UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

Martha Walther, Trent Kumfer, Jayme Lea, Megan Kelsey, Dave Lowe, Carol Whisler, and Michele Porter, as representatives of a class of similarly situated persons, and on behalf of the 80/20, Inc. Employee Stock Ownership Plan, Plaintiffs, v. John Wood and Brian Eagle, Defendants.	1:23-cv-00294-GSL-ALT

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION

Plaintiffs Martha Walther, Trent Kumfer, Jayme Lea, Megan Kelsey, Dave Lowe, Carol Whisler, and Michele Porter ("Plaintiffs") submit this Memorandum in support of their Unopposed Motion for Preliminary Approval of Class Action Settlement with Defendants John Wood, Brian Eagle, Patrick Buesching, Patrice Mauk, Rodney Strack, MPE Partners II, L.P., MPE Partners III, L.P., and Pareto Efficient Solutions, LLC regarding the management and termination of the 80/20, Inc. Employee Stock Ownership Plan (the "Plan" or "ESOP"). Under the Settlement, a Gross Settlement Amount of $7 million will be paid to resolve the claims of the Settlement Class. This is a significant recovery for the Class and compares favorably to negotiated settlements in similar cases brought under the Employee Retirement Income Security Act of 1974 ("ERISA").

As elaborated below, the Settlement is fair, reasonable, and adequate, and warrants preliminary approval so that the proposed Settlement Notice can be sent to the Settlement Class. Accordingly, Plaintiffs respectfully request that the Court enter the proposed Preliminary Approval Order submitted herewith that (1) preliminarily approves the Settlement; (2) approves the proposed Settlement Notice and authorizes its distribution; (3) certifies the proposed Settlement Class; (4) schedules a final approval hearing; and (5) grants such other relief as set forth in the proposed Preliminary Approval Order submitted herewith.

BACKGROUND

I. PLEADINGS, DISCOVERY, AND MEDIATION

Plaintiffs filed this ERISA class action on July 14, 2023, Dkt. 1, and amended their complaint twice to add named Plaintiffs, Defendants, and claims, Dkts. 47, 63. In their operative Second Amended Complaint ("SAC"), Plaintiffs allege that the Plan's fiduciaries, Defendants John Wood, Brian Eagle, Patrick Buesching, Patrice Mauk, and Rodney Strack (together,

Buesching, Mauk, and Strack are the "Officer Defendants"), breached their duty of care to the Plan under ERISA by failing to acquire 80/20, Inc. ("80/20 or the "Company") stock from founder Don Wood's estate and committing the Plan to join the estate in a third-party sale on unfavorable terms to the Plan. Plaintiffs further allege that Defendants MPE Partners II, L.P., MPE Partners III, L.P., and Pareto Efficient Solutions, LLC (together, the "MPE Defendants"), knowingly participated in the other Defendants' violations of ERISA through their purchase of the Company from the estate and the Plan. Dkt. 63. Defendants deny these allegations.

Defendants moved to dismiss the claims in the SAC or sought judgment on the pleadings. Dkts. 65, 68, 130, 152. While the initial motions to dismiss were pending, Plaintiffs aggressively pursued discovery from Defendants and served 14 third-party subpoenas for documents. Carrington Dec. ¶ 12. Plaintiffs also successfully moved to compel discovery responses from Defendants. Dkt. 104. As a result of their efforts, Plaintiffs obtained more than 40,000 documents totaling more than 300,000 pages. Carrington Dec. ¶ 12. Plaintiffs then marshalled that evidence and a preliminary expert opinion to support their motion for class certification. Dkts. 109, 121.

Before Plaintiffs' motion for class certification was fully briefed, the Court granted in part and denied in part Eagle's motion to dismiss and granted in full the motions to dismiss filed by the Officer and MPE Defendants. Dkt. 125. The parties then sought a stay of discovery and other deadlines to pursue further motions practice and briefing related to the scope of the case following the Court's order, which the Court granted. Dkts. 137, 143. After hearing the second round of motions related to the pleadings and scope of the case, the Court denied motions for judgment on the pleadings by Defendants Wood and Eagle, allowing Plaintiffs' claim for breach of fiduciary duty, 29 U.S.C. § 1104(a), to proceed against Eagle and Plaintiffs' breach of

fiduciary duty and prohibited transaction claims, 29 U.S.C. §§ 1104(a), 1106, to proceed against Wood. Dkt. 167. Shortly after the Court's order, the parties agreed to mediate and submitted a proposed schedule to complete the case if the mediation failed. Dkt. 171.

On December 2, 2025, the parties conducted an in-person mediation with the Honorable John A. Jarvey, a retired U.S. District Court Judge who served for 35 years on the federal bench and has led an active mediation practice since his retirement in 2022. Carrington Dec. ¶ 14, Ex. 2 (Hon. John A. Jarvey (ret.) Biography). Although the parties were unable to reach a settlement in person, Judge Jarvey continued to facilitate negotiations remotely over the following two weeks, and, through his efforts, the parties succeeded in reaching a settlement in principle on December 15, 2025. Carrington Dec. ¶ 15.

II. OVERVIEW OF SETTLEMENT TERMS

A. Settlement Class

The Settlement Agreement calls for certification of the following Class:

> All Participants who were issued a Termination Distribution, and their Beneficiaries or Alternate Payees of record, excluding Defendants.

Carrington Dec. Ex. 1 ("SA") §§ 1.41, 2.3.1. Based on the information produced by Defendants in discovery, there are 328 Settlement Class Members. Carrington Dec. ¶ 4.

B. Relief

A Gross Settlement Amount of $7 million will be paid to resolve Class Members' claims. SA § 1.20. After accounting for any Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Service Awards approved by the Court, the Net Settlement Amount will be distributed to Class Members according to the Plan of Allocation. *Id.* §§ 1.23, 5.1.

