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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.

**TENTH 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 Tenth Quarterly Status Report of Receiver as of September 30, 2016.

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 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

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.

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

This Tenth Quarterly Status Report is submitted to the Court in compliance with the Receivership Order for the period of July 1, 2016 to September 30, 2016 (“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 ECF No. 9 in this case.

3. Current Operations of Receiver

As we near completion, the Receivership continues to be very unique and complicated. 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, 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 The purported

³ Due to the asset freeze placed on the accounts of APS, on April 25, 2014 there were 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. As the Receiver has implemented her Amended Modified Plan of Liquidation, these numbers have been significantly reduced. *See infra*. Part 3.A–B.

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, the Receiver is wrapping up the search for information regarding assets of the Receivership Estate and has devised a plan for transferring or closing and distributing the remaining accounts.

The Court approved the Receiver's Amended Modified Plan of Liquidation ("Plan of Liquidation") and proposed successor administrator, Equity Trust, on February 27, 2015. The Receiver began the transfer of accounts to Equity Trust on April 1, 2015. Recently, the Receiver issued subpoenas in order to obtain documents related to assets held within remaining accounts of non-compliant account holders. Following the issuance of subpoenas, clients continue to call and e-mail regarding the value of their account(s), the amount required to satisfy their loss allocation, and the amount of any outstanding APS management fees. These calls also included questions on how to fund or satisfy the loss allocation; the status of transferred account(s) at Equity Trust Company, how to re-register the alternative assets held within account(s) from APS to Equity Trust Company, requests for duplicate copies of or changes to correct current and past tax forms, the status of the Receivership and pending lawsuits, and the amount of the future distributions they may receive. The Receiver also received several calls and e-mails from clients asserting they were not required to make a loss allocation, disputing the value of their accounts, and seeking to revalue their accounts despite being past the deadline established in the Plan of Liquidation for revaluation requests. The Receiver continues to receive communication from some clients that state they closed their accounts prior to the Receivership. The Receiver

⁴ 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.

investigates these claims as they arise and is closing accounts where her investigation reveals that the client did indeed close their account prior to the Receivership. This is in contrast to clients who have requested revaluations on assets, insisting they are worth nothing, but they do not fit into any of the permitted revaluation categories and never previously attempted to revalue their asset.

The Receiver continued to complete in-progress transfers on client accounts to Equity Trust under the Transition Services Agreement between the Receiver and Equity Trust. The Transition Services Agreement between the Receiver and Equity Trust expired on December 31, 2015. As of December 31, 2015, the Receiver had transferred 4,038 clients to Equity Trust. Despite the expiration of the Transition Services Agreement, clients that had submitted an Equity Trust account application prior to the expiration of the Transition Services Agreement have been accepted by Equity Trust. During the Reporting Period, the Receiver and her staff continued to process a limited number of accounts for transfer to Equity Trust where documentation was pending. This processing involved multiple steps with appropriate quality controls. A member of PBTK reviewed all account files to ensure all paperwork had been completed appropriately, that loss allocations had been appropriately booked into both the APS and accounting software, and that all precious documents and hard copies of files associated with the account have been gathered and shipped to Equity Trust or to the client.

Some previously transferred accounts have required additional documentation from the Receiver such as specific assignments of oil and gas leases. The Receiver is cooperating with all such requests for additional documents to facilitate re-registration of transferred assets.

The Transition Services Agreement expired on December 31, 2015; however, it contained a provision to allow the Receiver to seek and receive an Order of this Court allowing the “forced” transfer of certain accounts to Equity Trust by March 30, 2016 (the “Force Transfer Order”). The Receiver sought the Force Transfer Order after conducting a cost-benefit analysis of the time and expense associated with further collection efforts regarding these accounts, the continuing administrative and reporting requirements associated with these accounts, and the likelihood of recovering the loss allocation from these accounts. On February 19, 2016, this Court approved the Receiver’s request to force transfer certain non-compliant accounts to Equity Trust. *See Findings of Fact, Conclusions of Law, and Order on Motion for Order to Force the Transfer of American Pension Services, Inc. Accounts to Successor Equity Trust Company by March 30, 2016 and Memorandum in Support (Dkt. 720).* Under the Force Transfer Order, APS clients who had accounts “with balances of \$50,000 or less and owing \$5,000 or less” could be transferred to Equity Trust Company. *See Force Transfer Order, 4.* Clients who were transferred under the Force Transfer Order would have their easily liquidated assets (such as brokerage accounts) within their accounts liquidated, and the cash from this liquidation or any other cash within their accounts swept by the Receiver. These clients would also forego any future distribution from the Receivership Estate. Furthermore, these clients were not required to complete a direction letter, Equity Trust account application, or otherwise send correspondence to the Receiver regarding their account(s).

On March 21, 2016, the Receiver elected to transfer 714 accounts to Equity Trust under the Force Transfer Order and has processed those accounts. The Receiver sent each of these clients correspondence explaining the transfer of their account under the Force Transfer Order.

The Receiver swept cash from the accounts to the extent it was available totaling \$114,437. The Receiver forfeited an estimated \$1,198,994 in loss allocation related to the 714 forced transfer accounts. However, as this Court was informed, the projected costs of further collection efforts and administrative fees for these accounts was projected to far outweigh any potential loss allocation projected to be collected. As a result of the Force Transfer Order and the Receiver's ongoing efforts, ninety-seven (97) APS accounts remained in the Receivership at the end of the Reporting Period, and several of these accounts are in the process of being closed. At the end of the Reporting Period, approximately thirty (30) accounts have either paid their loss allocation or the Receiver has elected to resign as administrator and distribute the accounts, as explained in further detail below.⁵

At the end of the Reporting Period, the Receiver has transferred, terminated, or otherwise distributed 5,569 of the 5,665 accounts. Of the accounts transferred or closed at the end of the Reporting Period, 4,934 accounts have been transferred to Equity Trust Company.

Several of the remaining clients have sought extension agreements to fund their loss allocations. Clients with an extension agreement agreed to the loss allocation, a lien on their assets, and have provided a specific plan for creating the loss allocation payment either outside of or within their accounts, including which asset or assets the client is seeking to liquidate and the time frame expected to liquidate such asset. Most commonly, clients have sought extensions to foreclose on or complete the sale of real properties within their accounts to fund their loss allocations. All payments must be made no later than December of 2016 and the Receiver

⁵ Curtis and Michelle DeYoung account for eight (8) of the remaining accounts. These accounts are the subject of a settlement agreement between the Receiver and Michelle DeYoung. Furthermore, at the time of this filing, only seventy-four (74) accounts remain at APS.

retains the right to demand sooner payment. The Receiver has mailed demand letter to clients who have failed to honor their agreements.

