**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

JACKIE LYSENGEN, on behalf of the Morton Buildings, Inc. Leveraged Employee Stock Ownership Plan, and on behalf of a class of all other persons similarly situated, Plaintiff, v. ARGENT TRUST COMPANY, EDWARD C. MILLER, GETZ FAMILY LIMITED PARTNERSHIP, ESTATE OF HENRY A. GETZ, and ESTATE OF VIRGINIA MILLER. Defendants.	Case No. 1:20-cv-01177-MMM-JEH

DEFENDANT ESTATE OF VIRGINIA MILLER'S ANSWER AND AFFIRMATIVE DEFENSES TO FIRST AMENDED COMPLAINT

Defendant Estate of Virginia Miller, by and through its attorneys, and for its answer and affirmative defenses to the First Amended Complaint, states as follows:

BACKGROUND

1. Plaintiff Jackie Lysengen ("Plaintiff'), formerly known as Jackie Houska, brings this suit against Argent Trust Company ("Argent"), the trustee for the Morton Buildings, Inc. Leveraged Employee Stock Ownership Plan (the "Plan") when the Plan acquired shares of Morton Buildings, Inc. ("Morton") in 2017, and against selling shareholders Jan Rouse, Edward C. Miller,and Getz Family Limited Partnership, and against the estates of two selling shareholders, the Estateof Henry A. Getz and the Estate of Virginia Miller and the beneficiaries and successors of the estates (together, "Defendant Shareholders").

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 1, except admits that Plaintiff brings this suit against Argent, Ms. Rouse, Mr. Miller, the Estate of Henry A. Getz, the Estate of Virginia Miller and the Getz Family Limited Partnership, that Argent acted as the trustee for the Plan, and that the suit relates to the Plan's acquisition of shares of Morton Buildings, Inc. in 2017.

2. Plaintiff is a participant in the Plan, as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), who was vested in shares of Morton allocated to her account in the Plan.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 2.

3. This action is brought under Sections 404, 406, 409, 410, and 502(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1104, 1106, 1109, 1110, and 1132(a), for losses suffered by the Plan and its participants caused by Argent when it caused the Plan to buy shares of Morton for more than fair market value in 2017 and other relief.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 3, except admits that this action is brought under ERISA.

4. As alleged below, the Plan has been injured and its participants have been deprived of hard-earned retirement benefits resulting from Defendants' violations of ERISA.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 4.

5. At all relevant times, Morton was a privately held company and a party in interest to the Plan. Morton adopted the Plan effective January 1, 2017. On May 8, 2017, the Plan purchased 2,005,662 shares of Morton's common stock. Company common stock shares totaling 1,956,992 and 48,670 were purchased at $75.25 and $10.75 per share for $147,263,648 and $523,229, respectively, totaling $147,786,877. The reduced share price between the Plan and Morton for the 48,670 shares was reportedly due to a decrease in the fair market value of Morton's shares following the issuance of debt to finance the $147,263,648 portion of the transaction. The stock purchase was financed by three term loan agreements that the Plan entered into with: (1) Morton, for $132,277,461 at an interest rate of 2.75%, (2) Morton, for $523,229 at an interest rate of 2.75%, and (3) a former shareholder (the "Former Shareholder"), for $14,986,187 at an interest rate of 5.00%, all to be repaid over 30 years (the purchase and loan transactions together, the "ESOP Transaction" or "Transaction"). At that time, Morton became 100% employee owned.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 5, except admits that the Plan was effective January 1, 2017; that on May 8, 2017, the Morton Buildings, Inc. Leveraged Employee Stock Ownership Trust ("Trust"), which forms part of the Plan, purchased 1,956,992 shares of common stock for $147,263,648 ($75.25/share) and then

48,670 shares of common stock for $523,229.22 (approximately $10.75/share), which price differential was due to the reduction in equity value after the Company assumed debt related to the ESOP Transaction, for a total of 2,005,662 shares of Morton's common stock; that in conjunction with its purchase, the Trust entered into loan agreements with Morton for $132,277,461.32 at an interest rate of 2.75% per annum with a thirty-year amortization period, with Morton for $523,229.22 at an interest rate of 2.75% per annum with a thirty-year amortization period, and a former shareholder for $14,986,186.68 at an interest rate of 5.00% per annum with a thirty-year amortization period; that 100% of the stock of Morton, which had been privately owned prior to the ESOP Transaction, became owned by the Trust as a result of the Transaction; and that, to the extent an answer is required to Plaintiff's legal conclusion that Morton was a party in interest to the Plan, the Estate of Virginia Miller admits that, in pertinent part, 29 U.S.C. § 1002(14) defines "an employer any of whose employees are covered by [an employee benefit plan]" as a "party in interest" as to that plan.

6. Argent represented the Plan and its participants as Trustee in the ESOP Transaction. It had sole and exclusive authority to negotiate the terms of the ESOP Transaction on the Plan's behalf.

ANSWER: The Estate of Virginia Miller admits that Argent acted as the Trustee in the ESOP Transaction and that pursuant to the terms of Argent's engagement agreement signed in conjunction with the ESOP Transaction, Argent agreed "to assume the fiduciary responsibility for determination in consultation with its advisors . . . the prudence of entering into the [ESOP Transaction] and whether the price proposed to be paid for the stock in the [ESOP Transaction] is for 'adequate consideration' (as defined in the Employee Retirement Income Security Act of 1974, 'ERISA'), and whether the [ESOP Transaction] is fair from a financial viewpoint to [the ESOP] and its participants, including whether it is fair relative to other parties in the [ESOP

Transaction]. . . .” The Estate of Virginia Miller denies any remaining allegations to the extent they are inconsistent with the terms of Argent’s engagement agreement.

7. The ESOP Transaction allowed the selling shareholders, including Defendant Shareholders and other persons including members of the Getz family (“Selling Shareholders”), to unload their interests in Morton above fair market value and saddle the Plan with tens of millions of dollars of debt over a 30-year repayment period to finance the Transaction. Argent failed to fulfill its ERISA duties, as Trustee and fiduciary, to the Plan and its participants, including Plaintiff.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 7.

8. Jan Rouse, Edward C. Miller, Getz Family Limited Partnership, Henry A. Getz, and Virginia Miller were parties in interest to the Plan who sold shares in the ESOP Transaction. The Defendant Shareholders—which include the Estate of Henry A. Getz and the Estate of Virginia Miller as well as Jan Rouse, Edward C. Miller, and Getz Family Limited Partnership—are liable under ERISA for participating in the prohibited transactions and in Argent’s breaches of fiduciary duty.

