

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

3. Venue lies in the Southern District of Iowa pursuant to ERISA section 502(e)(2), 29 U.S.C. § 1132(e)(2) and S.D. Iowa LR 3.b.

PARTIES

4. The Secretary, pursuant to ERISA sections 502(a)(2) and (5), 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.

5. At all times relevant to this action, Defendant Kurt Ver Helst, D.C., P.C., was a corporation incorporated in the State of Iowa and located in Ames, Iowa. Defendant Kurt Ver Helst, D.C., P.C. uses goods, equipment and materials shipped from outside the State of Iowa, maintains an internet website, interacts with health insurance companies from outside the State of Iowa and is engaged in an industry or activity affecting commerce.

6. At all times relevant to this action, Defendant Kurt Ver Helst was a resident of the State of Iowa and was president and an officer of Kurt Ver Helst, D.C., P.C.

7. At all times relevant to this action, Defendant Mark Eldridge was a resident of the State of Iowa and was chief executive officer of Financial Freedom Controls, Inc.

8. The Kurt Ver Helst DC Employee Stock Ownership Plan (the "ESOP") is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and is joined as a party necessary for complete relief pursuant to Rule 19(a) of the Federal Rules of Civil Procedure. At all times relevant to this Complaint, the ESOP covered common law employees of Defendant Kurt Ver Helst, D.C., P.C. in addition to Defendant Kurt Ver Helst and his wife. At all times relevant to this Complaint, the ESOP has been administered in Story County, Iowa.

GENERAL ALLEGATIONS

9. The ESOP, originally established in 1994, is a single employer defined contribution employee stock ownership plan designed to invest primarily in employer securities.

10. Kurt Ver Helst, D.C., P.C., is the sponsor and administrator of the ESOP and had authority to appoint and remove the ESOP trustee. At all relevant times, Defendant Kurt Ver Helst, D.C., P.C. was a fiduciary to the ESOP in that it exercised discretionary authority or discretionary

control respecting the management of the ESOP, or control respecting management or disposition of its assets, and it had discretionary authority or discretionary responsibility in the administration of the ESOP pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Therefore, Defendant Kurt Ver Helst, D.C., P.C. at all times relevant herein, has been a fiduciary with respect to the ESOP pursuant to ERISA §§ 3(21)(A)(i) and (iii), 29 U.S.C. §§ 1002(21)(A)(i) and (iii).

11. Defendant Kurt Ver Helst was the final decision maker regarding the ESOP. In addition, by virtue of his position as president and sole officer of Kurt Ver Helst, D.C., P.C. who makes all business decisions for the company, Defendant Kurt Ver Helst exercised discretionary authority or control respecting the management of the ESOP, or exercised authority or control respecting the management or disposition of the assets of the ESOP, or had discretionary authority or discretionary responsibility in the administration of the ESOP. Therefore, Defendant Kurt Ver Helst, at all times relevant herein, has been a fiduciary with respect to the ESOP pursuant to ERISA §§ 3(21)(A)(i) and (iii), 29 U.S.C. §§ 1002(21)(A)(i) and (iii).

12. At all times relevant herein, Defendant Kurt Ver Helst was president and officer of Defendant Kurt Ver Helst, D.C., P.C. and a fiduciary of the Plan. Therefore, Defendant Kurt Ver Helst is a party in interest with respect to the ESOP pursuant to ERISA §§ 3(14)(A) and (H), 29 U.S.C. §§ 1002(14)(A) and (H).

13. At all times relevant herein, Defendant Kurt Ver Helst, D.C., P.C. was an employer whose employees were covered by the ESOP. Therefore, Defendant Kurt Ver Helst, D.C., P.C. was a party in interest with respect to the ESOP pursuant to ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

14. At all times relevant herein, Mark Eldridge was a service provider to the ESOP. Therefore, Mark Eldridge is a party in interest with respect to the ESOP pursuant to ERISA section 3(14)(B), 29 U.S.C. § 1002(14)(B).

