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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 MOTION AND
MEMORANDUM FOR AN ORDER OF
JUDICIAL DISSOLUTION OF LIMITED
LIABILITY COMPANIES ORGANIZED
IN UTAH HELD BY APS FOR THE
BENEFIT OF APS ACCOUNT
HOLDERS**

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

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

Diane Thompson ("Receiver"), Court-Appointed Receiver for American Pension Services, Inc. ("APS"), by and through her undersigned counsel, hereby respectfully moves the Court to order the judicial dissolution of twelve (12) limited liability companies ("LLCs") held

within ten (10) APS accounts in order to allow for the sale of real property, promissory notes, and other assets within the LLCs to satisfy the loss allocation for each of these APS accounts per the Receiver's Amended Modified Liquidation Plan.

RELIEF SOUGHT AND GROUNDS FOR MOTION

By this Motion, the Receiver seeks a Court order judicially dissolving twelve (12) LLCs held within ten (10) APS accounts (Account Numbers 3151, 5909, 6145, 6445, 7314, 7807, 8475, 12134, 12205, and 12633) (collectively, the "Non-compliant Accounts"). Each of these LLCs are organized under the laws of the State of Utah. APS, as the administrator of each Non-compliant Account holder's Individual Retirement Account ("IRA"), is a member of each of the LLCs, and in some cases, the sole member.¹

Under the Utah Revised Uniform Limited Liability Company Act, judicial dissolution is available upon the application of a member. In this case, APS makes this request as a member on the grounds that the managers or members in control of the LLC have acted or are acting in a manner that is illegal or fraudulent, or that is harmful to the member-applicant. UTAH CODE ANN. § 48-3a-701(5). That is to say, each manager or member of the LLCs held in Non-compliant Accounts is deliberately violating a willful order of this Court by failing to pay a loss allocation pursuant to the Receiver's Amended Modified Plan of Liquidation ("Liquidation Plan") (Dkt. 458 and 458-1). Upon judicial dissolution, the Non-compliant Accounts held at APS will receive cash, assets, or both, as managers liquidate assets and distribute assets to

¹ APS is a third-party administrator of self-directed retirement accounts. APS, as administrator for an IRA account holder, is a member of the LLC for the benefit of an account holder's IRA. As a member of each of the LLCs, APS in its capacity as administrator can request a judicial dissolution of the LLC. *See* 26 U.S.C. § 408(h).

members.² The Receiver can then collect the loss allocation as ordered in the Liquidation Plan from the available cash. Alternatively, the Receiver will liquidate assets returned to the Non-compliant Accounts to fully fund the required loss allocation. The loss allocation payment will be represented by a Contingent Repayment Agreement.³ (Liquidation Plan at p. 44). As the opportunity to transfer the accounts to Equity Trust Company has expired, the Receiver will then resign as administrator of the account and distribute the remainder of the assets to the account beneficiary. Should the Receiver need to exercise the alternative of liquidating assets, the Receiver also requests permission to liquidate real property and other assets received into the Non-complaint Accounts as part of the judicial dissolution pursuant to 28 U.S.C. §§ 2001, 2004, and as described in the Court-approved Liquidation Plan.

MOTION AND MEMORANDUM

On April 24, 2014, the Securities and Exchange Commission (“SEC”) filed suit against APS and Curtis L. DeYoung, alleging, among other claims, that DeYoung, as president and CEO of APS, misappropriated over \$24 million of APS account owner funds from APS’s master trust account. (Complaint (Dkt. 1), ¶ 1). That same day, the Receiver was appointed and tasked to promote the orderly and efficient administration of the Receivership Estate. (Order Appointing Receiver, Freezing Assets, and Other Relief (Dkt. 9) (“Receivership Order”).

² In the event, the managers and/or members decline to wind up the activities and affairs of the LLC, the Receiver requests that the Court supervise the winding up of the dissolved LLC and allow the Receiver to wind up the affairs of the LLC, as authorized under Utah Code Ann. § 48-3a-703(5).

³ The Contingent Repayment Agreement will represent only the value of the loss allocation and will not include any management fees or reasonable fees associated with the liquidation of the account assets.

On February 27, 2015, the Court approved the Receiver's proposed Liquidation Plan. The Liquidation Plan provides that the loss in the total value of the APS account owners' assets shall be divided among the accounts on a pro rata basis, resulting in an approximate loss of ten percent (10%) to each account. Under the Liquidation Plan, if an account owner fails to pay a loss allocation and transfer to Equity Trust Company ("Equity") by December 31, 2015, the Receiver may take certain action, including any of the following: (1) resigning as administrator and issuing an IRS Form 1099-R for tax reporting of the distribution of the total balance of the account; (2) imposing a lien for the amount of the applicable loss allocation on IRA account owner assets; (3) pursuing collection; or (4) liquidating account assets sufficient to meet the loss allocation requirement. (Liquidation Plan at p. 46).

The Receiver has carefully considered the costs associated with pursuing the liquidation of account assets of non-compliant IRA account owners and developed a plan for ensuring the greatest recovery to the Receivership Estate. At the time of this filing, there are fifty-three (53) accounts remaining at APS. Of the fifty-three (53) remaining accounts, ten (10) are the subject of this motion, twenty-one (21) will be the subject of future motions to be filed with the Court or are the subject of a motion filed concurrently herewith, seventeen (17) have been the subject of previous motions, 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.⁴

⁴ The three (3) accounts to be assigned contain LLCs organized under the laws of Arizona, Colorado, and Michigan. In these particular states, judicial dissolution is available when a member files a motion in the court for the county in which the registered office of the LLC is located, and only when the LLC is unable to carry on business in conformity with the LLC articles of organization and operating agreement. ARIZ. REV. STAT. ANN. § 29-785 (2016) (West); COLO. REV. STAT. ANN. § 7-80-810(3) (West 2016); MICH. COMP. LAWS § 450.4802 (West 2016). Alternatively, in Colorado and Michigan, a judicial dissolution is available on the

By this Motion, the Receiver seeks an order from this Court for a judicial dissolution of twelve (12) LLCs held in ten (10) separate APS accounts, pursuant to Utah Code Ann. § 48-3a-701(5). In the event the managers and/or members decline to wind up the activities and affairs of the LLC, the Receiver requests that the Court supervise the winding up of the dissolved LLC and allow the Receiver to wind up the affairs of the LLC, as authorized under Utah Code Ann. § 48-3a-703(5). Upon dissolution and winding up, the Receiver further asks this Court to approve the sale of real property and other assets formerly held by the LLCs returned to the APS accounts by public auction or other means, as authorized under 28 U.S.C. §§ 2001, 2004, and as authorized in the Liquidation Plan.

