

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

Eric Goldstein, Matt Sudol, and Bonnie Zelazek, individually and as representatives of a class of similarly situated persons, and on behalf of the Mutual of America Life Insurance Company Savings Plan,

Plaintiffs,

v.

Mutual of America Life Insurance Company, the Mutual of America Investment Manager Committee, and John and Jane Does 1-20,

Defendants.

Case No. 1:22-cv-7862-GHW-OTW

CLASS ACTION

**Declaration of Brock J. Specht in Support of
Plaintiffs' Motion for Approval of Attorneys' Fees and Costs, Administrative Expenses,
and Class Representative Service Awards**

I, Brock J. Specht, declare and state as follows:

1. I am a partner at Nichols Kaster, PLLP ("Nichols Kaster"), and am one of the attorneys of record for Plaintiffs in the above captioned action. In its Preliminary Approval Order *ECF No. 63*, the Court appointed Nichols Kaster to serve as Class Counsel on behalf of the Settlement Class. I respectfully submit this declaration in support of the accompanying Motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Service Awards.

Professional Overview

2. I am licensed 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 in which I have been admitted is set forth below:

United States Court of Appeals for the Second Circuit
United States Court of Appeals for the Third Circuit
United States Court of Appeals for the Fourth Circuit
United States Court of Appeals for the Eighth Circuit
United States Court of Appeals for the Ninth Circuit
United States District Court for the District of Colorado
United States District Court for the District of Minnesota
United States District Court for the Western District of New York
United States District Court for the District of North Dakota
United States District Court for the Eastern District of Wisconsin
Minnesota Supreme Court

3. I have been actively engaged in the practice of law since 2007 and have been counsel of record for both plaintiffs and defendants in numerous large, complex cases that have resolved through the payments of hundreds of millions of dollars in settlements or awards. The principal types of cases that I have handled at Nichols Kaster are consumer class actions and ERISA class actions. With regard to ERISA class actions, I have substantial experience litigating these cases in federal courts across the country and, in connection with those cases, I have been involved in negotiating class action settlements providing for more than \$250 million in available relief to ERISA plan participants. I have been admitted *pro hac vice* in numerous federal courts across the country and have argued before the United States Courts of Appeal for the Second, Eighth, and Ninth Circuits.

4. Along with my partner Paul Lukas, who is also counsel of record in this matter, I am one of the leaders of the ERISA practice group at Nichols Kaster. We have one of the most active and successful plaintiff-side ERISA litigation groups in the country. 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 twenty-five other class action cases involving retirement plans as set forth below:

- *Andrus v. NY Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y.);

- *Baker v. John Hancock Life Ins. Co. (U.S.A.)*, No. 1:20-cv-10397 (D. Mass.);
- *Beach v. JPMorgan Chase Bank, N.A.*, No. 1:17-cv-00563 (S.D.N.Y.);
- *Berry v. FirstGroup America, Inc.*, No. 1:18-cv-00326 (S.D. Ohio);
- *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.);
- *Falberg v. The Goldman Sachs Group, Inc.*, No. 19-cv-9910 (S.D.N.Y.);
- *Hill v. Mercy Health Corp.*, No. 3:20-cv-50286 (N.D. Ill.);
- *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-00375 (W.D.N.Y.);
- *Intravaia v. Nat'l Rural Elec. Coop. 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. Ret. Comm. of CHS/Community Health Sys., Inc.*, No. 3:19-cv-00689 (M.D. Tenn.);
- *Larson v. Allina Heath Sys.*, No. 0:17-cv-03835 (D. Minn.);
- *Main v. American Airlines, Inc.*, No. 3:16-cv-01033 (N.D. Tex.);
- *Mass v. Regents of the Univ. of California*, No. RG17-879223 (Alameda County Super. Ct.);
- *Moitoso 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.);
- *Pecou v. Bessemer Trust Co.*, No. 1:22-cv-01019 (S.D.N.Y.);
- *Reetz v. Lowe's Co.*, 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 Fin. Servs. Co.*, No. 1:17-cv-11249 (D. Mass.); and
- *Wildman v. American Century Servs., LLC*, No. 4:16-cv-00737 (W.D. Mo.).

