

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
FLINT**

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**THOMAS E. PEREZ**, Secretary of Labor, )  
United States Department of Labor, )  
Plaintiff, )

v. )

**Civil Action No.**

**WILLIAM ROBIN ROSE, ROSE BUSINESS FORMS** )  
**COMPANY d/b/a Rose Printing Services, Inc.,** )  
**ROSE PRINTING SERVICES, INC., EMPLOYEES 401(k)** )  
**RETIREMENT SAVINGS PLAN, ROSE PRINTING** )  
**SERVICES, INC., EMPLOYEES HEALTH PLAN, and** )  
**ROSE PRINTING SERVICES, INC., EMPLOYEES** )  
**DENTAL PLAN,** )  
Defendants. )

**COMPLAINT**

Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor  
(Secretary), alleges:

**JURISDICTION AND VENUE**

1. This action arises under Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §§1001, *et seq.*, and is brought by the Secretary under ERISA §502(a)(2) and (5), 29 U.S.C. §1132(a)(2) and (5), to enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain appropriate equitable relief for breaches of fiduciary duty under ERISA §409, 29 U.S.C. §1109, and to obtain such further equitable relief as may be appropriate to redress violations and to enforce the provisions of Title I of ERISA.

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

3. The Rose Printing Services, Inc., Employees 401(k) Retirement Savings 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 Rose Printing Services, Inc., Employees Health Plan (“Health Plan”) is an employee 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 Rose Printing Services, Inc., Employees Dental Plan (“Dental Plan”) is an employee 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 Eastern District of Michigan Flint Division pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because the 401(k) Plan, Health Plan, and Dental Plan (collectively “Plans”) are administered in Fowlerville, Livingston County, Michigan, within this district and division.

#### **DEFENDANTS AND PARTIES IN INTERESTS**

7. Rose Business Forms Company d/b/a Rose Printing Services, Inc. (“Rose Printing”), is a Michigan corporation that was incorporated on March 2, 1976. It was dissolved on July 15, 2014, according to the records of the Secretary of State of Michigan.

8. From at least January 1, 2009, through April 9, 2013, Defendant Rose Printing was a Plan Administrator to the Plans within the meaning of ERISA §3(16)(A)(ii), 29 U.S.C. §1002(16)(A)(ii), was the Plans’ fiduciary 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).

9. The Plans are named as defendants pursuant to Rule 19(a)(1)(A) of the *Federal Rules of Civil Procedure* solely to assure that complete relief can be granted.

10. From at least January 1, 2009, through April 9, 2013, William Robin Rose (“Defendant Rose”) was the President of Defendant Rose Printing; owned at least 75% of Defendant Rose Printing; exercised authority and control over Defendant Rose Printing and its assets; exercised authority and control respecting management or disposition of the Plans’ assets; was a trustee of the 401(k) Plan; was a fiduciary to the Plans within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A), and a party in interest to the Plans within the meaning of ERISA §3(14)(A), (E) and (H), 29 U.S.C. §1002(14)(A), (E) and (H).

### **COUNT I**

#### **(Failure To Remit Employee Salary Deferral Contributions To The 401(k) Plan)**

11. Paragraphs 1 through 2, 4, and 6 through 10 above, are re-alleged and incorporated herein.

12. Defendant Rose Printing established the 401(k) Plan on January 1, 1980, to provide retirement benefits to its employees and their beneficiaries.

13. From at least September 16, 2010 through March 17, 2012, the 401(k) Plan’s governing documents provided in pertinent part that participants could make pre-tax salary deferral contributions to the 401(k) Plan from their compensation.

14. From September 17, 2010, through March 16, 2012, Defendant Rose Printing withheld \$13,367.66 from its employees’ pay as salary deferral contributions intended for the 401(k) Plan. Defendant Rose Printing retained the withheld employee contributions in its bank account and never remitted them to the 401(k) Plan.

**15.** From September 17, 2010, through March 16, 2012, Defendant Rose had authority and control over whether Defendant Rose Printing remitted withheld employee salary deferral contributions to the 401(k) Plan.

**16.** From September 17, 2010, through March 16, 2012, Defendant Rose caused Defendant Rose Printing to retain \$13,367.66 in employee salary deferral contributions to the 401(k) Plan in Defendant Rose Printing's corporate bank account and used them to pay Defendant Rose Printing's general operating expenses.

