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RETIREMENT SECURITY PLAN AND TRUST, f/k/a
PENSION LIQUIDITY PLAN AND TRUST

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

HILDA L. SOLIS, Secretary of the United States
Department of Labor,

Plaintiff,

v.

MATTHEW D. HUTCHESON, HUTCHESON
WALKER ADVISORS LLC, GREEN VALLEY
HOLDINGS LLC, and the RETIREMENT
SECURITY PLAN AND TRUST, f/k/a PENSION
LIQUIDITY PLAN AND TRUST,

Defendants.

Case No.: 1:12-CV-00236-EJL

REPORT AND FEE NOTICE OF
COSTS AND EXPENSES

PURSUANT TO THE Preliminary Injunction entered on June 13, 2012 [Doc. 16],
Jeanne B. Bryant, Independent Fiduciary for Retirement Security Plan & Trust (RSPT) submits
this Report and Notice for the period beginning May 16, 2012 and ending May 31, 2012.

I. ACTIVITY REPORT

There have been a number of issues that have occurred with RSPT since the
appointment of the Independent Fiduciary (“IF”). One of the most significant has been the
issuance of the recent opinions of the Department of Labor regarding “open” multiple

employer plans. See U.S. Department of Labor Advisory Opinions 2012-03 and 2012-04. As a result of those rulings, and the consequences to the entire RSPT of the alleged theft of the funds from some, but not all, of the employer and member accounts, a number of employers have requested that IF consider whether those members could leave RSPT without waiting for the results of the efforts to recover the missing funds. There have also been questions concerning whether individual employers can pay any funds missing from their employees' accounts into the RSPT and also leave the RSPT. Currently there are 67 active plans which have investments involving the prohibited transaction between RSPT and Green Valley Holdings, LLC ("GVH") and the subsequent suspect purchase by GVH of the Pacific Continental Bank note ("PCB Note") (with the underlying collateral being portions of the Tamarack Resort property). There are 11 active plans that apparently have no investments involving the PCB Note and 22 plans that were listed as terminated prior to IF's appointment but which are still listed as having investments involving the PCB Note, and 4 of those 22 terminated plans that list as their sole investment the PCB Note. There are 433 current participants with account balances in the 78 active RSPT plans.

In addition to the items noted above, until the entry of the Preliminary Injunction in this action (Doc. 16), there were issues concerning the retrieval of the RSPT's records from the previous administrators. Representatives of the IF went to the HWA offices in Witchata Falls, Texas to review the records. Currently, the issues regarding retrieval of those records appear to have been solved, and the records are expected to be transferred as requested. There have been two employer conference calls held to go over a number of the issues reported here and to answer additional questions on what the employers and members of the RSPT can expect over

the next several months as RSPT attempts to recover the funds that have been used/misused for the investment in GVH by Mr. Hutcheson. The IF has determined that obtaining quotes for a market appraisal of the Tamarack Resort property in question - - to get a more accurate projection of the value of the property - - is the best way to proceed and will advise the RSPT sponsors of the results of that appraisal as soon as possible.

Regarding pending litigation, at the time of the IF's appointment, there was a pending case in Idaho State Court relating to foreclosure rights over the Tamarack Resort property - - Pacific Continental Bank/Green Valley Holdings, LLC v. West Mountain Golf, LLC, et al. (# CV-2010-029C) (4th Judicial District Valley County, Idaho). At the time of the IF's appointment, there were cross motions for summary judgment that were scheduled for argument on May 24, 2012. Efforts were undertaken to reach agreement with the existing parties to that action to postpone the summary judgment hearing, but those efforts were rejected both by GVH (Hutcheson's entity) and West Mountain Golf, LLC. This caused the immediate and pressing need to have the IF's counsel (both local counsel there in Idaho and other of my counsel) prepare and file papers regarding a request to intervene in that action and to stay those proceedings. On May 23, 2012, at a special set hearing obtained by IF's counsel, the state court allowed the IF to intervene into that case, but did not stay the proceedings, including the hearing of the cross-motions for summary judgment. That summary judgment hearing occurred on May 24, 2012 with the court taking the matter under advisement. Yesterday, June 28, 2012, the Idaho state court issued a ruling on the cross motions for summary judgment which held that because GVH did not have actual possession of the promissory note, GVH did not have standing to foreclose upon the collateral (i.e. portions of

