



29 U.S.C. § 1003(a). The Plan is named as a defendant herein pursuant to Federal Rule of Civil Procedure 19(a) solely to assure that complete relief can be granted.

4. Venue of this action lies in the Northern District of Illinois pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is or was administered in Chicago, Cook County, Illinois, within this district.

**DEFENDANTS AND PARTIES IN INTEREST UNDER ERISA**

5. Acme Orthotic and Prosthetic Laboratories, Inc. (“Acme”), was an Illinois corporation engaged in the business of providing custom fitted and manufactured orthotics and prosthetics in Chicago, Illinois, Homewood, Illinois, and Palos Heights, Illinois, from at least 1986 to approximately January 10, 2015.

6. The Illinois Secretary of State involuntarily dissolved Acme’s articles of organization on January 10, 2015.

7. From at least August 1, 2008, through at least October 15, 2015, Acme was the sponsor of the Plan; the administrator of the Plan pursuant to ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A); a fiduciary of 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)(C) and (G), 29 U.S.C. § 1002(14)(C) and (G).

8. From at least August 1, 2008, through at least October 15, 2015, Michael A. Lewis (“Defendant Lewis”) was the president and 100% owner of Acme and exercised authority and control over Acme, including its assets.

9. From at least August 1, 2008, through at least October 15, 2015, Defendant Lewis exercised authority and control over the assets of the Plan; was a named trustee of the Plan; was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and

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

10. From at least August 1, 2008, through November 2013, Monica Fox (“Defendant Fox”) was Acme’s Executive Director and responsible for Acme’s payroll administration.

11. From at least August 1, 2008, through November 2013, Defendant Fox exercised authority and control over the assets of the Plan and was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

12. Defendant Lewis filed for Chapter 13 bankruptcy in the U.S. Bankruptcy Court for the Northern District of Illinois, Eastern Division, on July 14, 2015.<sup>1</sup>

**COUNT ONE**  
**Failure to Remit Employee Salary Deferral  
Contributions and Loan Repayments to the Plan**

13. Paragraphs 1 through 12 above are realleged and incorporated in these allegations.

14. On August 1, 1966, Acme established the Plan to provide retirement benefits to its employees.

15. The Plan was restated effective as of August 1, 2009.

16. From at least January 1, 2008, through December 31, 2015, the Plan’s governing documents, which were adopted by Acme, provided in pertinent part that the Plan would be funded through employees’ pre-tax salary deferral contributions to the Plan and through contributions from Acme to the Plan.

---

<sup>1</sup> 11 U.S.C. § 362(b)(4) provides an exception from the automatic stay of litigation required by federal bankruptcy law under 11 U.S.C. § 362(a) for “the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s . . . police or regulatory power . . . .” The Secretary is seeking to enforce any monetary judgment obtained in this action in accordance with the Bankruptcy Code by filing a *Complaint for Determination of Dischargeability of Debt* in Defendant Lewis’s bankruptcy case. This action falls within the 11 U.S.C. § 362(b)(4)’s exception from the automatic stay.

17. From at least January 1, 2008, through December 31, 2015, the Plan's governing documents, which were adopted by Acme, provided in pertinent part that participants could obtain loans from the Plan.

18. During the period from July 9, 2010, through April 27, 2012, Acme withheld from employees' pay \$24,000 in employee salary deferral contributions to the Plan.

19. During the period from July 9, 2010, through April 27, 2012, Acme withheld from employees' pay \$15,391.17 in participant loan repayments to the Plan.

20. The salary deferral contributions and participant loan repayments withheld by Acme from employees' wages between July 9, 2010, through April 27, 2012, were retained in Acme's own general operating account and used to pay Acme's expenses.

21. During the period from July 9, 2010, through April 27, 2012, Defendants Lewis and Fox caused Acme to retain the employee salary deferral contributions and loan repayments to the Plan that were withheld from participating employees' pay and used that money to pay Acme's expenses.

22. The salary deferral contributions and participant loan repayments withheld by Acme from employees' wages between July 9, 2010, and April 27, 2012, were not used for Plan purposes.

