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Diane A. Thompson*

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

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**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 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**

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Before this Court is the Receiver's unopposed 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”). (Dkt. 853.) 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](http://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](http://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,

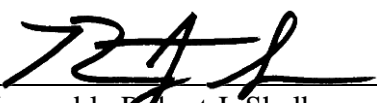
9191, 10066, 10847, 10899, 11669, and 11865 by certified mail or other verified delivery method to the address recorded with the respective state agencies responsible for maintaining such information.

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.

SO ORDERED this 23<sup>rd</sup> day of February, 2017.

  
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Honorable Robert J. Shelby  
United States District Court