

JS-6

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

HILDA L. SOLIS, Secretary  
of Labor, UNITED STATES  
DEPARTMENT OF LABOR,

Plaintiff,

v.

SOPHISTICATED TECHNOLOGIES,  
INC, a corporation also doing business as  
SOPHTECH; MOSHE KLEIN, an  
individual; and the SOPHTECH 401(k)  
PLAN, an employee pension benefit  
plan,

Defendants.

Case No. CV 10-8755 DSF (SSx)

**CONSENT JUDGMENT & ORDER  
BETWEEN THE SECRETARY OF  
LABOR AND DEFENDANTS  
MOSHE KLEIN AND THE  
SOPHTECH 401(k) PLAN  
RESOLVING REMAINING  
CLAIMS**

Plaintiff HILDA L. SOLIS, Secretary of Labor, United States Department of  
Labor ("Secretary") pursuant to her authority under §§ 502(a)(2) and (5) of the  
Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C.  
§§ 1132(a)(2) and (5), has filed a Complaint against Defendants Sophisticated  
Technologies, Inc., a corporation also doing business as Sophtech ("Company");

1 Moshe Klein, an individual (“Klein”); and the Sophtech 401(k) Plan, an employee  
2 pension benefit plan (“the Plan”).<sup>1</sup>

3  
4 A. The Secretary and Klein (collectively, “the parties”) admit that the  
5 Court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C.  
6 § 1132(e)(1), and that venue lies in the United States District Court, Central  
7 District of California, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).  
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9 B. On January 25, 2011, the parties signed a Partial Consent Judgment &  
10 Order, which appears as docket entry number 32 in this action and which is fully  
11 incorporated by reference and attached hereto.<sup>2</sup> As explained at paragraph B of the  
12 Partial Consent Judgment & Order, it resolved only the amount of liability, the  
13 appointment of an Independent Fiduciary, and the payment pursuant to § 502 (l) of  
14 ERISA, 29 U.S.C. § 1132(l). As further explained in the Partial Consent Judgment  
15 & Order, it did not resolve the Secretary’s claims for injunctive relief as pled for in  
16 the Complaint.  
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20 C. The parties agree to the entry of this Consent Judgment & Order  
21 Resolving Remaining Claims. The parties further agree that this Consent  
22 Judgment & Order Resolving Remaining Claims shall fully settle all remaining  
23 claims of the Secretary asserted in the Complaint.  
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25 D. All parties expressly waive Findings of Fact and Conclusions of Law.  
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27 <sup>1</sup> The Plan is named in the Secretary’s Complaint as a party necessary for complete  
28 relief pursuant to Fed. R. Civ. P. 19(a).

1 IT IS HEREBY **ORDERED, ADJUDGED,** and **DECREED** that:

2 1. Defendant Klein is permanently enjoined and restrained from  
3 violating the provisions of Title I of ERISA, 29 U.S.C. §§ 1001-1191c.  
4

5 2. Upon the Court's appointment of an Independent Fiduciary through  
6 entry of the Partial Consent Judgment & Order, Defendant Klein is removed as a  
7 fiduciary to the Plan.  
8

9 3. With regard to the ERISA-covered Synthean 401(k) Plan, and any  
10 other ERISA-covered Plan to which Defendant Klein is a fiduciary, other than the  
11 Sophtech 401(k) Plan, Defendant Klein agrees to appoint a successor Independent  
12 Fiduciary at his expense. Defendant Klein shall appoint such successor  
13 Independent Fiduciary concurrent with execution of this Consent Judgment &  
14 Order Resolving Remaining Claims and such appointment shall be in full force and  
15 effect by February 29, 2012. The successor Independent Fiduciary shall have full  
16 discretionary authority and control to administer and terminate the plans, as  
17 appropriate. Upon appointment of such successor Independent Fiduciary, Klein  
18 shall be removed as a fiduciary from the Synthean 401(k) Plan and any other  
19 ERISA-covered Plan to which he is a fiduciary.  
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24 4. Except as provided in Paragraph 3, Klein is hereby further  
25 permanently enjoined and restrained from future service as a fiduciary of, or  
26 service provider to, any ERISA-covered employee benefit plan.  
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<sup>2</sup> The Court has not entered the Partial Consent Judgment.

