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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.

**THE CORPORATION OF THE
PRESIDENT OF THE CHURCH OF
JESUS CHRIST OF LATTER-DAY
SAINTS, a Utah corporation.**

Defendants.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW APPROVING
JOINT STIPULATED MOTION AND
MEMORANDUM TO APPROVE
SETTLEMENT WITH THE
CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST
OF LATTER-DAY SAINTS**

AND

ORDER DISMISSING ACTION

Case No.: 2:16-cv-00792-RJS

Judge Robert J. Shelby

Before this Court is the Joint Stipulated Motion and Memorandum to Approve Settlement¹ Between Receiver and the Corporation of the President of The Church of Jesus Christ of Latter-day Saints, a Utah corporation, which conducts affairs on behalf of the unincorporated ecclesiastical denomination of The Church of Jesus Christ of Latter-day Saints, together with its affiliates (collectively herein the “COP”) (Dkt. 20). 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. APS was incorporated as a family-owned business by Curtis DeYoung (“Curtis”) and Michelle DeYoung (“Michelle” and together with Curtis, the “DeYongs”) in 1982 to serve as a third-party administrator for self-directed IRAs and 401(k) accounts.
2. Michelle served as APS’s Operations Manager and Secretary/Treasurer.
3. On April 24, 2014, the Securities and Exchange Commission (“SEC”) filed a complaint against APS and Curtis alleging that the Curtis’s misappropriation of IRA Account Owners’ funds. In its complaint, the SEC outlined Curtis’s misappropriation, which included using IRA Account Owners’ funds to invest in high-risk ventures.
4. On April 24, 2014, this Court appointed Diane A. Thompson to serve as Receiver for APS “for the purpose of marshaling and preserving all assets of [APS] together with any related entities owned, controlled, and/or under common control by or through [APS]” as well as all assets that “were fraudulently transferred by APS and DeYoung and that are otherwise attributable to funds derived from clients or clients of APS and DeYoung.” (*SEC v. APS*

¹ Dkt. 20.

American Pension Services, Inc. et al. 2:14-cv-00309-RJS-DBP ("SEC Action"), Complaint (Dkt. 1), ¶¶ 47-98).

5. The Receiver is given broad powers to sue third parties to recover funds for the benefit of APS and its Account Owners. Pursuant to the Receivership Order, the Receiver has the 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’).” (Receivership Order, Art. II, § 7.A).

6. The Receiver is further permitted upon leave of 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).

7. In April 2016, Curtis agreed to settle with the SEC on the fraud charges alleged. As part of his settlement, Curtis signed a Consent to Entry of Judgment, wherein Curtis consented to a judgment that permanently restrained him from violations of the Securities Act and Exchange Act, and further ordered the disgorgement of \$29,978,322.71 (“Judgment”). (SEC Action, Consent of Curtis L. DeYoung to Entry of Judgment (Dkt. 745), ¶ 2).

8. In the Consent to Entry of Judgment, Curtis also agreed to the entry of a civil penalty, and agreed that he was “precluded from arguing that he did not violate the federal securities laws as alleged” by the SEC. Curtis also agreed that, “solely for the purposes of such motion, the allegations of the [SEC] shall be accepted as and deemed true,” and that he would

“withdraw[] any papers filed in this action to the extent they deny any allegation in the complaint.” (*Id.*, ¶¶ 3, 13).

9. On April 21, 2016, the Court entered the Judgment against Curtis. (SEC Action, Dkt. 747).

II. THE RECEIVER'S ACTION AND SETTLEMENT

10. Between 2008 and April 24, 2014, the DeYoungs made tithing and other charitable contributions to the COP in the amount of approximately \$239,775.00.

11. On July 14, 2016, the Receiver filed a complaint against the COP alleging, among other allegations, that the tithing and charitable contributions to the COP by Curtis and Michelle were made using misappropriated APS funds and should be returned to the Receivership Estate because they were fraudulent transfers (“Lawsuit”). (Dkt. 2).

12. The COP disputed the Receiver's claims, asserting a number of affirmative defenses, including an assertion that it would violate the Establishment Clause of the First Amendment of the United States Constitution for the Court to assess the value of personal and spiritual benefits received by Curtis and Michelle DeYoung, if any, in connection with donations made by them to the Church; that any amounts tithed by Michelle are not recoverable as fraudulent transfers because they were made from her legitimate income and there was no actual finding of fraud against Michelle; and that there is no assertion that APS was operating as a Ponzi scheme, so the fraudulent-transfer presumption is inapplicable in this case and the burden would be on the Receiver to show that each transfer of money from APS to Curtis and to Michelle was fraudulent.

13. The Parties determined it to be in their respective best interests and the best interests of APS, on behalf of APS account owners, to negotiate a settlement agreement (“Settlement Agreement”).

14. The Parties have agreed to resolve the Lawsuit and have entered into the Settlement Agreement. The Receiver agrees to do so because the COP has agreed to provide \$150,000.00 to the Receiver within ten days of the Court's approval of the Settlement Agreement. The Receiver also agrees to settle to avoid the costs and risks associated with protracted litigation and because the COP could successfully defeat her claims. The COP agrees to do so to avoid the costs and risks associated with protracted litigation and because the Receiver may be successful in her claims against the COP.

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

16. On April 5 and 12, 2017, the parties signed the Settlement Agreement, attached hereto as Exhibit A, for which approval is sought by the 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, 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 the COP.

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 and the COP.

ORDER

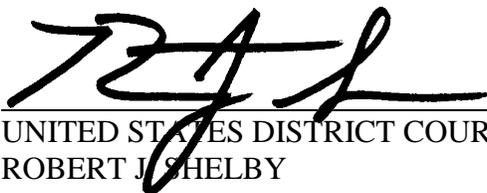
Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby

ORDERS, ADJUDGES AND DECREES THAT:

1. The Motion² is granted.
2. Within ten days following entry of this Court's order, the COP shall pay the Receiver the sum of \$150,000.00 pursuant to the terms of the Settlement Agreement.
3. 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.
4. The Court shall retain jurisdiction to enforce the terms and conditions of the Settlement Agreement.
5. Having resolved all claims between the Parties through settlement, the Court dismisses this action with prejudice and directs the Clerk of Court to close it.

DATED this 25th day of May, 2017.

BY THE COURT



UNITED STATES DISTRICT COURT JUDGE
ROBERT J. SHELBY

² Dkt. 20.