The Plan of Allocation requires the Settlement Administrator[1] to calculate a Settlement Credit Amount for each Settlement Class Member. *Id.* § 5.1. The Settlement Credit Amount is based on the amount of each Settlement Class Member's Termination Distribution. *Id.* A "Termination Distribution" is defined as "all distributions from the Plan that were issued to Participants or their Beneficiaries or Alternate Payee after the termination of the Plan." *Id.* § 1.31. Thus, each person with a stake in the Plan when it was terminated will participate in the Settlement on a *pro rata* basis. *Id.* § 5.1. For example, this means that if a Settlement Class Member received 0.3% of the amount distributed to Settlement Class Members when the Plan was terminated, the Settlement Class Member will receive 0.3% of the Net Settlement Amount. Carrington Dec. ¶ 8.

Settlement Class Members will have the option of receiving their Settlement distribution through a rollover to a qualified retirement account. *Id.* § 5.4.1. Alternatively, Settlement Class Members may receive their distribution by electronic funds transfer or check. *Id.* § 5.4.3. If they do nothing, Settlement Class Members will receive their distribution by check. *Id*. Under no circumstances will any monies revert to Defendants. *Id.* §§ 5.5.1-5.5.2. The Settlement Agreement provides that the Settlement Administrator, if initially unsuccessful, will make multiple attempts to deliver the Settlement Credit Amount to Settlement Class Members. *Id.* § 5.5.1. Any remaining funds will be distributed to the State of Indiana, Office of the Attorney General, Unclaimed Property Division. *Id.* § 5.5.2.

C. Release of Claims

In exchange for this relief, the Settlement Class will release Defendants and related

[1] The proposed Settlement Administrator is Atticus Administration LLC ("Atticus"). *See* SA § 1.38. Atticus has extensive experience administering ERISA settlements and other class action settlements. *See* Declaration of Settlement Administrator ¶¶ 2-8.

persons and entities (the "Released Parties") from claims arising from the following claims ("Released Claims"):

> [A]ny and all past, present, and future actual or potential claims (including claims for any and all losses, damages, unjust enrichment, attorneys' fees, disgorgement, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal or equitable relief), actions, demands, rights, obligations, liabilities, expenses, costs, and causes of action, accrued or not, whether arising under federal, state, or local law, whether by statute, contract, or equity, including but not limited to for breach of fiduciary duty, prohibited transaction, or for equitable relief against non-fiduciaries under ERISA, whether brought in an individual or representative capacity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen that:
>
> - Were asserted or could have been asserted in the Class Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the Complaint and the prior versions of the Complaint filed in the Class Action; or
> - Arise out of, relate in any way to, are based on, or have any connection with the Plan, Plaintiffs' interests in the Plan, or the MPE Defendants' purchase of 80/20; or
> - Would be barred by res judicata based on entry of the Final Approval Order; or
> - Relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to any Settlement Class Member in accordance with the Plan of Allocation; or
> - Relate to the approval by the Independent Fiduciary of the Settlement, unless brought against the Independent Fiduciary alone.

Id. §§ 1.33, 1.33.1-5. The Released Claims do not include claims to enforce the Settlement Agreement. *Id.* § 1.33.6.

D. Class Notice and Settlement Administration

Settlement Class Members will be sent the Settlement Notice via first-class U.S. Mail and email, if an email address is available for the Settlement Class Member. *Id.* § 2.3.4 & Ex. A. The Settlement Notice will include a Rollover Form to enable Settlement Class Members to make the rollover election described above. *Id.* § 2.6 & Ex. B. The Administrator will also establish a website on which it will post the SAC, Settlement Agreement and Exhibits thereto, Settlement

Notice, Rollover Form, Preliminary Approval Order and any other Court orders related to the Settlement, and Plaintiffs' Motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Service Awards once it is filed. *Id.* §§ 1.46, 12.2. The Administrator will also establish a toll-free telephone line to help Class Members understand the Settlement process. *Id.* § 1.38.

E. Attorneys' Fees, Costs, and Class Representative Service Awards

Class Counsel will file their motion for attorneys' fees at least 30 days before the deadline for objections set by the Court. *Id.* § 6.2. As explained in the Settlement Notice, Class Counsel will seek one-third of the Gross Settlement Amount ($2,333,333.33) in Attorneys' Fees. *Id.* § 6.1, Ex. A. Class Counsel will also seek recovery of Costs, Administrative Expenses, and Class Representative Service Awards of $5,000 for each Class Representative, subject to Court approval. *Id.* § 6.1.

F. Review by Independent Fiduciary

As required under ERISA, Defendants will retain an Independent Fiduciary to review and authorize the Settlement on behalf of the Plan. *Id.* § 2.1; Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830. The Independent Fiduciary will issue its report prior to the Final Fairness Hearing so that the Court may consider it. *Id.* §§ 2.1.2, 2.1.6.

LEGAL STANDARD

"Federal Rule of Civil Procedure 23(e) requires court approval of any settlement that effects the dismissal of a class action." *Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 279 (7th Cir. 2002) (citation and quotation marks omitted); *see also* Fed. R. Civ. P. 23(e). When parties seek preliminary approval of a class action settlement agreement under Rule 23(e), the court examines 1) whether it will likely be able to certify the putative class for purposes of judgment

on the proposed settlement under Rule 23(e)(1)(B)(ii); and 2) whether the proposed settlement is "within the range of possible approval" with regard to the criteria set forth in Rule 23(e)(2), which requires a class action settlement to be "fair, reasonable, and adequate." *In re TikTok, Inc., Consumer Priv. Litig.*, 565 F. Supp. 3d 1076, 1083 (N.D. Ill. 2021) (quotation marks omitted). If the court is satisfied on both counts, it directs notice "'in a reasonable manner to all class members who would be bound' by the proposed settlement agreement," so that class members are accorded notice and an opportunity to be heard before the Court grants final approval of the settlement. *Id.* at 1084 (quoting Fed. R. Civ. P. 23(e)(1)).

