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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AMY ELIASON, et al.,

Plaintiffs,

v.

AT&T INC., et al.,

Defendants.

Case No. 19-cv-06232-SK

ORDER GRANTING MOTION TO DISMISS

Regarding Docket Nos. 38, 39

Plaintiffs Amy Eliason, Lindie Lawrence, and Angela Hueckel (“Original Named Plaintiffs,” collectively “Plaintiffs”) filed a proposed class action complaint on behalf of themselves and others similarly situated on October 1, 2019. (Dkt. 1.) Plaintiffs bring suit against AT&T, Inc., AT&T Services, Inc., and the AT&T Pension Benefit Plan (“Defendants”) pursuant to section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(a)(3). All parties have consented to the jurisdiction of the Undersigned pursuant to 28 U.S.C. 636. (Dkt. 16, 27.) Plaintiffs filed an amended complaint (“FAC”) on December 23, 2019, adding named plaintiffs Timothy Scott, Patricia Gilchrist, Karen Fisher, and Gerald Klein (“Additional Named Plaintiffs,” collectively “Plaintiffs”). (Dkt. 34.) Defendants moved to dismiss the FAC pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) or, in the alternative, to transfer venue pursuant to 28 U.S.C. § 1404(a) on January 29, 2020. (Dkt. 38.) Plaintiffs oppose the motion. (Dkt. 39.)

The Court held oral argument on Defendants’ motion to dismiss on May 18, 2020. (Dkt. 49.) The Court allowed jurisdictional discovery, permitting Plaintiffs to take a deposition pursuant to Federal Rule of Civil Procedure 30(b)(6) of the person(s) most knowledgeable about the calculation of benefits for the three Original Named Plaintiffs within 45 days. (*Id.*) The Court further permitted additional briefing to be submitted no more than 5 days after the last deposition.

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1 (*Id.*) After the briefing was submitted, the Court granted permission for the filing of a reply and a
2 sur-reply. (Dkt. 57.) The Court heard a second round of oral argument on the issue of standing on
3 August 24, 2020. (Dkt. 61.) Defendants lodged the entire transcript of the deposition of Rhonda
4 Stone on the same date. (Dkt. 62.)

5 Having considered the submissions of the parties, the relevant legal authorities, and the
6 record in the case, and having had the benefit of oral argument, the Court HEREBY GRANTS
7 Defendants' motion to dismiss the FAC pursuant to Federal Rule of Civil Procedure 12(b)(1), for
8 the reasons set forth below. Because the Court grants the Rule 12 motion, the Court DENIES the
9 alternative motion to transfer venue as MOOT.

10 BACKGROUND

11 Plaintiffs are vested participants in the AT&T Pension Benefit Plan (the "Plan"). (Dkt. 34
12 ¶ 2.) Under the terms of the Plan, a participant's benefit is typically paid in the form of a monthly
13 pension payment called a single life annuity. (*Id.* ¶ 3.) Beginning at the "normal retirement age"
14 of 65, the single life annuity is paid monthly from the time the participant retires until death. (*Id.* ¶
15 3.) Plaintiffs contend that, under ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3), if a retirement plan
16 participant's benefit is to be paid in a form other than an annual benefit commencing at 65, "the
17 employee's accrued benefit ... shall be the actuarial equivalent of such benefit." (*Id.* ¶ 4.)
18 Plaintiffs further contend that ERISA § 203(a), 29 U.S.C. § 1053(a), creates a nonforfeitable right
19 to vested retirement benefits and makes paying less than the actuarial equivalent of an accrued
20 benefit an illegal forfeiture. (*Id.* ¶ 8.) Plaintiffs also argue that ERISA § 206(a)(3), 29 U.S.C. §
21 1056(a)(3) requires that retirement plans offering early retirement benefits must provide a benefit
22 equivalent to what a participant would have received at normal retirement age, actuarially reduced
23 under Secretary of the Treasury regulations. (*Id.* ¶ 10.)

