

18 MAG 4668

Approved: Michael Neff  
MICHAEL D. NEFF  
Assistant United States Attorney

Before: THE HONORABLE SARAH NETBURN  
United States Magistrate Judge  
Southern District of New York

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: **SEALED COMPLAINT**  
UNITED STATES OF AMERICA :  
:   
- v. - : Violations of  
: 18 U.S.C. §§ 371, 1001,  
: 1027, and 2; 29 U.S.C. § 501  
SALVATORE ARMAO and :  
KAREN AUER, : COUNTY OF OFFENSE:  
: NEW YORK  
Defendants. :  
:   
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SOUTHERN DISTRICT OF NEW YORK, ss.:

TIMOTHY A. SCHMIDT, being duly sworn, deposes and says that he is a Special Agent with the United States Department of Labor (the "DOL"), and charges as follows:

Count One  
(Embezzlement from a Labor Organization)

1. From at least in or about 2012 through in or about January 2014, in the Southern District of New York and elsewhere, SALVATORE ARMAO and KAREN AUER, the defendants, while employed, directly and indirectly, by a labor organization (the "Union"), willfully and knowingly embezzled, stole, unlawfully abstracted and converted to their own use and the use of another, to wit, the president of the Union (the "President-Trustee"), moneys, funds, securities, property, and other assets of the Union of which the President-Trustee was an officer, and by which he was employed, directly and indirectly, and aided and abetted the same, to wit, ARMAO and AUER, accountants whose firm was retained by the Union to perform accounting and audit functions, falsely classified and listed as loans on DOL filings funds that the President-Trustee had used to pay for personal expenses that were not for the benefit of the Union.

(Title 29, United States Code, Section 501(c) and  
Title 18, United States Code, Section 2.)

Count Two

(Conspiracy to Make False Statements In Employee Benefit Plan  
Records and Reports)

2. From at least in or about 2012 up to and including in or about 2014, in the Southern District of New York and elsewhere, SALVATORE ARMAO and KAREN AUER, the defendants, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit an offense against the United States, to wit, to make false statements and conceal facts in relation to documents required by the Employee Retirement Income Security Act of 1974 ("ERISA"), in violation of Title 18, United States Code, Section 1027.

3. It was a part and an object of the conspiracy that SALVATORE ARMAO and KAREN AUER, the defendants, and others known and unknown, in documents required by Title I of ERISA to be published and to be kept as part of the records of an employee welfare benefit plan, would and did knowingly and willfully make false statements and representations of fact, knowing the same to be false, and would and did knowingly conceal, cover up and fail to disclose facts the disclosure of which were necessary to verify, explain, clarify and check for accuracy and completeness of Forms 5500, Annual Return/Report of Employee Benefit Plan, a report required by ERISA to be published.

Overt Acts

4. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about January 27, 2014, SALVATORE ARMAO, the defendant, who is the managing partner of a particular accounting firm based on Long Island, New York (the "Accounting Firm"), had a conversation by phone with the President-Trustee, who served as both the president of the Union and a trustee of a related employee welfare benefit plan (the "Plan").

b. Shortly after this conversation, KAREN AUER, the defendant, directed an accountant she supervised at the Accounting Firm falsely to report on the Plan's fiscal year

("FY") 2012 Form 5500, Annual Return/Report of Employee Benefit Plan, that the Plan had not engaged in a "prohibited transaction."

c. On or about January 30, 2014, ARMAO caused the Accounting Firm to file the Plan's FY 2012 Form 5500 via electronic submission through contiguous waters within the Southern District of New York to a location outside of New York State.

(Title 18, United States Code, Section 371.)

Count Three

(False Statements In Employee Benefit Plan Records and Reports)

5. From at least in or about 2012 up to and including in or about January 2014, in the Southern District of New York and elsewhere, SALVATORE ARMAO and KAREN AUER, the defendants, in documents required by Title I of ERISA to be kept as part of the records of an employee welfare benefit plan, made false statements and representations of fact, knowing the same to be false, and knowingly concealed, covered up and failed to disclose facts the disclosure of which were necessary to verify, explain, clarify and check for accuracy and completeness of Forms 5500, Annual Return/Report of Employee Benefit Plan, a report required by ERISA to be published, to wit, ARMAO and AUER falsely reported in the Plan's FY 2012 Form 5500, which was filed with the DOL, that the Plan had not engaged in "prohibited transactions," and ARMAO made the same false statement for the FY 2010 and FY 2011 Forms 5500 as well.

