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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KATHERINE BAKER, et al.,
Plaintiffs,
v.
SAVE MART SUPERMARKETS,
Defendant.

Case No. [22-cv-04645-WHO](#)

**ORDER DENYING MOTION TO
DISMISS**

Re: Dkt. No. 25

Defendant Save Mart Supermarkets (“Save Mart”) moves to dismiss a class action complaint filed by Katherine Baker, Jose Luna, Edgar Popke, and Denny Wraske (collectively, “the plaintiffs”), former employees of the grocery store chain who allege that Save Mart breached its fiduciary duty under the Employee Retirement Income Security Act of 1974 (“ERISA”) by misrepresenting the medical benefits provided to non-union retirees. The plaintiffs have plausibly alleged the remediable wrong that Save Mart breached its fiduciary duty of loyalty when it made two misrepresentations: (1) that the plaintiffs’ non-union benefits would be as good or better than those of their union counterparts, and (2) that if the plaintiffs retired by December 31, 2017, they would retain a certain benefit for the life of the retiree. The plaintiffs have also plausibly shown that they may be entitled to appropriate equitable relief in the form of reformation and surcharge. Finally, the statute of limitations poses no issue, as the plaintiffs filed their claim within three years of receiving actual notice of the alleged breach when Save Mart announced it would terminate the benefit at issue in April 2022. Save Mart’s motion is DENIED.

BACKGROUND

Baker, Luna, Popke, and Wraske worked for Save Mart for 28, 33, 39, and 46 years, respectively. First Am. Compl. (“FAC”) [Dkt. No. 24] ¶ 6. Each worked in a non-union role by

1 the end of their careers with the grocery store chain. *See id.* ¶¶ 4-5.

2 The Save Mart Select Retiree Health Benefit Plan (“the Plan”) provides health care
3 benefits to eligible non-union retirees and their spouses. *Id.* ¶ 18. Beginning in 2016, Save Mart
4 modified the Plan to provide funding to a Health Reimbursement Account (“the HRA benefit”) in
5 lieu of premium contributions. *Id.* ¶ 19. According to the FAC, the HRA benefit was a monthly
6 \$500 contribution to an HRA for each eligible employee, plus \$500 for their spouse. *Id.* The
7 retired employee and their spouse could then use the money accrued in their HRA accounts to pay
8 for certain qualifying medical expenses. *Id.* The FAC alleges that Save Mart’s human resources
9 department repeatedly told employees that the HRA benefit could accumulate until the retiree’s
10 death. *Id.* ¶¶ 19, 21.

11 The FAC also alleges that Save Mart repeatedly represented that it would provide non-
12 union employees with benefits—including retirement benefits—that were “as good as or better
13 than” those provided to union employees. *Id.* ¶ 22. According to the FAC, Save Mart said this to
14 convince employees not to join the union. *Id.*

15 When Save Mart amended the Plan to implement the HRA benefit in 2016, it told
16 retirement-eligible employees that if they retired before December 31, 2017, they would be able to
17 keep the HRA benefit for their spouses for the retiree’s life—but if they retired after that date, the
18 spousal benefit would not be available. *Id.* ¶¶ 1, 33. The plaintiffs all retired on or before that
19 date—earlier than they had planned—to retain the HRA spousal benefit. *See id.* ¶ 5.

20 In April 2022, Save Mart announced that it would terminate the HRA benefit as of June
21 2022, which the FAC alleges “eliminated all retiree medical benefits for non-union retirees.” *See*
22 *id.* ¶¶ 1, 37. Save Mart allegedly told these retirees that after June, no medical expenses would be
23 covered and the funds accumulated in the HRA accounts would revert to Save Mart. *Id.* ¶ 37.
24 According to the FAC, the Plan terms allowed Save Mart to “modify or terminate the Plan at any
25 time for any reason.” *See id.* ¶¶ 21, 36.¹ As a result of this policy change, the plaintiffs allege

26
27 ¹ Save Mart requests judicial notice of two documents: (1) a copy of the Save Mart Select Retiree
28 Health Benefit Plan that was effective January 1, 2012, and (2) a copy of the 2016 Save Mart
Select Health Reimbursement Arrangement Summary Plan Description. RJN [Dkt. No. 26], Exs.
A, B. The plaintiffs oppose the requests, citing in part their concerns about the “authenticity and

1 that they and class members—other non-union retirees and their beneficiaries—lost their health
2 benefits. *Id.* ¶ 39.