the Tamarack Resort). The dismissal was without prejudice for a foreclosure or similar action to be pursued by an entity or person with appropriate standing. The state court ruling did not state whether the right to pursue foreclosure of the collateral was an asset of the Plans, but stated that the right of the IF to foreclose was dependent upon GVH's standing. Counsel for the IF are examining this ruling to see what actions to take to secure the rights to foreclose, which they consider an asset of the Plan, but think that detailed disclosure of their thoughts and potential actions are not appropriate at this time.

As to further efforts on asset recovery, the IF's counsel continue to investigate possible targets regarding culpability in the transaction wherein Plan(s) funds were removed and invested in GVH. The IF and her counsel maintain that it would be imprudent to go further into detail on these efforts at this time. Also, the IF's counsel is investigating, and requesting reconsideration of, a denial of coverage by a fidelity/ERISA bond underwriter which had provided coverage to the Plan(s). Earlier communication as between Mr. Walker of HWA and that underwriter had resulted in the denial of coverage, but the IF is in the process of presenting information to that underwriter to reconsider its position. Likewise, the IF and her counsel maintain that it would be imprudent to go further into detail on these efforts at this time.

II. ANTICIPATED FUTURE ACTIVITIES AND RESOLUTION OF ISSUES

The IF takes this opportunity to inform the Court and the parties to this litigation of the following issues, and anticipated means of resolution of same, involving the RSPT Plans. The IF will post a copy of this Report and Fee Notice on the website of the IF's company, Receivership Management, Inc. and will inform the sponsors of the RSPT Plans of such posting, as noted below, after filing of same with this Court.

1. Asset Transfers and Distributions. By letter dated May 17, 2012, the IF informed all sponsors of the RSPT Plans that pending resolution of certain matters (more particularly described below) no distributions, withdrawals, or transfers of funds out of the RSPT Plans would be allowed (other than required minimum distributions under Section 401(a) (9) of the Internal Revenue Code). Also, although the RSPT Plans allow participant loans, the IF will not approve any new participant loans or refinancing at this time. The primary reason for the freeze on outflows of RSPT Plans' assets is to prevent a run on the RSPT Plans' trust and to ensure that all RSPT Plans (or their sponsors) equitably pay their share of administrative expenses. The IF also stated that RSPT would not admit (and it has not admitted) any new sponsor after May 16, 2012.

2. Allegedly Misappropriated Funds. The IF's paramount concern is the recovery of assets she asserts were misappropriated and transferred to GVH, which GVH then used to purchase the PCB Note, said note being secured by certain land and assets of the Tamarack Resort. As reported above, the IF is considering the options for pursuit of the rights to foreclose upon the PCB Note on behalf of the RSPT Plans. The IF will also pursue other avenues of recovery should she determine that it is economically feasible to do so. The RSPT Plans whose assets are affected by the asserted misappropriation will share in all costs associated with asset recovery activities in proportion to their share of the misappropriated assets, to the extent that the RSPT Plans' sponsors do not pay such costs (or reimburse the IF for same). The allegedly misappropriated assets affect all RSPT Plans (active and terminated) other than approximately 11 plans, all of which the IF believes joined RSPT after the alleged misappropriation occurred.

3. Tax Qualification Issues. The IF has already begun to inspect copies of the RSPT Plans' plan documents to ensure that all required amendments have been timely made. She has also begun reviewing the RSPT Plans' administrative procedures to determine whether the RSPT Plans have been administered in accordance with their terms. Both of these requirements are conditions for the RSPT Plans' trust's exemption from federal income tax laws. To the extent that amendments have not been made timely and/or to the extent that the RSPT Plans have not been administered in accordance with their terms, the IF will file an application under the voluntary compliance program ("VCP") of the Internal Revenue Service ("IRS") pursuant to IRS Revenue Procedure 2008-50, or its successor, to correct these errors.

