

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MARCIA G. FLEMING; CASEY
FREEMAN; DAVID GUYON; ANTHONY
LOSCALZO; PATRICK ROSEBERRY;
and JULIO SAMNIEGO individually, on
behalf of the Rollins, Inc. 401(k) Savings
Plan and on behalf of all similarly situated
participants and beneficiaries of the Plan,

Plaintiffs,

v.

ROLLINS, INC.; THE ADMINISTRATIVE
COMMITTEE OF THE ROLLINS, INC.
401(k) SAVINGS PLAN, BOTH
INDIVIDUALLY AND AS THE *DE*
FACTO INVESTMENT COMMITTEE OF
THE ROLLINS, INC. 401(k) SAVINGS
PLAN; EMPOWER RETIREMENT, LLC
F/K/A PRUDENTIAL INSURANCE AND
ANNUITY COMPANY; PRUDENTIAL
BANK & TRUST, FBS, AS DIRECTED
TRUSTEE OF THE ROLLINS, INC. 401(k)
PLAN TRUST; ALLIANT INSURANCE
SERVICES, INC.; ALLIANT
RETIREMENT SERVICES, LLC; PAUL
E. NORTHEN, JOHN WILSON, JERRY
GAHLHOFF, JAMES BENTON, and A.
KEITH PAYNE in their capacities as
members of the Administrative Committee;
and John and Jane Does 1–10,

Defendants.

Case No. 1:21-cv-05343-ELR

DECLARATION OF MARK G. BOYKO

I, Mark G. Boyko, declare as follows:

1. I make this Declaration of my own personal knowledge, and if called as a witness, I would and could testify competently to the matters stated herein.

2. I am a partner at the law firm Bailey & Glasser LLP (“Bailey Glasser”).

3. I and other attorneys at my firm, including my partner Gregory Y. Porter, have been actively involved in this lawsuit including, but not limited to, meeting and conferring with defense counsel regarding discovery and case management, reviewing Defendants’ document productions, representing retaining experts, and settlement mediation.

4. I make this declaration in support of Plaintiffs’ Unopposed Motion for Final Approval of Settlement and Plaintiffs’ Motion for Attorneys’ Fees, Costs and Case Contribution Award. The Court appointed me, other attorneys at Bailey Glasser and our co-counsel as Class Counsel for a class of Rollins Plan participants on December 1, 2023. *See* Dkt. 123, ¶10.¹

A. Background and Experience of Bailey Glasser Attorneys

5. Class Counsel has decades of experience with complex ERISA class action litigation of this type. The experience of the attorneys at co-counsel, are set forth in the Declarations of Paul Sharman (the “Sharman Decl.”) and Jon Pels (the “Pels Decl.”) submitted contemporaneously with my Declaration.

6. I have been working on ERISA class actions since 2007. My partner, Gregory Porter, has been working on class actions since 1998. He and I have served together as lead or co-lead counsel for plaintiffs in many important ERISA cases, including *Intel v. Sulyma*. 140 S. Ct. 768 (2020) (ongoing case regarding the prudence and diversification of certain options in a 401(k) plan), *Bekker v. Neuberger Berman Plan Inv. Comm.*, No. 16-6123 (S.D.N.Y) (\$17 million settlement in class action concerning the prudence of one fund in a 401(k) plan), *Cryer v. Franklin*

¹ Together the Sharman Law Firm LLC, Bailey Glasser LLP, and The Pels Law Firm are referred to herein as “Class Counsel.”

Resources, Inc., No. 16-4265 (N.D. Cal.) (\$26.9 million settlement in class action concerning the prudence and loyalty of offering proprietary investments in a 401(k) plan), *Leber v. Citigroup 401(k) Plan Inv. Comm.*, No. 07-9329 (S.D.N.Y.) (class settlement concerning prudence and fees of certain plan investment options), *Schultz v. Edward D. Jones & Co., L.P.*, No. 16-cv-1346 (E.D.Mo) (same); *Stegemann v. Gannet Co., Inc.*, 970 F.3d 465 (4th Cir. 2020) (case challenging fiduciary decisions to continue offering legacy stock from a parent company after a spin-off).