3 The plaintiffs filed their initial class action complaint in August 2022, followed by the
4 FAC in November. Dkt. Nos. 1, 24. The FAC asserts a single claim: breach of fiduciary duty
5 under ERISA. FAC ¶¶ 87-92. Save Mart then moved to dismiss. Dkt. No. 25.

6 LEGAL STANDARD

7 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint
8 if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to
9 dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its
10 face.” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible
11 when the plaintiff pleads facts that allow the court to “draw the reasonable inference that the
12 defendant is liable for the misconduct alleged.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
13 (citation omitted). There must be “more than a sheer possibility that a defendant has acted
14 unlawfully.” *Id.* While courts do not require “heightened fact pleading of specifics,” a plaintiff
15 must allege facts sufficient to “raise a right to relief above the speculative level.” *See Twombly*,
16 550 U.S. at 555, 570.

17 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the
18 court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the
19 plaintiff. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court
20 is not required to accept as true “allegations that are merely conclusory, unwarranted deductions of
21 fact, or unreasonable inferences.” *See In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
22 2008) (citation omitted).

23 Claims sounding in fraud are subject to the heightened pleading standard of Federal Rule
24

25 _____
26 completeness” of the documents. Dkt. No. 30. I will DENY the requests for now. Not only do
27 the plaintiffs question the accuracy of the documents, but the plaintiffs do not rely on any Plan
28 documents in asserting their claim (which is based on Save Mart’s alleged misrepresentations
about union and non-union benefits, and the duration of the HRA benefit), meaning these
documents were not relevant to my analysis of its plausibility. *See Fed. R. Evid. 201(b)*. At most,
the modification and termination clause was relevant, but plaintiffs acknowledge its existence in
the FAC. *See FAC* ¶ 21.

1 of Civil Procedure 9(b), which requires that such claims “state with particularity the circumstances
 2 constituting fraud or mistake,” including the “who, what, when, where, and how of the misconduct
 3 charged.” *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (citation and
 4 quotations omitted). “The plaintiff must set forth what is false or misleading about a statement,
 5 and why it is false.” *Id.* (citation omitted). The allegations must be “specific enough to give
 6 defendants notice of the particular misconduct” which is alleged to constitute the fraud charged
 7 “so that they can defend against the charge and not just deny that they have done anything wrong.”
 8 *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (same).

9 DISCUSSION

10 Section 502 of ERISA allows a participant, beneficiary, or fiduciary to bring a civil action
 11 “to enjoin any act or practice which violates any provision of this subchapter or the terms of the
 12 plan” or “to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce
 13 any provisions of this subchapter or the terms of the plan.” 29 U.S.C. § 1132(a)(3). Under this
 14 provision, a plaintiff “must prove both (1) that there is a remediable wrong, i.e., that the plaintiff
 15 seeks relief to redress a violation of ERISA or the terms of a plan; and (2) that the relief sought is
 16 appropriate equitable relief.” *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945, 954 (9th Cir.
 17 2014) (citations and quotations omitted). The FAC alleges that Save Mart breached its fiduciary
 18 duties of loyalty and prudence in violation of ERISA, and seeks relief in the form of a surcharge,
 19 reformation of the Plan, and an injunction. *See* FAC ¶¶ 87-92; 24:5-9.²

20 I. REMEDIABLE WRONG

21 Save Mart first challenges whether the plaintiffs’ ERISA claim plausibly alleges a
 22 remediable wrong. Mot. to Dismiss (“MTD”) [Dkt. No. 25] 6:21-15:7. It argues that the FAC
 23 fails to allege a breach of fiduciary duty because it does not allege: (1) an affirmative
 24 misrepresentation under either Rule 9(b) or Rule 8(a); (2) actionable omissions; and (3) that the

25 _____
 26 ² Although the FAC mentions a fiduciary’s “duties of loyalty and prudence,” and alleges that
 27 “Save Mart breached these duties” by making the misrepresentations, the plaintiffs later deny that
 28 they alleged a breach of the duty of prudence. *See* FAC ¶¶ 89-90; *see also* Oppo. [Dkt. No. 29]
 12:3 (“Plaintiffs do not allege that Save Mart breached its duty of prudence.”). The plaintiffs
 should clarify at the next Case Management Conference, scheduled for April 25, 2023, whether
 they continue to pursue this theory of liability.

