

**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 UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS & ADMINISTRATIVE EXPENSES**

I, Mark E. Thomson, hereby submit this Declaration in support of Plaintiffs' Motion for Award of Attorneys' Fees, Costs & Administrative Expenses. This is the second Declaration that I have submitted in this action. My prior declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement (Dkt. 56) is attached hereto as **Exhibit 1**.

**PROFESSIONAL BACKGROUND**

1. I am a partner at the law firm of Engstrom Lee LLC ("Engstrom Lee"),

and I am one of the attorneys appointed by the Court to represent the Settlement Class<sup>1</sup> in the above-captioned action. *See* Dkt. 62.

2. 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. I am in good standing in every jurisdiction in which I have been admitted to practice.

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

4. 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.

### **LAW FIRM OVERVIEW**

5. 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.

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<sup>1</sup> Capitalized terms in this Declaration have the meaning assigned in the Settlement Agreement. *See* Dkt. 56-1.

6. Engstrom Lee's lawyers, including myself, have recently been appointed class counsel for Settlement purposes in a complex ESOP class action in this district, *Colon v. Johnson*, No. 8:22-cv-888-TPB-TGW (M.D. Fla.). Engstrom Lee's lawyers, including myself, have also been appointed class counsel for litigation or Settlement purposes in numerous other 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.).

7. 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.

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

9. 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 2**.

**WORK PERFORMED BY CLASS COUNSEL**

10. As a result of our firm's experience handling similar cases, we were able to efficiently and effectively litigate this action and achieve a substantial recovery for the Settlement Class.

11. Engstrom Lee has dedicated a significant amount of time and labor to this case. Among other things, we:

- investigated publicly available information, reviewed the Class Representative's account statements and other documents, and conducted an analysis of the Plan's investments;
- consulted with the Class Representative regarding his experience with the Electric Supply Employee Stock Ownership Plan;
- investigated potential class-wide claims under ERISA;
- drafted and filed an extensive Class Action Complaint;
- drafted and filed an Amended Class Action Complaint after reviewing documents provided by Defendants;
- researched and drafted a 20-page Response to Defendants' Motion to Dismiss;
- requested and obtained written discovery from Defendants and third-parties to obtain records and answers on matters pertinent to Plaintiff's claims;
- analyzed over 14,000 pages of documents received in discovery;

- evaluated the potential merits of Plaintiff's claims and concluded that Settlement negotiations should concern the claim that Defendants imprudently invested the Plan's non-stock assets, and not the claim that Defendants failed to obtain adequate consideration in the sale of the Plan's shares;
- advocated for significant monetary relief on behalf of the Settlement Class over the course of several months of arm's-length Settlement negotiations with Defendants' counsel;
- negotiated a comprehensive Settlement Agreement with Defendants, including the associated Notice, the Rollover Form, and proposed order for preliminary approval of the Settlement;
- solicited and analyzed bids from multiple Settlement administrators to minimize the cost of administration and ensure the Settlement would be administered by a capable administrator;
- selected Analytics Consulting LLC ("Analytics") as the Settlement Administrator, and oversaw the work of Analytics to administer the Settlement;
- drafted the motion for preliminary approval of the Settlement and certification of the Settlement Class, and supporting documents;
- worked with Defendants and Analytics to prepare the list of Settlement Class Members who would be sent a Notice;

- monitored and confirmed Analytics' successful mailing of the Settlement Notices on June 28, 2024;
- reviewed and approved the Settlement website and phone line for Settlement Class Members to receive additional information about the Settlement;
- monitored and confirmed that the initial contribution to the Qualified Settlement Fund required by the Settlement Agreement was made by Defendants;
- researched, drafted, and filed the instant motion for approval of attorneys' fees, costs, and administrative expenses; and
- counseled the Class Representative throughout the case.

12. After the date of this Declaration, we expect to perform additional work on behalf of the Settlement Class, including:

- Researching and drafting Plaintiff's motion for final approval of the Settlement;
- responding to any objections to the Settlement;<sup>2</sup>
- communicating with the Independent Fiduciary engaged by Defendants as part of the independent review of the proposed release on behalf of the Plan (as required by Prohibited Transaction Class Exemption 2003-39);

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<sup>2</sup> As of the date of this Declaration, we have received no objections to the Settlement.

