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Diane A. Thompson*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**AMERICAN PENSION SERVICES, INC.,
a Utah Corporation and CURTIS L.
DeYOUNG, an individual,**

Defendants.

**THIRTEENTH QUARTERLY STATUS
REPORT OF RECEIVER**

Case No.: 2:14-CV-00309-RJS-DBP

**Judge Robert J. Shelby
Magistrate Judge Dustin B. Pead**

Diane Thompson, Court-appointed receiver (“Receiver”) for Defendants, American Pension Services, Inc. and Curtis L. DeYoung (“Curtis”) and related entities, by and through her

counsel of record, Ballard Spahr LLP, hereby submits the Thirteenth Quarterly Status Report of Receiver as of June 30, 2017.

1. Introduction

On April 24, 2014, the Court appointed Diane Thompson as Receiver of American Pension Services, Inc. and any related entities owned, controlled, or under common control by or through American Pension Services, Inc. and all assets of Curtis L. DeYoung (collectively referred to as “Receivership Defendants”). *See* Order Appointing Receiver, Freezing Assets, and Other Relief 1–3 (Dkt. 9) (hereinafter “Receivership Order”). These entities include American Pension 401K Services, Inc. (“APS 401K” or “AP4S”); LJP, LLC; Interim Funding LLC; First Silverado Properties, LLC; LIC Environmental; and Quicksilver Management, LLC. *Id.* American Pensions Services, Inc. and related entities owned, controlled, or under common control of American Pension Services, Inc. are collectively referred to as APS.

The Court found the appointment of a Receiver was necessary to “marshal[] and preserv[e] all assets” of the Receivership Defendants (“Receivership Assets”) as well as “the assets of any other entities that: (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; (c) were fraudulently transferred by the Defendants; and (d) may otherwise be includable as assets of the estates of the Defendants.” Receivership Order, at 1–2.

The Receiver, with approval from the Court, engaged Ballard Spahr LLP as legal counsel to the Receiver, Piercy Bowler Taylor & Kern (“PBTk”) as forensic accountants, Precision Discovery, Inc. as forensic information technology specialists, Richards Brandt Miller Nelson as

insurance coverage counsel, Orange Document Services¹ to perform forensic computer services, Gary Free as an independent appraiser, and Jonathan Cook as an independent appraiser. *See* First Quarterly Report of Receiver 1–2 (Dkt. 169); Order Granting Motion to Retain Gary Free as Appraiser (Dkt. 208); Order Granting Motion to Retain Jonathan Cook as Appraiser (Dkt. 639). The Receiver is required to “file and serve a full report and accounting of each Receivership Estate . . . reflecting (to the best of the Receiver’s knowledge as of the period covered by the report) the existence, value, and location of all Receivership Property, and . . . the extent of liabilities . . . of the Receivership Estates” within thirty days of the end of each quarter. Receivership Order, at 22.

The quarterly status report must contain: (1) a summary of the operations of the Receiver; (2) the amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate; (3) a schedule of all the Receiver’s receipts and disbursements with one column for the quarterly period covered and a second column for the duration of the Receivership;² (4) a description of all Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended; (5) a description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic or investigatory resources, the approximate valuation of these claims, the anticipated or proposed method of enforcing these

¹ Orange Legal Technologies was acquired by Xact Data Discovery Company, after which the name was changed to Orange Document Services.

² The Receiver operates three accounts within APS. These accounts are discussed in more detail in Section IV, with copies of the Receiver’s Receipts and Disbursements attached as Exhibits A, B, and C.

claims, and the likelihood of success of the claims; (6) a list of known creditors with their addresses and the amounts of their claims; (7) the status of creditor claims proceedings; and (8) the Receiver's recommendation for continuing or discontinuing the Receivership with reasons for the recommendation. Receivership Order, at 22–23.

This Thirteenth Quarterly Status Report is submitted to the Court in compliance with the Receivership Order for the period of March 31, 2017 to June 30, 2017 (“Reporting Period”).

2. Directions to Receiver

The Receivership Order provides detailed directions and instructions to the Receiver regarding the Receivership Estate. The Receivership Order also grants the Receiver the authority and power to act while managing the Receivership Estate. A copy of the Receivership Order is available as ECF No. 9 in this case.

3. Current Operations of Receiver

The Receivership continues to be very unique and complicated, as we focus on final asset sales, the plan for distribution of recovered funds, and winding up of the Receivership. The Receiver was faced with the task of not only marshaling all Receivership Assets, but also taking over, managing, determining, and allocating the loss created by Curtis DeYoung, and transitioning the business of providing third-party administrative services to over 5,500 clients

with self-directed individual retirement accounts (“IRAs”) or 401(k) accounts.³ The purported value of the assets of APS client accounts as of April 25, 2014 was in excess of \$350 million.⁴

The day-to-day operations of APS have ceased, the Receiver is wrapping up the sale of assets of the Receivership Estate, and is awaiting the expiration of the ninety-day appeal period following the Tenth Circuit Court of Appeals decision upholding the Receiver’s settlement with First Utah Bank. Twenty-seven (27) accounts with assets remained at APS at the end of the Reporting Period. On July 13, 2017, the Receiver conducted an online auction of assets held in remaining accounts that have not complied with the Receiver’s Amended Modified Plan of Liquidation (“Liquidation Plan”), which was approved by the Court, was held (after the Reporting Period). The auction yielded \$14,100 for the Receivership Estate. The Receiver will complete the transfer or distribution of the accounts for assets that were auctioned after all sales contracts and paperwork related to the sale and the transmission of funds are complete.

The Court approved the Liquidation Plan and proposed successor custodian, Equity Trust Company (“Equity Trust”), on February 27, 2015. The Receiver began the transfer of accounts to Equity Trust on April 1, 2015. Clients continue to call and e-mail regarding the status of transferred account(s) at Equity Trust with the following most common requests: (1) the Receiver’s assistance to re-register assets held within account(s) transferred from APS to Equity

³ Due to the asset freeze placed on the accounts of APS, on April 25, 2014 there were approximately 5,400 clients with self-directed IRAs being administered by APS and over 300 clients with 401(k)s being administered by APS 401K. As the Receiver has implemented her Amended Modified Plan of Liquidation, these numbers have been significantly reduced as discussed below.

⁴ APS IRA accounts purportedly had in excess of \$350 million in assets, while APS 401(k)s purportedly had in excess of \$35 million in assets.

Trust Company; (2) duplicate copies of or changes to correct current and past tax forms; (3) the status of the Receivership and pending lawsuits; and, (4) the amount of the future distributions they may receive. The Receiver also received several calls and e-mails from former clients seeking to revalue the contingent repayment agreement held in their accounts.

As of June 30, 2017, there were twenty-seven (27) accounts remaining at APS.⁵ Since June 30, 2017, but before the filing of this report, seven (7) account owners paid their loss allocation and assets were assigned to the account owners; seven (7) account owners had their assets listed for auction but did not sell, which the Receiver subsequently distributed and assigned to the account owners; and, five (5) account owners had their assets auctioned on July 13, 2017, but the funds received at auction were insufficient to fund their full loss allocation. For the five (5) account owners whose assets were sold at auction, but the auctioned prices was insufficient to recover the full loss allocation, the Receiver will sweep available funds, and assign any remaining assets (which were not sold, if any). Based on prior Court order, those account owners will not receive a Contingent Repayment Agreement nor be eligible for a future distribution. The Receiver is in the process of liquidating assets of all of the remaining eight (8) accounts, which consist of either stock or a membership interest in a limited liability company (“LLC”).

As of June 30, 2017, the Receiver has transferred, terminated, or otherwise distributed 5,637 of the 5,664 accounts. Of the accounts transferred or closed at the end of the Reporting Period, 4,946 accounts have been transferred to Equity Trust. The other 691 have been closed,

⁵ The twenty-seven (27) remaining accounts do not include the eight (8) retirement accounts of Curtis and Michelle DeYoung. These accounts are the subject of a settlement agreement between the Receiver and Michelle DeYoung. (Dkt. 701).

terminated, or distributed and assigned by the Receiver after determining the most cost-effective manner to process the accounts.

The Receiver continues her efforts to liquidate assets in the remaining eight (8) non-compliant accounts as permitted by the Court orders as described below.

