

EXHIBIT 3

Declaration of Mark P. Kindall

Mark P. Kindall (State Bar No. 138703)
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*Attorneys for Proposed Intervenor
Michelle Hall, Jenifer Heiner, and Christine Montoya*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

STARLA ROLLINS and PATRICIA
WILSON, on behalf of themselves,
individually, on behalf of all others similarly
situated, and on behalf of the Dignity Plan,

Plaintiffs,

MICHELLE HALL, JENIFER HEINER, and
CHRISTINE MONTOYA,

Intervenor Plaintiffs,

v.

DIGNITY HEALTH, a California Non-profit
Corporation, HERBERT J. VALLIER, and
individual, DARRYL ROBINSON, an
individual, the Dignity Health Retirement Plan
Subcommittee, and JOHN and JANE DOES,
each as an individual, 1-20,

Defendants

Case No. 4:13-cv-01450-JST

**DECLARATION OF MARK P. KINDALL
IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF
SETTLEMENT AGREEMENT, AND
CERTIFICATION OF SETTLEMENT
CLASS AND AWARD OF ATTORNEYS'
FEES AND INCENTIVE AWARDS**

Hearing:

Date: March 3, 2022
Time 2:00 pm
Courtroom: 6
Judge: Hon. Jon S. Tigar

1 I, Mark P. Kindall, pursuant to 28 U.S.C. § 1746, declare as follows:

2 1. I am a partner with the law firm of Izard, Kindall & Raabe (“IKR”), co-counsel for
3 the Plaintiff, Rickie K. Smith (“Plaintiff” or “Smith”). I make this Declaration in support of
4 Plaintiffs’ Second Renewed Unopposed Motion for Preliminary Approval of Settlement Agreement
5 and Certification of Settlement Class (the “Motion”).

6 2. IKR has been involved in this litigation since shortly after this Court’s denial of
7 Plaintiff’s second motion for preliminary approval of a proposed settlement in June of 2020 (ECF
8 No. 292). I have been the principal attorney handling this matter at IKR and have first-hand
9 knowledge of the information set forth herein.

10 3. Sometime after the Court’s ruling, I contacted counsel for the Plaintiffs and indicated
11 that IKR was interested in representing a subclass of persons who had forfeited accrued benefits
12 when they left the company after more than three, but less than five years of vesting service (the
13 “Vesting Subclass”). Counsel for the Plaintiffs subsequently referred class members who would be
14 part of such a Vesting Subclass to me to discuss the possibility of intervening in the suit to represent
15 the interests of the Vesting Subclass. I had conversations with several potential Subclass Members
16 in July and August of 2020.

17 4. IKR investigated the claims of potential Vesting Subclass members who contacted
18 the firm. After discussions and after reviewing materials concerning the case and the firm, Jenifer
19 Heiner, Michele Hall and Christine Montoya determined that they wanted to intervene in the suit to
20 represent the Vesting Subclass. Their Motion to Intervene (ECF No. 294) was filed on August 31,
21 2020 and granted on October 8, 2020. ECF No. 296.

22 5. We began our analysis by reviewing the provisions of the Restated and Amended
23 Class Action Settlement Agreement, ECF No. 290-1 that the Court had declined to approve in its
24 June, 2020 Order. That version of the agreement had proposed to award a total of \$660,000 to former
25 participants in the Guaranteed Growth Account (“GGA”) and Value Protection Plan (“VPP”)
26 segments of the Cash Balance portion of the Dignity Plan who terminated employment with less than
27

1 five, but more than three, years of vesting service. Restated and Amended Class Action Settlement
2 Agreement, ECF No. 290-1, at ¶ 7.1.6. Participants in this group who had been enrolled in the GGA
3 plan were to receive \$226.80 each, while participants in the VPP were to receive \$113.40 each. *Id.*

4 6. In support of the motion to preliminarily approve the Restated and Amended Class
5 Action Settlement Agreement, proposed Class Counsel submitted a supplemental declaration from
6 actuarial expert Daniel Cassidy which was relevant to valuation of the claims of the Vesting Subclass.
7 Based on certain reasonable assumptions concerning average age and salary, Mr. Cassidy estimated
8 that the 2,538 former participants of the GGA Plan forfeited between \$6-18 million (reflecting an
9 average per-person forfeiture of between \$2,400 and \$10,800), and the 744 former participants in the
10 VPP forfeited between \$900,000 to \$2,700,000 (reflecting an average per-person forfeiture of
11 between \$1,200 and \$3,600). ECF No. 209-7, at ¶¶ 10, 14, 19 and 23.

12 7. Although the estimates in the Cassidy declaration were based on assumptions which
13 appeared to be reasonable, we believed that it should be possible to base the analysis of the Vesting
14 Subclass's claims on actual data rather than estimates. It was not clear that the information was kept
15 in the normal course of the company's business, but we requested that the Defendants search their
16 records and produce the information if it was available.

17 8. On October 16, 2020, Defendants provided us with data concerning the amount of
18 accrued benefits each member of the Vesting Subclass had forfeited when they separated from
19 Dignity after more than three, but less than five years of service. We reformatted the data so that we
20 could analyze it and make a better determination of the value of the claims. Based on that review,
21 we concluded that the First Revised Settlement provided members of the Vesting Subclass with
22 approximately 2.8% of the amount of the benefits they had forfeited from their cash balance accounts
23 when they separated from Dignity Health.

24 9. After analyzing Defendants' data, I consulted with the Intervenor to formulate a
25 negotiation strategy. As a result of that consultation, Intervenor made a proposal to Defendants in
26 early November, 2020 to modify the terms of the existing settlement that affected the Vesting
27 Subclass. The proposal addressed three issues: (1) increasing the overall amount of money going to

the Vesting Subclass; (2) revising the allocation of those amounts to conform to the amounts that individual Vesting Subclass Members had lost; and (3) including language to ensure that the Settlement did not result in prejudice to Vesting Subclass Members who might return to work at Dignity, and who might otherwise (under the terms of the Plan) be able to count their earlier service towards the Plan's vesting requirements.

10. Defendants and Intervenor exchanged offers and counteroffers over a period of several months, both in writing and by telephone. In mid-February of 2021, the Defendants and Intervenor reached agreement on changes to the terms of the Settlement that affected the Vesting Subclass that addressed each of the three issues in Intervenor's November, 2020 proposal. Each of the Intervenor signed off on the terms of the proposed changes to the settlement at this time. The agreement modified the prior Settlement by expressly providing that Vesting Subclass members would not lose the ability to have their prior service count towards vesting if they returned to work with Dignity Health, so long as the plan terms permitted prior service to be counted. In addition, the Plan of Allocation was modified to provide that each member of the Vesting Subclass would receive the same percentage of his or her forfeited benefits. Finally, the amount that would be paid to members of the Vesting Subclass was increased from \$660,000 to \$950,000. The following chart provides additional detail on individual benefit amounts:

Measure	Forfeited Benefits	Settlement Amount
Mean Individual Benefit	\$7,098	\$289.46
Median Individual Benefit	\$4,822	\$196.93
Highest Individual Benefit	\$69,771	\$2,845.29
Lowest Individual Benefit	\$86	\$3.50

11. Only after the Intervenor and Defendants had reached agreement on all other terms of the proposed changes to the settlement, as described in the preceding paragraph, did I raise the issue of payments for attorneys' fees, litigation expenses and incentive awards for the Intervenor

1 with counsel for the Defendants. Intervenor and Defendants reached agreement on these additional
 2 terms on February 22, 2021. The agreement provided that Defendants would pay up to \$50,000 in
 3 attorneys' fees and \$2,500 in incentive awards to the three Intervenor Plaintiffs in addition to the
 4 amounts to be paid to the Vesting Subclass. Further, Defendants agreed that if the Court denied the
 5 request for fees or incentive awards in whole or in part, the amount to be paid to the Vesting Subclass
 6 would be increased dollar for dollar. Counsel for all Parties then negotiated changes to the First
 7 Revised Settlement that reflected all of the changes Defendants had agreed to make on behalf of the
 8 Vesting Subclass, and counsel for Plaintiffs and Intervenor collaborated on the preparation of a
 9 motion for preliminary approval and supporting documents.

