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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.

**OPPOSITION
TO SECOND MOTION TO RELEASE
PORTION OF REVENUES AND
ASSETS OF AMERICAN PENSION
SERVICES, INC. FOR PAYMENT OF
ATTORNEY FEES**

Case No.: 2:14-cv-00309

Judge Robert J. Shelby

Magistrate Judge Dustin B. Pead

The United States Securities & Exchange Commission (“Commission”) respectfully submits this Opposition to Curtis L. DeYoung’s (“DeYoung”) Second Motion to Release Portion of Revenues and Assets of American Pension Services, Inc. for Payment of Attorney Fees (“Motion”).

There is a \$24 million shortfall in the funds and assets that APS should be holding on behalf of its customers. The shortfall was created by DeYoung’s misappropriation of customer funds for his own purposes, and he has concealed this shortfall, and perpetuated his fraudulent scheme, for

years while at the same time soliciting new customers to invest through APS. Indeed, as recognized by the Court in the July 23, 2014 Preliminary Injunction hearing, DeYoung relied upon these new investor funds to sustain his fraudulent enterprise. These new customers, some of whom invested as late as April 2014, immediately became victims of DeYoung's fraud, as all APS customers will likely be forced to shoulder some portion of the loss.

Even under a best case scenario, neither DeYoung nor APS have assets remotely sufficient to make up for the missing \$24 million. Investors likely will never be made whole. DeYoung misappropriated and lost his investors' money. The facts and evidence overwhelmingly confirm this. The Asset Freeze Order is necessary to preserve investor funds for equitable relief, and the Asset Freeze Order is proper given the fact that the funds are tainted. Accordingly, the Commission respectfully requests that the Court deny DeYoung's Motion to use APS funds – funds necessary to repay investors – to pay for DeYoung's defense costs.

STATEMENT OF FACTS

On July 23, 2014, the Court granted (Docket No. 167) the Commission's Motion for Preliminary Injunction (Docket No. 38) and denied DeYoung's Motion to Dissolve Temporary Restraining Order and Suspend or Dissolve Order Appointing Receiver (Docket No. 66). In granting the Commission's Motion for Preliminary Injunction, the Court found that the Commission had met its burden of demonstrating a *prima facie* case of securities fraud by DeYoung and APS. Specifically, the Court concluded that DeYoung had misappropriated customer funds for his own purposes, that in 2009 he made accounting entries to conceal the loss of funds, and that he relied upon new investor funds in order to sustain APS's business enterprise in the face of a \$24 million deficiency.

The Receiver's accountant, Mark Hashimoto, independently confirmed the missing \$24 million and, through APS's own financial records, demonstrated when the misappropriations occurred and the scope of APS's efforts to bring in new investor funds. *See* Declarations of Mark Hashimoto, Exhibits 8 and 9 attached to Opposition to Motion to Dissolve Temporary Restraining Order and Suspend or Dissolve Order Appointing Receiver, Docket No. 110. APS brought in approximately \$30 million in new investor funds for each of the past five years. Without these new funds, the Court concluded, DeYoung would have been unable to sustain his operation in the face of the deficiency. Accordingly, the Court found that DeYoung had conducted an ongoing fraudulent enterprise at least from 2009 through the filing of this action on April 24, 2014.

On May 30, 2014, this Court authorized the use of \$80,000 (since clarified by DeYoung to be \$85,000) of funds unrelated to APS by DeYoung to pay for his defense against the Commission's request for a Preliminary Injunction. *See* Docket No. 84. DeYoung contends that he used nearly all of those funds in May alone, and that he incurred nearly \$70,000 more in legal expenses during the month of June. *See* Motion, p. 5. DeYoung has not yet disclosed his legal expenses for the month of July.

In 2012, APS had total revenue of \$2.4 million. *See* Ex. A, American Pension Services 2012 Profit & Loss. APS had expenses that year of \$2.1 million, giving APS a net ordinary income of \$299,542. In 2013, APS had total revenue of \$2.5 million. *See* Ex. B, American Pension Services 2013 Profit & Loss. APS had expenses that year of \$2.25 million, giving APS a net ordinary income of \$254,700. As of April 24, 2014, the date of the filing of this action, APS had \$126,225.49 in its operating account.

