

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**JERRY DIDONATO, EDWARD KOGELIS, and
LEOVIGILDO LOERA individually, and on behalf of
those similarly situated,**

Plaintiffs,

v.

**NATIONAL PRODUCTION WORKERS UNION
SEVERANCE TRUST PLAN; NATIONAL
PRODUCTION WORKERS UNION 401(K)
RETIREMENT PLAN; JOSEPH VINCENT
SENESE, ROSIE GIBSON, JOSE DIAZ, SHAWN
FORD, SCOTT GORE, individually and in their
capacities as THE BOARD OF TRUSTEES of the
NATIONAL PRODUCTION WORKERS UNION
SEVERANCE TRUST PLAN and the NATIONAL
PRODUCTION WORKERS UNION 401(K) PLAN;
JAMES MELTREGGER, individually and in his
capacity as PLAN MANAGER of the NATIONAL
PRODUCTION WORKERS UNION SEVERANCE
TRUST PLAN and the NATIONAL PRODUCTION
WORKERS UNION 401(K) RETIREMENT PLAN**

Defendants.

Case No. 19-cv-2694

Judge John Robert Blakey

THIRD AMENDED CLASS ACTION COMPLAINT

Plaintiffs Jerry Didonato, Edward Kogelis, and Leovigildo Loera, by and through their attorneys, Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich, LLP, on behalf of all others similarly situated and by way of their third amended class action complaint against Defendants National Production Workers Union Severance Trust Plan; National Production Workers Union 401(k) Retirement Plan; Joseph Vincent Senese, Rosie Gibson, Jose Diaz, Shawn Ford, Scott Gore, individually and in their capacities as the Board of Trustees of the National Production Workers Union Severance Trust Plan and the National Production Workers Union 401(k)

Retirement Plan; and James Meltreger, individually and in his capacity as Plan Manager and Fund Director of the National Production Workers Union Severance Trust Plan and the National Production Workers Union 401(k) Retirement Plan (“Plan Manager”), state as follows¹:

JURISDICTION, VENUE, AND PARTIES

1. Plaintiffs bring this action under Sections (a)(2), and (a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ (a)(2), and (a)(3), on behalf of themselves and all others similarly situated.

2. This Court has jurisdiction pursuant to 29 U.S.C. § 1132(e) and (f), 29 U.S.C. § 1451, and 28 U.S.C. § 1331.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 29 U.S.C. § 1132(e), as a substantial part of the events giving rise to Plaintiffs’ claims occurred within this District, Defendants reside in this District, and the breaches alleged occurred in this District.

4. Plaintiffs Kogelis and Leovigildo reside in Will County, Illinois. Plaintiff Didonato resides in Lake County, Indiana.

5. Plaintiffs have, at all relevant times, been employed by Parsec, Inc. (“Parsec” or “Employer”) at its location in Elwood, Illinois.

6. Plaintiffs have, at all relevant times, been “participants” as that term is defined by Section 3(7) of ERISA, 29 U.S.C. § 1002(7), of the National Production Workers Union Severance Plan (“Severance Plan”) and the National Production Workers Union 401(k) Retirement Plan (“401(k) Plan”) (collectively referred to as “Retirement Plans”).

¹ Plaintiffs incorporate and preserve their claim against Defendants for the failure to provide pension benefit statements for the years 2021 to the present, as alleged in Paragraphs 113-124 of their *Proposed* Third Amended Complaint [Doc. No. 100-1] for purposes of appeal only but will not re-state the allegations herein because the Court denied Plaintiffs’ motion to add that claim to the Third Amended Complaint. [Doc. No. 102].

7. For a number of years and until August 2017, the National Production Workers Union, Local 707 (“NPWU” or “Union”) represented Plaintiffs and the other employees at Parsec’s Elwood facility for purposes of collective bargaining with Parsec, Plaintiffs’ Employer. Those employees are hereafter referred to in this Complaint as the “Elwood Bargaining Unit.”

8. Pursuant to successive collective bargaining agreements between Parsec and NPWU (“NPWU CBA”), Parsec made contributions on behalf of Elwood Bargaining Unit employees into the Severance Plan until 2012.

9. In 2012, the Board of Trustees of the Severance Plan established the 401(k) Plan. Pursuant to the NPWU CBA, from 2012 through approximately August 2017, Parsec made contributions on behalf of the Elwood Bargaining Unit employees into the NPWU 401(k) Plan instead of into the Severance Plan.

10. In 2017, the Elwood Bargaining Unit decertified the Union as its collective bargaining representative largely because of dissatisfaction with how the Retirement Plans were managed, and since then, Parsec has not made any contributions to either of the Retirement Plans on behalf the Elwood Bargaining Unit.

11. Hundreds of other employees of employers required by collective bargaining agreements to make contributions to the Severance Plan (“Employers”) became participants and had individual accounts since 2016 that were charged for administrative expenses approved by the defendants Senese, Gibson, Diaz, Ford, and Gore (collectively, the “Trustees”) and Plan Manager Meltreger.

