

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

SETH D. HARRIS, Acting Secretary of Labor,)	
United States Department of Labor,)	
[Substituted for HILDA L. SOLIS, resigned],)	
)	3:12-cv-00828-GCM-DSC
Plaintiff,)	
)	
v.)	
)	
FIRST RESTORATION SERVICES, INC.,)	
FRANK HEADEN, an Individual; and the)	
FIRST RESTORATION SERVICES, INC.)	
401 (K) RETIREMENT PLAN,)	
)	
Defendants.)	

CONSENT JUDGMENT AND ORDER

Plaintiff, Secretary of Labor, United States Department of Labor (“the Secretary”), pursuant to her authority under sections 502(a)(2) and (5), 29 U.S.C. § 1132(a)(2) and (5), of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., (“ERISA”) has filed a Complaint against First Restoration Services, Inc.; Frank Headen, an Individual; and the First Restoration Services, Inc. 401(K) Retirement Plan (“the Plan”). First Restoration Services, Inc. (“First Restoration”) and Frank Headen (“Headen”) and the Secretary have agreed to resolve all matters in controversy in this action except for the imposition by the Secretary of any penalty pursuant to ERISA section 502(l), 29 U.S.C. § 1132(l), and any proceedings related thereto, and said parties do now consent to entry of a Judgment and Order by this Court in accordance herewith.

A. First Restoration and Headen hereby admit to the jurisdiction of the Court over them and over the subject matter of this action. First Restoration and Headen admit that this

Court has the authority to enforce this Order and that this Court is the most appropriate venue for any enforcement action which may be required as a result of this Order.

B. The Secretary's Complaint alleges that First Restoration and Headen were fiduciaries and parties in interest to the Plan within the meaning of ERISA sections 3(21)(A) and 3(14), 29 U.S.C. §§ 1003(21)(A) and (14), and that First Restoration and Headen breached their fiduciary duties with respect to the Plan by violating the provisions of ERISA sections 403, 404, and 406, 29 U.S.C. §§ 1103, 1104, and 1106, as set forth in the Complaint.

C. First Restoration and Headen agree to take all necessary and appropriate steps to terminate the Plan and distribute the assets to participants and beneficiaries in accordance with ERISA no later than June 1, 2013. If First Restoration and Headen are unable or unwilling to complete these steps by June 1, 2013, the Secretary may seek the appointment of an independent fiduciary to the Plan. If an independent fiduciary is appointed to the Plan, First Restoration and Headen hereby agree to bear all necessary and reasonable costs of the independent fiduciary for the administration and termination of the Plan in accordance with ERISA and the Internal Revenue Code.

D. First Restoration and Headen expressly waive any and all claims of whatsoever nature that they have or may have against the Secretary, or any of her officers, agents, employees, or representatives, arising out of or in connection with the filing, prosecution, and maintenance of this civil action or any other proceeding and investigation incident thereto.

E. This Order represents a complete settlement of all the Secretary's claims asserted in this action against First Restoration and Headen with the exception of any potential civil money penalties that may be assessed under ERISA section 502(1), 29 U.S.C. § 1132(1). This Order is not binding upon any government agency other than the U.S. Department of Labor and

only resolves claims arising out of this action as between the Secretary and First Restoration and Headen.

F. The Secretary, First Restoration, and Headen expressly waive Findings of Fact and Conclusions of Law, except as otherwise set forth and addressed herein, and consent to the entry of this Order as a full and complete resolution of all claims and issues which were, or might have been, alleged in this action without trial or adjudication of any issue of fact or law raised in the Complaint.

Accordingly, it is **ORDERED ADJUDGED AND DECREED** that:

1. The Court has jurisdiction over the parties to this Order and the subject matter of this action and is empowered to provide the relief herein.

2. First Restoration and any successor corporation thereto, its agents, servants, employees and all persons in active concert or participation with it be and they hereby are permanently enjoined and restrained from violating the provisions of Title I of ERISA.

3. First Restoration and any successor corporation thereto, be and they hereby are permanently enjoined from acting as a fiduciary, trustee, agent, or representative in any capacity to any employee benefit plan, as defined by ERISA, with the exception of engaging in those acts required to terminate the Plan and distribute the assets to participants and beneficiaries.

4. Headen, his agents, servants, employees and all persons in active concert or participation with him be and they hereby are permanently enjoined and restrained from violating the provisions of Title I of ERISA.

5. Headen be and he hereby is permanently enjoined from acting as a fiduciary, trustee, agent, or representative in any capacity to any employee benefit plan, as defined by

ERISA, with the exception of engaging in those acts required to terminate the Plan and distribute the assets to participants and beneficiaries.

