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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

STMicroelectronics, Inc. Pension
Restoration Plan; and STMicroelectronics,
Inc. Supplemental Executive Retirement
Plan,

Plaintiffs,

vs.

Annibale Santoni,

Defendant,

Annibale Santoni

Third-Party Plaintiff,

vs.

STMicroelectronics, Inc., a Delaware
corporation; and John Does and Jane Does
I-X,

Third-Party Defendants.

No. CV-04-1025-PHX-ROS

ORDER

Pending before the Court are motions for summary judgment filed by both parties. For the following reasons, Defendant's motion will be granted in part and Plaintiffs' motion will be denied.

I. Background

Defendant/Counterclaimant Annibale Santoni began working for STMicroelectronics, Inc. ("ST") in 1966. (Defendant's Statement of Facts "DSOF" ¶ 9) At that time, Santoni was

1 an Italian citizen. Based on his Italian citizenship, ST made contributions to two Italian
2 pension programs. (ST's Statement of Facts "SSOF") Santoni became a United States Citizen
3 in 1988.

4 In 1994, ST established a qualified retirement plan for all eligible ST employees.
5 According to the plan, an employee was eligible to participate in the plan if he or she was a
6 "participant" as that term was defined by the plan. A "participant" was defined as an ST
7 "active employee." The plan provided a detailed definition of the term "employee."

8 "Employee" shall mean any person on the United States payroll
9 of the Employer; provided, however, that such term shall not
include:

10 (a) any person who is not a citizen of the United States and
11 who does not have a United States permanent resident
visa;

12

13 (c) any person who is not a citizen of the United States and
14 for whom contributions are being made to or benefits are
15 being accrued under (i) a foreign governmental pension
plan or social security system, or (ii) a pension plan
maintained by a Designated Nonparticipating Employer

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17 In 1997, ST created a new "Executive Retirement Program" for high-level employees.
18 (SSOF ¶ 10) This program consisted of a "Pension Restoration Plan" ("PRP") and a
19 "Supplemental Executive Retirement Plan" ("SERP"). (DSOF ¶ 1) Only employees that
20 obtained a grade level of 19 or received the title of "Vice President" were eligible to
21 participate in the supplemental plans. (SSOF ¶ 12) In a previous Order, the Court
22 determined that the PRP and the SERP were "top-hat" plans, subject to enforcement under
23 ERISA. (Doc. 31)

24 In 2002, Santoni decided to retire. (DSOF Ex. 5) At that time, Santoni had obtained
25 the grade level of 19 and the title of "Vice President." (DSOF ¶ 10) In June 2002, ST began
26 calculating the benefits Santoni would be entitled to receive upon retirement. On June 6,
27 2002, ST's Director of Compensation and Benefits, Laura Smith, sent Santoni estimates
28 regarding his benefits. (DSOF Ex. 8) The estimates included amounts pursuant to all three

1 plans: the qualified retirement plan, the PRP, and the SERP. (Id.) Santoni noticed an error
2 regarding the hire date used in calculating his benefits and requested that the calculations be
3 redone. (Id.) Using the correct hire date, the amount of Santoni's benefits was substantially
4 larger than the original calculation. (DSOF Ex. 9)

5 After learning of the revised estimates, Ms. Smith sent an email to ST's Retirement
6 Committee stating that she had "uncovered a technical error in the eligibility requirements
7 for the qualified STMicroelectronics, Inc. Retirement Plan. The error results in the ability
8 for an individual who is being maintained in a foreign country pension plan to also become
9 eligible for the US plan upon gaining citizenship." (DSOF Ex. 10) She believed ST would
10 have to adhere to the definition in the qualified plan for the individuals, such as Santoni, that
11 met the technical requirements, even though he was being maintained in a foreign pension
12 plan. Ms. Smith stated that the qualified plan would be "amended immediately to correct the
13 eligibility requirements to *fully reflect* the intention to exclude anyone being maintained in
14 a foreign country pension plan, regardless of their US citizenship status." (Id.) (emphasis
15 added) Ms. Smith also believed that the PRP needed to be amended to "*confirm* that
16 individuals being maintained in a foreign county [sic] pension plan are not eligible for [the
17 PRP], regardless of their US citizenship status." (Id.) (emphasis added) The members of the
18 Retirement Committee agreed the changes should be made. (DSOF Ex. 11-15)

