

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF CALIFORNIA

3 SETH D. HARRIS, Acting Secretary of Labor,) Civil Case No. C 08-04854 EMC
 4 UNITED STATES DEPARTMENT OF LABOR¹,)
)
 5 Plaintiff,) **CONSENT JUDGMENT**
) **AND ORDER**
 6 v.)
 7)
 8 ZENITH CAPITAL LLC, et al.,)
)
 9 Defendants.)

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 11 Plaintiff Seth D. Harris, Acting Secretary of the United States Department of Labor
 12 ("Secretary"), and Zenith Capital LLC ("Zenith Capital"), by and through their respective
 13 attorneys, have negotiated an agreement to settle all claims and issues between them in this
 14 action, and each consents to the entry of this Consent Judgment and Order (hereinafter, "Order")
 15 by the Court as the sole and complete memorialization of the terms of such agreement.

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 17 1. This action was filed by the Secretary pursuant to her authority under Title I of
 18 the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 - 1491, as
 19 amended. The Secretary's Complaint alleges, among other things, that defendant Zenith Capital
 20 LLC (collectively with its predecessors-in-interest referred to herein as "Zenith Capital") and
 21 other individual defendants ("Individual Defendants") (collectively, "Zenith Defendants"),
 22 provided investment advisory services to clients. In June 2000, LF Global Investments, LLC
 23 ("LF Global"), the investment manager and General Partner of Global Money Management, Inc.
 24 ("GMM"), purchased a 10% ownership interest in Zenith Capital. The Complaint alleges that the
 25 Zenith Defendants provided investment advisory services to, among others, thirteen (13)
 26 employee benefit plan clients (the "ERISA Clients"), within the meaning of ERISA Section 3(3),
 27 29 U.S.C. § 1002(3). The Secretary alleges that Zenith Capital served as a fiduciary to the

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¹ Hilda D. Solis resigned as Secretary of Labor. Pursuant to Rule 25(d), Fed. R. Civ. P., Seth D. Harris, the Acting Secretary of Labor, is automatically substituted at Plaintiff.

1 ERISA Clients providing, among other things, investment advice and asset management services
2 for a fee.

3 2. The Complaint alleges that the Zenith Capital, in its capacity as a fiduciary to the
4 ERISA Clients, violated Sections 404(a)(1)(A) and (B), and 406(a) and (b) of ERISA, 29 U.S.C.
5 §§ 1004 (a)(1)(A) and (B), and 1106(a) and (b). Among other things, the Secretary alleges that
6 the ERISA Clients relied on Zenith Capital to make all investment decisions and/or
7 recommendations for the Plans. The Secretary further alleges that Zenith Capital recommended
8 that the ERISA Clients invest in GMM, a hedge fund created in 1993. GMM was organized for
9 the purpose of investing in securities, options contracts, and related instruments including futures
10 contracts. When GMM failed in 2004, many of the ERISA Clients lost their total investments in
11 GMM.

12 3. In November 1998, LF Global and a predecessor of Zenith Capital entered into an
13 arrangement whereby LF Global paid Zenith Capital one-half of all GMM incentive fees that LF
14 Global received which derived from funds invested with GMM by Zenith Capital's existing or
15 new clients, including the ERISA Clients. The ERISA Clients were not told of the LF Global
16 arrangement prior to their investing in GMM. Zenith Capital continued this arrangement and
17 used the incentive fees received from LF Global as part of its general operating capital, including
18 for payment of compensation to its members.

19 4. The Complaint asserts that by its actions and omissions, Zenith Capital violated
20 numerous provisions of Sections 404 and 406 of ERISA, 29 U.S.C. §§ 1104 and 1106, and that
21 the ERISA Clients have suffered losses as a result. As relief for these breaches, the Secretary
22 sought a variety of equitable remedies, including restitution to the plans of losses and lost
23 opportunity costs, rescission of illegal prohibited transactions, and injunctions against Zenith
24 Capital barring it from serving as a discretionary fiduciary to any ERISA-covered employee
25 benefit plan.

