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12 ATTORNEYS FOR PETITIONER HILDA SOLIS,
13 DEPARTMENT OF LABOR

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

17 HILDA L. SOLIS, Secretary of Labor, United
States Department of Labor,

18 Petitioner,

19 v.

20 OPT, INC., a corporation; JOYCE
21 OLSZEWSKI, THE EXECUTOR OF THE
ESTATE OF ANTHONY OLSZEWSKI, a
22 deceased individual; JOYCELYN TRAN, an
individual; JONATHAN JONES, an
23 individual; and the OPT, INC. 401(k) PROFIT
SHARING PLAN, an employee pension
24 benefit plan;

25 Defendants.

CASE NO. 10-CV-04363 JW

STIPULATION BY PETITIONER HILDA L.
SOLIS AND DEFENDANTS OPT, INC. AND
JOYCE OLSZEWSKI TO APPOINT
INDEPENDENT FIDUCIARY AND
~~PROPOSED~~ ORDER

SUMMARY OF FACTS

1
2 1. On September 28, 2010, the Secretary filed her Complaint for violations of the
3 Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §1001-1191c, in this
4 Court, against Defendants Opt, Inc., a California corporation and Joyce Olszewski, as Executor
5 of the Estate Of Anthony Olszewski, a deceased individual and Joycelyn Tran, an individual;
6 Jonathan Jones, an individual; and the OPT, Inc. 401(k) Profit Sharing Plan, (hereinafter
7 collectively referred to as “Defendants”). (See Doc. 1 (Complaint).)

8 2. A default Judgment was taken against Joycelyn Tran and Jonathan Jones on May
9 2, 2011 (See Doc.40 (Default Judgment).)

10 3. A Consent Judgment was entered into as to Defendants Opt, Inc. and Joyce
11 Olszewski, the Executor of the Estate of Anthony Olszewski on May 14, 2012 (See Doc. 54
12 (Consent Judgment).)

13 4. The Consent Judgment specifically provides for the appointment of an
14 Independent Fiduciary, who shall have full discretionary authority over the administration and
15 management of the Plan. (Doc. 54, ¶6(a-i).) Among other things, the Consent Judgment
16 provides that:

17 a. said Independent Fiduciary shall be responsible for collecting,
18 marshalling, paying out, and administering all of the Plan’s assets and taking further action with
19 respect to the Plan as appropriate, establishing a trust account to receive those funds, and
20 terminating the Plan when all of its assets are distributed to all eligible participants and
21 beneficiaries (Id. ¶ 6(a)&(b));

22 b. said Independent Fiduciary shall have his or her reasonable costs and fees
23 paid by Defendant Joyce Olszewski, as Executor of the Estate of Anthony Olszewski. Should
24 there be insufficient funds in the Estate of Estate of Anthony Olszewski to pay the costs of the
25 Independent Fiduciary, in accordance with the governing Plan documents, the Plan shall bear
26 such costs, to be reimbursed to the Plan by all Defendants upon motion by the Secretary of Labor
27 setting forth the sum of such costs for this Court to enter judgment against all Defendants for
28 same. (Id. ¶ 6(i));

1 c. OPT, Inc., shall be removed as fiduciary and trustee to the Plan (Id. ¶ 3).

2 5. Petitioner and Counsel for OPT, Inc. and Joyce Olszewski, the Executor of the
3 Estate of Anthony Olszewski have met and conferred about an appropriate fiduciary and matter
4 and the Secretary has no objection to the appointment of M. Larry Lefoldt, CPA. Attached as
5 **Exhibit A** is a copy of Mr. Lefoldt's Curriculum Vitae and Retirement Plan Experience. M.
6 Larry Lefoldt, CPA has agreed to act as the fiduciary.

7 **WHEREFORE, IT IS HEREBY STIPULATED THAT:**

8 1. OPT, Inc. and Joyce Olszewski, the Executor of the Estate of Anthony Olszewski
9 shall removed as fiduciary and trustee to the Plan;

10 2. M. Larry Lefoldt, CPA of Lefoldt & Co., P.A., 690 Towne Center Blvd., P.O.
11 Box 2848, Ridgeland, MS 39158-2848, (601) 956-2374, shall be appointed as the Independent
12 Fiduciary, who:

13 a. Shall be responsible for collecting, marshalling, paying out, and
14 administering all of the Plan's assets and taking further action with respect to the Plan as
15 appropriate, establishing a trust account to receive those funds, and terminating the Plan when all
16 of its assets are distributed to all eligible participants and;

17 b. Pursuant to the procedures outlined in the Employee Benefits Security
18 Administration's Field Assistance Bulletin 2004-02, shall exercise reasonable care and diligence
19 to identify and locate each Plan participant and beneficiary who is eligible to receive a
20 distribution under the terms of the Plan to the extent the Plan has distributable assets;

21 c. Has all the rights, duties, discretion and responsibilities of a trustee,
22 fiduciary and Plan Administrator under ERISA, including filing a final Form 5500;

23 d. Has the authority to delegate or assign fiduciary duties as appropriate and
24 allowed under the law and may retain assistance as he may require including attorneys,
25 accountants, actuaries and other service providers;

26 e. Shall have full access to all data, information and calculations in the
27 Plan's possession and under its control, including information and records maintained by the
28 Plan's custodial trustee or service provider;

1 f. Shall have the authority to give instructions respecting the disposition of
2 assets of the Plan, including the authority to amend the Plan document, as necessary;

3 g. Shall be authorized to receive up to \$3,721.15 in reasonable costs and fees
4 paid by Defendant Joyce Olszewski, as Executor of the Estate of Anthony Olszewski. Should
5 there be insufficient funds in the Estate of Estate of Anthony Olszewski to pay the costs of the
6 Independent Fiduciary, in accordance with the governing Plan documents, the Plan shall bear
7 such costs, to be reimbursed to the Plan by all Defendants upon motion by the Secretary of Labor
8 setting forth the sum of such costs for this Court to enter judgment against all Defendants for
9 same.

10 h. Shall comply with all applicable rules and law.

12 DATED: MARCH ____, 2013

BERLINER COHEN

14 BY: //SUSAN E. BISHOP//
15 SUSAN E. BISHOP
16 ATTORNEYS FOR DEFENDANTS OPT, INC. AND
JOYCE OLSZEWSKI, AS EXECUTOR OF THE
ESTATE OF ANTHONY OLSZEWSKI

17 DATED: MARCH ____, 2013

U.S. DEPARTMENT OF LABOR

19 BY: //JOSEPH MICHAEL LAKE//
20 JOSEPH MICHAEL LAKE
21 ATTORNEYS FOR PETITIONER HILDA SOLIS,
UNITED STATES DEPARTMENT OF LABOR

22 **IT IS SO ORDERED.**

23 DATED: ~~MARCH~~ ____, 2013

UNITED STATES DISTRICT COURT

24 April 7, 2013

25 BY: *Lucy H. Koh*
26 JUDGE LUCY KOH