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 20 of the United States Department of Labor

21 UNITED STATES DISTRICT COURT  
 22 EASTERN DISTRICT OF CALIFORNIA  
 23 SACRAMENTO DIVISION

24 HILDA L. SOLIS, Secretary of the United  
 25 States Department of Labor,

26 Plaintiff,

27 v.

28 CLAIR R. COUTURIER, JR, *et al.*

Defendants.

Civil Action No. 2:08-cv-02732-RRB-GGH

**CONSENT JUDGMENT & ORDER  
 BETWEEN THE SECRETARY AND  
 DEFENDANT JAMES P. ROORDA**

Honorable Judge Ralph R. Beistline

Plaintiff, Hilda L. Solis, Secretary of the United States Department of Labor

("Secretary"), and Defendant James P. Roorda ("Defendant") have agreed to settle the matters in

1 controversy in this civil action and consent to the entry of this Consent Judgment in accordance  
2 herewith:

3           *WHEREAS*, the Secretary filed her Complaint against Defendant, among others, on  
4 November 13, 2008 and filed her Amended Complaint against Defendant, among others, on  
5 December 22, 2008 ("Amended Complaint"), pursuant to Title I of the Employee Retirement  
6 Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., as amended, wherein she  
7 alleged that Defendant violated provisions of Title I of ERISA while acting as a fiduciary of The  
8 Employee Ownership Holding Company, Inc. Employee Stock Ownership Plan (the "Plan"),  
9 which is an employee benefit plan subject to Title I of ERISA;  
10

11           *WHEREAS*, upon consideration of the record, and as agreed to by the parties, the Court  
12 finds that it has jurisdiction over the parties and the subject matter of this civil action;  
13

14           *WHEREAS*, the Secretary and Defendant have negotiated an agreement to settle all  
15 claims and issues between them arising from the matters alleged in the Secretary's Amended  
16 Complaint;  
17

18           *WHEREAS*, the Secretary and Defendant represent to the Court that this Consent  
19 Judgment & Order is the sole and complete memorialization of the agreement negotiated  
20 between them;  
21

22           *WHEREAS*, the Secretary and Defendant expressly waive Findings of Fact and  
23 Conclusions of Law and consent to the entry of this Consent Judgment & Order as a full and  
24 complete resolution of the Secretary's claims against Defendant alone;

25           *WHEREAS*, Defendant expressly acknowledges and represents that he has read this  
26 Consent Judgment & Order and understands its provisions and each of the undersigned attorneys  
27 expressly acknowledges and represents that they are authorized and empowered to execute this  
28

1 Consent Judgment & Order on behalf of the party represented and that they have fully disclosed  
2 any conflicts of interest relating to their representation for purposes of executing this Consent  
3 Judgment & Order.

4 *ACCORDINGLY*, it is hereby **ORDERED, ADJUDGED AND DECREED** that:

5  
6 1. The Court has jurisdiction over the parties to this Consent Judgment & Order and  
7 subject matter of this action and is empowered to provide the relief herein.

8  
9 2. Defendant shall restore to the Plan \$83,333 within ten (10) business days  
10 following entry by the Court of this Consent Judgment & Order.

11  
12 3. This Consent Judgment & Order does not in any manner affect the right of the  
13 United States Department of Labor, Employee Benefits Security Administration to assess a civil  
14 penalty of twenty percent (\$16,667) ("Penalty Amount") on amounts recovered pursuant to  
15 ERISA § 502(l), 29 U.S.C. § 1132(l). Defendant does not dispute such assessment and agrees to  
16 pay such assessment when due. The Defendant waives the notice of assessment and service  
17 requirement of 29 C.F.R. § 2570.83 and, within ten days following entry by the Court of this  
18 Consent Judgment & Order, Defendant shall pay the Penalty Amount to the U.S. Department of  
19 Labor, by sending a certified or cashiers check payable to the United States Department of Labor  
20 (please write EBSA Case No. 70-012855(48) on the check) to:

21  
22 Regular Mail:

23 U.S. Department of Labor  
24 ERISA Civil Penalty  
25 P.O. Box 70942  
26 Charlotte, NC 28272-0942  
27  
28

1                    Overnight Courier:

2                    U.S. Department of Labor  
3                    QLP Wholesale Lockbox - NC0810  
4                    Lockbox # 70942  
5                    1525 West WT Harris Blvd  
6                    Charlotte, NC 28262

7                    4.        Within ten (10) business days of the payments set forth in paragraphs 3 and 4,  
8                    *supra*, Defendant shall provide evidence of payment to the Secretary.

