

Mark R. Gaylord (#5073)
Melanie J. Vartabedian (#10148)
Tesia N. Stanley (#13367)
Jeffrey D. Enquist (#14634)
Scott S. Humphreys (*admitted pro hac vice*)
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
humphreys@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.

**ELEVENTH 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 Eleventh Quarterly Status Report of Receiver as of December 31, 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 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

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 Eleventh Quarterly Status Report is submitted to the Court in compliance with the Receivership Order for the period of October 1, 2016 to December 31, 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. 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, is awaiting the recovery of funds pending the Tenth Circuit Court of Appeals decision on the Receiver's settlement with First Utah Bank, and is implementing the Court approved sale of account assets required for transferring or closing and distributing the remaining 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.

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.⁵

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.

⁵ 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

During the Reporting Period, the Receiver and her staff processed a limited number of accounts for transfer to Equity Trust. This processing involved multiple steps with appropriate quality controls as described in previous reports.

The Transition Services Agreement expired on December 31, 2015; however, it contained a provision allowing the Receiver to obtain 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. 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.* Under the Force Transfer Order, these clients will forego any future distribution from the Receivership Estate.

On March 21, 2016, the Receiver elected to transfer 714 accounts to Equity Trust under the Force Transfer Order and has processed those accounts.

At the time of this filing, there are fifty-three (53) accounts remaining at APS. Of the fifty-three (53) remaining accounts, forty-eight (48) have been the subject of motions filed with

submitted an Equity Trust account application prior to the expiration of the Transition Services Agreement have been accepted by Equity Trust.

the Court, two (2) are in the process of funding their loss allocation, and three (3) will be assigned by the Receiver as authorized in previous motions.⁶

At the end of the Reporting Period, the Receiver has transferred, terminated, or otherwise distributed 5,611 of the 5,664 accounts. Of the accounts transferred or closed at the end of the Reporting Period, 4,937 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.

Several remaining clients had extension agreements to fund their loss allocations. All payments were scheduled to be made no later than December of 2016, and the Receiver has transferred or distributed these accounts.

On November 28, 2016, this Court entered an order approving the liquidation of certain parcels of real property, via sheriff's sale or other public auction, from four (4) remaining accounts to fund the respective loss allocations, outstanding management fees, and the cost associated with liquidation. (Dkt. 841). The following day, the Court also entered orders authorizing the Receiver to liquidate eight (8) accounts holding promissory notes and four (4) accounts holding certain non-public company stocks. (Dkt. 842, 843).

As of the date of filing this Report, the Receiver filed motions seeking Court approval to liquidate an additional four (4) accounts holding real property (Dkt. 852), eleven (11) accounts holding promissory notes (Dkt. 851), and four (4) accounts holding non-public company stock (Dkt. 854). The Receiver also filed motions for the judicial dissolution of nineteen (19) LLCs

⁶ The fifty-three (53) 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).

held by held by seventeen (17) remaining accounts where the Receiver believes there are sufficient assets to liquidate in order to pay the loss allocation. (Dkt. 850, 853).⁷

The Receiver researched public records for any additional business entities in existence that Curtis may have used to conduct business so that she may ensure all such entities are no longer active or able to be used for any purpose. The Receiver conducted research on the membership and status of all such entities. For any entities not already expired per public records, the Receiver filed a Motion for Judicial Dissolution seeking a Court order judicially dissolving six (6) LLCs. (Dkt. 848).

The Receiver undertook additional collection efforts on APS assets payable, including two notes held by LJP Holdings on properties in Kansas City, Missouri. She also investigated a potential bank account held at Wells Fargo bank by an entity called Asset Acquisition Partners of America Inc. in which Michael D. Memmott, Jr. may have an interest. A subpoena to Wells Fargo did not result in the production of any documents. After multiple attempts, the Receiver recently served Asset Acquisition Partners of America Inc. with a subpoena and is awaiting a response.