10 12. Each of the intervenors participated actively in the litigation, providing information
 11 and documents concerning their involvement in the plan, reviewing and approving court filings,
 12 consulting with counsel on negotiating strategy and participating in telephone and conference calls
 13 concerning the negotiations. At all times, they provided thoughtful input and worked to achieve the
 14 best possible result for all members of the Vesting Subclass. Their agreement to the terms of the
 15 proposed settlement was based on a thorough review and understanding of the risks and potential
 16 benefits of the litigation.

17 13. Throughout the process, counsel for Defendants and for the Intervenor vigorously
 18 defended their respective positions and engaged in negotiations that were serious and informed by a
 19 thorough understanding of both the facts of the case and the applicable law as it has developed over
 20 the past few years.

21 14. IKR has considerable experience in class actions and complex litigation, especially
 22 with respect to ERISA class action litigation. *See* Firm Resume of Iazard, Kindall and Raabe, LLP,
 23 attached to this Declaration as Exhibit A. In particular, IKR has litigated several cases involving
 24 application of ERISA's "church plan" exemption, both alone and in cooperation with other firms,
 25 including *Kemp-DeLisser v. Saint Francis Hospital and Medical Center*, No. 3:15-cv-01113-VAB
 26 (D. Conn.); *Tucker v. Baptist Health System, Inc.*, No. 2:15-cv-00382-SLB (N.D.AL.); *Nicholson v.*
 27 *Franciscan Missionaries of our Lady Health Systems*, No. 16-CV-258-SDD-EWD (M.D. LA); *In re*

1 *Mercy Health ERISA Litig.*, No. a:16-cv-441 (S.D. Ohio); and *Boden v. St. Elizabeth Med. Ctr., Inc.*,
 2 No. 16-49-DLB-CJS (E.D. Ky.). Some of these cases resulted in settlements that achieved significant
 3 results for the class, such as *Kemp-DeLisser*; others – like *Boden* – resulted in judgments for
 4 defendants. Notably, however, favorable settlements became substantially harder to achieve after the
 5 Supreme Court reversed the Ninth, Seventh and Third Circuits in *Advocate Health Care Network v.*
 6 *Stapleton*, 137 S. Ct. 1652 (2017). *Kemp-DeLisser*, for example, was a pre-*Advocate* settlement. By
 7 virtue of its involvement in these cases both before and after *Advocate Health*, IKR is well-informed
 8 concerning the applicable law. Based on its experience, knowledge of evolving caselaw and
 9 investigation of the facts at issue in this case, IKR supports the proposed Settlement.

10 15. Following this Court’s entry of the Preliminary Approval Order (ECF No. 307), IKR
 11 put the full Class Notice, the Preliminary Approval Order, the Motion for Preliminary Approval, the
 12 Declaration in Support of the Motion and the Settlement Agreement on a dedicated page on the firm’s
 13 website, <https://ikrlaw.com/file/dignityhealth/>. As of the date of this declaration, IKR has responded
 14 to 47 email and telephone inquiries from members of the Class and/or Subclass.

15 16. In preparation for filing this motion, I reviewed IKR’s time and lodestar in connection
 16 with the current litigation.

17 17. The information in this declaration regarding my firm’s time and lodestar is taken
 18 from contemporaneous time records prepared and maintained by my firm in the ordinary course of
 19 business. I reviewed these records to confirm both the accuracy of the entries on the printouts as
 20 well as the necessity for and reasonableness of the time and expenses committed to the litigation.
 21 Based on these reviews, I believe that the time reflected in my firm’s lodestar is reasonable and was
 22 necessary for the effective and efficient prosecution and resolution of the litigation. The billing rates
 23 are the same ones that IKR uses for all of its class action cases during the relevant time period, since
 24 IKR charges the same rates regardless of where a case is brought. IKR also charges the same rates
 25 to its hourly clients (although hourly clients can receive a discount for prompt payment). IKR
 26 prosecuted this case on a wholly contingent basis and has not received any compensation to date for
 27 either its litigation expenses or its time.

1 18. For simplicity's sake, I have not included time by attorneys who billed fewer than
 2 three hours in the case. I have also excluded time related to the preparation of the motion for fees.
 3 Although I believe that this time is properly billable (because Rule 23 and caselaw require substantial
 4 filings in support of any fee petition), I have not included it here because the requested fee of \$50,000
 5 is substantially below the firm's lodestar even when the hours spent preparing the fee petition are
 6 excluded.

7 19. Excluding the time entries just discussed, IKR has spent 107 hours on this case, and
 8 has a lodestar of \$78,975. The undersigned counsel is responsible for the great majority of time and
 9 lodestar devoted to this case. This was the most efficient method of proceeding in the context of this
 10 engagement, which had a very specific and clear focus. In my judgment, it would not have been
 11 efficient to assign this work to junior lawyers who did not already have significant experience
 12 litigating application of ERISA's church plan exception to pension plans run by large health care
 13 providers.

14 20. As of the date of this declaration, I have devoted 84.5 hours to this matter, not
 15 including time spent preparing the fee petition and supporting papers. These hours were spent on
 16 the following tasks during the following times:

- 17 a. June 16-19, 2020: Initial review of Court's decision denying preliminary approval of the
 18 Restated and Amended Class Action Settlement; communications with proposed Class
 Counsel concerning representation of the Vesting Subclass (1.75 hours);
- 19 b. July 17-August 3, 2020: Communications with members of the vesting subclass
 20 describing the case and discussing potential intervention; communications with proposed
 class counsel and counsel for Defendant concerning the process (14 hours);
- 21 c. August 14-October 14, 2020: Edit, finalize and file motion to intervene.
 22 Communications with clients, opposing counsel, proposed Class Counsel and counsel
 23 from the Department of Justice concerning the motion. Attending hearing on the Motion
 and communications with clients concerning the hearing (7.5 hours);
- 24 d. September 2, 2020-November 1, 2020: Communications with opposing counsel
 25 concerning informal discovery requests. Review confidentiality agreement. Review and
 26 analyze data concerning forfeitures by members of the Vesting Subclass.
 Communications with clients concerning the data and possible modifications of the
 settlement agreement (8.75 hours).
- 27 e. November 3, 2020 – February 23, 2021: Draft settlement modification proposal;
 28 communications with opposing counsel concerning the proposal. Negotiate

1 modifications. Communications with clients concerning Defendants' counter-proposals
2 (9.5 hours).

- 3 f. February 25-April 19, 2021: Negotiate changes to text of the Restated and Amended
4 Settlement Agreement to conform to agreement reached with opposing counsel. Review
5 and edit Motion for Preliminary Approval and draft section of brief relating to the Vesting
6 Subclass; research re: same. Prepare supporting declaration. Communications with
7 clients concerning the Motion; assist clients with their own supporting declarations.
8 Review proposed information to post on website (33.75 hours).
- 9 g. July 23-October 18, 2021: Communications with clients concerning status of case.
10 Communications with opposing counsel and proposed Class Counsel concerning status
11 of pending Motion for Preliminary Approval. Contact court clerk concerning status. (1.5
12 hours).
- 13 h. October 19-December 16, 2021: Review preliminary approval order; correspondence
14 with clients concerning the Order and next steps. Correspondence concerning class notice
15 and contents of email to class members. Telephone calls with class members. Prepare
16 FAQs for use in addressing class member calls. (7.75 hours).

