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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

KEITH E. SONDERLING, Acting Secretary of Labor, U.S. Department of Labor, Plaintiff, v. WLPEO LLC, a delinquent Colorado limited liability company; ALAN KANE, an individual; and WLPEO LLC 401(k) PLAN, Defendants.	Case No. 1:26-cv-4421 **COMPLAINT FOR VIOLATIONS OF ERISA**

INTRODUCTION

1. Plaintiff Keith E. Sonderling, Acting Secretary of Labor for the United States Department of Labor, brings this action requesting that the Court order Defendants WLPEO LLC ("WLPEO") and its owner, Alan Kane, to restore unforwarded employee contributions along with lost income earnings to the WLPEO LLC 401(k) Plan ("Plan"). The Acting Secretary further requests that Kane be removed as Plan Trustee and that WLPEO and Kane be removed as fiduciaries of the Plan. The Acting Secretary further requests that the Court appoint an independent fiduciary to administer the Plan pursuant to the Employee Retirement Income Security Act of 1974

("ERISA"), 29 U.S.C. §§ 1001-1191c, and order other equitable relief to remedy violations and enforce the provisions of ERISA pursuant to § 502(a)(2) and (5), 29 U.S.C. § 1132(a)(2) and (5).

JURISDICTION AND VENUE

2. This action arises under ERISA. The Acting Secretary brings this action to obtain relief under ERISA §§ 409, 502(a)(2), and 502(a)(5), 29 U.S.C. §§ 1109, 1132(a)(2), and 1132(a)(5), to redress violations and enforce Title I of ERISA.

3. This Court has jurisdiction over the action under ERISA §§ 502(e)(1), 29 U.S.C § 1132(e)(1).

4. Pursuant to ERISA § 502(e)(2), 29 U.S.C § 1132(e)(2), the venue for this action lies in this District because the individual defendant, Kane, resides in Fort Collins, Colorado.

DEFENDANTS

5. The Plan is an employee benefit plan set up to provide retirement income 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). The Plan is named as a defendant under Rule 19(a) of the Federal Rules of Civil Procedure solely to ensure that complete relief can be granted.

6. WLPEO was registered as a foreign entity in the state of Colorado on April 26, 2018. It was administratively renamed WLPEO LLC, Delinquent on March 8, 2022 after failing to file a Periodic Report with the Colorado Secretary of State.

7. At all relevant times, WLPEO was—and is—the Plan sponsor and fiduciary within the meaning of ERISA § 3(21)(A)(i) and (iii), 29 U.S.C. §§ 1002(21)(A)(i) and (iii). *See also* 29 C.F.R. § 2509.75-8, D-3. WLPEO was and is a party-in-interest to the Plan within the meaning of ERISA §§ 3(14)(A), (C), (G), 29 U.S.C. §§ 1002(14)(A), (C), (G).

8. At all relevant times, Alan Kane was the CEO, member, and agent of WLPEO. Kane was also the trustee of the Plan.

9. At all relevant times, Defendant Kane exercised authority over the corporate bank

account(s) of WLPEO.

10. At all relevant times, Defendants WLPEO and Kane were co-fiduciaries within the meaning of ERISA § 405, 29 U.S.C. § 1105.

FACTUAL ALLEGATIONS

11. Defendant WLPEO, LLC established the Plan on January 1, 2019.

12. The Plan's assets are held in a trust. Currently, the Plan's assets are maintained in the custodial accounts of Benefit Trust Company, the Plan's custodian.

13. According to the Summary Plan Document and Trust Agreement, Kane is the Plan's trustee.

14. The Plan allows participating employees to contribute payroll deductions for the employer to forward to the Plan. The Plan Document requires contributions to be remitted to the Plan.

15. Between July 24, 2023 and April 30, 2024, employee contributions totaling $35,632.98 were owed to the Plan and not remitted. During this time, employee contributions remained commingled with Defendants' assets and were subject to Defendants' use.

