SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

STEPHEN H. BAFFORD AND EVELYN L. WILSON, individually and on behalf of others similarly situated, Plaintiff, vs. ALIGHT SOLUTIONS LLC, Defendants.	Case No.: 22STCV14718 ORDER OVERRULING DEFENDANT'S DEMURRER Date: September 28, 2022 Time: 10:00 a.m. Dept.: SSC 17

I. INTRODUCTION

This is a putative class action by retirees of Northrup Grumman Corporation (Northrup) who were participants in the Northrup Grumman Pension Plan (Plan). Plaintiffs Stephen H. Bafford and Evelyn L. Wilson (Plaintiffs) allege that Defendant Alight Solutions LLC (Alight) contracted with Northrup to administer the Plan. Plaintiffs allege that Alight consistently overstated each participant's pension amount by more than 100 percent. When Plaintiffs retired, Alight notified them of their monthly payments and

paid them but then discovered an error, cut their pensions significantly, and demanded they reimburse the plan for overpayments.

Alight demurs to the first cause of action for professional negligence and the second cause of action for negligent misrepresentation on the grounds that: (1) the causes of action fail to state a claim; (2) the causes of action are ambiguous, uncertain, and unintelligible; and (3) Plaintiffs have failed to name a necessary and indispensable party.

Having considered the parties' written submissions, the limited judicially noticeable material, and the oral argument of counsel on September 28, 2022, the demurrer is overruled.

II. LEGAL STANDARD

A. Law Regarding Demurrers

Code of Civil Procedure section 430.10, subdivision (e),[1] provides for a demurrer on the basis that a complaint fails to state a cause of action.

A demurrer tests the legal sufficiency of a complaint. *Donabedian v. Mercury Insurance Co.* (2004) 116 Cal.App.4th 968, 994. As stated in *Nolte v. Cedars-Sinai Medical Center* (2015) 236 Cal.App.4th 1401, 1406 (*Nolte*):

> "We treat the demurrer as admitting all the properly pleaded material facts and consider matters which may be judicially noticed, but we do not treat as admitted contentions, deductions, or conclusions of fact or law. [*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 958.] Further, ' " 'we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context.' " ' [*Ibid.*] Because a demurrer tests only the legal sufficiency of the pleading, we accept as true even the most improbable alleged facts, and we do not concern ourselves with the plaintiff's ability to prove its factual allegations. [*Ibid.*]

When ruling on a demurrer, the Court may only consider the complaint's allegations or matters which may be judicially noticed. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The Court may not consider any other extrinsic evidence or judge the credibility of the

[1] Undesignated statutory references are to the Code of Civil Procedure.

allegations pled or the difficulty a plaintiff may have in proving his allegations. *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881. A demurrer is properly sustained only when the complaint, liberally construed, fails to state facts sufficient to constitute any cause of action. *Kramer v. Intuit Inc.* (2004) 121 Cal.App.4th 574, 578. Allegations need not be accepted as true if they are contradicted by judicially noticeable facts. *Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1474.

Section 430.10, subdivision (f), provides for a demurrer where a pleading is uncertain. Only where a pleading is so uncertain a defendant cannot determine what must be admitted or denied is a demurrer for uncertainty appropriate. *Khoury v. Maly's of California* (1993) 14 Cal.App.4th 612, 616.

B. Joinder of Indispensable Parties

In *TG Oceanside, L.P. v. City of Oceanside* (2007) 156 Cal.App.4th 1355, 1365, the Court of Appeal summarized the procedures regarding necessary and indispensable parties:

> Code of Civil Procedure section 389 subdivision (a) defines persons who should be joined in a lawsuit if possible, sometimes referred to as "necessary" parties. [Citation.] It provides: "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party." A determination that a person is a necessary party is the predicate for the determination whether he or she is an indispensable party [citation] and requires analysis of the three distinct clauses of the above-referenced statute. [Citation.]
>
> If a necessary party cannot be joined, the court shall "determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might

> be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder." [Citation.] None of these factors is determinative or necessarily more important than another.

C. Law Regarding Professional Negligence

"The elements of a cause of action in tort for professional negligence are (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." *Budd v. Nixen* (1971) 6 Cal.3d 195, 200, superseded in part by § 340.6.

"The threshold element of a cause of action for negligence is the existence of a duty to use due care toward an interest of another that enjoys legal protection against unintentional invasion. [Citation.] Whether this essential prerequisite to a negligence cause of action has been satisfied in a particular case is a question of law to be resolved by the court. *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 397 (*Bily*).

In the seminal case *Biakanja v. Irving* (1958) 49 Cal.2d 647 (*Biakanja*), the Supreme Court held that "the determination whether in a specific case the defendant will be held liable to a third person not in privity is a matter of policy and involves the balancing of various factors, among which are [1] the extent to which the transaction was intended to affect the plaintiff, [2] the foreseeability of harm to him, [3] the degree of certainty that the plaintiff suffered injury, [4] the closeness of the connection between the defendant's conduct and the injury suffered,[5] the moral blame attached to the defendant's conduct, and [6] the policy of preventing future harm." *Id.* at p. 650.

In *Biakanja*, the plaintiff's brother died and left a will that devised and bequeathed all his property to plaintiff. *Biakanja, supra*, 49 Cal.2d at p. 648. The will, prepared by the defendant, was denied probate for lack of sufficient attestation. *Ibid.* On review, the

Supreme Court of California considered whether the defendant had a duty to protect the plaintiff from injury even though they were not in privity of contract. *Ibid.*

The Court concluded that the defendant was liable for his negligence because: (1) the "end and aim" of the transaction was to provide for the passing of the estate to Plaintiff; (2) the defendant must have been aware that if the will was faulty, then the plaintiff would suffer the precise harm that she ultimately suffered; (3) the defendant's negligence was the but for cause of the plaintiff's harm; (4) the plaintiff only received a fraction of the estate due to the defendant's negligence; (5) and the defendant was woefully unqualified to draft the will and supervise its execution. *Biakanja, supra*, 49 Cal.2d at p. 651.

Recognizing that "foreseeability" is potentially endless, the Supreme Court in *Bily, supra*, 3 Cal.4th 370 emphasized that there are three policy concerns that are to be considered before duty may be found under *Biakanja*: (1) liability may in particular cases be out of proportion to fault; (2) parties should be encouraged to rely on their own ability to protect themselves through their own prudence, diligence and contracting power; and (3) the potential adverse impact on the class of defendants upon whom the duty is imposed. *Bily, supra*, at pp. 399-405; see *Adelman v. Associated Internat. Insurance Co.* (2001) 90 Cal.App.4th 352, 364 (*Adelman*).

