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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.

**RECEIVER'S MOTION AND
MEMORANDUM FOR AN ORDER OF
JUDICIAL DISSOLUTION OF LIMITED
LIABILITY COMPANIES HELD IN
JURISDICTIONS OTHER THAN UTAH
BY APS FOR THE BENEFIT OF APS
ACCOUNT HOLDERS**

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

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

Diane Thompson ("Receiver"), Court-appointed Receiver for American Pension Services, Inc. ("APS"), by and through her undersigned counsel, hereby respectfully moves the Court to order the judicial dissolution of seven (7) limited liability companies ("LLCs") held

within seven (7) APS accounts in order to allow for the sale of real property, promissory notes, and other assets within the LLCs to satisfy the loss allocation for each of these APS accounts per the Receiver's Amended Modified Plan of Liquidation.

RELIEF SOUGHT AND GROUNDS FOR MOTION

By this Motion, the Receiver seeks a Court order judicially dissolving seven (7) LLCs held within seven (7) APS accounts (Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865) (collectively, the "Non-compliant Accounts"). These LLCs are organized under the laws of California, Idaho, Washington, and Wyoming. APS, as the administrator of each Non-compliant Account holder's Individual Retirement Account ("IRA"), is a member of each of the LLCs, and in some cases, is the sole member.¹

The laws of California, Idaho, Washington, and Wyoming allow for a judicial dissolution upon the application of a member on the grounds that the managers or members in control of the LLC have acted or are acting in a manner that is illegal, oppressive, fraudulent, or otherwise harmful to the member-applicant. *See* CAL. CORP. CODE § 17707.03 (West 2016); IDAHO CODE ANN. § 30-25-701 (West 2015); WASH. REV. CODE § 20.15.274 (2010); WYO. STAT. ANN. § 17-29-701 (2010). In the present case, each manager or member of the LLCs held in Non-compliant Accounts is deliberately violating a willful order of this Court by failing to pay a loss allocation pursuant to the Receiver's Amended Modified Plan of Liquidation ("Liquidation Plan") (Dkt. 458 and 458-1). Upon judicial dissolution, the Non-compliant Accounts held at APS will receive

¹ APS is a third-party administrator of self-directed retirement accounts. APS, as administrator for an IRA account holder, is a member of the LLC for the benefit of an account holder's IRA. As a member of each of the LLCs, APS in its capacity as administrator can request a judicial dissolution of the LLC. *See* 26 U.S.C. § 408(h).

cash, assets, or both, as managers liquidate assets and distribute assets to members. The Receiver can then collect the loss allocation as ordered in the Liquidation Plan from the available cash. Alternatively, the Receiver will liquidate assets returned to the Non-compliant Accounts to fully fund the required loss allocation. The loss allocation payment will be represented by a Contingent Repayment Agreement.² As the opportunity to transfer the accounts to Equity Trust Company has expired, the Receiver will then resign as administrator of the account and distribute the remainder of the assets to the account beneficiary. Should the Receiver need to exercise the alternative of liquidating assets, the Receiver also requests permission to liquidate real property and other assets received for the Non-compliant Accounts as part of the judicial dissolution pursuant to 28 U.S.C. §§ 2001, 2004, and as described in the Court-approved Liquidation Plan.

MOTION AND MEMORANDUM

On April 24, 2014, the Securities and Exchange Commission (“SEC”) filed suit against APS and Curtis L. DeYoung, alleging, among other claims, that DeYoung, as president and CEO of APS, misappropriated over \$24 million of APS account owner funds from APS’s master trust account. (Complaint (Dkt. 1), ¶ 1). That same day, the Receiver was appointed and tasked to promote the orderly and efficient administration of the Receivership Estate. (Order Appointing Receiver, Freezing Assets, and Other Relief (Dkt. 9) (“Receivership Order”).

On February 27, 2015, the Court approved the Receiver’s proposed Liquidation Plan. The Liquidation Plan provides that the loss in the total value of the APS account owners’ assets

² The Contingent Repayment Agreement will represent only the value of the loss allocation and will not include any management fees or reasonable fees associated with the liquidation of the account assets.

shall be divided among the accounts on a pro rata basis, resulting in an approximate loss of ten percent (10%) to each account. Under the Liquidation Plan, if an account owner fails to pay a loss allocation and transfer to Equity Trust Company (“Equity”) by December 31, 2015, the Receiver may take certain action, including any of the following: (1) resigning as administrator and issuing an IRS Form 1099-R for tax reporting of the distribution of the total balance of the account; (2) imposing a lien for the amount of the applicable loss allocation on IRA account owner assets; (3) pursuing collection; or (4) liquidating account assets sufficient to meet the loss allocation requirement. (Liquidation Plan at p. 46).

The Receiver has carefully considered the costs associated with pursuing the liquidation of account assets of non-compliant IRA account owners and developed a plan for ensuring the greatest recovery to the Receivership Estate. At the time of this filing, there are fifty-three (53) accounts remaining at APS. Of the fifty-three (53) remaining accounts, seven (7) are the subject of this motion, twenty-four (24) will be the subject of future motions to be filed with the Court, or are the subject of a motion filed concurrently herewith, seventeen (17) have been the subject of previous motions, two (2) are in the process of funding their loss allocation, and three (3) will be assigned by the Receiver as authorized in previous motions.³

³ The three (3) accounts to be assigned contain LLCs organized under the laws of Arizona, Colorado, and Michigan. In these particular states, judicial dissolution is available when a member files a motion in the court for the county in which the registered office of the LLC is located, and only when the LLC is unable to carry on business in conformity with the LLC articles of organization and operating agreement. ARIZ. REV. STAT. ANN. § 29-785 (2016) (West); COLO. REV. STAT. ANN. § 7-80-810(3) (West 2016); MICH. COMP. LAWS § 450.4802 (West 2016). Alternatively, in Colorado and Michigan, a judicial dissolution is available on the grounds that the LLC acted in an unlawful manner only upon application by the attorney general. COLO. REV. STAT. ANN. § 7-80-810(1) (West 2016); MICH. COMP. LAWS § 450.4803 (West 2016). Based on the statutory requirements for a judicial dissolution, the Receiver believes it is

By this Motion, the Receiver seeks an order from this Court for a judicial dissolution of seven (7) LLCs held in seven (7) separate APS accounts, pursuant to the applicable state laws of California, Idaho, Washington, and Wyoming. Each of these state laws allow for a judicial dissolution upon the application of a member on the grounds that the managers or members in control of the LLC have acted or are acting in a manner that is illegal, oppressive, fraudulent, or otherwise harmful to the member-applicant. *See* CAL. CORP. CODE § 17707.03 (West 2016); IDAHO CODE ANN. § 30-25-701 (West 2015); WASH. REV. CODE § 20.15.274 (2010); WYO. STAT. ANN. § 17-29-701 (2010). Upon dissolution, the Receiver further asks this Court to approve the sale of real property and other assets formerly held by the LLCs within the APS accounts by public auction, as authorized under 28 U.S.C. §§ 2001, 2004, and as authorized in the Liquidation Plan.

