

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIABOARD OF TRUSTEES OF THE  
AUTOMOTIVE INDUSTRIES  
WELFARE FUND, et al.,

Plaintiffs,

v.

GROTH OLDSMOBILE/CHEVROLET,  
INC.,

Defendant.

No. C 09-0465 PJH

**ORDER RE MOTIONS FOR  
SUMMARY JUDGMENT**

On March 2, 2011, the court heard argument in plaintiffs' and third-party defendants' motions for summary judgment. Plaintiffs Board of Trustees of the Automotive Industries Welfare Fund and Automotive Industries Pension Fund, and Jim Beno ("Trustees") appeared by their counsel Anne M. Bevington; defendant and third-party plaintiff Groth Oldsmobile/Chevrolet, Inc. ("Groth") appeared by its counsel Joshua Cliffe; and third-party defendants East Bay Automotive Counsel, Machinists Automotive Trades District Lodge No. 190 of Northern California, and East Bay Automotive Lodge No. 1546 (collectively, "the Union") appeared by their counsel Ezekiel Carder.

Having read the parties' papers and carefully considered their arguments, and the relevant legal authority, and good cause appearing, the court hereby GRANTS plaintiffs' motion in part and DENIES it in part, and GRANTS the Union's motion.

**BACKGROUND**

This is a case brought under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C §§ 1002, et seq.; § 301(a) of the National Labor Relations Act of 1947, 29 U.S.C. § 185(a); and the Declaratory Judgment Act, 28 U.S.C .§ 2201, et seq.

The plaintiff Trustees are named fiduciaries and plan administrators of employee benefit plans (union welfare and pension trust funds) and bring this action on behalf of fiduciaries, participants and beneficiaries of those trust funds.

Groth is an automobile dealership that is located in Livermore, California, and owned by Robin Groth-Hill. Groth contributes to union welfare and pension trust funds jointly administered by trustees representing employers, such as Groth, and unions (“Employer Trustees” and “Union Trustees” respectively). The Automotive Industries Pension Trust Fund (“the Pension Trust Fund”) is a multi-employer pension plan that is governed by a Board of Trustees consisting of five Union Trustees and five Employer Trustees.

Over the years, Groth has entered into a series of collective bargaining agreements (“CBAs”) with Machinists Automotive Trade District Lodge No. 190 of Northern California (“Machinists Union”), which represents some of Groth’s employees. Each CBA has included provisions for pension contributions. During a portion of the time relevant to this case, Craig Andrews (“Andrews”) served as a representative of the Machinists Union and also as a Trustee for the Pension Trust Fund. Andrews reported to Don Crosatto (“Crosatto”), who was an Area Director for the Machinists Union, and a Trustee; and Crosatto and Andrews both reported to plaintiff Jim Beno, also a Trustee.

Groth claims that starting in 2003, the Pension Trust Fund began experiencing financial difficulties, with the result that it no longer had enough money to pay out the promised benefits. Under the 2001-2005 contract, Groth was obligated to contribute \$586.66 per employee, on behalf of most of its employees. Groth contends that beginning in 2003, retirement benefits were cut back to nearly nothing.

During the negotiations regarding the CBA effective July 1, 2006 to June 30, 2008

1 (“2006 CBA”), Robin Groth-Hill proposed to reduce Groth’s pension contributions from  
2 \$586.66 to \$50.00 per employee per month and to direct the rest of the money into a  
3 401(k) plan, which she believed would provide superior retirement benefits to the  
4 bargaining unit employees.

5 Robin Groth-Hill testified that she discussed this proposal with Andrews, the Union’s  
6 chief negotiator. She claimed that Andrews repeatedly stated throughout the period  
7 between May and August 2006 that the contribution amount could not be reduced because  
8 of a “freeze,” and that “because there was this rule, there was no reduction allowed.” She  
9 testified further that Andrews assured her that “if the rule were to change, then you can  
10 reduce your pension.” Nevertheless, she conceded that she had nothing in writing  
11 confirming this agreement, which she asserted was made verbally. In his deposition,  
12 Andrews testified that he could not recall any specific conversation about reducing pension  
13 contributions.

14 Andrews sent a proposal to Groth on November 13, 2006, which stated, “Pension  
15 freeze at current amount. If Trust changes rule, pension may be decreased. Company  
16 and Union will meet and discuss if Trust changes rule.” In his deposition, however,  
17 Andrews stated that there was no “rule” in 2006 regarding an employer’s ability to reduce  
18 its pension contribution. For this reason, Groth asserts that Andrews misrepresented the  
19 existing situation with regard to the possibility of reductions.

20 In other testimony, however, when asked about the provision in the trust agreement  
21 that “[e]ach Employer shall make such Employer contributions” to the Trust Fund “as are  
22 required by the Pension Agreement applicable to each Employer[,] provided however that  
23 such contributions shall be on a monthly basis and no less than \$25.00 per month,”  
24 Andrews explained that he interpreted this provision as meaning that the minimum  
25 contribution was \$25.00 per month.

26 Andrews testified further that it was his understanding that the employers could  
27 reduce their contribution if they requested a reduction and if the employees agreed to the  
28 reduction. He added that the “most likely” reason that he told Robin Groth-Hill in the

1 November 13, 2006 communication that Groth and the Union would “meet and discuss if  
2 Trust changes rules” was that “the employees did not want to have any reductions in their  
3 pension,” and he was therefore “under the impression that we could not reduce pension.”

4 While the negotiations for the 2006 CBA were ongoing, a dispute arose among the  
5 Trustees regarding whether the Trust allowed employers to reduce contributions to the  
6 Pension Trust Fund. After they deadlocked on the Union Trustees’ motion to disallow any  
7 reduction in employer contributions in any contract received after August 8, 2008, the  
8 Trustees decided to submit the matter to arbitration.

9 Thus, Groth asserts, Andrews knew that a rule precluding reductions in contributions  
10 had been proposed but that its approval was contingent upon the results of the pending  
11 arbitration between the Union Trustees and the Employer Trustees. Groth contends that  
12 this is reflected in the minutes of the August 8, 2006 meeting at which the Trustees had  
13 deadlocked on the Union Trustees’ proposed amendment. The minutes indicate that  
14 Andrews made a motion to proceed to arbitration. Groth asserts this shows that two  
15 months prior to Andrews’ representation that the Trust Fund could not reduce pension  
16 contributions, he personally endeavored to prevent pension contribution reductions.