16. In July 2023, WLPEO's payroll provider terminated its services.

17. Thereafter, Plan participants attempted to contact Kane about missing and inaccurate contributions but he did not respond.

18. Plan participants then complained to Chelsey Joseph, WLPEO's co-CEO, about their missing contributions.

19. Upon information and belief, Kane told Joseph, in response to Plan participants' complaints, that Plan contributions were placed into a "Mercury" account to which only Kane had access and control.

20. In April 2024, WLPEO retained a new payroll provider.

21. Upon information and belief, after WLPEO retained a new payroll provider, Joseph asked Kane to send employee contributions to the Plan.

22. Upon information and belief, in or about May 2024, Kane admitted to Joseph that

the "Mercury" account did not exist and that he planned to sell his other businesses to fund the missing contributions.

23. Joseph resigned from the company two months later in July 2024.

24. On July 8, 2024, the Employee Benefits Security Administration ("EBSA") at the United States Department of Labor learned that the Plan participants were missing contributions to their Plan accounts.

25. In July 2024, EBSA inquired with Kane regarding Plan participants missing contributions. Kane confirmed issues with the switch in payroll providers but represented that all missing contributions had been properly remitted.

26. On July 22, 2024, EBSA sent Kane a letter requesting confirmation of the remitted missing contributions. The next day, Kane acknowledged receipt of EBSA's letter but did not respond to that letter nor follow up requests from EBSA. Kane also did not respond to a voicemail message left for him on September 19, 2024.

27. On October 1, 2024, EBSA opened a formal investigation to determine whether Defendants had remitted the missing Plan contributions.

28. On March 26, 2025, EBSA received deposit records from the Plan's third-party administrator, Guideline, Inc., which EBSA compared with payroll records received on March 12, 2025 to establish that a violation of ERISA had occurred.

29. Defendants remain unresponsive and unwilling to return Plan participants' missing contributions.

30. As of the date of this filing, the participants' missing contributions total $35,632.98 and lost interest earnings total $6,271.23. Participants' lost earnings are expected to grow as long as Defendants continue to withhold participants' contributions to the Plan.

VIOLATIONS

FIRST CLAIM FOR RELIEF

Breach of the Exclusive Purpose Requirement Involving the Plan

[29 U.S.C. § 1103(c)(1); 29 C.F.R. § 2510.3-102(a)(1), (b)(1)]

31. The Acting Secretary realleges and incorporates by reference the foregoing paragraphs as though fully set forth herein.

32. ERISA § 403(c)(1) requires plan assets to be held only for the exclusive purposes of providing benefits to plan participants and defraying reasonable plan administration expenses, and it expressly forbids plan assets inuring to any employer's benefit. 29 U.S.C. § 1103(c)(1).

33. Withheld employee contributions became assets of the Plan as soon as they could have been reasonably segregated from an employer's general assets, and at most fifteen days after the end of the month in which they would have been payable to the employee. 29 C.F.R. § 2510.3-102(a)(1), (b)(1).

34. Defendants were responsible for remitting all employee contributions to the Plan but failed to do so after they could have reasonably segregated them from Defendants' general assets.

35. By their actions and omissions, Defendants allowed assets of the Plan to inure to the direct benefit of Defendants in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1).

36. As a direct and proximate result of Defendants' breaches of the exclusive purpose requirement committed by Defendants, the Plan has suffered losses, including lost opportunity income, for which the Defendants are jointly and severally liable pursuant to ERISA §§ 409, 502(a)(2) and (5), 29 U.S.C. §§ 1109 and 1132(a)(2) and (5).

SECOND CLAIM FOR RELIEF

Breaches of Fiduciary Duties Involving the Plan

[29 U.S.C. §§ 1104(a)(1)(A), (B) and (D)]

37. The Acting Secretary realleges and incorporates by reference the foregoing paragraphs as though fully set forth herein.

38. As fiduciaries to the Plan, Defendants have duties under ERISA §§ 404(a)(1)(A) and (B) to act prudently and loyally in the sole interest of the Plan's participants and beneficiaries. 29 U.S.C. §§ 1104(a)(1)(A) and (B).

