

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

HILDA L. SOLIS,

Plaintiff,

v.

Case No. 11-C-0438

JENDUSA ENGINEERING ASSOCIATES, INC.,
JAMES JENDUSA, and CARRIE JENDUSA,
individually and as fiduciaries to the
JENDUSA ENGINEERING ASSOCIATES, INC.
401(K) PLAN, and JENDUSA ENGINEERING
ASSOCIATES, INC. 401(K) PLAN,

Defendants.

CONSENT ORDER

Plaintiff Hilda L. Solis, Secretary of Labor ("Secretary"), United States Department of Labor, filed an amended complaint against defendants Jendusa Engineering Associates, Inc., James Jendusa, Carrie Jendusa, and Jendusa Engineering Associates, Inc. 401(k) Plan (collectively "defendants"), alleging that they violated their fiduciary obligations under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1001, et seq. with respect to their administration of the Jendusa Engineering Associates, Inc. 401(k) Plan ("Plan").

Defendants waive service of process of the Secretary's first-amended complaint and admit to the jurisdiction of this court over them and the subject matter of this action.

Plaintiff and defendants have agreed to resolve all matters in controversy in this action between them (except for the imposition by plaintiff of any penalty pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l), and any proceedings related thereto), and said parties do now consent to entry of a consent order and judgment by this court in accordance therewith.

Now, therefore, upon consideration of the record herein, and as agreed to by the parties hereto, the court finds that it has jurisdiction to enter this consent order and judgment, and being fully advised in the premises,

IT IS ORDERED that:

1. Defendants are jointly and severally liable to the Jendusa Engineering Associates, Inc. 401(k) Plan ("Plan") in the total amount of \$13,112.56, which represents \$10,441.53 in unremitted employee contributions and \$2,671.03 in lost opportunity costs

2. Upon execution of the consent order and judgment, defendants shall pay \$1,092.71 to the Plan. Defendants will provide the Regional Director at Department of Labor, EBSA, 230 S. Dearborn St., 21st Floor, Chicago, Illinois 60604, with satisfactory proof of this payment to the Plan.

3. Defendants shall pay the Plan the remaining \$12,019.85 owed to the Plan in 11 consecutive monthly installments of \$1,092.71 starting thirty (30) days after the execution of this agreement and continuing every thirty (30) days thereafter. Defendants will provide proof of payment to the Regional Director at Department of Labor, EBSA, 230 S. Dearborn St., 21st Floor, Chicago, Illinois 60604. Nothing herein

shall prevent the defendants from making payments to the Plan on an accelerated basis.

4. Should defendants fail to pay any of the installment payments described in this paragraph on or before the dates set forth herein, the entire amount of the balance remaining shall become due and payable immediately together with post-judgment interest pursuant to 28 U.S.C. §1961 with no further notice or demand required by plaintiff to defendants.

5. The Independent Fiduciary, Monica A. Dannenfelser, a C.P.A. working part-time for Jendusa Design & Engineering, Inc., at N64 W33734 Lakeview Dr., Oconomowoc, WI 53066, Telephone 262-370-7138 and/or 4615 Vettelson Rd., Suite 200, Hartland, WI 53029, Telephone 262-264-6340, is appointed and charged with the proper administration and termination of the Plan and having the following powers, duties, and responsibilities:

a. The Independent Fiduciary shall have the responsibility and authority to collect, liquidate, and manage such assets of the Plan for the benefit of the eligible participants and beneficiaries for 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;

b. 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 order and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled;

c. 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;

d. The Independent Fiduciary may retain such persons and firms including but not limited to accountants and attorneys, as may be reasonably required to perform his duties hereunder; and

e. The Trustee 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. 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, including attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

7. The court retains jurisdiction for purposes of enforcing compliance with the terms of the judgment.

Dated at Milwaukee, Wisconsin, this 7th day of October, 2011.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
CHIEF U. S. DISTRICT JUDGE