

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY**

HILDA L. SOLIS, Secretary of Labor,	:	
United States Department of Labor,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	Case No. 3:11-CV-654-H
GARY L. GOBLE, Individually and as,	:	
Fiduciary of the STEPHENS' DRUGS 401(k)	:	
RETIREMENT PLAN, STEPHENS' DRUGS, INC.	:	
AND THE STEPHENS' DRUGS 401(k)	:	
RETIREMENT PLAN,	:	
	:	
Defendants.	:	

CONSENT JUDGMENT AND ORDER

Plaintiff, Hilda L. Solis, Secretary of Labor, United States Department of Labor (the "Secretary"), pursuant to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, filed a Complaint against Defendants Gary L. Goble, individually and as fiduciary of the Stephens' Drugs 401(k) Retirement Plan, (the "Plan") as well as Stephens' Drugs, Inc. and the Plan, alleging that they violated their fiduciary obligations under ERISA with respect to the Plan.

Defendants, represented by counsel, have waived service of process of the complaint and have admitted to the jurisdiction of this Court over them and the subject matter of this action.

The 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 Judgment and Order by this Court in accordance therewith.

The parties agree that, if the Secretary of Labor assesses a penalty pursuant to ERISA §502(l) in connection with the violations alleged in this matter, the “applicable recovery amount” shall include all amounts paid in accordance with this Consent Judgment and Order.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Judgment and Order.

IT IS THEREFORE ORDERED that:

1. Defendants Gary L. Goble and Stephens’ Drugs, Inc. are permanently enjoined and restrained from violating the provisions of Title I of ERISA.
2. Defendants Gary L. Goble and Stephens’ Drugs, Inc. are jointly and severally liable to the Plan for \$19,762.62 which represents \$16,284.39 for principal and total lost opportunity costs of \$3,478.23 for the time period January 5, 2007 through May 1, 2010. The principal consists of employee withholdings. Gary L. Goble and Stephens’ Drugs, Inc. shall pay the \$19,762.62 to the Plan on or before December 1, 2011.
3. Defendants Gary L. Goble and Stephens’ Drugs, Inc. shall be removed as the fiduciaries of the Stephens’ Drugs 401(k) Retirement Plan. AMI Benefit Plan Administrators, Inc., located at 230 Windsor Drive, Cortland, OH 44410, shall be named the independent fiduciary of the Plan.
4. As the Plan’s independent fiduciary, AMI Benefit Plan Administrators, Inc., shall have the following powers, duties and responsibilities:

a. The independent fiduciary shall have responsibility and authority for terminating the Plan. Such terminations shall be made in accordance with the Plan's governing documents, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001 et seq., and the Internal Revenue Code. While not required to obtain a determination letter to terminate the Plan under ERISA or the IRC, the independent fiduciary shall make a determination as to whether it is prudent to go through the determination letter process for the Plan;

b. The independent fiduciary's responsibilities with respect to the termination of the Plan shall include, but not be limited to, liquidating the Plan's assets, communicating with participants regarding the termination of the Plan and their disbursal options, calculating the participant and beneficiaries account balances, and filing appropriate termination papers with the Internal Revenue Service and the Department of Labor, including the final Annual Report 5500;

c. The independent fiduciary shall have 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;

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

e. The independent fiduciary shall have full access to all data, information and calculations in the Plan's possession or under their 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;

f. The independent fiduciary may terminate any current service providers to the Plan and retain such persons and firms including, but not limited to, accountants and attorneys, as may be reasonably required to perform his duties hereunder. The costs associated with these service providers shall be paid for by the Plan;

g. The independent fiduciary shall obtain bonding in an amount that meets the requirements of ERISA 412, 29 U.S.C. 1112;

h. The independent fiduciary shall be paid \$1,125.00 in fees. Payment of the independent fiduciary's fees shall come from Defendants Gary L. Goble and Stephens' Drugs, Inc. Payment shall be made to the Independent Fiduciary within 15 days after the entry of this Order. Defendants Gary L. Goble and Stephens' Drugs, Inc. shall be jointly and severally liable for the cost of the independent fiduciary;

i. The independent fiduciary shall not be responsible for bringing any action on behalf of the Plan against any prior fiduciaries or service providers of the Plan for violations of state or federal law that occurred prior to the date of the independent fiduciary's appointment. The independent fiduciary shall be responsible for pursuing any violations of ERISA that occur after its appointment as the independent fiduciary by this Court.

5. Defendants Gary L. Goble and Stephens' Drugs, Inc. shall be permanently enjoined from serving or acting as fiduciaries or service providers with respect to any employee benefit plan subject to ERISA.

6. Each party agrees to pay 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.

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

8. Nothing in this Consent Judgment and Order is binding on any government agency other than the U.S. Department of Labor.

Dated: _____

UNITED STATES DISTRICT JUDGE

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

FOR PLAINTIFF SECRETARY OF LABOR,

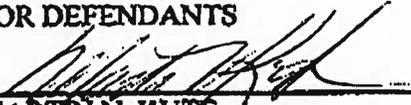


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Dated 11-28-11.

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Dated 11/28/2011