

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARTIN J. WALSH, Secretary of Labor, United States Department of Labor,	:	
	:	Civil Action File
Plaintiff,	:	
	:	No. 22-560
v.	:	
	:	COMPLAINT
VELO CORPORATION OF AMERICA, d/b/a QUIK TRAK, DANA DANOVA a.k.a. DANA DANOAA a.k.a. DANA HALADA, JOZEF HALADA, and the VELO CORPORATION OF AMERICA 401(K) PLAN,	:	
Defendants.	:	

Plaintiff Martin J. Walsh, Secretary of Labor, United States Department of Labor (the “Secretary”), alleges as follows:

PRELIMINARY STATEMENT

1. The Secretary brings this action under the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001, *et seq.*, against Velo Corporation of America, d/b/a Quik Trak (“Velo”), Jozef Halada (“Halada”), and Dana Danova a.k.a. Dana Danooa a.k.a. Dana Halada (“Danova”) seeking restitution and other appropriate relief for harms suffered by the Velo Corporation of America 401(k) Profit Sharing Plan (the “Plan”), which is joined as a defendant here solely to ensure that complete relief can be granted.

2. From approximately January 22, 2016 onward (the “relevant time period”), Defendants consistently withheld employee contributions from employee paychecks for the stated purpose of remitting this money to employees’ Plan accounts. Defendants, however, did not remit all employee contributions to the Plan, instead allowing them to remain unsegregated in Velo’s general operating account. In this same time period, Defendants also failed to ensure that all employer matching contributions for employees were made to the Plan. And Defendants

have failed to process requests for participant distributions from the Plan.

3. By the actions and omissions specified above, Defendants breached their duties of exclusive purpose, prudence, and loyalty, caused the Plan to enter into non-exempt prohibited transactions, and engaged in self-dealing.

4. Velo, Halada, and Danova had reason to know of the others' violations, but they did nothing to remedy them.

5. Because of these breaches, the Plan and its participants and beneficiaries have suffered significant losses, including lost opportunity costs, for which Defendants are jointly and severally responsible.

JURISDICTION AND VENUE

6. The Secretary brings this action under ERISA §§ 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(5), to redress violations and enforce Title I of ERISA.

7. This Court has subject matter jurisdiction over this action under ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and general federal question jurisdiction, 28 U.S.C. § 1331.

8. Venue with respect to this action lies in the United States District Court for the Southern District of New York, under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because Velo is located in the district of Manhattan, where Halada and Danova also reside and the Plan is administered, and the fiduciary breaches at issue in this Complaint occurred within this district.

PARTIES

9. Plaintiff the Secretary has authority to enforce Title I of ERISA by, among other things, filing and prosecuting claims against fiduciaries who breach their duties under Title I of ERISA. 29 U.S.C. §§ 1132(a)(2), (5).

10. During the relevant time period, defendant Velo was the sponsor of the Plan.

Certain Plan documents described Velo as the Plan administrator.

11. During the relevant time period, Velo had discretionary authority to administer and manage the Plan, and Velo is thus a fiduciary to the Plan under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). And, as a Plan administrator, Velo was also a fiduciary to the Plan under 29 C.F.R. § 2509.75-8, D-3.

12. Defendant Velo was also a party in interest to the Plan during the relevant time period under ERISA §§ 3(14)(A), (C), 29 U.S.C. §§ 1002(14)(A), (C), because it was a fiduciary of the Plan, and because it was the employer of participants in the Plan.

13. During the relevant time period, defendant Halada was Velo's owner. Halada managed the Plan's relationship with the third-party administrator and recordkeeper, and he signed certain documents as the Plan administrator

14. During the relevant time period, Halada exercised authority or control regarding management or disposition of Plan assets and had discretionary authority or responsibility over Plan administration. Halada is therefore a Plan fiduciary under ERISA § 3(21)(A). 29 U.S.C. § 1002(21)(A). And, as a Plan administrator, Halada was also a fiduciary to the Plan under 29 C.F.R. § 2509.75-8, D-3.

