

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

IN RE MERCY HEALTH ERISA LITIGATION

No.: 1:16-cv-00441-SJD-SKB

District Court Judge Susan J. Dlott
Magistrate Judge Stephanie K. Bowman

**DECLARATION OF MARK P. KINDALL IN SUPPORT OF PLAINTIFFS' MOTIONS
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR AN AWARD
OF ATTORNEYS' FEES AND EXPENSES AND CASE CONTRIBUTION AWARDS
FOR LEAD PLAINTIFFS**

I, MARK P. KINDALL declare as follows:

1. I am a partner at Izard, Kindall & Raabe, LLP ("IKR"), Interim Co-Lead Class Counsel in this litigation.

2. I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement, Certification of Settlement Class and Approval of Class for an Award of Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Award to the Named Plaintiffs ("Named Plaintiff" or "Plaintiff). A true and accurate copy of the proposed Settlement Agreement, and the exhibits thereto, is attached as Exhibit A to this Declaration.

3. I have been actively involved in the prosecution of this Action, am familiar with its proceedings, and have personal knowledge of the matters set forth herein based on my active supervision and participation in all material aspects of the Action and if called to do so, we could and would testify competently thereto.

II. History of the Litigation

4. IKR has worked on this case from its inception with Kessler Topaz Melzer & Check, LLP ("KTMC"), a firm with which we had worked on numerous cases, including church

plan cases, over the course of many years. KTMC took the lead in preparing the initial complaint in this action, which was filed on March 30, 2016, captioned *Lupp v. Mercy Health*, No. 1:16-cv-00441-SJD-SKB.

5. On May 3, 2016, Janet Whaley, a participant in the St. Vincent Retirement Plan, and Leslie Beidleman, a participant in the St. Vincent Retirement Plan and the Mercy Health Partners – Northern Region Retirement Plan (Cash Balance), filed a related case, *Whaley v. Mercy Health*, No. 1:16-cv-00518-SJD-SKB (the “*Whaley Complaint*”), on behalf of themselves and all participants in and beneficiaries of defined pension plans established, maintained, administered and/or sponsored by Mercy Health and its affiliates, which Mercy Health claimed were entitled to ERISA’s church plan exemption. On June 24, 2016, Whaley filed an Amended Complaint, adding as Plaintiffs Patricia Blockus, a participant in the Mercy Health System Wilkes Barre Cash Balance Plan, Charles Bork, Marilyn Gagne and Nancy Zink (like Beidleman, participants in both the St. Vincent Retirement Plan and the Mercy Health Partners – Northern Region Retirement Plan (Cash Balance)), Karl and Patricia Mauger (participants in the Mercy Health Partners Pension Plan/Mercy Health Partners (NEPA) Plan), and Beth Zaworski, a participant in several of the Mercy Health Plans.

6. On June 30, 2016, Mary Alban filed an additional related complaint. *Alban v. Mercy Health*, No. 1:16-cv-00726-SJD-SKB. The Court consolidated the *Lupp* and *Whaley* actions on July 21, 2016 (ECF No. 30), and consolidated the *Alban* action with the prior two actions on August 11, 2016 (ECF No. 38). In accordance with a schedule proposed by the parties (ECF No. 16) and approved by the Court (ECF No. 20), Plaintiff Lupp and the Whaley Plaintiffs filed competing motions to appoint interim class counsel and liaison counsel pursuant to Federal Rule 23(g) (ECF Nos. 25 and 33). On December 2, 2016, Magistrate Judge Bowman issued a report

and recommendation that the Lupp 23(g) motion should be granted, the Whaley 23(g) motion should be denied, that IKR and KTMC should be appointed interim co-lead counsel for the class, and Strauss Troy Co., LPA should be appointed interim liaison counsel (ECF No. 42). The Court confirmed the recommendation (ECF No. 58) after the Whaley Plaintiffs withdrew their objection (ECF Nos. 45 and 57).

