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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE DISTRICT OF OREGON

10 *Portland Division*

11 JERICO MCCOY, an individual,

12 Plaintiff,

13 vs.

14 AETNA INC., BANK OF AMERICA, N.A., a
15 Delaware Corporation, BANK OF AMERICA
16 GROUP BENEFITS PROGRAM

17 Respondent.

)
)
) NO. **CV '12 - 260 - HA**

) COMPLAINT FOR:
) Declaratory Relief and Equitable Estoppel
) under ERISA

) **JURY TRIAL DEMANDED**
)

18 Plaintiff complains of Defendants, and each of them, and alleges as follows:
19

20 **I. NATURE OF ACTION**

21
22 1. In this action, Plaintiff asserts Declaratory Relief and Equitable Estoppel claims for relief
23 under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, et seq,
24 and more particularly under 29 U.S.C. § 1132(a)(1)(B) for wrongful denial of disability and health
25 insurance.

26 **II. JURISDICTION AND VENUE**

2. Federal Question jurisdiction is present under 28 U.S.C. § 1441(a) over the ERISA claims,

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1 and pursuant to ERISA §§ 502(e) and (f), 29 U.S.C. §§ 1132(e) and (f), and 28 U.S.C. §1331.

2 3. Venue is proper under 29 U.S.C. § 1132(e)(2) based upon the location of Plaintiff's
3 employment and location of the alleged violations and breaches.

4 **III. THE PARTIES**

5 4. Plaintiff, JERICO MCCOY, is an individual, citizen and resident of the State of Oregon,
6 residing therein at 1763 NE 65th Ave., Hillsboro, Washington County, Oregon. On and until April
7 27, 2011, Plaintiff Jerico McCoy was an employee of Bank of America Corporation, National
8 Association, insured under Group Short Term Disability Insurance Policy, a true and correct copy of
9 which is attached hereto as *Plaintiff's Exhibit 'A'*.

10 5. Defendant BANK OF AMERICA CORPORATION, NATIONAL ASSOCIATION (hereinafter
11 referred to as "B of A, N.A.") is, and was at all times herein mentioned, a Delaware Corporation with
12 a principal place of business at 100 N. Tyron Street in Charlotte, North Carolina.

13 6. Defendant, BANK OF AMERICA GROUP BENEFITS PROGRAM (hereinafter "B of A
14 Group Benefits Program"), is a self-funded benefits plan for the employees of Defendant BANK OF
15 AMERICA, NATIONAL ASSOCIATION (Defendant B of A, N.A.),

16 7. Defendant, AETNA LIFE INSURANCE COMPANY (hereinafter "Aetna") is the claims
17 administrator for the B of A Group Benefits Program, pursuant to a Benefits Service Agreement
18 between Aetna and Defendant B of A, N.A. See Bank of America Group Benefits Program,
19 attached as *Plaintiff's Exhibit 'B'*.

20 **IV. GENERAL ALLEGATIONS**

21 8. Starting on or about June 13, 2005, Plaintiff, JERICO MCCOY, was employed as a
22 personal banker in Virginia Beach, VA by Defendant B of A, N.A. During his time with Defendant B
23 of A, N.A., Mr. McCoy had not used any disability leave until his recent return from Iraq in 2010.
24 Mr. McCoy had military leave in 2008 and in 2009. Mr. McCoy stayed with Defendant B of A, N.A.
25 until he had to resign as a result of his symptoms from his medical condition on April 28, 2011.

26 9. Aetna is a corporation and an insurance company duly organized and existing under the
laws of a state other than Oregon, doing business within the State of Oregon with its principal place
of business for purposes of service of process located within the State of Oregon.

10. This Court has jurisdiction of the matter under 29 U.S.C. §1132(e)(1) and 28 U.S.C. §1331.

11. The insurance policy in question under which Plaintiff seeks benefits is a group disability

1 insurance policy issued under an "employee benefit plan" pursuant to ERISA, 29 U.S.C. §1002(3).
2 The employee benefit plan and benefit plan in question are covered by ERISA. Defendant B. of A.,
3 N.A. is the plan administrator, and Plaintiff is a participant or beneficiary under the ERISA Plan.

4 12. The aforesaid short-term disability policy provides for weekly benefits equal to 100% of
5 Plaintiff's pre-disability salary.

6 13. Plaintiff's pre-disability salary was at all times material as an employee working as a
7 "Private Bank Mortgage Consultant" for his employer B. of A., N.A., whose Short-Term Disability
8 ("STD") benefits were \$1,056.79 per week.

9 14. Plaintiff has continuously and at all relevant time periods since filing a claim for STD
10 benefits effective his last day an employee for the aforementioned employer on April 28, 2011. He
11 had a STD within the meaning of the aforesaid policy that is caused by a mental health disorder of
12 depression, anxiety, nightmares, flashbacks, chronic fatigue, insomnia, irritability, short-term
13 memory loss, and hyperarousal,

14 15. On and until April 28, 2011, the day he informed Bank of America of his inability to return
15 after his Family and Medical Leave Act (FMLA) leave was up, or on May 10, 2011, the day his
16 FMLA time concluded, Plaintiff Jerico McCoy was an employee of Bank of America, insured under
17 Bank of America Group Benefits Program and specifically its Short Term Disability policy, a true
18 and correct copy of which policy is attached hereto.

19 16. In or around June of 2005, Mr. McCoy was offered health insurance benefits through B of
20 A Group Benefits Program, which under the name of "Bank of America Health Plans" offered to Mr.
21 McCoy as an employee of B of A, N.A., an "Aetna Comprehensive Traditional Health Plan" of
22 health insurance, and Aetna Dental and Vision plans. Mr. McCoy accepted this offer of health
23 benefits, and began paying applicable premiums.

24 **A. Mr. McCoy's Disability Leave for Post Traumatic Stress Disorder and Claim for Short**
25 **Term Disability Benefits with Aetna**

26 17. On or about November 22nd 2010, Mr. McCoy was properly absent from work on unpaid
27 medical disability leave for issues he was having with Post-Traumatic Stress Disorder. Medical
28 leave was authorized under the Federal Family and Medical Leave Act ("FMLA"), enacted at 29
29 U.S.C. § 2601 et seq. and under the Oregon Family Leave ("ORFML") enacted at Oregon Revised
30 Statutes 659A.150-659A.186.

31 18. On or about November 22nd 2010, Mr. McCoy began treatment with Marie Soller, MD,

1 concerning his condition. His treatment is ongoing. At that time, Dr. Soller suggested Mr. McCoy
2 take twelve (12) weeks off for medical leave, and Mr. McCoy requested this time off from his
3 supervisor (Scott Conely) at B of A, N.A. Mr. McCoy received the time off. Mr. McCoy also
4 informed Aetna and B. of A., N.A., on the 22nd of November, that his leave and disability claim
would start on November 23rd, 2011. See *Plaintiff's Exhibit 'C.'*

5 19. On or about December 13, 2010, Mr. McCoy was notified that his Short Term Disability
6 claim was denied since his claim fell within a plan exclusion, namely that benefits are not paid for a
7 disability resulting from acts of war. *Plaintiff's Exhibit 'D.'* Further, Mr. McCoy was notified that his
8 medical records were not enough to support his STD benefit claim, but were sufficient to allow an
unpaid medical leave of absence. *Id.*

9 20. The aforesaid plan administrator's denial of the Plaintiff's claim for STD Benefits were
10 wrongful.

11 21. On or about December 14, 2010, Mr. McCoy was notified by Aetna that he had been
12 approved for his Bank of America Medical Leave ("BACMED"), Federal Family and Medical Leave
13 Act ("FMLA"), and Oregon Family Leave – Family and EOI ("ORFML"), for the periods between
November 23, 2010 until November 29, 2010. See *Plaintiff's Exhibit 'E.'*

14 22. On or about January 18, 2011, Mr. McCoy notified Aetna of his appeal of their decision to
15 deny him Short Term Disability Benefits ("STD Benefits"). See *Plaintiff's Exhibit 'F.'*

16 23. On or about January 26, 2011, Mr. McCoy was notified by Aetna that his leave had been
17 extended for Bank of America Medical Leave ("BACMED"), Federal Family and Medical Leave Act
18 ("FMLA"), and Oregon Family Leave – Family and EOI ("ORFML"), for the periods between
November 30, 2010 until January 23, 2011. See *Plaintiff's Exhibit 'G.'*

19 24. On or about January 23, 2011, Mr. McCoy returned to work, despite his unresolved
20 condition, in an attempt to alleviate the financial stress he was experiencing as a result of his short-
21 term disability claim denial. On account of Mr. McCoy's condition, he was not able to continue to
22 work and relapsed on or about February 15, 2011 and properly renewed his leave on February 16,
23 2011. See *Plaintiff's Exhibit 'H.'* This relapse occurred within thirty (30) days of when Mr. McCoy
attempted to return to work.

