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11 *Attorneys for the Pension Benefit Guaranty Corporation*

12 **IN THE UNITED STATES DISTRICT COURT FOR**
 13 **THE CENTRAL DISTRICT OF CALIFORNIA**
 14 **WESTERN DIVISION**

PENSION BENEFIT GUARANTY CORPORATION,	)	Case No. 2:13-CV-04805
Plaintiff,	)	Judge Stephen V. Wilson
v.	)	Magistrate Judge Andrew J. Wistrich
THE OFFICE SUPPLY PLACE, INC., as plan administrator of The Office Supply Place, Inc. Defined Benefit Plan and Trust,	)	NOTICE OF MOTION AND MOTION FOR JUDGMENT BY DEFAULT
Defendant.	)	Hearing Date: August 11, 2014 Hearing Time: 1:30 p.m.

22 PLEASE TAKE NOTICE, that on August 11, 2014 at 1:30 p.m., or as soon thereafter
 23 as counsel may be heard, in the courtroom of the Honorable Steven V. Wilson, Plaintiff,
 24 Pension Benefit Guaranty Corporation (“PBGC”), will move this Court for Judgment by
 25 Default against Defendant, The Office Supply Place, Inc. (“Office Supply”), pursuant to Fed.
 26 R. Civ. P. 55(b)(2).

27 This motion is based upon this Notice of Motion and Motion for Judgment by
 28 Default, the attached Memorandum of Points and Authorities, and Declaration in Support

1 thereof. This motion is further based upon the pleadings and files herein, and such matters as
2 the court may take judicial notice of.

3 WHEREFORE, PBGC hereby moves this Court to enter judgment against Office
4 Supply pursuant to Fed. R. Civ. P. 55(b)(2), and hereby moves this Court to issue an Order:

5 A. Terminating The Office Supply Place, Inc. Defined Benefit Plan and Trust (“the
6 Plan”) pursuant to 29 U.S.C. § 1342(c);

7 B. Appointing PBGC statutory trustee of the Plan pursuant to 29 U.S.C. § 1342(b);

8 C. Establishing December 31, 2007, as the termination date of the Plan pursuant to
9 29 U.S.C. § 1348(a);

10 D. Requiring Office Supply, its agents, and any other person or entity having
11 possession, custody, or control of any records, assets, or other property of the Plan, and any
12 documents required to determine the benefits payable to participants of the Plan, to transfer,
13 convey, and deliver all such records, assets, property, and documents to PBGC; and

14 E. Granting any and all other relief that this Court deems just and proper.

15
16 Dated: July 7, 2014

Respectfully submitted,

17 Local Counsel:

18 /s/ Danielle L. Jaberg
19 Danielle L. Jaberg
20 Counsel for ERISA
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27 **NOTICE OF MOTION AND**
MOTION FOR DEFAULT
CASE NO. 2:13-CV-04805

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13 **IN THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION**

15	PENSION BENEFIT GUARANTY CORPORATION,	)	Case No. 2:13-CV-04805
16	Plaintiff,	)	Judge Stephen V. Wilson
17	v.	)	Magistrate Judge Andrew J. Wistrich
18	THE OFFICE SUPPLY PLACE, INC.,	)	MEMORANDUM OF POINTS
19	as plan administrator of	)	AND AUTHORITIES IN
20	The Office Supply Place, Inc.	)	SUPPORT OF MOTION FOR
21	Defined Benefit Plan and Trust,	)	JUDGMENT BY DEFAULT
	Defendant.)	

22 Plaintiff, Pension Benefit Guaranty Corporation (“PBGC”) submits this
23 Memorandum of Points and Authorities in Support of its Motion for Judgment by Default,
24 pursuant to Fed. R. Civ. P. 55(b)(2) and C.D. Cal. R. 55-1.

