

2021 WL 162643

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United States District Court, C.D. California.

Danielle Gamino

v.

KPC Healthcare Holdings, Inc. et al

Case No.: 5:20-cv-01126-SB-SHK

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Filed 01/15/2021**Attorneys and Law Firms**

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**Proceedings: ORDER DENYING MOTIONS
TO DISMISS (DKT. NOS. 43, 46)**

The Honorable [STANLEY BLUMENFELD, JR.](#), U.S. District Judge

*1 Before the Court are separate motions to dismiss from Defendant Alerus Financial, N.A., [Dkt. No. 43](#), and Defendants Kali Pradip Chaudhuri, Kali Priyo Chaudhuri, Amelia Hippert, KPC Healthcare Holdings, Inc., KPC Healthcare, Inc. Employee Stock Ownership Plan, KPC Healthcare, Inc. Employee Stock Ownership Plan Committee, William E. Thomas, and Lori Van Arsdale (collectively, KPC Defendants), [Dkt. No. 46](#).

I. BACKGROUND

This putative class action challenges a 2015 debt-leveraged purchase of stock by a company's employee stock ownership plan (ESOP).

Plaintiff Danielle Gamino is a former employee of Defendant KPC Healthcare Holdings Inc. and a participant in the company's ESOP. [Dkt. No. 1](#) (Compl.) ¶ 9. In 2015, KPC Healthcare's CEO, Defendant Kali Pradip Chaudhuri, allegedly sold 100% of the company's stock to the ESOP. *Id.* ¶

3. To oversee and facilitate this transaction, Defendant Alerus Financial, N.A. was appointed as an independent trustee. *Id.* ¶ 13. Allegedly, the company, Defendant KPC Healthcare, has sole authority to appoint and remove the trustee. *Id.* ¶ 152.

According to the complaint, this transaction was not in the best interest of the ESOP and its participants because the ESOP paid Defendant Kali Pradip Chaudhuri more than fair market value for the stock and incurred significant debt to do so. *Id.* ¶ 3. The complaint also alleges the ESOP Committee, which serves as the plan administrator, has failed to file or disclose several documents mandated for disclosure by ERISA. *Id.* ¶ 4. According to the complaint, the company's Board of Directors (the Director Defendants) serve on and monitor the ESOP Committee. *Id.* ¶¶ 14-19, 155-158.

On June 1, 2020, Plaintiff filed the class complaint in this Court. [Dkt. No. 1](#). On September 3, 2020, Defendant Alerus filed a motion to dismiss the complaint. [Dkt. No. 43-1](#) (Alerus MTD). The same day, KPC Defendants also moved to dismiss. [Dkt. No. 46-1](#) (KPC MTD).

On October 5, 2020, Plaintiff filed a consolidated opposition to both motions. [Dkt. No. 53](#) (Opp.). On October 19, 2020, both Defendant Alerus and KPC Defendants filed replies. [Dkt. Nos. 59](#) (Alerus Reply), [60](#) (KPC Reply).

II. LEGAL ANALYSIS

The Employee Retirement Income Security Act of 1974 (ERISA) provides “a panoply of remedial devices.” [Mass. Mut. Life Ins. Co. v. Russell](#), 473 U.S. 134, 146 (1985).

Generally, ERISA § 502(a)(2) permits a “participant, beneficiary or fiduciary” of a plan to bring a civil action for “appropriate relief” under ERISA § 409. [29 U.S.C. § 1132\(a\)\(2\)](#). In turn, § 409 dictates that a plan fiduciary shall be liable for any “breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries” by ERISA. [29 U.S.C. § 1109\(a\)](#). The provision permits courts to require breaching fiduciaries “to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary.” *Id.* The provision also provides for “other equitable or remedial relief as the court may deem appropriate.” *Id.*

*2 Separately, ERISA § 502(a)(3) authorizes plan participants, beneficiaries, and fiduciaries to initiate a civil

action “to enjoin any act or practice which violates any provision of [ERISA] or terms of the plan” or “to obtain other appropriate equitable relief.” 29 U.S.C. § 1132(a)(3). Notably, this cause of action may be brought against both fiduciaries and nonfiduciaries of the plan who participate in a breach of ERISA. *Harris Tr. & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 245 (2000).

