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Diane A. Thompson*

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

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

Defendants.

**RECEIVER'S OPPOSITION TO
DEFENDANT CURTIS DeYOUNG'S
SECOND MOTION TO RELEASE
PORTION OF REVENUES AND
ASSETS OF AMERICAN PENSION
SERVICES, INC. FOR PAYMENT OF
ATTORNEY FEES**

Case No.: 2:14-CV-00309-RJS-DBP

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

Diane Thompson, the Court-Appointed Receiver ("Receiver"), by and through undersigned counsel, hereby opposes Defendant Curtis L. DeYoung's ("DeYoung") Second Motion to Release Portion of Revenues and Assets of American Pension Services, Inc. for Payment of Attorney Fees [Docket No. 147] (the "Motion").

INTRODUCTION

Due to the misappropriation of \$24 million of client funds, American Pension Services, Inc. (“APS”) is bankrupt in that its liabilities significantly exceed its assets. DeYoung’s Motion asks the Court to order the APS clients to foot the bill of defending DeYoung’s misconduct. The Court should not allow DeYoung to use any of APS’s assets or revenue to pay his legal fees for a host of reasons.

APS does not have funds available to pay for DeYoung’s legal defense. DeYoung misrepresents that APS is receiving “legitimately derived revenues” he should be allowed to access for his own defense. The revenue generated by the operations of APS did not come from legitimate business operations. Nor does it come close to covering the shortfall created by DeYoung’s misconduct. In fact, APS’s current revenue is woefully short as APS finds itself insolvent due to the missing \$24 million, which is a liability caused by DeYoung and APS.

Even if APS had sufficient funds, which it does not, DeYoung’s request should still be denied. “Just as a bank robber cannot use the loot to wage the best defense money can buy, so a swindler in securities markets cannot use the victims’ assets to hire counsel who will help him retain the gleanings of crime.” *SEC v. Quinn*, 997 F.2d 287, 289 (7th Cir. 1993). It is not likely APS investors will recover sufficient revenue to cover the losses caused by the securities fraud perpetrated by DeYoung and APS. Therefore, they should not be further victimized and placed at risk of additional loss for the benefit of DeYoung. DeYoung has made no showing that he is attempting to pay for his attorney’s fees by seeking employment, as would be the burden on any other litigant. The Receiver respectfully requests that the Motion be denied.

Alternatively, if the Court is inclined to make funds available for DeYoung's additional defense fees, the Court could consider making DeYoung and his wife's 401(k) contributions to the APS 401k Plan established for APS employees available to pay the attorney's fees. Currently, there is approximately \$151,000 on deposit in two Brighton Bank accounts, opened surreptitiously by Dean Becker, in violation of the Freeze Order, in the name of DLC2 Investments, LLC and RE Ventures, LLC, which are Utah limited liability companies owned by DeYoung's 401(k), Roth 401(k), SEP IRA and IRA and Michelle DeYoung's 401(k), Roth 401(k), and SEP IRA, respectively. No additional funds should be made available for use in DeYoung's defense.

FACTUAL BACKGROUND

1. On May 19, 2014, DeYoung filed his first Motion to Release Profits of American Pension Services, Inc. for Payment of Attorney Fees [Docket No. 65] (“First Motion”) wherein he asked the Court to release \$250,000.00 from APS funds for the payment of attorney fees and costs. (*See* First Motion at 12.)

2. At a hearing on May 23, 2014, the Court denied the First Motion, noting that “a majority of courts that consider requests for release of funds by defendants who are charged with securities fraud in the face of a prima facie showing not unlike the showing that the Securities and Exchange Commission has made here, most courts say that the defendants are not entitled to release of those funds.” (*See* Transcript of May 21, 2014, Hearing at 30:10-17.)

3. The court also voiced its “concerns that Mr. DeYoung may have intentionally violated the Court’s temporary restraining order after receiving notice of it by destroying documents” as well as “sought to transfer funds that were frozen by the Court’s order” and, further, “may have deliberately delayed participation in communication with the Commission to facilitate a timely inventory of equipment and documents in accordance with the Court’s order.” (Transcript at 31:3-11.)

4. Notwithstanding these concerns, the Court left open the possibility of directing the release of some funds from APS in the future in recognition that it would be beneficial to the Court and the public interest that DeYoung have competent counsel “at least in the first instance through the preliminary injunction.” (*Id.* at 31:16-25, 32:1-9.)

