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

PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

Plaintiffs brought this action alleging that Defendants breached their duties under the Employee Retirement Income Security Act of 1974 (“ERISA”), including by causing the Rollins, Inc. 401(k) Plan (the “Plan”) to pay unreasonable administrative and investment management fees and maintaining underperforming investment options. Defendants denied, and continue to deny, Plaintiffs’ allegations.

The settlement reached in this case (the “Settlement”) provides significant monetary relief through a $3,925,000 Gross Settlement Amount that will benefit every class member. Considering the litigation risks that further prosecution of this action would entail, this Court should grant final approval of the Settlement.

I. BACKGROUND

a. Plaintiffs’ Claims and the course of litigation

As described more fully in Plaintiffs’ Memorandum in Support of Preliminary Approval, ECF No. 122, this case originated with Plaintiffs’ pre-suit administrative claims submitted to the Administrative Committee of the Rollins, Inc. 401(k) Savings Plan on December 10, 2020 alleging violations of ERISA related to the reasonableness of the recordkeeping fees charged to the Plan and all participants, as well as the selection and inclusion of certain plan investment options and products. Following the exhaustion of administrative remedies for the claims submitted to the Rollins 401(k) Committee, Plaintiffs filed their Complaint in the Northern District of Georgia on December 30, 2021. ECF No. 1. On April 18, 2022, Plaintiffs filed the operative First Amended Complaint. At the Motion to Dismiss stage the Court dismissed LPL Financial LLC and partly granted the Prudential Defendants’ Motion to Dismiss, but left largely intact Plaintiffs’ claims for damages incurred after December 30, 2015. ECF No. 89.

Shortly after Defendants answered the Amended Complaint, the parties engaged in discovery for the purposes of exploring early settlement. Plaintiffs' counsel reviewed the produced documents, engaged experts to opine on the merits and potential damages, and shared their assessment of the cases' merits and damage calculations with Defendants. Declaration of Mark Boyko filed in support of Plaintiffs' Motion for Award of Attorneys' Fees and Expenses ("Boyko Decl.") ¶¶ 3, 11.[1] On August 3, 2023, Plaintiffs, the Rollins Defendants, and the Alliant Defendants, through their counsel, participated in an arm's-length and good faith mediation with Robert A. Meyer of JAMS. Boyko Decl. ¶ 11. While the day-long mediation was not successful at achieving a settlement, subsequent mediated communications involving Plaintiffs and Rollins led to the Settlement Agreement, which the Court preliminarily approved on December 1, 2023.

b. The Settlement terms

The proposed Settlement Class consists of all Participants in and Beneficiaries of the Rollins Plan (including, prior to November 1, 2022, the Western Plan and Waltham Plan) at any time from December 30, 2015 through September 30, 2023. Settlement Agmt. § 2.9. Excluded from the Settlement Class are those individuals, including the individual defendants, who served as voting members of the Plans' administrative and/or investment committee during the Class Period. *Id*. Ultimately, the Settlement Administrator mailed notices to 41,544 individuals identified as Class Members based on its review of Plan records. Declaration of the Settlement Administrator Re: Notice Procedures ("KCC Decl.") ¶ 3.

The Settlement terms are detailed in the Settlement Agreement (ECF No. 122-1), and Plaintiffs' Memorandum in Support of Preliminary Approval (ECF No. 122). At its core, the

[1] All Declarations in Support of this Motion have been filed with Plaintiffs' Motion for Award of Attorneys' Fees and Expenses, ECF No. 124.

Settlement calls for Rollins to cause its insurer to pay $3,925,000 into the Settlement Fund Account to be allocated, after expenses and approved attorneys fees, to the Class Members according to a Plan of Allocation that allocates the settlement based on the Class Members' account balance and time in the Plan.

In exchange for payment of the Gross Settlement Amount by Rollins and satisfaction of the conditions required by the Settlement Agreement, Plaintiffs and the Class will release any claims against the Defendant Released Parties that were or could have been asserted in the Lawsuit or that in any way arise out of the Rollins Inc. 401(k) Savings Plan (and all predecessor plans, including the Western Plan and the Waltham Plan) and will correspondingly dismiss the Lawsuit with prejudice. Settlement Agmt., § 2.41. The Released Claims are set forth in full in the Settlement Agreement. *Id*., at Article 5. The covenant not to sue is set forth in the Settlement Agreement. *Id*. § 5.2.

c. Preliminary Approval and the Administration of the Settlement

The Court granted Preliminary Approval on December 1, 2023. The Settlement Administrator mailed notices to each class member as required and of the 41,544 notices mailed, only 52 were returned as undeliverable. KCC Decl. ¶ 4. Of these, the Settlement Administrator was able to subsequently locate and mail notices to 30, meaning that at least 99.5% of the Class is known to have received notice. *Id*. Thus, the notice plan and requirements presented to the Court have been followed. To date, no objections to the Settlement have been received.

