

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ATHENS DIVISION

THOMAS E. PEREZ,	)	
Secretary of Labor,	)	
United States Department of Labor,	)	
	)	
Plaintiff,	)	
	)	FILE NO. 3:14-cv-47-CDL
v.	)	
	)	
SR PLASTICS, INC., SR PLASTICS, INC.	)	
GROUP HEALTH PLAN, GARY	)	
ANDERSON, an individual, and DANIEL	)	
FETSCH, an individual,	)	
	)	
Defendants.	)	

**CONSENT JUDGMENT AND ORDER**

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor (“the Secretary”), pursuant to his authority under sections 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(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 SR Plastics, Inc. (“SR Plastics”); Gary Anderson (“Anderson”), an individual; Daniel Fetsch (“Fetsch”), an individual (Anderson and Fetsch are at times referred to collectively as “the Defendants”). The SR Plastics, Inc. Group Health Plan (which, together with its associated trust and any and all independent or successor fiduciaries acting on its behalf, are hereafter referred to as “the Plan”) is a named defendant pursuant to Fed. R. Civ. P. 19(a), solely to assure complete relief may be granted. SR Plastics is defunct and no longer in existence. Defendants and the Secretary

have agreed to resolve all matters in controversy in their 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..

Specifically, the parties have agreed:

- A. Defendants 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.
- B. The Secretary's Complaint alleges that SR Plastics, Anderson, and Fetsch 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 Defendants breached their fiduciary duties with respect to the Plan by violating the provisions of ERISA sections 404 and 406, 29 U.S.C. §§ 1104 and 1106 as set forth in the Secretary's Complaint.
- C. The Secretary alleges that as a result of their fiduciary breaches, SR Plastics, Anderson, and Fetsch caused the Plan losses of \$28,451.62, for which they are jointly and severally liable.
- D. Fetsch agrees to make restitution to the Plan in the total amount of \$14,225.81 by delivering a check in this amount payable to the Plan, by January 31, 2015, to Corey Berger, attorney for Defendants. Mr. Berger will hold these funds in trust for the

purpose of reimbursing the participants of the Health Plan for their losses according to the deadlines delineated in paragraphs 8, 9 and 10 below. By February 2, 2015, Mr. Berger shall send the Secretary a letter indicating that Mr. Fetsch has made the required payments.

E. Anderson agrees to make restitution to the Plan in the total amount of \$14,225.81, by remitting a check payable to the Plan in the amount of \$2,370.97, for 6 months, beginning January 20, 2015, to Corey Berger, attorney for Defendants. Mr. Berger will hold these funds in trust for the purpose of reimbursing the participants of the Health Plan for their losses according to the deadlines delineated in paragraphs 8, 9, and 10 below. By June 25, 2015, Mr. Berger shall send the Secretary a letter indicating that Mr. Anderson has made the required payments.

F. Fetsch and Anderson certify to this Court under penalty of perjury pursuant to 28 U.S.C. § 1746, that SR Plastics is out of business, has no intention of resuming operations, and is presently unable to make full restitution to the Plan. Fetsch and Anderson acknowledge that the Secretary expressly relies on their representation with respect to SR Plastics in entering into this Consent Judgment, and that their representation as to the operations and financial condition of SR Plastics is a necessary and material condition precedent to the Secretary's agreement to the terms in this Consent Judgment and Order. Based on foregoing certification and acknowledgement, the Secretary agrees to dismiss his claims against SR Plastics without prejudice to reinstate them should SR Plastics resume operations.

G. Defendants expressly waive any and all claims of whatsoever nature that they have or may have had 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.

H. This Order represents a complete settlement of all the Secretary's claims (including unpaid medical claims of \$105,561) asserted in this action against SR Plastics and Defendants (with the exception of any potential civil money penalties that may be assessed under ERISA section 502(l), 29 U.S.C. § 1132(l)). This Order is not binding upon any government agency other than the United States Department of Labor and only resolves claims arising out of this action as between the Secretary and Defendants.

I. 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. Fetsch and Anderson, their agents, servants, and all persons in active concert or participation with them, upon receiving actual or constructive notice of this Consent Judgment, are hereby permanently enjoined and restrained from violating the provisions of Title I of ERISA.

3. Fetsch and Anderson should 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.

4. As a result of their fiduciary breaches, Fetsch and Anderson caused the Plan losses in the amount of \$28,451.62. Fetsch's liability for these losses is limited by this Consent Judgment to \$14,225.81. Anderson's liability for these losses is limited by this Consent Judgment to \$14,225.81.

5. Fetsch shall make restitution to the Plan in the total amount of \$14,225.81 by January 31, 2015, by delivering a check in this amount payable to the Plan, to Corey Berger, attorney for Defendants. By February 2, 2015, Mr. Berger shall notify the Secretary that the amount has been received by sending a letter to this effect and copy of the canceled check to Uche Egemonye, Plaintiff's attorney. Any failure to make restitution to the Plan in accordance with this Order shall result in the total balance then remaining, plus interest accrued thereon at the U.S. Treasury underpayment rate referenced in 26 U.S.C. § 6621(c)(1) from the date of entry of this Consent Judgment and Order, to become due and payable immediately, without further notice or demand required by the Secretary. The Secretary reserves his right to initiate contempt proceedings against Fetsch in the event he fails to make restitution to the Plan in accordance with this Order. The participants of the Health Plan who

are owed funds and the amounts owed to each Health Plan participant are identified in Exhibit A.

