

Mark R. Gaylord (#5073)
Melanie J. Vartabedian (#10148)
Tesia N. Stanley (#13367)
Jeffrey D. Enquist (#14634)
BALLARD SPAHR LLP
One Utah Center, Suite 800
201 South Main Street
Salt Lake City, Utah 84111-2221
Telephone: (801) 531-3000
Facsimile: (801) 531-3001
gaylord@ballardspahr.com
vartabedianm@ballardspahr.com
stanelyt@ballardspahr.com
enquistj@ballardspahr.com

*Attorneys for Court-appointed Receiver,
Diane A. Thompson*

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

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

Defendants.

**TWELFTH 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 Twelfth Quarterly Status Report of Receiver as of March 31, 2017.

1. Introduction

On April 24, 2014, the Court appointed Diane Thompson as Receiver of American Pension Services, Inc. and any related entities owned, controlled, or under common control by or through American Pension Services, Inc. and all assets of Curtis L. DeYoung (collectively referred to as “Receivership Defendants”). *See* Order Appointing Receiver, Freezing Assets, and Other Relief 1–3 (Dkt. 9) (hereinafter “Receivership Order”). These entities include American Pension 401K Services, Inc. (“APS 401K” or “AP4S”); LJP, LLC; Interim Funding LLC; First Silverado Properties, LLC; LIC Environmental; and Quicksilver Management, LLC. *Id.* American Pensions Services, Inc. and related entities owned, controlled, or under common control of American Pension Services, Inc. are collectively referred to as APS.

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

The Receiver, with approval from the Court, engaged Ballard Spahr LLP as legal counsel to the Receiver, Piercy Bowler Taylor & Kern (“PBTk”) as forensic accountants, Precision Discovery, Inc. as forensic information technology specialists, Richards Brandt Miller Nelson as

insurance coverage counsel, Orange Document Services¹ to perform forensic computer services, Gary Free as an independent appraiser, and Jonathan Cook as an independent appraiser. *See* First Quarterly Report of Receiver 1–2 (Dkt. 169); Order Granting Motion to Retain Gary Free as Appraiser (Dkt. 208); Order Granting Motion to Retain Jonathan Cook as Appraiser (Dkt. 639). The Receiver is required to “file and serve a full report and accounting of each Receivership Estate . . . reflecting (to the best of the Receiver’s knowledge as of the period covered by the report) the existence, value, and location of all Receivership Property, and . . . the extent of liabilities . . . of the Receivership Estates” within thirty days of the end of each quarter. Receivership Order at 22.

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

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

² The Receiver operates three accounts within APS. These accounts are discussed in more detail in Section IV, with copies of the Receiver’s Receipts and Disbursements attached as Exhibits A, B, and C.

claims, and the likelihood of success of the claims; (6) a list of known creditors with their addresses and the amounts of their claims; (7) the status of creditor claims proceedings; and (8) the Receiver's recommendation for continuing or discontinuing the Receivership with reasons for the recommendation. Receivership Order at 22–23.

This Twelfth Quarterly Status Report is submitted to the Court in compliance with the Receivership Order for the period of January 1, 2017 to March 31, 2017 (“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. 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 value of the assets of APS client accounts as of April 25, 2014 was in excess of \$350 million.⁴

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 as discussed below.

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.

The day-to-day operations of APS have ceased, the Receiver is wrapping up the sale of assets of the Receivership Estate, and is awaiting the expiration of the ninety day appeal period following the Tenth Circuit Court of Appeals decision upholding the Receiver's settlement with First Utah Bank. After implementing the Court-approved sale of account assets, the Receiver will complete the transfer of any remaining assets of these accounts.

On February 27, 2015, the Court approved the Receiver's Amended Modified Plan of Liquidation ("Plan of Liquidation") and proposed successor administrator, Equity Trust. The Receiver began the transfer of accounts to Equity Trust on April 1, 2015. Clients continue to call and e-mail regarding the status of transferred account(s) at Equity Trust Company with the following most common requests: the Receiver's assistance to re-register assets held within account(s) transferred from APS to Equity Trust Company; 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 former clients seeking to revalue the contingent repayment agreement held in their accounts.

As of April 20, 2017, there are forty-four (44) accounts remaining at APS. Four of the forty-four (44) remaining have paid their loss allocation and are being processed out of APS either by the Receiver closing the account, assigning the client their account assets, and issuing an IRS Form 1099-R ("1099"), or by being transferred to Equity Trust if the client's Equity Trust application was timely received. Two of the forty-four (44) remaining have been assigned their

assets and are being processed out of APS by the Receiver's accountants. The Receiver is in the process of liquidating assets of all of the remaining thirty-eight (38) accounts.⁵

As of April 20, 2017, the Receiver has transferred, terminated, or otherwise distributed 5,620 of the 5,664 accounts. Of the accounts transferred or closed at the end of the Reporting Period, 4,946 accounts have been transferred to Equity Trust Company. The other 674 have been closed, terminated, distributed, or assigned by the Receiver after determining the most cost-effective manner to deal with the accounts.

