

UNITED STATES DISTRICT COURT JUDGE CASTEL

for the

Southern District of New York

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

Plaintiff

v.

ROBERT SARDINA and FINNEGAN'S MOVING  
WAREHOUSE SIMPLE IRA PLAN

Defendant

10 CIV 8615

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ROBERT SARDINA and FINNEGAN'S MOVING & WAREHOUSE SIMPLE IRA  
PLAN  
34 Jeanne Drive  
Newburgh, New York 12550

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patricia M. Rodenhausen  
Regional Solicitor  
U.S. Department of Labor  
201 Varick Street, Room 983  
New York, New York 10014  
By: Jennifer Weekley, Esq.

If you fail to respond, 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.

RUBY J. KRAJICK

CLERK OF COURT

*Patricia Rodenhausen*

Signature of Clerk or Deputy Clerk

Date:

NOV 15 2010

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*Plaintiff*

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CLERK OF COURT



Signature of Clerk or Deputy Clerk

NOV 15 2010

Date: \_\_\_\_\_

SOL:JW:SR

10 CIV 8615

JUDGE CASTEL  
UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff, :

v. :

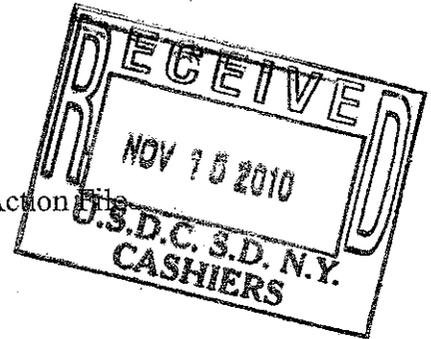
ROBERT SARDINA and FINNEGAN'S :  
MOVING & WAREHOUSE SIMPLE IRA PLAN, :

Defendants. :

Civil Action File

No.

COMPLAINT



Plaintiff Hilda L. Solis, Secretary Of Labor, United States Department of Labor, alleges:

**JURISDICTION AND VENUE**

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

2. This action arises under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA" or "the Act"), 29 U.S.C. § 1001 et seq., as amended, and is brought by the Secretary of Labor under ERISA §§ 502(a)(2) and (5) to obtain relief for breaches of fiduciary duty under ERISA § 409, 29 U.S.C. § 1109 and enjoin acts and practices which violate the provisions of Title I of ERISA. The Secretary also seeks to obtain other appropriate equitable and injunctive relief in order to redress violations and enforce the provisions of that Title.

3. Venue with respect to this action lies in the Southern District of New York, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

## PARTIES

4. The Secretary, pursuant to §§ 502(a)(2) and (5) of the Act, 29 U.S.C. §§ 1132(a)(2) and (5), has authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and other parties who are in violation of ERISA.

5. Defendant Finnegan's Moving & Warehouse Simple IRA Plan (hereinafter "the Plan") was an employee pension benefit plan within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2).

6. The Plan is named as a defendant solely to assure that the Court can order complete relief pursuant to F.R.Civ.P. 19.

7. The Plan was established and maintained by Finnegan's Warehouse Corporation (hereinafter "Finnegan's Warehouse"), a corporation headquartered at 34 Jeanne Drive, Newburgh, New York 12550, and a party in interest under ERISA § 3(14)(C) and (G), 29 U.S.C. § 1002(14)(C) and (G), for its employees.

8. Defendant Robert Sardina was an officer and/or director of Finnegan's Warehouse and made decisions on behalf of the company.

9. Defendant Robert Sardina was at all relevant times a fiduciary with respect to the Plan, because he had and/or he exercised discretionary authority or discretionary control respecting management of the Plan and/or exercised authority or control respecting management or disposition of the Plan assets and/or had and/or exercised discretionary authority or discretionary responsibility in the administration of the Plan. ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

## FACTUAL ALLEGATIONS

10. During the period January 1, 2008 to December 31, 2008, Finnegan's Warehouse employed employees who participated in the Plan.

11. The Plan provided for elective employee contributions to the Plan and mandatory 3% employer matching contributions unless the employer opted to make non-elective contributions to the participants' accounts and so informed the participants in advance.

12. During the period April 4, 2008 to December 26, 2008, Finnegan's Warehouse at the direction and/or with the acquiescence of Robert Sardina withheld the employees' contributions to the Plan from their wages but failed to ensure that some or all of these contributions were forwarded to the Plan in the total amount of \$9,605.29.

13. During the period April 4, 2008 to December 26, 2008, Finnegan's Warehouse at the direction and/or with the knowledge and acquiescence of Robert Sardina failed to ensure that some or all of the mandatory employer matching contributions were made to the Plan in a total amount of \$3,398.48.

14. During the period January 1, 2008 to March 31, 2008, Finnegan's Warehouse at the direction and/or with the knowledge and acquiescence of Robert Sardina withheld employees' contributions to the Plan from their wages but failed to ensure that the contributions together with mandatory employer matching contributions were timely forwarded to the Plan resulting in lost opportunity cost to the participants in the amount to be determined.

15. At all times relevant to this matter, Robert Sardina failed to take reasonable steps on behalf of the Plan to collect some or all of the withheld employee contributions and mandatory employer matching contributions due to the Plan from Finnegan's Warehouse.

16. Finnegan's Warehouse Corporation is now defunct.

### ERISA VIOLATIONS

17. By the conduct described in paragraphs 12 to 15, above, defendant Robert Sardina:

(a) failed to discharge his fiduciary duty with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants of the Plan and their beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A)(i), 29 U.S.C. § 1104(a)(1)(A)(i);

(b) failed to discharge his fiduciary duty 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 person 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);

(c) caused the Plan to engage in transactions which he knew or should have known constituted direct or indirect transfers of assets of the Plan to, or use of assets of the Plan by, or for the benefit of, a party in interest, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

(d) caused and allowed the Plan's assets to be used for purposes other than the exclusive benefit of plan participants or beneficiaries in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);

**PRAYER FOR RELIEF**

**WHEREFORE**, the Secretary of Labor prays that this Court:

1. Permanently enjoin defendant Robert Sardina from serving as a fiduciary to any employee benefit plan covered by the provisions of ERISA;
2. Ordering defendant Robert Sardina to make full restitution to the Plan in the amount of \$13,003.77 plus lost opportunity cost from the date the contributions should have been forwarded to the Plan;
3. Enjoining defendant Robert Sardina from violating any of the provisions of Title I of ERISA;
4. Offsetting any amounts in the Plan accounts of Robert Sardina from sums he is adjudged to owe the Plan;
5. Removing Robert Sardina as fiduciary of the Plan and replacing him with an independent fiduciary to receive and distribute any restitution paid pursuant to the judgment in this case; and

6. Providing such further relief as is just and equitable.

DATED: ~~October~~ 14, 2010  
New York, New York

M. Patricia Smith  
M. PATRICIA SMITH  
Solicitor of Labor

Patricia M. Rodenhausen  
PATRICIA M. RODENHAUSEN  
Regional Solicitor

Jennifer D. Weekley  
JENNIFER D. WEEKLEY  
Attorney (JW-6254)

U.S. Department of Labor,  
Attorneys for Plaintiff.

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