

2. This court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

3. Lakes Area Advertiser, Inc. (“Lakes”) established the Lakes Area Advertiser, Inc. 401(k) Plan (“Lakes Plan”) to provide retirement benefits to the Plan’s participants.

4. The Lakes 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).

5. A.D.S. Delivery Service, Inc. (“ADS”) established the A.D.S. Delivery Service, Inc. 401(k) Plan (“ADS Plan”) to provide retirement benefits to the Plan’s participants.

6. The ADS 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).

7. Venue for this action lies in the Northern District of Illinois, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because both the ADS Plan and the Lakes Plan were administered in Lake County within this district.

DEFENDANTS AND PARTIES IN INTEREST

8. The Lakes Plan and the ADS Plan (collectively “Plans”) are named as defendants herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

9. In February 2012, Phoenix Financial Holdings, Inc. (“Phoenix”) bought both Lakes and ADS.

10. Brandy Williams, Wanda Knight and Dmazana Lumukanda were the three owners of Phoenix from at least February 2012 to October 2012.

11. As of October 2012, Lakes and ADS ceased operations and no longer conduct any business.

12. At all relevant times, Defendant Brandy Williams (“Williams”) was a director of both ADS and Lakes who exercised authority and control over ADS and Lakes including their assets.

13. At all relevant times, Williams exercised authority and control over the assets of both Plans; was a named trustee of both Plans; was a fiduciary to the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and was a party in interest to the Plans within the meaning of ERISA § 3(14)(A) and (E), 29 U.S.C. § 1002(14)(A) and (E).

14. At all relevant times, Defendant Wanda Knight (“Knight”) was a director of both ADS and Lakes who exercised authority and control over ADS and Lakes including their assets.

15. At all relevant times, Knight exercised authority and control over the assets of both Plans; was a named trustee of both Plans; was a fiduciary to the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and was a party in interest to the Plans within the meaning of ERISA § 3(14)(A) and (E), 29 U.S.C. § 1002(14)(A) and (E).

16. At all relevant times, Defendant Dmazana Lumukanda (“Lumukanda”) was a director of both ADS and Lakes.

17. At all relevant times, Lumukanda was a named trustee of both Plans; was a fiduciary to the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and was a party in interest to the Plans within the meaning of ERISA § 3(14)(A) and (E), 29 U.S.C. § 1002(14)(A) and (E).

18. At all relevant times, ADS was the Plan Sponsor and Plan Administrator for the ADS Plan.

19. At all relevant times, Williams and Knight had the authority and control over whether ADS remitted withheld employee contributions and loan repayments to the ADS Plan.

20. At all relevant times, ADS was a fiduciary to the ADS Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and was a party in interest to the ADS Plan within the meaning of ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

21. At all relevant times, Lakes was the Plan Sponsor and Plan Administrator for the Lakes Plan.

22. At all relevant times, Williams and Knight had the authority and control over whether Lakes remitted withheld employee contributions and loan repayments to the Lakes Plan.

23. Lakes was a fiduciary to the Lakes Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and was a party in interest to the Lakes Plan within the meaning of ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

VIOLATIONS

**COUNT I - UNREMITTED EMPLOYEE CONTRIBUTIONS AND
EMPLOYEE LOAN REPAYMENTS TO THE ADS PLAN**

24. Paragraphs 1 through 20 above are hereby re-alleged and incorporated herein.

25. During the period from February 29, 2012 to August 1, 2012, the ADS Plan documents permitted participants to elect to defer a portion of their wages to be contributed to the ADS Plan.

26. During the period from February 29, 2012 to August 1, 2012, the ADS Plan document provided that participants could obtain participant loans from their individual accounts and repay them through after-tax payroll deductions.

27. During the period from February 29, 2012 to August 1, 2012, ADS withheld \$1,548.00 in employee contributions and failed to remit the amounts so withheld to the ADS Plan. ADS retained the withheld employee contributions in its general assets.

28. During the period from February 29, 2012 to August 1, 2012, Defendants Williams and Knight caused ADS to retain employee contributions and failed to ensure that the \$1,548.00 in withheld employee contributions was remitted to the ADS Plan.

29. During the period from February 29, 2012 to August 1, 2012, ADS withheld \$6,665.04 in participant loan repayments and failed to remit the loan repayments so withheld to the ADS Plan. ADS retained the withheld participant loan repayments in its general assets.

30. During the period from February 29, 2012 to August 1, 2012, Defendants Williams and Knight caused ADS to retain participant loan repayments and failed to

ensure that a total of \$6,665.04 in withheld participant loan repayments were remitted to the ADS Plan.

31. By the conduct described in paragraphs 27 through 30, Defendants Williams and Knight:

- a. failed to ensure that plan assets were held in trust in violation of ERISA § 403(a), 29 U.S.C. § 1103(a);
- b. permitted the assets of the ADS Plan to inure to the benefit of an employer in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);
- c. failed to discharge their duties with respect to the ADS Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);
- d. caused the ADS 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 ADS Plan in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D); and
- e. acted in a transaction involving the ADS Plan on behalf of a party whose interests were adverse to the interest of the ADS Plan and to the interest of the ADS Plan's participants and beneficiaries in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

32. On information and belief, Lumukanda failed to ensure that Williams and Knight remitted employee contributions and loan repayments to the ADS Plan and made

no inquiry as to their conduct as described in paragraphs 27 through 30, and thereby, enabled Williams and Knight to breach their fiduciary duties.