D. Law Regarding Negligent Misrepresentation

The elements of negligent misrepresentation are similar to intentional fraud, which requires: "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 184 (*Charnay*), internal quotes omitted. Unlike intentional fraud, however, negligent misrepresentation does not require scienter. *Ibid.* That is, in a claim for negligent misrepresentation, the plaintiff need not allege the defendant made an intentionally false

statement, but simply one as to which he or she lacked any reasonable ground for believing the statement to be true. *Ibid.*

III. PROCEDURAL ISSUES

A. The Meet and Confer Requirement is Met

The Declaration of Eileen R. Ridley states that on June 28, 2022, more than five days before the responsive pleading was due, she met and conferred by telephone with Plaintiff's counsel. Ridley Decl., ¶ 3. She further states that she explained Alight's grounds for the demurrer and that Plaintiff's counsel declined to resolve the objections raised in the demurrer. *Ibid.* This evidence is sufficient to meet the requirements of section 430.41, subdivision (a).

B. Judicial Notice

In support of Alight's demurrer, Alight requests judicial notice of the following document:

> **Exhibit 1:** The decision of the United States Court of Appeals for the Ninth Circuit in *Bafford v. Northrop Grumman Corporation* (9th Cir. 2021) 994 F.3d 1020 (*Bafford*).

Bafford is a federal action that Plaintiffs filed against Alight and Northrup, alleging breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA) (29 U.S.C. § 1132, subd. (a)(3)). The complaint also pled state-law professional negligence and negligent misrepresentation claims. See *Bafford*, *supra*, 994 F.3d at p. 1024.

The Court may take judicial notice of the existence of this document because it is the "[r]ecord[] of . . . any court of this state or . . . any court of record of the United States." Evid. Code, § 452, subd. (d). It may also take notice of the legal conclusion that the Ninth Circuit reached based on the facts pled in *Bafford* that Alight was performing a ministerial function as that term is understood under ERISA.

Alight additionally requests judicial notice of the Ninth Circuit's "factual finding" in *Bafford* "that the pension benefit estimates that Plaintiffs complain about were generated in response to Plaintiffs' use of an online platform, were titled 'Retirement Plan Pension Estimate Calculation Statement,' and specifically stated: 'Here's the pension estimate you requested. These amounts are estimated benefits using your personal information on file, the assumptions you entered . . . and the current terms of the Retirement Plan. Actual benefits payable to you may vary from the amounts at issue.' " RJN at 3:16-3:21, quoting *Bafford, supra*, 994 F.3d at p. 1024. The request is denied.

The Ninth Circuit did not make the "factual findings" ascribed to it. Its factual finding" was that the federal complaint in *Bafford* alleged those facts, which were taken as true for purposes of its analysis. It then drew legal conclusions from the facts pled.

Alight's reliance on *Jane Doe No. 1 v. Uber Technologies, Inc.* (2022) 79 Cal.App.5th 410 (*Uber Techs*) is misplaced. There, the Court of Appeal judicially noticed various documents filed in a parallel federal lawsuit against the same defendant and judicially noticed two decisions of the Public Utilities Commission. *Id.* at p. 415, fn. 1. In granting judicial notice, the *Uber Techs* court stated: "We consider these documents as a proffer identifying potential additional allegations the [plaintiffs] could include in a further amended complaint. We also consider the documents from the federal [ ] action in our analysis of the parties' arguments regarding the relevance of that action." *Ibid.* The Court of Appeal did not judicially notice the truth of any court's factual findings. Rather, the court considered the allegations in documents *filed* in the federal action as a basis for whether leave to amend should be given.

At oral argument Alight argued that judicial notice of the *allegations* in the federal complaint could be judicially noticed and amount to admissions by Plaintiffs, which may be treated as established facts for purposes of this demurrer. The federal complaint is not in the record, and the Court may not take as an established fact the Ninth Circuit's characterization of its allegations. As stated in *Sosinksy v. Grant* (1992) 6 Cal.App.4th 1548, 1568:

[N]either a finding of fact made after a contested adversary hearing nor a finding of fact made after any other type of hearing can be indisputably deemed to have been a correct finding. As we have noted, '[u]nder the doctrine of judicial notice, certain matters are assumed to be indisputably true, and the introduction of evidence to prove them will not be required.' (1 Witkin, Cal. Evidence (3d ed. 1986) § 80.) Taking judicial notice of the truth of a judge's factual finding would appear to us to be tantamount to taking judicial notice that the judge's factual finding must necessarily have been correct and that the judge is therefore infallible. We resist the temptation to do so.

Accordingly, the Court takes judicial notice of the existence of the *Bafford* opinion and its legal analysis only.

IV. SUMMARY OF RELEVANT ALLEGATIONS

The relevant allegations of the operative Complaint are:

¶ 11. Defendant Alight is an Illinois limited liability corporation that maintains an office in Irvine, Orange County, California. Beginning in 2008, Alight provided record-keeping and third-party administration services for the Northrop Plan, including to tens of thousands of Northrop Plan participants in California. At that time, Northrop Grumman had its principal place of business in Los Angeles, California. Upon information and belief, Alight operated the Northrop Grumman Benefits Center and a website at http://benefits.northropgrumman.com, and issued pension benefit statements and other communications on Northrop letterhead to Northrop Plan participants in California and elsewhere. Alight provided services to Northrop Plan participants on behalf of the Northrop Plan's Plan Administrator, which is located in El Segundo, California.

¶ 12. Alight has held itself out as providing "a total retirement approach to help drive better solutions and outcomes," based on "40+ years of knowledge, expertise, and innovation managing retirement plans for large organizations, helping people save, plan and retire confidently." Alight has publicly asserted that its defined benefit plan administration would enable employees "to retire confidently with industry leading expertise, technology and support," with "a customer experience designed to help [employees] fully understand their options" and "tools and rigorous processes that assure quality in all aspects of the services we deliver," making "essential plan information easy to access and navigate." Alight claims that it provides "strong support services, deep expertise," and has "tools and information at the ready to help [employees] make decisions and educate them about their

plans." It specifically states that its "Defined Benefit solution" offers advantages for employees as well as employers.

¶ 13. Upon information and belief, Northrop and/or the Northrop Plan's Administrative Committee contracted with Alight to carry out certain of the Administrative Committee's responsibilities for Northrop Plan administration, including its pension benefit statement responsibilities under ERISA § 105(a), 29 U.S.C. § 1025(a), and its responsibility for processing pension applications.

