

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: NATIONAL CITY CORPORATION	:	Case No. 08-nc-70000
SECURITIES, DERIVATIVE & ERISA	:	JUDGE SOLOMON OLIVER, JR.
LITIGATION	:	
	:	
This Document Relates to:	:	
The ERISA Cases	:	
	:	

ORDER AND FINAL JUDGMENT

This *Action* came on for hearing on 11/30/2010 to determine the fairness of the proposed settlement (the "*Settlement*") which has been presented to the *Court* and which was the subject of this *Court's* Order Granting Preliminary Approval of Class Action Settlement (Doc. ___). The issues having been duly heard and a decision having been duly reached,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

Except as otherwise defined herein, all capitalized and/or italicized terms used in this Order and Final Judgment shall have the same meanings as ascribed to them in the Class Action Settlement Agreement ("*Settlement Agreement*") between *Plaintiffs* and *Defendants*.

1. The *Court* has jurisdiction over the subject matter of the *Action* and over all parties to the *Action*, including all members of the *Settlement Class*.

2. For the sole purpose of settling and resolving the *Action*, the *Court* certifies this action as a class action under FED. R. CIV. P. 23(a) and 23(b)(1). The *Settlement Class* is defined as:

All current and former participants and beneficiaries of the National City Savings and Investment Plan (the "*Plan*") (a) for whose individual accounts the Plan purchased and/or held interests in the National City Stock Fund at any time during the period September 5, 2006 to December 31, 2008, inclusive; or (b) whose

individual accounts in the Plan held interests in any of the mutual funds of Allegiant Asset Management Company (formerly known as “Armada Funds”) offered as investment alternatives in the Plan (the “Allegiant Funds”) at any time during the period March 25, 2002 to December 31, 2009, inclusive.

3. *Named Plaintiffs* Sharon A. Deucher, Deborah Douglas, James Elsinghorst, Barbara Grosick, Charles C. Gunning, Robert Huenefeld, Rita Klabenesh, Rodolfo Ranallo, Jr., George Rithianos, Loretta D. Rogers, Robert Steinberg and Ella R. Whitlow (the “*Named Plaintiffs*”) are appointed as *Settlement Class* representatives, and Stull, Stull & Brody and Barroway Topaz Kessler Meltzer & Check, LLP (collectively “*Co-Lead Counsel*”) are appointed as counsel for the *Named Plaintiffs* and the *Settlement Class* pursuant to FED. R. CIV. P. 23(g).

4. The *Court* finds for the sole purpose of settling and resolving the *Action* that:

(a) The *Settlement Class* is so numerous that it is impractical to bring all *Settlement Class* members before the *Court* individually. National City’s public statements represent that the *Plan* had over 41,150 Participants as of December 31, 2003 (see Complaint ¶ 63 n.5), thus there are likely thousands of *Settlement Class* members.

(b) The class allegations, which are denied by *Defendants*, present common questions of law and/or fact, including:

(i) Whether the *Defendants* breached fiduciary obligations to the *Plan* and participants by causing the *Plan* to offer *National City* stock or the *National City Stock Fund* (used interchangeably herein) as an investment option for the *Plan* at a time when the *Defendants* knew or should have known that the stock was not a prudent investment for the *Plan*;

(ii) Whether the *Defendants* breached fiduciary obligations to the *Plan* and its participants by causing the *Plan* to make and

maintain investments in *National City* stock, at such times when and on such terms and conditions that it was not prudent to do so;

(iii) Whether the *Defendants* breached fiduciary obligations to the *Plan* and its participants by providing incomplete and inaccurate information to participants regarding the propriety of investing in *National City* stock;

(iv) Whether certain *Defendants* breached fiduciary obligations to the *Plan* and its participants by failing to prudently monitor other appointed *Defendants*, such that the *Plan* and its participants' interests were not adequately protected and served;

(v) Whether the *Defendants* breached fiduciary obligations to the *Plan* and participants by causing the *Plan* to offer *Allegiant Funds* on terms, and under circumstances, prohibited by ERISA; and

(v) Whether as a result of the alleged fiduciary breaches engaged in by the *Defendants*, the *Plan* and its participants and beneficiaries suffered losses.

