

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Mark Drust individually and as a
representative of a class of similarly situated
persons, and on behalf of the Southwest
Research Institute Retirement Plan

Plaintiff,

v.

Southwest Research Institute, and John Does
1-20,

Defendants.

Civil Case No. 5:23-cv-767-XR

**PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS, ADMINISTRATIVE
EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARD**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 9, 2024, 11:00 a.m., before the Honorable Xavier Rodriguez, United States District Judge, at the United States District Court of the Western District of Texas, 262 West Nueva Street, San Antonio, TX, 78207, Plaintiff Mark Drust will and hereby does move this Court for An Order awarding: (1) attorneys' fees to Class Counsel in the amount of \$100,000 (one-fifth of the \$500,000 Qualified Settlement Fund); (2) reimbursement of \$7,876.89 in litigation costs; (3) \$37,700 in settlement administration expenses; and (4) a settlement class representative compensation award in the amount of \$2,500 to the Class Representative.

This motion is made under Federal Rule of Civil Procedure 23(h) and Article 8 of the Parties' Class Action Settlement Agreement, *ECF No. 36-3*, and is based on the accompanying Memorandum of Law and authorities cited therein, the Declaration of Brock J. Specht and exhibits

thereto, the previously filed declaration of the Class Representative, *ECF No. 36-5*, the previously filed declaration of Brock J. Specht, *ECF No. 36-2*, the Settlement Agreement, and all files, records, and proceedings in this matter.

Pursuant to Article 8 of the Settlement Agreement, Defendant does not take any position with respect to this motion. As of the filing of this motion, there have been no objections to the proposed attorneys' fees and costs, Settlement Administrative Expenses, or Class Representative Award.

Dated: June 12, 2024

Respectfully submitted,

NICHOLS KASTER, PLLP

By: /s/ Brock J. Specht

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF/CM e-filing system to all counsel of record who are deemed to have consented to electronic service on this 12th day of June 2024.

/s/ Brock J. Specht

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**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND COSTS, ADMINISTRATIVE EXPENSES, AND CLASS
REPRESENTATIVE SERVICE AWARD**

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INTRODUCTION

In this ERISA class action, Plaintiff and Class Counsel¹ obtained a settlement creating a \$500,000 Qualified Settlement Fund for approximately 7,840 Class Members. As compensation for their efforts, Class Counsel request attorneys' fees in the amount of \$100,000 (one-fifth of the Qualified Settlement Fund). This amount reflects Class Counsel's time and labor litigating this large and complex ERISA class action and the considerable risks that Class Counsel assumed in bringing this contingency-fee case borne out of their own investigation.

This request is significantly *less* than the market rate in complex ERISA class actions like this, where courts "routinely approve fee awards of one-third of the common fund." [*Cates v. Trustees of Columbia Univ. in City of New York*, 2021 WL 4847890, at *7 \(S.D.N.Y. Oct. 18, 2021\)](#) (collecting cases); [*Kruger v. Novant Health, Inc.*, 2016 WL 6769066, *2 \(M.D.N.C. Sept. 29, 2016\)](#) ("[C]ourts have found that '[a] one-third fee is consistent with the market rate' in a complex ERISA 401(k) fee case such as this[.]"); [*Tussey v. ABB, Inc.*, 2019 WL 3859763, at *4 \(W.D. Mo. Aug. 16, 2019\)](#) ("Class Counsel's requested one-third fee is common in these cases.")² Consistent with this market rate, Courts have approved one-third fee awards to Class Counsel in several similar ERISA class actions.³

¹ The Court preliminarily approved Nichols Kaster, PLLP as counsel for the Settlement Class. *See ECF No. 37* ¶ 1.

² *See also, e.g., Spano v. Boeing*, 2016 WL 3791123, at *2 (S.D. Ill. Mar. 31, 2016) (awarding 1/3 fee in ERISA breach of fiduciary duty case); [*Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at *2 \(D. Minn. July 13, 2015\)](#) (same); *Leber v. Citigroup, 401(k) Pension Plan Investment Committee, et al.*, No. 07-9329-SHS, ECF No. 294 (S.D.N.Y. Jan. 3, 2019) (same).

³ *See, e.g., Reetz v. Lowe's Cos.*, No. 5:18-cv-00075, Dkt. 263 at *1–2 (W.D.N.C. Oct. 12, 2021); [*Karpik v. Huntington Bancshares Inc.*, 2021 WL 757123, at *1 \(S.D. Ohio Feb. 18, 2021\)](#); *Intravaia v. Nat'l Rural Elec. Coop. Assoc.*, No. 1:19-cv-973, Dkt. 114 (E.D. Va. Feb. 25, 2021); *Beach v. JPMorgan Chase Bank*, No. 1:17-cv-00563, Dkt. 232 at ¶¶ 2, 3 (S.D.N.Y. Oct. 7, 2020); *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-375, Dkt. 190 (W.D.N.Y. Sept. 3, 2020); [*Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *13 \(E.D. Pa. Feb. 28, 2020\)](#); [*Sims v. BB&T Corp.*, 2019](#)

Consistent with this market rate utilized across the country, Judge Chestney recently approved a one-third fee request in an ERISA breach of fiduciary duty case in the Western District of Texas, identifying that the “proposed award of 33 1/3% of the total settlement is reasonable and consistent with awards made by other district courts in this Circuit[.]” [Blackmon v. Zachary Holdings, Inc., 2022 WL 3142362, at *4 \(W.D. Tex. Aug. 5, 2022\)](#) (noting that courts in this circuit commonly award fees ranging from 20%-50%). Class Counsel’s request here falls on the low end of that range.

This 20% request is also reasonable based on the results achieved and work expended, as well as other considerations described below. The \$100,000 requested here is significantly *less* than Class Counsel’s lodestar amount of \$194,022, representing a Lodestar multiplier of .52. When all of the work is complete, Class Counsel anticipates a Lodestar above \$200,000 and roughly a .5 multiplier. This is eminently reasonable and should be approved.

Class Counsel also request reimbursement of \$7,876.89 in litigation expenses and \$37,700 in settlement administration expenses, which are all reasonable expenses customarily incurred in these types of cases. *See, e.g., Blackmon, 2022 WL 2866411, at *5* (approving similar expenses). Finally, Class Counsel request a \$2,500 service award for the Class Representative to compensate him for the time he has invested in the litigation, the benefits he has provided to the Settlement Class, and the reputational risks he undertook in bringing this action against his former employer. Accordingly, Mr. Drust, serving as the Class Representative, and Class Counsel respectfully request that the Court approve the requested distributions.

[WL 1993519, at *2–3 \(M.D.N.C. May 6, 2019\)](#) (all awarding one-third fee to Nichols Kaster, PLLP).

BACKGROUND

I. PROCEDURAL HISTORY

On June 16, 2023, Plaintiff Mark Drust (“Plaintiff”) filed a Complaint in the Western District of Texas alleging that Defendants breached their ERISA fiduciary duties by, among other things, using a single service provider (TIAA) to serve as the Plan’s recordkeeper, investment advisor, and investment manager and retaining a lineup consisting exclusively of TIAA’s proprietary funds. *See Drust v. Southwest Research Institute, et al*, No. 5:23-cv-00767 (W.D. Tex. June 16, 2023). Defendant moved to dismiss the Complaint on September 15, 2023. *ECF No. 18*. Plaintiff responded on September 29, 2023, *ECF No. 20*, and Defendant replied on October 13, 2023, *ECF No. 22*. The Court held a hearing on the motion on December 20, 2023. *ECF No. 29*.

Prior to the Court issuing its ruling on the motion to dismiss, Plaintiff and Defendant (the “Parties”) reached a settlement-in-principle and jointly requested that the Court stay any decision on the pending motion to dismiss. *ECF No. 36-3*. The Court agreed to this request, and on March 11, 2024, Plaintiff filed his Motion for Preliminary Approval of Class Action Settlement and the Settlement Agreement. *ECF No. 36*. The Court granted Preliminary Approval on March 13, 2024. *ECF No. 37*.

II. SETTLEMENT TERMS AND PRELIMINARY APPROVAL

Under the Settlement, Defendant contributed a Settlement Amount of \$500,000 to a Qualified Settlement Fund. *Settlement Agreement (“Settlement”)* ¶ 2.29, *ECF No. 36-03*. After accounting for any Attorneys’ Fees and Costs, Settlement Administration Expenses, and Case Contribution Awards approved by the Court, the Net Settlement Amount will be distributed to

eligible Settlement Class Members⁴ in accordance with the Plan of Allocation in the Settlement. *Id.* ¶¶ 2.33, 5.9, 6.1.