1 plaintiffs relied upon Save Mart's statements before 2017. *See id.*

2 **A. Affirmative Misrepresentation**

3 ERISA requires a fiduciary to "discharge his duties with respect to a plan solely in the
4 interest of the participants and beneficiaries and . . . for the exclusive purpose of: (i) providing
5 benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of
6 administering the plan." 29 U.S.C. § 1104(a)(1)(A). A fiduciary breaches this duty of loyalty if it
7 "mislead[s] plan participants or misrepresent[s] the terms or administration of a plan." *Guenther*
8 *v. Lockheed Martin Corp.*, 972 F.3d 1043, 1051 (9th Cir. 2020) (quoting *Barker v. Am. Mobil*
9 *Power Corp.*, 64 F.3d 1397, 1403 (9th Cir. 1995)). To prevail on a breach of fiduciary duty claim
10 based on a misrepresentation, a plaintiff must show: (1) the defendant's status as an ERISA
11 fiduciary acting as a fiduciary; (2) a misrepresentation by the defendant; (3) the materiality of that
12 misrepresentation; and (4) detrimental reliance by the plaintiff on the misrepresentation. *RJ v.*
13 *Cigna Health & Life Ins. Co.*, --- F. Supp. 3d ----, 2022 WL 4021890, at *11 (N.D. Cal. Sept. 2,
14 2022) (citation omitted).³

15 The parties initially dispute which pleading standard applies. Save Mart contends that
16 because misrepresentation sounds in fraud, the claim must meet Rule 9(b)'s heightened standard.
17 MTD at 6:25-27. The plaintiffs argue that only Rule 8, which requires "a short and plain
18 statement of the claim showing that the pleader is entitled to relief," must be satisfied. *Oppo.* at
19 8:20-23; *see also* Fed. R. Civ. P. 8(a). The claim is plausibly alleged under either standard.

20 Beginning with Rule 9(b), Save Mart argues that plaintiffs have not alleged "the falsity of
21

22 ³ At the end of its motion, Save Mart argues that it was not acting as a fiduciary when it terminated
23 the HRA benefit, because doing so was a business function. MTD at 21:6-27. However, as
24 discussed next, the plaintiffs' claim is based on the alleged misrepresentations by Save Mart that
25 led them to believe that their benefits as non-union employees would be as good or better than
26 those for union employees, and that if they retired by December 31, 2017, they would retain the
27 HRA benefit for life. *See* FAC ¶ 1. Even if Save Mart was not acting as a fiduciary when it
28 terminated the Plan (a question that will be answered with discovery), the plaintiffs' claim does
not necessarily depend on that termination. Therefore, this argument from Save Mart is not
dispositive. The same is true for its final argument, which is that the plaintiffs' claim is a
"disguised claim for benefits" that must be denied because the termination of the HRA benefit was
fully consistent with the Plan. MTD at 22:1-17. The plaintiffs assert a claim based on an alleged
breach of fiduciary duty, not the denial of benefits.

1 the alleged misrepresentation with particularity” because they did not allege facts about the union
2 and non-union employee health plans that sufficiently show that Save Mart “actionably
3 misrepresented the nature of Plan benefits when it purportedly stated that Plan benefits would be
4 as good or better than union benefits.” MTD at 8:3-7. According to Save Mart, the plaintiffs
5 instead “relied on their own subjective interpretations of vague alleged statements to extrapolate
6 an implied promise that Save Mart would never modify or terminate Plan benefits.” *Id.* at 8:7-9.

7 I disagree. The FAC lays out the relevant difference between the union and non-union
8 benefits: that medical benefits for union retirees “were and are more secure than those offered by
9 the Plan.” FAC ¶ 3. The FAC then alleges that unlike the Plan, the union’s retiree medical benefit
10 program does not allow Save Mart to unilaterally eliminate benefits or take back money that funds
11 those benefits. *See id.*; *see also* ¶ 4 (“Save Mart’s representations to its workers that it would
12 provide benefits as good or better than the union’s benefits were false. Save Mart’s retiree
13 medical benefits for non-union employees were in fact far less secure and allowed Save Mart to
14 eliminate the benefits at any time, at Save Mart’s sole discretion.”). If the alleged misstatement
15 (the “what”) is that Save Mart would provide non-union employees benefits as good as or better
16 than those provided to union employees, the FAC has sufficiently alleged “how” that statement is
17 false.

