

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (DAYTON)**

THOMAS E. PEREZ , Secretary of Labor , U.S. Department of Labor,	:	
	:	Case No. 3:12-cv-283
	:	
Plaintiff,	:	Judge Ovington (consent)
	:	
v.	:	
	:	
BRUCE E. SPENCER; TANNILE ELIZABETH ORTIZ; PAUL OLZESKI; and SPENCER & ASSOCIATES, LLC PROFIT SHARING AND 401(K) PLAN,	:	
	:	
Defendants.	:	

CONSENT JUDGMENT AND ORDER

Thomas E. Perez, Secretary of Labor (“Secretary”), United States Department of Labor, filed a complaint against Bruce E. Spencer (“Spencer”), Tannile Elizabeth Ortiz (“Ortiz”), and Paul Olzeski (“Olzeski”), alleging that they violated their fiduciary obligations 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 administration of the Spencer & Associates, LLC Profit Sharing and 401(k) Plan (“Plan”).

Defendants, having waived service of process and answer, admit to the jurisdiction of this Court over them and the subject matter of this action. The Secretary and the defendants consent to the jurisdiction of the United States Magistrate Judge to enter a final judgment in this matter. Defendants neither admit nor deny the allegations in the Secretary’s complaint.

The Secretary and the defendants agree to resolve all claims and issues between and among them regarding the captioned matter (except for the imposition by the Secretary of any penalties pursuant to ERISA §502(l), 29 U.S.C. §1132(l), and any proceeding related thereto), do

now accordingly consent to the entry of this Consent Judgment and Order (“Judgment”) by the Court.

The parties agree that, if the Secretary of Labor assesses a penalty pursuant to ERISA §502(l) in connection with the violations alleged in this matter, the “applicable recovery amount” shall include all amounts paid in accordance with this Consent Judgment and Order.

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 Judgment, and being fully advised in the premises, it is,

ORDERED, ADJUDGED AND DECREED that:

1. Defendants Spencer, Ortiz, and Olzeski are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §§1001, *et seq.*
2. Defendants Spencer and Ortiz are permanently enjoined from serving or acting as fiduciaries and/or service providers with respect to any employee benefit plan subject to ERISA.
3. Defendant Spencer shall restore \$12,837.21 to the Plan to resolve the losses to the Plan related to the allegations in Counts 1, 2, and 3 of the Secretary’s complaint.
 - a. Because the Plan has been terminated, defendant Spencer shall make payment directly to the Plan’s participants as set forth in Exhibit A, attached hereto. Spencer shall make this payment on or before September 30, 2013.
 - b. On or before October 7, 2013, defendant Spencer shall provide the EBSA Regional Director, 1885 Dixie Highway, Room 210, Fort Wright Kentucky 41011-2662 with satisfactory proof of such payment.
4. In the event that defendant Spencer fails to make payment to the Plan, as set forth in paragraph 3, defendants Ortiz and Olzeski shall be jointly and severally liable for \$7,211.84,

which is the loss to the Plan related to the allegations in Counts 1 and 2 of the Secretary's complaint. Spencer shall remain liable for the entire \$12,837.21.

5. Defendant Ortiz is owed \$4,412.96 which is the loss to her individual Plan account related to the allegations in Counts 1 and 2 of the Secretary's complaint. Defendant Ortiz waives her entitlement to this sum as part of the resolution of this matter.

6. Defendant Ortiz is owed an additional \$6,768.03, which is the loss to her individual Plan account related to the allegations in Count 3 of the Secretary's complaint. Defendant Ortiz, pursuant to 29 U.S.C. §1056(d)(4), shall be deemed to have authorized the Plan to cause this amount to be reallocated to the Plan's non-fiduciary participants. This amount is included within the \$12,837.21 that Defendant Spencer is paying, and shall be paid directly to the Plan's participants as set forth in paragraph 3 of this Judgment.

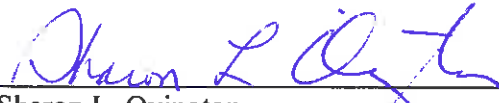
7. Upon entry of this Judgment, defendant Ortiz consents to the Secretary moving to vacate the default judgment previously entered against her. This Judgment replaces and supersedes the default judgment previously entered against defendant Ortiz.