17 21. During the entire period IKR has been involved in this case, the firm has billed my
18 time at \$850 per hour. I am a 1988 graduate of the University of California, Berkeley Law School
19 and in my 31 years of practice I have been associated with a major Washington D.C.-based law firm
20 (Covington & Burling), the federal government (U.S. EPA), and the Connecticut Attorney General's
21 Office prior to joining the firm that is now Iazard, Kindall & Raabe in 2005. I have spent almost all
22 of the last 16 years engaged in complex class action litigation, with a particular focus on ERISA
23 litigation. I have litigated several cases in this district, including *In re Supportsoft, Inc. Sec. Litig.*,
24 No. C 04-5222 SI, *Berson v. Applied Signal Technology, Inc. Sec. Litig.*, 05-cv-1027 SBA, *Eldee-K*
25 *Rental Properties, LLC v. DirecTV, Inc.*, 11-02416 CRB, *In re: Korean Ramen Noodles Antitrust*
26 *Litig.*, No. C-13-04115 WO, and *Cryer v. Franklin Resources, Inc.*, No. 16-cv-4265 CW. My hourly
27 rate has been approved by numerous federal courts in class action cases, including a 2019 decision
by Judge Wilken in *Cryer v. Franklin Resources*. Like the present case, *Cryer* was a class action
alleging violations of ERISA (although it did not involve ERISA's church plan exemption). Judge
Wilken found that class counsels' rates were "reasonable given the relevant market and the
complexities of ERISA class action such as this." Order Granting Attorneys' Fees, 4:16-cv-4265-
CW (Oct. 4, 2019). A copy of Judge Wilken's Order is attached to this Declaration as Exhibit B. A

1 copy of IKR's fee declaration in *Cryer* is attached as Exhibit C. Further biographical information is
2 included in the firm resume, attached as Exhibit A.

3 22. Oren Faircloth from IKR has also billed 17.25 hours in the case. He spent 14.25 hours
4 preparing and revising the Motion to Intervene in October of 2020 and finalizing the papers IKR
5 submitted in support of the motion for preliminary approval in October of 2021. He has also spent
6 3 hours communicating with class members after the class was provided with notice of the Settlement
7 in December of 2021.

8 23. IKR bills Mr. Faircloth's time at \$350 per hour. He graduated from the Quinnipiac
9 Law School in 2016 and has been with the firm since 2018. Mr. Faircloth has been involved in
10 several major ERISA class action cases, including *Masten v. Metropolitan Life Ins. Co.*, No. 1:18-
11 cv-11229 (S.D.N.Y.), *Herndon v. Huntington-Ingalls Industries, Inc.*, No. 4:19-cv-00052 (E.D. Va.),
12 *Cruz v. Raytheon Co.*, No. 1:19-cv-11425 (D. Mass.) and *Smith v. Rockwell Automation Inc.*, No.
13 2:19-cv-00505 (E.D. Wisc.). Mr. Faircloth's hourly rate has been approved in courts in several class
14 action cases, including by Judge Wilken in *Cryer v. Franklin*. See Exhs. B and C. Further
15 biographical information is included in the firm resume, attached as Exhibit A.

16 24. IKR's paralegals, Eileen McGee and Jude Reid, also billed five hours to the case,
17 almost all of which related to calls from class members in response to the notice of class action
18 settlement in December of 2021. IKR bills for paralegal time at the rate of \$180 per hour. IKR's
19 has submitted time and lodestar for paralegal work at this billing rate in other ERISA class action
20 cases including, most recently, in *Cruz v. Raytheon*, No. 19-cv-11425-PBS (D. Mass.), but to my
21 knowledge we have not submitted any paralegal time for approval in any of the cases we filed in the
22 Northern District of California.

23 25. In the course of our nationwide practice, attorneys at IKR have worked with many of
24 the firms that typically represent plaintiffs in ERISA class actions nationwide. As a result, we are
25 familiar with the rates charged by other firms in our practice area. In our experience, our rates are
26 broadly in line with rates of other firms with nationwide ERISA class action practices, and have been
27 the basis for awards of fees in courts around the country.

1 26. IKR's expenses in the case are minimal and thus the firm does not seek a separate
2 award of expenses.

3 I certify that the foregoing is true and accurate to the best of my knowledge, information and
4 belief.

5
6 December 22, 2021
7 Date

/s/ Mark P. Kindall
 Mark P. Kindall

EXHIBIT 3-A

Izard, Kindall & Raabe Firm Resume

Mark P. Kindall (State Bar No. 138703)
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EXHIBIT A

(IZARD, KINDALL & RAABE FIRM RESUME)



FIRM RESUME

Izard, Kindall & Raabe LLP ("IKR")¹ is one of the premier national firms engaged in class action litigation under the Employee Retirement Income Security Act of 1974 (ERISA) and the securities laws. We have served as lead or co-lead counsel in many large ERISA class actions, including cases against Raytheon, Wells Fargo, JP Morgan, Metropolitan Life, United Healthcare, Cigna, Merck, Time Warner, AT&T, Fidelity, Prudential and John Hancock as well as over 30 securities class actions, including cases involving shares of Campbell Soup Company, Citizens Utilities Company, Newmont Mining Corporation, SS&C Technologies, Inc., SureBeam Corporation, and Veritas Corporation.

ERISA Cases where IKR has been formally appointed as sole or co-lead counsel, or serves as lead or co-lead counsel, include:

- *Overby v. Tyco Int'l, Ltd.*, No. 02-CV-1357-B (D.N.H.);
- *In re Reliant Energy ERISA Litig.*, No. H-02-2051 (S.D. Tex.);
- *In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, MDL Docket No. 1500 (S.D.N.Y.);
- *Furstenau v. AT&T*, Case No. 02 CV 8853 (D.N.J.);
- *In re AEP ERISA Litig.*, Case No. C2-03-67 (S.D. Ohio);

¹ Formerly known as Izard Nobel LLP (2008-2016), Schatz Nobel Izard, P.C. (2006-2008), and Schatz & Nobel, P.C. (1995-2006).

- *In re JDS Uniphase Corp. ERISA Litig.*, Civil Action No. 03-4743-CW (N.D. Cal.);
- *In re Sprint Corporation ERISA Litig.*, Master File No. 2:03-CV-02202-JWL (D. Kan.);
- *In re Cardinal Health, Inc. ERISA Litig.*, Case No. C 2-04-642 (S.D. Ohio);
- *Spear v. Hartford Fin. Svcs Group. Inc.*, No. 04-1790 (D. Conn.);
- *In re Merck & Co., Inc. Sec., Derivative and ERISA Litig.*, MDL No. 1658 (D.N.J.);
- *In re Diebold ERISA Litig.* No. 5:06-CV- 0170 (N.D. Ohio);
- *In re Bausch & Lomb, Inc. ERISA Litig.*, Master File No. 06-CV-6297-MAT-MWP (W.D.N.Y.);
- *In re Hartford Fin. Svcs Group. Inc. ERISA Litig.*, No. 08-1708 (D. Conn.);
- *In re Merck & Co., Inc. Vytorin ERISA Litig.*, MDL No. 1938, 05-CV-1974 (D.N.J.);
- *Mayer v. Admin. Comm. of Smurfit Stone Container Corp.*, 09-CV-2984 (N.D. IL.);
- *In re YRC Worldwide ERISA Litig.*, Case No. 09-CV-02593 (D. Kan);
- *Board of Trustees v. JP Morgan Chase Bank*, Case No. 09-cv-9333 (S.D.N.Y.);
- *White v. Marshall & Ilsley Corp.*, No. 10-CV-00311 (E.D. Wis.);
- *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-CV-10610 (E.D. Mich.);
- *In re Eastman Kodak ERISA Litig.*, Master File No. 6:12-cv-06051-DGL (W.D.N.Y.);
- *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.);
- *Cryer v. Franklin Resources, Inc.*, No. 4:16-cv-04265 (N.D. Cal.);
- *Bishop-Bristol v. Massachusetts Mutual Life Insurance Company*, No. 3:16-cv-30082-MGM (D. Mass.);
- *Matthews v. Reliance Trust Company*, No. 1:16-cv-04773 (N.D. Ill.);
- *Brace v. Methodist Le Bonheur Healthcare*, No. 16-cv-2412-SHL-tmp (W.D. Tenn.);
- *Nicholson v. Franciscan Missionaries of our Lady Health Systems*, No. 16-CV-258-SDD-EWD (M.D. LA);

