

**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-MHH

**JOINT DECLARATION OF MARK P. KINDALL AND EDWARD W.
CIOLKO IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION
FOR AWARD OF ATTORNEYS’ FEES, REIMBURSEMENT OF
EXPENSES, AND INCENTIVE FEE TO THE NAMED PLAINTIFF**

MARK P. KINDALL and EDWARD W. CIOLKO declare as follows:

1. Mark P. Kindall and Edward W. Ciolko are, respectfully a partner in the law firm of Izard, Kindall & Raabe, LLP (formerly Izard Nobel, LLP) (“IKR”), and a partner in the law firm of Kessler Topaz Meltzer & Check, LLP (“KTMC”), Class Counsel in the above-captioned litigation.

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

We submit this Joint Declaration in support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Incentive Fee to Plaintiff Jeffrey Tucker ("Named Plaintiff" or "Plaintiff").

3. Defendants moved to dismiss the Complaint on May 26, 2015. Dkt No. 15. Defendants argued that statutory text, court opinions and administrative agency interpretation all support the conclusion that the Plan should be considered a church plan and be exempt from ERISA. After the motion to dismiss was fully briefed, the parties conferred and agreed to mediation. These discussions were prompted by the parties' desire to avoid the burden, expense, and uncertainty of continued litigation and to settle any and all claims that have been or could have been asserted against the Defendants arising out of the conduct described in the Complaint. The parties agreed to use Robert A. Meyer, Esq. as a mediator. Mr. Meyer is a highly skilled and experienced mediator who has mediated many complex cases and class actions.

4. As part of the mediation process, Defendants produced an actuarial report, pension plan and numerous other documents to Plaintiff. Plaintiff obtained and produced to Defendant its own expert actuarial report concerning both liability and damages. The parties also submitted letter briefs to Mr. Meyer and met with him in Los Angeles on May 31, 2016. During mediation, the parties exchanged

their respective views with Mr. Meyer regarding the merits of the case and the various issues with respect to liability, causation, and damages. The Settling Parties successfully reached an agreement-in-principle to settle the case and signed a term sheet reflecting the material terms at the conclusion of the mediation session. The term sheet indicated that Defendant would be responsible for paying Plaintiff's attorneys' fees and expenses, in an amount to be negotiated between the Parties. The term sheet further provided that the Mediator would act as the final arbiter with respect to any disagreement concerning plaintiff's reasonable fees and expenses.

5. The Parties finalized all of the terms and conditions of the Settlement, which was executed on August 26, 2016 and submitted to Court along with a Motion for Preliminary Approval. Dkt. No. 43. The Court granted Preliminary Approval by Order dated February 10, 2017 [Dkt. No. 51]. Among other things, the Order preliminarily certified the Class, appointed Plaintiff as Class Representative and his counsel as Class Counsel, approved the form and method of providing notice to the Class, and set a date for the Fairness Hearing.

6. In accordance with the Preliminary Approval Order, the approved Class Notice was sent to 17,536 Settlement Class members identified by the Plan's recordkeeper by first-class mail on March 31, 2017. *See* Declaration of Keith Hartsough for Hewitt Associates LLC, at ¶ 6, attached hereto as Exhibit 1.

7. In addition, the Settlement and all of its attachments (including the Notice), as well as the Motion for Preliminary Approval and supporting materials, were published on a dedicated page on the Izard, Kindall & Raabe website (<http://ikrlaw.com/file/tucker-v-baptist-health-system-inc/>) on February 14, 2017. The Notice to the Class specifically described the provisions of the Settlement related to this motion, including that Defendants agreed to pay a maximum of \$870,000 to satisfy Plaintiffs' attorneys' fees and expenses, with Plaintiffs agreeing to seek no more than \$50,000 for reimbursement of expenses and an Incentive Fee for the Named Plaintiff. Notice, ¶ 3.

8. The date for filing objections was set for May 22, 2017, to give class members the opportunity to review this motion, as well as the Motion for Final Approval, before deciding whether to object. At least as of the date of this filing, however, no Class Member has objected to the proposed award of attorneys' fees, expenses, or incentive payment for Lead Plaintiff as set forth in the Class Notice.

9. Counsel for Plaintiff answered approximately 200 telephone calls from Settlement Class Members and provided them with additional information about the case and the Settlement. A vast majority of the callers were pleased with the Settlement and, as of May 5, 2017, no class member has filed a written objection.

10. As detailed in the accompanying Memorandum in Support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Incentive Fee to Plaintiff Jeffrey Tucker (the "Fee Memorandum"), we believe that Class Counsel's request for attorneys' fees readily meets the standards set forth in the United States Court of Appeals for the Eleventh Circuit. Moreover, the requested attorneys' fees are in line with awards in ERISA class actions in the Eleventh Circuit.

11. Attached hereto as Exhibits 2, 3, and 4 are declarations submitted on behalf of IKR, KTMC, and Ragsdale, LLC ("Ragsdale") (hereinafter the "Fee Declarations"). These Fee Declarations summarize the lodestar of each firm, including the number of hours, hourly rates, and the expenses reasonably incurred by each firm in connection with the litigation. Class Counsel sought throughout this litigation to avoid duplication of effort by counsel. Moreover, we have reviewed our time records and eliminated certain entries in the exercise of billing judgment.

12. In total, we have expended over 550 hours in the prosecution of this Action, with a resulting lodestar of over \$366,530. The requested fee of \$820,000, is fair and reasonable considering the risks that Class Counsel took in prosecuting this Action under the applicable standards in this and other circuits in similar cases.

The expenses requested are also reasonable in amount and were necessarily incurred for the successful prosecution of the Action.

13. Attached hereto as Exhibit 5 is a true and accurate copy of the Class Action Settlement Agreement.

14. Attached hereto as Exhibit 6 is a true and accurate copy of the Firm Resume of Iazard, Kindall & Raabe, LLP.

15. Attached hereto as Exhibit 7 is a true and accurate copy of the Firm Resume of Kessler Topaz Meltzer & Check, LLP.

16. Attached hereto as Exhibit 8 is the declaration of Lars C. Golumbic submitted on behalf of Groom Law Group, Chartered, regarding delivery of Class Action Fairness Act (“CAFA”) notices.

17. Attached as Exhibits 9A – 9E are Orders in support of the requested award of attorneys’ fees, reimbursement of expenses and Incentive Fee to the Named Plaintiff.

I, Mark P. Kindall, declare under penalty of perjury that the foregoing is true and correct. Executed this 5th day of May, 2017, in West Hartford, Connecticut.

/s/ Mark P. Kindall
Mark P. Kindall

I, Edward W. Ciolko, declare under penalty of perjury that the foregoing is true and correct. Executed this 5th day of May, 2017, in Radnor, Pennsylvania.

/s/ Edward W. Ciolko
Edward W. Ciolko