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Diane A. Thompson*

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

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

Defendants.

**RECEIVER'S MEMORANDUM IN
RESPONSE TO APS CLIENT
RESPONSES AND OBJECTIONS TO
PROPOSED PLAN OF DISTRIBUTION**

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

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

Diane Thompson, as Receiver for American Pension Services, Inc., as well as any related entities owned, controlled and/or under common control by or through American Pension Services, Inc., including but not limited to American Pension 401(k) Services, Inc. ("APS

401(k)”), LJP, LLC, Interim Funding, LLC, First Silverado Properties, LLC, LIC Environmental, LLC and Quicksilver Management, LLC (collectively “APS”), and all assets of Curtis DeYoung (“DeYoung”) (APS and DeYoung shall collectively be referred to as “Receivership Defendants”), by and through her counsel of record Ballard Spahr LLP, hereby submits her Memorandum in Response to APS Client Responses and Objections to Proposed Plan of Distribution.

INTRODUCTION

The Receiver filed her proposed Plan of Distribution with the Court on September 22, 2017. On October 12, 2017, the Court entered an order directing the Receiver to provide Notice of the proposed Plan of Distribution to all APS Account Owners and Creditors no later than seven (7) business days following the Court’s order.¹ By October 20, 2017, the Receiver mailed and emailed notice to all Account Owners and Creditors at their last known physical and email address. The Receiver also posted the proposed Plan of Distribution on her website, www.apsreceiver.com. The Receiver’s Notice complied with the Court’s order in that it included the manner and deadline for Account Owners to provide an objection to the proposed Plan of Distribution (to be mailed to the offices of Ballard Spahr by November 20, 2017), notified all Account Owners and Creditors of the subject matter for which they could submit an objection (whether the Receiver incorrectly listed the Account Owner’s loss allocation payment on the Account Owner Claim List and whether the Receiver incorrectly calculated the estimated percentage distribution for Account Owners on the Account Owner Claim List), and provided

¹ The Receiver incorporates the definitions set forth in her initial Motion (Dkt. 947).

notice of the hearing scheduled on December 19, 2017. A copy of the Receiver's Notice is attached as Exhibit 1.

The Receiver received thirty-one (31) responses to the Proposed Plan of Distribution of the 5,664 APS clients. However, only eight (8) objections are legitimate because they object to the permitted subject matter. The remaining twenty-three (23) responses are not legitimate because they are outside the narrow topics on which clients could object to the proposed Plan of Distribution. Most seek clarification about the Receiver's proposed plan, ask various questions, and are complaints about issues that were previously decided by the Court in the Plan of Liquidation, which was approved on February 27, 2015. A summary chart of the responses is attached hereto as Exhibit 2, which is organized by response number, account number, and the category assigned to each response. The Receiver responded to every client that submitted a response to the Plan of Distribution.

Of the eight (8) legitimate objections, only two (2) required corrective action by the Receiver. One objection stated the Receiver incorrectly listed the amount of Account Owner's loss allocation and method of payment (outside vs. inside) on the Account Owner Claim List. The other objection stated the Receiver incorrectly attributed the Account Owner's method of payment as outside when it should have been inside. The Receiver has corrected both of the errors and notified the respective clients.

In addition to the thirty-one (31) responses, the Receiver received over 320 emails and over 250 voicemails and phone calls with questions and comments regarding the Plan of

Distribution. The Receiver has directly responded to every response, email, and phone call.²

Ultimately, the Receiver does not believe any of the objections affect the Plan of Distribution as proposed and recommends its approval by the Court without modification.

I. The Receiver's proposed Plan of Distribution.

On September 22, 2017, the Receiver filed her proposed Plan of Distribution. (*See* Receiver's Proposed Plan of Distribution and Motion to Approve Notice of Proposed Plan of Distribution ("Distribution Plan") (Dkt. 947)). In it, the Receiver describes the manner in which she has been carrying forth the Plan of Liquidation for the past two and one half years, including the sale of APS and DeYoung assets, prosecution of third party claims, settlement with culpable parties, collection of loss allocation payments, revaluation of client accounts as appropriate, tax issues and tax filings, complying with inquiries from government agencies, responding to subpoenas, the transfer of over 4,000 clients to Equity Trust Company, and the operations and wind-up of APS, among other things.³ After calculating the Receiver's total recoveries, taking into account valid client account revaluations, and the necessary administrative fees and costs to operate the receivership, the Receiver estimates a distribution to Compliant Account Owners of approximately 20% of the 10% loss allocation paid to the Receiver. Thus, Compliant Account Owners will recover approximately 92% of their account value.

