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 12 United States Department of Labor

13 UNITED STATES DISTRICT COURT FOR

14 THE EASTERN DISTRICT OF CALIFORNIA

15	THOMAS E. PEREZ, Secretary)	Case No. 2:15-cv-00118-MCE-KJN
16	of Labor, UNITED STATES)	
	DEPARTMENT OF LABOR,)	
17	Petitioner,)	CONSENT JUDGMENT & ORDER
18	v.)	
19	BUTTE STEEL & FABRICATION,)	
20	INC., a California corporation;)	
21	JEFFREY BROCHHEUSER, an)	
	individual; and the BUTTE STEEL)	
22	& FABRICATION, INC.)	
	401(k) PROFIT SHARING PLAN, an)	
23	employee pension benefit plan.)	
24	Defendants.)	

25
 26
 27 Plaintiff THOMAS E. PEREZ, Secretary of Labor, United
 28 States Department of Labor (the "Secretary"), pursuant to his

1 authority under §§ 502(a)(2) and (5) of the Employee Retirement
2 Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132(a)(2)
3 and (5), has filed a Complaint against Defendants BUTTE STEEL &
4 FABRICATION, INC., ("Butte Steel") a California corporation;
5 JEFFREY BROCHHEUSER ("Brochheuser"), an individual; and the
6 BUTTE STEEL & FABRICATION, INC. 401(k) PROFIT SHARING PLAN (the
7 "Plan"), an employee pension benefit plan within the meaning of
8 Section 3(3) of ERISA, 29 U.S.C. 1002(3).¹

9 A. The Secretary, Brochheuser, Butte Steel, and the Plan
10 (collectively, "the parties") admit that the Court has
11 jurisdiction over this action pursuant to ERISA § 502(e)(1), 29
12 U.S.C. § 1132(e)(1), and that venue lies in the Eastern District
13 of California pursuant to ERISA § 502(e)(2), 29 U.S.C. §
14 1132(e)(2).

15 B. All Defendants waive filing of an Answer and further
16 waive entering any affirmative defense, counterclaim, or third-
17 party complaint, or any other defenses that they may have in
18 this case. The Company and the Plan waive service of the
19 Complaint.

20 C. The parties agree to the entry of this Consent Judgment
21 & Order. The parties further agree that this Consent Judgment &
22 Order shall fully settle all claims of the Secretary asserted in
23 the Complaint filed in this matter.

24 All parties expressly waive Findings of Fact and
25 Conclusions of Law.

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

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 1. Defendant JEFFREY BROCHHEUSER, an individual, and
2 BUTTE STEEL & FABRICATION, INC., are jointly and severally
3 liable to the BUTTE STEEL & FABRICATION, INC. 401(K) PROFIT
4 SHARING PLAN for \$27,071.27 ("Amount Due"), including interest,
5 in losses caused to the Plan, arising out of their breaches of
6 fiduciary duties under ERISA §§ 404 and 406, as more fully
7 alleged in the Secretary's Complaint, and judgment is hereby
8 entered against them in that amount.

9 2. Defendant Jeffrey Brochheuser shall restore the Amount
10 Due (\$27,071.27) by April 22, 2015 and it shall be allocated to
11 participants' accounts in the amounts and manner set forth in
12 Exhibit A of this Consent Judgment. No amounts restored shall
13 go to the Plan account of Jeffrey Brochheuser. Within ten days
14 of restoring the Amount Due, and no later than May 1, 2015,
15 Jeffrey Broccheuser shall provide written proof to the Secretary
16 that the amounts were restored and correctly allocated to the
17 participants' accounts as set forth in Exhibit A.

18 3. It is ordered that the Plan shall be terminated
19 effective April 22, 2015. The Plan document is hereby amended
20 to allow this termination. Defendants Butte Steel and Jeffrey
21 Brochheuser will take all actions necessary to wind down the
22 Plan by July 21, 2015, including but not limited to directing
23 all roll overs and distributions as directed by participants or
24 authorized by law and the Plan document and filing a final Form
25 5500 annual report for the Plan with the Employee Benefit
26 Security Administration via the EFAST2 system, available at
27 <https://www.efast.dol.gov/welcome.html>. By August 3, 2015,
28 Defendants Butte Steel and Jeffrey Brochheuser shall provide

1 proof to the Secretary that all rollovers and distributions
2 necessary to wind down the plan were made by July 21, 2015 and
3 proof of the Plan's closure. No later than July 16, 2015,
4 Defendants may apply to the Secretary for an extension of the
5 July 21, 2015 and August 3, 2015, deadlines referred to in this
6 paragraph. The application shall be in writing and contain
7 supporting documents demonstrating that the Defendants have made
8 their best efforts to comply with these deadlines. The
9 Secretary will grant this application if it is substantiated by
10 documentation and will set a new deadline that Defendants will
11 be required to comply with.

