

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
CASE TYPE: CIVIL

ALLISON SCHABER, on behalf of herself
and the Putative Class,

Plaintiff,

Case No.

v.

RAMSEY COUNTY, MINNESOTA STATE
RETIREMENT SYSTEM, and ERIN
LEONARD,

**CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)**

Defendants.

Plaintiff Allison Schaber on behalf of herself and members of the Putative Class (“Plaintiff” or “Schaber”), by and through her attorneys, brings this action against Defendant Ramsey County, Minnesota State Retirement System (“MSRS”), and Defendant Erin Leonard (“Leonard”) (collectively “Defendants”) for damages and other relief. Plaintiff states as follows:

PRELIMINARY STATEMENT

1. Employee benefit plans are a vital source of well-being and security for American workers. Defined Contribution Plans specifically provide workers with a smart and easy way to invest their pre-tax compensation towards retirement. These plans allow employees to grow funds through investments over time.

2. Many employers encourage participation in such plans, often by offering a pre-tax “match” of employee contributions deposited into the employees’ retirement accounts. These matches contribute towards employees’ retirement nest eggs.

3. Mishandling of these investments can cause compounding and lasting damage to an employee’s retirement savings.

4. Ramsey County allows its employees to participate in the Minnesota Deferred Compensation Plan (“the Plan”).¹ It is the responsibility of MSRS, by and through Executive Director of the Board Erin Leonard, to ensure contributions to the Plan are invested as intended.

5. Ramsey County has promised and continues to promise to provide an investment “match” to Ramsey County employees participating in the Plan. Any “match” should have been remitted to MSRS and Leonard for investment into employees’ accounts.

6. Ramsey County, however, never made a “match.”

7. Ramsey County failed and refused to remit any employer-side contributions to employees’ retirement savings under the Plan.

8. Over the continuous objection of employees, Ramsey County instead diverted monies to employees’ paychecks as regular taxable compensation, denying employees of retirement investment revenue.

9. Ramsey County’s actions breached its own employment policies and defied the Plan agreement. Ramsey County also violated the fiduciary duties it owed to employees.

10. Ramsey County, however, is not the only party to have breached its fiduciary obligations to its employees.

11. MSRS and Leonard knew Ramsey County was not providing a match to investment accounts and failed and refused to correct the issue despite the complaints lodged by Ramsey County employees.

12. MSRS and Leonard failed and refused to order Ramsey County’s compliance with the Plan and applicable employment policies in violation of the obligations owed to participants.

¹ The current version is available at https://www.msrs.state.mn.us/sites/default/files/2020-11/mndcp_plan_document.pdf (last visited March 8, 2021).

13. Because of these actions and inactions, Ramsey County’s participating employees have suffered long-lasting damages.

14. This Complaint sets forth claims for breaches of fiduciary duties and contract and seeks to recover lost investment revenue on behalf of a putative class comprised of participating Ramsey County employees.

PARTIES

15. Plaintiff Allison Schaber (“Schaber”) is an adult resident of the County of Ramsey. Schaber has worked for Ramsey County since 2012 and participated in a defined contribution plan with Ramsey County since that time.

16. Defendant Ramsey County (“Ramsey County”) is a Minnesota Public Corporation. At relevant times, Ramsey County has employed Schaber.

17. Defendant Minnesota State Retirement System (“MSRS”) has administered employee benefit plans for public employees working throughout Minnesota since 1929. MSRS has offices throughout the State of Minnesota, including in St. Paul, County of Ramsey. MSRS administers the Plan to which Schaber and members of the Putative Class participated pursuant to Minn. Stat. § 352.965, subd. 1(a).

18. Defendant Erin Leonard (“Leonard”) is an adult resident of St. Paul, Minnesota in the County of Ramsey. Leonard is the Executive Director for the Board of Directors of MSRS. Leonard is the plan administrator of the Plan to which Schaber and members of the Putative Class participated pursuant to Minn. Stat. § 352.965, subd. 1(c). Leonard is being named as a defendant in her official capacity.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction pursuant to Minn. Stat. § 484.01.