17 Groth has also provided declarations from two employees (Barry Chambers and Dan  
18 Bermingham), stating that they attended a meeting held at the dealership in 2006, where  
19 Andrews told them that if they could “drag their feet” for a few months, Groth would not be  
20 able to reduce pension contributions.

21 The parties finalized the 2006 CBA on January 18, 2007. Although Groth claims to  
22 have relied on Andrews’ representations when it concluded the negotiations without  
23 adjusting its future pension obligations, Groth also agreed to what it calls the “Reduction  
24 Agreement,” which it asserts was intended to trigger its proposed modifications if the  
25 Employer Trustees prevailed at the pending arbitration. This agreement, which was  
26 memorialized in Article XII of the 2006 CBA, provided that the “Freeze is depending on  
27 arbitration ruling. If ruled in favor of management, the company and union will meet to  
28 discuss changes/reductions.”

1 The arbitration was held on February 26, 2007. On March 30, 2007, the Arbitrator  
2 issued his decision, stating that the motion of the Union Trustees was “beyond the scope of  
3 the arbitrator’s authority as provided for in the Trust Agreement,” and that the matter  
4 therefore could not be arbitrated under the terms of the Trust. The result of this ruling was  
5 that the Union Trustees’ proposed prohibition on pension reductions was not adopted.

6 Groth asserts that Andrews failed to inform them of the result of the arbitration, and  
7 that Union member Steve Older affirmatively misrepresented the outcome. Groth claims  
8 that based on Andrews’ alleged misrepresentations, it continued making the monthly  
9 \$586.66 per employee contribution to the Pension Fund for the remainder of the term of the  
10 2006 CBA.

11 On June 20, 2007, the Trustees held a meeting at which they established the  
12 “Pension Contribution Rate Policy,” which they set forth in a communication to contributing  
13 employers, dated August 2007. The new Policy provided that “[e]ffective for agreements  
14 which are ratified on or after June 20, 2007 . . . each monthly pension rate contributed by  
15 an employer may not be reduced to a rate that is more than 25% less than what that rate  
16 was on June 19, 2007.”

17 On May 7, 2008, the Union and Groth entered into a CBA covering the period April  
18 25, 2008 through June 12, 2012 (“2008 CBA”). Groth claims that based on the alleged  
19 misrepresentations by Andrews during the negotiations for the 2006 CBA, it not only  
20 continued contributing \$586.66/month per employee to the Pension Trust Fund for the  
21 remainder of the 2006 CBA, but also agreed to a provision in the 2008 CBA that preserved  
22 the arrangement.

23 Groth contends that after it agreed to the new CBA, Robin Groth-Hill learned that  
24 Andrews had misled her about the “rules” of the Trust Fund. She wrote an “appeal” letter  
25 to the Trustees, dated June 2008, requesting relief in the form of reduced pension  
26 contributions, as she had proposed during the negotiations for the 2006 CBA. Groth claims  
27 that the Trustees failed to give the request serious, good-faith consideration, and that they  
28 summarily dismissed the matter without looking into it.

1 In October 2008, Groth stopped contributing at the contract rates, and began paying  
2 contributions of only \$50.00 per employee. The present action is based on Groth's failure  
3 to make contributions owing under the 2008 CBA. The Trustees allege Groth has  
4 continued to underpay its pension contributions since October 2008. The Trustees filed the  
5 original complaint on February 2, 2009, seeking recovery of delinquent contributions,  
6 pursuant to ERISA § 502, 29 U.S.C. § 1132; and also seeking a declaratory judgment that  
7 Groth is obligated to make those payments.

8 On April 20, 2009, Groth filed an answer to the complaint, and on April 30, 2009,  
9 Groth filed a third-party complaint against the Union, alleging breach of contract, fraud,  
10 negligent misrepresentation, and indemnity. The third-party defendants filed an answer on  
11 June 17, 2009.

12 On April 1, 2010, Groth filed an amended answer asserting 19 affirmative defenses,  
13 and a counterclaim alleging fraud, negligent misrepresentation, and conflict of  
14 interest/breach of conflict policy. Based on the allegations in the counterclaim, Groth  
15 sought to have its pension obligations reduced to \$50.00 retroactive from January 27,  
16 2007. In the alternative, it sought to "renegotiate" the terms of the pension contributions  
17 under the Trust "rules" that were applicable during the 2006 CBA negotiations.

18 The Trustees moved to dismiss the counterclaim; and to strike the reference to fraud  
19 in the answer, the eighteenth affirmative defense (based on "fraudulent misrepresentations  
20 made by [the Trustees] through the Trust Fund's Trustee Craig Andrews"), and the  
21 nineteenth affirmative defense (based on "conflict of interest of . . . Trustee, Craig  
22 Andrews"). Groth opposed the motion as to only the claims for fraud and negligent  
23 misrepresentation. On July 16, 2010, the court granted the motion as to the fraud and  
24 negligent misrepresentation claims, finding that they were preempted by ERISA § 514, 29  
25 U.S.C. § 1144; and also granted the motion as to the claim of conflict of interest/breach of  
26 conflict policy, and the motion to strike, as unopposed.

27 The plaintiff Trustees now seek summary judgment, as do the third-party  
28 defendants.

## DISCUSSION

### A. Legal Standard

Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion, and of identifying those portions of the pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Material facts are those that might affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute as to a material fact is “genuine” if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. Id.

Where the moving party will have the burden of proof at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party. Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 994 (9th Cir. 2007). On an issue where the nonmoving party will bear the burden of proof at trial, the moving party can prevail merely by pointing out to the district court that there is an absence of evidence to support the nonmoving party’s case. Celotex, 477 U.S. at 324-25. If the moving party meets its initial burden, the opposing party must then set out specific facts showing a genuine issue for trial in order to defeat the motion. Anderson, 477 U.S. at 250; see also Fed. R. Civ. P. 56(c), (e).

When deciding a summary judgment motion, a court must view the evidence in the light most favorable to the nonmoving party and draw all justifiable inferences in its favor. Anderson, 477 U.S. at 255; Hunt v. City of Los Angeles, \_\_\_ F.3d \_\_\_, 2011 WL 982475 at \*4 (9th Cir., Mar. 22, 2011).

### B. Plaintiffs’ Motion

The Trustees argue that Groth owes delinquent pension contributions under its 2008 CBA with the Machinists Union, and that the Trustees are entitled to recover those unpaid contributions under ERISA § 502(g)(2), 29 U.S.C. § 1132(g)(2). The Trustees seek an

award of unpaid contributions; interest on unpaid contributions; and costs and attorney's fees in an amount to be determined by the court. The Trustees also reserve the right to conduct an audit to determine whether all reports and contributions have been made for the period October 2008 to the present, or for any other unaudited period; and seek an order requiring Groth to contribute at contract rates, and prohibiting Groth from disposing of any assets without fair consideration.