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 eight postings in this Reporting Period, as follows:

⁷ There are four (4) accounts that are included in more than one motion to liquidate an asset with the Court as they contain more than one asset that the Receiver seeks to liquidate to fund the loss allocation.

- Notices on the main page: November 16, 2016 – Notice of November 22, 2016 court hearing on a number of outstanding motions including a creditor claims bar order.
- November 22, 2016 – Notice of the results of the hearing, specifically Notice of the Approval of Claims Bar Date and Method for Submitting Claims.
- November 22, 2016 – Notice of Approval of Sale of Real Property from APS Accounts.
- Documents - Tenth Quarterly Status Report; Motion for Claims Bar Date; Order Establishing Bar Date and Proof of Claim Form; Order Approving Liquidation of Real Property from APS accounts; Notice of Judgment in Criminal Case – Curtis DeYoung.

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 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 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. The outstanding amount of management fees owed by clients at the end of the Reporting Period is \$346,440.83.⁹ At the end of the Reporting Period, Express Recovery has recovered \$30,047.86, and cancelled \$8,218.76 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 accounts where assets are being sold based on the Court orders.

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.

⁹ During the prior Reporting Period, the Receiver assigned the final \$70,421.63 in management fees for all remaining accounts to Express Recovery for collections.

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.

In the 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 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 is preparing a response to the DOL.

The Receiver is also preparing an amended 5500 Tax form relating to the APS Employee 401(k) Plan.

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") 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 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 will be required to file IRS Forms 1099-R and IRS Forms 5498 for tax year 2016 in early 2017 and for 2017 account distributions in early 2018.

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

The Receiver has drastically reduced the volume of incoming mail, although she continues to receive returned mail on correspondence or documents sent to clients. The Receiver has endeavored to determine updated addresses, resend the mailings to clients, and has now advised the senders to redirect all mail 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.¹⁰ The Receiver will use the amounts listed on the CRAs to make future

¹⁰ 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 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).

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 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 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 Receiver continues to communicate with Equity Trust and provide information necessary to unfreeze appropriate brokerage accounts and re-register assets held within transferred 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. At the end of the Reporting Period, there were a total of thirty-five (35) 401(k) accounts that had not funded their loss allocation and whose accounts remained frozen. These thirty-five (35) accounts represent \$202,668.84 in remaining loss allocation. After consultation with counsel on her legal options and conducting a cost-benefit analysis of the likelihood of collecting the remaining loss allocation, the Receiver elected to unfreeze the remaining thirty-five (35) 401(k) accounts without collecting the loss allocation payments. No further action need be taken by the Receiver related to these accounts. The accounts will not be issued a CRA and will not share in any future distribution.

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. Curtis was sentenced on November 22, 2016, and is now incarcerated. As part of his sentence, Curtis was ordered to pay restitution of \$24,998,422.65.00 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

On April 18, 2016, Curtis DeYoung 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). 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, DOJ, and Federal Bureau of

Investigation (“FBI”). The Receiver will continue to coordinate with the SEC, DOJ and FBI as necessary on the valuation and sale of assets recovered.

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.

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 were secured in safe deposit boxes at a local bank. Following Curtis’s sentencing, the Receiver obtained clearance from the DOJ to sell these items. The Receiver contracted with Erkelens & Olson Auctioneers, who conducted a public auction on January 21, 2017 to sell these assets. The auction resulted in sales of \$19,754.00, and after paying auction commissions, a net of \$17,778.60 will be remitted 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. The Receiver is evaluating whether to pursue them.

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 Draper 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 her retention or sale of 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 filed an opposition to this Motion. The Receiver did not file a response as there is no benefit to the Receivership Estate. On November 22, 2016, the Court granted Franklin American Mortgage's motion, lifting the freeze order as to the residence.

Pursuant to the Settlement Agreement with Michelle DeYoung, the Receiver released the Lis Pendens she had placed on the Draper Residence. The Release was recorded on December 16, 2016. 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 Release was recorded on December 16, 2016.

