

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CLIFTON W. MARSHALL, et al.,

Plaintiffs,

v.

NORTHROP GRUMMAN
CORPORATION, et al.,

Defendants.

Case No. 16-CV-6794 AB (JCx)

**ORDER GRANTING
PRELIMINARY APPROVAL
OF SETTLEMENT**

Date: January 31, 2020
Time: 10:00 a.m.
Courtroom 7B – 7th Floor

Hon. André Birotte Jr.

1 This litigation involves claims for alleged breaches of fiduciary duty and
2 prohibited transactions in violation of the Employee Retirement Income Security
3 Act of 1974 (ERISA), as amended, 29 U.S.C. §1001 *et seq.*, with respect to the
4 Northrop Grumman Savings Plan.

5 The parties seek preliminary approval of a settlement of these claims against
6 Defendants Northrop Grumman Corporation, Northrop Grumman Savings Plan
7 Administrative Committee, Northrop Grumman Savings Plan Investment
8 Committee, Denise Peppard, Michael Hardesty, Kenneth L. Bedingfield, Kenneth
9 N. Heintz, Prabu Natarajan, Mark A. Caylor, Mark Rabinowitz, Richard Boak,
10 Debora Catsavas, Teri Herzog, Tiffany McConnell King, Christopher McGee, Gary
11 McKenzie, Constance Soloway, Rajender Chandhok, Gloria Flach, James M.
12 Myers, Sunil Navale, Eric Scholten, and Steven Spiegel. The terms of the
13 settlement are set out in a Class Action Settlement Agreement dated January 13,
14 2020 (the “Settlement Agreement”), executed by the parties and their counsel.
15 Jerome J. Schlichter, Michael A. Wolff, and Kurt C. Struckhoff from the law firm
16 of Schlichter Bogard & Denton, LLP have been appointed as Class Counsel. Nancy
17 G. Ross and Brian D. Netter from the law firm of Mayer Brown LLP represent
18 Defendants.

19 The Court has considered the proposed Settlement Agreement. For purposes of
20 this Order, if not defined herein, capitalized terms have the Definitions in the
21 Settlement Agreement, which is incorporated herein by reference. Having reviewed
22 the Settlement Agreement, the motion papers, and conducted a hearing in open
23 court on January 31, 2020, it is **ORDERED** as follows.

24 1. **Preliminary Findings Regarding Proposed Settlement:** The Court
25 preliminarily finds that:

26 A. The proposed settlement resulted from extensive arm’s-length
27 negotiations;

28

1 B. The Settlement Agreement was executed only after Class
2 Counsel had conducted extensive pre-settlement motion practice and discovery, and
3 after negotiations, including in-person mediation sessions and numerous
4 teleconference mediation sessions and extensive telephonic and email
5 communications with a skilled mediator, and only after Class Counsel was set to
6 begin trial;

7 C. Class Counsel has concluded that the Settlement Agreement is
8 fair, reasonable and adequate; and

9 D. The Settlement is sufficiently fair, reasonable, and adequate to
10 warrant sending notice of the Settlement to the Class.

11 2. **Fairness Hearing:** A hearing is scheduled at the United States District
12 Court for the Central District of California, Judge André Birotte Jr. presiding, at
13 10:00a.m. on June 5, 2020, (the “Fairness Hearing”) to determine, among other
14 issues:

15 A. Whether the Settlement Agreement should be approved as fair,
16 reasonable, and adequate;

17 B. Whether the notice, publication notice and notice methodology
18 were performed as directed by this Court;

19 C. Whether the motion for attorneys’ fees and costs to be filed by
20 Class Counsel should be approved;

21 D. Whether the motion for compensation to Class Representatives
22 should be approved; and

23 E. Whether the Administrative Expenses specified in the Settlement
24 Agreement and requested by the parties should be approved for payment from the
25 Settlement Fund.