To the IF's understanding, although the U.S. Department of Labor views the RSPT Plans as separate, single- employer plans funded through a common trust, the IRS views the RSPT Plans as a single, multiple employer plan pursuant to Section 413(c) of the Internal Revenue Code (the "Code"). Because the IRS views any mistake involving federal tax qualification requirements made under a multiple employer plan as affecting the qualification of the entire plan (even if the mistake actually directly affects less than all employers), the IF will assess all RSPT Plans' sponsors for the costs of the VCP application, if filed, and its negotiation with the IRS. Pursuant to IRS Revenue Procedure 2008-50, the IRS user fee payable with the filing of a VCP application would be either \$5,000 (for a plan having between 100 and 500 eligible employees) or \$8,000 (for a plan having between 501 and 1,000 eligible employees). However, the RSPT Plans are not allowed to pay the IRS user fee. Rather, the RSPT Plans' sponsors must pay that fee and must agree not to deduct it for federal income tax purposes. The IF will assess the VCP fee against the sponsors. There will also be attorneys'

fees and other expenses (e.g., postage, copy charges, fax charges, etc.) in connection with the preparation of any VCP application and negotiation of correction alternatives with the IRS. These other expenses can be paid by the RSPT Plans or by the sponsors. The Independent Fiduciary will assess these additional costs and expenses against the sponsors based upon the value of each RSPT Plan's assets as of the VCP application filing date. However, if the sponsors refuse to pay, the Independent Fiduciary will assess such expenses against the sponsor's RSPT Plan funds.

Once the IRS has approved all corrections and all corrections have been made, it will issue a VCP compliance statement to confirm same. That compliance statement will likely not address any misappropriated funds.

4. Delinquent Contributions and/or Participant Loan Payments. The IF has also begun reviewing the RSPT Plans' trust records to determine whether all employer and employee contributions have been timely made and to determine whether all participant loan payments have been timely made. To the extent that such payments to the RSPT Plans have not been timely made, the IF will demand that same be paid in full by either the sponsor or the participant, as the case may be, with "lost earnings," calculated by using the U.S. Department of Labor's online calculator found at www.dol.gov/ebsa/calculator.

The IF does not anticipate filing any application under the U.S. Department of Labor's voluntary fiduciary correction program ("VFCP") regarding this issue, given the requirement under the Preliminary Injunction that she report her activities to this Court and given that the Secretary of Labor is the plaintiff in this action.

5. Forms 5500 for Individual RSPT Plans. The IF understands that the RSPT Plans have filed a single Form 5500 (the annual report to the IRS and U.S. Department of Labor) as a multiple employer plan for all plan years prior to 2011. She further understands that no individual single-employer plan within RSPT has filed its own Form 5500 for any year. Although this method of Form 5500 reporting appears to satisfy IRS reporting requirements, the U.S. Department of Labor's Advisory Opinions 2012-03 and 2012-04 presumably require that each single-employer plan within RSPT file its own Form 5500 for all years in which it has assets within RSPT. Accordingly, the IF believes that she, as plan administrator for the RSPT Plans, must file (i) a Form 5500 for the RSPT Plan as a whole with an audit report on the entire RSPT (to meet IRS requirements) and (ii) separate Forms 5500 for each single-employer plan within RSPT (to meet ERISA requirements). The IF believes that no single-employer plan within RSPT will have to be audited on its own, since none of them, individually, appears to have 100 or more participants. However, if a plan has 100 or more participants, it may have to be audited too.

