

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

SARAH CONTE, JOANNE TOUCHBERRY, )	CASE NO. 5:21-CV-00190-D
TEKISHA L. NICHOLSON, TOBY )	
BELIVEAU, ALEXANDER CARLISLE, and )	<u>CLASS ACTION</u>
EARLENE N. HUNTER, Individually and on )	
Behalf of the WakeMed 403(b) Plan and All )	DECLARATION OF MARK K. GYANDOH
Others Similarly Situated, )	FILED ON BEHALF OF CAPOZZI ADLER,
)	P.C. IN SUPPORT OF APPLICATION FOR
Plaintiffs, )	AWARD OF ATTORNEYS' FEES AND
)	EXPENSES
vs. )	
)	
WAKEMED, )	
)	
Defendants. )	
)	
_____ )	

I, Mark K. Gyandoh, declare as follows:

1. I am a member in good standing of the bars of the Commonwealth of Pennsylvania and state of New Jersey and have personal knowledge of the facts set forth below and, if called as witness, I could and would testify competently thereto.

2. I am a partner and Chair of the Fiduciary Practice Group at the law firm of Capozzi Adler, P.C. (“Capozzi Adler”). I am submitting this declaration in support of my firm’s application for an award of attorneys’ fees and expenses/charges (“expenses”) in connection with services rendered in the above-entitled action.

3. This Firm is counsel of record for plaintiffs Tekisha L. Nicholson, Toby Beliveau, Alexander Carlisle and Earlene N. Hunter.

***Capozzi Adler’s Experience***

4. I received both my J.D. (2001) and LLM in trial advocacy (2011) from Temple University School of Law. While at Temple, I was the research editor for the Temple International and Comparative Law Journal. After law school I clerked for a year with a Judge on the New Jersey State Appellate Court.

5. I have been litigating ERISA fiduciary breach lawsuits for over 16 years, first at my prior firm of Kessler Topaz Meltzer & Check, LLP (KTMC), and currently at Capozzi Adler where, as noted above, I am chair of the Fiduciary Practice Group. Over my career I have been actively involved in many high profile ERISA class actions. For example, I was one of the lead attorneys for plaintiffs in *Fifth Third Bancorp, et al., v. Dudenhoeffer, et al.*, 573 U.S. 409, 134 S. Ct. 2459 (2014), a seminal Supreme Court decision that clarified the unwavering duties owed by fiduciaries to pension plan participants. See biography at <https://capozziadler.com/mark-k-gyandoh-esquire/>.

6. My partner Donald Reavey who chairs the firm's Litigation Practice Group is an experienced litigator frequently handling multi-million dollar disputes. A 1998 graduate of Penn State, Dickinson School of Law, Mr. Reavey has leaned on his two-decade plus litigation experience in filing and litigating dozens of ERISA breach of fiduciary duty actions over the last several years. See biography at <https://capozziadler.com/donald-r-reavey-esquire/>.

7. Other members of the Fiduciary Practice Group include Senior Associate Lisa Basial, a former Senior Deputy Attorney General at Office of Attorney General in Harrisburg. See biography at <https://capozziadler.com/lisa-w-basial-esquire/>. Ms. Basial is a graduate of the University of Pittsburgh School of Law and Joseph M. Katz Graduate School of Business where she earned a Juris Doctor Degree and a Master of Business Administration. While working with the Attorney General's office, Ms. Basial tried more than twenty Federal jury trials to verdict.

8. Our team also includes Mid-Level Associate, Gabrielle P. Kelerchian, a 2017 graduate of Villanova Law School with several years of litigation experience. See biography at <https://capozziadler.com/gabrielle-p-kelerchian-esquire/>. Before joining Capozzi Adler, Ms. Kelerchian zealously represented individuals in medical malpractice and personal injury cases at Philadelphia area law firms. Rounding out the ERISA team are our support staff which include paralegals and other paraprofessionals who assist in the practice.

