IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JULIE A. SU, Acting Secretary of Labor, U.S. DEPARTMENT OF LABOR, Plaintiff, v. RIVERSEDGE ADVANCED RETIREMENT SOLUTIONS, LLC., a Pennsylvania Company, PAUL PALGUTA, an individual, v. MID ATLANTIC TRUST COMPANY dba AMERICAN TRUST CUSTODY, a corporation, SCHWAB RETIREMENT TECHNOLOGIES, INC., a corporation, and CHARLES SCHWAB TRUST BANK, a corporation, *solely as Rule 19 defendants*, v. BEAVER COUNTY DEFERRED COMPENSATION PLAN, CHRISTIAN AID MISSION 403(b) PLAN, and LCBC CHURCH 403(b) PLAN, *solely as Rule 19 defendants*, Defendants.	)	No. 2:24-cv-00104 (MJH)

NOTICE OF FILING

PLEASE TAKE NOTICE that in response to the Court's October 31, 2024 Order [Dkt 127], Receivership Management, Inc., in its capacity as a court-appointed Independent Fiduciary, by its counsel, hereby files the attached Statement of Independent Fiduciary in order to respond to the Order and to assist the parties in drafting a Consent Judgment.

Respectfully submitted,

RECEIVERSHIP MANAGEMENT, INC., AS COURT-APPOINTED INDEPENDENT FIDUCIARY OF MISMANAGED PLANS AND CLIENT PLANS OF RIVERSEDGE ADVANCED RETIREMENT SOLUTIONS LLC,

/s/ Bynum E. Tudor III

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JULIE A. SU, Acting Secretary of Labor, U.S. DEPARTMENT OF LABOR, Plaintiff, v. RIVERSEDGE ADVANCED RETIREMENT SOLUTIONS, LLC., a Pennsylvania Company, PAUL PALGUTA, an individual, v. MID ATLANTIC TRUST COMPANY dba AMERICAN TRUST CUSTODY, a corporation, SCHWAB RETIREMENT TECHNOLOGIES, INC., a corporation, and CHARLES SCHWAB TRUST BANK, a corporation, *solely as Rule 19 defendants*, v. BEAVER COUNTY DEFERRED COMPENSATION PLAN, CHRISTIAN AID MISSION 403(b) PLAN, and LCBC CHURCH 403(b) PLAN, *solely as Rule 19 defendants*, Defendants.	)	No. 2:24-cv-00104 (MJH)

STATEMENT OF INDEPENDENT FIDUCIARY

Receivership Management, Inc. ("RMI"), in its capacity as court-appointed Independent Fiduciary ("Independent Fiduciary") to the "Mismanaged Plans" and the "Client Plans" as (collectively, the "Plans") outlined in its Preliminary Injunction entered in this case on February 20, 2024 [Dkt. 40], hereby files this Statement in response to the Court's Order dated October 31,

2024 [Dkt. 127] (the "Order") and in anticipation of a potential hearing on a revised, proposed consent judgment.

First and foremost, RMI shares the Court's and the Mismanaged Plans' concerns raised over any records destruction. RMI never threatened to destroy the Plans' records; rather, it informed the Court that it would be transferring the 255 Client Plans' (the "Plans") records to the Assistant U.S. Attorney pursuant to a subpoena and that Lattimore, Black, Morgan & Cain ("LBMC") would be destroying the Plans' records in its possession upon termination of its contract with RMI. Independent Fiduciary's Seventh and Final Activity Report [Dkt. 124], pp. 4-5, ¶7. Given the current concerns over records retention, RMI has not transferred the Plans' records in its possession to the Assistant U.S. Attorney yet and still maintains a copy of those recods at its office. Thus, RMI does not oppose the Order insofar as it attempts to continue to safeguard the Plans' records. However, by this Statement, RMI seeks to inform the Court about the following incorrect assertions and/or conclusions contained in the Order (and the instigating motion [Dkt 126] (the "Motion)):

1. The Motion materially misstates RMI's duties with respect to the Plans' records. Motion, p. 2, ¶5 and p. 3, ¶14. RMI's duty was not to "facilitate" (i.e., take an active role in) the transfer of the records to a recordkeeping service provider. Rather, it was "to assist all Plans in facilitating the transfer of plan records to one or more other recordkeeping service providers in coordination with Rule 19(a) Defendant Schwab Retirement Technologies, Inc., the licensed software licensor and data hosting provider for Defendant RiversEdge." [Dkt. 40, p. 25, ¶7(b), emphasis added]. Thus, *the Plans* had the responsibility to interview and engage new recordkeepers, not RMI. RMI was there only to assist the Plans in transferring records to a new

recordkeeper, as needed, upon request. Once a Plan had engaged a new recordkeeper and the new recordkeeper had what records it needed to do its job, there was nothing for RMI to do to assist that Plan in that regard. RMI's duty to that Plan under Section 7(b) of the Preliminary Injunction ceased at that time. Thus, the Order materially changes RMI's duties with respect to the Plans' books and records.