24 25. On or about February 16, 2011, Aetna notified Mr. McCoy that he had been approved for
25 an extension of his leave with BACMED from February 16, 2011 until May 10, 2011, and with
26 FMLA, and ORFML extended from February 16, 2011 until March 10, 2011. See *Plaintiff's Exhibit
'I.'*

1 26. On or about March 18, 2011, Mr. McCoy received a letter from Dionne Walters of Aetna,
2 which stated that "[o]n appeal, [the] decision to deny disability benefits in regard[s] to [Mr. McCoy's]
3 claim, has been overturned. . . Rationale for overturning original determination includes: During
4 the appeal review it has been determined that there is no causal relationship from a disability
5 resulting from an act of war." *Attached as Plaintiff's Exhibit 'J.'* As a result of this decision,
6 Plaintiff's Counsel was notified that Aetna will no longer deny Mr. McCoy benefits as a result of the
"acts of war" plan exclusion.

7 27. On March 22, 2011, Aetna employee Katrisha Barner called Mr. McCoy and notified him
8 that his appeal was denied. That same day Mr. McCoy notified Aetna that he is appealing Aetna's
9 denial via a written fax. On March 23, 2011, Aetna employee Ronald Smalls wrote a letter to Mr.
10 McCoy, which stated that since Mr. McCoy failed to "have a physical examination and/or provide
11 satisfactory objective medical evidence of disability or continuing disability or other information
12 requested by Aetna," Aetna would be denying his claim. *See Plaintiff's Exhibit 'K.'* Further, Aetna
stated that:

13 Dr. Soller indicated that you were unable to work due to lack of concentration however,
14 has not considered a higher level of care such as intensive outpatient or partial
15 program. [sic] There are also no indications of severe symptoms of psychiatric illness.
16 Dr. Sollers' initial evaluation notes indicate that you were attending school with a GPA
of 4.0. [sic] This suggests intact ability in terms of cognitive functioning and social skills.
Our review also confirms that there are no physical or cognitive examination findings of
functional impairment affected by adverse medical effects.[sic].

17 *Id.*

18 28. On or about April 11, 2011, Aetna wrote Plaintiff's Counsel and notified him that the date of
19 Mr. McCoy's appeal will be set for April 6, 2011 instead of March 22nd, 2011, since Mr. McCoy had
20 requested the appeal before Aetna had sent its March 23, 2011 denial letter. *Attached as Plaintiff's
Exhibit 'L.'*

21 29. On or about June 30, 2011, Aetna wrote Plaintiff's Counsel and notified him that Aetna has:
22 completed [their] review of [Mr. McCoy's] appeal of the denial of [his] STD benefits. Based
23 upon [Aetna's] review, [Aetna] has overturned the original decision to deny [Mr. McCoy's]
24 benefits. Accordingly, the claim has been returned to the operations team for review and benefit
consideration, effective 11/23/10. . . . [Aetna] has determined that sufficient documentation
exists which supports [Mr. McCoy's] inability to perform the essential functions of his
occupation, effective 11/23/2010.

25 *Attached as Plaintiff's Exhibit 'M.'*

26 30. On or about July 05, 2011, Aetna wrote Mr. McCoy and notified him that Aetna will be
reinstating Mr. McCoy's STD benefits. *Attached as Plaintiff's Exhibit 'N.'* However, the benefits Mr.

1 McCoy was to receive are only for the period from November 23, 2010 until January 23, 2011.

2 There is no explanation as to why Mr. McCoy was to only receive benefits from these two months,
3 rather than his entire leave and STD claim.

