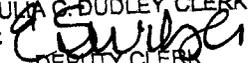


CLERK'S OFFICE U.S. DIST. COURT
AT ABINGDON, VA
FILED

JUL 31 2014

JULIA C. DUDLEY, CLERK
BY:  DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

THOMAS E. PEREZ, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR, :

Plaintiff, : CIVIL ACTION

v. : No. 1:13-cv-00091-JPJ-PMS

REBECCA BELLAMY, AMERICAN :
HOME CARE, LLC. AND :
AMERICAN HOME CARE, LLC :
SIMPLE IRA PLAN :

Defendants. :

CONSENT JUDGMENT

Plaintiff, Secretary of Labor, United States Department of Labor ("Secretary"), has filed a Complaint in this action pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, alleging certain violations by each of the above-captioned defendants.

Counsel for the Secretary has engaged in settlement discussions with counsel for defendants Rebecca Bellamy ("Ms. Bellamy") and American Home Care, LLC. The parties have agreed to resolve all claims against the defendants without further litigation. The American Home Care SIMPLE IRA Plan (the "Plan") was joined as a party defendant under Fed. R. Civ. P. 19(a) solely to assure that complete relief could be granted. Ms. Bellamy and American Home Care, LLC consent to the entry of this Consent Judgment against them by this Court, the terms of which are set forth herein:

1. The Secretary's Complaint alleges that Ms. Bellamy and American Home Care, LLC violated Sections 403, 404 and 406 of the ERISA, 29 U.S.C. §§ 1103, 1104 and 1106.
2. For purposes of this Consent Judgment, Ms. Bellamy and American Home Care, LLC admit that the Court has jurisdiction over them and the subject matter of this action.
3. The Secretary has agreed to resolve all claims asserted in the Complaint against Ms. Bellamy and American Home Care, LLC for the relief set forth below.
4. The Secretary, Ms. Bellamy and American Home Care, LLC have exchanged information regarding the full names of the participants owed restitution and the amounts.
5. The Secretary, Ms. Bellamy and American Home Care, LLC understand and agree that entry of this Consent Judgment is without prejudice to the Secretary's right to investigate and redress violations of ERISA, if any, not alleged in the Complaint, including the Secretary's right to institute future enforcement actions with respect to any other such matter. It is further understood that this paragraph shall not constitute a waiver by Ms. Bellamy of any defenses, legal or equitable, to any such future action.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that:

- a. This Court has jurisdiction over this action and Ms. Bellamy and American Home Care, LLC.
- b. Ms. Bellamy shall restore \$12,713.07 to participants in the American Home Care LLC SIMPLE IRA Plan ("the Plan") as restitution for unremitted employee withholdings (\$10,613.76 in missing contributions and \$2,099.31 in lost opportunity costs) as follows:

Participant Initials	Amount of Restitution Owed
AB	\$50.05
BF	\$2,517.44
CM	\$519.59
DR	\$1,126.71
DS	\$279.87
JF	\$182.62
KC	\$618.79
KD	\$343.17
KM	\$3,785.76
KirM	\$1,055.98
LC	\$1,341.74
LiC	\$248.16
LL	\$73.46
RF	\$25.99
RR	\$543.74
TOTAL	\$12,713.07

- c. The restitution payments shall be distributed pro rata to Plan participants and shall be in accordance with the payment schedule set forth in paragraphs f and g below.
- d. The restitution payments shall be made by check and made payable directly to the Plan participants. Plan participants each will have their own responsibility for any tax consequences that may arise from receipt of the restitution payment.
- e. A copy of this Consent Judgment shall be provided to each Plan participant along with the first payment made pursuant to paragraph f.