23. By the allegations described in paragraphs 18 through 22 above, Defendants Lewis and Fox:

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

b. failed to ensure that all Plan assets did not inure to the benefit of Acme, in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);

c. 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);

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

e. acted on behalf of a party whose interests are 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).

24. By the allegations described in paragraphs 18 through 22 above, Defendant Lewis dealt with assets of the Plan in his own interest in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

25. As a direct and proximate result of Defendants Lewis and Fox's breaches, the Plan suffered injury and losses for which Defendants Lewis and Fox are subject to appropriate equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

**COUNT TWO**  
**Defendant Lewis's Transfer of Plan Assets to Himself and Acme**

26. Paragraphs 1 through 12 above are realleged and incorporated in these allegations.

27. As sole named trustee of the Plan, Defendant Lewis had the discretionary and signatory authority to receive, manage, and dispose of Plan assets.

28. During periods from April 19, 2012, to March 5, 2015, Defendant Lewis liquidated \$66,431.99 in Plan assets, to which he was not entitled, from the Plan's trust account at UBS Financial Services, Inc.

29. Funds transferred from the Plan's assets, as described in paragraph 27 above, were used to pay for Acme's operating expenses.

30. Funds transferred from the Plan's assets, as described in paragraph 27 above, were not used for Plan purposes.

31. By the allegations described in paragraphs 26 through 30 above, Defendant Lewis:

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

b. failed to ensure that all assets of the Plan did not inure to the benefit of Acme, in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);

c. 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);

d. caused the Plan to engage in transactions which he 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);

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

f. acted on behalf of a party whose interests are 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).

32. As a direct and proximate result of Defendant Lewis's breaches, the Plan suffered injury and losses for which Defendant Lewis is subject to appropriate equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

**PRAYER FOR RELIEF**

WHEREFORE, the Secretary prays for a judgment:

- A. Permanently enjoining Defendants Lewis and Fox from violating the provisions of Title I of ERISA;
- B. Ordering Defendants Lewis and Fox to make good to the Plan all losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;
- C. Requiring Defendants Lewis and Fox to disgorge all profits received as a result of fiduciary breaches committed by them or for which they are liable;
- D. Ordering Defendants Lewis and Fox to correct the prohibited transactions in which they engaged;
- E. Removing Defendants Lewis and Fox from their positions as fiduciaries with respect to the Plan;
- F. Permanently enjoining Defendants Lewis and Fox from acting as fiduciaries or service providers to any ERISA-covered employee benefit plan;
- G. Appointing an independent fiduciary to terminate the Plan consistent with the Plan's governing document, the Internal Revenue Code, and ERISA; distribute the Plan's assets

and restored Plan losses to the participants and beneficiaries; and conclude any Plan-related matters connected with the proper termination of the Plan;

H. Ordering Defendants Lewis and Fox to pay all reasonable fees and expenses incurred by the independent fiduciary in administering the Plan, terminating the Plan, and distributing Plan assets and restored Plan losses;

I. Requiring the Plan to set off the individual Plan accounts of Defendants Lewis and Fox against the amount of losses incurred by the Plan, including lost opportunity costs, resulting from their 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. § 1056(d)(4)), if the losses are not otherwise restored to the Plan by Defendants Lewis and Fox;

J. Directing the Plan to reallocate the amounts set off from the Plan accounts of Defendants Lewis and Fox in amounts necessary to restore their losses as a result of Defendants Lewis and Fox's fiduciary breaches;

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

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

**M. PATRICIA SMITH**  
Solicitor of Labor

**CHRISTINE Z. HERI**  
Regional Solicitor

s/ Kevin M. Wilemon  
**KEVIN M. WILEMON**  
Trial Attorney

P.O. Address:  
Office of the Solicitor  
U.S. Department of Labor  
230 South Dearborn Street  
Eighth Floor

Attorneys for THOMAS E. PEREZ,  
Secretary of Labor, United  
States Department of Labor,  
Plaintiff

Chicago, Illinois 60604  
Telephone: (312) 353-6973  
Fax: (312) 353-5698