(Title 18, United States Code, Sections 1027 & 2.)

Count Four

(False Statements)

6. On or about October 7, 2015, in the Southern District of New York, KAREN AUER, the defendant, willfully and knowingly, in a matter within the jurisdiction of the executive branch of the Government of the United States, falsified, concealed, and covered up by trick, scheme, and device a material fact, and made a materially false, fictitious, and fraudulent statement and representation, and made and used a false writing and document knowing the same to contain a materially false, fictitious, and fraudulent statement and

entry, to wit, AUER made false statements to a Special Agent of the DOL, in New York, New York, including that AUER was unaware that Form 5500 contains a question about "prohibited transactions" and that a "prohibited transaction" must be reported on Form 5500, which is filed with the DOL.

(Title 18, United States Code, Section 1001.)

The bases for my knowledge and for the foregoing charge are, in part and among other things, as follows:

7. I am a Special Agent with the DOL. I have been a DOL Special Agent for more than two years and I am assigned to the Office of Inspector General Office of Investigations--Labor Racketeering and Fraud. As part of my work at the DOL, I have received training regarding employee welfare benefit plans, labor unions, and fraud and other crimes relating to such plans and unions. I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, including my examination of reports and records, interviews I have conducted, and conversations with other law enforcement officers and other individuals. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, unless noted otherwise.

#### OVERVIEW

8. Based on my knowledge, training, experience, and conversations with others, I am aware that a primary purpose of ERISA is to protect and promote the interests of participants in employee benefit plans and their beneficiaries, including by (a) requiring the disclosure and reporting of accurate financial information, and (b) establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans. Auditors and accountants serve a critical role in ensuring the accuracy of various forms filed with governmental entities. These forms help identify fraud and other misconduct, thereby helping to ensure that ERISA plans serve their intended beneficiaries, not other individuals and entities.

9. In this case, however, the President-Trustee - who was both the President of the Union and a trustee of the

related Plan - repeatedly engaged in self-dealing to fund a lavish lifestyle by using assets that were intended for the benefit of others.<sup>1</sup> As discussed further below, from at least in or about 2010 through in or about 2014, the President-Trustee used Union funds to pay for personal expenses, including payments for spa treatments, a gym membership, a second car, medical charges, unrelated union dues for an actors' union, purchases from retail establishments, payments to personal credit cards, and ATM cash withdrawals. The President-Trustee was able to do so because he controlled both the Union and the Plan. He used his Union credit card to pay for personal expenses and then "reimbursed" the Union with funds from the Plan. In total, the President-Trustee embezzled at least approximately \$101,000 from the Union over approximately three years.

10. As discussed below, in order to facilitate and conceal his embezzlement, the President-Trustee conspired with his accountants: SALVATORE ARMAO, the defendant, who is managing partner of the Accounting Firm, which specializes in, among other things, auditing labor organizations and employee benefit plans, and KAREN AUER, the defendant, a principal of the Accounting Firm who worked with ARMAO.

11. In furtherance of the embezzlement scheme, SALVATORE ARMAO and KAREN AUER, the defendants, falsely classified as "loans"--in accounting records and on DOL filings for the Union--personal expenses for which the President-Trustee paid using Union and Plan funds. ARMAO falsely classified the President-Trustee's personal expenses as loans for at least five years, while AUER did so for at least one year.

12. To facilitate and conceal the President-Trustee's embezzlement from the Union, SALVATORE ARMAO and KAREN AUER, the defendants, also provided false information on DOL filings for the Plan. Specifically, ARMAO and AUER falsely reported that there were no "prohibited transactions." These false filings concealed from DOL the President-Trustee's prohibited transfers of tens of thousands of dollars from the Plan to the Union which, in turn, facilitated and concealed the President-Trustee's use of Union funds to pay his personal expenses.

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<sup>1</sup> From my review of a trust agreement establishing the Plan, I have learned that the Plan was established pursuant to a collective bargaining agreement to provide, among other things, medical, surgical, and hospital care or benefits to Union members.

13. In connection with the DOL's investigation of the embezzlement scheme, a Special Agent of the DOL interviewed KAREN AUER, the defendant, on or about October 7, 2015. During this interview, AUER lied to the Special Agent about a false response on the DOL Form 5500 for FY 2012 that AUER and co-defendant SALVATORE ARMAO caused to be made concerning the prohibited transactions.