19 Ms. Smith later sent Santoni a revised estimate of his retirement benefits. That
20 estimate included benefits from the qualified retirement plan and the SERP, but not the PRP.
21 When Santoni asked why he was not eligible for the PRP benefits, Ms. Smith stated the
22 intent of the PRP "was always that an individual being maintained in a plan in another
23 country would not be eligible for [the PRP], regardless of citizenship status." (DSOF ¶ 16)
24 Based on that intent, Ms. Smith relayed that the Retirement Committee had interpreted the
25 PRP "consistent with it's [sic] intent," and Santoni was not eligible. (Id.) Ms. Smith did not
26 explain why Santoni was eligible for the qualified plan but not eligible for the PRP, given
27 the two plans use the same definition of eligibility. Santoni retired on August 30, 2002.
28 (DSOF ¶ 17)

1 After his retirement, Ms. Smith sent Santoni a breakdown of his retirement benefits.
2 (DSOF ¶ 19) That breakdown included benefits under the qualified plan and the SERP, but
3 did not include any benefits from the PRP. (Id.) Believing he was entitled to such benefits,
4 Santoni filed a claim with the Retirement Committee. (DSOF ¶ 22) At a Retirement
5 Committee meeting held on January 28, 2003, the Committee "unanimously agreed that the
6 denial of benefits is consistent with [the PRP's] intent." (DSOF Ex. 23) Santoni then filed
7 an appeal. (DSOF Ex. 24) The Committee denied the appeal. (DSOF Ex. 25)

8 Plaintiffs ST Plans¹ filed their complaint for declaratory relief in May 2004. ST Plans
9 seek "an order declaring that Santoni is not entitled to additional benefits under the Plans
10 [qualified retirement plan, the SERP, or the PRP]." (Doc. 1) Santoni filed a counterclaim,
11 seeking a determination that he is "entitled to benefits under the PRP."² (Doc. 4) Based on
12 the history of this case, as well as representations made at oral argument, ST Plans seek only
13 a determination regarding Santoni's entitlement to the PRP benefits. Santoni's entitlement
14 to benefits pursuant to the qualified plan is not at issue.

15 **II. Analysis**

16 **A. Jurisdiction**

17 The original complaint in this case sought equitable relief in the form of a declaratory
18 judgment that Santoni was not entitled to any further plan benefits. "[J]urisdiction [is]
19 plainly available by way of the Declaratory Judgment Act, 28 U.S.C. § 2201."³ Transamerica
20 Occidental Life Ins. Co. v. DiGregorio, 811 F.2d 1249, 1253 (9th Cir. 1987).

21
22 ¹ The Plaintiffs are STMicroelectronics, Inc. Pension Restoration Plan and
23 STMicroelectronics, Inc. Supplemental Executive Retirement Plan. For simplicity, Plaintiffs
24 will be referred to as "ST Plans."

25 ² Santoni asserted a number of other counterclaims that were dismissed in a previous
26 order. (Doc. 31)

27 ³ "If . . . the declaratory judgment defendant could have brought a coercive action in federal
28 court to enforce its rights, then [the Court has] jurisdiction" Transamerica Occidental Life Ins.
Co. v. DiGregorio, 811 F.2d 1249, 1253 (9th Cir. 1987). Santoni could have brought suit pursuant
to ERISA to recover the PRP benefits. Thus, federal jurisdiction exists.

1 **B. Summary Judgment Standard**

2 A court must grant summary judgment if the pleadings and supporting documents,
3 viewed in the light most favorable to the non-moving party, "show that there is no genuine
4 issue as to any material fact and that the moving party is entitled to a judgment as a matter
5 of law." Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).
6 Substantive law determines which facts are material, and "[o]nly disputes over facts that
7 might affect the outcome of the suit under the governing law will properly preclude the entry
8 of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In
9 addition, the dispute must be genuine, that is, "the evidence is such that a reasonable jury
10 could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.

