

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CYNTHIA RICHARDS-DONALD and
MICHELLE DEPRIMA, individually and on
behalf of a class of all other persons similarly
situated, and on behalf of the Teachers
Insurance and Annuity Association of
America Code Section 401(k) Plan and the
Teachers Insurance and Annuity Association
of America Retirement Plan,

Plaintiffs,

v.

TEACHERS INSURANCE AND ANNUITY
ASSOCIATION OF AMERICA and TIAA
PLAN INVESTMENT REVIEW
COMMITTEE,

Defendants.

Civ. A. No. 15-cv-08040 (PKC)

DECLARATION OF GREGORY Y. PORTER

I, Gregory Y. Porter, declare as follows:

1. I am a partner at the law firm Bailey & Glasser LLP (“Bailey & Glasser”). I am also Plaintiffs’ lead counsel in this action. If called as a witness, I would and could competently testify to these facts.
2. I submit this declaration in support of Plaintiffs’ Application for Attorneys’ Fees, Reimbursement of Expenses and Named Plaintiff Incentive Awards.
3. I have over twenty years of experience. My experience serving as lead or co-lead counsel in ERISA class actions is detailed in my biography, attached as Exhibit 1. A select group of cases in which I have acted as lead or co-lead counsel in ERISA actions includes: (i) *Jessop v. Larsen*, 14-cv-00916 (D. Utah) (employee stock ownership plan settlement with trustee and

individual defendants for \$19.8 million); (ii) *Diebold v. Northern Trust Investments, N.A.*, 09-cv-1934 (as co-lead counsel, secured a \$36 million cash settlement on behalf of hundreds of ERISA retirement plans who complained about mismanagement of class collateral pools); (iii) *Glass Dimensions, Inc. v. State Street Bank and Trust Co.*, 10-cv-10588 (D. Mass.) (class action about securities lending fees settled for \$10 million in 2014); (iv) *Figas v. Wells Fargo*, 08-04546 (D. Minn.) (recovered \$17.5 million in case alleging investment conflicts of interest); (v) *In re CMS Energy ERISA Litig.*, 02-cv-72834 (E.D. Mich.) (recovered \$28 million for employees in case alleging imprudent investment in employer stock); (vi) *Sherrill v. Federal Mogul Corp.*, 04-cv-72949 (E.D. Mich.) (recovered over \$14 million for employees in case alleging imprudent investment in employer stock); (vii) *Tittle v Enron Corp.*, 01-cv-3913 (S.D. Tex.) (represented Jeffrey Skilling, Chief Executive Officer of Enron Corp., in landmark ERISA case alleging imprudent investment of 401(k) plan savings in Enron stock); (viii) *Dupree v. The Prudential Ins. Co. of Am.*, 99-cv-8337 (S.D. Fla.) (successfully defended Prudential in trial of first impression involving claims that Prudential breached its duties by causing its own employee retirement plan to purchase investment products from Prudential).

4. Plaintiffs and the Plan were also represented by attorneys Ryan Jenny and Mark Boyko.

5. The biographies of Mr. Jenny, who has over sixteen years of experience, and Mr. Boyko, who has over twelve years of experience, are attached hereto as Exhibits 2 and 3, respectively. Collectively, Plaintiffs' Counsel have many decades of experience prosecuting complex ERISA class actions.

6. The agreed-upon plan changes will result in significant fee savings compared to the fees paid during the Class Period. The Plans and their participants should save over \$3 million per year in fees. See attached Exhibit 4.

7. As lead trial counsel, I personally managed, delegated, and supervised the allocation of personnel and expenses. We have aggressively and vigorously prosecuted this case and represented the best interests of the Plaintiffs and the participants and beneficiaries of the Plans. To date, we have performed nearly 600 hours of work and incurred over \$58,000 in expenses to investigate, prosecute and successfully try the claims in this action. We kept regular, contemporaneous records of our time and expenses incurred on behalf of the Plaintiffs. The categories of expenses sought to be reimbursed are broken down as follows:

Expense Category	Amount
Document Hosting Costs	\$3,791.39
Expert Witness Costs	\$14,805.00
Fees, Filing, Service of Process, Pro Hac Vice	\$835.00
Legal Research	\$652.32
Document Copying, Postage, FEDEX, Courier	\$178.46
Travel, Lodging and Meals	\$14,005.77
Mediation	\$24,615.45
TOTAL	\$58,883.39

8. The time records do not include hours billed by attorneys who billed fewer than ten hours to the lawsuit or work performed by summer associates.

