

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 9 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GALINA KOPELEV,

Plaintiff-Appellant,

v.

THE BOEING COMPANY; BOEING
EMPLOYEE BENEFIT PLANS
COMMITTEE; BOEING EMPLOYEE
VIP PLAN,

Defendants-Appellees,

and

BOEING COMPANY VOLUNTARY
INVESTMENT PLAN,

Defendant.

No. 21-55937

D.C. No.
2:20-cv-05805-VAP-KS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, Chief District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: WALLACE, FERNANDEZ, and SILVERMAN, Circuit Judges.

Galina Kopelev appeals pro se from the district court's dismissal with prejudice of her breach of fiduciary duty claim¹ under the Employee Retirement Income Security Act of 1974² ("ERISA"). She also appeals from the denial of her motion for reconsideration of the dismissal. We review de novo a dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6),³ and we review denial of leave to amend and denial of a motion for reconsideration for abuse of discretion.⁴ We affirm.

To state a claim under 29 U.S.C. § 1132(a)(3), Kopelev must allege facts to establish that: (1) she has a "remediable wrong, *i.e.*, that the plaintiff seeks relief to redress a violation of ERISA or the terms of a plan," and (2) she seeks "appropriate

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

¹ 29 U.S.C. § 1132(a)(1), (3).

² Pub. L. No. 93-406, § 1, 88 Stat. 829, 829.

³ *See Vaughn v. Bay Env't Mgmt., Inc.*, 567 F.3d 1021, 1024 (9th Cir. 2009); *Burgert v. Lokelani Bernice Pauahi Bishop Tr.*, 200 F.3d 661, 663 (9th Cir. 2000).

⁴ *United States ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir. 2011) (leave to amend); *United Nat'l Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772, 780 (9th Cir. 2009) (motion for reconsideration).

equitable relief.” *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945, 954 (9th Cir. 2014). Kopelev does not adequately allege facts to establish that the Appellees violated ERISA or the terms of the plan or that the Appellees breached their fiduciary duty by failing to inform her affirmatively of the December 2018 distribution, or by withholding taxes from the distribution.

Dismissal with prejudice was not an abuse of discretion because any amendment of the ERISA claim would have been futile. *See Gonzalez v. Planned Parenthood of L.A.*, 759 F.3d 1112, 1116 (9th Cir. 2014); *cf. Kroessler v. CVS Health Corp.*, 977 F.3d 803, 815 (9th Cir. 2020).

Denial of the motion for reconsideration was proper. The district court did not err in dismissing Kopelev’s ERISA action pursuant to Rule 12(b)(6), and Kopelev did not present the district court with new evidence or argue that there was an intervening change in controlling law. *See United Nat’l Ins.*, 555 F.3d at 780.

AFFIRMED.