7. We also have extensive experience with other ERISA class action cases alleging breaches of fiduciary duties and prohibited transaction. *See Brundle v. Wilmington Trust Ret. & Int'l Servs. Co.*, 241 F. Supp. 3d 610 (E.D. Va. 2017) (\$29.7 million trial judgment); *Allen v. GreatBanc Trust Co.*, 835 F.3d 670 (7th Cir. 2016) (reversing trial court ruling on motion to dismiss in an ESOP class action; lawsuit settled for \$2.3 million); *Jessop v. Larsen*, No. 14-916 (D. Utah) (\$19.8 million settlement secured for ESOP plan participants in 2017); *Swain v. Wilmington Trust, N.A.*, No. 17-71 (D. Del.) (\$5 million settlement); *Casey v. Reliance Trust Co.*, No. 18-424 (E.D. Tex.) (\$6.25 million settlement for ESOP plan participants); *Choate v. Wilmington Trust, N.A.*, No. 17-250-RGA (D. Del.) (\$19.5 million settlement); *Blackwell v. Bankers Trust Co. of South Dakota*, No. 18-141 (S.D. Miss.) (\$5 million settlement); *Fink v. Wilmington Trust, N.A.*, No. 19-1193 (D. Del.) (\$5.5 million settlement); and *Nistra v. Reliance Trust Co.*, No. 16-4773 (N.D. Ill.)(\$13.36 million settlement). In *Brundle*, Mr. Porter led a team of lawyers in an ERISA case that resulted in a \$30 million judgment for a class of ESOP plan participants. *Brundle*, 241 F. Supp. 3d 610. Defendants vigorously appealed the judgment, but the Fourth Circuit affirmed the \$30 million judgment in all respects. *See Brundle v. Wilmington Trust, N.A.*, 919 F.3d 763 (4th Cir. 2019). Mr. Porter argued the appeal for Plaintiffs-Appellees before the Fourth Circuit.

8. In 2023, Mr. Porter was recognized by Chambers and Partners as being in the top band, “Band 1” for ERISA Litigation: Mainly Plaintiffs. Including Mr. Porter, only six attorneys achieved that distinction, the highest available. Chambers rankings are based on factors including technical legal ability, professional conduct, client service, diligence and commitment.

9. That same year, the Bailey Glasser ERISA department was one of only four recognized in the category of ERISA Litigation: Mainly Plaintiffs.

10. Bailey Glasser currently represents plaintiffs in several other ERISA lawsuits. Additional background on the qualifications of Class Counsel were submitted as part of the previously filed Motion for Class Certification.

B. Work Performed by Class Counsel

11. This was an extremely hard-fought litigation in which Class Counsel devoted a tremendous amount of time and effort to this case. Co-Counsel reached out to us in March, 2023 and we immediately set to work. Among other things we:

- a. conducted an in-depth investigation of Defendants’ fiduciary process and the Plan’s GoalMaker Product;
- b. Reviewed and analyzed discovery produced by the Parties and through our own investigations;
- c. researched expert testimony supporting the allegations and retained two separate expert sophisticated experts;
- d. challenged the opinions of those experts;
- e. prepared a lengthy mediation statement and reply to Defendants’ mediation statement in advance of the parties’ mediation;
- f. engaged in a full-day mediation session before Robert A. Meyer of JAMS on August 3, 2023;

- g. negotiated with Defendants the terms of Settlement and drafted the papers associated with Plaintiffs' unopposed motion and incorporated memorandum of law for preliminary approval of settlement (*see* Dkt. XX);
- h. drafted class notice and revised form of the class notice (*see* Dkt. XX);
- i. invited bids for settlement administrator and retained KCC following review of KCC's extensive experience handling class action settlements, including ERISA settlements;
- j. worked with KCC to create a settlement website for Class Members who wished to obtain additional information about the Settlement; and
- k. prepared the present motions and supporting papers.

