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UNITED STATES DISTRICT COURT
DISTRICT OF NORTHERN CALIFORNIA
SAN FRANCISCO DIVISION

DIANA YE, JAMES BRIAN KURTZ, and TUSHAR BHUSHAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

X CORP., f/k/a/ TWITTER, INC., X HOLDINGS CORP., X.AI HOLDINGS CORP., ELON MUSK, DOES,

Defendants.

Case No. 3:25-cv-9501-TLT

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

Judge: Hon. Trina L. Thompson

DATE: July 28, 2026
TIME: 2:00 PM

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This case concerns the rights of thousands of employees to benefits owed under the Twitter Severance Plan. This Court previously held that these employees are not entitled to benefits under the Twitter Severance Plan because it is not governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001–1461. The Court of Appeals dismissed the fully briefed appeal before a decision on the merits because Plaintiffs could pursue their ERISA class claims in this case. As a result of the Court of Appeals Order, the threshold question of whether the Twitter Severance Plan is governed by ERISA, is again before this Court.

For years, Twitter, Inc. ("Twitter") maintained a policy of providing severance packages to eligible departing employees, calculated pursuant to an intricate matrix, with dedicated staff from numerous departments processing claims. In defiance of ERISA, however, Twitter kept its severance plan ("Plan" or "Twitter Severance Plan") largely secret until a controversial merger was announced. To prevent an outflow of talent, Twitter publicized summaries of Plan benefits to employees and guaranteed that benefits would continue for at least one year following the merger. Defendant Elon Musk—the acquirer of the company—approved these communications. Nonetheless, Defendants conducted mass layoffs after the merger and refused to pay benefits owed under the Plan. Obligations to provide services and funds to and through the Plan were cast aside, with those revenues going instead into Defendants' pockets. Defendants then ceased communications regarding the Plan, cut off avenues of inquiry about it, and denied the Plan's existence.

In the process of terminating thousands, Defendants, including Defendant Musk, falsely represented to employees that they were entitled to little or no severance in an attempt to coerce employees to release their rights at a steep discount—foreclosing the possibility of employees knowingly and voluntarily releasing all of their ERISA claims. Defendants' actions are exactly the type that ERISA, a "remedial statute designed to protect working men and women" from "the evils [of] . . . insecurity, lack of knowledge, and inability to police plan administration," was intended

to prevent. *Blau v. Del Monte Corp.*, 748 F.2d 1348, 1352, 1355 (9th Cir. 1984).

Plaintiffs properly plead the existence of an ERISA Plan and allege facts sufficient to assert claims under ERISA on behalf of the proposed class. Plaintiffs have also properly alleged that Defendant Musk was a Plan fiduciary and that he and Defendant X.AI Holdings Corp. (and/or its successors) are liable for X Holdings Corp.'s ERISA violations. Finally, this Court is not bound by its earlier dismissal of the *McMillian et al. v. Musk et al.* complaint and should issue a ruling on the merits.

I. PROCEDURAL HISTORY

Plaintiffs' allegations are largely based on the complaint in *McMillian*.[1] After the Named Plaintiffs in *McMillian* stopped seeking to represent the proposed ERISA class, Plaintiffs moved to intervene in an attempt to continue representing the interests of the potential ERISA class, which includes more than 4,000 individuals. *See* Dkts. 58.1, 73.1, *McMillian v. Musk*, No. 24-5045 (9th Cir. 2024) (hereinafter "*McMillian* Appeal"). While many potential class members may have signed release agreements upon their termination or after resolving individual non-ERISA arbitrations, the Ninth Circuit has clarified since this Court's decision in *McMillian* that ERISA requires these releases to be subject to "special scrutiny" to determine whether they were actually knowing and voluntary. *See Schuman v. Microchip Tech. Inc.*, 139 F.4th 1045, 1052–53 (9th Cir. 2025). Plaintiffs allege the releases were not knowing and voluntary, and thus all of the thousands of class members are entitled to relief: absent class members who have received nothing are entitled to benefits, and others are entitled to far more in severance than what Twitter may have paid in exchange for releases.

Plaintiffs filed this action while their intervention motion was pending, mindful that the

[1] In dismissing *McMillian*, this Court ordered that Plaintiffs could amend only with respect to non-ERISA claims. Dkts. 97, 106, *McMillian v. Musk*, No. 3:23-cv-03461 (N.D. Cal.).

statute of limitations for ERISA fiduciary breach claims can be as short as three years.[2] *See* Dkts. 82.1 at 7–8 & n.1, 83.1 at 6 & n.1, *McMillian* Appeal. In opposing intervention, Defendants argued that it was improper in part because Plaintiffs could pursue their claims in this action. Dkt. 95.1 at 2, *McMillian* Appeal. The Ninth Circuit dismissed the appeal because (and solely because) "the interests of any members of the putative class identified in this case, including any reliance on this action to protect their interests, can be protected adequately in another pending case." Dkt. 100.1, *McMillian* Appeal. In compliance with that Order (and not due to the "insanity" Twitter attributes to the Ninth Circuit's directive), Plaintiffs are pursuing ERISA claims on behalf of the class here.

II. LEGAL STANDARD

To survive a motion to dismiss under Rule 12(b)(6), plaintiffs need only plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Courts must "accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Courts "[are] not to presume facts against the Plaintiff on a motion to dismiss." *Barrilleaux v. Mendocino Cnty.*, 61 F. Supp. 3d 906, 916 (N.D. Cal. 2014). When the alleged facts, taken as true, "state[] a plausible claim for relief," dismissal is improper. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

III. ARGUMENT

A. Count I: Plaintiffs Adequately Plead the Existence of an ERISA Plan

Defendants' sole argument with respect to Plaintiffs' Count I benefits claims is that ERISA does not apply to the Twitter Severance Plan. The foundation of this argument is a misleading framing of Plaintiffs' allegations and a misunderstanding of Ninth Circuit precedent.

[2] Plaintiffs do not concede that the statute of limitations is three years instead of six. *See* 29 U.S.C. § 1113.

1. The Plan as Plaintiffs Allege It Involves an Ongoing Administrative Scheme

Plaintiffs' allegations easily "raise the existence of an ERISA plan above a speculative level." *Forest Ambulatory Surgical Assocs., L.P. v. United Healthcare Ins. Co.*, No. 10-CV-04911-EJD, 2011 WL 2748724, at *5 (N.D. Cal. July 13, 2011) (alteration in original) (internal quotation marks omitted). Plaintiffs allege that between at least 2019 and 2022, Twitter had an ongoing policy and practice of providing severance benefits to eligible employees. Compl. ¶ 31. The Plan existed for years before components of the Plan were summarized in FAQ documents, which were created in anticipation of Musk's takeover and which described some of the benefits available to employees who may be eligible as a result of mass layoffs if positions were eliminated in the wake of this takeover. *Id.* ¶¶ 32, 115. Employees from multiple departments and third-party contractors have been involved in administering the Plan. *Id.* ¶ 32. The Plan administrator administers the Plan by:

A) Assessing the reason for an individual employee's departure to determine whether the employee was eligible for Plan benefits. *Id.* ¶ 35. Any determination of why an employee departed is not always clear and may require conferring with an employee's management about the details of the employee's departure. *Id.* ¶ 36.

