

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TRUSTEES OF THE NORTHWEST
LABORERS-EMPLOYERS HEALTH AND
SECURITY TRUST,

Plaintiff,

v.

MORRIS MALONE, et al.,

Defendants.

MORRIS MALONE, et al.,

Third-Party Plaintiffs,

STREET PAVERS, SEWER, WATERMAIN
AND TUNNEL WORKERS, LABORERS
LOCAL 440, et al.,

Third-Party Defendants.

No. 09-05399 RBL

ORDER DENYING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT
[Dkt. #61]

I.

II. INTRODUCTION

This matter is before the Court on Defendants', Morris Malone and Viola Malone, Motion for Partial Summary Judgment on Plaintiff's, (ERISA) claim against Mr. and Mrs. Malone. [Dkt. #61]. Defendants request that the Court dismiss Plaintiff's ERISA claim because Plaintiff seeks legal relief when ERISA only allows for equitable relief. *Id.*

1 **III. BACKGROUND**

2 Plaintiff, the Trust, filed this action on July 1, 2009. [Dkt. #1]. Defendants are Viola and
3 Morris Malone, and Mrs. Malone’s company, The Bag Lady, Inc. (“Bag Lady”). *Id.* Mr.
4 Malone was an employee of Bag Lady. *Id.* Plaintiff alleges violation of the Employment
5 Retirement Income Security Act (ERISA) § 502(a)(3), 29 U.S.C. § 1132(a)(3), negligent
6 misrepresentation, and fraud against Defendants. *Id.*

7 Bag Lady has been signatory to multiple project collective bargaining agreements with
8 Third-Party Defendants, Street Pavers, Sewer, Watermain and Tunnel Workers, Laborers Local
9 440 (“Union”).¹ [Dkt. #1]. These agreements required Bag Lady to make monetary
10 contributions to the Trust in exchange for medical benefits provided by the Trust to eligible
11 bargaining unit employees. *Id.* The Trust determined the eligibility of the employees based on
12 the number of hours the employee worked under the collective bargaining agreement. *Id.* Bag
13 Lady was required to file monthly remittance reports with the Trust, listing the hours worked by
14 each employee under the collective bargaining agreement and the corresponding amount due in
15 contributions. *Id.*

16 Plaintiff alleges that Defendants reported contributions on behalf of Mr. Malone during
17 months that either Mr. Malone was not an employee of Bag Lady, or Bag Lady was not signatory
18 to a project agreement, and that Mr. Malone therefore received medical benefits from Plaintiff in
19 excess of that to which he was entitled. *Id.* Plaintiff seeks “equitable restitution under
20 ERISA . . . in an amount to be proved on motions or at trial” and “damages for the benefits
21 provided by the Trust, as well as interest, in an amount to be proved on motions or at trial.” *Id.*,
22 ¶¶30, 32, 37. The Court granted Plaintiff’s motion for voluntary dismissal of its claims for
23 negligent misrepresentation and fraud against the Malones on November 4, 2010.² [Dkt. #83].

24 ¹ Defendants filed a third-party complaint against the Union for negligent misrepresentation and
25 violation of Washington’s Consumer Protection Act (CPA). [Dkt. #29]. On November 18,
26 2010, the Court granted the Union’s motion for judgment on the pleadings, and dismissed
27 Defendant Bag Lady’s claim for negligent misrepresentation and Defendants’ claim for violation
of the CPA in its entirety. [Dkt. #95]. The Malones’ claim for negligent misrepresentation is
still valid. *Id.*

28 ² Plaintiff’s claim for negligent misrepresentation and fraud against Bag Lady were not
dismissed. [Dkt. #83].

1 Defendants bring this motion for partial summary judgment, arguing that the Court should
2 dismiss Plaintiff’s ERISA claim as well because Plaintiff seeks legal relief while ERISA only
3 allows for equitable relief. [Dkt. #61].

4 III. DISCUSSION

5 A. Standard of Review

6 Summary judgment is appropriate when, viewing the facts in the light most favorable to
7 the nonmoving party, “the pleadings, the discovery and disclosure materials on file, and any
8 affidavits show that there is no genuine issue as to any material fact and that the movant is
9 entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c)(2). There is no genuine issue as
10 to any material fact if there is not sufficient evidence to support a jury verdict in favor of the
11 nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The moving party
12 has the burden of demonstrating the absence of a genuine issue of material fact. *Id.* at 257.

13 In addition to demonstrating that there are no questions of material fact, the moving party
14 must also show that it is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c)(2). The
15 moving party is entitled to judgment as a matter of law when the nonmoving party fails to make
16 a sufficient showing on an essential element of a claim for which the nonmoving party has the
17 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

18 B. Equitable Remedies Under ERISA

19 It is Defendants’ position that Plaintiff’s ERISA claim should be dismissed because it
20 seeks legal relief when ERISA only allows for equitable relief. [Dkt. #61]. Defendants argue
21 that Plaintiff’s relief is legal because it seeks reimbursement of money that was never in
22 Defendants’ possession. *Id.* While Plaintiff concedes that ERISA only allows for equitable
23 relief, it argues that it seeks equitable restitution because Defendants fraudulently reported to the
24 Trust that Mr. Malone worked more hours than he actually did. [Dkt. #73].