Here, the complaint brings claims under both ERISA § 502(a)(2) and § 502(a)(3), alleging multiple breaches of fiduciary duties and violations of specific ERISA provisions against several defendants. The Court will analyze each in turn.

A. Breaches of Fiduciary Duty Regarding the 2015 Transaction

The complaint alleges that several entities and individuals violated their respective fiduciary duties with regard to the 2015 stock transaction.

1. Defendant Alerus

First, Count III alleges that Defendant Alerus, as trustee, breached its fiduciary duty under ERISA § 404(a). Compl. ¶¶109-116. In particular, Plaintiff contends Defendant Alerus failed “to undertake an appropriate and independent investigation of the fair market value of KPC Healthcare stock in the 2015 Transaction.” *Id.* ¶ 113.

ERISA § 404 requires that fiduciaries act with “care, skill, prudence, and diligence,” and the Ninth Circuit has instructed courts to enforce this obligation by examining “not only on the merits of the transaction, but also on the thoroughness of the investigation into the merits of the transaction.”

Howard v. Shay, 100 F.3d 1484, 1488 (9th Cir. 1996).

Here, the complaint alleges that 2015 transaction's price was exorbitant and the product of a lack of prudent investigation because it failed to “take into account the fact that less than two years before the transaction the selling shareholder had valued the Company at less than a quarter of the sale price.” Compl. ¶ 74. The 2015 transaction allegedly occurred at a price that was “between 891% and 1,484%” of the value “implied by the prices at which Integrated Health [KPC Healthcare's predecessor] traded on the public market in early 2013.” *Id.* ¶ 66.

The complaint goes on to allege that the company's value was unlikely to have improved to the 2015 transaction price because “during the intervening period the Company had experienced substantial financial distress, instability, layoffs, and persistent inability to make budgets.” *Id.* ¶ 74. Between 2013 and 2015, the Company's performance was allegedly characterized by “financial difficulties and related layoffs.” *Id.* The complaint also notes an industry publication's interview of KPC Healthcare's former CEO, who stated the Company was “not even close to making budget” in that intervening time. *Id.* ¶ 67. Moreover, the complaint alleges that the transaction was soon followed by a significant “decline in value” of the stock. Compl. ¶ 77. According to the complaint, a “prudent fiduciary who had conducted a prudent investigation would have concluded that the ESOP was paying more than fair market value for the KPC shares and/or the debt incurred in connection with the Transaction was excessive.” Compl. ¶ 75.

Taken together, these allegations are sufficient to allege a claim for breach of fiduciary duty due to a lack of prudent investigation against Defendant Alerus. *See, e.g., Zavala v. Kruse-W., Inc.*, 398 F. Supp. 3d 731, 746 (E.D. Cal. 2019) (denying motion to dismiss where complaint contained allegations that a “prudent investigation would have concluded that ESOP was paying more than fair market value” for stock because price failed to account for business and liability problems within the company).

*3 Defendant Alerus argues that the complaint is faulty because “Plaintiff offers no information concerning Alerus's due diligence process whatsoever, much less factual allegations from which this Court could infer it was deficient in some respect.” Alerus MTD 6-7. But such facts detailing the investigative process are likely within the sole control of the trustee and other ERISA defendants and, consequently, “an ERISA plaintiff alleging breach of fiduciary duty does not need to plead details to which she has no access.” *Allen v. GreatBanc Tr. Co.*, 835 F.3d 670, 678 (7th Cir. 2016). Rather it is enough to allege facts—as the complaint does—which “support an inference” that the defendant “fail[ed] to conduct an adequate inquiry.” *Id.*; *see Zavala*, 398 F.Supp.3d at 745-46 (applying the Seventh Circuit's *Allen* analysis).