Current Participants will have their Plan accounts automatically credited with their share of the Net Settlement Amount. *Settlement* ¶ 6.5. Former Participants will receive a direct payment by check. *Settlement* ¶ 6.6. Under no circumstances will any monies revert to Defendant. *Settlement* ¶ 6.10. Any uncashed checks shall be paid to the Plan for the purpose of defraying administrative fees and expenses of the Plan. *Id.*

III. CLASS COUNSEL’S WORK

Although this action settled early in the litigation process, Class Counsel has expended significant time and effort prosecuting this action and achieving the Settlement on behalf of the Settlement Class. To date, Class Counsel has invested approximately 394 hours into this case, and additional work will be required moving forward while seeking Final Approval and implementation of the Settlement. *See Decl. of Brock Specht in Supp. of Pls.’ Mot. For Approval of Atty’s’ Fees and Costs, Admin. Expenses, and Case Contribution Awards (“Second Specht Decl.”) ¶¶ 11-17.* This work is detailed in the accompanying declaration from Class Counsel and is summarized below.

A. Work Conducted to Date

Before filing this action, Class Counsel thoroughly investigated the claims that were asserted and their factual bases. Among other things, this included reviewing publicly available

⁴ The certified Settlement Class is defined as follows:

All participants and beneficiaries of the Southwest Research Institute Retirement Plan at any time from June 16, 2017, through March 11, 2024, excluding the members of the Southwest Research Institute Retirement Plan Committee.

ECF No. 37 ¶ 1(b).

information about the Plan, examining Plaintiff's account statements and other documents, and analyzing the Plan's service providers and investments' performance, utilization, and expenses versus other plans' investments. *Second Specht Decl.* ¶ 11. Thereafter, Class Counsel (1) drafted the Complaint; (2) responded to Defendant's motion to dismiss the Complaint; (3) argued the motion to dismiss at the hearing; (4) engaged in informal discovery while the motion to dismiss was pending; (5) engaged in arms-length settlement negotiations reaching a settlement-in-principle; and (6) consulted with the Class Representative throughout the case. *Id.*

In addition, Class Counsel have undertaken considerable work in connection with the Settlement and settlement administration. This has included (1) reviewing and revising the Settlement Agreement and exhibits thereto (including Class Notices, and the proposed preliminary approval order); (2) preparing Plaintiff's Preliminary Approval Motion papers; (3) reviewing the final drafts of the Class Notice prepared by the Settlement Administrator and ensuring that they were timely disseminated; (4) working with the Settlement Administrator to create a Settlement Website and telephone line for Settlement Class Members who seek additional information about the Settlement; and (5) preparing the present motion. *Id.*

B. Remaining Work to Be Performed

Class Counsel's work on this matter remains ongoing. Prior to the Fairness Hearing, Class Counsel will draft Plaintiff's motion for final approval of the Settlement and respond to objections, if any. *Second Specht Decl.* ¶ 17. Class Counsel will also communicate with the Independent Fiduciary that has been engaged to review the Settlement⁵ and will provide it with all necessary information in connection with its review. *Id.* Class Counsel will then attend the Fairness Hearing

⁵ A release on behalf of a plan is subject to independent fiduciary review under Prohibited Transaction Class Exemption 2003-39, 68 Fed. Reg. 75,632, as amended (Dec. 31, 2003). The Settlement Agreement also required review by an Independent Fiduciary. *Settlement* ¶ 3.1.

and, if final approval is granted, supervise the distribution of payments to eligible Class Members.

Id. In addition, Class Counsel will respond to any questions from Class Members and take other actions necessary to support the Settlement until the conclusion of the Class Period. *Id.*

C. Settlement Class Representative’s Work

The Class Representative (Mark Drust) has also worked to advance Class Members’ interests. Specifically, he (1) reviewed the allegations in the Complaint; (2) provided information and documents to Class Counsel to assist in the action’s investigation and prosecution; (3) produced documents as part of informal discovery; (4) made himself available to answer questions from Class Counsel and to stay informed of the action’s status; (5) conferred with Class Counsel regarding the potential strengths and weaknesses of the claims and the potential risks and rewards of settlement compared to pursuing further litigation; and (6) submitted an individual declaration in support of the Settlement. *See Decl. of Mark Drust in Supp. of Pls.’ Mot. for Prelim. Approval of Class Action Settlement (“Drust Decl.”) ¶ 3, ECF No. 35-05.*

D. Work of the Settlement Administrator, Escrow Agent, and Independent Fiduciary

The Settlement also requires time, resources, and expertise from non-parties. *See Second Specht Decl. ¶¶ 22-23; Settlement ¶¶ 3.3, 3.4, 6.1, 6.4, 6.5, 6.6, 6.7, 12.1, 12.2.* Atticus Administration, LLC (“Atticus”), the approved Settlement Administrator, disseminated the CAFA Notice, disseminated Class Notices to Class Members, and established the Settlement Website and telephone support line as provided by the Settlement. *Second Specht Decl. ¶ 22.* Atticus will also calculate payments to Class Members under the Plan of Allocation and facilitate distribution of payments to Class Members if the Settlement receives final approval. *Id.* In addition, as Escrow Agent, Atticus will invest the monies in the Qualified Settlement Fund while approval of the Settlement and distributions to Class Members are pending. *See Settlement ¶¶ 5.7.* Upon final

approval of the Settlement, Atticus will release these funds and execute the investment and tax qualification mandates in the Settlement Agreement. *Id.* ¶¶ 5.8, 5.10, 5.11. Finally, the Independent Fiduciary (Gallagher Fiduciary Advisors, LLC) will review the Settlement, and independently determine whether it is in the Plan’s best interest to release its claims against Defendant in exchange for the relief provided. *Settlement* ¶ 3.1. As noted above, both DOL guidance and the Settlement call for this Independent Fiduciary review. *See supra* at n.5.

IV. REQUESTED ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARD

In consideration of the work summarized above and associated expenses, Article 8 of the Settlement Agreement provides that Plaintiff may seek (1) Attorneys’ Fees; (2) litigation costs; (3) payment of Settlement Administration Expenses, including the expenses of the Settlement Administrator, Escrow Agent, and Independent Fiduciary; and (4) a \$2,500 Class Representative Service Award for the Settlement Class Representative. *Settlement* ¶¶ 8.1-8.3. Accordingly, Plaintiff seeks the following amounts in connection with this motion:

- Attorneys’ Fees: \$100,000 (20% of the Settlement Amount)
- Litigation Expenses: \$7,876.89⁶
- Total Settlement Administrative Expenses: \$37,700 (inclusive of the below expenses)⁷
 - Settlement Administrator and Escrow Agent: \$22,700
 - Independent Fiduciary: \$15,000
- Settlement Class Representative Service Award: \$2,500.

ARGUMENT

I. STANDARD OF REVIEW

When counsel obtains a class settlement, courts “may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed R. Civ. P. 23(h). An award of attorney's fees is entrusted to the “sound discretion” of the district court. [*Tex. Commerce*](#)

⁶ *Second Specht Decl.* ¶ 19.

⁷ *Second Specht Decl.* ¶¶ 22-23.

[Bank Nat'l Ass'n v. Capital Bancshares, Inc.](#), 907 F.2d 1571, 1575 (5th Cir. 1990). Here, the Settlement Agreement and applicable law authorize the requested distributions.

The Supreme Court “has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” [Boeing Co. v. Van Gemert](#), 444 U.S. 472, 478 (1980). Likewise, “[u]nder the common fund doctrine, class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement[.]” [In re Enron Corp. Sec., Derivative & “ERISA” Litig.](#), 2008 WL 2714176, at *4 (S.D. Tex. July 10, 2008) (quotation omitted); see also [Klein v. O’Neal, Inc.](#), 705 F. Supp. 2d 632, 682 (N.D. Tex. 2010). Finally, service awards to class representatives are appropriate in order to compensate them for their “personal participation” in the case and “services to the class as a whole.” See [Klein](#), 705 F. Supp. 2d at 682. In summary, the requested distributions are customary in a class action suit such as this and should be approved for the reasons set forth below.

II. THE COURT SHOULD GRANT CLASS COUNSEL’S REQUEST FOR ATTORNEYS’ FEES

“Reasonable attorneys’ fees are calculated by the Court using three steps: (1) determine the nature and extent of the services provided by Plaintiff[‘s] counsel; (2) set a value on those services according to the customary fee and quality of the legal work; and (3) adjust the compensation based on the other *Johnson* factors that may be of significance.” [Pittman v. Sw. Bell Tel. L.P.](#), 2022 WL 20508220, at *2 (W.D. Tex. Aug. 16, 2022) (Rodriguez, J.) (citations omitted). “In cases involving a common fund, the Fifth Circuit has expressly approved of the use of the percentage method to calculate attorney’s fees, so long it is cross-checked with the *Johnson* Factors.” [Cruson v. Jackson Nat’l Life Ins. Co.](#), 2021 WL 3702483, at *1 (E.D. Tex. June 4, 2021) (quoting [Ramirez v. J.C. Penney Corp., Inc.](#), 2017 WL 6462355, at *5 (E.D. Tex. Nov. 30, 2017), report and

recommendation adopted, 2017 WL 6453012 (E.D. Tex. Dec. 18, 2017); [Cunningham v. Kitchen Collection, LLC](#), 2019 WL 2865080, at *3 (E.D. Tex. July 3, 2019)).