In an effort to wind-down the Receivership, the Receiver moved the Court for an order to judicially dissolve nineteen (19) limited liability companies (“LLCs”) within seventeen (17) non-compliant APS accounts on January 18, 2017. *See* Dkts. 850, 853. The purpose of the motions was to liquidate LLC assets held by non-compliant IRA accounts in order to fund the Court-ordered loss allocation. The Court approved the Receiver’s motion on February 23, 2017.

The Receiver mailed a copy of her Motion for Judicial Dissolution, the Court’s Order, and a cover letter explaining how the account owners could avoid the sale of their asset by paying their loss allocation and any outstanding management fees to the seventeen (17) account owners by certified mail or other verified delivery method to the address at which each of the individuals was previously served a subpoena. The Receiver also mailed a copy of her Motion, the Court Order, and a cover letter to the manager(s), member(s), and registered agent(s) of the LLCs of the seventeen (17) APS accounts by certified mail or other verified delivery method to the address recorded with the respective state agencies responsible for maintaining such information. The letters to the managers, members, and registered agents included an explanation that they could purchase the membership interest at issue in lieu of judicial dissolution of the entire LLC.

As a result of the cover letter and copy of the Court’s orders mailed by the Receiver, seven (7) clients paid their loss allocations. An additional eight (8) clients who had previously

ignored communications contacted the Receiver. The Receiver is working with these clients to resolve the disposition of their accounts and in some cases is awaiting documentation to determine the assets and value of the LLC in order to properly dispose of the accounts. One (1) client has assigned his entire LLC to APS, and the Receiver is determining the best course of action to dissolve the LLC and distribute the account, which included issuing a subpoena to the debtor of certain promissory notes held by the LLC. The Receiver has not heard from three (3) clients and will be sending follow-up correspondence to the managers, members, and registered agents of the LLCs to determine the progress made in dissolving the LLC. If necessary and requested, the Court may oversee the liquidation of the remaining LLCs by appointing the Receiver to oversee the dissolution process.

One (1) non-compliant account for which the Receiver sought the judicial dissolution of an LLC was that of John Fischer. Mr. Fischer's IRA held only a 13.35% membership interest in SFL Holdings LLC. Mr. John Fischer submitted a letter to the Court on February 23, 2017, the same date that the Court approved the Receiver's motions. (Dkt. 873). The Court construed Mr. Fischer's letter as a motion for reconsideration of account valuation. (Dkt. 872). Mr. Fischer acknowledged that SFL Holdings LLC sold all of its assets to Maverik Inc. for \$2,200,000 on August 4, 2015. (Dkt. 873). After the sale, Mr. Fischer, as manager of SFL Holdings LLC, purportedly made distributions to each of the SFL Holdings LLC's members. *Id.* However, Mr. Fischer did not make a proper distribution of asset to his APS IRA. *Id.* Rather, as explained in his motion for reconsideration, Mr. Fischer made a distribution to himself, which he then transferred to his TD Ameritrade IRA. *Id.* Mr. Fischer deliberately attempted to avoid payment

of his loss allocation, as required by the Liquidation Plan and other Court orders, by foregoing distribution of SFL Holdings LLC's assets to his APS IRA.

The Court denied Mr. Fischer's motion on April 17, 2017, and in so doing, ordered Mr. Fischer to pay his loss allocation of \$13,786.70 within twenty (20) days. (Dkt. 902). The Receiver sent Mr. Fischer the order and instructions on where and how to pay his loss allocation but did not receive payment.

The Receiver, in accordance with the Court's orders, requested that TD Ameritrade remit \$13,786.70 of the funds rolled over in violation of the Court's orders to the IRA account administered by APS.⁶ TD Ameritrade complied with the Receiver's request and remitted the funds on July 10, 2017. The funds were applied to Mr. Fischer's account and swept as full payment of Mr. Fischer's loss allocation and Mr. Fischer was issued a Contingent Repayment Agreement. The Receiver advised Mr. Fischer of her actions by letter dated July 11, 2017.

Also on February 23, 2017, the Court entered orders permitting the Receiver to liquidate an additional four (4) pieces of real property, eleven (11) promissory notes, and non-publicly traded stock in four (4) companies, each held in the APS accounts of non-compliant account owners. (Dkts. 867, 868, 870). The liquidation request was to fund the loss allocation and outstanding management fees of those account owners. Pursuant to the Court's orders, the Receiver mailed a copy of her Motions and the Court's Orders to all affected account owners with a cover letter that explained how account owners could avoid the sale of their account assets by paying their loss allocation and outstanding management fees, if any.

⁶ All other funds in excess of the required loss allocation remained at TD Ameritrade in Mr. Fischer's newly-established IRA.

As a result of the letter and attached pleadings, seven clients (7) clients paid their loss allocation resulting in a combined \$83,220.80 in loss allocation payments, bringing the total amount of loss allocations collected to approximately \$31,030,000.00.

The Receiver made arrangements to sell remaining non-compliant client assets in accordance with the Court Orders. The Receiver entered into a contract with the Erkelens & Olson and CWS Marketing Group (“Auctioneers”) on April 24, 2017, for the purpose of liquidating remaining non-compliant assets via an online public auction. The assets for auction included real property, promissory notes, and rescission offers with a real estate investment company. As directed by Court Order, the Receiver mailed each non-compliant account owner a notice of auction with an explanation of the urgent need to fund their loss and all outstanding management fees, if any, in order to avoid the sale of their assets at auction. The notice included a deadline of July 7, 2017 to fund the remaining loss allocation and any outstanding management fees. The Receiver worked with two (2) clients who funded their loss allocation and management fees between July 11 and July 12, 2017, and the Receiver removed their assets from the auction. The auction occurred on July 13, 2017, at which time two (2) parcels of real property were sold for a total of \$9,100 and eleven (11) promissory notes were sold for \$5,000. The Receiver and the buyer of the real property have opened escrow to complete the sale within thirty (30) days. There was no offer on one parcel of real property or the rescission offers. The Receiver is in the process of assigning those assets to the account owners and closing those accounts.

The Receiver has been in discussions with Wilson-Davis & Co., Inc., a local brokerage firm, to list the non-publicly-traded stock held within non-compliant client accounts on the over-

the-counter bulletin board (“OTC-BB”). Wilson-Davis & Co., Inc. has analyzed each of the remaining stocks and provided an opinion on the salability of the stock. The vast majority of the stock have no value (for various reasons including the company is no longer in existence, is inactive, or is not current on its filings) or has such little value that the transaction costs exceed the value. Therefore, the Receiver has engaged Wilson-Davis & Co., Inc. to list the stock with adequate value. The Receiver will distribute the stocks with inadequate value to the client and issue an IRS Form 1099.

On April 4, 2017, the Court granted the Receiver’s Motion for an Order of Judicial Dissolution of Certain Limited Liability Companies owned or controlled by APS or Curtis DeYoung in part. (Dkt. 901). The Receiver subsequently dissolved LIC Environmental LLC, Quicksilver LLC, First Silverado LLC, and DLC2 Investments LLC. The Court denied the Receiver’s motion with regard to LJP Holdings LLC and RE Ventures. After the Reporting Period but prior to this filing, the Receiver worked with Dean Becker, the listed manager of LJP Holdings LLC and RE Ventures, to complete statements of dissolution for LJP Holdings LLC and RE Ventures.

The Receiver received a subpoena from a bankruptcy trustee related to an APS client account. The Receiver responded to the subpoena on May 15, 2017.⁷

The Receiver continues to update the Receivership website (www.apsreceiver.com) in an effort to keep all APS clients informed of key events affecting the Receivership. The website is

⁷ The Receiver received a Grand Jury Subpoena from the Acting United States Attorney for the District of Hawaii on July 7, 2017. The Receiver also received a subpoena from Michelle DeYoung’s former counsel on July 12, 2017. The Receiver will report on these subpoenas in the next Quarterly Status Report.

updated with Court filings and frequently asked questions as necessary. There were three postings during this Reporting Period, as follows:

- April 17, 2017 – Notification that the court approved findings of fact, conclusions of law, and an order approving settlement with the Estate of Michael Memmott Jr.
- May 30, 2017 – Notification that the court approved findings of fact, conclusions of law, and an order approving settlement with the LDS Church.
- June 22, 2017 – Notification that Receiver was holding an auction of remaining assets on July 13, 2017 pursuant to five Court Orders. (Dkts. 866, 867, 868, 869, 870).

