

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

JULIE A. SU,
Acting Secretary of Labor, United States
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*,

Defendants.

Civil Action Case No. 2:24-cv-00104

TEMPORARY RESTRAINING ORDER

JULIE A. SU, Acting Secretary of the United States Department of Labor (“Acting Secretary”), filed a Motion for a Temporary Restraining Order and Motion for an Order to Show Cause Why This Court Should Not Enter a Preliminary Injunction. This Court held an evidentiary hearing on January 29, 2024, at which the Acting Secretary presented testimony and exhibits in support of her Motion. Defendants were given notice of this action and attended the hearing through their counsel. Based on the pleadings, the Memorandum in Support of the Acting Secretary’s Motion, and the testimony and exhibits presented at the hearing, the Court GRANTS the Motion.

This Order is hereby entered to enjoin Defendants RiversEdge Advanced Retirement Solutions, LLC, and Paul Palguta (the “RiversEdge Defendants”) from accessing plan assets of retirement plans that they service that are either covered by the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001, *et seq.* or included in the list below (the “Plans”).

The RiversEdge Defendants allegedly misappropriated and misallocated in retirement plan assets from seventeen retirement plans, fourteen of which were covered by ERISA (“the Mismanaged Plans”). The RiversEdge Defendants also are alleged to have transferred assets among the trust accounts for these plans and generated false records to conceal these transfers. Because of the RiversEdge’s misappropriation and misallocation of plan assets among the plans, some of these trust accounts now hold plan assets of unaffiliated ERISA-covered plans. The Mismanaged Plans are identified below:

- (1) RiversEdge 401(k) Profit Sharing Plan;
- (2) Hampton Technical Associates 401(k) Profit Sharing Plan;
- (3) Max Environmental Technologies, Inc. 401(k) Savings Plan;
- (4) LBC Church 403(b) Plan;
- (5) Medical Predictive Science Corporation;
- (6) Christian Aid Mission 403(b) Plan;
- (7) Elite Mechanical, Inc. 401(k) Profit Sharing Plan;
- (8) Leech Tishman Fuscaldo & Lampl, LLC 401(k) Profit Sharing Plan;
- (9) W.N. Tuscano Agency, Inc. 401(k) Savings Plan;
- (10) St. Barnabas Health System Retirement Savings Plan;
- (11) Hawaiian Island Dental, Inc. 401(k) Plan;

- (12) Beaver County Deferred Compensation Plan;
- (13) Ad-base Group 401K Plan;
- (14) Arc of Wabash County Inc. 403(b) Plan;
- (15) Adventure WV Plan;
- (16) The National Fruit Product Co., Inc. 401(k) Employee Savings Plan;
- and
- (17) Family Medicine of Albemarle 401(k) Plan.

The Plans outside the group of the Mismanaged Plans will be referred to as the “Client Plans.”

Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, the Acting Secretary filed a Complaint that has shown that immediate and irreparable injury, loss, or damage will result to the Plans and their participants, represented by the Acting Secretary, in the absence of entry of this Temporary Restraining Order. The irreparable injury to be prevented is the harm to the Plans caused by the RiversEdge Defendants’ breach of their fiduciary duties, responsibilities, and/or obligations to the Plans, which includes misuse and misallocation of the Mismanaged Plans’ assets. This Order is issued to stop the payment of any Plan’s assets to the RiversEdge Defendants, to stop the transfer of any of the Plans’ funds to other accounts, and to appoint an independent fiduciary to perform an accounting of the remaining plan assets in the Mismanaged Plans.

Mid Atlantic Trust Company doing business as American Trust Custody (“MATC”) is a custodian of assets for many of the Plans involved in this case and is named as a defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure to assure that complete relief can be granted. Charles Schwab Trust Bank is a custodian of assets and Schwab Retirement Technologies, Inc. is a software licensor and data hosting provider (collectively

“Schwab”) for many of the Client Plans involved in this case and are named as defendants herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure to assure that complete relief can be granted. MATC and Schwab are collectively referred to herein as the “Rule 19(a) Defendants.”

The Court finds the Acting Secretary has shown a reasonable likelihood of success on the merits of the ERISA claims, irreparable harm absent this injunction, and that the balance of the harm to the parties and the public interest weigh in favor of an injunction.

