

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 15-cv-1701-WJM-MJW

THOMAS EDWARD PEREZ, Secretary of Labor, and
UNITED STATES DEPARTMENT OF LABOR,

Plaintiffs,

v.

M. PETER SCHREPFFER,
SCHREPFFER INDUSTRIES, INC. 401(k) PLAN,
SCHREPFFER INDUSTRIES, INC. HEALTH BENEFITS PLAN,
TRINIDAD GOLF, LLC SIMPLE IRA PLAN, and
TRINIDAD GOLF, LLC HEALTH BENEFITS PLAN,

Defendants.

CONSENT JUDGMENT AND ORDER

This action was brought by Plaintiffs, Thomas E. Perez, Secretary of Labor, and the United States Department of Labor, against Defendants M. PETER SCHREPFFER, individually; the SCHREPFFER INDUSTRIES, INC., 401(k) PLAN; SCHREPFFER INDUSTRIES, INC., HEALTH BENEFITS PLAN; the TRINIDAD GOLF, LLC, SIMPLE IRA PLAN; and the TRINIDAD GOLF, LLC, HEALTH BENEFITS PLAN, pursuant to Sections 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(5), of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001-1461 ("ERISA"). Defendant M. Peter Schrepfer ("Schrepfer"), individually, having appeared *pro se*, admits to the jurisdiction of the Court over him and over the subject matter of this action and has agreed to the entry of judgment without contest.

It is therefore, upon joint motion and for good cause shown,

ORDERED ADJUDGED AND DECREED that:

1. Defendant, Trinidad Golf, LLC (“Trinidad Golf”), was formed in 2007 to construct and operate a golf course, resort hotel, and adjoining housing community in Trinidad, Colo.

2. Schrepfer served as president of Schrepfer Industries, Inc. (“Schrepfer Industries”), which performed some construction for that golf course, resort, and housing.

3. Both Trinidad Golf and Schrepfer Industries (jointly, the “Companies”) are now insolvent, have no employees, and have dissolved with the Secretary of State for the State of Colorado.

4. Schrepfer was the named fiduciary for the Schrepfer Industries, Inc. 401(k) Plan; the Schrepfer Industries, Inc. Health Benefits Plan; the Trinidad Golf, LLC SIMPLE IRA Plan; and the Trinidad Golf, LLC Health Benefits Plan (collectively, the “Plans”).

5. The Schrepfer Industries, Inc. 401(k) Plan is an employee retirement savings plan that Schrepfer Industries established on January 1, 2005.

6. Schrepfer Industries is the employer sponsoring the Schrepfer Industries, Inc. 401(k) Plan; it is also that Plan’s named plan administrator.

7. American Funds Distributors, Inc. serves as the custodian of assets for the Schrepfer Industries 401(k) Plan.

8. The Schrepfer Industries, Inc. Health Benefits Plan is a health benefits plan for that company’s employees.

9. The Trinidad Golf, LLC SIMPLE IRA is a SIMPLE IRA Plan that Trinidad Golf established on October 1, 2007.

10. Trinidad Golf is the employer sponsoring the Trinidad Golf, LLC SIMPLE IRA Plan; Trinidad Golf also administers that Plan.

11. Van Kampen Investments, Inc. was the custodian of assets for the Trinidad Golf, LLC SIMPLE IRA Plan.

12. The Trinidad Golf, LLC Employee Health Benefits Plan is a health benefits plan for that company's employees.

13. To keep the Companies financially viable, Schrepfer withheld, but did not deposit to the Plans approximately \$42,157.63 in employee contributions. This sum remains unpaid to participants, who have been denied lost opportunity earnings and interest on that sum as well. Schrepfer is jointly and severally liable for these amounts under Section 409 of ERISA.

