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Diane A. Thompson*

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

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

Defendants.

**FOURTEENTH QUARTERLY
STATUS REPORT OF RECEIVER**

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

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

Diane Thompson, Court-appointed Receiver (“Receiver”) for Defendants, American Pension Services, Inc. and Curtis L. DeYoung (“Curtis”) and related entities, by and through her

counsel of record, Ballard Spahr LLP, hereby submits the Fourteenth Quarterly Status Report of Receiver as of September 30, 2017.

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 Pension Services, Inc. and all assets of 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” or “AP4S”); 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 Document Services¹ to perform forensic computer services, Gary Free as an independent appraiser, and Jonathan Cook 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); Order Granting Motion to Retain Jonathan Cook as Appraiser (Dkt. 639). 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;² (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

¹ Orange Legal Technologies was acquired by Xact Data Discovery Company, after which the name was changed to Orange Document Services.

² 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.

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

This Fourteenth Quarterly Status Report is submitted to the Court in compliance with the Receivership Order for the period of July 31, 2017 to September 30, 2017 (“Reporting Period”).

2. Directions to Receiver

The Receivership Order provides detailed directions and instructions to the Receiver regarding the Receivership Estate. The Receivership Order also grants the Receiver the authority and power to act while managing the Receivership Estate. A copy of the Receivership Order is available as ECF No. 9 in this case.

3. Current Operations of Receiver

The Receivership continues to be very unique and complicated, as the Receiver focuses on final asset sales, the plan for distribution of recovered funds, and winding up of the Receivership. The Receiver was faced with the task of not only marshaling all Receivership Assets, but also taking over, managing, determining, and allocating the loss created by Curtis DeYoung, and transitioning the business of providing third-party administrative services to over 5,500 clients with self-directed individual retirement accounts (“IRAs”) or 401(k) accounts.³

³ On April 25, 2014 APS and AP4S served as administrator to approximately 5,400 self-directed IRA and over 300 401(k) accounts. As the Receiver has implemented her Amended Modified Plan of Liquidation, these numbers have been significantly reduced to only four (4) remaining accounts as of this reporting period.

The purported value of the assets of APS client accounts as of April 25, 2014 was in excess of \$350 million.⁴

The day-to-day operations of APS have ceased and the Receiver is wrapping up the sale of assets of the Receivership Estate. She has filed her proposed plan of distribution (“proposed Plan of Distribution”), and has sent notice of the proposed Plan of Distribution to the over 5,500 former APS clients affected by the Receivership.

The Court approved the Liquidation Plan and proposed successor custodian, Equity Trust Company (“Equity Trust”), on February 27, 2015. The Receiver began to transfer accounts to Equity Trust on April 1, 2015. Clients continue to call and e-mail regarding the status of transferred account(s) at Equity Trust with the following most common requests: (1) the Receiver’s assistance to re-register assets held within account(s) transferred from APS to Equity Trust Company including requests to execute deeds for real property formerly administered by APS; (2) duplicate copies of or changes to correct current and past tax forms; (3) the status of the Receivership and pending lawsuits; (4) the amount and timing of a future distribution; and (5) questions about the contingent repayment agreement held in their accounts and requests to revalue the contingent repayment agreement.

During the Reporting Period, the Receiver distributed and assigned out of APS twenty-two (22) additional accounts and transferred one account to Equity Trust. As of September 30, 2017, the Receiver has transferred, terminated, or otherwise distributed a total of 5,660 of the 5,664 accounts. Of the accounts transferred or closed at the end of the Reporting Period, 4,947

⁴ APS IRAs purportedly had in excess of \$350 million in assets, while AP4S 401(k)s purportedly had in excess of \$35 million in assets.

accounts have been transferred to Equity Trust. The other 713 have been closed, terminated, or distributed and assigned by the Receiver after determining the most cost-effective manner to process the accounts.

As of September 30, 2017, there were four (4) accounts remaining at APS.⁵ The Receiver is in the process of collecting the full loss allocation, liquidating assets, or assigning and distributing the account to the client if there are insufficient assets to satisfy the loss allocation. The four (4) remaining accounts consist of stock or a membership interest in a limited liability company (“LLC”) that holds an interest in real property.

The Receiver collected an additional \$199,489.85 in loss allocation during this Reporting Period. On July 13, 2017, the Receiver conducted an online auction of remaining client assets in violation of the Plan of Liquidation. The Receiver auctioned remaining real property and promissory notes for a net total to the Receivership of \$14,100.00. The Receiver completed all sales paperwork and completed the transfer or distribution of the accounts for assets that were auctioned. Additionally, the Receiver engaged Wilson-Davis & Co., Inc., a local brokerage firm, to sell the non-publicly-traded stock with adequate value held within a non-compliant client account on the over-the-counter bulletin board (“OTC-BB”). The stock was sold to generate the full loss allocation owed by the account. A Contingent Repayment Agreement was issued, and the remaining stock shares and other unsold assets were assigned to the client.

