

Pension Plan (the “Fairfield Plan”, together with the “Hillsdale Plans”, the “Plans”); (B) appointing PBGC as statutory trustee of the Plans; (C) establishing March 1, 2013, as the termination date for the Hillsdale Plans and August 23, 2013 for the Fairfield Plan; and (d) requiring that Metavation, LLC (“Metavation”) and Fairfield Castings, LLC, f/k/a Revstone Casting Fairfield, LLC (“Fairfield Castings”, each a “Defendant” and, collectively, the “Defendants”), each of its agents and any other person or entity having possession, custody or control of any of the records, assets, property, and documents relating to each the Plans, each transfer, convey and deliver all such records, assets, and property and documents to PBGC.

JURISDICTION AND VENUE

2. This Court has exclusive jurisdiction over this action, without regard to the amount in controversy, under 29 U.S.C. §§ 1303(e)(3), 1342(c), 1342(f).

3. Venue properly lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g) because the Defendants are headquartered in Lexington, KY.

PARTIES

4. Plaintiff PBGC is a wholly-owned United States government corporation established under 29 U.S.C. § 1302(a) to administer and enforce the defined benefit pension plan termination insurance program created under Title IV of ERISA. When an underfunded pension plan terminates, PBGC pays statutorily guaranteed pension benefits to plan participants. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

5. Defendant Metavation is a limited liability company, organized under the laws of Delaware, with its principal places of business located in Southfield, Michigan and Lexington,

Kentucky. Metavation is the Plan administrator of the Plans within the meaning of 29 U.S.C. § 1302(a)(1) and 1002(16)(A).

6. Defendant Fairfield Castings is a limited liability company, organized under the laws of Delaware, with its headquarters located in Lexington, Kentucky and its principal place of business located in Fairfield, Iowa. Fairfield Castings is the Plan administrator of the Fairfield Plan within the meaning of 29 U.S.C. § 1302(a)(1) and 1002(16)(A).

THE PLANS

7. The Plans are tax-qualified, single-employer, defined benefit pension plans that are covered by Title IV of ERISA. 29 U.S.C. § 1321(a).

8. Metavation is the contributing sponsor of the Hillsdale Plans within the meaning of 29 U.S.C. § 1301(a)(13).

9. Fairfield Castings is the contributing sponsor of the Fairfield Plan within the meaning of 29 U.S.C. § 1301(a)(13).

10. The Plans provide pension benefits to certain present and former employees of Defendants and their beneficiaries.

11. On information and belief, the Hillsdale Plans have approximately 1526 participants. Using the assumptions set forth in 29 U.S.C. § 1344 and the regulations thereunder, PBGC estimates that the Hillsdale Plans are underfunded by at least \$40.1 million. However, as alleged in the Department of Labor complaint (described in paragraph 14 below), a significant portion of the Hillsdale Plans' assets are in the form of loans and notes to entities in the Metavation controlled group. The value of those assets is difficult to estimate and may in some

cases be as low as zero. Therefore, the assets available to provide benefits under the Hillsdale Plans are likely overstated, and the underfunding understated, by an unknown amount.

12. On information and belief, the Fairfield Plan has approximately 316 participants. Using the assumptions set forth in 29 U.S.C. § 1344 and the regulations thereunder, PBGC estimates that it is underfunded by approximately \$6 million. However, as alleged in the Department of Labor complaint (described in paragraph 14 below), a significant portion of the Fairfield Plan's assets are in the form of real estate leased to a controlled group member or notes made by controlled group members or third parties, and the value of those assets is difficult to estimate. In some cases, the value of the notes may be as low as zero. Therefore, the assets available to provide benefits under the Fairfield Plan are likely overstated, and the underfunding understated, by an unknown amount.

13. The sponsor of a pension plan and members of its controlled group, within the meaning of 29 U.S.C. § 1301(a)(14), are financially responsible for the pension plan. The liabilities of the plan sponsor and controlled-group members with regard to the pension plan are joint and several. IRC § 412(b)(1) & (2) (2009); 29 U.S.C. §§ 1307(e)(2), 1362(a).

14. On August 9, 2012, the Department of Labor filed a complaint in this court against Metavation, the Hillsdale Plans, and other parties alleging fiduciary breaches causing the Hillsdale Plans losses totaling approximately \$34.6 million (case number 12-cv-00250 (KKC)). On May 30, 2013, the Department of Labor filed a complaint in this court against Fairfield, the Fairfield Plan, and other parties alleging fiduciary breaches causing the Fairfield Plan losses totaling approximately \$4.4 million, ((case number 13-cv-00156 (KSF), together with case number 12-cv-00250, the "DOL Actions").

