

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PENSION BENEFIT GUARANTY
CORPORATION,

Petitioner,

v.

JELLYBEAN PRODUCTIONS, INC.,
as administrator of the Jellybean Productions, Inc.
Pension Plan, and JOHN BENITEZ,

Respondents.

Civil Action No.:

**PETITION OF PENSION BENEFIT GUARANTY CORPORATION FOR
ENFORCEMENT OF ADMINISTRATIVE SUBPOENA**

This action arises under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2006 & Supp. V 2011) ("ERISA"). Petitioner, Pension Benefit Guaranty Corporation ("PBGC"), files this Petition pursuant to 29 U.S.C. §1303(c) to enforce an administrative subpoena with respect to the Jellybean Productions, Inc. Pension Plan ("Pension Plan"). In support of this Petition, PBGC respectfully refers this Court to the Declaration of Karen Turner, a copy of which is attached hereto as Exhibit A ("Declaration").

PARTIES IN THIS PETITION

1. PBGC is a wholly owned United States Government corporation established under 29 U.S.C. § 1302(a) to administer the pension plan termination insurance program created by Title IV of ERISA.

2. Jellybean Productions, Inc. (“Jellybean”), is a New York corporation established May 7, 1981, with its principal executive office in New York, New York. *See* NYS Department of State, Division of Corporations, Entity Information, a copy of which is attached hereto as Exhibit B.

3. John Benitez is a natural person and, upon information and belief, he resides and carries on a business in New York, New York. *Id.*

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 1303(c) and (e)(3).

5. Venue lies in the District Court of New York pursuant to 29 U.S.C. § 1303(c) and (e)(2), because the Respondents reside here and the Pension Plan is administered here.

CAUSE OF ACTION

6. Jellybean established and maintained the Pension Plan for the exclusive benefit of its employees. *See* 29 U.S.C. § 1104(a).

7. The Pension Plan is a tax-qualified, defined benefit pension plan covered under Title IV of ERISA.

8. Jellybean is the administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1002(16)(A) and 1301(a)(1). *See* Declaration.

9. John Benitez is the chief executive officer of Jellybean and a fiduciary of the Pension Plan, and he served in those capacities at all times referred to in this Petition. *See* Declaration.

10. Jellybean did not make required PBGC insurance premium filings and payments on behalf of the Pension Plan for the years 2008 to present. *See* Declaration.

11. Jellybean did not make required minimum funding contributions to the Pension Plan. *See Declaration.* As plan sponsor, Jellybean and any members of its controlled group are jointly and severally liable for any unpaid contributions owed to the Pension Plan. *See* 26 U.S.C. § 412(c)(11); 29 U.S.C. § 1082(c)(11); *see also* 26 U.S.C. § 412(b)(1) & (2) (for plan years beginning after December 31, 2007); 29 U.S.C. § 1082(b)(1) & (2) (same).

12. Jellybean did not file required Forms 5500, Annual Return/Report of Employee Benefit Plan for the Pension Plan with the Department of the Treasury and the Department of Labor. *See Declaration.*

13. PBGC opened an investigation into Jellybean's failure to meet minimum funding obligations, as well as other concerns that the Pension Plan may have been abandoned or will be unable to pay benefits when due, or both, pursuant to the authority granted to PBGC under 29 U.S.C. §1303(a). *See Declaration.*

14. To further its investigation, PBGC requested by letters dated June 16, 2010, and June 18, 2010, sent to two known addresses, that Mr. Benitez forward to PBGC information and copies of certain documents relating to the Pension Plan and Jellybean's financial condition. Copies of the letters are attached hereto as Exhibit C and D, respectively. When Mr. Benitez failed to respond to the letters, PBGC attempted to contact Mr. Benitez by e-mail and telephone, but he did not respond. *See Declaration.*

15. On October 9, 2013, PBGC issued a subpoena to Jellybean c/o John Benitez under 29 U.S.C. § 1303(b) requiring production of the previously requested documents and information on or before thirty days from the date of service of the subpoena. A copy of the subpoena is attached hereto as Exhibit E and is incorporated herein by reference.

16. On November 8, 2013, the subpoena was served on John Benitez. A copy of the affidavit of service is attached as Exhibit F.

17. Respondents failed to respond to the subpoena within the time prescribed or at any time thereafter. *See Declaration.*

WHEREFORE, PBGC respectfully requests that this Court:

1. Enforce PBGC's subpoena under 29 U.S.C. § 1303(c) by ordering John Benitez, on behalf of Jellybean Productions, Inc., to produce to Mark R. Snyder, Attorney, Office of the Chief Counsel, PBGC, 1200 K Street NW, Washington, D.C., within ten (10) days of service upon him of a copy of this order, complete responses to the documents and information requested in the subpoena;
2. Order that failure of John Benitez to so produce shall be punished as contempt of this Court as provided in 29 U.S.C. § 1303(c); and
3. Provide such other relief as the Court deems appropriate.

A proposed order is attached hereto.

Date: February 10, 2014

Respectfully submitted,



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