

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Jennifer Baker and Jean Greenberg, as  
representatives of a class of similarly situated  
persons, and on behalf of the Investment-Incentive  
Plan for John Hancock Employees,

Plaintiffs,

v.

John Hancock Life Insurance Company (U.S.A.), and  
the John Hancock US Benefits Committee,

Defendants.

Case No. 1:20-cv-10397-RGS

**DECLARATION OF KAI  
RICHTER IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL  
OF CLASS ACTION  
SETTLEMENT**

I, Kai Richter, hereby declare and state as follows:

1. I am a partner at Nichols Kaster, PLLP (“Nichols Kaster”), and I am one of the attorneys representing Plaintiffs Jennifer Baker and Jean Greenberg (“Plaintiffs”) and the certified class in the above-captioned action.

2. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

**Settlement Terms**

3. Attached hereto as **Exhibit A** is a true and correct copy of the proposed Class Action Settlement Agreement.<sup>1</sup> The Settlement resolves Plaintiffs’ class action claims against John Hancock Life Insurance Company (U.S.A.) (“John Hancock”) and the John Hancock US Benefits Committee (the “Committee”) (together, “Defendants”) regarding Defendants’ administration and management of the Investment-Incentive Plan for John Hancock Employees (“Plan”).

4. The Settlement Agreement calls for certification of the following Settlement Class:

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<sup>1</sup> All capitalized terms have the meaning assigned to them in Article 1 of the Settlement Agreement, unless otherwise defined herein.

All participants and beneficiaries of the Investment-Incentive Plan for John Hancock Employees at any time between February 27, 2014 and the date the Court enters the Preliminary Approval Order, excluding any members of the John Hancock US Benefits Committee or the John Hancock US Investment Subcommittee.

*See Settlement Agreement ¶ 1.9.* This class tracks the class certified by the Court for litigation purposes on February 17, 2021 (ECF No. 53), and now includes and end date for the class period.

5. Under the Settlement, John Hancock will contribute \$14 million to a Qualified Settlement Fund (“Settlement Fund”). *Settlement Agreement ¶¶ 1.30, 4.1, 4.2.* After accounting for any Attorneys’ Fees and Costs, Administrative Expenses, and class representative Service Awards approved by the Court, the Net Settlement Amount will be distributed to eligible Settlement Class Members in proportion to their Average Qualifying Account Balance, which is based on Class Members’ quarterly account balances in the John Hancock funds the Plan. *Id. ¶¶ 1.34, 5.1-5.3.* Participant Class Members’ accounts will be automatically credited with their share of the Settlement Fund. *Id. ¶ 5.2.* Former Participant Class Members will have the opportunity to submit a Rollover Form allowing them to have their distribution rolled over into an individual retirement account or other eligible employer plan. *Id. ¶ 5.3(a)(i).* Former Participant Class Members who do not timely submit a Rollover Form will be sent a check. *Id. ¶ 5.3(a)(ii).* Under no circumstances will any monies revert to John Hancock. Any checks that are uncashed will revert to the Qualified Settlement Fund and will be paid to the Plan for the purpose of defraying administrative fees and expenses. *Id. ¶ 5.6(b).*

6. The Gross Settlement Amount in this case (\$14 million) represents approximately 0.76% of the Plan’s year-end assets as of the most recent reported Form 5500 filings in 2019

(~\$1.85 billion). This falls within the range of other recent 401(k) settlements, as summarized by the chart below<sup>2</sup>:

Defendant	Date Settled	Settlement Amount	Plan Assets in Year Settled	Settlement % of Plan Assets
<b>NRECA</b>	7/31/2020	\$10,000,000	\$12,046,287,000 (2019) <sup>3</sup>	0.083%
<b>Fidelity (Moitoso)</b>	7/2/2020	\$28,500,000	\$19,883,089,869 (2019)	0.14%
<b>Putnam</b>	4/17/2020	\$12,500,000	\$778,295,101 (2019)	1.60%
<b>M&amp;T</b>	9/26/2019	\$20,800,000	\$2,844,970,795	0.73%