The Trustees support their motion with a declaration by Michael Schumacher, the Fund Manager of Associated Third Party Administrators, which administers the Pension Trust Fund. Mr. Schumacher is the custodian of the books and records of the Trust Fund. In his declaration, Mr. Schumacher provides a calculation of the amount of unpaid contributions that Groth owed as of November 20, 2010, and attaches relevant supporting documentation, including the 2008 CBA; the incorporated Pension Agreement; portions of the Pension Trust Fund Agreement; the 1990 Trustees Resolution regarding liquidated damages on unpaid contributions; a summary of the contribution shortages owned by Groth for the period October 2008 to November 2010, plus underlying documents supporting that summary; and the calculation of interest and liquidated damages on Groth's unpaid contributions, through February 2, 2011.

In opposition, Groth argues that the motion should be denied because there are genuine disputes of material fact as to whether Groth's agreement to contribute to the Pension Trust Fund was fraudulently induced by the Trustees or the Trust Fund; and as to whether the doctrine of unclean hands or the doctrine of estoppel is a bar to the Trustees' claims. Groth also argues that the Trustees are not entitled to the injunctive relief they seek.

First, with regard to the affirmative defenses, Groth contends that it is not liable for the unpaid contributions because Andrews, a Trustee of the Pension Trust Fund and a representative of the Union, fraudulently induced Groth's agreement to pay contributions at an unreduced rate.

Groth concedes, as held in Southwest Administrators, Inc. v. Rozay's Transfer, 791



F.2d 769 (9th Cir. 1986), and Southern California Retail Clerks Union and Food Employers Joint Pension Tr. Fund v. Bjorklund, 728 F.2d 1262 (9th Cir. 1984), that ERISA § 515 limits the extent to which an employer can raise the misconduct of a third party as a defense to the collection action,<sup>1</sup> and, more importantly, that a defense of fraudulent inducement is not available in such an action.

Groth argues, however, that § 515 does not preclude all defenses to collection actions. Groth relies on the United States Supreme Court's decision in Kaiser Steel Corp. v. Mullins, 455 U.S. 72 (1982), where the Court noted that Congress did not say that employers should be prevented from raising all defenses, but rather "spoke in terms of 'unrelated' and 'extraneous' defenses," and did not even implicitly repeal any other statute that might be raised as a defense to a provision in a CBA. See id. at 88; see also Board of Trustees of Watsonville Frozen Food Welfare Tr. Fund v. California Co-op. Creamery, 877 F.2d 1415, 1424-25 (9th Cir. 1989) (noting that under Kaiser Steel, § 515 does not preclude all defenses to contribution collection actions, but only "unrelated" and "extraneous" defenses).

Here, Groth argues, it has not asserted any "unrelated" or "extraneous" defenses – but rather, has asserted defenses based specifically on the misconduct of Andrews, a Trustee of the Pension Trust Fund. Groth contends that in 2006, Andrews affirmatively misrepresented the Trust Fund's "rules," when he stated that a Trust Fund "rule" had to change in order for Groth to reduce the size of its pension contributions.

Groth argues further that even if the court finds that its contract-based defenses are

---

<sup>1</sup> Section 515 was added to ERISA in 1980 by § 306(a) of the Multiemployer Pension Plan Amendment Act ("MPPAA"), Pub. L. 96-364, 94 Stat. 1295, to allow trust funds to recover delinquent contributions from employers as expeditiously as possible. ERISA § 515 provides as follows:

Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

29 U.S.C. § 1145. In common with other ERISA provisions, § 515 is enforced via ERISA § 502(a)(3).

1 precluded by ERISA § 515, its equitable defenses of “unclean hands” and “estoppel” will  
2 apply, and asserts that the Trustees’ motion should be denied because disputed material  
3 issues of fact remain as to those two defenses.

4 In its second main argument, Groth contends that the Trustees are not entitled to  
5 injunctive relief in the form of an order requiring Groth to make contributions at an  
6 unreduced rate, and prohibiting Groth from transferring its assets without adequate  
7 consideration. Groth argues that to obtain such relief, the Trustees must show “a real  
8 threat of substantial or irreparable injury,” which Groth claims they have not done.

9 Viewing the evidence in the light most favorable to Groth, the court finds that since  
10 October 2008, Groth has failed to make required contributions to the Pension Trust Fund,  
11 and that Groth has not provided evidence sufficient to raise a genuine issue of fact as to  
12 any alleged wrongdoing by the Trust Fund. Accordingly, the motion is GRANTED as to the  
13 delinquent contributions claim.

14 Further, the motion is GRANTED as to the affirmative defenses of fraudulent  
15 inducement, unclean hands, and estoppel. Groth has not provided evidence as to those  
16 three defenses sufficient to create a triable issue regarding the Trustees’ claim for unpaid  
17 pension contributions under the 2008 CBA.

18 Groth cannot assert a defense of fraudulent inducement. As an initial matter, the  
19 court previously granted the Trustees’ motion to strike the eighteenth affirmative defense  
20 (fraudulent misrepresentations made by the Trustees through Andrews), as well as the  
21 allegations in fraud in the answer. Groth claims, however, that notwithstanding the court’s  
22 prior ruling, its fraud defense is preserved in the twelfth and fifteenth affirmative defenses.

23 The twelfth affirmative defense alleges “fraudulent misrepresentations made by the  
24 Machinists Union.” The fifteenth affirmative defense alleges that “the Trust knew” that  
25 Groth and the Union “had negotiated for a conditional reduction of pension contributions”  
26 and that this “negotiated condition” was “embodied in” the CBA, and was “satisfied” in  
27 2007,” which entitled Groth to a reduction of pension contributions. Neither of these  
28 defenses “preserves” a defense of fraudulent misrepresentation by the Trustees, nor, for

1 reasons stated below, is either defense sufficient to bar the Trustees' action in this case.

