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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

<p>THOMAS L. ANDERSON, Plaintiff, v. STRAUSS NEIBAUER & ANDERSON APC PROFIT SHARING 401(K) PLAN; DOUGLAS L. NEIBAUER; STRAUSS NEIBAUER, A PROFESSIONAL CORPORATION; TOTAL BENEFIT SERVICES, INC., Defendants.</p>	<p>1:09-cv-01446 OWW DLB (related case: 1:10-cv-02195)</p> <p>ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (DOC. 19)</p>
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<p>STRAUSS NEIBAUER, Plaintiff, v. THOMAS L. ANDERSON and LYNN ANDERSON, Defendants.</p>	<p>1:10-cv-02195 OWW DLB</p>
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On December 1, 2010, Plaintiff Thomas L. Anderson's motion for summary judgment was heard. After considering Plaintiff's motion and cited authority, declarations, exhibits and Defendants' opposition, and after the issuance of the memorandum decision on December 6, 2010,

1 IT IS HEREBY ORDERED:

2 1. Plaintiff's motion for summary judgment on his claim for
3 pension plan benefits is GRANTED as to Plaintiff's account
4 balance in the Strauss Neibauer & Anderson Profit Sharing
5 401(k) Plan (the "Plan"), minus (a) employer contributions
6 made for Plaintiff to the Plan during 2004, 2005, and 2006
7 and (b) the outstanding balance of Plaintiff's Plan loan.
8 The exact amount of employer contributions and balance of
9 Plaintiff's Plan loan are in dispute and subject to proof
10 of amount at trial. Distribution will be made at the time
11 of entry of final judgment.
12

13 2. Plaintiff's motion for summary judgment on his claim for
14 pension plan benefits is DENIED without prejudice as to
15 Defendant Strauss Neibauer's employer contributions made
16 for Plaintiff to the Plan during 2004, 2005, and 2006, for
17 the reasons set forth in the memorandum decision. The
18 issues of the application of the "mistake of fact"
19 doctrine under ERISA § 403(c), 29 U.S.C. § 1103(c), and
20 the reasonableness of the Plan administrator's denial of
21 benefits will be decided at trial.
22

23 3. Plaintiff's motion for summary judgment for breach of
24 fiduciary duty is DENIED without prejudice for the reasons
25 set forth in the memorandum decision. This claim will be
26 decided at trial.
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4. Plaintiff's motion for summary judgment for attorneys' fees and costs is DENIED without prejudice for the reasons set forth in the memorandum decision. This claim will be decided during trial or on motion after trial.

IT IS SO ORDERED.

Dated: December 27, 2010 /s/ OLIVER W. WANGER
United States District Judge