11 Furthermore, the party opposing summary judgment "may not rest upon the mere
12 allegations or denials of [the party's] pleading, but . . . must set forth specific facts showing
13 that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); see Matsushita Elec. Indus. Co.,
14 Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). There is no issue for trial unless
15 there is sufficient evidence favoring the non-moving party; "[i]f the evidence is merely
16 colorable, or is not significantly probative, summary judgment may be granted." Anderson,
17 477 U.S. at 249-50 (citations omitted). However, "[c]redibility determinations, the weighing
18 of the evidence, and the drawing of legitimate inferences from the facts are jury functions,
19 not those of a judge." Id. at 255. Therefore, "[t]he evidence of the non-movant is to be
20 believed, and all justifiable inferences are to be drawn in [its] favor" at the summary
21 judgment stage. Id.

22
23 **C. Standard of Review**

24 There are two possible standards of review when analyzing the actions of a benefit
25 plan administrator: abuse of discretion or *de novo*. A court must apply an abuse of discretion
26 standard when "the benefit plan gives the administrator or fiduciary discretionary authority
27 to determine eligibility for benefits or to construe the terms of the plan." Firestone Tire and
28 Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). The *de novo* standard is appropriate if the

1 plan does not grant discretionary authority. Abatie v. Alta Health & Life Ins. Co., 458 F.3d
2 955, 963 (9th Cir. 2006). The parties apparently agree that the PRP gives the administrator
3 discretionary authority.⁴ (SSOF Ex. 3 p.5) Santoni argues, however, that ST was operating
4 under a conflict of interest such that the *de novo* standard should apply. Subsequent to
5 submission of the motions for summary judgment, the Ninth Circuit stated that when
6 discretionary authority is conferred by the plan's language, abuse of discretion is always the
7 appropriate standard of review; the existence of a conflict of interest does not change the
8 standard to *de novo*. Id. at 968-69. The existence of a conflict of interest is merely a factor
9 to be weighed in the abuse of discretion analysis. Id. Thus, abuse of discretion is the
10 appropriate standard in this case.

11 "The abuse of discretion standard requires reversal of the findings of the Plan
12 Administrator if they are found to be arbitrary and capricious." Schikore v. BankAmerica
13 Supplemental Retirement Plan, 269 F.3d 956, 960 (9th Cir. 2001) (reviewing "top hat" plan).
14 "[P]lan administrators abuse their discretion when they 'render decisions without any
15 explanation, or construe provisions of the plan in a way that conflicts with the plain language
16 of the plan.'" Id.; see also Canseco v. Construction Laborers Pension Trust for S. Cal., 93
17 F.3d 600, 606 (9th Cir. 1996) ("We have consistently explained that 'trustees abuse their
18 discretion if they . . . construe provisions of [a] plan in a way that clearly conflicts with the
19 plain language of the plan.'" (quoting Johnson v. Trustees of the W. Conf. of Teamsters
20 Pension Trust Fund, 879 F.2d 651, 654 (9th Cir. 1989))). Pursuant to this standard, if Santoni

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23 ⁴ The plan grants the Retirement Committee "the authority and discretion to . . .
24 [i]nterpret the Plan and correct any defect, supply an omission or reconcile any inconsistency
25 or ambiguity in the Plan," as well as the authority to "[d]etermine the amount of benefits
26 payable to Participants." (SSOF Ex. 3 p.5) "There are no 'magic' words that conjure up
27 discretion on the part of the plan administrator." Abatie v. Alta Health & Life Ins. Co., 458
28 F.3d 955, 963 (9th Cir. 2006). But plans that grant administrators "the power to interpret
plan terms and to make final benefits determinations," should be deemed to confer discretion.
Id. Accordingly, the Court agrees with the parties that the PRP grants the administrator
discretion.

1 is entitled to benefits based on the plain language of the plan, the decision denying him the
2 PRP benefits must be overturned.⁵

3 **D. Interpretation of Plan Language**

4 The main dispute between the parties is Santoni's entitlement to benefits under the
5 PRP. According to the PRP, an employee is eligible for the PRP benefits if he is a
6 participant in the qualified plan, his title is at least "Vice President," and his salary grade is
7 at least 19. There is no dispute that at the time of his retirement, Santoni was a citizen of the
8 United States and he was a Vice President with a salary grade of at least 19. The only issue
9 is whether Santoni qualified as a participant in the qualified plan. Therefore, it is the
10 language of the qualified plan that the Court must construe.⁶

