

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

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.

CLASS ACTION COMPLAINT

COMPLAINT

Plaintiff, Jeffrey Tucker, by his attorneys, on behalf of himself and all others similarly situated, based on personal knowledge with respect to his own circumstances and based upon information and belief pursuant to the investigation of his counsel as to all other allegations, alleges the following Complaint.

I.

INTRODUCTION

1. This is a class action against Defendants Baptist Health System, Inc. (the “Company” or “Baptist Health”), the Baptist Health System, Inc. Benefits Committee (the “Committee”) and John Does 1-20 (the “Committee members”) concerning the Baptist Health System, Inc. Retirement Plan (the “Plan”). As of December 31, 2012, the Plan’s

Benefit Obligation was \$294,296,000, yet the Plan had only \$152,170,000 in assets. Consequently, the Plan was underfunded by a staggering \$142,126,000 or 48 %. Upon information and belief, the underfunding continues to this day.

2. Defendants excuse the severe underfunding on the grounds that the Plan is a “church plan” and therefore is exempt from the Employee Retirement Income Security Act (“ERISA”)

3. To the contrary, as described in detail herein, the Plan does not meet ERISA’s requirements for the “church plan” exemption, because it was not “established,” and is not “maintained” by a church. Rather, the Plan was established and is maintained by Baptist Health, which is a business -- not a church or a convention or association of churches.

4. Consequently, the Plan is governed by all of the funding, fiduciary and notice requirements of ERISA. This action seeks to require Defendants to comply with all of those requirements, and to pay damages and penalties as a result of their past failure to do so.

II. JURISDICTION AND VENUE

5. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 because it is a civil action arising under the laws of the United States, and pursuant to 29 U.S.C. §1332(e)(1), which provides for federal jurisdiction of actions brought under Title I of ERISA.

6. This court has personal jurisdiction over Defendants because they are headquartered and transact business in, or reside in, and have significant contacts with, this District, and because ERISA provides for nationwide service of process.

7. Venue is proper in this district pursuant to ERISA § 502(e), 29 U.S.C. § 1132(e)(2) because some or all of the violations of ERISA occurred in this District and Defendants reside and may be found in this district. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because Defendants do business in this District and a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District.

III. PARTIES

8. Plaintiff Jeffrey Tucker is a citizen and resident of Ragland, Alabama. Plaintiff is employed by Defendant as Radiological Technologist. Plaintiff is currently a participant in the Plan.

9. Defendant Baptist Health System, Inc. is an 501(c)(3) non-profit corporation organized under the laws of Alabama. Defendant is headquartered in Birmingham, Alabama 35205.

10. The Committee is an unincorporated association and is the Plan Administrator and named fiduciary of the Plan.

11. John Does 1-20 are the individual members of the Committee and members of any other committee(s) which administered the Plan. The identity of the members of the Committee, and of any other committee(s) which was or were responsible for carrying out the provisions of the Plan, is currently not known. Upon information and belief, John Does 1-20 are senior executive officers of the Company who knew or should have known the facts alleged herein. The Committee and John Does 1-20 hereafter collectively referred to as the “Committee Defendants.”

IV. SUBSTANTIVE ALLEGATIONS

A. Defendant's Business

12. Baptist Health has nearly 4,700 employees. The Company has four hospital campuses – located in Birmingham, Alabaster, Jasper and Talladega, Alabama – and maintains forty three primary and specialty care clinics in the state of Alabama.¹ According to its audited consolidated financial statements for the years ending December 31 2011 and 2012, it has other businesses such as Affinity Southeast Insurance, Inc. (an insurance company domiciled in Barbados), Hoover Baptist Medical LLC (a real estate holding company), and various other holding companies such as Regency Holdings, LLC, Walker Baptist Affinity, LLC and BHS Affinity, LLC.

