

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS PEREZ, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

AUTHORIZED FACTORY SERVICE, INC.,

Defendant.

Civil Action No. _____

COMPLAINT

Thomas E. Perez, Secretary of Labor, United States Department of Labor, hereby alleges:

JURISDICTION AND VENUE

1. This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA” or “the Act”), 29 U.S.C. § 1001, *et seq.*, and is brought to obtain relief under Sections 409 and 502 of ERISA, 29 U.S.C. §§ 1109 and 1132, in the form of equitable remedies that will redress violations, obtain appropriate equitable relief for breaches of fiduciary duty under ERISA § 409, 29 U.S.C. § 1109, and obtain such further equitable relief as may be appropriate to enforce the provisions of Title I of ERISA.

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

3. Venue with respect to this action lies in the Western District of Pennsylvania, pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

4. The A.F.S. 401(k) Plan (“the Plan”) is an employee benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3), and is, therefore, subject to the coverage of the Act pursuant to Section 4(a) of ERISA, 29 U.S.C. § 1003(a).

5. Authorized Factory Services, Inc. (“AFS”), a Pennsylvania corporation, is the administrator and sponsor of the Plan. AFS has a place of business located in Coraopolis, PA.

6. For purposes of this Complaint, the relevant period is defined as 1995 to date.

THE PARTIES

7. The Secretary, pursuant to Sections 502(a)(2) and (5) of the Act, 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.

8. AFS is the Administrator of the Plan and the Plan sponsor. During some or all of the relevant time period, AFS has exercised discretionary authority and discretionary control respecting management of the Plan, has exercised authority and control respecting management and disposition of the Plan’s assets and had discretionary authority and discretionary responsibility in the administration of the Plan. AFS is therefore a fiduciary to the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), and a party in interest with respect to the Plan within the meaning of ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

GENERAL ALLEGATIONS

9. On or about January 1, 1995, AFS established the Plan to provide benefits to its employees in the event of retirement, death or disability and upon termination of employment.

10. Since sometime in 2002, when AFS ceased operations, AFS has not taken fiduciary responsibility for the operation and administration of the Plan and its assets, nor has AFS appointed anyone to assume said responsibility.

11. Under the terms of the Plan, Plan participants are entitled to distribution of the non-forfeitable portion of their Employer Contribution Account, the account balance of their 401(k) account, and the account balance of their after-tax account, if any.

12. Plan participants were terminated from the company in 2002 when the company ceased operating, but those participants have not been able to obtain a distribution from the Plan because AFS has not initiated termination of the Plan and distribution of the assets.

13. As of June 3, 2015, the Plan had five (5) participants and \$30,555.70 in Plan assets.

VIOLATIONS

14. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by reference the averments and allegations of paragraphs 1-14, inclusive.

15. By the actions and conduct described above, AFS, as a fiduciary of the Plan,

- a. failed to discharge its 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 its 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); and
- b. failed to discharge its duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man 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 ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B); and

PRAYER FOR RELIEF


WHEREFORE, the Secretary prays that this Court enter an Order:

- A. Removing defendant AFS from its position as a fiduciary with respect to the Plan and appointing an independent fiduciary to administer the Plan in order to effectuate its termination and the distribution of Plan assets to the participants and beneficiaries; and
- B. Ordering such further relief as is appropriate and just.

Respectfully submitted,

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