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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

CHERYL HAYNES, and MARCELLUS GARNER, individually, on behalf of the AlaTrade Foods Holdings, Inc. Employee Stock Ownership Plan, and on behalf of a class of all other persons similarly situated,

Plaintiffs,

v.

STEPHEN C. JAMES, as trustee of the AlaTrade Foods Holdings, Inc. Employee Stock Ownership Trust, ALATRADE FOODS HOLDINGS, INC., ALATRADE FOODS, INC., DAVIS LEE, BETH LEE, and BETH LEE as trustee of the Davis Lee 2017 Irrevocable Trustee Family Trust,

Defendants.

Case No. 5:26-cv-00664-HNJ

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

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Plaintiffs Cheryl Haynes and Marcellus Garner ("Plaintiffs"), individually and on behalf of a class of participants in the AlaTrade Foods Holdings, Inc. Employee Stock Ownership Plan (the "ESOP" or "Plan"), have filed an unopposed motion for an order: (1) preliminarily approving a settlement agreement between Plaintiffs and (i) AlaTrade Foods Holdings, Inc. and AlaTrade Foods, Inc. (together, "AlaTrade" or the "Company"); (ii) Davis Lee, Beth Lee, and Beth Lee as Trustee of the Davis Lee 2017 Irrevocable Trustee Family Trust (together, "Selling Shareholders"); and (iii) Stephen C. James acting in his capacity as the trustee of the ESOP (the "Trustee"), (with AlaTrade and the Selling Shareholders, the "Defendants"); (2) certifying a class for settlement purposes ("Settlement Class"), and appointing Plaintiffs' Counsel as Class Counsel and Plaintiffs as Class Representatives; (3) approving notice to the Settlement Class; (4) appointing RG/2 Claims Administration, LLC as the Settlement Administrator; and (5) setting a date for a fairness hearing. In support thereof, Plaintiffs state as follows:

I. INTRODUCTION

Subject to the Court's approval, the Parties have settled this action under the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*, ("ERISA") for consideration totaling $4.575 million ("Gross Settlement Amount") for the benefit of the Settlement Class Members and the ESOP. The Gross Settlement Amount has two components: (1) a $3.7 million reduction in the principal amount of Refinanced (External) Company Note A (which will increase the equity value of AlaTrade, and thereby increase the value of the Plan accounts of those Settlement Class Members who are current participants of the Plan) with a corresponding reduction of the same amount in the Refinanced (Internal) ESOP Note (which will reduce the ESOP's liability to the Company by $3.7 million); and (2) a cash payment by AlaTrade or its insurer totaling $875,000 ("Cash Settlement Amount"). The parties memorialized their Settlement in an agreement dated April 21, 2026 ("Settlement Agreement") (attached hereto as Ex. 1). Because the Settlement Agreement satisfies all the criteria for preliminary approval and provides a good result for the Settlement Class, and because the proposed Settlement Class meets all the criteria for conditional certification, Plaintiffs request that the Court grant this unopposed motion.

II. BACKGROUND

A. Plaintiffs' Complaint

Named Plaintiffs are participants in the ESOP and former employees of the ESOP's sponsor, AlaTrade. Compl. ¶¶ 16-17 (Dkt. 1). Pursuant to Eleventh Circuit administrative exhaustion requirements, Plaintiffs submitted claims to the ESOP's Plan Administrator on August 15, 2024. *Id.* ¶ 57. The Claims Fiduciary for the ESOP denied Plaintiffs' claims on February 11, 2025, and denied Plaintiffs' appeal on August 4, 2025. *Id.* ¶¶ 62, 64. Before filing the Complaint, the Parties mediated the matter on October 21, 2025, and the Parties agreed to the Settlement. The Complaint was filed on April 22, 2026, solely for the purpose of facilitating the Settlement Agreement.

The Complaint alleges the Trustee caused the ESOP to acquire 100% of AlaTrade's issued and outstanding stock on June 14, 2021, from the Selling Shareholders for $160 million ("ESOP Transaction"), an amount Plaintiffs allege exceeded the stock's fair market value. Compl. ¶¶ 6, 8. In so doing, the Complaint alleges that the Trustee violated ERISA's prohibition on transactions between ERISA plans and plan insiders (known as "parties in interest"), 29 U.S.C. § 1106(a) (Count I), and the statute's fiduciary standards, 29 U.S.C. § 1104(a) (Count II). *See id.* ¶¶ 68-86. The Complaint also alleges that the Selling Shareholders knowingly participated in the Trustee's § 1106(a) violations (Count III). *Id.* ¶¶ 87-97. The Complaint further alleges that AlaTrade and AlaTrade Foods breached their fiduciary duties as defined in 29 U.S.C. § 1104(a) in selecting the Trustee, failing to monitor the Trustee's performance, failing to inform the Trustee of relevant information, and failing to remove the Trustee (Count IV). *Id.* ¶¶ 98-105. Finally, the Complaint alleges AlaTrade breached its fiduciary duty under 29 U.S.C. § 1104(a) by failing to select and monitor the performance of a Claims Fiduciary who would undertake a full and fair review of Plaintiffs' claims and appointed a Claims Fiduciary who refused to produce relevant information and compiled an inadequate and incomplete administrative record that did not permit a decision on the merits (Count V). *Id.* ¶¶ 106-116.

Defendants deny any wrongdoing or liability associated with the ESOP Transaction and the allegations in this lawsuit, and have vigorously defended themselves throughout.

B. Discovery and Motion Practice

Though the Parties mediated the matter prior to filing the Complaint, they engaged in substantial pre-litigation proceedings before initiating settlement discussions. Those proceedings included a year-long administrative claims process pursuant the Plan's claims procedures, during which Plaintiffs submitted a formal claim for benefits and an appeal challenging the ESOP Transaction. *See* Declaration of Gregory Y. Porter ("Porter Dec."), attached hereto as Exhibit 3, ¶ 6. In response to the formal claim, the Claims Fiduciary collected, reviewed, and compiled an administrative record exceeding 1,400 pages of documents, which was produced to Plaintiffs. *Id.* The administrative record included core transaction documents and analyses relating to the ESOP Transaction, including the closing binder and the fairness opinion relied upon by the Trustee. *Id.* After considering Plaintiffs' submissions and the administrative record, the Claims Fiduciary issued detailed written decisions at both the claim and appeal stages explaining the factual and legal bases for denying Plaintiffs' claims. *Id.*

After denial, Plaintiffs received additional documents including material relating to the selection of the ESOP trustee, corporate resolutions approving the engagement of the trustee, the valuation report prepared for the ESOP trustee in connection with the transaction, and a summary of the negotiations between the sellers and trustee in connection with the ESOP transaction. Porter Dec. ¶ 6. The Parties utilized that information to exchange detailed mediation statements outlining the strengths of each side's position based on the information learned through the appeal process and subsequent disclosures. *Id.* ¶ 8.