The Receiver posted three pertinent court documents during this Reporting Period. The posted documents included:

- Findings of Fact, Conclusions of Law, and Order Approving Settlement Between Receiver and Estate of Michael Memmott Jr.
- Findings of Fact, Conclusions of Law, and Order Approving Settlement with the LDS Church.
- Twelfth Quarterly Status Report of the Receiver.

The Receiver updated the frequently asked questions page on January 27, 2017 and again on July 26, 2017. The frequently asked questions addressed questions related to the issuance of IRS Forms 1099-R, required minimum distributions, and the reporting of contributions to accounts.

The Receiver continues to respond to client questions and requests for documents. Many clients that did not pay their loss allocation (and for whom the Receiver decided to close their account, assign the assets to the client, and issue an IRS Form 1099) did not understand why they received an asset assignment and the IRS Form 1099-R. Many of these clients believed they should have received cash and did not understand they were being assigned a non-cash asset in

their former APS account. The Receiver also continued to receive requests from some APS clients for amendments to IRS Forms 1099-R tax documents that were issued by APS prior to the Receivership. In these cases, the clients typically had not paid their administrative fees and APS resigned and reported the account, including non-cash assets, as a distribution. The IRS has started contacting these clients regarding unpaid taxes related to the distribution of non-cash assets. The Receiver and her staff have investigated and responded to all requests for amendments as they are received. In addition, the Receiver has been contacted by several former APS client family members where clients have died. The Receiver is working with the estate representatives to re-register the accounts for the beneficiaries, complete the loss allocation payments, issue tax reporting, and distribute the accounts.

The Receiver received many calls and e-mails from clients indicating the value of their account transferred to Equity Trust was incorrect or that there are other problems with their accounts after transfer to Equity Trust, most commonly registration of real property assets. The Receiver and her staff continue to hold periodic conference calls with Equity Trust to resolve these client concerns. Clients who have transferred have also been in contact with the Receiver requesting assistance with lost documents where APS either mishandled documents prior to the Receivership or documents were not in the APS files. This has complicated the re-titling or sale of real estate and other assets. The Receiver's staff has responded to these requests.

The Receiver continues to administer the APS Employee's 401(k) Plan. Most of the employees have requested and received distributions of their Plan assets. The Receiver must file required forms and maintain the Plan until the Receiver's Complaint in Intervention and for

Declaratory Relief (“Interpleader Complaint”) is resolved.⁸ The Receiver is also preparing an amended Form 5500 report relating to the APS Employee 401(k) Plan with the Department of Labor. Once these matters are resolved, the Plan will be terminated.

In a prior Reporting Period, the Receiver prepared two document productions in response to a request by the Department of Labor (“DOL”). The document productions included over 1,700 pages of documents, as well as a history of over 45,000 transactions relating to AP4S and the APS Employee 401(k) Plan. The Receiver also participated in two interview sessions with the DOL. On December 20, 2016, the DOL issued a letter to the Receiver indicating that its investigation concluded and that it was referring a potential violation of the blackout period notice for the APS Employee 401(k) Plan to its Office of Chief Accountant for further review. The Receiver believes that the circumstances the DOL is investigating regarding the blackout notice fit into an exception under the applicable rules and has prepared and submitted a response to the DOL. The Receiver has not heard anything further from the DOL during this Reporting Period.

As detailed in previous Quarterly Status Reports, the Receiver completed the shutdown of the APS office location in Riverton, Utah on December 18, 2015. The Receiver coordinated with the Securities and Exchange Commission (“SEC”) and the Department of Justice (“DOJ”) regarding document retention and storage requirements. Iron Mountain, Inc. now stores APS documents to be retained for the duration of the Receivership. The Receiver and her staff

⁸ On January 31, 2017, the Receiver filed the Interpleader Complaint requesting that the Court permit the Receiver to deposit the Michelle DeYoung settlement funds with the Court, or that the Court direct the Receiver to whom to pay the funds, as Michelle’s former attorney Jeffrey Colemere has made a claim to the settlement funds. (Dkt. 857).

continue to hold the files of non-transferred accounts for further processing and any documents that may be required for ongoing litigation or asset sales. The computer systems utilized at APS were relocated, and the Receiver continues to utilize those APS computer systems to access information, prepare required reporting, and complete transactions on behalf of clients seeking to make loss allocation payments.

The Receiver has filed IRS Forms 5498 for tax year 2016 in May 2017. For any client that transferred to Equity Trust before December 31, 2016, Equity Trust prepared the IRS Forms 5498. The Receiver will also be required to file IRS forms for any final 2017 account distributions in early 2018.

First Utah Bank has tendered its resignation as the custodian of remaining accounts to the Receiver. However, First Utah Bank has agreed that the resignation shall not be effective until there is a mutual agreement with the Receiver concerning the resignation and an order from the Court releasing APS as administrator and First Utah Bank as custodian. This will be completed following the asset disposition of the final eight (8) accounts discussed above. Once those events have occurred, the Receiver will issue any final IRS Forms 1099-R for the reported value of the assets, as described above.

As part of the transfer of accounts, clients' loss allocations are documented by a Contingent Repayment Agreement ("CRA") issued to the account or client, as applicable. The CRA is similar to a promissory note, and represents the amount clients have paid to fund their loss allocation.⁹ The Receiver will use the amounts listed on the CRAs to make future

⁹ In accordance with this Court's ruling on August 7, 2015, some clients will have the CRA issued to them personally, as they are ineligible to contribute to their retirement plan or have otherwise funded their loss allocation from assets outside of their retirement plan. (Dkt. 592).

distributions, if any, to the clients on a pro-rata basis as set forth in a future final distribution plan expected to be filed with the Court during the upcoming quarter. Because the Receiver's recovery of final assets is ongoing, the amount of Receivership Assets available for distribution is currently unknown. Thus, the best estimate of the value of the CRA at this time is the amount of each client's contribution to the loss allocation under the Plan of Liquidation. Many clients have requested that the Receiver revalue the CRA in order to reduce the amount of their account total. The Receiver does not believe it is appropriate to make an adjustment to the value of the CRA until the Receiver has exhausted her recovery efforts and has determined the amount, if any, that will be distributed to clients.

Clients who have transferred to Equity Trust but desire to select another custodian/administrator for their account have inquired about the transferability of the CRA. Some custodian/administrators are reluctant to accept the CRA as an account asset. The Receiver has conducted several conference calls with clients and new custodian/administrators to clear up this confusion and has posted clarifying information on her website. Clients are permitted to transfer the CRA to a successor custodian/administrator or distribute it to themselves without the need to re-register the CRA since the CRA is issued in the name of the account, not the custodian.

For efficiency purposes, if a distribution is made, the Transition Services Agreement provides that a distribution would be made in a lump sum to Equity Trust with an allocation schedule indicating the appropriate account recipients. Equity Trust shall process the payment to its accounts or track and forward the payments to accounts transferred to successor custodians or distributed clients. The Receiver will issue checks to clients personally if their loss allocation

was funded outside of their account.

The transfer of accounts from APS to Equity Trust required that all assets previously titled in the name of APS for the benefit of the client be re-registered to reflect ownership as Equity Trust for the benefit of the client. The Receiver executed a limited power of attorney that allows Equity Trust to re-register client assets and has amended and extended the power of attorney in anticipation of the completion of the Receivership. The re-registration of assets is a complicated and time consuming process for Equity Trust due to the volume of accounts transferred, number of assets held in each account, uniqueness of each asset, involvement of multiple parties, and incomplete information due to APS's deficient records. Furthermore, pursuant to Court Order, the Receiver "force transferred" 786 client accounts to Equity Trust in March 2016. (Dkt. 720). Many of these forcefully transferred accounts are either uncooperative with Equity Trust or are now deceased, which further inhibits Equity Trust's ability to re-register assets.

Because the Receiver has received numerous complaints from clients about the length of time it was taking for Equity Trust to re-register assets, the Receiver contacted Equity Trust to resolve the inquiries. Equity Trust advised that they track re-registration in two categories: started and complete. Started means Equity Trust has provided sufficient documentation to a third-party to complete re-registration. Equity Trust does not treat the re-registration as complete until they have received confirmation that the third-party has changed the registration. As of June 30, 2017, re-registration had been started for 89% of the assets and

completed for 51% of the assets.¹⁰ The Receiver continues to communicate with Equity Trust and provide information necessary to unfreeze appropriate brokerage accounts and re-register assets held within transferred accounts.

