

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

Karolyn Kruger, M.D., *et al.*

Plaintiffs,

v.

Novant Health, Inc., *et al.*

Defendants.

Case No. 1:14-cv-208
Judge William Osteen, Jr.
Magistrate Judge Joi Elizabeth Peake

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF JOINT MOTION FOR
PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

I. INTRODUCTION

This settlement provides significant benefits to virtually every participant in the Novant-sponsored retirement and savings plans. Those plans include the Savings and Supplemental Retirement Plan of Novant Health, Inc. and the Tax Deferred Savings Plan of Novant Health, Inc. (collectively referred to herein as the "Retirement Plus Plan"), the Franklin/Upstate 401(k) Plan, the Presbyterian Women's Care Corp. 401(k) Plan, the Lakeside/Q-Neck 401(k) Plan, the 457(b) Retirement Plan of Novant Health, Inc., and the Retirement Plus Plan Wrap Nonqualified 457(b)/457(f) Plan of Novant Health, Inc. These retirement plans are herein referred to as the "Plans."

The settlement provides a \$32 million Settlement Fund, returning significant money to current and former Novant employees who were participants in the Plans. Most class members will automatically receive their distributions directly into their tax-deferred retirement account(s). Those who have already left the Plans will be given the option to receive their distributions in the form of a check made out to them individually or, in

most cases, as a roll-over into another tax-deferred account.¹ As a result, most class members will receive their distributions tax-deferred, further enhancing the significant monetary recovery. Moreover, the settlement provides unprecedented future relief in terms of scope and duration while also securing additional commitments for participants' benefit.

This litigation, which was commenced on March 12, 2014, alleges, among other things, that Novant and the Retirement Plus Plan fiduciaries breached their duties by offering unreasonably priced investment options in the Retirement Plus Plan that were used, at least in part, to provide excessive compensation to two of the Plans' service providers, Great-West Life & Annuity Insurance Co. ("Great-West") and D.L. Davis & Co. ("Davis"). In so doing, Plaintiffs contended that Defendants provided participants investment options in the Retirement Plus Plan that were unreasonably expensive. With these offerings, Plaintiffs contended that Defendants caused the Retirement Plus Plan to pay above-market rates to Great-West and millions in excessive fees to Davis.

Defendants dispute these allegations and denied and continue to deny liability for any alleged breaches or ERISA violations.

The monetary payment and additional terms will provide meaningful relief to each class member. Under the Settlement's "Plan of Allocation," the Settlement Class will share the Settlement based on a formula which considers the alleged injury to each class

¹ The fully executed settlement agreement, dated November 9, 2015, ("Settlement" or "Settlement Agreement") is attached hereto as Exhibit A to the Declaration of Jerome J. Schlichter ("Schlichter Decl.").

member.² The actual recovery per Class Member will depend on the number of Class Members who are eligible for an award and the Class Member's average quarterly account balances during the Class Period.

Plaintiffs filed this action almost a year and a half ago. Class Counsel, for over two years, extensively researched and investigated the administration of the Plans and engaged the services of consulting experts, where necessary, to assist in this research. Plaintiffs have seen this case through a motion to dismiss and have obtained, through this Settlement, a significant monetary and future relief recovery.

The Settlement was the product of extensive arm's-length negotiation preceded by significant settlement-related discovery engaged by the parties related to Novant's operation and administration of not only the Retirement Plus Plan but all the Plans. Ultimately, the parties reached a settlement after mediation with a nationally recognized mediator. In light of the litigation risks further prosecution of this action would inevitably entail, the parties have jointly requested that the Court: (1) preliminarily certify the Settlement Class; (2) preliminarily approve the proposed Settlement; (3) approve the proposed form and method of notice to the Settlement Class; and (4) schedule a hearing at which the Court will consider final approval of the Settlement.

II. THE CLAIMS IN THE CASE

The complaint asserts five counts. In Count I, Plaintiffs alleged that Defendants breached their fiduciary duties by continuing to include "retail" share class versions of

² All capitalized terms have the meaning assigned to them in Article 2 of the accompanying Settlement Agreement, unless otherwise specified herein.

the investment funds offered through the Retirement Plus Plan, even though significantly cheaper, but otherwise identical, institutional share class versions of the same funds (or other lower-cost alternatives) were available. Doc. 1 ¶¶36, 39–46, 48–55, 63-77, 165-81.

In Count II, Plaintiffs allege that Defendants breached their fiduciary duties by allowing the Retirement Plus Plan to pay unreasonable administrative expenses to Great-West, which served as the Plans' recordkeeper since 1998. *Id.* ¶¶34, 78-81, 85–116, 182-92; Doc. 20-7 at 10. Plaintiffs contend that, as of the filing of the complaint, Defendants had not put the Retirement Plus Plan's recordkeeping services out to competitive bidding since 1998 and, as a result, the Retirement Plus Plan overpaid for administrative services. Doc. 1 ¶¶115–16.

In Count III, Plaintiffs allege that Defendants breached their fiduciary duties by allowing the Retirement Plus Plan to pay Davis unreasonable fees for providing participant communication and education services to the Retirement Plus Plan. *Id.* ¶¶35, 117–47, 193-205. Plaintiffs further allege that these unreasonable fees were made due to Novant's extensive business relations with Derrick Davis, the owner of D.L. Davis & Co., and his companies unrelated to the Retirement Plus Plan. *Id.* ¶¶140, 144–45.

In Counts IV and V, Plaintiffs allege breaches of fiduciary duties against certain Defendants based on theories that are derivative of the breaches alleged in Counts I-III, including failure to monitor and co-fiduciary breach claims. *Id.* ¶¶ 206-13, 214-19; 29 U.S.C. § 1105(a).

The Action

This litigation began on March 12, 2014, with the filing of Plaintiffs' complaint. However, Class Counsel's investigation of this matter commenced in mid-2013. In investigating the fees paid not only by the Retirement Plus Plan, but all the Plans, Class Counsel spent months reviewing publicly filed documents related to the Plans, researched and reviewed participant communications provided by participants, analyzed fees paid by the Plans, and extensively researched business relationships between key service providers to the Plans, including Great-West and Davis. In addition, Class Counsel, leveraging its experience in litigating many breach of fiduciary cases, employed the services of their consulting experts in analyzing the Plans' fees. In advance of the filing of their lawsuit, Plaintiffs, with the assistance of their attorneys, requested (and obtained) the production of a variety of key documents related to the operation of the Retirement Plus Plan from Defendants. Doc. 1, ¶38.

As referenced above, and after extensive research and investigation, Plaintiffs filed their complaint on March 12, 2014. Doc. 1. The complaint contains detailed allegations laying out a variety of fiduciary breaches and conflicted service provider relationships. *Id.* After the filing of the complaint, Defendants filed an extensive motion, with voluminous attachments, seeking the dismissal of the entire case. Doc. 19, 20. Plaintiffs responded to this motion with their own extensive opposition, along with a variety of attachments. Doc. 26.

While Defendants' motion to dismiss was under advisement, the parties entered into

settlement discussions in December of 2014. Before Plaintiffs agreed to engage in any substantive settlement discussions, Plaintiffs requested (and obtained) the production of a variety of categories of documents that were exclusively in the possession and control of Defendants. Those documents included, but were not limited to the following:

- Insurance policies applicable to Plans' fiduciaries;
- Documents related to Defendants' recent request for proposals to prospective service providers;
- Documents related to the governance of the Plans;
- Summary plan descriptions;
- Form 5500s for the Plans;
- Investment policy statements;
- Meeting minutes and accompanying materials, including agendas for the Plans' fiduciary meetings;
- Great-West agreements and compensation reports;
- Davis agreements, compensation reports, and invoices;
- Plans' invoices;
- Service provider presentations, reports, and related correspondence;
- Bids and proposals for services related to the Plans;
- Documents related to revenue sharing, commissions and compensation disclosure reports from the Plans' service providers;
- Plans' investment options returns, assets, fees, and expenses;
- Consultant reports related to the administration of and fees paid by the Plans;
- Documents related to Davis' business relationships with Novant;
- Documents related to Davis' real estate relationships with Novant; and,
- Documents related to Davis' gifts or donations provided to Novant.

All told, Defendants produced almost twenty thousand pages of materials. In preparing for mediation, Class Counsel spent hundreds of hours thoroughly reviewing and extensively analyzing these materials.

In addition, Class Counsel devoted hundreds of hours thoroughly researching publicly available documents related not only to the Plans, but all aspects of Novant's business operations with key service providers, including Davis. Indeed, Class Counsel

visited, in person, local and regional state and county offices researching records related to these relationships, business plans, and business developments between Novant and Davis. In sum, these materials exceed 2,500 collected documents totaling tens of thousands of pages.

With Class Counsel's due diligence review almost complete, the parties engaged a national mediator, Hunter Hughes, to conduct settlement discussions. Mr. Hughes has significant experience complex civil litigation, including ERISA excessive fee class actions. The mediation was an all-day affair that ended without a settlement. Rather, at the conclusion of the mediation, the parties, with the assistance of Mr. Hughes, continued their discussions. These discussions continued for over four additional months and covered both monetary damages and extensive non-monetary relief. On November 9, 2015, the parties reached an agreement on all issues and signed the Settlement Agreement.

III. THE TERMS OF THE PROPOSED SETTLEMENT

In exchange for releases and for the dismissal of this action as provided for in the Settlement Agreement, Defendants will make available to Class Members the benefits described below (the "Settlement Benefits"). The parties have consented to a rapid mediation process to resolve any future disputes and to the Court's continuing jurisdiction over certain matters. Class Counsel agrees to take any necessary enforcement action without additional cost to the Settlement Class.

A. Monetary Relief

Defendants will deposit \$32,000,000 (the “Gross Settlement Amount”) in an interest-bearing settlement account (the “Gross Settlement Fund”). The Gross Settlement Fund will be used to pay the participants’ recoveries as well Class Counsel’s Attorneys’ Fees and Costs, Administrative Expenses of the Settlement, and Class Representatives’ Compensation as described in the Settlement Agreement.

B. Non-Monetary Relief

In addition to the monetary component of the Settlement, Defendants have agreed to substantial non-monetary relief for the prospective benefit of participants. In particular, Defendants have agreed, in advance of or during the *four-year* Settlement Period, to: (1) conclude a comprehensive request for proposal (“RFP”) competitive bidding process, conducted and led by an outside consultant, for recordkeeping, investment consulting and participant education services for the Plans; (2) engage a mutually agreed upon Independent Consultant to assess the adequacy of the RFP process and assess Defendants’ anticipated selection of service providers for the Plans; (3) ensure that Plans’ administrative service providers are not reimburse for their services based on a percentage-of-plan-assets basis; (4) review all current investment options in the Plans and revise the investment options, as needed, ensuring that those options are selected or retained for the exclusive best interests of the Plans’ participants; (5) the Independent Consultant reviewing the investment option selection process and provide recommendations, if necessary; (6) the Independent Consultant conducting an annual

review, for four years, of Novant's management of the Plans; (7) removing Davis, and related entities, from any involvement with the Plans; (8) removing Davis and related entities from Novant employee benefit plans; (9) not enter into any new real estate or business relationships with Davis and related entities; (10) not offer any Mass Mutual investments in the Plans or any other investment that provides compensation to Davis and related entities; (11) provide accurate communications to participants in the Plans; (12) not offer any brokerage services to the Plans; and, (13) adopt a new investment policy statement to ensure that the Plans are operated for the exclusive best interests of the Plans' participants. These terms provide value to the Plan in addition to the monetary amount.

C. Notice and Class Representatives' Compensation

The notice costs and all costs of administration of the Settlement will come out of the \$32,000,000 Gross Settlement Amount. Incentive payments to the seven named Plaintiffs in an amount to be approved by the Court would also be paid out of the Gross Settlement Amount. Plaintiffs will seek \$25,000 for each of the Named Plaintiffs. This amount is well in line with precedent recognizing the value of individuals stepping forward to represent classes — particularly in a case like this one, where the potential benefit to any individual does not outweigh the cost of prosecuting the claim and there are significant risks, including the risk of no recovery, the risk of alienation from their employers and peers, and the risk of uncompensated time and energy devoted to a lawsuit with uncertain prospects for success. *Krueger v. Ameriprise Fin., Inc.*, 2015 U.S. Dist. LEXIS 91385,

*10–11 (D. Minn. July 13, 2015)(approving awards of \$25,000 to each of the named plaintiffs); *Tussey v. ABB, Inc.*, 2012 U.S. Dist. LEXIS 157428, *33–34 (W.D. Mo. Nov. 2, 2012)(J. Laughrey) (approving awards of \$25,000 to each of three named plaintiffs in 401(k) fee ERISA class action); *Beesley v. Int’l Paper Co.*, 2014 U.S. Dist. LEXIS 12037, *13–14 (S.D. Ill. Jan. 31, 2014)(J. Herndon)(approving \$25,000 to each of six surviving named plaintiffs in 401(k) fee settlement and noting that “ERISA litigation against an employee’s current or former employer carries unique risks and fortitude, including alienation from employers or peers.”). The total award requested for the Named Plaintiffs represents just over one-half of one percent of the Settlement Fund.