24 Citing these rules, Plaintiffs allege that the Plan improperly reduces benefits paid to
25 participants to less than the actuarial equivalent of a single life annuity by applying an "Early
26 Retirement Factor" to calculate the amount of benefits owed. (Dkt. 34 ¶ 10.) Plaintiffs also allege
27 that the Plan uses a "Joint and Survivor Annuity Factor" to calculate joint and survivor annuity
28 benefits that result in participants taking those benefits receiving less than the actuarial equivalent

1 of the single life annuity. (*Id.* ¶ 12.) Plaintiffs allege that both the Early Retirement Factor and
2 the Joint and Survivor Annuity Factor have not been updated in over a decade and therefore do not
3 reflect the general longevity of the American public or reasonable actuarial assumptions. (*Id.* ¶
4 17.) Plaintiffs allege that they have been harmed in two respects by the use of the Early
5 Retirement Factor and the Joint and Survivor Annuity Factor to calculate their benefits. First, they
6 allege monetary harm to the extent that Plaintiffs received less than the actuarial equivalent of
7 their protected retirement benefits. (*Id.* ¶¶ 18, 153.) Second, Plaintiffs assert decisional harm
8 insofar as their elections for how to receive benefit payments were influenced by incorrectly
9 calculated benefit options. (Dkt. 55.) However, Plaintiffs first raise their argument regarding the
10 second category of harm based on misrepresentation in their opposition to the motion to dismiss,
11 rather than in the FAC. (*Id.*)

12 Plaintiffs' original complaint names three Original Named Plaintiffs: Amy Eliason, Angela
13 Hueckel, and Lindie Lawrence. (Dkt. 1.) Eliason is a resident of Duluth, Minnesota, who worked
14 for AT&T, Inc. or its predecessors from 1975 to 1991. (*Id.* ¶ 26.) Eliason was 63 years old in
15 June 2019 when she elected to receive a lump sum under the Plan as an early retirement benefit.
16 (*Id.*) Hueckel is a resident of Alamo, California, who worked for AT&T, Inc. or its predecessors
17 from 1998 to 2015. (*Id.* ¶ 27.) Hueckel was 51 years old in June 2019 when she elected to receive
18 a lump sum under the Plan as an early retirement benefit. (*Id.*) Lawrence is a resident of
19 Arlington, Texas, who worked for AT&T, Inc. or its predecessors from 1978 to 2004. (*Id.* ¶ 28.)
20 Lawrence was 61 years old in June 2019 when she elected to receive a lump sum benefit under the
21 Plan as an early retirement benefit. (*Id.*)

22 Plaintiffs' FAC adds four Additional Named Plaintiffs: Timothy Scott, Patricia Gilchrist,
23 Gerald Klein, and Karen Fisher. (Dkt. 34.) Scott is a resident of Newark, California, who worked
24 for AT&T, Inc. or its predecessors from 1981 to 2015. (*Id.* ¶ 31.) Scott was 58 years old when he
25 retired in 2015 and elected to receive a 75 percent Joint and Survivor Annuity under the Plan.
26 (*Id.*) Gilchrist is a resident of Brentwood, California, who worked for AT&T, Inc. or its
27 predecessors from 1979 to 2012. (*Id.* ¶ 32.) Gilchrist was 55 years old when she retired in 2012
28 and elected to receive a 50 percent Joint and Survivor Annuity under the Plan. (*Id.*) Klein is a

1 resident of El Dorado Hills, California, who worked for AT&T, Inc. or its predecessors from 1996
2 to 2019. (*Id.* ¶ 33.) Klein was 66 years old when he retired in 2019 and elected to receive a 50
3 percent Joint and Survivor Annuity under the Plan. (*Id.*) Fisher is a resident of Cheney, Kansas,
4 who worked for AT&T, Inc. or its predecessors from 1982 to 2007. (*Id.* ¶ 34.) Fisher was 46 in
5 2007 when she left the company; Fisher alleges she was harmed because she is unable to begin
6 receiving her pension before the age of 65 without being subject to the Early Retirement or Joint
7 and Survivor Annuity Factors. (*Id.*)

8 In their motion to dismiss, Defendants argue that the Original Named Plaintiffs lack
9 standing to sue because they have not demonstrated injury based on the application of the Early
10 Retirement or Joint and Survivor Annuity Factors. (Dkt. 38.) Defendants contend that their
11 benefit calculations were based on 26 U.S.C. § 417(e), which has been established an actuarially
12 appropriate method for ERISA purposes. (*Id.*) Defendants further argue that the Early Retirement
13 Factor played no role in determination of the lump sum benefits claimed by the Original Named
14 Plaintiffs. (*Id.*) Defendants conclude that the Court lacks jurisdiction over this matter, a defect
15 which they assert cannot be cured by the insertion of the Additional Named Plaintiffs into the
16 FAC. (*Id.*)

17 In their opposition to the motion to dismiss, Plaintiffs argue that the Original Named
18 Plaintiffs have established standing to sue and that Defendants' assertion that the Early Retirement
19 or Joint and Survivor Annuity Factors were not applied to the Original Named Plaintiffs
20 contradicts several provisions of the Plan. (Dkt. 39.) Plaintiffs sought jurisdictional discovery to
21 establish a factual record showing whether or not the Early Retirement or Joint and Survivor
22 Annuity Factors were applied. (*Id.*) Plaintiffs argue that the complaint was timely amended
23 before a judicial determination that the Original Named Plaintiffs lack standing, so there is no
24 piggybacking issue for the Additional Named Plaintiffs. (*Id.*)

