

Oklahoma pursuant to ERISA Section 502(e)(2), 29 U.S.C. Section 1132(e)(2).

III. THE EMPLOYER & PLAN

A. Quartz Mountain Aerospace, Inc. (“QMA”) is, and at all times hereafter mentioned was, an Oklahoma corporation doing business in Altus, Jackson County, Oklahoma, within the jurisdiction of this Court. At all times hereinafter mentioned, QMA has been an employer, administrator, and plan sponsor with respect to the Plan within the meaning of ERISA Sections 3(5) and 3(16)(A) and (B), 29 U.S.C. Sections 1002(5) and 1002(16)(A) and (B). At all times hereafter mentioned, QMA had or exercised discretionary authority, control and responsibility respecting management and administration of the Plan and has been a fiduciary with respect to the Plan within the meaning of ERISA Section 3(21)(A), 29 U.S.C. Section 1002(21)(A). QMA also is a party in interest with respect to the Plan within the meaning of ERISA Section 3(14), 29 U.S.C. Section 1002(14).¹

B. The Quartz Mountain Aerospace, Inc. Welfare Plan (the “Plan”) is, and at all times hereafter mentioned was, an employee welfare benefit plan within the meaning of ERISA Section 3(1), 29 U.S.C. Section 1002(1). The Plan was established by, and at all times hereafter mentioned was maintained by QMA, an employer engaged in commerce or in an industry or activity affecting commerce and are subject to Title I, including Title I, Part 4 of ERISA, pursuant to ERISA Sections 4(a)(1) and 401(a), 29 U.S.C. Sections 1003(a)(1) and 1101(a). The Plan provided health, dental short-term disability, and life insurance coverage to QMA’s employees. At all relevant times the Plan was administered in Altus, Oklahoma, Jackson County, Oklahoma, within the jurisdiction of this Court.

¹ QMA filed for Chapter 7 bankruptcy protection on October 29, 2009, cause number: 09-16143, in the United States Bankruptcy Court for the Western District of Oklahoma, Oklahoma City Division. Plaintiff does not seek monetary relief from QMA.

IV. THE DEFENDANTS

A. Defendant Mark A. Arciero is and at all times hereinafter mentioned was the Chief Executive Officer and inside Direct of QMA, which is located in Altus, Jackson County, Oklahoma, within the jurisdiction of this court, and accordingly was engaged in business in Altus, Jackson County, Oklahoma, and is subject to this Court's jurisdiction pursuant to ERISA Section 502(e)(2), 29 U.S.C. Section 1132(e)(2). Defendant Arciero, at all relevant times, has had and exercised discretionary authority, control, and responsibility over Plan management and administration and had actual control over Plan assets in that he controlled the funding of the Plan and disposition of Plan assets. Thus, Defendant Arciero is and at all relevant times has been a fiduciary and a party in interest with respect to the Plan within the meaning of ERISA Sections 3(14) and 3(21)(A), 29 U.S.C. Sections 1002(21)(A) and 1002(14).

B. The Quartz Mountain Welfare Plan, as described in paragraph III, is named as a defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

V. ERISA VIOLATIONS

A. Defendant Arciero, a fiduciary with respect to the Plan, violated the provisions of ERISA, in that he:

(1) Failed to discharge his 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 in violation of Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A);

(2) Failed to discharge his duties to the Plan with the care, skill, prudence and diligence under the circumstances 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);

(3) Caused the Plan to engage in transactions which he knew or should have known constitute a direct or indirect transfer to, or use by or for the benefit of, a party in interest of the assets of such Plan in violation of Section 406(a)(1)(D) of ERISA, 29 U.S.C. § 1106(a)(1)(D);

(4) Dealt with the assets of the Plan in his own interests or for his own accounts in violation of Section 406(b)(1) of ERISA, 29 U.S.C. § 1106(b)(1);

(5) Engaged in transactions involving the Plan on behalf of a party whose interests were adverse to the interests of such Plan and the interests of participants and beneficiaries in violation of Section 406(b)(2) of ERISA, 29 U.S.C. § 1106(b)(2);

(6) Caused the assets of the Plan to inure to the employer's benefit and failed to hold such assets for the exclusive purpose of providing benefits to participants in the Plan in violation of Section 403(c)(1) of ERISA, 29 U.S.C. § 1103(c)(1).

B. The aforementioned violations occurred in, but were not limited to, the following Plan transactions: for the period August 8, 2008 through November 15, 2008, Defendant Arcerio failed to properly remit employee premium contributions to the Plan; failed to segregate and hold Plan assets for the purpose of providing promised welfare benefits; transferred Plan assets to QMA, a party in interest; and failed to properly manage and administer the Plan.

VI. DIRECT LIABILITY

As a result of engaging in breaches of his fiduciary responsibilities, obligations, or duties and by engaging in transactions prohibited by ERISA, as described in Part V of this Complaint, Defendant Arciero has caused the Plan to suffer financial losses for which he is liable pursuant to

ERISA Section 409(a), 29 U.S.C. § 1109(a).

VII. PRAYER

WHEREFORE, cause having been shown, Plaintiff, Secretary of Labor prays that this Court:

1. Permanently enjoin Defendant Mark A. Arciero from violating the provisions of ERISA;
2. Order Defendant Arciero to restore all losses to the Plan, with interest thereon, resulting from his breaches of fiduciary obligations, to correct all prohibited transactions, and if necessary, to offset any claims or benefits which he may have against or with the Plan against the amount of losses, including lost opportunity costs, resulting from his violations;
3. Permanently enjoin Defendant Mark A. Arciero from serving as a fiduciary to any plan covered by ERISA;
4. Award Plaintiff costs of this action; and
5. Provide such other remedial relief as may be appropriate.

Respectfully Submitted,

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