5. On May 30, 2014, this Court authorized \$80,000 from non-APS funds to be used for DeYoung’s defense [Docket No. 84]. This amount was later raised to \$85,000.

6. On July 23, 2014, almost exactly four months after the Receiver was first appointed, the Court granted the SEC's Motion for Preliminary Injunction [Docket No. 38]. In granting the SEC's Motion for Preliminary Injunction, the Court found that the SEC had demonstrated a prima facie case that DeYoung and APS engaged in securities fraud by misappropriating approximately \$24 million belonging to investors. DeYoung was represented by counsel at the hearing.

7. APS does not have sufficient funds to pay for DeYoung's legal defense. In 2012, APS had total revenue of \$2.4 million with APS expenses of \$2.1 million, leaving a net ordinary income of \$299,542. (See Declaration of Mark Hashimoto ("Hashimoto Decl."), dated August 4, 2014, ¶ 3, attached hereto as Exhibit A.)

8. In 2013, the total revenue of APS was \$2.5 million with expenses totaling \$2.25 million, leaving a net ordinary income of \$254,700. (*Id.* at ¶ 4.) Instead of using the net ordinary income to reimburse the more than \$24 million misappropriated, DeYoung chose to loan the funds to Michael Memmott, Jr., which funds have not been repaid as of this date. (Depo. of C. DeYoung, at 106-113.) The payments to Innovative Equity Partners, a Michael Memmott entity, totaled \$155,617 in 2013. These were characterized loans and, therefore, not included in APS's 2013 profits and losses. Further, Curtis DeYoung chose to take distributions (dividends) of \$83,903.45 from APS, in addition to his salary, in 2013. These distributions were similarly not included in APS's 2013 profits and losses. (Hashimoto Decl. at ¶¶ 5-6.)

9. As of the appointment of the Receiver on April 24, 2014, the Receiver and her forensic accountant have determined that APS is in essence bankrupt due to the misappropriation of more than \$24 million. Based on the assets located to date, APS's assets only have a value of

approximately \$1.0 to \$1.5 million while its liabilities exceed \$25 million rendering APS insolvent. (*Id.* at ¶ 7.)

10. Although APS continues to operate, it is unlikely it will generate or recover the assets needed to cover all monthly expenses and/or liabilities. (*See* Hashimoto Decl. at ¶ 5.)

11. As of April 24, 2014, the starting date of the Receivership, APS had \$126,225.49 in cash in its operating account (the “Operating Account”). (*Id.* at ¶ 8.)

12. APS also maintains a commingled master account at First Utah Bank (the “APS Master Trust Account”) which had a balance of approximately \$26,067,698 as of April 25, 2014. (*Id.* at ¶ 9.)

13. Since taking control APS, the Receiver has cut operating costs and expenses of APS significantly. (*Id.* at ¶¶ 10-11.)

14. The Receiver has terminated all but six (6) employees, including DeYoung, his wife Michelle and his daughters, which reduces employee salaries substantially—including DeYoung’s and Michel DeYoung’s monthly salary of \$40,000.00. (*Id.* at ¶ 10.)

15. The Receiver seized all APS advertising and canceled all subscriptions. (*Id.* at ¶ 11.)

16. The monthly revenue of APS is approximately \$200,000, with monthly expenses of approximately \$60,000, excluding the administrative costs of the Receivership, which are significant. (*Id.* at ¶ 12.)

17. As of June 30, 2014, APS’s Operating Account had a balance of \$395,319.80. This amount is likely to dwindle over time and remain insufficient to cover current operating and administrative expenses of the Receivership. (*See Id.* at ¶ 13.)

18. On Monday, April 28, DeYoung, acting with the assistance of his wife, Michelle DeYoung, and his former APS paralegal, Dean Becker, liquidated funds held by LLCs at Zions First National Bank (“Zions Bank”) and re-deposited those funds into newly opened bank accounts held in the name of those same LLCs at Brighton Bank. (*Id.* at ¶¶ 14-15.)

19. The clear intent of the transfer was to prevent Zions Bank from freezing those assets pursuant to the Receivership Order.