BACKGROUND FACTS

1. On April 24, 2014, the Securities and Exchange Commission (“SEC”) filed suit against APS and Curtis L. DeYoung, alleging, among other claims, that DeYoung, as president and CEO of APS, misappropriated over \$24 million of APS account owner funds from APS’s master trust account. (Complaint (Dkt. 1), ¶ 1). That same day, the Receiver was appointed and tasked to promote the orderly and efficient administration of the Receivership Estate. (Order Appointing Receiver, Freezing Assets, and Other Relief (Dkt. 9) (“Receivership Order”).

2. Following her appointment, the Receiver filed notice of the Receivership with the district court for each district in which APS property or Receivership Assets were located, pursuant to 28 U.S.C. § 754.

grounds that the LLC acted in an unlawful manner only upon application by the attorney general. COLO. REV. STAT. ANN. § 7-80-810(1) (West 2016); MICH. COMP. LAWS § 450.4803 (West 2016). Based on the statutory requirements for a judicial dissolution, the Receiver believes it is more economically sound to resign as administrator and assign these assets to the clients with the accompanying tax documents.

3. On August 22, 2014 the Receiver filed a motion for Court approval of the Liquidation Plan.

4. The Receiver provided notice of the Liquidation Plan to all APS account owners by mail, e-mail, and posting on the Receivership website at www.apsreceiver.com. (Dkt. 221; Dkt. 316 at p. 2).

5. The Receiver responded to a significant number of written objections from APS account owners regarding the proposed Liquidation Plan. (Dkt. 425 at p. 10). The Receiver filed a summary of these objections with the Court on November 11, 2014. (Dkt. 316). The Receiver then filed a response to APS account owner objections with the Court on December 3, 2014. (Dkt. 356).

6. The Court held a hearing on the Receiver's proposed Liquidation Plan on December 17, 2014, and afforded APS account owners the opportunity to be heard on the proposed Liquidation Plan in oral argument.

7. This Court approved the Liquidation Plan on February 27, 2015. (Dkt. 458). The Receiver provided notice of the approved Liquidation Plan to each account owner by mail, e-mail, and posting on the APS Receivership website at www.apsreceiver.com.

8. The Liquidation Plan required that APS account owners provide a loss allocation equal to ten percent (10%) of the total value of their accounts as of April 24, 2014. (Dkt. 458-1 at p. 44). This loss allocation applied to clients regardless of the form in which their assets within their account were held. (*Id.*). APS account owners were required to fund their loss allocation by May 27, 2014. (*Id.*).

9. The Liquidation Plan allowed clients with illiquid assets to preserve those assets by funding their loss allocation by direct payment of the loss allocation to the Receiver. In order to resolve potential tax reporting issues, the Receiver also sought a Private Letter Ruling (“PLR”) from the IRS. (Liquidation Plan at 40–41). Clients that were awaiting the outcome of the PLR were allowed to defer their loss allocation until a determination on the PLR was made. (*Id.*).

10. Furthermore, the Liquidation Plan authorized the Receiver to take certain actions if the APS Account Owner failed to fund their loss allocation. (Liquidation Plan at p. 46). Under the Liquidation Plan, the Receiver is authorized to: (1) resign as administrator and issue an assignment of assets and IRS Form 1099-R reporting a full distribution based on the recorded value of account assets of April 25, 2014; (2) impose a lien on APS account owners’ assets; (3) pursue collection from APS account owners who refuse to comply with the Liquidation Plan; (4) liquidate assets sufficient to meet the loss allocation requirement; or (5) any combination of the above. (*Id.*).

11. On July 2, 2015, the IRS declined to issue a PLR for procedural reasons. (Dkt. 592 at p. 4). As a result, the Receiver proposed, and this Court approved, an alternative method for reporting a cash payment to fund a loss allocation and requiring all remaining APS account owners to transfer their accounts by September 15, 2015. (Dkt. 592).

12. The Liquidation Plan recognized that some APS account owners required additional time to liquidate or otherwise fund a loss allocation. (Liquidation Plan at p. 45). Thus, the Liquidation Plan required all loss allocations be funded by December 31, 2015. (*Id.*).

13. On February 10, 2016, the Receiver filed a motion seeking to force transfer certain remaining APS account owners. (Dkt. 705). For that motion, the Receiver evaluated over 1,100 APS accounts and determined that, based on a cost-benefit analysis, 786 accounts had loss allocation amounts that did not justify the cost of liquidation and therefore transferred those accounts to the successor custodian. (*Id.*). The Court approved this motion on February 19, 2016, concluding that the transfer of these 786 accounts “would further implement the purpose and intent of the Liquidation Plan.” (Dkt. 720). Those APS account owners that were transferred without a loss allocation forfeited “any opportunity to participate in future recoveries” made by the Receiver. (*Id.*). The Receiver then transferred the 786 APS accounts.

14. The Receiver has taken actions permitted by the Liquidation Plan and subsequent Court orders to collect required loss allocation payments from Non-compliant Accounts, including sweeping accounts of cash, and liquidating foreign currency, gold, silver, coins, and brokerage accounts.

15. APS records contained limited information regarding certain assets. In an effort to ascertain additional information, and to evaluate whether liquidation of assets was justified from a cost-benefit standpoint, the Receiver issued subpoenas and a cover letter to remaining APS account owners. The subpoena and cover letter explained the APS account owners’ obligations to comply with the Liquidation Plan and other Court orders. The subpoenas requested a number of financial records and other documents related to the APS account owners’ assets.

16. The owner of Account Number 3151 is a resident of Utah.

17. The process server has made twelve (12) attempts to serve a subpoena on the owner of Account Number 3151. The process server has made attempts at all times of the day, each time leaving a business card and a note. The cards have been taken, but the account owner has not responded to the process server. The process server has confirmed that the account owner lives at the location of attempted service. Despite diligent efforts, the process server has been unable to make contact with the owner of Account Number 3151. The Receiver believes the owner of Account Number 3151 is evading service.

18. The owner of Account Number 5909 is a resident of Utah.

19. The owner of Account Number 5909 was served a subpoena at his residence on April 12, 2016. The owner of Account Number 5909 has not responded to the subpoena. The Receiver believes, based on account information available, that there are assets available for liquidation to satisfy all or part of the loss allocation and any outstanding management fees.

20. The owner of Account Number 6145 is a resident of Utah.

21. The owner of Account Number 6145 was not served a subpoena. Rather, the owner of Account Number 6145 had been communicating regularly with the Receiver regarding at least three parcels of real property held within his IRA LLCs⁵ until May 4, 2016. The Receiver granted the owner of Account Number 6145 a revaluation under the Liquidation Plan and the account owner agreed to fund his loss allocation by the end of March 2016. On May 4, 2016, the owner of Account Number 6145 stated in a letter that he intended to fund his loss allocation from the sale of real property within his IRA LLCs by the end of 2016. On May 24, 2016, the Receiver mailed a letter to the owner of Account Number 6145 indicating that the

⁵ Account Number 6145 contains two IRA LLCs.

owner was in violation of this Court's orders and was required to fund his loss allocation to avoid the potential liquidation of his assets. The owner of Account Number 6145 has not yet funded his loss allocation. The Receiver has had no contact with the owner of Account Number 6145 since her letter of May 24, 2016.

