

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

VALESKA SCHULTZ <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:16-cv-1346-JAR
)	
EDWARD D. JONES & CO., L.P., <i>et al.</i> ,)	
)	
Defendants.)	

PRELIMINARY APPROVAL ORDER

- 1) **CONDITIONALLY CERTIFYING THE SETTLEMENT CLASS AND APPOINTING CLASS COUNSEL;**
- 2) **GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT;**
- 3) **ENJOINING SETTLEMENT CLASS MEMBERS FROM PURSUING ANY CLAIMS THAT ARISE OUT OF OR RELATE IN ANY WAY TO THE CLAIMS AT ISSUE IN THIS ACTION PENDING FINAL APPROVAL OF THE SETTLEMENT;**
- 4) **DIRECTING NOTICE TO SETTLEMENT CLASS MEMBERS AND APPROVING THE PLAN AND FORM OF NOTICE;**
- 5) **APPOINTING A SETTLEMENT ADMINISTRATOR;**
- 6) **SCHEDULING A FAIRNESS HEARING; AND**
- 7) **SCHEDULING A HEARING ON CLASS COUNSEL’S MOTION FOR FEES AND COSTS AND THE PAYMENT OF SERVICE AWARDS TO THE NAMED PLAINTIFFS.**

The Court having received and considered Plaintiffs Unopposed Motion for Preliminary Approval, Plaintiffs’ Unopposed Motion for Certification of Settlement Class, and Motion for Appointment of Class Counsel (the “Motion”) (Doc. 93) in the above-captioned action (the “Action”) and supporting papers including the Class Action Settlement Agreement dated December 11, 2018, (the “Settlement Agreement”) and the declarations of counsel, having further considered the arguments of counsel and the pleadings and record in this case, and finding good cause for granting the Motion,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order that are not otherwise identified herein have the meaning assigned to them in the Settlement Agreement.
2. This Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).
3. Venue before the Court is proper pursuant to 29 U.S.C. § 1132(e)(2).
4. The terms set forth in the Settlement Agreement are hereby preliminarily approved, subject to further consideration at the Fairness Hearing provided for below. The Court concludes that the Settlement Agreement is sufficiently within the range of reasonableness to warrant the preliminary approval of the Settlement Agreement, the scheduling of the Fairness Hearing, and the mailing of notices to Settlement Class Members, each as provided for in this Order. The Court further finds that the formula proposed by Plaintiffs and Class Counsel for allocating the Distributable Settlement Amount among Settlement Class Members is fair and reasonable.
5. The Court approves the retention by Class Counsel of KCC Class Action Services LLC, as the Settlement Administrator.
6. In further aid of the Court's jurisdiction to review, consider, implement, and enforce the settlement, the Court orders that Plaintiffs and all Settlement Class Members are preliminarily enjoined and barred from commencing, prosecuting, or otherwise litigating, in whole or in part, either directly, representatively, derivatively, or in any other capacity, whether by complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency or other authority or forum wherever located, any contention, allegation, claim, cause of action, matter, lawsuit, arbitration, or action (including but not limited to actions pending as of

the date of this Order), that arises out of or relates in any way to the Released Claims.

7. The Court approves the Notice of Proposed Class Action Settlement (“Notice”) in the form attached as Exhibit B to the Settlement Agreement.

Class Certification for Settlement Purposes

8. Pursuant to Rule 23(b)(1) of the Federal Rules of Civil Procedure, the Court certifies, solely for the purposes of effectuating the Settlement, a proposed non-opt-out Settlement Class under Rule 23(b)(1) consisting of Current and Former Participants in the Plan who maintained a balance of any amount in the Plan at any point during the period from August 19, 2010 to the date of this Order.

9. Solely for purposes of the proposed Settlement of this Action, the Court finds that each element required for certification of the Settlement Class pursuant to Rule 23(a) of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are so numerous that their joinder in the Actions would be impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Named Plaintiffs are typical of the claims of the Settlement Class; (d) Named Plaintiffs and Named Plaintiffs’ Counsel have fairly and adequately represented and protected the interests of the Settlement Class. With respect to the Settlement Class, the Court finds that the requirements of Rule 23(b)(1)(A) and 23(b)(1)(B) have been met. Prosecution of separate actions by individual members of the Settlement Class would create a risk of inconsistent or varying adjudications as to individual Settlement Class Members that would establish incompatible standards of conduct for the parties opposing the claims asserted in this Action. Monetary relief ordered as a result of any one action by an individual class member would alter the Plan for all class members, impairing or impeding those other members’ ability to prosecute their interests.