D. Attorneys’ Fees and Costs

“[I]n a common fund case such as this, a reasonable fee is normally a percentage of the Class recovery.” *Smith, et al. v. Krispy Kreme Doughnut Corporation et al.*, 2007 U.S. Dist. LEXIS 2392, *3–4 (M.D.N.C. January 10, 2007); see also *Boeing Co. v. VanGemert*, 444 U.S. 472, 478 (1980). In this case, Class Counsel will request attorneys’ fees to be paid out of the Qualified Settlement Fund in an amount not more than one-third of the Gross Settlement Amount, or \$10,666,666.00 as well as reimbursement for costs incurred of no more than \$95,000.00. “A one-third fee is consistent with the market rate in settlements concerning this particularly complex area of law.” *Krueger*, 2015 U.S. Dist. LEXIS 91385 at *3–9; *Beesley v. Int’l Paper Co.*, 2014 U.S. Dist. LEXIS 12037, *7 (S.D. Ill. Jan 31, 2014) citing *Will v. General Dynamics Corp.*, 2010 U.S. Dist. LEXIS 123349, *9 (S.D. Ill. Nov. 22, 2010); see also *In re Airline Ticket Comm’n Antitrust Litig.*,

953 F.Supp. 280 (D. Minn. i nee 1997)(J. Rosenbaum) (approving one-third fee of \$86 million class settlement). In addition, a one-third fee to Class Counsel is also provided for in the contract with the Named Plaintiffs. Schlichter Decl. ¶4.

Further, although Class Counsel will not request a fee greater than one-third of the monetary recovery, the additional terms of the settlement add meaningful value in addition to the monetary amount. This results in the requested fee lower than a one-third award. In addition, Class Counsel will not seek fees from the Settlement Class for the following: (1) the interest earned on the Gross Settlement Amount; (2) communications with Class Members or Defendants during the four-year Settlement Period and review of related documents; and (3) work required if mediation or enforcement of the Settlement Agreement is necessary. *Smith*, 2007 U.S. Dist. LEXIS 2392, at *10–11. Further, Class Counsel bears the risk of half of the costs of pursuing the settlement if the settlement is not approved or otherwise terminated. A formal application for attorneys’ fees and costs and for named plaintiff awards will be made at least 30 days prior to the deadline for class members to file objections to the Settlement.

IV. ARGUMENT

The first step in approving any proposed settlement in a class action is preliminary approval. *Horton, et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F.Supp. 825, 827 (E.D.N.C. 1994). At this stage, the Court reviews the proposed settlement to determine whether it is sufficient to warrant public notice and a hearing. *Id.* If so, the final decision on approval is made after a “fairness” hearing. *Id.*, see also Manual for

Complex Litigation, Fourth, §13.14, at 172-73 (Fed. Jud. Ctr. 2004) (“Manual Fourth”).

The Court is not required at the preliminary stage to make any final determinations:

The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.

Id. § 21.632, at 321. As stated above, preliminary approval is only the first step in a two-step process required before a class action may be finally settled. *Id.* at 320. In some cases this initial assessment can be made on the basis of information already known to the court and then supplemented by briefs, motions and an informal presentation from the settling parties. *Id.*

In this case, the Court should preliminarily approve the Settlement for the reasons that: (1) the proposed Settlement was the product of extensive arm’s length negotiations; (2) the Settlement was executed only after Class Counsel conducted significant pre-settlement investigation; (3) Class Counsel have concluded that the Settlement is fair, reasonable, and adequate; and, (4) the Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Class Members. *Smith, et al. v. Krispy Kreme Doughnut Corporation et al.*, Case 05-cv-00187-WLO, Doc. 71 at 4–5 (M.D.N.C. September 27, 2006).

a. The Settlement is the product of extensive arm’s length negotiations

There is an initial strong presumption that a proposed class action settlement is fair and reasonable when it is the result of arms-length negotiations. *Horton*, 855 F.Supp. at 830, *Great Neck Capital Appreciation Inc. Partnership, L.P. v. Pricewaterhouse*

Coopers, LLP, 212 F.R.D. 400, 410 (W.D.Wis. 2002); see also *Newberg on Class Actions* §11.41 at 11-88 (3d ed. 1992). As describe above, the Settlement here is the result of lengthy, contentious and complex arms-length negotiations between the parties. These negotiations extended over a period of months and included the involvement of an independent mediator. Counsel on both sides are experienced and thoroughly familiar with the factual and legal issues presented. It is recognized that the opinion of experienced and informed counsel supporting settlement is entitled to considerable weight. *EEOC v. Faribault Foods, Inc.*, 2008 U.S. Dist. LEXIS 29132, *12 (D. Minn. March 28, 2008) (J. Kyle).

b. The Settlement was executed only after significant pre-settlement investigation

As explained above, Class Counsel conducted substantial investigation and analysis of tens of thousands of pages of documents that occurred over a period of almost two years. The majority of these documents were electronically indexed and sorted, and thereafter individually examined, analyzed and cataloged by an attorney. Class Counsel also thoroughly reviewed and analyzed additional and voluminous documents provided by the Plaintiffs and other documents obtained from public filings with the Department of Labor. Class Counsel had experts intimately familiar with financial services industry practices, investment management, recordkeeping, and retirement industry practices as well as industry fiduciary practices examine and analyze these and other documents and provide opinions based on the record and their experience. Thus, Class Counsel extensively developed the facts supporting the Plaintiffs' claims in tremendous detail.

Horton, 855 F.Supp. at 829–830, see also *In re Jiffy Lube Securities Litigation*, 927 F.2d 155, 157–158 (4th Cir. 1991).

c. Class Counsel believe the Settlement is fair, reasonable, and adequate

Class Counsel is very experienced in class action litigation generally and, in particular, class litigation arising from breaches of fiduciary duties to retirement plans under ERISA. Class Counsel is intimately familiar with this unique and complex area of law, as noted by other courts considering cases alleging ERISA breaches of fiduciary duty with respect to fees and investments in 401(k) plans. *Tussey v. ABB, Inc.*, 2012 U.S. Dist. LEXIS 157428, *10 (W.D. Mo. Nov. 2, 2012) (“Plaintiffs’ attorneys are clearly experts in ERISA litigation”); *Beesley v. Int’l Paper Co.*, 3014 U.S. Dist. LEXIS 12037, *4–5 (S.D. Ill. Jan 31, 2014)(J. Herndon)(“The Court remains impressed with Class Counsel’s navigation of the challenging legal issues involved in this trailblazing litigation and Class Counsel’s commitment and perseverance in bringing this case to this resolution.”); *Will v. Gen. Dynamics Corp.*, 2010 U.S. Dist. LEXIS 123349, *10 (S.D. Ill. Nov. 22, 2010)(J. Murphy)(“Counsel’s actions have led to dramatic changes in the 401(k) industry, including heightened disclosure and protection of employees’ and retirees’ retirement assets”); *Nolte v. Cigna Corp.*, 2013 U.S. Dist. LEXIS 184622, *5 (C.D. Ill. Oct. 15, 2013)(J. Baker)(“The law firm Schlichter, Bogard & Denton is the leader in 401(k) fee litigation.”). It is Class Counsel’s opinion that the Settlement is fair and reasonable. Schlichter Decl. ¶ 2. As set forth above, the Settlement provides a substantial monetary relief component in the amount of \$32,000,000. In addition, the Settlement

provides substantial and comprehensive non-monetary relief. At the final approval hearing, Plaintiffs will present expert declarations opining as to the value of this relief. Finally, independent of Class Counsel's opinion as to the reasonableness of the Settlement, the parties will also submit the settlement terms to an Independent Fiduciary which provide an opinion on the Settlement's fairness before the final approval hearing.

d. The Settlement is fair, reasonable, and adequate to warrant sending notice to the Settlement Class

Due process and Rule 23(e) do not require that each Class Member receive notice, but do require that class notice be "reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950). "Individual notice must be provided to those class members who are identifiable through reasonable effort." *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175 (1974).

Here, the proposed form and method of notice of proposed settlement agreed to by the parties satisfy all due process considerations and meet the requirements of Fed. R. Civ. P. 23(e)(1). Plaintiffs' proposed form of Settlement Notice is attached to the Settlement. The proposed Settlement Notice will fully apprise Class Members of the existence of the lawsuit, the Settlement, and the information they need to make informed decisions about their rights, including (i) the terms and operation of the Settlement; (ii) the nature and extent of the release, (iii) the maximum counsel fees that will be sought; (iv) the procedure and timing for objecting to the Settlement and the right of parties to

seek limited discovery from objectors; (v) the date and place of the fairness hearing; and (vi) the website on which the full settlement documents, and any modifications to those documents, will be posted.

The notice plan consists of multiple components designed to reach Class Members. First, the Settlement Notice will be sent by first-class mail to the current or last known address of all Class Members shortly after entry of the Preliminary Approval Order. Addresses of the Class Members are maintained by the Plans' recordkeeper and/or Novant personnel, who use this information for, *inter alia*, mailing plan notices, participant communications, and other plan-related information. Class Members include both current and former employees and agents of Novant Health, Inc. and its affiliates. In addition to the Settlement Notice, Class Counsel will develop a dedicated website, www.Novant401ksettlement.com, solely for the settlement, and a link to that website will appear on Class Counsel's website, www.uselaws.com. The notice plan also includes a requirement for follow-up by the Settlement Administrator for those Class Members whose notice letters are returned because they no longer reside at such address. Class Members may also receive notice of the settlement by reading published articles likely to mention the settlement.

Thus, the form of notice and proposed procedures for notice satisfy the requirements of due process and the Court should approve the notice plan as adequate. *See* Newberg on Class Actions, § 8.34.

V. CONCLUSION

For these reasons, the Joint Motion for Preliminary Approval of Class Settlement should be granted.

November 9, 2015

Respectfully submitted,

/s/ Jerome J. Schlichter
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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of this filing to all counsel of record.

/s/ Jerome J. Schlichter

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FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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Defendants.

No. 1:14-cv-208

Judge William Osteen, Jr.

Magistrate Judge Joi Elizabeth Peake

DECLARATION OF JEROME J. SCHLICHTER

1. I am the founding partner of the law firm Schlichter, Bogard & Denton LLP, counsel for the Plaintiffs. This declaration is submitted in support of Plaintiffs' Memorandum in Support of the Joint Motion for Preliminary Approval of Class Settlement. I am familiar with the facts set forth below and able to testify to them.

2. There has been no collusion or complicity of any kind in connection with the negotiations for, or the agreement to, settle this class action. As illustrated in Plaintiffs' Memorandum in Support of Joint Motion for Preliminary Approval of Class Settlement, all settlement negotiations in this case were conducted at arm's-length by adverse, represented parties. The negotiations were extensive and adversarial, and the parties engaged a highly experienced mediator with whom the parties met in person and via telephonic mediation sessions, as well as conducting long calls between the parties to negotiate a settlement. Apart from the monetary amount, these discussions also involved extensive negotiations for nonmonetary relief regarding the Plans' provisions, oversight, and administration going forward resulting in very substantial changes to the Plans and

monitoring for years. It is my opinion that the proposed settlement is not only “within the range of reasonableness,” but also is fair, reasonable, adequate, and in the best interests of the Plans and their participants in light of the procedural and substantive risks Plaintiffs would face if litigation were to continue

3. Attached hereto as Exhibit A is a true and accurate copy of the Settlement Agreement between Plaintiffs and Defendants.

4. Each of the seven named plaintiffs in the above-referenced matter have a contract for this firm agreeing to a one-third fee to Schlichter Bogard & Denton LLP in the event of any recovery.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 9, 2015.

SCHLICHTER, BOGARD & DENTON

/s/ Jerome J. Schlichter
Jerome J. Schlichter

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into between and among the Class Representatives, all Class Members, and the Defendants.