9                    5.        Defendant is hereby permanently enjoined and restrained from future service as a  
10                    fiduciary of, or service provider to, any ERISA-covered employee benefit plan. Specifically,  
11                    Defendant is hereby permanently enjoined and restrained from directly or indirectly, individually  
12                    or through any entity or any other person:

- 13                    (a)        serving or acting, for compensation or otherwise, as a fiduciary, service  
14                    provider, administrator, officer, trustee, custodian, counsel, agent,  
15                    employee or representative in any capacity to any employee benefit plan  
16                    covered by ERISA;
- 17                    (b)        serving or acting, for compensation or otherwise, as a consultant or  
18                    adviser to any employee benefit plan covered by ERISA or to any entity  
19                    whose activities are in whole or in part, devoted to providing goods or  
20                    services to any employee benefit plan covered by ERISA;
- 21                    (c)        serving or acting, for compensation or otherwise, in any capacity that  
22                    involves decision making authority or custody or control of the monies,  
23                    funds, assets or property of any employee benefit plan covered by ERISA;  
24                    and  
25                     
26                     
27                     
28

(d) 1 selling, promoting, marketing or providing any product or service to, making any  
2 recommendation to, or bringing any product, service or investment to the attention of, any  
3 employee benefit plan covered by ERISA or to any person acting on behalf of such plan, or  
4 facilitating or encouraging any expenditure or investment by any employee benefit plan covered  
5 by ERISA.  
6

7           6.     The parties acknowledge Defendant's affiliation with or ownership interest in the  
8 following entities ("Affiliated Entities"):

- 9                   (i)     Roorda, Piquet & Bessee, Inc.
- 10                   (ii)    Independent Financial Advisor, LLC
- 11                   (iii)   ProfESOP Group, LLC

12  
13     Within twenty (20) business days following entry by the Court of this Consent Judgment &  
14     Order, Defendant shall cause the Affiliated Entities to put into effect internal policies and  
15     procedures to ensure that following entry by the Court of this Consent Judgment & Order  
16     Defendant will not personally participate or be involved in any activity or service related or  
17     provided to employee benefit plans. Following entry by the Court of this Consent Judgment &  
18     Order, Defendant shall not be involved with or participate in any activity or service provided to  
19     any employee benefit plan by or through the Affiliated Entities, or any other entity.  
20

21           7.     All of the parties in this litigation and, as applicable, their agents, representatives,  
22     assigns and successors in interest, are permanently and forever barred and enjoined from filing,  
23     commencing, instituting, prosecuting, or maintaining, either directly, indirectly, representatively,  
24     or in any other capacity, any claim against Defendant arising under state, federal or common law,  
25     however styled, and in any forum, whether for indemnification or contribution or otherwise  
26     denominated, where the claim is based upon, arises out of, or relates to the facts, transactions and  
27  
28

1 occurrences referred to in the Secretary's Amended Complaint, and the claim seeks to recover  
2 from Defendant (i) any amount such person may become liable to pay pursuant to a settlement or  
3 judgment in the Secretary's action or (ii) any costs, expenses, or attorneys' fees from defending  
4 any claim by the Secretary.  
5

6 8. Defendant, and, as applicable, his agents, representatives, assigns and successors  
7 in interest, are permanently and forever barred and enjoined from filing, commencing,  
8 instituting, prosecuting, or maintaining, either directly, indirectly, representatively, or in any  
9 other capacity, any claim against any of the non-settling Defendants arising under state, federal  
10 or common law, however styled, and in any forum, whether for indemnification or contribution  
11 or otherwise denominated, where the claim is based upon, arises out of, or relates to the facts,  
12 transactions and occurrences referred to in the Secretary's Amended Complaint, and the claim  
13 seeks to recover (i) any amount Defendant has paid pursuant to this Consent Judgment & Order  
14 or (ii) any costs, expenses, or attorneys' fees from defending any claim by the Secretary.  
15

16 9. Defendant, and, as applicable, his agents, representatives, assigns and successors  
17 in interest, are hereby barred from asserting against the Secretary and her officers, agents,  
18 attorneys, employees, and representatives, both in their individual and governmental capacities,  
19 all actions, claims and demands of whatsoever nature, including those arising under the Equal  
20 Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412, or any statute, rule or regulation, that  
21 relate in any manner to the filing, prosecution, and maintenance of this matter and any other  
22 proceeding or investigation incident thereto.  
23