6. Headen agrees to allow any participant interest he may have in any existing or future assets of the Plan to be applied as an offset against the employee contributions and lost earnings that First Restoration and Headen did not restore to the Plan, as authorized by ERISA section 206(d)(4), 29 U.S.C. § 1056(d)(4). The Plan document is hereby deemed amended to permit the offset of Headen's participant interest, as provided herein. A fully executed copy of this Consent Judgment and Order shall be maintained by the Plan administrator with all other documents and instruments governing the Plan.

7. By her signature below, Laire Headen, spouse of Frank Headen, waives any claims that she may have for her spouse's benefits under the Plan with respect to her spouse's account, which was offset against amounts owed to the Plan by First Restoration and Headen, and acknowledges that she understands: (a) that the effect of such consent may be to forfeit the benefits that she would be entitled to receive upon her spouse's death; (b) that her spouse's waiver is not valid without her consent; and (c) that her consent is irrevocable upon the entry of this Order.

8. First Restoration and Headen shall take all necessary and appropriate steps to terminate the Plan and distribute the assets to participants and beneficiaries in accordance with ERISA no later than April 30, 2013. If First Restoration and Headen are unable or unwilling to complete these steps by April 30, 2013, the Secretary may seek the appointment of an independent fiduciary to the Plan. If an independent fiduciary is appointed to the Plan, First Restoration and Headen shall bear all necessary and reasonable costs of independent fiduciary

for the administration and termination of the Plan in accordance with ERISA and the Internal Revenue Code.

9. This Consent Judgment resolves all claims of the Secretary's Complaint against First Restoration and Headen with the following exceptions:

a. This Judgment does not adjudicate or otherwise affect any potential civil money penalties that may be assessed under ERISA section 502(l).

b. This Judgment does not affect or bind any governmental agency other than the United States Department of Labor.

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

10. Each party shall bear its own costs and expenses, including attorneys' fees, arising in connection with any stage of the above-referenced proceeding including but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

SO ORDERED.

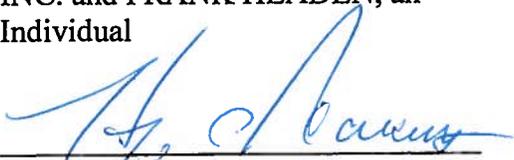
Signed: May 7, 2013



Graham C. Mullen
United States District Judge



DEFENDANTS FIRST RESTORATION,
INC. and FRANK HEADEN, an
Individual



HUGO A. PEARCE, III

BURRIS, MACMILLAN, PEARCE
McCUTCHEON & BURRIS, PLLC
6857 Fairview Road
Charlotte, NC 28210
Tel. 704.365.2600
Fac. 704.364.2637
hpearce@bmpblaw.com

Attorney for Defendants

PLAINTIFF HILDA L. SOLIS,
SECRETARY OF LABOR

M. PATRICIA SMITH
Solicitor of Labor

STANLEY E. KEEN
Regional Solicitor

ROBERT M. LEWIS, JR.
Counsel



KAREN E. MOCK
Senior Trial Attorney

U. S. Department of Labor
Office of the Solicitor
61 Forsyth Street, SW
Room 7T10
Atlanta GA 30303
Tel. 404.302.5435
Fac. 404.302.5438
Mock.karen@dol.gov

Attorneys for Plaintiff

SOL Case No. 11-09081

SPOUSAL CONSENT

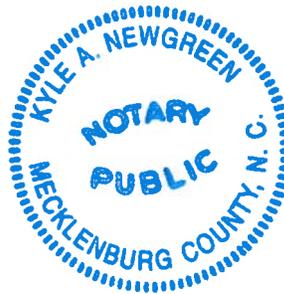
I, Laire Headen, spouse of Frank Headen, hereby consent to entry of this Order,
and specifically consent to the terms set forth in paragraph 7 of the Order.

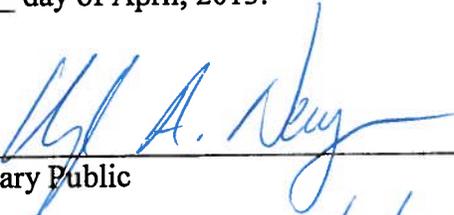


LAIRE HEADEN

State of North Carolina)
)
County of Mecklenburg)

SWORN TO and SUBSCRIBED before me this
24 day of April, 2013.





Notary Public

My Commission Expires: 4/27/2018

(SEAL)