25 **I. FACTUAL BACKGROUND**

26 PBGC is a wholly owned United States government corporation established to
27 administer the pension plan termination insurance program under Title IV of the Employee
28 Retirement Income Security Act of 1974, 29 U.S.C. §§ 1301-1461 (2012) (“ERISA”). PBGC

1 ensures the timely payment of certain guaranteed pension benefits to participants in pension
2 plans that terminate while covered by Title IV. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

3 Defendant, The Office Supply Place, Inc. (“Office Supply”), was a California
4 corporation which is currently listed as a dissolved corporation on the website of the Office
5 of the Secretary of State for California. Office Supply is the plan administrator, 29 U.S.C.
6 § 1002(16), of The Office Supply Place, Inc. Defined Benefit Plan and Trust (“the Plan”),
7 which is covered by PBGC’s Title IV insurance program. On or before December 31, 2007,
8 Office Supply terminated all of its employees and permanently ceased business operations.
9 The termination and cessation of business followed the death of Richard H. Lazar, the
10 founder of Office Supply on August 7, 2007.

11 Although Office Supply ceased business operations and dissolved as a California
12 corporation, it failed to terminate the Plan pursuant to Title IV of ERISA. On September 9,
13 2012, PBGC determined, in accordance with 29 U.S.C. §§ 1342(a)(1) and (2), that the Plan
14 had not met the minimum funding standard under Sections 412 and 430 of the Internal
15 Revenue Code and would be unable to pay benefits when due. (Decl. of Jean Marie Breen,
16 hereinafter “Breen” at ¶ 2). PBGC determined that the Plan must be terminated, in
17 accordance with 29 U.S.C. § 1342(c), to protect the interests of Plan participants. (Id.).

18 On September 12, 2012, PBGC issued a Notice of Determination to Office Supply
19 that the Plan should be terminated. (Compl. ¶ 13 and Ex. 1 thereto). PBGC’s letter to Office
20 Supply transmitting the Notice of Determination was returned as non-deliverable. (Id.).
21 Therefore, on July 3, 2013, PBGC filed this action against Office Supply pursuant to 29
22 U.S.C. §§ 1342, 1348(a) for an order: (1) terminating the Plan; (2) appointing PBGC as the
23 Plan’s statutory trustee; (3) establishing December 31, 2007, as the Plan’s termination date;
24 and (4) requiring Office Supply to transfer any and all Plan records and assets to PBGC.

1 II. GROUNDS FOR DEFAULT JUDGMENT

2 On May 1, 2014, pursuant to Fed. R. Civ. P. 4(h)(1), Cal. Civ. Proc. Code
3 § 416.10(d), and Cal. Corp. Code § 1702, this Court granted an Amended Application for
4 Alternative Service on the Office of the Secretary of State for the State of California. (Breen
5 ¶ 4). On April 30, 2014, pursuant to Fed. R. Civ. P. 4(m), this Court granted an Order
6 Authorizing Extension of Time to Provide Service of Process, extending the time for PBGC
7 to serve until June 30, 2014. (Id. at ¶ 5).

8 On May 27, 2014, in accordance with this Court’s order authorizing service of
9 process on the Office of the Secretary of State for the State of California, PBGC had copies
10 of the Order Granting Amended Application for Alternative Service on the Office of the
11 Secretary of State for the State of California, the Corrected Summons, and the Corrected
12 Complaint personally served on the Office of the Secretary of State for the State of
13 California, on behalf of Office Supply, pursuant to Fed. R. Civ. P. 4(h)(1), Cal. Civ. Proc.
14 Code § 416.10(d), and Cal. Corp. Code § 1702. (Id. ¶ 6). PBGC filed proof of service with
15 the Court on June 10, 2014. (Id. ¶ 7).

16 In accordance with Cal. Corp. Code § 1702, service of Office Supply was deemed
17 complete on the tenth day after serving the California Secretary of State, i.e., on June 6,
18 2014. (Id. ¶ 8). In accordance with Fed. R. Civ. P. 12(a)(1)(A), Office Supply was required
19 to serve an answer within 20 days after being served with the Summons and Complaint, i.e.,
20 on or before June 17, 2014. (Id. ¶ 9). Office Supply, however, failed to serve an Answer or
21 otherwise defend within the time prescribed. (Id.).

22 On June 26, 2014, PBGC requested that the Clerk of this Court enter Default against
23 Office Supply. (Id. ¶ 10). On June 27, 2014, the Clerk of the Court entered Default against
24 Office Supply with respect to PBGC’s Complaint pursuant to Fed. R. Civ. P. 55(a). (Id.).

