

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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 JONATHAN X. FLAGG and :  
 :  
 JACQUELINE ALVAREZ, :  
 :  
 On behalf of themselves and on :  
 behalf of all others similarly situated, :  
 : 07 Civ. 7392 (PKC)  
 Plaintiffs, :  
 :  
 - against - :  
 :  
 SKADDEN, ARPS, SLATE, MEAGHER :  
 & FLOM PENSION PLAN, :  
 :  
 Defendant. :  
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**FINAL ORDER AND JUDGMENT APPROVING SETTLEMENT  
AND DISMISSING THIS ACTION WITH PREJUDICE**

This Lawsuit is a class action brought by Plaintiffs Jonathan X. Flagg and Jacqueline Alvarez (“Plaintiffs” or “Named Plaintiffs”) individually, and on behalf of the Class they represent, against Defendant Skadden, Arps, Slate, Meagher & Flom Pension Plan. Pursuant to Fed. R. Civ. P. 23(b)(1)(A), 23(b)(1)(B), and 23(b)(2), a mandatory class action was conditionally certified by the Court on January 30, 2009, consisting of:

- (i) all persons identified on the Participant List as having received a lump sum distribution from the Plan between January 1, 1992, and August 17, 2006, prior to reaching age 65, in an amount less than their Whipsaw Amount (“Listed Participants”); together with
- (ii) the beneficiaries and estates of such persons and alternate payees under a Qualified Domestic Relations Order (“Listed Participant Successors”).

Plaintiffs, on behalf of themselves and the Class, and Defendant have agreed to settle this class action suit (the “Lawsuit”) on the terms and conditions set forth in the Class Settlement Agreement dated January 15, 2009 (the “Agreement”), the original of which is filed with the

Clerk of the Court.<sup>1</sup> Currently pending is an application for approval of the Settlement pursuant to Fed. R. Civ. P. 23(e), and final certification of the Class and this action as a class action under Fed. R. Civ. P. 23(b)(1)(A), 23(b)(1)(B), and 23(b)(2), and the final appointment of Plaintiffs' counsel as Class Counsel under Fed. R. Civ. P. 23(g).

On January 30, 2009, the Court entered an Order Preliminarily Approving Settlement And Approving Notice To The Class, conditionally certifying the proposed Class and appointing Plaintiffs' counsel as Class Counsel, directing that Notice be given to the Class Members of the proposed Settlement and of a Fairness Hearing. The Court approved the form and content of the mailed Notices directed to Class Members and the Publication Notice which were attached as Exhibits to the Agreement. The Notices informed the Class Members of the Settlement terms and that the Court would consider the following issues at the Fairness Hearing: (i) whether the Court should grant final approval of the Settlement; (ii) whether the Court should enter final judgment dismissing the Lawsuit with prejudice; (iii) whether the Court should approve the amount of attorneys' fees, costs, and expenses to be awarded to Class Counsel; (iv) whether the Court should approve any amount of compensation to be paid to the two Named Plaintiffs for their contributions to the Class; and (v) any objections by Class Members to any of the above.

In accordance with the Notice to Class Members, a Fairness Hearing was held on June 5, 2009 at 2:00 p.m. No objection(s) to the Settlement Agreement was/were filed with the Court and/or made at the Fairness Hearing.

The Court, having heard argument in support of the Settlement, certification of the Class, and appointment of Class Counsel, and having reviewed all of the evidence and other

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<sup>1</sup> Unless otherwise specifically defined herein, capitalized terms used in this Final Order and Judgment ("Judgment") have the same meaning as defined in the Agreement.

submissions presented with respect to the Settlement and the record of all proceedings in this case, enters the following findings:

1. The Court has jurisdiction over the subject matter and the Parties to this Lawsuit, including the Class Members,

2. The Court confirms for settlement purposes the certification of this action as a class action and the Class under Fed. R. Civ. P. 23(b)(1)(A), 23(b)(1)(B), and 23(b)(2), as consisting of:

(i) all persons identified on the Participant List as having received a lump sum distribution from the Plan between January 1, 1992, and August 17, 2006, prior to reaching age 65, in an amount less than their Whipsaw Amount ("Listed Participants"); together with

(ii) the beneficiaries and estates of such persons and alternate payees under a Qualified Domestic Relations Order ("Listed Participant Successors").

3. The Court further confirms for settlement purposes the appointment of Plaintiffs' counsel as Class Counsel under Fed. R. Civ. P. 23(g).

4. The Agreement, together with all of its exhibits (as filed with the Court), is incorporated in this Judgment.

5. On February 27, 2009, the Claims Administrator caused the Mailed Notices of Settlement to be mailed to all Class Members. On May 8, 2009, the Claims Administrator filed with the Court proof of mailing of those Notices to all Class Members. On February 10, 2009, Class Counsel also published the Notices of Settlement on the website dedicated to this litigation, [www.flaggpensionclassaction.com](http://www.flaggpensionclassaction.com), pursuant to the terms of the Agreement.

