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JS-6  
 both cases

9 Attorneys for Plaintiff  
 10 United States Department of Labor

11 UNITED STATES DISTRICT COURT  
 12 CENTRAL DISTRICT OF CALIFORNIA  
 13

14 **FRANK L. RUDY**, as an individual, and in his  
 15 individual capacity as a shareholder of Western  
 16 Mixers, Inc.,

Plaintiff,

17 v.

18 **DAVID BOLSTAD**, an individual; **ROBERT**  
 19 **J. FISHER**, an individual,

Defendants.\_

21 **HILDA L. SOLIS**,  
 22 Secretary of Labor,  
 United States Department of Labor,

Plaintiff,

24 v.

25 **FRANK L. RUDY, DAVID H. BOLSTAD,**  
 26 **ROBERT J. FISCHER, WESTERN**  
**MIXERS, INC., WESTERN MIXERS INC.**  
 27 **MONEY PURCHASE PENSION PLAN,**

Defendants

**Case No. 2:10-cv-04655-JHN-PJWx**

**Consolidated with:**

**2:11-cv-07220-JHN -PJWx**

**CONSENT JUDGMENT**  
**AND ORDER BETWEEN THE**  
**PLAINTIFF SECRETARY OF**  
**LABOR AND DEFENDANTS**  
**FRANK L. RUDY, DAVID H.**  
**BOLSTAD, ROBERT J. FISCHER,**  
**WESTERN MIXERS, INC., and the**  
**WESTERN MIXERS, INC.**  
**MONEY PURCHASE PENSION**  
**PLAN**

1 Plaintiff HILDA L. SOLIS, Secretary of Labor, United States Department of  
2 Labor (“Secretary”), pursuant to her authority under Sections 502(a)(2) and (5) of the  
3 Employment Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C.  
4 §§ 1132(a)(2) and (5), has filed a Complaint against Defendants FRANK L. RUDY,  
5 DAVID H. BOLSTAD, ROBERT J. FISCHER, WESTERN MIXERS, INC. (“the Com-  
6 pany”), and the WESTERN MIXERS INC. MONEY PURCHASE PENSION PLAN  
7 (“the Plan”).

8 A. The Secretary, the Company, Rudy, Bolstad, Fischer, and the Plan (collectively,  
9 the “Parties”) admit that the Court has jurisdiction over this action pursuant to  
10 Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1), and that venue lies in the  
11 United States District Court for the Central District of California pursuant to Sec-  
12 tion 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

13 B. The Parties agree to the entry of this Consent Judgment and Order. The Parties  
14 further agree that this Consent Judgment and Order shall fully settle all claims of  
15 the Secretary asserted in the Complaint.

16  
17 **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that:

- 18 1. Judgment is hereby entered against Defendants Rudy, Bolstad, Fischer and Com-  
19 pany in the amount of \$802,901.07 (“Amount Due”).
- 20 2. Within 10 days of entry of this Consent Judgment and Order, Defendants Rudy,  
21 Bolstad and Fischer shall restore the Amount Due to the Plan as described in Paragraphs  
22 4-7, below.
- 23 3. Following restoration of the Amount Due as described in Paragraphs 4-7, below,  
24 the Independent Fiduciary appointed under this Consent Judgment and Order shall dis-  
25 tribute all of the Plan’s assets, \$1,795,391.63, to the participants in the amounts desig-  
26 nated on Exhibit A attached to this Consent Judgment and Order.
- 27  
28

1 4. The governing Plan documents are hereby amended to allow for the offset of a par-  
2 ticipant's Plan benefits against an amount that the participant is required to pay as a re-  
3 sult of this Consent Judgment and Order.

4 5. Defendant Rudy shall restore to the Plan \$20,000.00. Pursuant to ERISA Section  
5 206(d)(4), 29 U.S.C. § 1056(d)(4), Defendant Rudy shall restore such amount by forfeit-  
6 ing \$20,000.00 of his Plan account balance. In so forfeiting, Defendant Rudy waives  
7 any further allocations into his Plan account and agrees that this sum offset from his Plan  
8 Account shall be reallocated to the participants listed on Exhibit A to this Consent  
9 Judgment and Order in order to satisfy Paragraphs 1 and 2 of this Consent Judgment and  
10 Order.