- *In re Mercy Health ERISA Litig.*, No. a:16-cv-441 (S.D. Ohio);
- *Negron v. Cigna Corp.*, No. 3:16-cv-01702 (D. Conn.);
- *Schultz v. Edward D. Jones & Co.*, No. 4:16-cv-01346 (E.D. Mo.);
- *Larson v. Allina Health Syst.*, No. 0:17-cv-03835 (D. Minn.);
- *Johnson v. Providence Health & Services*, No. 2:17-cv-01779 (W.D. Wash.);
- *Berry v. Wells Fargo & Co.*, No. 3:17-304 (D.S.C.);
- *Neufeld v. Cigna Health & Life Ins.*, No. 3:17-cv-01693 (D. Conn.);
- *Myers v. 401(k) Fiduciary Comm. for Seventy Seven Energy*, No. 5:17-cv-00200 (D. Okl.);
- *Quatrone v. Gannett Co., Inc.*, No. 1:18-cv-00325 (E.D. Va);
- *Reidt v. Frontier Communications Corp.*, No. 3:18-cv-01538 (D. Conn.);
- *Sohmer v. UnitedHealth Group, Inc.*, No. 0:18-cv-03191 (D. Minn.);
- *Masten v. Metropolitan Life Ins. Co.*, No. 1:18-cv-11229 (S.D.N.Y.);
- *Smith v. U.S. Bancorp*, No. 0:18-cv-03405 (D. Minn.);
- *Mannino v. Louisiana Health Serv. & Indemnity Co.*, No. 3:19-cv-00185 (M.D. La.);
- *Herndon v. Huntington-Ingalls Industries, Inc.*, No. 4:19-cv-00052 (E.D. Va.);
- *Belknap v. Partners Healthcare System, Inc.*, No. 1:19-cv-11437 (D. Mass.);
- *Cruz v. Raytheon Co.*, No. 1:19-cv-11425 (D. Mass.);
- *Smith v. Rockwell Automation Inc.*, No. 2:19-cv-00505 (E.D. Wisc.);
- *Brown v. United Parcel Service, Inc.*, No. 1:20-cv-00460-MLB (N.D. GA);
- *Berube v. Rockwell Automation Inc.*, No. 2:20-cv-01783 (E.D. Wisc.); and
- *Shafer v. Morgan Stanley*, 1:20-cv-11047 (S.D.N.Y.);

Moreover, IKR was also appointed to the Steering Committee in *Tittle v. Enron Corp.*, No. H-01-3913 (S.D. Tex.); *In re Electronic Data Systems ERISA Litig.*, 3:02-CV-1323 (E.D. Tex.); and *In re Marsh ERISA Litig.*, Master File No. 04 CV 8157 (S.D.N.Y.).

Our notable successes include settlements against the Franciscan Missionaries of Our Lady Health System (\$125 million), Saint Francis Hospital and Medical Center (\$107 million); AOL Time Warner (\$100 million); Wells Fargo (\$79 million); Tyco International (\$70.5 million); Merck (\$49.5 million); Cardinal Health (\$40 million); and AT&T (\$29 million). Moreover, IKR was on the Executive Committee in *In re Enron Corporation Securities and ERISA Litig.*, No. 02-13624 (S.D. Tex.), which resulted in a recovery in excess of \$250 million.

Numerous courts have recognized IKR's superior expertise in ERISA actions of this type. In particular, in *In re Merck Sec., ERISA and Deriv. Litig.*, the court stated, "[w]hat is clear is that Schatz & Nobel [now IKR] does have substantial experience in this area and much more experience than other contenders." *In re Merck Sec., ERISA and Deriv. Litig.*, No. 05 1157, (D.N.J.) (Transcript of proceedings on Apr. 18, 2005). Similarly, the court in *In re Tyco International, Ltd., Securities Litig.* found that IKR and its co-counsel "have the necessary resources, skill and commitment to effectively represent the proposed class" and "extensive experience in both leading class actions and prosecuting ERISA claims." *In re Tyco International, Ltd. Sec. Litig.*, Case No. 02 1335, slip op. at 2 (D.N.H. Dec. 18, 2002). In *Cardinal Health*, the court also noted IKR's "extensive experience in ERISA litigation," the "high level of ERISA expertise" and "several well-argued briefs . . . on a range of issues." *In re Cardinal Health, Inc. ERISA Litig.*, 225 F.R.D.552, 555-556 (S.D. Ohio Jan. 14, 2005). In *Berry v. Wells Fargo*, the court found that IKR and its co-counsel "displayed extraordinary skill and determination throughout this litigation which fully supports their well-known reputation and clear ability to handle a case of this magnitude." Slip. Op., No. 3:17-cv-00304, Dkt. No. 175, at 25 (D.S.C. July 29, 2020).

Courts have recognized the superior results that IKR has obtained as a result of its experience. In approving the *Sprint ERISA Litig.* settlement, the court found, “[t]he high quality of [IKR’s] work culminated in the successful resolution of this complex case” and that “the results obtained by virtue of the settlement are extraordinary. . . .” *In re Sprint Corp. ERISA Litig.*, No. 03 2202, slip op. at 33, 35 (D. Kan. Aug. 3, 2006). The District Court’s decision approving the settlement negotiated by IKR in the *St. Francis* litigation similarly found the result to be “an extremely favorable one for the class,” noting that the recovery achieved by the settlement represented over 76 percent of the amount by which the retirement plan was alleged to be underfunded. *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-CV-1113 (VAB), 2016 WL 6542707, at *10 (D. Conn. Nov. 3, 2016). The Court also noted that IKR’s time and efforts “resulted in an extremely efficient and favorable resolution of the case.” *Id.* at *5. Similarly, in *Edwards v. North American Power & Gas, LLC*, No. 3:14-cv-1714 (D. Conn.), the Court observed that IKR is one of the “national leaders in class action litigation” and achieved a “significant settlement for a large class of individuals,” while the *Wells Fargo* court noted that the settlement in that case “is the largest recovery in a ‘top hat’ case in the history of ERISA.” Slip. Op., No. 3:17-cv-00304, Dkt. No. 175, at 25 (D.S.C. July 29, 2020).

In the AOL Time Warner ERISA case, the Independent Fiduciary retained to review the \$100 million settlement on behalf of the AOL Time Warner retirement plans expected the case to settle for only \$70 million. *In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, No. 02-CV-1500 (S.D.N.Y.), Report & Recommendation of Special Master dated August 7, 2007 at 7, approved by the Court by Memorandum Opinion dated October 26, 2007. The Special Master reviewing an application for attorneys’ fees found that in addition to the fact that the quality of counsel’s

work was “impressive,” “[e]ven more importantly, they used the mediation process to persuade reluctant and determined defendants to part with settlement dollars well above those expected.” *Id.* at 30. According to the Special Master, obtaining an additional \$30 million for the class stands out as “some of the hardest work and most outstanding results” obtained by IKR and its co-counsel. *Id.* at 37. In negotiating this extraordinary settlement, IKR “stretched the defendants’ settlement tolerances beyond their limits.” *Id.* Moreover, the Court found that IKR worked with great efficiency. After conducting a “moderately detailed examination of counsels’ actual time records,” the Special Master lauded the efficiency with which counsel litigated such a large case which inherently tends to produce inefficiencies. *Id.* at 26, 43.

In approving the \$49.5 million settlement in *In re Merck & Co., Inc. Securities, Derivative & ERISA Litig.*, in which IKR served as Chair of the Lead Counsel Committee, the Court stated that it was an “extremely successful and extremely appropriate and reasonable settlement.” *In re Merck & Co., Inc. Securities, Derivative & ERISA Litig.*, No. 05-2369, (D.N.J.) (Transcript of proceedings on Nov. 29, 2011 at 15).

In the *Tyco ERISA* case, the court stated that the \$70.525 million settlement in an “extraordinarily complex case factually” was “outstanding,” and “an extraordinary settlement given the circumstances of the case and the knowledge that [the Court] has about the risks that the plaintiff class faced in pursuing this matter to verdict.” *In re Tyco International, Ltd., Securities Litig.*, No. 02-1335-B, (D. N.H.) (Transcript of proceedings on Nov. 18, 2009 at 11, 31, 41, 61).