<sup>2</sup> See *Intravaia v. Nat'l Rural Electric Coop. Ass'n*, No. 1:19-cv-00973, ECF No. 95-2 (E.D. Va. July 31, 2020); *Moitoso v. FMR LLC*, No. 1:18-cv-12122, ECF No. 243-1 (D. Mass. July 2, 2020); *Brotherston v. Putnam Investments, LLC*, No. 1:15-cv-13825, ECF No. 214 (D. Mass. Apr. 17, 2020); *In re M&T Bank Corporation ERISA Litigation*, No. 1:16-cv-375, ECF No. 158 (W.D.N.Y. Dec. 26, 2019); *Velazquez v. Mass. Fin. Servs. Co.*, No. 17-CV-11249, ECF No. 108 (D. Mass. Dec. 5, 2019); *Schultz v. Edward D. Jones & Co.*, No. 4:16-CV-1346-JAR, ECF No. 93-1 (E.D. Mo. Dec. 11, 2018); *Sims v. BB&T Corp.*, No. 1:15-CV-00732, ECF No. 437 (M.D.N.C. Nov. 30, 2018); *Moreno v. Deutsche Bank Ams. Holding Corp.*, No. 1:15-CV-09936-LGS, ECF No. 322-1 (S.D.N.Y. Aug. 14, 2018); *Richards-Donald v. Teachers Insurance & Annuity Assoc. of Am.*, No. 15-CV-08040-PKC, ECF No. 46 (S.D.N.Y. April 30, 2017); *Yost v. First Horizon National Corp.*, No. 2:08-02293-STA, ECF No. 190 (W.D. Tenn. May 2, 2012); *Abbott v. Lockheed Martin Corp.*, No. 06-701-MJR-DGW, ECF No. 491-1 (S.D. Ill. Feb. 20, 2015); *Spano v. Boeing Co.*, No. 3:06-cv-00743-DRH-DGW, ECF No. 554-1 (S.D. Ill. Nov. 5, 2015); *Nolte v. CIGNA Corp.*, No. 2:07-CV-02046-HAB-DGB, ECF No. 398-1 (C.D. Ill. June 21, 2013); *Kruger v. Novant Health, Inc.*, No. 1:14CV208, ECF No. 44-2 (M.D.N.C. Nov. 9, 2015); *Gordan v. Mass. Mutual Life Ins. Co.*, No. 13-CV-30184-MAP, ECF No. 107-2 (D. Mass. June 15, 2016); *Krueger v. Ameriprise Fin., Inc.*, No. 11-CV-02781 (SRN/JSM), ECF No. 597-1 (D. Minn. Mar. 26, 2015); *Main v. Am. Airlines, Inc.*, No. 4:16-CV-00473-O, ECF No. 127-2 (N.D. Tex. July 7, 2017); *Figas v. Wells Fargo & Co.*, No. 08-cv-4546 (PAM/FLN), ECF No. 257-1 (D. Minn. Mar. 18, 2011); *Bilewicz v. FMR LLC*, No. 13-10636-DJC, ECF No. 53-1 (D. Mass. July 3, 2014); *Urakhchin v. Allianz Asset Management of America, L.P.*, No. 8:15-cv-01614, ECF No. 174 (C.D. Cal. Dec. 26, 2017); *Dennard v. Transamerica Corp.*, No. 1:15-cv-00030-EJM, ECF No. 86-1 (N.D. Iowa); *Andrus v. N.Y. Life Ins. Co.*, No. 16 Civ. 5698 (KPF), ECF No. 66-1 (S.D.N.Y. Feb. 14, 2017); *Anderson v. Principal Life Ins. Co.*, No. 4:15-cv-00119-JAJ-HCA, ECF No. 23-3 (S.D. Iowa). The plan asset information in the chart was sourced from the plans' publicly filed Form 5500s, available at <https://www.efast.dol.gov/welcome.html>.