ARGUMENT

I. THE SETTLEMENT CLASS SHOULD BE CERTIFIED.

As part of the Settlement, the Parties request that the Court certify the proposed Settlement Class, defined in Section II.A, *supra*. At the preliminary approval stage, the Court must consider whether it will "likely be able to . . . certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B)(ii); *see also TikTok*, 565 F. Supp. 3d at 1083.

Certification of a class is proper where Plaintiffs demonstrate the four prerequisites of Rule 23(a) and at least one of the requirements of Rule 23(b). Fed. R. Civ. P. 23. Classes of participants seeking relief derivatively under 29 U.S.C. § 1132(a)(2) are "paradigmatic examples . . . appropriate for certification" under Rule 23(b)(1). *Neil v. Zell*, 275 F.R.D. 256, 267-68 (N.D. Ill. 2011) (citation and quotation marks omitted, citing cases). This case is no exception.

A. The Proposed Settlement Class Satisfies Rule 23(a).

To satisfy Rule 23(a), "(1) the class must be so numerous that joinder of all members is impracticable ('numerosity'); (2) there must be questions of law or fact common to the class ('commonality'); (3) the claims or defenses of the representative parties must be typical of the claims or defenses of the class ('typicality'); and (4) the representative parties must fairly and adequately protect the interests of the class ('adequacy')." *Rush v. GreatBanc Tr. Co.*, No. 19-CV-738, 2021 WL 2453070, at *1 (N.D. Ill. June 16, 2021) (citing Fed. R. Civ. P. 23(a)). All four requirements are met here.

1. Numerosity

Courts generally regard 40 members to be sufficient to satisfy the numerosity requirement. *See Mulvania v. Sheriff of Rock Island Cnty.*, 850 F.3d 849, 859 (7th Cir. 2017). Here, Plaintiffs seek to certify a class consisting of the ESOP's 328 participants at the time it terminated, *see* Carrington Dec. ¶ 4, which satisfies the numerosity requirement.

2. Commonality

"A common nucleus of operative fact is usually enough to satisfy the commonality requirement of Rule 23(a)(2)." *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992). "The commonality requirement may be satisfied by showing one issue common to all class members." *Kurgan v. Chiro One Wellness Centers LLC*, 2014 WL 642092, at *6 (N.D. Ill. Feb. 19, 2014). And "[d]istrict courts in the Seventh Circuit have held that because ESOP-related fiduciary breaches affect all plan members in the same way (and plan members likewise receive a common benefit if relief is granted), the commonality requirement is generally met in ERISA class actions." *Rush*, 2021 WL 2453070, at *4; *see also id.* (listing cases).

This is a representative action in which Plaintiffs bring claims on behalf of the ESOP. Virtually every issue of fact and law is thus identical as to each class member. Common issues

include whether (1) Defendants Wood, Eagle, Buesching, Mauk, and Strack were fiduciaries of the ESOP; (2) those Defendants breached their fiduciary duties; (3) those Defendants caused an ERISA prohibited transaction; (4) the Officer and MPE Defendants knowingly participated in those fiduciary breaches and a prohibited transaction; and (5) what losses Defendants caused the ESOP through the foregoing. *See, e.g.*, *Chesemore v. All. Holdings, Inc.*, 276 F.R.D. 506, 510 (W.D. Wis. 2011) (commonality met in an ERISA case involving an ESOP based on common questions of whether a transaction was prohibited, fiduciary duties were breached, and what injury this caused the ESOP); *Rush*, 2021 WL 2453070, at *4 (same); *Godfrey v. GreatBanc Tr. Co.*, No. 18-cv-7918, 2021 WL 679068, at *4 (N.D. Ill. Feb. 21, 2021) (commonality satisfied in ERISA action involving an ESOP as the case turned on "defendants' identical actions").

3. Typicality

A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and is based on the same legal theory. *Lacy v. Cook County*, 897 F.3d 847, 866 (7th Cir. 2018) (cleaned up). Where, as here, an "action is brought on behalf of the Plan, not the individual participants, . . . [the] Plaintiffs' claims, of necessity, are typical of the claims of the members of the proposed class." *Lively v. Dynegy, Inc.*, No. 05-cv-63, 2007 WL 685861, at *10 (S.D. Ill. Mar. 2, 2007). This is because such cases are based on the defendant's unitary conduct harming the plan that "could have formed the basis of identical ERISA claims brought by any Plan participant," and are brought "on behalf of the Plan" with "no individualized relief . . . sought and no individualized showing of harm need[ed] . . . to establish liability." *Godfrey*, 2021 WL 679068, at *5.

Such is the case here. As discussed above, Plaintiffs' claims are representative in nature, arise from the same actions and events as every proposed class member, and are based on the same legal theories as every other class member. In such cases, where a class representative's

"claim arises out of [the Defendant's] alleged breach of its fiduciary duties to the Plan" under ERISA, the "claim could not be any more typical of the absent class members' claims." *Nistra v. Reliance Tr. Co.*, No. 16 C 4773, 2018 WL 835341, at *3 (N.D. Ill. Feb. 13, 2018).