Further, both motions to dismiss argue the major drop in stock value after the 2015 transaction is a feature of debt-leveraged ESOPs, rather than an indication of any Defendant's bad faith or imprudence. Indeed, as one district court explained, the use of debt to finance the purchase of stock will negatively


impact the value of the ESOP's shares in the short run. *Lee v. Argent Tr. Co.*, No. 5:19-CV-156-BO, 2019 WL 3729721, at *4 (E.D.N.C. Aug. 7, 2019). Thus, the court in *Lee* concluded the drop in value of shares after the ESOP transaction did not indicate the “purchase could not have been at fair-market value.” *Id.* at *3. But *Lee* did not involve the additional allegations here—the prior purchase at a significantly lower price and subsequent financial distress—which support (at least for purposes of a 12(b)(6) motion) the plausible inference that the 2015 transaction was not for fair market value.

Thus, the Court **DENIES** Defendant Alerus's motion to dismiss as to Count III.


2. Defendant KPC Healthcare and Director Defendants

Count VII alleges that Defendant KPC Healthcare and the Director Defendants breached their respective duties to monitor the fiduciaries that they appointed and had the power to remove. Compl. ¶¶ 149-158. First, Plaintiff alleges that Defendant KPC Healthcare breached its duty to monitor Alerus as trustee by knowing that Alerus breached its duties in causing the unlawful 2015 transaction and failing to take any steps to protect participants or remove Alerus. *Id.* ¶¶ 154-158. Second, Plaintiff alleges Director Defendants breached their duty to monitor the ESOP Committee by failing to take action despite knowing about the ESOP Committee's failure to properly disclose required documentation. *Id.* ¶ 156-158.

KPC Defendants notes these claims are derivative of independent breaches of fiduciary duties and argues they should be dismissed because Plaintiff has not adequately alleged the underlying breaches. KPC MTD 22. But this argument fails because, as this Order has and will explain, Plaintiffs have plausibly pleaded the breaches upon which Count VII is based.

The motion otherwise only argues that there was “no fiduciary obligation or right to perform the fiduciary responsibilities of Alerus, the independent ESOP trustee.” KPC MTD 22. KPC Defendants contend that once Defendant Alerus was assigned the role of ERISA trustee, they had no ongoing obligation “to monitor Alerus by reviewing Alerus's valuation report or otherwise invading its independence.” KPC Reply 14. Yet “[c]ase law under ERISA indicates that the power to appoint and remove an ERISA fiduciary gives rise to a duty to monitor.”  *Carr v. Int'l Game Tech.*, 770 F.

Supp. 2d 1080, 1090 (D. Nev. 2011). And a “fiduciary with a duty to monitor a trustee is liable for the trustee's fiduciary breach if he ‘knew or should have known’ about the trustee's misconduct and failed to take steps to remedy the situation.”

 *Acosta v. Saakvitne*, 355 F. Supp. 3d 908, 923 (D. Haw. 2019) (citation omitted).


*4 Here, as Plaintiff notes in the opposition, Opp. 57, the complaint alleges: (1) Defendant KPC Healthcare had the power to appoint and remove Defendant Alerus as trustee, giving rising to a duty to monitor, (2) Defendant KPC Healthcare had knowledge, through Defendant Kali Pradip Chaudhuri, that the trustee had undergone an unlawful transaction for more than fair market value, and (3) despite this knowledge, Defendant KPC Healthcare took no steps to protect ESOP participants or remove the trustee. Compl. ¶¶ 149-158. These allegations are sufficient to state a claim for breach of the failure to monitor by Defendant KPC Healthcare. See *Hurtado v. Rainbow Disposal Co.*, No. 8:17-cv-01605-JLS-DFM, 2018 WL 3372752, at *14 (C.D. Cal. July 9, 2018) (denying motion to dismiss when plaintiff alleged fiduciaries knew of breach by trustee and failed to take corrective action).

Thus, the Court **DENIES** KPC Defendant's motion to dismiss as to Count VII.