20. The Receiver did not learn of this transfer until May 5, 2014. That day, while reviewing APS records, certified fraud examiner Mark Hashimoto discovered that in February 2014, DeYoung had transferred approximately \$151,000.00 held in the IRA, 401(k) and HSA accounts of DeYoung and Michelle DeYoung from the APS Master Trust Account and the APS 401(K) Trust Account to bank accounts located at Zions Bank in the name of newly formed LLCs: DLC2 Investments, LLC and RE Ventures, LLC. (*Id.* at ¶ 14.)¹

21. On April 28, to avoid detection, DeYoung instructed his wife Michelle DeYoung and Dean Becker, acting in his capacity as manager for each of the four LLCs, to withdraw funds in the accounts, including the \$151,000.00, by requesting cashier’s checks made payable to each of the LLCs. (*See id.* ¶ 15.) Although the Receiver had notified Zions Bank that same day to freeze all assets held by DeYoung and any APS entities, the transfers apparently were authorized because the assets were held in the name of newly-created LLCs bearing no obvious relationship to APS or DeYoung. Dean Becker then deposited those funds in newly created accounts at Brighton Bank. (*Id.* at ¶ 15.)

22. Having learned of the existence of these accounts at Zions Bank, and having discovered that the accounts suddenly and mysteriously had a \$0 balance, the Receiver requested

¹ According to the Utah Division of Corporations, Dean Becker is the registered agent and manager of these LLCs.

and obtained from Zions Bank copies of each of the four cancelled cashier's checks and determined that the checks had been negotiated at Brighton Bank. (*See id.*) The next day, May 6, the Receiver notified Brighton Bank that the funds were to be frozen pursuant to the Receivership Order before DeYoung, Becker, or anyone else could transfer the funds elsewhere. (*Id.* at ¶ 16.)

23. As of today's date, two Brighton Bank accounts have deposits totaling approximately \$151,000, which are held in the name of DLC2 Investments, LLC and RE Ventures, LLC. The entities are owned by DeYoung's and Michelle DeYoung's 401(k), Roth IRA, SEP IRA, and IRA, respectively. (*Id.* at ¶ 14.)

ARGUMENT

I. THE OVERWHELMING WEIGHT OF AUTHORITY REQUIRES THAT DEYOUNG’S MOTION BE DENIED.

A. Governing Law.

It is well established that “[a] defendant in a case brought by the SEC may not use income derived from alleged violations of the securities laws to pay for legal counsel.” *SEC v. Roor*, No. 99 Civ. 3372 (JSM), 1999 WL 553823, at *3 (S.D.N.Y. July 29, 1999).² “Just as a bank robber cannot use the loot to wage the best defense money can buy, so a swindler in securities markets cannot use the victims’ assets to hire counsel who will help him retain the gleanings of crime.” *SEC v. Quinn*, 997 F.2d 287, 289 (7th Cir. 1993); accord *SEC v. Coates*, No. 94 Civ. 5361, 1994 WL 455558 at *3 (S.D.N.Y. Aug. 23, 1994) (“A defendant is not entitled to foot his legal bill with funds that are tainted by his fraud.”)

“To persuade a court to unfreeze assets, the defendant must establish [1] that the funds he seeks to release are untainted and [2] that there are sufficient funds to satisfy any disgorgement remedy that might be ordered in the event a violation is established at trial.” *S.E.C. v. Stein*, No. 07 Civ. 3125 (GEL), 2009 WL 1181061 at *1 (S.D.N.Y. Apr. 20, 2009). Even if a defendant satisfies this burden, “[g]iven that the funds released are, in effect, coming out of the pockets of defrauded investors, it is appropriate for the court to consider whether the funds are necessary.” See *S.E.C. v. FTC Capital Markets, Inc.*, No. 09 Civ. 4755(PGG), 2010 WL 2652405 at *9-10 (holding that defendant demonstrated a need for the release of funds, but had failed to justify the

² See also *SEC v. Stein* Case No. 07 Civ. 3125(GEL), 2009 WL 1181061 at *1 (S.D.N.Y. Apr. 20, 2009) (refusing to release assets to pay for legal fees because “it appears that there are assets sufficient to cover the likely disgorgement and restitution obligations the Commission seeks”); *SEC v. Coates*, No. 94 Civ. 5361(KWM), 1994 WL 455558, at *3 (S.D.N.Y. Aug. 23, 1994) (“A defendant is not entitled to foot his legal bill with funds that are tainted by his fraud. In a criminal case, such restrictions on a defendant’s ability to obtain legal counsel do not violate his Sixth Amendment rights.”)

release of \$100,000 in addition to the \$60,000 that may already have been paid to defense counsel); *SEC v. Roor*, No. 99 Civ. 3372 (JSM), 1999 WL 553823, at *3 (S.D.N.Y. July 29, 1999) (refusing to unfreeze access to the defendant's home equity line of credit even though the equity in the home was not the proceeds of the fraud because the defendant would "soon have significant personal liabilities to the government and to the victims of the fraud he is alleged to have perpetrated.")

