

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

HILDA L. SOLIS , Secretary of Labor, United States Department of Labor,	:	
	:	
Plaintiff,	:	
	:	FILE NO.
v.	:	
	:	
JMN CONSULTING, INC. ,	:	
and	:	
JMN CONSULTING, INC. 401(k) P/S PLAN ,	:	
	:	
Defendants.	:	

COMPLAINT

Plaintiff Hilda L. Solis, Secretary, United States Department of Labor (the “Secretary”), alleges:

JURISDICTION, PARTIES AND VENUE

1. This action arises under Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §§1001, *et seq.*, and is brought by the Secretary under ERISA §§502(a)(2) and (5), 29 U.S.C. §§1132(a)(2) and (5), to enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain appropriate equitable relief for breaches of fiduciary duty under ERISA §409, 29 U.S.C. §1109, and to obtain such further equitable relief as may be appropriate to redress violations and to enforce the provisions of Title I of ERISA.

2. This court has jurisdiction over this action pursuant to ERISA §502(e)(1), 29

U.S.C. §1132(e)(1).

3. The JMN Consulting, Inc. 401(k) P/S Plan (the “Plan”) is an employee benefit plan within the meaning of ERISA §3(3), 29 U.S.C. §1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA §4(a), 29 U.S.C. §1003(a). The Plan was sponsored by JMN Consulting, Inc.

4. JMN Consulting, Inc. (“JMN”), is a Minnesota corporation which was incorporated in 1995. JMN ceased operating in approximately May 2010. JMN is the Plan’s administrator and a fiduciary of the Plan within the meaning of ERISA §3(21)(A)(ii), 29 U.S.C. §1002(21)(A)(ii).

5. Venue of this action lies in the District of Minnesota, pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because the JMN Consulting, Inc. 401(k) P/S Plan is administered in Maple Grove, Hennepin County, Minnesota, within this district.

FACTUAL ALLEGATIONS

6. The Plan’s governing documents named JMN as the Plan’s Administrator. As such, JMN was authorized to direct the disbursement of the Plan’s assets.

7. The Plan’s governing documents provide that JMN has the authority to appoint and remove the Plan’s trustee and the administrator of the Plan as necessary. Pursuant to this authority JMN named Patrick Tuckner as the Plan’s trustee.

8. The third-party administrator for the Plan is Plan Administrators, Inc., and the Plan’s assets are invested by Oppenheimer.

9. As of February 2, 2011, the Plan had 22 participants and assets of approximately \$54,094.74.

10. Plan trustee Patrick Tuckner died in May 2010.

11. To the best of the Secretary's knowledge, information, and belief, JMN has not authorized Plan Administrators Inc. or Oppenheimer to distribute the Plan's remaining assets to the company's terminated employees since May 2010.

12. To the best of the Secretary's knowledge, information, and belief, no individual or entity has taken fiduciary responsibility for the operation and administration of the Plan and its assets since May 2010, and the Plan has not been formally terminated.

13. Since the individuals and entities designated to act on behalf of the Plan failed to administer the Plan, participants and beneficiaries of the Plan have not been able to obtain distributions from the Plan of their individual account balances.

VIOLATIONS

14. By the conduct described in paragraphs 6 through 13 above, defendant JMN Consulting, Inc.:

a. failed to discharge its duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and its beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

b. failed to discharge its duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA §404(a)(1)(B), 29 U.S.C. §1104(a)(1)(B); and

c. failed to discharge its duties with respect to the Plan solely in the interests of the participants and beneficiaries and in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with ERISA, in violation of ERISA §404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

- A. Removing defendant JMN Consulting, Inc. from its position as a fiduciary with respect to the Plan and appointing an independent fiduciary to administer the Plan in order to effectuate its termination, and the distribution of Plan assets to the participants and beneficiaries;
- B. Awarding the Secretary the costs of this action; and
- C. Ordering such further relief as is appropriate and just.

M. PATRICIA SMITH
Solicitor of Labor

JOAN E. GESTRIN
Regional Solicitor

Dated: June 30, 2011

/s/ Matthew M. Scheff
MATTHEW M. SCHEFF
Trial Attorney

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