

CLOSED,NEBRASKADOCKET,TRIAL-OMAHA,USAPLAINTIFF

U.S. District Court
District of Nebraska (8 Omaha)
CIVIL DOCKET FOR CASE #: 8:14-cv-00143-JMG-CRZ

Perez v. Tincher et al
Assigned to: Judge John M. Gerrard
Referred to: Magistrate Judge Cheryl R. Zwart
Cause: 29:1001 E.R.I.S.A.: Employee Retirement

Date Filed: 05/08/2014
Date Terminated: 07/02/2014
Jury Demand: None
Nature of Suit: 791 Labor: E.R.I.S.A.
Jurisdiction: U.S. Government Plaintiff

Plaintiff

Thomas E. Perez
Secretary of Labor, United States
Department of Labor

represented by **Susan J. Willer**
U.S. DEPARTMENT OF LABOR -
OFFICE OF THE SOLICITOR
MISSOURI
2300 Main Street
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Building
Kansas City, MO 64108
(816) 285-7260
Fax: (816) 285-7287
Email: Willer.Susan@DOL.gov
ATTORNEY TO BE NOTICED

V.

Defendant**Mark Tincher****Defendant**

Tincher Chevrolet Oldsmobile 401(k)
Plan

Date Filed	#	Docket Text
05/08/2014	<u>1</u>	COMPLAINT against All Defendants, by Attorney Susan J. Willer on behalf of Thomas E. Perez(Willer, Susan) (Entered: 05/08/2014)
05/08/2014	2	TEXT NOTICE OF JUDGES ASSIGNED: Judge John M. Gerrard and Magistrate Judge Cheryl R. Zwart assigned. (AOA) (Entered: 05/08/2014)
06/20/2014	<u>3</u>	Unopposed MOTION for Judgment <i>Approval and Entry of Consent Judgment</i> by Attorney Susan J. Willer on behalf of Plaintiff Thomas E. Perez. (Attachments: # <u>1</u> Exhibit Consent Judgment)(Willer, Susan) (Entered: 06/20/2014)

07/02/2014	4	CONSENT JUDGMENT - This Court shall retain jurisdiction over this action and the parties hereto as may be necessary to enforce the provisions of the Consent Judgment. The Court directs the entry of this Consent Judgment as a final order. Ordered by Judge John M. Gerrard. (GJG) (Entered: 07/02/2014)
07/02/2014	5	ORDER - The plaintiff's Motion for Approval and Entry of Consent Judgment (filing 3) is granted. A separate judgment will be entered. Ordered by Judge John M. Gerrard. (GJG) (Entered: 07/02/2014)

PACER Service Center			
Transaction Receipt			
02/08/2018 14:00:08			
PACER Login:	tcn22015:2610667:0	Client Code:	
Description:	Docket Report	Search Criteria:	8:14-cv-00143-JMG-CRZ
Billable Pages:	2	Cost:	0.20

JS 44 (Rev 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
 Thomas E. Perez, Secretary of Labor, United States Department of Labor

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 H. Alice Jacks, Susan J. Willer, Office of the Solicitor, US Dept of Labor,
 Two Pershing Square, 2300 Main Street, Suite 1020,
 Kansas City, MO 64108, 816.285.7260

DEFENDANTS
 Mark Tincher and Tincher Chevrolet Oldsmobile 401(k) Plan

County of Residence of First Listed Defendant Cass
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)
 29 USC 1001, et seq. Employee Retirement Income Security Act of 1974

Brief description of cause:
 action for appointment of independent fiduciary to administer orphaned ERISA covered 401(k) Plan

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint.
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 05/08/2014 SIGNATURE OF ATTORNEY OF RECORD Susan J. Willer

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

THOMAS E. PEREZ,)	
SECRETARY OF LABOR,)	
UNITED STATES DEPARTMENT OF)	
LABOR,)	
)	
Plaintiff,)	CIVIL ACTION NO. 8:14-cv-143
v.)	
MARK TINCHER and)	
TINCHER CHEVROLET)	
OLDSMOBILE 401(k) PLAN,)	
Defendants,)	

COMPLAINT

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor (the “Secretary”), alleges the following:

This action arises under the Employment Retirement Income Security Act of 1974 (“ERISA” or the “Act”) as amended, 29 U.S.C. § 1001 et seq., and is brought by the Secretary against Defendant Mark Tincher, as the Trustee and fiduciary of the Tincher Chevrolet Oldsmobile 401(k) Plan (the “Plan”). The Secretary brings this action to obtain the appointment of an independent fiduciary to administer the Plan as well as to obtain appropriate relief in order to redress violations and to enforce the provisions of Title I of ERISA.

