

UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF WISCONSIN

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**HILDA L. SOLIS**, Secretary of Labor, :  
United States Department of Labor, :

Plaintiff, :

v. :

**CHRISTINA METZLER**, :

and :

**WESTSIDE CABINET &  
MILLWORK SIMPLE IRA PLAN**, :

Defendants. :  
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File No. 11-cv-00546

Judge William M. Conley

Mag. Judge Stephen L. Crocker

**CONSENT ORDER AND JUDGMENT**

Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor, pursuant to the provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §1001, et seq., filed a complaint against defendant Christina Metzler, alleging breaches of her fiduciary responsibilities under ERISA §§ 403(c)(1), 404(a)(1)(A) and (B), 406(a)(1)(D), 406(b)(1) and (2), 29 U.S.C. §§ 1103(c)(1), 1104(a)(1)(A) and (B), 1106(a)(1)(D), 1106(b)(1) and (2), with respect to her administration of the Westside Cabinet & Millwork SIMPLE IRA Plan (the “Plan”).

Defendant Christina Metzler admits to the jurisdiction of this Court over her and the subject matter of this action.

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

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

WHEREAS, defendant Metzler and the Secretary having agreed to the terms of this Judgment, subject to its approval by the Court, and with due consideration and being fully advised of the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant Christina Metzler is hereby permanently enjoined from the date of entry of this Judgment from engaging in any action in violation of the provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 *et seq.*
2. Defendant Metzler violated her ERISA fiduciary duties with respect to the Westside Cabinet & Millwork Simple IRA Plan (the "Plan") as alleged in the Secretary's complaint. Defendant Christina Metzler is liable to the Plan in the total amount of \$44,540.61, which represents the unremitted employee contributions and lost opportunity costs that accrued as a result of the non-remittance and untimely remittance of employee contributions to the Plan.
3. As a result of defendant Metzler's ERISA violations, she owes and is ordered to restore \$44,540.61 to the Plan.

4. In reliance on the representations made by defendant Metzler in the documents provided by her to the Secretary (including a financial declaration and tax returns), which show that she is currently unable to immediately pay the total restitution amount of \$44,540.61 to the Plan, the Secretary agrees to forbear immediate collection of the total restitution amount.

5. In return for the Secretary's forbearance, defendant Metzler agrees she will submit to Regional Director, U.S. Department of Labor - Employee Benefits Security Administration, 230 South Dearborn St., Suite 2160, Chicago, IL 60604 ("EBSA Regional Director") her annual federal tax returns on or before May 15th of each year beginning with her 2011 return on May 15, 2012, and continuing for seven (7) consecutive years or until the amounts recited in this Judgment are repaid in full, whichever occurs first.

6. Defendant Metzler agrees to submit an annual Declaration of Financial Status, attached hereto as Exhibit A, on or before May 15th of each year beginning on May 15, 2012 and continuing for seven (7) consecutive years, or until the amounts recited in this Judgment are repaid in full, whichever occurs first.

7. Defendant Metzler agrees to make annual payments to the Plan by May 15 of each year according to the following schedule, beginning on May 15, 2012 and continuing for seven (7) consecutive years, or until such time as the restitution amount, plus interest accruing after the date of Judgment, determined on the basis of the federal tax underpayment rate set forth at 26 U.S.C. Section 6621(c)(1) and compounded daily, is paid in full, whichever occurs first:

- 10% of defendant Metzler's income<sup>1</sup> in excess of \$25,000 (up to \$35,000) per annum;
- 20% of defendant Metzler's income in excess of \$35,000 per annum; and,
- 100% of any bequests, life insurance proceeds, lottery or gambling winnings, gifts, or any other income in excess of \$5,000.

In restoring the monies to the Plan, defendant Metzler shall send the monies directly to the Plan's asset custodian at JP Morgan Funds, 1111 Polaris Pkwy, Suite 2G OH1-1151, Columbus, OH 43240. Defendant Metzler shall direct the asset custodian as to the allocation of monies restored to the Plan. A copy of each check shall be submitted within three (3) days of issuance to the EBSA Regional Director.

8. If defendant Metzler fails to comply with the payment schedule above or it is found that the documents she provided regarding her financial status are materially false, the entire sum of \$44,540.61 plus accrued interest from date of Judgment (minus payments made pursuant to this Judgment) shall immediately become due and payable together with post-judgment interest pursuant to 28 U.S.C. §1961.

9. Defendant Metzler agrees that she will notify the EBSA Regional Director within seven (7) days of any of the following: (i) change of name; (ii) change of residence; (iii) change of telephone number; (iv) change of mailing address; (v) change of employment; and (vi) any bequests, life insurance proceeds, lottery or gambling winnings, gifts, or any other income in excess of \$5,000. The requirements of this

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<sup>1</sup> Income is defined as the gross amount, before adjustments, that Defendant Metzler must report on her filed U.S. Tax return as income.

