

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 Dakota County, Minnesota, within this district.

5. 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.

DEFENDANTS

6. During the relevant time period, SGH Communications, Inc. (“SGH”), 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).

7. During the relevant time period, Jean Hanvik (“Defendant Hanvik”) was the sole owner of SGH; exercised authority and control over assets of the Plan; was a fiduciary 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).

ALLEGATIONS

Count I **(Failure to remit participant contributions to the Plan)**

8. The General Allegations, paragraphs 1 through 7 above, are hereby incorporated in these allegations.

9. During periods from at least August 8, 2005 to April 26, 2012, the Plan’s

governing documents provided, in pertinent part, that participants could make pre-tax contributions to the Plan from their compensation.

10. During periods from at least August 8, 2005 to April 26, 2012, Defendant Hanvik had authority and control over whether and when SGH remitted withheld employee salary deferral contributions to the Plan.

11. During periods from at least August 12, 2011 to April 26, 2012, SGH withheld \$15,807.68 from an employee's pay in salary deferral contributions intended for the Plan. SGH retained this employee's withheld salary deferral contributions in its corporate account.

12. During periods from August 12, 2011 to April 26, 2012, Defendant Hanvik and SGH caused SGH to retain approximately \$9,377.48 from an employee's salary deferral contributions to the Plan that had been withheld from her pay. To date, the \$9,377.48 in unremitted salary deferral contributions has not been remitted to the Plan.

13. SGH used the employee's unremitted employee salary deferral contributions for its own benefit to pay corporate expenses.

14. By the conduct described in paragraphs 11 through 13 above, Hanvik and SGH:

- a. failed to ensure that the assets of the Plan were held in trust and did not inure to the benefit of SGH 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 Defendant Hanvik and SGH's fiduciary breaches, the Plan has 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 Two
(Failure to timely remit participant contributions to the Plan)

16. The General Allegations, paragraphs 1 through 7 and 9 and 10 above, are hereby incorporated in these Allegations.

17. During periods from at least January 14, 2011 to April 26, 2012, SGH withheld monies from an employee's pay to defer to her Plan account.

18. During periods from at least January 14, 2011 to April 26, 2012, SGH failed to timely remit an employee's salary deferral contributions intended for the Plan and retained those monies in its general operating account until they were remitted.

19. During periods from at least January 14, 2011 to April 26, 2012, Defendant Hanvik and SGH caused SGH to retain the withheld participant's Plan contributions intended for the Plan and not timely remit such Plan assets to the Plan.

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

21. By the conduct described in paragraphs 17 through 20 above, Hanvik and SGH:

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

22. As a direct and proximate result of Defendant Hanvik and SGH's fiduciary breaches, the Plan has 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 Hanvik and SGH from violating the provisions of Title I of ERISA;
- B. Ordering Defendants Hanvik and SGH 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 Hanvik and SGH to correct the prohibited transactions in which they engaged relating to the Plan;
- D. Permanently enjoining Defendants Hanvik and SGH from serving as a fiduciary or service provider to any ERISA-covered employee benefit plan;
- E. Awarding the Secretary the costs of this action; and
- F. Ordering such further relief as is appropriate and just.

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