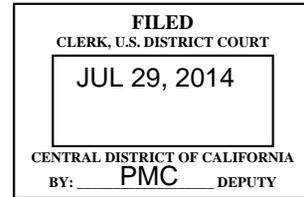


1 JANET M. HEROLD, Regional Solicitor
2 DANIELLE L. JABERG, Counsel for ERISA
3 California State Bar No. 256653
4 BENJAMIN R. BOTTS, Trial Attorney
5 California State Bar No. 274542
6 Office of the Solicitor
7 United States Department of Labor
8 90 7th Street, Suite 3-700
9 San Francisco, California 94103
10 Telephone: (415) 625-7767
11 Facsimile: (415) 625-7772
12 Email: botts.benjamin.r@dol.gov



JS-6

13 Attorneys for Plaintiff,
14 United States Secretary of Labor

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 THOMAS E. PEREZ, Secretary of
19 Labor, UNITED STATES
20 DEPARTMENT OF LABOR,

21 Plaintiff,

22 v.

23 NICKSON'S MACHINE SHOP, INC., a
24 corporation; DENNIS W. LEAL, an
25 individual; and the NICKSON'S
26 MACHINE SHOP 401(K) SAVINGS
27 PLAN, an employee pension benefit
28 plan.

Defendants.

Case No. 2:14-cv-00235-SVW-E

CONSENT JUDGMENT & ORDER

Plaintiff THOMAS E. PEREZ, Secretary of Labor, United States
Department of Labor ("Secretary") pursuant to his authority under Sections

1 502(a)(2) and (5) of the Employee Retirement Income Security Act of 1974
2 (“ERISA”), 29 U.S.C. §§ 1132(a)(2) and (5), has filed a Complaint against
3 Defendants NICKSON’S MACHINE SHOP, INC., a corporation (“Company”),
4 DENNIS W. LEAL, an individual (“Leal”), and the NICKSON’S MACHINE
5 SHOP 401(k) SAVINGS PLAN, an employee pension benefit plan (“Plan”).¹

6 A. The Secretary, the Company, Leal, and the Plan (collectively, “the
7 parties”) admit that the Court has jurisdiction over this action pursuant to ERISA
8 Section 502(e)(1), 29 U.S.C. § 1132(e)(1), and that venue lies in the United States
9 District Court, Central District of California, pursuant to ERISA Section 502(e)(2),
10 29 U.S.C. § 1132(e)(2).

11 B. The parties agree to the entry of this Consent Judgment & Order. The
12 parties further agree that this Consent Judgment & Order shall fully settle all
13 claims of the Secretary asserted in the Complaint.

14 **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that:

15 1. Defendants Company and Leal are jointly and severally liable for
16 restoring \$59,316.26 in losses and lost-opportunity costs (“Amount Due”) to the
17 Plan.

18 2. Defendants Company and Leal shall restore the Amount Due, as set
19 forth in this paragraph:

20 a. Pursuant to ERISA Section 206(d)(4), 29 U.S.C. § 1056(d)(4),
21 and within ten (10) days of the entry of this Consent Judgment & Order, Defendant
22 Leal shall restore the Amount Due, in part, by the offsetting of his entire individual
23 participant Plan account balance (“Offset Amount”) as determined by the
24 Independent Fiduciary appointed under the terms of this Consent Judgment &
25 Order effecting the described offset and reallocating such balance to the other
26

27 _____
28 ¹ The Plan is named in the Secretary’s Complaint as a party necessary for complete relief pursuant to Fed. R. Civ. P. 19(a).

1 participants' Plan accounts in accordance with the allocation method described in
2 Paragraph 2.e, below;

3 b. Following the offset of Defendant Leal's individual participant
4 Plan account balance, the Independent Fiduciary appointed under the terms of this
5 Consent Judgment & Order shall issue an IRS Form 1099-R to Defendant Leal for
6 the Offset Amount;

7 c. Defendants Company and Leal shall restore the Amount Due
8 remaining after the subtraction of the Offset Amount ("Remaining Balance") by
9 making the following payments to the Plan through the Independent Fiduciary
10 identified in Paragraph 4, *infra*:

11 i. 12 payments of \$500 on the first day of each month for 12
12 months, beginning on September 1, 2014, and ending on
13 August 1, 2015;

14 ii. 47 payments of \$1,000, beginning on September 1, 2015,
15 and ending on July 1, 2019; and

16 iii. One (1) balloon payment of the final amount due ("Final
17 Amount") no later than August 1, 2019. The Independent
18 Fiduciary appointed under this Consent Judgment & Order
19 shall establish the Final Amount and shall notify Defendants
20 Company and Leal of the Final Amount within thirty (30)
21 days of the entry of the Consent Judgment & Order. The
22 Final Amount shall be calculated by subtracting the Offset
23 Amount and all payments made pursuant to Paragraphs
24 2.c.i-ii from the Amount Due.