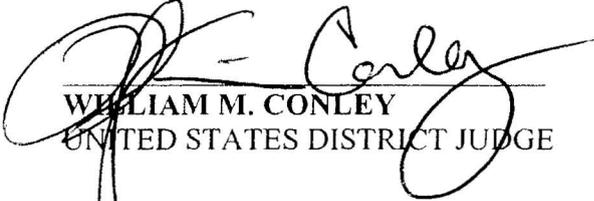
paragraph shall apply until May 15, 2019 or until the amounts recited in this Judgment are repaid in full, whichever occurs first.

10. Each party agrees to bear 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.

11. Nothing in this Judgment is binding on any government agency other than the United States Department of Labor.

12. Defendant Christina Metzler is permanently enjoined from serving or acting as a fiduciary or service provider with respect to any employee benefit plan subject to ERISA, except to the extent necessary to advise JP Morgan Funds on the allocation of funds paid to the Plan pursuant to Paragraph 7 of this Judgment.

DATED November 7, 2011

  
WILLIAM M. CONLEY  
UNITED STATES DISTRICT JUDGE

The parties hereby consent to the entry of this consent order and judgment:

FOR THE SECRETARY OF LABOR:

**M. PATRICIA SMITH**  
Solicitor of Labor

**JOAN E. GESTRIN**  
Regional Solicitor

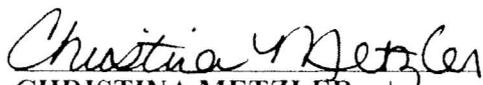
  
MATTHEW M. SCHEFF  
Attorney

DATED: 11/1/2011

**P.O. ADDRESS:**

Office of the Solicitor  
U.S. Department of Labor  
230 South Dearborn Street, 8<sup>TH</sup> Floor  
Chicago, Illinois 60604  
Telephone: (312) 353-1218

FOR DEFENDANT CHRISTINA METZLER:

  
CHRISTINA METZLER

DATED: 10/26/11

# EXHIBIT A



This Declaration describes without limitation assets or properties which are owned or held by trustees, agents or nominees for my benefit, or on my behalf, and income received by persons for my benefit or on my behalf. I further state that, except as described in this Declaration, either

(select and mark the option that applies)

- \_\_\_\_\_ (i) since I have never been married, no spouse holds any assets or property, or
- \_\_\_\_\_ (ii) since I am currently married, assets or properties which are owned or held by my spouse, and income received by my spouse, except for assets, properties and income which constitute the separate property of my spouse under application laws, or
- \_\_\_\_\_ (iii) since I am divorced, no current spouse holds any assets or property. The divorce was finalized in the past year; therefore, true and correct copies of the divorce decree and the property settlement are attached hereto.

I further declare the following under penalty of perjury that the following statement is a true and correct representation of my financial status for the past year:

**I. Name and Residence**

- A. Full name:
- B. Social Security number:
- C. Spouse's full name:
- D. Spouse's Social Security number:
- E. Current residence:
- F. Current mailing address (if different from residence):
- G. Residence area code and telephone number:
- H. Business area code and telephone number:
- I. Most recent prior residence:
- J. If you are, and have been known, by any other names or used any other social security numbers, tax identification numbers or employer identification numbers, list names and numbers:

**II. Occupation and Income**

(Attach federal income tax filings (series 1040), with all schedules and attachments, for the last year.

Attach individual payroll receipts or other proofs of income, for the last twelve (12) months.)

- A. Current occupation:
  
- B. Spouse's current occupation:
  
- C. Employer (name, address and telephone number):
  
- D. Spouse's employer (name, address and telephone number):
  
- E. Length of current employment (if less than one year, indicate prior employer with address and telephone number):
  
- F. Length of spouse's current employment (if less than one year, indicate prior employer with address and telephone number):
  
- G. Self-employment during last year (name(s), dates, location(s), type(s) of business):
  
- H. Spouse's self-employment during last year (name(s), dates, location(s), type(s) of business):
  
- I. Employers for last year (list name, address and telephone number)

J. Current gross wages, salary, bonus, tips and/or commissions per pay period (including estimated overtime) :

<u>Period</u>	<u>Declarant</u>	<u>Spouse</u>
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K. Current income from the operation of a business, profession or farm (do not include any part of the business expenses entered on Line 2 as a deduction in Part III.)