1           5.     The parties shall bear their own costs, expenses, and attorneys' fees  
2 incurred in connection with any stage of this proceeding, including but not  
3 limited to attorneys' fees which may be available under the Equal Access to Justice  
4 Act, as amended.  
5

6           6.     Defendant Klein expressly waives any and all claims of any nature  
7 which he has or may have against the Secretary, the U.S. Department of Labor, or  
8 any of its officers, agents, attorneys, employees or representatives, arising out of  
9 or in connection with the allegations contained in the Complaint on file in this  
10 action, any other proceedings or investigation incident thereto or based on the  
11 Equal Access to Justice Act, as amended.  
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14           7.     Nothing in this Consent Judgment & Order Resolving Remaining  
15 Claims is binding on any governmental agency other than the United States  
16 Department of Labor, Employee Benefits Security Administration.  
17

18           8.     This Court retains jurisdiction of this action for purposes of enforcing  
19 compliance with the terms of this Consent Judgment & Order Resolving  
20 Remaining Claims.  
21

22           9.     By signing their names to this Consent Judgment & Order Resolving  
23 Remaining Claims, the parties represent that they are informed and understand the  
24 effect and purpose of this Consent Judgment & Order Resolving Remaining  
25 Claims.  
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1 Defendants consent to the entry of this Consent Judgment & Order  
2 Resolving Remaining Claims.

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5 Dated: \_\_\_\_\_

\_\_\_\_\_   
Michael Hurey, Esq  
Counsel for Defendant Moshe Klein

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9 Dated: \_\_\_\_\_

\_\_\_\_\_   
Moshe Klein  
On his own behalf and as Fiduciary of the  
Plan.

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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
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8 HILDA L. SOLIS, Secretary  
9 of Labor, UNITED STATES  
10 DEPARTMENT OF LABOR,

11 Plaintiff,

12 v.

13 SOPHISTICATED TECHNOLOGIES,  
14 INC, a corporation also doing business as  
15 SOPHTECH; MOSHE KLEIN, an  
16 individual; and the SOPHTECH 401(k)  
17 PLAN, an employee pension benefit  
18 plan,

19 Defendants.  
20

Case No. CV 10-8755 DSF (SSx)

**PARTIAL CONSENT JUDGMENT  
& ORDER BETWEEN THE  
SECRETARY OF LABOR AND  
DEFENDANTS MOSHE KLEIN  
AND THE SOPHTECH 401(k) PLAN**

21 Plaintiff HILDA L. SOLIS, Secretary of Labor, United States Department of  
22 Labor ("Secretary") pursuant to her authority under §§ 502(a)(2) and (5) of the  
23 Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C.  
24 §§ 1132(a)(2) and (5), has filed a Complaint against Defendants Sophisticated  
25 Technologies, Inc., a corporation also doing business as Sophtech ("Company");  
26  
27  
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1 Moshe Klein, an individual (“Klein”); and the Sophtech 401(K) Plan, an employee  
2 pension benefit plan (“the Plan”).<sup>3</sup>

3 A. The Secretary and Defendant Klein (collectively, “the parties”) admit  
4 that the Court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29  
5 U.S.C. § 1132(e)(1), and that venue lies in the United States District Court, Central  
6 District of California pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

7 B. The parties agree to the entry of this Partial Consent Judgment &  
8 Order. The parties further agree and understand that that this Partial Consent  
9 Judgment & Order only resolves the amount of liability, the appointment of an  
10 Independent Fiduciary, and the payment pursuant to § 502(l) of ERISA, 29 U.S.C.  
11 § 1132(l). The parties further agree and understand the Secretary’s claims for  
12 injunctive relief as pled for in the Complaint are unresolved, the Secretary intends  
13 to continue to pursue those claims and relief, and Mr. Klein intends to defend the  
14 claims for injunctive relief.