39. ERISA § 404(a)(1)(D) requires fiduciaries to discharge their duties "in accordance with the documents and instruments governing the plan[.]" 29 U.S.C. § 1104(a)(1)(D).

40. During the relevant time period, Defendants were responsible for but failed to promptly segregate and remit all employee contributions to the Plan.

41. Instead of doing this, Defendants allowed the Plan's assets to commingle with Defendants' general assets, which were used for impermissible purposes such as paying everyday business expenses.

42. Failing to remit contributions to the Plan was not in the interest of the Plan's participants or beneficiaries or in accordance with the Plan's governing documents. It was, therefore, imprudent and disloyal.

43. A prudent person acting in a fiduciary capacity in similar circumstances to those faced by Defendants during the relevant time period would promptly segregate and remit all employee contributions to the Plan.

44. By their actions and omissions, Defendants failed to discharge their duties with respect to the Plan solely in the interest of the Plan's participants and beneficiaries and for the exclusive purposes of providing benefits to those participants and their beneficiaries and defraying reasonable expenses of administering the Plan in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A); and failed to act 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 § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B); and failed to discharge their duties in accordance with the documents and instruments governing the Plan in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

45. As a direct and proximate result of Defendants' breaches of their fiduciary duties of loyalty and prudence, the Plan has suffered losses, including lost opportunity income, for which

the Defendants are jointly and severally liable pursuant to ERISA §§ 409, 502(a)(2) and (5), 29 U.S.C. §§ 1109 and 1132(a)(2) and (5).

THIRD CLAIM FOR RELIEF

Non-Exempt Prohibited Transactions involving the Plan

[29 U.S.C. § 1106(a)(1)(D)]

46. The Acting Secretary realleges and incorporates by reference the foregoing paragraphs as though fully set forth herein.

47. ERISA § 406(a)(1)(D) prohibits fiduciaries from causing a plan to engage in a transaction, if they have reason to know "that such transaction constitutes a direct or indirect transfer to, or use by for the benefit of a party in interest, of any assets of the plan." 29 U.S.C. § 1106(a)(1)(D).

48. WLPEO LLC, as the Plan's sponsor, employer of Plan participants, and fiduciary, and Kane, as owner and CEO of WLPEO LLC, Plan Trustee, and fiduciary, are each a "party in interest" to the Plan. ERISA §§ 3(14)(A), (C), (E), (G), (H), 29 U.S.C. §§ 1002(14)(A), (C), (E), (G), (H).

49. By their actions and omissions, Defendants caused the Plan to enter into transactions that they knew or should have known constituted prohibited transactions of assets of the Plan to a party in interest for which no exemption applies in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

50. Defendants are, therefore, jointly and severally liable pursuant to ERISA §§ 409, 502(a)(2) and (5), 29 U.S.C. §§ 1109 and 1132(a)(2) and (5).

FOURTH CLAIM FOR RELIEF

Self-Dealing Involving the Funding of the Plan

[29 U.S.C. §§ 1106(b)(1) and (2)]

51. The Acting Secretary realleges and incorporates by reference the foregoing paragraphs as though fully set forth herein.

52. ERISA § 406(b)(1) prohibits fiduciaries, such as Defendants, from dealing with a plan's assets for their "own interest" or for their "own account." 29 U.S.C. § 1106(b)(1).

53. ERISA § 406(b)(2) prohibits fiduciaries, such as Defendants, from acting in any transaction involving a plan on behalf of a party whose interests are adverse to the interests of the plan or its participants and beneficiaries. 29 U.S.C. § 1106(b)(2).

54. Defendants, during the relevant time period, allowed the assets of the Plan to remain in Defendants' general operating accounts, which benefited Defendants' business interests, at the expense of the Plan and its participants and beneficiaries.

55. By their actions and omissions, the Defendants engaged in prohibited self-dealing in violation of ERISA §§ 406(b)(1) and (2), 29 U.S.C.§§ 1106(b)(1) and (2).

