

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

RICHARD J. CAMPBELL, Individually and as Trustee
of the Venice Catering of Berlin, Inc. 401(k) Plan, and
VENICE CATERING OF BERLIN, INC., and the
VENICE CATERING OF BERLIN, INC. 401(K) PLAN,

Defendants.

Civil Action File
No.: 1:14-cv-02051-
JEI-AMD

**CONSENT ORDER
AND JUDGMENT**

Plaintiff Thomas E. Perez, ("Secretary") and Defendants Richard J. Campbell ("Campbell") and the Venice Catering of Berlin, Inc. (the "Company") and the Venice Catering of Berlin, Inc., 401(k) Plan (the "Plan") agree to the entry of this Consent Order and Judgment as a complete resolution of all issues in contention between them in this matter.

This action arises under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, as amended, and was brought by the Secretary pursuant to ERISA § 502(a)(2) and (5), 29 U.S.C. § 1132(a)(2) and (5), to obtain relief for breaches of fiduciary duty under ERISA § 409, 29 U.S.C. § 1109, and to enjoin acts and practices which violate the provisions of Title I of ERISA.

The Secretary filed a complaint on April 1, 2014 against Defendants Campbell, the Company, and the Plan. The Plan was named as a Defendant for the purpose of ensuring complete relief among the parties under Rule 19 of the Federal Rules of Civil Procedure.

The Secretary has authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and other parties who are in violation of Title I of ERISA pursuant to ERISA § 502(a)(2) and (5), 29 U.S.C. § 1132(a)(2) and (5).

The Plan is and was at all relevant times an employee pension benefit plan within the meaning of ERISA § 3(2) and (3), 29 U.S.C. § 1002(2) and (3).

Campbell was at all relevant times to this action a Trustee of the Plan and a fiduciary with respect to the Plan because he exercised authority or control respecting the management or disposition of the assets of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

The Company was at all relevant times to this action a fiduciary of the Plan because it exercised authority or control respecting the management or disposition of the assets of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(a).

Campbell and the Company neither admit nor deny the allegations in the Secretary's complaint except that Campbell and the Company admit that this Court has subject matter jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), that venue of this action lies in the District of New Jersey pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), and that this Court has personal jurisdiction over them for all purposes relevant to this matter including the entry of this Consent Order and Judgment.

The Secretary, Campbell, the Company, and the Plan, have agreed to resolve all remaining matters in controversy in this action (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 Consent Order and Judgment by this Court.

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

IT IS THEREFORE ORDERED that:

1. Upon completing the orderly termination of the Plan, Campbell and the Company will be permanently enjoined and restrained from engaging in any further action in violation of Title I of ERISA, and from serving or acting as a fiduciary or service provider to any employee benefit plan subject to Title I of ERISA.

2. Campbell and the Company are jointly and severally liable to the Plan in the total amount of \$28,358.07. This figure is comprised of the following:

- a. \$23,378.31, representing the amount due to individual Plan participants and beneficiaries;
- b. \$4,979.76, representing lost opportunity costs on the amount due to individual Plan participants and beneficiaries.

3. Campbell and the Company agree to repay the Plan \$28,358.07 according to the following schedule:

- a. A payment of \$9,452.69 within 5 days following the entry of this Consent Order and Judgment; and
- b. A payment of \$9,452.69 within 60 days following the entry of this Consent Order and Judgment; and
- c. A payment of \$9,452.69 within 120 days following the entry of this Consent Order and Judgment.

4. The payments to the Plan as required by Paragraphs 2 and 3 shall be allocated to the individual Plan accounts of the Plan participants in accordance with the following schedule:

- a. \$4,300.28 to the individual participant account of James Keeney, Sr.;
- b. \$970.79 to the individual participant account of Danielle L. McDowell;
- c. \$3,647.57 to the individual participant account of Martha L. Pine;
- d. \$2,531.70 to the individual participant account of Tracey L. Osuna;
- e. \$4,310.76 to the individual participant account of Dianna Hatton;
- f. \$507.32 to the individual participant account of Giovanni Ciranni;
- g. \$1,103.41 to the individual participant account of Mitchell Keating;
- h. \$2,090.78 to the individual participant account of Luis Benabe;
- i. \$8,895.46 to the individual participant account of Michael Olivieri.

5. Campbell and the Company agree that if the Secretary 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. Campbell and the Company reserve their right to seek a waiver of assessment under ERISA § 502(l)(3), 29 U.S.C. § 1132(l)(3).