B. DeYoung Fails to Meet His Burden of Showing that the Funds He Seeks To Release Are Untainted and That There Are Sufficient Funds to Satisfy Any Disgorgement Remedy That Might Be Ordered.

The APS funds DeYoung seeks to release are tainted by his fraud and there are not sufficient funds to satisfy any disgorgement remedy in the event that a securities law violation is established. First, the SEC made a substantial evidentiary showing at the conclusion of the July 23, 2014 preliminary injunction hearing that DeYoung defrauded investors by misappropriating at least \$24 million held in the APS Master Trust Account. DeYoung's argument that he "vigorously disputes that the SEC has met its burden to present a *prima facie* case in support of the Freeze Order, and he vigorously disputes that any securities violation has occurred" has been rejected by this Court which found the SEC had demonstrated a *prima facie* case of securities fraud. (*See* Minute Entry [Docket 167].³)

DeYoung's attempt by his Motion to identify specific fees as separate from an overall fraudulent scheme is unpersuasive. (Motion at 4.) As stated in the SEC's Opposition to Second Motion to Release Portion of Revenues and Assets of American Pension Services, Inc. for Payment of Attorney Fees ("SEC Motion"), "irrespective of whether APS had functioned in a

³ The Court issued its oral ruling at the conclusion of the preliminary injunction hearing held on July 23, 2014, which is presently being reduced to written form by counsel for the SEC. However, the Court's oral ruling became effective immediately.

previously legitimate manner, APS immediately became a scheme and artifice that he used to defraud thousands of APS customers. Because all new customers are victims of his fraud and will share in the loss, none of the fees generated by APS during the ongoing fraudulent scheme are legitimate or untainted.” (SEC Motion at 9.)

Further, DeYoung overstates the profits of APS and funds available for his defense by failing to fully account for APS expenses and liabilities. The net ordinary income of APS in 2012 and 2013 was \$299,542 and \$254,700, respectively. (Statement of Facts (“SOF”), ¶¶ 7-8.) Instead of setting these funds aside to make up the shortfall, APS disbursed these funds to third-parties as unsecured promissory notes that have not been repaid. (*See* 2013 APS Profit and Loss Statement, attached hereto as Exhibit B). Nor does the Operating Account of APS have sufficient funds to cover APS’s current operation and administrative expenses, let alone DeYoung’s legal fees. At the beginning of the Receivership, APS had \$126,225.49 in cash in its Operating Account. (SOF, ¶ 11.) The Receiver has undertaken to substantially reduce APS’s monthly expenses, in part by eliminating the generous salaries DeYoung and his wife paid themselves. (SOF, ¶ 14.) The APS assets located to date have a value of approximately \$1.0 to \$1.5 million, while APS’s liabilities exceed \$25 million. (SOF, ¶ 9.)

As of June 30, 2014, the Operating Account had a balance of \$395,319.80. (SOF, ¶ 17.) This amount does not cover the operating and administrative expenses of APS that have been incurred by APS, the Receiver, and the professionals the Receiver has retained to assist in seizing and marshaling the assets of APS and maintaining the status quo while the SEC and DeYoung addressed the merits of the case. The Receiver and her professionals have dedicated a substantial amount of time and effort during the Receivership, and will submit a fee application

to the Court on or about August 15, 2014 which will reflect the substantial amount of work done in this case.

In *Stein* the court stated, “it is noteworthy that [the defendant] has made no effort in any of his affidavits to refute any of the Commission’s claims.” *SEC v. Stein*, Case No. 07 Civ. 3125(GEL), 2009 WL 1181061 at *1 (S.D.N.Y Apr. 20, 2009). The same is true here: DeYoung does not contest his misappropriation of \$24 million of investor funds. Instead, he remains unemployed and refuses to cooperate with the Receiver. DeYoung has even undermined the Receiver’s efforts to secure Receivership Assets by moving property to locations unknown. The Receiver continues to await an updated asset list from DeYoung. Ordering APS to hand over \$67,334.37 from the frozen assets to the wrong-doer is not fair or just. Thus, the Motion should be denied.

