

01

02

03

04

05

06

07

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08

09 NORTHWEST ADMINISTRATORS, INC., )

10 Plaintiff, )

11 v. )

12 ACE PAVING CO, INC., )

13 Defendant. )

CASE NO. C13-1082-MAT

ORDER GRANTING  
PLAINTIFF’S MOTION FOR  
SUMMARY JUDGMENT

14

15

INTRODUCTION

16

17

18

19

20

Plaintiff moves the Court for summary judgment against defendant Ace Paving Co., Inc. (“Ace Paving”). (Dkt. 11.) Defendant did not oppose plaintiff’s motion. The Court deems defendant’s failure to oppose to be an admission that the motion has merit. See Local Civil Rule 7(b)(2). The Court also, for the reasons described below, finds plaintiff entitled to summary judgment.

21

BACKGROUND

22

The Western Conference of Teamsters Pension Trust Fund (“Trust Fund” or “Trust”)

01 provides retirement and other benefits to eligible participants. The Trust Fund is covered by  
02 the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* (ERISA), which was  
03 amended to include the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. §  
04 1381, *et seq.* (MPPAA).

05 Ace Paving is bound to a Trust Agreement with the Trust Fund. (*See* Dkt. 12, Exs. B &  
06 C.) The Trust Agreement contains provisions restating and supplementing the MPPAA, as  
07 well as provisions requiring the payment of liquidated damages for all delinquent trust fund  
08 contributions, interest accruing on those delinquent contributions, and attorneys' fees and costs  
09 incurred in connection with collecting unpaid contributions. (*Id.*, Ex. A at Article IV, Section  
10 3, and at 19-24.)

11 Plaintiff Northwest Administrators Inc. administrates the Trust Fund and attests that, on  
12 or about June 1, 2012, Ace Paving withdrew from the Trust. By letter dated January 10, 2013,  
13 plaintiff notified Ace Paving of the assessment of withdrawal liability, pursuant to the MPPAA,  
14 in the amount of \$593,037.96, and set a schedule for payments to commence on March 10,  
15 2013. (*Id.*, Ex. D.) Ace Paving did not request any review by the Trust Fund, did not initiate  
16 arbitration, and, to date, has not made any payments for its withdrawal liability.

#### 17 DISCUSSION

18 The MPPAA requires that an employer who withdraws from a multiemployer plan pay  
19 its share of liability for the employees' unfunded vested benefits attributable to the employers'  
20 participation. 29 U.S.C. § 1381; *Penn Cent. Corp. v. Western Conference of Teamsters*  
21 *Pension Trust Fund*, 75 F.3d 529, 531 (9th Cir. 1996). This assessment of withdrawal liability  
22 "ensures that employees and their beneficiaries [are not] deprived of anticipated retirement

01 benefits by the termination of pension plans before sufficient funds have been accumulated in  
02 the plans.” *Pension Benefit Guar. Corp. v. R. A. Gray & Co.*, 467 U.S. 717, 720 (1984).  
03 When an employer withdraws, the plan sponsor must determine the amount of liability, notify  
04 the employer of the amount due, and demand payment in accordance with the listed schedule.  
05 29 U.S.C. §§ 1382, 1399(b)(1).

06 Disputes over determinations of withdrawal liability must be arbitrated in the first  
07 instance, after requesting a review of the liability assessment, within the time limits specified in  
08 the MPPAA. § 1401(a)(1). An employer that fails to timely initiate arbitration waives any  
09 chance to present a defense that could have been brought before an arbitrator. *See Teamsters*  
10 *Pension Trust Fund-Bd. of Trs. of W. Conference v. Allyn Transp. Co.*, 832 F.2d 502, 504-05  
11 (9th Cir. 1987). “Congress intended that disputes over withdrawal liability would be resolved  
12 quickly, and established a procedural bar for employers who fail to arbitrate disputes over  
13 withdrawal liability in a timely manner.” *Bowers v. Transportacion Maritima Mexicana, S.A.*,  
14 901 F.2d 258, 263 (2d Cir. 1990) (quoted source and quotation marks omitted).

15 Employers may request review of the liability determination within ninety days of  
16 notification. 29 U.S.C. § 1399(b)(2). Either party may initiate arbitration proceedings within  
17 the earlier of sixty days after the date of notification of the initial review or 120 days after the  
18 employer requests review. § 1401(a). If no arbitration is initiated, the demanded payments  
19 become “due and owing” on the schedule set forth in the initial assessment; that is, within sixty  
20 days of the initial notice of liability. §§ 1399(c)(2), 1401(b)(1), (d).