² The Receiver received Account Number 5525's objection one day prior to this filing (on December 4, 2017). She responds to this objection in Section II(8) below. The Receiver will also provide a response to the client directly following this filing.

³ Because these accounts were tax qualified and each account held unique assets including physical assets such as coins, the Receiver was required to transfer each account individually to Equity Trust Company to maintain each account's tax qualified status.

Because there are insufficient recoveries from the sale of APS assets to cover all administrative expenses, let alone the losses to the Account Owners, there are no funds available to distribute to APS Creditors on a pro-rata basis with Account Owners (who combined will still have losses in excess of \$16 million). (*See* Distribution Plan at 12, the total recoveries and administrative fees were “insufficient to fully satisfy the Account Owner claims; thus, no funds are available for distribution to Creditors.”).

The Receiver attached to her proposed Plan of Distribution as Exhibit A the Account Owner Claim List, which lists each APS account number, the amount of loss allocation paid by the Account Owner, and the estimated pro-rata percentage allocated to each account, if any. (Distribution Plan, at para. 22, 46, Exhibit A (Dkt. 947-1)). At the time, the Court had not yet adjudicated the Receiver's Renewed Motion for Summary Judgment in the Federal Insurance interpleader case, where the Receiver claimed the entirety of a \$1.0 million Chubb insurance policy, and the Receiver does not know the amount of final administrative fees to be incurred until the distribution payment is made. (*Id.*, at para. 36 & n.7, 37). Therefore, the Receiver provided an estimated pro-rata percentage for each Account Owner that paid the full loss allocation (the Compliant Account Owners). This pro-rata percentage will be used to determine the actual amount distributed to Compliant Account Owners once the distribution amount is determined.⁴ (*Id.*, at para. 41).

The Court's Order dated October 12, 2017 directed the Receiver to provide Notice to each Account Owner and Creditor, as discussed above. (*See* Order Approving Motion to

⁴ Based on the Court's oral ruling on November 30, 2017, the \$1.0 million in insurance proceeds will be included in the distribution. (*See* Minute Entry, December 4, 2017 [Dkt. 84].)

Approve Notice of Proposed Plan of Distribution (Dkt. 951), at 2). The Receiver's Notice, an example of which is attached hereto as Exhibit 1 complied with all of the Court requirements. All objections were due by November 20, 2017. However, the Receiver included any objection received by December 4, 2017 in this response.

As noted, under the proposed Plan of Distribution, parties could object only to limited topics: 1) whether the Receiver incorrectly listed the Account Owner's loss allocation payment on the Account Owner Claims List, and 2) whether the Receiver incorrectly calculated the estimated percentage distribution for Account Owners on the Account Owner Claim List. (*Id.* at 3). The objections were limited because these were the only factors of significance to the proposed Plan of Distribution. In approving the Plan of Liquidation in February 2015, the Court approved of the accounts that would be subject to a loss allocation, the estimated amount of loss allocation for each account, and the method the Receiver would use for a distribution. (*See* Order Approving Amended Modified Plan of Liquidation (Dkt. 458), at 5-6, 8-9). All Account Owners and Creditors had an opportunity to object to and be heard with regards to the Plan of Liquidation, including the right to attend a hearing on December 17, 2014. Ultimately, with a few minor modifications, the Plan of Liquidation was approved by the Court on February 27, 2015 after considering approximately 800 objections from the Account Owners and Creditors. (*See* Summary of Responses to Receiver's Proposed Plan of Liquidation, (Dkt. 316).) Accordingly, the only appropriate objections to be considered at this juncture are that the loss allocation or method that the Account Owner paid the loss allocation is incorrect on the Account Owner Claim List.

II. Receiver's Response to APS Client Concerns Regarding the Proposed Plan of Distribution.

The Receiver received thirty-one (31) responses to the Proposed Plan of Distribution, which are being delivered to the Court, along with the Receiver's responses to each. The responses are being provided to the Court confidentially to protect client names, addresses, account numbers, and other sensitive information. A summary chart of the responses is attached as Exhibit 2. All but eight (8) of the responses are not valid because they address issues that fall outside the narrow topics for which clients are permitted to object. Of the eight (8) responses, only two (2) required the Receiver to correct the Account Owner Claim List, which she has done. Most of the responses are questions of clarification or complaints about issues that were previously decided by the Court in approving the Plan of Liquidation.