13. The Company is not, and does not claim to be, a church. The mission of Baptist Health concerns healthcare, not fulfilling the mission of any church:

Our mission is to provide better health for more people by empowering our patients to achieve their best health through coordinated care, delivered at the right place at the right time. We are committed to reinventing the way health care is delivered by applying innovative solutions and technologies to advance safety, value, and convenience in each patient experience.²

14. The Company's Board of Trustees is not controlled by a church. Upon information and belief based on the Form IRS Form 990 filed by the Company for 2012, only one of the eleven voting members of the Board was even employed by a church. The voting members were in 2012:

Wayne Pate –former President and CEO of Golden Flake Snack Foods, Inc.;

John Holcomb – President, National Bank of Commerce;

¹ <http://baptisthealthalabama.org/Who-We-Are>

² <http://baptisthealthalabama.org/Who-We-Are>

Andrew Westmoreland, President, Samford University;

Clement Cotter M.D., Plastic Surgeon;

Jim Emack, President Emack Slate Co., Inc.;

Richard Farrar, financial advisor with Sagemark Consulting Private Wealth Services;

Jo Morris, Owner of Morris Properties, an apartment owner/manager;

Roger Putnam, Vice President, Alabama Gas Corporation;

Doris Sewell, Senior Vice President Kaiser Aircraft Industries, Inc.;

Donta Wilson, President of BBT of Alabama; Inc.; and

Bill Decker, Executive Pastor of Hunter St. Baptist Church.

15. The Company's executive leadership is comprised entirely of laypeople. This group includes the President/Chief Executive Officer, the Senior Vice President/Chief Financial Officer, four Vice Presidents responsible for governmental affairs, H.R., education and research and integration, a Chief Information Officer, a Chief Operating Officer, and four Presidents of individual medical centers.³

16. The Company is like any other non-profit health system. It relies on revenue bonds to raise money, including revenue bonds issued through the City of Birmingham Special Care Facilities Financing Authority. It also obtains financing through the New Markets Tax Credit Program.

17. The Company is an equal opportunity employer.⁴ Thus, its employees need not be affiliated with any church.

³ <http://baptisthealthalabama.org/Why-Choose-Baptist/Leadership>

⁴ <http://jobs.al.com/jobs/baptist-health-system-160751-cd>

18. The Company's promise to patients says nothing about church or religion:

We Promise to:

- always provide attentive and Personalized care that is sensitive to your physical, emotional and spiritual well being;
- always be compassionate and responsive to your needs;
- always listen to understand your needs and coordinate your care with our expert physicians and medical team;
- always provide you with open and honest communication, and the information you need - every step of way;
- always provide a safe and clean environment for you, your family and friends;
- always value your time while keeping focused on the importance of your health.⁵

19. The Company's chaplaincy recognizes that patients come from a wide variety of cultural and religious backgrounds and are not tied to a particular church or religious tradition:

We recognize that our patients come from all walks of life and bring with them a variety of cultural and religious backgrounds. We carefully minister to each individual; sensitive to the patient's personal beliefs.⁶

20. The Birmingham Baptist Association ("Association") claims on its website that Baptist Health is a "Related Ministry Agency." But the website states only that

Baptist Health System is a ministry of BBA, whose representatives elect the Board of Trustees.

Baptist Health System, Inc. is one of the largest health care systems in Alabama and one of the state's largest employers. It is a not-for-profit, 501(c) corporation that owns and manages hospitals in the state of

⁵ <http://baptisthealthalabama.org/Why-Choose-Baptist/Patient-Promise>

⁶ <http://baptisthealthalabama.org/Pastoral-Care>

Alabama. BHS was founded in 1922 by the churches of Birmingham Baptist Association.

21. The only other link on the Association website concerning Baptist Health refers to giving money to Baptist Health through an advanced directive/living will. <http://bbaonline.org/directive>.

22. The association has no control over the Company. The only employees of the association on the Board of Trustees is the Executive Director who serves only in a non-voting, *ex officio* capacity.