Similarly, in the *Flagstar* case, Court found that the settlement that represented 85% of likely recoverable damages was an “excellent result” as a result of the unquestionable “skill and

expertise of [IKR and its co-counsel] who are nationally known for their successful representation of ERISA clients in class action matters.” *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-CV-10610 (E.D. Mich.) (Order and Opinion dated Dec. 12, 2013 at 8, 15-16.)

IKR’s ERISA team is led by Robert A. Izard. In approving the *Tyco* settlement, Judge Paul Barbadoro, Chief Judge of the District of New Hampshire, stated with respect to Mr. Izard:

I have a high regard for you. I know you to be a highly experienced ERISA class action lawyer. You’ve represented your clients aggressively, appropriately and effectively in this litigation, and I have a high degree of confidence in you so I don’t think there’s any question that the quality of counsel here is a factor that favor’s the Court’s endorsement of the proposed settlement....

I have enjoyed working with you in this case. You’ve always been helpful. You’ve been a gentleman. You’ve been patient when I’ve been working on other matters....

In re Tyco International, Ltd., Securities Litig., No. 02-1335-B, (D. N.H.)(Transcript of proceedings on Nov. 18, 2009 at 74-75).

ATTORNEYS

Robert A. Izard heads the firm's ERISA team and has been lead or co-lead counsel in many of the nation's most significant ERISA class actions, including cases against Raytheon, Wells Fargo, JP Morgan, Metropolitan Life, United Healthcare, Cigna, Merck, Time Warner, AT&T, Fidelity, Prudential and John Hancock among others. Mr. Izard has substantial experience in other types of complex class action and commercial litigation matters. For example, he represented a class of milk purchasers in a price fixing case. He also represented a large gasoline terminal in a gasoline distribution monopolization lawsuit.

As part of his thirty-five plus years litigating complex commercial cases, Mr. Izard has substantial jury and nonjury trial experience, including a seven-month jury trial in federal district court. He is also experienced in various forms of alternative dispute resolution, including mediation and arbitration.

Mr. Izard is the author of *Lawyers and Lawsuits: A Guide to Litigation* published by Simon and Schuster and a contributing author to the *Mediation Practice Guide*. He is the former Chair of the Commercial and Business Litigation Committee of the Litigation Section of the American Bar Association. He is listed in *Best Lawyers* in the areas of ERISA and antitrust litigation. He is listed in *Super Lawyers* in the areas of class action and business litigation.

Mr. Izard received his B.A. from Yale University and his J.D., with honors, from Emory University, where he was elected to the Order of the Coif and was an editor of the *Emory Law Journal*.

Mark P. Kindall During his 16 years with IKR, Mark P. Kindall has represented clients in many significant class action cases, including ERISA litigation against AOL Time Warner, Kodak,

Cardinal Health, Gannett and Raytheon, consumer fraud cases against Johnson & Johnson, Unilever and Neutrogena, securities fraud litigation against SupportSoft, American Capital and Nuvelo, and bank overdraft fee litigation against Webster Bank and People's United Bank. Mr. Kindall successfully argued *Berson v. Applied Signal Tech. Inc.*, 527 F.3d 982 (9th Cir. 2008), and *Balser v. The Hain Celestial Group*, No. 14–55074, 2016 WL 696507 (9th Cir. 2016), which clarified standards for victims of securities and consumer fraud, respectively, as well as *Langan v. Johnson & Johnson Consumer Cos., Inc.*, 897 F.3d 88 (2d Cir. 2018), which held that plaintiffs bringing claims under state law could represent a class that included people in states with similar laws. Mr. Kindall also wrote Plaintiff's brief in *Stegemann v. Gannett Co., Inc.*, 970 F.3d 465 (4th Cir. 2020), which held that plaintiff stated a plausible claim for breach of fiduciary duty for failure to divest from a single-stock fund in a 401(k) plan.

Mr. Kindall was a lawyer at Covington & Burling in Washington, D.C. from 1988 until 1990. In 1990 he joined the United States Environmental Protection Agency as an Attorney Advisor. He represented the U.S. government in international negotiations at the United Nations, the Organization for Economic Cooperation and Development and the predecessor of the World Trade Organization, and was a member of the U.S. Delegation to the United Nations Conference on Environment and Development (the "Earth Summit") in Rio de Janeiro in 1992. From 1994 until 2005, Mr. Kindall was an Assistant Attorney General for the State of Connecticut, serving as lead counsel in numerous cases in federal and state court and arguing appeals before the Connecticut Supreme Court and the United States Court of Appeals for the Second Circuit.

Mr. Kindall has taught courses in appellate advocacy, administrative law and international environmental law at the University of Connecticut School of Law. He is admitted to practice in Connecticut, California, and the District of Columbia. He is also a member of the bar of the United States Supreme Court, the U.S. Courts of Appeals for the Second, Fourth, Fifth, Ninth, and D.C. Circuits, and the United States District Courts for Connecticut, the District of Columbia, the Eastern District of Wisconsin, the Central District of Illinois, and all U.S. District Courts in New York and California.

Mr. Kindall is a 1988 graduate of the University of California at Berkeley Law School, where he served as Book Review Editor of the California Law Review and was elected to the Order of the Coif. He has a bachelor's degree in history with highest honors from the University of California at Riverside, and he also studied history at the University of St. Andrews in Scotland.

Craig A. Raabe joined the partnership in 2016 from a large, regional law firm, where he previously served as the chair of the litigation department. Mr. Raabe has a nationwide practice, and he has tried many complex civil and criminal cases. He is a Fellow in the American College of Trial Lawyers. The Best Lawyers in America® (Copyright by Woodward/White, Inc., Aiken, SC) has named Mr. Raabe as the regional "Lawyer of the Year" in the areas of Bet-the-Company Litigation, Antitrust Litigation (3 times), White-Collar Criminal Defense and Intellectual Property Litigation. He also has been listed generally in The Best Lawyers in America® since 2006, most recently in seven disciplines: Bet-the-Company Litigation, Antitrust Litigation, Commercial Litigation, White-Collar Criminal Defense, General Criminal Defense, Intellectual Property Litigation and Regulatory Enforcement (SEC, Telecom, Energy)

Litigation. Chambers and Partners© has named Mr. Raabe to its highest level of recognition, Band 1, in the area of General Commercial Litigation and White-Collar Crime and Government Investigations. In addition, he has been honored as one of the Top 10 Lawyers in Connecticut by Super Lawyers® 2021 (Super Lawyers is a registered trademark of Key Professional Media, Inc.).

Mr. Raabe's commercial trial experience is broad and includes areas such as antitrust, government contracting, fraud, intellectual property, and unfair trade practices. Mr. Raabe has prosecuted, defended, and tried many class actions in areas including antitrust, fraud, unfair trade practices, securities, ERISA, and breach of contract. He also has tried many serious felony criminal cases in state and federal court and is active in the criminal defense trial bar. As part of his commitment to public service, Mr. Raabe has handled and tried significant court-appointed criminal matters, including death penalty litigation. Mr. Raabe also served as court-appointed trial counsel and exonerated a man who served 30 years in prison for a homicide with which he had no involvement. In addition to his trial practice, Mr. Raabe counsels clients on compliance issues and the resolution of regulatory enforcement actions by government agencies.

By appointment of the chief judge of the Second Circuit, Mr. Raabe has served on the Reappointment Committee for Connecticut's federal defender. The chief judge of the Connecticut district court appointed him to chair the United States Magistrate Reappointment Committee and to serve on the Merit Selection Panel for Magistrate Judges. By appointment of the district judges, he currently is serving on Connecticut's Criminal Justice Act Standing Committee. In 2012, the Connecticut district court judges selected Mr. Raabe for the district's Pro Bono Award for his service to indigent clients. He also serves as an officer of the Connecticut Bar Association's Federal Practice and Antitrust Sections.

