IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

THOMAS E. PEREZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, v. NATHAN WILLIAMS, NW SYSTEMS, INC. AND NW SYSTEMS, INC. 401(k) PROFIT-SHARING PLAN AND TRUST, Defendants.	Case 8:15-cv-00056-GJH

CONSENT ORDER AND JUDGMENT

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor (the "Secretary"), has engaged in settlement discussions with defendants NW Systems, Inc. and Nathan Williams ("Williams"). The Secretary and the two defendants respectively have agreed to a settlement of all civil claims and issues between them in this action. Defendant NW Systems, Inc. agreed to the entry of a separate Consent Order and Judgment. Defendant Williams consents to the entry of this Consent Order and Judgment ("Consent Judgment") against him by this Court. The agreement states, as follows:

1. In Harris v. NW Systems, Inc., Case 1:13-cv-00488-JFP, a prior action filed in the U.S. District Court of Maryland, the Secretary and Defendant Williams agreed to a consent judgment ("Prior Order") that, among other things, removed Defendant Williams as a fiduciary to the NW Systems, Inc. 401(k) Plan ("Plan") and appointed G Trust as Independent Fiduciary to

the Plan. The Prior Order was approved by the Court on February 20, 2013, without prejudice to the Secretary's right to investigate and redress violations of ERISA which were not alleged in the complaint filed in that action.

2. The instant action was filed on January 1, 2015 by the Secretary pursuant to Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, as amended, and by the authority vested in the Secretary by ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2) and (5).

3. The Secretary's Complaint ("the Complaint") alleges that defendants Williams and NW Systems, Inc. violated ERISA §§ 403, 404 and 406, 29 U.S.C. §§ 1104, 1103, and 1106 with respect to the Plan. Specifically, the Secretary alleges that Defendant Williams failed to remit employee contributions or ensure the collection of employer contributions, causing losses to the Plan and its participants and beneficiaries. The Complaint further alleges that Defendant's mishandling of Plan assets benefited, directly or indirectly, Defendant Williams and his co-fiduciary NW Systems, Inc., both of whom were parties in interest to the Plan. Additionally, the Secretary's Complaint alleges that defendants Williams and NW Systems, Inc. are liable as co-fiduciaries for each other's breaches pursuant to Section 405 of ERISA, 29 U.S.C. § 1105(a). The Secretary has not previously alleged these violations in any action. The Plan is joined as a party defendant pursuant to Rule 19, Fed. R. Civ. P., in order to ensure that complete relief can be granted.

4. The Secretary, through counsel, has engaged in settlement discussions with Defendant Williams. The parties have agreed to resolve all matters in controversy in this action between them pursuant to the terms of this Consent Judgment.

5. For purposes of this Consent Judgment, Defendant Williams acknowledges service of the Complaint and admits that the Court has jurisdiction over the parties and the subject matter of this action.

6. Defendant Williams also does not challenge that the present enforcement action by the Secretary was brought within the applicable limitations period for such actions and waives any defense based upon the passage of time including, but not limited to, any statute of limitations defense.

7. The Secretary and Defendant Williams expressly waive any Findings of Fact and Conclusions of Law except as stated in this Consent Judgment and consent to the entry of this Consent Judgment as a full and complete resolution of all of the claims and issues arising between them in this action without trial or adjudication of any issue of fact or law raised in the Secretary's Complaint.

8. Defendant Williams expressly acknowledges and represents that he, through his duly authorized representative(s), has read this Consent Judgment and understands its provisions. Any undersigned attorneys expressly acknowledge and represent that they are authorized and empowered to execute this Consent Judgment on behalf of the party represented and that they have fully disclosed any conflicts of interest to the party represented and to the Secretary relating to their representation for purposes of executing this Consent Judgment.

9. The Secretary and Defendant Williams understand and agree that entry of this Consent Judgment is without prejudice to the Secretary's right to investigate and redress violations of ERISA, if any, not alleged in the Complaint, including the Secretary's right to institute future enforcement actions with respect to any other such matter. It is further

understood that this paragraph shall not constitute a waiver by Defendant Williams of any defenses, legal or equitable, to any such future action.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that:

I. JURISDICTION

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

II. COMPLIANCE

A. During the period from January 1, 2009 until December 2012, $257,114.10 in employee contributions were never remitted to the Plan, causing $74,763.35 in lost earnings as of September 30, 2015; and $148,490.01 in employer matching contributions were never remitted to the Plan, causing a loss of $34,947.26 in lost earnings as of September 30, 2015. Attached as Exhibit A is a list of employees whose accounts suffered losses from the unremitted employee and employer contributed described herein, and the percentages owed to each account as of September 30, 2015.

