

**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 BRANDON J. HILL

I, Brandon J. Hill, declare under penalty of perjury as follows:

1. Unless otherwise indicated, the facts set forth below are based on my personal knowledge and the opinions set forth herein are my own. I understand that this declaration under oath may be filed in the above captioned action.

2. I am a partner at Wenzel Fenton & Cabassa, P.A., and counsel in the above-styled case.

3. I have been a member of the Florida Bar since April of 2007, the Illinois Bar since 2010, and District of Columbia Bar since 2011. I have an LL.M. from George Washington University School of Law, a J.D. from Florida State University College of Law, and two Bachelor's degrees from the University of Kansas.

4. I am admitted in the United States District Courts for the Northern, Middle, and Southern District Courts of Florida, the Northern District of Illinois, the Eastern District of Michigan, and the United States Court of Appeals for the Eleventh Circuit.

5. I have represented employers and employees in all stages of litigation in federal and state courts throughout Florida, and beyond. In the Middle District of Florida alone I have served as co-counsel or lead counsel in 500+ federal cases.

6. I possess the requisite experience necessary to serve as class counsel in this case. I have been appointed as class counsel in multiple class actions, including cases involving a few hundred class members up to nearly half a million class members. Below is a list of class action cases I have been appointed as class counsel by the Court:

- *Brown, et al. v. Lowe's Companies, Inc., and LexisNexis Screening Solutions, Inc.*, Case No.: 5:13-CV-00079-RLV-DSC (W.D.N.C) (appointed as co-class counsel in national FCRA class action matter involving 451,000 class members);
- *Speer v. Whole Foods Market Group, Inc.*, 8:14-cv-03035-RAL- TBM (M.D. Fla.) (Fair Credit Reporting Act class action settlement involving 20,000 individuals presided over by Judge Lazzara);
- *Kohler, Kimberly v. SWF Operations, LLC and Domino's Pizza, LLC*, Case No. 8:14-cv-2568-T-35TGH (appointed class counsel in Fair Credit Reporting Act case involving several hundred class members);
- *Hargrett, et al. v. Amazon.com, DEDC, LLC*, 8:15-cv-02456-WFJ-AAS, M.D. Fla. Case No.: 8:15-cv-02456 (appointed as class counsel in FCRA case with 480,000+ class members);
- *Smith, et al. v. QS Daytona, LLC*, Case No.: 6:15-cv-00347-GAP-KRS (M.D. Fla.) (Doc. 45) (appointed as class counsel in FCRA class action involving several hundred class members);
- *Patrick, Nieyshia v. Interstate Management Company, LLC*, Case No. 8:15-cv-1252-T-33AEP (M.D. Fla.) (appointed as class counsel in FCRA class action with approximately 32,000 class members);
- *Molina et al v. Ace Homecare LLC*, 8:16-cv-02214-JDW-TGW (M.D. Fla) (appointed as class counsel in WARN Act case with approximately 500 class members);
- *Moody, et al v. Ascenda, et al.*, Case No. 0:16-cv-60364-WPD (S.D. Fla.) (appointed as class counsel in FCRA class action with approximately 12,000 class members);

- *Mahoney v. TT of Pine Ridge, Inc.*, Case No.: 9:17-cv-80029-DMM (S.D. Fla. Nov. 20, 2017) (served as class counsel in TCPA case with 300,000+ class members).
- *George v. Primary Care Holding Inc.*, Case No. 0:17-cv-60217-BB (S.D. Fla.) (appointed as class counsel in FCRA class action);
- *Vazquez v. Marriott International, Inc.*, Case No.: 8:17-cv-00116-MSS-SPF (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 20,000 class members);
- *Figueroa v. Baycare Healthcare System, Inc.*, Case No.: 8:17-cv-01780-JSM-AEP (M.D. Fla) (served as class counsel in FCRA case involving approximately 2,009 class members);
- *Valdivieso v. Cushman & Wakefield Inc.*, Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 2,000+ class members);
- *Dukes v. Air Canada*, Case No.: 8:18-cv-02176-TPB-JSS (M.D. Fla) (served as class counsel in FCRA case involving approximately 1,300 class members);
- *Rivera v. Aimbridge Hospitality, LLC*, Case No.: 8:18-cv-02192-EAK-JSS (M.D. Fla) remanded to *Rivera v. Aimbridge Hospitality, LLC*, 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in data breach case with 320,000 class members).
- *Blaney v. Aimbridge Hospitality, LLC*, 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in Fair Credit Reporting Act case with 17,00 class members);
- *Cathey v. Heartland Dental, LLC*, 2019-CA-000568, Fourth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 9,800 class members);
- *Harake v. Trace Staffing Solutions, LLC*, Case No.: 8:19-cv-00243-CEH-CPT (M.D. Fla) (served as class counsel in Fair Credit Reporting Act case with 8,700 class members);
- *Hicks v. Lockheed Martin Corporation*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 54,000+ class members);
- *Holly-Taylor v. Acadia Healthcare Company, Inc., et al.*, Case No.: 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in Fair Credit Reporting Act case with 25,00 class members);
- *Ali v. Laser Spine Institute, LLC*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel WARN Act case involving 500 class members);
- *Rigney et al v. Target Corporation*, Case No.: 8:19-cv-01432-MSS-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 92,000+ class members)
- *Luker v. Cognizant Technologies Solutions U.S. Corporation*, Case No.: 8:19-cv-01448-WFJ-JSS (M.D. Fla) (served as class counsel in wage case with 308 class members);