Mr. Raabe is admitted to practice in the U.S. Supreme Court, the Courts of Appeals for the First, Second, and D.C. Circuits, the U.S. District Courts for Connecticut and the Eastern and Southern Districts of New York, the U.S. Tax Court and the state of Connecticut. He is an honors graduate of Valparaiso University and Western New England College of Law, where he served as Editor-in-Chief of the Law Review. Following graduation, Mr. Raabe served as the law clerk for the Honorable Arthur H. Healey of the Connecticut Supreme Court.

Mr. Raabe is a commercial, instrument-rated pilot and is active in general aviation. He serves as a volunteer pilot for Angel Flight Northeast, which provides free air transportation to people requiring serious medical care.

Seth R. Klein has been an attorney at Izard Kindall & Raabe LLP for nearly twenty years, focusing on both class action and complex civil litigation in areas including ERISA, consumer protection, securities and antitrust law.

In recent years Mr. Klein's class action work has resulted in significant class-wide recoveries. For example, in *Paetzold v. Metropolitan District Commission* (Conn. Super.), his team successfully recovered full damages against a quasi-public agency for wrongful excess billing of water customers. He also worked on the successful recovery of tens of millions of dollars for consumers wrongfully charged excessive electricity rates by several different third-party suppliers in *Richards v. Direct Energy Services LLC* (D. Conn.); *Edwards v. North American Power & Gas LLC* (D. Conn.); *Sanborn v. Viridian Energy, Inc.* (D. Conn.); *Chandler v. Discount Power* (Conn. Super.); *Gruber v. Starion Energy, Inc.* (Conn. Super.); and *Jurich v. Verde Energy USA, Inc.* (Conn. Super.).

In addition, Mr. Klein has worked on teams that have successfully represented high net worth individuals on complex civil matters as both plaintiff and defendant, including at trial.

Mr. Klein's current class cases include litigation against several of the largest United States real estate companies for the alleged charging of anticompetitive commissions (Nosalek v. MLS Property Information Network (D. Mass)) and several class actions against companies alleged to have overcharged patients for medical and prescription drug benefits (Negron v. Cigna Health and Life Insurance Company (D. Conn.); Neufeld v. Cigna Health and Life Insurance Company (D. Conn.); Bennett v. Blue Cross and Blue Shield of Louisiana (M.D. La.); Mohr-Lercara v. Oxford Health Ins., Inc. (S.D.N.Y.); and Sohmer v. UnitedHealth Group Inc. (D. Minn.)).

Mr. Klein also continues to represent individual clients in complex civil matters, including representation of an unjustly convicted former inmate to recover damages for the police misconduct that led to his wrongful imprisonment. He also is representing a regulated entity against the Connecticut Department of Banking in a variety of complex administrative and court proceedings.

Prior to joining Izard Kindall and Raabe, Mr. Klein was associated with the reinsurance litigation group at Cadwalader, Wickersham & Taft LLP in New York, where he focused on complex business disputes routinely involving hundreds of millions of dollars. Before that, Mr. Klein served as an Assistant Attorney General for the State of Connecticut, where he specialized in consumer protection matters and was a founding member of the office's electronic commerce unit. Mr. Klein is a 1996 graduate of the University of Michigan law school and clerked for the Hon. David M. Borden of the Connecticut Supreme Court upon graduation.

Douglas P. Needham represents plaintiffs in class actions cases under ERISA and consumer protection statutes concerning pension calculations, fees and investments in 401(k) plans, and insurance rates and coverage. He has litigated class actions cases against some of America's largest companies about ERISA's vesting rules, 401(k) plan investments and how corporate transactions affect participants' benefits, and has obtained significant class-wide recoveries.

Mr. Needham works extensively with experts in the fields of actuarial science, finance and economics to apply the ERISA statute to novel issues and complex annuity and financial products. Since 2018, he has taken a leading role in developing and litigating cases around the country involving the payment of actuarially equivalent pension benefits under ERISA. These cases include *Cruz v. Raytheon*, a case in the District of Massachusetts that settled in 2021 by providing class members increased pension benefits valued at more than \$59 million, as well as *Herndon v. Huntington Ingalls Industries, Inc.* (E.D. Virginia), *Masten v. Metropolitan Life Insurance Company* (S.D. New York), *Berube v. Rockwell Automation, Inc.* (E.D. Wisconsin), and *Belknap v. Partners Healthcare System, Inc.* (D. Massachusetts).

In *Berry v. Wells Fargo*, 2020 WL 9311859 (D.S.C. July 29, 2020), Mr. Needham litigated whether a plan was improperly claiming "top hat" status under ERISA. In approving the \$79 million settlement, the court found it was "the largest recovery in a 'top hat' case in the history of ERISA" and was the result of "displayed extraordinary skill and determination." Mr. Needham is also co-counsel for the class in *Stegemann v. Gannett*, 970 F.3d 465 (4th Cir. 2020), a case about a single-stock fund in a 401(k) plan that clarified the pleading standards for claims

under ERISA's duties of prudence and diversification that Law360 called one of the "most significant" ERISA decisions of 2020.

Before joining Iazard, Kindall & Raabe in 2016, Mr. Needham was a partner in a large national law firm, where he represented clients in cases involving business torts, claims for breach of fiduciary duty and fraud in Connecticut, New York, and Massachusetts.

Mr. Needham received his J.D. from Boston University School of Law in 2007 and his B.S. from Cornell University in 2004, where he received numerous academic honors, was a Cornell Tradition Fellow and an All-Ivy player on the men's lacrosse team. He is a board member for his town's lacrosse program, the risk manager for his town's soccer program and the co-founder and treasurer of a charitable foundation that provides college scholarships to graduates of his high school alma mater.

Christopher M. Barrett is an attorney at Iazard, Kindall & Raabe, LLP where his practice focuses on representing plaintiffs in class actions against large companies, representing clients in complex civil litigation, and defending and counseling white collar criminal defendants.

Mr. Barrett is a member of teams currently prosecuting class actions against companies alleged to have overcharged patients for medical and prescription drug benefits, including: *Negron v. Cigna Health and Life Insurance Company*; *Neufeld v. Cigna Health and Life Insurance Company*; *Bennett v. Blue Cross and Blue Shield of Louisiana*; *Mohr-Lercara v. Oxford Health Ins., Inc.*; and *Sohmer v. UnitedHealth Group Inc.* Mr. Barrett is also a member of a team prosecuting claims alleging antitrust violations against some of the largest real estate companies in the country, in *Nosalek v. MLS Property Information Network et al.*

He has previously been involved in the prosecution of numerous successful class actions in which over \$150 million dollars have been recovered for class members, including: Paetzold v. Metropolitan District Commission (\$7.7 million, representing 100% of class losses); Medoff v. CVS Caremark Corp. (\$48 million recovery); Citiline Holdings, Inc. v. iStar Fin. Inc. (\$29 million recovery); Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC (\$14 million recovery); In re Delphi Fin. Group Shareholder Litigation (\$49 million recovery); and In re OSG Sec. Litigation (\$34 million recovery, representing 93% of bond purchasers' damages and 28% of stock purchasers' damages).

Mr. Barrett also represents plaintiffs who are unable to afford legal counsel. He has served as trial counsel in significant federal felony cases and as a volunteer attorney on the District of Connecticut's Civil Pro Bono Panel.

Prior to joining Izard, Kindall & Raabe, Mr. Barrett was associated with Robbins Geller Rudman & Dowd, where his practice focused on prosecuting class actions on behalf of plaintiffs, and Mayer Brown, where his practice focused on complex commercial litigation.

Mr. Barrett is a member of the Connecticut and New York bars and is admitted to practice in the District of Connecticut, the Southern District of New York, the Eastern District of New York, and the Court of Appeals for the Second Circuit.

In 2015 through 2020, Mr. Barrett was recognized by Super Lawyers magazine as a Rising Star. Mr. Barrett received his J.D., magna cum laude from Fordham University School of Law where he served as a member of the Fordham Law Review and was inducted into the Order of the Coif and the honor society Alpha Sigma Nu. For his work in the law school's law clinic, he was awarded the Archibald R. Murray Public Service Award. He earned his B.S. in

Finance from Long Island University. During law school, Mr. Barrett served as a judicial intern to United States District Judge Shira Sheindlin (S.D.N.Y.), United District Judge Thomas Platt (E.D.N.Y.) and New York Supreme Court Justice Stephen Bucaria.