DeYoung is now asking the Court for a portion of the frozen assets to pay for legal fees. The Commission opposes DeYoung's motion because revenue generated by APS during the period

in which DeYoung conducted his fraudulent scheme is tainted, not legitimately earned, and any funds available should be used to repay defrauded investors. DeYoung has not shown that he has made any effort to obtain employment to generate amounts to fund his defense, which surely should be a prerequisite to any discussion around unfreezing assets, and there are currently insufficient funds in the asset freeze to pay disgorgement to defrauded investors.

ARGUMENT

APS' limited assets should not be unfrozen to pay for DeYoung's defense in this matter. DeYoung misappropriated and lost his clients' assets, leaving a \$24 million shortfall that must be absorbed by current APS customers. Because there are nowhere near enough APS or DeYoung assets to make up for this shortfall, the Court should not require those investors who have already been defrauded by DeYoung to face further hardship through what would amount to be a forced funding of his defense.

For his part, DeYoung argues that APS funds should be used to fund his defense because: (1) the Commission has not demonstrated a *prima facie* case that he has violated federal securities laws; (2) payment of attorneys' fees is necessary for a full and fair hearing on the preliminary injunction due to the disputed and complex issues raised by DeYoung; and (3) the equities in this case should allow for DeYoung to pay for legal fees out of frozen funds because the funds were generated from "legitimately derived revenues." The first and third issues were disposed of by the Court's ruling granting the Commission's application for a preliminary injunction. The Court concluded that the Commission had met its burden to demonstrate a *prima facie* case of securities fraud, and because the fraud extended up to the Commission's filing of this action, all revenues generated by APS are directly attributable to DeYoung's operation of a fraudulent enterprise. With respect to the second and only remaining issue, that payment of attorneys' fees are necessary to

ensure a full and fair hearing, DeYoung did receive funds to defend himself – \$85,000 to be exact. Although it appears that he chose to incur fees beyond this amount, it can't be said the he was denied adequate funds to mount a reasonable defense at this preliminary stage of the litigation.

As the Commission has amply supported its allegations that DeYoung operated a long-standing fraudulent scheme that has victimized thousands of unsuspecting clients, as DeYoung has received adequate funds to contest the preliminary injunction, and as APS' and DeYoung's assets are insufficient to repay the investors who will have to shoulder the consequences of DeYoung's fraud, there is simply no justifiable rationale to release frozen funds to pay for DeYoung's further defense in this matter.

I. DeYoung Defrauded His Investors, and Courts Around the Country Have Denied Requests to Unfreeze Assets Where the Defendant's Assets Are Insufficient to Satisfy Disgorgement.

Courts around the country have consistently denied requests by defendants to unfreeze assets in order to pay defense costs, especially where, as here, the Commission had satisfied its burden of demonstrating a *prima facie* case of securities fraud. DeYoung has provided the Court with nothing that would justify departing from this consistent line of cases, and his request, like so many others, should be denied.

In carrying on his business after his massive misappropriation of customer cash, DeYoung engaged in scheme, act, practice and course of business to defraud his customers in violation of Section 17(a)(1) and (3) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(a) and (c) thereunder. The Court concluded that the Commission had met its burden of demonstrating that DeYoung had violated these provisions, and DeYoung, for his part, did not contest the overwhelming evidence documenting his fraud. DeYoung defrauded his investors, that much is clear.

The Tenth Circuit, echoing the conclusions reached by other federal courts, has ruled that “a swindler in securities markets cannot use the victims’ assets to hire counsel who will help him retain the gleanings of crime.” *SEC v. Marino*, 29 Fed.Appx. 538, 541 (10th Cir. 2002), quoting *SEC v. Quinn*, 997 F.2d 287, 289 (7th Cir. 1993). See also *Caplin & Drysdale v. U.S.*, 491 U.S. 617, 627 (1989) (“a robbery suspect, for example, has no Sixth Amendment right to use funds he has stolen from a bank to retain an attorney to defend him if he is apprehended. The money, though in his possession, is not rightfully his.”); *SEC v. Cherif*, 933 F.2d 403, 416-17 (7th Cir. 1991) (defendant has no right to spend another person’s money to pay for attorney); *SEC v. Coates*, 1994 WL 455558 at *3 (S.D.N.Y.) (court may freeze assets even if asset freeze precludes him from obtaining counsel); *SEC v. FTC Capital Markets, Inc.*, 2010 WL 2652405 at *3 (S.D.N.Y.) (same); *U.S. v. Monsanto*, 491 U.S. 600, 615-16 (1989) (“Put another way: if the Government may, post-trial, forbid the use of forfeited assets to pay an attorney, then surely no constitutional violation occurs when, after probable cause is adequately established, the Government obtains an order barring a defendant from frustrating that end by dissipating his assets prior to trial”).