18 The FAC also alleges who made these statements, when they made them, and where. For
19 example, the FAC alleges that when a new Save Mart store opened or the company learned that
20 one may be unionizing, it sent human resources (“HR”) professionals and managers to discuss this
21 purported benefits difference. *See id.* ¶¶ 25-26. Although not needed on a motion to dismiss,
22 these allegations are supported with declarations from former HR representatives who spoke about
23 the messaging. *See, e.g., id.*, Kennedy Decl. ¶¶ 13-14. The FAC further alleges that similar
24 statements were made in anti-union pamphlets distributed to employees. *See, e.g.*, FAC ¶ 2 (citing
25 Ex. A).

26 Save Mart also overlooks the second alleged misstatement: that it told the plaintiffs that if
27 they retired before December 31, 2017, they could retain the HRA benefit for themselves and their
28 spouses for the retiree’s life. *See* FAC ¶¶ 1, 34-36. Again, the FAC sufficiently alleges the who,

1 what, where, when, and how of the alleged fraud.

2 The FAC alleges that Save Mart HR representatives and other managers (the who) told
3 retirement-eligible employees that if they retired before December 31, 2017, they would retain the
4 HRA benefit for their spouses for the duration of the retiree's life (the what) in letters and at
5 meetings and presentations (the where) during a push in 2016 and 2017 (the when) to encourage
6 retirements. *Id.* ¶¶ 33-34, 57-58, 65-67, 73-75, 82. The FAC also alleges how this representation
7 was false or misleading: because Save Mart could terminate the HRA benefit at any time,
8 including for employees who retired before the December 31, 2017, deadline. *Id.* ¶ 36. If the
9 plaintiffs' fraud-based claim is subject to Rule 9(b), they have alleged two misrepresentations with
10 sufficient particularity for the claim to proceed.

11 Rule 8(a)'s more lenient standard is satisfied too. The plaintiffs have sufficiently alleged
12 two types of misrepresentations by Save Mart that plausibly support their breach of fiduciary duty
13 claim. Many of Save Mart's attacks under Rule 8(a) raise factual disputes that will prove out at a
14 later stage of litigation, including whether it was reasonable for the plaintiffs to believe that Save
15 Mart would always provide beneficiaries with specific benefits and how certain language on
16 pamphlets describing the Plan should be interpreted. *See* MTD at 9:27-10:23. And whether Save
17 Mart's alleged statements were consistent with the language of the Plan documents does not
18 undermine the plaintiffs' claim, for reasons I next explain.

19 **B. Actionable Omissions**

20 Save Mart next argues that plaintiffs fail to allege actionable omissions implicating the
21 fiduciary duty to disclose. MTD at 11:18-13:2. It contends that the plaintiffs cannot allege an
22 omission because (1) they received a Plan document and Summary Plan Description ("SPD"),
23 which disclosed that Save Mart could modify or terminate the Plan at any time, and (2) they fail to
24 allege Save Mart promised them additional information or updates on the Plan. *See id.* at 12:3-21.

25 Neither point is compelling. "[W]hen an employer communicates with its employees
26 about a plan, fiduciary responsibilities come into play." *Bins v. Exxon Co. U.S.A.*, 220 F.3d 1042,
27 1053 (9th Cir. 2000). The Ninth Circuit has held that the duty of loyalty encompasses a duty "to
28 provide thorough and accurate information explaining" an option "offered to entice employees to

1 retire.” *See Farr v. U.S. W. Commc’ns, Inc.*, 151 F.3d 908, 915 (9th Cir. 1998), amended by 179
 2 F.3d 1252 (July 15, 1999). And “when a participant asks a fiduciary a question about his benefits,
 3 the fiduciary has a duty to completely and accurately answer the question”—a duty that cannot be
 4 avoided based on the technicality of the questions at hand. *Harris v. Life Ins. Co. of N. Am.*, 419
 5 F. Supp. 3d 1169, 1173-74 (N.D. Cal. 2019) (citations and quotations omitted).

