

1  
2  
3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
5  
6  
7

8 BOARD OF TRUSTEES OF THE  
9 AUTOMOBILE INDUSTRIES

No. C-09-0465 PJH

10 Plaintiff,

**ORDER GRANTING MOTION TO  
DISMISS AND MOTION TO STRIKE**

11 v.

12 GROTH OLDSMOBILE/CHEVROLET

13 Defendant.  
\_\_\_\_\_ /

14 The motion of plaintiffs and counterdefendants Board of Trustees of the  
15 Automotive Industries Welfare Fund and the Automotive Industries Pension Fund, and  
16 Jim Beno ("Trustees") to dismiss the counterclaim pursuant to Federal Rule of Civil  
17 Procedure 12(b)(6), and motion to strike portions of the prayer for relief and portions of  
18 the amended answer pursuant to Rule 12(f), came on for hearing before this court on  
19 July 14, 2010. The Trustees appeared by their counsel Michelle Sicula, Kimberly  
20 Hancock, and Caren Sencer; and defendant and counterclaimant Groth  
21 Oldsmobile/Chevrolet ("Groth") appeared by its counsel Joshua Cliff.

22 Having read the parties' papers and carefully considered their arguments and the  
23 relevant legal authority, and good cause appearing, the court hereby GRANTS the  
24 motion.

25 **BACKGROUND**

26 This is a case brought under the Employment Retirement Income Security Act  
27 ("ERISA"), 29 U.S.C §§ 1002, et seq., and § 301(a) of the National Labor Relations Act  
28 of 1947, 29 U.S.C. § 185(a), seeking to recover unpaid contributions to employee

1 welfare and pension funds, owed under a collective bargaining agreement (“CBA”).

2 Groth is an auto dealer that employs members of the Machinist Union (“Union”).  
3 On behalf of these employees, Groth contributes to union welfare and pension trust  
4 funds jointly administered by Groth and the Union (“Employer Trustees” and “Union  
5 Trustees” respectively). Periodically, the parties negotiate the CBAs, setting the terms  
6 of these contributions.

7 In the underlying complaint, the Trustees sought delinquent payments allegedly  
8 owed under the most recent CBA which covers the period from July 2008 to August  
9 2012 (“2008 CBA”). Groth filed an answer, and a counterclaim alleging that during the  
10 negotiation of the previous CBA, which ran from July 2006 to June 2008 (“the 2006  
11 CBA”), the Trustees fraudulently and negligently misrepresented the rules of the trust  
12 and other material facts, and that they breached an applicable conflict policy.

13 Groth alleges that during the negotiations regarding the 2006 CBA, it proposed to  
14 reduce its pension contributions from \$586.66 to \$50.00 per employee per month and to  
15 direct the rest of the money into a 401(k) plan. Craig Andrews (“Andrews”) who serves  
16 as both a Pension Fund Trustee and as the Union’s chief negotiator, allegedly claimed  
17 that this proposed alteration would violate an existing Trust rule that prohibited  
18 reductions in pension contributions.<sup>1</sup>

19 According to Groth, Andrews knew that such a rule had been proposed but that  
20 its approval was contingent upon the results of arbitration between the Union Trustees  
21 and the Employer Trustees. Thus, Groth argues that Andrews knowingly  
22 misrepresented the existing terms of the Trust both orally and in a written statement that  
23 read, “Pension freeze at current amount. If trust changes rule, pension may be  
24 decreased. Company and union will meet and discuss if Trust changes rule.”

25 Groth claims to have relied on these representations when it concluded the  
26

---

27  
28 <sup>1</sup> The Trustees allege that “[a]t all relevant times, Mr. Andrews reported to Don Crosatto, who was also a Trustee,” and that both reported to Jim Beno.

1 negotiations without adjusting its future pension obligations. Nevertheless, the parties  
2 consented to a “reduction agreement” that would allegedly trigger Groth’s proposed  
3 modifications if the Employer Trustees won the pending arbitration regarding  
4 permissible pension contributions. The “reduction agreement,” memorialized in Article  
5 XII of the 2006 CBA, provides that the “Freeze is depending on arbitration ruling. If  
6 ruled in favor of management, the company and union will meet to discuss  
7 changes/reductions.”

8 On March 20, 2007, the Employer Trustees succeeded at arbitration, thus  
9 blocking the Union Trustees’ proposed prohibition on pension reductions. Groth claims  
10 that Andrews failed to inform them of the result and that Union member Steve Older  
11 affirmatively misrepresented the arbitration outcome. Consequently, Groth not only  
12 continued contributing \$586.66/month/employee to the Trust for the remainder of the  
13 2006 CBA, but also agreed to a provision in the 2008 CBA that preserved the  
14 arrangement.