#### **THE DEFENDANTS**

14. SALVATORE ARMAO, the defendant, is managing partner and founder of the Accounting Firm.<sup>2</sup> For approximately 25 years, ARMAO has specialized in accounting and auditing of labor unions and employee benefit plans. ARMAO is also, among other designations, a Certified Public Accountant and a Certified Fraud Examiner. ARMAO has previously been a member of the Employee Benefit Plans Committee of the American Institute of Certified Public Accountants.

15. KAREN AUER, the defendant, has been employed as an accountant at the Accounting Firm since in or about 1998 where she specializes in, among other things, auditing employee benefit plans. AUER has been a principal at the Accounting Firm since in or about July 2013.

16. From at least in or about 2005 through in or about early 2014, the Accounting Firm was retained by both the Union and the Plan to perform accounting and audit functions. Multiple retention letters with the Union and Plan bear the name and signature of SALVATORE ARMAO, the defendant, on behalf of the Accounting Firm.

#### **LEGAL FRAMEWORK**

17. From my knowledge, training, and experience, and from speaking with an investigator with the DOL's Employee Benefits Security Administration ("DOL Investigator-1"), I have learned the following:

a. ERISA is a federal law that establishes certain requirements for, among other things, employee welfare benefit plans such as the Plan. An "employee welfare benefit

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<sup>2</sup> The Accounting Firm was dissolved in or about July 2013 when ARMAO began operating a successor accounting firm. In this Complaint, the Accounting Firm refers to both the initial firm and, beginning July 2013, the successor firm operated by ARMAO.

plan" is defined under ERISA to include any plan, fund, or program established or maintained by an employee organization, such as a labor union, for the purpose of providing for its participants or their beneficiaries, among other things, medical, surgical, or hospital care or benefits. ERISA was enacted to protect the interests of employee welfare benefit plan participants and their beneficiaries by, among other things, requiring the disclosure of financial and other information concerning the plan to beneficiaries.

b. Among ERISA's disclosure requirements, and to ensure that employee welfare benefit plans are operating in the best interests of the beneficiaries, employee welfare benefit plans must generally file, on an annual basis, a Form 5500, which is an "Annual Return/Report of Employee Benefit Plan," along with certain schedules. One of these schedules, Schedule H (entitled "Financial Information"), includes certain "Compliance Questions" relating to plan finances. Forms 5500 must be filed by the last day of the seventh calendar month after the end of the plan's fiscal year unless granted an extension.

c. One of the compliance questions on Schedule H to Form 5500 is: "Were there any nonexempt transactions with any party-in-interest?" This question - the "Prohibited Transaction Question" - requires disclosure of many (but not all) instances of self-dealing between a plan and either a fiduciary or a related entity such as a labor union.<sup>3</sup> For example, ERISA generally prohibits a plan fiduciary, such as the President-Trustee, from transferring plan assets to a party-in-interest, and from lending money to a party-in-interest. There is no monetary threshold for a prohibited transaction.

d. However, certain transactions between an employee welfare benefit plan and a party-in-interest are exempted from this prohibition, such as payments for administrative expenses needed to operate the plan, so long as only *reasonable* compensation is paid (e.g., reasonable compensation for office space shared by a plan and a union). Payment of amounts exceeding reasonable compensation for such administrative expenses constitutes a prohibited transaction that must be reported on Schedule H to Form 5500.

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<sup>3</sup> The term "party-in-interest" includes a labor union any of whose members is covered by the plan. A nonexempt transaction - which includes transfers of money - between a plan and a party-in-interest is known as a "prohibited transaction."

e. As discussed further below, a "yes" answer to the Prohibited Transaction Question triggers a requirement to pay taxes on the prohibited transaction and to file an additional form with the Internal Revenue Service ("IRS"), IRS Form 5330.

f. In addition to filing annual Forms 5500 with the DOL, certain employee benefit plans, including the Plan, are required to file annually with the IRS a Form 990, "Return of Organization Exempt From Income Tax." The Form 990 requires the organization to report, among other things, whether the plan was "related to any tax-exempt or taxable entity" and, if so, to file a schedule indicating, among other things, whether the organization engaged in any loans to or for the benefit of such a related organization, and listing such loans.