During this and the prior Reporting Period, the Receiver has issued and processed responses to 123 subpoenas to clients who have not responded to the Plan of Liquidation and have not funded their loss allocation. In the subpoenas, the Receiver requested documents related to their assets, consisting primarily of LLCs or promissory notes, including tax returns, profit and loss statements, information on any real estate held within an LLC, and balance sheets for LLCs within accounts. In accounts containing LLCs, the client controlled the LLC activities, books, and records, and APS files had no information about the assets held by the LLCs. The Receiver has issued the subpoenas to allow the Receiver to adequately assess the financial condition of the LLC, including the existence of cash in the LLC to pay the loss allocation, as well as the underlying value of any assets held within the LLC. With respect to the promissory note subpoenas, the Receiver sought to determine if the borrowers on the notes have paid off the note or have sent payments to the client directly rather than to the APS account and/or whether there is any security or assets underlying the notes which may be liquidated to satisfy the loss allocation. This work and research conducted by the Receiver's counsel has formed the foundation for her next course of action, including liquidating assets to satisfy the loss allocation or recovering loan payoffs which were not paid to the APS account. The issuance of subpoenas has also had the effect of encouraging some clients to fund their loss allocations and transfer from APS. The Receiver believes that the cost of this effort is justified by the additional loss allocation recovery from these previously non-compliant clients. Due to the success of encouraging payment or otherwise obtaining asset information, the Receiver issued subpoenas to

all other remaining account holders regardless of the assets held within the account. A summary of the results of the issued subpoenas is as follows:

- 123 subpoenas issued.
 - Six (6) were served but did not respond.
 - Ten (10) have been avoiding service of process.
 - 107 responses were received.
 - Of the 107 responses received:
 - Thirty-two (32) clients have paid their loss allocation. The total loss allocation collected from these clients was \$652,954.36.
 - Of the thirty-two (32) clients that paid, seven (7) were transferred to and accepted by Equity Trust and twenty-five (25) accounts were distributed to the clients and an IRS Form 1099-R will be issued for the distribution.
 - Ten (10) have arranged payment plans with the Receiver. Thus far, \$84,102.15 in payments has been received. Two (2) clients are attempting to sell real estate within their accounts to fully fund their loss allocation.
 - The Receiver has reviewed the subpoena responses received for the remaining sixty-five (65) accounts.
 - The Receiver has determined that thirty-four (34) accounts have insufficient assets to continue pursuit of the loss allocation. Therefore, the Receiver has decided to resign from these accounts, assign the remaining assets, and issue IRS Forms 1099-R to each of the clients for the full reported value of the account. The Receiver has advised the clients of her decision on each account. The assignments and an explanatory cover letter are sent to the client via FedEx or other means requiring the client to affirm receipt. This is important to allow there to be a clear date upon which the assignment and distribution is made if the clients are eligible for or choose to rollover these distributions to a new account. Some clients are refusing delivery of these assets.
 - The Receiver has determined the final thirty-one (31) accounts that were issued subpoenas have sufficient assets to liquidate and fund the loss allocation.

As of this filing, the Receiver has sought permission from this Court to liquidate parcels of real property within four (4) accounts, via sheriff's sale or other public auction, in order to fund the loss allocation for these accounts. The Receiver will file additional motions with the Court, based on asset type, seeking approval to liquidate certain assets. After filing the additional motions, the Receiver will have sought permission to liquidate all of the remaining accounts.

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 as necessary. There were three postings in this Reporting Period. First, the last quarterly report (July 28, 2016). Second, Statement of Curtis DeYoung in Advance of Plea (Sept. 12, 2016). Third, documents associated with the approved settlement with Michael Memmott Sr. and Shauna Memmott (Sept. 15, 2016).⁶ We also updated the Frequently Asked Questions page.

The Receiver continues 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. The clients have typically not paid their administrative fees and APS resigned and reported the account as a distribution. The IRS has now contacted the clients requesting that taxes be paid which is stimulating these requests. The Receiver and her staff have investigated and responded to all requests for amendments as they are received. In addition, the Receiver has been contacted by several former APS client family members where clients have died. The Receiver is working

⁶ The Receiver is working to complete a settlement with Deni Memmott and the Estate of Michael Memmott Jr. during the next Reporting Period.

with the estate representatives to re-register the accounts for the beneficiaries, complete the loss allocation payments and distribute the accounts.

The Receiver has received many calls and e-mails from clients who have indicated that the value of their account that was transferred to Equity Trust was incorrect or have indicated other problems with their accounts after transfer to Equity Trust. The Receiver and her staff continue to hold conference calls with Equity Trust to resolve these client concerns. The clients who have transferred have been in contact with 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 retitling or sale of real estate and other property. The Receiver staff has responded and researched these requests and provided lost note bond verification.

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 Clients' anniversary date. As possible, the Receiver has collected the outstanding management fees as part of the transfer to Equity Trust. The Receiver elected not to charge continuing management fees after June 30, 2015 because the Receiver ceased "normal" business operations on July 3, 2015. During the prior Reporting Period, the Receiver finalized a contract with a collections agency, Express Recovery, to assist with the collection of remaining outstanding management fees. The Receiver's contract with Express Recovery does not increase the administrative costs of the Receivership; rather, Express Recovery is paid a portion of the amounts it successfully collects. The outstanding amount of management fees owed by clients at

the end of the Reporting Period is \$389,365.42.⁷ At the end of the Reporting Period, Express Recovery has recovered \$21,383.57, and cancelled \$50,101.51 in fees due to bankruptcies and other required reasons. Certain clients have formally disputed the fees and the Receiver has responded to required verifications as requested by Express Recovery. The Receiver will continue to attempt to collect fees directly from the remaining account owners until disposition of their accounts is resolved.

The Receiver continues to administer the APS Employee's 401(k) Plan. Most of the employees have requested and received distributions of their plan assets. The Receiver must file required forms and maintain the plan until the final resolution of the settlement with Michelle DeYoung. Upon such resolution, the plan will be terminated. As detailed in previous Quarterly Status Reports, the Receiver completed the shutdown of the APS office location in Riverton, Utah on December 18, 2015. The Receiver coordinated with the SEC and the Department of Justice regarding document retention and storage requirements. Iron Mountain now stores APS documents to be retained for the duration of the Receivership. 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 ongoing litigation.