15. During the relevant time period, defendant Danova was the Plan trustee, signing various documents on behalf of the Plan. Danova was also married to Halada throughout the relevant time period.

16. During the relevant time period, Danova exercised authority or control respecting management or disposition of Plan assets and had discretionary authority or responsibility over Plan administration. Danova is therefore a Plan fiduciary under ERISA § 3(21)(A). 29 U.S.C. § 1002(21)(A). And, as a trustee, Danova is also a fiduciary to the Plan under 29 C.F.R. § 2509.75-

8, D-3.

17. During the relevant time period, the Plan was an employee benefit plan within the meaning of ERISA §§ 3(2) and (3), 29 U.S.C. §§ 1002(2) and (3). The Plan is joined as a defendant pursuant to Rule 19 of the Federal Rules of Civil Procedure solely to ensure that complete relief can be granted.

FACTUAL ALLEGATIONS

18. Velo is a provider of same-day courier and messenger services in Manhattan and throughout the Tri-State Area, located at 267 W 17th St, New York, NY 10011.

19. Velo is also the sponsor of the Plan, to which its employees contributed via weekly payroll deductions.

20. Velo stated in the Plan's summary plan description that it would make a matching contribution equal to 25% of employees' contributions per pay period up to a fixed percentage.

Defendants Have Failed to Remit All Employee Contributions to the Plan

21. During the relevant time period, Defendants regularly deducted employee contributions to the Plan from employees' weekly pay. For some time before the relevant time period, employee contributions were properly remitted to the Plan.

22. Beginning on or around January 22, 2016, Defendants stopped remitting all employee contributions to the Plan, although they continued to withhold contributions from employee pay.

23. To date, Defendants have failed to remit all of these withheld employee contributions.

24. These unremitted employee contributions were allowed to commingle with Velo's assets and Velo was able to use the funds for day-to-day operations, such as to pay creditors. This

benefited Halada and Danova.

Defendants Failed to Remit All Employer Contributions

25. During the relevant time period, the Plan's documents stated that Velo promised to make a matching contributions of a 25% portion of employee contributions to the Plan each pay period up to a fixed amount.

26. Velo's intention to make these matching contributions is also reflected in employees' pay records, where Velo reported that it was making these contributions.

27. Upon information and belief, not all of the employer contributions were made, but Defendants took no action to ensure that the Plan received all owed employer match during the relevant time period.

28. Velo remains in business as going concern, and such action would not have been futile.

Defendants Have Failed to Administer the Plan

29. During the relevant time period, Defendants failed to honor at least two requests for distributions by participants.

**FIRST CLAIM FOR RELIEF
(Against Velo, Halada, and Danova for Breaches of the Exclusive Purpose Requirement)**

30. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts and incorporates by reference the allegations in all prior paragraphs.

31. 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. It expressly forbids plan assets inuring to any employer's benefit. 29 U.S.C. § 1103(c)(1).

32. Withheld employee contributions became Plan assets as soon they could have reasonably been segregated them from Velo's general assets, and at most seven 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).

33. During the relevant time period, Velo, Halada, and Danova were responsible to but failed to remit all employee contributions to the Plan after they could have reasonably segregated the employee contributions from Velo's general assets.

34. By their actions and omissions, Velo, Halada, and Danova allowed Plan assets to inure to the direct benefit of Velo.

35. Velo, Halada, and Danova are therefore jointly and severally liable under ERISA § 409(a) for the harms suffered by the Plan and its participants and beneficiaries. 29 U.S.C. § 1109(a).

**SECOND CLAIM FOR RELIEF
(Against Velo, Halada, and Danova for Breaches of Fiduciary Duties for Failing to
Remit All Employee Contributions)**

36. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts and incorporates by reference the allegations in all prior paragraphs.

37. As Plan fiduciaries, Velo, Halada, and Danova had a duty under ERISA § 404(a)(1)(A)-(B) to act prudently and loyally in the sole interest of Plan participants and beneficiaries. 29 U.S.C. § 1104(a)(1)(A)-(B).

38. During the relevant time period, Velo, Halada, and Danova responsible to but failed to promptly segregate and remit all employee contributions to the Plan.

