

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION**

**THOMAS E. PEREZ**, Secretary of :  
Labor, United States Department of Labor, :

Plaintiff, :

v. :

**RAYDAR, INC. f/k/a RAYDAR &** :  
**ASSOCIATES, INC., and RAYDAR &** :  
**ASSOCIATES, INC. SAFE HARBOR** :  
**401(K) PLAN,** :

Defendant. :

Case No. 1:14-CV-1644

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**COMPLAINT**

Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor (“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. §§1001, *et seq.*, and is brought by the 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 Raydar & Associates, Inc. Safe Harbor 401(k) Plan (the “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 Southern District of Indiana, Evansville Division, pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because the Plan was administered in Daviess County, Indiana, within this district and division.

5. The Plan is named as a defendant pursuant to Rule 19(a)(1)(A) of the *Federal Rules of Civil Procedure* solely to assure that complete relief can be granted.

### **DEFENDANT**

6. Raydar, Inc. f/k/a Raydar & Associates, Inc. (“Raydar”) is an Indiana corporation that was formed in 2002. On February 7, 2013, Raydar amended its articles of incorporation to change its name from Raydar & Associates, Inc. to Raydar, Inc.

7. At all relevant times, Raydar was the Plan’s sponsor; the Plan Administrator; an employer of employees who were covered by the Plan; a fiduciary to the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A); and a party in interest to the Plan within the meaning of ERISA §§3(14)(A) and (C), 29 U.S.C. §§1002(14)(A) and (C).

### **THE PLAN**

8. The Plan was established in 2007 by Raydar to provide retirement benefits to its employees and their beneficiaries.

9. At all relevant times, the Plan’s governing documents provided that participants could make pre-tax contributions to the Plan from their compensation on a per-payroll basis.

10. At all relevant times, Raydar withheld employee contributions from its

employees' pay for remittance to the Plan. These withholdings were retained in Raydar's corporate bank account until they were remitted to the Plan's directed trustee, Principal Financial Group.

**COUNT I**  
**UNREMITTED AND UNTIMELY REMITTED EMPLOYEE**  
**CONTRIBUTIONS TO THE PLAN**

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

**12.** During the period from January 1, 2008 through November 12, 2010, Raydar withheld \$61,098.00 from its employees' pay in participant contributions to the Plan and failed to remit the amounts so withheld to the Plan. Raydar retained the withheld employee contributions in its own corporate bank account.

**13.** During the period from January 1, 2008 through November 12, 2010, Raydar withheld additional amounts from its employees' pay in participant contributions to the Plan and remitted the amounts so withheld to the Plan up to 226 days after they should have been remitted. Raydar retained the withheld employee contributions in its own corporate bank account until they were remitted to the Plan.

**14.** By the conduct described in Paragraphs 12 and 13, Raydar:

**A.** violated ERISA §§403(a) and (c)(1), 29 U.S.C. §§1103(a) and (c)(1), which requires that all assets of an employee benefit plan shall be held in trust and never inure to the benefit of the employer;

**B.** failed to act solely in the interest of the participants and beneficiaries of the Plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of

ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

C. caused the Plan to engage in transactions which it 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 assets of the Plan, in violation of ERISA §406(a)(1)(D), 29 U.S.C.

§1106(a)(1)(D);

D. dealt with assets of the Plan in its own interest in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

E. acted on behalf of a party whose interests were adverse to the interests of the Plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

**15.** As a direct and proximate result of these breaches committed by defendants, the Plan has suffered injury and losses for which it is entitled to equitable relief, pursuant to ERISA § 409, 29 U.S.C. §1109.

### **PRAYER FOR RELIEF**

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining defendant Raydar from violating the provisions of Title I of ERISA;

B. Ordering defendant Raydar to make good to the Plan any losses, including interest, resulting from fiduciary breaches committed by it or for which it is liable;

C. Ordering defendant Raydar to correct the prohibited transactions in which it engaged;

D. Awarding the Secretary the costs of this action; and

E. Ordering such further relief as is appropriate and just.

Respectfully submitted,

Dated: October 8, 2014

/s/ Matthew M. Scheff  
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