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12 UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF IDAHO

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

16 Plaintiff,

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

17 v.

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

23 Defendants.

24 **SEPTEMBER 2012 INDEPENDENT FIDUCIARY REPORT**
25 **AND FEE NOTICE OF COSTS AND EXPENSES**

26 PURSUANT TO THE Preliminary Injunction entered on June 13, 2012 [Doc. 16],
27 Jeanne B. Bryant, Independent Fiduciary for Retirement Security Plan & Trust (RSPT)
28 submits this Fifth Report and Notice for the period beginning September 1, 2012 and
29 ending September 30, 2012.

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I. ACTIVITY REPORT

There have been a number of issues that have occurred with RSPT since the last report of the Independent Fiduciary (“IF”). The IF has informed the Employer members of the current status of their individual collections involving the monthly administration fee, and is now requesting payment from ASPIre for any delinquent amounts. Attached as **Exhibit 1** is a report noting the collections and payments made from the account for previously approved fees and cost through September 2012.

As noted in the last report, the IF has now hired contingency counsel, and has requested payment from ASPIre for any amounts due for previously approved fees and costs concerning the PCB investment from those members holding such accounts. All costs will be paid by the RSPT and/or its Plans on an ongoing basis, pursuant to the payment submission and approval procedures previously outlined in the court’s Preliminary Injunction Order entered on June 13, 2012 (or, in the event of a bankruptcy proceeding, pursuant to the fee application procedure outlined in 11 U.S.C. §§330 and 331).

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 its web site and will inform the sponsors of the RSPT Plans of such posting as noted below after filing of same with this Court.

Tax Qualification Issues. The IF has completed her review of plan documents and sponsor files. It appears all required amendments have been made and except for matters

1 pending before this court, the RSPT Plans appear to have been administered in accordance with
2 plan documents. As stated in earlier reports an early termination process has been discussed with
3 the Department of Labor and will be discussed below.
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5 Delinquent Contributions and/or Participant Loan Payments, and possible Safe
6 Harbor issues. The IF has reviewed the RSPT Plans' trust records concerning these
7 issues. It does not appear that absent the transactions complained of in the instant case,
8 no contributions to current plans appear delinquent.
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10 Valuation for Individual Employers- Employers under the terms of the RSPT
11 Plans' Documents are required to provide an annual independent business valuation to
12 the Plans' trustee and administrator. A deadline of September 15, 2012 had already been
13 established by the previous administrator. This business valuation is necessary to the
14 valuation of qualified employer securities held in each of the RSPT Plans. All but forty
15 submitted their independent business valuations in time for use in the 2011 Forms 5500
16 filed October 15, 2012. For those that did not, the form was filed utilizing last year's
17 valuation. The Independent Fiduciary is working to receive the final business valuations
18 and will file amended returns as she determines is necessary.
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22 Forms 5500 for Plan Year 2011 filed. A completed Form 5500 along with audit
23 was filed timely with the U.S. Department of Labor. Also, as now indicated by the U.S.
24 Department of Labor, Forms 5500 for each employer sponsored plan within the RSPT
25 were also timely filed. A total of 106 Forms 5500 were filed in connection with RSPT.
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III. EARLY TERMINATION PROCEDURE AND PROCESS

As stated in earlier reports, the IF began a review process intended to identify problem areas in addition to the transactions that concern the instant case, so as to determine those items that would prevent the eventual termination of the RSPT Plans. No problem significant to prevent termination of plans has been identified other than the transaction subject of the instant case. At this time the IF has proposed a process to the Department of Labor concerning termination that is currently under review. The IF expects to be able to report to the Court the results of that proposal in the next report.

IV. 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 allocated as outlined above. 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 the participating employers will be given notice of the filing.

1 Attached hereto as **Exhibit 2** is a schedule of the hourly rates for the Independent
2 Fiduciary and the hourly rates of any staff of Receivership Management, Inc. that might
3 be used to carry out the terms of the Court's June 13, 2012 Preliminary Injunction.
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5 Attached hereto as **Collective Exhibit 3** are expense summaries for the period of
6 September 1, 2012 – September 30, 2012.

7 Total expenses, as listed on **Collective Exhibit 3** include \$2,085.00 in IF fees,
8 \$690.30 in legal expenses and \$9,854.32 in contract labor expenses (which include
9 auditor fees and identified charges for other fees, postage, copies, telephone, travel, etc.)
10 for the period of September 1, 2012 – September 30, 2012. Please note that counsel
11 have, as necessary, redacted exact descriptions of litigation issues in order to protect
12 applicable privileges, and the IF may also redact the names of employers and or members
13 as to protect the companies or the members involved when responding to individual
14 questions if required. The IF believes that the remaining descriptions are sufficient for
15 approval of the charges requested. All expenses and fees are separated between those
16 costs necessary for administration and those costs necessary for asset recovery, and will
17 be paid as noted in previous reports. Upon final replacement by contingency counsel,
18 costs for asset recovery efforts are expected to be minimal.
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22 In the absence of any objection, total reimbursement for \$2,085.00 in IF fees,
23 \$690.30 in legal expenses and \$9,854.32 in contract labor expenses for administration
24 and litigation will be paid from the Plan's expense reserve in accordance with the Court's
25 June 13, 2012 Preliminary Injunction. The exact amounts and the parties to be paid are
26 listed below:
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|----|------------------------------|------------|
| 1. | Jeanne Barnes Bryant | \$2,085.00 |
| 2. | Wyatt Tarrant & Combs | \$40.30 |
| 3. | Berry & Tudor | \$650.00 |
| 4. | Receivership Management Inc. | \$9,854.32 |
| | \$8,281.75/Contract labor | |
| | \$1,572.57/Other expenses | |

Pursuant to the Court’s June 13, 2012 Preliminary Injunction [Doc. 16], if no objection is filed with the Court within fifteen (15) days after the filing of this Notice and Report, the IF will proceed to authorize payments due counsel and any other parties listed.

DATED this 8th day of November, 2012.

By: /s/ Matt Christensen
Matthew Christensen, Attorneys for
Jeanne B. Bryant, Independent Fiduciary
for RSPT Plans

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the individual(s) so noted below.

Jamila B. Minnicks	minnicks.jamila@dol.gov
Michael R. Hartman	hartman.michael@dol.gov
Michael A. Schloss	schloss.michael@dol.gov
Raymond E. Patricco	raymond.patricco@usdoj.gov
Michael J. Elia	mje@mbelaw.net
J. Graham Matherne	gmatherne@wyattfirm.com
Matthew T. Christensen	mtc@angstman.com

All others as listed on the Court's ECF Notice.

I further certify that on the 9th day of November, 2012, I served a copy of the foregoing notice on the following individuals or entities via US Mail, postage prepaid.

Matthew D. Hutcheson
 33 Pinnacle Court
 Donnelly, ID 83615

Monty W. Walker
 c/o R. Bradford Huss
 Trucker Huss, APC
 One Embarcadero Center, 12th Floor
 San Francisco, CA 94111

DATED: November 8, 2012

 /s/ Matt Christensen
 Matthew T. Christensen