7. Following consolidation and appointment of an interim leadership team, IKR took the lead in drafting a Master Consolidated Complaint for the now-combined actions, incorporating the work that all Plaintiffs' counsel had done to that point, as well as additional investigations conducted subsequent to the filing of the earlier complaints. We worked with Co-Lead Counsel at KTMC, as well as with counsel for the Whaley and Alban Plaintiffs, to ensure that the MCC was comprehensive and complete. In addition, we engaged in discussions with counsel for Defendants to expedite responses to certain of the initial discovery requests that had been served on Defendants on January 18, 2017. One key issue which was a focus of the investigation for the MCC involved the different plans Mercy Health considers to be "church plans." While the MCC includes several Plans (many of which include other plans that had previously been consolidated into them), the investigation determined that the Plans are all materially the same for purposes of the litigation. Each of the Plans are "administered" by an internal committee. Each specifically provides that the plan is a "church plan," and that plan participants have no recourse pursuant to ERISA for benefits against any person or entity other than the master trust fund.

8. While Class Counsel were working to finalize the MCC, the U.S. Supreme Court issued its ruling in *Advocate Health Care Network v. Stapleton*, ___ U.S. ___, 137 S. Ct. 1652 (June 5, 2017). Although the *Advocate* decision was limited to the precise issue of statutory construction considered by the Court, the ruling did foreclose one of the primary arguments Plaintiffs had

advanced in their initial complaints as to why the Plans at issue in this case should not be considered “church plans.” This required Plaintiffs to substantially revise their approach to the MCC, focusing on provisions of the statute that had not been addressed in *Advocate*, and adding state law claims as alternative grounds for relief. The final MCC was 70 pages long and included 402 paragraphs of detailed factual and legal allegations in support of Plaintiffs’ claims. Plaintiffs completed and filed the MCC on September 14, 2017 (ECF No. 66).

9. On November 13, 2017, Defendants filed a lengthy Motion to Dismiss the MCC for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) together with supporting addenda, declarations and exhibits (*see* ECF Nos. 69 – 69-33). Defendants simultaneously filed a Motion to Dismiss for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1) (*see* ECF Nos. 70 – 70-5).

10. Just over a month after Defendants filed their Motions to Dismiss, and while Plaintiffs were in the midst of preparing their briefs in opposition to both motions, the Tenth Circuit issued its decision in *Medina v. Catholic Health Initiatives*, 877 F.3d 1213 (10th Cir. 2017). *Medina*, like the instant case, was a challenge to a hospital system’s claim that its pension plan was entitled to the “church plan” exemption in ERISA. The Tenth Circuit upheld the District Court’s decision granting summary judgment for the defendants on grounds which had application to some of the arguments advanced by Plaintiffs here. Accordingly, in responding to Defendant’s Rule 12(b)(6) motion, Plaintiffs had to address an area of law that was both new and subject to shifting interpretations. Plaintiffs filed the briefs in opposition to Defendants’ motions to dismiss on January 12, 2018. ECF Nos. 72 & 73.

II. Mediation, Settlement and Preliminary Approval

11. Following Plaintiffs’ filing of their briefs in opposition to the motions to dismiss, interim Class Counsel and counsel for Defendants discussed the possibility of resolving the case

through mediation. As a result of those discussions, in late January, 2018 the parties retained Robert Meyer of JAMS, an independent mediator who had successfully mediated several other cases involving ERISA's "church plan" exemption, and scheduled an in-person mediation session for February 27, 2018 in Chicago. The Parties filed a joint motion for a stay of all case deadlines for a period of ninety days to provide time for negotiations, which the Court granted on February 2, 2018. ECF No. 75.

12. In preparation for the mediation, Defendants provided Plaintiffs with updated actuarial reports for all the pension plans Mercy Health operates as ERISA-exempt "church plans." Interim Class Counsel also consulted with their own actuarial expert concerning the adequacy of the Plans' current funding levels. Plaintiffs' expert concluded that the Plans' current levels of funding would be sufficient to meet ERISA's minimum guidelines.¹