9. The time records also do not include work performed to date on this Motion. None of the expenses sought to be reimbursed include any expenses incurred relating to seeking reasonable attorneys' fees and expenses in this matter.

10. The hourly rates of timekeepers reflect the hourly rates that they bill in similar matters and engagements.

11. The time records indicate the following hours worked:

Name	Position	Hourly Rate	Hours	Fee
Gregory Porter	Partner	\$750	140.1	\$105,075
Ryan Jenny	Partner	\$550	180.3	\$99,165
Mark Boyko	Associate	\$550	210.8	\$115,940

Melissa Kestner-Clay	Paralegal	\$200	48.7	\$9,740
Total			579.9	\$329,920

12. Plaintiffs' Counsel only spent the time necessary to effectively prosecute this case, and attempted to avoid duplication of efforts.

13. Plaintiffs' Counsel anticipates, based on prior experience, spending a minimum of 30 additional hours in order to prepare for and conduct interviews with the independent Fiduciary, communicate with class members, attend the Final Approval Hearing, and monitor Defendants' compliance with the Settlement. The time records above do not include future time spent on this case.

14. Plaintiffs' Counsel received from Defendant and third parties, and subsequently reviewed, approximately 20,000 pages of documents.

15. The expenses pertaining to this case are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records and other documents, and are an accurate record of the expenses incurred in the prosecution of this matter.

16. In this matter, the representation agreements signed by Plaintiffs Cynthia Richards-Donald and Michelle Deprima provided for payment of attorneys' fees up to one-third (33.33%) of the gross value of any monetary award obtained after the litigation costs advanced by the attorneys are deducted.

17. Details and material supporting the time records and expenses referenced in this declaration are available upon the request of the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of June, 2017 at Washington, District of Columbia.

By: /s/ Gregory Y. Porter
Gregory Y. Porter

EXHIBIT 1

**Attorney**

Washington, DC 20007
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Practices

- High Stakes Litigation
- Complex Commercial Litigation
- Class Actions-Mass Torts
- Labor, Employment and Employee Benefits
- Whistleblower-False Claims Act

Gregory Y. Porter**Biography**

Greg is a partner at Bailey & Glasser. He has extensive experience litigating complex pension, consumer fraud, insurance sales, and RICO class actions in federal and state courts throughout the United States. Greg has sued and represented many Fortune 500 companies in class actions under the federal Employee Retirement Income Security Act (ERISA). Greg also represents whistleblowers in qui tam, securities, and commodities frauds.

Greg currently represents employees in several retirement plan class actions, including claims that large financial institutions have limited employee 401(k) plan investment options to inferior in-house mutual funds, that fiduciaries of 401(k) plans have imprudently invested employee retirement savings in employer stock, and that financial institutions have mismanaged securities lending programs. Greg has also defended companies, trustees and individuals in several landmark cases. Greg has argued ERISA appeals in the Second, Fourth, Sixth and Eighth United States Circuit Courts of Appeal.

Greg is a member of the Employee Benefits Committee of the American Bar Association's Labor and Employment Section. He is a contributing author to the Committee's respected treatise on employee benefits law and a former co-chair of the Committee's Preemption and Benefit Claims sub-committees. He is a regular speaker at the Committee's annual meeting and speaks at other conferences about employee benefits litigation, including the American Conference Institute's annual ERISA conference. Greg served for four years in the United States Infantry, including 18 months on the DMZ in Korea.

Professional Involvement**Bar Admissions**

District of Columbia, 1998
Commonwealth of Virginia, 1996

Prior Experience

Prior to joining the firm in March 2009, Mr. Porter was a partner at McTigue & Porter, LLP. Before joining McTigue & Porter, Greg practiced in the Washington office of O'Melveny & Myers LLP for six years, where he focused on employee benefit and complex class actions.

Court Admissions

U.S. Circuit Court of Appeals for the First Circuit
U.S. Circuit Court of Appeals for the Second Circuit
U.S. Circuit Court of Appeals for the Third Circuit
U.S. Circuit Court of Appeals for the Fourth Circuit
U.S. Circuit Court of Appeals for the Sixth Circuit

U.S. Circuit Court of Appeals for the Eighth Circuit
U.S. District Court for the District of Columbia
U.S. District Court for the Northern District of Ohio
U.S. District Court for the Eastern District of Virginia

Cases

National City Corp., Securities, Derivative & ERISA Litigation

Recovered \$43 million for class members in settlement of breach of fiduciary duty claims for mismanaging 401(k) plan investments.