ANSWER: The Estate of Virginia Miller admits that Virginia Miller sold shares in the ESOP Transaction and that the closing documents relating to the ESOP Transaction reflect that the Getz Family Limited Partnership, Henry A. Getz, and Edward C. Miller sold shares in the ESOP Transaction. Further answering and to the extent an answer is required to Plaintiff’s legal conclusion that Jan Rouse, Edward C. Miller, the Getz Family Limited Partnership, Henry A. Getz, and Virginia Miller were parties in interest to the Plan, the Estate of Virginia Miller admits that, in pertinent part, 29 U.S.C. § 1002(14) defines “an employee, officer, director . . . or a 10 percent or more shareholder directly or indirectly, of” “an employer any of whose employees are covered by [any employee benefit plan]” as a “party in interest” as to that plan. The Estate of Virginia Miller denies the remaining allegations contained in paragraph 8.

9. Plaintiff brings this action to recover the losses incurred by the Plan, and thus by each individual account in the Plan held by them and similarly situated participants, resulting from Argent’s engaging in, and causing the Plan to engage in, prohibited transactions under

ERISA, and breaching its fiduciary duties under ERISA, and the Defendant Shareholders' participation in these violations.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 9.

JURISDICTION AND VENUE

10. This action arises under Title I of ERISA, 29 U.S.C. §§ 1001 et seq., and is brought by Plaintiff under ERISA § 502(a), 29 U.S.C. § 1132(a), to require Argent to make good to the Plan losses resulting from its violations of the provisions of Title I of ERISA, to obtain appropriate equitable relief against Argent and the Defendant Shareholders, to restore to the Plan any profits that have been made by breaching fiduciaries and parties in interest through the use of Plan assets, and to obtain other appropriate equitable and legal remedies in order to redress violations and enforce the provisions of ERISA.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 10.

11. This Court has subject matter jurisdiction over this action pursuant to ERISA § 502(e)(l), 29 U.S.C. § 1132(e)(l).

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 11.

12. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan was administered in this District, because some of the events or omissions giving rise to the claims occurred in this District, and because one or more Defendants reside or may be found in this District.

ANSWER: The Estate of Virginia Miller admits that venue is proper in this District but denies that any breach or other wrongdoing occurred.

13. From the effective date of the Plan on January 1, 2017 to the present, the address of the Plan Administrator, Morton, was 252 West Adams, Morton, Illinois 61550, in Tazewell County.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 13, except admits that the address of Morton is as alleged.

PARTIES

14. Plaintiff Jackie Lysengen is and has been a Plan participant, as defined in ERISA § 3(7), 29 U.S.C. § 1002(7), since the adoption of the Plan effective on January 1, 2017. Plaintiff Lysengen resides in Eden Prairie, Minnesota. She was a Construction Center Administrator (CCA) at Morton. She was employed there from December 28, 1990 to August 23, 2019. She was vested by the Plan's terms in shares of Morton in her Plan account.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 14.

15. Defendant Argent operates as an investment management firm and offers financial planning, trusts, and real estate management services to families and organizations. Argent's principal place of business is 1100 Abernathy Road, 500 Northpark, Suite 550, Atlanta, Georgia 30328. Argent is a division of Argent Financial Group, an independent wealth management firm. Argent Financial Group is headquartered at 500 E Reynolds Dr., Ruston, Louisiana 71270.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 15.

16. Argent was the Trustee of the Plan at the time of the ESOP Transaction. Argent was a "fiduciary" under ERISA because it was the Trustee. As Trustee, Argent had exclusive authority to manage and control the assets of the Plan and had sole and exclusive discretion to authorize and negotiate the ESOP Transaction on the Plan's behalf. Argent was a party in interest under ERISA § 3(14), 29 U.S.C. § 1002(14), at all times that it was Trustee of the Plan.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 16, except admits that Argent served as the Trustee in the ESOP Transaction, that pursuant to the terms of Argent's engagement agreement signed in conjunction with the ESOP Transaction, Argent agreed "to assume the fiduciary responsibility for determination in consultation with its advisors . . . the prudence of entering into the [ESOP Transaction] and whether the price proposed to be paid for the stock in the [ESOP Transaction] is for 'adequate consideration' (as defined in the Employee Retirement Income Security Act of 1974, 'ERISA'), and whether the [ESOP Transaction] is fair from a financial viewpoint to [the ESOP] and its participants, including whether it is fair relative to other parties in the [ESOP Transaction]. . .", and that to the extent an answer is required to Plaintiff's legal conclusion that Argent is a party in interest, the Estate of Virginia Miller admits that, in pertinent part, 29 U.S.C. § 1002(14) defines "any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian) . . . of such employee benefit plan" as a "party in interest" as to that plan."

17. The Notes to Financial Statements of the Plan's 2017 Form 5500 reports that service providers to the Plan are parties in interest under ERISA, and that Argent was the Plan's custodian and holds the Plan's assets.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 17.

18. Argent's power and authority does not include the power and authority to interpret and construe the terms of the written Plan document.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 18.

19. Defendant Jan Rouse was a selling shareholder in the ESOP Transaction. She was a Director of Morton at the time of the ESOP Transaction. Jan Rouse was a party in interest under ERISA § 3(14), 29 U.S.C. § 1002(14), as a Morton director at the time of the ESOP Transaction.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 19, except admits that Ms. Rouse was a director of Morton at the time of the ESOP Transaction and that 29 U.S.C. § 1002(14) defines a director of an employer whose employees are covered by an employee benefit plan as a "party in interest" as to that plan.

20. Defendant Edward C. Miller was a selling shareholder in the ESOP Transaction. He was a Director of Morton at the time of the ESOP Transaction. Edward C. Miller was a party in interest under ERISA § 3(14), 29 U.S.C. § 1002(14), as a Morton director at the time of the ESOP Transaction. Edward C. Miller was an officer and employee of Morton at the time of the ESOP Transaction. He was a party in interest under ERISA § 3(14), 29 U.S.C. § 1002(14), as a Morton officer and/or employee at the time of the ESOP Transaction.