20. Venue is proper in the Second Judicial District because a substantial portion of the events giving rise to this Complaint occurred in Ramsey County.

FACTUAL ALLEGATIONS

21. Plaintiff and the Putative Class re-allege and incorporate by reference the preceding paragraphs as if fully set forth herein.

The Plan

22. Minnesota’s Deferred Compensation Plan (“the Plan”) is an investment vehicle available to State’s public employees, at the state and local level, permitting long-term investments of compensation for retirement purposes. Minn. Stat. § 352.965, subd. 1(b).

23. The Plan is similar to the 401(k) defined contribution plans available to many employees in the private sector.

24. Full-time, part-time, or temporary public employees in Minnesota—who work for any of the approximately 900 participating public-employers, including Ramsey County—may participate in the Plan.²

25. Under the Plan, public employees, including Plaintiff Schaber, contribute pre-tax compensation to their investment accounts each pay period.

26. Under the Plan, employers decide whether or not to also contribute a “match” to their employees’ accounts. Minn. Stat. § 352.965, subd. 4b; Minn. Stat. § 356.24, subs. 1(b), 3(f); The Plan ¶ 3.06(a).

27. Whether, and to what extent, an employer will match an employee’s contribution is set forth in the employer’s controlling employment policies/contracts. Minn. Stat. § 356.24, subd. 3(d).

² <https://mn.gov/admin/employees/hr/new-employees/mn-retirement-system/>

28. A “match” under the Plan is defined as:

“Nonelective Employer Contribution” Nonelective Employer Contribution is a contribution made by an Eligible Employer for the Participant with respect to which the Participant does not have the choice to receive the contribution in cash or property. Such term may also include an Employer matching contribution.

The Plan ¶ 1.12.³

29. Elsewhere, the Plan’s reference to the match makes clear that these monies are expected to be remitted to the participating employees’ Plan account. For example, section 3.06(a) entitled “Nonelective Employer Contribution (Employer Matching Contribution),” makes clear that the match is included in the calculation of the annual maximum deferral limits. The section goes on to state that matches “must be designated pre-tax deferrals.” The Plan ¶ 3.06(a).

30. According to MSRS, “Matching dollars are applied to your account dollar-for-dollar, per fiscal year. Once you reach the matching limit, your employer will no longer contribute matching dollars until the next fiscal year. The annual contribution limits take into account employer matching contributions.”⁴

31. Income tax for these contributions—both the employee compensation and the employer match—is to be deferred pursuant to section 457(b) of the Internal Revenue Code during the year of contribution. Minn. Stat. § 352.965, subd. 1(b).

³ The IRS defines “employer contribution” in the context of public employment deferred compensation plans as follows: “Amounts credited to individual employee retirement accounts paid in addition to salary; the employee does not have the option to receive these amounts in cash. These amounts are always tax deferred, because the employee does not have constructive receipt.” <https://www.irs.gov/government-entities/federal-state-local-governments/government-retirement-plans-toolkit>

⁴ <https://www.msrs.state.mn.us/faqs-mndcp>.

32. To participate in the Plan, public employees fill out MSRS’s Participant Enrollment Agreement. The Plan then communicates the employees’ desired contributions with their public employers.

33. By statute, Ramsey County must “implement” the Plan (i.e., withhold income and remit monies to MSRS to be placed in the plan) within a specified time frame. Minn. Stat. § 352.965, subd. 3.

34. Accordingly, public employers, including Ramsey County, are to automatically deduct contributions from participating employees’ paychecks and remit it to their Plan account for investment.

35. “When remitting contributions to the Plan, the Employer must identify the Employee salary deferral contributions and Nonelective Employer Contributions [(match)] separately.” The Plan ¶ 2.05(e), p.10.

