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Diane A. Thompson*

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

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

Defendants.

**RECEIVER'S *EX PARTE* MOTION AND
MEMORANDUM FOR LEAVE TO FILE
A CIVIL ACTION AGAINST CURTIS
AND MICHELLE DEYOUNG**

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

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

Diane A. Thompson, the Court-Appointed Receiver, by and through undersigned counsel, hereby moves the Court *ex parte* for an order granting the Receiver leave to file a civil complaint, in substantially the form attached hereto as Exhibit 1, against Defendant Curtis L. DeYoung (“Curtis”) and Michelle DeYoung (“Michelle” collectively the “DeYongs”), which complaint

seeks to recover at least \$2,949,000.00 in funds that were ill-gotten and/or fraudulently transferred.

INTRODUCTION

Since January 2000, Curtis engaged in a fraudulent scheme whereby he misappropriated approximately \$24 million in funds from APS clients, causing APS to become insolvent. During this time, Curtis paid exorbitant salaries to himself and his wife, which by 2013 exceeded \$520,000 per year. From their salaries, the DeYoungs transferred funds into several retirement accounts for the benefit of themselves and with the knowledge that creditors would have difficulty executing against the retirement accounts. Curtis also borrowed money from APS, which he subsequently caused to be discharged, in the amount of approximately \$211,399.00. Curtis further took money from the APS Master Trust Account to pay for real property in Ogden, Utah that was subsequently sold to an APS investor who makes payments on a note executed in favor of Curtis, among other investors.

Aware that an SEC investigation was underway, the DeYoungs created a scheme whereby they diverted a portion of their retirement funds into Zions Bank accounts in February 2014, which funds were subsequently redirected into Brighton Bank accounts in violation of the Court's order freezing assets. *See* Order Appointing Receiver, Freezing Assets, and Other Relief [Docket No. 9] (the "Receivership Order").

The funds unlawfully transferred to the DeYoungs as compensation and subsequently into the DeYoungs' retirement accounts between the time the fraudulent scheme began in 2000 and the date of the Receivership Order April 24, 2014 is Receivership Property. The Receiver has a duty to "sue for and collect, recover, receive and take into possession from third parties" for the benefit of APS and its clients. *See* Receivership Order at ¶ 7.B. Accordingly, the

Receiver seeks to file a complaint against the Defendants to recover all funds that have been fraudulently transferred to DeYoungs' retirement accounts and to disgorge any ill-gotten gains of the DeYoungs in the form of excessive compensation from APS funds.

ARGUMENT

I. The Receiver Has Standing to Sue the DeYoungs on Behalf of APS, and this Court May Exercise Jurisdiction Over the DeYoungs.

A. The Receiver Has Standing to Sue the DeYoungs.

The Receiver has standing, both pursuant to statute and under the Receivership Order, to bring actions against third parties to recover, marshal and conserve the assets of the receivership for the benefit of the defrauded investors and/or creditors. *See* Receivership Order, Art. II, ¶ 7.B; Art. X (“The Receiver shall have the following general powers and duties...to sue for and collect, recover, receive and taking into possession from third parties all Receivership Property and records relevant thereto.”); *see also* 28 U.S.C. §§ 754, 1692 (“A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof [and] shall have capacity to sue in any district without ancillary appointment.”).

In 2012, the Tenth Circuit made it clear that a receiver has standing to sue third-parties to recover funds fraudulently transferred to them. In *Wing v. Dockstader*, 482 Fed.Appx. 361, 362-63 (10th Cir. 2012) the court-appointed receiver brought suit against several third-parties to recover funds pursuant to Utah's Uniform Fraudulent Transfer Act (“UFTA”). The third-parties challenged the Receiver's standing to sue under the UFTA, arguing that the statute did not create remedies for receivers and that the receivership order did not empower the receiver to bring

claims on behalf of creditors and/or investors. *Id.* The district court rejected these arguments, and the Tenth Circuit affirmed, citing a line of cases which hold that “a receiver of an entity which was used to perpetrate a Ponzi scheme has standing to recover fraudulent transfers as though the receiver were a creditor of the scheme.” *Id.* at 363 (citing *Scholes v. Lehmann*, 56 F.3d 750, 753-55 (7th Cir. 1995); *Donell v. Kowell*, 533 F.3d 762, 776-77 (9th Cir. 2008); *Eberhard v. Marcu*, 530 F.3d 122, 132-33 (2d Cir. 2008)).