¶ 18. The Northrop Plan is an employee pension benefit plan as defined by ERISA § 3(2), 29 U.S.C. § 1002(2), sponsored by Northrop. The Northrop Plan consists in part of sub-plans including the Northrop Grumman Retirement Plan and the Grumman Pension Plan. The Northrop Plan is a defined benefit pension plan, meaning that each participating employee is entitled to a fixed periodic payment during retirement based on a pension calculation formula set forth in the applicable sub-plan, and each surviving spouse of a participating employee is entitled to a fixed periodic payment during his or her lifetime unless he or she has validly waived the survivor benefit.

¶ 19. Prior to July 1, 2003, each Northrop Plan sub-plan used a final average pay formula to calculate benefits. Under the final average pay formula, a participant's pension was calculated based on factors including his or her years of benefit service and his or her average rate of annual salary during his or her highest three years of salary out of the last ten years that he was a covered employee under the plan.

¶ 20. Effective July 1, 2003, the Northrop Plan switched to a less-generous "cash balance" formula. However, because ERISA prohibits reductions of accrued benefits, Northrop Plan participants who accrued benefits before the cash balance conversion continued to be entitled to have those benefits calculated under the more-generous final average pay formula.

¶ 21. Thus, after July 1, 2003, participants who accrued benefits prior to July 1, 2003, continued to be entitled to have those benefits calculated using the final average pay formula. Plaintiffs' Northrop Plan benefits are calculated based on the pre-July 1, 2003 benefit formula.

¶ 22. Through a complex formula pieced together from multiple plan documents, definitions, and appendices, the final average pay formula recognized Plaintiffs' years of service after returning to Northrop for vesting and early retirement credit, but did not recognize their earnings after returning to Northrop in determining their final average earnings. Plaintiffs

and similarly situated Northrop Plan participants had no way to ascertain and apply this multi-step formula without assistance from the entities charged with administering the Plan, including Alight.

¶ 23. Under the Northrop Plan's terms, a participant is entitled to a normal retirement benefit commencing at age 65. A participant who has attained at least age 55 with at least 10 years of service is entitled to a reduced early retirement benefit, and a participant whose age plus his or her years of early retirement service equals at least 85 is entitled to an unreduced early retirement benefit — that is, to receive his or her full age 65 pension before age 65.

¶ 24. As used in ERISA, "accrued benefit" means the participant's benefit expressed as an annual benefit beginning at normal retirement age, or the actuarial equivalent of that amount. ERISA §§ 3(23)(A), 204(c)(3), 29 U.S.C. §§ 1002(23)(A), 1054(c)(3). The Plan defines "accrued benefit" consistent with these rules.

¶ 25. ERISA defines "normal retirement benefit" as the greater of a participant's benefit at normal retirement age or his or her early retirement benefit.

¶ 26. Because the Northrop Plan's final average pay formulae calculate benefits based in part on a participant's years of service at employment termination and age at benefit commencement, a participant's pension benefit will vary depending upon his or her employment termination date and benefit commencement date. Thus, Alight's online platform allowed Northrop Plan participants to request that Alight determine the effect of different combinations of dates on their pension benefit amounts, and the statements generated and mailed by Alight to participants provided that information.

¶ 27. Mr. Bafford began his employment with Northrop in April 1987, at age 26, as a Procurement Expeditor. He worked for Northrop in Pico Rivera, California, and Palmdale, California.

¶ 28. Ms. Wilson began her employment with Northrop in September 1986 as a software engineer, working in Hawthorne, California.

¶ 29. As Northrop employees, Mr. Bafford and Ms. Wilson accrued pension benefits under the Northrop Grumman Retirement Plan, which is one of the sub-plans of the Northrop Plan. Ms. Wilson also accrued benefits under the Grumman Pension Plan, another Northrop Plan sub-plan.

¶ 30. In September 1997, Ms. Wilson was laid off by Northrop and went to work for TRW Corporation ("TRW") in California as a software engineer.

¶ 31. In February 1998, Mr. Bafford terminated employment with Northrop and went to work for TRW in Ogden, Utah, as a Subcontract Manager.

¶ 32. As TRW employees, Mr. Bafford and Ms. Wilson accrued pension benefits under the TRW Pension Plan ("TRW Plan").

¶ 33. In December 2002, Northrop acquired TRW, and Mr. Bafford and Ms. Wilson became Northrop employees again.

¶ 34. Upon information and belief, more than 20,000 TRW employees became Northrop employees as a result of the December 2002 acquisition.

¶ 35. Northrop renamed the TRW Plan the Northrop Grumman Space and Mission Systems Salaried Employees Pension Plan. Mr. Bafford and Ms. Wilson continued to accrue benefits under the renamed TRW Plan as Northrop employees.

¶ 36. Plaintiffs and the members of the proposed Class were the victims of a systemic calculation error affecting Northrop Plan participants who, while working for Northrop, accrued benefits under pension plans formerly sponsored by acquired companies. According to Pension Recalculation Notices issued by Alight to Mr. Bafford and Ms. Wilson, the error involved calculating these participants' pensions based on their final average earnings following their return to Northrop employment, rather than on their final average earnings from their first periods of Northrop employment.

¶ 37. The systemic error resulted in participants' benefits being overstated.

¶ 38. The systemic error persisted from at least 2010 until late 2016.

¶ 39. The systemic error infected pension benefit statements provided to participants, pension election paperwork provided to participants, and pension checks provided to participants.

¶ 40. For example, beginning in 2010, Mr. Bafford began requesting pension benefit statements as he approached age 50 to assist him in planning for retirement.

¶ 41. Alight's statements consistently informed Mr. Bafford that if he worked until at least age 55 and elected to receive his benefit in the form of a 100 percent joint and survivor annuity, his Northrop Plan benefit would be

over $2,000 per month during his lifetime and the same amount for his wife's lifetime if he predeceased her.

¶ 42. Each of the statements provided to Mr. Bafford showed that it was based on his earnings from his second period of Northrop employment. Mr. Bafford did not know and had no way of knowing that Alight should have used his earnings from his first period of Northrop employment.

¶ 43. Likewise, Ms. Wilson made numerous requests for benefit statements. For instance, in February 2011, pursuant to Ms. Wilson's request, Alight sent Ms. Wilson a pension benefit statement that set forth the amount of her retirement benefits under the Northrop Plan if she terminated employment on May 31, 2011, and commenced her pension on June 1, 2011. The statement showed Ms. Wilson's earnings from her most recent three years of employment: 2009, 2010, and 2011. Ms. Wilson did not know and had no way of knowing that Alight should have used her earnings from her first period of Northrop employment.

