# APPENDIX

# APPENDIX

## TABLE OF CONTENTS

## APPENDIX A

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**
**FOR THE FOURTH CIRCUIT**

**No. 22-1130**

**[Filed November 10, 2022]**

| | |
|---|---|
| TODD BOWERS, | ) |
| Plaintiff – Appellant, | ) |
| | ) |
| v. | ) |
| | ) |
| INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS, AND HELPERS AFL-CIO, | ) |
| Defendant – Appellee. | ) |

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. Gina M. Groh, District Judge. (3:21–cv–00089–GMG)

Submitted: October 3, 2022
Decided: November 10, 2022

Before WILKINSON, WYNN, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

**ON BRIEF:** Christian J. Riddell, THE RIDDELL LAW GROUP, Martinsburg, West Virginia, for Appellant. Jason R. McClitis, Brandon E. Wood, Jordan L. Glasgow, BLAKE & UHLIG, P.A., Kansas City, Kansas, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Todd Bowers, a longtime member of the International Brotherhood of Boilermakers (IBB), started his own welding business and entered into a collective-bargaining agreement with the union before the relationship soured. After he sued IBB in West Virginia state court, IBB removed the case based on the Labor Management Relations Act's creation of exclusive federal jurisdiction over cases arising from collective-bargaining agreements. Bowers appeals the district court's dismissal of his case with prejudice and its denial of his motion to remand. For the following reasons, we affirm.

I.

Bowers was a member of an IBB local lodge who founded his own welding business, Elite Mechanical. J.A. 14. He entered into a collective-bargaining agreement with IBB—the Ohio Valley Agreement (OVA)—wherein IBB would provide Bowers with certified boilermakers and Bowers would employ boilermakers exclusively through the OVA and make payments into IBB's pension and retirement programs. *Id.* at 14–15.

At some point in or around 2017, the relationship between Bowers and IBB soured based, in part, on Bowers's hiring of a boilermaker who had been expelled by the union. *Id.* at 15. Bowers also attempted to withdraw from the OVA. *Id*. In early 2020, IBB's pension funds filed a lawsuit against Bowers alleging that he had not properly remitted contributions to the funds for work performed by OVA-covered employees. *Id.* at 168–76. Bowers filed a counterclaim reciting substantially identical claims to those set forth in the instant case. *Id.* at 120–25. The parties jointly dismissed their claims. *Id.* at 210.

Bowers filed the complaint at issue in this appeal on February 19, 2021, in West Virginia state court. *Id.* at 14. The complaint alleges that IBB plotted to take reprisals against Bowers for hiring non-union labor, competing with IBB boilermakers for general welding work, and pulling out of the OVA. *Id.* at 15–16. It alleges that IBB tried to harass, intimidate, and put Bowers out of business by "filing meritless lawsuits," demanding compensation and threatening legal action for post-2017 work, "[t]hreatening and harassing" Bowers's employees to "coerce them into leaving [his] employ," and "[f]alsely reporting" him to "relevant oversight organizations." *Id.* at 16. The complaint includes five counts: (1) "tortious interference of business," (2) abuse of process, (3) intentional infliction of emotional distress, (4) violation of W. Va. Code § 61-2-13(a) [criminal extortion], and (5) violation of W. Va. Code § 61-2-9a [criminal harassment]. *Id.* at 16–18.

IBB removed the case to federal court. *Id.* at 6. It asserted that because Bowers's claims are "directly

based on the terms of the collective bargaining agreement or substantially dependent on" analysis of it, the Labor Management Relations Act (LMRA) provides for exclusive federal jurisdiction over the complaint. *Id.* at 8 (citing 29 U.S.C. § 185(a)). IBB also moved to dismiss, arguing that (1) the LMRA preempts Bowers's claims, (2) the claims are time-barred by the LMRA's statute of limitations, (3) Bowers failed to exhaust required contractual remedies, (4) no civil cause of action exists for Bowers's West Virginia statutory claims, and (5) the complaint lacks sufficient factual allegations to state a claim. *Id.* at 138. Bowers moved to remand the case back to state court. *Id.* at 212–21.