4 31. Subsequently, on or about August 04, 2011, Aetna wrote Plaintiff's Counsel a "Revision
5 Letter," revising the letter Aetna sent to Mr. McCoy on March 18, 2011, which had previously stated
6 Aetna would not deny Mr. McCoy STD benefits as a result of the "acts of war" exclusion. *Attached*
7 *as Plaintiff's Exhibit 'O.'* In this August 04, 2011 letter, Aetna notified Plaintiffs that the original
8 decision to deny Mr. McCoy STD benefits was now, instead, upheld since benefits are not paid
9 "[f]or a disability resulting from acts of war, participation in a riot, rebellion, or civil commotion." *Id.*
10 This decision to deny benefits is stated to be effective as of November 23, 2010. *Id.*

11 32. Afterwards, on or about August 9, 2011, Aetna wrote Mr. McCoy an explanation of his
12 short-term disability denial. *Attached as Plaintiff's Exhibit 'P.'* In this letter, Aetna notified Mr.
13 McCoy that they will deny him his STD benefits AFTER the beginning of his relapse period, from
14 February 6, 2011 through April 26, 2011, but stated nothing concerning the period from November
15 23, 2010 until January 23, 2011. *Id.*

16 33. On or about July 5, 2011, Bank of America processed Mr. McCoy's STD Benefit claim, and
17 paid Mr. McCoy for his STD benefits claim for the period between November 23, 2001 through
18 January 23, 2011, a gross amount of approximately \$8,152.38, before taxes.

19 **B. Jerico McCoy's Post Traumatic Stress Disorder**

- 20 1. In September 2000, Mr. McCoy joined the United States Army.
- 21 2. He was sent to Iraq in April of 2003 and returned in October of that same year.
- 22 3. Mr. McCoy was hired by B. of A., N.A. on or about June 13, 2005 and started in a branch
23 as a personal banker in Virginia Beach, Virginia.
- 24 4. On or about March 1, 2006, Mr. McCoy was promoted to a Private Bank Mortgage
25 Consultant.
- 26 5. Mr. McCoy started to attend Portland Community College in Fall of 2006, and Spring of
2007. Mr. McCoy delayed his education at this point to make more time for his position at Bank of
27 America and obtain more education from Bank of America's programs.
- 28 6. Mr. McCoy was later called to the 320th Psy-Op Unit in the United States Army, in January
29 of 2008. He was then sent to a Language in Culture class for Arabic in March 2008 for one month.
- 30 7. In July 2008, Mr. McCoy's contract with the United States Army was involuntarily extended

1 and he was put on the roster to return to Iraq.

2 8. Mr. McCoy was sent to New Jersey in August 2008 for additional training and ultimately
3 arrived in Iraq in October of 2008.

4 9. Mr. McCoy returned from Iraq in August of 2009.

5 10. Mr. McCoy's leave from the Army ended in September of 2009, and he called his
6 supervisor, Kathy Aquino, at B. of A., N.A., to let them know he was back in the United States.

7 11. Ms. Aquino requested that Mr. McCoy come back to work, and assured Mr. McCoy that he
8 could have any time off that he wanted and that B. of. A, N.A. would work around his schedule,
9 understanding that he may require additional time to adjust after just returning from Iraq.

10 12. Mr. McCoy restarted his education for the Fall Semester in 2009 at Portland State
11 University (PSU). However, he was not able to fit any classes into his work schedule for Spring
12 2010 at PSU, so he started coursework at the University of Phoenix in April 2010. Mr. McCoy
13 continued to take courses at the University of Phoenix until August 2010.

14 13. In August of 2010, Mr. McCoy started to experience additional difficulties of handling stress
15 and anxiety and was not able to complete his semester at the University of Phoenix.

16 14. In November of 2010, it began to become apparent to Mr. McCoy that he was having
17 significant trouble dealing with the stress and anxiety of his job. On or about November 22, 2010,
18 Mr. McCoy contacted Dr. Soller and she was able to diagnose Mr. McCoy with Post Traumatic
19 Stress Disorder. She suggested that Mr. McCoy take twelve (12) weeks off of work, and then at
20 that point re-evaluating his health.

21 15. The same day that Mr. McCoy was diagnosed with PTSD by Dr. Soller, he went to talk with
22 his immediate supervisor, Mr. Scott Conely, to ask his advice. Mr. McCoy informed Mr. Conely that
23 he could not afford to take unpaid time off, but that he needed the medical time off to recuperate.
24 Mr. Conely gave Mr. McCoy the number for Aetna and told him that he could take Short Term
25 Disability leave.

