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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN (LOS ANGELES) DIVISION

CLIFTON W. MARSHALL, et al., Plaintiffs, v. NORTHROP GRUMMAN CORPORATION, NORTHROP GRUMMAN SAVINGS PLAN ADMINISTRATIVE COMMITTEE, NORTHROP GRUMMAN SAVINGS PLAN INVESTMENT COMMITTEE, DENISE PEPPARD, MICHAEL HARDESTY, KENNETH L. BEDINGFIELD, KENNETH N. HEINTZ, PRABU NATARAJAN, MARK A. CAYLOR, MARK RABINOWITZ, RICHARD BOAK, DEBORA CATSAVAS, TERI HERZOG, TIFFANY MCCONNELL KING, CHRISTOPHER MCGEE, GARY MCKENZIE, CONSTANCE SOLOWAY, RAJENDER CHANDHOK, GLORIA FLACH, JAMES M. MYERS,	Case No.: 16-CV-06794-AB-JC *Assigned to Hon. André Birotte Jr.* **OBJECTIONS OF ALAN CARLSON, PETER DeLUCA, AND ROBERT STOLTE TO SETTLEMENT AGREEMENT**

SUNIL NAVALE, ERIC SCHOLTEN, AND STEVEN SPIEGEL,

Defendants.

Alan Carlson, Peter DeLuca, and Robert Stolte, by and through their counsel, hereby submit their objections to the Class Action Settlement Agreement (ECF No. 321-1) in the above-captioned case ("the Savings Plan Case").

1. Carlson, DeLuca, and Stolte were each participants in the Northrop Grumman Savings Plan between September 9, 2010 and the present and thus subject to the conduct alleged in the Complaint, and each of them received the Class Notice. Carlson Decl. ¶¶ 4-5; DeLuca Decl. ¶¶ 4-5; Stolte Decl. ¶¶ 4-5. As such, they are Class Members.

2. Alan Carlson and Peter DeLuca are also the plaintiffs and court-appointed class representatives for and Robert Stolte is a member of the certified class in *Carlson v. Northrop Grumman Corporation*, Case No. 13-2635 (N.D. Ill.) ("the Severance Plan Case"). R. Joseph Barton of Block & Leviton LLP and Michael Bartolic of the Law Offices of Michael Bartolic LLC were appointed by the Court as Class Counsel in that case. *Carlson v. Northrop Grumman Corp.*, 333 F.R.D. 415, 424 (N.D. Ill. Oct. 11, 2019).

3. Carlson and Deluca, on behalf of themselves and the members of the *Carlson* Class who are also members of the *Marshall* Class, and Stolte object to the Class Action Settlement Agreement in this case because the scope of the release in the Settlement Agreement in this case is impermissibly broad. The claims released under the Settlement Agreement extend beyond the factual basis of the claims of the operative Complaint in the Savings Plan Case. Indeed, the scope of the release appears to release at least some of the claims in *Carlson*. Because the Class in the Savings Plan Case is mandatory, Carlson, DeLuca, Stole and other members of the *Carlson* class cannot opt out of the Savings Plan Settlement. Nor is there anything in the Class Notice that advises the *Marshall* class members who are also members of the *Carlson* class (or some other class litigation against

Northrop) that the release may release these other claims. Accordingly, Carlson, DeLuca and Stole request that final approval of the Settlement Agreement be denied without prejudice until and unless the release provisions are modified to limit the released claims to those arising out of the facts alleged in the operative complaint.

4. The operative Complaint in *Carlson* alleges three claims against Northrop Grumman Corporation ("Northrop"). Count I alleges an ERISA § 502(a)(1)(B) claim against Northrop and the Northrop Grumman Severance Plan ("the Severance Plan") that employees who were laid off from January 1, 2012 and after were improperly denied severance benefits under the Plan because they did not receive a memo notifying them of their eligibility for such benefits. Cheng Decl. at Ex. A.[1] ¶¶ 53-61. Count II alleges a claim for violation of ERISA § 510 by interfering with certain employees' rights to receive benefits. *Id*. ¶¶ 64–77. Count III alleges a claim for breach of ERISA fiduciary duties by failing to disclose material information to plan participants. *Id*. ¶¶ 79–84; *see Carlson v. Northrop Grumman Corp*., 196 F. Supp. 3d 830, 834 (N.D. Ill. 2016). The *Marshall* Complaint alleges no facts about any of Northrop's employee benefit plans other than the Savings Plan. Thus, neither the factual allegations nor the claims alleged in the Severance Plan Case share any common factual basis with the allegations and claims in the Savings Plan Case.