With respect to the two (2) responses that questioned the dollar amount and method of payment of their loss allocation, the Receiver has addressed those complaints directly. One Account Owner stated the Receiver incorrectly listed the amount of the Account Owner's loss allocation and method of payment as inside when it should be outside on the Account Owner Claim List. The other Account Owner stated the Receiver incorrectly attributed the Account Owner's method of payment as outside when it should have been inside. The Receiver has corrected both of the errors and notified the respective clients.

In addition to the thirty-one (31) written responses, the Receiver received over 320 emails and over 250 voicemails and phone calls with questions and comments regarding the Plan of Distribution. The Receiver individually responded to every written response, email, and phone call, with the exception of Account Number 5525's response which was received yesterday and

is responded to in Section II(8) below. The Receiver will also provide an individual response to the client.

For the Court's benefit, the Receiver has categorized the written responses into nine (9) categories, as noted below:

1. Clarification about account number, change of address, or calculation of distribution amount.

The Receiver received seven (7) responses from clients asking for their account number, notifying the Receiver of an address change, asking the Receiver to explain the calculation of the client's estimated percentage distribution, or seeking other clarification about the proposed Plan of Distribution generally. The Account Numbers of clients with such questions are 7120, 7987, 9524, 12036, 12933, 13505, and 13848.⁵ The Receiver has responded to all of the concerns raised by these clients. These responses do not include the hundreds of emails and phone calls received and responded to of a similar topic. The Receiver has resolved all of these questions.

2. Complaint over Fairness of 10% Loss Allocation.

Twelve (12) clients responded to the Plan of Distribution on the grounds the client should not have been assessed a 10% loss allocation for a variety of reasons. Clients making this objection are as follows: Account Numbers 6445, 7442, 7575, 9724, 11917, 12036, 12227, 13454/13519, 13848, 14394, 14709, and 14834.⁶ Some clients objected to the loss allocation on general fairness grounds. Other clients maintained they had no cash or a worthless asset that

⁵ These objections are located in the confidential submission to the Court at Tabs 2, 5, 12, 17, 22, 25, and 31.

⁶ These objections are located in the confidential submission to the Court at Tabs 1, 5, 10, 14, 16, 18, 20, 21, 22, 24, 28, and 29.

they failed to revalue.⁷ All of these complaints are moot based on the Court's approval of Liquidation Plan, in which the Court previously considered and ruled on these very issues. Regardless, the Receiver responded to all such questions.

For example, Account Numbers 6445 and 14394 assert it was impossible that Mr. DeYoung stole from them due to an in-kind transfer of real property⁸ or because the account not have cash in the Master Trust Account on the date the Receiver was appointed. Account Number 14709 asserts his account was open only for a short time and APS performed only one transaction, so as a matter of fairness he should not be held accountable for a loss allocation. Account Numbers 9724, 11917, 12227, 13454/13519, and 13848 assert their investments were not worth the value APS held on the books as of April 24, 2014, therefore their loss allocation or tax form 1099 distribution was based on a false amount.

These are not valid responses because they do not fit within the narrow category of permitted objections. Additionally, very similar responses were considered by the Receiver and the Court in 2014 when the Receiver filed, and the Court considered, the Plan of Liquidation. Thus, these responses are moot and should not affect the Court's consideration of the Receiver's proposed Plan of Distribution.

⁷ Account Owners had the right and opportunity to request that the Receiver revalue their account under the Plan of Liquidation. (*See* Receiver's Proposed Plan of Distribution and Motion to Approve Notice of Proposed Plan of Distribution ("Distribution Plan") (Dkt. 947), at para. 39 n.9; Amended Modified Plan of Liquidation (Dkt. 458-1), at 30-31).

⁸ Account Number 6445 previously submitted a formal request that the Receiver treat the account as "in-kind" pursuant to the Plan of Liquidation. After review, the Receiver denied the Account Owner's request as it did not qualify under the requirements of the Plan of Liquidation. The Receiver notified the Account Owner of this by letter on May 26, 2015.