26 16. Mr. McCoy called Aetna and the representative informed him that he could take STD leave.
He was told that all he had to do was inform Aetna when his first day off of work would be and then
to fax in a letter from Dr. Soller. Mr. McCoy followed the Aetna representative's instructions and
was subsequently told in that same month (November) that he was not approved for STD due to
his injury resulting from "acts of war."

1 **C. The Iraqi Conflict and Acts of War**

2 1. Mr. McCoy served for more than one period of time in Iraq. Mr. McCoy's first period was
3 from April until October of 2003. It was not until after Mr. McCoy returned from this first period in
4 Iraq, that he was hired to work for B. of A., N.A., and he did not have any disabling issues and did
5 not take any leave from work.

6 2. Mr. McCoy served for a second period in Iraq from October of 2008 until August of 2009,
7 and he returned to his position with B. of A., N.A. once he was back in the United States.

8 3. In January of 2005, elections were held for the National Assembly of Iraq and in October of
9 2005 a new constitution was ratified. On December 15, 2005, a general election was held in Iraq to
10 elect the permanent members to the Iraq Council of Representatives. Later, on May 10th, 2007, the
11 duly elected Iraqi government created a timetable for the United States to withdraw from Iraq, thus
12 consenting to their continued presence and assistance pursuant to that timetable.

13 4. During Mr. McCoy's time in Iraq, there was no properly declared or "perfect" war between
14 the United States and the Iraqi Government.

15 5. During Mr. McCoy's second period in Iraq, the United States military forces were present in
16 Iraq by the consent and desire of Iraq's properly elected and representative government.

17 6. War, both declared and undeclared, requires a conflict between two nations. War cannot
18 exist between mere individuals. War did not exist in any form between Iraq and the United States
19 during Mr. McCoy's second period in Iraq.

20 7. Any act Mr. McCoy participated in during his second period in Iraq would not constitute an
21 Act of War as required by the plan exclusion.

22 **D. Mr. McCoy's Exhaustion of Administrative Remedies**

23 1. In Aetna's August 04, 2011 "Revision Letter," Ms. Dionne Walters of Aetna noted that their
24 denial "decision is final and not subject to further review." See *Plaintiff's Exhibit 'O.'*

25 2. Mr. McCoy has proceeded through two appeals through Aetna's internal review process
26 and has had his medical records reviewed by two different psychologists that have contracted with
Aetna to do independent medical reviews.

3. Mr. McCoy has exhausted the Plan's claims and appeals procedures.

V. CLAIMS FOR RELIEF

1. Plaintiff's Claims arise under the Employee Retirement Income Security Act of 1974, as

1 amended ("ERISA"), 20 U.S.C. §1132(a)(1). Pursuant to 29 U.S.C. §1331, this Court has
2 jurisdiction over this action because this action arises under the laws of the United States of
3 America. 29 U.S.C. § 1132(e)(1) provides for Federal District Court jurisdiction of this action.

4 2. Venue is proper in the Federal District of Oregon, in that Plaintiff is and was a resident of
5 the City of Hillsboro, County of Washington, in the state of Oregon, presently and when Defendant
6 refused to pay Plaintiff's short-term disability benefits. Therefore 29 U.S.C. § 1132(3)(2) provides
7 for venue in this Court.

8 3. Plaintiff is, and at all times relevant hereto was, a beneficiary, as the term is defined by 29
9 U.S.C. §1000(8) of the Bank of America Group Benefits Program. More specifically, he was a
10 beneficiary of Bank of America Health Plans, and enrolled in a program of medical benefits entitled
11 "Aetna Comprehensive Traditional Plan" (hereafter "the Plan").

12 4. Defendant, the Plan is an employee welfare benefit plan organized and operating under the
13 provisions of ERISA, 29 U.S.C. §1001 et. seq.

14 5. The Plan is self-funded by Defendant B. of A., N.A., who is obligated to pay benefits
15 claimed and acted on behalf of the Plan in all matters alleged herein. Plaintiff is informed and
16 believes that B. of A., N.A. is obligated to administrate the Plan by either performing the Plan
17 administration itself – in-house – or by contracting with an independent contractor to provide
18 administration services for the Plan. Plaintiff is informed and believes that Defendant B. of A., N.A.
19 entered a contract with Defendant Aetna Life Insurance Company so that Defendant Life Insurance
20 Company agreed to provide administration services for health benefits provided under the Bank of
21 America Group Benefits Program.