18. From my conversations with an investigator with the DOL's Office of Labor-Management Standards ("DOL Investigator-2"), and my knowledge, training, and experience, I have learned the following:

a. The Labor-Management Reporting and Disclosure Act ("LMRDA") is a federal law that, among other things, contains disclosure requirements for labor organizations or unions. In general, every union covered by the LMRDA must adopt and file with the DOL a constitution and bylaws along with an initial report that provides certain information regarding the organization's structure, practice, and procedures.

b. Additionally, each covered union is required to file an annual financial report, which discloses the union's financial condition for the preceding year, including information concerning the union's assets, liabilities, receipts, and disbursements. For unions with yearly receipts less than \$250,000 but \$10,000 or more, such as the Union, the annual financial report is known as the "Form LM-3."

19. From my review of the Constitution and Bylaws of the Union (the "Union Constitution"), dated August 12, 1997, I have learned that the Union Constitution provides, among other things, that the Union may extend loans only if approved by an "Executive Board" of the Union, consisting of five Union members, and only "to the extent provided by law." Pursuant to Title 29, United States Code, Section 503, it is a crime for a labor union, such as the Union, willfully to lend an officer or employee more than a cumulative total of \$2,000.



**THE EMBEZZLEMENT AND FALSE DOL FILINGS SCHEME**

20. From my conversations with DOL Investigator-2, my review of a report prepared by DOL Investigator-2 - which was based, among other things, upon the Union's DOL filings, records for the only bank account maintained by the Union (the "Union Bank Account"), and records for a Union credit card (the "Union Credit Card") - and my knowledge, training, and experience, I have learned the following:

a. From at least in or about 2011 through at least in or about January 2014, the President-Trustee used at least approximately \$101,000 of Union funds to pay for personal expenses. These personal expenses included payments for spa treatments, a gym membership, a second car, medical charges, unrelated union dues for an actors' union, purchases from retail establishments, payments to the President-Trustee's personal credit cards, and ATM cash withdrawals. Some of the personal expenses that the President-Trustee charged to the Union Credit Card were incurred in New York, New York between at least in or about 2012 and in or about 2014.

b. The Accounting Firm audited the Union and prepared the Union's LM-3 for each of the fiscal years ending March 31, 2009 (FY 2009) through March 31, 2013 (FY 2013).<sup>4</sup>

c. For each year except FY 2012, the Union's LM-3 listed as a "loan" to the President-Trustee the Union funds that the President-Trustee was using for his own personal expenses. The Union's LM-3s further stated, in each year except FY 2012, that the loan would be repaid within one year.<sup>5</sup> The

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<sup>4</sup> In this Complaint, as was the convention used by the Accounting Firm, the Union's fiscal year, which ends on March 31, will be referred to by the calendar year in which it ends while the Plan's fiscal year, which begins on July 1, will be referred to by the calendar year in which it begins.

<sup>5</sup> From speaking with accountants at the Accounting Firm, I have learned that in FY 2012 the Accounting Firm did not, prior to filing the LM-3, perform an analysis to calculate the personal expenses that the President-Trustee paid for with Union funds that year. Rather, the Accounting Firm relied solely upon the classification of expenses performed by the Union, which did not reflect additional personal expenditures that the President-Trustee had made that year using Union funds. The Accounting Firm later conducted an audit of the Union for FY 2012 and

amounts of these purported loans, as listed on the Union's LM-3s or worksheets of the Accounting Firm, were \$450 in FY 2009; \$21,384 in FY 2010; \$46,871 in FY 2011; \$67,415 in FY 2012; and \$97,888 in FY 2013.

d. The Union Bank Account records show that, from at least FY 2011 through FY 2014, the President-Trustee made no payments or transfers to the Union; *i.e.*, he did not repay the Union for these purported "loans."

21. From interviews with an accountant employed by the Accounting Firm (the "Junior Accountant"),<sup>6</sup> and from records provided by the Accounting Firm, I have learned the following:

a. In or about January 2012, shortly after graduating from college, the Junior Accountant began working full-time at the Accounting Firm as a junior accountant.

b. The Junior Accountant participated as a junior accountant in the audits of the Union for FY 2012 and FY 2013 and audits of the Plan for FY 2011 and FY 2012. The Junior Accountant's immediate supervisor for the Union's FY 2013 audit and the Plan's FY 2012 audit was KAREN AUER, the defendant. AUER, in turn, reported to SALVATORE ARMAO, the defendant, who was the partner assigned to the account.

c. In assisting in the audits of the Union for FY 2012 and FY 2013, the Junior Accountant observed that Union funds were used to pay personal expenses of the President-Trustee. The Junior Accountant and another more senior accountant also working on the Union audit ("Accountant-1") discussed with ARMAO that the President-Trustee was paying the President-Trustee's personal expenses with Union funds. ARMAO directed the Junior Accountant and Accountant-1 improperly to

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determined that the President-Trustee paid, from Union funds, an additional net total of approximately \$20,544 in personal expenses which, together with the \$46,871 outstanding from the prior year, sums to \$67,415.

