

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

STEPHANIE WOZNICKI,

Plaintiff,

v.

Case No: 6:18-cv-2090-Orl-78GJK

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

Defendants.

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**ORDER**

THIS CAUSE is before the Court on Plaintiff's Motion for Class Certification (Doc. 96). United States Magistrate Judge Thomas B. Smith issued a Report and Recommendation ("**R&R**," Doc. 156), in which he recommends that the Motion be granted. Defendants timely filed Objections to the R&R (Doc. Nos. 159, 160). For the reasons set forth herein, this Court will adopt the R&R and grant the Motion.

## I. BACKGROUND

The relevant background to the Motion is fully set forth in the R&R and is hereby adopted and made a part of this Order. (Doc. 156 at 1–4).

## II. LEGAL STANDARD

When a party objects to a magistrate judge’s findings, the district court must “make a de novo determination of those portions of the report . . . to which objection is made.” 28 U.S.C. § 636(b)(1). The district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* The district court must consider the record and factual issues independent of the magistrate judge’s report, as de novo review is “essential to the constitutionality of [§] 636.” *Jeffrey S. v. State Bd. of Educ.*, 896 F.2d 507, 512 (11th Cir. 1990). The objecting party must state with particularity findings with which it disagrees, along with its basis for the disagreement. *Kohser v. Protective Life Corp.*, 649 F. App’x 774, 777 (11th Cir. 2016) (citing *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989)). The court will not consider “[f]rivolous, conclusive, or general objections.” *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988) (citation omitted).

## III. DISCUSSION

Defendant Lubbock National Bank (“**Lubbock**”) objects to the R&R insofar as it finds that Plaintiff is an adequate class representative. Likewise, the remaining Defendants (the “**Raydon Defendants**”) object to the finding of adequacy. The Raydon Defendants further object to the finding that proposed class representative Briana Nicole Tatum has standing in this litigation.

**A. Adequacy**

Defendants raise two arguments in their Objections. First, they argue that Magistrate Judge Smith, after reviewing the evidence and relevant case law, reached the wrong conclusion in finding that Plaintiff was not unduly antagonistic. Having reviewed the relevant law and the evidence in this case, this Court agrees with the R&R. Plaintiff has presented evidence that she is ready, willing, and able to consider the best interests of all class members, including in the resolution of this proceeding. (Doc. 96-12, ¶¶ 7–9; *see also* Doc. 96-13 at 2). While Plaintiff may be antagonistic toward Defendants, she is not so unduly antagonistic as to render her inadequate as a class representative, and nothing in the record suggests that she is currently unable or unwilling to fairly and adequately represent the class. Simply put, the conduct alleged and shown in this case falls substantially short of the conduct that occurred in those cases cited by Defendants where the proposed representative has been found inadequate. Defendants' objections are without merit.

Second, Defendants argue that Magistrate Judge Smith erred in failing to consider or address declarations submitted by potential class members stating that they do not agree with Plaintiff's representation of them in this litigation. In this vein, Defendants have presented this Court with no case law stating that the opinions of putative class members are an appropriate consideration in determining the adequacy of the proposed class representative. To the extent that Defendants argue that personal animosity by putative class members against Plaintiff would subject any class resolution to collateral attack, Defendants' arguments are unsupported and fail to address how Plaintiff's representation would deprive any putative class member of due process. The fact that the Raydon

Defendants' employees may not like Plaintiff or agree with comments that she has made does not equate with inadequacy. Accordingly, this Court agrees with the R&R that Plaintiff has established adequacy under Federal Rule of Civil Procedure 23(a)(4).

#### **B. Standing**

The Raydon Defendants also object to the R&R insofar as Judge Smith recommends that this Court find that Ms. Tatum has standing. For the reasons set forth in the R&R, Ms. Tatum's claims are not typical of the class, and she is not, therefore, a proper class representative. No objection has been made to this finding. Accordingly, this Court need not address the Raydon Defendants' standing arguments. *See Rudolph v. Dep't of Corr.*, No. 5:06-cv-56-RS, 2006 WL 8443761, at \*3 n.1 (N.D. Fla. Nov. 9, 2006).

#### **IV. CONCLUSION**

In accordance with the foregoing, it is hereby **ORDERED** and **ADJUDGED** as follows:

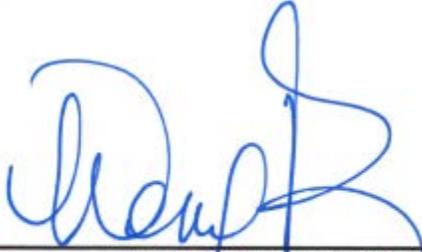
1. Lubbock's Objection (Doc. 159) and the Raydon Defendants' Objection (Doc. 160) are **OVERRULED**.
2. The Report and Recommendation (Doc. 156) is **ADOPTED** and **CONFIRMED** and is made a part of this Order.
3. Plaintiff's Motion for Class Certification (Doc. 96) is **GRANTED**.
4. The Court hereby certifies a class pursuant to Rule 23(b)(1) consisting of the following:

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

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

5. Plaintiff, Stephanie Woznicki, is certified as representative of the class.
6. Robert Joseph Barton of Block & Leviton LLP, Daniel M. Feinberg of Feinberg Jackson Worthman & Wasow LLP, and Sam Jones Smith and Loren Bolno Donnell of Burr & Smith, LLP are certified as Class Counsel pursuant to Rule 23(g)(1).
7. **On or before March 30, 2020**, that parties shall jointly file a proposed notice to the class members for approval by the Court.

**DONE AND ORDERED** in Orlando, Florida on March 16, 2020.



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WENDY W. BERGER  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record