

**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
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

I, Kai Richter, hereby submit this Declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement.

1. I am a partner at the law firm of Nichols Kaster, PLLP, and am one of the attorneys appointed by the Court to represent the Settlement Class in the above-captioned action. *See ECF No. 67 ¶ 5.*

2. For the reasons stated in my earlier Declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (*ECF No. 64*), I believe that the Settlement is fair, reasonable, and adequate.

Report of the Independent Fiduciary

3. Pursuant to Prohibited Transaction Exemption 2003-39 (PTE 2003-39)¹ and Paragraph 2.2 of the Settlement Agreement (*ECF No. 64-01*), an Independent Fiduciary (Newport Trust Company) reviewed the Settlement on behalf of the Investment-Incentive Plan for John Hancock Employees ("Plan"). As part of this review, the Independent Fiduciary personally discussed the Settlement with me (and separately with defense counsel) by telephone, and

¹ See 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830.

subsequently issued a letter after the review. A true and correct copy of the letter is attached hereto as **Exhibit A**. In the letter, the Independent Fiduciary stated that: “(i) the Settlement terms, the \$14,000,000 Settlement amount and non-monetary relief provided for in the Settlement, and the amount of any attorneys’ fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan’s likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone; (ii) the scope of the release of claims is reasonable and is consistent with the release of other ERISA settlements we have reviewed in the past year; (iii) the terms and conditions of the transaction are no less favorable to the Plan than comparable arm’s-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances; and (iv) the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.” *Id. at 2-3*. Accordingly, the Independent Fiduciary “authorize[d] the Plan’s participation in the Settlement” in accordance with Prohibited Transaction Exemption 2003-39 (“PTE 2003-39”). *Id. at 3*.

Reaction of the Class to the Settlement

4. The reaction of the Class to the Settlement also has been favorable overall. The period to timely object pursuant to the Preliminary Approval Ordered ended September 8, 2021. *See ECF No. 67 ¶ 6*. As of the date of this declaration, there have been no objections to the Settlement out of 14,453 Class Members who were sent a Notice of Settlement.

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

Dated: September 15, 2021

/s/ Kai H. Richter
Kai H. Richter

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2021, a true and correct copy of the foregoing *Declaration of Kai Richter in Support of Plaintiffs' Motion Final 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

EXHIBIT A



September 1, 2021

John Hancock Life Insurance Company (U.S.A)
c/o James O. Fleckner, Esq.
Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02110

Re: Statement of Independent Fiduciary – Settlement of *Baker et al., v. John Hancock Life Insurance Company (U.S.A) et al.*

Ladies and Gentlemen:

This statement is made by Newport Trust Company (“Newport Trust”) in its capacity as independent fiduciary for the Investment-Incentive Plan for John Hancock Employees (the “Plan”) in connection with the proposed settlement (the “Settlement”) of the class action lawsuit captioned *Baker, et al., v. John Hancock Life Insurance Company (U.S.A.) et al.* No. 1:20-cv-10397-GAO (the “Litigation”), in the United States District Court for the District of Massachusetts

Newport Trust was engaged by John Hancock Life Insurance Company (the “Company”), acting on behalf of the Plan, pursuant to U.S. Department of Labor Prohibited Transaction Class Exemption 2003-39, as amended, 75 Fed. Reg. 33,830 (June 15, 2010) (the “Class Exemption”), to serve as the independent fiduciary for the Plan for the limited purpose of determining whether to authorize the Plan’s participation in the Settlement as described below. Newport Trust has extensive experience in serving in the capacity of an independent fiduciary on behalf of employee benefit plans in connection with the settlement of litigation, and is closely familiar with the fiduciary obligations imposed by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

The Class Exemption permits a plan subject to ERISA, such as the Plan, to release a claim against a party in interest in exchange for consideration, provided certain requirements are met. Among these requirements is the authorization of the plan’s participation in the settlement by a fiduciary that “has no relationship to, or interest in, any of the parties involved in the litigation, other than the plan, that might affect the exercise of such person’s best judgment as a fiduciary.” The Class Exemption is designed to ensure that, subject to court approval, a party that is independent of the plan sponsor (here, a defendant in the Litigation) represents the plan’s interests in settling a claim. Absent the Class Exemption, an ERISA plan’s entry into such a settlement could be a prohibited transaction under Section 406 of ERISA, 29 U.S.C. §1106.