23. Upon information and belief, the Association imposes no religious beliefs, practices, rules, restrictions, directions or guidelines on any of the Company's operations.

24. Despite its status as an ERISA plan, the Company has invoked Church Plan status to evade ERISA's protections to which its employees are entitled. The Company's failure to treat the Plan as an ERISA plan puts the Company's Plan participants at risk of receiving pension payouts drastically lower than those promised and deprives participants of material information as alleged below. Moreover, by avoiding ERISA's requirements, the Company obtains a competitive advantage over other nonprofit healthcare entities that comply with ERISA.

B. The Plan

25. Baptist Health maintains the Plan for its employees. The Plan is established and maintained by an employer to provide retirement income to employees. The Plan is an "employee pension benefit plan" within the meaning of ERISA, § 3(2)(A), 29 U.S.C. § 1002(2)(A).

26. The Plan is a defined benefit plan within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35).

27. At all relevant times, the Committee Defendants have been the Administrators of the Plan within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A). They have also been fiduciaries of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because they have exercised authority or control respecting management or disposition of its assets, or has had discretionary authority or discretionary responsibility in the administration of the Plan.

28. The Company is a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because it has exercised authority or control respecting management or disposition of Plan assets, or has had discretionary authority or discretionary responsibility in the administration of the Plan. In particular, the Company, acting through its Board of Trustees, officers and employees is responsible for all of the acts alleged herein. Additionally, the Company has also has been a party in interest under ERISA § 3(14), 29 U.S.C. § 1002(14) both because it is a fiduciary and because it is an employer whose employees are covered by the Plan.

29. The Plan is not a church plan. Under Section 3(33) of ERISA, 29 U.S.C. § 1002(33), a plan must be both *established* and *maintained* by a *church* to qualify for the church plan exception. Specifically, to be a church plan under Section 3(33)(A) of ERISA, 29 U.S.C. § 1002(33)(A), a plan must be *established and maintained* by a church or convention or association of churches. Similarly, under section 3(33)(C)(i) of ERISA, 29 U.S.C. § 1002(33)(C)(i), a plan is a church plan only if it is both:

- a. ***Established*** by a church or by a convention of churches; **and**
- b. ***maintained*** by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, ***for the employees of a church*** or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

30. Upon information and belief, the Plan was established and is maintained by the Company, not by a church or convention of churches.

31. Moreover, the Plan is not maintained for employees of any church or convention or association of churches. It is maintained for employees of Baptist Health – ***a hospital system***.

32. Therefore, the plan is not a church plan.

C. Defendants Breached Their Fiduciary Duties

1. Defendants breached their Duties to Ensure the Plan is Fully Funded

33. Under ERISA, the Plan must have an annual actuarial report assessing the plan's funding needs. ERISA § 103(d), 29 U.S.C. § 1023(d). The Plan is further required to follow a funding plan each year that meets the funding standard of ERISA and is based on reasonable actuarial assumptions. ERISA §§ 302, 303, 29 U.S.C. §§ 1082, 1083.

34. Defendants are responsible for setting the funding requirements and the funding policy for the Plan.

35. Defendants failed to set a funding policy that will adequately fund the anticipated obligations of the Plan.

36. As of December 31, 2012, the Plan was underfunded by over \$142 million or 48%.

2. Defendants have a Conflict of Interest

37. By continuing to set an inadequate funding policy and following that policy, which has resulted in the Plan becoming underfunded by over one hundred forty million dollars, Defendants have acted at all times in the interest of the Company, and have not acted solely in the interests of the Plan participants, as is required of a fiduciary under ERISA. Baptist Health benefits from Defendants' decision not to fund the Plan adequately, and Defendants have a conflict of interest that prevents them from carrying out their fiduciary duties in a manner consistent with ERISA.