1. Article 1 – Recitals

- 1.1** On March 12, 2014, Karolyn Kruger, M.D., Candace Culton, Frances Baillie, Eileen Schneider, Judy Lewis, Linda Christensen, and Teresa Powell all participants in the defined contribution retirement program known as the Retirement Plus Plan, filed a Complaint (Case No. 14-cv-00208) against Novant Health, Inc. and various individuals and committees alleged to have fiduciary responsibility for the Retirement Plus Plan in the United States District Court for the Middle District of North Carolina as representatives of a putative class asserting various claims of breaches of fiduciary duty and seeking relief under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).
- 1.2** Defendants filed a motion to dismiss on May 20, 2014, seeking dismissal of the Complaint on the basis that plaintiffs failed to state a cause of action for fiduciary breach.
- 1.3** With defendants’ motion to dismiss under advisement, the parties discussed settlement through private mediation. Through extensive discussions in mediation and continued discussions after mediation, the parties finally reached an agreement. The terms of the parties’ settlement are memorialized in this Settlement Agreement.
- 1.4** The plaintiff class representatives and plaintiffs’ class counsel consider it desirable and in the class members’ best interests that the claims against defendants be settled on behalf of the class representatives and the class upon the terms set forth below, and they have concluded that such terms are fair, reasonable, and adequate and that this settlement will result in benefits to class representatives and the class.
- 1.5** Defendants admit no wrong doing or liability with respect to any of the allegations or claims in the Complaint. This Settlement Agreement, and the discussions between the settling parties preceding it, shall in no event constitute, be construed as, or be deemed evidence of, an admission or concession of fault or liability of any kind by Novant Health, Inc. or any of the other defendants named in the Complaint and identified in the Settlement Agreement.
- 1.6** The Settling Parties, as defined below, have concluded that it is desirable that this matter be finally settled upon the terms and conditions set forth in this Settlement Agreement.

1.7 Therefore, the Settling Parties, in consideration of the promises, covenants, and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree to the terms of this Settlement Agreement.

2. Article 2 – Definitions

As used in this Settlement Agreement and the Exhibits hereto (as listed in Paragraph 13.18), unless otherwise defined, the following terms have the meanings specified below:

- 2.1 “Administrative Expenses” means expenses incurred in the administration of this Settlement Agreement, including (a) all fees, expenses, and costs associated with providing the Settlement Notices to the Class; (b) related tax expenses (including taxes and tax expenses as described in Paragraph 5.3); (c) all expenses and costs associated with the distribution of funds pursuant to the Plan of Allocation, including but not limited to the fees of the Plans’ recordkeeper associated with implementing this Settlement Agreement, facilitating the distribution of funds pursuant to the Plan of Allocation, and gathering the data necessary to prepare the Plan of Allocation; (d) all fees and expenses of the Independent Fiduciary, Independent Consultant (except as specifically provided otherwise in Paragraphs 10.5, 10.6, 10.7, 10.8, and 10.11 herein), Settlement Administrator, and Escrow Agent; and (e) all fees, expenses, and costs associated with providing notices required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711–1715. Excluded from Administrative Expenses are Defendants’ internal expenses and the Settling Parties’ respective legal expenses. Administrative Expenses shall be paid from the Gross Settlement Amount.
- 2.2 “Active Account” means an individual investment account in any of the Plans with a balance greater than \$0.
- 2.3 “Alternate Payee” means a person other than a participant or Beneficiary in any of the Plans who is entitled to a benefit under any of the Plans as a result of a Qualified Domestic Relations Order.
- 2.4 “Approved Service Providers” means those service providers selected by the Plan Fiduciary and reviewed by the Independent Consultant following the request for proposal (“RFP”) bidding process described in Paragraph 10.6.
- 2.5 “Attorneys’ Fees and Costs” means the amount awarded by the Court as compensation for the services provided by Class Counsel and to be provided in the future during the Settlement Period. The amount of attorneys’ fees for Class Counsel shall not exceed \$10,666,666 which shall be recovered from the Gross Settlement Amount. Class Counsel also will seek reimbursement for all litigation costs and expenses advanced and carried by Class Counsel for the duration of this litigation, not to exceed \$95,000.00 which also shall be recovered from the Gross Settlement Amount.

- 2.6** “Authorized Former Participant” means a Former Participant who has submitted a completed, satisfactory Former Participant Claim Form by the Claims Deadline set by the Court in the Preliminary Order and whose Former Participant Claim Form is accepted by the Settlement Administrator.
- 2.7** “Beneficiary” means a person who currently is entitled to receive a benefit under any of the Plans that is derivative of a participant’s interest in any of the Plans, other than an Alternate Payee. A Beneficiary includes, but is not limited to, a spouse, surviving spouse, domestic partner, or child who currently is entitled to a benefit.
- 2.8** “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711–1715.
- 2.9** “Claims Deadline” means a date that is no later than ten (10) calendar days before the Fairness Hearing.
- 2.10** “Class Action” means *Karolyn Kruger, M.D. et al. v. Novant Health, Inc. et al.*, Case No. 14-cv-00208 in the United States District Court for the Middle District of North Carolina.
- 2.11** “Class Counsel” means Schlichter, Bogard & Denton LLP, 100 S. Fourth Street, Saint Louis, Missouri, 63102.
- 2.12** “Class Members” means all individuals in the Settlement Class.
- 2.13** “Class Period” means the period from October 1, 1998 through September 30, 2015.
- 2.14** “Class Representatives” means Karolyn Kruger, M.D., Candace Culton, Frances Baillie, Eileen Schneider, Judy Lewis, Linda Christensen, and Teresa Powell.
- 2.15** “Class Representatives’ Compensation” means an amount to be determined by the Court, but not to exceed \$25,000 for each Class Representative, which shall be paid from the Gross Settlement Amount.
- 2.16** “Confidentiality Order” means the Protective Order entered by the Court based upon the Proposed Protective filed contemporaneously herewith.
- 2.17** “Court” means the United States District Court for the Middle District of North Carolina.
- 2.18** “Court of Appeals” means the United States Court of Appeals for the Fourth Circuit.
- 2.19** “Current Participant” means a person who participated in any of the Plans during the Class Period and on September 30, 2015, had an Active Account balance.

- 2.20** “Defendants” means Novant Health, Inc., the Plan Fiduciary, as defined herein, and all current or former Novant employees who were members of the committees defined herein as the Plan Fiduciary at any time since October 1, 1998.
- 2.21** “Defense Counsel” means counsel for Defendants including Morgan, Lewis & Bockius LLP and Brooks Pierce McLendon Humphrey & Leonard, LLP.
- 2.22** “Escrow Agent” means Commerce Bank, or another entity agreed to by the Settling Parties.
- 2.23** “Fairness Hearing” means the hearing scheduled by the Court to consider (a) any objections from Class Members to the Settlement Agreement, (b) Class Counsel’s petition for Attorneys’ Fees and Costs and Class Representatives’ Compensation, and (c) whether to finally approve the Settlement pursuant to Fed. R. Civ. P. 23.
- 2.24** “Final Approval” means the entry of the order and final judgment approving the Settlement Agreement, implementing the terms of this Settlement Agreement, and dismissing the Class Action with prejudice, to be proposed by the Settling Parties for approval by the Court, in substantially the form attached as Exhibit 5 hereto.
- 2.25** “Final Order” means thirty days after Final Approval.
- 2.26** “Final” means with respect to any judicial ruling, order, or judgment that the period for any motions for reconsideration, motions for rehearing, appeals, petitions for certiorari, or the like (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that it has been fully and finally resolved, either by court action or by voluntary action of any party, without any possibility of a reversal, vacatur, or modification of any judicial ruling, order, or judgment, including the exhaustion of all proceedings in any remand or subsequent appeal and remand. The Settling Parties agree that absent an appeal or other attempted review proceeding, the period after which the Final Order becomes Final is thirty (30) calendar days after its entry.
- 2.27** “Former Participant” is a person who participated in any of the Plans during the Class Period and on September 30, 2015, did not have an Active Account.
- 2.28** “Former Participant Claim Form” means the form described generally in Paragraph 3.4.2 and substantially in the form attached as Exhibit 1.
- 2.29** “Gross Settlement Amount” means the sum of thirty-two million dollars (\$32,000,000), contributed to the Qualified Settlement Fund pursuant to Article 5. The Gross Settlement Amount shall be the full and sole monetary payment to the Settlement Class, Plaintiffs, and Class Counsel made on behalf of Defendants in connection with the Settlement effectuated through this Settlement Agreement.
- 2.30** “Independent Consultant” means Innovest Portfolio Solutions LLC.

- 2.31** “Independent Fiduciary” means the company mutually agreed to by the Settling Parties, within seven days of the Court’s entry of the Preliminary Order, to serve as a fiduciary to the Plans as defined in Article 3 herein.
- 2.32** “Mediator” means Hunter Hughes, Hunter ADR, 1075 Peachtree Street NW, suite 2550, Atlanta, Georgia 30309, or if he is unavailable, another mediator mutually agreed upon by the Settling Parties.
- 2.33** “Novant” means Novant Health, Inc.
- 2.34** “Net Settlement Amount” means the Gross Settlement Amount minus: (a) all Attorneys’ Fees and Costs paid to Class Counsel; (b) all Class Representatives’ Compensation as authorized by the Court; (c) all Administrative Expenses; and (d) a contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties that is set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the Settlement Period, and (3) an amount estimated for adjustments of data or calculation errors.
- 2.35** “Plaintiffs” means the Class Representatives and the Class Members.
- 2.36** “Plans” means the Savings and Supplemental Retirement Plan of Novant Health, Inc. and the Tax Deferred Savings Plan of Novant Health, Inc (collectively, the “Retirement Plus Plan”); the Franklin/Upstate 401(k) Plan; the Presbyterian Women’s Care Corp. 401(k) Plan; the Lakeside/Q-Neck 401(k) Plan; the 457(b) Retirement Plan of Novant Health, Inc. (the “457(b) Plan”); and the Retirement Plus Plan Wrap Nonqualified 457(b)/457(f) Plan of Novant Health, Inc. (the “457(f) Plan”).
- 2.37** “Plan of Allocation” means the methodology for allocating and distributing the Net Settlement Amount pursuant to Article 6 herein.
- 2.38** “Plan Fiduciary” refers to the Administrative Committee for the Plans, which is sometimes referred to as the Novant Health Retirement Plan Committee.
- 2.39** “Preliminary Order” means the order proposed by the Settling Parties and approved by the Court in connection with the Motion for Entry of the Preliminary Order to be filed by Class Representatives through Class Counsel, as described in Paragraph 3.2 and in substantially the form attached hereto as Exhibit 2.
- 2.40** “Qualified Settlement Fund” or “Settlement Fund” means the interest-bearing, settlement fund account to be established and maintained by the Escrow Agent pursuant to Article 5 herein and referred to as the Qualified Settlement Fund (within the meaning of Treas. Reg. § 1.468B-1).
- 2.41** “Released Parties” means (a) each Defendant, (b) each Defendant’s past, present, and future parent corporation(s), and (c) each Defendant’s past, present, and future

affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns, and (d) with respect to (a) through (c) above, all of their affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, assigns, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), administrators, service providers (including their owners and employees), consultants, subcontractors, boards of trustees, boards of directors, officers, trustees, directors, partners, agents, managers, members, employees, independent contractors, representatives, attorneys, administrators, fiduciaries, insurers, co-insurers, reinsurers, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, members of their immediate families, and all persons acting under, by, through, or in concert with any of them.