12. The Severance Plan holds itself out as a multiemployer defined contribution “money purchase” pension plan as that term is defined by ERISA. The 401(k) Plan holds itself

out as a multiemployer defined contribution “profit sharing” pension plan as that term is defined by ERISA.

13. The Retirement Plans maintain their offices in DuPage County, Illinois.

14. The Severance Plan provides severance or retirement benefits to qualified participants and their beneficiaries, to be paid to the participants and beneficiaries in the amounts and under conditions specified in the January 1, 1985 Restated Trust Agreement and Declaration of Trust (“Trust Agreement”), the Summary Plan Description (“SPD”), any other governing plan documents, and in accordance with applicable law.

15. The 401(k) Plan provides severance or retirement benefits to be paid to qualified participants and their beneficiaries in the amounts and under conditions specified in the 401(k) Plan Document, any other governing plan documents, and in accordance with applicable law.

16. The Board of Trustees has, at all relevant times, been the Plan Administrator and Plan Sponsor of the Retirement Plans, as those terms are defined by ERISA, 29 U.S.C. §§ 1002(16)(A) and (B).

17. Defendant Joseph Vincent Senese has at all relevant times been an officer and/or employee of the Union and a Union-appointed trustee and fiduciary of the Retirement Plans, charged with the duty to administer the Retirement Plans solely in the interests of the Retirement Plans’ participants and in accordance with the governing plan documents, all applicable laws, and the DOL Settlement Agreement described below.

18. Defendant Rosie Gibson has at some point in time between 2016 and 2021 been an officer and/or employee of the Union and a Union-appointed trustee and fiduciary of the Retirement Plans, charged with the duty to administer the Retirement Plans solely in the interests

of the Retirement Plans' participants and in accordance with the governing plan documents and all applicable laws.

19. Defendant Jose Diaz has at all relevant times been an officer and/or employee of the Union and a Union-appointed alternate trustee and fiduciary of the Retirement Plans charged with the duty to administer the Retirement Plans solely in the interests of the Retirement Plans participants and in accordance with the governing plan documents and all applicable laws.

20. Defendant Shawn Ford has at all relevant times been an employer trustee and fiduciary of the Retirement Plans charged with the duty to administer the Retirement Plans solely in the interests of the Retirement Plans' participants and in accordance with the governing plan documents and all applicable laws.

21. Defendant Scott Gore has at all relevant times been an employer trustee and fiduciary of the Retirement Plans charged with the duty to administer the Retirement Plans solely in the interests of the Retirement Plans' participants and in accordance with the terms of the plans and all applicable laws.

22. Defendant James Meltreger has at all relevant times been an officer and/or employee of the Union and also the "Plan Manager" of the Retirement Plans, appointed by the Board of Trustees to act on its behalf in connection with day-to-day operations and administration of the Retirement Plans.

23. Defendant Meltreger is also referred to as the "Fund Director" in the Severance Plan's SPD.

24. Defendant Meltreger is a fiduciary of the Retirement Plans charged with the duty to administer the Retirement Plans solely in the interests of the Retirement Plans' participants

and in accordance with the governing plan documents, all applicable laws and the DOL Settlement Agreement described below.

FACTUAL BACKGROUND

Administration of the Retirement Plans

25. The Retirement Plans are jointly administered by the Board of Trustees that is equally comprised of Union-appointed trustees and employer-appointed trustees.

26. The NPWU has also appointed an alternate Union-appointed trustee to vote in the place of either of the two other Union-appointed trustees from time to time.

27. All Union-appointed trustees of the Retirement Plans are also officers and/or employees of the Union.

28. The value of each participant's account in the Severance Plan is based solely on employer contributions made on the participant's behalf and net investment income allocated to the participant's account, less allocable portions of plan administration fees and any net investment losses. The Severance Plan pools all assets for investments and tracks individual account balances and allocations in notional individual accounts for each plan participant.

29. The value of each participant's account in the 401(k) Plan is based on employer contributions made on the participant's behalf, plus any voluntary contributions the participant makes into the plan, and investment income or losses directly attributable to the participant's account, less allocable portions of plan administration fees and expenses.

30. The Trustees charges the costs of administration to the accounts of participants in both Retirement Plans.

31. On information and belief, some of the administrative expenses charged by the Board of Trustees to participants in the 401(k) Plan included compensation paid to defendant Melterger and other employees of the Severance Plan.

2016 Department of Labor Settlement Agreement with Retirement Plans

32. In 2016, the United States Department of Labor (“DOL”) filed an action, *Perez v. Monaco, et al.*, Case No. 16-CV-597 (2016), against the then-fiduciaries of the Retirement Plans alleging numerous prohibited transactions between the Retirement Plans and the Union’s related benefit plans and alleging the failure to distribute benefits to more than 10,000 participants who have accounts in the Severance Plan and are eligible for distribution of benefits.