Practice areas

- Class actions on behalf of plaintiffs
- ERISA and benefits litigation
- Healthcare litigation
- White collar defense
- Complex civil litigation
- Civil rights litigation

Oren Faircloth Since joining the firm in 2018, Oren Faircloth has represented numerous retirees seeking to hold major corporations accountable. He focuses primarily on complex class actions brought under the Employee Retirement Income Securities Act (ERISA). He has investigated, developed and drafted complaints against some of America's largest corporations, including: Huntington Ingalls, Raytheon Technologies, UPS and Rockwell Automation. Mr. Faircloth has worked on ERISA cases involving actuarial equivalence, mismanagement of 401k plans, excessive fee, and breach of contract and breach of fiduciary duty matters. His persistence and dedication have contributed to substantial, multi-million dollar recoveries for plan participants and beneficiaries.

Mr. Faircloth graduated from Quinnipiac University School of Law, magna cum laude, in 2016. During law school, he worked at the State Treasurer's office, served on law review and provided tax advice to low-income individuals. He is actively involved in the community serving on the board of a non-profit and representing incarcerated individuals on a pro bono basis.

In his free time, Oren enjoys cooking, reading, skiing, and spending time with his wife and two boys.

EXHIBIT 3-B

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*Attorneys for Proposed Intervenor
Michelle Hall, Jenifer Heiner, and Christine Montoya*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

STARLA ROLLINS and PATRICIA
WILSON, on behalf of themselves,
individually, on behalf of all others similarly
situated, and on behalf of the Dignity Plan,

Plaintiffs,

MICHELLE HALL, JENIFER HEINER, and
CHRISTINE MONTOYA,

Intervenor Plaintiffs,

v.

DIGNITY HEALTH, a California Non-profit
Corporation, HERBERT J. VALLIER, and
individual, DARRYL ROBINSON, an
individual, the Dignity Health Retirement
Plan Subcommittee, and JOHN and JANE
DOES, each as an individual, 1-20,

Defendants

Case No. 4:13-cv-01450-JST

Hearing:

Date: March 3, 2022
Time 2:00 pm
Courtroom: 6
Judge: Hon. Jon S. Tigar

EXHIBIT B

(JUDGE WILKEN'S ORDER GRANTING ATTORNEYS' FEES)

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Attorneys for the Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MARLON H. CRYER, individually and
as representative of a class of
similarly situated persons,

Plaintiffs,

v.

FRANKLIN RESOURCES, INC., et al.,

Defendants.

) Case No. 4:16-cv-4265-CW
) **(lead case consolidated with)**
) Case No. 3:17-cv-6409-CW
)

**ORDER GRANTING
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES
AND NAMED PLAINTIFF
INCENTIVE AWARDS**

Judge: Hon. Claudia Wilken

1
2 The Court having received and considered Plaintiffs' Motion for Attorneys' Fees,
3 Reimbursement of Expenses and Incentive Awards (the "Fee Motion") in the above-
4 captioned action (the "Action") and the supporting papers, including the Class Action
5 Settlement Agreement dated February 12, 2019 (the "Settlement Agreement"), the
6 declarations of counsel and the supporting Memorandum of Law, and having held a hearing
7 on the Fee Motion on September 24, 2019, and finding good cause for granting the Fee
8 Motion, as modified herein, makes the following findings of fact and conclusions of law:
9

10 1. The Settlement Agreement confers substantial benefits on the Settlement Class.

11 2. The benefits that the Settlement Agreement confers on the Settlement Class are
12 immediate and readily quantifiable upon Judgment in the Action becoming Final (as defined
13 in the Settlement Agreement).

14 3. Class Counsel, Bailey Glasser LLP and Izard, Kindall & Raabe, LLP, and
15 Local Counsel Joseph Creitz (collectively, "Class Counsel"), vigorously and effectively
16 pursued the claims in this complex case on behalf of the Plaintiffs and the Class.
17

18 4. The Settlement Agreement was obtained as a direct result of Class Counsel's
19 advocacy.

20 5. The Settlement Agreement was reached following three years of litigation and
21 extensive, good-faith negotiations between Class Counsel and Counsel for Defendants and
22 was not the product of collusion.
23

24 6. Members of the Settlement Class were advised in the Class Notice approved by
25 the Court that Class Counsel intended to seek attorneys' fees of \$7,490,000, and to be
26 reimbursed for the expenses they incurred in prosecuting the Action from the Settlement
27 Fund.
28

1 7. Counsel who recover a common benefit for a class of persons other than their
2 client are entitled to a reasonable attorneys' fees from the Settlement Fund as a whole. *See,*
3 *e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

4
5 8. Class Counsel's requested fee is 28 percent of the amount of the Settlement.

6 9. In the Ninth Circuit, the "usual range" for a percentage award of attorneys'
7 fees in a common fund case is 20–30 percent. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
8 1047 (9th Cir. 2002). The "benchmark" award is 25% of the fund. *Powers v. Eichen*, 229
9 F.3d 1249, 1256 (9th Cir. 2000). Awards can be adjusted upwards or downwards "to
10 account for any unusual circumstances involved in [the] case." *Alberto v. GMRI, Inc.*, No.
11 CIV 07-1895 WBS DAD, 2008 WL 4891201, at *11 (E.D. Cal. Nov. 12, 2008) (quoting
12 *Paul, Johnson, Alston & Hunt v. Grawley*, 886 F.2d 268, 272 (9th Cir. 1989)).

13
14 10. A 25% award fee is appropriate in this case. Class Counsel obtained a high
15 recovery in a case of this type. The case carried significant risks, including novel risks
16 related to the Named Plaintiffs (and other members of the Class) previously signing
17 covenants not to sue Defendants. There are meaningful additional benefits beyond the
18 immediate generation of a cash fund, including changes to the Plan with respect to the
19 challenged investment options. Class Counsel brought this as a contingent action and have
20 not received any compensation to date. The reaction of the class and lodestar cross check
21 justify a 25 percent award.

22
23 11. A lodestar cross-check indicates that the 25% fee provides a lodestar multiplier
24 of 2.21. This is lower than Plaintiff's requested fee, which has a lodestar multiplier 2.48x.
25 The Court finds the rates and hours used to determine the lodestar multiplier to be reasonable
26 given the relevant market and the complexities of ERISA class litigation such as this.

1 12. No objections to the Settlement were filed or raised in the Fairness Hearing.

2 13. Class Counsel's request to be reimbursed for the \$473,882.01 in expenses they
3 incurred in prosecuting this case is also reasonable and the Court finds that these expenses
4 would normally be charged to a fee-paying client.
5

6 14. Plaintiffs, Marlon Cryer and Nelly Fernandez, brought their respective lawsuits
7 on behalf of the entire Plan. In doing so, Plaintiffs expended substantial amounts of time and
8 effort to protect the interests of the Class and the Settlement is a direct result of Plaintiffs'
9 commitment. In addition, the Plaintiffs risked alienation by peer and friends and reputational
10 risk in having brought an action against their prior employer. Mr. Cryer also willingly
11 subjected himself to a deposition during the course of the litigation.
12

13 15. Accordingly, the Court awards Class Counsel fees in the amount of
14 \$6,687,500, and reimbursement of \$473,882.01 in expenses. Mr. Cryer is awarded an
15 Incentive Award in the amount of \$15,000 and Ms. Fernandez is awarded an Incentive
16 Award in the amount of \$10,000. All awards to Class Counsel and Plaintiffs shall be paid
17 from the Settlement Fund.
18

19 **SO ORDERED** this 4 day of October, 2019.

20 

21 The Honorable Claudia A. Wilken
22 U.S. District Court Judge
23
24
25
26
27
28

EXHIBIT 3-C

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

STARLA ROLLINS and PATRICIA
WILSON, on behalf of themselves,
individually, on behalf of all others similarly
situated, and on behalf of the Dignity Plan,

Plaintiffs,

MICHELLE HALL, JENIFER HEINER, and
CHRISTINE MONTOYA,

Intervenor Plaintiffs,

v.

