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16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF NEVADA**
18 **NORTHERN DIVISION**

18 PENSION BENEFIT GUARANTY CORPORATION)
19 1200 K Street, N.W.)
Washington, D.C. 20005-4026,)
20 Plaintiff,)
21 v.) Case No. 3:16-CV-00110
22)
23 ACE REMAS, LLC, as Administrator of the) COMPLAINT FOR PENSION
William A. Remas Defined Benefit Pension Plan) PLAN TERMINATION
24 4790 Caughlin Parkway, #806)
Reno, Nevada 89519,)
25 Defendant.)

1 This action arises under Title IV of the Employee Retirement Income Security Act of
2 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012 and Supp. II 2014) (“ERISA”). Plaintiff, the
3 Pension Benefit Guaranty Corporation (“PBGC”), files this Complaint, pursuant to 29 U.S.C.
4 §§ 1342(a)(1), (2), and (3), 1342(c), and 1348(a), seeking an order (a) terminating the William
5 A. Remas Defined Benefit Pension Plan (“Pension Plan”), (b) appointing PBGC statutory trustee
6 of the Pension Plan, (c) establishing February 29, 2016, as the termination date for the Pension
7 Plan, and (d) directing the Defendant and any other person or entity having possession, custody,
8 or control of any records, assets, or other property of the Pension Plan, to transfer, convey and
9 deliver all such records, assets, and property to the PBGC, as the statutory trustee upon request
10 under 29 U.S.C. § 1342(d)(1).
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12 **JURISDICTION AND VENUE**

13 1. This Court has exclusive jurisdiction of this action pursuant to 29 U.S.C.
14 §§ 1303(e)(3) and 1342(e) and (f).

15 2. Venue lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g).

16 **PARTIES**

17 3. Plaintiff, PBGC, is a wholly owned United States government corporation
18 established under 29 U.S.C. § 1302(a) to administer the pension plan termination insurance
19 program created by Title IV of ERISA. When an underfunded pension plan terminates, PBGC
20 ensures the timely and uninterrupted payment of statutorily guaranteed pension benefits to plan
21 participants and their beneficiaries. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.
22

23 4. Defendant, Ace Remas, LLC (“Ace”) is the Plan administrator of the Pension
24 Plan within the meaning of 29 U.S.C. §§ 1301(a)(1) and 1002(16)(A). On information and
25 belief, the Defendant is located in Reno, Nevada, and the Pension Plan is administered there.

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<u>Date</u>	<u>Amount</u>
September 21, 2012	\$49,200
January 8, 2013	\$49,200
September 4, 2013	\$10,000
September 30, 2013	\$10,000
October 28, 2013	\$10,000
January 3, 2014	\$15,000
January 7, 2014	\$10,000
February 6, 2014	\$25,000
April 17, 2014	\$25,000
May 20, 2014	\$10,000
May 22, 2014	\$15,000
June 10, 2014	\$10,000
June 26, 2014	\$25,000
August 1, 2014	\$15,000
August 11, 2014	\$20,000
August 28, 2014	\$15,000
September 18, 2014	\$15,000
October 1, 2014	\$15,000
October 21, 2014	\$25,000
November 12, 2014	\$25,000
January 9, 2015	\$15,000

1	January 28, 2015	\$15,000
2	February 6, 2015	\$20,000
3	February 24, 2015	\$25,000
4	March 24, 2015	\$25,000
5	April 8, 2015	\$15,000
6	April 24, 2015	\$10,000
7	May 5, 2015	\$25,000
8	June 2, 2015	\$10,000
9	July 10, 2015	\$15,000

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12 12. None of the Distributions were made by reason of William A. Remas's death.

13 13. On information and belief, immediately after each of the Distributions, the
14 Pension Plan had nonforfeitable pension benefits which were not funded.

15 14. On information and belief, none of the Distributions was used in whole or in part
16 to pay benefits under the Pension Plan to the Pension Plan's other participants.

17 15. PBGC is authorized by 29 U.S.C. § 1342 to commence proceedings to terminate
18 a plan whenever PBGC determines, *inter alia*, that: (a) the plan has not met the minimum
19 funding standard required under section 412 of the Internal Revenue Code, 29 U.S.C.
20 § 1342(a)(1); (b) a plan will be unable to pay benefits when due, 29 U.S.C. § 1342(a)(2); and
21 (c) there is a distribution under the plan to a participant who is a substantial owner if: (i) such
22 distribution has a value of \$10,000 or more, (ii) such distribution is not made by reason of the
23

1 death of the participant, and (iii) immediately after the distribution, the plan has nonforfeitable
2 benefits which are not funded. 29 U.S.C. §§ 1342(a)(4), 1343(c)(7).

3 16. PBGC has determined, pursuant to 29 U.S.C. §§ 1342(a)(1), (2), and (3), that the
4 Pension Plan has not met the minimum funding standard required under section 412 of the
5 Internal Revenue Code, that the Pension Plan will be unable to pay benefits when due, and that
6 there were 30 distributions under the Pension Plan to a participant who is a substantial owner of
7 \$10,000 or more, not made by reason of the death of such participant, and immediately after each
8 such distribution, the Pension Plan had nonforfeitable benefits which were not funded.

9 17. On February 23, 2016, in accordance with 29 U.S.C. § 1342(c), PBGC issued a
10 Notice of Determination (the "Notice") to Ace, as plan administrator of the Pension Plan,
11 notifying Ace that PBGC determined that the Pension Plan has not met the minimum funding
12 standard required under section 412 of the Internal Revenue Code, that the Pension Plan will be
13 unable to pay benefits when due, and that there were 30 distributions under the Pension Plan to a
14 participant who is a substantial owner of \$10,000 or more, not made by reason of the death of
15 such participant, and immediately after each such distribution, the Pension Plan had
16 nonforfeitable benefits which were not funded. A copy of the Notice is attached hereto as
17 Exhibit 1.
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19 18. PBGC also caused a notice to be published in a local newspaper on February 29,
20 2016, advising the Pension Plan's participants of PBGC's determination both to terminate the
21 Pension Plan and to have February 29, 2016 established as the Pension Plan's termination date.
22 This notice was published in the Reno Gazette-Journal.
23

24 19. Pursuant to 29 U.S.C. § 1342(c), a district court may order the termination of a
25 pension plan if necessary to protect the interests of participants, to avoid any unreasonable

1 deterioration of the financial condition of the plan, or to avoid any unreasonable increase in
2 liability to the PBGC insurance fund.

3 20. PBGC has determined that termination of the Pension Plan is necessary to protect
4 the interests of participants.

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

8 22. As of the filing of this Complaint, PBGC and the Pension Plan administrator have
9 not agreed on a date of termination.

10 23. February 29, 2016 should be established as the date of the Pension Plan's
11 termination pursuant to 29 U.S.C. § 1348(a)(4), because as of that date, the Pension Plan's
12 participants received constructive notice of the Pension Plan termination, and they no longer
13 had any justifiable expectations of the Pension Plan's continuation.

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

17 25. PBGC is ready, willing, and able to serve as statutory trustee of the Pension Plan.
18

19 **REQUEST FOR RELIEF**

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

- 22 1. Adjudicating the Pension Plan terminated pursuant to 29 U.S.C. § 1342(c);
23 2. Appointing PBGC statutory trustee of the Pension Plan pursuant to 29 U.S.C.
24 § 1342(c);
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