12 4. In the event that any Defendant fails to timely satisfy
13 any obligation set forth in Paragraphs 2 and 3 above as
14 determined by the Regional Director for the Employee Benefits
15 Security Administration, the following provisions shall become
16 in effect:

17 i. The total remaining balance of the Amount
18 Due shall become due and payable by Jeffrey Brochheuser
19 within ten (10) business days of the default, and interest
20 shall accrue at five percent (5%) annum until the balance
21 is paid in full.

22 ii. Upon motion by the Secretary, the Court
23 shall appoint an Independent Fiduciary ("Independent
24 Fiduciary") of the Plan and order Defendant Jeffrey
25 Brochheuser to advance the reasonable costs and expenses of
26 such Independent Fiduciary at the time of the appointment.

27 The Independent Fiduciary:

28 a) Shall collect, marshal, pay out and

1 administer all of the assets of the Plan and take further
2 action with respect to the Plan as appropriate to
3 effectuate the Plan's termination;

4 b) Pursuant to the procedures outlined in
5 the Employee Benefits Security Administration's Field
6 Assistance Bulletin 2014-01, must exercise reasonable care
7 and diligence to identify and locate each Eligible Plan
8 Participant to the extent the Plan has distributable
9 assets;

10 c) shall have all the rights, duties,
11 discretion and responsibilities of a trustee, fiduciary and
12 Plan Administrator under ERISA, including filing annual and
13 final Form 5500s;

14 d) shall have the authority to delegate or
15 assign fiduciary duties as appropriate and allowed under
16 the law and may retain assistance as needed including
17 attorneys, accountants, actuaries and other service
18 providers;

19 e) Shall have full access to all data,
20 information and calculations in the Plan's possession and
21 under its control, including information and records
22 maintained by the Plan's custodial trustee or service
23 provider;

24 f) Shall have the authority to give
25 instructions respecting the disposition of assets of the
26 Plan;

27 g) Shall comply with all applicable rules
28 and laws; and

1 h) Shall be entitled to reasonable
2 compensation, fees and expenses, and pursuant to Under 29
3 U.S.C. § 1056(d)(4), such reasonable compensation, fees and
4 expenses shall be paid by Defendants Butte Steel and
5 Jeffrey Brochheuser.

6 5. If an Independent Fiduciary is appointed pursuant to
7 Paragraph 4 above, Defendants Butte Steel and Jeffrey
8 Brochheuser shall be removed as fiduciaries to the Plan upon the
9 appointment of the Independent Fiduciary. Defendants Butte
10 Steel and Jeffrey Brochheuser shall cooperate fully with the
11 Independent Fiduciary in providing documents or information they
12 may have relevant to the Plan's administration and management.

13 6. Defendants Jeffrey Brochheuser and Butte Steel are
14 permanently enjoined and restrained from violating the
15 provisions of Title I of ERISA, 29 U.S.C. §§ 1001-1191c.

16 7. Except to complete the functions set forth in
17 Paragraph 2 and 3 above, Defendant Jeffrey Brochheuser is hereby
18 permanently enjoined and restrained from future service as a
19 fiduciary of, or service provider to, any ERISA-covered employee
20 benefit plan.

21 8. Defendant Jeffrey Brochheuser is solely responsible
22 for any administrative fees or expenses related to the
23 administration, termination and wind up of the Plan.

24 9. Wherever submission to the Secretary is required under
25 the terms of this Consent Judgment & Order, including the
26 submissions required under paragraph 2 and 3 above, such
27 submission shall be made via overnight delivery AND facsimile
28 to:

1
2 Regional Director
3 U.S. Department of Labor
4 Employee Benefits Security Administration
5 90 7th Street, Suite 11-300
6 San Francisco, CA 94103
7 Fax: 415-625-2499

8
9 10. The Secretary and Defendants shall each bear their own
11 costs, expenses, and attorneys' fees incurred to date in
12 connection with any stage of this proceeding, including but not
13 limited to attorneys' fees which may be available under the
14 Equal Access to Justice Act, as amended.

15
16 11. Defendants expressly waive any and all claims of any
17 nature which they have or may have against the Secretary, the
18 Department of Labor, or any of its officers, agents, attorneys,
19 employees or representatives, arising out of or in connection
20 with the allegations contained in the Complaint on file in this
21 action, any other proceedings or investigation incident thereto
22 or based on the Equal Access to Justice Act, as amended.