The Receiver also has authority to seek disgorgement from ill-gotten gains. *See, e.g. SEC v. Wencke*, 783 F.2d 829, 835-838 (9th Cir. 1986). Therefore, the Receiver seeks leave to file the attached civil complaint against the DeYoungs, which asserts claims to recover at least \$2,949,000.00 in funds that were fraudulently transferred to them from the APS operating and/or master trust accounts. Therefore, the Receiver has standing to sue the DeYoungs.

B. This Court May Exercise Jurisdiction Over the DeYoungs.

This Court may also exercise jurisdiction over Michelle. As the Tenth Circuit has explained, “[t]he Supreme Court recognized over 100 years ago that a federal receiver may sue in the court of his appointment ‘to accomplish the ends sought and directed by the suit in which the appointment was made,’ and that ‘such action or suit is regarded as ancillary’ to the court’s original subject matter jurisdiction.” *Merrill Scott & Assocs., Ltd. v. Concilium Ins. Servs.*, 253 Fed.Appx. 756, 761 (10th Cir. 2007) (quoting *Pope v. Louisville, N.A. & C. Ry.*, 173 U.S. 573, 577 (1899)). With the passage of 28 U.S.C. § 1367, such “ancillary” jurisdiction is now part of a district court’s statutory “supplemental” jurisdiction. *See Scholes*, 56 F.3d at 753.

The Tenth Circuit recently affirmed a district court’s exercise of jurisdiction in circumstances quite similar to the instant case. In *Merrill Scott*, the Tenth Circuit affirmed the district court’s exercise of ancillary jurisdiction over a receiver’s civil lawsuit for breach of

fiduciary duty against an officer and director of Merrill Scott, explaining that the civil action was consistent with the receivers' appointment "to marshal and preserve the assets of Merrill Scott for the benefit of Merrill Scott's creditors." 253 Fed.Appx. at 761.

Here, as in *Merrill Scott*, the Receiver has been appointed to marshal and preserve the assets of APS for the benefit of its clients and creditors. (*See* Receivership Order, Art. II at 3-5 [Docket No. 9].) The Receiver has uncovered significant evidence showing that Michelle received APS funds that are properly characterized as Receivership Property and belong to APS and its clients, and therefore has a duty to "sue for and collect, recover, receive and take into possession from third parties [i.e. Michelle] all Receivership Property and records relevant thereto." (*Id.*) Thus, the Receiver has standing to file a lawsuit against the DeYoungs, and this Court may exercise subject matter jurisdiction over the DeYoungs and grant the Receiver leave to file its Complaint against her.

II. The Court Should Grant the Receiver Leave to File a Civil Complaint Against the DeYoungs to Recover Ill-Gotten Gains and APS Funds Fraudulently Transferred to Her.

The Receiver should be granted leave to file the attached civil complaint against the DeYoungs. The complaint, which seeks to recover the more than \$2,949,000.00, alleges causes of action for violations of Utah's Uniform Fraudulent Transfer Act (UFTA), conversion, unjust enrichment, and disgorgement of profits/ill-gotten gains.

Article II of the Receivership Order gives the Receiver the power and attendant duty to "take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property," including to "sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto." (*See* Receivership Order, Art. II at pp. 3-5 [Docket No. 9].) However,

leave of this Court is required to commence litigation against third parties so as “to recover and/or conserve Receivership Property.” (*Id.* at Art. VIII, X at pp. 17-20.)

Leave should be granted as there is a substantial likelihood that the Receiver will prevail on her claims against the DeYoungs. As set forth above, the Receiver has uncovered evidence that DeYoung improperly transferred at least \$2,949,000.00 to himself and his wife Michelle. Those funds are subject to immediate execution both pursuant to the Receivership Order, which classifies those funds as Receivership Property, and pursuant to state law, including Utah’s Uniform Fraudulent Transfer Act (“UFTA”) as Curtis conspired with Michelle to transfer and convert such funds to the DeYoungs with the actual intent to defraud APS, its creditors, and its clients, and because APS did not receive any reasonably equivalent value in exchange for the transfers. *See* Utah Code Ann. § 25-6-1, *et seq.* (transfers are fraudulent when made “(a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or (b) without receiving a reasonably equivalent value in exchange for the transfer or obligation,” and the debtor was unable to repay the debts as they became due). The Receiver will almost certainly prevail on the claims against Michelle because the evidence and facts gathered to date reveal the DeYoung received monies without adequate consideration.

CONCLUSION

So that the Receiver may recover the \$2,949,000.00 in funds that were illegally transferred to Curtis and Michelle from APS funds, the Court should enter an order allowing the Receiver to file the civil complaint in substantially the form attached hereto as **Exhibit 1**.