22. The owner of Account Number 6445 is a resident of Utah.

23. The owner of Account Number 6445 was served a subpoena at his residence on March 21, 2016. The owner of Account Number 6445 responded to the subpoena. After a review of documents supplied in response to the subpoena, the Receiver believes Account Number 6445 contains two LLCs that hold one piece of real property each, and upon dissolution of the LLC, the real property can be liquidated to satisfy the loss allocation and any outstanding management fees for Account Number 6445.

24. The owner of Account Number 7314 is a resident of Utah.

25. The owner of Account Number 7314 was served a subpoena at his residence on March 21, 2016. The owner of Account Number 7314 responded to the subpoena. After a review of documents supplied in response to the subpoena, the Receiver believes Account Number 7314 contains an LLC with sufficient assets, which upon dissolution, can be liquidated to satisfy the loss allocation and any management fees for Account Number 7314.

26. The owner of Account Number 7807 is a resident of Utah.

27. The owner of Account Number 7807 was not served a subpoena. Rather, the owner of Account Number 7807 had been communicating regularly with the Receiver regarding the LLC within his account. Specifically, the owner of Account Number 7807 asserted that his account was not subject to a loss allocation due to his investment in an LLC. The owner of

Account Number 7807 had the information sought by subpoena within his APS files. The owner of Account Number 7807 had also communicated with the Receiver's staff by phone on numerous occasions. The owner of Account Number 7807 has not yet funded his loss allocation, and the Receiver believes that Account Number 7807 contains an LLC with sufficient assets, which upon dissolution, can be liquidated to satisfy the loss allocation and any management fees for Account Number 7807.

28. The owner of Account Number 8475 is a resident of Utah.

29. The owner of Account Number 8475 was served a subpoena at his residence on July 30, 2016. The owner of Account Number 8475 responded to the subpoena. After a review of documents supplied in response to the subpoena, the Receiver believes Account Number 8475 contains an LLC with sufficient assets, which upon dissolution, can be liquidated to satisfy the loss allocation and any management fees for Account Number 8475.

30. The owner of Account Number 12134 is a resident of Utah.

31. The owner of Account Number 12134 was served a subpoena at his residence on March 21, 2016. The owner of Account Number 12134 responded to the subpoena. After a review of documents supplied in response to the subpoena, the Receiver believes Account Number 12134 contains an LLC with sufficient assets, which upon dissolution, can be liquidated to satisfy the loss allocation and any management fees for Account Number 12134.

32. The owner of Account Number 12205 is a resident of Utah.

33. The owner of Account Number 12205 was served at his residence on March 21, 2016. The owner of Account Number 12205 has not responded to the subpoena. Based on the records available, the Receiver believes that Account Number 12205 contains an LLC, which

once dissolved, has assets that can be liquidated to satisfy the loss allocation and any outstanding management fees for Account Number 12205.

34. The owner of Account Number 12633 is a resident of the State of Utah.

35. The owner of Account Number 12633 was served at his residence on March 31, 2016. The owner of Account Number 12633 has not responded to the subpoena. Based on the records available, the Receiver believes that Account Number 12633 contains an LLC, which once dissolved, has assets that can be liquidated to satisfy the loss allocation and any outstanding management fees for Account Number 12633.

36. In addition to service of a subpoena and cover letter, the owners of Non-compliant Accounts were mailed and e-mailed a copy of the Liquidation Plan on or about February 27, 2015, and were provided notice of additional court orders via the Receivership website at www.apsreceiver.com.

37. Account Number 3151 holds an LLC with a reported value of \$100,001.00.⁶ The LLC within Account Number 3151 has multiple members. APS is a 49% owner of the LLC within the account. The LLC is managed by an individual other than the APS client or APS.

38. Account Number 3151 has a loss allocation of \$39,046.65 and owes \$1,775.70 in outstanding management fees. The Receiver believes the LLC can be dissolved and assets sold to fund the loss allocation and outstanding management fees of Account Number 3151.

⁶ Account number 3151 holds a number of assets in addition to the LLC. The total account value subject to a loss allocation for Account number 3151 is \$390,466.49. Thus, the loss allocation is \$39,046.65.

39. Account Number 5909 holds an LLC with a reported value of \$831,331.00. The LLC within Account Number 5909 is a single-member manager-managed LLC with APS as the only owner. The manager of the LLC is the owner of APS Account Number 5909.

40. Account Number 5909 has a loss allocation of \$83,133.10. The Receiver believes the LLC can be dissolved and assets sold to fund the loss allocation for Account Number 5909.

41. Account Number 6145 holds two LLCs with an aggregate value of \$482,008.56. The first LLC has two members and is manager-managed. The manager is an individual other than the owner of APS Account Number 6145. APS is a 94% owner of the first LLC. The second LLC within Account Number 6145 is a manager-managed LLC with six members. The manager is an individual other than the owner of APS Account Number 6145. APS is a 4.16% owner of the LLC.

42. Account Number 6145 has a loss allocation of \$48,200.86 and owes \$3,822.48 in outstanding management fees. The Receiver believes the LLCs can be dissolved and assets sold to fund the loss allocation and outstanding management fees of Account Number 6145.

43. Account Number 6445 holds two LLCs with an aggregate value of \$262,811.34. The LLCs within Account Number 6445 are both single-member manager-managed LLCs. APS is the only member of both of the LLCs within Account Number 6445. The LLCs are managed by an individual other than the owner of APS Account Number 6445.

44. Account Number 6445 has a loss allocation of \$26,743.38. The Receiver believes the LLCs can be dissolved and assets sold to fund the loss allocation of Account Number 6445.

45. Account Number 7314 holds an LLC with a reported value of \$137,867.00. The LLC within Account Number 7314 is member-managed. The LLC has multiple members, with APS being a 15% owner.

46. Account Number 7314 has a loss allocation of \$13,786.70. The Receiver believes the LLC can be dissolved and assets sold to fund the loss allocation of Account Number 7314.

47. Account Number 7807 holds an LLC with a reported value of \$109,000.00. The LLC within Account Number 7807 is a manager-managed LLC with four members. The manager of the LLC is the owner of Account Number 7807. APS is a 25% owner of the LLC.

