

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF NextGen 1.7.1.1
Eastern Division**

Martin J. Walsh

Plaintiff,

v.

Case No.: 1:22-cv-01822

Honorable Robert W. Gettleman

Fred Vargason, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, April 10, 2023:

MINUTE entry before the Honorable Robert W. Gettleman: Secretary Of Labor's Unopposed Motion To Approve Consent Order And Judgment [19] is granted. Enter Consent Order and Judgment. Telephonic hearing set for 4/13/2023 is stricken. Motion to approve [18] is stricken as moot. Civil case terminated. Mailed notice (cn).

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

MARTIN J. WALSH , Secretary of Labor,)	
United States Department of Labor,)	
)	
Plaintiff,)	
)	Civil Action No.: 1:22-cv-01822
v.)	
)	Hon. Robert W. Gettleman
FRED VARGASON ,)	
NISSAN OF ST. CHARLES , and)	
NISSAN OF ST. CHARLES SIMPLE IRA ,)	
)	
Defendants.)	

CONSENT ORDER AND JUDGMENT

Plaintiff Martin J. Walsh, Secretary of Labor, United States Department of Labor (“Secretary”), pursuant to the provisions of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.* (“ERISA” or the “Act”), filed a complaint against Defendants Fred Vargason, Nissan of St. Charles, and the Nissan of St. Charles SIMPLE IRA (collectively, “Defendants”) alleging breaches of ERISA §§ 403(a) and (c)(1), 404(a)(1)(A) and (a)(1)(B), and 406(a)(1)(D), (b)(1), and (b)(2), for failing to remit employee salary deferral contributions to the Nissan of St. Charles Savings Incentive Match Plan for Employees Individual Retirement Account (“Plan”).¹

Defendants waived service of process of the complaint and admitted to the jurisdiction of this Court over them and the subject matter of this action.

¹ The Plan is named as a defendant herein pursuant to Federal Rule of Civil Procedure 19(a) solely to assure that complete relief can be granted.

The Secretary and Defendants have agreed to resolve all matters in controversy in this action between them and any proceedings related thereto) and consent to entry of a Consent Order and Judgment (“Judgment”) by this Court in accordance therewith.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Judgment.

IT IS THEREFORE ORDERED, ADJUDICATED, AND DECREED that:

Injunctive Relief

1. Defendant Vargason and Defendant Nissan of St. Charles are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. § 1001 *et seq.*

2. Defendant Vargason and Defendant Nissan of St. Charles are removed from any position they now hold as a fiduciary to the Plan and shall be permanently enjoined from serving or acting as fiduciaries or service providers with respect to employee benefit plans subject to ERISA.

Restitution

3. In October 2022, Defendant Vargason directed the asset custodian to convert his individual Plan account to cash to be used to allocate to the harmed participants.

4. Within 14 days of the entry of this Judgment (“Restoration Date”), Defendant Vargason and Defendant Nissan of St. Charles, through the Receiver shall authorize and work with the Independent Fiduciary, identified in paragraph 6 below, to effectuate the reallocation of \$13,772.26 (“Restoration Amount”) from Defendant Vargason’s individual Plan account for issuance to the affected participants and beneficiaries in the manner provided herein. The

Restoration Amount represents \$13,071.22 for unremitted employee contributions and \$651.04 for lost opportunity costs as a result of the violations alleged in the Secretary's Complaint.

5. As a compromise to amicably resolve this claim, the Secretary agrees to accept the Restoration Amount in full satisfaction of amounts Defendants owe to the Plan due to Defendants' alleged violations.

Appointment of Independent Fiduciary & Issuance of Restoration Amount

6. AMI Benefit Plan Administrators, Inc. is hereby appointed to act as the Independent Fiduciary of the Plan ("Independent Fiduciary").

7. The Independent Fiduciary shall have the following powers, duties and responsibilities:

(a) The Independent Fiduciary shall have responsibility and authority to reallocate the Restoration Amount from Defendant Vargason's individual Plan account to the individual Plan accounts of all individuals, except Defendant Vargason, who: (1) were employees of Nissan of St. Charles; (2) Plan participants during the period January 1, 2019, through January 31, 2019; and (3) had voluntary employee contributions withheld from their pay for contribution to the Plan during this period and such contributions were not remitted to the Plan. The Independent Fiduciary shall allocate \$13,071.22 to the individual Plan accounts of the Plan's participants in an amount equal to each participant's unremitted contributions. The lost opportunity cost amount allocated to each participant shall be based on the participant's percent of the total unremitted contributions owed to them. For any participant who is entitled to loss restoration, but received a distribution prior to the entry of this Judgment, the Independent Fiduciary shall create an

account for them with the amount due, send them a check for the amount due, or provide the amount due by other appropriate means.

(b) The Independent Fiduciary shall have the authority and responsibility necessary to take appropriate action to support or facilitate receipt of the Restoration Amount from Defendant Vargason's individual Plan account by the Plan's custodial account and issue it to the individual Plan accounts of the eligible participants, including working with the designated financial institution of the Plan as appropriate.

(c) The Independent Fiduciary shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the Plan who is eligible to receive a payment under the terms of this Consent Order and Judgment and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled.

(d) The Independent Fiduciary shall have full access to all data, information and calculations in the Plan's possession or under its control, including that information contained in the records of the Plan's custodial trustees and other service providers, bearing on the distribution of benefit payments, participant account balances, and current Plan assets.

(e) The Independent Fiduciary may retain such persons and firms including but not limited to accountants and attorneys, as may be reasonably required to perform his duties hereunder.

(f) For the services performed pursuant to this consent judgment, the Independent Fiduciary shall receive compensation not to exceed \$2,060 for fees and expenses reasonably and necessarily incurred.

(g) The independent fiduciary shall obtain bonding in an amount that meets the requirements of ERISA § 412, 29 U.S.C. §1112. The costs incurred by the Independent Fiduciary in obtaining such bonding shall be paid from Defendant Vargason's individual Plan account.

(h) Within 30 days of issuance of the Restoration Amount to the eligible participants and beneficiaries as described herein, the Independent Fiduciary shall provide the Regional Director of the Employee Benefits Security Administration, Chicago Regional Office, U.S. Department of Labor, Employee Benefits Security Administration, 230 S. Dearborn Street, Suite 2160, Chicago, IL 60604, with a report identifying the disbursements made by the Plan since the Independent Fiduciary's appointment.

(i) The Independent Fiduciary's appointment shall terminate: (1) at such time as the Restoration Amount is fully disbursed and the Independent Fiduciary submits its report to the Regional Director, as described herein; or (2) upon the Independent Fiduciary's resignation after finding an acceptable replacement, agreed to by all parties or the Court, providing notice to all parties to this matter, and approval by the Court to have the replacement independent fiduciary appointed.

(j) Defendant Vargason and Defendant Nissan of St. Charles, through the Receiver, shall first authorize \$2,060 from Defendant Vargason's individual Plan account to be paid to the Independent Fiduciary for its compensation described in ¶ 6(f) above.

8. Defendants shall cooperate with the Independent Fiduciary and representatives of the Secretary to take any action or provide any documents, records, or information needed to effectuate this Judgement.

Assessment and Payment of § 502(l) Penalties

9. On payment of restitution set forth in ¶ 4 above, the Secretary has determined Defendants shall be and hereby are assessed a total penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), of \$2,754.45, which represents 20% of the Restoration Amount.

10. Defendants waive their right to a separate notice of assessment of the penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), the service requirement of 29 C.F.R. § 2570.83, and its right to seek any further reductions of or relief from the penalty under ERISA § 502(l), 29 U.S.C. § 1132(l).

11. On execution of this Consent Order and Judgment, Defendant Vargason shall pay the penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), by sending a certified or cashier's check to:

U.S. Department of Labor
ERISA Civil Penalty
P.O. Box 71360
Philadelphia, PA 19176-1360

The certified or cashier's check referenced in this paragraph shall be made payable to the United States Department of Labor and will reference EBSA Case No. 43-009851(48). If Defendant Vargason wishes to remit a check by commercial express courier, it agrees to contact Soroosh Nikouei at the United States Department of Labor (Nikouei.Soroosh@dol.gov or 202-693-8486) and follow his instructions.

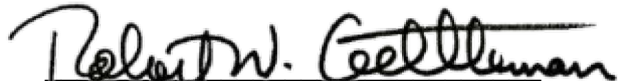
Additional Terms

12. Each party agrees to bear their own attorneys' fees, costs and other expenses incurred in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

13. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Judgment and Order.

14. Nothing in this Order is binding on any government agency other than the United States Department of Labor.

DATED _____ April 10, 2023


HON. ROBERT W. GETTLEMAN
UNITED STATES DISTRICT JUDGE

The parties hereby consent to the entry of this Consent Order and Judgment:

FOR THE SECRETARY OF LABOR:

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

ELISABETH NOLTE
Trial Attorney

Dated:

FOR THE DEFENDANTS:

FRED VARGASON

Dated:

THOMAS SPRINGER
Receiver for Fred Vargason with respect to

Dated:

his property, assets, and estate

NISSAN OF ST. CHARLES
By: Thomas Springer, Receiver

Dated:

NISSAN OF ST. CHARLES SIMPLE IRA
By: Fred Vargason, Fiduciary

Dated:

FOR THE INDEPENDENT FIDUCIARY:

AMI BENEFIT PLAN ADMINS. INC.
By: Timothy J. Halchuck

Dated:

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DATED _____, 2023

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UNITED STATES DISTRICT JUDGE

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Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

ELISABETH NOLTE Digitally signed by ELISABETH NOLTE
Date: 2023.04.07 13:52:57 -05'00'

Dated: April 7, 2023

ELISABETH NOLTE
Trial Attorney

FOR THE DEFENDANTS:

FRED VARGASON Dated:

THOMAS SPRINGER Dated:
Receiver for Fred Vargason with respect to

his property, assets, and estate

_____ Dated:
NISSAN OF ST. CHARLES
By: Thomas Springer, Receiver

_____ Dated:
NISSAN OF ST. CHARLES SIMPLE IRA
By: Fred Vargason, Fiduciary

FOR THE INDEPENDENT FIDUCIARY:

Pamela L. Shoup
_____ Dated:
AMI BENEFIT PLAN ADMINS. INC.
By: Pamela L. Shoup, President

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DATED _____, 2023

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UNITED STATES DISTRICT JUDGE

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Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

ELISABETH NOLTE
Trial Attorney

Dated:

FOR THE DEFENDANTS:

FRED VARGASON

Dated:



THOMAS SPRINGER

Dated:

Receiver for Fred Vargason with respect to

his property, assets, and estate



NISSAN OF ST. CHARLES
By: Thomas Springer, Receiver

3/9/23

Dated:

NISSAN OF ST. CHARLES SIMPLE IRA
By: Fred Vargason, Fiduciary

Dated:

FOR THE INDEPENDENT FIDUCIARY:

AMI BENEFIT PLAN ADMIN. INC.
By: Timothy J. Halchuck

Dated:

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DATED _____, 2023

HON. ROBERT W. GETTLEMAN
UNITED STATES DISTRICT JUDGE

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FOR THE SECRETARY OF LABOR:

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

ELISABETH NOLTE
Trial Attorney

Dated:

FOR THE DEFENDANTS:



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By: Thomas Springer, Receiver

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Fred Vargason

NISSAN OF ST. CHARLES SIMPLE IRA
By: Fred Vargason, Fiduciary

FOR THE INDEPENDENT FIDUCIARY:

Dated:

AMI BENEFIT PLAN ADMIN. INC.
By: Timothy J. Halchuck