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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST ADMINISTRATORS,
INC.,

Plaintiff,

v.

ACE PAVING CO., INC.,

Defendant.

Case No. 10-cv-647-JPD

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

I. INTRODUCTION AND SUMMARY CONCLUSION

Plaintiff Northwest Administrators, Inc. moves the Court for summary judgment against defendant Ace Paving Co., Inc. Dkt. 8; Dkt. 13. Defendant opposes the motion. Dkt. 12. After careful consideration of plaintiff's motion, defendant's opposition, plaintiff's reply, and the balance of the record, the Court GRANTS plaintiff's motion for summary judgment.

II. BACKGROUND

The relevant facts of this case, as set forth by plaintiff's briefs and supporting documents, are uncontroverted by defendant. Plaintiff is the authorized administrative agent and assignee of the Washington Teamsters Welfare Trust (the "Trust"). The Trust is an

1 employee benefit plan established by the Washington Teamsters Welfare Trust Agreement and
2 Declaration of Trust (the “WTWT Trust Agreement”), and governed by § 302(c)(5) of the
3 Labor Management Relations Act of 1947 and the Employee Retirement Income Security Act
4 of 1974 (“ERISA”). *See* 29 U.S.C. § 186(c)(5); 29 U.S.C. § 1001 *et seq.*, as amended (1988).
5 The Trust provides medical, dental, vision, time loss, and death benefits to eligible employees.
6 *See* Dkt. 11 at 2-3 (Ditter Decl.); *id.*, Ex. A. at 5.

7
8 Employers bound by a 2007-2012 collective bargaining agreement (“CBA”) with a
9 local Teamsters union, the International Brotherhood of Teamsters Local 589 (“Local 589”),
10 are required to remit monthly contributions to the Trust at specified rates “for each
11 compensable man hour of Teamsters employed by such Employers in work contained under
12 the terms of this Agreement.” *See id.*, Ex. C at § 7.2.1. The CBA also requires employers to
13 make their required contributions to the Trust “on or before the tenth (10th) day of the month
14 following the month in which the hours were worked. . . .” *Id.* The defendant is such an
15 employer.

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17 Defendant became bound to the terms of the 2007-2012 CBA, as well as the WTWT
18 Trust Agreement, when it entered into a Heavy Construction Compliance Agreement (the
19 “Compliance Agreement”) with Local 589 on July 28, 2003.¹ *See id.* at 4 (Ditter Decl.); *id.*,
20 Ex. B. Defendant acknowledges that it is a party to the above-described agreements, and is
21 therefore obligated to remit contributions to the Trust by the tenth day of each month following
22 work by his eligible Teamster employees. *See* Dkt. 12, Ex. 1 at 2 (Yingling Decl.).

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¹ The Compliance Agreement provides that defendant is bound by any “successive collective bargaining agreements” to a 2003-2007 CBA, which in this case is the Teamsters 2007-2012 Building, Heavy and Highway Construction Labor Agreement. *Id.*, Exs. B and C. Similarly, although the Compliance Agreement states that defendant is bound by the Teamsters Construction Industry Welfare Trust (“TCIWT”) Agreement, it also provides that defendant is a party to agreements entered into by TCIWT’s “successors in trust.” *Id.* Following a merger effective January 1, 2010, the Trust became the TCIWT’s successor trust and the WTWT Trust Agreement became the TCIWT Agreement’s successor trust agreement. *See id.* at 1-2 (Ditter Decl.).

1 Pursuant to the WTWT Trust Agreement, a participating employer who makes
2 delinquent contributions is required to pay “liquidated damages of 20% of the amount of
3 Employer contributions due on such date following the date on which Employer contributions
4 became delinquent. . . .” Dkt. 11, Ex. A at 8. In addition, the WTWT Trust Agreement
5 provides that employers must pay interest for the delinquent contributions, and “reimburse the
6 Trust Fund for all of its costs, including . . . all reasonable attorneys’ fees incurred by the Trust
7 Fund in connection” with the collection of the employer’s delinquent payments. *Id.*