13. The mediation took place as scheduled on February 27, 2018, and lasted all day. Robert Izard from IKR, Mark Gyandoh and Julie Siebert-Johnson from KTMC, and Laura Gerber from Keller Rohrback, LLP, counsel for the Whaley Plaintiffs, attended the mediation for the Plaintiffs. The parties negotiating back-and-forth on each significant point, and Plaintiffs arguing for the longest possible guarantee period. At the end of the day, as the Parties had not otherwise been able to reach agreement, Mr. Meyer made a mediator's proposal addressing all key elements of a proposed settlement, which also proposed an overall cap on the amount that Defendants would be required to pay for Plaintiffs' attorneys' fees, litigation expenses and case contribution awards. Each Party had a week to inform the mediator, on a confidential basis, whether they accepted the proposal; a party that did not accept the proposal would not be told whether the other party had

¹ Plaintiffs' actuarial expert has provided an updated version of his analysis for purposes of the Court's evaluation of the proposed settlement. *See* Declaration of Mitchell I. Serota ("Serota Decl."), attached as Exhibit B, at ¶¶ 4-12.

accepted or rejected it (this is sometimes called a “double-blind” proposal). On March 6, 2018, the mediator reported that both sides had accepted his proposal.

14. Following the successful mediation, the Parties negotiated a term sheet that incorporated the specific proposals discussed during the mediation. Once that exercise was complete, the Parties began the process of negotiating the Settlement Agreement itself, which incorporated the provisions of the term sheet as well as other ancillary issues and general terms, as well as the exhibits to the Settlement Agreement, including the class notice of settlement. Several of the key terms – first in the term sheet, then in the Settlement Agreement – required significant additional negotiations, both in writing and through conference calls. As a result, the negotiations took longer than the Parties had anticipated, which necessitated requesting an extension of the stay the Court had previously entered. ECF Nos. 78 & 79. The Settlement Agreement was finalized and executed by the Parties on July 13, 2018.

15. While negotiations to finalize the Settlement Agreement were reaching their conclusion, Plaintiffs’ counsel conferred regularly concerning the preliminary approval process in the Southern District of Ohio, and worked on preparing a motion and supporting papers.

16. The Settlement Agreement was finalized and executed by the Parties on July 13, 2018. On July 17, 2018, Plaintiffs filed an Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, Approval of Class Notice and Scheduling of a Fairness Hearing (the “Preliminary Approval Motion,” ECF No. 81), together with supporting declarations, exhibits and a memorandum of law (ECF Nos. 81-1 – 81-20).

17. The Court held a telephonic conference on the Preliminary Approval Motion on August 8, 2018, after which the Parties filed a Joint Motion to Proceed Before Magistrate Judge (ECF No. 83-1). The Court granted the Motion on August 8, 2018 (ECF No. 84), after which the

the Court (Bowman, J.) issued an order (the “Preliminary Approval Order”) granting the Preliminary Approval Motion (ECF No. 85).

III. Notice to the Class

18. Following Preliminary Approval, IKR worked with counsel for Defendants to finalize the Class Notice which had been approved by the Court in the Preliminary Approval Order, as well as on language for a supplemental post-card notice that would be sent to Class Members who were entitled to additional lump-sum payments under the proposed settlement. IKR also posted the finalized Class Notice on a dedicated page on IKR’s website (<http://ikrlaw.com/file/mercy-health/>) on August 23, 2018, together with documents relevant to the case and the settlement, including the Complaint, the memoranda and declarations supporting preliminary approval, and the Preliminary Approval Order itself.

19. Defendant Mercy Health retained Dahl Administration LLC (“Dahl”) to provide notice to the Class in accordance with the terms of the Preliminary Approval Order. Pursuant to instructions by Defendants’ counsel, Dahl mailed 37,433 notice packets to class members identified by Mercy Health based on its internal records of participation in the Plans. Declaration of Kimberley K. Ness With Respect to Due Diligence and Proof of Mailing (“Ness Decl.”), attached to this Declaration as Exhibit C, at ¶ 8. The notice packets contained the Class Notice approved by the Court in the Preliminary Approval Order. Dahl provided additional notice, in the form of a postcard with language agreed by the Parties, to those Class Members who would be entitled to \$450 payments under the “lump sum” provisions of the Settlement. *Id.* at ¶¶ 9-10.