The district court dismissed the case with prejudice and denied Bowers's motion to remand. *Bowers v. Int'l Bhd. of Boilermakers*, No. 3:21-CV-89, 2022 WL 421145, at *6 (N.D. W. Va. Jan. 20, 2022). It concluded that every asserted basis in IBB's motion to dismiss warranted dismissal. *Id.* at *2. Nothing in the complaint "c[ame] close to alleging a factual basis to support a lawsuit," West Virginia's criminal statutes created no private right of action, and the LMRA preempted the suit because evaluating Bowers's claims would require the court "to consider and interpret the OVA at great length." *Id.* at *2–4. Even if Bowers had properly alleged claims under the LMRA, he had failed to exhaust his contractual remedies, *and* those claims would be time-barred. *Id.* at *5–6.

Bowers raises numerous assignments of error. We conclude that none has merit.

II.

First, Bowers argues that the district court lacked subject-matter jurisdiction because his claims did not sufficiently relate to any collective-bargaining agreement under the LMRA, so his complaint raises no federal question. We review de novo whether the district court had subject-matter jurisdiction. *See Foy v. Giant Food Inc.*, 298 F.3d 284, 287 (4th Cir. 2002). We conclude that the district court had jurisdiction because § 301 of the LMRA preempts Bowers's claims.

Section 301 of the LMRA completely preempts state law, and any claim so preempted "is considered, from its inception, a federal claim, and therefore arises under federal law." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987). Removal of such claims is therefore proper. *See id.*; 28 U.S.C. § 1441(a). The LMRA preempts a state-law claim "when resolution of the claim requires the interpretation of a collective-bargaining agreement or is inextricably intertwined with consideration of the terms of the labor contract." *Foy*, 298 F.3d at 287 (quotation marks and citations omitted).

Bowers's claims are "inextricably intertwined with consideration of the terms of" the OVA. His claim for tortious interference of business depends on whether he was violating the terms of the OVA's exclusive-referral provision and whether IBB was within its rights under the OVA's jobsite-access provision to talk to and try to convince his employees to leave. *See* J.A. 39 (exclusive-referral provision), 55 (jobsite-access provision). Resolution of this claim requires interpretation and application of these provisions.

Bowers's abuse-of-process claim depends on whether IBB's funds filed *meritless* lawsuits, and that question is inextricably intertwined with consideration of the OVA's provisions governing employer contributions. *See id.* at 60–67. And Bowers's claim for intentional infliction of emotional distress closely parallels the claim that we held preempted in *Foy*: Such a claim "requires an inquiry into whether [IBB] was legally entitled to act as [it] did," which "can be determined only by interpreting the collective bargaining agreement." 298 F.3d at 288 (quotation marks omitted).

Thus, the Labor Management Relations Act preempted Bowers's claims and established federal jurisdiction over his case.

III.

Next, Bowers contends that the district court erred in concluding that Counts Four and Five fail to state a claim because the West Virginia criminal statutes do not create a private cause of action. Whether a statute creates a private cause of action is a question of law subject to de novo review. *See Diaz de Gomez v. Wilkinson*, 987 F.3d 359, 363 (4th Cir. 2021). It is clear that the West Virginia criminal-extortion and criminal-harassment statutes, §§ 61-2-13(a) and 61-2-9a, do not create private causes of action.

In West Virginia, whether a private cause of action exists based on a violation of a statute is determined by applying the four-part test set forth in *Hurley v. Allied Chemical Corporation*, 262 S.E.2d 757 (W. Va. 1980). This test considers (1) whether the plaintiff is a member of the statute's intended class of beneficiaries,

(2) whether there exists express or implied legislative intent to create a private cause of action, (3) whether a private cause of action is consistent with the statutory scheme, and (4) whether a private cause of action would intrude into exclusively federal areas. *Hurley*, 262 S.E.2d at 763.