25 After hearing oral argument, the Court allowed jurisdictional discovery on the issue of
26 standing, ruling that Plaintiffs could conduct a 30(b)(6) deposition of person(s) most
27 knowledgeable about how the benefits at issue were calculated. (Dkt. 49.) Plaintiffs conducted a
28 deposition of Rhonda Stone on July 13, 2020. (Dkt. 62-1.) Stone is an Assistant Vice President of

1 Benefits for AT&T Services. (*Id.* at 11:4-7.) Stone has held various roles in the benefits
2 department of AT&T Services for over 10 years and currently supervises six benefits employees
3 who oversee the Plan. (*Id.* at 12:14-17:21, 19:12-15.) Stone and her department work in
4 conjunction with Fidelity Workplace Investing LLC (“Fidelity”), the Plan’s recordkeeper, to apply
5 formulas dictated by the Plan for the administration of pension benefits. (*Id.* at 56:5-58:15.) To
6 prepare for her deposition, Stone reviewed relevant materials and consulted with Fidelity
7 regarding how the Original Named Plaintiffs’ lump sum benefits were calculated. (*Id.* at 21:1-24,
8 22:25-24:10, 26:21-27:20, 28:22-29:20.)

9 Stone testified about the manner of calculation for the lump sum benefit under the Plan for
10 each of the Original Named Plaintiffs. (*Id.* at 81-134.) Stone explained that, as provided by the
11 terms of the Plan, an Early Retirement Factor is used to convert a single life annuity scheduled to
12 begin at the normal retirement age of 65 into a lump sum to be paid at its present value. (*Id.* at
13 81:10-24, 134:18-20.) The Early Retirement Factor used, Stone testified, is based on mortality
14 tables and interest rate formulas derived from 26 U.S.C. § 417(e). (*Id.* at 87:4-6, 91:5-12, 108:19-
15 109:3, 128:12-21, 132:9-20, 134:11-20.) Fidelity generates the Early Retirement Factor by
16 loading the mortality tables and interest rates described by 26 U.S.C. § 417(e) into formulas,
17 which are then used to calculate pension benefits under the plan (*Id.* at 91:5-20, 108:19-109:3,
18 132:9-20.) During her testimony, Stone estimated that the Early Retirement Factor used to
19 calculate a lump sum payment would be “close to an 80 factor – a .8.” (*Id.* at 142:17-21.) Stone
20 did not make a precise calculation for any of the Original Named Plaintiffs using her estimated .8
21 factor. (*Id.*)

22 In the joint letter brief based on the deposition testimony, Plaintiffs argued that Stone’s
23 testimony showed that the Original Named Plaintiffs would have received higher benefits had
24 “ERISA-compliant Reduction Factors been used.” (Dkt. 55.) Plaintiffs then apply Stone’s
25 estimated .8 factor to each of the Original Named Plaintiffs’ lump sum calculations, concluding
26 that each would have been paid more had a .8 factor been applied, rather than the factor
27 Defendants used. (*Id.*) In response, Defendants point out that the .8 factor was merely Stone’s
28 estimation of what the 417(e) calculations would have produced. (Dkt. 58.) In fact, the Original

1 Named Plaintiffs' lump sum payments were calculated using a precise 417(e) factor of
 2 0.78941454. (*Id.*) When this precise factor is applied to the benefit calculations, the results are
 3 exactly the amounts that each Original Named Plaintiff actually received. (*Id.*) Defendants argue
 4 that Plaintiffs' attempt to use Stone's estimated factor to create the illusion of a disparity between
 5 417(e) and the Early Retirement Factor identified by the plan is disingenuous. (*Id.*) Because
 6 417(e) was baked into the Early Retirement Factor applied by the Plan, Plaintiffs received exactly
 7 what 417(e) and ERISA require and were not injured, Defendants conclude. (*Id.*)

8 Finally, Plaintiffs counter that a full actuarial analysis is required to determine whether the
 9 Early Retirement Factor applied by Defendants are equivalent to "a *proper* early retirement factor
 10 using § 417(e) assumptions." (Dkt. 59) (emphasis original).

11 DISCUSSION

12 A. Legal Standard.

13 "A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) tests whether
 14 the court has subject matter jurisdiction" under Article III of the Constitution. *Williams v. Apple,*
 15 *Inc.*, 449 F. Supp. 3d 892, 900 (N.D. Cal. 2020) (citing *Nw. Requirements Utilities v. FERC*, 798
 16 F.3d 796, 808 (9th Cir. 2015)). A party challenging jurisdiction under Rule 12(b)(1) may bring
 17 either a factual or a facial attack. "In a facial attack, the challenger asserts that the allegations
 18 contained in a complaint are insufficient on their face to invoke federal jurisdiction. By contrast,
 19 in a factual attack, the challenger disputes the truth of allegations that, by themselves, would
 20 otherwise invoke federal jurisdiction." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th
 21 Cir. 2004). In resolving a factual attack, the court "need not presume the truthfulness of the
 22 plaintiff's allegations" and may look to "evidence beyond the complaint without converting the
 23 motion to dismiss into a motion for summary judgment." *Id.* After a defendant has moved to
 24 dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), the burden shifts to the plaintiff
 25 to establish the court's jurisdiction. *Chandler v. State Farm Mut. Auto Ins. Co.*, 598 F.3d 1115,
 26 1122 (9th Cir. 2010).

27 In order for subject matter jurisdiction to exist, a plaintiff must have standing to sue.
 28 *DaVita, Inc. v. Amy's Kitchen, Inc.*, 379 F. Supp. 3d 960, 967 (N.D. Cal. 2019) (noting in ERISA

1 case that “Article III standing” is “a jurisdictional prerequisite to a federal court’s consideration of
2 any claim”); *see also Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004) (“a suit
3 brought by a plaintiff without Article III standing is not a ‘case or controversy,’ and an Article III
4 federal court therefore lacks subject matter jurisdiction over the suit.”) The “irreducible
5 constitutional minimum of [Article III] standing contains three elements:” (1) an injury in fact (2)
6 that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be
7 redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61
8 (1992). The alleged injury in fact must be “concrete and particularized” and “actual or imminent,”
9 rather than “conjectural” or “hypothetical.” *Id.* “The party invoking federal jurisdiction bears the
10 burden of establishing these elements.” *Id.* at 561. “In a class action, standing is satisfied if at
11 least one named plaintiff meets the requirements.” *Bates v. United Parcel Serv., Inc.*, 511 F.3d
12 974, 985 (9th Cir. 2007).

13 In the class action context, the named plaintiff must show that she personally has been
14 injured, or standing for the rest of the class does not lie. *Lierboe v. State Farm Mut. Auto. Ins.*
15 *Co.*, 350 F.3d 1018, 1022 (9th Cir. 2003) (holding that “our law makes clear that ‘if none of the
16 named plaintiffs purporting to represent a class establishes the requisite of a case or controversy
17 with the defendants, none may seek relief on behalf of himself or any other member of the
18 class.’”) (quoting *O’Shea v. Littleton*, 414 U.S. 488, 494 (1974)). When a named plaintiff “had no
19 live claim and therefore no standing when the case was first brought,” substituting a putative class
20 member as the named plaintiff will not cure the jurisdictional defect. *Stanford v. Home Depot*
21 *USA, Inc.*, 358 F. App’x 816, 819 (9th Cir. 2009); *Lierboe*, 350 F.3d at 1022-23. Governing Ninth
22 Circuit precedent “*Lierboe* stands for the proposition that where the original named plaintiff lacks
23 standing, a new plaintiff with standing cannot step in to save the lawsuit from dismissal.” *Almeida*
24 *v. Google, Inc.*, 2009 WL 3809808, at *2 (N.D. Cal. Nov. 13, 2009). This proposition “would
25 seem to apply with equal force whether intervention of a new plaintiff is achieved by Rule 15
26 amendment or Rule 24.” *Id.* A party engaged in an “attempt to amend [...] designed specifically
27 to avoid any [...] judicial determination” of standing cannot then be heard to “distinguish *Lierboe*
28 on the grounds that it involved a judicial determination that the named plaintiff lacked standing.”

1 *Id.*

2 **B. Discussion.**

3 Because Defendants' Early Retirement Factor was formulated in compliance with 26
4 U.S.C. § 417(e), the Original Named Plaintiffs have not demonstrated injury in fact under ERISA.
5 ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3) allows civil enforcement actions for violations
6 of ERISA. Here, Plaintiffs allege that Defendants violated sections 204(c)(3), 203(a), and
7 206(a)(3) of ERISA calculating benefits owed to Plan participants – represented by the Original
8 Named Plaintiffs – who elected to receive a lump sum payment. (Dkt. 34 ¶¶ 4, 8, 10.) Section
9 204(c)(3) of ERISA requires that any retirement benefit provided in a form other than a single life
10 annuity be the actuarial equivalent of a single life annuity. 29 U.S.C. § 1054(c)(3). Section
11 203(a) of ERISA makes such reduced payment an illegal forfeiture. 29 U.S.C. § 1053(a). Section
12 206(a)(3) of ERISA requires that early retirement benefits be adjusted using regulations prescribed
13 by the Secretary of the Treasury. 29 U.S.C. § 1056(a)(3). The Secretary of the Treasury has
14 promulgated regulations for the calculation of ERISA benefits at 26 U.S.C. § 417(e).

15 Plaintiffs allege that the Early Retirement Factor applied to calculate the benefits of the
16 Original Named Plaintiffs was not formulated in accordance with section 417(e) and does not
17 reflect current actuarial assumptions. (Dkt. 34 ¶ 17.) However, the jurisdictional discovery
18 permitted by the Court revealed that Defendants' Early Retirement Factor is in fact formulated
19 using section 417(e). (Dkt. 62-1 at 87:4-6, 91:5-12, 108:19-109:3, 128:12-21, 132:9-20, 134:11-
20 20.) Defendants employ the terminology "Early Retirement Factor" rather than something like
21 "417(e) Factor." However, Stone's testimony made clear that the Early Retirement Factor used by
22 Defendants is generated using the assumptions required by section 417(e). Plaintiffs have not
23 demonstrated that this is not the case; their best argument is a feeble attempt to hold Defendants to
24 Stone's off-the-cuff suggestion during deposition that the 417(e) factor would likely be
25 approximately .8. Plaintiffs use the differential between .8 and the actual Early Retirement Factor
26 applied by Defendants, 0.78941454, to suggest that benefits calculations for the Original Named
27 Plaintiffs were incorrect, simultaneously asserting that the Court would need another, different
28 actuarial analysis to determine if Defendants' 417(e) calculations were correct.

1 This is both internally inconsistent and illogical. Plaintiffs in essence propose that the
2 Court hold Defendants to an approximate estimation for purposes of demonstrating injury in fact
3 under Article III, all the while acknowledging that the actual harm to Plaintiffs for purposes of
4 proving the case – *i.e.*, the potential difference between Defendant’s factor and some ideal factor
5 under section 417(e) – could only be measured with the most precise actuarial analysis possible.
6 A full actuarial accounting would be redundant in this case, as Plaintiffs have not shown any
7 likelihood that the methods ds used to calculate were based on anything other than 417(e) or
8 presented any theory of how the actuarial process relied on by Defendants was inadequate.

9 Defendants have shown that their Early Retirement Factor is made under section 417(e),
10 producing the exact figures offered to the Original Named Plaintiffs. In the face of Defendants’
11 factual attack on subject matter jurisdiction, Plaintiffs bear the burden of demonstrating injury in
12 fact, and they have not carried that burden here. Stone’s testimony shows that Plaintiffs both were
13 offered and received amounts calculated in accordance with statutory requirements and governing
14 actuarial assumptions. Thus, both Plaintiffs’ monetary and misrepresentation theories of harm fail
15 as to the Original Named Plaintiffs.

16 Plaintiffs’ argument that the Additional Named Plaintiffs cure the jurisdictional defect
17 fails. *Lierboe* plainly holds that, where none of the named plaintiffs have standing to sue at the
18 initiation of a lawsuit, the action must be dismissed. 350 F.3d at 1022. Substitution of other
19 putative class members will not cure the jurisdictional defect. *Stanford*, 358 F. App’x at 819. A
20 party may not evade a judicial finding on standing by quickly amending the complaint to add
21 Plaintiffs and then in turn evade dismissal by distinguishing *Lierboe* on the grounds that it
22 involved a judicial determination of standing. *Almeida*, 2009 WL 3809808, at *2. Here, the
23 Original Named Plaintiffs lacked standing when the original complaint was filed. Under *Lierboe*,
24 the Additional Named Plaintiffs cannot be substituted for the Original Named Plaintiffs.
25 Therefore, dismissal under Federal Rule of Civil Procedure 12(b)(1) is appropriate.

26 CONCLUSION

27 For the reasons set forth above, the Court HEREBY GRANTS Defendants’ motion to
28 dismiss. Because amendment would be futile as to the Original Named Plaintiffs, the Court does

1 not grant leave to amend. The Clerk of Court is directed to close the file.

2 **IT IS SO ORDERED.**

3 Dated: September 28, 2020



4 SALLIE KIM
5 United States Magistrate Judge

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