The computer systems utilized at APS were relocated, and the Receiver continues to utilize those APS computer systems to access information, prepare required reporting, and complete transactions on behalf of clients seeking to make loss allocation payments. The

⁷ During this Reporting Period, the Receiver assigned the final \$70,421.63 in management fees for all remaining accounts to Express Recovery for collections.

Receiver will be required to file IRS Forms 1099-R and IRS Forms 5498 for tax year 2016 in early 2017.

The Receiver is filing motions with the Court regarding disposition of the remaining IRA accounts after final subpoenas responses are processed. First, prior to this filing but after the end of the Reporting Period, the Receiver filed a motion with this Court seeking approval to liquidate certain parcels of real property, via sheriff's sale or other public auction, from within four remaining accounts to fund the respective loss allocations, outstanding management fees, and the cost associated with liquidation. The Receiver is preparing similar motions seeking to authorization to liquidate promissory notes, certain stocks, and other assets. Finally, the Receiver is preparing a motion on her proposed method of liquidation of LLC interests held within remaining accounts to fund outstanding loss allocations. Through each of these motions, the Receiver will request Court approval for liquidating assets for failing to comply with the Plan of Liquidation.

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. Once those events have occurred, the Receiver will issue an IRS Form 1099-R for the reported value of the assets and possibly also place a lien on those distributed assets for the remaining accounts not resolved by the motions described above.

The deadline for submitting a revaluation or in-kind exemption request under the Plan of Liquidation expired July 1, 2015. However, there have been a few additional requests for

account revaluations and in-kind exemption requests during the Reporting Period. The Receiver has processed these supplemental revaluations and in-kind exemption requests using the process outlined in the Plan of Liquidation. To date, the Receiver has granted a total of eighty-five (85) revaluations, reducing the total amount of assets assessed a loss allocation by \$7,587,960.40 or \$758,796.04 in loss allocation payments. To date, the Receiver has also granted seventy-eight (78) in-kind exemptions, which has reduced the total amount of assets assessed a loss allocation by \$13,971,011.89 or \$1,397,101.19 in loss allocation. The revaluations and in-kind treatment of assets were contemplated in the Plan of Liquidation and will not have a material negative impact on the Plan of Liquidation.

The Receiver continues to receive returned mail on correspondence or documents sent to clients. The Receiver has endeavored to determine updated addresses and resend the mailings to clients and has now advised the senders to redirect to Equity Trust.

As part of the transfer of accounts, clients' loss allocations are documented by a Contingent Repayment Agreement ("CRA") issued to the account or client as applicable. The CRA is similar to a promissory note, and represents the amount clients have paid to fund their loss allocation.⁸ The Receiver will use the amounts listed on the CRAs to make future distributions, if any, to the clients on pro-rata basis. Because the Receiver's recovery of assets is ongoing, the amount of Receivership Assets available for distribution is currently unknown.

⁸ In accordance with this Court's ruling on August 7, 2015, some clients will have the CRA issued to them personally, as they are ineligible to contribute to their retirement plan or have otherwise funded their loss allocation from asset outside of their retirement plan. *See infra*, Part 3.B.2; *see also* Findings of Fact, Conclusions of Law, and Order Granting Receiver's Motion for Order Requiring All Remaining American Pension Services, Inc. Account Holders to Transfer Accounts to Equity Trust Within Thirty Days, and Authorizing the Receiver to Exercise All Rights to Collect Loss Allocation Payments Under the Liquidation Plan. (Dkt. 592).

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. One client advised the Receiver that he intends to abandon his interest in his CRA. 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, if any, that will be distributed to clients.

There have been inquiries about the transferability of the CRA by clients who transferred to Equity and now desire to select another custodian/administrator for their accounts, and by those custodians/administrators that are reluctant to accepting the CRA as an account asset. The Receiver has conducted several conference calls with clients and new administrators/custodians to clear up this confusion and has posted clarifying information on her website. Clients are permitted to transfer the CRA to a successor custodian/administrator and no re-registration is required since the CRA is issued in the name of the account not the custodian. If a payment(s) is made pursuant to the CRA, for efficiency purposes, the Receiver provided in the Transition Services Agreement that payment would be made in a lump sum to Equity Trust (with an allocation schedule indicating the appropriate account recipients). Equity Trust is contractually obligated to process the payment to its accounts or track and forward the payments to accounts transferred to successor custodians or distributed clients.

The transfer of accounts from APS to Equity Trust requires that all assets previously titled in the name of APS for the benefit of the client be re-registered to reflect ownership as 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 and is currently working with Equity Trust counsel to extend the power of attorney in anticipation of the completion of the Receivership. 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.

The Receiver also continues to receive requests from title and escrow companies involved in real estate transactions for former APS clients where pre-receivership documentation is incomplete and must be corrected in order for the transaction to close. The Receiver continues to assist with these requests.

The Receiver also continues to work with remaining APS 401(k) accounts. As reported in previous Quarterly Reports, ExpertPlan—an administrator and record-keeper for 401(k) accounts—resigned in September 2015. As a result of the ExpertPlan resignation, APS moved all 401(k) accounts to Equity Trust for administration and record-keeping. All 401(k) accounts were moved; however, only those accounts and plans that have funded their loss allocations have been released from the Receivership. At the end of the Reporting Period, there were a total of thirty-five (35) 401(k) accounts that have not funded their loss allocation. These thirty-five (35) accounts represent \$202,668.84 in remaining loss allocation. The laws surrounding 401(k) accounts are complicated. The Receiver continues to work within the bounds of the law and with clients to fund their loss allocations and remove the remaining thirty-five (35) 401(k) accounts from the APS Receivership.

In this and the prior Reporting Period, the Receiver prepared two document responses in response to requests by the Department of Labor. The Receiver's response to the Department of Labor included over 1,700 pages of documents, as well as a history of over 30,000 transactions

to the Department of Labor relating to AP4S and the APS employee 401(k) plan. The Receiver also participated in two interview sessions with the Department of Labor. The Receiver is awaiting the outcome of these investigations and will continue to work the Department of Labor as requested. The Receiver also responded to a subpoena from the State of Illinois Securities Department.