The relevant factors all support the fee request. These *Johnson* factors include:

(1) the time and labor required; (2) the novelty and difficulty of the legal issues; (3) the skill required to perform the legal service properly; (4) the preclusion of other employment by the attorney as a result of taking the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or other circumstances; (8) the monetary amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) whether the case is undesirable; (11) the nature and duration of the professional relationship with the client; and (12) awards in similar cases.

[Welsh v. Navy Federal Credit Union](#), 2018 WL 7283639, at *16 (W.D. Tex. Aug. 20, 2018). When analyzing the request, “not every [*Johnson*] factor need be necessarily considered.” [Klein](#), 705 F. Supp. at 676; [Welsh](#), 2018 WL 7283639, at *17. “The relevance of each of the *Johnson* factors will vary in any particular case, and, rather than requiring a rigid application of each factor, the Fifth Circuit has left it to the lower court’s discretion to apply those factors in view of the circumstances of a particular case.” [Buettgen v. Harless](#), 2013 WL 12303143, at *11 (N.D. Tex. Nov. 13, 2013) (citing [Brantley v. Surlles](#), 804 F.2d 321, 325-26 (5th Cir. 1986)). Indeed, “it is not necessary for a district court to examine each of the [*Johnson*] factors independently if it is apparent that the court has arrived at a just compensation based on appropriate standards.” [Pittman](#), 2022 WL 20508220, at *12 (quoting [Sanders v. Barnhart](#), 2005 WL 2285403, at *2 (5th Cir. Sept. 19, 2005)).

In a similar ERISA class action in the Western District of Texas, Judge Chestney approved a fee request “based on the percentage method (an award of 33 1/3%) – with a lodestar reasonableness check.” [Blackmon](#), 2022 WL 3142362, at *4. Beginning at the 20% request and performing a cross-check with the lodestar and/or pertinent *Johnson* factors, as analyzed below, also supports the reasonableness of the fee request here.

A. The Customary Fee Awards in Similar Cases (Fifth and Twelfth *Johnson* Factors) Support Approval

The “customary fee” awarded in similar cases is one factor that the Fifth Circuit advises courts to “give special heed” to. [Welsh, 2018 WL 7283639, at *16](#) (quoting [Migis v. Pearle Vision, Inc.](#), 135 F.3d 1041, 1047 (5th Cir. 1998) (citation omitted)). As discussed above, the 20% requested here is reasonable in part because it is well below the market rate for ERISA class actions. *See supra at 1*. It is also below the rate typically awarded in this circuit. *See, e.g.*, [Blackmon, 2022 WL 3142362, at *4](#) (awarding 33 1/3% in ERISA 401(k) class action); [Celeste Neely, 2022 WL 17736350, at *11 \(E.D. Tex. Dec. 16, 2022\)](#) (awarding 33 1/3%) (quoting [Shaw v. Toshiba Am. Info. Sys., Inc.](#), 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) (“[R]egardless of whether the percentage method or lodestar method is used, fee awards in class actions average around one-third of recovery)); [Cruson, 2021 WL 3702483, at *1](#) (“[N]umerous courts in this Circuit have awarded fees in the 30% to 36% range.”) (collecting cases). Accordingly, the fifth and twelfth *Johnson* factors strongly favor approval of the 20% request.

B. The Time and Labor Required (first *Johnson* Factor) Supports Approval

The fee request is reasonable based on the time devoted to this case. “Given the nature of the litigation, the complicated issues involved, the risks faced, the quality of the work performed, and the rigorous defenses confronted, an award approximately equivalent to the lodestar of Class Counsel unquestionably represents an appropriate level of compensation for the success counsel achieved.” [King v. United SA Fed. Credit Union](#), 744 F. Supp. 2d 607, 616 (W.D. Tex. 2010). To date, Class Counsel and co-counsel’s lodestar is \$194,022, which actually exceeds the fee requested. *Second Specht Decl.* ¶ 15. By the time this action is concluded and all work is complete, this lodestar will likely be above \$200,000, and the lodestar multiplier roughly .5. “Because there is a strong presumption that the lodestar represents a reasonable fee, the fact that Class Counsel

seek an award less than the lodestar supports a finding that the fee award is reasonable.” [Welsh, 2018 WL 7283639, at * 18.](#)

Additionally, the work completed thus far has contributed to an early settlement that benefits the Class. Class Counsel worked diligently to achieve this result by thoroughly investigating the matter prior to filing suit, drafting the Complaint, briefing and arguing a motion to dismiss, engaging in informal discovery while the motion to dismiss was pending, engaging in ongoing settlement negotiations with Defendant, reviewing and revising the Settlement Agreement and accompanying exhibits, and submitting multiple filings with the Court in connection with the Settlement. *See supra* at 3-6. Following this motion, Class Counsel will continue to oversee the Settlement’s administration, respond to Settlement Class member inquiries, confer with the Independent Fiduciary that has been retained to review the Settlement (*see supra* at n.5.), draft and file a motion for final approval, attend the Fairness Hearing, and take any other measures necessary to effectuate the Settlement. *See Second Specht Decl.* ¶ 17.

Further, the hourly rates used to calculate Class Counsel’s lodestar are “reasonable and are comparable to fees that have been recently approved in [other] ERISA class action[s].” [Sims, 2019 WL 1993519, at *3](#) (addressing and approving Nichols Kaster’s billing rates); *see also Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, 2018 WL 2183253, at *7 (N.D. Cal. May 11, 2018)

(describing Nichols Kaster’s billing rates as “reasonable”). Nichols Kaster’s billing rates for ERISA actions range from \$750 to \$975 for attorneys with 10 or more years of experience, \$450 to \$525 per hour for attorneys with less than 10 years of experience, and \$250 per hour for paralegals and clerks. *See Second Specht Decl. Ex. 1.* These rates are consistent with the rates approved for other experienced ERISA litigators. *See, e.g., Novant Health, Inc.*, 2016 WL 6769066, at *4 (adopting rates of \$460 to \$998 per hour based on years of experience); [Spano,](#)

[2016 WL 3791123, at *3](#) (same); [Abbott v. Lockheed Martin Corp., 2015 WL 4398475, at *3](#) (S.D. Ill. July 17, 2015) (adopting rates of \$447 to \$974 per hour based on years of experience).

Accordingly, the first *Johnson* factor supports approval.

C. The Novelty and Difficulty of the Litigation, the Skill Required, and the Experience, Reputation, and Ability of Counsel (Second, Third and Ninth *Johnson* Factors) Support Approval

Courts recognize that “ERISA 401(k) fiduciary breach class actions are extremely complex and require a willingness to risk significant resources in time and money, given the uncertainty of recovery and the protracted and sharply-contested nature of ERISA litigation.” [Bekker v. Neuberger Berman Grp. 401\(k\) Plan Inv. Comm., 504 F. Supp. 3d 265, 269](#) (S.D.N.Y. 2020); Indeed, courts have repeatedly noted that ERISA class actions present difficult legal issues. [Krueger, 2015 WL 4246879, at *1](#) (“ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation.”); [In re Marsh ERISA Litig., 265 F.R.D. 128, 138](#) (S.D.N.Y. 2010) (“Many courts have recognized the complexity of ERISA breach of fiduciary duty actions.”); *see also* [Lockheed Martin Corp., 2015 WL 4398475, at *2](#); (noting that ERISA 401(k) cases are “particularly complex”). This case is no exception.

Moreover, not many lawyers can effectively litigate ERISA 401(k) class actions. Successful prosecution of these ERISA cases requires “expertise regarding industry practices” and knowledge of how to obtain and analyze relevant plan documents and financial statements. *See* [Novant Health, 2016 WL 6769066, at *3](#). As a result, “few law firms...are willing to take the risk and devote the substantial resources necessary, all at risk of nonpayment, to litigate these complex ERISA claims.” [Henderson v. Emroy Univ., 2020 WL 9848978, at *3](#) (N.D. Ga. Nov. 4, 2020); *see also* [Savani v. URS Prof. Solutions LLC, 121 F. Supp. 3d 564, 573](#) (D.S.C. 2015) (“Very few plaintiffs’ firms possess the skill set or requisite knowledge base to litigate... class-wide,

statutorily-based claims for pension benefits”); [Surgical Clinic, Inc. v. Optuminsight, Inc., 2016 WL 5938722, at *10 \(C.D. Cal. May 16, 2016\)](#) (finding that ERISA litigation requires “highly skilled counsel”).