36. In withholding and remitting contributions, public employers like Ramsey County act as fiduciaries on behalf of their participating public employees.

Ramsey County’s Employer Match

37. Ramsey County has participated in The Plan as far back as 2004.

38. At relevant times, Ramsey County considered the following employees eligible to participate in the Plan: all “Permanent, probationary, provisional and unclassified employees who work at least 40 hours per pay period on a regular basis. . . . Temporary, seasonal and intermittent employees are not eligible.”⁵

39. Participation in the Plan is voluntary. Plan participants who work for Ramsey County are referred to in this Complaint as “participating employees” or “participants.”

⁵ <https://www.ramseycounty.us/jobs/employee-benefits-and-policies>

40. According to Ramsey County’s employment policies, participating employees are entitled to receive an employer match under the Plan.⁶ Non-unionized participating employees may receive up to a \$35.00 per month match. The amount of unionized eligible employees’ match is set forth in their respective collective bargaining agreements.

41. Ramsey County, however, did not administer its promised employer-match pursuant to Plan requirements, statutory expectations, or in a manner consistent with how a reasonably prudent person would expect an employer-match to be administered in a deferred compensation plan.

42. It did not actually provide a “match” at all as the term is defined by the Plan, the IRS, or ordinary parlance because Ramsey County did not remit a contribution to MSRS for investment.

43. Instead, Ramsey County paid an amount equal to the “match” as additional wages, remitting those monies directly to the participating employees through their paychecks.

44. Ramsey County provided these payments and reported these amounts on participating employees’ Form W-2 as taxable income rather than as deferred contributions in violation of the Plan and in breach of its employment policies.

45. Because these payments were not remitted to participating employees’ deferred compensation accounts, they did not generate additional investment revenue for participating employees’ retirement accounts at all.

46. These payments, therefore, did not allow participating employees to “make the most of each dollar they set aside for retirement” as the Plan intended.⁷

⁶ *Id.*

⁷ <https://www.ramseycounty.us/jobs/employee-benefits-and-policies>

47. As a result of Ramsey County's under-funding of participating employees' Plan accounts, participating employees have been damaged, the effects of which continue to compound over time.

48. Ramsey County has known for years that its payments to participants are not proper employer-matches because many of its participating employees complained over time.

49. Yet, Ramsey County continues to stand by its practice. It has not corrected its error and continues to fail and refuse to remit the pre-tax match investment promised by its employment policies.

Plan Administration

50. The Minnesota State Retirement System administers the Plan. Minn. Stat. §§ 352.03, subd. 4(5); 352.965, subd. 1(a).

51. Erin Leonard, the Executive Director of MSRS's board of directors, is the Plan Administrator. Minn. Stat. § 352.965, subd. 1(c); The Plan ¶ 1.02. (hereafter MSRS and Leonard shall be referred to collectively as the "Plan Administrator").

52. The Plan Administrator is responsible for establishing "policies and procedures necessary for the administration of the deferred compensation plan." Minn. Stat. § 352.965, subd. 1(d); *see also* The Plan ¶ 5.12.

53. The Plan Administrator also has fiduciary obligations to Plan participants. Minn. Stat. § 352.965, subd. 1(c) (citing Minnesota Statutes chapter 356A); The Plan ¶ 7.08 (citing Minn. Stat. § 356A.04, subd. 2).

54. Fiduciaries of Minnesota public-employee retirement plans must:

act in good faith and shall exercise that degree of judgment and care, under the circumstances then prevailing, that persons of prudence, discretion, and intelligence would exercise in the management of their own affairs, not for speculation, considering the probable safety of the plan capital as well as the probable investment return to be derived from the assets.

Minn. Stat. § 356A.04, subd. 2.