2 Fraudulent inducement cannot be asserted as a defense in an action for recovery of  
3 delinquent contributions. Generally, courts that have analyzed ERISA § 515 and its  
4 legislative history have concluded that employers are responsible for ERISA plan  
5 contributions regardless of defenses challenging the validity of the underlying CBA. See,  
6 e.g., MacKillop v. Lowe's Market, Inc., 58 F.3d 1441, 1443 (9th Cir. 1995). Sponsors of the  
7 legislation intended the provision to "simplify contribution collection actions" by curtailing  
8 "lengthy, costly, and complex litigation concerning claims and defenses unrelated to the  
9 employer's promise and the Plan's entitlement to the employer's contributions. . . . Sound  
10 national pension policy demands that employers . . . not be permitted to repudiate their  
11 pension promises." California Co-op. Creamery, 877 F.2d at 1424 (quoting 126 Cong.  
12 Rec. S. 11673 (Aug. 26, 1980); 126 Cong. Rec. H. 7899 (Aug. 26, 1980)).

13 Given Congress' stated intent, the Ninth Circuit has interpreted § 515 to limit the  
14 affirmative defenses available to employers defending against delinquent contribution  
15 claims. In Bjorklund, union trust funds brought suit under the LMRA and ERISA to collect  
16 unpaid contributions, and the employer alleged that he had been fraudulently induced by a  
17 union representative into signing the CBAs. The court denied the defense, noting that  
18 under applicable law, "the range of defenses to such a suit is severely limited." Id., 788  
19 F.2d at 1265-66 (citations omitted). In particular, the court noted that when Congress  
20 enacted the MPPAA in 1980, it included the provision that "[e]very employer who is  
21 obligated to make contributions . . . shall . . . make such contributions." Id. at 1265 (quoting  
22 29 U.S.C. § 1145).

23 Bjorklund acknowledged that under Kaiser Steel, an employer can successfully  
24 defend a suit for delinquent contributions by showing that the promise to make  
25 contributions was itself illegal. Bjorklund, 728 F.2d at 1265-66 (citing Kaiser Steel, 455  
26 U.S. at 88). However, Bjorklund concluded, while "a defense is properly allowable when it  
27 relates to a promise to make contributions that is illegal," a defense that the promise was  
28 fraudulently induced is not a legitimate defense to a suit for delinquent contributions. Id. at

1 1265-66; see also California Co-op. Creamery, 877 F.2d at 1424-25 .

2 In Rozay's Transfer, the Ninth Circuit reaffirmed that where the alleged  
3 misrepresentation by the Union goes to the employer's inducement to enter into the  
4 agreement, rather than to his understanding of the basic nature of the transaction, the  
5 claim that a promise to make contributions was fraudulently induced could not be  
6 considered "a legitimate defense to the trust fund's action to recover delinquent  
7 contributions." Id., 771 F.2d at 773 (citing Bjorklund, 728 F.2d at 1266).

8 In a subsequent case, Rozay's Transfer v. Local Freight Drivers, Local 208, 850  
9 F.2d 1321 (9th Cir. 1988) ("Rozay's Transfer II"), the same employer brought an action  
10 against the union, alleging that the union had fraudulently induced it to enter into the CBA,  
11 based on the same allegations of misrepresentation as in the prior case. The court found  
12 that the employer would not have entered into the CBA if he had known that it obligated  
13 him to pay retroactive contributions. Id. at 1327. The court also held that its prior ruling  
14 that the employer was bound by the CBA and was obligated to pay the contributions,  
15 regardless of whether the union had misrepresented the contents of the CBA, had no  
16 bearing on the question whether the union itself could be held liable for fraudulently  
17 inducing the employer to enter into the CBA. Id. at 1331.

18 Implicit in the twelfth affirmative defense is the allegation that the Union fraudulently  
19 induced Groth to enter into the 2006 CBA. As stated above, the defense of fraudulent  
20 inducement is barred by ERISA § 515. Groth's reliance on Kaiser Steel Corp. is misplaced,  
21 because the issue in that case was that "illegal promises" will not be enforced in cases  
22 controlled by federal law; and because the case did not involve any actions of the trust  
23 fund, but rather a provision in the CBA itself, which allegedly violated federal law. Here, by  
24 contrast, Groth is not claiming that the contribution obligation in the CBA is illegal under  
25 federal law or otherwise, but rather is asserting that it was fraudulently induced – a defense  
26 that is extraneous to the terms of the contract.

27 As for the fifteenth affirmative defense, it appears to be predicated on an untrue  
28 premise. The undisputed evidence shows that during the negotiation for the 2006 CBA,

1 Groth and the Union agreed to the insertion of a provision in the CBA stating that if the  
2 arbitrator ruled in favor of management, “the company and union will meet to discuss  
3 changes/reductions.” There is no evidence of any agreement regarding a “conditional  
4 reduction of pension contributions” – simply an agreement that depending on the outcome  
5 of the arbitration, the parties would “meet to discuss” a possible reduction.

6 The other two defenses that Groth relies on – unclean hands and estoppel – are  
7 also inapplicable. Both defenses seek to preclude the Trust Fund’s recovery of unpaid  
8 contributions based on the same alleged “fraud” by Andrews during the negotiations for the  
9 2006 CBA. In addition, each of these defenses is inapplicable because Groth cannot meet  
10 the necessary elements.

11 The doctrine of unclean hands applies when a party seeks affirmative relief, but is  
12 itself guilty of conduct involving fraud, deceit, unconscionability, or bad faith; and the  
13 misconduct directly relates to the matter at issue, injures the other party, and affects the  
14 balance of equities between the litigants. Precision Instrument Mfg. Co. v. Automotive  
15 Maintenance Mach. Co., 324 U.S. 806, 814-15 (1945). This defense serves as a bar to  
16 recovery where the plaintiff’s conduct is inequitable, and that conduct relates to the subject  
17 matter of its claims. Brother Records, Inc. v. Jardine, 318 F.3d 900, 909 (9th Cir. 2003).

18 Groth contends that all the elements are met, as the Trustees are seeking  
19 affirmative relief (recovery of unpaid contributions) on behalf of the Pension Trust Fund;  
20 and are guilty of conduct involving fraud, deceit, unconscionability, and bad faith, as a  
21 Trustee (Andrews) misled Groth as to its “contribution rights” in order to preclude Groth  
22 from reducing its rate of pension contributions. In addition, Groth asserts that the matter in  
23 issue is the pension contributions, which were affected by the alleged misrepresentations;  
24 and that the conduct of the Trustees and the Trust Fund has injured Groth and affected the  
25 balance of equities between the parties. Groth contends that because there is a significant  
26 issue of material fact as to whether the Trustees and Trust Fund have acted with “unclean  
27 hands,” and are therefore precluded from seeking the delinquent contributions, the  
28 Trustees’ motion for summary judgment should be denied.