<sup>3</sup> Asset figures are reported for 2019 because 2020 year-end data is not yet available from Form 5500 filings with the Department of Labor.

<b>Mass. Fin. Services</b>	11/21/2019	\$6,875,000	\$1,075,446,143	0.64%
<b>Edward Jones</b>	12/11/2018	\$3,175,000	\$5,859,210,627	0.05%
<b>BB&amp;T</b>	11/30/2018	\$24,000,000	\$4,632,550,462	0.52%
<b>Deutsche Bank</b>	8/14/2018	\$21,900,000	\$3,385,372,412	0.65%
<b>Allianz</b>	12/26/2017	\$12,000,000	\$1,170,130,105	1.03%
<b>Fujitsu</b>	12/6/2017	\$14,000,000	\$1,502,757,150	0.93%
<b>American Airlines</b>	7/7/2017	\$22,000,000	\$10,962,065,208	0.20%
<b>TIAA</b>	5/10/2017	\$5,000,000	\$2,144,212,948	0.23%
<b>NY Life</b>	2/14/2017	\$3,000,000	\$3,117,480,047	0.10%
<b>MassMutual</b>	6/15/2016	\$30,900,000	\$2,452,976,418	1.26%
<b>Transamerica/Aegon</b>	5/19/2016	\$3,800,000	\$1,723,051,884	0.22%
<b>Novant Health</b>	11/10/2015	\$32,000,000	\$969,670,230	3.30%
<b>Boeing</b>	11/4/2015	\$57,000,000	\$47,130,387,730	0.12%
<b>Principal</b>	6/29/2015	\$3,000,000	\$2,116,933,587	0.14%
<b>Ameriprise</b>	3/26/2015	\$27,500,000	\$1,546,494,029	1.78%
<b>Lockheed Martin</b>	2/20/2015	\$62,000,000	\$30,447,099,819	0.20%
<b>Fidelity (Bilewicz)</b>	7/1/2014	\$12,000,000	\$13,250,740,623	0.09%
<b>Prudential/CIGNA</b>	6/17/2013	\$35,000,000	\$3,988,214,734	0.88%
<b>First Horizon</b>	5/2/2012	\$6,000,000	\$369,591,201	1.62%
<b>Wells Fargo</b>	3/18/2011	\$17,500,000	\$22,208,369,556	0.08%

7. The negotiated settlement amount also represents a significant portion of the damages that we estimated were caused by Defendants' alleged fiduciary breaches. Those estimated damages were as follows:

Alleged damages from retention of John Hancock funds in Plan: \$62.2 million;

Alleged damages from excessive recordkeeping expenses: \$9.45 million.

Because the Plan's recordkeeping expenses were paid through a fee applicable to all of the investments in the Plan (amounting to 0.1% of assets invested), Defendants may have argued that Plaintiffs' recordkeeping damages overlapped with their investment-related damages. The \$14 million recovery represents approximately 23% of the estimated investment damages, and approximately 20% of total estimated damages (without accounting for any overlap between the damages categories).

8. In addition to the foregoing monetary compensation, the Settlement also provides for prospective relief. Specifically, the Settlement provides that the following procedures shall apply to the management of the Plan on a prospective basis as of the Settlement Effective Date:

- (a) Defendants shall retain an independent third-party investment consultant to provide ongoing monitoring and review of the investment options in the Plan's investment lineup for at least five years from the Settlement Effective Date;
- (b) Defendants shall develop and approve an Investment Policy Statement ("IPS") for the Plan; and,
- (c) At or before the expiration of the Plan's current recordkeeping contract, Defendants will utilize the services of an independent consultant to assist with negotiating the next recordkeeping agreement and issuing a request for information for recordkeeping services.

*Settlement Agreement* ¶ 6.1. This relief is designed to address the core allegations in the lawsuit and will provide additional benefits to the Settlement Class.