55. Plan Administrators must exercise this level of care when performing duties, such as:

- (1) the investment and reinvestment of plan assets;
- (2) the determination of benefits;
- (3) the determination of eligibility for membership or benefits;
- (4) the determination of the amount or duration of benefits;
- (5) the determination of funding requirements or the amounts of contributions;
- (6) the maintenance of membership or financial records;
- (7) the expenditure of plan assets; and
- (8) the selection of financial institutions and investment products.

Minn. Stat. § 356A.02, subd. 2.

56. The Plan Administrator also has an obligation to ensure that employers are remitting the appropriate funds for participants.

57. Upon complaint of a participant, the Plan Administrator has the authority to “order the public officer’s or employee’s public employer to implement the deferred compensation plan provided for in this section and may enforce that order in appropriate legal proceedings.” Minn. Stat. 352.965, subd. 3.

58. The Plan Administrator knew that Ramsey County was failing to remit to the Plan all monies owed to participants’ accounts and certainly had access to records that would show Ramsey County was failing to remit all monies owed to the accounts.

59. In fact, participating employees, including but not limited to Plaintiff, have complained to the Plan Administrator about Ramsey County’s practices.

60. Further, the Plan Administrator should have discovered the delinquencies itself through the regular performance of its administrator duties under the appropriate duty of care.

61. With this knowledge, the Plan Administrator did nothing. Upon information and belief, it did not direct Ramsey County to comply with the terms of the Plan or with its own

employment policies. It did not exercise its authority under Minn. Stat. § 352.965, subd. 3, in the face of delinquencies. Rather, it allowed the underfunding of participant investments to continue for years.

62. The Plan Administrator's failure to act harmed participants and breached the duty it owed to Plaintiff and the putative class.

Plaintiff's Participation in the Plan

63. Plaintiff has worked for Ramsey County and has participated in the Plan during the applicable statutory period.

64. Plaintiff entered into the Participant Enrollment Agreement related to her employment with Ramsey County in approximately 2012. This Agreement put MSRS on notice of where Plaintiff worked and the amount of her compensation that she elected to defer. *See* Minn. Stat. § 352.965, subd. 2(b); The Plan ¶¶ 2.01–.02.

65. Plaintiff was eligible to receive a match up to \$25.00 per month subject to her annual contribution caps.

66. Plaintiff noticed that Ramsey County was not remitting her employer-match to MSRS for investment into her account.

67. Plaintiff complained to Ramsey County about this practice.

68. Plaintiff confirmed with human resources that the employer-match remitted to her through her regular paycheck were included as taxable gross income, rather than deferred pre-tax.

69. Plaintiff also inquired about the practice to the Plan Administrator.

70. The Plan Administrator indicated it was aware of Ramsey County's practice.

71. The Plan Administrator did not challenge Ramsey County's practice.

72. As a result of these actions and inactions, Plaintiff's deferred compensation investment account has not produced the revenue it otherwise would have had Ramsey County

properly remitted its match to her account pretax. Had Ramsey County followed the Plan agreement and its own employment policies, Plaintiff would have realized gains on these investments and would continue to realize gains compounding over time until such time as she withdraws funds for retirement.

CLASS ACTION ALLEGATIONS

73. Plaintiff and the Putative Class re-allege and incorporate by reference the proceeding paragraphs as if fully set forth herein.

74. Plaintiff brings this action individually and as a class action under Rule 23.01 of the Minnesota Rules of Civil Procedure.

75. The Putative Class is defined as:

All individuals employed by Defendant Ramsey County, who participated in and contributed to the Minnesota Deferred Compensation Plan, at any time in the six years prior until the filing of this Complaint until the date of final judgment in this matter.

76. This definition shall explicitly exclude the Judge presiding over this case and any of their family or staff who are participating employees in the Minnesota Deferred Compensation Plan through the County of Ramsey.

77. The persons in the Putative Class are so numerous that joinder of all members of the proposed Putative Class is impracticable. While the precise number of class members has not been determined at this time, Defendant Ramsey County has employed in excess of 4,000 individuals during the applicable limitations period.

