

3. The Guatam Gupta MD d/b/a Nutrition Clinic 401(k) 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 Northern District of Illinois, Western Division, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan was administered in Winnebago County, Illinois, within this district.

DEFENDANTS

5. 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.

6. At all relevant times, Defendant Gautam Gupta (“Gupta”), was the 100% owner of Nutrition Clinic, which operated as a sole proprietorship; a named Trustee of the Plan; and was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A)(i) and (iii), 29 U.S.C. § 1002(21)(A)(i) and (iii).

FAILURE TO TERMINATE THE PLAN AND DISTRIBUTION PLAN ASSETS

7. Paragraphs 1 through 6 above are realleged and incorporated herein by reference.

8. Nutrition Clinic was the named Plan Sponsor and Plan Administrator and was no longer in business as of the end of 2011. Nutrition Clinic never filed any business documents with the Illinois Secretary of State.

9. In 2011 or 2012, Mr. Ehtesham J.A. Ghani took over the clients and offices of Nutrition Clinic under a business entity called “ThinFast M.D.” It is unknown if Ghani entered into any purchase agreement with Gupta or Nutrition Clinic, but he took on no formal role with the Plan.

10. Pension Techs LLC (“Pension Techs”) serves as the Plan’s third-party administrator.

11. As of June 6, 2012, the Plan had 26 participants with vested accounts totaling \$521,932.00.

12. Defendant Gupta, as the Plan's sole fiduciary has not authorized Pension Techs to distribute the Plan's assets to Plan participants.

13. Defendant Gupta is on the Federal Bureau of Investigation's most wanted list and his whereabouts is unknown.

14. Since 2011, Defendant Gupta has failed to administer and to terminate the Plan.

15. Since 2011, Defendant Gupta has failed to authorize distributions to all of the Plan's participants and beneficiaries of the Plan, and thus, they have not been able to obtain distributions from the Plan.

16. The Plan has not been terminated.

17. By the conduct described in paragraphs 7-16 above, Defendant Gupta:

a. failed to discharge his 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);

b. failed to discharge his 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); and

c. failed to discharge his duties solely in the interest of the participants and beneficiaries of the Plan in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of ERISA, in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

- A. Permanently enjoining Defendant Gupta from violating the provisions of Title I of ERISA and serving as a fiduciary or service provider to any ERISA-covered plan;
- B. Removing Defendant Gupta from serving as a fiduciary for the Plan;
- C. Appointing an independent fiduciary to distribute the Plan's assets and to terminate the Plan;
- D. Awarding the Secretary the costs of this action; and
- E. Ordering such further relief as is appropriate and just.

Respectfully submitted,

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