9. In the absence of a settlement, Plaintiffs would have faced uncertainty and risk in connection with their claims. Given these risks (which are outlined in the accompanying Memorandum of Law), and the costs and potential delays associated with further litigation, I believe that the Settlement that was negotiated is fair, reasonable, and adequate.

**Investigation, Discovery, and Settlement Negotiations**

10. Throughout this litigation, our firm has vigorously represented the interests of the class. Prior to filing the Complaint in this action, my colleagues and I conducted a thorough investigation of the claims that were asserted and the factual basis for those claims. Among other things, this included reviewing publicly-available information relating to the Plan, examining our clients' account statements and other documents, and conducting an analysis of the Plan's investments and administrative expenses versus the investments and administrative expenses of other plans. As a result of our investigatory efforts, we were able to file a detailed, 27-page Complaint and a similarly detailed First Amended Complaint. In addition, we responded to Defendants' motion to dismiss, served and responded to written discovery requests (including interrogatories), reviewed Defendants' document productions (consisting of over 5,000 pages of documents), produced over 4,000 pages of documents, negotiated extensively with Defendants concerning the scope of additional ESI discovery, and took additional measures in furtherance of the litigation. We also noticed the deposition of a witness associated with John Hancock for February 10, 2021, but that deposition was postponed when a necessary participant was diagnosed with COVID-19.

11. The parties engaged in a full-day mediation with Retired Judge Layn Phillips on April 9, 2021, and submitted written mediation statements and reply statements in advance of the mediation. Judge Phillips is an experienced and well-respected mediator who has successfully resolved numerous class action cases, including many actions involving breach of fiduciary duty claims under ERISA. A copy of Judge Phillips' biography is attached as **Exhibit B**.

12. The parties did not reach a settlement during the April 9, 2021 mediation but agreed that negotiations would continue through Judge Phillips. After further arm's length negotiations

through Judge Phillips, the parties reached a settlement-in-principle on April 15, 2021, after Judge Phillips made a mediator's proposal. The parties then negotiated the details of the comprehensive Settlement Agreement that is the subject of the present motion. For the reasons explained above, I believe the Settlement is fair, reasonable, and adequate.

### **Professional Overview**

13. My professional background and qualifications were previously set forth in my declaration in support of Plaintiffs' Motion for Class Certification. For the convenience of the Court, a copy of that declaration (without exhibits) is attached as **Exhibit C**.

14. In addition to the present case, the firm's lawyers (including myself) have been appointed class counsel for litigation and/or settlement purposes in over 20 other breach of fiduciary duty cases involving retirement plans, as set forth below:

- *Andrus v. NY Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y.);
- *Beach v. JPMorgan Chase Bank, N.A.*, No. 1:17-cv-00563 (S.D.N.Y.);
- *Bhatia v. McKinsey & Co., Inc.*, No. 1:19-cv-01466 (S.D.N.Y.);
- *Brotherston v. Putnam Investments, LLC*, No. 1:15-cv-13825 (D. Mass.);
- *Clark v. Oasis Outsourcing Holdings Inc.*, No. 9:18-cv-81101 (S.D. Fla.);
- *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-00375 (W.D.N.Y.);
- *Intravaia v. Nat'l Rural Electric Cooperative Assoc.*, No. 1:19-cv-00973 (E.D. Va.);
- *Johnson v. Fujitsu Tech. & Bus. of America, Inc.*, No. 5:15-cv-03698 (N.D. Cal.);
- *Karpik v. Huntington Bancshares Inc.*, No. 2:17-cv-1153 (S.D. Ohio);
- *Kirk v. Retirement Committee of CHS/Community Health Systems, Inc.*, No. 3:19-cv-00689 (M.D. Tenn.);
- *Larson v. Allina Heath System*, No. 17-cv-03835 (D. Minn.);
- *Main v. American Airlines, Inc.*, No. 3:16-cv-01033 (N.D. Tex.);