26 5. The Secretary has executed separate consent orders with each of the Individual
27 Defendants in this case (hereinafter, the "Individual Consent Orders"). This Order is binding on
28 Zenith Capital only and neither alters, amends, adds to, takes away from, or changes in anyway,

1 the Individual Consent Orders, nor does this Order increase the liability of the Individual
2 Defendants beyond that set forth in the Individual Consent Orders. The Monetary Relief set
3 forth below cannot be enforced against the Individual Defendants. Rick Lane Tasker, Martel Jed
4 Cooper and Michael Gregory Smith sign this Order solely in their capacities as owners/members
5 of Zenith Capital, not in their individual capacities, and this Order binds, applies to and is limited
6 to, Defendant Zenith Capital only.

7 6. By agreeing to the entry of this Order, Defendant Zenith Capital admits the
8 substantive allegations of the Secretary's Complaint. Defendant Zenith Capital admits that the
9 Court has jurisdiction over the parties and the subject matter of this action.

10 7. The Secretary and Defendant Zenith Capital expressly waive Findings of Fact and
11 Conclusions of Law and consent to the entry of this Order as a full and complete resolution of all
12 of the civil claims and issues raised in the Complaint without trial or adjudication of any issue of
13 fact or law raised in the Complaint.

14 Accordingly, it is **ORDERED, ADJUDGED AND DECREED** that:²

15 I. JURISDICTION

16 The Court has jurisdiction over the parties to this Order and the subject matter of this
17 action and is empowered to provide the relief herein.

18 II. DEFENDANT ZENITH CAPITAL LLC

19 A. Defendant Zenith Capital, including any entity owned (in any capacity),
20 controlled or managed by Defendant Zenith Capital permanently agrees not to, directly or
21 indirectly, individually or through any entity or any other person:

22 (1) serve or act, for compensation or otherwise, as a fiduciary, officer,
23 custodian, agent, adviser, or representative in an capacity, or as an investment manager, as
24 defined in Section 3(38) of ERISA, 29 U.S.C. § 1002(38), or as a trustee or administrator of any
25 ERISA-covered employee benefit plan;

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28 ² All captions in this Order are for ease of reference only and do not constitute substantive provisions.

1 (2) serve or act, for compensation or otherwise, as a consultant or adviser to
2 any ERISA-covered employee benefit plan or to any entity whose activities are in whole or
3 substantial part devoted to providing goods or services to any ERISA-covered employee benefit
4 plan;

5 (3) serve or act, for compensation or otherwise, in an capacity that involves
6 decision making authority or custody or control of monies, funds, assets or property of any
7 ERISA-covered employee benefit plan; or

8 (4) sell, promote, market or provide any product or service to, make any
9 recommendation concerning any product, service or investment to, or bring any product, service
10 or investment to the attention of, any ERISA-covered plans or to any person acting on behalf of
11 such plans.

12 III. MONETARY RELIEF

13 A. Defendant Zenith Capital is liable for \$268,030.00 (two-hundred sixty-eight
14 thousand thirty dollars), plus lost opportunity costs of \$125,984.07 (one-hundred twenty-five
15 thousand nine-hundred eighty-four dollars and seven cents), for a total payment of \$394,014.07
16 to restore the losses to its ERISA-covered employee benefit plan clients as a result of plans'
17 investments in GMM.

18 B. Defendant Zenith Capital is also liable for an additional \$74,017.58 (seventy-four
19 thousand seventeen dollars and fifty-eight cents) plus lost opportunity costs of \$33,650.32
20 (thirty-three thousand six hundred fifty dollars and thirty-two cents), for a total amount of
21 \$107,667.90 to restore to its ERISA-covered employee benefit plan clients the incentive fee
22 compensation earned by the Defendant Zenith Capital on its client plans' investments in GMM.

23 C. Defendant Zenith Capital is also liable for an additional amount equal to 20% of
24 the total of Paragraphs A and B above (\$501681.97) (not to exceed \$100,336.39 in total) in
25 accordance with ERISA § 502(l), 29 U.S.C. § 1132(l), and the regulations thereunder.

