

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO: 1:22-cv-22962-AHS

**GRACE ANGELO and KERSTIN THOMPSON,
on behalf of the NCLC 401(k) Plan,
themselves and all others similarly situated,**

Plaintiffs,

v.

**NCL CORPORATION LTD, and
NCL (BAHAMAS) LTD., A BERMUDA
COMPANY,**

Defendants.

**DECLARATION OF MICHAEL C. MCKAY IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION FOR ATTORNEYS' FEES AND COSTS**

I, Michael C. McKay, declare as follows:

1. I am an attorney for Plaintiff in this case. I am a member in good standing of the State Bar of Arizona. I am admitted pro hac vice in this case. I am familiar with the facts stated in this declaration. If he called as a witness, I could and would testify truthfully to them.

2. I was first licensed to practice law in Arizona in 2004. I founded McKay Law in 2018. Prior to founding McKay Law, I was a partner in law firm with offices in San Francisco, Los Angeles, Scottsdale, Houston, Charlotte, and San Juan (Puerto Rico). While at my former law firm, I focused my practice on representing individuals in class action lawsuits, with an emphasis on ERISA class actions. I have acted as class counsel on more than 100 class actions. I have represented plaintiffs at United States District Courts across the country and have helped to recover over \$1 billion for my clients in the past 15 years.

3. Recently, in ERISA cases, I represented plaintiffs in *Diebold v. Northern Trust Investments, N.A.*, 09-cv-01934 (N.D. Ill.), which settled in 2015 on a class wide basis for about \$36 million. *Bilewicz v. Fidelity Investments*, which settled in 2015 on class wide basis for \$12 million. *Kramer v. Aegon*, which settled in 2016 on a class wide basis for about \$4 million. *Whitley v. J.P. Morgan*, which settled in 2017 on a class basis for approximately \$75 million. *Pease v. Jackson National*, which settled in 2018 on a class basis for \$4.6 million. *Moon v. DuPont de Nemours*, which settled for \$12 million in 2023. These examples are illustrative and not exhaustive.

4. In addition, I represented plaintiffs with ERISA claims similar to those here in *Short v. Brown Univ.*, Case No. 17-318 (D. RI. July 2018); *Nicolas v. Trustees of Princeton Univ.*, Case No. 17-3695 (D.N.J.); *Santiago v. University of Miami*, 1:20-cv-21784 (S.D. Fla.); *Davis v. Washington University St Louis*, 4:17-CV-1641 RLW (E.D. Mo.); *Wilcox v. Georgetown Univ.*, No. 18-422, (D.D.C.); *Moler v. University of Maryland Medical System*, 21-cv-01824 (D. Md.). The cases settled on a class-wide basis resulting in the recovery of millions and millions of dollars for the retirement plan participants, not to mention significant plan-overhauls which meaningfully will improve the administration of those plans and will benefit plan participants going forward.

5. I support the settlement reached by the Parties in this case as fair, reasonable, and adequate, and ask that the Court approve it.

6. If permitted by the Court, I will also continue to represent the class through final approval and will defend against any objectors.

7. The Named Plaintiff, Kerstin Thompson, has been an excellent class representative.

8. The Named Plaintiff does not have any existing conflicts with class members of which I am aware. Throughout the time that Kerstin Thompson has acted as Named Plaintiff, she has communicated with her attorneys, reviewed documents, participated in settlement discussions, and has otherwise done everything necessary to keep the case on track and protect the Class Members' interests.

9. The case was litigated thoroughly and the decision to settle was well-informed.

10. Before filing this case, I, along with my co-counsel, conducted a significant, in-depth analysis into Plaintiff's claims and Defendants' Plan.

11. By way of specific example, on July 19, 2022, Plaintiff's counsel sent a letter addressed to NCL "Plan Administrator" which requested certain Plan documents and submitted an administrative claim pursuant to the Plan's mandatory administrative claims review process.

12. On August 25, 2022, NCL acknowledged receipt of the claim notice, notified Plaintiff's counsel that the claim notice had been forwarded to the NCL Investment Committee ("Committee") for review, and produced documents in response to Plaintiff's document requests. On October 14, 2022, the Committee notified Plaintiff of its decision to deny the administrative claim, and the reasons for its decision.

13. Plaintiff's counsel submitted an appeal on November 7, 2022, and the Committee denied the appeal on December 29, 2022.

14. During the course of the administrative process, NCL produced over 3,800 pages of documents relevant to Plaintiff's claims, including (1) the Plan's governing documents and trust agreements, (2) the Plan's mandatory fee-related disclosures, (3) a full set of the Committee's minutes dating back to 2016, along with presentations and reports shared with the Committee at those meetings, (4) the Plan's contracts with Prudential, (5) all versions of the

Plan's Investment Policy Statement during the putative class period, (6) documents relating to the Plan's recordkeeper requests for proposal in 2018 and 2022, and (7) Plaintiff's quarterly account statement.