15. On June 13, 2013, the DOL filed a preliminary injunction in the DOL Actions seeking appointment of an independent fiduciary with respect to the Plans (docket number 257). On July 26, 2013, the court entered an order removing George Hofmeister, Metavation, and Fairfield Castings, and Fourslides, Inc. as fiduciaries, and appointed Fiduciary Counselors, Inc. as the independent fiduciary (docket number 73).

COMPANY BACKGROUND AND ASSET SALES

16. The Defendants are within the same controlled group, comprising of at least 60 entities. The Defendants are in the business of, *inter alia*, production of highly engineered components, assemblies for the automotive industry and other industrial sectors focusing on case and formed metals, tooling, and high-performance products and processes.

17. On December 3, 2012, Metavation's parent company, Revstone Industries, LLC ("Revstone Industries") and certain other subsidiaries, filed petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, case number 12-13262 (BLS) (jointly administered).

18. On July 22, 2013, Metavation filed a petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, case number 13-11831 (BLS).

19. Fairfield Castings is not under bankruptcy protection.

20. Certain of the Defendants, and members of the Defendants' controlled group, are conducting or exploring selling their assets. The proceeds from each asset sale will first be used to pay off the seller's secured debt and any administrative fees incurred. The remaining proceeds

will be used to pay off the seller's unsecured creditors. Any proceeds remaining after unsecured creditors are paid will be upstreamed to Revstone Industries.

21. In general, PBGC is the largest unsecured creditor of the operating subsidiaries of Revstone Industries, including Metavation. Moreover, PBGC is the largest unsecured creditor of the RemainCos (as defined below). PBGC's analysis indicates that, if its claims are matured by termination of the Plans before the proceeds of the asset sales are dispersed to other creditors, PBGC stands to obtain a substantially more significant recovery on the Plans' underfunding that is described above.

22. On information and belief, the only significant operating entities in the Defendants' controlled group that will remain after the asset sales are Fairfield Castings and T-Cast Holdings, LLC ("T-Cast", together with Fairfield Castings, "RemainCos").

23. Based on information provided to PBGC by the Defendants, the RemainCos cannot afford the Plans. More specifically, PBGC's analysis, which is based on the Defendants' projections, shows that RemainCos will not generate enough cash flow (after payment of debt amortization) to consistently pay minimum funding contributions for the Plans.

24. Additionally, PBGC's analysis, based on information provided by the Defendants, shows that PBGC would receive little or no recovery on its claims in the event of RemainCos' failure.

PBGC'S DETERMINATIONS

25. On March 1, 2013, in accordance with 29 U.S.C. § 1342(c), PBGC issued Notices of Determination to Metavation as plan administrator of the Hillsdale Plans ("Metavation Notices"), notifying Metavation that PBGC had determined that the Pension Plans will be unable to pay benefits when due and that the possible long-run loss of the PBGC with respect to the

Hillsdale Plans may reasonably be expected to increase unreasonably if the Hillsdale Plans are not terminated. The Metavation Notices also stated that PBGC determined, under 29 U.S.C. § 1342(c), that the Hillsdale Plans must be terminated in order to protect the interests of participants and to avoid any unreasonable increase in liability of the PBGC insurance fund. The Metavation Notices further stated that PBGC intended to proceed to seek termination of the Hillsdale Plans, have PBGC appointed as trustee of the Hillsdale Plans, and establish March 1, 2013, as the date of termination for the Hillsdale Plans. The Metavation Notices are attached hereto as Exhibit A.

26. On August 23, 2013 PBGC issued revised Notices of Determination (“Revised Notices”) to Metavation as plan administrator of the Hillsdale Plans, notifying Metavation that PBGC had determined that the Hillsdale Plans should be terminated because they will be unable to pay benefits when due and that the possible long-run loss to PBGC may reasonably be expected to increase unreasonably if the Hillsdale Plans are not terminated. The Revised Notices also stated that PBGC has determined, under 29 U.S.C. § 1342(c), that the Hillsdale Plans must be terminated in order to protect the interests of participants and to avoid any unreasonable increase in liability of the PBGC insurance fund. The Revised Notices further stated that PBGC intended to proceed to seek termination of the Hillsdale Plans, have PBGC appointed as trustee of the Hillsdale Plans, and establish March 1, 2013, as the date of termination for the Hillsdale Plans. The Revised Notices are attached as Exhibit B.