ANSWER: The Estate of Virginia Miller admits that the closing documents relating to the ESOP Transaction reflect that Edward C. Miller sold shares in the ESOP Transaction and, to the extent an answer is required to Plaintiff's legal conclusion that Mr. Miller was a party in interest, admits that, in pertinent part, 29 U.S.C. § 1002(14) defines "an employee, officer, director . . . or a 10 percent or more shareholder directly or indirectly, of" "an employer any of whose employees are covered by [any employee benefit plan]" as a "party in interest" as to that plan. The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the remaining allegations contained in paragraph 20.

21. Getz Family Limited Partnership was a selling shareholder in the ESOP Transaction. It was a party in interest under ERISA § 3(14), 29 U.S.C. § 1002(14), as a 10 percent or more shareholder directly or indirectly of Morton at the time of the ESOP Transaction. Getz Family Limited Partnership is an active partnership in Illinois. Its agent is Janet R. Getz, who is located at 1606 Robin Court, Morton, Illinois 61550, and its designated office is at 100 S Kansas, Morton, Illinois 61550.

ANSWER: The Estate of Virginia Miller admits that the closing documents relating to the ESOP Transaction reflect that Getz Family Limited Partnership sold shares in the ESOP Transaction and, to the extent an answer is required to Plaintiff's legal conclusion that the Getz Family Limited Partnership was a party in interest, admits that, in pertinent part, 29 U.S.C. § 1002(14) defines "an employee, officer, director . . . or a 10 percent or more shareholder directly or indirectly, of" "an employer any of whose employees are covered by [any employee benefit plan]" as a "party in interest" as to that plan. The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the remaining allegations contained in paragraph 21.

22. Estate of Henry A. Getz is the estate of Henry A. Getz, who was a selling shareholder in the ESOP Transaction. He was a former President of Morton at the time of the ESOP Transaction. Mr. Getz was a party in interest under ERISA § 3(14), 29 U.S.C. § 1002(14), as a 10 percent or more shareholder directly or indirectly of Morton at the time of the ESOP Transaction. Jan Rouse, Mr. Getz's daughter, is the executor for the Estate of Henry A. Getz.

ANSWER: The Estate of Virginia Miller admits that the closing documents relating to the ESOP Transaction reflect that Henry A. Getz sold shares in the ESOP Transaction and, to the extent an answer is required to Plaintiff's legal conclusion that Henry A. Getz was a party in interest, the Estate of Virginia Miller admits that, in pertinent part, 29 U.S.C. § 1002(14) defines "an employee, officer, director . . . or a 10 percent or more shareholder directly or indirectly, of" "an employer any of whose employees are covered by [any employee benefit plan]" as a "party in interest" as to that plan. The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the remaining allegations contained in paragraph 22.

23. Estate of Virginia Miller is the estate of Virginia Miller, who was a selling shareholder in the ESOP Transaction. Ms. Miller was a party in interest under ERISA § 3(14), 29 U.S.C. § 1002(14), as a 10 percent or more shareholder directly or indirectly of Morton at the time of the ESOP Transaction. Edward C. Miller and Sara A. Miller, Ms. Miller's children, are the executors of the Estate of Virginia Miller.

ANSWER: The Estate of Virginia Miller admits that Virginia Miller sold shares in the ESOP Transaction, and, to the extent an answer is required to Plaintiff's legal conclusion that Virginia Miller was a party in interest, the Estate of Virginia Miller admits that, in pertinent part, 29 U.S.C. § 1002(14) defines "an employee, officer, director . . . or a 10 percent or more shareholder directly or indirectly, of" "an employer any of whose employees are covered by [any employee benefit plan]" as a "party in interest" as to that plan.

FACTUAL ALLEGATIONS

24. Headquartered in Morton, Illinois, Morton bills itself as the industry leader in post-frame manufacturing and construction. Morton operates in 43 states with 103 construction centers and eight manufacturing plants across the country. Morton had approximately 1,700 employees at the time of the ESOP Transaction. Morton was at all times a private company. There is and was no public market for Motion stock.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 24, except admits that as of May 9, 2017, Morton was headquartered in Morton, Illinois, was engaged in post-frame manufacturing and construction, and was a privately-held company.

25. Morton was founded in 1903 by John Getz Sr., as the Interlocking Fence Company. Morton was owned by the Getz family for 113 years, until the 2017 ESOP Transaction.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 25, except admits that in 1903 John Getz, Sr. formed the Interlocking Fence Company and that members of the Getz family owned some, but not all of the, shares in Morton until the 2017 ESOP Transaction.

26. Morton was incorporated in Illinois on June 26, 1903.

ANSWER: The Estate of Virginia Miller admits the allegations contained in paragraph 26.

27. Morton is headquartered at 252 West Adams, Morton, Illinois 61550.

ANSWER: The Estate of Virginia Miller admits the allegations contained in paragraph 27.

28. Morton is an S corporation, effective January 1, 2018.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 28.

29. Morton stock is not readily tradable on an established securities market.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 29, except admits that Morton's stock is privately-held.

30. Morton adopted the Plan effective January 1, 2017.

ANSWER: The Estate of Virginia Miller admits the allegations contained in paragraph 30.

31. The Plan is a pension plan within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2), and is subject to ERISA pursuant to ERISA § 4(a)(l), 29 U.S.C. § 1003(a)(l).

ANSWER: The Estate of Virginia Miller admits the allegations contained in paragraph 31.

32. The Plan is a leveraged employee stock ownership plan, or " Leveraged ESOP." The Plan was designed to invest primarily in the employer securities of Morton.

ANSWER: The Estate of Virginia Miller admits the allegations contained in paragraph 32.

33. The Plan's principal asset was Morton stock at all times since the ESOP Transaction.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 33.

34. The Plan is an individual account plan, or defined contribution plan, under which a separate individual account was established for each participant.

ANSWER: The Estate of Virginia Miller admits the allegations contained in paragraph 34.

35. Morton is and was from the inception of the Plan the sponsor of the Plan within the meaning of ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B).

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 35, except admits that at the time of the ESOP Transaction, Morton was the Plan sponsor.

36. Employees of Morton participate in the Plan.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 36, except admits that at the time of the ESOP Transaction, employees of Morton, except those categories of employees identified in the Plan document, became participants in the Plan.

37. Morton is and was the Plan's administrator within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 37.

38. The Plan's Forms 5500 report at Part II Lines 2a & 3a that Morton is the Plan's administrator.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 38.

39. Morton is and was an ERISA fiduciary to the Plan as its administrator.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 39.

40. The Schedules H, Line 4i-Schedule of Assets (Held At End of Year) to the Plan's Forms 5500 Annual Return/Report for plan years ending December 31, 2017, and December 31, 2018, report that Morton is a party in interest to the Plan.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 40

41. Morton is and was at the time of the ESOP Transaction a party in interest to the Plan under ERISA § 3(14), 29 U.S.C. § 1002(14).

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 41, except, to the extent an answer is required to Plaintiff's legal conclusion that Morton was a party in interest to the Plan, the Estate of Virginia Miller admits that, in pertinent part, 29 U.S.C. § 1002(14) defines "an employer any of whose employees are covered by [an employee benefit plan]" as a "party in interest" as to that plan.

42. Morton's duties as Plan Administrator were delegated to a benefit plan committee appointed by Morton's Board of Directors.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 42.

43. Plaintiff further alleges that the following factual allegations in this paragraph will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. At the time of the ESOP Transaction, the Morton Board of Directors included Selling

Shareholders, including Defendant Shareholders. The Selling Shareholders were parties in interest to the Plan under ERISA § 3(14), 29 U.S.C. § 1002(14), at the time of the ESOP Transaction, as directors of Morton or persons with powers or responsibilities similar to directors; and/or as 10 percent or more shareholders of Morton, directly or indirectly; and/or as officers of Morton or persons with powers or responsibilities similar to officers; and/or as employees of Morton; and/or as relatives of a party in interest.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 43, except admits that Virginia Miller was a 10 percent or more shareholder of Morton at the time of the ESOP Transaction and, to the extent an answer is required to Plaintiff's legal conclusion that Virginia Miller was a party in interest, admits that, in pertinent part, 29 U.S.C. § 1002(14) defines "an employee, officer, director . . . or a 10 percent or more shareholder directly or indirectly, of" "an employer any of whose employees are covered by [any employee benefit plan]" as a "party in interest" as to that plan.

44. Morton appointed Argent as Trustee of the Plan. As Trustee, Argent had sole and exclusive authority to negotiate and approve the ESOP Transaction on behalf of the Plan, including the price the Plan paid for Morton stock.

ANSWER: The Estate of Virginia Miller admits the allegations contained in paragraph 44.

45. As Trustee for the Plan, it was Argent's exclusive duty to ensure that any transactions between the Plan and the Selling Shareholders and between the Plan and Morton, including acquisitions of Morton stock by the Plan and loans to the Plan, were fair and reasonable and to ensure that the Plan paid no more than fair market value.

ANSWER: The Estate of Virginia Miller admits the allegations contained in paragraph 45.

46. On May 8, 2017, the Plan purchased from the Selling Shareholders 2,005,662 shares of Morton's common stock. Company common stock shares totaling 1,956,992 and 48,670 were purchased at $75.25 and $10.75 per share for $147,263,648 and $523,229, respectively, totaling $147,786,877.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 46, except admits that on May 8, 2017, the Trust purchased 2,005,662 shares of Morton common stock and that 1,956,992 of those shares were purchased for $147,263,648, and 48,670 of those shares were purchased for $523,229.22.

47. At that time, Morton became 100% employee owned.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 47, except admits that as a result of the ESOP Transaction, 100% of the shares of Morton stock became owned by the Trust for the benefit of the plan participants, including eligible Morton employees.

48. The Plan's purchase of the Morton shares was financed by three term loan agreements that the Plan entered into with: (1) Morton, for $132,277,461 at an interest rate of 2.75%, (2) Morton, for $523,229 at an interest rate of 2.75%, and (3) the Former Shareholder, for $14,986,187 at an interest rate of 5.00%, all payable in annual payments with final payments due in 2046.

ANSWER: The Estate of Virginia Miller admits the allegations contained in paragraph 48, but clarify that the loan agreement were executed by the Trust, which forms part of the Plan.

49. Plaintiff was allocated shares of Morton stock in her individual account in the Plan in 2017 and 2018. She was 100% vested in her Morton shares.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 49.

50. The Selling Shareholders were the shareholders of the majority of Morton common stock at the time of the ESOP Transaction.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 50, except admits that Edward Miller, Henry A. Getz, and Virginia Miller were shareholders of Morton at the time of the ESOP Transaction.

51. Plaintiff further alleges that the following factual allegations in this paragraph will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. Morton provided financial projections to Argent for the valuation for the ESOP Transaction. The financial projections were unreasonably optimistic.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 51.

52. Morton announced in a Media Release dated May 10, 2017 that: "As an employee-owned company, Morton Buildings will continue to operate under its existing business model and management structure."

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 52.

53. Plaintiff further alleges that the following factual allegations in this paragraph will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. The Plan paid a premium to remove Selling Shareholders including Getz family members, who were involved in other litigation, from ownership of Morton. The Plan paid more than fair market value for Morton due to this payoff as well as a faulty valuation of the company.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 53.

54. Prairie Capital Advisors, Inc. was the buyer-side valuator working with Argent on the ESOP Transaction.

ANSWER: The Estate of Virginia Miller admits the allegations contained in paragraph 54.

55. The valuation of Morton stock strangely rose for the May 8, 2017 sale to the Plan, and then plummeted after the ESOP Transaction. On December 31, 2016, Morton stock was valued at $58.04 per share. Just over four months later, at the time of the ESOP Transaction on May 8, 2017, Morton stock was valued at $75.25 per share. But as of December 31, 2017, the stock was revalued at $33.78 per share. The stock valuation dropped again a year later, when as of December 31, 2018 it was valued at $29.48 per share.

ANSWER: The Estate of Virginia Miller admits that the Trust purchased 1,956,992 shares of Morton stock for $75.25 as part of the ESOP Transaction on May 8, 2017, lacks knowledge about post-transaction share prices, and denies the remaining allegations contained in paragraph 55.

56. Plaintiff further alleges that the following factual allegations in this paragraph will likely have evidentiary support after a reasonable opportunity for further investigation or

discovery. Argent did not perform due diligence in the course of the ESOP Transaction similar to the due diligence that is performed by third-party buyers in large corporate transactions. Argent's due diligence in the ESOP Transaction was less extensive and thorough than the due diligence performed by third-party buyers in corporate transactions of similar size and complexity. The Plan overpaid for Morton stock in the ESOP Transaction due to Argent's reliance on unrealistic growth projections, unreliable or out-of-date financials, improper discount rates, inappropriate guideline public companies for comparison, and/or its failure to test assumptions, failure to question or challenge underlying assumptions, and/or other factors that rendered the valuation of Morton stock in the ESOP Transaction faulty.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 56.

