

3. The Sunset Golf, LLC 401(k) Employee Retirement Plan (the “Retirement Plan”) was established on January 1, 1995 by a predecessor to Sunset Golf, LLC (“Sunset Golf”), to provide retirement benefits to its eligible employees.

4. Sunset Golf adopted the Retirement Plan through an Adoption Agreement effective January 1, 2003.

5. The Retirement 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).

6. The Sunset Golf, LLC Group Health Plan (the “Health Plan”) was established by a predecessor to Sunset Golf, LLC to provide health care benefits to its eligible employees.

7. Sunset Golf continued to offer the Health Plan, through which it provided health care benefits to its eligible employees starting in 2003.

8. The Health 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).

9. Venue of this action lies in the Northern District of Ohio, Eastern Division, pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because the Retirement Plan and Health Plan were administered in Loudonville, Ashland County, Ohio within this district and division.

10. The Retirement Plan and the Health Plan (collectively the “Plans”) are named as defendants pursuant to Rule 19(a)(1)(A) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

DEFENDANTS AND PARTIES IN INTEREST UNDER ERISA

11. During the relevant time period, Sunset Golf was the Plans' Administrator, exercised authority and control over the disposition of assets of the Plans; was a fiduciary to the Plans within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A); and was a party in interest to the Plans within the meaning of ERISA §§3(14)(A) and (C), 29 U.S.C. §§1002(14)(A) and (C).

12. During the relevant time period, Daniel Deighan ("Daniel") was President and subsequently Vice President of Sunset Golf; exercised authority and control over assets of the Plans, was a fiduciary of the Plans, within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A); and was a party in interest to the Plans within the meaning of ERISA §§3(14)(A) and (H), 29 U.S.C. §§1002(14)(A) and (H).

13. During the relevant time period, Timothy Deighan ("Timothy") was Vice President of Sales and Marketing and Assistant Treasurer of Sunset Golf; exercised authority and control over assets of the Health Plan, was a fiduciary of the Health Plan, within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A); and was a party in interest to the Health Plan within the meaning of ERISA §§3(14)(A) and (H), 29 U.S.C. §§1002(14)(A) and (H).

14. Revolution Golf, LLC ("Revolution Golf") is an Ohio Limited Liability Company formed in 2011. Daniel and Timothy are part owners of Revolution Golf and Timothy is the managing member.

15. In or around July 2011, Sunset Golf ceased operating as a business and transferred all of its operations to Revolution Golf.

16. Revolution Golf, through Daniel and Timothy, had notice of Sunset Golf's liability under ERISA for losses to the Plans.

17. Revolution Golf had continuity of operations with Sunset Golf, including employing employees of Sunset Golf, working out of the same facility, producing and selling the same products, and maintaining customer accounts from Sunset Golf.

18. Based on paragraphs 14 through 17, Revolution Golf is a successor in liability to Sunset Golf and properly named as a defendant in this action.

ALLEGATIONS

Count I **(Failure to remit employee contributions and loan repayments to the Retirement Plan)**

19. The General Allegations, paragraphs 1-5, 9-12 and 14-18 above, are re-alleged and hereby incorporated in these allegations.

20. During the relevant time period, the Retirement Plan document provided that participants could defer a portion of their wages to the Retirement Plan.

21. During the relevant time period, the Retirement Plan document provided that participants could obtain participant loans from their individual accounts, and repay them through after-tax payroll deductions.

22. During periods from October 4, 2007 through March 16, 2011, Sunset Golf withheld from employees' wages \$16,293.37 in contributions to the Retirement Plan.

23. During periods from November 7, 2008 through March 16, 2011, Sunset Golf withheld from employee's wages \$9,983.91 in employee loan repayments to the Retirement Plan.

24. The contributions and loan repayments withheld by Sunset Golf from employees' wages during periods from October 4, 2007 through March 16, 2011, were retained in Sunset Golf's general operating account and used by Sunset Golf to pay the general operating expenses of Sunset Golf.

25. During periods from October 4, 2007 through March 16, 2011, Daniel and Sunset Golf caused Sunset Golf to retain the participants' contributions and loan repayments to the Retirement Plan that had been withheld from their wages and failed to ensure that the amounts withheld from employees' wages were deposited into the Retirement Plan's account.

26. Based on the facts described in paragraphs 20 through 25 above, Daniel and Sunset Golf:

a. failed to ensure that the assets of the Retirement Plan were held in trust and did not inure to the benefit of Sunset Golf in violation of ERISA §§403(a) and (c)(1), 29 U.S.C. §§1103(a) and (c)(1);

b. failed to act solely in the interest of the participants and beneficiaries of the Retirement 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 Retirement 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 Retirement Plan, in violation of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D);

d. dealt with assets of the Retirement 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 Retirement Plan or the interests of its participants and beneficiaries in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

27. As a direct and proximate result of Daniel's and Sunset Golf's breaches as cited in paragraph 26 above, the Retirement Plan suffered injury and losses for which it is entitled to appropriate equitable relief pursuant to ERISA §409, 29 U.S.C. §1109.

28. Revolution Golf is liable, for the violations committed by Sunset Golf in paragraph 26, as the successor to Sunset Golf.

Count II
(Failure to timely remit participant contributions and loan repayments to the Retirement Plan)

29. The General Allegations, paragraphs 1-5, 9-12 and 14-16 above, are re-alleged and hereby incorporated in these allegations.

30. During periods from October 4, 2007 through March 16, 2011, Sunset Golf withheld money from its employees' wages for contributions and loan repayments to the Retirement Plan.

31. During periods from January 3, 2008 through April 24, 2009, Sunset Golf failed to timely remit to the Retirement Plan the money it withheld from its employees' wages for contributions and loan repayments to the Retirement Plan and retained this money in its general operating account until it was remitted.