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12 "ERISA does not contain a body of contract law to govern the interpretation and
13 enforcement of employee benefit plans. Rather, Congress intended that courts apply contract
14 principles derived from state law but be guided by the policies expressed in ERISA and other

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16 ⁵ The fact that the PRP is a "top-hat" plan does not change this analysis. "Top-hat"
17 plans are exempted from many of ERISA's requirements, "including the requirement of a
18 written plan." In re New Valley Corp., 89 F.3d 143, 149 (3d Cir. 1996). However, ST Plans
19 has not cited to, and the Court is not aware of, any authority allowing oral representations
20 regarding a "top-hat" plan to contradict the plain language of the written plan. Thus, even
21 though no written plan is required, the written plan must be given priority over oral
22 representations that directly contradict the written terms. See Schikore v. BankAmerica
23 Supplemental Retirement Plan, 269 F.3d 956, 960 (9th Cir. 2001) (reviewing "top hat" plan
24 administrators' actions and stating they abuse their discretion when they "construe provisions
25 of the plan in a way that conflicts with the plain language of the plan") (quotation omitted).

26 ⁶ Because there is no dispute that Santoni met the eligibility requirements unique to
27 the PRP, the only eligibility requirement at issue is whether he was a participant in the
28 qualified plan. ST has effectively admitted that Santoni met the eligibility requirements for
participation under the qualified plan by paying him qualified plan benefits. In a series of
emails, Ms. Smith stated Santoni was "eligible to receive the qualified Retirement Plan" and
that the definition of eligibility (that Santoni met) "must be honored for purposes of those
meeting the criteria at this point." (DSOF Ex. 16) At oral argument, counsel for ST Plans
seemed to argue that it was appropriate to interpret the language of the qualified plan in one
way when deciding on eligibility for the qualified plan, but interpret the same language in
another way when deciding on eligibility for the PRP. This argument is not well taken.

1 federal labor laws." Richardson v. Pension Plan of Bethlehem Steel Corp., 112 F.3d 982,
2 985 (9th Cir. 1997). Thus, "federal courts apply federal common law" when interpreting
3 benefit plans subject to ERISA. Padfield v. AIG Life Ins. Co., 290 F.3d 1121, 1125 (9th Cir.
4 2002). Federal common law directs that plan terms be interpreted "in an ordinary and
5 popular sense as would a person of average intelligence and experience." Id. (quoting
6 Babikian v. Paul Revere Life Ins. Co., 63 F.3d 837, 840 (9th Cir.1995)). The crucial issue
7 in the current case is what role, if any, extrinsic evidence should play when interpreting the
8 language of the qualified plan.

9 The Ninth Circuit has made a surfeit of confusing statements regarding the role of
10 extrinsic evidence in interpreting a plan's language. In Richardson, the court began its
11 analysis by acknowledging that when a dispute arises involving interpretation of a plan's
12 language, "courts should first look to explicit language of the agreement to determine, if
13 possible, the clear intent of the parties." Richardson, 112 F.3d at 985 (quoting Armistead v.
14 Vernitron Corp., 944 F.2d 1287, 1293 (6th Cir. 1991)). But reliance on the explicit language
15 alone may be inappropriate. "The intended meaning of even the most explicit language can,
16 of course, only be understood in the light of the context that gave rise to its inclusion." Id.
17 (quoting Armistead v. Vernitron Corp., 944 F.2d 1287, 1293 (6th Cir. 1991)). This seems
18 to indicate a willingness to examine extrinsic evidence to determine the meaning of even
19 clear language. But the court in Richardson also stated "when a plan is ambiguous, a court
20 will examine extrinsic evidence to determine the intent of the parties." Id. This indicates that
21 language must first be shown to be ambiguous, after which extrinsic evidence can be
22 introduced to resolve the ambiguity.

