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 MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

INTRODUCTION

On March 13, 2026, this Court preliminarily approved the parties' Class Action Settlement, which resolves Plaintiffs' claims under the Employee Retirement Income Security Act of 1974 ("ERISA") against Defendants John Wood, Brian Eagle, Patrick Bueschİng, 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"). Dkt. 184. The Court found on a preliminary basis that the Settlement is "fair, reasonable, and adequate" and approved the distribution of Notice of Settlement as described in the Settlement Agreement. *Id.* ¶¶ 1, 5. Since then, the appointed Settlement Administrator distributed notice to the Settlement Class and, so far, no Class Members have objected. Declaration of Melissa A. Carrington in Support of Final Approval ("Third Carrington Dec.") ¶ 3. The Independent Fiduciary has also confirmed that the Settlement terms are reasonable. *See id.* ¶ 2, Ex. A ("IF Report"). Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Settlement in connection with the final fairness hearing on July 14, 2026.

BACKGROUND[1]

I. PROCEDURAL HISTORY

Plaintiffs filed this ERISA class action on July 14, 2023, Dkt. 1, and amended their complaint twice to add new support for the claims of the putative class and new members as putative class representatives. 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

[1] Unless specified, all capitalized terms have the meaning assigned in the Settlement Agreement, Dkt. 183-02.

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 third parties. First Declaration of Melissa A. Carrington ("First Carrington Dec."), Dkt. 183-1, ¶ 12. Plaintiffs then marshalled that evidence in support of their detailed motion for class certification. Dkt. 109.

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. First 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 the parties succeeded in reaching a settlement. First Carrington Dec. ¶ 15.

On March 9, 2026, Plaintiffs moved for preliminary approval of the settlement, Dkt. 182, which the Court granted on March 13, 2026, Dkt. 184. On May 22, 2026, Plaintiffs moved for an award of attorneys' fees, costs, administrative expenses, and class representative service awards. Dkt. 186. A final fairness hearing is set for July 14, 2026. Dkt. 185.

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.

Dkt. 183-02 ("Settlement Agreement or "SA") §§ 1.41, 2.3.1. There are 328 Settlement Class Members. Carrington First 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 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. First Carrington Dec. ¶ 8.

Settlement Class Members will have the option of receiving their Settlement distribution through a rollover to a qualified retirement account. SA § 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 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 Administrator

Pursuant to the Court's Preliminary Approval Order, Atticus Administration ("Atticus"), the Court-appointed Settlement Administrator, mailed the Court-approved Settlement Notices to each Settlement Class Member and emailed the Settlement Notices where an email address was available for the Settlement Class Member. *See* Declaration of Bryn Bridley of Atticus Administration ("Atticus Dec.") ¶ 7. In total, 328 were mailed, and Atticus also included a Rollover Form for all Settlement Class members. *Id*. Prior to sending Settlement Notices, Atticus cross-referenced the addresses on the Settlement Class list with the United States Postal Service National Change of Address Database and updated addresses as needed. *Id.* ¶ 6. If Settlement Notices were returned, Atticus re-mailed them to any forwarded address provided and utilized a professional service for address tracing to determine a valid address for the Settlement Class Member in the absence of a forwarding address. *Id.* ¶ 8. The Notice program was very effective. Of the 328 Settlement Notices that were mailed, only one (approximately 0.3%) was ultimately undeliverable despite these efforts. *Id.*

The Notice provided a variety of crucial information to the Settlement Class regarding, among other items: (1) the nature of the claims asserted in the Action; (2) the scope of the Settlement Class; (3) the terms of the Settlement Agreement; (4) the process for submitting a Rollover Form; (5) Settlement Class Members' right to object to the Settlement and the deadline for doing so; (6) the Settlement Class's release; (7) the identity of Class Counsel and the amount of compensation they will seek in connection with the Settlement; (8) the date, time, and location of the Fairness Hearing; and (9) Settlement Class Members' right to appear at the Fairness Hearing. Dkt. 183-02, Exhibit A.

Atticus further established a Settlement Website with a frequently asked questions page providing essential case information; an important dates page providing notice of applicable deadlines; and a settlement documents page with relevant filings. Atticus Dec. ¶ 9. The Settlement Administrator also established a toll-free telephone line as a resource for Settlement Class members seeking information about the Settlement. *Id.* ¶ 10. This telephone number also appears on the Settlement Website. *Id.*

The deadline to submit objections to the Settlement is June 23, 2026. Dkt. 184 ¶ 12. Although the deadline has not passed, Class Counsel and Atticus are not aware of any objections to the Settlement. Third Carrington Dec. ¶ 3; Atticus Dec. ¶ 11.

On March 19, 2026, Atticus also sent the notices required by the Class Action Fairness Act, 28 U.S.C. § 1715, to the appropriate federal and state officials. Atticus Dec. ¶ 4. No objections were received in response to the CAFA notices. *Id*.