II. ARGUMENT

"Public policy strongly favors pretrial settlement in all types of litigation[.]" *Matter of Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996). Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of any class action settlement. In determining whether

to approve a settlement, the Court must ensure that the settlement "is fair, adequate, reasonable and not the product of collusion between the parties." *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)). A determination of the fairness of a settlement is in the sound discretion of the trial court. *Id*. The Eleventh Circuit has dictated that the following factors should be used to assess a class action settlement:

> (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

Bennett, 737 F.2d at 986. The trial court's judgment is further informed "by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement." *Id*. As discussed in prior briefing related to this settlement (ECF No. 122), and as described in greater detail here, all *Bennett* factors are met. Therefore, the Court should issue final approval of the Settlement.

d. The Standards for Approval

"Public policy strongly favors the pretrial settlement of class action lawsuits." *Swaney v. Regions Bank*, 2020 WL 3064945, at *3 (N.D. Ala. June 9, 2020) (citation omitted). Rule 23(e) provides that a class action cannot be settled without court approval. Ultimately, to approve the proposed settlement, the Court must determine that it is fair, reasonable and adequate. *Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1216 (11th Cir. 2012). Review of a proposed class action settlement for approval generally proceeds in two stages: (1) preliminary approval and notice to class members of the proposed settlement; and (2) final approval following a fairness hearing in which the Court determines whether the proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Shaw v. Set Enters., Inc.*, No. 15-62152, 2017 WL 2954675, at *1 (S.D.

Fla. June 30, 2017). The question is "whether [the proposed settlement] is within the range of fair, reasonable and adequate." *Exum v. Nat'l Tire & Battery*, 2020 WL 1670997, at *7 (S.D. Fla. Apr. 6, 2020) (citing Manual for Complex Litig. § 30.41). "Where [ ] the proposed settlement is the result of serious, arms-length negotiations between the parties, has no obvious deficiencies, falls within the range of possible approval, achieves favorable outcomes for plaintiffs and the class, and does not grant preferential treatment to plaintiffs or other segments of the class, courts generally grant approval." *Id.*

A. Likelihood of Success at Trial and Range of Possible Recovery (Factors 1–3)

Although "[a] determination of a reasonable settlement is not susceptible to a precise equation yielding a particular sum," *In re NetBank, Inc., Sec. Litig.*, No. 07-2298, 2011 WL 13176646, at *4 (N.D. Ga. Nov. 9, 2011), the Settlement represents an outstanding result in light of both the strength of Plaintiffs' claims and the strength of Defendants' defenses. *See also Bennett*, 737 F.2d at 987 (citation omitted) ("[A] just result is often no more than an arbitrary point between competing notions of reasonableness.").

Plaintiffs maintain that they have strong underlying claims against Defendants related to, among other things, their management and administration of the Plans. Plaintiffs allege, for instance, that Defendants caused the Plans to pay unreasonable recordkeeping and administrative expenses. FAC ¶¶ 390–419. One of a fiduciary's duties is to ensure those administrative expenses are reasonable. 29 U.S.C. § 1104(a)(1)(A). Minimizing costs is a fundamental element of the fiduciary's duty of prudence. *Tibble v. Edison Int'l*, 834 F.3d 1187, 1198 (9th Cir. 2016) (en banc). Plaintiffs maintain that the facts supporting their claims have been found to support findings of fiduciary breach. *Tibble v. Edison Int'l*, 135 S.Ct. 1823 (2015).

Although Class Counsel continues to believe in the underlying merits of these claims, there are significant legal obstacles and defenses that render recovery in this case uncertain. Defendants continue to deny all allegations of wrongdoing, and continue to maintain that the Plans have been managed and operated in compliance with ERISA. Defendants had significant defenses related to both the fiduciary process and decision-making, and the damages exposure calculations by Plaintiffs' experts. For example, the fiduciary committee met periodically and reviewed reports concerning the performance of the Plan's investments.

