

Mark R. Gaylord (#5073)
Melanie J. Vartabedian (#10148)
Tesia N. Stanley (#13367)
Scott S. Humphreys (*admitted pro hac vice*)
BALLARD SPAHR LLP
One Utah Center, Suite 800
201 South Main Street
Salt Lake City, Utah 84111-2221
Telephone: (801) 531-3000
Facsimile: (801) 531-3001
gaylord@ballardspahr.com
vartabedianm@ballardspahr.com
stanelyt@ballardspahr.com
humphreys@ballardspahr.com

*Attorneys for Court-Appointed Receiver,
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.

**FIFTH QUARTERLY STATUS
REPORT OF RECEIVER**

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

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

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Diane Thompson, Court-appointed receiver (Receiver) for Defendants American Pension Services Inc. and Curtis L. DeYoung (DeYoung) and related entities, by and through her counsel of record Ballard Spahr LLP hereby submits the Fifth Quarterly Status Report of Receiver as of June 30, 2015.

1. Introduction

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

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

The Receiver, with approval from the Court, engaged Ballard Spahr LLP as legal counsel to the Receiver, Piercy Bowler Taylor & Kern (PBTk) as forensic accountants, Precision

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

The quarterly status report must contain: (1) a summary of the operations of the Receiver; (2) the amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate; (3) a schedule of all the Receiver’s receipts and disbursements with one column for the quarterly period covered and a second column for the duration of the Receivership;¹ (4) a description of all Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended; (5) a description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic or investigatory resources, the approximate valuation of these claims, the anticipated or proposed method of enforcing these claims, and the likelihood of success of the claims; (6) a list of known creditors with their addresses and the amounts of their claims; (7) the status of creditor claims proceedings; and (8)

¹ The Receiver operates three accounts within APS. These accounts are discussed in more detail in Section IV, with copies of the Receiver’s Receipts and Disbursements attached as Exhibits A, B, and C.

the Receiver's recommendation for continuing or discontinuing the Receivership with reasons for the recommendation. Receivership Order at 22–23.

This Fifth Quarterly Status Report is submitted to the Court in compliance with the Receivership Order for the period of April 1, 2015 to June 30, 2015 (“Reporting Period”).

2. Directions to Receiver

The Receivership Order provides detailed authorizations, directions, and instructions to the Receiver with regard to the Receivership Estate. A copy of the Receivership Order is available as Document Number 9 in this case.

3. Operations of Receiver

The Receivership continues to be a very unique and complicated Receivership. Unlike a typical Receivership—where the Receiver steps in, shuts down the business, terminates all employees, identifies and liquidates assets, makes disbursements to creditors, and files a report—the Receiver was faced with the task of not only marshaling all Receivership Assets, but also taking over and managing a business of providing third-party administrative services to over 5,500 clients with self-directed individual retirement accounts (IRAs) or 401(k) accounts.² The purported value of the assets of APS client accounts as of April 25, 2014 was in excess of \$350 million.³ The APS business is complex because the emphasis of the business is on offering

² Due to the asset freeze placed on the accounts of APS, there are still approximately 5,400 clients with self-directed IRAs being administered by APS and over 300 clients with 401(k)s being administered by APS 401K.

³ APS IRA accounts purportedly had in excess of \$350 million in assets, while APS 401(k)s purportedly had in excess of \$35 million in assets.

administration of non-traditional assets, such as unsecured real estate and promissory notes.⁴ It has become clear that APS was mismanaged prior to the Receivership and there were deficiencies in operating processes, training, technology, and process and accounting controls. Adding to the complexity of the Receivership—as well as the determination of the value of assets of both the Receivership Defendants and APS clients—is missing, poor, or inadequate documentation. This lack of documentation has made the Receiver’s task more difficult. The Receiver has also spent much of the Receivership continuing to search for information regarding assets of the Receivership Estate. This effort was complicated by the lack of cooperation from DeYoung in providing a detailed sworn statement identifying and estimating the value of all known assets of the Receivership Estate and in his deposition on September 30, 2014.⁵

Further adding to the cost and complexity of the Receivership are the hundreds of continuous telephone calls and emails between the Receiver or her staff and APS clients, many of whom have questions, are confused, angered, and frustrated by the Receivership. Some APS clients seek answers to questions about the Receivership, some demand distributions, others seek to conduct business transactions which require review pursuant to the Court’s Order Clarifying Order Appointing Receiver, Freezing Assets, and Other Relief [Dkt. 79] (“Clarifying Order”), which authorized APS customer transactions under certain conditions. The Court approved the Receiver's Amended Modified Plan of Liquidation (“Plan of Liquidation”) and proposed

⁴ While unsecured promissory notes were an offering available prior to the Receivership, the Receiver has authorized only secured promissory notes pursuant to the Court’s Order Clarifying Order Appointing Receiver, Freezing Assets, and Other Relief [Dkt. 79].

⁵ DeYoung continues to be uncooperative in the identification and recovery of Receivership Assets. Mr. DeYoung was indicted on fifteen counts of mail fraud in violation of 18 U.S.C. § 1341 on February 25, 2015.

Successor Administrator Equity Trust Company on February 27, 2015. Consequently, APS clients could transfer their account to Equity Trust Company.

The Receiver began the transfer of accounts to Equity Trust Company on April 1, 2015. During the Reporting Period, the Receiver and her professionals responded to hundreds of telephone calls and emails from APS clients with questions regarding transfer to Equity Trust Company and the Amended Modified Plan of Liquidation. These calls include questions regarding whether their accounts are subject to the Plan of Liquidation, how clients can make their loss allocation, and how to transfer accounts to Equity Trust Company. Clients also had questions about how to seek a revaluation of the assets in their APS accounts and whether they qualify for an in-kind exemption.

A. Current Operations of APS

The Receiver seized control of APS and the Receivership Assets on April 25, 2014, including the APS office located at 4168 West 12600 South, Suite 300, Riverton, Utah 84096. Upon seizing control, the Receiver took over a complex business operation administering self-directed IRA and 401(k) accounts. APS offered third-party administration services for self-directed retirement accounts for over thirty years. During the thirty-plus years of operation, APS administered accounts for over 14,000 clients. As of April 25, 2014, APS was the third-party administrator of approximately 5,500 accounts who had self-directed IRAs, self-directed 401(k)s, or both, with those accounts purportedly holding in excess of \$350 million in assets.

The assets held by clients within their retirement accounts vary widely and consist of real estate, stock in private corporations, memberships in limited liability companies, leases of business furniture and equipment, automobiles, short and long-term notes, precious metals,

bonds, oil and gas interests, and foreign currency.⁶ Because the accounts administered by APS are mostly retirement accounts, and in an effort to minimize the harm to those clients, the Receiver recognized the need of clients to continue to direct investment activities and sought a clarifying order from the Court allowing clients to pursue investment opportunities. On May 21, 2014, the Court granted a Clarifying Order, which allowed clients to pursue investment opportunities while the Receiver developed a liquidation plan. The Clarifying Order authorized the Receiver to: (1) make ordinary and necessary expenses to maintain and preserve assets; (2) approve the liquidation of investments for reinvestment into other assets within an APS client's account upon direction by the client; (3) approve the investment of existing cash in APS client accounts into other investments within the account; (4) approve the investment of existing cash into a business entity (e.g. LLC, partnership, or corporation) with identifiable "hard" assets so long as the asset remained frozen under the Receivership Order; (5) approve new incoming cash deposited to APS for investment within APS client accounts; (6) approve the payment of pre-existing regularly scheduled monthly, quarterly, or semi-annual distributions to clients; and (7) approve required minimum distributions to clients over the age of seventy-and-a-half years to comply with IRS guidelines. Under the Clarifying Order, APS client transaction and investment requests were initially subject to maintaining a 20% liquidity requirement.

On February 6, 2015, the Court granted the Receiver's requested Amended Clarifying Order that subsequently reduced the 20% liquidity requirement to 10%. *See* Amended Clarifying Order [Dkt. 434]. The Receiver has continued to operate APS under the requirements of the

⁶ This list is by way of example and not exhaustive of all types of assets held by client accounts.