Curtis DeYoung is now incarcerated in federal prison. As part of his sentence, Curtis was ordered to pay restitution of \$24,998,422.65 to the victims of APS. The Receiver and her counsel have conducted meetings with the SEC and U.S. Attorney's office to discuss and coordinate the treatment of and distribution to victims of any restitution payments made by Curtis. Any amounts that have thus far been received by the Receiver have been credited to the restitution balance payable by Curtis. This amount totals \$2,056,079.00 as of the end of the Reporting Period. Restitution obtained from Curtis will be remitted to the Receiver until the close of the Receivership. Curtis was ordered to pay the greater of \$25.00 per calendar quarter or 50% of his income while incarcerated. If he receives more than \$200.00 from any outside source in any calendar month during the period of incarceration, all funds received will be paid toward restitution. Upon release from incarceration, Curtis was ordered to pay a minimum of \$250.00 per month towards restitution. Restitution paid to the Receiver will be allocated and paid to the victims pursuant to a final distribution plan to be submitted and approved by the Court. When the Receivership closes, the Receiver will provide the Court Clerk with a list of

¹⁰ These numbers have decreased due to Equity Trust's significant clean-up efforts taken over the past several months to accurately deal with the large number of accounts where the client has refused to return an Equity Trust account application and/or those instances where Equity Trust was not provided sufficient information from the Receiver (due to deficient APS records) to begin and/or complete the re-registration of an asset. Equity Trust is pursuing a strategy to resolve these deficiencies and continue to move forward with re-registration of accounts and assets that were transferred to Equity Trust in good order.

victims, their addresses, and related loss as well as an accounting of funds she has distributed to victims. The Court Clerk will then take over the process of disbursing any restitution to victims.

4. Assets Uncovered or Sold During Reporting Period

As previously reported, the Receiver has sold certain assets recovered including the 1922 Studebaker, the Ford Model T, coke machines, and geode at auction on April 23, 2016 and collected \$13,005.00. The Receiver contracted with Erkelens & Olson Auctioneers, who conducted a public auction on January 21, 2017 to sell certain coins, jewelry, and gems previously seized. The auction resulted in sales of \$19,754.00, and after paying auction commissions, a net of \$17,778.60 was added to the Receivership Estate. *See also* Exhibit C.

The Receiver discovered that APS had filed Notices of Interest on certain real property in Ogden, Utah indicating that the previous transfer of said property was without consideration and made with the agreement that the owner of the property would remit proceeds of its sale or disposition to APS. The Receiver has undertaken efforts to recoup any interest that may have been fraudulently transferred for the benefit of the Receivership Estate. The Receiver is in active settlement discussions with counsel for the party seeking to remove the notices of interest on the real property and has a preliminary settlement agreement.

The Receiver continued collection efforts on APS assets payable, including two notes held by LJP Holdings on properties in Kansas City, Missouri. The owner of the first property owed \$18,000.00 on the note and was in default. The owner of the second property owed \$2,250.00 and was also in default. The Receiver discovered the properties had minimal value because they are in disrepair or have been looted. The Receiver attempted to negotiate a settlement with each of the borrowers. Both were initially non-responsive, so the Receiver

instituted foreclosure proceedings on the properties, upon which time the borrowers contacted the Receiver. The owner of the first property agreed to settle with the Receiver for \$500.00, and in exchange, the Receiver agreed to quit claim deed the property to the owner. The Receiver completed the settlement with the owner of the first property during the Reporting Period. The second property was lost to a tax foreclosure sale by Jackson County due to the owner's failure to pay taxes on the property. The Receiver did not receive notice of the tax sale and only learned about it after sending the foreclosure notice to owner of the second property. As the Receiver investigated her options, she discovered there were excess proceeds from the tax sale in the amount of nearly \$1,200.00. She claimed and received these excess proceeds in the amount of \$1,128.12 for the Receivership during the Reporting Period.

The Receiver continued her efforts to collect outstanding administrative and management fees owed to APS. APS administrative and management fees were charged annually on the APS Clients' anniversary date. The Receiver has collected the outstanding management fees as part of the transfer to Equity Trust.¹¹ Express Recovery has continued to assist with the collection of remaining outstanding management fees. The Receiver's contract with Express Recovery does not increase the administrative costs of the Receivership because Express Recovery is paid a portion of the amounts it successfully collects. During previous Reporting Periods, the Receiver assigned all remaining management fees owed by clients to Express Recovery. The outstanding amount of management fees sent to Express Recovery was \$346,440.83. During this Reporting Period, Express Recovery collected \$3,519.64 in past due fees. When added to collection efforts

¹¹ The Receiver elected not to charge continuing management fees after June 30, 2015 because the Receiver ceased "normal" business operations on July 3, 2015.

previously reported, Express Recovery has collected a total of \$35,657.83 in management fees for the Receivership and cancelled a total of \$12,794.98 (due to bankruptcies and other required reasons), leaving \$297,988.02 in management fees outstanding. Certain clients have formally disputed the fees, and the Receiver has responded to required verifications as requested by Express Recovery. The Receiver will continue to attempt to collect fees directly from accounts where assets are being sold based on the Court orders.

The Receiver continues to evaluate her options regarding the remaining assets and real property owned in which APS and Curtis may have an interest. The Receiver has indicated how she has or intends to dispose of each known asset in her Summary of Assets, attached as Exhibit C.

5. Insurance, Tax Refunds, and Other Claims of Receiver

The Receiver filed claims against APS's "CrimeShield Advanced" policy issued by The Hartford with policy limits of \$1,000,000.00 as detailed in previous Quarterly Status Reports. The Receiver and The Hartford agreed to terms of a settlement which was approved by the Court on February 9, 2016. (Dkt. 703). The settlement agreement provided \$405,000.00 to the Receivership Estate and avoided the cost and expense of protracted litigation.

The Receiver also made a claim on APS's Chubb "PRO E&O" errors and omissions policy issued by the Federal Insurance Company with policy limits of \$1,000,000.00. On January 7, 2016, Federal Insurance Company filed its Complaint in Interpleader and for Declaratory Relief in *Federal Insurance Company v. Thompson, et al.*, No. 2:16-cv-00023 (D. Utah Jan. 7, 2016) (Dkt. 2) seeking to interplead the full policy limits of \$1,000,000.00 with the Court. The Receiver, Curtis DeYoung, and Michelle DeYoung all sought policy proceeds. The

Receiver's motion for summary judgment seeking the entirety of those funds came for hearing on April 4, 2017. Based on the Court's questions and concerns expressed at the hearing, the Receiver withdrew her motion. Following the hearing, the Court entered an order granting Federal Insurance Company's oral motion to dismiss it from the case, with additional stipulations by Federal, and ordered Federal to deposit the full policy limits of \$1,000,000.00 with the Court. (Case No. 2:16-cv-00023, Dkt. 58). The Receiver engaged in settlement discussions with Curtis's attorneys regarding the policy proceeds to no avail. The Receiver filed a Renewed Motion for Summary Judgment on May 19, 2017. Curtis filed his opposition to the Receiver's renewed motion on June 30, 2017. The Receiver submitted her reply to the Court on July 28, 2017.

During previous Reporting Periods, the Receiver completed pre-litigation discussions and mediation with some third-parties, including financial institutions, regarding their potential liability to APS and its clients. The largest settlement achieved by the Receiver is that with First Utah Bank, the custodian of the Master Trust Account. The settlement agreement provides that First Utah would provide value to the Receivership with cash and other consideration in excess of \$6,000,000.00. Following this Court's approval of the settlement agreement (Dkt. 683), three intervenors filed an appeal with the Tenth Circuit Court of Appeals, which was argued at the Tenth Circuit in September 2016. On March 9, 2017, the Tenth Circuit Court of Appeals issued its decision affirming this Court's ruling. On March 23, the intervenors filed a petition for rehearing with the Tenth Circuit, which the Tenth Circuit denied on March 30, 2017. The decision from the Tenth Circuit Court of Appeals became final on June 28, 2017. The three APS

clients informed the Receiver that they did not intend to appeal further. First Utah Bank and its insurer met the July 27, 2017 deadline to provide the settlement funds to the Receiver.