¶ 44. Similarly, in November 2013, pursuant to Ms. Wilson's request, Alight sent Ms. Wilson a pension benefit statement that set forth the amount of her retirement benefits under the Northrop Plan if she terminated employment on January 31, 2014, and commenced her pension on February 1, 2014. Again, the statement used Ms. Wilson's average earnings from her last three years of employment: 2012, 2013, and 2014. Ms. Wilson did not know and had no way of knowing that basing her pension amount on these years' earnings was contrary to the Plan terms. The statements showed if Ms. Wilson retired on February 1, 2014, and elected to receive her benefit in the form of a 50 percent joint-and-survivor annuity, her Northrop Plan benefit would be $1,630.11 during her lifetime and $815.06 for her spouse's lifetime if she predeceased him.

¶ 45. Ms. Wilson retired on February 1, 2014, and, consistent with the statements and her pension election paperwork prepared by Alight, she began receiving benefits in the amount of $1,630.11 per month under the Northrop Grumman Retirement Plan and $117.36 per month under the Grumman Pension Plan, both based on her average earnings during her final three years of service at Northrop.

¶ 46. From February 1, 2014, through March 1, 2017, the Northrop Plan made payments to Ms. Wilson of $1,630.11 per month for her Northrop Grumman Retirement Plan benefit and $117.36 per month for her Grumman Pension Plan benefit.

¶ 47. In July 2016, Mr. Bafford requested and received materials necessary to commence his pension as of October 1, 2016. The materials included a statement again showing the 100 percent joint-and-survivor benefit amount of $2,114.41 per month.

¶ 48. After Mr. Bafford submitted his pension paperwork, Alight issued him a "Retirement Plan Pension Election Confirmation Statement" on Northrop letterhead, showing that he had elected the 100 percent joint-and-survivor annuity benefit of $2,114.41 per month. Mr. Bafford signed and returned the accompanying "Pension Election Authorization Form," certifying that he had elected the 100 percent joint-and-survivor annuity form of benefit. The form states that Mr. Bafford "[c]ertifies that I understand this payment option pays $2,114.41 per month," and "[c]ertifies that I understand my beneficiary is LAURA A. BAFFORD and will receive upon my death $2,114.41 per month."

¶ 49. On August 11, 2016, Alight confirmed on Northrop letterhead that it had received and would process Mr. Bafford's Pension Election Authorization Form and that his first payment would be made on October 1, 2016. 50. From October 1, 2016, through January 1, 2017, the Northrop Plan made monthly benefit payments to Mr. Bafford of $2,114.41 each.

¶ 51. In December 2016, more than three months after his retirement, Mr. Bafford received a "Pension Plan Recalculation Notice" on Northrop letterhead, falsely stating that Northrop had recalculated his benefit "based on updated information." The notice stated, "The initial calculation of your benefit was based on the information we had on file about you at that time," inaccurately implying that Northrop had received some new, previously unknown information relevant to Mr. Bafford's pension amount.

¶ 52. In January 2017, Mr. Bafford received another "Pension Plan Recalculation Notice" on Northrop letterhead, explaining that his monthly Northrop Plan benefit would be permanently reduced from $2,114.41 to $807.89 — a reduction of more than 60 percent.

¶ 53. The second recalculation notice admitted that there was no "updated information" that formed the basis of the recalculation. Instead, the notice explained that Mr. Bafford's pension amount had been based on "incorrect pay." Specifically, the benefit had been based on Mr. Bafford's final average salary from his second period of Northrop employment, but should have been based on final average salary from his first period of Northrop employment.

¶ 54. Thus, Mr. Bafford's pension was recalculated based on information that had been in Northrop's possession for nearly 20 years, including

throughout the period when Alight issued at least a dozen statements showing that Mr. Bafford had earned a pension in excess of $2,000 per month.

¶ 55. In February 2017, three years after her retirement, Ms. Wilson received a Pension Plan Recalculation Notice on Northrop letterhead. Although Ms. Wilson had been told for numerous years that her benefits would be based on her earnings from her final three years of service at Northrop, and the Northrop Plan actually paid those benefits for three years, the Pension Plan Recalculation Notice states that there was a mistake in the benefit calculation. The notice states that Ms. Wilson's pension benefits would be recalculated using her 1995-1997 salary, the final average salary from her first period of Northrop employment. The recalculation decreased her retirement benefits dramatically to less than half the retirement benefits she had been promised and was receiving for three years.

¶ 56. Thus, as with Mr. Bafford, Northrop and/or Alight recalculated Ms. Wilson's Northrop Grumman Retirement Plan and Grumman Pension Plan benefits based on information that had been in Northrop's possession for 20 years, including the entire time Alight issued statements showing she had earned pension benefits in excess of $1,600 and the entire three years that the Northrop Plan actually paid her that amount.

¶ 57. Northrop insisted that Ms. Wilson repay the alleged "overpayment" of over $35,000, even though any mistake in the calculation was through no fault of Ms. Wilson, and stated that if Ms. Wilson did not repay the alleged overpayment in a lump sum, her already diminished pension would be reduced further until the Northrop Plan had collected the alleged overpayment.

¶ 58. In issuing pension benefit statements and pension election paperwork, Alight intended to, and did, induce reliance on the part of Northrop Plan participants, including Plaintiffs. The sole purpose for requesting a pension benefit statement is to learn the amount of a participant's pension benefit upon retirement.

¶ 59. Due to the complexity of the Northrop Plan terms and the required calculations, and the multiple plan documents involved, Northrop Plan participants had no way to verify the benefit amounts provided in pension benefit statements, pension election paperwork, and pension payments.

¶ 60. The Northrop Plan's summary plan description instructed participants that Alight's website would allow them to "track the amount of your accrued benefit." The summary plan description told participants that tracking their benefit amounts was "a key part of planning for a financially secure

retirement" and could "help you make informed decisions about" retirement savings.

¶ 61. In deciding when to retire, and in making other financial decisions to plan for retirement, Plaintiffs relied on Alight's representations that Mr. Bafford's pension would be in excess of $2,000 for Mr. Bafford and Ms. Wilson's would be in excess of $1,700.

¶ 81. Alight owed this duty of care to Northrop Plan participants as intended third-party beneficiaries of its contract to perform services for the Northrop Plan. There is no purpose for administration services provided to an employee benefit plan other than to benefit the employees. Moreover, Alight was paid for its services from the Northrop Plan's assets — that is, with money held in trust for the benefit of Northrop Plan participants. Alight failed to perform its duty when it provided Plaintiffs and other Northrop Plan participants with grossly inaccurate pension statements and pension election paperwork, and by related acts and omissions.

¶ 85. As a consequence of Alight's professional negligence, Plaintiffs and Class members have been injured in that they relied upon the inaccurate information in planning for their retirements, and have suffered losses as a result.