25 d. The payment schedule is summarized in the following chart:
26
27
28

Date Payment is Due	Payment Amount
Within ten (10) days of the entry of the Consent Judgment & Order	Balance of Leal's individual participant account balance
The 1st of each month beginning September 1, 2014 and ending August 1, 2015	\$500
The 1st of each month beginning September 1, 2015 and ending July 1, 2019.	\$1,000
On or before August 1, 2019	Final Amount

e. All restorations of the Amount Due, including all payments made to the Plan and the offset of Defendant Leal's Plan account balance set forth in Paragraphs 2.a and 2.c, above, shall be allocated to participants with current individual Plan accounts by the Independent Fiduciary on a pro rata basis, and to former participant Henry Lopez, who formerly had an individual Plan account, on a pro rata basis, reduced by twenty seven percent. Defendant Leal shall receive no allocation;

f. Should Defendants Company and Leal fail to timely comply with any requirements set forth in this Paragraph, the Remaining Balance of the Amount Due at the time of non-compliance shall become immediately due and payable;

g. Barbara R. Leal, the spouse of Defendant Leal, has consented to the offset of Defendant Leal's Plan account described in Paragraph 2a as evidenced by the spousal consent form submitted to the Secretary contemporaneously with Dennis Leal's execution of this Consent Judgment & Order and attached to this Consent Judgment & Order as Exhibit A.

1 3. Defendants Company and Leal are liable for paying all reasonable
2 fees and costs of the Independent Fiduciary within thirty days of receiving the bill
3 for same by the Independent Fiduciary; in no event may Plan assets be used to pay
4 the fees or costs of the Independent Fiduciary;

5 4. Receivership Management, Inc., 783 Old Hickory Blvd., Suite 255r,
6 Brentwood, TN 37027 is appointed as the Independent Fiduciary to the Plan with
7 the following duties and responsibilities:

8 a. The Independent Fiduciary shall collect, marshal, pay out and
9 administer all of the assets of the Plan and take further action with respect to the
10 Plan as appropriate, including terminating the Plan when all of its assets have been
11 distributed to all eligible participants and beneficiaries;

12 b. The Independent Fiduciary shall, pursuant to the procedures
13 outlined in the Employee Benefits Security Administration's Field Bulletin 2004-
14 02, exercise reasonable care and diligence to identify and locate each participant
15 and beneficiary of the Plan who is eligible to receive a distribution under the terms
16 of the Plan;

17 c. The Independent Fiduciary shall have all the rights, duties,
18 discretion, and responsibilities of a trustee, fiduciary, and Plan Administrator under
19 ERISA, and shall have full authority to amend the Plan as necessary to effectuate
20 its termination and processing of all participant distributions;

21 d. Among other responsibilities and duties, the Independent
22 Fiduciary shall accomplish the offset described in Paragraph 2.a, issue the Forms
23 1099-R in accordance with Paragraph 2.b, and calculate the payments due to the
24 Plan in accordance with Paragraph 2.c.iii;

25 e. The Independent Fiduciary is authorized to delegate or assign
26 fiduciary duties as appropriate and allowed under the law and may retain such
27 assistance as required, including attorneys, accountants, actuaries, and other
28 service providers;

1 f. The Independent Fiduciary shall bill Defendants Company and
2 Leal for its reasonable fees and costs for serving as the Independent Fiduciary as
3 described in Paragraph 3;

4 g. The Independent Fiduciary shall have full access to all data,
5 information, and calculations in the Plan's possession and under its control,
6 including information and records maintained by the Plan's custodial trustees or
7 service providers;

8 h. The Independent Fiduciary is authorized to give instructions
9 respecting the disposition of the assets of the Plan; and

10 j. The Independent Fiduciary shall maintain a fidelity bond
11 pursuant to ERISA Section 412, 29 U.S.C. §1112;

12 k. The Independent Fiduciary shall comply with all applicable rules
13 and laws;

14 l. Upon request, the Independent Fiduciary shall provide the
15 Secretary with appropriate evidence of the restoration and/or other actions taken
16 pursuant to this Consent Judgment & Order; and

17 m. Upon request, the Independent Fiduciary shall provide any
18 information regarding the Plan requested by the Secretary, including any
19 documents or records requested, regarding the administration of the Plan.

20 5. Within ten (10) days of the Court's entry of this Consent Judgment &
21 Order, Defendants Company and Leal shall provide a copy of this Consent
22 Judgment & Order to the Independent Fiduciary.

