

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

KRISTOPHER A. SCHWARTZ,

Plaintiff,

v.

ART COOK, ET AL.,

Defendant.

No. 15-cv-03347-BLF

Judge: Hon. Beth Labson Freeman

**NOTICE OF PROPOSED SETTLEMENT OF ERISA CLASS ACTION LITIGATION,  
PROPOSED BAR ORDER, SETTLEMENT FAIRNESS HEARING, AND PROPOSED  
AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

**TO: ANY PERSON WHO WAS A PARTICIPANT IN OR BENEFICIARY OF THE  
BUCKLES-SMITH ELECTRIC COMPANY EMPLOYEE STOCK OWNERSHIP  
PLAN (THE "PLAN") AT ANY TIME FROM AND AFTER SEPTEMBER 1, 2012**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

The Court has preliminarily approved a proposed settlement of a class action lawsuit brought under the Employee Retirement Income Security Act (the "Settlement"). The Settlement is with all of the defendants in the litigation. The terms of the Settlement are contained in a Settlement Agreement dated as of September 8, 2016 (the "Settlement Agreement"), a copy of which is available by contacting Class Counsel identified below. Capitalized terms used in this Notice and not defined herein have the meanings assigned to them in the Settlement Agreement. The Settlement will provide for payments to the Plan and for allocation of those payments to the Class Members. It is summarized below.

The Settlement provides for an injunction that will bar Class members from asserting certain claims against the Defendants.

The Court has scheduled a hearing to evaluate the fairness and adequacy of the Settlement, at which the Court will consider Plaintiff's motion for final approval of the Settlement, and for an award of attorneys' fees and reimbursement of expenses. That hearing, before the Hon. Beth Labson Freeman, has been scheduled for June 15, 2017, at 1:30 p.m. in Courtroom 3, of the United States District Court for the

Northern District of California, San Jose Courthouse, 280 South 1<sup>st</sup> Street, San Jose, California 95113.

Any objections to the settlement or to the potential award of attorneys' fees and expense reimbursement must be served in writing on Class Counsel. The procedure for objecting is described below.

This Notice contains summary information with respect to the Settlement. The terms and conditions of the Settlement are set forth in the Settlement Agreement. The Settlement Agreement is available from Class Counsel listed on Page 3 below.

**PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU NEED NOT APPEAR IN COURT, AND YOU NEED NOT HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.**

**Your Legal Rights and Options in the *Settlement*:**

<b>You May Do Nothing. No Action is Necessary to Participate in the Settlement.</b>	If the Settlement is approved by the Court and you are a member of the Class, you do not need to do anything to participate in the Settlement. If the Court grants final approval to the Settlement, you will receive notice thereof with further information regarding payment.
<b>You May Object (to be postmarked by May 15, 2017)</b>	If you wish to object to any part of the Settlement or the requested attorneys' fees and costs you may (as discussed below) write to the Court and counsel about what you find objectionable.
<b>You May Attend the Hearing (to be held on June 15, 2017, at 1:30 p.m.)</b>	You may (but do not have to) attend the Court hearing about Settlement. If you wish to attend the Court hearing and to address the Court at the hearing, you must submit a written objection to the Court and counsel and state in that objection that you intend to attend the hearing and whether you wish to address the Court at the hearing.

- These rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this case still has to decide whether to grant final approval to the Settlement. Payments will be made only if the Court grants final approval of the Settlement and that approval is upheld in the event of any appeals.

Further information regarding the litigation and this Notice may be obtained by contacting Class Counsel:

Gary A. Gotto, Esq.  
 Keller Rohrback LLP  
 3101 N. Central Avenue, Suite 1400  
 Phoenix, AZ 85013  
 Phone: (602) 248-0088  
 Email: [info@kellerrohrback.com](mailto:info@kellerrohrback.com)

**WHAT THIS NOTICE CONTAINS**

**Summary of Settlement** .....

1. Why did I get this Notice package? .....
2. What is the lawsuit about? .....
3. Why is there a Settlement? .....
4. How do I know whether I am part of the Settlement? .....
5. What does the Settlement provide? How much will I receive? .....
6. How can I get a payment? .....
7. When would I get my payment? .....
8. Can I get out of the Settlement? .....
9. Do I have a lawyer in the case? .....
10. How will the lawyers be paid? .....
11. How do I tell the Court if I don't like the Settlement? .....

