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Friday, 10 October, 2014 03:12:38 PM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor,	
Plaintiff,	CIVIL ACTION
v.	
RODGER D. FERGUSON, INDUSTRIAL SURFACING CORP., and **INDUSTRIAL SURFACING CORP. 401(k) PLAN,**	File No. 2: 13-cv-2201
	The Honorable Harold A. Baker
Defendants.	

DEFAULT JUDGMENT

Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor (the "Secretary"), Plaintiff in the above-styled action, having filed his complaint and Defendants Rodger D. Ferguson,[1] Industrial Surfacing Corp. ("Industrial Surfacing"), and Industrial Surfacing Corp. 401(k) Plan ("Plan") (collectively, "Defendants") having been duly served, and Defendants having failed to plead or otherwise defend within the time prescribed by law, and default of the Defendants having been duly entered by this Court, and the amount owed by

[1] On April 23, 2014, defendant Rodger D. Ferguson filed for Chapter 7 bankruptcy in the United States Bankruptcy Court in the Central District of Illinois, case no. 14-90481. Because the Secretary is prosecuting this civil action pursuant to the Department of Labor's police and regulatory power under Title I of ERISA, the Secretary's action is "an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power," it is excluded from the operation of the automatic stay provisions of the Bankruptcy Code pursuant to 11 U.S.C. § 362(b)(4). The Secretary's efforts to enforce any monetary portion of any judgment obtained against defendant corporation Rodger Ferguson will be consistent with the Bankruptcy Code. *See e.g.*, *Chao v. B.D.K. Industries, LLC.*, 296 B.R. 165, 167-168 (C.D. Ill. 2003); *In re Mateer*, 205 B.R 915, 920-921 (C.D. Ill. 1997); *Sec'y of Labor v. Wallis*, 2012 WL 3779065 *6-*9 (N.D. Ill. 2012); *Sec'y of Labor v. Caro*, 2012 WL 1230824 *3-*6 (N.D. Ill. 2012); *Martin v. Friedman*, 133 B.R. 609 (N.D. Ohio 1991).

Defendants having been verified by the attested declaration of the Secretary's investigator; now, therefore, upon motion of the Secretary and for cause shown,

JUDGMENT IS HEREBY ENTERED against Defendants Industrial Surfacing, Rodger D. Ferguson, and the Plan in accordance with the prayer of the complaint in the above-styled action; and it is:

ORDERED, ADJUDGED, AND DECREED that:

1. Defendants Rodger D. Ferguson and Industrial Surfacing Corp. ("Industrial Surfacing") are removed from their positions as fiduciaries with respect to the Industrial Surfacing Corp. 401(k) Plan ("Plan");

2. Defendants Rodger D. Ferguson and Industrial Surfacing are permanently enjoined from violating the provisions of Title I of ERISA;

3. Defendants Rodger D. Ferguson and Industrial Surfacing are permanently enjoined from acting as fiduciaries or service providers to any ERISA-covered employee benefit plan;

4. Defendants Rodger D. Ferguson and Industrial Surfacing shall correct the prohibited transactions in which they engaged;

5. Defendants Rodger D. Ferguson and Industrial Surfacing shall restore $47,636.44 to the Plan in unremitted employee salary deferral contributions to the Plan consistent with the Bankruptcy Court proceeding, case no. 14-90481;

6. Defendant Rodger D. Ferguson shall restore $5,650.61 in associated lost opportunity costs incurred by the Plan as a result of fiduciary breaches calculated through April

22, 2014 consistent with the U.S. Bankruptcy Court for the Central District of Illinois, *In re: Rodger Ferguson*, Case No. 14-9048;

7. The Plan is amended to permit the setoff of Defendant Rodger Ferguson's Plan account for losses incurred by the Plan resulting from fiduciary breaches, as authorized by §1502(a) of the Taxpayer Act of 1997, Pub. L. No. 105-34, 11 Stat. 788, 1058-59 (1997), codified at 29 U.S.C. § 1056(d)(4);