2.42 “Released Claims” means any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action:

- a. That were asserted in the Class Action, or that arise out of the conduct alleged in the Complaint whether or not pleaded in the Complaint;
- b. That relate to: (1) the selection, oversight, retention, or performance of the Plans’ investment options and service providers, (2) fees, costs, or expenses charged to, paid, or reimbursed by the Plans, (3) disclosures or failures to disclose information regarding the Plans’ investment options or service providers, (4) disclosures or failures to disclose relationships among fiduciaries, service providers, and investment managers for the Plans, (5) engaging in self-dealing or prohibited transactions, and/or (6) collecting compensation based on a percentage of total assets;
- c. That would be barred by *res judicata* based on entry of the Final Order;
- d. That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plans or any member of the Settlement Class pursuant to the Plan of Allocation; or
- e. That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.
- f. “Released Claims” specifically exclude (1) those claims not related to 2.41(a)-(e) above; (2) claims of denial of benefits from the Plans; (3) labor or employment claims unrelated to the Plans, including by way of example only, claims arising under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Equal Pay Act, 42 U.S.C. § 1981, the Fair Labor Standards Act, the Family and Medical Leave Act, the National Labor Relations Act, the Sarbanes Oxley Act, the Dodd-Frank Wall Street Reform and Protection Act, state anti-discrimination and wage-payment laws, claims for wrongful termination under state common law and other state law claims of

a similar nature to those set forth in this subpart (f)(3); and, (4) claims arising from conduct outside the Class Period, other than the continuation of the Plans' current investment menu and plan services (and related fees) through the periods concerning plan investments and services identified in Paragraphs 10.2, 10.4, and 10.6 herein; and (5) claims assigned to Novant pursuant to Paragraph 13.21 of this Settlement Agreement.

- 2.43** “Settlement” or “Settlement Agreement” refers to the agreement embodied in this agreement and its exhibits.
- 2.44** “Settlement Administrator” means Analytics LLC, an independent contractor to be retained by Class Counsel.
- 2.45** “Settlement Agreement Execution Date” means that date on which the final signature is affixed to this Settlement Agreement.
- 2.46** “Settlement Class” means all persons who participated in the Plans at any time during the Class Period, including any Beneficiary of a deceased person who participated in the Plans at any time during the Class Period, and/or, Alternate Payees, in the case of a person subject to a Qualified Domestic Relations Order who participated in the Plans at any time during the Class Period.
- Excluded from the Settlement Class are Defendants and all members of Novant’s Board of Trustees since October 1, 1998.
- 2.47** “Settlement Effective Date” means the date on which the Final Order is Final, provided that by such date the Settlement has not been terminated pursuant to Article 11.
- 2.48** “Settlement Notice” means the Notices of Class Action Settlement and Fairness Hearing to be mailed by first class mail to Class Members identified by the Settlement Administrator following the Court’s issuance of the Preliminary Order, in substantially the form attached hereto as Exhibits 3 and 4. The Settlement Notice also shall inform Class Members of a Fairness Hearing to be held before the Court, on a date to be determined by the Court, at which any Class Member satisfying the conditions set forth in the Preliminary Order and the Settlement Notice may be heard regarding: (a) the terms of the Settlement Agreement; (b) the petition of Class Counsel for award of Attorneys’ Fees and Costs; (c) payment of and reserve for Administrative Expenses; and (d) Class Representatives’ Compensation. The Settlement Notice shall inform Former Participants of the Claims Deadline by which they must file a completed Former Participant Claim Form to be eligible for a distribution pursuant to the Plan of Allocation.
- 2.49** “Settlement Period” shall be from the Settlement Effective Date and continuing for a period of four years thereafter.
- 2.50** “Settlement Website” means the internet website established pursuant to Paragraph 12.3.

2.51 “Settling Parties” means the Defendants and the Class Representatives, on behalf of themselves and each of the Class Members.

3. Article 3 – Review and Approval by Independent Fiduciary, Preliminary Settlement Approval, and Notice to the Class

3.1 The Independent Fiduciary, agreed to by Class Counsel and Defendants, and retained by the Plan Fiduciary, on behalf of the Plans, shall have the following responsibilities including whether to approve and authorize the settlement of Released Claims on behalf of the Plans.

3.1.1 The Independent Fiduciary shall comply with all relevant conditions set forth in Prohibited Transaction Class Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”) in making its determination, for the purpose of Defendants’ reliance on PTE 2003-39.

3.1.2 The Independent Fiduciary shall notify Novant and the Plan Fiduciary directly of its determination in writing (with copies to Class Counsel and Defense Counsel), which notification shall be delivered no later than thirty (30) calendar days before the Fairness Hearing.

3.1.3 All fees and expenses associated with the Independent Fiduciary’s determination and performance of its other obligations in connection with the Settlement will constitute Administrative Expenses to be deducted from the Gross Settlement Amount.

3.1.4 Novant, Defense Counsel, and Class Counsel shall provide the Independent Fiduciary with sufficient information so that the Independent Fiduciary can review the Settlement Agreement.

3.1.5 Within fifteen (15) calendar days of receipt of the notification from the Independent Fiduciary, the Plan Fiduciary shall (a) review the determination by the Independent Fiduciary, (b) conclude whether the Independent Fiduciary has made the determinations required by the PTE, and (c) notify Class Counsel and Defense Counsel in writing of its conclusion in that regard.

3.2 Class Representatives, through Class Counsel, shall file with the Court motions seeking preliminary approval of this Settlement Agreement, class certification for settlement purposes only, and for entry of the Preliminary Order in substantially the form attached hereto as Exhibit 2. Defendants will promptly thereafter file a statement of non-opposition to these motions. The Preliminary Order to be presented to the Court, as to the Class Action, shall, among other things:

3.2.1 Grant the motion to certify the class for settlement purposes only;

- 3.2.2** Approve the text of the Settlement Notice and Former Participant Claim Form for mailing to Class Members and Former Participants identified by the Settlement Administrator to notify them (1) of the Fairness Hearing and (2) that notice of changes to the Settlement Agreement, future orders regarding the Settlement, modifications to the Class Notice, changes in the date or timing of the Fairness Hearing, or other modifications to the Settlement, including the Plan of Allocation, may be provided to the Class through the Settlement Website without requiring additional mailed notice;
- 3.2.3** Determine that pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, the Settlement Notices constitute the best notice practicable under the circumstances, provide due and sufficient notice of the Fairness Hearing and of the rights of all Class Members, and comply fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable law;
- 3.2.4** Cause the Settlement Administrator to mail by first class mail the Settlement Notice to each Class Member identified by the Settlement Administrator and the Former Participant Claim Form to each Former Participant identified by the Settlement Administrator based upon the data provided by the Plans' recordkeeper;
- 3.2.5** Provide that, pending final determination of whether the Settlement Agreement should be approved, no Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against the Defendants, the Released Parties, or the Plans;
- 3.2.6** Set the Fairness Hearing for no sooner than one hundred twenty (120) calendar days after the date the Motion for Entry of the Preliminary Order is filed, in order to determine whether (i) the Court should approve the Settlement as fair, reasonable, and adequate, (ii) the Court should enter the Final Order, and (iii) the Court should approve the application for Attorneys' Fees and Costs, Class Representatives' Compensation, Administrative Expenses incurred to date, and a reserve for anticipated future Administrative Expenses;
- 3.2.7** Provide that any objections to any aspect of the Settlement Agreement shall be heard, and any papers submitted in support of said objections shall be considered, by the Court at the Fairness Hearing if they have been filed validly with the Clerk of the Court and copies provided to Class Counsel and Defense Counsel. To be filed validly, the objection and any notice of intent to appear or supporting documents must be filed at least thirty (30) days prior to the scheduled Final Approval Hearing. Any person wishing to speak at the Fairness Hearing shall file and serve a notice of intent to appear within the time limitation set forth above;

- 3.2.8** Provide that the Settling Parties may, but are not required to, serve discovery requests, including requests for documents and notices of deposition not to exceed two (2) hours in length, on any objector within ten (10) days of receipt of the objection and that any responses to discovery or depositions must be completed within ten (10) days of the discovery request being served on the objector;
- 3.2.9** Provide that any party may file a response to an objection by a Class Member at least ten (10) days before the Fairness Hearing;
- 3.2.10** Set a deadline of no later than the date of the Fairness Hearing by which each Former Participant must file a Former Participant Claim Form with the Settlement Administrator in order to be considered for a distribution pursuant to the Plan of Allocation; and
- 3.2.11** Provide that the Fairness Hearing may, without further direct notice to the Class Members, other than by notice to Class Counsel, be adjourned or continued by order of the Court.
- 3.3** Defense Counsel shall respond timely to written requests, including by e-mail, from the Settlement Administrator for readily accessible data that are reasonably necessary to determine the feasibility of administering the Plan of Allocation or to implement the Plan of Allocation. The actual and reasonable expenses of any third party, including the Plans' recordkeeper, that are necessary to perform such work shall be Administrative Expenses to be deducted from the Gross Settlement Amount.
- 3.3.1** The Settlement Administrator shall be bound by the Confidentiality Order and any further non-disclosure or security protocol required by the Settling Parties.
- 3.3.2** The Settlement Administrator shall use the data provided by Defendants and the Plans' recordkeeper solely for the purpose of meeting its obligations as Settlement Administrator, and for no other purpose.
- 3.3.3** The Settling Parties shall have the right to approve a written protocol to be provided by the Settlement Administrator concerning how the Settlement Administrator will maintain and store information provided to it in order to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of such information.
- 3.4** By the date and in the manner set by the Court in the Preliminary Order, and unless otherwise set forth below, the Settlement Administrator shall:
- 3.4.1** Cause to be mailed to each Class Member identified by the Settlement Administrator a Settlement Notice in the form and manner to be approved by the Court, which shall be in substantially the form attached hereto as Exhibits 3 and 4 or a form subsequently agreed to by the Settling Parties

and the Court. The Settlement Notice shall be sent by first-class mail, postage prepaid, to the last known address of each Class Member provided by the the Plans' recordkeeper (or its designee) through Defense Counsel, unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided by the Plans' recordkeeper (or its designee). Class Counsel also shall post a copy of the Settlement Notice on the Settlement Website. The Settlement Administrator shall use commercially reasonable efforts to locate any Class Member whose Settlement Notice is returned and re-mail such documents one additional time.

- 3.4.2** Cause the Former Participant Claim Form, which shall be in substantially the form attached as Exhibit 1, or a form subsequently agreed to by the Settling Parties and the Court, to be included with the Settlement Notice that is mailed to the Former Participants.
- 3.4.3** Have prepared and provided CAFA notices to the Attorney General of the United States, the Secretary of the Department of Labor, and the Attorneys General of all states in which members of the Class reside, as specified by 28 U.S.C. § 1715, within ten (10) calendar days of Class Representatives' filing of the Settlement Agreement and proposed Preliminary Order. Subject to Court approval, the costs of such notice shall be paid from the Qualified Settlement Fund and shall be considered Administrative Expenses.

4. Article 4 – Final Settlement Approval

- 4.1** No later than ten (10) business days before the Fairness Hearing, Class Counsel and Defense Counsel shall submit to the Court a mutually agreed upon motion for entry of the Final Order (Exhibit 5), which shall request approval by the Court of the terms of this Settlement Agreement and entry of the Final Order in accordance with this Settlement Agreement. The Final Order as proposed by the Settling Parties shall provide for the following, among other things, as is necessary to carry out the Settlement consistent with applicable law and governing Plan documents:
 - 4.1.1** For approval of the Settlement of the Released Claims covered by this Settlement Agreement adjudging the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Plans and the Class Members and directing the Settling Parties to take the necessary steps to effectuate the terms of the Settlement Agreement;
 - 4.1.2** For a determination pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure that the Settlement Notice constitutes the best notice practicable under the circumstances and that due and sufficient notice of the Fairness Hearing and the rights of all Class Members has been provided;

- 4.1.3** For dismissal with prejudice of the Class Action and all Released Claims asserted therein whether asserted by Class Representatives on their own behalf or on behalf of the Class Members, or derivatively to secure relief for the Plans, without costs to any of the Settling Parties other than as provided for in this Settlement Agreement, except for retention of jurisdiction to enforce Article 8 of the Settlement Agreement;
- 4.1.4** That each Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns, shall be (i) conclusively deemed to have, and by operation of the Final Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants, the Plans, and the Released Parties from all Released Claims, and (ii) barred from suing Defendants, the Plans, or the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Members or Class Counsel now know or believe to be true with respect to the Class Action and the Released Claims, whether or not such Class Members have executed and delivered a Former Participant Claim Form, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed;
- 4.1.5** That the Plans and each Class Member (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) on behalf of the Plans shall be (i) conclusively deemed to have, and by operation of the Final Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants and the Released Parties from all Released Claims, and (ii) barred from suing Defendants or the Released Parties in any action or proceeding alleging any of the Released Claims, even if the Plans or any Class Member on behalf of the Plans may thereafter discover facts in addition to or different from those which the Plans or any Class Member now knows or believes to be true with respect to the Class Action and the Released Claims;
- 4.1.6** That each Class Member shall release Defendants, Defense Counsel, Class Counsel, the Released Parties, and the Plans for any claims, liabilities, and attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses;
- 4.1.7** That all applicable CAFA requirements have been satisfied;

- 4.1.8** That the Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant and each Authorized Former Participant pursuant to the Plan of Allocation approved by the Court;
- 4.1.9** That, with respect to payments or distributions to Authorized Former Participants, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its sole and exclusive discretion;
- 4.1.10** That, with respect to any matters that arise concerning the implementation of distributions to Current Participants (after allocation decisions have been made by the Settlement Administrator in its sole discretion), all questions not resolved by the Settlement Agreement shall be resolved by the Plan Fiduciary pursuant to the applicable law and governing terms of the Plans; and
- 4.1.11** That within twenty-one (21) calendar days following the issuance of all settlement payments to Class Members as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who received a settlement payment or contribution from the Qualified Settlement Fund and the amount of such payment or contribution.