B) Determining the amount of each benefit component to which the employee was entitled, if the employee was departing for an eligible reason. The Twitter Severance Plan provides several components to a severance benefits package: a payment for a certain amount of base pay, a portion of bonuses, the value of a certain amount of equity known as Restricted Stock Units (RSUs), payment for health care premiums for a certain number of months, and a period of outplacement services. *Id.* ¶ 37. The value of each component of the Twitter Severance Plan—base pay, bonuses, RSUs, health care, and outplacement services—depended on factors such as the employee's tenure, job type (sales or non-sales), job level, department, geographical location, and participation in certain programs. *Id.* ¶ 38.

C) Exercising discretion in considering whether to adjust the severance package due to litigation risk and potentially other factors, after determining the values of each component in step B. *Id*. ¶ 39.

D) Issuing payments to the eligible employee once the discretionary adjustments in step C were complete.

E) Coordinating the employee's outplacement services for either three months or six months. *Id*. ¶¶ 37, 40, 83.

Twitter's Plan administrators repeated steps A through E on an ongoing basis for years any time an eligible employee departed. *Id*. ¶ 40.

2. Defendants' Factual Misrepresentations Must Be Disregarded at the Pleading Stage

Contrary to Defendants' assertions, the Plan did not require rote calculations and one-time lump sum payments that did not involve administrative discretion. First, a Plan administrator exercised discretion during the step A assessment of an employee's separation reason, *id.*¶¶ 35, 36, and the step C assessment of whether to adjust the severance package for litigation risk or other factors, *id*. ¶ 39. Second, Plan benefits are not a one-time lump sum payment: the Plan includes outplacement services that continue for a period following departure. Compl. ¶¶ 37, 40, 83. The ongoing payments and these outplacement services are more than sufficient to implicate ongoing administration. *See Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9–12 (1987) ; *see also Kolkowski v. Goodrich Corp.,* 448 F.3d 843, 849–50 (6th Cir. 2006) (lump sum plus benefits that continued for period after payout were subject to ERISA under *Fort Halifax*).

Defendants' factual misunderstandings stem from their attempt to recharacterize the FAQ documents as defining the entirety of the Plan. This contradicts Plaintiffs' pleadings, which must be taken as true. The Twitter Severance Plan existed since at least 2019, long before the merger; payment was part of the severance benefits, but the payment could be adjusted based on

discretionary factors; and severance benefits included outplacement services for several months after each payment was made to an outgoing employee. Compl. ¶¶ 31, 35–40, 83.

The Acquisition FAQ documents, which described how the existing Plan would be applied in the event of position eliminations, "**summarized some—but not all**" Plan components. *Id.* ¶ 53 (emphasis added). In response to one FAQ: "What is our **general** severance package **if a position is eliminated**?", the documents stated, "**Generally speaking, in the event of a position elimination**, [severance includes]…**at least**…two months base salary…Pro-Rated Performance Bonus Plan…[c]ash value of equity…[and a] cash contribution for health care continuation." *Id.* ¶ 58 (quoting FAQ documents) (emphasis added). Plaintiffs' allegations and the text of the FAQ documents make clear that the documents were a summary of some benefits available to employees eligible because they were separating for the particular reason of position elimination; the FAQ documents were not a comprehensive list of every aspect of the Plan for every type of eligible employee. Twitter made arguments consistent with Plaintiffs' position in *Arnold v. X Corp.*, arguing that Merger-era severance communications, like the FAQ documents "only generally describe[]" the Plan, No. 1:23-cv-00528-TMH, 2025 WL 2769479, at *5 (D. Del. Sep. 29, 2025), and it is estopped from taking a contrary position now. *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 783 (9th Cir. 2001) (noting judicial estoppel is "appropriate to bar litigants from making incompatible statements in two different cases").

Defendants claim that "whatever severance plan the prior company might have maintained before that date ceased to exist" when Musk took over. *See* Dkt. 40 at 22, *Ye. et al. v. Musk et al.* No. 3:25-cv-9501-TLT (N.D. Cal.) (hereinafter "Mot."). However, ERISA-governed plans cannot be terminated or amended without following formal amendment procedures. *See Winterrowd v. Am. Gen. Annuity Ins. Co.*, 321 F.3d 933, 937 (9th Cir. 2003); *Miller v. Coastal Corp.*, 978 F.2d 622, 624 (10th Cir. 1992) (benefit plan cannot be modified by informal communications); *Coffin v. Bowater Inc.*, 501 F.3d 80, 85-86 (1st Cir. 2007) (amendment must be done through formal

writing, executed by party authorized to effect such amendment). Whether a plan was in fact amended or terminated is a "fact-intensive inquiry," *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 85 (1995), including into whether the purported amendment was infected by procedural violations or bad faith, *see, e.g.*, *Blau*, 748 F.2d at 1353-54.

Plaintiffs plead that no amendment occurred; that the Plan has been in place since 2019; and that the 2022 communications were generalized summaries of how the Plan would apply to certain employees, not Plan amendments. Compl. ¶¶ 31, 53, 58–59. Thus, this Court is precluded by the pleading standards from presuming that Twitter followed the required procedures, that it amended the Plan, or that any purported amendment was not so riddled with procedural violations or bad faith as to be invalid. *In re Tracht Gut, LLC*, 836 F.3d 1146, 1150 (9th Cir. 2016) (noting the court must "draw all reasonable inferences in favor of the plaintiff" at the pleading stage).

3. The Plan Is Governed By ERISA Under Ninth Circuit Case Law

Defendants' legal analysis also falters. In *Fort Halifax*, the seminal Supreme Court decision defining when benefits are governed by ERISA, the Court held that a benefit program is a plan governed by ERISA where there is a "uniform administrative scheme." 482 U.S. at 9, 18 . The lump sum payment triggered by a single plant termination in *Fort Halifax* was not a plan because "the employer assume[d] no responsibility to pay benefits on a regular basis, and thus face[d] no periodic demands on its assets." *Id*. at 12 . Whether a program implicates "a one-time obligation" or ongoing benefits is viewed not from the perspective of each individual employee, but from the employer. *Id* . For example,"[w]hile death benefits may represent a one-time payment from the perspective of the beneficiaries, the employer clearly foresees the need to make regular payments to survivors on an ongoing basis," and a death benefit plan is thus governed by ERISA even though each beneficiary experiences the triggering event only once. *Id.* at 14, n.9 ; *see also Massachusetts v. Morash*, 490 U.S. 107, 113 (1989) ("ERISA covers 'employee benefit plans'").

The Ninth Circuit follows *Fort Halifax*'s simple test: "From the fountain of *Fort Halifax* .

