

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|---------------------------|---|----------------------------------|
| In re GE ERISA LITIGATION |) | Master File No. 1:17-cv-12123-IT |
| |) | <u>CLASS ACTION</u> |
| _____ |) | |
| This Document Relates To: |) | |
| ALL ACTIONS. |) | |
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**JOINT MOTION FOR APPROVAL OF CLASS ACTION
NOTICE AND PLAN OF NOTICE**

Pursuant to the Court’s order dated March 16, 2020, Plaintiffs Maria LaTorre, Robyn Berger, Brian Sullivan, Frank Magliocca, Melinda Stubblefield, Kristi Haskins, Laura Scully, Donald J. Janak, John Slatner, and Chip Knight (“Plaintiffs”) and Defendants submit this joint motion for approval of the Parties’ class action notice (the “Notice”) and plan for distribution of the Notice.

By way of background, by the March 16 order and a subsequent March 17, 2020 order, this Court granted Plaintiffs’ unopposed motion for class certification and appointed class representatives and class counsel. The Court certified the Class pursuant to Federal Rule of Civil Procedure 23(b)(1)(a) and (b) and ordered Plaintiffs and Defendants to “jointly submit to the court their proposal for [the Notice], including the content and method for communicating the notice to individual class members.” The proposed notice is attached hereto as Exhibit A.

The parties have agreed on the content of the Notice and, as described in Section II below, while they disagree regarding the potential method of distribution of the Notice, Defendants have agreed to Plaintiffs’ proposal to avoid burdening the Court with unnecessary motion practice. Plaintiffs propose that the Notice be sent to Class members by email for those whose email addresses are known, and by U.S. mail for those without known email addresses.

I. THE PROPOSED CLASS ACTION NOTICE SHOULD BE APPROVED

Federal Rule of Civil Procedure 23(c)(2)(A) does not state any requirements for a notice program pursuant to subsections (b)(1) and (b)(2). However, in the related context of certification pursuant to Rule 23(b)(3), “the best notice that is practicable under the circumstances” must be given, “including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 258 (D.N.H. 2007).

The notice must inform class members of: “(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires . . . and ([v]) the binding effect of a class judgment on members under Rule 23(c)(3).” Fed. R. Civ. P. Rule 23(c)(2)(B); *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 336 (D. Mass. 2015).¹

Here, the Notice complies with each requirement. The Notice informs the Class members (i) that this is an action alleging that “Defendants breached their fiduciary duties and engaged in prohibited transactions under” ERISA (Exhibit A at 1); (ii) about the precise definition of the Class (Exhibit A at ¶4); (iii) that in addition to Plaintiffs’ allegations and the relief Plaintiffs seek, Defendants deny any wrongdoing (Exhibit A at 1, *Id.* ¶6); (iv) that a class member may retain his or her own attorney if desired (Exhibit A at ¶13); and (v) that the Class members will be “bound by all rulings of the Court, any judgments the Court makes, and any court-approved settlement of any of the claims in this Class Action.” Exhibit A at ¶9.

¹ Rule 23(b)(3) notices also require additional information that is not relevant to the current certification including “(v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion[.]” Class members may not request exclusion under Rule 23(b)(1) and (2).

The Notice also goes above and beyond these requirements and clarifies for the Class members that there is no recovery at this time, that they need not take any action to remain a part of the case, that Rule 23(b)(1) does not allow Class members to opt out, that the Class members can visit a website or contact Plaintiffs' counsel for more information, and that Class members will receive an additional notice of and may file objections to any potential future resolution of this Action. This Court previously approved a similar notice for a class that was certified under Rule 23(b)(3). *Allman v. American Airlines, Inc. Airline Pilot Benefit Program Variable Income Plan*, No. 14-cv-10138 (Docket No. 76).

Accordingly, the content of the Notice should be approved.

II. THE PLAN OF NOTICE SHOULD BE APPROVED

Under the proposed Notice plan, each Class Member who can be identified through a reasonable search of Defendants' files containing participant data will be sent a copy of the Notice.