After extensive attempts, the Receiver has elected to cease any additional effort to uncover assets of the Receivership Estate by obtaining information from Curtis DeYoung. Mr. DeYoung is now incarcerated and awaiting sentencing. During this reporting period the Receiver and her staff answered and provided documentation to several SEC and FBI requests related to the revocation of Curtis DeYoung's release and other criminal proceedings. The Receiver's counsel also prepared for and deposed Dean Becker.

The Receiver and her counsel have conducted meetings with the SEC and US Attorney's office to discuss and coordinate the treatment of and distribution to victims of any restitution payments made by Curtis DeYoung. The Receiver has also answered calls and e-mails regarding the Curtis DeYoung criminal matter and SEC settlement. The Receiver continues to refer all inquiries regarding the Curtis DeYoung criminal matter to the U.S. Attorney's Office.

4. Assets Uncovered or Sold During Reporting Period

The Receiver has uncovered a number of Receivership Assets. As previously reported, the Receiver has sold certain assets of the Receivership Estate including the 1922 Studebaker, the Ford Model T, coke machines, and geode at auction on April 23, 2016 and collected \$13,005.00.

On April 7, 2016, the Receiver and her staff discovered assets hidden by Curtis and Michelle DeYoung. The assets include U.S. mint coins, jewelry, and loose gems, in addition to other assets. The Receiver's counsel, along with a Deputy U.S. Marshal, took inventory of the assets. The assets are now secured in safe deposit boxes at a local bank. Some items were appraised by Rust Rare Coin and the Receiver intends to sell these assets for the benefit of the Receivership Estate upon clearance by the Department of Justice. This is expected to occur after the sentencing of Curtis DeYoung, which is anticipated in mid-December 2016.

In addition, the Receiver discovered the existence of a corporate entity owned by Michelle DeYoung, Mirocc LLC, which was not disclosed by Michelle. The Receiver has contacted counsel for Michelle to demand disclosure of all assets owned by the LLC, but has yet to receive a response.

On April 18, 2016, Curtis agreed to settle with the SEC and signed the Consent of Curtis L. DeYoung to Entry of Judgment Order on April 18, 2016, which Consent has been filed with the Court by the SEC (Dkt. 745). Receiver's counsel participated in the settlement discussion. The Court signed the Judgment as to Curtis L. DeYoung on April 21, 2016 (Dkt. 747). The SEC has filed a request with the Court withdrawing its request for imposition of civil penalties.

The Receiver has cooperated with, provided all information requested by, and provided access to assets held by the Receiver as requested by the SEC, Department of Justice ("DOJ"), and Federal Bureau of Investigation ("FBI"). The Receiver will continue to coordinate with the SEC, DOJ and FBI on the valuation and sale of the Receivership Assets. In addition, the Receiver's counsel provided assistance to the U.S. Attorney and FBI in connection with hearings

held to revoke the pre-trial release of Curtis DeYoung. Staff of the Receiver was asked to attend and testify at the revocation proceedings.

Other personal items of Michelle and Curtis were stored in property leased by FrontLine, such as furniture and paintings. The Receiver took possession of this personal property. On May 6, 2016 the Receiver's counsel received a letter from Candace DeYoung claiming that the seized furniture belonged to an LLC formed by her, Rock Top Property Services LLC. On June 28, 2016, the Receiver released the items to Candace DeYoung following the receipt of a notarized disclaimer from Michelle DeYoung.

The Receiver has determined that the DeYoung residence is of no value to the Receivership Estate because it has no equity. Under the settlement agreement with Michelle DeYoung, the Receiver agreed to abandon claims related to the DeYoung residence and the furniture located therein based on her determination that the DeYoung residence will not benefit the Receivership Estate. Franklin American Mortgage filed a motion with this Court requesting the Freeze Order be lifted with respect to the residence for the purpose of instituting foreclosure proceedings. Michelle DeYoung has filed an opposition to this Motion. The Receiver has not filed and does not intend to file any response as there is no benefit to the Receivership Estate. The Receiver will also receive a number of APS IRA, Roth IRA, 401(k), and Roth 401(k) accounts currently owned by Curtis and Michelle DeYoung as part of the settlement.

The Receiver is aware of a cabin located in Island Park, Idaho for which Curtis paid for extensive renovations and furniture following a flood. The Receiver has been unable to gain access to the cabin to assess the value of personal property located within. The Receiver agreed to release a Notice of Lis Pendens filed on the cabin pursuant to her settlement with Michelle.

The Receiver recently discovered that APS had filed Notices of Interest on certain real property indicating that the previous transfer of said property was without consideration and was made with the agreement that the owner of the property would remit proceeds of its sale or disposition to APS. The Receiver intends to pursue additional information and to assert efforts to recoup any interest that may have been fraudulently transferred for the benefit of the Receivership estate.

The Receiver continues to evaluate her options regarding the remaining assets and real property owned by APS and Curtis. 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.

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

The Receiver filed claims against APS's "CrimeShield Advanced" policy issued by The Hartford with policy limits of \$1 million, as detailed in previous Quarterly Status Reports. The Receiver and The Hartford agreed to terms of a settlement which was approved by the Court (Dkt. 703) on February 9, 2016. The settlement agreement provided \$405,000.00 to the Receivership Estate, and avoided the cost and expense of protracted litigation.

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. 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 million with the Court. The case was originally assigned to Judge Dee Benson. Federal Insurance Company did not seek leave to file an action against the Receiver as required by the Receivership Order; however, the Receiver

moved to have the Complaint consolidated as an ancillary action to this case. The Court heard argument on the motion on June 28, 2016. The next day, the Court ordered the case transferred to Judge Shelby for further disposition with this case. Danny Quintana, Curtis's civil defense attorney, has stated in Court proceedings that he intends to seek interpleaded funds for defense work done on Curtis's behalf. Additionally, on June 29, 2016, Curtis had new counsel—a criminal defense attorney—file a notice of appearance in the Federal Insurance case. (Dkt. 28 in Federal Insurance case). Curtis also filed a Notice of Tender of Defense in which he seeks the release of interpleaded insurance funds to pay for defense costs in his pending criminal charges. (Dkt. 29 in Federal Insurance case). Several discussions with counsel were conducted in an attempt to settle this matter. On October 5, 2016, the Receiver filed a Motion for Summary Judgment asserting the Receivership's interest in the entirety of those funds.

