

Approved: David Raymond Lewis  
DAVID RAYMOND LEWIS and ELI J. MARK  
Assistant United States Attorneys

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

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UNITED STATES OF AMERICA : **SEALED**  
 : **COMPLAINT**  
 - v. - :  
 : Violation of 18 U.S.C. §  
KENNETH WYNDER, Jr., : 1343  
 :  
Defendant. : COUNTY OF OFFENSE:  
 : NEW YORK

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SOUTHERN DISTRICT OF NEW YORK, ss.:

JOSEPH DUOME, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE  
(Wire Fraud)

1. From at least in or about 2012 up to and including in or about July 2020, in the Southern District of New York and elsewhere, KENNETH WYNDER, Jr., the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, while serving as the Fund Administrator of the Law Enforcement Employees Benevolent Association ("LEEBA") Annuity Fund (the "Annuity Fund"), and as a member of the Annuity Fund's board of trustees, WYNDER engaged in a fraudulent scheme to withdraw funds from the Annuity Fund and from the retirement accounts of individual members held by the Annuity Fund under false and fraudulent pretenses, including by making false and fraudulent statements to the Annuity Fund's

custodian to justify the withdrawals, and by making false and fraudulent statements to current and prospective Annuity Fund members to cause them to continue to invest and in breach of his fiduciary duties to the Annuity Fund and its members.

(Title 18, United States Code, Sections 1343 and 2.)

The bases for my knowledge and the foregoing charges are, in part, as follows:

2. I have been a Special Agent with the FBI for more than three years. I have participated in multiple investigations of financial fraud, tax fraud, and mail and wire fraud, among other things, and have conducted and participated in surveillance, interviews of witnesses, and the execution of search warrants and arrest warrants. Since at least 2018, I have been personally involved in the investigation of this matter, along with other law enforcement officers and investigators working with the FBI, the United States Department of Labor's Office of Labor-Management Standards, and other law enforcement agencies.

3. I am familiar with the facts and circumstances set forth below from my participation in the investigation of this matter, from my personal knowledge, from my conversations with other law enforcement agents and personnel, and with witnesses, and from my examination of various reports and records. Because this affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include all the facts that I have learned during the course of my investigation. In addition, due to the ongoing nature of the investigation, the monetary calculations are based on the records obtained to date and are approximate, unless otherwise noted. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

#### Overview of the Scheme

4. At all times relevant to this Complaint, KENNETH WYNDER, Jr., the defendant, served as the President of LEEBA, a labor union that principally represents law enforcement personnel at various agencies of the City of New York (the "City"), and as a trustee and Fund Administrator of the LEEBA Annuity Fund. From at least in or about 2012 up to and including the date of this Complaint, WYNDER participated in a scheme to steal, embezzle, and misappropriate money from the Annuity Fund and individual members' retirement accounts. Specifically, and as alleged herein, WYNDER made hundreds of thousands of dollars of fraudulent transfers from the Annuity Fund to LEEBA's operating account, which he controlled,

and regularly used the funds, once transferred from the Annuity Fund, to enrich himself at union members' expense, including through unauthorized and excessive checks to himself and cash withdrawals for his own benefit. In addition, WYNDER caused the union to pay for various personal expenses such as a second residence, clothing, travel expenses, and the purchase of a personal automobile, all paid for by the union, and none of which were contemporaneously reported to the Internal Revenue Service ("IRS"), as required.

5. To accomplish this fraudulent scheme, KENNETH WYNDER, Jr., the defendant, acting in his capacity as Annuity Fund's Plan Administrator, repeatedly made false and misleading statements to a third-party retirement plan manager that served as the custodian for the Annuity Fund and the retirement accounts of individual union members (the "Fund Custodian"), including through emails and faxes, in order to withdraw increasingly large sums of money from the Annuity Fund, effectively causing such withdrawals to be made from the retirement accounts of individual members. From in or about 2014 through in or about 2019, WYNDER caused the withdrawal of more than \$500,000 from the individual retirement accounts that comprise the Annuity Fund, thereby wiping out the entire balance of certain members' accounts. Without these improper withdrawals from the Annuity Fund, the LEEBA operating account would have been insolvent, and would have had insufficient funds to pay for WYNDER'S excessive checks to himself and cash withdrawals and the personal expenses he caused to be charged to that account.

6. In addition, throughout the duration of this scheme, KENNETH WYNDER, Jr., the defendant, repeatedly made and approved false and misleading statements to LEEBA'S members and prospective members about how he was purportedly using and protecting their retirement accounts and the LEEBA Annuity Fund. WYNDER further concealed his scheme by causing LEEBA to fail to timely file mandatory reports and financial disclosures with the City and public reports to the Annuity Fund's members, and by making false statements to the Annuity Fund's auditors and accountants.

#### Relevant Persons and Entities

7. KENNETH WYNDER, Jr., the defendant. Based upon records and interviews in this case, I have learned that, at all times relevant to this Complaint, KENNETH WYNDER, Jr., the defendant -- a former New York State Trooper -- has been the President of LEEBA and a member of LEEBA'S board of directors. WYNDER has also served as the Fund Administrator of the Annuity Fund and as a member of the board of trustees of the Annuity Fund, pursuant to which he owed a fiduciary duty to act in the best interests of the Annuity Fund and its account holders. WYNDER also was on the board of

trustees of the LEEBA Welfare Fund (the "Welfare Fund," and collectively with the Annuity Fund, the "LEEBA Funds"), which provided supplemental insurance benefits to its members. While occupying those positions, WYNDER centralized and controlled major decision-making authority for LEEBA and the LEEBA Funds, often acting without the proper approval of their respective boards of directors or trustees, even where such approval was required by the governing documents of LEEBA and the LEEBA Funds. As described herein, WYNDER's de facto dominance of LEEBA and the LEEBA Funds enabled him to make decisions in his own self-interest and contrary to the interests of the Annuity Fund and individual members.

8. LEEBA. Based upon records and interviews in this case, I have learned that LEEBA is a labor union that has acted as the collective bargaining representative principally for law enforcement personnel at various City agencies, and has entered into certain agreements on behalf of those law enforcement employees, including agreements that provided for insurance and retirement benefits. The City agencies whose employees LEEBA represented included, at various times, the Department of Environmental Protection ("DEP"), the Department of Sanitation ("Sanitation"), and the Department of Transportation ("Transportation").

9. The Annuity Fund. Agreements between the City and LEEBA provided for the City to make monthly contributions to the LEEBA Annuity Fund for the benefit of funding retirement accounts for employees of DEP and Sanitation (the "Annuity Fund Agreements").<sup>1</sup> These agreements were signed by KENNETH WYNDER, Jr., the defendant, on behalf of LEEBA.

10. Pursuant to the Annuity Fund Agreements, and the associated Annuity Plans (which governed the distribution of the retirement benefits), KENNETH WYNDER, Jr., the defendant, agreed that the Annuity Fund would maintain a separate retirement account, and to credit each member with the corresponding contribution paid by the City. These employee retirement accounts were functionally similar to an employer-sponsored 401(k) retirement account. Upon retirement, death, or separation from employment, each employee was entitled to recover the full value of his or her individual retirement account.

11. Each of these Annuity Plans contained strict requirements that the contributions made by the City to the Annuity Fund could be used for no purpose other than funding individual

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<sup>1</sup> In contrast to the employees of DEP and Sanitation, the agreements for Transportation employees did not provide for the City to make any contributions to the Annuity Fund.

annuity/retirement accounts and defraying reasonable administrative expenses of the Annuity Fund, and solely for the benefit of the Annuity Fund's members. KENNETH WYNDER, Jr., the defendant, signed the Annuity Plans as both the president of LEEBA, and as a trustee of the Annuity Fund.

12. The Welfare Fund. Other agreements between the City and LEEBA provided that the City would make monthly contributions to the Welfare Fund for the benefit of employees, in order to provide these employees ancillary health benefits, including prescription drugs, dental services, vision care, and life insurance (the "Welfare Fund Agreements"). KENNETH WYNDER, Jr., the defendant, executed these agreements as the president of LEEBA, and as a trustee of the Welfare Fund.

WYNDER Fraudulently Withdrew Hundreds of Thousands of Dollars from the Annuity Fund

13. From in or about at least 2008, through in or about November 2018, pursuant to applicable Annuity Fund Agreements as noted above, the City provided monthly contributions to the Annuity Fund for the retirement accounts of covered DEP and Sanitation employees. Based upon a review of documents obtained from the City Comptroller's Office (the "Comptroller") and from LEEBA, I know that LEEBA arranged for individual retirement accounts for each Fund member to be created and held by the Fund Custodian. Based upon an agreement between LEEBA and the City, the City made its required contributions to the Annuity Fund by electronically transferring them to the Fund Custodian, who placed those contributions into individual member retirement accounts for investment. From in or about 2012 through in or about December 2018, pursuant to the applicable Annuity Fund Agreements, the City provided approximately \$1,554,770 in contributions to the Annuity Fund for the benefit of fund members.

14. Based upon my review of documents obtained from the Fund Custodian and LEEBA, I know the following:

a. As noted above, pursuant to agreements signed by KENNETH WYNDER, Jr., the defendant, *see supra* ¶¶ 9-11, moneys in the Annuity Fund could be used *only* to benefit the individual fund members or to "defray reasonable expenses of administration."

b. From in or about 2012 through in or about 2019, KENNETH WYNDER, Jr., the defendant, caused the Fund Custodian to withdraw and transfer approximately \$529,000 from the Annuity Fund to LEEBA's main operating account (which was an account from which WYNDER misappropriated money, as described below).

c. WYNDER caused each of these withdrawals by signing misleading instruction forms as the "authorized representative" of the Annuity Fund, which forms were sent to the Fund Custodian by email and by fax. The forms, each of which was signed by WYNDER, made the false representation that the relevant withdrawals were to defray administrative expenses of the Annuity Fund.

