

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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**THOMAS E. PEREZ**, Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

**EUGENE AGUIRRE and SUNSTRAND  
ELECTRIC COMPANY, INC. EMPLOYEES  
401(K) PROFIT SHARING PLAN AND TRUST,**

Defendants.  
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: CIVIL ACTION  
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: Case No.  
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**COMPLAINT**

Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor (“Secretary”), alleges:

**JURISDICTION AND VENUE**

1. This cause of action arises under 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 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 Sunstrand Electric Company, Inc. 401(k) Employees Profit Sharing Plan and Trust (“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).

4. Venue of this action lies in the Northern District of Illinois, Eastern Division, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan was administered in Elgin, Kane County, Illinois, within this district.

#### **DEFENDANTS AND PARTIES IN INTEREST**

5. Sunstrand Electric Company, Inc. (“Sunstrand”) was incorporated in May 1984 in the State of Illinois.

6. On May 5, 1999, Sunstrand established the Plan for the benefit of its employees. The purpose of the Plan was to provide benefits to its participants and beneficiaries in the event of retirement, death, or disability.

7. Sunstrand Electric Company, Inc. was the named Plan Sponsor and named Plan Administrator.

8. From at least May 5, 1999 to October 1, 2003, Defendant Eugene Aguirre (“Aguirre”), was the President and 100% owner of Sunstrand Electric Company, Inc., which operated as a sole proprietorship; the sole trustee of the Plan; the sole signatory on the Plan’s account; and was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A)(i) and (iii), 29 U.S.C. § 1002(21)(A)(i) and (iii).

9. The Plan is named as a defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

#### **FAILURE TO TERMINATE THE PLAN AND DISTRIBUTE PLAN ASSETS**

10. Paragraphs 1 through 8 above are realleged and incorporated herein by reference.

11. Sunstrand was involuntarily dissolved by the State of Illinois on October 1, 2003.

12. Sunstrand Electric Company, Inc. filed for Chapter 11 bankruptcy reorganization in the Northern District of Illinois on March 18, 2004. The bankruptcy matter was later dismissed.

13. Metropolitan Life Insurance Company (“MetLife”) serves as the Plan’s asset custodian.

14. As of October 15, 2012, the Plan had 9 participants with vested accounts totaling \$100,734.00. The last participant distribution occurred in August 2010.

15. Defendant Aguirre, as the Plan’s sole authorized signatory and sole trustee, has not authorized MetLife to distribute the Plan’s assets to Plan participants.

16. Defendant Aguirre has been unresponsive to communications regarding terminating the Plan.

17. Since August 2010, Defendant Aguirre has failed to administer and to terminate the Plan.

18. Since August 2010, Defendant Aguirre has failed to authorize distributions to all of the Plan’s participants and beneficiaries of the Plan, and thus, they have not been able to obtain distributions from the Plan.

19. The Plan has not been terminated.

20. By the conduct described in paragraphs 10-19 above, Defendant Aguirre:  
a. failed to discharge his duties solely in the interest of the participants and beneficiaries of the Plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of Plan administration, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A); and

b. failed to discharge his duties 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).

**PRAYER FOR RELIEF**

WHEREFORE, the Secretary prays for judgment:

- A. Permanently enjoining Defendant Aguirre from violating the provisions of Title I of ERISA;
- B. Removing Defendant Aguirre from his position as Plan trustee;
- C. Removing Sunstrand from its position as Plan Administrator;
- D. Permanently enjoining Aguirre and Sunstrand from serving as a fiduciary or service provider to any ERISA-covered plan;
- E. Appointing an independent fiduciary to distribute the Plan's assets and to terminate the Plan;
- F. Ordering Defendant Aguirre to pay all reasonable fees and expenses incurred by the independent fiduciary in administering and terminating the Plan;
- F. Awarding the Secretary the costs of this action; and
  
- G. Ordering such further relief as is appropriate and just.

Respectfully submitted,

**M. PATRICIA SMITH**  
Solicitor of Labor

**CHRISTINE Z. HERI**  
Regional Solicitor

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