B. Prohibited Transaction Claims

Counts I and II are claims alleging that Defendant Alerus and Defendant Kali Pradhip Chaudhuri violated provisions of ERISA by participating in a prohibited transaction, in which the ESOP purchased 100% of the shares of KPC stock from Defendant Kali Pradhip Chaudhuri. Compl. ¶¶ 95-108.

1. Violations of ERISA § 406(a)

Count I alleges that Defendant Alerus, as trustee, engaged in a prohibited transaction in violation of ERISA § 406(a) by causing the ESOP to purchase 100% of the shares of KPC stock purchased from Defendant Kali Pradhip Chaudhuri. Compl. ¶¶ 95-101. “ERISA § 406(a) begins with the premise that virtually all transactions between a plan and a party in interest are prohibited, unless a statutory or administrative exemption applies.”  *Kanawi v. Bechtel Corp.*, 590 F. Supp. 2d 1213, 1222 (N.D. Cal. 2008). One such exemption applies

when the otherwise prohibited transaction involves no more than “adequate consideration.” [29 U.S.C. § 1108\(e\)\(1\)](#).

Here, it is not disputed that Defendant Kali Pradhip Chaudhuri, as CEO of KPC Healthcare and fiduciary to the ESOP, constitutes a party in interest. [Compl.](#) ¶ 14. Nor is it disputed that his sale of 100% KPC stock to the ESOP (a transaction caused by Defendant Alerus, as trustee) constitutes a prohibited transaction unless an exemption applies. *Id.* ¶¶ 98-101. Instead, both motions to dismiss contend that the “adequate consideration” exemption applies and that the complaint contains no factual allegations that the ESOP paid more than adequate consideration. [Alerus MTD](#) 6; [KPC MTD](#) 12-13.

But the “prohibited transaction” exemptions are *affirmative defenses* to ERISA liability, meaning the burden of proof “rests with the defendant.” [Zavala v. Kruse-W., Inc.](#), 398 F. Supp. 3d 731, 742 (E.D. Cal. 2019). The failure to include allegations establishing the “adequate consideration” exemption has been held not to warrant dismissal, *id.*, because “a plaintiff generally has no duty to plead around an affirmative defense.” [Greene v. Greyhound Lines Inc.](#), No. 20-CV-07613-TSH, 2020 WL 7049156, at *2 (N.D. Cal. Oct. 30, 2020). In any event, the complaint in this case alleges “the ESOP paid more than fair market value” in the 2015 transaction. [Compl.](#) ¶ 100; *see* [Zavala](#), 398 F. Supp. 3d at 743. Thus, the Court concludes that Plaintiff has sufficiently alleged that Defendant Alerus caused the ESOP to engage in a prohibited transaction.

Count I also seeks to impose liability for the “prohibited transaction” violation on Defendant Kali Pradhip Chaudhuri on the grounds that he knowingly participated in the transaction. [Compl.](#) ¶ 101. Under ERISA § 502(a)(3), a party in interest who participates in a prohibited transaction may be liable for “appropriate equitable relief.” [Harris Tr. & Sav. Bank v. Salomon Smith Barney, Inc.](#), 530 U.S. 238, 241 (2000). In order to establish liability, the party in interest “must have ‘actual or constructive knowledge’ of the circumstances that rendered any prohibited transaction wrongful.” [Del Castillo v. Cmty. Child Care Council of Santa Clara Cty., Inc.](#), No. 17-CV-07243-BLF, 2019 WL 6841222, at *3 (N.D. Cal. Dec. 16, 2019).

*5 Here, Plaintiff alleges that Defendant Kali Pradhip Chaudhuri, as a party in interest, knew the 2015 transaction was not for adequate consideration. [Compl.](#) ¶¶ 100-101.

Indeed, Chaudhuri allegedly knew the much lower price he initially paid for the stock previously and, as CEO, would have known about the company's subsequent financial distress. [Compl.](#) ¶¶ 52-67. These allegations lead to a plausible inference that Chaudhuri participated in the 2015 transaction knowing he was improperly receiving more than fair market value as consideration for the KPC stock. Thus, Plaintiff has plausibly alleged that Defendant Kali Pradhip Chaudhuri knowingly participated in an unlawful transaction.