B. Defendant Williams is joint and severally liable to the Plan in the total amount of $515,314.73.

C. In reliance on the representations made by Defendant Williams in the documents provided by him to the Secretary (including a financial declaration and tax returns), which show that he is currently unable to immediately pay the total restitution amount of $515,314.73 owed to the Plan, the Secretary agrees to forbear immediate collection of the total restitution amount.

D. Defendant Williams shall provide the District Supervisor of the Washington District

Office of Employee Benefits Administration ("EBSA") with a financial disclosure statement signed under penalty of perjury, in the form attached as Exhibit B, on or before the 15th calendar day following the end of each calendar quarter for the next three (3) years, beginning with the quarter ended December 31, 2015. Until the balance of his liability under paragraph B of Section II is fully paid, Defendant Williams also shall provide a copy of his annual federal tax return on or before May 15th of each year and if he is not required by federal law to file an annual federal tax return he will provide a statement under oath that such filing is not required. This information shall be mailed to the District Supervisor of the Washington District Office of the Employee Benefits Administration.

E. Defendant Williams shall notify the District Supervisor within seven (7) days if any of the following events occurs:

a) Change in name;

b) Change in residence or mailing address;

c) Change in telephone number;

d) Filing of personal bankruptcy; or

c) Change of employment.

F. Defendant Williams shall restore to the Plan the total amount set forth in paragraph B of Section II, $515,314.73, less any payments made by Defendant NW Systems pursuant to its separate Consent Judgment executed by the Defendant NW Systems and the Secretary, plus post-judgment interest pursuant to 28 U.S.C. § 1961, according to the following schedule of income:

1) One hundred percent (100 %) of any bequest, inheritance, monetary gift, lottery and gambling winnings, or proceeds of any life insurance policy, that Defendant Williams may receive within 30 days of receipt;

2) One hundred percent (100 %) of any payments due, payable, or paid by NW Systems, Inc. (including through any bankruptcy proceeding) or Blue Capital, LLC to Defendant Williams, which sum shall be paid directly to the Plan by NW Systems, Inc. or Blue Capital, LLC. Defendant Williams shall not dispute the payment of any monies directly from NW Systems, Inc. or Blue Capital, LLC to the Plan, and waives any and all rights or claims to any monies paid to the Plan pursuant to this provision; and

3) Twenty five percent (25%) of Defendant William's "disposable wages" per week in excess of $145.[1] Amounts paid under this paragraph (F)(3) shall be paid directly from Defendant William's employer to the Plan and Defendant Williams agrees to take all necessary steps to authorize such direct payments to the Plan.

4) In the event that Williams restores to the Plan the aggregate amount of $250,000 within 24 months following the Execution Date, the Secretary will consider Williams' debt compromised and satisfied.

G. In restoring the monies, Defendant Williams (or, in the case of paragraph F(2) of Section II, Blue Capital, LLC and/or NW Systems, Inc.) shall send the monies directly to the Independent Fiduciary of the Plan.

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1 For purposes of paragraph F(3) of Section II, "disposable wages" means the part of wages that remain after deduction of any amount required to be withheld by law and excludes payments by Defendant Williams to the Plan pursuant to paragraphs F(1) and F(2) of Section II of this Consent Judgment.

H If it is found that the documents Defendant Williams provided or provides in the future regarding his financial status are untrue, the full amount of losses owed to the Plan of $515,314.73 plus accrued interest from (date), less any prior payments made by Defendant Williams or NW Systems, Inc. for the total restitution amount described in Paragraph B of Section II, shall immediately become due and payable together with post-judgment interest pursuant to 28 U.S.C. § 1961. If, following execution of this Consent Judgment, the Secretary discovers past, current, or future sources of Defendant William's income or assets that are not otherwise accounted for in this Consent Judgment or in the documents provided by Defendant Williams to the Secretary, the Secretary reserves the right to immediately and without notice pursue collection of the total restitution amount from such income or assets, less any amounts already paid by Defendant Williams or NW Systems, Inc. to the Plan.