The IF is in the process of preparing and filing extension requests for all single-employer plans within RSPT, and for RSPT as a whole, for Forms 5500 for the RSPT Plans' 2011 plan year, on IRS Forms 5558. Such Forms 5558 must be filed with the IRS on or before July 31, 2012 and, by their terms, will be approved automatically. The extension of time to file the 2011 Forms 5500 will expire October 15, 2012. The IF will prepare individual 2011 Forms 5500 for each single-employer plan within RSPT and will prepare a 2011 Form 5500 for the RSPT as a whole, with an audit of the RSPT Plans' trust for the 2011 calendar year (to satisfy IRS reporting requirements) and will file same by the above deadline. Forms 5500 are required

for so long as the RSPT Plans have assets, and Form 5500 audits are generally required for so long as the RSPT Plans, in the aggregate, have 100 or more participants. The IF plans to request a waiver from the audit requirement from the U.S. Department of Labor and the IRS for all years after 2011.

The IF will also request a waiver from the U.S. Department of Labor exempting her from having to prepare and file Forms 5500 for the single-employer plans within RSPT for years prior to 2011. If that waiver is not granted, the IF will have to prepare and file prior year Forms 5500 for all single-employer plans that have ever been within RSPT (whether or not they have assets in RSPT currently) and will assess the cost of same to each sponsor. If a sponsor refuses to pay those costs, the IF will cause the respective single-employer plan within RSPT to pay same.

6. Prior Schedule SSA to Forms 5500 and Forms 8955-SSA for Individual RSPT Plans. Prior to 2009, the Social Security Administration received information regarding terminated participants' vested account balances on Schedule SSA to Form 5500, pursuant to Code section 6057. Beginning in 2009, administrators of ERISA pension plans report that information on IRS Form 8955-SSA.

Because Code section 6057 references ERISA's vesting rules in determining which plans must provide information to the Social Security Administration, the U.S. Department of Labor's Advisory Opinions 2012-03 and 2012-04 presumably operate to require that each single- employer plan within RSPT file its own Schedule SSA to Form 5500 or Form 8955-SSA, as applicable, for all years in which the single employer plan has participants who terminate employment with its sponsor with a vested benefit.

The IF understands that the RSPT Plans have filed Schedules SSA to Form 5500 or Forms 8955-SSA, as applicable, as a multiple employer plan for years prior to 2011. She further understands that no individual single-employer plan within RSPT has filed its own Schedule SSA to Form 5500 or Form 8955-SSA, as applicable, for any year.

The IF is in the process of preparing and filing extension requests for all single-employer plans within RSPT for Forms 8955-SSA for the RSPT Plans' 2011 plan year, on IRS Forms 5558. Such Forms 5558 must be filed with the IRS on or before July 31, 2012 and, by their terms, will be approved automatically. The extension of time to file the 2011 Forms 8955-SSA will expire October 15, 2012. The IF will prepare and file individual 2011 Forms 8955-SSA for each single-employer plan within RSPT by the above deadline. Forms 8955-SSA will likely need to be prepared and filed for future years as well.

The IF will also request a waiver from the IRS exempting her from having to prepare and file Schedules SSA to Forms 5500 and Forms 8955-SSA, as applicable, for the single-employer plans within RSPT for years prior to 2011. If that waiver is not granted, the IF will have to prepare and file prior year Schedules SSA to Forms 5500 and Forms 8955-SSA, as applicable, for all single-employer plans that have ever been within RSPT (whether or not they have assets in RSPT currently) and will assess the cost of same to each sponsor. If a sponsor refuses to pay those costs, the IF will cause the respective single-employer plan within RSPT to pay same. There may be IRS penalties associated with late filings, which the IF will charge to each sponsor if the IRS does not waive them.

Filing pre-2009 Schedule SSA to Forms 5500 for the single employer plans, if required, would presumably be made pursuant to the U.S. Department of Labor's delinquent filer

voluntary compliance program (“DFVCP”) for all single employer plans that are subject to ERISA. The DFVCP is not applicable to late Form 8955-SSA filings. The DFVCP is also not available for plans within the RSPT that do not benefit employees, since those plans are not ERISA plans. Rather, non-ERISA plans within RSPT (if any) would be subject only to the IRS’s Form 5500 reporting requirements (and some may be exempt). The IF has not yet determined whether any plans within RSPT are exempt from ERISA.