PARTIES

1. Plaintiff is the Secretary of the United States Department of Labor, who has authority to bring civil action under ERISA §§ 502(a)(2) and (5), 29 U.S.C. § 1132(a)(2) and (5) to enjoin acts and practices which violate the provisions of Title I of ERISA and to obtain appropriate relief for breaches of fiduciary duty under ERISA section 409, 29 U.S.C. § 1109.

2. At all times relevant to this action, Defendant Mark Tincher was the named Trustee of the Plan and sole Owner and President of the Plan’s Sponsor, Tincher Chevrolet Oldsmobile in Plattsmouth, Nebraska. Tincher Chevrolet Oldsmobile operated within the State of Nebraska until ceasing operations in July 2011.

3. Defendant Tincher Chevrolet Oldsmobile 401(k) Plan is an employee benefit plan within the meaning of § 3(3) of ERISA, 29 U.S.C. § 1002(3). An employee benefit plan may be sued by service of process on the plan trustee or administrator. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1). The Plan is only named as a defendant pursuant to Fed. R. Civ. P. 19(a) to assure that complete relief may be granted.

JURISDICTION AND VENUE

4. Jurisdiction over this action pursuant is conferred upon this Court by Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).

5. Venue with respect to this action lies in the District of Nebraska, where Defendant Tincher resides and where the Plan was administered, pursuant to Section § 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

GENERAL ALLEGATIONS

6. The Plan is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and subject to coverage of the Act under ERISA § 4(a), 29 U.S.C. § 1003(a). The Plan is a defined contribution, 401(k) deferred compensation plan that was administered in Nebraska. The Plan was established by Tincher Chevrolet Oldsmobile, the employer and Plan Sponsor on January 1, 1993. The Plan allowed employees of Tincher Chevrolet Oldsmobile to elect to defer a portion of their compensation and have that amount contributed to the Plan.

7. Defendant Tincher solely owned and operated Tincher Chevrolet Oldsmobile and served as the sole officer. Defendant Tincher was also the sole named Trustee of the 401(k) Plan in the Adoption Agreement.

8. At all times relevant herein, Defendant Tincher, as named Trustee of the 401(k) Plan and as President and Owner of the sponsoring employer, was vested with and exercised discretionary authority or control respecting the management of the 401(k) Plan, or exercised authority or control respecting the management or disposition of the assets of the 401(k) Plan, or had discretionary authority or discretionary responsibility in the administration of the 401(k)

Plan. Therefore, Defendant Tincher, at all times relevant herein, has been a fiduciary with respect to the 401(k) Plan pursuant to ERISA §§ 3(21)(A)(i) and (iii), 29 U.S.C. §§ 1002(21)(A)(i) and (iii).

9. At all times relevant herein, Defendant Tincher was sole Officer and Owner of Tincher Chevrolet Oldsmobile and a fiduciary of the Plan. Therefore, Defendant Tincher is a party in interest with respect to the Plan, pursuant to ERISA §§ 3(14)(A) and (H), 29 U.S.C. §§ 1002(14)(A) and (H).

10. Assets of the Plan are held by Principal Financial Group as third party custodian.

11. Upon information and belief, the Plan currently possesses assets totaling approximately \$183,146.48 and has a total of five participants or their beneficiaries.

12. The Plan Document states that the Plan shall be terminated if the business is dissolved or terminated and that the Plan must be kept in compliance with current laws and regulations until all assets have been distributed. As the Trustee, it is the duty of Defendant Tincher to follow the directions of the Plan Document to terminate the Plan and to ensure that participants have access to their accounts for distribution or rollover.

13. Tincher Chevrolet Oldsmobile ceased all operations in 2011. Neither Defendant Tincher nor the company appointed a discretionary fiduciary to administer and manage the Plan or to ensure the orderly termination and liquidation of the Plan.

14. The Plan now stands abandoned by the Trustee, Defendant Tincher, who has refused to administer said Plan. The Plan has no other named fiduciary with the authority of administration. Participants are unable to access their accounts or to obtain distribution or rollover of Plan accounts. Principal Financial Group can only disburse assets at the direction of Plan Administrator, Trustee, named fiduciary or court-appointed successor fiduciary.