Receivership Order, Clarifying Order, and Amended Clarifying Order during the Reporting Period.

The Receiver has also continued to implement the Plan of Liquidation. The Receiver began receiving client direction letters requesting their account be transferred to Equity Trust Company as the successor custodian for APS accounts. The Receiver began processing these requests immediately and transferred the first group of clients to Equity Trust Company on April 8, 2015. The Receiver has continued to process client accounts for transfer to Equity Trust Company and, as of this filing, has received a communication from approximately 3,700 of the 5,500 APS clients. Of the approximately 3,700 clients that have submitted a communication to the Receiver, approximately 2,300 have been transferred to Equity Trust Company and the rest are being processed.

The Receiver has reviewed and processed numerous transactions requested by APS clients to create liquidity so that clients may comply with the Plan of Liquidation loss allocation requirement. Client transactions require a review of direction letters, transaction documents, and coordination with clients regarding any relevant supplemental documentation needed. The transactions reviewed include, but are not limited to, the transfer or funding from business entities such as LLCs, the purchase or sale of secured promissory notes, the purchase or sale of real estate, and the sale of foreign currency. The Receiver has also rejected transactions requested by APS clients, with a written explanation of the rejection. Rejected transactions include, but are not limited to, unsecured promissory notes and transactions between prohibited parties, as well as transactions that would result in a violation of existing Court orders. The review of these transactions, as well as explaining rejected transactions, has taken considerable

time in the operation of APS. The Receiver and her team processed regularly scheduled distributions for clients pursuant to the Clarifying Order.

The Receiver continues to update the Receivership website (www.apsreceiver.com) in an effort to keep all APS clients informed of key events affecting the Receivership. The website is updated with Court filings and frequently asked questions on a regular basis. The updates during this Reporting Period have included posting of the Fourth Quarterly Status Report of the Receiver, an updated mailing to the clients encouraging compliance with the Plan of Liquidation, communications with clients that included a phone number for dedicated staff handling APS client transitions at Equity Trust Company, and updates to other court proceedings such as orders and decisions denying several motions to intervene. The Receiver has received phone calls from clients regarding the DeYoung criminal matter. The Receiver has referred all inquiries regarding the DeYoung criminal matter to the U.S. Attorney's Office.

During the Reporting Period, the Receiver has continued to work with the SEC, FBI, DOJ, IRS and DOL in their investigations of DeYoung and other related individuals and entities. The Receiver also responded to the subpoenas and discovery requests issued by the FBI, DOJ, IRS and DOL during their investigation of Mr. DeYoung and others.

The Receiver and her staff issued 2014 IRS Forms 5498 to all APS clients, which reported the value of client accounts as of December 31, 2014, and included information regarding contributions and rollovers or transfers of funds into APS. The Receiver and her staff also received requests from APS clients for amendments to 2014 IRS Forms 1099-R tax documents that were issued in January 2015 and the 2014 IRS Forms 5498 that were issued in

May 2015. The Receiver and her staff have investigated and responded to all requests for amendments and continue to investigate and respond to requests as they are received.

The Receiver and her staff continued to meet with clients in person to answer questions regarding the current status of their accounts, the current status of the Receivership, and the process of transferring their accounts to Equity Trust Company. The Receiver and her staff also responded to hundreds of client phone calls and email inquiries regarding transaction requests, outstanding management fees owed to APS, the Plan of Liquidation, requests for revaluation, required paperwork for the transfer of accounts to Equity Trust Company, and other related questions.

The Receiver continued to receive fair market valuation requests from clients seeking to modify current account values. The purpose of these fair market valuations is to appropriately list the value of client accounts for IRS reporting purposes. One substantial problem at APS prior to the Receivership was the inappropriate valuation of assets reported on IRS Forms 5498. The Receiver posted the fair market valuation form to the Receivership website in February 2015 and has received and processed numerous requests submitted by clients.

The Receiver continued her efforts to collect outstanding administrative and management fees owed to APS. The collection of these fees is warranted due to the continuing operations of APS during the Receivership pursuant to the Receivership Order and subsequent Clarifying Orders. Any remaining funds related to management fees following the winding up of the APS business will be distributed back to clients under the Plan of Liquidation. APS administrative and management fees are charged yearly on the APS Clients' anniversary date. On April 25, 2014, the amounts owed for outstanding management fees totaled \$559,857.93. This amount did

not include any outstanding management fees that were owed to APS for clients that had closed their APS accounts. That balance currently stands at \$286,898.48.⁷ APS's stated policy prior to the Receivership was that all outstanding management fees were to be collected before closing an account. Despite the stated policy, APS was not diligent in its collection efforts associated with these accounts.⁸ Currently, APS has \$518,131.99 in outstanding administrative and management fees owed. As noted in previous reports, the outstanding administrative and management fees had grown to approximately \$803,000. The collection of outstanding management fees has dramatically increased with approval and implementation of the Plan of Liquidation, which required all clients to pay their outstanding management fees prior to transferring their account(s) to Equity Trust Company. The Receiver continues to evaluate how best to collect management fees owed on closed accounts and may engage a collections agent to pursue these fees.

As a result of the implementation of the Plan of Liquidation, the Receiver and her staff have received multiple communications from clients who claim their accounts with APS were "closed" prior to the Receivership. Specifically, some clients opened accounts with APS, but never funded their accounts with a transfer, rollover, or contribution. These clients continued to be charged a \$40.00 annual trust fee. The Receiver and her staff continue to identify these

⁷ In previous reports, the Receiver identified this balance as "approximately \$271,000." The balance listed above is the current figure.

⁸ APS typically did not seek collections from clients. Rather, APS would simply resign as the third-party administrator, distribute assets to the client, and issue an IRS Form 1099-R indicating the distribution with its inherent tax consequence.

clients and appropriately “close” the account at APS. These accounts had no balance as of the Receivership Order and are thus not included in any allocation of loss calculation.

The Receiver continues to receive responses from some clients that they paid termination fees and had their accounts moved from APS. The Receiver investigates these claims as they arise. The Receiver is closing accounts where clients have been charged and paid termination fees and the accounts contain no assets. The Receiver is performing these account closings in conjunction with account revaluations and transfers to Equity Trust Company in an effort to streamline operations.

In previous Quarterly Status Reports, the Receiver noted anecdotal evidence that clients who receive regular deposits from dividends, rental income, or payments from promissory notes were diverting those deposits from their APS accounts. Where the Receiver confirms such action, the Receiver continues to notify APS clients of the potential ramifications of diverting those deposits, including the ramifications of a prohibited transaction under section 408(e)(2) of the Internal Revenue Code of 1986 (Prohibited Transactions). The Receiver continues to notify clients to consult with independent legal counsel regarding Prohibited Transactions or any other tax advice sought by APS clients. As noted in previous Quarterly Status Reports, the Receiver has elected to include an acknowledgment that no withholdings have occurred within the transfer paperwork to Equity Trust Company preceding the transfer of APS client accounts. As a result of this acknowledgment, the Receiver can report that many clients who may have been withholding funds, typically out of fear or confusion due to the Receivership, have returned those funds prior to the transfer of their accounts to Equity Trust Company.

APS has also worked with clients who have made investments in assets that are the subject of other receiverships. APS has worked with the receiver of these other receiverships to ascertain the appropriate value of assets held in APS accounts, which may include the amount of any possible recovery. Notably, the Management Solutions, Inc. receivership has proposed and conducted distributions. Many of these distributions were the subject of an interpleader motion whereby the Management Solutions, Inc. receiver interpleaded funds to this Court for distribution to APS clients or their APS accounts. [Dkt. 550, 552]. The Receiver has prepared and will be filing a motion shortly seeking to release those funds to the appropriate APS clients' self-directed accounts. Many clients are awaiting this distribution to their respective APS accounts in order to make their loss allocation under the Plan of Liquidation.

Implementation of the Plan of Liquidation during this Reporting Period has involved the collection of the 10% loss allocation, issuance of a Contingent Repayment Agreement representing the right to reimbursement of the loss allocation in designated circumstances, and the transfer of the account balance and assets to Equity Trust Company. The Contingent Repayment Agreement will be valued by Equity Trust Company at face value and it is not transferable or negotiable. The implementation and execution of the Plan of Liquidation has and continues to require a significant volume of correspondence, conference calls, and meetings, both internally at APS and between APS and Equity Trust Company, to refine and execute the process for transferring accounts from APS to Equity Trust Company as the successor custodian.

