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15 UNITED STATES DISTRICT COURT  
 16 EASTERN DISTRICT OF CALIFORNIA  
 17 SACRAMENTO DIVISION

18 HILDA L. SOLIS, Secretary of the United  
 19 States Department of Labor,

20 Plaintiff,

21 v.

22 CLAIR R. COUTURIER, JR, *et al.*

23 Defendants.

Civil Action No. 2:08-cv-02732-RRB-GGH

**CONSENT JUDGMENT & ORDER  
 BETWEEN THE SECRETARY AND  
 DEFENDANTS MATTHEW DONNELLY  
 AND BUSINESS APPRAISAL INSTITUTE**

Honorable Judge Ralph R. Beistline

26 Plaintiff, Hilda L. Solis, Secretary of the United States Department of Labor  
 27 ("Secretary"), and Defendants Matthew Donnelly and Business Appraisal Institute ("Settling  
 28

**CONSENT JUDGMENT & ORDER – DEFENDANTS DONNELLY AND BAI**  
 Civil Action No. 2:08-CV-02732-RRB-GGH

1 Defendants") have agreed to settle the matters in controversy in this civil action and consent to  
2 the entry of this Consent Judgment in accordance herewith:

3           *WHEREAS*, the Secretary filed her Complaint against Settling Defendants, among others,  
4 on November 13, 2008 and filed her Amended Complaint against Settling Defendants, among  
5 others, on December 22, 2008 ("Amended Complaint"), pursuant to Title I of the Employee  
6 Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, as amended,  
7 wherein she alleged that Settling Defendants violated provisions of Title I of ERISA while acting  
8 as service providers to the The Employee Ownership Holding Company, Inc. Employee Stock  
9 Ownership Plan (the "Plan"), which is an employee benefit plan subject to Title I of ERISA;  
10

11           *WHEREAS*, the Secretary is also investigating and considering filing additional  
12 complaints against Settling Defendants in connection with other matters including, but not  
13 limited to the:  
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- 15           • JBM Employee Stock Ownership Plan,
- 16           • JBM Eligible Individual Account Plan,
- 17           • DirecTECH Employee Stock Ownership Plan,
- 18           • Comm-Craft Employee Stock Ownership Plan,
- 19           • DirecTECH Southwest Employee Stock Ownership Plan,
- 20           • DirecTECH Southwest Employee Stock Ownership Plan,
- 21           • Michigan Microtech Employee Stock Ownership Plan,
- 22           • DirecTECH Holding Company Employee Stock Ownership Plan,
- 23           • DirecTECH Holding Company Eligible Individual Account Plan,
- 24           • DirecTECH Holding Company Eligible Individual Account Plan,
- 25           • Bruister and Associates Employee Stock Ownership Plan,
- 26           • Bruister and Associates Eligible Individual Account Plan,
- 27           • Bruister and Associates Eligible Individual Account Plan,
- 28           • Digital Satellite Services ESOP, and the

- 1           • Digital Satellite Services Eligible Individual Account Plan.

2           *WHEREAS*, upon consideration of the record, and as agreed to by the parties, the Court  
3 finds that it has jurisdiction over the parties and the subject matter of this civil action;

4           *WHEREAS*, the Secretary and Settling Defendants have negotiated an agreement to settle  
5 all claims and issues between them arising from the matters alleged in the Secretary's Amended  
6 Complaint;  
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8           *WHEREAS*, the Secretary and Settling Defendants represent to the Court that this  
9 Consent Judgment & Order is the sole and complete memorialization of the agreement  
10 negotiated between them;  
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12           *WHEREAS*, the Secretary and Settling Defendants expressly waive Findings of Fact and  
13 Conclusions of Law and consent to the entry of this Consent Judgment & Order as a full and  
14 complete resolution of the Secretary's claims against Settling Defendants alone;

15           *WHEREAS*, Settling Defendants expressly acknowledge and represent that they have read  
16 this Consent Judgment & Order and understand its provisions and each of the undersigned  
17 attorneys expressly acknowledges and represents that they are authorized and empowered to  
18 execute this Consent Judgment & Order on behalf of the party represented and that they have  
19 fully disclosed any conflicts of interest relating to their representation for purposes of executing  
20 this Consent Judgment & Order.  
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22           *ACCORDINGLY*, it is hereby **ORDERED, ADJUDGED AND DECREED** that:  
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24           1.       The Court has jurisdiction over the parties to this Consent Judgment & Order and  
25 subject matter of this action and is empowered to provide the relief herein.

