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11 Attorneys for Plaintiff, Thomas E. Perez,
12 Secretary of Labor,
13 United States Department of Labor

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 THOMAS E. PEREZ, Secretary of)
17 Labor, UNITED STATES)
18 DEPARTMENT OF LABOR,)

19 Plaintiff,)

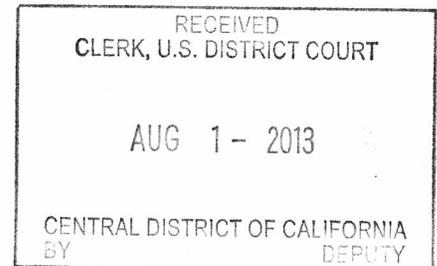
20 vs.)

21 DTK COMPUTER, INC., a California)
22 corporation, and DTK COMPUTER,)
23 INC. 401(k) PLAN, an employee)
24 benefit plan,)

25 Defendants.)

Case No. **CV 13 - 5644 DSF(SS)**

COMPLAINT FOR VIOLATIONS OF ERISA



26 Plaintiff THOMAS E. PEREZ, Secretary of Labor, UNITED STATES
27 DEPARTMENT OF LABOR (the "Secretary"), alleges:

28 1. This cause of action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1191c, and is brought to enjoin acts and practices that violate the provisions of Title I of ERISA, and to

1 obtain other appropriate equitable relief to redress violations and enforce the
2 provisions of that Title pursuant to Section 502(a)(5), 29 U.S.C. § 1132(a)(5).

3 **Jurisdiction, Parties, and Venue**

4 2. Jurisdiction over this action is conferred upon the Court by ERISA §
5 502(e)(1), 29 U.S.C. § 1132(e)(1).

6 3. The DTK COMPUTER, INC. 401(k) PLAN (the “Plan”) is an
7 employee benefit plan as defined under ERISA § 3(3), 29 U.S.C. § 1002(3). The
8 Plan is named as a Defendant herein pursuant to Rule 19(a) of the Federal Rules of
9 Civil Procedure, solely to assure that complete relief can be granted.

10 4. The Plan was sponsored by DTK COMPUTER, INC. (“DTK” or
11 “Company”), a California corporation that manufactured and sold computers. The
12 Company’s principal place of business was in the City of Industry.

13 **Intra-District Assignment**

14 5. Pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), venue for this
15 action lies in the Central District of California because the defendants reside or
16 may be found in this district.

17 **Factual Allegations**

18 6. Pursuant to the Plan’s governing documents, Defendant DTK was the
19 Plan Administrator of the Plan, and as such was and is a fiduciary with respect to
20 the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

21 7. The purpose of the Plan was to provide retirement benefits for the
22 exclusive benefit of its participants, employees of DTK.

23 8. Pursuant to the governing Plan documents, the Board of Directors
24 (consisting of Chih Hung Liao aka Duke Chih Hung Liao and Dan Tsuei aka Der
25 Jong Tsuzi) were the named fiduciaries and as such were fiduciaries with respect to
26 the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

27 9. The California Secretary of State dissolved the corporate status of DTK
28 and DTK ceased operations in 2002.

1 10. Prior to ceasing operations, DTK failed to take steps to ensure the
2 continuing prudent administration of the Plan. The Company failed to take control
3 of the Plan's assets, including taking appropriate measures to effectuate the
4 distribution of these assets to the participants and beneficiaries, and terminating the
5 Plan.

6 11. Despite diligent efforts, the Secretary has been unable to locate any of
7 the known named fiduciaries.

8 12. Automatic Data Processing, Inc. dba ADP Retirement Services
9 ("ADP") is the Plan's asset custodial trustee, and it can act only at the direction of
10 the Plan's Trustee.

11 13. ADP will not authorize distributions of the remaining Plan assets to the
12 Plan's participants and beneficiaries without direction from a properly-appointed
13 fiduciary or a court-appointed independent fiduciary.

14 14. The Plan was funded through discretionary employer contributions and
15 elective salary deferral contributions. As of May 5, 2013, the Plan had 25
16 participants and \$33,610.99 in Plan assets.

17 **Violations of ERISA**

18 15. Because of the facts and circumstances set forth in Paragraphs 6-14,
19 above:

20 a. the Plan does not have named fiduciaries or trustees with exclusive
21 authority and discretion to manage and control its assets as required by ERISA §
22 402(a), 29 U.S.C. § 1102(a); and ERISA § 403(a), 29 U.S.C. § 1103(a); and there
23 is no one other than this Court with the authority to appoint a new discretionary
24 trustee or plan administrator.