6. On February 16, 2009, the Plan caused the Publication Notice to be published in the *USA Today* on a nationwide basis. On May 27, 2009, the Plan filed with the Court proof of such publication.

7. Notice to the Class Members has been given in an adequate and sufficient manner and the Notices given constitute the best notice practicable under the circumstances, and were reasonably calculated to apprise interested parties of the pendency of this Lawsuit, the nature of the claims, the definition of the Class, and their opportunity to present their objections to the Settlement. The notices complied in all respects with the requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law.

8. In response to the 1,025 individually mailed notices (in addition to the Publication Notice), no Class Member filed an objection to the Settlement by the May 22, 2009 filing deadline and <sup>No</sup>    Class Member(s) filed <sup>an</sup>    objection(s) prior to the Fairness Hearing. <sup>No</sup>    objection(s) was/were presented at the Fairness Hearing.

9. After considering (i) whether the Agreement was a product of fraud or collusion; (ii) the complexity, expense, and likely duration of the Lawsuit; (iii) the stage of the proceedings and amount of discovery completed; (iv) the factual and legal obstacles to prevailing on the merits; (v) the possible range of recovery and the difficulties of calculating damages; and (vi) the respective opinions of the Parties, including Plaintiffs, Class Counsel, Defendant, and Defendant's Counsel, the Court finally approves the Settlement including the Plan of Allocation in all respects as fair, reasonable, adequate, and in the best interests of the Class Members pursuant to Fed. R. Civ. P. 23(e). No Class Member may opt-out of the Settlement. The terms of the Agreement, including all Exhibits to the Agreement and to this Judgment, shall be forever binding on the Class Members.

10. The Court notes that it was informed by the parties in a letter dated April 22, 2009, that five annuitants were inadvertently included on the original Participant List and that the

parties requested leave to inform these five participants of their intention to ask the Court for permission to amend the Participant List to remove these annuitants from the provisionally certified Class, which should consist only of certain defined persons receiving lump sum distributions. The Court granted leave on April 23, 2009 (Doc. 53), and on April 24, 2009, the Claims Administrator forwarded these five annuitants the letter the Court approved. *See Sartory Decl.* (Doc. 56) ¶ 10. The Court is informed that the Plan has provided Plaintiffs with an updated Participant List that removes these annuitants from the Participant List and Plaintiffs agree that these annuitants should be so removed. The Court finally certifies the Class for purposes of this settlement excluding these five annuitants, based on the updated Participant List.

11. Class Counsel has sought an award of attorney's fees, inclusive of costs and expenses, in an amount equal to 22.5 % of the Total Settlement Amount, *i.e.*, \$2.79 million.

Based on the evidence presented by Class Counsel and the entire record herein, the Court finds 2.79 million PKC 22.5 % of the Total Settlement Amount, *i.e.*, \$ ~~X~~ to be fair and reasonable compensation and reimbursement in light of the result obtained for the Class; the risk of non-recovery or a greatly reduced recovery as to those Class Members receiving lump sums within six years of the date suit was filed and the very high risk of non-recovery as to Class Members receiving lump sums more than six years prior to the date suit was filed; the quality of Class Counsel's representation; the complexity of the litigation and novelty of some of the issues presented; the skill and experience of opposing counsel; the reaction of the Class to the requested award; and the significant time and resources expended in prosecuting this action; and the percentage-of-the-fund award requested compared to the range of awards granted in similar cases in this District and this Circuit. PKC

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12. The Named Plaintiffs, Jonathan X. Flagg and Jacqueline Alvarez, seek, in addition to their allocable shares of the Class recovery, an additional \$3,000.00 each for the time expended in pursuit of these claims, their diligence, and the benefits obtained by the Class. The Court <sup>declines to approve</sup> ~~finds that~~ an additional payment of \$ ~~\_\_\_\_\_~~ to each ~~from the Total Settlement Amount~~ is fair and reasonable.

13. The Court recognizes that Defendant has denied and continues to deny Plaintiffs' and Class Members' claims. Neither the Agreement, this Judgment, any papers related to the Settlement, nor the fact of Settlement, shall be used as an admission of the Defendant, or any other person, of any fault, omission, mistake, or liability, and shall not be offered as evidence of any claimed liability in this or any other proceeding. Evidence of the Agreement and this Court's Orders approving same shall be admissible only in proceedings to enforce the Agreement or this Judgment, but not as an admission of liability in the underlying Lawsuit.

It is, therefore, ORDERED, ADJUDGED, AND DECREED that:

1. The Parties shall carry out all the terms of the Agreement, including the payment of the Individual Settlement Benefits by Defendant to the Class Members in accordance with the terms of the Agreement. The Court finds this allocation of the Net Settlement Benefit to be fair, reasonable, adequate, and in the best interests of the Class Members.