Figas v. Wells Fargo & Company

Serving as co-lead counsel, we recovered \$17.5 million in settlement of breach of fiduciary duty claims against Wells Fargo & Co. for mismanaging Wells Fargo 401(k) plan.

Glass Dimensions, Inc. v. State Street Bank & Trust Co.

Obtained class certification on behalf of 1,500 retirement plans invested in over 250 collective investment funds claiming excessive fees in securities lending; the parties later reached a proposed \$10 million settlement; final approval pending.

Bilewicz v. Fidelity Investments

Bailey & Glasser was named co-lead counsel representing nearly 100,000 current and former employees of Fidelity, who had been compelled to invest in Fidelity mutual funds despite the availability of better, cheaper investment options. The case settled for \$12 million plus reforms to Fidelity's employee 401(k) plan.

Diebold v. Northern Trust

As co-lead counsel, Bailey & Glasser secured a \$36 million cash settlement on behalf of hundreds of ERISA retirement plans who complained about mismanagement of class collateral pools.

Brundle v. Wilmington Trust

Bailey & Glasser recovered \$30 million for the participants in the Constellis Employee Stock Ownership Plan following a two-week trial. The court's decision set important new standards for ESOP trustees representing plans and participants in ESOP transactions.

Jessop v. Larsen

In 2016 Bailey & Glasser negotiated a settlement under which the former top officers and owners of once-high flying nutritional juice company MonaVie, and plan trustee Bankers Trust Co. of South Dakota, agreed to pay \$19.8 million to settle a lawsuit over an employee stock program that lost nearly all of its value within about two years. Bankers Trust also agreed to a permanent injunction barring it from serving as an ESOP trustee. Notably, we recovered well more than the available insurance coverage from the defendants.

Education

- J.D., 1996; Order of the Coif; Articles Editor, Southern California Law Review; Paralyzed Veterans of America Scholarship; Teaching and Research Assistant - University of Southern California School of Law
- B.A., History, 1989; Winning History Department Essay, 1988 - University of Massachusetts at Amherst

EXHIBIT 2

**Attorney**

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 rjenny@baileyglasser.com

Practices

- High Stakes Litigation
- Class Actions-Mass Torts
- Labor, Employment and Employee Benefits

Ryan T. Jenny**Biography**

Ryan T. Jenny is a partner in Bailey & Glasser LLP's Washington, D.C. office. He practices primarily in the area of complex employee benefits litigation, representing clients in actions brought under the Employee Retirement Income Security Act of 1974 (ERISA).

Ryan has litigated a broad range of ERISA class and individual actions at both the trial and appellate levels, with a particular focus on the fiduciary responsibility area. His recent fiduciary litigation includes employer stock, private company ESOP, misrepresentation and nondisclosure, excessive fee, and Affordable Care Act (ACA) actions. Other representative ERISA cases have focused on issues such as Section 510 discrimination and unlawful termination, the remedies available under the statute, the termination of retiree health benefits, prohibited transactions, claims for benefits, and the preemption of state statutory and common law. Ryan has also represented multiemployer plan trustees in actions arising under the Labor Management Relations Act (LMRA).

Prior to joining the firm, Ryan was of counsel in the D.C. office of Steptoe & Johnson LLP, where he litigated and counseled in the areas of ERISA, the ACA, the Health Insurance Portability and Accountability Act (HIPAA), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), and other employment statutes and regulations. For seven years Ryan also managed a team that provided pro bono representation to Holocaust survivors in claiming benefits under Germany's Social Security Pension Program and German Ghetto Work Payment Program. He also served as an associate in the labor and employee benefits group of a prominent law firm in New York, and as a law clerk for the American Psychological Association's Legal and Regulatory Affairs Department in D.C., where he focused on professional licensure and legislative issues in the healthcare industry.

He received his J.D. from The George Washington University Law School, and holds a B.A. in Anthropology from The University of Chicago.

Professional Involvement**Bar Admissions**

New York, 2000
 District of Columbia, 2006

Court Admissions

U.S. Court of Appeals for the Fourth Circuit
 U.S. Court of Appeals for the Fifth Circuit

U.S. Court of Appeals for the Seventh Circuit
U.S. Court of Appeals for the Eighth Circuit
U.S. District Court for the District of Columbia
U.S. District Court for the Western District of New York
U.S. District Court for the District of Colorado
U.S. District Court for the Northern District of Illinois

Cases

Brundle v. Wilmington Trust

Bailey & Glasser recovered \$30 million for the participants in the Constellis Employee Stock Ownership Plan following a two-week trial. The court's decision set important new standards for ESOP trustees representing plans and participants in ESOP transactions.

