

# EXHIBIT R

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**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT, STATE OF UTAH**

<p>JEANNINE L. RENEAU,  Plaintiff,  vs.  AMERICAN PENSION SERVICES, INC., et al.  Defendants,</p>	<p><b>DECLARATION OF CURTIS DEYOUNG IN OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT</b></p> <p>Civil No. 080922754  Judge Joseph C. Fratto</p>
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I, Curtis DeYoung, having been first duly sworn upon oath, depose and state as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am the President of American Pension Services, Inc. ("APS"), and have been at all times relevant to this litigation.
3. In addition, I was the manager of Interim Funding, LLC ("Interim") at all times relevant to this litigation.
4. APS is an active, legally organized Utah corporation.
5. Interim is a legally organized Utah limited liability company.
6. Remington Commercial Advisors, LLC ("Remington") is a legally organized Utah limited liability company.
7. Clare Morse is and was at all times relevant to this litigation a member of Remington.
8. Remington and APS have a long-standing relationship stretching over the course of a number of years and many projects.
9. Over the course of this relationship, APS, as a lender and an investor, and Remington were jointly involved in a number of projects in a number of separate states where Remington bought and sold real property, and APS invested in and loaned money for these projects.

10. Most of the projects involved Remington remodeling or constructing improvements to various real properties and then selling those properties and paying APS a previously agreed upon amount.

11. Over the course of these projects, APS and Remington would typically agree prior to the commencement of construction on each project how much Remington was obligated to pay APS in connection with the project when the project was finished in consideration for APS's past and ongoing lending and investment in Remington's projects.

12. APS has loaned and disbursed to Remington millions of dollars on many projects.

13. APS did not exercise any control over how Remington used the funds APS disbursed to Remington previously or the funds Remington claims to have used on the Property.

14. APS allowed Remington to spend the millions of dollars disbursed as Remington saw fit toward any of its projects because APS and Remington had an ongoing, close relationship.

15. APS did not keep records of or supervise which projects received funds from Remington.

16. Instead, APS and Remington would, as they did in this case, just agree for each project on an amount APS would be paid from each project—regardless of whether or not Remington claims to have used that amount on the specific project.

17. Prior to purchasing the Property, Remington owed APS more than the face value (\$249,000.00) of the note at issue in this case (the "Note").

18. Remington, through Clare Morse, and APS, through Curtis DeYoung, agreed that upon the sale of the Property, \$249,000 would be paid to APS as a return on APS's capital (i.e., profit) and in consideration of APS's involvement in prior and future projects and the funds APS had disbursed and would disburse to Remington.

19. Remington, through Mr. Morse, agreed to have the Property finished, sold, and to pay APS \$249,000.00 by October 1, 2005.

20. Consistent with APS and Remington's agreement, they entered into the Note.

21. Consistent with APS and Remington's agreement, and to secure payment of the Note, APS recorded a Trust Deed against the Property.

22. At no point did APS promise to loan an additional \$249,000.00 when Remington signed the Note.

23. Rather, APS agreed to fund the construction on the Property as Remington needed, and Remington agreed to pay APS \$249,000.00.

24. Both parties knew and understood that it was unlikely Remington would need \$249,000.00 to buy and finish construction on the Property, but Remington was still obligated to pay APS \$249,000.00.

25. Consistent with the agreement between APS and Remington, APS rejected and returned a check sent from Direct Title to it in the amount of \$201,570.00 (the "Check") because it was less than \$249,000.00 together with interest at 12% per annum, the agreed-upon amount.

26. APS understood that by returning the Check, Reneau and Direct Title would be put on notice that there was a problem with the payoff amount.

27. Moreover, I, on behalf of APS, called Clare Morse and told him that the Check was insufficient to satisfy the Note.

28. Neither Direct Title nor Reneau communicated with me or any other APS employee or officer regarding the returned Check.

29. Neither Direct Title nor Reneau made any attempt to obtain a payoff statement from APS—before or after it returned the Check.

30. At no point did APS obtain any funds from Reneau, Remington, Direct Title, Interim, or any other person or entity in connection with Reneau's purchase of the Property.