12. When and where will the Court decide whether to approve the Settlement? .....
13. Do I have to come to the hearing? .....
14. May I speak at the hearing? .....
15. What happens if I do nothing at all? .....
16. How do I get more information? .....

This litigation (the “Action”) is a case that concerns allegations that defendants breached fiduciary duties they owed to the Buckles-Smith Electric Company Employee Stock Ownership Plan (the “Plan”) and its participants. Copies of the Second Amended Complaint (the “Complaint”) and certain other documents filed in the Action are available from Class Counsel identified above. The Plaintiff in the Action is Kristopher A. Schwartz. The defendants in the Action (“Defendants”) are Art Cook, Roger Stanger, Ronald Zimmerman, Buckles-Smith Electric Company, and Bankers Trust Company of South Dakota.

### **SUMMARY OF SETTLEMENT**

1. A Gross Settlement Fund of \$350,000 will be established to settle the Action.
2. The net amount in the Settlement Fund, including interest, and after payment of any taxes and approved reserves, costs, attorneys’ fees, and expenses, will be allocated among the Class members based on their respective ending Plan stock account balances, as further described in Section 5 below.
3. As a result of the Settlement, all Class members will be deemed to have released all Claims against all Defendants arising out of the allegations or facts in the Complaint, as further described in Section 5 below.

As with any litigation, Plaintiff would face an uncertain outcome if the Action were to continue against the Defendants. Continued litigation of the Action could result in a judgment or verdict greater or lesser than the recovery under the Settlement Agreement, or in no recovery at all. The Plaintiff has concluded that the Settlement is reasonable and that it is in the best interests of the Class to accept the Settlement rather than face the risks associated with continued litigation of the Action.

Throughout this litigation, the Plaintiff and the Defendants have disagreed on both liability and damages. The Defendants have denied and continue to deny the claims and contentions alleged by the Plaintiff. Nevertheless, the Defendants have taken into account the uncertainty and risks inherent in any litigation and have concluded that it is desirable that the Action be fully and finally settled on the terms and conditions set forth in the Settlement Agreement.

### 1. Why did I get this Notice package?

You or someone in your family is/are or may have been a participant in or beneficiary of the Plan. The Court ordered that this Notice to be sent to you because, if you fall within that group, you have a right to know about the Settlement and about all of your options before the Court decides whether to approve the Settlement. If the Court grants final approval of the Settlement, and after any objections and appeals are resolved, and subject to certain conditions in the Settlement Agreement, a certain portion of the Settlement Fund may become available to be paid to the Plan and then allocated among the Plan accounts of Class members. This Notice package describes this Action, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

### 2. What is the lawsuit about?

The Action claims that the Defendants were fiduciaries of the Plan and violated fiduciary duties under ERISA that they owed to the Plan and its participants. The Complaint alleges that as a result of the fiduciary breaches, shares of Buckles-Smith Electric Company stock that had been held by the ESOP were redeemed during 2012-2014 at inadequate prices.

The Defendants deny that they breached any duty or took any wrongful actions in regards to the Plan and deny they have liability to the Plan or its participants or beneficiaries. If the litigation were to continue, the Defendants would raise numerous defenses to liability, including that the transactions at issue are not subject to ERISA, that the prices paid to redeem shares were adequate and proper, that they did nothing wrong in terminating the Plan, and that they fully performed all fiduciary duties imposed on them by ERISA.

### 3. Why is there a Settlement?

This Settlement is the product of extensive, arm's-length negotiations between Class Counsel and the Defendants' counsel, including the services of an experienced mediator. The Court has not reached any final decisions on the merits of Plaintiff's claims against the Defendants. Instead, the Plaintiff and the Defendants have agreed to a settlement to end the lawsuit. In reaching the Settlement, they have avoided the cost and time of a trial. As with any litigation, the Plaintiff would face an uncertain outcome if this case went to trial. On the one hand, pursuing the case against the Defendants could result in a verdict greater than this Settlement. On the other hand, continuing the case against the Defendants could result in a verdict for less money than Plaintiff has obtained in this Settlement, or even no recovery at all. Based on these factors, the Plaintiff and his attorneys believe the Settlement is in the best interests of all Class members. Additional information concerning the Settlement and these factors is available in the motion for preliminary approval of the Settlement Agreement, which may be obtained from Class Counsel identified above.

#### 4. How do I know whether I am part of the Settlement?

United States District Judge Beth Labson Freeman has preliminarily certified that this Settlement shall proceed on behalf of a Class defined as follows: all Persons who were participants in or beneficiaries of the Plan from and after September 1, 2012, other than any Defendant or any beneficiary of any Defendant.

If you are a Class Member, your share of the Net Settlement Fund, if any, will be determined as described in Section 5 below.

#### 5. What does the Settlement provide? How Much Will I Receive?

A Settlement Fund consisting of \$350,000 will be established to settle the Action. The Settlement Agreement provides that certain costs of notice and allocation of proceeds will be paid from the Settlement Fund. In addition, Class Counsel will petition the Court for an award of attorneys' fees (not to exceed 33% of the gross Settlement Fund) plus reimbursement of expenses (not to exceed \$25,000), which amounts if awarded will be paid from the Settlement Fund. After payment of these amounts and any applicable taxes, the net amount in the Settlement Fund will be allocated among the members of the Class. Each Class member's allocable share shall be a percentage derived by dividing (i) such Class member's Plan stock account balance at the date of the Plan termination (June 16, 2014), or, as to any Class member who terminated service with Buckles Smith prior to June 16, 2014, at the date of termination, by (ii) the total of all Class members' stock account balances at the date of the Plan termination, June 16, 2014, or, as to any Class member who terminated service with Buckles Smith prior to June 16, 2014, at the date of termination.



All Class members are deemed to fully release the Defendants from “Class Released Claims.” Class Released Claims are defined as any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys’ fees, expenses and costs, whether known or unknown, that were brought or could have been brought as of the date of the Fairness Hearing by Plaintiff arising out of the allegations or facts contained in the Second Amended Complaint or in any other Complaint filed in the Action, including but not limited to claims related to the termination of the Plan. Class Released Claims are not intended to include the release of any rights or duties arising out of the Settlement Agreement, including the express warranties and covenants in the Settlement Agreement. It is a condition to the effectiveness of the Settlement that the Court’s Final Approval Order enjoin Class members from bringing any Class Released Claims in the future.

The Settlement Agreement may be terminated on several grounds, including if the Court does not approve or modifies the Settlement. Should the Settlement Agreement be terminated, the Settlement will be terminated, and the Action will proceed as if the Settlement had not been reached.

The above description of the operation of the Settlement is only a summary. The governing provisions are set forth in the Settlement Agreement (including its exhibits), which may be obtained by contacting Class Counsel listed at (602) 248-0088.

## 6. How can I get a payment?

You do not need to file a claim for recovery. If you are a Class member entitled to a share of the Net Settlement Fund and if the Settlement is approved by the Court, your Allocable

Share of the Net Settlement Fund will be allocated to you and paid out as you specify at a later date.

#### 7. When would I get my payment?

Payment is conditioned on several matters, including the Court's approval of the Settlement and such approval becoming final and no longer subject to any appeals to any court. Subject to these limitations, and upon satisfaction of various conditions, the Net Settlement Fund will be allocated among members of the Settlement Class as described in the Section 5 above as soon as possible after final approval has been obtained for the Settlement (which includes affirmation on appeal, if any). An appeal of the final approval could take one or more years.

#### 8. Can I get out of the Settlement?

You do not have the right to exclude yourself from the Settlement. The Settlement is conditioned upon the Court certifying the Action under Federal Rule of Civil Procedure 23(b)(1) and (2) as a non "opt-out" class action. This is consistent with ERISA, which provides that breach of fiduciary duty claims under ERISA may be brought by participants on behalf of ERISA plans, and any judgment or resolution necessarily applies to all plan participants and beneficiaries. Thus, it is not possible for any participants or beneficiaries to exclude themselves from the benefits of the Settlement. As a Class member, you will be bound by any judgments or orders that are entered in the Action for all claims that were asserted in the Action or otherwise included in the release under the Settlement.