d. The purported fees and expenses WYNDER withdrew from the Annuity Fund were in fact used for purposes other than those that WYNDER falsely represented, as described further below.

e. Indeed, the amounts WYNDER withdrew under the false pretense of "administrative expenses" were *in addition* to recordkeeping and administration fees that were separately billed to the Annuity Fund by the Fund Custodian and by the Annuity Fund's third-party clerical administrator.

f. Withdrawals from the Annuity Fund steadily increased over time, taking an increasingly large percentage of monthly contributions from the City to members.

i. In or about 2015, WYNDER caused approximately \$37,000 to be withdrawn from the Annuity Fund and transferred to LEEBA. This was more than 17% of the approximately \$210,140 in City funds contributed to the Annuity Fund for the benefit of members that year.

ii. In or about 2016, WYNDER caused approximately \$50,000 to be withdrawn from the Annuity Fund and transferred to LEEBA. This was more than 23% of the approximately \$210,360 in City funds contributed to the Annuity Fund for the benefit of members that year.

iii. In or about 2017, WYNDER caused approximately \$110,000 to be withdrawn from the Annuity Fund and transferred to LEEBA. This was more than 47% of the approximately \$234,010 in City funds contributed to the Annuity Fund for the benefit of members that year.

iv. In or about 2018, WYNDER caused approximately \$115,000 to be withdrawn from the Annuity Fund and transferred to LEEBA. This was more than 41% of the approximately \$280,100 in City funds contributed toward the Annuity Fund for the benefit of members that year.<sup>2</sup>

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<sup>2</sup> From in or about September 2018 through the date of this Complaint, as described below, the City has been placing its

v. From in or about January 2019 through in or about September 2019, WYNDER caused approximately \$160,000 to be withdrawn from the Annuity Fund and transferred to LEEBA. This was more than 74% of the approximately \$216,470 in City funds contributed for the benefit of members for that year, which was placed in escrow.

g. As described below, during the same time that WYNDER was defrauding the Annuity Fund and arranging for its moneys to be transferred to the union, WYNDER was inappropriately using the union's bank accounts to make unauthorized payments to himself and to pay unauthorized personal expenses on his behalf. In addition, WYNDER's excessive personal use of the union's bank accounts caused shortfalls in the funding available to pay for general operations of the union, including, among other things, salaries, overhead, and accounting and legal fees for work unrelated to the Annuity Fund. WYNDER was only able to arrange for some of those expenses to be paid as a result of his fraudulent withdrawals from the Annuity Fund.

15. Based upon a review of documents obtained from the Fund Custodian, I know that, as a result of the above withdrawals, numerous members currently have virtually no funds in their individual retirement accounts at the Annuity Fund, because KENNETH WYNDER, Jr., the defendant, has caused LEEBA to withdraw the entire balances from their individual accounts. During the same period of time as the increased withdrawals from the Annuity Fund, and using some of the fraudulently withdrawn funds, WYNDER's compensation from LEEBA increased substantially.

16. Misleading Withdrawal Request Forms. Based upon a review of documents obtained from the Fund Custodian and LEEBA, I know that each of the more than fifteen withdrawal requests caused by KENNETH WYNDER, Jr., the defendant, were accompanied by a form signed by WYNDER, explaining the purported purpose for the requested withdrawal. Such forms contained the pre-printed warning that "restrictions apply limiting the Plan Administrator's ability to pay expenses from plan assets," and that "potential compliance issues," may arise from these instruction, including "fines" and "penalties." Many of these requests also were supported by an invoice on LEEBA letterhead. These withdrawal requests -- which purported to be only for legitimate expenses incurred "during the administration of the plan" -- frequently overstated and misstated the purpose of the requested fund

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monthly contributions to the LEEBA Funds in escrow, because of the failure of the LEEBA Funds and WYNDER to comply with their reporting, compliance and disclosure obligations.

withdrawals, and were in violation of the Annuity Fund's governing documents, which limited expenses to the administration of the Fund itself. For example, these requests included the following representations:

a. On or about October 5, 2015, WYNDER, as the Plan Administrator, caused a request form to be submitted to the Fund Custodian, signed by WYNDER, requesting the withdrawal of \$20,000 from the Annuity Fund for "Administrative Management/Cost." However, those funds were not used to administer the Annuity Fund. Indeed, once this withdrawal was examined by outside auditors, it was instead classified on the Annuity Fund's financial statements as a loan from the Annuity Fund, meaning, purportedly, that such funds were to be repaid, because they had been spent on expenses unrelated to the administration of the Fund and were in violation of the Fund's governing documents. Those funds have never been repaid.

b. On or about January 27, 2017, WYNDER, as the Plan Administrator, caused a request form to be submitted to the Fund Custodian, signed by WYNDER, requesting the withdrawal of \$50,000 for "Audit CPA 2013, 2014 & 2015." However, the total amount billed by the Accountants for the audit of the Annuity Fund for the 2013 through 2015 audits was \$26,035, or approximately half of the amount WYNDER sought to withdraw; moreover WYNDER did not actually use the withdrawn funds to cover those expenses as that amount remained mostly unpaid for at least 18 months after this request.

