

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HILDA L. SOLIS, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR, :

Plaintiff, : Civil Action

v. : No. _____

J.M. SINGLEY & ASSOCIATES, INC., :

Defendant. :

COMPLAINT

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

JURISDICTION AND VENUE

1. This action arises under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*, and is brought to obtain relief under sections 409 and 502 of the Act, 29 U.S.C. §§ 1109 and 1132, in the form of equitable remedies that will redress violations, obtain appropriate equitable relief for breaches of fiduciary duty under the Act, § 409, 29 U.S.C. § 1109, and obtain such further equitable relief as may be appropriate to enforce the provisions of Title I of the Act.

2. This Court has subject matter jurisdiction over this action pursuant to section 502(e)(1) of the Act, 29 U.S.C. § 1132(e)(1).

3. Venue with respect to this action lies in the Eastern District of Pennsylvania, pursuant to section 502(e)(2) of the Act, 29 U.S.C. § 1132(e)(2).

4. The J.M. Singley & Associates, Inc. 401(k) Retirement Plan is an employee benefit plan within the meaning of section 3(3) of the Act, 29 U.S.C. § 1002(3), and is therefore subject to the coverage of the Act pursuant to section 4(a) of the Act, 29 U.S.C. § 1003(a).

5. J.M. Singley & Associates, Inc. (“Singley”), a Pennsylvania corporation, is the Administrator and Sponsor of the Plan. Singley had a place of business located in Media, Pennsylvania.

6. For purposes of this Complaint, the relevant period is defined as 2009 to date.

THE PARTIES

7. The Secretary, pursuant to sections 502(a)(2) and (5) of the Act, 29 U.S.C. §§ 1132(a)(2) and (5), has the authority to enforce the provisions of Title I of the Act by, among other means, the filing and prosecution of claims against fiduciaries and others who commit violations of the Act.

8. Singley is the Administrator of the Plan and the Plan Sponsor. During some or all of the relevant time period, Singley has exercised discretionary authority and discretionary control respecting management of the Plan, has exercised authority and control respecting management and disposition of the Plan’s assets and had discretionary authority and discretionary responsibility in the administration of the Plan. Singley is therefore a fiduciary to the Plan within the meaning of the Act, § 3(21), 29 U.S.C. § 1002(21), and a party in interest with respect to the Plan within the meaning of the Act, § 3(14)(A), 29 U.S.C. § 1002(14)(A).

GENERAL ALLEGATIONS

9. On or about January 1, 2009, Singley established the Plan to provide benefits to its employees in the event of retirement, death, or disability and upon termination of employment.

10. In 2010, Singley ceased operations.

11. In 2012, the sole trustee of the Plan, Bradley Weiss, was barred from serving as a fiduciary by order of the Court in *Solis v. Singley, et al.*, No. 2:11-CV-05175 (E.D. Pa. March 20, 2012).

12. Singley has not taken fiduciary responsibility for the operation and administration of the Plan and its assets, nor has it appointed anyone to assume said responsibility on an on-going basis.

13. Plan participants were terminated from the company in 2010 when the company ceased operations, but those participants have not able to obtain a distribution from the Plan because Singley has not initiated termination of the Plan and distribution of the assets.

14. As of May 2012, the Plan had eight (8) participants and \$17,896.98 in Plan assets.

VIOLATIONS

15. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by reference the averments and allegations of paragraphs 1-14 inclusive.

16. By the actions and conduct described above, Singley, as fiduciary of the Plan,

- 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 the Act, § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A); and
- 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 the Act, § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays that this Court enter an order:

- A. Removing defendant Singley from its position as 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; and
- B. Awarding such further relief as is appropriate and just.

Respectfully submitted,

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Solicitor of Labor

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Regional Solicitor

Joanne Roskey
Counsel for ERISA

s/ Jessica R. Brown
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Attorney

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