39. Instead, Velo, Halada, and Danova allowed Plan assets to commingle with Velo's general funds, which Velo could access for impermissible purposes such as paying everyday business expenses.

40. Diversion of employee contributions to Velo's general operating account was not

in the interest of Plan participants or beneficiaries and, therefore, was imprudent and disloyal.

41. 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 and monitor accounts and ensure that Velo did not convert Plan assets to its own use.

42. By their actions and omissions, Velo, Halada, and Danova:

a. Failed to discharge their duties to the Plan solely in the interests of Plan participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable Plan administration expenses, in violation of ERISA § 404(a)(1)(A); and

b. 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 to conduct 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)(A)-(B).

43. Velo, Halada, and Danova are therefore jointly and severally liable under ERISA § 409(a) for harms suffered by the Plan and its participants and beneficiaries. 29 U.S.C. § 1109(a).

THIRD CLAIM FOR RELIEF
(Against Velo, Halada, and Danova for Breaches of Fiduciary Duties for Failing to Ensure the Plan Received Employer Matching Contributions)

44. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts and incorporates by reference the allegations in all prior paragraphs.

45. As Plan fiduciaries, Velo, Halada, and Danova had a duty under ERISA § 404(a)(1)(A)-(B) to act prudently and loyally in the sole interest of Plan participants and beneficiaries. 29 U.S.C. § 1104(a)(1)(A)-(B).

46. From January 22, 2016 and on an ongoing basis, Velo failed to make all required

employer match contributions to the plan.

47. From January 22, 2016 and on an ongoing basis, Velo, Halada, and Danova were responsible to but failed to ensure that the Plan received the employer match contributions owed.

48. Failure to ensure that the Plan received the owed employer match contributions was imprudent and disloyal because it was not in the interest of Plan participants or beneficiaries.

49. A prudent person acting in a fiduciary capacity in similar circumstances to those faced by Defendants during the relevant time period would have taken reasonable steps to enforce the terms of the Plan and ensure that the Plan received all overdue contributions.

50. These efforts would not have been futile, as Velo had the ability to make the overdue payments.

51. By their actions and omissions, Velo, Halada, and Danova:

a. Failed to discharge their duties to the Plan solely in the interests of Plan participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable Plan administration expenses, in violation of ERISA § 404(a)(1)(A); and

b. 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 to conduct 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)(A)-(B).

52. Velo, Halada, and Danova are therefore jointly and severally liable under ERISA § 409(a) for the harms suffered by the Plan and its participants and beneficiaries. 29 U.S.C. § 1109(a).

FOURTH CLAIM FOR RELIEF
(Against Velo, Halada, and Danova for Prohibited Transactions)

53. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts and incorporates by reference the allegations in all prior paragraphs.

54. ERISA § 406(a)(1)(D) prohibits fiduciaries from transferring Plan assets to a “party in interest.” 29 U.S.C. § 1106(a)(1)(D).

55. Velo, as Plan sponsor and a fiduciary, was a “party in interest” to the Plan. ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

56. During the relevant time period, Velo, Halada, and Danova were responsible to but failed to segregate and remit all employee contributions and allowed Velo to commingle Plan assets with general employer assets.

57. By their actions and omissions, Velo, Halada, and Danova caused the Plan to enter into transactions that they knew or should have known constituted prohibited transfers of Plan assets to a party in interest in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

58. Velo, Halada, and Danova are therefore jointly and severally liable under ERISA § 409(a) for the harms suffered by the Plan and its participants. 29 U.S.C. § 1109(a).

FIFTH CLAIM FOR RELIEF
(Against Velo, Halada, and Danova for Self-Dealing)

59. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts and incorporates by reference the allegations in paragraphs 1-58 inclusive.

60. ERISA § 406(b)(1) prohibits Plan fiduciaries, such as Velo, Halada, and Danova, from dealing with Plan assets in their “own interest” or for their “own account.” 29 U.S.C. § 1106(b)(1).

61. ERISA § 406(b)(2) prohibits Plan fiduciaries, such as Velo, Halada, and Danova,

from acting in any transaction involving the 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).