Further complicating the transfer of accounts has been the resignation of ExpertPlan as a record-keeper and administrator of most of the APS 401K accounts and plans. The resignation of ExpertPlan has required an intense effort to process and transfer APS 401K accounts to Equity

Trust Company while also navigating required blackout periods for 401(k) plan activities under ERISA. The Receiver, Equity Trust Company, and ExpertPlan have been cooperating in transitioning APS 401K accounts and plans from APS and ExpertPlan platforms to Equity Trust Company.

In the previous Quarterly Status Report, the Receiver reported that APS data files and operating software had been transferred to Equity Trust Company. This transfer was completed successfully, but resulted in extensive time delays in accessing client account information for the facilitation of account transfers. In order to increase the speed and efficiency of the account transfer process, the Receiver worked with Equity Trust Company to return the APS operating software to the APS location. Rather than the Receiver and her staff accessing APS operating software through remote connections, Equity Trust Company now accesses APS operating software remotely. This change has dramatically improved the speed and efficiency of transferring accounts from APS to Equity Trust Company.

Finally, as of June 30, 2015, the Receiver ceased normal business operations of APS and all remaining employees were terminated and received severance pay. As a result, the Receiver will no longer process regular transactions requested by APS customers, unless the transaction produces cash to fund the client's loss allocation, but will instead focus on executing the Plan of Liquidation and transferring accounts from APS to Equity Trust Company. The Receiver will still accommodate client transaction requests to preserve and protect assets according to this Court's orders, but will not conduct the purchase of additional assets. The Receiver will also continue to work with clients to accommodate special circumstances to execute transactions to

create the required loss allocation in order to effectively transfer clients from APS to Equity Trust Company.

B. Current Operations of Receiver

In addition to conducting the day-to-day operations of APS described above, the Receiver has conducted a variety of other actions pertaining to the Receivership. These actions include attempts to recover assets of the Receivership Estate. A detailed description of the Receiver's actions outside of the day-to-day operations of APS follows.

1. Implementation of Amended Modified Plan of Liquidation

The vast majority of the Receiver's attention during this Reporting Period has been on the continued implementation of her Plan of Liquidation. The Receiver mailed notice of this Court's order approving the Plan of Liquidation, a copy of the Plan of Liquidation, and all associated transfer paperwork required of each APS client in March 2015, with a follow up mailing in June 2015. Nearly immediately, the Receiver received responses from clients.

Client responses to the notice of the Plan of Liquidation have varied. Most clients have voluntarily complied with the Plan of Liquidation, have submitted paperwork, and have been transferred to Equity Trust Company. As previously noted, as of this filing the Receiver has received a response from approximately 3,700 of the 5,500 clients. Of the approximately 3,700 clients that have responded, 2,300 have been transferred to Equity Trust Company and the rest are being processed. The Receiver has also requested additional information from approximately 230 clients that have submitted a response to the Receiver, but their transfer request was deficient for one reason or another. The deficiencies ranged from incomplete direction letters or Equity Trust Company account applications to insufficient funds to make their loss allocation or

satisfy outstanding management fees. The Receiver continues to communicate with those clients with deficiencies in their transfer requests to resolve issues and complete the client transfers. Additionally, at the time of this filing, approximately 450 clients have indicated they are awaiting notice by the Receiver regarding a private letter ruling with the IRS.

Finally, at the time of this filing, approximately 180 clients have requested either an in-kind exemption or revaluation under the Plan of Liquidation. Of the 180 requests, the Receiver has responded to approximately 100 at the time of this filing. The Receiver continues to evaluate and respond to client requests for revaluation or in-kind treatment of their accounts. The Plan of Liquidation places the responsibility for providing sufficient documentation supporting a request with the client. To date, the vast majority of client revaluation and in-kind exemption requests are lacking documentation. In an effort to work with APS clients and also properly evaluate the client requests, the Receiver has and continues to diligently research the client requests by reviewing the client's entire APS file and any other documentation within control of the Receiver. This additional research associated with the revaluation and in-kind exemption requests has delayed the Receiver's response time. Additionally, many clients have phoned or emailed the Receiver seeking a determination of their eligibility for a revaluation or in-kind exemption prior to submitting the required revaluation fee. The Receiver has endeavored to respond to client requests of this nature, which has also added to the time required to process revaluation and in-kind exemption determinations. Nevertheless, the Receiver has responded to all requests within the sixty-day deadline outlined in the Plan of Liquidation.

Furthermore, the Receiver received returned mail related to the notice of the Plan of Liquidation sent to clients. The Receiver has endeavored to determine updated address and resend the notice to clients.

The Receiver met with a variety of bankruptcy receivership software providers to determine whether to utilize such software in tracking loss allocation and making distributions to clients. The Receiver met with Bankruptcy Management Solutions, Epiq Systems, and TrustESolutions regarding the possible use of their software. After meeting with each company, the Receiver determined it would be more cost-effective and efficient to utilize existing accounting software and staff to track client loss allocations and make future distributions, if any.

The Receiver has processed and continues to process accounts for transfer to Equity Trust Company. This processing involves multiple steps with appropriate quality controls. A member of PBTK and the Receiver's legal team each review all account files to ensure all paperwork has been completed appropriately, that loss allocations have been appropriately booked into both the APS and accounting software, and that all precious documents and hard copies of files have been gathered and shipped to Equity Trust Company. The process for transferring foreign currency and precious metals involves additional controls, including the removal of foreign currency and precious metals from safe deposit boxes by staff of both PBTK and the Receiver's legal team, the counting of currency and precious metals by additional staff members, and the packaging and shipping in the presence of two or more staff members from different firms. The use of these controls is appropriate to assure that the correct/verifiable assets are transmitted to Equity Trust.

The Receiver must facilitate the transfer of both IRA and 401K plan assets. Because 401(k) plans contain individual accounts for each participant, there is added complexity.

Complicating the transition of APS 401K accounts and plans is the fact that not all accounts in a particular plan are impacted by the loss allocation. However, the 401(k) plan members who are affected must individually comply with the Plan of Liquidation before the entire 401(k) plan can be transferred. For example, a 401(k) plan that contains twenty members must have all twenty members satisfy the requirements of the Plan of Liquidation before transfer. Thus, if nineteen plan members have complied by submitting transfer paperwork and funding a loss allocation, but one member has not, that 401(k) plan cannot be transferred. As noted above, further complicating the Receivership has been the resignation of ExpertPlan as a record-keeper and administrator for APS 401K accounts and plans. The resignation of ExpertPlan during this period of transition has triggered additional processes required under ERISA. The Receiver has worked with Equity Trust Company and ExpertPlan to contact clients to encourage compliance with the Plan of Liquidation, ensure compliance with additional ERISA requirements, and facilitate the transfer of 401(k) plans and accounts as quickly as possible.

2. IRS Private Letter Ruling

The Receiver was and is cognizant that many APS clients do not have sufficient cash in their accounts to make a ten percent loss allocation payment. Such a situation could be addressed by having APS clients contribute cash outside of their IRA account, liquidate assets, or borrow against assets held in their accounts. *See* Amended Modified Plan of Liquidation at 34-35. The Receiver further recognized that the cash contribution, allocation, or liquidation of or borrowing against assets may have adverse tax consequences. *Id.* Thus, the Receiver filed a request for a Private Letter Ruling on October 3, 2014 (“PLR Request”). Additionally, as part of the Plan of Liquidation, the Receiver allowed clients with solely illiquid assets to elect to defer

the transfer of their account to Equity Trust by returning a “notice” to APS indicating they elect to defer transfer until the IRS issued guidance on the PLR Request. To date, approximately 450 clients have filed these elections.