DIGNITY HEALTH, a California Non-profit
Corporation, HERBERT J. VALLIER, and
individual, DARRYL ROBINSON, an
individual, the Dignity Health Retirement
Plan Subcommittee, and JOHN and JANE
DOES, each as an individual, 1-20,

Defendants

Case No. 4:13-cv-01450-JST

Hearing:

Date: March 3, 2022
Time 2:00 pm
Courtroom: 6
Judge: Hon. Jon S. Tigar

EXHIBIT C

(IKR FEE DECLARATION - CRYER v. FRANKLIN)

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

13 MARLON H. CRYER, individually and on
14 behalf of a class of all others similarly situated,
15 and on behalf of the Franklin Templeton 401(k)
Retirement Plan,

16 Plaintiffs,

17
18 v.

19 FRANKLIN RESOURCES, INC., the Franklin
20 Templeton 401(k) Retirement Plan Investment
Committee, and DOES 1-25,

21 Defendants.
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23

Lead Case No. 4:16-cv-04265-CW
[Consolidated with Case No. 4:17-cv-
06409-CW]

**DECLARATION OF ROBERT A.
IZARD IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
AWARD OF ATTORNEYS' FEES
AND EXPENSES**

Judge: Hon. Claudia Wilken

24 Robert A. Izard respectfully submits this Declaration in Support of Plaintiffs' Motion for
25 Final Approval of Class Action Settlement and Motion for Award of Attorneys' Fees and Expenses,
26 and declares under penalty of perjury under the laws of the United States of America:

27 1. I am a partner at Izard, Kindall & Raabe, LLP ("IKR"), and a member in good
28 standing of the bar of the State of Connecticut. IKR is co-lead counsel for the certified class in this

1 action.

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

6 3. IKR has extensive experience in complex class action litigation and particular
7 experience in class action litigation under the Employee Retirement Income Security Act of 1974
8 (“ERISA”). IKR has served as lead or co-lead counsel in numerous ERISA class actions in courts
9 throughout the country. A copy of the firm’s resume was filed in connection with Plaintiff’s Motion
10 for Class Certification. ECF No. 53-7.

11 4. IKR participated in all aspects of this litigation, from inception through settlement.
12 As a result of detailed factual investigation that preceded the filing of the complaint, the information
13 obtained in discovery, the lengthy motions practice in this case, and the firm’s extensive experience
14 in ERISA class action litigation, we support the proposed settlement and believe it to be fair,
15 reasonable, adequate and in the best interests of the certified Class.

16 5. Class Counsel selected the Angeion Group as the Settlement Administrator after
17 reviewing four competitive bids. In the past two years, IKR has not retained the Angeion Group
18 as an administrator for any class action settlement.

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

21 7. The information in this declaration regarding my firm’s time and expenses is taken
22 from contemporaneous time and expense printouts prepared and maintained by my firm in the
23 ordinary course of business. The time reflected in my firm’s lodestar calculation and the expenses
24 for which payment is sought are reasonable in amount and were necessary for the effective and
25 efficient prosecution and resolution of the litigation. IKR prosecuted this case on a wholly
26 contingent basis, and has received no compensation to date for either its litigation expenses or its
27 time.

8. IKR devoted a total of 1490.25 hours to the prosecution of this litigation from inception through July 15, 2019, excluding time spent on the fee petition and supporting materials. The total lodestar amount for attorney time based on the firm's current rates is \$876,581.25. A breakdown of IKR's lodestar as of July 15, 2019 is as follows:

Name	Years of Practice	Rate	Hours	Lodestar
Robert A. IZard	36	\$925.00	428.25	\$396,131.25
Mark P. Kindall	31	\$850.00	105	\$89,250.00
Douglas P. Needham	12	\$550.00	384	\$211,200.00
Jennifer Somers	15	\$300.00	411	\$123,300.00
Oren Faircloth	3	\$350.00	162	\$56,700.00
Total			1490.25	\$876,581.25

9. Attached hereto as Exhibit A is a chart that breaks down the total hours spent by each attorney by the areas and tasks where their time was spent in the case.

10. Biographical details for the IKR attorneys who worked on the case are included at the end of the Firm's resume, which was filed in connection with Plaintiff's Motion for Class Certification. ECF No. 53-7.

11. The hourly rates shown in paragraph 8 and Exhibit A 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.

12. 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 Bailey & Glasser. 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.

13. By way of comparison, Defendants in this action are represented by O'Melveny & Myers LLP, "an international, 800-lawyer firm with 15 offices in the world's financial and political centers." (<https://www.omm.com/our-firm/history>). While Plaintiffs do not have access to a comprehensive list of rates charged by attorneys from O'Melveny & Myers, a recent filing in *Open Source Sec., Inc. v. Perens*, No. 17-CV-04002-LB, 2018 WL 2762637 (N.D. Cal. June 9, 2018), shows partners with 13 and 24 years of experience billing at \$880 and \$995 per hour, respectively, and junior associates with three years of practice billing at \$535 per hour. The Court found these rates to be "at or below the median range for lawyers of comparable experience doing comparable work in the Bay Area." *Id.* at *3. IKR's rates are somewhat lower than the rates approved by the *Open Source* court.

14. To date, IKR's out-of-pocket expenses for this litigation are \$101,288.17, broken down as follows:

EXPENSE DESCRIPTION	AMOUNT
Court costs (<i>pro hac vice</i> fees)	\$620.00
Meals, Hotels & Transportation	\$21,158.16
Litigation Fund - Experts	\$87,263.58
Transcripts	\$4,127.05
Postage & delivery	\$330.97
PACER	\$84.90
TOTAL EXPENSES:	\$113,584.66

15. The expenses shown in paragraph 13 are all of a type that would normally be charged to a fee-paying client in the private legal marketplace. I have included \$2,500 in the estimated travel expenses related to the Fairness Hearing.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of July, 2019, in West Hartford, Connecticut.

/s/ Robert A. Izard
Robert A. Izard

Declaration of Robert A. Izard

Exhibit A

Izard, Kindall & Raabe, LLP Hours/Lodestar Breakdown by Topic
Data as of 7/15/2019

Attorney	Robert Izard		Mark Kindall		Douglas Needham		Oren Faircloth		Jennifer Somers		Totals	
Title	Partner		Partner		Associate		Associate		Attorney			
Years of Practice	36		31		12		3		15			
Hourly Rate	\$925.00		\$850.00		\$550.00		\$350.00		\$300.00			
	Hours	Lodestar	Hours	Lodestar	Hours	Lodestar	Hours	Lodestar	Hours	Lodestar	Hours	Lodestar
Factual Inv.	0	0	1.75	1,487.50	32.25	17,737.50	0	0	402.75	120,825	436.75	140,050.00
Client Contact	0	0	0	0	0	0	0	0	0	0	0	0
Pleadings/MTD	13.25	12,256.25	2.75	2,337.50	32.25	17,737.50	0	0	0	0	48.25	32,331.25
Depos/discovery	8.75	8,093.75	0.25	212.50	134.25	73,837.50	0	0	8.25	2,475	151.50	84,618.75
Class Cert	15.50	14,337.50	24.00	20,400.00	14.5	7,975.00	0	0	0	0	54.00	42,712.50
MSJ	4.75	4,393.75	0	0	49	26,950.00	0	0	0	0	54.75	31,343.75
Other Motions	19.25	16,187.50	2.75	2,337.50	9.75	5,362.50	0	0	0	0	30.00	23,887.50
Experts	91.50	84,637.50	35.25	29,962.50	39.5	21,725.00	0	0	0	0	166.25	136,325.00
Trial Prep	105.75	97,818.75	0	0	64.75	35,612.50	162	56,700	0	0	332.50	190,131.25
Settlement	169.50	156,556.25	38.25	32,512.50	7.75	4,262.50	0	0	0	0	215.50	193,331.25
Totals	428.25	396,131.25	105	89,250	384	211,200	162	56,700	411	123,300	1490.25	876,581.25