All extensions to pay loss allocations expired by December 31, 2016. If a remaining client were to request an extension to pay their loss allocation/management fees prior to the completion of the pending sale of their assets, the Receiver would consider it if the client made a substantial up-front payment, and the remainder of the loss allocation/management fees were paid in full by June 2017. Two remaining clients have requested payment plans but have not signed an extension agreement. Remaining APS client account number 3151 retained attorney Frank Slaugh. Mr. Slaugh entered an appearance in the case and appeared at the April 4, 2017 Court hearing. Mr. Slaugh was to present the Receiver with a payment plan for his client, but has not yet done so. The Receiver is proceeding with the sale of non-compliant clients' assets in accordance with the Court orders as described below.

On April 4, 2017, the Court denied client John Fisher's motion for reconsideration of the Receiver's denial of Mr. Fischer's revaluation request and requirement to pay a loss allocation (Dkt. 902.) The Court ordered Mr. Fischer to pay his loss allocation of \$13,786.20 within twenty

⁵ The forty-four (44) remaining accounts do not include the eight (8) retirement accounts of Curtis and Michelle DeYoung. These accounts are the subject of a settlement agreement between the Receiver and Michelle DeYoung. (Dkt. 701).

(20) days. The Receiver sent the order to Mr. Fischer with instructions on where to pay his loss allocation and has not yet received payment.

On February 23, 2017, the Court entered orders approving the judicial dissolution of nineteen limited liability companies held in the accounts of seventeen non-compliant APS account owners. The Court further approved the sale of real property and other assets held by the LLCs by public sale to fund the loss allocation and outstanding management fees for those non-compliant account owners. (Dkt. 866, 869.) The orders permit account owners to fund their loss allocation and any past due management fees up to five days prior to the public sale of the assets.

The Receiver mailed a copy of her Motion for Judicial Dissolution, the Court's Order, and a cover letter explaining how the account owners could avoid the sale of their asset by paying their loss allocation and/or management fees to the seventeen account owners by certified mail or other verified delivery method to the address at which each of the individuals was served a subpoena previously. The Receiver also mailed a copy of her Motion, the Court Order, and a cover letter to the manager, member, and registered agent(s) of the LLCs of the seventeen APS accounts by certified mail or other verified delivery method to the address recorded with the respective state agencies responsible for maintaining such information.

On February 23, 2017, the Court entered orders permitting the Receiver to liquidate an additional four pieces of real property, eleven promissory notes, and four non-public company stock of non-compliant account owners to fund the loss allocation and outstanding management fees of those account owners. The orders permit account owners to fund their loss allocation and any past due management fees up to five days prior to the public sale of the assets. (Dkt. 867,

868, 870). The Receiver mailed a copy of her Motion and the Court Order to all affected account owners with a cover letter explaining how the account owners could avoid the sale of their asset by paying their loss allocation and/or management fees.

As a result of the above-referenced motions to sell client assets, and correspondence sent to the non-compliant clients as a result of the motions, seven clients have paid their loss allocations in the amount of \$139,970.85.

During the Reporting Period, the Receiver has made arrangements to sell non-compliant client assets in accordance with the Court orders received in the prior reporting period and the orders described above. The Receiver has engaged Erkelens & Olson and CWS Marketing Group (“Auctioneers”) to sell all of the remaining non-compliant clients’ real property, promissory notes, and rescission offers in a public online auction. The Receiver entered into a contract with the Auctioneers on April 20 and 24, 2017. The auction will occur within ninety days of the contract date. Currently, the Auctioneers project that the auction will take place in June 2017. Pursuant to the Court orders, the Receiver will send notice of the auction date when it is set by Auctioneers to all affected non-compliant clients, and they will have an opportunity to pay their loss allocation up to five days prior to the sale.

The Receiver has also been in discussions with Wilson-Davis & Co., Inc., a local brokerage firm, to list the non-compliant client, non-publicly traded stock on the OTC Bulletin Board. Wilson-Davis & Co., Inc. has analyzed each of the remaining stocks and provided an opinion on the saleability of the stock. The vast majority of the stock have no value (for various reasons including the company is no longer in existence, is inactive, or is not current on its filings) or has such little value that the transaction costs exceed the value. Therefore, the

Receiver intends to engage Wilson-Davis & Co., Inc. to list the stock with adequate value, and the Receiver will distribute the stocks with little to no value to the client and issue an IRS Form 1099.