38. Despite this conflict of interest, Baptist Health has failed to appoint fiduciaries who could carry out their duties to protect Plan participants in a manner consistent with ERISA or to take other appropriate steps to address the conflict.

39. As a result of this conflict of interest, and in light of Defendants repeated and ongoing breaches of fiduciary duties, the court should appoint an independent fiduciary who can protect the interests of Plan participants and carry out his or her duties consistent with ERISA.

D. CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and class (the "Class") defined as follows:

All participants and beneficiaries of the Baptist Health System, Inc. Retirement Plan. Excluded from the class are any individuals who are subsequently determined to be fiduciaries of the Plan.

41. The members of the Classes and Subclasses are so numerous that joinder of all members is impractical. Upon information and belief, the Class includes thousands of persons.

42. Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff's claims, and the claims of all Class members, arise out of the same conduct, policies and practices of Defendants as alleged herein, and all members of the Class are similarly affected by Defendants' wrongful conduct.

43. There are questions of law and fact common to the Classes and Subclasses and these questions predominate over questions affecting only individual Class and Subclass members. Common legal and factual questions include, but are not limited to:

- a. Whether the Plan is covered by ERISA;
- b. whether the Plan administrator failed to comply with ERISA's reporting and disclosure provisions;
- c. whether the Plan fiduciaries failed to establish a funding policy in compliance with ERISA;
- d. whether the Plan fiduciaries breached their fiduciary duties in failing to comply with the provisions of ERISA set forth above.

45. Plaintiff will fairly and adequately represent the Class and has retained counsel experienced and competent in the prosecution of ERISA class action litigation. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is

committed to the vigorous prosecution of this action and anticipates no difficulty in the management of this litigation as a class action.

46. A class action is superior to other available methods for the fair and efficient adjudication of the controversy within the meaning of Rule 23(b) and in consideration of the matters set forth in Rule 23(b)(3)(A)-(D). Because of the amount of the individual Class members' claims relative to the complexity of the litigation and the financial resources of the Defendants, few, if any, members of the Class would seek legal redress individually for the wrongs complained of here. The maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members. Absent a class action, Class members will continue to suffer damages and Defendant's misconduct will proceed without remedy.

FIRST CLAIM FOR RELIEF

Declaratory and Equitable Relief

(Declaratory Judgment Act and ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3))

47. Plaintiff re-alleges and incorporates herein by reference all prior allegations of the Complaint.

48. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to: "(A) [] enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan."

49. Pursuant to this provision, 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiff seeks declaratory relief that the plan is not a Church Plan within the meaning of ERISA § 3(33), 29 U.S.C. § 1002(33), and is thus subject to the provisions of Title I and Title IV of ERISA.

50. Plaintiff further seeks orders directing all Defendants to bring the Plan into compliance with ERISA, including the reporting and funding requirements of ERISA, 29 U.S.C. §§ 1021, 1023, 1082, 1102 and 1104, and by remedying the additional violations set forth below.

51. Additionally, Plaintiff seeks an order that Baptist Health make all contributions to the Plan necessary to remedy the Plan's funding shortfall.

SECOND CLAIM FOR RELIEF

Violation of Reporting and Disclosure Provisions

(ERISA §§ 101 -104, 502(a)(1)(A), (a)(3), 29 U.S.C. §§ 1021 - 1024, 1132(a)(1)(A), (a)(3))

52. Plaintiff re-alleges and incorporates herein by reference restates all prior allegations of the Complaint.

53. ERISA § 502(a)(1)(A), 29 U.S.C. § 1132(a)(1)(A) permits a plan participant to bring suit for penalties when a defendant violates the recordkeeping obligations set forth in ERISA.

54. ERISA § 502(a)(1)(A), 29 U.S.C. § 1132(a)(3) permits a plan participant to bring suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

A. Annual Reports

55. Under ERISA § 103, 29 U.S.C. § 1023, employee benefit plans are required to file an annual report with the Secretary of Labor. This report, submitted via a Form 5500, must include certain specified information about the plan's finances, participants, and administration.