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. Most notably,

⁵ The four (4) remaining accounts do not include the eight (8) retirement accounts of Curtis and Michelle DeYoung. These accounts are the subject of a settlement agreement between the Receiver and Michelle DeYoung. (Dkt. 701).

after the Reporting Period but before this filing, on October 20, 2017, the Receiver posted notice of her proposed Plan of Distribution, the list of each Compliant Account Owner's estimated pro-rata share of distribution, and instructions on how and by when Account Owners must object to the proposed Plan of Distribution. The website is updated with Court filings and frequently asked questions as necessary. There were three (3) postings during this Reporting Period, as follows:

- July 26, 2017: Updated Frequently Asked Questions and Answers re: Contingent Repayment Agreements, status of settlement payment from First Utah Bank, and timing of a future distribution.

- September 12, 2017: An update regarding a future distribution payment.

- September 22, 2017: An explanation and posting of the Receiver's proposed Plan of Distribution.

The Receiver posted two (2) pertinent court documents during this Reporting Period. The posted documents included the Receiver's Thirteenth Quarterly Status Report and the proposed Plan of Distribution and Method of Notice for the proposed Plan of Distribution.

The Receiver continues to respond to client questions and requests for documents. Many clients that did not pay their loss allocation (and for whom the Receiver decided to close their account, assign the assets to the client, and issue an IRS Form 1099) did not understand why they received an asset assignment and the IRS Form 1099-R. Many of these clients believed they should have received cash and did not understand they were being assigned a non-cash asset in their former APS account. The Receiver also continued to receive requests from some APS clients for amendments to IRS Forms 1099-R tax documents that were issued by APS prior to the

Receivership. In these cases, the clients typically had not paid their administrative fees and APS resigned and reported the account, including non-cash assets, as a distribution. The IRS has started contacting these clients regarding unpaid taxes related to the distribution of non-cash assets. The Receiver and her staff have investigated and responded to all requests.

The Receiver received many calls and e-mails from clients indicating the value of their account transferred to Equity Trust was incorrect or that there are other problems with their accounts after transfer to Equity Trust. The most common issues involve the registration of real property asset at Equity Trust. The Receiver and her staff continue to hold periodic conference calls with Equity Trust to resolve these client issues and concerns. Clients who have transferred have also contacted the Receiver requesting assistance with lost documents where APS either mishandled documents prior to the Receivership or documents were not in the APS files. This has complicated the re-titling or sale of real estate and other assets. The Receiver's staff has responded to these requests.

The Receiver has terminated the APS Employee's 401(k) Plan. Most of the employees have requested and received distributions of their Plan assets and the remaining participant distributions are in progress. Once all distributions are made, the Receiver must file required forms.

After the end of the quarter, but before this Report was filed, the Receiver completed and filed an amended Form 5500 report for years 2014 and 2015 and a Form 5500 report for 2016 relating to the APS Employee 401(k) Plan with the Department of Labor. She will file a final Form 5500 for reporting year 2017 in 2018, when it is due.

The Receiver and her staff continue to hold the files of non-transferred accounts for further processing and any documents that may be required for asset sales. The computer systems utilized at APS were relocated, and the Receiver continues to utilize those APS computer systems to access information, prepare required reporting, respond to subpoenas, assist Equity Trust with any client issues, and complete transactions on behalf of the few remaining clients seeking to make loss allocation payments.

The Receiver filed IRS Forms 5498 for tax year 2016 in May 2017. For any client that transferred to Equity Trust before December 31, 2016, Equity Trust prepared the IRS Forms 5498. The Receiver will also be required to file IRS Form 1099-R for any final 2017 account distributions in early 2018.

First Utah Bank has tendered its resignation as the custodian of remaining accounts to the Receiver. However, First Utah Bank has agreed that the resignation shall not be effective until there is a mutual agreement with the Receiver concerning the resignation and an order from the Court releasing APS as administrator and First Utah Bank as custodian. This will be completed following the asset disposition of the four (4) accounts discussed above. Once those events have occurred, the Receiver will issue any final IRS Forms 1099-R for the reported value of the assets, as described above.

As part of the transfer of accounts, a client's loss allocation is documented by a Contingent Repayment Agreement (“CRA”) issued to the account or client, depending on how the client paid their loss allocation. The CRA is similar to a promissory note, and represents the

amount a client has paid to fund his or her loss allocation.⁶ The Receiver will use the amounts listed on the CRAs to make future distributions to the clients on a pro-rata basis as set forth in the proposed Plan of Distribution filed with the Court on September 25, 2017. As noted in the proposed Plan of Distribution, because the Receiver is continuing to collect loss allocation from the four (4) remaining accounts, adjudication of her Motion for Summary Judgment in the interpleader action in which a \$1,000,000 insurance policy is at stake is pending⁷, and the total administrative fees are not yet known, the amount of Receivership Assets available for distribution is currently unknown. Thus, the best estimate of the value of the CRA at this time is the amount of each client's contribution to the loss allocation under the Plan of Liquidation. Many clients have requested that the Receiver revalue the CRA in order to reduce the amount of their account total. The Receiver does not believe it is appropriate to make an adjustment to the value of the CRA until the Receiver has exhausted her recovery efforts and has determined the amount that will be distributed to clients.

Clients who have transferred to Equity Trust but desire to select another custodian/administrator for their account have inquired about the transferability of the CRA. Some custodian/administrators do not accept the CRA as an account asset. The Receiver has conducted several calls with clients and new custodian/administrators to clear up this confusion and has posted clarifying information on her website. Clients are permitted to transfer the CRA

⁶ In accordance with this Court's ruling on August 7, 2015, the Receiver issued the CRA to some clients individually, as they are ineligible to contribute to their retirement account or have otherwise funded their loss allocation from funds sourced outside of their retirement account. (Dkt. 592).

