

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Robert Cothran, as the representative of a class of similarly situated persons, and on behalf of the Electric Supply Employee Stock Ownership Plan,

Plaintiff,

v.

George M. Adams Jr., Sandra Brock, Shaker Brock, Kelly A. Pound, and Harold Irwin,

Defendants.

Case No. 8:23-cv-00518-CEH-CPT

DECLARATION OF MARK E. THOMSON IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Mark E. Thomson, declare and state as follows:

1. I am a partner at the law firm of Engstrom Lee LLC (“Engstrom Lee”), and am one of the attorneys of record for Plaintiff Robert Cothran in the above-captioned action. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

Settlement Terms

2. Attached hereto as **Exhibit A** is a true and correct copy of the proposed Class Action Settlement Agreement. The Settlement resolves Plaintiff’s class action claims against George M. Adams Jr., Sandra Brock, Shaker Brock, Kelly A. Pound, and Harold Irwin (collectively, “Defendants”) regarding Defendants’ administration

and management of the Electric Supply Employee Stock Ownership Plan (the “Plan”).

3. The Settlement Agreement applies to the following Class:

All participants of the ESOP who had an account balance greater than zero at any time between January 1, 2016 and April 14, 2021, excluding Defendants.

Settlement Agreement ¶ 1.44. Based on information provided by the Plan’s recordkeeper, there are 197 Class Members

4. Under the terms of the proposed Settlement, a Gross Settlement Amount of \$1,100,000 will be paid to resolve the claims that were asserted in the Action. *Settlement Agreement* ¶ 1.23. The Gross Settlement Amount represents approximately 40% to 60% of the alleged losses caused by Defendants’ mismanagement of the Plan’s non-company stock investments, depending on the benchmark used for purposes of calculating damages.¹

5. After accounting for any Attorneys’ Fees and Costs and Administrative Expenses approved by the Court, the Net Settlement Amount will be distributed to eligible Class Members in accordance with the Plan of Allocation in the Settlement. *Settlement Agreement* ¶¶ 5.1-5.6.

6. Under the Plan of Allocation, an Average Settlement Score will be calculated for each Class Member based on each Settlement Class Member’s average

¹ Plaintiff used two models to calculate the alleged losses. The first model was based on the returns of the iShares Micro-Cap ETF, a microcap index fund. The second model was based on the returns of the Vanguard 500 Index Fund (VFFSX), an S&P 500 index fund.

yearly balance in the Plan's Other Investments Account during the Class Period. *Id.*

¶ 5.1. Each Class Member will then receive a pro rata share of the Net Settlement Amount based on their Average Settlement Score in relation to other Class Members. *Id.*

7. Class members will have the opportunity to submit a Rollover Form allowing them to have their distribution rolled over into an individual retirement account or other eligible employer plan. *Id.* ¶ 5.2. Class Members who do not timely submit a Rollover Form will be sent a check. *Id.*

8. In the absence of a settlement, Plaintiffs would have faced uncertainty and risk in connection with their claims. Given these risks (which are outlined in the accompanying Memorandum of Law), and the costs and potential delays associated with further litigation, I believe that the Settlement is fair, reasonable, and adequate.

Case Proceedings

9. Prior to filing the Complaint in this action, my colleagues and I conducted a thorough investigation of the claims that were asserted and the factual basis for those claims. As a result of our investigatory efforts, we were able to file a detailed, 39-page Complaint on March 8, 2023 (Dkt. 1). We subsequently filed a First Amended Complaint (Dkt. 23).

10. On June 8, 2023, Defendants filed a motion to dismiss the First Amended Complaint. Dkt. 36. Plaintiff filed a memorandum of law in opposition to Defendants' motion on June 29, 2023 (Dkt. 43), to which Defendants replied on July

21, 2023 (Dkt. 48). Defendants' motion to dismiss remained pending at the time the Parties filed a Notice of Settlement. Dkt. 51.

11. While Defendants' motion to dismiss was pending, Plaintiff commenced discovery. On August 23, 2023, Plaintiff served 63 Requests for Production of Documents. Plaintiff also served document subpoenas on multiple third-parties during this period. Plaintiffs received more than 14,000 pages in response to these discovery requests.

12. Following review of these materials, Plaintiff concluded that settlement negotiations should concern the claim that Defendants imprudently invested the Plan's assets that were not invested in company stock, and not the claim that Defendants failed to obtain adequate consideration in the sale of the Plan's shares. The Parties engaged in settlement discussions over the course of several months. After extensive arm's length negotiations, the parties reached a settlement in principle, and then prepared the comprehensive Settlement Agreement that is the subject of this motion.

13. The \$1.1 million Gross Settlement Amount represents approximately 40% to 60% of the losses caused by Defendants' alleged mismanagement of the Plan's non-company stock investments, depending on the benchmark used for purposes of calculating damages. Plaintiff used two models to calculate the allegedly losses. The first model was based on the returns of a microcap index fund. The second model was based on the returns of an S&P 500 index fund. For the reasons explained above, I believe the Settlement is fair, reasonable, and adequate.