Additionally, in evaluating class action settlements, the Court "is entitled to rely upon the judgment of experienced counsel for the parties . . . [and] should be hesitant to substitute its own judgment for that of counsel." *Cotton*, 559 F.2d at 1330; *see also In re Motorsports Merch. Antitrust Litig*., 112 F.Supp.2d 1329, 1333 (N.D. Ga. 2000) (same). Class Counsel pioneered litigation arising from breaches of fiduciary duty under ERISA, and counsel on both sides are highly experienced and thoroughly familiar with the factual and legal issues presented. It is Class Counsel's opinion that the Settlement is fair and reasonable.

The Settlement also appropriately values Plaintiffs' claims given that "the Settlement provides a substantial, assured and relatively quicker recovery for the Class." *In re NetBank, Inc., Sec. Litig.*, 2011 WL 13176646, at *3; *see also Hillis v. Equifax Consumer Servs., Inc.*, No. 104-3400, 2007 WL 1953464, at *10 (N.D. Ga. June 12, 2007) (holding that "[a]ny settlement typically offers far less than a full recovery"). The first three *Bennett* factors thus strongly support approval of the Settlement.

B. Complexity, Expense, and Duration of the Litigation (Factor 4)

"The policy favoring settlement is especially relevant in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise

overwhelm any potential benefit the class could hope to obtain." *Gevaerts v. TD Bank, N.A.*, No. 14-20744, 2015 WL 12533121, at *5 (S.D. Fla. Aug. 4, 2015); *accord Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 04-3066, 2012 WL 12540344, at *6 (N.D. Ga. Oct. 26, 2012).

Here, the Parties engaged in an extensive administrative review process, following by the filing of this case and the briefing, and subsequent ruling on, Defendants' motions to dismiss. The Parties exchanged documents through the administrative review process and through targeted discovery as a predicate to undertaking mediation. Plaintiffs also engaged multiple consulting experts to assess the claims and calculate damages. This extensive investigation and discovery informed the Parties' arm's-length negotiations and strongly weighs in favor of approval of the Settlement. *Greco v. Ginn Dev. Co., LLC*, 635 F. App'x 628, 633 (11th Cir. 2015).

In sum, this litigation was highly complex, lengthy, and expensive for all Parties. The Settlement "offers the [Class Members] a certain and substantial recovery . . . in what would otherwise be an uncertain, lengthy, and expensive endeavor." *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 04-3066, 2008 WL 11319971, at *4 (N.D. Ga. Mar. 4, 2008). Therefore, the fourth *Bennett* strongly supports approval of the Settlement.

C. Substance and Among of Opposition to Settlement (Factor 5)

Acknowledging that the objection deadline has not yet passed, notices were mailed to 41,544 Class Members on January 16, 2024 explaining their right or object and, to date, no objections have been filed, and none are known to Class Counsel. Boyko Decl. ¶ 32; KCC Decl. ¶ 7. While the absence of many objectors is not dispositive, it supports final approval. *See, e.g.*, *In re Motorsports*, 112 F.Supp.2d at 1338 ("The lack of objection to the settlements suggests that

the terms are satisfactory to those affected.”). The fifth *Bennett* factor strongly supports approval of the Settlement.

D. Stage of Proceedings at Which Settlement Was Achieved (Factor 6)

“The purpose of considering the stage of the proceedings is to ensure that plaintiffs have had access to sufficient information to evaluate the case and to determine the adequacy of the settlement.” *Carpenters Health & Welfare Fund v. Coca-Cola Co.*, No. 00-2838, 2008 WL 11336122, at *10 (N.D. Ga. Oct. 20, 2008) (citing *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 544 (S.D. Fla. 1988), *aff’d sub nom. Behrens v. Wometco Enters.*, 899 F.2d 21 (11th Cir. 1990)). Here, “both the knowledge of [Class Counsel] and the proceedings themselves have reached a stage where an intelligent evaluation of the litigation and the propriety of settlement can be, and has been, made.” *Id*.

The Parties have had the opportunity to develop a complete understanding of the legal and factual issues in the case. Given their lengthy, arm’s-length negotiations after the extensive discovery described above, “the trial court may legitimately presume that counsel’s judgment that they had achieved the desired quantum of information necessary to achieve a settlement is reliable.” *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. Apr. 1981) (citation omitted). Therefore, the sixth *Bennett* factor also supports approval of the Settlement.

III. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that this Court grant final approval of the Settlement.

Dated: February 16, 2024 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing document was electronically filed with the Clerk using the CM/ECF system, which will send a notice of electronic filing to all registered users of the CM/ECF system.

Dated: February 16, 2024

By: /s/ *Mark G. Boyko*
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