Here, §§ 61-2-13(a) and 61-2-9a are criminal statutes "enacted for the protection of the general public;" they do not "expressly identif[y]" a class they intend to benefit. *Id.* at 761 (quotation marks omitted). Moreover, the plain language of these statutes—and other statutes in the same chapter—provides only for criminal penalties; neither the statutory text nor scheme suggests any intent to create a private cause of action. So, these criminal statutes do not create private causes of action. Counts Four and Five failed to state a claim.

IV.

Finally, Bowers argues that we lack appellate jurisdiction because the district court dismissed his suit without giving him an opportunity to amend his complaint and did not certify that the complaint's deficiencies could not be cured by amendment. We disagree.

We have jurisdiction because this is an appeal of a dismissal with prejudice, which is a final decision of the district court. *See* 28 U.S.C. § 1291; *Harrison v. Edison Bros. Apparel Stores, Inc.*, 924 F.2d 530, 534 (4th Cir. 1991). Bowers never properly moved to amend his complaint, so the district court was not required to offer him the opportunity to amend. *See* J.A. 1–5;

*Cozzarelli v. Inspire Pharms. Inc.*, 549 F.3d 618, 630–31 (4th Cir. 2008) (holding that a request for leave to amend made in a response to a motion to dismiss "did not qualify as [a] motion[] for leave to amend" under Fed. R. Civ. P. 7(b), 15(a)). Moreover, amendment would have been futile: Even if Bowers had properly stated claims under the LMRA, those claims would have been time-barred by the applicable six-month statute of limitations and precluded by his failure to exhaust his remedies under the collective-bargaining agreement. *See Smith v. United Parcel Serv., Inc.*, 776 F.2d 99, 100 (4th Cir. 1985) (statute of limitations); *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652–53 (1965) (exhaustion requirement).

V.

We have reviewed Bowers's other assignments of error and find them to be without merit. For the foregoing reasons, the judgement is affirmed.

*AFFIRMED*

## APPENDIX B

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF**
**WEST VIRGINIA**
**MARTINSBURG**

**CIVIL ACTION NO.: 3:21-CV-89 (GROH)**

**[Filed January 20, 2022]**

| | |
|---|---|
| TODD BOWERS, | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS and HELPERS AFL-CIO, | ) |
| Defendant. | ) |

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**

This case involves claims for tortious interference of business, abuse of process, intentional infliction of emotional distress, criminal extortion and harassment against a 501(c)(5) labor organization. Specifically, the Plaintiff alleges that "trouble . . . began when [the Defendant] discovered that Plaintiff had hired a former boilermaker to work at his welding company. . . . These

hostilities were significantly exacerbated when Plaintiff pulled out of the Ohio Valley Agreement in December 2017." ECF No. 1-2 at 2. The Plaintiff contends that the "Defendant's tortious conduct has caused Plaintiff economic harm and emotional distress." Id. at 3.

The Defendant filed a Motion to Dismiss the Plaintiff's Complaint, alleging four distinct grounds for dismissal. The Defendant asserts that the complaint must be dismissed because it is preempted by the Labor-Management Relations Act ("LMRA"), barred by the LMRA's statute of limitations, insufficient to state a claim for which relief can be granted and the Plaintiff failed to exhaust his remedies under the Ohio Valley Articles of Agreement ("OVA"). Upon review and consideration of the complaint, legal standards and the parties' arguments, the Complaint must be dismissed.

## I. STANDARD OF REVIEW

"A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992) (citing 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1356 (1990)). When reviewing a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court must assume all of the allegations to be true, must resolve all doubts and inferences in favor of the plaintiff and must view the allegations in a light most favorable to the plaintiff. See Edwards v. City of Goldsboro, 178 F.3d 231, 243-44 (4th Cir. 1999). But a

complaint must be dismissed if it does not allege "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). To that end, Federal Rule of Civil Procedure 8 articulates a pleading standard which "does not require detailed factual allegations, but . . . demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted).

A complaint that offers "labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." Id. (citation and internal quotation marks omitted). Likewise, a complaint that tenders only "naked assertion[s] devoid of further factual enhancement" does not suffice. Id. (alteration in original) (citation and internal quotation marks omitted).