DATED this 21st day of November, 2014.

/s/ Mark R. Gaylord
Mark R. Gaylord, Esq.
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Tesia N. Stanley, Esq.
Scott S. Humphreys, Esq. (*admitted pro hac vice*)
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Diane A. Thompson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **RECEIVER'S**
EX PARTE MOTION AND MEMORANDUM FOR LEAVE TO FILE A CIVIL ACTION
AGAINST CURTIS AND MICHELLE DEYOUNG was served to the following this 21st day
of November 2014, in the manner set forth below:

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

Hand Delivery

U.S. Mail, postage prepaid

E-mail: ahardenbrook@swlaw.com; docket_slc@swlaw.com; jpollard@swlaw.com;
moric@sec.gov; wadleyd@sec.gov; #SLRO-Docket@sec.gov;
dleta@swlaw.com; docket_slc@swlaw.com; wsmart@swlaw.com;
gbh@pkhlawyers.com; dh@pkhlawyers.com; jt@pkhlawyers.com;
john@johnbagleylaw.com; jchandler@djplaw.com; cfrandsen@djplaw.com;
judsonpitts@hotmail.com; judson@wimmerpitts.com; krw@scmlaw.com;
ec@scmlaw.com; intakeclerk@scmlaw.com; markjgregersen@hotmail.com;
feindtp@sec.gov; pmoxley@djplaw.com; cwatters@djplaw.com;
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EXHIBIT 1

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*Attorneys for Court-Appointed Receiver,
Diane A. Thompson*

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

**DIANE A. THOMPSON, as Receiver for
AMERICAN PENSION SERVICES, INC.,
a Utah corporation and its related entities,**

Plaintiff,

v.

**CURTIS L. DEYOUNG, an individual and
MICHELLE DeYOUNG, an individual**

Defendants.

COMPLAINT

Case No.:

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

Diane A. Thompson, as Court-Appointed Receiver for American Pension Services, Inc. (the “Receiver” or “Plaintiff”) and all related entities owned, controlled, and/or under common control by or through American Pension Services, Inc. (collectively, “APS”), by and through undersigned counsel, hereby complains of Defendants Curtis L. DeYoung (“Curtis”) and Michelle DeYoung (“Michelle” collectively the “DeYongs”), as follows:

INTRODUCTION

For well over a decade, Curtis engaged in a fraudulent scheme whereby he misappropriated approximately \$24 million in funds from APS clients. As a business, APS became insolvent due to Curtis's misappropriation. During this time, Curtis paid exorbitant salaries to himself and his wife, which by 2013 exceeded \$520,000 per year. As APS's "Operations Manager", Michelle received the same compensation as her husband, the company's President, Chief Executive Officer ("CEO") and sole shareholder. Curtis used his position in the Company to fraudulently funnel APS money to friends, including Michael Memmott Jr. ("Memmott Jr."), Michael Memmott Sr. ("Memmott Sr."), Shauna Memmott (collectively, the "Memmotts"), and a host of legal entities controlled by and/or associated with the Memmotts, which Michelle later allowed to be devalued and/or written off in violation of company policy. From their salaries, the DeYoungs transferred funds into several retirement accounts for the benefit of themselves and with the knowledge that creditors would have difficulty executing against the retirement accounts.

Further, while engaged in a fraudulent scheme, Curtis loaned himself approximately \$211,399.00 from APS's operating account and subsequently discharged his debt on APS's 2013 tax return. Curtis also purchased property in Ogden, Utah using funds from APS's Master Trust Account. He subsequently sold the property to an APS client and currently unlawfully benefits from her repayment to Curtis and three other clients on a promissory note.

Aware that an SEC investigation was underway, the DeYoungs created several new limited liability companies under their self-directed IRAs and 401(k)s and caused a portion of their retirement funds to be transferred and deposited into Zions Bank accounts opened in the

name of these new companies. The DeYoungs transfers were accomplished without submitting the necessary direction letters to APS as was required of all APS clients.

On April 24, 2014, the Securities and Exchange Commission (“SEC”) filed a Complaint against APS and Curtis DeYoung, and the Court appointed the Receiver to marshal and preserve all APS assets, as well as any assets that had been fraudulently transferred to third parties or are otherwise attributable to funds illegally derived from APS clients or clients. *See* Order Appointing Receiver, Freezing Assets, and Other Relief [Docket No. 9] (the “Receivership Order”).