As part of the approved motions, the Court authorized the judicial dissolution of LLCs held by seventeen (17) non-compliant account holders on February 23, 2017. The judicial dissolution of these LLCs involves the winding down of the LLCs by each of their respective managers, and may entail liquidation of assets held by the LLCs, which include real property. Following entry of the Court's orders, the Receiver mailed a letter and a copy of the Court's orders to each of the effected LLC's managers, members, and registered agents. The letter explained that judicial dissolution had been ordered and directed the managers, members, and registered agents to the appropriate state codes that explained the dissolution process. The dissolution process is similar in each of the states where LLCs were ordered dissolved. Once ordered dissolved, the manager of each LLC is to marshal the assets of the LLC, which may include liquidating assets, discharge debts and repay any creditors, and distribute the remaining assets to the members in proportion of their membership interests. Further, each of the other LLC members has the option to purchase the membership interest of the APS client rather than dissolve the LLC.

As a result of the cover letter and copy of the Court's orders mailed by the Receiver, seven clients have paid their loss allocations. An additional six clients who had ignored previous communications have now contacted the Receiver. The Receiver is working with these clients to resolve the disposition of their accounts and in some cases is awaiting documentation to determine if the assets require revaluation as authorized in the Plan of Liquidation. One client

has assigned his entire LLC to APS, and the Receiver is determining the best course of action to dissolve the LLC and distribute the account. The Receiver has not heard from five clients and will be sending follow-up correspondence to the managers, members, and registered agents of the LLCs to determine the progress made in dissolving the LLC. If necessary, the Court may oversee the liquidation of the remaining LLCs by appointing the Receiver to oversee the dissolution process.

With respect to non-client account assets, on April 4, 2017, the Court granted in part the Receiver's Motion for Order of Judicial Dissolution of certain entities related to APS and/or controlled by Curtis DeYoung. (Dkt. 901.)

During a previous Reporting Period, the Receiver learned of a bank account at Wells Fargo in which Michael Memmott Jr. may have had an interest. The Receiver learned of this account from Deni Memmott, Michael Memmott Jr.'s wife and the personal representative of his estate, who discovered account documents while she was cleaning Mr. Memmott Jr.'s car. The bank account was listed in the name of Asset Acquisition Partners of America Inc. During this Reporting Period, the Receiver concluded her investigation of the bank account. The Asset Acquisition Partners of America Inc. bank statement purported to be from Wells Fargo and showed an approximate balance of \$2,000,000.00. The Receiver issued a subpoena to Wells Fargo seeking information related to the account. Wells Fargo responded to the Receiver's subpoena. The documents produced by Wells Fargo revealed there was no such bank account held at Wells Fargo for Asset Acquisition Partners of America, Inc. Further investigation also revealed that neither Mr. Memmott Jr. nor any of his known entities were related to any member or principal of Asset Acquisition Partners of America, Inc. The Receiver also served Asset

Acquisition Partners of America, Inc. with a subpoena, for which no response was received. However, based on the documentation and information received from Wells Fargo, the Receiver believes that the account document was yet another device used by Curtis and Mr. Memmott Jr. during their fraudulent activities. Therefore, the Receiver decided not to pursue the account further.

The Receiver responded to a subpoena served on her regarding the estate of a former client. The Receiver also received a subpoena from the bankruptcy estate of a former APS client and is evaluating her response to the same.

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 seven postings in this Reporting Period, as follows:

- January 5, 2017 – The Receiver posted the Court Orders allowing the Receiver to liquidate certain real property, promissory notes, and stock of non-compliant account owners.
- January 12, 2017 – The Receiver posted notice of the Receiver’s motion to dissolve certain entities related to APS and Curtis DeYoung.
- January 18, 2017 – The Receiver posted notice of the Receiver’s motions to dissolve certain LLCs of non-compliant account owners, and of the Receiver’s motions to dissolve certain additional real property, promissory notes, and stock of non-compliant account owners.

- February 23, 2017 – The Receiver posted the Court Orders granting the Receiver’s motions to judicially dissolve LLCs of non-compliant account owners and Court Orders allowing the Receiver to liquidate certain additional real property, promissory notes and stocks of non-compliant account owners.
- March 9, 2017 – The Receiver posted the Tenth Circuit Court of Appeals’ decision affirming this Court’s order approving the Receiver’s settlement with First Utah Bank. The Receiver provided a brief explanation of the ruling, its implications on a future distribution, and timing for an appeal.
- March 23, 2017 – The Receiver posted the Petition for Rehearing filed with the Tenth Circuit Court of Appeals.
- March 30, 2017 – The Receiver posted the Tenth Circuit’s denial of the Petition for Rehearing. The Receiver also provided a brief explanation and the implications on a future distribution.
- Documents – All of the documents referenced in the above postings, plus the Eleventh Quarterly Status Report of the Receiver.
- Frequently Asked Questions – The Receiver updated the frequently asked questions page on January 27, 2017 with several questions, mostly dealing with commonly received tax-reporting questions for tax year 2016.

