

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

PAUL HARVEY, MERYL
EICHENBAUM, and ROXANNE
KUZOWSKY, as representatives of a
class of similarly situated persons, and
on behalf of the BED BATH &
BEYOND, INC. 401(K) SAVINGS
PLAN,

Plaintiffs,

v.

BED BATH & BEYOND, INC.
401(K) SAVINGS PLAN
COMMITTEE and LAURA
CROSSEN,

Defendants.

Case No. 2:23-cv-20376-CCC-SDA

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

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 has been appointed Class Counsel in the above-captioned action. Dkt 62 ¶ 3. I submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Costs & Administrative Expenses, and Class Representative Compensation.

2. I incorporate my prior declaration filed in this case, including my declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Dkt. 61-1 ("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 \$1.95 million. The recovery represents a recovery of more than \$900 per Class Member on a gross basis.

4. This case concerns a conservative investment option that Plaintiffs allege subjected participants to a substantial negative market value adjustment after Bed Bath and Beyond, Inc. ("BBB") passed a resolution terminating the Plan in 2023. Class Counsel is unaware of any similar lawsuit prior to this one and at the time of the filing of this action, no Court had ruled on the merits of Plaintiffs' claims. Despite these risks, Class Counsel was prepared to see this case all the way through trial and advance all necessary litigation costs, including expert fees.

5. Prior to filing the Complaint, Class Counsel investigated publicly available information relating to the Plan and BBB's financial health, and researched and analyzed the legal claims. As a result of these investigatory efforts, Class Counsel drafted and filed a detailed 15-page complaint.

6. Defendants moved to dismiss the Complaint on December 12, 2024. Dkt. 24. In response, Plaintiffs amended their Complaint to add additional allegations regarding the foreseeability of BBB's bankruptcy and the GIA market value adjustment. Dkt. 28. Defendants then moved to dismiss the First Amended Complaint. Dkt. 34. Briefing on that motion was complete on March 12, 2024. Dkt. 37, 40. During this process the Parties exchanged preliminary discovery. *See, e.g.*, Dkt. 41.

7. While Defendants' motion to dismiss the First Amended Complaint was pending, the Court ordered the Parties to mediate with Judge Mark Falk (Ret.). Dkt. 49. On October 29, 2024, the Parties engaged in a mediation session with Judge Falk. Dkt. 52. That mediation was unsuccessful but ended with a mediator's proposal. *Id.* On December 2, 2024 the Parties held a second mediation and reached the Settlement that has been preliminarily approved. Dkts. 55, 62.

8. After negotiating the settlement, Class Counsel reviewed and revised the Settlement Agreement, and drafted the Settlement Notice, Rollover Form, and proposed preliminary and final approval orders. In addition, Class Counsel drafted Plaintiffs' motion for preliminary approval of the Settlement.

9. Class Counsel also solicited bids from qualified settlement administration firms to serve as the Settlement Administrator and selected Analytics Consulting LLC after reviewing the bids. Class Counsel then worked

with Analytics and Defense counsel to identify the class members and ensure the Settlement Notices were timely mailed by Analytics. In addition, Class Counsel worked with Analytics to create a settlement website and telephone line for Class Members who wished to obtain additional information about the Settlement.

10. Finally, Class Counsel also met with the Independent Fiduciary that has been engaged to review the Settlement, and provided it with all necessary information in connection with its review.

REMAINING WORK TO BE PERFORMED

11. 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. 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 up to three 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 50 hours.

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12. Class Counsel was able to achieve significant efficiencies given its expertise in ERISA and expended roughly 195 hours from its pre-suit

investigation, through motion practice, mediation, and the settlement approval and administration process, as set forth below.

Firm Member	Hours	Rate	Total
Jennifer Lee, Partner	74.9	\$775	\$58,047.50
Carl Engstrom, Partner	49	\$750	\$36,750.00
Brandon McDonough, Partner	26.8	\$750	\$20,100.00
Other Attorneys	20.1	\$700–775	\$15,570.00
Paralegals and staff	24	\$258	\$6,192.00
TOTAL	194.77		\$136,659.50

13. In addition to the time set forth above, Class Counsel expects to incur an additional \$30,000 in fees in connection with overseeing the administration of the Settlement and seeking final approval of the Settlement.

14. Class Counsel are highly skilled and experienced ERISA class action attorneys who are admitted to practice in courts nationwide. Class Counsel was able to leverage its expertise in this difficult field. Other firms with less experience would not have been able to litigate the case nearly as efficiently. Because of the complexities and special expertise demanded of ERISA class actions, the few attorneys who have the requisite skill to bring successful ERISA class actions generally litigate in U.S. District Courts all over the country. These cases often require extensive research and pre-suit investigative work involving a thorough understanding of finance and ERISA regulations, federal common law, and trust

law. This is especially true of cases that are novel and develop new legal theories. Because of these factors, ERISA class action lawyers often charge—and are paid—substantial fees.

15. In addition, Class Counsel does take individual representation on a contingent basis and routinely negotiates a 40% contingency fee. Indeed, Class Counsel and Class Representatives agreed to a one-third fee (subject to the approval of the Court) at the time Counsel was retained.

WORK OF CLASS REPRESENTATIVES

16. It has been my honor to represent Mr. Harvey, Ms. Eichenbaum, and Ms. Kuzowsky in this matter. Throughout the course of this action, the Class Representatives have worked diligently and conscientiously to advance the interests of the Class. Among other things, they (1) aided Class Counsel in their investigation and provided pertinent documents, (2) reviewed the allegations in the Complaint and First Amended Complaint, (3) communicated with Class Counsel during the course of the action and stayed informed about the case, (4) were available throughout the mediation, and (5) discussed the settlement with Class Counsel and reviewed the Settlement Agreement.

17. Based on the time and assistance that Mr. Harvey, Ms. Eichenbaum, and Ms. Kuzowsky provided in service of the Class and their initiative and risks in pursuing this action, I believe that the requested service award is reasonable and

appropriate. The requested award of \$7,500 is below that sought and approved in other ERISA class actions.

COSTS ADVANCED BY CLASS COUNSEL

18. In connection with the action, Class Counsel advanced costs for the benefit of Plaintiffs and the Class. Because Class Counsel handled this action on a contingency basis, Class Counsel has not yet received reimbursement for any of these costs.

19. As of the date of this Declaration, Class Counsel has incurred \$3,338.27 in costs in connection with this action. These costs are broken down by category below:

Category	Costs Incurred to Date
Mediation Services	\$2,599.30
Legal Research	\$540.77
Process Service	\$180.00
Filing Fees	\$18.20
TOTAL	\$3,338.27

20. In my professional experience, all of these costs were reasonable and necessary for the successful prosecution of this action. Special care was taken to minimize costs, particularly mediation services, by mediating remotely, which avoided the need for travel.

WORK OF THE SETTLEMENT ADMINISTRATOR

21. On and prior to June 9, 2025, the appointed Settlement Administrator, Analytics, printed and mailed settlement notices and rollover forms to all 2,107 Class Members, established the settlement website and telephone support line as provided by the Settlement.

22. Analytics has since collected rollover forms, monitored returned mail, and researched additional means to contact the few Class Members whose notices were returned undeliverable if required. This work continues, and Analytics' complete work will be detailed in Plaintiffs' forthcoming motion for final approval.

23. 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 distribution of payments to Class Members.

24. For these services, Analytics will charge \$21,529.34. Analytics was selected following a competitive bidding process and their settlement administration expenses amount to 1.1% of the Gross Settlement Amount. In my professional experience, this rate is reasonable and less than other bids received from other settlement administrators.

25. Finally, 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, and class representative compensation requested by Plaintiffs.

WORK OF INDEPENDENT FIDUCIARY

26. As required by the Settlement and DOL regulations, an independent fiduciary must review and approve the Settlement on behalf of the Plan. Defendants selected Gallagher Fiduciary Advisors, LLC to review the Settlement. For their review, analysis, report, and appearance at the final fairness hearing (if required), Gallagher Fiduciary Advisors, LLC will charge \$15,000.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 19, 2025

/s/Jennifer K. Lee
Jennifer K. Lee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 19, 2025, 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/Andrew R. Frisch