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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE JP MORGAN CHASE CASH
BALANCE LITIGATION

Via ECF

Master File No. 06-cv-0732 (DLC)

THIS DOCUMENT RELATES TO:
ALL ACTIONS

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: *2/2/09*

~~PROPOSED~~ ⁹ PRELIMINARY ORDER RELATED TO
DISMISSAL PROCEEDINGS

WHEREAS, on January 30, 2009, the parties to the above-entitled action (the "Action") entered into a Stipulation of Voluntary Dismissal (the "Stipulation") which sets forth the Plaintiffs' proposed voluntary dismissal with prejudice of the Certified Notice Claims of the Class Representatives and the Certified Class subject to this Court's review under Rule 23 of the Federal Rules of Civil Procedure; and the Court having read and considered the Stipulation; and the parties to the Stipulation having consented to the entry of this Order; and all capitalized terms used herein having the meanings defined in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED, this 2nd day of February, 2009 that:

1. On or before February 27, 2009, Plaintiffs shall file with the Court a motion to approve the voluntary dismissal provided for in the Stipulation, including the Plaintiffs' proposal for class notice that will include notice by first class U.S. Mail, interoffice mail, and/or electronic mail.

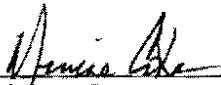
2. Any response by the Defendants shall be filed on or before March 13, 2009.

3. If the Court finds that a hearing is necessary to consider preliminary approval of the voluntary dismissal provided for in the Stipulation and Plaintiffs' proposal for class notice, and to set a final hearing on Plaintiffs' motion to approve the voluntary dismissal provided for in the Stipulation, such a hearing shall be scheduled for March 25, 2009, at 2:30 ~~am~~ ^{p.m.}.

4. All current deadlines in the Action, including the trial scheduled for March 2, 2009, and all filings related thereto, are hereby suspended and stayed until further notice.

5. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Stipulation.

Dated: New York, New York
February 2, 2009


Hon. Denise L. Cote
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE JP MORGAN CHASE CASH
BALANCE LITIGATION

Via ECF

Master File No. 06-cv-0732 (DLC)

THIS DOCUMENT RELATES TO:
ALL ACTIONS

STIPULATION FOR VOLUNTARY DISMISSAL OF CERTIFIED CLAIMS

WHEREAS, the original complaint in this action was filed on January 31, 2006;

WHEREAS, three other subsequently-filed complaints were consolidated with this action pursuant to a Consolidation Order dated April 5, 2006;

WHEREAS, Plaintiffs filed their Consolidated Class Action Complaint on May 25, 2006 and a (Corrected) Consolidated Class Action Complaint on June 23, 2006 (the "Complaint");

WHEREAS, by Order dated October 30, 2006, this Court denied in part and granted in part Defendants' Motion to Dismiss;

WHEREAS, by Order dated May 30, 2007, this Court certified the following claims as a non opt-out class under Fed. R. Civ. P. Rules 23(b)(1) and (b)(2): (a) Counts IV, V and VI of the Complaint, but only with respect to the class claims that stem from the JPMC Plan as of January 1, 2002, and excluding those individuals who have already received their lump sum benefit (the "Certified Notice Claims"); and (b) Count I of the Complaint beginning January 1, 1989 (the "Certified Age Claim");

WHEREAS, by Order dated May 30, 2007, this Court appointed plaintiffs John Berotti, Annette Falchetti, Terri Melli, and Perry Shapiro as Class Representatives for the Certified Notice Claims;

WHEREAS, in accordance with its discretion under Fed. R. Civ. P. Rule 23(c)(2)(A), the Court, citing the potential number of plaintiffs in the class and the financial burden upon the representative plaintiffs, did not require notice of this litigation to the absent class members;

WHEREAS, following the completion of fact discovery in this matter, conscious of the resources of the parties and of the Court, the parties agreed to a stay of this matter, including the Certified Notice Claims, pending a ruling by the Second Circuit in *Hirt v. Equitable Ret. Plan*, on an issue central to the Certified Age Claim;

WHEREAS, in July 2008 the Second Circuit issued a ruling in *Hirt v. Equitable Ret. Plan*, 533 F.3d 102 (2d Cir. 2008), *reh'g denied*, Nos. 06-4757, 06-5190 (2d Cir. Sept. 15, 2008), 2008 WL 2675828 (2d Cir. July 9, 2008) holding that cash balance plans are not age discriminatory;

WHEREAS, on September 26, 2008, this action was reassigned from the Honorable Harold Baer, Jr. to the Honorable Denisc L. Cote;

WHEREAS, by Motion dated October 21, 2008, Plaintiffs filed a Motion to Amend Class Certification Order, pursuant to which Plaintiffs requested that the Court: (a) certify Plaintiffs' claims related to the conversion of the Chase Retirement Plan to the Chase Retirement Cash Balance Plan on or around January 1, 1989 (the "1989 Chase Claims"); and (b) expand the Certified Notice Claims to include the claims of participants who have taken lump sum distributions from the Plan;

WHEREAS, on October 23, 2008, in light of the Second Circuit *Hirt* decision, Defendants filed an unopposed Motion for Partial Judgment on the Pleadings, requesting dismissal, with prejudice, of the Certified Age Claim;

