

**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
APPROVAL OF ATTORNEYS’
FEES AND COSTS,
ADMINISTRATIVE
EXPENSES, AND CLASS
REPRESENTATIVE SERVICE
AWARDS**

I, Kai Richter, hereby submit this Declaration in support of Plaintiffs’ Motion for Approval of Attorneys’ Fees and Costs, Administrative Expenses, and Class Representative Service Awards.

Professional Overview

1. I am a partner at Nichols Kaster, PLLP (“Nichols Kaster”), and I am one of the attorneys appointed by the Court to represent the Settlement Class in the above-captioned action.

2. I am currently licensed in good standing to practice law in the State of Minnesota, and also have been admitted to practice in several federal district courts and appellate courts across the country. A list of jurisdictions and courts in which I am admitted is set forth below:

Supreme Court of the United States
1st Circuit Court of Appeals
2nd Circuit Court of Appeals
3rd Circuit Court of Appeals
6th Circuit Court of Appeals
8th Circuit Court of Appeals
9th Circuit Court of Appeals
U.S.D.C. for the District of Minnesota
U.S.D.C. for the Eastern District of Michigan
U.S.D.C. Western District of New York
U.S.D.C. Eastern District of Wisconsin
Minnesota Supreme Court

I am in good standing in every jurisdiction in which I have been admitted to practice.

3. I have been actively engaged in the practice of law since 1999, and have substantial class action experience and other complex litigation experience.

4. Since joining Nichols Kaster in April 2010, my practice has focused exclusively on class action cases. I have been appointed class counsel for litigation or settlement purposes in over thirty class cases, including over twenty ERISA cases. In connection with those class cases, I have personally negotiated class action settlements providing for more than \$450 million in available relief to class members nationwide. A more detailed explanation of my professional background is contained in my prior Declaration in support of Plaintiffs' Motion for Class Certification (*ECF No. 54*).

Law Firm Overview

5. Nichols Kaster has been engaged in the practice of law for over 30 years, and is devoted to representing the interests of both consumers and employees. The firm has offices in Minneapolis and San Francisco, and currently employs 39 attorneys and a sizeable staff of paralegals, legal assistants, class action clerks, and information technology professionals. A copy of Nichols Kaster's law firm resume (which includes attorney biographies) is attached hereto as **Exhibit 1**.

6. Nichols Kaster has extensive class action experience, including experience litigating ERISA class actions such as this. 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);
- *Kinder v. Koch Indus., Inc.*, No. 1:20-cv-02973 (N.D. Ga.);
- *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.).

7. Our firm took the *Putnam*, *American Century*, and *Lowe's* cases to trial. 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*, and also recently received preliminary approval of our settlement with *Koch Industries*. 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 Co.*, 362 F. Supp. 3d 627 (S.D. Iowa 2019), *Davis v. Stadion Money Mgmt.*, 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.

8. Based on its experience, Nichols Kaster is regarded as a leader in ERISA 401(k) cases. According to a recent Bloomberg BNA article, “Nichols Kaster has been the driving force” behind recent 401(k) self-dealing litigation. *See* Jacklyn Wille, *Deutsche Bank Can't Shake 401(k) Fee Lawsuit*, Bloomberg BNA (Oct. 17, 2016). Attorneys from the firm have been interviewed by

National Public Radio (for the program “All Things Considered”), the Wall Street Journal, Bloomberg, Financial Times, Pensions & Investments, Investment News, Bankrate.com, and other trade publications in connection with their ERISA work. I also have spoken by invitation at several national conferences and seminars on ERISA litigation, including (1) two employee benefits programs sponsored by the American Law Institute (October 22, 2020 and October 24, 2019); (2) a webinar on “Fee Litigation” sponsored by the American Bar Association (November 12, 2019); (3) a Professional Liability Directors & Officers conference on a panel regarding “Plan Fee Litigation” (February 6, 2019); (4) an American Bankers Association Insurance Risk Management Conference on a panel concerning excessive fee ERISA class actions (February 5, 2019); (5) an American Law Institute webcast on Excessive Fee Litigation (November 28, 2018); (6) the American Law Institute’s tax-exempt and government plans education series (September 24, 2018), where I co-presented on “The Current State of Fee Litigation and Its Implications”; (7) the American Conference Institute’s National Forum on ERISA Litigation (on both March 1, 2017 and November 2, 2017), where I was a member of the “Fiduciary Investment Litigation Update” panel; and (8) the Retirement Advisor Council’s annual meeting (May 22, 2018), where I was a member of a panel on “The Moving Litigation Frontier”.

