

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

Johana Colon, *et al.*,

Plaintiffs,

v.

Kevin G. Johnson, *et al.*,

Defendants.

Case No. 8:22-cv-888-TPB-TGW

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

Pursuant to Federal Rule of Civil Procedure 23(h) and the Court's Order Granting Preliminary Approval of Class Action Settlement, Dkts. 280 ¶¶ 1, 14; 281, Plaintiffs and Class Counsel respectfully move for an Order awarding (1) attorneys' fees in the amount of \$6,333,333.33 (one-third of the \$19 million Gross Settlement Amount); (2) reimbursement of \$615,148.25 in litigation expenses; and (3) settlement administration expenses in the amount of \$12,202.<sup>1</sup>

This motion is made based on the accompanying Memorandum of Points and Authorities, Declaration of Jennifer K. Lee in Support of Plaintiffs' Motion for Attorneys' Fees, Costs & Administrative Expenses; Declaration of Jennifer K. Lee in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Dkt. 267 ("First Lee Decl."); Declarations of Johana Colon, Christine Rundberg, and Anthony Womack in Support of Plaintiffs' Motion for Attorneys' Fees, Costs &

---

<sup>1</sup> Undersigned counsel was appointed Class Counsel for the Settlement Class. Dkt. 280 ¶ 2.

Administrative Expenses; and all other papers, pleadings, documents, arguments, and materials presented before or during the hearing on this motion, and any other evidence or argument the Court may consider.

## MEMORANDUM OF POINTS AND AUTHORITIES

### INTRODUCTION

This is a sprawling and complex ERISA class action concerning Defendants' alleged violations of ERISA in connection with the formation, administration, and termination of the ESOP. Because of their efforts, Class Counsel has achieved a settlement that provides an average recovery of more than \$100,000 per class member on a gross basis, topping the chart of recent ESOP settlements by a substantial margin.

To date, Class Counsel have received no payment for any of their efforts in this litigation, nor have they been reimbursed for their out-of-pocket costs advanced on behalf of the Class. All compensation to Class Counsel is contingent upon the Court's award of fees and expenses as provided in the Settlement.

In common fund cases like this, a one-third award of attorneys' fees is common both within and outside the Eleventh Circuit. *See, e.g., Wolff v. Cash 4 Titles*, 2012 WL 5290155, at \*5 (S.D. Fla. Sept. 26, 2012) (average percentage award in the Eleventh Circuit is "roughly one-third," citing numerous cases).<sup>2</sup> Such a fee award is especially

---

<sup>2</sup> *See also Waters v. International Precious Metals Corp.*, 190 F.3d 1291, 1297-98 (11th Cir. 1999) (affirming 1/3 fee award); *Woznicki v. Raydon Corp.*, No. 6:18-CV-02090, Dkt. 249 (M.D. Fla. May 2, 2022) (awarding 1/3 fee request in ESOP class action); *Smith v. Kforce, Inc.*, No. 8:19-cv-02068-CEH-CPT, Dkt. 46 (M.D. Fla. June 28, 2021) (awarding 1/3 fee); *George v. Acad. Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1382 (N.D. Ga. 2019) (awarding 1/3 fee request as "typical"); *Silberstein v. Petsmart, Inc.*, No. 8:19-cv-2800-SCB-AAS, ECF 37 (M.D. Fla. Dec. 4, 2020) (same); *Hargrett v. Amazon.com DEDC LLC*, No. 8-15-cv-2456-WFJ-AAS, Dkt. 187 (M.D. Fla. Nov. 16, 2018) (same); *Bryant v. Realogy Group*,

common in ERISA class actions, which are “notoriously complex cases, and ESOP cases are . . . the most complex.” *Foster v. Adams & Assocs., Inc.*, 2021 WL 4924849, at \*6 (N.D. Cal. Oct. 21, 2021).<sup>3</sup> In light of the outstanding recovery achieved in this novel and complicated class action, Plaintiffs’ request for fees, expenses, and costs are reasonable and should be approved.

## **BACKGROUND**

### **I. PROCEDURAL HISTORY**

This case was filed on April 14, 2022. Dkt. 1. With early discovery, Plaintiffs amended their complaint twice to add additional Defendants and claims. Dkts. 103, 169. In summary, the Second Amended Complaint (“SAC” or “Complaint”) alleges that Defendants violated ERISA throughout the entire lifespan of the ESOP—from its formation, throughout its operation, and at termination.