BACKGROUND FACTS

1. On April 24, 2014, the Securities and Exchange Commission (“SEC”) filed suit against APS and Curtis L. DeYoung, alleging, among other claims, that DeYoung, as president and CEO of APS, misappropriated over \$24 million of APS account owner funds from APS’s master trust account. (Complaint (Dkt. 1), ¶ 1). That same day, the Receiver was appointed and tasked to promote the orderly and efficient administration of the Receivership Estate. (Order Appointing Receiver, Freezing Assets, and Other Relief (Dkt. 9) (“Receivership Order”).

2. Following her appointment, the Receiver filed notice of the Receivership with the district court for each district in which APS property or Receivership Assets were located,

more economically sound to resign as administrator and assign these assets to the clients with the accompanying tax documents.

pursuant to 28 U.S.C. § 754.

3. On August 22, 2014 the Receiver filed a motion for Court approval of the Liquidation Plan.

4. The Receiver provided notice of the Liquidation Plan to all APS account owners by mail, e-mail, and posting on the Receivership website at www.apsreceiver.com. (Dkt. 221; Dkt. 316 at p. 2).

5. The Receiver responded to a significant number of written objections from APS account owners regarding the proposed Liquidation Plan. (Dkt. 425 at p. 10). The Receiver filed a summary of these objections with the Court on November 11, 2014. (Dkt. 316). The Receiver then filed a response to APS account owner objections with the Court on December 3, 2014. (Dkt. 356).

6. The Court held a hearing on the Receiver's proposed Liquidation Plan on December 17, 2014, and afforded APS account owners the opportunity to be heard on the proposed Liquidation Plan in oral argument.

7. This Court approved the Liquidation Plan on February 27, 2015. (Dkt. 458). The Receiver provided notice of the approved Liquidation Plan to each account owner by mail, e-mail, and posting on the APS Receivership website at www.apsreceiver.com.

8. The Liquidation Plan required that APS account owners provide a loss allocation equal to ten percent (10%) of the total value of their accounts as of April 24, 2014. (Dkt. 458-1 at p. 44). This loss allocation applied to clients regardless of the form in which their assets within their account were held. (*Id.*). APS account owners were required to fund their loss allocation by May 27, 2014. (*Id.*).

9. The Liquidation Plan allowed clients with illiquid assets to preserve those assets by funding their loss allocation by direct payment of the loss allocation to the Receiver. In order to resolve potential tax reporting issues, the Receiver also sought a Private Letter Ruling (“PLR”) from the IRS. (Liquidation Plan at 40–41). Clients that were awaiting the outcome of the PLR were allowed to defer their loss allocation until a determination on the PLR was made. (*Id.*).

10. Furthermore, the Liquidation Plan authorized the Receiver to take certain actions if the APS Account Owner failed to fund their loss allocation. (Liquidation Plan at p. 46). Under the Liquidation Plan, the Receiver is authorized to: (1) resign as administrator and issue an assignment of assets and IRS Form 1099-R reporting a full distribution based on the recorded value of account assets of April 25, 2014; (2) impose a lien on APS account owners’ assets; (3) pursue collection from APS account owners who refuse to comply with the Liquidation Plan; (4) liquidate assets sufficient to meet the loss allocation requirement; or (5) any combination of the above. (*Id.*).

11. On July 2, 2015, the IRS declined to issue a PLR for procedural reasons. (Dkt. 592 at p. 4). As a result, the Receiver proposed, and this Court approved, an alternative method for reporting a cash payment to fund a loss allocation and requiring all remaining APS account owners to transfer their accounts by September 15, 2015. (Dkt. 592).

12. The Liquidation Plan recognized that some APS account owners required additional time to liquidate or otherwise fund a loss allocation. (Liquidation Plan at p. 45). Thus, the Liquidation Plan required all loss allocations be funded by December 31, 2015. (*Id.*).

13. On February 10, 2016, the Receiver filed a motion seeking to force transfer certain remaining APS account owners. (Dkt. 705). For that motion, the Receiver evaluated over 1,100 APS accounts and determined that, based on a cost-benefit analysis, 786 accounts had loss allocation amounts that did not justify the cost of liquidation and therefore transferred those accounts to the successor custodian. (*Id.*). The Court approved this motion on February 19, 2016, concluding that the transfer of these 786 accounts “would further implement the purpose and intent of the Liquidation Plan.” (Dkt. 720). Those APS account owners that were transferred without a loss allocation forfeited “any opportunity to participate in future recoveries” made by the Receiver. (*Id.*). The Receiver then transferred the 786 APS accounts.

14. The Receiver has taken actions permitted by the Liquidation Plan and subsequent Court orders to collect required loss allocation payments from Non-compliant Accounts, including sweeping accounts of cash, and liquidating foreign currency, gold, silver, coins, and brokerage accounts.

15. APS records contained limited information regarding certain assets. In an effort to ascertain additional information, and to evaluate whether liquidation of assets was justified from a cost-benefit standpoint, the Receiver issued subpoenas and a cover letter to remaining APS account owners. The subpoena and cover letter explained the APS account owners’ obligations to comply with the Liquidation Plan and other Court orders. The subpoenas requested a number of financial records and other documents related to the APS account owners’ assets.

16. The owner of Account Number 8795 is a resident of the State of California.

17. The owner of Account Number 8795 was served a subpoena at his residence on March 26, 2016. The owner of Account number 8795 responded to the subpoena. After a review of documents supplied in response to the subpoena, the Receiver believes Account Number 8795 contains an LLC that holds real property and other assets, and upon dissolution of the LLC, the real property and other assets can be liquidated to satisfy the loss allocation and any outstanding management fees for Account Number 8795.

18. The owner of Account Number 9191 is a resident of the State of California.

19. The owner of Account Number 9191 was served a subpoena at his residence on July 17, 2016. The owner of Account Number 9191 has not responded to the subpoena. The Receiver believes, based on account information available, that there are assets available for liquidation to satisfy all or part of the loss allocation and any outstanding management fees.