3. Amount of loss allocation, and/or manner of payment (inside/outside).

Eight (8) clients responded to the Plan on the grounds the Receiver incorrectly listed the client's loss allocation or method of payment of the loss allocation on the Account Owner Claim List. Account Numbers 5764, 7995/8108, 8524, 12294, 12933, 13505, 14543, and 14639 responded on these grounds.⁹ This is the only category permitted by the Court's Order. The Receiver investigated each client's claims and discovered that for all but two (2) of these responses, the Receiver included the correct loss allocation and method of payment on the Account Owner Claim List. The Receiver corrected the two errors (Account Numbers 7995/8108 and 5764) and notified the clients. Likewise, the Receiver notified the other six (6) clients that the error they claimed was not correct upon review of the Receiver's records. Therefore, the Receiver has resolved all of the concerns raised in this category.

4. Lack of Notice.

Two (2) clients claim they have not been receiving notice of the Receiver's proceedings. Account Number 12227 stated she has received no mail and only occasional emails from the Receiver. The client provided the Receiver with her updated physical address, and the Receiver updated this information for the distribution. Account Number 9274 claimed she did not receive notice that she could revalue her account prior to September 2016.¹⁰

⁹ These objections are located in the confidential submission to the Court at Tabs 2, 3, 4, 9, 11, 13, 15, and 25.

¹⁰ These objections are located in the confidential submission to the Court at Tabs 14 and 24.

The Receiver has made extensive efforts to ensure her communications are received by all clients. She sends communications via physical mail, e-mail, and by posting on the Receiver's website (www.apsreceiver.com). All communications are sent to the last known physical and email addresses on file at APS. It was the client's responsibility to keep their contact information updated at APS and with the Receiver. Notice of the Plan of Liquidation and Plan of Distribution were sent by professional mail vendors who ran all addresses through the U.S. Postal Service registry to ensure the most up-to-date addresses were used. Additionally, when mail was returned to the Receiver with a forwarding address, the Receiver re-sent the mail to the forwarding address as indicated by the U.S. Post office. The Receiver updates her mailing list as clients provide address changes. At no time was the Receiver previously informed that these clients were not receiving notice. The Receiver has complied with all Court Orders regarding notice requirements, and these objections should in no way impede the Court's consideration of the Plan of Distribution.

5. Distribution should be made directly to client or client's new administrator rather than to Equity Trust.

Four (4) clients responded that they do not want their distribution payment sent to Equity Trust: Account Numbers 10807, 12081, 12143, and 12227.¹¹ Account Number 12227 had unpleasant dealings with Equity Trust in transferring her account to a new administrator and fears Equity will not notify her of a distribution or will take a year to forward the distribution to her new administrator. Account Numbers 10807 and 12143 have taken a distribution from

¹¹ These objections are located in the confidential submission to the Court at Tabs 6, 14, 19, and 26.

Equity Trust and requested their funds be sent to themselves individually. Account Number 12081 requested the Receiver send her distribution directly to her new administrator. Account number 12081 expressed her belief that Equity will soon fall on the same fate as APS and go into receivership. As such, Account Number 12081 does not want to have any cash at Equity Trust so that her funds are not tainted in the same way they were at APS. This client has stated she will not accept anything other than the transfer of funds to her new administrator and will not accept any funds from Equity. She offered to pay the additional administrative costs associated with this transaction so that no one else bears this expense. The Receiver understands that the client holding Account Number 12081 intends to attend and be heard regarding this issue at the December 19, 2017 hearing.

The Receiver responded by notifying these clients that this issue was previously considered and decided upon by the Court in the Plan of Liquidation. Therefore, these objections are moot. First, in the Plan of Liquidation, the Receiver concluded that allowing each client to choose their own successor administrator would significantly “escalate the costs to the Receivership Estate” due to the logistics involved in transferring over 5,500 accounts from APS, which included documents in both hard copy and electronic format. (Liquidation Plan, at 36.) The Receiver selected Equity Trust in conjunction with consultations with the SEC, and the Court ultimately approved of the selection of Equity Trust. Clients could move from Equity Trust Company to an administrator of their choice immediately upon transfer to Equity Trust. (*Id.*, at 37–39.) Second, by selecting only one successor administrator, the Receiver was able to recover additional enterprise value from Equity Trust, which was used to offset a portion of the Receiver’s costs and the loss created by Mr. DeYoung. (*Id.*, at 35.) Furthermore, the Receiver’s

selection of one successor administrator allowed APS clients to transfer from APS in the most expedient and efficient possible manner. (*Id.*, at 40.)