20. On September 26, 2018, Howard Shapiro, counsel for Defendants, informed me that Defendants had inadvertently failed to serve copies of the Class Notice on approximately 4,400 Class Members, because they were no longer Plan Participants, and they had taken lump-

sum distributions from Plans that were calculated in accordance with formulae we had not challenged in the litigation. I discussed with counsel the most expeditious method for correcting the oversight. After we had agreed on a strategy, I reviewed and approved the Joint Motion to Amend the Preliminary Approval Order and the documents submitted in support thereof. ECF Nos. 90 – 90-4. The Motion was filed on September 27, 2018, and granted by the Court later that day. ECF No. 91. Before close of business on September 27, IKR posted the Order and the Revised Notice on the settlement website, <http://ikrlaw.com/file/mercy-health/>. Additionally, Dahl sent copies to the last-known address of these 4,459 class members by first-class mail on October 1, 2018. Ness Decl. at ¶¶ 11-13.

IV. Counsel’s Evaluation of the Proposed Settlement Agreement

21. IKR has substantial experience in class actions, complex litigation and ERISA litigation. Over the course of the past several years, IKR has been appointed as lead counsel or co-lead counsel in several cases involving application of ERISA’s “church plan” exemption to pension plans for employees of hospitals and healthcare systems, including *Kemp-DeLisser v. Saint Francis Hospital and Medical Center*, Civil Action No. 3:15-cv-01113-VAB (D. Conn.), *Tucker v. Baptist Health System, Inc.*, Case No. 2:15-cv-00382-SLB (N.D.AL.), *Brace v. Methodist Le Bonheur Healthcare*, No. 16-cv-2412-SHL-tmp (W.D. Tenn.), and *Nicholson v. Franciscan Missionaries of our Lady Health Systems*, No. 16-CV-258-SDD-EWD (M.D. LA), and are also functioning as co-lead counsel in *Boden v. St. Elizabeth Medical Center*, No. 2:16-cv-00049-DLB-CJS (E.D. Ky.). A copy of the Firm’s current resume is attached to this declaration as Exhibit D.

22. Based on its experience, its knowledge of evolving caselaw and its investigation of the facts at issue in this case, IKR strongly supports the proposed Settlement. Several factors are particularly important to this analysis.

23. First, if Plaintiffs prevailed on the merits in full and the Plans were fully subject to ERISA, Defendants would not have to make any “Required Minimum Contributions” to the trust funds to satisfy ERISA’s minimum funding requirements, unless the trust fund’s financial position deteriorated significantly between now and the date of judgment. *See* Serota Decl., ¶¶ 4-12.

24. Second, the Settlement provides real and significant protections for participants in the Plans. The current plan documents specifically state that the Plans’ trust funds provide the only recourse for payment of promised retirement benefits. The Settlement provides that Mercy Health itself will guarantee payment of benefits for a period of nine years. Plaintiffs’ actuarial expert has calculated that the market cost of insuring the payment of the Plans’ benefits for nine years would be in excess of \$63 million. *Serota Decl.*, ¶¶ 13-25. Additionally, the Settlement provides that Plan Participants will receive important information about the Plans and their benefits for the same nine-year period. Finally, approximately 1390 former participants of Plans who received lump sum payments based on calculations that would not have met ERISA standards will each receive \$450.

25. Third, while Plaintiffs would have achieved a far better result, especially with respect to future years, had they prevailed on the merits of the case and had Defendants been required to operate the Plans in accordance with ERISA, any Settlement must take into account the real risks that Plaintiffs face in the case. Here, in the years since the case was initially filed, the legal landscape has shifted against the interests of the Class. In particular, the Supreme Court’s

ruling in *Advocate Health Care* and the Tenth Circuit's ruling in *Medina* provide support for arguments favorable to Defendants here.

26. Thus, while the Settlement falls short of the primary goal of the litigation – shielding Class Member's pension benefits with the full panoply of protections afforded by ERISA – it nonetheless provides substantial additional protections for current plan participants for a period of nine years, and additional money for former participants who took lump sum payments that were calculated using formulas that would not have passed muster under federal law.