22 6. Defendant Aetna Life Insurance Company is the administrator, or a co-administrator with
23 Defendant B. of A., N.A. of the Plan. As the administrator, Defendant(s) are obligated to issues all
24 notices, premium statements, invoices, and claim statements with regard to the "Aetna
25 Comprehensive Traditional Plan" of medical benefits that was provided to Plaintiff.

26 7. On or about June 13, 2005, Defendants provided and issued to Plaintiff a Certificate of
Group Health Plan Coverage for "Aetna Comprehensive Traditional" medical benefits as part of the
B of A Group Benefits Program.

8. Plaintiff was on authorized Bank of America Medical Leave ("BACMED"), throughout the
pertinent period, as well as Federal Family and Medical Leave Act ("FMLA"), and Oregon Family
Leave – Family and EOI ("ORFML") up until March 2011.

9. Review of Aetna's denial to pay Mr. McCoy's short-term disability benefits should be *de*

1 *novo* by this Court. Alternatively, if the Court determines that Plaintiff's claim for STD benefits is not
2 entitled to de novo standard of review, than the Court should make a finding that the Defendant's
3 denial of Plaintiff's STD claim was the result of an abuse of discretion by the Defendant.

4 10. Plaintiff has exhausted all administrative remedies required to be exhausted.

5 11. Defendants' denial of Plaintiff's short-term disability benefits was wrongful and without basis
6 in law or contract, and a violation of the terms of the Aetna Traditional Comprehensive Plan and the
7 B of A Group Benefits Plan.

8 12. Plaintiff desires a judicial determination of his rights and a declaration as to which party's
9 contentions are correct, together with a declaration that the B of A Plan is obligated to pay Plaintiff's
10 STD benefits, through both his initial disability leave from November 23, 2010 until January 23,
11 2011, and through his relapsed period from February 16, 2011 until April 27, 2011, his last day of
12 work, and provide all benefits that Plaintiff was entitled to receive under the Plan. Further Plaintiff
13 desires the Court order Defendants pre-judgment interest at the rate of 9% per annum from the due
14 date of each monthly benefit payment until paid.

15 13. A judicial determination of these issues is necessary and appropriate at this time under the
16 circumstances described herein, in order that the parties may ascertain their respective rights and
17 duties. **Plaintiff requests an expedited determination as he remains handicapped as a result**
18 **of his Post Traumatic Stress Disorder and resultant disability.**

19 14. As a proximate result of Defendants' wrongful conduct as alleged herein, Plaintiff was
20 required to obtain the services of counsel to obtain the benefits to which he is entitled under the
21 terms of the Policy. Pursuant to 29 U.S.C. § 1132(g)(1), Plaintiff requests an award of attorney's
22 fees and expenses as compensation for costs and legal fees incurred to pursue Plaintiff's legal
23 rights.

24 15. Plaintiff demands a jury trial.

25 **VI. PRAYER FOR JUDGMENT**

26 WHEREFORE, Plaintiff, JERICO MCCOY, prays for judgment on his claims for relief
brought under ERISA as follows:

1. For declaratory judgment against Defendant, the Plan, requiring it to provide all medical and
disability benefits due to Plaintiff from November 22, 2010 to present, and enjoining the Plan from
withholding future benefits from Plaintiff..

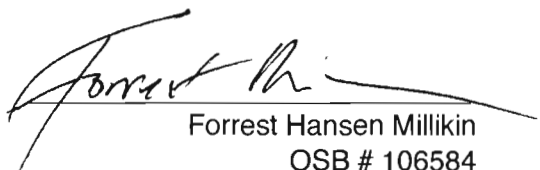
2. For pre-judgment interest at the rate of 9% per annum from the date of each monthly

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disability benefit payment was due from the Defendant.

- 3. For attorney's fees and for costs of suit incurred, pursuant to 29 U.S.C. §1132(g)(1).
- 4. For such other and further relief as the Court deems just and proper.

Dated this 13th day of January, 2012


Forrest Hansen Millikin
OSB # 106584
Attorney for Plaintiff, JERICO MCCOY