

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

3. Frank Robino Companies, LLC 401(k) Plan (the “401(k) Plan” or “Plan”) is an employee benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3), and is therefore subject to the coverage of the Act, pursuant to Section 4(a) of ERISA, 29 U.S.C. § 1003(a). The Plan is administered in Wilmington, Delaware.

4. Venue with respect to this action lies in District of Delaware, pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

The Parties

5. The Secretary, pursuant to Sections 502(a)(2) and (5) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (5), has the authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and others who commit violations of ERISA.

6. Frank Robino, LLC. is the Plan Sponsor and Plan Administrator of the Plan (the “Company”). At all relevant times, the Company exercised discretionary authority and discretionary control respecting management of the Plan, exercised authority and control respecting management or disposition of the Plan’s assets, and had discretionary authority or discretionary responsibility in the administration of the Plan. The Company, therefore, is a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14)(A) and (C) of ERISA, 29 U.S.C. §§ 1002(14)(A) and (C).

7. At all relevant times, Michael Stortini was Vice-President/Director of Operations for the Company and a trustee of the Plan. At all relevant times, Stortini exercised discretionary authority and discretionary control respecting management of the Plan, exercised authority and control respecting management or disposition of the Plan's assets, and had discretionary authority and discretionary responsibility in the administration of the Plan. Stortini, therefore, is a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14) (A) and (E) of ERISA, 29 U.S.C. §§ 1002(14) (A) and (E).

8. At all relevant times, Paul Robino was Chairman of the Board of the Company and a trustee of the Plan. At all relevant times, Robino exercised discretionary authority and discretionary control respecting management of the Plan, exercised authority and control respecting management or disposition of the Plan's assets, and had discretionary authority and discretionary responsibility in the administration of the Plan. Robino, therefore, is a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14) (A) and (E) of ERISA, 29 U.S.C. §§ 1002(14) (A) and (E).

9. At all relevant times, Barbara Becker-Graham was Treasurer of the Company and a trustee of the Plan. At all relevant times, Becker-Graham exercised discretionary authority and discretionary control respecting management of the Plan, exercised authority and control respecting management or disposition of the Plan's assets, and had discretionary authority and discretionary responsibility in the administration of the Plan. Becker-Graham, therefore, is a

fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14) (A) and (E) of ERISA, 29 U.S.C. §§ 1002(14) (A) and (E).

10. The Plan is joined as a party defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

General Allegations

11. The Company established the 401(k) Plan in 1994 and restated it in 2005. The Plan permitted participants to contribute a portion of their pay to the Plan as elective salary deferrals (“employee contributions”) through payroll deductions.

12. Stortini, Robino and Becker-Graham are named as trustees to the Plan in the Plan’s Adoption Agreement, the Summary Plan Description, and the Plan Trust Agreement.

13. Prior to April 21, 2009, the asset custodian for the Plan was John Hancock Retirement Plan Services (“John Hancock”).

14. On or about April 22, 2009, Stortini, Robino and Becker-Graham opened a new Plan trust account at Charles Schwab and Company (“Schwab”). Plan assets were subsequently transferred from the Plan trust account at John Hancock to a Plan trust account at Schwab.

15. On or about April 22, 2009, Stortini, Robino and Becker-Graham, as trustees of the Plan, authorized the Plan to enter into a subscription agreement with the Robino Stortini Holding Company (the “Holding Company”).

16. Stortini, Robino and Becker-Graham are each owners or investors in the Holding Company.

17. The subscription agreement allowed the Plan to invest its assets in the Holding Company by purchasing a limited liability partnership interest in the Holding Company.

18. In addition to executing the subscription agreement as a trustee to the Plan, Stortini signed the subscription agreement for the Holding Company as the Managing Member of RSSI Asset Management, LLC, General Partner.

19. Stortini, Robino and Becker-Graham authorized the Plan's investment into the Holding Company without taking any steps to evaluate the soundness or appropriateness of the investment or verify the existence of any assets.

20. Following the execution of the subscription agreement Stortini, in a series of transactions, directed the transfer of funds from the Plan trust account at Schwab to a Holding Company account, also held at Schwab.

21. After entering into the subscription agreement, the Company, Robino and Becker-Graham did not monitor the transfer of assets from the Plan's trust account.