31. Interim was formed and used for the sole purpose of investing in Remington related projects.

32. In fact, Interim gave Clare Morse its signed checks so that Remington could use them for its projects.

33. Interim obtained a million dollar line of credit from Bank of American Fork and used those funds to invest in Remington's projects.

34. Interim's agreements with Remington were separate and distinct from APS's agreements with Remington. And Remington's obligations to Interim were separate and distinct from its obligations to APS.

35. All of Interim's funds and bank accounts, including its line of credit with Bank of American Fork, were used for Remington's projects.

36. Interim gave Remington authorization to directly withdraw funds from Interim's bank account—the same account Direct Title wired \$201,570.00 to (the "Wired Funds").

37. Prior to Direct Title sending the Wired Funds to Interim's account, I gave Remington all of Interim's bank account information, including the wiring information.

38. On April 3, 2006, shortly after the Wired Funds were sent to Interim, Remington, through Clare Morse, withdrew from Interim's bank account (the same account the Wired Funds were sent to) all of the Wired Funds.

39. Interim's only accounting was the statements Bank of American Fork prepared for it.

40. Neither APS nor Interim was aware that the Wired Funds were from Reneau's purchase of the Property until after Clare Morse had withdrawn those funds.

41. Interim did not realize the Wired Funds equaled the amount of the Check until this litigation commenced.

42. Interim did not retain the Wired Funds. Rather, Remington, through Clare Morse, withdrew and retained the Wired Funds without Interim's or APS's knowledge.

43. Interim did not retain or benefit from the Wired Funds because Remington used Interim's account as a holding account until it could abscond with those funds for its own purposes.

44. Remington is the only party that benefitted from the Wired Funds.
45. Neither Interim nor APS ever gave Direct Title or Reneau instructions to wire funds to Interim, or even communicated with them about wiring funds to Interim.
46. Neither Reneau nor Direct Title obtained (or even tried to obtain) any confirmation that APS would release its Trust Deed in exchange for payment to Interim.
47. Neither APS nor Interim took any action with the intent to induce Reneau, through Direct Title, to send the Wired Funds to Interim.
48. Neither APS nor Interim had any intention to induce Reneau, through Direct Title, to send the Wired Funds to Interim.
49. Neither Reneau nor Direct Title ever followed up with APS about the returned Check or asked for a payoff.
50. Moreover, neither Reneau nor Direct Title ever obtained a written or oral payoff quote or instructions from APS.
51. In addition to Reneau's failure to obtain a payoff letter, Reneau failed to obtain (or even try to obtain) any confirmation that APS would release its Trust Deed in exchange for payment to Interim.
52. Neither Reneau nor Direct Title ever asked APS to reconvey the Trust Deed prior to this litigation.
53. APS genuinely believed, and still believes, that it was entitled to foreclose the Trust Deed against the Property (the "Foreclosure").



54. And it certainly did not knowingly or wrongfully conduct the Foreclosure with the intent to injure any party.

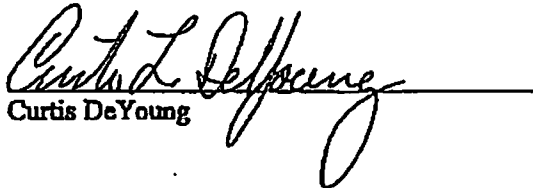
55. APS would have conducted the Foreclosure earlier, but Remington continued to promise to pay off the Note, and it did not tell APS when the Property was sold to Reneau.

56. I saw or heard nothing of the purported payoff letter (the "Payoff Letter") that Mr. Morse claims that I signed and sent to Remington until well into this litigation.

57. I did not sign the Payoff Letter--the signature is a forgery.

I, Curtis DeYoung, verify under criminal penalty of the State of Utah that the foregoing Declaration is true and correct as to my knowledge, information and belief

EXECUTED this 22nd day of July, 2011.

  
Curtis DeYoung

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of July, 2011, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **DECLARATION OF CURTIS**

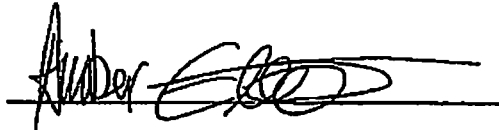
**DEYOUNG to:**

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A handwritten signature in black ink, appearing to read "David E. West", is written over a horizontal line.