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Sent: Thursday, December 22, 2011 3:06 PM
To: ecf.notice@ned.uscourts.gov
Subject: Activity in Case 4:11-cv-03230-JFB-TDT United States Department of Labor v. Andringa et al Consent Judgment

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U.S. District Court

District of Nebraska

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Case Name: United States Department of Labor v. Andringa et al

Case Number: 4:11-cv-03230-JFB-TDT

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WARNING: CASE CLOSED on 12/22/2011

Document Number: 4

Docket Text:

CONSENT JUDGMENT - Ordered by Judge Joseph F. Bataillon. (JAB)

4:11-cv-03230-JFB-TDT Notice has been electronically mailed to:

Evert H. Van Wijk vanwijk.evert@dol.gov, fisher.victoria@dol.gov, hurst.janessa@dol.gov, reynolds.carla@dol.gov

4:11-cv-03230-JFB-TDT Notice has been delivered by other means to:

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[STAMP dcecfStamp_ID=1002743010 [Date=12/22/2011] [FileNumber=2372017-0] [0af07c379ca12aea619ec70e002f9be4f6c46ef8979e89fd996a25f7f58eb351d88a9654532c37e21e933bac4ac9809018b76f2b1aaf72c201bda8b7ea9c6606]]

12/23/2011

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SECRETARY OF LABOR,)	
UNITED STATES DEPARTMENT OF LABOR,)	
)	
Plaintiff,)	
v.)	CASE NO. 4:11-cv-3230
)	
PAUL W. ANDRINGA, INTEGRITY BUILDERS,)	
INC., and the INTEGRITY BUILDERS, INC.)	
401(K) SAFE HARBOR PLAN,)	
)	
Defendants.)	

JUDGMENT

This action was brought by Plaintiff, Hilda Solis, Secretary of Labor, United States Department of Labor, against Defendants Paul W. Andringa, Integrity Builders, Inc., and the Integrity Builders, Inc. 401(K) Safe Harbor Plan, pursuant to §§ 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"). The above-named Defendants, having had the opportunity to consult legal counsel, admit to the jurisdiction of the Court over each said Defendant and over the subject matter of this action, and have agreed to the entry of this Judgment without further contest.

Now therefore, upon joint motion of the parties and for good cause shown, it is,

ORDERED, ADJUDGED AND DECREED, that:

1. Defendant Paul W. Andringa is hereby permanently

enjoined from acting in any fiduciary capacity within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), including but not limited to, refraining from serving as trustee or administrator with respect to any ERISA-covered employee benefit plan in the future. Defendants, having expressed their intention to terminate the Plan and distribute the Plan assets to the Plan's participants and/or their beneficiaries upon the making of all payments described hereinafter, therefore the above prohibition against Defendant Andringa acting in any fiduciary capacity shall not apply with respect to any actions that are required to ensure the proper termination of the Integrity Builders, Inc., 401(K) Safe Harbor Plan and the distribution of benefits to the Plan's participants and/or their beneficiaries.

2. Defendants Paul W. Andringa and Integrity Builders, Inc., failed to ensure that \$42,716.82 was forwarded to the Plan. The aforesaid amount consists of \$28,536.18 in unforwarded and late forwarded employee contributions and \$14,180.64 in unforwarded employer contributions during the period of time from November 1, 2004, to May 8, 2009. As a result, Defendants are jointly and severally liable for repayment of said amounts as well as lost earnings on the unforwarded and late forwarded employee and employer contributions. Lost earnings on the aforesaid amounts are \$8,439.75

