

1 Inc., 2005 WL 3050613, at *2-3, *9 (N.D. Ill.); *see also*,
2 Garay v. UNUM Life Ins. Co. of Am., 2008 WL 4167297, at *2
3 (N.D. Cal.); Finkelstein v. Guardian Life Ins. Co. of Am.,
4 2007 WL 1345228, at *5 (N.D. Cal.) (both applying Yates to
5 interpret pre-Yates plans).

6 In California, the applicable statute of limitations to
7 enforce an ERISA plan under section 1132 is four years.

8 Northern California Retail Clerks Unions & Food Employers

9 Joint Pension Trust v. Jumbo Markets, 906 F.2d 1371, 1372 (9th
10 Cir. 1990) (applying California Code of Civil Procedure §
11 337). The statute begins to run when the plaintiff "knows or
12 has reason to know" of the injury. Id. at 1373. This period
13 may begin when trustees commence an audit of employer
14 practices, if it provides them with reason to know of plan
15 violations.

16 Based on this record, there are disputed issues of fact
17 as to the precise period for which Eshelman was employed by
18 defendant following the 1999-2002 audit, and as to whether,
19 given the 1999-2002 audit conducted by plaintiffs, they knew
20 or should have known that they were entitled to recover
21 contributions for Eshelman.²

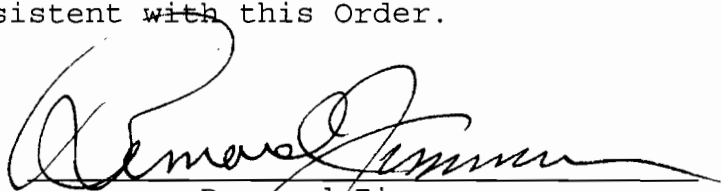
22 As to its other employees, defendant has produced no
23 evidence to controvert the evidence provided by plaintiffs
24 that there are unpaid contributions owing on behalf of
25 employees Bautista, Fimbrez, Mendoza, Rostran, Steiner, Yanez,
26 and Londregan for work performed between April 2004 and

27
28 ² In ruling on summary judgment, a court must view
evidence, such as the prior audits, in the light most favorable
to the party opposing the motion.

1 September 2006, and on behalf of Platt, a non-bargaining unit
2 personnel, for work performed from May 2005 through September
3 2006. Accordingly, plaintiffs are awarded summary judgment in
4 the amount of contributions unpaid for these employees: A.
5 Bautista (health and welfare underpayment of \$806.10, pension
6 underpayment of \$1,000, annuity underpayment of \$453.13), G.
7 Fimbrez (health and welfare underpayment of \$1,612.20, pension
8 underpayment of \$1,235.20, annuity underpayment of \$559.70),
9 M. Mendoza (health and welfare underpayment of \$1,612.20,
10 pension underpayment of \$1369.60, annuity underpayment of
11 \$620.61), N. Rostran (health and welfare underpayment of
12 \$2,418.30, pension underpayment of \$1,588.80, annuity
13 underpayment of \$719.93), R. Steiner (health and welfare
14 underpayment of \$2,535.30, pension underpayment of \$1,567.10,
15 annuity underpayment of \$688.75), E. Yanez (health and welfare
16 underpayment of \$1,028.87, pension underpayment of \$592.85,
17 annuity underpayment of \$242.15), R. Londregan (pension
18 underpayment of \$155.20 and annuity underpayment of \$70.33),
19 and S. Platt (underpayment of \$13,879.18). Plaintiffs are
20 also entitled to liquidated damages and interest, but those
21 amounts are not broken down in plaintiffs' papers.

22 Plaintiffs' request for attorneys' fees and costs is not
23 supported by any proof, let alone proof broken down to allow
24 an apportionment consistent with this Order.

25 Dated: 4 Feb 09



Bernard Zimmerman
United States Magistrate Judge