6. Anderson shall make restitution to the Plan in the total amount of \$14,225.81 by June 20, 2015, by remitting a check in the amount of \$2,370.97, for 6 months, beginning January 20, 2015. These monthly checks will be payable to the Plan and delivered to Corey Berger, attorney for Defendants. No later than five business days after receiving each monthly check, Mr. Berger shall notify the Secretary that the monthly amount has been received by sending a letter to this effect and a copy of the canceled check to Uche Egemonye, Plaintiff's attorney. Any failure to make restitution to the Plan in accordance with this Order shall result in the total balance then remaining, plus interest accrued thereon at the U.S. Treasury underpayment rate referenced in 26 U.S.C. § 6621(c)(1) from the date of entry of this Consent Judgment and Order, to become due and payable immediately, without further notice or demand required by the Secretary. The Secretary reserves his right to initiate contempt proceedings against Anderson in the event he fails to make restitution to the Plan in accordance with this Order. The participants of the Health Plan who are owed funds and the amounts owed to each Health Plan participant are identified in Exhibit A.

7. By June 30, 2015, Mr. Berger will send: (1) each participant identified in Exhibit A the amounts owed to them along with an Acknowledgment of Receipt of Health Plan Distributions and a return envelope and (2) a letter confirming that the amounts have been sent to the participants to the Employee Benefits Security Administration c/o Uche Egemonye, Plaintiff's attorney.

8. On August 31, 2015, Mr. Berger will send a copy of the signed Acknowledgment of Receipt received from each participant and a copy of the canceled check sent to said participant to the Employee Benefits Security Administration c/o Ms. Egemonye.

9. If Mr. Berger does not receive a signed Acknowledgment of Receipt from a participant, Mr. Berger will alert Ms. Egemonye of the missing participant via e-mail on August 30, 2015. For each missing participant, the provisions of U.S. Department of Labor Employee Benefits Security Administration Field Assistance Bulletin 2014-01 (attached as Exhibit B) shall apply.

10. Fetsch and Anderson have certified to this Court under penalty of perjury pursuant to 28 U.S.C. § 1746, that SR Plastics is out of business, has no intention of resuming operations, and is presently unable to make full restitution to the Plan. Fetsch and Anderson have acknowledged that the Secretary expressly relies on their representation with respect to SR Plastics in entering into this Consent Judgment, and that their representation as to the operations and financial condition of SR Plastics is a necessary and material condition precedent to the Secretary's agreement to the terms in this Consent Judgment and Order. Based on the foregoing certification and acknowledgement, the Secretary's claims against SR Plastics are dismissed with prejudice and can only be reinstated should SR Plastics resume operations.

11. **AS TO DEFENDANT ANDERSON ONLY:** 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 section 502(l), 29 U.S.C. § 1132(l). A party against whom a penalty is assessed may seek a waiver or reduction pursuant to ERISA section

502(l)(3), 29 U.S.C. § 1132(l)(3). The penalty under section 502(l) is equal to 20 percent of the “applicable recovery amount” as that term is defined by ERISA. The Secretary and Defendant Anderson agree that the “applicable recovery amount” is \$14,225.81 with respect to Anderson.

12. This Consent Judgment and Order resolves all claims of the Secretary’s Complaint against SR Plastics, Fetsch, and Anderson, with the following exceptions:

- a. **AS TO DEFENDANT ANDERSON ONLY:** This Consent Judgment and Order does not adjudicate or otherwise affect any potential civil money penalties that may be assessed under ERISA section 502(l), except to confirm that, as to Anderson, the “applicable recovery amount” is \$14,225.81.
- b. This Consent Judgment and Order does not affect or bind any governmental agency other than the United States Department of Labor.

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

14. 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 this 28<sup>th</sup> day of January, 2015.

s/Clay D. Land  
\_\_\_\_\_  
CLAY D. LAND  
CHIEF U. S. DISTRICT JUDGE  
MIDDLE DISTRICT OF GEORGIA

THE UNDERSIGNED PARTIES HEREBY CONSENT TO ENTRY OF THIS CONSENT JUDGMENT AND ORDER:

DANIEL FETSCH

By: *s/Daniel Fetsch*

GARY ANDERSON

By: *s/Gary Anderson*

*s/Corey S. Berger*

Corey S. Berger

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Attorney for Defendants

PLAINTIFF THOMAS E. PEREZ, SECRETARY OF LABOR, CONSENTS TO AND  
MOVES FOR ENTRY OF THIS CONSENT JUDGMENT AND ORDER

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STANLEY E. KEEN  
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