Law Firm Overview

14. I am licensed to practice law in the State of Minnesota, and also have been admitted to practice in the United States District Court for the District of Minnesota, the United States District Court for the Northern District of Illinois, and the United States Court of Appeals for the Ninth Circuit.

15. I received my law degree from Harvard Law School in 2016 and my B.A. from the University of Minnesota in 2011.

16. I have been actively engaged in the practice of law since 2016, and have substantial class action experience. My practice has focused exclusively on class action ERISA cases.

17. Engstrom Lee is a boutique ERISA and employment firm. In 2022 I, along with three of my current partners (Carl Engstrom, Jennifer Lee, and Brandon McDonough), separated from Nichols Kaster PLLP to found Engstrom Lee. Prior to separating from Nichols Kaster, we were attorneys in that firm's ERISA practice group, which had recovered more than \$300 MM for its clients since the practice was founded in 2015.

18. Engstrom Lee's lawyers, including myself, have been appointed class counsel for litigation or settlement purposes in numerous class action ERISA cases, as set forth below:

- *Andrus v. NY Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y.);
- *Baker v. John Hancock Life Ins. Co. (U.S.A.)*, No. 1:20-cv-10397 (D. Mass.);

- *Beach v. JPMorgan Chase Bank, N.A.*, No. 1:17-cv-00563 (S.D.N.Y.);
- *Bhatia v. McKinsey & Co., Inc.*, No. 1:19-cv-01466 (S.D.N.Y.);
- *Brotherston v. Putnam Invs., LLC*, No. 1:15-cv-13825 (D. Mass.);
- *Clark v. Oasis Outsourcing Holdings Inc.*, No. 9:18-cv-81101 (S.D. Fla.);
- *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-00375 (W.D.N.Y.);
- *Intravaia v. Nat'l Rural Elec. Coop. Assoc.*, No. 1:19-cv-00973 (E.D. Va.);
- *Johnson v. Fujitsu Tech. & Bus. of America, Inc.*, No. 5:15-cv-03698 (N.D. Cal.);
- *Karpik v. Huntington Bancshares Inc.*, No. 2:17-cv-1153 (S.D. Ohio);
- *Kirk v. Ret. Comm. of CHS/Community Health Sys., Inc.*, No. 3:19-cv00689 (M.D. Tenn.);
- *Larson v. Allina Heath Sys.*, No. 0:17-cv-03835 (D. Minn.);
- *Main v. American Airlines, Inc.*, No. 3:16-cv-01033 (N.D. Tex.);
- *Mass v. Regents of the Univ. of California*, No. RG17-879223 (Alameda County Super. Ct.);
- *Moitoso v. FMR LLC*, No. 1:18-cv-12122 (D. Mass.);
- *Moreno v. Deutsche Bank Americas Holding Corp.*, No. 1:15-cv-09936 (S.D.N.Y.);
- *Reetz v. Lowe's Co.*, No. 5:18-CV-00075 (W.D.N.C.);
- *Sims v. BB&T Corp.*, No. 1:15-cv-00732 (M.D.N.C.);
- *Stevens v. SEI Invs. Co.*, No. 2:18-cv-04205 (E.D. Pa.);
- *Toomey v. Demoulas Super Markets, Inc.*, No. 1:19-cv-11633 (D. Mass);

- *Urakhchin v. Allianz Asset Mgmt. of America, L.P.*, No. 8:15-cv-01614 (C.D. Cal.);
- *Velazquez v. Massachusetts Fin. Servs. Co.*, No. 1:17-cv-11249 (D. Mass.); and
- *Wildman v. American Century Servs., LLC*, No. 4:16-cv-00737 (W.D. Mo.).

19. Many of these cases concerned the prudence of investment options, as this case does. Engstrom Lee's lawyers, including myself, settled many of the above cases, while taking others to trial.

20. My partners and I have also been invited to speak at industry and bar events on ERISA class actions.

21. Based on my personal experience and Engstrom Lee's firm-wide experience litigating class action ERISA cases, I believe that we were well-equipped to negotiate the Settlement that was reached in this case. For further background, a copy of our firm resume is attached as **Exhibit B**.

Named Plaintiff

22. Plaintiff Robert Cothran has been actively engaged in the litigation and provided documents to counsel used to draft the Complaint and the Amended Complaint.

Settlement Administrator

23. Analytics Consulting, LLC ("Analytics") has been selected to serve as the settlement administrator in this matter. Analytics has extensive experience administering class action settlements, including numerous ERISA settlements in this circuit. A copy of Analytics' company profile is attached as **Exhibit C**.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 16, 2024

/s/Mark E. Thomson
Mark E. Thomson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of February, 2024, the foregoing was electronically filed using the CM/ECF system, causing a Notice of Electronic Filing to be transmitted to all counsel of record.

/s/Mark E. Thomson
Mark E. Thomson