

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CLERK'S OFFICE
AT BALTIMORE

BY _____ DEPUTY

THOMAS E. PEREZ,
SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,

Civil Action

No. 13 - CV- 01909

Plaintiff,

v.

DAVID O. NYANJOM, LAURA NYANJOM,
PULMONARY DISEASE AND CRITICAL
CARE ASSOCIATES, P.A., and,
PULMONARY DISEASE AND CRITICAL
CARE ASSOCIATES, P.A. 401(K) PLAN,

Defendants.

CONSENT JUDGMENT

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor ("Secretary"), has filed a Complaint in this action pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, alleging certain violations by Defendant David O. Nyanjom ("D. Nyanjom"), Defendant Laura Nyanjom ("L. Nyanjom"), and Defendant Pulmonary Disease and Critical Care Associates, P.A. ("PDCCA") (hereinafter jointly, "Defendants"). The Pulmonary Disease and Critical Care Associates, P.A. 401(k) Plan ("Plan") was joined as a party defendant under Fed. R. Civ. P. 19(a) solely to assure that complete relief could be granted.

Counsel for the Secretary has engaged in settlement discussions with counsel for Defendants. The parties have agreed to resolve this case without further litigation. Defendants admit to the jurisdiction of this Court over them and the subject matter of this action. Defendants

consent to the entry of this Consent Judgment against them by this Court, the terms of which are set forth herein:

1. The Secretary's Complaint alleges that Defendants, fiduciaries of the Plan, violated Sections 403, 404, and 406 of ERISA, 29 U.S.C. §§ 1103, 1104, and 1106. Additionally, the Complaint alleges that Defendants are liable as co-fiduciaries for each other's breaches pursuant to Section 405 of ERISA, 29 U.S.C. § 1105.

2. For purposes of this Consent Judgment, Defendants admit that the Court has jurisdiction over them and the subject matter of this action.

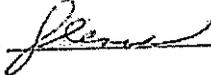
3. The Secretary has agreed to resolve all claims asserted in the Complaint against Defendants for the equitable relief set forth below.

4. The Secretary and Defendants understand and agree that entry of this Consent Judgment is without prejudice to the Secretary's right to investigate and redress violations of ERISA, if any, not alleged in the Complaint, including the Secretary's right to institute future enforcement actions with respect to any other such matter. It is further understood that this paragraph shall not constitute a waiver by Defendants of any defenses, legal or equitable, to any such future action.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that:

- a. For purposes of this Consent Judgment, the parties agree that the Court has jurisdiction over the Defendants and this proceeding, and that venue in this Court is proper.
- b. Defendants shall jointly and severally, restore \$66,474.02 in plan assets and \$66,392.57 in pre-judgment interest to the Plan in restitution and shall further restore

\$9,750.00 to the Plan for the costs and expenses of an independent fiduciary. The total amount to be restored to the Plan is \$142,616.59.

- c. D. Nyanjom and L. Nyanjom are participants in the Plan. The Plan is deemed amended to allow forfeiture of D. Nyanjom and L. Nyanjom's individual Plan accounts to the extent necessary to satisfy paragraph (b) as set forth herein. The Plan shall set off D. Nyanjom and L. Nyanjom's individual Plan accounts against the amount of losses to the Plan resulting from their fiduciary breaches alleged in the Complaint as set forth herein, as authorized by Section 1502 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1502, 111 Stat. 788 (1997). A copy of this consent judgment shall be filed with the Plan records.
- d. D. Nyanjom is owed a total of \$49,710.21 as a result of his failure to remit employee contributions and loan repayments to the Plan. D. Nyanjom hereby waives the repayment of this sum to his individual Plan account as part of the resolution of this matter.
- e. L. Nyanjom is owed a total of \$5,792.04 as a result of her failure to remit employee contributions and loan repayments to the Plan. L. Nyanjom hereby waives the repayment of this sum to her individual account as part of the resolution of this matter.
- f. D. Nyanjom's spouse, , has agreed to waive her rights to a qualified joint and survivor annuity/or qualified preretirement survivor annuity form of benefit for this amount, pursuant to Section 205(c) of ERISA, 29 U.S.C. § 1055(C), and her waiver is attached hereto as Exhibit A.

