

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

HILDA L. SOLIS,)
Secretary of Labor,)
United States Department of Labor,)
)
Plaintiff,)
)
v.)
)
OTORHINOLARYNGOLOGY ASSOCIATES,)
P.C.; OTORHINOLARYNGOLOGY)
ASSOCIATES, P.C., PROFIT SHARING PLAN;)
and DR. RICKEY GENE LOVE,)
)
Defendants.)

FILE NO.

2:11CV822-WKW

CONSENT JUDGMENT AND ORDER

Plaintiff, Secretary of Labor, United States Department of Labor, pursuant to her authority under §§ 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(5), of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., ("ERISA") has filed a Complaint against Defendants Otorhinolaryngology Associates, P.C. ("OTO") and Dr. Rickey Gene Love ("Love") (referred to collectively herein as "Defendants"). The Complaint also names the Otorhinolaryngology Associates, P.C. Profit Sharing Plan (the "Plan") as a party defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to ensure that complete relief may be granted. Defendants and the Secretary have agreed to resolve all matters in controversy

in this action, and said parties do now consent to entry of a Judgment and Order by this Court in accordance herewith.

A. The Secretary's Complaint alleges that Defendants Love and OTO breached their fiduciary duties with respect to the Plan by failing to discharge their duties under the Plan and by violating provisions of §§ 404(a)(1)(A), 404(a)(1)(B) and 405(a)(1)(C) of ERISA, 29 U.S.C. §§ 1104(a)(1)(A), 1104(a)(1)(B) and 1104(a)(1)(C), as set forth in the Complaint.

B. Defendants hereby admit to the jurisdiction of the Court over them and over the subject matter of this action. Defendants admit that this Court has the authority to enforce this Order and that this Court is the most appropriate venue for any enforcement action which may be required as a result of this Order.

C. Defendants neither admit nor deny the allegations in the Complaint.

D. Defendants expressly waive any and all claims of whatsoever nature that they have or may have against the Secretary, or any of her officers, agents, employees, or representatives, arising out of or in connection with the filing, prosecution, and maintenance of this civil action or any other proceeding and investigation incident thereto.

E. This Order represents a complete settlement of all the Secretary's claims asserted in this action against Defendants Love and OTO, with the exception of any potential civil money penalties that may be assessed under § 502(l) of ERISA, 29 U.S.C.

§ 1132(l). This Order is not binding upon any government agency other than the U.S. Department of Labor and only resolves claims arising out of this action as between the Secretary and Defendants Love and OTO.

F. The Secretary and Defendants expressly waive Findings of Fact and Conclusions of Law, except as otherwise set forth and addressed herein, and consent to the entry of this Order as a full and complete resolution of all claims and issues which were, or might have been, alleged in this action without trial or adjudication of any issue of fact or law raised in the Complaint.

Accordingly, it is **ORDERED ADJUDGED AND DECREED** that:

1. The Court has jurisdiction over the parties to this Order and the subject matter of this action and is empowered to provide the relief herein.
2. Defendants Love and OTO, their agents, servants, employees and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from violating the provisions of Title I of ERISA.
3. Defendant Love is hereby permanently enjoined from acting as a fiduciary, trustee, agent, or representative in any capacity to any employee benefit plan, as defined by ERISA.
4. Defendant Rickey Gene Love agrees to allow any participant interest he may have in any existing or future assets of the Plan to be applied as an offset against the amounts that the Secretary has alleged are due to the Plan, as authorized by ERISA § 206(d)(4). The Plan document is hereby deemed amended to

permit the distribution and offset of Love's participant interest, as provided herein. A full executed copy of this Consent Judgment and Order shall be maintained by the Plan administrator with all other documents and instruments governing the Plan.

5. By her signature below, Mrs. Candace Jones Love, spouse of Rickey Gene Love, waives any claims that she may have for her spouse's benefits under the Plan with respect to her spouse's account, which will be redistributed to other participants, and acknowledges that she understands: (a) that the effect of such consent may be to forfeit the benefits that she would be entitled to receive upon her spouse's death; (b) that her spouse's waiver is not valid without her consent; and (c) that her consent is irrevocable upon the entry of this Order.

6. By her signature below, Mrs. Candace Jones Love, spouse of Rickey Gene Love, agrees to allow any participant interest she may have in any existing or future assets of the Plan to be applied as an offset against the amounts that the Secretary has alleged are due to the Plan, as authorized by ERISA § 206(d)(4). The Plan document is hereby deemed amended to permit the distribution and offset of Mrs. Candace Jones Love's participant interest, as provided herein. A full executed copy of this Consent Judgment and Order shall be maintained by the Plan administrator with all other documents and instruments governing the Plan.

