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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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THOMAS E. PEREZ, Secretary of Labor, :  
United States Department of Labor, :

Plaintiff, :

Civil Action File No. :

v. :

**COMPLAINT**

RAYMOND ORSUTO; 800 WEST SALON, :  
INC.; and the 800 WEST SALON, INC. :  
RETIREMENT SAVINGS PLAN, :

Defendants. :  
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Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor, (the  
“Secretary”) alleges:

**JURISDICTION AND VENUE**

1. This action arises under Title I of the Employee Retirement Income Security Act of 1974 (“ERISA” or “the Act”), 29 U.S.C. § 1001 et seq., as amended, and is brought by the Secretary of Labor under ERISA § 502(a)(2) and (5) to obtain relief for breaches of fiduciary duty under ERISA §§ 403, 404, and 406, 29 U.S.C. §§ 1103, 1104, and 1106 and enjoin acts and practices which violate the provisions of Title I of ERISA. The Secretary also seeks to obtain other appropriate equitable and injunctive relief in order to redress violations and enforce the provisions of that Title.

2. This Court has subject matter jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

3. Venue with respect to this action lies in the District of New Jersey pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

#### PARTIES

4. The Secretary, pursuant to § 502(a)(2) and (5) of the Act, 29 U.S.C. § 1132(a)(2) and (5), has authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and other parties who are in violation of ERISA.

5. At all relevant times herein, Defendant 800 West Salon, Inc. Retirement Savings Plan (the “Plan”) was an employee benefit plan within the meaning of ERISA § 3(2) and (3), 29 U.S.C. § 1002(2) and (3). The Plan is named as a defendant herein pursuant to Federal Rule of Civil Procedure 19 to ensure that complete relief can be granted.

6. At all relevant times herein, Defendant 800 West Salon, Inc. (the “Company”) was an employer whose employees were covered by the Plan, which maintained its principal place of business at 800 West Route 70, Marlton, New Jersey 08053. At all times pertinent hereto, the Company exercised discretionary authority or discretionary control respecting management of the Plan or exercised authority or control respecting management or disposition of the Plan’s assets, or had discretionary authority or discretionary responsibility in the administration of the Plan, and thus, was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). The Company was also a party in interest within the meaning under ERISA § 3(14)(A) and (C).

7. At all relevant times, Defendant Raymond Orsuto (“Orsuto”) was the owner of the Company, and the sole named trustee of the Plan. At all times pertinent hereto, he exercised discretionary authority or discretionary control respecting management of the Plan or exercised

authority or control respecting management or disposition of the Plan's assets, or had discretionary authority or discretionary responsibility in the administration of the Plan, and thus, was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Orsuto was also a party in interest within the meaning under ERISA § 3(14)(A), (E) and (H) as he is a fiduciary of the Plan and the sole owner of 800 West Salon.

### **FACTUAL ALLEGATIONS**

8. Pursuant to the Summary Plan Description and Plan Trust Agreement, participating employees would contribute to their individual accounts within the Plan by means of payroll deductions every pay period (the "Elective Contributions").

9. The Company was required to deposit the Elective Contributions of each participant into the participant's respective account within the Plan as soon as those contributions could be segregated from the Company's general assets, but in no case later than the close of the 15-day period following the last day of the month to which such Elective Contributions relate.

10. Participating employees of the Plan could also apply for a loan from the Plan, and were required to repay the Plan, with interest, pursuant to a definite repayment period (the "Loan Repayments").

11. ~~Between the period of 2007 through 2009, the Company and Orsuto failed to deposit and/or ensure the deposit of approximately \$38,080.94 of Elective Contributions and Loan Repayments into the Plan's trust (referred to hereinafter as "Unforwarded Contributions and Loan Repayments").~~

12. Upon information and belief, the Unforwarded Contributions and Loan Repayments were not segregated from the Company's general assets.

13. Between the period of 2007 through 2009, the Company and Orsuto also failed to ensure the remittance of Elective Contributions and Loan Repayments into the Plan's trust in a timely fashion, up to 145 days after the contributions were deducted from the Participant's compensation (referred to hereinafter as "Untimely Contributions and Loan Repayments").

14. Upon information and belief, the Untimely Contributions and Loan Repayments were not segregated from the Company's general assets in a timely fashion.

15. Defendants' failure to ensure that the Unforwarded Contributions and Loan Repayments were deposited caused a loss to the Plan including but not limited to the amount of the contributions that were not forwarded and lost earnings.

16. Defendants' failure to ensure that the Untimely Contributions and Loan Repayments were timely forwarded caused a loss to the Plan including but not limited to the lost earnings on the Untimely Contributions and Loan Repayments.

17. At least one Plan participant has sought to contact the Company to obtain a distribution to which he was eligible under the Plan documents, but received no response.

### **VIOLATIONS**

18. By the conduct described above, Orsuto and the Company allowed the assets of the Plan to inure to the benefit of the Company, and also failed to hold the Plan assets for the ~~exclusive purpose of providing benefits to participants in the Plan and their beneficiaries, and~~ defraying reasonable expenses of administering the Plan in violation of ERISA § 403(c)(1).

19. By the conduct described above, Orsuto and the Company failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries, and defraying reasonable expenses of administering the plan in violation of ERISA § 404(a)(1)(A).

20. By the conduct described above, Orsuto and the Company failed to discharge their duties to administer the Plan's assets with the care, skill, prudence and diligence that a prudent fiduciary would have used in like circumstances in violation of ERISA § 404(a)(1)(B).

21. By the conduct described above, Orsuto and the Company caused the Plan to enter into transactions which they knew or should have known constituted direct or indirect transfers to or use by or for the benefit of a party in interest of Plan assets in violation of ERISA § 406(a)(1)(D).

22. By the conduct described above, Orsuto and the Company dealt with Plan assets in their own interest and/or for their own accounts in violation of ERISA § 406(b)(1).

23. By the conduct described above, Orsuto and the Company engaged in transactions involving the Plan on behalf of a party whose interests are adverse to the interests of the Plan and/or participants or beneficiaries in violation of ERISA § 406(b)(2).

**PRAYER FOR RELIEF**

WHEREFORE, the Secretary requests that the Court grant the following relief:

24. Ordering Orsuto and the Company to restore all losses, plus interest and/or lost opportunity earnings, incurred by the Plan as a result of their violations of ERISA;

25. Permanently enjoining Orsuto and the Company from serving as a fiduciary or service provider to any ERISA-covered plan;

26. Permanently enjoining Orsuto and the Company from violating Title I of ERISA;

27. Ordering Orsuto and the Company, as well as their agents, employees, service providers, banks accountants, and attorneys to preserve and provide the Secretary all of the books, documents, and records relating to the finances and administration of the Company and the Plan;

28. Appointing an Independent Fiduciary to the Plan with plenary authority to make distributions of any restitution paid by Orsuto and/or the Company and to otherwise marshal the assets of and administer the Plan, including making whole Plan participants who received distributions in amounts less than they were entitled to under the Plan; and

29. Providing such other appropriate relief as is equitable and just.

DATE: August 16, 2013  
New York, New York



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