V. ALIGHT'S DEMURRER IS OVERRULED[2]

A. The First Cause of Action for Professional Negligence Is Well Pled

1. That Alight Is Not An ERISA Fiduciary Is Not Determinative

Alight contends that Plaintiffs have failed to sufficiently allege that Alight owed a duty to them, arguing that its "[c]arrying out record-keeping functions and serving as a ministerial 'third-party administrator,' does not create a professional duty to Plaintiffs." MPA at 15:9-15:10. Alight relies upon *Bafford, Doe v. United Behavioral Health* (*United Health*) (N.D.Cal. 2021) 523 F.Supp.3d 1119 and *Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817 (*Goonewardene*). Plaintiffs rely primarily on *Biakanja* and *Bily.*

[2] In its notice of motion, Defendant demurs to both of Plaintiffs causes of action on the ground that the claims are ambiguous, uncertain, and unintelligible. Notice of Motion at pp. 2-3. However, Defendant advances no argument or authority to support this contention. Accordingly, the Court will not consider whether Plaintiffs' pleading is uncertain under section 473.10, subdivision (f).

Bafford and *United Health* do not support Alight's position. Those cases are limited to the question of whether Alight is an ERISA *fiduciary*. In *Bafford*, Plaintiffs alleged: (1) Alight (then called Hewitt), Northrup, and Northrup's Administrative Committee (Committee) breached their fiduciary duty under ERISA; (2) the Committee violated ERISA by providing inaccurate pension benefit statements; (3) Alight was liable for professional negligence; (4) Alight was liable for negligent misrepresentation; and (5) all three defendants violated ERISA by paying Alight for recordkeeping services that were worthless. *Bafford, supra*, 994 F.3d at p. 1024. When the District Court dismissed Plaintiffs' complaint for failure to state a claim, Plaintiffs appealed. *Ibid.*

The Ninth Circuit affirmed the District Court's dismissal of the breach of fiduciary duty claim against Alight, holding that "calculation of pension benefits is a ministerial function that does not have a fiduciary duty attached to it." *Bafford, supra*, 994 F.3d at p. 1028. Regarding the state-law claims for professional negligence and negligent misrepresentation, the Ninth Circuit disagreed with the District Court's conclusion that the claims were preempted by ERISA. *Id.* at p. 1030. In so holding, the court observed that ERISA preempts state-law causes of action that "relate to any employee benefit plan.' " In applying this rule, the court relied on *Paulsen v. CNF Inc.* (9th Cir. 2009) 559 F.3d 1061 (*Paulsen*) and determined the state-law claims had no "connection with" the ERISA plan because " '[a]lthough a state law negligence claim such as this one might encroach on an ERISA-regulated relationship were it made against a plan sponsor, it does not encroach on any actuary-participant relationship governed by ERISA when asserted against a non-fiduciary actuary.' [¶] Instead '[t]he duty giving rise to the negligence claim runs from a third-party actuary, *i.e.*, a non-fiduciary service provider, to the plan participants as intended third party beneficiaries of the actuary's service contract.' " *Bafford, supra*, at pp. 1031-1032, quoting *Paulsen, supra*, at p. 1083.

In *United Health*, the plaintiff was diagnosed with autism and sought recovery of costs spent on his treatment. *United Health, supra*, 523 F. Supp. 3d at p. 1123. When the defendant third-party administrator of the plaintiff's employer-funded health plan denied

coverage for the treatment, the plaintiff sued, alleging the defendant breached its fiduciary duty under ERISA. *Id.* at pp. 1122-1123. The defendant moved for summary judgment, arguing, inter alia, that it was not a fiduciary under ERISA. *Id.* at p. 1124. The District Court acknowledged that entities do not act in a fiduciary capacity when they perform " 'administrative functions for an employee benefit plan [] within a framework of policies, interpretations, rules, practices and procedures made by other persons' such as the 'application of rules determining eligibility for participation or benefits,' '[p]rocessing of claims,' and '[c]alculation of benefits.' " *Id.* at p. 1125. Ultimately, however, the court held the defendant was a fiduciary because it " 'exercises [ ] authority or control respecting management or disposition of its assets.' " *Id.* at p. 1127. Specifically, the court noted that the defendant "was given the authority to make benefits determination[s]." *Id.* at p. 1126.

Accordingly, *United Health* and *Bafford* are not determinative of Plaintiffs' negligence claim. As Plaintiff argues, "nothing in California negligence law requires Plaintiffs to allege that Alight acted as a fiduciary, and nothing exempts what Alight asserts are 'ministerial' functions from the duty of ordinary care." Opp. at 4:18-4:20. Rather, the proper analysis is under the factors and policy considerations in *Biakanja* and *Bily.*

2. Application of the *Biakanja* Factors Shows a Duty Is Properly Pled

i. The Extent to Which the Transaction was Intended to Affect Plaintiffs

Alight argues that the purpose of its contract with Northrup was intended to benefit Northrup, not Plaintiffs. In support of this argument, it cites *Goonewardene*, *supra*, 6 Cal.5th 817. There, the plaintiff alleged she was improperly paid. *Id.* at p. 820. She asserted breach of contract, negligence, and negligent misrepresentation claims against ADP, a payroll company that contracted with plaintiff's employer to provide payroll services, alleging ADP negligently miscalculated her wages. *Ibid.* The trial court sustained the defendants' demurrer. *Id.* at p. 822. The Court of Appeal reversed the trial court's judgment " 'to the extent the trial court denied [plaintiff] leave to file an amended

complaint asserting claims against [ADP] limited to breach of contract, negligent misrepresentation, and negligence.' " *Id.* at p. 826. On review, our Supreme Court reversed the Court of Appeal's decision. *Id.* at p. 822.

On the issue of whether the plaintiffs were a third-party beneficiary of the contract between ADP and the employer, so as to support a breach of contract claim, the Supreme Court held plaintiff was not. *Goonewardene*, *supra*, 6 Cal.5th at p. 837. The Supreme Court set forth three prerequisites to apply this doctrine: (1) the third party would in fact benefit from the contract; (2) a motivating purpose of the contracting parties was to provide a benefit to the third party; and (3) permitting a third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties. *Id.* at p. 830. As to the second element, "the contracting parties must have a motivating purpose to benefit the third party, and not simply knowledge that a benefit to the third party may follow from the contract." *Ibid.* Regarding the third element, it "calls for a judgment regarding the potential effect that permitting third party enforcement would have on the parties' contracting goals, rather than a determination whether the parties actually anticipated third party enforcement at the time the contract was entered into." *Id.* at p. 831. All three elements must be satisfied to permit the third-party action to go forward. *Id.* at p. 830.