4.2 The final order and judgment entered by the Court approving the Settlement Agreement shall provide that upon its entry all Settling Parties, the Settlement Class, and the Plans shall be bound by the Settlement Agreement and by the final order.

5. Article 5 – Establishment of Qualified Settlement Fund

5.1 No later than three (3) business days after entry of the Preliminary Order, the Escrow Agent shall establish an escrow account. The Settling Parties agree that the escrow account is intended to be, and will be, an interest-bearing Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent timely shall make such elections as necessary or advisable to carry out the provisions of this Paragraph 5.1, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

5.2 For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow

Agent. The Escrow Agent, or the Settlement Administrator on its behalf, shall timely and properly cause to be filed all informational and other tax returns necessary or advisable with respect to the Gross Settlement Amount (including without limitation applying for a Taxpayer Identification Number for the Fund and filing the returns described in Treas. Reg. § 1.468B-2(k)). Such returns as well as the election described in Paragraph 5.1 shall be consistent with this Article 5 and, in all events, shall reflect that all taxes (as defined in Paragraph 5.3 below) (including any estimated taxes, interest, or penalties) on the income earned by the Gross Settlement Amount shall be deducted and paid from the Gross Settlement Amount as provided in Paragraph 5.3 hereof.

- 5.3** Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Gross Settlement Amount, including but not limited to: (1) all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Gross Settlement Amount, including any taxes or tax detriments that may be imposed upon Defendants or Defense Counsel with respect to any income earned by the Gross Settlement Amount for any period during which the Gross Settlement Amount does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (2) all tax expenses and costs incurred in connection with the operation and implementation of this Article 5 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Article 5). Such taxes and tax expenses shall be Administrative Expenses and shall be paid timely by the Escrow Agent out of the Gross Settlement Amount without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any Class Member any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Defendants, Defense Counsel, nor Class Counsel are responsible nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Article 5.
- 5.4** Within five (5) business days after the later of (a) the Preliminary Order is entered, or (b) the escrow account described in Paragraph 5.1 is established and the Escrow Agent shall have furnished to Defendants in writing the escrow account name, IRS W-9 Form, and all necessary wiring instructions, Defendants, or their agents or insurers, will deposit the Gross Settlement Amount, thirty-two million dollars (\$32,000,000), into the Qualified Settlement Fund.
- 5.5** The Escrow Agent shall, at the written direction of Class Counsel, invest the Qualified Settlement Fund in short-term United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof, and shall reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates.

- 5.6** The Escrow Agent shall not disburse the Qualified Settlement Fund or any portion except as provided in this Settlement Agreement, in an order of the Court, or in a subsequent written stipulation between Class Counsel and Defense Counsel. Subject to the orders of the Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement.
- 5.7** Within one-hundred twenty (120) calendar days after the Settlement Effective Date, the Gross Settlement Amount will be distributed from the Qualified Settlement Fund as follows: (a) first, all Attorneys' Fees and costs shall be paid to Class Counsel within three (3) business days after the Settlement Effective Date; (b) second, all Administrative Expenses not paid previously shall be paid within five (5) business days after the Settlement Effective Date; (c) third, any Class Representatives' Compensation ordered by the Court shall be paid within five (5) business days after the Settlement Effective Date; (d) fourth, a contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties shall be set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the Settlement Period, (3) an amount estimated for adjustments of data or calculation errors; and (d) fourth, the Net Settlement Amount will be distributed pursuant to the Plan of Allocation. Pending final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Qualified Settlement Fund.
- 5.8** The Escrow Agent, or the Settlement Administrator on its behalf, shall be responsible for making provision for the payment from the Qualified Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. Defendants, Defense Counsel, and/or Class Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.
- 5.9** No later than February 15 of the year following the calendar year in which Defendants, their insurers, or agents make a transfer to the Qualified Settlement Fund pursuant to the terms of this Article 5, Defendants, their insurers, or agents shall timely furnish a statement to the Escrow Agent, or the Settlement Administrator on its behalf, that complies with Treas. Reg. § 1.468B-3(e)(2), which may be a combined statement under Treas. Reg. § 1.468B3(e)(2)(ii), and shall attach a copy of the statement to their federal income tax returns filed for the taxable year in which Defendants, their insurers, or agents make a transfer to the Qualified Settlement Fund.

6. Article 6 – Plan of Allocation

- 6.1** After the Settlement Effective Date, the Settlement Administrator shall cause the Net Settlement Amount to be allocated and distributed to the Authorized Former

Participants and those Current Participants covered by Paragraphs 6.6 and 6.7 below, and to the Plans for distribution to the Current Participants in accordance with the Plan of Allocation set forth in this Article 6 and as ordered by the Court.

6.2 To be eligible for a distribution from the Net Settlement Amount, a person must be a Current Participant or an Authorized Former Participant, Beneficiary, or Alternate Payee of such a person. Current Participants shall receive their settlement payments as contributions to their Plan account(s), except as provided in Paragraphs 6.6 and 6.7 below. Authorized Former Participants shall receive their settlement payments in the form of checks, as provided in Paragraph 6.8 below.

6.3 Beneficiaries will receive checks as described in this Article 6 in amounts corresponding to their entitlement as beneficiaries of the Current Participant or of the Authorized Former Participant with respect to which the payment is made. Alternate Payees will receive checks if and to the extent they are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under this Article 6 pursuant to the terms of the applicable Qualified Domestic Relations Order. The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation set forth in this Article 6 and as ordered by the Court.

6.4 **Calculation of Settlement Payments.** Payments to Authorized Former Participants and Current Participants shall be calculated by the Settlement Administrator pursuant to the Plan of Allocation as follows:

6.4.1 For each Authorized Former Participant and Current Participant, the Settlement Administrator shall determine a Modified Average Account Balance, as follows:

- First, each participant's average, aggregate quarter-ending balance across all of his or her accounts in the Plans shall be determined for two separate periods: (1) March 31, 2008 through September 30, 2015 (the "Period 1 Average"); and (2) December 31, 1998 through December 31, 2007 (the "Period 2 Average").
- Second, the Period 1 Average shall be multiplied by 4 to determine the Modified Period 1 Average.
- Third, the Modified Period 1 Average shall be combined with the Period 2 Average and the total divided by 2, to determine the participant's Modified Average Account Balance.

6.4.2 The Settlement Administrator shall determine the total settlement payment available to each Authorized Former Participant and Current Participant by calculating each such participant's pro-rata share of the Net Settlement fund based on his or her Modified Average Account Balance.

Further, to the extent a participant has more than one account in the Plans, the Settlement Administrator shall calculate the proportionate share of the total settlement distribution available to the participant (rounded to the nearest dollar or smaller increment, as determined by the Settlement Administrator) that shall be allocated to each of the participant's accounts, based upon the most recent quarter-ending balance in each such account. To illustrate, if the total settlement distribution available to a Current Participant is \$1,000, and that Current Participant has two Active Accounts with quarter-ending balances of \$100,000 (account 1) and \$50,000 (account 2), then the proportionate share to be contributed to accounts 1 and 2 would be \$667.00 and \$333.00, respectively.

6.4.3 The Settlement Administrator shall utilize the calculations required to be performed herein for (a) making the required payments to Authorized Former Participants and Current Participants under Paragraphs 6.6 and 6.7 of the Settlement Agreement; and (b) instructing Defendants as to the amounts to be distributed to the Current Participants under Paragraph 6.5 of the Settlement Agreement and calculating the total amount to deposit into each Current Participant's Active Account(s) to fulfill this instruction.

6.4.4 Unless the Settling Parties agree in writing, the total amount of all checks to be written by the Settlement Administrator plus the total amount of all credits that Defendants are instructed to make to Current Participants may not exceed the Net Settlement Amount. Nothing in this Paragraph 6.4.4 is intended to modify the requirements of Paragraph 6.9 below. In the event that the Settlement Administrator determines that the Plan of Allocation would otherwise require payments exceeding the Net Settlement Amount, the Settlement Administrator is authorized to make such changes as are necessary to the Plan of Allocation such that said totals do not exceed the Net Settlement Amount.

6.5 **Payments to Current Participants Generally.** Current Participants will not be required to submit a Former Participant Claim Form to receive a settlement payment. The Settlement Administrator shall complete all payment calculations for all Current Participants and Authorized Former Participants within thirty (30) business days after the Settlement Effective Date.

6.5.1 Within two (2) business days after the Settlement Administrator has completed all payment calculations for all Current Participants, the Settlement Administrator will provide Novant (or its designee) with an Excel spreadsheet containing the name, Social Security number, and the amount of the settlement payment to be made into the Active Account(s) for each of the Current Participants, except with respect to payments associated with Active Accounts in the 457(f) Plan, which will be paid by check as set forth in Paragraph 6.6.

- 6.5.2** Thereafter, within ten (10) business days' written notice to Novant (or its designee), the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund to the Plans' trustee of the aggregate amount of all settlement payments payable to Current Participants, as reflected in the spreadsheet provided by the Settlement Administrator. Novant (or its designee) shall direct the Plans' trustee to credit the individual Active Account(s) of each Current Participant in an amount equal to that stated on the spreadsheet provided by the Settlement Administrator in relation to such Current Participant.
- 6.5.3** The settlement payment for each Current Participant will be invested in accordance with and proportionate to such Current Participant's investment elections then on file. If there is no investment election on file for any Current Participant, then such Current Participant shall be deemed to have directed such payment to be invested in the relevant Plan's "Qualified Default Investment Alternative," as defined in 29 C.F.R. § 2550.404c-5.
- 6.5.4** The settlement payments into Active Accounts associated with the Retirement Plus Plan, the Franklin/Upstate 401(k) Plan, the Lakeside/Q-Neck 401(k) Plan, and the Presbyterian Women's Care Corp. 401(k) Plan will be reflected as additional earnings.
- 6.5.5** The settlement payments into Active Accounts associated with the 457(b) Plan will be reflected as vested, additional earnings.
- 6.5.6** The Plans' recordkeeper shall process all Current Participant transactions within thirty (30) calendar days of receiving direction from Novant (or its designee) for any Current Participant.
- 6.5.7** The Plans may be amended, to the extent necessary, to reflect the settlement allocation to Current Participants' Active Account(s) in accordance with this Article 6.

- 6.6 Payments to Current Participants with an Active Account in the 457(f) Plan.** For each Current Participant entitled to a settlement payment allocable to his or her Active Account in the 457(f) Plan, the Settlement Administrator shall issue a single check from the Qualified Settlement Fund and mail it to the address of the Current Participant then on file with the recordkeeper for the Plans. The Settlement Administrator shall: (i) calculate and withhold any applicable taxes associated with the payments allocable to the Current Participant's 457(f) account; (ii) report such payments and remit such tax withholdings and employer-tax payments to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to the Current Participants.
- 6.7 Payments to Current Participants with accounts that are not Active Accounts.** For each Current Participant entitled to a settlement payment allocable to a Plan

account that is not an Active Account as of September 30, 2015, the Settlement Administrator shall issue a check or checks from the Qualified Settlement Fund and mail the check or checks to the address of the Current Participant then on file with the recordkeeper for those Plans. The checks shall be issued as follows:

- 6.7.1** A single check shall be issued for total settlement payments allocable to the Current Participant's inactive accounts in the Retirement Plus Plan, the Franklin/Upstate 401(k) Plan, the Presbyterian Women's Care Corp. 401(k) Plan, and/or the Lakeside/Q-Neck 401(k) Plan (the "Qualified Plans").
- 6.7.2** A separate, single check shall be issued for total settlement payments allocable to the Current Participant's inactive account in the 457(b) Plan;
- 6.7.3** A separate, single check shall be issued for total settlement payments allocable to the Current Participant's inactive account in the 457(f) Plan.
- 6.7.4** For each check issued, the Settlement Administrator shall (i) calculate and withhold any applicable taxes associated with the payments allocable to the Current Participant; (ii) report such payments and remit such tax withholdings (and, with respect to payments allocable to the 457(f) Plan, remit any employer-tax payments) to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to the Current Participant.
- 6.7.5** For settlement payments allocable to inactive accounts in the Qualified Plans, the Settlement Administrator shall advise the Current Participant that any distribution pursuant to the Settlement is rollover eligible and of their right to rollover such an amount, and shall follow proper rollover instructions provided by the Current Participant.
- 6.7.6** Settlement payments that cannot be made by the Plans' trustee within thirty (30) calendar days of receiving direction from Novant (or its designee), as described in Paragraph 6.5, because the Current Participant no longer has an Active Account in one or more of the Plans shall be returned by the Plans' trustee to the Settlement Administrator for distribution pursuant to this Paragraph 6.7 within ten (10) calendar days thereafter.