Courts have refused requests to access frozen funds to pay for defense costs because in civil enforcement matters, unlike criminal matters, there is no Sixth Amendment right to counsel and because those funds should be used to repay defrauded victims. See *U.S. v. Vilar*, 2013 WL 5797581 at *2 (S.D.N.Y.) (“The Sixth Amendment, however, by its terms, is limited to ‘criminal prosecutions.’ [Cites] There is thus no Sixth Amendment right to counsel in civil cases.”); see also *Cullins v. Crouse*, 348 F.2d 887, 889 (10th Cir.1965) (holding that the Sixth Amendment right to counsel does not apply to civil cases).

The relevant question in determining the propriety of an asset freeze, particularly in the face of a request to unfreeze some portion of the funds to pay defense costs, is whether there are

sufficient funds to satisfy an ultimate disgorgement amount. *See, e.g., SEC v. Lauer*, 445 F.Supp.2d 1362, 1369 (S.D. Fla. 2006). In *Lauer*, the court concluded that “the amount of assets to be frozen, prior to the finding of liability, is determined not by whether the funds themselves are traceable to the fraudulent activity underlying the lawsuit, but by showing a reasonable approximation of the amount, with interest, the defendant was unjustly enriched.” *Id.*, citing *SEC v. ETS Payphones*, 408 F.3d 727, 735 (11th Cir. 2005) (All that is required is “a reasonable approximation of a defendant’s ill gotten gains ... Exactitude is not a requirement.”); *see also SEC v. Current Financial Services*, 62 F.Supp.2d 66, 68 (D.D.C. 1999) (refusing to unfreeze assets where the potential disgorgement order would vastly exceed the assets that had been frozen); *SEC v. Bravata*, 763 F. Supp. 2d 891, 920 (E.D. Mich. 2011) (“To persuade a court to unfreeze assets, the defendant must establish that... there are sufficient funds to satisfy any disgorgement remedy that might be ordered in the event a violation is established at trial.”)

In the face of this overwhelming authority, DeYoung cites two cases for the proposition that, at least in his case, funds should be unfrozen to allow him to defend himself. In doing so, he makes no effort to distinguish this matter from the numerous other cases, much more on point than the two he cites, in which courts have rejected the very same plea that he is making here. In *SEC v. Dowdell*, DeYoung’s first cited authority, the court recognized the substantial body of caselaw refusing to unfreeze assets, but nevertheless felt that it could not achieve a fair result at the preliminary injunction proceeding, given the complicated issues presented, without providing the defendant with some amount to fund his defense. *SEC v. Dowdell*, 175 F.Supp.2d 850, 856 (W.D. Va. 2001). Far from providing a blank check to the defendant, however, the court invited the parties to submit estimates of the fees necessary to take them through the preliminary injunction hearing which, the court stated, it would approve if the fees were reasonable. *Id.* In *SEC v. Duclaud*

Gonzalez De Castilla, DeYoung's second cited case, after the defendants had moved for summary judgment, the court observed that, at least as to the two defendants who had petitioned for attorney fees, there was some question as to whether the Commission's claims were supported by the necessary quantum of proof, and that as such there was some question as to whether disgorgement would be ordered. *SEC v. Duclaud Gonzalez De Castilla*, 170 F.Supp.2d 427, 430 (S.D.N.Y. 2001).

In contrast to those two cases, DeYoung did have funds to pay for his defense and objection to the Commission's application for a preliminary injunction. The Court approved \$85,000 to be used by DeYoung in this capacity. Although DeYoung apparently chose to exceed that amount, either by hiring a team of attorneys with substantial hourly rates or undertaking work that caused those fees to increase, it cannot be said that DeYoung was deprived of funds to pay for his defense. \$85,000 is a substantial sum of money and should have been sufficient to enable DeYoung to contest the Commission's motion for a preliminary injunction, especially when DeYoung chose to take no depositions and conducted no third party discovery.¹ Indeed, DeYoung's defense consisted entirely of briefing legal argument. It would be unreasonable to unfreeze precious funds to pay what will likely be hundreds of thousands of dollars for two defense motions, two replies, and a flurry of motions in limine.