**17.** Based on the facts described in Paragraphs 12 – 16 above, Defendants Rose Printing and Rose:

**A.** failed to hold all assets of the 401(k) Plan in trust in violation of ERISA §403(a), 11 U.S.C. §1103(a);

**B.** permitted the 401(k) Plan's assets to inure to the benefit of the employer and failed to hold them for the exclusive purpose of providing benefits to 401(k) Plan participants and their beneficiaries and defraying reasonable expenses of plan administration in violation of ERISA §403(c)(1), 29 U.S.C. §1103(c)(1);

**C.** failed to act solely in the interest of 401(k) Plan participants and their beneficiaries and for the exclusive purpose of providing benefits to 401(k) Plan participants and their beneficiaries and defraying reasonable expenses of the plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

**D.** 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);

**E.** dealt with assets of the 401(k) Plan in their own interest in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

**F.** 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)(2), 29 U.S.C. §1106(b)(2).

**18.** As a direct and proximate result of Defendant Rose Printing's and Defendant Rose's fiduciary breaches, the 401(k) Plan 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 II**

### **(Failure To Remit Employee Salary Deferral Contributions To The 401(k) Plan In A Timely Manner)**

**19.** Paragraphs 1 through 3 and 6 through 10 above, are re-alleged and incorporated herein.

**20.** From January 2, 2009, through March 16, 2012, Defendant Rose Printing withheld \$79,606 in employee salary deferral contributions from employees' paychecks to defer to employees' 401(k) Plan account.

**21.** From January 2, 2009, through March 16, 2012, Defendant Rose Printing failed to remit the \$79,606 employee salary deferral contributions to the 401(k) Plan in a timely manner and retained those amounts in its corporate bank account for up to 115 days until they were remitted.

**22.** From January 2, 2009, through March 16, 2012, Defendant Rose caused Defendant Rose Printing to withhold \$79,606 in employee salary deferral contributions from employees' paychecks and not remit such plan assets to the 401(k) Plan in a timely manner.

**23.** From January 2, 2009, through March 16, 2012, Defendant Rose Printing used the 401(k) Plan's assets, the retained employee salary deferral contributions, for its own benefit to pay other corporate expenses.

**24.** Based on the facts described in Paragraphs 20 – 23 above, Defendants Rose Printing and Rose:

**A.** failed to hold all assets of the 401(k) Plan in trust in violation of ERISA §403(a), 11 U.S.C. §1103(a);

**B.** permitted the 401(k) Plan's assets to inure to the benefit of the employer and failed to hold them for the exclusive purpose of providing benefits to 401(k) Plan participants and their beneficiaries and defraying reasonable expenses of plan administration in violation of ERISA §403(c)(1), 29 U.S.C. §1103(c)(1);

**C.** failed to act solely in the interest of 401(k) Plan participants and their beneficiaries and for the exclusive purpose of providing benefits to 401(k) Plan 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);

**D.** 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);

**E.** dealt with assets of the 401(k) Plan in their own interest in violation of

ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

**F.** 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)(2), 29 U.S.C. §1106(b)(2).

**25.** As a direct and proximate result of Defendant Rose Printing's and Defendant Rose's fiduciary breaches, the 401(k) Plan 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 III**  
**(Failure To Remit Employee Contributions To Health Plan)**

**26.** Paragraphs 1 through 3 and 6 through 10 above, are re-alleged and incorporated herein.

**27.** Defendant Rose Printing established the Health Plan on March 1, 1990, to provide health benefits to its employees and their beneficiaries.

**28.** The Health Plan was a fully-insured plan.

**29.** Health Alliance Plan ("HAP") provided health insurance coverage for Defendant Rose Printing's employees who participated in the Health Plan.

**30.** From May 4, 2012, through August 31, 2012, Defendant Rose Printing paid 50% of the health insurance premium owed to HAP for each employee.

**31.** From May 4, 2012, through August 31, 2012, the Health Plan participants were required to contribute 50% of the health insurance premiums through payroll deductions.

**32.** From May 4, 2012, through August 31, 2012, Defendant Rose had authority and control over whether and when Defendant Rose Printing remitted withheld employee contributions to the Health Plan and exercised such authority.

**33.** From May 4, 2012, through August 31, 2012, Defendant Rose Printing withheld \$6,440 from its employees' pay as contributions to the Health Plan for insurance premiums. Defendant Rose Printing retained the \$6,440 in employee contributions in its corporate bank account.

**34.** From May 4, 2012, through August 31, 2012, Defendant Rose caused Defendant Rose Printing to retain \$6,440 in employee contributions to the Health Plan that had been withheld from its employees' pay and used these contributions to pay other corporate expenses.