56. Defendants are, therefore, jointly and severally liable pursuant to ERISA §§ 409, 502(a)(2) and (5), 29 U.S.C. §§ 1109 and 1132(a)(2) and (5).

FIFTH CLAIM FOR RELIEF

Co-Fiduciary Liability

[29 U.S.C. §§ 1105(a)(1), (2) and (3)]

57. The Acting Secretary realleges and incorporates by reference the foregoing paragraphs as though fully set forth herein.

58. ERISA provides for co-fiduciary liability, whereby a fiduciary is liable for the breaches of another fiduciary, if a fiduciary, (a) knowingly participants or conceals the breach of a co-fiduciary; (b) enables another fiduciary to commit a breach of ERISA through failure to comply with ERISA § 404(a)(1); or makes no reasonable effort under the circumstances to remedy the breaches of another fiduciary of which he/she had knowledge. ERISA §§ 405(a)(1), (2), and (3), 29 U.S.C. §§ 1105(a)(1), (2), and (3).

59. Here, Defendants knowingly participated in, enabled, and/or had knowledge of the breaches of fiduciary duties by their co-fiduciaries.

60. By their actions and omissions, the Defendants violated ERISA § 405(a)(1), (2), and (3), 29 U.S.C. §§ 1105(a)(1), (2), and (3).

61. Defendants are, therefore, jointly and severally liable pursuant to ERISA §§ 409, 502(a)(2) and (5), 29 U.S.C. §§ 1109 and 1132(a)(2) and (5).

PRAYER FOR RELIEF

WHEREFORE, pursuant to ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2) and (5), Plaintiff respectfully requests that the Court:

a. Require Defendants to return $35,632.98 in unforwarded employee contributions to the Plan,

b. Remove Kane from his position as trustee of the Plan,

c. Enjoin Kane from serving as a fiduciary of any other ERISA-covered employee benefit plan,

d. Remove WLPEO LLC as a fiduciary of the Plan,

e. Appoint an independent fiduciary with full discretionary authority to administer the Plan and, if appropriate, distribute the Plan's assets to the participants and beneficiaries, terminate the Plan, and conclude any Plan-related matters associated with the proper termination of the Plan,

f. Require Defendants to restore the Plan's losses, including the Plan's lost opportunity costs, resulting from Defendants' fiduciary breaches committed by Defendants,

g. Require Defendants to pay for all costs associated with the appointment and retention of the independent fiduciary,

h. Require Defendants to cooperate with the independent fiduciary,

i. Award the Acting Secretary the costs of this action, and

j. Order any further relief as deemed appropriate and just.

Dated: September 14, 2026

Respectfully submitted,

JONATHAN BERRY
Solicitor of Labor

MARC A. PILOTIN
Regional Solicitor

ANDREW J. SCHULTZ
Counsel for ERISA

/s/ Eduard R. Meleshinsky
EDUARD R. MELESHINSKY
Senior Trial Attorney

Attorneys for Plaintiff Keith E. Sonderling,
Acting United States Secretary of Labor

JS 44 (Rev. 10/20) District of Colorado

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Keith E. Sonderling, Acting United States Secretary of Labor

(b) County of Residence of First Listed Plaintiff ______
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Eduard R. Meleshinsky, United States Department of Labor, 90 7th Street, Suite 3-700, San Francisco, CA 94103 (415) 625-7744

DEFENDANTS

Alan Kane, WLPEO LLC, WLPEO LLC 401(k)

County of Residence of First Listed Defendant Larimer County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☒ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
29 U.S.C. §§ 1109, 1132(a)(2), and 1132(a)(5)

☐ AP Docket

Brief description of cause:
Defendants failed to remit employees' contributions to the WLPEO LLC 401(k) plan in violation of the Employee Retirement Income Security Act.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE: Sep 14, 2026

SIGNATURE OF ATTORNEY OF RECORD: EDUARD MELESHINSKY

Digitally signed by EDUARD MELESHINSKY
Date: 2026.09.14 18:47:59 -07'00'

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______