

E-Filed 9/13/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MAYA ARMOUR, an individual,
Plaintiff,

v.

IP UNITY LONG TERM DISABILITY PLAN;
SUN LIFE AND HEALTH INSURANCE
COMPANY (U.S.), formerly GE GROUP LIFE
ASSURANCE COMPANY; and DOES 1 through
50;

Defendants.

Case Number 5:10-cv-00189 JF/HRL

**ORDER¹ DENYING MOTION FOR
LEAVE TO FILE MOTION FOR
RECONSIDERATION**

[Docket No. 52]

Plaintiff Maya Armour (“Plaintiff”) and Defendant Sun Life and Health Insurance Company (“Sun Life”) previously filed cross-motions for partial summary judgment with respect to the applicable standard of review in this ERISA action. On August 25, 2010, the Court granted Plaintiff’s motion and denied Sun Life’s motion, holding that the applicable standard of review is *de novo*. The Court concluded that Sun Life has not met its burden of demonstrating that the plan unambiguously conferred discretion. *See Thomas v. Oregon Fruit Prods. Co.*, 228

¹ This disposition is not designated for publication in the official reports.

1 F.3d 991, 994 (9th Cir. 2000). Pursuant to Civil Local Rule 7-9, Sun Life seeks leave to file a
2 motion for reconsideration, asserting that the Court failed to consider material facts that Sun Life
3 raised in connection with its motion for partial summary judgment and that new material facts
4 have emerged. For the reasons discussed below, the motion will be denied.

5 I. BACKGROUND

6 Resolution of the motions for partial summary judgment turned upon judicial
7 construction of three documents that were presented to Plaintiff at various times. While she was
8 employed by IP Unity, Plaintiff received a document entitled “Benefits Package for IP Unity”
9 (the “Booklet”). (Docket No. 33 ¶ 2; Ex. A.) The Booklet “contains benefit plan summaries as
10 they apply to eligible employees and their covered dependents,” including a description of the
11 plan’s long-term disability benefits. (Docket 33, Ex. A at PLAN 000035; PLAN 000054.) After
12 her claim for long-term disability benefits was denied in June 2007, Plaintiff asked Sun Life to
13 provide copies of her “insurance policies and plan documents.” (Docket No. 33 ¶ 9.) In
14 response to that request, Sun Life provided Plaintiff with two documents: the certificate of
15 insurance (“Certificate”) and a two-page memorandum entitled “Your Rights Under ERISA” (the
16 “Memorandum”). (Docket No. 33 ¶¶ 9-10.)

17 In its order of August 25, 2010, the Court determined that the Memorandum, if it was
18 shown to be part of the plan, would require deferential review because it says both “in sum [and]
19 substance that the plan administrator or fiduciary has authority, power[,], or discretion to
20 determine eligibility or to construe the terms of the plan.” *Sandy v. Reliance Standard Life Ins.*
21 *Co.*, 222 F.3d 1202, 1207 (9th Cir. 2000).² However, Sun Life bore the burden of showing that
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23 ² The Memorandum includes the following passage:

24 [Sun Life], as Claims Fiduciary, shall have the sole and exclusive discretion and power to
25 grant and/or deny any and all claims for benefits, and construe any and all issues relating
26 to eligibility for benefits. All findings, decisions, and/or determinations of any type made
27 by the Claims Fiduciary shall not be disturbed unless the Claims Fiduciary has acted in an
28 arbitrary and/or capricious manner. Subject to the requirements of law, the Claims
Fiduciary shall be on the sole judge of the standard of proof required in any claims for
benefits and/or in any question of eligibility for benefits. All decisions of the Claims

1 its reservation of discretion was unambiguous, *Thomas*, 228 F.3d at 994, and the Court
2 concluded that Sun Life did not show that the Memorandum was part of the plan purchased by IP
3 Unity.

4 III. DISCUSSION

5 Civil Local Rule 7-9 permits reconsideration of an interlocutory order if the moving party
6 shows a “material difference in fact or law exists from that which was presented to Court before
7 entry of the interlocutory order,” “[t]he emergence of new material facts or a change in the law
8 occurring after the time of such order,” or “[a] manifest failure by the Court to consider material
9 facts or dispositive legal arguments which were presented to the Court before such interlocutory
10 order.” Civ. L.R. 7-9(b). Sun Life contends (1) that the Court failed to consider material facts
11 alleged in Kathleen Peters’ declaration and in Plaintiff’s own declaration and (2) that new
12 material facts warranting reconsideration of the cross-motions for partial summary judgment
13 have emerged. To the extent that Sun Life alleges that there is a “material difference in fact,” it
14 must demonstrate that it was unaware of the true facts at the time of the hearing despite the
15 exercise of reasonable diligence. Civ. L.R. 7-9(b)(1).