24 10. In calculating the amount of the Plan's alleged losses in the Secretary's action  
25 against the non-settling Defendants, such alleged losses shall be reduced by \$83,333 to reflect  
26 the Secretary's settlement with Defendant. Furthermore, the Secretary waives any entitlement to  
27  
28

1 recover, and shall not recover, an aggregate amount from all of the Defendants in her action that  
2 exceeds the total amount of the Plan's alleged losses (including any loss of principal, interest or  
3 earnings), as calculated by the Secretary, regardless of whether the basis for recovery from any  
4 particular non-settling Defendant is to compensate the Plan for its alleged losses, to compel the  
5 disgorgement of unjust earnings, or any other basis. Nothing in this Consent Judgment & Order,  
6 however, is intended to otherwise limit the personal, joint and several liability of any non-settling  
7 Defendant.  
8

9  
10 11. Nothing in this Consent Judgment & Order shall be construed as a declaration by  
11 the signatories to this Consent Judgment & Order that any person not a signatory hereto has any  
12 defense or affirmative defense, any right or basis for contribution or indemnity or any other basis  
13 for recovery from the Plan, any Plan fiduciary, any person signatory hereto, or the Secretary.  
14

15 12. In the event that, for any reason whatsoever, the Court declines to approve this  
16 Consent Judgment & Order or it is reversed on appeal, then this Consent Judgment & Order shall  
17 be deemed null and void and (a) the Secretary will be free to pursue all of the claims alleged in  
18 her action and to seek all relief prayed for in her action from Defendant, including her claims for  
19 non-monetary and monetary relief, (b) Defendant will be free to assert all of his defenses of any  
20 kind to the Secretary's claims other than defenses arguing that any part of this Consent Judgment  
21 & Order, or any bar order issued pursuant to this Agreement, can be construed to release,  
22 interfere with, qualify, or bar the prosecution of claims by the Secretary for any type of remedy,  
23 monetary or non-monetary set forth in her action; and, (c) the provisions of this Consent  
24 Judgment & Order shall be of no further force or effect and shall not be admissible in evidence in  
25 any action pending or filed against Defendant.  
26  
27  
28

1           13.   Provisions of this Consent Judgment & Order requiring notice to the Defendant  
2 shall be satisfied by delivering it in writing to the Defendant in care of:

3                   Stephen J. Tully  
4                   Garrett & Tully  
5                   4165 E. Thousand Oaks Blvd., Ste. 201  
6                   Westlake Village, California 91362  
7                   (805) 446-4141  
8                   fax: (805) 446-4135

9 Provisions of this Consent Judgment & Order requiring notice to the Secretary shall be satisfied  
10 by delivering it in writing to:

11                   Regional Director, EBSA  
12                   San Francisco Regional Office  
13                   90 7th St, Ste 11-300  
14                   San Francisco, CA 94103  
15                   Phone: (415) 625-2481  
16                   Fax: (415) 625-2450

17 with a duplicate delivered to:

18                   Associate Solicitor  
19                   U.S. Department of Labor  
20                   Office of the Solicitor  
21                   Plan Benefits Security Division  
22                   200 Constitution Avenue, N.W., Room N-4611  
23                   Washington, DC 20210  
24                   Phone: (202)693-5600  
25                   Fax: (202)693-5610

26                   and

27                   Regional Solicitor  
28                   U.S. Department of Labor  
29                   Office of the Solicitor  
30                   San Francisco Regional Office  
31                   90 7th Street, Suite 3-700  
32                   San Francisco, CA 94103  
33                   Phone: (415) 625-7740  
34                   Fax: (415) 625-7772

35 Delivery shall be made by facsimile transmission or reliable overnight express courier service.

36 The parties to this Consent Judgment & Order may, as they deem necessary, change



1 from time to time the designation of persons to receive notice on their behalf by filing with the  
2 Court notification of such change and serving a copy thereof on the other party or parties to this  
3 Consent Judgment & Order, by delivery to the address to which notice would be sent.