6. Within 30 days of depositing the third and final payment to the Plan, Campbell shall begin the process of terminating the Plan. After all of the participants and beneficiaries accounts identified in paragraph 4 are fully reimbursed, Campbell agrees to take all actions necessary to terminate the Plan, including but not limited to the following specific actions:

- a. Complete the distributions for all Plan participants, and fulfill 1099R/1096 and 945 reporting requirements;
- b. Complete and electronically file the Plan's final Form 5500 and supporting schedules for the 2014 plan year, and file any outstanding Form 5500's;

- c. In the event a participant cannot be located to receive a distribution, Campbell agrees to follow the standards set forth in DOL Field Assistance Bulletin 2004-02 in addressing this issue.

7. The parties agree that Campbell, in his capacity as the Plan Trustee, with authority to administer the Plan, will implement the Plan's orderly termination.

8. Campbell agrees to submit to EBSA documentary evidence establishing that he is fulfilling all of his obligations set forth in this Consent Order and Judgment. Such evidence shall include, but not be limited to:

- a. Evidence establishing that the three deposits described in Paragraph 3 have been deposited to the Plan;
- b. Evidence establishing that the deposits identified in Paragraph 3 have been credited to the accounts of the participants and beneficiaries identified in Paragraph 4.
- c. Evidence establishing that all IRS and DOL forms required for the Plan's orderly termination have been duly filed with the appropriate agency;
- d. In the event a participant(s) cannot be located, Campbell agrees to provide evidence to EBSA that establishes that he has followed standards set forth in DOL Field Assistance Bulletin 2004-02 to resolve the issue.

9. Within 7 days of taking any action pursuant to this Consent Order and Judgment, Campbell agrees to mail evidence that such action has been taken to:

Stephanie Thimodo
Supervisory Investigator
U.S. Department of Labor
Employee Benefits Security Administration
170 South Independence Mall West
Suite 870 West

Philadelphia, PA 19106

10. Campbell shall distribute or cause the distribution of the assets of the Plan in accordance with applicable Plan documents and Federal law.

11. Campbell and the Company shall be subject to the orders of this Court.

12. In the performance of his duties, Campbell may retain assistance as he may reasonably require, including attorneys, accountants, actuaries and other service providers.

13. Within 7 days of signing this Consent Order and Judgment, Campbell shall obtain a bond pursuant to ERISA § 412, 29 U.S.C. § 1112, for the Plan. Because the beneficiary of the bond is the Plan, the Plan may pay for the cost of the bond.

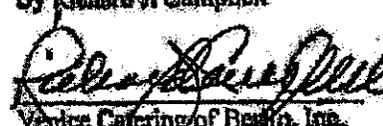
14. Each party agrees to bear his, her or its own attorneys' fees, costs and other expense incurred by such party in connection with any stage of this proceeding to date, including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

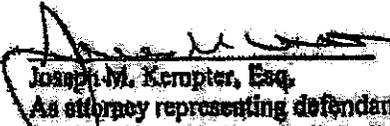
15. The parties agree that this document may be executed via counterpart signatures and that a signature via facsimile or PDF and electronic mail will be deemed an original signature and will be binding upon the party transmitting the signature by facsimile or PDF and electronic mail.

16. The Court directs the entry of this Consent Order and Judgment as a final order.

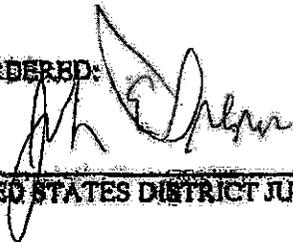
17. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Order and Judgment.

18. Nothing in this Consent Order and Judgment is binding on any government agency other than the United States Department of Labor.

 Richard J. Campbell	<u>7/10/14</u> Date	M. PATRICIA SMITH Solicitor of Labor
 Venice Catering of Berlin, Inc. By Richard J. Campbell	<u>7/11/14</u> Date	JEFFREY S. ROGOFF Acting Regional Solicitor
 Venice Catering of Berlin, Inc. 401(k) Plan By Richard J. Campbell	<u>7/10/14</u> Date	MATTHEW M. SULLIVAN Attorney
		U.S. Department of Labor Attorneys for Plaintiff Thomas E. Perez, Secretary of Labor


Joseph M. Krupter, Esq.
As attorney representing defendants:
1. Richard J. Campbell, Individually and as Trustee
2. Venice Catering of Berlin, Inc.
3. Venice Catering of Berlin, Inc., 401(k) Plan

The Clerk of Court is hereby directed to CLOSE THIS FILE.
Date: 7/17/14, 2014

SO ORDERED:

UNITED STATES DISTRICT JUDGE