The Receiver continues to respond to client questions and requests for documents. Many clients that did not pay their loss allocation, and for whom the Receiver decided to close their account, assign the assets to the client, and issue an IRS Form 1099 did not understand why they received an asset assignment and the Form 1099. Many clients believed they should have

received cash and did not understand they were being assigned a non-cash asset in their former APS account. Additionally, as it was tax season during this Reporting Period, many clients called the Receiver to dispute their receipt of their Forms 1099 and the value reported on the Forms 1099. The Receiver also continued to receive requests from some APS clients for amendments to Form 1099 tax documents that were issued by APS prior to the Receivership. In these cases, the clients typically had not paid their administrative fees and APS resigned and reported the account 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 with the estate representatives to re-register the accounts for the beneficiaries, complete the loss allocation payments, issue tax reporting, and distribute the accounts.

The Receiver received many calls and e-mails from clients indicating the value of their account transferred to Equity Trust was incorrect or that there are other problems with their accounts after transfer to Equity Trust. The Receiver and her staff continue to hold periodic conference calls with Equity Trust to resolve these client concerns. Clients who have transferred have also 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 the re-titling or sale of real estate and other property. The Receiver's staff has responded to these requests.

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 Receiver's Complaint in Intervention and for Declaratory Relief ("Interpleader Complaint") is resolved [Dkt. 857].⁶ The Receiver is also preparing an amended Form 5500 report relating to the APS Employee 401(k) Plan with the Department of Labor. Once these matters are resolved, the Plan will be terminated.

In a prior Reporting Period, the Receiver prepared two document productions in response to requests by the Department of Labor ("DOL"), including over 1,700 pages of documents, as well as a history of over 30,000 transactions relating to AP4S and the APS Employee 401(k) Plan. The Receiver also participated in two interview sessions with the DOL. On December 20, 2016, the DOL issued a letter to the Receiver indicating that its investigation concluded and that it was referring a potential violation of the blackout period notice for the APS Employee 401(k) Plan to its Office of Chief Accountant for further review. The Receiver believes that the circumstances the DOL is investigating regarding the blackout notice fit into an exception under the applicable rules and has prepared and submitted a response to the DOL. The Receiver has not heard anything further from the DOL during this Reporting Period.

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 Securities and Exchange Commission ("SEC") and the Department of Justice ("DOJ")

⁶ On January 31, 2017, the Receiver filed the Interpleader Complaint requesting that the Court permit the Receiver to deposit the settlement funds with Michelle with the Court, and that the Court direct the Receiver to whom to pay the funds, as Michelle's former attorney Jeffrey Colemere has made a claim to the settlement funds. (Dkt. 857).

regarding document retention and storage requirements. Iron Mountain, Inc. 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 or asset sales. The computer systems utilized at APS were relocated, and the Receiver continues to utilize those APS computer systems to access information, prepare required reporting, and complete transactions on behalf of clients seeking to make loss allocation payments.

The Receiver has filed IRS Forms 1099 for distribution or assignments of accounts made in 2016. She will file IRS Forms 5498 for tax year 2016 prior to the May 2017 deadline. She will also be required to file IRS forms for any final 2017 account distributions in early 2018. For any client that transferred to Equity Trust before December 31, 2016, Equity Trust is preparing the IRS Forms 5498. The Receiver is handling the preparation of the 5498 for clients still at APS after December 31, 2016 who are subsequently transferred or distributed after that date.

First Utah Bank has tendered its resignation as the custodian of remaining accounts to the Receiver. However, First Utah Bank has agreed that the resignation shall not be effective until there is a mutual agreement with the Receiver concerning the resignation and an order from the Court releasing APS as administrator and First Utah Bank as custodian. This will be completed following the asset sales of the final thirty-eight (38) accounts discussed above. Once those events have occurred, the Receiver will issue any final IRS Forms 1099 for the reported value of the assets as described above.

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.⁷ The Receiver will use the amounts listed on the CRAs to make future distributions, if any, to the clients on pro-rata basis as approved by the Court in a future final distribution plan. Because the Receiver's recovery of final assets is ongoing, the amount of Receivership Assets available for distribution is currently unknown. Thus, the best estimate of the value of the CRA at this time is the amount of each client's contribution to the loss allocation under the Plan of Liquidation. Many clients have requested that the Receiver revalue the CRA in order to reduce the amount of their account total. The Receiver does not believe it is appropriate to make an adjustment to the value of the CRA until the Receiver has exhausted her recovery efforts and has determined the amount, if any, that will be distributed to clients.

Clients who have transferred to Equity Trust but desire to select another custodian/administrator for their account have inquired about the transferability of the CRA. Some custodian/administrators are reluctant to accept the CRA as an account asset. The Receiver has conducted several conference calls with clients and new custodian/administrators to clear up this confusion and has posted clarifying information on her website. Clients are permitted to transfer the CRA to a successor custodian/administrator or distribute to themselves and no re-registration is required since the CRA is issued in the name of the account, not the custodian. For efficiency purposes, if a distribution is made, the Transition Services Agreement provides that a distribution would be made in a lump sum to Equity Trust with an allocation

⁷ 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 assets outside of their retirement plan. (*See* Dkt. 592).

schedule indicating the appropriate account recipients. Equity Trust shall process the payment to its accounts or track and forward the payments to accounts transferred to successor custodians or distributed clients. The Receiver will issue checks to clients personally if their loss allocation was funded outside of their account.