15. After an independent bidding process, Gabel, Schnieders, Hollman & Co., an independently owned trust company located at 206 W Argonne Dr., Suite 200, Kirkwood, MO 63122, has agreed to be appointed as an Independent Fiduciary to administer the Plan in order to effectuate its termination and the distribution of the Plan's assets to the participants and beneficiaries. Gabel, Schnieders, Hollman & Co. will complete the distributions and

termination of the Plan for a fee of \$1,500.00. In accordance with the Plan documents, the Plan will pay the expenses incurred by the Independent Fiduciary to administer the Plan and to accomplish the distributions.

VIOLATIONS OF ERISA

16. The Defendant employer has ceased operations and is no longer in existence. The named Trustee of the Plan, Defendant Tincher, failed to provide written authorization to allow distribution or rollover of the Plan's participant accounts after the business ceased to exist. Since the company ceased operations, no individual or entity has taken fiduciary responsibility for the operation and administration of the Plan and its assets. As a result of the cessation of this business and as a result of the failure of Trustee Tincher to respond to inquiries and requests related to participant distributions, there exists no one to administer the Plan. Participants and beneficiaries of the Plan are unable to gain access to their individual account balances. Defendant Tincher has failed to discharge his fiduciary duties and has abandoned the Plan.

17. Because of the facts and circumstances set forth above, the Plan does not have named fiduciaries or trustees with exclusive authority and discretion to manage and control its assets as required by ERISA § 402(a), 29 U.S.C. § 1102(a); and ERISA § 403(a), 29 U.S.C. § 1103(a).

18. Because of the facts and circumstances set forth above, participants are unable to access their account balances, either to reinvest them in other tax-qualified retirement savings vehicles before retirement, or to draw them down upon retirement. Because of the basis upon which payments are made from the Plan are not and cannot be specified without a trustee, the Plan exists in violation of ERISA § 402(b)(4), 29 U.S.C. § 1102(b)(4).

19. By the conduct described above, Defendant Tincher has failed to discharge his fiduciary duties with respect to the Plan in accordance with the documents and instruments governing the Plan, in violation of ERISA §§ 404(a)(1)(A), (B), and (D), 29 U.S.C. §§ 1104(a)(1)(A), (B), and (D).

20. Because Defendant resides in Cass County, the Secretary requests a trial location in Omaha, Nebraska.

WHEREFORE, the Secretary prays that this Court:

1. Remove Mark Tincher as Trustee of the Tincher Chevrolet Oldsmobile 401(k) Plan.
2. Appoint Gabel, Schnieders, Hollman & Co. as the Independent Fiduciary of the Plan with plenary authority to administer the Plan, to effectuate the distribution of Plan assets to the participants and beneficiaries, and to terminate the Plan, for a fee of \$1,500.00;
3. Require the Plan to pay the \$1,500.00 fee for administrative expenses and fees to Gabel Schnieders, Hollman & Co.;
4. Provide such other relief as may be just and equitable.

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Regional Solicitor
Illinois Bar No. 6204656

H. Alice Jacks
Associate Regional Solicitor
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEBRASKA

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Plaintiff

v.

MARK TINCHER, an individual and
TINCHER CHEVROLET
OLDSMOBILE 401(K) PLAN

Defendants

Case No. 8:14-CV-143jmg

CONSENT JUDGMENT

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor, (the "Secretary") pursuant to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, et seq., filed a complaint against Defendants Mark Tincher ("Tincher") and the Tincher Chevrolet Oldsmobile 401(k) Plan (the "Plan"), alleging breaches of their fiduciary responsibilities under ERISA §§ 402(a) and (b)(4), 403(a), and 404(a)(1)(A), (B), and (D) with respect to the Plan.

Defendants have waived service of process of the complaint and admit that this Court has jurisdiction over the parties and that this Court has jurisdiction of this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and that venue lies with the United District Court for District of Nebraska pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

A representative of the Employee Benefits Security Administration (“EBSA”) has identified Grabel, Schneiders, Hollman & Co., PC, Certified Public Accountants located in Kirkwood, Missouri, to serve as an independent fiduciary of the Tincher Chevrolet Oldsmobile 401(k) Plan.