4. Adequacy

"To assess adequacy of representation, the Court must determine 'the adequacy of the named plaintiffs as representatives of the proposed class's myriad members, with their differing and separate interests," and "the adequacy of the proposed class counsel." *Id.* (citation omitted). As to class representatives, "[t]he appropriate question is whether the class representative can presently pursue the class's interests without conflict," which is generally the case in ERISA actions like this one where, if the representative "succeeds in his claims, the recovery will go to the ESOP and be distributed to its members," and thus the representative's "interest . . . is to maximize the recovery received by the plan, a portion of which would accrue to him." *Rush*, 2021 WL 2453070, at *7.

Plaintiffs are not aware of any conflicts that would render their interests antagonistic to those of the class.[2] Walther Dec. ¶ 5; Kumfer Dec ¶ 5; Lea Dec. ¶ 5; Kelsey Dec. ¶ 5; Lowe Dec. ¶ 5; Whisler Dec. ¶ 5; Porter Dec. ¶ 5; *see also* Dkts. 113-119 ¶ 8. Plaintiffs have actively engaged with these proceedings, having reviewed filings, asked questions, responded to written discovery, assisted with preparation for mediation, participated telephonically in mediation, decided whether to settle the case, and reviewed the settlement agreement. Walther Decl. ¶ 3; Kumfer Decl. ¶ 3; Lea Decl. ¶ 3; Kelsey Decl. ¶ 3; Lowe Decl. ¶ 3; Whisler Decl. ¶ 3; Porter Decl. ¶ 3; *see also* Dkts. 113-119 ¶ 5; Carrington Dec. ¶ 26. And while Plaintiffs do not purport to be ERISA experts, they have an understanding of the claims and defenses in this action. *See*

[2] Plaintiffs filed declarations in support of their initial motion for class certification, Dkts. 113-119, and now file updated declarations in support of the instant motion.

Dkts. 113-119 ¶ 4. This is sufficient to demonstrate Plaintiffs' adequacy. *See, e.g.*, *Murray v. E*Trade Fin. Corp.*, 240 F.R.D. 392, 398 (N.D. Ill. 2006) (explaining "the adequacy requirement places only a 'modest' burden on a class representative" (citation omitted)).

"In addition to having an adequate named plaintiff, the proposed class must have counsel that is experienced, competent, qualified and able to conduct the litigation vigorously." *Wahl v. Midland Credit Mgmt., Inc.*, 243 F.R.D. 291, 299 (N.D. Ill. 2007) (citation and quotation marks omitted). Such is the case here. Engstrom Lee attorneys comprise experienced ERISA practitioners and complex litigators who have been appointed as class counsel in more than a dozen ERISA class actions. Carrington Dec. ¶¶ 24-25, Ex. 3 (Engstrom Lee Firm Biography). Plaintiffs' Counsel have prosecuted this action through investigation, motion practice, discovery, and mediation. Carrington Dec. ¶¶ 10-16. At all times, Plaintiffs' Counsel have vigorously represented the interests of the Class in this litigation. *Id.* Plaintiffs' Counsel are therefore adequate.

B. The Proposed Settlement Class Satisfies Rule 23(b)(1).

In addition to meeting the requirements of Rule 23(a), the proposed class also satisfies Rule 23(b)(1). Under Rule 23(b)(1), a class may be certified if prosecution of separate actions by individual class members would create a risk of:

> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests[.]

Fed. R. Civ. P. 23(b)(1). The claims here plainly satisfy this test because they are brought derivatively on behalf of the Plan under ERISA, *see* 29 U.S.C. §§ 1109, 1132(a)(2), 1132(a)(3); *see also* SAC ¶ 26, and the outcome will necessarily affect the participants in the Plan and the

Plan's fiduciaries. For this reason, "ERISA class actions are commonly certified under either or both subsections of 23(b)(1) because recovery for a breach of the fiduciary duty owed to an ERISA plan, as is the predominant claim here, will inure to the plan as a whole, and because defendant-fiduciaries are entitled to consistent rulings regarding operation of the plan." *Neil*, 275 F.R.D. 256 at 267-68; *see also id.* (listing cases); *Placht on behalf of Symbria Inc. Emp. Stock Ownership Plan v. Argent Tr. Co.*, No. 21 C 5783, 2023 WL 2895738, at *3 (N.D. Ill. Apr. 11, 2023); *see also id.* (listing cases).

More specifically, certification under Rule 23(b)(1)(A) is appropriate because it will avoid subjecting Defendants to "inconsistent or varying adjudications" on claims brought derivatively on behalf of the Plan. Courts in this Circuit have regularly found that this untenable possibility warrants class certification under Rule 23(b)(1)(A) in ERISA cases like this one. *See, e.g.*, *Placht*, 2023 WL 2895738, at *3 (certifying a similar ERISA class under Rule 23(b)(1)(A)); *Rush*, 2021 WL 2453070, at *9 (same); *Godfrey*, 2021 WL 679068, at *7 (same); *Spano v. Boeing Co.*, 294 F.R.D. 114, 122 (S.D. Ill. 2013) (same); *Chesemore*, 276 F.R.D. at 517 (same); *Neil*, 275 F.R.D. at 268 (same).

Certification under Rule 23(b)(1)(B) is equally appropriate. "Essentially, in an ERISA action in which relief is being sought on behalf of the plan as a whole (as it is here), a plaintiff's victory would necessarily settle the issue for all other prospective plaintiffs." *Neil*, 275 F.R.D. at 267. This is "because . . . money recovered for the . . . ESOP will be paid into the plan" and distributed to the ESOP's members, resolving the ESOP's claims, which would "affect the rights of all participants as a practical matter." *Chesemore*, 276 F.R.D. at 517. Given the foregoing, courts in this Circuit regularly certify classes in ERISA cases like this one under Rule 23(b)(1)(B) in addition to Rule 23(b)(1)(A). *See, e.g., Placht*, 2023 WL 2895738, at *3

(certifying a similar ERISA class under Rule 23(b)(1)(B)); *Rush*, 2021 WL 2453070, at *9 (same); *Godfrey*, 2021 WL 679068, at *7 (same); *Spano*, 294 F.R.D. at 122 (same); *Chesemore*, 276 F.R.D. at 517 (same); *Neil*, 275 F.R.D. at 268 (same). Certification under Fed. R. Rule 23(b)(1) is therefore appropriate here.

