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20 UNITED STATES DISTRICT COURT
 21 EASTERN DISTRICT OF CALIFORNIA
 22 SACRAMENTO DIVISION

23 HILDA L. SOLIS, Secretary of the United
 24 States Department of Labor,

25 Plaintiff,

26 v.

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

28 Defendants.

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

**FIRST ORDER AMENDING CONSENT
 JUDGMENT & ORDER BETWEEN THE
 SECRETARY AND DEFENDANTS
 DAVID R. JOHANSON AND JOHANSON
 BERENSON LLP**

Honorable Judge Ralph R. Beistline

Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor
 ("Secretary"), and Defendants David R. Johanson and Johanson Berenson LLP ("Settling

1 Defendants") have agreed to settle a controversy arising from alleged civil contempt, by
2 Defendants Johanson and Johanson Berenson, of paragraph 13.e in the Consent Judgment &
3 Order entered in this action on March 10, 2010, as ECF # 204. The contempt dispute thus
4 resolved concerns whether or not either or both of these two defendants are liable for injunctive
5 relief for the alleged contempt, and this contempt dispute arises only from Settling Defendants
6 David R. Johanson's and Johanson Berenson LLP's representation of one or more of J. Michael
7 Bruce, Herbert C. Bruister, Bruister Family LLC, Bruister and Associates, Jonda C. Henry, Amy
8 O. Smith, and the Bruister Plans, in relation to: Bruister, et al. v. Beazley Ins. Co., Inc., No.
9 4:10-cv-136-HTW-LRA (S.D. Miss.), and the settlement thereof.
10

11 In settling this civil contempt controversy, the Secretary and Settling Defendants
12 Johanson and Johanson Berenson have agreed to this First Order Amending Consent Judgment
13 & Order, which amends ECF # 204 by adding new injunctive restrictions not ordered in ECF
14 # 204. Settling Defendants neither admit nor deny any alleged civil contempt described above.
15 Plaintiff Secretary has acknowledged that Settling Defendants Johanson and Johanson Berenson
16 have timely either paid, or caused payment on their behalf of, all consideration due under
17 paragraphs two through six in ECF # 204. All other provisions in the order entered as ECF # 204
18 remain in full effect.
19

20
21 *ACCORDINGLY*, it is hereby **ORDERED, ADJUDGED AND DECREED** that:

22 1. The Court has jurisdiction over the parties to this First Order Amending Consent
23 Judgment & Order and over the subject matter of this action and is empowered to provide the
24 relief herein.
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1 2. Paragraph 13.e in the Consent Judgment & Order entered in this action on March
2 10, 2010, as ECF # 204 is modified by deleting that paragraph 13.e and replacing it with the
3 paragraphs 13.1 and 13.2 set forth below.

4 13.1 David R. Johanson and Johanson Berenson, LLP are permanently enjoined
5 and restrained from taking on, whether directly or indirectly through any other entity or
6 other person, any new client or new project or new matter from an existing client from
7 the date of this order involving:
8

- 9 A. serving or acting, for compensation or otherwise, as service
10 providers, administrators, officers, custodians, counsels, agents,
11 employees, attorneys, consultants, advisors or representatives in
12 any other capacity, to any ERISA-covered employee benefit plan,
 its trustees, or its other fiduciaries;
- 13 B. serving or acting, for compensation or otherwise, as attorneys,
14 consultants, or other advisors to any entity or person for purposes
15 related to the person or entity providing goods or services to any
16 employee benefit plan covered by ERISA;
- 17 C. selling, promoting, marketing or providing any product or service
18 to, making any recommendation to, or bringing any product,
19 service or investment to the attention of any employee benefit plan
20 covered by ERISA or to the attention of any entity or person acting
21 on behalf of such plan;
- 22 D. facilitating, encouraging, recommending, or giving advice with
23 respect to any investment or other expenditure by any employee
24 benefit plan covered by ERISA;
- 25 E. representing in litigation any entity or person in relation to an
26 alleged fiduciary breach arising from a transaction involving any
27 asset of an ERISA-covered employee benefit plan, where, in
28 connection with such transaction, Mr. Johanson either represented
 or otherwise advised

- (1) an employer or employee organization that established or
maintained the plan;

1
2 (2) the plan;

3 (3) any other party to the transaction;

4
5 (4) any fiduciary or service provider to the plan;

6 (5) any entity that extended credit in connection with the
7 transaction; or

8
9 (6) any attorney, consultant, or other advisor (including but not
10 limited to appraisers, accountants, auditors, tax consultants,
11 investment analysts, and other financial analysts) to any
12 person or entity described in subparagraphs 13.1.E(1)
13 through 13.1.E(5) above; and

14 F. violating or knowingly participating in any violation of ERISA.

15 13.2 The injunctive restraints in paragraph 13.1 above and this paragraph 13.2
16 shall apply on a going forward basis, but shall not apply to any specific litigation or
17 project that began prior to this prior to the Court's entry of this Amendment to ECF
18 # 204. Further:

19 A. The injunctive bar in paragraph 13.1 above shall not prevent Mr.
20 Johanson from representing a person and/or entity, including but
21 not limited to a corporation and/or its corporate officers and/or
22 directors, who also is an ERISA plan fiduciary at any time during
23 the representation on matters unrelated to the ERISA fiduciary
24 status and/or fiduciary conduct of such person or entity. Mr.
25 Johanson must have a written engagement document with each
26 such client which clearly states that Mr. Johanson is not and cannot
27 be providing legal services related to the client's status and/or
28 conduct as an ERISA fiduciary and/or service provider, and which
in writing advises the client to obtain any such advice from
independent counsel.