Work Performed by Class Counsel

9. As a result of our firm’s experience litigating ERISA cases and other class action cases, we were able to effectively handle this action and achieve a significant settlement for the Class.

10. Notwithstanding the efficiencies that we gained based our experience, Nichols Kaster has devoted a significant amount of time to this matter. Among other things, we (1) conducted a thorough investigation of the class-wide claims; (2) drafted the initial class action

Complaint (ECF No. 1) and First Amended Complaint (ECF No. 19); (3) responded to Defendants' motion to dismiss; (4) drafted a comprehensive set of discovery requests; (5) responded to Defendants' discovery requests; (6) repeatedly met and conferred with Defendants during the course of discovery; (7) reviewed over 5,000 pages of documents produced by Defendants; (8) produced over 4,000 pages of documents; (9) successfully moved for class certification; (10) drafted a written mediation statement and reply statement; (11) participated in a full-day mediation with Defendants; (12) consulted with the Named Plaintiffs throughout the course of the case; (13) drafted the Settlement Agreement and exhibits thereto; (14) prepared Plaintiffs' Preliminary Approval Motion papers; (15) reviewed the bid received from the Settlement Administrator (Analytics Consulting); (16) reviewed the final drafts of the Notices of Settlement and Former Participant Rollover Form prepared by the Settlement Administrator; (17) worked with the Settlement Administrator to create a settlement website and telephone support line for Class Members; (18) communicated with Class Members; (19) communicated with the Independent Fiduciary (Newport Trust Company) and provided it with necessary information in connection with its review of the proposed release on behalf of the Plan (as called for by Prohibited Transaction Exemption 2003-39 and Paragraph 2.2 of the Settlement Agreement); and (20) prepared the present motion. This work is further detailed in my Declaration in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. *ECF No. 64 ¶¶ 10-12.*

11. The work summarized above required the efforts of numerous attorneys and professional staff at Nichols Kaster. Attached hereto as **Exhibit 2** is a true and correct copy of Nichols Kaster's timekeeper summary in this action. As reflected by this summary, Nichols Kaster attorneys and professional staff have expended approximately 1,253.9 hours pursuing this matter through the date of this Declaration. Our co-counsel and his firm invested approximately 3.4

additional hours (as reported in his declaration), for a grand total of approximately 1,257.3 hours invested by all Class Counsel. We would be happy to provide detailed timekeeper descriptions supporting this time if the Court deems it necessary or helpful.

12. Nichols Kaster's timekeeper rates for ERISA actions such as this range from \$650 to \$900 per hour for attorneys with more than 10 years of experience, \$425 to \$600 per hour for attorneys with 10 years or less experience, and \$250 per hour for paralegals, law clerks, and other support staff. In setting these rates, our firm is cognizant of the rates approved in other ERISA class action cases (as set forth in our accompanying Memorandum of Law), as well as the rates charged by the defense bar in this field.

13. All of the work of Class Counsel has been undertaken on a contingent basis. To date, Class Counsel have not been compensated for any of this work. Based on the hourly rates and work performed, the reported lodestar for our firm amounts to \$702,035, and the total lodestar for all firms amounts to \$704,157.50. *See Ex. 2.*

14. In my professional opinion, and based on my personal knowledge of the work that was performed and the requirements of this case and similar cases, the time that our firm and our co-counsel expended on this action was reasonable and necessary.

15. After the date of this Declaration, we expect to perform additional work on behalf of the Settlement Class, including (1) drafting Plaintiffs' motion for final approval of the Settlement; (2) preparing for and attending the Fairness Hearing; (3) if final approval is granted, supervising the distribution of payments to Class Members; (4) responding to questions from Class Members; and (5) taking other actions necessary to support the Settlement until the conclusion of the Settlement Period.

Litigation Costs

16. In connection with the action, Nichols Kaster advanced all costs of litigation. Because our law firm handled this action on a contingent basis, we have not yet received reimbursement for any of these expenses.

17. As of the date of this Declaration, Nichols Kaster has incurred \$37,675.13 in litigation-related costs in connection with this action. These expenses are broken down below:

Category	Cost
Financial Data Charges	\$14,675.28
Mediation Fee	\$20,000.00
Postage, Shipping, Copies	\$189.35
Process/Courier Service	\$310.00
Relativity Database Hosting and Storage	\$260.38
Westlaw/PACER	\$1,412.71
Travel	\$827.41
TOTAL (Nichols Kaster only)	\$37,675.13

Our co-counsel has reported \$800 in additional litigation costs, for a combined total of \$38,475.13 in litigation costs.

