



**The Defendants admit to the following facts and legal conclusions:**

1. This Court has jurisdiction over them and subject matter jurisdiction for this action.
2. The Plan is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).
3. Venue of this action lies in the Northern District of Indiana, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered in Goshen, Indiana, in Elkhart County, within this district.
4. At all relevant times, Defendant Glen Hostetler served as one of the Plan's named Trustees, was a 50% owner and President of Hostetler Door, and he had authority, control, and responsibility over the assets of the Plan.
5. Glen Hostetler is a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and a party in interest to the Plan within the meaning of ERISA § 3(14)(A), (E) and (F), 29 U.S.C. § 1002(14)(A), (E), and (F).
6. At all relevant times, Defendant Julie Hostetler served as one of the Plan's named Trustees, was a 50% owner and an employee of Hostetler Door, and she had authority, control, and responsibility over the assets of the Plan.
7. Julie Hostetler is a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and a party in interest to the Plan within the meaning of ERISA § 3(14)(A), (E), and (F), 29 U.S.C. § 1002(14)(A), (E), and (F).
8. At all relevant times, Hostetler Door was the Plan Sponsor and Plan Administrator.

9. Hostetler Door is a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and a party in interest to the Plan within the meaning of ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

10. The Plan allows for participants to have elective deferrals withheld from their pay as contributions to the Plan up to the maximum amount permitted by law.

11. During the period from January 6, 2006 to April 16, 2010, Hostetler Door withheld \$21,552.07 in employee contributions and failed to remit the amounts so withheld to the Plan. Hostetler Door retained the withheld employee contributions in its own general assets.

12. During the period from January 6, 2006 to April 16, 2010, Defendants Glen Hostetler and Julie Hostetler caused Hostetler Door to retain employee contributions and failed to ensure that the \$21,552.07 in withheld employee contributions was remitted to the Plan.

13. During the period from January 6, 2006 to April 16, 2010, Hostetler Door withheld \$117,233.18 in employee contributions and failed to remit the amounts withheld to the Plan in a timely manner. Hostetler Door retained, in its own general assets, the employee contributions withheld from employees' pay until they were remitted to the Plan.

14. During the period from January 6, 2006 to April 16, 2010, Defendants Glen Hostetler and Julie Hostetler caused Hostetler Door to retain employee contributions and failed to ensure that the \$117,233.18 in withheld employee contributions was deposited promptly in the Plan's account.

15. By the conduct described above, Defendants Glen Hostetler, Julie Hostetler, and Hostetler Door:

- a. failed to ensure that plan assets were held in trust, in violation of ERISA § 403(a), 29 U.S.C. § 1103(a);
- b. permitted the assets of the Plan to inure to the benefit of an employer, in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);
- c. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);
- d. caused the Plan to engage in transactions that they knew constituted a direct transfer of plan assets to a party in interest, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);
- e. dealt with assets of the Plan in their own interest, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and
- f. acted in a transaction involving the Plan on behalf of a party whose interests were adverse to the interest of the Plan and to the interest of the Plan's participants and beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

16. The Plan permitted participants to receive loans from their individual accounts. The participant loans were to be repaid in accordance with the Plan's documents through withholding from the employees' pay.

17. During the period from January 6, 2006 to April 16, 2010, Hostetler Door withheld \$14,885.90 in participant loan repayments and failed to remit the loan

repayments to the Plan. Hostetler Door retained the withheld participant loan repayments in its own general assets.

18. During the period from January 6, 2006 to April 16, 2010, Defendants Glen Hostetler and Julie Hostetler caused Hostetler Door to retain the participant loan repayments in its own assets and failed to ensure that a total of \$14,885.90 in withheld participant loan repayments were remitted to the Plan.

19. During the period from January 6, 2006 to April 16, 2010, Hostetler Door withheld \$36,557.45 in participant loan repayments and failed to remit the amounts withheld to the Plan in a timely manner. Hostetler Door retained the participant loan repayments withheld from employees' pay in its own general assets until they were remitted to the Plan.

20. During the period from January 6, 2006 to April 16, 2010, Defendants Glen Hostetler and Julie Hostetler caused Hostetler Door to retain participant loan repayments in its own general assets and failed to ensure that a total of \$36,557.45 in withheld participant loan repayments were deposited promptly in the Plan's accounts.

21. By the conduct described above, Defendants Glen Hostetler, Julie Hostetler, and Hostetler Door:

- a. failed to ensure that plan assets were held in trust, in violation of ERISA § 403(a), 29 U.S.C. § 1103(a);
- b. permitted the assets of the Plan to inure to the benefit of an employer, in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);
- c. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing

benefits to participants and their beneficiaries, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

d. caused the Plan to engage in transactions that they knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of assets of the Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

e. dealt with assets of the Plan in their own interest or for their own account, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

f. acted in a transaction involving the Plan on behalf of a party whose interests were adverse to the interest of the Plan and to the interest of the Plan's participants and beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

**WHEREAS,**

The Secretary and Defendants have agreed to resolve all matters in controversy in this action between them (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 in accordance therewith.