33. The DOL reached a Settlement Agreement and Consent Order with the Retirement Plans in January 2016 (“DOL Settlement Agreement”).

34. The DOL Settlement Agreement required the then-plan administrator and then-trustees of the Retirement Plans to resign and barred them from serving as fiduciaries of any benefit plans.

35. The DOL Settlement Agreement required the Retirement Plans to retain a third-party accounting firm to perform all accounting functions for the Retirement Plans, including:

[G]eneral ledger maintenance, accounting for contributions, investment activity, payment of participant benefits, payment of administrative expenses, processing applicable required tax deposits, preparation of quarterly financial reports, attendance at quarterly Board of Trustee meetings, coordinating the annual audits of the plans and assisting internal administrative staff of the plans in carrying out their duties, and issuing all checks and other disbursements of the plans’ assets in any form or manner as approved by the respective Boards of Trustees of the Severance Trust and the Insurance Fund.

Compliance with the terms of this DOL Settlement Agreement would have reduced most of the administrative responsibilities of Defendant Meltreger and other of the Retirement Plans’ employees for which they had been receiving compensation.

36. The DOL Settlement Agreement required the Retirement Plans to “[r]etain a third-party service provider to locate Missing Participants, and then direct the Fund Director to make distributions to all Missing Participants as set forth in the ‘Plan of Action to Search for Missing Participants’” that was attached to the DOL Settlement Agreement.

37. On information and belief, between 2016 and the present, approximately 10,000 of the total accounts in the Severance Plan are those of “Missing Participants” as that term is defined by the DOL Settlement Agreement, and the Fund Director is to issue payment to Missing Participants who are located by a third-party service provider.

Excessive Compensation to James Meltreger and Vincent Senese

38. Since 2016, Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger (collectively, “Defendant Fiduciaries”) breached their fiduciary duty of loyalty by paying unreasonable compensation to Defendant Meltreger, and to a family member of Defendant Senese.

39. The Severance Plan reported on its annual governmental filing (Form 5500) for 2016 through 2021 that the Severance Plan paid Defendant Meltreger the following amounts in direct compensation each year:

- a. \$74,857 in 2015,
- b. \$96,008 in 2016,
- c. \$94,695 in 2017,
- d. \$106,801 in 2018,
- e. \$110,607 in 2019,
- f. \$110,607 in 2020, and
- g. \$110,607 in 2021.

40. The Severance Plan reported on its annual governmental filing (Form 5500) for 2016 through 2021 that the Severance Plan paid Vincent Senese², a family member of Defendant Joseph Vincent Senese, the following amounts in direct compensation each year:

- a. \$68,750 in 2015,
- b. \$88,221 in 2016,
- c. \$83,774 in 2017,
- d. \$89,502 in 2018,
- e. \$91,772 in 2019,
- f. \$91,772 in 2020, and
- g. \$91,772 in 2021.

41. The Severance Plan reported on its 2015 annual governmental filing (Form 5500) that there were 12,591 total participants at the end of the plan year, and 2,195 of those participants were “active participants.”

42. The Severance Plan reported on its 2021 annual governmental filing (Form 5500) that there were 11,604 total participants at the end of the plan year, and 304 of those participants were “active participants.”

43. Between 2015 and 2021, the total number of active participants has declined from 2,195 to 304.

44. There are no employer contributions being made to the Severance Plan on behalf of the Elwood Bargaining Unit employees who decertified the Union in 2017. On information and belief, most if not all of the 304 participants identified as “active participants” in the Severance Plan’s 2021 governmental filing are the employees in the Elwood Bargaining Unit.

² Throughout the Third Amended Complaint, “Vincent Senese” refers to the family member of Defendant Joseph Vincent Senese.

45. Between 2016 and the present, the total amount of contributions paid to the Severance Plan by contributing employers has drastically declined. In 2016, the Severance Plan received contributions from contributing employers in the total amount of \$2,723,395. In 2021, the Severance Plan only received \$192,923 in contributions from contributing employers.

46. Therefore, little or no administrative functions of the Severance Plan involve receipt of or accounting for contributions from employers.

47. Despite the elimination of the vast majority of administrative responsibilities to the Severance Plan and the sharp decline of active participants, the salary paid to Defendant Meltreger rose \$21,151 from 2015 to 2016, and increased \$14,599 between 2016 and 2019, for a total increase of 47.8% between 2015 to 2019.

48. Similarly, the salary of Vincent Senese rose \$19,471 from 2015 to 2016, and \$3,551 between 2017 and 2019, for a total increase of 33.5% between 2015 and 2019, despite the reduced administrative functions of staff and the 86% decline of active participants.

49. On information and belief, between 2016 and 2021, Meltreger and Vincent Senese performed work for parties in interest at the same time they were employed by the Severance Plan, such as the National Production Workers Union Local 707 and the National Production Workers Union Insurance Trust Fund.

