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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL BOUVY

Plaintiff,

v.

ANALOG DEVICES, INC., a
Massachusetts company, as successor to
LINEAR TECHNOLOGY
CORPORATION; LINEAR
TECHNOLOGY LLC, a Delaware
company; LINEAR TECHNOLOGY
ADMINISTRATIVE COMMITTEE; and
DOE DEFENDANTS 1–20,

Defendants.

Case No.: 19-cv-881 DMS (BLM)

**ORDER DENYING DEFENDANTS’
MOTION TO RECONSIDER**

Pending before the Court is Defendants’ Motion to Reconsider the Court’s Order denying in part Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint. The matter is fully briefed and submitted. For the following reasons, the motion is denied.

**I.
LEGAL STANDARD**

Generally, where a district court “has jurisdiction over the case, ... it possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient.” City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper,

1 254 F.3d 882, 889 (9th Cir. 2001) (internal quotation marks and citations omitted)
2 (emphasis omitted). Reconsideration is generally appropriate “if the district court (1) is
3 presented with newly discovered evidence, (2) committed clear error or the initial decision
4 was manifestly unjust, or (3) if there is an intervening change in controlling law.” School
5 Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993)
6 (citations omitted).¹

7
8 **II.**
DISCUSSION

9 The facts of the case are set out in the prior Order. (See Order Granting In Part and
10 Denying In Part Defendants’ Motion to Dismiss (“Order”), ECF No. 32, at 2–4.)
11 Defendants contend reconsideration is merited because the Court erred by applying a
12 regulation that governs annual, not quarterly, disclosure statements and concluding that
13 Defendants conceded the “Administrative Fee-Per Account” did not sufficiently describe
14 what those fees entailed. (Mot. to Recon., ECF No. 33, at 1.) At issue is the following
15 section of the Court’s Order:

16 Plaintiff contends the disclosures do not define the “Administrative Fee-Per
17 Account.” (Opp’n at 22) (citing FAC, Ex. 2 at 4.) Indeed, Defendants even
18 acknowledge that the “Administrative Fee-Per Account” did not sufficiently
19 describe what the fees entailed. (Mot. at 24, n. 19.) The regulations require
20 “an explanation of any fees and expenses for general plan administrative
21 services.” 29 C.F.R. § 2550.404a–5(c)(2)(i)(A). Because Defendants did
22 not adequately describe the “Administrative Fee-Per Account” listed in the
23 quarterly statements in their fee disclosures, Plaintiff adequately stated a

24 ¹ Motions for reconsideration are also subject to Civil Local Rule 7.1(i)(1), which requires
25 applicants for reconsideration to “present to the judge ... an affidavit of a party or witness
26 or certified statement of an attorney setting forth the material facts and circumstances
27 surrounding each prior application, including inter alia: (1) when and to what judge the
28 application was made, (2) what ruling or decision or order was made thereon, and (3) what
new or different facts and circumstances are claimed to exist which did not exist, or were
not shown, upon such prior application.” Defendants have complied with this Rule. (See
Mot. to Recon., Ex. 1.)

1 claim for failure to provide complete and accurate administrative disclosures
2 under § 2550.404a–5(c)(2)(i)(A).

3 Order at 24.

4 Defendants contend the Court erred because it cited 29 C.F.R. § 2550.404a–
5 5(c)(2)(i)(A), which applies to annual fee statements, and not the quarterly fee statements
6 at issue. Plaintiff argues Defendants are picking the “nit” and the result is the same because
7 the correct regulation for quarterly fee statements “requires a fiduciary to furnish to plan
8 participants a quarterly statement of the very same charges that includes ‘a description of
9 the services to which the charges relate.’” (Opp’n Br., ECF No. 37, at 4) (citing 29 C.F.R.
10 § 2550.404a–5(c)(2)(ii)) (emphasis in original). Indeed, the correct provision, 29 C.F.R. §
11 2550.404a–5(c)(2)(ii), mandates that quarterly disclosures not only include “the dollar
12 amount of the fees and expenses described in paragraph (c)(2)(i)(A)” but also a
13 “description of the services to which the charges relate (e.g., plan administration, including
14 recordkeeping, legal, accounting services).” Thus, the Court’s citation to § 2550.404a–
15 5(c)(2)(i)(A) rather than § 2550.404a–5(c)(2)(ii) does not warrant the relief Defendants
16 request.