Second, the complaint against DeYoung alleges that he took \$24 million from the accounts, which is overwhelmingly supported by the evidence in this case. “This is not a case in which liability, and hence a likely disgorgement order, is seriously in dispute.” (SEC Motion at 9.) The Receiver is aggressively in the process of recovering all assets held by DeYoung, which she expects will be significantly less than the \$24 million missing from the APS Master Trust Account. To the extent there are any excess revenue generated from the operations of APS and/or recovered from the Receiver’s efforts to marshal and liquidate all of APS’s assets, the revenue should be allocated to reimburse the more than 5500 APS clients who have suffered losses at the hands of DeYoung.

C. The Cases Cited By DeYoung Are Inapposite.

The cases relied upon by DeYoung are inapposite. In *S.E.C. v. Duclaud Gonzalez de Castilla*, the district court granted the defendants’ motion to modify the freeze to permit the

payment of legal fees, but only because the district court had previously determined that the SEC failed to sustain its burden of proving that the defendants had engaged in insider trading and therefore denied the SEC's motion seeking an order preliminarily enjoining the defendants from violating securities laws in the future. 170 F.Supp.2d 427, 430 (S.D.N.Y. 2001) (citing its prior decision in *S.E.C. v. Gonzalez de Castilla*, 145 F.Supp.2d 402, 419 (S.D.N.Y. 2001)). By contrast, the APS funds are missing and substantial evidence establishes DeYoung as the source of misappropriation.

In *S.E.C. v. Dowdell*, the court's concern—similar to this Court's—was that a fair result would not be achieved at a preliminary injunction hearing if the defendants were not able to retain counsel given the complex nature of the case. 175 F.Supp.2d 850, 856 (W.D. Va. 2001). DeYoung was represented by counsel through the preliminary injunction hearing and, thus, the court's analysis in *Dowdell* does not apply.

II. ALTERNATIVELY, THE RETIREMENT ACCOUNTS OF THE DeYOUNGs MAY BE USED TO PAY DeYOUNG'S LEGAL FEES; HOWEVER, THE FEES SHOULD NOT EXCEED THE FEES THAT WOULD BE INCURRED BY COURT-APPOINTED DEFENSE COUNSEL IN A CRIMINAL MATTER.

At the hearing on May 21, 2014, the Court expressed its concern that DeYoung be represented by competent counsel through the preliminary injunction. (Transcript at 27:15-17; 31:16-22; 32:4-9.) That concern is of no further import because the Court entered a preliminary injunction wherein it concluded that the SEC had shown a substantial likelihood of success on the merits on July 23, 2014. DeYoung was represented by counsel at the hearing and has received the process he is due.

To the extent the Court still has concerns and wishes to compensate counsel for DeYoung, it should only do so by allowing DeYoung and/or his wife to tap into their respective

401(k) investments made to APS employee retirement plan. (SOF, ¶ 23.) Under federal law, only the owner of these investments can elect to liquidate their retirement account. 29 U.S.C.A. § 1056(d)(1). Here, if DeYoung truly wants the benefits of legal counsel, he can elect to liquidate his retirement account, which funds are available to him and not the Receiver. Since the funds have been frozen by the Order Appointing Receiver, Freezing Assets, and other Relief, the Court could enter an order unfreezing the DeYoungs' retirement accounts which could be used by DeYoung to pay his defense costs.

In doing so, the Court should also consider limiting the amount of fees to no more than what would be charged by court-appointed counsel in a criminal matter. In essence, DeYoung claims that he has a due process right to legal counsel. This assertion is not only wrong as a legal matter, but even if this were a criminal proceeding entitling DeYoung to counsel under the Sixth Amendment, DeYoung would be entitled to a public defender. Hence, at the most, the court should only authorize payment of the same fee given to court-appointed defense counsel in criminal matters. *See S.E.C. v. Cherif*, 933 F.2d 403, 416-17 (7th Cir. 1991) (“A criminal defendant has ‘no Sixth Amendment right to spend another person’s money for services rendered by an attorney.’ It would be anomalous to hold that a civil litigant has any superior right to counsel than one who stands accused of a crime.” (quoting *Caplin & Drysdale v. United States*, 491 U.S. 617 (1989))). DeYoung has already been given access to \$85,000 for his defense. If the Motion is granted, APS investors will be put at risk of suffering a further loss to pay the defense costs of the very person that defrauded them.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that DeYoung's Motion be denied. Alternatively, only funds from DeYoungs' retirement accounts should be made available to cover the costs of DeYoung's defense.

