

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

Thaddius Intravaia, *et al.*

Plaintiffs,

v.

National Rural Electric Cooperative Association,
et al.,

Defendants.

Case No. 1:19-cv-973-LO-IDD

**DECLARATION OF BROCK J. SPECHT IN SUPPORT OF PLAINTIFFS' MOTION
FOR APPROVAL OF ATTORNEYS' FEES AND COSTS, AND CLASS
REPRESENTATIVE SERVICE AWARDS**

I, Brock J. Specht, hereby submit this Declaration in support of Plaintiffs' Motion for Approval of Attorneys' Fees and Costs, and Class Representative Service Awards.

Professional Overview

1. I am a partner at Nichols Kaster, PLLP ("Nichols Kaster"), and I am one of the attorneys appointed by the Court to represent the Settlement Class¹ in the above-captioned action. *See* ECF No. 97.

2. I am licensed in good standing 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 Eighth Circuit
United States District Court for the District of Minnesota

¹ Capitalized terms in this Declaration have the meaning assigned in the Settlement Agreement. *See* ECF No. 99-2.

United States District Court for the Western District of New York
United States District Court for the District of North Dakota
Minnesota Supreme Court

I am in good standing in every jurisdiction in which I have been admitted to practice.

5. 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 venued in federal courts across the United States, as well as before federal administrative agencies and private arbitration tribunals. Among other things, I have substantial experience litigating ERISA class actions and, in connection with those cases, I have been involved in negotiating class action settlements providing for more than \$100 million in direct monetary relief to ERISA plans and their participants. A more-detailed explanation of my professional background is contained in my prior Declaration in support of preliminary approval of the Parties' Class Action Settlement (ECF No. 95-1) ("First Specht Declaration").

Law Firm Overview

6. 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 38 attorneys and a sizeable staff of paralegals, legal assistants, class action clerks, and information technology professionals. A copy of Nichols Kaster's law firm resume (which includes attorney biographies) was previously filed in this action as Exhibit B to First Specht Declaration (ECF No. 95-3).

7. 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.

8. 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.

9. 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 recently has been involved in two successful appeals before the United States Supreme Court, *Perez v. Mortgage Bankers Ass’n*, 135 S.Ct. 1199 (2015) and *Kasten v. Saint-Gobain Performance Plastics Corp.*, 131 S. Ct. 1325 (2010).

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 efficiently and effectively handle this action. Litigating ERISA class actions requires skillful, specialized expertise. This is especially true when bringing actions on behalf of a unique and rare breed of 401(k) plan—a Multiple Employer Plan (or “MEP”). Only a handful of plaintiffs’ firms have successfully recovered on behalf of MEPs. Doing so requires, among others, being able to ascertain the relevant marketplace and peer plans to attempt to demonstrate that Defendants’ management of the Plan did not satisfy fiduciary standards and caused substantial losses to the Plan. I previously outlined our extensive experience litigating ERISA class actions in my prior Declaration. *See ECF No. 95-1 (“First Specht Declaration”)* ¶¶ 17-20.

11. Notwithstanding the efficient manner in which the matter was handled, Nichols Kaster has dedicated a significant amount of time to successfully prosecuting this case. In addition to conducting an in-depth investigation of the Plan (*see id.* ¶ 12), we (1) drafted the initial class action complaint and the First Amended Complaint; (2) successfully opposed Defendants’ motion to dismiss, including appearing before the Court for the motion to dismiss hearing; (3) propounded numerous discovery requests and repeatedly met and conferred with Defendants to ensure the production of critical information regarding the Plan and its expenses; (4) analyzed over 124,000

pages of documents and extensive class data produced by Defendants; (5) produced over 30,000 pages of documents; (6) diligently pursued relevant discovery from five non-parties² and reviewed more than 1,000 pages of documents produced by those non-parties; (7) worked with two well-credentialed experts to conduct detailed analyses of Defendants' oversight of the Plan's expenses; (8) negotiated the Settlement on terms very favorable to the Settlement Class compared to similar ERISA settlements; and (9) consulted with the Class Representatives throughout the course of the case.

In addition, Class Counsel have undertaken considerable work in connection with the Settlement and settlement administration. This has included (1) drafting the Settlement Agreement and exhibits thereto (including the Settlement Notices, Former Participant Claim Form, and the proposed preliminary and final approval orders); (2) preparing Plaintiffs' Preliminary Approval Motion papers; (3) evaluating potential settlement administrators and working with opposing counsel to engage Analytics Consulting LLC ("Analytics") to serve as Settlement Administrator; (4) reviewing the final drafts of the Settlement Notices prepared by Analytics and ensuring that they were timely mailed; (5) working with Analytics to create a settlement website and telephone line for Class Members who would like additional information about the Settlement; (6) communicating with Class Members; and (7) preparing the present motion. This work is further detailed in the First Specht Declaration.

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 Class Counsel's timekeeper summary in this action. As reflected by this summary, Nichols Kaster

² These non-parties included Aon Hewitt, Calibre, Evercore, Newport Trust Company, and Johnson Lambert, each of whom provided services to the Plan and possessed relevant information regarding the Plan's administrative expenses.

attorneys have expended 1,775.8 hours pursuing this matter through the date of this Declaration, and Nichols Kaster professional staff (including paralegals, law clerks, legal assistants, class action clerks, and information technology professionals) have expended an additional 291.8 hours, for a total of 2,067.6 hours by Nichols Kaster personnel. Our co-counsel invested an additional 19 hours (as reported in his declaration), for a grand total of 2,086.6 hours invested by all Class Counsel. *See Declaration of Gregg C. Greenberg ¶ 16.* We would be happy to provide detailed billing records if the Court deems them necessary or helpful.

13. Nichols Kaster's standard billing rates for ERISA actions such as this range from \$625 to \$875 per hour for attorneys with more than 10 years of experience, \$425 to \$575 per hour for attorneys with 10 years or less 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 the 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. To date, Class Counsel have not been compensated for any of this work. Based on the hourly rates and work performed, the total lodestar for our firm amounts to \$1,062,650.00, and the total lodestar for all counsel amounts to \$1,069,300.00 (*see Declaration of Gregg Greenberg*).

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) researching, drafting, and filing Plaintiffs' motion for final approval of the Settlement; (2) communicating with the Independent Fiduciary engaged by

Defendants (Jim Carroll of Carroll Services LLC) as part of the independent review of the proposed release on behalf of the Plan (as called for by Prohibited Transaction Exemption 2003-39 and Article 3 of the Settlement Agreement) and provide all necessary information in connection with the Independent Fiduciary's review of the proposed release on behalf of the Plan; (3) preparing for and attending the Fairness Hearing; (4) if final approval is granted, supervising the Settlement Administrator and the Escrow Agent (Alerus) to ensure proper and efficient distribution of payments to eligible Class Members; (5) responding to questions from Class Members; and (6) taking other actions necessary to support the Settlement until the conclusion of the Settlement Period. Based on my experience supporting and supervising similar settlements, I estimate that Class Counsel will expend at least an additional 50 to 150 hours of professional time after the date of this Declaration.

Class Counsel's Costs and Expenses

18. In connection with the action, Nichols Kaster also has advanced a significant amount of expenses. Because our firm handled this action on a contingent basis, we have not yet received reimbursement for any of these expenses. As of the date of this Declaration, Nichols Kaster has incurred \$293,021.35 in litigation-related expenses in connection with this matter. These expenses are broken down below:

Category	Cost
Expert fees	\$269,130.85
Financial Database Charges	\$15,299.32
Westlaw/PACER	\$2,644.22
Travel Expenses	\$1,986.41
Relativity Database Hosting and Storage	\$ 1,442.92
Filing fees	\$1,000.00
Process/Courier Service	\$900.00
Public records	\$ 361.00
Postage, Shipping, Copies	\$256.63
TOTAL	\$293,021.35

19. In addition, our co-counsel has incurred \$1,065.75 in litigation expenses, for a total of \$294,087.10 in litigation expenses.

20. These expenses do **not** include expenses of settlement administration (totaling \$183,640.00), which are broken out separately below. *See infra* at ¶¶ 26, 28, 29. In the event that the Court would like further detail or documentation concerning these expenses, we would be happy to provide it.

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

22. In addition to these expenses, it is anticipated Nichols Kaster will incur additional expenses in connection with this case going forward, including certain incidental expenses that will be incurred in connection with appearing for the final approval hearing (meals, ground transportation, etc.). We do not intend to seek reimbursement of those additional expenses.

Settlement Administration Expenses

Analytics

25. Analytics Consulting, LLC (“Analytics”) was selected to serve as the Settlement Administrator in this matter. Analytics has extensive experience administering class action settlements, including several ERISA settlements. A copy of Analytics’ company profile was attached as Exhibit C to the First Specht Declaration (ECF No. 95-4).

26. Based on the bid submitted by Analytics, it will cost \$141,140 to administer the settlement in this action. This is reasonable based on my experience handling similar cases.

27. Analytics has diligently carried out its duties as Settlement Administrator by, among other things, (1) preparing and mailing the Settlement Notices; (2) searching for valid addresses for any Settlement Class Members whose Notices were returned as undeliverable; (3) establishing a telephone support line for Class Members; (4) creating and maintaining the settlement website; and (5) communicating regularly with the Parties regarding the status of settlement administration. Analytics also is also in the process of reviewing the Claim Forms submitted by Former Participants, and upon final approval of the Settlement, Analytics will facilitate delivery of settlement payments to Class Members as provided by the Settlement.

Alerus

28. Class Counsel selected Alerus to perform the duties of the Escrow Agent under the Settlement Agreement. Alerus has agreed to perform those duties for a fee of \$2,500. Alerus successfully performed a similar role with respect to the ERISA settlements overseen by our firm in the *Andrus v. NY Life Ins. Co.*, 1:16-cv-05698 (S.D.N.Y.); *Main v. American Airlines, Inc.*, 3:16-cv-01033 (N.D. Tex.); *Johnson v. Fujitsu Tech. & Bus. of America, Inc.*, No. 5:15-cv-03698 (N.D. Cal.); *Urakhchin v. Allianz Asset Management of America, L.P.*, 8:15-cv-01614 (C.D. Cal.); *Clark v. Oasis Outsourcing Holdings Inc.*, No. 9:18-cv-81101 (S.D. Fla.); *Moreno v. Deutsche Bank Americas Holding Corp.*, No. 1:15-cv-09936 (S.D.N.Y.); *Stevens v. SEI Invs. Co.*, No. 2:18-cv-04205 (E.D. Pa.); *Velazquez v. Mass. Financial Services Co.*, 1:17-cv-11249 (D. Mass.); *In re M&T Bank Corporation ERISA Litigation*, No. 1:16-cv-00375 (W.D.N.Y.); and *Bhatia v. McKinsey & Co.*, No. 1:19-cv-1466 (S.D.N.Y.). Alerus has performed its role competently in these cases and the present case, and I believe its fee is reasonable in light of the services provided and the size of the Settlement Fund.

Independent Fiduciary

29. Additional administrative expenses will be incurred relating to the review of the proposed release on behalf of the Plan by the independent fiduciary appointed pursuant to PTE 2003-39 and Article III of the Settlement. Under the Settlement Agreement, Defendants are responsible for arranging this review by the Independent Fiduciary, and the expense is an Administrative Expense that may be paid from the Gross Settlement Amount. We understand that the Defendants engaged Jim Carroll of Carroll Services LLC to perform the role of the Independent Fiduciary, and the fee for Mr. Carroll's services in this matter will be \$40,000.

Assistance of the Class Representatives

30. It has been my honor to represent the Thaddius Intravaia and Steven Marvik, who have served as the Named Plaintiffs and Class Representatives in this matter.³

31. Throughout the course of this action, Mr. Intravaia and Mr. Marvik have been mindful of their responsibilities as Class Representatives, and have actively participated in the action. Among other things, Mr. Intravaia and Mr. Marvik (1) assisted Class Counsel with their investigation by providing documents and other information regarding their participation in the Plan; (2) reviewed the initial Complaint and the Amended Complaint and consulted with Class Counsel regarding the matters asserted therein; (3) produced documents (including personal financial information) during discovery; (4) communicated with Class Counsel throughout the course of the action; and (5) discussed the Settlement with Class Counsel and reviewed and approved the Settlement Agreement.

32. Based on the time and assistance that the named Plaintiffs have provided as Class

³ In connection with the representation, the Class Representatives agreed to a one-third contingency fee, and to reimbursement of expenses in the event that the action was successfully resolved.

Representatives, and their initiative in pursuing this action, I believe that the requested class representative service awards are reasonable and appropriate. As noted in our motion papers, the amount that the Class Representatives are seeking (\$10,000) is consistent with other ERISA cases.

Objections

33. The Class reaction has been favorable, as indicated by correspondence with class members and the fact that Class Counsel has received only three objections out of more than 93,000 class members. They are attached as Exhibits 2-4. The second objection, Ex. 3, appears to have been based on the misplaced concern that claims concerning NRECA's defined benefit plan would be released under the Settlement Agreement. Class Counsel has advised the class member that the Settlement Agreement's release would not include claims against NRECA's defined benefit plan. That communication is attached in Exhibit 3.

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

Dated: October 20, 2020

/s/Brock J. Specht
Brock J. Specht