The Receiver 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 has undertaken 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 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 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 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 moved to have the Complaint consolidated as an ancillary action to this case, resulting in the Court ordering the case transferred to Judge Shelby for further disposition. 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—filed 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 related to his criminal case. (Dkt. 29 in Federal Insurance case). Several discussions with counsel were conducted in an attempt to settle this matter. The Receiver has filed a motion for summary judgment asserting the Receivership's interest in the entirety of those funds. The motion is scheduled for a hearing on April 4, 2017.

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. 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 with the Court. (Dkt. 694). 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 8.¹¹

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 summary sheet 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

¹¹ 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.

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 are 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 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. The Receiver and her legal counsel have reviewed the available case files for all of the approximately fifty (50) purported judgments and settlements and determined the collectability of each judgment and settlement. During this Reporting Period, the Receiver contracted with Express Recovery to collect on the judgments and settlements in favor of APS. Express Recovery continues their efforts in collecting the judgments and settlements at this time. It is anticipated that Express Recovery will continue its efforts during the next reporting period.

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 fifty-three (53) APS clients who have failed to comply with the loss allocation requirement of the Plan of Liquidation. The Receiver has filed motions with the Court

proposing a method by which compliance with the loss allocation for final remaining accounts can be secured. The Court has entered orders authorizing the Receiver to liquidate certain assets of non-compliant account holders (Dkt. 841, 842, 843). The Receiver's motions to liquidate other remaining assets of non-compliant accounts are pending (Dkt. 848, 850-854). The Receiver is proceeding with liquidating the assets for which she has permission to sell. 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) 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 \$30.15 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 currently subject to an appeal with the Tenth Circuit Court of Appeals as described above. 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 \$1.23 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.

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. 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. As of the date of this Reporting period, the Receiver has resolved seven (7) of these cases.

Prior to the Receiver's appointment, APS initiated a lawsuit encaptioned *APS v. Direct Title Insurance Company*, a Utah District Court case. During the Reporting Period, the Receiver determined that APS's case against Direct Title Insurance Company should not be pursued due to the merits of the case and the likelihood of recovery given the fact that the defendant no longer exists as a business entity. At a pretrial conference on January 3, 2017, counsel to the Receiver requested that the action be dismissed with prejudice, which dismissal was ordered by the court.

APS was named as a defendant in the case of *Hardy v. Freitas*, in San Joaquin County, California. During this Reporting Period, Plaintiff dismissed the case and filed a proof of claim pursuant to the process set forth in the Liquidation Plan. *See also* Exhibit E. Counsel for the Receiver objected to the proof of claim as no judgment against APS was obtained. If the parties cannot agree on the validity of the proof of the claim, the dispute will be submitted to Magistrate Judge Dustin B. Pead for resolution pursuant to the Plan of Liquidation.

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 in Utah District Court where APS was a plaintiff --*APS v. Huettinger*. 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 sent a demand letter for

payment to Mr. Huettinger on October 31, 2016. Mr. Huettinger claims to have no assets to satisfy the judgment, but has provided no proof of his inability to pay. The Receiver has hired Express Recovery to attempt to collect on the judgment.

In the Receiver's ancillary action against Curtis and Michelle, *Thompson v. Curtis DeYoung and Michelle DeYoung*, Case No. 2:14-cv-00870-RJS, the Receiver reached a settlement with Michelle DeYoung. On December 9, 2016, the Court granted the parties' stipulated motion to dismiss the action with prejudice. Also pursuant to the settlement agreement, Michelle DeYoung dismissed her appeal at the Tenth Circuit Court of Appeals in *SEC v. American Pension Services, Inc.*, No. 15-4033. Upon interpleading the disputed settlement funds (for which Michelle's former attorney claims an interest), the Receiver will have completed all requirements under the Settlement Agreement and will be taking the funds in the DeYongs' retirement accounts for the Receivership Estate. Regarding her action against Curtis, the Receiver will seek dismissal in light of Curtis's settlement with the SEC, and his guilty plea to criminal charges.