Education

- J.D., 1999 - George Washington University Law School
- B.A., Anthropology, 1995 - University of Chicago

EXHIBIT 3



Attorney

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Practices

- High Stakes Litigation
- Class Actions-Mass Torts
- Labor, Employment and Employee Benefits

Mark G. Boyko

Biography

Mark practices primarily in the area of complex fiduciary breach and prohibited transaction litigation, representing clients in actions brought under the Employee Retirement Income Security Act of 1974 (ERISA).

Mark earned his bachelors in economics from the University of Illinois, then went to the University of Missouri, where he earned his law degree in 2004 along with a certificate in Dispute Resolution. In 2005 Mark earned a Masters of Law from New York University where he studied complex multi-party litigation and dispute resolution.

Mark has been involved in all aspects of class litigation, from organizing and investigating cases against over a dozen companies, such as Ameriprise Financial and Lockheed Martin, to mediating the settlement of ten cases for a total of over \$300 million. He has class action trial experience, securing a verdict for employees and retirees based on self-dealing by their employer in their 401(k) plan, and has experience at the appellate and U.S. Supreme Court level.

Mark is on the ABA Section of Litigation's Class Action and Derivative Suits Committee and is a member of the Board of Places for People, a St. Louis area non-profit focused on serving adults with severe, persistent mental illness as well as co-occurring challenges, such as drug addiction, HIV, or prior suffering as a victim of state-sponsored terrorism. Mark recently retired from his position as a professional soccer referee.

Mark lives in St. Louis with his wife and two children.

Professional Involvement

Bar Admissions

New York, 2005
Missouri, 2005
Illinois, 2006

Education

- LL.M., 2005 - New York University School of Law
- J.D., 2004 - University of Missouri - Columbia School of Law
- B.A., Economics & Political Science, 2001 - University of Illinois at Champaign - Urbana

EXHIBIT 4

Fund	401k Plan Assets	Retirement Plan Assets	Total Assets	Current Fee	New Fund	New Fee	Fee Savings
TIAA Em Mkt Equity	\$0	\$14,684,124	\$14,684,124	0.95%	LifeCycle Funds (reflecting 2025 Fund fee)	0.41%	\$79,294
TIAA Growth & Inc.	\$24,648,332	\$46,166,675	\$70,815,007	0.59%	Blackrock Equity Index	0.03%	\$396,564
TIAA Int'l Equity	\$29,041,727	\$50,542,551	\$79,584,278	0.85%	Blackrock MSCI ACWI ex-US Index	0.09%	\$604,841
TIAA M Cap Growth	\$22,962,593	\$45,837,268	\$68,799,861	0.72%	BlackRock S&P 400 Midcap Index	0.04%	\$467,839
TIAA M Cap Value	\$39,537,384	\$66,571,411	\$106,108,795	0.68%	BlackRock S&P 400 Midcap Index	0.04%	\$679,096
TIAA Real Estate	\$25,030,889	\$41,634,555	\$66,665,444	0.86%	LifeCycle Funds (reflecting 2025 Fund fee)	0.41%	\$299,994
TIAA S Cap Equity	\$29,906,795	\$50,379,606	\$80,286,401	0.78%	BlackRock Russell 2000 Equity Index	0.04%	\$594,119
TIAA S Cap Blend Idx	\$10,158,097	\$13,610,708	\$23,768,805	0.06%	BlackRock Russell 2000 Equity Index	0.04%	\$4,754
TIAA L Cap Growth Idx	\$9,660,510	\$12,535,607	\$22,196,117	0.06%	Blackrock Equity Index	0.03%	\$6,659
TIAA L Cap Value Idx	\$19,887,727	\$20,447,000	\$40,334,727	0.06%	Blackrock Equity Index	0.03%	\$12,100
TIAA S&P 500 Index	\$35,591,293	\$52,651,001	\$88,242,294	0.06%	Blackrock Equity Index	0.03%	\$26,473
TIAA Int'l Equity Idx	\$25,713,880	\$32,783,844	\$58,497,724	0.06%	Blackrock MSCI ACWI ex-US Index	0.09%	-\$17,549

Total per year	\$3,154,184
Total for 6-years	\$18,925,106