50. On information and belief, Defendant Fiduciaries failed to monitor the reasonableness of the compensation paid for the administration of the Severance Plan and how Meltreger and Vincent Senese split their time between part time work for the Retirement Plans and work for the various parties in interest and failed to determine if the compensation paid to Meltreger and Vincent Senese was reasonably allocated to the Severance and 401(k) Plans

among the other parties in interest for which Meltreger and Vincent Senese were also performing work.

51. Between 2019 and 2020, the administrative fees paid by participants in the 401(k) Plan as a percentage of their accounts' values nearly tripled from 2.6% to 7.7% on average.

52. On information and belief, since at least 2020, Defendants have been assessing administrative fees from the participants in the 401(k) Plan to, in part, pay for the excessive compensation of Defendant Meltreger and Vincent Senese that is reported on the Severance Plan's Form 5500.

ERISA Fiduciary Duties

53. The "principal object" of ERISA "is to protect plan participants and beneficiaries." *Boggs v. Boggs*, 520 U.S. 833, 845 (1997) (internal citation omitted). The "crucible of congressional concern was misuse and mismanagement of plan assets by plan administrators" and "ERISA was designed to prevent these abuses." *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 140 n.8 (1985) (citing legislative history).

54. In furtherance of this purpose, Section 404 of ERISA imposes on fiduciaries the duties of loyalty and prudence. 29 U.S.C. § 1104(a)(1).

55. The duty of loyalty requires that fiduciaries act "for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan." 29 U.S.C. § 1104(a)(1)(A).

56. The duty of prudence requires the fiduciary 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 the enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B).

57. ERISA supplements the fiduciary duties of loyalty and prudence set forth in Section 404 through Section 406's prohibition on transactions with "parties in interest" by "categorically barring certain transactions deemed 'likely to injure the pension plan.'" *Keach v. U.S. Trust Co.*, 419 F.3d 626, 635 (7th Cir. 2005) (quoting *Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 241-42 (2000)).

58. Under Section 406, except as provided by Section 408 (which creates certain exemptions from prohibited transactions), a fiduciary is prohibited from engaging in a transaction if, *inter alia*, "he knows or should know that such transaction constitutes a direct or indirect:" lending of money or extension of credit to a party in interest; furnishing of goods or services to a party in interest; and transfer to, or use by or for the benefit of a party in interest, of any assets of the plan. 29 U.S.C. § 1106(a)(1)(B), (C), and (D).

59. Section 406 also prohibits transactions between the plan and fiduciaries. Under 29 U.S.C. § 1106(b), the fiduciary shall not:

(1) deal with the assets of the plan in his own interest or for his own account, (2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or (3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

60. Congressional intent of Section 406 "was to prevent fiduciaries from engaging in any conduct that might have the potential" to cause the fiduciaries to waver in their "undivided loyalty" to plan participants. *Chao v. Linder*, 2007 U.S. Dist. LEXIS 40425, *24 (N.D. Ill. May 31, 2007) (citing *Leigh v. Engle*, 727 F.2d 113, 123 (7th Cir. 1985)).

61. There are certain exemptions to prohibited transactions, such as receipt by a fiduciary of "reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred[.]" 29 U.S.C. § 1108(c)(2). However, "no person so

serving who already receives full time pay . . . from an employee organization whose members are participants in such plan shall receive compensation from such plan, except for reimbursement of expenses properly and actually incurred.” *Id.*

62. Fiduciaries may be liable for the breaches of co-fiduciaries if (1) they knowingly participate in, or undertake to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (2) by failing to exercise their fiduciary duties, they enable the other fiduciary to commit a breach; or (3) having knowledge of the breach of another fiduciary, they fail to take reasonable efforts to remedy the breach. 29 U.S.C. § 1105(a).

63. Under Section 409, 29 U.S.C. § 1109(a), a fiduciary who breaches any of his fiduciary duties imposed on him by ERISA shall be “personally liable to make good to such plan any losses to the plan resulting from each such breach, and to have been made through the use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.”

CLASS ACTION ALLEGATIONS

64. 29 U.S.C. § 1132(a)(2) authorizes any participant or beneficiary of a plan to bring an action individually on behalf of the plan to seek remedies provided by 29 U.S.C. § 1109(a). In addition, 29 U.S.C. § 1132(a)(3) authorizes any participant or beneficiary to bring suit for injunctive or other equitable relief. Plaintiffs seek certification of this action as a class action pursuant to these statutory provisions and Fed. R. Civ. P. (“Rule”) 23.

65. Plaintiffs assert their claims against Defendants on behalf of a class of participants and beneficiaries of the Retirement Plans defined³ as follows:

All participants and beneficiaries of the Severance Plan who have had accounts in the plan for any period of time between 2016 and the present and all participants and

³ Plaintiffs reserve the right to propose other or additional classes or subclasses in their motion for class certification or subsequent pleadings in this action.

beneficiaries of the 401(k) Plan whose accounts have been charged administrative fees between 2020 and the present as a result of unreasonable expenses and other prohibited transactions of Defendants.

