

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

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

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

Plaintiff,

vs.

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

Defendants.

CLASS ACTION SETTLEMENT AGREEMENT

This CLASS ACTION SETTLEMENT AGREEMENT (“Settlement Agreement”) is entered into by and between Plaintiff, as defined in § 1.14 below, on the one hand, and Defendants, as defined in § 1.7 below, on the other. Plaintiff and Defendants are referred to collectively in this Settlement Agreement as the “Parties.” Capitalized terms and phrases have the meanings provided in § 1 below or as specified elsewhere in this Settlement Agreement.

1. DEFINITIONS

1.1. “*Action*” shall mean: *Tucker v. Baptist Health System, Inc., et al.*, No. 2:15-cv-00382, an action pending in the United States District Court for the Northern District of Alabama.

1.2. “*Baptist Health*” shall mean: Baptist Health System, Inc.

1.3. “*Church Plan*” shall mean: a plan which meets the definition of a “church plan” under ERISA § 3(33), 29 U.S.C. § 1002(33) and is thus exempt from the provisions of Title I and Title IV of ERISA.

1.4. “*Class Counsel*” shall mean: Izard, Kindall & Raabe, LLP and Kessler Topaz Meltzer & Check, LLP.

1.5. “*Complaint*” shall mean: the Class Action Complaint filed in the Action on March 3, 2015.

- 1.6. “*Court*” shall mean: the United States District Court for the Northern District of Alabama.
- 1.7. “*Defendants*” shall mean: Baptist Health System, Inc. (“Baptist Health”), the Baptist Health System, Inc. Benefits Committee (the “Committee”), and the individual members of the Committee.
- 1.8. “*Effective Date of Settlement*” shall mean: the date on which all of the conditions to settlement set forth in § 3 of this Settlement Agreement have been fully satisfied or waived and the Settlement shall have become Final.
- 1.9. “*ERISA*” shall mean: the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated thereunder.
- 1.10. “*Final*” shall mean: with respect to any judicial ruling or order in the Action, that the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari, or any other proceedings for review (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and completed disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand.
- 1.11. “*Incentive Fee*” shall mean: any monetary amounts awarded by the Court in recognition of the Named Plaintiff’s assistance in the prosecution of the Action and payable pursuant to § 8.1.3 below
- 1.12. “*Liaison Counsel*” shall mean: Ragsdale LLC.
- 1.13. “*Person*” shall mean: an individual, partnership, corporation, any form of business entity, or any other form of organization.
- 1.14. “*Plaintiff*” and “*Named Plaintiff*” shall mean: Jeffrey Tucker.
- 1.15. “*Plan*” and “*Covered Plan*” shall mean: the Baptist Health System, Inc. Retirement Plan, which is operated as, and claims to be, exempt from ERISA as a Church Plan as of the Effective Date of Settlement.
- 1.16. “*Plan Document*” shall mean the 2014 Amendment and Restatement of The Baptist Health System, Inc. Retirement Plan, as amended.
- 1.17. “*Released Claims*” shall have the meaning provided in § 4.
- 1.18. “*Releasees*” shall mean: the Defendants, the Plan, any Person who served as a trustee, investment manager, service provider, record-keeper, or named or functional fiduciary (including de facto fiduciaries) of the Plan, together with, for each of the foregoing, their counsel and any Person that controls, is controlled by, or is under common control with any of the foregoing, including, without limitation, every person who was a director, officer, governor, management committee member, in-house counsel, employee, or agent of Baptist Health, and any and all

present or former Representatives, insurers, reinsurers, consultants, attorneys, administrators, employee benefit plans, investment advisors, investment underwriters, and spouses.

1.19. “*Representatives*” shall mean: representatives, attorneys, agents, directors, officers, employees, insurers, and reinsurers.

1.20. “*Settlement*” shall mean: the settlement to be consummated under this Settlement Agreement pursuant to the Final Approval Order.

1.21. “*Settlement Class*” shall mean: all vested or non-vested present and past participants of the Plan (or their beneficiaries) as of the Effective Date of Settlement.

1.22. “*Successor-In-Interest*” shall mean: a Person’s estate, legal representatives, heirs, successors or assigns, and any other Person who can make a legal claim by or through such Person.

2. RECITALS

2.1. In the Complaint, Plaintiff alleges causes of action on behalf of “[a]ll participants and beneficiaries of the Baptist Health System, Inc. Retirement Plan” arising under ERISA §§ 101-104, 302, 402, 404, 409, and 502(a).

2.2. Plaintiff alleges and seeks declaratory relief that the Plan is not a Church Plan within the meaning of ERISA § 3(33) and thus is subject to the provisions of Title I and Title IV of ERISA. Plaintiff alleges that Defendants (a) violated ERISA’s reporting and disclosure provisions; (b) failed to adhere to ERISA’s required minimum funding standards for the Plan; and (c) failed to establish the Plan pursuant to a written instrument meeting the requirements of ERISA § 402. Plaintiff alleges that Defendants breached fiduciary duties owed to the Plan’s participants and beneficiaries, including Plaintiff. Defendants deny each and every allegation of violation and assert that Baptist Health is associated with and controlled by the Birmingham Baptist Association and that the Plan was and remains a Church Plan exempt from ERISA.

2.3. On May 26, 2015, Defendants filed a Motion to Dismiss with prejudice (Dkt. No. 15). On July 9, 2015, Plaintiff filed a Memorandum in opposition to Defendants’ Motion to Dismiss (Dkt. No. 20), and, on August 5, 2015, Defendants filed a Reply (Dkt. No. 21). On December 24, 2015, Defendants filed a Notice of Supplemental Authority in further support of their Motion to Dismiss (Dkt. No. 28). On January 21, 2016, Plaintiff filed a Response in Opposition to Defendants’ Supplemental Authority (Dkt. No. 29). On February 9, 2016, Plaintiff and Defendant, through counsel, appeared for a hearing on Defendants’ Motion to Dismiss. On March 17, 2016, Plaintiff filed a Notice of Supplemental Authority in further opposition to the Motion to Dismiss (Dkt. No. 30). On March 25, 2016, before the Court issued a decision on Defendants’ Motion to Dismiss, Plaintiff and Defendants filed a Joint Motion to Stay the Action pending mediation and settlement negotiations (Dkt. No. 31) that the Court granted on March 28, 2016 (Dkt. No. 32).

2.4. On October 2, 2015, in connection with a joint venture with Tenet HealthSystem Medical, Inc., Baptist Health caused a contribution of approximately \$88.9 million to be made to

the Plan, after which the Plan was fully funded on an ERISA basis as of the end of calendar year 2015.

2.5. Defendants deny any and all liability to Plaintiff, members of the Settlement Class, and/or the Plan, and deny any and all allegations of wrongdoing made in the Action. Defendants aver that the Plan was, has been, and continues to be, properly established, maintained, and/or administered as a Church Plan under the appropriate Plan terms and as defined in ERISA § 3(33), exempt from coverage under ERISA. This Settlement is not evidence of liability of any type. Nothing in this Settlement Agreement eliminates or restricts any argument Defendants may have that Baptist Health constitutes a church or part of a church for purposes of the Church Plan exemption.

2.6. Defendants desire to resolve fully and settle with finality the Action and all of Plaintiff's Released Claims, thereby avoiding the risk, expense, inconvenience, burden, distraction and diversion of their personnel and resources, and the uncertainty of outcome that is inherent in any litigation.

2.7. Plaintiff denies any and all theories of defense asserted in Defendants' Motion to Dismiss (Dkt. No. 15), Defendants' Reply (Dkt. No. 21), and Notice of Supplemental Authority (Dkt. No. 28).

2.8. Class Counsel has conducted an extensive investigation into the facts, circumstances and legal issues associated with the allegations made in the Action. This investigation has included, *inter alia*: (a) inspecting, reviewing, and analyzing documents relating to Defendants and the Plan; (b) researching the applicable law with respect to the claims asserted in the Action and the defenses and potential defenses thereto; (c) inspecting, reviewing, and analyzing documents concerning the Plan and administration of the Plan; (d) consulting with actuarial experts, and (e) participating in settlement negotiations with Defendants' counsel, facilitated by mediator Robert Meyer, Esq.

2.9. Class Counsel believes that the Settlement will provide a significant benefit to the Settlement Class, and that, when that benefit is weighed against the attendant risks of continuing the prosecution of the Action, the Settlement represents a reasonable, fair, and adequate resolution of the claims of the Settlement Class. In reaching this conclusion, Class Counsel has considered, among other things, the risks of litigation; the time necessary to achieve a complete resolution through litigation; the complexity of the claims set forth in the Complaint; the ability of Defendants to withstand judgment; and the benefit accruing to the Plan's participants under the Settlement.