8
9 Defendant acknowledges that its contributions to the Trust for work performed in
10 February and March 2010 “were not timely paid.” Dkt. 12, Ex. 1 at 3-4 (Yingling Decl.).
11 These contributions were due on March 10, 2010, and April 10, 2010, respectively. *See id.* On
12 April 15, 2010, plaintiff initiated this action against defendant for the delinquent contributions,
13 which totaled \$19,896.16, as well as liquidated damages, interest, and attorneys’ fees and
14 costs. *See* Dkt. 1 at 2-3; Dkt. 11 at 8 (Ditter Decl.). Approximately one month later, on May
15 17, 2010, defendant paid the full amount of the delinquent contributions. *See* Dkt. 9 at 1-2
16 (Azus Decl.); Dkt. 11 at 8 (Ditter Decl.); Dkt. 12, Ex. 1 at 3 (Yingling Decl).

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18 Plaintiff’s motion for summary judgment seeks \$3,979.23 in liquidated damages, which
19 is 20% of \$19,896.16, as well as \$105.58 in interest, \$2,858.40 in attorneys’ fees, and \$453.70
20 in costs. *See* Dkt. 11, Ex. E; Dkt. 14 (Leahy Decl.). Defendant acknowledges its obligation to
21 pay plaintiff interest, attorneys’ fees, and costs, and does not challenge plaintiff’s calculations.²
22 *See* Dkt. 12, Ex. 1 at 4 (Yingling Decl.). Defendant contends, however, that the liquidated
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25 ² Although defendant states that it “does not dispute that it will owe ‘reasonable’ attorney’s fees and
26 costs to the Trust in this action,” defendant also requests an award of attorneys’ fees under 29 U.S.C. § 1132(g)(1)
in the event that the Court finds “that 29 U.S.C. § 1132(g)(2) does not apply to this action.” Dkt. 12, Ex. 1 at 4
(Yingling Decl.); *see id.* at 13-14. As discussed below, the Court finds that § 1132(g)(2), rather than § 1132(g)(1),
governs this case, and therefore defendant is not entitled to attorneys’ fees.

1 damages provision of the WTWT Trust Agreement constitutes an unenforceable penalty under
2 state and federal common law, and that liquidated damages may not be awarded under ERISA
3 if there are no unpaid contributions at the time judgment is entered. *See* Dkt. 12; *id.*, Ex. 1 at
4 6-8 (Yingling Decl.). For the reasons discussed below, the Court finds defendant’s arguments
5 unpersuasive.

6 III. JURISDICTION

7 The parties have consented to this matter proceeding before the undersigned United
8 States Magistrate Judge pursuant to 28 U.S.C. § 636(c). *See* Dkt. 5 at 3. The Court has
9 exclusive jurisdiction over this action pursuant to 29 U.S.C. §§ 1132(e)(1) and (f). Venue is
10 proper because the Trust Funds are administered in this district. 29 U.S.C. § 1132(e)(2).

12 IV. DISCUSSION

13 A. *Summary Judgment Standard*

14 Summary judgment is appropriate when, viewing the evidence in the light most
15 favorable to the nonmoving party, there exists “no genuine issue as to any material fact” such
16 that “the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A
17 material fact is a fact relevant to the outcome of the pending action. *See Anderson v. Liberty*
18 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). Genuine issues of material fact exist when the evidence
19 would enable “a reasonable jury . . . [to] return a verdict for the nonmoving party.” *Id.* In
20 response to a summary judgment motion that is properly supported, the nonmoving party may
21 not rest upon mere allegations or denials in the pleadings, but must set forth specific facts
22 demonstrating a genuine issue of fact for trial, and produce evidence sufficient to establish the
23 existence of the elements essential to his case. *See* Fed. R. Civ. P. 56(e); *Celotex Corp. v.*
24 *Cattrett*, 477 U.S. 317, 323 (1986). A mere scintilla of evidence, however, is insufficient to
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1 create a factual dispute. *See Anderson*, 477 U.S. at 252. To defeat a motion for summary
2 judgment, the non-moving party must make more than conclusory allegations, speculations, or
3 argumentative assertions that material facts are in dispute. *T.W. Elec. Service, Inc. v. Pacific*
4 *Elec. Contractors Ass'n*, 809 F.2d 626, 630-32 (9th Cir. 1987).

