



3. The Mariah Industries, Inc. 401(k) 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 Eastern District of Michigan, pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because the Plan is administered in Warren, Macomb County, Michigan, within this district.

### **DEFENDANTS**

5. Since at least July 15, 2009, Defendant Christina Samone DeLaGarza (“DeLaGarza”) was the president of Mariah Industries, Inc., the trustee of the Plan, and a fiduciary of the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A).

6. Since at least July 15, 2009, Defendant Mariah Industries, Inc. (“Mariah”) was the sponsor of the Plan, the Plan Administrator of the Plan, and a fiduciary of the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A).

7. 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.

### **ALLEGATIONS**

8. Paragraphs 1 through 7 above, are realleged and incorporated herein by reference.

9. Upon information and belief, Mariah ceased operations in September 2012. Mariah’s Michigan corporate status was automatically dissolved by the Michigan Department of Licensing and Regulatory Affairs on July 15, 2015.

10. Mariah, as the Plan Administrator, was responsible for administering the Plan, including terminating the Plan and directing the trustee to commence distributions to Plan participants upon termination.

11. According to the Summary Plan Description, a participant may elect to have their vested account balance distributed as soon as administratively feasible following termination of employment.

12. On information and belief, when the company ceased operating in 2012, Plan participants' employment with Mariah was terminated.

13. The Plan assets are currently invested in Lord Abbett mutual funds.

14. The current third party administrator for the Plan is Prime Plan Solutions ("PPS").

15. The Participant Distribution Election Form requires the signature of the Plan trustee in order for PPS to process a distribution request.

16. At least one Plan participant has requested a distribution of her Plan assets.

17. To date, participants are unable to secure DeLaGarza's signature as Plan trustee on the distribution form.

18. By Defendants DeLaGarza and Mariah failing to administer the Plan, participants of the Plan have not been able to obtain distributions from the Plan of their individual account balances.

19. According to the valuation for the period ending December 31, 2015, the Plan had twenty-two participants and assets totaling approximately \$14,103.69.

20. To date, Defendants DeLaGarza and Mariah have not terminated the Plan or issued distributions to all of the Plan's participants.

21. Since September 1, 2012, Defendants DeLaGarza and Mariah failed to administer the Plan and its assets.

22. By the facts described in paragraphs 9 through 21 above, Defendants DeLaGarza and Mariah:

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); and

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).

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 Secretary prays for judgment:

A. Removing Defendants DeLaGarza and Mariah from their position as fiduciaries with respect to the Plan;

B. Permanently enjoining Defendants DeLaGarza and Mariah from serving as a fiduciary or service provider 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 DeLaGarza and Mariah to pay the reasonable fees and expenses incurred by the independent fiduciary in administering and terminating the Plan;
- E. Awarding the Secretary the costs of this action; and
- F. Ordering such further relief as is appropriate and just.

Respectfully submitted,

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