

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

PENSION BENEFIT GUARANTY)
CORPORATION)
1200 K Street, NW, Suite 340)
Washington, DC 20005,)

Plaintiff,

v.

OCEAN LABEL, INC.)
3910 Valley Avenue)
Pleasanton, CA 94566,)

Defendant.

CASE NO. 14-1129

COMPLAINT

COMES NOW Plaintiff Pension Benefit Guaranty Corporation (“PBGC”) and for its Complaint against Ocean Label, Inc., as administrator of the Dennis J. Brennan, Inc. Defined Benefit Pension Plan (the “Pension Plan”), states as follows.

1. This action arises under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (“ERISA”).

2. By this action, PBGC seeks an order, pursuant to 29 U.S.C. §§ 1342 & 1348, (i) terminating the Pension Plan, (ii) appointing PBGC the Pension Plan’s statutory trustee, (iii) fixing the Pension Plan’s termination date; and (iv) commanding third parties to transfer all Pension-Plan-related information and documents to PBGC.

Jurisdiction

3. The Court has subject-matter jurisdiction over this action pursuant to 29 U.S.C. §§ 1342, 1370.

4. The Court has personal jurisdiction over the defendant pursuant to 29 U.S.C. § 1370(e)(2).

The Parties

5. Plaintiff PBGC is the agency and wholly owned corporation of the United States government that administers the pension plan insurance program of Title IV of ERISA.

6. Defendant Ocean Label is the Plan Administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1002(16)(A) & 1301(a)(1).

Statutory Background

7. When an underfunded defined benefit pension plan terminates, PBGC typically becomes the statutory trustee of the plan and, subject to certain statutory limitations, uses PBGC's insurance funds to pay the plan's unfunded benefits. *See* 29 U.S.C. § 1322.

8. PBGC may institute proceedings to terminate a defined benefit pension plan whenever it determines that the plan will be unable to pay benefits when due. 29 U.S.C. § 1342(a)(2).

9. PBGC may institute proceedings to terminate a defined benefit pension plan whenever it determines that, *inter alia*, termination is necessary to avoid any

unreasonable deterioration of the financial condition of the plan or any reasonable increase in the liability of the PBGC insurance fund. 29 U.S.C. § 1342(c).

10. After determining that a pension plan should be terminated and notifying its plan administrator of such determination, PBGC may apply to the appropriate United States district court for a decree adjudicating that the Plan must be terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of the PBGC insurance fund. 29 U.S.C. § 1342(c). Alternatively, PBGC and the plan administrator may enter into an agreement to terminate the plan.

11. The termination date of a pension plan is either agreed upon by PBGC and the plan administrator or, in the absence of an agreement, established by the district court. 29 U.S.C. § 1348(a)(4).

12. Upon issuing a termination decree under 29 U.S.C. § 1342(c), the district court must appoint and authorize a trustee to terminate the pension plan in accordance with Title IV of ERISA. 29 U.S.C. § 1342(b), (c). PBGC may request its appointment as trustee in any case. 29 U.S.C. § 1342(b)(1).

Factual Background

13. The Pension Plan was established by Ocean Label on February 1, 1995, for the benefit of Ocean Label's employees. The Plan has a total of 13 participants.

14. The Pension Plan is a defined benefit pension plan covered by Title IV of ERISA. *See* 29 U.S.C. §§ 1002(35), 1321(a).

15. No required employer contributions have been made to the Pension Plan since October 2002.

16. On December 15, 2009, the Pension Plan was closed to any additional benefit accruals by participants.

17. In September 2012, the United States Department of Labor (“DOL”) informed PBGC of reports it received from Pension Plan participants that participants were not being paid their pension benefits, and that Mr. Brennan was converting Pension Plan assets for his personal use.

18. DOL further informed PBGC that Mr. Brennan appears to have made numerous withdrawals of money from the Pension Plan. On information and belief, this money was neither distributed to Pension Plan participants nor expended on permissible Pension Plan expenses.

19. Basic pension plan administration of the Pension Plan has been lacking. Plan professionals have resigned because requests for payment for services rendered were ignored. Similarly, participant requests to be put into pay status under the Pension Plan have been ignored by the Pension Plan’s Administrator.

20. On August 20, 2013, PBGC issued its determination (“Determination”) that the Pension Plan will be unable to pay benefits when due under 29 U.S.C. § 1342(a)(2) and that the Pension Plan must be terminated under 29 U.S.C. § 1342(c). A copy of the Determination is attached hereto as Exhibit A and incorporated herein by reference.

21. PBGC sent a copy of the Determination to Ocean Label via Federal Express on August 29, 2013, and offered to enter into an agreement consensually terminating the

Pension Plan and naming PBGC statutory trustee thereof. As of the date of this Complaint, PBGC has received no response from Ocean Label.