12. Throughout the life of this case, the parties have engaged in numerous settlement discussions including a private full-day mediation on August 3, 2023, attended by Plaintiffs, the Rollins Defendants, and Alliant defendants, through their counsel, where those in attendance participated in an arm's length and good faith mediation with Robert A. Meyer of JAMS, a mediator with substantial experience with ERISA cases. In connection with their settlement negotiations, the Parties exchanged information regarding their views on the merits, strengths, and weaknesses of the Actions, risks of litigation, available insurance, and the financial impact to Rollins, the Class, and the Plan, with respect to any judgment or settlement.

13. Prior to the mediation, Plaintiffs received key documents to evaluate the strength of their claims and liability of each Defendant. Among other documents, Plaintiffs receive Plan and Trust documents, performance and benchmark information, and meeting minutes of the fiduciary committee. Plaintiffs also retained multiple experts who prepared opinions regarding liability and damages prior to the mediation. Expert assessments and calculations of loss were

exchanged with Defendants prior to mediation, as were comprehensive mediation statements addressing all sides of the key issues. Plaintiffs' claimed damages, as assessed by these experts and counsel, were \$1.6 million for alleged excessive recordkeeping fees, \$4.3 million for the underperformance of the Plans' Stable Value Fund, and while Plaintiffs asserted \$27 million in damages from two other plan investment funds including within the "GoalMaker" product, those losses were generally mitigated by outperformance of other investments within GoalMaker.

14. While the case was not settled during the mediation, substantial progress was made at the mediation and through continued settlement negotiations through the mediator after the mediation. As a result of these negotiations, Plaintiffs and Rollins agreed to the terms contained in the Settlement Agreement currently before the Court for preliminary approval.

C. Class Counsel's One Third Contingency Fee Agreements With the Named Plaintiffs is Market Rate

15. A contingency fee of one third is the typical market rate to provide ERISA class action representation. Clients of Bailey Glasser's in other ERISA class action cases sign similar engagement agreements in which they agree for Bailey Glasser attorneys to advance the costs of the litigation and receive one third of any monetary recovery and/or judgments.

16. In my experience, the market for experienced and competent lawyers willing to pursue complex ERISA class action litigation is a national one and the rate of one-third of total monetary recovery, plus expenses, is the market rate that Courts have to be reasonable in many other complex ERISA breach of fiduciary duty actions, including in the Eleventh Circuit.

17. Class Counsel's depth of experience with ERISA claims and class action litigation allowed counsel to pursue the case and negotiate a settlement that capitalized on the claims' strengths while taking into account the risks of continued litigation.

18. Class Counsel has always been confident in their chances of success in this matter. However, based upon my 17 years of experience in litigating ERISA breach of fiduciary and prohibited transaction matters, ERISA breach of fiduciary class actions involve tremendous risk, require finding and obtaining opinions from expensive, unconflicted, consulting and testifying experts in finance, investment management, fiduciary practices, and related fields, and are extremely hard fought and well defended.

19. Only a small number of plaintiffs' firms have the necessary expertise and are willing to take the risk and devote the resources to litigate complex ERISA fiduciary breach cases. Within this small market of firms, in my experience there is even a smaller amount of law firms that would have the expertise and resources to bring a case such as this one, given the novel and complex allegations and the resources necessary to litigate the case. Bailey Glasser makes long-term and expensive commitments to cases such as this one in order to ensure its clients receive a full recovery for their claims. Indeed, in light of the complexity and scope of this action, Class Counsel had to forego other cases once they had agreed to represent the Named Plaintiffs and Class in this Action.

20. As further described in Plaintiffs' Motion for Attorney Fees and Costs, I believe these facts are supportive of Plaintiffs' fee request for one-third of the total \$3,925,000 recovery in this action in conformity with Eleventh Circuit case law.

D. Summary of Time and Expenses of Bailey Glasser Attorneys

21. Attorneys and paralegals at Bailey Glasser have collectively expended 363 hours litigating this case since its inception. When combined with co-Class Counsel, Plaintiffs' counsel have expended 1,826.6 hours litigating this case. The total requested fee of \$1,308,333 represents 33.33% percent of the Gross Settlement Fund. The total lodestar as of this date for Bailey &

Glasser is \$286,213 and together with co-counsel, Class Counsel's lodestar is \$1,248,492.² Thus, the lodestar multiplier of the fee requested is 1.05.

