

**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-104

[PROPOSED] 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. Based on the pleadings, Memorandum in Support of the Acting Secretary’s Motion, and the declarations and exhibits in support, 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 retirement plans that they service that are covered by the Employee Retirement Income Security Act of

1974 (“ERISA”), as amended, 29 U.S.C. § 1001, *et seq.* (the “Client Plans”) and their participants.

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 Client 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 Client Plans caused by the RiversEdge Defendants’ breach of their fiduciary duties, responsibilities, and obligations to the Client Plans, which includes misuse of the Client Plans’ assets. This Order is issued to stop the payment of the Client Plans’ assets to the RiversEdge Defendants and to stop the transfer of funds to other plan accounts.

Mid Atlantic Trust Company doing business as American Trust Custody (“MATC”) is a custodian of assets for many of the ERISA 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 Client Plans, and are enjoined from acting as fiduciaries on behalf of the Client Plans, from acting as service providers to the Client Plans, and from exercising any authority or control with respect to the Client 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 Client Plans pursuant to existing agreements with the Client Plans and/or RiversEdge, as determined by the Client 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 Client Plans, including from custodial or any other accounts held at MATC and Schwab, and from destroying, altering, or secreting any of the Client 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 the Client Plans. The RiversEdge Defendants shall pay all reasonable fees and expenses of the Independent Fiduciary up to \$743,158 within five (5) days of this Order. The date this payment is made shall be the Effective Date of the Independent Fiduciary’s appointment.
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 Client 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;
 - 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 Rule 19(a) Defendants, and the Client 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 Client Plan records from the RiversEdge Defendants in accordance with this Order.
- b. The authority to assist Client 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) Client 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 Client Plan. The Independent Fiduciary shall have no authority to manage, purchase, or sell any assets of any Client 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) the Client Plans, at the Client Plans' direction, all books, records, and documents, including electronic files, that relate to the administration, management, and operation of the Client 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 the Client 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 the Client Plan 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. The Rule 19(a) Defendants are ordered to provide immediate notice (within no later than five (5) business days) of this Order and the Acting Secretary's Motion to each Client Plan it services or has serviced through a custodial agreement (whether through Defendant RiversEdge or directly with the Client Plan).
11. 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.
12. All monies in the accounts set forth in Paragraph 11 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.
13. 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.

14. 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.
15. 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.
16. 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.
17. The Acting Secretary has alleged no claims against the Rule 19(a) Defendants in its 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 Client Plans. To that end, the

- Rule 19(a) Defendants shall cooperate with the Independent Fiduciary to provide and continue to provide the Client Plans the services that the Rule 19(a) Defendants have been providing for the Client Plans and agreed to provide for the Client 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 the Client Plans and its assets.
18. 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.
19. 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 Client Plans within five (5) days after entry of this Order.

20. Barring further action by the parties, this Temporary Restraining Order will become a preliminary injunction on February 2, 2024.

21. This Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of enforcing this Order and granting such further relief as may be equitable and proper.

22. This Order may be amended only upon application by the Acting Secretary, or an independent fiduciary appointed by this Court.

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 _____ day of _____, 2024.
Time:

United States District Court Judge