II. THE SETTLEMENT IS WITHIN THE RANGE OF APPROVAL OF RULE 23(E)(2).

The next issue for the Court's consideration is whether the proposed settlement is "within the range of possible approval" with regard to the criteria set forth in Rule 23(e)(2), which requires a class action settlement to be "fair, reasonable, and adequate." *TikTok*, 565 F. Supp. 3d at 1083. At the preliminary approval stage, "the purpose of the inquiry is 'only to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing,' 'not to conduct a full-fledged inquiry into whether the settlement meets Rule 23(e)'s standards.'" *Id.* (quoting *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982) (first quotation); *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, Nos. 07 C 2898, 09 C 2026, 2011 WL 3290302, at *3 (N.D. Ill. July 26, 2011) (second quotation)).

Rule 23(e) requires courts to determine whether a proposed settlement is "fair, reasonable, and adequate" after considering if: (a) the class representatives and class counsel have adequately represented the class; (b) the proposal was negotiated at arm's length; (c) the relief provided for the class is adequate; and (d) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). All factors are satisfied here.

A. The Class Representatives and Class Counsel Have Adequately Represented the Class and Will Continue to Do So.

For the same reasons that the proposed Class Representatives and Plaintiffs' Counsel satisfy the adequacy of representation requirements under Rule 23(a)(4), they also satisfy Rule 23(e)(2)(A). *See Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079,

at *3 (S.D. Ill. Dec. 16, 2018) (adequacy standard of Rule 23(a)(4) coextensive with that of Rule 23(e)(2)(A)). The proposed Class Representatives have been actively engaged in the litigation, have no conflicts with the Class, and seek no individual relief. *See supra* § I.A.4. Plaintiffs' counsel is also well-qualified. *Id.*

B. The Settlement Was Negotiated at Arm's Length by Experienced Counsel and Facilitated by an Experienced Mediator.

Rule 23(e)(2)(B) requires the court to determine whether a proposed settlement "was negotiated at arm's length." Where experienced counsel have negotiated a settlement at arm's-length, with the help of an experienced mediator, a strong initial presumption is created that the compromise is fair. *See Eubank v. Pella Corp.*, 2019 WL 1227832, at *3 (N.D. Ill. Mar. 15, 2019); *Hale*, 2018 WL 6606079, at *3. Class Counsel and defense counsel are experienced class action litigators, Carrington Dec. ¶¶ 16, 24-25 & Ex. 3, and the settlement negotiations took place in the context of an arm's length mediation session before an experienced and highly regarded former federal judge. *See TikTok*, 565 F. Supp. 3d at 1088 (noting favorably that class settlement was reached through mediation by "reputable former federal judge").

C. The Settlement Provides Significant Relief to Class Members that is Fair and Adequate Based on All Relevant Considerations.

Rule 23(e)(2)(C) evaluates the adequacy of a settlement through the following factors:

> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3).

Fed. R. Civ. P. 23(e)(2)(C). Prior to the 2018 amendments to Rule 23, the Seventh Circuit's "longstanding guidance" on Rule 23(e)(2) instructed district courts to consider the following

factors in conducting a fairness inquiry: "(1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed." *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014).[3] Because these factors "overlap" with those set forth in Rule 23(e)(2), courts consider them together. *Hale*, 2018 WL 6606079, at *2 (S.D. Ill. Dec. 16, 2018); *see also Fralish v. Ceteris Portfolio Servs.*, LLC, No. 3:22-CV-176 DRL-MGG, 2023 WL 3579139, at *2 (N.D. Ind. May 19, 2023) (considering 23(e)(2) and Seventh Circuit factors). Here, the Settlement satisfies both the adequacy factors of Rule 23(e)(2)(C) and the Seventh Circuit's longstanding guidance.

1. The Strength of Plaintiffs' Case Balanced Against the Settlement Offer (Seventh Circuit Factor 1)

The value of the settlement balanced against the strength of Plaintiffs' case—the most significant factor under the Seventh Circuit's analysis, *Wong*, 773 F.3d at 863-64—strongly supports the adequacy of this settlement. When evaluating this factor, the court should "estimate the likely outcome of a trial . . . in order to evaluate the adequacy of the settlement." *Eubank v. Pella Corp.*, 753 F.3d 718, 727 (7th Cir. 2014). Because this is an inexact science, the court need only come up with a "ballpark valuation" and need not "undertake . . . [a] mechanical mathematic valuation exercise." *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (first quotation); *TikTok*, 565 F. Supp. 3d at 1088 (second quotation); *see also Anderson v. Torrington Co.*, 755 F. Supp. 834, 839 (N.D. Ind. 1991).

[3] Plaintiffs do not address opposition to the Settlement or Class Members' reactions to the settlement (Seventh Circuit factors 3 and 4) because the Class has not yet received notice. These factors will be addressed in Plaintiffs' motion for final approval.

Plaintiffs faced demonstrable challenges in proving liability. Indeed, this Court dismissed Plaintiffs' claims entirely against the Officer and MPE Defendants, Dkt. 125, meaning that the possibility of *any* recovery against these Defendants, absent the Settlement, would have required Plaintiffs to appeal successfully to the Seventh Circuit and ultimately obtain a favorable judgment on remand. That these dismissed Defendants will voluntarily participate in the $7 million Settlement is a significant achievement for the Class. *See Edwards v. Educ. Mgmt. Corp.*, No. 1:18-cv-03170-RLY-DLP, 2022 WL 3213277, at *5 (S.D. Ind. June 13, 2022) (claims that "would face long odds if the case were to proceed" supported adequacy of settlement).