15 In 2008, presumably after it ratified the 2008 CBA, Groth learned of the alleged  
16 misrepresentations and requested relief from the Trust Fund. According to Groth, the  
17 Trust Fund directed the appeal to a Trustees’ committee which summarily dismissed the  
18 appeal without considering it in good faith. Nevertheless, Groth then reduced its  
19 contributions to \$50/month/employee “in accordance with Groth’s understanding that  
20 this reduction would be permitted, in the event such reductions were permitted by the  
21 Trust Fund.” On February 9, 2009, the Trustees filed the present action, seeking to  
22 collect delinquent pension fund contributions owed under the 2008 CBA.

23 The counterclaim alleges (1) fraud, (2) negligent misrepresentation, and (3)  
24 conflict of interest/breach of conflict policy. Based on these allegations, Groth seeks to  
25 have its pension obligations reduced to \$50 retroactive from January 27, 2007. In the  
26 alternative, it seeks the opportunity to renegotiate the terms of the pension contributions  
27 under the Trust rules that were applicable during the 2006 CBA negotiations.  
28 Additionally, Groth seeks general damages, punitive damages, and attorneys fees.

1 The Trustees now move to dismiss the counterclaim, and also move to strike the  
2 prayers for punitive damages and to reopen negotiation of the CBA, as well as the  
3 affirmative defenses pertaining to fraud, misrepresentation, and conflict of interest.

4 Groth opposes the motion to dismiss the first and second causes of action in the  
5 counterclaim, but does not respond to the motion to dismiss the third cause of action, or  
6 to the motion to strike.

## 7 DISCUSSION

### 8 A. Legal Standard

9 A motion to dismiss under Rule 12(b)(6) tests for the legal sufficiency of the  
10 claims alleged in the complaint. Ileto v. Glock, Inc., 349 F.3d 1191, 1199-1200 (9th Cir.  
11 2003). Review is limited to the contents of the complaint. Allarcom Pay Television, Ltd.  
12 V. Gen. Instrument Corp., 69 F.3d 381, 385 (9th Cir. 1995). To survive a motion to  
13 dismiss for failure to state a claim, a complaint generally must satisfy only the minimal  
14 notice pleading requirements of Federal Rule of Civil Procedure 8.

15 Rule 8(a)(2) requires only that the complaint include a “short and plain statement  
16 of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).  
17 Specific facts are unnecessary – the statement need only give the defendant “fair  
18 notice of the claim and the ground upon which it rests.” Erickson v. Pardus, 551 U.S.  
19 89, 93 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). All allegations  
20 of material fact are taken as true. Id. at 94. However, “a plaintiff’s obligations to provide  
21 the grounds of his entitlement to relief requires more than labels and conclusions, and a  
22 formulaic recitation of the elements of a cause of action will not do.” Twombly, 550 U.S.  
23 at 555 (citations and quotations omitted). Rather, the allegations in the complaint “must  
24 be enough to raise a right to relief above the speculative level. Id.

25 A motion to dismiss should be granted if the complaint does not proffer enough  
26 facts to state a claim for relief that is plausible on its face. See id. at 558-59. “[W]here  
27 the well-pleaded facts do not permit the court to infer more than the mere possibility of  
28 misconduct, the complaint has alleged – but it has not ‘show[n]’ – ‘that the pleader is

1 entitled to relief.” Ashcroft v. Iqbal, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1937, 1950 (2009).

2 Finally, in actions alleging fraud, “the circumstances constituting fraud or mistake  
3 shall be stated with particularity.” Fed. R. Civ. P. 9(b). Under Rule 9(b), the complaint  
4 must allege specific facts regarding the fraudulent activity, such as the time, date, place,  
5 and content of the alleged fraudulent representation, how or why the representation was  
6 false or misleading, and in some cases, the identity of the person engaged in the fraud.  
7 In re GlenFed Sec. Litig., 42 F.3d 1541, 1547-49 (9th Cir. 1994).

8 B. Motion to Dismiss

9 The Trustees move to dismiss the first two counts of the counterclaim on three  
10 separate bases. First, they contend that both § 302 of the Labor Management  
11 Relations Act (“LMRA”), 29 U.S.C. § 186, and ERISA § 515, 29 U.S.C. § 1145, bar  
12 claims of fraud by an employer against a pension trust fund where the alleged  
13 misrepresentations are not specified in a written agreement. Second, they argue that  
14 ERISA § 514, 29 U.S.C. § 1144, preempts Groth’s state law fraud and  
15 misrepresentation claims. Third, they assert that the pleadings fail to satisfy the  
16 heightened standard of Federal Rule of Civil Procedure 9(b).