The transfer of accounts from APS to Equity Trust required that all assets previously titled in the name of APS for the benefit of the client be re-registered to reflect ownership 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 has amended and extended the power of attorney in anticipation of the completion of the Receivership. The re-registration of assets is a complicated and time consuming process for Equity Trust due to the sheer volume of accounts transferred, the number of assets held in each account, the uniqueness of each asset, and the involvement of multiple parties.

Because the Receiver has received numerous complaints from clients about the length of time it was taking for Equity Trust to re-register assets, the Receiver contacted Equity Trust to inquire as to the status. Equity Trust advised that they track re-registration in two categories: started and complete. Started means Equity Trust has provided sufficient documentation to a third-party to complete re-registration. Equity Trust does not treat the registration as complete until they have received confirmation that the third-party has changed the registration. As of March 31, 2017, re-registration had been started for 93% of the assets and completed for 53% of the assets. The Receiver continues to communicate with Equity Trust and provide information necessary to unfreeze appropriate brokerage accounts and re-register assets held within transferred accounts.

Curtis DeYoung is now incarcerated in federal prison. As part of his sentence, Curtis was ordered to pay restitution of \$24,998,422.65 to the victims of APS. The Receiver and her counsel have conducted meetings with the SEC and U.S. Attorney's office to discuss and coordinate the treatment of and distribution to victims of any restitution payments made by Curtis. Any amounts that have thus far been received by the Receiver have been credited to the restitution balance payable by Curtis. This amount totals \$2,056,079.00 as of December 31, 2016. Restitution obtained from Curtis will be remitted to the Receiver until the close of the Receivership. Curtis was ordered to pay the greater of \$25.00 per calendar quarter or 50% of his income while incarcerated. If he receives more than \$200.00 from any outside source in any calendar month during the period of incarceration, all funds received will be paid toward restitution. Upon release from incarceration, Curtis was ordered to pay a minimum of \$250.00 per month towards restitution. Restitution paid to the Receiver will be allocated and paid to the victims pursuant to a final distribution plan to be submitted and approved by the Court. When the Receivership closes, the Receiver will provide the Court Clerk with a list of victims, their addresses, and related loss as well as an accounting of funds she has distributed to victims. The Court Clerk will then take over the process of disbursing any restitution to victims.

4. Assets Uncovered or Sold During Reporting Period

As previously reported, the Receiver has sold certain assets recovered including the 1922 Studebaker, the Ford Model T, coke machines, and geode at auction on April 23, 2016 and collected \$13,005.00. The Receiver contracted with Erkelens & Olson Auctioneers, who conducted a public auction on January 21, 2017 to sell certain coins, jewelry and gems

previously seized. The auction resulted in sales of \$19,754.00, and after paying auction commissions, a net of \$17,778.60 was added to the Receivership Estate. *See also* Exhibit C.

In addition, the Receiver discovered corporate entities in which Michelle DeYoung has an interest-- MIROCC LLC and Witt's Lake Ranch, LLC-- which were not disclosed by Michelle in the parties' settlement agreement. The Receiver contacted counsel for Michelle to demand disclosure of all assets owned by the LLCs. Michelle has represented there are either no assets, or the disclosed assets are very minimal. During this reporting period, the Receiver has determined not to pursue them based on their minimal value.

The Receiver discovered that APS had filed Notices of Interest on certain real property in Ogden, Utah 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 has undertaken efforts to recoup any interest that may have been fraudulently transferred for the benefit of the Receivership Estate. The Receiver is in active discussions with counsel for the party seeking to remove the notices of interest on the real property.

The Receiver continued collection efforts on APS assets payable, including two notes held by LJP Holdings on properties in Kansas City, Missouri. One property had a borrower named Lionel Brown. Mr. Brown owed \$18,000.00 on the note and was in default. The other property had a borrower named Clarence White. Mr. White owed \$2,250.00 and was also in default. The Receiver discovered the properties had minimal value because they are in disrepair or have been looted. The Receiver attempted to negotiate a settlement with each of the borrowers. Both were initially non-responsive, so the Receiver instituted foreclosure

proceedings on the properties, upon which time the borrowers contacted the Receiver. Mr. Brown agreed to settle with the Receiver for \$500.00, and in exchange, the Receiver agreed to quit claim deed the property to Mr. Brown. The other property was lost to a tax foreclosure sale by Jackson County due to Mr. White's failure to pay taxes on the property. The Receiver did not receive notice of the tax sale and only learned about it after sending the foreclosure notice to Mr. White. As the Receiver investigated her options, she discovered there were excess proceeds from the tax sale in the amount of nearly \$1,200.00. She is in the process of claiming the excess proceeds for the Receivership.