. . a relatively simple test has emerged to determine whether a plan is covered by ERISA: does the benefit package implicate an ongoing administrative scheme?" *Delaye v. Agripac, Inc.*, 39 F.3d 235, 237 (9th Cir. 1994). The Twitter Severance Plan meets the ongoing administrative scheme requirement because Twitter implicated a "set of standard procedures to guide processing of claims and disbursement of benefits" and systematically paid severance benefits in a way that required "a host of obligations, such as determining the eligibility of claimants, calculating benefit levels, making disbursements, monitoring the availability of funds for benefit payments, and keeping appropriate records[.]"[3] *See Fort Halifax*, 482 U.S. at 9 ; *see also Bogue v. Ampex Corp.*, 976 F.2d 1319, 1323 (9th Cir. 1992) ("[T]here was no way to administer [the program for ten employees] without an administrative scheme."). The Twitter Severance Plan covered thousands of employees, Compl. ¶ 74, far more than the ten employees found to implicate an ongoing administrative scheme in the Ninth Circuit's decision in *Bogue*, 976 F.2d at 1321 .

Defendants rely on *Velarde* and *Delaye* , Mot. at 20–21, two cases assessing whether one-time payments nevertheless implicated an ongoing administrative scheme. In these cases, the court assessed whether there was sufficient discretion that could transform a one-time employer payment into one that nevertheless implicated an ongoing administrative scheme. *See* DOL Amicus Brief in Support of Plaintiffs, Dkt. 16.1 at 12, 26, *McMillian* Appeal (explaining that discretion is not required where there is already an ongoing administrative scheme but, where a plan does not implicate ongoing administration, discretion may be sufficient to bring an otherwise non-ERISA plan under ERISA's purview): "[The Ninth Circuit] has never held that even where a policy pays benefits directly to multiple employees on an ongoing basis over time—in other words, a policy

[3] Because of this ongoing administrative scheme, Defendants' reliance on a district court's dicta that "traditional severance packages" calling for nothing more than a one-time lump-sum payment generally do not involve an ongoing administrative scheme, is inapplicable. *See* Mot. at 19 (quoting *Edwards v. Lockheed Martin Corp.*, a case in which the court found the alleged plan was ERISA-governed, 954 F. Supp. 2d 1141, 1149 (E.D. Wash. 2013), *aff'd* 617 F. App'x 648 (9th Cir. 2015)).

that has the precise characteristics of an 'ongoing administrative scheme' cited by the Supreme Court in *Fort Halifax*—it must still entail 'particularized discretion.'" (emphasis in original)) .

In *Delaye*, the Ninth Circuit held that administering the compensation benefits provided in one individual's contract did not constitute an ongoing administrative scheme. 39 F.3d at 237 . The *Delaye* program was not ongoing—it applied only to one employee—and there was no ongoing discretionary analysis in determining the employee's eligibility for benefits like there was in *Bogue*, where the employer had to make eligibility assessments for ten employees. *See Delaye*, 39 F.3d at 237–38. Here, the Plan applied to thousands of eligible departing employees and is more akin to *Bogue* than *Delaye*. Compl. ¶¶ 31, 74. Nor is this case like *Velarde v. PACE Membership Warehouse, Inc.*, which involved only lump sum payments (not outplacement services) and a one-time plant closing (not payments made over years to all eligible employees). 105 F.3d 1313, 1317 (9th Cir. 1997).

Notably, even in situations where discretion is necessary to subject a severance plan to ERISA, only "more than a modicum" of discretion is required. *Golden Gate Restaurant Ass'n v. City & County of San Francisco*, 546 F.3d 639, 650 (9th Cir. 2008). Plaintiffs plead that the Plan implicated discretion in steps A and C above, including eligibility assessments, litigation risk, and potentially other factors. Compl. ¶¶ 35, 36, 39.

Plaintiffs also plead that the "intended benefits, beneficiaries, source of funding, and procedures for receiving benefits" are reasonably ascertainable. *Winterrowd*, 321 F.3d at 939 (citing *Donovan v. Dillingham*, 688 F.2d 1367, 1373 (11th Cir. 1982) (setting "reasonably ascertainable" test)). "Very few offers to extend benefits will fail the [reasonably ascertainable] test . . . , which requires neither formalities nor elaborate details." *Winterrowd*, 321 F.3d at 939. Plaintiffs allege the matrix sets forth factors for determining eligibility, and the amount and type of severance, Compl. ¶ 34; and allege specific details regarding the intended benefits, *id.* ¶ 37, and the procedures for receiving them, *id.* ¶¶ 31–32, 34–44. The benefits include payments based on

salary, tenure, job level, department, reason for departure, a payment for health insurance continuation, pro-rated bonuses for certain types of employees, payments for RSUs, and outplacement services. *Id.* ¶ 37. Plaintiffs include details on the procedures for receiving benefits, including how payments are calculated, processed, and paid, and required approvals. *Id.* ¶¶ 31–32, 34–44. Plaintiffs also allege that the Plan was funded via "company funds." *Id.* ¶ 44. These allegations are sufficient to establish that the Plan terms are reasonably ascertainable.[4] *Winterrowd*, 321 F.3d at 938 ("There are few formal requirements for the creation of an ERISA plan"); *see also Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp., Inc.*, 99 F. Supp. 3d 1110, 1159 (C.D. Cal. 2015) ("Given the allegations in this case regarding absence of access to plan documents, the Court will permit these allegations to be made 'on information and belief.'").

Because the Twitter Severance Plan is governed by ERISA, Plaintiffs' claim for benefits under 29 U.S.C. § 1132(a)(1)(B) should not be dismissed. Defendants' assertion that some potential class members have settled related, non-ERISA claims does not doom Plaintiffs' ERISA benefits claims given Plaintiffs' allegations that the releases signed by thousands of other potential class members were not knowing and voluntary. Compl. ¶ 81, 123-24. As the Ninth Circuit explained last year, any release agreements purporting to waive ERISA benefits claims where breach of fiduciary duties is alleged must be evaluated with "special scrutiny." *Schuman*, 139 F.4th at 1049, 1052–54 (holding a breach of fiduciary duties, like "deceiving a plan's beneficiaries in order to save the employer money," can render releases invalid). Plaintiffs allege that even those potential class members who have signed release agreements are entitled to far more than Twitter has paid them.

[4] Twitter and Musk's failure to provide plan documents to employees does not absolve them of ERISA liability. *Blau*, 748 F.2d at 1355–56 (holding that severance plan that had been kept secret from employees were subject to ERISA).

