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9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 **THOMAS E. PEREZ**, Secretary of Labor,
United States Department of Labor,

14 Plaintiff,

15 v.

16 **DRAEGER CONSTRUCTION, INC.**, a Cali-
fornia corporation;

17 **DRAEGER CONSTRUCTION, LLC**, a Ne-
vada limited liability company;

18 **DRAEGER CONSTRUCTION, INC.**
19 **HEALTH AND WELFARE PLAN**, an em-
20 ployee benefit plan;

21 **JEFFREY DRAEGER**, an individual.
22

23 Defendants.
24

Case No. CV 15-4668 BLF

~~(PROPOSED)~~ CONSENT
JUDGMENT

25 Plaintiff THOMAS E. PEREZ, Secretary of Labor, United States Department of
26 Labor (“Plaintiff” or the “Secretary”), pursuant to his authority under Sections 502(a)(2)
27 and (5) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C.
28 §§ 1132(a)(2) and (5), has filed a Complaint against, among others, JEFFREY

1 DRAEGER, an individual (“Draeger”). The Secretary and Draeger (the “Parties”) have
2 agreed to resolve the matters in controversy in this civil action and consent to the entry
3 of this consent judgment (“Consent Judgment” or “Judgment”) in accordance herewith.

4 A. The Parties admit that the Court has jurisdiction over this action pursuant to
5 ERISA Section 502(e)(1), 29 U.S.C. § 1132(e)(1), and that venue lies in the Dis-
6 trict Court for the Northern District of California pursuant to ERISA Section
7 502(e)(2), 29 U.S.C. § 1132(e)(2).

8 B. The Secretary has alleged that Defendant Draeger violated Sections 403, 404,
9 and 406 of the Employee Retirement Security Act of 1974 (“ERISA”), 29
10 U.S.C. §§ 1103, 1104, 1106, respectively: (1) by failing to forward withheld
11 employee contributions and COBRA repayments to the Draeger Construction,
12 Inc. Health and Welfare Plan, an employee benefit plan as defined by ERISA
13 (the “Plan”); and (2) by failing to provide Plan participants with notice that they
14 were at risk of losing their health insurance coverage, and in fact lost said cov-
15 erage, due to the Plan fiduciaries’ nonpayment of insurance premiums, and as
16 alleged more fully in the Complaint.

17 C. The Secretary has alleged that as a result of the aforementioned violations of
18 ERISA, Defendant Draeger is jointly and severally liable pursuant to ERISA
19 Section 409, 29 U.S.C. § 1109, for Plan losses and uncovered medical claims for
20 Plan participants, and as alleged more fully in the Complaint.

21 D. The Parties agree to entry of this Consent Judgment. The Parties further agree
22 that this Consent Judgment shall fully settle all claims asserted by the Secretary
23 in the Complaint.

24 E. Defendant Draeger acknowledges receipt of the Complaint and hereby waives
25 service of process of the Summons and the Complaint.

26 F. The Parties expressly waive Findings of Fact and Conclusions of Law.
27
28

1 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

- 2 1. Defendant Draeger is liable for \$94,174.06 and judgment is hereby entered against
3 him in said amount (“Judgment Amount”). The Judgment Amount is comprised
4 of: (1) \$31,679.94 in Plan losses in the form of outstanding employee contribu-
5 tions not forwarded to the Plan; and (2) \$62,494.12 in Plan participants’ uncov-
6 ered medical claims resulting from their loss of health insurance coverage due to
7 the Plan fiduciaries’ nonpayment of premiums.
- 8 2. The monetary provisions of this Consent Judgment shall be as follows:
- 9 a. On or before March 15, 2016, Defendant Draeger shall initiate a first in-
10 stallment payment of the Judgment Amount totaling \$20,000.00 (“First In-
11 stallment Payment”). The First Installment Payment shall be via check or
12 automated electronic payment, whichever is preferred by each Plan partici-
13 pant, to each Plan participant who is owed funds in accordance with the
14 proportional amounts due to each Plan participant as determined by the
15 United States Department of Labor, Employee Benefits Security Admin-
16 istration (“EBSA”), and as previously provided to Defendant Draeger. The
17 Secretary shall be authorized to provide Plan participant contact infor-
18 mation to Defendant Draeger to facilitate payment of the Judgment
19 Amount. Attached as Exhibit A is a summary of the portion of the Judg-
20 ment Amount due and owing to each Plan participant, as calculated by
21 EBSA.
- 22 b. On or before April 15, 2016, and on a monthly basis thereafter on the first
23 of each month for a period of thirty six (36) consecutive months, Defendant
24 Draeger shall make subsequent installment payments in the amount of
25 \$2,060.39 per month for the remaining balance, or \$74,174.06, of the
26 Judgment Amount (“Subsequent Installment Payments”). The Subsequent
27 Installment Payments shall be via check or automated electronic payment,
28 whichever is preferred by each Plan participant, to each Plan participant

1 who is owed funds in accordance with the proportional amounts due to each
2 Plan participant as determined by EBSA and as previously provided to De-
3 fendant Draeger. The Subsequent Installment Payment schedule is set forth
4 in the attached **Exhibit B**.