66. Numerosity: The Class is so numerous that joinder of all Class members is impracticable. The Class consists of approximately 304 participants or beneficiaries who are active in the Severance Plan, plus an unknown number of participants or beneficiaries whose Severance Plan or 401(k) Plan accounts were reduced since 2016 as a result of unreasonable expenses and other prohibited transactions of Defendants who (a) have severed employment from contributing Employers or (b) taken distributions of their accounts after 2016 or (c) had their Severance Plan accounts transferred to the 401(k) Plan. .

67. Typicality: Plaintiffs' claims are typical of Class members' claims. Like other Class members, Plaintiffs participated and have accounts in the Severance Plan, were employed by contributing Employers, and suffered losses as a result of Defendants' mismanagement of one or both of the Severance Plan and 401(k) Plan.

68. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' interests are aligned with the Class that they seek to represent, and they have retained counsel experienced in employee benefit class action litigation, including ERISA litigation. Plaintiffs do not have any conflicts of interest with any Class members that would impair or impede their ability to represent such Class members.

69. Commonality: Common questions of law and fact exist as to all Class members and predominate over questions solely affecting individuals, including but not limited to:

- a. Whether Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger are fiduciaries of the Retirement Plans;
- b. Whether the Retirement Plans' fiduciaries breached their fiduciary duties under 29 U.S.C. § 1104 by engaging in the conduct described herein;

- c. Whether Defendants are additionally or alternatively liable as co-fiduciaries for the unlawful conduct described herein under 29 U.S.C. § 1105;
- d. Whether Defendants engaged in prohibited transactions that caused losses to the Plan and, therefore, injuries to participants of the Plan;
- e. The proper form of equitable, injunctive relief; and
- f. The proper measure of monetary relief.

70. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) as prosecuting separate actions against Defendants would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants.

71. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(1)(B) because adjudications with respect to individual Class members, as a practical matter, would be dispositive of the interests of the other persons not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. Any award of equitable relief by the Court, such as removal of fiduciaries, would be dispositive of non-party interests. The accounting and restoration of plan assets that would be required under 29 U.S.C. §§ 1109 and 1132 would similarly be dispositive of the interests of other plan participants.

72. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Class predominate over any questions affecting only individuals, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' conduct described in this Complaint applied uniformly to all Class members. Class members do not have an interest in pursuing separate actions against Defendants, as the amount of each member's individual claim is relatively small compared to the expense and burden of individual prosecution, and Plaintiffs are unaware of any similar claims brought against Defendants by any Class members on an individual basis. Class

certification also will obviate any unduly duplicative litigation that might result in inconsistent judgments concerning Defendants' practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be appropriate to concentrate the litigation of all Class members' claims in a single forum.

73. Plaintiffs are capable of adequately representing the interests of the class as are their attorneys who are experienced in the representation of employee benefit funds and of plaintiffs in class actions involving claims to vested pension and retiree health benefits.

74. To the extent that any of Plaintiffs' claims under 29 U.S.C. § 1132(a)(2) or 1132(a)(3) are construed to seek duplicative recovery for any element of damages, Plaintiffs assert those claims in the alternative.

75. Plaintiffs will serve a copy of this complaint on the Offices of the Secretary of Labor and the Secretary of Treasury pursuant to 29 U.S.C. § 1132(h).

COUNT I
BREACH OF FIDUCIARY DUTY OF LOYALTY:
EXCESSIVE AND UNREASONABLE ADMINISTRATIVE FEES
(By Plaintiffs and Class against all Defendants)

76. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 75 as if fully stated in Count I.

77. As set forth above in paragraph 35, the DOL Settlement Agreement outsourced nearly all administrative functions of the Retirement Plans to an independent accounting firm in January 2016.

78. On information and belief, the outsourcing of these administrative services to an independent accounting firm left Defendant Meltreger and Vincent Senese with few, if any, administrative responsibilities to the Retirement Plans.

79. The increased salaries paid to Defendants Meltreger and Vincent Senese following the DOL Settlement Agreement from 2016 through 2021 are excessive in light of the limited administrative functions of the Retirement Plans, which, as of 2016, were required to be provided by the independent accounting firm. In addition, day-to-day administrative work would have declined rather than increased given the sharp decline of active participants.

80. On information and belief, Defendant Fiduciaries also continued to pay, or allowed to be paid, excessive compensation to Meltreger and Vincent Senese in each plan year since 2021.

81. By paying a fiduciary and a relative of a trustee excessive compensation, the fiduciaries breached their duty of loyalty, which requires them to act “solely in the interest of participants and beneficiaries” and “for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan” 29 U.S.C. § 1104(a)(1)(A).

82. By breaching the duty of loyalty through the payment of excessive compensation to parties in interest, Defendant Fiduciaries have also engaged in prohibited transactions in violation of 29 U.S.C. § 1106(a)(1) and (b)(1).