25 b. Defendant DTK, acting in its fiduciary capacity, failed to act solely in
26 the interest of the participants and beneficiaries of the Plan and for the exclusive
27 purpose of providing benefits to participants and their beneficiaries and defraying
28

1 reasonable expenses of Plan administration, in violation of ERISA § 404(a)(1)(A),
2 29 U.S.C. § 1104(a)(1)(A);

3 c. Defendant DTK, acting in its fiduciary capacity, failed to act with the
4 care, skill prudence, and diligence under the circumstances then prevailing that a
5 prudent man acting in a like capacity and familiar with such matters would use in
6 the conduct of an enterprise of a like character and with like aims as required by
7 ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B); and

8 16. Because of the facts and circumstances set forth in Paragraphs 6-14
9 above, the Plan participants are unable to access their account balances, either to
10 reinvest them in other tax-qualified retirement savings vehicles before retirement,
11 or to draw them down upon retirement. Because the bases upon which payments
12 are made from the Plan are not and cannot be specified without a properly-
13 appointed discretionary trustee, the Plan exists in violation of ERISA § 402(b)(4),
14 29 U.S.C. § 1102(b)(4).

15 17. As a direct and proximate result of the breaches and violations set forth
16 in Paragraphs 6-16 above, the Secretary is entitled to such equitable or remedial
17 relief as the Court may deem appropriate, including removal of such fiduciary,
18 pursuant to ERISA § 409, 29 U.S.C. § 1109.

19 **WHEREFORE**, pursuant to ERISA § 502(a)(5), 29 U.S.C. § 1132(a)(5),
20 Plaintiff prays that the Court:

21 a. remove DTK from its position as the Plan Administrator and fiduciary
22 of the Plan;

23 b. appoint an independent fiduciary with discretionary authority to
24 administer the Plan in order to effectuate its termination and the distribution of
25 Plan assets to the participants and beneficiaries; and

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c. Provide such other relief as may be just and equitable.

Dated: July 31, 2013

M. PATRICIA SMITH
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

DANIELLE L. JABERG
Counsel for ERISA

By: Norman E Garcia
NORMAN E. GARCIA
Senior Trial Attorney

Attorneys for the Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Dale S. Fischer and the assigned Magistrate Judge is Suzanne H. Segal.

The case number on all documents filed with the Court should read as follows:

CV13-5644-DSF(SS)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

August 5, 2013

Date

By C. Sawyer

Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012 | <input type="checkbox"/> Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701 | <input type="checkbox"/> Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501 |
|--|--|---|

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:
 Norman E. Garcia, Senior Trial Attorney
 United States Department of Labor
 Office of the Solicitor
 90 Seventh Street, Suite 3-700
 San Francisco, California 94103

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

THOMAS E. PEREZ, Secretary of Labor, UNITED STATES DEPARTMENT OF LABOR

CASE NUMBER

CV13-5644 DSF (SSx)

PLAINTIFF(S)

v.

DTK COMPUTER, INC., a California corporation, and DTK COMPUTER, INC. 401(k) PLAN, an employee benefit plan

SUMMONS

DEFENDANT(S).

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Norman E. Garcia, whose address is U.S. Dept. of Labor, Ofc. of the Solicitor, 90 7th St., Ste 3-700; San Francisco, CA 94103. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court



By: _____

Deputy Clerk

1149
 (Seal of the Court)

Dated: 8-5-13

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself)

Thomas E. Perez, Secretary of Labor, UNITED STATES DEPARTMENT OF LABOR

DEFENDANTS (Check box if you are representing yourself)

DTK COMPUTER, INC., a California corporation, and DTK COMPUTER, INC. 401(k) PLAN, an employee benefit plan,

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Norman E. Garcia
U.S. Department of Labor, Office of the Solicitor
90 Seventh Street, Suite 3-700
San Francisco, CA 94103 (415) 625-7747

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

II. BASIS OF JURISDICTION (Place an X in one box only.)

1. U.S. Government Plaintiff
 2. U.S. Government Defendant
 3. Federal Question (U.S. Government Not a Party)
 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)

- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | <input type="checkbox"/> PTF 1 | <input type="checkbox"/> DEF 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> PTF 4 | <input type="checkbox"/> DEF 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

1. Original Proceeding
 2. Removed from State Court
 3. Remanded from Appellate Court
 4. Reinstated or Reopened
 5. Transferred from Another District (Specify)
 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ 0

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
29 U.S.C. §§1001-1191c. This is an abandoned Plan ERISA case. The Plan does not have named fiduciaries or trustees with authority and discretion to manage its assets as required by ERISA. Plaintiff is seeking the removal of DTK as the Plan Administrator and fiduciary and the appointment of an independent fiduciary.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 530 General	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	TORTS	PERSONAL PROPERTY	<input type="checkbox"/> 535 Death Penalty	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	PERSONAL INJURY	<input type="checkbox"/> 370 Other Fraud	Other: <input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 330 Fed. Employers' Liability	BANKRUPTCY	FORFEITURE/PENALTY	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 350 Motor Vehicle	CIVIL RIGHTS	LABOR	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision		<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 751 Family and Medical Leave Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 790 Other Labor Litigation	
		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input checked="" type="checkbox"/> 791 Employee Ret. Inc. Security Act	
		<input type="checkbox"/> 369 Personal Injury Product Liability	<input type="checkbox"/> 448 Education		

FOR OFFICE USE ONLY: Case Number: **CV 13 - 5644**

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? NO YES

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? NO YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
NOTE: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): Norman E Georgia DATE: 7/31/13

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))