After the Receivership Order was entered, Curtis instructed Dean Becker, who was the manager of the limited liability companies, to withdraw the funds deposited with Zions Bank and re-deposit over \$200,000.00 into accounts established at Brighton Bank. Once again, these transactions were completed without the DeYoungs submitting the necessary and required direction letters and in violation of the Receivership Order.

The funds fraudulently transferred into the DeYoungs’ as compensation and subsequently into retirement accounts between 2000, when the fraudulent scheme began, and the date of the Receivership Order April 24, 2014 is Receivership Property. The Receiver has a duty to “sue for and collect, recover, receive and take into possession from third parties” for the benefit of APS and its clients. *See* Receivership Order at ¶ 7.B. Accordingly, the Receiver brings this civil action against the Defendants to recover all funds that have been fraudulently transferred to their retirement accounts and to disgorge any ill-gotten gains of the DeYoungs in the form of excessive compensation from APS funds.

PARTIES

1. Plaintiff Diane A. Thompson is the court-appointed receiver for APS.
2. Curtis L. DeYoung is a resident of Salt Lake County, State of Utah and the former President and Chief Executive Officer of APS.
3. Michelle DeYoung is a resident of Salt Lake County, State of Utah and the former Operations Manager of APS.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1367 and ancillary federal jurisdiction over the claims asserted herein under *Merrill Scott & Assocs., Ltd. v. Concilium Ins. Servs.*, 253 Fed. Appx. 756, 761 (10th Cir. 2007).
5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 754 and 1391.

GENERAL ALLEGATIONS

I. While Curtis Is Stealing from APS Clients; Curtis and Michelle Receive Excessive Compensation While APS Is Insolvent.

6. Curtis founded APS in 1982 to serve as a third-party administrator for self-directed IRA and 401(k) accounts, which permit investments in a broader set of assets than would be permitted by a traditional IRA custodian. Curtis was the sole shareholder of APS and served as its President and CEO from its inception.

7. From 1982 until 1992, Curtis and APS established a business relationship with a local credit union to act as custodian of all IRA accounts since APS was not authorized to act as custodian or capable to administer an IRA pursuant to IRC § 408 and 26 C.F.R. 1.408-2(e).

8. In July of 1992, Curtis caused APS to change its banking relationship when he partnered with the First Utah Bank (the “Bank”), whereby the Bank would serve as

custodian/trustee for all self-directed IRAs that opened accounts with the Bank while APS would be delegated certain third-party administrative duties by the Bank.

9. Based on their business association, Curtis, embarked on a course of conduct wherein he marketed and encouraged thousands of individuals to liquidate their securities in other IRA accounts and transfer and deposit those funds into the commingled master trust account maintained at the Bank (“Master Trust Account”) touting the increase in available investment options, many of which were not available through other IRA custodians.

10. Between 2000 and 2014, over 14,000 separate individuals established, and maintained separate IRA and 401(k) plan accounts into which hundreds of millions of dollars were deposited into the Master Trust Account.

11. At the time of the appointment of the Receiver, over 5,500 separate IRA and 401(k) plan accounts were being maintained and administered by the Bank and APS for IRA Account Owners.

12. The Bank and APS records confirm the scale of the customer funds deposited into the Master Trust Account. From approximately 2000 through April 24, 2014, over \$308 million in assets held in account owners’ previous IRA and 401(k) accounts were liquidated and rolled over and deposited into the Master Trust Account maintained at the Bank.

13. From 2009 through April 24, 2014, over \$146 million was rolled over from securities that were liquidated by IRA Account Owners and deposited into the commingled Master Trust Account.

14. As of the filing of the SEC Action, according to APS records, the cash deposits in the Master Trust Account should have totaled \$50,653,871.85. However, the Bank's records only showed deposits totaling \$25,962,173.00 in cash on behalf of its customers, leaving a discrepancy in the Master Trust Account of \$24,697,698.85 between the cash it should have been holding according to the records maintained by APS and the amount the Master Trust Account actually held according to the Bank's records.

15. Notwithstanding Curtis's admission that neither he or APS had any discretionary authority over customer funds, and that all funds on deposit in the Master Trust Account could only be deployed and invested pursuant to an IRA Account Owner's specific authorization and direction, when asked whether he had in fact deployed, invested, or transferred client funds without the specific authorization of IRA Account Owners, Curtis invoked his Fifth Amendment privilege.

16. On April 24, 2014, the SEC filed a Complaint against Curtis and APS based on Curtis's "long-standing fraudulent scheme resulting in the misappropriation of over \$22 million of investor funds." (*See* Complaint, ¶ 1 [Docket No. 1] ("SEC Complaint")). The SEC Complaint details Curtis's misappropriation, which included engaging in unauthorized, high-risk investments using the money of APS clients. (*Id.* ¶¶ 47-98.) When questioned by the SEC about the misappropriation of APS client funds during sworn testimony, Curtis invoked his Fifth Amendment right against self-incrimination. (*Id.* at ¶ 54.)