48. Account Number 7807 has a loss allocation of \$11,582.76 and has funded \$5,187.16 of their loss allocation thus far. Account Number 7807 has a remaining loss allocation of \$6,395.60. The Receiver believes the LLC can be dissolved and assets sold to fund the remaining loss allocation of Account Number 7807.

49. Account Number 8475 holds an LLC with a reported value of \$160,460.00. The LLC within Account Number 8475 is a single-member manager-managed LLC with APS as the only owner. The manager of the LLC is the owner of APS Account Number 8475.

50. Account Number 8475 has a loss allocation of \$16,046.00. The Receiver believes the LLC can be dissolved and assets sold to fund the loss allocation of Account Number 8475.

51. Account Number 12134 holds an LLC with a reported value of \$189,748.00. The LLC within Account Number 12134 is a single-member manager-managed LLC with APS as the only owner. The manager of the LLC is the owner of APS Account Number 12134.

52. Account Number 12134 has a loss allocation of \$18,974.80 and owes \$2,002.40 in outstanding management fees. The Receiver believes the LLC can be dissolved and assets sold to fund the loss allocation and outstanding management fees of Account Number 12134.

53. Account Number 12205 holds an LLC with a reported value of \$741,000.00. The LLC within Account Number 12205 is a single-member manager-managed LLC with APS as the only owner. The manager of the LLC is the owner of APS Account Number 12205.

54. Account Number 12205 has a loss allocation of \$74,100.00 and owes \$4,304.58 in outstanding management fees. The Receiver believes the LLC can be dissolved and assets sold to fund the loss allocation and outstanding management fees of Account Number 12205.

55. Account Number 12633 holds an LLC with a reported value of \$202,000.00. The LLC within Account Number 12633 is a single-member manager-managed LLC with APS as the only owner. The manager of the LLC is the owner of Account Number 12633.

56. Account Number 12633 has a loss allocation of \$20,230.10 and owes \$2,302.59 in outstanding management fees. The Receiver believes the LLC can be dissolved and assets sold to fund the loss allocation and outstanding management fees of Account Number 12633.

57. IRA LLCs are established for a number of reasons. The typical IRA LLC is used to invest in and hold real property assets; however, the LLC may be used for any lawful business purpose other than a prohibited transaction, as defined by 26 U.S.C. § 4975. An IRA LLC provides increased asset protection, allowing the account owner to attempt to shield an asset from creditors by the creation of an additional layer—the LLC. The IRA LLC also grants the account owner “checkbook control” of the assets, and removes the need for each transaction within the IRA LLC to be approved and processed by the custodian. The lack of custodial

“checkbook control” makes it difficult to ascertain information regarding any assets within the IRA LLC. Despite the lack of “checkbook control” and the increased asset protections, APS has the right to seek dissolution because, as the IRA custodian, it is the member of the LLC in order to preserve tax-advantaged status. *See* 26 U.S.C. § 408(h).

58. The LLCs of the above-listed Non-compliant Accounts are all organized under the State of Utah.

59. Judicial dissolution and the subsequent winding up of the LLCs is governed by the Utah Revised Uniform Limited Liability Company Act (the “Act”), Utah Code Ann. § 48-3a-101 *et seq.*

60. APS, as the administrator of each non-compliant account holder’s IRA, is a member of each of the LLCs, and in some cases, the sole member.⁷ As a member of each of the LLCs listed in the Non-compliant Accounts, APS may apply to this Court for an order dissolving each of the LLCs, as the managers, members, or both, have acted in a manner that is either illegal or fraudulent, or harmful to APS, as the applicant. Each of the managers or members of the LLCs held by Non-compliant Accounts has acted illegally by failing to obey a lawful order of this Court and in a manner harmful to APS by failing to fund the Court-ordered loss allocation under the Liquidation Plan. *See* UTAH CODE. ANN. § 48-3a-701(5).

⁷ APS is a third-party administrator of self-directed retirement accounts. APS, as administrator for an IRA account holder, is a member of the LLC for the benefit of an account holders IRA. As a member of each of the LLCs, APS in its capacity as administrator can request a judicial dissolution of the LLC. *See* 26 U.S.C. § 408(h).

61. The Act allows the LLC, or one or more of its members, to purchase the interest of the applicant member—in this case APS—at fair market value to avoid judicial dissolution. UTAH CODE ANN. § 48-3a-702(1).

62. The Receiver intends to provide notice of this Motion to any listed members, managers, and registered agents of each of the LLCs on file with the Utah Division of Corporations and Commercial Code to allow for an election to purchase.

63. If the LLC or any of its members forego the opportunity to purchase the interest of the APS account owner, the LLC must be wound up by its manager or managers by discharging the debts and obligations of the LLC and then marshaling and distributing the assets of the LLC. UTAH CODE ANN. § 48-3a-703(1)–(3).

64. Upon dissolution and during winding up, the assets of LLCs will be returned to each member of the LLC based on the percentage interest of each member. In the case of APS accounts as owners, the APS accounts will receive the proportion of assets from the liquidated LLCs.

65. In the event the manager, managers, or members refuse to wind up an LLC, this Court may order judicial supervision of the winding up, to include appointing a person to wind up the LLC's affairs. UTAH CODE ANN. § 48-3a-703(5).

66. The Receiver may be appointed to supervise the wind up of the LLC's affairs. *Id.*

67. In the case of a single-member LLC, the assets do not necessarily need to be liquidated, but can instead be returned to the APS account for liquidation by the Receiver.

68. The assets returned to the APS account from the dissolved LLC can then be liquidated pursuant to 28 U.S.C. §§ 2001 and 2004 in order to fund the respective loss allocation, and any management fees that may be due and owing, for each of the accounts.

69. As a result of the need to liquidate assets of the dissolved LLCs to fund the Court-ordered loss allocation, the Receiver will incur fees and costs associated with the liquidation of the assets returned to the respective Non-compliant Accounts.

ARGUMENT

I. This Court Has the Authority to Dissolve the LLCs Within the APS Accounts.

The district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010). “When a district court creates a receivership, its focus is to . . . achiev[e] a final, equitable distribution of the assets.” *Id.* The district court has authority to accomplish the goal of an equitable distribution, including the liquidation of assets from individual accounts. *See, e.g., In re Comm’r of Banks and Real Estate*, 764 N.E.2d 66, 86 (Ill. App. Ct. 2001); *see also SEC v. Bilzerian*, 378 F.3d 1100, 1103 (D.C. Cir. 2004) (holding a district court has personal jurisdiction over non-resident that holds property subject to receivership in another jurisdiction). Furthermore, no preference should be given to some account holders to the detriment of others. *See generally Cunningham v. Brown*, 265 U.S. 1 (1924); *Rosenberg v. Collins*, 624 F.2d 659 (5th Cir. 1980); *see also In re Comm’r of Banks and Real Estate*, 764 N.E.2d at 101; *Reichert v. Fidelity Bank & Trust Co.*, 245 N.W. 808, 810 (Mich. 1932); 5 Scott on Trusts § 519. This Court recognized the Receiver’s authority to “pursue collection from APS clients who refuse to cooperate with th[e] Liquidation Plan and, if necessary, liquidate the assets and deposit the client’s proportionate

share of the loss allocation with the balance, if any, transferred to the Successor [custodian] on behalf of the APS client” when it approved the Receiver’s Liquidation Plan. (Liquidation Plan at p. 46).

