

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA**

Jeffrey Tucker, on behalf of himself and  
all others similarly situated,

Plaintiff,

vs.

Baptist Health System, Inc., the Baptist  
Health System, Inc. Benefits Committee  
and John Does 1-20,

Defendants.

Civil Action No. 2:15-cv-00382-SLB

**[PROPOSED] ORDER AND FINAL JUDGMENT**

This litigation involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, et seq. (“ERISA”), set forth in Plaintiff’s Class Action Complaint dated July 21, 2015, with respect to the Plan.<sup>1</sup>

This matter came before the Court for a hearing pursuant to Federal Rule of Civil Procedure 23(e) and to the Preliminary Approval Order of this Court entered on \_\_\_\_\_, 2016, on the application of the Parties for approval of the

<sup>1</sup> This Judgment incorporates by reference the definitions in the Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”), and all terms used herein shall have the same meanings as set forth in the Settlement Agreement unless set forth differently herein. The terms of the Settlement are fully incorporated in this Judgment as if set forth fully here.

Settlement set forth in the Settlement Agreement, executed on August \_\_, 2016, on behalf of the Parties. Due and adequate notice having been given to the Settlement Class as required in the Preliminary Approval Order, and the Court having considered the Settlement Agreement, all papers filed and proceedings held herein, and good cause appearing therefore, , IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Court has jurisdiction over the subject matter of this Action and all Parties to the action, including all members of the Settlement Class.

2. On \_\_\_\_\_, 2016, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(1) or alternatively (b)(2), the Court preliminarily certified for settlement purposes only the following Settlement Class:

All vested or non-vested present and past participants of the Plan (or their beneficiaries) as of the Effective Date of Settlement.

3. For the sole purpose of settling and resolving this Action, the Court finds that the Settlement Class meets all requirements of Federal Rules of Civil Procedure 23(a) for certification of the class claims alleged in the Complaint, including (a) numerosity; (b) commonality; (c) typicality; and (d) adequacy of the class representative and Class Counsel.

4. Additionally, the Court finds, for the purposes of settlement only, the prerequisites of Rule 23(b)(1) have been satisfied, because the prosecution of

separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants; or (ii) adjudications with respect to individual Settlement Class members, which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

5. Alternatively, the Court finds, for the purposes of settlement only, the prerequisites of Rule 23(b)(2) have been satisfied, because Defendants have acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole. Accordingly, for the sole purpose of settling and resolving the Action, the Court certifies this Action as a non-opt-out class action under Federal Rule of Civil Procedure 23(b)(1) and/or (b)(2).

6. Pursuant to Federal Rule of Civil Procedure 23(a), the Court finds that Plaintiff Jeffrey Tucker is a member of the Settlement Class, his claims are typical of those of the Settlement Class and he fairly and adequately protected the interests of the Settlement Class throughout the proceedings in this Action. Accordingly, the Court hereby appoints Jeffrey Tucker as class representative.

7. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1), the Court finds that Class Counsel have fairly and adequately

represented the Settlement Class for purposes of entering into and implementing the Settlement, and thus, hereby appoints Izard Kindall & Raabe LLP and Kessler Topaz Meltzer & Check LLP to represent the members of the Settlement Class.

8. Class Counsel is hereby awarded attorneys' fees pursuant to Federal Rule of Civil Procedure 23(h), in the amount of \_\_\_\_\_ which the Court finds to be fair and reasonable, and \_\_\_\_\_ in reimbursement of Class Counsel's reasonable expenses incurred in prosecuting the Action. All fees and expenses paid to Class Counsel shall be paid pursuant to the timing requirements described in the Settlement Agreement.

9. Class Counsel has moved for an Incentive Fee for Plaintiff Jeffrey Tucker. The Court hereby [grants in the amount of \$\_\_\_\_\_] [denies] Class Counsel's motion for an award of an Incentive Fee.

10. The Court directed that Class Notice be given pursuant to the notice program proposed by the Parties and approved by the Court. In accordance with the Court's Preliminary Approval Order and the Court-appointed notice program: (1) On or about \_\_\_\_\_, 2016, Class Counsel posted the Settlement Agreement and Class Notice to the websites identified in the Class Notice; and (2) On or about \_\_\_\_\_, 2016, Defendants sent the Class Notice via first-class mail to each Person within the Settlement Class at the last known address for members of the Settlement Class in the possession of the Plan's current record-keeper.

11. The Class Notice and Internet/Publication of Class Notice (collectively, the “Class Notices”) advised members of the Settlement Class of the: terms of the Settlement, Fairness Hearing and the right to appear at such Fairness Hearing; inability to opt out of the Settlement Class; right to object to the Settlement, including the right to object to the Settlement or the application for an award of attorneys’ fees and reimbursement of expenses, or the Incentive Fee to Jeffrey Tucker, as class representative; the procedures for exercising such rights; and the binding effect of this Order and Final Judgment, whether favorable or unfavorable, to the Settlement Class, including the scope of the Released Claims described in §4 of the Settlement Agreement.

12. The Class Notices met all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, the United States Constitution, and any other applicable law. The Court further finds that the form of notice was concise, clear, and in plain, easily understood language, and was reasonably calculated under the circumstances to apprise Class Members of the pendency of the Action, the claims, issues and defenses of the Settlement Class, the definition of the Settlement Class certified, the right to object to the proposed Settlement, the right to appear at the Fairness Hearing, through counsel if desired, and the binding effect of a judgment on members of the Settlement Class, including the scope of the Released Claims described in Section 4 of the Settlement Agreement.