<u>Period</u>	<u>Declarant</u>	<u>Spouse</u>
---------------	------------------	---------------

1. Gross Receipt:

2. Ordinary and necessary business expense:

3. Business income (subtract Line 2 from Line 1):

L. Current Payroll deductions:

- |                                | <u>Declarant</u> | <u>Spouse</u> |
|--------------------------------|------------------|---------------|
| 1. Taxes                       |                  |               |
| a. Federal:                    |                  |               |
| b. State:                      |                  |               |
| c. Local:                      |                  |               |
| d. Social Security:            |                  |               |
| 2. Insurance                   |                  |               |
| a. Medical:                    |                  |               |
| b. Life:                       |                  |               |
| 3. Allotments to Credit Union: |                  |               |
| 4. Dues:                       |                  |               |
| 5. Others (specify):           |                  |               |

M. Current take home pay per period (indicate period):

N. Gross income (including but not limited to wages, salary, tips, and/or commission) for last calendar year:

O. Average monthly wages for last six months:

P. Current wage assignments or allotments (with names, addresses, amounts, total owing):

- Q. Rental income:
- |  |                  |               |
|--|------------------|---------------|
|  | <u>Declarant</u> | <u>Spouse</u> |
|--|------------------|---------------|
1. Gross Receipt:
2. Ordinary and necessary operating expense:
- R. Interest or dividend income:
- |  |                  |               |
|--|------------------|---------------|
|  | <u>Declarant</u> | <u>Spouse</u> |
|--|------------------|---------------|
- S. Royalties:
- |  |                  |               |
|--|------------------|---------------|
|  | <u>Declarant</u> | <u>Spouse</u> |
|--|------------------|---------------|
- T. Alimony, maintenance or support payments received:
- |  |                  |               |
|--|------------------|---------------|
|  | <u>Declarant</u> | <u>Spouse</u> |
|--|------------------|---------------|
- U. Social Security or governmental assistance including unemployment compensation (specify the identity of the agency or the department thereof):
- |               |                  |               |
|---------------|------------------|---------------|
| <u>Agency</u> | <u>Declarant</u> | <u>Spouse</u> |
|---------------|------------------|---------------|
- V. Pension, retirement pay, or other benefits:
- |  |                  |               |
|--|------------------|---------------|
|  | <u>Declarant</u> | <u>Spouse</u> |
|--|------------------|---------------|
- W. Income from other sources:
- |               |                  |               |
|---------------|------------------|---------------|
| <u>Source</u> | <u>Declarant</u> | <u>Spouse</u> |
|---------------|------------------|---------------|

Any increase or decrease in gross income reasonably anticipated to occur within the near future

1. Increase:  
Reason                      Declarant                      Spouse

2. Decrease:  
Reason                      Declarant                      Spouse

3. Net increase/decrease:

Currently monthly income:  
(prorate if not paid monthly)

Declarant:

Spouse:

Total monthly  
Income:                      \$ \_\_\_\_\_

**III. Budget**

(Attach copies of monthly expense checks.)

- A. Currently monthly income  
(See the previous page): \$ \_\_\_\_\_
  
- B. Currently monthly expenses
  - 1. Residence
    - a. Rent or mortgage:  
   
(Check the box that applies)
    - b. Real estate taxes:
    - c. Property insurance:
    - d. Home maintenance:
  - 2. Utilities
    - a. Electricity:
    - b. Water and sewer:
    - c. Telephone  
including mobile phones:
    - d. Others:
  - 3. Food:
  - 4. Clothing:
  - 5. Medical and dental expenses:
  - 6. Insurance  
(other than that deducted from wages  
or included in home mortgage payments)
    - a. Homeowner's or renter's:
    - b. Life:

- c. Health:
  - d. Auto:
  - e. Others:
7. Transportation (specify type and do not include car payments)
- a. The number of vehicles  
(if 0, go to "b"):
    - i. Total operating  
cost:
  - b. Public transportation:
8. Alimony, maintenance  
or support paid to others:
9. Other taxes:
10. Dues:  
(not deducted from wages)
11. Child care:
12. Education expense:
13. Installment payments
- a. Auto:
  - b. Others:
14. Recreation:
15. Others (specify): \_\_\_\_\_
-

16. Any increase or decrease in expenditures reasonably anticipated to occur within the near future

a. Increase:  
Reason Amount

b. Decrease:  
Reason Amount

c. Net increase/decrease:

Total monthly  
expense: \$ \_\_\_\_\_

**IV. Tax Refunds Owing or Anticipated**

- A. Federal:
- B. State/County/City:
- C. Foreign:

**V. Financial or other accounts of Declarant and/or Spouse**

(Include all accounts at domestic and foreign institutions and attach copies of account statements for the past calendar year)

- A. Savings accounts or certificates of deposit (list name of each institution, address, account number, balance):
- B. Checking or cash management accounts (list name of each institution, address, account number, balance):
- C. Money market accounts (list name of each institution, address, account number, balance):
- D. Safe deposit boxes (list name of each institution, address, box number, contents):
- E. Brokerage or investment accounts (list name of each institution, address, account number, balance):
- F. Retirement or pension account, or other deferred compensation plan account, including any retirement, pension or other deferred compensation plan accounts of which I am a beneficiary (list name of each institution, entity or individual, each account number, amount of vested and unvested benefits, balance)
- G. Other accounts (institutions, addresses, account numbers, balances):