5 B. *ERISA Governs the Liquidated Damages Clause of the WTWT Trust Agreement*

6 Defendant states that, in addition to the delinquent contributions for February and
7 March 2010, it has consistently been forced to delay its required contributions to the Trust over
8 the past two years due to the economic downturn and resulting loss in revenues. Dkt. 12, Ex.
9 1 at 6-7 (Yingling Decl.). In addition, defendant asserts that the “liquidated damages that
10 Northwest has forced Ace to pay over the past two years was a principle (sic) cause of Ace
11 being late in making its payments.” *Id.* at 7. Thus, defendant contends that the liquidated
12 damages provision of the WTWT Trust Agreement operates as a penalty, which is
13 unenforceable under state and federal common law. *See* Dkt. 12 at 11. To support this
14 argument, defendant relies upon the Washington Supreme Court’s assertion that in order for a
15 liquidated damages clause in a lease to be enforceable, “the amount fixed must be a reasonable
16 forecast of just compensation for the harm that is caused by the breach . . . [and] the harm must
17 be such that it is incapable or very difficult of ascertainment.” *Walter Implement, Inc. v.*
18 *Focht*, 107 Wn.2d 553, 558-59, 730 P.2d 1340 (1987). Defendant also cites the Ninth Circuit’s
19 decision in *Idaho Plumbers & Pipefitters Health & Welfare Fund v. United Mech. Contractors,*
20 *Inc.* as support for the proposition that a liquidated damages provision is void as a penalty
21 under federal common law unless the harm caused by a breach is very difficult or impossible to
22 estimate, and the amount fixed is a reasonable forecast of just compensation for the harm
23 caused. 875 F.2d 212, 215 (9th Cir. 1989) (holding that ERISA’s damages provision was
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1 inapplicable because the defendant had paid all contributions owed to the trust before the
2 lawsuit was initiated).

3 Defendant’s reliance upon state and federal common law in this case is unavailing,
4 because ERISA governs cases such as this one, where an employer owed contributions to an
5 employee benefit plan at the time the lawsuit was initiated. *See* 29 U.S.C. § 1144(a) (providing
6 that ERISA “shall supersede any and all State laws insofar as they may now or hereafter relate
7 to any employee benefit plan. . . .”); *Egelhoff v. Egelhoff*, 532 U.S. 141, 146 (2001) (observing
8 that ERISA’s preemption provision is “clearly expansive”); *General Am. Life Ins. Co. v.*
9 *Castonguay*, 984 F.2d 1518, 1521 (9th Cir. 1993) (“ERISA’s preemption clause is one of the
10 broadest ever enacted by Congress, and it preempts even generally applicable laws, not just
11 laws aimed exclusively at employee benefit plans. . . .”) (internal citations omitted). ERISA
12 provides specific remedies for delinquent contributions, including an award of “(A) the unpaid
13 contributions, (B) interest on the unpaid contributions, (C) an amount equal to the greater of—
14 (i) interest on the unpaid contributions, or (ii) liquidated damages provided for under the plan
15 in an amount not in excess of 20 percent (or such higher percentage as may be permitted under
16 Federal or State law) of the amount determined by the court under subparagraph (A), [and] (D)
17 reasonable attorney’s fees and costs of the action, to be paid by the defendant. . . .” 29 U.S.C.
18 § 1132(g)(2).

21 Furthermore, ERISA obligates participating employers to make contributions to a
22 multi-employer trust fund in accordance with the terms of the trust agreement or collective
23 bargaining agreement. *See* 29 U.S.C. §§ 1102(a), 1103(a), 1145. The language of a written
24 trust agreement defines the rights and obligations of the parties to the trust to the extent they
25 are consistent with ERISA. *Id.* at § 1145; *Santa Monica Culinary Welfare Fund v. Miramar*
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1 *Hotel Corp.*, 920 F.2d 1491, 1493-94 (9th Cir. 1990) (internal citations omitted). As noted, the
2 WTWT Trust Agreement provides that an employer shall pay liquidated damages of 20% of
3 the amount of the delinquent contributions. *See* Dkt. 11, Ex. A at 8. Defendant has made no
4 showing in these proceedings that this provision is somehow inconsistent with ERISA, which
5 also provides for liquidated damages in the amount of 20% of any delinquent contributions.