6 As the plaintiffs note, the FAC alleges various examples of Save Mart’s assertions that the
 7 HRA benefit would last for the life of the retiree, including in response to questions from
 8 employees. *Oppo.* at 15:9-12 (citing in part FAC ¶¶ 2, 33, 58, 67). For example, the FAC alleges
 9 that when the Plan was amended in 2016, Save Mart told employees that if they retired by
 10 December 31, 2017, they could retain the HRA benefit for their spouses for the retiree’s life, and
 11 did so in an effort to “persuade eligible employees to retire.” FAC ¶ 33. This implicates Save
 12 Mart’s duty to provide thorough and accurate information under *Farr*. So do the questions about
 13 the HRA benefit allegedly asked to Save Mart human resources workers by employees. *See id.* ¶¶
 14 58 (alleging that Baker attended an HR presentation where employees asked “many questions
 15 about the HRA changes”), 67 (alleging that Luna spoke to an HR representative “to ask questions
 16 about his retirement benefits” and was told that as long as he retired by December 31, 2017, “both
 17 he and his spouse would keep their HRA benefit for the duration of Mr. Luna’s life”). The
 18 plaintiffs plausibly contend that these answers were not complete nor accurate because they did
 19 not include that the HRA benefit could be terminated at any time. *See id.* ¶ 36.

20 The plaintiffs have sufficiently alleged that Save Mart’s representations contained
 21 omissions about the HRA benefit that support their claim for breach of fiduciary duty.

22 C. Reliance

23 Save Mart next contends that the plaintiffs fail to allege detrimental reliance on its alleged
 24 misrepresentations. *MTD* at 13:3-15:7. The plaintiffs argue that they need not plead detrimental
 25 reliance but that even if they must, they have plausibly done so. *Oppo.* at 16:1-17:3. *RJ* states that
 26 a breach of fiduciary duty claim based on a misrepresentation requires a showing of detrimental
 27 reliance. *See* 2022 WL 4021890, at *11. Assuming that it does, the plaintiffs have still
 28 sufficiently pleaded detrimental reliance on at least some of the misstatements.

1 Save Mart primarily argues that the FAC does not allege that when the plaintiffs accepted
2 management positions that were not eligible for union membership, they did so based on any
3 guarantee of specific benefits. *See* MTD at 13:3-15:7. The plaintiffs respond that they
4 detrimentally relied on Save Mart’s representations “by continuing to work at Save Mart at all
5 (and not elsewhere) to accrue the necessary years of service at Save Mart required to earn retiree
6 medical benefits only to have Save Mart refuse to provide those benefits.” *Oppo*. at 16:21-24
7 (citing FAC ¶ 4).

8 Save Mart makes a fair point. With one exception, the FAC does not allege that the named
9 plaintiffs relied on statements that non-union benefits would always be as good or better than
10 union benefits when deciding not to join the union. The FAC alleges that Luna, Popke, and
11 Wraske were told or reassured that this was the case, but does not expressly connect the dots
12 between those statements and their decisions to accept or remain in non-union positions. *See* FAC
13 ¶¶ 62-64, 71-72, 79-81. Indeed, it alleges that Popke deferred a promotion to a non-union position
14 “for several years because of the additional hours of work it would require and the young age of
15 his children.” *Id.* ¶ 71. Although it alleges that when Popke accepted a promotion, he asked what
16 impact it would have on his benefits and was assured that they “would always be as good as or
17 better than the union’s[,]” the FAC does not allege that he relied on this statement in deciding to
18 take the new job. *See id.* Although the FAC makes a conclusory allegation that Save Mart’s
19 misrepresentation harmed the plaintiffs “by inducing them to continue working for Save Mart as
20 long as it took to become eligible for benefits under the Plan instead of other employment
21 opportunities,” nowhere else does the FAC connect the statement about union versus non-union
22 benefits and these three plaintiffs’ decisions to remain working for Save Mart. *See id.* ¶ 4.

