

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

PATRICK PIZZELLA,)	
Acting Secretary of Labor,)	
United States Department of Labor,)	FILE NO.
)	
Plaintiff,)	3:19-cv-00119-FDW-DCK
)	
v.)	
)	
STEVEN MATTHEW GOOD;)	
WILLIAM H. WINN, JR.;)	
SMARTCORE, LLC; and SMARTCORE,)	
LLC GROUP HEALTH BENEFIT PLAN;)	
)	
)	
Defendants.)	

CONSENT JUDGMENT AND ORDER

THIS MATTER is before the Court on the parties' joint Motion to Approve the Consent Judgment and Order (Doc. No. 21). For the reasons stated therein, it is GRANTED.

Plaintiff, Acting Secretary of Labor, United States Department of Labor, pursuant to his authority under §§ 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

Defendants **Steven Matthew Good** (“Good”), **William H. Winn Jr.** (“Winn”), **SmartCore LLC** (“SmartCore”), and **SmartCore LLC Group Health Benefit Plan** (hereinafter “Plan”). The Acting Secretary named the Plan as a Defendant pursuant to Fed. R. Civ. P. 19(a). Upon entry of this Consent Judgment, the Complaint may be dismissed with prejudice. Defendants Good, Winn, and SmartCore (hereinafter referred to collectively as “Defendants”) have agreed with the Acting Secretary to resolve all matters in controversy in this action except for the imposition by the Acting Secretary of any penalty pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l) (hereinafter “502 (l) penalty”), and any proceedings related thereto, and said parties do now consent to entry of a Judgment and Order by this Court in accordance herewith.

A. The Acting Secretary's Complaint alleges that Defendants breached their fiduciary duties with respect to the Plan by failing to discharge their duties under the Plan and by violating provisions of §§ 403, 404 and 406 of ERISA, 29 U.S.C. §§ 1103, 1104 and 1106, as set forth in the Complaint.

B. The Acting Secretary and Defendants expressly waive Findings of Fact and Conclusions of Law, except as otherwise set forth and address herein, and consent to the entry of this Order as full and complete resolution of all claims and issues, with the exception of the 502 (l) penalty as referenced above, 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, and without entry of a judgment as to liability.

C. 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.

D. Defendants Good and Winn also admit the following:

1. SmartCore was a business operating in Mecklenburg County, North Carolina. The business administratively dissolved on or around 2016. Defendant SmartCore was the employer as well as the Plan Sponsor, Plan Administrator and the named fiduciary to the Plan.

2. Defendant Good was, at all times relevant to this action, a Principal of SmartCore.

3. Defendant Winn was, at all times relevant to this action, the President of SmartCore.

4. SmartCore adopted the SmartCore, LLC Group Health Plan ("Plan") on December 18, 2015.

5. The Plan is a group health plan providing payment for

major medical benefits including prescription drug coverage to SmartCore employees.

6. The Plan is a single-employer employee benefit plan within the meaning of § 3(3) of ERISA, 29 U.S.C. § 1002(3), subject to coverage under ERISA pursuant to § 4(a), 29 U.S.C. § 1003(a).

7. SmartCore is the Plan Sponsor and was the Plan Administrator of the Plan.

8. Under the terms of the Plan, SmartCore was responsible for paying “Plan benefits and administration expenses directly from general assets.”

9. SmartCore entered into an administrative services agreement with Starmark wherein in exchange for payment from SmartCore, Starmark agreed to provide certain services relating to the administration of the Plan, including making eligibility and benefits determinations under the Plan.

10. SmartCore also purchased stop-loss insurance from Trustmark. Under the terms of the stop-loss policy, in exchange for SmartCore’s payment of premiums, Trustmark agreed to reimburse SmartCore for a certain portion of the “reasonable and customary fee actually paid by [SmartCore] for eligible benefits under the Plan.”

11. Starmark and Trustmark are affiliated entities. Therefore, under the various agreements, Defendants were responsible to make a monthly payment to Starmark to pay for (1) the premiums owed to Trustmark for the stop-loss insurance policy, (2) benefits paid under the plan administered by Starmark, and (3) Starmark's services.

12. As of December 31, 2015, there were a total of eighty-nine (89) participants in the Plan, fifty-seven (57) of whom were employees of SmartCore, and thirty -two (32) of whom were dependents of the employee participants.

13. To fund the Plan, Defendants withheld monies from some of the paychecks of SmartCore employees participating in the Plan.

14. Defendants Good and Winn both had signatory authority on SmartCore's bank account used to pay vendors, and are, or were at all times relevant to this litigation responsible for deciding which vendors' bills would receive payment, including remittance of employee contributions to the claims administrator Starmark.

15. Defendants Good and Winn are, or were at all times relevant to this action, acting as a fiduciary to the Plan within the meaning of 29 U.S.C. § 1002(21)(A).

16. Defendants admit that SmartCore, Good, and Winn

stopped paying a portion of the money necessary to fund the Plan or to pay Plan participant and/or beneficiary medical claims.