I. Upon receipt of any monies received by the Plan pursuant to paragraph F of Section II, the Independent Fiduciary of the Plan shall credit the monies to the investment accounts of those individuals who: (1) were employees of NW Systems, Inc., (2) were Plan participants during the period January 1, 2009 through December 2012, (3) had employee contributions withheld from their pay for contribution to the Plan, and were owed employer contributions, during this period and such contributions were either remitted to the plan in an untimely manner or never remitted to the Plan, and (4) who have not received a distribution of their full vested account balance as of the date of the entry of this Consent Judgment. The Plan shall allocate the aforementioned money to the individual investment accounts of the Plan's participants in accordance with the attached

schedule (see attached, Ex. A). Any amounts paid under this Consent Judgment shall be applied first to restore unremitted employee contributions and associated lost earnings, then shall be applied to restore unremitted employer contributions and associated lost earnings.

J. Upon receiving proof of payment of restitution, the Secretary shall assess a penalty against Defendant Williams of twenty (20%) percent of the applicable recovery amount, pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l). The applicable recovery amount shall include any monies paid pursuant to paragraph F of Section II, including any monies paid by NW Systems, Inc. or Blue Capital, LLC on behalf of Williams. Defendant Williams agrees to pay any penalty assessed by the Department of Labor ("DOL") pursuant to ERISA §502(l)(3), 29 U.S.C. §§1132(l) except to the extent he seeks and is granted a waiver as a result of financial hardship pursuant to ERISA §502(l)(3)(A) or (B) in the Secretary's sole discretion, and Defendant agrees to waive any other defenses or appeals if any such financial hardship waiver is denied or if he or she fails to seek said waiver within the time set forth in the assessment letter; and this document or a copy thereof can be used as evidence of his or her waiver of future defenses or appeals pursuant to ERISA §502(l). Notwithstanding the foregoing, EBSA has reviewed William's financial affidavit and attachments, and, based on William's current submissions, has determined that it is reasonable to expect that Williams will not be able to restore all losses to the plan without severe financial hardship unless a waiver or reduction is granted under section 502(l)(3)(B) of ERISA. Accordingly, in its sole discretion, the Regional Director of Philadelphia EBSA has agreed to waive the 502(l) penalty based on financial hardship

if Defendant provides proof to EBSA that he has restored to the Plan the aggregate amount of $250,000 within 24 months following the Execution Date, pursuant to paragraph (F)(4) of this section II.

K. If Defendant Williams files for any form of bankruptcy prior to the full payment of restitution to the Plan, Defendant Williams will not oppose any proof of claim that the Secretary files in the bankruptcy proceeding for any amount still owing, and will not oppose an adversarial action that the Secretary may file to have the debt to the Plan declared non-dischargeable.

L. Pursuant to § 523(a)(4) of the Bankruptcy Code, 11 U.S.C. § 523(a)(4), in the event Defendant Williams files for bankruptcy protection in the future, any amount of unpaid liability set forth in paragraph B of Section II above, which resulted from his breach of fiduciary duties is, and shall be treated as, a non-dischargeable debt. Defendant Williams admits to the following facts:

1. Defendant Williams in his capacity as a named trustee of the Plan, failed to remit to the Plan $257,114.10 in employee contributions.

2. During his tenure as Plan trustee, Defendant Williams was aware of NW Systems' contribution obligations to the Funds, but nonetheless failed to remit the contributions. Instead he prioritized other, non-Plan-related expenses, including corporate expenses.

3. Defendant Williams' actions resulted in a loss of $257,114.10 in employee contributions that were never remitted to the Plan, and $74,763.35 in lost earnings.

4. The employee contributions are assets of the Plan by operation of 29 C.F.R. § 2510.3-102(a)(1), (b)(1).

5. Defendant Williams violated 29 U.S.C. §§ 1104, 1103, and 1106 by failing to remit employee contributions. Defendant Williams' mishandling of Plan assets benefited, directly or indirectly, Defendant Williams and his co-fiduciary NW Systems, Inc., both of whom were parties in interest to the Plan. Pursuant to Section 405 of ERISA, 29 U.S.C. § 1105(a), Defendant Williams is further liable as a co-fiduciary for the breaches of NW Systems, Inc.

6. Defendant Williams is liable to the Plan in the total amount of $257,114.10 in employee contributions that were never remitted to the Plan, and $74,763.35 in lost earnings due to the unremitted employee contributions;

7. Defendant Williams' breach of his fiduciary duties under ERISA to the Plan, as set forth above, constitute defalcations while acting in a fiduciary capacity with respect to the Plan and its participants, within the meaning of 11 U.S.C. § 523(a)(4).

