

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

SETH D. HARRIS , Acting Secretary of Labor, Successor to Hilda L. Solis, U.S. Department of Labor,	:	
	:	
	:	
Plaintiff,	:	File No.: 11-cv-13906
	:	
v.	:	Judge Nancy G. Edmunds
	:	
ODELL JONES, III , et. al.,	:	Mag. Judge Mark A. Randon
	:	
Defendants.	:	

**MOTION TO APPROVE CONSENT JUDGMENT AND ORDER
AS TO REMAINING DEFENDANTS**

Plaintiff Seth D. Harris, Acting Secretary of Labor, United States Department of Labor, by his undersigned attorney, respectfully requests that the Court enter the executed Consent Judgment and Order, attached hereto, which fully resolves this matter as to the remaining defendants.

Respectfully submitted,

Dated: April 16, 2013

/s/ Matthew M. Scheff
 MATTHEW M. SCHEFF (0082229)
 Trial Attorney

United States Department of Labor
 Office of the Solicitor
 1240 East Ninth St., Room 881
 Cleveland, OH 44199
 (216) 522-3878
 (216) 522-7172 (Fax)
scheff.matthew@dol.gov

OF COUNSEL:

M. PATRICIA SMITH
 Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

BENJAMIN T. CHINNI
Associate Regional Solicitor

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

SETH D. HARRIS, Acting Secretary of :
Labor, Successor to Hilda L. Solis, U.S. :
Department of Labor, :

Plaintiff, :

v. :

ODELL JONES, III, et. al., :

Defendants. :

File No.: 11-cv-13906

Judge Nancy G. Edmunds

Magistrate Judge Mark A. Randon

**CONSENT JUDGMENT AND ORDER
AS TO DEFENDANT ODELL JONES, III**

Seth D. Harris, Acting Secretary of Labor, successor to Hilda L. Solis (“Secretary”), United States Department of Labor, filed a complaint against Odell Jones, III (“Jones”), alleging that he violated his 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 the administration of the Jomar Building Company, Inc. 401(k) Plan (“401(k) Plan”) and the welfare plan sponsored by the Jomar Building Company, Inc. (“Benefit Plan”).

Jones, having waived service of process and having filed an answer, admits to the jurisdiction of this Court over him and the subject matter of this action. Jones neither admits nor denies the allegations in the Secretary’s complaint. This Consent Judgment shall not be deemed to be an admission or denial of any claims made by the Secretary.

The Secretary and the defendants agree to resolve all claims and issues between and among them regarding the captioned matter (except for the imposition by the

Secretary of any penalties pursuant to ERISA §502(l), 29 U.S.C. §1132(l), and any proceeding related thereto), do now accordingly consent to the entry of this Consent Judgment and Order (“Judgment”) by the Court.

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 Judgment, and being fully advised in the premises, it is,

ORDERED, ADJUDGED AND DECREED that:

1. Jones is enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §§1001, *et seq.*
2. The 401(k) Plan is amended to permit the set-off of defendant Jones’ 401(k) Plan account against the amount of losses incurred by the 401(k) Plan, as authorized by Section 1502(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, Section 1502(a), 111 Stat. 788, 1058-59 (1997) (codified at 29 U.S.C. Section 1056(d)(4)).
3. Immediately upon the entry of this Judgment, Jones, pursuant to 29 U.S.C. §1056(d)(4), shall be deemed to have authorized the 401(k) Plan to cause \$19,878.52 of his individual account balance in the 401(k) Plan to be reallocated to the investment accounts of the 401(k) Plan’s non-fiduciary participants/beneficiaries.
4. The reallocation referred to in paragraph 3 above shall be to the investment accounts of each non-fiduciary participant/beneficiary: (1) who was a 401(k) Plan participant or beneficiary; (2) who had voluntary employee contributions withheld from his or her pay for contribution to the 401(k) Plan during the period January 6, 2006

through March 14, 2008; and (3) whose salary deferrals were not remitted and/or timely remitted.

5. Within thirty (30) days after the aforesaid reallocation, the 401(k) Plan shall provide the EBSA Regional Director, 1885 Dixie Highway, Room 210, Fort Wright, KY 41011-2662, with satisfactory proof of such allocations.

6. The Plan Administrator for the 401(k) Plan, pursuant to his duties under the Bankruptcy Code, 11 U.S.C. § 704(a)(11), shall initiate the termination of the 401(k) Plan in accordance with ERISA within thirty (30) days of the entry of this Judgment. Within thirty (30) days of the entry of this Judgment, the Plan Administrator of the 401(k) Plan shall provide the EBSA Regional Director, 1885 Dixie Highway, Room 210, Fort Wright, KY 41011-2662, with satisfactory proof of such termination.

7. Defendant Jones shall pay \$1,533.15 to the Benefit Plan within fourteen (14) days of the entry of this Judgment by mailing a cashier's or certified check directly to each non-fiduciary participant/beneficiary of the Benefit Plan: (1) who was a Benefit Plan participant or beneficiary; (2) who had voluntary employee contributions withheld from his or her pay for contribution to the Benefit Plan during the period January 4, 2008 through March 14, 2008; and (3) whose salary deferrals were not remitted.

8. Within seven (7) days after the aforesaid payment, defendant Jones shall provide the EBSA Regional Director, 1885 Dixie Highway, Room 210, Fort Wright Kentucky 41011-2662 with satisfactory proof of such payment.

9. Should Defendant Jones fail to make the payment described in paragraph 7 above on or before (14) days after the entry of this Judgment, that amount shall become due and payable immediately by Defendant Jones together with post-judgment interest

pursuant to 28 U.S.C. Section 1961 with no further notice or demand required by Plaintiff to Defendant.

10. Each party agrees to bear his, her, or 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.

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

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

DATED this _____ day of _____, 2013.

NANCY G. EDMUNDS
UNITED STATES DISTRICT JUDGE

The undersigned apply for and consent to the entry of this Consent Judgment and Order.

Dated this 15th day of April, 2013.

Dated this 15th day of April, 2013.

For Defendant Odell Jones, III:

For Plaintiff Seth D. Harris:



ODELL JONES, III

/s/ Matthew M. Scheff

MATTHEW M. SCHEFF
Trial Attorney

/s/ Cyril C. Hall (by consent)

CYRIL C. HALL
Attorney for Odell Jones, III

United States Department of Labor
Office of the Solicitor
1240 East Ninth St., Room 881

Cyril C. Hall Law Offices
14650 W. Warren Ave., Suite 200
Dearborn, MI 48126

Cleveland, OH 44199
(216) 522-3878
(216) 522-7172 (Fax)
scheff.matthew@dol.gov

Dated this 16th day of April, 2013.

OF COUNSEL:

For the Jomar Building Co., Inc. 401(k) Plan:

M. PATRICIA SMITH
Solicitor of Labor

/s/ Basil T. Simon (by consent)

CHRISTINE Z. HERI
Regional Solicitor

BASIL T. SIMON
as the Plan Administrator of the Jomar
Building Co., Inc. 401(k) Plan, pursuant to
11 U.S.C. § 704(a)(11)
422 West Congress St., Suite 400
Detroit, MI 48226
(313) 962-6400
bsimon@sszpc.com

BENJAMIN T. CHINNI
Associate Regional Solicitor

LOCAL COUNSEL:

BARBARA L. McQUADE
United States Attorney

PETER A. CAPLAN
Assistant U.S. Attorney
211 W. Fort Street, Suite 2001
Detroit, MI 48226
(313) 226-9784
P-30643
Email: peter.caplan@usdoj.gov