23 6. Defendant Leal shall cooperate fully with the Independent Fiduciary
24 in providing documents or information he may have relevant to the Plan's
25 administration and management.

26 7. Upon Defendant's restoration of the Amount Due to the Plan as
27 outlined above, Defendants Company and Leal shall be assessed a penalty under
28 ERISA Section 502(1), 29 U.S.C. § 1132(1), in the amount of \$11,863.25

1 (“Penalty Amount”), which is twenty percent (20%) of the Amount Due.
2 Defendants Company and Leal waive the notice of assessment and service
3 requirement of 29 C.F.R. § 2570.83 and, within sixty (60) days following the last
4 payment date outlined in Paragraph 2, *supra*, Defendants Company and Leal shall
5 pay the Penalty Amount to the U.S. Department of Labor, by sending a certified or
6 cashier’s check payable to the United States Department of Labor (please write
7 EBSA Case No. 72-031158 (48) on the check) to:

8 For Regular Mail

9 U.S. Department of Labor
10 ERISA Civil Penalty
11 P.O. Box 70942
12 Charlotte, NC 28272-0942

13 For Overnight Courier (e.g., FedEx)

14 U.S. Department of Labor
15 QLP Wholesale Lockbox NC0810
16 Lockbox #70942
17 1525 West WT Harris Blvd.
18 Charlotte, NC 28262

19 8. Wherever submission to the Secretary is required under the terms of
20 this Consent Judgment & Order, such submission shall be made to:

21 Regional Director
22 Los Angeles Regional Office
23 Employee Benefits Security Administration
24 U.S. Department of Labor
25 1055 East Colorado Blvd., Suite 200
26 Pasadena, CA 91106

27 9. Defendants Company and Leal are permanently enjoined and restrained
28 from violating the provisions of Title I of ERISA, 29 U.S.C. §§ 1001-1191c

10. Defendants Company and Leal are removed as the Plan Administrator
and Trustee to the Plan, respectively, and Defendant Leal is permanently enjoined

1 and restrained from future service as a fiduciary of, or service provider to, any
2 ERISA-covered employee benefit plan.

3 11.The parties shall each bear their own costs, expenses, and attorneys' fees
4 incurred in connection with any stage of this proceeding, including but not limited
5 to attorneys' fees which may be available under the Equal Access to Justice Act, as
6 amended.

7 12.Defendants expressly waive any and all claims of any nature which they
8 have or may have against the Secretary, the United States Department of Labor, or
9 any of its officers, agents, attorneys, employees or representatives, arising out of or
10 in connection with the allegations contained in the Complaint on file in this action,
11 any other proceedings or investigation incident thereto or based on the Equal
12 Access to Justice Act, as amended.

13 13.Nothing in this Consent Judgment & Order is binding on any
14 governmental agency other than the United States Department of Labor, Employee
15 Benefits Security Administration.

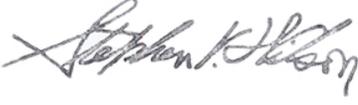
16 14.This Court retains jurisdiction of this action for purposes of enforcing
17 compliance with the terms of this Consent Judgment & Order.

18 15.By signing their names to this Consent Judgment & Order, the parties
19 represent that they are informed and understand the effect and purpose of this
20 Consent Judgment & Order.

21 The Court directs the entry of this Consent Judgment & Order as a
22 final order.

23 IT IS SO ORDERED, ADJUDGED, and DECREED.

24
25 Dated: July 29, 2014

26 
United States District Judge
STEPHEN V. WILSON

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

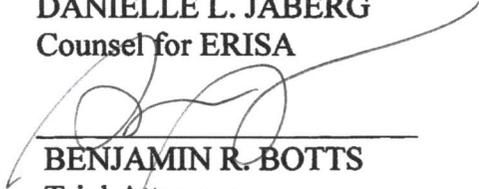
Entry of this Consent Judgment is hereby consented to:

Dated: 7/22/2014

M. PATRICIA SMITH
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

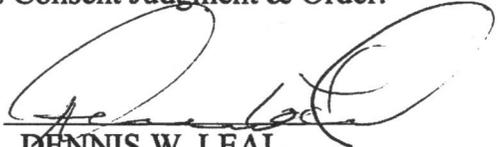
DANIELLE L. JABERG
Counsel for ERISA


BENJAMIN R. BOTTS
Trial Attorney

Attorneys for the Plaintiff

Defendants consent to the entry of this Consent Judgment & Order.

Dated: July 22, 2014


DENNIS W. LEAL
Individually, as President of
Nickson's Machine Shop, Inc., and
as Trustee of the Nickson's Machine
Shop 401(k) Savings Plan