33. By the conduct in paragraph 32, Lumukanda as a named trustee in the Plan documents failed to discharge his duties with respect to the ADS Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

34. By the conduct in paragraphs 32 and 33, Lumukanda is liable, pursuant to ERISA § 405(a)(2); 29 U.S.C. § 1105(a)(2), for his co-fiduciaries Knight and Williams' breaches of their fiduciary duties, as described in paragraphs 27 through 30, because Lumukanda failed to comply with ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1) in the administration of his specific responsibilities which gave rise to his individual status as a fiduciary of the ADS Plan and enabled Knight and Williams to commit the breaches described in paragraph 31.

35. Lumukanda is liable, pursuant to ERISA § 405(b)(1)(A), 29 U.S.C. § 1105(b)(1)(A), for the breaches of fiduciary responsibility by a co-trustee, as described in paragraphs 27 through 30, because he failed to use reasonable care to prevent a co-trustee from committing a breach.

36. As a direct and proximate result of the Defendants Williams, Knight, and Lumukanda's fiduciary breaches, they are personally liable for the losses to the ADS Plan, and they are subject to appropriate equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

**COUNT II - UNREMITTED EMPLOYEE CONTRIBUTIONS AND
EMPLOYEE LOAN REPAYMENTS TO THE LAKES PLAN**

37. Paragraphs 1 through 17 and 21 through 23 above are hereby re-alleged and incorporated herein.

38. During the period from February 29, 2012 to August 1, 2012, the Lakes Plan documents permitted participants to elect to defer a portion of their wages to be contributed to the Lakes Plan.

39. During the period from February 29, 2012 to August 1, 2012, the Lakes Plan document provided that participants could obtain participant loans from their individual accounts and repay them through after-tax payroll deductions.

40. During the period from February 29, 2012 to August 1, 2012, Lakes withheld \$10,504.51 in employee contributions and failed to remit the amounts so withheld to the Lakes Plan. Lakes retained the withheld employee contributions in its general assets.

41. During the period from February 29, 2012 to August 1, 2012, Defendants Williams and Knight caused Lakes to retain employee contributions and failed to ensure that the \$10,504.51 in withheld employee contributions was remitted to the Lakes Plan.

42. During the period from February 29, 2012 to August 1, 2012, Lakes withheld \$16,116.80 in participant loan repayments and failed to remit the loan repayments so withheld to the Lakes Plan. Lakes retained the withheld participant loan repayments in its general assets.

43. During the period from February 29, 2012 to August 1, 2012, Defendants Williams and Knight caused Lakes to retain participant loan repayments and failed to

ensure that a total of \$16,116.80 in withheld participant loan repayments were remitted to the Lakes Plan.

44. By the conduct described in paragraphs 40 through 43 above, Defendants Williams and Knight:

a. failed to ensure that plan assets were held in trust in violation of ERISA § 403(a), 29 U.S.C. § 1103(a);

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

c. failed to discharge their duties with respect to the Lakes Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

d. caused the Lakes 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 Lakes Plan in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D); and

e. acted in a transaction involving the Lakes Plan on behalf of a party whose interests were adverse to the interest of the Lakes Plan and to the interest of the Lakes Plan's participants and beneficiaries in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

45. On information and belief, Lumukanda failed to ensure that Williams and Knight remitted employee contributions and loan repayments to the Lakes Plan and made

no inquiry as to their conduct as described in paragraphs 40 through 43, and thereby, enabled Williams and Knight to breach their fiduciary duties.

46. By the conduct in paragraph 45, Lumukanda as a named trustee in the Plan documents failed to discharge his duties with respect to the Lakes Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

47. By the conduct in paragraphs 45 and 46, Lumukanda is liable, pursuant to ERISA § 405(a)(2); 29 U.S.C. § 1105(a)(2), for his co-fiduciaries Knight and Williams' breaches of their fiduciary duties, as described in paragraphs 40 through 43, because Lumukanda failed to comply with ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1) in the administration of his specific responsibilities which gave rise to his individual status as a fiduciary of the Lakes Plan and enabled Knight and Williams to commit the breaches described in paragraph 44.

48. Lumukanda is liable, pursuant to ERISA § 405(b)(1)(A), 29 U.S.C. § 1105(b)(1)(A), for the breaches of fiduciary responsibility by a co-trustee, as described in paragraphs 40 through 43, because he failed to use reasonable care to prevent a co-trustee from committing a breach.

49. As a direct and proximate result of the Defendants Williams, Knight, and Lumukanda's fiduciary breaches, they are personally liable for the losses to the Lakes Plan, and they are subject to appropriate equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

- A. Permanently enjoining Defendants Williams, Knight, and Lumukanda (“Defendants”) from violating the provisions of Title I of ERISA;
- B. Permanently enjoining Defendants from serving as fiduciaries or service providers to any ERISA-covered employee benefit plan;
- C. Removing Defendants from any positions that they now have as fiduciaries to the Plan;
- D. Appointing an independent fiduciary to ensure the proper administration and termination of the Plan.
- E. Ordering Defendants to pay the fees and expenses of the independent fiduciary.
- F. Ordering Defendants to correct the prohibited transaction in which they engaged;
- G. Ordering Defendants to restore to the Plan any losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;

- H. Awarding the Secretary the costs of this action; and
- I. Ordering such further relief as is appropriate and just.

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

P.O. ADDRESS:
Office of the Solicitor
230 South Dearborn St.
Room 844
Chicago, IL 60604
Tel. (312) 353-3271
Fax. (312) 353-5698
canetti.bruce@dol.gov

/s/ Bruce C. Canetti
BRUCE C. CANETTI
Trial Attorney
U.S. Department of Labor,
Attorneys for THOMAS E. PEREZ
Secretary of Labor
Plaintiff