V. Reaction of the Class

27. Since the Class Notice was sent out, I and other attorneys at IKR have spoken and/or communicated in writing or by email with well over 100 Class Members who contacted us to discuss the litigation and settlement. Primarily, class members called to make sure that they understood the settlement terms and how the settlement might affect them, and their response was generally supportive. Several current plan participants expressed concern that the additional protections in the Settlement Agreement did not last beyond nine years, but understood that the settlement was a compromise.

28. Out of over 40,000 class members who were served with the notice, nine have filed objections with the Court as of the date of this submission, and an additional 14 have sent copies of objection forms to either counsel or the claims administrator without filing them. The deadlines for filing objections (November 14, 2018 for Class Members who were mailed notices within 30 days of the Preliminary Approval Order, and November 27, 2018 for Class Members who received the Notices sent after the Court's Amended Preliminary Approval Order was issued on September 28, 2018) have not yet passed, so more class members may file objection forms prior to the final approval hearing.

29. In his filed objection (ECF No. 86), Class Member Gary N. Fox argued that the nine-year guarantee should, instead, be a 19-year guarantee starting at age 65 for each Plan Participant, based on the U.S. government's current statistical table for life expectancies. I spoke with Mr. Fox by telephone on September 21, 2018. After discussing the case and the settlement, Mr. Fox authorized Class Counsel to represent to the Court that he was withdrawing his objection.

30. In her filed objection (ECF No. 87), Class Member Patricia S. Hackett expressed concern that the pension plan trust fund was underfunded by \$209 million in 2014, and believed that this loss of investment funds needed to be addressed. I spoke with Mrs. Hackett and her husband by telephone on September 21, 2018 to address the issues raised in Mrs. Hackett's objection and answer any additional questions they had.

31. In her filed objection (ECF No. 92), Class Member Melanie Sue Gillespie argues that the 9-year guarantee is not long enough, and points out that she is only 48 at present and will not reach retirement age before the guarantee expires. I had an email exchange with Ms. Gillespie and answered questions that she had; she wishes to maintain her objection.

32. In his filed objection (ECF No. 89), Class member Randall Hodak stated that a nine-year guarantee was an insufficient price for the release of claims, and expressed the belief that the only people who benefit from the Settlement are the Defendants and the Plaintiffs' lawyers. I called Mr. Hodak to discuss the litigation and settlement on October 4 and October 9, 2018, but was unable to reach him and left a message.

33. In her filed objection (ECF No. 94), Dianne Marie Krajewski wrote that she had taken a lump-sum distribution on December 31, 2012 after 38 years' service, and objected to the "fairness of changes and loss of income that was supposed to be mine when pension plans were changed." I spoke with Ms. Krajewski on October 17, 2018, and determined that her objection

involved a decrease in accrued pension savings that occurred prior to the Class Period, when Mercy Health acquired the hospital system where she had been employed.

34. Class Member Beatrice Etzel filed an objection ECF No. 97, which involved an incorrect hire date being used to calculate her pension. Douglas Needham from this office spoke with Ms. Etzel by telephone on October 26, 2018.

35. Class member Vonell Sadler filed an objection (ECF No. 93) which left blank the areas of the form requesting information about her objection. I spoke with Ms. Sadler by telephone on October 17, 2018 to inquire about the nature of her objection. She indicated that she had not intended to object to the Settlement. Class Members Bruce Wright and Nancy Norman similarly filed objections (ECF Nos. 88 and 96) that put an “x” in all of the areas of the form requesting information about their objections, including the space on the form for describing the nature of the objection. I have been unable to reach either Class Member to determine if they intended to object.

36. Objection forms were received from Class Members Darlene Brown, Thomas Walsh, Raymond Woods, Nancy West, John Danklefsen, Shawn Smith, Carrie Maynard Meyer, Carolee Ochsner, Susan Moyers and Tracey Green, copies of which are attached in Exhibit E. In each case, the objection forms left blank the space for describing the nature of the Class Member’s objection to the Settlement. We have endeavored to reach out to all of these class members to ascertain whether they intended to object to the settlement. I spoke with Mr. Walsh and Mr. Woods on September 21, 2018, with Ms. Brown and Mr. West on September 27, 2018, and with Mr. Danklefsen on October 10, 2018. Douglas Needham spoke with Ms. Ochsner and Ms. Meyer. Each indicated that they did not intend to object to the Settlement; several were under the mistaken impression that they could only participate in the Settlement by submitting the form. This was also true of one additional Class Member who submitted a largely blank

objection form; that Class Member, however, specifically instructed Class Counsel not to submit the form to the Court. As of the date of this filing, we have not been able to contact Class Members Smith, Moyers or Green.

