IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

THOMAS E. PEREZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, v. CARLOS CALDERON, C.R. CALDERON CONSTRUCTION COMPANY, CONTRACTORS & EMPLOYEES 401(K) PROFIT SHARING PLAN, 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"), 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 Contractors & Employees 401(k) Profit Sharing Plan (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). The Plan is administered in College Park, Maryland.

4. Venue with respect to this action lies in the District of Maryland, pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

The Parties

5. The Secretary, pursuant to Sections 502(a)(2) and (5) of ERISA, 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.

6. At all relevant times, C.R. Calderon Construction Company ("the Company") has been the Plan Sponsor and Plan Administrator of the Plan. At all relevant times, the Company has exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets and had discretionary authority or discretionary responsibility in the administration of the Plan. The Company, therefore, is a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14) (A) and (C) of ERISA, 29 U.S.C. §§ 1002(14) (A) and (C).

7. At all relevant times, Carlos Calderon ("C. Calderon") has been the President and 40% owner of the Company. C. Calderon made decisions regarding the Plan, including decisions as to the disposition of plan assets, and performed functions of the Plan Administrator. At all

relevant times, C. Calderon has exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets and had discretionary authority or discretionary responsibility in the administration of the Plan. C. Calderon, therefore, is a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14) (A) and (H) of ERISA, 29 U.S.C. §§ 1002(14) (A) and (H).

8. 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.

General Allegations

9. The Company adopted the Plan on or about January 1, 2005. The Plan permitted participants to contribute a portion of their pay to the Plan as elective salary deferrals ("employee contributions") through payroll deductions. The Plan is also funded through mandatory employer prevailing wage contributions which are withheld through the Company's payroll.

Missing and Late Employee Contributions

10. During the period January 2012 through December 2012, the Company and C. Calderon deducted money from the participants' pay as employee contributions to the Plan. C. Calderon and the Company failed to remit these withheld employee contributions to the Plan.

11. During the period of January 2013 through December 2014, the Company and C. Calderon deducted money from the participants' pay as employee contributions to the Plan. C. Calderon and the Company remitted these employee contributions to the Plan late and without interest.

12. Unremitted employee contributions are assets of the Plan within the meaning of ERISA. By failing to remit employee contributions or remitting them late, defendants C. Calderon and the Company failed to segregate the Plan assets from the general assets of the Company.

Missing Employer Contributions

13. The Plan and the Plan's adoption agreement required that the Company remit prevailing wage employer contributions to the Plan.

14. C. Calderon and the Company were responsible for collecting the mandatory prevailing wage employer contributions for the Plan.

15. During the period January 2012 through December 2013, C. Calderon and the Company failed to remit mandatory prevailing wage employer contributions to the Plan or take any action to collect the contributions from the Company payable to the Plan. During this period, the Company possessed sufficient funds to pay the mandatory prevailing wage employer contributions, and hence efforts to collect these contributions would have been successful.

Violations

16. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by reference the averments and allegations of paragraphs 1-15 inclusive.

17. By the actions and conduct described above, Defendants C. Calderon and the Company, as fiduciaries of the Plan:

a. failed to hold all assets of the Plan in trust;

b. failed to ensure that the assets of the Plan did not inure to the benefit of the Company in violation of Section 403(c)(1) of ERISA, 29 U.S.C. § 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 Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A);

d. 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 Section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B);

e. failed to discharge their duties in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of Title I and IV of ERISA in violation of Section 404(a)(1)(D) of ERISA, 29 U.S.C. § 1104(a)(1)(D);

f. caused the Plan to engage in transactions which they knew or should have known constituted the lending of money or extension of other credit between the Plan and a party-in-interest, in violation of Section 406(a)(1)(B) of ERISA, 29 U.S.C. § 1106(a)(1)(B);

g. 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 Section 406(a)(1)(D) of ERISA, 29 U.S.C. § 1106(a)(1)(D); and

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

18. C. Calderon and the Company participated knowingly in or knowingly undertook to conceal acts or omissions by the others that they knew to be violations of ERISA. By each participating knowingly in these fiduciary breaches of the other, C. Calderon and the Company are each liable for the others breaches of fiduciary responsibility, pursuant to Section 405(a)(1) of ERISA, 29 U.S.C. § 1105(a)(1).

19. C. Calderon and the Company failed to comply with Section 404(a)(1) of ERISA in the administration of their specific fiduciary responsibilities and enabled the others to commit breaches of ERISA. By failing to comply with Section 404(a)(1) of ERISA in the administration of their specific fiduciary responsibilities and thereby enabling the others to commit breaches of ERISA, C. Calderon and the Company are liable for the others' breaches of fiduciary responsibility, pursuant to Section 405(a)(2) of ERISA, 29 U.S.C. § 1105(a)(2).

20. C. Calderon and the Company knew that the other had violated ERISA, but did not make reasonable efforts under the circumstances to remedy the other's breaches. By failing to make reasonable efforts under the circumstances to remedy the others breaches of which they had knowledge, C. Calderon and the Company, as fiduciaries of the Plan, are liable for each others fiduciary breaches, pursuant to Section 405(a) (3) of ERISA, 29 U.S.C. § 1105(a)(3).

Prayer for Relief

WHEREFORE, the Secretary prays that this Court issue an order:

1. Requiring each of the fiduciary defendants, C. Calderon and the Company, jointly and severally to restore to the Plan all losses, including interest or lost opportunity costs and the costs of the independent fiduciary, which were caused by their fiduciary breaches;

2. Requiring each of the fiduciary defendants, C. Calderon and the Company, to disgorge to the Plan any and all unjust enrichment they have received as a result of their fiduciary breaches;

3. Requiring the Plan to set off any individual account balances of C. Calderon against the amount of losses, including interest or lost opportunity costs, resulting from their fiduciary breaches, as authorized by 29 U.S.C. § 1056(d)(4), and reallocating the account balances to the non-breaching participants, if the losses are not otherwise restored to the Plan by defendants;

4. Removing C. Calderon and the Company as fiduciaries of the Plan and of any employee benefit plan for which they acts as fiduciaries;

5. Permanently enjoining C. Calderon and the Company from acting directly or indirectly, in any fiduciary capacity, with respect to any employee benefit plan subject to ERISA;

6. Permanently enjoining C. Calderon and the Company from exercising any custody, control, or decision making authority with respect to the assets of any employee benefit plan covered by ERISA;

7. Appointing an independent fiduciary with plenary authority and control with respect to the management and administration of the Plan, including the authority to marshal assets on behalf of the Plan, to pursue claims on behalf of the Plan, and to take all appropriate actions for the administration of the Plan, with all costs to be borne by the defendants.

8. Ordering the defendants, their agents, employees, service providers, banks, accountants, and attorneys to provide the Secretary and the independent fiduciary with all of the books, documents, and records relating to the finances and administration of the Plan, and to make an accounting to the Secretary and the independent fiduciary of all contributions to the Plan and all transfers, payments, or expenses incurred or paid in connection with the Plan;

9. Barring the defendants C. Calderon and the Company from engaging in any future violations of ERISA;

10. Awarding plaintiff, Secretary of Labor, the costs of this action; and

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

Respectfully submitted,

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U. S. DEPARTMENT OF LABOR

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