The Utah Revised Uniform Limited Liability Act (the “Act”) provides the Court with statutory authority to order a judicial dissolution of LLCs organized under the laws of Utah. *See* UTAH CODE ANN. § 48-3a-101 *et seq.* According to the Act:

A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

* * *

(5) on application by a member, the entry by the district court of an order dissolving the limited liability company on the grounds that the managers or those members in control of the limited liability company:

- (a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or
- (b) have acted, are acting, or will act in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

UTAH CODE ANN. § 48-3a-701. Furthermore, under the winding up section of the Act, once the Court orders the dissolution of the LLC, the “dissolved company shall wind up its activities and affairs” and “shall discharge the [LLC’s] debts, obligations, and other liabilities, settle and close the [LLC’s] activities and affairs, and marshal and distribute the assets of the [LLC].” UTAH CODE ANN. § 48-3a-703(1)–(2)(a). Finally, the Court can order judicial supervision of the winding up, including the appointment of a person to wind up the LLC, in conjunction with the judicial dissolution. UTAH CODE ANN. § 48-3a-703(5)(a), (c).

There is limited case law on the revised Act, as the Act was revised effective January 1, 2016. However, under the predecessor to the Act, the Utah Supreme Court

stated that “[w]hen a company is judicially dissolved, the Act requires the court to direct the winding-up process in accordance with [the Act],” and may use the processes available under the voluntary or administrative dissolution. *In re Olympus Const., L.C.*, 2009 UT 29, ¶ 29, 215 P.3d 129 (Utah 2009). However, the Utah Supreme Court also noted that the Act “grants the court broad authority to direct the winding-up process. Thus, the court may choose to adopt sections [of the Act] to dispose of claims, but is not required to do so. It may fashion a more suitable procedure through the use of a Receiver.” *Id.* The Utah Supreme Court further stated that “the court may fashion its own claim disposition [and wind-down] procedures pursuant to the broad authority granted [by the Act].” *Id.*

In the present case, APS is a member of each of the LLCs held in the Non-compliant Accounts. APS is a member of the LLCs in its capacity as administrator of the Non-compliant Accounts. *See* 26 U.S.C. § 408(h). As part of the Liquidation Plan, each APS-administered IRA has been ordered to fund a loss allocation equal to ten percent (10%) of the reported value of the account as of April 24, 2014. Despite this lawful Court order, and the fact that each LLC’s manager or member are required to remit the loss allocation, APS does not have the funds to remit payment due to the manner in which the LLCs were formed, in which the IRA account owner has checkbook control over the LLC’s assets. (*See* Statement of Facts, ¶ 57.) Pursuant to the Act, the Receiver, on behalf of APS as a member of each of the LLCs, asks this Court to order the judicial dissolution of twelve (12) LLCs held within the ten (10) Non-compliant Accounts that are the subject of this Motion. *See* UTAH CODE ANN. § 48-3a-701 *et seq.* Each of the

LLCs should be directed to wind down their affairs and return the assets of the LLC to the APS account in proportion of their membership interest within ninety (90) days.

The Act also outlines a procedure for the purchase of APS's interest where there is more than one member of the LLC. The LLC, or one or more members, may elect to purchase the interest in the LLC owned by APS (as the applicant for dissolution) at fair market value. UTAH CODE ANN. § 48-3a-702(1). An election by the LLC, a member, or members, must be filed within ninety (90) days of this Motion. UTAH CODE ANN. § 48-3a-702(2). In order to trigger the election to purchase in lieu of dissolution, the Receiver must notify any member, manager, and registered agent of the LLC. To accomplish proper notice, the Receiver intends to mail a copy of this Motion and a cover letter explaining this Motion to each of the Non-compliant Account owners at the address at which the owners were served or attempted to be served, as well as any previous address on file with the Utah Division of Corporations and Commercial Code. The Receiver will also mail a copy of the Motion to each of the members, managers, and registered agents of the LLCs as listed with the Utah Division of Corporations and Commercial Code. Finally, the Receiver will post a copy of this Motion and cover letter to the Receiver's website upon filing with the Court.

II. The Court Has the Authority to Appoint the Receiver to Supervise the Wind Up of Each LLC, if Necessary.

The Act requires the LLC to wind up its activities and affairs upon an order of dissolution. *See generally* UTAH CODE ANN. § 48-3a-703. The Act also grants this Court the authority to supervise the winding up of the LLCs, to include the ability to appoint a person to wind up the LLCs. UTAH CODE ANN. § 48-3a-703(5)(c).

In the event the manager, member, or members, refuse to wind up operations and liquidate the assets of the LLC, the Receiver requests that the Court appoint her to wind up the operations of the non-compliant LLCs. Such an appointment serves judicial economy. First, the Receiver is already familiar with the operations and assets of the LLCs, as well as the specific laws related to the treatment of the assets held within the IRAs. Second, as the Receiver is familiar with the assets and operations of the LLCs and intricate laws surrounding the IRA, the Receiver is in a position to wind up the LLCs in the most cost-effective manner. Finally, in the case of single-member LLCs, the assets need not be immediately liquidated, but can simply be returned to the Non-compliant Account following judicial dissolution. Once the assets are returned, the Receiver asks the Court for authorization to sell those assets pursuant to 28 U.S.C. § 2001 and 2004.

III. The Receiver Has Authority to Sell Assets Within APS Accounts.

As noted above, the district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010). The primary focus of a receivership is to “achiev[e] a final, equitable distribution of the assets.” *Id.* The district court has authority to accomplish the goal of an equitable distribution, including the liquidation of assets from individual accounts. *See, e.g., In re Comm’r of Banks and Real Estate*, 764 N.E.2d 66, 86 (Ill. App. Ct. 2001); *see also SEC v. Bilzerian*, 378 F.3d 1100, 1103 (D.C. Cir. 2004). Furthermore, no preference should be given to some account holders to the detriment of others. *See generally Cunningham v. Brown*, 265 U.S. 1 (1924); *Rosenberg v. Collins*, 624 F.2d 659 (5th Cir. 1980); *In re Comm’r of Banks and Real Estate*, 764

N.E.2d at 101; 5 Scott on Trusts § 519. This Court recognized the Receiver's authority to liquidate the assets of the client accounts upon failure to fund the loss allocation. (Liquidation Plan at p. 46).