37. Class member Susan Reams Hammer submitted an objection form, attached in Exhibit E. In the space on the objection form for describing the nature of the objection, Ms. Hammer wrote, “N/A.” Elsewhere on the form, Ms. Hammer indicated that she was providing notice of a change of name and address. As of the date of this filing, we have been unable to reach Ms. Hammer.

38. Class member Kimberley Sheets Bailey submitted an objection form, attached in Exhibit E. Ms. Bailey left blank the space on the objection form for describing the nature of the objection. At the bottom of the form, Ms. Bailey indicated that she “would like update on this hearing/settlement.” Although we have called Ms. Bailey to provide an update and to confirm that she did not intend to object to the settlement, we have been unsuccessful in reaching her to date.

39. Class member Gary Stucke submitted an objection form, attached in Exhibit E, that describes his objection as “Lost of 401k from 2001-2003.” As of the date of this filing, we have been unable to reach Mr. Stucke.

VI. Counsel’s Lodestar and Expense Calculation

40. In preparation for filing this motion, I reviewed IKR’s time and out-of-pocket expenses in connection with the current litigation.

41. The information in this declaration regarding my firm’s time and expenses is taken from contemporaneous time and expense printouts prepared and maintained by my firm in the ordinary course of business. I reviewed these printouts to confirm both the accuracy of the entries on the printouts as well as the necessity for and reasonableness of the time and expenses committed

to the litigation. Based on these reviews, I believe that the time reflected in my firm's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace. IKR prosecuted this case on a wholly contingent basis, and has received no compensation to date for either its litigation expenses or its time.

42. The hourly rates shown below are IKR's normal rates for both hourly customers and class action work. IKR's class action work, which represents the large majority of its business, is a specialized national practice; we do not charge differential rates based on the location where a lawsuit is filed. Courts have approved IKR's fees in class actions litigated all over the country.

43. In the course of our nationwide practice, attorneys at IKR have worked with many of the firms that typically represent plaintiffs in ERISA class actions nationwide, just as, in this case, we are working collaboratively with attorneys from KTMC, GM&E, Keller Rohrback and Cohen Milstein Sellers & Toll, PLLC ("CMST"). As a result, we are familiar with the rates charged by other firms in our industry. While there are invariably differences in rates between different firms – and even between rates for lawyers within the same firm with the same number of years of practice – in our experience each firm's rates are broadly in line with rates of other firms with nationwide ERISA class action practices, and have been the basis for awards of fees in courts around the country.

44. By way of comparison, Defendants in this action are represented by Proskauer Rose LLP, a firm of over 725 attorneys with "one of the largest global client rosters" (<https://www.proskauer.com/about>) and offices in Beijing, Boca Raton, Boston, Chicago, Hong Kong, London, Los Angeles, New Orleans, New York, Newark, Paris, Sao Paulo and Washington,

D.C. See <https://www.proskauer.com/locations>. While Plaintiffs do not have access to a comprehensive list of rates charged by Proskauer Rose's attorneys, a recent filing in *Ruben Daniel Chorny v. The Republic of Argentina*, No. 1:04-cv-00400-LAP (S.D.N.Y. 2016) shows partner rates that range from \$615-\$975 per hour, senior counsel rates that range from \$755-850 per hour, and associate rates that range from \$170-\$900 per hour. A copy of the relevant portions of the filing are attached as Exhibit F.

45. IKR devoted a total of 550 hours to the prosecution of this litigation from inception through October 10, 2018. The total lodestar amount for attorney time based on the firm's current rates is \$397,406.25. A breakdown of IKR's lodestar as of October 10, 2018 is as follows:

Name	Position	Years of Practice	Rate	Hours	Lodestar
Douglas P. Needham	Attorney	11	\$550.00	227.75	\$125,262.50
Mark P. Kindall	Partner	30	\$850.00	246.50	\$209,525.00
Robert A. Izard	Partner	35	\$925.00	65.75	\$60,818.75
Eileen A. McGee	Paralegal	--	\$180.00	10.00	\$1,800
Total				550.00	\$397,406.25

46. I have prepared a breakdown of all of IKR's reported time by each of the key tasks that were performed over the course of this litigation. Collectively, IKR's time for these tasks is broken down as follows:

Task	Hours
Initial Complaint	7.25
23(g) Issues	74.25
Discovery	6.9
Amended Complaint	75.95
Motions to Dismiss	89
Misc. Motions/Scheduling	27.9
Mediation/Settlement	70.025
Preliminary Approval Briefing	92.975
Client Contact	00
Other Class Member Contact	62.275
Final Approval	43.475
Total	550.00

47. Further detail concerning what is included in each of these tasks is set out in Exh. G, which also breaks down the time for each of IKR's timekeepers by each of these tasks.

48. Biographical details for the IKR attorneys who worked on the case are included at the end of the Firm’s resume, attached as Exhibit C to this declaration.

49. To date, IKR’s out-of-pocket expenses for this litigation are \$16,288.43, broken down as follows:

EXPENSE DESCRIPTION	AMOUNT
Court costs (<i>pro hac vice</i> fees)	\$600.00
Meals, Hotels & Transportation	\$1,691.12
Expert expenses	\$9,689.65
Mediation fees	\$4,102.71
Overnight delivery	\$64.85
PACER	\$140.10
TOTAL EXPENSES:	\$16,288.43

VI. WORK BY OTHER PLAINTIFFS’ COUNSEL

50. The firms representing Plaintiffs in this action include all of the firms that have undertaken litigation over the past several years against hospitals and health care systems that have claimed the exemption for their pension plans under ERISA’s “church plan” exemption. *See* competing motions for appointment as interim lead counsel, ECF Nos. 23 and 35 (discussing, *inter alia*, background of Keller Rohrback and CMST, and counsel for Plaintiff Lupp, IKR and KTMC). In addition, counsel for Plaintiff Alban, Gainey McKenna & Egleston (“GM&E”), which did not seek appointment as lead counsel, has substantial experience in class action and ERISA litigation generally. *See* ECF No. 35-7. Each of the firms did substantial work at the outset of the case investigating claims, communicating with Plaintiffs and plan participants and preparing detailed complaints, as shown in the Joint Declaration of Laura R. Gerber, Michelle C. Yau and Thomas R. Theado in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of a Class Action Settlement (“Whaley Plaintiffs’ Decl.”) and the Declaration of Thomas J. McKenna in Support of Plaintiffs’ Motion for Preliminary Approval of a Class Action Settlement (“McKenna Decl.”).

51. As directed in the Manual for Complex Litigation, after their appointment as Interim Class Counsel, IKR and KTMC consulted with other plaintiffs' counsel in the formulation and drafting of the MCC, the development of arguments concerning the motions to dismiss and with respect to settlement negotiations. Manual of Complex Litig., § 10.221. Interim Co-Lead Class Counsel worked to minimize duplication of effort, while maximizing input from plaintiffs' counsel. This is shown by the Declarations submitted by counsel for Plaintiff Alban and the Whaley Plaintiffs, which provide breakdown of their time in the case by task using the same methodology described in Exhibit G.

52. The contributions of Plaintiffs' counsel, both before and after appointment of Interim Co-Lead Counsel, were substantive and important to the successful prosecution of the litigation.

53. Collectively, the firms representing all Plaintiffs in this action (including Co-Lead and Liaison Counsel as well as all other Plaintiffs' Counsel) have spent \$46,468.80 litigating this case. In addition to paragraph 49 herein, *see* Gyandoh Decl., ¶ 17, Parry Decl. Exh. 3, Whaley Plaintiffs' Decl., Exhs. C, D and E and McKenna Decl. Exh. 3. The following chart breaks down the Firms' collective expenses:

