

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

Paul Laidig, Peter Lewis, and Derek Kemp, as
representatives of a class of similarly situated
persons, and on behalf of the Vi-Jon Employee
Stock Ownership Plan,

Plaintiffs,

v.

GreatBanc Trust Company, Berkshire Fund VI,
Limited Partnership, John G. Brunner, John G.
Brunner Revocable Trust dated 06-09-1992,
and John and Jane Does 1-20,

Defendants.

Case No. 1:22-cv-01296

Hon. LaShonda A. Hunt

Hon. Heather K. McShain

**DECLARATION OF
BROCK J. SPECHT IN SUPPORT
OF PLAINTIFFS' OPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF PARTIAL CLASS
ACTION SETTLEMENT**

DECLARATION OF BROCK J. SPECHT

1. I am a partner at Nichols Kaster, PLLP ("Nichols Kaster"), and am one of the attorneys of record for Plaintiffs in the above captioned action. I submit this declaration in support of Plaintiffs' Opposed Motion for Preliminary Approval of Partial Class Action Settlement.

Settlement Terms

2. Attached hereto as **Exhibit A** is a true and correct copy of the proposed Partial Class Action Settlement Agreement. The Settlement resolves Plaintiffs' class action claims against the following entities (hereinafter "Brunner Defendants"):

- a. John Brunner;
- b. John G. Brunner Revocable Trust dated 06-09-1992;
- c. Elizabeth Brunner Kline 2012 Irrevocable Trust Dated November 30, 2012;
- d. Elizabeth Lorton Brunner Irrevocable Trust Dated August 1, 2001;
- e. John And Janell Brunner Family Trust Dated May 27, 2020;
- f. John B. Brunner, III 2012 Irrevocable Trust Dated November 30, 2012;
- g. John Burgess Brunner, III Irrevocable Trust Dated August 1, 2001;
- h. John G. Brunner Irrevocable Trust F/B/O Elizabeth Sally Pratte Dated March 30, 2007;
- i. John G. Brunner Irrevocable Trust F/B/O Robin Peregrine White Moores Dated March 30, 2007;
- j. John G. Brunner Irrevocable Trust FBO Gabrielle G. Alves Dated March 30, 2007;

- k. John G. Brunner Irrevocable Trust FBO Lucas B. Alves Dated March 30, 2007;
- l. John G. Brunner Irrevocable Trust FBO Nicholas N. Alves Dated March 30, 2007;
- m. Virginia Brunner Becker 2012 Irrevocable Trust Dated November 30, 2012; and
- n. Virginia White Brunner Irrevocable Trust Dated August 1, 2001.

3. Plaintiffs' claims are not released against any remaining defendants, including GreatBanc Trust Company and Berkshire Fund VI, L.P., nor any defendants added to the case by the pending motion to amend Plaintiff's complaint.¹

4. The Settlement Agreement applies to the following Class:

All participants and beneficiaries of the Vi-Jon Employee Stock Ownership Plan (n/k/a Emprise Group, Inc. Employee Stock Ownership Plan) at any time since its inception with a vested Plan balance on or prior to October 29, 2024, excluding Defendants, the directors of Vi-Jon or of any entity in which a Defendant has a controlling interest, and legal representatives, successors, and assigns of any such excluded person.

Settlement ¶ 1.52. Based on information provided by the Plan's recordkeeper, there are approximately 1,200 Class Members.

5. Under the terms of the proposed Settlement, the Brunner Defendants will pay a Gross Settlement Amount² of one million dollars (\$1,000,000) into a common fund for the benefit of the Settlement Class. *Id.* ¶¶ 1.31, 4.2.

6. After accounting for any Attorneys' Fees and Costs, Administrative Expenses, and Class Representative service awards approved by the Court, the Net Settlement Amount will be distributed to eligible Class Members in accordance with the Plan of Allocation in the Settlement. *Id.* ¶¶ 5.1–5.5.