Pursuant to the Liquidation Plan, the Receiver seeks approval from this Court to liquidate real property assets and other assets held by the APS administered-LLCs returned to the APS Non-compliant Accounts following judicial dissolution and wind-down. Account Number 3151 requires a loss allocation of \$39,046.65 and has outstanding management fees of \$1,775.70. Account Number 5909 requires a loss allocation of \$83,133.10. Account Number 6145 requires a loss allocation of \$48,200.86 and has outstanding management fees of \$3,822.48. Account Number 6445 requires a loss allocation of \$26,743.38. Account Number 7314 requires a loss allocation of \$13,786.70. Account Number 7807 has a remaining loss allocation of \$6,395.60. Account Number 8475 requires a loss allocation of \$16,046.00. Account Number 12134 requires a loss allocation of \$18,974.80 and has outstanding management fees of \$2,002.48. Account Number 12205 requires a loss allocation of \$74,100.00 and has outstanding management fees of \$4,304.58. Account Number 12633 has a loss allocation of \$20,230.10 and outstanding management fees of \$2,302.59. Each of the LLCs formed within these Non-compliant Accounts were formed for the purposes of purchasing, selling, and otherwise holding real property and other assets for the purpose of generating value within the IRA. APS is a member of each of the LLCs within the Non-compliant Accounts. Once dissolved, the Receiver will receive funds to pay the required loss allocation.

The Act outlines the wind up process for the LLC. UTAH CODE ANN. § 48-3a-703. The manager or appointed receiver will discharge the LLC's debts, liabilities, and obligations, then

distribute the assets. UTAH CODE ANN. § 48-3a-703(2)(a). The manager or appointed receiver may distribute assets by transferring property of the LLC to its member or members. UTAH CODE ANN. § 48-3a-703(2)(b)(iv). In the case of a multi-member LLC, it is likely that the manager or appointed receiver will need to liquidate assets and distribute cash to its members according to their proportional share of ownership. In the event the LLC has only one member—the APS account owner—distribution of the assets may occur simply by transferring the assets without liquidation of the assets. *Id.* When cash assets are received, the Receiver will use the cash to pay the loss allocation within the account. When illiquid assets are received for a single-member LLC, the Receiver will need to liquidate those assets to fund the loss allocation pursuant to 28 U.S.C. §§ 2001, 2004, as described below.

The Receiver has contacted each of the owners of Non-compliant Accounts on numerous occasions to pay their loss allocations. The Receiver has obtained additional Court orders requiring these owners to pay their respective loss allocations and transfer their accounts. *See, e.g.,* Order Requiring All Remaining APS Account Holders to Transfer Within 30 Days (Dkt. 592). Despite the Receiver's numerous communications, each of the above account owners has failed to cooperate with the Receiver to resolve their loss allocation. Ultimately, the Receiver issued subpoenas to the owners of the Non-compliant Accounts in order to compel cooperation and make a preliminary determination as to the value of the underlying assets of the LLCs.

Of the nine (9) Non-compliant Account owners that were subpoenaed, one was not served (which the Receiver believes is evading service), two were served but have not

responded, and six were served and responded to the subpoena.⁸ Based on the information provided by the six Non-compliant Accounts that responded, the Receiver believes there are sufficient assets to liquidate and fund the loss allocation and management fees, if any, for each of those accounts following judicial dissolution. Furthermore, the Receiver also believes, based on the limited information available regarding the unresponsive Non-compliant Accounts, there are sufficient real estate assets to liquidate following judicial dissolution. While the owners of each of the accounts may believe they are being punished (and most assuredly, the owners are victims of Curtis DeYoung's misappropriation), the loss allocation is the product of a lawful court order, and the owners of Non-compliant Accounts are in violation of this Court's order. *See In re Comm'r of Banks and Real Estate*, 764 N.E.2d at 123.

Furthermore, “[i]t is generally recognized that the district court has broad powers and wide discretion to determine . . . relief in an equity receivership.” *SEC v. Vescor Capital Corp.*, 599 F.3d, 1189, 1194 (10th Cir. 2010) (internal quotation marks omitted). Therefore, this Court, exercising equitable principles, should not allow Non-compliant Accounts containing IRA LLCs to evade the Receivership and the Court-ordered loss allocation payment by setting up an IRA LLC to invest in assets that could have been directly held by the IRA.

The United States Code describes the procedure for selling real property and other assets. 28 U.S.C. §§ 2001, 2004. According to 28 U.S.C. § 2001, “Property in the possession of a receiver . . . appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city”

⁸ One of the nine (9) Non-complaint Account owners was not issued a subpoena based on several communications with the Receiver, during which the Receiver obtained the necessary information to evaluate the account for liquidation or distribution.

where the property is located, “or on the premises” of the property. Furthermore, “[a]ny personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.” 28 U.S.C. § 2004. The Receiver seeks the approval of this Court to sell real property and other assets returned to the Non-compliant Accounts following the judicial dissolution of the LLCs held within those accounts.

Should this Court approve, the Receiver intends to hold a public sale or auction that will bring the highest and best value for the property or other assets returned to the Non-compliant Accounts. The Receiver requests the Court grant the Receiver authority to sell the parcels of real property by sheriff’s sale, U.S. Marshals sale, or other public auction, whichever the Receiver determines will bring the highest and best value. Regardless of the method of sale, the Receiver will strive to obtain a minimum bid equal to the loss allocation and outstanding management fees, if any, owed by each of the respective accounts, and reasonable fees and costs associated with liquidating the properties in the respective accounts. Should a minimum bid not be obtained, the Receiver will strive to liquidate the assets for the highest and best value. The Receiver should be awarded her reasonable costs and fees associated with the liquidation of the real property assets as this Motion is only necessary because the owners of Non-compliant Accounts have disregarded this Court’s orders. Furthermore, account owners that have willingly complied with this Court’s orders should not be harmed by subsidizing the costs incurred by the Receiver in executing against the Non-compliant Accounts.

Should the Receiver elect to hold a sheriff’s sale, the Receiver will follow the procedure for a sheriff’s sale for the county in which she elects to conduct the sale. *See, e.g.*, UTAH CODE

ANN. § 57-1-25. The typical process involves a payment of a fee to the sheriff's office, and providing the sheriff's office with a court order authorizing the sale, the amount due at the sale (a minimum bid), and a legal description of the property. *Id.* The sheriff's office will then publish notice of the sale in the newspaper and other public places. *Id.* Typically, notice is published three weeks prior to the sale.⁹ *Id.* Should the Receiver elect to engage the U.S. Marshals Service to auction real property and other assets, the Receiver will coordinate the auction with the U.S. Department of Justice Asset Forfeiture Program, which will then publicly auction the assets.