It is well-established that notice sent by first class mail is sufficient when the names and addresses of the class members are known. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-77 (1974); *Manual for Complex Litigation* § 21.311 (4th ed. 2004) (explaining that individual notice via mail is preferred when names and addresses are known).

Additionally, Courts in this District and elsewhere have approved notice via electronic mail as an alternative to U.S. mail. *See, e.g., Tracey v. Massachusetts Institute of Technology*, No. 16-cv-11620-NMG (D. Mass. Jan. 7, 2020) (approving class settlement notice sent by email to all participating ERISA class members with known email addresses, and by U.S. mail to those without known email addresses, *see* Docket No. 291 at 14); *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1245 (S.D. Fla. 2016) (approving settlement notice program including "(1) email notice to all Class

members for whom [defendant] had email addresses; [and] (2) notice sent by U.S. first class mail to those Class members for whom [defendant] did not have email addresses”).

In an effort to minimize costs that may ultimately be paid by the Class in the event there is a resolution in their favor, Class Counsel has issued requests for proposals (“RFPs”) from three professional class action administrators to handle the distribution of the Notice. The RFPs have requested estimates for the cost of distributing the Notice under two scenarios: (i) a paper mailing to the approximately 220,000 Class members² and (ii) an email notice for those whose email addresses are known and a paper mailing by U.S. mail to those without known email addresses. Plaintiffs have requested that the administrators respond to the RFPs respond by Friday, April 3, 2020 and provide a firm commitment that they will disseminate the notice within two weeks of receiving the final Notice from Plaintiffs’ counsel.

The class action administrator will provide the Notice to all known Class Members by U.S. mail or email to those whose email addresses are known. Publication of the Notice will also be provided via a web site that is listed on the Notice.

Plaintiffs are seeking to provide the Notice in an effective manner that is as cost effective as possible. In that regard, Plaintiffs submit that the Notice should be sent to Class members by email for those whose email addresses are known, and by U.S. mail to those without known email addresses, which is consistent with precedent in this District. *See Tracey*, No. 16-cv-11620-NMG.

This class action involves an extremely large class and sending the Notice by email to even a small percentage of the Class members could save significant resources for the Class. For example, assuming a potential cost of postage of \$0.47 per Notice, if even 25% of the Class

² After the RFP was issued to proposed class action administrators, Defendants’ counsel revised their estimate of the number of class members to 211,000. That estimate continues to be subject to further refinement.

members receive the Notice by email, then over 50,000 mail Notices will be avoided, saving substantial costs to the Class. The RFP sent by Plaintiffs seeks estimates under both an all U.S. Mail program and a split email/U.S. Mail program so the costs can be compared.

In the event that the cost savings of sending a portion of the Notices by email is *de minimus* or if the Administrator indicates that sending a portion of the Notices by email would create unnecessary problems, Plaintiffs will request that the Administrator send all Notices by U.S. Mail. Plaintiffs will notify Defendants of this decision prior to the distribution of the Notices.

Defendants estimate that the Class may involve over 211,000 members. Defendants have email addresses for approximately 60% of current participants in the entire Plan, but do not currently know how many of those participants invested in the GE Funds, thus qualifying for Class membership.

Although Defendants believe that dividing notification has the possibility to create inefficiencies and may cause confusion and/or delay (as opposed to the more straight-forward method of proving all potential Class Members notice by mail), since the Notice provides that any questions be directed to class counsel and the administrator (meaning that the Plaintiffs and their administrator will address and be responsible for any possible delays or confusion of class members), Defendants will not oppose Plaintiffs' proposed method of notification.

III. THE COURT SHOULD ESTABLISH DATES RELATED TO DISTRIBUTION OF THE NOTICE

The Parties jointly propose deadlines for a schedule of events, including a date for Defendants to provide data for members of the Class to Class Counsel and the class action administrator, for notice to be sent to the Class, and for members of the Class to object to the Class. As such, the Parties request that the Court establish the dates set forth below.

| <u>DATE</u> | <u>EVENT</u> |
|--|---|
| 21 Calendar Days After Approval of Notice and Plan of Notice | Defendants to provide Class member address and e-mail data and holdings in the Plan's investments to the Class Action Administrator |
| 21 Days After Receipt of Class member data from Defendants | Class Action Administrator to send Notice by U.S. mail and e-mail to the Class |

IV. CONCLUSION

For the reasons stated above, the Court should approve the content of the Notice and the parties respectfully request that the Court decide whether Plaintiff's proposed notice plan, or Defendant's proposed notice plan, is appropriate.

Dated: March 27, 2020

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Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I, Jason M. Leviton, hereby certify that the foregoing document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants this 27th day of March, 2020.

s/Jason M. Leviton _____

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NOTICE OF CLASS ACTION AGAINST GENERAL ELECTRIC AND RELATED PARTIES

If you were a participant in the General Electric 401(k) Plan, a/k/a the GE Retirement Savings Plan, and its predecessor the GE Savings and Security Program (together the “Plan”) who was invested in one or more of the GE Funds (as defined below) at any time since September 26, 2011, you are a member of a certified class.

A federal court authorized this Notice. It is not a solicitation from a lawyer. You are not being sued. However, your legal rights may be affected by the class action lawsuit discussed in this Notice. Please read this notice carefully.

- A class action lawsuit is pending in the United States District Court for the District of Massachusetts (“the Court”) against General Electric Company (“GE”), GE Asset Management, the Benefit Plan Investment Committee, the Fund Trustees, and unknown “Doe Defendants” (“Defendants” or “GE”). The lawsuit alleges that Defendants breached their fiduciary duties and engaged in prohibited transactions under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, et seq. (ERISA). Defendants deny any wrongdoing, and assert that the Plan has always been managed appropriately and in the interests of the Class.
- The Court decided that this lawsuit should proceed as a class action on behalf of a “Class” that could include you. The Class consists of any participant in the Plan who was invested through the Plan in one or more of the GE Funds (as defined below) at any time since September 26, 2011 (“Class”). The “GE Funds” are:
 - GE Institutional Strategic Investment Fund, a/k/a SSGA Strategic Fund;

- GE Institutional Small Cap Equity Fund, a/k/a SSGA Small Cap Equity Fund;
 - GE Institutional International Equity Fund, a/k/a SSGA International Fund;
 - GE RSP Income Fund; and
 - GE RSP U.S. Equity Fund
- **You do not need to take any action at this time.** There has not been a recovery on behalf of the Class. This Notice is only to inform you that you may be part of the Class. The Court certified the Class under 23(b)(1) of the Federal Rules of Civil Procedure, a “mandatory” class action under which class members cannot “opt out,” that is, exclude themselves as members of the class.
- As a Class Member, you may share in any future recovery resulting from a favorable judgement or by settlement of this Class Action, but you will give up your rights to sue the Defendants in a separate lawsuit for the claims made, or which could have been made in this Class Action. If Plaintiffs and GE reach a settlement in the future, that settlement must be approved by the Court. Before the court acts on any proposed settlement, you and other Class members will be given notice of the terms of the settlement, and will have the opportunity to comment on or object to the settlement.

BASIC INFORMATION

1. Why Did I Receive This Notice?

Records indicate that you are currently or may have been a participant, or the beneficiary of a participant, in the Plan, and invested in one or more of the GE Funds through the Plan at any time since September 26, 2011.

This Notice explains that the Court has allowed the case to proceed as a class action lawsuit. The Honorable Indira Talwani of the United States District Court for the District of Massachusetts is the Federal Judge overseeing this class action. As a Class Member, your rights may be affected by this case.

2. What is the Class Action about?

In this Class Action, the Plaintiffs named in the Second Consolidated Complaint have been appointed by the Court as “Class Representatives,” who are to act on behalf the Class Members. Plaintiffs claim that Defendants are plan fiduciaries and failed to fulfill their fiduciary duties by offering as Plan investments the poorly performing GE Funds, and did so not in the best interests of the Class members, but to benefit GE. Specifically, Plaintiffs allege that GE failed to monitor the Plan’s investment options and remove poorly performing options that were managed and

sponsored by GE’s wholly-owned subsidiary, GE Asset Management (“GEAM”). In that regard, Plaintiffs allege that Defendants, as fiduciaries of the Plan, breached their duties of loyalty and prudence in violation of sections 404(a)(1)(A) and (B) of ERISA, and engaged in prohibited transactions in violation of section 406 of ERISA. Defendants deny all claims and assert that they have always acted in the best interests of participants and beneficiaries when discharging their obligations with respect to the Plan, including as to the GE Funds. Defendants contend that they provided you and other Plan participants with high quality investment options from which you could select for your retirement savings, and that they appropriately monitored those investments. Defendants maintain that they neither engaged in prohibited transactions, nor breached their fiduciary duties under ERISA.

3. What is a class action lawsuit?

In a class action lawsuit, one or more people called “Plaintiffs” (in this case Kristi Haskins, Laura Scully, Jeff Janak, John Slatner, Chip Knight, Maria LaTorre, Robyn Berger, Brain Sullivan, Frank Magliocca, and Melinda Stubblefield) sue as “Class Representatives” on behalf of themselves and other people who have similar claims. The Plaintiffs and the individuals on whose behalf they have sued are “Class Members,” who together constitute a “Class.” The entities and persons the Plaintiffs sued—GE, GE Asset Management, the Benefit Plan Investment Committee, the Fund Trustees and Does—are called the Defendants. One court resolves the claims for all Class Members and Defendants.

THE CLAIMS IN THE LAWSUIT

4. Who is involved in the Class Action?

The Class is defined as:

All participants in the GE Retirement Savings Plan (f/k/a the General Electric Savings and Security Program) (the “Plan”), from September 26, 2011 to the date of Judgment (the “Class Period”), who were invested in one or more of the “GE Funds” – *i.e.*, the GE Institutional Strategic Investment Fund; the GE Institutional Small Cap Equity Fund; the GE Institutional International Equity Fund; the GE RSP U.S. Equity Fund; and the GE RSP Income Fund.

Excluded from the Class are (a) any individuals named as defendants in the Second Consolidated Amended Complaint, as modified by the October 4, 2018 Notice of Dismissal Without Prejudice of Certain Individual Defendants and the December 13, 2019 Stipulation of Dismissal With Prejudice Of Certain Individual Defendants, (b) any fiduciaries of the Plan, (c) the officers and

directors of GE and GEAM during the Class Period, and members of their immediate families, as well as the heirs, successors, assigns, or legal representatives of any such excluded party.

5. What is the current status of the Class Action?

Plaintiffs and Defendants are currently involved in fact discovery (exchanging relevant information about the case), which is to be completed on or before December 18, 2020. Expert discovery shall commence on January 15, 2021 and continue until August 2, 2021. The dates are subject to change. The Court has not yet set a trial date.

6. What are the Class Representatives asking for?

The Class Representatives are seeking to recover all losses resulting from the Defendants' alleged breaches of fiduciary duty and other ERISA violations and recover on behalf of the Plan and Class Members any potential losses they sustained as well any profits made by the Defendants, or by the persons and/or entities who knowingly participated in the Defendants' allegedly wrongful actions. In addition, Plaintiffs seek such other equitable or remedial relief as the Court may deem appropriate as well as their reasonable attorneys' fees, costs and expenses. An award of attorneys' fees, costs and expenses may reduce the net recovery of the Class.

7. Is there any money available now?

No money or benefits are available now because the Court has not yet decided whether the Defendants did anything wrong, and the parties have not settled the case. There is no guarantee that money or benefits ever will be obtained. If there is a recovery, you will receive another notice telling you about your rights in connection with the recovery.

WHO IS IN THE CLASS

8. Am I a Member of the Class?

You are a member of the Class if you were a participant in the Plan who invested in one or more of the GE Funds through the Plan at any time since September 26, 2011. Please refer to Question 4 above for the precise legal definition of the Class.