¹ If granted, Plaintiffs' pending Motion for Leave to File Second Amended Complaint would add VJCS Holdings, Inc., Vi-Jon, Inc., VJ Holding Corp., and eleven corporate executives and board members as defendants. Decl. Brock Specht Ex. 4 ("Prop. 2d Am. Compl."), Dkt. 164-4, at ¶¶ 1, 30–47

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

7. Class Members' Benefits will be determined by the Settlement Administrator after calculating each Entitlement Percentage as follows:

The total number of vested shares of Company stock allocated to each individual Settlement Class Member on or prior to October 29, 2024, divided by the total number of vested shares of Company stock allocated to the ESOP accounts of all Settlement Class Members on or prior to October 29, 2024

Id. ¶ 5.2(a).

The Settlement Administrator shall then determine each Class Member's benefit "by multiplying the Net Proceeds by his or her Entitlement Percentage." *Id.* ¶ 5.2(b). This method of allocation aligns with Plaintiffs' theory of liability in this case in that it compensates Plan participants based on their level of investment in the Plan, which Plaintiffs allege was harmed by the Defendants' conduct.

8. Active ESOP Participant Class Members' accounts will be automatically credited with their share of the Settlement Fund. *Id.* ¶ 5.3(a). Non-Active ESOP Participants will automatically receive a direct payment by check unless they elect to have their distribution rolled over to an individual retirement account or other eligible employer plan. *Id.* ¶ 5.3(b).

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

Case Proceedings

10. Prior to filing the Complaint in this action, my colleagues and I conducted a thorough investigation of the claims that were asserted and the factual basis for those claims. As a result of our investigatory efforts, we were able to file a detailed, 25-page Complaint on March 10, 2022, (Dkt. 1) and similarly detailed Amended Complaint (Dkt. 116).

11. My colleagues and I devoted substantial resources to responding to (and defeating) three separate motions to dismiss by the various Defendants. ECF Nos. 55, 70. Plaintiffs' claims remained almost entirely intact. No Defendants obtained dismissal, and the Court struck only two equitable claims from Plaintiffs' Complaint. Dkt. 70 at 19–20 (striking requests for declaratory relief and “other appropriate relief”).

12. Prior to reaching a partial settlement, the Parties engaged in extensive written discovery, developing a substantial record. Collectively, Defendants produced over 25,000 documents. Of these, the Brunner Defendants produced 965 documents amassing more than 7,500 pages.

13. In addition, Plaintiffs sought discovery from five third-party entities that played central roles in the valuation of the company and/or the ESOP Transaction. Collectively, these third parties produced more than 42,500 documents.

14. The Parties also took twelve depositions of fact witnesses: Defendants deposed the three named Plaintiffs, and Plaintiffs deposed nine fact witnesses, including Mr. Brunner.

15. The Class Representatives have fulfilled their duties to the class by, among other things, reviewing the complaints, producing documents, reviewing and signing written discovery responses, testifying at their depositions when requested, and communicating regularly with Class Counsel. They have acknowledged their duties in executed statements, attached to this Declaration as **Exhibit B**.³

16. Fact discovery with the Brunner Defendants closed on December 31, 2024.

17. From approximately April 2023 to January 2024, counsel for the various defendants and Class Counsel engaged in arm's-length settlement negotiations. Some of these discussions

³ The acknowledgments of Mr. Laidig, Mr. Lewis, and Mr. Kemp are found at Ex. B on pages 1, 2, and 3, respectively.

were facilitated by Magistrate Judge Heather K. McShain. However, by mid-January 2024 global negotiations had broken down.

18. Counsel for Plaintiffs and the Brunner Defendants continued discussions, however, and in October 2024 they reached a settlement-in-principle. The parties then engaged in extensive arm's-length negotiations to determine the details of the comprehensive Settlement Agreement that is the subject of the present motion. For the reasons explained above, I believe the Settlement is fair, reasonable, and adequate.