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 largest settlement achieved by the Receiver is that with First Utah Bank, the custodian of the Master Trust Account. The settlement agreement provides that First Utah would provide value to the Receivership with cash and other consideration in excess of \$6 million. The Receiver believes the settlement agreement offers the highest potential recovery for the Receivership Estate and IRA Accounts Owners and the best method to carry out the Court's mandate to efficiently and economically administer the Receivership Estate. After extensive briefing, notice, an objection period, and a hearing in which three intervenors objected, the Court approved the settlement agreement, and entered findings of fact, conclusions of law, and an order granting the Motion to Approve Settlement Agreement (Dkt. 683). The settlement

with First Utah Bank included a claims bar order. The order approving the settlement and claims bar order were certified as a final judgment under Rule 54(b) of the Federal Rules of Civil Procedure to permit appeal of the Court's determination. On January 29, 2016, the three intervenors filed a notice of appeal (Dkt. 694) with the Court. Counsel for the Receiver has entered an appearance and has strongly contested the appeal. The Receiver and her counsel conducted legal research and coordinated the filing of response briefs. The Receiver, First Utah Bank, and the SEC filed individual responses to the initial brief of the three intervenors, after which the three intervenors filed their reply. Counsel for the Receiver met with counsel for First Utah Bank and the SEC and spent considerable time preparing for oral argument. The Tenth Circuit Court of Appeals held oral argument on the appeal on September 20, 2016. Counsel to the Receiver, the SEC, and First Utah Bank presented their case. The Receiver is awaiting a decision from the Tenth Circuit Court of Appeals.

In addition to the Federal Insurance Company interpleader lawsuit, the Receiver has filed three ancillary lawsuits to pursue recovery on behalf of APS clients (*Thompson v. Curtis DeYoung and Michelle DeYoung*, No. 2:14-cv-00870-RJS; *Thompson v. Michael Memmott Sr. et al.*, No. 2:14-cv-00744-RJS; and *Thompson v. The Corporation of the President of The Church of Jesus Christ of Latter-day Saints*, No. 2:16-cv-00792-DN), the status of each is discussed below in Section 8.⁹

As part of her settlement agreement with the Receiver, Michelle DeYoung was to provide documentation regarding collectibles and judgments (and settlements) belonging to APS.

⁹ Due to the death of Michael Memmott, Jr. in *Thompson v. Michael Memmott Sr. et al.*, Case No. 2:14-cv-00744-RJS, Deni Memmott, personal representative for the estate of Michael Memmott Jr. has been substituted as a defendant.

Michelle provided only a one-page docket sheet for each of approximately fifty (50) outstanding judgments and settlements in favor of APS. These docket sheets provided no substantive information related to the settlements or judgments. Michelle also provided a list of collectibles, in which she included assets associated with the Memmotts, ownership interests of APS in stock, entities, and other similar assets. Finally, Michelle included both her and Curtis's APS accounts as a collectible and judgment. Pursuant to the settlement agreement, the Receiver notified the Court that she would be pursuing the judgments and settlements in favor of APS. The Receiver also notified the Court that she would be pursuing, and had begun pursuit of, all claims and ownership interests of APS associated with Michael Memmott Jr., Michael Memmott Sr., and Shauna Memmott. The Receiver also noted that all stocks and other entities owned by APS were considered part of the Receivership Estate under the Receivership Order and was not part of the defined collectibles and judgments under the settlement agreement. Finally, the Receiver notified the Court that Curtis and Michelle's APS accounts were not part collectibles and judgments, but were treated separately under the settlement agreement.

During the Reporting Period, the Receiver and her staff spent considerable time obtaining available documents for each of the judgments and settlements in favor of APS. During the next Reporting Period, the Receiver and her legal counsel will review the available case files for all of the approximately fifty (50) purported judgments and settlements and determine the collectability of each judgment and settlement.

6. Distributions to Clients and Creditors

At the time of this filing, sufficient funds have been recovered to cover the loss caused by the misappropriation of approximately \$25 million from the APS Master Trust Account by

Curtis. However, there are APS clients who have failed to comply with the loss allocation requirement of the Plan of Liquidation. The Receiver has filed or will soon file motions with the Court proposing a method by which compliance with the loss allocation for final remaining accounts can be secured. Thus, there have been no distributions to any APS clients or creditors at this time. The Receiver will file a Plan of Distribution for Court approval before any distributions are made.

7. Costs of Receivership

The costs of the Receivership remains 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, and pursues all available avenues to recover the approximately \$25 million misappropriated by Curtis. 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) 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 \$29.9 million to date. This amount does not include management fees collected through the Receiver's operation of APS or the First Utah Bank settlement proceeds currently subject to an appeal with the Tenth Circuit Court of Appeals. These proceeds and management fees collected went first 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 \$1.85 million in unencumbered funds combined in the Master Trust Account and APS operating account.

The Receivership continues to strive to reduce costs and make decisions to speed the completion of the operational aspects of the Receivership and resolve all pending litigation. However, many of the aspects related to litigation are beyond the Receiver's control. The Receiver has spent considerable time defending Receivership Assets from motions filed by Curtis and Michelle DeYoung, as well as three intervenors that objected to and appealed the settlement with First Utah Bank. As noted above, during previous Reporting Periods the Receiver reviewed a list of collectibles and judgments submitted by Michelle and notified this Court of the Receiver's intent to pursue those collectibles and judgments. However, Michelle DeYoung has a motion seeking assets that were either disclaimed or were not assigned to her in the settlement with the Receiver. The Receiver has filed opposition to that motion. Furthermore, two of Michelle's previous attorneys have filed motions to intervene seeking the attorneys' fees for work done on behalf of Michelle that remain unpaid.

8. 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 majority of 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 and have analyzed several of the cases, held discussions with opposing counsel and are proceeding with filings to dispose of these cases.

On June 7, 2016, counsel for the Receiver made an appearance in *APS v. Direct Title Company*, a Utah District Court case. Counsel updated the Court on the progress of the Receivership and that the stay of litigation from the Receivership Court was still in effect. The Utah District Court entered a minute order staying the case for an additional four months. During this Reporting Period, the Receiver discovered that this case was intricately involved with another case that resulted in a judgment against APS, which is noted on the list of creditors attached to this report. On October 4, 2016, the Receiver requested and was granted an additional stay until January 4, 2017. During the next reporting period, the Receiver will determine the appropriate course of action.