27. On August 23, 2013, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination to Fairfield Castings as plan administrator of the Fairfield Plan (“Fairfield Notice”), notifying Fairfield Castings that PBGC had determined that the Fairfield Plan will be unable to pay benefits when due and that the possible long-run loss to PBGC may

reasonably be expected to increase unreasonably if the Fairfield Plan is not terminated. The Fairfield Notice also stated that PBGC has determined, under 29 U.S.C. § 1342(c), that the Fairfield Plan must be terminated in order to protect the interests of participants and to avoid any unreasonable increase in liability of the PBGC insurance fund. The Fairfield Notice further stated that PBGC intended to proceed to seek termination of the Fairfield Plan, have PBGC appointed as trustee of the Fairfield Plan, and establish August 23, 2013, as the date of termination for the Fairfield Plan. The Fairfield Notice is attached as Exhibit C.

28. On March 1, 2013, PBGC caused notices to be published in the Detroit Free Press and the Lexington Herald-Leader advising the Hillsdale Plans' participants of PBGC's determination both to terminate the Hillsdale Plans and to have March 1, 2013, established as the Hillsdale Plans' termination date.

29. On August 23, 2013, PBGC caused notices to be published in the Fairfield Daily Ledger and the Lexington Herald-Leader advising the Fairfield Plan participants of PBGC's determination both to terminate the Fairfield Plan and to have August 23, 2013 established as the Fairfield Plan termination date.

COUNT I

30. Paragraphs 1 through 29 are incorporated by reference as if set forth fully herein.

31. PBGC is authorized by 29 U.S.C. § 1342 to apply to a U.S. District Court for a decree terminating a plan whenever PBGC determines, *inter alia*, that a pension plan will be unable to pay benefits when due. 29 U.S.C. § 1342(a)(2).

32. PBGC has determined, pursuant to 29 U.S.C. § 1342(a)(2), that the Hillsdale Plans and the Fairfield Plan will be unable to pay benefits when due. PBGC will file an administrative record with respect to its determinations.

33. As described above, on August 23, 2013 PBGC issued the Revised Notices of PBGC's determinations with respect to the Hillsdale Plans. Also as described above, PBGC published a notice regarding its determinations in the Detroit Free Press and the Lexington Herald-Leader on March 1, 2013.

34. As described above, on August 23, 2013 PBGC issued the Fairfield Notice regarding PBGC's determinations with respect to the Fairfield Plan. Also as described above, PBGC published a notice regarding its determination in the Fairfield Daily Ledger and the Lexington Herald-Leader on August 23, 2013.

35. Pursuant to 29 U.S.C. § 1342(c), a district court may order the termination of a pension plan if, *inter alia*, termination is necessary to protect the interests of participants or to avoid any unreasonable deterioration of the financial condition of the plan.

36. As supported by PBGC's administrative record with respect to the Plans, termination of the Hillsdale Plans and the Fairfield Plan is necessary to protect the interests of participants and to avoid unreasonable deterioration of the financial condition of the Plans.

COUNT II

37. Paragraphs 1 through 36 are incorporated by reference as if set forth fully herein.

38. PBGC is authorized by 29 U.S.C. § 1342 to commence proceedings to terminate a plan whenever PBGC determines, *inter alia*, that the possible long-run loss of PBGC with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated. 29 U.S.C. § 1342(a)(4).

39. PBGC has determined, pursuant to 29 U.S.C. § 1342(a)(4), that the possible long-run loss of PBGC with respect to the Plans may reasonably be expected to increase unreasonably

if the Plans are not terminated. PBGC will file an administrative record with respect to its determinations.

40. As described above, on August 23, 2013 PBGC issued the Revised Notices of PBGC's determinations with respect to the Hillsdale Plans. Also as described above, PBGC published a notice regarding its determinations in the Detroit Free Press and the Lexington Herald-Leader on March 1, 2013.

41. As described above, on August 23, 2013 PBGC issued the Fairfield Notice regarding PBGC's determinations with respect to the Fairfield Plan. Also as described above, PBGC published a notice regarding its determination in the Fairfield Daily Ledger and the Lexington Herald-Leader on August 23, 2013.

42. Pursuant to 29 U.S.C. § 1342(c), a district court may order the termination of a pension plan if necessary to avoid any unreasonable increase in liability to the PBGC insurance fund.

43. As fully supported by PBGC's administrative record with respect to the Plans, termination of the Plans is necessary to avoid any unreasonable increase in liability to the PBGC insurance fund.

