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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE
NORTHERN CALIFORNIA PLASTERERS
HEALTH AND WELFARE TRUST FUND,
et al.,

Plaintiffs,

v.

HINDS BROS. COMPANY, INC.,

Defendant.

Case No. [3:15-cv-02387-JD](#)

**ORDER RE MOTION FOR SUMMARY
JUDGMENT ON LIQUIDATED
DAMAGES**

Re: Dkt. No. 25

Plaintiffs allege that defendant Hinds failed to make required contributions to employee benefit plans for the months of February and April 2015. Dkt. No. 1 ¶ 13. Under the trust agreements, employers who fail to make timely contributions are liable for liquidated damages on the unpaid principal. *Id.* ¶ 12. Plaintiffs sought the required contributions, unpaid as of the time of filing, as well as liquidated damages for payments made but made untimely before May 2015. *Id.* ¶ 15.

At the second case management conference, the Court advised the parties to file for summary judgment on the issue of liquidated damages alone. Dkt. No. 24. Hinds filed a motion, Dkt. No. 25, plaintiffs opposed it, Dkt. No. 27, and the Court took the matter under submission pursuant to Civil Local Rule 7-1(b). In the opposition, plaintiffs represented that since their filing of the complaint, Hinds had continued to make untimely contributions. Dkt. No. 27 at 11. Consequently, the questions presented are whether Hinds must pay: (1) liquidated damages for contributions unpaid as of the time of the complaint’s filing; (2) liquidated damages for late contributions paid by the time of filing; and (3) liquidated damages for late contributions after the time of filing.

1 When a trust agreement provides for liquidated damages, and a trust fiduciary obtains a
2 judgment in favor of the plan, the Employment Retirement Income Security Act of 1974
3 (“ERISA”) provides that liquidated damages are mandatory as to contributions unpaid as of the
4 time of filing. 29 U.S.C. § 1132(g)(2); *Idaho Plumbers & Pipefitters Health & Welfare Fund v.*
5 *United Mech. Contractors, Inc.*, 875 F.2d 212, 215 (9th Cir. 1989). Liquidated damages are
6 available “notwithstanding the defendant’s post-suit, pre-judgment payment of the delinquent
7 contributions themselves.” *Nw. Adm’rs, Inc. v. Albertson’s, Inc.*, 104 F.3d 253, 258 (9th Cir.
8 1996) (citations omitted).

9 District courts in our circuit largely agree that Section 1132(g)(2) also makes mandatory
10 liquidated damages for payments made late after the time of filing. To find otherwise would
11 require trust fiduciaries to file successive suits to obtain liquidated damages. *See, e.g., Roofers*
12 *Local Union No. 81 v. Wedge Roofing, Inc.*, 811 F. Supp. 1398 (N.D. Cal. Sept. 11, 1992); *Bd. of*
13 *Trs. of Sheet Metal Workers Health Care Trust of N. Cal. v. Bridon, Inc.*, No. C-95-1240-MHP,
14 1995 WL 573701, at *3 (N.D. Cal. Sept. 19, 1995); *Bay Area Painters v. Alta Specialty*, No. C06-
15 06996-MJJ, 2008 WL 114931, at *4 (N.D. Cal. Jan. 10, 2008). Consequently, plaintiffs can
16 recover liquidated damages under ERISA for both (1) unpaid contributions as of filing and (3) late
17 contributions after filing.

18 ERISA does not, however, mandate liquidated damages for (2) late contributions paid by
19 time of filing. For those contributions, the terms of the trust agreement’s liquidated damages
20 provision control. Such a provision is enforceable if (1) the harm of breach is “very difficult or
21 impossible to estimate” and (2) the damages are “a reasonable forecast of just compensation for
22 the harm caused.” *Idaho Plumbers*, 875 F.2d at 217. District courts have consistently found that
23 the first prong is satisfied by untimely contributions to trusts. Enforceability turns on the second
24 prong, which requires “some indication that the liquidated damages provision is a good faith
25 attempt to set an amount reflective of anticipated damages.” *Parkhurst v. Armstrong Steel*
26 *Erectors, Inc.*, 901 F.2d 796, 798 (9th Cir. 1990).

27 Whether the provision at issue was such a good-faith attempt is a genuine dispute of
28 material fact. Plaintiffs have offered some evidence of a liquidated damages study undertaken 14

1 years prior to the suit and reviewed by the parties to the trust agreements. *See* Dkt. No. 27, Exh.
2 N. That is enough to create a fact dispute and deny summary judgment. The Court also notes that
3 Hinds' summary judgment papers -- including an unauthorized "supplemental brief" -- often raise
4 points far outside the domain of the motion, *see* Dkt. No. 25 at 2, 5-6, which also cuts against
5 summary judgment against defendants. The motion is denied.

6 **IT IS SO ORDERED.**

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8 Dated: September 22, 2017



10 JAMES DONATO
11 United States District Judge

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