



3. The Hanco, Inc. 401(k) Plan (“401(k) 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).

4. The Hanco, Inc. Health Plan (“Health Plan”) is an employee welfare benefit plan within the meaning of ERISA §3(1), 29 U.S.C. §1002(1), which is subject to the provisions of Title I of ERISA pursuant to ERISA §4(a), 29 U.S.C. §1003(a).

5. The Hanco, Inc. Dental Plan (“Dental Plan”) is an employee welfare benefit plan within the meaning of ERISA §3(1), 29 U.S.C. §1002(1), which is subject to the provisions of Title I of ERISA pursuant to ERISA §4(a), 29 U.S.C. §1003(a).

6. Venue of this action lies in the Northern District of Indiana, pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because the 401(k) Plan, the Health Plan, and the Dental Plan were administered in Peru, Miami County, Indiana, within this district.

#### **DEFENDANTS**

7. The 401(k) Plan, Health Plan, and Dental Plan (collectively the “Plans”) were sponsored by Hanco, Inc. d/b/a Classico Seating (“Hanco”), which was incorporated in the state of Indiana on March 7, 1991.

8. The 401(k) Plan was established on July 1, 1996, as a defined contribution plan which allows employees to make voluntary salary reduction contributions through payroll withholdings.

9. The Health Plan was established on January 1, 2010, as a fully insured health plan. Participants were required to contribute a portion of insurance premiums through a weekly payroll deduction.

10. The Dental Plan was also a fully insured plan. Participants were required to contribute a portion of insurance premiums through a weekly payroll deduction.

11. The Plans are named as defendants herein pursuant to Federal Rule of Civil Procedure Rule 19(a) solely to assure that complete relief can be granted.

12. At all relevant times, Defendant Hanco was Plan Sponsor and Plan Administrator for each 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 (C), 29 U.S.C. § 1002(14)(A) and (C).

13. At all relevant times, Defendant Harry T. Richardson, Jr. (“Richardson”) was the Chief Financial Officer and Secretary of Hanco; owned approximately 24% of Hanco; was a trustee of the 401(k) Plan; 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).

### **COUNT ONE**

#### **Failure to Remit Participant Contributions to the 401(k) Plan**

14. Paragraphs 1 through 3, 6 through 8, and 11 through 13 above are realleged and incorporated herein by reference.

15. During the period from October 14, 2011 through February 17, 2012, the 401(k) Plan’s documents stated that participants could elect to defer a portion of their wages to be contributed to the 401(k) Plan.

16. During the period from October 14, 2011 through February 17, 2012, Defendant Richardson had authority and control over whether Hanco remitted withheld employee contributions to the 401(k) Plan and exercised such authority.

17. During the period from October 14, 2011 through February 17, 2012, Hanco withheld \$5,242.08 from its employees' pay as contributions to the 401(k) Plan. Hanco retained the withheld employee contributions in its general assets.

18. During the period from October 14, 2011 through February 17, 2012, Defendant Richardson caused Hanco to retain employee 401(k) Plan contributions that it withheld from its employees' pay and failed to ensure that the \$5,242.08 in withheld employee contributions was remitted to the 401(k) Plan.

19. Based on the facts described in paragraphs 15 through 18 above, Defendants Hanco and Richardson:

a. violated ERISA §403(a) and (c)(1), 29 U.S.C. 1103(a) and (c)(1), which requires that all assets of an employee benefit plan shall be held in trust and shall never inure to the benefit of the employer;

b. failed to act solely in the interest of the participants and beneficiaries of the 401(k) 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 401(k) 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 401(k) Plan, in violation of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D); and

d. dealt with assets of the 401(k) Plan in their own interest or acted on behalf of a party whose interests are adverse to the interests of the 401(k) Plan or the interests of its

participants and beneficiaries, in violation of ERISA §406(b)(1) and (2), 29 U.S.C. §1106(b)(1) and (2).

20. As a direct and proximate result of Defendants Hanco and Richardson's fiduciary breaches, the 401(k) Plan has suffered injury and losses for which they are personally liable and subject to appropriate equitable relief, pursuant to ERISA §409, 29 U.S.C. §1109.

## **COUNT TWO**

### **Failure to Terminate the 401(k) Plan and Distribute its Assets**

21. Paragraphs 1 through 3, 6 through 8, and 11 through 13 above are realleged and incorporated herein by reference.

22. As of January 29, 2013, the 401(k) Plan had 12 participants and \$50,657.89 in assets.

23. At all relevant time periods, the 401(k) Plan's documents required that distributions to participants be made no later than 60 days after the close of the plan year in which the participant terminates service with the employer.

24. On February 21, 2012, Hanco ceased operating, terminated all of its employees, and liquidated its assets through a state-ordered receivership.

25. Since February 21, 2012, Defendants Hanco and Richardson have failed to administer the 401(k) Plan by failing to terminate the 401(k) Plan and failing to authorize distributions to the 401(k) Plan's participants and beneficiaries.

