

**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 SAMANIEGO 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; LPL  
FINANCIAL 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.**

**Civil Action File  
No. 1:21-cv-05343-ELR**

**ORDER GRANTING  
PLAINTIFFS'  
APPLICATION FOR  
ATTORNEYS' FEES AND  
REIMBURSEMENT OF  
EXPENSES**

**ORDER GRANTING PLAINTIFFS' APPLICATION FOR  
ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

THIS MATTER is before the Court in connection with Plaintiffs' Motion for Award of Attorneys' Fees and Expenses. In the Motion, Class Counsel, has asked this Court to compensate them for their role in obtaining a settlement of class claims under the Employee Retirement Income Security Act ("ERISA"). The settlement provides a \$3,925,000 monetary recovery for 41,544 class members generally consisting of participants in the 401(k) retirement plan offered to employees of Rollins, Inc. ("Rollins") during the Class Period.

Class Counsel has asked this Court to award them a fee of 33 1/3% of the monetary settlement obtained, or \$1,308,333. Class Counsel has also asked this Court to award them \$224,970.91 for outstanding costs.

In a Court-approved notice regarding the terms of the ERISA settlement, class members were informed of Class Counsel's request and were given an opportunity to object. Not a single class member filed an objection to Class Counsel's request for fees and costs. The Court finds this to be a strong indication of the class's overwhelming and justified support for their Class Counsel and the Motion.

On April 2, 2024, this Court conducted a hearing regarding the Motion for Final Approval of Class Action Settlement as well as Plaintiffs' Motion for Attorneys' Fees and Expenses. Based upon the Court's observation of Counsel's conduct during this litigation, knowledge of the difficult legal issues facing the Plaintiffs, and a review of all settlement-related filings, including Plaintiffs' Motion. This Order explains the Court's findings and conclusion that Counsel's fee and expense requests are reasonable and merited.

## FINDINGS AND CONCLUSIONS

### A. Class Counsels' Request For Attorneys' Fees

Under Rule 23, when counsel obtain a settlement for a class, courts “may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” FED. R. CIV. P. 23(h). The Supreme Court “has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Likewise, “reasonable expenses of litigation” may be recovered from a common fund, *see Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391–92 (1970).

In the Eleventh Circuit, determining the amount of the attorneys’ fees in common fund cases “shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Camden I Condo. Ass’n, Inc. v Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991). To determine the reasonableness of a percentage-of-recovery fee award, courts consider:

(1) the time and labor required; (2) the novelty and difficulty of the relevant questions; (3) the skill required to properly carry out the legal services; (4) the preclusion of other employment by the attorney as a result of his acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the clients or the circumstances; (8) the results obtained, including the amount recovered for the clients; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and the length of the professional relationship with the clients and (12) fee awards in similar cases.

*Lunsford v. Woodforest Nat’l Bank*, No. 12-103, 2014 WL 12740375, at \*11–12 (N.D. Ga. May 19, 2014) (citing *Camden I Condominium Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 772 n.3 (11th Cir. 1991)).

Of these factors, “[g]enerally, the factor given the greatest emphasis is the size of the fund created, because ‘a common fund is itself the measure of success ... [and] represents the

benchmark from which a reasonable fee will be awarded.” Manual for Complex Litigation (Fourth), § 14.121 (2004) (quoting 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 14:6, at 547, 550 (4th ed. 2002)); *see also Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (the “critical factor is the degree of success obtained”).

**1. Results obtained for the Class (Factor 8)**

“The most critical factor in determining a fee award’s reasonableness is the degree of success obtained[.]” *Farrar v. Hobby*, 506 U.S. 103, 114 (1992). Here, Class Counsel obtained \$3,925,000 for the Class, a meaningful percentage of the maximum recovery possible as calculated by Plaintiffs’ experts. In addition, the Class will benefit from receiving compensation now, instead of after years more of expensive, high-risk litigation.