⁷ The Receiver's Motion for Summary Judgment in the interpleader action is set for hearing on November 21, 2017.

to a successor custodian/administrator or distribute it to themselves without the need to re-register the CRA since the CRA is issued in the name of the account, not the custodian.

The transfer of accounts from APS to Equity Trust required that all assets previously titled in the name of APS for the benefit of the client be re-registered to reflect ownership in the name of Equity Trust for the benefit of the client. The Receiver executed a limited power of attorney that allows Equity Trust to re-register client assets without the direct involvement of the Receiver and has amended and extended the power of attorney in anticipation of the completion of the Receivership. The re-registration of assets is a complicated and time consuming process for Equity Trust due to the volume of accounts transferred, number of assets held in each account, uniqueness of each asset, involvement of multiple parties, and incomplete information due to APS's deficient records. Furthermore, pursuant to Court Order, the Receiver "force transferred" 786 client accounts to Equity Trust in March 2016. (Dkt. 720). Many of these transferred accounts are either uncooperative with Equity Trust or the individuals are now deceased, which further complicates Equity Trust's ability to re-register assets.

Because the Receiver has received numerous complaints from clients about the length of time it was taking for Equity Trust to re-register assets, the Receiver contacted Equity Trust to resolve the inquiries. Equity Trust advised that they track re-registration in two categories: started and complete. Started means Equity Trust has provided sufficient documentation to a third-party to complete re-registration. Equity Trust does not treat the re-registration as complete until they have received confirmation that the third-party has changed the registration. As of September 30, 2017, re-registration is complete for 69% of the assets transferred to Equity Trust. The Receiver continues to communicate with Equity Trust and

provide information necessary to unfreeze appropriate brokerage accounts and re-register assets held within transferred accounts.

Curtis is now incarcerated in federal prison. As part of his sentence, Curtis was ordered to pay restitution of \$24,998,422.65 to the victims of APS. The Receiver and her counsel have conducted meetings with the SEC and U.S. Attorney's office to discuss and coordinate the treatment of and distribution to victims of any restitution payments made by Curtis. The Receiver has or will credit all recoveries to date to Curtis's restitution balance. This amount totals \$7,469,502.00 as of the end of the Reporting Period. The Court Clerk will remit to the Receiver any restitution from Curtis until the close of the Receivership. Curtis was ordered to pay the greater of \$25.00 per calendar quarter or 50% of his income while incarcerated. If he receives more than \$200.00 from any outside source in any calendar month during the period of incarceration, all funds received will be paid toward restitution. Upon release from incarceration, Curtis was ordered to pay a minimum of \$250.00 per month towards restitution. The Receiver will allocate and distribute restitution funds to the victims pursuant to the proposed Plan Distribution. As set forth in the proposed Plan of Distribution, when the Receivership closes, the Receiver will provide the Court Clerk with a list of victims, their addresses, and related loss as well as an accounting of funds she has distributed to victims. The Court Clerk will then take over the process of disbursing any restitution to victims.

4. Assets Uncovered or Sold During Reporting Period

Previous quarterly reports contain all information on assets sold.

The Receiver discovered that APS recorded Notices of Interest on certain real property in Ogden, Utah indicating that the previous transfer of said property was without consideration and

made with the agreement that the owner of the property would remit proceeds of its sale or disposition to APS. The Receiver has undertaken efforts to recoup any interest that may have been fraudulently transferred for the benefit of the Receivership Estate. The Receiver completed a settlement with counsel for the party seeking to remove the notices of interest on the real property and received a settlement payment of \$45,000.00 in this quarter.

The Receiver was also contacted by Neighborhood Legal Support of Kansas City indicating that APS may have had an interest in certain real property located at 3000 Highland Ave, Kansas City, Missouri with a value of approximately \$200.00. The Receiver worked with Neighborhood Legal Support of Kansas City to quitclaim any interest APS may have had in the property in exchange for payment of \$50.00.

The Receiver continued her efforts to collect outstanding administrative and management fees owed to APS. APS administrative and management fees were charged annually on the APS Client's anniversary date. The Receiver has collected the outstanding management fees as part of the transfer to Equity Trust.⁸ The Receiver engaged the company Express Recovery to continue to collect remaining outstanding management fees. The Receiver's contract with Express Recovery does not increase the administrative costs of the Receivership because Express Recovery is paid a portion of the amounts it successfully collects.

During previous Reporting Periods, the Receiver assigned all remaining management fees owed by clients to Express Recovery. The outstanding amount of management fees sent to Express Recovery was \$346,440.83. During this Reporting Period, Express Recovery collected

⁸ The Receiver elected not to charge continuing management fees after June 30, 2015 because the Receiver ceased "normal" business operations on July 3, 2015.

\$823.73 in past due fees. When added to collection efforts previously reported, Express Recovery has collected a total of \$34,270.25 in management fees for the Receivership and cancelled a total of \$61,161.40 (due to bankruptcies and other required reasons), leaving \$292,005.83 in management fees outstanding. Certain clients have formally disputed the fees, and the Receiver has responded to required verifications as requested by Express Recovery. The Receiver is in the process of collecting remaining APS management fees directly from the remaining four (4) accounts where assets are being sold based on the Court orders.