83. Plaintiffs and putative class members have been harmed by the payment of excessive compensation to Meltreger and Vincent Senese because the excessive compensation has reduced the value of their individual accounts in the Retirement Plans.

84. 29 U.S.C. § 1109(a) provides that any person who breaches her or his fiduciary duties “shall be personally liable to make good to such plan any losses to the plan resulting from such breach . . . and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.”

85. To the extent any individual Defendant Fiduciary did not directly benefit from any of the above transactions, they are liable for the breaches of the duty of loyalty and prohibited transactions of their co-fiduciaries under 29 U.S.C. § 1105(a)(2).

WHEREFORE, pursuant to 29 U.S.C. §§ 1132(a)(2) and/or (a)(3), Plaintiffs respectfully request a judgment against Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger as follows:

- (a) Certifying that the action may be maintained as a class action, certifying Plaintiffs as Class representatives, and designating Plaintiffs' counsel as counsel for the Class;
- (b) Finding that Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger have breached their fiduciary responsibilities and caused losses to the Retirement Plans (and therefore to Plaintiffs and Class members) and are liable to the Retirement Plans, Plaintiffs, and Class members as a result of the payment of unreasonable or excessive expenses and because of engaging in prohibited transactions;
- (c) Requiring Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger to provide an accounting of the effect on participants of all amounts of compensation and expenses paid by the Retirement Plans to James Meltreger and Vincent Senese;
- (d) Determining the amount of compensation, expenses, and service fees, if any, that reasonably should have been paid by the Retirement Plans to James Meltreger and Vincent Senese and finding Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger liable to repay the Retirement Plans for the amounts paid in excess of the reasonable compensation and expenses.
- (e) Requiring Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger to reimburse the Severance Plan for the amounts of any excessive or unreasonable compensation found by the Court and to pay with interest to the Severance Plan all amounts that have been unlawfully paid to James Meltreger and Vincent Senese;
- (f) Requiring Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger to reimburse with interest all participants in the 401(k) Plan whose accounts were charged administrative fees to pay for the excessive compensation of James Meltreger and Vincent Senese;
- (g) Removing Defendants Senese, Gibson, Diaz, Ford, and Gore as trustees of the Retirement Plans; removing Defendant Meltreger as Plan Manager and Fund Director of the Retirement Plans; and permanently enjoining Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger from serving as trustees, fiduciaries or service

- providers of the Retirement Plans and any other ERISA-governed employee benefit plan;
- (h) Appointing an independent fiduciary to administer the Retirement Plans;
 - (i) Awarding attorneys' fees and costs to Plaintiffs as permitted by law, including but not limited to 29 U.S.C. § 1132(g); and
 - (j) Granting all such other legal and equitable relief as the Court deems just and proper.

COUNT II:
BREACH OF FIDUCIARY DUTY OF PRUDENCE:
EXCESSIVE AND UNREASONABLE ADMINISTRATIVE FEES
(By Plaintiffs and Class against all Defendants)

86. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 85 as if fully stated in Count II.

87. Encompassed within the fiduciary duty of prudence is the duty to prudently select, monitor, and set reasonable compensation for employees and service providers of the Retirement Plans.

88. The Severance Plan paid unreasonable compensation to Defendant Meltreger and to Vincent Senese for administration of the Severance Plan in 2016, 2017, 2018, 2019, and 2021 after the DOL required the Retirement Plans to outsource the vast majority of its administrative services to an independent third-party accountant and as the number of active participants of the Severance Plan was in sharp decline.

89. On information and belief, Defendant Fiduciaries also continued to pay, or allowed to be paid, excessive compensation to Meltreger and Vincent Senese in each plan year since 2021.

90. On information and belief, the compensation that the Severance Plan paid to Defendant Meltreger and Vincent Senese was not reviewed by an independent accountant or Defendant Fiduciaries to determine whether the amounts were reasonable.

91. On information and belief, Defendant Trustees failed to monitor how Meltreger and Vincent Senese split their time between work for the Severance Plan and work for the various parties in interest and failed to determine if the compensation paid to Meltreger and Vincent Senese was reasonable and also reasonably allocated among the other parties in interest for which Meltreger and Vincent Senese were also performing work.

92. By failing to ensure that the compensation to Meltreger and Vincent Senese was reasonable, Defendant Fiduciaries breached their fiduciary duty of prudence imposed by 29 U.S.C. § 1104(a)(1)(B).

93. As a result of Defendants' fiduciary breaches, Defendant Fiduciaries have caused the Severance Plan to pay excessive compensation to Defendant Meltreger and Vincent Senese and

94. By breaching the duty of prudence through the payment of excessive compensation to parties in interest, Defendant Fiduciaries also have engaged in prohibited transactions in violation of 29 U.S.C. § 1106(a)(1) and (b)(1).

