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UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

HILDA L. SOLIS, SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR
1000 BIRMINGHAM AVENUE
BIRMINGHAM, ALABAMA 35203-0001

NORTHERN DIVISION

HILDA L. SOLIS,)
Secretary of Labor,)
United States Department of Labor,)
)
Plaintiff,)

FILE NO.

2:11 cv 822 - WKW

v.)

OTORHINOLARYNGOLOGY ASSOCIATES,)
P.C.; OTORHINOLARYNGOLOGY)
ASSOCIATES, P.C., PROFIT SHARING PLAN;)
and DR. RICKEY GENE LOVE,)
)
Defendants.)

COMPLAINT
(Injunctive Relief Sought)

Plaintiff **HILDA L. SOLIS**, Secretary of Labor, **UNITED STATES**

DEPARTMENT OF LABOR ("the Secretary") alleges as follows:

1. This cause of action arises under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, et seq., and is brought to enjoin acts and practices which violate the provisions of Title I of ERISA, and to obtain appropriate relief and appropriate equitable relief to redress violations and enforce the provisions of that Title pursuant to § 502(a)(2) and (5) of ERISA, 29 U.S.C. § 1132(a)(2) and (5).

2. Jurisdiction hereof is conferred upon the Court by § 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).

3. Venue of this action lies in the Middle District of Alabama pursuant to § 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

4. The OTORHINOLARYNGOLOGY Associates, P.C. Profit Sharing Plan ("the Plan") is a single-employer employee benefit plan within the meaning of § 3(3) of ERISA, 29 U.S.C. § 1002(3), subject to coverage under ERISA pursuant to § 4(a), 29 U.S.C. § 1003(a), and is joined as a party defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to ensure that complete relief may be granted.

5. Defendant OTORHINOLARYNGOLOGY Associates, P.C. (the "Company"), an Alabama professional corporation providing medical services, is or was at all times relevant to this action the Employer, Plan Sponsor and Plan Administrator of the Plan and, therefore, a "fiduciary" within the meaning of § 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A), and a "party in interest" within the meaning of § 3(14) of ERISA, 29 U.S.C. § 1002(14)(A) and (C).

6. Defendant Dr. Rickey Gene Love ("Love"), the sole owner and CEO of the Company, is or was at all times relevant to this action a named Trustee of the Plan and, therefore, a "fiduciary" within the meaning of § 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A), and a "party in interest" within the meaning of § 3(14) of ERISA, 29 U.S.C. § 1002(14)(A).

7. According to the corporate records on file with the Alabama Secretary of State, the Company exists, its registered agent is Love, and its current registered office is at 2031 Normandie Drive, Montgomery, Alabama, 36198-2201.

8. The Company adopted the Plan in or around November 2, 1999, and funded the Plan with yearly discretionary employer contributions.

9. Love, as Trustee, has at all relevant times had the authority to direct the investment and distribution of the Plan assets.

10. As of December 31, 2005, the Plan held \$472,421 in assets for four (4) participants.

11. Through a series of transactions between September 6, 2007 and November 10, 2009, Love transferred \$437,939.76 of the Plan's assets to the Company as a loan (the "Loan") to fund the business.

12. The Company did not execute any loan documents for the Loan.

13. The Company provided no security or promissory note for the Loan.

14. The Company has not fully repaid the Loan or made interest payments to the Plan.

15. As of February, 2010, the Plan held \$2,635.14 in assets.

16. In causing or permitting virtually all of the Plan's assets to be loaned back to the sponsoring Company in exchange for no security or promissory note

and without adequate record keeping and monitoring, Love and the Company failed to discharge their duties with respect to the Plan solely in the interests of the Plan's participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable Plan administration expenses as required by section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A).

17. In causing or permitting virtually all of the Plan's assets to be loaned back to the sponsoring Company without security or promissory note and without adequate record keeping and monitoring, Love and the Company violated their duty of prudence as imposed by section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B).

18. In causing or permitting the investment of virtually all of the Plan's assets in loans to the sponsoring Company, Love and the Company failed to diversify the investments of the Plan so as to minimize the risk of large losses as required by section 404(a)(1)(C) of ERISA, 29 U.S.C. § 1104(a)(1)(C).

19. In causing or permitting virtually all of the Plan's assets to be loaned back to the sponsoring Company, Love and the Company caused the Plan to engage in a transaction, which they knew or should have known constituted a direct or indirect lending of money or other extension of credit between the plan and a party in interest, in violation of section 406(a)(1)(B) of ERISA, 29 U.S.C. § 1106(a)(1)(B).

20. In causing or permitting virtually all of the Plan's assets to be loaned back to the sponsoring Company, Love and the Company caused the Plan to engage in a transaction, which they knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of a party in interest, of any assets of the plan, in violation of section 406(a)(1)(D) of ERISA, 29 U.S.C. § 1106(a)(1)(D).

21. In causing or permitting virtually all of the Plan's assets to be loaned back to the sponsoring Company, Love and the Company dealt with the assets of the Plan in their own interest or for their own account, in violation of section 406(b)(1) of ERISA, 29 U.S.C. § 1106(b)(1).

WHEREFORE, Plaintiff prays that the Court:

A. Order that the Plan set off the individual Plan account of Defendant Love against the amount of losses, including lost opportunity costs, resulting from his fiduciary breaches, as authorized by § 1502(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1502(a), 111 Stat. 788, 1058-59 (1997) (codified at 29 U.S.C. § 1056(d)(4)), if the losses are not otherwise restored to the Plan by Defendants and reallocated to the non-breaching participants;

B. Remove Defendants Love and the Company as the Plan fiduciaries and appoint an Independent Fiduciary to arrange for termination of the Plan and distribution of its assets;

C. Order Defendants Love and the Company, jointly and severally, to pay all of the Independent Fiduciary's fees and expenses, other than transactional fees that would have been incurred by the Plan even if Love and the Company not been removed as Trustees;

D. Permanently enjoin Defendants Love and the Company from serving as fiduciary, administrator, officer, trustee, custodian, agent, employee, or representative, or from having control over the assets of any employee benefit plan subject to ERISA;

E. Order Defendants Love and the Company, jointly and severally, to restore to the Plan all losses, including lost opportunity costs and interest, and to disgorge all profits or financial benefit they realized as a result of the prohibited transactions and breaches of their fiduciary obligations;

F. Enjoin Defendants Love and the Company from engaging in any further violations of Title I of ERISA;

G. Award Plaintiff the costs of this action; and

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

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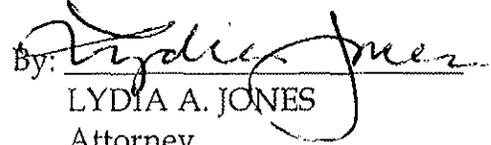
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SOL Case No. 11-04020