c. On or about January 1, 2018, WYNDER, as the Plan Administrator, caused a request form to be submitted to the Fund Custodian, signed by WYNDER, requesting the withdrawal of \$55,000, purportedly for third-party fees, which were further detailed on an accompanying LEEBA invoice as "Legal fees to obtain transfer of existing funds for previous unions." However, those funds were deposited into the general LEEBA operating account, from which the majority of the money subsequently withdrawn was used to pay for months of unpaid insurance premiums bearing no relation to legal bills or the administration of the Annuity Fund.

d. On or about May 16, 2019, WYNDER, as the Plan Administrator, caused a request form to be submitted to the Fund Custodian, signed by WYNDER, requesting the withdrawal of \$40,000 for purported "Administrative Management Cost" to LEEBA. At the time the union received the money from the Custodian, the union had almost no funds in its operating account. The next day, May 29, 2019, WYNDER caused the majority of the money (\$32,686) to be paid to LEEBA's life insurance provider for months of outstanding bills. WYNDER also signed a \$2,500 check that day to LEEBA's

treasurer. These expenses were unrelated to the administration of the Annuity Fund.

17. Based upon a review of LEEBA documents, including emails and text messages sent and received by KENNETH WYNDER, Jr., the defendant, I know that WYNDER also discussed with LEEBA's benefits coordinator various justifications for the purported administrative withdrawals from the Annuity Fund that did not relate to the administration of the Fund itself, in contrast to the representations on the withdrawals forms submitted to the Fund Custodian. For example:

a. On or about October 17, 2018, the broker texted WYNDER, "Are you looking to do a withdrawal from the annuity? If so, you need to let me know how much and what we need to write for a purpose." The next day, October 18, 2018, the benefits coordinator sent WYNDER two draft "letters to the file," for WYNDER's signature, purporting to provide alternative justifications for withdrawals from the Annuity Fund, including the U.S. Supreme Court's 2018 decision in *Janus v. AFSCME*<sup>3</sup> and the City's decision to place additional benefit contributions into escrow. WYNDER replied by text, "60000 and janus decision and make it for 2019 early withdrawal. Send it to me to be notarized." On or about October 23, 2018, a request form was sent to the Fund Custodian, signed by WYNDER as the Plan Administrator. WYNDER ultimately requested the \$60,000 withdrawal from the Annuity Fund using the same false justification he had successfully used before, i.e., to pay for "Administrative Management/Cost." The Fund Custodian processed the withdrawal, based on the submitted forms.

b. On or about May 16, 2019, the benefits coordinator sent a text to WYNDER asking whether he "could do [a Fund Custodian] withdrawal to pay the [Welfare Fund's provider of life insurance]?" Later that day, WYNDER caused a withdrawal request form, signed by WYNDER as the Plan Administrator, to be sent by wire to the Fund Custodian requesting a withdrawal from the Annuity Fund of \$40,000, providing the same false justification that the funds were needed for "Administrative Management/Cost." Also later that day, confirming the misrepresentation, the benefits

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<sup>3</sup> One of the draft letters described the *Janus* decision, as "allow[ing] members to self-select out of full union membership." The letter explained that, "[t]his may cause a temporary or permanent disruption in the cash flows of the union," and, "[a]s such LEEBA may be required to increase its administrative withdrawals [from the Annuity Fund] through [the Fund Custodian] to continue to administer the annuity and provide the service to those members."

coordinator sent an email to the insurance provider, as well as to WYNDER and others, stating that "as a hedge (and per Kenneth's instruction), I transferred" money from the Annuity Fund "sufficient to cover the entire arrears of [the Welfare Funds'] policies."

#### WYNDER's Most Recent Fraudulent Withdrawal Request

18. Based upon my participation in the investigation, I know that by no later than on or about September 18, 2019, which was the day I and fellow agents executed a search warrant at the offices of LEEBA at 80 Broad Street in Manhattan, KENNETH WYNDER, Jr., the defendant, became aware of a federal investigation into the union's finances, including his improper withdrawals from the Annuity Fund. In addition, on or about October 1, immediately after I and other federal investigators finished conducting an interview with LEEBA's treasurer, who was also a member of the board of the Annuity Fund, WYNDER sent a text to the benefits coordinator, stating "Hey, investigation is looking at annuity fund lol."

19. Based upon a review of correspondence from LEEBA's outside counsel, I know that in or about October 2019, LEEBA's counsel informed the U.S. Attorney's Office for the Southern District of New York ("USAO-SDNY") that LEEBA "will not be initiating any further transfers from [the Annuity Fund]," and would not do so in the future without further discussions with USAO-SDNY.

20. Nonetheless, I have learned from documents and recorded telephone calls obtained from the Fund Custodian, that from on or about February 5, 2020 through on or about February 21, 2020, KENNETH WYNDER, Jr., the defendant, prepared and caused to be submitted to the Fund Custodian a request to withdraw an additional \$40,000 from the Annuity Fund. Based on my review of materials from the Fund Custodian, I have learned that on or about February 19, 2020, after the benefits coordinator did not act upon WYNDER's requests to submit another withdrawal to the Fund Custodian, WYNDER contacted the Annuity Fund's clerical administrator for assistance in submitting such a withdrawal request.