25 ERISA § 502(a)(3) only permits suit “to obtain other appropriate equitable relief.” 29
26 U.S.C. § 1132(a)(3). Defendants rely on two recent Supreme Court cases that argue that relief
27 under ERISA § 502(a)(3) is legal when the plaintiff seeks reimbursement of money that was
28 never in the defendant’s possession. In *Great-West Life & Annuity Ins. Co. v. Knudson*, Plaintiff

1 sought to enforce a contractual provision to recover the medical expenses it had paid on behalf of
2 Defendants for injuries sustained in a car accident, after Defendants had recovered a settlement
3 with the car manufacturer. 534 U.S. 204, 207–08 (2002). Although Defendants kept Plaintiff’s
4 portion in a Special Needs Trust, Plaintiff did not specifically seek the money in the trust, rather
5 it sought Defendants’ assets generally. *See id.* at 207; *Sereboff v. Mid Atl. Med. Servs., Inc.*, 547
6 U.S. 356, 363 (2006). The Court held that Plaintiff’s claim was for legal relief because “[f]or
7 restitution to lie in equity, the action generally must seek not to impose personal liability on the
8 defendant, but to restore to the plaintiff particular funds or property in the defendant's
9 possession.” *Knudson*, 534 U.S. at 205.

10 Similarly, in *Sereboff*, the Court held that Plaintiff sought equitable relief because the
11 funds it sought to recover were in Defendants’ possession. 547 U.S. at 369. As was the case in
12 *Knudson*, Plaintiff sued for breach of contract to get reimbursement of medical expenses it paid
13 on Defendants’ behalf after Defendants were involved in a car accident. *Id.* at 359–60. Plaintiff
14 specifically sought to recover funds that Defendants had collected in settlements with multiple
15 third parties, which funds were set aside in Defendants’ investment account. *Id.* at 360. The
16 Court held that Plaintiff sought equitable relief because “[it] sought specifically identifiable
17 funds that were within the possession and control of the [defendants].” *Id.* at 362 (internal
18 quotations omitted).

19 *Knudson* and *Sereboff* are not exactly on point with the present case. They do not address
20 a plaintiff’s claim that the defendant obtained benefits through fraud or wrongdoing. “The Ninth
21 Circuit has recognized the remedy of restitution under ERISA § 502(a)(3) in situations involving
22 ill-gotten gains, such as money obtained through fraud or wrongdoing.” *Nw. Adm’rs., Inc. v.*
23 *Cutter*, No. C07-0988-JCC, 2008 WL 217731, at *5 (W.D.Wash. Jan 24, 2008) (internal
24 quotations omitted). For example, the Ninth Circuit noted in *Carpenters Health and Welfare*
25 *Trust For S. Cal. v. Vonderharr*, “[t]he remedies of restitution and the imposition of a
26 constructive trust are available under § 1132(a)(3), but only as true equitable remedies and
27 provided the traditional requirements of fraud or wrong-doing are satisfied.” 384 F.3d 667, 672
28 (2004).

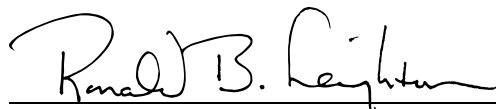
1 Other Ninth Circuit authority suggests that when the defendant procures benefits through
2 fraud, even if the benefits were never in the defendant's possession, the plaintiff's relief is
3 grounded in equity. In *Cutter*, the court found that the plaintiff sought equitable relief under
4 ERISA § 502(a)(3) when the defendant had falsely informed the plaintiff that he was married,
5 and the plaintiff provided medical benefits to the defendant's "spouse." 2008 WL 217731, at *1.
6 The court distinguished the case from *Knudson* and *Sereboff* on the grounds that (1) the plaintiff
7 was not trying to enforce a separate contractual obligation to compensate for a benefit conferred;
8 rather, it sought to recoup the actual benefit conferred, and (2) the plaintiff alleged fraud or
9 wrongdoing by the defendant in procuring the medical benefits. *Id.* at 6.

10 Like *Cutter*, the present case is distinguishable from *Knudson* and *Sereboff*. The Trust is
11 alleging that the Defendants obtained the medical benefits wrongfully by falsifying the number
12 of hours Mr. Malone worked. [Dkt. #1]. Because, under the summary judgment standard, the
13 Court must take the facts in the light most favorable to the nonmoving party, the Court must
14 accept that Defendants falsely reported the number of hours Mr. Malone worked for Bag Lady.
15 Although Defendants never had possession of the money the Trust paid in medical care, the
16 medical benefits were procured by wrongdoing. Plaintiff's claim for relief, therefore, is
17 grounded in equity.

18 Because Plaintiff seeks equitable relief, its action is authorized under ERISA. Thus,
19 Defendants' Motion for Partial Summary Judgment of Plaintiff's ERISA claim against them is
20 DENIED.

21 **IT IS SO ORDERED.**

22 Dated this 29th day of November 2010.

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25 RONALD B. LEIGHTON
26 UNITED STATES DISTRICT JUDGE
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