Professional Overview

19. I am licensed to practice law in the State of Minnesota, and also have been admitted to practice in several federal district courts and appellate courts across the country. A list of jurisdictions in which I have been admitted is set forth below:

United States Court of Appeals for the Second Circuit
United States Court of Appeals for the Third Circuit
United States Court of Appeals for the Fourth Circuit
United States Court of Appeals for the Eighth Circuit
United States Court of Appeals for the Ninth Circuit
United States District Court for the District of Colorado
United States District Court for the District of Minnesota
United States District Court for the Western District of New York
United States District Court for the District of North Dakota
United States District Court for the Eastern District of Wisconsin
Minnesota Supreme Court

20. I have been actively engaged in the practice of law since 2007 and have been counsel of record for both plaintiffs and defendants in numerous large, complex cases that have resolved through the payments of hundreds of millions of dollars in settlements or awards. The principal types of cases that I have handled at Nichols Kaster are consumer class actions and ERISA class actions. With regard to ERISA class actions, I have substantial experience litigating these cases in federal courts across the country and, in connection with those cases, I have been

involved in negotiating class action settlements providing for more than \$250 million in available relief to ERISA plan participants. I have been admitted *pro hac vice* in numerous federal courts across the country and have argued before the United States Courts of Appeal for the Second, Eighth, and Ninth Circuits.

21. Along with my partner Paul Lukas, who is also counsel of record in this matter, I am one of the leaders of the ERISA practice group at Nichols Kaster. We have one of the most active and successful plaintiff-side ERISA litigation groups in the country. In addition to the present case, the firm's lawyers (including myself) have been appointed class counsel for litigation and/or settlement purposes in over thirty-five other class action cases involving retirement plans, including:

- *Brotherston v. Putnam Investments, LLC*, No. 15-CV-13825 (D. Mass.);
- *Johnson v. Fujitsu Tech. & Bus. of America, Inc.*, No. 15-CV-03698 (N.D. Cal.);
- *Moreno v. Deutsche Bank Americas Holding Corp.*, No. 15-CV-09936 (S.D.N.Y.);
- *Sims v. BB&T Corp.*, No. 15-CV-00732 (M.D.N.C.);
- *Urakhchin v. Allianz Asset Mgmt. of America, L.P.*, No. 15-CV-01614 (C.D. Cal.);
- *Andrus v. NY Life Ins. Co.*, No. 16-CV-05698 (S.D.N.Y.);
- *In re M&T Bank Corp. ERISA Litig.*, No. 16-CV-00375 (W.D.N.Y.);
- *Main v. American Airlines, Inc.*, No. 16-CV-01033 (N.D. Tex.);
- *Wildman v. American Century Servs., LLC*, No. 16-CV-00737 (W.D. Mo.);
- *Beach v. JPMorgan Chase Bank, N.A.*, No. 17-CV-00563 (S.D.N.Y.);
- *Karpik v. Huntington Bancshares Inc.*, No. 17-CV-1153 (S.D. Ohio);
- *Larson v. Allina Heath Sys.*, No. 17-CV-03835 (D. Minn.);
- *Mass v. Regents of the Univ. of Cal.*, No. RG17-879223 (Alameda Cnty. Super. Ct.);