A party is required to articulate facts that, when accepted as true, "show" he is plausibly entitled to relief. Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009) (citing Iqbal, 556 U.S. at 678; Twombly, 550 U.S. at 557). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" Iqbal, 556 U.S. at 679 (second alteration in original) (quoting Fed. R. Civ. P. 8(a)(2)). When reviewing a complaint's sufficiency under Rule 12(b)(6), a court may consider "documents incorporated into the complaint by reference, and matters of which a court may take

judicial notice." Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007).

## II. DISCUSSION

Although defendants often assert multiple, alternative theories for dismissal in their 12(b)(6) motions, it is infrequent that every asserted basis in a single motion warrants dismissal. Yet, that is the situation in this case.

### A. Review of the Plaintiff's Complaint

The Plaintiff's Complaint was filed in the Circuit Court of Berkeley County, West Virginia, on February 9, 2021. ECF No. 1-2. Substantively, the Complaint is five pages long. The first ten paragraphs present a narrative that introduces the parties and alleges limited details. The remainder of the Complaint presents each count (I through V) in a formulaic manner as an "unadorned, the-defendant-unlawfully-harmed-me accusation." See Iqbal at 678.

Although each count "incorporates the allegations above as if set forth fully herein[,]" the preceding ten paragraphs hardly contain the requisite factual allegations to state a claim upon which relief could be granted. The first two paragraphs introduce the Plaintiff and Defendant. Paragraph three alleges the Plaintiff was a longtime member of the Defendant organization, and Plaintiff entered into an agreement with Defendant, the OVA. Paragraph four alleges that the Plaintiff's business expanded to include "general welding work and less boilermaker work." ECF No. 1-2 at 2.

Paragraph five states that "Plaintiff continued complying with [Defendant's] requirements . . . until late 2017, when he discontinued his membership by written notice . . . ." Id. Paragraph six claims trouble between the parties began when Defendant learned that "Plaintiff had hired a former boilermaker to work at his welding company." Id. the Defendant "was extremely upset" and the "hostilities were significantly exacerbated when Plaintiff pulled out of the [OVA] in December 2017 and no longer participated in any union activities." Id. Paragraph seven alleges that "Defendant's hostility against Plaintiff increased further over time" because the Plaintiff was competing with Defendant for non-boilermaker welding work. Id. In paragraph eight, the Plaintiff avers the Defendant held several meetings where "a major topic of discussion was what [the Defendant] was going to do about Plaintiff using non-union labor for his welding business." Id. at 3. Apparently, "various strategies for taking reprisal against Plaintiff were discussed." Id.

In paragraph nine, the Plaintiff makes the following allegations:

> Because of the above described allegations Defendant IBB engaged in numerous actions designed to harass, intimidate, unlawfully extract funds and ultimately, put Plaintiff out of business, including by not limited to:
>
> > a. Filing meritless lawsuits, through IBB's pension funds and trusts subsidiaries, on knowingly false allegations and in an inconvenient forum 1,000 miles away from

> all relevant parties and witnesses when a clearly more convenient forum existed;
>
> b. Demanding compensation and threatening further legal action for work engaged in by Plaintiff post-2017.
>
> c. Threatening and harassing Plaintiff's employees in an attempt to coerce them into leaving Plaintiff's employ.
>
> d. Falsely reporting Plaintiff for violations to relevant oversight organizations.

Id. Finally, paragraph ten claims that Defendant's tortious conduct has caused Plaintiff economic harm and emotional distress.

Nothing in any of these paragraphs comes close to alleging a factual basis to support a lawsuit. Although the statements in paragraph nine meander somewhere near the vicinity of factual allegations, once stripped of legal conclusions, they do not contain the sort of factual support required to survive the low bar established by Rule 12. This Court is aware that the motion to dismiss standard is not onerous, but the standard is clear and was not met in this case.