WHEREFORE, upon motion of the attorneys for the Acting Secretary and for cause shown, it is hereby **ORDERED**:

1. Defendants RiversEdge (“RiversEdge”) and Paul Palguta (“Palguta”) (collectively, the “RiversEdge Defendants”) and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers (except the Rule 19(a) Defendants), accountants, and attorneys are removed as agents, service providers, administrators and any other position or role involving the ERISA and non-ERISA Plans, and are enjoined from acting as fiduciaries on behalf of the ERISA and non-ERISA Plans, from acting as service providers to the ERISA and non-ERISA Plans, and from exercising any authority or control with respect to the ERISA and non-ERISA Plans or their assets.
2. Notwithstanding anything else in this Order to the contrary, the Rule 19(a) Defendants are permitted to continue to provide asset custodial, recordkeeping, and other services to the Plans pursuant to existing agreements with such plans and/or RiversEdge, as determined by all Plans.

3. The RiversEdge Defendants and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers (except the Rule 19(a) Defendants acting lawfully and in accordance with this Order), accountants, attorneys and any other party acting in concert with them or at their direction are enjoined from expending, transferring, hypothecating, secreting, or otherwise obligating or disposing of any assets of the Plans, including from custodial or any other accounts held at MATC and Schwab, and from destroying, altering, or secreting any of all Plans' documents, books, records or electronic files or data or the documents, books, records or electronic files or data of any associated trust accounts, bank accounts, and/or segregated accounts.
4. Receivership Management, Inc. ("Independent Fiduciary") is hereby appointed as an independent fiduciary to all Plans governed by ERISA and Non-ERISA. The RiversEdge Defendants shall pay all reasonable fees and expenses of the Independent Fiduciary for the full amount of services rendered up to \$238,918.00. On its own Motion, the Court orders the RiversEdge Defendants, within one (1) business days of the date of this Order, (a) to deposit into the Court the full balance of all individual bank accounts of Paul Palguta, including but not limited to the account at PNC Bank, and (b) to deposit into the account ending in 6665 in the name of RiversEdge Advanced Retirement Solutions, LLC at PNC Bank all unnegotiated checks for RiversEdge's fees that are in their possession, up to \$238,918.00. If those deposits do not cover the remaining balance, then the Court orders the remainder be paid from the RiversEdge account at PNC Bank to the Court within three (3) business days of the date of this Order. Three (3) business days from the date of this Order shall be the

Effective Date of the Independent Fiduciary's appointment. The RiversEdge Defendants shall not use plan assets to make these payments.

5. Upon the Effective Date, the reasonable compensation, fees and expenses of the Independent Fiduciary and such person(s) and firm(s) retained by the Independent Fiduciary in the performance of services to the Plans pursuant to this Order shall be paid subject to the following procedures:
 - a. Before causing any payment to be made to the Independent Fiduciary, the Independent Fiduciary shall provide written notice of such compensation, fees or expenses, by filing a fee notice with this Court and by serving a copy to the Secretary, the RiversEdge Defendants, the Rule 19(a) Defendants and all Plans;
 - b. The fee notice shall include a detailed invoice itemizing the compensation, fees and expense to be paid;
 - c. The Independent Fiduciary shall not be required to file, serve, or otherwise deliver the fee notice to any person or persons other than the Court, the Secretary, the RiversEdge Defendants, the Rule 19(a) Defendants, and all Plans; and
 - d. If an objection to a fee notice or payment by this Court of the compensation, fees, or expenses described therein is filed with this Court within fifteen (15) days after filing of such fee notice, this Court shall hold a hearing on the matter and the compensation, fees, expenses described in the fee notice shall be paid by this Court only to the extent approved by the Court.
 - e. If no objection to a fee notice or payment by Court of the compensation, fees,

or expenses described therein is filed with this Court within fifteen (15) days, the compensation, fees or expenses shall be paid by the Court to the Independent Fiduciary from amounts submitted into the Court pursuant to this paragraph.

6. Upon the Effective Date of the Independent Fiduciary's appointment and until further order of the Court, the Independent Fiduciary's duties shall be limited as follows:
 - a. The authority to secure all Plan records from the RiversEdge Defendants in accordance with this Order.
 - b. The authority 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.
 - c. The authority to conduct an accounting of the assets of the assets of the following seventeen (17) Mismanaged Plans:
 - (1) RiversEdge 401(k) Profit Sharing Plan;
 - (2) Hampton Technical Associates 401(k) Profit Sharing Plan;
 - (3) Max Environmental Technologies, Inc. 401(k) Savings Plan;
 - (4) LBC Church 403(b) Plan;
 - (5) Medical Predictive Science Corporation;
 - (6) Christian Aid Mission 403(b) Plan;
 - (7) Elite Mechanical, Inc. 401(k) Profit Sharing Plan;
 - (8) Leech Tishman Fuscaldo & Lampl, LLC 401(k) Profit Sharing Plan;

- (9) W.N. Tuscano Agency, Inc. 401(k) Savings Plan;
- (10) St. Barnabas Health System Retirement Savings Plan;
- (11) Hawaiian Island Dental, Inc. 401(k) Plan;
- (12) Beaver County Deferred Compensation Plan;
- (13) Ad-base Group 401K Plan;
- (14) Arc of Wabash County Inc. 403(b) Plan;
- (15) Adventure WV Plan;
- (16) The National Fruit Product Co., Inc. 401(k) Employee Savings Plan;
- and
- (17) Family Medicine of Albemarle 401(k) Plan.

- d. The exclusive authority to appoint such employees and service providers as the Independent Fiduciary shall, in the Independent Fiduciary's sole discretion, determine are necessary to aid the Independent Fiduciary in the exercise of the Independent Fiduciary's powers, duties, and responsibilities under this Order;
- e. The authority to delegate to such administrators, trustees, attorneys, employees, assigns, agents, and service providers such fiduciary and non-fiduciary responsibilities it has under this Order as the Independent Fiduciary shall determine appropriate.
- f. Notwithstanding anything in this Order, the Independent Fiduciary shall not have any authority to serve as the administrator or trustee of any Plan. The Independent Fiduciary shall have no authority to manage, purchase, or sell any assets of any Plan.

7. The RiversEdge Defendants, and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, (except the Rule 19(a) Defendants), accountants, attorneys, and any other party acting in concert with them or at their direction are enjoined to preserve, secure, and immediately produce to (1) the Independent Fiduciary upon the Effective Date, and (2) all Plans, at the Plans' direction, all books, records, and documents, including electronic files, that relate to the administration, management, and operation of all Plans and their assets.
8. Upon the Effective Date, the Independent Fiduciary shall have full access to all documents, books, records, personnel, files, and information of whatever type or description in the possession, custody, or control of the RiversEdge Defendants. In addition, the Independent Fiduciary shall have full access to all documents, books, records, personnel, files and information of whatever type or description relating to RiversEdge and all Plans in the possession or control of the RiversEdge Defendants or their fiduciaries, agents, employees, service providers, depositories, banks, accountants, attorneys, and any other party acting in concert with or at their direction, that relate to the administration, management, and operation of all Plans and their assets. The RiversEdge Defendants shall deliver such records as the Independent Fiduciary may request within five (5) business days after demand therefor or within such other time as the RiversEdge Defendants and the Independent Fiduciary may agree.

9. The Independent Fiduciary shall not be required to obtain a bond that conforms to the requirements of ERISA section 412, 29 U.S.C. § 1112, because ERISA's bonding requirements do not apply to the Independent Fiduciary's duties hereunder.
10. In order to preserve plan assets and until the Independent Fiduciary may conduct an accounting of the assets of the Mismanaged Plans, each of the Mismanaged Plan's assets (to the extent those assets are currently custodied with MATC) shall be frozen and not transferred to another custodial platform until an independent fiduciary files the accounting with the Court, at which time the Mismanaged Plan may transfer its assets from the MATC custodial platform if that Plan so chooses. Forensic review services provided by MATC under the Independent Fiduciary's direction and as agreed to by MATC and the Independent Fiduciary shall be at no cost.
11. The Rule 19(a) Defendants are ordered to provide immediate copy of this Order and Complaint in this action and notice (within no later than five (5) business days) of this Order to all Plans they service through a trust agreement or custodial agreement. The Rule 19(a) Defendants and the Acting Secretary will work together to prepare the notice to be sent by electronic and certified mail by the Rule 19 Defendants to the all Client Plans. This notice is intended to facilitate as expeditiously as possible the transition of all Client Plans to new recordkeepers. The notice will include information on other potential recordkeepers familiar with the Schwab RT system and will also include a copy of this Order and the Acting Secretary's Motion. Rule 19(a) Defendants will provide this notice to ERISA and

non-ERISA plans they have serviced through RiversEdge. The notice will also convey the following:

As an affected plan to the above action, you may have standing to participate in the pending action, including the injunctive relief being requested. You should immediately consult with legal counsel to obtain advice and make decisions relative to your interests.

12. MATC is further ordered to provide immediate copy of this Order and Complaint in this action and notice (within no later than five (5) business days) of this Order to each Mismanaged Plan. MATC and the Acting Secretary will work together to prepare the notice to be sent by electronic and certified mail to the Mismanaged Plans. This notice is intended to notify the Mismanaged Plans of this lawsuit, to notify them that their accounts at MATC have been frozen pending the Independent Fiduciary's accounting of plan assets, to provide the Independent Fiduciary's contact information, to encourage the Mismanaged Plans to assist the Independent Fiduciary during the accounting, and to notify the Mismanaged Plans of their option to contact an attorney for further advice. The notice will also convey the following:

As an affected plan to the above action, you may have standing to participate in the pending action, including the injunctive relief being requested. You should immediately consult with legal counsel to obtain advice and make decisions relative to your interests.