26           2.       Settling Defendants shall pay no monetary amount in connection with this  
27 Consent Judgment & Order.  
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1           3.       Settling Defendants are hereby immediately and permanently enjoined and  
2 restrained from future service as a fiduciary of, or service provider to, any ERISA-covered  
3 employee benefit plan. Specifically, Settling Defendants are hereby immediately and  
4 permanently enjoined and restrained from directly or indirectly, individually or through any  
5 entity or any other person:  
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- 7           (a)     serving or acting, for compensation or otherwise, as a fiduciary, service  
8 provider, administrator, officer, trustee, custodian, counsel, agent,  
9 employee or representative in any capacity to any employee benefit plan  
10 covered by ERISA;  
11
- 12          (b)     serving or acting, for compensation or otherwise, as a consultant or  
13 adviser to any employee benefit plan covered by ERISA or in connection  
14 with any matter involving an employee benefit plan;  
15
- 16          (c)     serving or acting, for compensation or otherwise, in any capacity that  
17 involves decision making authority or custody or control of the monies,  
18 funds, assets or property of any employee benefit plan covered by ERISA;  
19 and,  
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- 21          (d)     selling, promoting, marketing or providing any product or service to,  
22 making any recommendation to, or bringing any product, service or  
23 investment to the attention of, any employee benefit plan covered by  
24 ERISA or to any person acting on behalf of such plan, or facilitating or  
25 encouraging any expenditure or investment by any employee benefit plan  
26 covered by ERISA.  
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1           4.       All of the parties in this litigation and, as applicable, their agents, representatives,  
2 assigns and successors in interest, are permanently and forever barred and enjoined from filing,  
3 commencing, instituting, prosecuting, or maintaining, either directly, indirectly, representatively,  
4 or in any other capacity, any claim against Settling Defendants arising under state, federal or  
5 common law, however styled, and in any forum, whether for indemnification or contribution or  
6 otherwise denominated, where the claim is based upon, arises out of, or relates to the facts,  
7 transactions and occurrences referred to in the Secretary's Amended Complaint, and the claim  
8 seeks to recover from Settling Defendants (i) any amount such person may become liable to pay  
9 pursuant to a settlement or judgment in the Secretary's action or (ii) any costs, expenses, or  
10 attorneys' fees from defending any claim by the Secretary.  
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12           5.       Settling Defendants, and, as applicable, their agents, representatives, assigns and  
13 successors in interest, are permanently and forever barred and enjoined from filing, commencing,  
14 instituting, prosecuting, or maintaining, either directly, indirectly, representatively, or in any  
15 other capacity, any claim against any of the non-settling Defendants arising under state, federal  
16 or common law, however styled, and in any forum, whether for indemnification or contribution  
17 or otherwise denominated, where the claim is based upon, arises out of, or relates to the facts,  
18 transactions and occurrences referred to in the Secretary's Amended Complaint, and the claim  
19 seeks to recover (i) any amount Settling Defendants have paid pursuant to this Consent Judgment  
20 & Order or (ii) any costs, expenses, or attorneys' fees from defending any claim by the  
21 Secretary.  
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23           6.       Settling Defendants, and, as applicable, their agents, representatives, assigns and  
24 successors in interest, are hereby barred from asserting against the Secretary and her officers,  
25 agents, attorneys, employees, and representatives, both in their individual and governmental  
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1 capacities, all actions, claims and demands of whatsoever nature, including those arising under  
2 the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412, or any statute, rule or  
3 regulation, that relate in any manner to the filing, prosecution, and maintenance of this matter,  
4 any other proceeding or investigation incident thereto, and any other proceeding or investigation  
5 conducted by the Secretary regarding Settling Defendants including, but not limited to, the  
6 Secretary's proceedings and investigations regarding the:  
7

- 8 • JBM Employee Stock Ownership Plan,
- 9 • JBM Eligible Individual Account Plan,
- 10 • DirecTECH Employee Stock Ownership Plan,
- 11 • Comm-Craft Employee Stock Ownership Plan,
- 12 • DirecTECH Southwest Employee Stock Ownership Plan,
- 13 • Michigan Microtech Employee Stock Ownership Plan,
- 14 • DirecTECH Holding Company Employee Stock Ownership Plan,
- 15 • DirecTECH Holding Company Eligible Individual Account Plan,
- 16 • Bruister and Associates Employee Stock Ownership Plan,
- 17 • Bruister and Associates Eligible Individual Account Plan,
- 18 • Digital Satellite Services ESOP, and the
- 19 • Digital Satellite Services Eligible Individual Account Plan.