B. Count II: Defendants Had a Duty to Ensure the Plan Could Pay Contractually Guaranteed Benefits, and the Plan was Harmed by Defendants' Breach

Defendants' attempts to defeat Count II also fail for two reasons. First, Defendants' repeated assertion that they are not obligated to have a severance plan is immaterial. Twitter created a severance plan and Twitter and Defendant Musk contractually agreed and represented in Section 6.9 of the Merger Agreement that it would continue to provide "payments and benefits" that are "no less favorable" than what was provided before the merger. Compl. ¶ 48. As a result, Plan fiduciaries could not fail to fund the Plan without breaching their fiduciary duties. *See, e.g.*, *Inter-Modal Rail Emp. Ass'n. v. Atchison, Topeka, & Santa Fe Ry. Co.*, 520 U.S. 510, 515 (1997) (an employer may "contractually cede[]" its non-fiduciary settlor freedom); *Alday v. Raytheon Co.*, 693 F.3d 772, 781–82 (9th Cir. 2012) (acknowledging that an employer can "contractually cede[]" its settlor function freedoms and that it violates ERISA where it fails to provide benefits in contravention of a contractual duty); *Frulla v. CRA Holdings, Inc.*, 596 F. Supp. 2d 275, 283–84 (D. Conn. 2009); *L.I. Head Start Child Dev. Servs., Inc. v. Econ. Opportunity Comm'n of Nassau Cnty. Inc.*, 710 F.3d 57, 69–70 (2d Cir. 2013) (citing *Frulla* and holding that fiduciaries breached their duties by not funding plan in violation of trust agreement).

While it is rare for courts to review a welfare benefit plan with a contractual obligation, courts that have done so have rejected the arguments Defendants make here. In *Frulla*, for example, a district court held that "[e]ven if ERISA itself imposes no . . . funding requirement for welfare plans," the defendants had a fiduciary duty to ensure the plan had enough funds to pay benefits because they were "contractually obligated to provide and fund benefits under the Plan as a result of the [contract]."[5] *Id.* at 283–84. Plaintiffs allege that the Merger Agreement created an

[5] The contract in *Frulla* was an Agreed Judgment enforcing a settlement. 596 F.Supp.2d at 279. The effect of this Agreed Judgment is the same as that of the Merger Agreement here; an agreed judgment is akin to a contract and is interpreted by applying principles of contract interpretation. *See Hook v. State of Ariz., Dep't of Corr.*, 972 F.2d 1012, 1014 (9th Cir. 1992) ("[C]onsent decrees are essentially contractual agreements that are given the status of a judicial decree.").

obligation to maintain benefits for a certain period, like the contract in *Frulla*, and Defendants diverted funds away from the Plan. Compl. ¶¶ 146, 147. As in *Frulla*, these allegations sufficiently plead a breach of fiduciary duty claim.

Plaintiffs need not successfully plead a breach of contract for the contract to give rise to Defendants' fiduciary duty. *See Halliburton Co. Benefits Comm. v. Graves*, 463 F.3d 360, 375–76 (5th Cir. 2006) (other portions clarified on denial of hearing; *Halliburton Co. Benefits Comm. v. Graves*, 479 F.3d 360 (5th Cir. Feb. 13, 2007)). In *Halliburton*, for example, the defendant, like Defendants here, signed a merger agreement providing the surviving company provide employees with a certain level of benefits for a certain period after the merger. 463 F.3d at 365. The court held that while the plaintiffs could not establish a breach of contract because they were not third-party beneficiaries, they could nevertheless point to the company's contractual obligations as a basis for their breach of fiduciary duty claims. *Id*. at 375–76 (rejecting the defendant's argument because it was "wrongfully equat[ing] a plan participant's enforcement of a plan right under ERISA with a third party's enforcement of a provision in a contract"). Because the cases cited by Defendants in support of their assertion that they were not obligated to fund the Plan do not involve contractual obligations to pay benefits, they are inapplicable.[6]

Defendants argue that the promises in Section 6.9 of the Merger Agreement should be disregarded, relying on a single quote from an out-of-circuit, unreported, non-ERISA decision in which the court explained in dicta that it was "compelled" by Defendants' proffered interpretation of Section 6.9 of the Merger Agreement. Mot. at 24 (citing *Arnold*, 2025 WL 2769479, at *4). Importantly and contrary to Defendants' assertion, the *Arnold* court did not interpret the meaning

[6] *See Lockheed Corp. v. Spink*, 517 U.S. 882 (1996) (no contract requiring benefits); *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 148 (1985) (same); *Snodgrass v. Simpson Timber Co.*, 955 F.2d 48 (9th Cir. 1992) (same); *Curtiss-Wright*, 514 U.S. 73 (1995) (same); *In re WorldCom, Inc.*, 263 F.Supp.2d 745, 758 (S.D.N.Y. 2003) (contemplating effect of contract on funding obligations but instead looking at whether fiduciaries breached their duties by leaving company stock among 401(k) options even though they allegedly knew the company was not doing well financially).

of Section 6.9 because it held employees were not third-party beneficiaries. *Arnold*, 2025 WL 2769479, at *4. Additionally, Defendants' argument is wholly inconsistent with case law in this Circuit providing that contracts should not be interpreted to render any word or term meaningless. *United States v. 1.377 Acres of Land*, 352 F.3d 1259, 1265–66 (9th Cir. 2003) (cautioning that courts should avoid a contract interpretation that makes part of the contract surplusage).

Plaintiffs' § 502(a)(2) claim is on behalf of the Plan and alleges harm to the Plan, not individual participants. Compl. ¶¶ 144–47 (alleging Defendants left the Plan unable to meet its contractual obligations). Plaintiffs request an order requiring Defendants to "fund the Plan in an amount sufficient to pay benefits to Plan participants[.]" Compl. ¶ Prayer for Relief, H. A request for restitution to the Plan "sufficient to make the plan participants whole" does not indicate that Plaintiffs are seeking individual relief disguised as relief to the Plan because such a request is "a measure of the damages that defendants caused to the Plan[.]" *Pfahler v. Nat'l Latex Prods. Co.*, 517 F.3d 816, 826 (6th Cir. 2007). That the recovery to the Plan will ultimately benefit participants does not transform the claim into one for individual benefits.[7] *See id*. ("[T]he fact that damages awarded to the Plan may provide plaintiffs with an indirect benefit, the payment of their claims, does not convert their derivative suit into an action for individual relief.").

[7] The cases cited by Defendants do not suggest otherwise; those plaintiffs did not allege any harm to the plan or request any remedy for the plan. *See, e.g.*, *Russell*, 473 U.S. 134 (seeking extracontractual damages for delay of individual benefits); *Ortega v. Rainbow Disposal Co. Inc.*, No. SA CV 15-669-JFW (FFMx), 2016 WL 11757786, at *3 (C.D. Cal. Jan. 14, 2016) (plaintiff did not plead injuries to the plan or seek remedies on behalf of the plan); *Ford v. MCI Commc'ns Corp. Health & Welfare Plan*, 399 F.3d 1076, 1082 (9th Cir. 2005) (§ 502(a)(2) claim not available where plaintiff sought only individual remedy); *Wise v. Verizon Commc'ns, Inc.*, 600 F.3d 1180, 1189 (9th Cir. 2010) (individual claim for benefits included "no factual allegations that the Plan Administrators violated their duties with respect to anything other than [] individual claim"); *Smith v. Recreational Equip. Inc*., No. 3:24-cv-06032-TMC, 2025 WL 1953042, at *10–11 (W.D. Wash. July 16, 2025) (plaintiffs alleged some individual participants treated less well, not that fiduciary breaches injured plan); *Magin v. Monsanto Co.*, 420 F.3d 679, 687–88 (7th Cir. 2005) (plaintiff alleged no harm to plan and requested no remedy to the plan); *Rosenblatt v. United Way of Greater Houston*, 590 F.Supp.2d 863, 876 (S.D. Tex. 2008) (allegations about incorrect calculation of individual benefits, not plan-wide harm).