7. Jeanne B. Bryant of Receivership Management, Inc., 783 Old Hickory Blvd., Suite 255, Brentwood, TN 37027, is appointed as successor fiduciary for the Plan and:

a. The successor fiduciary shall collect, marshal, and administer all of the Plan's assets and take such further actions with respect to the Plan as may be appropriate.

b. The successor fiduciary shall have all the rights, duties, and responsibilities of any fiduciary or trustee described under the Plan documents or the applicable law, with respect to the successor fiduciary's duties.

c. The successor fiduciary is authorized to delegate or assign fiduciary duties as appropriate and allowed under the law.

d. The successor fiduciary shall be entitled to receive reasonable fees and expenses for his or her services. Defendants Love and OTO shall be responsible for paying the entire successor fiduciary's reasonable fees and expenses with respect to services performed for the Plan. The successor fiduciary shall send invoices for such fees and expenses to Defendant Love and OTO at such times and on such a schedule as the successor fiduciary, in his or her sole discretion, deems appropriate. Defendants Love and OTO acknowledge and agree that these invoices will be considered properly delivered if they are deposited in the United States mail, addressed to: **Dr. Rickey Gene Love, c/o James Wilson, Esq., 4265 Lomac Street, Montgomery, Alabama, 36106.**

e. Full payment of each invoice shall be made by Defendants Love and OTO and received by the successor fiduciary not later than the 16th day following the date of the invoice. Interest shall accrue on any past due amount at the

rate of 18% per annum, compounded daily. Defendants Love and OTO shall be responsible, jointly and severally, for all costs, including reasonable attorneys' fees and expenses, incurred by the successor fiduciary in the course of collecting such past due amounts.

f. Defendants Love and OTO shall deliver or otherwise make available to the successor fiduciary any information, documents, files or other compilations, wherever and however stored; that are reasonably necessary to perform the duties of the successor fiduciary.

g. The successor fiduciary is authorized to give instructions respecting the disposition of assets of the Plan.

h. The successor fiduciary in the performance of his or her duties may retain such assistance as he or she may require, including attorneys, accountants, actuaries and other service providers.

i. The payment of administrative expenses and all fees to the successor fiduciary, his assistants, attorneys, accountants, actuaries and other necessary service providers are to be considered priority administrative expenses of the Plan.

j. The successor fiduciary or his agents, employees or representatives may not be held personally responsible for any claims against the Plan which existed, arose, matured or vested prior to the appointment of the successor fiduciary.

k. The successor fiduciary is to comply with all applicable rules

and laws.

8. This Consent Judgment resolves all claims of Plaintiff's Complaint with the following exceptions:

a. This Judgment does not adjudicate or otherwise affect any potential civil money penalties that may be assessed under § 502 (l) of the Act.

b. This Judgment does not affect or bind any governmental agency other than the United States Department of Labor.

c. This Court retains jurisdiction for purposes of enforcing compliance with the terms of this Consent Order and Judgment.

9. Each party shall bear its own costs and expenses, including attorneys' fees, arising in connection with any stage of the above-referenced proceeding including but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

This ____ day of _____, 2011.

UNITED STATES DISTRICT JUDGE

Defendants consent to entry of the foregoing Judgment:

DR. RICKEY GENE LOVE,
OTORHINOLARYNGOLOGY
ASSOCIATES, P.C. and
OTORHINOLARYNGOLOGY
ASSOCIATES, P.C. PROFIT
SHARING PLAN.

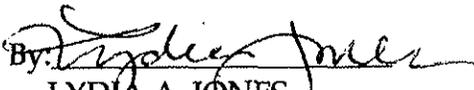
By: 
DR. RICKEY GENE LOVE

Plaintiff moves entry of the foregoing Judgment:

M. PATRICIA SMITH
Solicitor of Labor

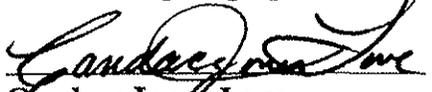
STANLEY E. KEEN
Regional Solicitor

ROBERT M. LEWIS, JR.
Counsel

By: 
LYDIA A. JONES
Attorney

SPOUSAL CONSENT:

Candace Jones Love, wife of Dr. Rickey Gene Love, hereby consents to entry of this Order, and specifically consents to the terms set forth in paragraphs 5 and 6 of the Order.


Candace Jones Love
Wife of Dr. Rickey Gene Love

Office of the Solicitor
U.S. Department of Labor
61 Forsyth Street, S.W.
Room 7T10
Atlanta, GA 30303
(404) 302-5435
(404) 302-5438 (FAX)
Attorneys for Plaintiff

State of Alabama
County of Montgomery

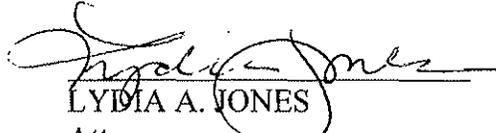
SWORN TO and SUBSCRIBED before me this
26th day of September, 2011.


Notary Public
My Commission Expires: Nov 23, 2011 (SEAL)

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Consent Judgment and Order between the Secretary of Labor and Defendants OTORHINOLARYNGOLOGY Associates, P.C.; OTORHINOLARYNGOLOGY Associates, P.C., Profit Sharing Plan; and Dr. Rickey Gene Love was served by first class mail this 29th day of September, 2011, addressed to:

Mr. James Eldon Wilson, Esq.
4265 Lomac Street
Montgomery, AL 36106


LYDIA A. JONES
Attorney

SOL Case No. 11-04020