APS was named as a defendant in the case of *Hardy v. Freitas*, in San Joaquin County, California. Counsel for Receiver has reviewed the case and, during this Reporting Period, agreed to a consent to judgment. Neither the Receiver nor her counsel has received any further documentation from opposing counsel to complete the consent to judgment. The Receiver determined the consent to judgment to be the appropriate course of action. The Receiver and her counsel determined that the defense of this action would be expensive and by consenting to the judgment, the plaintiff is simply becoming a creditor of APS and will receive minimal funds from the Receivership Estate, as each of the APS clients that complied with the Plan of Liquidation are in first position to recover from the Receivership Estate.

APS was also named as a party in *U.S. Bank v. Welsh* in Maine state court. The action related to a foreclosure on real property held in an APS client account. After reviewing the pleadings, counsel for the Receiver contacted opposing counsel, who stipulated to a dismissal of APS as a party. On April 22, 2016, the parties filed a stipulated motion to dismiss APS, which was granted by the Maine court.

The Receiver was notified by previous counsel of an additional case where APS was a plaintiff on June 15, 2016. The case, *APS v. Huettinger*, is in Utah District Court. That same day, counsel for the Receiver filed a notice of substitution of counsel and notice of the Receivership Order and stay of all litigation. The next day, on June 16, 2016, counsel for the Receiver appeared in the case at an order to show cause hearing. Counsel described the APS Receivership and the progress of the Receivership. Counsel also notified the Court of the stay of litigation. The Utah District Court stayed the case and a status update was filed in September 2016. During this Reporting Period, the Receiver filed a motion for default judgment against Mr. Huettinger, as he did not answer APS's complaint and a default certificate had been entered. The Utah District Court granted the default judgment in favor of the Receiver for \$13,871.19. The Receiver will be sending a demand letter for payment to Mr. Huettinger, and in the event the Receiver's demand is ignored, the Receiver will utilize Express Recovery to collect on the judgment.

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. Upon the completion of the conditions precedent to the settlement agreement, the Receiver will

seek dismissal of the action against Michelle. One such condition precedent is Michelle's dismissal of her appeal at the Tenth Circuit Court of Appeals in *SEC v. American Pension Services, Inc.*, No. 15-4033. Furthermore, the Receiver will seek dismissal of her action against Curtis in light of his settlement with the SEC, and his guilty plea to criminal charges.

The Receiver continues to negotiate a settlement agreement with Deni Memmott, the personal representative of the estate of Michael Memmott Jr., in *Thompson v. Michael Memmott Sr. et al.* The Receiver finalized settlement with Mr. Memmott Sr. and Shauna Memmott on August 12, 2016. The Court approved the settlement on September 2, 2016 and the motion to dismiss was signed September 14, 2016.

On June 24, 2016, the Court granted the Receiver's Ex Parte Motion for Leave to File a Civil Action Against the Corporation of the President of The Church of Jesus Christ of Latter-day Saints. (Dkt. 774). The Receiver filed an action on July 15, 2016 against The Church of Jesus Christ of Latter-day Saints ("LDS Church") for the return of Curtis and Michelle DeYoungs' charitable contributions of approximately \$240,000 that were donated from funds fraudulently obtained from APS Account Owners. Counsel for the Receiver has reviewed responsive pleadings filed by the LDS Church, conducted discussions with counsel for the Church and has prepared and agreed to a scheduling order for the case. Counsel for both parties believe the prospect for settlement is high, as indicated in the attorney planning meeting report filed with the Court.

9. 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, are assets and

expenses attributable to APS clients. Third, are assets and expenses related to APS 401K accounts. It should be noted that the Receiver transferred all APS 401K 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, 2016, the Operating Account¹⁰ of APS was as follows:

	July 1, 2016 through <u>September 30, 2016</u>	<u>Receivership Cumulative</u> ¹¹
Beginning Balance	\$ 55,244.15	\$ 129,251.80
APS Receipts ¹²	\$ 15,948.04	\$ 5,415,391.97
APS Expenses	\$ 6,126.12	\$ 1,215,581.13
APS Extraordinary Expenses ¹³	\$ 0.00	\$ 4,263,996.57
APS Operating Account Balance	\$ 65,066.07	\$ 65,066.07

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.

¹⁰ The Operating Account is a combination of the operating accounts for APS and APS 401K; however, these accounts are maintained separately by the Receiver.

¹¹ This reflects the balance of the account at the beginning of the Receivership.

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 amount is the amount of Receivership Fees and Expenses approved by the Court and paid from the APS Operations Account. As noted in the previous Quarterly Report, this number was to be reported once funds were approved and distributed.

APS Master Trust Accounts

As of September 30, 2016, the APS Master Trust Account and related expenses, receipts, and disbursements are as follows:

	July 1, 2016 through <u>September 30, 2016</u>	<u>Receivership</u> <u>Cumulative</u>
Beginning Balance	\$ 3,172,669.13	\$ 25,962,173.24
Receipts	\$ 343,387.64	\$ 64,118,462.27
Expenses	\$ 1,722,433.33	\$ 88,287,012.07
Balance	\$ 1,793,623.44	\$ 1,793,623.44

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, 2016, the APS 401K Trust Account and related expenses, receipts, and disbursements are as follows:

	July 1, 2016 through <u>September 30, 2016</u>	<u>Receivership</u> <u>Cumulative</u>
Beginning Balance	\$ 0.00	\$ 3,842,908.62
Receipts	\$ 0.00	\$ 7,150,259.60
Expenses	\$ 0.00	\$ 10,993,168.22
Balance	\$ 0.00	\$ 0.00

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 list of Receivership Assets and its actual or estimated value 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. 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.

12. Creditors and Claim Proceedings

A list of known creditors, their addresses, and the amounts of their claims is attached as Exhibit E. 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

creditor 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.

Before this filing, but after the Reporting Period, the Receiver filed a motion with this Court seeking to establish a claims bar date. Upon this Court's approval of the claims bar date, the Receiver will post notice of the claims bar date to the Receivership website and will notify potential creditors of the claims bar date. This step is necessary as the Receiver continues the wind-down of this Receivership.

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. 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 Receiver to complete collecting loss allocation payments from non-compliant clients, force the liquidation of client assets where available to satisfy the loss allocation, and/or

issue an IRS Form 1099 where appropriate and complete the appellate process related to the settlement with First Utah Bank.

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

DATED this 28th day of October, 2016.

/s/ Jeffrey D. Enquist

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Melanie J. Vartabedian, Esq.

Tesia N. Stanley, Esq.