17 Plaintiff stated a claim because he alleged facts showing Defendants did not
18 adequately describe the “Administrative Fee-Per Account” listed in his quarterly
19 statements. Specifically, as to the October 2, 2016 – December 31, 2016 quarterly fee
20 statement, Plaintiff alleges that he was charged \$31.25 in a fee described as
21 “Administrative Fee-Per Account,” and the same statement showed an additional charge
22 of \$19.72 associated with Plaintiff’s investment in the T. Rowe Price Income Advantage
23 Fund, with the same description. (First Amended Complaint (“FAC”), ECF No. 16, at ¶
24 159). Plaintiff alleges he has stated a claim because the disclosures fail to include an
25 adequate description of the fees or “any indication as to which entity received the fee or
26 the basis for the charge.” (Id.) Further, Plaintiff contends “[w]ithout knowing the basis of
27 the fees or who is receiving them, participants cannot make informed decisions regarding
28 these charges or assess their reasonableness.” (Id.) Accordingly, Plaintiff has stated a

1 claim by alleging facts showing his quarterly statement and related fee disclosures failed
2 to specify what aspects of plan administration the charges relate to, such as “recordkeeping,
3 legal, [or] accounting services.” See 29 C.F.R. § 2550.404a–5(c)(2)(ii).

4 Next, Defendants take issue with the Court’s statement that “Defendants even
5 acknowledge that the ‘Administrative Fee-Per Account’ did not sufficiently describe what
6 the fees entailed.” (Order at 24.) In making that reference, the Court cited footnote 19 of
7 Defendants’ motion to dismiss. The Court intended to cite footnotes 17 and 18 of the
8 motion, where Defendants specified that the first “Administrative Fee-Per Account” listed
9 on Plaintiff’s October to December 2016 quarterly statement was for “administrative costs
10 such as plan administration, recordkeeping, and call center staffing,” and the second
11 “Administrative Fee-Per Account” covered “investment advisory fees, which include an
12 independent review of all funds offered in the plan.” (Mot. to Dismiss, ECF No. 23, at 24,
13 n. 17-18) (citing FAC ¶ 159).

14 Defendants contend the Court erred by finding these descriptions were “an implicit
15 acknowledgement that the explanation on the statement itself was insufficient” because the
16 “footnotes simply state factual information; they do not concede legal inadequacy,” and
17 “any implied concession of inadequacy is belied by the fact that... the statement’s
18 description in fact satisfied the requirements for quarterly statements.” (Mot. to Recon. at
19 5.) Nevertheless, the descriptions provided by Defendants were not provided in Plaintiffs’
20 quarterly statement. (See Ex. 4 to FAC at 2.) Moreover, the Plan’s fee disclosure only
21 included the following definition of “Administrative Fee-Per Account”:

22 The plan incurs annual general administrative fees for ongoing plan
23 administrative services (e.g., recordkeeping) of \$125 per participant account
24 (accrued monthly). On a quarterly basis, fees will be deducted as a fixed
25 dollar amount from your account based on the total number of participant
26 accounts at the time the deduction is taken, unless paid from other sources ...
27 When applicable, general administrative fees other than the charge above, for
28 administrative services (e.g., legal, accounting and auditing), may from time
to time be deducted as a fixed dollar amount from your account.

1 (Ex. 1 to FAC at 2.)

2 In the Order, the Court found Defendants’ footnotes clarified what the quarterly
3 statement and fee disclosures did not adequately describe. (See Ex. 4 to FAC) (showing
4 only “Administrative Fee-Per Account”). Although Defendants did not concede that the
5 “Administrative Fee-Per Account” was insufficiently described, neither the quarterly
6 statement nor the above definition of fees adequately describes how each fee is allocated.
7 Rather than specifying what aspects of plan administration the charges relate to, such as
8 “recordkeeping, legal, [or] accounting services[,]” 29 C.F.R. § 2550.404a–5(c)(2)(ii), the
9 fee disclosure states the fee could be incurred for any of those services, without
10 distinguishing between them. Viewing all facts in the light most favorable to Plaintiff, as
11 the Court must at this stage of the proceedings, Plaintiff has adequately stated a claim for
12 failure to sufficiently describe administrative fees on the quarterly statements under Count
13 III.

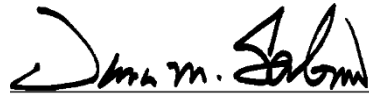
14 **III.**

15 **CONCLUSION AND ORDER**

16 Defendants’ motion for reconsideration is denied.

17 **IT IS SO ORDERED.**

18 Dated: September 8, 2020

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20 _____
21 Hon. Dana M. Sabraw
22 United States District Judge