

**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ALABAMA
 SOUTHERN DIVISION**

**JEFFREY TUCKER, on behalf of }
 himself and all others similarly }
 situated, }**

Plaintiff, }

v. }

Case No.: 2:15-cv-00382-MHH

**BAPTIST HEALTH SYSTEM, INC., }
 et al., }**

Defendants. }

ORDER

In this putative class action, plaintiff Jeffrey Tucker alleges that the defendants, Baptist Health System, Inc. and Baptist Health System, Inc. Benefits Committee, violated the Employee Retirement Income Security Act (ERISA) by maintaining an employee pension plan that fails to comply with the statute’s funding, fiduciary, and notice requirements. (Doc. 1, p. 2).¹ On March 28, 2016, the Court stayed the action to facilitate the parties’ efforts to mediate their dispute. (Doc. 32). Pursuant to Federal Rule of Civil Procedure 23(e), Mr. Tucker now asks the Court to preliminarily approve the parties’ proposed settlement of the case. (Doc. 43). The defendants do not oppose Mr. Tucker’s motion.

¹ The complaint also names as defendants John Does 1-20. These fictitious parties are members of the Benefits Committee or any other committee that administered the Plan. (Doc. 1, ¶ 11). These defendants have not been served and have not appeared in this action.

After consideration of the proposed settlement agreement (Doc. 44-1) and the entire record, and for good cause shown, the Court **ORDERS** as follows:

1. The Court preliminarily approves the terms of the proposed settlement agreement because the terms appear to be fair, reasonable, and adequate. The Court shall consider *de novo* the fairness of the proposed settlement at the Final Fairness Hearing described below.

2. Pursuant to Federal Rules of Civil Procedure 23(b)(1) and (b)(2) and Rule 23(e), and solely for purposes of settlement, the Court preliminarily certifies a non-opt out Settlement Class as defined in the proposed settlement agreement. (Doc. 44-1, § 1.21).

3. The Court preliminarily appoints Jeffrey Tucker, the named plaintiff, as the class representative for the Settlement Class, and Iazard Kindall & Raabe LLP and Kessler Topaz Meltzer & Check LLP as class counsel for the Settlement Class.

4. The Court will hold a Final Fairness Hearing at **10:00 a.m.** on **June 5, 2017** in Courtroom 7B at the Hugo L. Black United States Courthouse, 1729 Fifth Avenue North, Birmingham, AL 35203 (the Final Fairness Hearing). The purposes of the Final Fairness Hearing shall be (a) to determine whether the proposed settlement agreement is fair, reasonable, and adequate and should be finally approved by the Court; (b) to entertain any objections to the proposed settlement agreement and any other matter related to the settlement; (c) to determine whether the application for payment of attorney's fees and expenses to class counsel should be approved; (d) to

determine whether the application for an incentive fee to Mr. Tucker should be approved; and (e) to rule on all other matters pertaining to the proposed settlement agreement, including whether a settlement class should be certified as a mandatory non-opt out class, and such other matters as the Court may deem appropriate. The Court may adjourn the Final Fairness Hearing without further notice of any kind other than oral announcement at the hearing, or alternatively, written notice to all persons who have appeared or filed objections.

5. **No later than thirty-one (31) days** before the Final Fairness Hearing, class counsel shall file a motion for final approval of the proposed settlement agreement, attorney's fees and expenses, an incentive fee to Mr. Tucker, and a finding that the order and final judgment is a final judgment disposing of all claims and parties.

6. Notice of the proposed settlement shall be issued to the Settlement Class as defined in the proposed settlement agreement in accordance with this order as soon as practicable after entry of this preliminary approval order, but **not later than April 3, 2017**. Notice shall take the form set out in the amended proposed class notice. (Doc. 49-1). The notice shall be sent by first class United States mail to the last known addresses of all members of the Settlement Class.

7. The Court finds that the form and methods of notice specified above are the best notice practicable under the circumstances and shall constitute due and sufficient notice of the proposed settlement and all other matters addressed in the

notice, including, without limitation, the pendency of this action, the terms of the proposed settlement agreement, the procedure for objections, the binding effect of the proposed settlement on all members of a final Settlement Class, and the Final Fairness Hearing. The Court approves the form of the amended proposed class notice pursuant to Federal Rule of Civil Procedure 23(e)(1).

8. Any briefs or other documents in support of the proposed settlement agreement shall be filed by the parties with the Clerk of Court **no later than seven (7) days** before the Final Fairness Hearing.

9. As provided in greater detail in the amended proposed class notice, any member of the Settlement Class may file written objections to the proposed settlement agreement. Any member of the Settlement Class may appear at the Final Fairness Hearing in person or by counsel (if a notice of appearance is submitted in accordance with the proposed settlement agreement and amended proposed class notice), and to the extent allowed by the Court, may be heard in support of, or in opposition to (a) the fairness, reasonableness, and adequacy of the proposed settlement agreement; (b) the terms and conditions of the final judgment to be entered; and (c) the procedures adopted by the Court for its determination of whether to approve the proposed settlement agreement. Such members of the Settlement Class may raise issues including but not limited to (1) the binding effect of the proposed settlement agreement on all members of the Settlement Class; (2) the content and method of delivery of notice of the proposed settlement agreement; (3) any orders or findings

entered by the Court; and (4) all other matters pertaining to the proposed settlement. Any objection must be in the form described in the amended proposed class notice and must be filed with the Court, with a copy to class counsel and counsel for the defendants, **no later than fourteen (14) days** before the Final Fairness Hearing. Responses to objections shall be due **no later than seven (7) days** prior to the Final Fairness Hearing.

No member of the Settlement Class shall be heard and no objections, briefs, or pleadings submitted by any member of the Settlement Class shall be received or considered by the Court unless those written and signed materials are submitted to the Court, class counsel, and counsel for the defendants **at least fourteen (14) days** before the Final Fairness Hearing. Any member of the Settlement Class who does not object in the manner described above shall be deemed to have waived his or her objections and shall be barred from making any such objections in this lawsuit or in any other action or proceeding.

10. If the proposed settlement agreement (including any modification by consent of the parties) is approved by the Court following the Final Fairness Hearing, the Court may enter an order approving the proposed settlement agreement as valid, fair, reasonable, and adequate and directing consummation of the proposed settlement agreement.

11. If the Court does not approve the proposed settlement agreement or the proposed settlement agreement does not become effective for any reason whatsoever,

then the proposed settlement agreement and any actions taken or to be taken in connection with it shall be terminated and rescinded and shall become null and void and have no further force or effect.

Accordingly, the Court sets the following deadlines:

Final Fairness Hearing: **June 5, 2017.**

Deadline for mailing class notice: **April 3, 2017.**

Deadline for filing plaintiffs' motions for final class certification, settlement approval, attorney's fees and costs, and incentive payment to Mr. Tucker: **May 5, 2017.**

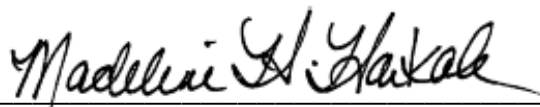
Deadline for class member objections (14 days prior to the Final Fairness Hearing): **May 22, 2017.**

Deadline to respond to any objections (7 days prior to the Final Fairness Hearing): **May 29, 2017.**

Deadline to file briefs and supporting evidence (7 days prior to the Final Fairness Hearing): **May 29, 2017.**

Deadline for parties to file with the Court notices of intention to appear: **May 29, 2017.**

DONE and **ORDERED** this February 10, 2017.



MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE