UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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THOMAS E. PEREZ, Secretary of Labor, :
United States Department of Labor, :
:
Plaintiff, :
: CIVIL ACTION NO.:
v. :
:
KENNETH W. WRIGHT, **E. PAUL WILLINGHAM**, and **SCHOOLSTART COMPANY 401(k) P/S PLAN**, :
:
Defendants. :

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COMPLAINT

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

JURISDICTION AND VENUE

1. This cause of action arises under 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 SchoolStart Company 401(k) P/S 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 Eden Prairie, Hennepin County, Minnesota, within this district.

DEFENDANTS AND PARTIES IN INTEREST

5. SchoolStart Company ("SchoolStart") was incorporated as a domestic nonprofit corporation on approximately February 2, 2001 in the State of Minnesota.

6. On approximately January 1, 2004, SchoolStart established the Plan for the benefit of its employees. The purpose of the Plan was to provide benefits to its participants and beneficiaries in the event of retirement, death, or disability.

7. SchoolStart was the Plan Sponsor and named Plan Administrator.

8. From at least January 1, 2004, Defendant Kenneth W. Wright ("Wright"), was President of SchoolStart; a trustee of the Plan; a signatory on the Plan's account; and was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

9. From at least January 1, 2004, Defendant E. Paul Willingham ("Willingham"), was a trustee of the Plan; a signatory on the Plan's account; and was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

10. 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.

FAILURE TO TERMINATE THE PLAN AND DISTRIBUTE PLAN ASSETS

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

12. MG Trust serves as the Plan's asset custodian.

13. SchoolStart was involuntarily dissolved by the State of Minnesota on January 23, 2008. Upon information and belief, SchoolStart ceased operations by January 1, 2008.

14. Under the terms of the Plan, for participants with vested account balances, distributions are first available or will be made as soon as administratively feasible following the participant's employment termination date.

15. The four non-fiduciary participants remaining in the Plan on December 16, 2013 had termination dates between approximately February 15, 2004 and August 15, 2005.

16. As of December 16, 2013, the Plan had four non-fiduciary participants with vested accounts totaling $18,710.27. The last participant distribution occurred on approximately February 14, 2007.

17. To date, the plan has not been terminated.

18. Since approximately April 1, 2011, Defendants Wright and Willingham, as the Plan's sole trustees, have failed to authorize distributions to all Plan participants and beneficiaries, thus the remaining Plan participants and beneficiaries have not been able to obtain distributions from their Plan accounts.

19. Defendants Wright and Willingham have failed to administer the Plan since approximately April 1, 2011.

20. By the facts described in paragraphs 11-19 above, Defendants Wright and Willingham:

a. failed to discharge their duties 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); and

b. failed to discharge their duties 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).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining Defendants Wright and Willingham from violating the provisions of Title I of ERISA;

B. Ordering the removal of Defendants Wright and Willingham from their positions as Plan trustees;

C. Permanently enjoining Defendants Wright and Willingham from serving as fiduciaries or service providers to any ERISA-covered plan;

D. Appointing an independent fiduciary to terminate the Plan consistent with the Plan's governing document, the Internal Revenue Code, and ERISA, distribute the Plan's assets to the participants and beneficiaries, and conclude any plan-related matters connected with the proper termination of the plan;

E. Ordering Defendant Wright and Willingham to pay all reasonable fees and expenses incurred by the independent fiduciary in administering and terminating the Plan;

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

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

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

/s/ Stacey Scanlon
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