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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**DIANE A. THOMPSON, as Receiver for
AMERICAN PENSION SERVICES, INC., a
Utah corporation and its related entities,**

Plaintiff,

v.

**DENI MEMMOTT, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
MICHAEL MEMMOTT JR., an individual;
MICHAEL MEMMOTT SR., an individual;
SHAUNA MEMMOTT; an individual;
and DOES 1-100,**

Defendants.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER ON JOINT STIPULATED
MOTION AND MEMORANDUM TO
APPROVE SETTLEMENT
BETWEEN RECEIVER AND
MICHAEL MEMMOTT SR. AND
SHAUNA MEMMOTT**

Case No.: 2:14-CV-00744-RJS

Honorable Robert J. Shelby

Before this Court is the Joint Stipulated Motion and Memorandum to Approve Settlement Between Receiver and Michael Memmott Sr. and Shauna Memmott (“Motion”). (Dkt. 80). The Motion is unopposed. For good cause appearing, and for the reasons stated in the Motion, the Court HEREBY ENTERS THE FOLLOWING:

FINDINGS OF FACT

BACKGROUND

1. Shauna Memmott is an individual residing in Salt Lake County, State of Utah, and is Michael Memmott Sr.'s spouse.

2. Michael Memmott, Sr. is a resident of Salt Lake County, State of Utah, and is Shauna Memmott's spouse.

3. On April 24, 2014, the SEC instituted the action styled *SEC v. American Pension Services, Inc.*, No. 2:14-CV-00309-RJS-DBP (D. Utah Apr. 24, 2014), against APS and DeYoung, alleging among other claims, that DeYoung, as a principal of APS, misappropriated over \$24 million of IRA Account Owner funds from APS's Master Trust Account. The Memmotts are not parties to the SEC action.

4. On April 24, 2014, under the Order Appointing Receiver, the Court appointed the Receiver as receiver for APS and the Receivership Assets, which included all assets held by APS and DeYoung.

5. The Order Appointing Receiver vests broad authority in the Receiver, including without limitation, the power to "pursue, resist and defend all suits, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates" or "other action approved by the Court."

6. The Receiver was appointed to gather and recover assets and liquidate claims for the benefit of all APS Account Owners that suffered losses as a result of DeYoung's misappropriation of funds from the APS Master Trust Account.

THIS LAWSUIT

7. On October 17, 2014, the Receiver, with approval from the Court and for the benefit of the APS Account Owners and APS, filed a first amended complaint against the Memmotts, which includes, among other claims, allegations of transfers made to the Memmotts by APS without adequate consideration (collectively “Receiver’s Claims”) in *Thompson v. Memmott*, No. 2:14-CV-00744-RJS (D. Utah, Oct. 10, 2014) (the “Lawsuit”).

8. The Memmotts dispute the Receiver’s Claims advanced in the Lawsuit and allege any monies received from APS were in the ordinary course and for valid consideration.

9. According to the Receiver’s Claims, either individually, together, or through entities under their custody or control, the Receiver asserts the Memmotts, acting individually and in concert with one another, were the recipients of \$1.8 million in transfers whereby adequate consideration was not exchanged. The Memmotts dispute this amount, assert adequate consideration was exchanged, and advance other defenses.

10. On April 25, 2016, the Memmotts moved to dismiss the Receiver’s Claims on the grounds that the first amended complaint does not provide sufficient notice or specificity under Federal Rules of Civil Procedure 8(a) and 9(b) and on the grounds that certain of the Receiver’s claims are time-barred (collectively with all other of their defenses, “Memmotts’ Defenses”). The Memmotts moved in the alternative for the Court to certify to the Utah Supreme Court a state law issue related to one of the Memmotts’ Defenses alleging the Receiver’s claims are time-barred, and to stay the case. The Receiver has not yet responded. Both motions remain pending.

11. The Receiver's Claims and the Memmotts' Defenses are all disputed and nothing in the Parties' Agreement constitutes an admission of liability by any Party.

12. The Parties have agreed to resolve the Lawsuit by their Settlement and Release Agreement. The Receiver agrees to do so because the Memmotts have represented to the Receiver that they have limited assets from which the Receiver would be entitled to recover if the judgment sought by the Receiver were entered against them. The Memmotts have agreed to do so because they maintain they are not liable to the Receiver as alleged in the Lawsuit.

13. The Memmotts have disclosed and provided, under oath and penalty of perjury, various information relating to their financial condition, including a current financial statement listing all of their assets and liabilities, all sources of earned and investment income (including any and all K-1s, W-2s or 1099s), gifts, or other forms of income from any sources, all bank statements for the past three years, county auditor's market value estimate of residence, current fair market value of any assets listed in the Disclosures, last three filed federal and state tax returns, including evidence of any and all passive investments, losses and/or income identified in said tax returns, explanation of cancellation of any and all indebtedness set forth in tax returns (including identity of creditor(s)), and identification of any future income, deferred compensation or debt repayment (collectively, the "Disclosures"). Should the Court require, the Parties will submit the Disclosures to the Court *in camera*.

14. The Parties have agreed to settle and compromise the Lawsuit together with any and all other claims that may exist between them, in accordance with the terms and provisions of the Settlement Agreement.

SETTLEMENT

15. The Parties determined it to be in their respective best interests and the best interests of APS to negotiate a settlement.

16. After lengthy negotiations and the Memmotts' financial disclosures, the Parties reached a settlement.

17. The Parties executed the Settlement Agreement on August 4, 2016, a copy of which is attached hereto as Exhibit 1, for which approval is sought pursuant to this Motion.

CONCLUSIONS OF LAW

1. The Receiver is an officer of the Court with fiduciary obligations of impartiality and individual loyalty and is bound to act fairly and openly with the Court and the IRA Account Owners. *See Phelan v. Middle States Oil Corp.*, 154 F.2d 978 (2d. Cir. 1946).

2. The Court has the power and authority to permit the Receiver to enter into the Settlement Agreement with the Memmotts.

3. The Settlement Agreement is made to further implement the purpose and intent of the Liquidation Plan.

4. The Settlement Agreement is fair to the Receivership Estate and the IRA Account Owners.

5. The Settlement Agreement fully resolves all issues, disputes, claims, and defenses by and between the Receiver and the Memmotts.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby

ORDERS, ADJUDGES AND DECREES THAT:

1. The Motion is approved.
2. The Receiver shall promptly post a copy of these Findings of Fact, Conclusions of Law, and Order on the Receiver's website, www.apsreceiver.com.
3. The Court shall retain jurisdiction to enforce the terms and conditions of the Settlement Agreement.

SO ORDERED this 2nd day of September, 2016.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'RJS', written over a horizontal line.

ROBERT J. SHELBY
United States District Judge