22. On August 30, 2013, PBGC published notice of its Determination in the Tri-Valley Times newspaper, which covers the area in which the Pension Plan was administered and benefits under the Pension Plan were earned (Pleasanton, California). This notice, which informed participants that PBGC was proceeding to terminate the Pension Plan in accordance with ERISA, extinguished participants' reasonable expectations that the Pension Plan would continue.

COUNT I

23. PBGC realleges and incorporates by reference paragraphs 1 through 22.

24. Pursuant to 29 U.S.C. § 1342(c), PBGC is authorized, after having determined that a pension plan covered by Title IV of ERISA should be terminated, “[to] apply to the appropriate United States District Court for a decree adjudicating . . . the plan . . . terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any reasonable increase in the liability of [PBGC’s insurance] fund.”

25. After PBGC determines that a pension plan must be terminated, and upon application and notice to the plan’s administrator by PBGC pursuant to 29 U.S.C. § 1342(c), a district court may issue a decree adjudicating such pension plan terminated in order to protect the interests of the participants, to avoid any unreasonable deterioration of the financial condition of the plan, or to avoid any unreasonable increase in PBGC’s liability.

26. PBGC has made the requisite determinations under 29 U.S.C. § 1342(a) and (c) that the Pension Plan must be terminated, and has provided notice thereof to the Pension Plan's Administrator and the participants. Accordingly, this Court may issue a decree terminating the Pension Plan.

COUNT II

27. PBGC realleges and incorporates by reference paragraphs 1 through 26.

28. Upon issuing a termination decree under 29 U.S.C. § 1342(c), a United States district court may appoint PBGC as statutory trustee of the terminated plan. 29 U.S.C. § 1342(b)(1). PBGC is willing and able to serve as statutory trustee of the Pension Plan.

29. If appointed trustee of the Pension Plan, PBGC will terminate the Pension Plan in accordance with Title IV of ERISA, pursue statutory claims for liability under 29 U.S.C. § 1362, pay Pension Plan benefits in accordance with Title IV of ERISA, and administer the Pension Plan in accordance with its terms and the provisions of 29 U.S.C. § 1342(d).

COUNT III

30. PBGC realleges and incorporates by reference paragraphs 1 through 29.

31. The termination date of a pension plan is the date agreed to by PBGC and the plan administrator, or, in the absence of such an agreement, the date established by the Court. 29 U.S.C. § 1348(a)(3) and (a)(4).

32. PBGC's publication on August 30, 2013 in the Tri-Valley Times newspaper of its Determinations that the Pension Plan must be terminated and that PBGC

should become trustee of the Pension Plan, extinguished participants' reasonable expectations that the Pension Plan would continue after August 30, 2013.

33. August 30, 2013, is the termination date that best serves PBGC's interests.

34. Thus, the Court should establish August 30, 2013, as the Pension Plan's termination date.

COUNT IV

35. PBGC realleges and incorporates by reference paragraphs 1 through 34.

36. Under 29 U.S.C. § 1342(d), a court appointed statutory trustee is authorized, among other things, to pay pension plan benefits and manage pension plan assets in accordance with Title IV of ERISA.

37. To carry out its statutory duties with respect to a pension plan, the court-appointed statutory trustee must receive all pension plan assets and all documents relating to the plan, the participants, and the plan's assets.

38. The Court should therefore order the transfer of all Pension Plan assets and Pension Plan related documents as an incident of appointing PBGC statutory trustee of the Pension Plan.

WHEREFORE, PBGC prays for judgment on all counts of its Complaint, and requests an Order

- Adjudicating that the Pension Plan is terminated under 29 U.S.C. § 1342(c);
- Appointing PBGC statutory trustee of the Pension Plan under 29 U.S.C. § 1342(c);

- Establishing August 30, 2013, as the Pension Plan's termination date under 29 U.S.C. § 1348(a);
- Ordering Ocean Label and all other persons or entities having possession, custody, or control of any records, assets, or other property of the Plan, or any documents required to determine Plan benefits, to transfer, convey, and deliver all such items to PBGC; and
- Granting such other relief as the Court deems just and proper.

Respectfully submitted,

Dated: March 11, 2014

/s/ Nathaniel Rayle
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EXHIBIT A



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

AUG 20 2013

Ocean Label Corporation
3910 Valley Avenue
Pleasanton, CA 94566

EIN/PN: 943265400/001

PBGC Case Number: 22277000

Plan Name: The Dennis J. Brennan 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 Dennis J. Brennan Defined Benefit Pension Plan ("Plan") has not met the minimum funding standard required under sections 412 and 430 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. 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 August 30, 2013, 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