57. Incentives to Argent to act in favor of the Selling Shareholders in the ESOP Transaction included the possibility of business from sellers of companies who understood that Argent applied a lesser degree of due diligence in ESOP purchases of businesses than is typical for non-ESOP-buyers' purchases of businesses, engagement as the Plan's ongoing trustee after the ESOP Transaction and the fees paid for that engagement, and engagement as the custodian for the Morton Buildings, Inc. 401(k) and ESOP, which is also sponsored by Morton, and the fees paid for that engagement. Effective May 8, 2017, Argent was appointed custodian of the Morton Buildings, Inc. 401(k) and ESOP for its investments in Morton common stock and Fidelity Investments Money Market Treasury Portfolio I.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 57, except lacks knowledge sufficient to form a belief about whether effective May 8, 2017, Argent was appointed custodian of the Morton Buildings, Inc. 401(k) and ESOP for its investments in Morton common stock and Fidelity Investments Money Market Treasury Portfolio I.

58. Argent is liable to the Plan for the difference between the price paid by the Plan and the actual value of Morton shares at the time of the ESOP Transaction.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 58.

59. The Defendant Shareholders are liable to the Plan to repay the difference between the price they received and the actual value of their Morton shares at the time of the ESOP Transaction.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 59.

60. Argent has received consideration for its own personal account from Morton for its services in the ESOP Transaction in the form of fees, under a contract made when the Selling Shareholders owned Morton.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 60, except admits that Morton paid Argent a fee for its services related to the ESOP Transaction.

61. The Notes to Financial Statements of the Plan's 2017 Form 5500 explains that the Plan's administrative expenses for 2017 were paid by Morton.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 61.

62. Pursuant to Argent's engagement agreement, Morton, at a time that it was owned by the Selling Shareholders, agreed to indemnify Argent as Plan Trustee in connection with the ESOP Transaction ("Engagement Indemnification Agreement"). The Engagement Indemnification Agreement is something of value, potentially worth millions of dollars of defense costs and/or liability in ERISA private company ESOP litigation.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 62, except admits that Argent's engagement agreement with Morton signed in connection with the ESOP Transaction generally provides for indemnification of Argent relating to the ESOP Transaction or Argent's duties as trustee except in cases of "any Indemnitee's breach of fiduciary duty under ERISA," "gross negligence," or "willful misconduct."

63. Plaintiff further alleges that the following factual allegations in this paragraph will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. The Engagement Indemnification Agreement does not contain an exemption addressing violation of the per se prohibited transaction rules under ERISA § 406. The Engagement Indemnification Agreement does not require payment of interest or otherwise account for the time value of money should Argent ultimately be required to reimburse Morton.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 63, except states that Argent's engagement agreement with Morton signed in connection with the ESOP Transaction speaks for itself.

64. Pursuant to the Morton Buildings, Inc. Leveraged Employee Stock Ownership Trust, Morton, by Chief Executive Officer and President John Russell-who held those positions before, at the time of, and after the ESOP Transaction-agreed to indemnify Argent as Plan Trustee in a contract made and entered into on May 8, 2017 and effective as of January 1, 2017 ("Trust Engagement Agreement"). The Trust Engagement Agreement covers Argent's role as Plan Trustee in connection with the ESOP Transaction. The indemnification agreement is something of value, potentially worth millions of dollars of defense costs and/or liability in ERISA private company ESOP litigation.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 64.

65. The Trust Engagement Agreement includes an exemption if a court of competent jurisdiction holds that a loss resulted from Argent's "gross negligence" or "willful misconduct," or "breach of any fiduciary duty imposed under ERISA." Those carve-outs do not apply to ERISA § 406 claims for "Prohibited Transactions," which are different than ERISA § 404 claims concerning "Fiduciary Duties," and as establishing per se statutory violations do not require findings of gross negligence or willful misconduct.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 65.

66. The Trust Engagement Agreement includes a provision that nullifies certain court holdings that indemnification is unavailable to Argent: "If a court of competent jurisdiction holds that any payment or award of indemnification pursuant to the terms of this Trust Agreement is unavailable to any one or more of the Indemnitees from the Company for any reason other than their gross negligence, willful misconduct or breach of fiduciary duty, the Company then shall nonetheless reimburse the affected Indemnitees, as required by Section 9.1, but taking into account the basis for the denial of full indemnification by the court."

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 66.

67. The Trust Engagement Agreement does not require payment of interest or otherwise account for the time value of money should Argent ultimately be required to reimburse Morton.

ANSWER: The Estate of Virginia Miller lacks knowledge sufficient to form a belief about the truth of the allegations contained in paragraph 67.

68. The indemnification agreements are invalid under ERISA § 410(a), 29 U.S.C. § 1110(a), as against public policy because Argent violated its ERISA duties to the Plan, and its legal defense and liability for the Plan's losses should not be paid by the company that the Plan owns.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 68.

69. Payment by Morton of millions of dollars of attorneys' fees, costs, litigation expenses, and liabilities to Argent necessarily would adversely impact Morton's equity value and therefore the value of Plan assets. Direct payment or reimbursement of Argent's attorneys' fees, costs, litigation expenses, and liabilities by Morton, or the Plan that owns it, would adversely affect the Plan and Plaintiff's and other participants' financial interests.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 69.

CLAIMS FOR RELIEF

COUNT 1
Causing and Engaging in Prohibited Transactions Forbidden by ERISA § 406(a)-(b), 29 U.S.C. § 1106(a)-(b), Against Argent

70. Plaintiff incorporates the preceding paragraphs as though set forth herein.

ANSWER: The Estate of Virginia Miller incorporates its answers to the preceding paragraphs as though fully set forth herein.[1]

71. ERISA § 406(a)(l)(A), 29 U.S.C. § 1106(a)(1)(A), prohibits a plan fiduciary, here Argent, from causing a plan, here the Plan, to engage in a sale or exchange of any property, here Morton stock, with a party in interest, here the Selling Shareholders, as took place in the ESOP Transaction.