(c) FED. R. CIV. P. 23(a)(3) requires that the claims of the proposed representative plaintiffs be typical of the claims of the proposed class. That requirement is satisfied where the claims of the proposed representative plaintiffs arise from the same alleged course of conduct that gives rise to the claims of the proposed class members, and where the claims are based on the same legal theory. In the present case, the *Named Plaintiffs* allege that they were *Plan* participants or beneficiaries during the *Class Period* with *Plan* accounts that included investments in *National City* stock and/or *Allegiant Funds*, that the

Plan's fiduciaries treated them and all other *Plan* participants alike, and that *Plan*-wide relief is necessary and appropriate under *ERISA*. Under these circumstances, for purposes of the *Settlement* only, and subject to the foregoing, the claims asserted by the *Named Plaintiffs* are sufficiently typical of the claims asserted by the *Settlement Class* as a whole to satisfy FED. R. CIV. P. 23(a)(3).

(d) The requirements of FED. R. CIV. P. 23(a)(4) are also satisfied. The *Court* is satisfied that *Co-Lead Counsel* are qualified, experienced, have represented and are further prepared to represent the *Settlement Class* to the best of their abilities. For the purposes of this *Settlement*, the *Court* finds that the *Named Plaintiffs* have no conflicting interests with absent members of the *Settlement Class*.

(e) The *Settlement Class* satisfies the requirements of FED. R. CIV. P. 23(a), and also the requirements of FED. R. CIV. P. 23(b)(1). Given the *Plan*-representative nature of the *Named Plaintiffs'* breach of fiduciary duty claims, there is a risk that prosecution of separate actions by individual members of the *Settlement Class* could result in adjudications with respect to individual *Settlement Class* members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or that would substantially impair or impede their ability to protect their interests and, there is also a risk of inconsistent dispositions that might prejudice the *Defendants*. This case is appropriate for class certification, for the purposes of this *Settlement*, under FED. R. CIV. P. 23 (b)(1).

(f) The *Court* has also considered each of the elements required by FED. R. CIV. P. 23(g) in order to ensure that *Co-Lead Counsel* will fairly and adequately represent the interests of the *Settlement Class*. *Co-Lead Counsel* has done the work necessary to identify or investigate potential claims in the *Action*, to investigate the allegations made in the *Consolidated Complaint*, including interviewing witnesses, reviewing publicly available information, reviewing documents and materials uncovered in their investigation and during certain discovery and consulting with experts. *Co-Lead Counsel* has extensive and successful experience in handling class actions and claims of the type asserted in this *Action*. They have refined their allegations through a consolidated amended pleading. *Co-Lead Counsel* have also demonstrated in connection with the pending motion to dismiss (Doc. 32) extensive knowledge of the applicable law. The *Court* concludes that *Co-Lead Counsel* have fairly and adequately represented the interests of the *Settlement Class*.

(g) The *Settlement Class* has received proper and adequate notice of the *Settlement Agreement*, the *Fairness Hearing*, *Co-Lead Counsel's* motion for attorneys' fees and reimbursement of expenses and for the *Named Plaintiffs' Case Contribution Awards*, and the *Plan of Allocation*, such notice having been given in accordance with the Order Granting Preliminary Approval of Class Action Settlement. Such notice included individual notice to all members of the *Settlement Class* who could be identified through reasonable efforts, as well as a summary notice via national business wire service, and provided valid, due, and sufficient notice of these proceedings and of the matters

set forth therein, and included information regarding the procedure for the making of objections. Such notice fully satisfied the requirements of FED. R. CIV. P. 23 and the requirements of due process.

