

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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Thomas E. Perez, SECRETARY OF LABOR, \*  
United States Department of Labor, \*

Plaintiff, \*

v. \*

AMERICAN MATERIALS CORPORATION, \*  
and DONALD J. BERCOWETZ, Individually, \*

Defendants. \*

CIVIL ACTION NO.  
3:15-cv-01023-MPS

\*\*\*\*\*

CONSENT JUDGMENT AND ORDER

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor (the "Secretary") and Defendants American Materials Corporation and Donald J. Bercowetz (collectively, the "Defendants"), have agreed to resolve all matters in controversy in this action (not including the imposition by Plaintiff of any penalty pursuant to Title I of the Employee Retirement Income Security Act of 1974 ("ERISA" or the "Act"), Section 502(l), 29 U.S.C. § 1132(l), and any proceedings related thereto). Said parties do now consent to the entry of a Consent Judgment and Order ("Consent Judgment") by this Court in accordance therewith.

The parties agree, for purposes of any future assessment of any penalty pursuant to ERISA Section 502(l), 29 U.S.C. § 1132(l), that the "applicable recovery amount" shall be the amount of \$20,939, as set forth in paragraph 2 of this Consent Judgment.

Defendants herein waive service of process of the Complaint and admit to the jurisdiction of this Court over them and the subject matter of this action.

Now therefore, by consent of the parties hereto, and with due consideration,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Defendants are permanently enjoined from violating Title I of ERISA.
2. Defendants shall pay to the American Materials Corporation SIMPLE IRA plan (the "Plan") the amount of \$20,939, representing principal and pre-judgment lost opportunity costs. The amount represents losses to non-fiduciary plan participants resulting from fiduciary breaches by the defendants. Said amount shall be allocated among the non-fiduciary Plan participants, whose employee contributions were withheld but never transmitted to the Plan, according to the amount each Plan participant is due, provided however, that none of said amount will be allocated to Defendant Donald J. Bercowetz's Plan account or otherwise for the benefit of Defendants.
3. Payment of said amount shall be made to the Plan in twenty-four (24) monthly installment payments of \$872.45 per month, including post-judgment interest amortized annually at the rate of three-percent (3%). The first installment payment shall be due on September 1, 2015. Thereafter, Defendants shall make successive installment payments on a monthly basis. Said successive installment payments shall be due on the first (1st) day of each month following the month in which the preceding payment was due. If an installment payment is more than fifteen (15) days late, the remaining balance of the Consent Judgment amount becomes immediately due and payable.
4. Defendants shall have the right to make greater payments toward the balance due without penalty, but shall pay at least the monthly installment payment amount described in paragraph 3 of this Consent Judgment. Any greater payments towards the balance due shall be applied to the final payments.
5. Defendants shall provide all instructions and documentation required to American

Funds to transmit the installment payments to the Plan including, but not limited to, the name and monthly allocation amount for each Plan participant receiving a payment.

6. If a Plan participant due an amount no longer has an account with the Plan, Defendants shall notify the Plan participant and enroll the Plan participant in the Plan, subject to the Plan participant's agreement. Defendants shall follow all appropriate steps to locate Plan participants. Defendants shall notify the Secretary of enrolling the Plan participant in writing. Defendants shall provide proof of notifying the Plan participant and enrolling the Plan participant pursuant to paragraph 9 of this Consent Judgment.

7. In the event that Defendants are unable to allocate a payment to any Plan participant due an amount for any reason, Defendants shall establish an interest-bearing federally insured bank account in the name of the Plan and shall remit such payment and future payments to the bank account, unless otherwise notified by the Plan participant. Within twenty (20) days of establishing the bank account, Defendants shall notify the Plan participant of the bank account in writing. Defendants shall follow all appropriate steps to locate Plan participants. Defendants shall notify the Secretary of the establishment of the bank account in writing. Defendants shall provide proof of notifying the Plan participant and establishing the bank account pursuant to paragraph 9 of this Consent Judgment.

8. Within thirty (30) days of the entry of this Consent Judgment, Defendants shall provide Plan participants due amounts with a copy of this Consent Judgment. Defendants shall provide proof of transmitting such copies pursuant to paragraph 9 of this Consent Judgment. Defendants shall take all appropriate steps to maintain current addresses and contact information for Plan participants.