During the mediation process, Defendants vigorously contested the merits of Plaintiffs' claims, including whether Plaintiffs could show that Defendants breached their fiduciary duties and whether those breaches caused harm to Plaintiffs. Carrington Dec. ¶ 18. *See Kenseth v. Dean Health Plan, Inc.*, 610 F.3d 452, 464 (7th Cir. 2010) (listing elements for ERISA breach of fiduciary duty claim). To the knowledge of Class Counsel, this case is the first of its kind to allege that an ESOP fiduciary breached his duties under ERISA by failing to purchase company stock. Carrington Dec. ¶ 19. While Plaintiffs' theory of breach is firmly grounded in principles of trust law and the Court denied Eagle and Wood's Rule 12 motions, Dkt. 167, the scope and contours of a duty to buy company stock in the ERISA context would be a matter of first impression. *See Edwards*, 2022 WL 3213277, at *5 (litigation risk associated with novel claim supported adequacy of settlement). With respect to causation, Defendants argued that Plaintiffs could not prove that Don Wood's estate would have voluntarily sold its 80/20 stock to the ESOP or been legally compelled to do so, even if Defendants did everything that Plaintiffs claim they should have done. Carrington Dec. ¶ 18. All told, these challenges to establishing liability strongly support the adequacy of Plaintiffs' settlement.

Additionally, Plaintiffs faced significant unpredictability in how the Court would calculate damages, if Plaintiffs succeeded in establishing liability. *See Leigh v. Engle*, 727 F.2d 113, 137 (7th Cir. 1984) (observing that "finding an appropriate measure of damages" in an ESOP case is a "formidable task"). ESOP cases require an analysis of the subject company under hypothetical financial assumptions, which is "impossible [to do] with certainty." *Schoenholtz v. Doniger*, 657 F. Supp. 899, 908 (S.D.N.Y. 1987). Damages awards are necessarily "approximate," and courts are empowered to use their equitable powers to fashion the remedy "best suited to the harm." *See Martin v. Feilen*, 965 F.2d 660, 671-72 (8th Cir. 1992) (affirming trial court's decision to disregard the Secretary of Labor's ESOP damages model, but reversing for further consideration of an appropriate remedy).

Here, Plaintiffs would have had to account for unknowns such as the amount of gains the company would have generated under sole ESOP ownership, the effect of the ESOP's financing package on company value, how acquired shares would have been allocated to Settlement Class Members over time, and (alternatively) the amount of additional consideration Defendants should have negotiated upon terminating the ESOP. While Plaintiffs were prepared to present a compelling case for damages in each respect, *see* Dkt. 121 (preliminary report of Plaintiffs' expert Dana Messina filed in support of Plaintiffs' motion for class certification), the Court would be free to choose any or none of them as best suited to the equities of the case. *See Martin*, 965 F.2d at 671-72; *Peabody v. Davis*, 636 F.3d 368, 377 (7th Cir. 2011) (rejecting ESOP's damage claim based on proposed alternative course of events as not "solidly tied to the breach"). Uncertainty in this respect strongly favors settlement.

In the end, the proportion of the possible recovery needed for a fair settlement turns on the likelihood of recovery. *See Mars Steel Corp. v. Cont'l Illinois Nat. Bank & Tr. Co. of*

Chicago, 834 F.2d 677, 682 (7th Cir. 1987) (finding that a class is "better off" settling for one percent if "the probability that the class would prevail if the case were tried is only one percent"). For Plaintiffs, complete success and a maximalist approach to damages could have resulted in a recovery of around $145 million, measured as Company gains after Don Wood died in 2019. *See* Dkt. 121 ¶¶ 18, 20. However, around 85% of that figure represents gains after MPE took over 80/20 in 2021. *Id.* A disgorgement recovery against MPE would have required those claims to be reinstated by the Seventh Circuit and then proven at trial. *See supra.* Alternatively, the Court would have to find for Plaintiffs against Eagle and Wood and then adopt the Company's gains under MPE's ownership as the measure of the ESOP's loss. Dkt. 121 ¶ 20. While Plaintiffs consider it a defense burden to prove that the ESOP would not have retained the Company after 2021 or generated the same gains,[4] Class Counsel believes that Defendants would have made a strong showing that 80/20's growth after 2021 was driven by factors unique to MPE ownership and cannot be assumed as the fair measure of the ESOP's loss chargeable to Eagle and Wood. Carrington Dec. ¶ 20. For these reasons, the maximum possible recovery was not a significant factor in the parties' settlement negotiations. *Id.*

Plaintiffs are on stronger footing with respect to Company gains between Don Wood's death and the MPE sale. *Id.* This $22 million amount is tied closely to allegations of "dilatory conduct following Donald Wood's death" that the Court credited as a plausible basis for relief. *See* Dkt. 121 ¶ 18 ($22 million damages calculation); Dkt. 125 at 14 (Court's Order). The $22 million amount is also free of unknowns concerning what would have happened after 2021 if

[4] Several circuits shift the burden to defendants to prove that a plan loss was not proximately caused by their violation, once the plaintiff make a prima facia showing of a loss related to the violation. Other circuits have rejected burden-shifting. *See Brotherston v. Putnam Invs., LLC*, 907 F.3d 17, 35 (1st Cir. 2018) (reviewing authorities). The Seventh Circuit has not directly addressed the burden-shifting question. Class Counsel anticipates that Defendants would have vigorously resisted Plaintiffs' efforts to shift the burden to them. Carrington Dec. ¶ 20.

