

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

THOMAS E. PEREZ, Secretary of Labor,)
United States Department of Labor,) Civil Action No. 14-5033
)
Plaintiff,)
)
v.) COMPLAINT
)
REMODEL KING CONSTRUCTION, INC.,)
SCOTT D. SOGGE, and REMODEL KING)
CONSTRUCTION, INC. SARSEP PLAN,)
)
Defendants.)

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor, brings this action against Defendants, Remodel King Construction, Inc., Scott D. Sogge, and Remodel King Construction, Inc. Salary Reduction Simplified Employee Pension Plan (“SARSEP Plan” or “Plan”), pursuant to Sections 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(5), of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.* (“ERISA”), for appropriate equitable and remedial relief under ERISA Sections 409 and 502(a)(5), 29 U.S.C. §§ 1109 and 1132(a)(5), to enjoin violations of the provisions of Title I of ERISA, and to obtain other appropriate relief to redress violations and to enforce the provisions of Title I of ERISA.

JURISDICTION

1. Jurisdiction of this action is conferred upon the Court by ERISA Section 502(e)(1), 29 U.S.C. § 1132(e)(1).

VENUE

2. Venue of this action lies in the United States District Court, for the District of South Dakota, pursuant to ERISA Section 502(e)(2), 29 U.S.C. § 1132(e)(2).

SARSEP PLAN

3. Remodel King Construction, Inc. Salary Reduction Simplified Employee Pension Plan (SARSEP Plan) is, and at all times hereafter mentioned was, an employee pension benefit plan within the meaning of ERISA Section 3(2), 29 U.S.C. § 1002(2). The Plan was established by, and at all times hereinafter mentioned was maintained by, an employer engaged in commerce or in an industry or activity affecting commerce and is subject to Title I including Title I, Part 4 of ERISA pursuant to ERISA Sections 4(a)(1) and 401(a), 29 U.S.C. §§ 1003(a)(1) and 1101(a). During all times hereinafter mentioned, the Plan has been administered in Rapid City, South Dakota, within the jurisdiction of this Court.

DEFENDANTS

4. Defendant Remodel King Construction, Inc. ("RKCI") is, and at all times hereinafter mentioned was, a South Dakota corporation doing business within the jurisdiction of this Court. At all times hereinafter mentioned, RKCI has been an employer and Plan Sponsor with respect to the SARSEP Plan within the meaning of ERISA Sections 3(5) and 3(16)(B), 29 U.S.C. §§ 1002(5) and 1002(16)(B). Additionally, at all times hereinafter mentioned, RKCI has been a fiduciary and a party in interest with respect to the SARSEP Plan within

the meaning of ERISA Sections 3(14) and 3(21)(A), 29 U.S.C. §§ 1002(14) and 1002(21)(A). At all times hereinafter mentioned, RKCI has also been the Plan administrator pursuant to Section 3(16)(A)(ii), 29 U.S.C. § 1002(16)(A)(ii), because it is the Plan sponsor and the Plan documents do not specifically designate a Plan administrator.

5. At all relevant times, Defendant Scott D. Sogge was President and sole owner of RKCI and acted on its behalf with respect to the SARSEP Plan. At all relevant times, Defendant Scott D. Sogge was a fiduciary and a party in interest with respect to the Plan within the meaning of ERISA Sections 3(14) and 3(21)(A), 29 U.S.C. §§ 1002(14) and 1002(21)(A). As the sole owner, Defendant RKCI has had and exercised discretionary authority, control and responsibility over Plan management and administration, and had actual control over the Plan assets retained in the general account of his company. During all relevant times, Defendant Scott D. Sogge conducted his job duties concerning the administration of the SARSEP Plan in Rapid City, South Dakota, within the jurisdiction of this Court.

6. The SARSEP Plan, as described in paragraph III, above, is joined as a party defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

ERISA VIOLATIONS

7. During the period of May 9, 2008, through December 31, 2010, Defendants RKCI and Scott D. Sogge failed to ensure employee contributions withheld from employees' pay were remitted to the SARSEP Plan. Instead, the

Defendants allowed the withheld funds, which became assets of the Plan pursuant to the Department of Labor Regulation at 29 C.F.R. § 2510.3102, for uses unrelated to the Plan.

8. As a result of their respective positions and actions, Defendants, RKCI and Scott D. Sogge, were fiduciaries with respect to the Plan, and they each violated the provisions of ERISA in that they respectively:

- (a) Failed to discharge their 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 Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A);
- (b) Failed to discharge their duties to the Plan with the care, skill, prudence and diligence under the circumstances that a prudent person 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 Section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B);
- (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, assets of such plan in violation of Section 406(a)(1)(D) of ERISA, 29 U.S.C. § 1106(a)(1)(D);
- (d) Dealt with the assets of the Plan in their own interests or for their own accounts in violation of Section 406(b)(1) of ERISA, 29 U.S.C. § 1106(b)(1);
- (e) Engaged in transactions involving the Plan on behalf of a party

whose interests were adverse to the interests of such plan and the interests of its participants and beneficiaries in violation of Section 406(b)(2) of ERISA, 29 U.S.C. § 1106(b)(2); and

(f) Caused the assets of the Plan to inure to the benefit of the Employer and Plan Sponsor and failed to hold Plan assets for the exclusive purposes of providing benefits to participants in the Plan and their beneficiaries in violation of Section 403(c)(1) of ERISA, 29 U.S.C. §1103(c)(1).