20. The owner of Account Number 10066 is a resident of Washington.

21. The owner of Account Number 10066 was served a subpoena at her residence on March 21, 2016. The owner of Account Number 10066 responded to the subpoena. After a review of documents supplied in response to the subpoena, the Receiver believes Account Number 10066 contains an LLC that holds real property and other assets, and upon dissolution of the LLC, the real property and other assets can be liquidated to satisfy the loss allocation and any outstanding management fees for Account Number 10066.

22. The owner of Account Number 10847 is a resident of the State of California.

23. The owner of Account Number 10847 was served a subpoena at her residence on March 29, 2016. The owner of Account Number 10847 has not responded to the subpoena. The Receiver believes, based on account information available, that there are assets available for

liquidation to satisfy all or part of the loss allocation and any outstanding management fees.

24. The owner of Account Number 10899 is a resident of the State of Idaho.

25. The owner of Account Number 10899 was served a subpoena at his residence on March 22, 2016. The owner of Account Number 10899 responded to the subpoena. After a review of documents supplied in response to the subpoena, the Receiver believes Account Number 10899 contains an LLC that holds real property and other assets, and upon dissolution of the LLC, the real property and other assets can be liquidated to satisfy the loss allocation and any outstanding management fees for Account Number 10899.

26. The owner of Account Number 11669 is a resident of the State of California.

27. The process server has made at least twenty (20) attempts to serve a subpoena on the owner of Account Number 11669 requesting additional information on Account Number 11669. The process server confirmed with neighbors on multiple occasions that the owner of Account Number 11669 lives at the address where service was attempted. Process was attempted at various times of the day and on several different days. The Receiver believes the owner of Account Number 11669 is evading service of the subpoena. The Receiver believes, based on account information available, that there are assets available for liquidation to satisfy all or part of the loss allocation and any outstanding management fees.

28. The owner of Account Number 11865 is a resident of the State of Idaho.

29. The owner of Account Number 11865 was served a subpoena at his residence on March 31, 2016. The owner of Account Number 11865 responded to the subpoena. After a review of documents supplied in response to the subpoena, the Receiver believes Account Number 11865 contains an LLC that holds real property and other assets, and upon dissolution of

the LLC, the real property and other assets can be liquidated to satisfy the loss allocation and any outstanding management fees for Account Number 11865.

30. In addition to service of a subpoena and cover letter, the owners of Non-compliant Accounts were mailed and e-mailed a copy of the Liquidation Plan on or about February 27, 2015, and were provided notice of additional court orders via the Receivership website at www.apsreceiver.com.

31. Account Number 8795 holds an LLC with a reported value of \$157,245.00.⁴ Upon information and belief, the LLC within Account Number 8795 is a single-member, manager-managed LLC with APS as the only owner. The manager of the LLC is the owner of APS Account Number 8795.

32. Account Number 8795 has a remaining loss allocation of \$17,186.87 and has funded \$362.09 of their loss allocation thus far. Account Number 8795 has a remaining loss allocation of \$16,824.78. The Receiver believes the LLC can be dissolved and assets sold to fund the loss allocation of Account Number 8795.

33. Account Number 9191 holds an LLC with a reported value of \$30,000.00.⁵ Upon information and belief, the LLC within Account Number 9191 has multiple members. APS is only a partial owner of the LLC within the account. The LLC is managed by an individual other than the APS account owner or APS.

⁴ Account number 8795 holds a number of assets in addition to the LLC. The total account value subject to a loss allocation for Account number 8795 is \$171,868.67. Thus, the loss allocation is \$17,186.87.

⁵ Account number 9191 holds a number of assets in addition to the LLC. The total account value subject to a loss allocation for Account number 9191 is \$104,004.93. Thus, the loss allocation is \$10,400.49.

34. Account Number 9191 had a loss allocation of \$10,400.49 and has funded \$4,687.17 of their loss allocation thus far. Account Number 9191 has a remaining loss allocation of \$5,713.32. The Receiver believes the LLC can be dissolved and assets sold to fund the remaining loss allocation of Account Number 9191.

35. Account Number 10066 holds an LLC with a reported value of \$218,425.00. Upon information and belief, the LLC within Account Number 10066 is a single-member, manager-managed LLC with APS as the only owner. The manager of the LLC is the owner of APS Account Number 10066.

36. Account Number 10066 has a loss allocation of \$21,842.51 and owes \$683.26 in outstanding management fees. The Receiver believes the LLC can be dissolved and assets sold to fund the loss allocation and outstanding management fees for Account Number 10066.

37. Account Number 10847 holds an LLC with a reported value of \$195,270.00. Upon information and belief, the LLC within Account Number 10847 is a single-member, manager-managed LLC with APS as the only owner. The manager of the LLC is the owner of APS Account Number 10847.

38. Account Number 10847 has a loss allocation of \$19,527.00 and owes \$2,527.98 in outstanding management fees. The Receiver believes the LLC can be dissolved and assets sold to fund the loss allocation and outstanding management fees for Account Number 10847.

39. Account Number 10899 holds an LLC with a reported value of \$225,000.00. Upon information and belief, the LLC within Account Number 10899 is a single-member, manager-managed LLC with APS as the only owner. The manager of the LLC is the owner of APS Account Number 10899.

40. Account Number 10899 has a loss allocation of \$22,581.13 and owes \$2,048.10 in outstanding management fees. The Receiver believes the LLC can be dissolved and assets sold to fund the loss allocation and outstanding management fees for Account Number 10899.

41. Account Number 11669 holds an LLC with a reported value of \$228,741.15. Upon information and belief, the LLC within Account Number 11669 is a single-member, manager-managed LLC with APS as the only owner. The manager of the LLC is the owner of APS Account Number 11669.

42. Account Number 11669 had a loss allocation of \$23,616.20 and has funded \$4,459.90 of their loss allocation thus far. Account Number 11669 has a remaining loss allocation of \$19,156.30. The Receiver believes the LLC can be dissolved and assets sold to fund the remaining loss allocation of Account Number 11669.

43. Account Number 11865 holds an LLC with a reported value of \$250,000.00. Upon information and belief, the LLC within Account Number 11865 is a single-member, manager-managed LLC with APS as the only owner. The manager of the LLC is the owner of APS Account Number 11865.

44. Account Number 11865 has a loss allocation of \$25,000.00 and owes \$792.00 in outstanding management fees. The Receiver believes the LLC can be dissolved and assets sold to fund the loss allocation and outstanding management fees for Account Number 11865.