KPC Defendants argue that, even if there is a claim against Defendant Kali Pradhip Chaudhuri, Plaintiff “has failed to plead that appropriate equitable relief is available.” [KPC MTD](#) 15. They cite [Depot, Inc. v. Caring for Montanans, Inc.](#), 915 F.3d 643, 660 (9th Cir. 2019), for the proposition that failure to plead that appropriate equitable relief was available warrants dismissal of an ERISA § 502(a)(3) claim. [KPC MTD](#) 15. In particular, they note that Plaintiff has failed to “plead ‘a specific fund’ to which equitable relief can attach, not general assets of a defendant.” *Id.*

Deficiencies in the prayer for relief do not typically justify dismissal under Rule 12(b)(6). [Commerce Point Capital, Inc. v. First Data Corp.](#), No. 19-CV-556-W (LL), 2019 WL 7020057, at *10 (S.D. Cal. Dec. 20, 2019) (“Because a 12(b)(6) motion to dismiss challenges the legal sufficiency of the pleadings, not the appropriateness of the relief sought, a motion to dismiss is not the proper mechanism to challenge a prayer for relief.”). And “the selection of an improper remedy in the ... demand for relief will not be fatal to a party's pleading if the statement of the claim indicates the pleader may be entitled to relief of some other type.” 5 Wright & Miller Fed. Prac. & Proc. Civ. § 1255 (3d ed.).

Plaintiff notes that *Depot's* analysis was limited to equitable relief against a nonfiduciary and that breaches by a fiduciary, like Defendant Kali Pradhip Chaudhuri, give rise to a more flexible set of equitable relief. [Opp.](#) 47. Plaintiff is correct. *Depot's* requirement to plead a specific fund arose in the context of claims for disgorgement and restitution against defendants who the Ninth Circuit emphasized were “not fiduciaries but instead non-fiduciary third parties.” 915 F.3d at 664 n.15. *Depot* specifically notes that “traditional rules of equity” provide broader relief that does not require “specifically identifiable property if the defendant owed a fiduciary duty to the plaintiff and breached that duty.” *Id.* (noting availability of accounting of profits and surcharge remedies against fiduciaries).¹

Thus, the Court concludes that Plaintiff's claims survive even without the identification of a specific fund held by Defendant Kali Pradip Chaudhuri. Not only are remedies like accounting of profits and surcharge available to Plaintiff, they were specifically identified in the complaint's prayer. Compl. 43. Moreover, the complaint also seeks rescission, *id.*, which “is an appropriate equitable remedy in the context of ESOP transactions” and does not require identification of a specific fund. Hurtado, 2018 WL 3372752, at *15.

*6 Thus, the Court **DENIES** KPC Defendants' and Alerus's motions to dismiss as to Count I.

2. Violation of ERISA § 406(b)

Count II asserts a claim that Defendant Kali Pradip Chaudhuri, as a fiduciary to the ESOP, violated a different ERISA provision, § 406(b), when he engaged in the 2015 transaction. Compl. ¶¶ 102-108.

ERISA § 406(b) mandates that “[a] fiduciary with respect to a plan shall not: (1) deal with the assets of the plan in his own interest or for his own account, (2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or (3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.”

Here, the complaint alleges that, by selling his shares of KPC stock to the plan above fair market value, Defendant Kali Pradip Chaudhuri “acted in a transaction involving a plan where his own interests were adverse to those of the ESOP,” “dealt with the assets of the Plan,” and “received consideration for [his] own personal account.” Compl. ¶ 105. These allegations are sufficient to establish a violation of ERISA § 406(b).

