

**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

**DECLARATION OF BROCK J. SPECHT IN SUPPORT OF PLAINTIFF’S MOTION  
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

**Settlement Terms**

2. Attached hereto as **Exhibit A** is a true and correct copy of the proposed Class Action Settlement Agreement. The Settlement resolves Plaintiff’s class action claims against Southwest Research Institute (“Southwest Research” or “Defendant”) regarding Defendant’s administration and management of the Southwest Research Institute Retirement Plan (“Plan”).

3. The Settlement Agreement applies to the following Class:

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.

*Settlement* ¶ 2.45. Based on information provided by the Plan's recordkeeper, there are approximately 7,840 Class Members.

4. Under the terms of the proposed Settlement, Defendant will pay a Gross Settlement Amount<sup>1</sup> of \$500,000 into a common fund for the benefit of the Settlement Class. *Id.* ¶¶ 2.29, 5.4–5.5. Staff at my firm have estimated that the Plan's total losses for the matters alleged in the Complaint could be as much as \$9.45 million. Based on this estimate, the Gross Settlement Amount represents approximately 5.3% of the total estimated losses.

5. After accounting for any Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Service Awards approved by the Court, the Net Settlement Amount will be distributed to eligible Class Members. *Id.* ¶¶ 2.33, 5.9, 6.1.

6. Under the Plan of Allocation, the Net Settlement Amount will be divided pro rata among Settlement Class Members (and eligible Beneficiaries and Alternate Payees) based on their Average Account Balance in relation to other Class Members. *Id.* ¶¶ 6.4.1–6.4.2. A Settlement Class Member's Average Account Balance shall be the average of the quarterly scores during the Class Period, weighted to account for partial quarters. *Id.*

7. Current Participants' accounts will be automatically credited with their share of the Settlement Fund. *Id.* ¶ 6.5–6.5.1. Former Participants will be sent their distribution by check. *Id.* ¶ 6.2.

8. In addition to the foregoing monetary compensation, the Settlement also provides meaningful prospective relief to the Plan and its participants. Specifically, within 12 months of the Effective Date of the Settlement, Defendants will engage and utilize the services of an independent

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<sup>1</sup> Unless otherwise specified herein, all capitalized terms have the meaning assigned to them in Article 2 of the Settlement Agreement.

consultant or consultants unaffiliated with TIAA to assist with the monitoring of the Plan's investments for a period of three (3) years from the engagement. *Settlement ¶ 7.1.*

9. In the absence of a settlement, Plaintiff would have faced uncertainty and risk in connection with his claims. Given these risks (which are outlined in the accompanying Memorandum of Law), and the costs and potential delays associated with further litigation, I believe that the Settlement is fair, reasonable, and adequate.

### **Case Proceedings**

10. Prior to filing the Complaint in this action, my colleagues and I conducted a thorough investigation of the claims that were asserted and the factual basis for those claims. As a result of our investigatory efforts, we were able to file a detailed, 33-page Complaint on June 16, 2023 (*ECF No. 1*).

11. On September 15, 2023, Defendant filed a motion to dismiss the Complaint. *ECF No. 18*. Plaintiff filed a memorandum of law in opposition to Defendant's motion on September 29, 2023 (*ECF No. 20*), to which Defendant replied on October 13, 2023 (*ECF No. 22*). The Court also held a hearing on Defendant's motion to dismiss on December 20, 2023 (*ECF No. 35*).

12. While Defendant's motion to dismiss was pending, the parties engaged in early discovery of key documents. In total, Defendants produced over 3,500 pages of documents and Plaintiff produced over 1,300 pages of documents.

13. While the motion to dismiss was pending, and after exchanging the above discovery, the parties engaged in arms-length settlement discussions. The parties then reached a settlement-in-principle and negotiated the details of the comprehensive Settlement Agreement that is the subject of the present motion. For the reasons explained above, I believe the Settlement is fair, reasonable, and adequate.

**Professional Overview**

14. 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:

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| 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  |

15. I have been actively engaged in the practice of law since 2007 and have been counsel of record for both plaintiffs and defendants in numerous large, complex cases that have resolved through the payments of hundreds of millions of dollars in settlements or awards. The principal types of cases that I have handled at Nichols Kaster are consumer class actions and ERISA class actions. With regard to ERISA class actions, I have substantial experience litigating these cases in federal courts across the country and, in connection with those cases, I have been involved in negotiating class action settlements providing for more than \$250 million in available relief to ERISA plan participants. As part of this work, 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.

16. 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 twenty-five other class action cases involving retirement plans as set forth below:

- *Andrus v. NY Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y.);
- *Baker v. John Hancock Life Ins. Co. (U.S.A.)*, No. 1:20-cv-10397 (D. Mass.);
- *Beach v. JPMorgan Chase Bank, N.A.*, No. 1:17-cv-00563 (S.D.N.Y.);
- *Berry v. FirstGroup America, Inc.*, No. 1:18-cv-00326 (S.D. Ohio);
- *Bhatia v. McKinsey & Co., Inc.*, No. 1:19-cv-01466 (S.D.N.Y.);
- *Brotherston v. Putnam Investments, LLC*, No. 1:15-cv-13825 (D. Mass.);
- *Clark v. Oasis Outsourcing Holdings Inc.*, No. 9:18-cv-81101 (S.D. Fla.);
- *Falberg v. The Goldman Sachs Group, Inc.*, No. 19-cv-9910 (S.D.N.Y.);
- *Hill v. Mercy Health Corp.*, No. 3:20-cv-50286 (N.D. Ill.);
- *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-00375 (W.D.N.Y.);
- *Intravaia v. Nat'l Rural Elec. Coop. Assoc.*, No. 1:19-cv-00973 (E.D. Va.);
- *Johnson v. Fujitsu Tech. & Bus. of America, Inc.*, No. 5:15-cv-03698 (N.D. Cal.);
- *Karpik v. Huntington Bancshares Inc.*, No. 2:17-cv-1153 (S.D. Ohio);
- *Kinder v. Koch Indus., Inc.*, No. 1:20-cv-02973 (N.D. Ga.);
- *Kirk v. Ret. Comm. of CHS/Community Health Sys., Inc.*, No. 3:19-cv-00689 (M.D. Tenn.);
- *Larson v. Allina Heath Sys.*, No. 0:17-cv-03835 (D. Minn.);
- *Main v. American Airlines, Inc.*, No. 3:16-cv-01033 (N.D. Tex.);
- *Mass v. Regents of the Univ. of California*, No. RG17-879223 (Alameda County Super. Ct.);
- *Moitoso v. FMR LLC*, No. 1:18-cv-12122 (D. Mass.);
- *Moreno v. Deutsche Bank Americas Holding Corp.*, No. 1:15-cv-09936 (S.D.N.Y.);

- *Pecou v. Bessemer Trust Co.*, No. 1:22-cv-01019 (S.D.N.Y.);
- *Reetz v. Lowe's Co.*, No. 5:18-CV-00075 (W.D.N.C.);
- *Sims v. BB&T Corp.*, No. 1:15-cv-00732 (M.D.N.C.);
- *Stevens v. SEI Invs. Co.*, No. 2:18-cv-04205 (E.D. Pa.);
- *Toomey v. Demoulas Super Markets, Inc.*, No. 1:19-cv-11633 (D. Mass.);
- *Urakhchin v. Allianz Asset Mgmt. of America, L.P.*, No. 8:15-cv-01614 (C.D. Cal.);
- *Velazquez v. Massachusetts Fin. Servs. Co.*, No. 1:17-cv-11249 (D. Mass.); and
- *Wildman v. American Century Servs., LLC*, No. 4:16-cv-00737 (W.D. Mo.).

17. Our firm took the *Putnam*, *American Century*, *Lowe's*, and *Univ. 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*, *Allianz*, and *Massachusetts Financial Services*. We won contested class certification motions in *Goldman Sachs*, *JPMorgan Chase*, *Putnam*, *University of California*, *Deutsche Bank*, *BB&T*, *Allianz*, and *American Century*, and reached stipulations concerning class certification in our cases with *John Hancock*, *FirstGroup*, *Fidelity*, *Lowe's*, and *Massachusetts Financial Services*. We also defeated motions to dismiss in many of these cases in whole or in part, including *John Hancock*, *JPMorgan Chase*, *Putnam*, *M&T*, *NRECA*, *Fujitsu*, *Goldman Sachs*, *FirstGroup*, *Huntington Bank*, *American Airlines*, *University of California*, *Deutsche Bank*, *Lowe's*, *BB&T*, *Demoulas Super Markets*, *Allianz*, *Massachusetts Financial Services*, and *American Century*, as well as in *Morin v. Essentia Health*, 2017 WL 4083133 (D. Minn. Sept. 14, 2017), *report and recommendation affirmed*, 2017

WL 4876281 (D. Minn. Oct. 27, 2017), *Nelsen v. Principal Global Investors Trust Company*, 362 F. Supp. 3d 627 (S.D. Iowa 2019), *Davis v. Stadion Money Management*, 2020 WL 1248580 (D. Neb. March 16, 2020), *Falberg v. The Goldman Sachs Group*, 2020 WL 3893285 (S.D.N.Y. July 9, 2020), *McGinnes v. FirstGroup America, Inc.*, No. 1:18-cv-00326, *ECF No. 59* (S.D. Ohio March 18, 2021), *Stark v. Keycorp*, No. 1:20-cv-01254, *ECF No. 24* (N.D. Ohio May 4, 2021), *Kohari v. MetLife Grp., Inc.*, No. 21 CIV. 6146 (JPC), 2022 WL 3029328, at \*1 (S.D.N.Y. Aug. 1, 2022); *Klawonn v. Bd. of Directors for the Motion Picture Indus. Pension Plans*, No. CV-20-9194-DMG (JEMx), 2022 WL 17224708, at \*1 (C.D. Cal. Sept. 27, 2022); *Thomson v. Caesars Holdings Inc.*, No. 2:21-cv-00961, *ECF No. 109*, (D. Nevada March 13, 2023), and *Schaf v. O-I Glass, Inc.*, No. 3:22-cv-1240, *ECF No. 33* (N.D. Ohio June 30, 2023)

18. 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**

19. Nichols Kaster has been engaged in the practice of law for over 30 years, and is devoted to representing the interests of both consumers and employees. The firm has offices in Minneapolis and San Francisco, and currently employs 36 attorneys and a sizeable staff of paralegals, legal assistants, class action clerks, and information technology professionals.

20. 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.

21. 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).

22. Based on my personal experience and Nichols Kaster's firm-wide experience litigating ERISA cases, I believe that we were well-equipped to negotiate the Settlement that was reached in this case. For further background, a copy of our firm resume is attached as **Exhibit B**.

#### **Settlement Administrator**

23. Plaintiff has solicited bids from potential settlement administrators and has retained Atticus Administration, LLC as the Settlement Administrator.

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

Dated: March 11, 2024

/s/Brock J. Specht  
Brock J. Specht