All Defendants moved to dismiss at least some of the claims raised in the Complaint and the SAC and Plaintiffs briefed nine oppositions to those motions. *See* Dkts. 39, 41, 44, 64–66, 178, 179, 181, 182, 183, 188–193, 197. Plaintiffs moved to

---

*LLC*, No. 8:18-cv-2572-T-60CPT, Dkt. 53 (M.D. Fla. Sept. 4, 2020) (same); *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1257–58 (S.D. Fla. 2016) (awarding 33% attorneys’ fees); *Cook’s Pest Control, Inc.*, 2012 WL 2923542, at 18 (N.D. Ala. July 17, 2012) (awarding 35% attorneys’ fees); *In re Terazosin Hydrochloride Antitrust Litig.*, No. 1:99-md-01317-PAS, Dkt. 1557 at 8–10 (S.D. Fla. Apr. 19, 2005) (awarding 1/3 fee); *In re Managed Care Litig. v. Aetna*, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (awarding 35.5% attorneys’ fees); *Gutter v. E.I. DuPont De Nemours & Co.*, No. 1:95-cv-02152-ASG, Dkt. 626 at 7 (S.D. Fla. May 30, 2003) (awarding 1/3 fee).

<sup>3</sup>*Clark v. Oasis Outsourcing Holdings Inc.*, No. 18-81101, Dkt. 23 at ¶ 1 (S.D. Fla. Dec. 20, 2018) (awarding one-third fee request in ERISA class action); *Krohnengold v. N.Y. Life Ins. Co.*, No. 1:21-cv-01778-JMF, Dkt. 201 (July 18, 2024) (same); *Tussey v. ABB, Inc.*, 2019 WL 3859763, at \*4 (W.D. Mo. Aug. 16, 2019) (same); *Kruger v. Novant Health, Inc.*, 2016 WL 6769066, at \*2 (M.D.N.C. Sept. 29, 2016) (“[a] one-third fee is consistent with the market rate in a complex ERISA 401(k) fee case”); *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at \*2 (D. Minn. July 13, 2015) (same).

certify the class, which Defendants each separately opposed. *See* Dkts. 212, 222–25. Those pending motions were terminated upon the Parties’ settlement. *See* Dkts. 258, 260, 262. By the time of Settlement, expert discovery had begun and Plaintiffs served their initial expert disclosures on January 2, 2024. First Lee Decl. ¶ 11.

On January 9–10, 2024, the Parties attended a two-day, in-person mediation facilitated by Judge Mark Bennett (Ret.). *Id.* ¶ 12. While the Parties did not reach a settlement at the in-person mediation, they continued negotiations through Judge Bennett for nearly two weeks before reaching a global settlement-in-principle by the end of January. *Id.* ¶ 13.

## **II. SETTLEMENT TERMS AND PRELIMINARY APPROVAL**

Under the Settlement, Defendants will contribute a Gross Settlement Amount of \$19 million to resolve Class Members’ claims. Dkt. 273-1 (“Settlement Agreement”) §§ 1.20, 4.2.1, 4.2.2. After accounting for any Attorneys’ Fees and Costs, and Administrative Expenses 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 appointed Settlement Administrator, Analytics Consulting LLC (“Analytics”), 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 Class Member’s prior distributions from the ESOP relative to other Class Members. Thus, Class Members will receive awards from the Settlement in proportion to their stakes in the ESOP. *Id.*

Settlement Class Members have the option of receiving their Settlement

distribution through a rollover check. *Id.* § 5.4.1. If they do nothing, Settlement Class Members will receive their distribution through a direct distribution. *Id.* § 5.4.3. Under no circumstances will any monies revert to Defendants. *Id.* § 5.5.1. The aggregate balance of any checks that remain uncashed will be re-distributed to those Class Members who successfully received an initial distribution, and any remaining funds will be distributed to the Florida Department of Financial Services Unclaimed Property Fund. *Id.* §§ 5.5.2, 5.5.3.

On March 27, 2024, Plaintiffs moved for preliminary approval of the Settlement. Dkt. 267. That motion was referred to Magistrate Wilson, who held an in-person hearing on May 2, 2024. Dkts. 274, 275. Following that hearing, on May 31, 2024, Magistrate Wilson recommended the motion for preliminary approval of class action settlement be granted, Dkt. 278, which the Court entered on June 10, 2024. Dkt. 280. The Court has set the Final Fairness Hearing for October 9, 2024. Dkt. 281.