23 In Bolton v. Construction Laborers' Pension Trust for Southern California, 56 F.3d
24 1055, 1059 n.2 (9th Cir. 1995), the court again recognized that the "real-world context of the
25 agreement" must be considered when evaluating the meaning of certain terms. (quotation
26 omitted). But then in Bergt v. Retirement Plan for Pilots Employed by Markair, Inc., 293
27 F.3d 1139 (9th Cir. 2002), the court found that only after finding language is ambiguous is
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1 a court justified in using extrinsic evidence. Id. at 1143 ("The initial issue is whether the
2 provisions of the plan master document are ambiguous, which would justify the Committee's
3 use of extrinsic evidence to determine whether Bergt was eligible to participate in the
4 retirement plan."). Fortunately, the Court need not definitively resolve the proper manner
5 extrinsic evidence may be used because ST Plans' arguments regarding extrinsic evidence
6 suffer from two flaws. First, the qualified plan's language is not ambiguous. Therefore,
7 pursuant to the more restrictive approach regarding resort to extrinsic evidence, it would be
8 improper to consider the evidence. Second, whether or not the plan's language is ambiguous,
9 ST Plans' extrinsic evidence is presented in an attempt to rewrite, not clarify, portions of the
10 qualified plan. It would be improper to allow extrinsic evidence to perform such a function.

11 **1. Plan Language Not Ambiguous**

12 According to the relevant literal portion of the qualified plan's definitions, an
13 employee is not eligible to participate if he is either 1) not a citizen of the United States and
14 does not have a United States permanent resident visa, or he is 2) not a citizen of the United
15 States (whether or not he has a visa) and contributions are being made to or benefits are being
16 accrued on his behalf under a foreign governmental pension plan. ST Plans admit that "at
17 first blush" Santoni does not fit either of these exclusions and he is "arguably" eligible to
18 participate. (Doc. 42 p.2, Doc. 64 p.9) ST Plans are correct that Santoni does not fall under
19 either of the exceptions. Santoni became a United States citizen long before the qualified
20 plan or the PRP were enacted. Thus, the first exception does not apply. Santoni's citizenship
21 also means that the second exception does not apply. ST Plans attempt to avoid this
22 straightforward interpretation by arguing an internal ambiguity exists due to inclusion of
23 citizenship in the second exception, after citizenship was also included in the first exception.
24 The Court does not agree.

25
26 ST Plans contend "[b]ecause lack of U.S. citizenship *alone* disqualifies an employee
27 from benefits under [exception 1], repeating the same disqualifying factor in [exception 2]
28 renders the foreign benefits disqualifying factor meaningless." (Doc. 64 p.8) This statement

1 is demonstrably false. The U.S. citizenship factor performs a function in both exceptions,
2 though the exceptions could have been written more consistently. According to exception
3 one, an individual that is not a U.S. citizen but has a permanent resident visa is eligible to
4 participate in the plan. This exception prevents non-U.S. citizens without permanent resident
5 visas from participating in the plans. Removing the U.S. citizenship requirement from this
6 exception would mean that the vast majority of ST's American employees would not be
7 eligible to participate in the plan. (U.S. citizens do not have permanent resident visas.) The
8 U.S. citizenship factor is crucial to exception one.

9 The second exception provides that a U.S. citizen is eligible to participate, even if
10 contributions are being made to a foreign pension plan. According to ST Plans, this
11 exception should not include any reference to U.S. citizenship. But there can be no dispute
12 that the U.S. citizenship factor is not meaningless in exception two. Santoni is an example
13 of how the U.S. citizenship factor performs a role in this exception. Were the factor not
14 present, Santoni would clearly be prevented from participating in the qualified plan due to
15 ST's contributions to his Italian pension.⁷ Thus, the U.S. citizenship factor is not rendered
16 "nugatory." (Doc. 42 p.15) ST Plans' disapproval of the plan's language is not to be equated
17 with the plan being ambiguous. Pursuant to the more restrictive view regarding use of
18 extrinsic evidence, the lack of internal ambiguity means the Court need not examine such
19 evidence.

20 **2. Attempt to Rewrite Plan is Improper**

21 ST also argues that a "latent ambiguity" exists in that "anyone who understood the
22 context of [the creation of the qualified plan] would understand that it doesn't mean what it
23 seems to mean." Mathews v. Sears Pension Plan, 144 F.3d 461, 465 (7th Cir. 1998). This
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25 ⁷ In fact, that was precisely the amendment ST made to the relevant definition after
26 Santoni highlighted the issue. The second exception was amended to provide that "any
27 person for whom contributions are being made to or benefits are being accrued under . . . a
28 foreign governmental pension plan" is not eligible to participate in the qualified plan. (Doc.
45 ex. 21)

1 argument acknowledges that the plan's language is straightforward, but still argues for
2 consideration of the extrinsic evidence to reach ST Plans' desired result. This doctrine of
3 "latent ambiguity," however, does not perform the role that ST Plans desires.