17. Defendants admit that SmartCore, Good, and Winn were not using all of the money withheld from participants' paychecks to pay Plan participant and/or beneficiary medical claims to Starmark/Trustmark or to pay Plan benefits.

18. Defendants admit that SmartCore, Good and Winn did not pay to Starmark or Trustmark the monies that were withheld from employees' paychecks for Plan expenses, but instead used such monies for other purposes.

19. Defendants admit that on February 5, 2016, Starmark notified SmartCore that it was cancelling the stop-loss insurance and its administrative services contract with SmartCore retroactively because SmartCore had failed to make payments for Plan expenses as required.

20. Defendants failed to return unremitted contributions to SmartCore employees.

21. On February 19, 2016, Plan participants received a letter from Defendants regarding "Cancellation of Medical Insurance Policy." The letter states: "As you may know, our insurance was cancelled effective 1/1/2016 for non-payment. We were not made aware of this until 2/8/2016. We have made

every effort to secure the funds to reinstate the insurance; however, at this time, we have not been able to do so.”

E. In a related matter against Defendants that is before this Court, *Kinsinger et al. v. SmartCore LLC et al.*, No. 3:17-cv-643-FDW-DCK (W.D.N.C. filed Nov. 1, 2017) (hereinafter “*Kinsinger matter*”), whereby judgment was entered against Defendants Winn, Good, and SmartCore jointly and severally for wrongful denial of benefits under 29 U.S.C. § 1132 (a)(1)(B). See Document 116 in *Kinsinger matter*. Pursuant to the Court’s order, Defendants are required to provide written verification of payment of equitable relief owed to the Kinsingers by July 3, 2019. The Kinsingers’ unpaid medical claims were higher than the unremitted contributions owed to them. This matter therefore deals with the remaining unpaid medical claims and/or unremitted contributions for Plan participants and/or beneficiaries other than the Kinsingers.

F. There are Plan participants who have unremitted contributions owed to them, there are beneficiaries who only have unpaid medical claims, and there are plan participants who have both unpaid medical claims and unremitted contributions. The parties have agreed that, in addition to the amount paid for unpaid medical claims in the *Kinsinger matter*, Defendants will pay the higher of the two for those participants that experienced both losses so that they are made

whole pursuant to *CIGNA Corp. v. Amara*, 563 U.S. 421, 442 (2011) and *McCraw v. Metro. Life Ins. Co.*, 690 F.3d 176 (4th Cir. 2012). Defendants agree to pay \$ 21,404.15 to Plan participants either to cover their unpaid medical claims or, if they have no or minimal unpaid medical claims, to restore their contributions made between January 15, 2016 and February 19, 2016. (hereinafter the “Settlement Amount”). Defendants agree that they will remit the above referenced amount, which will be allocated to the following beneficiaries and/or participants as follows:

	Name	Amount Owed
1	J. Epps	\$1,916.55
2	Angela Fleeman	\$1,046.34
3	Dennis Parrish	\$1,535.74
4	R. Gordy	\$89
5	Fred Gordy	\$1,581.36
6	Gaylord White	\$351.60
7	Hunter Fleshood	\$133.14
8	James Roberts	\$1,569.51
9	Jay Fisher	\$133.14

10	John Dichtelmiller	\$133.14
11	Nyreeka Dickson	\$277.02
12	Robert Newell	\$694.74
13	Sonya Grier	\$277.02
14	William Weil	\$1,569.51
15	Adam Widener	\$199.68
16	Daniel Dixon	\$1,581.36
17	James Dixon	\$199.68
18	James Kolb	\$199.68
19	Joshua Fries	\$527.40
20	Randall McCall	\$199.68
21	Roy Price	\$199.68
22	Steven Gowin	\$199.68
23	J. Ward	\$53
24	S. Eaker	\$5, 857.00
25	E. Israel	\$440.00
26	Joseph Strickland	\$439.50

G. Defendants agree that they will pay the Settlement Amount in full within 30 days of entry of this Order to the Successor Fiduciary identified below.

H. Defendants expressly waive any and all claims of whatsoever nature that they have or may have against the Acting 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.

I. This Order represents a complete settlement of all the Acting 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 Acting Secretary and Defendants.

J. The Acting 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 hereby are permanently enjoined and restrained

from violating the provisions of Title I of ERISA.

3. Defendant Winn, having expressed no desire to serve in such capacity in the future, hereby is permanently enjoined from acting as a fiduciary, trustee, agent, or representative in any capacity to any employee benefit plan, as defined by ERISA.

4. Defendant Good hereby is enjoined from acting as a fiduciary, trustee, agent, or representative in any capacity to any employee benefit plan, as defined by ERISA, for a period of three years from the date of this Order. Defendant Good shall complete training during this three year period on the obligations and responsibilities of fiduciaries under ERISA, and provide proof of this training to the Acting Secretary.