45. IRA LLCs are established for a number of reasons. The typical IRA LLC is used to invest in and hold real property assets; however, the LLC may be used for any lawful business purpose other than a prohibited transaction, as defined by 26 U.S.C. § 4975. An IRA LLC provides increased asset protection, allowing the account owner to attempt to shield an asset

from creditors by the creation of an additional layer—the LLC. The IRA LLC also grants the account owner “checkbook control” of the assets, and removes the need for each transaction within the IRA LLC to be approved and processed by the custodian. The lack of custodial “checkbook control” makes it difficult to ascertain information regarding any assets within the IRA LLC. Despite the lack of “checkbook control” and the increased asset protections, APS has the right to seek dissolution because, as the IRA custodian, it is the member of the LLC in order to preserve tax-advantaged status. *See* 26 U.S.C. § 408(h).

46. The LLCs held by Account Numbers 8795, 9191, and 10847 are organized under the laws of California.

47. Judicial dissolution and the subsequent winding up of the LLCs within the State of California is governed by the Revised Uniform Limited Liability Company Act, CAL. CORP. CODE § 17707.03 (West 2016).

48. The LLCs held by Account Numbers 10899 and 11865 are organized under the laws of the State of Idaho.

49. Judicial dissolution and the subsequent winding up of the LLCs within the State of Idaho is governed by the Idaho Limited Liability Company Act, IDAHO CODE ANN. § 30-25-701 (West 2015).

50. The LLC held by Account Number 10066 is organized under the laws of the State of Washington.

51. Judicial dissolution and the subsequent winding up of an LLC within the State of Washington is governed by the Washington Limited Liability Act, WASH. REV. CODE § 20.15.274 (2010).

52. The LLC held by Account Number 11669 is organized under the laws of the State of Wyoming.

53. Judicial dissolution and subsequent winding up of the LLC within the State of Wyoming is governed by the Wyoming Limited Liability Companies Act, WYO. STAT. ANN. § 17-29-701 (2010).

54. Each of the state laws of California, Idaho, Washington, and Wyoming allow this Court to enter a decree requiring the dissolution of the LLCs held in the Non-compliant Accounts. *See* CAL. CORP. CODE § 17707.03 (West 2016); IDAHO CODE ANN. § 30-25-701 (West 2015); WASH. REV. CODE § 20.15.274 (2010); WYO. STAT. ANN. § 17-29-701 (2010).

55. APS, as the administrator of each non-compliant account holder's IRA, is a member of each of the LLCs, and in some cases, the sole member.⁶ As a member of each of the LLCs listed in the Non-compliant Accounts, APS may apply to this Court for an order dissolving each of the LLCs, as the managers, members, or both, have acted in a manner that is either illegal or fraudulent, or harmful to APS, as the applicant. Each of the managers or members of the LLCs held by Non-compliant Accounts has acted illegally by failing to obey a lawful order of this Court and in a manner harmful to APS by failing to fund the Court-ordered loss allocation under the Liquidation Plan. *See* CAL. CORP. CODE § 17707.03 (West 2016); IDAHO CODE ANN. § 30-25-701 (West 2015); WASH. REV. CODE § 20.15.274 (2010); WYO. STAT. ANN. § 17-29-701 (2010).

⁶ APS is a third-party administrator of self-directed retirement accounts. APS, as administrator for an IRA account holder, is a member of the LLC for the benefit of an account holders IRA. As a member of each of the LLCs, APS in its capacity as administrator can request a judicial dissolution of the LLC. *See* 26 U.S.C. § 408(h).

56. The laws of both California and Idaho allow the purchase of an interest of the applicant seeking a judicial dissolution—in this case APS—at fair market value to avoid a judicial dissolution. *See* CAL. CORP. CODE § 17707.03(c)(1)–(5) (West 2016); IDAHO CODE ANN. § 30-29-1434 (West 2015).

57. The laws of Washington and Wyoming are silent on the election to purchase an interest to avoid judicial dissolution. However, Washington, and Wyoming “do have corporate mechanisms that offer a buyout at ‘fair market’ in lieu of judicial dissolution.” Sandra K. Miller, *Discounts and Buyouts in Minority Investor LLC Valuation Disputes Involving Oppression or Divorce*, 13 U. PA. J. BUS. L. 607, 649 (2011); *see also* WASH. REV. CODE § 25.05.425 (2010); WYO. STAT. ANN. § 17-21-701 (2010).

58. The Receiver intends to provide notice of this Motion to any listed members, managers, and registered agents for the LLCs with the respective state agencies to allow for an election to purchase in lieu of dissolution.

59. If any of the members of the LLC forego the opportunity to purchase the interest of the APS account owner, the LLC must be wound up by its manager or managers under each of the respective state statutes.

60. Upon dissolution and during winding up, the assets of LLCs will be returned to each member of the LLC based on the percentage interest of each member. In the case of APS accounts as owners, the APS accounts will receive the proportion of assets from the liquidated LLCs.

61. In the event the manager, managers, or members refuse to wind up an LLC, this Court may order judicial supervision of the winding up, to include appointing a person to wind

up the LLC's affairs. IDAHO CODE ANN. § 30-25-702(d) (West 2015); WASH. REV. CODE § 25.15.297(4) (2010); WYO. STAT. ANN. § 17-29-702(d) (2010).⁷

62. The Receiver may be appointed to supervise the wind up of the LLC's affairs. *Id.*

63. In the case of a single-member LLC, the assets do not necessarily need to be liquidated, but can instead be returned to the APS account for liquidation by the Receiver.

64. The assets returned to the APS account from the dissolved LLC can then be liquidated pursuant to 28 U.S.C. §§ 2001 and 2004 in order to fund the respective loss allocation, and any management fees that may be due and owing, for each of the accounts.

65. As a result of the need to liquidate assets of the dissolved LLCs to fund the Court-ordered loss allocation, the Receiver will incur fees and costs associated with the liquidation of the assets returned to the respective Non-compliant Accounts.

ARGUMENT

I. This Court Has the Authority to Dissolve the LLCs Within the APS Accounts.

The district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010). "When a district court creates a receivership, its focus is to . . . achiev[e] a final, equitable distribution of the assets." *Id.* The district court has authority to accomplish the goal of an equitable distribution, including the liquidation of assets from individual accounts. *See, e.g., In re Comm'r of Banks and Real Estate*, 764 N.E.2d 66, 86 (Ill. App. Ct. 2001); *see also SEC v. Bilzerian*, 378 F.3d 1100, 1103 (D.C. Cir. 2004) (holding a district court has personal jurisdiction over non-

⁷ The California Revised Uniform Limited Liability Company Act does not expressly authorize this Court to appoint a person to wind down the affairs of the LLC in the event the manager or member refuses.

resident that holds property subject to receivership in another jurisdiction). Furthermore, no preference should be given to some account holders to the detriment of others. *See generally Cunningham v. Brown*, 265 U.S. 1 (1924); *Rosenberg v. Collins*, 624 F.2d 659 (5th Cir. 1980); *see also In re Comm’r of Banks and Real Estate*, 764 N.E.2d at 101; *Reichert v. Fidelity Bank & Trust Co.*, 245 N.W. 808, 810 (Mich. 1932); 5 Scott on Trusts § 519. This Court recognized the Receiver’s authority to “pursue collection from APS clients who refuse to cooperate with th[e] Liquidation Plan and, if necessary, liquidate the assets and deposit the client’s proportionate share of the loss allocation with the balance, if any, transferred to the Successor [custodian] on behalf of the APS client” when it approved the Receiver’s Liquidation Plan. (Liquidation Plan at p. 46).