2. Although the Motion acknowledges that "RMI has already expended the remainder of the funds in the CRIS deposit (Motion, p. 4, ¶29; see also, Independent Fiduciary's Eighth and Final Fee Filing [Dkt. 125])," the proposed order filed with the Motion [Dkt. 126-1] and the Order nevertheless state that "[c]osts shall be assumed by the principal remaining from the CRIS deposit." Neither the Motion nor the Order address at all who bears the cost of data retention after the principal remaining from the CRIS deposit is exhausted. Although the LCBC Plan states, "...if there are insufficient funds from the CRIS deposit because of RMI and its counsel's billings to cover the costs of the monthly storage, LCBC, likely along with other victims, are willing to cover the cost of continued storage (Motion, p. 4, ¶30.)," there is nothing in the Motion or the Order that would require that action. That leaves RMI as the only entity currently responsible for data storage costs and without any means of being reimbursed for same. Further, the actions contemplated by LCBC, along with the Court, indicate that RMI or Lattimore Black Morgan and Cain ("LBMC") will curate these records. LBMC's hourly charge for ANY assistance or conversation is $300 per hour per the Contract that existed between RMI and LBMC.[1]

[1] The Contract between RMI and LBMC contains a provision that when the services of LBMC are concluded, so is the contract. LBMC had terminated the contract effective in October. With the Court's Order, the contract's provisions are re-activated with not only storage costs now being incurred, but any conversation with

3. The Motion correctly states, "[t]oday, RMI and LBMC possess records from 255 plans, including LCBC's and other victims of the RiversEdge Defendants' fraud and injustice. ... These records however are not segregated; they are intermingled." *Id.*, p. 2, ¶¶7-8. Nothing in the Motion or the Order addresses the need (due to privacy and cybersecurity concerns) to segregate each Plan's records from the other Plans' records, or otherwise prohibit representatives from one Plan from searching through a database that contains any of the other Plans' records. In addition, neither the Motion nor the Order address the financial responsibility for the costs associated with segregating each Plan's records in the electronic and paper files in RMI's and LBMC's possession. Given the exhaustion of the remaining principal of the CRIS deposit, the Order essentially requires RMI to do that work for free, with LBMC continuing to bill RMI for storage costs.

4. Neither the Motion nor the Order state a period of time during which RMI and LBMC must maintain the 255 Plans' records.[2] This is particularly unfair because RMI is not a person or entity that is subject to ERISA's records retention requirements, 29 U.S.C. §1027 and 29 U.S.C. §1059, since RMI is not responsible for filing annual reports for any Plan and since RMI is neither the employer nor the plan administrator of any of the Plans, respectively. Accordingly, there needs to be a fixed date after which RMI will no longer be required to maintain any of the 255 Plans' books and records.

LBMC to be charged at $300 per hour per the terms of that contract. RMI has already received an invoice for the month of November storage fees, an invoice for which there are no funds to pay.

[2] Indeed, if RMI and LBMC want to terminate the Order's records retention requirements, they would likely have to get the consent of all parties to this action and all 255 Plans. Alternatively, RMI and LBMC could file a motion in the future to lift the stay imposed by the Order, but that would likely require service upon all 255 Plans and the opportunity for all of them to be heard. Surely that result was not intended (or even contemplated) when the Preliminary Injunction was entered.

For the above reasons, RMI believes the Order should be amended and clarified (1) to state a definite period of time for the stay to continue; (2) to outline the expectations the Court holds for RMI and LBMC; (3) to acknowledge who will be financially responsible for records storage and records segregation expenses after the principal remaining from the CRIS deposit is exhausted. The Court should also consider limiting the application of the Order to only the 17 Mismanaged Plans listed in the Preliminary Injunction, effective October 31, 2024. Alternatively, as discussed below, these concerns could be addressed in a Consent Judgment.

RMI understands that Plaintiff and the RiversEdge Defendants will soon be filing a revised, proposed Consent Judgment for the Court's consideration. RMI expects that a hearing will occur to discuss that proposal. RMI has reviewed the November 1, 2024 draft of the proposed Consent Judgment and understands that many, if not all, of its concerns with the Order will likely be addressed in the proposed Consent Judgment. Accordingly, RMI is not moving for a separate hearing on the Order. Notwithstanding that, there are facts which RMI wants the parties in this action and the Court to understand in their review of the anticipated proposed Consent Judgment.