1           The court finds that Groth has failed to raise a genuine issue as to whether  
2 Andrews' representation was an action of the Trust Fund. While the evidence shows that  
3 Andrews was one of ten Trustees of the Pension Trust Fund at the time of the 2006  
4 negotiations, there is no evidence that he was acting in his capacity as Trustee when he  
5 negotiated the contract or when he made the allegedly false representations about the  
6 Trust Fund "rule."

7           In addition, there is no evidence that the Board of Trustees delegated authority to  
8 Andrews to negotiate a CBA with Groth, or to make representations on its behalf when he  
9 did so, or that the Trustees had such authority to delegate – or that it did anything to give  
10 Groth the reasonable impression that Andrews was acting on the Board's behalf. To the  
11 contrary, the evidence provided by Groth shows that Andrews acted in his capacity as a  
12 bargaining representative for the Union when he negotiated the 2006 CBA with Groth, and  
13 that Robin Groth-Hill believed Andrews was acting on behalf of the Union during the  
14 negotiations.

15           Groth claims that the Trust Fund "ratified" Andrews' misconduct by summarily  
16 dismissing Groth's "appeal" without any investigation. The parties agree that the "appeal"  
17 took the form of a letter dated June 2008 that Robin Groth-Hill sent to the Board of  
18 Trustees of the Trust Fund, in which she complained that Union representatives had failed  
19 to tell her that there had been an opportunity to reduce her pension contribution when the  
20 employers' side prevailed in the arbitration. She also requested that the Trust Fund modify  
21 Groth's contribution obligation to \$50.00 per employee per month, retroactive to July 2006;  
22 reimburse Groth for the amounts in excess of that sum that it had paid for that period; pay  
23 interest on the entire sum; and pay Groth's attorney's fees.

24           Robin Groth-Hill told the Board that "My exact language in my contract states that if  
25 the arbitration is successful then I get to go to the \$50 level." However, this statement is at  
26 odds with the actual language in the 2006 CBA, which provided that "Pension freeze is  
27 depending on arbitration ruling, if ruled in favor of management, the company and union will  
28 meet to discuss changes/reductions."

1           Moreover, there is no evidence that the Trustees “summarily dismissed” the “appeal”  
2 without giving it due consideration, as Groth claims. The Trustees have provided the text of  
3 the minutes of the August 5, 2008, Trust Funds Delinquency Committee Meeting, stating  
4 that

5           [t]he Delinquency Committee reviewed the request by Groth Oldsmobile/  
6 Chevrolet, Inc. to be able to reduce contribution rates due to their claim that  
7 they were not notified of the new policy. After review and discussion, the  
Committee denied their request based on the Collection Policy that is in effect  
and the requirements of the Pension Protection Act of 2006.

8           Under N.L.R.B. v. Amax Coal Co., a Div. of Amax, Inc., 453 U.S. 322 (1981),  
9 trustees can neither require employer contributions not required by the original collectively  
10 bargained contract, nor compromise the claim of the union or the employer with regard to  
11 the latter’s contributions. Id. at 335-36. Trustees are required to enforce the terms of the  
12 CBA regarding employer contributions “for the sole benefit of the beneficiaries of the fund.”  
13 United States v. Carter, 353 U.S. 210, 220 (1957). Thus, as a matter of law, the Trustees  
14 were precluded from granting the relief requested in Groth-Hill’s “appeal,” as they had no  
15 power to modify Groth’s CBA or to reduce its pension contributions.

16           As for Robin Groth-Hill’s request for a refund of contributions, and for interest and  
17 attorney’s fees, ERISA § 403(c) provides that “the assets of a plan shall never inure to the  
18 benefit of any employer and shall be held for the exclusive purposes of providing benefits to  
19 participants in the plan and their beneficiaries and defraying reasonable expenses of  
20 administering the plan.” 29 U.S.C. § 1103(c)(1). While trustees are permitted under  
21 ERISA § 403(c)(2)(A) to refund contributions that an employer makes because of a mistake  
22 of fact or law, see 29 U.S.C. § 1103(c)(2)(A), the circumstances under which an employer  
23 can obtain a refund are limited to those described in that section of ERISA. Award Service,  
24 Inc. v. Northern Cal. Retail Clerks, 763 F.2d 1066, 1070-71 (9th Cir. 1985).

25           In this case, there is no evidence that Groth was requesting a refund because of a  
26 mistake. Nor can the Trustees’ denial of Robin Groth-Hill’s “appeal” be considered a  
27 ratification of any activity by Andrews. Rather, it was a proper exercise of their fiduciary  
28 duty under ERISA, and therefore cannot create a genuine issue of material fact as to

1 Groth's affirmative defense of unclean hands.

2 The estoppel defense is also inapplicable. Groth has failed to provide evidence  
3 sufficient to raise a genuine issue as to whether the Trust Fund itself engaged in the  
4 conduct that Groth complains of, either because of Andrews' status as a trustee, or  
5 because of "ratification."

6 The elements of this defense are that the party to be estopped must know the facts,  
7 and must intend that his conduct be acted on so that the party asserting the estoppel has a  
8 right to believe it is so intended; and the party asserting the estoppel must be ignorant of  
9 the true facts, and must rely on the other party's conduct to his injury. Operating Eng'rs'  
10 Pension Tr. Fund v. Clark's Welding & Machine, 688 F.Supp. 2d 902, 914 (N.D. Cal. 2010)  
11 (trust fund assessed penalty against employer for withdrawal from pension plan, and  
12 employer challenged it on the basis that trust fund had previously represented that an  
13 agreement settling a claim for delinquent contributions would cover every obligation the  
14 employer had against the trust fund).

15 Groth contends that each of these elements is met. Groth asserts that at the time of  
16 the alleged misrepresentations, the Trust Fund knew it had no rules prohibiting contribution  
17 reductions. Groth claims that Andrews intended that his misrepresentations be acted on,  
18 as his position remained the same throughout the negotiations, and even instructed Union  
19 members to "drag their feet" until the Trust Fund's contribution rules had changed. Groth  
20 claims that Robin Groth-Hill was not aware that the Trust Fund had no rule prohibiting  
21 contribution reductions, and that she relied on Andrews' representations. Thus, Groth  
22 asserts, there is a genuine issue of material fact as to whether the Trust Fund is estopped  
23 from collecting the delinquent contributions.