DATED this 4th day of August 2014.

/s/ Mark R. Gaylord

Mark R. Gaylord, Esq.

Melanie J. Vartabedian, Esq.

Scott S. Humphreys, Esq., *pro hac vice*

BALLARD SPAHR LLP

Attorneys for the Court-Appointed Receiver,

Diane A. Thompson

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August 2014, I caused a true and correct copy of the foregoing **RECEIVER'S OPPOSITION TO DEFENDANT CURTIS DeYOUNG'S SECOND MOTION TO RELEASE PORTION OF REVENUES AND ASSETS OF AMERICAN PENSION SERVICES, INC. FOR PAYMENT OF ATTORNEY FEES** to be delivered as follows:

Through the CM/ECF System for the U.S. District Court.

Hand Delivery

U.S. Mail, postage prepaid

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EXHIBIT A

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*Attorneys for the Court-Appointed Receiver,
Diane A. Thompson*

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

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

Defendants.

**DECLARATION OF MARK
HASHIMOTO**

Case No.: 2:14-CV-00309-RJS-DBP

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

I, Mark Hashimoto, hereby declare under penalty of perjury that the following is true and correct, and made upon personal knowledge and belief:

1. I am a Certified Public Accountant and Certified Fraud Examiner with over 30 years of experience in the areas of investigative accounting, bankruptcy reorganization and receivership matters.

2. I am a Principal with the accounting firm of Piercy Bowler Taylor & Kern (“PBTk”), which has been retained as accountant for Diane Thompson, the Court-Appointed Receiver (“Receiver”) in this matter, who took over operations of American Pension Services, Inc. on April 25, 2014.

3. In 2012, APS had total revenue of \$2.4 million with APS expenses of \$2.1 million, leaving a net ordinary income of \$299,542.

4. In 2013, the total revenue of APS was \$2.5 million with expenses totaling \$2.25 million, leaving a net ordinary income of \$254,700.

5. I identified payments to Innovative Equity Partners, a Michael Memmott entity, which totaled \$155,617 in 2013. These payments were characterized as loans and, therefore, not included in APS’s 2013 profits and losses.

6. Curtis DeYoung had distributions (dividends) of \$83,903.45 from APS, in addition to his salary, in 2013. These distributions were similarly not included in APS’s 2013 profits and losses.

7. As of the appointment of the Receiver on April 24, 2014, the Receiver and I determined that APS is in essence bankrupt due to the misappropriation of more than \$24 million. Based on the assets located to date, APS’s assets only have a value of approximately \$1.0 to \$1.5 million while its liabilities exceed \$25 million rendering APS insolvent.

8. As of April 24, 2014, the starting date of the Receivership, APS had \$126,225.49 in cash in its operating account (the “Operating Account”).

9. APS also maintains a commingled master account at First Utah Bank (the “APS Master Trust Account”) which had a balance of approximately \$25,962,173 as of April 25, 2014.

10. Upon reviewing the APS payroll, I discovered that Curtis L. DeYoung and his wife Michelle DeYoung had each been paid \$10,000.00 on a bi-weekly basis, or approximately \$520,000.00 per year while at APS.

11. The Receiver has worked to decrease operating expenses including elimination of all advertising, canceling all subscriptions and reducing payroll costs.

12. The monthly revenue of APS is approximately \$200,000, with monthly expenses of approximately \$60,000, excluding the administrative costs of the Receivership.