13. Except for deposit of Independent Fiduciary fees to the Court, as set forth in Paragraph 4, the RiversEdge Defendants, and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, and any other party acting in concert with them or at their direction, shall not withdraw, transfer or access monies in the following

accounts:

- a. RiversEdge Corporate Paying Agent Account, Account No. RERREBTE at MATC;
- b. Account ending in 6665 in the name of RiversEdge Advanced Retirement Solutions, LLC at PNC Bank.

14. All monies in the accounts set forth in Paragraph 12 of this Order located at PNC Bank and MATC that are or were subject to the control and/or direction of the RiversEdge Defendants shall be allowed to continue to receive deposits, including from Defendants, but any and all transfers or withdrawals of funds from those accounts shall be prohibited until further order of this Court.

15. The Independent Fiduciary shall not be discharged or terminated during the duration of this Order except by leave of Court upon application by either the Acting Secretary or the Independent Fiduciary. Upon termination, discharge, or resignation of the Independent Fiduciary during the term of this Order, the Acting Secretary shall recommend a successor independent fiduciary for appointment by the Court.

Recommendations for a successor independent fiduciary shall be made by the Acting Secretary within such periods as the Court, by further order, may provide and require.

16. Commencing after the Effective Date, on an at least monthly basis, the Independent Fiduciary shall provide the Court with a report of all significant actions taken.

17. The Independent Fiduciary shall cooperate fully with the Acting Secretary in the exercise of the Acting Secretary's enforcement responsibilities under ERISA, *inter alia*, by promptly providing such documents, information and persons under the

Independent Fiduciary's control as the Acting Secretary from time to time may request. Nothing herein shall be construed to limit the rights of the Acting Secretary to maintain access to documents, information or persons or to waive or restrict the exercise by the Independent Fiduciary and any individual of his or her constitutional rights.

18. The Acting Secretary may provide to the Independent Fiduciary any documents necessary to assist with its duties relating to the Client Plan assets. To the extent any privilege or confidentiality applies to any such documents, the privilege or confidentiality is not waived and is preserved when documents are provided to the Independent Fiduciary. The Acting Secretary will comply with the Freedom of Information Act and Federal Records Act for any such documents provided to the Independent Fiduciary.

19. The Acting Secretary has alleged no claims against the Rule 19(a) Defendants in her complaint. The Rule 19(a) Defendants are named as parties-defendants for purposes of this Order so that the Department of Labor, the Independent Fiduciary, and the Rule 19(a) Defendants can work cooperatively to assist the Plans. To that end, the Rule 19(a) Defendants shall cooperate with the Independent Fiduciary to provide and continue to provide all Plans the services that the Rule 19(a) Defendants have been providing for all Plans and agreed to provide for all Plans. The Rule 19(a) Defendants shall also preserve, secure, and produce to the Independent Fiduciary all books, records, and documents, including electronic files, that relate to the administration, management, and operation of all Plans and their assets.

20. The RiversEdge Defendants shall require anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, any other party acting in concert with them or at their direction, to discharge their duties in full compliance with the terms of this Order and shall require that they not take any action in the discharge of such duties that is inconsistent with the terms of this Order. The RiversEdge Defendants shall require anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, and any other party acting in concert with them or at their direction, including all persons who serve in any capacity that involves decision making authority for them, as a condition of maintaining their relationship with them, to cooperate completely and immediately with the Independent Fiduciary in the performance of the Independent Fiduciary's duties and responsibilities.

21. The RiversEdge Defendants shall provide a copy of this Order to anyone acting on their behalf, including all of their officers, agents, employees, assigns, subsidiaries, affiliates, service providers (except the Rule 19(a) Defendants), accountants, attorneys, and any other party acting concert with them or at their direction, including all persons who serve in any capacity that involves any decision making authority for them with respect to the Plans within five (5) days after entry of this Order.

22. RiversEdge Defendants are ordered to show cause by February 9, 2024, why this Court should not enter a preliminary injunction containing all relief set forth

in this TRO. The Court hereby schedules a video preliminary injunction hearing on February 14, 2024 at 1:00 p.m., pursuant to Federal Rule of Civil Procedure 65.

23. Pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, no bond or other security shall be required of the Acting Secretary.

Dated: This 5th day of February, 2024.
Time:


Marilyn Horan
United States District Court Judge