E. Review by Independent Fiduciary

As required under applicable ERISA regulations[2] and Section 2.1 of the Settlement Agreement, an Independent Fiduciary (Fiduciary Counselors, Inc.) reviewed the Settlement following the Court's Preliminary Approval Order. After reviewing the Settlement and other case documents, and interviewing counsel for each of the Parties, the Independent Fiduciary concluded on behalf of the Plan, *inter alia*:

- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.

- The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.

- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.

IF Report at 7-10.

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). A court may grant final approval of a class action settlement if: (1) the settlement is "fair, reasonable, and adequate;" (2) the class was provided adequate notice and a public hearing; and (3) the class is certifiable. Fed. R. Civ. P. 23(e)(1)-(2); *see also In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 921 (N.D. Ill. 2022) ("*TikTok II*").

[2] *See* Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830.

ARGUMENT

I. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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 Counsel Have Adequately Represented the Class.

The named Plaintiffs have adequately represented the Settlement Class. They committed to carry out their duties as class representatives, and each of them diligently sought to fulfill those duties through the duration of this lawsuit. *See* Dkts. 183-05–183-11 ("Plaintiffs' Decs.") ¶¶ 2-6. Among other tasks, Plaintiffs 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. First Carrington Dec. ¶ 26. Plaintiffs are members of the Settlement Class and further are not aware of any conflicts between themselves and the Settlement Class. Plaintiffs' Decs. ¶ 5. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 625 (1997) (adequacy inquiry looks for "conflicts of interest between named parties and the class they seek to represent"); *Rush v. GreatBanc Tr. Co.*, 2021 WL 2453070, at *5 (N.D. Ill. June 16, 2021) (finding plaintiff adequate based on "his participation in the ESOP class, the common goal of maximizing recovery, and his active engagement in the case").

Class Counsel is also adequate. Engstrom Lee attorneys are experienced ERISA practitioners and complex litigators who have been appointed as class counsel in more than a dozen ERISA class actions. First Carrington Dec. ¶ 25, Ex. 3. Plaintiffs' Counsel prosecuted this action through its investigation, motion practice, discovery, and mediation. Dkt. 187 at 4-6. At all times, Plaintiffs' Counsel have vigorously represented the interests of the Class in this litigation. *Id.* Plaintiffs' Counsel is therefore adequate. *See Wahl v. Midland Credit Mgmt., Inc.*, 243 F.R.D. 291, 299 (N.D. Ill. 2007) (finding class counsel who were "experienced, competent, qualified and able to conduct the litigation vigorously" to be adequate (citation and quotation marks omitted)).

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 v. State Farm Mut. Auto. Ins. Co.*, 2018 WL 6606079, at *3 (S.D. Ill. Dec. 16, 2018). Class Counsel and defense counsel are experienced class action litigators, First 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. *In re TikTok, Inc., Consumer Priv. Litig.*, 565 F. Supp. 3d 1076, 1088 (N.D. Ill. 2021) ("*TikTok I*") (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). 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, 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

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 I*, 565 F. Supp. 3d at 1088 (second quotation); *see also Anderson v. Torrington Co.*, 755 F. Supp. 834, 839 (N.D. Ind. 1991).

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. The participation of these Defendants in the $7 million Settlement is a significant achievement for the Class. *See Edwards v. Educ. Mgmt. Corp.*, 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. First 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). Class Counsel is unaware of any other ESOP class action that sought to enforce ERISA duties in connection with rights and opportunities arising from an estate plan, or one that alleged that an ESOP fiduciary breached his duties under ERISA by failing to purchase company stock. First Carrington Dec. ¶ 19; Second Declaration of Melissa A. Carrington, Dkt. 187-1 ("Second Carrington Dec.") ¶ 6. 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 the fiduciaries' duties in these contexts 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. First 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,[3] 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. First 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

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[3] 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. First Carrington Dec. ¶ 20.

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 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. First Carrington Dec. ¶ 20; Plaintiffs' Declarations ¶ 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. First 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.*, 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*, 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.*, 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 $13,936. Carrington Third Dec. ¶ 4.[4] 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[5]
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

This case settled following the completion of extensive written discovery, a preliminary

[4] Class Counsel has updated the estimated average net recovery since filing the motion for preliminary approval, as administrative expenses were less than expected, increasing the average net recovery from $13,923 to $13,936. This calculation assumes $2,333,333.33 as Attorneys' Fees; $35,000 awarded as Class Representative Service Awards ($5,000 x 7); $35,812.79 as Attorneys' Expenses; and $24,800 for other Administrative Expenses. These estimates would result in a Net Settlement Amount of $4,571,053.88. Divided by 328 Class Members, the average net recovery per Class Member is estimated to be $13,936. Carrington Third Dec. ¶ 4.