- 6.8** **Payments to Authorized Former Participants.** For each Authorized Former Participant, the Settlement Administrator will issue a check or checks from the Qualified Settlement Fund and mail the check or checks to the address of such Authorized Former Participant listed in his or her Former Participant Claim Form or, in the case of ambiguity or uncertainty, to the address of such person as determined by the Settlement Administrator using commercially reasonable means. The checks shall be issued as follows:

- 6.8.1** A single check shall be issued for total settlement payments allocable to the Authorized Former Participant's accounts in the "Qualified Plans."
- 6.8.2** A separate, single check shall be issued for total settlement payments allocable to the Authorized Former Participant's account in the 457(b) Plan;
- 6.8.3** A separate, single check shall be issued for total settlement payments allocable to the Authorized Former Participant's account in the 457(f) Plan.
- 6.8.4** For each check issued, the Settlement Administrator shall (i) calculate and withhold any applicable taxes associated with the payments allocable to the Authorized Former Participant; (ii) report such payments and remit such tax withholdings (and, with respect to payments allocable to the 457(f) Plan, remit any employer-tax payments) to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to the Authorized Former Participants.
- 6.8.5** For settlement payments allocable to accounts in the Qualified Plans, the Settlement Administrator shall advise the Authorized Former Participant that any distribution pursuant to the Settlement is rollover eligible and of their right to rollover such an amount, and shall follow proper rollover instructions provided by the Authorized Former Participant.

6.9 This Plan of Allocation is based upon preliminary data regarding the Class Members who may be entitled to settlement payments. If the Settlement Administrator concludes that it is impracticable to implement any provision of this Plan of Allocation, the Settling Parties will modify promptly the terms of this Plan of Allocation and present such modified terms, first, to the Independent Fiduciary for its review and approval and, second, to the Court for its approval. Direct mailed notice to Class Members of such proposed modification of the Plan of Allocation shall not be required. However, notice of such proposed modification shall be posted on the Settlement Website within five (5) business days of the date that the proposed modification is submitted to the Court for its approval. If the proposed modification is implemented, notice of such modification shall be posted on the Settlement Website within five (5) business days of the date that the modification was implemented.

The Settlement Administrator shall be solely responsible for performing any calculations required by this Plan of Allocation.

6.10 Within ten (10) business days of completing all aspects of this Plan of Allocation, the Settlement Administrator shall send to Class Counsel, Defense Counsel, and Defendants one or more affidavits stating the following: (a) the name of each Class Member to whom the Settlement Administrator sent the Settlement Notice or the Former Participant Claim Form, and the address of such mailing; (b) the date(s)

upon which the Settlement Administrator sent the Settlement Notice or the Former Participant Claim Form; (c) the name of each Class Member whose Settlement Notice or Former Participant Claim Form was returned as undeliverable; (d) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice or Former Participant Claim Form for each such Class Member; and (e) the name of each Class Member to whom the Settlement Administrator made a distribution from the Net Settlement Amount, together with the amount of the distribution, the name of the payee, the date of distribution, the amount of tax withholdings, if applicable, and the date of remittance of tax withholdings to the appropriate tax authority, if applicable.

- 6.11** The Settling Parties acknowledge that any payments to Class Members or their attorneys may be subject to applicable tax laws. Defendants, Defense Counsel, Class Counsel, and Class Representatives will provide no tax advice to the Class Members and make no representation regarding the tax consequences of any of the settlement payments described in this Settlement Agreement. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement. Payments from the Qualified Settlement Fund shall not be treated as wages by the Settling Parties, with the exception of settlement payments allocable to the 457(f) Plan.
- 6.12** Each Class Member who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class Member shall hold Defendants, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold Defendants, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.
- 6.13** All checks issued pursuant to this Plan of Allocation shall expire no later than one hundred twenty (120) calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date shall revert to the Qualified Settlement Fund.
- 6.14** No sooner than thirty (30) calendar days following the end of the Settlement Period, any Net Settlement Amount remaining in the Qualified Settlement Fund after distributions, including costs and taxes, shall be paid to the Plans for the purpose of defraying administrative fees and expenses of the Plans that would otherwise be charged to the Plans' participants. In no event shall any part of the Settlement Fund be used to reimburse any Defendant or otherwise offset settlement related costs incurred by any Defendant.

7. Article 7 – Attorneys’ Fees and Costs

7.1 Class Counsel will seek to recover their attorneys’ fees not to exceed \$10,666,666, and litigation costs and expenses advanced and carried by Class Counsel for the duration of this litigation, not to exceed \$95,000.00, which shall be recovered from the Gross Settlement Amount.

7.2 Class Counsel will file a motion for an award of Attorneys’ Fees and Costs at least thirty (30) days before the deadline set in the Preliminary Order for objections to the proposed settlement, which may be supplemented thereafter. Defendants will take no position with the Court regarding Class Counsel’s request for Attorneys’ Fees and Costs, to the extent it does not exceed the amounts set forth in Article 7, and shall take no position with the Court regarding any request for Class Representatives’ Compensation that does not exceed \$25,000 per Class Representative.

8. Article 8 – Release and Covenant Not to Sue

8.1 As of the Settlement Effective Date, the Plans (subject to Independent Fiduciary approval as required by Paragraph 3.1) and the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants, the Plans, and all Released Parties from the Released Claims, whether or not such Class Members have executed and delivered a Former Participant Claim Form, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys’ Fees and Costs, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

8.2 As of the Settlement Effective Date, the Class Members and the Plans (subject to Independent Fiduciary approval as required by Paragraph 3.1), expressly agree that they, acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement pursuant to the procedures set forth in this Settlement Agreement.

8.3 Class Counsel, the Class Members, or the Plans, may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with Defendants, the Plans, and the Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement. Notwithstanding the

foregoing, each Class Member and the Plans shall expressly, upon the entry of the Final Order, be deemed to have, and by operation of the Final Order, shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims. The Class Members and the Plans acknowledge and shall be deemed by operation of the Final Order to have acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in this Settlement Agreement of which this release is a part.

- 8.4** Each Class Member and the Plans hereby stipulate and agree with respect to any and all Released Claims that, upon entry of the Final Order, the Class Members shall be conclusively deemed to, and by operation of the Final Order shall, settle, release, relinquish, waive and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims pertaining specifically to Section 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.

Also, the Class Members with respect to the Released Claims shall, upon entry of the Final Order, waive any and all provisions, rights and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

9. Article 9 – Representations and Warranties

- 9.1** The Settling Parties represent:

- 9.1.1** That they are voluntarily entering into this Settlement Agreement as a result of arm's length negotiations among their counsel, and that in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and upon 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 that relate in any way to the subject matter hereof;
- 9.1.2** That they assume the risk of mistake as to facts or law;
- 9.1.3** That they recognize that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement;
- 9.1.4** That they have read carefully the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each individual

executing this Settlement Agreement on behalf of each of the Settling Parties; and

9.1.5 That they have made such investigation of the facts pertaining to the Settlement and all matters pertaining thereto, as they deem necessary.

9.2 Each individual executing this Settlement Agreement on behalf of a Settling Party does hereby personally represent and warrant to the other Settling Parties that he/she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal that each such individual represents or purports to represent.

10. Article 10 – Additional Terms

10.1 Defendants agree to comply with the Additional Terms set forth in this Article 10 for the duration of the Settlement Period, unless another period is specified.

10.2 Within 90 days after Final Approval, and for the remainder of the Settlement Period, Novant and the Plan Fiduciary shall not knowingly permit and shall use their best efforts to ensure that Derrick L. Davis, DL Davis & Company and any of its current or former employees since January 1, 1998, any non-publicly traded entity wholly or partially owned by Derrick L. Davis, any member of Derrick L. Davis' immediate family, and Ron Warden (herein collectively referred to as "Davis") do not have any involvement with the Plans or any other defined contribution retirement plan provided or offered by Novant or any employer within the Novant Health System.

Within 90 days after Final Approval, Novant shall initiate the process of terminating its relationship with Davis related to Novant's other benefit plans including its defined benefits plans and any other (non-retirement) employee benefit plan. In any event, and beginning no later than January 1, 2017, and continuing for four years thereafter until January 1, 2021, Novant and the Plan Fiduciary or other relevant fiduciary of Novant's benefit plans shall not knowingly permit and shall use their best efforts to ensure that Davis does not have any involvement with any defined benefit retirement plan or any other (non-retirement) employee benefit plan provided or offered by Novant or any employer within the Novant Health System.

The prohibitions in this paragraph 10.2 include the prohibition of Davis receiving any remuneration, payment, or any other benefit as a result of any employee retirement plan or (non-retirement) employee benefit plan provided or offered by Novant or any employer within the Novant Health System.

The prohibitions in this Paragraph 10.2 shall not preclude payments or other benefits to any individual other than Derrick L. Davis who becomes entitled to such payments or benefits only by virtue of their status as a participant or beneficiary under an employee benefit plan provided or offered by Novant or any employer within the Novant Health System.

10.3 During the Settlement Period, Novant shall not enter into any new real estate or business relationships with Derrick L. Davis or DL Davis & Company. In addition, Novant shall not knowingly permit and shall use its best efforts to ensure that it does not enter into any such relationships with any non-publicly traded entity wholly or partially owned by (1) Derrick L. Davis, (2) any member of Derrick L. Davis' immediate family, or (3) Ron Warden. For the purposes of this paragraph 10.3, Derrick L. Davis, DL Davis & Company, and any non-publicly traded entity wholly or partially owned by Derrick L. Davis, any member of Derrick L. Davis' immediate family, or Ron Warden are herein collectively referred to as "DLD".

This paragraph 10.3 shall not preclude Novant from (1) extending existing real estate or business relationship agreements involving DLD during the Settlement Period, where such extension is available as a matter of contractual right to Novant under the terms of the underlying agreement(s) as originally executed, (2) purchasing the real estate or other property that is the subject of such agreement(s) for an appropriate fair market value as determined by an independent appraiser, or (3) taking such other action with respect to an existing agreement involving DLD as is necessary to unwind or otherwise extinguish the parties' continuing obligations under such business or real estate agreement.

Paragraphs 10.2 and 10.3 shall not apply to (1) life insurance policies owned by Novant, or for which Novant pays associated premiums, and for which Davis or DLD served as an agent or broker; (2) individual whole life insurance policies purchased by Novant employees, or for which Novant pays associated premiums, and for which Davis or DLD served as an agent or Broker; or (3) individual disability wrap insurance policies purchased by Novant employees, or for which Novant pays associated premiums, and for which Davis or DLD served as an agent or broker.

10.4 Within nine months after Final Approval and for the remainder of the Settlement Period, Novant and the Plan Fiduciary shall not offer any fund or investment provided by Mass Mutual and shall not knowingly permit and shall use their best efforts to ensure that no other fund or investment from any other company is included in the Plans that provide Davis any form of remuneration, payment, or any other benefit.

10.5 At the end of the first, second, third, and fourth year of the Settlement Period, the Independent Consultant shall (1) audit and benchmark the Plans' existing investment options and recordkeeping fees and services; and (2) review a list of the Plans' existing service providers along with the compensation paid to those providers. Novant or the Plan Fiduciary shall provide upon request all plan-related materials needed to facilitate the Independent Consultant's annual review.