- *Velazquez v. Massachusetts Fin. Servs. Co.*, No. 17-CV-11249 (D. Mass.);
- *Berry v. FirstGroup America, Inc.*, No. 18-CV-00326 (S.D. Ohio);
- *Clark v. Oasis Outsourcing Holdings Inc.*, No. 18-CV-81101 (S.D. Fla.);
- *Moitoso v. FMR LLC*, No. 18-CV-12122 (D. Mass.);
- *Reetz v. Lowe's Co.*, No. 18-CV-00075 (W.D.N.C.);
- *Stevens v. SEI Invs. Co.*, No. 18-CV-04205 (E.D. Pa.);
- *Bhatia v. McKinsey & Co., Inc.*, No. 19-CV-01466 (S.D.N.Y.);
- *Falberg v. The Goldman Sachs Group, Inc.*, No. 19-CV-9910 (S.D.N.Y.);
- *Intravaia v. Nat'l Rural Elec. Coop. Assoc.*, No. 19-CV-00973 (E.D. Va.);
- *Kirk v. Ret. Comm. of CHS/Cnty. Health Sys., Inc.*, No. 19-CV-00689 (M.D. Tenn.);
- *Toomey v. Demoulas Super Markets, Inc.*, No. 19-CV-11633 (D. Mass.);
- *Baker v. John Hancock Life Ins. Co. (U.S.A.)*, No. 20-CV-10397 (D. Mass.);
- *Hill v. Mercy Health Corp.*, No. 20-CV-50286 (N.D. Ill.);
- *Kinder v. Koch Indus., Inc.*, No. 20-CV-02973 (N.D. Ga.);
- *Klawonn v. Motion Picture Industry Pension Plans*, No. 20-CV-9194 (C.D. Cal.);
- *Carrigan v. Xerox Corp.*, No. 21-CV-01085 (D. Conn.);
- *Kohari v. MetLife Group, Inc.*, No. 21-CV-6146 (S.D.N.Y.);
- *Waldner v. Natixis Investment Managers, L.P.*, No. 21-CV-10273 (D. Mass.);
- *Wanek v. Russell Investments Trust Co.*, No. 21-CV-00961 (D. Nev.);
- *Burnett v. Prudent Fiduciary Services, LLC*, No. 22-CV-00270 (D. Del.);
- *Goldstein v. Mutual of America Life Insurance Co.*, No. 22-CV-7862 (S.D.N.Y.);
- *Johnson v. Russell Investments Trust Co.*, No. 22-CV-21735 (S.D. Fla.);
- *Pecou v. Bessemer Trust Co.*, No. 22-CV-01019 (S.D.N.Y.);

- *Schaf v. O-I Glass, Inc.*, No. 22-CV-01240 (N.D. Ohio); and
- *Drust v. Southwest Research Institute*, No. 23-CV-00767 (W.D. Tex.).

22. Our firm took the *Putnam*, *American Century*, *Lowe's*, *University of California*, and *Natixis* cases to trial. A trial in *Johnson v. Russell* is currently scheduled to take place in February 2025. We received final court approval of settlements in *New York Life*, *John Hancock*, *JPMorgan Chase*, *McKinsey & Co.*, *Putnam*, *Oasis Outsourcing*, *Koch*, *M&T*, *Mercy Health*, *National Rural Electric Cooperative Association* (“NRECA”), *Fujitsu*, *Huntington Bank*, *CHS/Community Health Systems*, *Allina*, *American Airlines*, *FMR LLC* (also known as Fidelity), *Deutsche Bank*, *Lowe's* (partial settlement), *BB&T*, *SEI*, *Demoulas Super Markets*, *Allianz*, *Massachusetts Financial Services*, *Xerox*, *Prudent Fiduciary Services*, *Mutual of America*, *Bessemer Trust*, *O-I Glass, Inc.*, *Southwest Research*, and *MetLife*. We won contested class certification motions in *Goldman Sachs*, *JPMorgan Chase*, *Putnam*, *University of California*, *Deutsche Bank*, *BB&T*, *Allianz*, *American Century*, *Natixis*, and *Motion Picture Industry Pension Plans*, and reached stipulations concerning class certification in our cases with *John Hancock*, *FirstGroup*, *Fidelity*, *Lowe's*, *Massachusetts Financial Services*, and *Wanek v. Russell*. We also defeated motions to dismiss in many of these cases in whole or in part, including *John Hancock*, *JPMorgan Chase*, *Putnam*, *M&T*, *NRECA*, *Fujitsu*, *Goldman Sachs*, *FirstGroup*, *Huntington Bank*, *American Airlines*, *University of California*, *Deutsche Bank*, *Lowe's*, *BB&T*, *Demoulas Super Markets*, *Allianz*, *Massachusetts Financial Services*, *American Century*, *O-I Glass, Inc.*, *Natixis*, as well as in *Morin v. Essentia Health*, No. 16-CV-4397, 2017 WL 4083133 (D. Minn. Sept. 14, 2017), *R. & R. affirmed*, 2017 WL 4876281 (D. Minn. Oct. 27, 2017), *Nelsen v. Principal Global Invs. Tr. Co.*, 362 F. Supp. 3d 627 (S.D. Iowa 2019), *Davis v. Stadion Money Mgmt.*, 19-CV-556, 2020 WL 1248580 (D. Neb. Mar. 16, 2020), *Falberg v. The Goldman Sachs Grp.*, 19-