KPC Defendants contend that this claim fails because Defendant Kali Pradip Chaudhuri “was not the fiduciary who caused the ESOP to purchase stock or to engage in any challenged transaction.” KPC MTD 13. But “§ 406(b) does not have a causal element; it requires only that the fiduciary received consideration from a transaction involving assets of the plan.” Hurtado v. Rainbow Disposal Co., No. 8:17-cv-01605-JLS-DFM, 2018 WL 3372752, at *11 (C.D. Cal.

July 9, 2018). Here, the complaint contains such allegations and so plausibly states a claim that Chaudhuri violated ERISA § 406(b).

Thus, the Court **DENIES** KPC Defendants' motion to dismiss as to Count II.

C. General failures to disclose

Counts IV, V, and VI all brings claims based on the purported failures of the ESOP Committee Defendants (who act as plan administrator under ERISA) to provide or file various documents related to the plan. Compl. ¶¶ 117-148.

These claims are rooted in different remedial provisions of ERISA. First, ERISA § 502(a)(1)(A) permits participants and beneficiaries to seek statutory penalties (accruing each day) against plan administrators for “refusal to supply requested information” that ERISA requires to be provided. 29 U.S.C. § 1132(a)(1)(A), (c). Second, ERISA § 502(a)(3) is a “catchall” provision that provides equitable relief for statutory and plan violations where there is otherwise no adequate remedy. 29 U.S.C. § 1132(a)(3).

1. Failure to provide summary plan description

Count IV alleges that the ESOP Committee, as Plan Administrator, failed to make required disclosures in the summary plan description. Compl. ¶¶ 123-131. In particular, Plaintiff asserts that the September 2017 summary plan description did not include all ERISA-required information, specifically the name, address, or telephone number of the plan administrator or a statement that service of process may be made on the trustee or plan administrator. *Id.* ¶¶ 125-130. As relief, Plaintiff seeks (1) daily statutory penalties for failure to provide a requested document and (2) a Court order requiring the Plan Administrator to provide a compliant summary plan description. *Id.* at 42.

*7 KPC Defendants seek to dismiss this claim on several grounds. First, they argue that the statutory penalties are inappropriate because they are permitted only after a request for information, and Plaintiff “does not allege that she requested the information that she claims was not included.” KPC MTD 16. Plaintiff responds that it requested a summary plan description—and indeed was given an incomplete version of the document—but the failure to provide a

complete and statutorily compliant summary plan description upon request establishes a claim for statutory penalties. Opp. 48-49.

Plaintiff appears to be correct. Summary plan descriptions are an employee's "primary source of information regarding employment benefits" and thus have strict statutory and regulatory requirements. Spinedex Physical Therapy USA Inc. v. United Healthcare of Arizona, Inc., 770 F.3d 1282, 1294 (9th Cir. 2014). As a consequence, a document does not constitute a summary plan description when it lacks the necessary formal requirements. Baumberger v. Hollywood Entm't Corp., No. CIV 05-1108-PK, 2006 WL 3513648, at *4 n.6 (D. Or. Nov. 30, 2006) (noting "[u]nder the law of this circuit," a document that "does not contain all of the formal requirements set forth by statute" for summary plan descriptions "cannot be" a summary plan description under ERISA). Here, in response to Plaintiff's request, Defendants provided something that included only some of the requirements for summary plan descriptions, Compl. ¶¶ 125-131, meaning Defendants did not provide a summary plan description as requested.

Relatedly, KPC Defendants argue (citing only non-binding authority) that "[c]ourts have consistently held that plaintiffs cannot state an ERISA claim for substantive damages stemming from alleged notice and disclosure violations unless there are additional, and exceptional, circumstances such as bad faith, fraud, concealment, or induced reliance." KPC MTD 17. But the Ninth Circuit has imposed no such rule and, instead, has stated the daily statutory penalties for failure to provide requested documents is not a "penalty or forfeiture" incurred by the defendant, but "compensation to address a private wrong" suffered by the plaintiff. Stone v. Travelers Corp., 58 F.3d 434, 439 (9th Cir. 1995). The wrong suffered by Plaintiff here existed regardless of whether there was bad faith or fraud on the part of Defendants. It follows that the statutory penalty likewise does not require an allegation of bad faith or other independent wrongful acts. *See, e.g., Villalobos v. Downey Grinding Co*, No. SACV 19-150 JVS (ADSx), 2020 WL 2620309, at *6 (C.D. Cal. Apr. 6, 2020) (providing statutory penalties for failure to provide requested documents, despite lack of "bad faith, intentional misconduct, [delay], or prejudice").² Thus, the Court concludes, as a matter of pleading, Plaintiff has stated a claim for failure to supply requested information that may provide for statutory fees.