As to the negligence claim, the *Goonewardene* court rejected the plaintiff's argument that the *Biakanja* factors supported imposing a duty on ADP, concluding that various policy considerations militated against imposing a duty. First, it was concluded that because the Labor Code clearly and directly imposes liability on an employer for a payroll company's negligence in calculating an employee's wages, a separate tort duty on the payroll company is unnecessary. *Id.* at p. 839. Second, given that the payroll company was already contractually obligated to the employer to act with due care, imposing tort liability was not needed to deter the payroll company's negligent conduct. *Ibid.* Third, based on its analysis of the breach of contract claim, the employee had no third-party beneficiary status or any other special relationship that would warrant recognition of a duty

of care. *Id.* at pp. 839-840. Fourth, the imposition of a duty of care could improperly distort the payroll company's performance of its contractual obligations to the employer. Specifically, because potential tort damages could exceed contract damages, payroll companies could place the employee's interests above those of the employer with which the payroll company has a contract. *Id.* at p. 840. Finally, "imposition of a tort duty of care on a payroll company is likely to add an unnecessary and potentially burdensome complication to California's increasing volume of wage and hour litigation." *Id.* at p. 841. Regarding this final factor, the Court noted that "the payroll company is likely to be joined as an additional party in virtually every wage and hour lawsuit." *Ibid.*

Goonewardne is not dispositive for at least two reasons. First, the Supreme Court did not address in *Goonewardne* whether all elements of contractual third-party beneficiary status are required to be shown to meet the first *Biakanja* factor. Alight cites no case so holding.

Second, unlike in *Goonewardne,* Plaintiffs' pleading alleges "[t]here is no purpose for administration services provided to an employee benefit plan other than to benefit the employees." Compl., ¶ 81. Moreover, Plaintiffs allege that [Alight] "was paid for its services from the Northrop Plan's assets — that is, with money held in trust for the benefit of Northrop Plan participants." Compl., ¶ 81. This is distinguishable from *Goonewardene* where the defendant payroll company was contracted to provide services to the employer and the employees' wages were paid out of the employer's funds. As Plaintiffs note, the contract between Alight and Northrup is not in the record. On demurrer Plaintiffs' allegations as taken as true. *Nolte*, *supra*, 236 Cal.App.4th at p.406.

Plaintiffs' pleading is similar to that in *Paulsen*, *supra*, 559 F.3d 1061. There, the employer sponsored a retirement plan and contracted with an actuarial service company to ensure the plan was adequately funded. *Id.* at p.1065. The employer later declared bankruptcy and "distress terminated" its pension plan, resulting in reduced benefits to participant employees. *Id.* at p. 1066. The plaintiff employees sued the actuarial service company for professional negligence under California law. *Ibid.* On appeal from the

District Court's dismissal, the Ninth Circuit held that the plaintiffs *had* stated a cognizable claim for professional negligence, holding that the pleading alleged the employees were third-party beneficiaries of the contract to value the plan. *Ibid.* In so holding, the court observed that the plaintiffs alleged that the actuary service company " 'provided actuarial services to the [retirement plan] for the benefit of Plan participants, including Plaintiffs, from at least November 1996 forward . . . .' " *Id.* at p. 1079. The plaintiffs "also alleged that they were 'intended beneficiaries of the professional services rendered' by [the actuarial services company]." *Ibid.*

As in *Paulsen*, and as noted above, Plaintiffs allege that Alight owed a "duty of care to Northrop Plan participants as intended third-party beneficiaries of its contract to perform services for the Northrop Plan" and "[t]here is no purpose for administration services provided to an employee benefit plan other than to benefit the employees." Compl., ¶ 81. Moreover, Plaintiffs allege that [Alight] "was paid for its services from the Northrop Plan's assets — that is, with money held in trust for the benefit of Northrop Plan participants." Compl., ¶ 81. This is sufficient to allege a transaction intended to benefit plaintiffs.

ii. Foreseeability of Harm to Plaintiffs

The allegations in the Complaint show the harm to Plaintiffs was foreseeable. It is alleged Alight provided individualized pension statements to Plaintiffs through "an online platform that allowed participants to request statements of their accrued pension benefits based on potential future employment termination dates and benefit commencement dates." Compl., ¶ 14. Furthermore, Plaintiffs allege that Alight "has publicly asserted that its defined benefit plan administration would enable employees 'to retire confidently with industry leading expertise, technology and support,' with 'a customer experience designed to help [employees] fully understand their options' and 'tools and rigorous processes that assure quality in all aspects of the services we deliver,' making 'essential plan information easy to access and navigate.' " Compl., ¶ 12. Because Alight provided retirement planning data directly to Plaintiffs, and acknowledged the importance of such information,

Alight "must have been aware that if the [information] was faulty, then the [Plaintiffs] would suffer the precise harm that [they] ultimately suffered." *Biakanja*, *supra*, 49 Cal.2d at p. 651.

The concerns expressed in *Bily*, *supra*, 3 Cal.4th 370 are not briefed by the parties. Given that an error by Alight would directly impact the financial planning of specific individuals, who can do little to protect their own interests beyond inquiring of Alight as to what benefits will be paid to them upon retirement, the impact on the class of defendants at issue, while potentially considerable, does not weigh against finding a duty.

iii. The Degree of Certainty that Plaintiffs Suffered Injury

There is a high degree of certainty that Plaintiffs suffered injury as a result of Alight's miscalculation of benefits. As alleged in the Complaint, Plaintiffs chose when to retire and made other financial decisions based on the information they received from Alight. Compl., ¶ 61. Because Plaintiffs' retirement benefits were in part based on their years of service (Compl., ¶ 19), they would have been eligible to receive a higher monthly pension payment had they waited to retire. It is also alleged that Plaintiffs regularly requested benefit statements (Compl., ¶¶ 3, 47), suggesting that the benefit amount was important to their retirement planning. Given that Plaintiffs planned their retirements based on calculations showing benefit amounts "more than twice what the plan provided" (Compl., ¶ 5), the miscalculation is alleged to have injured Plaintiffs.

iv. The Closeness of the Connection Between Alight's Conduct and The Injury Suffered

Related to the previous factor, there is a close connection between Alight's erroneous pension statements and the harm Plaintiffs have suffered. Indeed, Plaintiffs allege "they relied upon the inaccurate information in planning for their retirements, and have suffered losses as a result." Compl., ¶ 85.