13. Defendants notified the appropriate Federal and State officials of this Settlement as required by the Class Action Fairness Act of 2005. 28 U.S.C. § 1715.

14. The Court finds after a hearing and based upon all submissions of the Parties and interested persons that the Parties' proposed Settlement is fair, reasonable, and adequate. The Court also finds that the proposed Settlement is consistent with and in compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, and the United States Constitution, and other applicable law. In so finding, the Court has considered and found that:

- a) The Settlement provides for significant funding of the Plan.
- b) The Settlement further provides for significant Plan administrative provisions which will enhance the retirement security of the members of the Settlement Class.
- c) The terms and provisions of the Settlement were entered into by experienced counsel and only after extensive, arm's-length negotiations conducted for over three months in good faith and with the assistance of an experienced mediator, who was thoroughly familiar with this litigation. The Settlement is not the result of collusion.
- d) Those negotiations followed Defendants' filing of a motion to dismiss which included voluminous documents, all of which Class Counsel

reviewed. The absence of formal discovery in this case in no way undermines the integrity of the Settlement given the extensive investigation that has occurred as a result of proceedings thus far.

e) Those proceedings gave counsel opportunity to adequately assess this case's strengths and weaknesses – and thus to structure the Settlement in a way that adequately accounts for those strengths and weaknesses. Counsel were cognizant that there was no guarantee of success and, if the Settlement had not been achieved, the Parties face the expense, risk, and uncertainty of extended litigation.

f) Approval of the Settlement will result in substantial savings of time, money and effort for the Court and the Parties, and will further the interests of justice. Defendants have denied and continue to deny Plaintiff's claims and allegations against them, and raised various factual and legal arguments in support of its vigorous defense in this Action.

15. All members of the Settlement Class are bound by this Order and Final Judgment and by the terms of the Settlement, including the scope of the Released Claims described in § 4 of the Settlement Agreement.

16. The Court recognizes that Defendants have denied and continue to deny the claims of the Named Plaintiff and the Settlement Class. None of the Settlement Agreement, this Order and Final Judgment, nor the fact of the

Settlement itself constitutes any admission by any of the Parties of any liability, wrongdoing or violating of law, damages or lack thereof, or of the validity or invalidity of any claim or defense asserted in the Action except that Defendants may submit this Order and Final Judgment to support a claim of *res judicata*, collateral estoppel, release or any theory of claim or issue preclusion. If the Settlement Agreement is not upheld on appeal, or is otherwise terminated for any reason, the Settlement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission by an party of any fact, matter, or position of law; all Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court. The Court's certification of the Settlement Class pursuant to the terms of the Settlement Agreement shall not constitute and does not constitute, and shall not be construed or used as an admission, concession, or declaration by or against Defendants that (except for the purposes of Settlement), this Action or any other action is appropriate for class treatment under Federal Rule of Civil Procedure 23, or any similar federal or state class action statute or rule, for litigation purposes.

17. The Court hereby dismisses with prejudice the Action and all Released Claims identified in § 4 of the Settlement Agreement against each and all



Releasees and without costs to any of the Parties as against the others. The Court hereby orders that on the Effective Date of this Settlement Agreement the Plaintiff, Jeffrey Tucker, as well as the members of the Settlement Class release any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, expenses and costs arising out of the allegations of the Complaint that were brought or could have been brought as of the date of the Settlement Agreement by any member of the Settlement Class, including any current or prospective challenge to the Church Plan status of the Plan, whether or not such claims are accrued, whether already acquired or subsequently acquired, whether known or unknown, in law or equity, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim, or otherwise. Notwithstanding the foregoing, Released Claims are not intended to, and shall not, include the release of any of the following: any rights or duties arising out of the Settlement Agreement, including the express warranties and covenants in the Settlement Agreement; should the Birmingham Baptist Association ever make a material change in its relationship with the Plan's sponsor so as to affirmatively cease to control or be associated with the Plan's sponsor, as that term is defined in the Plan documents, any claim arising prospectively under ERISA with respect to any event occurring after such action by the Birmingham Baptist Association; and any claim arising under ERISA with respect to any event occurring after the

Internal Revenue Service issues a written ruling that the Plan does not qualify as a Church Plan; the United States Supreme Court holds that a Church Plan must be established by a church or a convention or association of churches and such holding renders ERISA's church plan exemption inapplicable to the Plan; or an amendment to ERISA is enacted and becomes effective as a law of the United States specifying that a Church Plan must be established by a church or a convention or association of churches and such amendment renders ERISA's church plan exemption inapplicable to the Plan.

18. In connection with the Released Claims, as of the Effective Date of this Settlement Agreement, each member of the Settlement Class is deemed to have waived any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code relinquishes, to the fullest extent permitted by law and equity, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor and any and all provisions, rights and benefits of any similar statute, law or principle or common law of the United States, any state thereof, or any other jurisdiction.”

19. The Court incorporates the Settlement Agreement into this Order and Final Judgment. Without affecting the finality of this Order and Final Judgment,

the Court retains jurisdiction over the implementation, administration and enforcement of this Order and Final Judgment and the Settlement, and all matters ancillary thereto.

20. The Court hereby approves the Settlement Agreement and orders that the Settlement Agreement shall be consummated and implemented in accordance with its terms and conditions. The Court finds that no reason exists for delay in ordering final judgment, and the Clerk is hereby directed to enter this Order and Final Judgment forthwith.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2017

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Hon. Madeline Hughes Haikala  
U.S. District Court Judge