5. Defendants Good and Winn shall pay the Plan for the benefit of participants and/or beneficiaries the amount of \$21,404.15, the Settlement Amount, concurrently with the execution of this Order, to be allocated to participants and beneficiaries and former participants and beneficiaries as referenced in the table above in paragraph E, by the Successor Fiduciary described below in Paragraph 8. Payment shall be made out to the Plan and sent to the Successor Fiduciary at the address listed in Paragraph 8. None of said sum shall be allocated to the account of Defendants. In the event that Defendants Good and

Winn fail to pay the Settlement Amount, post judgment interest shall be assessed against any remaining unpaid balance of such amount, in accordance with 28 U.S.C. § 1961, from the date hereof until paid in full.

6. AMI Benefit Plan Administrators, Inc. located at 100 Terra Bella Drive, Youngstown, Ohio 44505, is appointed as Successor Fiduciary (hereinafter "Successor Fiduciary" for the Plan and:

a. The Successor Fiduciary shall distribute the Settlement Amount to Plan participants and beneficiaries.

b. The Successor Fiduciary shall have all the rights, duties, and responsibilities of any fiduciary or trustee described under the Plan documents or the applicable law, with respect to the Successor Fiduciary's duties.

c. The Successor Fiduciary is authorized to delegate or assign fiduciary duties as appropriate and allowed under the law.

d. The Successor Fiduciary shall be entitled to receive reasonable fees and expenses for its services. Defendants shall pay the Successor Fiduciary's fees for any work it performs in relation to this Order and/or the Plan. These fees are estimated to be \$1,250.00 and will be paid within 30 days of this Order. Defendants shall be liable for any additional fees exceeding \$1,250.00 incurred by the Successor Fiduciary.

e. Upon service of any invoice, the parties will have fifteen (15) days to file any objections. The full payment of such invoice shall be made by Defendants Good and Winn to the Plan, and received by the Successor Fiduciary, not later than the 16th day following the date of the invoice. Interest shall accrue on any past due amount at the rate of 12% per annum, compounded daily. Defendants Good and Winn shall be responsible, jointly and severally, for all costs, including reasonable attorneys' fees and expenses, incurred by the Successor Fiduciary and/or the Plan in the course of collecting such past due amounts. If any party or the Court objects to any payment, the matter should be resolved by the Court prior to payment.

f. Defendants Good and Winn shall deliver or otherwise make available to the Successor Fiduciary any information, documents, files or other compilations, wherever and however stored that are reasonably necessary to perform the duties of the Successor Fiduciary.

g. The Successor Fiduciary in the performance of its duties may retain such assistance as it may require, including attorneys, accountants, actuaries and other service providers.

h. The payment of administrative expenses and all fees to the Successor Fiduciary, its assistants, attorneys, accountants, actuaries and other

necessary service providers are to be considered priority administrative expenses of the Plan.

i. The Successor Fiduciary or its agents, employees or representatives may not be held personally responsible for any claims against the Plan which existed, arose, matured or vested prior to the appointment of the successor fiduciary.

j. The Successor Fiduciary shall comply with all applicable rules and laws.

7. Once the corrective actions required in this Consent Judgment and Order are complied with, the Acting Secretary is required to assess a civil penalty pursuant to ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2) and (5). The penalty under § 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 5. The parties further agree that nothing contained in the Consent Judgment and Order will prevent Defendants Mr. Good and Mr. Winn from seeking waiver and/or reduction of the penalty pursuant to § 502(l).

8. This Consent Judgment and Order 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 § 502 (l) of the Act.


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.

9. Each party shall bear their 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.

IT IS SO ORDERED.

Signed: August 19, 2019


Frank D. Whitney
Chief United States District Judge

Defendants consent to entry
of the foregoing Judgment:

By: /s/ Marc E. Gustafson
MARC E. GUSTAFSON
Attorney for Defendant
William H. Winn, Jr.

Bell, Davis & Pitt, P.A.
227 W. Trade Street, Suite 1800
Charlotte, North Carolina 28202
Phone: (704) 227-0400
mgustafson@belldavispitt.com

By: /s/ David L. Woodard
DAVID L. WOODARD
Attorney for Defendant Steven M. Good
Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh, NC 27602-01801
dwoodard@poynerspruill.com
Phone : (919) 783-6400
(919) 783-1075 (FAX)

By: /s/s Eric Spengler
ERIC SPENGLER
Attorney for Defendants
SmartCore, LLC and
SmartCore, LLC Group Health Benefit Plan
Spengler & Agans, LLC
352 N. Caswell Road
Charlotte, North Carolina 28204
eric@spengleraganslaw.com
Phone : (704) 910-5469
(704) 730-7861 (FAX)

SOL Case No. 18-00692

Plaintiff moves entry of
the foregoing Judgment:

KATE S. O'SCANNLAIN
Solicitor of Labor

STANLEY E. KEEN
Regional Solicitor
ROBERT M. LEWIS, JR.
Counsel

By: /s/ Shelly C. Anand
SHELLY C. ANAND
Trial Attorney

Office of the Solicitor
U. S. Department of Labor
Attorneys for Plaintiff
61 Forsyth Street, S.W., Rm. 7T10
Atlanta, GA 30303
Phone: (404) 302-5476
(404) 302-5438 (FAX)