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23 7. In calculating the amount of the Plan's alleged losses in the Secretary's action  
24 against the non-settling Defendants, such alleged losses shall not be reduced to reflect the  
25 Secretary's settlement with Settling Defendants. Furthermore, the Secretary waives any  
26 entitlement to recover, and shall not recover, an aggregate amount from all of the non-settling  
27 Defendants in her action that exceeds the total amount of the Plan's alleged losses (including  
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1 any loss of principal, interest or earnings), as calculated by the Secretary, regardless of whether  
2 the basis for recovery from any particular non-settling Defendant is to compensate the Plan for  
3 its alleged losses, to compel the disgorgement of unjust earnings, or any other basis. Nothing in  
4 this Consent Judgment & Order, however, is intended to otherwise limit the personal, joint and  
5 several liability of any non-settling Defendant.  
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7 8. Nothing in this Consent Judgment & Order shall be construed as a declaration by  
8 the signatories to this Consent Judgment & Order that any person not a signatory hereto has any  
9 defense or affirmative defense, any right or basis for contribution or indemnity or any other basis  
10 for recovery from the Plan, any Plan fiduciary, any person signatory hereto, or the Secretary.  
11

12 9. In the event that, for any reason whatsoever, the Court declines to approve this  
13 Consent Judgment & Order or it is reversed on appeal, then this Consent Judgment & Order shall  
14 be deemed null and void and (a) the Secretary will be free to pursue all of the claims alleged in  
15 her action and to seek all relief prayed for in her action from Settling Defendants including her  
16 claims for non-monetary and monetary relief, (b) Settling Defendants will be free to assert all of  
17 their defenses of any kind to the Secretary's claims other than defenses arguing that any part of  
18 this Consent Judgment & Order, or any bar order issued pursuant to this Agreement, can be  
19 construed to release, interfere with, qualify, or bar the prosecution of claims by the Secretary for  
20 any type of remedy, monetary or non-monetary set forth in her action; and, (c) the provisions of  
21 this Consent Judgment & Order shall be of no further force or effect and shall not be admissible  
22 in evidence in any action pending or filed against Settling Defendants.  
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25 10. Provisions of this Consent Judgment & Order requiring notice to the Settling  
26 Defendants shall be satisfied by delivering it in writing to the Settling Defendants in care of:  
27  
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1 Matthew J. Donnelly  
2 16 Crest Lane  
3 Fanwood, NJ 07023

4 with a duplicate delivered to:

5 Larry Israel, Attorney  
6 Larry Israel & Associates  
7 4454 Deer Ridge Road  
8 Blackhawk, CA 94506  
9 Phone: (925) 648-7582  
10 Fax: (925) 648-7584

11 Provisions of this Consent Judgment & Order requiring notice to the Secretary shall be satisfied  
12 by delivering it in writing to:

13 Regional Director, EBSA  
14 San Francisco Regional Office  
15 90 7th St, Ste 11-300  
16 San Francisco, CA 94103  
17 Phone: (415) 625-2481  
18 Fax: (415) 625-2450

19 with a duplicate delivered to:

20 Associate Solicitor  
21 U.S. Department of Labor  
22 Office of the Solicitor  
23 Plan Benefits Security Division  
24 200 Constitution Avenue, N.W., Room N-4611  
25 Washington, DC 20210  
26 Phone: (202) 693-5600  
27 Fax: (202) 693-5610

28 and

29 Regional Solicitor  
30 U.S. Department of Labor  
31 Office of the Solicitor  
32 San Francisco Regional Office  
33 90 7th Street, Suite 3-700  
34 San Francisco, CA 94103  
35 Phone: (415) 625-7740  
36 Fax: (415) 625-7772



1 Delivery shall be made by facsimile transmission or reliable overnight express courier service.

2 The parties to this Consent Judgment & Order may, as they deem necessary, change from time to  
3 time the designation of persons to receive notice on their behalf by filing with the Court  
4 notification of such change and serving a copy thereof on the other party or parties to this  
5 Consent Judgment & Order, by delivery to the address to which notice would be sent.  
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7 11. This Consent Judgment & Order constitutes a full, final and complete judicial  
8 resolution of all of the civil claims alleged in the Secretary's Amended Complaint against the  
9 Settling Defendants in this action as well as in all other matters in which the Secretary is  
10 currently investigating and considering filing additional complaints against Settling Defendants  
11 including, but not limited to such claims related to:  
12