- *Mass v. Regents of the University of California*, No. RG17-879223 (Alameda County Super. Ct.);
- *Moitsoso v. FMR LLC*, No. 1:18-cv-12122 (D. Mass.);
- *Moreno v. Deutsche Bank Americas Holding Corp.*, No. 1:15-cv-09936 (S.D.N.Y.);
- *Reetz v. Lowe's Companies, Inc.*, No. 5:18-cv-00075 (W.D.N.C.);
- *Sims v. BB&T Corp.*, No. 1:15-cv-00732 (M.D.N.C.);
- *Stevens v. SEI Invs. Co.*, No. 2:18-cv-04205 (E.D. Pa.);
- *Toomey v. Demoulas Super Markets, Inc.*, No. 1:19-cv-11633 (D. Mass.);
- *Urakhchin v. Allianz Asset Mgmt. of America, L.P.*, No. 8:15-cv-01614 (C.D. Cal.);
- *Velazquez v. Massachusetts Financial Services Co.*, No. 1;17-cv-11249 (D. Mass.);  
and
- *Wildman v. American Century Servs., LLC*, No. 4:16-cv-00737 (W.D. Mo.).

15. Our firm took the *Putnam* and the *American Century* cases to trial in April 2017 and September 2018, respectively. We received final court approval of settlements in *New York Life*, *JPMorgan Chase*, *McKinsey & Co.*, *Putnam*, *Oasis Outsourcing*, *M&T*, *National Rural Electric Cooperative Association* (“NRECA”), *Fujitsu*, *Huntington Bank*, *CHS/Community Health Systems*, *Allina*, *American Airlines*, *FMR LLC* (also known as Fidelity), *Deutsche Bank*, *BB&T*, *SEI*, *Demoulas Super Markets*, *Allianz*, and *Massachusetts Financial Services*. We won contested class certification motions in *JPMorgan Chase*, *Putnam*, *University of California*, *Deutsche Bank*, *BB&T*, *Allianz*, and *American Century*, and reached stipulations concerning class certification in our cases with *FMR LLC*, *Lowe's*, and *Massachusetts Financial Services*. We also defeated motions to dismiss in many of these cases in whole or in part including *JPMorgan Chase*, *Putnam*, *M&T*, *NRECA*, *Fujitsu*, *Huntington Bank*, *American Airlines*, *University of California*, *Deutsche Bank*, *Lowe's*, *BB&T*, *Demoulas Super Markets*, *Allianz*, *Massachusetts Financial Services*, and *American Century*, as well as in *Morin v. Essentia Health*, 2017 WL 4083133 (D. Minn. Sept. 14,



2017), *report and recommendation affirmed*, 2017 WL 4876281 (D. Minn. Oct. 27, 2017), *Nelsen v. Principal Global Investors Trust Company*, 362 F. Supp. 3d 627 (S.D. Iowa 2019), *Davis v. Stadion Money Management*, 2020 WL 1248580 (D. Neb. March 16, 2020), *Falberg v. The Goldman Sachs Group*, 2020 WL 3893285 (S.D.N.Y. July 9, 2020), *Stark v. Keycorp*, 1:20-cv-01254, ECF No. 24 (N.D. Ohio May 4, 2021) and this case.

16. Based on our collective experience litigating these cases and other ERISA cases, I believe that we were well-equipped to negotiate the Settlement that was reached in this case.

**Settlement Administrator**

17. Analytics Consulting, LLC (“Analytics”) has been selected to serve as the settlement administrator in this matter. Analytics has extensive experience administering class action settlements, including several ERISA settlements, and previously served as the Settlement Administrator in connection with the *Fidelity, Putnam and Massachusetts Financial Services* settlements in this District. A copy of Analytics’ company profile is attached as **Exhibit D**.

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

Dated: June 1, 2021

/s/ Kai H. Richter  
Kai H. Richter

**CERTIFICATE OF SERVICE**

I hereby certify that on June 1, 2021, a true and correct copy of the foregoing *Declaration of Kai Richter in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement* was served by CM/ECF to the parties registered to the Court’s CM/ECF system.

/s/ Kai H. Richter  
Kai H. Richter