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**Department of Justice**

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE

Monday, July 25, 2016

## **Owner Of Long Island Produce Distributor Sentenced To 7 Years For Embezzling Over \$750,000 From Company Profit Sharing Plan**

### **Defendant Stole Over \$750,000 From His Company's Retirement Plan To Pay For Corporate And Personal Expenses**

Preet Bharara, the United States Attorney for the Southern District of New York, announced today that THOMAS HOEY, JR., the owner and president of a Long Island-based produce distributor (the "Company"), and trustee for the Company's profit sharing plan (the "Plan"), was sentenced to seven years in prison for embezzling nearly all of the assets of the Plan and defrauding the Plan participants. HOEY, over the course of several years, transferred over \$750,000 from the Plan to the Company's corporate accounts and then unlawfully used the money to, among other things: (1) purchase hundreds of thousands of dollars of produce for the Company; and (2) pay for hundreds of thousands of dollars of HOEY's personal expenses. On March 18, 2016, HOEY was convicted after a four-day jury trial before Judge Paul A. Engelmayer.

U.S. Attorney Preet Bharara said: "Thomas Hoey, Jr., convicted by a unanimous jury of siphoning off his employees' pension money, was sentenced for that theft. Hoey stole money meant to secure the futures of his employees and instead spent it on indulgences like travel, limousine service, and luxury Manhattan hotels. For that crime of fraud, Hoey will serve time in a federal prison."

According to the allegations contained in the Indictment as well as the evidence presented during trial:

The Plan was set up as an employee pension benefit plan under the Employee Retirement Income Security Act of 1974 ("ERISA"), for the benefit of certain employees of the Company. As an ERISA qualified pension plan, there were strict statutory and regulatory limitations on the use of money contributed to the Plan. In particular, Plan proceeds could be used only to pay for employee disbursement and employee loans, which in no circumstances could be greater than \$50,000. Moreover, the Company, which was the sponsor for the loan, was not allowed to receive any money from the Plan.

Between June 2009 and July 2012, however, the defendant transferred almost all of the assets in the Company's Plan to corporate accounts that HOEY controlled. Specifically, in three transactions on one day in June 2009, the defendant transferred \$350,000 from the Plan to the Company's corporate bank account. In May 2010, the defendant transferred \$415,000 from the Plan to the Company's corporate bank account. And finally, in July 2012, the defendant transferred \$73,000 from the Plan to the Company's corporate bank

account. As a result of these withdrawals from the Plan as well as fees on the account, the Plan, which at one point was worth over \$900,000 in employee benefits, was almost entirely depleted.

The Plan money was transferred to corporate accounts to cover significant negative balances as well as for additional corporate expenses and HOEY's personal expenses. For example, hundreds of thousands of dollars of Plan money was used to pay invoices from the Company's produce suppliers. Plan money was also used to pay for automobile insurance on a policy that covered, among other vehicles, numerous luxury cars that HOEY used for his personal use. During the period of time that HOEY was using Plan money to fund the Company's corporate accounts, the corporate accounts were also being used to pay for HOEY's personal expenses, including international travel for HOEY and his family, limousine service, and hotels in Manhattan.

In order to cover up HOEY's embezzlement of Plan assets, HOEY caused plan statements to be created that reflected the employees' full account balances as if no money had been taken out of the Plan. A 2012 account statement for one employee, for example, reflected an individual benefit total of approximately \$140,000. At that time, however, the total amount of money left in the Plan was only approximately \$15,000.

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In addition to the prison term, HOEY, 48, of Garden City, New York, was ordered to pay \$650,936.20 in restitution, \$763,000 in forfeiture, and a \$400 special assessment.

In imposing sentence, Judge Engelmayer told HOEY, "Your track record here reflects a self-centered history where Thomas Hoey, Jr., came first," and said HOEY's conduct was "appalling and utterly without excuse or justification."

Mr. Bharara praised the outstanding work of the Department of Labor Employee Benefits Security Administration and the Internal Revenue Service's Criminal Investigation Division.

This case is being handled by the Office's Complex Frauds and Cybercrime Unit. Assistant U.S. Attorneys Kristy J. Greenberg and Daniel B. Tehrani are in charge of the prosecution.

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