78. There are questions of law and fact common to the proposed Putative Class that predominate over any questions solely affecting individual members of the Putative Class, including but not limited to the following:

- a) Ramsey County's policies with regard to employer contribution matches to the Plan;

b) Ramsey County's practice of remitting monies to members of the Putative Class through their paystubs rather than contributing an employer match to their Plan accounts;

c) The extent of the Plan Administrator's knowledge of Ramsey County's refusal to provide an employer contribution match that complies with the Plan or the incorporated employment policies and/or agreements;

d) Whether Defendants owed a fiduciary duty to the Putative Class;

e) Whether Defendants breached their duty to the Putative Class by failing to ensure Class Members received full contributions to their accounts;

f) Whether Ramsey County breached its employment policies by failing to ensure members of the Putative Class received full contributions to their accounts;

g) Whether Defendants actions or inactions caused harm to members of the Putative Class; and

h) The proper measure of damages sustained by the Putative Class.

79. Plaintiff's claims are typical of those of the members of the Putative Class. Plaintiff, like the other members of the proposed Putative Class, worked for Ramsey County, participated in and contributed to the Plan, and was subject to Ramsey County's failure and refusal to remit agreed-upon employer contribution match to her Plan account.

80. Plaintiff will fairly and adequately protect the interests of the Putative Class and has retained counsel experienced in complex employment class and collective action litigation, including benefits litigation.

81. This action is properly maintainable as a class action under Minnesota Rule of Civil Procedure 23.02 because questions of law or fact predominate over any questions affecting individual class members, individual adjudication would risk establishing incompatible standards of conduct for the Defendants on behalf of the Putative Class, and because Defendants have acted or refused to act on grounds applicable to all members of the Putative Class.

82. A class action is superior to other methods adjudicating the claims of individual class members because:

a) Separate actions risk inconsistent adjudications with respect to individual class members, and thus, likewise risk incompatible standards of conduct for Defendants;

b) Individuals lack the financial resources and incentives to vigorously prosecute separate lawsuits against corporate defendants; and

c) There does not appear to be any difficulties in managing this case as a class action.

83. The Putative Class Members are known to Defendants and should be readily identifiable through Defendants' records.

84. Plaintiffs intend to send notice to all members of the Putative Class to the extent required by Rule 23 of the Minnesota Rules of Civil Procedure.

FIRST CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY Against Defendant Ramsey County *On Behalf of Plaintiff and the Putative Class*

85. Plaintiff and the Putative Class re-allege and incorporate by reference the proceeding paragraphs as if fully set forth herein.

86. An employer acts in a fiduciary capacity in relation to its employees when it performs duties to administer retirement benefits.

87. Defendant Ramsey County acts as a fiduciary when it remits employee contributions, and when it fails to remit its employer contribution, to Plan accounts for Plaintiffs and members of the Putative Class.

88. Defendant Ramsey County breached its fiduciary duty in failing and refusing to place Plaintiff and the Putative Class's "match" in their deferred compensation plan accounts.

89. In not remitting its “match,” Defendant Ramsey County failed to act in good faith and with the care an ordinary prudent person would exercise under the circumstances in handling their own funds.

90. Defendant Ramsey County did not act in the best interest of Plaintiff and the Putative Class and violated its duty of loyalty.

91. Defendant Ramsey County’s actions and inactions harmed Plaintiff and the Putative Class.

92. As a result, Plaintiff and the Putative Class are entitled to recover damages to include lost investment revenue.

SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY
Against Defendants MSRS and Leonard
On Behalf of Plaintiff and the Putative Class

93. Plaintiff and the Putative Class re-allege and incorporate by reference the proceeding paragraphs as if fully set forth herein.

94. By statute, Defendant MSRS is responsible for administering the Plan, and Defendant Leonard is the designated Plan Administer.