11 6. Defendant Bolstad shall restore to the Plan \$630,678.15. Pursuant to ERISA Sec-  
12 tion 206(d)(4) of ERISA, 29 U.S.C. § 1056(d)(4), Defendant Bolstad shall restore such  
13 amount by forfeiting his entire Plan account balance in the amount of \$508,161.75 and,  
14 within 10 days of the entry of this Consent Judgment and Order, by separately paying to  
15 the Plan the sum of \$122,516.40. In so forfeiting, Defendant Bolstad waives any further  
16 allocations into his Plan account and agrees that this sum offset from his Plan account  
17 shall be reallocated to the participants listed on Exhibit A to this Consent Judgment and  
18 Order in order to satisfy Paragraphs 1 and 2 of this Consent Judgment and Order.  
19 Should Defendant Bolstad fail to timely separately pay the Plan \$122,516.40, the out-  
20 standing amount shall become immediately due and payable. Interest shall accrue on the  
21 outstanding amount at the rate set forth in 26 U.S.C. § 6621 until such time as the entire  
22 outstanding amount plus any applicable interest is restored.

23 7. Defendant Fischer shall restore to the Plan \$152,222.92. Pursuant to ERISA Sec-  
24 tion 206(d)(4), 29 U.S.C. § 1056(d)(4), Defendant Fischer shall restore such amount by  
25 forfeiting his entire Plan account balance in the amount of \$152,222.92. In so forfeiting,  
26 Defendant Fischer waives any further allocations into his Plan account and agrees that  
27 this sum offset from his Plan account shall be reallocated to the participants listed on  
28

1 Exhibit A to this Consent Judgment and Order in order to satisfy Paragraphs 1 and 2 of  
2 this Consent Judgment and Order.

3 8. The spouses of Defendants Rudy, Bolstad and Fischer have consented to the offset  
4 of Defendants' Plan account balances ordered in Paragraphs 5 through 7 of this Consent  
5 Judgment and Order, as evidenced by the spousal consent forms submitted by the parties  
6 contemporaneously with the filing of this Consent Judgment and Order ("Waiver of  
7 Benefits and Spousal Consent Form").

8 9. Defendants Rudy, Bolstad and Fischer are permanently enjoined and restrained  
9 from violating the provisions of Title I of ERISA, 29 U.S.C. §§ 1001-1191c.

10 10. Defendants Rudy, Bolstad and Fischer are hereby permanently enjoined from  
11 serving as fiduciaries to any employee benefit plan governed by ERISA.

12 11. Nicholas L. Saakvitne, of 532 Colorado Avenue, 2<sup>nd</sup> Floor, Santa Monica, Cali-  
13 fornia, 90401, Phone Number 310-451-3225, shall be, and hereby is, appointed Inde-  
14 pendent Fiduciary of the Plan who:

- 15 a. Will be responsible for collecting, marshalling, paying out, and administer-  
16 ing Plan assets, in accordance with the distribution schedule shown in Ex-  
17 hibit A, which lists the exact balances due to each participant, and taking  
18 further action with respect to the Plan as appropriate, and, if necessary, ter-  
19 minating the Plan when all of its assets are distributed to all eligible partici-  
20 pants and beneficiaries;
- 21 b. Pursuant to the procedures outlined in the Employee Benefits Security Ad-  
22 ministration's Field Assistance Bulletin 2004-02, must exercise reasonable  
23 care and diligence to identify and locate each Plan participant and benefici-  
24 ary who is eligible to receive a distribution under the terms of the Plan to  
25 the extent the Plan has distributable assets;
- 26 c. Has all the rights, duties, discretion and responsibilities of a trustee, fiduci-  
27 ary and Plan Administrator under ERISA, including filing a final Form  
28 5500;