23 The exception is Baker. The FAC alleges that when Baker was approached about
24 becoming a store manager, requiring her to give up her union status, she was “especially
25 concerned about preserving her medical benefits,” given her family’s medical needs. FAC ¶ 50.
26 Her boss allegedly “assured her that as a non-union manager, her benefits would always be as
27 good as or better than the union’s benefits.” *Id.* The FAC then alleges that “[o]n the basis of this
28 representation, Ms. Baker decided to remain in management and give up her union status.” *Id.*

1 This clearly alleges reliance on the statement at issue.

2 Moreover, the FAC plausibly alleges detrimental reliance on the *other* alleged
3 misstatement: that if the plaintiffs retired by December 31, 2017, they would preserve their
4 spouses' HRA benefits for life. The FAC alleges that each of the named plaintiffs relied on this
5 statement in deciding to retire when they did. *See id.* ¶¶ 57-60, 66-68, 75-77, 82-85.

6 Although the FAC does not expressly allege that Luna, Popke, and Wraske relied on Save
7 Mart's statements about the union benefits as compared to non-union benefits in deciding to
8 accept non-union jobs, it plausibly alleges that Baker did. It also plausibly alleges that each of the
9 named plaintiffs relied on Save Mart's representations about the HRA benefit in deciding to retire
10 when they did. Reliance is sufficiently pleaded and the plaintiffs have plausibly pleaded a
11 remediable wrong under ERISA.

12 **II. APPROPRIATE EQUITABLE RELIEF**

13 Save Mart challenges the plausibility of plaintiffs' claim to "appropriate [forms of]
14 equitable relief"—reformation, surcharge, and an injunction—under ERISA. MTD at 15:8-19:13.
15 The Supreme Court has explained that "appropriate equitable relief refers to a remedy traditionally
16 viewed as equitable." *See Gabriel*, 773 F.3d at 954 (citations and quotations omitted). Three
17 types of traditional equitable remedies may be available under section 1132(a)(3) of ERISA: the
18 reformation of plan terms in order to remedy false or misleading information, equitable estoppel,
19 and surcharge. *See id.* at 954-57.

20 **A. Reformation**

21 "The power to reform contracts is available only in the event of mistake or fraud."
22 *Gabriel*, 773 F.3d at 955 (citations omitted). If fraud is alleged, "a plaintiff may obtain
23 reformation when either (1) a trust was procured by wrongful conduct, such as undue influence,
24 duress, or fraud, or (2) a party's assent to a contract was induced by the other party's
25 misrepresentations as to the terms or effect of the contract and he was justified in relying on the
26 other party's misrepresentations." *Id.* (cleaned up).

27 As explained earlier, the plaintiffs plead sufficient facts supporting a fraud-based breach of
28 fiduciary duty claim under both Rules 9(b) and 8(a). Save Mart contends that the plaintiffs have

1 not alleged that the Plan itself contained terms induced by fraud, which it argues is the kind of
 2 fraud that could warrant reformation. *See* MTD at 15:23-16:2. But Save Mart ignores the test for
 3 reformation under a fraud theory, where reformation is available when: “(1) a trust was procured
 4 by wrongful conduct, such as undue influence, duress, or fraud, *or* (2) a party’s assent to a contract
 5 was induced by the other party’s misrepresentations as to the terms or effect of the contract and he
 6 was justified in relying on the other party’s misrepresentations.” *See Gabriel*, 773 F.3d at 955
 7 (cleaned up and emphasis added). As alleged, the plaintiffs agreed to retire before December 31,
 8 2017, based on Save Mart’s misrepresentation about the duration of the HRA benefit. *See* FAC ¶
 9 5. They seek to reform the Plan in part “to reflect Save Mart’s repeated promise that retiree
 10 medical benefits, including the HRA benefit for retirees and their spouses specifically, would last
 11 until the death of the retiree.” *Id.* ¶ 92. The plaintiffs may continue to pursue reformation.⁴

12 **B. Surcharge**

13 “Appropriate equitable relief” also includes surcharge: “monetary compensation for a loss
 14 resulting from a trustee’s breach of duty, or to prevent the trustee’s unjust enrichment.” *Gabriel*,
 15 773 F.3d at 957 (cleaned up). “Under a breach of duty theory, the beneficiary can pursue the
 16 remedy that will put the beneficiary in the position he or she would have attained but for the
 17 trustee’s breach.” *Gomo v. NetApp, Inc.*, No. 17-CV-02990-BLF, 2022 WL 16972492, at *5
 18 (N.D. Cal. Nov. 16, 2022) (citing *Gabriel*, 773 F.3d at 958) (cleaned up). “Under an unjust
 19 enrichment theory, a trustee (or a fiduciary) who gains a benefit by breaching his or her duty must
 20 return that benefit to the beneficiary.” *Id.* (same). Save Mart argues that the plaintiffs cannot
 21 pursue a surcharge because they do not plausibly plead that they were actually harmed by Save
 22 Mart’s breach of its fiduciary duty or that Save Mart was unjustly enriched as a result. MTD at
 23 18:1-19:13.