### B. West Virginia's Criminal Statutes Include no Private Right of Action

In addition to lacking factual allegations, the Complaint includes two counts that are fatally flawed—regardless of what the Plaintiff alleged. The Defendant aptly noted, "[t]his Court has expressly held that West Virginia does not recognize a cause of action

arising from a criminal extortion statute." ECF No. 11 at 8 (citing Horton v. Vinson, No. 1:14-cv-192, 2015 WL 4774276, at*22 (N.D. W. Va. Aug. 12, 2015). As the Southern District has explained, "[t]here is nothing in the text of § 61-2-13 to indicate, even impliedly, that a private right of action exists." Cunningham Energy, LLC v. Outman, No. 2:13-cv-20748, 2013 WL 5274361, at *5 (S.D. W. Va. Sept. 18, 2013).

Inexplicably, in the face of clear case law from this Court addressing the exact issue at bar, the Plaintiff claims, "Defendant [sic] reference to federal district court cases . . . as authority . . . must be disregarded, as federal precedent is not controlling on matters of West Virginia state law." ECF No. 14 at 4. Although a District Court's decision is not controlling *per se*, there is no requirement that it "must be disregarded." The Horton and Cunningham decisions are illustrative, directly on point, and well-reasoned decisions by District Courts in West Virginia interpreting and applying West Virginia law, which they frequently must do.

Rather than address their merits, Plaintiff prefers to pretend they *must* not be considered by the Court without any legal basis for this assertion. This is incorrect. Further, the Court finds the analysis in the Horton and Cunningham decisions accurate and persuasive. The Plaintiff cannot state a claim for criminal extortion in this civil action. Similarly, the Plaintiff cannot state a claim for criminal harassment. The Court adopts and incorporates the Defendant's Hurley analysis by reference. Even if the Plaintiff's counts for violations of West Virginia's criminal

statutes were viable, they would still be dismissed for the following reasons.

**C. Section 301 Preemption**

The Fourth Circuit has explained,

> Section 301 of the Labor Management Relations Act establishes federal subject matter jurisdiction over employment disputes covered by a collective bargaining agreement and directs federal courts to fashion a uniform body of federal common law applicable to such disputes. Allis–Chalmers Corp. v. Lueck, 471 U.S. 202, 209, 105 S.Ct. 1904, 85 L.Ed.2d 206 (1985). The "preemptive force of § 301 is so powerful as to displace entirely any state cause of action for violation of contracts between an employer and a labor organization." Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 23, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983) (internal quotation marks omitted).
>
> A state law claim is preempted when resolution of the claim "requires the interpretation of a collective-bargaining agreement," Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 405–06, 108 S.Ct. 1877, 100 L.Ed.2d 410 (1988), or is "inextricably intertwined with consideration of the terms of the labor contract." Lueck, 471 U.S. at 213, 105 S.Ct. 1904; see also IBEW, AFL–CIO v. Hechler, 481 U.S. 851, 863 n.5, 107 S.Ct. 2161, 95 L.Ed.2d 791 (1987) (noting that a state law claim is preempted when "[t]he nature and scope

> of the duty of care owed Plaintiff is determined by reference to the collective bargaining agreement"). "[T]he bare fact that a collective bargaining agreement will be consulted in the course of state-law litigation plainly does not require [preemption]." Livadas v. Bradshaw, 512 U.S. 107, 124, 114 S.Ct. 2068, 129 L.Ed.2d 93 (1994).

Foy v. Giant Food Inc., 298 F.3d 284, 287 (4th Cir. 2002).