2.10. Class Counsel believes that the Settlement will provide the Settlement Class with the bulk of the protections they would have received if the Action had been litigated to a conclusion and Plaintiff had prevailed.

2.11. Plaintiff and Defendants have thus reached this Settlement by and through their respective counsel on the terms and conditions set forth herein, which they have had a full and meaningful opportunity to consider with the advice of their respective counsel.

3. CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE SETTLEMENT

3.1. *Effectiveness of This Settlement Agreement.* This Settlement Agreement shall not become binding unless and until each and every one of the following conditions in §§ 3.2 through 3.8 shall have been satisfied.

3.2. *Court Approval.* The Settlement contemplated under this Settlement Agreement shall have been approved by the Court, as provided for in this § 3.2. The Parties agree jointly to recommend to the Court that it approve the terms of this Settlement Agreement and the Settlement contemplated hereunder. The Parties agree to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement, and any other steps or efforts which may become necessary by order of the Court (unless such order modifies the terms of this Settlement Agreement) or otherwise, to carry out this Settlement Agreement, including the following:

3.2.1 *Motion for Preliminary Approval of Settlement and of Notices.* The Court shall have approved the preliminary motion to be filed by Plaintiff (“Preliminary Motion”) by issuing an order in substantially the same form as attached hereto as Exhibit 1 (the “Preliminary Approval Order”), including the form of class notice in substantially the form as attached hereto as Exhibit A to the Preliminary Approval Order (the “Class Notice”), and:

- (a) Preliminarily approving this Settlement Agreement;
- (b) Directing the time and manner of the Class Notice; and
- (c) Finding that: (i) the proposed form of Class Notice fairly and adequately: (A) describes the terms and effect of this Settlement Agreement and of the Settlement, (B) gives notice to the Settlement Class of the time and place of the hearing of the motion for final approval of this Settlement Agreement, and (C) describes how the recipients of the Class Notice may object to approval of this Settlement Agreement; and (ii) the proposed manner of communicating the Class Notice to the members of the Settlement Class is the best notice practicable under the circumstances.

3.2.2 *Class Certification.*

(a) The Court shall have certified the Action as a non-opt out class action for settlement purposes only, pursuant to Federal Rules of Civil Procedure 23(b)(1) and/or (b)(2), with Plaintiff as the named Settlement Class representative; IZARD, KINDALL & RAABE, LLP and KESSLER TOPAZ METZLER & CHECK, LLP as Class Counsel, and RAGSDALE LLC as Liaison Counsel; and with a “Settlement Class” as defined in § 1.21.

(b) The Parties shall have stipulated to a certification of the case as a non-opt out class action for settlement purposes only, pursuant to Federal Rules of Civil Procedure 23(b)(1) and/or (b)(2), on the foregoing terms. If the Settlement does not become Final, then no Settlement Class shall be deemed to have been certified by or as a result of this Settlement Agreement, and the Action will for all purposes revert to its status as of March 25, 2016.

3.2.3 *Issuance of Class Notice.* Within 60 days of the Court's entry of the Preliminary Approval Order, Defendants will cause notice of the Preliminary Approval Order to be delivered to the Settlement Class in the form and manner approved by the Court. The Parties shall have conferred in good faith with regard to the form of the Class Notice and agree that notice shall be sent via first-class mail to the last known addresses of all members of the Settlement Class. The Parties agree, and the form of Preliminary Approval Order attached hereto as Exhibit 1 shall provide, that the last known addresses for members of the Settlement Class in the possession of the Plan's current record-keeper will suffice for all purposes in connection with this Settlement, including, without limitation, the mailing of the Class Notice. Defendants shall pay the cost for notice to the Settlement Class.

3.2.4 *Internet/Publication of Class Notice.* Class Counsel also shall have given Notice by publication of the Settlement Agreement and Class Notice on the websites of Class Counsel.

3.2.5 *The Fairness Hearing.*

- (a) On the date set by the Court in its Preliminary Approval Order, the Parties shall have participated in the hearing (the "Fairness Hearing") during or after which the Court will determine by order (the "Final Approval Order," attached hereto as Exhibit 2) whether: (i) this Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court; (ii) final judgment approving this Settlement Agreement should be entered ("Judgment"); (iii) the Settlement Class should be certified as a mandatory non-opt-out class meeting the applicable requirements for a settlement class imposed by Federal Rule of Civil Procedure 23; (iv) the requirements of Federal Rule of Civil Procedure 23 and due process have been satisfied in connection with the distribution of the Class Notice to members of the Settlement Class; (v) the requirements of the Class Action Fairness Act have been satisfied; (vi) to award Plaintiff an Incentive Fee and, if so, the amount; and (vii) to award attorneys' fees and further expenses to Class Counsel and other attorneys who represent members of the Settlement Class and, if so, the amounts.
- (b) The Parties covenant and agree that they will reasonably cooperate with one another in obtaining an acceptable Final Approval Order at the Fairness Hearing and will not do anything inconsistent with obtaining such a Final Approval Order.

3.2.6 *Motion for Final Approval of Class Action Settlement.* On the date set by the Court in its Preliminary Approval Order, Plaintiff shall have filed a motion (the "Final Approval Motion") for a Final Approval Order. The Final Approval Motion shall seek the Court's finding that the Final Approval Order is a final judgment disposing of all claims and all Parties.

3.3. *Finality of Final Approval Order.* The Final Approval Order shall have become Final, as defined in § 1.10 of this Settlement Agreement.

3.4. *Compliance with the Class Action Fairness Act.* The Court shall have determined that Defendants complied with the Class Action Fairness Act of 2005 (“CAFA”) and its notice requirements by providing appropriate federal and state officials with information about the Settlement. Pursuant to CAFA, the Court may not enter a Final Approval Order earlier than 90 days from Defendants’ service of the CAFA notice to the appropriate officials.

3.5. *Dismissal of Action.* The Action shall have been dismissed with prejudice as against Defendants by the Effective Date of Settlement.

3.6. *No Termination.* The Settlement shall not have terminated pursuant to § 10 below.

3.7. *Materiality of Settlement Agreement Conditions.* The Parties expressly acknowledge that the effectiveness of this Settlement Agreement is specifically conditioned upon the occurrence of each and every one of the foregoing conditions precedent prior to the Effective Date of Settlement, and that a failure of any condition set forth in §§ 3.1 through 3.6 above at any time prior to the Effective Date of Settlement shall make this Settlement Agreement, and any obligation to pay the amounts specified in § 8.1, or any portion thereof, null, void, and of no force and effect.

3.8. *Establishment of Effective Date of Settlement.* If Plaintiff and Defendants disagree as to whether each and every condition set forth in § 3 has been satisfied, they shall promptly confer in good faith and, if unable to resolve their differences within five (5) business days thereafter, shall present their disputes for determination to Robert M. Meyer, the Parties’ mediator, who shall retain authority for this purpose. No portion of the Class Settlement Amount shall be disbursed in the event of such a dispute pending Mr. Meyer’s determination. Disbursement shall thereafter be made pursuant to such determination.

4. RELEASES AND COVENANT NOT TO SUE

4.1. “Released Claims” shall mean 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 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. Plaintiff, on behalf of himself and on behalf of the Settlement Class, hereby expressly waives and 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.”

Released Claims are not intended to, and shall not, include the release of any of the following:

4.1.1 Any rights or duties arising out of the Settlement Agreement, including the express warranties and covenants in the Settlement Agreement;

4.1.2 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

4.1.3 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.

4.1.4 Should any of the events mentioned in § 4.1.3 occur, nothing in the Settlement Agreement eliminates or restricts any argument by Baptist Health that it constitutes a church or part of a church for purposes of the church plan exemption.

4.2. *Release by Plaintiff and Settlement Class.* Subject to § 10 below, upon the Effective Date of Settlement, Plaintiff, on behalf of himself and on behalf of the Settlement Class, absolutely

and unconditionally releases and forever discharges the Releasees from any and all Released Claims that Plaintiff or the Settlement Class directly, indirectly, derivatively, or in any other capacity ever had, now have, or hereafter may have. The Settlement Class covenants and agrees: (i) not to file against any of the Releasees any claim based on, related to, or arising from any Released Claim; and (ii) that the forgoing covenants and agreements shall be a complete defense to any such claim against any Releasee.

4.3. *Defendants' Releases of Plaintiff, the Settlement Class, and Class Counsel.* Subject to § 10 below, upon the Effective Date of Settlement, Defendants absolutely and unconditionally release and forever discharge Plaintiff, the Settlement Class, and Class and Liaison Counsel from any and all claims relating to the institution or prosecution of the Action.