As noted in prior reports, the Receiver also assigned to Express Recovery the collection of APS judgments as noted on a list provided by Michelle DeYoung to the Receiver in connection with the parties' settlement agreement. Michelle provided a one-page summary sheet for each of approximately fifty (50) outstanding judgments and settlements in favor of APS. Many of these judgments have expired. To date, Express Recovery has collected \$0 in the judgment accounts and cancelled a total of \$895,375.29 (due to bankruptcies and other required reasons). Express Recovery continues its collection attempts on the outstanding judgment accounts.

With the exception of the pending \$1,000,000.00 insurance policy, which is the subject of the hearing on November 21, 2017, the Receiver has now dealt with all remaining APS/Curtis DeYoung assets. *See* Summary of Assets, attached as Exhibit C.

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

In previous Quarterly Status Reports the Receiver reported on tax refunds and insurance claims.

The Receiver's claim on APS's Chubb "PRO E&O" errors and omissions policy issued by the Federal Insurance Company with policy limits of \$1,000,000.00 is nearing completion. On January 7, 2016, Federal Insurance Company filed its Complaint in Interpleader and for Declaratory Relief in *Federal Insurance Company v. Thompson, et al.*, No. 2:16-cv-00023 (D. Utah Jan. 7, 2016) (Dkt. 2) seeking to interplead the full policy limits of \$1,000,000.00 with the Court. The Receiver, Curtis, and Michelle DeYoung all sought policy proceeds. The Receiver's motion for summary judgment seeking the entirety of those funds came for hearing on April 4, 2017. Based on the Court's questions and concerns expressed at the hearing, the Receiver withdrew her motion. Following the hearing, the Court entered an order granting Federal Insurance Company's oral motion to dismiss it from the case, with additional stipulations by Federal, and ordered Federal to deposit the full policy limits of \$1,000,000.00 with the Court. (Case No. 2:16-cv-00023, Dkt. 58). The Receiver engaged in settlement discussions with Curtis's attorneys regarding the policy proceeds to no avail. The Receiver filed a Renewed Motion for Summary Judgment on May 19, 2017. Curtis filed his opposition to the Receiver's renewed motion on June 30, 2017. The Receiver submitted her reply to the Court on July 28, 2017. A hearing is set for November 21, 2017 to resolve this final insurance dispute.

6. Distributions to Clients and Creditors

At the time of this filing, sufficient funds have been recovered to make a distribution to cover a portion of the loss caused by Curtis's misappropriation of approximately \$25 million. The Receiver filed a proposed Plan of Distribution for Court approval on September 25, 2017 (Dkt. 947) detailing her plan for a single distribution to Compliant Account Owners. Per the Court's Order (Dkt. 951), the Receiver provided notice of the proposed Plan of Distribution to

the over 5,500 Account Owners on October 20, 2017 by U.S. Mail, e-mail, and by posting notice on her website. She is responding to numerous client questions, collecting objections to the proposed Plan of Distribution, and will provide all objections to the Court. The Court will hold a hearing to consider the proposed Plan of Distribution on December 19, 2017.

7. Costs of Receivership

The costs of the Receivership remain significant during the Reporting Period. The Receiver is striving to control costs and continues to make prudent cost-benefit decisions as she completes the Plan of Liquidation, marshals the assets of the Receivership Defendants, pursues all available avenues to recover the approximately \$24.6 million misappropriated by Curtis, prepares and files her plan of distribution, and winds up the Receivership. Since 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 (which were approximately \$50,000.00) to cover a portion of Court-approved fees and expenses.

Through pursuit of the 10% loss allocation required from APS clients under the Plan of Liquidation, the Receiver has collected approximately \$30.90 million to date. This amount does not include management fees collected through the Receiver's operation of APS, sale of assets, or the First Utah Bank settlement proceeds. The proceeds and management fees collected will be used to cover the approximately \$24.6 million shortfall created by Curtis's misappropriation. Under the Plan of Liquidation, a portion of these unencumbered funds have been used to cover Court-approved fees and expenses; thus there is approximately \$6,484,371.17 million in unencumbered funds combined in the Master Trust Account and APS operating account.

8. Pending Litigation

The Receiver determined that as of April 25, 2014, APS was involved in a total of nine (9) separate lawsuits in California, Idaho, Washington, and Utah as either a plaintiff or defendant. One action, noted in the First Quarterly Status Report, settled and resulted in over \$15,000.00 being deposited into the APS operating account. As of the date of this Reporting period, the Receiver has resolved all nine (9) of these cases, the details of which were provided in prior quarterly reports.

Two additional lawsuits were filed against the Receiver in this Reporting Period. Both lawsuits were to quiet title of real property formerly held in an APS client account, which property had not yet been re-registered out of APS's name. In both instances, the Receiver worked with opposing counsel to resolve the disputes.

The Receiver served four (4) subpoenas during the Reporting Period, as follows:

- Alpine Water Systems - subpoena served 07/12/2017
- Natural Energy Investments - subpoena served 9/26/2017
- Aequitas I, LLC – subpoena served 8/16/2017
- Zions Bancorporation – subpoena served 8/29/2017

All of the above subpoenas were served to ascertain additional information about non-compliant account assets to assist the Receiver in her efforts to sell those assets to recover loss allocation payments. The Receiver received and reviewed responses to each subpoena. She collected the loss allocation of one non-compliant client as a result, and is in the process of collecting another non-compliant client's loss allocation. Based on the subpoena responses, it was determined that

two (2) non-compliant accounts did not have sufficient assets to pursue given a cost-benefit analysis and the accounts were assigned and distributed to the clients.