8. Amy M. Grace of 7930 Santa Fe Drive, Suite 100, overland Park, Kansas 66204, is hereby appointed as the independent fiduciary for the Plan to administer the Plan and to terminate the Plan consistent with the Plan's governing documents, the Internal Revenue Code, and ERISA. The independent fiduciary shall have the following powers, duties and responsibilities:

a. The independent fiduciary shall have responsibility and authority to collect, liquidate, and manage such assets of the Plan for the benefit of the eligible participants and beneficiaries of the Plan who are entitled to receive such assets, until such time that the assets of the Plan are distributed to the eligible participants and beneficiaries of the Plan and the Plan is fully terminated;

b. The independent fiduciary shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the Plan who is eligible to receive a payment under the terms of this Consent Order and Judgment and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled;

c. The independent fiduciary shall have full access to all data, information and calculations in the Plan's possession or under its control, including that

information contained in the records of the Plan's custodial trustees and other service providers, bearing on the distribution of benefit payments, participant account balances and current plan assets;

d. The independent fiduciary may retain such persons and firms including, but not limited to, accountants and attorneys, as may be reasonably required to perform his duties hereunder;

e. Within fourteen (14) days of entry of a bankruptcy order finding Defendant Rodger Ferguson's debt to the Plan non-dischargeable in U.S. Bankruptcy Court for the Central District of Illinois, *In re: Rodger Ferguson*, Case No. 14-9048, the independent fiduciary shall cause, pursuant to §1502(a) of the Taxpayer Relief Act of 1997, codified at 29 U.S.C. §1056(d)(4), all assets in Rodger Ferguson's current Plan account, an amount in total that is approximately $14,860.22, to be allocated to the participants in the Plan, excluding himself and Rebecca Ferguson, whose salary deferral contributions were not remitted and in the manner and amounts set forth in Attachment 1 of the Default Judgment. Alternatively, within fourteen (14) days of entry of a bankruptcy order finding Defendant Rodger Ferguson's debt to the Plan is dischargeable in U.S. Bankruptcy Court for the Central District of Illinois, *In re: Rodger Ferguson*, Case No. 14-9048, the independent fiduciary shall distribute Rodger Ferguson's Plan account to Rodger Ferguson.

f. The independent fiduciary shall initiate the termination of the Plan in accordance with ERISA within thirty (30) days of entry of this order. The independent fiduciary's responsibilities shall include, but not be limited to,

causing the distribution of the Plan's assets to the Plan participants and filing all appropriate documents with the various government agencies. The Plan shall be fully terminated within ninety (90) days of the entry of a bankruptcy order determining whether Rodger Ferguson's debt is non-dischargeable in U.S. Bankruptcy Court for the Central District of Illinois, *In re: Rodger Ferguson*, Case No. 14-9048. Within thirty (30) days from the date that the Plan is fully terminated, the independent fiduciary shall provide satisfactory proof of such termination, including proof of issuance of the Plan's participant distributions, to the Regional Director of the Employee Benefits Security Administration, United States Department of Labor, 2300 Main Street, Suite 1100, Kansas City, MO 64108; and

g. After terminating the Plan, as referenced in paragraph 9(f) above, for the services performed pursuant to this Consent Order and Judgment, the Independent Fiduciary shall receive compensation, from the Plan not to exceed $5,400 for fees and expenses reasonably and necessarily incurred in administering and terminating the Plan;

9. Awarding the Secretary costs of this action; and

10. Such further relief as is appropriate and just.

Dated: October 10, 2014

s/Harold A. Baker

HAROLD A. BAKER
UNITED STATES DISTRICT COURT JUDGE

Attachment 1

Industrial Surfacing Corp. 401(k) Plan
62-100256
Allocation of Rodger Ferguson Accounts to Other Participants

Participant	Total Unpaid Employee Contributions	Percentage of Total Unpaid Contributions	Percentage of Rodger Ferguson Accounts to Be Allocated to Other Particiapnts
Stacey Albers	$13.69	0.00034	0.00034
Elizabeth Barnes	$384.60	0.00946	0.00946
Lori Balanck	$580.80	0.01429	0.01429
Robin Brown	$992.44	0.02442	0.02442
Scott Browning	$1,860.61	0.04579	0.04579
Michael Carter	$3,037.50	0.07475	0.07475
Martin Couture	$1,845.00	0.04540	0.04540
Daniel Enos	$193.08	0.00475	0.00475
Ernest Estrada	$110.00	0.00271	0.00271
Daniel Ferguson	$2,750.00	0.06767	0.06767
Matthew Gilt	$1,149.83	0.02830	0.02830
Ann Lookingbill	$663.22	0.01632	0.01632
Matthew Martinez	$230.80	0.00568	0.00568
Kenneth O'Banion	$140.00	0.00345	0.00345
Eugene Pepper III	$230.80	0.00568	0.00568
Gary Rogers	$3,157.47	0.07770	0.07770
James Story	$230.80	0.00568	0.00568
William Tinney, Jr.	$230.80	0.00568	0.00568
Larry Trujillo	$4,400.00	0.10828	0.10828
Ignacio Villamil	$18,435.00	0.45366	0.45366
	$40,636.44	1.00000	1.00000

