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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.

ORDER

**1) APPROVING SETTLEMENT
BETWEEN RECEIVER AND
DENI MEMMOTT, AS
PERSONAL REPRESENTATIVE
OF THE ESTATE OF MICHAEL
MEMMOTT JR., AND**

2) DISMISSING CASE

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 Deni Memmott, as Personal Representative of the Estate of Michael

Memmott Jr. (“Motion”). (Dkt. 89). 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

1. Michael Memmott, Jr. (“Mr. Memmott Jr.”) was a resident of Salt Lake County, State of Utah, and was Deni Memmott’s lawful spouse.

2. Deni Memmott is an individual residing in Salt Lake County, State of Utah, and was the lawful spouse of Memmott, Jr.

3. Mr. Memmott, Jr. passed away on February 12, 2015. (Dkt. 29).

4. Mr. Memmott, Jr.’s Last Will and Testament appointed Deni Memmott as the personal representative and administrator of the Memmott Estate (“Personal Representative”) (Motion, Exhibit A, and Exhibit 1 thereto.)

5. The Court entered an order substituting Deni Memmott, as Personal Representative of the Estate of Michael Memmott, Jr., as a defendant in this action for Mr. Memmott Jr. (Dkt. 43).

6. 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) (“SEC Action”), against APS and Curtis L. DeYoung, alleging among other claims, that DeYoung, as a principal of APS, misappropriated over \$24 million of APS account owner funds from APS’s master trust account.

7. On April 24, 2014, this Court appointed the Receiver as receiver for APS and the Receivership Assets, which included all assets held by APS and DeYoung. (SEC Action, Receivership Order (Dkt. 9)).

8. 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 misappropriations of funds from the APS Master Trust Account. (*Id.*)

9. The Receivership Order vested the Receiver with broad authority, 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 Estate[]" or "other action approved by the Court." (*Id.*)

10. The Receivership Order also vested the Receiver with the power and duty to "use all reasonable efforts to determine the nature, location and value of all property interests of [APS] including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly ('Receivership Property')." (*Id.*)

11. The Receiver is further permitted upon leave of the Court "to sue for and collect, recover, receive and taking into possession from third parties all Receivership Property and records relevant thereto." (*Id.*, Art. II, § 7.B; Art. X).

THIS LAWSUIT

12. After receiving leave of this Court, on October 17, 2014, the Receiver, on behalf of APS and for the benefit of APS account owners, filed her first amended complaint against Mr. Memmott, Jr. and others, which alleged that Mr. Memmott Jr. and others conspired with Curtis DeYoung, the president and CEO of APS, to secretly wire approximately \$4.5 million to

Memcott Jr. and others from the APS operating and master trust accounts without adequate consideration. (See Complaint (Dkt. 3), ¶¶ 21–25, *Thompson v. Memcott*, No. 2:14-CV-00744-RJS (D. Utah Oct. 17, 2014) (the “Lawsuit”)).

13. Mr. Memcott Jr. disputed the Receiver’s allegations.

14. The Parties have agreed to resolve the Lawsuit and have entered into the First Amended Settlement and Release Agreement (“Settlement Agreement”). The Receiver agrees to do so because Deni Memcott, on behalf of herself and the Memcott Estate, has represented to the Receiver that Deni Memcott and the Memcott Estate have limited assets from which the Receiver would be entitled to recover if the judgment sought by the Receiver were entered against Deni Memcott or the Memcott Estate. Deni Memcott has agreed to do so to avoid the costs and risks associated with protracted litigation.

15. Deni Memcott, as the Personal Representative, has disclosed and provided, under oath and penalty of perjury, a financial statement listing all known assets and liabilities of herself as the Personal Representative, Mr. Memcott Jr. and the Memcott Estate (hereinafter referred to as the “Disclosures”). These Disclosures include: copies of income tax returns for Deni Memcott, the Memcott Estate, and Mr. Memcott Jr. for the years 2010, 2013, 2014, and 2015; bank statements for 2014, 2015, 2016; application for a loan modification on the Mr. Memcott Jr. residence; a representation that there is no earned or investment income (including any and all Schedules K-1, Forms W-2, or Forms 1099); and a representation that there is no income from any other source nor any gifts. A copy of the Disclosures is attached to the Settlement Agreement as Exhibit 2.

16. Deni Memmott, as Personal Representative, also provided a list of assets which the Receiver, agrees shall be retained by Deni Memmott (the “Retained Assets List”). The Retained Assets List is attached as to the Settlement Agreement as Exhibit 3.

17. 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

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

19. After negotiation and receipt of the Disclosures of Deni Memmott, Mr. Memmott Jr., and the Memmott Estate, the Parties reached a settlement.

20. As part of the Settlement Agreement, Deni Memmott has agreed to transfer and assign all her interest and the interests of Mr. Memmott Jr. and the Memmott Estate in any and all funds currently at First National Bank of America to the Receiver, including a check for approximately \$65,947.78 made out to the Memmott Estate.

21. Furthermore, Deni Memmott agreed to transfer and assign to the Receiver any and all assets the Receiver uncovers that are not included in her Retained Assets List.

22. Nothing in the Settlement Agreement constitutes an admission of liability, fault, or wrongdoing by any Party.

23. The Parties executed the Settlement Agreement on April 7 and 12, 2017.

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, APS, and the APS account owners. *See Phelan v. Middle States Oil Corp.*, 154 F.2d 978, 991 (2d. Cir. 1946).
2. The Court has the power and authority to permit the Receiver to enter into the Settlement Agreement with Deni Memmott and the Memmott Estate.
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 APS, for the benefit of APS account owners.
5. The Settlement Agreement fully resolves all issues, disputes, claims, and defenses by and between the Receiver, Deni Memmott, and the Memmott Estate.

ORDER

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

ORDERS, ADJUDGES AND DECREES THAT:

1. The Motion is granted.
2. All interests of Michael Memmott Jr., Deni Memmott, and the Memmott Estate in any and all funds held by Michael Memmott Jr., Deni Memmott, and the Memmott Estate at First National Bank of America, including a check for approximately \$65,947.78 payable to the Memmott Estate, are hereby transferred and assigned to the Receiver as part of the Receivership Estate. Deni Memmott shall cooperate with the Receiver and shall take all necessary steps to

coordinate and secure the transfer of funds held at First National Bank of America to the Receiver.

3. To the extent the Receiver locates or otherwise identifies assets of Deni Memmott, Mr. Memmott Jr., or the Memmott Estate that are not identified or disclosed in the Retained Assets List, the Receiver shall have the exclusive right to possession and ownership of said assets and Deni Memmott and Memmott Estate shall not interfere with the Receiver's efforts to secure and take possession of said assets or make a claim to ownership of the same.

4. 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.

5. The Court shall retain jurisdiction to enforce the terms and conditions of the Settlement Agreement.

6. Having resolved all claims between the Parties through settlement, this case shall be closed and dismissed with prejudice and on the merits.

DATED this 17th day of April, 2017.

BY THE COURT



UNITED STATES DISTRICT COURT JUDGE
ROBERT J. SHELBY