6 Finally, the Ninth Circuit has held that § 1132(g)(2) is “mandatory and not
7 discretionary.” *Northwest Adm'rs Inc. v. Albertson's, Inc.*, 104 F.3d 253, 257 (9th Cir. 1996)
8 (quoting *Operating Eng'rs Pension Trust v. Beck Eng'g & Surveying, Co.*, 746 F.2d 557, 569
9 (9th Cir. 1984)). Section 1132(g)(2) requires only that: “(1) the employer must be delinquent
10 at the time the action is filed; (2) the district court must enter a judgment against the employer;
11 and (3) the plan must provide for such an award.” *Id.* (citing *Idaho Plumbers & Pipefitters*
12 *Health & Welfare Fund*, 875 F.2d at 215).

13 Here, the Court finds that all three criteria for a mandatory award under § 1132(g)(2)
14 are satisfied. *See* Dkt. 12 at 5. Defendant admits that there were unpaid contributions at the
15 time plaintiff filed this lawsuit, and that the WTWT Trust Agreement provides for an award of
16 liquidated damages. *See id.*; *id.*, Ex. 1 at 2, 4 (Yingling Decl.). As discussed in greater detail
17 below, with respect to the final factor, the Ninth Circuit has held that “mandatory fees are
18 available under § 1132(g)(2) ‘notwithstanding the defendant’s post-suit, prejudgment payment
19 of the delinquent contributions themselves.’” *Albertson's*, 104 F.3d at 258 (quoting *Carpenters*
20 *Amended & Restated Health Benefit Fund v. John W. Ryan Constr. Co.*, 767 F.2d 1170, 1175
21 (5th Cir. 1985)).
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23 Accordingly, the state and federal common law cases cited by defendant are inapposite,
24 as such law is preempted by ERISA. While the Court is sympathetic to defendant’s apparent
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1 plight, defendant is obligated to pay liquidated damages as a result of its failure to timely pay
2 contributions to the Trust, regardless of its financial situation.

3 C. *Liquidated Damages Are Available Pursuant to § 1132(g)(2) If Unpaid*
4 *Contributions Existed at the Time the Lawsuit was Filed*

5 Defendant argues that ERISA is inapplicable to this case because a judgment for unpaid
6 contributions is a necessary predicate for an award of liquidated damages under § 1132(g)(2).
7 Dkt. 12 at 5. Specifically, he asserts that where “there are no remaining ‘unpaid contributions’
8 to enter a judgment on . . . no judgment may be awarded in favor of the plan for unpaid
9 contributions.” Dkt. 12 at 6. Defendant relies upon statutory language providing for an award
10 of liquidated damages “in an action to recover delinquent contributions . . . in which a
11 judgment in favor of the plan is awarded. . . .” 29 U.S.C. § 1132(g)(2). He also points to
12 statutory language providing that a liquidated damages award may not exceed “20 percent . . .
13 of the amount [of unpaid contributions] determined by the court under subparagraph (A). . . .”
14 *Id.* § 1132(g)(2)(C)(ii).

15
16 As the plaintiff points out, defendant’s arguments are unavailing because the Ninth
17 Circuit has held that an employer is liable for mandatory fees under § 1132(g)(2), including
18 liquidated damages, “notwithstanding the defendant’s post-suit, prejudgment payment of the
19 delinquent contributions themselves.” *Albertson’s*, 104 F.3d at 258. Significantly, the Ninth
20 Circuit has also expressly rejected defendant’s argument that “a mandatory award under
21 § 1132(g)(2) is improper because the employer voluntarily paid the delinquent contributions
22 . . . thus the district court did not enter judgment against [the employer] relating to those
23 contributions. . . .” *Id.* Instead, the court held that mandatory “[f]ees may be awarded even
24 though there is no judgment on the merits or when the dispute has become moot because relief
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1 is otherwise obtained.” *Id.* (citing *Lads Trucking Co. v. Board of Trustees of W. Conference of*
2 *Teamsters Pension Trust Fund*, 777 F.2d 1371, 1375 (9th Cir. 1985)).