<sup>6</sup> The Junior Accountant has entered into an agreement with the Government in which the Government has agreed not to prosecute him for his role in the embezzlement and DOL false filings scheme in exchange for his cooperation. Information from the Junior Accountant is corroborated by, among other things, emails, records from the Accounting Firm, and information from other witnesses.

record these personal expenses as a "loan" to the President-Trustee on the Union's LM-3.

22. From my review of emails provided by the Accounting Firm, I have learned that SALVATORE ARMAO and KAREN AUER, the defendants, discussed the President-Trustee's use of Union and Plan funds to pay personal expenses. For example:

a. On or about September 24, 2013, the Junior Accountant sent ARMAO an email with the subject "[Union]" and stating "[s]ee attached for personal expenses from [the Union]."

b. On or about October 22, 2013, AUER forwarded via email to ARMAO an Excel spreadsheet titled "[Union] Prohibited Transaction" and stating "[The Junior Accountant] had sent you the attached a few weeks ago. We need to go over when we get a chance."

c. On or about October 31, 2013, AUER emailed ARMAO with the subject the "[Plan]". In this email, AUER asked ARMAO "[a]re we going to be able to file the [Form] 990 (due 11/15/13) for them or should we put on extension? They have the whole situation with the personal expenses and the Union. Let me know." ARMAO replied, via email, "Extension."

d. After receiving this response, AUER sent an email to the Junior Accountant (also on or about October 31, 2013) asking the Junior Accountant to prepare an extension to file the Plan's Form 990 and noting "Sal [ARMAO] needs to still go over the expenses with the [President-Trustee]."

e. On or about November 12, 2013, AUER emailed ARMAO, asking if ARMAO was going to speak to the President-Trustee "about all the personal expenses going through the [Plan] and Union." ARMAO replied, in part, "Ok. I will get him in here again. I will have [an administrative assistant] schedule a lunch meeting with me and him alone."<sup>7</sup>

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<sup>7</sup> Based on my review of records, reports, and my interviews of several individuals, some of whom worked at the Accounting Firm, I have learned, among other things, that on several occasions, including one in June 2013, SALVATORE ARMAO, the defendant, urged the President-Trustee to reduce and/or eliminate his personal expenses, and that KAREN AUER, the defendant, was present for at least one of these meetings. Another of these meetings - which involved ARMAO, the President-

f. From these emails, and based upon my training, experience, and knowledge of this investigation, I believe that the Form 990 extension discussed by ARMAO and AUER relating to "personal expenses and the Union" - which was for the Plan, not the Union - shows that ARMAO and AUER knew that the prohibited transfers from the Plan to the Union were designed to conceal and facilitate the President-Trustee's embezzlement from the Union.<sup>8</sup>

23. Based on, among other things, my conversations with DOL Investigator-2, my review of documents obtained from a judicially authorized search of the offices of the Union, and interviews of personnel at the Accounting Firm, I have learned that no loan agreements exist for the President-Trustee's personal expenses; no Union Executive Board meeting minutes exist relating to such personal expenses; and the President-Trustee never repaid the Union or the Plan for any of these personal expenses.

24. From my review of records provided by the Accounting Firm, which conducted yearly audits of the Plan for at least FY 2010 through FY 2012, I have learned the following:

a. From FY 2010 through FY 2012, the Plan transferred funds to the Union. As described in the Plan's general ledger, the purpose of these transfers was purportedly to reimburse the Union for shared administrative expenses paid by the Union, such as rent for shared office space. The amounts transferred by the Plan to the Union for such purported shared expenses were \$94,000 in FY 2010; \$69,000 in FY 2011; and \$110,000 in FY 2012.

b. After reviewing records from the Union and the Plan, the Accounting Firm determined that the Plan substantially overpaid the Union for purported shared expenses. Given the Accounting Firm's determination that the Plan and the Union should have shared expenses 50-50, the Plan's actual

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Trustee, a lawyer, and the Union's bookkeeper - occurred at a law office in New York, New York.