4  
5 14. This Consent Judgment & Order constitutes a full, final and complete judicial  
6 resolution of all of the civil claims alleged in the Secretary's Amended Complaint against the  
7 Defendant in this action, and all such claims are hereby released, settled and dismissed with  
8 prejudice. Neither the Secretary nor Defendant waives any claims against any other persons.  
9 Except as provided herein, the Secretary's claims for monetary and injunctive relief and the  
10 Defendant's claims for monetary and equitable relief against any other persons are expressly  
11 preserved. Except as provided herein, nothing in this Consent Judgment & Order is, nor is to be  
12 construed as, an admission or acknowledgment that any person or entity is in any way released  
13 from any liability or wrongdoing except for the Defendant who is released as described and the  
14 Secretary who is released as described.  
15

16  
17 15. Defendant and, where applicable, his agents, beneficiaries, representatives,  
18 assigns and successors in interest, does hereby release the Secretary and the Secretary's officers,  
19 agents, attorneys, employees, and representatives, both in their individual and governmental  
20 capacities, from all actions, claims and demands of whatsoever nature, including those arising  
21 under any statute, rule or regulation, that relate in any manner to the filing, prosecution, and  
22 maintenance of this civil action or any other proceeding or investigation incident thereto. In  
23 particular, Defendant expressly waives any and all claims of any nature that he may have against  
24 the Secretary, or any of the Secretary's officers, agents, employees, or representatives arising  
25 under the Equal Access To Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412.  
26  
27  
28

1           16.     The Secretary and Defendant shall bear their own costs, expenses, and attorney's  
2 fees in connection with this action and any other proceeding or investigation incident thereto.

3           17.     This Court shall retain jurisdiction over the parties and subject matter of this  
4 action for the purpose of enforcing the terms of this Consent Judgment & Order.  
5

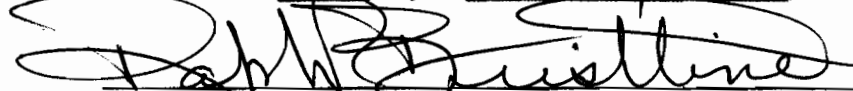
6           18.     By entering into this Consent Judgment & Order, Defendant represents that he has  
7 been informed by Counsel of the effect and purpose of this Consent Judgment & Order and  
8 agrees to be bound by its terms.

9           19.     This Consent Judgment & Order is not binding on any governmental agency other  
10 than the United States Department of Labor, Employee Benefits Security Administration.  
11

12           20.     This Consent Judgment & Order may be executed in counterparts, each of which  
13 shall be deemed to be an original, but all of which, taken together, shall constitute one and the  
14 same instrument.  
15

16           The Court finds that there is no just reason to delay the entry of this Consent Judgment &  
17 Order and, pursuant to Rule 54(b), Fed. R. Civ. P., expressly directs the entry thereof as a final  
18 Consent Judgment & Order.  
19

20  
21           SO ORDERED this 14 day of July, 2009

22           

23           RALPH R. BEISTLINE  
24           UNITED STATES DISTRICT JUDGE

25           //

26           //

27           //

28           //

1 The parties, by themselves or their undersigned Counsel, hereby consent to the entry of  
2 this Consent Judgment & Order:


3 FOR PLAINTIFF  
4 Secretary of Labor

5 CAROL A. DE DEO  
6 Deputy Solicitor of Labor for National Operations

7 TIMOTHY D. HAUSER  
8 Associate Solicitor, PBSO

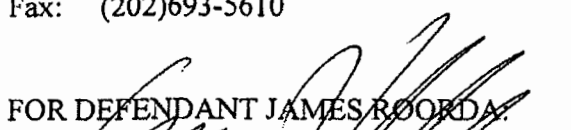
9 LAWRENCE BREWSTER  
10 Regional Solicitor, San Francisco

11 DANIELLE L. JABERG  
12 Counsel for ERISA, San Francisco

13 BY: 

Date 4/21/09

14 MICHAEL SCHLOSS  
15 ROBERT FURST  
16 Senior Trial Attorneys  
17 MEGAN GUENTHER  
18 ROBYN SWANSON  
19 Trial Attorneys  
20 Plan Benefits Security Division  
21 Office of the Solicitor  
22 U.S. Department of Labor  
23 P.O. Box 1914  
24 Washington, DC 20013-1914  
25 Phone: (202)693-5600  
26 Fax: (202)693-5610

27 FOR DEFENDANT JAMES ROORDA  
28 

Date 4-20-09

29 STEPHEN J. TULLY  
30 Garrett & Tully  
31 4165 E. Thousand Oaks Blvd., Ste. 201  
32 Westlake Village, California 91362  
33 Phone: (805) 446-4141  
34 Fax: (805) 446-4135