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. The Receiver has collected the outstanding management fees as part of the transfer to Equity Trust.⁸ Express Recovery has continued 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 because Express Recovery is paid a portion of the amounts it successfully collects. During previous Reporting Periods, the Receiver assigned all remaining management fees owed by clients to Express Recovery. The outstanding amount of management fees sent to Express Recovery was \$346,440.83. During this Reporting Period, Express Recovery collected \$2,090.33 in past due fees and cancelled another \$4,576.22. When added to collection efforts previously reported, Express Recovery has collected a total of \$32,138.19 in management fees for the Receivership and cancelled a total of \$12,794.98 (due to

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

bankruptcies and other required reasons), leaving \$301,507.66 in management fees outstanding. Certain clients have formally disputed the fees, and the Receiver has responded to required verifications as requested by Express Recovery. The Receiver will continue to attempt to collect fees directly from accounts where assets are being sold based on the Court orders.

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 Assets, attached as Exhibit C.

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 \$1,000,000.00 as detailed in previous Quarterly Status Reports. The Receiver and The Hartford agreed to terms of a settlement which was approved by the Court on February 9, 2016. (Dkt. 703). 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 \$1,000,000.00. On January 7, 2016, Federal Insurance Company filed its Complaint in Interpleader and for Declaratory Relief in *Federal Insurance Company v. Thompson, et al.*, No. 2:16-cv-00023 (D. Utah Jan. 7, 2016) (Dkt. 2) seeking to interplead the full policy limits of \$1,000,000.00 with the Court. The Receiver, Curtis DeYoung, and Michelle DeYoung all sought policy proceeds. The Receiver's motion for summary judgment seeking the entirety of those funds came for hearing on April 4, 2017. Based on the Court's questions and concerns expressed at the hearing, the Receiver withdrew her motion and will re-file by May 4, 2017. Following the hearing, the Court

entered an order granting Federal Insurance Company's oral motion to dismiss it from the case, with additional stipulations by Federal, and ordered Federal to deposit the full policy limits of \$1,000,000.00 with the Court. (Case No. 2:16-cv-00023, Dkt. 58.)

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 \$6,000,000.00. Following this Court's approval of the settlement agreement (Dkt. 683), three intervenors filed an appeal with the Tenth Circuit Court of Appeals, which was argued at the Tenth Circuit in September 2016. On March 9, 2017, the Tenth Circuit Court of Appeals issued its decision affirming this Court's ruling. On March 23, the intervenors filed a petition for rehearing with the Tenth Circuit, which the Tenth Circuit denied on March 30, 2017. The intervenors have 90 days from the denial of their petition for rehearing, or longer should they seek an extension, to file an appeal with the U.S. Supreme Court.

As part of her settlement agreement with the Receiver, Michelle DeYoung was to provide documentation regarding collectibles and judgments (and settlements) belonging to APS. Michelle provided a one-page summary sheet for each of approximately fifty (50) outstanding judgments and settlements in favor of APS. The Receiver turned these collectibles and judgments over to Express Recovery, which continues its efforts in collecting the judgments and settlements at this time. To date, no recoveries have been made on the judgments and settlements by Express Recovery.

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 thirty-eight (38) APS clients who have failed to comply with the loss allocation requirement of the Plan of Liquidation. As noted above, the Receiver has received orders from the Court permitting her to sell and/or the judicial dissolution of all remaining assets within the non-compliant accounts. The Receiver is proceeding with liquidating the assets she has permission to sell. She has engaged Wilson-Davis to list the non-public private stocks on the OTC Bulletin Board. She has entered into a contract with CWS Marketing to liquidate the real property and promissory notes. She has begun the judicial dissolution process for the LLCs. 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 remain significant during the Reporting Period. The Receiver is striving to control costs and continues to make prudent cost-benefit decisions as she completes the Plan of Liquidation, marshals the assets of the Receivership Defendants, 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 \$50,000.00) to cover a portion of Court-approved fees and expenses.

Through pursuit of the 10% loss allocation required from APS clients under the Plan of Liquidation, the Receiver has collected approximately \$30.36 million to date. This amount does not include management fees collected through the Receiver's operation of APS, sale of assets, or the First Utah Bank settlement proceeds. 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 \$1.32 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.

8. Pending Litigation

The Receiver has determined that as of April 25, 2014, APS was involved in a total of nine (9) separate lawsuits in California, Idaho, Washington, and Utah as either a plaintiff or defendant. One action, noted in the First Quarterly Status Report, settled and resulted in over \$15,000.00 being deposited into the APS operating account. As of the date of this Reporting period, the Receiver has resolved seven (7) of these cases.

The Receiver is determining her options in both of the remaining cases, the first styled as *Oliver v. American Pension Services, Inc.*, the second styled as *American Pension Services, Inc. v. Chambers*. In *Oliver*, an APS client filed a class-action complaint in state court on June 6, 2014. The action was then removed to federal court by the Receiver. The Receiver intends to dismiss the class-action complaint during the next Reporting Period, as the class-action was filed after the Receivership was entered, and no leave from this Court was sought. Furthermore, the

class-action seeks to recover funds lost as result of Curtis DeYoung's misappropriation, which was the purpose of the Receivership.