As part of her settlement agreement with the Receiver, Michelle DeYoung was to provide documentation regarding collectibles and judgments (and settlements) belonging to APS. Michelle provided a one-page summary sheet for each of approximately fifty (50) outstanding judgments and settlements in favor of APS. Many of these judgments have expired. The Receiver turned these collectibles and judgments over to Express Recovery, which continues its efforts in collecting the judgments and settlements at this time. At the end of the Reporting Period, Express Recovery has not recovered on any of the judgments and settlements.

6. Distributions to Clients and Creditors

At the time of this filing, sufficient funds have been recovered to cover the loss caused by the misappropriation of approximately \$25 million from the APS Master Trust Account by Curtis. However, there are eight (8) APS clients¹² who have failed to comply with the loss allocation requirement of the Plan of Liquidation. As noted above, the Receiver has received orders from the Court permitting her to judicially dissolve LLCs within remaining non-compliant accounts and sell all remaining assets within those non-compliant accounts. The Receiver has conducted an online auction of the non-compliant assets she has permission to sell. She has engaged Wilson-Davis & Co. to list non-publicly-traded private stocks on the OTC-BB. She has begun the judicial dissolution process for the LLCs. Thus, there have been no distributions to any APS clients or creditors at this time. The Receiver will file a Plan of Distribution for Court approval before any distributions are made.

¹² Eight (8) APS clients at the time of this filing.

7. Costs of Receivership

The costs of the Receivership remain significant during the Reporting Period. The Receiver is striving to control costs and continues to make prudent cost-benefit decisions as she completes the Plan of Liquidation, marshals the assets of the Receivership Defendants, and pursues all available avenues to recover the approximately \$24.6 million misappropriated by Curtis. Since the Court has approved the Receiver's Applications for Interim Compensation of Receiver and Professionals for Services, the Receiver has utilized amounts in excess of one month of operating expenses (which were approximately \$50,000.00) to cover a portion of Court-approved fees and expenses.

Through pursuit of the 10% loss allocation required from APS clients under the Plan of Liquidation, the Receiver has collected approximately \$31.03 million to date. This amount does not include management fees collected through the Receiver's operation of APS, sale of assets, or the First Utah Bank settlement proceeds. These proceeds and management fees collected will be used to cover the approximately \$24.6 million shortfall created by Curtis's misappropriation. Under the Plan of Liquidation, a portion of these unencumbered funds have been used to cover Court-approved fees and expenses; thus there is approximately \$1.207 million in unencumbered funds combined in the Master Trust Account and APS operating account.

The Receiver is working on a plan of distribution to submit to the Court and continues to strive to reduce costs and make decisions to speed the completion of the operational aspects of the Receivership and resolve all pending litigation.

8. Pending Litigation

The Receiver determined that as of April 25, 2014, APS was involved in a total of nine (9) separate lawsuits in California, Idaho, Washington, and Utah as either a plaintiff or defendant. One action, noted in the First Quarterly Status Report, settled and resulted in over \$15,000.00 being deposited into the APS operating account. As of the date of this Reporting period, the Receiver has resolved eight (8) of these cases.

The one remaining case at the end of the Reporting Period is styled as *Oliver v. American Pension Services, Inc.* In *Oliver*, an APS client filed a class-action complaint in state court on June 6, 2014. The action was then removed to federal court by the Receiver. After the Reporting Period, but prior to this filing, opposing counsel in *Oliver* voluntarily dismissed the case. (See Notice of Voluntary Dismissal (Dkt. 8), *Oliver v. American Pension Services, Inc.*, No. 2:14-cv-00487-DB (D. Utah July 27, 2017)).

During the Reporting Period, the Receiver discovered that another remaining case in which APS was the plaintiff, styled as *American Pension Services, Inc. v. Chambers*, was administratively dismissed without prejudice on September 16, 2015. APS filed suit in October 2006 against Corky Chambers due to an alleged default on two promissory notes in the aggregate amount of \$50,350.00. As a result of the initial 2006 suit, Chambers and APS allegedly entered into a forbearance agreement in which the parties agree to settle the lawsuit for the principal owed if Chambers made seven regular monthly payments. The forbearance agreement also called for the parties to negotiate a further settlement on any interest due and owing on the principal amount. On February 7, 2012, APS filed suit against Chambers alleging breach of the forbearance agreement and other claims. The Receiver has investigated the claims presented in

the case, including all APS files and account records associated with the lawsuit. According to APS records, each of the client accounts with an interest in the Chambers notes had been repaid during 2003. Furthermore, the Receiver discovered that the APS files contained little to no documentation to support the allegations in the lawsuit. Thus, the Receiver chose not to seek a reinstatement of the case.

In the Receiver's ancillary action against Curtis and Michelle, *Thompson v. Curtis DeYoung and Michelle DeYoung*, Case No. 2:14-cv-00870-RJS is complete. The Receiver's settlement with Michelle DeYoung is complete and final. Michelle DeYoung has been dismissed from the case with prejudice. As part of the case, however, the Receiver filed a Complaint in Intervention seeking to interplead funds held within Michelle DeYoung's APS 401(k) accounts with the Court on January 31, 2017. The Receiver also sought a declaration that by interpleading and depositing the funds, the Receiver had satisfied her obligations under the settlement agreement with Michelle DeYoung and was absolved for any further liabilities. (Dkt. 857). The Receiver sought to interplead the funds due to a dispute over the funds between Michelle DeYoung and her former legal counsel by her Complaint in Intervention (Dkt. 857). No response has been filed to the Complaint and the Receiver intends to prepare and file a document with the Court in order to obtain adjudication of her Complaint in Intervention.

Regarding her action against Curtis, the Receiver is prepared to file a dismissal in light of Curtis's settlement with the SEC and his guilty plea to criminal charges. The Receiver prepared and sent Curtis's counsel a joint stipulated motion to dismiss Curtis and close the case in late January 2017. Curtis's counsel indicated he is unwilling to authorize the dismissal because they need their fees to be paid from the interpleaded insurance proceeds.

In the Receiver's ancillary action *Thompson v. Michael Memmott Sr. et al.*, Case No. 2:14-CV-00744-RJS), the Receiver finalized settlement with Deni Memmott as the personal representative for the Estate of Michael Memmott Jr. in April 2017. Under the terms of the settlement, the Receiver received \$65,947.78 for the benefit of the Receivership Estate.¹³ The Court approved the settlement on April 17, 2017, and dismissed the case the same day. (No. 2:14-cv-00744, Dkt. 91). This matter has been completely resolved and the case dismissed.

The Receiver filed an action on July 15, 2016 against The Church of Jesus Christ of Latter-day Saints ("LDS Church") for the return of Curtis and Michelle DeYoungs' charitable contributions of approximately \$240,000.00 that were donated from funds fraudulently obtained from APS Account Owners (Case No. 2:16-cv-00792, Dkt. 1). In early April 2017, the parties entered into a settlement agreement in which the LDS Church agreed to pay the Receiver \$150,000 to settle her claims. The Court approved the settlement between the Receiver and the LDS Church on May 30, 2017. The LDS Church paid the settlement funds to the Receiver during the Reporting Period.

On June 27, 2017, the Receiver was served with an Alias Summons and Complaint to Quiet Title to Real Estate in Marion County, Indiana. The case was styled *Miller v. Washington Mutual Bank, et al.*, and named an APS account as a defendant. The Receiver's counsel contacted counsel for the plaintiff by letter and phone on July 11, 2017. Receiver's counsel explained that the account holder named in the suit had transferred to Equity Trust and, as a result, APS should be dismissed from the case. Receiver's counsel also explained that if APS

¹³ The Receiver provided details of the settlement with the Estate of Michael Memmott Jr. in the Twelfth Quarterly Status Report.

was not dismissed from the case, the Receiver would seek dismissal of the suit, as no leave of this Court had been received and the suit violated the Receivership Order. APS was dismissed from the suit on July 19, 2017.

The Federal Insurance Company interpleader lawsuit, the only remaining litigation (along with the Receiver's Complaint in Intervention, is discussed in Section 5 above.