Alternatively, the Receiver seeks authorization to engage an auctioneer to publicize and conduct the sale of the real property. The Receiver has successfully used an auctioneer in this matter to liquidate other Receivership Assets. The auctioneer will publicize a notice of sale in newspapers and online in an effort to maximize the number of potential purchasers.

The Receiver will deposit any funds from the liquidation of the assets into the respective APS accounts.¹⁰ Following the deposit to accounts, the Receiver will fund the loss allocation and outstanding management fees, as well as reasonable fees and costs associated with the liquidation of the asset from the Non-compliant Accounts. The loss allocation asset will be represented by a Contingent Repayment Agreement.¹¹ (Liquidation Plan at p. 44). As the

⁹ The Receiver will comply with any statutes applicable in the jurisdiction in which the property is sold, including any statutory timelines or additional notice requirements.

¹⁰ In the case of a multi-member LLC, the likely outcome of the wind-up will be receipt of cash based on the proportional share of ownership in the LLC. The loss allocation will be made from the proportional share received.

¹¹ The Contingent Repayment Agreement will represent only the value of the loss allocation and will not include any management fees or reasonable fees associated with the liquidation of the account assets.

opportunity to transfer the accounts to Equity Trust Company has expired, the Receiver will then resign as administrator of the account and distribute the Contingent Repayment Agreement and any excess funds to the account owner with a letter explaining the resignation and the account owner's right to rollover the account assets. The account owner will be issued an IRS Form 1099-R for the amount of the distribution, which would include the face value of the Contingent Repayment Agreement.

IV. Due Process Has Been Afforded to Each Account Holder.

“Due process requires notice and an opportunity to be heard.” *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). Due process ensures a “claimant[’s] interests [are] adequately safeguarded.” *Id.* The owners of each of the Non-compliant Accounts have been, and will be, afforded due process.

In *In re Comm’r of Banks and Real Estate*, a Receiver sought to dissolve and liquidate a custodian of investment trust assets. 764 N.E.2d 66 (Ill. App. Ct. 2001). In affirming the Receiver’s authority to liquidate assets from individual trust accounts, the Court addressed due process considerations, and found that account holders had “both actual and constructive notice . . . in the form of publication of pleadings, orders, the receiver’s recommendations, etc.” on the receiver’s website. *In re Comm’r of Banks and Real Estate*, 764 N.E.2d at 92. The Court noted that each of the account holders had been mailed notice of the receivership, which advised account holders that “a substantial portion of cash . . . was missing and it was the priority of the receiver to determine the amount of money missing and how the beneficiaries would be affected by the missing cash,” and that notice was posted to the receiver’s website. *Id.* The Court then noted that account holders received notice of other court filings by mail and website postings,

and that account holders “were afforded ample opportunity to participate in the court’s proceedings,” including the ability to “file extensive pleadings . . . including objections and suggestions . . . to the receiver’s initial recommendation[s], . . . objections and oppositions to the proposed final order,” and other filings. *Id.* at 93–94.

In addition to the initial notice of the Receivership, APS account owners were mailed notice of the Receiver’s proposed Liquidation Plan and afforded an opportunity to make suggestions and objections. APS account owners were also mailed the Court-approved Liquidation Plan. Additionally, the Receiver has posted all substantive pleadings to the Receiver’s website at www.apsreceiver.com. As to each of the Non-compliant Accounts, the Receiver has issued and served or attempted to serve subpoenas with cover letters explaining the loss allocation and the need to comply with the Court’s orders. The cover letter to the subpoena explicitly stated that each account owner was “in violation of Court orders by failing to pay [their] loss allocation.” The cover letter also stated that, pursuant to the Liquidation Plan, the Receiver may take certain actions, including “liquidat[ing] assets sufficient to meet the loss allocation.”

Finally, as noted *supra* Part I, the Receiver intends to mail a copy of this Motion and a cover letter to each Non-compliant Account owners and all other listed members, managers, and registered agents of the LLCs on file with the Utah Division of Corporations and Commercial Code. The Receiver will also post a copy of this Motion and the cover letter to the Receiver’s website upon filing with the Court. Such notice will provide the LLC and any other members of the LLC an opportunity to initiate their option to purchase the Non-compliant Account owner’s interest in lieu of dissolution. Utah Code Ann. § 48-3a-702.

If the Court elects to hold a hearing on this Motion, the Receiver will post a notice of the hearing date to the Receivership website. Thus, each of account owners has been and will be afforded due process.

CONCLUSION

The Receiver requests that this Court approve the Receiver's request to order dissolution of twelve (12) LLCs held in ten (10) Non-compliant Accounts. The Receiver also requests authorization to liquidate the real property or other assets returned to the APS accounts following the judicial dissolution by sheriff's sale, U.S. Marshals sale, or other public auction pursuant to 28 U.S.C. §§ 2001, 2004.

DATED this 18th day of January, 2017.

/s/ Jeffrey Enquist

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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 **RECEIVER'S MOTION AND MEMORANDUM FOR AN ORDER OF JUDICIAL DISSOLUTION OF LIMITED LIABILITY COMPANIES ORGANIZED IN UTAH HELD BY APS FOR THE BENEFIT OF APS ACCOUNT HOLDERS** was served to the following this 18th 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

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For the Benefit of Guy Tomlinson, Roth IRA
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*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.

**ORDER APPROVING RECEIVER'S
MOTION AND MEMORANDUM FOR
AN ORDER OF JUDICIAL
DISSOLUTION OF LIMITED
LIABILITY COMPANIES ORGANIZED
IN UTAH HELD BY APS FOR THE
BENEFIT OF APS ACCOUNT
HOLDERS**

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

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

Before this Court is the Receiver's Motion and Memorandum for an Order of Judicial
Dissolution of Limited Liability Companies Organized in Utah Held by APS for the Benefit of

APS Account Holders (“Motion”). For good cause appearing, and for the reasons stated in the Motion, the Court hereby GRANTS the Receiver’s motion.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Court approved the Receiver’s Liquidation Plan on February 27, 2015. (Dkt. 458).

2. This Court has the statutory authority to order judicial dissolution of limited liability companies (“LLCs”) organized under the laws of Utah held in APS Account Numbers 3151, 5909, 6145, 6445, 7314, 8475, 12134, 12205, 12207, and 12633. *See* UTAH CODE ANN. § 48-3a-701(5) (West 2016).

3. This Court has jurisdiction to authorize the sale of real property and other assets returned to APS Account Numbers 3151, 5909, 6145, 6445, 7314, 8475, 12134, 12205, 12207, and 12633 under 28 U.S.C. § 754 and 1692. *See SEC v. Bilzerian*, 378 F.3d 1100, 1103 (D.C. Cir. 2004).