Now, therefore, upon consideration of the record herein, and as agreed to by the parties hereto, the Court finds that it has jurisdiction to enter this Consent Order and Judgment, and being fully advised in the premises, it is

**ORDERED, ADJUDGED AND DECREED** that:

A. Glen Hostetler, Julie Hostetler, and Hostetler Door, Inc. are jointly and severally liable to the Plan in the amount of \$34,572.95, which includes \$18,533.07 in unremitted employee contributions and \$1,663.76 in lost opportunity costs; \$4,853.66 in unremitted participant loan repayments and \$869.04 in lost opportunity costs; and \$7,388.27 in lost opportunity costs for untimely remitted employee contributions and \$1,265.15 in lost opportunity costs for untimely remitted participant loan repayments.

B. On March 8, 2013, Glen Hostetler, Julie Hostetler, and Hostetler Door, Inc., paid \$34,572.95 directly to the Plan. This payment represents a full and complete satisfaction of the liability described in Paragraph A above, which is hereby released. These monies shall be allocated to the individual plan accounts of the Plan participants, with the exclusion of Glen and Julie Hostetler, who: (1) were participants during the period of January 6, 2006 to April 16, 2010; (2) had voluntary employee contributions or participant loan repayments to the Plan withheld from their pay during this period and such contributions and loan repayments (a) remain unremitted or (b) were remitted untimely; and (3) have not received a distribution of their full vested account balance (including all lost opportunity costs associated therewith) as of the date of the entry of this Consent Order and Judgment. The Plan shall allocate the aforementioned money to the Plan's participants in an amount equal to the unremitted, withheld amounts from each participant's pay for contributions and loan repayments to the Plan and associated loss opportunity costs for the unremitted and untimely remitted contributions and loan repayments. The Defendants have provided proof of such payment to the Chicago

Regional Director, Employee Benefits Security Administration, 230 S. Dearborn St., Suite 2160, Chicago, Illinois 60604 (“Chicago Regional Director”).

C. In addition to the losses owed to the Plan, as set forth in paragraph A, Glen Hostetler is owed \$7,388.09, as a result of the fiduciaries’ failure to ensure the remittance of his employee contributions and participant loan repayments to the Plan. Glen Hostetler waives any claim he has to this amount and any associated lost opportunity costs as part of the resolution of this matter.

D. In addition to the losses owed to the Plan, as set forth in paragraph A, Julie Hostetler is owed \$5,663.15, as a result of the fiduciaries’ failure to ensure the remittance of her employee contributions and participant loan repayments to the Plan. Julie Hostetler waives any claim she has to this amount and any associated lost opportunity costs as part of the resolution of this matter.

E. Glen Hostetler and Julie Hostetler are immediately removed from any position they currently hold as a fiduciary to the Plan.

F. Glen Hostetler and Julie Hostetler are permanently barred from serving as fiduciaries to any ERISA-covered employee benefit plan.

G. Benefit Solutions, 201 N. Illinois St., Suite 1550, Indianapolis, Indiana 46204, is hereby appointed as the Plan’s Independent Fiduciary (“Independent Fiduciary”) and charged with the proper administration and termination of the Plan and has the following powers, duties, and responsibilities:

1. The Independent Fiduciary shall have the responsibility and authority to collect, liquidate, and manage all assets of the Plan for the benefit of the eligible participants and beneficiaries for the Plan;

2. The Independent Fiduciary shall administer and distribute all assets that are currently in the Plan to its eligible participants and beneficiaries;

3. The Independent Fiduciary shall have the duty to allocate monies received under paragraph B above to the participant's individual plan accounts and shall report the allocations within 30 days to the Chicago Regional Director;

4. The Independent Fiduciary shall have full access to all data, information and calculations in Glen Hostetler, Julie Hostetler, Hostetler Door, Inc. and the Plan's possession or under their control relating to the Plan, 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;

5. The Independent Fiduciary shall comply with all provisions of ERISA and the Plan documents in the performance of his fiduciary duties;

6. 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; and

H. The Defendants Julie Hostetler, Glen Hostetler, and Hostetler Door agree to fully cooperate with any requests from the Independent Fiduciary that relate to the administration and termination of the Plan.

I. Nothing in this Consent Order and Judgment is binding on any governmental agency except for the United States Department of Labor, Employee Benefits Security Administration.

J. Each party agrees to bear his/her/its own attorney's fees, costs, and other expenses incurred by such party to date in connection with any stage of this proceeding including, but not limited to, attorneys' fees, costs and other expenses which may be available under the Equal Access To Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412, or under the Federal Rules of Civil Procedure.

The Court retains jurisdiction for purposes of enforcing compliance with the terms of this Consent Order and Judgment.

SO ORDERED.

Dated May 28, 2013

S/Christopher A. Nuechterlein  
Christopher A. Nuechterlein  
United States Magistrate Judge

The undersigned apply for and consent to the entry of this Consent Order and Judgment this \_\_\_ of \_\_\_\_\_, 2013:

For the Defendants:

\_\_\_\_\_  
Glen Hostetler

\_\_\_\_\_  
Julie Hostetler

\_\_\_\_\_  
Hostetler Door, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Hostetler Door, Inc. 401(k) Plan

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Michael DeBoni

Yoder, Ainlay, Ulmer & Buckingham, LLP

Attorneys for Glen Hostetler, Julie Hostetler,

Hostetler Door, Inc. and Hostetler Door, Inc. 401(k) Plan

For the Secretary of Labor:

M. PATRICIA SMITH  
Solicitor of Labor

CHRISTINE Z. HERI  
Regional Solicitor

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Bruce C. Canetti

Attorneys for SETH D. HARRIS

Acting Secretary of Labor, Plaintiff