C. Count III: Defendants Breached Their Fiduciary Duties by Failing to Provide Complete and Accurate Information

Defendants breached their fiduciary duties by failing to not mislead Plan participants, failing to provide participants with complete and accurate information about the Plan, and failing to disclose potential changes to the Plan that were under serious consideration. *See King v. Blue Cross & Blue Shield of Ill.*, 871 F.3d 730, 744 (9th Cir. 2017); *Mathews v. Chevron Corp.*, 362 F.3d 1172, 1183 (9th Cir. 2004); *Kalda v. Sioux Valley Physician Partners, Inc.*, 481 F.3d 639, 644 (8th Cir. 2004) ("[A] fiduciary has a duty to inform when it knows that silence may be harmful and cannot remain silent if it knows or should know that the beneficiary is laboring under a material misunderstanding of plan benefits[.]") (internal citation omitted).

1. Plaintiffs' Claims Based on the Failure to Disclose or Misrepresentation are Subject to Rule 8 Notice Pleading, Not Rule 9(b) Heightened Pleading

Defendants are wrong that Plaintiffs' failure to disclose and misrepresentation claims are subject to Rule 9(b)'s heightened pleading standard for fraud. *See Concha v. London*, 62 F.3d 1493, 1502–03 (9th Cir. 1995) (explaining why Rule 9(b) does not apply to ERISA cases that do not allege fraud). The Ninth Circuit "expressly rejected . . . the analogy to fraud" in ERISA misrepresentation cases. *Warmenhoven v. NetApp, Inc.*, 13 F.4th 717, 727 (9th Cir. 2021). Accordingly, Rule 8, not 9(b), applies.[8] *See In re First Am. Corp. ERISA Litig.*, No. SACV-07-

[8] *See also Jander v. Int'l Bus. Machines Corp.*, 205 F.Supp.3d 538, 542 (S.D.N.Y. 2016) ("[A]legations similar to fraud do not implicate Rule 9(b) where the gravamen of the claim is grounded in ERISA.") (internal quotation and citation omitted); *In re Polaroid*, 362 F. Supp.2d 461, 469–70 (S.D.N.Y. 2005) ("Allegations of intentional conduct do not transmogrify breach of fiduciary duty claims into causes of action for fraud."). The cases cited by Defendants do not involve breach of fiduciary duty claims under ERISA. *See* Mot. at 27 (citing *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009), (California state law claims)); *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (False Claims Act); *Evanson v. Price*, No. 2:06-CV-0795-GEB-KJM, 2006 WL 2829789, at *4–5 (E.D. Cal. Sep. 29, 2006) (addressing fraud exception to statute of limitations); *see also Dual Diagnosis Treatment Ctr., Inc. v. Blue Cross of Cal.*, No. SA CV 15-0739-DOC (DFMx), 2017 WL 11467730, at *3 (C.D. Cal. Sept. 25, 2017) (unpublished case in which the plaintiffs sought reformation, an equitable remedy not sought here that specifically requires allegations of fraud).

01357-JVS (RNBx), 2008 WL 5666637, at *7 (C.D. Cal. July 14, 2008) (claim for breach of fiduciary duty by nondisclosure is subject to Rule 8, not 9(b)). Courts apply Rule 8 in ERISA cases because many details are concealed from employees and in defendants' exclusive possession. *See Concha*, 62 F.3d at 1503 ("relax[ed] pleading requirements" are appropriate in ERISA cases because "facts will frequently be in the exclusive possession of the breaching fiduciary"); *see also Monper v. Boeing Co.*, 104 F. Supp. 3d 1170, 1177 (W.D. Wash. 2015) (applying Rule 8 to claim for breach of fiduciary duties related to misinformation about benefits because an employee "often will not, at the time he files his complaint, be in a position to describe with particularity the events constituting the alleged misconduct").

2. Plaintiffs Adequately Plead Defendants' Failure to Disclose and Misrepresentation

Even if Rule 9(b) applies, Plaintiffs meet the standard by alleging specific communications, their content, and the dates they were made, easily satisfying the "who, what, when, where, and how" of Rule 9(b). *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009); *see also Baker v. Save Mart Supermarkets*, 684 F. Supp. 3d 980, 987–88 (N.D. Cal. 2023) (holding that even if Rule 9(b) applied to the claim for breach of fiduciary duty for misrepresentation of available benefits, plaintiffs met the Rule 9(b) standard by alleging that employees were told by HR and managers and in pamphlets that their benefits would be "as good as" those provided to others); Compl. ¶¶ 53–59 (describing and excerpting specific, dated company communications and documents alleged to be misleading).

First, Plaintiffs specifically alleged that Defendant Musk's November 4, 2022, social media post that employees were receiving "50% more than legally required" was misleading given that employees were not receiving what they were entitled to under the Plan. Compl. ¶¶ 77–78. Before Musk's takeover, Defendants repeatedly represented that employees would be eligible for the same severance benefits as before the merger. *Id.* ¶¶ 53–59 (providing specifics). Defendant Musk approved these communications. *Id.* ¶ 54. These direct, affirmative representations by Defendant

Musk and his associates and subordinates were part of his "disloyal and dishonest strategy . . . to deny the Plan's existence when the employees were fired." *Id.* ¶ 161.

Second, Defendants failed to provide beneficiaries with complete and accurate information about the Plan. *Barker v. Am. Mobil Power Corp.*, 64 F.3d 1397, 1403 (9th Cir. 1995) ("A fiduciary has an obligation to convey complete and accurate information material to the beneficiary's circumstance, even when a beneficiary has not specifically asked for the information.").

If Twitter's Severance Plan was "discontinued," as Defendants argue, Mot. at 28, then employees should have been informed of the change to the Plan that Defendants were seriously considering, *Mathews*, 362 F.3d at 1180 (fiduciary "has a duty to provide complete and truthful information about [changes to a plan] then under serious consideration"). Plaintiffs plead specific facts demonstrating that the determination not to abide by the plan was under "serious consideration" before Defendant Musk took over and that Defendants failed to inform employees of this in breach of their fiduciary duties. Compl. ¶153–54. Plaintiffs allege Defendants were meeting to plan on proceeding with layoffs without abiding by the Plan. *Id.* ¶¶ 150–53. Defendants now assert that they were not obligated to communicate anticipated changes to the Plan because no "specific proposal" was under consideration, despite Plaintiffs' allegations that Defendant Musk, Human Resources, and other company leaders were considering a proposal to not pay Plan benefits. *Id.* ¶¶ 60–63, 69–72.

