



3. The Joos Electric Co. 401(k) Profit Sharing Plan and Trust (the “Plan”) is an employee benefit plan within the meaning of ERISA §3(3), 29 U.S.C. §1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA §4(a), 29 U.S.C. §1003(a).

4. The Plan is named as a defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

5. Venue of this action lies in the District of Minnesota pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because the Plan is administered in Eagan, Dakota County, Minnesota, within this district.

### **DEFENDANT AND OTHER PARTIES**

6. At all relevant times, Joos Electric Company (Joos Electric), a Minnesota corporation, was the sponsor of the Plan, the administrator of the Plan pursuant to §3(16)(A) of ERISA, 29 U.S.C. §1002(16)(A), a fiduciary of 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). Joos Electric filed for Chapter 11 bankruptcy protection on February 3, 2010 and the case was converted to a Chapter 7 proceeding on June 18, 2010.<sup>[1]</sup>

7. At all relevant times, defendant Susan Joos was the sole owner and President of Joos Electric, the named trustee of the Plan, a fiduciary of 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 (H), 29 U.S.C. §1002(14)(A) and (H).

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[1] Because the Secretary is prosecuting this civil action pursuant to the Department of Labor's police and regulatory power under Title I of ERISA, the Secretary's action will be “an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power,” it is excluded from the operation of the automatic stay provisions of the Bankruptcy Code pursuant to 11 U.S.C. sec. 362(b)(4). The Secretary's efforts to enforce any monetary portion of any judgment obtained against Defendant Joos Electric will be consistent with the Bankruptcy Code.

**COUNT ONE**  
**(Failure to remit employee contributions and participant loan repayments to the Plan)**

8. Paragraphs 1 through 7 above are realleged and incorporated herein by reference.

9. The Plan was established in 1994 by Joos Electric, the plan sponsor, to provide benefits to its employees upon retirement, death or disability.

10. At all relevant times, the Plan's governing documents, which were adopted by Joos Electric, provided in pertinent part that participants could make pre-tax contributions from their compensation to the Plan in an amount up to the contribution limitations set by the Internal Revenue Code on a yearly basis.

11. At all relevant times, the Plan's governing documents provided in pertinent part that participants could take participant loans from their vested Plan account balances. The participant loans were to be repaid in accordance with the Plan's documents through withholding from the participants' paychecks.

12. During the period January 9, 2009 through May 28, 2010, Joos Electric withheld \$15,850.20 from employees' pay in employee contributions and participant loan repayments and failed to remit the amounts so withheld to the employees' Plan accounts. Joos Electric retained in its own general assets the withheld employee contributions and participant loan repayments.

13. During the period January 9, 2009 through May 28, 2010, defendant Susan Joos caused Joos Electric to retain the employee contributions and participant loan repayments and failed to ensure that the amounts withheld from employees' pay were deposited in the employees' Plan accounts.

14. By the conduct described in paragraphs 12 through 13 above, defendants Joos Electric and Susan Joos:

a. failed to ensure that all assets of the Plan were held in trust and did not inure to the benefit of Joos Electric, in violation of ERISA §403(a) and (c)(1), 29 U.S.C. 1103(a) and (c)(1);

b. failed to act solely in the interest of the participants and beneficiaries of the 401(k) Plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of Plan administration, in violation of ERISA §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 man 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);

d. caused the 401(k) Plan to engage in transactions which they knew or should have known constituted a direct or indirect transfer to, or use 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);

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

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

**COUNT TWO**

**(Failure to remit employee contributions and participant loan repayments to the Plan in a timely manner)**

15. Paragraphs 1 through 11 above are realleged and incorporated herein by reference.

16. During the period January 5, 2007 through April 23, 2010, Joos Electric withheld from its employees' pay employee contributions and participant loan repayments to Plan and failed to remit the amounts so withheld to the Plan's accounts in a timely manner. Joos Electric retained in its own general assets the employee contributions and participant loan repayments withheld from employees pay until they were remitted to the Plan.

17. During the period January 5, 2007 through April 23, 2010, defendant Susan Joos caused Joos Electric to retain employee contributions and participant loan repayments to the Plan withheld from the employees pay and failed to ensure that the amounts withheld from employees' pay were deposited promptly in the Plan's accounts.

18. By the conduct described in paragraphs 16 through 17 above, defendants Joos Electric and Susan Joos:

a. failed to ensure that all assets of the Plan were held in trust and did not inure to the benefit of Joos Electric, in violation of ERISA §403(a) and (c)(1), 29 U.S.C. 1103(a) and (c)(1);

b. failed to act solely in the interest of the participants and beneficiaries of the Plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of Plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

c. caused the Plan to engage in transactions which they knew or should have known constituted a direct or indirect transfer to, or use 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);

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

e. acted on behalf of a party whose interests are adverse to the interests of the Plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

**PRAYER FOR RELIEF**

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining defendants Joos Electric and Susan Joos from violating the provisions of Title I of ERISA;

B. Ordering defendants Joos Electric and Susan Joos to make good to the Plan any losses, including interest, resulting from fiduciary breaches committed by them or for which they are liable;

C. Ordering defendants Joos Electric and Susan Joos to correct the prohibited transactions in which they engaged;

D. Removing defendants Joos Electric and Susan Joos from their positions as fiduciaries with respect to the Plan and appointing an independent fiduciary to administer the Plan;

E. Permanently enjoining defendants Joos Electric and Susan Joos from acting as a fiduciary or service provider to any ERISA-covered employee benefit plan;

F. Awarding the Secretary the costs of this action; and

G. Ordering such further relief as is appropriate and just.

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