As an example, legal and factual questions relating to loss causation, and methods for calculating loss, are highly contested in ERISA class actions. Thus, “even had Plaintiff[] prevailed on the merits, there would be significant uncertainty as to a damage award following trial.” [Urakhchin v. Allianz Asset Mgmt. of Am., L.P., 2018 WL 8334858 at *6 \(C.D. Cal. July 30, 2018\)](#); see also [Tussey v. ABB Inc., 746 F.3d 327, 338 \(8th Cir. 2014\)](#) (vacating damages award and instructing district court to “reevalaute its method of calculating the damage award, if any, for the participants’ investment selection...claims”); [Tussey v. ABB, Inc., 850 F.3d 951, 958–61 \(8th Cir. 2017\)](#) (remanding a second time, finding that the district court still did not adequately consider “other ways of measuring the plans’ losses”). Winning these cases requires winning numerous contested, often unsettled issues.

Accordingly, meeting the challenges in ERISA litigation requires counsel with specialized skills, and Class Counsel were well-suited to the challenge. Class Counsel “is one of the relatively few firms in the country that has the experience and skills necessary to successfully litigate a complex ERISA action such as this.” [Karpik, 2021 WL 757123, at *9](#) (describing Nichols Kaster, PLLP).⁸ Class Counsel have a demonstrated record of success in ERISA litigation, and have taken other ERISA breach of fiduciary duty class actions to trial (*Putnam, American Century, and Lowe’s*). See *Second Specht Decl.* ¶ 5. According to a Bloomberg BNA article, “Nichols Kaster has been the driving force” behind recent ERISA litigation over proprietary mutual funds. *Id.* at ¶

⁸ See also [Moreno v. Deutsche Bank Ams. Holding Corp., 2017 WL 3868803, at *11 \(S.D.N.Y. Sept. 5, 2017\)](#) (“Plaintiffs’ counsel [Nichols Kaster, PLLP] are experienced litigators who serve as class counsel in ERISA actions involving defined-contribution plans[.]”).

6 (citation omitted). In recognition of their expertise, attorneys from Nichols Kaster have been interviewed by several media outlets and trade publications. *Id.*

This specialized expertise was instrumental in achieving the obtained results. “In common fund class action cases” such as this one, “an early settlement often signals counsel’s ‘efficiency’ and ‘effectiveness’ compared to similar cases that ‘unnecessarily dragged on for years.’” [Celeste Neely, 2022 WL 17736350, at *11](#) (quoting [Schwartz v. TXU Corp., 2005 WL 3148350, at *29 \(N.D. Tex. Nov. 8, 2005\)](#); [In re Harrah’s Entm’t, Inc., 1998 WL 832574, at *5 \(E.D. La. Nov. 25, 1998\)](#)). Here, Class Counsel’s specialized experience allowed them to evaluate the arguments made at the motion to dismiss hearing and to request targeted, informal discovery to assess the likelihood of success on the merits, saving time and resources that less experienced litigators would have expended in discovery. It weighs in favor of approving the requested fee where “counsel performed diligently and skillfully, achieving a speedy and fair settlement, distinguished by the use of informal discovery and cooperative investigation to provide the information necessary to analyze the case and reach a resolution.” [C.C. & L.C. v. Baylor Scott & White Health, 2022 WL 4477316, at *7 \(E.D. Tex. Sept. 26, 2022\)](#); *see also* [King, 744 F. Supp. at 614](#). This could not be replicated without significant time, effort, and resources. Based on their experience litigating similar ERISA cases (*Second Specht Decl.* ¶¶3-6), Class Counsel were uniquely able to navigate this case’s size and complexity and achieve a successful result for their clients and the Settlement Class.

D. The Contingent Nature of the Fee (Sixth *Johnson* Factor) Supports Approval

Where class counsel’s compensation is contingent, the sixth *Johnson* factor “favors an increase in the typical benchmark percentage.” [Klein, 705 F. Supp. 2d at 678](#). As courts in this district have recognized, litigating complicated, expensive class actions on a contingent basis

carries substantial risk of non-payment and non-reimbursement that should be considered in approving fee awards. *See id.*; [Buettgen, 2013 WL 12303143, at *8, 12-13](#) (discussing frequency of non-recovery in complex class actions, including losses that result from unfavorable rulings on complex and disputed issues or changes in statutory or case law).

“In this case, Class Counsel prosecuted the case on a contingency basis and advanced all costs and expenses incurred in connection with the case. A risk of no recovery and significant uncertainty existed. These risks are properly considered in awarding attorneys’ fees.” [King, 744 F. Supp. at 616](#). The fact that Class Counsel took this case with significant risk “with no assurance ‘of a paycheck’” weighs in favor of approval. [Slipchenko v. Brunel Energy, Inc., 2015 WL 338358, at *20 \(S.D. Tex. Jan. 23, 2015\)](#) (quoting [Florin v. Nationsbank of Georgia, N.A., 60 F.3d 1245, 1247 \(7th Cir. 1995\)](#)); *see also* [In re Waste Mgmt., Inc. Sec. Litig., 2002 WL 35644013, at *28 \(S.D. Tex. May 10, 2002\)](#), *amended*, 2003 WL 27380802 (S.D. Tex. July 31, 2003) (contingency nature of litigation weighs in favor of approval); [Izzio v. Century Gold Partners Mgmt., L.P., 2019 WL 10589568, at *10 \(N.D. Tex. Feb. 13, 2019\)](#), *aff’d*, 787 F. App’x 242 (5th Cir. 2019)). In sum, obtaining a successful result in a complex contingent case confirms the reasonableness of the under-benchmark fee requested here.

E. The Amount Involved and the Results Obtained (Eighth Johnson Factor) Favors Approval

The settlement amount is strong in light of the risks of additional litigation. As explained above and in Plaintiff’s Memorandum in Support of Preliminary Approval (*ECF No. 36-01*), winning any amount of money at trial required a long road with significant risks. Even the best-case scenario would require years of litigation before Class Members received any compensation. Here, Class Members receive their compensation without delay and will “be able to invest those funds immediately, rather than having to wait as long as a decade as other classes in 401(k) cases

have had to do.” [Novant Health, 2016 WL 6769066, at *5](#) (finding that immediacy of settlement benefits class members).

The total monetary amount of the Settlement is also in line with other class action settlements. The \$500,000 recovery represents roughly 5.3% of the Plan’s estimated losses. *ECF no. 36-02 ¶ 4*. While the plaintiffs and counsel always hope for the maximum recovery, settling for roughly 5% of damages is consistent with the “three-to-six cents on the dollar” that plaintiffs commonly recover in class actions. [Welsh, 2018 WL 7283639, at *13](#) (quoting [City of Omaha Police & Fire Ret. Sys. V. LHC Group, 2015 WL 965696, at *7 \(W.D. La. Mar. 3, 2015\)](#)); *see also Stott v. Capital Fin. Services, Inc., 277 F.R.D. 316, 345, n. 19 (N.D. Tex. 2011)* (approving class settlement of 2-3% of total losses); [In re Rite Aid Corp. Sec. Litig., 146 F. Supp. 2d 706, 715 \(E.D. Pa. 2001\)](#) (class actions typically recover “between 5.5% and 6.2% of the class members’ estimated losses). Further, “a low damages award alone ‘should not lead the court to reduce a fee award.’” [Pittman, 2022 WL 20508220, at *3](#) (Rodriguez, J.) (awarding fees despite counsel recovering less than 1% of damages) (quoting [Saizan v. Delta Concrete Prod. Co., 448 F. 3d 795, 799 \(5th Cir. 2006\)](#)). This is particularly true where Class Counsel requests a fee well below the market rate.

Additionally, the Settlement provides for meaningful prospective relief that provides non-monetary benefits. Specifically, no later than twelve (12) months following the Effective Date of the Settlement, Defendant will engage an independent consultant or consultants unaffiliated with TIAA to assist with the monitoring of the Plan’s investments for a period of three (3) years from engagement. *See Settlement ¶ 7.1*. This is designed to address the core allegation in this case, the lack of independent advice and oversight of TIAA and the TIAA funds. The fact that participants will benefit from this relief should be considered when evaluating the fee award.

In sum, the eighth *Johnson* factor supports approval of the fee request.

F. The Undesirability of the Case (Tenth *Johnson* Factor) Also Favors Approval

The tenth *Johnson* factor considers the undesirability of the case, including the “financial burden” and “size and complexity” of large class actions. See [Buettgen, 2013 WL 12303143, at *13](#). “Class actions carry ‘elevated risks’ that can make them undesirable.” [C.C. & L.C., 2022 WL 44777316, at *8](#) (finding that this complexity contributed to undesirability of case and supported requested fee) (quoting [Schwartz, 2005 WL 3148350, at *33](#)). As noted above, the issues are more complex than a typical class action, so much so that few plaintiff’s lawyers can litigate this type of case. In order to prosecute the case, Class Counsel would need to advance hundreds of thousands of dollars in expert and other litigation fees. The payoff for that investment was uncertain. These considerations also support the requested fee.

III. THE REQUESTED COSTS AND EXPENSES ARE REASONABLE AND WARRANT APPROVAL

A. The Litigation Costs Incurred are Reasonable

The nature and amount of the expenses sought for reimbursement are both reasonable.

Litigation “[e]xpenses and administrative costs expended by class counsel are recoverable from a common fund in a class action settlement.” [Izzio, 2019 WL 10589568, at *11](#). The types of reimbursable expenses include “all reasonable out-of-pocket litigation expenses and costs,” such as costs “in connection with document production, consulting with experts and consultants, travel and other litigation-related expenses.” [In re Enron Corp., Sec., Derivative & “ERISA” Litig., 2008 WL 2712176, at *4](#); see also [Buettgen, 2013 WL 12303143, at *14](#) (awarding expenses for “investigators, in-house damage consultants, expert fees, mediation fees, travel, photocopying of documents, on-line research, messenger service, postage, express mail and next day delivery, long

distance and facsimile expenses, database maintenance [], transportation, meals, and other incidental expenses”).

“Class Counsel’s claimed costs include expenses related to travel...transcripts, filings...and meals.” [ODonnell v. Harris Cnty., Texas, 2019 WL 6219933, at*28 \(S.D. Tex. Nov. 21, 2019\)](#) (finding these types are “the appropriate categories of expenses”) (citing [DeHoyos v. Allstate Corp., 240 F.R.D. 269, 342 \(W.D. Tex. 2007\)](#)); see also *Second Specht Decl.* ¶¶ 18-21 (identifying expenses). “These expenses are all associated with Class Counsel’s investigation, discovery... and other activities necessary to prosecute the case.” [Blackmon, 2022 WL 2866411, at *5](#). In other words, the reimbursements sought are “the types of litigation expenses that are recoverable...as part of an attorneys’ fee award.” [Johnson v. Sw Rsch. Inst., 2019 WL 4003106, at *8 \(W.D. Tex. Aug. 23, 2019\)](#).

Similarly, the total reimbursement sought by Class Counsel is \$7,876.89. *Second Specht Decl.* ¶ 19. Courts routinely approve requests for reimbursement of expenses that far exceed this amount. See, e.g., [Blackmon, 2022 WL 2866411, at *5](#) (awarding reimbursement of \$43,372.06); [Izzio, 2019 WL 10589568, at *11](#) (\$45,000); [ODonnell, 2019 WL 2019 WL 6219933, at*28](#) (\$150,425.40). The amount requested here is modest by comparison.

The Court should therefore approve these litigation expenses.

B. The Settlement Administration Expenses Incurred are Reasonable

The costs of the Settlement Administrator and the Independent Fiduciary are both reasonable and necessary to effectuate the Settlement.

As Settlement Administrator and Escrow Agent, Atticus has provided services that are essential to carry out the Settlement, including disseminating the Class Notices and establishing the Settlement Website. Atticus will also be responsible for distributing the payments should the

Court grant final approval of the Settlement. The cost of providing services (\$22,700) is reasonable in light of the services provided and comes to \$2.90 per class member.

“To further ensure that the Settlement Agreement is fair, reasonable, and adequate, as well as compliance with ERISA’s prohibited transaction provisions, the Parties retained the independent fiduciary, [Gallagher Fiduciary Advisors, LLC], to approve and authorize the Settlement on behalf of the Plan and Class Members.” [Blackmon, 2022 WL 2866411, at *2](#). DOL guidance calls for review of the Settlement by the Independent Fiduciary, as it is a “critically important” benefit to plan participants. *See* [Marsh, 265 F.R.D. at 139](#). Thus, the independent fiduciary expenses are reasonable and necessary to effectuate the settlement.

Both the total amount of these expenses and underlying components are reasonable and customary in similar ERISA cases. *See* [Blackmon, 2022 WL 2866411, at *5](#) (approving independent fiduciary and settlement administrator expenses); *see also, e.g., Moreno v. Deutsche Bank Ams. Holding Corp*, No. 1:15-cv-09936, ECF No. 348 at 16-17 (S.D.N.Y. Mar. 20, 2019) (approving “Class Counsel’s request for \$106,536 in settlement administration expenses (comprising \$64,036 to the settlement administrator, \$2,500 to the escrow agent and \$40,000 to the independent fiduciary”). The Court should therefore approve the requested Settlement Administration Expenses in the amount of \$37,700.

IV. THE COURT SHOULD GRANT THE REQUESTED SERVICE AWARD

Finally, Class Counsel seeks a modest service award of \$2,500 for the Class Representative’s services to this case. Service awards “compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” [McClain v. Lufkin Indus. Inc., 2009 WL 5814124, at *4 \(E.D. Tex. Dec. 22, 2009\)](#) (quoting [In re Lorazepam v. Clorazepate Antitrust Litig., 205 F.R.D. 369, 400 \(D.D.C. 2002\)](#)); *see also* [Klein,](#)

[705 F. Supp. 2d at 682](#). The requested \$2,500 award is on the low end of similar ERISA cases. *See, e.g., Tracey v. Mass. Inst. Tech.*, No. 1:16-cv-11620, ECF No. 317 (D. Mass. May 29, 2020) (approving \$25,000 service awards); [Novant Health, 2016 WL 6769066, at *6](#) (same); [Krueger, 2015 WL 4246879, at *3](#) (same); [Sims, 2019 WL 1993519, at *4-5](#) (approving service awards of \$20,000); *Velazquez v. Mass. Fin. Services Co.*, No. 17-cv-11249, ECF No. 108 (D. Mass. Dec. 5, 2019) (\$10,000).

For example, Judge Chestney recently approved service awards of \$12,500, five times the amount requested here, in an ERISA class action for the plaintiffs’ work “collecting and providing documents to Class Counsel, answering discovery requests, participating in regular conference calls with Class Counsel, and preparing for their depositions.” [Blackmon, 2022 WL 2866411, at *5](#). Although the Class Representative here did not prepare for a deposition or answer formal discovery requests, he did participate in informal discovery by collecting and producing documents to Class Counsel and Defendant and conferred with counsel numerous times regarding the case itself and the Settlement. *See Drust Decl.* ¶ 3. In light of these contributions, the risks that the Class Representative assumed,⁹ and the benefit derived for the Settlement Class, the requested awards should be approved.

CONCLUSION

For the reasons above, Plaintiff and Class Counsel respectfully request that the Court approve the requested distributions from the Qualified Settlement Fund.

Dated: June 12, 2024

Respectfully submitted,

NICHOLS KASTER, PLLP

By: /s/ Brock J. Specht
Paul J. Lukas (admitted pro hac vice)

⁹ Courts have noted that bringing a lawsuit against an employer relating management of a 401(k) plan entails risk that the plaintiff will be viewed unfavorably by the employer or future employers. *See Lockheed Martin, 2015 WL 4398475, at *4*.

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2024 a true and correct copy of the foregoing was served by CM/ECF to the parties registered to the Court's CM/ECF system.

Dated: June 12, 2024

s/ Brock J. Specht
Brock J. Specht

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Mark Drust individually and as a representative of a class of similarly situated persons, and on behalf of the Southwest Research Institute Retirement Plan

Plaintiff,

v.

Civil Case No. 5:23-cv-767-XR

Southwest Research Institute, and John Does 1-20,

Defendants.

**DECLARATION OF BROCK J. SPECHT IN SUPPORT OF PLAINTIFF’S MOTION
FOR APPROVAL OF ATTORNEYS’ FEES AND COSTS, ADMINISTRATIVE
EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARD**

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 Plaintiff in the above captioned action. In its Preliminary Approval Order *ECF No. 37*, 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 Case Contribution 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 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.);
- *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.);
- *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*, *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*, and *Bessemer*. 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); *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 35 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 D to the Declaration of Brock J. Specht in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, *ECF No. 36-4*.

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) thoroughly investigated the class-wide claims, including analyzing the Plan's investments' performance, utilization, and expenses versus other plans' investments; (2) drafted a detailed Complaint, *ECF No. 1*; (3) responded to Defendant's motion to dismiss; (4) argued at the motion to dismiss hearing; (5) engaged in targeted, informal discovery; (6) reviewed documents produced

by Defendants; (7) consulted with the Named Plaintiff throughout the case; (8) reviewed and revised the Settlement Agreement and exhibits thereto; (9) prepared Plaintiff's Preliminary Approval Motion papers; (10) engaged the Settlement Administrator (Atticus Administration, LLC ("Atticus")); (11) reviewed the final drafts of the Class Notices prepared by Atticus, and ensured that they were timely distributed by Atticus; (12) worked with Atticus to create a Settlement Website and telephone line for Settlement Class members who wished to obtain additional information about the Settlement (13) consulted with Class Representative for the Settlement Class throughout the course of the case; and (14) 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. 36-2*.

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 301.7 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 92.7 hours, for a total of 394.4 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 \$750 to \$975 per hour for attorneys with 10 or more years of experience, \$450 to \$525 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 \$194,022.50. 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 Plaintiff's 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.