- f. Within ten (10) days of the entry of this Order, Ms. Bellamy shall pay \$3,000.00 to Plan participants to be distributed as follows:

Participant Initials	Amount of Restitution Owed
AB	\$11.81
BF	\$594.06
CM	\$122.61
DR	\$265.88
DS	\$66.04
JF	\$43.09
KC	\$146.02
KD	\$80.98
KM	\$893.35
KirM	\$249.19
LC	\$316.62
LIC	\$58.56
LL	\$17.34
RF	\$6.13
RR	\$128.32
TOTAL	\$3,000.00

- g. Ms. Bellamy shall make annual restitution payments of \$2,000.00 on the first day of January in years 2015, 2016, 2017 and 2018 to Plan participants to be distributed as follows:

Participant Initials	Amount of Restitution Owed
AB	\$7.87
BF	\$396.04
CM	\$81.74
DR	\$177.25
DS	\$44.03
JF	\$28.73
KC	\$97.35
KD	\$53.99
KM	\$595.57
KirM	\$166.12
LC	\$211.08
LiC	\$39.04
LL	\$11.56
RF	\$4.09
RR	\$85.54
TOTAL	\$2,000.00

h. Ms. Bellamy shall make a final restitution payment \$1,713.07.00 on the first day of January in 2019 to Plan participants to be distributed as follows:

Participant Initials	Amount of Restitution Owed
AB	\$6.74
BF	\$339.22
CM	\$70.01
DR	\$151.82
DS	\$37.71

Participant Initials	Amount of Restitution Owed
JF	\$24.61
KC	\$83.38
KD	\$46.24
KM	\$510.13
KirM	\$142.29
LC	\$180.80
LiC	\$33.44
LL	\$9.90
RF	\$3.50
RR	\$73.28
TOTAL	\$1,713.07

- i. In the event that the location of Plan participants who are owed restitution is unknown, Ms. Bellamy shall immediately utilize any and all means available to her to locate, verify and memorialize contact with the Plan participant in accordance with any applicable procedures promulgated by the United States Department of Labor, Employee Benefits Security Administration such as those contained in Field Assistance Bulletin 2004-02 ("FAB") regarding Fiduciary Duties and Missing Participants in Terminated Defined Contribution Plans. Defendant acknowledges that a copy of the FAB was provided to her. The FAB also is available online at http://www.dol.gov/ebsa/regs/fab_2004-2.html.

- j. Defendant shall follow any applicable guidance found in the FAB and any other guidance that may be promulgated by the Employee Benefits Security Administration regarding distributions to participants who cannot be located.
- k. No later than 30 days after the entry of this Consent Judgment, Defendant shall submit an initial accounting of her effort to locate missing Plan participants to:

Regional Director
Employee Benefits Security Administration
Washington District Office
1335 East-West Highway, Suite 200
Silver Spring, MD 20910

(referred to hereinafter as "EBSA Philadelphia Regional Director")

This initial accounting shall include the following:

1. All Plan participants contacted;
 2. All verified Plan participant contact information; and
 3. The identity of all Plan participants who appear un-locatable as of 30 days after the entry of this Consent Judgment, despite reasonable efforts of Defendant to locate them, along with an explanation of the detailed efforts which were undertaken to locate such missing participants.
- l. No later than 24 months after approval of this Consent Judgment, Defendant shall provide to the EBSA Philadelphia Regional Director a written report and accounting that shall include the following information with particularity:
 1. The efforts used to locate Plan participants;

2. All individual Plan participant contact information verified as of such date;
 3. The identities of any Plan participants who, despite all reasonable efforts, have not been located, along with the particular efforts that were undertaken to locate such participants; and
 4. With regards to the monies due to the participants who could not be located, which option Defendant has chosen to follow regarding such undistributed monies, as set forth in the FAB.
- m. No part of the restitution payments shall be distributed to Ms. Bellamy and Ms. Bellamy waives all rights and claims as to the restitution payments.
- n. Within five (5) days of each restitution payment, Ms. Bellamy shall furnish satisfactory evidence of the payment to each Plan participant to EBSA's Philadelphia Regional Director.
- o. If, for any reason, payments are not timely made or reports provided as described above, Ms. Bellamy shall immediately be deemed to have defaulted her obligations under this Consent Judgment. The entire balance then owing, plus interest to be calculated at the post-judgment rate of interest in effect at the time of the entry of this Consent Judgment and the Secretary's reasonable attorneys' fees, shall become immediately due and payable. Upon default by Ms. Bellamy, Secretary shall be entitled to immediately collect the entire outstanding balance due to the Plan participants by any process allowed by law, including execution, garnishment and levy.