7. ERISA Bond for IF. Pursuant to Section 412 of ERISA and this Court’s June 13, 2012 Preliminary Injunction [Doc. 16], the IF is required to obtain a bond protecting those single- employer plans within RSPT that are subject to ERISA. The IF has purchased a bond from CNA insuring the RSPT Plans, in the aggregate, for a face amount of \$500,000. The IF will charge the cost of this bond to the applicable RSPT plans, as allowed by ERISA.

8. Lifting the Freeze on Transfers, Withdrawals and Distributions. The IF does not intend to refuse to disburse RSPT Plans’ assets indefinitely. Rather, as soon as all issues affecting a particular single-employer plan within RSPT are resolved, and subject to this Court’s prior approval, the IF believes that the freeze of transfers, withdrawals, and distributions on that plan should be lifted, as follows:

A. Single employer plans impacted by the PCB Note. These plans need to remain frozen until asset recovery efforts are terminated or until the applicable sponsor makes its plan whole. If a sponsor makes its plan whole, its plan would nevertheless share in any assets recovered from third parties (which would presumably be allocated to a suspense account for the benefit of that sponsor’s plan), and, if assets are recovered, would also share in the asset recovery costs incurred after the sponsor makes its plan whole. Plans that joined RSPT after

Mr. Hutcheson transferred RSPT Plans' funds to GVH are not frozen for this reason (the IF is not aware of any legitimate argument that would require her to freeze such unaffected plans' assets solely on account of the PCB Note).

B. Tax qualification defects other than missing assets. If a VCP application is needed for the RSPT Plans as a whole, all plans within RSPT will remain frozen until the IRS issues a VCP compliance statement and all mistakes are corrected.

C. Single employer plans that have delinquent employee and/or employer contributions and/or participant loans that do not comply with the RSPT's loan policies. These plans will remain frozen at least until all delinquent contributions and loan payments, with lost earnings, are contributed and allocated to affected participants.

D. Single employer plans that have not filed their own Forms 5500 (and Forms 8955-SSA, if applicable). These plans will remain frozen until all pre-2011 Forms 5500 are filed or until the Independent Fiduciary can get a Form 5500 filing waiver from DOL for the single employer plans' prior year 5500s and a Schedule SSA/Form 8955-SSA waiver from the IRS.

E. Sales of Employer Securities. Notwithstanding the above, the IF will not prevent the sale of employer securities held by an RSPT Plan, provided that the sponsor acknowledges (i) its fiduciary responsibility under ERISA with respect to such sale, (ii) that all requirements of ERISA, the Internal Revenue Code, and the RSPT Plans are satisfied with respect to such sale, and (iii) the proceeds of such sale(s) remain in the applicable RSPT Plan.

F. Participants' right to select offered investment portfolios unchanged.
Also, notwithstanding the freeze on RSPT Plans' disbursements, RSPT Plans' participants will

continue to have the right to elect which investment portfolios (as developed and monitored by Interlake Capital Management, LLC) they wish their account balances invested in, in accordance with the RSPT Plans' current investment direction procedures.

9. Assessment of Fees and Expenses, Generally. Except as otherwise specifically stated above, the IF will assess fees and expenses against the RSPT Plans' sponsors. If a sponsor does not pay such assessed fees and expenses after the IF files a Fee Notice with this Court, the IF will assess the sponsor's plan for same.

If the IF assesses fees and expenses against the RSPT Plans, it is her intent that all participant accounts shall share in such assessment. Since approximately 70% the RSPT Plans assets are invested in employer securities, and since such employer securities are designated investments of the accounts belonging to the owners/principals of the sponsors, payment of such assessed fees and expenses ratably by all participants in a particular RSPT Plan may not be feasible. As a result, to the extent an assessment against a particular RSPT Plan occurs, the IF shall charge the liquid assets of the particular plan and shall impose a lien on the employer securities held in that plan, such that the owner/principal's account(s) shall be required to pay its/their share of such fees and expenses prior to distribution from the RSPT Plan.

