

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

JOSEPH R. KVIDERA and the PROCEDO, INC.
401(k) PROFIT SHARING PLAN a/k/a the
PROCEDO, INC. 401(k) & PROFIT SHARING
PLAN,

Defendants.

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: Case No. 0:11-cv-01442
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: Hon. Ann D. Montgomery
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: Magistrate Arthur J. Boylan
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CONSENT ORDER AND JUDGMENT AS TO DEFENDANTS
JOSEPH R. KVIDERA AND THE PROCEDO, INC. 401(K) PROFIT
SHARING PLAN A/K/A THE PROCEDO, 401(K) & PROFIT SHARING PLAN

Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor, ("the Secretary") pursuant to the provisions of the Employee Retirement Income Security Act of 1974("ERISA"), as amended, 29 U.S.C. §1001, et seq., filed a complaint against defendant Joseph R. Kvidera alleging breaches of his fiduciary responsibilities under ERISA §§403(c)(1), 404(a)(1)(A), 406(a)(1)(D), 406(b)(1) and (2), 29 U.S.C. §§1103(c)(1), 1104(a)(1)(A), 1106(a)(1)(D), and 1106(b)(1) and (2), with respect to the Procedo, Inc. 401(k) Profit Sharing Plan a/k/a the Procedo, Inc. 401(k) & Profit Sharing Plan ("Plan").

Defendants Joseph R. Kvidera and the Plan hereby waive service of process of the complaint and admit to the jurisdiction of this Court over them and the subject matter of this action.



The Secretary and Defendants Joseph R. Kvidera and the Plan have agreed to resolve all matters in controversy in this action between them (except for the imposition by Plaintiff of any penalty pursuant to ERISA §502(l), 29 U.S.C. §1132(l), and any proceedings related thereto), and said parties do now consent to entry of a Judgment and Order by this Court in accordance therewith.

The parties agree that, if the Secretary of Labor assesses a penalty pursuant to ERISA §502(l) in connection with the violations alleged in this matter, the “applicable recovery amount” shall include all amounts paid in accordance with this Consent Order and Judgment.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED that:

1. Defendant Joseph R. Kvidera is permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §1001 *et seq.*
2. Defendant Joseph R. Kvidera is liable to the Plan in the total amount of \$10,740 which represents the unremitted employee contributions and loan repayments and the lost opportunity costs which accrued as a result of the non-remittance of employee contributions and loan repayments and the untimely remittance of employee contributions to the Plan.
3. In addition to the losses owed to the Plan, as set forth in paragraph 2 above, Defendant Joseph R. Kvidera is owed \$98.87 in unremitted employee contributions to the Plan on his own behalf. Defendant Joseph R. Kvidera hereby waives

the repayment of this sum to his individual Plan account as part of the resolution of this matter.

4. Defendant Joseph R. Kvidera is liable to the Plan and shall pay to John Hancock, the Plan's asset custodian, on behalf of the Plan the total amount of \$10,740¹ in accordance with the schedule set forth below:

a. Payment to the Plan of \$895 per month for twelve (12) consecutive months commencing within thirty (30) calendar days after the earlier of the following events: 1) the bankruptcy court's approval of the Chapter 7 Bankruptcy Trustee's final accounting or report in Defendant Joseph R. Kvidera's bankruptcy case no. 10-38676, or 2) the close of Defendant Joseph R. Kvidera's bankruptcy case no. 10-38676.

b. Payment to the Plan of \$895 per month shall be made each month on the 10th day of the month, until all payments to the Plan have been made.

5. Defendant Joseph R. Kvidera shall cause the Plan's asset custodian to allocate the monthly payments made to the Plan pursuant to paragraph 4 above to the individual Plan accounts of participants in the Plan, except for Defendant Joseph R. Kvidera, who were (1) employees of Procedo, Inc., (2) Plan participants during the period from March 30, 2007 through January 15, 2010, and (3) had voluntary employee salary contributions and/or employee loan repayments withheld from their Pay for contribution to the Plan during this period where such contributions were never remitted or were untimely remitted to the Plan. Each participant shall receive their pro-rata share of each

¹ Defendant Joseph Kvidera filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Minnesota, case number 10-38676. That proceeding is still pending. Restitution of any monetary portion pursuant to this Consent Order and Judgment shall be consistent with the Bankruptcy Code. The parties have simultaneously filed a stipulation of non-dischargeability of debt in the bankruptcy court providing that that Defendant Kvidera's total debt of \$10,740 to the Plan is non-dischargeable.

monthly installment of the money Defendant Joseph R. Kvidera has paid pursuant to paragraph 4 above, in an amount equal to the percentage of each individual participant's unremitted contributions, participant loan repayments and/or lost opportunity costs in relation to the total amount owed to the Plan by Defendant Joseph R. Kvidera.