26
27
28

1 3. **Establishment of Qualified Settlement Fund:** A common fund is agreed
2 to by the parties in the Settlement Agreement and is hereby established and shall be
3 known as the *Marshall, et al. v. Northrop Grumman, et al.* Settlement Fund (the
4 “Settlement Fund”). The Settlement Fund shall be a “qualified settlement fund”
5 within the meaning of Treasury Regulations §1.468-1(a) promulgated under Section
6 468B of the Internal Revenue Code. The Settlement Fund shall consist of
7 \$12,375,000 and any interest earned thereon. The Settlement Fund shall be
8 administered as follows:

9 A. The Settlement Fund is established exclusively for the purposes
10 of: (a) making distributions to eligible claimants in accordance with the claims
11 process described in the Settlement Agreement; (b) making distributions to Class
12 Representatives and Class Members as specified in the Settlement Agreement; (c)
13 making payments for all settlement administration costs and costs of notice,
14 including payments of all Administrative Expenses specified in the Settlement
15 Agreement; (d) making payments of all Attorneys’ Fees and Costs to Class Counsel
16 as awarded by the Court in this action; and (e) paying employment, withholding,
17 income and other applicable taxes, all in accordance with the terms of the
18 Settlement Agreement and this Order. Other than the payment of Administrative
19 Expenses or as otherwise expressly provided in the Settlement Agreement, no
20 distribution shall be made from the Settlement Fund until after the Settlement
21 Effective Date.

22 B. Within the time periods set forth in the Settlement Agreement,
23 Defendants, their insurers or representatives shall cause \$12,375,000 to be
24 deposited into the Settlement Fund.

25 C. The Settlement Fund shall be a single qualified settlement fund
26 within the meaning of Treasury Regulation §1.468B-1 *et seq.* Defendants, their
27 insurers or representatives shall timely furnish a statement to the Settlement
28

1 Administrator that complies with Treasury Regulation §1.468B-3(e)(2) (a
2 “§1.468B-3 Statement”), which may be a combined statement under Treasury
3 Regulation §1.468B-3(e)(2)(ii), and shall attach a copy of the statement to their
4 federal income tax returns filed for the taxable year in which Defendants, their
5 insurers or representatives make a transfer to the Settlement Fund.

6 D. Defendants, their insurers or representatives shall have no
7 withholding, reporting or tax reporting responsibilities with regard to the Settlement
8 Fund or its distribution, except as otherwise specifically identified herein.
9 Defendants, their insurers or representatives shall have no liability, obligation, or
10 responsibility for administration of the Settlement Fund or the disbursement of any
11 monies from the Settlement Fund except for: (1) the obligation to cause the
12 Settlement Amount to be deposited into the Settlement Fund; and (2) the agreement
13 to cooperate in providing information that is necessary for settlement administration
14 set forth in the Settlement Agreement.

15 E. The oversight of the Settlement Fund is the responsibility of the
16 Settlement Administrator. The status and powers of the Settlement Administrator
17 are as defined by this Order and as approved in the Settlement Agreement.

18 F. The Settlement Amount caused to be deposited by Defendants
19 into the Settlement Fund in accordance with the Settlement Agreement, and all
20 income generated by that Amount, shall be *in custodia legis* and immune from
21 attachment, execution, assignment, hypothecation, transfer or similar process by
22 any person. Once the Settlement Fund vests, it is irrevocable during its term and
23 Defendants have divested themselves of all right, title or interest, whether legal or
24 equitable, in the Settlement Fund, if any; provided, however, in the event the
25 Settlement Agreement is not approved by the Court or the Settlement set forth in
26 the Settlement Agreement is terminated or fails to become effective in accordance
27 with its terms (or, if following approval by this Court, such approval is reversed or
28

1 modified), the parties shall be restored to their respective positions in this Case as
2 of the day prior to the Settlement Agreement Execution Date; the terms and
3 provisions of the Settlement Agreement and this Order shall be void and have no
4 force and effect and shall not be used in this Case or in any proceeding for any
5 purpose; and the Settlement Fund and income earned thereon shall immediately be
6 returned to the entity that funded the Settlement Fund. Further provided that, if the
7 Settlement Agreement is terminated after Defendants, their insurers or
8 representatives have deposited the Settlement Funds, but prior to the entry of an
9 order granting Final Approval of the Settlement, the funds in the Settlement Fund
10 shall be disposed of as set forth in the Settlement Agreement.

11 G. The Settlement Administrator may make disbursements out of
12 the Settlement Fund only in accordance with this Order or any additional Orders
13 issued by the Court.

