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11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

13	THOMAS E. PEREZ, Secretary of)	Case No.: SACV14-00425 CJC (DFMx)
14	Labor, UNITED STATES)	
15	DEPARTMENT OF LABOR,)	
16	Plaintiff,)	FIRST AMENDED COMPLAINT
17	vs.)	FOR VIOLATIONS OF ERISA
18	ROADRUNNER MATERIAL)	
19	DISTRIBUTORS, INC., a California)	
20	corporation, and ROADRUNNER)	
21	MATERIAL DISTRIBUTORS, INC.)	
22	401(k) PROFIT SHARING PLAN, an)	
23	employee benefit plan, ¹)	
24	Defendants.)	

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 24 Plaintiff THOMAS E. PEREZ, Secretary of Labor, UNITED STATES
 25 DEPARTMENT OF LABOR (the “Secretary”), alleges:

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 27 ¹ The Secretary’s original complaint named the Roadrunner Material Distributors, Inc. Retirement
 28 Saving Plan. Upon further investigation, Plaintiff learned that the Defendant Plan is properly titled the
 Roadrunner Material Distributors, Inc. Profit Sharing Plan.

1 prudent man acting in a like capacity and familiar with such matters would use in the
2 conduct of an enterprise of a like character and with like aims as required by ERISA §
3 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

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5 11. Because of the facts and circumstances set forth in Paragraphs 1-9 above,
6 the 401(k) Plan participants are unable to access their account balances to reinvest
7 them in other tax-qualified retirement savings vehicles before retirement, to draw
8 them down upon retirement, or for any other purpose. Because the basis upon which
9 payments are made from the 401(k) Plan are not and cannot be specified without a
10 properly appointed discretionary trustee, the 401(k) Plan exists in violation of ERISA
11 § 402(b)(4), 29 U.S.C. § 1102(b)(4).
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14 12. As a direct and proximate result of the breaches and violations set forth in
15 Paragraphs 1-9 above, the Secretary is entitled to such equitable or remedial relief as
16 the Court may deem appropriate, including removal of such fiduciary, pursuant to
17 ERISA § 409, 29 U.S.C. § 1109.
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1 **WHEREFORE**, pursuant to ERISA § 502(a)(5), 29 U.S.C. § 1132(a)(5),
2 Plaintiff prays that the Court:
3 a. Remove Roadrunner from its position as the Plan Administrator;
4 b. Appoint an independent or successor fiduciary with discretionary
5 authority to administer the 401(k) Plan in order to effectuate its termination and the
6 distribution of 401(k) Plan assets to the participants and beneficiaries; and
7
8 c. Provide such other relief as may be just and equitable.
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10 Dated: March 28, 2014
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12 M. PATRICIA SMITH
13 Solicitor of Labor

14 JANET M. HEROLD
15 Regional Solicitor

16 DANIELLE L. JABERG
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