Next, KPC Defendants contend that Plaintiff has failed to allege an entitlement to the requested equitable relief because Plaintiff has not pleaded breach of fiduciary duty, causation, or damages in the failure to provide these materials. KPC MTD 16-18. But as Plaintiff notes, Opp. 50-51, ERISA claims seeking "purely equitable relief" requires no "showing of loss." Shaver v. Operating Engineers Local 428 Pension Tr: Fund, 332 F.3d 1198, 1203 (9th Cir. 2003). Any contrary rule would "say that the fiduciaries are free to ignore their duties so long as they do no tangible harm, and that the beneficiaries are powerless to rein in the fiduciaries' imprudent behavior until some actual damage has been done." *Id.* Here, the complaint alleges that the failure to keep and provide a compliant summary plan description in violation of ERISA breaches several fiduciary obligations. Compl. ¶ 123. That is enough to state a claim for equitable relief.

*8 Thus, the Court **DENIES** KPC's motion to dismiss as to Count IV.

2. Failure to file Form 5500

Count V alleges the ESOP Committee failed to timely file the required Form 5500 with the United States Department of Labor and failed to provide the summary annual report to class members. Compl. ¶¶ 133-137. As relief, Plaintiff requests that the Court order the Plan Administrator to file a Form 5500 as required. Compl. 42.

KPC Defendants' major argument³ is that "[t]he filing of a Form 5500 is a matter between the Department of Labor and an employee benefit plan," and so a "federal district court has nothing to do with this process and cannot order a plan administrator to file one." KPC Reply 13; *see KPC MTD* 18-19. But a recent decision from this district rejected a similar argument, noting that "[t]he fact that the Secretary of Labor may seek civil penalties does not mean that Plaintiffs cannot seek injunctive relief regarding the Form 5500s." Alas v. AT&T Inc., No. LACV 17-08106-VAP (RAOx), 2019 WL 1744847, at *4 (C.D. Cal. Feb. 25, 2019). ERISA's catchall provision—ERISA § 502(a)(3)—permits "individuals to seek injunctive remedies for ERISA violations" and thus could provide a cause of action to remedy violations related to the Form 5500s. *Id.* at *3-*4. Here, Plaintiffs likewise can pursue equitable relief based on Defendants' purported ERISA violations based on the Form 5500s.

In their reply, KPC Defendants also contend that this claim is moot because a Form 5500 is currently available on the Department of Labor's public database and indicates that it was timely filed. The Court declines to rule on this argument first raised in reply, but instructs both parties to meet and confer about whether this cause of action remains viable.⁴

Thus, the Court **DENIES** KPC Defendants' motion to dismiss as to Count V.

3. Failure to provide valuation documents

Count VI alleges that the ESOP Committee failed to timely provide documents in response to Plaintiff's written request, including valuation reports. Compl. ¶¶ 138-147. In particular, Plaintiff requested (1) "any valuation or other document used to determine the price at which her shares had been allocated," and (2) "a copy of the most recent valuation and other documents setting forth how the value of her shares was determined." *Id.* ¶ 141. As relief, Plaintiff seeks daily statutory penalties for failure to provide a requested document. Compl. 42.

ERISA § 104(b)(4) obligates the plan administrator to, "upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or *other instruments under which the plan is established or operated.*"

29 U.S.C. § 1024(b)(4) (emphasis added). The "other instruments" provision implicates "documents that are similar in nature to the documents specifically listed." *Hughes Salaried Retirees Action Comm. v. Adm'r of Hughes Non-Bargaining Ret. Plan*, 72 F.3d 686, 691 (9th Cir. 1995).