Additionally, unlike *Duclaud*, there is simply no real question as to DeYoung's liability in this matter. The funds are missing. DeYoung admits that neither he, nor anyone at APS, had any discretion to use or dispose of those investor funds without client authorization and direction. And DeYoung invokes his Fifth Amendment privilege, with the negative inference attached thereto,

¹ The Commission has not been provided with access to DeYoung's legal bills, and thus cannot opine as to whether the costs incurred were reasonable. However, at least two motions submitted by DeYoung have been specifically for the purpose of unfreezing assets. Certainly time devoted to those efforts may be considered excessive and/or outside the costs necessary to mount a defense to the Commission's allegations.

when asked whether he misappropriated the funds. APS' in-house counsel has testified that DeYoung admitted to his misappropriation and to his efforts to conceal the loss, and the Court has found that DeYoung engaged in a scheme to lure new customers to APS in order to sustain his fraudulent operation. This is not a case in which liability, and hence a likely disgorgement order, is seriously in dispute. The Commission has met its burden. Because DeYoung did have money to fund his defense, and because liability in this matter is nearly certain, the Court should not unfreeze additional funds that should be used to repay defrauded investors.

II. The Fees Generated by APS Have Been Tainted by DeYoung's Fraud.

DeYoung argues that the money he is requesting is untainted because it came from fees legitimately collected on APS customer accounts. *See* Docket No. 147 at 4. In describing these amounts, DeYoung significantly overinflates the profits of the company, focusing on the company's total income before expenses rather than net income after expenses – which significantly affects the calculus. Moreover, in arguing that the funds are legitimate, he insistently chooses to ignore the fact that by virtue of his misappropriation and continued efforts to sustain his fraud, irrespective of whether APS had functioned in a previously legitimate manner, APS immediately became a scheme and artifice that he used to defraud thousands of APS customers. Because all new customers are victims of his fraud and will share in the loss, none of the fees generated by APS during the ongoing fraudulent scheme are legitimate or untainted.

In considering DeYoung's request, it is imperative to clarify the financial condition of APS. Several times in his Motion DeYoung, somewhat misleadingly, refers to the fees generated by APS in 2012 as evidence of some deep pot of money out of which he could fund his defense. Specifically, he states that APS generated \$2.4 million in fees in 2012. *See* Motion, pp. 6, 10.

While that may be accurate, it is only half the story. In both 2012 and 2013, APS did in fact generate revenue of \$2.4 and \$2.5 million, respectively. However, in 2012 and 2013, APS also had expenses of \$2.1 and \$2.25 million, respectively, leaving profits for each year of \$299,000 and \$250,000. *See* Exhibits A and B. Moreover, at the time the receivership was filed, APS had only \$126,225.49 in its operating account, which has been more than consumed in the operation of the Receivership to this point. The bottom line: there is no deep pot of money at APS from which to draw in order to pay for DeYoung's defense.

Moreover, even what "profits" APS did recognize are tainted by DeYoung's fraud. "To persuade a court to unfreeze assets, the defendant must establish that the funds he seeks to release are untainted..." *SEC v. Bravata*, 763 F.Supp.2d 891, 920 (E.D. Mich. 2011) (quoting *SEC v. Stein*, No. 07 Civ. 3125, 2009 WL 1181061, at *1 (S.D.N.Y. Apr. 30, 2009)). In this case, every dollar of fees charged and collected by APS after DeYoung's misappropriation was obtained in the context of an ongoing securities fraud. APS' clients were not informed that DeYoung had misappropriated customer funds. Quite the contrary, client statements throughout the relevant period of time continued to represent the amounts that should have been held in the APS Master Trust Account. New customers were not informed that their transferred funds would be used to prop up a failing company, that their funds would be used to fill orders made by earlier APS customers, or that APS had insufficient funds to return to its investors if the entity was liquidated. Nothing about APS' business operations after DeYoung's fraud can reasonably be described as legitimate.

