



meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).

4. Venue of this action lies in the District of Minnesota, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered in Maple Grove, Hennepin County, Minnesota, within this district.

### **DEFENDANTS AND FIDUCIARIES**

5. Edelweiss Home Health Care, Inc., (“Edelweiss” or “the Company”), a former Minnesota corporation, was engaged in the business of providing in-home medical care for senior citizens in the Minneapolis and St. Paul, Minnesota metropolitan areas.

6. On January 1, 2004, Edelweiss established the Plan for the benefit of its employees. The purpose of the Plan was to provide benefits to its participants and beneficiaries in the event of retirement, death, or disability.

7. From January 1, 2004 to the present, Edelweiss was the Plan Administrator and a named fiduciary by virtue of the Company’s Board of Directors failure to establish a Plan Administrator pursuant to Article VIII, Section 8.1.1 of the governing Plan document and, therefore, a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

8. From at least March 2010 through June 2012, Defendant Lori Jo. Mueller (“Mueller”) was the Vice President of Operations for Edelweiss and, from July 21, 2005 through the present, Mueller exercised authority and control over Plan assets by virtue of her position as the “Authorized Coordinator” for the Plan and a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

9. The Plan is named as a Defendant in this action pursuant to Federal Rule of Civil

Procedure 19(a), solely to assure that complete relief can be granted.

**ALLEGATIONS**

10. Paragraphs 1 through 9 above, are realleged and incorporated herein by reference.
11. On information and belief, Edelweiss and Defendant Mueller were the only known individuals authorized to direct the disbursement of the Plan's assets.
12. Edelweiss ceased operations in September 2012, after it was discovered that Defendant Mueller embezzled money from the Company for personal use. Edelweiss was administratively dissolved on April 16, 2014.
13. No individual or entity has taken fiduciary responsibility for the operation and administration of the Plan and its assets since the Company was administratively dissolved on April 16, 2014.
14. The current asset custodian for the Plan is State Street Bank and Trust Company.
15. According to the valuation for the period ending September 8, 2014, the Plan had four participants and assets totaling approximately \$12,276.90.
16. Defendant Mueller has not terminated the Plan or issued distributions to Plan participants.
17. Under Article V, Section 5.2.1 of the Plan's governing document, if the nonforfeitable portion of a participant's account balance, as of the valuation date, coincides with or immediately after the termination of employment, is not more than \$5,000, the nonforfeitable portion of the account balance will be paid in a lump sum as soon as practicable thereafter.
18. On information and belief, when Edelweiss ceased operations in September 2012, all employees were terminated.
19. On information and belief, since 2012 Plan participants and beneficiaries have not

been able to obtain distributions of their individual Plan account balances.

20. On February 4, 2013, Defendant Mueller pled guilty to defrauding her employer and a health care company.

21. On June 12, 2013, Defendant Mueller was sentenced to fifty-one months in prison for one count of wire fraud and one count of health care fraud. As a result of her conviction, Mueller may no longer serve as a fiduciary to an ERISA Plan pursuant to ERISA §411(a)(1), 29 U.S.C. §1111(a)(1).

22. By the facts described in paragraphs 10 through 21 above, Defendant Mueller:

a. Failed to discharge her duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and its beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

b. Failed to discharge her duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B); and

c. Failed to discharge her duties in accordance with the documents and instruments governing the Plan in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

**PRAYER FOR RELIEF**

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining Defendant Lori Jo. Mueller from violating the provisions

of Title I of ERISA;

B. Ordering the removal of Defendant Lori Jo. Mueller from her position as a fiduciary of the Plan;

C. Permanently enjoining Defendant Lori Jo. Mueller from serving as a fiduciary or service provider to any ERISA-covered plan;

D. Appointing an independent fiduciary to terminate the Plan consistent with the Plan's governing documents, the Internal Revenue Code, and ERISA, distribute its assets to the participants and beneficiaries, and conclude any plan-related matters connected with the proper termination of the Plan;

E. Ordering Defendant Lori Jo. Mueller to pay all reasonable fees and expenses incurred by the independent fiduciary in administering and terminating the Plan;

F. Awarding the Secretary the costs of this action; and

G. Ordering such further relief as is appropriate and just.

Dated: April 26, 2016

Respectfully submitted,

**M. PATRICIA SMITH**  
Solicitor of Labor

**CHRISTINE Z. HERI**  
Regional Solicitor

s/Mark H. Ishu

**MARK HENRY ISHU**  
Attorney  
Illinois Bar no.: 6296803

Office of the Solicitor  
U.S. Department of Labor  
230 S. Dearborn Street, Room 844  
Chicago, Illinois 60604  
Telephone: (312) 353-6972  
Facsimile: (312) 353-5698  
Email: ishu.mark.h@dol.gov

Attorneys for **THOMAS E. PEREZ**,  
Secretary of Labor, United States  
Department of Labor, Plaintiff