C. Mediation and Settlement

The Parties held a full-day mediation with JAMS mediator Maxine Aaronson on October 21, 2025. Porter Dec. ¶ 8. In advance of the mediation, the Parties submitted statements to the mediator laying out their positions. *Id.* At the mediation, the Parties reached a settlement in principle. The Parties agreed to the Settlement Agreement on April 21, 2026. *Id.*

III. SUMMARY OF PROPOSED SETTLEMENT

The material terms of the Settlement Agreement are as follows:

A. The Proposed Settlement Class

The proposed Settlement covers all Plan participants and beneficiaries at any time from the Plan's inception until December 31, 2025 ("Class Period"). Excluded from the Class are the shareholders who sold their stock to the Plan, directly or indirectly, and their immediate families, legal representatives, successors, and assigns of any such excluded persons. Based on information included in AlaTrade's Form 5500s, there are at least approximately 2,000 Settlement Class Members. Porter Dec. ¶ 17 n.1.

B. Benefits to the Settlement Class

The Gross Settlement Amount consists of the following two forms of consideration for the benefit of the Settlement Class Members:

First, effective the latter of January 4, 2027, or sixty (60) days after entry of the Final Approval Order, the principal amount of the Refinanced (External) Company Note A dated as of June 28, 2021 ("Seller Note") in the original principal amount of $8,000,000 will be reduced by $3,700,000 ("Seller Note Reduction"). Settlement Agmt. § 10.1(ii). Because the Seller Note is debt on AlaTrade's balance sheet, and because company debt reduces its equity value, the Seller Note reduces the value of the ESOP's AlaTrade stock. Accordingly, the Seller Note Reduction will increase the value of AlaTrade stock, which will inure to the benefit of the Settlement Class Members that maintain Plan accounts by increasing the value of their stock. Simultaneous to the Seller Note Reduction, the Company and the Selling Shareholders will also cause a corresponding reduction in the promissory note the ESOP issued to AlaTrade in connection with the Transaction ("ESOP Note"), reducing the ESOP's liability to the Company by $3.7 million. *Id.*

Second, AlaTrade or its insurer have agreed to a pay a total of $875,000 in cash into a fund maintained for purposes of holding settlement amounts ("Settlement Fund Account") on the following payment schedule ("Cash Settlement Amount"):

- $100,000 paid within 30 days after the Court enters a Preliminary Approval Order; and
- $775,000 paid 30 days after the Effective Date of the Settlement.

Settlement Agmt. §§ 10.1(i), 10.2.3.

The amount remaining in the Settlement Fund Account after the payment of any court-awarded attorneys' fees and expenses, taxes owed on the Cash Settlement Amount, settlement administration expenses, and 50% of the fee of the Independent Fiduciary retained to approve the Settlement on behalf of the ESOP are the "Net Proceeds." Settlement Agmt. § 12.5. Because some of the Settlement Class Members sold some or all of their AlaTrade shares during the Class Period ("Cashed-Out Class Members")—and because those cashed-out shares will not benefit from the Seller Note Reduction—a portion of the Net Proceeds will first be set aside for Cashed-Out Class Members for their cashed-out shares in an amount commensurate with the benefit conferred on existing shares in the Plan by the Seller Note Reduction. Specifically, because the $3.7 million Seller Note Reduction translates to roughly $3.70 of increased value to each of the 1,000,000 shares in the Plan, *see Walsh v. Vinoskey*, 19 F.4th 672, 683–84 (4th Cir. 2021), Cashed-Out Class Members will be paid \$3.70 for each of their cashed-out shares plus their pro rata share of the remainder of the Net Proceeds based on their "Entitlement Percentage." Plan of Allocation ¶ 1 (attached hereto as Ex. 2). A Class Member's Entitlement Percentage—including for Cashed-Out Class Members and those that still participate in the Plan—will be determined by adding the Class Member's vested AlaTrade shares plus any vested shares the Class Member previously cashed out, and dividing that total by the overall number of vested AlaTrade shares plus the overall number of vested shares previously cashed out. *Id.* ¶ 1(b).

C. Notice and Administration

Within 45 days after entry of the Preliminary Approval Order, Plaintiffs' Counsel shall cause the proposed Settlement Administrator, RG/2 Claims Administration, LLC ("Settlement Administrator"), to disseminate a notice to the Settlement Class Members, and post it on a website, apprising them of the Settlement Agreement ("Class Notice"). Settlement Agmt. ¶ 4.1.1. The proposed Class Notice (attached hereto as Ex. 4) informs Settlement Class Members about the nature of this lawsuit, the terms of the Settlement, and the procedures for entering an appearance to be heard or object to the Settlement. In addition to the Class Notice, the Settlement Administrator will also post on a website made available to Class Members other key documents associated with this lawsuit and the Settlement, including the

Complaint, the Settlement Agreement, preliminary approval papers, Plaintiffs' Motion for Award of Attorneys' Fees, and Plaintiffs' Motion for Final Approval.

The Settlement Administrator shall receive the names and last known mailing addresses of the Settlement Class Members within 21 days of the entry of the Preliminary Approval Order. Settlement Agmt. § 4.2. Defendants' Counsel shall also provide the number of shares allocated to the Plan account of each member of the Settlement Class to the Settlement Administrator. *Id.*

If the Court enters a Final Approval Order, and after Defendants complete the Cash Settlement Amount, the Settlement Administrator shall implement the Plan of Allocation. Specifically, the Settlement Administrator shall distribute the "Net Proceeds"—*i.e.*, the amounts remaining in the Settlement Fund Account after deducting court-approved expenses and fees—per the procedure described in Sec. III(B) above. *See* Plan of Allocation ¶ 2 (Ex. 2).

The Settlement Administrator shall distribute payments to Class Members pursuant to the Plan of Allocation in the following form: (1) Class Members with an active ESOP account will receive a cash allocation to their ESOP account; (2) Class Members without an active ESOP account may elect their payment (a) as a deposit into a qualified retirement account or (b) directly to that Class Member by check. *Id.* ¶ 2. If any checks remain uncashed after 120 days, and the Settlement Administrator has made reasonable efforts to notify the recipients of these checks, the Settlement

Administrator shall re-distribute the total amount of any uncashed checks pro-rata to the remaining Settlement Class Members that maintain an account in the Plan. *Id.* ¶ 3(a).

D. Attorneys' Fees and Expenses

Subject to the Court's entry of a Final Approval Order, Class Counsel's fees and litigation expenses shall be paid from the Settlement Fund Account. Class Counsel will petition the Court for an award of attorneys' fees not to exceed 15% of the Gross Settlement Amount, plus litigation expenses. Settlement Agmt. ¶ 11.1.