17. Curtis's misappropriation of client funds began in January 2000 and continued until the date on which the Receivership Order was entered. (The initial shortfall was approximately \$50,000)

18. By March 2001, the misappropriations by Curtis from the Master Trust Account had already exceeded \$1.0 million (the amount in March 2001 was \$1,068,196) and continued to grow from that point forward to in excess of \$24 million by September 30, 2007.

19. In an effort to avoid detection, Curtis made a journal entry to hide the misappropriation. Despite the journal entry APS remained insolvent due to Curtis's wrongful conduct.

II. Curtis and Michelle Engage in Fraudulent Transfers.

20. Michelle, who has been married to Curtis before the establishment of APS, was Secretary Treasurer of APS from at least 1994 to 2002, and was employed as the Operations Manager beginning in 2008, reaped financial benefits from Curtis's activities by using APS to establish and fund IRAs and 401(k) accounts when APS was insolvent.

21. Michelle signed corporate resolutions and other APS documents as the Secretary-Treasurer of APS.

22. Due to the commingled accounting practices related to Curtis's Michelle's compensations, it cannot be determined at this time the relative compensations of Curtis and Michelle for all of the years from January 2000 to the present; however:

- In 2001, Curtis received \$100,000 in compensation from APS.
- In 2006, Curtis received \$200,000 in compensation from APS.
- In 2007, Curtis received \$215,000 in compensation from APS.
- In 2009, Curtis received \$350,000 in compensation from APS.
- In 2010, Curtis received approximately \$250,000 in compensation from APS.
- In 2001, Michelle received \$2,000 per month, or \$24,000 total.

- In 2010, Michelle received approximately \$250,000 in compensation from APS.
- Since January 2011, Curtis and Michelle have each been paid \$10,000.00 bimonthly, or approximately \$260,000 each and \$520,000.00 total per year.

23. Since January 2000 and the date of the Receivership Order, Michelle's compensation totaled no less than \$1,054,000.00.

24. Since January 2000 and the date of the Receivership Order, Curtis's compensation totaled no less than \$1,895,000.00.

25. The combined total of Curtis's and Michelle's compensation since January 2000 and the date of the Receivership Order is no less than \$2,949,000.00.

26. Upon information and belief, Michelle's compensation was raised to commensurate with the amount paid to Curtis with actual intent to hinder, delay or defraud creditors and/or clients of APS.

27. APS became insolvent due to the misappropriation of client funds either in or prior to January 2001 when the misappropriation resulted in liabilities exceeding assets of APS.

28. Between January 2000 and the date of the Receivership Order, Curtis caused \$6,000.00 to be transferred into Curtis's SEP Account No. 2824.

29. Between January 2000 and the date of the Receivership Order, Curtis caused \$5,000.00 to be transferred into Curtis's Roth IRA Account No. 5756.

30. Between January 2000 and the date of the Receivership Order, Curtis caused \$76,175.34 to be transferred into Curtis's 401(k) Account No. 9330.

31. Between January 2000 and the date of the Receivership Order, Curtis caused \$133,769.24 to be transferred into Curtis's Roth IRA Account No. 9331.

32. Between January 2000 and the date of the Receivership Order, Curtis caused \$18,600.00 to be transferred into Curtis's HSA Account No. 11600. (Accounts listed in ¶¶36-40 together as the "Curtis's Retirement Accounts").

33. Between January 2000 and the date of the Receivership Order, Curtis caused a total of \$239,544.58 to be transferred into Curtis's Retirement Accounts.

34. Between January 2000 and the date of the Receivership Order, Curtis and Michelle caused \$4,000.00 to be transferred into Michelle's SEP Account No. 2823.

35. Between January 2000 and the date of the Receivership Order, Curtis and Michelle caused \$5,000.00 to be transferred into Michelle's Roth IRA Account No. 5757.

36. Between January 2000 and the date of the Receivership Order, Curtis and Michelle caused \$80,246.07 to be transferred into Michelle's 401(k) Account No. 9328.

37. Between January 2000 and the date of the Receivership Order, Curtis and Michelle caused \$133,769.24 to be transferred into Michelle's Roth 401(k) Account No. 9329. (Accounts listed in ¶¶41-45 together as the "Michelle's Retirement Accounts").

