

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

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THOMAS E. PEREZ, SECRETARY  
OF LABOR, UNITED STATES  
DEPARTMENT OF LABOR,  
170 S. Independence Mall West, Suite 630 East  
Philadelphia, PA 19106-3306

Plaintiff,

v.

NATHAN WILLIAMS,  
6006 Strathmore Way, Upper Marlboro, MD 20772  
(Prince George’s County),  
NW SYSTEMS, INC.,  
1725 I Street, NW, Suite 300  
Washington, D.C. 20006,  
AND NW SYSTEMS, INC. 401(k)  
PROFIT-SHARING PLAN AND TRUST,  
900 S Kansas Avenue, Suite 100  
Topeka, KS 66612,

Defendants.

Civil Action No. \_\_\_\_\_

**COMPLAINT**

Thomas E. Perez, Secretary of Labor, United States Department of Labor, hereby alleges:

**JURISDICTION AND VENUE**

1. This cause of action arises under the Employee Retirement Income Security Act of 1974 (“ERISA” or “the Act”), 29 U.S.C. §1001, *et seq.*, and is brought by the Secretary under Sections 502(a)(2) and (5) of ERISA, 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 relief for breaches of fiduciary duty under

ERISA Section 409, 29 U.S.C. §1109, and to obtain such other further relief as may be appropriate to redress violations and enforce the provisions of Title I of ERISA.

2. This Court has subject matter jurisdiction over this action pursuant to Section 502(e)(1) of ERISA, 29 U.S.C. §1132(e)(1).

3. The NW Systems, Inc. 401(k) Profit-Sharing Plan and Trust (“the Plan”) is an employee benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. §1002(3), and is, therefore, subject to the coverage of the Act pursuant to Section 4(a) of ERISA, 29 U.S.C. §1003(a).

4. Venue with respect to this action lies in the Greenbelt Division of the United States District Court for the District of Maryland, pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2). The Plan was administered by its Administrator and Plan Sponsor NWS Systems, Inc. (“NWS”) in Largo, Maryland, where the breaches occurred.

5. The relevant time period is January 1, 2009 until December 2012 to the present.

#### **THE PARTIES**

6. The Secretary, pursuant to Sections 502(a)(2) and (5) of the Act, 29 U.S.C. §§1132(a)(2) and (5), has the authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and others who commit violations of ERISA.

7. NWS is the Administrator of the Plan and the Plan Sponsor, who was at all relevant times an employer to employees covered by the Plan. NWS is a named fiduciary to the Plan within the meaning of ERISA § 3(21), 29 U.S.C. §1002(21), and a party in interest with respect to the Plan within the meaning of ERISA § 3(14)(A), 29 U.S.C. §1002(14)(A) and (C). NWS filed for Chapter 11 bankruptcy on or around May 23, 2014.

8. From January 1, 2009 until at least December 2012, Nathan Williams was the named Trustee of the Plan and the owner and President/CEO of NWS. From January 1, 2009 until at least December 2012, Williams exercised discretionary authority and discretionary control respecting management of the Plan, exercised authority and control respecting management and disposition of the Plan's assets and had discretionary authority and discretionary responsibility in the administration of the Plan. As Plan trustee, Williams had the authority to manage the Plan's assets, including discretionary authority regarding the forwarding of employee contributions. Williams is therefore a fiduciary to the Plan within the meaning of ERISA § 3(21), 29 U.S.C. §1002(21), and a party in interest with respect to the Plan within the meaning of ERISA § 3(14)(A), 29 U.S.C. §1002(14)(A).

9. American United Life Insurance Company is the asset custodian who holds the assets of the Plan.

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

### **III. General Allegations**

11. NWS established the Plan on January 1, 1999 to provide benefits to its employees in the event of retirement, death, disability as well as upon termination of employment.

12. The Plan was funded by elective employee payroll deferral contributions.

13. Until December 31, 2011, NWS also was required to make "Safe Harbor" matching employer contributions.

14. From January 1, 2009 until December 2012, NWS, through Nathan Williams, deducted over \$250,000 from the participants' pay as employee elective salary deferrals which were plan assets.

15. From January 1, 2009 until December 2012, NWS, through Nathan Williams, failed to remit employee contributions to the Plan and failed to timely remit employee contributions to the Plan.