[5] 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.

report from Plaintiffs' expert, and motion practice that yielded multiple orders providing the Court's view of the merits. First 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 a finding of adequacy. *See TikTok I*, 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 Opinion of Competent Counsel

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

4. The Amount of Opposition to the Settlement and the Reactions of Members of the Class to the Settlement

The deadline to submit objections to the Settlement is June 23, 2026. Dkt. 184 ¶ 12. Although the deadline has not passed, Class Counsel and Atticus are not aware of any objections to the Settlement. Third Carrington Dec. ¶ 3; Atticus Dec. ¶ 11. The absence of any objections to the Settlement by Class Members supports the conclusion that the proposed settlement is fair, reasonable, and adequate. *Lively v. Dynegy, Inc.*, 2008 WL 4657792, at *2 (S.D. Ill. Sept. 30, 2008).

The Independent Fiduciary's analysis further supports the Settlement. After completing the review required by the Settlement Agreement and applicable law, *see* Background § II.E, *supra*, the Independent Fiduciary found that the "Settlement Amount is a fair and reasonable recovery given the novelty of Plaintiffs' theory of liability, the results in numerous much more straightforward ESOP ERISA cases in the last several years, the potential recovery, the defenses the Defendants would have asserted, the risks and costs involved in proceeding to trial, the possibility of reversal on appeal of any favorable judgment, and the necessity of prevailing on appeal of the dismissal of the MPE Defendants and the Officer Defendants to have any chance of recovery from them through continued litigation." IF Report at 9.

5. 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* Background § 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).

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

Class Counsel has filed an application seeking an award of attorneys' fees of $2,333,333.33 (one-third of the Gross Settlement Amount), plus reimbursement of litigation costs. Dkt. 186. One-third of the common fund is the fee typically awarded in ERISA cases and other complex class actions such as this. *See Bell v. Pension Comm. of ATH Holding Co.*, 2019 WL 4193376, at *3 (S.D. Ind. Sept. 4, 2019) (awarding one-third fee in ERISA class action) (collecting cases); *George v. Kraft Foods Global, Inc.*, 2012 WL 13089487, at *2-3 (N.D. Ill. Jun. 26, 2012) (awarding one-third fee in ERISA class action); *TikTok II,* 617 F. Supp. 3d at 941 ("A one-third flat fee . . . is routine for class action settlements in . . . complex fields.").

7. 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

Under Rule 23(e)(2)(D), the Court must consider whether the proposal treats class members equitably relative to each other. As noted in Background § II.B *supra*, 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).

For all of these reasons, the Settlement is fair, adequate, and reasonable, and comports with Fed. R. Civ. P. 23(e) and longstanding Seventh Circuit guidance.

II. THE CLASS NOTICE PLAN WAS REASONABLE

The Notice program was also reasonable and satisfied the requirements of Due Process and Rule 23. *See* Fed. R. Civ. P. 23(e)(1)(B). The "best notice" practicable under the circumstances 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 that occurred here.

As discussed, the Settlement Administrator mailed the Court-approved Settlement Notices to Settlement Class Members via U.S. Mail. *See* Background § II.D, *supra*. 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 also provided notice via email where an email address was available for the Settlement Class Member. *See Berglund v. Matthews Senior Hous. LLC*, 2023 WL 6847696, at *5 (E.D. Wis. Oct. 17, 2023) (notice by mail and email, if available, was reasonable). This Notice plan was demonstrably effective. Atticus Dec. ¶ 8.

The content of the Settlement Notices was 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. *See* Background § II.D, *supra*. *See Berglund*, 2023 WL 6847696, at *5 (approving content of similar notice). Further, the Settlement Notices have been supplemented through the Settlement Website and toll-free telephone line. *See* Background § II.D., *supra*.

III. THE COURT SHOULD AFFIRM ITS CERTIFICATION OF THE SETTLEMENT CLASS FOR FINAL APPROVAL

In its Preliminary Approval Order, the Court preliminarily certified the following Settlement Class:

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

Dkt. 184 ¶ 2.

In support of preliminary approval, Plaintiffs established: (1) the class was sufficiently numerous; (2) Plaintiffs raised common issues in the operative Complaint; (3) Plaintiffs' claims are typical of other class members' claims; (4) Plaintiffs are adequate class representatives; (5) Class Counsel is experienced and competent; (6) class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) due to the risk of inconsistent adjudications; and (7) class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(B) because any individual adjudication would be dispositive of the interests of other class members. Dkt. 183 at 7-12. There have been no changes since the Court preliminarily certified the Settlement Class. Accordingly, the Court should reaffirm its certification of the Settlement Class for purposes of final approval.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order granting final approval of the Settlement following the final fairness hearing scheduled for July 14, 2026.

Dated: June 12, 2026

Respectfully submitted,

ENGSTROM LEE LLC

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 12, 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