

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

BARRY BLANK, on behalf of himself and
all others similarly situated,

Plaintiff,

-against-

VICTOR JACOBS, et. al,

Defendants.

Civil Action No. 03-C V-2353
(Consolidated No. 03-C V-2111)

CLASS ACTION

AMENDED ORDER PRELIMINARILY APPROVING SETTLEMENTS

WHEREAS, a consolidated class action is pending before this Court, *Blank v. Jacobs, et al.*, Civil Action No. 03-CV-2111 (E.D.N.Y.), and

WHEREAS, the Settling Parties have applied to the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order approving the settlement of the Action as to them in accordance with the Stipulation of Settlement dated as of February 8, 2010 (the "Andersen Stipulation"), which, together with the Exhibits annexed thereto and the Stipulation of Settlement dated July __, 2010 (the "KPMG Stipulation"), sets forth the terms and conditions for a proposed settlement of the Action as to Arthur Andersen LLP ("the Andersen Settlement") and KPMG LLP (the "KPMG Settlement") and for dismissal of the Action with prejudice as to Arthur Andersen LLP ("Arthur Andersen") and KPMG LLP ("KPMG");

WHEREAS, both the Andersen Stipulation and the KPMG Stipulation provide for the conditional certification of the Settlement Class solely for purposes of the Andersen Settlement and the KPMG Settlement; and

WHEREAS, the Court has read and considered the Andersen Stipulation and the KPMG Stipulation and the Exhibits annexed thereto and has read and considered all other papers filed

and proceedings had herein, and is otherwise fully informed in the premises, and with good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order (the "Preliminary Approval Order") incorporates by reference the definitions in both the Andersen Stipulation and the KPMG Stipulation, and all capitalized terms used herein shall have the same meanings set forth in the Stipulations.

2. The Court preliminarily approves the Andersen Stipulation and the KPMG Stipulation, including the releases contained therein, and the Andersen Settlement and the KPMG Settlement as being fair, reasonable, and adequate to the Settlement Class.

3. Solely for purposes of both Stipulations and the Settlements, the Court now finds and concludes that:

(a) With respect to all Released Claims as defined in the Stipulations, particularly in light of the Andersen Settlement and the KPMG Settlement, (1) the Members of the Settlement Class are so numerous that joinder of all class members in the Action is impracticable; (2) there are questions of law and fact common to the Settlement Class; (3) the claims of Lead Plaintiffs are typical of the claims of the Settlement Class; and (4) in negotiating and entering into both the Andersen Stipulation and the KPMG Stipulation, Lead Plaintiffs and their counsel have fairly and adequately represented and protected the interests of all Settlement Class Members; and

(b) With respect to all Released Claims (1) the questions of law and fact that are common to the Settlement Class predominate over any individual questions; and (2) a class action is superior to other available methods for the fair and efficient adjudication of this controversy, considering (i) the interests of the Settlement Class Members in individually

controlling the prosecution of separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by Settlement Class Members, (iii) the desirability or undesirability of concentrating the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the Action.

4. Solely for purposes of both the Stipulations and Settlements, the Settlement Class is hereby certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure in accordance with the following definition as set forth in the Andersen Stipulation and the KPMG Stipulation: "Settlement Class" means all Persons (and their beneficiaries) who purchased or acquired any Class A Common Stock of Allou between June 22, 1998 and April 9, 2003, inclusive. Excluded from the Settlement Class are Defendants, the officers and directors of Allou, and members of their immediate families or their successors, heirs, and legal representatives. Also excluded from the Settlement Class are those Persons who timely and validly request exclusion from the Settlement Class, to the extent that they are able to do so under Rule 23 of the Federal Rules of Civil Procedure, pursuant to the Mailed Notice (as defined in ¶6, below).