95. Plaintiffs and putative class members have been harmed by the payment of excessive compensation to Meltreger and Vincent Senese because the excessive compensation has reduced the value of their individual accounts in the Retirement Plans.

96. 29 U.S.C. § 1109(a) provides that any person who breaches her or his fiduciary duties "shall be personally liable to make good to such plan any losses to the plan resulting from such breach . . . and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary."

97. To the extent any individual Defendant Fiduciary did not directly benefit from any of the above transactions, they are liable for the breaches of the duty of prudence of their co-fiduciaries under 29 U.S.C. § 1105(a)(2).

WHEREFORE, pursuant to 29 U.S.C. §§ 1132(a)(2) and/or (a)(3), Plaintiffs respectfully request a judgment against Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger as follows:

- (a) Certifying that the action may be maintained as a class action, certifying Plaintiffs as Class representatives, and designating Plaintiffs' counsel as counsel for the Class;
- (b) Finding that Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger have breached their fiduciary responsibilities and caused losses to the Retirement Plans (and therefore to Plaintiffs and Class members) and are liable to the Retirement Plans, Plaintiffs, and Class members as a result of the payment of unreasonable or excessive expenses and because of engaging in prohibited transactions;
- (c) Requiring Defendants to provide an accounting of the effect on participants of all amounts of compensation and expenses paid by the Retirement Plans to James Meltreger and Vincent Senese;
- (d) Determining the amount of compensation, expenses and service fees that reasonably should have been paid by the Retirement Plans to James Meltreger and Vincent Senese and finding Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger liable to repay the Retirement Plans for the amounts paid in excess of the reasonable compensation and expenses.
- (e) Requiring Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger to reimburse the Severance Plan for the amounts of any excessive or unreasonable compensation found by the Court and to pay with interest to the Severance Plan all amounts that have been unlawfully paid to James Meltreger and Vincent Senese;
- (f) Requiring Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger to reimburse with interest all participants in the 401(k) Plan whose accounts were charged administrative fees to pay for the compensation of James Meltreger and Vincent Senese;
- (g) Removing Defendants Senese, Gibson, Diaz, Ford, and Gore as trustees of the Retirement Plans; removing Defendant Meltreger as Plan Manager and Fund Director of the Retirement Plans; and permanently enjoining all Defendants from serving as trustees, fiduciaries or service providers of the Retirement Plans and any other ERISA-governed employee benefit plan;

- (h) Appointing an independent fiduciary to administer the Retirement Plans;
- (i) Awarding attorneys' fees and costs to Plaintiffs as permitted by law, including but not limited to 29 U.S.C. § 1132(g); and
- (j) Granting all such other legal and equitable relief as the Court deems just and proper.

COUNT III

FAILURE TO SUPPLY REQUESTED INFORMATION

(By Plaintiffs and Class against Senese, Gibson, Diaz, Ford, Gore, and Meltreger)

98. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 97 as if fully stated in Count III.

99. On information and belief, Defendant Trustees and Defendant Meltreger have all acted as the "Plan Administrator" of either or both of the Retirement Plans between 2018 and the present.

100. 29 U.S.C. §§ 1024(b) and 1132(c)(1), collectively, require the Plan Administrator to provide to participants, upon request, a copy of the Retirement Plans' SPDs, latest annual reports, a summary of material modifications, the trust agreement, and any other instruments under which the plan is established or operated.

101. 29 U.S.C. § 1024(b) additionally requires the Plan Administrator to furnish "to each participant and to each beneficiary" a copy of the "summary plan description."

102. On March 26, 2018, Plaintiff Loera, acting on behalf of the putative class members of the Elwood Bargaining Unit, submitted a request to the Retirement Plans for, among other information, a copy of each of the Retirement Plans' summary plan descriptions and a copy of "any other instruments under which the plan is established and operated."

103. As of the date of the filing of the Complaint, the Plan Administrator has not provided a copy of a summary plan description for the 401(k) Plan to Plaintiff Loera in response

to his written request or to any other participant or beneficiary as required to be provided automatically to participants under 29 U.S.C. § 1024(b).

104. On July 1, 2019, Defendants disclosed a previously-requested document for the first time – the DOL Settlement Agreement – when moving to dismiss the First Amended Complaint in this lawsuit.

105. The DOL Settlement Agreement is an instrument under which the Retirement Plans are operated. Defendants failed to disclose the DOL Settlement Agreement from April 25, 2018, the 30 day deadline from the written request for disclosure of the document, to July 1, 2019, the filing of defendants’ motion to dismiss the first Amended Complaint.

106. The DOL Settlement Agreement provided details of Defendants’ record of prohibited transactions in lending over \$777,000 of Severance Plan assets to another Union-related benefit fund (the “Insurance Fund”) and multiple fiduciary violations in the administration of the Retirement Plans, the forced resignations of the trustees and administrator, and terms of an agreement with the DOL to, among other actions, locate missing participants, obtain repayment of the loan to the Insurance Fund, turn over specific day-to-day administrative functions of the Retirement Plans to an independent accounting firm, and amend the plan documents. The DOL Settlement Agreement did not indicate the independent accounting firm to be retained or the amount to be paid for such services nor provide information on whether any of the Severance Plan’s unlawful loan to the Insurance Fund caused reductions in the participants’ accounts or whether such losses had been or would be offset by amounts paid by the Severance Plan’s fiduciary liability insurer.