In *Chambers*, APS filed suit in October 2006 against Corky Chambers due to an alleged default on two promissory notes in the aggregate amount of \$50,350.00. As a result of the initial 2006 suit, Chambers and APS allegedly entered into a forbearance agreement in which the parties agree to settle the lawsuit for the principal owed if Chambers made seven regular monthly payments. The forbearance agreement also called for the parties to negotiate a further settlement on any interest due and owing on the principal amount. On February 7, 2012, APS filed suit against Chambers alleging breach of the forbearance agreement and other claims. The Receiver has investigated the claims presented in the case. According to APS accounting records, the funds borrowed from Chambers were secured by promissory notes owned by several APS accounts. Also according to the APS accounting records, each client with an interest in the promissory notes was paid off on the notes during 2003. As a result, the Receiver will take steps to dismiss this case during the next Reporting Period.

In the Receiver's ancillary action against Curtis and Michelle, *Thompson v. Curtis DeYoung and Michelle DeYoung*, Case No. 2:14-cv-00870-RJS is complete. The Receiver's settlement with Michelle DeYoung is complete and final. Michelle DeYoung has been dismissed from the case with prejudice.

On January 31, 2017, the Receiver filed her Complaint in Intervention and for Declaratory Relief in which she seeks permission from the Court to deposit with the Court the money the Receiver agreed to provide to Michelle under the settlement agreement as well as a declaration by the Court that by so depositing the funds, the Receiver has satisfied all of her

obligations under the settlement agreement and is absolved from any liability therefrom. (Dkt. 857.) Because Michelle's former counsel has laid claim to the funds to cover his unpaid attorney fees, the Receiver seeks direction from the Court regarding to whom the funds should be paid.

Regarding her action against Curtis, the Receiver is prepared to file a dismissal in light of Curtis's settlement with the SEC and his guilty plea to criminal charges. The Receiver prepared and sent Curtis's counsel a joint stipulated motion to dismiss Curtis and close the case in late January 2017. Curtis's counsel recently indicated he is unwilling to authorize the dismissal because they need their fees to be paid from the interpleaded insurance proceeds.

In the Receiver's ancillary action *Thompson v. Michael Memmott Sr. et al.*, Case No. 2:14-CV-00744-RJS), 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 order dismissing the case was entered on September 15, 2016. (Case no. 2:14-cv-00744, Dkt. 82, 84).

In early April 2017, the Receiver finalized her settlement agreement with Deni Memmott, the personal representative of the estate of Michael Memmott Jr. Pursuant to the settlement agreement, Deni Memmott provided a financial disclosure to the Receiver under oath and penalty of perjury. The financial disclosure reveals Deni Memmott and the Memmott Estate have limited assets for the Receiver to recover if the Receiver were successful in her claims and obtained a judgment against Deni Memmott/the Memmott Estate. Accordingly, the Receiver determined it in the best interest of the Receivership Estate to not expend valuable time and resources pursuing litigation for minimal gain, if any. As part of the settlement, Deni Memmott/the Memmott Estate agreed to turn over to the Receiver any assets the Receiver

discovers which were not disclosed to the Receiver in a list provided by Deni Memmott as part of the settlement agreement. Deni Memmott also agreed to turn over to the Receiver funds held at First National Bank of America for the Memmott Estate in the amount of over \$65,000.00. The parties filed a joint motion to approve of the settlement agreement on April 14, 2017. (Case no. 2:14-cv-00744, Dkt. 89). The Court approved the joint motion and dismissed the case in its entirety on April 17, 2017. (Case no. 2:14-cv-00744, Dkt. 91.) The Receiver is making arrangements with First National Bank of America to retrieve the \$65,000.00 in funds being held.

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 \$240,000.00 that were donated from funds fraudulently obtained from APS Account Owners (Case No. 2:16-cv-00792, Dkt. 1). In early April 2017, the parties entered into a settlement agreement in which the LDS Church agreed to pay the Receiver \$150,000 to settle her claims. The parties are preparing a joint stipulated motion to approve the settlement agreement, which the Receiver anticipates filing with the Court shortly.

On April 11, 2017, the Receiver was served with a Summons and Complaint in a delinquent tax suit in the matter captioned *Grapevine-Colleyville Independent School District (TX) v. APS American Pension Services 401k, Inc.* The suit involves a property owned by APS (not AP4S as stated in the suit) for the benefit of a remaining APS client. The property is located at 1508 Bellaire Dr., Grapevine, TX 76051 and is among the real property to be auctioned by the Receiver to satisfy the non-compliant client's loss allocation. According to the lawsuit, the APS client is currently owes property taxes in the amount of \$3,419.88. The Receiver’s response to

the suit is due May 8, 2017. In the meantime, the Receiver has recorded a lis pendens on the property to protect her interest.