4 As defined in Bolton v. Construction Laborers' Pension Trust for Southern California,
5 a latent ambiguity "exists when, 'although the agreement itself is a perfectly lucid and
6 apparently complete specimen of English prose, anyone familiar with the real-world context
7 of the agreement would wonder what it meant with reference to the particular question that
8 has arisen.'" 56 F.3d 1055, 1059 n.2 (9th Cir. 1995) (quoting Federal Deposit Ins. Corp. v.
9 W.R. Grace & Co., 877 F.2d 614, 620 (7th Cir. 1989)). Because the Ninth Circuit has rarely
10 relied on this doctrine, counsel for ST Plans asks the Court to rely on cases from other Courts
11 of Appeal. Those cases, however, do not help ST Plans.

12 According to the Seventh Circuit, the latent ambiguity doctrine is useful because even
13 when "[t]he text contains no clue that the contract might mean something different from what
14 it says," a court may need to look beyond the text to divine the parties' intentions. AM Int'l,
15 Inc. v. Graphic Mgmt. Assocs., Inc., 44 F.3d 572, 574 (7th Cir. 1995). By analyzing
16 "objective evidence," a court may be able to determine that "anyone who understood the
17 context of the contract would realize it couldn't mean what an untutored reader would
18 suppose it meant." Id. at 575. For example, a simple term such as "cotton" may be
19 ambiguous because it could "refer to guncotton rather than to the cotton used in textiles." Id.
20 Thus, the doctrine applies when there is evidence "that the parties were employing a special
21 vocabulary, so that the meaning of the contract is opposite to what an outsider would think."
22 Id. at 578.

23 An ERISA case from the Seventh Circuit involving the latent ambiguity doctrine is
24 Mathews v. Sears Pension Plan, 144 F.3d 461 (7th Cir. 1998). At issue there was the
25 meaning of the phrase "date of distribution." The parties disagreed on whether the phrase
26 should be read to mean "the actual date of distribution" or "January 1 of the plan year in
27 which the distribution occurs." Id. at 467. The court relied on extrinsic evidence to conclude
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1 that the proper interpretation of "date of distribution" was "January 1 of the plan year in
2 which the distribution occurs." The court reached this conclusion in part because "date of
3 distribution" was "a term of art, that is, a term that has a technical legal meaning different
4 from its ordinary meaning." Id. at 467. Accordingly, the contract was enforced according
5 to the specialized meaning of "date of distribution," not the meaning that an ordinary reader
6 would have ascribed to the term.

7 In the Third Circuit, a case analogous to the present one in which the latent ambiguity
8 doctrine was applied is In re New Valley Corp., 89 F.3d 143 (3d Cir. 1996). There the court
9 observed that "[b]efore making a finding concerning the existence or absence of ambiguity,
10 [a court must] consider the contract language, the meanings suggested by counsel, and the
11 extrinsic evidence offered in support of each interpretation." Id. at 150. At issue was a
12 provision in a "top-hat" plan providing the plan may be terminated "at any time." The parties
13 disagreed whether this phrase meant "at any time (prior to retirement)" or "at any time (even
14 after retirement)." The court considered the context of the plan, as well as oral
15 representations made by the company to the employees, in determining the phrase "at any
16 time" could plausibly be interpreted as having either meaning. Thus, the apparent
17 straightforwardness of the language did not prevent the consideration of extrinsic evidence
18 to determine the true meaning.

19 The common thread through all of these cases is that the latent ambiguity doctrine is
20 a way for a court to penetrate beneath the surface of contractual language. Am Int'l, 44 F.3d
21 at 575. Consideration of extrinsic evidence may allow a court to conclude that a "contract
22 says X but means Y." Mathews, 144 F.3d at 467. None of these cases, however, involves
23 a situation where a party is proffering extrinsic evidence to show that a contract says X but
24 means not-X. That is, the contractual language in all of the above cases could plausibly be
25 read, after considering the greater context, to have a meaning different than was immediately
26 apparent. The current case does not involve a similar situation.