Industrial Surfacing Corp 401(k) Plan
Case Number 62-100256, File Prepared by William Brown on June 25, 2014
Period covered: May 28, 2010 through April 22, 2014

Summary

Total Amount Withheld:	$47,036.44
Total Amount Deposited:	$0.00
Total Paid Late (Including Amounts Outstanding):	$47,036.44
Average Workdays from Withholding to Deposit:	
Average Calendar Days Late:	
Maximum Calendar Days Late:	0
Total Interest Owed:	$5,650.61
Employee Contributions Outstanding:	$47,036.44
Participant Loan Repayments Outstanding:	$0.00
Total Outstanding:	$47,036.44
Total Overpaid:	$0.00
Grand Total Owed to Plan:	$52,687.05

Summary by Plan Year

PYE	All Years	12/31/2010	12/31/2011
Total Principal Withheld	$47,036.44	$38,308.16	$8,728.28
Total Amount Deposited	$0.00	$0.00	$0.00
Total Paid Late (Including Amounts Outstanding)	$47,036.44	$38,308.16	$8,728.28
Average Workdays from Withholding to Deposit			
Average Calendar Days Late			
Maximum Calendar Days Late	0	0	0
Total Interest Owed on Late Deposits	$5,650.61	$4,724.79	$925.82
Employee Contributions Outstanding	$47,036.44	$38,308.16	$8,728.28
Participant Loan Repayments Outstanding	$0.00	$0.00	$0.00
Total Outstanding	$47,036.44	$38,308.16	$8,728.28
Total Overpaid	$0.00	$0.00	$0.00
Total Owed to Plan	$52,687.05	$43,032.95	$9,654.10

PENGAD 800-631-6989
EXHIBIT
1

Exhibit B
#3

Industrial Surfacing Corp 401(k) Plan, Case Number 62-100256, File Prepared by William Brown on June 25, 2014