4.4. *Releasees' Release of Other Releasees.* Subject to § 10 below, upon the Effective Date of Settlement, each of the Releasees also releases each of the other Releasees from any and all Claims which were asserted in the Complaint or any pleading which would have been required to be filed in the Action or that would be barred by principles of res judicata or collateral estoppel had the claims asserted in the Complaint or any such other pleading in the Action been fully litigated and resulted in a Final judgment or order.

5. COVENANTS

Named Plaintiff, on his own behalf and on behalf of the members of the Settlement Class, hereby covenants as follows:

5.1. *Taxation of Settlement Payments.* Plaintiff acknowledges that Defendants, Releasees, and any of their Representatives or Successors-In-Interest shall have no responsibility for any taxes that may be due on the Class Settlement Amount, or on any funds that the Plan, members of the Settlement Class, or Plaintiff receive from the Class Settlement Amount. Nothing herein shall constitute an admission or representation that any taxes will or will not be due on the Class Settlement Amount or any allocation or disbursement therefrom.

5.2. *Non-Disparagement.* The Parties, their counsel, and their agents shall refrain from making derogatory or disparaging comments as to the Settlement Agreement, Plaintiff, Class Counsel, Liaison Counsel, any Releasee, Defendants, the Plan, and/or Defendants' Counsel.

6. REPRESENTATIONS AND WARRANTIES

6.1. *Parties' Representations and Warranties.*

6.1.1 Plaintiff represents and warrants that he has not assigned or otherwise transferred any interest in any Released Claims, and further covenants that he will not assign or otherwise transfer any interest in any Released Claims.

6.1.2 Plaintiff represents and warrants that he shall have no surviving claim or cause of action against any of the Releasees with respect to the Released Claims.

6.1.3 The Parties, and each of them, represent and warrant that they are voluntarily entering into this Settlement Agreement as a result of arm's-length negotiations among their

counsel; in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, as well as the advice and recommendations of their own independently-selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; except as expressly stated herein, they have not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by any other Party or its Representatives; and each Party assumes the risk of and unconditionally waives any and all claims or defenses arising out of any alleged mistake as to facts or law.

6.1.4 The Parties, and each of them, represent and warrant that they have carefully read the contents of this Settlement Agreement; they have made such investigation of the facts and law pertaining to this Settlement Agreement and all of the matters pertaining thereto as they deem necessary; and this Settlement Agreement is executed freely by each Person executing it on behalf of each of the Parties.

6.2. *Signatories' Representations and Warranties.* Each individual executing this Settlement Agreement on behalf of any other Person does hereby personally represent and warrant to the other Parties that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal which such individual represents or purports to represent.

7. NO ADMISSION OF LIABILITY

The Parties understand and agree that this Settlement Agreement embodies a compromise and settlement of disputed claims, and that nothing in this Settlement Agreement, including the furnishing of consideration for this Settlement Agreement, shall be deemed to constitute any finding that ERISA governs the Plan and/or of any wrongdoing by any of the Releasees as it pertains to the allegations of the Complaint. This Settlement Agreement and the payments made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal, equitable, or factual. Moreover, the Releasees specifically deny any such liability or wrongdoing. Neither the fact nor the terms of this Settlement Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Settlement Agreement or arising out of or relating to the Final Order.

8. SETTLEMENT PAYMENTS

8.1. *The Class Settlement Amount.*

8.1.1 Defendants will make ten (10) annual contributions to the Plan, each in the amount of \$1.1 million (each an "Annual Settlement Payment" and collectively, the "Class Settlement Amount"). Defendants will make the first Annual Settlement Payment within sixty (60) days of when the Final Approval Order approving the Settlement becomes Final. Defendants will contribute an Annual Settlement Payment of \$1.1 million in each of the subsequent nine (9) calendar years, provided, however, that Defendants may, without penalty, opt to apply any contribution they make to the Plan beyond the amount of the Annual Settlement

Payment as a prepayment toward any future Annual Settlement Payment(s) and toward the Class Settlement Amount.

8.1.2 *Payment of Fees and Expenses to Class Counsel and Liaison Counsel and Incentive Fee to Plaintiff.* Defendants will not oppose Plaintiff's application to the Court for an award of attorney fees that shall not exceed \$820,000. This amount will include fees for Class Counsel and Liaison Counsel. Also, Defendants will not oppose Plaintiff's application for expenses actually incurred and for an Incentive Fee. The application for expenses and an Incentive Fee for Plaintiff will not exceed \$50,000 in the aggregate. Defendants will cause these amounts to be paid in addition to the payments described in § 8.1.1 and § 8.2 of this Settlement Agreement. Attorney fees and expenses for Class Counsel and Liaison Counsel and the Incentive Fee for Plaintiff will be subject to the discretion and approval of the Court.

8.1.3 *Application for Fees, Expenses, and Incentive Fee for Plaintiff.* Class Counsel shall petition the Court no later than thirty-one (31) days prior to the Fairness Hearing for an award of attorneys' fees and costs and an Incentive Fee for Plaintiff, as specified in § 8.1.3. As provided in § 8.1.3 above, fourteen (14) days after the Order approving the settlement becomes Final, Defendants shall pay Class Counsel and Liaison Counsel the amount specified in § 8.1.3.

8.2. *Cost of Notice.* Defendants shall pay the cost for class notice in addition to the amounts specified in § 8.1.

8.3. *Sole Monetary Contributions.* The payments provided for in § 8.1 and § 8.2 shall be the full and sole consideration made by or on behalf of the Releasees in connection with the Action and this Settlement Agreement. The amount specified in § 8.1.2 specifically satisfies any claims for costs and attorneys' fees by Class Counsel and Liaison Counsel and claims for an Incentive Fee to Plaintiff. Except as set forth above, the Parties shall bear their own costs and expenses (including attorneys' fees).

9. AGREED UPON PLAN PROVISIONS.

9.1. *Scope.* The provisions of the Settlement Agreement shall apply to the Plan.

9.2. *Benefits Commitment.* As provided in § 9.4, below, Defendants will make all contributions that are required under the Plan Document as amended by this Settlement. If Defendants terminate the Plan within eight (8) years commencing on the Effective Date of Settlement, Defendants agree that, when the final distribution of assets occurs, the Defendants will have made contributions sufficient to pay benefit liabilities determined as of the termination date in accordance with the terms of the Plan. In distributing such assets, Defendants agree that the Plan administrator shall—(i) purchase irrevocable commitments from an insurer rated at least AA- by Standard & Poor or A+ by A. M. Best to provide all benefit liabilities under the Plan, or (ii) in accordance with the provisions of the Plan, including any Plan amendment, otherwise fully provide all benefit liabilities under the Plan.

9.3. *Plan Mergers.* For a period of eight (8) years commencing on the Effective Date of Settlement, if the Plan is merged with or into another plan, Plan participants will be entitled to the same (or greater) benefits post-merger as they enjoyed before the merger.

9.4. *Plan Amendments.* Defendants shall within thirty days of when the Final Approval Order becomes Final amend Section 6.1 of the Plan to provide as follows: “For each Plan Year, the Employer shall, within the time prescribed by law and in accordance with the most recent base mortality tables and projection scale published by the Society of Actuaries for pension employee and annuitant lives, contribute to the Retirement Fund an amount sufficient to provide the Benefits required hereunder. No Participant shall make any contributions.” Amended Plan Section 6.1 notwithstanding, Defendants will pay the Class Settlement Amount. Each of the Annual Settlement Payments will be inclusive of, and not in addition to, any contribution required under Amended Plan Section 6.1.

9.5. *Continuing Obligations.* Any continuing obligations hereunder agreed to by Defendants shall cease if, prior to the expiration of the period of time such obligations are in effect, 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.

10. TERMINATION OF THE SETTLEMENT AGREEMENT

10.1. *Termination By Defendants.* Defendants may terminate this Settlement Agreement if, before the issuance of the Final Approval Order, a member of the Settlement Class brings a claim against any of the Releasees, or notifies any Releasee that it intends to file such a claim concerning the Plan’s status as a church plan.

10.2. *Automatic Termination.* This Settlement Agreement shall automatically terminate, and thereupon become null and void, in the following circumstances:

10.2.1 If the Court declines to approve the Settlement, and if such order declining approval has become Final, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the date that any such order becomes Final, provided, however, that if the Court declines to approve the Settlement for any reason, the Parties shall negotiate in good faith and undertake their best efforts to cure any deficiency identified by the Court, and further provided that if necessary to cure any such deficiency, Class Counsel shall re-submit within a reasonable time the Preliminary or Final Approval Motion with an additional or substitute member of the Settlement Class as a named Class Representative.

10.2.2 If the Court issues an order in the Action modifying the Settlement Agreement, and if within thirty-one (31) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Court or by the Parties, then, provided that no Review Proceeding is then pending from such ruling, this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the order referenced in this § 10.2.2.