The parties having agreed to entry of this Consent Decree without contest and it appearing that the Court has jurisdiction over the parties and subject matter of this action and that the Court is empowered to provide the following equitable relief, and for cause shown, it is therefore:

ORDERED, ADJUDGED and DECREED that:

1. Defendant Mark Tincher is removed as fiduciary to the Plan.
2. Grabel, Schneiders, Hollman & Co., PC, Certified Public Accountants located in Kirkwood, Missouri, is hereby appointed as the Independent Fiduciary of the Plan, with plenary authority to verify and secure the Plan assets held by Principal Financial Group, to determine and verify participant records, to contact participants regarding distribution options, and to make final distributions of the Plan’s assets to participants and beneficiaries, according to the terms of the Plan.
3. The independent fiduciary shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the Plan who is eligible to receive a payment under the terms of this Consent Judgment and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled;
4. The independent fiduciary shall have full access to all data, information and calculations in the Plan's possession or under its control, including that information contained in the records of the Plan's custodial trustees and other service providers,

bearing on the distribution of benefit payments, participant account balances and current plan assets;

5. The independent fiduciary shall obtain bonding in an amount that meets the requirements of ERISA §412, 29 U.S.C. §1112. The costs incurred by the independent fiduciary in obtaining such bonding shall be paid by the Plan.

6. Within 30 days of the distribution of all of the Plan's assets, the independent fiduciary shall provide the EBSA Regional Director with a report identifying the distributions made by the Plan since the independent fiduciary's appointment.

7. Grabel, Schneiders, Hollman & Co., PC is further granted the authority and duty to terminate the Plan.

8. The Plan shall pay Grabel, Schneiders, Hollman & Co., PC a fee of \$1,500.00 to effectuate distribution of the Plan's assets and for the administration and termination of the Plan.

9. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor, Employee Benefits Security Administration.

10. Each party shall bear his or its own attorney's fees, costs and other expenses incurred by such party to date in connection with any stage of the above-referenced proceeding including, but not limited to, attorney's fees, costs and other expenses which may be available under the Equal Access to Justice Act, as amended.

11. The parties to this Consent Judgment expressly waive any and all claims of any nature which each may have against the other, or any of their officers, agents,

attorneys, employees or representatives, arising out of or in connection with the Plan, or based on the Equal Access to Justice Act, as amended.

12. This Court shall retain jurisdiction over this action and the parties hereto as may be necessary to enforce the provisions of the Consent Judgment. The Court directs the entry of this Consent Judgment as a final order.

13. By signing their names to this Consent Judgment, the parties hereto represent that they are informed and understand the effect and purpose of this Consent Judgment.

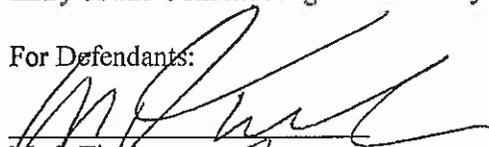
14. This Consent Judgment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

Dated this _____ day of _____, 2014.

JOHN M. GERRARD
United States District Judge

Entry of this Consent Judgment is hereby consented to:

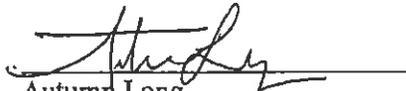
For Defendants:



Mark Tischer
Defendant



Mark Tischer, Trustee of the Tischer Chevrolet Oldsmobile 401(k) Plan
Defendant, on behalf of the Plan


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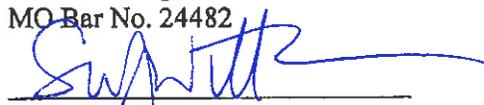
Attorneys for Defendants

For Plaintiff:

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s/ Susan J. Willer
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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June, 2014, I electronically filed the foregoing Motion for Entry of Consent Judgment with the Clerk of the Court using the CM/ECF system, and notification of such filing will be sent postage prepaid mail to:

Autumn Long
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Omaha, NE 68102
(402) 633-1422
along@mcgrathnorth.com

Attorneys for Defendants

/s/Susan J. Willer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THOMAS E. PEREZ, Secretary of
Labor, United States Department of
Labor,

Plaintiff,

vs.

MARK TINCHER, an individual, and
TINCHER CHEVROLET
OLDSMOBILE 401(K) PLAN,

Defendants.

8:14-CV-143

CONSENT JUDGMENT

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor, pursuant to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, [29 U.S.C. § 1001 et seq.](#), filed a complaint against Defendants Mark Tincher ("Tincher") and the Tincher Chevrolet Oldsmobile 401(k) Plan (the "Plan"), alleging breaches of their fiduciary responsibilities under ERISA §§ 402(a) and (b)(4), 403(a), and 404(a)(1)(A), (B), and (D) with respect to the Plan. Defendants have waived service of process of the complaint and admit that this Court has jurisdiction over the parties and that this Court has jurisdiction of this action pursuant to [ERISA § 502\(e\)\(1\)](#), [29 U.S.C. § 1132\(e\)\(1\)](#), and that venue lies with the United States District Court for the District of Nebraska pursuant to [ERISA § 502\(e\)\(2\)](#), [29 U.S.C. § 1132\(e\)\(2\)](#).