<sup>8</sup> From my review of the Plan's Forms 990 filed with the IRS for FY 2009 through FY 2012, I have learned that these returns all report either no loans to "interested persons" or a loan of only \$235. Nevertheless, these forms list, under "other assets," much larger amounts "due from [an] affiliated organization."

portion of shared expenses should have been \$76,512 in FY 2010 and \$62,039 in FY 2012. In FY 2011, the Plan's actual portion of shared expenses, as calculated by the Accounting Firm, was \$69,265.

c. As a result of these overpayments by the Plan to the Union in FY 2010 and FY 2012, the amount owed to the Plan by the Union grew increasingly large. The Plan began FY 2010 with a balance due from the Union of \$27,741 from the previous fiscal year. This balance was the result of a series of prohibited transfers from the Plan to the Union beginning in FY 2005. By the end of FY 2010, this balance had grown to \$43,729. By the end of FY 2012, this balance had grown to \$89,925.

d. From my review of the Plan's Forms 5500 filed by the Accounting Firm with DOL for FY 2009 through FY 2012, I have learned that, despite the prohibited transactions in each of those years, the Forms falsely stated "no" in response to the Prohibited Transaction Question.<sup>9</sup>

25. From interviews with the Junior Accountant, from records provided by the Accounting Firm, and from telephone and mail records, I have learned the following:

a. The Plan's FY 2012 Form 5500 was not due until January 31, 2014. In or about late August or early September 2013, the Junior Accountant prepared a draft of the Plan's FY 2012 Form 5500. The Junior Accountant's draft of the Plan's FY 2012 Form 5500 answered "no" to the Prohibited Transaction Question, as had been done in FY 2009 through FY 2011. The Junior Accountant provided the form to KAREN AUER, the defendant, for her review.

b. In or about September 2013, AUER called the Junior Accountant to her office along with another accountant then employed by the Accounting Firm ("Accountant-2"). During this meeting, AUER discussed with Accountant-2 and the Junior Accountant, among other things, the requirement to report prohibited transactions on Form 5500. AUER told the Junior Accountant that she had included Accountant-2 in this meeting

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<sup>9</sup> While the Plan's financial statements in each of those years indicate an "amount due" to the Plan from the Union, there is no indication that a prohibited transaction occurred. The amount due is included on Forms 5500 only as a receivable in the generic category "other."

because Accountant-2 had previously worked on auditing a pension fund which had reported a prohibited transaction on its Form 5500. During this meeting, AUER directed the Junior Accountant to change to "yes" the response to the Prohibited Transaction Question on the Plan's FY 2012 Form 5500. An invoice from the Accounting Firm to the Plan includes an entry for a meeting on or about September 23, 2013 between the Junior Accountant, Accountant-2, AUER, and SALVATORE ARMAO, the defendant, "regarding prohibitive [sic] transactions."

c. In or about September 2013, the Junior Accountant made the change directed by AUER to the Plan's FY 2012 Form 5500 - answering "yes" to the Prohibited Transaction Question and listing the amount of the prohibited transfer from the Plan to the Union - and returned the revised form to AUER.

d. On or about January 24, 2014, the Accounting Firm sent the President-Trustee an IRS Form 5330 (the "Draft Form 5330"), which the Accounting Firm had filled out. IRS Form 5330 is a form whose filing is triggered by a "yes" answer on the Prohibited Transaction Question. The Draft Form 5330 indicated that the President-Trustee owed \$7,194.15 to the IRS because he had engaged in prohibited transactions of \$47,961. The Accounting Firm provided "instructions" for how to file the IRS Form 5330, which noted that the President-Trustee needed to mail a check to the IRS for \$7,194.15 by January 31, 2014.<sup>10</sup>

e. On or about January 27, 2014, the President-Trustee received the Draft Form 5330 from the Accounting Firm.

f. Based on, among other things, my review of call records, I have learned that, on the same day that he received the Draft Form 5330 (January 27, 2014), the President-Trustee repeatedly called ARMAO, and he spoke with ARMAO by phone.

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<sup>10</sup> On the same day - January 24, 2014 - the Accounting Firm sent a "Management Letter" to the Plan stating, among other things, that there was not supporting documentation for the Plan's payments to the Union for purported administrative expenses. The Management Letter also cautioned that "the [Plan] cannot reimburse [the Union] for meals, pleasure, or any other personal expenses incurred by its officers." The Management Letter was sent on the same day that the Accounting Firm sent the President-Trustee the Draft Form 5330.

g. Shortly after ARMAO's phone conversation with the President-Trustee, AUER came to the Junior Accountant's cubicle, handed the Plan's FY 2012 Form 5500 back to the Junior Accountant, and directed the Junior Accountant to change to "no" the response to the Prohibited Transaction Question. AUER did not provide any explanation for this change. This was the only change AUER directed the Junior Accountant to make. AUER said that, after changing the answer to the Prohibited Transaction Question, the Junior Accountant should reprint the form and return it to AUER. The Junior Accountant did as AUER directed.