9. Defendants shall submit the following, setting forth evidence of compliance with

the provisions of paragraphs 2 through 8 of this Consent Judgment:

a) Within twenty (20) days of making each monthly installment payment to the Plan, or to a bank account, Defendants shall provide proof of payment<sup>1</sup> to the Secretary, until such time as the full amount owed is restored;

b) Within twenty (20) days of enrolling a Plan participant due an amount in the Plan, Defendants shall notify the Secretary in writing and provide proof of notifying and enrolling the Plan participant;

c) Within twenty (20) days of establishing a bank account, Defendants shall notify the Secretary in writing and provide proof of notifying the Plan participant due an amount and establishing the bank account;

d) Within thirty (30) days of completing payments to the Plan, or to a bank account, Defendants shall submit a written report to the Secretary showing a full accounting of the proceeds allocated to the accounts of Plan participants due amounts or otherwise allocated to Plan participants;

e) Within (30) days of transmitting copies of the Consent Judgment to Plan participants due amounts, Defendants shall provide proof of transmitting the copies to the Secretary; and,

f) Proof of payments, enrollments, notices, bank account, transmitting copies of the Consent Judgment, and the report of compliance, as required by paragraphs 9(a) through (e) of this Consent Judgment, shall be sent to the following address:

Regional Director  
Employee Benefits Security Administration  
U.S. Department of Labor  
JFK Federal Building, Room 575

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<sup>1</sup> "Proof of payment" is defined as documentation verifying the allocation to, and receipt of, funds in each Plan participant's account.

Boston, Massachusetts 02203

10. Defendant Donald J. Bercowetz is permanently enjoined from serving as a fiduciary to any employee benefit plan subject to ERISA, except to enroll Plan participants in the Plan pursuant to paragraph 6 of this Consent Judgment and to carry out the provisions of this Consent Judgment.

11. Each party shall bear its own fees and expenses with respect to this action.

12. This Court shall retain jurisdiction of this matter for purposes of enforcing this Consent Judgment.

13. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor.

IT IS ORDERED THIS 9<sup>th</sup> day of Sept., 2015.

/s/ Michael P. Shea  
United States District Judge

CONSENTED TO BY:

For Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor:

M. Patricia Smith  
Solicitor of Labor

Michael D. Felsen  
Regional Solicitor

/s/ Marjorie Butler  
Marjorie Butler  
Trial Attorney

7/20/2015  
Dated

Massachusetts BBO No. 548797

U.S. Department of Labor  
Office of the Solicitor  
JFK Federal Building, Room E-375  
Boston, Massachusetts 02203

Telephone: (617) 565-2500  
Facsimile: (617) 565-2142  
Butler.Marjorie@dol.gov

For Defendant American Materials Corporation:

/s/   
Donald J. Bercowetz  
President

7-16-15  
Dated

American Materials Corporation  
c/o DMR Materials  
100 Old Iron Ore Road  
Bloomfield, CT 06002

For Defendant Donald J. Bercowetz

/s/   
Donald J. Bercowetz

7-16-15  
Dated

Donald J. Bercowetz  
830 Prospect Avenue  
Hartford, CT 06105

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FOR THE DISTRICT OF CONNECTICUT

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 Thomas E. Perez, SECRETARY OF LABOR, \*  
 United States Department of Labor, \*  
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 Defendants. \*  
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ADDENDUM TO CONSENT JUDGMENT AND ORDER

Now comes Plaintiff, Secretary of Labor Thomas E. Perez and submits additional information in regard to the provisions set forth in the Proposed Consent Judgment filed in this matter and attached to a Motion to Approve Consent Judgment, dated July 27, 2015 (Document 10-1).

Paragraph #5 of the proposed Consent Judgment states that “Defendants shall provide all instructions and documentation required to American Funds to transmit the installment payments to the Plan including, but not limited to, the name and monthly allocation amount for each Plan participant receiving a payment.”

American Funds<sup>1</sup> is the Custodian and Designated Financial Institution<sup>2</sup>, which receives all contributions to the American Materials Corporation SIMPLE IRA Plan and deposits those

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<sup>1</sup> American Funds is one of the largest mutual fund families in the United States. Capital Research and Management is the investment advisor to the 30 American Funds. The Capital Group Companies is a group of investment management firms. The firm includes the American Funds, Capital Bank and Trust, Capital Guardian, Capital International, Capital International Asset Management, Capital International Funds, and Capital Research and Management. (<http://www.streetinsider.com/entities/The+Capital+Group+Companies>)

<sup>2</sup> Custodian and Designated Financial Institution are defined in the Savings Incentive Match Plan for Employees for use with SIMPLE Retirement Account, attached to this document as Exhibit 1.

contributions to the SIMPLE IRA of each Participant. Defendants shall be required to transmit the monthly payment to American Funds in order for American Funds to allocate the funds to the correct participant accounts. The Defendants are required to provide American Funds with the documentation and instructions required by the American Funds for the payments to be properly allocated to the affected participants.

Counsel for the Plaintiff has provided this Addendum to the Defendants and Defendants do not object or disagree.

Respectfully submitted,

M. Patricia Smith  
Solicitor for Labor

Michael D. Felsen  
Regional Solicitor

/s/ Marjorie A. Butler

Marjorie A. Butler  
Attorney for the Plaintiff  
Massachusetts BBO No. 548797  
United States Department of Labor  
Attorneys for the Plaintiff

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Date: September 8, 2015