5. Solely for purposes of both Stipulations and Settlements, Lead Plaintiffs are hereby certified as class representatives pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

6. The Court approves, as to form and content, the Notice of Pendency and Partial Settlement of Class Action annexed hereto as Exhibit B-1 (the "Mailed Notice").

7. The Court approves, as to form and content, the Summary Notice for Publication annexed hereto as Exhibit B-2 (the "Summary Notice").

8. The date and time of the Settlement Hearing shall be added to the Mailed Notice and the Summary Notice before they are mailed and published, respectively, in accordance with ¶10, below.

9. The Court finds that the mailing, publication and distribution of the Mailed Notice and Summary Notice substantially in the manner and form set forth, constitutes the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who can be identified through reasonable effort, and constitutes valid, due and sufficient notice to all Persons entitled thereto, complying fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

10. The Notice and Claims Administrator is empowered to supervise and administer the notice procedure, as set forth below:

(a) Commencing on or before September 3, 2010, the Notice and Claims Administrator shall mail or cause to be mailed, by first class mail, postage prepaid, copies of the Mailed Notice to all Settlement Class Members who can be identified by Counsel for Lead Plaintiffs with reasonable effort at each such Settlement Class Member's last known address; and

(b) On or before September 15, 2010, the Notice and Claims Administrator shall cause the Summary Notice to be published on PR Newswire on the Internet and in a hard copy journal of relevant distribution, Investor's Business Daily.

11. At or prior to the Settlement Hearing (as defined below), Counsel for Lead Plaintiffs shall file with the Court and serve on counsel for Andersen and counsel for KPMG proof by declaration or affidavit of the mailing and publication described in ¶10, above.

12. Settlement Class Members who wish to exclude themselves from the Settlement Class must do so in accordance with the instructions contained in the Mailed Notice.

13. Unless otherwise ordered by the Court, all Persons who fall within the definition of the Settlement Class and who do not timely and validly request to be excluded from the Settlement Class in accordance with the instructions set forth in the Mailed Notice shall be subject to and bound by the provisions of the Andersen Stipulation and the KPMG Stipulation, the releases contained therein, and the Judgment with respect to all Released Claims as defined in the Stipulations, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Gross Settlement Fund.

14. A hearing (the "Settlement Hearing") shall be held on November 19, 2010 at 11:30 a.m., before the Honorable Joanna Seybert, United States District Judge, at the United States District Court for the Eastern District of New York, Long Island Courthouse, 100 Federal Plaza, Central Islip, New York 11722-4438, to determine (a) whether the Andersen Settlement and the KPMG Settlement are fair, reasonable and adequate and should be approved by the Court; (b) the proposed distribution of \$1,750,000 from all settlements in this Action less court awarded litigation expenses of Lead Plaintiffs; (c) the application by Counsel for Lead Plaintiffs for an award of attorneys' fees and reimbursement of litigation expenses; and (d) whether an Order of Final Judgment and Dismissal, substantially in the form of Exhibit A to the KPMG Stipulation, should be entered herein.

15. All papers in support of the Settlement shall be filed at least seven (7) days prior to the Settlement Hearing.

16. Any Settlement Class Member may appear and show cause (if he, she or it has any) why the Court should or should not (a) approve the Andersen Settlement and the KPMG Settlement as fair, reasonable and adequate; (b) approve the proposed distribution of \$1,750,000

from all settlements in this Action less court awarded litigation expenses of Lead Plaintiffs; (c) approve the application by Counsel for Lead Plaintiffs for an award of attorneys' fees and reimbursement of litigation expenses; and (d) enter the Order of Final Judgment and Dismissal substantially in the form annexed as Exhibit A to the KPMG Stipulation provided, however that no Person shall be heard with respect to, or shall be entitled to contest, the foregoing matters unless on or before November 5, 2010, that Person has served by hand or by first class mail notice of his, her or its intention to appear, setting forth briefly each objection and the basis therefor, together with copies of any papers and briefs in support of said objections and proof of membership in the Settlement Class, upon Stephen T. Rodd, Stephanie Amin-Giwner, Abbey Spanier Rodd & Abrams, LLP, 212 East 39th Street, New York, New York 10016 (on behalf of the Lead Plaintiffs); upon Christopher Harris, Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (on behalf of Arthur Andersen); and upon Kevin Burke, Howrey LLP, 601 Lexington Avenue, Floor 54, New York, New York 10022 (on behalf of KPMG); and has filed said objections, papers and briefs with the Court. Unless otherwise ordered by the Court, any Settlement Class Member who does not make his, her, or its objection in the manner provided for herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the foregoing matters.