21 The plan sponsor may require payment of the total outstanding amount due, §  
22 1399(c)(5) (“In the event of a default, a plan sponsor may require immediate payment of the

01 outstanding amount of an employer’s withdrawal liability, plus accrued interest on the total  
02 outstanding liability from the due date of the first payment which was not timely made.”), and  
03 may bring a collection action in federal court, § 1401(b)(1). A plan sponsor may also be  
04 entitled to interest, liquidated damages, and attorney’s fees and costs. See § 1451(b) (“In any  
05 action ... to compel an employer to pay withdrawal liability, any failure of the employer to make  
06 any withdrawal liability payment within the time prescribed shall be treated in the same manner  
07 as a delinquent contribution”) and § 1132(g)(2) (“in any action [involving delinquent  
08 contributions] in which a judgment in favor of the plan is awarded, the court shall award the  
09 plan ... (B) interest ... (C) an amount equal to the greater of (i) interest on the unpaid  
10 [withdrawal liability], or (ii) liquidated damages provided for under the plan in an amount not  
11 in excess of 20 percent. . . , (D) reasonable attorney’s fees and costs . . .”). See also *Lads*  
12 *Trucking Co. v. Board of Trustees*, 777 F.2d 1371, 1375 (9th Cir. 1985) (plaintiff entitled to  
13 attorney’s fees in withdrawal liability action); *Northwest Adm’rs, Inc. v. Northern Distrib.,*  
14 *LLC*, No. C10-0507-JCC, 2011 U.S. Dist. LEXIS 7343 at \*10 (W.D. Wash. Jan. 26, 2011) (“By  
15 the time this civil action notified Defendant of its liability, the time for review and arbitration  
16 lapsed, and delinquency set in, the full \$1,144,508.29 remained unpaid. Accordingly, 20  
17 percent liquidated damages of \$228,901.65 are appropriate.”)

18 In this case, plaintiff moves for summary judgment on its claim that defendant Ace  
19 Paving must pay its assessed withdrawal liability to the Trust Fund in the amount of  
20 \$593,037.96, and liquidated damages in the amount of \$118,607.59, together with interest,  
21 attorney’s fees, and costs incurred by plaintiff. Summary judgment is appropriate when a  
22 “movant shows that there is no genuine dispute as to any material fact and the movant is entitled

01 to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party is entitled to  
02 judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an  
03 essential element of his case with respect to which he has the burden of proof. *Celotex Corp. v.*  
04 *Catrett*, 477 U.S. 317, 322-23 (1986). The Court must draw all reasonable inferences in favor  
05 of the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587  
06 (1986).

07 The Court finds plaintiff entitled to summary judgment. There is no dispute that Ace  
08 Paving was a party to a labor agreement requiring it to pay monthly contributions to the Trust  
09 Fund at specified rates for eligible employees, that Ace Paving withdrew from the Trust, and  
10 that plaintiff notified Ace Paving of its withdrawal liability, set a schedule, and made a demand  
11 for payment. There is further no dispute that Ace Paving failed to request a review by the  
12 Trust Fund, did not initiate arbitration, and, to date, has not made any payments for its  
13 withdrawal liability. Because no arbitration proceeding was initiated pursuant to 29 U.S.C. §  
14 1401(a)(1), the amounts demanded by the Trust Fund plan sponsor became due and owing in  
15 full. Further, because the full amount of the withdrawal liability is now due, plaintiff is also  
16 entitled to liquidated damages equal to twenty percent of the withdrawal liability total, as well  
17 as interest, attorney’s fees, and costs.

18 CONCLUSION

19 For the reasons set forth above, plaintiff’s motion for summary judgment against Ace  
20 Paving (Dkt. 11) is GRANTED. Plaintiff is entitled to withdrawal liability in the amount of  
21 \$593,037.96 and liquidated damages in the amount of \$118,607.59, as well as interest,  
22 attorney’s fees, and costs in an amount to be determined. Plaintiff is directed to submit

01 documentation supporting an award of interest, attorney's fees, and costs within **ten (10) days**  
02 of the date of this Order.

03 DATED this 18th day of December, 2013.

04  
05 

06 Mary Alice Theiler  
07 Chief United States Magistrate Judge  
08  
09  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22