5 c. Defendant Draeger may pay the Judgment Amount early at any time and
6 without penalty.

7 d. At the end of each month until the Judgment Amount is paid in full, De-
8 fendant Draeger shall provide: (1) written confirmation to EBSA (with ref-
9 erence to “Draeger, EBSA Case No. 70-015489(48)”) that the payments
10 due to date have been proportionally paid, and (2) written notice to EBSA
11 regarding whether any payments to any of the Plan participants have either
12 been returned to Defendant Draeger or otherwise not deposited. Said writ-
13 ten confirmation and notice shall be sent to:

14 Regional Director
15 Employee Benefits Security Administration
16 United States Department of Labor
17 90 7th Street, Suite 11-300
18 San Francisco, CA 94103-6712

19 3. Within ten (10) calendar days of signing the Consent Judgment, Defendant Drae-
20 ger shall execute one deed of trust to secure the Judgment Amount and installment
21 payment schedule outlined above. The deed of trust shall be recorded against the
22 real property commonly known as 1017 Vista Del Mar, San Jose, California,
23 95132 (the “Property”). Defendant Draeger has provided proof to the Secretary:
24 (1) of any current encumbrances on the Property; and (2) that there is sufficient
25 equity on the Property to satisfy the Judgment Amount. Defendant Draeger shall
26 not further encumber the Property at any time before the Judgment Amount is
27 paid in its entirety. If Defendant Draeger defaults on his payment obligations as
28 outlined above, he shall be given thirty (30) calendar days written notice to cure
the default. Written notice shall be sent to Jeffrey Draeger at his last known ad-

1 dress as well as by email to: jgdraeger@pro-craftbuilders.com and attorney Gor-
2 don J. Finwall (email only) at: Gordon@FinwallLaw.com. Defendant Draeger
3 may update his contact information by providing written notice to the Regional
4 Director at the address provided in Paragraph 2(d), *supra*; any changes to Defend-
5 ant Draeger's contact information shall be effective fourteen (14) days after re-
6 ceipt by the Regional Director. If Defendant Draeger fails to cure the default, the
7 Secretary shall, at his discretion and without further notice to Defendant Draeger,
8 cause the trustee, identified in the deed of trust or subsequently substituted, to sell
9 the Property to satisfy the outstanding balance of the Judgment Amount. For the
10 purposes of this paragraph, a default is deemed to occur if payment is not deliv-
11 ered within five (5) calendar days of the due date.

12 4. Once Defendant Draeger has paid the full Judgment Amount, he shall be assessed
13 a penalty under ERISA § 502(1), 29 U.S.C. § 1132(1), in the amount of
14 **\$18,834.81** ("Penalty Amount"). The Penalty Amount shall be subject to change
15 to include lost opportunity costs, including but not limited to lost interest calculat-
16 ed at the relevant rate, should Defendant Draeger default or delay on any of the
17 payment terms outlined in this Judgment. Defendant Draeger waives the notice of
18 assessment and service requirement of 29 C.F.R. § 2570.83. Upon assessment,
19 payment of the Penalty Amount shall be made immediately unless Defendant files
20 a petition for waiver or reduction of the penalty as provided for in 29 C.F.R. §§
21 2570.83--2570.87, and the Secretary agrees to waive or reduce the penalty. In the
22 event that the Secretary does not agree to waive or reduce the penalty, Defendant
23 shall remit the Penalty Amount to the Secretary within sixty (60) calendar days of
24 receipt of the Secretary's decision denying Defendant's petition. Defendant may
25 not challenge the Secretary's decision regarding any petition submitted to waive
26 or reduce the Penalty Amount.