**VI. Transfers of Property During the Past Year:**

- A. Gifts valued in excess of \$ 500 made by declarant and spouse (list names and addresses of donees, dates, description, value of gifts and basis for valuation):
  
  
  
  
  
  
  
  
  
  
- B. Transfers of real or personal property (absolute or as security) (list names, addresses, dates, description and value of property transferred, basis for valuation, consideration and disposition of consideration):

**VII. Debts**

(Attach copies of documents evidencing debt to affiant, including original applications for loans or other extensions of credit.)

<u>Creditors Name and Address</u>	<u>Initial Amount</u>	<u>Security</u>	<u>Repayment Schedule</u>	<u>Current Balance</u>
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**VIII. Real Property (Declarant and Spouse)**

<u>Description</u>	Location and nature of <u>interest</u>	Cost of <u>Acquisition</u>	<u>Market value</u>	Amount of remaining <u>mortgage</u>	Other mortgage interest or <u>security</u>
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**IX. Personal Property and other assets**

(Attach all financial statements for the past year for all corporations, unincorporated companies, and partnerships in which you or your spouse have any type of financial interest to this Declaration. For those corporations, unincorporated companies and partnerships which file annual financial statements with the Securities and Exchange Commission, satisfy this requirement by listing their full names below.)

<u>Type of property</u>	<u>Description and location</u>	<u>Market Value</u>	<u>Any Mortgage or Security Interest</u>	<u>Mortgagee or Secured Creditor</u>
Cash on hand				
	Security deposits with public utilities, telephone companies, landlords, and others			
	Automobiles, boats, airplanes or other motor vehicles of any nature			
	Household goods, appliances and furnishings			
	Art objects and collectibles (e.g., coins, stamps, etc)			

<u>Type of property</u>	<u>Description and location</u>	<u>Market Value</u>	<u>Any Mortgage or Security Interest</u>	<u>Mortgagee or Secured Creditor</u>
	Furs and jewelry which, whether calculated separately or collectively exceeds the sum of \$ 500			
	Interest in precious metals (i.e. gold, silver, platinum, etc. or like property) which, whether calculated separately or collectively exceeds the sum of \$ 500			
	Interest in insurance policies. Name insurance company of each policy and itemize surrender value or refund value			
	Annuities. Itemize and name each issuer			
	Interest in an education IRA			

<u>Type of property</u>	<u>Description and location</u>	<u>Market Value</u>	<u>Any Mortgage or Security Interest</u>	<u>Mortgagee or Secured Creditor</u>
	Interest in IRA, ERISA, Keogh or other pension or profit sharing plans			
	Stock and interest in incorporated and unincorporated businesses. Itemize			
	Interest in partnerships or joint ventures. Itemize			
	Government and corporate bonds and other negotiable and nonnegotiable instruments			
	Tangible personal property of any other description			
	Receivables			

<u>Type of property</u>	<u>Description and location</u>	<u>Market Value</u>	<u>Any Mortgage or Security Interest</u>	<u>Mortgagee or Secured Creditor</u>
	Equitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor			
	Contingent and unliquidated claims			
	Patents, copyright and other intellectual property			
	Licenses, franchises, and other general intangibles			
	Machinery, fixtures, equipment, and supplies used in business			
	Inventory			
	Animals			
	Crops			

<u>Type of property</u>	<u>Description and location</u>	<u>Market Value</u>	<u>Any Mortgage or Security Interest</u>	<u>Mortgagee or Secured Creditor</u>
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Others  
(specify)

**X. Has the declarant and/or his spouse declared bankruptcy?**

If so state the:

- A. Court:
- B. Bankruptcy Case No.:
- C. Current Status:
- D. Discharge date (if applicable):
- E. Attorney representing bankrupt:

Was the Secretary of Labor or the employee benefit plan listed and/or scheduled?

**XI. I hereby declare that I have not traveled outside the continental United States for the past year, except as follows and I have attached a true and correct copy of my passport(s) in effect for the past year:**

<u>Date</u>	<u>Destination (each town/city and country)</u>	<u>Duration</u>	<u>Purpose</u>
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**XII. I have no other financial statement prepared for or by me, and I have issued no financial statement to my bank, financial institution, firm or person with the past year except as follows: (identify and attach copies of all such financial statements to the Declaration)**

**I have reviewed the foregoing information and declare under penalty of perjury that it is true and correct. I also have reviewed the attachments and declare under penalty of perjury that they are true, correct and complete copies of the original documents.**

(Print Name): CHRISTINA METZLER

Signature: \_\_\_\_\_

Date: \_\_\_\_\_