5. In the Severance Plan case, the district court certified the ERISA § 502(a)(1)(B) claim on behalf of the following class on October 11, 2019:

> All persons who worked for Northrop Grumman in the United States, were regularly scheduled to work over 20 hours per week, were laid off from Northrop Grumman from January 1, 2012 and after, and who did not receive the "Cash Portion" of the severance benefits (a.k.a. the

[1] All exhibits hereto are to the Declaration of Vincent Cheng.

> Salary Continuation Benefits) under the terms of the Plan (regardless of whether they received Medical, Dental or Vision Benefits under the Plan), because they did not receive written notification from management or from a Vice President of Human Resources (or his/her designee) notifying them of their eligibility for severance benefits under the Plan, as well as the beneficiaries of such persons.

Carlson, 333 F.R.D. at 421-22. The *Carlson* court denied class certification without prejudice as to Counts II and III. *Id*. at 425-426. However, in accordance with the schedule set by the *Carlson* court on December 20, 2019, Plaintiffs Carlson and DeLuca filed a renewed motion for class certification on those counts (*i.e*., the ERISA § 510 claim and fiduciary breach claim) on behalf of the following two subclasses:

> Count II (ERISA § 510 claim): All members of the Amended Class who worked in the Technical Services Sector at the time of their layoff from Northrop Grumman Corporation.
>
> Count III (fiduciary breach claim): All members of the Amended Class whose original date of hire with Northrop Grumman Corporation was before October 2011

Ex. C. The renewed motion was fully briefed as of February 14, 2020 and is pending. Cheng Decl. ¶ 6.

6. As the class certified in the Savings Plan litigation includes both current and former employees "who are or were participants or beneficiaries of the Northrop Grumman Savings Plan at any time between September 9, 2010 and the date of judgment, and were affected by the conduct set forth in this complaint," there is likely a significant number of member of the *Carlson* class who are also members of the class in this case. *See Marshall v. Northrop Grumman Corp*., No. 16-06794, 2017 WL 6888281, at *1 (C.D. Cal. Nov. 2, 2017).

7. Nancy Ross is counsel for the defendants in both the Severance Plan Case and the Savings Plan Case. ECF No. 35; Ex. B. The Settlement Agreement in this case was not executed until January 13, 2020. ECF No. 321-1 at 28-29. Thus, Northrop and its counsel were aware of the class certification decision in the Severance Plan Case and the likelihood of overlap of the classes.

8. "A settlement agreement may preclude a party from bringing a related claim in the future 'even though the claim was not presented and might not have been presentable in the class action,' *but only* where the released claim is 'based on the identical factual predicate as that underlying the claims in the settled class action.'" *Hesse v. Sprint Corp*., 598 F.3d 581, 590 (9th Cir. 2010) (emphasis added). Thus, "a release of claims that 'go beyond the scope of the allegations of the operative complaint' is impermissible." *Lovig v. Sears, Roebuck & Co.,* Case No. 11-00756, 2014 WL 8252583, at *2 (C.D. Cal. Dec. 9, 2014) (denying preliminary approval as a result of release that impermissibly extended beyond the factual predicate of the complaint); *Willner v. Manpower Inc*., No. 11-02846, 2014 WL 4370694, at *7 (N.D. Cal. Sept. 3, 2014) (citing *Hesse* and denying motion for preliminary approval). An overly broad release of claims could be cured by "narrow[ing] the scope of release in compliance with the Ninth Circuit's decision in *Hesse*." *Lovig*, 2014 WL 8252583, at *2; *see Willner*, 2014 WL 4370694, at *7 ("This excessive breadth could be cured by changing the phrase 'related in any way' to 'arise out of the allegations in the operative complaint.'").

9. The factual predicate underlying the claims in the Savings Plan Case concerns the management and administration of the Northrop Grumman Savings Plan ("the Savings Plan"), a 401(k) defined contribution plan governed by the Employee Retirement Income Security Act ("ERISA") and sponsored by Northrop. The operative Complaint in this case – *i.e*., the Second Amended Complaint –

alleges that Northrop, the administrative and investment committees for the Savings Plan, and members of the committees (collectively "Defendants") distributed and paid assets of the Savings Plan to Northrop for administrative and investment-related services Northrop provided to the plan, caused the plan to pay unreasonable recordkeeping fees to the plan's recordkeeper Hewitt Associates LLC, and maintained active managers instead of passive managers in the plan's Emerging Markets Equity Fund ("the EME Fund"). *E.g.*, ECF No. 132 ("2d Am. Compl.") ¶¶ 1-3, 52-58, 69-76, 84-89. Based on this factual predicate, on behalf of a class of plan participants and beneficiaries, the Complaint alleges fiduciary breach claims under ERISA §§ 404(a)(1)(A) and (B) that Defendants breached their fiduciary duties of loyalty and prudence by causing the plan to pay improper and unreasonable administrative fees to Northrop and unreasonable recordkeeping fees to Hewitt and failing to remove underperforming active managers for the EME Fund. *Id*. ¶¶ 105-21. Based on the same factual predicate, the Complaint alleges that Defendants engaged in prohibited transactions in violation of ERISA §§ 406(a) and (b), *id*. ¶¶ 122-41, and that Defendants breached their fiduciary monitoring duties. *Id*. ¶¶ 142-48. Neither the operative Complaint nor any of the previous complaints in the Savings Plan Case alleged any facts or claims about any of the other employee benefit plans of Northrop. *See id*.; ECF Nos. 1 & 70. Thus, the claims of the certified class in *Carlson* are based on a set of allegations distinct from the factual basis of the claims in the Savings Plan Case.

10. The Settlement Agreement, if finally approved, would purport to release claims that go beyond the factual basis of the claims in the Complaint. Article 8 of the Agreement provides that "Class Members" will be deemed to have released "the Released Parties from the Released Claims" and cannot "sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding" any

known or unknown claim "on the basis of, connected with, or arising out of any of the Released Claims." ECF No. 321-1 ("Agmt.") §§ 8.1-8.3. "Class Members" are defined to mean all individual in the Class, as certified by the Court. *Id*. §§ 2.9, 2.12. This Court certified the following Class:

> all persons, excluding defendants and/or other individuals who are liable for the conduct described in the complaint, who are or were participants or beneficiaries of the Northrop Grumman Savings Plan at any time between September 9, 2010 and the date of judgment, and were affected by the conduct set forth in this complaint, as well as those who will become participants or beneficiaries of the Northrop Grumman Savings Plan.

Marshall, 2017 WL 6888281, at *1. As "Class Period" is defined to mean "the period from September 9, 2010 through the Court's entry of the Final Order," the Class Period covers the same time period as the Severance Plan Case. Agmt. § 2.13. Because the Class in the Savings Plan Case is mandatory, class members such as Carlson, DeLuca, and Stolte cannot opt out of the Settlement and are subject to the release provisions in the Settlement Agreement. *Marshall*, 2017 WL 6888281, at *11 (certifying the Class under Rules 23(a) and 23(b)(1)).

11. "Released Parties" is defined to include Defendants and "all of their past, present, and future affiliates, subsidiaries, divisions, joint ventures," "employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), administrators, service providers," "officers," and "directors." Agmt. § 2.38. Under this definition, Northrop and the Severance Plan are among the Released Parties. Finally, "Released Claims" is defined to encompass any actual or potential "claims that *might have been asserted in the Class Action*, arising under ERISA, or any other local, state, or federal statute or law (or any rule or regulation associated therewith or promulgated thereunder) or the common law, that *arise out*

of, relate to, or are based on any of the actions or omissions that occurred during the Class Period." *Id*. § 2.39.1 (emphasis added). Thus, Released Claims are not limited to claims based on the factual predicate of the Second Amended Complaint. *Id*. Instead, the release would include any statutory claims including ERISA claims even if they are not based on the identical factual predicate, so long as they are claims that "might have been asserted" in this case that "arise out of, relate to, are based on" any acts or omissions from September 9, 2010 on. *Id*. Because claims in the Severance Plan Case are based on acts and omissions of Northrop within that same time period, the scope of the release in the Settlement Agreement purports to extend to the claims alleged in *Carlson*.

12. Courts have consistently rejected such overly broad release. *E.g*., *Christensen v. Hillyard, Inc*., No. 13-04389, 2014 WL 3749523, at *4 (N.D. Cal. July 30, 2014) (denying motion for preliminary approval because the broad release of claims that "were or could have been reasonably asserted in the Litigation" failed to "'directly track the allegations in the complaint'"); *Lovig*, 2014 WL 8252583, at *2 (finding release of claims that "could have been asserted in the Action based on the facts pled in *any* of the complaints filed in the Action" impermissibly broad) (emphasis in original); *Willner*, 2014 WL 4370694, at *7 (finding "related in any way" in release of claims "whether known or unknown . . . that are related in any way to any claim alleged in the Lawsuit" excessively broad). Section 2.39.8 of the Agreement provides that the following claims are excluded from the Release:

> "Released Claims" specifically excludes claims of individual denial of benefits under ERISA § 502(a)(1)(B) other than claims for benefits under the Plan during the Class Period, wages, labor or employment claims of any type, including but not limited to employment discrimination or wrongful termination, or any

workers' compensation claim.

Agmt. § 2.39.8 (emphasis added). While this provision is not a model of grammar or clarity, it appears to mean that the Agreement does not release ERISA § 502(a)(1)(B) claims made by *individuals* like Mr. Carlson and Mr. DeLuca who filed an administrative claim for benefits under an employee benefits plan other than the Savings Plan and received a claim denial. But the release provisions still purport to release the § 502(a)(1)(B) claims of the *absentee* class members who might not have filed an administrative claim under the Severance Plan in *Carlson*. *See Carlson*, 333 F.R.D. at 422 (rejecting Northrop's argument that "typicality is lacking because other class members might have failed to exhaust their remedies under the Plan"). Even if Section 2.39.8 excludes the ERISA § 502(a)(1)(B) claims for all of the *Carlson* class members, the release provision undeniably purports to release both the ERISA § 510 claim (Count II) and the fiduciary breach claim (Count III) alleged in the Severance Plan Case. *Compare* Agmt. § 2.39.8 *with* Ex. A ¶¶ 53–61, 64-77, 79-84; *Carlson*, 196 F. Supp. 3d at 834. Finally, because the Released Claims as currently defined "still capture claims that go beyond the scope of the allegations in the operative complaint," the exclusion does not cure the excessive breadth of the release. *Willner*, 2014 WL 4370694, at *7 n.5; *see* Agmt. § 2.39.1. As such, the scope of the Released Claims in the Settlement Agreement is impermissibly broad.

13. For the reasons stated above, the Court should sustain the objections by Carlson, Deluca, and Stolte and order that final approval of the Settlement Agreement be denied without prejudice until and unless the Agreement is modified to narrow the scope of the Released Claims to claims that are based on the identical factual predicate of the operative Complaint in the Savings Plan Case and to exclude any claim in the Severance Plan Case.

Dated: May 5, 2020

Respectfully submitted,

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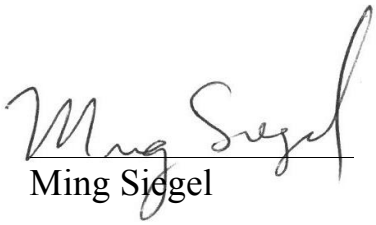
Attorneys for Objecting Class Members Carlson, DeLuca and Stolte

CERTIFICATE OF SERVICE

I certify that on May 5, 2020, I caused a copy of the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

Dated this 5th day of May 2020.



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