

**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

**DECLARATION OF JENNIFER K. LEE IN SUPPORT OF PLAINTIFFS'  
MOTION FOR ATTORNEYS' FEES, COSTS &  
ADMINISTRATIVE EXPENSES**

I, Jennifer K. Lee, declare and state as follows:

1. I am a partner at the law firm of Engstrom Lee LLC (“Engstrom Lee”), which, along with Wenzel, Fenton, Cabassa, PA, has been appointed Class Counsel in the above-captioned action. I submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Costs & Administrative Expenses.

2. I incorporate my prior declarations filed in this case, including my declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, Dkt. 267 (“First Lee Decl.”), and the exhibits attached thereto.

**WORK OF ATTORNEYS**

3. Class Counsel has dedicated substantial time and effort to prosecuting this class action in order to achieve the outstanding Settlement of a non-reversionary sum of \$19 million.

4. Because of Class Counsel's efforts this lawsuit grew from a case concerning a single transaction into a much larger action spanning the entire lifespan of the ESOP—its formation, its operation, and its termination—against six groups of defendants responsible for the ESOP, including the company's officers, directors, independent trustee, shareholder rights representative, and other investors. Class Counsel is unaware of any other comparable ERISA class action that challenged how an ESOP was deployed from start to finish.

5. I am in receipt of all hours billed to this action from all Class Counsel and Plaintiffs' prior counsel (see *infra* ¶ 19). The total law firm hours invested thus far exceeds 5,000.<sup>1</sup> Applying rates approved for the Middle District of Florida, the lodestar value of counsel's time is more than \$3.9 million. No attorneys' fees will be shared with Morgan & Morgan, P.A. or any other law firm that has not been appointed Class Counsel, except Plaintiffs' former counsel, Nichols Kaster, PLLP.

6. Prior to filing this lawsuit, Plaintiffs' attorneys scrupulously investigated the ESOP termination transaction and prepared the initial Complaint, filed in April 2022. *See* Dkt. 1.

7. After this case was filed, Defendants filed a motion to stay discovery, which Plaintiffs opposed and the Court denied. Dkts. 68, 69, 73. Right away, Class Counsel aggressively pursued discovery. We served more than 250 requests for production, in response to which Defendants produced 21,000 documents spanning

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<sup>1</sup> Detailed billing records and invoices are available upon request.

150,000 pages. We served 51 interrogatories and 71 requests for admission on all of Defendants. We briefed four motions to compel discovery, Dkts. 101, 145, 216, 252, and achieved the relief we were seeking in all but one, which remained pending at the time of Settlement. Dkts. 138, 174, 246, 252, 258. We also subpoenaed more than 20 third-parties that produced an additional 15,000 documents comprising 250,000 pages. Class Counsel also deposed eight witnesses and engaged two experts, who developed and submitted lengthy reports prior to mediation. We twice amended Plaintiffs' complaint. Dkts. 103, 169.

8. The parties mediated after approximately 18 months of discovery, motion practice, and amendments. Class Counsel represented Plaintiffs and the Class vigorously during multi-day in-person mediation sessions and in subsequent negotiations during the following weeks, ultimately resulting in the Settlement. First Lee Decl. ¶¶ 12-13. Class Counsel further served Plaintiffs and Class by negotiating and drafting portions of the Settlement Agreement and associated documents and successfully moving for Preliminary Approval of the Settlement. *See* Dkts. 266, 273-1, 280.

9. This case presented novel and complex legal and factual questions, requiring a significant investment of time and labor by highly skilled counsel, which also precluded other employment. At times, this litigation demanded the attention of all five of Engstrom Lee's ERISA attorneys so we could simultaneously conduct a complicated accounting investigation, file motions to compel, take depositions, and work with outside experts to prepare detailed reports.