21. Thereafter, on or about February 21, 2020, the Annuity Fund's clerical administrator emailed to the Fund Custodian a request form, signed by KENNETH WYNDER Jr., the defendant, as the Plan Administrator, to withdraw an additional \$40,000 from the Annuity Fund, purportedly to be used for "Accountants, attorneys & administrative fees." On or about March 30, 2020, the Fund Custodian informed WYNDER that they would not process the request.

While Improperly Transferring Large Sums of Money from the  
Annuity Fund to LEEBA, WYNDER Repeatedly Embezzled and  
Misappropriated Money from the Union

22. Based upon a review of LEEBA's bank records, as well as interviews of LEEBA board members and employees, I have learned that during the same years that KENNETH WYNDER, Jr., the defendant, was repeatedly and improperly transferring more than \$500,000 from the Annuity Fund to the accounts of LEEBA, WYNDER embezzled, misappropriated, and misspent the funds of both LEEBA and the LEEBA Funds in a variety of ways, in violation of LEEBA's governing documents and his fiduciary duties to LEEBA, the Annuity Fund, and the individual members of LEEBA and the Annuity Fund. Such misconduct included: (1) causing the withdrawal of hundreds of thousands of dollars, via checks and cash, for his own benefit; and (2) misusing tens of thousands of dollars for personal expenses, including an extra apartment, personal clothing, the purchase of a personal automobile, and travel and entertainment expenses unrelated to the business of LEEBA or the Annuity Fund. As to at least some of this conduct, WYNDER concealed his activities from current and prospective union members, failed to obtain proper authorization from LEEBA's board of directors, and failed to report this income to the IRS.

23. Based upon a review of materials from LEEBA, I have learned that LEEBA's Constitution and Bylaws provided a number of internal controls and safeguards, including that LEEBA's board of directors was responsible for setting the salary of LEEBA employees and for authorizing certain business expenses, payments, and reimbursements, in conformity with expense allowance guidelines set forth in the Bylaws. However, KENNETH WYNDER, Jr., the defendant, routinely disregarded those limits by exercising control over LEEBA's finances, including by setting his own salary and making payments to himself, without oversight, to pay for purported allowances and expense reimbursements, which steadily increased over the years and exceeded the amounts LEEBA could afford. WYNDER concealed this excess spending and self-dealing by making increasingly larger withdrawals from the Annuity Fund. As described below, WYNDER used those withdrawals to pay the costs of operating LEEBA and the Welfare Fund, and to enrich himself.

24. WYNDER wrote checks to himself. Based upon a review of LEEBA materials, bank records, and interviews, I have learned that KENNETH WYNDER, Jr., the defendant, wrote substantial, sporadic checks to himself outside of LEEBA's payroll system. Since at least 2015, WYNDER signed checks to himself totaling hundreds of thousands of dollars, which he identified -- in notations on the checks or by informing LEEBA's bookkeeper -- as purported salary

for himself, although WYNDER failed to otherwise treat such withdrawals as salary, such as by directing LEEBA to collect payroll taxes on these disbursements or otherwise reporting the money as income to the IRS. Further, as of 2016, WYNDER was already receiving his salary through a payroll processing company. Nonetheless, WYNDER continued to write checks to himself for purported salary, in addition to the paychecks that WYNDER received through the payroll processor, none of which were reported by WYNDER or LEEBA to the IRS as income. Despite a requirement that salary be approved by LEEBA's Board, WYNDER did not properly seek board approval for his salary or any of these additional payments to himself.

25. Cash withdrawals by WYNDER and others. Based upon a review of LEEBA documents, bank records, and interviews, I have learned that KENNETH WYNDER, Jr., the defendant, withdrew, caused others to withdraw, and approved the withdrawal by others, of tens of thousands of dollars in cash from LEEBA's bank accounts. Such withdrawals included the following:

a. Between 2014 and 2019, more than \$450,000 in cash or cash equivalents was withdrawn from various LEEBA bank accounts, principally by WYNDER or LEEBA's treasurer. Many of the withdrawal slips bore the signature of WYNDER or of LEEBA's treasurer, while some of the withdrawals were used to purchase cashier's checks payable to either WYNDER or LEEBA's treasurer.

b. On at least two occasions, on or about February 1, 2018 and March 30, 2018, records reflect that LEEBA's treasurer twice withdrew \$16,000 in cash from a LEEBA bank account, and on each of those same dates, the treasurer deposited \$15,000 into WYNDER's personal bank account, and \$1,000 into the treasurer's own personal bank account.