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v. The Moral Blame Attached to Alight's Conduct

Plaintiffs' allegations evince that Alight bears a high degree of moral blame. Unlike *Adelman*, *supra*, 90 Cal.App.4th 352, where an insurance company acted reasonably in asserting its coverage and claim defenses, it is alleged that the Plan's benefits required a series of complex calculations and that Plaintiffs' funds were used to make those calculations. Compl., ¶¶ 22-26. Alight was the party with the requisite information and skill to calculate Plaintiffs' benefits, representing its benefit statements were "essential plan information" and that one could retire "confidently" with Alight's assistance (Compl., ¶ 12).

vi. The Policy of Preventing Future Harm.

Finally, the policy of preventing future harm outweighs any adverse consequences. Alight relies heavily on *Goonewardene* for the Supreme Court's observation that "extending tort liability where no special relationship existed 'would clearly be anomalous' " and the Court's conclusion that "imposing such liability was not needed where the payroll company was already obligated to act with due care in insuring that it fulfilled its obligations to the employer." MPA at 16:18-16:20, quoting *Goonewardene*, *supra*, 6 Cal.5th at pp. 840-841. However, in *Goonewardene*, the Court noted that California law already provides employees with "a full and complete remedy" for underpaid wages, and "imposition of a tort duty of care on a payroll company is likely to add an unnecessary and potentially burdensome complication to California's increasing volume of wage and hour litigation." *Goonewardene*, *supra*, at pp. 839, 841. The concerns in *Goonewardene* have minimal import. As the *Bafford* court acknowledged: "[h]olding both that [Alight]'s calculations were not a fiduciary function and that state-law claims are preempted would deprive Plaintiffs of a remedy for the wrong they allege without examination of the merits of their claim." *Bafford*, *supra*, 994 F.3d at 1031. Nor does Alight argue that as in *Adelman*, any benefit of preventing future harm would be outweighed by adverse consequences. See *Adelman*, *supra*, 90 Cal.App.4th at p. 367.

In sum, the application of the *Biakanja* and *Bily* factors demonstrate that the allegations in the Complaint are sufficient to show that Alight owed a duty of care to Plaintiffs.

B. Second Cause of Action for Negligent Misrepresentation

Alight contends that Plaintiffs have failed to state a claim for negligent misrepresentation. Specifically, Alight argues that Plaintiffs have failed to allege that: (1) Alight made a "positive assertion"; (2) Alight had no reasonable and honest grounds for believing its representations to be true; (3) Alight had an intent to induce Plaintiffs' reliance; (4) Plaintiffs justifiably relied on Alight's representations; (5) Plaintiffs have suffered damages.

As an initial matter, Alight relies heavily on the Ninth Circuit's "factual finding" in *Bafford* that the " 'Retirement Plan Pension Estimate Calculation Statement' . . . specifically stated: 'Here's the pension estimate you requested. These amounts are estimated benefits using your personal information on file, the assumptions you entered . . . and the current terms of the Retirement Plan. Actual benefits payable to you may vary from the amounts at issue." *Bafford, supra*, 994 F.3d at p. 1025. However, as discussed above, there are no factual findings in *Bafford* beyond a recognition that this was an allegation in the Complaint in that action. The Complaint in this action makes no reference to any such disclaimer and this court may not properly conclude based on *Bafford* that the statements plaintiffs received had any particular language in them. Thus, the Court does not consider Alight's arguments predicated on this purported disclaimer.

1. Alight Made a "Positive Assertion"

The first element of negligent representation is "the misrepresentation of a past or existing material fact." *National Union Fire Insurance Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 50 (*National Union*), quoting *Apollo Capital Fund LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 243. Such a misrepresentation requires a showing that the defendant

made a "positive assertion," not merely an implied representation. *Huber, Hunt & Nichols, Inc. v. Moore* (1977) 67 Cal.App.3d 278, 304, citing Civ. Code, § 1572, subd. (2).

Alight argues that the Complaint fails to allege that Alight made any positive representations of fact. Alight points out that the benefit statements they received were from Northrup or on Northrup letterhead, not Alight. See Compl., ¶¶ 46-55. However, the Complaint alleges that Alight "operated the Northrop Grumman Benefits Center and a website at http://benefits.northropgrumman.com, and issued pension benefit statements and other communications on Northrop letterhead to Northrop Plan participants in California and elsewhere." *Id.* at ¶ 11. The Complaint also alleges that "Alight's online platform allowed Northrop Plan participants to request that Alight determine the effect of different combinations of dates on their pension benefit amounts, and the statements generated and mailed by Alight to participants provided that information." *Id.* at ¶ 26. Furthermore, Plaintiffs allege that "[w]hen Plaintiffs retired, they completed pension election paperwork prepared by Alight." *Id.* at ¶ 5. Thus, even if the statements had Northrup's letterhead or otherwise specified that the statements were from Northrup, Plaintiffs allege the benefit statements that Plaintiffs received were actually from Alight. Such allegations are sufficient to show that Alight made "positive assertions" regarding the benefit amounts to which Plaintiffs were entitled.

2. Alight Had No Reasonable and Honest Grounds for Believing its Representations to be True

The second element for a claim for negligent misrepresentation requires the plaintiff to allege that Alight made a false statement as to which it lacked any reasonable ground for believing the statement to be true. See *Charnay*, *supra*, 145 Cal.App.4th at p. 184.

Alight cites *Fox v. Pollack* (1986) 181 Cal.App.3d 954 (*Fox*), in which the plaintiffs brought an action for negligent misrepresentation against an attorney who had represented the party with whom the plaintiffs had entered into a real estate transaction. The attorney prepared the promissory note solely based on information he received from his clients, but the interest rate varied from the parties' prior oral agreement. *Id.* at p. 963. The Court of

Appeal determined that no allegations showed the attorney unreasonably relied on the information or that he had any basis for not believing it. *Ibid.*

Alight argues that like *Fox*, it prepared the benefit statements based on information provided by Northrup, and the Complaint fails to show that Alight had no reasonable and honest grounds for believing the information. However, Plaintiffs allege that the error in calculating the payment did not come from Northrup's misinformation. Rather, Plaintiffs allege "the Pension Plan Recalculation Notice states that there was a mistake in the benefit calculation." Compl., ¶ 55. Because Plaintiffs allege that Alight, not Northrup, miscalculated Plaintiff's benefits, this case is not analogous to *Fox*.

Even if Alight received the Plan information from Northrup, the allegations show that Alight, which allegedly holds itself out as providing "leading expertise, technology and support" in managing retirement plans that would allow employees "to retire confidently" (see Compl. ¶ 12), "failed to apply the Plan terms correctly." *Id.* at ¶ 4. Accordingly, the Complaint adequately alleges that Alight had no reasonable and honest grounds for believing the benefit statements were accurate.