56. Defendants failed to file an annual report concerning the Plan with the Secretary of Labor in compliance with ERISA § 103, 29 U.S.C. § 1023, or a Form 5500 and associated schedules and attachments, which the Secretary has approved as an alternative method of compliance with ERISA § 103, 29 U.S.C. § 1023.

57. Defendants have violated ERISA § 104(a), 29 U.S.C. § 1024(a) by failing to file annual reports with respect to the Plan with the Secretary of Labor in compliance with ERISA § 103, 29 U.S.C. § 1023, or Form 5500s and associated schedules and attachments.

B. Notification of Failure to Meet Minimum Funding Standards

58. Under ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1), employers maintaining employee benefit plans are required to issue a notice to beneficiaries and participants whenever the plan fails to make a required installment or other payment required to meet the minimum funding standards under ERISA.

59. At all relevant times, Baptist Health has been the employer that established and/or maintained the Plan.

60. Baptist Health has failed to furnish Plaintiff or any member of the Class with a Notice with respect to the Plan pursuant to ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1),

informing them that the Health System failed to make payments required to comply with ERISA §302, 29 U.S.C. §1082.

C. Funding Notices

61. Under ERISA § 101(f), 29 U.S.C. § 1021(f), administrators of defined benefit plans are required to provide annual plan funding notices to all participants and beneficiaries.

62. At no time has the Committee furnished Plaintiff or any member of the Class with a Funding Notice with respect to the Plan pursuant to ERISA § 101(f), 29 U.S.C. § 1021(f).

63. As the Administrator of the Plan, the Committee has violated ERISA § 101(f) by failing to provide each participant and beneficiary of the Plan with the Funding Notice required by ERISA § 101(f), and as such may be required by the Court to pay Plaintiffs and each class member up to \$110 per day (as permitted by 29 C.F.R. section 2575.502(c)(3)) for each day that the Committee has failed to provide Plaintiffs and each Class member with the notice required by ERISA § 101(f), 29 U.S.C. § 1021(f).

THIRD CLAIM FOR RELIEF

Failure to Provide Minimum Funding

(ERISA §§ 302 and 502(a)(3), 29 U.S.C. §§ 1082, 1132(a)(3))

64. Plaintiff re-alleges and incorporates herein by reference all prior allegations of the Complaint.

65. ERISA § 302, 29 U.S.C. § 1082, establishes minimum funding standards for defined benefit plans that require employers to make minimum contributions to their plans

so that each plan will have assets available to fund plan benefits if the employer maintaining the plan is unable to pay benefits out of its general assets.

66. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

67. As the employer maintaining the Plan, Baptist Health was responsible for making the contributions that should have been made pursuant to ERISA § 302, 29 U.S.C. § 1082, at a level commensurate with ERISA's requirements.

68. Baptist Health has failed to make contributions in satisfaction of the minimum funding standards of ERISA § 302, 29 U.S.C. § 1082.

69. By failing to make the required contributions to the Plan, Baptist Health has violated ERISA § 302, 29 U.S.C. § 1082.

70. As a result of the failure of Baptist Health to fund the Plan in accordance with ERISA's minimum funding standards, Plaintiff faces a substantial risk of his pension being lost or severely reduced.

FOURTH CLAIM FOR RELIEF

Failure to Establish the Plan Pursuant to a Written Instrument Under ERISA (ERISA §§ 402, 502(a)(3), 29 U.S.C. §§ 1102, 1132(a)(3))

71. Plaintiff re-alleges and incorporates herein by reference all prior allegations of the Complaint.

72. ERISA § 402, 29 U.S.C. § 1102, provides that every plan will be established pursuant to a written instrument which will, among other things, "provide a procedure for

establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of [Title I of ERISA].”

73. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

74. The Plan has not been established pursuant to a written instrument meeting the requirements of ERISA § 402, 29 U.S.C. § 1102.