In the PLR Request, the Receiver sought advice from the IRS as to how she should treat the various transactions included in the loss allocation approach for tax reporting purposes. While the IRS ruling sought in the PLR Request would only provide guidance to the Receiver on tax reporting, APS clients presumably would take the Receiver’s reporting position into account when determining the tax treatment of their transactions. The PLR Request seeks tax advice on tax issues related to the loss allocation to resolving the cash shortfall. Specifically, the Receiver asked that payments or future reimbursements: (1) be considered a “restorative payment”; (2) not be considered a contribution to the 401(k) or IRA account; (3) not be considered a distribution from the 401(k) or IRA; (4) not be subject to additional excise taxes imposed by the Internal Revenue Code; and (5) not be reported as income on a Form W-2, Form 5498, or Form 1099-R. The Receiver requested expedited treatment and a conference regarding the ruling. A meeting on the Receiver’s request for a Private Letter Ruling was held at the end of April 2015 in Washington D.C., which was attended by the Receiver and her legal counsel.

The Receiver learned during the Reporting Period that the IRS has declined to issue the PLR based on procedural considerations. Nevertheless, the Receiver believes that there is substantial authority supporting the conclusion that the tax positions on which the Receiver sought guidance by filing the PLR Request are reasonable. Based on consultation with legal counsel and the relevant IRS guidance and authority, the Receiver intends, for Federal income tax reporting purposes, to treat a payment of cash outside the IRA account or liquidation of

assets in order to pay the required loss allocation as described above. The Receiver does not provide tax or legal advice to the individual account holders. In this situation, based on relevant IRS guidance and authority, the Receiver does not intend to report any such payment or liquidation of assets to the IRS as a contribution to, or distribution from, the individual accounts.

In addition to those account holders who have legitimately deferred their transfer under the Liquidation Plan, some APS account holders not eligible to defer transfer have refused to submit the papers necessary to transfer their account to Equity Trust as required by the Plan of Liquidation. Pursuant to the Plan of Liquidation, the Receiver may exercise all of her rights to collect the loss allocation payment by causing the resignation of APS as administrator, imposing a lien on account assets, pursuing collection, and/or liquidating account assets, which includes sweeping the cash accounts of any such clients in order to satisfy all or part of that account holder's loss allocation.

Therefore, on July 13, 2015, the Receiver filed a motion with this Court requesting an order to: (1) require all remaining APS account holders to transfer their account to the Court-approved APS successor/custodian Equity Trust Company ("Equity Trust") within thirty (30) days of receipt of notice of such an order; and (2) authorize the Receiver to exercise all available collection efforts under the Liquidation Plan for any account holder who has failed to transfer within thirty (30) days of receipt of notice of the Court's order requiring such transfer. [Dkt. 567]. Due to the time-sensitive nature of the Receiver's request for a Court order, the Receiver also requested expedited consideration of her motion. The motion has been set for hearing on August 12, 2015.

3. Assets Sold During Reporting Period

This Receiver has been unable to uncover any additional Receivership Assets since the last Reporting Period, and no assets have been sold to date. On April 20, 2015, the Receiver filed a Motion for and Memorandum in Support of Order Approving the Sale of Certain Personal Property [Dkt. 515] (“Motion to Sell”).

The Motion to Sell seeks to sell the following: a 1913 Ford Model T, Coca Cola vending machines, a large crystal geode, furniture and other personal property from DeYoung’s home and cabin, and motor vehicles owned by DeYoung. The Receivership Estate contains a 1913 Ford Model T, which is currently appraised at \$3,000. The Receivership Estate also contains four Coca Cola vending machines or coolers. The vending machines vary in value from \$600 to \$2,000 each. The Receivership Estate contains a large geode crystal, currently appraised at approximately \$10,000. The Receiver has also obtained an appraisal on the personal property located at the DeYoung residence. The personal property is currently appraised at approximately \$20,000. The Receiver has been unable to gain access to the cabin to assess the value of personal property located within. Curtis DeYoung filed a Response and Objection to Receiver’s Motion for and Memorandum in Support of Order Approving the Sale of Certain Personal Property [Dkt. 541] on May 18, 2015. The Receiver replied on June 4, 2015 [Dkt. 548]. The Motion to Sell has not yet been set for a hearing.

Relatedly, Michelle DeYoung moved to intervene for a second time, seeking to assert her interest in the personal property that is the subject of the Motion to Sell [Dkt. 544]. Ms.

DeYoung's motion to intervene is fully briefed [*see* Dkt. 556, 562] and has been set for hearing on August 12, 2015.⁹

The Receiver has determined that the DeYoung residence is of no value to the Receivership Estate because it has no equity. As such, on July 20, 2015, the Receiver filed a Motion for Partial Lift of Freeze Order for Limited Purpose of allowing the Foreclosure of DeYoung Residence [Dkt. 573], in which the Receiver seeks to allow the lender of the DeYoung's residence to commence non-judicial foreclosure proceedings. No response has been filed to date, and a hearing has not yet been scheduled.

The Receiver continues to evaluate her options regarding the remaining assets and real property owned by APS and DeYoung. The Receiver has indicated how she has or intends to dispose of each known asset in her Summary of Receivership Assets, attached as Exhibit D.

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

The Receiver has filed claims against APS's "CrimeShield Advanced" policy issued by the Hartford with policy limits of \$1 million. During the Reporting Period, the Receiver was asked for and responded to additional information from the Hartford regarding the \$1 million claim. A meeting with the Hartford attorneys was scheduled to be held in late July and preliminary settlement terms were agreed upon, but a settlement is not yet finalized. The

⁹ During the Reporting Period, Ms. DeYoung also filed an appeal to the Tenth Circuit Court of Appeals regarding the denial of her first motion to intervene, in which she sought to stake a claim to the personal assets as well as APS 401K [Dkt. 371]. On appeal, Ms. DeYoung seeks monetary recompense for her asserted interest in APS 401K. The Receiver will respond to the appellate brief before the required deadline. The Receiver will keep the Court apprised of the status of the appeal.

Receiver will seek the Court's approval of the settlement shortly and will report the settlement terms at that time.

The Receiver also made a claim on APS's Chubb "PRO E&O" errors and omissions policy issued by the Federal Insurance Company with policy limits of \$1 million. The Receiver understands from her outside counsel's discussions with a Chubb representative that Chubb intends to interplead the \$1 million policy limits with the Court. The Receiver further understands Mr. DeYoung's attorney has been in discussions with a Chubb representative and intends to make a claim to those funds to cover defense costs. The Receiver intends to assert the Receivership's interests in those funds at the appropriate time.

During previous reporting periods, the Receiver completed pre-litigation discussions and mediation with some third parties, including financial institutions, regarding their potential liability to APS and its clients. The details of these settlement discussions are confidential, but the Receiver can report that settlements with some parties have been approved by required entities. The Receiver continues to negotiate some details of these settlements and will move for Court approval of settlement shortly.

The Receiver has filed two ancillary lawsuits to pursue recovery on behalf of APS clients (*Thompson v. Curtis DeYoung and Michelle DeYoung*, Case No. 2:14-cv-00870-RJS; *Thompson v. Michael Memmott Sr. et al.*, Case No. 2:14-cv-00744-RJS).¹⁰ The Receiver has completed her

¹⁰ Due to the death of one party in *Thompson v. Michael Memmott Sr. et al.*, Case No. 2:14-cv-00744-RJS, the personal representative for the estate of the deceased individual has been substituted as a defendant. Details cannot be publicly revealed at this time due to the sealed status of the case.

analysis and evaluation of potential claims against third parties, including DeYoung family members.

The Receiver has also sent several demand letters to parties related to outstanding amounts owed to APS. No funds have yet been recovered as a result of these demand letters. The Receiver will continue to pursue these outstanding amounts owed to APS and will evaluate the potential to recover, the likelihood of any recovery, and the costs to obtain any recovery, before determining whether to file suit against these parties. Outside of these loans, the Receiver has determined that further actions against other third parties would not be prudent at this time.

5. Distributions to Clients and Creditors

At the time of this filing, there are not funds available to cover the loss caused by the misappropriation of approximately \$25 million from the APS Master Trust Account by DeYoung. Thus, there have been no distributions to any APS clients or creditors at this time.

Furthermore, the Receiver has continued to receive requests from clients to close their APS accounts and distribute all assets to the client. The Receiver has denied each of these requests as each is contrary to existing Court orders.

6. Costs of Receivership

The costs of the Receivership remain significant during the Reporting Period. The Receiver continues to seek and marshal the assets of the Receivership Defendants and pursue all available avenues to recover the approximately \$25 million misappropriated by DeYoung. While the Court has approved the Receiver's Applications for Interim Compensation of Receiver and Professionals for Services, the Receiver has utilized amounts in excess of one month of

operating expenses (approximately \$50,000) to cover a portion of Court-approved fees and expenses.

The costs of the Receivership have been reduced following the transfer of accounts from APS to Equity Trust Company. During the Reporting Period, many of the administrative costs of APS have been reimbursed by Equity Trust Company. This reimbursement includes employee payroll, benefit expenses and software licensing fees. Receivership costs are expected to continue to reduce following the Receiver's ceasing of normal APS business operations as of June 30, 2015 and termination of remaining APS employees effective July 3, 2015.

7. Pending Litigation

The Receiver has determined that as of April 25, 2014, APS was involved in a total of nine separate lawsuits in California, Idaho, and Utah as either a plaintiff or defendant. One action, noted in the First Quarterly Status Report, settled and resulted in over \$15,000 being deposited into the APS operating account. The Receiver has stayed the remaining actions. The Receiver has also elected to terminate counsel for APS in these actions and Ballard Spahr has entered appearances on behalf of APS.

During the Reporting Period, the Receiver and her counsel have made necessary filings and court appearances in appropriate courts to report on the status of the receivership in the ancillary actions.

The Receiver also issued and served the following subpoenas duces tecum, with the status indicated below:

- Capital Title Agency: The subpoena was issued on April 6, 2015. As of this date, Capital Title Agency has not responded;

- Advanced Title Company, Inc.: The subpoena was issued on April 7, 2015. Advanced Title Company, Inc. responded on or about April 14, 2015. The documents received from Advanced Title Company, Inc. have been processed accordingly for use in counsels' document review platform;
- Lawyers Title of Arizona: The subpoena was issued on April 7, 2015. As of this date, Lawyers Title of Arizona has not responded;
- Deni Memmott: The subpoena was issued on April 8, 2015. Deni Memmott responded on or about April 13, 2015. The documents received from Deni Memmott have been processed accordingly for use in counsels' document review platform;
- Advantage Title Company: The subpoena was issued on April 8, 2015. Advantage Title Company responded on or about April 15, 2015. The documents received from Advantage Title Company have been processed accordingly for use in counsels' document review platform;
- Amerititle Insurance Company: The subpoena was issued on April 10, 2015. Amerititle Insurance Company responded on or about April 14, 2015, indicating it possesses no documents responsive to the subpoena;
- First Utah Bank: The subpoena was issued on April 14, 2015. First Utah Bank responded on or about May 12, 2015. The documents received from First Utah Bank have been processed accordingly for use in counsels' document review platform;
- Cenlar FSB: The subpoena was issued on April 27, 2015. Cenlar FSB responded on or about May 11, 2015. The documents received from Cenlar FSB have been processed accordingly for use in counsels' document review platform;
- Wrona Gordon Dubois: The subpoena was issued on May 8, 2015. Wrona Gordon Dubois responded on or about May 20, 2015. The documents received from Wrona Gordon Dubois have been processed accordingly for use in counsels' document review platform;
- Rick Memmott: The subpoena was issued on May 20, 2015. Rick Memmott responded on or about May 26, 2015. The documents received from Rick Memmott have been reviewed and indexed;
- Jimmy Lu: The subpoena was issued on May 20, 2015. Jimmy Lu responded indicating he possesses no documents responsive to the subpoena;
- Foxfire Properties, Inc.: The subpoena was issued on May 27, 2015. Foxfire Properties responded on or about May 29, 2015. The documents received from Foxfire Properties have been processed accordingly for use in counsels' document review platform;

- Asset Acquisition Partners of America, Inc.: The subpoena was issued on May 27, 2015. The registered agent for Asset Acquisitions Partners of America responded indicating he is no longer the registered agent.
- Deni Memmott: The second subpoena was issued on May 27, 2015. Deni Memmott responded on or about June 30, 2015. The documents received from Deni Memmott will be processed accordingly for use in counsels' document review platform;
- Jordan Credit Union: The subpoena was issued on May 27, 2015. Jordan Credit Union responded on or about May 29, 2015. The documents received from Jordan Credit Union have been processed accordingly for use in counsels' document review platform; and
- America First Federal Credit Union: The subpoena was issued on May 28, 2015. America First Federal Credit Union responded on or about June 4, 2015. The documents received from America First Federal Credit Union have been processed accordingly for use in counsels' document review platform.

The following additional document productions have been received with the status of each reflected below:

- First American Title Company: The documents were received on April 2, 2015 and have been processed accordingly for use in counsels' document review platform;
- Title One: The documents were received on April 6, 2015 and have been processed accordingly for use in counsels' document review platform;
- Inwest Title Services: The documents were received on April 13, 2015 and have been processed accordingly for use in counsels' document review platform;
- Meridian Title Company: The documents were received on April 13, 2015 and have been processed accordingly for use in counsels' document review platform; and
- Canyon View Title: The documents were received on April 14, 2015 and have been processed accordingly for use in counsels' document review platform.

As noted above, the Receiver continues to prosecute claims in two ancillary actions (*Thompson v. Curtis DeYoung and Michelle DeYoung*, Case No. 2:14-cv-00870-RJS; *Thompson v. Michael Memmott Sr. et al.*, Case No. 2:14-CV-00744-RJS) to recover monies resulting from fraudulent transfers. On April 21, 2015 in the *Thompson v. Curtis DeYoung and Michelle*

DeYoung matter, the Receiver filed her Motion in Support of Partial Summary Judgment [Dkt. 22]. Curtis and Michelle DeYoung filed separate Opposition briefs on May 22, 2015 [Dkt. 44, 45]. The Receiver replied to the oppositions on June 19, 2015 [Dkt. 55]. A hearing on the Receiver's motion is scheduled for August 12, 2015.

During the Reporting Period, the Receiver and her counsel reviewed Michael Memmott Sr. documents in the possession of DeYoung's counsel. The Receiver subpoenaed, received and reviewed documents from the former office of Michael Memmott Jr. produced by Rick Memmott. The Receiver also gained access and performed an inspection of the former offices of Micheal Memmott Jr. and deposed the personal representative of Michael Memmott Jr., Deni Memmott. The Receiver is currently negotiating a settlement agreement with the defendants in *Thompson v. Michael Memmott Sr. et al.*

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

APS business operations can be evaluated and broken into three categories. First, is revenue and expenses related to the day-to-day operations of APS. Second, there are assets and expenses attributable to APS clients. Third, are assets and expenses related to APS 401K accounts. The following is a breakdown of the revenue and expenses of all three categories, with a summary of related account balances.

APS Operations (Day-to-Day)

As of June 30, 2015, the Operating Account¹¹ of APS was as follows:

	April 1, 2015 through <u>June 30, 2015</u>	<u>Receivership Cumulative</u>
Beginning Balance as of April 1, 2015	\$ 197,931.08	\$ 129,251.80
APS Receipts ¹²	\$ 1,773,995.57	\$ 4,045,499.78
APS Expenses ¹³	\$ 224,969.59	\$ 1,008,923.20
APS Operating Account Balance	\$ 1,409,421.99	\$ 1,409,421.99

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

¹¹ The Operating Account is a combination of the operating accounts for APS and APS 401K; however, these accounts are maintained separately by the Receiver.

¹² This amount represents business revenue generated from fees paid to APS in accordance with the APS clients' agreement to have First Utah Bank act as custodian and APS as third-party administrator.

¹³ This does not include all of the administrative expenses approved by the Court in the Fee Orders because amounts were not dispersed by the end of the Reporting Period. Those expenses will be reflected on the next Quarterly Status Report.

APS Master Trust Accounts

As of June 30, 2015, the APS Master Trust Account and related expenses, receipts, and disbursements are as follows:

	April 1, 2015 through <u>June 30, 2015</u>	<u>Receivership Cumulative</u>
Beginning Balance as of April 1, 2015	\$ 35,038,170.80	\$ 25,962,173.24
Receipts	\$ 12,920,407.33	\$ 51,532,101.84
Expenses	\$ 26,800,260.07	\$ 56,335,957.02
Balance	\$ 21,158,318.06	\$ 21,158,318.06

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

APS 401K

As of June 30, 2015, the APS 401K Trust Account and related expenses, receipts, and disbursements are as follows:

	April 1, 2015 through <u>June 30, 2015</u>	<u>Receivership Cumulative</u>
Beginning Balance as of April 1, 2015	\$ 4,198,886.67	\$ 3,842,908.62
Receipts	\$ 1,316,879.88	\$ 6,529,183.41
Expenses	\$ 758,734.31	\$ 5,615,059.79
Balance	\$ 4,757,032.24	\$ 4,757,032.24

Attached as Exhibit C is a Summary of the Operating Cash Receipts and Disbursements of APS 401K Account for the Reporting Period.

5. Receivership Property

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

6. Liquidated and Unliquidated Claims

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

7. Creditors and Claim Proceedings

A list of known creditors, their addresses, and the amounts of their claims is attached as Exhibit F. The list of known creditors is exclusive of potential creditor claims of APS clients, which may be impacted by the final Plan of Liquidation. No creditor claim proceedings have taken place to date. On or about September 19, 2014, each of the creditors was sent Notice of the Proposed Plan of Liquidation and a response form to the Plan. As stated in the Amended Modified Proposed Plan of Liquidation, the Receiver has determined that creditors of APS should be classified differently than APS clients. *See* Amended Modified Plan of Liquidation at 51-52. Each creditor will need to submit a proof of claim setting forth (1) the date the claim arose, (2) the nature of the claim, (3) the amount of the claim, (4) whether the claim is secured or unsecured, and (5) when the creditor contends the claim became due and owing. *Id.* The credit must attach all supporting documentation to the proof of claim. *Id.* A proof of claim form is attached to the Amended Modified Plan of Liquidation as Appendix H. Once a proof of claim is

filed, the Receiver will consider the claim. Should the Receiver object to the creditor's claim, the Receiver will notify the creditor in writing of the basis for her objection. The creditor will have the opportunity to respond to the objection by written reply. If the Receiver and creditor cannot agree on the amount of the claim, the Receiver or creditor will be allowed to submit the proof of claim, written objection, and written reply to the Honorable U.S. Magistrate Judge Dustin B. Pead for determination of the amount of the claim.

8. Receiver Recommends Continuation of the Receivership

As noted above, this is a complicated Receivership due to the nuances created by the APS clients, the assets held in the clients' accounts, and the interplay with the Internal Revenue Code. The Receiver recommends continuation of the Receivership. Continuation of the Receivership will assure the most favorable outcome for all APS clients through the pursuit of and equitable distribution of Receivership Assets. Additionally, the continuation of the Receivership will allow for the transfer of APS business and client accounts to Equity Trust Company as the successor custodian/administrator.

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

DATED this 30th day of July, 2015.

/s/ Melanie J. Vartabedian

Mark R. Gaylord, Esq.

Melanie J. Vartabedian, Esq.

Tesia N. Stanley, Esq.

Scott S. Humphreys, Esq. (*admitted pro hac vice*)

BALLARD SPAHR LLP

Attorneys for Court-Appointed Receiver, Diane A.
Thompson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **FIFTH QUARTERLY STATUS REPORT OF RECEIVER** was served to the following this 30th day of July 2015, 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: olivera@sec.gov; #slro-docket@sec.gov; ahardenbrook@swlaw.com; docket_slc@swlaw.com; jpollard@swlaw.com; miller@millertoone.com; mahoney@millertoone.com; miller@ecf.inforuptcy.com; miller.blaked@gmail.com; moric@sec.gov; howe@millertoone.com; wadleyd@sec.gov; dleta@swlaw.com; wsmart@swlaw.com; dwinder@winderfirm.com; kstevenson@winderfirm.com; gdoctorman@parsonsbehle.com; ecf@parsonsbehle.com; gbh@pkhlawyers.com; dh@pkhlawyers.com; jt@pkhlawyers.com; jsteed@kmclaw.com; mglaiser@kmclaw.com; colemere@wgdlawfirm.com; mortensen@wgdlawfirm.com; john@johnbagleylaw.com; judsonpitts@hotmail.com; judson@wimmerpitts.com; krw@scmlaw.com; ec@scmlaw.com; intakeclerk@scmlaw.com; markjgregersen@hotmail.com; saltlakedocketclerk@ballardspahr.com; feindtp@sec.gov; steve@skclawfirm.com; jen@skclawfirm.com; kajdad@gmail.com; sara@actionlawutah.com; danny_quintana@yahoo.com; dsbyers@hollandhart.com; justin@hsblegal.com

Daniel J. Wadley, Esq.

Cheryl M. Mori, Esq.

Paul N. Feindt, Esq.

Amy J. Oliver, Esq.

SECURITIES & EXCHANGE COMMISSION

351 S. West Temple, Suite 6.100

Salt Lake City, UT 84101

Paul T. Moxley, Esq.
Thomas J. Burns, Esq.
Z. Ryan Pahnke, Esq.
Joshua D. Chandler, Esq.
DURHAM JONES & PINEGAR
111 East Broadway, Suite 900
Salt Lake City, UT 84111

Judson T. Pitts, Esq.
WIMMER & PITTS, P.C.
11651 S. Harvest Rain Ave.
South Jordan, UT 84095

George B. Hofmann, IV, Esq.
PARSONS KINGHORN HARRIS
111 E. Broadway 11th Fl.
Salt Lake City, UT 84111

David E. Leta, Esq.
Andrew V. Hardenbrook, Esq.
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

John P. Bagley, Esq.
BAGLEY LAW, PC
308 East 4500 South, Suite 175
Salt Lake City, UT 84107

Kim R. Wilson, Esq.
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, UT 84145-5000

Mark J. Gregersen, pro se
10 West Broadway, Suite 505
Salt Lake City, UT 84101

Kent A. Jordan
844 N. King St., Unit 10
Wilmington, DE 19801

Stephen K. Christiansen, Esq.
311 South State Street, Suite 250
Salt Lake City, UT 84111

Blake D. Miller, Esq.
Craig H. Howe, Esq.
MILLER TOONE, P.C.
165 South Regent Street
Salt Lake City, UT 84111
Gary E. Doctorman, Esq.
PARSONS BEHLE & LATIMER
201 S. Main Street, Suite 1800
Salt Lake City, UT 84111

Jeffrey T. Colemere, Esq.
WRONA GORDON & DUBOIS, P.S.
11650 South State Street, Suite 103
Draper, UT 84020

Jeffrey D. Steed, Esq.
KIRTON & MCCONKIE
50 East South Temple, 4th Floor
P.O. Box 45120
Salt Lake City, UT 84145-0120

Donald J. Winder, Esq.
WINDER & COUNSEL, P.C.
460 South 400 East
Salt Lake City, UT 84111

Sara E. Bouley, Esq.
ACTION LAW LLC
2825 E. Cottonwood Pkwy., Suite 500
Salt Lake City, UT 84121

Danny Quintana, Esq.
DANNY QUINTANA PLLC
3341 South 700 East
Salt Lake City, UT 84101

Doyle S. Byers, Esq.
HOLLAND & HART LLP
222 S. Main Street, Suite 2200
Salt Lake City, UT 84101

Justin R. Baer, Esq.
HIRSCHI STEELE & BAER, PLLC
136 East South Temple, Suite 1650
Salt Lake City, UT 84111

/s/ Trista Lawson

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

EXHIBIT A

AMERICAN PENSION SERVICES, INC. AND AMERICAN PENSION 401K SERVICES, INC.
Business Operating Cash Receipts and Disbursements
For the Period April 1, 2015 through June 30, 2015