24 However, Groth has not provided evidence that the Trust Fund led Groth to believe  
25 that something was true and then later tried to deny it. Groth claims that Andrews made a  
26 false representation that the Trust Fund had a "rule" prohibiting reductions. Proper  
27 application of estoppel would be to prevent the party who made the representation  
28 (Andrews) from later claiming that there was no such rule. However, Groth does not assert



1 that Andrews later denied having said that, but rather that Andrews said it originally  
2 knowing it was false. The Trustees are correct that this is just another variant of a fraud  
3 defense, and as such, is not permissible as a defense to a § 515 collection action.

4 The declarations of Groth employees Barry Chambers and Don Bermingham, in  
5 which they claim that at a meeting of Groth's employees, Andrews told them that if they  
6 could delay for a few months, Groth would not be able to reduce pension contributions, are  
7 irrelevant to this issue, as the statements do not pertain to any representation by the Trust  
8 Fund directed at Groth, the employer.

9 Moreover, Groth has established neither that Andrews' representation was an action  
10 of the Trust Fund, nor that the Trustees "ratified" Andrews' misrepresentation by  
11 "summarily dismissing" Robin Groth-Hill's "appeal." Groth provides no evidence regarding  
12 the Trustees' consideration of the "appeal," other than the minutes of the August 5, 2008  
13 committee meeting, at which they denied Robin Groth-Hill's request for a reduction in  
14 contribution amounts. The Trustees are correct in arguing that they had no authority to  
15 reduce the stated pension contributions amounts as set forth in the CBA. Groth has  
16 provided no evidence of "unclean hands."

17 The motion is DENIED as to the prayer for injunctive relief, as injunctive relief is  
18 neither a claim nor a defense, but rather is a remedy. The court finds, however, that the  
19 Trustees are entitled to injunctive relief to effectuate their collection of the delinquent  
20 contributions, and that the revised proposed order should include such a provision.

21 Finally, the Trustees have moved in the alternative for a finding of undisputed facts.  
22 That alternative motion is DENIED, as unauthorized under Rule 56. A party may "move for  
23 summary judgment" on a "claim or defense" or on "part of [a] claim or defense." Fed. R.  
24 Civ. P. 56(a). If, in ruling on the motion, the court "does not grant all the relief requested," it  
25 "may enter an order stating any material fact . . . that is not genuinely in dispute and  
26 treating the fact as established in the case." Fed. R. Civ. 56(g). While Rule 56 allows the  
27 court in its discretion to find that particular facts are not in dispute, it does not authorize  
28 parties to move for "partial summary judgment" as to a particular fact.

C. The Union's Motion

The Union seeks summary judgment as to all causes of action alleged in the third-party complaint. In the first cause of action, Groth alleges that the Union breached the 2006 CBA by failing to notify Groth that the Employer Trustees prevailed at the arbitration, by misrepresenting the outcome of the arbitration, and by failing to meet and discuss and implement the Reduction Agreement. The Union asserts that this claim is preempted by LMRA § 301, and that Groth failed to exhaust contractual remedies to cure the breach. Groth does not oppose this part of the motion.

In the second cause of action, Groth alleges that the Union committed fraud by misrepresenting to Groth the outcome of the arbitration. Groth claims that it relied on the Union's representations because it believed the Union was in a superior position to know the outcome of the arbitration. Groth adds, in its opposition to the Union's motion, that the Union also committed fraud when Andrews misinformed Groth regarding the pension contribution "rules."

In the third cause of action for negligent misrepresentation, Groth alleges that as a party to the CBA, the Union owed Groth a duty to represent all material facts fairly and honestly, and that it breached this duty by misrepresenting the "rules" of the Trust and the outcome of the arbitration.

In the fourth cause of action, Groth alleges that if it is held liable for damages (unpaid pension contributions) as alleged in the first amended complaint, it will be entitled to complete indemnification by the Union.

The Union argues that the second cause of action for fraud and the third cause of action for negligent misrepresentation fail because both claims are preempted. State law claims that are substantially dependent on an interpretation of a CBA are preempted under LMRA § 301. See Cramer v. Consolidated Freightways, Inc., 209 F.3d 1122, 1129 (9th Cir. 2000). The Union contends that because the alleged fraud arises out of enforcement and obligations existing under the CBA, and because this claim arises out of the same acts and conduct that form the basis of the § 301 claim (the first cause of action), the fraud claim is

1 preempted.

2       The Union also asserts that both the fraud and the negligent misrepresentation  
3 claims are preempted by § 301 because the court would have to interpret the CBA in order  
4 to determine the duty that the Union allegedly owed to Groth. Groth alleges in the third-  
5 party complaint that the Union owed a duty to represent material facts fairly and honestly  
6 because of the bargaining relationship. The Union argues that this duty is not found in  
7 federal labor law, and appears to be derived solely from the relationship between the  
8 parties, as expressed in the CBA.

9       The Union argues further that Groth cannot prove the elements of fraud or the  
10 elements of negligent misrepresentation. The elements of a claim of fraud are  
11 misrepresentation, knowledge of falsity, intent to defraud (*i.e.*, to induce reliance), justifiable  
12 reliance, and resulting damage. Lazar v. Superior Court, 12 Cal. 4th 631, 638 (1996). The  
13 same elements comprise a cause of action for negligent misrepresentation, except that  
14 there is no requirement of intent to induce reliance. Caldo v. Owens-Illinois, Inc., 125 Cal.  
15 App. 4th 513, 519 (2004). In both causes of action, the plaintiff must show that it actually  
16 relied on the misrepresentation. Alliance Mortgage Co. v. Rothwell, 10 Cal. 4th 1226, 1239  
17 & n.4 (1995); see also Conrad v. Bank of America, 45 Cal. App. 4th 133, 157 (1996). Here,  
18 the Union asserts that Groth cannot show reasonable reliance.

19       In addition, where a fraud claim is based on alleged nondisclosure of facts, the  
20 plaintiff must establish that the defendant was under a legal duty to disclose those facts.  
21 See Milne Employees Ass'n v. Sun Carriers, Inc., 960 F.2d 1401, 1408 (9th Cir. 1992);  
22 OCM Principal Opportunities Fund v. CIBC World Markets Corp., 157 Cal. App. 4th 835,  
23 845 (2007). The Union contends that in this case, Groth cannot show any such legal duty.

24       First, with regard to the alleged misrepresentations concerning the outcome of the  
25 arbitration, the Union asserts that there is no basis for Groth's allegation in the third-party  
26 complaint that the Union or any Union representative was in a better position to know the  
27 outcome of the arbitration than Groth was, particularly given the involvement of Groth's  
28 counsel Robert Hulteng, who also served as counsel for the Employer Trustees of the

1 Pension Trust Fund in the arbitration. The Union argues that because Groth had direct  
2 knowledge of the facts from its own counsel, it was not reasonable for Groth to rely on  
3 statements made by representatives of the Union.