Within thirty days after its review, the Independent Consultant will report to the Independent Fiduciary, Class Counsel, Novant, and the Plan Fiduciary with a written assessment of (a) the investment options and recordkeeping fees and services; and (b) the Defendants' compliance with Article 10 of the Settlement

Agreement. The Independent Consultant, in its discretion, also may provide written recommendations regarding the Plans' investment options and/or recordkeeping fees and services as part of its annual report to the Independent Fiduciary and the Plan Fiduciary. Within 60 days after receiving the Independent Consultant's report, the Plan Fiduciary will respond to the Independent Consultant's observations or recommendations, including any plan of action. Copies of the Plan Fiduciary's response will be sent to the Independent Fiduciary, who will determine whether there is compliance with Article 10 of the Settlement Agreement, and Class Counsel.

The Settling Parties agree that the costs of the Independent Consultant's activities described in this paragraph are administrative expenses properly paid for, or reimbursed to Novant, by the Plans under applicable law.

- 10.6** The Settling Parties acknowledge that the Plan Fiduciary recently completed an RFP bidding process for education, recordkeeping, and investment consulting services related to the Plans. To advise in conducting this RFP process, the Plan Fiduciary, on behalf of the Plans, retained Plan Sponsor Advisors. All three RFPs sought and obtained proposals from at least three prospective vendors. For the recordkeeping RFP, at least three of the prospective vendors currently provide services to 401(k) plans with assets exceeding \$2 billion.

The Independent Consultant (1) reviewed all of the vendor proposals submitted during the RFP process; (2) provided recommendations arising from its review for consideration by the Plan Fiduciary prior to the Plan Fiduciary's decisions on which vendors to retain; (3) approved the RFP process conducted; and (4) reviewed the vendor selection decisions made by the Plan Fiduciary. Class Counsel was apprised and the Independent Fiduciary will be apprised by the Independent Consultant, in writing, of its review, recommendations, and approval of the RFP process and review of the Plan Fiduciary's vendor-selection decisions.

Within six months after Final Approval, the Plan Fiduciary shall transition all education, recordkeeping, and investment consulting services to the Approved Service Providers retained by the Plan Fiduciary on behalf of the Plans, based on the RFP process described above.

Within three months after the Plans are transitioned to the selected investment consultant, the Plan Fiduciary shall review all investment options then offered in the Plans. In considering new/replacement options, the Plan Fiduciary, with the assistance of the investment consultant to the Plans, shall consider, without limitation, (1) the lowest-cost share class available for any particular mutual fund considered for inclusion in the Plans; (2) collective trusts and separate account investments, to the extent such investments are permissible under IRC § 403(b); and (3) passively managed funds for each category or fund offering that will be made available under the Plans. For any style or class of investment, the investment consultant to the Plans shall provide the Plan Fiduciary with at least three finalists to consider in making its selection.

A copy of the investment consultant's report or reports provided to the Plan Fiduciary as part of the above review, including the identities of the recommended finalists, their fees, and their performance histories, shall also be provided to the Independent Consultant. Within fourteen days after receiving the report(s), the Independent Consultant shall notify the investment consultant, Class Counsel, Novant, the Plan Fiduciary, and the Independent Fiduciary in writing if it determines that (1) the investment consultant's report(s) is materially flawed or (2) its investment-finalists recommendations are inconsistent with industry practice.

The Settling Parties agree that the costs of the Independent Consultant's activities described in this subsection are administrative expenses properly paid for, or reimbursed to Novant, by the Plans under applicable law.

- 10.7** To the extent any RFPs for recordkeeping, education, or investment consulting services with respect to the Plans are commenced during the Settlement Period, the Independent Consultant shall review the RFP in advance of its issuance. To facilitate such review, Novant or the Plan Fiduciary shall provide the RFP to the Independent Consultant no less than 14 days before the RFP's intended date of issuance. If the Independent Consultant disapproves of the RFP, it must notify Novant, the Plan Fiduciary, Class Counsel, and the Independent Fiduciary in writing of such disapproval no less than 7 days before the RFP's intended date of issuance. The Independent Consultant's written disapproval shall contain recommendations meant to address or correct those concerns for the Plan Fiduciary's consideration. Within 14 days after receiving the Independent Consultant's report, the Plan Fiduciary will respond to the Independent Consultant's observations or recommendations, including any plan of action. Copies of the Plan Fiduciary's response will be sent to the Independent Fiduciary, who will determine whether there is compliance with the Settlement Agreement, and Class Counsel.

In addition, Novant or the Plan Fiduciary shall provide all RFP responses received during the Settlement Period to the Independent Consultant. Upon request, Novant or the Plan Fiduciary also shall provide to the Independent Consultant all RFP related materials needed to facilitate the Independent Consultant's review of the RFP responses. Within fourteen days after receiving the RFP responses, the Independent Consultant shall have the authority, in its discretion, to provide recommendations arising from its review of the RFP responses to Novant and the Plan Fiduciary. Class Counsel and the Independent Fiduciary shall receive a copy, if any, of the Independent Consultant's recommendations. Within 14 days after receiving the Independent Consultant's report, the Plan Fiduciary will respond to the Independent Consultant's observations or recommendations, including any plan of action. Copies of the Plan Fiduciary's response will be sent to the Independent Fiduciary, who will determine whether there is compliance with the Settlement Agreement, and Class Counsel.

Novant or the Plan Fiduciary shall notify the Independent Consultant of the anticipated selection of any vendor arising from the RFP process and the

Independent Consultant shall, within seven days thereafter, notify Novant and the Plan Fiduciary if it disapproves the anticipated vendor selection(s), identifying in writing the specific reasons for such disapproval. A copy of any such notification shall be provided to the Independent Fiduciary and Class Counsel. Within 14 days after receiving the Independent Consultant's report, the Plan Fiduciary will respond to the Independent Consultant's observations or recommendations, including any plan of action. Copies of the Plan Fiduciary's response will be sent to the Independent Fiduciary, who will determine whether there is compliance with the Settlement Agreement, and Class Counsel.

The Settling Parties agree that the costs of the Independent Consultant's activities described in this subsection are administrative expenses properly paid for (or reimbursed to Novant) by the Plans under applicable law.

- 10.8** Novant shall receive no compensation for services provided to the Plans. Nothing in this paragraph prevents or prohibits Novant from seeking or obtaining reimbursement from the Plans for costs incurred by Novant on behalf of the Plans to the extent such costs would be appropriately charged to the Plans under applicable law.
- 10.9** Fees paid to the Plans' recordkeeper will not be set or determined on a percentage-of-plan-assets basis. Nothing in this paragraph shall dictate how fees paid to the Plans' recordkeeper shall be allocated among the Plans' participants.
- 10.10** The Plan Fiduciary, on behalf of the Plans, will continue to contract with the Plans' recordkeeper to obtain participant statements that comply with all applicable DOL participant-disclosure regulations.
- 10.11** Novant or the Plan Fiduciary shall provide accurate participant communications throughout the Settlement Period and shall submit generic participant communications intended for all of the Plans' participants to the Independent Consultant for review before dissemination to participants. Within 14 days of receipt of such communications, the Independent Consultant shall notify the Plan Fiduciary in writing of any suggested changes, edits, or concerns regarding the communications. The Settling Parties agree that the costs of the Independent Consultant's review activities described in this paragraph are administrative expenses properly paid for, or reimbursed to Novant, by the Plans under applicable law.
- 10.12** Any portion of the Net Settlement Amount remaining after distributions, including costs and taxes, shall be paid to the Plans. In no event shall any part of the Settlement Fund be used to reimburse any Defendant or otherwise offset settlement-related costs incurred by any Defendant, except as to the third-party expenses described in paragraph 3.3 and/or as would be appropriately chargeable to the Plan under applicable law, including paragraphs 10.5, 10.6, 10.7, 10.8, and 10.11. Nothing in this paragraph prohibits Novant from paying for the Plan's administrative expenses and obtaining only reasonable reimbursement from Plan

assets. Any costs paid in this manner shall be stated in any required disclosures or reporting as costs paid by the Plan, not costs paid by Novant.

10.13 At no time during the Settlement Period will any broker provide brokerage services or receive any compensation for brokerage services either directly or indirectly from the Plans.

10.14 To ensure compliance with this Settlement, the Independent Consultant shall prepare recommendations and reports as described in Article 10 of the Settlement Agreement and provide those reports to the Independent Fiduciary as described in Article 10 (10.5, 10.6, 10.7). If the Independent Fiduciary determines, based on such reports and any additional reports as may be specifically requested by the Independent Fiduciary during the Settlement Period, that Defendants have materially failed to comply with Article 10 of this Agreement, it shall promptly notify Class Counsel, Novant, and the Plan Fiduciary of such disapproval. If Novant or the Plan Fiduciary does not obtain the written approval of the Independent Fiduciary within 60 days of such determination, Class Counsel may initiate a dispute pursuant to Paragraph 13.7 of this Settlement Agreement.

10.15 The Settling Parties agree that in the event the Plan Fiduciary, or the Independent Fiduciary based upon its review of reports received from the Independent Consultant as described in this Article 10, determines that continued retention of the particular Independent Consultant identified in the Settlement Agreement will disadvantage the Plans or participants in the Plans, Novant may terminate such retention pursuant to the notice provisions prescribed in the underlying service agreement entered into between the Independent Consultant and Novant. In advance of such termination, Novant, the Plan Fiduciary or Independent Fiduciary shall provide a written explanation to Class Counsel detailing the reason(s) for such intended termination. In the event the particular Independent Consultant is terminated in accordance with this section, Class Counsel, Novant and the Plan Fiduciary shall mutually agree to and promptly identify a replacement service provider to serve as Independent Consultant for the remainder of the Settlement Period. Novant shall notify the Independent Fiduciary and Class Counsel of its intention to terminate the Independent Consultant at least thirty days in advance of such termination.

10.16 Within six months after Final Approval, the Plan Fiduciary, with the assistance of the Plans' investment consultant, shall adopt a new investment policy statement(s) for the Plans. Thirty days prior to its adoption, a draft investment policy statement(s) shall be provided to the Independent Consultant. Within fourteen days after being supplied the draft investment policy statement(s), the Independent Consultant shall provide its recommendations, if any, concerning the investment policy statement(s) to Novant and the Plan Fiduciary.

11. Article 11 – Termination, Conditions of Settlement, and Effect of Disapproval, Cancellation, or Termination

- 11.1** The Settlement Agreement shall automatically terminate, and thereby become null and void with no further force or effect if:
- 11.1.1** Pursuant to paragraph 3.1, (1) either the Independent Fiduciary does not approve the Settlement Agreement, or disapproves the Settlement Agreement for any reason whatsoever or the Plan Fiduciary reasonably concludes that the Independent Fiduciary's approval does not include the determinations required by the PTE; and (2) the Settling Parties do not mutually agree to modify the terms of this Settlement Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by the PTE.
 - 11.1.2** The Preliminary Order and the Final Order are not entered by the Court in the form submitted by the Settling Parties or in a form which is otherwise agreed to by the Settling Parties;
 - 11.1.3** The Settlement Class is not certified as defined herein or in a form which is otherwise agreed to by the Settling Parties;
 - 11.1.4** This Settlement Agreement is disapproved by the Court or fails to become effective for any reason whatsoever; or
 - 11.1.5** The Preliminary Order or Final Order is finally reversed on appeal, or is modified on appeal, and the Settling Parties do not mutually agree to any such modifications.
- 11.2** If the Settlement Agreement is terminated, deemed null and void, or has no further force or effect, the Class Action and the Released Claims asserted by Class Representatives shall for all purposes with respect to the Settling Parties revert to their status as though the Settling Parties never executed the Settlement Agreement. All funds deposited in the Qualified Settlement Fund, and any interest earned thereon, shall be returned to Defendants, their agents, or insurers pro rata based on their contributions to the Qualified Settlement Fund within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void, except as provided for in Paragraph 11.4.
- 11.3** It shall not be deemed a failure to approve the Settlement Agreement if the Court denies, in whole or in part, Class Counsel's request for Attorneys' Fees and Costs and/or Class Representatives' Compensation.
- 11.4** In the event that the Settlement Agreement is terminated, Administrative Expenses incurred prior to the termination shall be paid first from the interest earned, if any, on the Qualified Settlement Fund. Administrative Expenses in excess of the interest earned on the Qualified Settlement Fund shall be split evenly and paid by Class Counsel, on the one hand, and Defendants, on the other hand.
- 11.5** CAFA notice will be served timely on the appropriate officials by the Settlement Administrator as provided in Paragraph 3.4.3.

