UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor, Plaintiff, v. **PETER FAHNLANDER, LARRY HANSON, SISTER ROSALIND GEFRE SCHOOLS & CLINICS OF MASSAGE, INC.**, and **SISTER ROSALIND GEFRE EMPLOYEE RETIREMENT PLAN,** Defendants.	CIVIL ACTION File No.

COMPLAINT

Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor ("Secretary"), alleges:

JURISDICTION AND VENUE

1. This action arises under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, et seq., and is brought by the Secretary under ERISA §§502(a)(2) and (5), 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 equitable relief for breaches of fiduciary duty under ERISA §409, 29 U.S.C. §1109, and to obtain such further equitable relief as may be appropriate to redress violations and to enforce the provisions of Title I of ERISA.

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

3. The Sister Rosalind Gefre Employee Retirement Plan ("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. 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 was administered in Ramsey County, Minnesota, which is within this District.

5. 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.

DEFENDANTS

6. During the relevant time period, Sister Rosalind Gefre Schools and Clinics of Massage, Inc. ("Sister Rosalind"),[1] the Plan Administrator, exercised authority and control over the disposition of assets of the Plan; was a fiduciary to the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A); and was 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). Sister Rosalind was dissolved on August 6, 2012 and has ceased operations.

7. During the relevant time period, Peter Fahnlander was the President of Sister Rosalind; was part owner of Sister Rosalind; exercised authority and control over assets of the Plan; was a fiduciary of the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A); and was 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).

---

1 On May 23, 2011, defendant Sister Rosalind filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Minnesota, case no. 11-33457, where the case is still pending. 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. § 362(b)(4). The Secretary's efforts to enforce any monetary portion of any judgment obtained against defendant

8. During the relevant time period, Larry Hanson was a named Trustee of the Plan; was the Director of Finance of Sister Rosalind; was a fiduciary within the meaning of ERISA §(21)(A), 29 U.S.C. §1002(21)(A); and was a party in interest to the Plan within the meaning of ERISA §3(14)(A), 29 U.S.C. §1002(14)(A).

ALLEGATIONS

COUNT ONE
(Failure to remit participant contributions to the Plan)

9. Paragraphs 1 through 8 above are realleged and hereby incorporated in these allegations.

10. The Summary Plan Description ("SPD") stated that participants could elect to defer a portion of their wages to the Plan.

11. From November 20, 2007 through May 10, 2008, Sister Rosalind withheld from employees pay $20,743.75 in contributions to the Plan.

12. The participant contributions withheld by Sister Rosalind from employees' wages between November 20, 2007 through May 10, 2008 were retained in Sister Rosalind's general operating account and used to pay corporate expenses.

13. During periods between November 20, 2007 through May 10, 2008, Peter Fahnlander and Sister Rosalind caused Sister Rosalind to retain the participant's contributions to the Plan that had been withheld from their pay and failed to ensure that the amounts withheld from the employee's pay were deposited in the Plan's accounts.

14. Based on the facts described in paragraphs 10 through 13 above, Peter Fahnlander and Sister Rosalind:

---

corporation Sister Rosalind will be consistent with the Bankruptcy Code.

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

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).

15. As a direct and proximate result of these breaches committed by defendants Peter Fahnlander and Sister Rosalind in paragraph 14, the Plan has suffered injury and losses for which it is entitled to equitable relief, pursuant to ERISA §409, 29 U.S.C. §1109.

COUNT TWO
(Failure to timely remit participant contributions to the Plan)

16. Paragraphs 1 through 10 above are realleged and hereby incorporated in these allegations.

17. During periods from January 1, 2007 through March 4, 2011, Sister Rosalind withheld money from its employees pay for contribution to the Plan.

18. During periods from January 1, 2007 through March 4, 2011, Sister Rosalind failed to timely remit to the Plan the money it withheld from its employees for contribution to the Plan and retained this money in its general operating account until it was remitted.