9. Cash on Hand, Expenses, Unencumbered Funds, Receipts, and Disbursements

APS business operations can be evaluated and broken into three categories. First, are revenue and expenses related to the day-to-day operations of APS. Second, are assets and expenses attributable to APS clients. Third, are assets and expenses related to APS 401K accounts. It should be noted that the Receiver transferred all APS 401K clients to Equity Trust in September 2015. The following is a breakdown of the revenue and expenses of all three categories, with a summary of related account balances.

APS Operations (Day-to-Day)

As of June 30, 2017, the Operating Account¹⁴ of APS was as follows:

	March 31, 2017	
	through	<u>Receivership</u>
	<u>June 30, 2017</u>	<u>Cumulative</u> ¹⁵
Beginning Balance	\$ 164,586.18	\$ 129,251.80

¹⁴ The Operating Account is a combination of the operating accounts for APS and APS 401K; however, these accounts are maintained separately by the Receiver.

¹⁵ This reflects the balance of the account at the beginning of the Receivership.

APS Receipts ¹⁶	\$ 9,258.82	\$ 5,591,814.32
APS Expenses	\$ 6,297.36	\$ 5,553,518.48
APS Operating Account Balance	\$ 167,547.64	\$ 167,547.64

Attached as Exhibit A is a Summary of the Operating Cash Receipts and Disbursements of APS for the Reporting Period, as well as a cumulative report.

APS Master Trust Accounts

As of June 30, 2017, the APS Master Trust Account and related expenses, receipts, and disbursements are as follows:

	March 31, 2017 through <u>June 30, 2017</u>	<u>Receivership</u> <u>Cumulative</u>
Beginning Balance	\$ 1,091,978.18	\$ 25,962,173.24
Receipts	\$ 302,823.79	\$ 64,810,665.78
Expenses	\$ 355,238.90	\$ 89,733,275.95
Balance	\$ 1,039,563.07	\$ 1,039,563.07

Attached as Exhibit B is a Summary of the Operating Cash Receipts and Disbursements of the APS Master Trust Account for the Reporting Period.

APS 401K

As of June 30, 2017, the APS 401K Trust Account and related expenses, receipts, and disbursements are as follows:

¹⁶ This amount represents business revenue generated from fees paid to APS in accordance with the APS clients' agreement to have First Utah Bank act as custodian and APS as third-party administrator.

	March 31, 2017 through <u>June 30, 2017</u>	<u>Receivership</u> <u>Cumulative</u>
Beginning Balance	\$ ---	\$ 3,842,908.62
Receipts	\$ ---	\$ 7,150,259.60
Expenses	\$ ---	\$ 10,993,168.22
Balance	\$ ---	\$ --- ¹⁷

A Summary of the Operating Cash Receipts and Disbursements of APS 401K Account for the Reporting Period is combined with the APS Operations schedule, attached as Exhibit A.

10. Receivership Property

The Receiver has attached a Summary of Assets, its actual or estimated value, and the status of each asset as Exhibit C. The Receiver has attached a Schedule of Assets of APS Clients as Exhibit D. As with the previous Quarterly Status Reports, the Receiver has elected not to provide a detailed list of APS client assets on confidentiality grounds.

11. Liquidated and Unliquidated Claims

The Receiver has yet to determine whether claims held by the Receivership Estate are liquidated or unliquidated. The Receiver and her staff continue to evaluate all claims, the value of potential claims, and the anticipated methods of enforcing such claims, if any.

12. Creditors and Claim Proceedings

A list of known creditors, their addresses, and the amounts of their claims is attached as Exhibit E. The list of known creditors is exclusive of potential creditor claims of APS clients,

¹⁷ The 401K Trust Account was closed on January 22, 2016.

which may be impacted by the final Plan of Liquidation. No creditor claim proceedings have taken place to date. On or about September 19, 2014, each of the creditors was sent Notice of the Proposed Plan of Liquidation and a response form to the Plan. As stated in the Amended Modified Proposed Plan of Liquidation, the Receiver has determined that creditors of APS should be classified differently than APS clients. *See* Amended Modified Plan of Liquidation at 51-52.

The Receiver filed a motion with this Court on October 14, 2016, seeking to establish a claims bar date for APS creditors of November 30, 2016. The Court ordered the Receiver to provide additional notice to potential creditors and extended the claims bar date to December 30, 2016. (Dkt. 838). The Receiver provided notice of her compliance with the Creditor Bar Date. (Dkt. 845). The Receiver received four additional claims. *See* Exhibit E. Proofs of claim were not submitted by Franklin American, Greenbaum Law Group, James Allfrey, Kyler Kohler Ostermiller & Sorenson, Smith Accounting Services, and Snow Christensen & Martineau, but they were preliminary included as "known creditors" because the Receiver's forensic accounts observed there were outstanding bills upon taking over APS records and accounts. The Receiver disputed two claims: Hardy/Kane and First Utah's indemnity claim. Because no response was provided to the Receiver's objection by Hardy/Kane, the Receiver deems it ineffective and will remove that claim for the next Reporting Period. First Utah Bank recently tendered its Abandonment of Claims to the Receiver, which becomes effective during the next Reporting Period. Therefore, all of First Utah's claims will also be removed for the next Reporting Period.

13. Receiver Recommends Continuation of the Receivership

As noted above, this is a complicated Receivership due to the nuances created by the APS clients, the assets held in the clients' accounts, and the interplay with the Internal Revenue Code. The Receiver recommends continuation of the Receivership in order to complete the wind-up of the Receivership and complete the distribution of recoveries. Continuation of the Receivership will assure the most favorable outcome for all APS clients through the pursuit of and equitable distribution of Receivership Assets. Additionally, the continuation of the Receivership will allow for the Receiver to complete collecting loss allocation payments from non-compliant clients, assign or distribute appropriate remaining accounts, and complete her recovery efforts.

To the best of my knowledge, the information presented in this Thirteenth Quarterly Status Report is a full report and accounting of the Receivership estate as of the end of the Reporting Period.

DATED this 31st day of July, 2017.

/s/ Melanie J. Vartabedian

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BALLARD SPAHR LLP

Attorneys for Court-appointed Receiver, Diane A. Thompson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **THIRTEENTH QUARTERLY STATUS REPORT OF RECEIVER** was served to the following this 31st day of July, 2017, in the manner set forth below:

Through the CM/ECF System for the U.S. District Court

Hand Delivery

U.S. Mail, postage prepaid

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/s/ Trista Lawson

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- Exhibit A Summary of the Operating Cash Receipts and Disbursements of APS and APS 401(k)
- Exhibit B Summary of the Operating Cash Receipts and Disbursements of the APS Master Trust Account
- Exhibit C Summary of Receivership Assets
- Exhibit D Schedule of Assets of APS Clients
- Exhibit E Summary of Known Creditors

EXHIBIT A

AMERICAN PENSION SERVICES, INC. AND AMERICAN PENSION 401K SERVICES, INC.
Business Operating Cash Receipts and Disbursements
For the Period April 1, 2017 through June 30, 2017

	Apr 1, 2017 through June 30, 2017	Receivership Cumulative
Beginning Cash Balance	\$ 164,586.18	\$ 129,251.80
Cash Receipts		
Business Revenue	9,258.82	3,627,076.58
Draws from Related Companies	-	47,209.10
Sale of Property	-	340,178.70
Insurance Proceeds	-	405,000.00
Transition Services Fee	-	1,050,000.00
Legal Settlements	-	122,349.94
Total Cash Receipts	<u>9,258.82</u>	<u>5,591,814.32</u>
Cash Disbursements		
Appraisal Fees	-	7,365.00
Auto Expense - Employee	-	1,817.63
Bank Charges	-	65,365.15
Building Rent	-	67,793.46
Comcast Internet Services	-	2,661.11
Computer Software	-	5,159.34
Computer Support Services	1,155.00	27,940.48
Contract Labor	-	87,902.25
Copier Expense	-	3,383.76
Credit Card Processing	-	5,822.51
Document Disposal	-	2,598.64
Employee 401(k) Program	1,839.97	41,853.05
Employee Comp.-401K Services	-	104,678.20
Employee Compensation & Taxes	-	360,040.43
Equipment Leases	-	25,315.20
General Telephone	-	32,004.49
Guard Services	-	42,437.50
Health Insurance	-	33,251.08
Insurance Expense	-	6,921.75
Interest Expense	-	3,179.33
Internet Research Fee	-	451.00
Legal Noticing	-	143,535.09
Licenses & Permits	15.00	667.90
Litigation Resolution	-	1,673.33
Meals & Entertainment	-	5,487.86
Mediation Services	-	7,687.50
Miscellaneous Operating Expense	-	5,743.17
Office supplies	77.98	14,117.23
Outside Contracting Services	-	23,043.10
Postage	89.41	25,673.78