3. Alight Intended to Induce Plaintiff's Reliance

The third element requires a plaintiff to show that the defendant "intended to induce another's reliance on the fact misrepresented." *National Union*, *supra*, 171 Cal.App.4th at p. 50.

In *B.L.M. v. Sabo & Deitsch* (1997) 55 Cal.App.4th 823 (*B.L.M.*), the plaintiff developer entered into a construction contract with the city. The defendant law firm served as special counsel for the project on behalf of the city, and the plaintiff relied on the law firm's legal advice to its detriment. *Id.* at pp. 827, 828. When the plaintiff sued the defendant for negligent misrepresentation, the trial court granted defendant's summary judgment. *Id.* at p. 829. The Court of Appeal affirmed, concluding "[t]here is no specific allegation in the complaint of intent on the part of [the law firm] to induce [the plaintiff] to act in reliance on the representation; the only indication of such intent would be the

inference to be drawn that if [the law firm] said it they must have intended [the plaintiff] to rely on it." *Id.* at p. 836.

Relying on *B.L.M.*, Alight argues the statements of pension benefit estimates are not sufficient to show that Alight intended to induce Plaintiffs to rely on those statements. However, Plaintiffs rely on more than the benefit statements themselves to show Alight's intent. Specifically, the Complaint alleges "Alight has held itself out as providing 'a total retirement approach to help drive better solutions and outcomes,' based on '40+ years of knowledge, expertise, and innovation managing retirement plans for large organizations, helping people save, plan and retire confidently.' Alight publicly asserted that its defined benefit plan administration would enable employees 'to retire confidently with industry leading expertise, technology and support,' with 'a customer experience designed to help [employees] fully understand their options' and 'tools and rigorous processes that assure quality in all aspects of the services we deliver,' making 'essential plan information easy to access and navigate.' Alight claims that it provides 'strong support services, deep expertise,' and has 'tools and information at the ready to help [employees] make decisions and educate them about their plans.' It specifically states that its 'Defined Benefit solution' offers advantages for employees as well as employers." Compl., ¶ 12. Such assurances appear to be designed to persuade Plan members that they can depend on Alight's services when making retirement decisions. Indeed, Plaintiff further alleges that "[t]he summary plan description told participants that tracking their benefit amounts was 'a key part of planning for a financially secure retirement' and could 'help you make informed decisions about' retirement savings." Compl., ¶ 60. These allegations are sufficient to show that Alight intended for Plaintiffs to rely on the benefit statements in planning their retirement.

4. Plaintiff Justifiably Relied on Alight's Representations

The fourth element of negligent misrepresentation is "justifiable reliance on the misrepresentation." *National Union, supra*, 171 Cal.App.4th at p. 50.

Alight argues it was not "rational for [Plaintiffs] to rely on the estimates." Reply at 7:27. However, Plaintiffs allege they did not know the pension amounts were overstated, and due to the complexity of Plan terms, the required calculations and multiple plan documents involved, they had no reasonable way to verify the benefit amounts as calculated by Alight. See Compl., ¶¶ 42-43, 59-60. Further, Plaintiffs' pension amounts were based on fixed data points, including their ages, years of service, and past salaries, which Alight detailed in the benefit statements. Compl., ¶¶ 22, 41, 44. Thus, it was reasonable for Plaintiffs to rely on the benefit statements. Alight's argument is also undermined by Plaintiffs' allegations that when they retired, they were paid for several years at the precise rates that were set forth in the benefit statements. See Compl., ¶¶ 45-50. Accordingly, the Complaint sufficiently alleges justifiable reliance.

5. Plaintiffs Have Suffered Damages as a Result of Alight's Actions

The final element of negligent representation is "resulting damage." *National Union*, *supra*, 171 Cal.App.4th at p. 50. Alight contends that Plaintiffs' claim fails because the Complaint does not allege the amount of actual damages that they seek.

Alight points out that section 425.10 provides: "A complaint or cross-complaint shall contain both of the following: (1) A statement of the facts constituting the cause of action, in ordinary and concise language. (2) A demand for judgment for the relief to which the pleader claims to be entitled. If the recovery of money or damages is demanded, the amount demanded shall be stated." Indeed, the Complaint does not allege a specific dollar amount. However, a fraud complaint is "sufficient to overcome a general demurrer despite the absence of the exact amount" as long as it alleges the type of damage suffered. *Furia v. Helm* (2003) 111 Cal.App.4th 945, 957.

Alight also argues that, even assuming Alight negligently represented the benefits to which Plaintiffs were entitled, "there is no allegation that Plaintiffs did not receive the benefits to which they were actually entitled under the Northrop Plan." MPA at 22:17-22:18. However, Plaintiffs do not allege that they were entitled to the benefits that Alight

promised. Rather, the Complaint alleges that "[i]n deciding when to retire, and in making other financial decisions to plan for retirement, Plaintiffs relied on Alight's representations that Mr. Bafford's pension would be in excess of $2,000 for Mr. Bafford and Ms. Wilson's would be in excess of $1,700." Compl., ¶ 61. Thus, the crux of the damage is that Plaintiffs would have allegedly made other financial decisions (e.g., retirement date, increased personal savings, investment, etc.) that would have impacted their retirement planning. The allegations also make clear that it was Alight's representations that caused the harm.

In sum, the Complaint sufficiently states a claim for negligent misrepresentation.

C. Indispensable Party

In a footnote to the MPA, Alight cursorily argues that Northrup and the Northrup Plan are necessary and indispensable parties to these proceedings. It urges that "Northrop's absence will prevent the court from rendering any effective judgment between the parties and/or would seriously prejudice Alight as its interests would be inequitably affected or jeopardized should there be a judgment against Alight regarding the calculation of benefits of an ERISA plan sponsored by Northrop and for which Alight only provided ministerial administrative services." MPA at 13:25-13:28, citing § 389; *Peerless Insurance Co. v. Superior Court* (1970) 6 Cal. App. 3d 358. How this is so is not explained. In any event, "[a] court has the power to proceed with a case even if indispensable parties are not joined. Courts must be careful to avoid converting a discretionary power or rule of fairness into an arbitrary and burdensome requirement that may thwart rather than further justice." *City of San Diego v. San Diego City Employees' Retirement System* (2010) 186 Cal.App.4th 69, 84, internal quotation marks omitted.

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VI. CONCLUSION AND ORDER

For the reasons discussed above, Alight's demurrer to the Complaint is OVERRULED. Alight shall file an answer within twenty days.

A further status conference is scheduled for December 1, 2022 at 10:00 a.m.

Dated: 9/28/2022

MAREN E. NELSON
JUDGE OF THE SUPERIOR COURT