19. During periods from January 1, 2007 through March 4, 2011, Peter Fahnlander and Sister Rosalind caused Sister Rosalind to retain the employees contributions to the Plan that had been withheld from employees pay and failed to ensure that these withholding were timely remitted to the Plan.

20. Based on the facts described in paragraph 17 through 19 above, Peter Fahnlander and Sister Rosalind:

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

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).

21. As a direct and proximate result of these breaches committed by defendants Peter Fahnlander and Sister Rosalind in paragraph 20, the Plan has suffered injury and losses for which it is entitled to equitable relief, pursuant to ERISA §409, 29 U.S.C. §1109.

COUNT THREE
(Failure to ensure participant contributions were remitted and timely remitted to the Plan)

22. Paragraphs 1 through 8, 10 through 13, and 17 through 19 above are realleged and hereby incorporated in these allegations.

23. Based on information and belief, at all relevant times, Larry Hanson knew that contributions withheld from employees pay were either being remitted to the Plan in an untimely manner or not being remitted to the Plan at all.

24. During periods between November 20, 2007 through May 10, 2008, Larry Hanson failed to ensure that withheld participant wages intended for contributions to the Plan were remitted to the Plan.

25. During periods from May 21, 2007 through March 4, 2011, Larry Hanson failed to ensure that withheld participant wages intended for contributions to the Plan were timely remitted to the Plan.

26. Based on the facts described in paragraphs 10 through 13, 17 through 19, and 23 through 25 above, Larry Hanson:

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

b. failed to act solely in the interest of the participants and beneficiaries of the Plan for the exclusive purpose of proving 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).

27. Larry Hanson is liable, pursuant to ERISA §405(a)(2), 29 U.S.C. §1105(a)(2), for the breaches of fiduciary responsibility by a co-fiduciary, as describe in paragraphs 10 through 13, 17 through 19, and 23 through 25 above, because by failing to comply with ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A), in the administration of his specific responsibilities which gave rise to his status as a fiduciary of the Plan, he enabled another fiduciary to commit a breach.

28. Larry Hanson is liable, pursuant to ERISA §405(a)(3), 29 U.S.C. §1105(a)(3), for the breaches of fiduciary responsibility buy a co-fiduciary, as described in paragraphs 10 through 13, 17 through 19, and 23 through 25 above, because by the nature of his role as the Plan's Trustee and the Director of Finance of Sister Rosalind, he was aware of Fahnlander's failure to

remit employee contributions to the Plan and did not make reasonable efforts to remedy the breach.

29. As a direct and proximate result of these breaches committed by defendant Hanson as set forth in paragraph 26 through 28, the Plan has suffered injury and losses for which it is entitled to equitable relief, pursuant to ERISA §409, 29 U.S.C. §1109.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining Peter Fahnlander, Larry Hanson, and Sister Rosalind from violating the provisions of Title I of ERISA;

B. Ordering Peter Fahnlander, Larry Hanson, and Sister Rosalind to make good to the Plan all losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;

C. Ordering Peter Fahnlander and Sister Rosalind to correct the prohibited transactions in which they engaged relating to the Plan;

D. Permanently enjoining Peter Fahnlander, Larry Hanson, and Sister Rosalind from serving as a fiduciary or service provider to any ERISA-covered employee benefit plan;

E. Appointing an independent fiduciary to administer the Plan in order to effectuate its termination and the distribution of Plan assets to the participants and beneficiaries.

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

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

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

s/ Mark H. Ishu
MARK H. ISHU
Attorney
Illinois Bar No. 6296803

Attorneys for **THOMAS E. PEREZ**,
Secretary, United States Department
of Labor, Plaintiff

P.O. ADDRESS:
Office of the Solicitor
U.S. Department of Labor
230 South Dearborn Street
Eighth Floor
Chicago, Illinois 60604
Telephone: (312) 353-6972
Email: Ishu.Mark.H@dol.gov
sol-chi@dol.gov