The workbook only calculates

Notes/Comments	Date Withheld	Employee Contributions Withheld	Participant Loan Repayments Withheld	Date of Deposit	Employee Contributions Deposited	Participant Loan Repayments Deposited	Total Amount Deposited	Date Due	Safe Harbor Date	Total Withheld	Employee Contributions Outstanding	Participant Loan Repayments Outstanding	Total Outstanding
	5/28/2010	$1,183.16						5/28/2010	6/9/2010	$1,183.16	$1,183.16		$1,183.16
	6/4/2010	$1,193.53						6/4/2010	6/15/2010	$1,193.53	$1,193.53		$1,193.53
	6/11/2010	$1,193.53						6/11/2010	6/22/2010	$1,193.53	$1,193.53		$1,193.53
	6/18/2010	$1,193.53						6/18/2010	6/29/2010	$1,193.53	$1,193.53		$1,193.53
	6/25/2010	$1,261.32						6/25/2010	7/7/2010	$1,261.32	$1,261.32		$1,261.32
	7/2/2010	$1,270.48						7/2/2010	7/14/2010	$1,270.48	$1,270.48		$1,270.48
	7/9/2010	$1,252.27						7/9/2010	7/20/2010	$1,252.27	$1,252.27		$1,252.27
	7/16/2010	$1,201.60						7/16/2010	7/27/2010	$1,201.60	$1,201.60		$1,201.60
	7/23/2010	$1,255.43						7/23/2010	8/3/2010	$1,255.43	$1,255.43		$1,255.43
	7/30/2010	$1,200.74						7/30/2010	8/10/2010	$1,200.74	$1,200.74		$1,200.74
	8/6/2010	$1,089.71						8/6/2010	8/17/2010	$1,089.71	$1,089.71		$1,089.71
	8/13/2010	$1,166.80						8/13/2010	8/24/2010	$1,166.80	$1,166.80		$1,166.80
	8/20/2010	$1,194.47						8/20/2010	8/31/2010	$1,194.47	$1,194.47		$1,194.47
	8/27/2010	$1,269.65						8/27/2010	9/8/2010	$1,269.65	$1,269.65		$1,269.65
	9/3/2010	$1,266.91						9/3/2010	9/15/2010	$1,266.91	$1,266.91		$1,266.91
	9/10/2010	$1,265.66						9/10/2010	9/21/2010	$1,265.66	$1,265.66		$1,265.66
	9/17/2010	$1,263.15						9/17/2010	9/28/2010	$1,263.15	$1,263.15		$1,263.15
	9/24/2010	$1,208.60						9/24/2010	10/5/2010	$1,208.60	$1,208.60		$1,208.60
	10/1/2010	$1,268.48						10/1/2010	10/13/2010	$1,268.48	$1,268.48		$1,268.48
	10/8/2010	$1,298.18						10/8/2010	10/20/2010	$1,298.18	$1,298.18		$1,298.18
	10/15/2010	$1,253.75						10/15/2010	10/26/2010	$1,253.75	$1,253.75		$1,253.75
	10/22/2010	$1,156.12						10/22/2010	11/2/2010	$1,156.12	$1,156.12		$1,156.12
	10/29/2010	$1,196.16						10/29/2010	11/9/2010	$1,196.16	$1,196.16		$1,196.16
	11/5/2010	$1,140.05						11/5/2010	11/17/2010	$1,140.05	$1,140.05		$1,140.05
	11/12/2010	$1,215.05						11/12/2010	11/23/2010	$1,215.05	$1,215.05		$1,215.05
	11/19/2010	$1,191.73						11/19/2010	12/1/2010	$1,191.73	$1,191.73		$1,191.73
	11/26/2010	$1,184.97						11/26/2010	12/7/2010	$1,184.97	$1,184.97		$1,184.97
	12/3/2010	$1,067.28						12/3/2010	12/14/2010	$1,067.28	$1,067.28		$1,067.28
	12/10/2010	$1,137.03						12/10/2010	12/21/2010	$1,137.03	$1,137.03		$1,137.03
	12/17/2010	$1,205.78						12/17/2010	12/29/2010	$1,205.78	$1,205.78		$1,205.78
	12/24/2010	$1,041.50						12/24/2010	1/5/2011	$1,041.50	$1,041.50		$1,041.50
	12/31/2010	$1,021.54						12/31/2010	1/11/2011	$1,021.54	$1,021.54		$1,021.54
	1/7/2011	$820.79						1/7/2011	1/19/2011	$820.79	$820.79		$820.79
	1/14/2011	$929.26						1/14/2011	1/26/2011	$929.26	$929.26		$929.26
	1/21/2011	$981.23						1/21/2011	2/1/2011	$981.23	$981.23		$981.23
	1/28/2011	$946.32						1/28/2011	2/8/2011	$946.32	$946.32		$946.32
	2/4/2011	$916.68						2/4/2011	2/15/2011	$916.68	$916.68		$916.68
	2/11/2011	$848.18						2/11/2011	2/23/2011	$848.18	$848.18		$848.18
	2/18/2011	$226.13						2/18/2011	3/2/2011	$226.13	$226.13		$226.13
	2/25/2011	$207.60						2/25/2011	3/8/2011	$207.60	$207.60		$207.60
	3/4/2011	$820.98						3/4/2011	3/15/2011	$820.98	$820.98		$820.98
	3/11/2011	$906.10						3/11/2011	3/22/2011	$906.10	$906.10		$906.10
	3/18/2011	$776.98						3/18/2011	3/29/2011	$776.98	$776.98		$776.98
	3/25/2011	$250.53						3/25/2011	4/5/2011	$250.53	$250.53		$250.53
	4/1/2011	$82.50						4/1/2011	4/12/2011	$82.50	$82.50		$82.50
	4/8/2011	$15.00						4/8/2011	4/19/2011	$15.00	$15.00		$15.00

Exhibit B

Industrial Surfacing Corp 401(k) Plan, Case Number 62-100256, File Prepared **Lost Earnings up to 7 years after the earliest payroll withholding date**

