

3. Bonner & Borhart, LLP (“Bonner & Borhart”) established the Bonner & Borhart, LLP SIMPLE IRA Plan (“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 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 Hennepin County, Minnesota, within this district.

DEFENDANTS AND PARTIES IN INTEREST

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

7. From January 15, 2009 to the present, John Bonner (“Defendant Bonner”) was the managing partner and sole owner of Bonner & Borhart; exercised authority or control over the management or disposition of the Plan assets; 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 (E), 29 U.S.C. §1002(14)(A) and (E).

8. From January 15, 2009 to the present, Bonner & Borhart, the Plan Administrator, exercised authority or control over the management or disposition of the Plan assets; 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), (C) and (G), 29 U.S.C. §1002(14)(A), (C) and (G).

VIOLATIONS

Count I

(Failure to remit participant contributions to the Plan)

9. The General Allegations, paragraphs 1 through 8 above, are hereby incorporated in these allegations.

10. During periods from at least January 15, 2009 to May 12, 2014, the Plan's governing documents provided, in pertinent part, that participants could elect to defer a portion of their compensation to be contributed to the Plan.

11. During periods from at least January 15, 2009 to May 12, 2014, Bonner & Borhart withheld in excess of \$23,334.63 from employees' pay in salary reduction contributions intended for the Plan. Bonner & Borhart retained the withheld employee contributions in its general operating account.

12. During periods from at least January 15, 2009 to May 12, 2014, Defendant Bonner exercised authority and control over whether and when Bonner & Borhart remitted withheld employee salary reduction contributions to the Plan.

13. During periods from January 15, 2009 to May 12, 2014, Defendant Bonner caused Bonner & Borhart to retain approximately \$23,334.63 in employee salary reduction contributions to the Plan that had been withheld from its employees' pay. To date, the \$23,334.63 in unremitted salary deferral contributions has not been remitted to the Plan.

14. Bonner & Borhart used the Plan's assets, the retained employee salary reduction contributions, for its own benefit to pay its operating expenses.

15. By the conduct described in paragraphs 10 through 14 above, Defendants Bonner and Bonner & Borhart:

a. failed to ensure that the assets of the Plan were held in trust and did not inure to the benefit of Bonner & Borhart 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. failed to discharge his duties with respect to the Plan in accordance with the documents and instruments governing the Plan, in violation of ERISA §404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D).

d. 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);

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).

16. As a direct and proximate result of Defendants Bonner and Bonner & Borhart's fiduciary breaches, the Plan suffered injury and losses for which they are personally liable and are subject to appropriate equitable relief, pursuant to ERISA §409, 29 U.S.C. §1109.

Count II

(Failure to timely remit participant contributions to the Plan)

17. The General Allegations, paragraphs 1 through 8 and 10 above, are hereby incorporated in these Allegations.

18. During periods from at least January 15, 2009 to May 12, 2014, Bonner & Borhart withheld \$151,497.09 from its employees' pay as salary reduction contributions intended for the Plan.

19. During periods from at least January 15, 2009 to May 12, 2014, Bonner & Borhart failed to timely remit \$133,127.53 in employees' salary reduction contributions intended for the Plan and retained those monies in its general operating account until they were remitted.

20. During periods from at least January 15, 2009 to May 12, 2014, Defendant Bonner caused Bonner & Borhart to retain the withheld participant's Plan contributions intended for the Plan and not timely remit such contributions to the Plan.

21. Bonner & Borhart used the Plan's assets, the retained employee salary reduction contributions, for its own benefit to pay its operating expenses.

22. By the conduct described in paragraphs 18 through 21 above, Bonner and Bonner & Borhart:

a. failed to ensure that the assets of the Plan were held in trust and did not inure to the benefit of Bonner & Borhart 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. failed to discharge his duties with respect to the Plan in accordance with the documents and instruments governing the Plan, in violation of ERISA §404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D)

d. 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);

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).

23. As a direct and proximate result of Defendants Bonner and Bonner & Borhart's fiduciary breaches, the Plan suffered injury and losses for which they are 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 judgment:

A. Permanently enjoining Defendants Bonner and Bonner & Borhart from violating the provisions of Title I of ERISA;

B. Ordering Defendants Bonner and Bonner & Borhart 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 Defendants Bonner and Bonner & Borhart to correct the prohibited transactions in which they engaged relating to the Plan;

D. Ordering Defendants Bonner and Bonner & Borhart removed from any positions they currently hold as fiduciaries to the Plan;

E. Permanently enjoining Defendants Bonner and Bonner & Borhart from serving 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.

Respectfully submitted,

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