

parties agree that if the Secretary assesses a penalty pursuant to ERISA §502(l) in connection with the violations alleged in this matter, the “applicable recovery amount” shall include all amounts paid in accordance with this *Consent Order*.

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*.

IT IS THEREFORE ORDERED that:

1. Defendant Black is permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §1001 *et seq.*
2. Defendant Black is permanently enjoined from serving or acting as a fiduciary to any ERISA-covered employee benefit plan and is removed from any position she now holds as a fiduciary of the Plan.
3. Defendant Black is liable to the Plan in the total amount of \$22,106.57, consisting of the following:
 - A. \$18,385.41 (Recovery Amount), which represents \$13,067.35 in employee contributions and loan repayments owed to the Plan for participants other than herself for the period from August 3, 2010, to May 27, 2011, and lost opportunity costs² through April 30, 2013, on that amount as well as on \$125,867.80 in untimely remitted employee contributions and loan repayments to the Plan for the period July 13, 2007, through August 5, 2010.
 - B. \$3,721.16, which represents \$2,845.50 in unremitted employee contributions and loan repayments owed to her and \$875.66 in associated lost opportunity costs for unremitted and untimely remitted employee contributions and loan repayments during the

² All lost opportunity costs were calculated using the higher of the Plan’s rate of return or Internal Revenue Code §6621 interest rates.

periods specified in Paragraph 3(A) above. Defendant Black waives repayment of these sums to her individual Plan account as part of the resolution of this matter.

4. Within 10 days of the entry of this *Consent Order*, Defendant Black shall direct the Plan to reallocate 100% of her Plan account to the investment accounts of the Plan's other participants as authorized by §1502(a) of the Taxpayer Relief Act of 1997, codified at 29 U.S.C. §1056(d)(4), to fund, in part, her debt to the Plan as described in Paragraph 3. The reallocation shall be made at the direction of LeFoldt & Co. in accordance with Paragraph 9. The Plan is hereby amended to allow for forfeiture of Defendant Black's individual Plan account as authorized by §1502(a) of the Taxpayer Relief Act of 1997. This *Consent Order* shall be attached to the Plan document as an amendment.

5. Defendant Black's remaining liability to the Plan will be calculated by LeFoldt & Co. after it determines her individual Plan account balance and then subtracts it from the \$18,385.41 Recovery Amount. Defendant Black agrees to restore the remainder of her liability to the Plan in two payments to be made on June 1, 2013, and August 1, 2013. The June 1, 2013, payment shall be \$2,500. The August 1, 2013, payment shall be the remainder of Defendant Black's liability after her Plan account balance and the \$2,500 June 1, 2013, payment are subtracted from the Recovery Amount. For each payment, Defendant Black shall send a cashier's check made payable to the "Fresh Start, Inc., 401(k) Plan" to the Plan so that it is received by the due date. Defendant Black shall not pay more or less to the Plan than the Recovery Amount.

6. Defendant Black shall provide the Secretary with satisfactory proof of the payments described in Paragraph 5 within 10 calendar days following payment.

7. Upon receipt of the payments made to the Plan as described herein, the Plan shall credit the restoration described in Paragraphs 3, 4 and 5 to the investment accounts of any individuals, except Defendant Black, who: (1) were employees of Fresh Start, Inc.; (2) were Plan participants during the period July 13, 2007, through May 27, 2011; and (3) had voluntary employee contributions withheld from their pay for contribution to the Plan during this period and such contributions were not remitted to the Plan or remitted in an untimely manner. The Plan shall allocate the aforementioned restoration to the individual investment accounts of the Plan's participants or make payment directly to those participants who no longer have account balances, in amounts proportionate to the unremitted contributions and loan repayments and/or lost opportunity costs owed to each participant, pursuant to direction provided by LeFoldt & Co., P.A. (LeFoldt & Co.), the independent fiduciary appointed herein.

8. If Defendant Black does not otherwise restore \$18,385.41 to the Plan in accordance with Paragraphs 3, 4 and 5, the entire amount of the balance remaining after reallocation of her Plan account described in Paragraph 4 shall become immediately due and payable by her together with post-judgment interest pursuant to 28 U.S.C. §1961 with no further notice or demand required by the Secretary to Defendant Black.

9. LeFoldt & Co., 690 Towne Center Boulevard, P.O. Box 2848, Ridgeland, Mississippi 39158-2848, is appointed as the independent fiduciary for the Plan. It shall have the following powers, duties and responsibilities:

A. It shall have the responsibility and authority to terminate the Plan, distribute its assets to the participants and beneficiaries, and conclude any Plan-related matters connected with the proper termination of the Plan.

B. It shall have responsibility and authority to collect, liquidate, and manage such assets of the Plan for the benefit of the eligible participants and beneficiaries of the Plan who are entitled to receive such assets, until such time that the assets of the Plan are distributed to the eligible participants and beneficiaries of the Plan;

C. It 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 Order* to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled;

D. It shall have full access to all data, information and calculations in the Plan's possession or under its control, including 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;

E. It shall obtain bonding in an amount that meets the requirements of ERISA §412, 29 U.S.C. §1112. The costs it incurs in obtaining such bonding shall be paid by the Plan.

F. Within thirty days of the distribution of all of the Plan's assets, it shall provide to the Regional Director, Employee Benefits Security Administration (EBSA), Cincinnati Regional Office, Ft. Wright Executive Building, 1885 Dixie Highway, Room 210, Fort Wright, KY, 41011-2662, a written report identifying the distributions the Plan has made since its appointment

10. For the services performed pursuant to this *Consent Order*, the independent fiduciary shall receive compensation not to exceed \$2,943.75 for fees and expenses reasonably and necessarily incurred. Its fees and expenses described in Paragraph 8(E) and this paragraph

The parties hereby consent to the entry of this *Consent Order and Judgment*.

FOR THE DEFENDANT:

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s/Alan I. Silver
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FOR THE PLAINTIFF:

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s/Eileen R. Hurley
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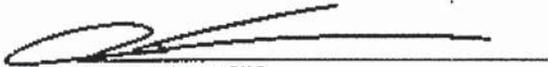
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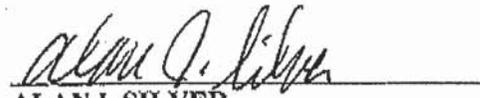
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The parties hereby consent to the entry of this *Consent Order and Judgment*.

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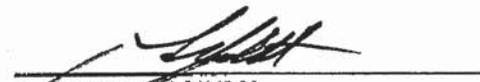
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CERTIFICATE OF SERVICE

I certify that a copy of the *Consent Order and Judgment* was filed electronically on the 9th day of May, 2013. Notice of this filing will be sent electronically to the following parties by operation of the court's electronic filing system. Parties may access this document through the court's ECF system.

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