6. Defendant Joseph R. Kvidera shall provide the Secretary with satisfactory proof of the payments described in paragraph 5 above, and the distributions made to the participants in paragraph 6 above, within fifteen (15) calendar days following each payment to the Regional Director, Kansas City Regional Office, Employee Benefits Security Administration, 2300 Main Street, Suite 1100, Kansas City, Missouri 64108-2415.

7. Should Defendant Joseph R. Kvidera fail to pay any of the installment payments described in paragraph 4 above on or before the dates set forth therein, the entire amount of the balance remaining shall become due and payable immediately by him together with post-judgment interest pursuant to 28 U.S.C. §1961 with no further notice or demand required by plaintiff to defendant.

8. Defendant Joseph R. Kvidera shall fully cooperate in the termination of the Plan and the distribution of its assets, to the extent that his cooperation is required.

9. Within thirty (30) calendar days of the earlier of the following events:
1) the bankruptcy court's approval of the Chapter 7 Bankruptcy Trustee's final accounting or report in Defendant Joseph R. Kvidera's bankruptcy case no. 10-38676, or 2) the close of Defendant Joseph R. Kvidera's bankruptcy case no. 10-38676, Defendant Joseph R. Kvidera shall provide notice of the same to the Regional Director, Kansas City Regional

Office, Employee Benefit Security Administration, 2300 Main Street, Suite 1100, Kansas City, Missouri 64108-2415.

10. Should Defendant Joseph R. Kvidera's address or telephone number change, he shall provide notice within seven (7) calendar days of the same to the Regional Director, Kansas City Regional Office, Employee Benefit Security Administration, 2300 Main Street, Suite 1100, Kansas City, Missouri 64108-2415.

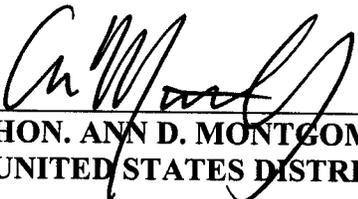
11. Except for purposes of completion of the payment plan and distribution of assets by John Hancock, the Plan's asset custodian, as set forth in paragraphs 4 and 5 above in this Consent Order and Judgment, Defendant Joseph R. Kvidera shall be permanently enjoined from serving or acting as a fiduciary or service provider with respect to any employee benefit plan subject to ERISA.

12. Each party agrees to bear his, her or its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

13. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Judgment and Order.

14. Nothing in this Order is binding on any government agency other than the United States Department of Labor.

DATED 27 October, 2011



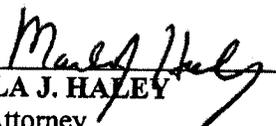
HON. ANN D. MONTGOMERY
UNITED STATES DISTRICT JUDGE

The parties hereby consent to the entry of this Consent Order and Judgment:

FOR THE SECRETARY OF LABOR

M. PATRICIA SMITH
Solicitor of Labor

Regional Solicitor
JOAN E. GESTRIN



MARLA J. HALEY
Trial Attorney

DATED: 10/26/11

Attorneys for Hilda L. Solis,
Secretary of Labor, United
States Department of Labor, Plaintiff
P.O. ADDRESS:
Office of the Solicitor
U.S. Department of Labor
230 South Dearborn Street, 8TH Floor
Chicago, Illinois 60604
Tel. 312-353-4455
Fax. 312-353-5698

FOR THE DEFENDANTS:

JOSEPH R. KVIDERA:


JOSEPH R. KVIDERA

DATED: 10-25-11

**PROCEDO, INC. 401(k) PROFIT
SHARING PLAN a/k/a PROCEDO, Inc.
401(k) & PROFIT SHARING PLAN:**

By 
JOSEPH R. KVIDERA

DATED: 10.25.11

Its _____
TRUSTEE



DENISE YEGGE TATARYN, ESQ.
Mansfield, Tanick & Cohen
Attorneys for Defendant Joseph R.
Kvidera and the Procedo, Inc. 401(k)
Profit Sharing Plan a/k/a Procedo,
Inc. 401(k) & Profit Sharing Plan
1700 U.S. Bank Plaza South
220 South Sixth Street
Minneapolis, MN 55402-4511
Tel. 612-339-4295
Fax. 612-339-3161