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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 OPERATING ENGINEERS' PENSION TRUST  
12 FUND; GIL CROSTHWAITE and RUSS  
13 BURNS, as Trustees,

14 Plaintiffs,

15 v.

16 FIFE ROCK PRODUCTS COMPANY, a Utah  
17 Corporation; FIFE EQUIPMENT &  
18 INVESTMENTS, LLC, a Utah limited liability  
19 company; FIFE EQUIPMENT &  
20 INVESTMENTS COMPANY, a Utah  
unincorporated general partnership; GENEVA H.  
FIFE, as an individual; and KATHRYN F.  
DAMON, as an individual,

21 Defendants.  
22 \_\_\_\_\_/

No. C 10-697 SI

**ORDER DENYING PLAINTIFFS'  
MOTION FOR AN ORDER ENFORCING  
ARBITRATION AWARD AND CLOSING  
CASE**

23 Plaintiffs' motion for an order enforcing the arbitration award is scheduled for a hearing on July  
24 27, 2012. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is appropriate for  
25 resolution without oral argument, and VACATES the hearing. For the reasons set forth below, the Court  
26 DENIES the motion.

27 **BACKGROUND**

28 In an order filed January 24, 2011, the Court granted defendants' motion to compel arbitration.  
The parties proceeded to arbitration, and on May 8, 2012, the arbitrator issued an award in plaintiffs'  
favor, awarding \$697,153.36 to the Fund. That amount includes the entire withdrawal liability

1 assessment, plus attorneys' fees, and certain interest and costs. *See* Mersich Decl. Ex. A at 18-19  
2 (arbitration order).

3 On May 16, 2012, the Fund demanded payment of the amount awarded in arbitration. On May  
4 23, 2012, defendants filed a motion for clarification or modification of the award, and the Fund  
5 submitted a response to that motion on May 29, 2012. On June 4, 2012, the arbitrator declined to  
6 modify the arbitration award.

7 On June 15, 2012, the Fund filed a motion to enforce the arbitration award. On June 29, 2012,  
8 defense counsel mailed plaintiffs' counsel a check for the full amount of the arbitration award. Mersich  
9 Decl. ¶ 11. Defendants filed an opposition to plaintiff's motion, and plaintiff did not file a reply.

## 10 11 DISCUSSION

12 Defendants' payment of the full amount of the arbitration award moots the Fund's request for  
13 an order requiring defendants to immediately provide the payment owed under the arbitration award.  
14 The Fund also seeks attorneys' fees of \$15,788.50 incurred from April 1, 2012, through June 15, 2012,  
15 interest on the unpaid withdrawal liability, \$14,320 in arbitration fees, and post-judgment interest.<sup>1</sup>

16 The Fund contends that it is entitled to mandatory attorneys' fees and interest on the unpaid  
17 withdrawal liability because defendants did not immediately pay the full amount of the arbitration award  
18 after it was entered on May 8, 2012. "Under ERISA, the award of attorney fees to a pension plan is  
19 mandatory in all actions to collect delinquent contributions." *Trustees of Amalgamated Ins. Fund v.*  
20 *Geltman Industries, Inc.*, 784 F.2d 926, 931 (9th Cir. 1986). An employer's failure to make timely  
21 payments in accordance with an arbitrator's final decision is a "delinquent contribution." *Id.* at 932.  
22 In *Geltman Industries*, the Ninth Circuit held that "a delinquency is not determined in relation to the  
23 timing of arbitration. Rather, an employer is delinquent 60 days from the pension plan's demand." *Id.*

24 Here, the Fund made its "demand" that defendants pay the arbitration award on May 16, 2012,  
25 and defendants made that payment before the 60 day deadline, on June 29, 2012. Accordingly, the Fund  
26 is not entitled to mandatory attorneys' fees or interest on the unpaid withdrawal liability. To the extent  
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28 <sup>1</sup> The Court notes that the Fund requested additional attorneys' fees and the arbitration fees from  
the arbitrator, and that the arbitrator declined to award this relief.

1 that the Fund seeks discretionary attorneys' fees, the Fund has made no showing regarding the five  
2 factors that the Court must consider in making such an award, and thus the Court declines to award  
3 discretionary attorneys' fees. *See Cuyamaca Meats v. Pension Trust Fund*, 827 F.2d 491, 500 (9th Cir.  
4 1987) (listing factors).

5 Citing ERISA section 4301(e), 29 U.S.C. § 1451(e), plaintiff requests \$14,320 in arbitration fees  
6 and the arbitrator's compensation. Section 4301(e) provides that the Court "may award all or a portion  
7 of the costs and expenses incurred in connection with such action, including reasonable attorney's fees,  
8 to the prevailing party." *Id.* The Fund specifically requested an award of the arbitrator's fees and  
9 expenses and compensation, and the arbitrator declined to do so. In light of this fact, the Court finds  
10 it inappropriate to award these costs.

11 Finally, the Fund seeks post-judgment interest pursuant to 28 U.S.C. § 1961. That provision  
12 provides that "[i]nterest shall be allowed on any money judgment in a civil case recovered in a district  
13 court." Defendants assert that the Fund is not entitled to post-judgment interest because the Fund has  
14 not received a money judgment in a civil case recovered in a district court, but rather has been issued  
15 an award by an arbitrator. Plaintiff does not respond to this argument, nor has plaintiff cited any  
16 authority supporting its assertion that post-judgment interest can be awarded on the arbitration award.  
17 Accordingly, the Court declines to award post-judgment interest.

18  
19 **CONCLUSION**

20 For the foregoing reasons, the Court DENIES plaintiff's motion to enforce the arbitration award.  
21 Docket No. 49. All matters related to the arbitration having been concluded, this case is now CLOSED.

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23 **IT IS SO ORDERED.**

24 Dated: July 23, 2012

25   
26 SUSAN ILLSTON  
27 United States District Judge  
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