4. The liquidation of assets is authorized by statute, 28 U.S.C. §§ 754, 1692, and by the Liquidation Plan.

5. The judicial dissolution of LLCs held within APS Account Numbers 3151, 5909, 6145, 6445, 7314, 8475, 12134, 12205, 12207, and 12633 will further the purpose of the Receivership to treat all account owners equitably.

6. The further liquidation of assets from APS Account Numbers 3151, 5909, 6145, 6445, 7314, 8475, 12134, 12205, 12207, and 12633 is fair, reasonable, and necessary to allow the Receivership to be administered to a conclusion.

7. The beneficiaries of APS Account Numbers 3151, 5909, 6145, 6445, 7314, 7807, 8475, 12134, 12205, and 12633 received notice of the Liquidation Plan by mail, e-mail, and by posting of the Liquidation Plan to the Receiver's website at www.apsreceiver.com.

8. The beneficiaries of APS Account Numbers 3151, 5909, 6145, 6445, 7314, 7807, 8475, 12134, 12205, and 12633 have not complied with the Liquidation Plan, approved by this Court on February 27, 2015. (Dkt. 458).

9. The beneficiaries of APS Account Numbers 3151, 5909, 6145, 6445, 7314, 7807, 8475, 12134, 12205, and 12633 were either served, or the Receiver made reasonable efforts to serve, a subpoena with a cover letter explaining that they had not complied with the Liquidation Plan. The cover letter also explained that the Liquidation Plan authorized the Receiver to liquidate assets within their accounts.

10. Account Number 3151 has a loss allocation of \$39,046.65 and has outstanding management fees of \$1,775.70.

11. Account Number 5909 has a loss allocation of \$83,133.10 and has outstanding management fees of \$0.00.

12. Account Number 6145 has a loss allocation of \$48,200.86 and has outstanding management fees of \$3,822.48.

13. Account Number 6445 has a loss allocation of \$26,743.38 and has outstanding management fees of \$0.00

14. Account Number 7314 has a loss allocation of \$13,786.70 and has outstanding management fees of \$0.00.

15. Account Number 7807 has a remaining loss allocation of \$6,395.60 and has outstanding management fees of \$0.00.

16. Account Number 8475 has a loss allocation of \$16,046.00 and has outstanding management fees of \$0.00.

17. Account Number 12134 has a loss allocation of \$18,974.80 and has outstanding management fees of \$2,002.40.

18. Account Number 12205 has a loss allocation of \$74,100.00 and has outstanding management fees of \$4,304.58.

19. Account Number 12633 has a loss allocation of \$20,230.10 and has outstanding management fees of \$2,302.59.

20. Judicial dissolution of the LLCs held by APS Account Numbers 3151, 5909, 6145, 6445, 7314, 7807, 8475, 12134, 12205, and 12633 will allow for the return of cash or other assets to APS Account Numbers 3151, 5909, 6145, 6445, 7314, 7807, 8475, 12134, 12205, and 12633.

21. Proceeds received from the return of cash or the sale of additional assets in each of APS Account Numbers 3151, 5909, 6145, 6445, 7314, 7807, 8475, 12134, 12205, and 12633 will be utilized to satisfy each account's loss allocation, outstanding management fees, and reasonable fees and costs incurred by the Receiver associated with liquidation of the asset.

22. Any excess funds available as a result of the public sale of the real property will be deposited to the respective accounts of the beneficiaries. These excess funds, as well as any other assets, including a Contingent Repayment Agreement as described in the Liquidation Plan,

will be distributed to the beneficiary. The Receiver will also issue appropriate documents for the purpose of tax reporting, including but not limited to an IRS Form 1099-R.

23. Should the Receiver be required to liquidate real property assets returned to APS Account Numbers 3151, 5909, 6145, 6445, 7314, 7807, 8475, 12134, 12205, and 12633 following judicial dissolution, statute requires that real property be sold at public sale in the district wherein the receiver was first appointed, at the courthouse of the county, parish or city in which the property is located, or on the premises of the property. 28 U.S.C. § 2001(a).

24. Should the Receiver be required to liquidate other assets or personalty returned to APS Account Numbers 3151, 5909, 6145, 6445, 7314, 7807, 8475, 12134, 12205, and 12633 following judicial dissolution, statute requires that such assets be sold at public sale in the district wherein the receiver was first appointed, at the courthouse or the county, parish or city in which the property is located, or on the premises of the property, or as the court otherwise directs. 28 U.S.C. § 2004.

25. The Receiver is further authorized to conduct the sale of real property and other assets held by APS Account Numbers 3151, 5909, 6145, 6445, 7314, 7807, 8475, 12134, 12205, and 12633 by public sale in a manner the Receiver believes will bring the highest and best value for the property and other assets, whether by sheriff's sale, U.S. Marshals sale, or through a public auction.

26. After due diligence, should the Receiver believe a public auction will bring the highest and best value, the Receiver is authorized to engage an auctioneer or auction house for the purpose of conducting a public auction.

27. The Receiver shall promptly publish a copy of this Order to the Receivership website at www.apsreceiver.com.

28. The Receiver shall mail a copy of her Motion, this Order, and if applicable, notice of the final date of the sale of the property to the account owners of APS Account Numbers 3151, 5909, 6145, 6445, 7314, 7807, 8475, 12134, 12205, and 12633 by certified mail or other verified delivery method to the address at which each of the individuals was served a subpoena.

29. The Receiver shall also mail a copy of her Motion and this Order to all members, managers, and the registered agent(s) of the LLCs in APS Account Numbers 3151, 5909, 6145, 6445, 7314, 8475, 12134, 12205, 12207, and 12633 by certified mail or other verified delivery method to the address recorded with the respective state agencies responsible for maintaining such information.

30. Should the Receiver be required to liquidate real property or other assets, the minimum bid for each of the parcels of real property or other assets shall be the loss allocation, any outstanding management fees, and reasonable fees and costs associated with liquidating the real properties.

31. Any additional member or members of the LLCs held within APS Account Numbers 3151, 5909, 6145, 6445, 7314, 8475, 12134, 12205, 12207, and 12633 that are not associated with APS shall have the opportunity to elect to purchase the non-compliant APS account owner's interest of the LLC in lieu of judicial foreclosure within ninety (90) days of this Motion. UTAH CODE ANN. § 48-3a-702 (West 2016).

32. Should any other member or members that are not the non-compliant APS account owner elect to purchase the non-compliant APS account owner's interest, such election

is binding and the non-compliant APS account owner's interest will be sold to the member or members in lieu of judicial dissolution. UTAH CODE ANN. § 48-3a-702 (West 2016).

IT IS SO ORDERED.

DATED this ____ day of January, 2017.

Honorable Robert J. Shelby
United States District Court