13. As of June 30, 2014, APS's Operating Account had a balance of \$395,319.80.

14. On May 5, 2014, I discovered that in February, 2014, funds from DeYoungs' IRA, 401(k) and IRA accounts had been transferred from the American Pension Services, Inc. Master Trust Account and the American Pension Services, Inc. 401(K) Trust Account to bank accounts at Zions Bank in the names of newly-formed LLC's. A summary of two of those transfers are as follows:

To: DLC2 Investments, LLC

Manager:	Dean Becker	
Members:	Curtis DeYoung 401(k)	\$33,583.05
	Curtis DeYoung Roth 401(k)	32,997.90
	Curtis DeYoung SEP IRA	2,839.06
	<u>Curtis DeYoung IRA</u>	<u>630.57</u>
	Total to DLC2 Investment, LLC	\$70,050.58

To: RE Ventures, LLC

Manager:	Dean Becker	
Members:	Michelle DeYoung 401(k)	\$37,739.80
	Michelle DeYoung Roth 401(k)	41,167.48
	<u>Michelle DeYoung SEP IRA</u>	<u>2,563.91</u>
	Total to RE Ventures, LLC	\$81,471.19

15. Also on May 5, 2014, the Receiver discovered that on April 28, 2014, Dean Becker, acting in his capacity as manager for each of the two LLCs identified above, had

requested that Zions Bank withdraw all funds held in each of the two LLC accounts, totaling approximately \$151,795.28, by issuing cashier's checks made payable as follows:

To: DHB2 Holding, LLC, in the amount of \$70,050.58
To: RE Ventures, LLC, in the amount of \$81,744.70

The Receiver obtained copies of these cancelled cashier's checks and determined that the checks were negotiated at Brighton Bank. Copies of the canceled cashier's checks are attached hereto as Exhibit 1.

16. On or about May 6, 2014, counsel for the Receiver notified Brighton Bank that these funds were to be frozen pursuant to the Receivership Order.

17. Documents requested and received from Brighton Bank reflected that the cashier's checks issued by Zions Banks were used to open new bank accounts at Brighton Bank.

[Signature Page Follows]

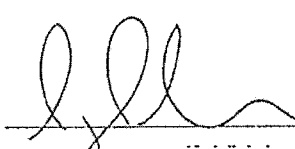
I declare to the best of my knowledge and belief under penalty of perjury under the laws of the State of Utah and the United States of America that the foregoing is true and correct.

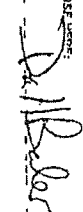
DATED this 4th day of August, 2014.



Mark Hashimoto

EXHIBIT 1

ZIONS BANK Salt Lake City, Utah 84101	CASHIER'S CHECK	1857834
<u>DLG2 INVESTMENTS LLC</u> Remitter	Date	31-5/1240 April 30, 2014
Pay	\$	***70,050.58***
SEVENTY THOUSAND FIFTY and 58/100 US Dollars		
To The Order Of	***DEAN H BECKER***	
	 Authorized Signature	
137 06 0886		
⑈ 1857834 ⑆ ⑆ 24000054 ⑆ 002 25563 6 ⑆		

<p>For payment on a check, the bank may not honor cash payment unless the check is cashed at the bank. If the check is cashed at another location, the bank is not responsible for the cash payment.</p>	BRIGHTON BANK 05/01/2014	<p>ENDORSE HERE: X </p> <p>DO NOT WRITE / STAMP BELOW THIS LINE</p>
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Date:05/01/14 Seq #:76206563 Account:2255636 Serial #:1857834 Amount:\$70,050.58 Dep Seq #:76206509

ZIONS BANK <small>Salt Lake City, Utah 84111</small>	CASHIER'S CHECK	1883937
Remitter PE VENTURES	Date April 28, 2014	31-5/1240
Pay \$ 81,744.70	*1881,744.70*	
EIGHTY ONE THOUSAND SEVEN HUNDRED FORTY FOUR and 70/100ths US Dollars		
To The Order Of PE VENTURES	Authorized Signature <i>Wendy Rexard</i>	
407 18 1098		
⑆1883937⑆ ⑆124000054⑆ 002 25563 6⑆		

<p>BRIGHTON BANK 05/01/2014</p> <p><small>For information & comparison COMPACT 35 U.S.C. 35 U.S.C.</small></p> <p><small>The following are used for identification: 1. All numbers are printed in black ink on a white background. 2. All numbers are printed in a standard font. 3. All numbers are printed in a standard size. 4. All numbers are printed in a standard color. 5. All numbers are printed in a standard position. 6. All numbers are printed in a standard orientation. 7. All numbers are printed in a standard format. 8. All numbers are printed in a standard style. 9. All numbers are printed in a standard typeface. 10. All numbers are printed in a standard weight.</small></p>	<p>ENDORSE HERE:</p> <p>DO NOT WRITE BELOW THIS LINE</p> <p>E/STAMP BELOW THIS LINE</p>
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Date:05/01/14 Seq #:76206636 Account:2255636 Serial #:1883937 Amount:\$81,744.70 Dep Seq #:76206509