24 The FAC alleges that the plaintiffs were harmed by Save Mart’s breach in two ways. First,
 25 it alleges that, at least with respect to Baker, she decided to give up her union status based on the

26 _____
 27 ⁴ The parties also debate whether the plaintiffs allege enough facts in the FAC to plausibly claim
 28 reformation under a theory of mistake. *See* MTD at 16:3-24; *see also* *Oppo.* at 19:21-21:8.
 Because they have alleged enough to plausibly support their entitlement to reformation under a
 theory of fraud, I need not address these points.

1 misrepresentation that “her benefits would always be as good or better than the union’s benefits.”
 2 FAC ¶ 50. It is reasonable to infer, then, that she was harmed when the HRA benefit was
 3 terminated, as it was a non-union benefit that she was eligible for because she gave up her union
 4 status. Moreover, the FAC alleges that each of the named plaintiffs retired earlier than planned
 5 based on the second alleged misrepresentation about the duration of the HRA benefit, and thus, at
 6 minimum, lost income and employee benefits that they otherwise would have earned by working.
 7 *See id.* ¶¶ 58-61, 66-69, 75-78, 82-86.

8 The plaintiffs have also plausibly alleged that Save Mart was unjustly enriched by its
 9 alleged breach of fiduciary duty, at least in the form of the money it saved when it induced the
 10 plaintiffs to retire early. *See* Oppo. at 19:1-12; *see also* FAC ¶ 2 (alleging that Save Mart’s motive
 11 for misrepresenting the Plan terms was in part “to save money”). Though at this stage of the
 12 litigation there is no evidence to determine whether Save Mart was indeed better off having
 13 induced plaintiffs to retire, the plaintiffs’ allegations plausibly suggest that the offer of early
 14 retirements to maintain lifetime spousal benefits were for the purpose of improving Save Mart’s
 15 financial position. *See, e.g.*, FAC ¶ 33.

16 Because the plaintiffs have plausibly shown they are entitled to appropriate equitable relief
 17 in the form of reformation or a surcharge, they have plausibly stated their claim.⁵

18 III. STATUTE OF LIMITATIONS

19 Finally, Save Mart argues that the plaintiffs’ sole cause of action is time-barred. MTD at
 20 19:14-21:5. There are three relevant time periods for ERISA claims, depending on the “triggering
 21 event.” *See Intel Corp. Inv. Pol’y Comm. v. Sulyma*, 140 S. Ct. 768, 774 (2020). The Supreme
 22 Court recently provided guidance on these time periods, in relevant part:

23
 24 ⁵ The FAC includes a request for an injunction “requiring Save Mart to administer the Plan with
 25 respect to plaintiffs and the Class and Subclass in a manner consistent with the terms of the Plan in
 26 existence prior to the elimination of the HRA benefit in 2022.” FAC at 24:5-9. Save Mart
 27 challenges this on several grounds, including that it “already administered (and is administering)
 28 the Plan consistent with the pre-termination terms, which expressly permitted Save Mart to
 terminate Plan benefits at any time.” MTD at 17:4-8 (citing FAC ¶ 31). The plaintiffs do not
 respond or maintain their request for an injunction in their opposition. *See generally* Oppo. Given
 this and the contrary allegations in the FAC (which acknowledges the provision stating that Save
 Mart “has the right to modify or terminate the Plan at any time for any reason”), I agree that the
 plaintiffs have not shown that this form of relief is available. *See* FAC ¶ 21.

1 The first begins when the breach occurs. Specifically, under §
2 1113(1), suit must be filed within six years of “the date of the last
3 action which constituted a part of the breach or violation” or, in cases
4 of breach by omission, “the latest date on which the fiduciary could
5 have cured the breach or violation.” We have referred to § 1113(1)
6 as a statute of repose, which “effect[s] a legislative judgment that a
7 defendant should be free from liability after the legislatively
8 determined period of time.”