WHEREAS, by Order dated December 4, 2008, the Court granted Defendants' Motion for Partial Judgment on the Pleadings and dismissed, with prejudice, the Certified Age Claim, for the reasons set forth in *Hirt*;

WHEREAS, on October 24, 2008, the Court held a pre-trial status conference in this action and, further, ordered the parties to pursue settlement discussions and mediation;

WHEREAS, between October 25 and December 16, 2008, the parties took depositions of their respective experts and otherwise exchanged materials related to expert discovery pertaining to the merits of the Certified Notice Claims;

WHEREAS, on December 17, 2008, the parties participated in a mediation session before the Honorable Douglas F. Eaton and conducted good faith discussions concerning the potential resolution of the Certified Notice Claims and the Plaintiffs' pre-2002 claims;

WHEREAS, the December 17, 2008 mediation session was unsuccessful;

WHEREAS, between December 18, 2008 and January 21, 2009, the parties continued to discuss, in good faith, the potential resolution of this action, and such discussions have been unsuccessful;

WHEREAS, by Order dated January 6, 2008, the Court denied Plaintiffs' request to certify the 1989 Chase Claims, and amended the scope of the certified Class with respect to the Certified Notice Claims to include participants who have taken lump sum distributions (as amended, the "Certified Class");

WHEREAS, the Certified Notice Claims are set for trial on March 2, 2009;

WHEREAS, the Defendants maintain that there is no merit to the Certified Notice Claims;

WHEREAS, in light of: (a) the *Hirt* decision; and (b) the results of fact and expert discovery concerning the Certified Notice Claims, the Plaintiffs believe that, although they may have a continued disagreement with the Defendants over whether Defendants may have committed certain technical violations of applicable law under ERISA concerning the Certified Notice Claims (which technical violations the Defendants deny), the resources of all parties and the Court will best be served by the voluntary dismissal of the Certified Notice Claims and that the voluntary dismissal of those claims with prejudice is fair, reasonable and adequate to the Class Representatives as well as to the Certified Class;

WHEREAS, pursuant to Fed. R. Civ. P. 15(a)(2) and 41(a)(1)(A)(ii), Plaintiffs may amend their complaint to voluntarily dismiss with prejudice the Certified Notice Claims by a stipulation of dismissal as to the Certified Notice Claims of all parties who have appeared, subject to Fed. R. Civ. P. 23(e);

WHEREAS, Fed. R. Civ. P. 23(e) requires the Court's approval of a voluntary dismissal where such dismissal resolves the claims, issues or defenses of a certified class and, requires notice to class members who will be bound by the dismissal;

WHEREAS, the parties have stipulated that this voluntary dismissal is to be with prejudice to the Class Representatives and the members of the Certified Class with respect to the Certified Notice Claims;

WHEREAS, the Plaintiffs will submit a Proposed Order in the form attached hereto for the Court's consideration;

WHEREAS, on or before any deadline set by the Court in the Proposed Order, the Plaintiffs will file with the Court a motion to approve the voluntary dismissal provided for in this Stipulation, including Plaintiffs' proposal for class notice that will include notice by first class U.S. Mail, interoffice mail, and/or electronic mail;

WHEREAS, Defendants agree to pay the reasonable costs of class notice issued by first class U.S. Mail, interoffice mail, and/or electronic mail;

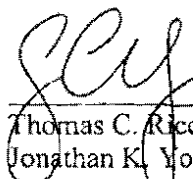
WHEREAS, if the Court deems that notice by publication (in addition to notice by first class U.S. Mail, interoffice mail, and/or electronic mail) is necessary, Plaintiffs have agreed to pay the reasonable costs of publishing a notice;

WHEREAS, neither the Class Representatives herein nor their counsel have received compensation or any other form of relief with respect to the Certified Notice Claims;

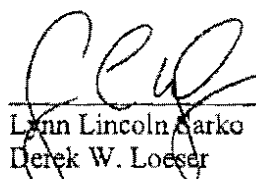
NOW THEREFORE, the parties stipulate and agree as follows:

1. The Certified Notice Claims of the Class Representatives and the Certified Class are voluntarily dismissed with prejudice, subject to the final approval of the Court.
2. Each party shall bear its own costs and fees with respect to the Certified Notice Claims, except as agreed herein with respect to notice of this dismissal to the Certified Class.
3. Subject to the final approval of the Court, Plaintiffs' Complaint is amended to dismiss with prejudice the Certified Notice Claims from Counts IV, V, and VI, but Counts IV, V, and VI shall remain with respect to Plaintiffs' claims that relate to the period prior to January 1, 2002.
4. Nothing in this Stipulation shall affect the status of Plaintiffs' individual notice claims related to plan amendments effective prior to January 1, 2002, which claims are currently pending before this Court.
5. Nothing in this Stipulation shall affect the status of the claims alleged in the pending related action, *Bilello v. JPMorgan Chase Retirement Plan, et al.*, No. 07-cv-7379 (DLC).

Dated: January 30, 2009

 with authority

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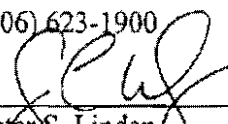
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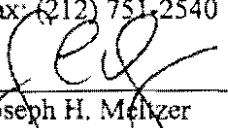
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