E. Review by Independent Fiduciary

The Settlement is contingent upon approval by an Independent Fiduciary in accordance with Prohibited Transaction Exemption 2003-39 promulgated by the Department of Labor. Settlement Agmt. § 5.1; *see also* 68 Fed. Reg. 75,632 (Dec. 31, 2003), as amended, 75 Fed. Reg. 33,830 (June 15, 2010) ("PTE 2003-39"). PTE 2003-39 applies to ERISA settlements that release claims brought on behalf of an ERISA plan and requires that an independent fiduciary evaluate the settlement terms and determine that they are "reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone." PTE 2003-39 at 33,836. Defendants will select and retain an Independent Fiduciary, subject to Plaintiffs' approval, to evaluate the reasonableness of the Settlement. The Independent Fiduciary shall notify all Counsel for the Parties of its determination in writing no later than 35 calendar days before the Fairness Hearing. The cost of retaining the Independent Fiduciary will be split between the Company and the Qualified Settlement Fund, with each paying 50%. *See* Settlement Agmt. § 5.6.

F. Release of Claims

In exchange for the Gross Settlement Amount and satisfaction of the other conditions required of Defendants by the Settlement Agreement, Plaintiffs and the proposed Settlement Class will release the "Released Parties" (as defined in the Settlement Agreement) from any and all "Released Claims" (as defined in the Settlement Agreement), which "means any and all present or past claims, demands, debts, controversies, expenses, rights of action, suits, and causes of action of every kind and nature whatsoever, including those for any and all losses, liabilities, obligations, damages, unjust enrichment, attorneys' fees and expenses, disgorgement of fees, litigation costs, injunctive or declaratory relief or seeking contribution, indemnification, or any other type of legal or equitable relief, whether under ERISA, the Internal Revenue Code, or any other federal, state, local or foreign law, whether based on contract, tort, statute, regulation, ordinance, the common law, or another legal or equitable theory of recovery, whether known or unknown, suspected or unsuspected, existing or claimed to exist, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, in law or equity, that (i) arise out of or relate in any way to: (a) the allegations, acts, omissions, representations, facts, events, matters, transactions or occurrences asserted in Plaintiffs' August 15, 2024 claims letter or Plaintiffs' May 12, 2025 claims appeal (the "Administrative Claims"); (b) the claims process relating to the Administrative Claims; (c) the 2021 ESOP purchase transaction (the "ESOP Transaction"), including but not limited to the financial projections provided and/or use in determining the purchase price in the ESOP Transaction; (d) the valuation relied upon by the Trustee in the ESOP Transaction; and (e) all other claims arising out of or relating to the facts alleged in the Administrative Claims or that could be brought in Plaintiffs' Complaint; (ii) would be barred by principles of *res judicata* had the claims asserted in the Class Action been fully litigated and resulted in a final judgment or order; or (iii) pertain to any conduct related to the direction to calculate, the calculation of, and/or the method or manner of allocation or distribution of the Settlement Fund." Settlement Agmt. § 6.1.

G. Summary of Schedule

The proposed schedule for the effectuation of this Settlement Agreement and Plan of Allocation is set out below:

Event	**Date**
Motion for Preliminary Approval	Within 21 days of filing Complaint
CAFA Notices issued	Within 10 days of Plaintiffs filing the Settlement Agreement with the Court
Transmission of Settlement Class list to Settlement Administrator	Within 21 days of the Preliminary Approval Order
Mailing of Class Notice	Within 45 days of the Preliminary Approval Order

Motion for award of attorneys' fees and expenses	No later than 45 days before the Fairness Hearing
Motion for Final Approval of Settlement	No later than 45 days before the Fairness Hearing
Objections to Settlement and notice of intent to appear at Fairness Hearing	No later than 21 days before the Fairness Hearing
Response to Objections	No later than 10 days before the Fairness Hearing
Fairness Hearing	TBD (but at least 90 days after the mailing of Class Notice to Settlement Class)

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

A class action cannot be settled without court approval and notice to the class, which entails a two-stage process: (1) preliminary approval and notice to the class of the proposed settlement; and (2) final approval following a fairness hearing in which the court determines whether the proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

At the preliminary-approval stage, the court must determine whether the settlement justifies giving notice of the settlement to the class, which is informed by the following factors:

(A) the class representatives and counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

> (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); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Prior to the 2018 amendments, the Eleventh Circuit traditionally evaluated class action settlements using the six factors outlined in *Bennett v. Behring Corp.* ("*Bennett* factors"):

> (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

737 F.2d 982, 986 (11th Cir. 1984); *see also Ponzio v. Pinon*, 87 F.4th 487, 494 (11th Cir. 2023). The Eleventh Circuit has noted that the *Bennett* factors complement the "four core concerns set out in Rule 23(e)(2)." *Ponzio*, 87 F.4th at 495. In light of

this, in addition to the Rule 23(e)(2) factors, Plaintiffs will address each of the *Bennett* factors to the extent they are applicable, many of which overlap.[1]

There is a strong presumption in favor of voluntary settlement agreements, especially in class actions. *See Bennett*, 737 F.2d at 982, 987; *see also Wyatt v. Horsley*, 793 F. Supp. 1053, 1055 (M.D. Ala. 1991) ("It is true that voluntary settlement is recognized as the preferred method of resolving disputed issues in class litigation.").

A. The Settlement is the Result of Good Faith, Arm's-Length Negotiations

As noted, among the criteria for preliminary approval is that the settlement proposal be negotiated at "arm's length." Fed. R. Civ. P. 23(e)(2)(B). "Where the parties have negotiated at arm's length, the Court should find that the settlement is not the product of collusion." *Braynen v. Nationstar Mortg., LLC*, No. 14-20726, 2015 WL 6872519, at *10 (S.D. Fla. Nov. 9, 2015). "Moreover, the assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1247 (S.D. Fla. 2016) (internal quotation omitted).

Here, the Parties engaged in substantial pre-litigation proceedings that ensured the Parties were fully informed of the strengths and weaknesses of their

[1] Since Notice has not yet been sent, the substance and amount of opposition to the settlement (*Bennett* factor #5) cannot be evaluated.

respective positions before entering settlement negotiations. Those proceedings included a year-long administrative claims process pursuant the Plan's claims procedures, during which Plaintiffs submitted a formal claim for benefits and an appeal challenging the ESOP Transaction. In response, the Claims Fiduciary collected, reviewed, and compiled an administrative record exceeding 1,400 pages of documents, which was produced to Plaintiffs. The administrative record included core transaction documents and analyses relating to the ESOP Transaction, including the closing binder and the fairness opinion relied upon by the Trustee. After considering Plaintiffs' submissions and the administrative record, the Claims Fiduciary issued detailed written decisions at both the claim and appeal stages explaining the factual and legal bases for denying Plaintiffs' claims.