- preparing for and attending the Fairness Hearing;
- if final approval is granted, supervising Analytics and the Escrow Agent to ensure proper and efficient distribution of payments to Settlement Class Members and compliance with other terms of the Settlement Agreement and the Court's Final Approval Order;
- responding to questions from Settlement Class Members; and
- taking other actions necessary to support the Settlement until the conclusion of the Settlement Period.

Based on my experience supporting and supervising similar Settlements, I expect that Class Counsel will expend at least an additional 50 hours of professional time after the date of this Declaration.

13. The work summarized above required the efforts of numerous attorneys and professional staff at Engstrom Lee. In aggregate, Class Counsel have expended over 500 hours prosecuting this case.

14. All of the work of Class Counsel was or will be performed on a contingent basis. To date, Class Counsel have not been compensated for any of this work.

15. In my professional opinion, and based on my personal knowledge of the work that was performed and the requirements of this case and similar cases, the time expended on this action by Class Counsel was reasonable and necessary. This work was required to prosecute and resolve the action, and to obtain approval of the



Settlement and administer the Settlement. Likewise, anticipated work supporting and supervising the Settlement after the date of this Declaration is typical and necessary to complete a Settlement of this kind.

### **CLASS COUNSEL'S COSTS AND EXPENSES**

16. In connection with the action, Engstrom Lee also advanced costs and expenses.

17. Because our firm handled this action on a contingent bases, we have not received reimbursement for any of these costs and expenses.

18. As of the date of this Declaration, Class Counsel has incurred \$3,642.37 in costs and expenses in connection with this action. These costs and expenses are broken down below:

<b>Category</b>	<b>Costs Incurred</b>
Westlaw/PACER/Research	\$1,425.11
Filing Fees and Service of Process	\$ 942.60
eDiscovery	\$1,274.66
<b>TOTAL</b>	<b>\$3,642.37</b>

19. These expenses do not include expenses of Settlement administration, which are broken out separately below. *See infra* at ¶¶ 22-24.

20. In my professional opinion, and based on my experience prosecuting this action and overseeing the conduct of the litigation, all of these expenses were reasonable and necessarily incurred in connection with the action.

21. In addition to these expenses, it is anticipated Engstrom Lee will incur additional expenses in connection with this case going forward, including certain

expenses that will be incurred in connection with appearing for the final approval hearing.

### **SETTLEMENT ADMINISTRATION EXPENSES**

#### ***Analytics Consulting LLC***

22. Analytics Consulting LLC (“Analytics”) is the appointed Settlement administrator for this Class Action Settlement. Analytics was selected by Class Counsel following a competitive bidding process because it has extensive experience handling class action settlements, including ERISA settlements, and submitted the most competitive overall bid.

23. It will cost \$12,716 to administer the Settlement in this action. Analytics has diligently carried out its duties as Settlement Administrator by, among other things, (1) working with Class Counsel and Defense Counsel to assemble a list of Settlement Class Members based on data supplied by Plan recordkeeper; (2) preparing and mailing the Notices; (3) searching for valid addresses for any Settlement Class Members whose Notices were returned as undeliverable; (4) establishing a telephone support line for Class Members; (5) creating and maintaining the Settlement website; and (6) communicating regularly with Class Counsel regarding the status of Settlement administration. In addition, upon final approval of the Settlement, Analytics will facilitate delivery of Settlement payments to Settlement Class Members as provided by the Settlement. The requested amount is reasonable in light of the work entailed and the bids that our firm received.

*Independent Fiduciary*

24. The Settlement will generate additional administrative expenses relating to the review of the proposed release on behalf of the Plan by the Court-appointed independent fiduciary. Under the Settlement Agreement, Defendants are responsible for arranging the required review by the Settlement Fiduciary, and the expense is an Administrative Expense that may be paid from the Qualified Settlement Fund. Defendants have engaged Newport Trust Company to perform the role of the Settlement Fiduciary, and the fee for Newport Trust Company's services in this matter will be \$12,500.

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

Dated: July 30, 2024

/s/Mark E. Thomson  
Mark E. Thomson

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 30th day of July, 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