3 Indeed, defendant appears to concede that an interpretation of § 1132(g)(2) which
4 authorizes an award of liquidated damages as long as unpaid contributions existed at the time
5 the lawsuit was filed “is arguably the prevailing Ninth Circuit interpretation. . . .” Dkt. 12 at 9.
6 Nevertheless, defendant posits that Ninth Circuit precedent incorrectly interprets the plain
7 language of § 1132(g)(2). *Id.* at 9-10.

8
9 The Court declines defendant’s invitation to interpret § 1132(g)(2) in a manner that is
10 contrary to longstanding Ninth Circuit precedent. In doing so, the Court notes that with the
11 exception of the Sixth Circuit, every Court of Appeals to consider the issue concurs with the
12 Ninth Circuit’s interpretation of § 1132(g)(2). *See UAW Local 259 Soc. Sec. Dep’t v. Metro*
13 *Auto Ctr.*, 501 F.3d 283, 288-89 (3d Cir. 2007) (providing that § 1132(g)(2) remedies apply to
14 all contributions unpaid at the time a suit is filed, even if the debts are partially satisfied before
15 judgment); *Operating Eng’rs Local 139 Health Benefit Fund v. Gustafson Constr. Corp.*, 258
16 F.3d 645, 654 (7th Cir. 2001) (“The interest and liquidated-damages provisions of ERISA
17 apply . . . only to contributions that are unpaid at the date of suit (not the date of judgment, as
18 argued by the defendant.)”); *Iron Workers Dist. Council v. Hudson Steel Fabricators &*
19 *Erectors, Inc.*, 68 F.3d 1502, 1507 (2d Cir. 1995) (“[T]he provisions of § 1132(g)(2)(B) and
20 (C) make reference to unpaid contributions not to establish a limit on qualifying judgments, but
21 rather because the amount of an award of interest or liquidated damages should logically be
22 predicated upon the amount of the unpaid contributions originally at issue, whether or not
23 outstanding at the time of judgment, since that amount correctly measures the damage caused
24 by the delinquency.”). *See also Carpenters & Joiners Welfare Fund v. Gittleman Corp.*, 857
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1 F.2d 476, 478 (8th Cir. 1988) (agreeing that “unpaid contributions” accounted for in
2 § 1132(g)(2) means “contributions unpaid at the time suit was filed[.]”).

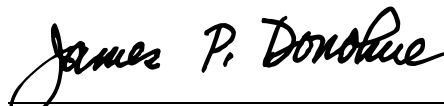
3 Thus, defendant’s argument that § 1132(g)(2) is inapplicable to this case is unavailing.
4 Pursuant to the WTWT Trust Agreement and § 1132(g)(2), plaintiff is entitled to liquidated
5 damages, interest, attorneys’ fees and costs.

6 V. CONCLUSION

7 For the reasons discussed above, the Court finds no issues of fact regarding plaintiff’s
8 entitlement to the total amount of liquidated damages sought in this action, which equals 20%
9 of the amount of defendant’s delinquent contributions for the February and March 2010
10 employment periods. Accordingly, the Court hereby ORDERS as follows:

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- 12 (1) Plaintiff’s motion for summary judgment, Dkt. 8, is GRANTED.
 - 13 (2) Judgment is awarded in favor of plaintiff and against defendant in the following
14 amounts: \$3,979.23 for liquidated damages; \$105.58 for interest; \$2,858.40 for
15 attorneys’ fees; and \$453.70 for costs.
 - 16 (3) The Clerk is directed to send copies of this Order to counsel for all parties.

17 DATED this 30th day of September, 2010.

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20 JAMES P. DONOHUE
21 United States Magistrate Judge
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