### **III. WORK OF CLASS COUNSEL**

Class Counsel has dedicated substantial time and effort prosecuting this complex action in order to achieve this outstanding Settlement. What began as a lawsuit concerning a single transaction grew into a much larger action spanning the entire lifespan of the ESOP against six groups of defendants, including the company's officers, directors, independent trustee, and shareholder rights representative. *See* Dkt. 169. Class Counsel is unaware of any other comparable ERISA class action that challenged how an ESOP was deployed from start to finish. Declaration of Jennifer K. Lee in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs &

Administrative Expenses (“Second Lee Decl.”) ¶ 4. It is perhaps not surprising that Class Counsel invested more than 5,000 hours to achieve this remarkable result, and additional work will be required to implement the Settlement. *Id.* ¶ 5.

**A. Work conducted to date**

Prior to filing this lawsuit, Plaintiffs’ counsel spent dozens of hours reviewing publicly available information regarding the ESOP termination transaction. *Id.* ¶ 6. After this case was filed, Defendants moved to stay discovery. Dkt. 68. Plaintiffs opposed that motion and the Court denied it. Dkts. 69, 73.

Right away, Plaintiffs aggressively pursued discovery. They served more than 250 requests for production, in response to which Defendants produced 21,000 documents spanning 150,000 pages. First Lee Decl. ¶ 9. They served 51 interrogatories and 71 requests for admission on all Defendants. Second Lee Decl. ¶ 7. Plaintiffs briefed four motions to compel discovery, Dkts. 101, 145, 216, 252, and achieved the relief they were seeking in all but one, which remained pending at the time of Settlement, Dkts. 138, 174, 246, 252, 258. Plaintiffs subpoenaed more than 20 third-parties that produced an additional 15,000 documents comprising 250,000 pages. First Lee Decl. ¶ 9. Plaintiffs also deposed eight witnesses and engaged two experts, who developed and submitted lengthy reports prior to mediation. *Id.* ¶¶ 9, 11.

**B. Remaining work to be performed**

Class Counsel’s work on this matter remains ongoing. Prior to the Fairness Hearing, Class Counsel will draft Plaintiffs’ motion for final approval of the Settlement and respond to any objections. Second Lee Decl. ¶ 10. Class Counsel also will

communicate with the Independent Fiduciary that has been engaged to review the Settlement, and will provide it with all necessary information in connection with its review. *Id.* Class Counsel will then attend the Fairness Hearing, and if final approval is granted, supervise the distribution of payments to eligible Class Members, which entails two rounds of distributions to ensure maximum recovery among Class Members. *Id.* In addition, Class Counsel will continue to respond to questions from Class Members and take other actions necessary to support the Settlement until the conclusion of the Settlement Period. *Id.* Class Counsel estimates this will require an additional 100–200 hours. *Id.*

#### **IV. WORK OF THE SETTLEMENT ADMINISTRATOR**

The appointed Settlement Administrator, Analytics, printed and mailed settlement notices and rollover forms to Class Members, established the settlement website and telephone support line as provided by the Settlement. Second Lee Decl. ¶ 14. Analytics has since collected completed rollover forms, monitored returned mail, and researched additional means to contact the few Class Members whose notices were returned undeliverable. *Id.* ¶ 15. If the Settlement receives final approval, Analytics will review and process rollover forms, calculate payments to Class Members pursuant to the Plan of Allocation, and facilitate and mail two rounds of distribution of payments to Class Members. *Id.* ¶ 16.

#### **V. FEES TO FORMER COUNSEL**

When this case commenced in April 2022, Class Counsel Jennifer Lee, Carl Engstrom, Brandon McDonough, and Mark Thomson were employed by Nichols

Kaster PLLP (“Nichols Kaster”). *Id.* ¶ 19. Two months later, in June 2022, these attorneys separated from Nichols Kaster to form Engstrom Lee. *Id.* ¶ 20. Soon after, pending a final decision by Plaintiffs regarding their legal representation going forward, Nichols Kaster and Engstrom Lee agreed that Engstrom Lee and Local Class Counsel, Wenzel, Fenton, & Cabassa, would have sole responsibility for ongoing work on the case and advance all future costs. *Id.* ¶ 20; *see* Dkts. 64–66. Accordingly, Nichols Kaster did not participate in any briefing, hearings, discovery, expert discovery, depositions, mediation, or any of the post-filing investigation that yielded the more expansive First and Second Amended Complaints. *Id.* ¶ 21. Plaintiffs formally retained Engstrom Lee and discharged Nichols Kaster in September 2022. *Id.* ¶ 21. Nichols Kaster subsequently withdrew from this action. Dkt. 87.