38. Between January 2000 and the date of the Receivership Order, Curtis and Michelle caused a total of \$235,465.31 to be transferred into Michelle's Retirement Accounts.

39. Between January 2000 and the date of the Receivership Order, Curtis and Michelle caused \$12,450.00 to be transferred into Michelle's HSA Account No. 11601. (Accounts listed in ¶¶34-43 together as the "Retirement Accounts").

40. The transfers to the Retirement Accounts between January 2000 and the date of the Receivership Order total \$475,009.89.

41. The transfers to the Retirement Accounts were made by Curtis and Michelle with actual intent to hinder, delay or defraud APS clients, and with the knowledge (actual or constructive) that APS was insolvent.

42. Between December 2008 and the date of the Receivership Order, Curtis loaned himself money from APS's operating account, totaling approximately \$211, 399.00 (the "Loans"). The Loans were discharged on APS's 2013 tax returns.

43. Between January 2000 and the date of the Receivership Order, Curtis purchased real property in Ogden, Utah that was subsequently sold to an APS client, Cherry Williams. Curtis, along with three other APS clients, receive principal and interest payments from Cherry Williams on a property note jointly held in Curtis and the three other clients' retirement accounts.

44. Before and after the Receivership Order, personal property transfers were made for the benefit of family members of the DeYoungs, including the daughters of the DeYoungs, with actual intent to hinder, delay or defraud APS clients.

III. Funds from the Retirement Accounts of Curtis and Michelle Are Improperly Transferred in Violation of the Receivership Order.

45. In February 2014, funds from DeYoungs' IRA, 401(k) and HSA accounts were transferred from the American Pension Services, Inc. Master Trust Account and the American Pension Services, Inc. 401(K) Trust Account to bank accounts at Zions Bank in the names of newly-formed LLC's ("Zions Transfer"). A summary of two of those transfers are as follows:

To: DLC2 Investments, LLC

Manager:	Dean Becker	
Members:	Curtis DeYoung 401(k)	\$33,583.05
	Curtis DeYoung Roth 401(k)	32,997.90
	Curtis DeYoung SEP IRA	2,839.06
	<u>Curtis DeYoung IRA</u>	<u>630.57</u>
	Total to DLC2 Investment, LLC	\$70,050.58

To: RE Ventures, LLC

Manager:	Dean Becker	
Members:	Michelle DeYoung 401(k)	\$37,739.80
	Michelle DeYoung Roth 401(k)	41,167.48
	<u>Michelle DeYoung SEP IRA</u>	<u>2,563.91</u>
	Total to RE Ventures, LLC	\$81,471.19

IV. The Receiver Is Appointed to Marshal All APS Assets and Is Given Broad Powers to Recover APS Assets from DeYoung and to Sue Third-Parties to Recover any APS Assets Improperly Transferred to Them.

46. On April 24, 2014, this Court appointed Diane A. Thompson to serve as receiver for APS “for the purpose of marshaling and preserving all assets of [APS] together with any related entities owned, controlled, and/or under common control by or through [APS]” as well as all assets that “were fraudulently transferred by APS and DeYoung and that are otherwise attributable to funds derived from clients or clients of APS and DeYoung.” (*See* Receivership Order at pp. 1-2 [Docket No. 9]).

47. The Receiver is given broad powers to sue third parties to receiver fraudulently transferred funds for the benefit of APS and its clients. Pursuant to the Receivership Order, the Receiver has the power and duty to “use all reasonable efforts to determine the nature, location and value of all property interests of [APS] including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Defendants own, possess, have a beneficial interest in, or

control directly or indirectly (“Receivership Property’).” (*See* Receivership Order Art. II, § 7.A.) The Receiver is further permitted upon leave of Court “to sue for and collect, recover, receive and taking into possession from third parties all Receivership Property and records relevant thereto” (*See id.*, Art. II § 7.B; Art. X).

V. DeYoung Instructs Dean Becker to Move Certain Retirement Funds on Deposit at Zions Bank to Brighton Bank.

48. Dean Becker was instructed by Curtis after the Receivership Order was entered to withdraw all of his and Michelle’s retirement money initially included in the Zions Transfer and deposit the same moneys into new bank accounts at Brighton Bank.

VI. DeYoungs and the Memmotts Conspire to Defraud APS.

49. Since the Receiver took control of APS on April 25, 2014, the Receiver has learned that the Memmotts and the Memmott Entities have been intimately connected with Curtis and his fraudulent operations of APS for at least the past decade. Upon deeper investigation, the Receiver and her forensic accountants have discovered evidence showing that for at least the past decade, the Memmotts have conspired with and actively assisted Curtis in transferring at least \$4,500,000 from the APS operating account and/or Master Trust Account to the Memmotts and the Memmott Entities.