Notes/Comments	Date Withheld	Employee Contributions Withheld	Participant Loan Repayments Withheld	Date of Deposit	Employee Contributions Deposited	Participant Loan Repayments Deposited	Paid Late	Overpaid	Interest 1 IRC 6621(a)	Interest 2 IRC 6621(a)	Total Interest	Total Owed to Plan	Workdays from Withholding to Deposit	Calendar Days Late
	5/28/2010	$1,183.16					$1,183.16		$161.56		$161.56	$1,344.72		
	6/4/2010	$1,193.53					$1,193.53		$161.93		$161.93	$1,355.46		
	6/11/2010	$1,193.53					$1,193.53		$160.89		$160.89	$1,354.42		
	6/18/2010	$1,193.53					$1,193.53		$159.85		$159.85	$1,353.38		
	6/25/2010	$1,261.32					$1,261.32		$167.84		$167.84	$1,429.16		
	7/2/2010	$1,270.48					$1,270.48		$167.95		$167.95	$1,438.43		
	7/9/2010	$1,252.27					$1,252.27		$164.46		$164.46	$1,416.73		
	7/16/2010	$1,201.60					$1,201.60		$156.76		$156.76	$1,358.36		
	7/23/2010	$1,255.43					$1,255.43		$162.70		$162.70	$1,418.13		
	7/30/2010	$1,200.74					$1,200.74		$154.57		$154.57	$1,355.31		
	8/6/2010	$1,089.71					$1,089.71		$139.33		$139.33	$1,229.04		
	8/13/2010	$1,166.80					$1,166.80		$148.18		$148.18	$1,314.98		
	8/20/2010	$1,194.47					$1,194.47		$150.66		$150.66	$1,345.13		
	8/27/2010	$1,269.65					$1,269.65		$159.05		$159.05	$1,428.70		
	9/3/2010	$1,266.91					$1,266.91		$157.61		$157.61	$1,424.52		
	9/10/2010	$1,265.66					$1,265.66		$156.36		$156.36	$1,422.02		
	9/17/2010	$1,263.15					$1,263.15		$154.97		$154.97	$1,418.12		
	9/24/2010	$1,208.60					$1,208.60		$147.23		$147.23	$1,355.83		
	10/1/2010	$1,268.48					$1,268.48		$153.44		$153.44	$1,421.92		
	10/8/2010	$1,298.18					$1,298.18		$155.91		$155.91	$1,454.09		
	10/15/2010	$1,253.75					$1,253.75		$149.50		$149.50	$1,403.25		
	10/22/2010	$1,156.12					$1,156.12		$136.87		$136.87	$1,292.99		
	10/29/2010	$1,196.16					$1,196.16		$140.58		$140.58	$1,336.74		
	11/5/2010	$1,140.05					$1,140.05		$133.01		$133.01	$1,273.06		
	11/12/2010	$1,215.05					$1,215.05		$140.72		$140.72	$1,355.77		
	11/19/2010	$1,191.73					$1,191.73		$137.00		$137.00	$1,328.73		
	11/26/2010	$1,184.97					$1,184.97		$135.21		$135.21	$1,320.18		
	12/3/2010	$1,067.28					$1,067.28		$120.87		$120.87	$1,188.15		
	12/10/2010	$1,137.03					$1,137.03		$127.80		$127.80	$1,264.83		
	12/17/2010	$1,205.78					$1,205.78		$134.50		$134.50	$1,340.28		
	12/24/2010	$1,041.50					$1,041.50		$115.28		$115.28	$1,156.78		
	12/31/2010	$1,021.54					$1,021.54		$112.20		$112.20	$1,133.74		
	1/7/2011	$820.79					$820.79		$89.63		$89.63	$910.42		
	1/14/2011	$929.26					$929.26		$100.88		$100.88	$1,030.14		
	1/21/2011	$981.23					$981.23		$105.90		$105.90	$1,087.13		
	1/28/2011	$946.32					$946.32		$101.53		$101.53	$1,047.85		
	2/4/2011	$916.68					$916.68		$97.76		$97.76	$1,014.44		
	2/11/2011	$848.18					$848.18		$89.92		$89.92	$938.10		
	2/18/2011	$226.13					$226.13		$23.83		$23.83	$249.96		
	2/25/2011	$207.60					$207.60		$21.74		$21.74	$229.34		
	3/4/2011	$820.98					$820.98		$85.47		$85.47	$906.45		
	3/11/2011	$906.10					$906.10		$93.76		$93.76	$999.86		
	3/18/2011	$776.98					$776.98		$79.90		$79.90	$856.88		
	3/25/2011	$250.53					$250.53		$25.60		$25.60	$276.13		
	4/1/2011	$82.50					$82.50		$8.38		$8.38	$90.88		
	4/8/2011	$15.00					$15.00		$1.51		$1.51	$16.51		