10. Eventual Withdrawal from RSPT. Once a particular RSPT Plan's issues have been fully resolved, and all incurred fees and expenses allocable to such plan and its sponsor have been paid or reimbursed to the satisfaction of the IF, the IF anticipates that such plan's sponsor will want to withdraw from RSPT. That withdrawal will be implemented by a trustee-to-trustee transfer of the RSPT Plan's assets to a successor 401(k) plan established by the sponsor, which shall comply with ERISA, the Internal Revenue Code, and the RSPT Plans.

The IF would also establish a reserve to fund post-transfer expenses (e.g., for that sponsor's final Form 5500 in RSPT, the RSPT's Form 5500 for the year of transfer and RSPT-level 5500 audit, Forms 1099-R (if applicable), etc.).

11. Monthly and Annual Fees. The IF has learned that some RSPT sponsors were paying \$155 per month, while others paid \$210 per month, to Hutcheson Walker Advisors, LLC for RSPT administrative fees prior to May 16, 2012. The sole reason for the different administrative fee rates was the timing as to when the sponsor had joined RSPT. Similarly, prior to May 16, 2012, Mr. Hutcheson had charged some RSPT participants' accounts an annual fee of \$28, while he charged other accounts a lesser amount, presumably for trustee services. The IF has been advised that RSPT paid the 2012 trustee fees to Mr. Hutcheson in the first quarter of 2012. The sole reason for the different trustee fee rates was when the participant had become eligible to participate in RSPT. Effective August 1, 2012, the IF will equalize both types of fees, such that all RSPT sponsors will pay at least \$210 per month in administrative fees. All RSPT participants will pay an annual trustee fee of \$28 effective January 1, 2013.

III. ACCOUNTINGS REGARDING THE RSPT PLANS

As noted in Section 18 of the June 13, 2012 Preliminary Injunction, before causing the RSPT Plans to pay compensation, fees or expenses, the IF is to provide written notice (the "Fee Notice") of such compensation, fees or expenses, by filing the Fee Notice (such as set forth herein) with the Court, and by serving a copy of that filing to the Secretary of the U.S. Department of Labor, Employee Benefits Security Administration, Hutcheson and HWA. The IF intends to submit her Fee Notice and Activity Report on a monthly basis. If, within fifteen

(15) days after filing of a Fee Notice, no objection to the Fee Notice, nor to payment by the Plan of the compensation, fees or expenses described therein, is filed with the Court, such compensation, fees or expenses shall be deemed reasonable expenses of the RSPT Plans and shall be paid by the RSPT Plans without further action or approval of the Court. The fees and expenses will be paid first from the monthly administrative payments made by the employers, and then from the RSPT Plans' plan assets as necessary to accomplish the matters set forth herein and as necessary to recover the missing funds. An accounting will be maintained separately for all such costs incurred and paid. In an effort to reduce costs, copies of this Report and Fee Notice are being posted to a website of the IF's company, Receivership Management, Inc. ("RMI"), and all current and former participating employers with existing RSPT account balances will be given notice of the filing and the posting on the RMI website.

Attached hereto as **Exhibit 1** is a schedule of the hourly rates for the Independent Fiduciary and the hourly rates of any staff of Receivership Management, Inc. that might be used to carry out the terms of the Court's June 13, 2012 Preliminary Injunction.

Attached hereto as **Collective Exhibit 2** are expense summaries for the period of May 16-May 31, 2012.

Total expenses, as listed on **Collective Exhibit 2** include \$5,235.00 in IF fees, \$31,064.83 in legal expenses and \$15,445.28 in contract labor expenses (which include auditor fees and identified charges for other fees, postage, copies, telephone, travel, etc.) for the period of May 16- May 31, 2012. Please note that counsel have, as necessary, redacted exact descriptions of litigation issues in order to protect confidential information and/or applicable

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 2012, I served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

Jamila Beatrice Minnicks
United States Department of Labor
200 Constitution Ave., NW
Washington DC 20210

U.S. Mail, postage prepaid
 Hand Delivered
 Overnight Mail
 Fax Transmission
 Email
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MOORE & ELIA, LLP

/s/

Michael J. Elia

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