

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

**HILDA L. SOLIS**, Secretary of Labor, :  
United States Department of Labor, :

Plaintiff :

v. :

**TIMOTHY A. MASEK**, individually and :  
as fiduciary of the **GRAND CRAFT, LLC 401(k)** :  
**PLAN, GRAND CRAFT, LLC and the** :  
**GRAND CRAFT, LLC 401(k) PLAN,** :

Defendants :  
:

-----

**COMPLAINT**

Plaintiff, Hilda L. Solis, Secretary of Labor, United States Department of Labor (the  
“Secretary”), alleges:

**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. Secs. 1001, et seq., and is brought by the Secretary under ERISA Secs. 502(a)(2) and (5), 29 U.S.C. Secs.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 Sec. 409, 29 U.S.C. Sec. 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 Sec. 502(e)(1), 29 U.S.C. Sec. 1132(e)(1).

3. Grand Craft, LLC 401(k) Plan ("Plan") is a defined contribution pension plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. Sec. 1002(3), and is, therefore, subject to the coverage of the Act pursuant to Section 4(a) of ERISA 29 U.S.C. Section 1003(a).

4. Grand Craft, LLC ("Grand Craft"), a Michigan corporation, is the sponsor of the Plan.

5. Venue of this action lies in Western District of Michigan, pursuant to ERISA Sec. 502(e)(2), 29 U.S.C. Sec. 1132(e)(2) because the Plan was administered in Kent County, Michigan, within this district.

#### **DEFENDANTS**

6. At all relevant times, Defendant Timothy A. Masek was a fiduciary of the Plan within the meaning of ERISA Sec. 3(21)(A)(i) and (iii), 29 U.S.C. Sec. 1002(21)(A)(i) and (iii) and a party in interest to the Plan within the meaning of ERISA Secs. 3(14)(A), (C) and (E); 29 U.S.C. Sec. 1002(14)(A), (C) and (E).

7. At all relevant times, Grand Craft was an employer and Plan Administrator and therefore a fiduciary of the Plan within the meaning of ERISA Sec. 3(21)(A) and a party in interest to the Plan within the meaning of ERISA Secs. 3(14)(A) and (C).

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

**Failure to Segregate and Remit Employee Contributions and Late Contributions**

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

10. From January 1, 2008 to April 2009, Defendants Masek and Grand Craft withheld money from the paychecks of employees as elective salary deferrals for contribution to the Plan but did not segregate these employee contributions from Grand Craft's general assets as soon as it reasonably could be done and defendants did not remit all of these employee contributions to the Plan. These monies remained commingled with the general assets of Grand Craft and were used for Grand Craft's general operating expenses.

12. The withheld amounts commingled with the general assets of Grand Craft were assets of the Plan within the meaning of ERISA , and Defendants Masek and Grand Craft failed to segregate the Plan assets from the general assets of Grand Craft.

13. Defendants Masek and Grand Craft used these plan assets for the benefit of themselves, not for the benefit of the participants and beneficiaries.

14. Defendants Masek and Grand Craft failed to ensure that plan assets were paid into the Plan.

15. By the conduct described in paragraphs 9 through 14 above, Defendants Masek and Grand Craft:

a. failed to hold the assets of the Plan in trust in violation of ERISA Section 403(a), 29 U.S.C. Section 1103(a);

b. permitted the assets of the Plan to inure to the benefit of an employer in violation of ERISA Section 403(c)(1), 29 U.S.C. Section 1103(c)(1);

c. 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 their beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA Sec. 404(a)(1)(A), 29 U.S.C. Sec. 1104(a)(1)(A);

d. caused the Plan to engage in transactions that 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 any assets of the Plan in violation of ERISA Sec. 406(a)(1)(D), 29 U.S.C. Sec. 1106(a)(1)(D);

e. dealt with assets of the Plan in their own interest or for their own account, in violation of ERISA Section 406(b)(1), 29 U.S.C. Section 1106(b)(1).

f. in their individual or other capacity acted in transactions involving the Plan on behalf of parties (or represented parties) whose interests were adverse to the interests of the Plan, or the interests of its participants or beneficiaries in violation of ERISA Section 406(b)(2), 29 U.S.C. Section 1106(b)(2).

**Failure to Obtain a Fidelity Bond.**

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

17. The Plan does not have a fidelity bond.

18. By the conduct described in paragraphs 16 and 17, the defendants failed to assure every fiduciary of the Plan and every person who handles funds or other property of the Plan was bonded in violation of ERISA Section 412(a) and (b), 29 U.S.C. Section 1112(a) and (b).

**PRAYER FOR RELIEF**

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining Defendants Masek and Grand Craft from violating the provisions of Title I of ERISA;

**B.** Ordering Defendants Masek and Grand Craft to make good to the Plan any losses, including lost opportunity costs, resulting from fiduciary breaches committed by such defendant or for which such defendant is liable;

**C.** Ordering each defendant to correct the prohibited transactions in which he or it engaged, restore any losses to the Plan, and pay appropriate interest;

**D.** Requiring the Plan to set off from Defendant Masek's individual accounts the amount of losses, including lost opportunity costs, resulting from the defendants' fiduciary breaches, as authorized by Section 1502(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, Section 1502(a), 111 Stat. 788, 1058-59 (1997) (codified at 29 U.S.C. Section 1056(d)(4)), if the losses to the Plan are not otherwise restored to the Plan by the defendants;

**E.** Permanently enjoining defendants from serving as fiduciaries or service providers to any ERISA-covered employee benefit plan;

**F.** Ordering the appointment of an independent fiduciary to oversee the Plan after the fiduciaries are removed;

**G.** Ordering Defendant Masek to pay for the independent fiduciary.

**H.** Ordering the defendants, as parties in interest, to disgorge any profits received as a result of prohibited transactions in which they engaged;

**I.** Awarding the Secretary the costs of this action; and

**J. Ordering such further relief as is appropriate and just.**

M. PATRICIA SMITH  
Solicitor of Labor

JANET M. GRANEY  
Acting Regional Solicitor

BENJAMIN T. CHINNI  
Associate Regional Solicitor

/s/Maureen M. Cafferkey  
MAUREEN M. CAFFERKEY  
Senior Trial Attorney  
(Ohio reg. no. 0031165)

U.S. Department of Labor  
Office of Solicitor  
1240 East Ninth Street, Room 881  
Cleveland, Ohio 44199  
Phone: (216) 522-3872  
Fax: (216) 522-7172  
Email: [cafferkey.maureen@dol.gov](mailto:cafferkey.maureen@dol.gov)

Donald A. Davis  
United States Attorney  
Western District of Michigan  
P.O. Box 208  
Grand Rapids, MI 49501-0208