On December 1, 2022, Nichols Kaster filed notice of a charging lien “for attorney’s fees from any and all recoveries by Plaintiff” in this case “for services rendered to them by Nichols Kaster and for litigation costs advanced . . . on behalf of Plaintiff.” Dkt. 82. After Plaintiffs moved for preliminary approval of the Settlement, Nichols Kaster informed Class Counsel that, in order to satisfy its lien, “Nichols Kaster is looking only to recoup its costs and to recover a proportional share of any fees based on each firm’s respective lodestar.” Second Lee Decl. ¶ 23. Nichols Kaster’s costs are sought as part of the total costs requested in this motion.

As to Nichols Kaster’s fees, in light of its minimal investment, risk, and contributions to the Settlement, Class Counsel does not concede that Nichols Kaster is entitled to an attorney fee contingency multiplier under Florida law. *See Rosenberg v.*



*Levin*, 409 So.2d 1016 (Sup. Ct. Fla. 1982) (attorney in a contingent matter who is discharged before the occurrence of the contingency is entitled only to the “reasonable value of his services on the basis of quantum meruit.”).<sup>4</sup> Nonetheless, in order to expedite resolution of the case and distribution of the Settlement Fund to Class Members, Class Counsel will hold in trust a proportional share of any fees awarded pending resolution of the dispute. Second Lee Decl. ¶ 24.

Shortly before the deadline to file this motion, Nichols Kaster filed a motion to enforce its lien, Dkt. 282, to which Class Counsel will respond fully at a later date. Class Counsel, notes, however, that contrary to the “belief” of Nichols Kaster, *see* Dkt. 282 at 4, n.1, no attorneys’ fees will be shared with Morgan & Morgan, P.A. or any other law firm that has not been appointed Class Counsel, except Nichols Kaster. Lee Decl. ¶ 5.

## **ARGUMENT**

### **I. LEGAL STANDARD**

“Attorneys who create a common fund or benefit for a group of persons are entitled to their fees and costs based on the common benefit achieved.” *Millstein v. Holtz*, 2022 WL 18024840, at \*8 (S.D. Fla. Dec. 30, 2022) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). In *Camden I Condo. Ass’n, Inc. v. Dunkle*, the Eleventh Circuit held that “the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit,

---

<sup>4</sup> *See also Mineo Salcedo Law Firm, P.A. v. Cesard*, 333 So. 3d 222 (Fla. Dist. Ct. 2022); *Scherer v. Austin Roe Basquill, P.A.*, 325 So. 3d 175, 182 (Fla. Dist. Ct. 2021).

attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." 946 F.2d 768, 774 (11th Cir. 1991); *see also Millstein*, 2022 WL 18024840, at \*8 ("Even before *Camden*[], courts in this Circuit recognized that a percentage of the gross recovery is the only sensible method of awarding fees in common fund cases." (citation and quotations omitted)).

Courts have "substantial discretion in determining the appropriate fee percentage." *Millstein*, 2022 WL 18024840, at \*9. In evaluating the reasonableness of a fee award, courts in the Eleventh Circuit consider a set of factors set forth in *Camden*:

(1) the time and labor required; (2) the novelty and difficulty of the relevant questions; (3) the skill required to properly carry out the legal services; (4) the preclusion of the other employment by the attorney as a result of his acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the clients or the circumstances; (8) the results obtained, including the amount recovered for the clients; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and the length of the professional relationship with the clients; and (12) fee awards in similar cases.

*Millstein*, 2022 WL 18024840 (citing *Camden*, 946 F.2d at 772 n.3 (citing factors originally set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974))). Of these factors, "monetary results achieved predominate over all other criteria." *Belin v. Health Ins. Innovations, Inc.*, 2022 WL 1126006, at \*2 (S.D. Fla. Mar. 10, 2022), *report and recommendation adopted*, 2022 WL 1125788 (S.D. Fla. Apr. 15, 2022) (quoting *Camden*, 946 F.2d at 774). As elaborated below, all applicable *Camden* factors weigh in favor of awarding Class Counsel their requested one-third fee

request.<sup>5</sup>

## II. CLASS COUNSEL’S ONE-THIRD FEE REQUEST IS REASONABLE

### A. Time and Labor Required, Novelty and Difficulty of the Relevant Questions, the Skill Required, and the Preclusion of Other Employment (Factors 1, 2, 3, and 4)

This case presented novel and complex legal and factual questions, requiring a significant investment of time and labor by highly skilled Class Counsel, which also precluded other employment. Class Counsel invested more than 5,000 hours in this case amounting to more than \$3.9 million in fees at rates approved by this Court.<sup>6</sup> Second Lee Decl. ¶ 5. Unlike typical ESOP class action, which are nonetheless “notoriously complex,” this case concerned the entire lifespan of the ESOP—its formation through a leveraged buyout, its operation, and its termination and sale to a Canadian company. *Id.* ¶ 4. Class Counsel is unaware of a comparable ERISA class action challenging how an ESOP was deployed from start to finish. *Id.*

