

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Kevin Moitoso, Tim Lewis, Mary Lee Torline, and  
Sheryl Arndt, individually and as representatives of  
a class of similarly situated persons, and on behalf  
of the Fidelity Retirement Savings Plan,

Plaintiffs,

v.

FMR LLC, the FMR LLC Funded Benefits  
Investment Committee, the FMR LLC Retirement  
Committee, Fidelity Management & Research  
Company, FMR Co., Inc., and Fidelity Investments  
Institutional Operations Company, Inc.,

Defendants.

Case No. 1:18-cv-12122-WGY

**DECLARATION OF KAI RICHTER  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

I, Kai Richter, hereby submit this Declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement.<sup>1</sup>

1. I am a partner at Nichols Kaster, PLLP ("Nichols Kaster"), and I am one of the attorneys appointed by the Court to represent the Class in the above-captioned action. *See ECF No. 250 ¶ 5; ECF No. 83 at ¶ 7.*

2. For the reasons stated in my earlier Declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (*ECF No. 215*), I believe that the Settlement is fair, reasonable, and adequate.

**Report of the Independent Fiduciary**

3. Pursuant to Prohibited Transaction Exemption 2003-39 (PTE 2003-39)<sup>2</sup> and Section 2.2 of the Settlement Agreement (*see ECF No. 243-1 ¶ 2.2*), an independent fiduciary,

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<sup>1</sup> Capitalized terms in this Declaration have the meaning assigned in the Settlement Agreement. *See ECF No. 215-1.*

<sup>2</sup> *See* 68 Fed. Reg. 75,632 (Dec. 31, 2003), as amended 75 Fed. Reg. 33,830 (June 15, 2010).

Fiduciary Counselors Inc., reviewed the Settlement on behalf of the Fidelity Retirement Savings Plan (“Plan”). I provided all documents and information requested by the Independent Fiduciary and discussed the Settlement with the Independent Fiduciary by telephone. The Independent Fiduciary issued a letter after its review. A true and correct copy of the letter is attached hereto as **Exhibit A**. In the letter, the Independent Fiduciary concluded that: (1) “The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, the non-monetary consideration and the amount of any attorneys’ fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan’s likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone”; (2) “The terms and conditions of the transaction are no less favorable to the Plan than comparable arm’s-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances”; and (3) “The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.” *Ex. A at 1*. Accordingly, the Independent Fiduciary “approve[d] and authorize[d] the Settlement on behalf of the Plan in accordance with Prohibited Transaction Exemption 2003-39 (“PTE 2003-39”).” *Id.*

#### **Reaction of the Settlement Class to the Settlement**

4. The reaction of the Settlement Class to the Settlement also has been favorable. The period to timely object pursuant to the Preliminary Approval Order (*ECF No. 250 ¶ 11*) ended December 22, 2020. As of the date of this declaration, there has been only one objection to the Settlement out of 41,281 Class Members who were sent a Notice of Settlement. That objection is attached as **Exhibit B**, and is addressed in Plaintiffs’ accompanying memorandum of law.

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

Dated: December 29, 2020

s/Kai Richter  
Kai Richter