15. On August 25, 2022, Defendants' Plan Administrator responded to Plaintiff's counsel's 29 U.S.C. § 1024(b)(4) request for information by providing approximately 3,800 pages of Plan-related documents. Those documents, in turn, assisted Plaintiff's counsel with their analysis of the claims in this case, and the ERISA violations that formed the basis of this lawsuit.

16. On September 16, 2022, the Original Named Plaintiff, Grace Angelo, filed a Complaint in the United States District Court for the Southern District of Florida, Case No. 1:22-cv-22962-AHS. (ECF No. 1.) She brought this action under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. ("ERISA"), alleging that Defendants breached their fiduciary duties relating to the management, operation, and administration of the Plan, and seeking to recover all alleged losses resulting from each breach of duty under 29 U.S.C. § 1109(a), and other equitable relief. (See ECF No. 1.)

17. On January 9, 2023, Defendants moved to dismiss the Complaint for failure to state a claim under Rule 12(b)(6) and for lack of standing, pursuant Rule 12(b)(1). (ECF No. 9.) Defendants argued, among other things, that the Complaint failed to allege plausibly that Defendants breached their duty of loyalty, that the Plan paid excessive administrative/recordkeeping fees, or that the Defendants' process for evaluating investment options was deficient. (Id.) Plaintiff filed her Opposition on January 23, 2023 (ECF No. 17), along with supporting documentation. Additionally, Plaintiff filed a Motion to Strike Extrinsic

Evidence Attached to Defendants' Motion to Dismiss. (ECF No. 18). The Defendants filed a Reply in support of its Motion to Dismiss (ECF No. 19) on January 30, 2023. (ECF No. 19).

18. Next, on February 7, 2023, the Parties filed a Joint Motion to Stay All Deadlines and Proceedings Pending Completion of Class-Wide Mediation. (ECF No. 22). That Motion was granted by Order dated February 7, 2023. (ECF No. 23). At that point, the case was stayed to allow the Parties sufficient time to mediate this case on a class basis.

19. On April 3, 2023, the Parties and their respective counsel engaged in a full-day videoconference mediation with Robert Meyer, Esq. of JAMS, who has extensive experience handling ERISA fiduciary-breach lawsuits similar to this one. After extensive arms-length negotiations—which lasted into evening—the parties reached a Settlement, the terms of which are memorialized in the Settlement Agreement attached hereto for the Court's review.

20. In advance of the mediation, the parties submitted mediation briefs—which included damage analyses conducted by Plaintiff's expert—along with and settlement proposals.

21. The parties also held a pre-mediation telephone conference with Bob Meyer of JAMS, during which the parties exchanged additional information that helped ensure mediation would be productive. The mediation was successful, resulting in the Parties reaching agreement on the principal terms of the settlement, memorialized in a fully-executed term sheet, which was finalized during the evening April 3, 2023.

22. During the months that followed, the parties negotiated the detailed terms of the Settlement Agreement and exhibits thereto, which are provided to the Court in support of this Motion.

23. As required by Prohibited Transaction Class Exemption 2003-39, 68 FR 75632 (Dec. 31, 2003), as amended 75 FR 33830 (June 15, 2010), the Settlement Agreement required that Parties select an Independent Fiduciary to review the Settlement and provide, if the Independent Fiduciary concludes that it is appropriate, the authorization required by that Exemption on behalf of the Plan.

24. The Plan's sponsor, NCL (Bahamas) Ltd. ("NCL"), engaged Gallagher Fiduciary Advisors, LLC ("Gallagher"), to serve in this capacity, a nationally-respected independent fiduciary. Following a thorough and objective review to ensure the Settlement's fairness to the proposed Settlement Class, Gallagher made the following determination: "[a]fter a thorough review of the pleadings and interviews with the parties' counsel and the mediator, Gallagher has concluded that an arm's-length Settlement was achieved after hard-fought negotiations between the parties and is reasonable given the uncertainties of a larger recovery for the Class at trial and the value of claims foregone." Gallagher also concluded that the attorneys' fees sought by Plaintiffs' counsel is "reasonable in light of the effort expended by Plaintiffs' counsel in the litigation."

25. In my opinion, the \$615,000.00 recovery falls well within the range of reasonableness in this case, as it is a substantial percentage of the estimated recovery Plaintiffs' counsel estimated could be recovered if successful in litigating the case through trial.

26. I support the settlement reached by the Parties in this case as fair, reasonable, and adequate, and ask that the Court approve it.

27. Additionally, my firm has expended a total of \$11,809.50 litigating this case, including: \$6,250.00 in expert witness fees; \$4,737.50 for my firm's portion of the mediation invoice; and, finally, \$822.00 for travel costs for the upcoming final hearing.

I declare under the penalty of perjury and the laws of the United States of America and the State of Arizona that the foregoing is true and correct and that this declaration was executed on the 18th day of December, 2023, in Scottsdale, Arizona.

/s/ Michael C. McKay

Michael C. McKay