10.2.3 If the Eleventh Circuit reverses the Court's order approving the Settlement, and if within ninety-one (91) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Eleventh Circuit or by the Parties, then, provided that no Review Proceeding is then pending from such ruling, this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the ninety-first day after issuance of the Second Circuit order referenced in this § 10.2.3.

10.2.4 If the Supreme Court of the United States reverses or remands an Eleventh Circuit order approving the Settlement, and if within thirty-one (31) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Supreme Court or by the Parties, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the Supreme Court order referenced in this § 10.2.4.

10.2.5 If a Review Proceeding is pending of an order declining to approve the Settlement Agreement or modifying this Settlement Agreement, this Settlement Agreement shall not be terminated until Final resolution or dismissal of any such Review Proceeding, except by written agreement of the Parties.

10.3. *Consequences of Termination of the Settlement Agreement.* If the Settlement Agreement is terminated and rendered null and void for any reason, the following shall occur:

10.3.1 The Action shall for all purposes with respect to the Parties revert to its status as of March 25, 2016.

10.3.2 All Releases given or executed pursuant to the Settlement Agreement shall be null and void; none of the terms of the Settlement Agreement shall be effective or enforceable; neither the fact nor the terms of the Settlement Agreement shall be offered or received in evidence in the Action or in any other action or proceeding for any purpose, except in an action or proceeding arising under this Settlement Agreement.

11. MISCELLANEOUS PROVISIONS

11.1. *Jurisdiction.* The Court shall retain jurisdiction over all Parties, the Action, and this Settlement Agreement to resolve any dispute that may arise regarding this Settlement Agreement or the orders and notice referenced in § 3 above, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Settlement Agreement, and no Party shall oppose the reopening and reinstatement of the Action on the Court's active docket for the purposes of effecting this § 11.1.

11.2. *Governing Law.* This Settlement Agreement shall be governed by the laws of the United States, including federal common law, except to the extent that, as a matter of federal law, state law controls, in which case Alabama law will apply without regard to conflict of law principles.

11.3. *Severability.* The provisions of this Settlement Agreement are not severable, provided, however, that if any court with original or appellate jurisdiction over the Action does not award attorneys' fees and expenses or an Incentive Fee to Plaintiff under § 8.1.3, or does not award the

attorneys' fees and expenses sought by Class Counsel or the Incentive Fee sought by Plaintiff, such decision shall not provide cause for either Party to withdraw, void, or nullify the Settlement.

11.4. *Amendment.* Before entry of a Final Approval Order, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of a Final Approval Order, the Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Parties and approved by the Court.

11.5. *Waiver.* The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach of this Settlement Agreement, whether prior, subsequent, or contemporaneous with the waived breach.

11.6. *Construction.* None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against a drafter.

11.7. *Principles of Interpretation.* The following principles of interpretation apply to this Settlement Agreement:

11.7.1 *Headings.* The headings of this Settlement Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Settlement Agreement.

11.7.2 *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.

11.7.3 *Gender.* Definitions apply to the masculine, feminine, and neuter genders of each term defined.

11.7.4 *References to a Person.* References to a Person are also to the Person's permitted successors and assigns.

11.7.5 *Terms of Inclusion.* Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

11.8. *Further Assurances.* Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Agreement.

11.9. *Survival.* All representations, warranties, and covenants set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.

11.10. *Notices.* Any notice, demand, or other communication under this Settlement Agreement (other than notices to members of the Settlement Class) shall be in writing and shall be deemed

duly given if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

A. IF TO NAMED PLAINTIFF:

Robert A. Izard
Mark P. Kindall
IZARD, KINDALL & RAABE, LLP
29 South Main Street, Suite 305
West Hartford, CT 06107
Telephone: (860) 493-6292
Facsimile: (860) 493-6290

Edward W. Ciolko
Mark K. Gyandoh
KESSLER TOPAZ MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, PA 19087
Telephone: 610-667-7706
Facsimile: 610-667-7056

B. IF TO DEFENDANTS:

Lars C. Golumbic
Sarah M. Adams
GROOM LAW GROUP, CHARTERED
1701 Pennsylvania Avenue NW, Suite 1200
Washington, D.C. 20006
Telephone: 202-857-0620
Facsimile: 202-659-4503

William B. Wahlheim, Jr.
John David Collins
Beth Beabe
MAYNARD COOPER & GALE PC
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, AL 35203
Telephone: 205-254-1000
Fax: 205-254-1999

Email: wwahlheim@maynardcooper.com
Email: jcollins@maynardcooper.com
Email: BBeaube@maynardcooper.com

Any Party may change the address at which it is to receive notice by written notice delivered to the other Parties in the manner described above.

11.11. *Entire Agreement.* This Settlement Agreement contains the entire agreement among the Parties relating to the settlement of the Action. It specifically supersedes any settlement terms or settlement agreements relating to Defendants that were previously agreed upon orally or in writing by any of the Parties, including the terms of the Term Sheet and any and all discussions, representations, warranties, or the like prior to the Effective Date of Settlement.

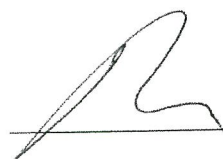
11.12. *Counterparts.* This Settlement Agreement may be executed by exchange of faxed or emailed executed signature pages, and any signature transmitted by facsimile or email for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

11.13. *Binding Effect.* This Settlement Agreement binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors, and Successors-in-Interest.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

FOR NAMED PLAINTIFF AND THE SETTLEMENT CLASS

Dated this the 25th August, 2016.

By:  _____

Robert A. Izard
Mark P. Kindall
IZARD, KINDALL & RAABE, LLP
29 South Main Street, Suite 305
West Hartford, CT 06107
Telephone: (860) 493-6292
Facsimile: (860) 493-6290

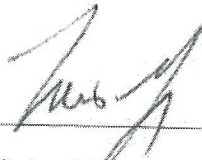
Edward W. Ciolko
Mark K. Gyandoh
KESSLER TOPAZ MELTZER & CHECK LLP
280 King of Prussia Road
Radnor, PA 19087
Telephone: 610-667-7706
Facsimile: 610-667-7056

Class Counsel

FOR ALL DEFENDANTS

Dated this the 26th day of Aug, 2016.

By: _____



Lars C. Golumbic
Sarah M. Adams
GROOM LAW GROUP, CHARTERED
1701 Pennsylvania Avenue NW, Suite 1200
Washington, D.C. 20006
Telephone: 202-857-0620
Facsimile: 202-659-4503

William B. Wahlheim, Jr.
John David Collins
Beth Beube
MAYNARD COOPER & GALE PC
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, AL 35203
Telephone: 205-254-1000
Fax: 205-254-1999
Email: wwahlheim@maynardcooper.com
Email: jcollins@maynardcooper.com
Email: BBeube@maynardcooper.com

Attorneys for Defendants

EXHIBIT 1
TO SETTLEMENT
AGREEMENT
(Proposed Preliminary
Approval Order)

**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

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT, NOTICE
PROCEDURES AND SETTING DATE FOR FAIRNESS HEARING**

Presented to the Court for preliminary approval is a settlement of the instant litigation as against all Defendants. This litigation involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), with respect to the Baptist Health System, Inc. Retirement Plan (the “Plan”).

The terms of the Settlement are set forth in the Class Action Settlement Agreement (the “Settlement” or “Settlement Agreement”), executed by counsel on August __, 2016 on behalf of the Parties.¹ Plaintiff has filed a Motion for Preliminary Approval of the Settlement, pursuant to which the Court has considered the Settlement to determine, among other things, whether to preliminarily approve the Settlement, preliminarily certify a Settlement Class, authorize the

¹ Capitalized terms not otherwise defined in this Preliminary Approval Order shall have the same meaning as ascribed to them in the Settlement Agreement.

dissemination of Class Notice to members of the Settlement Class, and set a date and time for the Final Fairness Hearing. Upon reviewing the Settlement Agreement, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Jurisdiction. The Court has jurisdiction over the subject matter of the Action, the Parties, and all members of the Settlement Class.