The Receiver also considered the manner of distribution for clients that initially transferred to Equity Trust, but who since either moved to a new administrator or took a distribution of their account. Pursuant to the Transition Services Agreement between the Receiver and Equity Trust, the Receiver will make a wire transfer of any distribution to Equity, which will then forward the funds to either the successor administrator or the client as appropriate. (Distribution Plan, at 17–18.) This process is intended to reduce the administrative costs of the Receiver, and thus allow for additional funds to be distributed to the APS clients that paid their full loss allocation. (Liquidation Plan, at 35.) The Receiver is following the Court's orders in making one distribution payment to Equity Trust. Equity Trust will then distribute the funds to the new administrators for those clients that transferred from Equity Trust to the individual client if a distribution was taken. Equity Trust advised the Receiver that it will take approximately three (3) days to complete the transfer of the distribution funds to successor custodians or to the individual client. (Distribution Plan, at 18.) Based on the Court's orders, and the Receiver's agreement with Equity Trust, the Receiver intends to make one distribution to Equity for those transferred accounts.

Upon further consideration of this issue, the Receiver does not recommend modifying the proposed Plan of Distribution to bypass Equity Trust and allow clients to receive a distribution at the location of their choosing. Although Account Number 10281 offered to pay a fee to offset the additional administrative fees, a revision to the Plan would open the floodgates for additional clients seeking the same treatment. For each separate transaction, the Receiver will incur

additional fees to: 1) update her tracking spreadsheet indicating where payment is to be sent; 2) prepare and send separate wires for each client requesting their funds be sent to a new administrator; and 3) prepare the appropriate tax documents reflecting the distribution (which tax forms Equity has agreed to prepare under the current arrangement). It will complicate the distribution and could delay the ability to get a timely distribution out to clients. For these reasons, and because this issue was already considered in the Plan of Liquidation, the Receiver does not recommend a revision.

6. First Utah Bank Should be Liable.

One client, Account Number 5902, queried why First Utah Bank was being absolved of liability and settled with.¹² The Receiver advised the client of the process she went through to obtain approval of the Receiver's settlement with First Utah Bank and referred her to appropriate briefs on the Receiver's website should the client wish to read more about the settlement and why it was determined to be fair for the receivership.

7. Creditor Objection.

One former APS employee filed an objection as a Creditor to the Plan of Distribution, asserting a claim against the Receivership Estate for \$2,000.00 based on a check issued to him by APS on October 20, 2011. The former employee claims that this claim for \$2,000.00 should have priority. He further asserts that he was told by the Receiver that he could not deposit the check and that APS reported this \$2,000 payment on a 2011 IRS Form 1099-R issued to him in

¹² This objection is located in the confidential submission to the Court at Tab 27.

January 2012 and that APS reported this payment on APS's 2011 IRS tax returns as an operating expense.

The former employee filed a valid proof of claim. Upon investigation, however, the Receiver discovered that in December 2011, APS's former accountant voided the check. The payment was not reported on any APS tax forms, nor was a 1099 issued to the former APS employee indicating that he received the payment. Despite this discovery, the Receiver did not dispute the former employee's proof of claim. However, the impact of this decision is of no consequence since the total recoveries from the sale of assets of APS were not sufficient to cover Account Owner losses much less cover any creditor claims. As noted in the Distribution Plan, the only monies available for distribution are those received to cover the losses incurred by the clients, not to cover general creditor claims. (Distribution Plan, at 12). Accordingly, the Receiver rejects the claim for priority payment over all APS Account Owners, because at best, the claim is on par with all other creditors.

8. Administrative Fees.

One client, Account Number 5525, filed an objection with the Court expressing disappointment with the Receiver's course of conduct throughout the proceedings, as well as her administrative fees.¹³ Account Number 5525 makes many incorrect assertions, including that the SEC was no longer involved once the Receiver was appointed. The client also asserts that clients had no standing or opportunity to be heard to object to the Receiver's actions, proposed settlements, and fee applications throughout the proceedings. This too is incorrect. The

¹³ This objection is located in the confidential submission to the Court at Tab 23.