25 Pursuant to Fed. R. Civ. P. 55(b) and C.D. Cal. R. 55-1, Office Supply is not a minor,
26 infant, or incompetent person. (Id. ¶ 11). Pursuant to C.D. Cal. R. 55-1, Office Supply is not
27

1 a servicemember, requiring application of the Soldiers' and Sailors' Relief Act, 50 U.S.C.
2 app. § 521. (Id.). Office Supply has not answered the Complaint or otherwise defended in
3 this action, and the Clerk of this Court entered default against Office Supply on the
4 Complaint on June 27, 2014. Accordingly, PBGC is a party entitled to a default judgment
5 under Fed. R. Civ. P. 55(b)(2) and no notice must be served on Office Supply. (Id. ¶ 12).

6 CONCLUSION

7 For the foregoing reasons, PBGC respectfully requests that the Court grant its Motion
8 for Judgment by Default.

9
10 Dated: July 7, 2014

Respectfully submitted,

11 Local Counsel:

12 /s/ Danielle L. Jaberg
13 Danielle L. Jaberg
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15 California State Bar No. 256653
16 United States Department of Labor
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22 **IN THE UNITED STATES DISTRICT COURT FOR**
23 **THE CENTRAL DISTRICT OF CALIFORNIA**
24 **WESTERN DIVISION**

25 PENSION BENEFIT GUARANTY
26 CORPORATION,

27 Plaintiff,

28 v.

29 THE OFFICE SUPPLY PLACE, INC.,
30 as plan administrator of
31 The Office Supply Place, Inc.
32 Defined Benefit Plan and Trust,

33 Defendant.

Case No. 2:13-CV-04805

Judge Stephen V. Wilson
Magistrate Judge Andrew J. Wistrich

DECLARATION OF
JEAN MARIE BREEN

34 I, Jean Marie Breen, make this declaration pursuant to Fed. R. Civ. P 55(b)(2) and
35 C.D. Cal. R. 55-1, in support of Pension Benefit Guaranty Corporation's ("PBGC") Motion
36 for Judgment by Default, and state as follows:

37 1. I am an attorney, presently employed by the Office of the Chief Counsel of the
38 Plaintiff, PBGC.

39 2. On September 19, 2012, PBGC determined, in accordance with 29 U.S.C.
40 §§ 1342(a)(1) and (2), that The Office Supply Place, Inc. Defined Benefit Plan and Trust (the

1 “Plan”) had not met the minimum funding standard under Sections 412 and 430 of the
2 Internal Revenue Code and would be unable to pay benefits when due. (Exhibit 1). In
3 addition, PBGC determined that the Plan must be terminated, in accordance with 29 U.S.C.
4 § 1342(c), to protect the interest of Plan participants. (Id.).

5 3. On July 3, 2013, PBGC filed its Complaint against The Office Supply Place, Inc.
6 (“Office Supply”). Office Supply is the Plan Administrator of The Office Supply Place, Inc.
7 Defined Benefit Plan and Trust as defined by 29 U.S.C. §§ 1102(16)(A), 1301(a)(1).

8 4. On May 1, 2014, pursuant to Fed. R. Civ. P. 4(h)(1), Cal. Civ. Proc. Code
9 § 416.10(d), and Cal. Corp. Code § 1702, this Court granted an Order Granting PBGC’s
10 Amended Application for Alternative Service on the Office of the Secretary of State for the
11 State of California.

12 5. On April 30, 2014, pursuant to Fed. R. Civ. P. 4(m), this Court granted an Order
13 Authorizing an Extension of Time to Provide Service of Process. This Court extended the
14 time for PBGC to serve Office Supply until June 30, 2014.

15 6. On May 27, 2014, PBGC had a copy of the Corrected Summons, Corrected
16 Complaint, and Order Granting PBGC’s Amended Application for Alternative Service
17 personally served on the Office of the Secretary of State for the State of California on behalf
18 of The Office Supply Place, Inc., 1500 11th Street, Room 390, Sacramento, CA 95814.