8. Each party agrees to bear its/his/her own attorneys' 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.

9. The Court retains jurisdiction for purposes of enforcing compliance with the terms of this Judgment.

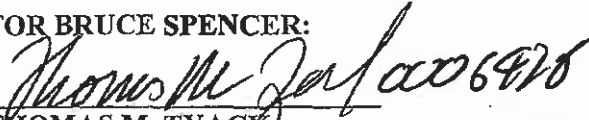
10. Nothing in this Consent Judgment and Order is binding on any government agency other than the United States Department of Labor.

DATED this 21st day of October, 2013.


Sharon L. Ovington
United States Magistrate Judge

The undersigned apply for and consent to the entry of this Consent Judgment and Order.

FOR BRUCE SPENCER:



THOMAS M. TYACK
Attorney for Bruce Spencer

Dated: Sept 23, 2013

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Columbus, Ohio 43215
Phone: (614) 221-1341
Fax: (614) 228-0253
ttyack@tblattorneys.com

FOR TANNILE ELIZABETH ORTIZ:

TANNILE ELIZABETH ORTIZ

Dated: _____

FOR PAUL OLZESKI:

PAUL OLZESKI

Dated: _____

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FOR BRUCE SPENCER:

THOMAS M. TYACK
Attorney for Bruce Spencer

Dated: _____

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FOR TANNILE ELIZABETH ORTIZ:



TANNILE ELIZABETH ORTIZ

Dated: 10/1/13

FOR PAUL OLZESKI:

PAUL OLZESKI

Dated: _____

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FOR BRUCE SPENCER:

THOMAS M. TYACK
Attorney for Bruce Spencer

Dated: _____

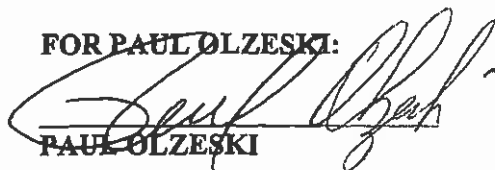
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FOR TANNILE ELIZABETH ORTIZ:

TANNILE ELIZABETH ORTIZ

Dated: _____

FOR PAUL OLZESKI:



PAUL OLZESKI

Dated: 10/1/13

FOR THE SECRETARY:

/s/ Matthew M. Scheff

MATTHEW M. SCHEFF
Attorney for the Secretary

Dated: 10/17/2013

U.S. Department of Labor
Office of the Solicitor
1240 E. 9th St., Rm 881
Cleveland, OH 44199
Telephone: (216) 522-3878
Facsimile: (216) 522-7172
e-mail: scheff.matthew@dol.gov

Exhibit A

	<u>Participant</u>	<u>Total</u>	<u>Counts 1 and 2</u>	<u>Count 3</u>
1	Ashley Atley Welch 4673 Cottonville Rd. Jamestown, OH 45335	\$ 1,003.21	\$ 1,003.21	\$ -
2	Nancy Harris 2863 Benninghofen Street Hamilton, OH 45015	\$ 5,335.49	\$ 2,006.41	\$ 3,329.08
3	Lisa Jackson 7850 W. McDowell Road, 1116 Phoenix, AZ 85035-4279	\$ 1,495.83	\$ 308.05	\$ 1,187.78
4	Wendy Kegley 4635 Plateau Drive South Springfield, OH 45502	\$ 601.92	\$ 601.92	\$ -
5	Lisa Lovelace 4139 Camelot Drive Springfield, OH 45503	\$ 906.48	\$ 906.48	\$ -
6	Deborah Porter 3320 Red Coach Drive Springfield, OH 45503	\$ 347.34	\$ 347.34	\$ -
7	Margaret Ramey 4744 Oxtoby St. Springfield, OH 45505	\$ 1,522.94	\$ 972.61	\$ 550.33
8	Sharon Rice 301 Taft Avenue Urbana, OH 43078	\$ 123.44	\$ 123.44	\$ -
9	Kathleen Sallot 3407 Turner Dr Springfield, OH 45504	\$ 1,500.56	\$ 942.38	\$ 558.18
	Total	\$ 12,837.21	\$ 7,211.84	\$ 5,625.37