Each of the laws of California, Idaho, Washington, and Wyoming provide the Court with the statutory authority to order judicial dissolution of the LLCs organized under the respective states. CAL. CORP. CODE § 17707.03 (West 2016); IDAHO CODE ANN. § 30-25-701 (West 2015); WASH. REV. CODE § 20.15.274 (2010); WYO. STAT. ANN. § 17-29-701 (2010). California Corporations Code section 17707.03 states:

(a) Pursuant to an action filed by any manager or by any member or members of a limited liability company, a court of competent jurisdiction may decree the dissolution of a limited liability company whenever any of the events specified in subdivision (b) occurs.

* * *

(b)(2) Dissolution is reasonably necessary for the protection of the rights or interests of the complaining members.

The Idaho Limited Liability Companies Act, section 30-25-701 states:

(a) A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

* * *

(4) On application by a member, the entry by the district court of an order dissolving the company on the grounds that:

(A) The conduct of all or substantially all the company's activities and affairs is unlawful; or

(B) It is not reasonably practicable to carry on the company's activities and affairs in conformity with the certificate of organization and the operating agreement;

(i) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(ii) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant; or

(C) The managers or those members in control of the company:

(i) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(ii) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

The Washington Limited Liability Companies Act states:

A limited liability company is dissolved and its affairs must be wound up upon the first to occur of the following:

* * *

(5) The entry of a decree of judicial dissolution under RCW 25.15.274.

Section 25.15.265. The Washington Limited Liability Companies Act further states that the Court "may order dissolution of a limited liability company" "[o]n application by a member or manager" "whenever . . . other circumstances render dissolution equitable." WASH. REV. CODE § 20.15.274 (2010). The Wyoming

Limited Liability Companies Act section 17-29-701 states:

(a) A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

* * *

(v) On application by a member . . . , the entry of a court order dissolving the company on the grounds that the managers or those members in control of the company:

(A) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(B) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

As to the LLCs organized under the laws of California, Idaho, Washington, and Wyoming, APS, as administrator of each non-compliant account holder's IRA, is a member of each of the LLCs, and in some cases, the sole member. *See* 26 U.S.C. § 408(h). As part of the Liquidation Plan, each APS-administered IRA has been ordered to fund a loss allocation equal to ten percent (10%) of the reported value of the account as of April 24, 2014. Despite this lawful Court order, and the fact that each LLC's manager or member are required to remit the loss allocation, APS does not have the funds to remit payment due to the manner in which the LLCs were formed, in which the IRA account owner has checkbook control over the LLC's assets. (*See* Statement of Facts, ¶ 45.) As noted above, each IRA is required to fund this loss allocation, with no preference to some account holders to the detriment of others. *See generally* *Cunningham v. Brown*, 265 U.S. 1 (1924); *Rosenberg v. Collins*, 624 F.2d 659 (5th Cir. 1980); *see also In re Comm'r of Banks and Real Estate*, 764 N.E.2d at 101; *Reichert v. Fidelity Bank & Trust Co.*, 245 N.W. 808, 810 (Mich. 1932); 5 Scott on Trusts § 519.

The Receiver has no other recourse than to seek the judicial dissolution of the LLC within the IRA in order to fund the loss allocation. Upon judicial dissolution, the Non-compliant Accounts held at APS will receive cash, assets, or both, as managers liquidate assets and distribute assets to members. APS can then make the loss allocation ordered in the Liquidation Plan (Dkt. 458 and 458-1) from the available cash.

In the event that LLCs organized under the laws of California, Idaho, Washington, and Wyoming contain more than one member, those members may avoid dissolution by purchasing the APS Non-compliant Account's interest for cash at fair market value. *See* CAL. CORP. CODE §

17707.03(c)(1)–(6) (West 2016); IDAHO CODE ANN. § 30-29-1434 (West 2015); Sandra K. Miller, *Discounts and Buyouts in Minority Investor LLC Valuation Disputes Involving Oppression or Divorce*, 13 U. PA. J. BUS. L. 607, 649 (2011); *see also* WASH. REV. CODE § 25.05.425 (2010); WYO. STAT. ANN. § 17-21-701 (2010).

APS is a member of each of the LLCs held in the Non-compliant Accounts in its capacity as administrator. *See* 26 U.S.C. § 408(h). The Receiver asks this Court, as a member of each LLC, to order the judicial dissolution of those seven (7) LLCs held within the seven (7) Non-compliant Accounts that are the subject of this Motion. Each of the states in which the LLCs are organized allow for the purchase of APS's interest by the remaining members to avoid judicial dissolution by statute or other corporate mechanism. *See* CAL. CORP. CODE § 17707.03(c)(1)–(6) (West 2016); IDAHO CODE ANN. § 30-29-1434 (West 2015); Sandra K. Miller, *Discounts and Buyouts in Minority Investor LLC Valuation Disputes Involving Oppression or Divorce*, 13 U. PA. J. BUS. L. 607, 649 (2011); *see also* WASH. REV. CODE § 25.05.425 (2010); WYO. STAT. ANN. § 17-21-701 (2010). In order to trigger the election to purchase in lieu of dissolution, the Receiver would need to notify any known members, managers, and registered agents of the LLC. To accomplish proper notice, the Receiver intends to mail a copy of this Motion and a cover letter explaining this Motion to each of the Non-compliant Account owners at the address at which the owners were served or attempted to be served. The Receiver will also mail a copy of the Motion to each of the members, managers, and registered agents of the LLCs as listed with the responsible governing bodies for the respective states. Finally, the Receiver will post a copy of this Motion and cover letter to the Receiver's website upon filing with the Court.

As part of the judicial dissolution, each of the LLCs should be directed to wind down their affairs and return the assets of the LLC to the APS account in proportion of their membership interest within ninety (90) days. Once the assets are returned, the Receiver asks the Court for authorization to sell those assets pursuant to 28 U.S.C. § 2001 and 2004.