19 7. On June 10, 2014, PBGC filed Proof of Service upon Office Supply with this
20 Court, in accordance with Fed. R. Civ. P. 4(e), 4(l), and C.D. Cal. R. 5-3.

21 8. In accordance with Cal. Corp. Code. § 1702, service of process on Office Supply
22 was deemed complete on the 10th day after delivery of the Summons and Complaint to the
23 California Secretary of State, i.e., on June 6, 2014.

24 9. In accordance with Fed. R. Civ. P. 12(a), Office Supply was required to serve an
25 Answer within 20 days after being served with the Summons and Complaint, i.e., on or
26 before June 17, 2014. Office Supply did not file an Answer or otherwise defend the
27

1 Complaint filed against it within that time period.

2 10. On June 26, 2014, PBGC requested that the Clerk of this Court enter Default
3 against Office Supply. On June 27, 2014, the Clerk of the Court entered Default against
4 Office Supply with respect to PBGC's Complaint pursuant to Fed. R. Civ. P. 55(a).

5 11. Office Supply is not a minor, infant, or incompetent person, such that the
6 restrictions on entry of judgment by default under Fed. R. Civ. P. 55(b)(2) and C.D. Cal. R.
7 55-1 would apply. Office Supply is not a servicemember, such that restrictions against entry
8 of judgment by default under C.D. Cal. R. 55-1 and 50 U.S.C. app. § 521 would apply.
9 Office Supply cannot be a servicemember in military service (as defined under
10 50 U.S.C. app. §511), minor, infant, or incompetent person, because it is a corporation.

11 12. Office Supply has not appeared either personally or by a representative in this
12 proceeding. Thus, PBGC is not required to serve Office Supply with notice before the
13 hearing.

14
15 I declare under penalty of perjury that the foregoing is true and correct.

16
17 July 7, 2014

18 
JEAN MARIE BREEN

19 Subscribed and sworn to before me this 7th day of July, 2014, in Washington, D.C.

20
21 

22
23 NOTARY PUBLIC

24
25 **Mark F. Maddrey**
26 **Notary Public, District of Columbia**
27 **My Commission Expires 9/30/2018**



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 14 **WESTERN DIVISION**

PENSION BENEFIT GUARANTY CORPORATION,)	Case No. 2:13-CV-04805
Plaintiff,	)	Judge Stephen V. Wilson
v.	)	Magistrate Judge Andrew J. Wistrich
THE OFFICE SUPPLY PLACE, INC.,	)	DEFAULT JUDGMENT ORDER
as plan administrator of)	
The Office Supply Place, Inc.)	
Defined Benefit Plan and Trust,)	
Defendant.)	

22 The Court, having reviewed the Pension Benefit Guaranty Corporation’s (“PBGC”) Motion
 23 for Judgment by Default, Memorandum of Law, and Declaration in Support Thereof against
 24 the Office Supply Place, Inc. (“Office Supply”), and the Clerk of this Court having entered
 25 a Default with respect to Office Supply, and good cause having been shown therefore, it is
 26 by the Court,

27 **ORDERED** that PBGC’s Motion for Judgment by Default is granted; and it is
 28

1 FURTHER ORDERED that The Office Supply Place, Inc. Defined Benefit Plan and
2 Trust (“the Plan”) is terminated pursuant to 29 U.S.C. § 1342(c); and it is

3 FURTHER ORDERED that PBGC is appointed statutory trustee of the Plan
4 pursuant to 29 U.S.C. § 1342(b), with all the powers conferred and duties imposed upon
5 such a statutory trustee by 29 U.S.C. § 1342(d), and otherwise by law; and it is

6 FURTHER ORDERED that December 31, 2007, is established as the Plan's
7 termination date pursuant to 29 U.S.C. § 1348(a); and it is

8 FURTHER ORDERED that Office Supply, its agents, and any other person or entity
9 having possession, custody, or control of any records, assets, or other property of the Plan,
10 and any documents required to determine the benefits payable to participants of the Plan,
11 shall transfer, convey, and deliver to PBGC, as statutory trustee, all such records, assets,
12 property, and documents.

13
14
15
16 Dated: _____

_____ UNITED STATES DISTRICT JUDGE