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 \$7,876.89 in litigation-related costs in connection with this matter. These expenses are broken down below:

¹ In connection with the representation, the Named Plaintiff agreed to no higher than a one-third contingency fee, and to reimbursement of expenses in the event that the action was successfully resolved.

Category	Cost
Financial Data Charges	\$ 4,359.24
Filing Fees	\$ 602.00
Transcripts	\$176.00
Pacer/Westlaw	\$ 222.39
Travel Expenses	\$ 2,248.57
Relativity Database Hosting and Storage	\$ 110.85
Postage/Shipping/Copies	\$ 12.84
Process/Courier Service	\$145.00
TOTAL	\$ 7,876.89

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. 37 at ¶ 3*. Atticus has extensive experience administering class action settlements, including several ERISA settlements.² Based on the bid submitted by Atticus, it will cost \$22,700 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 Defendant; (2) preparing and distributing the Class Notices; (3) searching

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

for valid addresses for any Class Members whose Class Notices were returned as undeliverable; (4) establishing a telephone support line for Settlement 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, 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 3.4 of the Settlement Agreement. Under the Settlement Agreement, Defendant is 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 Defendant has engaged Gallagher Fiduciary Advisors, LLC 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 Representative

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

25. Throughout the course of this action, the Named Plaintiff has been mindful of his responsibilities as the Settlement Class representative and has actively participated in the action. Among other things, he has (1) reviewed the allegations in the complaints bearing his name; (2) provided information and documents to our firm to assist with the investigation and prosecution

of this action; (3) made himself 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 Plaintiff has provided as Settlement Class Representative, his initiative in pursuing this action, and the risks that he assumed, I believe that the requested Class Representative Service Award is reasonable and appropriate. As noted in our motion papers, the amount that the Named Plaintiff is seeking as the Settlement Class Representative (\$2,500) is consistent with other ERISA cases.

No Objections

27. 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: June 12, 2024

s/ Brock J. Specht

EXHIBIT 1

Drust v. Southwest Research Institute.

Court File No: 5:23-cv-00767-XR

 Lodestar by Nichols Kaster, PLLP Time Keeper:
Partners/Of Counsel:

Name	Years of Experience	Billing Rate Per Hour	Hours	Charges
Paul Lukas	31	\$975	6.8	\$6,630.00
Brock Specht	15	\$750	52.5	\$39,375.00

Associate Attorneys:

Name	Years of Experience	Billing Rate Per Hour	Hours	Charges
Benjamin Bauer	6	\$525	198.1	\$104,002.50
Steve Eiden	2	\$475	36.2	\$17,195.00
Mary Clare Mulcahy	1	\$450	8.1	\$3,645.00

Law Clerks/Paralegals/Support Staff:

Name		Billing Rate Per Hour	Hours	Charges
Caitlin Thompson		\$250	38.2	\$9,550.00
Sean Kelly		\$250	3.4	\$850.00
Cameron Pylka		\$250	3.3	\$825.00
Evelyn Doran		\$250	47.8	\$11,950.00

Nichols Kaster, PLLP Total Hours (Attorneys and Support Staff) 394.4

Nichols Kaster, PLLP Lodestar Total (Attorneys and Support Staff) \$194,022.50

EXHIBIT 2



CURRICULUM VITAE

About Atticus Administration LLC

Founded in August 2016, Atticus has administered over 1056 settlements and has distributed more than \$1.34 billion in award payments. Collectively, the Atticus team has over 125 years of industry experience, has managed over 3,000 settlements, and has distributed more than \$3 billion. Below is a partial listing of our cases, and the cases that our team has managed during their careers.

Partial Listing of Atticus' Current Cases and References

Shahno v Pendry	
AAFCU GAP Interest Settlement	2020CV32226
Abdul-Ahad v Associated Courier, Inc (Street Fleet)	0:20-CV-00607-PJS-HB
Abrams v Savannah College of Art & Design (SCAD)	
Acevedo v Southwest Airlines	1:16-cv-00024-MV-LF
Ahmed v Beverley Hills Rehabilitation Services	
Alvechurch v Suburban [PAGA]	
Ali v Sutter Valley Medical Foundation	34-2017-00217486
Allard v Med Impact	
Allianz Life Ins Co Class Cert	27-CV-17-15118
Altamirano-Santiago v Better Produce Inc Class Cert	Civil Action 2:19-cv-3964
Altamirano-Santiago v Better Produce Settlement	2:19-CV-3964-DDP
Alvarez v AutoZone	CIVDS1416344
Amaya v Eagle Tech Manufacturing	17CV02862
Amaya v Eagle Tech Manufacturing Cert	17cv02862
AMEX Data Breach	
Amezcuca Peregrina v SEAM Group	1:20-cv-01032-SO
Anderson v The Cellular Connection	2021-CA-007204-AXX
Andrade v Caltech	VCU 266410
Andrade v ESMI	CIVD82023816
Andrews v Prestige Care, Inc.	2:18-CV-00378-JAM-KJN
Arnold v Edwin Trucking	20TRCV00191



ATTICUS

Arrieta v Genentech	21-CV-05353
Ashe v Farmers Insurance Group	18STCV00453
	VCU238439-Class
Astorga v Bosman Dairy	VCU243327 Consolidated
Athan v US Steel Corporation	2:17-cv-14220
Atlanta Hawks FACTA	2017CV288354
Avilez v Full Steam Staffing	
Ayala et al v Olson Brothers Ranchers	
	37-2020-00000922-CU-OE-CTL
Baca v Two Jinn	1881-CV-849
Baldwin v RHP Properties	56-2022-00567731-CU-OE-VTA
	RG20082630
Barragan v Natrol	
Bassett v Vons	
	2:18-CV-03043-DDP-PLA
Baylog v Hash Flare	BC683325
Beamon v Event Merchandising Inc	1811-CC01173
Bean v Lewis Boats	21stcv16493
Beato v Elite Rooter PAGA	CAVC-20-4961
Baudette v McDonough (VA Caregiver Program)	3:21-cv-01031-yy
Begley v JK Enterprise (Cabaret II)	7:19-cv-55-HL
Bejines-Gonzalez v So Valley Fruit & Vegetable Inc	17-003861-CZ
Bell v MCSC	1:17-cv-00918-DCN
Benefield v Springco Metal Coatings	30-2018-00997257-CU-OE-CXC
Bennett v Alorica INC	
Bennett v Dart	
Benton v NorCal In Alliance	
Bernier v AT&F	1:21-cv-1302
Berthiaume v Allianz Life	27-CV-17-15118
Best v Twin Inc	ESX-L-8062-16
Bethmann v Roberts (St. Charles County Coop)	1711-CC01263
BF-Biscomerica-0814	
Bice v Vensure HR	STK-CV-UOE-2016-1264
Phan v. Big Saver Foods FACTA	BC636343
	30-2019-01065525-CU-OE-CXC
Bilberry v Hardy Window Co.	2:16-cv-01326-DMG
Birbower v Quorn Foods	GJH-21-2240 US District Court, District of Maryland
	1:18-cv-00545
Biscardi v GEICO 216b Notice	NO. 2:17-cv-05578-RBS
Blackburn v APTIM	
Blofstein v Michael's Family Restaurant	
BMC West case	
Boehm v BMW	2:17-cv-2827
Bolanos v FSC Corporation	BC722758



ATTICUS

Bonham, et al. v Club Champion LLC	50-2021-CA-008650-XXXX-MB
Bowdle v Kings Seafood	8:21-cv-01784-CJC-JDE
Bowlay-Williams v Google LLC	4:21-cv-09942-FJH
Branning v Romeo Pizza	1:19-cv-2092
Bravo v Small Progress Co & Riverview Farms	19CV003943
Breese v NaturChem Distribution	
Briggs v TASC	
Briceno v. Acqua E Farina Ristorante, LLC	RG19045636
Bruce v Del Monte	
Burger v DIRECTV	20-2-06558-2
Burnett v Professional Credit Mgmt (PCM)	21OZ-CC00192
Burns v Chesapeake	15CV01016-RP
Burton v MOGA	SCV-265985
Busby v Flowers Foods	
Bustos v. Tropicale Foods, Inc.	CIVDS1915805
C.S. v DaVita Dialysis	2122-cc0494
Caddick v Tasty Baking	2:19-cv-02106-JDW
Caddick-Bertino v Flowers	
Cain v Fairfield Health Care PAGA	FCS056452
Calhoun v West Road Pizza Stop	5:20-cv-12661
Callier v Outokumpu Stainless USA	21-cv-521-JB-N
Camacho v Southwest Harvesting	
Cannon v Huntington Hospital	19STCV14554
Cantonwine v Mahos	
Carloss v After-School All Stars LA	20STCV03869
Carr v Flowers Foods, Inc	2:15-cv-06391-WB
Carrillo v Mabry Management	BC667019
Carroll v CCSF BW	CGC-17-562580
Carroll v CCSF Cert	CGC-17-562580
Carter v Bed Bath & Beyond	L-06178-16
Carter v City of Ferguson	14SL-CC04195
Carter v City of Ferguson Cert	14SL-CC04195
Carter v State of Michigan Dept of State Police (MSP)	15-015901-CZ
Cash & Henryhand v Smart Professionals	JCCP4871
Cashon v Encompass	
Castro v Caterpillar	LC105350
Caudle v Sprint	3:17-cv-06874-WHA
Centeno v DeVon's Jewelry	STK-CV-UOE-2020-8297
Cervantes v TDT Consulting	3:18-CV-02547-S
Chavez v Smart72	17CVP-0176