Before explaining why the Plaintiff's claims are preempted under Section 301, the Court notes that it may consider the OVA without converting this 12(b)(6) Motion to one for summary judgment because it was "attached to the motion to dismiss, . . . integral to the complaint and authentic." Philips v. Pitt Cty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009)) (citing Blankenship v. Manchin, 471 F.3d 523, 526 n.1 (4th Cir. 2006)). Accordingly, the Plaintiff's contention that provisions of the OVA "are not contained in the complaint and therefore not appropriate for the Court's consideration at this time," is wrong.[1] The Court can

---

[1] The Plaintiff repeatedly references the OVA throughout his succinct Complaint. Paragraph three of the Complaint states, "Plaintiff was a longtime member [of Defendant's] Local Lodge . . . and . . . entered into an agreement [with Defendant]." ECF No. 1-2 at 2. "Plaintiff in turn agreed to make payments into Defendant['s] pension and retirement programs under the terms mandating [sic] in the Ohio Valley Articles of Agreement . . . ." Id. Plaintiff alleges that he "continued complying" with the OVA, "discontinued his membership" under the OVA, and "hired a former boilermaker" who was "expelled from the union" prior to "pull[ing] out of the [OVA] in December of 2017." Id.

and will consider the OVA in determining whether Section 301 preemption applies.

Evaluating the Plaintiff's claims on the merits would require the Court to consider and interpret the OVA at great length. As the Defendant notes, the Plaintiff's "causes of action are inextricably intertwined[2] with the [OVA]; consequently, the claims are preempted." ECF No. 11 at 13. Other courts addressing similar claims in similar contexts have reached the same conclusion. See, e.g., T.H. Eifert, Inc. v. United Ass'n. of Journeymen, 422 F.Supp.2d 818, 838 (W.D. Mich. 2006) (Finding state tort claims preempted and explaining that the "question is inextricably intertwined with and requires interpretation of the collective bargaining agreement." (collecting cases)); Smith v. Houston Oilers, Inc., 87 F.3d 717, 719 (5th Cir. 1996) ("In considering a claim of intentional infliction of emotional distress, we have stated that "the question of preemption turns on whether the conduct upon which the claim is grounded is governed by the CBA. . . . If the conduct arises out of activities covered in the agreement, however, courts

---

[2] Courts use this term interchangeably with "substantially dependent" in the context of Section 301 preemption. See Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 213 (1985) (The Supreme Court explained, "[o]ur analysis must focus, then, on whether the Wisconsin tort action for breach of the duty of good faith as applied here confers nonnegotiable state-law rights on employers or employees independent of any right established by contract, or, instead, whether evaluation of the tort claim is inextricably intertwined with consideration of the terms of the labor contract. If the state tort law purports to define the meaning of the contract relationship, that law is pre-empted.").

generally hold that the emotional distress claim is preempted." (citing Baker v. Farmers Elec. Co-op., Inc., 34 F.3d 274 (5th Cir. 1994); Adkins v. Gen. Motors Corp., 946 F.2d 1201, 1211 (6th Cir. 1991) ("It follows that adjudicating the plaintiffs' tortious interference claim necessarily involves an analysis of a collective-bargaining agreement . . . ."); Davis v. Bell Atl.-W. Virginia, Inc., 110 F.3d 245, 249 (4th Cir. 1997) ("Because the basis of Davis' state tort claim thus depends on an interpretation of the underlying collective-bargaining agreement, the tort claim alleged in this case is also a matter of federal law and is preempted."); Clark v. Newport News Shipbuilding & Dry Dock Co., 937 F.2d 934, 938 (4th Cir. 1991) ("Clark's state-law claims against Newport News are substantially dependent upon an analysis of the rights and obligations embodied in Article 37 of the collective-bargaining agreement and they are preempted by § 301.").

Plaintiff's claims are all inextricably intertwined with (or substantially dependent upon an interpretation of) the terms the OVA. For example, the Plaintiff alleges that the Defendant "fil[ed] meritless lawsuits, through IBB's pension funds and trusts subsidiaries, on knowingly false allegations and in an inconvenient forum 1,000 miles away from all relevant parties and witnesses when a clearly more convenient forum existed." ECF No. 1-2 at 3. These allegations reference Boilermaker-Blacksmith Nat'l Pen. Trust v. Elite Mechanical & Welding, LLC, Case No. 5:20-cv-06021-SRB (W.D. Mo.).