As Defendants acknowledge, whether a change to the Plan was under "serious consideration" is an "inherently fact-specific review." Mot. at 27 (quoting *Mathews*, 362 F.3d at 1180–82, a case decided on summary judgment rather than the pleading stage). These fact-specific inquiries are not appropriate at the pleading stage. *Lee v. Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (noting "factual challenges to a plaintiff's complaint have no bearing" at the pleading stage), *abrogated on other grounds by Galbraith v. Cnty. Of Santa Clara*, 307 F.3d 1119,1125–26 (9th Cir. 2002); *see also Allen v. GreatBanc Tr. Co.*, 835 F.3d 670, 678 (7th Cir. 2016) ("[A]n ERISA

plaintiff alleging breach of duty does not need to plead details to which she has no access, as long as the facts alleged tell a plausible story."); *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 598 (8th Cir. 2009) ("ERISA plaintiffs generally lack the inside information necessary to make out their claims in detail unless and until discovery commences."). "[F]lexibility [in determining "serious consideration"] is particularly necessary in cases that present evidence of an employer's deliberate attempt to circumvent ERISA[.]" *Bins v. Exxon Co. U.S.A.*, 220 F.3d 1042, 1049 (9th Cir. 2000) (internal quotation marks omitted). Here, Defendants sought to prevent employees from discussing or asking about severance benefits, providing further support for "flexibility" in finding that any anticipated changes were under serious consideration.

Finally, Defendants are incorrect that Plaintiffs must establish detrimental reliance on a misrepresentation.[9] *See CIGNA Corp. v. Amara*, 563 U.S. 421, 443–44 (2011) ("[T]here is no general principle that 'detrimental reliance' must be proved before a remedy is decreed. To the extent any such requirement arises, it is because the specific remedy being contemplated imposes such a requirement."); *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945, 963–64 (9th Cir. 2014) (finding no reliance but remanding to district court to consider remedy of surcharge in misrepresentation claim in light of Supreme Court's holding in *CIGNA*). Plaintiffs do not seek equitable estoppel, a remedy that requires detrimental reliance,[10] but injunctive relief related to the Plan and its management. Compl. Prayer for Relief, A, D-H, L.

D. Count III: Plaintiffs' Claims for Equitable Relief Do Not Seek Duplicative Relief and Should Not be Dismissed

Plaintiffs can assert claims in the alternative under § 502(a)(3) for equitable relief and under §502(a)(1)(B) for benefits. *See Moyle v. Liberty Mut. Ret. Ben. Plan*, 823 F.3d 948, 960–62 (9th

[9] Even if some showing of harm is required, Defendants' misrepresentations and omissions caused harm, including employees not pursuing the full benefits to which they were entitled and signing release agreements. Compl. ¶¶ 7–9, 75–81, 123–24, 156, 160–163.

[10] *Poore v. Simpson Paper Co.*, on which Defendants rely, is inapplicable because plaintiffs there sought equitable estoppel and the case predates *CIGNA*. 566 F.3d 922, 928 (9th Cir. 2009).

Cir. 2016). At this stage, Plaintiffs need not prove likelihood of success on both claims.[11] *Id.* Additionally, Plaintiffs may ultimately prevail on the following claims for equitable relief, which are not duplicative of Plaintiffs' claims for benefits.

***Appointment of Independent Fiduciary*:** Plaintiffs seek "[a]n Order compelling Defendants to appoint one or more independent fiduciaries to participate in the management of the Plan[.]" Compl. ¶ Prayer for Relief, F; *see Donovan v. Mazzola*, 716 F.2d 1226, 1235–36 (9th Cir. 1983) (appointing independent investment manager and acknowledging that courts have "broad authority to fashion remedies" for breach of fiduciary duties).

Other Injunctive Relief: Injunctive relief is appropriate in equity where there has been irreparable harm, remedies at law would be inadequate, and the court finds it warranted. *See Bd. of Trs. of Bay Area Roofers Health & Welfare Tr. Fund v. Westech Roofing*, No. 12-cv-05655-JCS, 2014 WL 4383062, at *3 (N.D. Cal. Sept. 4, 2014). Defendants' failures to disclose changes to the Plan and misrepresentations regarding Plan benefits irreparably harmed Plaintiffs. Plaintiffs seek orders requiring Defendants to abide by ERISA and the Plan terms. Compl. ¶ Prayer for Relief, D-G.

Surcharge: Surcharge is an equitable remedy that provides compensation for a loss resulting from a fiduciary's breach of duty or to prevent a fiduciary's unjust enrichment. *Schuman v. Microchip Tech. Inc.*, 302 F. Supp. 3d 1101, 1119 (N.D. Cal. 2018) (citing *CIGNA*, 563 U.S. 421 (2011)). Surcharge is not duplicative of a claim for benefits as it provides "a remedy for *other* losses caused by Defendants' alleged breach of fiduciary duty, *beyond* the amount of benefits

[11] Defendants misstate the holding in *Moyle*, which stands for the premise that claims under 502(a)(1)(b) and (a)(3) "may proceed simultaneously as long as there is no double recovery." 823 F.3d at 961. Defendants cite no case in this Circuit contradicting this rule. The cases Defendants cite stand for the proposition that plaintiffs may not *obtain* duplicative relief, but not that they cannot bring claims in the alternative. Defendants' reference to *Hutcherson v. Krispy Kreme Doughnut Corp.*, 803 F.Supp.2d 952, 958–59 (S.D. Ind. 2011), is similarly misguided, claiming the court dismissed the 502(a)(3) claim because it was duplicative when the court took issue with the plaintiff's failure to allege equitable relief at all.

allegedly withheld." *Id.* at 1119–20 (emphasis in original); *see also LD v. United Behavioral Health*, 508 F. Supp. 3d 583, 596–98 (N.D. Cal. 2020) (equitable remedy appropriate where the defendant breached fiduciary duties and unjustly gained profits as a result).

E. Count IV: Dismissal of the Failure to Monitor Claim Would Be Inappropriate

Defendants' only challenge to the failure to monitor claim is that it is derivative of the breach of fiduciary duty claims. Since Plaintiffs have adequately pled breach of fiduciary duty claims, their duty to monitor claim should be sustained. *In re Syncor ERISA Litig.*, 351 F. Supp. 2d 970, 986 (C.D. Cal. 2004).

F. Plaintiffs Plead Sufficient Facts to Establish that Musk was a Fiduciary

1. Plaintiffs Sufficiently Plead That Musk Was a Functional Fiduciary

"ERISA's definition of 'fiduciary' is functional rather than formal." *Parker v. Bain*, 68 F.3d 1131, 1139–40 (9th Cir. 1995) (noting the inquiry is whether a person "in fact exercised any discretionary authority . . . regardless [of] whether the Plan itself named [them] as such"). ERISA fiduciary status is to be construed "liberally, consistent with ERISA's policies and objectives." *Johnson v. Couturier*, 572 F.3d 1067, 1076 (9th Cir. 2009); *see also* 29 U.S.C. § 1002(21)(A).

Plaintiffs allege Defendant Musk was a fiduciary because he was the ultimate decisionmaker regarding Plan management and whether benefits were paid. Compl. ¶¶ 60–62, 141, 153. Decisions regarding plan administration and payment of benefits are a quintessential fiduciary function. *King*, 871 F.3d at 745 (explaining "final authority to authorize or disallow benefit payments" creates fiduciary status).