MPE had not taken over. *See supra.* Accordingly, Plaintiffs focused on their $22 million damages calculation in settlement negotiations and were satisfied by Defendants' offer to pay $7 million, which is approximately 32% of that amount. Carrington Dec. ¶ 20; Walther Dec. ¶ 4; Kumfer Dec. ¶ 4; Lea Dec. ¶ 4; Kelsey Dec. ¶ 4; Lowe Dec. ¶ 4; Whisler Dec. ¶ 4; Porter Dec. ¶ 4. In the view of Class Counsel, the Settlement is commensurate with the risk that Defendants will defeat Plaintiffs' evidence on breach or causation, or that the Court will award less than $22 million, and the Class is therefore "better off" accepting the Settlement. *See Mars Steel Corp.*, 834 F.2d at 682. Carrington Dec. ¶ 20.

The proportion of possible damages recovered by the Settlement compares favorably to similar class settlements that were approved. In shareholder litigation, the median recovery is 4.8% of the maximum possible damages. *Shah v. Zimmer Biomet Holdings, Inc.*, No. 3:16-CV-815-PPS-MGG, 2020 WL 5627171, at *5 (N.D. Ind. Sept. 18, 2020). This rate reflects the "reality of litigation," where class claims with "substance" still face a "perilous journey." *Id.* Plaintiffs' maximalist damages theory is comparable to shareholder damage claims, where the value that would have been realized absent the violation is not clear, and the case value will "plummet" if the plaintiffs' preferred version is not accepted. *Id*. (observing that claimed damages would drop 85% if shareholders' "pie in the sky" model was rejected). So too here. *See supra*. Additionally, Plaintiffs' recovery of 32% of claimed damages that accrued between Don Wood's death and the MPE takeover is at the high end of the range of recent ESOP settlements. *See Colon v. Johnson*, No. 8:22-CV-888-TPB-TGW, 2024 WL 3315628, at *5 (M.D. Fla. May 31, 2024) (noting recent ESOP settlements "varying from 7% to 39%" of claimed damages); *see also Gamino v. KPC Healthcare Holdings, Inc.*, No. 5:20-CV-01126-SB-SHK, 2023 WL 3325190, at *4 (C.D. Cal. Mar. 11, 2023) (approving settlement for 7% of the estimated total

recovery); *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 463 (D. Md. 2014) (approving settlement for 3.2% of claimed plan losses on company stock).

Measured another way, the average net recovery per Class Member is projected to be $13,923. Carrington Dec. ¶ 21.[5] This is an outstanding result compared to the average net recovery obtained in other ESOP settlements approved in the Seventh Circuit in the last few years:

Case Name	Case No., Court, Year	Settlement Amount	Net Avg. Per Member[6]
Placht v. Argent Trust	1:21-cv-05783, N.D. Ill., 2024	$5,900,000	$2,041
Hensiek v. Casino Queen BOD	3:20-cv-00377, S.D. Ill., 2024	$7,100,000	$7,396
Lysengen v. Argent Trust	1:20-cv-01177, C.D. Ill., 2025	$4,000,000	$1,528

All told, the value of the Settlement measured against the strength of Plaintiffs' case supports the adequacy of the Settlement.

2. Stage of Proceedings and the Amount of Discovery Completed (Seventh Circuit Factor 6)

This case settled following the completion of extensive written discovery, a preliminary report from Plaintiffs' expert, and motion practice that yielded multiple orders providing the Court's view of the merits. Carrington Dec. ¶ 16. Thus, all parties entered the mediation with a clear understanding of the strengths and risks of their claims and defenses, and the parties also exchanged robust mediation statements setting forth their positions. *Id.* This factor also supports

[5] This assumes: $2,333,333.33 awarded as Attorneys' Fees; $35,000 awarded as Class Representative Service Awards ($5,000 x 7); $35,000 Attorneys' Expenses; and $30,000 for other Administrative Expenses. These estimates would result in a Net Settlement Amount of $4,566,667. Divided by 328 Class Members, the average net recovery per Class Member is estimated to be $13,923. Carrington Dec. ¶¶ 6, 21 n.1.

[6] Net Average Per Member is the approximate average settlement distribution per class member, following payment of approved attorneys' fees and costs and estimated administrative expenses.

a finding of adequacy. *See TikTok*, 565 F. Supp. 3d at 1088 (noting favorably that parties had fully completed motion to dismiss briefing and exhaustively briefed positions on liability and damages during mediation).

3. Costs, Risks, and Delay of Continued Litigation (Rule 23(e)(2)(C)(i) and Seventh Circuit Factor 2) and Opinion of Competent Counsel (Seventh Circuit Factor 5)

The Settlement is also adequate considering the risks, costs, and delay of continued litigation. ERISA class actions are "notoriously complex cases, and ESOP cases are often cited as the most complex of ERISA cases." *Foster v. Adams & Assocs., Inc.*, No. 18-cv-02723-JSC, 2021 WL 4924849, at *6 (N.D. Cal. Oct. 21, 2021) (citation omitted). Indeed, these cases can extend for a decade before final resolution, sometimes going through multiple appeals. *See, e.g.*, *Tussey v. ABB, Inc.*, 850 F.3d 951, 955-56 (8th Cir. 2017) (recounting 11-year procedural history and multiple appeals); *Tibble v. Edison Int'l*, No. CV 07-5359 SVW (AGRx), 2017 WL 3523737, at *15 (C.D. Cal. Aug. 16, 2017) (issuing findings of fact and conclusions of law following bench trial 10 years after case filing). Further, if this case were to proceed, it is anticipated that the Parties would have taken numerous fact depositions and retained several experts to opine regarding prudent Plan management and the value of the Company under alternative scenarios. Carrington Dec. ¶ 22. This would have been costly to Defendants and the Settlement Class. *Id.*

