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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LOCALS 302 AND 612 OF THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS
CONSTRUCTION INDUSTRY HEALTH
AND SECURITY FUND, et al.,

Plaintiffs,

v.

BARRY CIVIL CONSTRUCTION INC.,

Defendant.

CASE NO. C16-387-BAT

**ORDER GRANTING PLAINTIFFS’
MOTION FOR SUMMARY
JUDGMENT**

Plaintiffs Local 302 of the International Union of Operating Engineers; Locals 302 and 612 of the International Union of Operating Engineers – Employers Construction Industry Retirement Fund; Locals 302 and 612 of the International Union of Operating Engineers Construction Industry Health and Security Fund; and the Western Washington Operating Engineers – Employers Training Trust Fund, filed this action to collect unpaid trust fund contributions, liquidated damages, interest, attorney’s fees, costs, and auditor fees from defendant Barry Civil Construction Inc. (“Barry Civil”). Dkt. 1. Plaintiffs have moved, without opposition, for summary judgment. Dkt. 11. For the following reasons, the Court **GRANTS** plaintiffs’ motion for summary judgment.

1 **BACKGROUND**

2 The relevant facts are undisputed. On March 3, 2015, plaintiffs initiated this action
3 pursuant to the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* (“ERISA”)
4 and Section 301(a) of the Taft–Hartley Act, 29 U.S.C. § 185(a), to recover unpaid trust fund
5 contributions, liquidated damages, audit fees, interest, attorney’s fees, and costs. Dkt. 1.
6 Plaintiffs are three trust funds and a local union. The trust fund plaintiffs operate under § 302 of
7 the Labor Management Relations Act of 1947 to provide certain benefits to eligible participants.
8 Local 302 is an employee organization within the meaning of the ERISA. Defendant Barry Civil
9 employed members of a bargaining unit represented by Local 302.

10 Defendant Barry Civil is a signatory to a compliance agreement with Locals 302 and 612.
11 By signing the compliance agreement, Barry Civil agreed to adopt the collective bargaining
12 agreement (“CBA”) in place at the time, and any successor agreement. Under the CBA, Barry
13 Civil was also bound by three trust agreements: Locals 302 and 612 Operating Engineers –
14 Employers Retirement Fund Trust Agreement, Locals 302 and 612 International Union of
15 Operating Engineers Construction Industry Health and Security Fund Trust Agreement, and
16 Western Washington Operating Engineers – Employers Training Fund Trust Agreement
17 (collectively, “Trust Agreements”). The Trust Agreements require that Barry Civil report and
18 pay monthly contributions to the trust fund plaintiffs, based in part upon the hours of
19 compensation Barry Civil pays its employees who are members of the bargaining unit
20 represented by Local 302. The Trust Agreements also require that Barry Civil pay liquidated
21 damages, interest, payroll auditor fees, attorneys’ fees, and costs in relation to the collection of
22 delinquent contributions.

23 Barry Civil was required under the Trust Agreements to self-report and timely pay
contributions to the trust funds. The trust funds rely on these self-reports but also conduct their

1 own regular compliance testing through the Welfare and Pension Administration Service, Inc.
2 (“WPAS”), the entity responsible for administering the trust funds. Barry Civil’s noncompliance
3 in failing to pay certain required contributions was discovered by WPAS during “for-cause”
4 testing in March 2016, covering the period January 1, 2014 through September 30, 2015. The
5 WPAS testing found Barry Civil owed \$214,580.68 in underpayments for fringe benefit
6 contributions, \$26,056.49 for liquidated damages, and \$28,505.40 for interest, pursuant to the
7 Trust Agreements. The amounts owed during the testing period were revised by the trust fund
8 plaintiffs in September 2016, to reflect contributions, liquidated damages, and interest already
9 paid pursuant to a March 2015 settlement agreement stemming from other litigation.