Finally, the Federal Insurance Company interpleader lawsuit is discussed in Section 5 above.

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

APS business operations can be evaluated and broken into three categories. First, are revenue and expenses related to the day-to-day operations of APS. Second, are assets and expenses attributable to APS clients. Third, are assets and expenses related to APS 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 March 31, 2017, the Operating Account⁹ of APS was as follows:

	January 1, 2017 through <u>March 31, 2017</u>	<u>Receivership Cumulative</u> ¹⁰
Beginning Balance	\$72,518.81	\$129,251.80
APS Receipts ¹¹	\$97,534.24	\$5,582,555.50
APS Expenses	\$4,663.09	\$1,223,514.25
APS Extraordinary Expenses ¹²	\$ 803.80	\$4,323,706.87
APS Operating Account Balance	\$164,586.18	\$164,586.18

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.

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

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

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

¹² 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 March 31, 2017, the APS Master Trust Account and related expenses, receipts, and disbursements are as follows:

	January 1, 2017 through <u>March 31, 2017</u>	<u>Receivership</u> <u>Cumulative</u>
Beginning Balance	\$1,517,557.52	\$25,962,173.24
Receipts	\$262.78	\$64,436,922.89
Expenses	\$30.00	\$89,241,305.83
Balance	\$1,157,790.30	\$1,157,790.30

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 March 31, 2017, the APS 401K Trust Account and related expenses, receipts, and disbursements are as follows:

	January 1, 2017 through <u>March 31, 2017</u>	<u>Receivership</u> <u>Cumulative</u>
Beginning Balance	\$ ---	\$3,842,908.62
Receipts	\$ ---	\$7,150,259.60
Expenses	\$ ---	\$10,993,168.22
Balance	\$ ---	\$ --- ¹³

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

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

10. Receivership Property

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

11. 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.*

The Receiver filed a motion with this Court on October 14, 2016, seeking to establish a claims bar date for APS creditors of November 30, 2016. The Court ordered the Receiver to provide additional notice to potential creditors and extended the claims bar date to December 30, 2016. (Dkt. 838). The Receiver provided notice of her compliance with the Creditor Bar Date. (Dkt. 845). The Receiver received four additional claims. *See* Exhibit E. The Receiver has disputed two claims and has sent a letter to the claimants' attorneys advising of her dispute with the claim. The Receiver has not received a response. 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. The Receiver does not believe that additional objections to claims are appropriate.

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 a 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 Twelfth 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 April, 2017.

/s/ Melanie J. Vartabedian

Mark R. Gaylord, Esq.

Melanie J. Vartabedian, Esq.

Tesia N. Stanley, Esq.

Jeffrey D. Enquist, Esq.

BALLARD SPAHR LLP

Attorneys for Court-appointed Receiver, Diane A. Thompson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **TWELFTH QUARTERLY STATUS REPORT OF RECEIVER** was served to the following this 28th day of April, 2017, 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

Cheryl M. Mori, Esq.

Paul N. Feindt, Esq.

Amy J. Oliver, Esq.

SECURITIES & EXCHANGE COMMISSION

351 S. West Temple, Suite 6.100

Salt Lake City, UT 84101

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

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

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

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

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

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

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

Blake D. Miller, Esq.
Craig H. Howe, Esq.
MILLER TOONE, P.C.
165 South Regent Street
Salt Lake City, UT 84111

Gary E. Doctorman, Esq.
PARSONS BEHLE & LATIMER
201 S. Main Street, Suite 1800
Salt Lake City, UT 84111

R. Jeremy Adamson, Esq.
KUNZLER LAW GROUP, P.C.
50 West Broadway, 10th Floor
Salt Lake City, UT 84101

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

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

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

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

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

Robert G. Wing, Esq.
Mark W. Pugsley, Esq.
Jared N. Parrish, Esq.
Brent D. Wride, Esq.
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, UT 84145-0385

Edward F. Donohue, Esq.
HINSHAW & CULBERTSON LLP
One California Street, 18th Floor
San Francisco, CA 94111

Robert K. Hunt, Esq.
OFFICE OF THE FEDERAL PUBLIC DEFENDER
DISTRICT OF UTAH
46 West Broadway, Suite 110
Salt Lake City, UT 84101

Benjamin B. Grindstaff, Esq.
BENJAMIN B. GRINDSTAFF, PLLC
5383 South 900 East, Suite 103
Salt Lake City, UT 84117

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

Armand J. Howell, Esq.
HALLIDAY, WATKINS & MANN, P.C.
376 East 400 South, Suite 300
Salt Lake City, UT 84111

Jerome H. Mooney, Esq.
WESTON, GARROU & MOONEY
12121 Wilshire Blvd., 525
Los Angeles, CA 90025

/s/ Trista Lawson_____

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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