The Receiver also received and responded to two (2) subpoenas for documents during this reporting period from the DOJ concerning former APS client accounts. In both instances, the Receiver gathered and produced the requested documents.

The Federal Insurance Company interpleader lawsuit is discussed in Section 5 above.

In the Receiver's ancillary action against Curtis and Michelle, *Thompson v. Curtis DeYoung and Michelle DeYoung*, Case No. 2:14-cv-00870-RJS is complete. The Receiver's settlement with Michelle is complete and final. Michelle has been dismissed from the case with prejudice. As part of the case, on January 31, 2017, the Receiver filed a Complaint in Intervention seeking to interplead funds held within Curtis's and Michelle's APS 401(k) accounts with the Court due to a dispute over the funds between Michelle and her former legal counsel (Dkt. 857). Michelle and her former legal reached a settlement, approved by the Court (Dkt. 944), and the Receiver dispensed the Court ordered amount to Michelle DeYoung's former legal counsel and is preparing to release the balance to Michelle. The Receiver stands ready to pay Michelle and has been communicating with Michelle DeYoung's current legal counsel regarding how she would like the settlement funds paid to her since September 7, 2017. On October 10, 2017, the Court granted the Receiver's motion to dismiss her Complaint in Intervention as moot due to the Court's order resolving the dispute between Michelle and her former counsel.

Regarding her action against Curtis, the Receiver prepared and sent Curtis's counsel a joint stipulated motion to dismiss Curtis and close the case in late January 2017. Curtis's counsel indicated he is unwilling to authorize the dismissal due to the desire for their fees to be

paid from the interpleaded insurance proceeds. The resolution of this issue will be the subject of the hearing set for November 21, 2017.

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

APS business operations can be evaluated and broken into three categories. First, are revenue and expenses related to the day-to-day operations of APS. Second, are assets and expenses attributable to APS clients. Third, are assets and expenses related to APS 401(k) accounts. It should be noted that the Receiver transferred all APS 401(k) clients to Equity Trust in September 2015. 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 September 30, 2017, the Operating Account⁹ of APS was as follows:

	July 1, 2017 through <u>September 30, 2017</u>	<u>Receivership Cumulative</u> ¹⁰
Beginning Balance	\$ 167,547.64	\$ 129,251.80
APS Receipts ¹¹	\$ 96,114.38	\$ 5,687,928.70
APS Expenses	\$ 2,153.47	\$ 5,555,671.95
APS Operating Account Balance	\$ 261,508.55	\$ 261,508.55

⁹ The Operating Account is a combination of the operating accounts for APS and APS 401K; however, these accounts were maintained separately by the Receiver.

¹⁰ This reflects the balance of the account at the beginning of the Receivership.

¹¹ This amount represents business revenue generated from fees paid to APS in accordance with the APS clients' agreement in which First Utah Bank acted as custodian and APS served as third-party administrator.

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.

APS Master Trust Accounts

As of September 30, 2017, the APS Master Trust Account and related expenses, receipts, and disbursements are as follows:

	July 1, 2017 through <u>September 30, 2017</u>	<u>Receivership</u> <u>Cumulative</u>
Beginning Balance	\$ 1,039,563.07	\$ 25,962,173.24
Receipts	\$ 5,186,704.20	\$ 69,997,369.98
Expenses	\$ 3,404.65	\$ 89,736,680.60
Balance	\$ 6,222,862.62	\$ 6,222,862.62 ¹²

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 September 30, 2017, the APS 401K Trust Account and related expenses, receipts, and disbursements are as follows:

	July 31, 2017 through <u>September 30, 2017</u>	<u>Receivership</u> <u>Cumulative</u>
Beginning Balance	\$ 0.00	\$ 3,842,908.62
Receipts	\$ 0.00	\$ 7,150,259.60

¹² The APS 401K Trust Account was closed on January 22, 2016.

Expenses	\$ 0.00	\$ 10,993,168.22
Balance	\$ 0.00	\$ 0.00 ¹³

A Summary of the Operating Cash Receipts and Disbursements of APS 401K Account for the Reporting Period is combined with the APS Operations schedule, attached as Exhibit A.

10. Receivership Property

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

11. Creditors and Claim Proceedings

As noted in the proposed Plan of Distribution, six (6) parties submitted eight (8) proof of claims to the Receiver, of which six (6) proof of claims (submitted by four (4) creditors) were deemed valid. The treatment of creditors is discussed on pages 10-12 of the proposed Plan of Distribution. All parties that submitted a proof of claim were sent notice of the proposed Plan of Distribution and may submit an objection. A list of creditors who submitted a valid proof of claim is attached as Exhibit E.

12. Liquidated and Unliquidated Claims.

The Receiver has determined all claims of the Receivership Estate are liquidated with the exception of the pending \$1,000,000.00 insurance claim which is the subject of the November

¹³ The APS 401K Trust Account was closed on January 22, 2016.

21, 2017 hearing. A summary of the Receiver's ancillary actions and the resolution of those actions is included in section 8 above, in prior Quarterly Reports, and in the attached Exhibit C.

13. 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 in order to complete the wind-up of the Receivership and the distribution of recoveries. Continuation of the Receivership will ensure 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 the Receiver to complete collecting loss allocation payments from four (4) remaining APS clients, assign or distribute appropriate remaining accounts, complete her recovery efforts, and make a distribution as outlined in the proposed Plan of Distribution.

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

DATED this 31st October, 2017.

/s/ Melanie J. Vartabedian

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Melanie J. Vartabedian, Esq.

Tesia N. Stanley, Esq.

Jeffrey D. Enquist, Esq.

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 **FOURTEENTH QUARTERLY STATUS REPORT OF RECEIVER** was served to the following this 31st day of October, 2017, in the manner set forth below:

[X] 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; danny_quintana@yahoo.com; dleta@swlaw.com; wsmart@swlaw.com; dsbyers@hollandhart.com; bknoble@hollandhart.com; gdoctorman@parsonsbehle.com; ecf@parsonsbehle.com; ghofmann@cohnekinghorn.com; dhaney@cohnekinghorn.com; jthorsen@cohnekinghorn.com; jsteed@kmclaw.com; mglauser@kmclaw.com; jchandler@djplaw.com; cfrandsen@djplaw.com; judsonpitts@hotmail.com; judson@wimmerpitts.com; justin@hsblegal.com; krw@scmlaw.com; ec@scmlaw.com; intakeclerk@scmlaw.com; markjgregersen@hotmail.com; saltlakedocketclerk@ballardspahr.com; feindtp@sec.gov; pmoxley@djplaw.com; cwatters@djplaw.com; jadamson@kunzlerlaw.com; robert_hunt@fd.org; geri_wynhof@fd.org; utx_ecf@fd.org; steve@skclawfirm.com; jen@skclawfirm.com; sara@actionlawutah.com; tburns@djplaw.com; rpahnke@djplaw.com; speck@djplaw.com; utfedcourt@djplaw.com; mpugsley@rqn.com; rwing@rqn.com; bwride@rqn.com; EDonohue@hinshawlaw.com; ben@BBG-Law.com; jeff@cgsutahlaw.com; armand@hwmlawfirm.com; jerrym@mooneylaw.com; frank@fiber.net; Kristian@Beckettlegal.com

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/s/ Trista Lawson

INDEX

- Exhibit A Summary of the Operating Cash Receipts and Disbursements of APS and APS 401(k)
- Exhibit B Summary of the Operating Cash Receipts and Disbursements of the APS Master Trust Account
- Exhibit C Summary of Receivership Assets
- Exhibit D Schedule of Assets of APS Clients
- Exhibit E 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 July 1, 2017 through September 30, 2017

	July 1, 2017 through Sept 30, 2017	Receivership Cumulative
Beginning Cash Balance	\$ 167,547.64	\$ 129,251.80
Cash Receipts		
Business Revenue	883.35	3,627,959.93
Draws from Related Companies	10,533.03	57,742.13
Sale of Property	-	340,178.70
Insurance Proceeds	-	405,000.00
Transition Services Fee	-	1,050,000.00
Legal Settlements	84,698.00	207,047.94
Total Cash Receipts	<u>96,114.38</u>	<u>5,687,928.70</u>
Cash Disbursements		
Appraisal Fees	-	7,365.00
Auto Expense - Employee	-	1,817.63
Bank Charges	100.00	65,465.15
Building Rent	-	67,793.46
Comcast Internet Services	-	2,661.11
Computer Software	399.00	5,558.34
Computer Support Services	270.00	28,210.48
Contract Labor	-	87,902.25
Copier Expense	-	3,383.76
Credit Card Processing	-	5,822.51
Document Disposal	-	2,598.64
Employee 401(k) Program	-	41,853.05
Employee Comp.-401K Services	-	104,678.20
Employee Compensation & Taxes	-	360,040.43
Equipment Leases	-	25,315.20
General Telephone	-	32,004.49
Guard Services	-	42,437.50
Health Insurance	-	33,251.08
Insurance Expense	-	6,921.75
Interest Expense	-	3,179.33
Internet Research Fee	-	451.00
Legal Noticing	-	143,535.09
Licenses & Permits	-	667.90
Litigation Resolution	-	1,673.33
Meals & Entertainment	-	5,487.86
Mediation Services	-	7,687.50
Miscellaneous Operating Expense	-	5,743.17
Office supplies	-	14,117.23
Outside Contracting Services	-	23,043.10

AMERICAN PENSION SERVICES, INC. AND AMERICAN PENSION 401K SERVICES, INC.
Business Operating Cash Receipts and Disbursements
For the Period July 1, 2017 through September 30, 2017

	July 1, 2017 through Sept 30, 2017	Receivership Cumulative
Postage	79.47	25,753.25
Printing Expenses	-	10,264.27
Professional Services	-	1,245.00
Repairs & Maintenance	-	11,961.33
Storage	1,305.00	18,379.74
Taxes - Other	-	3,556.13
Taxes - Payroll	-	3,400.00
Travel Expense - Reimbursement	-	552.97
Utilities	-	86.01
Web Site Fees	-	24,325.84
Total Expenses	<u>2,153.47</u>	<u>1,230,190.08</u>
Extraordinary Expenses:		
Receivership Fees and Expenses	-	4,325,481.87
Total Extraordinary Expenses	<u>-</u>	<u>4,325,481.87</u>
Total Cash Disbursements	<u>2,153.47</u>	<u>5,555,671.95</u>
Ending Cash Balance	<u><u>261,508.55</u></u>	<u><u>261,508.55</u></u>