22. The below summary of time and expenses was taken from computer-based timekeeping programs, in which Bailey Glasser maintained their fees and expense records.

23. Bailey Glasser's fee summaries demonstrate the amount of time spent on this litigation and how Plaintiff's counsel's lodestar was calculated.³ Given the market where Class Counsel litigated the case, and the skills and experience required to litigate, Bailey Glasser is using the following rates in determining the lodestar:

Name	Position	Hours	Hourly Rate	Lodestar
Greg Porter	Partner	19.0	\$1,075	\$20,843
Mark Boyko	Partner	278.3	\$850	\$236,555
Laura Babiak	Associate	38.8	\$500	\$19,400
Olivia Adubofour	Paralegal	26.9	\$350	\$9,415
Total		363.0		\$286,213

24. In setting these rates, Bailey Glass is cognizant of the rates approved in other ERISA class actions cases. Below is an excerpt from a Valeo Group Report showing the 2021 market rates for class action litigation to be significantly higher than Bailey Glasser's rates and that the market rates for such work increases on a yearly basis.

² Class Counsel also anticipates contributing additional time and effort to this case, including continuing to oversee settlement administration.

³ Time spent by legal assistants and law clerks were not billed.

Class Action

Overall	2016	2017	%	2018	%	2019	%	2020	%	2021	%
	Rate	Rate		Rate		Rate		Rate		Rate	
AMLAW (1-10)											
Senior Partner	\$901	\$945	5%	\$982	4%	\$1,015	3%	\$1,075	6%	\$1,134	5%
Partner	\$789	\$827	5%	\$869	5%	\$918	6%	\$966	5%	\$1,017	5%
Counsel	\$685	\$722	6%	\$755	5%	\$795	5%	\$837	5%	\$879	5%
Senior Associate	\$551	\$577	5%	\$606	5%	\$638	5%	\$674	6%	\$710	5%
Associate	\$446	\$468	5%	\$490	5%	\$515	5%	\$540	5%	\$568	5%
Support Staff	\$379	\$400	5%	\$422	6%	\$443	5%	\$465	5%	\$489	5%
Overall	\$625	\$656	5%	\$687	5%	\$721	5%	\$759	5%	\$799	5%

25. As noted above, Class Counsel expect to contribute additional time and resources relating to Plaintiffs' forthcoming motion for final approval, the Fairness Hearing, and subsequent Settlement administration and oversight. Based on my experience supporting and supervising similar settlements, I expect that Class Counsel will expend an additional 30 to 80 hours of professional time after the date of this Declaration.

26. All of the work of Class Counsel has been undertaken on a contingent basis. To date, Class Counsel have not been compensated for any of this work.

27. Because of our experience litigating similar ERISA cases, Class Counsel was able to efficiently and effectively litigate this action. In my professional opinion, and based on my personal knowledge of the work that was performed and the requirements of this case and similar cases, all of the time expended on this action by Class Counsel was reasonable and necessary.

28. A lodestar multiplier of 1.05 is reasonable — indeed, below reasonable — for litigation of this type.

E. Expenses

29. Bailey Glasser has incurred \$44,588.91 in litigation expenses. When combined with expenses incurred by co-counsel, the total expenses incurred was \$224,970.91. The bulk of those expenses were fees for Plaintiffs' experts. All of the expenses were necessary and appropriate

for the prosecution of this action, and all are of the type that are customarily incurred in litigation and routinely charged to clients billed by the hour. Here, Class Counsel retained two consulting experts. In Class Counsel's experience, at least two experts, and often more, are necessary to prosecute a complex ERISA lawsuit.

30. The next largest categories of expenses were for the mediation and travel related to the settlement.

a. In total, expenses by Bailey Glasser fell into the following categories:

Item	Total Cost
Mediators	\$7,141.67
Experts/Consultants	\$36,647.50
Research	\$110.21
Travel	\$689.53
Total	\$44,588.91

F. No Objections Have Been Submitted

31. The Settlement Notice that was approved by the Court disclosed the terms of the Settlement. To date, none of the class members have objected to the Settlement terms or the proposed fees or expenses.

I declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed at St. Louis, Missouri this 16th day of February, 2024.

/s/ Mark G. Boyko