9. I and my firm have been lead or co-lead interim counsel in dozens of ERISA breach of fiduciary duty actions. Recently, Capozzi Alder was appointed interim co-lead class counsel in *Tracy et al. v. The American National Red Cross*, No. 1:21-cv-00541-EGS (D.D.C. Apr. 16, 2021) an ERISA class action analogous to the instant Action. Capozzi Adler was also appointed co-lead class counsel in *Boley, et al. v. Universal Health Services, Inc., et al.* 2021 WL 859399 (E.D.Pa. Mar. 8, 2021). Additionally, Capozzi Adler has been appointed interim lead or co-lead class

counsel in several analogous ERISA breach of fiduciary duty matters. *See, e.g., Bilello, et al., v. Estee Lauder, Inc., et al.*, No. 1:20-cv-04770-JMF (S.D.N.Y. Aug. 10, 2020) (Doc. 11.) (appointing Capozzi Adler interim lead class counsel); *Covington et al. v. Biogen Inc. et al.*, No. 1:20-cv-11325 (D. Mass. Oct. 6, 2020 (Doc. 24) (appointing Capozzi Adler interim Co-Lead Class Counsel); *Tepper et al. v. Omnicom Group et al.*, No. 20-cv-4141 (S.D.N.Y. Sept. 17, 2020) (Doc. 13) (same); *Johnson et al. v. Quest Diagnostics et al.*, No. 2:20cv07936 (D.N.J. Oct. 2, 2020) (Doc. 7) (same).

***Capozzi Adler's Fee and Expenses in this Matter***

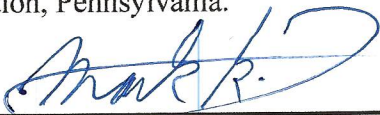
10. I personally managed, delegated, and supervised the allocation of personnel and expenses employed by my firm in this case. The Firm's expenses were actually incurred in the litigation of this case as reflected in the books and records of Capozzi Adler. These books and records are prepared from receipts, expense vouchers, check records, and other documents and are an accurate record of the expenses. These expenses were necessary to the prosecution and settlement of the case, and are of the type that would be billed to hourly clients of the firm.

11. The time spent by my Firm was reasonable and necessary to effectively prosecute this case, and avoided duplication of efforts. Moreover, we have reviewed our time records and eliminated certain entries in the exercise of billing judgment. My Firm allocated work to maximize efficiency, assigning tasks within the firm based on a number of considerations and with the goal of minimizing duplication of effort, thereby minimizing fees in the case. Thus, senior attorneys did not do the work that could be accomplished more efficiently by more junior attorneys, and attorneys did not do work that could be completed by paraprofessionals. Had such efforts not been made, the lodestar would have been much higher.

12. After the reductions referred to above, the number of hours spent on the Litigation by my Firm is 130.10. A breakdown of the lodestar is provided in Exhibit A. The lodestar amount for attorney/paralegal (or attorney/paraprofessional) time based on the Firm's 2021 rates is \$89,960.50. The hourly rates shown in Exhibit A are consistent with hourly rates submitted by the Firm during 2021 in other ERISA class action litigation. In the course of my 16 year plus nationwide ERISA practice, I have worked with most if not all firms that have a national ERISA class action practice. In my experience, 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 – Capozzi Adler's rates are broadly in line with rates of other firms with nationwide class action practices, that have been the basis for awards of fees in courts around the country.

13. My Firm also seeks an award of \$1,331.08 in expenses and charges in connection with the prosecution of the litigation. Those expenses and charges are summarized by category in Exhibit B.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29<sup>th</sup> day of September, 2021, at Merion Station, Pennsylvania.

  
\_\_\_\_\_  
Mark K. Gyandoh

# EXHIBIT A

**EXHIBIT A**

*Sarah Conte v. WakeMed*, No. 5:21-CV-00190-D  
CAPOZZI ADLER, P.C.  
Inception through September 24, 2021

<b>Name</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Lodestar</b>
Mark K. Gyandoh	Partner	\$820	34.6	\$28,372
Donald R. Reavey	Partner	\$820	63.8	\$52,316
Gabrielle P. Kelerchian	Mid-Level Associate	\$425	7.7	\$3,272.50
Linda Gussler	Paralegal	\$250	22.6	\$5,650
Kathleen Hughes	Paralegal	\$250	0.4	\$100
Lauren Phillips	Paralegal	\$250	1.0	\$250
<b>Totals</b>			<b>130.1</b>	<b>\$89,960.5</b>

# EXHIBIT B



**EXHIBIT B**

*Sarah Conte v. WakeMed*, No. 5:21-CV-00190-D  
CAPOZZI ADLER, P.C.  
Inception through September 24, 2021

<b>Expense Category</b>	<b>Amount</b>
PACER	\$4.50
Local Counsel	\$600.00
Investigation Services	\$17.10
Courier/Fed Ex	\$257.48
Court Costs (filing fees)	\$452.00
<b>Total</b>	<b>\$1,331.08</b>