26. WYNDER purchased his personal car with LEEBA funds. Based upon my review of documents from a car dealer and financing company, LEEBA documents and bank records, and witness interviews with LEEBA employees, I have learned that, in approximately October 2014, KENNETH WYNDER, Jr., the defendant, purchased a Lexus automobile, registered in his own name, for a total cost of more than \$77,000, including financing charges.<sup>4</sup> WYNDER caused LEEBA to pay for at least the great majority of these purchase costs,

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<sup>4</sup> The terms of that loan included an interest rate of 21 percent. Each monthly payment was to be for \$969.64, for a total of more than \$69,000. In obtaining that loan, WYNDER represented to the lender that he worked for an employer (LEEBA) that he personally owned and that "he pays himself."

totaling at least \$57,000, including through payments made directly to the financing company as well as checks payable to WYNDER accompanied by notations indicating that they were for an "allowance" or "reimbursement" for a vehicle, in amounts approximately equal to his monthly payments to the financing company. The meeting minutes of LEEBA's board of directors contain no indication that the board approved or even addressed the use of LEEBA's funds to purchase a vehicle for WYNDER, or the payment of a vehicle "allowance," despite such approval being required under LEEBA's governing documents.

27. Use of LEEBA Funds to rent WYNDER an apartment. Based upon a review of LEEBA's bank records, as well as interviews with LEEBA employees and others, I have learned that from in or about 2017 through in or about January 2018, KENNETH WYNDER, Jr., the defendant, caused LEEBA funds to be used to rent an apartment for WYNDER in Astoria, Queens (the "Astoria Apartment"), which WYNDER secured initially to assist him with establishing residence in the City for a run for New York City Council, since his primary residence was in Pennsylvania. The apartment was not rented for the benefit of the union. In particular, since at least October 2017 (after WYNDER failed to qualify for the City Council primary election in September 2007) WYNDER caused LEEBA to pay for this apartment, as follows:

a. On or about October 11, 2017, WYNDER signed a \$2,000 check from a LEEBA bank account, payable to himself. The checkbook stub for that check stated "KW, Housing."

b. On two occasions, on or about November 8, 2017 and December 7, 2017, payments of \$2,000 were made from WYNDER's personal bank account via cashiers' checks to the owner of the Astoria Apartment. On each of those same dates, WYNDER signed a \$2,000 check from a LEEBA bank account, payable to himself. The memo line on each of those checks stated, "Rent."

c. For each of the fourteen months from approximately January 2018 through approximately February 2019, a monthly check for \$2,000 per month was drawn on a LEEBA bank account, payable to the owner of the Astoria Apartment. However, beginning in or about February 2018, WYNDER made the Astoria Apartment available as a residence to a LEEBA employee.

28. WYNDER used LEEBA funds for a weekend football trip to Dallas. Based upon a review of bank and credit card records of LEEBA, social media postings, and airline and hotel records, as well as interviews with LEEBA employees, I have learned that LEEBA funds were used to pay for various charges related to a September

2018 weekend trip by KENNETH WYNDER Jr., the defendant, and others, to Dallas, Texas, which was principally for the purpose of attending two football games, despite WYNDER's false representations to union membership that, in contrast to other unions, LEEBA did not pay for travel to destination meetings. Specifically, WYNDER caused LEEBA to pay for various costs of this weekend, including the cost of hotel rooms, meals, ground transportation, and airline flights, and, after being confronted about this trip by a current or potential union member, he lied about it, as described below:

a. On or about September 14-17, 2018, WYNDER and approximately five other LEEBA employees and/or board members travelled to Dallas, during which time most of them attended an NCAA collegiate football game on September 15 and an NFL game between the New York Giants and the Dallas Cowboys on September 16. There was no labor conference or other labor-related event in Dallas on the weekend of this football getaway.

b. During this weekend trip, WYNDER used funds from two LEEBA bank accounts to pay for more than \$2,970 in hotel room charges in Dallas. Other charges paid for with LEEBA credit cards included for parking, transportation, and a lounge/restaurant.

c. LEEBA funds were used to make other purchases, in cash, in connection with this football weekend. Such purchases included five roundtrip airline tickets from New York to Dallas, which were initially purchased directly by LEEBA, at WYNDER's direction, but then were refunded and purchased in cash that appears to have been taken from LEEBA bank accounts,<sup>5</sup> and another roundtrip ticket from Pittsburgh for a sixth individual who lived in Pennsylvania, which was purchased at the last minute by WYNDER using LEEBA funds of more than \$1,000. Additionally, immediately after the trip, WYNDER wrote a check to himself for an \$800 "stipend," for two participants in the trip.

d. On or about August 22, 2019, WYNDER participated in a recruiting conference call with prospective LEEBA members. During that call, in response to a question about LEEBA's expenditures, WYNDER stated in pertinent part as follows: "And for the question and the rumors I went to Texas and I spent money, the union's money, no we did not."

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<sup>5</sup> Airline records indicate that one of these tickets was not ultimately used, yet LEEBA never received a refund for that ticket.

