

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

3. SLP Machine, Inc. (“SLP Machine”) established the SLP Machine Simple IRA (“Plan”) to provide retirement benefits to the Plan’s participants.

4. 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).

5. Venue for 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 Ham Lake, Anoka County, Minnesota, within this district.

DEFENDANTS AND PARTIES IN INTEREST

6. 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.

7. From July 22, 2008 to present, Defendant Gregory Fletcher (“Defendant Fletcher”) was SLP Machine’s president; exercised authority and control over SLP Machine and its assets; exercised authority and control respecting management or disposition of the Plan’s assets; was a named trustee 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 (H), 29 U.S.C. § 1002(14)(A) and (H).

8. From July 22, 2008 to present, SLP Machine was the Plan Sponsor and Plan Administrator 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). SLP Machine ceased operations on or around November 11, 2013.

VIOLATIONS

COUNT I - FAILURE TO REMIT EMPLOYEE SALARY REDUCTION CONTRIBUTIONS TO THE PLAN

9. Paragraphs 1 through 8 above are hereby re-alleged and incorporated herein.

10. During the period from July 22, 2008 through October 5, 2011, the Plan's governing documents stated that participants could elect to defer a portion of their wages to be contributed to the Plan.

11. During the period from April 16, 2010 through October 5, 2011, SLP Machine withheld \$10,818.69 from its employees' pay as salary reduction contributions intended for the Plan. SLP Machine retained the withheld employee contributions in its general assets.

12. During the period from April 16, 2010 through October 5, 2011, Defendant Fletcher had authority and control over whether SLP Machine remitted withheld employee salary reduction contributions to the Plan.

13. During the period from April 16, 2010 through October 5, 2011, Defendant Fletcher caused SLP Machine to retain \$10,818.69 in employee salary reduction contributions to the Plan, that had been withheld from its employees' pay, and not remit such salary reduction contributions to the Plan.

14. SLP Machine used the Plan's assets, the retained employee salary reduction contributions, for its own benefit to pay other corporate expenses.

15. Based on the facts described in paragraphs 9-14, Defendant Fletcher:
- a. failed to hold all Plan assets in trust in violation of ERISA § 403(a), 29 U.S.C. § 1103(a);
 - b. permitted the assets of the Plan to inure to the benefit of the employer in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);
 - c. failed to discharge his 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 in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);
 - d. caused the Plan to engage in transactions that he 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 any assets of the Plan in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);
 - e. dealt with the Plan assets in his own interest or for his own account in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and
 - f. acted in a transaction involving the Plan on behalf of a party whose interests were adverse to the interest of the Plan and to the interest of the Plan's participants and beneficiaries in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).
16. As a direct and proximate result of Defendant Fletcher's fiduciary breaches, the Plan has suffered injury and losses for which he is personally liable and subject to appropriate equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

**COUNT II- FAILURE TO TIMELY REMIT EMPLOYEE SALARY
REDUCTION CONTRIBUTIONS TO THE PLAN**

17. Paragraphs 1 through 8 above are hereby re-alleged and incorporated herein.

18. During the period from July 22, 2008 through April 12, 2010, SLP Machine withheld monies from its employees' pay to defer to employees' plan accounts.

19. During the period from July 22, 2008 through April 12, 2010, SLP Machine failed to timely remit employee salary reduction contributions intended for the Plan to the Plan and retained those monies in its general operating account until they were remitted.

20. During the period from July 22, 2008 through April 12, 2010, Defendant Fletcher caused SLP Machine to retain employee salary reduction contributions intended for the Plan and not timely remit such plan assets to the Plan.

21. SLP Machine used the Plan's assets, the retained employee salary reduction contributions, for its own benefit to pay other corporate expenses.

22. Based on the facts described in paragraphs 17-21, Defendant Fletcher:

a. failed to hold all Plan assets in trust in violation of ERISA § 403(a), 29 U.S.C. § 1103(a);

b. permitted the assets of the Plan to inure to the benefit of the employer in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);

c. failed to discharge his 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 in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

d. caused the Plan to engage in transactions that he 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 any assets of the Plan in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

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

f. acted in a transaction involving the Plan on behalf of a party whose interests were adverse to the interest of the Plan and to the interest of the Plan's participants and beneficiaries in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

23. As a direct and proximate result of Defendant Fletcher's fiduciary breaches, the Plan has suffered injury and losses for which he is personally liable and subject to appropriate equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for a judgment:

A. Permanently enjoining Defendant Fletcher from violating the provisions of Title I of ERISA;

B. Ordering the removal of Defendant Fletcher from any positions that he now has as a fiduciary to the Plan;

C. Permanently enjoining Defendant Fletcher from serving as a fiduciary or service provider to any ERISA-covered employee benefit plan;

D. Ordering Defendant Fletcher to correct the prohibited transaction in which he engaged;

E. Ordering Defendant Fletcher to restore to the Plan all losses, including lost opportunity costs, resulting from fiduciary breaches committed by him or for which he is liable;

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

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

Respectfully submitted,

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