You have received this Notice because the Plan's records reflect that you fit the definition outlined above, and therefore you are likely a Class Member in this Class Action. You don't have to do anything to be a member of the Class.

9. Can I opt out of the Class and proceed with individual claims?

No. In some class actions, class members have the opportunity to exclude themselves from the action. However, this Class has been certified under Federal Rule of Civil Procedure 23(b)(1), which does not allow you to exclude yourself as a member of the Class. If the Class Representatives obtain money or benefits, either as a result of a trial or a settlement, you will be notified about how that would be distributed, including whether you would need to apply for a share. Regardless of whether the Plaintiffs win or lose the trial, you will not be able to sue, or continue to sue the Defendants—as part of any other lawsuit—about the same legal claims that are the subject of this lawsuit, or any claims that could have been brought. You will also be legally bound by all rulings of the Court, any judgments the Court makes, and any court-approved settlement of any of the claims in this Class Action. Although you may not opt out of the Class, you have the right to file objections with the Court to the terms of any resolution of this matter including a proposed settlement if that occurs in the future.

10. Are you still not sure if you're included?

If you are still not sure whether you are included in the Class, you can get free help by contacting the lawyers in this case at the phone numbers or addresses listed in response to question 11.

THE LAWYERS REPRESENTING YOU

11. As a Class Member, do I have a lawyer representing my interests in this Class Action?

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called Class Counsel. The following lawyers are representing the Class:

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12. How will the lawyers be compensated, and will the Class Representatives receive compensation?

Class Counsel has pursued this action on a fully contingent basis and has agreed to advance all costs and expenses on behalf of Plaintiffs and the Class. If a recovery is obtained for the Class, Class Counsel will request from the Court an award for attorneys' fees, costs and expenses. Class Counsel may also ask the Court to approve reasonable incentive awards for the Class Representatives. If approved, these fees and expenses and incentive awards will either be paid from the recovery obtained for the Class or separately by the Defendants. An award of attorneys' fees, costs and expenses, or incentive awards for the Class Representatives, may reduce the net recovery of the Class. You do not have to pay any out-of-pocket fees, costs or expenses to Class Counsel.

13. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working for you. However, you are welcome to hire your own lawyer at your own expense.

GETTING MORE INFORMATION

14. Are more details available?

This Notice summarizes the Class Action. Complete copies of public pleadings, Court rulings and other filings are available for review at the following website which has been created to provide you with additional information about the Class Action: www.-----.com

You can also get more information by contacting the lawyers in this case at the phone numbers or addresses listed in response to question 11.

Please do not contact the Court or Judge Talwani. They cannot answer any questions about the Class Action.

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**[PROPOSED] ORDER GRANTING MOTION FOR APPROVAL OF
CLASS ACTION NOTICE AND PLAN OF NOTICE**

1. This matter is before the Court on the Join Motion for Approval of Class Action Notice and Plan of Notice. The Court, having reviewed the Motion and the relevant portions of the record, ORDERS that the Motion is GRANTED as follows:

2. Pursuant to Federal Rule of Civil Procedure Rule 23, the Proposed Class Action Notice (“the Notice”) is approved in the form attached to the Motion as Exhibit A, and the proposed plan of disseminating the Notice is approved.

3. The court finds that the Notice and plan of notice as set forth herein are the best practicable and comply with the requirements of Rule 23(c)(2)(B) and meet the requirements of due process.

4. Within 21 calendar days of the date of this Order, Defendants shall provide Class member address and e-mail data and holdings in the Plan’s investments to the Class Action Administrator. The class action administrator shall treat this information as confidential, and such information shall be used solely for the purposes of this litigation.

5. Class Counsel, by the Class Action Administrator, shall send the Notice, in a form substantially similar to the one attached to the Motion, to the members of the Class identified by Defendants within 21 calendar days after receipt of class member data from Defendants.

IT IS SO ORDERED.

DATED: _____
THE HONORABLE INDIRA TALWANI
UNITED STATES DISTRICT JUDGE