In his Response, Plaintiff contends that "Defendant makes great efforts to discuss a prior litigation in the Western District of Kansas involving Plaintiff and Defendant . . . ." ECF No. 14 at 2. "Toto, I've a feeling we're not in Kansas"[3] because there is no Western District of Kansas, and the Order Plaintiff attached to his Response is authored by the Western District of Missouri.[4] See ECF No. 14-1.

Discussing the prior litigation's potential impact to the case at bar, Plaintiff contends that Defendant's

> argument implicitly ignores the clear legal distinction between Defendant and the Boilermakers National Health and Welfare Fund, which is an entirely different organization with a specific ERISA related mandate which administers and enforces contribution requirements totally independent of Defendant. As such, Defendant has no business whatsoever being involved in any such enforcement or collection attempts by any of [sic] ERISA entity its [sic] affiliated with.

ECF No. 14 at 12. Yet, in his complaint, the Plaintiff advances a contradictory allegation:

---

[3] The Wizard of Oz (Metro-Goldwyn-Mayer 1939).

[4] Unfortunately, this is not the only glaring error in Plaintiff's filings. Lawyers who appear before United States District Courts would do well to perform thorough research, scrutinize their arguments and even more carefully review the papers they file for the Court's review.

> Defendant . . . is a 501(c)(5) organization, with its principal place of business in Kansas City, Missouri, formed to organize and advance the interests of boilermakers and certain other trades and who originated, manages, and/or directs various pensions[,] trusts and funds formed for the purpose of collecting and administering employer pension contributions pursuant to federal ERISA laws.

ECF No. 1-2 at 1.

Indeed, the Court finds, as Defendant stated, "Plaintiff's Opposition seemingly fails to grasp the fundamental tenets of Section 301 preemption. Because none of [his] arguments refute the [Defendant's] arguments, each and every claim should be considered preempted." ECF No. 19 at 5. Every count in Plaintiff's complaint is preempted by Section 301 because resolution of those claims is substantially dependent on analyzing the terms of the OVA.

### D. Any Properly Stated Section 301 Claim Must be Dismissed

Finally, the Court has determined that even if the Plaintiff were to properly mount a Section 301 claim, it must be dismissed. Specifically, the Plaintiff failed to exhaust the available remedies provided in the OVA. Moreover, the time for Plaintiff to bring a Section 301 claim for an alleged breach of the OVA has run:

> Finding that Plaintiff's claim sounds in Section 301 of the LMRA, the Court examines the applicable statute of limitations in this case. Claims rooted in Section 301 are subject to a

> six-month statute of limitations. Smith v. United Parcel Service, Inc., 776 F.2d 99, 100 (4th Cir. 1985) (citing DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983)). A plaintiff claiming that his employer breached a CBA, therefore, must bring his case within six months of the alleged breach. Id. Otherwise, his claims for breach are time-barred and must be dismissed. Id.

Osburn v. Huntington Alloys Corp., No. CV 3:17-4236, 2018 WL 3795266, at *3 (S.D. W. Va. Aug. 9, 2018).

Although the Plaintiff provides very few dates in his complaint, any alleged breach would have likely occurred over four years ago and certainly more than six months ago. Furthermore, the Court notes that the Plaintiff failed to address either the exhaustion or statute of limitations arguments made by the Defendant. Thus, the Court concludes that Section 301 claims are both time-barred and precluded.

## III. CONCLUSION

Having considered the Defendant's Motion, the Court finds that it has jurisdiction over this matter for the reasons more fully stated in the Notice of Removal. ECF No. 1. Accordingly, the Plaintiff's "Motion in Opposition to Defendant's Notice of Removal," which this Court construes as a Motion for Remand, is without merit and shall be **DENIED**. ECF No. 12.

Furthermore, the Defendant's Motion to Dismiss is **GRANTED** [ECF No. 10], and this civil action is **DISMISSED WITH PREJUDICE** and hereby

**ORDERED STRICKEN** from the Court's active docket.

The Clerk of Court is **DIRECTED** to transmit copies of this Order to all counsel of record herein.

**DATED**: January 20, 2022

/s/ Gina M Groh
GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE