

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JULIE A. SU, Acting Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

PAUL S. TURNER, JOHN W. McCULLOUGH,
F. DENNIS NELSON, DAVID L. JOSLYN and
McCULLOUGH, CAMPBELL & LANE LLP
RETIREMENT SAVINGS PLAN,

Defendants.

CIVIL ACTION

File No.

COMPLAINT

Plaintiff Julie A. Su, Acting Secretary of Labor, United States Department of Labor (“the Acting Secretary”), alleges as follows:

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 Acting 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 McCullough, Campbell & Lane LLP Retirement Savings Plan (“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. Venue of this action lies in the Northern District of Illinois, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered in Chicago, Cook County, Illinois, within this district.

DEFENDANTS

5. Since October 1, 2015, until October 29, 2019, McCullough, Campbell & Lane LLP (“MCL”) was the Administrator of the Plan and the Sponsor of the Plan.

6. On October 29, 2019, Defendants John W. McCullough (“McCullough”), F. Dennis Nelson (“Nelson”), Paul S. Turner (“Turner”) and David L. Joslyn (“Joslyn”), as capital partners of MCL and on behalf of the MCL (collectively “the Capital Partners”), entered into a Partnership Resolution stating its intention to terminate the Plan on January 31, 2020, and appointing Turner as the Plan Administrator with authority to take all steps necessary to terminate it, subject to consultation with the partnership about any substantial expenses.

7. On November 14, 2019, the Capital Partners of MCL, on behalf of MCL, entered into a Partnership Resolution stating its intention to terminate the Plan on December 31, 2019, and appointing Turner as the Plan Administrator with authority to take all steps necessary to terminate it, subject to consultation with the partnership about any substantial expenses.

8. From at least October 29, 2019, Defendants McCullough, Nelson, and Joslyn were fiduciaries of the Plan and had discretionary authority or discretionary control with respect to management of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), when they appointed Defendant Turner as Plan Administrator with authority to take all necessary

steps to terminate the Plan.

9. From at least October 29, 2019, Defendant Turner was the Administrator of the Plan and a fiduciary of the Plan and had discretionary authority or discretionary control with respect to management of the Plan or disposition of its assets within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

10. The Plan is named as a Defendant in this action pursuant to Federal Rule of Civil Procedure 19(a), solely to assure that complete relief can be granted.

COUNT I

Defendant Turner Failed to Follow the Governing Documents of the Plan Regarding Properly Terminating the Plan and Distributing Plan Assets

11. Paragraphs 1 through 10 above are realleged and incorporated herein by reference.

12. MCL, the sponsoring employer of the Plan and Plan Administrator, ceased business operations in September 2019.

13. On October 29, 2019, and November 14, 2019, the Capital Partners of MCL approved Partnership Resolutions requiring the termination of the Plan and naming Turner as the successor Plan Administrator with authority to take all steps necessary to terminate the Plan, subject to consultation with the partnership about any substantial expenses.

14. The asset custodian and recordkeeper for the Plan is Transamerica.

15. On October 31, 2019, Turner signed Transamerica's Signature Authorization Form authorizing Turner to approve changes to plan level services and participant requests. This included but was not limited to approving participant transaction requests, plan level fund changes, plan design changes, and changes to administrative services.

16. According to Transamerica Retirement Solutions, LLC's Basic Plan Document

(“Plan Document”), if the employer ceases to operate or exist, the Plan shall be automatically terminated in accordance with the requirements of the Code and ERISA or other guidance issued thereunder and, to the extent permitted by the Code and ERISA, all assets shall be distributed to Participants and Beneficiaries.

17. According to the Plan Document, the commencement date for the distributions of a Participant’s Account to the Participant (or, if applicable, his or her Beneficiary) shall be the date that is no later than the date specified in the Adoption Agreement for such purpose or, if such date is not specified in the Adoption Agreement, as soon as administratively feasible (but no later than the 60th day) after the latest of the close of the Plan Year in which the date the Participant incurs a Severance from Employment with the Employer.

18. According to the Adoption Agreement, the Plan Year is from January 1 – December 31.

19. MCL no longer had any employees when it ceased operations in September 2019.

20. As of February 28, 2023, the Plan had twenty-five participants and assets totaling approximately \$5,419,118.82.

21. To date, Turner has not terminated the Plan or issued distributions to all of the Plan’s participants.

22. Since 2019, Defendant Turner has failed to administer the Plan and its assets.

23. By Defendant Turner failing to administer the Plan, participants of the Plan have not been able to obtain distributions from the Plan of their individual account balances.

24. By the facts described in paragraphs 11 through 23 above, Defendant Turner:

a. 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 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);

b. Failed to discharge his 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

c. Failed to discharge his duties with respect to the Plan solely in the interest of the participants and beneficiaries and in accordance with the documents and instruments governing the Plan, in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

COUNT II

The Capital Partners Failed to Monitor Defendant Turner Regarding the Termination of the Plan and the Distribution of its Assets

25. Paragraphs 1 through 24 above are realleged and incorporated herein by reference.

26. From October 29, 2019, to the present, the Capital Partners failed to monitor Defendant Turner to ensure the Plan was properly terminated and distributions were made to Plan participants in accordance with the Plan's governing documents.

27. By the Capital Partners failing to monitor Defendant Turner, participants of the Plan have not been able to obtain distributions from the Plan of their individual account balances.

28. By failing to monitor Defendant Turner as alleged in paragraphs 25 through 27 above, the Capital Partners:

a. Failed to discharge their 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);

b. Failed to discharge their 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

c. Failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and in accordance with the documents and instruments governing the Plan, in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

PRAYER FOR RELIEF

WHEREFORE, the Acting Secretary prays for judgment:

A. Removing Defendants Turner, McCullough, Nelson and Joslyn from their position as fiduciaries with respect to the Plan;

B. Permanently enjoining Defendants Turner, McCullough, Nelson and Joslyn from serving as fiduciaries or service providers to ERISA-covered employee benefit plans;

C. Appointing an independent fiduciary to terminate the Plan consistent with the Plan's governing documents, the Internal Revenue Code, and ERISA, distribute the Plan's assets to the participants and beneficiaries, and conclude any Plan-related matters connected with the proper termination of the Plan;

D. Ordering Defendants Turner, McCullough, Nelson and Joslyn to pay reasonable fees and expenses incurred by the independent fiduciary in administering and terminating the

Plan;

- E. Awarding the Acting Secretary the costs of this action; and
- F. Ordering such further relief as is appropriate and just.

Respectfully submitted,

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

/s/Barbara M. Villalobos
BARBARA M. VILLALOBOS
Senior Trial Attorney

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