Thereafter, the Parties participated in a full-day mediation with experienced JAMS mediator Maxine Aaronson on October 21, 2025. Porter Dec. ¶ 8. In advance of the mediation, the Company produced additional documents to Plaintiffs' counsel, including material relating to the selection of the ESOP trustee, corporate resolutions approving the engagement of the trustee, the valuation report prepared for the ESOP trustee in connection with the transaction, and a summary of the negotiations between the sellers and trustee in connection with the ESOP transaction. Additionally, the Parties provided the mediator with written statements outlining their views on liability and damages. *Id.* At the mediation, the Parties reached a settlement in principle. The Parties agreed to the Settlement Agreement on April 21, 2026. *Id.* Throughout the settlement discussion process, the Parties vigorously debated the merits of Plaintiffs' claims and Defendants' theories of defense. And, as discussed below, given the benefit of reviewing the business appraisal relied on by the Trustee in approving the ESOP Transaction as well as the closing binder for the ESOP Transaction, the Parties entered the negotiations with an understanding of the issues that would be presented at trial.

Because the proposed Settlement is the result of good faith, arm's-length negotiations by well-informed and experienced counsel, Rule 23(e)(2)(B) is satisfied.

B. The Complexity, Expense, and Likely Duration of Litigation

Addressing the fourth *Bennett* factor (complexity, expense, and duration of litigation), as well as Rule 23(e)(2)(C)(i) (the costs, risks, and delay of trial and an appeal), the Parties have different views about Defendants' actions, their potential liability, and the likely outcome of the litigation. Plaintiffs' core allegations regarding the ESOP Transaction rest on facts that are strongly contested by Defendants. In their mediation statement, Defendants argued that Plaintiffs' claims would fail because the Court would have to apply an "arbitrary and capricious" standard in analyzing the Claims Fiduciary's decision denying Plaintiffs' claim for benefits, and even if the case would proceed on a *de novo* standard, Defendants argued that Plaintiffs would not be able to survive a motion to dismiss because they have not alleged an injury in fact sufficient to establish Article III standing. Defendants also pointed to evidence that countered Plaintiffs' central critiques, including that the Trustee engaged in a thorough, prudent process with the help of advisors that was documented in the administrative record. If the lawsuit were to proceed, Plaintiffs would have to overcome these and other defenses and arguments. These fact-intensive inquiries would have led to a battle of experts and conflicting evidence and testimony.

Proceeding to motions to dismiss, fact and expert discovery, summary judgment, class certification, and ultimately trial also would have taken a significant amount of time and attorney resources. Regardless of whether this case was decided at the pleading stage, summary judgment, or after a trial, there likely would have been appeals that followed, further delaying resolution and causing more expense. The proposed Settlement—which includes $875,000 in cash and a $3.7 million reduction in debt held by AlaTrade and the ESOP—is a good result for the Settlement Class given the likely duration and uncertainty associated with further litigation.

C. The Stage of Proceedings and the Amount of Discovery Completed

Regarding the sixth *Bennett* factor (stage of the proceedings and the amount of discovery completed), though the Parties reached a Settlement in principle at an early stage of the case—after the administrative review process was complete and before a Complaint was filed with the Court—the Parties are nevertheless well informed about the facts of the case due to an early exchange of relevant documents. As discussed above, Plaintiffs received an administrative record exceeding 1,400 pages of documents, plus the business appraisal relied on by the Trustee in approving the ESOP Transaction as well as the closing binder and negotiation history for the ESOP Transaction. As a result of these productions, Class Counsel had insight at an early stage into the central issues in the case. Further assisting Class Counsel was a valuation expert who provided a preliminary analysis to Class Counsel on his opinion of the fair market value of the AlaTrade stock purchased by the ESOP and damages. Porter Dec. ¶ 5.

"The stage of the proceedings at which a settlement is achieved is evaluated to ensure that Plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation." *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005). "[V]ast formal discovery need not be taken." *Id.*; *see also Perez v. Asurion Corp.*, 501

F.Supp.2d 1360, 1383 (S.D. Fla. 2007) ("[T]he Settlement was achieved early in the litigation, but not so early that Class Counsel did not have sufficient information with which to negotiate.").

Here, Plaintiffs had sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation. The shared information allowed the Parties to fully and fairly assess the allegations and strengths and weaknesses of their respective positions at an early stage. The sixth *Bennett* factor supports approval of the Settlement.

D. The Risks of Establishing Liability, Damages, and Likelihood of Success at Trial

The first *Bennett* factor and Rule 23(e)(2)(C)(i), account for the risks of establishing liability, establishing damages, and being successful at trial. "The likelihood of success on the merits is weighted against the amount and form of relief contained in the settlement." *Lipuma*, 406 F. Supp. 2d at 1319. "The Court, however, has neither the duty nor the right to reach any ultimate conclusions on the issues of fact or law which underlie the merits of the dispute." *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 315 (N.D. Ga. 1993).

Here, Plaintiffs faced significant risks. As discussed above in Section IV(B), the Parties have different views about the likely outcome of the litigation and the fair market value of AlaTrade stock at the time of the ESOP Transaction. Defendants contend that the Plan and its participants were not harmed at all. Plaintiffs, on the other hand, contend that the Plan incurred significant financial loss through its overpayment for AlaTrade shares. That core dispute had not been resolved at the time the Parties reached the Settlement, and the uncertainty put all Parties at great risk.

Further, counsel for the Parties, having litigated similar issues extensively in the past, *see, e.g.*, Porter Dec. ¶¶ 9–16, were fully aware of these risks and the possible outcomes, and the Parties were able to reach a settlement that balanced those risks.

E. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risks of Litigation

The second and third *Bennett* factors and Rule 23(e)(2)(C)(i)-(iv) assess the range of reasonableness of the settlement fund in light of the best possible recovery and the risks of litigation. The range of possible recovery "spans from a finding of non-liability through varying levels of injunctive relief." *Assoc. for Disabled Americans, Inc. v. Amoco Oil Co.,* 211 F.R.D. 457, 468 (S.D. Fla. 2002). Courts analyze "the range of possible damages that could be recovered at trial and then combine this assessment with plaintiffs' likelihood of prevailing at trial and other relevant factors to determine whether the settlement falls at a point in the range that is fair to the class." *In re Domestic*, 148 F.R.D. at 319. "The Court's role is not to engage in a claim-by-claim, dollar-by-dollar evaluation, but to evaluate the proposed settlement in its totality. Moreover, the existence of strong defenses to the claims presented makes the possibility of a low recovery quite reasonable." *Lipuma*, 406 F. Supp. 2d at 1323; *see also Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988) ("A settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery.").

In cases alleging that a trustee violated ERISA by causing an ESOP to pay too much for the stock of a privately held company, courts have held that the measure of loss is the difference between what the plan paid for the stock and what the stock was worth at the time of the transaction. *See Perez v. Bruister*, 823 F.3d 250, 270-72 (5th Cir. 2016); *Perez v. First Bankers Trust Servs., Inc.*, No. 12-4450, 2017 WL 1232527, at *81 (D.N.J. Mar. 31, 2017). As noted, Plaintiffs commissioned a preliminary damages estimate from their retained valuation expert, who estimated that, in his opinion, the ESOP overpaid by as much as $32.8 million. Porter Dec. ¶ 7. The $4.575 million in total consideration associated with the proposed Settlement represents 13.9% of the largest amount of estimated damages.