- d. Has the authority to delegate or assign fiduciary duties as appropriate and allowed under the law and may retain assistance as needed including attorneys, accountants, actuaries and other service providers;
- e. Shall have full access to all data, information and calculations in the Plan's possession and under its control, including information and records maintained by the Plan's custodial trustee or service provider;
- f. Shall have the authority to give instructions respecting the disposition of assets of the Plan;
- g. Shall comply with all applicable rules and laws;
- h. Shall be entitled to reasonable compensation, fees and expenses, paid by Defendant Western Mixers, Inc. Defendant Western Mixers, Inc. shall pay such reasonable compensation, fees and expenses within 30 days of receiving an invoice from the Independent Fiduciary. Assets of the Plan shall not be used to satisfy this obligation.

12. Within 10 days of the entry of this Consent Judgment and Order, the Independent Fiduciary shall take all steps necessary to complete the offsets ordered in Paragraphs 5 through 7 of this Consent Judgment and Order.

13. The Independent Fiduciary shall provide evidence of payment of the Amount Due to the Secretary within twenty (20) calendar days of said payment.

14. Upon Defendants' restoration of the Amount Due, Defendants Rudy, Bolstad and Fischer shall be assessed a penalty under Section 502(l) of ERISA, 29 U.S.C. § 1132(l), in the amount of 20 percent of the applicable recovery amount, or \$4,000.00 for Defendant Rudy, \$126,136.83 for Defendant Bolstad and \$30,444.58 for Defendant Fischer ("Penalty Amounts"). Defendants Rudy, Bolstad and Fischer waive the notice of assessment and service requirement of 29 C.F.R. § 2570.83. Upon assessment, Defendants Rudy, Bolstad and Fischer shall submit immediate payment of the Penalty Amount to the address listed in this Paragraph unless any such Defendant files a petition for waiver or reduction of the penalty as provided for in 29 C.F.R. §§ 2570.83–2570.87 and the

1 Secretary agrees to waive or reduce the penalty. Defendants Rudy, Bolstad and Fischer  
2 may not challenge the applicable recovery amount, the validity of the violations alleged,  
3 or their liability for the violations. Defendants Rudy, Bolstad and Fischer shall pay the  
4 Penalty Amount to the United States Department of Labor, by sending a certified or  
5 cashiers check payable to the United States Department of Labor (please write EBSA  
6 Case No. 72-031855(48) on the check) at the following address:

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

11 15. Wherever submission to the Secretary is required under the terms of this Consent  
12 Judgment and Order, such submission shall be made to:

13 Regional Director  
14 Employee Benefits Security Administration  
15 United States Department of Labor  
16 1055 E. Colorado Blvd., Ste 200  
17 Pasadena, CA 91106-2357

18 16. Following the appointment of the Independent Fiduciary identified in Paragraph  
19 11 of this Consent Judgment and Order, Defendant Company is hereby removed as Plan  
20 Administrator and as fiduciary to the Plan.

21 17. Following the appointment of the Independent Fiduciary identified in Paragraph  
22 11 of this Consent Judgment and Order, Defendants Rudy and Bolstad are hereby re-  
23 moved as Plan Trustee and as fiduciary to the Plan.

24 18. Defendants Company, Rudy, Bolstad and Fischer shall cooperate fully with the  
25 Independent Fiduciary herein appointed by the Court in providing documents or infor-  
26 mation that Defendants may have relevant to the Plan's administration and management.

27 19. Defendants Company, Rudy, Bolstad and Fischer shall instruct the Plan's current  
28 third party administrator, custodian, and any other Plan service provider to cooperate

1 with the Independent Fiduciary, and shall serve a copy of this Consent Judgment and  
2 Order on said persons.

3 20. The Secretary and Defendants shall each bear their own costs, expenses, and at-  
4 torney's fees incurred to date in connection with any stage of this proceeding, including  
5 but not limited to attorney's fees which may be available under the Equal Access to Jus-  
6 tice Act, as amended.

7 21. Defendants expressly waive any and all claims of any nature which they have or  
8 may have against the Secretary, the United States Department of Labor, or any of its of-  
9 ficers, agents, attorneys, employees, or representatives, arising out of or in connection  
10 with the allegations contained in the Complaint on file in this action, or any other pro-  
11 ceedings or investigation incident thereto or based on the Equal Access to Justice Act, as  
12 amended.

