

§ 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. On January 1, 1998, Weinhagen Tire Co., Inc. (“Weinhagen Tire” or “WTC”) established the Weinhagen Tire Co., Inc. 401(k) Plan (“Plan”) to provide retirement benefits to the Plan’s participants. The Plan was amended and restated effective January 1, 2009.

4. The 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).

5. Venue of this action lies in the District of Minnesota pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan was administered in St. Paul, Ramsey County, Minnesota, within this district.

DEFENDANTS AND PARTIES IN INTEREST

6. The Plan is named as a defendant herein pursuant to Federal Rule of Civil Procedure 19(a) solely to assure that complete relief can be granted.

7. From at least January 1, 2009, to the present, Michael E. Weinhagen (“Defendant Weinhagen”) was the sole owner and president of Weinhagen Tire; exercised authority or control over the management or disposition of the Plan assets; was

a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C.

§ 1002(21)(A); and was a party in interest to the Plan within the meaning of ERISA § 3(14)(A), (E) and (H), 29 U.S.C. § 1002(14)(A), (E) and (H).

8. From at least January 1, 2009, to the present, Weinhagen Tire, Plan Administrator, exercised authority or control over the management or disposition of the Plan assets; was a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and was a party in interest to the Plan within the meaning of ERISA § 3(14)(A), (C) and (G), 29 U.S.C. § 1002(14)(A), (C) and (G).

FAILURE TO REMIT PARTICIPANT CONTRIBUTIONS TO THE PLAN

9. Paragraphs 1 through 8 above are realleged and are hereby incorporated in these allegations.

10. During periods from at least February 1, 2010 to May 27, 2015, the Plan's governing documents provided, in pertinent part, that participants could elect to defer a portion of their compensation to be contributed to the Plan.

11. During periods from at least February 1, 2010 to May 27, 2015, Defendants Weinhagen and WTC withheld \$35,363.86 from employees' pay in salary reduction contributions intended for the Plan.

12. During periods from at least February 1, 2010 to May 27, 2015, Defendants Weinhagen and WTC exercised authority and control over whether and when Defendant WTC remitted withheld employee salary reduction contributions to the Plan.

13. During periods from February 1, 2010 to May 27, 2015, Defendants Weinhagen and WTC caused Defendant WTC to retain approximately \$29,058.14 in employee salary reduction contributions to the Plan in Weinhagen Tire's corporate bank account and used those Plan assets to pay Weinhagen Tire's general operating expenses.

14. To date, the \$29,058.14 in unremitted salary deferral contributions has not been remitted to the Plan.

15. By the facts described in paragraphs 9 through 14 above, Defendants:

a. failed to ensure that the assets of the Plan did not inure to the benefit of Weinhagen Tire 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 of the 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 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 Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

e. 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,

f. acted on behalf of a party whose interests 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).

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

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

- A. Permanently enjoining Defendants Weinhagen and Weinhagen Tire from violating the provisions of Title I of ERISA;
- B. Ordering Defendants Weinhagen and Weinhagen Tire to make good to the Plan all losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;
- C. Ordering Defendants Weinhagen and Weinhagen Tire to correct the prohibited transactions in which they engaged relating to the Plan;
- D. Ordering the removal of Defendants Weinhagen and Weinhagen Tire from any positions they currently hold as fiduciaries to the Plan;
- E. Permanently enjoining Defendants Weinhagen and Weinhagen Tire from serving as a fiduciary or service provider to ERISA-covered employee benefit plans;
- F. Appointing an independent fiduciary to administer the Plan consistent with

the Plan's governing documents, the Internal Revenue Code, and ERISA;

- G. Ordering Defendants Weinhagen and Weinhagen Tire to pay all reasonable fees and expenses incurred by the independent fiduciary in administering the Plan;
- H. Awarding the Secretary the costs of this action; and
- I. Ordering such further relief as is appropriate and just.

Respectfully submitted,

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