WYNDER Concealed His Financial Misdeeds by Failing to Comply  
with Various Reporting Requirements

29. Based upon my review of the Annuity Fund Agreements and the Welfare Fund Agreements (collectively, the "Fund Agreements"), documents filed with the City by LEEBA and the LEEBA Funds, applicable regulations, and interviews with witnesses, I have learned that since at least 2007, the LEEBA Funds were subject to various annual requirements, including that they submit certain filings with the City, pursuant to the City Comptroller's Directive 12, that they file annual reports to LEEBA members, that they annually obtain audited financial statements, and that they file certain annual tax forms. Each of these requirements was agreed to in the Fund Agreements signed by KENNETH WYNDER, Jr., the defendant, on behalf of LEEBA and the LEEBA Funds, and would have led to a proper accounting of WYNDER's embezzlement and misuse of monies of the Annuity Fund and LEEBA. Meeting these requirements would also have led to the disclosure of the massive and increasing withdrawals WYNDER took from members' retirement accounts held in the Annuity Fund. As detailed further below, however, under the control of WYNDER, LEEBA and the LEEBA Funds repeatedly failed to comply with these various annual filing requirements.<sup>6</sup>

30. Directive 12. At all relevant times, Directive 12 set forth "accounting, auditing, and financial guidelines for employee and retiree Benefit Funds, which receive contributions from the City," including the LEEBA Funds. Directive 12, which was issued by the City Comptroller and in effect at all times relevant to this Complaint, also established detailed information reporting requirements for the Funds and their boards of trustees.

31. Pursuant to Directive 12 and the Fund Agreements, which were agreed to by KENNETH WYNDER, Jr., the defendant, as LEEBA's President, the LEEBA Funds were required to submit annual Directive

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<sup>6</sup> In addition, prior to 2016, LEEBA also represented private sector employees, which subjected LEEBA to recordkeeping and disclosure requirements under the Labor Management Reporting and Disclosure Act ("LMRDA"), including requirements with which WYNDER similarly failed to comply. Following an audit in 2015 by the U.S. Department of Labor, which identified various problematic issues and resulted in a criminal referral, WYNDER decided that LEEBA would no longer represent private sector employees, thus avoiding the LMRDA's additional reporting and disclosure requirements. Thereafter, a separate but related union, partially funded by LEEBA was formed that represented private sector employees.

12 filings to the City. Such Directive 12 filings were required to be signed by WYNDER, as a trustee of the Funds, under penalty of perjury. The Fund Agreements and Directive 12 further required that the LEEBA Funds be audited annually by a certified public accountant, and that the Funds annually send a financial report to members and file the same with the Comptroller, within nine months of the end of each fiscal year.<sup>7</sup>

32. Notwithstanding these requirements, from in or about 2008 through in or about 2016, KENNETH WYNDER, Jr., the defendant, caused the LEEBA Funds to fail to file any Directive 12 reports or any annual reports to the Funds' members.

33. From a review of documents obtained from the Comptroller and LEEBA, I know that in or about June 2016, the Comptroller began to communicate repeatedly with KENNETH WYNDER, Jr., the defendant, seeking the missing Directive 12 filings for the LEEBA Funds. The efforts by the Comptroller to obtain from LEEBA Directive 12 filings and other required financial information subsequently escalated into a formal audit, the Comptroller's issuance of subpoenas to LEEBA, and a lawsuit in New York Supreme Court in which the court ordered LEEBA to comply with those subpoenas.

a. In or about January and March 2017 -- after retaining accountants (the "Accountants") to assist with the Directive 12 filings by, among other things, performing an independent audit -- the LEEBA Funds filed their first reports purportedly in compliance with Directive 12, for Fiscal Year 2014, but nothing for subsequent or earlier years. The Directive 12 for 2014 was more than 17 months late.

b. In or about June and July 2017, more than 8 months late, the LEEBA Funds submitted reports purportedly in compliance with Directive 12 for Fiscal Year 2015, which also restated the Funds' finances for Fiscal Year 2014.

c. In or about October 2019, more than two years late and after the FBI had executed a search warrant at the Manhattan office of LEEBA, the LEEBA Funds submitted reports purportedly in compliance with Directive 12 for Fiscal Year 2016, but nothing for subsequent or earlier years.<sup>8</sup>

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<sup>7</sup> At all times relevant to this Complaint, the fiscal year for LEEBA and the LEEBA Funds was the same as the calendar year.

<sup>8</sup> In or about March 2019, WYNDER caused the Welfare Fund to file reports purportedly in compliance with Directive 12 for Fiscal

d. As of the date of this Complaint, the LEEBA Funds still have not filed any Directive 12 reports for any years more recent than 2016 or earlier than 2014, nor submitted audited financial statements for those years, nor provided the members with any annual reports for any years, as required.