5. Pursuant to FED. R. CIV. P. 23(e), the *Court* hereby approves and confirms the *Settlement* embodied in the *Settlement Agreement* as a fair, reasonable and adequate settlement and compromise of the *Action*, and more particularly finds:

(a) The *Settlement* was negotiated vigorously and at arm's-length by counsel for the *Defendants*, on the one hand, and *Co-Lead Counsel* on behalf of the *Settlement Class*, on the other;

(b) This *Action* settled after the *Parties* had fully briefed their respective positions on *Defendants'* motion to dismiss, which was pending when the settlement in principle was reached. The *Settlement* was also reached following arm's-length negotiations among counsel with the assistance of an experienced mediator. *Co-Lead Counsel* and *Defendants* had sufficient information to evaluate the settlement value of the *Action*;

(c) If the *Settlement* had not been achieved, *Named Plaintiffs* and *Defendants* faced the expense, risk, and uncertainty of extended litigation;

(d) The amount of the *Settlement* is fair, reasonable, and adequate. The *Settlement* amount is within the range of settlement values obtained in similar cases;

(e) At all times, *Co-Lead Counsel* and *Named Plaintiffs* have acted independently of *Defendants* and in the interest of the *Settlement Class*; and,

(f) The *Court* has duly considered any objections to the *Settlement* that were filed.

6. The *Court* hereby approves the *Settlement Agreement* and orders that the *Settlement Agreement* shall be consummated and implemented in accordance with its terms and conditions. [The *Court* has duly considered each objection that was filed to the proposed *Settlement*, and each objection is hereby overruled.]

7. The *Plan of Allocation* is approved as fair and reasonable, and the *Parties* are directed to administer the *Plan of Allocation* in accordance with its terms and provisions.

8. Neither the *Plaintiffs* nor the *Defendants* have, for the purposes of any form of estoppel, “prevalled” upon any argument or position related to class certification with respect to this *Action* and *Plaintiffs* would not be prejudiced if (i) this *Settlement* were not approved or such approval were reversed on appeal and (ii) *Defendants* later objected to the certification of any proposed class in this *Action*.

9. *Defendants* have filed a Declaration of Compliance with the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. *Defendants* timely mailed notice of the settlement agreement pursuant to 28 U.S.C. § 1715(b), including notices to the Attorney General of the United States of America, the Federal Reserve Board, the Office of the Comptroller of the Currency and the Attorneys General of all states in which members of the Settlement Class reside. The notice contains the documents and information required by 28 U.S.C. § 1715(b)(1)-(8). The *Court* finds that *Defendants* have complied in all respects with the requirements of 28 U.S.C. § 1715.

10. All persons who have not made their objections to the Settlement in the manner provided in the *Notice* are deemed to have waived any objections by appeal, collateral attack or otherwise.

11. The *Action* is hereby dismissed with prejudice, each party to bear his, her, or its own costs, except as expressly provided herein.

12. The *Court* has approved the following Releases and injunctive relief as set forth in Section 4 of the *Settlement Agreement*:

(a) *Plaintiffs', the Settlement Class's and the Plan's Releases.* Effective upon the entry of the *Judgment*, *Plaintiffs* shall and hereby do conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge, and the *Plan* and the *Settlement Class* shall, by operation of the *Judgment*, be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged any and all claims of any nature whatsoever (including claims for any and all losses, damages, demands, debts, obligations, costs, liabilities, benefits, rights, actions, judgments, suits, unjust enrichment, attorneys' fees, expert or consultant fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification, matters and issues of any kind whatsoever or any other type or nature of legal or equitable relief), whether accrued or not, fixed or contingent, liquidated or unliquidated, whether known, unknown, or unsuspected, in law or equity, matured or unmatured, foreseen or unforeseen, whether class, individual or derivative in nature, whether based on United States federal, state or local statutory or common law or any other law, rule or regulation, whether foreign or domestic, as well as any claim or right obtained by assignment, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim or otherwise (collectively, "Claims"), in any court or other tribunal, arising out of or in any way related to,

directly or indirectly, any or all of the acts, omissions, facts, matters, transactions or occurrences (i) that have been asserted in the Action against any of the *Released Parties*, (ii) that could have been asserted in the Action or in any forum by the *Named Plaintiffs*, members of the *Settlement Class*, or the *Plan*, or any of them or by their heirs, agents, executors, fiduciaries, administrators, beneficiaries, predecessors, successors or assigns (in their capacities as such), against any of the *Released Parties*, which arise out of or are related to (a) the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth or referred to in the *Complaint*, including without limitation any public statement, or any statement in any document relating to the *Plan*, by any *Released Party* during the *Class Period*, and (b) any purchase, sale, or retention of *National City* common stock or units of the National City Stock Fund in connection with the *Plan* during the *Class Period*, or (iii) that would be barred by principles of res judicata had the claims asserted in the *Complaint* been fully litigated and resulted in a *Final* judgment or order.