The recovery reflected in the Settlement Agreement is reasonable in light of the potential damages. *See, e.g.*, *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1346 (S.D. Fla. 2011) ("[N]ine percent or higher constitutes a fair settlement even absent the risks associated with prosecuting these claims."); *In re Domestic*, 148 F.R.D. at 325 (approving a 12.7–15.3% recovery as "fall[ing] well above the lowest point in the zone of reasonableness" where the "proposed settlement reflects an appropriate balance between the possibility of a judgment for defendants and of no recovery for the consumers"); *Behrens*, 118 F.R.D. at 543 ("A recovery at trial of three to five percent of the requested damages is fairly realistic given these uncertainties."); *see also In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001) (noting that since 1995, class action settlements have typically "recovered between 5.5% and 6.2% of the class members' estimated losses").

While the recovery includes both cash and a reduction in AlaTrade's debt (the Seller Note Reduction), the latter directly benefits the ESOP and each share of AlaTrade stock it holds. The ESOP Transaction was financed by the ESOP's sponsor (AlaTrade), including through promissory notes (the Seller Notes) issued to the Selling Shareholders. Those Seller Notes are a component of AlaTrade's debt, and thus reduces the equity value of AlaTrade stock. As a result, the $3.7 million Seller Note Reduction increases the equity value of AlaTrade stock held by the ESOP. That is a direct benefit to the Plan and its participants, and serves to correct one of the effects of the alleged overpayment (namely, the increased debt taken on by AlaTrade). That benefit is why other courts have approved ESOP settlements that include debt reduction as a component of the recovery. *See, e.g.*, *Chea v. Lite Star Esop Comm.*, No. 1:23-00647, 2025 WL 2938836 (E.D. Cal. Oct. 16, 2025) (preliminarily approving settlement for $1.5 million in cash and $1 million in debt reduction); *Smith v. Greatbanc Trust Company et al.*, No. 1:20-CV-02350, Dkt 163, (N.D. Ill. Aug. 23, 2023) (finally approving settlement for $15 million in debt reduction and $2.5 million in cash, among other consideration). Given the potential defenses and uncertainty inherent in any dispute about business valuation and the attendant risk of recovering nothing for Plan participants, the proposed Settlement represents a good result for the Settlement Class.

F. Effectiveness of the Proposed Method of Distributing Relief to the Class

Rule 23(e)(2)(C)(ii) examines the effectiveness of any proposed method of distributing relief to the class, including the method of processing any class member claims. Here, the Settlement Agreement contemplates Defendants' Counsel to provide the Settlement Administrator with the names and last known addresses of the Settlement Class Members. Settlement Agmt. § 4.2. Defendants' Counsel shall also provide the number of shares allocated to the Plan account of each member of the Settlement Class to the Settlement Administrator. *Id.* The Settlement Administrator will use that information to make distributions to Settlement Class Members in accordance with the Plan of Allocation. No claim forms are required. This method of distributing relief is both effective and efficient.

G. The Terms of the Proposed Award of Attorneys' Fees

Rule 23(e)(2)(C)(iii) looks at the terms of any proposed award of attorneys' fees, including timing of payment. As described above in Section III(D), Plaintiffs' counsel will file an application seeking an award of attorneys' fees, not to exceed 15% of the Gross Settlement Amount, plus reimbursement of litigation expenses.

H. The Settlement Proposal Treats Class Members Equitably

Under Rule 23(e)(2)(D), the court must consider whether the settlement proposal treats class members equitably relative to each other. As noted in Section III(C) above, Class Members who are current participants in the Plan will all benefit from the Seller Note Reduction, which will increase the value of AlaTrade stock. *See* Settlement Agmt. § 10.1. Because the shares already redeemed by the Cashed-Out Class Members will not benefit from the Seller Note Reduction, the Cashed-Out Class Members will receive $3.70 per share in cash payments for each share cashed out (derived by taking $3.7 million and dividing it by all 1,000,000 AlaTrade shares held by the Plan, which is the 100% owner of AlaTrade). All Class Members (including the Cashed-Out Class Members) will then share *pro rata* in the Net Proceeds. As a result, the proposed Settlement has no obvious deficiencies such as preferential treatment to a portion of the Class.

I. Agreements Made in Connection with the Settlement

Pursuant to Rule 23(e)(3), the Parties have entered a Settlement Agreement in connection with the Settlement. Class Counsel also has an agreement with referring counsel, Major Khan.

J. The Court Should Approve the Class Notice and Schedule a Fairness Hearing

Pursuant to Rule 23(e)(1), the Court "must direct notice in a reasonable manner to all class members who would be bound by [a proposed settlement, voluntary dismissal, or compromise]." Fed. R. Civ. P. 23(e)(1). District courts have discretion as to "appropriate notice" for a class certified under Rule 23(b)(1) or (b)(2). Fed. R. Civ. P. 23(c)(2)(A). The Eleventh Circuit has interpreted Rule 23(e)(1) to require class members be given "information reasonably necessary to make a decision [whether] to remain a class member and be bound by the final judgment or opt out of the action, though the notice need not include every material fact or be overly detailed." *Faught v. Am. Home Shield Cor.*, 668 F.3d 1233, 1239 (11th Cir. 2011). "An overly detailed notice" has the potential to "confuse class members and impermissibly encumber their rights to benefit from the action." *Id.* "The court must ensure that all class members are informed of the agreement[] and have the opportunity to voice their objections." *Laube v. Campbell*, 333 F. Supp. 2d 1234, 1240 (M.D. Ala. 2004). In addition, Rule 23(e) gives the district court discretion as to the manner of the notice. Fed. R. Civ. P. 23(e)(1).

As described in Sections III(C) above, the Parties have agreed, subject to Court approval, to a Class Notice that provides individual notice to Settlement Class Members. The Class Notice, which is attached hereto as Exhibit 4, will be sent by mail to each Settlement Class Member no later than 45 days after the Court's preliminary approval of the Settlement. The proposed Class Notice describes in plain English: (i) the Settlement's terms and operation; (ii) the nature and extent of the released claims; (iii) the procedure and timing for objecting to the Settlement; and (iv) the date and place for the Fairness Hearing. Plaintiffs request that the Court approve RG/2 Claims Administration, LLC as Settlement Administrator. RG/2 has extensive experience in the administration of settlements of this type. *See* Ex. B to Porter Dec.

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 expenses, as set forth in the accompanying proposed Order.