[1] Although paragraphs 70 through 82 do not direct allegations against the Estate of Virginia Miller, the Estate answers them to the extent Plaintiff relies on these allegations as a basis for her claim against the Estate of Virginia Miller alleged in paragraphs 99 through 107 of the Complaint.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 71.

72. ERISA § 406(a)(l)(B), 29 U.S.C. § 1106(a)(l)(B), prohibits Argent from causing the Plan to borrow money from a party in interest, here Morton and the Former Shareholder, as took place in the ESOP Transaction.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 72.

73. ERISA § 406(a)(l)(D), 29 U.S.C. § 1106(a)(l)(D), prohibits Argent from causing the Plan to engage in a transaction that constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, here the Selling Shareholders, of any assets of the Plan, as took place in and after the ESOP Transaction with the transfer of Plan assets as payment for Morton stock and in continuing payments on the loan.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 73.

74. The stock and loan transactions between the Plan and the parties in interest were authorized by Argent in its capacity as Trustee for the Plan.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 74, except admits that Argent authorized the ESOP Transaction in its capacity as trustee for the Plan.

75. Argent caused the Plan to engage in prohibited transactions in violation of ERISA § 406(a), 29 U.S.C. § 1106(a), in the ESOP Transaction.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 75.

76. ERISA § 406(b), 29 U.S.C. § 1106(b), inter alia, mandates that a plan fiduciary shall not "act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants," or "receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan."

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 76, except admits that 29 U.S.C. § 1106(b) states: "A fiduciary with respect to a plan shall not—(1) deal with the assets of the plan in his own interest or for his own account, (2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or (3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan."

77. Argent caused the Plan to acquire Morton stock from the Selling Shareholders above fair market value and with the proceeds of three loans that were used to pay the Selling Shareholders. This primarily benefited the Selling Shareholders to the substantial detriment of the Plan and its participants and beneficiaries, even though Argent was required to act solely in the interests of the Plan's participants and beneficiaries in connection with any such transaction.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 77.

78. Argent received consideration for its own personal account from Morton-fees and an indemnification agreement-as Trustee for the Plan in the ESOP Transaction, in violation of ERISA § 406(b)(3).

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 78.

79. Argent caused and engaged in prohibited transactions in violation of ERISA § 406(b) in the ESOP Transaction.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 79.

80. ERISA § 409, 29 U.S.C. § 1109, provides, inter alia, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by Title I of ERISA shall be personally liable to make good to the plan any losses to the plan resulting from each such breach, and additionally is subject to such other equitable or remedial relief as the court may deem appropriate.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 80, except admits that 29 U.S.C. § 1109(a) states: "Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 1111 of this title."

81. ERISA § 502(a), 29 U.S.C. § 1132(a), permits a plan participant to bring a suit for relief under ERISA § 409 and to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 81, except admits that 29 U.S.C. § 1132(a) states: "A civil action may be brought . . . (2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title; (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan. . . ."

82. Argent has caused losses to the Plan by the prohibited transactions in an amount to be proved specifically at trial.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 82.

COUNT II
Breaches of Fiduciary Duty Under ERISA § 404(a), 29 U.S.C. § 1104(a), Against Argent

83–90. Paragraphs 83 through 90 contain no allegations against the Estate of Virginia Miller, and thus no response is required by it. To the extent a response is required, The Estate of Virginia Miller denies all allegations contained in paragraphs 83 through 90.

COUNT III
Violation of ERISA §§ 410 and 404(a)(1)(A), (B),
29 U.S.C. §§ 1110 and 1104(a)(1)(A), (B), Against Argent

91–98. Paragraphs 91 through 98 contain no allegations against the Estate of Virginia Miller, and thus no response is required by it. To the extent a response is required, The Estate of Virginia Miller denies all allegations contained in paragraphs 91 through 98.

COUNT IV
Prohibited Transactions Pursuant to 29 U.S.C. § 1132(a)(3),
Against Defendant Shareholders

99. Plaintiff incorporates the preceding paragraphs as though set forth herein.

ANSWER: The Estate of Virginia Miller incorporates its answers to the preceding paragraphs as though fully set forth herein.

100. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a civil action to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 100, except admits that 29 U.S.C. § 1132(a)(3) states: A civil action may be brought . . . (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan."

101. The Supreme Court has held that anyone, including a non-fiduciary, who receives the benefit of conduct that violates ERISA may be subject to equitable remedies under ERISA § 502(a)(3) if they have "actual or constructive knowledge of the circumstances that rendered the transaction unlawful." *Harris Trust& Sav. Bank v. Salomon Smith Barney, Inc.,* 530 U.S. 238, 251 (2000).

ANSWER: The Estate of Virginia Miller admits that paragraph 101 purports to summarize the holding of *Harris Trust & Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S.C. 238 (2000), denies that Plaintiff's characterization is complete or accurate to the extent it is inconsistent with the express language of the opinion or its progeny, and denies the remaining allegations contained in paragraph 101.

102. As a result of the prohibited transactions described above, selling shareholders Jan Rouse Edward C. Miller, Getz Family Limited Partnership, Henry A. Getz and Virginia Miller received Plan assets in payments above fair market value for their Morton stock.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 102.

103. The Defendant Shareholders (including predecessor decedents Henry A. Getz and Virginia Miller) were parties in interest to the Plan under ERISA § 3(14), 29 U.S.C. § 1002(14), as described above.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 103, except, to the extent an answer is required to Plaintiff's legal conclusion that Ms. Rouse, Mr. Miller, Henry A. Getz, Virginia Miller, and the Getz Family Limited Partnership were parties in interest, admits that, in pertinent part, 29 U.S.C. § 1002(14) defines "an employee, officer, director . . . or a 10 percent or more shareholder directly or indirectly, of" "an employer any of whose employees are covered by [any employee benefit plan]" as a "party in interest" as to that plan.

104. The Defendant Shareholders knew or should have known (1) about the existence of the Plan, (2) about the Plan's purchase of their Morton stock in the ESOP Transaction, (3) that Argent was a fiduciary to the Plan, (4) that the ESOP Transaction was for above fair market value, (5) that Argent caused the Plan to engage in transactions prohibited under ERISA § 406(a)

and (b), 29 U.S.C. § 1106(a) and (b), (6) that Argent breached its fiduciary duties under ERISA, and (7) that the true purpose of the ESOP Transaction was to benefit the Selling Shareholders.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 104.