AMERICAN PENSION SERVICES, INC. AND AMERICAN PENSION 401K SERVICES, INC.
Business Operating Cash Receipts and Disbursements
For the Period April 1, 2017 through June 30, 2017

	Apr 1, 2017 through June 30, 2017	Receivership Cumulative
Printing Expenses	-	10,264.27
Professional Services	-	1,245.00
Repairs & Maintenance	-	11,961.33
Storage	1,245.00	17,074.74
Taxes - Other	100.00	3,556.13
Taxes - Payroll	-	3,400.00
Travel Expense - Reimbursement	-	552.97
Utilities	-	86.01
Web Site Fees	-	24,325.84
Total Expenses	<u>4,522.36</u>	<u>1,228,036.61</u>
Extraordinary Expenses:		
Receivership Fees and Expenses	<u>1,775.00</u>	<u>4,325,481.87</u>
Total Extraordinary Expenses	<u>1,775.00</u>	<u>4,325,481.87</u>
Total Cash Disbursements	<u>6,297.36</u>	<u>5,553,518.48</u>
Ending Cash Balance	<u>\$ 167,547.64</u>	<u>\$ 167,547.64</u>

NOTES:

Note 1 - The above amounts are cash receipts and disbursements related to the business operations of American Pension Services, Inc. and American Pension 401k Services, Inc.

APS 401(K) TRUST ACCOUNT
Cash Receipts and Disbursements
For the Period April 1, 2017 through June 30, 2017

	April 1, 2017 through June 30, 2017	Receivership Cumulative
Beginning Cash Balance	\$ -	\$ 3,842,908.62
Cash Receipts		
Gain	-	230,316.68
Interest	-	660,081.68
Principal	-	1,458,031.24
Rent	-	192,501.19
Assets Sold	-	2,283,467.21
Money Market Transfer In	-	1,452,984.48
Contribution - Loss Allocation	-	104,387.71
Refund of Fees	-	2,160.57
Employer Contribution	-	423,205.62
Employee Contribution	-	343,123.22
Total Cash Receipts	<u>-</u>	<u>7,150,259.60</u>
Cash Disbursements		
Expenses	-	67,371.88
Fees	-	149,524.88
Transfer to Equity	-	4,854,664.11
Real Property Tax	-	24,378.57
Loss Allocation	-	880,949.51
Assets Purchased	-	4,995,543.76
Loan Payment	-	20,735.51
Total Disbursements	<u>-</u>	<u>10,993,168.22</u>
Ending Cash Balance	<u>\$ -</u>	<u>\$ -</u>

EXHIBIT B

AMERICAN PENSION SERVICES MASTER TRUST ACCOUNT**Cash Receipts and Disbursements****For the Period April 1, 2017 through June 30, 2017**

	April 1, 2017 through June 30, 2017	Receivership Cumulative
Beginning Cash Balance	\$ 1,091,978.18	\$ 25,962,173.24
Cash Receipts		
Contributions for Loss Allocation	62,032.03	6,598,735.34
Contribution	-	1,119,475.88
Gain	-	4,273,369.99
Interest Payments	546.88	7,260,127.98
Principal Payments	377.90	21,282,019.53
Rent	-	1,722,849.63
Rollovers	16,176.22	1,130,117.55
Assets Sold	7,556.29	17,959,149.71
Direct Transfer In	-	2,186,306.37
Dividends	-	44,601.48
Bank Interest	186.69	10,214.69
Other Rents	-	1,500.00
Other Income	-	2,241.51
Fees Collected	-	679.85
Receivership Recoveries	215,947.78	215,947.78
401k Loss Allocation Collections	-	1,003,328.49
Total Cash Receipts	302,823.79	64,810,665.78
Cash Disbursements		
Transfer to Equity	12,640.02	48,938,323.89
Assets Bought	-	28,449,424.02
Corrections	-	664.29
Early Distribution - exception applies	-	321,502.94
Early Distribution - no exception applies	-	371,726.53
Normal Distribution	-	2,784,368.01
Distribution Charitable Gift Annuity	-	14,853.04
Qualified Distribution Roth IRA	-	130,601.37
Roth IRA Distribution - Exception applies	-	59,035.47
Federal Tax / Premature Distribution	-	16,500.00
Federal Tax / Normal Distribution	-	48,724.96
Expenses	-	1,250,288.83
Fees Paid	-	1,975,147.36
Property Tax	7,388.07	316,701.03
Charitable Gift Annuity	-	74.36
Direct Transfer Out	-	40,530.96
Receivership Administrative Costs	335,167.81	5,014,474.39
Bank Service Charges	43.00	334.50
Total Disbursements	355,238.90	89,733,275.95
Ending Cash Balance	\$ 1,039,563.07	\$ 1,039,563.07

EXHIBIT C

AMERICAN PENSION SERVICES, INC. AND RELATED PARTIES
SUMMARY OF ASSETS

Entity	Asset Description	Estimated Value	Comments	Actions/Status
Personal Assets - Curtis DeYoung				
	Home - 12231 S. 1950 E., Draper, UT	630,000	Appraised Value	Receiver abandoned per Settlement Agreement with M. DeYoung [Dkt. 701].
	Encumbered by mortgage	-	Franklin America	Franklin filed a motion to intervene to release home from freeze [Dkt. 768]. The motion was granted on 11/22/16. Claim satisfied due to foreclosure.
	Encumbered by 2nd Mortgage	-	Heritage West Credit Union	Claim satisfied due to foreclosure.
	Combined Retirement Accounts - Curtis DeYoung	325,845	Frozen at Brighton Bank; accounts comprised of \$70,051 cash and remainder in various other investments of unknown value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701] and Receiver's Complaint in Intervention and for Declaratory Relief [Dkt. 857]
	HSA account Curtis DeYoung	4,181	Frozen at Brighton Bank; accounts comprised of \$81744.7 cash and remainder in various other investments of unknown value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701] and Receiver's Complaint in Intervention and for Declaratory Relief [Dkt. 857] Subject to Settlement Agreement with M. DeYoung [Dkt. 701] and Receiver's Complaint in Intervention and for Declaratory Relief [Dkt. 857]
	Combined Retirement Accounts - Michelle DeYoung	231,652	investments of unknown value	
	HSA account Michelle DeYoung	4,181		Subject to Settlement Agreement with M. DeYoung [Dkt. 701] and Receiver's Complaint in Intervention and for Declaratory Relief [Dkt. 857]
	Personal Furniture, Fixtures (Draper Home)	20,000	Value based on Rob Olson inspection	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Idaho Cabin Furniture	unknown		Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
American Pension Services, Inc.				
	Cash - First Utah Bank	167,547	Operating account controlled by Receiver	Being used for day-to-day operations of APS and payment of professional fees, as funds are available.
	APS interest in two Ogden properties	195,000	APS has notice of interest on properties	Receiver has preliminary settlement agreement entailing cash payment to Receiver.
LIC Environmental				
	Cash - First Utah Bank	-		Final tax return filed for 2015. Court granted Receiver's motion to judicially dissolve [Dkt. 901]. Cash was transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
LJP, LLC				
	Cash - First Utah Bank	-		Cash was transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
	Receivable - Cl. White - Kansas City	-		Receiver received \$1,128.12 in excess proceeds following tax sale.
	Receivable - Lionel Brown - Kansas City	-		Receiver settled with Mr. Brown for \$500.00. Mr. Brown paid the \$500.00 and Receiver quit-claimed the property.
Quicksilver				
	Cash - First Utah Bank	-		Court granted Receiver's motion to judicially dissolve [Dkt. 901]. Cash was transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
First Silverado				
	Cash - First Utah Bank	-		Court granted Receiver's motion to judicially dissolve [Dkt. 901]. Cash was transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
APS Master Trust				
	Property - Harrisburg, PA	-	3 homes, demolished by City as a hazard. Total assessed value only on land	Demolition costs and taxes are in excess of value. Receiver legally abandoned the properties.
DHBZ Holdings, LLC				
	Cash- Brighton Bank	67,616	Amount on deposit at Brighton Bank	Subject to Settlement Agreement with M. DeYoung [Dkt. 701] and Receiver's Complaint in Intervention and for Declaratory Relief [Dkt. 857]
RE Ventures, LLC				
	Cash-Brighton Bank	-		Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
Other Claims or Assets				
	AP4S	-	Account closed	Final tax return filed for 2015.
	Claim for Uncollected APS Management Fees	297,988		Open accounts plus amounts assigned to Express Recovery for collection.
	Membership Interest in Asset Acquisition Partners of America Inc.	-		Receiver determined to be of no value based on subpoena response from Wells Fargo.
	Value of Assets Discovered (coins, jewelry, precious metals)	17,778	Auction Value	The assets were auctioned on January 21, 2017.
	Interest in BD&D Investments, Inc.	-	Not aware of any value. Cannot verify existence of this entity.	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Various Collectibles and Judgments	Unknown	Value to be determined	The Receiver has assigned the collections of the judgments and settlements to Express Recovery, which is continuing their efforts to collect.
	Partnership Interest in DeYoung Associates, Ltd.	-	No known value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Membership Interest in DLC2 Investments, LLC	-	Dissolved	Subject to Settlement Agreement with M. DeYoung [Dkt. 701] and Court granted Receiver's motion to judicially dissolve [Dkt. 901].
	Claims Against Estate of Michael Memmott Jr.	65,948		Court granted order approving settlement in <i>Thompson v. Memmott</i> , Case No. 2:14-cv-00744-RJS and closed case [Dkt. 84, 91]. Receiver collected \$65,948 from First National Bank of America.
	Action Against First Utah Bank	5,000,000		Tenth Circuit affirmed on 3/9/17 in appellate case 16-4013. Petition for rehearing denied on 3/30/17. Receiver collected Settlement Funds during next Reporting Period.
	Default Judgment Against Gary Huettinger	13,500		Assigned to Express Recovery for collection.
	Claim Against Insurance Carriers - Chubb (Federal Insurance Company)	1,000,000	Policy limits interpleaded by Chubb	Interpleader Action pending, Case No. 2:16-cv-00023.