1. There is some overlap in what Plan records LBMC and RMI have: for example, both have the Egnyte Shared Folder and Quickbooks. However, other files are located only at LBMC (e.g., Egnyte Private Folder, RiversEdge desktop and laptop backups, inaccessable WorkXpress files, Schwab SRT records) or only at RMI (e.g., historical paper records, RiversEdge insurance policies, RiversEdge recordkeeping agreements). Further, Schwab SRT and Mid Atlantic Trust Company may have some of the Plans' records that LBMC has. Because of the locations of the Plans' records, and based on the assumption that a Mismanaged Plan will

want to be thorough in its compilation of its respective historical records, RMI believes that ending its appointment either upon October 31, 2024 or upon entry of the Consent Judgment will not work. If Plaintiff and/or others are unwilling to allow RMI to be paid out of the Court's registry after October (assuming additional funds are transferred thereto), then the Mismanaged Plans (and any of the other Plans that wish to obtain additional records from LBMC and/or RMI) will need to make separate arrangements for their (or their plan sponsors') payment of storage fees and retrieval expenses – both to LBMC and RMI for the respective records stored and transferred.

2. The original due date for RMI's response to the grand jury subpoena recently issued to it was October 22, 2024. The Assistant United States Attorney has graciously granted two extensions - the last one being indefinite – given the complexities involved with records retention and retrieval for the victim plans. RMI intends to comply fully with that subpoena after all Plans' needs for books and records are satisfied.

By its signature below, the undersigned confirms that its duly authorized representative has read this Statement and that the allegations herein are true and correct of his personal knowledge or based on authentic records.

Respectfully submitted,

RECEIVERSHIP MANAGEMENT, INC., AS COURT-APPOINTED INDEPENDENT FIDUCIARY OF MISMANAGED PLANS AND CLIENT PLANS OF RIVERSEDGE ADVANCED RETIREMENT SOLUTIONS LLC

Robert E. Moore, Jr., President

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JULIA A. SU, ACTING SECRETARY OF U.S. DEPARTMENT OF LABOR,	)	
Plaintiff,	)	**CASE NO. 2:24-CV-00104 (MJH)**
v.	)	
RIVERSEDGE ADVANCED RETIREMENT SOLUTIONS, LLC a Pennsylvania Company, PAUL PALGUTA, an individual,	)	
v.	)	
MID ATLANTIC TRUST COMPANY dba AMERICAN TRUST CUSTODY, a corporation, and CHARLES SCHWAB TRUST BANK, a corporation, *solely as Rule 19 defendants,*	)	
Defendants.	)	

CERTIFICATE OF SERVICE REGARDING NOTICE OF FILING STATEMENT OF INDEPENDENT FIDUCIARY

I hereby certify that on November 7, 2024, I caused a Notice of Filing [Dkt. 129] of the Statement of the Independent Fiduciary [Dkt. 129-1], to be filed and electronically served using the Court's CM/ECF system to counsel for all parties to this action.

I also hereby certify that on November 7, 2024, I caused a Notice of Filing [Dkt. 129] of the Statement of the Independent Fiduciary [Dkt. 129-1], to be served upon the following fourteen (14) non-party plans listed in the Court's Preliminary Injunction Order [Dkt. 40], by email:

(1) RiversEdge 401(k) Profit Sharing Plan (pshoup@amibenefit.com);

(2) Hampton Technical Associates 401(k) Profit Sharing Plan (MarkS@Hampton-Tech.net);

(3) Max Environmental Technologies, Inc. 401(k) Savings Plan (JStango@MaxEnvironmental.com);

(4) Medical Predictive Science Corporation (GAlms@HeroScore.com);

(5) Elite Mechanical, Inc. 401(k) Profit Sharing Plan (donna@elite-mechanical.com);

(6) Leech Tishman Fuscaldo & Lampl, LLC 401(k) Profit Sharing Plan (jsteiner@leechtishman.com);

(7) W.N. Tuscano Agency, Inc. 401(k) Savings Plan (scrary@tuscano.com);

(8) St. Barnabas Health System Retirement Savings Plan (jdturco@stbarnabashealthsystem.com);

(9) Hawaiian Island Dental, Inc. 401(k) Plan (allhawaiismiles@hotmail.com);

(10) Ad-base Group 401K Plan (adams@abgcapital.com);

(11) Arc of Wabash County Inc. 403(b) Plan (MGuthrie@ArcWabash.org);

(12) Adventure WV Plan (m.fowler@onthegorge.com);

(13) The National Fruit Product Co., Inc. 401(k) Employee Savings Plan (atinsman@nfpc.com) and (agum@nfpc.com) and (tomwillis@glenlochlegal.com); and

(14) Family Medicine of Albemarle 401(k) Plan (rwynne@mcguirewoods.com) and (lsneathern@mcguirewoods.com).

Further, on or before November 8, 2024, the Independent Fiduciary posted/will post a copy of the Notice of Filing [Dkt. 129] of the Statement of the Independent Fiduciary [Dkt. 129-1], on its web site at www.receivermgmt.com/riversedge.

Respectfully submitted,

RECEIVERSHIP MANAGEMENT, INC., AS COURT-APPOINTED INDEPENDENT FIDUCIARY OF MISMANAGED PLANS AND CLIENT PLANS OF RIVERSEDGE ADVANCED RETIREMENT SOLUTIONS LLC,

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