In arguing that the funds are untainted, DeYoung continues to refuse to address the reality of his fraud. While APS purportedly has made a profit, these funds do not come from "proper business practices." The purported "profit" must be viewed in proper context: APS is

carrying a \$24 million deficiency. No amount of profit allegedly made by APS could or has come close to satisfying this deficiency. As such, it is incorrect to suggest that APS has made any money at all. It is, for all intents and purposes, an insolvent entity.

DeYoung has failed to demonstrate that the funds he seeks to unfreeze are derived from legitimate business activities, and he has failed to demonstrate that the frozen fund are sufficient to satisfy any disgorgement ordered against him. As such, the asset freeze should remain in place to protect investors against further loss.

III. The Equities Support Maintaining the Asset Freeze in this Case.

Given DeYoung's involvement in defrauding investors, lifting of the asset freeze to pay for his defense costs is not in the best interest of the harmed investors. The frozen assets were derived from the investors, and the Receiver preliminarily estimates that all APS investors will already suffer at least a 7% loss on the value of their accounts. The frozen assets should be preserved, and, to the extent possible, returned to the harmed investors. The assets should not be given back to the very person who perpetrated this fraud.

There is no question as to the Court's vested authority to freeze a defendant's assets in a securities enforcement proceeding such as this. "Freezing assets is a well accepted equitable remedy employed to 'preserve the status quo' and is proper in actions arising under the Securities Act." *SEC v. Lauer*, 445 F.Supp.2d 1362, 1367 (S.D. Fla. 2006). Notwithstanding this uncontested authority and the clear purpose for freezing the assets, DeYoung nevertheless claims that the equity requires that he be allowed to use those assets to fund his defense.

Regarding equity, the *Lauer* court further observed that:

A cardinal rule of equity is 'he who comes into equity must come with clean hands [i]t is a self-imposed ordinance that closes the door ... to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief.' *Precision Instrument v.*

Automotive Maintenance Machinery, 324 U.S. 806, 814, 65 S.Ct. 993, 89 L.Ed. 1381 (1945). Under this cardinal rule of equity, Lauer's unclean hands have closed the door on any attempt by Lauer to seek relief from the Court's equitable asset freeze order...."

Id. at 1366-67.

DeYoung's equitable argument centers on his contention that "the equities in this case do not favor the Freeze Order or the liquidation of APS's ongoing and profitable business dealings under the receiver. If DeYoung is unable to prepare and present a defense in this case, the legitimate business interests and dealings of APS will undoubtedly be harmed. The equities do not favor the unnecessary destruction of APS's ongoing business." Motion, p. 10. The Court's July 23, 2014 entry of a preliminary injunction against DeYoung forcefully rebuts this argument. It was DeYoung's actions, not the Receiver's, the Court's, or the Commission's, that have harmed investors and put the business interests of APS at risk. It was DeYoung who misappropriated his clients' funds, lost them, and concealed the loss for years. It was DeYoung who, each year, brought \$30 million in new investor funds into APS to perpetuate and sustain his fraudulent enterprise, thereby victimizing thousands more investors. Because of DeYoung's actions, APS ceased to carry on a "legitimate business," and any protest he makes as to the asset freeze and preservation of funds rings hollow. He does not approach this equity argument with clean hands.

Moreover, in requesting additional defense funding, DeYoung has made no effort to demonstrate that he has sought other employment to help finance his defense. By its terms the asset freeze applies only to assets held by DeYoung and APS as of April 24, 2014. Both DeYoung and his family members are free to seek other employment, as long as it doesn't run counter to the federal securities laws, to offset their living expenses and DeYoung's defense costs. Before any discussion is undertaken as to whether to draw amounts away from APS to

fund DeYoung's litigation expenses, to be fair to the already victimized APS customers, certainly DeYoung ought to be required to at least undertake an effort to obtain other employment first. The preliminary injunction hearing is over, the arguments have been made, and the costs have been incurred. At this point, DeYoung should be required to undertake payment of his legal bills through his contemporaneous employment efforts – just like every other litigant.

