

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

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

Plaintiff :

v. :

**TED AYOUB, individually and as fiduciary of the :**  
**YAMASAKI ASSOCIATES, INC. EMPLOYEES' :**  
**401(K) SAVINGS and INVESTMENT PLAN and :**  
**TRUST PLAN and the YAMASAKI :**  
**ASSOCIATES, INC. GROUP HEALTH PLAN :**  
**and YAMASAKI ASSOCIATES, INC. :**

Defendants :

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**COMPLAINT**

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

**JURISDICTION 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. Secs. 1001, et seq., and is brought by the Secretary under ERISA Secs. 502(a)(2) and (5), 29 U.S.C. Secs.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 Sec. 409, 29 U.S.C. Sec. 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 Sec. 502(e)(1), 29 U.S.C. Sec. 1132(e)(1).

3. The Yamasaki Associates, Inc. 401(k) Savings and Investment Plan and Trust Plan (“Pension Plan”) and the Yamasaki Associates, Inc. Group Health Plan (“Health Plan”) (collectively the “Plans”) are employee benefit plans within the meaning of ERISA §3(3), 29 U.S.C. §1002(3), and are subject to the coverage of the Act pursuant to ERISA §4(a), 29 U.S.C. §1003(a).

4. Yamasaki Associates, Inc. (“YAI”), a Michigan corporation which sponsored the Plans, ceased doing business in 2009 but has not filed for bankruptcy.

5. Ted Ayoub owns 66% of YAI and filed for personal bankruptcy under Chapter 7 on July 16, 2010 (U.S. Bankruptcy Court, Eastern District of Michigan; Case No. 10-62790).

6. Venue of this action lies in Eastern District of Michigan, pursuant to ERISA Sec. 502(e)(2), 29 U.S.C. Sec. 1132(e)(2), because at all relevant times the Plans were administered in Oakland County, Michigan, within this district.

#### **DEFENDANTS**

7. At all relevant times, defendant Ted Ayoub was a fiduciary of the Plans within the meaning of ERISA Sec. 3(21)(A), 29 U.S.C. Sec. 1002(21)(A) and a party in interest to the Plans within the meaning of ERISA Secs. 3(14)(A), (C), (E) and (H); 29 U.S.C. Sec. 1002(14)(A), (C), (E) and (H).

8. At all relevant times, defendant YAI was a fiduciary of the Plans within the meaning of ERISA Sec. 3(16)(A), 29 U.S.C. Sec. 1002(16)(A) and a party in interest to the Plans within the meaning of ERISA Secs. 3(14)(A), (C), and (G); 29 U.S.C. Sec. 1002(14)(A), (C) and (G).

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

**Failure to Segregate and Remit Employee Contributions**

10. Paragraphs 1 through 9 above are realleged and incorporated herein by reference.

11. From August 7, 2008 to September 4, 2008, Defendants Ted Ayoub and YAI withheld money from the paychecks of employees as contributions to the Pension Plan but did not segregate them from YAI's general assets as soon as they reasonably could do so and did not remit these contributions until up to 46 days after they could reasonably have done so. These monies were commingled with the general assets of YAI and were used for YAI's general operating expenses.

12. From September 18, 2008 to December 25, 2008, Defendants Ted Ayoub and YAI withheld money from the paychecks of employees as contributions to the Pension Plan but did not segregate them from YAI's general assets as soon as they reasonably could do so and did not remit these contributions until up to 252 days after they could reasonably have done so. These monies were commingled with the general assets of YAI and were used for YAI's general operating expenses.

13. From January 2009 through March 2009, Defendants Ted Ayoub and YAI withheld money from the paychecks of employees as contributions (premium payments) to the Health Plan but did not segregate them from the YAI's general assets. These monies remained commingled with the general assets of YAI, were used for YAI's general operating expenses, and were never remitted to the Health Plan.

14. Defendants used the plan assets mentioned in paragraph 11, 12 and 13 above for their own benefit, not for the benefit of the participants and beneficiaries.

15. Defendants failed to ensure that plan assets were paid into the Health Plan and paid into the Pension Plan timely.

16. By the conduct described in paragraphs 10 through 15 above, Defendants Ted Ayoub and YAI:

a. violated ERISA §403(a) and (c)(1), 29 U.S.C. §1103(a) and (c)(1), which requires that all assets of an employee benefit plan shall be held in trust and never inure to the benefit of the employer;

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

c. caused the Plans to engage in transactions that they knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, parties in interest, of any assets of the Plans in violation of ERISA Sec. 406(a)(1)(D), 29 U.S.C. Sec. 1106(a)(1)(D);

d. dealt with assets of the Plans in their own interest or for their own account, in violation of ERISA Section 406(b)(1), 29 U.S.C. Section 1106(b)(1).

e. in their individual or other capacity acted in transactions involving the Plans on behalf of parties (or represented parties) whose interests were adverse to the interests of the Plans, or the interests of its participants or beneficiaries in violation of ERISA Section 406(b)(2), 29 U.S.C. Section 1106(b)(2).

**Failure to Obtain a Fidelity Bond.**

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

18. On information and belief, the Plans do not have a fidelity bond .

19. By the conduct described in paragraphs 17 and 18, the defendants failed to assure every fiduciary of the Plans and every person who handles funds or other property of the Plans was bonded in violation of ERISA Section 412(a) and (b), 29 U.S.C. Section 1112(a) and (b).

20. Defendants Ted Ayoub and YAI are liable, pursuant to ERISA Sec. 405(a), 29 U.S.C. Sec. 1105(a), during the time periods when said defendants acted as fiduciaries of the Plans.

**PRAYER FOR RELIEF**

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining Defendants Ted Ayoub and YAI from violating the provisions of Title I of ERISA;

B. Ordering Defendants Ted Ayoub and YAI to make good to the Plans any losses, including lost opportunity costs, resulting from fiduciary breaches committed by such defendant or for which such defendant is liable;

C. Ordering the defendants to correct the prohibited transactions in which they engaged, restore any losses to the Plan, disgorge any profits, and pay appropriate interest;

D. Permanently enjoining Ted Ayoub and YAI from serving as fiduciaries or service providers to any ERISA-covered employee benefit plan;

E. Ordering the appointment of an independent fiduciary to oversee the Plans after Ted Ayoub and YAI are removed;

**F.** Ordering Ted Ayoub to secure a fidelity bond and keep it active until such time as the Plans are terminated;

**G.** Requiring the Plans to set off from Ted Ayoub's individual account in the Yamasaki Associates Inc. Employees' 401(k) Savings and Investment Plan and Trust Plan, the amount of losses, including lost opportunity costs, resulting from his fiduciary breaches, as authorized by Section 1502(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, Section 1502(a), 111 Stat. 788, 1058-59 (1997) (codified at 29 U.S.C. Section 1056(d)(4)), if the losses to the Plans are not otherwise restored to the Plans by the defendants;

**H.** Awarding the Secretary the costs of this action; and

**I.** Ordering such further relief as is appropriate and just.

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