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. (Dkt. 82, 84, Case no. 2:14-cv-00744). The Receiver continues to negotiate a settlement agreement with Deni Memmott, the personal representative of the estate of Michael Memmott Jr. The parties have agreed to settlement terms, and the Receiver is waiting for Ms. Memmott to provide the final documentation necessary to file a motion to approve the settlement agreement with this Court.

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. 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. The parties are currently engaged in settlement discussions.

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, 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 December 31, 2016, the Operating Account¹² of APS was as follows:

	October 1, 2016 through <u>December 31, 2016</u>	<u>Receivership Cumulative</u> ¹³
Beginning Balance	\$65,066.07	\$129,251.80
APS Receipts ¹⁴	\$69,629.27	\$5,485,021.24
APS Expenses	\$3,270.03	\$1,218,851.16
APS Extraordinary Expenses ¹⁵	\$ 58,906.50	\$4,322,903.70
APS Operating Account Balance	\$72,518.81	\$72,518.81

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.

¹² The Operating Account is a combination of the operating accounts for APS and APS 401K; however, these accounts are maintained separately by the Receiver.

¹³ This reflects the balance of the account at the beginning of the Receivership.

¹⁴ 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.

¹⁵ 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 December 31, 2016, the APS Master Trust Account and related expenses, receipts, and disbursements are as follows:

	October 1, 2016 through <u>December 30, 2016</u>	<u>Receivership</u> <u>Cumulative</u>
Beginning Balance	\$1,793,623.44	\$25,962,173.24
Receipts	\$318,197.84	\$64,436,660.11
Expenses	\$954,263.76	\$89,241,275.83
Balance	\$1,157,557.52	\$1,157,557.52

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 December 31, 2016, the APS 401K Trust Account and related expenses, receipts, and disbursements are as follows:

	October 1, 2016 through <u>December 31, 2016</u>	<u>Receivership</u> <u>Cumulative</u>
Beginning Balance	\$ ---	\$3,842,908.62
Receipts	\$ ---	\$7,150,259.60
Expenses	\$ ---	\$10,993,168.22
Balance	\$ ---	\$ --- ¹⁶

¹⁶ 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. 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 is evaluating whether 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 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 Eleventh Quarterly Status Report is a full report and accounting of the Receivership estate as of the end of the Reporting Period.

DATED this 30th day of January, 2017.

/s/ Melanie J. Vartabedian

Mark R. Gaylord, Esq.

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 **ELEVENTH QUARTERLY STATUS REPORT OF RECEIVER** was served to the following this 30th day of January, 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_____

INDEX

- Exhibit A Summary of the Operating Cash Receipts and Disbursements of APS and APS 401(k)
- Exhibit B Summary of the Operating Cash Receipts and Disbursements of the APS Master Trust Account
- Exhibit C Summary of Receivership Assets
- Exhibit D Schedule of Assets of APS Clients
- Exhibit E Summary of Known Creditors

EXHIBIT A

AMERICAN PENSION SERVICES, INC. AND AMERICAN PENSION 401K SERVICES, INC.
Business Operating Cash Receipts and Disbursements
For the Period October 1, 2016 through December 31, 2016

	Oct 1, 2016 through Dec 31, 2016	Receivership Cumulative
Beginning Cash Balance	\$ 65,066.07	\$ 129,251.80
Cash Receipts		
Business Revenue	22,420.17	3,598,633.44
Draws from Related Companies	47,209.10	47,209.10
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>69,629.27</u>	<u>5,485,021.24</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	1,235.11	25,312.25
Contract Labor	-	87,902.25
Copier Expense	-	3,383.76
Credit Card Processing	69.94	5,682.63
Document Disposal	-	2,598.64
Docuware Support	-	-
Employee 401(k) Program	625.00	39,138.08
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	-	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

AMERICAN PENSION SERVICES, INC. AND AMERICAN PENSION 401K SERVICES, INC.
Business Operating Cash Receipts and Disbursements
For the Period October 1, 2016 through December 31, 2016