50. The \$4,500,000 in funds that were paid to the Memmotts and Memmott Entities were fraudulent transfers within the meaning of Utah’s Uniform Fraudulent Transfer Act (“UFTA”) Utah Code Ann. § 25-6-1, *et seq.*

51. On October 17, 2014, the Receiver filed a Complaint against the Memmotts alleging fraudulent transfers, conversion, breach of contract, breach of covenant of good faith

and fair dealing, unjust enrichment, disgorgement of profits, and civil conspiracy [Docket No. 3]).

52. While at APS, Michelle—as the “Chair of the Revaluation Committee”—wrote down significant debts of the Memmotts in violation of APS’ company revaluation policy and in furtherance of the fraudulent scheme to transfer APS funds to the Memmotts.

FIRST CLAIM FOR RELIEF
**(Violations of Utah’s Uniform Fraudulent Transfer Act,
Utah Code Ann. § 25-6-1, et seq.)**

53. All prior allegations are hereby incorporated as if fully stated herein.

54. The combined total of Curtis’s and Michelle’s compensation since January 2000 and the date of the Receivership Order is no less than \$2,949,000.00.

55. Between January 2000 and the date of the Receivership Order, Curtis and Michelle caused a total of \$475,009.89 to be transferred into the Retirement Accounts.

56. Curtis loaned himself approximately \$211, 399.00 from the APS operating account between December 2008 and the date of the Receivership Order.

57. Between January 2000 and the date of the Receivership Order, Curtis used APS money to purchase real property which was subsequently sold to an APS client and for which he receives principal and interest payments on a property note.

58. Before and after the Receivership Order, personal property transfers were made for the benefit of family members of the DeYoungs, including the daughters of the DeYoungs, with actual intent to hinder, delay or defraud APS clients.

59. Curtis committed fraud upon APS clients during the time funds were transferred to Curtis and Michelle.

60. Michelle conspired and actively participated with DeYoung in his misappropriation of client funds during the time funds were transferred to Curtis and Michelle.

61. The transfers were made by Curtis and Michelle with actual intent to hinder, delay or defraud APS clients.

62. From at least January 2001 onward, these transfers were made at a time when APS was insolvent.

63. As a result of these fraudulent transfers, APS and its clients have been damaged in amounts to be proven at trial, but not less than \$3,160,399.00.

SECOND CLAIM FOR RELIEF
(Conversion)

64. All prior allegations are hereby incorporated as if fully stated herein.

65. The combined total of Curtis's and Michelle's compensation since January 2000 and the date of the Receivership Order is no less than \$2,949,000.00.

66. Between January 2000 and the date of the Receivership Order, Curtis and Michelle caused a total of \$475,009.89 to be transferred into the Retirement Accounts.

67. Curtis loaned himself approximately \$211,399.00 from the APS operating account between December 2008 and the date of the Receivership Order.

68. Between January 2000 and the date of the Receivership Order, Curtis used APS money to purchase real property which was subsequently sold to an APS client and for which he receives principal and interest payments on a property note.

69. Before and after the Receivership Order, personal property transfers were made for the benefit of family members of the DeYoungs, including the daughters of the DeYoungs, with actual intent to hinder, delay or defraud APS clients.

70. Curtis committed fraud upon APS clients during the time funds were transferred to Curtis and Michelle.

71. Michelle conspired and actively participated with DeYoung in his misappropriation client funds during the time funds were transferred to Curtis and Michelle.

72. Curtis and Michelle willfully, wrongfully and without legal justification converted these funds for their own use in violation of Utah law.

73. As a result of such conversion, APS and its clients were deprived of the use and possession of the more than \$3,160,399.00 in funds, and have suffered damages caused by such conversion in an amount to be proven at trial, but not less than \$3,160,399.00.

THIRD CLAIM FOR RELIEF
(Breach of Contract)

74. All prior allegations are hereby incorporated as if fully stated herein.

75. Curtis loaned to himself approximately \$211, 399.00 from APS's operating account.

76. APS fully complied with its obligations under the Loans.

77. Curtis breached his contractual obligations to APS by, among other things, failing to repay APS.

78. Curtis discharged the Loans on APS's 2013 tax return.

79. As a result of these breaches of contract, APS has suffered damages in an amount to be proven at trial, but no less than \$211, 399.00, including but not limited to payment of all principal owed under the Loans, as well as all interest accrued thereon in the maximum amount permitted under the Loans and contracts or otherwise permitted by law.