4 Second, with regard to the alleged misrepresentations concerning the “rules” of the  
5 Trust, the Union asserts that Groth cannot prove any type of reliance, because it entered  
6 into the 2006 CBA with the language regarding the pending arbitration in place, and agreed  
7 in the CBA to be bound by the pension contribution provisions. The Union argues that for  
8 Groth to say that it would not have entered into the CBA unless it was convinced that the  
9 Employer Trustees would prevail at the arbitration and the Union would agree to a  
10 reduction of pension contributions is an unrealistic and unsupported reading of the CBA  
11 provision.

12 The Union anticipates that Groth will rely on Rozay’s Transfer II, but argues that the  
13 facts in the present case are distinguishable. In Rozay’s Transfer II, the employer relied on  
14 the union’s representation that it would persuade the trust fund to waive certain  
15 contributions for past work, and learned only after signing the CBA that the past  
16 contributions would be required (and indeed, that the trust fund had already rendered an  
17 adverse decision on his request to forgive the unpaid contributions). Id., 850 F.2d at 1327-  
18 28. Here, the Union asserts, Groth entered into the 2006 CBA well aware of the  
19 uncertainty surrounding pension contributions (as evidenced by the reference in the 2006  
20 CBA to the pending arbitration of the dispute between the Trustees), and without any  
21 certainty as to what would occur if the Employer Trustees prevailed in the arbitration.

22 The only relevant agreement memorialized in the 2006 CBA is the obligation to  
23 “meet to discuss changes/reductions.” The Union asserts that the CBA imposed no  
24 obligation on the parties to reach agreement on the issue, and no obligation on the Union to  
25 notify Groth of the results of the arbitration. The Union argues that there can be no  
26 fraudulent inducement when, at the time of contract execution, neither party knows what  
27 the future will hold or what alternatives might have existed to the agreed contract language.

28 Moreover, the Union asserts, Groth subsequently entered into the 2008 CBA, which,

1 on its face, did not provide for any reduction to pension contributions. Robin Groth-Hill  
2 testified in her deposition that in April 2008, Groth's counsel Robert Hulteng told her that  
3 the Union should have informed her of the result of the arbitration. (Mr. Hulteng is also  
4 counsel for the Northern California Auto Dealers Coalition, of which Groth is a member.)  
5 Nevertheless, the Union notes, at no time between receiving this advice from Mr. Hulteng  
6 and the time of signing the 2008 CBA in May 2008 did Groth seek to amend the CBA  
7 language regarding pension contributions.

8 Similarly, the Union contends, there is no basis to find that the Union had a duty to  
9 disclose any information to Groth about the arbitration or about the "rules" of the Trust. The  
10 Machinists Union and Groth were not in a confidential relationship, and the information  
11 was presumably equally available to both parties. The Union argues that absent an  
12 identified duty to disclose (which appears nowhere in the CBA), there can be no claim for  
13 fraud based on failure to disclose. Moreover, the Union asserts, it is separate from the  
14 entity that is the Trust, and had no obligation to provide Groth with legal information  
15 regarding the Trust.

16 Finally, the Union argues that the damages claimed by Groth are speculative. The  
17 Union contends that nothing in the 2006 CBA requires a reduction in pension contributions,  
18 as it provides only that the parties shall "meet to discuss changes/reductions." The Union  
19 claims that the use of the phrase "meet to discuss" shows that there was no agreement  
20 between the parties at the time the contract was entered into as to what the result of such  
21 discussions would be, and also shows that any of a number of alternatives might be on the  
22 table.

23 The Union contrasts the above-cited provision in the 2006 CBA with the language in  
24 the 2008 CBA, which provides for the \$586.66 monthly contribution, but also states that "[i]f  
25 during the term of this agreement the Employer gains the ability to reduce pension  
26 contributions, any amount of said reduction over [a certain amount] will be allocated to the  
27 employees in the form of a monthly check or contribution to the Machinists 401K plan."  
28 This CBA was executed on May 8, 2008, which was after Groth had learned of the result of

1 the arbitration. Thus, the Union argues, Groth's refusal to pay contributions under the  
2 present CBA cannot be said to be related to the prior CBA, which provides the basis for the  
3 fraud claim.

4 In opposition, Groth argues that the fraud and negligent misrepresentation claims  
5 are not preempted because the court does not need to interpret the CBA in order to resolve  
6 them. Groth asserts that while the CBA may be evidence of fraud, it is by no means the  
7 only example of the Union's fraud. Groth claims that the Union defrauded Groth by stating  
8 that "there's this freeze and rule out there," and that Groth could not reduce its rate of  
9 pension contributions. Groth asserts that it is undisputed that in 2006, there was no rule  
10 prohibiting reductions in employer contributions. Groth asserts that there is no need to  
11 interpret CBA to show that such misrepresentations are fraudulent.

12 Groth also contends that it has pled and proven the elements of fraud, although it  
13 also argues that the question of reasonable reliance is a factual issue that is not  
14 appropriate for summary judgment. Groth argues that in asserting that the fraud claim is  
15 based on an allegation that the Union misrepresented the outcome of the arbitration, the  
16 Union has misconstrued the fraud claim, because the fraud claim is in fact based on the  
17 Union's fraudulent misrepresentations during contract negotiations – the representations  
18 regarding the Trust Fund's contribution "rules."

19 Nevertheless, Groth asserts that its reliance on Andrews' representations about the  
20 "rules" of the Trust was reasonable because Robin Groth-Hill had a long-standing  
21 relationship of trust with Andrews, and had no reason to doubt his word. Groth does not  
22 respond to the Union's argument that Groth's reliance on the representations (or non-  
23 representations) concerning the arbitration was not reasonable, but simply asserts that the  
24 fraud claim survives even if its reliance on Andrew's representations concerning the  
25 outcome of the arbitration was unreasonable, and even if the Union had no duty to disclose  
26 the results of the arbitration.

27 The court finds that the motion must be GRANTED as to the fraud claim. First,  
28 Groth cannot prove the elements of fraud. Groth effectively conceded in its opposition that

1 it did not justifiably rely on the Union's statements about the outcome of the arbitration, and  
2 has provided no evidence to support its claim that it justifiably relied on the statements  
3 made by Andrews during the negotiations for the 2006 CBA.