17. The Court may adjourn the Settlement Hearing from time to time and without further notice to the Settlement Class. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modifications as may be consented to by the Settling Parties and without further notice to the Settlement Class. The Court further reserves the right to enter the Order of Final Judgment and Dismissal, *inter alia*, dismissing the Action with prejudice

as to Arthur Andersen and KPMG at or after the Settlement Hearing and without further notice to the Settlement Class.

18. Upon the Effective Date, Lead Plaintiffs and each of the Settlement Class Members, and regardless of whether any such Lead Plaintiff or Settlement Class Member ever seeks or obtains by any means, including, without limitation, by submitting a Proof of Claim and Release, any distribution from the Gross Settlement Fund, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims as defined in the Stipulations against the Andersen Releasees and KPMG and shall have covenanted not to sue the Andersen Releasees and KPMG with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Released Claim against the Andersen Releasees and KPMG. Class Members must submit their completed Proof of Claim form, with all required documents postmarked no later than January 12, 2011.

19. Except as otherwise provided in the Andersen Stipulation and KPMG Stipulation, no Person who is not a Settlement Class Member or counsel for one or more of the Lead Plaintiffs shall have any rights to any portion of the Gross Settlement Fund.

20. Banks, brokerage firms, institutions, and other Persons who are nominees that purchased Class A Common Stock of Allou during the Settlement Class Period shall, within ten (10) calendar days of receiving the Mailed Notice (a) send the Mailed Notice to all such beneficial owners, or (b) send a list of the names and addresses of such beneficial owners to the Notice and Claims Administrator, in which event the Notice and Claims Administrator shall promptly mail the Mailed Notice to such beneficial owners. The Mailed Notice will advise such nominees that their reasonable costs in providing the Mailed Notice to such beneficial owners,

will be reimbursed from funds made available pursuant to the Stipulations of Settlement in the bankruptcy proceeding entitled *In re Allou Distributors, Inc., et al.*, Case No. 03-82321-511 (ESS) (Bankr. E.D.N.Y.).

21. All reasonable costs and expenses incurred in identifying and providing notice to Settlement Class Members and in administering the Gross Settlement Fund shall be paid from funds made available pursuant to the Bankruptcy Stipulations.

22. The Court retains jurisdiction over all proceedings arising out of or related to the Andersen Stipulation, the KPMG Stipulation, the Andersen Settlement and/or the KPMG Settlement.

23. If for any reason the Andersen Settlement and/or the KPMG Settlement does not become effective, this Preliminary Approval Order shall be rendered null and void and shall be vacated *nunc pro tunc*, and the provisions of ¶2.3 of the Andersen Stipulation and the KPMG Stipulation shall apply.

24. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of this Preliminary Approval Order or the Andersen Stipulation and the KPMG Stipulation.

25. Pending final determination as to whether the Andersen Settlement and the KPMG Settlement as set forth in the respective Stipulations should be approved, no Settlement Class Member shall commence, prosecute, pursue or litigate any Released Claim against Arthur Andersen or KPMG, whether directly, representatively or in any other capacity, and regardless of whether or not any such Settlement Class Member has appeared in the Action.

IT IS SO ORDERED.

DATED: 8-30-10

/s/ JOANNA SEYBERT
HONORABLE JOANNA SEYBERT
United States District Court Judge