15 **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that:

16 1. Defendant Klein shall pay the Plan \$48,857.78 in principal and lost-  
17 opportunity costs calculated through January 25, 2011, (“Amount Due”).

18 a. Defendant Klein shall pay the Amount Due referred in  
19 Paragraph 2 to the Independent Fiduciary appointed to the Plan by the Court  
20 (“Independent Fiduciary”), referenced *infra* at Paragraph 3, two payments as  
21 follows: \$20,000 on or about January 25, 2012 and \$28,857.78 on or before  
22 February 3, 2012. The February 3, 2012 payment shall be made by certified or  
23 cashier’s check.

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28 <sup>1</sup> The Plan is named in the Secretary’s Complaint as a party necessary for complete  
relief pursuant to Fed. R. Civ. P. 19(a).



1           b.     Immediately following each payment, the Independent  
2 Fiduciary shall provide the Secretary with proof of same. Such proof shall include  
3 a trust statement showing deposit has been made into the Plan's trust account, or  
4 other appropriate evidence that such payment has been made.

5           c.     Should Defendant Klein fail to timely comply with any  
6 requirements set forth in this Paragraph, the remaining balance of the Amount Due  
7 at the time of non-compliance shall become immediately due and payable. Interest  
8 will continue to accrue on the Amount Due at the rate set forth in 26 U.S.C. §  
9 6621.

10          2.     Upon the Court's appointment of an Independent Fiduciary,  
11 Defendant Klein is removed as a fiduciary to the Plan.

12          3.     Nicholas Saakvitne is appointed as the Independent Fiduciary to the  
13 Plan with the following duties and responsibilities:

14           a.     The Independent Fiduciary shall collect, marshal, pay out and  
15 administer all of the assets of the Plan and take further action with respect to the  
16 Plan as appropriate, including terminating the Plan when all of its assets have been  
17 distributed to all eligible participants and beneficiaries, and the filing of the Annual  
18 Report Form 5500s;

19           b.     The Independent Fiduciary shall, pursuant to the procedures  
20 outlined in the Employee Benefit Security Administration's Field Bulletin 2004-  
21 02, exercise reasonable care and diligence to identify and locate each participant  
22 and beneficiary of the Plan who is eligible to receive a distribution under the terms  
23 of the Plan;

24           c.     The Independent Fiduciary shall have all the rights, duties,  
25 discretion, and responsibilities of a trustee, fiduciary, and Plan Administrator under  
26 ERISA;

27           d.     The Independent Fiduciary is authorized to delegate or assign  
28 fiduciary duties as appropriate and allowed under the law and may retain such as  
assistance as he may require, including attorneys, accountants, actuaries, and other

1 service providers;

2 e. The Independent Fiduciary shall bill Defendant Klein for his  
3 reasonable fees and costs for serving as the Independent Fiduciary;

4 f. The Independent Fiduciary shall have full access to all data,  
5 information, and calculations in the possession of the Plan and under its control,  
6 including information and records maintained by the custodial trustees or service  
7 providers of the Plan;

8 g. The Independent Fiduciary is authorized to give instructions  
9 respecting the disposition of the assets of the Plan; and

10 h. The termination of the Plan shall occur no later than April 30,  
11 2012.

12 i. No later than thirty days following termination of the Plan, the  
13 Independent Fiduciary shall provide documentation of same to Plaintiff. Such  
14 documentation must evidence that distributions were made to all remaining eligible  
15 Plan participants.

16 4. Defendant Klein is liable for paying all reasonable fees and costs of  
17 the Independent Fiduciary within thirty days of receiving the bill for same by the  
18 Independent Fiduciary; in no event may Plan assets be used to pay the fees and/or  
19 costs of the Independent Fiduciary.

20 5. Defendant Klein affirms he did not participate in the Plan and further  
21 waives any interest he may have in any amounts restored to the Plan as a result of  
22 this Complaint and Partial Consent Judgment & Order.

23 6. The parties shall cooperate fully with the Independent  
24 Fiduciary herein appointed by the Court by, among other things, providing  
25 documents or information any party may have in his, her, or its, actual or  
26 constructive possession which may be relevant to the Plan's administration and  
27 management.