	Oct 1, 2016 through Dec 31, 2016	Receivership Cumulative
Postage	90.83	25,375.30
Printing Expenses	-	10,264.27
Professional Services	-	1,245.00
Repairs & Maintenance	-	11,961.33
Storage	1,249.15	14,584.74
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>3,270.03</u>	<u>1,218,851.16</u>
Extraordinary Expenses:		
Receivership Fees and Expenses	<u>58,906.50</u>	<u>4,322,903.07</u>
Total Extraordinary Expenses	<u>58,906.50</u>	<u>4,322,903.07</u>
Total Cash Disbursements	<u>62,176.53</u>	<u>5,541,754.23</u>
Ending Cash Balance	<u>\$ 72,518.81</u>	<u>\$ 72,518.81</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 October 1, 2016 through December 31, 2016**

	October 1, 2016 through December 31, 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	-	7,150,259.60
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	-	10,993,168.22
Ending Cash Balance	\$ -	\$ -

EXHIBIT B

AMERICAN PENSION SERVICES MASTER TRUST ACCOUNT**Cash Receipts and Disbursements****For the Period October 1, 2016 through December 31, 2016**

	October 1, 2016 through December 31, 2016	Receivership Cumulative
Beginning Cash Balance	\$ 1,793,623.44	\$ 25,962,173.24
Cash Receipts		
Contributions for Loss Allocation	168,578.09	6,471,395.58
Contribution	-	1,119,475.88
Gain	-	4,273,369.99
Interest Payments	3,561.58	7,258,293.43
Principal Payments	3,917.03	21,280,236.43
Rent	-	1,719,931.13
Rollovers	-	1,113,941.33
Assets Sold	141,128.15	17,951,593.42
Direct Transfer In	-	2,186,306.37
Dividends	616.00	44,601.48
Bank Interest	396.99	9,765.22
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	318,197.84	64,436,660.11
Cash Disbursements		
Transfer to Equity	2,920.01	48,921,147.43
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	60,851.13	2,784,368.01
Distribution Charitable Gift Annuity	-	14,853.04
Qualified Distribution Roth IRA	-	130,601.37
Roth IRA Distribution - Exception applies	-	59,035.47
Federal Tax / Premature Distribution	-	16,500.00
Federal Tax / Normal Distribution	-	48,724.96
Expenses	-	1,249,037.15
Fees Paid	2,360.73	1,974,355.36
Property Tax	-	309,312.96
Charitable Gift Annuity	-	74.36
Direct Transfer Out	-	40,530.96
Receivership Administrative Costs	888,096.89	4,549,155.48
Bank Service Charges	35.00	261.50
Total Disbursements	954,263.76	89,241,275.83
Ending Cash Balance	\$ 1,157,557.52	\$ 1,157,557.52