ATTICUS

Chavez v Stellar Management Group VII, LLC	3:19CV01353JCS and SCV264110
Choukalas v Cuyahoga County	1:18-cv-00588-JG
Christian v Mad Anthonys	22-2-03132-8 SEA
Chung v Alliance One	
Ciaz v ND Travel Nurses	
Cibulka v St. Louis County, MO	17SL-CC04021
Citywide v Gruma Corporation	CV19-04724 DSF
Clark v Heavy Restaurant Group	22-2-01864-0-SEA
Clay v Dart (Cook County Division 6 Cert)	1:19-cv-02412
Cole v Orange County	8:18-CV-1020-DOC-(KESx)
Cole v Orange County Cert	8:18-cv-01020-DOC-KES
Coley v Eskaton	34-2014-00171851
Colina v Goya Foods	ESX-L-8192-21
Collins v Dunbar	
Collins v Golden Gate Bell	
Comofort v Fernandez Brothers	5:17-cv-01863-EJD
Cook v Window Nation	
Corcoran v Herringbone Tavern	CGC-18-570576
Corner v Gregory & Co	
Coronado v Flowers Foods	16-350 JCH/KK
Cosio v IPAA	CC-16-551337
Cosio v IPAA Cert	CGC-16-551337
Cottonwood Financial Ltd dba Cash Store	File No. 2020-BCFP-0001
Covarrubias v The Martin Brower Co	19STCV26101
Cowley v Prudential 216(b)	2:21-cv-12226-SJM-DRG
Coyle v Flowers Foods	
Coyle v Mosaic	19STCV30088
Craw & Shurtleff v Hometown	18-12149-LTS
Crema v New Jersey National Golf Club	SOM-L-1433-17
Crites v Smokey Point	CASE NO. 18-2-19921-2 SEA
Culberson v Motion Auto Plaza	2011-CC00118
Daniels v Top Dot Mortgage	08 CV 4736
Danley v City of Mission KS	Case No. 17CV05514
Danshir v GNY	
Dart v Sheriff of Cook County	
Davis v Omnisure	CAM-L-3742-15
Davis v. City of Normandy	4:18CV01514RLW
Day v GEICO Casualty (cert notice)	
De Carolis v Broadcom	21CV384293
De La Rosa v Coca Cola	17CV000787
De Luna v Pacific Rim Dairy	14C0070
Deak v In-N-Out Burgers	30-2019-01060706-CU-OE- CXC



ATTICUS

DE Benning v Costco	34-2021-00309030
Deltoro v City Select	BUR-L-709-19
Demings v. Summit NW	19-2-09345-5 KNT
Diaz v Azcona Harvesting	M127608
Dillard v Fidelity National Financial Inc.	MSC18-00394
Doe v Barnstormers Basketball of Iowa	3:20-CV-0005
Domenech v National Water Main Cleaning Company	2:18-cv-08202 SDW-LDW
Dominguez v LifeSaver	
Donofrio v Auto Owners Ins. Co.	3:19-cv-58-WHR
Doty v Watkins & Shepard Trucking	3:19-cv-05236-JHC
Douillard v Sprint	8942
Dun & Bradstreet (Group 2-No Settlement)	1:18-cv-00725-LY
Edlin v Boot Man Inc (dba Premier Parking)	18EV004241
Edwards v Costco	5:21-cv-00716-MWF-KK
Edwards v PJ Ops, Idaho et al.	1:17-cv-0283
EEOC v Activision Blizzard	2:21-CV-07682 DSF-JEM
EEOC v AMTCR	2:21-cv-01808-JAD (NJK)
EEOC v Hathaway	
EEOC v Prestige Care	1:17 CV 01299-AWI-SAB
Ellsworth v Schneider National Carriers	CIVDS2012486
Eldridge v LADMC	
Embry v Big Earls Goldmine	4:19-CV-00305
EMJ-UAW Local 2096	
Empire Parking Settlement	
Escalera v La Tapatia Mexican Market	STK-CV-UOE-2017-5296
Escobar v 509 Time	20-2-14618-8knt
Espinoza v Alicia Accoyo	
Event Merchandising Settlement	
Exact Staffing Settlement	
Tran v Fastenal Company	BC717323
Ferguson v G3 Enterprise Services	
Fernando v Burroughs	RG18906875
Findley v Avenue5 Residential [PAGA]	
Fisher v Behavioral Health Services	BC613297
Pasini v Fish's Eddy FACTA	1:16-cv-00354-PGG
Fitzgerald v Forest River	3:20-CV-01004-DRL-MGG
Flowers Foods Global Settlement	1:19-cv-01021-STA-egb
Flowers Texas Settlement	
FMI case	
Foster v Advantage	3:18-cv-07205-LB
Foster v A-Para Transit Corp	RG18920985
Furtado Matter	
Garcia - PAGA	
Garcia v Moctezuma's	
Garcia v RCCB	19STCV36155



ATTICUS

Garcia v Toro Petroleum Corp	21CV000871
Gateley v Roman Freight	19-2-04498-5 KNT
Gaytan-Mendoza v Taylor Orchards	18-2-00482-3
Gelson's Markets Project	BC670061
George v Schulte Hospitality	2018-CH-04413
Gil v Luxottica	19STCV32413
Gilstrap v Sushanti 216b Cert	1:22-cv-434
Go Jump [PAGA]	
Goh v NCR FCRA	AAA No. 01-15-0004-0067
Gomez-Gasca v Future Ag	19-CV-2359-YGR
Gonzales v Healthcare Services Group BW	CGC-18-570988
Gonzalez v New Century Financial Services Inc	ESX-L-007675-17
Gonzalez v Xtreme Manufacturing	
Tran v Good Health Natural Products	BC561427 and BC588986
Gotishan v Kyo Autism Therapy	
Gould v BCT, Inc	19-2-00706-36
Gould v Farmers Insurance Exchange	1922-CC11065
Gray 2 v HCI Group	18-7440 (KFP)
	Confidential Master Settlement Administration Agreement
Grubhub	19STCV10106
Gruma Foods Settlement	
Gudia v Adams	
Guidry v Dow Chemical Company	2:19-CV-12233-MLCF-KWR
Guillen v AAA Limo	
Gutierrez v Zero Motorcycles	19CV03725
Hadley v Sugarmill Distillery	2020L13
Hanna v Marriott	3:18-cv-00325
Hanz v. SWBT	None: Arbitration
Harding & Moore v Wakefield & Assoc	18SL-AC26348-01
Harris v Diamond Dolls	3:19-cv-00598-RCJ-CBC
Harris v General Motors Corp	
Harris v Georgia Pacific	6:19-cv-06001-RTD
Harris v Wakefield	1722-cc11907
Hawkins v Middle Tennessee Pizza	
Hendrix v. Knight Transport	19-2-03468-8 KNT
Hernandez v Central Valley Community Bank	278857
	Civil Action No: 4:16-cv- 03577
Hernandez v City of Houston	18CV001441
Hernandez v Double Lucky	712045/18
Hernandez v NY4 Pretzel	M129230
Hernandez v So Mo Co Labor Supply, Inc.	



ATTICUS

Hodges v 77 Grandville	1:19-cv-00081
Holtegaard v Sierra Aluminum (PAGA)	5:20-CV-00509-JGB (KKX)
Nygaard v Home Advisor	2017-cv-3200
Home Security Settlement	
Hood v Hen Quarter Cert	2:22-cv-00486 DC OH
Hope v Alorica	3:20-cv-00267
Hudson v Valley Hope Association	1916-CV24811
Huffman v Pacific Gateway Concessions LLC	19CIV00412
Hurlocker v APTIM	3:21-cv-00403-EMD
Huynh v Parker -Hannifin Corporation	
Ibanez v OC Burger Boys	BC662360
Illinois v Mino Automation	2022CH08271
	20-40857 (RLE) AND 20-40858 (RLE)
In re Galileo Learning	
In Re Managed Care Solutions Healthcare	
In Re: Chinos Holdings, Inc (J Crew)	
IP-CommuniCare-469	
Isley v BMW	2:19-cv-12680
Jacques v Mike's Mobile	
Jadan v Costco	19CV340438
Janjua v Pilot Travel Centers	
James Blancher v KRG JCS	RG18916321
Jeffries v Volume Services America FACTA	17-1788 (CKK)
Jensen v Blue Shield of CA	CGC-17557801
Jewell v New Legend, Inc.	19-2-06146-0
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Jimenez v Environmental Service Partners	CGC 195766544
Jimenez v ESP	CGC-19-576544
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Jimenez v San Cristobal Distributing	56-2020-00545162-CU-OE-VTA
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Jimenez v San Cristobal Distributing BW	56-2020-00545162-CU-OE-VTA
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LWDA v UTC Restaurant Venture LLC	CGC-20-582236
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Rose v Impact Group	
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Rosinbaum v Flowers Foods	18CV337830
Ross v Hewlett Packard (HPE)	18-cv-336219
Rotor v Signature Consultants	FSC052953
Rough v Costco Wholesale Corporation	C34-2019-00267231-CU-OE-GDS
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Sanchez v ExamOne World Wide, Inc.	17CV308382
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White v Wesco Aircraft Hardware Corp	BC658654
Whitney v Cook County	18-cv-4475
Wicks v Title Loan Company DBA The Loan Machine	17SL-CC02673
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Williams v Equitable Acceptance Corporation	18-CV-07537 (NRB)
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Winkel v JH Steak	20-2-04853-4-SEA
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Womack v Superior Energy Services	7:19-CV-00074
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Ylvisaker v Clarkson Eyecare LLC	17SL-CC02089
Youmans v CPS	19EV001823
Young v Chieftain Coating	20-cv-10520
Zaldivar v. Moulton Logistics	19STCV12250
Zambrano v Strategic Delivery Solutions 216b	15-cv-8410 (ER) ED NY
Zamudio v Underground Rocket	
Zamora v Walgreen Co	114CV269810
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Zollicoffer v Gold Standard Eagle v Vee Pak	9672 (Vee Pak)
Zollicoffer v MVP	16CV11086



Partial Listing of Cases Managed at Dahl Administration

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Sun Country Employee Litigation

Dupont Chemical Pollution Litigation

Haight v Bluestem Brands, Inc. -TCPA

Dugan v TGIF-Wage and Hour/FLSA

Dunkel v Warrior Energy-Energy-Wage & Hour

Shelby v Miller Investment Group-Consumer Finance

Salas v Watkins Manufacturing-FLSA

Dull v IPS-Energy Sector Wage & Hour

Wallach v FFG-TCPA

Bourgeoisie v City of Baltimore-Consumer Fees

Brown v Alley-FLSA

Turner v ACD-Wage & Hour

Villa v San Francisco 49'ers-Consumer Fees

Thomas v Solvay

Reid v Unilever-Mass Tort

Zeller v PDC Corporation-FLSA

Murr v Capital One-Consumer Fraud

Redman v City of Chicago- FACTA

Ernst v Sterling-Dish Case-Consumer Fraud

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Martin v JTH-TCPA

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Gay v Tom's of Maine-False Labeling, 0:14-cv-6060004-KMM

Templeton Rye -False Labeling

Belardes v Farm Fresh to You-FLSA

Tin Cup Settlement-False Labeling

Johnson v Scan SAT-Medical Billing Data Breach

Garcia v EJ Amusement-FLSA and Wage & Hour

Doran v Forever Grand Vacations-Consumer Fraud- Time Share

Velasco v Chrysler Corp-Recall

Covell v Sleep Train-Wage & Hour

Torres v Kwon Yet Lung-FACTA

Redman v IMAX-FACTA

In Re Motor Fuel- Hot Fuel Case- Consumer Fraud, MDL No. 1840, 07-md-1840-KHV

Haight v Bluestem-TCPA

Martin v JTH-TCPA

In Re Target Data Breach-Financial Institutions



ATTICUS MANAGEMENT TEAM

Chris Longley, co-founder, and CEO of Atticus Administration LLC – Former CEO of Dahl Administration, a nationally recognized Claims Administration Company. Licensed Attorney (retired in-active status), admitted to practice Minnesota, 8th Circuit and United States Supreme Court.

During Chris' tenure at Dahl, he successfully managed, more than 300 class and collective action settlements, including some of the highest profile cases in the last few years, including *In Re Motor Fuel (Hot Fuel) MDL No: 1840, Case No: 07-md-1840-KHV*, an all- digital notice campaign with over 160 mm class members in 36 states and US Territories, and the *Target Data Breach- Financial Institutions Settlement, Case No. 0:14-md-02522-PAM* .

Chris co-founded Atticus Administration LLC, in August 2016. Since its inception, Atticus has administered over 900 settlements and has distributed more than \$1 billion in award payments.

Chris and his team, have extensive experience in all matters of notice campaigns, including class certification notices, CAFA notices, WARN notices, ISO notices, Belaire West Notices, 216(b) notices, as well as other complex notification projects on an as need basis.

Chris is the author of *"Internet and Electronic Notification Methods for Rule 23: How to Enhance Reach, Conversion, Real Time Analytics to Reduce Administrative Costs"*, published in 2016.

Chris is currently the membership chair of the ABA's Consumer Litigation Committee and Class Actions & Derivatives (CADS) sub-committee and is a frequent speaker on matters relating to complex notice procedures for class action settlements.

Prior to joining the class action industry, he served for 11 years in the private equity industry focusing on telecommunications companies and company acquisitions. He has been a founding member in 14 start-up companies during this same period.

Prior to that experience he was a practicing attorney in Minneapolis, Minnesota. Chris was named *"40 under 40"* by the *City Business Magazine* in 2001, and a *"Power Lawyer"*, by *Law and Politics Magazine*. He practiced law for the Minneapolis law firm of Hessian, McKasy & Soderberg, LLP prior to launching his business career.

Chris graduated from William Mitchell College of Law and the University of St. Thomas, and currently splits his time between St. Paul, Minnesota, and New York city.

Bryn Bridley – Vice President of Business Development – Bryn has over 19 years of Project Management experience within the industry, having worked with two large Settlement Administrators, Rust Consulting and Dahl Administration. Bryn's past claims administration work included the day-to-day activities of several high-



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profile consumer, employment and other types of cases. Bryn has extensive experience with CAFA Notices and Class Certification campaigns. Bryn is an honor's graduate of the University of Minnesota-Duluth.

Joel Prest – Director of Technology – Joel has 15 years of experience with software development and project management. Joel has expertise in designing scalable solutions to allow end users to work more efficiently with easy-to-use applications. Joel's prior work history includes Human Resource Management, which allows him to understand system payroll needs, HIPPA, and tax requirements necessary for employment related cases.

Jim Hardy, CPA (Inactive) – Co-Founder and CFO – Prior to co-founding Atticus, Jim held finance leadership positions over a twenty-year period in a variety of industries (contract manufacturing - implantable medical devices, sheet-fed printing, and commodity trading) where the wide-range of responsibilities and challenges from these experiences has enabled him to develop a versatile set of finance, administrative and operations skills.

Mike Gelhar – Practice Director, Employment & Treasury – Mike brings over 20 years of payroll experience in the employment law practice area. Along with his payroll knowledge, Mike is also bringing his work experience as he managed the processing and distribution of one of the nation's largest Labor and Employment administrators. These cases ranged from a few hundred claimants to over 700,000 claimants in all 50 states, including Puerto Rico.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Mark Drust individually and as a
representative of a class of similarly situated
persons, and on behalf of the Southwest
Research Institute Retirement Plan

Plaintiff,

v.

Southwest Research Institute, and John Does
1-20,

Defendants.

Civil Case No. 5:23-cv-767-XR

**[PROPOSED] ORDER ON PLAINTIFF’S MOTION FOR ATTORNEYS’ FEES AND
COSTS, ADMINISTRATIVE EXPENSES, AND CLASS REPRESENTATIVE SERVICE
AWARD**

This matter came before the Court on a Fairness Hearing on August 9, 2024. During the Fairness hearing, the Court considered, among other things, Plaintiff’s Motion for Attorneys’ Fees and Costs, Administrative Expenses, and Class Representative Service Award. This motion is unopposed by Defendants.

Having considered the motion papers, the proposed Settlement Agreement which the Court preliminarily approved on March 13, 2024, the arguments of counsel, and all files, records, and proceedings in this action, and otherwise being fully informed in the premises as to the facts and the law,

It is hereby ORDERED as follows:

1. Class Counsel’s request for an award of \$100,000 in attorneys’ fees is approved.

Having reviewed Class Counsel’s application and the applicable legal authorities, the Court finds

the requested amount (one-fifth of the \$500,000 Qualified Settlement Fund) to be reasonable and appropriate.

2. Class Counsel's request for litigation expenses in the amount of \$7,876.89 and settlement administration expenses in the amount of \$37,700 is approved. The Court has reviewed these expenses and finds that they are reasonable and appropriate given the nature of this action.

3. Plaintiff's request for a class representative service award in the amount of \$2,500 to Named Plaintiff Mark Drust is approved. The Court finds this award to be justified under the facts of this case and consistent with applicable legal authorities.

IT IS SO ORDERED.

Dated: _____

Hon. Xavier Rodriguez
United States District Judge