3. The Plan account balance of Defendant Paul W.

Andringa is hereby forfeited up to the amount of Defendant Paul W. Andringa's current account balance to permit the Plan to set off Defendant Andringa's Plan account against the amount of losses, including lost opportunity costs which consists of the aforesaid \$51,156.57 in unforwarded employee and employer contributions and lost earnings thereon, incurred by the Plan during the relevant period as set forth above and in the Complaint. The Plan is hereby deemed amended to permit the forfeiture, reallocation, and distribution contemplated in this Consent Judgment and a copy of this Consent Judgment shall be filed with the Plan records. In the event that said setoff is insufficient to satisfy the total amount owed to the Plan, Defendant Paul W. Andringa shall make such additional payments as set forth in paragraph 4. Said setoff and any additional payments as described in paragraph 4 shall represent the total amount of unforwarded employee and employer contributions and lost earnings owed by Defendants. Defendant Paul W. Andringa shall notify or shall direct the Plan custodian to notify Plaintiff of the amount of the setoff of Defendant Andringa's account balance within five (5) days of said setoff occurring. To the extent that Defendant Paul W. Andringa's Plan account balance does not contain sufficient funds to satisfy the \$51,156.57 debt that is currently due, at the time that the setoff is applied, Defendants Paul W. Andringa and Integrity Builders, Inc., shall remain personally, jointly and severally liable for the balance due

and said balance shall not be dischargeable in any bankruptcy proceeding, whether now filed or subsequently filed or for any other reason, as more fully set forth in paragraphs 7 and 8.

4. In the event that Defendant Paul W. Andringa's Plan account balance contains insufficient funds at the time of the application of the setoff to reimburse the Plan the aforesaid \$51,156.57, then Defendants Paul W. Andringa and Integrity Builders, Inc., shall pay or cause to be paid to the Plan the remaining amount due following the application of the aforesaid offset, upon the following payment schedule: Defendants Paul W. Andringa and Integrity Builders, Inc., shall pay the said remaining amounts due to the Plan by making equal monthly payments not to exceed twelve (12) in total with the first said payment being paid to the Plan on September 15, 2011, and the remaining eleven (11) equal monthly payments being paid to the Plan on the fifteenth (15th) day of each month, beginning October 15, 2011, until the total remaining amount due to the Plan is paid in full. Said payments shall each be for a minimum of \$2,300.00 except for the final payment, or the twelfth (12th) payment in the event that twelve (12) payments are necessary, which final payment shall be for the balance due

to the Plan following the application of the setoff amount and the previous installment payments. Nothing contained herein shall prevent Defendants from making payment of the remaining amount due on an accelerated basis. Failure of the Defendants to make any payment in a timely manner pursuant to this Judgment shall cause the entire outstanding balance to become due upon receipt of demand from Plaintiff's representative, the Employee Benefits Security Administration. Defendants Andringa and Integrity Builders, Inc. shall cause to be delivered on or before each monthly due date an electronic transfer of funds, certified check, cashier's check, or money order payable to the Plan for the balance due following the setoff of Defendant Andringa's account balance. Proof of each installment payment to the Plan shall be provided to Plaintiff within seven (7) business days of the making of each such installment payment to the following address: Regional Director, Kansas City EBSA Regional Office, Two Pershing Square Building, Suite 1100, 2300 Main Street, Kansas City, Missouri 64108.

5. The forfeited amounts of the accounts of Defendant Andringa shall be distributed *pro rata* among the accounts of the Plan participants based on the amounts due as a result of the late forwarded and unforwarded employee contributions

and unforwarded employer contributions, except that no part of this setoff amount shall be distributed to Defendant Andringa.

6. Following the repayment of all amounts due to the Plan, Defendants having expressed their intention to terminate the Plan and to distribute its assets to the Plan's participants, Defendants agree to take such actions as are necessary to expeditiously terminate the Plan and distribute the Plan's assets to the participants. Proof of Plan termination shall be provided to Plaintiff within seven (7) business days of such termination to the following address: Regional Director, Kansas City EBSA Regional Office, Two Pershing Square Building, Suite 1100, 2300 Main Street, Kansas City, Missouri 64108.

7. Defendants' breaches of their fiduciary duties under ERISA to the Plan, as set forth in the complaint, constitute defalcations while acting in a fiduciary capacity with respect to the Plan and its participants, within the meaning of 11 U.S.C. § 523(a)(4).

8. In the event any of the Defendants file for bankruptcy protection in the future, any amount of unpaid Restitution set forth in paragraphs 3 and 4 above, which resulted from their breach of fiduciary duties, is, and shall

be treated as, a nondischargeable debt under § 523(a)(4) of the Bankruptcy Code, 11 U.S.C. § 523(a)(4).

