

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

STEPHANIE WOZNICKI,  
on behalf of herself and all others  
similarly situated,

Plaintiff,

v.

Case No: 6:18-cv-2090-WWB-GJK

RAYDON CORPORATION,  
DONALD K. ARIEL, DAVID P.  
DONOVAN, THE ESOP  
COMMITTEE OF THE RAYDON  
CORPORATION EMPLOYEE  
STOCK OWNERSHIP PLAN,  
LUBBOCK NATIONAL BANK,  
DAVID P. DONOVAN 2012  
TRUST, ARIEL FAMILY TRUST  
DATED DECEMBER 18, 2012,  
PAMELA W. ARIEL, VERNA L.  
DONOVAN 2012 TRUST, DAVID  
P. DONOVAN, JR.,  
IRREVOCABLE TRUST DATED  
JULY 25, 2008, LORI L. WEISS  
IRREVOCABLE TRUST DATED  
JULY 25, 2008, NIKI J. DUNCAN  
IRREVOCABLE TRUST DATED  
JULY 25, 2008,

Defendants.

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ORDER<sup>1</sup>

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<sup>1</sup> Magistrate Judge David A. Baker substituting for Magistrate Judge Gregory J. Kelly.

This cause came on for consideration without oral argument on the following motion:

**MOTION: UNOPPOSED MOTION TO APPOINT PAUL PORTER AND BRIANA TATUM AS CLASS REPRESENTATIVES AND NOTICE TO THE COURT OF CLASS REPRESENTATIVE STEPHANIE WOZNICKI'S POSSIBLE OBJECTION TO THE SETTLEMENT (Doc. No. 230)**

**FILED: December 29, 2021**

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**THEREON it is ORDERED that the motion is GRANTED.**

On December 5, 2018, Plaintiff Stephanie Woznicki filed suit against Defendants, alleging that they violated the Employee Retirement Income Security Act of 1974 ("ERISA"). Doc. No. 1. On April 23, 2019, Woznicki filed an amended complaint that includes claims for (1) engaging in a prohibited transaction forbidden by ERISA § 406(a), 29 U.S.C. § 1106(a); (2) engaging in a prohibited transaction forbidden by ERISA § 406(b), 29 U.S.C. § 1106(b); (3) breach of fiduciary duty under ERISA § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B); (4) breach of fiduciary duty under ERISA § 404(a)(1)(A), (B) and (D), 29 U.S.C. § 1104(a)(1)(A), (B) and (D); and (5) violation of ERISA § 410 and ERISA § 502(a)(3). Doc. No. 67. Woznicki sought a declaratory judgment, injunctive relief, disgorgement of profits made using the ESOP's assets, an accounting, constructive trusts, equitable liens on funds wrongfully withheld by Defendants, and attorney's

fees and costs. *Id.* at 36-37. Woznicki also asked the Court to certify a class consisting of “all participants in the . . . ESOP from September 30, 2015 or any time thereafter who vested under the terms of the Plan and those participants’ beneficiaries.” *Id.* at ¶ 78.

On March 16, 2020, the Court granted Woznicki’s motion to certify the class.

Doc. No. 163. The Court certified the following class:

All participants in the Raydon Corporation Employee Stock Ownership Plan from September 30, 2015, or any time thereafter, who vested under the terms of the Plan and those participants’ beneficiaries.

Excluded from the named class are Defendants and their immediate family (including any person defined as a relative under 29 U.S.C. § 1002(15)); any fiduciary of the Plan; the officers and directors of Raydon Corporation or of any entity in which any Defendant has a controlling interest; and legal representatives, successors, and assigns of any such excluded persons.

*Id.* at 4-5. Woznicki’s counsel (“Class Counsel”) were certified as class counsel. *Id.* at 5. The Court also denied Woznicki’s request that Briana Nicole Tatum be a class representative because Tatum’s claims were not typical of the class. *Id.* at 4.

On August 25, 2020, the parties executed the Class Action Settlement Agreement. Doc. No. 208 at 10. On August 26, 2020, the parties filed a “Joint Motion for Preliminary Approval of Class Action Settlement and Motion to Modify Class and Memorandum of Law in Support Thereof.” Doc. No. 208. On January 29, 2021, a Report and Recommendation was issued recommending that

the motion be denied due to numerous deficiencies. Doc. No. 211. On February 12, 2021, the parties filed a joint notice of no objection to the Report and Recommendation. Doc. No. 212. On February 17, 2021, the Court adopted the Report and Recommendation. Doc. No. 213. On May 3, 2021, the parties filed a renewed motion seeking preliminary approval of their settlement, in which they corrected the deficiencies noted in the Report and Recommendation. Doc. No. 216. On October 26, 2021, the Court granted the renewed motion. Doc. No. 220. The final fairness determination hearing is scheduled for February 17, 2022. Doc. No. 231.

On December 29, 2021, Class Counsel filed an unopposed motion to appoint class members Paul Porter and Briana Tatum as class representatives (the “Motion”). Doc. No. 230. In the Motion, Class Counsel also advises the Court that Woznicki may object to the class settlement. *Id.* at 4. Class Counsel represents, “Woznicki has informed Class Counsel that she may . . . object to the settlement although she has not made a final decision and has not yet done so.” *Id.*

Under Federal Rule of Civil Procedure 23(a)(3) and (4), a member of a class may sue as a representative party if the representative party’s claims are typical of the claims of the proposed class and “the representative parties will fairly and adequately protect the interests of the class.” In support of the Motion, Class Counsel attached the Declaration of Paul Porter, in which Porter states that he is a

class member, is familiar with the class action claims and the class representative's duties, and he will fulfill his duties to the best of his abilities.<sup>2</sup> Doc. No. 230-2.

Regarding Tatum, Class Counsel asserts that the reasons why the Court found that she was not typical of the class in ruling on the motion for class certification are no longer present. Doc. No. 230 at 9-10. Tatum's deceased father is listed as a class member, and Tatum is the administrator and sole beneficiary of her father's estate. *Id.*

"Courts have generally permitted the addition or substitution of class representatives when there is no showing of prejudice to defendants and such addition or substitution would advance the purposes served by class certification." *In re Arakis Energy Corp. Sec. Litig.*, No. 95-CV-3431 (ARR), 1999 WL 1021819, at \*13 (E.D.N.Y. Apr. 27, 1999). The Motion is unopposed, the addition of Porter and Tatum "will in no way alter the legal or factual claims of the already certified class, and because their intervention will not result in undue delay or prejudice to the original parties," the Motion is granted. *Id.* (granting motion to add class representatives).

Accordingly, it is **ORDERED** that the Motion, Doc. No. 230, is **GRANTED**, and Paul Porter and Briana Tatum are appointed class representatives.

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<sup>2</sup> Porter states that he "reviewed and signed a document entitled 'Duties of Class Representatives,' which is attached to [his] Declaration as Exhibit 1." Doc. No. 230-2 at ¶ 5. There are no exhibits attached to the declaration, however.

**DONE and ORDERED** in Orlando, Florida, on January 18, 2022.

*David A. Baker*

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DAVID A. BAKER  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record