

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

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

FILE NO.

Plaintiff, )

v. )

TRIPP MECHANICAL SERVICES, )  
JARVIS EDWARD TRIPP, JR., GINA )  
TRIPP, AND TRIPP MECHANICAL )  
SERVICES, LLC SIMPLE IRA PLAN, )

Defendants. )

**COMPLAINT**  
**(Injunctive Relief Sought)**

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

DEPARTMENT OF LABOR ("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 by the Secretary under Sections 502(a)(2) and (5) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (5), to enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain appropriate relief for breaches of fiduciary duty under ERISA Section 409, 29 U.S.C. § 1109, and to obtain such other further relief as may be appropriate to redress violations and enforce the provisions of that Title.

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

3. Venue lies in the Eastern District of North Carolina pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

4. The Tripp Mechanical Services, LLC SIMPLE IRA Plan (hereinafter "the Plan") is an employee benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. §1002(3), subject to coverage under ERISA pursuant to Section 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. Tripp Mechanical Services ("TMS"), a company located in Falkland, North Carolina and the sponsor of the Plan, was at all relevant times a "fiduciary" to the Plan within the meaning of Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A), and a "party in interest" to the Plan within the meaning of Sections 3(14)(A) and (C) of ERISA, 29 U.S.C. §§ 1002(14)(A) and (C).

6. Jarvis Edward Tripp, Jr., an individual and General Partner of TMS, was at all relevant times a "fiduciary" to the Plan within the meaning of Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A), and a "party in interest" to the Plan within the meaning of Sections 3(14)(A) and (C) of ERISA, 29 U.S.C. §§ 1002(14)(A) and (C).

7. Gina Tripp, an individual and the designated administrator of the Plan, was at all relevant times a "fiduciary" to the Plan within the meaning of Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A), and a "party in interest" to the Plan within the meaning of Sections 3(14)(A) and (C) of ERISA, 29 U.S.C. §§ 1002(14)(A) and (C).

8. The Plan was established by TMS on January 1, 2008.

9. The Plan permitted participants to contribute a portion of their pay to the Plan through payroll deductions.

10. At all relevant times, TMS, Jarvis Edward Tripp, Jr., and Gina Tripp (hereinafter referred to collectively as “Defendants”) were the only entities or individuals with authority and discretion to manage and control assets of the Plan.

11. In accordance with 29 C.F.R. § 2510.3-102, participant contributions were required to be forwarded to the Plan on the earliest date on which such contributions could reasonably be segregated from the employer's general assets.

12. From January 29, 2009 through February 26, 2009, December 10, 2009 through January 7, 2010, and then again from January 21, 2010 through February 25, 2010, Defendants withheld employee contributions and failed to timely forward them to the Plan in accordance with ERISA.

13. From March 5, 2009 until December 3, 2009, and then again from March 4, 2010 until September 23, 2010, in the approximate amount of \$9,468.65, Defendants withheld employee contributions and completely failed to segregate and forward the contributions from Company assets to the Plan in accordance with ERISA.

14. During the periods that participant contributions were not remitted to the Plan as required, Defendants caused or allowed the contributions to be commingled with the general assets of TMS.

15. Defendants have failed to take action to restore to the Plan the full amount of the un-remitted employee contributions plus lost interest that would have accrued but for the actions described in the preceding paragraphs.

## CLAIMS

16. By the actions described in paragraphs 9 through 15, Defendants, as fiduciaries of the Plan,

(a) failed to discharge their duties with respect to the Plan by failing to segregate and forward plan assets to the Plan and by allowing the assets to be used for the benefit of the Company, in violation of Sections 403(a) and 403(c)(1) of ERISA, 29 U.S.C. §§ 1103(a) and 1103(c)(1);

(b) failed to discharge their 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 their beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA Section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

(c) failed to discharge their 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 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 Section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);

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

(e) dealt with assets of the Plan in their own interest or for their own account, in violation of ERISA Section 406(b)(1), 29 U.S.C. § 1106(b)(1); and

(f) acted in the transactions described involving the Plan on behalf of a party whose interests were adverse to the interests of the plan or the interests of its participants and beneficiaries in violation of Section 406(b)(2) of ERISA, 29 U.S.C. § 1106(b)(2).

17. Defendants are each liable for the breaches of the other, pursuant to § 405(a) of ERISA, 29 U.S.C. § 1105(a), in that they either (1) participated knowingly in an act of the other fiduciary, knowing such act was a breach, in violation of Section 405(a)(1) of ERISA, 29 U.S.C. § 1105(a)(1); (2) failed to monitor or supervise the other fiduciary and thereby enabled the breach, in violation of Section 405(a)(2) of ERISA, 29 U.S.C. § 1105(a)(2); or (3) had knowledge of a breach by the other fiduciary and failed to make reasonable efforts under the circumstances to remedy the breach, in violation of Section 405(a)(3) of ERISA, 29 U.S.C. § 1105(a)(3).

WHEREFORE, pursuant to Sections 502(a)(2) and (5) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (5), Plaintiff prays that the Court:

A. Order Defendants to restore to the Plan all losses, including interest or lost opportunity costs, which occurred as a result of their breaches of fiduciary obligations;

B. Order that the Plan set off the individual Plan accounts of any Defendant against the amount of losses, including lost opportunity costs, resulting from their fiduciary breaches, as authorized by Section 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 the Defendants and reallocated to the non-breaching participants;

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

D. Enjoin Defendants from engaging in any further action in violation of Title I of ERISA;

E. Award Plaintiff the costs of this action; and

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

Respectfully submitted,

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U. S. Department of Labor  
Attorneys for Plaintiff.

SOL Case No. 12-12051

**CERTIFICATE OF SERVICE**

I hereby certify that on January 17, 2013, I electronically filed a Complaint with the Clerk of Court using the CM/ECF system and caused a true and accurate copy of the same to be mailed to Defendants by U.S. first class mail proper postage affixed and addressed as follows:

Tripp Mechanical Services  
3283 Crisp Street  
Falkland, NC 27872

Tripp Mechanical Services, LLC SIMPLE IRA Plan  
3283 Crisp Street  
Falkland, NC 27872

Jarvis Edward Tripp, Jr.  
4733 Statonsburg Road  
Greenville, NC 27834

Gina Tripp  
4733 Statonsburg Road  
Greenville, NC 27834

*s/Kristina T. Harrell*  
KRISTINA T. HARRELL  
Attorney for Plaintiff

SOL Case No. 12-12051