### **REMAINING WORK TO BE PERFORMED**

10. Class Counsel's work on this matter remains ongoing and Class Counsel expects to invest additional time in order to obtain final approval of the Settlement and to implement the Settlement. Prior to the Fairness Hearing, Class Counsel will draft Plaintiffs' motion for final approval of the Settlement and respond to any objections. 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. 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. 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. Class Counsel estimates this will require an additional 100–200 hours.

### **COSTS ADVANCED BY ATTORNEYS**

11. In connection with the action, Plaintiffs' attorneys advanced a significant amount of costs for the benefit of Plaintiffs and the Class. Because counsel handled this action on a contingency basis, counsel have not yet received reimbursement for any of these costs.

12. As of the date of this Declaration, Class Counsel has incurred \$612,176.34 in costs in connection with this action. Plaintiffs' prior counsel incurred \$2,771.91 in costs. These costs are broken down by category below:

<b>Category</b>	<b>Costs Incurred to Date</b>
Expert Fees	\$509,156.05
Depositions	\$30,108.33
Travel Expenses	\$20,875.18
Mediation Services	\$11,607.22
Bankruptcy Counsel	\$5,915.77
Financial Data Subscriptions	\$593.06
Legal Research/PACER	\$10,969.95
Process/Courier Service	\$4,575.31
Filing Fees	\$1,350.00
Postage, Shipping, Copies	\$883.62
Public Records	\$268.56
Discovery	\$18,845.20
<b>TOTAL</b>	<b>\$615,148.25</b>

13. 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).

### **WORK OF THE SETTLEMENT ADMINISTRATOR**

14. On and prior to July 10, 2024, 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.

15. 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. This work continues, and the Settlement Administrator detail the final results of the notice campaign in connection with Plaintiffs’ forthcoming motion for final approval.

16. 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.

17. For these services, Analytics will charge \$12,202.00. Analytics was selected following a competitive bidding process and their settlement administration expenses amount to 0.06% of the Gross Settlement Amount.

18. Although the deadline for objections is still weeks away, since Class notices were mailed, neither Analytics nor Class Counsel has received an objection to the Settlement or to the attorneys' fees, costs, and expenses requested by Plaintiffs.

**PLAINTIFFS' PRIOR COUNSEL**

19. When Plaintiffs initially retained counsel and filed this case in April 2022, I, along with my partners and co-Class Counsel, Carl Engstrom, Brandon McDonough, and Mark Thomson were employed by Plaintiffs' prior counsel, Nichols Kaster PLLP ("Nichols Kaster"). Engstrom and McDonough worked with Plaintiffs on this matter while employed by Nichols Kaster.

20. Two months later, in June 2022, we separated from Nichols Kaster to form Engstrom Lee. Pending a final decision by Plaintiffs regarding their legal representation going forward, Nichols Kaster and Engstrom Lee agreed that Engstrom Lee and Wenzel, Fenton, & Cabassa would maintain sole responsibility for ongoing work on the case and advance all future costs. *See* Dkts. 64–66.

21. Plaintiffs formally retained Engstrom Lee and discharged Nichols Kaster in September 2022. Nichols Kaster subsequently withdrew from this action. Dkt. 87. 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.

22. 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.

23. After Plaintiffs moved for preliminary approval of the Settlement, Nichols Kaster informed Engstrom Lee that, in order to satisfy its lien, Nichols Kaster is seeking to recoup its costs and to recover a proportional share of any fees based on each firm’s respective lodestar. Nichols Kaster further provided its costs and billed hours. Nichols Kaster’s costs are sought as part of the total costs requested in this motion. *See supra* ¶ 12.

24. As to Nichols Kaster’s fees, while Engstrom Lee does not concede that it is entitled to a contingency multiplier under Florida law, Class Counsel will hold in their trust account a proportional share of any attorneys’ fees awarded in this matter pending resolution of disputes concerning Nichols Kaster’s fees

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

Dated: August 28, 2024

/s/Jennifer K. Lee  
Jennifer K. Lee



**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