22. Between May and August, 2009, Stortini transferred the Plan assets that had been "invested" into the Holding Company to a variety of individuals and companies. Recipients included, but are not limited to, the Company and Stortini.

23. After the transfer of assets from the Schwab Plan account to the Holding Company, the Company, Robino and Becker-Graham took no steps to monitor the performance of the Holding Company or verify the existence of its assets.

24. There are no Plan assets remaining in the Schwab account and the Holding Company is defunct. Participants, therefore, are unable to obtain distributions from the Plan.

25. Stortini, Robino, Becker-Graham, and the Company failed to comply with Section 404(a)(1) of ERISA in the administration of their specific fiduciary responsibilities and each enabled the others to commit breaches of ERISA.

26. Stortini entered into a plea agreement with the United States on October 24, 2013 in the District of Delaware. In the plea agreement, Stortini admits that he knowingly converted Plan assets for his own use.

Violations

27. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by reference the averments and allegations of paragraphs 10-26 inclusive.

28. By the actions and conduct described in paragraphs 10-26, Defendants Stortini, Robino, Becker-Graham and the Company, as fiduciaries of the Plan:

- a. failed to ensure that all assets of the Plan were held in trust by one or more trustees, in violation of Section 403(a) of ERISA, 29 U.S.C. § 1103(a);
- b. failed to ensure that the assets of the Plan did not inure to the benefit of the Company in violation of Section 403(c)(1) of ERISA, 29 U.S.C. § 1103(c)(1);
- c. 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 Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A);
- d. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill,

prudence, and diligence under the circumstances then prevailing that a prudent person 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 Section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B);

- e. dealt with assets of the Plan in their own interest or for their own account, in violation of Section 406(b)(1) of ERISA, 29 U.S.C. § 1106(b) (1).

29. Robino and Becker-Graham failed to comply with Section 404(a) of ERISA when they entered into the subscription agreement that authorized the transfer of Plan assets to the Holding Company without any information regarding the validity of the investment. The Company, Robino and Becker-Graham failed to monitor the Holding Company or verify the existence of its assets. These actions by the Company, Robino and Becker-Graham allowed Stortini to commit breaches of ERISA and the Company, Robino and Becker-Graham, therefore, are each liable for Stortini's breaches pursuant to 405(a)(2) of ERISA, 29 U.S.C. § 1105(a)(2).

30. Stortini failed to comply with Section 406(b)(2) of ERISA when, as fiduciary to the Plan he authorized the transfer of Plan Assets to the Holding Company and then, as Managing Member of the Holding Company, Stortini accepted the Plan assets as an investment, thereby acting adversely to the interests of the Plan in violation of Section 406(b)(2) of ERISA, 29 U.S.C. § 1106(b) (2).

Prayer for Relief

WHEREFORE, the Secretary prays that this Court issue an order:

- a. Ordering the defendants to restore to the Plan all losses, including interest or lost opportunity costs and the costs of the independent fiduciary, which were caused by their fiduciary misconduct;
- b. Removing Stortini, Robino, Becker-Graham and the Company as fiduciaries of the Plan and of any employee benefit plan for which they act as fiduciaries;
- c. Permanently enjoining Stortini, Robino, Becker-Graham and the Company from acting directly or indirectly, in any fiduciary capacity, with respect to any employee benefit plan subject to ERISA;
- d. Permanently enjoining Stortini, Robino, Becker-Graham and the Company from exercising any custody, control, or decision making authority with respect to the assets of any employee benefit plan covered by ERISA;
- e. Appointing an independent fiduciary with plenary authority and control with respect to the management and administration of the Plan, including the authority to marshal assets on behalf of the Plan, to pursue claims on behalf of the Plan, and to take all appropriate action for the termination of the Plan and the distribution of benefits to the Plan's participants and beneficiaries, with all costs to be borne by the defendants;
- f. Ordering the defendants, their agents, employees, service providers, banks, accountants, and attorneys to provide the Secretary and the independent fiduciary with all of the books, documents, and records relating to the finances and administration of the Plan, and to make an accounting to the Secretary and

to the independent fiduciary of all contributions to the Plan and all transfers, payments, or expenses incurred or paid in connection with the Plan;

- h. Awarding plaintiff, Secretary of Labor, the costs of this action; and
- i. Awarding such other relief as is equitable and just.

Respectfully submitted,

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