A case of this scale required Class Counsel to independently scrutinize hundreds of financial statements and QuickBooks; serve more than 250 requests for productions, 20 third-party subpoenas, review more than 35,000 documents; and consult with two

---

<sup>5</sup> “The ‘time limitations imposed by the client or the circumstances’ factor does not apply in this action” and need not be addressed. *Blessinger v. Wells Fargo & Co.*, 2024 WL 3851244, at \*11 (M.D. Fla. Aug. 12, 2024) (not considering this factor as inapplicable, citing *Ressler v. Jacobson*, 149 F.R.D. 651, 655 (M.D. Fla. 1992)).

<sup>6</sup> “[T]he alternative lodestar method, employed as a cross check, confirms the attorneys’ fee award sought is reasonable.” *In re Health Ins. Innovations Sec. Litig.*, 2021 WL 1341881, at \*13 (M.D. Fla. Mar. 23, 2021), *report and recommendation adopted*, 2021 WL 1186838 (M.D. Fla. Mar. 30, 2021) (citations omitted). Here, Plaintiffs’ requested fee would be a roughly 1.6 multiple of the lodestar. Second Lee Decl. ¶ 5. Typically, courts award a multiplier range of 2.5 to 4 in class actions. *Id.* (citing cases); *see also Ressler*, 149 F.R.D. at 653, n.4 (citing numerous cases awarding contingency multipliers ranging from 2 to 4.5).

outside experts. *Supra* at 6. The large number of Defendants represented by renowned ERISA counsel required Class Counsel to draft nine separate oppositions to multiple motions to dismiss, four motions to compel, and a contested motion for class certification. *See* First Lee Decl. ¶¶ 8, 10. Class Counsel’s substantial investment of time and labor supports their fee request. *See, e.g., Taylor v. Serv. Corp. Int’l*, 2023 WL 2346295, at \*7 (S.D. Fla. Mar. 3, 2023) (“A higher fee award is favored where there are complex issues requiring experience and skill on the part of Class Counsel.”); *Stoll v. Musculoskeletal Inst.*, 2022 WL 16927150, at \*3 (M.D. Fla. July 27, 2022) (finding that counsel’s 1048.30 hours of work supported counsel’s request for 33% of the settlement fund); *Morgan*, 301 F. Supp. 3d at 1254 (awarding 33% fee request to counsel who invested over 6,000 hours); *Belin*, 2022 WL 1126006, at \*3 (awarding one-third fee award to class counsel who participated in “extensive discovery”).

Class Counsel’s time does not capture the full scope of its investment. The thousands of hours Class Counsel “spent on this case detracted from work on other potential cases.” *Millstein*, 2022 WL 18024840, at \*12. At times, this litigation demanded the attention of all five of Engstrom Lee’s ERISA attorneys so they could simultaneously conduct a complicated accounting investigation, file motions to compel, take depositions, and work with outside experts to prepare detailed reports. Second Lee Decl. ¶ 9. *See Belin*, 2022 WL 1126006, at \*4. The total investment of firm resources and the opportunity cost associated with that investment presents yet another form of risk Class Counsel took in taking this case on a fully contingent basis and supports the requested fee. *See Millstein*, 2022 WL 18024840, at \*12 (“the relatively

small size of the firms representing the Class and the major commitment required of all the law firms involved precluded Class Counsel from working on other cases and accepting other representations.”); *Belin*, 2022 WL 1126006, at \*4 (“Given the relatively small size of Class Counsel's law firms (less than 20 attorneys combined), a case of this magnitude limited their ability to pursue other matters with guaranteed compensation from clients, as well as other contingency fee matters.”).

**B. The Customary Fee and Fee Awards in Similar Cases (Factors 5 and 12)**

Plaintiffs’ requested one-third fee award is customary in this market and among contingent ERISA class actions. “[C]ourts in this Circuit often grant fee awards of one-third or more of the class settlement fund.” *Belin*, 2022 WL1126006, at \*6 (citing numerous cases); *see also* cases cited *supra* n.2. A one-third fee award is especially common in ERISA class actions, which are “notoriously complex cases, and ESOP cases are often cited as the most complex of ERISA cases.” *Foster*, 2021 WL 4924849 at \*6; *see also* cases cited *supra* n.3. This factor therefore favors Plaintiffs’ request.

**C. Whether the Fee Is Fixed or Contingent (Factor 6)**

“The risk borne by Class Counsel is one of the most significant factors to consider when determining an appropriate fee award. Indeed, ‘a contingency fee arrangement often justifies an increase in the award of attorney’s fees.’” *Taylor*, 2023 WL 2346295, at \*7 (citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000) and quoting *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1364 (S.D. Fla. Nov. 22, 2011)). Here, Class Counsel’s compensation was entirely

contingent upon a successful resolution for the Class and Court approval. Defendants had numerous defenses and “[t]he novelty of the legal issue further increased the risk that Defendants might prevail” on any of these defenses. *Taylor*, 2023 WL 2346295, at \*8. In such cases, courts often award a “bonus” attorney award. *See Millstein*, 2022 WL 18024840, at \*11 (discussing bonus justified by pure contingent arrangement and citing cases). The purely contingent nature of this novel and complex case augurs in favor of the requested one-third fee award.

**D. The Results Obtained, Including the Amount Recovered for the Clients (Factor 8)**

Of all of the *Camden* factors, “monetary results achieved predominate over all other criteria.” *Belin*, 2022 WL 1126006, at \*2. The Settlement represents “an extraordinary result” on behalf of the Class, topping the charts on a per participant basis. *See* Dkt. 266 at 21; *George*, 369 F. Supp. 3d at 1379. Even after accounting for Class Counsel’s requested fees, costs, and expenses, the Settlement will exceed the original ESOP distributions received by the Class. Dkt. 278 at 5, 15. This is “an unqualified success.” *Millstein*, 2019 WL 18024840, at \*11; *see also id.* (common funds, as opposed to coupons, confer “a substantial, tangible, and real benefit for the Class.”); *Wave Lengths Hair Salons of Fla., Inc. v. CBL & Assocs. Properties, Inc.*, 2019 WL 13037028, at \*13 (M.D. Fla. Aug. 22, 2019) (same); *Morgan*, 301 F. Supp. 3d at 1255 (same). This “excellent result is supported by the fact that” even if class members do not elect to receive their distribution through a rollover, distributions “will be forthcoming automatically” in the form of checks mailed to Class Members. *Swift v. BancorpSouth*

*Bank*, 2016 WL 11529613, at \*18 (N.D. Fla. July 15, 2016). The size, nature, and method of distribution of the Settlement all favor Plaintiffs' requested fee award.

**E. Experience, Reputation, and Ability of the Attorneys (Factor 9)**

As this Court has already recognized, Class Counsel "clearly possess the qualifications and experience to handle this litigation." Dkt. 278 at 11. The quality of Class Counsel's representation is further validated by the fact that they opposed "extremely capable counsel" from four renowned ERISA firms: Bryan Cave Leighton Paisner LLP (a firm with more than 1,275 attorneys worldwide whose co-leader of the firm's ERISA and ESOP Class Action Team appeared in this action),<sup>7</sup> Jackson Lewis PC (a firm with more than 1,000 attorneys nationwide whose co-leader of the firm's ERISA Complex Litigation group appeared in this action),<sup>8</sup> Holland & Knight, LLP (a firm with more than 2,200 attorneys worldwide whose leader of the firm's ERISA Litigation Team appeared in this action),<sup>9</sup> and Kilpatrick Townsend and Stockton LLP (a firm with more than 650 attorneys worldwide).<sup>10</sup> "Given the quality of defense counsel from prominent national [and international] law firms" it is doubtful "attorneys of lesser aptitude could have achieved similar results." *Taylor*, 2023 WL 2346295, at \*7. This weighs heavily in favor of Class Counsel's requested fee. *See also*

---

<sup>7</sup> See "About BCLP," available at <https://www.bclplaw.com/en-US/about/about-bclp.html>; "W. Bard Brockman," available at <https://www.bclplaw.com/en-US/people/bard-w-brockman.html>.

<sup>8</sup> See "About US," available at <https://www.jacksonlewis.com/firm/about-us>; "Howard Shapiro," available at <https://www.jacksonlewis.com/people/howard-shapiro>.

<sup>9</sup> See "Holland & Knight," available at <https://www.hklaw.com/en/>; "Todd D. Wozniak," available at <https://www.hklaw.com/en/professionals/w/wozniak-todd-david>.

<sup>10</sup> See "Kilpatrick," available at <https://ktslaw.com/>.

*Belin*, 2022 WL 11226006, at \*4 (awarding requested fee, observing that a boutique firm “with less than 20 attorneys” “faced formidable opposition from” “200-plus” and “1,100-plus law firm[s]”).

**F. Undesirability of the Case (Factor 10)**

“Difficult issues in a case . . . often contribute to the undesirability of a case” and Class Counsel “should be rewarded for taking on a case from which other law firms shrunk.” *Wave Lengths*, 2019 WL13037028, at \*12 (citation and quotations omitted). This case was no different. Upon the separation of undersigned Class Counsel from Nichols Kaster, Nichols Kaster did not seek to continue representing Plaintiffs in this case, highlighting the undesirability of the case. Declaration of Johana Colon (“Colon Decl.”) ¶ 3; Declaration of Christine Rundberg (“Rundberg Decl.”) ¶ 3; Declaration of Anthony Womack (“Womack Decl.”) ¶ 3. The outcome achieved here would not have been possible without the conviction of Class Counsel. Where other larger firms retreated, Class Counsel continued undaunted. They should be rewarded for taking on the risk of prosecuting this novel case. *Millstein*, 2022 WL 18024840, at \*10; *see also In re Bayou Sorrel Class Action*, 2006 WL 3230771, at \*6 (W.D. La. Oct. 31, 2006) (finding undesirability due in part to issues such as “problems of proof, problems of causation, and a host of other complex issues”).

**G. Nature and length of professional relationship with clients (Factor 11)**

Plaintiffs have been represented by the same undersigned counsel since the beginning of this case more than two years ago, electing to hire Engstrom Lee after its



attorneys separated from Nichols Kaster. Colon Decl. ¶ 2; Rundberg Decl. ¶ 2; Womack Decl. ¶ 2. Throughout the litigation Plaintiffs have remained in close contact with Class Counsel and have been actively engaged throughout the litigation, assisting Class Counsel in their investigation, producing documents, preparing for and appearing at their deposition, and participating in the two-day in-person mediation, taking time off of work and traveling from out of town. *See* Dkts. 268 ¶ 4; 269 ¶ 4; 270 ¶ 4. This factor weighs in favor of the requested fee award. *See Ali v. Laser Spine Inst., LLC*, 2023 WL 7411246, at \*9 (M.D. Fla. June 16, 2023), *report and recommendation adopted*, 2023 WL 7411305 (M.D. Fla. July 3, 2023) (noting that the plaintiffs’ years-long relationship with Class Counsel and their involvement in the litigation, “weigh[ing] in favor of the requested fee award.”).

#### **H. Lack of Any Objections**

In addition to the *Camden* factors, courts also consider “whether there are any substantial objections by class members . . . to the fees requested by counsel.” *Millstein*, 2022 WL 18024840, at \*9. Although the deadline for objections is still weeks away, since Class notices were mailed on July 10, 2024, not a single Class Member has objected to the Settlement or to the fees to be requested by Counsel. Second Lee Decl. ¶ 18. This factor also augurs in support of the requested fee. *See Roubert v. Capital One Fin. Corp.*, 2023 WL 5916714, at \*11 (M.D. Fla. July 10, 2023) (finding “significant[]” that “no settlement class member objected to the attorneys’ fees request despite having adequate time to do so.”).

\* \* \* \*

In light of the outstanding recovery achieved on behalf of Class Members, the extraordinary risk and investment made by Class Counsel, and the exceptional skill required to achieve this favorable outcome on behalf of Class Members, Class Counsel's requested one-third fee is reasonable under all applicable *Camden* factors and should be awarded.

### **III. THE REQUESTED COSTS AND EXPENSES ARE REASONABLE AND SHOULD ALSO BE AWARDED**

#### **A. Litigation Costs**

Plaintiffs' requests for reimbursement of advanced costs are likewise reasonable and should be awarded. Litigation expenses that may be reimbursed include "out-of-pocket costs and expenses that Class Counsel incurred during the prosecution and settlement of the Action[.]" *Gevaerts v. TD Bank*, 2015 WL 6751061, at \*14 (S.D. Fla. Nov. 5, 2015) (approving "fees for experts, photocopies, travel, online research, translation services, mediator fees, and document review and coding expenses"; charges were "necessarily incurred" for the "benefit of the Settlement Class"). These expenses relate to travel for hearings, mediation, depositions, expert discovery, legal research, e-discovery, and service and filing. Second Lee Decl. ¶ 12. "[C]ourts normally grant expense requests in common fund cases as a matter of course." *Hanley v. Tampa Bay Sports and Ent. LLC*, 2020 WL 2517766, at \*6 (M.D. Fla. Apr. 23, 2020); *see also Kukorinis v. Walmart, Inc.*, 2024 WL 3226772, at \*13 (M.D. Fla. June 28, 2024) (approving costs to cover "expert fees, mediation fees, travel expenses for the in-person mediation, legal research costs, court filings, photocopying costs" among other costs);

*Stoll*, 2022 WL 16927150, at \*4 (same); *Denning v. Mankin Law Grp., P.A.*, 2023 WL 2655187, at \*8 (M.D. Fla. Feb. 15, 2023) (same); *Del Rosario v. King & Prince Seafood Corp.*, 2010 WL 11519378, at \*12 (S.D. Ga. July 15, 2010) (approving recovery of costs associated with legal research and eDiscovery); *Cromer-Tyler v. Teitel*, 2007 WL 2684878, at \*6 (M.D. Ala. Sept. 11, 2007) (same).

One atypical but necessary expense Class Counsel incurred was the retention of bankruptcy counsel for the limited purpose of drafting and filing an objection to the Chapter 11 Restructuring Plan of Akumin Inc. (the company that acquired ADG upon the termination of the ESOP) in Bankruptcy Court in S.D. Texas. As written, the broad third-party release contemplated by the proposed Chapter 11 plan may have released all claims against all Defendants in this action, including the independent trustee. *See In re Akumin*, No. 23-90827, Dkt. 21 at 17 & n.1 (Bankr. S.D. Tex. Oct. 22, 2023) (defining “Related Party”, “Released Parties”, and “Releasing Parties”, and directing to complete list of Debtors, which included Advanced Diagnostic Group, LLC). Bankruptcy Counsel was able to obtain a specific carve out from the Chapter 11 Plan explicitly preserving all claims related to this Action. *See In re Akumin*, No. 23-90827, Dkt. 272 ¶ 24(a) (Bankr. S.D. Tex. Nov. 30, 2023).

#### **B. Administrative Expenses**

The requested settlement administration expenses are necessary and reasonable and should be reimbursed. The policy of “equitably distributing the fees and costs of successful litigation among all who gained” from the effort, also applies to settlement administration expenses. *Gevaerts*, 2015 WL 6751061, at \*10; *see also Benzion v. Vivint*,

*Inc.*, 2014 WL 11531917, at \*3 (S.D. Fla. June 9, 2014) (ordering settlement administration expenses to be “paid out of the Settlement Fund”).

The notice and payment distribution services provided by Analytics are essential to carry out the Settlement and require experience processing rollover claims and calculating distributions according to the court-approved plan of allocation. Analytics was selected following a competitive bidding process and their administration expenses amount to 0.06% of the Gross Settlement Amount. Second Lee Decl. ¶ 17. Accordingly, the total amount of \$12,202 for payment of settlement administration expenses are reasonable and should be approved.

### **CONCLUSION**

For the reasons set forth above, Plaintiffs respectfully request the Court award Class Counsel attorneys’ fees in the amount of \$6,333,333.33, equal to one-third (33.33%) of the Gross Settlement Amount; reimbursement of litigation expenses incurred in the amount of \$615,148.25; and payment to Analytics Consulting LLC in the amount of \$12,202 for Notice and Administration of the Settlement.

### **LOCAL RULE 3.01(G) CERTIFICATION**

Plaintiffs certify that counsel met and conferred via written correspondence on August 27, 2024, and Defendants stated they do not oppose the requested relief.

Dated: August 28, 2024

**ENGSTROM LEE LLC**

/s/ Jennifer K. Lee

Jennifer K. Lee, MN No. 0399012\*

Brandon T. McDonough, MN No. 0393259\*

Carl F. Engstrom, MN No. 0396298\*

Mark E. Thomson, MN No. 0398260\*

Charlie C. Gokey, MN No. 0402225\*

323 N. Washington Ave., Suite 200  
Minneapolis, MN 55401  
Telephone: 612-305-8349  
jlee@engstromlee.com  
bmcdonough@engstromlee.com  
cengstrom@engstromlee.com  
mthomson@engstromlee.com  
cgokey@engstromlee.com

\* By Special Admission

**WENZEL, FENTON, CABASSA, P.A.**

Brandon J. Hill, FL No. 0037061  
Luis A. Cabassa, FL No. 053643  
Amanda E. Heystek, FL No. 0285020  
1110 N. Florida Avenue, Suite 300  
Tampa, FL 33602  
Telephone: 813-224-0431  
bhill@wfclaw.com  
lcabassa@wfclaw.com  
aheystek@wfclaw.com

*ATTORNEYS FOR PLAINTIFFS*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 28th day of August, 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/Jennifer K. Lee  
Jennifer K. Lee