(i) “*Released Parties*” mean the *Defendants*, any *Person* who served as a trustee or named or functional fiduciary of the *Plan*, and any director, officer, executive, employee or agent of *National City*, together with, for each of the foregoing, any predecessors, *Successors-In-Interest*, present and former *Representatives*, direct or indirect parents, affiliates and subsidiaries, insurers, re-insurers, consultants, accountants, auditors, administrators, investment advisors, financial advisors, investment bankers, underwriters, and any *Person* that controls, is controlled by, or is under common control with any of the foregoing.

(ii) “*Representatives*” mean representatives, attorneys, agents, directors, officers, executives or employees.

(iii) “*Successor-In-Interest*” means a *Person’s* estate, legal representatives, heirs, successors or assigns, including successors or assigns that result from corporate mergers or other structural changes.

(b) *Defendants’ Releases*. Effective upon the entry of the *Judgment*, the *Defendants* absolutely and unconditionally release and forever discharge with prejudice the *Named Plaintiffs*, the *Settlement Class*, and *Co-Lead Counsel* (collectively, the “*Plaintiff Releasees*”) from any and all Claims relating to the institution or prosecution of the *Action* or the settlement of any *Released Claims*, except that this release shall not include claims to enforce the covenants or obligations set forth in the *Settlement Agreement*.

(c) *Scope of Releases*.

(i) The *Parties* intend and agree that the *Releases* granted in this *Judgment* shall be effective as a bar to any and all claims within the scope of their express terms and provisions that are currently unsuspected, unknown, or partially known to exist in their favor that might have affected their decision(s) with respect to the *Settlement*. Accordingly, the *Parties* have stipulated and agreed that by operation of this *Judgment* becoming *Final*, *Named Plaintiffs* shall have expressly waived, and each member of the *Settlement Class* and the *Plan* shall be deemed to have waived, and the *Defendants* shall have expressly waived, any and all rights and benefits respectively conferred upon them by the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common laws of any other State, Territory, or other jurisdiction. Section 1542 reads in pertinent part:

A general release does not extend to claims that the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Named Plaintiffs, on their own behalf and on behalf of all members of the *Settlement Class* and on behalf of the *Plan*, and the *Defendants* each hereby acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other State, Territory, or other jurisdiction was separately bargained for and that neither *Named Plaintiffs*, on the one hand, nor the *Defendants*, on the other, would enter into the *Settlement Agreement* unless it included a broad release of unknown claims. *Named Plaintiffs*, on their own behalf and on behalf of all members of the *Settlement Class* and on behalf of the *Plan*, and the *Defendants* each expressly agree that all release provisions in the *Settlement Agreement* shall be given full force and effect in accordance with each and all of their express terms and provisions, including those terms and provisions relating to unknown, unsuspected, and future claims, demands, and causes of action. *Named Plaintiffs* assume for themselves, and on behalf of the *Settlement Class*, the *Plan*, and any party acting on behalf of the *Plan* or the *Settlement Class*, and the *Defendants* assume for themselves, the risk of his, her or its respective subsequent discovery or understanding of any matter, fact, or law, that if now known or understood, would in any respect have affected his, her, or its entering into the *Settlement Agreement*.

(d) Nothing in this *Judgment* shall release, bar, waive, or otherwise affect the *Claims* that actually have been asserted, before the date of execution of the *Settlement Agreement*, by or on behalf of the *Plan* and/or any member of the Settlement Class in: 1) the *Securities Action*; 2) *Tomascik et al. v. National City Corporation et al*, No. 1:09-CV-00251-SO (N.D. Ohio); 3) *Parker et al. v. National City Corporation et al.*, No. CV-08-657360 (Cuyahoga Cty., Ohio, Common Pleas Ct.); or 4) *Reagan v. National City Corporation et al.*, No. 1:08-nc-70015 (N.D. Ohio). Further, nothing in this *Judgment* shall preclude the *Plan* from filing a claim

in connection with any settlement or judgment fund established in any action referenced in this sub-paragraph.

(i) The releases set forth in this section are not intended to include the release of any rights or duties of the parties arising out of the *Settlement Agreement*, including the express warranties and covenants contained herein.

13. The *Named Plaintiffs*, the *Plan*, the *Plan's* fiduciaries, and all members of the *Settlement Class* are each hereby premanently barred and enjoined from instigating, instituting, commencing, maintaining or prosecuting any action in any court or tribunal that asserts any *Released Claim* against any *Released Party*.

14. Neither this Order and Final Judgment, the *Settlement Agreement*, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein, shall be:

(i) offered or received against the *Defendants* or any other *Released Party* as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the *Defendants* with respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has been or could have been asserted in the *Action* or in any litigation, or the deficiency of any defense that has been or could have been asserted in the *Action* or in any proceeding, or of any liability, negligence, fault, or wrongdoing of the *Defendants*;

(ii) offered or received against the *Defendants* or any other *Released Party* as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any *Defendant* or any of the *Released Parties*;

(iii) offered or received against the *Defendants* or any other *Released Party* as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the *Defendants* or *Released Parties*, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the *Settlement Agreement*; provided, however, that *Defendants* or *Released Parties* may refer to it to effectuate the liability protection granted them hereunder;

(iv) construed against the *Defendants* or any other *Released Party* as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial or of the validity of any claims in the *Action* or of any wrongdoing; or

(v) construed as or received in evidence as an admission, concession or presumption against the *Named Plaintiffs* or any of the *Settlement Class* members that any of their claims are without merit, or that any defenses asserted by the *Defendants* have any merit, or that damages recoverable under the *Complaint* would not have exceeded the *Settlement Fund*.

15. *Co-Lead Counsel* are hereby awarded 18.6% of the *Class Settlement Amount* as and for their attorneys' fees, which sum the Court finds to be fair and reasonable. *Co-Lead Counsel* are hereby awarded \$ 160,821.50 in reimbursement of their litigation expenses, which expenses the Court finds to have been reasonably incurred. *Co-Lead Plaintiffs* are hereby awarded case contribution awards in the amount of \$ 7500.00 each, and the other *Named Plaintiffs* are hereby awarded case contribution awards in the amount of \$ 2000.00 each. The award of attorneys' fees and expenses, with interest on such amounts from the date the *Settlement Fund* was funded to the date of payment at the same net rate the *Settlement Fund*

earns, and the case contribution awards shall be paid from the *Settlement Fund* pursuant to the terms of the *Settlement Agreement*. Any modification or change in the award of attorneys' fees and expenses or in the *Case Contribution Awards* to the *Named Plaintiffs* that may hereafter be approved shall in no way disturb or affect this *Judgment* or the releases provided hereunder and shall be considered separate from this *Judgment*.

16. This *Action* is dismissed with prejudice. The *Court* shall retain exclusive jurisdiction to resolve any disputes or challenges that may arise as to the performance of the *Settlement Agreement* or any challenges as to the performance, validity, interpretation, administration, enforcement, or enforceability of the *Class Notice*, the *Judgment*, the *Settlement Agreement* or the termination of the *Settlement Agreement*.

17. All other provisions of the *Settlement Agreement* are incorporated into this *Judgment* as if fully rewritten herein. To the extent that the terms of this *Judgment* conflict with the terms of the *Settlement Agreement*, the *Settlement Agreement* shall control.

18. Without further order of the *Court*, the parties may agree to reasonable extensions of time to carry out any of the provisions of the *Settlement Agreement*.

19. In the event that the *Settlement Agreement* is terminated in accordance with its terms, this *Judgment* shall be rendered null and void, *ab initio*, and shall be vacated *nunc pro tunc*, and this *Action* shall for all purposes with respect to the *Parties* revert to its status as of February 9, 2010. The *Parties* shall be afforded a reasonable opportunity to negotiate a new case management schedule.

IT IS SO ORDERED.

DATED: 11/30/ 2010

/s/SOLOMON OLIVER, JR.

THE HONORABLE SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE