

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

Wendy Berry, Lorri Hulings, and Kathleen Sammons, individually and as representatives of a class of similarly situated persons, and on behalf of the FirstGroup America, Inc. Retirement Savings Plan,

Plaintiffs,

v.

FirstGroup America, Inc., FirstGroup America, Inc. Employee Benefits Committee, and Aon Hewitt Investment Consulting, Inc.,

Defendants.

Case No. 1:18-cv-00326-KLL

Judge Karen L. Litkovitz

DECLARATION OF BROCK J. SPECHT IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS, ADMINISTRATIVE EXPENSES, AND CLASS REPRESENTATIVES' COMPENSATION 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. 179*, 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 Representatives' Compensation 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. For the last several years, the principal types of cases that I have handled at Nichols Kaster are 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 lead 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 thirty 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);

- *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.);
- *Drust v. Southwest Research Institute*, No. 5:23-cv-0767 (W.D. Texas);
- *Falberg v. The Goldman Sachs Group, Inc.*, No. 19-cv-9910 (S.D.N.Y.);
- *Goldstein v. Mutual of America Life Insurance Co.*, No. 1:22-cv-7862 (S.D.N.Y.);
- *Hill v. Mercy Health Corp.*, No. 3:20-cv-50286 (N.D. Ill.);
- *Goldstein v. Mutual of Am. Life Ins. Co.*, No. 1:22-cv-7862 (S.D.N.Y.);
- *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.);
- *Rocke v. Allianz Asset Management of America LLC*, No. 8:23-cv-00098 (C.D. Cal.);
- *Schaf v. O-I Glass, Inc.*, No. 3:22-cv-01240 (N.D. Ohio);
- *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.);
- *Wanek v. Russell Invs. Trust Co.*, No. 2:21-cv-00961 (D. Nev.); and
- *Wildman v. American Century Servs., LLC*, No. 4:16-cv-00737 (W.D. Mo.).

5. Our firm took the *Putnam*, *American Century*, *Lowe's*, and *University of California* 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*, *Urakhchin v. Allianz*, *Massachusetts Financial Services*, *Mutual of America*, *Rocke v. Allianz*, *Southwest Research Institute*, *O-I Glass*, and *Bessemer*. We won contested class certification motions in *Goldman Sachs*, *JPMorgan Chase*, *Putnam*, *University of California*, *Deutsche Bank*, *BB&T*, *Allianz*, *American Century*, *Waldner v. Natixis Investment Managers, L.P.*, No. 1:21-cv-10273 (D. Mass), and *Klawonn v. Board of Directors for the Motion Picture Industry Pension Plans*, No. 2:20-cv-09194 (C.D. Cal.), and reached stipulations concerning class certification in our cases with

John Hancock, FirstGroup, Fidelity, Lowe's, Russell Investments, and Massachusetts Financial Services. We also defeated motions to dismiss in many of these cases in whole or in part, including the present case, *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); *Laidig v. GreatBanc Trust Company*, No. 1:22-cv-01296, ECF No. 70, (N.D. Ill. January 31, 2023); *Thomson v. Caesars Holdings Inc.*, No. 2:21-cv-00961, ECF No. 109, (D. Nevada March 13, 2023), *Schissler v Janus Henderson US (Holdings) Inc.*, No. 22-cv-02326, ECF No. 58, (D. Colo. January 22, 2024); and *Randall v. GreatBanc Trust Co.*, No. 22-cv-2354, ECF No. 122, (D. Minn. February 13, 2024).

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 45 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 more than thirty 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 J. Specht in Support of Plaintiffs’ Motion for Preliminary Approval of Partial Class Action Settlement, *ECF No. 144-4*.

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) conducted a thorough investigation of the class-wide claims; (2) drafted a detailed Class Action Complaint (ECF No. 1); First Amended Complaint (ECF No. 35); and Second Amended Complaint (ECF No. 71); (3) responded to Defendants' Motions to Dismiss the Complaint (ECF Nos. 37 and 38); (4) propounded numerous discovery requests and repeatedly met and conferred with Defendants regarding discovery; (5) analyzed approximately 350,000 pages of documents produced by Defendants and additional data regarding the class; (6) produced over 7,000 pages of documents; (7) issued subpoenas and pursued relevant discovery from five non-parties¹ and reviewed documents produced by those non-parties; (8) took 14 depositions of fact witnesses and defended the deposition of the named Plaintiffs; (9) engaged three experts (Brian Becker, Steve Pomerantz, and Skip Halpern) and assisted them in drafting their expert reports; (10) defended or deposed a total of seven expert witnesses; (11) responded to the FGA Defendants' motion for summary judgment (ECF No. 107); (12) responded to the FGA Defendants' *Daubert* motion (Dkt. 156); (13) participated in a mediation with David Geronemus and the FGA Defendants, and prepared a lengthy mediation statement in advance; (14) drafted the Settlement Agreement and

¹ These non-parties included CapFinancial Partners, LLC; Curcio Webb, LLC; Employee Benefits Solutions Consulting, LLC; Wilshire Advisors LLC; and Russell Investments Trust Company. Callan LLC, Gallagher Fiduciary Advisors LLC, NEPC LLC, PricewaterhouseCoopers LLP, Wells Fargo Bank N.A., and Willis Towers Watson.

exhibits thereto (including the Settlement Notices, Former Participant Rollover Form, and the proposed preliminary approval order); (15) prepared Plaintiffs' Preliminary Approval Motion papers; (16) reviewed the bid received from the settlement administrator (Analytics Consulting LLC); (17) reviewed the final drafts of the Settlement Notices prepared by Analytics, and ensured that they were timely mailed by Analytics; (18) worked with Analytics to create a settlement website and telephone line for Class Members who wished to obtain additional information about the Settlement; (19) communicated with Class Members who contacted our office; (20) consulted with Plaintiffs as the named Class Representatives throughout the course of the case; and (21) 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 Partial Class Action Settlement, *ECF No. 144-2*.

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 4,856.1 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 709.4 hours, for a total of 5,565.5 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 \$975 per hour for attorneys with 10 or more years of experience, \$475 to \$575 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.² 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 \$3,501,735.00. *See* **Exhibit 1**. Of the 4,856.1 total attorney hours spent on this case, over 70% of the hours were performed by four attorneys: Paul Lukas (956 hours), Brock Specht (788 hours), Mark Thomson (1,194.4 hours), and Steve Eiden (593.8 hours) (collectively 3,532.2 hours or 73% of the total attorney hours). *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 Plan (*see infra* ¶ 23); (2) drafting Plaintiffs' motion for final approval of the Settlement; (3) preparing for and attending the Fairness Hearing; (4) if final approval is granted, supervising the Settlement Administrator and Escrow Agent to ensure proper and efficient distribution of payments to the Settlement Class members; (5) responding to any additional questions from Settlement Class members; and (6) taking any other actions necessary to support the Settlement until the conclusion of the Class Period.

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.

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.

19. As of the date of this Declaration, Nichols Kaster has incurred \$614,047.43 in litigation-related out-of-pocket costs in connection with this matter. These expenses are broken down below:

Category	Cost
Financial Database Subscription Charges	\$ 31,747.52
Expert Fees	\$481,886.51
Transcripts	\$53,089.60
Court Fees	\$3,403.35
Pacer/Westlaw	\$5,870.76
Postage, Shipping, Copies	\$688.96
Travel Expenses	\$9,214.18
Relativity Document Database Hosting and Storage	\$10,509.31
Process/Courier Service	\$1,645.94
Mediation	\$15,146.35
Records Requests	\$844.95
TOTAL	\$614,047.43

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. Analytics Consulting, LLC (“Analytics”) has been selected to serve as the Settlement Administrator and Escrow Agent in this matter. *See Preliminary Approval Order, ECF No. 179 at ¶ 7.* Analytics has extensive experience administering class action settlements, including several ERISA settlements.³ Based on the bid submitted by Analytics, it will cost \$101,444.00 to administer the settlement in this action. This covers all work required of the Settlement Administrator under the Settlement Agreement, including (1) reviewing the Settlement Class member information provided by Defendants; (2) preparing and distributing the Class Notices; (3) searching for valid addresses for any Settlement Class members whose Class Notices were returned as undeliverable; (4) reviewing and processing rollover forms submitted by Former Participant Class Members; (5) establishing a telephone support line for Settlement 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, Analytics will facilitate delivery of settlement payments to Settlement 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 Plans by the Independent Fiduciary appointed under Prohibited Transaction Exemption 2003-39 and Paragraph 2.2 of the Settlement Agreement. Under the

³ A copy of Analytics’ firm resume is filed at ECF No. 144-05.

Settlement Agreement, the FGA 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 Qualified Settlement Fund. We understand that the Defendants have engaged Fiduciary Counselors Inc. to perform the role of the Independent Fiduciary, and the fee for its services in this matter will be \$15,000. 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 Settlement Class Representatives

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

25. Throughout the course of this action, the Named Plaintiffs have been mindful of their responsibilities as Settlement 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) reviewed and signed answers to interrogatories; (4) appeared for their depositions; and (5) made themselves available to answer questions from our firm and stayed informed on the status of the action.

26. Based on the time and assistance that the Named Plaintiffs have provided as Settlement Class representatives, their initiative in pursuing this action, and the risks that they assumed, I believe that the requested Compensations Awards are reasonable and appropriate. As noted in our motion papers, the amount that the Named Plaintiffs are seeking as Settlement Class representatives (\$10,000 per class representative) is consistent with other ERISA cases.

Value of the Settlement

27. According to Plaintiffs' expert, aggregate damages to the Plan had a present value

between \$40,800,000 and \$65,000,000 as of February 28, 2022. Accordingly, the amount provided by the Settlement, \$9,000,000, recovers approximately 14% to 22% of the total claimed damages that would have been sought at trial.

No Objections

28. The Class 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 Settlement 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: November 8, 2024

/s/ Brock J. Specht
Brock J. Specht

CERTIFICATE OF SERVICE

I, Brock J. Specht, hereby certify that I served this document on counsel of record via ECF on November 8, 2024.

/s/ Brock J. Specht
Brock J. Specht