V. THE COURT SHOULD CERTIFY A RULE 23 SETTLEMENT CLASS

Plaintiffs also seek to certify a class for settlement purposes pursuant to Fed. R. Civ. P. 23. The proposed Class is defined as: "All participants and beneficiaries of the AlaTrade Food Holdings, Inc. Employee Stock Ownership Plan at any time from its inception until December 31, 2025." Settlement Agmt. § 1.35. Excluded from the Class are the shareholders who sold their stock to the Plan, directly or indirectly, and their immediate families, legal representatives, successors, and assigns of any such excluded persons. Plaintiffs are participants in the Plan and bring this action on behalf of the Plan and its participants.

Rule 23(a) is easily met as to all claims because the Settlement Class consists of at least 2,000 members; the questions of fact and law surrounding Defendants' conduct are the same for all Settlement Class Members; Plaintiffs' claims are typical of the Class; and Plaintiffs and their counsel have and will adequately represent the Class. The Plan was established for the common benefit of all its participants, and its assets are held in a common trust. Defendants owed all participants the same duties under ERISA. As detailed in the Complaint and further described below, Defendants either breached their fiduciary duties or otherwise violated ERISA as to all Settlement Class Members or to none, and all Class Members suffered the same injuries as a result. And because Plaintiffs' claims are brought on behalf of the Plan pursuant to 29 U.S.C. § 1132(a)(2), any recovery and relief belong to the Plan, which ultimately benefits all participants and beneficiaries in the Plan.

A. Legal Standards for Class Certification

A plaintiff seeking class certification must show that the proposed class meets the four requirements of Fed. R. Civ. P. 23(a)—numerosity, commonality, typicality, and adequacy—and one of the subsections of Fed. R. Civ. P. 23(b). *See Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1267 (11th Cir. 2019). While the Eleventh Circuit has not adopted a specific standard, courts in the Eleventh Circuit have held that plaintiffs bear the burden of proof by a preponderance of the evidence. *See In re HealthSouth Corp. Secs. Litig.*, 257 F.R.D. 260, 272 (N.D. Ala. 2009); *All Family*

Clinic of Daytona Beach Inc. v. State Farm Mut. Auto. Ins., Co., 280 F.R.D. 688, 690 (S.D. Fla. 2012). Rule 23 "creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010).

ERISA fiduciary-breach actions under 29 U.S.C. § 1132(a)(2) are frequently certified under Rule 23. *See Gamache v. Hogue*, 338 F.R.D. 275, 291 (M.D. Ga. 2021) ("Recently, Courts in this circuit have certified classes in ERISA breach of fiduciary duty actions, like this case, under either subsection of Rule 23(b)(1)." (citing cases)); *Boley v. Universal Health Servs., Inc.*, 36 F.4th 124, 136 (3d Cir. 2022); *In re YRC Worldwide, Inc. ERISA Litig.*, No. 09-2593, 2011 WL 1303367, at *9 (D. Kan. Apr. 6, 2011) ("[T]he vast majority of courts faced with [ERISA claims against fiduciaries] conclude that [class] certification is appropriate"). That is because suits under § 1132(a)(2) are brought in a representative capacity on behalf of the plan, and thus seek redress for the benefit of the plan, rather than individualized relief. *See Henderson v. Emory Univ.*, No. 1:16-2920, 2018 WL 6332343, at * 9 (N.D. Ga. 2018) ("In light of the derivative nature of ERISA [Section] 502(a)(2) claims, breach of fiduciary duty claims brought under [Section] 502(a)(2) are paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class, as numerous courts have held. Indeed, the allegations of the complaint are based on alleged duties and relief owed to the Plans as a whole.");

Henry on behalf of BSC Ventures Holdings, Inc. Emp. Stock Ownership Plan v. Wilmington Tr. NA, 72 F.4th 499, 506 (3d Cir. 2023).

Courts across the country regularly certify ESOP class actions alleging violations of ERISA's fiduciary standards. *See, e.g.*, *Gamache*, 338 F.R.D. at 292 (certifying a class alleging breaches of fiduciary duties brought by ESOP participants); *Henderson*, 2018 WL 6332343, at *10 (same); *Guidry v. Wilmington Trust*, N.A., 333 F.R.D. 324 (D. Del. 2019) (certifying a class alleging breaches of fiduciary duty and prohibited transaction claims brought by ESOP participants); *Cunningham v. Wawa, Inc.*, 387 F. Supp. 3d 529 (E.D. Pa. 2019) (same); *Hurtado v. Rainbow Disposal Co.*, No. 8:17-1605, 2019 WL 1771797, at *11 (C.D. Cal. Apr. 22, 2019) (same)*;* *Douglin v. GreatBanc Trust Co.*, Inc., 115 F. Supp. 3d 404, 412 (S.D.N.Y. 2015) (finding an ESOP class alleging ERISA fiduciary claims to present a "paradigmatic" example of a Rule 23(b)(1) class); *Godfrey v. GreatBanc Trust Co.*, No. 18-7918, 2021 WL 679068 (N.D. Ill. Feb. 21, 2021); *Chesemore v. Alliance Holdings, Inc.*, 276 F.R.D. 506 (W.D. Wis. 2011) (certification under 23(b)(1)(A) & (B), (b)(2)).

B. The Proposed Class Satisfies Rule 23(a)'s Requirements

Every class must satisfy the criteria of Rule 23(a): numerosity, commonality, typicality, and adequacy of representation. *See* Fed. R. Civ. P. 23(a). Those requirements are met here.

1. The numerosity requirement is satisfied because the Class is so numerous that joinder of all Class members is impracticable.

Rule 23(a)(1) permits class treatment where "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[W]hile there is no fixed numerosity rule, generally less than twenty-one [individuals] is inadequate, [but] more than forty [is] adequate, with numbers between varying according to [the] other factors." *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986). Here, the Settlement Class consists of approximately 2,000 Members. Porter Dec. ¶ 17 n.1. The numerosity requirement, therefore, is satisfied.

2. The commonality requirement is satisfied because the Complaint's overpayment allegations are common to all Settlement Class Members.

Rule 23(a)(2) requires the existence of "questions of law or fact common to the class." It is a "low hurdle" to overcome. *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1356 (11th Cir. 2009). "[A] single [common] question" will satisfy Rule 23(a)(2). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011). Commonality exists if the plaintiff's claims "depend upon a common contention" that is "of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350. Even "[a]n alleged policy or practice of treating an entire class unlawfully satisfies the commonality requirement." *Herman v.*

Seaworld Parks & Ent., Inc., 320 F.R.D. 271, 290 (M.D. Fla. 2017) (citing *Cox*, 784 F.2d at 1557–58).