II. The Receiver Has Authority to Sell Assets Within APS Accounts.

As noted above, the district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010). “When a district court creates a receivership, its focus is to . . . achiev[e] a final, equitable distribution of the assets.” *Id.* The district court has authority to accomplish the goal of an equitable distribution, including the liquidation of assets from individual accounts. *See, e.g., In re Comm’r of Banks and Real Estate*, 764 N.E.2d 66, 86 (Ill. App. Ct. 2001); *see also SEC v. Bilzerian*, 378 F.3d 1100, 1103 (D.C. Cir. 2004) (holding a district court has personal jurisdiction over non-resident that holds property subject to receivership in another jurisdiction). Furthermore, no preference should be given to some account holders to the detriment of others. *See generally Cunningham v. Brown*, 265 U.S. 1 (1924); *Rosenberg v. Collins*, 624 F.2d 659 (5th Cir. 1980); *see also In re Comm’r of Banks and Real Estate*, 764 N.E.2d at 101; *Reichert v. Fidelity Bank & Trust Co.*, 245 N.W. 808, 810 (Mich. 1932); 5 Scott on Trusts § 519. This Court recognized the Receiver’s authority to liquidate the assets of the client accounts upon failure to fund the loss allocation. (Liquidation Plan at p. 46).

Pursuant to the Liquidation Plan, the Receiver seeks approval from this Court to liquidate real property assets and other assets held by the APS-administered LLCs returned to the APS Non-compliant Accounts following judicial dissolution and wind-down. Account Number 8795

has a remaining loss allocation of \$16,824.78. Account Number 9191 has a remaining loss allocation of \$5,713.32. Account Number 10066 requires a loss allocation of \$21,842.51 and has outstanding management fees of \$683.26. Account Number 10847 requires a loss allocation of \$19,527.00 and has outstanding management fees of \$2,527.98. Account Number 10899 requires a loss allocation of \$22,581.13 and has outstanding management fees of \$2,048.10. Account Number 11669 has a remaining loss allocation of \$19,156.30. Account Number 11865 requires a loss allocation of \$25,000.00 and has outstanding management fees of \$792.00. Each of the LLCs formed within these Non-compliant Accounts was formed for the purposes of purchasing, selling, and otherwise holding real property and other assets for the purpose of generating value within the IRA. Once dissolved, the real property and other assets held by these Non-compliant Accounts can be liquidated to fund the respective loss allocations and outstanding management fees, if any.

In a typical wind up, the manager will discharge the LLC's debts, liabilities, and obligations, then distribute the assets. *See, e.g.,* WYO. STAT. ANN. § 17-29-702 (2010). The manager may distribute assets by transferring property of the LLC to its member or members. *See, e.g.,* WYO. STAT. ANN. § 17-29-702(b)(ii)(D) (2010). In the case of a multi-member LLC, it is likely that the manager or appointed receiver will need to liquidate assets and distribute cash to its members according to their proportional share of ownership. In the event the LLC has only one member—the APS account owner—distribution of the assets may occur simply by transferring the assets without liquidation of the assets. *Id.* When cash assets are received, the Receiver will use the cash to make the loss allocation within the account. When illiquid assets are received for a single-member LLC, the Receiver will need to liquidate those assets to fund

the loss allocation pursuant to 28 U.S.C. §§ 2001, 2004, as described below.

The Receiver has contacted each of the owners of Non-compliant Accounts on numerous occasions to pay their loss allocations. The Receiver has obtained additional Court orders requiring these owners to pay their respective loss allocations and transfer their accounts. *See, e.g.,* Order Requiring All Remaining APS Account Holders to Transfer Within 30 Days (Dkt. 592). Despite the Receiver's numerous communications, each of the above account owners has failed to cooperate with the Receiver to resolve their loss allocation. Ultimately, the Receiver issued subpoenas to the owners of the Non-compliant Accounts in order to compel cooperation and make a preliminary determination as to the value of the underlying assets of the LLCs.

Of the seven (7) Non-compliant Account owners that were subpoenaed, one (1) was not served (which the Receiver believes is evading service), two (2) were served but have not responded, and four (4) were served and responded to the subpoena. Based on the information provided by the four (4) Non-compliant Accounts that responded, the Receiver believes there are sufficient assets to liquidate and fund the loss allocation and management fees, if any, for each of those accounts following judicial dissolution. Furthermore, the Receiver also believes, based on the limited information available regarding the unresponsive Non-compliant Accounts, there are sufficient real estate assets to liquidate following judicial dissolution. While the owners of each of the accounts may believe they are being punished (and most assuredly, the owners are victims of Curtis DeYoung's misappropriation), the loss allocation is the product of a lawful court order, and the owners of Non-compliant Accounts are in violation of this Court's order. *See In re Comm'r of Banks and Real Estate*, 764 N.E.2d at 123.

Furthermore, “[i]t is generally recognized that the district court has broad powers and wide discretion to determine . . . relief in an equity receivership.” *SEC v. Vescor Capital Corp.*, 599 F.3d, 1189, 1194 (10th Cir. 2010) (internal quotation marks omitted). Therefore, this Court, exercising equitable principles, should not allow Non-compliant Accounts containing IRA LLCs to evade the Receivership and the Court-ordered loss allocation payment simply because they set up an IRA LLC to invest in assets rather than hold them directly in the IRA account.

The United States Code describes the procedure for selling real property and other assets. 28 U.S.C. §§ 2001, 2004. According to 28 U.S.C. § 2001, “Property in the possession of a receiver . . . appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city” where the property is located, “or on the premises” of the property. Furthermore, “[a]ny personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.” 28 U.S.C. § 2004. The Receiver seeks the approval of this Court to sell real property and other assets returned to the Non-compliant Accounts following the judicial dissolution of the LLCs held within those accounts.

Should this Court approve, the Receiver intends to hold a public sale or auction that will bring the highest and best value for the property. The Receiver requests the Court grant the Receiver authority to sell the parcels of real property by sheriff’s sale, U.S. Marshals sale, or public auction, whichever the Receiver determines will bring the highest and best value. Regardless of the method of sale, the Receiver will strive to obtain a minimum bid equal to the loss allocation and outstanding management fees, if any, owed by each of the respective

accounts, and reasonable fees and costs associated with liquidating the properties in the respective accounts. Should a minimum bid not be obtained, the Receiver will strive to liquidate the assets for the highest and best value. The Receiver should be awarded her reasonable costs and fees associated with the liquidation of the real property assets as this Motion is only necessary because these owners of Non-compliant Accounts have completely disregarded this Court's orders. Furthermore, those account owners that have willingly complied with this Court's orders should not be harmed by subsidizing the costs incurred by the Receiver in executing against the Non-compliant Accounts.

