

pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

3. This court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

4. Venue lies in the Southern District of Ohio, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered in Dayton, Montgomery County, Ohio, within this district.

DEFENDANTS AND OTHER PARTIES

5. At all relevant times, defendant Dayton Imaging Solutions, an Ohio corporation, was the Plan's sponsor, the Plan's administrator pursuant to ERISA § 3(16), 29 U.S.C. § 1002(16), and 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), and a party in interest to the Plan within the meaning of ERISA §§ 3(14)(A) and (C), 29 U.S.C. §§ 1002(14)(A) and (C).

6. At all relevant times, defendant Bryan Belden ("Belden") was the president and 50% owner of Dayton Imaging Solutions, exercised authority and control over assets of the Plan, and was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i), and a party in interest to the Plan within the meaning of ERISA §§ 3(14)(A) and (E), 29 U.S.C. §§ 1002(14)(A) and (E).

COUNT ONE **Failure to remit employee contributions to the Plan**

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

8. The Plan was established on May 29, 2003, effective as of June 1, 2003, in order to provide retirement benefits to eligible employees of Dayton Imaging Solutions.

9. At all relevant times, the Plan's governing documents, which were adopted by Dayton Imaging Solutions, provided in pertinent part that participants could make pre-tax contributions from their compensation to the Plan in an amount up to the contribution limitations set by the Internal Revenue Code on a yearly basis.

10. During the period July 6, 2005, through October 20, 2010, Dayton Imaging Solutions withheld \$21,156.10 from its employees' pay in employee contributions and failed to remit the amounts so withheld to the Plan. Dayton Imaging Solutions retained in its own general assets the withheld employee contributions until they were remitted to the Plan.

11. During the period July 6, 2005, through October 20, 2010, Belden caused Dayton Imaging Solutions to withhold \$21,156.10 from its employees' pay in employee contributions and failed to ensure that the amounts withheld from its employees' pay were remitted to the Plan.

12. By the conduct described in paragraphs 10 through 11 above, defendants Dayton Imaging Solutions and Belden:

a. failed to ensure that the assets of the Plan did not inure to the benefit of Dayton Imaging Solutions, 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 and for the exclusive purpose of providing benefits to participants and its beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

c. caused the Plan to engage in transactions that 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 Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

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

COUNT TWO
**Failure to remit employee contributions
to the Plan in a timely manner**

13. Paragraphs 1 through 9 above are realleged and incorporated herein by reference.

14. During the period July 6, 2005, through October 20, 2010, Dayton Imaging Solutions withheld \$11,555.77 from its employees' pay in employee contributions and failed to remit the amounts so withheld to the Plan in a timely manner. Dayton Imaging Solutions retained in its own general assets the withheld employee contributions until they were remitted to the Plan.

15. During the period July 6, 2005, through October 20, 2010, Belden caused Dayton Imaging Solutions to withhold \$11,555.77 from its employees' pay in employee contributions and failed to ensure that the amounts withheld from its employees' pay were remitted to the Plan in a timely manner.

16. By the conduct described in paragraphs 14 through 15 above, defendants Dayton Imaging Solutions and Belden:

a. failed to ensure that the assets of the Plan did not inure to the benefit of Dayton Imaging Solutions, 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 and for the exclusive purpose of providing benefits to participants and its beneficiaries and defraying

reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

c. caused the Plan to engage in transactions that 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 Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

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

COUNT THREE
(Failure to meet the bonding requirement of insurance coverage for fraud or dishonesty)

17. Paragraphs 1 through 9 above are realleged and incorporated herein by reference.

18. During the period July 6, 2005, through October 20, 2010, Dayton Imaging Solutions failed to maintain a bonding for fraud or dishonesty.

19. During the period from July 6, 2005, through October 20, 2010, defendant Belden caused Dayton Imaging Solutions to fail to a maintain bonding on behalf of the Plan for fraud or dishonesty.

20. By the conduct described in paragraphs 18 through 19, defendants Dayton Imaging Solutions and Belden failed to provide protection to the Plan against loss by reason of acts of fraud or dishonesty on the part of plan officials, in violation of ERISA § 412(a), 29 U.S.C. § 1112(a).

COUNT FOUR

Failure to Provide the Required Annual Disclosure Information

21. Paragraphs 1 through 9 above are realleged and incorporated herein by reference.

22. For Plan years 2005 through 2010, Dayton Imaging Solutions failed to provide participants a notice of their opportunity to participate in the Plan or to modify the amounts they elected to have withheld from their pay in employee contributions to the Plan.

23. For Plan years 2005 through 2010, defendant Belden caused Dayton Imaging Solutions to fail to provide participants a notice of their opportunity to participate in the Plan or to modify the amounts they elected to have withheld from their pay in employee contributions to the Plan.

24. For Plan years 2005 through 2010, Dayton Imaging Solutions only provided participants with year-end asset summaries of their Plan accounts. These summaries did not include an explanation of the importance of a well-balanced and diversified portfolio or a notice directing the participant or beneficiary to the Internet website of the Department of Labor for sources of information on individual investing and diversification.

25. For Plan years 2005 through 2010, defendant Belden caused Dayton Imaging Solutions to provide participants with year-end asset summaries of their Plan accounts. These summaries did not include an explanation of the importance of a well-balanced and diversified portfolio or a notice directing the participant or beneficiary to the Internet website of the Department of Labor for sources of information on individual investing and diversification.

26. By the conduct described in paragraphs 22 through 25 above, defendants Dayton Imaging Solutions and Belden:

a. failed to notify employees eligible to participate of their opportunity to participate or modify their contributions during the 60-day period prior to any year (and the 60-

day period before the employee is eligible to participate), in violation of ERISA § 101(h)(3), 29 U.S.C. § 1021(h)(3);

b. failed to provide employees eligible to participate an explanation, written in a manner calculated to be understood by the average plan participant, of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a statement of the risk that holding more than 20 percent of a portfolio in the security of one entity (such as employer securities) may not be adequately diversified, in violation of ERISA § 105(a)(2)(B)(ii)(II), 29 U.S.C. § 1025(a)(2)(B)(ii)(II); and

c. failed to provide employees eligible to participate a notice directing the participant or beneficiary to the Internet website of the Department of Labor for sources of information on individual investing and diversification, in violation of ERISA § 105(a)(2)(B)(ii)(III), 29 U.S.C. § 1025(a)(2)(B)(ii)(III).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining defendants Dayton Imaging Solutions and Bryan Belden from violating the provisions of Title I of ERISA;

B. Ordering defendants Dayton Imaging Solutions and Bryan Belden to make good to the Plan any losses, including interest, resulting from fiduciary breaches committed by them or for which they are liable;

C. Ordering defendants Dayton Imaging Solutions and Bryan Belden to correct the prohibited transactions in which they engaged, plus appropriate interest;

- D. Permanently enjoining defendant Bryan Belden from acting as a fiduciary or service provider to any ERISA-covered employee benefit plan;
- E. Awarding the Secretary the costs of this action; and
- F. Ordering such further relief as is appropriate and just.

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