4 Groth argues, however, that Andrews lied about the existence of a purported Trust  
5 Fund "rule" prohibiting a reduction in the contribution amount; and that Groth relied on  
6 those alleged lies when it agreed not to reduce the pension contribution in the 2006 CBA.  
7 Groth asserts that this case is similar to Rozay's Transfer II, where the Union failed to  
8 inform Groth of the existence of a material fact – the fact that there was no "rule" prohibiting  
9 reductions in contributions. Groth claims that the Union's "omission" here is  
10 indistinguishable from a Union's omission of a Trust Fund's decision regarding the  
11 collection of delinquent contributions.

12 Groth supports its argument regarding the fraud claim with citations to deposition  
13 testimony from Robin Groth-Hill and Craig Andrews, most of which is summarized above in  
14 the "Factual Background" section. When Andrews was asked what he said to Robin Groth-  
15 Hill, he responded, "Most likely that the Trust – or the employees did not want to have any  
16 reductions in their pension, and I was under the impression that we could not reduce  
17 pension." He then added in response to a follow-up question, "No, I don't believe in  
18 reduction. The Trust Fund – and unfortunately, after we've gone through this – does allow  
19 a reduction of \$25. But as a business representative representing the employees, there  
20 was no rule about reductions."

21 This exchange supports the Union's position, as Andrews testified that it was his  
22 impression that the contributions could not be reduced. Andrews also testified that he did  
23 not recall telling Robin Groth-Hill that the Trust Fund would not allow her to reduce the  
24 pension, but that what he did recall telling her – based on his communications with the  
25 employees – was that the employees did not support Groth's proposal to reduce the  
26 pension contributions.

27 The 2006 CBA contained a specific reference to the potential outcome of the  
28 arbitration proceeding. Thus, Groth, as a party to the CBA, knew that the issue of

1 reductions in contributions was disputed, and that the Trustees were seeking resolution of  
2 this contested issue in arbitration. The CBA plainly reflected the parties' agreement that if  
3 the Arbitrator ruled in favor of management, Groth and the Union would "meet to discuss  
4 changes/reductions." Because the resolution of the issue was not clear at the time of the  
5 contract negotiations, Groth could not have reasonably relied on the statements made by  
6 Andrews during the contract negotiations in 2006 for what happened in subsequent  
7 negotiations for the successor agreement in 2008 (after the Arbitrator's decision was  
8 reached).

9 Moreover, even if there were misstatements in 2006 (which is not clear), the events  
10 surrounding the February 2007 arbitration hearing and subsequent decision, and Groth's  
11 participation in an industry organization directly involved in the dispute, mitigate any  
12 misstatements made in 2006.

13 Similarly, the motion is GRANTED as to the negligent misrepresentation claim.  
14 Groth, in essence, is claiming that the Union should have told it about the results of the  
15 March 30, 2007 arbitration decision a full year before the parties consummated the 2008  
16 Agreement, which is the Agreement that Groth now concedes that it breached. However,  
17 Groth does not explain why the Union had any obligation to notify it of the decision, given  
18 the involvement of Mr. Hulteng, Groth's attorney, in the arbitration proceeding, where he  
19 was counsel for the Employer Trustees.

20 Moreover, in contrast to the situation in Rozay's Transfer II, where the union  
21 deliberately withheld from the employer the fact that the trust fund had already determined  
22 prior to the execution of the CBA that it would not waive the collection of delinquent  
23 contributions, neither party in the present case knew the outcome of the arbitration at the  
24 time that Groth signed the 2006 CBA.

25 The court in Rozay's Transfer II also found that the employer would not have signed  
26 the CBA if it had known that the Trust Fund would not waive the delinquent contributions.  
27 Here, there is no evidence that Groth would not have signed the CBA if it had been aware  
28 that the Trust Fund's "rules" did allow for a reduction in pension fund contributions.



1 Moreover, Andrews testified to the effect that the employees did not want the pension  
2 contributions reduced. Finally, Groth cannot prove reliance, because the CBA contained  
3 language addressing what would be done in the event that the Arbitration went in favor of  
4 the Employer Trustees. That is, the parties would meet and discuss a possible reduction.

5 With regard to preemption, the Union argues that Groth appears to be attempting to  
6 assert a tort claim under § 301 based on negligent misrepresentation or fraudulent  
7 concealment, and that this theory has been rejected by the courts, most recently by the  
8 United States Supreme Court in Granite Rock Co. v. International Bhd. of Teamsters, 130  
9 S.Ct. 2847 (2010). The Union also contends, as indicated above, that the resolution of  
10 Groth's tort claims will require the court to interpret the CBA. Groth argues, however, that  
11 the fraud and negligent misrepresentation claims are not preempted because the court  
12 does not need to interpret the CBA in order to resolve either claim. The court is not entirely  
13 persuaded by the Union's argument that the fraud and negligent misrepresentation claims  
14 are preempted by LMRA § 301, but need not resolve this issue in light of its other rulings.

15 Finally, the court finds that there is no basis to support an indemnification claim,  
16 given the failure of the other claims. Accordingly, the motion is also GRANTED as to the  
17 fourth cause of action.

18 Moreover, Groth alleges fraud in connection with the negotiations surrounding the  
19 2006 CBA, but the Trustees are seeking delinquent contributions due and owing to the  
20 Pension Trust Fund in connection with the subsequent 2008 CBA. Groth does not (and  
21 cannot) claim that the alleged fraud from the negotiations over the 2006 CBA carried over  
22 to the 2008 CBA. For this reason, the facts do not support a claim for indemnification,  
23 because there is no connection between the events surrounding the negotiation for the  
24 2006 CBA, and Groth's failure to pay contributions owing under the subsequent 2008 CBA.

### 25 CONCLUSION

26 In accordance with the foregoing, plaintiffs' motion for summary judgment is  
27 GRANTED in part and DENIED in part; and the third-party defendants' motion is  
28 GRANTED as to the four causes of action alleged in the third-party complaint.

1 No later than April 27, 2011, plaintiffs shall submit a declaration supporting the  
2 amounts of delinquent contributions and interest owing as of that date, along with a  
3 proposed order. In addition, while the court makes no findings in this order as to injunctive  
4 relief, it is an appropriate remedy, and any proposal regarding injunctive relief shall also be  
5 included in the proposed order. Plaintiffs shall meet and confer with Groth regarding the  
6 proposed order prior to submitting it to the court.

7  
8 **IT IS SO ORDERED.**

9 Dated: April 11, 2011



---

PHYLLIS J. HAMILTON  
United States District Judge