10. The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Plaintiffs are adequate class representatives and certifies them as Class Representatives for the Settlement Class. The Court also appoints Plaintiffs' Counsel as Class Counsel for the Settlement Class.

Manner of Giving Notice

11. Not later than fourteen (14) days after entry of this Order, Defendants shall cause data to be provided to the Settlement Administrator sufficient to determine the identity and last known address of Settlement Class Members. The names and addresses provided to the Settlement Administrator pursuant to this Order shall be used solely for the purpose of providing notice of this Settlement and for no other purpose.

12. Not later than thirty-five (35) days after entry of this Order, the Settlement Administrator shall send the Notice by electronic mail to current Plan participants who are Settlement Class Members and have elected to receive their quarterly statements electronically, or by first-class mail to the address on file at the Plan's current recordkeeper for Current Participants who are Settlement Class Members and do not receive their quarterly statements electronically. Former Participants who are Settlement Class Members will receive the Notice by mail to the last address on file with the Plan's recordkeeper. For those receiving Notice via mail, the mailing address will be updated by the Settlement Administrator through the National Change of Address database before mailing (with all returned mail skip-traced and promptly re-mailed).

13. Not later than five (5) days after sending the Notice to Settlement Class Members, the Settlement Administrator shall provide to Class Counsel and to Defendants' Counsel a declaration attesting to compliance with the sending of the Settlement Notices, as set forth above.

14. The Court finds that the notice to be provided as set forth in this Order is the best means of providing notice to the Settlement Class Members as is practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Fairness Hearing to all persons affected by or entitled to participate in the Settlement, the hearing on the motion for fees, or the Fairness Hearing, in full compliance with the requirements of due process and the Federal Rules of Civil Procedure.

15. All reasonable costs incurred by Plaintiffs' Counsel or the Settlement Administrator for providing the Notice as well as for administering the Settlement shall be paid as set forth in the Settlement Agreement without further order of the Court.

Fairness Hearing

16. The Court will hold a settlement hearing (the "Fairness Hearing") on **Thursday, April 18, 2019 at 10:00 a.m., in Courtroom 12 North** of the United States District Court for the Eastern District of Missouri, located at the Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, St. Louis, Missouri 63102, for the following purposes (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class and should be approved by the Court; (b) to determine whether a Judgment substantially in the form attached as Exhibit A to the Settlement Agreement should be entered dismissing with prejudice all claims asserted in the Action against Defendants with respect to Settlement Class Members; (c) to determine whether the proposed Plan of Allocation (attached as Exhibit C to the Settlement Agreement) for the net proceeds of the Settlement is fair and reasonable and should be approved; (d) to determine whether the motion by Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of litigation expenses should be approved; and (e) to consider any other matters

that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Fairness Hearing shall be given to Settlement Class Members as set forth in Paragraph 12 of this Order.

17. The Court may adjourn the Fairness Hearing and approve the proposed Settlement with such modification as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

18. **Not later than March 19, 2019**, Class Counsel shall submit their papers in support of final approval of the Settlement Agreement and Class Counsels' applications for attorneys' fees, expenses and service payments.

Objections to the Settlement

19. The Court will consider written comments and objections to the Settlement Agreement, to the proposed award of attorneys' fees and expenses, or to the request for a Case Contribution Award for the Named Plaintiffs only if such written comments or objections are filed with the Court Clerk not later than 15 days before the Fairness Hearing and comply with the requirements of Paragraph 20 below, and are served on the Parties at the following addresses

For Filing with the Court:

Clerk of Court Thomas F. Eagleton Courthouse 111 South 10th Street, Suite 3.300 St. Louis, MO 63102
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To Class Counsel:

Gregory Y. Porter BAILEY & GLASSER LLP 1055 Thomas Jefferson Street, NW Suite 540 Washington, DC 20007 Phone: (202) 463-2101

Facsimile: (202) 463-2103
Email: gporter@baileyglasser.com

Mark G. Boyko
Bailey & Glasser, LLP 8012 Bonhomme Ave. Suite 300
St. Louis, MO 63105
Telephone: (314) 863-5446
Facsimile: (314) 863-5483
Email: mboyko@baileyglasser.com

To Defendants' Counsel:

Thomas J. Kavalier
Cahill Gordon & Reindel LLP
80 Pine Street
New York, NY 10005-1702
Telephone: (212) 701-3406
Facsimile: (212) 378-2230
Email: tkavalier@cahill.com

James F. Bennett
Dowd Bennett LLP
7733 Forsyth Blvd.
Suite 1900
St. Louis, MO 63105
Telephone: (314) 889-7302
Facsimile: (314) 378-2230
Email: jbennett@dowdbennett.com

20. The Court will only consider written comments and objections to the Settlement that are signed by the Settlement Class Member and are timely filed with the Court and include all of the following: (a) the name and case number of the Action; (b) the Settlement Class Member's full name, address, telephone number, and signature; (c) a statement that the person submitting the comments or objections is a Settlement Class Member and an explanation of the basis upon which the person claims to be a Settlement Class Member; (d) all grounds for the

objection, accompanied by any legal support known to the objector or his or her counsel; (e) a statement as to whether the Settlement Class Member or his or her counsel intends to personally appear and/or testify at the Fairness Hearing; and (f) a list of any persons the objector or his or her counsel may call to testify at the Fairness Hearing in support of the objection. Any member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement Agreement, and any untimely objection shall be barred absent an order from the Court. The Named Plaintiffs or Defendants may, bearing the cost, take discovery, including depositions not to exceed three hours in length, from anyone who files an objection with respect to any of the issues raised in the objection.

21. Anyone who files and serves a timely, written comment or objection in accordance with this Order may also appear at the Fairness Hearing either in person or through qualified counsel retained at their own expense. Those persons or their attorneys intending to appear at the Fairness Hearing must effect service of a notice of intention to appear setting forth, among other things, the name, address, and telephone number of the Settlement Class Member (and, if applicable, the name, address, and telephone number of that Settlement Class Member's attorney) on Class Counsel and Defendants' Counsel (at the addresses set out above) and file it with the Court Clerk by **no later than April 3, 2019**. Anyone who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except by Order of the Court for good cause shown. Any comment or objection that is timely filed will be considered by the Court even in the absence of a personal appearance by the Settlement Class Member or that Settlement Class Member's counsel.

22. The Parties may file written responses to any objections **not later than April 11,**

2019.

Termination of Settlement

23. This Order shall become null and void, *ab initio*, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective statuses as of the filing of the Complaint, prior to this Settlement Agreement, if the Settlement Agreement is terminated in accordance with the terms of the Settlement Agreement


Use of Order

24. This Order is not admissible as evidence for any purpose against Defendants in any pending or future litigation involving any individual or entity. This Order (a) shall not give rise to any inference of, and shall not be construed or used as an admission, concession, or declaration against any Defendant of, wrongdoing or liability in the Actions or any other proceeding; (b) is not an admission of any liability of any kind, whether legal or factual; (c) shall not be used or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce the Settlement Agreement; (d) shall not be construed or used as an admission, concession, or declaration by or against Plaintiffs or the Settlement Class that their claims lack merit or that the relief requested in the Actions is inappropriate, improper or unavailable; (e) shall not be construed or used as an admission, concession, declaration or waiver by any party of any arguments, defenses, or claims he, she, or it may have, including, but not limited to, any objections by Defendants to class certification in the event that the Settlement Agreement is terminated. This Order and the Settlement Agreement and any proceedings taken pursuant to the Settlement Agreement are for settlement purposes only. Defendants specifically deny any fault, breach, liability or wrongdoing.

Jurisdiction

25. The Court hereby retains jurisdiction for purposes of implementing the Settlement Agreement, and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Settlement Agreement as may from time to time be appropriate, and to resolve any and all disputes arising thereunder.

SO ORDERED this 13th day of December, 2018.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE