

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

(JRT/BRT)

Civil No. 16-3503

Plaintiff,

v.

CONSENT ORDER AND JUDGMENT
AS TO ALL DEFENDANTS

TODD OLSON, DELL, INC, and
DELL, INC. SIMPLE IRA PLAN,

Defendants.

Bruce C. Canetti, **US DEPARTMENT OF LABOR**, Office of The Solicitor, 230 South Dearborn Street, Room 844, Chicago, IL 60604, for plaintiff.

Plaintiff THOMAS E. PEREZ, Secretary of Labor (“Secretary”), United States Department of Labor, filed a complaint against Defendants Todd Olson (“Olson”), Dell, Inc. (“Dell”),¹ and Dell, Inc. SIMPLE IRA Plan alleging that Olson and Dell (collectively, “Defendants”) breached their fiduciary responsibilities 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 Dell, Inc. SIMPLE IRA Plan (“Plan”).²

¹ Dell filed for bankruptcy on August 1, 2016, in the District of Minnesota, Case Number 16-42287-WJF. Mr. Olson represented to the Secretary that none of the money paid to resolve this matter came from the bankruptcy estate for Dell.

² The Plan was only named as a defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

The Plan and Defendants waived service of process of the complaint and admitted to the jurisdiction of this Court over them and the subject matter of this action.

The Secretary and Defendants agreed to resolve all matters in controversy in this action between them (except for the imposition by the Secretary of any penalty pursuant to ERISA §502(1), 29 U.S.C. §1132(1), and any separate proceedings related thereto) and said parties do now consent to entry of a Consent Order and Judgment by this Court.

The Secretary and Defendants further agree that, if the Secretary assesses a penalty pursuant to ERISA §502(1), 29 U.S.C. § 1132(1), in connection with the violations alleged in this matter, the “applicable recovery amount” shall include all amounts paid in accordance with this Consent Order and Judgment.

On September 9, 2016, Defendant Olson paid \$32,617 for losses owed to the Plan by sending cashier’s checks directly to the individual participants of the Plan who suffered losses in relation to the violations asserts by the Secretary. Defendant Olson made a total payment of \$32,617 to the Plan’s participants who: (1) were employees of Dell; (2) were participants in the Plan during the period of July 1, 2010 through December 31, 2014; (3) had voluntary employee contributions withheld from their pay for contribution to the Plan during this period and such contributions remain unremitted or were remitted untimely; and (4) had not received a distribution of their full account balance as of the date of payment. Defendant Olson allocated \$32,617 to the individual Plan’s participants in an amount equal to unremitted contributions owed to each participant, totaling \$24,289.27 in unremitted contributions, and their pro rata share of \$9,327.50 in lost opportunity costs based on the percent of the participant’s employee

contributions that were unremitted and on the employee contributions that were remitted untimely. On September 9, 2016, Defendant Olson provided proof of the aforementioned payments to the Kansas City Regional Director, Employee Benefits Security Administration, 2300 Main St, Ste. 1100, Kansas City, MO 64108.

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 Consent Order and Judgment, and being fully advised in the premises, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

A. Defendant Olson is permanently enjoined from violating the provisions of Title I of ERISA, as amended, 29 U.S.C. § 1001, *et seq.*;

B. Defendant Olson is permanently enjoined from serving as a fiduciary or service-provider to any ERISA-covered plan;

C. Nothing in this Consent Order and Judgment is binding on any governmental agency except for the United States Department of Labor, Employee Benefits Security Administration; and

D. Each party agrees to bear his/its own attorney's 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.

The Court retains jurisdiction for purposes of enforcing compliance with the terms of this Consent Order and Judgment.

DATED: October 20, 2016
at Minneapolis, Minnesota

s/John R. Tunheim
JOHN R. TUNHEIM
Chief Judge
United States District Court

The undersigned apply for and consent to the entry of this Consent Order and Judgment this 4th of October, 2016:

For the Defendants:

For the Secretary of Labor:

s/ Todd Olson
Todd Olson

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

s/ Bruce C. Canetti
Bruce C. Canetti
Attorneys for Thomas E. Perez
Secretary of Labor, Plaintiff

s/ Todd Olson
Dell, Inc.
By: Todd Olson

Its: President

s/ Todd Olson
Dell, Inc. SIMPLE IRA Plan
By: Todd Olson

Its: President