15. The ESOP purchased stock from Defendant Kurt Ver Helst, D.C., P.C. twice since the ESOP's inception.

16. The first stock purchase was on December 1, 1994 when the ESOP purchased 17,290 shares of stock from Defendant Kurt Ver Helst, D.C., P.C. The purchase was financed with a \$179,202 loan from Defendant Kurt Ver Helst, D.C., P.C. to the ESOP (the "1994 Loan").

17. The second purchase of stock was on December 1, 2000 when the ESOP purchased 6,875 shares of stock from Defendant Kurt Ver Helst, D.C., P.C. The purchase was financed with a \$89,859 loan from Defendant Kurt Ver Helst, D.C., P.C. to the ESOP (the "2000 Loan").

18. No documents were drafted or executed to record the terms of the 2000 Loan. Upon information and belief, the 2000 Loan was an extension of and part of the outstanding balance of the 1994 Loan.

19. The total original principal balance of the ESOP Loans was \$269,061. The ESOP made the following payments on the 1994 Loan and the 2000 Loan (collectively, the "ESOP Loans"):

<u>Year</u>	<u>Total</u>	<u>Repayment</u>	<u>Principal</u>	<u>Interest</u>
1994	28,895	23,295	5,600	
1995	36,372	20,780	15,592	
1996	55,037	45,158	9,879	
1997	11,652	6,249	5,403	
1998	57,203	47,802	9,401	
1999	12,040	8,581	3,459	
2000	38,135	31,867	6,268	
2001	92,566	85,329	7,337	
2002	15,242.76	15,242.75		
2003	15,473	15,473		
2004	16,219	16,219		
Total:	\$378,834	\$315,995	\$62,939	

20. Although the ESOP made the ESOP Loan repayments set forth in Paragraph 19, only the portion of each ESOP Loan repayment that was deductible under Internal Revenue

Code Section 415 (26 U.S.C. § 415) was applied towards the loan and for which stock was allocated from the ESOP's suspense account to the participants' accounts. The remaining loan payment amount that was due was added back to the outstanding balance of the loan. For example, for the 1994 plan year, even though a principal payment of \$23,295 was paid by the ESOP, only \$15,941 of that payment was used to pay down the outstanding balance of the 1994 ESOP Loan. The remaining \$12,954 was added to the balance of the 1994 ESOP Loan.

21. As of 2004, according to Kurt Ver Helst, D.C., P.C.'s accounting records, \$111,919.99 remained outstanding on the ESOP Loans. No further repayments on the ESOP Loans were made after 2004.

22. The ESOP terminated in December 2009. At termination of the ESOP, there were 4,657 unallocated shares of stock held in the suspense account valued at \$19.36 per share. Those shares reverted to Kurt Ver Helst, D.C., P.C. when the ESOP terminated.

23. As a result of Defendants' practice of adding back non-deductible amounts to the ESOP Loan balance, the ESOP made loan repayments in excess of the original \$269,061 ESOP Loan balance. Accordingly, by the time of ESOP termination,

all the stock in the ESOP's suspense account should have been released and allocated to participants' accounts. Without regard to Defendant Kurt Ver Helst's ESOP account, the remaining participants should have received stock worth approximately \$21,638.28. No shares should have reverted to Defendant Kurt Ver Helst, D.C., P.C.

24. At the time of ESOP termination, the Defendants took no action to allocate shares from the ESOP suspense account to ESOP participants.

25. The 1994 ESOP Loan document stated that the ESOP promised to pay "\$179,202.00 with interest from December 1, 1995, on unpaid principal at the rate of 0.0% per annum." However, contrary to the terms of the loan documents, the ESOP paid \$55,602 in interest on the 1994 Loan.

26. Upon information and belief, the 2000 ESOP Loan was governed by the terms of the 1994 ESOP Loan. Contrary to the terms of the loan documents, the ESOP paid \$7,337 in interest on the 2000 Loan.

27. At the time of ESOP termination, the Defendants took no action to repay the improperly charged interest on the ESOP Loans to the ESOP.