AMERICAN PENSION SERVICES, INC. AND RELATED PARTIES
SUMMARY OF ASSETS

Entity	Asset Description	Estimated Value	Comments	Actions/Status
			Checking account for \$100 transfered to APS operating account	No further action necessary
Interest in Interim Funding		-		
Claims Against LDS Church		150,000	C. and M. DeYoung contributions	Subject of <i>Thompson v. LDS Church</i> , Case No. 2:16-cv-00792. Parties settled for \$150,000.00 (Dkt. 22). Settlement funds collected during Reporting Period.
Excess Loss Allocation Collected		1,039,563		May be distributed to clients as part of estate or used for administrative costs.
Claim for Additional Loss Allocation to be Collected from Non-compliant Accounts		707,614		Auction of assets occurred on July 13, 2017, and Receiver is working to recover loss from eight (8) remaining accounts.
Interest in Mirocc, LP		-	M. DeYoung formerly had ownership interest in entity w	M. DeYoung represents assets are minimal and she no longer has a claim to any of the assets. Receiver determined not to pursue assets.
Partnership Interest in NACH, LP		-	No known value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
Interest in Venture Broadcast Inc.		-	No known value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
Interest in Witt's Lake Ranch, LLC		-	M. DeYoung has ownership interest which was not discl	M. DeYoung represents there are no assets currently or ever owned by entity. Receiver determined not to pursue.

EXHIBIT D

**AMERICAN PENSION SERVICES, INC.
SCHEDULE OF CLIENT ASSETS
AS OF JUNE 30, 2017**

ASSET TYPE	BOOK VALUE
Cash	\$ 48
Consolidated Notes	100,000
Contracts	340,790
LLC Interest	3,002,059
Promissory Notes	1,608,103
Real Property	581,685
Rescission Offer	708,455
Stocks	655,000
Trust Deed Notes	80,000
Total Assets	\$ 7,076,140

NOTES:

Note 1 - The asset descriptions and asset values shown above were compiled from data contained in the APS trust accounting system as of June 30, 2017. The Receiver and her professionals do not guarantee the accuracy of the categories and their related values.

Note 2 - During the month of July 2017, the Receiver has liquidated various assets through auction and other means, and she has received funds from investors to pay the required 10% loss allocation. In addition, the Receiver has further evaluated remaining assets in open accounts, and in some cases, she has determined that the costs to liquidate will be in excess of the anticipated liquidation proceeds. These accounts will be closed and assigned out to the accountholder. Therefore, by July 31, 2017, it is anticipated that only eight accounts will be open, and the assets shown above are the combined remaining assets in those eight accounts.

EXHIBIT E

**AMERICAN PENSION SERVICES, INC.
SUMMARY OF KNOWN CREDITORS**

CREDITOR	ADDRESS	OBLIGOR	AMOUNT	DESCRIPTION
City of Harrisburg, PA	10 N. 2nd St., Suite 103, Harrisburg, PA 17101-1679	APS Master Trust	26,711.22	Demolition Costs on Property
City of Harrisburg, PA	10 N. 2nd St., Suite 103, Harrisburg, PA 17101-1679	APS Master Trust	10,504.77	Utility bills
Dauphin County Tax Bureau	P.O. Box 1295, Harrisburg, Pennsylvania 17108	American Pension Services, Inc.	69,347.12	Claim for Unpaid Taxes
Estate of Jeannine Reneau	2825 E. Cottonwood Pkwy, Ste. 500, SLC, UT 84121	American Pension Services, Inc.	505,959.87	Judgment
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	Curtis DeYoung	43,412.75	Unsecured loan
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	American Pension Services, Inc.	137,299.92	Unsecured line of credit
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	Curtis DeYoung	3,450.00	Overdraft on bank account
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	American Pension Services, Inc.	27,840,599.00	Claim for Indemnity, Insurance, Joint Account, Rent, and Banking Fees
Franklin America	501 Corporate Centre Dr., Franklin, TN 37067	Curtis DeYoung	590,000.00	Mortgage on residence
Greenbaum Law Group, LLP	840 Newport Ctr. Dr., Suite 720 Newport Beach, CA 92660	American Pension Services, Inc.	3,484.50	Legal fees
James P. Alfrey	3843 West 11970 South, Riverton, UT 84065	American Pension Services, Inc.	2,000.00	Claim for Unpaid Compensation
Kyler Kohler Ostermiller & Sorensen	1883 W. Royal Hunte Dr., Suite 200, Cedar City, UT 84720	American Pension Services, Inc.	320.00	Legal fees
Louis Hardy and Sandra Kane	4568 Feather River Dr., Ste. A, Stockton, CA 95219	American Pension Services, Inc.	720,756.61	Claim for Breach of Contract
Mountain America Credit Union	111 East Broadway, 11th Floor, SLC, UT 84111	American Pension Services, Inc.	12,253.00	Judgment
Smith Accounting Services	999 E. 13200 S., Draper, UT 84020	American Pension Services, Inc.	8,695.62	Accounting fees
Snow, Christensen & Martineau	10 Exchange Place, 11th Floor, SLC, UT 84145-5000	American Pension Services, Inc., Curtis DeYoung	14,851.60	Legal fees
Total			<u>\$ 29,989,645.98</u>	

NOTES:

Note 1 - The above represents all known creditors of the Receivership Estate. The creditor claims bar date was 12/30/16.

Note 2 - The above list does not include investors who have retirement accounts with American Pension Services Master Trust.

Note 3 - The Receiver objected to the claims of Hardy/Kane and First Utah Bank's indemnity claim. The Receiver does not believe additional objections are appropriate.

Note 4 - Hardy/Kane did not respond to the Receiver's objection; thus the Receiver will remove this claim during the next Reporting Period.

Note 5- First Utah Bank tendered its Abandonment of Claims to the Receiver during this Reporting Period, which becomes effective during the next Reporting Period.

Note 6- The Receiver did not receive a proof of claim from Franklin America, Greenbaum Law Group, James Alfrey, Kyler, Kohler, Ostermiller & Sorensen, Smith Accounting Services, and Snow, Christensen & Martineau.