- g. If the individual Plan accounts of D. Nyanjom and L. Nyanjom are less than the total amount necessary to restore the full amount of \$142,616.59 to the Plan, the Defendants shall pay the deficiency out of other assets within sixty (60) days of entry of this consent judgment.
- h. The Plan shall redistribute the restitution to the Plan participants in amounts necessary to restore their losses incurred as a result of the fiduciary breaches alleged in the Complaint.
- i. The Plan shall provide to the Regional Director of EBSA satisfactory proof of the reallocations of D. Nyanjom and L. Nyanjom's accounts and satisfactory proof of each subsequent payment to the Plan, within 7 days of such reallocation and each subsequent payments. Satisfactory proof of the reallocation shall include, at a minimum, copies of records maintained by the Plan's third party record keeper before and after the reallocation demonstrating the reallocation from D. Nyanjom and L. Nyanjom's accounts to the accounts of other participants, or (in the case of reallocation to former participants or their beneficiaries) checks written to those participants, or transfers of funds to IRAs established in their names, together with a statement in writing from the Plan Administrator that appropriate 1099Rs will be issued reflecting the reallocations. Satisfactory proof of the payments by the Defendants shall consist, at a minimum, of documentation obtained from a third party service provider that confirm that the Defendants have made payments to the plan in the form of wire transfers or checks that have cleared, and the amount of such

payments. Such proof shall be sent to the Regional Director, EBSA, U.S. Department of Labor, 170 S. Independence Mall West Suite 870 West, Philadelphia, PA 19106.

- j. Upon receiving proof of the restitution payment, the Secretary shall assess a penalty against the Defendants of \$39,611.77 which represents 20 percent of the applicable recovery amount of \$198,058.84 pursuant to ERISA §502(l), 29 U.S.C. § 1132(l). The Defendants waive their right to contest the assessment of said penalty. The Defendants, however, reserve the right to request a waiver of said penalty based on financial hardship.
- k. PDCCA is removed as Plan administrator to the Plan, D. Nyanjom is removed as trustee of the plan, and the Defendants are removed as fiduciaries to the Plan.
- l. G Trust Financial Partners ("G Trust") is appointed the Plan's independent fiduciary with plenary authority over Plan administration, management, and disposition of Plan assets, including termination of the Plan. G Trust shall be compensated for the performance of its duties and costs in an amount not to exceed \$9,750.00, in accordance with Exhibit B attached. That amount shall be paid from the Plan's assets, but the Defendants shall reimburse the Plan in that same amount as provided in paragraph (b) herein.
- m. Defendants, their agents, representatives, servants and employees and all persons acting by or under their authority shall cooperate with G Trust in the performance of their duties. Defendants shall provide their full cooperation to G Trust relative to any need for participant or financial data that may exist

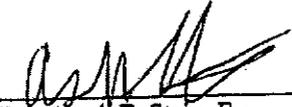
with regard to any record of the Plan.

- n. Defendants are permanently enjoined from serving as trustee, fiduciary, advisor, or administrator to any employee benefit plan subject to ERISA. Specifically, Defendants are permanently enjoined from serving in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan.
- o. Defendants are permanently enjoined from violating any provisions of ERISA in the future.
- p. If D. Nyanjom, L. Nyanjom, or PDCCA file for any form of bankruptcy prior to the full payment of restitution to the Plan, these Defendants will not oppose any proof of claim that the Secretary files in the bankruptcy proceeding for any amount still owing.
- q. If D. Nyanjom or L. Nyanjom file for any form of bankruptcy prior to the full payment of restitution to the Plan, these Defendants will not oppose an adversarial action that the Secretary may file to have the debt to the Plan declared non-dischargeable.
- r. The Secretary and Defendants shall each bear their own costs, expenses, and attorneys' fees incurred to date in connection with any stage of this proceeding, including but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.
- s. This Consent Judgment shall operate as a final disposition of all claims asserted by the Secretary against Defendants in the Complaint.

- t. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor.
- u. This Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment.
- v. The Court directs the entry of this Consent Judgment as a final order for the Plaintiff Secretary of Labor and against Defendants.

Date: April 8, 2014

Defendant David O. Nyanjom,
Defendant Laura Nyanjom, and
Defendant Pulmonary Disease and Critical
Care Associates, P.A.
consent to entry of this Consent Judgment


By: Aryeh E. Stein, Esq.
Counsel for Defendants David O. Nyanjom,
Laura Nyanjom, and
Pulmonary Disease and Critical Care Associates, P.A.

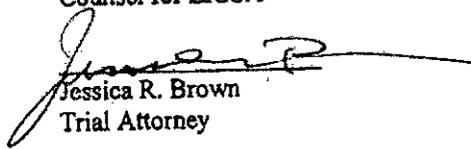
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U.S. DEPARTMENT OF LABOR