2. Preliminary Class Findings. Solely for the purposes of the Settlement, the Court preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other applicable law have been met as to the “Settlement Class” defined below, in that:

a) The Court preliminarily finds, for purposes of settlement only, that the Settlement Class is ascertainable from records kept with respect to the Plan and from other objective criteria, and the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable. Rule 23(a)(1) is therefore satisfied for purposes of settlement only.

b) The Court preliminarily finds, for purposes of settlement only, that there are one or more questions of fact and/or law common to the Settlement Class. Rule 23(a)(2) is therefore satisfied for purposes of settlement only.

c) The Court preliminarily finds, for purposes of settlement only, that the Named Plaintiff’s claims are typical of the claims of the Settlement Class. Rule 23(a)(3) is therefore satisfied for purposes of settlement only.

d) The Court preliminarily finds, for purposes of settlement only, that the Named Plaintiff will fairly and adequately protect the interests of the Settlement Class in that: (i) the Named Plaintiff’s interests and the nature of claims alleged are consistent with those of the

members of the Settlement Class; (ii) there appear to be no conflicts between or among the Named Plaintiff and the Settlement Class; and (iii) the Named Plaintiff and the members of the Settlement Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated ERISA class actions. Rule 23(a)(4) is therefore satisfied for purposes of settlement only.

e) The Court preliminarily finds, for purposes of settlement only, that the prosecution of separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying adjudications as to individual class members that would establish incompatible standards of conduct for Defendants; or (ii) adjudications as to individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests. Rule 23(b)(1) is therefore satisfied for purposes of settlement only.

f) Alternatively, the Court preliminarily finds, for purposes of settlement only, that Defendants have acted or refused to act on grounds generally applicable to the Settlement Class, and such conduct may be subject to appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole. Rule 23(b)(2) is therefore satisfied for purposes of settlement only.

g) The Court preliminarily finds, for purposes of settlement only, that Izard Kindall & Raabe LLP and Kessler Topaz Meltzer & Check LLP (collectively, "Class Counsel") are capable of fairly and adequately representing the interests of the Settlement Class. Class Counsel have done extensive work identifying or investigating potential claims in the Action, and have litigated the validity of those claims through the motion to dismiss the case. Class Counsel are experienced in handling class actions, other complex litigation, and claims of the

type asserted in the Action. Class Counsel are knowledgeable about the applicable law, and have committed the necessary resources to represent the Settlement Class. Rule 23(g) is therefore satisfied for purposes of settlement only.

3. Class Certification. Based on the findings set forth above, the Court preliminarily certifies solely for the purposes of settlement the following class under Federal Rules of Civil Procedure 23(b)(1) and/or (2) and 23(e) in this litigation (the “Settlement Class”):

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

Preliminary certification of a preliminary 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 the Settlement), this Action or any other action is appropriate for class treatment under Federal Rules of Civil Procedure 23, or any similar federal or state class action statute or rule, for litigation purposes. If the Settlement does not become Final, then no Settlement Class shall be deemed to have been certified by or as a result of this Preliminary Approval Order or by the Settlement Agreement, and the Action will for all purposes revert to its status as of March 25, 2016.

The Court preliminarily appoints Jeffrey Tucker, the Named Plaintiff, as the class representative for the Settlement Class, and Izard Kindall & Raabe LLP and Kessler Topaz Meltzer & Check LLP as Class Counsel for the Settlement Class.

4. Preliminary Findings Regarding Proposed Settlement. The Court preliminarily finds that: (a) the proposed Settlement resulted from informed, extensive arm’s-length and non-collusive negotiations, including participating in mediation; (b) Class Counsel, having conducted an appropriate investigation and discovery regarding the strengths and weaknesses of the Named

Plaintiff's claims, has concluded that the proposed Settlement is fair, reasonable, and adequate; and (c) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Settlement Class. Having considered the essential terms of the Settlement Agreement under the standards for preliminary approval of settlements as set forth in relevant jurisprudence, the Court finds that those whose claims would be settled, compromised, dismissed, and/or released pursuant to the Settlement should be given notice and an opportunity to be heard regarding final approval of the Settlement and other matters.

5. Final Fairness Hearing. A hearing is scheduled for _____, 2016, at _____.m. (the "Fairness Hearing") to determine, among other things:

a) Whether the Settlement should be approved as fair, reasonable, and adequate;

b) Whether final judgment approving the Settlement Agreement should be entered;

c) Whether the Settlement Class should be certified as a mandatory non-opt-out class meeting the applicable requirements for a settlement class imposed by Federal Rule of Civil Procedure 23;

d) Whether the Complaint should be dismissed with prejudice pursuant and subject to the terms of the Settlement Agreement;

e) Whether the Class Notice provided for by the Settlement Agreement: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to

notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law;

f) Whether Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;

g) Whether the requirements of the Class Action Fairness Act have been satisfied;

h) Whether the application for payment for attorneys' fees and expenses to Class Counsel should be approved; and

i) Whether the application for an Incentive Fee for the Named Plaintiff should be approved.

6. Class Notice. A proposed form of Class Notice is attached as Exhibit A. With respect to such form of Class Notice, the Court finds that such form fairly and adequately: (a) describes the terms and effect of the Settlement Agreement; (b) notifies the Settlement Class that Class Counsel's attorneys' fees and expenses, and the Named Plaintiff's Incentive Fee, will be determined in the sole discretion of the Court and paid according to §§ 8.1.2 and 8.1.3 of the Settlement Agreement; (c) gives notice to the Settlement Class of the time and place of the Fairness Hearing; and (d) describes how the recipients of the Class Notice may object to any of the relief requested. The Court directs that Class Counsel shall:

a) Within 60 days of entry of this Preliminary Approval Order and by no later than sixty (60) days before the Fairness Hearing, cause the Class Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be sent 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 recordkeeper. Defendants will pay the cost for sending notice to the Settlement Class.

b) By no later than sixty (60) days before the Fairness Hearing, cause the Settlement Agreement and the Class Notice to be published on the websites identified in the Class Notice.

c) At or before the Fairness Hearing, Class Counsel shall notify the Court of the timely compliance with the foregoing Class Notice mailing and publication requirements.

7. Motions in Support of Final Approval of the Settlement. By no later than thirty-one (31) days before the Fairness Hearing, Class Counsel shall file motions for final approval of the Settlement, a finding that the Order and Final Judgment is a final judgment disposing of all claims and all Parties, attorneys' fees and expenses, and an Incentive Fee to the Named Plaintiff.

8. Objections to Settlement. Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the application for payment of attorneys' fees and expenses, or to the application for an Incentive Fee for the Named Plaintiff, may timely file an Objection in writing no later than _____ [fourteen (14) days prior to the Fairness Hearing]. All written objections and supporting papers must: (a) clearly identify the case name and number "*Tucker v. Baptist Health System, Inc., et al.*, Case No. 15-cv-00382 (MHH);" (b) be filed with the Court and mailed to Class Counsel and Defendants' Counsel at the addresses below so that it is received on or before fourteen (14) days before the Fairness Hearing; (c) set forth the objector's full name, current address, and telephone number; (d) set forth a statement of the position the objector wishes to assert, including the factual and legal grounds for the position; (e) set forth the names and a summary of testimony of any witnesses that the objector might want to call in

connection with the Objection; (f) provide copies of all documents that the objector wishes to submit in support of his/her position; (g) provide the name(s), address(es) and telephone number(s) of any attorney(s) representing the objector; (h) state the name, court, and docket number of any class action litigation in which the objector and/or his/her attorney(s) has previously appeared as an objector or provided legal assistance with respect to an objection; and (i) include the objector's signature.

The addresses for filing objections with the Court and service on counsel are as follows:

To the Court:

Clerk of the Court
United States District Court
Northern District of Alabama
1729 Fifth Avenue North
Birmingham, Alabama 35203

Re: Tucker v. Baptist Health System, Inc., Case No. 2:15-cv-00382(MHH)

To Class Counsel:

Douglas Needham
IZARD KINDALL & RAABE LLP
29 South Main Street, Suite 305
West Hartford, Connecticut 06107
Facsimile: (860) 493-6290

Mark K. Gyandoh
KESSLER TOPAZ METZLER & CHECK LLP
280 King of Prussia Road
Radnor, Pennsylvania 19087
Facsimile: (610) 667-7056

To Defendants' Counsel:

Lars C. Golumbic
Sarah M. Adams
GROOM LAW GROUP, CHARTERED
1701 Pennsylvania Avenue NW, Suite 1200
Washington, D.C. 20006
Facsimile: (202) 659-4503

William B. Wahlheim, Jr.
John David Collins
Beth Beaubé
MAYNARD COOPER & GALE PC
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, Alabama 35203
Facsimile: (205) 254-1999

If an objector hires an attorney to represent him or her for the purposes of making such objection pursuant to this paragraph, the attorney must both effect service of a notice of appearance on counsel listed above and file it with the Court by no later than fourteen (14) days before the date of the Fairness Hearing. Any member of the Settlement Class or other Person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

9. Responses to Objection(s). Any responses to objections shall be filed with the Court and served on opposing counsel no later than _____ [seven (7) days before Fairness Hearing]. There shall be no reply briefs.

10. Supplemental Briefs. Any additional briefs the Parties may wish to file in support of the Settlement shall be filed no later than _____ [seven (7) days before Fairness Hearing].

