UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

HILDA L. SOLIS, Secretary of Labor, United States Department of Labor, Plaintiff, v. CUSTOM NAVIGATION SYSTEMS, INC., and STEVEN G. GILL Defendant.	CIVIL ACTION FILE NO.

COMPLAINT

Plaintiff Hilda L. Solis, Secretary of the United States Department of Labor ("Plaintiff"), hereby alleges:

1. 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.*, and is brought by Plaintiff to obtain equitable relief, to redress violations, to obtain restitution from employee benefit plan fiduciaries and parties in interest, and to obtain other appropriate relief necessary to enforce the provisions of Title I of ERISA, pursuant to ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2) and (5).

JURISDICTION AND VENUE

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

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

DEFENDANTS

4. During the period from 2002 to 2008 ("pertinent period"), defendant Custom Navigation Systems, Inc. (the "Company") was, and is, an employer within the meaning of ERISA § 3(5), 29 U.S.C. § 1002(5), and was, and is, a corporation having an office and place of business at 633 Boston Post Road, Westbrook, Connecticut 06498, within the jurisdiction of this Court.

5. During the pertinent period, defendant Steven G. Gill ("Gill") was an owner and, beginning on or around July 2007, the President of the Company.

CLAIMS

6. On January 1, 1998, the Company established the Custom Navigation Systems, Inc. 401(k) Profit Sharing Plan and Trust (the "Plan"), an employee pension benefit plan within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A), and which is covered under ERISA pursuant to § 4(a), 29 U.S.C. § 1003(a).

7. The purpose of the Plan was to provide retirement benefits for the exclusive benefit of its participants, employees of the Company, and their beneficiaries.

8. During the pertinent period, the Company was, and is, (i) the sponsor of the Plan, as defined by ERISA § 3(16)(B)(i), 29 U.S.C. § 1002(16)(B)(i), and (ii) the Plan Administrator as defined by ERISA § 3(16)(A)(i), 29 U.S.C. § 1002(16)(A)(i).

9. During the pertinent period, in its capacity as Plan Administrator, the Company was, and is, a fiduciary with respect to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Furthermore, at all times relevant hereto, the Company was a party in interest with respect to the Plan within the meaning of ERISA §§ 3(14)(A) and (C), 29 U.S.C. §§ 1002(14)(A) and (C).

10. During the pertinent period, Gill, President of the Company, was and is, a Trustee of the Plan and, at all times material hereto, exercised authority or control respecting management or disposition of assets of the Plan. As such, Gill was, and is, a fiduciary with respect to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Furthermore, during the pertinent period, Gill was, and is, a party in interest with respect to the Plan within the meaning of ERISA §§ 3(14)(A), (E) and (H), 29 U.S.C. §§ 1002(14)(A), (E) and (H). Gill resides at 134 Westbrook Rd., Deep River, Connecticut 06417, within the jurisdiction of this Court.

11. According to Plan documents, during the pertinent period, the Plan was to be funded by withheld employee contributions in accordance with each employee participant's election, and by discretionary employer matching contributions. The employee contributions withheld on behalf of each Plan participant during the pertinent period became assets of the Plan by operation of 29 C.F.R. § 2510.3-102.

12. During the pertinent period, the Company and Gill (together hereinafter, "Defendants") failed to remit to the Plan withheld employee contributions and participant loan payments totaling in excess of $74,000 excluding lost interest, and diverted the withheld contributions and participant loan payments for use by the Company for purposes other than the Plan benefits.

13. During the pertinent period, Defendants were responsible for receiving and collecting any and all monies and other property due to the Plan, including contributions and participant loan payments, and for properly managing the assets of the Plan, including the withheld employee contributions and withheld participant loan payments.

14. During the pertinent period, Defendants failed to take appropriate measures to receive and collect any and all employee contributions due to the Plan, and to ensure that the withheld employee contributions and withheld participant loan payments, as assets of the Plan, were properly forwarded to the Plan account.

15. As a result of the conduct set forth at paragraphs 12-14, the assets of the Plan inured to the benefit of the Company and were not held for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1).

16. As a result of the conduct set forth at paragraphs 12-14, Defendants failed to discharge their fiduciary duties for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

17. As a result of the conduct set forth at paragraphs 12-14, Defendants failed to discharge their fiduciary duties with care, skill, prudence and diligence, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

18. As a result of the conduct set forth at paragraphs 12-14, Defendants failed to discharge their fiduciary duties in accordance with the Plan documents, in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

19. As a result of the conduct set forth at paragraphs 12-14, Defendants caused the Plan to engage in transactions that they knew or should have known constituted direct or indirect transfers to or uses by or for the benefit of, a party in interest, of assets of the Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C.

§ 1106(a)(1)(D).

20. As a result of the conduct set forth at paragraphs 12-14, Defendants engaged in prohibited transactions by dealing with the assets of the Plan in their own interest or for their own account, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

21. As a result of the conduct set forth at paragraphs 12-14, Defendants breached their fiduciary responsibilities to the Plan by acting in their individual capacity and in their capacity as a representative of the Company where those interests were adverse to the interests of the Plan's participants and beneficiaries, by, among other things, using assets of the Plan to operate the business to the benefit of the Company and Gill, rather than the participants and beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

WHEREFORE, Plaintiff prays that this Court enter an Order:

1. Permanently enjoining Defendants from violating, or knowingly participating in violations of, the provisions of ERISA §§ 403, 404 and 406, 29 U.S.C. §§ 1103, 1104 and 1106.

2. Permanently enjoining Defendant Steven G. Gill from serving as a fiduciary to any ERISA-covered plan.

3. Appointing an Independent Fiduciary to administer the Plan at the Defendants' expense.

4. Requiring Defendants to undo the prohibited transactions in which they engaged and for which they are liable.

5. Requiring Defendants to restore to the Plan any and all losses incurred as a result of breaches of their fiduciary duties, with appropriate interest.

6. Awarding to Plaintiff the costs of this action, and other relief as is equitable and just.

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