27 5. Defendant Draeger shall hereby be removed as a fiduciary to the Plan.
28

- 1 6. Defendant Draeger shall hereby be permanently enjoined and restrained from vio-
2 lating the provisions of Title I of ERISA, 29 U.S.C. § 1001-1191c.
- 3 7. Defendant Draeger shall hereby be permanently enjoined and restrained from
4 serving as a fiduciary or service provider in connection with any ERISA covered
5 plan.
- 6 8. Defendant Draeger expressly waives any and all claims of any nature which he
7 may have against the Secretary, the United States Department of Labor, or any of
8 its officers, agents, attorneys, employees or representatives, arising out of, or in
9 connection with, the allegations contained in the Complaint on file in this action,
10 any other proceedings or investigation incident thereto, or based on the Equal Ac-
11 cess to Justice Act, as amended.
- 12 9. The Parties shall each bear their own costs, expenses, and attorney's fees incurred
13 in connection with any stage of this proceeding, including but not limited to attor-
14 ney's fees which may be available under the Equal Access to Justice Act, as
15 amended.
- 16 10. Nothing in this Consent Judgment and Order is binding on any governmental
17 agency other than the United States Department of Labor, Employee Benefits Se-
18 curity Administration, in relation to the specific civil allegations set forth in this
19 Complaint, or on any private party not named in this action.
- 20 11. This Court retains jurisdiction of this action for purposes of enforcing compliance
21 with the terms of this Consent Judgment and Order.
- 22 12. By signing their names to this Consent Judgment and Order, the Parties each rep-
23 resent that they are informed and understand the effect and purpose of this Con-
24 sent Judgment and Order.
- 25 13. Any person signing this Consent Judgment and Order on behalf of a party ex-
26 pressly acknowledges and represents that he or she has the authority to sign for,
27 and legally bind, that party.
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14. This Consent Judgment and Order may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

1 The Court directs the entry of this Consent Judgment and Order as a final order.
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3 IT IS SO ORDERED.

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5 Dated: January 29, 2016


The Hon. Beth Labson Freeman
United States District Judge

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Entry of this Consent Judgment and Order is hereby consented to:

M. PATRICIA SMITH
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

IAN H. ELIASOPH
Counsel for ERISA

Dated: Jan. 29, 2016



GRACE A. KIM
Trial Attorney
Attorneys for Plaintiff Secretary of Labor

Dated: 1/29/16



DEFENDANT JEFFREY DRAEGER

Jeffrey G. Draeger

(Print Name)

This Consent Judgment is approved as to form by:

Dated: 1/28/16



GORDON J. FINWALL
Attorney for Defendant Jeffrey Draeger

EXHIBIT A TO CONSENT JUDGMENT

	Plan Participant Initials¹	Outstanding Employee Contributions Owed	Uncovered Medical Claim Amount Owed	Total Owed to Plan Participant
1	A. A.	\$92.54	-	\$92.54
2	H. B.	\$274.51	-	\$274.51
3	S. B.	-	\$1,338.82	\$1,338.82
4	J. B.	\$123.80	-	\$123.80
5	A. B.	\$298.68	-	\$298.68
6	B. B.	\$85.50	-	\$85.50
7	M. B.	\$466.22	-	\$466.22
8	G. B.	\$126.75	-	\$126.75
9	S. B.	\$114.78	-	\$114.78
10	M. B.	\$201.93	-	\$201.93
11	A. B.	\$581.82	\$750.00	\$1,331.82
12	E. C.	\$184.79	-	\$184.79
13	B. C.	\$88.07	-	\$88.07
14	V. C.	\$243.84	-	\$243.84
15	R. C.	\$66.08	-	\$66.08
16	L. C.	-	\$136.00	\$136.00
17	V. C.	\$298.68	-	\$298.68
18	G. C.	\$88.07	-	\$88.07
19	D. C.	-	\$2,524.00	\$2,524.00
20	G. C.	\$43.37	-	\$43.37
21	H. D.	\$460.86	\$9.43	\$470.29

¹ Full names of Plan participants have been omitted from this Consent Judgment for privacy reasons. Plaintiff Secretary of Labor has separately provided full names and other information to Defendant Draeger to facilitate payment of the Judgment Amount.

1	22	J. D.	-	\$512.00	\$512.00
2	23	G. E.	\$989.69	-	\$989.69
3	24	M. E.	\$342.07	-	\$342.07
4	25	Z. E.	\$10.30	-	\$10.30
5	26	E. F.	\$39.16	-	\$39.16
6	27	L. G.	-	\$163.00	\$163.00
7	28	A. G.	\$236.12	-	\$236.12
8	29	R. G.	\$471.10	-	\$471.10
9	30	M. G.	\$484.84	\$355.00	\$839.84
10	31	G. G.	\$160.71	-	\$160.71
11	32	J. H.	\$343.08	-	\$343.08
12	33	E. H.	\$66.64	-	\$66.64
13	34	J. H.	\$214.82	-	\$214.82
14	35	J. H.	\$97.88	-	\$97.88
15	36	R. H.	\$684.66	-	\$684.66
16	37	D. H.	\$274.45	-	\$274.45
17	38	L. H.	\$606.16	-	\$606.16
18	39	B. J.	\$134.64	-	\$134.64
19	40	N. K.	\$54.22	-	\$54.22
20	41	M. K.	\$66.04	-	\$66.04
21	42	B. L.	-	\$298.00	\$298.00
22	43	T. L.	\$1,175.23	-	\$1,175.23
23	44	A. L.	\$282.52	\$195.00	\$477.52
24	45	K. L.	\$147.00	-	\$147.00
25	46	C. L.	-	\$18,819.59	\$18,819.59
26	47	M. L.	\$1,469.04	\$1,572.75	\$3,041.79
27	48	C. M.	\$683.79	-	\$683.79
28	49	M. M.	\$298.68	-	\$298.68