Should the Receiver elect to hold a sheriff's sale, the Receiver will follow the procedure for a sheriff's sale for the county in which she elects to conduct the sale. *See, e.g.*, UTAH CODE ANN. § 57-1-25. The typical process involves a payment of a fee to the sheriff's office, and providing the sheriff's office with a court order authorizing the sale, the amount due at the sale (a minimum bid), and a legal description of the property. *Id.* The sheriff's office will then publish notice of the sale in the newspaper and other public places. *Id.* Typically, notice is published three weeks prior to the sale.⁸ *Id.* Should the Receiver elect to engage the U.S. Marshals Service to auction real property and other assets, the Receiver will coordinate the auction with the U.S. Department of Justice Asset Forfeiture Program, which will then publicly auction the assets.

Alternatively, the Receiver seeks authorization to engage an auctioneer to publicize and conduct the sale of the real property. The Receiver has successfully used an auctioneer in this

⁸ The Receiver will comply with any statutes applicable in the jurisdiction in which the property is sold, including any statutory timelines or additional notice requirements.

matter to liquidate other Receivership Assets. The auctioneer will publicize a notice of sale in an effort to maximize the number of potential purchasers.

The Receiver will deposit any funds from the liquidation of the assets into the respective APS accounts. Following the deposit to accounts, the Receiver will fund the loss allocation and outstanding management fees, as well as reasonable fees and costs associated with the liquidation of the promissory notes from the Non-compliant Accounts. The loss allocation asset will be represented by a Contingent Repayment Agreement.⁹ (Liquidation Plan at p. 44). As the opportunity to transfer the accounts to Equity Trust Company has expired, the Receiver will then resign as administrator of the account and distribute the Contingent Repayment Agreement and any excess funds to the client with a letter explaining the resignation and the account holder's right to rollover the account assets. The client will be issued an IRS Form 1099-R for the amount of the distribution, which would include the face value of the Contingent Repayment Agreement.

III. Due Process Has Been Afforded to the Account Holder.

"Due process requires notice and an opportunity to be heard." *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). Due process ensures a "claimant[']s interests [are] adequately safeguarded." *Id.* The owners of each of the Non-compliant Accounts have been, and will be, afforded due process.

In *In re Comm'r of Banks and Real Estate*, a Receiver sought to dissolve and liquidate a custodian of investment trust assets. 764 N.E.2d 66 (Ill. App. Ct. 2001). In affirming the

⁹ The Contingent Repayment Agreement will represent only the value of the loss allocation and will not include any management fees or reasonable fees associated with the liquidation of the account assets.

Receiver's authority to liquidate assets from individual trust accounts, the Court addressed due process considerations, and found that account holders had "both actual and constructive notice . . . in the form of publication of pleadings, orders, the receiver's recommendations, etc." on the receiver's website. *In re Comm'r of Banks and Real Estate*, 764 N.E.2d at 92. The Court noted that each of the account holders had been mailed notice of the receivership, which advised account holders that "a substantial portion of cash . . . was missing and it was the priority of the receiver to determine the amount of money missing and how the beneficiaries would be affected by the missing cash," and that notice was posted to the receiver's website. *Id.* The Court then noted that account holders received notice of other court filings by mail and website postings, and that account holders "were afforded ample opportunity to participate in the court's proceedings," including the ability to "file extensive pleadings . . . including objections and suggestions . . . to the receiver's initial recommendation[s], . . . objections and oppositions to the proposed final order," and other filings. *Id.* at 93–94.

In addition to the initial notice of the Receivership, APS account owners were mailed notice of the Receiver's proposed Liquidation Plan and afforded an opportunity to make suggestions and objections. APS account owners were also mailed the Court-approved Liquidation Plan. Additionally, the Receiver has posted all substantive pleadings to the Receiver's website at www.apsreceiver.com. As to each of the Non-compliant Accounts, the Receiver has issued and served or attempted to serve subpoenas with cover letters explaining the loss allocation and the need to comply with the Court's orders to owners of Non-compliant Accounts. The cover letter to the subpoena explicitly stated that each client was "in violation of Court orders by failing to pay [their] loss allocation." The cover letter also stated that, pursuant

to the Liquidation Plan, the Receiver may take certain actions, including “liquidat[ing] assets sufficient to meet the loss allocation.”

Finally, as noted *supra* Part I, the Receiver intends to mail a copy of this Motion and a cover letter to each of the Non-compliant Account owners and all other listed members, managers, and registered agents of the LLCs on file with the respective states under which each are organized. The Receiver will also post a copy of this Motion and the cover letter to the Receiver’s website upon filing with the Court. Such notice will provide the LLC and any other members of the LLC an opportunity to initiate their option to purchase the Non-compliant Account owner’s interest in lieu of dissolution. *See* CAL. CORP. CODE § 17707.03(c)(1)–(6) (West 2016); IDAHO CODE ANN. § 30-29-1434 (West 2015); Sandra K. Miller, *Discounts and Buyouts in Minority Investor LLC Valuation Disputes Involving Oppression or Divorce*, 13 U. PA. J. BUS. L. 607, 649 (2011); *see also* WASH. REV. CODE § 25.05.425 (2010); WYO. STAT. ANN. § 17-21-701 (2010).

If the Court elects to hold a hearing on this Motion, the Receiver will post a notice of the hearing date to the Receivership website. Thus, each of the account owners has been and will be afforded due process.

CONCLUSION

The Receiver requests that this Court approve the Receiver’s request to order dissolution of seven (7) LLCs held in seven (7) Non-compliant Accounts. The Receiver should also be authorized to liquidate the real property or other assets returned to the APS accounts following the judicial dissolution by sheriff’s sale, U.S. Marshals sale, or other public auction pursuant to 28 U.S.C. §§ 2001, 2004.

DATED this 18th day of January, 2017.

/s/ Jeffrey D. Enquist

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **RECEIVER'S MOTION AND MEMORANDUM FOR AN ORDER OF JUDICIAL DISSOLUTION OF LIMITED LIABILITY COMPANIES HELD IN OTHER JURISDICTIONS BY APS FOR THE BENEFIT OF APS ACCOUNT HOLDERS** was served to the following this 18th day of January, 2017, in the manner set forth below:

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

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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.