**2. Time and labor expended by Counsel (Factor 1)**

Prosecuting and settling the claims in this action demanded considerable time and labor, making this fee request reasonable. *See George v. Acad. Mortg. Corp. (UT)*, 369 F.Supp.3d 1356, 1376 (N.D. Ga. 2019). Though a lodestar cross-check is not required, courts may use it to see whether a requested fee is in the “ballpark” of an appropriate fee. *In re Home Depot Inc.*, 931 F.3d 1065, 1091 n.25 (11th Cir. 2019). ERISA litigation, such as this, involves a national market because the number of plaintiffs’ firms who have the necessary expertise and are willing to take the risk and devote the resources to litigate complex claims is small, and thus the relevant hourly rate is a nationwide market rate. Class Counsels’ rates are reasonable and consistent with national rates approved for similar litigation within this District previously. *Henderson v. Emory Univ.*, No. 16-2920, 2020 WL 9848978, at \*2 (N.D. Ga. Nov. 4, 2020) (finding hourly rates reasonable that ranged from \$490–\$1,060 per hour for attorneys and \$330 per hour for paralegals and law clerks).

The lodestar multiplier, 1.05, is well within the acceptable levels and further supports the reasonableness of Plaintiffs' requested attorneys' fees. *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 04-3066, 2008 WL 11234103, at \*3 (N.D. Ga. Mar. 4, 2008) (approving fee with lodestar multiplier between 2 and 3); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 696 (N.D. Ga. 2001) (noting that courts have approved lodestar multipliers greater than five).

**3. The novelty, difficulty, and undesirability of the litigation (Factors 2 and 10)**

ERISA 401(k) fiduciary breach class actions are extremely complex and require a willingness to risk significant resources in time and money, given the uncertainty of recovery and the protracted and sharply-contested nature of ERISA litigation. ERISA is a "comprehensive and reticulated statute." *Nachman Corp. v. Pension Ben. Guaranty Corp.*, 446 U.S. 359, 361 (1980). Class Counsel thus must be knowledgeable about this complex and developing area of law, aware of numerous merits and procedural pitfalls, willing to risk dismissal at any stage, and prepared to pursue many years of litigation.

The risk of zero recovery here was present from the moment Class Counsel decided to investigate this case. Dismissals have been obtained in cases alleging imprudent investment selection in 401(k) plans. *See, e.g., Sweda v. The Univ. of Penn.*, No. 16-4329, 2017 WL 4179752 (E.D. Penn. Sept. 21, 2017). Nevertheless, Class Counsel persisted in representing the Class despite these obstacles and uncertainty.

This factor supports Plaintiffs' attorneys' fees request.

**4. Skill required and quality of attorneys involved (Factors 3 and 9)**

"Litigation of ERISA 401(k) breach of fiduciary duty claims requires significant expertise and the devotion of significant resources." *Henderson*, 2020 WL 9848978, at \*2. Class Counsel "have extensive experience at the forefront of this area of law." *Bekker v. Neuberger*

*Berman Group 401(k) Plan Inv. Comm.*, 504 F.Supp.3d 265, 270 (S.D.N.Y. 2020). This case required counsel who understood and diligently pursued the litigation through the administrative process, had experience valuing cases in this narrow area of law, and had the resources and reputation to maximize the value of the case for the Class. This factor supports Plaintiffs' attorneys' fees request.

**5. Attorneys' time limitations and opportunity costs (Factors 4 and 7)**

The decision to pursue this case, advance substantial costs, and commit substantial resources impacted Class Counsel's ability to handle "other simpler and less risky matters." *Kranauer v. Dish Network, LLC*, No. 14-333, 2018 WL 6305785, at \*4 (M.D.N.C. Dec. 3, 2018); *McLendon v. PSC Recovery Sys., Inc.*, No. 06-1770, 2009 WL 10668635, at \*2 (N.D. Ga. June 2, 2009). The commitment for this type of litigation is made with the knowledge that it may require over ten thousand hours of attorney time over a decade, including multiple appeals, to achieve a final result. Class Counsel have noted that the commitment required them to forgo other work and, as a result, this factor also supports Plaintiffs' attorneys' fees request.

**6. Awards in similar cases (Factors 5 and 12)**

In complex ERISA class actions, such as this one, a one-third contingency fee is routinely awarded. *Henderson*, 2020 WL 9848978, at \*1–2; *Stevens*, 2020 WL 996418, at \*14 (awarding one-third of \$6.8 million fund); *In re Cigna-Am. Specialty Health Admin. Fee Litig.*, 2019 WL 4082946, at \*14–15 (E.D. Pa. Aug. 29, 2019) (awarding one-third of \$8.25 million fund and noting "[i]n complex ERISA cases, courts in this Circuit and others also routinely award attorneys' fees in the amount of one-third of the total settlement fund"). Courts in this District also routinely approve fee awards of one-third of the common fund or more. *See, e.g., Acrd.*

*Mortg. Corp.*, 369 F. Supp. 3d at 1382; *Lunsford*, 2014 WL 12740375, at \*15–16; *McLendon*, 2009 WL 10668635, at \*5. This factor supports Plaintiffs’ attorneys’ fees request.