28 7. Should Defendant Klein change residences or telephone numbers  
before the restoration of the Amount Due the Plan or the Plan's termination,

1 whichever comes later, Defendant Klein shall notify the Secretary in writing of the  
2 updated address and/or telephone number within seven days of the change.

3 8. Upon Defendant Klein's payment of \$48,857.78 to the Plan as  
4 outlined *supra*, Defendant Klein shall be assessed an amount due under ERISA §  
5 502(1), 29 U.S.C. § 1132(1) in the amount of twenty percent of the applicable  
6 recovery amount, or \$9,771.40.

7 9. Defendant Klein agrees to waive the notice of assessment and service  
8 requirement of 29 C.F.R. § 2570.83. Defendant Klein may not challenge the  
9 applicable recovery amount for any reason but retains the right to challenge the  
10 injunctive relief the Secretary seeks in this matter. By April 3, 2012, Defendant  
11 Klein shall pay the amount in paragraph 9 to the U.S. Department of Labor, by  
12 sending a certified or cashiers check payable to the United States Department of  
13 Labor (please write EBSA Case No. 72-030850(48) on the check) to:

14 ERISA – Civil Penalties  
15 P.O. Box 71360  
16 Philadelphia, PA 19176-1360

17 10. Wherever submission to the Secretary is required under the terms of  
18 this Partial Consent Judgment, such submission shall be made to:

19 Regional Director  
20 Employee Benefits Security Administration  
21 U.S. Department of Labor  
22 1055 East Colorado Blvd., Suite 200  
Pasadena, CA 91106

23 11. The parties shall bear their own costs, expenses, and attorneys' fees  
24 incurred in connection with any stage of this proceeding, including but not  
25 limited to attorneys' fees which may be available under the Equal Access to Justice  
26 Act, as amended.

27 12. Defendant Klein expressly waives any and all claims of any nature  
28 which he has or may have against the Secretary, the Department of Labor, or any

1 of its officers, agents, attorneys, employees or representatives, arising out of or in  
2 connection with the allegations contained in the Complaint on file in this action,  
3 any other proceedings or investigation incident thereto or based on the Equal  
4 Access to Justice Act, as amended.

5 13. Nothing in this Partial Consent Judgment & Order is binding on any  
6 governmental agency other than the United States Department of Labor, Employee  
7 Benefits Security Administration.

8 14. This Court retains jurisdiction of this action for purposes of enforcing  
9 compliance with the terms of this Partial Consent Judgment & Order.

10 15. By signing their names to this Partial Consent Judgment & Order, the  
11 parties represent that they are informed and understand the effect and purpose of  
12 this Partial Consent Judgment & Order.

13 16. By the entry of this Partial Consent Judgment & Order, the  
14 Secretary's right to pursue injunctive relief based on the claims alleged in the  
15 Complaint are in no way prejudiced and Defendant Klein's right to contest the  
16 sought injunctive relief and assert any relevant defenses are preserved.

17 The Court directs the entry of this Partial Consent Judgment & Order as a  
18 final order.

19 IT IS SO ORDERED, ADJUDGED, and DECREED.

20 Dated: February 22, 2012



21 DALE S. FISCHER

22 United States District Judge

23  
24 Entry of this Partial Consent Judgment is hereby consented to:

25 Dated: \_\_\_\_\_

26 M. PATRICIA SMITH

27 Solicitor of Labor

28 MARY K. ALEJANDRO

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Acting Regional Solicitor  
DANIELLE L. JABERG  
Counsel for ERISA

By \_\_\_\_\_  
Katherine M. Kasameyer  
Trial Attorney

Attorneys for the Plaintiff

Defendants consent to the entry of this Partial Consent Judgment & Order.

Dated: \_\_\_\_\_

Michael Hurey, Esq.  
Counsel for Defendant Moshe Klein

Dated: \_\_\_\_\_

Moshe Klein

On his own behalf and as Fiduciary of the  
Plan.