**ORDER APPROVING RECEIVER'S
MOTION AND MEMORANDUM FOR
AN ORDER OF JUDICIAL
DISSOLUTION OF LIMITED
LIABILITY COMPANIES HELD IN
JURISDICTIONS OTHER THAN UTAH
BY APS FOR THE BENEFIT OF APS
ACCOUNT HOLDERS**

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

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

Before this Court is the Receiver's Motion and Memorandum for an Order of Judicial
Dissolution of Limited Liability Companies Held in Other Jurisdictions by APS for the Benefit

of APS Account Holders (“Motion”). For good cause appearing, and for the reasons stated in the Motion, the Court hereby GRANTS the Receiver’s motion.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Court approved the Receiver’s Liquidation Plan on February 27, 2015. (Dkt. 458).

2. This Court has the statutory authority to order judicial dissolution of limited liability companies (“LLCs”) organized under the laws of California, Idaho, Washington, and Wyoming held in APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865. *See* CAL. CORP. CODE § 17707.03 (West 2016); IDAHO CODE ANN. § 30-25-701 (West 2015); WASH. REV. CODE § 20.15.274 (2010); WYO. STAT. ANN. § 17-29-701 (2010).

3. This Court has jurisdiction to authorize the sale of real property and other assets returned to APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 under 28 U.S.C. § 754 and 1692. *See SEC v. Bilzerian*, 378 F.3d 1100, 1103 (D.C. Cir. 2004).

4. The liquidation of assets is authorized by statute, 28 U.S.C. §§ 754, 1692, and by the Liquidation Plan.

5. The judicial dissolution of LLCs held within APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 will further the purpose of the Receivership to treat all account owners equitably.

6. The further liquidation of assets from APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 is fair, reasonable and necessary to allow the Receivership to be administered to a conclusion.

7. The beneficiaries of APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 received notice of the Liquidation Plan by mail, e-mail, and by posting of the Liquidation Plan to the Receiver's website at www.apsreceiver.com.

8. The beneficiaries of Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 have not complied with the Liquidation Plan, approved by this Court on February 27, 2015. (Dkt. 458).

9. The beneficiaries of APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 were served, or the Receiver made a diligent effort to serve, a subpoena with a cover letter explaining that they had not complied with the Liquidation Plan. The cover letter also explained that the Liquidation Plan authorized the Receiver to liquidate assets within their accounts.

10. Account Number 8795 has a remaining loss allocation of \$16,824.78 and has outstanding management fees of \$0.00.

11. Account Number 9191 has a remaining loss allocation of \$5,713.32 and has outstanding management fees of \$0.00

12. Account Number 10066 has a loss allocation of \$21,842.51 and has outstanding management fees \$683.26.

13. Account Number 10847 has a loss allocation of \$19,527.00 and has outstanding management fees of \$2,527.98.

14. Account Number 10899 has a loss allocation of \$22,581.13 and has outstanding management fees of \$2,048.10.

15. Account Number 11669 has a remaining loss allocation of \$19,156.30 and has outstanding management fees of \$0.00.

16. Account Number 11865 has a loss allocation of \$25,000.00 and has outstanding management fees of \$792.00.

17. Judicial dissolution of the LLCs held by APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 will allow for the return of cash or other assets to APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865.

18. Proceeds received from the return of cash or the sale of additional assets in each of APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 will be utilized to satisfy each account's loss allocation, outstanding management fees, and reasonable fees and costs associated with liquidation of the asset.

19. Any excess funds available as a result of the public sale of the real property will be deposited to the respective accounts of the beneficiaries. These excess funds, as well as any other assets, including a Contingent Repayment Agreement as described in the Liquidation Plan, will be distributed to the beneficiary. The Receiver will also issue appropriate documents for the purpose of tax reporting, including but not limited to an IRS Form 1099-R.

20. Should the Receiver be required to liquidate real property assets returned to APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 following judicial dissolution, statute requires that real property be sold at public sale in the district wherein the receiver was first appointed, at the courthouse of the county, parish or city in which the property is located, or on the premises of the property. 28 U.S.C. § 2001(a).

21. Should the Receiver be required to liquidate other assets or personalty returned to APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 following judicial dissolution, statute required that such assets be sold at public sale in the district wherein the receiver was first appointed, at the courthouse or the county, parish or city in which the property is located, or on the premises of the property, or as the court otherwise directs. 28 U.S.C. § 2004.

22. The Receiver is further authorized to conduct the sale of real property and other assets held by APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 by public sale in a manner the Receiver believes will bring the highest and best value for the property and other assets, whether by sheriff's sale, U.S. Marshals sale, or through a public auction.

23. After due diligence, should the Receiver believe a public auction will bring the highest and best value, the Receiver is authorized to engage an auctioneer or auction house for the purpose of conducting a public auction.

24. The Receiver shall promptly publish a copy of this Order to the Receivership website at www.apsreceiver.com.

25. The Receiver shall mail a copy of her Motion, this Order, a cover letter, and if applicable, notice of the final date of the sale of the property to the account owners of APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 by certified mail or other verified delivery method to the address at which each of the individuals was served a subpoena.

26. The Receiver shall also mail a copy of her Motion, this Order, and a cover letter to the manager, member, and registered agent(s) of the LLCs in APS Account Numbers 8795,

9191, 10066, 10847, 10899, 11669, and 11865 by certified mail or other verified delivery method to the address recorded with the respective state agencies responsible for maintaining such information.

27. Should the Receiver be required to liquidate real property or other assets, the minimum bid for each of the parcels of real property or other assets shall be the loss allocation, any outstanding management fees, and reasonable fees and costs associated with liquidating the real properties.

28. Any additional member or members of the LLCs held within APS Account Numbers 8795, 9191, 10066, 10847, 10899, 11669, and 11865 that are not associated with APS shall have the opportunity to elect to purchase the non-compliant APS account owner's interest of the LLC in lieu of judicial foreclosure within ninety (90) days of the filing of the Motion. CAL. CORP. CODE § 17707.03(c)(1)–(5) (West 2016); IDAHO CODE ANN. § 30-29-1434 (West 2015); Sandra K. Miller, *Discounts and Buyouts in Minority Investor LLC Valuation Disputes Involving Oppression or Divorce*, 13 U. PA. J. BUS. L. 607, 649 (2011); *see also* WASH. REV. CODE § 25.05.425 (2010); WYO. STAT. ANN. § 17-21-701 (2010).

29. Should any other member or members that are not the non-compliant APS account owner elect to purchase the non-compliant APS account owner's interest, the election is binding on the member or members, and the purchase shall be made in lieu of judicial dissolution.

IT IS SO ORDERED.

DATED this ____ day of January, 2017.

Honorable Robert J. Shelby
United States District Court