FOURTH CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing)

80. All prior allegations are hereby incorporated as though fully set forth herein.

81. Pursuant to Utah law, an implied covenant of good faith and fair dealing existed as part of the Loans to Curtis. Implicit in this covenant, and as the President and CEO of APS, Curtis promised to take no action by which he purposefully harmed APS by making loans to himself with no intention of repayment that he had the capability of fully discharging.

82. APS has complied with all of its obligations under the Loans and is therefore entitled to the benefits promised in connection with the Loans.

83. Curtis discharged the Loans on APS's 2013 tax return.

84. Curtis breached the covenant of good faith and fair dealing by unilaterally taking funds Loans from APS, with no intention of repayment, and subsequently discharging his obligations to APS.

85. As a result of these breaches of the covenant of good faith and fair dealing, APS has suffered damages in an amount to be proven at trial, but not less than \$211, 399.00.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

86. All prior allegations are hereby incorporated as though fully set forth herein.

87. APS and its clients conferred a benefit upon the DeYoungs by transferring funds to them totaling at least \$2,949,000.00 on the reasonable understanding and belief that Curtis and Michelle would tender reasonably equivalent professional services or consideration in exchange for the funds transferred.

88. Between January 2000 and the date of the Receivership Order, Curtis and Michelle caused a total of \$475,009.89 to be transferred into the Retirement Accounts.

89. APS conferred a benefit upon DeYoung in Loans totaling approximately \$211,399.00 between December 2008 and the date of the Receivership Order.

90. Between January 2000 and the date of the Receivership Order, Curtis used APS money to purchase real property which was subsequently sold to an APS client and for which he receives principal and interest payments on a property note.

91. Curtis committed fraud upon APS clients during the time funds were transferred to Curtis and Michelle.

92. Michelle conspired and actively participated with DeYoung in his misappropriation client funds during the time funds were transferred to Curtis and Michelle.

93. The DeYoungs at all times had an appreciation and knowledge of the benefit conferred upon them by APS and its clients.

94. The DeYoungs acceptance and retention of the benefit without paying for its value would be inequitable under the circumstances.

95. To avoid the DeYoungs' unjust enrichment, APS is entitled to recover in an amount to be proven at trial, but not less than \$3,160,399.00, plus all disgorgement of profits and ill-gotten gains as requested below.

SIXTH CLAIM FOR RELIEF
(Disgorgement of Profits/Ill-Gotten Gains)

96. All prior allegations are hereby incorporated as if fully stated herein.

97. By means of accounting fraud, Curtis prolonged the life of APS to ensure exorbitant compensations were allocated from APS and/or the Master Trust Account to himself and his wife, Michelle.

98. As set forth above, while engaged in a fraudulent scheme Curtis and Michelle received at least \$2,949,000.00 in compensation to which they had no legal right.

99. These monies would not have been available but for Curtis' fraudulent conduct, misappropriation and deceit as APS would not have survived and would have ceased to exist long before millions of dollars were paid to the DeYoungs in compensation.

100. As set forth above, while engaged in a fraudulent scheme Curtis also received approximately \$211,399.00 between December 2008 and the date of the Receivership Order.

101. As set forth above, while engaged in a fraudulent scheme Curtis used APS money to purchase real property which was subsequently sold to an APS client and for which he receives principal and interest payments on a property note.

102. Because the DeYoungs had no legal rights whatsoever to receive those funds and instead obtained the funds by fraudulent transfers of APS funds over which they exercised control, it would be wholly inequitable to allow the DeYoungs to retain possession of these funds attributable to their unlawful possession and use of the at least \$3,160,399.00 in funds.

103. Therefore, equity requires that the DeYoungs be disgorged of any such profits or ill-gotten gains attributable to their unlawful possession and use of amounts fraudulently transferred to them, including any interest that was earned or could have been earned thereon, all of which shall be paid to APS for disbursement to its clients.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Diane A. Thompson, as Court-Appointed Receiver for APS, prays for relief as follows:

- A. For an order setting aside all fraudulent transfers described herein, and for entry of judgment against all Defendants named herein as transferees for

the value of the funds and other assets transferred, or the full amount necessary to satisfy APS's claims asserted herein, whichever is less;

- B. For damages in an amount to be proven at trial, but not less than \$3,160,399.00, plus prejudgment interest thereon;
- C. For costs, attorneys' fees, and interest recoverable by law or contract;
- D. Such other and further relief as the Court deems just and equitable.

DATED this _____ day of November, 2014.

/s/ Mark R. Gaylord
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