EXHIBIT C

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

Entity	Asset Description	Estimated Value	Comments	Actions/Status
Personal Assets - Curtis DeYoung				
	Home - 12231 S. 1950 E., Draper, UT	630,000	Appraised Value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Encumbered by mortgage	(590,000)	Franklin America	Franklin filed a motion to intervene to release home from freeze [Dkt. 768]. The motion was granted on 11/22/16.
	Encumbered by 2nd Mortgage	(125,000)	Heritage West Credit Union	
	Combined Retirement Accounts - Curtis DeYoung	325,845	Frozen at Brighton Bank; accounts comprised of \$70,051 cash and remainder in various other investments of unknown value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	HSA account Curtis DeYoung	4,181		Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Combined Retirement Accounts - Michelle DeYoung	231,652	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].
	HSA account Michelle DeYoung	4,181		Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Personal Furniture, Fixtures (Draper Home)	20,000	Value based on Rob Olson inspection	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Idaho Cabin Furniture	unknown		
American Pension Services, Inc.				
	Cash - First Utah Bank	72,519	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 determine the value if any of APS' interest in the properties.
	APS interest in two Ogden properties	195,000	APS has notice of interest on properties	Final tax return filed for 2015. Subject of Motion for Judicial Dissolution [Dkt. 848]. Cash was transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
LIC Environmental				
	Cash - First Utah Bank	-		
LP, LLC				
	Cash - First Utah Bank	-		Subject of Motion for Judicial Dissolution [Dkt. 848].
	Receivable - Cl. White - Kansas City	2,250		Cash was transferred to APS Operating Account during the Eleventh Reporting Period (October 2016). Property was allegedly foreclosed upon by another lender. Receiver is researching this.
	Receivable - Lionel Brown - Kansas City	18,000		Periodic payments being received. The Receiver has demanded payment in full with interest.
Quicksilver				
	Cash - First Utah Bank	-		Subject of Motion for Judicial Dissolution [Dkt. 848]. Cash was transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
First Silverado				
	Cash - First Utah Bank	-		Subject of Motion for Judicial Dissolution [Dkt. 848]. Cash was transferred to APS Operating Account during the Eleventh Reporting Period (October 2016).
APS Master Trust				
	Property - Harrisburg, PA	25,300	3 homes, demolished by City as a hazard. Total assessed value only on land	Demolition costs and taxes are in excess of value. Receiver legally abandoning the properties
DHB2 Holdings, LLC				
	Cash - Brighton Bank	67,616	Amount on deposit at Brighton Bank	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
RE Ventures, LLC				
	Cash-Brighton Bank	81,745	Amount on deposit at Brighton Bank	Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. Subject of Motion for Judicial Dissolution [Dkt. 848].
Other Claims or Assets				
	APAS	-	Account closed	Final tax return filed for 2015.
	Claim for Uncollected APS Management Fees	411,134		Open accounts plus amounts assigned to Express Recovery for collection.
	Membership Interest in Asset Acquisition Partners of America Inc.	Unknown	Value to be determined	Served a subpoena concerning potential bank account associated with Michael Memmott, Jr. Awaiting response.
	Value of Assets Discovered (coins, jewelry, precious metals)	17,778	Auction Value	The assets were auctioned on January 21, 2017.
	Interest in BD&D Investments, Inc.	-	Not aware of any value. Cannot verify existence of this entity.	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Various Collectibles and Judgments	Unknown	Value to be determined	The Receiver contracted with Express Recovery to collect on the judgments and settlements in favor of APS. Express Recovery continues their efforts to collect. See also Dkt. 749.
	Partnership Interest in DeYoung Associates, Ltd.	-	No known value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Membership Interest in DLC2 Investments, LLC	65,948	Value to be determined	Subject to Settlement Agreement with M. DeYoung [Dkt. 701]. Subject of Motion for Judicial Dissolution [Dkt. 848].
	Claims Against Estate of Michael Memmott Jr.	5,000,000		Subject of <i>Thompson v. Memmott</i> , Case No. 2:14-cv-00744-RJS. Receiver moving toward settlement.
	Action Against First Utah Bank	13,500		Subject to appeal at 10th Circuit, appellate case 16-4013. Awaiting decision from 10th Circuit.
	Default Judgment Against Gary Huettlinger	1,000,000		Assigned to Express Recovery for collection.
	Claim Against Insurance Carriers - Chubb (Federal Insurance Company)	-	Policy limits interpleaded by Chubb	Interpleader Action pending, Case No. 2:16-cv-00023. Receiver filed a motion for summary judgment for entire policy proceeds. Scheduled for hearing on 4/4/17.
	Interest in Interim Funding	-	Checking account for \$100 transferred to APS operating account	No further action necessary
	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	1,157,558		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	1,577,747		Receiver filed motions to liquidate assets from accounts.
	Interest in Mitrocc, LP	unknown	M. DeYoung formerly had ownership interest in entity w M. DeYoung represents assets are minimal and she no longer has a claim to any of the assets. Receiver determined not to pursue assets.	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
	Partnership Interest in NACH, LP	-	No known value	

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

Entity	Asset Description	Estimated Value	Comments	Actions/Status
Interest in Venture Broadcast Inc.		-	No known value	Subject to Settlement Agreement with M. DeYoung [Dkt. 701].
Interest in Witt's Lake Ranch, LLC		unknown	M. DeYoung has ownership interest which was not disc'd. M. DeYoung represents there are no assets currently or ever owned by entity. Receiver considering whether to take steps to transfer ownership interest to Receiver.	