10 Accordingly, plaintiffs’ motion for summary judgment seeks \$68,491.76 in contributions,
11 \$8,503.92 for liquidated damages, \$21,943.28 in interest as of September 20, 2016 (to continue
12 to accrue until contributions have been paid in full), reasonable attorneys’ fees and costs (to be
13 determined at a later date), and reasonable audit fees (to be determined at a later date).¹

14 **DISCUSSION**

15 A court should grant summary judgment when, viewing the evidence in the light most
16 favorable to the nonmoving party, there exists “no genuine dispute as to any material fact” and
17 the moving party is “entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also*
18 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears the initial
19 burden of showing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477
20 U.S. 317, 323 (1986). If the moving party meets this burden, it is entitled to summary judgment

22 ¹ Plaintiffs calculate the audit fees to have been \$3,771.00 as of September 20, 2016, but contend
23 these fees will increase “if this litigation continues and/or if additional testing is required and
further work is performed by WPAS in compliance testing.” Dkt. 11 at 14. Plaintiffs’ Proposed
Order requests “reasonable testing fees to be determined at a later date.” Dkt. 11-1 at 2.

1 if the nonmoving party fails to present specific facts showing that there is a genuine issue for
2 trial. *Celotex*, 477 U.S. at 324.

3 Plaintiffs have shown, and defendant does not dispute, that under the ERISA and
4 pursuant to the CBA and Trust Agreements, defendant is liable for unpaid contributions from
5 January 1, 2014 through September 30, 2015, interest on that amount, liquidated damages, and
6 attorney’s fees and costs, as adjusted by the amounts already paid pursuant to a March 2015
7 settlement agreement.² Under 29 U.S.C. § 1132(g)(2), in an action seeking payment of
8 delinquent contributions in which the court awards judgment in favor of the plan, the court shall
9 award the plan:

- 10 (A) the unpaid contributions,
- 11 (B) interest on the unpaid contributions,
- 12 (C) an amount equal to the greater of—
 - 13 (i) interest on the unpaid contributions, or
 - 14 (ii) liquidated damages provided for under the plan in an amount not in
15 excess of 20 percent (or such higher percentage as may be
16 permitted under Federal or State law) of the amount determined by
17 the court under subparagraph (A),
- 18 (D) reasonable attorney’s fees and costs of the action, to be paid by the
19 defendant, and
- 20 (E) such other legal or equitable relief as the court deems appropriate.

21 29 U.S.C. § 1132(g)(2). A plan is entitled to an award under § 1132(g)(2) under the following
22 conditions: “(1) the employer must be delinquent at the time the action is filed; (2) the district
23 court must enter a judgment against the employer; and (3) the plan must provide for such an
award.” *Nw. Adm’rs, Inc. v. Albertson’s, Inc.*, 104 F.3d 253, 257 (9th Cir. 1996) (citing *Idaho
Plumbers & Pipefitters Health & Welfare Fund v. United Mech. Contractors, Inc.*, 875 F.2d 212,

² Under 29 U.S.C. § 1145, an employer who is obligated to make contributions to an employee benefit plan must make the contributions in accordance with the terms of the governing CBA.

1 215 (9th Cir. 1989)). As all of the conditions are met here, and plaintiffs seek liquidated
2 damages less than either the amount in interest on unpaid contributions or 20 percent of the
3 unpaid contributions, *see* 29 U.S.C. § 1132(g)(2)(C), plaintiffs are entitled to an award of
4 liquidated damages in the amount they seek, \$8,503.92.

5 **CONCLUSION**

6 For the reasons stated above, the Court **ORDERS:**

7 Plaintiffs' motion for summary judgment (Dkt. 11) is **GRANTED**. Plaintiffs are
8 **AWARDED \$68,491.76** for contributions and **\$8,503.92** for liquidated damages. Plaintiff may
9 submit a supported calculation of reasonable attorney's fees and costs, testing (audit) fees, and
10 interest (\$21,943.28 as of September 20, 2016 and accruing) no later than **January 25, 2017**.
11 Defendant may respond to the calculations no later than **January 30, 2017** and plaintiffs may
12 reply no later than **February 3, 2017**.

13 DATED this 11th day of January, 2017.

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17 BRIAN A. TSUCHIDA
18 United States Magistrate Judge
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