26. From my review of "Form 5500 E-File Docket" sheets<sup>11</sup> maintained by the Accounting Firm, I have learned the following, among other things:

a. For each of FY 2010 through FY 2012, SALVATORE ARMAO, the defendant, is listed on these docket sheets as the partner assigned to the Plan and each docket sheet contains ARMAO's initials indicating that ARMAO conducted a "partner review" of the Plan's Form 5500.

b. The docket sheet for the Plan's FY 2012 Form 5500 contains the initials of KAREN AUER, the defendant, indicating, among other things, that AUER reviewed the Plan's FY 2012 Form 5500 on or about January 23, 2014, at which point I believe the Prohibited Transaction Question was checked "yes", as corroborated by, among other things, the fact that the Accounting Firm sent the corresponding Form 5330 to the President-Trustee on or about January 24, 2014.

c. The docket sheet for the Plan's FY 2012 Form 5500 also contains AUER's initials on or about January 30, 2014,

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<sup>11</sup> Based, among other things, on records provided by the Accounting Firm and interviews with the Junior Accountant, I have learned that the Accounting Firm maintained a "Docket" sheet, with various blank spaces. For instance, there were blank spaces for the particular client (e.g., the Union or the Plan), the form at issue (e.g., "5500" or "5330"), the date the form was due to be filed, and the Partner in charge of that account. There were also a number of steps that needed to be completed for each filing, such as the preparation of the form, the review of the form, the partner's review of the form, and details related to mailing. For each of these steps, there were blanks to be filled in with the initials of the particular employee who conducted that step, along with the date on which they did so.

indicating that AUER approved the form as "Ready to Release (Preparer Sign-Off)" - this time, with a "no" answer to the Prohibited Transaction Question.

27. DOL records indicate that on or about January 30, 2014, the Accounting Firm, which is located on Long Island, New York, filed the Plan's FY 2012 Form 5500 via electronic submission to a location outside of New York State. That electronic submission traveled through contiguous waters within the Southern District of New York.<sup>12</sup> The filed version of the Plan's FY 2012 Form 5500 included the "no" answer to the Prohibited Transaction Question. An IRS Form 5330 was not filed.

#### **ARMAO'S ADMISSIONS**

28. From my review of the Plan's FY 2013 Form 5500 and a letter dated February 3, 2015 from SALVATORE ARMAO, the defendant, to the DOL (the "Armao Letter"), as well as my conversation with another investigator with the DOL ("DOL Investigator-3"), and my review of a report prepared by DOL Investigator-3, I have learned the following:

a. The Plan's FY 2013 Form 5500 reported that the Plan had ceased using the services of the Accounting Firm that year "due to the auditors' report not being delivered to the trustees in a timely fashion as well as the [Plan's] desire to control costs by paying more affordable fees."

b. In the Armao Letter, ARMAO advised the DOL that the explanation in the Plan's FY 2013 Form 5500 for the Plan's termination of the Accounting Firm was "not correct" but rather "[t]he reason my firm was terminated . . . was mainly due to our unwillingness to prepare the [FY 2013 Form 5500] without

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<sup>12</sup> In addition, based on my conversations with DOL Investigator-1, I know that the United States Department of Labor - Employee Benefits Security Administration's New York Regional Office ("EBSA-NY"), which is located in New York, New York, conducted "targeting" during at least in or about 2013, 2014, and 2015. Targeting includes conducting searches of Forms 5500 based in part on certain disclosures, including a "yes" answer to the Prohibited Transaction Question. One purpose of targeting is to determine whether to open an investigation of certain entities and/or individuals. Thus, EBSA-NY relies on representations and disclosures made in the Form 5500, including the Plan's FY 2012 Form 5500.



disclosing certain prohibited transactions that occurred during the fiscal year."

c. On or about March 9, 2015, DOL Investigator-3 interviewed ARMAO by phone regarding the prohibited transactions referenced in the Armao Letter. During this interview, ARMAO stated, in sum and substance and among other things, the following:

i. The President-Trustee engaged in prohibited transactions by paying personal expenses from the Union account and then having the Plan reimburse those expenses to the Union. ARMAO believed these prohibited transactions had occurred for the last few years.

ii. The President-Trustee's use of Union assets to pay personal expenses was fairly obvious from records which showed that the President-Trustee was paying for his family vacations and his wife's car payments using Union money and that these personal expenses were reimbursed to the Union by the Plan.

iii. When asked whether the Plan's other trustees were aware of the prohibited transactions, ARMAO replied that the Plan's reimbursement to the Union for the President-Trustee's personal expenses may not have been obvious because the transfers were labeled joint administrative expenses by the Plan and the Union.

