



404 and 406 of ERISA, 29 U.S.C. § 1104 and 1106, as set forth in the Complaint.

B. Defendants hereby admit to the jurisdiction of the Court over them and over the subject matter of this action. Defendants 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.

C. Defendant Mark Sowka admits that he is, or was at all times relevant to this action, acting as a fiduciary within the meaning of 11 U.S.C. § 523(a)(4). Defendant Mark Sowka further admits that the losses to the Plan, as set forth in Paragraph 4 of this Consent Judgment and Order, are a non-dischargeable debt pursuant to 11 U.S.C. § 523(a)(4).

D. Defendants expressly waive any and all claims of whatsoever nature that they have or may have against the Secretary, or any of his 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 Defendants. 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 Defendant.

F. The Secretary and Defendants 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. Defendants, their agents, servants, employees and all persons in active concert or participation with him are permanently enjoined and restrained from violating the provisions of Title I of ERISA.

3. For as long as Defendant Mark Sowka serves as a fiduciary to an ERISA-covered plan, he will agree to complete eight hours of fiduciary training annually, commencing in calendar year 2014 or during the first calendar year in which Mr. Sowka serves in such a capacity.

4. Defendant Mark Sowka shall make restitution to the Plan's participants or their beneficiaries (hereafter the "Plan Participants", which phrase shall include both former and current participants) of the total sum of \$7,994.49 in the manner set forth herein and to the participants and in the amounts set forth in Exhibit A. Defendant Mark Sowka shall complete the aforementioned restitution no later than sixty (60) days following the Court's entry of this Order. In the event that Defendant Mark Sowka fails to make restitution to each participant and beneficiary in the amount ordered, post judgment interest shall be assessed against any remaining unpaid balance of such amount, in accordance with 28 U.S.C. § 1961. In order to comply with this Paragraph, Defendant Mark Sowka shall:

a. Either (1) make restitution to the Plan Participants listed in Exhibit A (attached) in the amount shown as due and owing to each Plan Participant, together with any post judgment interest, paying the said amount directly to the appropriate Plan Participant; or (2)

obtain a signed and notarized written acknowledgement and agreement from each Plan Participant who voluntarily and knowingly agrees that he/she is owed no disbursement from the Plan and/or has already received payment for the amounts owed set forth in Exhibit A.

b. Provide the Secretary written accountings of the amounts paid to each participant and beneficiary as specified above. All accountings provided to the Secretary shall include the payees' names, addresses, and the total amount paid, and will be presented as cancelled checks evidencing payments or signed confirmations from payees acknowledging payments received. Defendant Mark Sowka shall provide an accounting no later than 10 days after making restitution to the participants and beneficiaries. Defendant Mark Sowka shall also provide written accountings to the Secretary whenever requested by the Secretary. The accountings shall be delivered to the Regional Director, Employee Benefits Security Administration, 61 Forsyth Street, SW, Room 7B54, Atlanta, Georgia 30303.

c. Provide the Secretary copies of all agreements and acknowledgements obtained pursuant to item 4(a)(2) above, along with the current address and telephone number of each participant who signs each such written acknowledgement and agreement. Any agreement and acknowledgement obtained pursuant to item 4(a)(2) above shall not be considered valid for purposes of this Consent Judgment and Order unless the Secretary in her sole discretion determines, through representatives of the Employee Benefits Security Administration, that the participant or beneficiary signing the agreement knowingly and voluntarily waived his or her right to receive the amount set forth in Exhibit A.

5. Once the corrective actions required in this Consent Judgment and Order are complied with, the Secretary is required to assess a civil penalty pursuant to ERISA § 502(l),

29 U.S.C. § 1132(l). The penalty under Section 502(l) is equal to 20 percent of the “applicable recovery amount” as that term is defined by ERISA. The parties agree that the “applicable recovery amount” is the amount specified in paragraph 4. Once the Department delivers a written assessment of the civil money penalty to the Defendant, Defendant shall pay to the Department of Labor the civil money penalty assessed pursuant to ERISA § 502(l)(2), 29 U.S.C. § 1132(l)(2), in the time and manner prescribed by 29 C.F.R. § 2570.84, subject only to any waiver or reduction of such penalty that Defendant may seek and obtain pursuant to 29 C.F.R. § 2570.85.

6. This Court shall retain jurisdiction to enforce this Order and take enforcement action which may be required as a result of this Order for a period of three (3) years.

7. In the event that Defendant Mark Sowka fails to promptly distribute all of the Plan's cash assets to the participants and beneficiaries as ordered by this Court, the Plaintiff, on motion to the Court, may seek the appointment of an administrator to receive payments of the amounts Defendant is to restore to the Plan's participants and beneficiaries pursuant to paragraph 4.

8. This Consent Judgment resolves all claims of Plaintiff's Complaint with the following exceptions:

a. This Judgment does not adjudicate or otherwise affect any potential civil money penalties that may be assessed under Section 502 of the Act, except as specifically addressed in this Judgment.

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 for a period of three (3) years following its entry.

9. 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: November 20, 2013

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

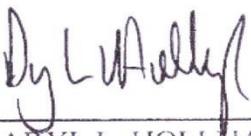
Graham C. Mullen  
United States District Judge



Defendants consent to entry  
of the foregoing Judgment:

COVENANT EQUIPMENT COMPANY,  
d/b/a WHOLESALE FORK LIFTS, INC.,  
the COVENANT EQUIPMENT CORPORATION  
SIMPLE IRA PLAN, and MARK SOWKA

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

  
DARYL L. HOLLNAGEL  
Attorney

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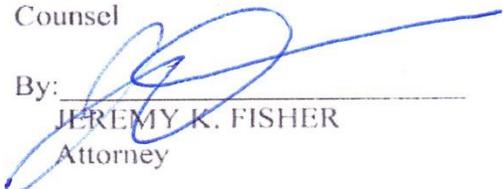
Plaintiff moves entry of  
the foregoing Judgment:

M. PATRICIA SMITH  
Solicitor of Labor

STANLEY E. KEEN  
Regional Solicitor

ROBERT M. LEWIS, Jr.  
Counsel

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

  
JEREMY K. FISHER  
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