5. Our firm took the *Putnam*, *American Century*, and *Lowe's* cases to trial. We received final court approval of settlements in *New York Life*, *John Hancock*, *JPMorgan Chase*, *McKinsey & Co.*, *Putnam*, *Oasis Outsourcing*, *Koch*, *M&T*, *Mercy Health*, *National Rural Electric Cooperative Association* (“NRECA”), *Fujitsu*, *Huntington Bank*, *CHS/Community Health Systems*, *Allina*, *American Airlines*, *FMR LLC* (also known as Fidelity), *Deutsche Bank*, *Lowe's* (partial settlement), *BB&T*, *SEI*, *Demoulas Super Markets*, *Allianz*, and *Massachusetts Financial Services*. We won contested class certification motions in *Goldman Sachs*, *JPMorgan Chase*, *Putnam*, *University of California*, *Deutsche Bank*, *BB&T*, *Allianz*, and *American Century*, and reached stipulations concerning class certification in our cases with *John Hancock*, *FirstGroup*, *Fidelity*, *Lowe's*, and *Massachusetts Financial Services*. We also defeated motions to dismiss in many of these cases in whole or in part, including *John Hancock*, *JPMorgan Chase*, *Putnam*, *M&T*, *NRECA*, *Fujitsu*, *Goldman Sachs*, *FirstGroup*, *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),

McGinnes v. FirstGroup America, Inc., No. 1:18-cv-00326, ECF No. 59 (S.D. Ohio March 18, 2021), *Stark v. Keycorp*, No. 1:20-cv-01254, ECF No. 24 (N.D. Ohio May 4, 2021), *Kohari v. MetLife Grp., Inc.*, No. 21 CIV. 6146 (JPC), 2022 WL 3029328, at *1 (S.D.N.Y. Aug. 1, 2022); *Klawonn v. Bd. of Directors for the Motion Picture Indus. Pension Plans*, No. CV-20-9194-DMG (JEMx), 2022 WL 17224708, at *1 (C.D. Cal. Sept. 27, 2022); *Thomson v. Caesars Holdings Inc.*, No. 2:21-cv-00961, ECF No. 109, (D. Nevada March 13, 2023), and *Schaf v. O-I Glass, Inc.*, No. 3:22-cv-1240, ECF No. 33 (N.D. Ohio June 30, 2023).

6. The firm is viewed as a leader in ERISA 401(k) cases. According to a Bloomberg BNA article, “Nichols Kaster has been the driving force” behind 401(k) self-dealing litigation. *See* Jacklyn Wille, *Deutsche Bank Can’t Shake 401(k) Fee Lawsuit*, Bloomberg BNA (Oct. 17, 2016). Attorneys from Nichols Kaster have been interviewed by National Public Radio’s “All Things Considered”, the Wall Street Journal, Bloomberg, Financial Times, Investment News, Bankrate.com, and several trade publications in connection with their ERISA work.

Law Firm Overview

7. 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 34 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) was previously filed in this action as Exhibit B to the Declaration of Brock Specht in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, *ECF No. 57-2*.

8. Nichols Kaster has extensive class action and collective action experience. The firm has been appointed lead counsel or co-counsel on hundreds of class and collective actions, and has recovered over \$750 million for its clients.

9. Nichols Kaster was named one of the top 50 elite trial firms by National Law Journal in September 2014, and also has been ranked as a Best Law Firm by U.S. News and World Report. In addition, Nichols Kaster has received praise from numerous courts for its work. The firm's lawyers have litigated dozens of cases through trial, and have managed discovery in cases involving millions of pages of documents. The firm is also well regarded for its appellate work, and has been involved in two successful appeals before the United States Supreme Court, *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92 (2015) and *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1 (2011).

Work Performed by Class Counsel

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

11. Notwithstanding the efficiencies that we were able to gain based on our experience, Nichols Kaster has devoted a significant amount of time to this case. Among other things, we: (1) thoroughly investigated the class-wide claims; (2) drafted a detailed Complaint, *ECF No. 1*, and subsequently drafted an Amended Complaint, *ECF No. 32*, (3) responded to Defendants' motion to dismiss; (4) reviewed documents produced by Defendants at Plaintiffs' request; (5) consulted with the Class Representatives throughout the case; (6) drafted the Settlement Agreement and exhibits thereto; (7) prepared Plaintiffs' Preliminary Approval Motion papers; (8) reviewed the bid received from the Settlement Administrator (Atticus Administration LLC

(“Atticus”)); (9) reviewed the final drafts of the Settlement Notices and Rollover Form prepared by Atticus, and ensured that they were timely mailed by Atticus; (10) worked with Atticus to create a settlement website and telephone line for Class Members who wished to obtain additional information about the Settlement; (11) communicated with Class Members who contacted our office; (12) consulted with the class representatives throughout the course of the case; and (13) prepared the present motion and supporting papers. This work is further detailed in the Declaration of Brock Specht in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, *ECF No. 57*.

12. The work summarized above required the efforts of numerous attorneys and professional staff at Nichols Kaster. Attached hereto as **Exhibit 1** is a true and correct copy of Nichols Kaster’s timekeeper summary in this action. As reflected by this summary, Nichols Kaster attorneys have expended 405.8 hours pursuing this matter through the date of this Declaration, and Nichols Kaster professional staff (including paralegals, law clerks, legal assistants, class action clerks, and information technology professionals) have expended an additional 151.8 hours, for a total of 557.6 hours by Nichols Kaster personnel. We would be happy to provide detailed billing records if the Court deems them necessary or helpful.

