

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 MICHAEL F. DORMAN, individually
5 as a participant in the SCHWAB
6 PLAN RETIREMENT SAVINGS AND
7 INVESTMENT PLAN and on behalf
8 of a class of all those
9 similarly situated,

10 Plaintiff,

11 v.

12 THE CHARLES SCHWAB
13 CORPORATION; CHARLES SCHWAB &
14 CO INC.; SCHWAB RETIREMENT
15 PLAN SERVICES INC.; CHARLES
16 SCHWAB BANK; CHARLES SCHWAB
17 INVESTMENT MANAGEMENT, INC.;
18 JOHN DOES 1-50; and XYZ
19 CORPORATIONS 1-5,

20 Defendants.

Case No. 17-cv-00285-CW

ORDER DENYING DEFENDANTS'
MOTION FOR LEAVE TO MOVE FOR
PARTIAL RECONSIDERATION OF
THE COURT'S JANUARY 18, 2018
ORDER

(Dkt. No. 82)

21 Defendants The Charles Schwab Corporation et al. move for
22 leave to move for partial reconsideration of the Court's January
23 18, 2018 order, which denied Defendants' motion to compel
24 individual arbitration of Plaintiff Michael F. Dorman's claims,
25 or, alternatively, to stay the action. Defendants move pursuant
26 to Civil Local Rule 7-9(b)(1), which requires the moving party to
27 show:

28 (1) That at the time of the motion for leave, a
material difference in fact or law exists from that
which was presented to the Court before entry of the
interlocutory order for which reconsideration is
sought. **The party also must show that in the exercise
of reasonable diligence the party applying for
reconsideration did not know such fact or law at the
time of the interlocutory order;**

1 (emphasis added). In their motion for leave, Defendants omit the
2 portion of the rule that is emphasized above. Defendants fail to
3 explain why, at the time of the Court's order, they did not know
4 that a Plan Document (which presumably was in their possession)
5 contained an arbitration provision was allegedly adopted on
6 December 8, 2014 and made effective on January 1, 2015.
7 Accordingly, reconsideration of the Court's order is unwarranted
8 and Defendants' motion for leave is DENIED.

9 Defendants also suggest that the Court could correct its
10 order on its own accord pursuant to Federal Rule of Civil
11 Procedure 60(a). Rule 60(a) allows the Court to correct clerical
12 mistakes or mistakes arising from oversight or omission, however.
13 None of these circumstances applies here. Defendants brought
14 their motion to compel arbitration based on their assertion that
15 the version of the Plan Document dated January 1, 2106 and
16 executed on June 13, 2016 contained an enforceable arbitration
17 agreement. The Court held that it does not for three independent
18 reasons, including the fact that the June 13, 2016 version of the
19 Plan Document was executed after the participant had ceased
20 participation in the plan and thus cannot bind the participant to
21 arbitration. January 18, 2018 Order at 6-7. This Court's
22 holding still holds true with respect to the June 13, 2016 Plan
23 Document, which was the basis of Defendants' motion. There is no
24 reason for the Court to change its order pursuant to Rule 60(a).

25 IT IS SO ORDERED.

26
27 Dated: July 9, 2018



28
CLAUDIA WILKEN
United States District Judge