26. Based on the facts described in paragraphs 22 through 25 above, Defendants Hanco and Richardson:

a. failed to act solely in the interest of the participants and beneficiaries of the 401(k) 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); and

b. failed to discharge their duties with respect to the 401(k) Plan solely in the interest of the participants and beneficiaries and in accordance with the 401(k) Plan's documents and instruments, in violation of §404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D).

### **COUNT THREE**

#### **Failure to Remit Employee Contributions to the Health Plan**

27. Paragraphs 1, 2, 4, 6, 7, 9 and 11 through 13 above are realleged and incorporated herein by reference.

28. During the period from August 5, 2011 through September 30, 2011, the Health Plan participants were required to contribute a portion of the Health Plan's insurance premiums through a weekly payroll deduction.

29. During the period from August 5, 2011 through September 30, 2011, Defendant Richardson had the authority and control over whether Hanco remitted withheld employee contributions to the Health Plan and exercised such authority.

30. During the period from August 5, 2011 through September 30, 2011, Defendant Hanco withheld \$22,863.09 from its employees' pay as contributions to the Health Plan for insurance premiums. Defendant Hanco retained the withheld employee contributions in its general assets.

31. During the period from August 5, 2011 through September 30, 2011, Defendant Richardson caused Hanco to retain employee contributions to the Health Plan that it withheld from its employees' pay and failed to ensure that the \$22,863.09 in withheld employee

contributions was remitted to the Health Plan or to an insurance provider on behalf of the Health Plan.

32. Based on the facts described in paragraphs 28 through 31 above, Defendants Hanco and Richardson:

a. 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);

b. 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); and

c. dealt with assets of the Health Plan in their own interest or 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)(1) and (2), 29 U.S.C. §1106(b)(1) and (2).

33. As a direct and proximate result of Defendants Hanco and Richardson's fiduciary breaches, the Health Plan has suffered injury and losses for which they are personally liable and subject to appropriate equitable relief, pursuant to ERISA §409, 29 U.S.C. §1109.

#### **COUNT FOUR**

##### **Failure to Remit Employee Contributions to the Dental Plan**

34. Paragraphs 1 through 2, 5 through 7, and 10 through 13 above are realleged and incorporated herein by reference.

35. During the period from February 4, 2011, through May 20, 2011, the Dental Plan participants were required to contribute a portion of the Dental Plan's insurance premiums through a weekly payroll deduction.

36. During the period from February 4, 2011, through May 20, 2011, Defendant Richardson had the authority and control over whether Hanco remitted withheld employee contributions to the Dental Plan and exercised such authority.

37. During the period from February 4, 2011, through May 20, 2011, Defendant Hanco withheld \$2,282.60 from its employees' pay as contributions to the Dental Plan for insurance premiums. Defendant Hanco retained the withheld employee contributions in its general assets.

38. During the period from February 4, 2011, through May 20, 2011, Defendant Richardson caused Hanco to retain the employee contributions to the Dental Plan that had been withheld from its employees' pay and failed to ensure that the \$2,282.60 in withheld employee contributions was remitted to the Dental Plan or to an insurance provider on behalf of the Dental Plan.

39. Based on the facts described in paragraphs 35 through 38 above, Defendants Hanco and Richardson:

a. failed to act solely in the interest of the participants and beneficiaries of the Dental 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);

b. caused the Dental 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 Dental Plan, in violation of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D); and

c. dealt with assets of the Dental Plan in their own interest or acted on behalf of a party whose interests are adverse to the interests of the Dental Plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(1) and (2), 29 U.S.C. §1106(b)(1) and (2).

40. As a direct and proximate result of Defendant Hanco and Richardson's fiduciary breaches, the Dental Plan has suffered injury and losses for which they are personally liable and subject to appropriate equitable relief, pursuant to ERISA §409, 29 U.S.C. §1109.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Secretary prays for judgment:

A. Requiring Defendants Hanco and Richardson to restore to the Plans all losses incurred as a result of their breaches of fiduciary duties and for which they are liable, with appropriate lost earnings;

B. Permanently enjoining Defendants Hanco and Richardson from violating the provisions of Title I of ERISA;

C. Permanently removing Defendants Hanco and Richardson from serving as fiduciaries for the Plans;

D. Permanently enjoining Defendants Hanco and Richardson from serving as fiduciaries or service providers to any ERISA-covered employee benefit plan;

E. Appointing an independent fiduciary to distribute the 401(k) Plan's assets and to terminate the 401(k) Plan;

F. Ordering Defendants to pay the fees and expenses of the independent fiduciary;

- G. Awarding the Secretary the costs of this action; and
- H. Ordering such further relief as is appropriate and just.

Respectfully submitted,

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*/s/ Elizabeth K. Arumilli*

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