13. Nichols Kaster’s reported billing rates for ERISA actions such as this range from \$675 to \$950 per hour for attorneys with 10 or more years of experience, \$450 to \$675 per hour for attorneys with less than 10 years of experience, and \$250 per hour for paralegals and clerks.

14. 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.

15. All of the work of Class Counsel has been undertaken on a contingent basis.¹ To date, Class Counsel have not been compensated for any of this work. Based on our hourly rates and work performed, the total lodestar for our firm amounts to \$265,305.00. See **Exhibit 1**.

16. 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 expended on this action by Class Counsel was reasonable and necessary.

17. After the date of this Declaration, we expect to perform additional work on behalf of the Settlement Class, including: (1) communicating with the Independent Fiduciary as part of its review of the proposed Settlement on behalf of the Plans (*see infra* ¶ 23); (2) drafting Plaintiffs' motion for final approval of the Settlement; (3) preparing for and attending the final approval hearing; (4) if final approval is granted, supervising the Settlement Administrator and Escrow Agent to ensure proper and efficient distribution of payments to the Class Members; (5) responding to any additional questions from Class Members; and (6) taking any other actions necessary to support the Settlement until the conclusion of the Settlement Period.

Litigation Costs

18. In connection with the action, Class Counsel 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.

¹ 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.

19. As of the date of this Declaration, Nichols Kaster has incurred \$18,553.28 in litigation-related costs in connection with this matter. These expenses are broken down below:

Category	Cost
Financial Data Charges	\$ 7,465.61
Court Fees	\$ 908.30
Pacer/Westlaw	\$ 1,121.99
Travel Expenses	\$ 8,685.22
Transcripts	\$ 91.68
Relativity Database Hosting and Storage	\$ 15.35
Process/Courier Service	\$ 265.13
TOTAL	\$ 18,553.28

20. These expenses do **not** include expenses of settlement administration, which are broken out separately below. *See infra* ¶¶ 22-23. In the event that the Court would like further detail or documentation concerning our litigation costs, we would be happy to provide it.

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

Settlement Administration Expenses

Settlement Administrator and Escrow Agent

22. Atticus Administration LLC (“Atticus”) has been selected to serve as the Settlement Administrator and Escrow Agent in this matter. *See Preliminary Approval Order, ECF No. 63 at* ¶ 7. Atticus has extensive experience administering class action settlements, including several ERISA settlements.² Based on the bid submitted by Atticus, it will cost \$23,469 to administer the settlement in this action. This covers all work required of the Settlement Administrator under the Settlement Agreement, including (1) reviewing the class member information provided by

² A copy of Atticus’s company profile is attached as **Exhibit 2**.

Defendants; (2) preparing and mailing the Settlement Notices; (3) searching for valid addresses for any Settlement Class Members whose Notices were returned as undeliverable; (4) reviewing and processing Rollover Forms submitted by Former Participant Class Members; (5) establishing a telephone support line for Class Members; (6) creating and maintaining the Settlement Website; (7) distributing the notices to government officials required by the Class Action Fairness Act (“CAFA”); and (8) managing the project and communicating with the parties regarding the status of settlement administration. In addition, upon final approval of the Settlement, Atticus will facilitate delivery of settlement payments to Class Members as provided by the Settlement.

Independent Fiduciary

23. Additional administrative expenses will be incurred relating to the review of the proposed release on behalf of the Plan by the Independent Fiduciary appointed under Prohibited Transaction Exemption 2003-39 and Paragraph 2.2 of the Settlement Agreement. Under the Settlement Agreement, 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. We understand that the Defendants have engaged Newport Trust Company, LLC, to perform the role of the Independent Fiduciary, and the fee for its services in this matter will be \$12,500. Based on my experience, this amount is reasonable and consistent with the fees charged by experienced independent fiduciaries for an engagement of this nature.

Assistance of the Class Representatives

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

25. 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 have (1) reviewed the allegations in the complaints bearing their names; (2)

provided information and documents to our firm to assist with the investigation and prosecution of this action; (3) made themselves available to answer questions from our firm and stayed informed on the status of the action; and (4) conferred with our firm regarding the potential strengths and weaknesses of the claims asserted in this action and the potential risks and rewards of the Settlement compared to pursuing litigation.

26. Based on the time and assistance that the named Plaintiffs have provided as class representatives, their initiative in pursuing this action, and the risks that they assumed, I believe that the requested class representative service awards are reasonable and appropriate. As noted in our motion papers, the amount that the named Plaintiffs are seeking (\$5,000 per class representative) is consistent with other ERISA cases.

No Objections

27. The Settlement Notices that were approved by the Court disclosed the terms of the Settlement and also contained an explanation of the of attorneys' fees, costs and expenses, and class representative compensation 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 class representative compensation as of the date of this motion.

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

Dated: August 23, 2023

s/ Brock J. Specht
Brock J. Specht