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 July 1, 2017 through September 30, 2017**

	July 1, 2017 through September 30, 2017	Receivership Cumulative
Beginning Cash Balance	\$ 1,039,563.07	\$ 25,962,173.24
Cash Receipts		
Contributions for Loss Allocation - Note 1	48,910.42	6,647,645.76
Contribution	-	1,119,475.88
Gain	61.12	4,273,431.11
Interest Payments	1,943.43	7,262,071.41
Principal Payments	214.38	21,282,233.91
Rent	900.00	1,723,749.63
Rollovers	48,578.56	1,178,696.11
Assets Sold	71,497.63	18,030,647.34
Direct Transfer In	-	2,186,306.37
Dividends	181.96	44,783.44
Bank Interest	12,237.52	22,452.21
Other Rents	-	1,500.00
Other Income	-	2,241.51
Fees Collected	-	679.85
Receivership Recoveries	5,000,000.00	5,215,947.78
401k Loss Allocation Collections	2,179.18	1,005,507.67
Total Cash Receipts	5,186,704.20	69,997,369.98
Cash Disbursements		
Transfer to Equity	6,194.49	48,944,518.38
Assets Bought	-	28,449,424.02
Corrections	-	664.29
Early Distribution - exception applies	-	321,502.94
Early Distribution - no exception applies	-	371,726.53
Normal Distribution	-	2,784,368.01
Distribution Charitable Gift Annuity	-	14,853.04
Qualified Distribution Roth IRA	-	130,601.37
Roth IRA Distribution - Exception applies	-	59,035.47
Federal Tax / Premature Distribution	-	16,500.00
Federal Tax / Normal Distribution	-	48,724.96
Expenses	(2,925.35)	1,247,363.48
Fees Paid	76.51	1,975,223.87
Property Tax	-	316,701.03
Charitable Gift Annuity	-	74.36
Direct Transfer Out	-	40,530.96
Receivership Administrative Costs	-	5,014,474.39
Bank Service Charges	59.00	393.50
Total Disbursements	3,404.65	89,736,680.60
Ending Cash Balance	\$ 6,222,862.62	\$ 6,222,862.62

Notes:

Note 1 - Due to the theft of approximately \$24.6 million of client funds by the principal of the company, APS clients were assessed a 10% loss allocation to cover the shortfall created by the theft. The 10% loss allocation was paid by clients through cash which already existed in their accounts, through liquidation of assets in their accounts or by contribution of funds to their retirement accounts. The amount shown represents those funds which were contributed by clients to complete payment of their 10% loss allocation.

Note 2 - During the quarter ending September 30, 2017, the settlement proceeds from First Utah Bank were received in the amount of \$5,000,000.

EXHIBIT C

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

Entity	Asset Description	Estimated Value	Comments	Actions/Status
Personal Assets - Curtis DeYoung				
	Home - 12231 S. 1950 E., Draper, UT	630,000	Appraised Value	Receiver abandoned per Settlement Agreement with M. DeYoung [Dkt. 701].
	Encumbered by mortgage	-	Franklin America	Franklin filed a motion to intervene to release home from freeze [Dkt. 768]. The motion was granted on 11/22/16.
	Encumbered by 2nd Mortgage	-	Heritage West Credit Union	
	Combined Retirement Accounts - Curtis DeYoung	325,845	Frozen at Brighton Bank; accounts comprised of \$70,051 cash and remainder in various other investments of unknown value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	HSA account Curtis DeYoung	4,181	Frozen at Brighton Bank; accounts comprised of \$81744.7 cash and remainder in various other investments of unknown value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Combined Retirement Accounts - Michelle DeYoung	231,652		
	HSA account Michelle DeYoung	4,181		Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Personal Furniture, Fixtures (Draper Home)	20,000	Value based on Rob Olson inspection	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Idaho Cabin Furniture	unknown		Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
American Pension Services, Inc.				
	Cash - First Utah Bank	261,509	Operating account controlled by Receiver	Being used for day-to-day operations of APS and payment of professional fees, as funds are available.
	APS interest in two Ogden properties	195,000	APS has notice of interest on properties	Receiver settled and received cash payment of \$45,000.00.
LIC Environmental				
	Cash - First Utah Bank	-		Final tax return filed for 2015. Court granted Receiver's motion to judicially dissolve [Dkt. 901]. Cash was transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
LJP, LLC				
	Cash - First Utah Bank	-		Cash was transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
	Receivable - Cl. White - Kansas City	-		Receiver received \$1,128.12 in excess proceeds following tax sale.
	Receivable - Lionel Brown - Kansas City	-		Receiver settled with Mr. Brown for \$500.00 and Receiver quit-claimed the property.
Quicksilver				
	Cash - First Utah Bank	-		Court granted Receiver's motion to judicially dissolve [Dkt. 901]. Cash was transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
First Silverado				
	Cash - First Utah Bank	-		Court granted Receiver's motion to judicially dissolve [Dkt. 901]. Cash was transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
APS Master Trust				
	Property - Harrisburg, PA	-	3 homes, demolished by City as a hazard. Total assessed value only on land	Demolition costs and taxes are in excess of value. Receiver legally abandoned the properties.
DHBZ Holdings, LLC				
	Cash- Brighton Bank	-		Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
RE Ventures, LLC				
	Cash-Brighton Bank	-		Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
Other Claims or Assets				
	AP4S	-	Account closed	Final tax return filed for 2015.
	Claim for Uncollected APS Management Fees	299,763		Open accounts plus outstanding amounts assigned to Express Recovery for collection.
	Membership Interest in Asset Acquisition Partners of America Inc.	-		Receiver determined to be of no value based on subpoena response from Wells Fargo.
	Value of Assets Discovered (coins, jewelry, precious metals)	17,778	Auction Value	The assets were auctioned on January 21, 2017.
	Interest in BD&D Investments, Inc.	-	Not aware of any value. Cannot verify existence of this entity.	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Various Collectibles and Judgments	Unknown	Value to be determined	The Receiver has assigned the collections of the judgments and settlements to Express Recovery, which is continuing their efforts to collect.
	Partnership Interest in DeYoung Associates, Ltd.	-	No known value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Membership Interest in DLC2 Investments, LLC	-	Dissolved	Subject to Settlement Agreement with M. DeYoung [Dkt. 701] and Court granted Receiver's motion to judicially dissolve [Dkt. 901].
	Claims Against Estate of Michael Memmott Jr.	65,948		Court granted order approving settlement in <i>Thompson v. Memmott</i> , Case No. 2:14-cv-00744-RJS and closed case [Dkt. 84, 91]. Receiver collected \$65,948 from First National Bank of America.
	Action Against First Utah Bank	5,000,000		Receiver collected all Settlement Funds during this Reporting Period.
	Default Judgment Against Gary Huettinger	13,500		Assigned to Express Recovery for collection.
	Claim Against Insurance Carriers - Chubb (Federal Insurance Company)	1,000,000	Policy limits interpleaded by Chubb	Interpleader Action pending, Case No. 2:16-cv-00023. Receiver's Motion for Summary Judgment set for hearing on 11/16/17.

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

Entity	Asset Description	Estimated Value	Comments	Actions/Status
			Checking account for \$100 transferred to APS operating account	No further action necessary
	Interest in Interim Funding	-		
	Claims Against LDS Church	250,000	C. and M. DeYoung contributions	Subject of <i>Thompson v. LDS Church</i> , Case No. 2:16-cv-00792. Parties settled for \$150,000.00 (Dkt. 22). Settlement funds collected during Reporting Period.
	Excess Loss Allocation Collected	6,293,826		May be distributed to clients as part of estate or used for administrative costs.
	Claim for Additional Loss Allocation to be Collected from Non-compliant Accounts	158,979		Receiver collected \$14,100.00 from auction of assets on July 13, 2017, and Receiver is working to recover loss from four (4) remaining accounts.
	Interest in Mirocc, LP	-	M. DeYoung formerly had ownership interest in entity w	M. DeYoung represents assets are minimal and she no longer has a claim to any of the assets. Receiver determined not to pursue assets.
	Partnership Interest in NACH, LP	-	No known value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Interest in Venture Broadcast Inc.	-	No known value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Interest in Witt's Lake Ranch, LLC	-	M. DeYoung has ownership interest which was not discl	M. DeYoung represents there are no assets currently or ever owned by entity. Receiver determined not to pursue.
	Interest in real property located at 3000 Highland Ave, Kansas City, MO	200		Receiver settled for \$50.00 with Neighborhood Legal Support of Kansas City and Habitat for Humanity who purchased the property at foreclosure sale.

EXHIBIT D

**AMERICAN PENSION SERVICES, INC.
SCHEDULE OF CLIENT ASSETS
AS OF SEPTEMBER 30, 2017**

ASSET TYPE	BOOK VALUE
LLC Interest	1,181,539
Stocks	340,000
Total Assets	\$ 1,521,539

EXHIBIT E

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

<u>CREDITOR</u>	<u>ADDRESS</u>	<u>OBLIGOR</u>	<u>AMOUNT</u>	<u>DESCRIPTION</u>
Dauphin County Tax Bureau	P.O. Box 1295, Harrisburg, Pennsylvania 17108	American Pension Services, Inc.	69,347.12	Claim for Unpaid Taxes
Estate of Jeannine Reneau	2825 E. Cottonwood Pkwy, Ste. 500, SLC, UT 84121	American Pension Services, Inc.	505,959.87	Judgment
James P. Allfrey	3843 West 11970 South, Riverton, UT 84065	American Pension Services, Inc.	2,000.00	Claim for Unpaid Compensation
Mountain America Credit Union	111 East Broadway, 11th Floor, SLC, UT 84111	American Pension Services, Inc.	12,253.00	Judgment
Total			<u>\$ 589,559.99</u>	

NOTES:

Note 1 - The above represents creditors that submitted a valid proof of claim to the Receiver. The creditor claims bar date was 12/30/16.

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

Note 3 - The Receiver removed the claims of Hardy/Kane as invalid and the claims of First Utah Bank because First Utah abandoned its claims during this Reporting Period.

Note 4- The Receiver removed creditors that did not submit a proof of claim.