EXHIBIT D

AMERICAN PENSION SERVICES, INC.
SCHEDULE OF CLIENT ASSETS
AS OF DECEMBER 31, 2016

ASSET TYPE	BOOK VALUE
Cash	\$ 176,577
Consolidated Notes	100,000
Contracts	622,155
Limited Partnerships	169,632
LLC Interest	8,223,689
Loan Agreements	100,000
Oil Leases	73,000
Promissory Notes	3,949,079
Real Property	903,806
Rescission Offer	708,455
Stocks	2,034,415
Trust Deed Notes	624,119
Total Assets	\$ 17,684,927

NOTES:

Note 1 - The asset descriptions and asset values shown above were compiled from data contained in the APS trust accounting system as of December 31, 2016. The Receiver and her professionals do not guarantee the accuracy of the categories and their related values.

EXHIBIT E

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

CREDITOR	ADDRESS	OBLIGOR	AMOUNT	DESCRIPTION
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
Dauphin County Tax Bureau	P.O. Box 1295, Harrisburg, Pennsylvania 17108	American Pension Services, Inc.	69,347.12	Claim for Unpaid Taxes
Estate of Jeannine Reneau	2825 E. Cottonwood Pkwy, Ste. 500, SLC, UT 84121	American Pension Services, Inc.	505,959.87	Judgment
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
First Utah Bank	4168 W. 12600 S., Riverton, UT 84096	American Pension Services, Inc.	27,840,599.00	Claim for Indemnity, Insurance, Joint Account, Rent, and Banking Fees
Franklin America	501 Corporate Centre Dr., Franklin, TN 37067	Curtis DeYoung	590,000.00	Mortgage on residence
Greenbaum Law Group, LLP	840 Newport Ctr. Dr., Suite 720 Newport Beach, CA 92660	American Pension Services, Inc.	3,484.50	Legal fees
Heritage West Credit Union	13218 South 5600 West, Herriman, UT 84096	Curtis DeYoung	125,000.00	Mortgage on residence
James P. Alfrey	3843 West 11970 South, Riverton, UT 84065	American Pension Services, Inc.	2,000.00	Claim for Unpaid Compensation
Kyler Kohler Ostermiller & Sorensen	1883 W. Royal Hunte Dr., Suite 200, Cedar City, UT 84720	American Pension Services, Inc.	320.00	Legal fees
Louis Hardy and Sandra Kane	4568 Feather River Dr., Ste. A, Stockton, CA 95219	American Pension Services, Inc.	720,756.61	Claim for Breach of Contract
Mountain America Credit Union	111 East Broadway, 11th Floor, SLC, UT 84111	American Pension Services, Inc.	12,253.00	Judgment
Smith Accounting Services	999 E. 13200 S., Draper, UT 84020	American Pension Services, Inc.	8,695.62	Accounting fees
Snow, Christensen & Martineau	10 Exchange Place, 11th Floor, SLC, UT 84145-5000	American Pension Services, Inc., Curtis DeYoung	14,851.60	Legal fees
Total			<u>\$ 30,114,645.98</u>	

NOTES:

Note 1 - The above represents all known creditors of the Receivership Estate. The creditor claims bar date was 12/30/16.

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

Note 3 - The Receiver objected to the claims of Hardy/Kane and First Utah Bank's indemnity claim. The Receiver is evaluating whether additional objections are appropriate.

Note 4 - All claims made by First Utah Bank are subject to the settlement with First Utah Bank, which is the subject of an appeal pending before the 10th Circuit.