In accordance with the conditions of the Class Exemption, Newport Trust may authorize the Plan’s participation in the Settlement if the Settlement satisfies the applicable conditions of the Class Exemption including that: (i) the terms of the Settlement, including the scope of the release of claims; the amount of cash and the value of any non-cash assets and other consideration received by the Plan and the amount of the attorneys’ fees and other amounts paid from the recovery, are reasonable in light of the Plan’s likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone; (ii) the terms and conditions of the transaction are no less favorable to the Plan than comparable arm’s-length terms and conditions that would have been agreed to by

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unrelated parties under similar circumstances; and (iii) the transaction isn't part of an agreement, arrangement, or understanding designed to benefit a party in interest.

Consistent with the requirements of the Class Exemption: (i) Newport Trust has no relationship to, or interest in, any of the parties involved in the Litigation that might affect the exercise of its best judgment as an independent fiduciary; (ii) the terms of the Settlement are specifically described in a written settlement agreement; (iii) Newport Trust has acknowledged in writing that it is a fiduciary on behalf of the Plan with respect to the Settlement; and (iv) Newport Trust will maintain or cause to be maintained for a period of six years the records described in the Class Exemption.

In making the determinations described above and deciding whether to accept or reject the Settlement on behalf of the Plan, Newport Trust is required to act in accordance with the fiduciary responsibility standards of ERISA. Consistent with the Class Exemption, Newport Trust can authorize the Settlement on behalf of the Plan if, after a review of the Settlement, Newport Trust concludes that the chances of obtaining any further relief for the Plan from the settling defendants are not justified by the expense and risk involved in pursuing such relief. In determining whether the Settlement is reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone, Newport Trust is obligated to weigh these factors pursuant to a prudent decision-making process, given the facts and circumstances of the Litigation.

Newport Trust primarily considered the merits of the parties' claims and their respective arguments; the amount of cash consideration paid in connection with the Settlement; and the terms of the Settlement, including but not limited to the scope of the release, the plan of allocation, and the amount of legal fees requested by Plaintiffs' counsel.

In fulfilling its responsibilities and in evaluating the reasonableness of the Settlement, Newport Trust has taken the following actions:

1. Reviewed court documents relating to the Litigation that it deemed relevant;
2. Reviewed Plan documents provided to by the Company that it deemed relevant;
3. Interviewed counsel for the parties;
4. Evaluated the strengths and weaknesses of the legal and factual arguments on which the Litigation was based;
5. Reviewed and analyzed the terms of the Settlement, including but not limited to the Settlement consideration and the scope of the Settlement release;
6. Reviewed the plan of allocation proposed by the parties; and
7. Reviewed Plaintiffs' counsel's request for attorneys' fees.

Based on its evaluation of the relevant documents and information associated with the class action and the Settlement, and taking into account the fiduciary obligations imposed by ERISA, Newport Trust has concluded, consistent with the requirements of the Class Exemption, that: (i) the Settlement terms, the \$14,000,000 Settlement amount and non-monetary relief provided for in the Settlement, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone; (ii) the scope of the release of claims is reasonable



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and is consistent with the release of other ERISA settlements we have reviewed in the past year; (iii) the terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances; and (iv) the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

As a result, Newport Trust has determined that the Plan should not object to the Settlement or any portion thereof, including but not limited to the requested attorneys' fees and costs, and as such authorizes the Plan's participation in the Settlement.

Very truly yours,

By: 
Name: William E. Ryan III
Title: President and Chief Fiduciary Officer