

the Act, pursuant to Section 4(a) of ERISA, 29 U.S.C. § 1003(a). The Plan is administered in Blue Bell, Pennsylvania.

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

The Parties

5. The Secretary, pursuant to Section 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. Cobalt Staffing, Inc. (the “Company”) is the Plan Sponsor and Administrator of the Plan. At all relevant times, the Company exercised discretionary authority and discretionary control respecting management of the Plan, exercised authority and control respecting management and disposition of the Plan’s assets, and had discretionary authority and discretionary responsibility in the administration of the Plan. The Company is therefore 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 Section 3(14)(A) and (C) of ERISA, 29 U.S.C. § 1002(14)(A) and (C).

7. At all relevant times, Steven F. Sonstein (“Sonstein”) was a trustee of the Plan and the President of the Company. Sonstein made decisions regarding the Plan, including decisions as to the disposition of plan assets, and performed the functions of the Plan administrator. Sonstein exercised discretionary authority and discretionary control respecting the management of the Plan, exercised authority and control respecting assets of the Plan, and had discretionary authority and discretionary responsibility in the administration of the Plan.

Sonstein is therefore 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 Section 3(14)(A) and (H) of ERISA, 29 U.S.C. § 1002(14)(A) and (H).

8. 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.

9. The relevant period is February 2012 to present.

General Allegations

10. The Company established the Plan in 2011. The Plan permitted participants to contribute a portion of their pay to the Plan elective salary deferrals (“employee contributions”) through payroll deductions.

11. The Plan participants are employees of the Company.

12. For certain payroll periods during the relevant period, Sonstein and the Company caused the Company to deduct money from participants’ pay as employee contributions. During the relevant period, Sonstein and the Company retained the employee contributions rather than deposit the withholdings into the plan. The employee contributions were commingled with general assets of the Company and used to pay the Company’s business expenses. Additionally, certain employee contributions to the Plan were remitted late and without interest.

13. Unremitted employee contributions are assets of the Plan within the meaning of ERISA. Defendants Sonstein and the Company failed to segregate the Plan assets from the general assets of the Company.

14. Sonstein failed to assure that the Plan assets described in paragraphs 12 and 13, *supra*, were collected by the Plan.

15. Sonstein and the Company participated knowingly in acts or omissions by each other that they knew to be a breach of fiduciary duty.

16. Sonstein 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 other to commit breaches of ERISA.

17. Sonstein and the Company each knew that the other had breached their fiduciary duties, but did not make reasonable efforts under the circumstances to remedy the breaches.

Violations

18. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by reference the averments and allegations of paragraphs 1-17 inclusive.

19. By the actions and conduct described in paragraphs 1-14, defendants Sonstein 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. caused the Plan to engage in transactions which they knew or should have known constituted the direct or indirect transfer of Plan assets to, or use of Plan assets by or for the benefit of a party-in-interest, in violation of Section 406(a)(1)(D) of ERISA, 29 U.S.C. § 1106(a)(1)(D); and
- f. 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).

20. By participating knowingly in the fiduciary breaches of one another, knowing such acts or omissions to be breaches of fiduciary duty, Sonstein and the Company are each liable for the other's breaches of fiduciary responsibility, pursuant to Section 405(a)(1) of ERISA, 29 U.S.C. § 1105(a)(1).

21. By failing to comply with the Section 404(a)(1) of ERISA in the administration of their specific fiduciary responsibility and each thereby enabling the other to commit a breach of ERISA, Sonstein and the Company are liable for each other's breaches of fiduciary responsibility, pursuant to Section 405(a)(2) of ERISA, 29 U.S.C. § 1105(a)(2).

22. Sonstein and the Company, as fiduciaries of the Plan, by failing to make reasonable efforts under the circumstances to remedy the breaches of which they had knowledge, are each liable for the other's fiduciary breaches, pursuant to Section 405(a) (3) of ERISA, 29 U.S.C. § 1105(a)(3).

Prayer for Relief

23. WHEREFORE, the Secretary prays that this Court issue an order:
- a. 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 with respect to the Plan and the distribution of benefits to the Plan's participants and beneficiaries, with all costs of the independent fiduciary to be paid by the defendants;
 - b. 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;
 - c. 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;
 - d. Requiring the Plan to set off any individual account balance of Sonstein against the amount of losses, including interest or lost opportunity costs and

the costs of the independent fiduciary, resulting from his fiduciary breaches, as authorized by 29 U.S.C. § 1056(d)(4), and reallocate it to the non-breaching participants, if the losses are not otherwise restored to the Plan by defendants;

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

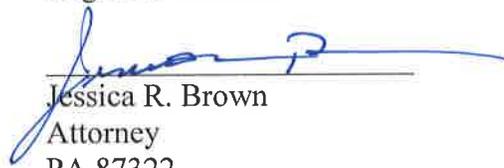
Respectfully Submitted,

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