Although you cannot opt out of the Settlement, you can object to the Settlement and ask the Court not to approve it. See Section 11, below.

## 9. Do I have a lawyer in the case?

The Court has appointed the law firm of Keller Rohrback, LLP, located in Seattle, Washington and Phoenix, Arizona, as Class Counsel in the Action. You will not be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

## 10. How will the lawyers be paid?

Class Counsel will request that the Court award attorneys' fees not to exceed 33% of the Settlement Fund (\$116,666), plus reimbursement of expenses not to exceed \$25,000. Class Counsel will file an application with the Court for an award of attorneys' fees and expenses no later than thirty days prior to the Fairness Hearing, and this application can be obtained from Class Counsel. The following section sets forth instructions if you wish to tell the Court that you do not agree with any part of the Settlement or with the proposed award of attorneys' fees and expenses.

## 11. How do I tell the Court that I don't like the Settlement?

If you are a Class Member, you can object to the Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

To object, you must send a letter or other written statement saying that you object to the Settlement in *Schwartz v. Cook, et al.*, United States District Court for the Northern District of California, San Jose Division, No. 15-cv-03347-BLF. If you wish to address the Court at the hearing, you must state your wish to do so in your objection. In addition, be sure to include your name, address, telephone number, signature, and a full explanation of all of the reasons for your objection. **Your written objection must be filed with the Court, and mailed to Class Counsel and must be postmarked no later than May 15, 2017, at the following addresses:**

**The Court:**

Clerk's Office  
Objections  
Case No. 3:15-cv-03347-BLF  
Attn. Hon. Beth Labson Freeman  
Second Floor  
RM 2112  
United States Courthouse  
280 South First St.  
San Jose, CA 95113

**Class Counsel:**

Gary A. Gotto  
KELLER ROHRBACK L.L.P.  
3101 N. Central Ave., Ste 1400  
Phoenix, AZ 85012

**12. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing at 1:30 p.m. on June 15, 2017, at the United States District Court for the Northern District of California, San Jose Courthouse, 280 South First Street, San Jose, California, 95113, in Courtroom 3. At that hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the

Court will consider them. After the Fairness Hearing, the Court will decide whether to grant final approval of the Settlement. The Court will also rule on the motions for attorneys' fees and expenses. It is uncertain how long it will take the Court to issue these decisions. The date of the Fairness Hearing may change without further notice. Class Members are advised to check [www.KellerSettlements.com](http://www.KellerSettlements.com) or the Court's PACER website (see Section 16 below) to confirm that the date has not changed.

### **13. Do I have to come to the hearing?**

No. Class Counsel will answer questions the Court might have. But you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, it will be considered by the Court when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but attendance is not necessary. If you, personally or through your own attorney, intend to appear at the hearing, you must state your intention to do so in your written objections.

### **14. May I speak at the hearing?**

If you are a Settlement Class member, you may ask the Court for permission to speak at the Fairness Hearing. If you wish to address the Court at the Fairness Hearing, either directly or through your own attorney, you must state your wish to do so in your written objection.

#### 15. What happens if I do nothing at all?

If you do nothing and you are a member of the Class, you will participate in the Settlement of the Action as described above in this Notice if the Settlement is granted final approval.

#### 16. How do I get more information?

This Notice summarizes the proposed Settlement. The complete settlement is set forth in the Settlement Agreement. You may obtain a copy of the Settlement Agreement by contacting Class Counsel listed at Page 3 above. You may review the Court's docket and the documents filed in this Action on-line or in person. To access materials online, you must first register at [www.pacer.gov](http://www.pacer.gov) and then navigate [www.cand.uscourts.gov/cm/ecf](http://www.cand.uscourts.gov/cm/ecf). To access materials personally, visit the Clerk's Office, Second Floor, Rm. 2112, United States Courthouse, 280 South First St., San Jose, CA 95113. The case number for the Action is 15-cv-03347-BLF. In addition, this Notice, the Court's Preliminary Approval Order, the Motion for Final Approval of the Settlement, and Class Counsel's Application for Award of Attorneys' Fees and Reimbursement of Expenses will be available at [www.KellerSettlements.com](http://www.KellerSettlements.com).