105. As directors of Morton and as Selling Shareholders, Defendants Jan Rouse and Edward C. Miller were aware of sufficient facts that the ESOP Transaction constituted a prohibited transaction with parties in interest. As Selling Shareholders and as three of the largest holders of Morton stock, Getz Family Limited Partnership, Henry A. Getz and Virginia Miller were aware of sufficient facts that the ESOP Transaction constituted a prohibited transaction with parties in interest. As parties in interest, the Defendant Shareholders are liable for violations of ERISA § 406(a)(l)(A) and (D), 29 U.S.C. § l 106(a)(l)(A) and (D).

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 105.

106. The Defendant Shareholders have profited from the prohibited transactions in an amount to be proven at trial, and upon information and belief, they remain in possession of some or all of the assets that belong to the Plan.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 106.

107. The Defendant Shareholders are subject to appropriate equitable relief including disgorgement of any profits, accounting for profits, surcharge, having a constructive trust placed on any proceeds received (or which are traceable thereto), having the transactions rescinded, requiring all or part of the consideration to be restored to the Plan, or to be subject to other appropriate equitable relief.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 107.

CLASS ACTION ALLEGATIONS

108. Plaintiff brings this action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b), on behalf of the following class:

> All participants in the Morton Buildings, Inc. Leveraged Employee Stock Ownership Plan (the "Plan") and the beneficiaries of such participants as of the date of the May 8, 2017 ESOP Transaction or anytime thereafter. Excluded from the Class are the shareholders who sold the stock of Morton Buildings, Inc. ("Morton")

to the Plan on May 8, 2017, and their immediate families; the directors and officers of Morton and their immediate families; and legal representatives, successors, and assigns of any such excluded persons.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 108, including that class certification is appropriate, except admits that Plaintiff purports to bring this action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b).

109. The Class is so numerous that joinder of all members is impracticable. Although the exact number and identities of Class members are unknown to Plaintiff at this time, the Plan's most recent Form 5500 filing reports that as of December 31, 2018, there were 1,802 participants and beneficiaries of deceased participants receiving or entitled to receive benefits in the Plan.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 109, except lacks knowledge sufficient to form a belief about the number of participants and beneficiaries under the Plan.

110. Questions of law and fact common to the Class as a whole include, but are not limited to, the following:

i. Whether Argent served as Trustee in the Plan's acquisition of Morton stock;

ii. Whether Argent was an ERISA fiduciary of the Plan;

iii. Whether Argent caused the Plan to engage in prohibited transactions under ERISA by permitting the Plan to purchase Morton stock and take loans from parties in interest;

iv. Whether Argent engaged in a good faith valuation of the Morton stock in connection with the ESOP Transaction;

v. Whether Argent caused the Plan to pay more than fair market value for Morton stock;

vi. Whether Argent engaged in a prohibited transaction under ERISA by acting on behalf of a party adverse to the Plan and its participants in the ESOP Transaction;

vii. Whether Argent engaged in a prohibited transaction under ERISA by receiving consideration for its own account in the ESOP Transaction;

viii. Whether Argent breached its fiduciary duty to undertake an appropriate and independent investigation of the fair market value of Morton stock in or about May 2017;

ix. Whether Morton was a party in interest;

x. Whether the Selling Shareholders were parties in interest;

xi. Whether Jan Rouse and Edward C. Miller, as parties in interest, participated in the prohibited transactions;

xii. Whether the Former Shareholder with whom the Plan entered a term loan agreement was a party in interest;

xiii. The amount of losses suffered by the Plan and its participants as a result of Argent's ERISA violations; and

xiv. The appropriate relief for Argent's violations of ERISA.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 110.

111. Plaintiff's claims are typical of those of the Class. For example, Plaintiff, like other Plan participants in the Class, suffered a diminution in the value of her Plan account because the Plan paid above fair market value and took on excessive loans for Morton stock, resulting in her being allocated fewer shares of stock, and she continues to suffer such losses in the present because Argent failed to collect the overpayment by the Plan.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 111.

112. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel competent and experienced in complex class actions, ERISA, and employee benefits litigation.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 112.

113. Class certification of Plaintiff's Claims for Relief for the alleged violations of ERISA is appropriate pursuant to Fed. R. Civ. P. 23(b)(l) because the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Argent, and/or because

adjudications with respect to individual Class members would as a practical matter be dispositive of the interests of non-party Class members.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 113.

113. The names and addresses of the Class members are available from the Plan. Notice will be provided to all members of the Class to the extent required by Fed. R. Civ. P. 23.

ANSWER: The Estate of Virginia Miller denies the allegations contained in paragraph 113.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendants and for the following relief:

A. Declare that Defendant Argent caused the Plan to engage in and itself engaged in prohibited transactions and thereby breached its duties under ERISA;

B. Declare that Defendants Jan Rouse and Edward C. Miller engaged in a prohibited transaction with the Plan in violation of ERISA;

C. Declare that Defendant Argent breached its fiduciary duties under ERISA to the Plan and the class members;

D. Order each Defendant found to have violated ERIS A to jointly and severally make good to the Plan and/or to any successor trust(s) the losses resulting from the breaches of ERISA and restore any profits it, he, or she has made through use of assets of the Plan;

E. Order that Defendants provide other appropriate equitable relief to the Plan and its participants and beneficiaries, including but not limited to surcharge, providing an accounting for profits, and imposing a constructive trust and/or equitable lien on any funds wrongfully held by Defendants;

F. Order the proceeds of any recovery for the Plan to be allocated to the accounts of the class members to make them whole for any injury that they suffered as a result of the breaches of ERISA in accordance with the Court's declaration;

G. Order the allocation to the accounts of the class members of the additional shares of stock that would have been allocated but for the Plan's overpayment on company stock and Defendants' breaches of ERIS A;

H. Declare that the indemnification agreement between Defendant Argent and Morton violates ERISA § 410, 29 U.S.C. § 1110;

I. Order Defendant Argent to reimburse Morton for any money paid by Morton under any indemnification agreement between Argent and Morton, plus interest;

J. Award Plaintiff reasonable attorneys' fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g), and/or for the benefit obtained for the common fund;

K. Order Defendant Argent to disgorge any fees it received in conjunction with its services as Trustee for the Plan in the ESOP Transaction as well as any earnings and profits thereon;

L. Order Defendants to pay prejudgment and post-judgment interest;

M. Certify this action as a class action pursuant to Fed. R. Civ. P. 23, certify the named Plaintiff as class representative and her counsel as class counsel; and

N. Award such other and further relief as the Court deems equitable and just.

ANSWER: The Estate of Virginia Miller denies that judgment for Plaintiff is proper or that Plaintiff is entitled to any relief whatsoever; respectfully requests that judgment be entered in its favor and against Plaintiff and that it be awarded its reasonable attorneys' fees and costs and any such further relief that the Court deems just and proper.