75. As Baptist Health has been responsible for maintaining the Plan and has amendment power over the Plan, it violated § 402 by failing to promulgate written instruments in compliance with ERISA § 402, 29 U.S.C. § 1102 to govern the Plan operations and administration.

FIFTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

(ERISA §§ 404, 409, 502(a)(2), 29 U.S.C. §§ 1104, 1109, 1132(a)(2))

76. Plaintiff re-alleges and incorporates herein by reference all prior allegations of the Complaint.

77. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), provides that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan, and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

78. ERISA § 409, 29 U.S.C. § 1109, provides, *inter alia*, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by ERISA shall be personally liable to make good to the plan any losses to the plan resulting from each such breach and to restore to the plan any profits the fiduciary made through use of the plan's assets. ERISA § 409 further provides that such fiduciaries are subject to such other equitable or remedial relief as a court may deem appropriate.

79. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), permits a plan participant, beneficiary, or fiduciary to bring a suit for relief under ERISA § 409.

80. As a fiduciary of the Plan, Defendants had the duty to comply with and enforce the provisions of ERISA alleged above.

81. Defendants have not complied with and enforced any of the provisions of ERISA set forth above with respect to the Plan.

82. By failing to enforce the provisions of ERISA set forth above, Defendants have breached their fiduciary duties.

83. The failure of Defendants to create and enforce adequate funding for the Plan has resulted in a loss to the Plan equal to the forgone funding and earnings thereon, and this failure has profited Baptist Health by providing it the use for its general business purposes of money that it should have paid to the Plan.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants on all claims and requests that the Court award the following relief:

A. Certifying this action as a class action pursuant to Fed. R. Civ. P. 23;

B. Declaring that the Plan is an employee benefit plan within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2), is a defined benefit pension plan within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35), and is not a Church Plan within the definition of ERISA § 3(33), 29 U.S.C. § 1002(33);

C. Ordering Defendants to bring the Plan into compliance with ERISA, including, but not limited to, requiring Defendants to fund the Plan in accordance with ERISA's funding requirements, disclose required information to the Plan participants and beneficiaries, and otherwise comply with all other reporting, vesting, and funding requirements of Title I of ERISA;

D. Requiring Defendants to make the Plan whole for all contributions that should have been made pursuant to ERISA funding standards, and for interest and investment income on such contributions, and requiring Defendants to disgorge any profits accumulated as a result of fiduciary breaches;

E. Granting a preliminary and permanent injunction removing Defendants as Plan fiduciaries, and appointing one or more independent fiduciaries to hold the Plan assets in trust, to manage and administer the Plan and its assets, and to enforce the terms of ERISA.

F. Requiring the Baptist Health to pay a civil money penalty of up to \$110 per day to Plaintiff and each Class member for each day it failed to inform Plaintiff and each Class member of its failure to fund the Plan in accordance with ERISA's requirements;

G. Requiring Baptist Health to pay a civil money penalty of up to \$110 per day to

Plaintiffs and each Class member for each day it failed to provide Plaintiffs and each Class member with a Funding Notice;

H. Ordering declaratory and injunctive relief as necessary and appropriate, including enjoining the Defendants from further violating the duties, responsibilities, and obligations imposed on them by ERISA, with respect to the Plan;

I. Awarding, declaring or otherwise providing Plaintiffs and the Class all relief under ERISA § 502(a), 29 U.S.C. § 1132(a), or any other applicable law, that the Court deems proper and such appropriate equitable relief as the Court may order, including an accounting, surcharge, disgorgement of profits, equitable lien, constructive trust, or other remedy; and

J. Awarding to Plaintiff attorneys' fees and expenses as provided by the common fund doctrine, ERISA § 502(g), 29 U.S.C. § 1132(g), and/or other applicable doctrine.

DATED: March 3, 2015

Respectfully Submitted,



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