**35.** Because Defendant Rose Printing failed to remit \$6,440 in employee contributions to the Health Plan, HAP cancelled the company's health insurance effective May 31, 2012. Of the unremitted employee contributions, \$3,987 remains unreimbursed to the affected Health Plan participants.

**36.** HAP subsequently denied at least sixteen claims because the Health Plan participants were not eligible for coverage on the date of medical service.

**37.** Based on the facts described in Paragraphs 27 – 36 above, Defendants Rose Printing and Rose:

**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);

C. dealt with assets of the Health Plan in their own interest in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

D. 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)(2), 29 U.S.C. §1106(b)(2).

**38.** As a direct and proximate result of Defendant Rose Printing's and Defendant Rose's fiduciary breaches, the Health Plan 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 IV**  
**(Failure To Remit Employee Contributions To Dental Plan)**

**39.** Paragraphs 1 through 2 and 5 through 10 above, are re-alleged and incorporated herein.

**40.** Defendant Rose Printing established the Dental Plan on March 1, 1990, to provide dental insurance benefits to its employees and their beneficiaries.

**41.** United Concordia Insurance Company ("Concordia") provided dental insurance coverage for Defendant Rose Printing's employees who participated in the Dental Plan.

**42.** The Dental Plan was entirely funded by Defendant Rose Printing employees who participated in it.

**43.** Employee contributions to the Dental Plan were deducted from employees' paychecks in advance of the month of coverage under the Dental Plan.

**44.** From November 10, 2011, through April 8, 2013, Defendant Rose had authority and control over whether and when Defendant Rose Printing remitted withheld employee contributions to the Dental Plan and exercised such authority.

**45.** From November 10, 2011, through April 8, 2012, Defendant Rose Printing withheld \$989 from its employees' pay as contributions to the Dental Plan for insurance premiums. Defendant Rose Printing retained the withheld employee contributions in its general assets. Of that amount, \$218 remains outstanding.

**46.** During the period from November 10, 2011, through October 26, 2012, Defendant Rose caused Defendant Rose Printing to retain \$989 in employee contributions to the Dental Plan that had been withheld from its employees' pay and failed to ensure the Dental Plan assets were remitted to the Dental Plan or an insurance provider on behalf of the Dental Plan. The failure to remit the Dental Plan assets resulted in the cancellation of the dental insurance policy retroactive to December 1, 2011.

**47.** Based on the facts described in paragraphs 40 - 46 above, Defendants Rose Printing and Rose:

**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);

C. dealt with assets of the Dental Plan in their own interest in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

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

48. As a direct and proximate result of Defendant Rose Printing's and Defendant Rose's fiduciary breaches, the Dental Plan 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 V**

##### **(Failure to maintain fidelity bond for fiduciaries of 401(k) Plan)**

49. Paragraphs 1 through 2, 4, and 6 through 10 above, are hereby re-alleged and incorporated herein.

50. From December 31, 2009, to the present time, the Defendants Rose Printing and Rose failed to maintain a fidelity bond for the 401(k) Plan.

51. By the conduct described in Paragraph 50 above, Defendants Rose Printing and Rose failed to ensure that the fiduciaries of the 401(k) Plan who handled the funds or other property of the 401(k) Plan were bonded against losses to the 401(k) Plan resulting from acts of fraud or dishonesty in violation of ERISA §412(a), 29 U.S.C. §1112.

#### **PRAYER FOR RELIEF**

Wherefore, the Secretary prays for judgment:

A. Permanently enjoining Defendants Rose Printing and Rose from violating the provisions of Title I of ERISA;

**B.** Permanently enjoining Defendants Rose Printing and Rose from serving or acting as fiduciaries to any ERISA-covered employee benefit plan and removing them from any positions they now hold as fiduciaries of the Plans;

**C.** Ordering Defendants Rose Printing and Rose to make good to the 401(k) Plan, the Health Plan, and the Dental Plan all losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;

**D.** Appointing an independent fiduciary who will terminate the 401(k) Plan, distribute its assets to the participants and beneficiaries, and conclude any 401(k) Plan-related matters connected with the proper termination of the 401(k) Plan, with the Defendants paying all related costs;

**E.** Ordering Defendants Rose Printing and Rose to pay all reasonable fees and expenses incurred by the independent fiduciary in administering and terminating the 401(k) Plan;

**F.** Ordering Defendants Rose Printing and Rose to correct the prohibited transactions in which they engaged;

**G.** Awarding the Secretary the costs of this action; and

**H.** Ordering such other just and proper relief.

**M. PATRICIA SMITH**

Solicitor of Labor

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