*9 First, KPC Defendants contend that Plaintiff has failed to state a claim as to the first document requested—the valuation report for the 2015 transaction—because Plaintiff "does not allege that the [plan administrator] ever possessed the transaction valuation" and that such an allegation "would be false" because only Defendant Alerus, as trustee, ever possessed these materials. *KPC MTD* 20. But the complaint alleges that all Defendants "had access to the valuation report" and its underlying information. Compl. ¶ 76. Whether that fact is true cannot be evaluated at the pleading stage. Moreover, KPC Defendants' argument rests on the theory that "ERISA does not require a plan administrator to produce

to an ESOP participant the confidential valuation that only the independent ESOP trustee obtained, especially where the administrator is not in possession of that valuation." *KPC MTD* 20. But this contention is not supported by authority and seems to run contrary to ERISA's broad and unqualified mandate to provide any "instruments under which the plan is established or operated" upon request. 29 U.S.C. § 1024(b)(4).

Second, KPC Defendants contend that the second requested document—an annual valuation report and related materials—was not required to be disclosed because it is not an "instrument[] under which the plan is established or operated." *KPC MTD* 20. Their motion acknowledges "annual valuation reports" have been deemed covered documents in several cases, but argues those cases are limited to situations where "a participant has made a claim for benefits." *KPC MTD* 21 (collecting cases).

The Ninth Circuit has instructed the "other instruments" provision covers "those documents that provide individual participants with information about the plan and benefits," i.e., "those that allow the individual participant to know exactly where he stands with respect to the plan—what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his plan funds have been entrusted." *Hughes*, 72 F.3d at 690 & n.3 (citation omitted).

Here, the complaint articulates that the annual valuation report was requested to understand "how the value of her shares was determined." Compl. ¶ 141. The Court cannot conclude (for purposes of a motion to dismiss at least) that this allegation is insufficient to state a claim. Though this request was not made in the context of a claim for specific benefits, an understanding of the true value of Plaintiff's shares has direct bearing on where Plaintiff stands with respect to the plan and to what benefits Plaintiff may ultimately be entitled.

See *Hughes*, 72 F.3d at 690.

Thus, the Court **DENIES** KPC Defendant's motion to dismiss as to Count VI.

IV. CONCLUSION


For these reasons, the Court **DENIES** the motions to dismiss of both KPC Defendants and Defendant Alerus.

All Citations

IT IS SO ORDERED.

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Footnotes

- 1 For the first time in reply, KPC Defendants argue that these more flexible remedies are not available because, though Defendant Kali Pradip Chaudhuri is a fiduciary to the ESOP generally, he “was not a fiduciary” for purposes of the ESOP transaction but “counter-party to the transaction.” KPC Reply 8, 11. The Court declines to grant dismissal on an argument first raised in reply, particularly when the reply does not identify any authority in which a fiduciary is relieved of all fiduciary obligations as a seller in an ESOP transaction.
- 2 Some courts have indicated “the amount of those penalties ... is discretionary” and depends on several factors. See, e.g.,  Hemphill v. Estate of Ryskamp, 619 F. Supp. 2d 954, 975-76 (E.D. Cal. 2008) (granting a lower penalty of \$50 per day for failure to supply documents upon consideration of, among other things, defendant's provision of some but not all required materials). That determination, however, is made at summary judgment or trial. See *id.*
- 3 KPC Defendants also briefly contends “[t]his claim fails for the same reasons that Count IV fails.” KPC MTD 18. The Court rejects those arguments for Count V as it did with Count IV.
- 4 Because the Court does not rule on the belated mootness argument, it need not take judicial notice of the materials offered by KPC Defendants to establish the claim is moot. See Dkt. No. 61. The Court also denies the other requests for judicial notice as the Court's ruling did not require consideration of the documents contained therein. See Dkt. Nos. 47, 53-1.