

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

	:	
<b>JULIE A. SU</b> , Acting Secretary of Labor,	:	
United States Department of Labor,	:	
	:	
Plaintiff,	:	Case No.
	:	
v.	:	
	:	
<b>FLYING FOOD GROUP, LLC</b> , and the	:	
<b>FLYING FOOD GROUP, LLC</b>	:	
<b>WELFARE BENEFIT PLAN</b> ,	:	
	:	
Defendants.	:	
	:	

**CONSENT ORDER AND JUDGMENT**

Plaintiff JULIE A. SU, Acting Secretary of Labor, United States Department of Labor (“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 Defendant Flying Food Group, LLC (also referred to as the “Company” herein), and the Flying Food Group, LLC Welfare Benefit Plan (“Plan”) (collectively, “Defendants”), alleging breaches of its fiduciary responsibilities under ERISA §§ 404, 406, and 702, 29 U.S.C. §§ 1104, 1106, and 1182, with respect to the Plan. Furthermore, the Plan was also named as a defendant pursuant to Federal Rule of Civil Procedure 19(a) to assure that complete relief would be granted.

Defendants waive service of process of the complaint and have admitted to the jurisdiction of this Court over them and the subject matter of this action. Defendants neither admit nor deny the allegations in the Secretary’s Complaint.

The Secretary and Defendants have agreed to resolve all matters in controversy in this action between them, and said parties do now consent to entry of a Consent Order and Judgment by this Court in accordance therewith.

Prior to this litigation, Defendants paid a total of \$84,944.54 to Plan participants, \$79,780 constituting reimbursement of \$79,780 for overpayment of health insurance premiums for tobacco users and \$5,164.57 for improper deductibles imposed upon them for certain outpatient diagnostic services and mammograms.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED, ADJUDICATED, AND DECREED that:

1. Defendant Flying Food Group, LLC is liable for \$117,562.70 in losses to the Plan during the period of January 7, 2013, through December 31, 2017, which represents the amount necessary to reimburse participants for improper deductibles imposed upon them for certain outpatient diagnostic services and mammograms.

2. Within 110 days of the entry of this Consent Order and Judgment, Defendant Flying Food Group, LLC, shall restore \$117,562.70 to the Plan by having the Company remit these monies to the Plan participants in accordance with Exhibit A, attached hereto and made a part hereof. The participants listed on Exhibit A were Plan participants during the period of January 7, 2013, through December 31, 2017, whom the Secretary alleges received certain outpatient diagnostic services and mammograms for which an improper deductible was imposed. Within 130 days of the entry of this Consent Order and Judgment, Defendants shall provide the Secretary with documentary proof of the distribution of checks to the Exhibit A participants by submitting copies of the issued checks and proof of mailing via US Postal Service, UPS, or

Federal Express to the Regional Director at United States Department of Labor, Employee Benefits Security Administration, 230 South Dearborn Street, Suite 2160, Chicago, IL 60604. Proof of mailing may be substantiated by an affidavit asserting the mailing of checks from a Company executive responsible for ensuring payment.

3. Defendant Flying Food Group, LLC shall take appropriate actions to locate each participant or beneficiary identified in Exhibit A by following the procedures set forth in the attached Exhibit B. Some of these procedures may have been accomplished already.

4. Defendant Flying Food Group, LLC, is also liable for \$16,660 in losses to the Plan during the period of January 1, 2011, through April 30, 2018, which represents the overpayment of health insurance premiums based on tobacco use by participants not previously reimbursed by Defendant Flying Food Group, LLC, identified in the attached Exhibit C.

5. Within 110 days of the entry of this Consent Order and Judgment, Defendant Flying Food Group, LLC, shall restore \$16,660 to the Plan participants identified in Exhibit C by having the Company remit these monies to the Plan participants. Within 130 days of this Consent Order and Judgment, Defendant Flying Food Group, LLC shall provide documentary proof of the distribution of checks to the Plan participants identified in Exhibit C by submitting copies of the issued checks and proof of mailing via US Postal Service, UPS, or Federal Express to the Regional Director at United States Department of Labor, Employee Benefits Security Administration, 230 South Dearborn Street, Suite 2160, Chicago, Illinois 60604. Proof of mailing may be substantiated by an affidavit asserting the mailing of checks from a Company executive responsible for ensuring payment. Defendant Flying Food Group, LLC shall follow the procedures set forth in Exhibit B to provide reimbursement to the participants identified in Exhibit C. Some of these procedures may have been accomplished already.