B. Except as prohibited in subparagraphs 13.1.E(1) through 13.1.E (6)
above, the injunctive bar in paragraph 13.1 above shall not prevent
Mr. Johanson from representing a person and/or entity who is no
longer an ERISA plan fiduciary and/or service provider regarding

1 matters related to such person's and/or entity's prior conduct as a
2 fiduciary or service provider to ERISA plans.

3 C. Except as prohibited in subparagraphs 13.1.E(1) through 13.1.E (6)
4 above, the injunctive bar in paragraph 13.1 above shall not prevent
5 Mr. Johanson from representing a person and/or entity who is an
6 ERISA plan fiduciary and/or service provider to ERISA plans at
7 any time during the representation regarding matters related to
8 such person's and/or entity's prior conduct as a fiduciary or
9 service provider to ERISA plans, provided that Mr. Johanson in
10 writing:

11 (1) confirms that the current fiduciary has independent counsel
12 for current ERISA fiduciary issues who is unrelated to Mr.
13 Johanson and his firm;

14 (2) advises the current ERISA plan fiduciary and/or service
15 provider and independent counsel in writing that Mr.
16 Johanson cannot advise the ERISA plan fiduciary and/or
17 service provider regarding their current ERISA fiduciary
18 obligations; and

19 (3) also advises the current ERISA plan fiduciary and/or
20 service provider in writing that they must consult with
21 independent counsel for all matters related to current
22 obligations as an ERISA fiduciary and/or service provider.

23 D. Except as prohibited in subparagraphs 13.1.E (1) through 13.1.E(6)
24 above, the injunctive bar in paragraph 13.1 above shall not prevent
25 Mr. Johanson from representing any participant in an ERISA plan
26 on any matter, including the participant's assertion of ERISA
27 claims authorized by law, except that Mr. Johanson may not
28 represent a participant regarding that participant's current ERISA
fiduciary conduct and/or status.

E. The injunctive bar in paragraph 13.1 above is authorized by the
Secretary of Labor's equitable powers to obtain injunctive relief in
the form of a service provider bar under ERISA. It is not intended
to restrict Mr. Johanson's practice of law generally or on matters
unrelated to ERISA, and thus the Parties and their counsel do not
believe that the service provider bar is in conflict with California
Rule of Professional Conduct section 1-500 which prohibits a
lawyer from participating in a settlement which restricts another
lawyer's ability to practice law. Paragraph 13.1 above and this
paragraph 13.2 are not intended to require Mr. Johanson to violate

1 California Rule of Professional Conduct 1-500 and/or any similar
2 rule of professional responsibility.

3 3. The Secretary and Settling Defendants shall bear their own costs, expenses, and
4 attorney's fees in connection with this order and any other proceeding or investigation incident
5 thereto.

6 4. This Court shall retain jurisdiction over the parties to and subject matter of this
7 action for the purpose of enforcing the terms of the Consent Judgment and Order as amended by
8 this First Order Amending Consent Judgment & Order.

9 5. By entering into this First Order Amending Consent Judgment & Order, Settling
10 Defendants represent that they have been informed by their counsel of the effect and purpose of
11 this First Order Amending Consent Judgment & Order and agree to be bound by its terms.

12 6. This First Order Amending Consent Judgment & Order is not binding on any
13 governmental agency other than the United States Department of Labor, Employee Benefits
14 Security Administration.

15 7. This First Order Amending Consent Judgment & Order may be executed in
16 counterparts, each of which shall be deemed to be an original, but all of which, taken together,
17 shall constitute one and the same instrument.

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

21
22 **SO ORDERED this** 1st **day of** March, 2016, ~~2009~~
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25
26 s/RALPH R. BEISTLINE
27 RALPH R. BEISTLINE
28 UNITED STATES DISTRICT JUDGE

1 The parties, by themselves or their undersigned Counsel, hereby consent to the entry of
2 this Consent Judgment & Order:

3 FOR PLAINTIFF
4 Secretary of Labor§

5 M. PATRICIA SMITH
6 Solicitor of Labor

7 G. WILLIAM SCOTT
8 Associate Solicitor, PBSB

9 JANET HEROLD
10 Regional Solicitor, San Francisco

11 DANIELLE L. JABERG
12 Counsel for ERISA, San Francisco

13 BY: /s/ Peter B. Dolan Date 12/14/2015

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25 NATALIE P. VANCE
26 Counsel for Defendant David R. Johanson and Defendant Johanson Berenson LLP

27 /s/ Natalie P. Vance Date 12/14/2015

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