- 13 • JBM Employee Stock Ownership Plan,
- 14 • JBM Eligible Individual Account Plan,
- 15 • DirecTECH Employee Stock Ownership Plan,
- 16 • Comm-Craft Employee Stock Ownership Plan,
- 17 • DirecTECH Southwest Employee Stock Ownership Plan,
- 18 • Michigan Microtech Employee Stock Ownership Plan,
- 19 • Michigan Microtech Eligible Individual Account Plan,
- 20 • DirecTECH Holding Company Employee Stock Ownership Plan,
- 21 • DirecTECH Holding Company Eligible Individual Account Plan,
- 22 • Bruister and Associates Employee Stock Ownership Plan,
- 23 • Bruister and Associates Eligible Individual Account Plan,
- 24 • Digital Satellite Services ESOP, and the
- 25 • Digital Satellite Services Eligible Individual Account Plan,
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28 as well as any other civil claims arising under Title I of ERISA based upon Settling Defendants'

1 conduct or omissions that occurred prior to the effective date of this Consent Judgment & Order.  
2 All such claims are hereby released, settled and dismissed with prejudice. Neither the Secretary  
3 nor Settling Defendants waive any claims against any other persons. Except as provided herein,  
4 the Secretary's claims for monetary and injunctive relief and the Settling Defendants' claims for  
5 monetary and equitable relief against any other persons are expressly preserved. Except as  
6 provided herein, nothing in this Consent Judgment & Order is, nor is to be construed as, an  
7 admission or acknowledgment that any person or entity is in any way released from any liability  
8 or wrongdoing except for the Settling Defendants who are released as described and the  
9 Secretary who is released as described. Nothing in this Consent Judgment & Order shall be  
10 construed or interpreted as either an admission or denial by the Settling Defendants of any claims  
11 made by the Secretary.

12 12. Settling Defendants and, where applicable, their agents, beneficiaries,  
13 representatives, assigns and successors in interest, do hereby release the Secretary and the  
14 Secretary's officers, agents, attorneys, employees, and representatives, both in their individual  
15 and governmental capacities, from all actions, claims and demands of whatsoever nature,  
16 including those arising under any statute, rule or regulation, that relate in any manner to the  
17 filing, prosecution, and maintenance of this civil action or any other proceeding or investigation  
18 incident thereto or relating or incidental to any and all other matters in which the Secretary is  
19 currently investigating and considering filing additional complaints against Settling Defendants  
20 including, but not limited to the:

- 23 • JBM Employee Stock Ownership Plan,
- 24 • JBM Eligible Individual Account Plan,
- 25 • DirecTECH Employee Stock Ownership Plan,
- 26 • Comm-Craft Employee Stock Ownership Plan,
- 27 • DirecTECH Southwest Employee Stock Ownership Plan,
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- 1 • Michigan Microtech Employee Stock Ownership Plan,
- 2 • DirecTECH Holding Company Employee Stock Ownership Plan,
- 3 • DirecTECH Holding Company Eligible Individual Account Plan,
- 4 • Bruister and Associates Employee Stock Ownership Plan,
- 5 • Bruister and Associates Eligible Individual Account Plan,
- 6 • Digital Satellite Services ESOP, and the
- 7 • Digital Satellite Services Eligible Individual Account Plan.

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10 In particular, as to all of these matters, Settling Defendants expressly waive any and all claims of  
11 any nature that they may have against the Secretary, or any of the Secretary's officers, agents,  
12 employees, or representatives arising under the Equal Access To Justice Act, 5 U.S.C. § 504, 28  
13 U.S.C. § 2412.

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15 13. The Secretary and Settling Defendants shall bear their own costs, expenses, and  
16 attorney's fees in connection with this action and any other proceeding or investigation incident  
17 thereto.

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19 14. This Court shall retain jurisdiction over the parties and subject matter of this  
20 action for the purpose of enforcing the terms of this Consent Judgment & Order.

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22 15. By entering into this Consent Judgment & Order, Settling Defendants represents  
23 that they have been informed by Counsel of the effect and purpose of this Consent Judgment &  
24 Order and agree to be bound by its terms.

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26 16. This Consent Judgment & Order is not binding on any governmental agency other  
27 than the United States Department of Labor, Employee Benefits Security Administration.  
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17. This Consent Judgment & 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.

The Court finds that there is no just reason to delay the entry of this Consent Judgment & Order and, pursuant to Rule 54(b), Fed. R. Civ. P., expressly directs the entry thereof as a final Consent Judgment & Order.

SO ORDERED this 26 day of January, ~~2009~~ 2010  
S/RRB  
RALPH R. BEISTLINE  
UNITED STATES DISTRICT JUDGE

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