Consistent with a prerequisite that DeYoung be required to undertake an effort to pay down his litigation costs through contemporaneous employment, should the Court be inclined to release funds to pay DeYoung's defense counsel, those funds should be derived from DeYoung's personal accounts, specifically any 401(k) account he holds, and not from APS' general operating account. As a practical matter, there are insufficient funds in the APS operating account to pay the requested defense costs. But even more fundamentally, the operating funds of APS were derived from fees charged on APS customer accounts, fees that should be returned to the customers to the extent possible. Although DeYoung's retirement account also was undoubtedly funded with money drawn from his operation of APS as a fraudulent enterprise, to the extent he continues to contest the Commission's action, certainly he could have no objection to drawing down those amounts to fund his defense costs before turning to the general operating funds of APS to finance the litigation.

All of this said, the equities in this case weigh heavily in favor of preserving every dollar possible to repay investors. Investors likely will never be made whole. Probably not even close. It would be inequitable, indeed it would be an injustice at this stage, with the evidence of DeYoung's fraud so clear and un rebutted, to further drain what assets are available to fund DeYoung's defense in this matter. For these reasons, the Commission respectfully requests that

the Court deny DeYoung's Second Motion to Release Portion of Revenues and Assets of American Pension Services, Inc. for Payment of Attorney Fees.

CONCLUSION

For the foregoing reasons, the Commission respectfully requests that this Court deny DeYoung's Second Motion to Release Portion of Revenues and Assets of American Pension Services, Inc. for Payment of Attorney Fees.

DATED this 1st day of August 2014.

/s/ Daniel J. Wadley

Daniel J. Wadley

Thomas M. Melton

Paul Feindt

Cheryl Mori

Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2014, I caused to be filed the forgoing using the Court's CM ECF System. A true and correct copy of the document was served on all parties entitled to service through the Court's CM ECF System.

/s/ Marie E. Iovino
Marie E. Iovino

EXHIBIT A

12:32 PM

11/15/13

Cash Basis

American Pension Services Inc.

Profit & Loss

January through December 2012

	Jan - Dec 12
Ordinary Income/Expense	
Income	
Sales	
401(k) Fees Collected	176,156.51
ACH Collections	7,116.63
Bicycle Club Fees	8,013.89
Credit Card Collections	215,416.11
Miscellaneous Revenues	7,618.87
Refunded Fees	-130,000.31
Returned Checks	9,754.51
Yrly Maintenance Fees	2,158,396.06
Total Sales	<u>2,452,472.27</u>
Total Income	2,452,472.27
Expense	
Operating Expenses	
ACH Processing Fee	73.80
Advertising & Promotion	27,153.13
APS 401 K Cr Cards	14,065.00
Auto Expense - Employee	690.53
Bank Charges	
Monthly Service Charges	36,000.00
Safety Deposit Box	2,630.13
Bank Charges - Other	100.00
Total Bank Charges	<u>38,730.13</u>
Bicycle Team	19,936.19
Building Rent	124,813.07
Charitable Contributions	200.00
Computer Software	
Accounting Software Dev	6,910.28
Misc Computer Software	1,815.82
Total Computer Software	<u>8,726.10</u>
Dues & Subscriptions	6,962.01
Employee 401(k) Program	71,327.47
Employee Compensation	489,294.49
Equipment Leases	13,399.37
Equipment Purchases	10,038.48
Furniture & Fixtures	9,668.08
Insurance Expenses	
Health Insurance	26,675.29
Personal Liability	11,938.95
Property Insurance	3,199.46
Service Charges	20.00
Workman Compensation	1,831.59
Insurance Expenses - Other	15.00
Total Insurance Expenses	<u>43,680.29</u>
Interest Expense	15,360.75
Licenses & Permits	1,768.66
Meals & Entertainment	1,340.27
Miscellaneous Operating Expense	4,907.43

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↳ Basis

American Pension Services Inc.