Claims that a stock was sold at an incorrect price, such as those at issue here, satisfy the commonality requirement. *In re Netbank, Inc. Secs. Litig.*, 259 F.R.D. 656, 664–65 (N.D. Ga. 2009) (finding commonality among class members where common question included whether stock was artificially inflated due to alleged misrepresentations); *see also Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 182–83 (3d Cir. 2001) (finding common questions of law and fact under Rule 23(a)(2) as to the sale of securities at the price offered on the central National Best Bid and Offer system without investigating other, potentially higher prices); *Kindle v. Dejana*, 315 F.R.D. 7, 11 (E.D.N.Y. 2016) (finding common issues where plaintiff alleged that defendants sold ESOP stock for less than fair market value); *In re Ikon Office Solutions, Inc.*, 191 F.R.D. 457, 462–63 (E.D. Pa. 2000) (certifying claim that Ikon stock price had been artificially inflated).

Commonality is also frequently satisfied in ERISA cases arising under 29 U.S.C. § 1132(a)(2), given that the claim is brought on behalf of the plan for relief inuring to the plan. *See Gamache*, 338 F.R.D. at 286–92; *Cunningham*, 387 F. Supp. 3d at 539; *Guidry*, 333 F.R.D. at 329 (finding commonality because "[t]he class claims here all depend on the question of whether the ESOP paid an inflated price for" company stock); *Nistra v. Reliance Tr. Co.*, No. 16-4773, 2018 WL 835341, at

*2 (N.D. Ill. Feb. 13, 2018) (finding commonality in ERISA action against trustee arising from ESOP's purchase of private company stock); *Douglin*, 115 F. Supp. 3d at 410 (noting that a defendant's liability for breaching ERISA's fiduciary duties is a common question to all class members because such a breach affects all participants and beneficiaries); *Neil v. Zell*, 275 F.R.D. 256, 260–61 (N.D. Ill. 2011) (finding commonality satisfied where plaintiffs' claims stemmed from the ESOP's purchase of Tribune Company stock).

This case is no different: it is based on a single transaction involving a single security and involves multiple common questions of law and fact. Those common questions include: (1) whether Defendants were fiduciaries of the Plan under ERISA; (2) whether the Selling Shareholders were parties in interest under ERISA; (3) whether the Trustee breached its fiduciary duties and caused a prohibited transaction under ERISA by permitting the Plan to purchase AlaTrade stock from the Selling Shareholders; (4) whether Davis Lee, as an officer (CEO) of AlaTrade and AlaTrade's sole director who appointed the Trustee, knew or should have known about the prohibited transaction or the Trustee's breaches of fiduciary duty; and (5) the amount of losses suffered by the Plan and its participants as a result of Defendants' ERISA violations.

Proof on each of these issues will necessarily be proof for the entire Settlement Class because the claims center on Defendants' fiduciary obligations *to the Plan* and on prohibited transactions *involving the Plan,* with relief inuring *to the Plan*. Put simply, "Plaintiffs' claims do not focus on injuries caused to each individual [ESOP Participant], but rather on how the Defendants' conduct affected the pool of assets that make up the [ESOP]." *Hurtado*, 2019 WL 1771797, at *7 (citation omitted). The commonality requirement is met.

3. The typicality requirement is satisfied because Plaintiffs' claims are identical to those of the Settlement Class Members.

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). While related to commonality, typicality focuses on the "individual characteristics of the named plaintiff in relation to the class." *Piazza v. Ebsco Inds., Inc.*, 273 F.3d 1341, 1346 (11th Cir. 2001). Typicality is satisfied if there is a "nexus between the class representative's claims or defenses and the common questions of fact or law which unite the class." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984). "But a plaintiff's claims or defenses need not be identical to the proposed class, and minor variations will not render the plaintiff's claims atypical." *Gamache*, 338 F.R.D. at 287 (citing *Kornberg*, 741 F.2d at 1337). Instead, typicality is met where the claims "arise from the same event or pattern or practice and are based on the same legal theory." *Kornberg*, 741 F.2d at 1337.

In ERISA cases alleging breach of fiduciary duty under 29 U.S.C. § 1132(a)(2), courts frequently find the typicality requirement satisfied because the "action is brought on behalf of the Plan, not the individual participants, so that Plaintiff's claims, of necessity, are typical of the claims of the members of the proposed class." *Lively v. Dynegy, Inc.*, No. 05-63, 2007 WL 685861, at *10 (S.D. Ill. 2007); *Gamache*, 338 F.R.D. at 288 ("The members claims are based on the same events and legal theories: breach of fiduciary duties and monitoring the ESOP. Proof of Defendants' alleged misconduct and the alleged harm would be the same for each class member rather than turning on individual circumstances."); *Pfeifer v. Wawa, Inc.*, No. 16-497, 2018 WL 2057466, at *4 (E.D. Pa. May 1, 2018) (finding typicality where "Class Representatives' stock was sold at the same price, after the same valuation process, and in the same circumstances as every other Class Member.").

Here, Plaintiffs' claims are typical of the Settlement Class because they assert a single representative action on behalf of the Plan arising from a single transaction involving the Plan's AlaTrade stock, and seek to recover, for the Plan's benefit, all of the Plan's overpayment losses and other relief on behalf of the Plan as a whole. Defendants thus cannot "distinguish Plaintiffs' circumstances from other ESOP Participants and beneficiaries." *Hurtado*, 2019 WL 1771797, at *8 (typicality established because allegations focus on the conduct of Defendants as to the ESOP as a whole and not on conduct specific to any particular Plaintiff).

4. Plaintiffs are adequate Class representatives.

Rule 23(a)(4) requires that plaintiffs "fairly and adequately protect the interests of the class," meaning that a plaintiff must have the same interests and suffer the same injury as the class. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 625–26 (1997). To demonstrate adequacy, plaintiffs must show (1) "that they and their counsel will adequately prosecute the action;" and (2) "that no substantial conflicts of interest exist between the representatives and the class." *Gamache*, 338 F.R.D. at 288 (internal citations omitted). These requirements are met here.

As to the first requirement, class certification is only denied when a class representative displays "so little knowledge of and involvement in the class action that they would be unable or unwilling to protect the interests of the class against the possibly competing interests of the attorneys." *Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 727 (11th Cir. 1987). There is no requirement "that the lead plaintiffs possess expert knowledge of the details of the case; rather, plaintiffs are expected to rely on counsel for guidance and advice." *Gamache*, 338 F.R.D. at 288 (citing *Kirkpatrick*, 827 F.2d at 728). Here, the proposed Class Representatives have been actively engaged in the litigation since its inception in May 2024, including by providing documents to counsel used to draft the Complaint and discussing the mediation with counsel. Porter Dec. ¶ 19. As discussed in more detail below in Section V(D), Class Counsel have adequately represented the interests of the Class.

Second, Plaintiffs' interests are aligned with those of the Class Members. Adequacy will not be defeated by "the existence of minor conflicts alone." *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003). The "conflict must be a 'fundamental' one going to the specific issues in controversy. A fundamental conflict exists where some party members claim to have been harmed by the same conduct that benefited other members of the class." *Id.* Here, the named Plaintiffs assert claims on the Plan's behalf for relief inuring to the Plan as a whole stemming from the ESOP's alleged overpayment, and request no individual relief. No member of the Class benefited from the ESOP overpaying for AlaTrade stock (as Plaintiffs allege), and any distinctions between Plaintiffs and other Settlement Class members are immaterial. Accordingly, Rule 23(a)(4)'s adequacy requirement is met.

C. A Class Action May Be Maintained Under Rule 23(b)(1)

In addition to Rule 23(a), a class must satisfy one of the three alternative requirements of Rule 23(b). One of those alternatives can be satisfied if "prosecuting separate actions by or against individual class members would create a risk of" either of two scenarios: "(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct" for the defendants, 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). As explained below, both scenarios would be present here absent a class action. Indeed, "[m]ost ERISA class actions are certified under Rule 23(b)(1)." *Kanawi v. Bechtel Corp.*, 254 F.R.D. 102, 111 (N.D. Cal. 2008); *DiFelice v. U.S. Airways, Inc.*, 235 F.R.D. 70, 80 (E.D. Va. 2006) ("[G]iven the derivative nature of suits brought pursuant to § 502(a)(2) on behalf of the Plan, 'ERISA litigation of this nature presents a paradigmatic example of a (b)(1) class.").

1. The proposed Class satisfies Rule 23(b)(1)(B) because the interests of absent class members would be disposed of or affected by individual adjudications.

Certification under Rule 23(b)(1)(B) is appropriate where "*any* individual adjudication by a class member disposes of, or substantially affects, the interests of absent class members." *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 834 (1999) (emphasis added). One example of an action ideally suited for certification under Rule 23(b)(1) is "the adjudication of the rights of all participants in a fund in which the participants have common rights." *Id.* at 834 n.14. Rule 23(b)(1)(B) is designed for "an action which charges a breach of trust by a[ ] . . . trustee or other fiduciary similarly affecting the members of a large class of security holders or other beneficiaries, and which requires an accounting or like measures to restore the subject of the trust." Fed. R. Civ. P. 23, Advisory Committee Notes to 1966 Amendment.

That precisely describes the claims here, which are brought under 29 U.S.C. § 1132(a)(2) in a representative action on behalf of the Plan. "[T]he structure of ERISA favors the principles [of] Rule 23(b)(1)(B), since the statute creates a 'shared' set of rights among the plan participants by imposing duties on the fiduciaries relative to the plan" and it "structures relief in terms of the plan and its accounts, rather than directly for the individual participants." *Leber v. Citigroup 401(k) Plan Inv. Comm.*, No. 07-9329, 2017 WL 5664850, at *17 (S.D.N.Y. Nov. 27, 2017) (quoting *Kindle*, 315 F.R.D. at 12). As another court explained in certifying a class under Rule 23(b)(1)(B), "given the nature of an ERISA claim which authorizes plan-wide relief, there is a risk that failure to certify the class would leave future plaintiffs without relief[.]" *Ikon*, 191 F.R.D. at 466; *see also Gamache*, 338 F.R.D. at 292 ("[B]ecause the fiduciary claims are brought on behalf of the ESOP, individual adjudication would necessarily affect—or be dispositive of the interest of—plan participants absent from that individual action, or otherwise would substantially impair or impede their ability to protect their interests as participants in the ESOP."). Indeed, the type of private-company ESOP case of the kind at issue here is often certified under Rule 23(b)(1)(B). *See, e.g.*, *Nistra*, 2018 WL 835341, at *3; *Neil*, 275 F.R.D. at 267-68. A judgment that Defendants violated ERISA and that the Plan overpaid would naturally apply to the entire Plan and impact all Class members, with relief inuring to the Plan as a whole.

2. A class action also may be maintained under Rule 23(b)(1)(A).

Rule 23(b)(1)(A) provides that a class may be certified if prosecuting separate actions would create a risk of inconsistent adjudications that would establish incompatible standards of conduct for the party opposing the class. Rule 23(b)(1)(A) "takes in cases where the party is obliged by law to treat the members of the class alike . . . , or where the party must treat all alike as a matter of practical necessity." *Amchem*, 521 U.S. at 614 (quotation omitted). That precisely describes cases under ERISA, which "requires plan administrators to treat all similarly situated participants in a consistent manner." *Alday v. Raytheon Co.*, 619 F. Supp. 2d 726, 736 (D. Ariz. 2008) (citations omitted). For this reason, courts have certified cases involving violations of ERISA under Rule 23(b)(1)(A). *See Gamache*, 338 F.R.D. at 292; *Moon v. E.I. du Pont de Nemours & Co.*, No. 19-1856, 2023 WL 1765565, at *2 (D. Del. Feb. 3, 2023); *Neil*, 275 F.R.D. at 267–68; *Knight v. Lavine*, No. 1:12-611, 2013 WL 427880, at *4 (E.D. Va. Feb. 4, 2013); *Chesemore*, 276 F.R.D. at 517.

Here, inconsistent adjudications obtained by participants on the fair market value of AlaTrade stock as of the ESOP Transaction would make it impossible for the Plan administrator to treat similarly situated participants alike. Certification under Rule 23(b)(1)(A) is appropriate.

D. Plaintiffs Are Represented by Competent and Qualified Counsel

In appointing class counsel, Rule 23(g) requires the court to consider factors such as (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g). Plaintiffs' Counsel in this case are well-qualified ERISA practitioners.

Gregory Porter is a partner with Bailey & Glasser LLP. He has specialized in employee benefits and ERISA litigation since 1998. Porter Dec. ¶¶ 9–13. He has served as class counsel or co-counsel in numerous ERISA class actions, including ESOP class actions that proceeded to and through trial or resulted in settlements for the retirement plan. *Id.* ¶ 10. He also has significant experience in cases involving ERISA fiduciary duties. *Id.* ¶¶ 12–13. Other attorneys involved in this action at Bailey & Glasser's team have also served as class counsel or co-counsel in numerous ERISA class actions, including ESOP class actions. *Id.* ¶¶ 14–16 and Ex. A to Porter Decl.

VI. CONCLUSION

For the foregoing reasons, the proposed Settlement meets the standard for preliminary approval. Accordingly, Plaintiffs respectfully request that the Court issue an Order: (a) certifying the Class for settlement purposes, appointing Plaintiffs' Counsel as Class Counsel and Plaintiffs as Class Representatives, and granting preliminary approval of the Settlement Agreement, proposed order attached to motion as Exhibit 1; (b) approving the Plan of Allocation, attached hereto as Exhibit 2; (c) approving the proposed Class Notice, attached hereto as Exhibit 4; (d) approving RG/2 Claims Administration, LLC as the Settlement Administrator; and (e) setting a date for a Fairness Hearing.

DATED: April 27, 2026

Respectfully submitted

s/ David L. Selby

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Accordingly, the foregoing is available for viewing and downloading from the ECF System.

/s/ David L. Selby
David L. Selby