9 The second period, which accelerates the filing deadline, begins when
10 the plaintiff gains “actual knowledge” of the breach. Under §
11 1113(2), suit must be filed within three years of “the earliest date on
12 which the plaintiff had actual knowledge of the breach or violation.”
13 Section 1113(2) is a statute of limitations, which “encourage[s]
14 plaintiffs to pursue diligent prosecution of known claims.”

15 The third period, which applies “in the case of fraud or concealment,”
16 begins when the plaintiff discovers the alleged breach. In such cases,
17 suit must be filed within six years of “the date of discovery.”

18 *Sulyma*, 140 S. Ct at 774 (citations omitted). The Ninth Circuit has held that the six-year
19 exception for fraud “only applies when a defendant has taken steps to hide its breach of fiduciary
20 duty,” and in such cases a plaintiff “must establish affirmative conduct upon the part of the
21 defendant which would, under the circumstances of the case, lead a reasonable person to believe
22 that he did not have a claim for relief.” *Guenther*, 972 F.3d at 1057 (citations omitted). *Save Mart*
23 focuses on the second and third time bars. MTD at 19:14-21:5.

24 At the least, the plaintiffs’ ERISA claim is timely under the three-year statute of
25 limitations. *Save Mart* contends that plaintiffs had actual knowledge of its unilateral ability to
26 change and terminate the Plan as early as 2009 and no later than 2016, based on prior
27 modifications to the Plan. MTD at 20:11-21:5; *see also* 4:9-10 (describing allegation that in 2009,
28 *Save Mart* stopped paying 100% of active and retired employees’ group premium costs); 20:21-
21:1 (describing allegation that *Save Mart* modified the plan in 2016 to provide the HRA funding
in lieu of premium contributions). The plaintiffs argue that “these actions were merely
modifications to the nature of the benefits” and that “neither gave plaintiffs ‘actual knowledge’
that *Save Mart* could terminate retiree health benefits altogether.” *Oppo*. at 22:10-12.

The 2009 and 2016 changes might indicate *Save Mart*’s ability to modify Plan benefits, but
the alleged breach relies on misrepresentations about how long those benefits would last—and it is
plausible that neither of the changes would inform the plaintiffs that their benefits could be

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1 unilaterally terminated. This is further supported by the plaintiffs’ decision to retire before
 2 December 31, 2017, to maintain their medical benefits for life, from which one could reasonably
 3 infer that the plaintiffs were not aware then that the HRA benefit could be terminated at any time.
 4 As the Supreme Court wrote in *Sulyma*, “if a plaintiff is not aware of a fact, he does not have
 5 ‘actual knowledge’ of that fact however close at hand the fact might be.” 140 S. Ct. at 777. As
 6 alleged, the plaintiffs did not have actual knowledge of Save Mart’s ability to eliminate the HRA
 7 benefit until April 2022, when Save Mart announced that it was doing so. *See* FAC ¶¶ 37-38.⁶
 8 They filed this suit in August of the same year—well within the three-year statute of limitations.
 9 *See* Dkt. No. 1. As alleged, the plaintiffs’ claim is timely.

CONCLUSION

The motion to dismiss is DENIED.

IT IS SO ORDERED.

Dated: April 7, 2023



William H. Orrick
United States District Judge

23 ⁶ Save Mart also argues that the plaintiffs’ awareness of the earlier Plan changes made them
 24 “willfully blind” to its ability to terminate the Plan. *See* MTD at 20:18-21:5; Reply [Dkt. No. 31]
 25 2:16-4:16. Although “evidence of ‘willful blindness’” may “support[] a finding of ‘actual
 26 knowledge,’” Save Mart has not shown willful blindness at this point. *See Sulyma*, 140 S. Ct. at
 27 779. A willfully blind party “is one who takes deliberate actions to avoid confirming a high
 28 probability” that a fact exists and “who can almost be said to have actually known” that fact. *See*
Global-Tech Appliances, Inc. v. SEB S.A., 563 U.S. 754, 769 (2011). Even if the previous Plan
 modifications caused the plaintiffs to believe that their benefits could be unilaterally terminated,
 nothing in the FAC indicates that they took deliberate actions to avoid confirming such. Save
 Mart’s argument may carry more weight as this case develops and discovery sheds further light on
 the facts. For now, willful blindness does not stand in the way of the plaintiffs’ claim.