11. Appearance at Fairness Hearing. Any objector who files and serves a timely, written objection in accordance with paragraph 8 above, may also appear at the Fairness Hearing either in person or through counsel retained at the objector's expense. Objectors or their attorneys or those wishing to speak at the Fairness Hearing must effect service of a notice of intention to appear setting forth, among other things, the objector's full name, current address,

and telephone number (and, if applicable, the name, address, and telephone number of the objector's attorney) on Class Counsel and on the Defendants' counsel (at the addresses set out above). The objector or anyone wishing to speak at the Fairness Hearing must also file the notice of intention to appear with the Court by no later than fourteen (14) days before the date of the Fairness Hearing. Any objector or person who wishes to speak at the Fairness Hearing who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to speak at the Fairness Hearing, except for good cause shown.

12. Service of Papers. Defendants' Counsel and Class Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

13. Termination of Settlement. This Preliminary Approval Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Preliminary Approval Order, if the Settlement is terminated in accordance with the Settlement Agreement. In such event, § 10 of the Settlement Agreement shall govern the rights of the parties.

14. Use of Preliminary Approval Order. This Preliminary Approval Order is not admissible as evidence for any purpose against Defendants in any pending or future litigation. This Preliminary Approval Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any finding of fiduciary status, fault, wrongdoing, breach, class certification, or liability. This Preliminary Approval Order shall not be construed or used as an admission, concession, or declaration by or against the Named Plaintiff or the Settlement Class that their claims lack merit, or that the relief requested in the Action is inappropriate, improper, or unavailable. This Preliminary Approval Order shall not be construed or used as an admission, concession, declaration, or waiver by any Party of any arguments,

defenses, or claims he, she, or it may have, without limitation, in the event that the Settlement Agreement terminates. Moreover, the Settlement Agreement and any proceedings taken pursuant to the Settlement Agreement are for Settlement purposes only. Neither the fact of, nor any provision contained in the Settlement Agreement or its exhibits, nor any actions taken thereunder shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth of any allegation or validity of any defense that has been, could have been, or might be asserted.

15. Jurisdiction. The Court hereby retains jurisdiction for purposes of implementing the Settlement, and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Settlement as may from time to time be appropriate, and to resolve any and all disputes arising hereunder.

16. Continuance of Hearing. The Court may continue the Fairness Hearing without further written notice.

SO ORDERED this _____ day of _____, 2016

Hon. Madeline Hughes Haikala

EXHIBIT A
TO PROPOSED
PRELIMINARY
APPROVAL ORDER
(Proposed Class Notice)

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

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

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

Plaintiff,

vs.

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

Defendants.

NOTICE OF PROPOSED CLASS ACTION

**YOUR LEGAL RIGHTS MIGHT BE AFFECTED IF YOU ARE A MEMBER OF THE
FOLLOWING SETTLEMENT CLASS:**

All vested or non-vested present and past participants of the
Baptist Health System, Inc. Retirement Plan (or their beneficiaries)
as of the Effective Date of Settlement.

This Notice of Proposed Class Action (“Class Notice”) advises you of a proposed settlement (the “Settlement”) of a class action lawsuit (the “Action”) brought by plaintiff Jeffrey Tucker (the “Named Plaintiff”) on behalf of himself, the Baptist Health System, Inc. Retirement Plan (the “Plan”), and as a representative of the Settlement Class against Defendants Baptist Health System, Inc., the Baptist Health System, Inc. Benefits Committee, and the individual members of the Committee (the “Defendants”) alleging that they breached their fiduciary duties and violated the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). The Named Plaintiff and Defendants are referred to as the “Parties.”

**PLEASE READ THIS CLASS NOTICE CAREFULLY.
A FEDERAL COURT AUTHORIZED THIS CLASS NOTICE.
THIS IS NOT A SOLICITATION.
YOU HAVE NOT BEEN SUED.**

This Class Notice is being distributed to advise you that the United States District Court for the Northern District of Alabama (the “Court”) has preliminarily approved the proposed Settlement of the Action. The Court has scheduled a hearing (the “Fairness Hearing”) to consider the Named Plaintiff’s motion for final approval of the Settlement, Class Counsel’s application for attorneys’ fees, reimbursement of litigation expenses, and an Incentive Fee to the Named Plaintiff. The Fairness Hearing has been scheduled for _____, 2016 at ____ in the United States District Court for the Northern District of Alabama, 1729 Fifth Avenue North, Birmingham, Alabama 35203.

Any objections to the Settlement, the application for attorneys’ fees and litigation expenses, or the Incentive Fee must be served in writing on Class Counsel and on Defendants’ counsel, as identified on Page 10 of this Class Notice. The procedure for objecting is described below.

This Class Notice contains summary information with respect to the Settlement. The terms and conditions of the Settlement are set forth in the Class Action Settlement Agreement (“Settlement Agreement”). Capitalized terms used in this Class Notice but not defined in this Class Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement and additional information with respect to the Action and the Settlement are available at www.---.com and www.----.com. You can also obtain a copy of the Settlement Agreement and information about the Settlement by contacting Class Counsel: Douglas Needham, Izard Kindall & Raabe LLP, 29 South Main Street, Suite 305, West Hartford, Connecticut 06107 or Mark K. Gyandoh, Kessler Topaz Metzler & Check LLP, 280 King of Prussia Road, Radnor, Pennsylvania 19087. Please do not contact the Court, the Clerk’s Office, or the Defendants.

PLEASE READ THIS CLASS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS TO WHOM THIS CLASS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS.

YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.

As described in more detail below, the case concerns allegations that Defendants violated ERISA by operating the Baptist Health System, Inc. Retirement Plan as a “Church Plan.” The Named Plaintiff claims that the Plan should have been operated under the protections of ERISA. Defendants deny any and all liability and allegations of wrongdoing made in the Action and maintain the Plan was, has been, and continues to be properly established, maintained, and administered as a Church Plan under the appropriate Plan terms and as defined in ERISA, exempt from coverage under ERISA, but are settling this case to avoid risk, expense, and the uncertainty of outcome that is inherent in any litigation. The Settlement will require Defendants to contribute \$11,000,000 (eleven million dollars) in funding to the Plan over a ten-year period. Because the Plan is a defined benefit pension plan, and not a defined contribution plan like a 401(k) plan with individual accounts, the funding amounts will be contributed to the Plan as a

whole, rather than to the individual accounts of the Plan’s participants and beneficiaries. Additionally, the Settlement provides non-monetary equitable consideration, in that the participants in the Plan will receive certain ERISA-like financial protections in the event of plan termination for the next eight (8) years. The Plan will still operate as a “Church Plan.”

The Settlement also provides that, upon Final Court approval and disposition of any appeals or any other proceedings for review, the members of the Settlement Class release any and all actual or potential claims, actions, demands, obligations, liabilities, attorneys’ fees, expenses and costs arising out of the allegations in the Action against the Defendants, the Plan, their counsel and certain other individuals, as described in more detail below.

The Court in charge of this case still has to decide whether to approve the Settlement. The funding contributions will be made only if the Court approves the Settlement and that approval is upheld if there are any appeals. This process is explained in greater detail below.

While the Settlement will not increase or decrease the amount of benefits that you individually are receiving or will receive, the Settlement will improve the funding level and financial security of the Plan as a whole. Please see the terms of the Settlement Agreement and the “Summary of Settlement” section below for a description of the ways in which the Plan will be affected.

If your Plan benefits were previously paid out in the form of a lump sum, you already received your full benefit due under the Plan, and you will not be entitled to an additional benefit as a result of this Settlement.

If you are a former plan participant, and you are not due a benefit under the Plan, you will not be entitled to an additional benefit as a result of this Settlement.

You have received with this Class Notice an individualized letter that identifies which of these three situations applies to you.

<i>YOUR LEGAL RIGHTS AND OPTIONS</i>	
DO NOTHING	If the Settlement is approved by the Court and you are a member of the Settlement Class but do not wish to object to the Settlement, you do not need to do anything.
FILE AN OBJECTION	If you want to submit comments or objections to the any aspect of the Settlement, you may write to the Court and the Parties’ attorneys no later than ____, 2016. <i>See</i> Question 12 below.