- p. No later than April 20th of each year in which restitution payments remain due, Ms. Bellamy shall forward a copy of her individual state and federal tax returns to the EBSA Philadelphia Regional Director. The Secretary reserves his right to seek Court approval of higher restitution payments under this Consent Judgment based on the information contained within Ms. Bellamy's tax returns and Ms. Bellamy acknowledges this right.
- q. On January 15, 2015 and every two years thereafter until the full restitution amount is paid to Plan Participants, Ms. Bellamy shall complete and forward the asset affidavit attached hereto as Exhibit A to the EBSA Philadelphia Regional Director. The Secretary reserves his right to seek Court approval of higher restitution payments under this Consent Judgment based on the information contained within Ms. Bellamy's asset affidavits and Ms. Bellamy acknowledges this right.
- r. Within ten (10) days of any change in home address or in employment, Ms. Bellamy shall notify the EBSA Philadelphia Regional Director in writing of such change.
- s. Ms. Bellamy shall have the right to make greater payments towards the balance of the money due without penalty.
- t. If Ms. Bellamy files for any form of bankruptcy prior to the full payment of restitution to the Plan, Ms. Bellamy will not oppose any proof of claim that the Secretary of Labor files in the bankruptcy proceeding for any amount still owing

to Plan participants and she will not oppose an adversarial action that the Secretary may file to have the debt to the Plan declared non-dischargeable.

- u. Upon receiving proof of payment of restitution, the Secretary shall assess a penalty against Ms. Bellamy of 20 percent of the applicable recovery amount pursuant to ERISA § 502(1), 29 U.S.C. § 1132(1). Unless she applies for a waiver, Ms. Bellamy shall pay any applicable penalty within ten days of receipt of the notice of assessment. If Ms. Bellamy applies for a waiver or reduction of the penalty amount pursuant to ERISA § 502(1)(3), 29 U.S.C. § 1132(1)(3), and is denied such waiver or reduction by the Secretary, she shall pay any applicable penalty amount within ten days of the Secretary's denial.
- v. Ms. Bellamy is permanently enjoined from serving as trustee, fiduciary, advisor, or administrator to any employee benefit plan, as that term is defined at Section 3(3) of ERISA, 29 U.S.C. § 1002(3). Ms. Bellamy is permanently enjoined from serving in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan.
- w. The Secretary and Ms. Bellamy shall each bear their own costs, expenses, and attorneys' fees incurred to date in connection with any stage of this proceeding, including but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.
- x. This Consent Judgment shall operate as a final disposition of all claims asserted by the Secretary against Ms. Bellamy in the Complaint.

- y. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor.
- z. This Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment.
- aa. The Court directs the entry of this Consent Judgment as a final order.

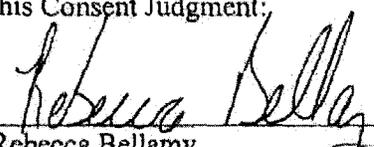
Date: 7-24-14

ENTER: 7/31/14



 James V. Jones
 United States District Judge

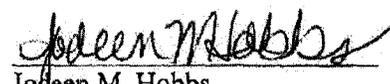
Defendant Rebecca Bellamy
consents to entry of
this Consent Judgment:



 Rebecca Bellamy

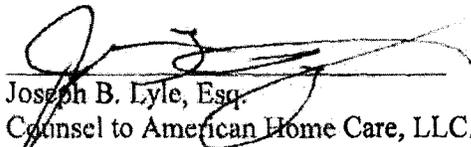
M. Patricia Smith
Solicitor of Labor

Linda Thomasson
Acting Regional Solicitor



 Jojeen M. Hobbs
 Attorney
 PA Bar ID 80200
 Office of the Solicitor
 Suite 630E, The Curtis Center
 170 S. Independence Mall West
 Philadelphia, PA 19106
 (215) 861-5143
 (215) 861-5162 (fax)

Defendant American
Home Care, LLC
Consents to entry of
this Consent Judgment:



 Joseph B. Lyle, Esq.
 Counsel to American Home Care, LLC.

U.S. DEPARTMENT OF LABOR