28. Defendant Kurt Ver Helst relied on Defendant Mark Eldridge for advice and assistance for all aspects of operation of the ESOP.

29. Defendant Mark Eldridge knew that the ESOP Loans were not being repaid pursuant to their original schedule, and that interest was being paid on the ESOP Loans.

30. Defendant Mark Eldridge took no action at the time of ESOP termination to advise Defendants Kurt Ver Helst, D.C., P.C. and Defendant Kurt Ver Helst to remedy their actions or omissions with respect to the allocation of ESOP shares and payment of interest on the ESOP Loans.

VIOLATIONS OF ERISA

COUNT I

31. By permitting unallocated ESOP shares to revert to Kurt Ver Helst D.C., P.C. upon ESOP termination when the shares should have been allocated to participants had the original ESOP Loan schedules been followed, Defendants Kurt Ver Helst, D.C., P.C. and Defendant Kurt Ver Helst, acting in their fiduciary capacities:

- (a) permitted assets of the ESOP to inure to the benefit of Defendant Kurt Ver Helst, D.C., P.C. in violation of ERISA section 403(c)(1), 29 U.S.C. § 1103(c)(1);

(b) failed to discharge their fiduciary duties with respect to the ESOP solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and 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) failed to discharge their fiduciary duties with respect to the ESOP 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 like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);

(d) caused the ESOP to engage in transactions, which they knew or should have known constituted a transfer to, or use by, or for the benefit of, a party in interest, of assets of the ESOP in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

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

(f) acted in transactions involving the ESOP on behalf of a party whose interests were adverse to the interests of the ESOP or of the ESOP's participants and beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

COUNT II

32. By taking no action to repay the improperly charged interest on the ESOP Loans to the ESOP at the time of ESOP termination, Defendants Kurt Ver Helst, D.C., P.C. and Defendant Kurt Ver Helst, acting in their fiduciary capacities:

(a) permitted assets of the ESOP to inure to the benefit of Defendant Kurt Ver Helst, D.C., P.C. in violation of ERISA section 403(c)(1), 29 U.S.C. § 1103(c)(1);

(b) failed to discharge their fiduciary duties with respect to the ESOP solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and 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) failed to discharge their fiduciary duties with respect to the ESOP 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 like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B); and

(d) failed to act in accordance with the documents and instruments governing the ESOP as required by ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

COUNT III

33. By knowingly participating in the transactions described in paragraphs 30 and 31, Defendant Mark Eldridge bears liability for appropriate equitable relief pursuant to ERISA section 502(a)(5), 29 U.S.C. § 1132(a)(5) for the breaches alleged therein.

PRAYER FOR RELIEF

34. By breaching its fiduciary responsibilities, obligations or duties as described above, the Defendants

have caused the ESOP to suffer financial losses, and the Defendants therefore are subject to all appropriate relief pursuant to ERISA §§ 502(a)(2) and (a)(5), 29 U.S.C.

§§ 1132(a)(2) and (a)(5). By knowingly participating in the fiduciaries' breaches as described above, Defendant Mark Eldridge caused the ESOP to suffer financial losses, and the Defendant therefore is subject to all appropriate relief pursuant to ERISA § 502(a)(5), 29 U.S.C. § 1132(a)(5).

Wherefore, the Secretary prays that this Court enter judgment as follows:

1. That Defendants Kurt Ver Helst D.C., P.C. and Kurt Ver Helst be required to make full restitution of all losses suffered by the ESOP as a result of their fiduciary breaches and prohibited transactions, including, but not limited to, lost opportunity income;

2. That Defendant Kurt Ver Helst be permanently enjoined from future violations of sections 403, 404 and 406 of Title I of ERISA;

3. That Defendant Kurt Ver Helst be permanently enjoined from serving as a fiduciary or service provider to any employee benefit plan subject to ERISA;

4. That Defendant Mark Eldridge be permanently enjoined from serving as a fiduciary or service provider to the ESOP;

5. That the Secretary be awarded the costs of this action; and

6. That the Court provide such further relief as is appropriate and just.

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