- *Lyttle v. Trulieve, Inc., et al.*, Case No.: 8:19-cv-02313-CEH-TGW (M.D. Fla) (appointed as class counsel in Fair Credit Reporting Act case involving 1,300 class members);
- *Twardosky v. Waste Management, Inc. of Florida, et al.*, 8:19-cv-02467-CEH-TGW(M.D. Fla) (appointed as class counsel in Fair Credit Reporting Act case involving 29,295 class members);
- *Silberstein v. Petsmart, Inc.*, 8:19-cv-02800-SCB-AAS (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 12,000+ class members);
- *Benson v. Enterprise Holdings, Inc. et al.*, Case No.: 6:20-cv-00891-RBD-LRH (M.D. Fla) (appointed as class counsel in WARN Act class action involving 900+ class members);
- *Morris et al v. US Foods, Inc.*, Case No.: 8:20-cv-00105-SDM-CPT (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 19,000+ class members);
- *Forsyth v. Lucky's Market GP2, LLC et al*, Case No.: 20-10166 (JTD); Adv. Pro. No. 20-50449 (JTD) (Del. Bk.) (served as class counsel in WARN Act class action pursued in Bankruptcy court adversarial proceeding involving hundreds of former employees);
- *Taylor v. Citizens Telecom Services Company, LLC*, Case No.: 8:20-cv-00509-CEH-CPT (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 16,137 class members);
- *Holmes et al v. WCA Waste Systems, Inc.*, Case No.: 8:20-cv-00766-SCB-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 1,720 class members);
- *Boyd v. Task Management, Inc.*, Case No.: 8:20-cv-00780-MSS-JSS (M.D. Fla.) (appointed as class counsel in Fair Credit Reporting Act case involving 5,500 class members);
- *In re The Hertz Corporation, et al*, Case No.: 20-11218 (MFW) (Del. Bk.) (served as class counsel in WARN Act class action pursued in Bankruptcy court involving 6,000+ class members);
- *Kaintz v. The Goodman Group, Inc.*, 8:20-cv-02115-VMC-AAS (appointed as class counsel in deficient COBRA notice case with 2,889 class members);
- *Gorman v. Whelan Event Staffing Services, Inc., et al.*, Case No.: 8:20-cv-02275-CEH-AEP (appointed as class counsel in Fair Credit Reporting Act case involving 29,000+ class members);
- *Benitez v. FGO Delivers, LLC*, Case No.: 8:21-cv-00221-KKM-TGW (M.D. Fla.) (appointed as class counsel in Fair Credit Reporting Act case involving 9,000+ class members);
- *Lopez v. Ollie's Bargain Outlet, Inc.*, 2020-CA-002511-OC, Ninth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 3,500 class members);
- *McNamara v. Brenntag Mid-South, Inc.*, Case No.: 8:21-cv-00618-MSS-JSS (M.D. Fla.) (appointed as class counsel in deficient COBRA notice case with 800+ class members);

- *Santiago et al v. University of Miami*, 1:20-cv-21784-DPG (appointed as class counsel in ERISA class action involving university retirement plan and approximately 20,000 class members);
- *Johnson v. McDonald's Corp.*, 1:21-cv-24339-FAM (S.D. Fla. Feb. 14, 2023)(ECF. No. 50) (served as class counsel in COBRA class action settlement recently granted final approval by Judge Moreno in case involving over 8,000 class members)
- *Baja v. Costco*, 0:21-cv-61210-AHS (S.D. Fla. Oct. 25, 2022)(ECF. No. 56)(served as class counsel in COBRA class action settlement recently granted final approval by Judge Singhal in case involving over 38,000 class members);
- *Santiago v. Univ. of Miami*, 1:20-CV-21784 (ECF No. 66) (S.D. Fla. April 7, 2022) (served as class counsel in ERISA retirement plan class action settlement involving 38,000 class members).

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

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

9. The Named Plaintiff, Kerstin Thompson, has been an excellent class representative and taken an active role in this litigation.

10. 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.

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

12. Before filing this case, Plaintiff's counsel conducted a significant, in-depth analysis into Plaintiff's claims and Defendants' Plan.

13. 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.

14. 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.

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

16. 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.

17. 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.

18. 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.)

19. 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).

20. 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.

21. 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.

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

23. 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.

24. 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.

25. 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.

26. 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.”

27. 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.

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

29. Additionally, my firm has expended a total of \$10,365.00 litigating this case, including \$402 in filing fees; \$25.50 in postage; \$200 paid for McKay pro hac vice motion; \$4,737.50 WFC firm portion of mediation invoice; and \$5,000 for expert witness fees.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 18th day of December, 2023.

/s/ Brandon J. Hill
BRANDON J. HILL