13 22. Nothing in this Consent Judgment and Order is binding on any governmental  
14 agency other than the United States Department of Labor, Employee Benefits Security  
15 Administration.

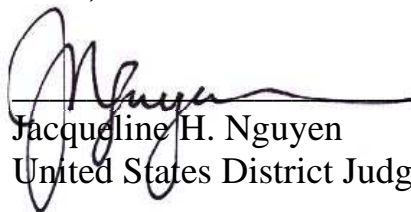
16 23. This Court retains jurisdiction of this action for purposes of enforcing compliance  
17 with the terms of this Consent Judgment and Order.

18 24. By signing their names to this Consent Judgment and Order, the parties represent  
19 that they are informed and understand the effect and purpose of this Consent Judgment  
20 and Order.

21  
22 The Court directs the entry of this Consent Judgment and Order as a final order.

23  
24 **IT IS SO ORDERED, ADJUDGED, and DECREED.**

25  
26 Dated: May 01, 2012

27   
28 Jacqueline H. Nguyen  
United States District Judge

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

2 M. PATRICIA SMITH  
Solicitor of Labor

3 MARY K. ALEJANDRO  
4 Acting Regional Solicitor

5 DANIELLE L. JABERG  
6 Counsel for ERISA

7 Dated: May 1, 2012

/s/ Andrew J. Schultz

8 ANDREW J. SCHULTZ

9 Trial Attorney

10 Attorneys for Plaintiff

11 Defendants consent to the entry of this Consent Judgment and Order:

12  
13 Dated: March 23, 2012

/s/ David H. Bolstad

14 DAVID H. BOLSTAD,

15 Individually and on behalf of Defen-  
16 dant the Western Mixers, Inc. Money  
Purchase Pension Plan

17  
18 Dated: March 29, 2012

/s/ David H. Bolstad

19 DAVID H. BOLSTAD,

20 on behalf of Defendant WESTERN  
21 MIXERS, INC.

22  
23 Dated: April 23, 2012

/s/ Frank L. Rudy

24 FRANK L. RUDY

25 Defendant

26  
27 Dated: March 26, 2012

/s/ Robert J. Fischer

28 ROBERT J. FISCHER

Defendant



**EXHIBIT A  
TO CONSENT JUDGMENT**

<u>Participant Name</u>	<u>Final Balances</u>
Bolstad, David H	\$ 0.00
Bolstad, David H Jr	55,219.82
Bolstad, Kristin	44,935.04
Bolstad, Michelle	5,602.29
Bolstad, Stephen R.	31,743.34
Calvano, Peter	87,174.22
Conlon, Mark	43,508.09
Espinosa, Margarito M	32,791.39
Fischer, Robert J	0.00
Foster, Jeffrey	75,532.10
Goldman, Burt	69,434.83
Grinstead, Leslie	129,036.70
Juarez, Hugo	23,474.44
Koga, Dick	352,347.80
Osborne, Greg	35,041.13
Quintanilla, Melvin W	6,675.21
Rudy, Frank L	292,673.06
Rudy, Mark F	114,705.25
Vasquez, Marcelino	39,265.59
Villescas, Absalom	14,403.65
Akahoshi, Greg	4,693.93
Bolstad, William C	264,174.02
Garcia, Radames	191.39
Hernandez, Luciano	4,902.72
Hernandez, Walter	120.02
Minguela Vasquez, J. C.	4,579.60
Munoz, Antonio	2,447.61
Nader Margaret	10,469.77
Patruno, Luke Sr	13,736.45
Peraza, Jose	7,437.70
Quiroz, Constantino A	2,379.61
Ramos, Carlos	2,197.30
Salinas, Herminio	3,299.54
Torres, Manilo	526.73
Vasquez, Jose G	6,829.02
Vega, Macario	1,711.43
Vela, Reyshell	<u>12,130.84</u>
<b>Total</b>	<b>\$ 1,795,391.63</b>