32. During periods from January 3, 2008 through April 24, 2009, Daniel and Sunset Golf caused Sunset Golf to retain the employees' contributions and loan repayments to the Retirement Plan that had been withheld from the employees' wages and failed to ensure that these withholdings were timely remitted to the Retirement Plan.

33. Based on the facts described in paragraphs 30 through 32 above, Daniel and Sunset Golf:

a. failed to ensure that the assets of the Retirement Plan were held in trust and did not inure to the benefit of Sunset Golf in violation of ERISA §403(a) and (c)(1), 29 U.S.C. §1103(a) and (c)(1);

b. failed to act solely in the interest of the participants and beneficiaries of the Retirement 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 Retirement 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 Retirement Plan, in violation of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D);

d. dealt with assets of the Retirement 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 Retirement Plan or the interests of its participants and beneficiaries in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

34. As a direct and proximate result of Daniel's and Sunset Golf's breaches as cited in paragraph 33 above, the Retirement Plan suffered injury and losses for which it is entitled to appropriate equitable relief pursuant to ERISA §409, 29 U.S.C. §1109.

35. Revolution Golf is liable, for the violations committed by Sunset Golf in paragraph 33, as the successor to Sunset Golf.

Count III
(Failure to maintain fidelity bond for fiduciaries)

36. The allegations contained in paragraphs 1-5, 9-12 and 14-18, are hereby incorporated in this Count.

37. At all relevant times, the fiduciaries failed to maintain a fidelity bond for the Retirement Plan.

38. By the conduct described in paragraph 37, Daniel and Sunset Golf failed to ensure that the fiduciaries of the Retirement Plan who handled the funds or other property of the Retirement Plan were bonded against losses to the Retirement Plan resulting from acts of fraud or dishonesty in violation of ERISA §412, 29 U.S.C. §1112.

Count IV
(Failure to update summary plan description)

39. The allegations contained in paragraphs 1-5, 9-12 and 14-18, are hereby incorporated in this Count.

40. The fiduciaries of the Retirement Plan issued a summary plan description for the Retirement Plan in March 2004.

41. Since that time, the fiduciaries have failed to update the summary plan description for the Retirement Plan, and provide participants with an updated summary plan description every five years.

42. By the conduct described in paragraphs 40 and 41, Daniel Deighan and Sunset Golf failed to comply with ERISA §102(a), 29 U.S.C. §1022(a) and 104(b), 29 U.S.C. § 1024(b).

Count V
**(Failure to remit health insurance premiums to the
Health Plan or health insurance carrier)**

43. The allegations contained in paragraphs 1-4, 6-10, 13, and 17-18, are hereby incorporated in this Count.

44. During the relevant time period, Sunset Golf withheld employee contributions from its employees' paychecks for contribution to the Health Plan. These contributions were retained in Sunset Golf's corporate bank account until they were remitted to the Health Plan or the insurance carrier.

45. During the periods from December 1, 2010 through January 4, 2011 and March 5, 2011 through June 3, 2011, Sunset Golf withheld \$8,271.51 from its employees' pay in employee contributions and failed to remit the amounts so withheld to the Health Plan or the health insurance carrier.

46. During the periods from December 1, 2010 through January 4, 2011 and March 5, 2011 through June 3, 2011, Daniel, Timothy and Sunset Golf caused Sunset Golf to retain \$8,271.51 in participant contributions it had withheld in its corporate account and failed to ensure that the amounts withheld from employees' pay were deposited into the Health Plan or remitted to a health insurance carrier.

47. Based on the facts described in paragraphs 44 through 46 above, Daniel, Timothy and Sunset Golf:

a. failed to ensure that the assets of the Health Plan did not inure to the benefit of Sunset Golf in violation of ERISA §§403(c)(1), 29 U.S.C. §§1103(c)(1);

b. failed to act solely in the interest of the participants and beneficiaries of the Health 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 Health 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 Health Plan, in violation of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D);

d. dealt with assets of the Health 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 Health Plan or the interests of its participants and beneficiaries in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

48. As a direct and proximate result of Daniel's, Timothy's and Sunset Golf's breaches as cited in paragraph 47 above, the Health Plan suffered injury and losses for which it is entitled to appropriate equitable relief pursuant to ERISA §409, 29 U.S.C. §1109.

49. Revolution Golf is liable, for the violations committed by Sunset Golf in paragraph 47, as the successor to Sunset Golf.

PRAYER FOR RELIEF

Wherefore, the Secretary prays for judgment:

A. Permanently enjoining Defendants Daniel Deighan, Timothy Deighan, Sunset Golf and Revolution Golf from violating the provisions of Title I of ERISA;

B. Permanently enjoining Defendants Daniel Deighan, Timothy Deighan, Sunset Golf and Revolution Golf from serving or acting as fiduciaries to any ERISA-covered employee benefit plan and removing them from any positions they now hold as a fiduciary of the Plans;

C. Appointing an independent fiduciary to ensure the proper administration of the Retirement Plan;

D. Ordering Defendants Daniel Deighan, Timothy Deighan, Sunset Golf and Revolution Golf, as the successor to Sunset Golf, to correct the prohibited transactions in which Sunset Golf, Daniel Deighan and Timothy Deighan engaged for which they are liable;

E. Ordering Defendants Daniel Deighan, Timothy Deighan, Sunset Golf and Revolution Golf, as the successor to Sunset Golf, to restore to the Plans any losses, including lost opportunity costs, resulting from Daniel's, Timothy's and Sunset Golf's fiduciary breaches committed by them or for which they are liable;

F. Ordering Daniel Deighan, Timothy Deighan and Sunset Golf to correct the prohibited transactions in which they engaged;

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

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

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