1	50	M. M.	\$1,671.36	-	\$1,671.36
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3	51	D. M.	\$1,117.75	\$791.50	\$1,909.25
4	52	K. M.	-	\$319.00	\$319.00
5	53	L. M.	\$761.60	-	\$761.60
6	54	J. M.	\$1,401.31	-	\$1,401.31
7	55	B. M.	\$780.97	-	\$780.97
8	56	A. M.	\$343.08	\$425.00	\$768.08
9	57	R. M.	\$527.94	\$1,283.32	\$1,811.26
10	58	G. M.	\$581.82	-	\$581.82
11	59	D. N.	\$965.56	\$946.68	\$1,912.24
12	60	F. O.	\$71.72	-	\$71.72
13	61	F. O.	\$274.45	-	\$274.45
14	62	R. P.	\$233.07	-	\$233.07
15	63	C. P.	\$205.18	-	\$205.18
16	64	P. P.	\$203.16	-	\$203.16
17	65	D. P.	\$280.64	-	\$280.64
18	66	F. Q.	\$787.06	-	\$787.06
19	67	S. Q.	-	\$52.26	\$52.26
20	68	S. R.	-	\$69.37	\$69.37
21	69	J. R.	\$82.31	-	\$82.31
22	70	A. R.	\$110.10	-	\$110.10
23	71	H. S.	\$694.72	-	\$694.72
24	72	G. S.	\$98.36	-	\$98.36
25	73	L. S.	\$98.36	-	\$98.36
26	74	K. S.	-	\$882.61	\$882.61
27	75	M. S.	\$1,653.83	-	\$1,653.83
28	76	O. S.	\$336.74	-	\$336.74
	77	B. S.	-	\$255.00	\$255.00

1	78	E. S.	\$123.79	-	\$123.79
2	79	J. S.	\$110.42	-	\$110.42
3	80	C. S.	\$80.78	\$5,001.10	\$5,081.88
4	81	S. T.	\$1,377.85	\$800.00	\$2,177.85
5	82	J. V.	-	\$80.00	\$80.00
6	83	D. V.	\$298.68	-	\$298.68
7	84	J. V.	\$336.74	-	\$336.74
8	85	J. V.	\$436.81	-	\$436.81
9	86	A. V.	\$1,671.36	\$18,516.86	\$20,188.22
10	87	R. W.	\$180.23	-	\$180.23
11	88	D. W.	\$324.59	\$6,397.83	\$6,722.42
12	89	M. Y.	\$161.50	-	\$161.50
13		Total	\$31,679.94	\$62,494.12	\$94,174.06 (Judgment Amount)
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EXHIBIT B TO CONSENT JUDGMENT

Payment No.	Date Due	Amount Due
1	03/15/2016	\$20,000.00
2	04/15/2016	\$2,060.39
3	05/15/2016	\$2,060.39
4	06/15/2016	\$2,060.39
5	07/15/2016	\$2,060.39
6	08/15/2016	\$2,060.39
7	09/15/2016	\$2,060.39
8	10/15/2016	\$2,060.39
9	11/15/2016	\$2,060.39
10	12/15/2016	\$2,060.39
11	01/15/2017	\$2,060.39
12	02/15/2017	\$2,060.39
13	03/15/2017	\$2,060.39
14	04/15/2017	\$2,060.39
15	05/15/2017	\$2,060.39
16	06/15/2017	\$2,060.39
17	07/15/2017	\$2,060.39
18	08/15/2017	\$2,060.39
19	09/15/2017	\$2,060.39
20	10/15/2017	\$2,060.39

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21	11/15/2017	\$2,060.39
22	12/15/2017	\$2,060.39
23	01/15/2018	\$2,060.39
24	02/15/2018	\$2,060.39
25	03/15/2018	\$2,060.39
26	04/15/2018	\$2,060.39
27	05/15/2018	\$2,060.39
28	06/15/2018	\$2,060.39
29	07/15/2018	\$2,060.39
30	08/15/2018	\$2,060.39
31	09/15/2018	\$2,060.39
32	10/15/2018	\$2,060.39
33	11/15/2018	\$2,060.39
34	12/15/2018	\$2,060.39
35	01/15/2019	\$2,060.39
36	02/15/2019	\$2,060.39
37	03/15/2019	\$2,060.41
	<u>Total:</u>	<u>\$94,174.06</u>