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PENSION BENEFIT GUARANTY CORP.

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
17 **SOUTHERN DIVISION**

18 PENSION BENEFIT GUARANTY
19 CORPORATION
1200 K Street, N.W.
20 Washington, D.C. 20005,

No. SACV 14-1860

COMPLAINT

21 Plaintiff,

22 v.

23 EXCEL PLUS HOME HEALTH
SERVICES, INC. as administrator of the
24 Excel Plus Home Health Services, Inc.
Defined Benefit Pension Plan
25 824 Lilac Drive
Placentia, CA 92870,

26 Defendant.
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1 **PRELIMINARY STATEMENT**

2 1. This action arises under Title IV of the Employee Retirement Income
3 Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012) (“ERISA”).
4 Plaintiff, the Pension Benefit Guaranty Corporation (“PBGC”), files this Complaint
5 pursuant to 29 U.S.C. §§ 1342 and 1348(a), seeking an order: (a) terminating the Excel
6 Plus Home Health Services, Inc. Defined Benefit Pension Plan (the “Pension Plan”); (b)
7 establishing December 31, 2009, as the termination date for the Pension Plan; (c)
8 appointing PBGC as the statutory trustee of the Pension Plan; (d) directing the
9 Defendant and any other person or entity having possession, custody or control of any
10 records, assets or other property of the Pension Plan, to transfer, convey and deliver all
11 such records, assets and property to the PBGC; and (e) requiring the Defendant to
12 furnish any information with respect to the Pension Plan that PBGC reasonably may
13 need to administer the Pension Plan.

14 **JURISDICTION AND VENUE**

15 2. This Court has exclusive jurisdiction over this action, the Pension Plan, and
16 its property wherever located, pursuant to 29 U.S.C. §§ 1303(e)(3), 1342(c) and (f).

17 3. Venue properly lies in this Court under 29 U.S.C. § 1342(g). On
18 information and belief, the Defendant did business in La Mirada, California.

19 **PARTIES**

20 4. PBGC is a wholly owned United States government corporation established
21 under 29 U.S.C. § 1302(a) to administer and enforce the defined benefit pension plan
22 termination insurance program created by Title IV of ERISA. When an underfunded
23 pension plan terminates, PBGC provides the timely and uninterrupted payment of
24 pension benefits to plan participants and their beneficiaries. 29 U.S.C. §§ 1302(a)(2),
25 1321, 1322.

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1 5. Defendant, Excel Plus Home Health Services, Inc. (“Excel Plus”), is a
2 California corporation and the administrator of the Pension Plan within the meaning of
3 29 U.S.C. §§ 1301(a)(1) and 1002(16)(A).

4 **THE PENSION PLAN**

5 6. The Pension Plan is a single-employer, defined benefit pension plan that is
6 covered by Title IV of ERISA. 29 U.S.C. § 1321(a).

7 7. Excel Plus established the Pension Plan to provide pension benefits to
8 certain of its employees. Excel Plus is the contributing sponsor of the Pension Plan
9 within the meaning of 29 U.S.C. § 1301(a)(13).

10 8. On information and belief, the Pension Plan has three participants, and
11 PBGC estimates that the Pension Plan is underfunded by approximately \$196,518.00, on
12 a termination basis.

13 **CLAIM FOR RELIEF**

14 9. On or about August 19, 2009, Excel Plus terminated its employees and
15 ceased business operations.

16 10. PBGC is authorized by 29 U.S.C. § 1342 to commence proceedings to
17 terminate a plan whenever PBGC determines, *inter alia*, that a pension plan has not met
18 the minimum funding standard required under sections 412 and 430 of the Internal
19 Revenue Code, 29 U.S.C. § 1342(a)(1), or the pension plan will be unable to pay
20 benefits when due, 29 U.S.C. § 1342(a)(2).

21 11. PBGC has determined, pursuant to 29 U.S.C. § 1342(a)(1) and (a)(2), that
22 the Pension Plan has not met the minimum funding standard required under section 412
23 of the Internal Revenue Code, 29 U.S.C. § 1342(a)(1), and the Pension Plan will be
24 unable to pay benefits when due. 29 U.S.C. § 1342(a)(2). PBGC also determined that
25 the Pension Plan’s termination date should be December 31, 2009.

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1 12. On September 2, 2014, in accordance with 29 U.S.C. § 1342(c), PBGC
2 issued a Notice of Determination (the “Notice”) to Excel Plus, as plan administrator of
3 the Pension Plan, notifying Excel Plus that PBGC had determined that the Pension Plan
4 has not met the minimum funding standard required under section 412 of the Internal
5 Revenue Code, and that the Pension Plan will be unable to pay benefits when due. A
6 true and correct copy of the Notice is attached as **Exhibit 1**.

7 13. Pursuant to 29 U.S.C. § 1342(c), a district court may order the termination
8 of a pension plan if necessary to protect the interests of participants, to avoid any
9 unreasonable deterioration of the financial condition of the plan, or to avoid any
10 unreasonable increase in liability to the PBGC insurance fund.