COUNT III

44. Paragraphs 1 through 43 are incorporated by reference as if set forth fully herein.

45. As described above, on August 23, 2013 PBGC issued the Revised Notices to Metavation, notifying Metavation that PBGC had determined that the Hillsdale Plans should be terminated because they will be unable to pay benefits when due and that the possible long-run loss to PBGC may reasonably be expected to increase unreasonably if the Hillsdale Plans are not terminated. The Revised Notices also stated that PBGC has determined, under 29 U.S.C.

§ 1342(c), that the Hillsdale Plans must be terminated in order to protect the interests of participants and to avoid any unreasonable increase in liability of the PBGC insurance fund. The Revised Notices further stated that PBGC intended to proceed to seek termination of the Hillsdale Plans, have PBGC appointed as trustee of the Hillsdale Plans, and establish March 1, 2013, as the date of termination for the Hillsdale Plans.

46. On March 1, 2013, PBGC caused notices to be published in the Detroit Free Press and the Lexington Herald-Leader advising the Hillsdale Plans' participants of PBGC's determination both to terminate the Hillsdale Plans and to have March 1, 2013, established as the Hillsdale Plans' termination date.

47. As described above, on August 23, 2013 PBGC issued the Fairfield Notice, notifying Fairfield Castings that PBGC had determined that the Fairfield Plan should be terminated because it will be unable to pay benefits when due and that the possible long-run loss to PBGC may reasonably be expected to increase unreasonably if the Fairfield Plan is not terminated. The Fairfield Notice also stated that PBGC has determined, under 29 U.S.C. § 1342(c), that the Fairfield Plan must be terminated in order to protect the interests of participants and to avoid any unreasonable increase in liability of the PBGC insurance fund. The Fairfield Notice further stated that PBGC intended to proceed to seek termination of the Fairfield Plan, have PBGC appointed as trustee of the Fairfield Plan, and establish August 23, 2013, as the date of termination for the Fairfield Plan.

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

49. As of the date of the filing of this Complaint, PBGC and the Defendants have not agreed on a date of plan termination for any of the Plans.

50. March 1, 2013 should be established as the date of termination of the Hillsdale Plans pursuant to 29 U.S.C. § 1348(a)(4) because as of that date, Plan participants received constructive notice of the Hillsdale Plans' termination and no longer had any justifiable expectations of the Hillsdale Plans' continuation. Similarly, August 23, 2013 should be established as the date of termination for the Fairfield Plan pursuant to 29 U.S.C. § 1348(a)(4) because as of that date, participants received constructive notice of the Fairfield Plan termination and no longer had any justifiable expectations of such plans' continuation. Moreover, establishment of these dates serves the interests of PBGC by preventing PBGC's long-run loss from increasing unreasonably, thus preventing an unreasonable increase in the liability of the PBGC insurance fund.

COUNT IV

51. Paragraphs 1 through 50 are incorporated by reference as if set forth fully herein.

52. Pursuant to 29 U.S.C. § 1342(c), a trustee for a pension plan shall be appointed by the court upon granting a decree of plan termination. Further, 29 U.S.C. § 1342(b)(1) provides that PBGC "may request that it be appointed as trustee of a plan in any case."

53. PBGC is ready, willing and able to serve as statutory trustee of the Plans.

REQUEST FOR RELIEF

WHEREFORE, PBGC respectfully requests this Court grant judgment for PBGC and issue an order granting the following relief:

1. Adjudicating the Plans terminated pursuant to 29 U.S.C. § 1342(c);

2. Appointing PBGC statutory trustee of the Plans pursuant to 29 U.S.C. § 1342(c);
3. Establishing March 1, 2013 as the termination date of the Hillsdale Plans and August 23, 2013 as the termination date of the Fairfield Plan pursuant to 29 U.S.C. § 1348(a)(4);
4. Directing Defendants and any other person or entity having possession, custody or control of any records, assets or other property of the Plan, to transfer, convey and deliver all such records, assets and property to PBGC as statutory trustee upon request under 29 U.S.C. § 1342(d)(1); and
5. Granting such other relief as the Court deems just and proper.

Dated: August 23, 2013
Washington, D.C.

Respectfully submitted,

/s/ M. Katherine Burgess

ISRAEL GOLDOWITZ
Chief Counsel
KAREN L. MORRIS
Deputy Chief Counsel
KARTAR S. KHALSA
Assistant Chief Counsel
DESIREE M. AMADOR
CASSANDRA B. CAVERLY
M. KATHERINE BURGESS
Attorneys
PENSION BENEFIT GUARANTY
CORPORATION
Office of the Chief Counsel
1200 K Street NW, Suite 340
Washington, DC 20005
Telephone: (202) 326-4020, ext. 4779
Facsimile: (202) 326-4112
burgess.katie@pbgc.gov & efile@pbgc.gov