1 The extrinsic evidence proffered by ST Plans does not establish that the phrase "not
2 a citizen of the United States" in exception two is a term of art that has a specialized
3 meaning. The phrase does not, as far as the Court is aware, have any special meaning in the
4 ERISA context. The extrinsic evidence proffered by ST Plans is not meant to disambiguate
5 the seemingly straightforward phrase.⁸ Instead, ST Plans ask the Court to use the extrinsic
6 evidence to rewrite the qualified plan by simply removing the phrase "not a citizen of the
7 United States."⁹ To interpret the language in the manner suggested by ST Plans would "drain
8 [the plan's] text of all content save ink and paper." United States v. Westlands Water Dist.,
9 134 F. Supp. 2d 1111, 1140 (E.D. Cal. 2001) (quoting Smart v. Gillette Co. Long-Term
10 Disability Plan, 70 F.3d 173, 180 (1st Cir. 1995)). Were the Court to adopt ST Plans' view,
11 the words of all top-hat plans "would become little more than sideshows in a circus of self-
12 serving declaration as to what the parties to the agreement really had in mind."¹⁰ Wilson

14 ⁸ The extrinsic evidence is less aimed at establishing an ambiguity in the plan's
15 language and more at establishing ST Plans is the victim of "sloppy lawyering." Wilson
16 Arlington Co. v. Prudential Ins. Co. of Am., 912 F.2d 366, 371 (9th Cir. 1990). It seems that
17 the language at issue was inserted in error, not because the language has some technical
18 meaning that is only apparent once one is aware of the greater context of the agreement.
Sloppy lawyering "hardly warrants rewriting" the plan documents. Id.

19 ⁹ At oral argument, counsel for ST Plans disputed the characterization of its argument
20 as an attempt to rewrite the plan. The line between rewriting and clarifying is not always
21 clear, but the Court believes ST Plans' argument is far closer to rewriting than clarifying.
22 Rewriting is clearly prohibited by federal law. See Pierce County Hotel Employees and
23 Restaurant Employees Health Trust v. Elks Lodge, 827 F.2d 1324, (9th Cir. 1987) ("Extrinsic
24 evidence is inadmissible to contradict a clear contract term . . ."); Westlands Water Dist. v.
25 United States, 337 F.3d 1092, 1101 (9th Cir. 2003) (under federal common law "[e]xtrinsic
26 evidence cannot contradict a clear contract term in a final expression of agreement"); Pace
27 v. Honolulu Disposal Service, Inc., 227 F.3d 1150, 1158 n.10 (9th Cir. 2000) (quoting
28 Pierce).

¹⁰ ST Plans' reading of the plan language also conflicts with a long-standing principle
of contract law: "An interpretation which gives effect to all provisions of the contract is
preferred to one which renders a portion of the writing superfluous, useless or inexplicable."
11 Williston on Contracts § 32:5 (4th ed. 2006). ST Plans' reading would render the phrase
"not a citizen of the United States" superfluous.

1 Arlington Co. v. Prudential Ins. Co. of Am., 912 F.2d 366, 370 (9th Cir. 1990).
2 Consideration of ST Plans' extrinsic evidence, in conjunction with the latent ambiguity
3 doctrine, does not lead to an interpretation of the plan documents that renders Santoni
4 ineligible for the PRP benefits.

5 ST Plan's Motion for Summary Judgment will be denied. Santoni's Motion, however,
6 cannot be granted in full because it is not clear the precise relief Santoni is seeking. The
7 parties will be directed to confer and submit to the Court a proposed form of judgment in
8 light of the determination that Santoni is entitled to receive the PRP benefits.


9 Accordingly,

10 **IT IS ORDERED** Plaintiff ST Plan's Motion for Summary Judgment (Doc. 42) is
11 **DENIED**.

12 **IT IS FURTHER ORDERED** Defendant Santoni's Motion for Summary Judgment
13 (Doc. 48) is **GRANTED IN PART**.

14 **IT IS FURTHER ORDERED** the parties shall submit a proposed form of judgment
15 within 15 days of this Order.
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18 DATED this 8th day of March, 2007.
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26 Roslyn O. Silver
27 United States District Judge
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