Jeffrey D. Enquist, 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 **TENTH QUARTERLY STATUS REPORT OF RECEIVER** was served to the following this 28th day of October , 2016, 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; 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; rwing@rqn.com; mpugsley@rqn.com; jparrish@rqn.com; bwride@rqn.com; EDonohue@hinshawlaw.com; ben@BBG-Law.com; colemere@wronalawfirm.com; armand@hwmlawfirm.com; jerrym@mooneylaw.com

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/s/ Jeffrey D. Enquist

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- 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, 2016 through September 30, 2016

	July 1, 2016 through Sept 30, 2016	Receivership Cumulative
Beginning Cash Balance	\$ 55,244.15	\$ 129,251.80
Cash Receipts		
Business Revenue	15,948.04	3,576,213.27
Sale of Property	-	340,178.70
Insurance Proceeds	-	405,000.00
Transition Services Fee	-	1,050,000.00
Legal Settlements	-	44,000.00
Total Cash Receipts	<u>15,948.04</u>	<u>5,415,391.97</u>
Cash Disbursements		
Appraisal Fees	-	7,365.00
Auto Expense - Employee	-	1,817.63
Bank Charges	-	65,365.15
Building Rent	-	67,793.46
Comcast Internet Services	-	2,661.11
Computer Software	-	4,438.43
Computer Support Services	2,352.47	24,077.14
Contract Labor	-	87,902.25
Copier Expense	-	3,383.76
Credit Card Processing	219.86	5,612.69
Document Disposal	-	2,598.64
Docuware Support	-	-
Employee 401(k) Program	2,075.00	38,513.08
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	15.00	652.90
Litigation Resolution	-	1,673.33
Meals & Entertainment	-	5,487.86
Mediation Services	-	7,687.50
Miscellaneous Operating Expense	-	5,743.17
Office supplies	-	14,039.25
Outside Contracting Services	-	23,043.10
Postage	218.79	25,284.47

AMERICAN PENSION SERVICES, INC. AND AMERICAN PENSION 401K SERVICES, INC.
Business Operating Cash Receipts and Disbursements
For the Period July 1, 2016 through September 30, 2016

	July 1, 2016 through Sept 30, 2016	Receivership Cumulative
Printing Expenses	-	10,264.27
Professional Services	-	1,245.00
Repairs & Maintenance	-	11,961.33
Storage	1,245.00	13,335.59
Subscription Services	-	-
Taxes - Other	-	3,456.13
Taxes - Payroll	-	3,400.00
Travel Expense - Reimbursement	-	552.97
Utilities	-	86.01
Web Site Fees	-	24,325.84
Total Expenses	<u>6,126.12</u>	<u>1,215,581.13</u>
Extraordinary Expenses:		
Receivership Fees and Expenses	-	4,263,996.57
Total Extraordinary Expenses	<u>-</u>	<u>4,263,996.57</u>
Total Cash Disbursements	<u>6,126.12</u>	<u>5,479,577.70</u>
Ending Cash Balance	<u>\$ 65,066.07</u>	<u>\$ 65,066.07</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.

APS 401(K) TRUST ACCOUNT**Cash Receipts and Disbursements****For the Period July 1, 2016 through September 30, 2016**

	January 1, 2016 through June 30, 2016	Receivership Cumulative
Beginning Cash Balance	\$ -	\$ 3,842,908.62
Cash Receipts		
Gain	-	230,316.68
Interest	-	660,081.68
Principal	-	1,458,031.24
Rent	-	192,501.19
Assets Sold	-	2,283,467.21
Money Market Transfer In	-	1,452,984.48
Contribution - Loss Allocation	-	104,387.71
Refund of Fees	-	2,160.57
Employer Contribution	-	423,205.62
Employee Contribution	-	343,123.22
Total Cash Receipts	<u>-</u>	<u>7,150,259.60</u>
Cash Disbursements		
Expenses	-	67,371.88
Fees	-	149,524.88
Transfer to Equity	-	4,854,664.11
Real Property Tax	-	24,378.57
Loss Allocation	-	880,949.51
Assets Purchased	-	4,995,543.76
Loan Payment	-	20,735.51
Total Disbursements	<u>-</u>	<u>10,993,168.22</u>
Ending Cash Balance	<u>\$ -</u>	<u>\$ -</u>

EXHIBIT B

AMERICAN PENSION SERVICES MASTER TRUST ACCOUNT**Cash Receipts and Disbursements****For the Period July 1, 2016 through September 30, 2016**

	July 1, 2016 through <u>September 30, 2016</u>	<u>Receivership Cumulative</u>
Beginning Cash Balance	\$ 3,172,669.13	\$ 25,962,173.24
Cash Receipts		
Contributions for Loss Allocation	249,303.54	6,302,817.49
Contribution	-	1,119,475.88
Gain	60,983.43	4,273,369.99
Interest Payments	4,365.53	7,254,731.85
Principal Payments	24,053.05	21,276,319.40
Rent	4,142.96	1,719,931.13
Rollovers	-	1,113,941.33
Assets Sold	-	17,810,465.27
Direct Transfer In	-	2,186,306.37
Dividends	-	43,985.48
Bank Interest	539.13	9,368.23
Other Rents	-	1,500.00
Other Income	-	2,241.51
Fees Collected	-	679.85
401k Loss Allocation Collections	-	1,003,328.49
Total Cash Receipts	<u>343,387.64</u>	<u>64,118,462.27</u>
Cash Disbursements		
Transfer to Equity	22,656.75	48,918,227.42
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	-	2,723,516.88
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	-	1,249,037.15
Fees Paid	12,111.20	1,971,994.63
Property Tax	-	309,312.96
Charitable Gift Annuity	-	74.36
Direct Transfer Out	26,516.80	40,530.96
Receivership Administrative Costs	1,661,058.58	3,661,058.59

AMERICAN PENSION SERVICES MASTER TRUST ACCOUNT
Cash Receipts and Disbursements
For the Period July 1, 2016 through September 30, 2016

	July 1, 2016 through September 30, 2016	Receivership Cumulative
Bank Service Charges	90.00	226.50
Total Disbursements	<u>1,722,433.33</u>	<u>88,287,012.07</u>
Ending Cash Balance	<u>\$ 1,793,623.44</u>	<u>\$ 1,793,623.44</u>