6. Within 90 days of completing compliance with Paragraphs 1 through 5 above, including compliance with the procedures set forth in Exhibit B, Defendant Flying Food Group, LLC, shall provide to the Regional Director at United States Department of Labor, Employee Benefits Security Administration, 230 South Dearborn Street, Suite 2160, Chicago, IL 60604: (1) copies of the fronts and backs of cancelled checks issued by the financial institution showing all monies restored to Plan participants; and (2) for any lost Plan participants still owed money, a list identifying each participant's name, amount owed, the methods used to attempt to locate the participants, and for each such participant a summary of the actions Defendant took to comply with the missing participant search policy in Exhibit B. If any monies owed to the missing participants are escheated to a State, Defendant will also provide a list identifying the State(s) to which the monies were escheated, the amount escheated for each such participant, and the date of escheatment.

7. Based upon the amounts in Paragraphs 1 and 4 above, the Secretary has determined Defendant Flying Food Group, LLC, shall be and hereby is assessed a total penalty pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l), of \$26,844.54. Based on the information provided, the Secretary will reduce the amount of the penalty by 50% to \$13,422.27. Therefore, the Secretary hereby does and will accept as full satisfaction of the assessed penalty, the amount of \$13,422.27. Defendant Flying Food Group, LLC waives its right to a separate notice of assessment of the penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), the service requirement of 29 C.F.R. § 2570.83, and its right to seek any further reductions of or relief from the penalty under ERISA § 502(l), 29 U.S.C. § 1132(l).

8. Defendant Flying Food Group, LLC shall pay the penalty under ERISA § 502(l), 29 U.S.C. § 1132(l) within 90 days of the entry of this Consent Order and Judgment, by remitting a payment online at <https://www.pay.gov/public/form/start/1063197296>.

9. The online payment referenced in Paragraph 8 above shall be made payable to the United States Department of Labor and will reference EBSA Case No. 50-033689 (50) and the name of the Plan.

10. Within 10 business days of completing compliance with Paragraphs 8 and 9 above, Defendant Flying Food Group, LLC shall provide notice of such to the Regional Director at United States Department of Labor, Employee Benefits Security Administration, 230 South Dearborn Street, Room2160, Chicago, Illinois 60604.

11. Upon payment of amounts and submission of documentation as set forth in ¶¶ 2, 5, 6, 8, and 10, the Secretary shall file with the Court a Notice of Satisfaction of Monetary Portion of the Judgment.

12. Each party agrees to bear its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

13. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Order and Judgment.

14. Nothing in this Order is binding on any government agency other than the United States Department of Labor.

DATED \_\_\_\_\_, 2023

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

The parties hereby consent to the entry of this consent order and judgment:

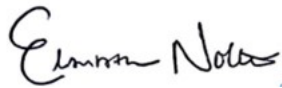
FOR THE ACTING SECRETARY OF LABOR:

**SEEMA NANDA**

Solicitor of Labor

**CHRISTINE Z. HERI**

Regional Solicitor



**ELISABETH S. NOLTE**

Senior Trial Attorney

DATED: 8/30/2023

**P.O. ADDRESS:**

Office of the Solicitor

U.S. Department of Labor

230 S. Dearborn St., Room 844

Chicago, IL 60604

T: (312) 353-7237

Email: nolte.elisabeth.p@dol.gov

FOR THE DEFENDANTS:

FLYING FOOD GROUP, LLC

By:   
Title: Vice President of Finance

DATED: 8/30/23

FLYING FOOD GROUP, LLC  
WELFARE BENEFIT PLAN

By:   
Title: General Counsel

DATED: 8/30/23

272984419v2