2. Releases:

A. Each Releasor is bound by this Judgment and, as a result of it, has fully, finally, and forever released, acquitted and discharged the Released Parties from the Released Claims. As used herein:

"Releasors" means Plaintiffs and all Class Members, together with each of their affiliates, predecessors, successors, assigns, and current or former partners, principals, employees, fiduciaries, agents, advisors, consultants, attorneys, representatives, or any persons acting or purporting to act on their behalf.

“Released Parties” means the Plan, Skadden, and Buck, together with each of their affiliates, predecessors, successors, assigns, and current or former partners, principals, employees, fiduciaries, agents, advisors, consultants, attorneys, representatives, or any persons acting or purporting to act on their behalf.

“Released Claims” means any and all past, present, and future causes of action, claims, damages, awards, equitable, legal, and administrative relief, interest, demands or rights that are based upon, related to, or connected with, directly or indirectly in whole or in part, the allegations, facts, subjects, or issues that have been, could have been, may be, or could be set forth or raised in the Lawsuit, or that concern or relate in any way to the sufficiency or correctness of lump sum distributions by the Plan. Notwithstanding the foregoing, Released Claims do not include any claim of any Class Member concerning his original lump sum distribution from the Plan outside the scope of the Complaint or Amended Complaint (such as a claim that the Class Member’s original lump sum was incorrectly calculated by reason of one or more factual errors) (an “Individual Claim”), provided that Effective Notice was given. “Effective Notice” means individual written notice to the Plan of such claim and the grounds therefor, received by the Plan no later than the deadline established in the Preliminary Order for objecting to the Settlement, and identifying by name the individual claimant; any notice purporting to be on behalf of a group or class of persons shall be a nullity and not Effective Notice. Any Individual Claim as to which Effective Notice was not given shall be included as a Released Claim.

B. Releasors, without limitation, are precluded, estopped, and forever barred from bringing or prosecuting in the future any claim or cause of action released in the preceding subparagraph.

C. Releasors have acknowledged that they are releasing both known and unknown and suspected and unsuspected claims and causes of action, and are aware that they may hereafter discover legal or equitable claims or remedies presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, including those with respect to the allegations and subject matters in the Lawsuit, or that concern or relate in any way to the sufficiency or correctness of lump sum distributions from the Plan. Nevertheless, it is the intention of Releasors to fully, finally, and forever settle and release all such matters, and all claims and causes of action

relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in this Lawsuit).

D. Releasors have expressly acknowledge certain principles of law applicable in some states, such as Section 1542 of the Civil Code of the State of California, which provide that a general release does not extend to claims that a creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. Notwithstanding the choice of law provision in the Agreement, to the extent that California or other law may be applicable and enforceable, Releasors agree that the provisions of Section 1542 of the Civil Code of the State of California and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction that may be applicable here, are knowingly and voluntarily waived and relinquished by Releasors and acknowledge that this provision is an essential term of the Agreement and this Release.

E. Releasors have agreed that no third-party shall bring any Released Claims on behalf of any Releasor against any Released Party. Should any third-party do so, Releasors shall take all necessary action to secure the dismissal with prejudice of any such claim.

F. Nothing in this Release shall preclude any action to enforce the terms of the Settlement.

G. This Release may be raised as a complete defense to and will preclude any action or proceeding that is encompassed by this Release. The Parties intend that the terms of this release are to be broadly construed in favor of the Released Parties and in favor of the complete resolution of all Released Claims.



3. Except as otherwise provided in the Agreement and this Judgment, Plaintiffs and the Class Members shall take nothing in this Lawsuit and the Court hereby dismisses the claims of Plaintiffs and the Class Members against Defendant with prejudice and without costs.

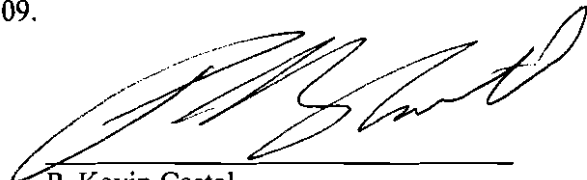
4. Class Counsel is entitled to be paid attorney's fees, costs, and expenses in an amount equal to 22.5 % of the Total Settlement Amount, *i.e.*, the amount of \$ 2.79 Million from the Total Settlement Amount to be paid in accordance with the payment terms of the Agreement. PKC

~~5. Named Plaintiffs, Jonathan X. Flagg and Jacqueline Alvarez, are each awarded \$ \_\_\_ as compensation for their contributions to the Class recovery to be paid from the Total Settlement Amount in accordance with the payment terms of the Agreement.~~ PKC

6. Without affecting the finality of this Judgment in any way, this Court will retain continuing jurisdiction over all Parties and Class Members solely for purposes of enforcing this Judgment and, pursuant to it, the Settlement, and may order any appropriate legal or equitable remedy necessary to enforce the terms of this Judgment and/or the Settlement.

7. This is a final and appealable judgment.  
*All motions are terminated.*  
SO ORDERED.

Dated: June 5, 2009.

  
P. Kevin Castel  
Judge, United States District Court