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 Encumbered by mortgage	630,000	Appraised Value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. M. DeYoung has filed a motion re: agreement which is pending before the Court. Franklin has filed a motion to intervene to release home from freeze [Dkt. 768]. Motion is still pending before the Court. No disposition at this time.
	Encumbered by 2nd Mortgage	(590,000)	Franklin America	
	Combined Retirement Accounts - Curtis DeYoung	125,000	Heritage West Credit Union	Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. M. DeYoung has filed a motion re: agreement which is pending before the Court.
		325,845	Frozen at Brighton Bank; accounts comprised of \$70,051 cash and remainder in various other investments of unknown value	
	HSA account Curtis DeYoung	4,181		Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. M. DeYoung has filed a motion re: agreement which is pending before the Court.
			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]. M. DeYoung has filed a motion re: agreement which is pending before the Court.
	Combined Retirement Accounts - Michelle DeYoung	231,652		Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. M. DeYoung has filed a motion re: agreement which is pending before the Court.
	HSA account Michelle DeYoung	4,181		
	Personal Furniture, Fixtures (Draper Home)	20,000	Value based on Rob Olson inspection	
	Idaho Cabin Furniture	unknown		
American Pension Services, Inc.				
	Cash - First Utah Bank	65,066	Operating account controlled by Receiver	Being used for day-to-day operations of APS and payment of professional fees, as funds are available. Receiver communicating with counsel for other party to resolve matter.
	APS interest in two Ogden properties	195,000	Fraudulent transfer from APS to another party.	
LIC Environmental				
	Cash - First Utah Bank	44,821		Cash to be transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
LJP, LLC				
	Cash - First Utah Bank	8,905		Cash to be transferred to APS Operating Account during the Eleventh Reporting Period (October 2016). Owner has contacted Receiver to request resolution. Periodic payments being received in amount of \$137.50.
	Receivable - Cl. White - Kansas City	2,250		
	Receivable - Lionel Brown - Kansas City	18,000		
Quicksilver				
	Cash - First Utah Bank	19		Cash to be transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
First Silverado				
	Cash - First Utah Bank	2,250		Cash to be transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
APS Master Trust				
	Property - Harrisburg, PA	25,300	3 homes, total assessed value only on land	Receiver is working with legal counsel in PA to determine next steps on asset.
DHB2 Holdings, LLC				
	Cash- Brighton Bank	67,616	Amount on deposit at Brighton Bank	Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. M. DeYoung has filed a motion re: agreement which is pending before the Court.
RE Ventures, LLC				
	Cash-Brighton Bank	81,745	Amount on deposit at Brighton Bank	Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. M. DeYoung has filed a motion re: agreement which is pending before the Court.
Other Claims or Assets				
	Action Against First Utah Bank	5,000,000		Subject to appeal at 10th Circuit, appellate case 16-4013. Awaiting decision from 10th Circuit.
	Claims Against Estate of Michael Memmott Jr.	65,948		Subject of <i>Thompson v. Memmott</i> , Case No. 2:14-cv-00744-RJS. Receiver moving toward settlement.
	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 has filed a motion for summary judgment for entire policy proceeds.
	Membership Interest in Asset Management Intl., LLC	Unknown	Value to be determined	Pending further research.
	Interest in BD&D Investments, Inc.	Unknown	Value to be determined	Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. M. DeYoung has filed a motion re: agreement which is pending before the Court.
	Partnership interest in DeYoung Associates, Ltd.	Unknown	Value to be determined	Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. M. DeYoung has filed a motion re: agreement which is pending before the Court.
	Membership Interest in DLC2 Investments, LLC	Unknown	Value to be determined	Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. M. DeYoung has filed a motion re: agreement which is pending before the Court.
	Partnership Interest in NACH, LP	Unknown	Value to be determined	Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. M. DeYoung has filed a motion re: agreement which is pending before the Court.
	Interest in Venture Broadcast Inc.	Unknown	Value to be determined	Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. M. DeYoung has filed a motion re: agreement which is pending before the Court.
	Various Collectibles and Judgments	Unknown	Value to be determined	The Receiver intends pursue items included in list provided to M. DeYoung pursuant to the parties' settlement agreement to extent provided by law [Dkt. 749].
	Value of Assets Discovered (coins, jewelry, precious metals)	60,000	Approximate appraised value	To be sold after C. DeYoung criminal sentencing in December 2016.
	Claims Against LDS Church	239,775	C. and M. DeYoung contributions	Subject of <i>Thompson v. LDS Church</i> , Case No. 2:16-cv-00792. Receiver working toward settlement.
	Excess Loss Allocation Collected	1,793,623		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	2,123,567		Receiver filing motions to liquidate assets from accounts.
	Claim for Uncollected APS Management Fees	389,365		Assigned to Express Recovery for collection.
	Default Judgment Against Gary Huettinger	13,500		Receiver sending demand letter and assigning collections to Express Recovery.

EXHIBIT D

AMERICAN PENSION SERVICES, INC.
SCHEDULE OF CLIENT ASSETS
AS OF SEPTEMBER 30, 2016

ASSET TYPE	BOOK VALUE
Brokerage Account	\$ 80,000
Coins	101,174
Consolidated Notes	100,000
Contracts	622,155
Escrow Account	1,507
Limited Partnerships	169,632
LLC Interest	11,053,082
Loan Agreements	100,000
Mutual Fund	5,000
Oil Leases	73,000
Promissory Notes	5,654,271
Real Property	1,931,703
Rescission Offer	708,455
Stocks	2,184,415
Tax Deeds	56,321
Tax Lien	2,600
Trust Deed Notes	690,066
Total Assets	\$ 23,533,380

NOTES:

Note 1 - The asset descriptions and asset values shown above were compiled from data contained in the APS trust accounting system as of September 30, 2016. The Receiver and her professionals do not guarantee the accuracy of the categories and their related values.

Note 2 - For those accounts remaining at APS, the full 10% Loss Allocation has yet to be extracted due to the lack of liquid assets in the accounts.

EXHIBIT E

**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	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
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
James P. Allfrey	3843 West 11970 South, Riverton, UT 84065	American Pension Services, Inc.	2,000.00	Claim for Unpaid Compensation
Total			<u>\$ 1,483,943.25</u>	

NOTES:

Note 1 - The above list contains known creditors as of the inception of the Receivership on April 24, 2014. At this time, a claims bar date has not been established. As such, there may be additional creditors which assert claims against the Receivership Estate.

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

Note 3 - The Receiver has consented to a judgment in *Hardy v. Freitas* but is awaiting final documents, including a judgment amount.

Note 4 - The Loans with First Utah Bank are subject to the settlement with First Utah Bank, which is the subject of appeal at the 10th Circuit.