Plaintiffs further allege that Defendant Musk had the final word on communications to employees regarding such benefits. Even before he acquired Twitter, Plaintiffs allege that Defendant Musk personally approved major communications to employees about the future

availability of severance.[12] Compl. ¶¶ 18, 54–55, 59, 152. Defendant Musk instituted specific policies designed to hinder employees' awareness of the Plan as the company conducted layoffs, including shutting down the Slack channel where employees could previously ask about company policies. *Id*. ¶¶ 63–68, 154–61. Moreover, after taking control of Twitter, Defendant Musk posted on his personal Twitter account—where employees had been directed to look for information on the layoffs and policies, *Id*. ¶ 157—that terminated employees were receiving "50% more than legally required,"[13] *Id*. ¶ 77.

Deciding what to convey to employees is a fiduciary act. *Varity Corp. v. Howe*, 516 U.S. 489, 502–03 (1996). Because ERISA's definition of fiduciary focuses on practicalities rather than formalities, it does not matter that Musk approved the communications to employees about the future availability before he became sole owner and CEO. That Defendant Musk may have instructed others to communicate on his behalf also does not relieve him of his fiduciary duty to provide full and accurate information about the Plan. *Bafford v. Northrup Grumman Corp.,* 994 F.3d 1020, 1027 (9th Cir. 2021) ("[T]he fiduciary cannot hide behind [a] delegation to escape liability for fiduciary breach.").

2. Plaintiffs Sufficiently Plead That Musk is Subject to Alter Ego Liability

Defendant Musk also faces liability as an alter ego of the company because Plaintiffs' allegations meet the two-factor test: that (1) there is "a sufficient unity of interest and ownership between the corporation and the individual [such] that the separate personalities of the individual and the corporation no longer exist" and that (2) "treating the acts as those of the corporation alone

[12] These allegations differ from those in *Engel v. Farmers Grp., Inc.*, No. 20-245, 2020 WL 4032902, at *4 (C.D. Cal. May 13, 2020), where alleged fiduciary had no control over the plan.

[13] Defendants' argument that this post concerned the WARN Act ignores how a reasonable employee would interpret the post, which explicitly referred to severance and purported to state a legal conclusion about eligibility for severance. *See Varity*, 516 U.S. at 504 (rejecting argument that "parses the . . . communications too finely").

will sanction a fraud, promote injustice, or cause an inequitable result."[14] *Misik v. D'Arco*, 130 Cal. Rptr. 3d 123, 128 (2011), *as modified* (Aug. 9, 2011). "Whether a party is liable under an alter-ego theory is normally a question of fact," and courts "must examine all the circumstances to determine whether to apply the doctrine." *Zoran Corp. v. Chen*, 110 Cal. Rptr. 3d 597, 606–07 (2010) (internal quotation marks and citation omitted).

Defendant Musk has repeatedly blurred the line between himself and his companies. Plaintiffs allege multiple transactions that do not appear to be arms-length. Defendant Musk borrowed $1 billion from SpaceX and sold his Tesla stocks to finance his purchase of Twitter, Compl. ¶¶ 133–34; used his position as controlling shareholder of X Corp. and X.AI to facilitate a transaction that increased his net worth by tens of billions of dollars, *id.* ¶ 131; and "conscripted employees from his other companies, as well as friends and family, to do work at and for Twitter," *id.* ¶ 132. Plaintiffs plead Defendant Musk had "immense control over Twitter," that he "routinely used his personal Twitter account to propose and announce changes in company policy," and that "official Twitter communications described the company as 'Twitter 2.0: an Elon company.'" *Id.* ¶¶ 138, 140. These allegations easily meet the "unity of interest and ownership" requirement at this stage.[15] The allegations here go far beyond those in *Arnold*, where plaintiffs pointed only to control over low-level decisions (i.e., Twitter account access and subscription price) and made no

[14] To establish alter ego liability, plaintiffs need show either injustice or fraud. *See Rodriguez v. Old W. Exp., Inc.*, 711 F. Supp. 3d 1182, 1190–91 (E.D. Cal. 2024). While Defendants point to a three-factor inquiry outlined in *Seymour v. Hull & Moreland Eng'g*, 605 F.2d 1105, 1111 (9th Cir. 1979), later cases establish that "Ninth Circuit decisions for many years have recognized a disjunctive test, wherein the second prong requires a showing of either fraud or injustice." *See id.* (explaining that *Seymour* applied a two-part test).

[15] *See, e.g.*, *In re SK Foods, LP*, 499 B.R. 809, 840–41 (Bankr. E.D. Cal. 2013) (applying alter ego theory where one person controlled all the companies, undercapitalized the companies, and routinely transferred money between companies); *Parker v. Country Oaks Ptrs, LLC*, No. SACV 23-00195-CJC (KESx), 2023 WL 3149330, at *3 (C.D. Cal. Mar. 22, 2023) (explaining that "[a]t the motion to dismiss stage, the pleading requirements for alleging an alter ego theory are not strict" because "the most damning evidence of the unity of interest and identity is often in the hands of the corporation and its principals and can be found nowhere else" (internal quotation marks and citation omitted).

allegations regarding Defendant Musk's blending of companies. *Cf. Arnold v. X Corp.*, No. 1:23-cv-00528-TMH, 2025 WL 2769484, at *5 (D. Del. Sept. 29, 2025).

Plaintiffs' allegations regarding Defendant Musk's intent to deceive employees about their severance, *see* Compl. ¶¶ 88–89, 120–22, show it would be unjust to deny Plaintiffs severance benefits based on Twitter's funds alone. Importantly, Plaintiffs need not establish at the pleading stage that veil piercing will be necessary to satisfy a future judgment. "A money judgment must be won before a plaintiff may pierce a defendant's veil, but it is not a pleading requirement." *Bd. of Cement Masons S. Cal. Health Welfare Fund v. Galvan & Brown Concrete Decking, Inc.*, No. CV 09-4215 CBM, 2009 WL 10675912, at *6 (C.D. Cal. Dec. 4, 2009) (internal citation omitted) (citing *UA Loc. 343 of the United Ass'n of Journeymen & Apprentices of the Plumbing and Pipefitting Industry v. Nor-Cal Plumbing, Inc.*, 48 F.3d 1465, 1475–76 (9th Cir. 1994)).

Furthermore, allowing Defendant Musk to benefit from his close personal association with his companies while hiding behind them to evade accountability for his actions would promote injustice and lead to an inequitable result. *See, e.g.*, *Nationwide Mut. Ins. Co. v. Murray*, 811 F. Supp. 3d 1142, 1155 (C.D. Cal. 2025) (imposing alter ego liability where an individual defendant would otherwise "escape liability" for wrongful actions), *appeal docketed* No. 26-76 (9th Cir.); *United States v. Fed. Res. Corp.*, 30 F. Supp. 3d 979, 1001 (D. Idaho 2014) (holding that alter ego liability would prevent injustice when the individual had a "propensity to use the corporate form as a shield from liability"), *aff'd in part,* 691 F. App'x 441 (9th Cir. 2017).