AFFIRMATIVE DEFENSES

The Estate of Virginia Miller states the following as its affirmative defenses to the First Amended Complaint:

First Affirmative Defense

Exemption from Prohibited Transaction

1. Plaintiff's claim that Virginia Miller was a knowing participant in a transaction prohibited by ERISA § 406, 29 U.S.C. § 1106 fails because the prohibited transaction rules exempt and do not apply to: the May 8, 2017 stock purchase transaction in which the ESOP purchased 1,956,992 shares of Morton Buildings, Inc. stock from certain shareholders of Morton stock, the

May 8, 2017 stock purchase transaction in which the ESOP purchased 48,670 shares of Morton stock from Morton's treasury (the "Purchase Transactions"), or the loans made by Morton and/or certain selling shareholders that qualify as "parties in interest" in connection with the ESOP Transaction (the "Purchase Loans").

2. The Purchase Transactions satisfy the exemption set forth in § 1108(e).

3. 29 U.S.C. § 1108(e) provides in pertinent part: "Sections 1106 and 1107 of this title shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 1107(d)(5) of this title) . . . (1) if such acquisition, sale, or lease is for adequate consideration (or in the case of a marketable obligation . . . (2) if no commission is charged with respect thereto, and (3) if—(A) the plan is an eligible individual account plan (as defined in section 1107(d)(3) of this title)."

4. As used in Section 408(e), "adequate consideration" means "in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary." *See also* Proposed Regulation Relating to the Definition of Adequate Consideration, 53 Fed. Reg. 17632-01 (May 17, 1988) (to be codified at 29 C.F.R. pt. 2510).

5. The ESOP is an eligible individual account plan, no commission was charged for the ESOP's acquisition of the stock, and the ESOP's purchase of stock in the May 8, 2017 Purchase Transactions was for adequate consideration.

6. The Purchase Loans satisfy the exemption in 29 U.S.C. § 1108(b)(3).

7. 29 U.S.C. § 1108(b)(3) provides in pertinent part: "The prohibitions provided in section 1106 of this title shall not apply to any of the following transactions . . . (3) A loan to an

employee stock ownership plan (as defined in section 1107(d)(6) of this title), if—(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and (B) such loan is at an interest rate which is not in excess of a reasonable rate.

8. The Purchase Loans were primarily for the benefit of participants and beneficiaries of the Plan and they were at an interest rate not in excess of a reasonable rate.

Second Affirmative Defense

Lack of Intent under ERISA § 406(a)(1)(D)

9. ERISA § 406(a)(1)(D) prohibits transactions between a plan and a party in interest that constitute a direct or indirect "transfer to, or use by or for the benefit of a party in interest, of any assets of the plan."

10. Courts have held that a prohibited use of plan assets for the benefit of a party in interest as described in ERISA § 406(a)(1)(D) requires a subjective intent to benefit a party in interest.

11. Plaintiff cannot establish that there was any subjective intent to benefit any party in interest.

Third Affirmative Defense

Lack of Knowledge under ERISA § 502(a)(3)

12. Plaintiff's claims against the Estate of Virginia Miller are barred because Virginia Miller did not have actual or constructive knowledge of the circumstances that allegedly rendered the ESOP Transaction unlawful.

<u>Fourth Affirmative Defense</u>

Failure to Exhaust Administrative Remedies

13. Plaintiff's claims are barred, in whole or in part, by the failure to exhaust administrative remedies.

<u>Fifth Affirmative Defense</u>

Failure to State a Claim

14. The Complaint in whole or in part fails to state a claim upon which relief can be granted against the Estate of Virginia Miller.

<u>Sixth Affirmative Defense</u>

Lack of Standing

15. Plaintiff's claims are barred in whole or in part because neither she nor the ESOP has suffered an injury in fact and Plaintiff therefore lacks standing to pursue the claims alleged.

<u>Seventh Affirmative Defense</u>

Unjust Enrichment/Improper Windfall

16. Plaintiff's claims are barred in whole or in part because any award to compensate for any alleged loss or damage to the ESOP would constitute unjust enrichment and/or an improper windfall to the ESOP.

<u>Eighth Affirmative Defense</u>

Offset of Damages

17. Any award to compensate for any alleged loss or damage to the ESOP should be offset to the extent any notes affiliated with the ESOP Transaction were forgiven after the ESOP Transaction, including those affiliated with the sale by Henry A. Getz, individually, to Morton Buildings, Inc. of Mr. Getz's ESOP Note in exchange for a promissory note from Morton payable

to Mr. Getz's trust and the subsequent cancellation and forgiveness by Mr. Getz's trust of the promissory note from Morton, or to the extent any company or ESOP debt associated with the ESOP Transaction was cancelled and/or forgiven.

Ninth Affirmative Defense

Lack of Subject Matter Jurisdiction/Probate Exception

18. This Court lacks subject matter jurisdiction over Plaintiff's claims against the Estate of Virginia Miller under the probate exception to the federal jurisdiction.

19. The assets of the Estate of Virginia Miller are in probate in the Tenth Judicial Circuit Court, Tazewell County, Illinois. Plaintiff has filed claims in the probate matter related to the filing of her Amended Complaint.

20. Because the state probate court is currently exercising jurisdiction over the *res* of the Estate of Virginia Miller, this Court cannot assume *in rem* jurisdiction over the same property here.

WHEREFORE, the Estate of Virginia Miller respectfully requests that this Court enter judgment in its favor and against Plaintiff on all claims, award its reasonable attorneys' fees and costs, and grant such further relief as the Court deems just and proper.

Respectfully submitted,

ESTATE OF VIRGINIA MILLER

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CERTIFICATE OF SERVICE

The undersigned certifies that on **April 5, 2022**, the foregoing **Defendants Estate of Virginia Miller's Answer and Affirmative Defenses to First Amended Complaint** was filed with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

s/ Chelsea Ashbrook McCarthy