107. The Plan Administrator’s failure to provide Plaintiffs with the requested information prejudiced Plaintiffs. Because Defendants deprived Plaintiffs of the underlying

documents supporting the Form 5500 filings, Plaintiffs conducted substantial factual and legal research concerning the facts and issues addressed in the DOL Settlement Agreement and had no alternative but to bring a suit against Defendants to gain access to information necessary to pursue recovery of the excessive administrative expenses of the Retirement Plans and any losses to participants' accounts caused by the prohibited loan of \$777,000 to the Insurance Fund.

108. The Plan Administrator's failure to disclose the DOL Settlement Agreement caused Plaintiffs to incur a significant amount of attorneys' fees to obtain that information.

109. The Plan Administrator's failure to provide Plaintiffs with the DOL Settlement Agreement until filing a motion to dismiss caused Plaintiffs to further amend their complaint and incur even more attorneys' fees and costs. The DOL Settlement Agreement contained information that would have affected their original complaint had it been properly disclosed when Plaintiffs first requested it.

110. On information and belief, the Plan Administrator's failure to provide Plaintiffs with the information they requested was intentional and for the purpose of causing extra expense and designed to frustrate the filing of an appropriate complaint as well as delaying the resolution of the issues raised by Plaintiffs.

111. 29 U.S.C. § 1132(c)(1) provides for penalties of \$110 per day per violation for the Plan Administrator's failure to provide a copy of the 401(k) Plan's summary plan description and the DOL Settlement Agreement,

112. Accordingly, Plaintiffs demand, pursuant to 29 U.S.C. §§ 1024(b) and 1132(a)(1)(A) and (c)(1) penalties in the amount of \$110 per day commencing April 25, 2018 for nondisclosure of the 401(k) summary plan description through the date of its eventual disclosure

to plaintiffs and for nondisclosure of the DOL Settlement Agreement through the date it was filed in court.

WHEREFORE, Plaintiffs respectfully request a judgment against Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger as follows:

- (a) Certifying that the action may be maintained as a class action, certifying Plaintiffs as Class representatives, and designating Plaintiffs' counsel as counsel for the Class;
- (b) Finding that Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger violated 29 U.S.C. § 1024(b) by failing to provide Plaintiffs with the 401(k) Plan summary plan description and the DOL Settlement Agreement within 30 days of their written information request;
- (c) Finding that Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger violated 29 U.S.C. § 1024(b) by failing to provide every participant and beneficiary a copy of the 401(k) Plan summary plan description.
- (d) Awarding penalties to each Plaintiff and Class member at the rate of \$110 per day per violation;
- (e) Ordering Defendants Senese, Gibson, Diaz, Ford, Gore, and Meltreger to provide Plaintiffs with all information requested;
- (f) Awarding attorneys' fees and costs to Plaintiffs as permitted by law, including but not limited to 29 U.S.C. § 1132(g); and
- (g) Awarding any other relief that the Court deems just and proper.

J. Peter Dowd (ARDC# 0667552)
jpdowd@laboradvocates.com
George A. Luscombe III (ARDC# 6290097)
gluscombe@laboradvocates.com
Elizabeth L. Rowe (ARDC# 6316967)
erowe@laboradvocates.com
DOWD, BLOCH, BENNETT, CERVONE,
AUERBACH & YOKICH, LLP
8 S. Michigan Ave. – 19th Floor
Chicago, IL 60602
312-372-1361

Respectfully submitted,
/s/ Elizabeth L. Rowe
Elizabeth L. Rowe
An Attorney for the Plaintiffs

Dated: July 5, 2023

CERTIFICATE OF SERVICE

I, Elizabeth L. Rowe, an attorney, certify that I will cause to be served a copy of the attached *Third Amended Complaint* by electronically filing a copy using the Court's CM/ECF service on July 5, 2023, which will cause an electronic notification to be sent to the following parties:

Nancy G. Ross
Jed W. Glickstein
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606-4637

/s/ Elizabeth L. Rowe
Elizabeth L. Rowe
An Attorney for Plaintiffs

J. Peter Dowd (ARDC# 0667552)
jpdowd@laboradvocates.com
George A. Luscombe III (ARDC# 6290097)
gluscombe@laboradvocates.com
Elizabeth L. Rowe (ARDC# 6316967)
erowe@laboradvocates.com
DOWD, BLOCH, BENNETT, CERVONE,
AUERBACH & YOKICH, LLP
8 S. Michigan Ave. – 19th Floor
Chicago, IL 60602
312-372-1361