A representative of the Employee Benefits Security Administration ("EBSA") has identified Gabel, Schneiders, Hollman & Co., PC, Certified Public Accountants located in Kirkwood, Missouri, to serve as an independent fiduciary of the Tincher Chevrolet Oldsmobile 401(k) Plan. The parties have agreed to entry of this Consent Decree without contest. It appears that the Court has jurisdiction over the parties and subject matter of this action and that the Court is empowered to provide the following equitable relief, and that cause has been shown.

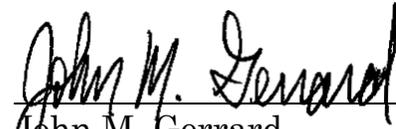
IT IS ORDERED:

1. Defendant Tincher is removed as fiduciary to the Plan.
2. Grabel, Schneiders, Hollman & Co., PC, Certified Public Accountants located in Kirkwood, Missouri, is hereby appointed as the Independent Fiduciary of the Plan, with plenary authority to verify and secure the Plan assets held by Principal Financial Group, to determine and verify participant records, to contact participants regarding distribution options, and to make final distributions of the Plan's assets to participants and beneficiaries, according to the terms of the Plan.
3. The independent fiduciary shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the Plan who is eligible to receive a payment under the terms of this Consent Judgment and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled.
4. The independent fiduciary shall have full access to all data, information, and calculations in the Plan's possession or under its control, including that information contained in the records of the Plan's custodial trustees and other service providers, bearing on the distribution of benefit payments, participant account balances and current plan assets.
5. The independent fiduciary shall obtain bonding in an amount that meets the requirements of ERISA § 412, [29 U.S.C. § 1112](#). The costs incurred by the independent fiduciary in obtaining such bonding shall be paid by the Plan.
6. Within 30 days of the distribution of all of the Plan's assets, the independent fiduciary shall provide the EBSA Regional Director with a report identifying the distributions made by the Plan since the independent fiduciary's appointment.
7. Grabel, Schneiders, Hollman & Co., PC is further granted the authority and duty to terminate the Plan.

8. The Plan shall pay Grabel, Schneiders, Hollman & Co., PC a fee of \$1,500.00 to effectuate distribution of the Plan's assets and for the administration and termination of the Plan.
9. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor, Employee Benefits Security Administration.
10. Each party shall bear his or its own attorney's fees, costs and other expenses incurred by such party to date in connection with any stage of the above-referenced proceeding including, but not limited to, attorney's fees, costs and other expenses which may be available under the Equal Access to Justice Act, as amended.
11. The parties to this Consent Judgment expressly waive any and all claims of any nature which each may have against the other, or any of their officers, agents, attorneys, employees or representatives, arising out of or in connection with the Plan, or based on the Equal Access to Justice Act, as amended.
12. This Court shall retain jurisdiction over this action and the parties hereto as may be necessary to enforce the provisions of the Consent Judgment.
13. The Court directs the entry of this Consent Judgment as a final order.
14. By signing their names to this Consent Judgment, the parties hereto represent that they are informed and understand the effect and purpose of this Consent Judgment.
15. This Consent Judgment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

Dated this 2nd day of July, 2014.

BY THE COURT:



John M. Gerrard
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THOMAS E. PEREZ, Secretary of
Labor, United States Department of
Labor,

Plaintiff,

vs.

MARK TINCHER, an individual, and
TINCHER CHEVROLET
OLDSMOBILE 401(K) PLAN,

Defendants.

8:14-CV-143

ORDER

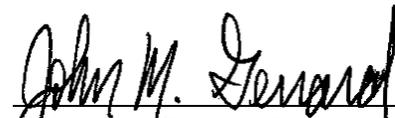
This matter is before the Court on the plaintiff's Motion for Approval and Entry of Consent Judgment (filing 3). Being duly advised in the premises, the Court finds that the motion should be granted.

IT IS ORDERED:

1. The plaintiff's Motion for Approval and Entry of Consent Judgment (filing 3) is granted.
2. A separate judgment will be entered.

Dated this 2nd day of July, 2014.

BY THE COURT:



John M. Gerrard
United States District Judge