16. The failure to timely remit employee contributions caused the Plan and its participants and beneficiaries to incur losses, including benefits and lost opportunity costs.

17. Defendants Williams and NWS failed to segregate the employee contributions, which were Plan assets, from the general assets of NWS.

18. Defendant NWS failed to ensure that over \$140,000 in employer contributions were collected by the Plan.

19. NWS had the authority to appoint and remove trustees, but failed to properly assign the obligation to collect contributions to the Plan to a Plan trustee.

20. The failure of any Plan trustee or fiduciary to collect employee and employer contributions caused the Plan and its participants and beneficiaries to incur losses, including benefits and lost opportunity costs.

21. Defendants NWS and Williams knew that employee and employer contributions were not being used for Plan benefits or expenses, but failed to take reasonable steps to remedy the problem.

22. Defendant NWS and Williams knew that the obligation to collect contributions was not assigned to any individual.

23. Defendant NWS and Williams knew that employee and employer contributions were not being collected by the Plan, but failed to take reasonable steps to remedy the problem.

24. The unpaid or delinquent employee and employer contributions were retained by NWS and Williams for NWS's and Williams's benefit and/or use.

25. Williams also diverted corporate assets to himself at times between January 1, 2009 and February 20, 2013.

26. On or around February 20, 2013, Williams was removed by court order as trustee and fiduciary of the Plan.

#### **IV. Violations**

26. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by reference the averments and allegations of paragraphs 1 to 25, inclusive.

27. By the actions and conduct described in paragraphs 1 to 25, defendants Williams and NWS, fiduciaries of the Plan:

- a. 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 Section 404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);
- b. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA Section 404(a)(1)(B), 29 U.S.C. §1104(a)(1)(B);
- c. failed to ensure that all assets of the Plan were held in trust by one or more trustees, in violation of Section 403(a) of ERISA, 29 U.S.C. §1103(a);

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

e. caused the Plan to engage in transactions which they knew or should have known constituted the direct or indirect transfer of Plan assets to, or use of Plan assets by or for the benefit of a party in interest, in violation of ERISA Section 406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D); and

f. 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. §1106(b)(1).

28. By participating knowingly in each other's fiduciary breaches, knowing such acts or omissions to be breaches of fiduciary duty, Defendants Williams and NWS are liable for each other's breaches of fiduciary duty, pursuant to Section 405(a)(1) of ERISA, 29 U.S.C. §1105(a)(1).

29. By failing to comply with the Section 404(a)(1) of ERISA in the administration of their specific fiduciary duties and thereby each enabling the other to commit a breach of ERISA, Defendants NWS and Williams are liable for each other's breaches of fiduciary duty, pursuant to Section 405(a)(2) of ERISA, 29 U.S.C. §1105(a)(2).

30. Defendants Williams and NWS, as fiduciaries of the Plan, by failing to make reasonable efforts under the circumstances to remedy the breaches of which they had knowledge, are liable for each other's fiduciary breaches, pursuant to Section 405(a) (3) of ERISA, 29 U.S.C. §1105(a)(3).

31. By the acts and omissions alleged in paragraphs 1 to 25, NWS and Williams knowingly participated and profited from the prohibited transactions, in violation of ERISA Section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D) and ERISA Section 406(b)(1), 29 U.S.C. §1106(b)(1).

**V. Prayer for Relief**

32. WHEREFORE, the Secretary prays that this Court issue an order:
- a. Permanently enjoining Nathan Williams from acting directly or indirectly, in any fiduciary capacity, with respect to any employee benefit plan subject to ERISA;
  - b. Permanently enjoining Nathan Williams from exercising any custody, control, or decision making authority with respect to the assets of any employee benefit plan covered by ERISA;
  - c. Ordering defendants NWS and Nathan Williams to restore any losses, including lost opportunity costs, to the Plan caused by their fiduciary misconduct;
  - h. Awarding plaintiff, Secretary of Labor, the costs of this action; and

i. Awarding such other relief as is equitable and just.

Respectfully submitted,

M. Patricia Smith  
Solicitor of Labor

Oscar L. Hampton III  
Regional Solicitor

Douglas N. White  
Associate Regional Solicitor

/s/ \_\_\_\_\_  
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