GO TO A HEARING	If you submit comments or objections to the Settlement to the Court, you and/or your attorney may speak at the Fairness Hearing on _____, 2016 by filing a notice of intention to appear no later than _____, 2016. You may attend the Fairness Hearing even if you do not file a written objection, but you will only be allowed to speak at the Fairness Hearing if you file a Notice of Intention to Appear. <i>See</i> Question 15 below.
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SUMMARY OF SETTLEMENT

Every year for ten years, Defendants will contribute \$1.1 million to the Plan. Defendants will make the first payment within sixty (60) days after the Order approving the Settlement becomes Final and non-appealable, or after the disposition of any such appeal or other proceeding for review. While the Plan will continue to operate as a “Church Plan” exempt from ERISA, the Settlement provides significant non-monetary equitable consideration, in that the participants in the Plan will receive certain ERISA-like protections relating to the payment of their benefits for the next eight years. Defendants have also agreed to pay a maximum of \$870,000 to be used to fund Class Counsel’s requested attorneys’ fees and for expenses actually incurred and/or an Incentive Fee to the Named Plaintiff. The application for expenses and an Incentive Fee for the Named Plaintiff will not exceed \$50,000. The Court has the sole discretion as to whether, and/or in what amounts up to a total of \$870,000, to award attorney’s fees, expenses, and/or an Incentive Fee.

As with any litigation, the Parties would face an uncertain outcome if the Action were to continue against Defendants. Continued litigation of the Action against Defendants could result in a judgment or verdict greater or less than the recovery under the Settlement Agreement, or in no recovery at all. Throughout this litigation, the Named Plaintiff and Defendants have disagreed on both liability and damages, and they do not agree on the amount that would be recoverable even if the Named Plaintiff were to prevail at trial. Defendants, among other things: (1) have denied, and continue to deny, the material allegations of the Complaint; (2) have denied, and continue to deny, any wrongdoing or liability whatsoever; (3) believe that they acted at all times reasonably and prudently with respect to the Plan, its participants and beneficiaries, and the Settlement Class; (4) would assert numerous other defenses if this Settlement is not consummated; and (5) are entering into the Settlement solely to avoid the cost, disruption, and uncertainty of litigation. Nevertheless, the Parties have taken into account the uncertainty and risks inherent in this litigation, particularly its complex nature, and have concluded that it is desirable that the Action be fully and finally settled on the terms and conditions set forth in the Settlement Agreement.

Please visit www.---.com and www.----.com if you have additional questions.

BASIC INFORMATION

1. Why did I get this Class Notice package?

Either you or someone in your family may have been a participant or beneficiary of the Plan. Since you are a potential member of the Settlement Class, the Court has directed that this Class Notice be sent to you because you have a right to know about the proposed Settlement with Defendants and the options available to you regarding the Settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and all related objections and appeals, if any, are favorably resolved, you will be bound by the terms of the Settlement. Also, if the Settlement is approved by the Court and appeals, if any, are favorably resolved, the Defendants will make contributions totaling \$11,000,000 over a ten-year period to the Plan.

This Class Notice explains the Action, the Settlement, and your legal rights. The purpose of this Class Notice is also to inform you of a hearing (the “Fairness Hearing”) to be held by the Court to consider the fairness, reasonableness and adequacy of the proposed Settlement, and to consider the application of Class Counsel for their attorneys’ fees and reimbursement of litigation expenses as well as an application for an Incentive Fee to the Named Plaintiff.

The Fairness Hearing will be held at ___ .m. on _____, 2016 before the Honorable Madeleine Hughes Haikala in the United States District Court for the District of Alabama, United States Federal Courthouse, 1729 Fifth Avenue North, Birmingham, Alabama 35203, to determine, among other things:

- a) Whether the Settlement should be approved as fair, reasonable, and adequate;
- b) Whether the Complaint should be dismissed with prejudice pursuant to and subject to the terms of the Settlement;
- c) Whether the Class Notice provided for by the Settlement Agreement: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law;
- d) Whether the Settlement Class should be certified as a mandatory non-opt-out class pursuant to Federal Rule of Civil Procedure 23(a) and (b) for purposes of the Settlement and, with respect thereto, whether Izard Kindall & Raabe LLP and Kessler Topaz Meltzer & Check LLP should be appointed as Class Counsel pursuant to Federal Rule of Civil Procedure 23(g);
- e) Whether the application for attorneys’ fees and expenses filed by Class Counsel should be approved; and

f) Whether the application for an Incentive Fee to the Named Plaintiff should be approved.

The issuance of this Class Notice is not an expression of the Court's opinion on the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, and after all related appeals, if any, are favorably resolved, you will be bound by the terms of the Settlement. It is always uncertain whether such appeals can be favorably resolved, and resolving them can take time, perhaps more than a year.

2. How do I know whether I am part of the Settlement?

You are a member of the Settlement Class if you were or are a present or past participant (vested or non-vested) or beneficiary of the Baptist Health System, Inc. Retirement Plan as of the Effective Date of Settlement, which is the date when the period for any appeals of the Court's approval of the Settlement has expired, or when any such appeals are favorably resolved.

3. What does the Settlement Agreement provide?

Sixty (60) days after the Order and Final Judgment approving the Settlement becomes Final and non-appealable, or after any such appeals are favorably resolved, Defendants will make the first of ten annual contributions in the amount of \$1.1 million to the Plan. Every year thereafter for nine years, Defendants will make a \$1.1 million contribution to the Plan. These contributions will be inclusive of, and not in addition to, any contribution that Defendants must contribute under the Plan document to fund the Plan.

The Settlement also provides that, upon Final Court approval and disposition of any appeals or any other proceedings for review, the members of the Settlement Class absolutely and unconditionally 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 in the Action that were brought by any member of the Settlement Class against the Defendants, the Plan, their counsel and any Person that controls, is controlled by, or is under their common control, as of the date of the Settlement Agreement, August ____, 2016.

Under the Settlement, Defendants will pay a maximum of \$820,000 to be used to fund Class Counsel's requested attorneys' fees and a maximum of \$50,000 for expenses actually incurred and/or an Incentive Fee to the Named Plaintiff. The Incentive Fee is awarded by the Court in recognition of the Named Plaintiff's assistance in the prosecution of the Action. The Court has the sole discretion as to whether, and/or in what amounts up to a total of \$870,000, to award attorney's fees, expenses, and/or an Incentive Fee.

While the Plan will continue to operate as a "Church Plan," the Settlement provides significant non-monetary equitable consideration, in that Plan participants will receive certain ERISA-like protections for the next eight (8) years.

The above description of the Settlement is only a summary. The governing provisions are set forth in the Settlement Agreement and the Court's Order Preliminary Approving Settlement, which may be obtained at www.---.com and www.----.com.

4. What is the lawsuit about? What has happened so far?

On March 3, 2015, a putative class action Complaint was filed in the Court against Baptist Health and other defendants alleging violations of ERISA (the "Complaint"). The Complaint alleged that, by operating as a "Church Plan," Defendants denied the Plan's participants and beneficiaries the protections of ERISA.

On May 26, 2015, Defendants moved to dismiss the Complaint. The proceedings in connection with the motion to dismiss were extensive. The briefing consisted of the motion papers on the motion to dismiss itself, as well as documents submitted by the Defendants in support of the motion. The Parties, through counsel, appeared before the Court at a hearing on Defendants' motion to dismiss. While the Defendants' motion to dismiss was pending before the Court, the Parties agreed to try to settle the lawsuit by appearing before a professional mediator. The Parties jointly requested a stay of the Action pending settlement negotiations, and the Court granted the request.

On October 2, 2015, Baptist Health System, Inc. contributed approximately \$89 million to the Plan as a result of a joint venture transaction with Tenet Healthcare Corporation. Defendants have represented that this contribution was approved by Baptist's Board of Trustees prior to the filing of the Complaint and that the contribution resulted in the Plan being fully funded on an ERISA basis.

The Settlement is the product of intensive, arm's-length negotiations between Class Counsel and Defense Counsel, with the assistance of a professional mediator.

5. Why is this case a class action?

In a class action, one or more plaintiffs, called "named plaintiffs," sue on behalf of people who have similar claims. All of the individuals on whose behalf the Named Plaintiff in this Action is suing are "class members," and they are also referred to in this Class Notice as members of the Settlement Class. The Court resolves the issues for all class members and the Settlement, when Final, binds all class members. U.S. District Judge Madeline Hughes Haikala is presiding over this case.

6. Why is there a settlement?

Under the proposed Settlement, the Court will not decide the merits of the Action in favor of either the Named Plaintiff or the Defendants. By agreeing to a Settlement, both the Named Plaintiff and the Defendants avoid the costs, risks and delays of litigating the Action.

This Settlement is the product of extensive arm's-length negotiations between the Named Plaintiff's Counsel and the Defendants' counsel, including utilizing the services of an experienced mediator. Throughout the Settlement negotiations, the Named Plaintiff and the Defendants were advised by various consultants and experts, including individuals with expertise

in ERISA fiduciary liability issues, actuaries, and potential damages evaluations in cases involving ERISA fiduciary liability.

The Named Plaintiff's Counsel believe that the proposed Settlement is fair, reasonable and adequate and in the best interest of the Class.