Receiver has made all of her filings in open court, as a matter of public record, and she has sought the Court's permission for all significant actions she has taken, including all settlements and all fee applications. Nothing has been decided by the Court outside of discussions in open court. At no time did the Receiver tell any client that they did not have standing to review or object to the Receiver's bills.¹⁴

The client misunderstands the very purpose of Liquidation Plan and the manner in which it was approved by this Court. The client incorrectly accuses the Receiver of failing to unfreeze accounts when the Receiver went to great lengths to unfreeze this client's account. The client also complains about the selection of Equity Trust, which was expressly addressed in the Liquidation Plan and is now moot.¹⁵

In short, this client has been vociferous throughout this receivership. The Receiver and her counsel have no less than 125 emails with this client throughout the proceedings. The Receiver has met with the client personally on at least one occasion and she personally facilitated the transfer of his accounts to Equity Trust, as well as his colleague's accounts, upon his request.

¹⁴ Account Number 5525 filed an objection to the Liquidation Plan and had an opportunity to be heard.

¹⁵ The client incorrectly characterizes the Receiver's transaction with Equity Trust as a "sale." However, the Receiver did not sell the bankrupt entity; rather the Receiver received over \$1.0 million from Equity for the right to manage and administer the APS accounts pursuant to the parties' Transition Services Agreement. The over \$1.0 million payment by Equity Trust funded a portion of the transition and processing costs for the approximately 4,200 accounts that transferred to Equity Trust under the Liquidation Plan. Finally, clients had complete flexibility to transfer to the administrator of their choice immediately upon transfer to Equity Trust and for nine months thereafter without any fees.

If anything, it is the actions of this client and similar individuals that have driven up the costs of the Receivership due to the individualized attention they demanded.

Finally, and most importantly, this objection no way affects the proposed Plan of Distribution, and it should not impede the Court's consideration of the Plan.

9. Closed Account not subject to Loss Allocation.

Two former APS clients with accounts that were closed prior to the Receivership, Account Numbers 6209 and 9941, objected to the Plan of Distribution. One objected because his funds were used to purchase another investment. The other client objected because he had not been receiving notice of the receivership proceedings.¹⁶ The Receiver notified these clients that they are not subject to the loss allocation because their accounts were closed prior to the appointment of the Receiver.

CONCLUSION

As demonstrated above, none of the objections challenge the legitimacy of the Plan of Distribution, and it should be approved.

¹⁶ These objections are located in the confidential submission to the Court at Tabs 7 and 8.

DATED this 5th day of December, 2017.

/s/ Melanie J. Vartabedian

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct of copy of the foregoing **RECEIVER'S MEMORANDUM IN RESPONSE TO APS CLIENT RESPONSES AND OBJECTIONS TO PROPOSED PLAN OF DISTRIBUTION** was served to the following this 5th day of December, 2017, in the manner set forth below:

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

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U.S. Mail, postage prepaid

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/s/ Trista Lawson

EXHIBIT 1

October 20, 2017

Re: Notice of Proposed Plan of Distribution – *SEC v. American Pension Services and Curtis L. DeYoung*, Case No. 2:14-cv-00309-RJS-DBP

Dear Former APS Account Owner:

You are receiving this letter because you were an American Pension Services, Inc. ("APS") account owner on April 24, 2014, the date that the Receiver was appointed ("Account Owner"). Please be advised that the Receiver has filed her proposed Plan of Distribution with the Court ("Plan of Distribution"). The Receiver has also filed the Account Owner Claims list, which contains the estimated proportionate share of funds each Account Owner will receive (if any) from the Receiver's recoveries. A copy of the proposed Plan of Distribution and Account Owner Claim List is available at www.apsreceiver.com.

On February 27, 2015, the Court approved the Receiver's Plan of Liquidation. The Plan of Liquidation requires that each Account Owner pay the Receiver ten percent (10%) of their account balance as of April 24, 2014 as a loss allocation payment to recognize the loss caused by Curtis DeYoung's misappropriation. The Plan of Liquidation further approved a pro-rata method of distribution of the Receiver's recoveries to Account Owners who paid the Court-ordered loss allocation in full ("Compliant Account Owners"). Compliant Account Owners received a Contingent Repayment Agreement ("CRA") from the Receiver which entitles the Compliant Account Owner to receive a distribution payment from the Receiver's recoveries after payment of the costs and fees associated with the administration of the Receivership. Please refer to the Account Owner Claim List, Exhibit A to the proposed Plan of Distribution to review your estimated proportionate share (if any), available at www.apsreceiver.com. If you did not provide a full loss allocation payment, your proportionate share will be zero.

Please be advised that you have thirty (30) days from the date of this letter to provide a written objection to the Plan of Distribution. Because the pro-rata distribution approach has already been approved by the Court in the Plan of Liquidation, Account Owner objections shall be limited to: (a) whether the Receiver incorrectly listed the Account Owner's loss allocation payment amount on the Account Owner Claims List; and (b) whether the Receiver incorrectly calculated the estimated percentage distribution for the Account Owner on the Account Owner Claims List. Objections must be made in writing and sent to the Receiver within thirty (30) days of the date of this letter, no later than November 20, 2017, at the following address:

American Pension Services, Inc.
c/o Melanie Vartabedian
Ballard Spahr LLP
201 South Main Street, Suite 800
Salt Lake City, UT 84111

All objections will be provided to the Court. The Court will hold a hearing to consider the Receiver's proposed Plan of Distribution and all objections to the Account Owner Claims List on December 19, 2017 at 10:00 am at the U.S. District Court, District of Utah, 351 S. West Temple in Judge Shelby's Courtroom.

If you are unable to access the proposed Plan of Distribution or Account Owner Claims List, please contact us at info@apsreceiver.com or by phone at 801 531-3062.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Thompson", enclosed in a thin black rectangular border. The signature is written in a cursive style with a long horizontal flourish extending to the right.

Diane A. Thompson

October 20, 2017

Re: Notice of Proposed Plan of Distribution – *SEC v. American Pension Services and Curtis L. DeYoung*, Case No. 2:14-cv-00309-RJS-DBP

To Whom it May Concern:

You are receiving this letter because you submitted a proof of claim to the Court-appointed Receiver of American Pension Services, Inc. ("APS"). Please be advised that the Receiver has filed her proposed Plan of Distribution with the Court ("Plan of Distribution"). A copy of the proposed Plan of Distribution is available at www.apsreceiver.com.

On February 27, 2015, the Court approved the Receiver's Plan of Liquidation. Under the Plan of Liquidation, Creditors with valid claims are only entitled to a distribution on a pro-rata basis with the Account Owners after all administrative fees and the full amount of Account Owner claims is satisfied. Unfortunately, the Receiver's total recoveries are insufficient to fully satisfy the Account Owner claims. Thus, no funds are available for distribution to Creditors.

Please be advised that you have thirty (30) days from the date of this letter to provide a written objection to the Proposed Plan of Distribution. Objections must be made in writing and sent to the Receiver within thirty (30) days of the date of this letter, no later than November 20, 2017, at the following address:

American Pension Services, Inc.
c/o Melanie Vartabedian
Ballard Spahr LLP
201 South Main Street, Suite 800
Salt Lake City, UT 84111

All objections will be provided to the Court. The Court will hold a hearing to consider the Receiver's proposed Plan of Distribution and all objections to the Account Owner Claims List on December 19, 2017 at 10:00 am at the U.S. District Court, District of Utah, 351 S. West Temple in Judge Shelby's Courtroom.

If you are unable to access the proposed Plan of Distribution or Account Owner Claims List, please contact us at info@apsreceiver.com or by phone at 801 531-3062.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Thompson", with a long horizontal flourish extending to the right.

Diane A. Thompson

EXHIBIT 2

List of Client Responses to proposed Plan of Distribution

Response No.	Acct. No.	Category
1.	7442	2
2.	12933	1, 3
3.	14639	3
4.	7995/8108	3
5.	12036	1, 2
6.	12143	5
7.	6209	9
8.	9941	9
9.	14543	3
10.	6445	2
11.	8524	3
12.	7120	1
13.	12294	3
14.	12227	2, 4, 5
15.	5764	3
16.	14834	2
17.	7987	1
18.	13454/13519	2
19.	12081	5
20.	11917	2
21.	14394	2
22.	13848	1, 2
23.	5525	8
24.	9724	2, 4
25.	13505	1, 3
26.	10807	5
27.	5902	6
28.	14709	2
29.	7575	2
30.	Former APS Employee	8
31.	9524	1

Category Key:

1. Clarification about account number, change of address, or calculation of distribution amount.
2. Complaint over fairness of 10% loss allocation.
3. Amount of loss allocation, and/or manner of payment (inside/outside).
4. Lack of notice.
5. Distribution made directly to client or client's new administrator rather than to Equity Trust.
6. First Utah Bank should be liable.
7. Creditor objection.
8. Administrative fees.
9. Closed account not subject to loss allocation.