29. On or about April 30, 2015, DOL Investigator-1, along with a Special Agent from the U.S. Attorney's Office for the Southern District of New York, interviewed SALVATORE ARMAO, the defendant, at the Accounting Firm. From DOL Investigator-1, I have learned that, during this interview, ARMAO reiterated that he had known for years that the Plan had engaged in prohibited transactions that were intended to conceal the President-Trustee's use of Union assets to pay for personal expenses. ARMAO further stated that, while he had known for years that the Plan was engaged in prohibited transactions, he did not insist that the prohibited transactions be reported on the Plan's Forms 5500 because ARMAO considered the amounts of the prohibited transactions in previous years to be low.

#### **AUER'S FALSE STATEMENTS TO A FEDERAL AGENT**

30. On or about October 7, 2015, KAREN AUER, the defendant, was interviewed by a Special Agent of the DOL in New

York, New York ("Special Agent-2"). During this interview, after being advised of the Special Agent's identity, AUER made several false statements to Special Agent-2, including that:

a. AUER did not know, prior to the filing of the Plan's FY 2012 Form 5500, that Form 5500 contains a specific question relating to prohibited transactions, *i.e.*, the Prohibited Transaction Question. AUER stated, therefore, that she did not know that a prohibited transaction must be reported on Form 5500 by checking the "yes" box in response to the Prohibited Transaction Question.

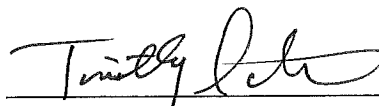
31. I believe KAREN AUER's, the defendant's, statements were false based, among other things, upon (1) information from the Junior Accountant that AUER directed the Junior Accountant first to report the prohibited transaction on the Plan's FY 2012 Form 5500; (2) after a subsequent phone conversation between SALVATORE ARMAO, the defendant, and the President-Trustee, AUER directed the Junior Accountant to delete the report of the prohibited transaction; and (3) AUER's earlier participation in the reporting of prohibited transactions on an unrelated pension fund's Forms 5500 in 2012 and 2013.<sup>13</sup>

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<sup>13</sup> From the Junior Accountant, I have learned that he performed some work for a pension fund (the "Pension Fund") that had no connection to the Union or the Plan. KAREN AUER, the defendant, supervised the Junior Accountant's work (as well as another accountant's work) relating to the Pension Fund, and SALVATORE ARMAO, the defendant, was the partner assigned to the Pension Fund account. From my review of DOL records, I have learned that the Accounting Firm prepared and filed Forms 5500 for the Pension Fund for the Pension Fund's FY 2011 and FY 2012. Records from the Accounting Firm show that ARMAO and AUER reviewed the Pension Fund's FY 2011 and FY 2012 Forms 5500 before they were filed. The Pension Fund's FY 2011 and FY 2012 Forms 5500 both answered "yes" to the Prohibited Transaction Question.

In fact, on or about September 6, 2013, the Junior Accountant emailed AUER stating, in part, "I did some research on filing the 5500 for [the Pension Fund] and whether or not we could file a [short-form 5500] because they have a prohibited transaction. They do qualify for the SF form and there is a section on it regarding prohibited transactions. So technically we can file the short form instead of the long form." Based upon my knowledge, training and experience, I believe that in this email the Junior Accountant is telling AUER that, like the

WHEREFORE, deponent prays that arrest warrants be issued for SALVATORE ARMAO and KAREN AUER, the defendants, and that ARMAO and AUER be arrested and imprisoned or bailed, as the case may be.



TIMOTHY A. SCHMIDT  
Special Agent  
U.S. Department of Labor,  
Office of Inspector General

Sworn to before me this  
31st day of May 2018

  
THE HONORABLE SARAH NETBURN  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK

full Form 5500, the short Form 5500-SF contains the Prohibited Transaction Question and could therefore be used by the Pension Fund to report its prohibited transaction.