34. City contributions placed in Escrow. From my review of documents obtained from the Comptroller and from LEEBA, I know that, in or about September 2018, the City began placing its monthly contributions to the LEEBA Funds in escrow, because of LEEBA's failure to comply with its reporting, compliance and disclosure obligations.<sup>9</sup>

WYNDER Misled the Annuity Fund's Accountants About His  
Withdrawals from the Annuity Fund

35. Based upon my review of documents obtained from LEEBA and the Accountants, who as discussed above were first retained in 2016 to audit the financial books and records of LEEBA and the Funds and assist with preparation of the Directive 12 filings, and upon interviews of the Accountants, I learned the following:

a. The Accountants, upon learning of WYNDER's prior transfers from the Annuity Fund, advised WYNDER, both in writing and orally, that the transfers from the Annuity Fund had not been made properly, that he could only withdraw money from the Annuity Fund that was related to administration of the Annuity Fund, and that he needed to insure that the money improperly withdrawn from the Annuity Fund was repaid.

b. In response, WYNDER repeatedly falsely stated to the Accountants that he would comply with their instructions not to withdraw additional money from the Annuity Fund that was not related to administration of the Annuity Fund and that he would ensure that the money owed to the Annuity Fund would be repaid. These false representations were subsequently incorporated in the Annuity Fund's annual financial statements, which were supplied to

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Years 2016 and 2017, although the Comptroller found them to be thoroughly deficient, in part because they did not include audited financial statements. At that time, there were no corresponding reports filed for the Annuity Fund.

<sup>9</sup> The City continued to make payments to the Annuity Fund through November 2018. In addition, through apparent administrative error, the City made one monthly payment to the LEEBA Welfare Fund, in or about August 2019. WYNDER caused those funds to be spent immediately, in part on LEEBA salaries and other expenses unrelated to the Welfare Fund.

the City Comptroller. WYNDER, in fact, has not caused those funds to be repaid, and caused additional such improper withdrawals to be made.

c. WYNDER failed to distribute this advice to the nominal trustees of the Annuity Fund, as required, and failed to have the Annuity Fund repaid.

WYNDER's Misleading Statements about the Annuity Fund to  
Union Members and Potential Union Members

36. Based upon a review of documents obtained from LEEBA and interviews in this case, I know that from at least approximately 2014, KENNETH WYNDER, Jr., the defendant, and other LEEBA board members and employees acting with WYNDER's knowledge, advertised to current and prospective union members, both orally and in writing, that the Annuity Fund's money belonged to each individual union member; that such money was used appropriately and transparently; and that WYNDER was paid his salary solely from union dues and not from the Annuity Fund. In fact, as described herein, these representations were false, because, among other things, WYNDER repeatedly withdrew large sums of money from the Annuity Fund to operate the union and to pay himself salary and other benefits. These misrepresentations, which were made in part to solicit new union members and to allay concerns expressed by some existing members, included:

a. Written statements and information that WYNDER caused to be posted, at times, on LEEBA's website touting that: "Your Annuity is YOURS: Your City-Funded LEEBA Annuity belongs to YOU, not the union. . . . It's your money and it's there to help you in retirement."

b. On or about December 21, 2018, WYNDER authored and distributed a letter to DEP union members, falsely stating to the members that WYNDER and LEEBA were "continu[ing] to properly administer your Annuity Fund," that the funds were not commingled with those of the union, and that "We will never revert to operating [the Annuity Fund] like every other NYC union by commingling your funds in one giant account, . . . and never explaining what we do with your money."

c. On or about August 22, 2019, WYNDER participated in a recruiting conference call with prospective LEEBA union members.

i. During the call, WYNDER was asked about withdrawals from the Annuity Fund that had been taken from members' individual retirement accounts. WYNDER stated that such withdrawals reflected permissible fees for administration

("mailing, answering, office, keeping track of everything, keeping your money, getting your statements") and that, "It's not sitting in some bank account where I can go and do whatever I want with it and you never know what I do with it." In so stating, WYNDER falsely portrayed any withdrawals as legitimately related to permissible expenses for the administration of the Annuity Fund, when in fact, as detailed herein, the withdrawn funds were actually being used to operate the labor union and to enrich WYNDER personally.

ii. WYNDER also claimed falsely that he received his salary solely from union dues (i.e., from LEEBA rather than the LEEBA Funds), and that his salary is "in our Directive 12s -- look it up -- it's public knowledge," even though WYNDER knew that: (1) his union salary was not listed in the Directive 12s (a required filing with the City described more fully above) which pertained only to the LEEBA Funds but not the union; (2) at the time, the LEEBA Funds had not filed Directive 12s for any years other than the significantly delinquent filings for 2014 and 2015; and (3) he had used the money withdrawn from the Annuity Fund to operate the union and to benefit himself.

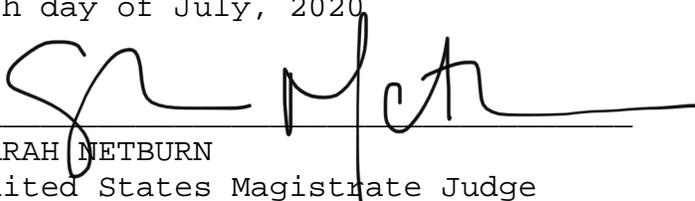
WHEREFORE, I respectfully request that an arrest warrant be issued for KENNETH WYNDER, Jr., the defendant, and that he be imprisoned or bailed, as the case may be.

/s authorized electronic signature

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JOSEPH DUOME  
Special Agent  
Federal Bureau of Investigation

Sworn to before me this  
9th day of July, 2020



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SARAH NETBURN  
United States Magistrate Judge