None of this is to say that Plaintiffs lacked confidence in their claims. However, given the risks and costs of litigation, it was reasonable for Plaintiffs to reach a settlement on these terms. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 582 (N.D. Ill. 2011) ("Absent settlement, Class Members would face the real risk that they would win little or no recovery. What is assured is that any victory would come only after many months (or years) of hard-fought litigation."). Moreover, in light the strengths and weaknesses of the case discussed at above, and

notably the uncertainty in fixing damages, it is the opinion of Plaintiffs' counsel, who comprise experienced ERISA practitioners, that the settlement is fair, adequate, and reasonable. Carrington Dec. ¶¶ 17, 20-22, 24-25.

4. Effectiveness of the Proposed Method of Distributing Relief (Rule 23(e)(2)(C)(ii))

Participants will have the option to receive their Settlement distribution in the form of a rollover to a qualified retirement account or direct payment via check or electronic funds transfer. *See* Section II.B, *supra*. This method of distribution is both effective and efficient. *See, e.g., Colon*, 2024 WL 3315628, at *7 (option of rollover or check to former ESOP participants was effective); *Moreno v. Deutsche Bank Americas Holding Corp.*, No. 15 Civ. 9936 (LGS), ECF No. 322-1 at ¶ 6.6 (S.D.N.Y. Aug. 14, 2018) (settlement agreement directing rollover or check for former plan participants).

5. The Proposed Award of Attorneys' Fees (Rule 23(e)(2)(C)(iii))

As described *supra* in Section II.E, Class Counsel will file an application seeking an award of attorneys' fees in an amount not exceeding $2,333,333.33 (one-third of the Gross Settlement Amount), plus reimbursement of litigation costs. SA § 6.1. One-third is the percentage typically awarded in complex ERISA cases such as this. *See Bell v. Pension Comm. of ATH Holding Co.*, 2019 WL 4193376, at *3 (S.D. Ind. Sept. 4, 2019) (collecting cases).

6. No Separate Agreements (Rule 23(e)(2)(C)(iv))

There are no side agreements relating to the Settlement. As the Settlement expressly states, "[t]his Settlement Agreement and the exhibits attached thereto constitute the entire agreement among the Settling Parties. No representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto." SA § 13.14.

D. The Proposed Plan of Allocation Treats Class Members Equitably (Rule 23(e)(2)(D).

Under Rule 23(e)(2)(D), the Court must consider whether the proposal treats class members equitably relative to each other. As noted in Section II.B, the Settlement proceeds will be distributed to Class Members on a *pro rata* basis based on a common allocation formula. *See* SA § 5.1. According to that process, individual Class Members will receive awards in proportion to their Termination Distribution from the ESOP. This method allocates the settlement funds based on the size of each Class Member's respective stake in the terminated ESOP. Courts in this Circuit have found such *pro rata* distributions appropriate. *See, e.g.*, *Kaplan v. Houlihan Smith & Co.*, 2014 WL 2808801, at *3 (N.D. Ill. June 20, 2014); *Downes v. Wis. Energy Corp. Ret. Acct. Plan*, 2012 WL 1410023, at *4 (E.D. Wis. Apr. 20, 2012).

III. THE COURT SHOULD APPROVE THE NOTICE PLAN AND SCHEDULE A FAIRNESS HEARING

In addition to reviewing the substance of the proposed Settlement, the Court must ensure that notice is sent in a reasonable manner to all Class Members who would be bound by the Settlement. *See* Fed. R. Civ. P. 23(e)(1). The "best notice that is practicable" under Rule 23 specifically includes "individual notice to all [class] members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). That is precisely the type of notice proposed here.

The Settlement Agreement provides that the Settlement Administrator will provide direct notice of the Settlement to the Settlement Class via first-class mail. *See* SA § 2.6. This type of notice is presumptively reasonable. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). In addition to first-class mail, the Settlement Administrator will also provide notice via email where an address is available for the Class Member. SA §§ 2.3.4, 2.6. *See Berglund v. Matthews Senior Hous. LLC*, No. 21-CV-108-PP, 2023 WL 6847696, at *5 (E.D. Wis. Oct. 17, 2023) (notice by mail and email, if available, was reasonable).

The content of the Notice is also reasonable. The Notice includes information regarding: (1) the nature of the claims; (2) the scope of the Settlement Class; (3) the terms of the Settlement; (4) the process for receiving distributions; (5) Class Members' right to object to the Settlement and the deadline for doing so; (6) the class release; (7) the identity of Class Counsel and the compensation they will seek; (8) the date, time, and location of the Fairness Hearing; and (9) Class Members' right to appear at the final approval hearing. SA, Ex. A. *See Berglund*, 2023 WL 6847696, at *5 (approving content of similar notice). If Class Members would like further information, the Settlement Notice will be supplemented through a website and telephone support line. SA §§ 1.38, 12.2.

Finally, Plaintiffs request that the Court schedule a Fairness Hearing on Plaintiffs' motion for final approval of the Settlement and motion for an award of reasonable attorneys' fees and costs, administrative expenses, and class representative service awards, as set forth in the proposed Preliminary Approval Order. This will establish a reasonable and efficient process for disseminating notice, providing the opportunity for Settlement Class Members to object, and considering final approval of the Settlement.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the Settlement, certify the Settlement Class, and enter the accompanying proposed order.

Dated: March 9, 2026

ENGSTROM LEE LLC

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 9, 2026, 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/Melissa A. Carrington
Melissa A. Carrington