

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

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**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

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

**Defendants.**

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**ORDER GRANTING RECEIVER'S  
PLAN OF DISTRIBUTION**

**Case No.: 2:14-cv-00309-RJS-DBP**

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

The Receiver's Proposed Plan of Distribution and Motion to Approve Notice of Proposed Plan of Distribution [Dkt. 947] (the "Plan of Distribution") seeks to authorize the Receiver's proposed plan to disperse the funds collected over the course of the past three years, after payment of the necessary administrative fees and costs (the "Distributable Funds"). In the Plan of Distribution, the Receiver set forth the efforts undertaken to secure and maximize the Distributable Funds, and the methodology used to determine the pro-rata share of the Distributable Funds to be dispersed to the APS Account Owners who fully complied with the Court's orders in establishing and paying their Loss Allocation (the "Compliant Account Owners").<sup>1</sup>

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<sup>1</sup> All capitalized terms shall be defined as per the Proposed Plan of Distribution [Dkt. 947].

In seeking the relief set forth in the Plan of Distribution, the Receiver provided notice to all APS Account Owners and Creditors by (a) mailing via U.S. mail and sending via electronic mail a Notice to each Account Owner and Creditor at their last known physical and email address, and (b) posting the proposed Plan of Distribution and Account Owner Claim List on the Receiver's website, [www.apsreceiver.com](http://www.apsreceiver.com). The Notice informed the recipient of the Receiver's proposed Plan of Distribution and Account Owner Claim List, provided a link to obtain these documents on the Receivership website or a phone number to call to obtain the documents, stated any objection shall be made in writing and filed with the Receiver at the address provided no later than November 20, 2017, provided the topics on which objections could be submitted, provided the manner in which said objections would be presented to the Court, and provided the date the Distribution Motion would be heard.

On December 5, 2017, the Receiver filed her Memorandum in Response to APS Client Responses and Objections to Proposed Plan of Distribution [Dkt. 966] ("Receiver's Memo."). In the Receiver's Memo, she informed the Court that a total of thirty-one (31) of the more than 5,500 APS Account Owners (approximately one-half of one percent) filed responses of which only eight could be characterized as legitimate objections. The Receiver provided a copy of each Account Owner response and objection as well as the Receiver's response to each to the Court *in camera* to protect confidential, sensitive client information. In addition, the Receiver indicated that she received more than 320 emails and over 250 voicemails and telephone calls with questions about the proposed Plan of Distribution. The Receiver has set forth her reply to the responses in the Receiver's Memo. and has effectively addressed the various responses and objections directly. (*See id.* at 7-17.)

A hearing on the Plan of Distribution was held on December 19, 2017. Mark R. Gaylord and Melanie J. Vartabedian of Ballard Spahr LLP appeared on behalf of the Receiver, Diane Thompson, and Ms. Thompson was present as well. Amy J. Oliver appeared on behalf of the United States Securities and Exchange Commission. No other parties or counsel were present.

The Court has reviewed the Plan of Distribution, the Receiver's Memo., the thirty-one (31) responses and objections filed by APS Account Owners, the representations of the Receiver made on the record during the hearing, the comments of other interested parties (including APS Account Owners and Creditors), and the record in this case. The Court finds that the Receiver properly provided notice and the opportunity be heard and object to the Plan of Distribution and that no further notice is required or necessary. The Court further finds that the relief sought by the Receiver for the authority to distribute the Distributable Funds as proposed is appropriate and proper.

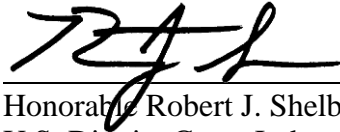
BASED on the foregoing; the reasons discussed at the hearing on December 19, 2017; and for GOOD CAUSE shown, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Plan of Distribution is GRANTED;
2. The distribution methodology for this distribution, and, if necessary, any other distribution as outlined in the Plan of Distribution is APPROVED;
3. The Receiver is hereby AUTHORIZED and DIRECTED to distribute the Distributable Funds as soon as reasonably practicable on a pro-rata basis to the Compliant Account Owners identified in the attached Exhibit A, subject to payment of administrative costs and expenses.

4. The Receiver is AUTHORIZED to hold back the total sum of \$175,000 of the Distributable Funds for the purpose of covering the on-going costs and expenses necessary to complete the distribution, wind up the receivership, file, and be heard with regard to a final accounting and approval to close the Receivership and discharge and release the Receiver of her duties in this case.

DATED this 20<sup>th</sup> day of December, 2017

BY THE COURT

A handwritten signature in black ink, appearing to read 'RJS', is written over a horizontal line.

Honorable Robert J. Shelby  
U.S. District Court Judge