8. Therefore, in the event that Defendant Williams files for bankruptcy protection in the future, any amount of unpaid liability for the unremitted employee contributions set forth in paragraph B of Section II above, which resulted from his breach of fiduciary duties, is, and shall be treated as, a nondischargeable debt under § 523(a)(4) of the Bankruptcy Code, 11 U.S.C. § 523(a)(4).

III. PRESERVATION OF CLAIMS AND DEFENSES

A. Nothing in this Consent Judgment shall be construed as a declaration by the signatories to this Consent Judgment that any person not a signatory hereto has any defense or affirmative defense, any right or basis for contribution or indemnity or any other basis for recovery from the Plan, any Plan trustee, any person signatory hereto, or the Secretary.

IV. NOTICE

All notices, including financial disclosure statements and attachments, required to be sent by this Consent Judgment shall be to the following addresses.

To the Independent Fiduciary of the Plan:

The Private Bank at BOK Financial
f/k/a GTRUST
900 South Kansas Avenue
Topeka, KS 66612

To the Secretary:

Elizabeth A. Bond
District Supervisor
Washington District Office-Philadelphia Region
Employee Benefits Security Administration
1335 East-West Highway, Ste. 200
Silver Spring, MD 20910
Ph: 202-693-8708
Fax: 202-693-8736

To Defendant Williams:

6006 Strathmore Way
Upper Marlboro, MD 20772
Cell. 301-906-6161

The parties to this Consent Judgment may, as they deem necessary, change from time to time the designation of persons to receive notice on their behalf by filing with the Court notification of such change and serving a copy thereof on the other appropriate party or parties to

this Consent Judgment by delivery to the address to which notice would be sent.

V. RELEASES

A. This Consent Judgment constitutes a full, final and complete judicial resolution of all of the civil claims alleged in the Secretary's Complaint against Defendant Williams in this action, relating to acts and omissions occurring in the period from January 1, 2009 until December 2012, and all such claims are hereby released, settled and dismissed with prejudice. Neither the Secretary nor Defendant Williams waives any claims against any other persons. Except as provided for herein, the Secretary's claims for monetary and injunctive relief and Defendant William's claims for monetary and equitable relief against any other persons are expressly preserved. Nothing in this Consent Judgment is, nor is to be construed as, an admission or acknowledgment that any person or entity is in any way released from any liability or wrongdoing except for Defendant Williams who is released as described herein.

B. Defendant Williams and, where applicable, his agents, beneficiaries, representatives, assigns and successors-in-interest, do hereby release the Secretary and his officers, agents, attorneys, employees, and representatives, both in their individual and governmental capacities, from all actions, claims and demands of whatsoever nature, including those arising under any statute, rule or regulation, that relate in any manner to the filing, prosecution, and maintenance of this civil action or any other proceeding or investigation incident thereto. In particular, Defendant Williams expressly waives any and all claims of any nature that he may have against the Secretary, or any of his officers, agents, employees, or representatives arising under the Equal Access To Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412.

C. The Secretary and Defendant Williams shall bear their own costs, expenses, and

attorney's fees in connection with this action, including but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

D. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor, Employee Benefits Security Administration.

VI. RETENTION OF JURISDICTION

This Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of enforcing the terms of this Consent Judgment.

VII. PARTIES BOUND

By entering into this Consent Judgment, Defendant Williams represents that he has been informed by his legal counsel of the effect and purpose of this Consent Judgment and agrees to be bound by its terms. Defendant Williams expressly represents that he will abide by any further orders of this Court, subject to his right to appeal from such orders.

VIII. SIGNATORIES

Defendant Williams expressly acknowledges and represents that it, through a duly authorized representative, has read this Consent Judgment and understands its provisions.

IX. MULTIPLE ORIGINALS

This Consent Judgment 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.

X. ENTRY OF JUDGMENT

The Court finds that there is no just reason to delay the entry of this Consent Judgment and, pursuant to Rule 54(b), Fed. R. Civ. P., expressly directs the entry thereof as a final Consent Judgment.

ENTERED: _____

United States District Judge

The parties, by themselves or their undersigned Counsel, hereby consent to the entry of this Consent Judgment:

FOR THE PLAINTIFF,
SECRETARY OF LABOR
THOMAS E. PEREZ

M. Patricia Smith
Solicitor of Labor

Oscar L. Hampton III
Regional Solicitor

Douglas N. White
Associate Regional Solicitor

/s/ Evelyn H. Chung
Evelyn H. Chung
Senior Trial Attorney

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Office of the Solicitor
U. S. Department of Labor

FOR THE DEFENDANT,
NATHAN WILLIAMS