14 H. The Settlement Fund shall expire after the Settlement
15 Administrator distributes all of the assets of the Settlement Fund in accordance with
16 Article 6 of the Settlement Agreement, provided, however, that the Settlement Fund
17 shall not terminate until its liability for any and all government fees, fines, taxes,
18 charges and excises of any kind, including income taxes, and any interest, penalties
19 or additions to such amounts, are, in the Settlement Administrator's sole discretion,
20 finally determined and all such amounts have been paid by the Settlement Fund.

21 I. The Settlement Fund shall be used to make payments to Class
22 Members under the Plan of Allocation set forth in the Settlement Agreement.
23 Individual payments to Class Members will be subject to tax withholding as
24 required by law and as described in the Class Notice and its attachments. In
25 addition, all Class Representatives' Compensation, Administrative Expenses and all
26 Attorneys' Fees and Costs of Class Counsel shall be paid from the Settlement Fund
27 as set forth in the Settlement Agreement.

28

1 J. The Court and the Settlement Administrator recognize that there
2 will be tax payments, withholding and reporting requirements in connection with
3 the administration of the Settlement Fund. The Settlement Administrator shall, in
4 accordance with the Settlement Agreement, determine, withhold, and pay over to
5 the appropriate taxing authorities any taxes due with respect to any distribution
6 from the Settlement Fund and shall make and file with the appropriate taxing
7 authorities any reports or returns due with respect to any distributions from the
8 Settlement Fund. The Settlement Administrator also shall determine and pay any
9 income taxes owing with respect to the income earned by the Settlement Fund.
10 Additionally, the Settlement Administrator shall file returns and reports with the
11 appropriate taxing authorities with respect to the payment and withholding of taxes.

12 K. The Settlement Administrator, in its discretion, may request
13 expedited review and decision by the IRS or the applicable state or local taxing
14 authorities, with regard to the correctness of the returns filed for the Settlement
15 Fund and shall establish reserves to assure the availability of sufficient funds to
16 meet the obligations of the Settlement Fund itself and the Settlement Administrator
17 as fiduciaries of the Settlement Fund. Reserves may be established for taxes on the
18 Settlement Fund income or on distributions.

19 L. The Settlement Administrator and Defendants shall provide to
20 and exchange with each other such information as shall be reasonably necessary to
21 file notices, reports and returns and to make timely determinations of withholding
22 obligations.

23 M. The Settlement Administrator shall have all the necessary
24 powers, and take all necessary ministerial steps, to effectuate the terms of the
25 Settlement Agreement, including the payment of all distributions. Such powers
26 include receiving and processing information from Former Participants pertaining to
27 their claims and investing, allocating and distributing the Settlement Fund, and in
28

1 general supervising the administration of the Settlement Agreement in accordance
2 with its terms and this Order.

3 N. The Settlement Administrator shall keep detailed and accurate
4 accounts of all investments, receipts, disbursements and other transactions of the
5 Settlement Fund. All accounts, books and records relating to the Settlement Fund
6 shall be open for reasonable inspection by such persons or entities as the Court
7 orders. Included in the Settlement Administrator's records shall be complete
8 information regarding actions taken with respect to the award of any payments to
9 any person; the nature and status of any payment from the Settlement Fund and
10 other information which the Settlement Administrator considers relevant to
11 showing that the Settlement Fund is being administered, and awards are being
12 made, in accordance with the purposes of the Settlement Agreement, this Order,
13 and any future orders that the Court may find it necessary to issue.

14 O. The Settlement Administrator will establish protective
15 conditions concerning the disclosure of information maintained by the Settlement
16 Administrator if publication of such information would violate any law, including
17 rights to privacy. Any person entitled to such information and who is denied access
18 to the Settlement Fund's records may submit a request to the Court for such
19 information. However, the Settlement Administrator shall supply such information
20 to any claimant as may be reasonably necessary to allow him or her to accurately
21 determine his or her federal, state and local tax liabilities. Such information shall be
22 supplied in the form and manner prescribed by relevant law.

23 P. This Order will bind any successor Settlement Administrator.
24 The successor Settlement Administrator(s) shall have, without further act on the
25 part of anyone, all the duties, powers, functions, immunities, and discretion granted
26 to the original Settlement Administrator. Any Settlement Administrator(s) who is
27 replaced (by reason other than death) shall execute all instruments, and do all acts,
28

1 that may be necessary or that may be ordered or requested in writing by the Court
2 or by any successor Settlement Administrator(s), to transfer administrative powers
3 over the Settlement Fund to the successor Settlement Administrator(s). The
4 appointment of a successor Settlement Administrator(s), if any, shall not under any
5 circumstances require any Defendant to make any further payment of any nature
6 into the Settlement Fund or otherwise.

7 4. **Class Notice:** The Settling Parties have presented to the Court proposed
8 forms of Class Notice, which are appended hereto as Exhibit 1 and Exhibit 2,
9 respectively.

10 A. The Court finds that the proposed forms and the website
11 referenced in the Class Notice fairly and adequately:

12 i. Describe the terms and effect of the Settlement
13 Agreement and of the Settlement;

14 ii. Notify the Class concerning the proposed Plan of
15 Allocation;

16 iii. Notify the Class that Class Counsel will seek
17 compensation from the Settlement Fund for the Class Representatives,
18 Attorneys' Fees and Costs;

19 iv. Notify the Class that Administrative Expenses related to
20 the implementation of the Settlement will be paid from the Settlement
21 Fund;

22 v. Notify the Class of the time and place of the Fairness
23 Hearing; and

24 vi. Describe how the recipients of the Class Notice may
25 object to any of the relief requested and the rights of the parties to
26 discovery concerning such objections.

27 B. The Settling Parties have proposed the following manner of
28

1 communicating the notice to members of the Class, and the Court finds that such
2 proposed manner is the best notice practicable under the circumstances, and directs
3 that the Settlement Administrator shall by no later than sixty (60) days before the
4 Fairness Hearing, cause the Class Notice, with such non-substantive modifications
5 thereto as may be agreed upon by the Settling Parties, to be sent by electronic mail
6 to all Class Members for whom the Settlement Administrator is provided a current
7 email address and mailed, by first-class mail, postage prepaid, to the last known
8 address of all Class Members for whom there is no current email address and for
9 whom can be identified through commercially reasonable means. Defendants shall
10 cooperate with the Settlement Administrator by providing, in electronic format, the
11 names, addresses, email addresses (to the extent available), and social security
12 numbers of members of the Class. The names, addresses, email addresses (to the
13 extent available), and Social Security numbers or other unique identifiers obtained
14 in accordance with this Order shall be used solely for the purpose of providing
15 notice of this settlement and as required for purposes of tax withholding and
16 reporting, and for no other purpose.

17 C. For any Class Notice returned as undeliverable, the Settlement
18 Administrator shall utilize the provided Social Security number to attempt to
19 determine the current address of the Class Member and shall mail notice to that
20 address.

21 D. At or before the Fairness Hearing, Class Counsel or the
22 Settlement Administrator shall file with the Court a proof of timely compliance
23 with the foregoing requirements.

24 E. The Court directs Class Counsel, no later than sixty (60) days
25 before the Fairness Hearing, to cause the Class Notice to be published on the
26 website identified in the Class Notice.

27 **5. Objections to Settlement:** Any member of the Class who wishes to
28

1 object to the fairness, reasonableness or adequacy of the Settlement, to the Plan of
2 Allocation, to any term of the Settlement Agreement, to the proposed award of
3 attorneys' fees and costs, or to any request for compensation for the Class
4 Representatives must file an Objection in the manner set out in this Order.

5 A. A Class Member wishing to raise an objection to the Plan of
6 Allocation, to any term of the Settlement Agreement, to the proposed award of
7 attorneys' fees and costs, or to any request for compensation for the Class
8 Representatives must do the following: (A) file with the Court a statement of his,
9 her, or its objection(s), specifying the reason(s), if any, for each such objection
10 made, including any legal support or evidence that such objector wishes to bring to
11 the Court's attention or introduce in support of such objection; and (B) serve copies
12 of the objection and all supporting authorities or evidence to Class Counsel and
13 Defense Counsel. The addresses for filing objections with the Court and for service
14 of such objections on counsel for the parties to this matter are as follows:

15 Clerk of the Court
16 United States District Court for the Central District of California
17 350 West First Street
18 Los Angeles, CA 90012

19 SCHLICHTER BOGARD & DENTON, LLP
20 Attn: Northrop Grumman 401(k) Settlement
21 100 S. 4th Street, Suite 1200
22 St. Louis, MO 63102

23 MAYER BROWN LLP
24 Attn: Nancy G. Ross
25 71 S. Wacker Drive
26 Chicago, IL 60606

27 B. The objector, or his, her, or its counsel (if any), must serve
28 copies of the objection(s) on the attorneys listed above and file it with the Court by
no later than thirty (30) days before the date of the Fairness Hearing.

1 C. If an objector hires an attorney to represent him, her, or it for the
2 purposes of making such objection pursuant to this paragraph, the attorney must
3 serve a notice of appearance on the attorneys listed above and file it with the Court
4 by no later than thirty (30) days before the date of the Fairness Hearing.

5 D. Failure to serve objections(s) on either the Court or counsel for
6 the parties shall constitute a waiver of the objection(s). Any Class Member or other
7 person who does not timely file and serve a written objection complying with the
8 terms of this Order shall be deemed to have waived, and shall be foreclosed from
9 raising, any objection to the Settlement, and any untimely objection shall be barred.

10 E. Any party wishing to obtain discovery from any objector may,
11 but is not required to, serve discovery requests, including requests for documents
12 and notice of deposition not to exceed two (2) hours in length, on any objector
13 within ten (10) days of receipt of the objection and that any responses to discovery
14 or depositions must be completed within ten (10) days of the request being served
15 on the objector.

16 F. Any party wishing to file a response to an objection must do so,
17 and serve the response on all parties, no later than ten (10) days before the Fairness
18 Hearing.

19 **6. Appearance at Fairness Hearing:** Any objector who files and serves a
20 timely, written objection in accordance with the terms of this Order as set out in
21 Paragraph 5 above may also appear at the Fairness Hearing either in person or
22 through counsel retained at the objector's expense. Objectors or their attorneys
23 intending to speak at the Fairness Hearing must serve a notice of intention to speak
24 setting forth, among other things, the name, address, and telephone number of the
25 objector (and, if applicable, the name, address, and telephone number of the
26 objector's attorney) on Class Counsel and Defense Counsel (at the addresses set out
27 above) and file it with the Court by no later than thirty (30) days before the date of
28

1 the Fairness Hearing. Any objector (or objector's attorney) who does not timely file
2 and serve a notice of intention to appear in accordance with this paragraph shall not
3 be permitted to speak at the Fairness Hearing.

4 7. **Claim Form Deadline:** All valid claim forms must be received by the
5 Settlement Administrator with a postmark date or submitted online no later than
6 March 9, 2020.

7 8. **Service of Papers:** Defense Counsel and Class Counsel shall promptly
8 furnish each other with copies of all objections that come into their possession.

9 9. **Effect of Termination of Settlement on this Order:** This Order shall
10 become null and void, and shall be without prejudice to the rights of the Settling
11 Parties, all of whom shall be restored to their respective positions existing the day
12 before the Settlement Agreement Execution Date, if the Settlement is terminated in
13 accordance with the Settlement Agreement.

14 10. **Use of Order:** This Order shall not be construed or used as an admission,
15 concession, or declaration by or against Defendants of any fault, wrongdoing,
16 breach, or liability or a waiver of any claims or defenses, including but not limited
17 to those as to the propriety of any amended pleadings or the propriety and scope of
18 class certification. This Order shall not be construed or used as an admission,
19 concession, or declaration by or against any Class Representative, or the Class that
20 their claims lack merit, or that the relief requested in the Class Action is
21 inappropriate, improper or unavailable. This Order shall not be construed or used
22 as a waiver by any party of any arguments, defenses, or claims he, she, or it may
23 have.

24 11. **Continuance of Hearing:** The Court may continue the Fairness Hearing
25 in its discretion without direct notice to the Class, other than by notice to Class
26 Counsel and Defense Counsel, and any Class Member wishing to appear should
27 check the Court's docket three (3) days before the scheduled date of the Fairness
28 Hearing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

DATED: February 3, 2020



Andre Birotte Jr.
United States District Court Judge