9. The violations occurred in, but were not limited to, the following Plan transactions: failing to remit employees' contributions withheld from employees' wages, and thus, Plan assets to the SARSEP Plan; permitting RKCI, a party in interest, to use Plan assets for its own benefit and other non-Plan purposes; and failing to properly administer the SARSEP Plan for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expense of administering the Plan.

10. The fiduciaries' violations resulted in:

(a) \$33,866.40 in employees' contributions withheld from employees' wages not being remitted to the SARSEP Plan; and

(b) Lost opportunity costs to the SARSEP Plan that as of March 7, 2014, have accrued using the underpayment rate specified in Internal Revenue Code Section 6621(a) in the amount of \$5,937.92.

DIRECT LIABILITY

11. As a result of engaging in breaches of its fiduciary responsibilities,

obligations, or duties, and by engaging in transactions prohibited by ERISA, as described in paragraphs 7 through 10 of this Complaint, Defendants, RKCI and Scott D. Sogge, have caused the SARSEP Plan to suffer financial losses for which they are jointly and severally liable pursuant to ERISA Section 409(a), 29 U.S.C. § 1109(a).

CO-FIDUCIARY LIABILITY

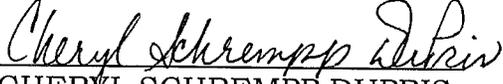
12. Pursuant to the provisions of ERISA Section 405, 29 U.S.C. § 1105, Defendants, RKCI and Scott D. Sogge, fiduciaries with respect to the Plan, are personally liable for the breaches of fiduciary responsibility set forth in paragraphs 7 through 10, above, committed by their co-fiduciaries with respect to the Plan.

WHEREFORE, cause having been shown, Plaintiff, Secretary of Labor prays that this Court:

1. Permanently enjoin Defendants RKCI and Scott D. Sogge from violating the provisions of ERISA;
2. Order Defendants RKCI and Scott D. Sogge to restore all losses to the SARSEP Plan, with interest thereon, resulting from their breaches of fiduciary obligations, to correct all prohibited transactions, and if necessary, to offset any claims or benefits which they may have against or with the SARSEP Plan against the amount of losses, including lost opportunity costs, resulting from their violations;
3. Award plaintiff costs of this action; and
4. Provide such other remedial relief as may be appropriate.

Dated this 6th day of May, 2014.

BRENDAN V. JOHNSON
United States Attorney


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Solicitor of Labor

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Regional Solicitor

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UNITED STATES DISTRICT COURT

for the

District of South Dakota

Thomas E. Perez, Secretary of Labor,
U.S. Department of Labor,

Plaintiff(s)

v.

Remodel King Construction, Inc.,
Scott D. Sogge, and
Remodel Construction, Inc. SARSEP PLAN

Defendant(s)

Civil Action No. 14-5033

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Remodel King Construction, Inc.
1221 E. Fairmont Boulevard
Rapid City, SD 57701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Cheryl Schrempp DuPris
Assistant United States Attorney,
United States Attorney's Office
P.O. Box 7240
Pierre, SD 57501

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

[Handwritten Signature]

Signature of Clerk or Deputy Clerk

Date: 5-6-14

UNITED STATES DISTRICT COURT

for the

District of South Dakota

Thomas E. Perez, Secretary of Labor,
U.S. Department of Labor,

Plaintiff(s)

v.

Remodel King Construction, Inc.,
Scott D. Sogge, and
Remodel Construction, Inc. SARSEP PLAN

Defendant(s)

Civil Action No. 14-5033

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Scott D. Sogge
919 Franklin Street
Rapid City, SD 57701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Cheryl Schrempp DuPris
Assistant United States Attorney,
United States Attorney's Office
P.O. Box 7240
Pierre, SD 57501

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Genevieve Clausen
Signature of Clerk or Deputy Clerk

Date: 5-6-14

UNITED STATES DISTRICT COURT

for the

District of South Dakota

Thomas E. Perez, Secretary of Labor,
U.S. Department of Labor,

Plaintiff(s)

v.

Remodel King Construction, Inc.,
Scott D. Sogge, and
Remodel Construction, Inc. SARSEP PLAN

Defendant(s)

Civil Action No. 14-5033

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Remodel King Construction, Inc. SARSEP Plan
P.O. Box 9171
Rapid City, SD 57709

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Cheryl Schrempp DuPris
Assistant United States Attorney,
United States Attorney's Office
P.O. Box 7240
Pierre, SD 57501

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

[Handwritten Signature]
Signature of Clerk or Deputy Clerk

Date: 5-6-14

CIVIL COVER SHEET

Attachment 2

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 THE REVERSE OF THE FORM.)

14-5033

I. (a) PLAINTIFFS
 Thomas E. Perez, Secretary of Labor, U.S. Department of Labor

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

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Cheryl Schrempp DuPris, Assistant US Attorney,
 US Attorney's Office, P.O. Box 7240, Pierre, SD 57501 / 605-224-5402

DEFENDANTS
 Remodel King Construction, Inc., Scott D. Sogge, and
 Remodel King Construction, Inc., SARSEP Plan

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

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

Attorneys (If Known)

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

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)

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act		
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

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

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 USC 1132

Brief description of cause:

VII. 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

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE May 6, 2014 SIGNATURE OF ATTORNEY OF RECORD Cheryl Schrempp DuPris

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____