7. How will the Settlement be distributed to the Plan?

Members of the Settlement Class do not need to do anything with respect to the Settlement in this Action. Sixty (60) days after the Order and Final Judgment approving the Settlement becomes Final and non-appealable, Defendants will contribute \$1.1 million to the Plan. Every year thereafter for nine years, Defendants will contribute \$1.1 million to the Plan.

8. What rights am I giving up in the Settlement?

If the Settlement is approved, the Court will enter a judgment. This judgment will fully, finally, and forever release, relinquish, and discharge 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 as of the date of the Settlement Agreement, including any current or prospective challenge to the "Church Plan" status of the Plan. The Named Plaintiff, on behalf of himself and on behalf of the Settlement Class, hereby expressly waives and relinquishes, to the fullest extent permitted by law, 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.

Released Claims are not intended to include the release of any of the following: (1) Any rights or duties arising out of the Settlement Agreement, including the express warranties and covenants in the Settlement Agreement; (2) 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 respective Plan documents, any claim arising prospectively under ERISA with respect to any event occurring after such action by the Birmingham Baptist Association; and (3) Any claim arising under ERISA with respect to any event occurring after the Internal Revenue Service issues a written ruling that a 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.

9. Can I exclude myself from the Settlement?

You do not have the right to exclude yourself from the Settlement. For settlement purposes, the Action was certified under Federal Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) (non-opt-out class) because the Court determined the requirements of that rule were satisfied for Settlement purposes only. Thus, it is not possible for any of the members of the Settlement Class to exclude themselves from the Settlement. As a member of the Settlement Class, you will be bound by any judgments or orders that are entered in the Action for all claims that were or could have been asserted in the Action against the Defendants or are otherwise included in the release under the Settlement, as described in Question 8 and set forth in section 4 of the Settlement Agreement.

Although members of the Settlement Class cannot opt-out of the Settlement, they can object to the Settlement and ask the Court not to approve the Settlement, as described below.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

The law firms of IZARD KINDALL & RAABE LLP and KESSLER TOPAZ MELTZER & CHECK LLP represent the Named Plaintiff and the Settlement Class (“Class Counsel”). You will not be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

Before the Fairness Hearing, Class Counsel will apply for an award of attorneys’ fees and expenses. The application for attorneys’ fees and expenses will not exceed \$870,000. The Court has the sole discretion as to whether, and/or in what amounts to award attorney’s fees and expenses. The attorneys’ fees and expenses are separate from the \$11,000,000 that Defendants will contribute to the Plan over a ten-year period if the Settlement is approved, and the attorneys’ fees will not reduce those contributions.

To date, Class Counsel has not received any payment for their services in prosecuting this Action on behalf of the Settlement Class, nor have counsel been reimbursed for their out-of-pocket expenses. The fee requested by Class Counsel would compensate them for their efforts in achieving the Settlement for the benefit of the Settlement Class and for their risk in undertaking this representation on a contingency basis. The Court will determine the actual amount of attorneys’ fees and expenses to award, not to exceed \$870,000.

OBJECTING TO THE SETTLEMENT

12. How do I object or tell the Court if I don’t like the Settlement?

Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the application for payment of attorneys’ fees and expenses, or to the application for an Incentive Fee for the Named Plaintiff, may file an Objection in writing. All written objections and supporting papers must: (1) clearly identify the case name and number “*Tucker v. Baptist Health*

System, Inc., Case No. 2:15-cv-00382 (MHH);” (2) be filed with the Court and mailed to Class Counsel and Defendants’ Counsel at the addresses below so that it is received on or before fourteen (14) days before the Fairness Hearing; (3) set forth your full name, current address, and telephone number; (4) set forth a statement of the position you wish to assert, including the factual and legal grounds for the position; (5) set forth the names and a summary of testimony of any witnesses that you might want to call in connection with the Objection; (6) provide copies of all documents that you wish to submit in support of your position; (7) provide the name(s), address(es) and telephone number(s) of any attorney(s) representing you; (8) state the name, court, and docket number of any class action litigation in which you and/or your attorney(s) have previously appeared as an objector or provided legal assistance with respect to an objection; and (9) include your signature.

The addresses for filing objections with the Court and service on counsel are listed below. Your written objection must be filed with the Court, and mailed (and sent via facsimile) to the counsel listed below so that is received, by no later than _____, 2016:

File with the Clerk of the Court:

Clerk of the Court
United States District Court
Northern District of Alabama
1729 Fifth Avenue North
Birmingham, Alabama 35203

Re: Tucker v. Baptist Health System, Inc., Case No. 2:15-cv-00382(MHH)

And, by the same date, serve copies of all such papers by mail and fax to each of the following:

Class Counsel:

Douglas Needham
IZARD KINDALL & RAABE LLP
29 South Main Street, Suite 305
West Hartford, Connecticut 06107
Facsimile: (860) 493-6290

Mark K. Gyandoh
KESSLER TOPAZ MELTZER & CHECK LLP
280 King of Prussia Road
Radnor, Pennsylvania
Facsimile: (610) 667-7056

Defendants' Counsel:

Lars C. Golumbic
Sarah M. Adams
GROOM LAW GROUP, CHARTERED
1701 Pennsylvania Avenue NW, Suite 1200
Washington, D.C. 20006
Facsimile: (202) 659-4503

William B. Wahlheim, Jr.
John David Collins
Beth Beube
MAYNARD COOPER & GALE PC
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, Alabama 35203
Facsimile: (205) 254-1999

UNLESS OTHERWISE ORDERED BY THE COURT, ANY MEMBER OF THE SETTLEMENT CLASS WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT AND THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES AND AN INCENTIVE FEE TO THE NAMED PLAINTIFF.

THE COURT'S FAIRNESS HEARING

13. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at ____ .m. on _____, 2016, at the United States District Court for the Northern District of Alabama, 1729 Fifth Avenue North, Birmingham, Alabama 35203.

IF YOU DO NOT WISH TO OBJECT TO THE PROPOSED SETTLEMENT OR THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES AND INCENTIVE FEE TO THE NAMED PLAINTIFF, YOU NEED NOT ATTEND THE FAIRNESS HEARING.

At the hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to approve the Settlement. The Court will also rule on the motions for attorneys' fees and expenses and an Incentive Fee to the Named Plaintiff. We do not know how long these decisions will take.

14. Do I have to come to the hearing?

No. Class Counsel will address any questions the Court may have. You are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it, but you may if you wish to, again at your own expense. As long as you mailed your written objection on time, it will be before the Court when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You may also have your own lawyer attend the Fairness Hearing, again at your expense, but such attendance is not necessary.

15. May I speak at the hearing?

If you are a member of the Settlement Class and you have filed a timely objection, you may ask the Court for permission to speak at the Fairness Hearing. You may attend the Fairness Hearing even if you do not file a written objection, but you will only be allowed to speak at the Fairness Hearing if you send a letter or other paper called a “Notice of Intention to Appear at Fairness Hearing in *Tucker v. Baptist Health System, Inc.*, Case No. 2:15-cv-00382(MHH).” Be sure to include your full name, current address, telephone number, and your signature. Your Notice of Intention to Appear must be served on the attorneys listed above, postmarked and sent via facsimile no later than _____, 2016 and must be filed with the Clerk of the Court, postmarked no later than _____, 2016. Any objector or person wishing to speak at the Fairness Hearing who does not timely file and serve a notice of intention to appear shall not be permitted to speak at the Fairness Hearing, except for good cause shown.

The Fairness Hearing may be delayed by the Court without further notice to the Class. If you wish to attend the Fairness Hearing, you should confirm the date and time with a member of Class Counsel.

IF YOU DO NOTHING

16. What happens if I do nothing at all?

If you do nothing and you are a Class member, you will participate in the Settlement as described above in this Class Notice and will be bound by the Settlement if the Settlement is approved.

GETTING MORE INFORMATION

17. How do I get more information?

This Class Notice summarizes the proposed Settlement. Full details of the Settlement are set forth in the Settlement Agreement. You may obtain a copy of the Settlement Agreement by making a written request to a member of Class Counsel listed above under Question 12. Copies of the Settlement Agreement, as well as the Preliminary Motion seeking preliminary approval of the Settlement Agreement, and the Preliminary Approval Order, may also be viewed at www.---.com and www.----.com.

Dated: _____, 2016

BY ORDER OF THE COURT

EXHIBIT 2
TO PROPOSED
SETTLEMENT
AGREEMENT
(Proposed Final
Approval Order)

**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

[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.¹

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 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,

¹ This Order and Final 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 Order and Final Judgment as if set forth fully here.

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, the 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 § 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 that 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 faced 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 their 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 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 _____, 2016

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