

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

THOMAS E. PEREZ,)	
Secretary of Labor,)	FILE NO.
United States Department of Labor,)	
)	_____
Plaintiff,)	
)	
v.)	
)	
HOMESTEAD PHYSICIANS, P.A.,)	
LORN LEITMAN, Individually, and)	
HOMESTEAD PHYSICIANS, P.A.)	
401(K) PLAN,)	
)	
Defendants.)	COMPLAINT
)	(Injunctive Relief Sought)

Plaintiff THOMAS E. PEREZ, Secretary of Labor, UNITED STATES

DEPARTMENT OF LABOR ("Secretary") alleges as follows:

Nature of the Action

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 to enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain other appropriate relief for breaches of fiduciary duty under ERISA, and to obtain such other further relief as may be appropriate to redress violations and enforce the provisions of that Title pursuant to § 404(a)(1)(A), (B) and (D) of ERISA, 29 U.S.C. §§ 1104(a)(1)(A), (B), and (D).

Jurisdiction and Venue

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

3. Venue lies in the Southern District of Florida, Miami Division, pursuant to §502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2).

The Parties

4. Defendant Lorn Leitman (hereinafter "Leitman"), an individual and owner of Homestead Physicians, P.A. (the "Company"), was at all relevant times a Trustee of the Homestead Physicians, P.A. 401(k) Plan (the "Plan"), a "fiduciary" to the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A), and a "party in interest" to the Plan within the meaning of ERISA §3(14)(A) and (C), 29 U.S.C. §1002(14)(A) and (C). Upon information and belief, Defendant Leitman resides at Federal Bureau of Prisons, 15801 S.W. 137th Avenue, Miami, Florida 33177.

6. Defendant Homestead Physician, P.A., a Florida corporation, the Plan Sponsor, and the Plan Administrator, was at all relevant times also a "fiduciary" to the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A), and a "party in interest" to the Plan within the meaning of ERISA §3(14)(A) and (C), 29 U.S.C. §1002(14)(A) and (C).

7. Defendant Homestead Physician, P.A., 401(k) Plan is an employee benefit plan within the meaning of §3(3) of ERISA, 29 U.S.C. §1002(3), subject to coverage under ERISA pursuant to §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.

8. The Plan was implemented by Homestead Physician, P.A., on March 20, 1999.

9. The Plan is a defined contribution plan. The Plan was funded by employee elective deferral contributions.

10. According to the corporate records on file with the Florida Secretary of State, the Company was administratively dissolved on September 14, 2010, and its registered agent is or was Defendant Leitman.

11. There is approximately one participant remaining in the Plan.

12. As of December 31, 2012, the Plan had assets of \$91,165.45, which are held in trust by Charles Schwab & Company, Inc.

13. When the Company ceased operations on September 30, 2010, Defendant Leitman failed to ensure that all fund assets in the Plan were appropriately distributed to a participant. According to the Plan documents, if the Plan is discontinued or terminated, all amounts credited to participant accounts become 100% vested and the Company shall direct the distribution of the accounts as soon as practical.

14. Since the Company ceased operations, Defendant Leitman has failed to administer the Plan and has effectively abandoned it, as a result of which the remaining participant is unable to receive information about his fund and is unable to gain access to his funds.

15. Defendant Leitman was permanently barred from serving as a fiduciary to any employee benefits plan according to a Consent Judgment filed on October 9, 2013 in the U.S. District Court for the Southern District of Florida, Miami Division (Case No. 13-cv-23499-00). Defendant Leitman was convicted of one (1) count of theft or embezzlement from employee benefit, 18 U.S.C. § 664, on or about November 16, 2011, and is currently serving a sentence of twenty seven (27) months.

Violations

16. By the actions described in paragraphs 4 through 15, Defendant Leitman, as fiduciary of the Plan has breached his fiduciary obligations by failing to discharge his duties with respect to the Plan solely in the interest of the Plan participant and beneficiary, for the exclusive purpose of providing benefits and defraying reasonable expenses of plan administration, with the requisite degree of care, skill and prudence, and in accordance with the documents and instrument governing the Plan, in violation of §§ 404(a)(1)(A), (B) and (D) of ERISA, 29 U.S.C. §§ 1104(a)(1)(A), (B) and (D).

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

- A. Remove Defendants Leitman and Homestead Physicians, P.A. from serving as fiduciaries to the Plan.
- B. Appoint a successor fiduciary or administrator whose expenses may be deducted from the Plan's assets;

- D. Award Plaintiff the costs of this action; and
- E. 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. 16-00231

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case YES NO b) Related Cases YES NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD s/Brooke Werner McEckron

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

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designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

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