G. Defendant X.AI Holdings Corp. Is Liable for the ERISA Violations of its Predecessor

Defendant X.AI is the owner of and/or successor to Twitter and cannot avoid liability for ERISA violations. The cases Defendants cite are inapplicable. All of the cases on which Defendants rely in their successor liability arguments involve non-employment claims. Mot. at 34. The general common law presumption against successor liability to which Defendants refer to

does not apply to cases involving labor and employment claims, including ERISA claims. *Resilient Floor Covering Pension Tr. Fund Bd. of Trs. v. Michael's Floor Covering, Inc.*, 801 F.3d 1079, 1090 (9th Cir. 2015) ("In the fields of labor and employment law, federal courts have developed a common-law doctrine of successorship liability that provides an exception from the general rule that a purchaser of assets does not acquire a seller's liabilities." (internal quotation marks and citation omitted)); *Grimm v. Healthmont, Inc.*, No. CV 01-982-BR, 2002 WL 31549095, at *7 (D. Or. Oct. 29, 2002) (recognizing claim for severance benefits under ERISA against "the bona fide successor employer"). Defendants ignore the fact that courts have explicitly departed from this "general rule" in the labor and employment context, rendering their non-employment cases inapplicable. *Cf.* Mot. at 34.

Importantly, "[t]he successorship inquiry in the labor-law context is much broader" than in other contexts. *See Resilient Floor*, 801 F.3d at 1090. In the labor and employment context, successor liability attaches where "1) the subsequent employer was a bona fide successor and 2) the subsequent employer had notice of the potential liability." *Steinbach v. Hubbard*, 51 F.3d 843, 845–46 (9th Cir. 1995). Liability depends not on when the successor company was created, but rather on "whether, under the totality of the circumstances, there is 'substantial continuity' between the old and new enterprise" and on "fairness." *Resilient Floor*, 801 F.3d. at 1090–91 (internal quotation marks omitted) .

Plaintiffs have sufficiently alleged "substantial continuity" between Twitter and X.AI given that X.AI "succeeded to all of [Twitter]'s obligations, including its obligations under the Merger Agreement" and is also controlled by Defendant Musk. Compl. ¶¶ 22, 131. Fairness also dictates that Defendant Musk should not be allowed to evade liability or allow Twitter to evade liability by causing one of his companies to buy another one of his companies. Furthermore, when X.AI acquired Twitter in March 2025, it had ample notice of the potential liability for Twitter's

failure to pay severance benefits based on the 2023 *McMillian* case. *See* Mot. at 11 (*McMillian* was filed on October 13, 2023), 33 (acquisition occurred on March 28, 2025).

Successor liability is specifically appropriate for Plaintiffs' fiduciary breach claims because Plaintiffs allege that the Defendants, including X.AI, "[t]o this day . . . have not done anything to remedy these breaches." Compl. ¶ 172; *see also Fernandez v. K-M Indus. Holding Co.*, 585 F. Supp. 2d 1177, 1184 (N.D. Cal. 2008) (holding successor companies can be liable for failing to remedy predecessor's fiduciary breaches); *Stephens v. US Airways Grp.*, 555 F. Supp. 2d 112, 119 (D.D.C. 2008) ("[A] predecessor's breach that continues to have effect on beneficiaries during the term of a successor trustee must be remedied to the extent practicable under § 1105(a)(3)."), *aff'd in part,* 644 F.3d 437 (D.C. Cir. 2011).

Finally, discovery is necessary to understand the nature of the transaction and its effect on the liability analysis. *See, e.g.*, *Sunnyside Dev. Co., LLC v. Opsys Ltd.*, No. C 05 0553 MHP, 2007 WL 2462142, at *6 (N.D. Cal. Aug. 29, 2007) (describing the application of successor liability as "a highly factual inquiry that does not lend itself well to determination without a trial or, at the very least, an evidentiary hearing"). For example, according to public reporting and Defendant Musk's comments, the transaction between X.AI and X was not an asset purchase, but an all-stock transaction.[16] The sole case Defendants cite to support the general rule that a buyer does not acquire a seller's liabilities involved an asset purchase, not a stock transaction. *See Heavenly Hana LLC v. Hotel Union & Hotel Indus. of Hawaii Pension Plan*, 891 F.3d 839, 844 (9th Cir. 2018) (discussing application of successor liability to an "asset purchaser").

H. This Court is Not Bound by its Dismissal of the *McMillian* Case

The law of the case and *stare decisis* doctrines do not apply to this separate lawsuit brought by separate plaintiffs, particularly given that absent class members are not bound by pre-

[16] Kate Conger & Lauren Hirsch, *Elon Musk Says He Has Sold X to His A.I. Start-Up xAI*, N.Y. Times (Mar. 28, 2025), https://www.nytimes.com/2025/03/28/technology/musk-x-xai.html.

certification rulings. *Smith v. Bayer Corp.*, 564 U.S. 299, 314–15 (2011). *Stare decisis* also does not apply because the Ninth Circuit did not review the underlying decision regarding whether ERISA applies to the Twitter Severance Plan. *See Cactus Corner, LLC v. U.S. Dep't of Agric.*, 346 F. Supp. 2d 1075, 1105–06 (E.D. Cal. 2004) (holding *stare decisis* does not compel a district court to follow a district court ruling "because the responsibility for maintaining the law's uniformity is a responsibility of the appellate rather than trial judges" (internal quotation marks and citations omitted), *aff'd,* 450 F.3d 428 (9th Cir. 2006)). Even if these doctrines apply, they are permissive. *See Askins v. U.S. Dep't of Homeland Sec.*, 899 F.3d 1035, 1042 (9th Cir. 2018) ("The law of the case doctrine does not preclude a court from reassessing its own legal rulings in the same case."); *see also Corrado v. N.Y. Unified Ct. Sys.*, 163 F. Supp. 3d 1, 17–18 (E.D.N.Y. 2016) (explaining that the law of the case doctrine "may be properly invoked only if the parties had a full and fair opportunity to litigate the initial determination" (internal quotation marks and citation omitted)), *aff'd,* 698 F. App'x 36 (2d Cir. 2017).

Importantly, dismissal under the law of the case or *stare decisis* would also be inconsistent with the clear direction from the Ninth Circuit in this case that "the interests of any members of the putative class identified in this case . . . can be protected adequately in . . . *Ye et al. v. Musk et al.*" Dkt. 100.1, *McMillian* Appeal.

Defendants cannot have it both ways: they cannot preclude appellate review of *McMillian* based on *Ye* and then insist that *Ye* be dismissed based on *McMillian*. The interests of potential class members, including the thousands who were misled into signing releases (and continue to be misled about the validity of these releases) can be protected through ERISA, and the Ninth Circuit has already determined that this threshold issue should be decided through this case.

IV. CONCLUSION

Plaintiffs have adequately pled claims for benefits and breaches of fiduciary duties, and Defendants' motion should be denied.

DATED: April 14, 2026

Respectfully submitted,

/s/ Kate Mueting

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a copy of this filing to all counsel of record.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: April 14, 2026

/s/ Kate Mueting

Kate Mueting