#### 7. The contingent nature of the fees (Factor 6)

Class Counsel litigated this matter on a contingent basis with no guarantee of recovery. Class Counsel entered into contingency fee agreements with each of the Named Plaintiffs and, despite this significant risk of nonpayment, Class Counsel devoted more than 1,800 hours of attorney and paralegal time and \$224,970.91 in out-of-pocket expenses to litigating this matter to a successful resolution.

“Numerous cases recognize that the attorney’s contingent fee risk is an important factor in determining the fee award.” *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 04-3066, 2008 WL 11234103, at \*3 (N.D. Ga. Nar. 4, 2008) (citations omitted). “A fee award may be increased ... to compensate attorneys for the risk of accepting a case on a contingency basis and to attract competent counsel.” *Richardson v. Ala. State Bd. Of Educ.*, 935 F.2d 1240, 1248 (11th Cir. 1991). “When the attorney fee is contingent on success, the hourly rate should ordinarily be raised to compensate the attorney for the risk of nonrecovery.” *Carmichael v. Birmingham Saw Works*, 738 F.2d 1126, 1138 (11th Cir. 1984).

ERISA fiduciary breach class actions carry a “tremendous” risk. *Henderson*, 2020 WL 9848978, at \*1–2. Cases challenging investment selection are often won by defendants, either from a ruling on a dispositive motion, or after years of litigation and a costly trial. *Ortiz v. Am. Airlines, Inc.*, “*Ortiz II*”, No. 16-151, 2020 WL 4504385 (N.D. Tex. Aug 5, 2020) (summary judgment for defendants); *Sacerdote v. N.Y. Univ.*, 328 F.Supp.3d 273 (S.D.N.Y. 2018) (trial decision for defendants); *Stegemann v. Gannett Co., Inc.*, No. 18-325, 2023 WL 8436056 (E.D.Va. Dec. 5, 2023) (same). The *Ortiz* decision is particularly noteworthy because the court

had earlier denied approval of a settlement after finding that on the merits a decision for the plaintiffs “appear[ed] likely.” *Ortiz v. Am. Airlines, Inc.*, “*Ortiz I*”, No. 4:16-151, 2016 WL 8678361, at \*11 (N.D. Tex. Nov. 18, 2016). Despite this enormous risk, the requested fee constituted a lodestar multiplier of only 1.05, far below a multiplier which would be justified by the risk identified in this factor.

**8. The nature and length of the professional relationship between attorney and client (Factor 11)**

Class Counsel did not have a professional relationship with any of the Named Plaintiffs prior to this litigation, which supports the requested fee award. [Doc. 124-1 at 16].

**B. The Court should also award reimbursement of Class Counsel’s costs**

Reimbursement of the litigation expenses that Counsel advanced in prosecuting this case is also warranted. FED. R. CIV. P. 23(h).

Counsel in common fund cases may recover those expenses that would normally be charged to a fee-paying client. Counsel brought this case without guarantee of reimbursement or recovery, so they had a strong incentive to keep costs to a reasonable level, and they did so.

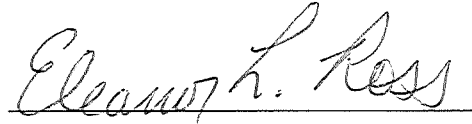
The Court has reviewed Class Counsel’s description of these costs and expenses, broken down by category. The costs and expenses are the types of costs and expenses that are routinely reimbursed by paying clients, such as experts’ fees, travel, mediation fees, and photocopying costs. Counsels’ request for reimbursement of costs and expenses is fair and reasonable.

**CONCLUSION**

After consideration of Counsel’s Petition, the Court concludes that the requested attorneys’ fees and cost reimbursements are fair and merited. Accordingly, the Court **GRANTS** the Motion [Doc. 124]; **APPROVES** the requested attorneys’ fee of \$1,308,333; and **APPROVES** the requested reimbursement of \$224,970.91 in outstanding costs.



**SO ORDERED**, this 2<sup>nd</sup> day of April, 2024.

A handwritten signature in cursive script that reads "Eleanor L. Ross". The signature is written in black ink and is positioned above a horizontal line.

The Honorable Eleanor L. Ross  
United States District Court  
Northern District of Georgia