95. Defendants MSRS and Leonard owe a fiduciary duty to plan participants, including Plaintiff and the Putative Class.

96. Defendants MSRS and Leonard breached their duty because they failed and refused to exercise the judgement of a prudent person of intelligence when ensuring Ramsey County remitted proper payment amounts, to include matches, to the plan accounts for Plaintiff and the Putative Class.

97. Defendants MSRS and Leonard did not exercise the requisite care in determining Plaintiff and the Putative Class's benefits, their eligibility for receiving employer matches, or the amount of employer matches owed to, but not remitted for, them.

98. Defendants MSRS and Leonard breached their duty of loyalty. They knew Ramsey County was not remitting its employer-match to participants' Plan accounts as contemplated by the Plan agreement because this information was made available to them in the performance of their administrative duties and because Plaintiff and members of the Putative Class complained to them about Ramsey County's actions. Yet, Defendants MSRS and Leonard failed and refused to order Ramsey County, pursuant to its statutory powers, to remit the match as contemplated by the Plan.

99. Defendants MSRS and Leonard failed and refused to act in the best interest of Plaintiff and the Putative Class.

100. Defendants MSRS and Leonard's actions and inactions harmed Plaintiff and the Putative Class.

101. As a result, Plaintiff and the Putative Class are entitled to recover damages to include lost investment revenue.

THIRD CAUSE OF ACTION

BREACH OF CONTRACT **Against Defendant Ramsey County** *On Behalf of Plaintiff and the Putative Class*

102. Plaintiff and the Putative Class re-allege and incorporate by reference the proceeding paragraphs as if fully set forth herein.

103. Employment policies that contain sufficiently definite terms qualify as a unilateral employment contracts. *See Hall v. City of Plainview*, 954 N.W.2d 254 (Minn. 2021).

104. Defendant Ramsey County's employment policies offering the Plan as a benefit to its employees has sufficiently definite terms and qualifies as a unilateral contract.

105. Defendant Ramsey County breached its policies and therefore is contract with employees when it failed and refused to remit its employer match to the Plan accounts of Plaintiff and the Putative Class.

106. Defendant Ramsey County's breach caused harm to Plaintiff and the Putative Class. They are entitled to receive lost investment revenue.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, as a Class Representative, on behalf of herself and the proposed Putative Class request relief as follows:

A. Certification of this action as a class action pursuant to Minn. R. Civ. P. 23 on behalf of the Putative Class, appointment of Plaintiffs as Class Representatives, and appointment of the undersigned as Class Counsel;

B. Judgment declaring Defendants violated the law that forms the basis of relief;

C. An award in an amount equal to Plaintiffs' and the Putative Class's lost investment revenue;

D. Restitution;

E. Injunctive relief;

F. An award of all reasonable costs, disbursements, and attorneys' fees incurred prosecuting this case;

G. Leave to add additional plaintiffs or claims by motion or any other method approved by the Court;

H. All other and further relief available under applicable law, including but not limited to prejudgment and postjudgment interest; and

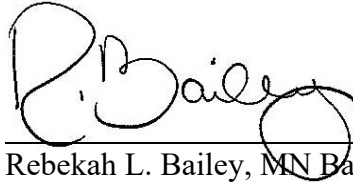
I. All other and further relief the Court deems equitable and just.

DEMAND FOR JURY TRIAL

107. Plaintiff hereby demands a jury trial on the causes of action alleged herein.

Dated: 03/17/2021

NICHOLS KASTER, PLLP

A handwritten signature in black ink, appearing to read "R. Bailey". The signature is written in a cursive style with a large initial "R" and a loop at the end.

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ATTORNEYS FOR PLAINTIFF AND THE
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**ACKNOWLEDGMENT REQUIRED BY
MINN. STAT. § 549.211**

I hereby acknowledge that, pursuant to Minn. Stat. § 549.211, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find I acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings, or to harass, or committed a fraud upon, the Court.



A handwritten signature in cursive script, appearing to read "R. Bailey", is written above a horizontal line.