Civ.-9910, 2020 WL 3893285 (S.D.N.Y. July 9, 2020), *McGinnes v. FirstGroup Am., Inc.*, No. 18-CV-00326, 2021 WL 1056789 (S.D. Ohio Mar. 18, 2021), *Stark v. Keycorp*, No. 20-CV-01254, 2021 WL 1758269 (N.D. Ohio May 4, 2021), *Laidig v GreatBanc Trust Co.*, No. 22-CV-1296, 2023 WL 1319624 (N.D. Ill. Jan. 31, 2023), *Thomson v. Caesars Holdings Inc.*, 661 F. Supp. 3d 1043 (D. Nev. 2023), and *Schissler v. Janus Henderson US (Holdings) Inc.*, No. 22-CV-02326, 2023 WL 6902050 (D. Colo. Sept. 7, 2023), *R. & R. adopted*, 2024 WL 233141 (Jan. 22, 2024).

23. The firm is viewed as a leader in ERISA 401(k) cases. According to a Bloomberg BNA article, “Nichols Kaster has been the driving force” behind 401(k) self-dealing litigation. See Jacklyn Wille, *Deutsche Bank Can’t Shake 401(k) Fee Lawsuit*, Bloomberg L. (Oct. 14, 2016), <https://news.bloomberglaw.com/employee-benefits/deutsche-bank-cant-shake-401-k-fee-lawsuit>. Attorneys from Nichols Kaster have been interviewed by National Public Radio’s “All Things Considered”, the Wall Street Journal, Bloomberg, Financial Times, Investment News, Bankrate.com, and several trade publications in connection with their ERISA work.

Law Firm Overview

24. Nichols Kaster has been engaged in the practice of law for over 30 years and is devoted to representing the interests of both consumers and employees. The firm has offices in Minneapolis and San Francisco, and currently employs 35 attorneys and a sizeable staff of paralegals, legal assistants, class action clerks, and information technology professionals.

25. Nichols Kaster has extensive class action and collective action experience. The firm has been appointed lead counsel or co-counsel on hundreds of class and collective actions, and has recovered over \$750 million for its clients.

26. Nichols Kaster was named one of the top 50 elite trial firms by National Law Journal in September 2014, and also has been ranked as a Best Law Firm by U.S. News and World

Report. In addition, Nichols Kaster has received praise from numerous courts for its work. The firm's lawyers have litigated dozens of cases through trial and managed discovery in cases involving millions of pages of documents. The firm is also well regarded for its appellate work, and has been involved in two successful appeals before the United States Supreme Court, *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92 (2015), and *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1 (2011).

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

Settlement Administrator

28. Plaintiffs have retained Atticus Administration LLC as the Settlement Administrator. Atticus Administration has extensive experience administering class action settlements. I have personally worked with Atticus Administration to administer ERISA class action settlements in *Schaf v. O-I Glass, Inc.* and *Drust v. Southwest Research Institute*,⁴ and found their work to be commendable. A copy of Atticus Administrations' firm curriculum vitae is attached to this Declaration as **Exhibit D**.

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

Dated: January 27, 2025

s/Brock J. Specht
Brock J. Specht

⁴ See ¶ 21, *supra*, for case citations.

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2025, I caused a copy of the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: January 27, 2025

s/Brock J. Specht
Brock J. Specht