14. The Plans are all subject to the protections of ERISA.

15. None of the Plans have been terminated.

16. To redress the fiduciary breaches that occasioned the aforementioned Plans' losses, it is further **ORDERED, ADJUDGED, AND DECREED** that:

(a) To the extent he has not already done so, Schrepfer shall make restitution in the amount of \$21,500 to the Plans' participants within 180 days of the entry of this Consent Order and Judgment as follows:

Schrepfer Industries, Inc. 401(k) Plan Participants

(i) Frank Castillo: \$1,313.95

- (ii) Brian Duran: \$715.59
- (iii) Dave Foster: \$226.44
- (iv) Rob Fransua: \$990.34
- (v) Karl Gabrialson: \$1,267.88
- (vi) Lois Keeler: \$911.68
- (vii) Stephen Parker: \$1,205.75
- (viii) Andre Richert: \$673.86
- (ix) Mary Romero: \$559.19
- (x) Angela Sepulveda: \$782.97
- (xi) Jason Sepulveda: \$2,097.81
- (xii) Jeff Sepulveda: \$1,965.05
- (xiii) Wade Stalker: \$2,863.39
- (xiv) Anna Till: \$633.44
- (xv) Anthony Tortorice: \$598.90
- (xvi) Genaro Trevino: \$249.13
- (xvii) Roy Woelherth: \$1,467.90

(xviii) Glenna Zamora: \$119.15

Trinidad Golf, LLC SIMPLE IRA Participants

(i) Chanelle Garlutz: \$783.33

(ii) Craig Horton: \$781.60

(iii) Matt Reams: \$51.21

(iv) Jimmy Rodriguez: \$1,241.44

(b) Within ten calendar days of making the payment pursuant to paragraph 16(a), above, Schrepfer shall provide to the Secretary, via first class mail, proof of each such payment in the form of cancelled checks, wire transfer receipts, or other indicia of actual payment to the **United States Department of Labor, Employee Benefits Security Administration, Attention Investigator Brian Peterson, 2300 Main St., Suite 1100, Kansas City, Missouri, 64108.**

(c) Defendant, M. Peter Schrepfer, his agents, servants, employees and all persons in active concert or participation with him be and hereby are permanently enjoined and restrained from violating the Title I of ERISA.

(d) Subject to the limited exception in ¶¶ 16(e-f), below, Defendant M. Peter Schrepfer shall be permanently enjoined and restrained from acting as a fiduciary, trustee, agent or representative in any capacity to any employee benefit plan, as defined by ERISA, unless Defendant M. Peter Schrepfer agrees to obtain and does obtain, on or before March 15, 2017, no less than 12 hours of education and training in the duties and responsibilities of fiduciaries and trustees to ERISA-covered plans.

(e) Defendant M. Peter Schrepfer may pursue such education and training through self-study or formal instruction. The education and training materials shall be prepared or provided or approved by a nationally recognized authority or organization involved in fiduciary training such as, but not limited to, the International Foundation of Employee Benefit Plans or the Canon Financial Institute.

(f) Defendant M. Peter Schrepfer further agrees to provide written evidence of any such education and training to the Employee Benefits and Security Administration, United States Department of Labor, Attention: Brian Peterson, Two Pershing Square, 2300 Main Street, Suite 1100, Kansas City, Missouri, 64108, within 30 days of completing such training.

17. This Judgment does not affect or bind any governmental agency other than the United States Department of Labor.

18. This Judgment does not adjudicate or otherwise affect any potential civil money penalties that may be assessed under Section 502(l) of the Act.

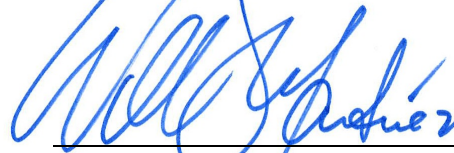
19. This Court retains jurisdiction for purposes of enforcing compliance with the terms of this Consent Judgment and Order.

20. Each party shall bear its own cost and expenses, including attorneys' fees, arising in connection with any stage of the above-referenced proceeding including but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

21. No Plan assets will be used to pay the attorneys' fees, costs, and other litigation expenses incurred by any of the Defendants in this action.

Dated this 3rd day of March, 2016.

BY THE COURT:



William J. Martínez
United States District Judge

The parties approve the Consent Judgment and Order as to form and substance:

For Plaintiff:

M. Patricia Smith
Solicitor of Labor

James E. Culp
Regional Solicitor

John Rainwater
Associate Regional Solicitor

Robert A. Goldberg
ERISA Counsel

/s/ Matthew B. Finnigan
Matthew B. Finnigan
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Signed this 19th day of
February, 2016

For Defendants:

/s/ M. Peter Schrepfer
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Signed this 19th day of
February, 2016