	IKR	KTMC	Strauss	KR	CMST	GNT	GM&E	Totals
Court costs	600.00	-	1,000.00	1,200.00	985.00	-	410.00	4,195.00
Meals, Hotels & Transportation	1,691.12	,002.66	-	2,484.07	28.55	-	-	7,206.40
Expert expenses	9,689.65	-	-	-	-	-	-	9,689.65
Mediation fees	4,102.71	4,102.70	-	-	-	-	-	8,205.41
Postage & Delivery	64.85	214.60	-	1,925.81	54.27	17.82	6.15	2,283.50
Electronic Research	140.10	5,839.85	-	2,339.79	2,387.02	1,879.73	31.10	12,617.59
Telephone/fax	-	-	-	-	24.27	-	22.75	47.02
Copying	-	143.00	-	2,081.23	-	-	-	2,224.23
TOTALS	16,288.43	3,302.81	1,000.00	10,030.90	3,479.11	1,897.55	470.00	46,468.80

54. Collectively, the hours devoted to this litigation by all Plaintiffs' Counsel (including Co-Lead and Liaison Counsel as well as all other Plaintiffs' Counsel), based on their submitted declarations, is as follows:

Task	Hours
Initial Complaint	274.9
23(g) Issues	536.25
Discovery	123.15
Amended Complaint	298.8
Motions to Dismiss	129.8
Misc. Motions/Scheduling	291.2
Mediation/Settlement	292.425
Preliminary Approval Briefing	182.025
Client Contact	145.95
Other Class Member Contact	334.025
Final Approval	74.125
Totals	2682.65

A chart summarizing the contributions of each firm by task is attached to this declaration as Exhibit H.

55. Based on the declarations of Plaintiffs' counsel submitted in support of the Motion for Preliminary Approval, counsel for all Plaintiffs have collectively spent 2,682.9 hours prosecuting this litigation to date. Their collectively lodestar, based on the firms' regular rates, is slightly more than \$1.4 million. Class Counsel believe that the firms' regular rates, which have been approved as the bases for lodestar analysis in numerous cases around the country, are the correct basis for the lodestar analysis here. This case required expertise in both class action litigation and a very specialized area of ERISA law, and Plaintiffs' counsel were uniquely qualified to provide that expertise. That said, however, Class Counsel recognize that this Court has also looked to rates developed by the Rubin Committee in 1983, modified by a cost-of-living adjustment of 4% per year, in lodestar analysis. *Palombaro, v. Emery Fed. Credit Union*, No. 1:15-CV-792, 2018 WL 4635973, at *10 (S.D. Ohio Sept. 27, 2018); *Michel v. WM Healthcare Solutions*, 2014 WL 497031 (S.D. Ohio Feb. 7, 2014); *Planned Parenthood Sw. Ohio Region v.*

DeWine, No. 1:04-CV-00493, 2017 WL 3115306, at *8 (S.D. Ohio July 21, 2017). Based on the description of Rubin Rates in *Palombaro*, *Michel* and *Planned Parenthood*, as well as on the information provided in the declarations of Plaintiffs' counsel, it appears that lodestar for Plaintiffs' counsel to date would be over \$950,000 if Rubin Rates are substituted for the regular hourly rates of Plaintiffs' counsel. An analysis of the lodestar for all Plaintiffs' counsel, using the Rubin Rates in the *Palombara*, *Michel* and *Planned Parenthood* decisions, modified where necessary to account for a 4% per year COLA, is attached to this Declaration as Exhibit I.

56. Counsel are seeking an attorneys' fee award of \$779,531.20. This represents a negative lodestar multiplier of 0.82% using Rubin Rates, and a negative lodestar multiplier of 0.53% using the regular billing rates of Plaintiffs' counsel. An award of attorneys' fees in the amount of \$779,531.20 would yield a blended hourly rate for all counsel of approximately \$290 per hour.

57. Attached hereto as Exhibit J is a true and correct copy of the declaration of Howard Shapiro concerning Defendants' compliance with the notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*

I, Mark P. Kindall, declare under penalty of perjury that the foregoing is true and correct.
Executed this 29th day of October 2018, in West Hartford, Connecticut.

/s/ Mark P. Kindall
Mark P. Kindall

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2018, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system.

/s/ Mark P. Kindall _____

Mark P. Kindall