18. The above expenses do not include expenses of settlement administration, which are broken out separately below. *See infra* at ¶¶ 20-22. In the event that the Court would like further detail or documentation concerning our litigation costs, we would be happy to provide it.

19. In my professional opinion, and based on my experience prosecuting this action and overseeing the conduct of the litigation, these expenses were reasonable and necessarily incurred in connection with the action.

Settlement Administration Expenses

Settlement Administrator

20. Analytics Consulting LLC (“Analytics”) has been appointed to serve as the Settlement Administrator in this matter. *See Order Preliminarily Approving Class Action*

Settlement, Approving Procedure and Form of Notice, and Scheduling Final Approval Hearing (ECF No. 67). Analytics has extensive experience administering class action settlements, including several ERISA settlements.¹ Based on the bid submitted by Analytics, it will cost \$62,587 to administer the settlement in this action. This covers all settlement administration work required by the Settlement Agreement, including: (1) preparing and mailing the Notices of Settlement (including postage costs); (2) searching for valid addresses for any Class Members whose Notices were returned as undeliverable; (3) reviewing and processing Former Participant Rollover Forms submitted by Former Participant Class Members; (4) establishing a telephone support line for Class Members; (5) creating and maintaining the Settlement Website; (6) distributing the notices to government officials required by the Class Action Fairness Act (“CAFA”); and (7) managing the project and communicating with the parties regarding the status of settlement administration. In addition, upon final approval of the Settlement, Analytics will calculate payments to Class Members pursuant to the Plan of Allocation, and facilitate delivery of settlement payments to Class Members as provided by the Settlement.

Escrow Agent

21. Alerus Financial (“Alerus”) has been appointed to perform the duties of the Escrow Agent under the Settlement Agreement. *See Settlement Agreement (ECF No. 64-1) ¶ 1.23*. Alerus has successfully performed a similar role with respect to several other ERISA class action settlements. Consistent with the rate charged in other cases, Alerus has agreed to a flat fee of \$2,500 (representing less than 0.02% of the Settlement Fund) for its services as Escrow Agent.

¹ A copy of Analytics’ company profile was previously submitted with Plaintiff’s motion for preliminary approval of the Settlement. *See ECF No. 64-4*.

Independent Fiduciary

22. Additional administrative expenses will be incurred relating to the review of the proposed release on behalf of the Plan by the Independent Fiduciary appointed pursuant to PTE 2003-39 and Paragraph 2.2 of the Settlement Agreement. Under the Settlement Agreement, the Defendants are responsible for arranging the required review by the Independent Fiduciary, and the expense is an Administrative Expense that may be paid from the Settlement Fund. *See Settlement Agreement ¶¶ 1.2; 2.2.* We understand that Defendants have engaged Newport Trust Company to perform the role of the Independent Fiduciary, and the fee for its services in this matter will be \$20,000.

Assistance of the Class Representatives

23. It has been my honor to represent the class representatives in this matter.²

24. Throughout the course of this action, the Named Plaintiffs have been mindful of their responsibilities as class representatives, and have actively participated in the action. Among other things, they (1) reviewed the allegations in the Complaints bearing their names; (2) provided information to our firm in connection with the lawsuit; (3) produced documents in response to Defendants' discovery requests; (4) reviewed and signed answers to interrogatories; (5) communicated with our firm regarding the litigation and Settlement; and (6) reviewed the Settlement Agreement in its entirety.

25. Based on the time and assistance that the Named Plaintiffs provided as class representatives, the risks they assumed, and the benefits that they have helped obtain for the Settlement Class, I believe that the requested class representative service awards are reasonable

² In connection with the representation, the Named Plaintiffs agreed to a one-third contingency fee, and to reimbursement of expenses in the event that the action was successfully resolved.

and appropriate.

No Objections

26. The Notices of Settlement that were approved by the Court disclosed the terms of the Settlement and also contained an explanation of the attorneys' fees, costs and expenses, and class representative service awards that would be sought in connection with the Settlement. To my knowledge, none of the Class Members have objected to the Settlement terms or the proposed fees, costs and expenses, or service awards as of the date of this motion.

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

Dated: August 25, 2021

/s/ Kai H. Richter
Kai H. Richter

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2021, a true and correct copy of the foregoing *Declaration of Kai Richter in Support of Plaintiffs' Motion for Approval of Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Service Awards* was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ Kai H. Richter
Kai H. Richter