26 D. Defendant Zenith Capital is liable for \$602,018.36 in losses, lost-opportunity
27 costs, and penalties, (the "Loss Amount"), as set forth in Paragraphs A, B and C above, and
28 judgment is hereby entered against Zenith Capital in that amount.

1 E. Defendant Zenith Capital agrees that, in the event that the company files for
2 bankruptcy protection under any chapter of the United States Bankruptcy Code, within thirty
3 (30) calendar days of filing a petition in any United States Bankruptcy Court, Zenith Capital will
4 execute a stipulation with the Secretary and consent to the entry of an Order that the identified
5 Loss Amount is a nondischargeable debt pursuant to 523(a)(4) of the Bankruptcy Code, 11
6 U.S.C. § 523(a)(4).

7 VI. RELEASES

8 A. The Secretary hereby waives, releases and forever discharges any and all claims
9 which she has or may have against Defendant Zenith Capital, including its attorneys, employees
10 or representatives or insurers, relating to the transactions, events, acts or omissions alleged in the
11 Complaint, as well as any and all other claims of whatsoever nature that she has or may have
12 against Defendant Zenith Capital, including its agents, attorneys, employees or representatives or
13 insurers, arising out of or in connection with the filing of this civil action, or Defendant Zenith
14 Capital's recommendation of GMM as an investment to its clients, through the date of entry of
15 this Order.

16 B. Defendant Zenith Capital expressly waives any and all claims of whatsoever
17 nature which it, jointly or severally, has or may have against the Secretary, or any of her officers,
18 agents, employees, or representatives, in both their governmental and individual capacities,
19 arising out of or in connection with this civil action, or any other proceedings and investigations
20 incident thereto, including but not limited to claims under the Equal Access to Justice Act, as
21 amended.

22 C. Each party to this Order shall bear its own costs, expenses, and attorney's fees in
23 connection with this action.

24 D. This Order represents a full, final, and complete judicial resolution of all claims
25 between the Secretary and Defendant Zenith Capital contained in this action.

26 E. This Order is not binding on any governmental agency other than the United
27 States Department of Labor.

28 F. By signing this Order, Defendant Zenith Capital represents that, after having read
this Order, it understands it, has agreed to it, and agrees to comply with it.

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VII. RETENTION OF JURISDICTION

This Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of enforcing the terms of this Order.

VIII. MULTIPLE ORIGINALS

This Order may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

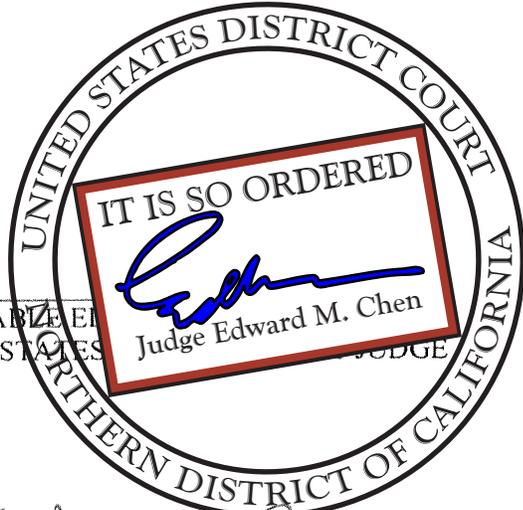
IX. DISMISSAL OF ACTION

The Secretary's Complaint as to Defendant Zenith Capital and all claims asserted therein against Defendant Zenith Capital are hereby dismissed with prejudice.

IT IS SO ORDERED.

Dated: 4/5, 2013

HONORABLE E
UNITED STATES
JUDGE



Dated: March 18, 2013

By: Wayne R. Berry

Attorney signing

WAYNE R. BERRY
ROBIN SPRINGBERG PARRY
Attorneys for Plaintiff

UNITED STATES DEPARTMENT OF LABOR

Dated: March 13, 2013

By: [Signature]

RICK LANE TASKER, solely in his capacity as a member of Zenith Capital

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Dated: March 11, 2013

By: 
MARTEL JED COOPER solely in his
capacity as a member of Zenith Capital

Dated: March 11, 2013

By: 
MICHAEL GREGORY SMITH solely in his
capacity as a member of Zenith Capital