16 A. Consideration of previously presented facts

17 In support of its motion for partial summary judgment, Sun Life presented the declaration
18 of Kathleen Peters, who is the associate director of long-term disability appeals for Sun Life.
19 (Docket No. 44 (“Peters Decl.”) ¶ 1.) Ms. Peters declared that Exhibit A to her declaration is a
20 “true and correct copy of the Certificate of Insurance issued to IP Unity . . . by [Sun Life].”
21 (Peters Decl. ¶ 2; Ex. A.) Because Exhibit A to Ms. Peters’ declaration consists of a copy of the
22 Certificate and Memorandum presented together, Sun Life contends that the declaration proved
23 that the Certificate and Memorandum comprised a single document. Sun Life also points to
24 Plaintiff’s own declaration, in which Plaintiff stated that upon requesting further documentation
25 following the denial of long-term disability benefits, she received a copy of the Memorandum

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27 Fiduciary shall be final and binding on all parties.

28 (Docket 33, Ex. C at PLAN 000031.)

1 that was “enclosed with the Certificate of Insurance.” (Docket 33 ¶ 10.)

2 As is discussed at length in the Court’s order, the copy of the Certificate submitted by
3 Sun Life differs materially from the copy submitted by Plaintiff. Plaintiff’s copy of the
4 Certificate concludes with a page stating “END OF INSURANCE CERTIFICATE,” but that
5 page is not included in Exhibit A to Ms. Peters’ declaration. In the copy submitted by Plaintiff,
6 the Memorandum is not presented before the page stating “END OF INSURANCE
7 CERTIFICATE,” and the pages of the Memorandum are formatted differently from the pages of
8 the Certificate, suggesting strongly that the Memorandum is not part of the Certificate. Sun Life
9 neither disputes the authenticity of Plaintiff’s documents nor explains the discrepancy between
10 Plaintiff’s copy of the Certificate and the copy submitted by Ms. Peters. Ms. Peters’ conclusory
11 statement that Exhibit A to her declaration comprises the terms of the plan purchased by IP Unity
12 is insufficient to overcome the permissible inferences that may be drawn from Plaintiff’s
13 evidence. Accordingly, the record submitted in connection with the cross-motions for partial
14 summary judgment does not show unambiguously that the plan purchased by IP Unity includes
15 the terms of the Memorandum.

16 **B. New material facts**

17 In support of its motion for reconsideration, Sun Life submits the declaration of Jennifer
18 Matthews, the director of distribution services at Sun Life. (Declaration of Matthews ISO Sun
19 Life’s Mot. for Leave (“Matthews Decl.”) ¶ 1.) Ms. Matthews declares that in 2002, she
20 “oversaw the area responsible for the process, preparation and distribution of certificates of
21 insurance, including the certificates issued to IP Unity.” (Matthews Decl. ¶ 2.) She asserts that
22 employers purchasing plans from Sun Life could elect to include the Memorandum in the terms
23 of the plan, (Matthews Decl. ¶ 10), that IP Unity did make such a request, (*id.* at ¶ 11), and that
24 copies of the Memorandum always have been included with the Certificate, (*id.* at ¶¶ 14-23).
25 These newly-alleged facts appear to be material to Sun Life’s contention that the plan purchased
26 by IP Unity includes the terms of the Memorandum.

27 However, newly-*alleged* facts are not necessarily newly-*discovered* facts. Sun Life does
28 not explain adequately why the facts alleged in Ms. Matthews’ declaration could not have been

1 presented in connection with the earlier cross-motions for partial summary judgment. Although
2 Sun Life contends that it could not have known that these facts were significant prior to the
3 issuance of the Court's decision, (Sun Life's Mot. at 3:1-2), Plaintiff's moving papers clearly
4 raised the issue of whether the Memorandum was part of the plan purchased by IP Unity, and in
5 response, Sun Life submitted only Ms. Peters' declaration. It is self-evidence that the facts
6 alleged in Ms. Matthews' declaration have been known to Sun Life since 2002, and Sun Life
7 does not explain how the facts could not have been presented in the exercise of reasonable
8 diligence.

9 **IV. CONCLUSION**

10 Good cause appearing, the motion for leave to file a motion for reconsideration is denied.

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12 **IT IS SO ORDERED.**

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14 DATED: 9/13/10

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17 JEREMY FOGEL
18 United States District Judge
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