Profit & Loss

January through December 2012

	<u>Jan - Dec 12</u>
Office Expenses	
Comcast Internet Services	844.71
Company Logo Design Package	12.23
County Recording Fees	258.50
Credit Card Processing	2,752.87
Customer Education	447.56
Document Disposal	1,185.59
DocuWare Support	2,697.66
Internet Research Fee	1,606.83
Subscription Services	1,006.35
Web Site Fees	3,148.80
Office Expenses'- Other	374.50
Total Office Expenses	<u>14,335.60</u>
Office supplies	8,972.06
Office Telephone Services	
General Telephone	37,996.01
Total Office Telephone Services	<u>37,996.01</u>
Officer Compensation	536,200.00
Outside Contracting Services	
Computer Support Services	20,410.29
WEB Development	38,616.55
Total Outside Contracting Services	<u>59,026.84</u>
Postage	13,996.91
Printing Expenses	12,622.95
Professional Services	
Accounting Services	47,623.75
General Legal Services	139,100.50
Litigation Resolution	259,963.65
Total Professional Services	<u>446,687.90</u>
Program Management 401(k)	25,500.00
Repairs & Maintenance	6,249.00
Seminar Travel Expenses	36,303.69
Taxes	
Federal Income Taxes	37,014.74
Property Taxes	195.02
State Income Taxes	6,139.03
Total Taxes	<u>43,348.79</u>
Travel Expense - Other	9,555.18
Total Operating Expenses	<u>2,152,930.18</u>
Total Expense	<u>2,152,930.18</u>
Net Ordinary Income	<u>299,542.09</u>
Net Income	<u>299,542.09</u>

EXHIBIT B

12:44 PM
05/20/14
Cash Basis

American Pension Services Inc.
Profit & Loss
January through December 2013

	Jan - Dec 13
Ordinary Income/Expense	
Income	
Sales	
401(k) Fees Collected	194,891.63
ACH Collections	6,051.87
Bicycle Club Fees	150.00
Credit Card Collections	199,076.51
Litigation Settlement Revenues	8,172.54
Miscellaneous Revenues	933.59
Refunded Fees	-109,402.80
Returned Checks	1,184.84
Yrly Maintenance Fees	2,210,897.83
Total Sales	2,511,956.01
Total Income	2,511,956.01
Gross Profit	2,511,956.01
Expense	
Operating Expenses	
ACH Processing Fee	5.00
Advertising & Promotion	58,637.21
APS 401 K Cr Cards	1,500.00
Auto Expense - Employee	540.64
Bank Charges	
LOC Renewal Fees	550.00
Monthly Service Charges	36,000.00
Safety Deposit Box	3,290.00
Total Bank Charges	39,840.00
Bicycle Team	1,460.14
Building Rent	132,794.98
Charitable Contributions	210.00
Computer Software	
Misc Computer Software	7,808.39
Total Computer Software	7,808.39
Dues & Subscriptions	8,535.67
Employee 401(k) Program	62,550.23
Employee Compensation	560,050.87
Employee Continuing Education	350.00
Employee Wellness Program	235.00
Equipment Leases	13,316.77
Equipment Purchases	25,978.17
Furniture & Fixtures	788.83
Insurance Expenses	
Health Insurance	42,014.76
Personal Liability	21,261.95
Workman Compensation	1,202.09
Total Insurance Expenses	64,478.80
Interest Expense	7,284.36
Licenses & Permits	7,093.15
Meals & Entertainment	1,748.50
Miscellaneous Operating Expense	3,962.13

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05/20/14
Cash Basis

American Pension Services Inc.
Profit & Loss
January through December 2013

	Jan - Dec 13
Office Expenses	
Comcast Internet Services	868.91
County Recording Fees	103.00
Credit Card Processing	2,923.78
Customer Education	1,494.43
Document Disposal	1,310.64
DocuWare Support	2,911.76
Internet Research Fee	1,690.85
Remote Storage	1,000.00
Subscription Services	562.52
Web Site Fees	1,479.79
Office Expenses - Other	368.48
Total Office Expenses	14,714.16
Office supplies	9,986.82
Office Telephone Services	
General Telephone	34,591.50
Total Office Telephone Services	34,591.50
Officer Compensation	540,000.00
Outside Contracting Services	
Computer Support Services	13,593.75
WEB Development	21,939.10
Total Outside Contracting Services	35,532.85
Postage	19,661.04
Printing Expenses	14,429.68
Professional Services	
Accounting Services	71,793.75
General Legal Services	165,550.00
Litigation Resolution	184,500.33
Total Professional Services	421,844.08
Program Management 401(k)	67,750.00
Repairs & Maintenance	6,120.00
Seminar Travel Expenses	36,902.76
Taxes	
Federal Income Taxes	45,438.66
Property Taxes	136.89
State Income Taxes	7,512.00
Total Taxes	53,087.55
Travel Expense - Other	3,466.37
Total Operating Expenses	2,257,255.65
Total Expense	2,257,255.65
Net Ordinary Income	254,700.36
Net Income	254,700.36