23
24 12. This Consent Judgment does not in any manner affect
25 the right of the United States Department of Labor to assess a
26 civil penalty of twenty percent on amounts recovered pursuant to
27 ERISA § 502(1), 29 U.S.C. § 1132(1). Defendant Jeffrey
28 Brochheuser does not dispute such assessment and agrees to pay
such assessment when due. The Defendants waive the notice of
assessment and service requirement of 29 C.F.R. § 2570.83 and,
within sixty days following termination of the Plan, Defendant
Jeffrey Brochheuser shall pay the Penalty Amount (which shall be
\$5,414.25 in event there is no default with respect to

1 Paragraphs 2 above) to the U.S. Department of Labor, by sending
2 a certified or cashier's check payable to the United States
3 Department of Labor (please write EBSA Case No. 70-015280(48) on
4 the check) to:

5 Regular Mail
6 U.S. Department of Labor
7 ERISA Civil Penalty
8 P.O. Box 70942
9 Charlotte, NC 28272-0942

10 13. Nothing in this Consent Judgment is binding on any
11 governmental agency other than the United States Department of
12 Labor, Employee Benefits Security Administration.

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

16 15. By signing their names to this Consent Judgment &
17 Order, the parties represent that they are informed and
18 understand the effect and purpose of this Consent Judgment &
19 Order. Defendant Jeffrey Brochheuser represents that he has
20 consulted with bankruptcy counsel and the bankruptcy trustee for
21 Defendant Butte Steel & Fabrication, Inc., informed them of the
22 contents of this agreement, and he is authorized to sign this
23 agreement on behalf of Defendants Butte Steel & Fabrication,
24 Inc. and the Butte Steel & Fabrication, Inc. Profit Sharing
25 401(k) Plan.

26 16. This Consent Judgment and Order may be executed in
27 counterparts, each of which shall be deemed to be an original,
28 but all of which, taken together, shall constitute one and the
same instrument.

1 Entry of this Consent Judgment is hereby consented to:

2 M. PATRICIA SMITH
3 Solicitor of Labor

4 JANET M. HEROLD
5 Regional Solicitor

6 DANIELLE L. JABERG
7 Counsel for ERISA

8 By: /s/ Ian H. Eliasoph
9 IAN H. ELIASOPH
10 Counsel for ERISA

11 SEEMA N. PATEL
12 Trial Attorney

13 Attorneys for Thomas E. Perez

14 Defendants consent to the entry of this Consent Judgment.

15 Dated: March 23, 2015 /s/ Jeffrey Brochheuser
16 Jeffrey Brochheuser
17 On behalf of himself,
18 Butte Steel & Fabrication, Inc.,
19 and the Butte Steel & Fabrication
20 Inc. 401(k) Profit Sharing Plan

21 **ORDER**

22 In accordance with the terms of the foregoing Stipulated
23 Consent Judgment, and given the lack of any opposition to the
24 Motion for Entry of Consent Judgment, the Court hereby directs
25 the entry of this Consent Judgment and Order as a final
26 judgment.

27 IT IS SO ORDERED.

28 Dated: April 20, 2015


MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT A

Participant	Outstanding EE Contributions	Outstanding Loan Repayments	Lost Earnings Owed	Amount to be restored
Donavan Black	\$102.03	\$0.00	\$36.10	\$138.13
Jasmine E Bradley	\$0.00	\$0.00	\$97.26	\$97.26
Andrew Colenzo	\$600.00	\$0.00	\$116.00	\$716.00
Craig Copeland	\$0.00	\$1,696.80	\$217.87	\$1,914.67
Javier B Corona	\$0.00	\$0.00	\$2.43	\$2.43
Daniel Dixon	\$596.39	\$0.00	\$199.85	\$796.24
Jose Garnica	\$125.00	\$0.00	\$61.27	\$186.27
Benjamin Gonzales	\$0.00	\$535.50	\$213.86	\$749.36
Victor H. Gonzalez	\$0.00	\$0.00	\$31.17	\$31.17
Sandra Jackson	\$2,504.99	\$0.00	\$539.65	\$3,044.64
Donald Harp	\$0.00	\$20.84	\$274.31	\$295.15
Chris A Lewis	\$125.00	\$0.00	\$62.48	\$187.48
Terry Lindblad	\$14,527.82	\$0.00	\$2,104.57	\$16,632.39
Matt McCoy	\$0.00	\$0.00	\$224.22	\$224.22
Robert McCoy	\$1,375.00	\$0.00	\$175.15	\$1,550.15
Southiame Southiphonh	\$115.00	\$0.00	\$40.67	\$155.67
James L Stearns	\$0.00	\$0.00	\$81.97	\$81.97
Joseph G Story	\$190.01	\$0.00	\$52.79	\$242.80
Nathan T. Woodbeck	\$0.00	\$0.00	\$25.27	\$25.27
Totals	\$20,261.24	\$2,253.14	\$4,556.89	\$27,071.27