	April 1, 2015 through June 30, 2015	Receivership Cumulative
Beginning Cash Balance at April 1, 2015	\$ 197,931.08	\$ 129,251.80
Cash Receipts		
Business Revenue	697,995.57	2,951,499.78
Transition Services Fee	1,050,000.00	1,050,000.00
Legal Settlements	26,000.00	44,000.00
Total Cash Receipts	<u>1,773,995.57</u>	<u>4,045,499.78</u>
Cash Disbursements		
Appraisal Fees	-	4,075.00
Auto Expense - Employee	53.76	1,667.55
Bank Charges	9,025.00	46,824.48
Building Rent	-	67,793.46
Comcast Internet Services	-	1,182.63
Computer Software	303.58	3,640.71
Computer Support Services	8,332.29	15,291.09
Contract Labor	3,439.64	76,344.69
Copier Expense	107.05	848.61
Credit Card Processing	573.56	3,150.64
Document Disposal	127.74	1,464.48
Docuware Support	-	-
Employee 401(k) Program	6,421.92	27,201.04
Employee Comp.-401K Services	16,161.89	84,621.86
Employee Compensation & Taxes	63,698.68	293,734.15
Equipment Leases	3,263.28	19,208.88
General Telephone	4,736.03	22,204.43
Guard Services	-	42,437.50
Health Insurance	2,055.43	29,198.41
Insurance Expense	-	3,652.00
Interest Expense	-	3,179.33
Internet Research Fee	-	426.00
Legal Noticing	83,755.40	134,660.46
Licenses & Permits	25.00	466.10
Litigation Resolution	-	1,673.33
Meals & Entertainment	742.49	5,104.37
Mediation Services	-	7,687.50
Miscellaneous Operating Expense	141.65	5,314.54
Office supplies	3,349.49	11,720.77
Outside Contracting Services	-	23,043.10
Postage	4,477.09	13,710.98
Printing Expenses	5,062.84	10,264.27
Professional Services	-	1,245.00

AMERICAN PENSION SERVICES, INC. AND AMERICAN PENSION 401K SERVICES, INC.
Business Operating Cash Receipts and Disbursements
For the Period April 1, 2015 through June 30, 2015

	April 1, 2015 through June 30, 2015	Receivership Cumulative
Repairs & Maintenance	1,843.36	9,134.22
Storage	537.00	2,298.92
Subscription Services	-	-
Taxes - Other	3,135.42	13,431.13
Taxes - Payroll	-	3,400.00
Travel Expense - Reimbursement	-	552.97
Utilities	-	86.01
Web Site Fees	3,600.00	16,982.59
Total Expenses	<u>224,969.59</u>	<u>1,008,923.20</u>
Extraordinary Expenses:		
Receivership Fees and Expenses	337,535.07	1,756,406.39
Total Extraordinary Expenses	<u>337,535.07</u>	<u>1,756,406.39</u>
Total Cash Disbursements	<u>562,504.66</u>	<u>2,765,329.59</u>
Ending Balance at June 30, 2015	<u>\$ 1,409,421.99</u>	<u>\$ 1,409,421.99</u>

NOTES:

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

EXHIBIT B

AMERICAN PENSION SERVICES MASTER TRUST ACCOUNT**Cash Receipts and Disbursements****For the Period April 1, 2015 through June 30, 2015**

	April 1, 2015 through June 30, 2015	Receivership Cumulative
Beginning Cash Balance at April 1, 2015	\$ 35,038,170.80	\$ 25,962,173.24
Cash Receipts		
Contributions for Loss Allocation	1,529,919.99	1,529,919.99
Contribution	406,075.73	909,833.26
Gain	301,981.29	3,995,325.97
Interest Payments	982,974.21	6,844,321.31
Principal Payments	3,713,774.60	20,408,537.84
Rent	310,417.34	1,391,625.25
Rollovers	323,301.19	919,427.74
Assets Sold	5,321,911.00	14,675,749.52
Direct Transfer In	18,050.00	815,047.48
Dividends	12,001.98	42,313.48
	-	-
Total Cash Receipts	<u>12,920,407.33</u>	<u>51,532,101.84</u>
Cash Disbursements		
Transfer to Equity	21,207,604.68	21,207,604.68
Assets Bought	4,718,730.78	28,449,424.02
Corrections	-	664.29
Early Distribution - exception applies	7,609.00	314,253.17
Early Distribution - no exception applies	87,075.89	337,751.87
Normal Distribution	125,756.86	2,470,292.74
Distribution Charitable Gift Annuity	-	14,853.04
Qualified Distribution Roth IRA	12,000.00	37,760.22
Roth IRA Distribution - Exception applies	1,200.00	59,035.47
Federal Tax / Premature Distribution	3,000.00	16,500.00
Federal Tax / Normal Distribution	6,202.45	48,724.96
Expenses	257,054.22	1,236,946.72
Fees Paid	345,635.66	1,823,842.39
Property Tax	28,390.53	304,214.93
Charitable Gift Annuity	-	74.36
Direct Transfer Out	-	14,014.16
Total Disbursements	<u>26,800,260.07</u>	<u>56,335,957.02</u>
Ending Cash Balance at June 30, 2015	<u>\$ 21,158,318.06</u>	<u>\$ 21,158,318.06</u>

NOTES:

Note 1 - The above amounts include deposits and disbursements related to client retirement accounts administered by American Pension Services, Inc.

EXHIBIT C

EXHIBIT D

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

Entity	Asset Description	Estimated Value	Comments	Disposition Status
Personal Assets - Curtis DeYoung				
	Home - 12231 S. 1950 E., Draper, UT	630,000	Appraised Value	Subject of Motion for Partial Lift of Freeze Order [Dkt. 573]
	Encumbered by mortgage	(590,000)	Franklin America	
	Encumbered by 2nd Mortgage	(125,000)	Heritage West Credit Union	
	Rental Property - 1574 Iron Horse, Bluffdale, UT	375,000	Appraised Value	Part of pending settlement agreement with financial institutor
	Encumbered by mortgage of \$364,644	(364,644)	First Utah Bank	
	Retirement Accounts - Curtis DeYoung	70,051	Frozen at Brighton Bank	Subject of <i>Thompson v. DeYoungs</i> , Case No. 2:14-cv-00870-RJS
	Retirement Accounts - Michelle DeYoung	81,745	Frozen at Brighton Bank	Subject of <i>Thompson v. DeYoungs</i> , Case No. 2:14-cv-00870-RJS
	Personal Furniture, Fixtures	20,000	Value based on Rob Olson inspection	Subject of Motion to Sell Assets, [Dkt. 515]
	Vehicles	45,507	Kelley Blue Book	The Receiver will file appropriate motion to invalidate Trust holding vehicles shortly
American Pension Services, Inc.				
	Cash - First Utah Bank	193,337	Operating account controlled by Receiver	Being used for day-to-day operations of APS and payment of professional fees, as funds are available
	Receivable - Watson	7,000	Loan 8/14/08, no payments received.	Receiver has demanded repayment and will determine whether further collection efforts are appropriate
	Receivable - Courseware	46,600	Loans 2011 and 2012, no payments received	Receiver has demanded repayment and will determine whether further collection efforts are appropriate
	Receivable - Innovative Equity Partners	155,617	Loans Apr. to July 2013, Mike Memmott entity	Receiver has demanded repayment and will determine whether further collection efforts are appropriate
	Receivable - Innovative Services	16,500	\$6500 loaned 6/29/11, \$10,000 on 6/4/13, Mike Memmott entity	Receiver has demanded repayment and will determine whether further collection efforts are appropriate
	Receivable - Sawtell Capital, LLC	12,750	Loan on 8/31/11, Mike Memmott entity	Receiver has demanded repayment and will determine whether further collection efforts are appropriate
	Receivable - Tyler Ayres	6,630	Loan on 10/25/10, no payments received	Receiver has demanded repayment and will determine whether further collection efforts are appropriate
	Receivable - Harold Hardee	5,056	\$15,000 loan on 12/31/06, repayment of \$9,943 on 6/10/11. No payments since.	Receiver has been unable to locate Mr. Hardee. Receiver will continue to search.
	Vernal Property-Kendrick Note	58,468	Loaned on 5/2/12, no payments received	Receiver has demanded repayment and will determine whether further collection efforts are appropriate
American Pension 401k Svcs, Inc.				
	Cash - First Utah Bank	3,594	Operating account controlled by Receiver	Being used for day-to-day operations
LIC Environmental				
	Commercial Property - 11027 S. State Street, Sandy, UT	330,000	Appraised Value	Part of pending settlement agreement with financial institutor
LJP, LLC				
	Cash-First Utah Bank	7,530		
	Receivable - Prime Utah	35,000	Loan 10/7/08, no payments received	Memmott entity. Receiver has demanded repayment and will determine whether further collection efforts are appropriate
	Receivable - Cl. White - Kansas City	2,250	No payments received since 2010	No value to Receivership Estate.
	Receivable - Lionel Brown - Kansas City	18,000	No payments received since 9/15/11	Periodic payments being received in amount of \$137.50.
Quicksilver				
	Real Property - Legends Townhomes in American Fork	280,000	Holladay Bank - Property is subject of litigation.	Minimal value to Receivership Estate. Receiver settled with Holladay Bank [Dkt. 522]
	Encumbered by loan from Holladay Bank & Trust	(186,861)		
APS Master Trust				
	Property - Harrisburg, PA	25,300	3 homes, assessed value only on land	No value to Receivership Estate
Other Claims or Assets				
	Going Concern Value of APS	Unknown	Value to be determined.	Subject of Transition Services Agreement with Equity Trust
	1913 Ford Automobile	Unknown	Value to be determined.	Subject of Motion to Sell Assets [Dkt. 515]
	Vintage Coke Machines	Unknown	Value to be determined.	Subject of Motion to Sell Assets [Dkt. 515]
	Potential Action Against First Utah Bank	Unknown	Claim amount to be determined.	Subject to ongoing negotiations

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

Entity	Asset Description	Estimated Value	Comments	Disposition Status
	Potential Claims Against Michael Memmott	Unknown	Claim amount to be determined.	Subject of <i>Thompson v. Memmotts</i> , Case No. 2:14-cv-00744-RJS
	Potential Action Against NACH Trust	Unknown	Vehicles held by the Trust	The Receiver will file appropriate motion to invalidate Trust shortly.
	Potential Action Against NACH II Trust	Unknown	Recreation vehicles held by the Trust	The Receiver will file appropriate motion to invalidate Trust shortly.
	Potential Claim Against Insurance Carriers	Unknown	Amount to be determined	Receiver is pursuing claims against the Hartford and Chubb
	Membership Interest in Asset Management Intl., LLC	Unknown	Value to be determined.	No value to Receivership Estate
	Membership Interest in First Silverado Properties, LLC	Unknown	Value to be determined.	No value to Receivership Estate
	Interest in BD&D Investments, Inc.	Unknown	Value to be determined.	No value to Receivership Estate
	Partnership interest in DeYoung Associates, Ltd.	Unknown	Value to be determined.	No value to Receivership Estate
	Membership Interest in Interim Funding, LLC	Unknown	Value to be determined.	No value to Receivership Estate
	Membership Interest in DLC2 Investments, LLC	Unknown	Value to be determined.	No value to Receivership Estate
	Trustee of APS Master Business Trust	Unknown	Value to be determined.	No value to Receivership Estate
	Partnership Interest in NACH, LP	Unknown	Value to be determined.	No value to Receivership Estate
	Interest in Venture Broadcast Inc.	Unknown	Value to be determined.	No value to Receivership Estate

EXHIBIT E

AMERICAN PENSION SERVICES, INC.
SCHEDULE OF CLIENT ASSETS
AS OF JUNE 30, 2015

ASSET TYPE	VALUE
Cash - Note 2	\$ 45,752,455.29
LLC	62,004,926.99
Promissory Note	36,385,457.95
Stock	7,378,980.00
Escrow Account	3,729.47
Real Property	13,618,576.19
Mutual Fund	17,120.20
Brokerage Account	3,669,299.72
Limited Partnership	14,501,895.35
Trust Deed Note	16,580,219.39
Bond	91,000.00
Tax Lien	25,613.72
Debenture	236,325.00
Tax Sale	36,961.96
Tax Lien Certificate	1,546.12
Mortgage Note	754,325.55
Contract	1,840,584.35
Money Market	786,149.10
Oil Lease	161,750.00
Lease	81,643.67
Tax Deed	56,320.61
Miscellaneous	69,793.82
Water Shares	30,139.20
Judgment	47,170.45
Cash Balance	629.08
Sub Debenture	1.00
Coins	452,366.65
Real Estate Option	405,710.30
Assignment	248,115.79
Option	25.00
Loan Agreement	333,306.00
Domain Name	5,162.50
Foreign Exchange Mrk	23.76
Mobile Home	115,947.68
Joint Venture	400,000.18
REIT	173,927.33
Purchase Agreement	102,500.00
Land Trust	14,607.50
Warrant	500.00
Trust Deed	143,000.00
PPM	1,213,921.53

**AMERICAN PENSION SERVICES, INC.
SCHEDULE OF CLIENT ASSETS
AS OF JUNE 30, 2015**

ASSET TYPE	VALUE
Assignment of Note	261,080.41
Currency	1,070,351.26
Non-Recourse Loan	1,262,462.70
Viatical	230,747.22
Consolidated Notes	100,000.00
Oil & Gas Venture	263,270.51
Rescission Offer	1,439,277.79
UCC1 Filing	65,000.00
Total Assets	\$ 212,433,918.29

NOTES:

Note 1 - The asset descriptions and asset values shown below were compiled from data contained in the APS trust accounting system as of June 30, 2015. The Receiver and her professionals do no guarantee the accuracy of the categories and their related values.

Note 2 - The cash balance shown was based on the data contained in the APS Trust accounting system. The Receiver has determined that the aggregate cash balance shown in the APS Trust system is overstated by approximately \$24,600,000.

EXHIBIT F

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

CREDITOR	ADDRESS	OBLIGOR	AMOUNT	DESCRIPTION
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	Curtis DeYoung	\$ 43,412.75	Unsecured loan
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	Curtis DeYoung	364,644.32	Secured by Iron Horse Property
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	American Pension Services, Inc.	137,299.92	Unsecured line of credit
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	Curtis DeYoung	3,450.00	Overdraft on bank account
Snow, Christensen & Martineau	10 Exchange Place, 11th Floor, SLC, UT 84145-5000	American Pension Services, inc., Curtis DeYoung	14,851.60	Legal fees
City of Harrisburg, PA	10 N. 2nd St., Suite 103, Harrisburg, PA 17101-1679	APS Master Trust	26,711.22	Demolition Costs on Property
City of Harrisburg, PA	10 N. 2nd St., Suite 103, Harrisburg, PA 17101-1679	APS Master Trust	10,504.77	Utility bills
Smith Accounting Services	999 E. 13200 S., Draper, UT 84020	American Pension Services, Inc.	8,695.62	Accounting fees
Greenbaum Law Group, LLP	840 Newport Ctr. Dr., Suite 720 Newport Beach, CA 92660	American Pension Services, Inc.	3,484.50	Legal fees
Kyler Kohler Ostermiller & Sorensen	1883 W. Royal Hunte Dr., Suite 200, Cedar City, UT 84720	American Pension Services, Inc.	320.00	Legal fees
Franklin America	501 Corporate Centre Dr., Franklin, TN 37067	Curtis DeYoung	590,000.00	Mortgage on residence
Heritage West Credit Union	13218 South 5600 West, Herriman, UT 84096	Curtis DeYoung	125,000.00	Mortgage on residence
Holladay Bank & Trust	2020 Murray Holladay Rd., SLC, UT 84117	Quicksilver, LLC	186,861.00	Secured by Legends Townhomes
Mountain America Credit Union	111 East Broadway, 11th Floor, SLC, UT 84111	American Pension Services, Inc.	12,253.00	Judgment
Estate of Jeannine Reneau	2825 E. Cottonwood Pkwy, Ste. 500, SLC, UT 84121	American Pension Services, Inc.	505,959.87	Judgment
Total			<u>\$ 2,033,448.57</u>	

NOTES:

Note 1 - The above list contains known creditors as of the inception of the Receivership on April 24, 2014, and those creditors who have filed proofs of claim.

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