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

- (a) This Judgment does not adjudicate or otherwise affect any potential civil money penalties that may be assessed against Defendants under §§ 502(c). For purposes of ERISA § 502(1), the parties agree that the amount by or on behalf of Defendants is understood by the parties to be the "applicable recovery amount" for purposes of civil penalty assessment pursuant to ERISA § 502(1). It is further agreed and understood by the parties that the penalty which will be assessed will equal twenty percent (20%) of the "applicable recovery amount." Defendant agrees either (1) to pay the assessed penalty within sixty (60) days of service of notice of the assessment, or (2) to file a timely request for waiver or reduction of penalty, pursuant to ERISA § 501(1)(3) and 29 C.F.R. § 2570.80 to 2570.88. If a request for waiver or reduction of the penalty is timely filed,

Defendant agrees to accept the Secretary's determination regarding such request, and to pay the penalty, if any, as set forth in the Secretary's determination letter; and

- (b) This Judgment does not affect or bind any governmental agency other than the United States Department of Labor;

10. Defendants shall file all reports, including all Form 5500 Annual Reports as required under ERISA § 103(a)(1)(A) for Plan years 2005 through 2009, all Annual Summary Reports as required under Department of Labor Regulation 29 C.F.R. § 2520.104(b)-10 for Plan years 2005 through 2009, and all Plan participant pension benefit statements as required under ERISA § 105(A)(1)(A)(i) for Plan years 2007, 2008, and 2009, currently past due for any Plan year in which such Reports had not previously been filed. Such reports shall be in compliance with the annual reporting requirements set forth in Section 103 of the Act and any applicable Department of Labor Regulations. All such delinquent reports shall be filed no later than six (6) months following the entry of this Consent Judgment. Proof of these filings shall be provided to Plaintiff within seven (7) business days of said filings at the following address:

Regional Director, Kansas City EBSA Regional Office, Two Pershing Square Building, Suite 1100, 2300 Main Street, Kansas City, Missouri 64108. Defendants shall file all future reports in a timely manner as required in Section 103 of the Act.

11. Defendants' filing of any past due or future Annual Reports may be subject to rejection and potential civil penalty under ERISA § 502(c)(2) if such filing fails to meet the requirements for such filings. Plaintiff's right to enforce the civil penalty reporting provisions set forth in ERISA § 502(c) is in no manner deemed waived as a result of the filing of this Order or in the event that Defendants fail to file any Annual Report, files incomplete or inaccurate Annual Reports.

12. Upon approval of this Consent Judgment, Defendants Andringa and Integrity Builders, Inc., shall immediately undertake any and all means available to them to locate, verify, and memorialize contact with, and pay all Plan participants said participants' account balances by following the procedures contained in the U.S. Department of Labor, Employee Benefits Security Administration, Field Assistance Bulletin 2004-02. ("FAB") Defendants acknowledge that a copy of the FAB has previously been provided to them.

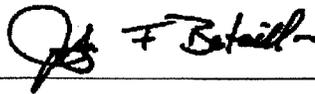
14. This Court shall retain jurisdiction for the purposes of enforcing compliance with the terms of this Consent Order and Judgment.

15. Each party shall bear their own costs and expenses, including attorney's 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.

16. Defendant Andringa agrees that he will notify the EBSA Regional Director within seven (7) days of any change in his name, residence, telephone number, mailing address, or employment until the amounts recited in this Judgment are repaid. All notices required of Defendants to Plaintiff required hereunder shall be sent to Plaintiff at Employee Benefits Security Administration, Two Pershing Square, 2300 Main Street, Suite 1100, Kansas City, Missouri 64108.

The Court directs the entry of this Judgment as a Final Order.

Dated this 22nd day of December, 2011.



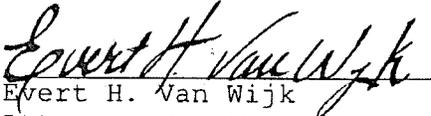
UNITED STATES DISTRICT JUDGE

Entry of this Judgment is hereby consented to:


Paul W. Andringa
Individually and on behalf
of Integrity Builders, Inc.
Integrity Builders, Inc.
401(k) Plan Safe Harbor Plan

M. Patricia Smith
Solicitor of Labor
CT Bar No. 371708

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U.S. Department of Labor
Attorneys for Plaintiff