62. During the relevant time period, Velo, Halada, and Danova allowed Plan assets to remain in Velo's general operating account, which benefitted Velo's business interests, and therefore Halada's personal interests (as owner of Velo) and Danova's personal interests (as Halada's spouse), at the expense of the Plan and its participants and beneficiaries, who thought their employee contributions were funding retirement accounts.

63. By their actions and omissions, Velo, Halada, and Danova engaged in prohibited self-dealing in violation of ERISA § 404(b)(1) and (2), 29 U.S.C. § 1106(b)(1)-(2).

64. Velo, Halada, and Danova are therefore jointly and severally liable under ERISA § 409(a) for the harms suffered by the Plan and its participants and beneficiaries. 29 U.S.C. § 1109(a).

SIXTH CLAIM FOR RELIEF
(Against Velo, Halada, and Danova for Breaches of Fiduciary Duties for Failing to Administer the Plan)

65. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts and incorporates by reference the allegations in all prior paragraphs.

66. As Plan fiduciaries, Velo, Halada, and Danova had a duty under ERISA § 404(a)(1)(A)-(B) to act prudently and loyally in the sole interest of Plan participants and beneficiaries. 29 U.S.C. § 1104(a)(1)(A)-(B).

67. During the relevant time period, participants made at least two requests for Plan distributions, which Velo, Halada, and Danova did not act upon.

68. A prudent person acting in a fiduciary capacity in similar circumstances to those faced by Defendants during the relevant time period would promptly act to process requests for

distributions, such actions being in the interest of the participants.

69. By their actions and omissions, Velo, Halada, and Danova:

a. Failed to discharge their duties to the Plan solely in the interests of Plan participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable Plan administration expenses, in violation of ERISA § 404(a)(1)(A); and

b. 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 to conduct 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)(A)-(B).

70. Velo, Halada, and Danova are therefore jointly and severally liable under ERISA § 409(a) for harms suffered by the Plan and its participants and beneficiaries. 29 U.S.C. § 1109(a).

**SEVENTH CLAIM FOR RELIEF
(Against Velo, Halada, and Danova Co-Fiduciaries for the Others' Breaches)**

71. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts and incorporates by reference the allegations of all prior paragraphs.

72. Velo, Halada, and Danova neglected the Plan's interests by failing to make reasonable efforts to protect the Plan from losses despite each knowing that the others had violated their fiduciary responsibility by not timely remitting all employee contributions or employer matches and not processing distribution requests.

73. Velo, Halada, and Danova are therefore liable as co-fiduciaries under ERISA § 405, 29 U.S.C. § 1105, for the others' breaches alleged in the previous six claims for relief.

PRAYER FOR RELIEF

WHEREFORE, the Secretary requests that the Court grant the following relief:

1. Ordering Velo, Halada, and Danova jointly and severally to restore all losses, plus interest and/or lost opportunity earnings, incurred by the Plan as a result of their violations of ERISA;
2. Ordering that any money currently in Halada and Danova's accounts in the Plan be offered to satisfy in part Defendants' obligation to restore the unremitted employee contributions;
3. Removing Velo, Halada, and Danova as fiduciaries to the Plan;
4. Permanently enjoining Velo, Halada, and Danova from serving as fiduciaries or service providers to any ERISA-covered plan;
5. Appointing an independent fiduciary for the Plan with plenary authority and control over the Plan, including but not limited to the authority to calculate losses, marshal assets on behalf of the Plan, pursue claims on behalf of the Plan, and receive and distribute any restitution paid pursuant to the judgment in this case;
6. Ordering Velo, Halada, and Danova to pay the fees charged and costs incurred by the independent fiduciary or its agents in administering the Plan and its assets;
7. Ordering Velo, Halada, and Danova, as well as their agents, employees, service providers, banks, accountants, and attorneys, to preserve and provide the Secretary all of the books, documents, and records relating to the finances and administration of Velo and the Plan; and
8. Granting such other relief as may be equitable, just, and proper.

DATED:
New York, New York

Respectfully submitted,

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