11 14. PBGC has determined that termination of the Pension Plan is necessary to
12 protect the interests of participants.

13 15. Pursuant to 29 U.S.C. § 1348(a)(4), a district court establishes the date of
14 termination of a pension plan covered by Title IV when PBGC and the plan
15 administrator have not agreed on a date of plan termination.

16 16. As of the filing of this Complaint, PBGC and the Pension Plan
17 administrator have not agreed on a date of plan termination.

18 17. December 31, 2009, should be established as the date of the Pension Plan’s
19 termination pursuant to 29 U.S.C. § 1348(a)(4), because as of that date, the Pension
20 Plan’s participants had received constructive notice of the Pension Plan termination, and
21 they no longer had any justifiable expectations of the Pension Plan’s continuation.
22 Establishment of that date furthers the interests of PBGC by preventing an unreasonable
23 increase in the liability of the PBGC insurance fund.

24 18. Pursuant to 29 U.S.C. § 1342(c), a trustee for a pension plan shall be
25 appointed by the court upon granting a decree of plan termination. Further,
26 29 U.S.C. § 1342(b) provides that PBGC may request that it be appointed as trustee of a
27 plan in any case.

1 19. The PBGC is ready, willing, and able to serve as the statutory trustee of the
2 Pension Plan.

3 20. In order to carry out its statutory duties with respect to a pension plan, the
4 trustee appointed by the Court may require the transfer of all assets and records of the
5 pension plan to the trustee. 29 U.S.C. § 1342(d)(1)(A)(ii).

6 21. In order to carry out its statutory duties with respect to a pension plan, the
7 trustee appointed by the Court may require the plan sponsor and the plan administrator to
8 furnish the trustee with any information with respect to the pension plan that the trustee
9 may reasonably need in order to administer the pension plan. 29 U.S.C. §
10 1342(d)(1)(A)(vii).

11 **REQUEST FOR RELIEF**

12 WHEREFORE, PBGC prays this Court grant judgment for PBGC and issue an
13 order:

- 14 (i). Adjudicating that the Pension Plan is terminated pursuant to 29 U.S.C. §
15 1342(c);
- 16 (ii). Establishing December 31, 2009, as the termination date of the Pension
17 Plan pursuant to 29 U.S.C. §1348(a)(4);
- 18 (iii). Appointing PBGC as statutory trustee of the Pension Plan pursuant to
19 29 U.S.C. § 1342(c);
- 20 (iv). Directing Excel Plus and any other person or entity having possession,
21 custody or control of any records, assets or other property of the Pension
22 Plan, to transfer, convey and deliver all such records, assets, and property to
23 PBGC as statutory trustee upon request under 29 U.S.C. §
24 1342(d)(1)(A)(ii);
- 25 (v). Requiring Excel Plus and its agents to furnish PBGC, at PBGC’s request,
26 any information with respect to the Plan that PBGC may reasonably need in
27 order to administer the Plan, pursuant to 29 U.S.C. §§ 1342(d)(1)(A)(vii);
28

1 and

2 (vi). Granting such other relief as the Court deems just and proper.

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4 Dated: November 24, 2014

Respectfully submitted,

5 STEPHANIE YONEKURA
6 Acting United States Attorney
7 LEON W. WEIDMAN
8 Assistant United States Attorney
9 Chief, Civil Division

10 /s/ Kristen Lee
11 KRISTEN LEE,
12 Assistant United States Attorney
13 MERRILL D. BOONE, Attorney, PBGC

14
15 Attorneys for Plaintiff Pension Benefit
16 Guaranty Corp.



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

SEP 2 2014

Excel Plus Home Health Services, Inc.
c/o Sharon Garcia
1331 Montevideo Avenue
Placentia, CA 92870

EIN/PN: 330694542/002
PBGC Case Number: 22487500
Plan Name: Excel Plus Home Health Services,
Inc. Defined Benefit Pension Plan

NOTICE OF DETERMINATION

PLEASE TAKE NOTICE that the Pension Benefit Guaranty Corporation ("PBGC") has determined under section 4042(a)(1), and (2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1342(a)(1), and (2) that the Excel Plus Home Health Services, Inc. Defined Benefit Pension Plan ("Plan") has not met the minimum funding standard required under section 412 of the Internal Revenue Code; and will be unable to pay benefits when due. PBGC has further determined, under ERISA § 4042(c), 29 U.S.C. § 1342(c), that the Plan must be terminated in order to protect the interests of the Plan's participants. Accordingly, PBGC intends to proceed under ERISA § 4042, 29 U.S.C. § 1342, to have the Plan terminated and PBGC appointed as statutory trustee, and under ERISA § 4048, 29 U.S.C. § 1348, to have December 31, 2009, established as the Plan's termination date.

PBGC has completed its decision-making process in this matter; accordingly, this determination is effective on the date it is issued.

PENSION BENEFIT GUARANTY CORPORATION

Andrea Schneider
Chairperson, Trusteeship Working Group