17 Because the court finds that the ERISA § 514 argument is dispositive, and that  
18 the first and second causes of action in the counterclaim are preempted, the court  
19 GRANTS the motion on that basis. Thus, the court does not address the argument that  
20 the claims are precluded by LMRA § 302(a) or ERISA § 515, the argument that the  
21 claims conflict with Congress’ “comprehensive scheme of civil remedies” in  
22 contravention of ERISA § 502(a), 29 U.S.C. § 1132(a), or the assertion that the  
23 pleadings do not conform to Rule 9(b).

24 The Trustees assert that ERISA preempts Groth’s claims because they “relate to”  
25 an employee benefit plan as articulated by ERISA § 514(a). ERISA § 514(a) expressly  
26 preempts “state laws insofar as they . . . relate to any employee benefit plan.” 29  
27 U.S.C. 1144(a); see also Abraham v. Norcal Waste Sys., Inc., 265 F.3d 811, 819 (9th  
28 Cir. 2001).

1 State law “relates to” an ERISA benefit plan if there is a “connection with” or  
2 “reference to” such a plan. Abraham, 265 F.3d at 820. The “reference to” prong  
3 requires that the state law act immediately and exclusively upon ERISA plans or that the  
4 existence of ERISA plans is essential to the law's operation. Rutledge v. Seyfarth,  
5 Shaw, Fairweather & Geraldson, 201 F.3d 1212, 1216 (9th Cir. 2000). That prong is  
6 clearly inapplicable here.

7 In applying the “connection with” prong, the court looks to whether the state law  
8 encroaches on “relationships” regulated by ERISA. Abraham, 265 F.3d at 820-21; see  
9 also Geweke Ford v. St. Joseph's Omni Preferred Care, Inc., 130 F.3d 1355, 1358 (9th  
10 Cir. 1997). Under this “relationship” test, ERISA preempts a state law claim if the claim  
11 encroaches on the relationships ERISA regulates, “such as between plan and plan  
12 member, plan and employer, and plan and trustee.” Blue Cross of Cal. v. Anesthesia  
13 Care Assocs. Med. Group, 187 F.3d 1045, 1053 (9th Cir. 1999); see also Rutledge, 201  
14 F.3d at 1219.

15 An appropriate inquiry into ERISA preemption should examine “the objectives of  
16 the ERISA statute as a guide to the scope of the state law that Congress understood  
17 would survive as well as to the nature of the effect of the state law on ERISA plans.”  
18 Rutledge, 201 F.3d at 1216 (quoting California Div. of Labor Standards v. Dillingham,  
19 519 U.S. 316, 325 (1997)). Under one articulation of this test by the Ninth Circuit, a  
20 state law claim is preempted if it “encroaches on the relationships regulated by ERISA.”  
21 Geweke, 130 F.3d at 1358.

22 The Trustees persuasively argue that Groth’s claims are invalid because they  
23 implicate ERISA’s core concerns – the payment, collection, and security of pension  
24 contributions – and affect a relationship between plan and employer with respect to  
25 ensuring security of pension contributions. Specifically, they contend that Groth, a  
26 signatory employer, seeks restitution (refund) from an employee benefit plan of  
27 contributions paid on behalf of Groth employees who are plan participants and which  
28 contributions were paid pursuant to the express terms of a written CBA.

1 Groth's attempt to divorce its claim from the underlying ERISA complaint is  
2 unconvincing. Any of Groth's requested remedies would substantially impact collections  
3 under the agreement, the maintenance of current funds, and the payment of benefits to  
4 employees. While Groth correctly notes that Congress did not intend to preempt state  
5 regulation that is "quite remote from the areas with which ERISA is expressly  
6 concerned," Rutledge, 201 F.3d at 1217, its own claims do affect an area and a  
7 relationship regulated by ERISA. Moreover, ERISA preempts any state claim for  
8 restitution of contributions. See Chase v. Trustees of the Western Conference of  
9 Teamsters Pension Trust Fund, 753 F.2d 744, 746 (9th Cir. 1985).

10 Because Groth's first and second causes of action for fraud and  
11 misrepresentation against the Trust Funds substantially affect an ERISA-governed  
12 relationship, they "relate to" to an "employment benefit plan" and are preempted under §  
13 514(a). Accordingly, the Trustees' motion to dismiss the first two causes of action is  
14 GRANTED.

### 15 CONCLUSION

16 In accordance with the foregoing, the motion to dismiss the first and second  
17 causes of action asserted in the counterclaim is GRANTED. In addition, the motion to  
18 dismiss the third cause of action in the counterclaim and the motion to strike are  
19 GRANTED as unopposed.

20 A further case management conference will be held on November 18, 2010, at  
21 2:00 p.m.

22  
23 **IT IS SO ORDERED**

24 Dated: July 16, 2010

25   
26 \_\_\_\_\_  
27 PHYLLIS J. HAMILTON  
28 United States District Judge