EXHIBIT B

12:44 PM
05/20/14
Cash Basis

American Pension Services Inc.
Profit & Loss
January through December 2013

	Jan - Dec 13
Ordinary Income/Expense	
Income	
Sales	
401(k) Fees Collected	194,891.63
ACH Collections	6,051.87
Bicycle Club Fees	150.00
Credit Card Collections	199,076.51
Litigation Settlement Revenues	8,172.54
Miscellaneous Revenues	933.59
Refunded Fees	-109,402.80
Returned Checks	1,184.84
Yrly Maintenance Fees	2,210,897.83
Total Sales	2,511,956.01
Total Income	2,511,956.01
Gross Profit	2,511,956.01
Expense	
Operating Expenses	
ACH Processing Fee	5.00
Advertising & Promotion	58,637.21
APS 401 K Cr Cards	1,500.00
Auto Expense - Employee	540.64
Bank Charges	
LOC Renewal Fees	550.00
Monthly Service Charges	36,000.00
Safety Deposit Box	3,290.00
Total Bank Charges	39,840.00
Bicycle Team	1,460.14
Building Rent	132,794.98
Charitable Contributions	210.00
Computer Software	
Misc Computer Software	7,808.39
Total Computer Software	7,808.39
Dues & Subscriptions	8,535.67
Employee 401(k) Program	62,550.23
Employee Compensation	560,050.87
Employee Continuing Education	350.00
Employee Wellness Program	235.00
Equipment Leases	13,316.77
Equipment Purchases	25,978.17
Furniture & Fixtures	788.83
Insurance Expenses	
Health Insurance	42,014.76
Personal Liability	21,261.95
Workman Compensation	1,202.09
Total Insurance Expenses	64,478.80
Interest Expense	7,284.36
Licenses & Permits	7,093.15
Meals & Entertainment	1,748.50
Miscellaneous Operating Expense	3,962.13

12:44 PM
05/20/14
Cash Basis

American Pension Services Inc.
Profit & Loss
January through December 2013

	Jan - Dec 13
Office Expenses	
Comcast Internet Services	868.91
County Recording Fees	103.00
Credit Card Processing	2,923.78
Customer Education	1,494.43
Document Disposal	1,310.64
DocuWare Support	2,911.76
Internet Research Fee	1,690.85
Remote Storage	1,000.00
Subscription Services	562.52
Web Site Fees	1,479.79
Office Expenses - Other	368.48
	14,714.16
Total Office Expenses	14,714.16
Office supplies	9,986.82
Office Telephone Services	
General Telephone	34,591.50
	34,591.50
Total Office Telephone Services	34,591.50
Officer Compensation	540,000.00
Outside Contracting Services	
Computer Support Services	13,593.75
WEB Development	21,939.10
	35,532.85
Total Outside Contracting Services	35,532.85
Postage	19,661.04
Printing Expenses	14,429.68
Professional Services	
Accounting Services	71,793.75
General Legal Services	165,550.00
Litigation Resolution	184,500.33
	421,844.08
Total Professional Services	421,844.08
Program Management 401(k)	67,750.00
Repairs & Maintenance	6,120.00
Seminar Travel Expenses	36,902.76
Taxes	
Federal Income Taxes	45,438.66
Property Taxes	136.89
State Income Taxes	7,512.00
	53,087.55
Total Taxes	53,087.55
Travel Expense - Other	3,466.37
	2,257,255.65
Total Operating Expenses	2,257,255.65
Total Expense	2,257,255.65
Net Ordinary Income	254,700.36
Net Income	254,700.36

12:32 PM
 05/20/14
 Accrual Basis

American Pension 401k Services, Inc
Profit & Loss
 January through December 2013

	Jan - Dec 13
Ordinary Income/Expense	
Income	
Revenues	
Fees	115,196.00
Revenue Sharing - Expert Plans	10,325.00
Total Revenues	125,521.00
Total Income	125,521.00
Expense	
Bank Service Charges	0.72
Employee 401(k) Plan	10,064.64
Office Supplies	100.00
Payroll Expenses	113,495.68
Travel Expense	4,259.66
Total Expense	127,920.70
Net Ordinary Income	-2,399.70
Net Income	-2,399.70