12. Article 12 – Public Comments Regarding the Class Action or Settlement Agreement

12.1 Except as set forth explicitly below, the Settling Parties, Class Counsel, and Defense Counsel agree to keep confidential all positions, assertions, and offers made during settlement negotiations relating to the Class Action and the Settlement Agreement, except that they may discuss the negotiations with the Class Members, the Independent Fiduciary, the Independent Consultant, and the Settling Parties' tax advisors, provided in each case that they (a) secure written agreements with such persons or entities that such information shall not be further disclosed and (b) comply with this Article 12 in all other respects.

12.2 The Settling Parties and Class Counsel further agree that they each will not at any time publicly disparage or encourage or induce others to publicly disparage any of the Settling or Released Parties or disparage them in writing, except that Novant may bring legal action as provided in Paragraph 13.21 and make public comments or statements consistent with such legal action. However, at no time shall Novant, the Plan Fiduciary or an entity acting on its behalf publicly disparage Class Counsel, Class Members, Class Representatives, or disparage the filing or claims in the Class Action, provided that nothing in this sentence shall preclude Novant or the Plan Fiduciary from expressing disagreement with the factual or legal merits of the claims or Defendants' potential liability associated with those claims.

12.3 Class Counsel will establish a Settlement Website on which it will post the following documents or links to the following documents on or following the date of the Preliminary Order: the operative Complaint, Settlement Agreement and its Exhibits, Settlement Notice, Former Participants Claim Form, Class Representatives' Motion for Attorneys' Fees and Costs and Award of Compensation to Class Representatives, any Court orders related to the Settlement, any amendments or revisions to these documents, and any other documents or information mutually agreed upon by the Settling Parties ("Settlement Website Information"). No other information or documents will be posted on the Settlement Website unless agreed to in advance by the Settling Parties in writing. Class Counsel will take down the Settlement Website ninety (90) calendar days after the receipt of the affidavit(s) referenced in Paragraph 6.9.

13. Article 13 – General Provisions

13.1 The undersigned counsel, on behalf of themselves and the Settling Parties, agree to cooperate fully with each other in seeking Court approvals of the Preliminary Order and the Final Order, and to do all things as may reasonably be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms. The Settling Parties agree to provide each other with copies of any filings necessary to effectuate this Settlement at least three (3) business days in advance of filing.

- 13.2** Within sixty (60) calendar days after the Settlement Period, the Settling Parties shall either return to the producing parties, or destroy, all documents produced in discovery under a claim of confidentiality pursuant to the Confidentiality Order, including but not limited to documents produced under a claim of privilege. Each Settling Party shall serve a written notice to each producing party certifying that the Settling Party has carried out the obligations imposed by this Paragraph 13.2. The Settling Parties, Class Counsel, and Defense Counsel agree that at all times they will honor the requirements of the Confidentiality Order, notwithstanding Settlement of the Action.
- 13.3** This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder are not, and shall not be construed as, deemed to be, or offered or received as evidence of an admission by or on the part of Defendants of any wrongdoing, fault, or liability whatsoever by any of Defendants, or give rise to any inference of any wrongdoing, fault, or liability or admission of any wrongdoing, fault, or liability in the Class Action or any other proceeding, and Defendants admit no wrong doing or liability with respect to any of the allegations or claims in the Class Action. This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder, shall not constitute admissions of any liability of any kind, whether legal or factual.
- 13.4** Neither the Settling Parties, Class Counsel, nor Defense Counsel shall have any responsibility for or liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Gross Settlement Amount or otherwise; (ii) the determination of the Independent Fiduciary; (iii) the management, investment, or distribution of the Qualified Settlement Fund; (iv) the Plan of Allocation as approved by the Court; (v) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (vi) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (vii) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns. Further, neither Defendants nor Defense Counsel shall have any responsibility for, or liability whatsoever with respect to, any act, omission, or determination of Class Counsel in connection with the administration of the Gross Settlement Amount or otherwise.
- 13.5** Only Class Counsel shall have standing to seek enforcement of this Settlement Agreement on behalf of Plaintiffs and Class Members. Any individual concerned about Defendants' compliance with this Settlement Agreement may so notify Class Counsel and direct any requests for enforcement to them. Class Counsel shall have the full and sole discretion to take whatever action they deem appropriate, or to refrain from taking any action, in response to such request. Class Counsel shall provide the monitoring necessary to assure compliance with the Settlement Agreement and any action to enforce the Settlement Agreement during the Settlement Period without additional fee or reimbursement of expenses beyond the Attorneys' Fees and Costs determined by the Court.

- 13.6** This Settlement Agreement shall be interpreted, construed, and enforced in accordance with applicable federal law and, to the extent that federal law does not govern, North Carolina law.
- 13.7** Class Counsel, Defense Counsel, and the Settling Parties agree that any and all disputes concerning compliance with the Settlement Agreement, with the exception of any and all disputes concerning compliance with Article 8, shall be exclusively resolved as follows:
- 13.7.1** If Class Counsel, Defense Counsel, or a Settling Party has reason to believe that a legitimate dispute exists concerning the Settlement Agreement, other than any and all disputes concerning compliance with Article 8, the party raising the dispute shall first promptly give written notice under the Settlement Agreement to the other party including in such notice: (a) a reference to all specific provisions of the Settlement Agreement that are involved; (b) a statement of the alleged non-compliance; (c) a statement of the remedial action sought; and (d) a brief statement of the specific facts, circumstances, and any other arguments supporting the position of the party raising the dispute;
- 13.7.2** Within twenty (20) days after receiving the notice described in Paragraph 13.7.1, the receiving party shall respond in writing with its position and the facts and arguments it relies on in support of its position;
- 13.7.3** For a period of not more than twenty (20) days following mailing of the response described in Paragraph 13.7.2, the Settling Parties shall undertake good-faith negotiations, which may include meeting in person or conferring by telephone, to attempt to resolve the dispute;
- 13.7.4** If the dispute is not resolved during the period described in Paragraph 13.7.3, the parties shall conduct a mediation of the dispute with the Mediator on the earliest reasonably practicable date; provided, however, that the scope of such mediation shall be expressly limited to the dispute;
- 13.7.5** Within 30 days after the conclusion of the Mediator's attempt to resolve the dispute (the date of the conclusion of the mediation shall be determined by agreement of the parties or by the Mediator), if the dispute persists, the Settling Parties shall arbitrate the dispute. The Mediator shall serve as the arbitrator.
- 13.7.6** The Settling Parties intend to resolve any disputes quickly, expeditiously, and inexpensively. Accordingly, there shall be no discovery allowed in connection with mediation or arbitration pursuant to this Paragraph 13.7, and no witnesses shall be presented or examined during the mediation or arbitration except that if the Mediator acting as arbitrator, in his sole discretion, should determine that a limited number of documents or witnesses are needed to resolve the dispute, he may order their production

or testimony. The Mediator acting as the arbitrator will make his decision based solely on the papers, documents, testimony, and arguments of counsel presented to him.

13.7.7 If the Mediator acting as the arbitrator finds that a party has not complied with the Settlement Agreement as asserted, the sole remedy that the Mediator acting as the arbitrator may impose is the issuance of an order requiring the offending party to cure such non-compliance.

13.7.8 In any arbitration or mediation under this Paragraph 13.7, each party shall bear its own fees and costs. However, the Mediator acting as the arbitrator shall have the discretion and authority to award attorneys' fees and/or costs to the prevailing party.

13.7.9 The Mediator acting as the arbitrator shall issue a written determination, including findings of fact, if requested by any party.

13.7.10 Under no circumstances shall the mediator acting as the arbitrator have authority to consider any disputes or order any remedy other than as expressly set forth in this Paragraph 13.7. The arbitrator's award may be enforced in the Court under federal law governing arbitration awards.

13.8 The Settling Parties agree that the Court has personal jurisdiction over the Class and Defendants and shall maintain that jurisdiction for purposes of resolving any disputes between the Settling Parties concerning compliance with Article 8 or 13.7 of the Settlement Agreement. Any motion or action to enforce Article 8 or 13.7 of this Settlement Agreement—including by way of injunction—may be filed in the U.S. District Court for the Middle District of North Carolina, and or asserted by way of an affirmative defense or counterclaim in response to any action that is asserted to violate Article 8 or 13.7.

13.9 The Settlement Agreement may be executed by exchange of executed signature pages, and any signature transmitted by facsimile or e-mail attachment of scanned signature pages for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. The Settlement Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed an original, and all such counterparts shall together constitute the same instrument.

13.10 Each party to this Settlement Agreement hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Settlement Agreement and that this Settlement Agreement has been explained to that party by his, her, or its counsel.

13.11 Any headings included in this Settlement Agreement are for convenience only and do not in any way limit, alter, or affect the matters contained in this Settlement Agreement or the Articles or Paragraphs they caption. References to a person are also to the person's permitted successors and assigns, except as otherwise provided

herein. Whenever the words “include,” “includes” or “including” are used in this Settlement Agreement, they shall not be limiting but shall be deemed to be followed by the words “without limitation.”

- 13.12** Before entry of the Preliminary Approval Order and approval of the Independent Fiduciary, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Settling Parties. Following approval by the Independent Fiduciary, this Settlement Agreement may be modified or amended only if such modification or amendment is set forth in a written agreement signed by or on behalf of all Settling Parties and only if the Independent Fiduciary approves such modification or amendment in writing. Following entry of the Preliminary Approval Order, this Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Settling Parties, and only if the modification or amendment is approved by the Independent Fiduciary in writing and approved by the Court.
- 13.13** This Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the Settling Parties and no representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto.
- 13.14** The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party and specifically waiving such provisions. The waiver of any breach of this Settlement Agreement by any party shall not be deemed to be or construed as a waiver of any other breach or waiver by any other party, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.
- 13.15** Each of the Settling Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that it 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 of this Settlement Agreement.
- 13.16** The provisions of this Settlement Agreement are not severable.
- 13.17** All of the covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. No party is relying on any oral representations or oral agreements. All such covenants, representations, and warranties set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.
- 13.18** All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. The exhibits shall be: Exhibit 1 – Former Participant Claim Form; Exhibit 2 – Preliminary Order; Exhibit 3 – Notice of Class Action Settlement and Fairness Hearing to Current Participants; Exhibit 4 – Notice of Class Action

Settlement and Fairness Hearing to Former Participants; and Exhibit 5 – Final Order.

- 13.19** No provision of the Settlement Agreement or of the exhibits attached hereto shall be construed against or interpreted to the disadvantage of any party to the Settlement Agreement because that party is deemed to have prepared, structured, drafted, or requested the provision.
- 13.20** Any notice, demand, or other communication under this Settlement Agreement (other than the Settlement Notice, or other notices given at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt 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, or delivered by reputable express overnight courier;

IF TO THE CLASS REPRESENTATIVES:

Jerome J. Schlichter (jschlichter@uselaws.com)
Troy A. Doles (tdoles@uselaws.com)
Heather Lea (hlea@uselaws.com)
Mark G. Boyko (mboyko@uselaws.com)

SCHLICHTER, BOGARD & DENTON
100 S. Fourth St.
St. Louis, Missouri 63102
Tel: (314) 621-6115
Fax: (314) 621-7151

IF TO DEFENDANTS:

Charles C. Jackson (cjackson@morganlewis.com)
Christopher J. Boran (cboran@morganlewis.com)

MORGAN, LEWIS & BOCKIUS LLP
77 West Wacker Drive
Chicago, Illinois 60601
Tel: (312) 324-1000
Fax: (312) 324-1001

and

NOVANT HEALTH, INC.
Attn: Chief Legal Officer
2085 Frontis Plaza, Blvd.
Winston-Salem, North Carolina 27103

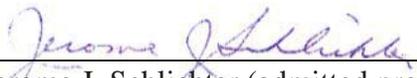
13.21 The Settling Parties acknowledge that, upon the Settlement Effective Date, the Plan Fiduciary shall and does assign to Novant any claims that the Plans may have against the Plans' service providers and/or their owners or employees related to services provided with respect to the Plans or the fees received by the Plans' service providers for Plan-related services at any time during the Class Period.

13.22 As additional consideration above and beyond the consideration set forth in Paragraph 13.21 herein, Novant shall defend, indemnify and hold harmless the Class Representatives, Plaintiffs, the Settlement Class, and the Plans against any claims (whether direct claims, counter claims, or otherwise) by Plan service providers or their employees or owners related to Plan-related services or contracts for such services, arising during the Class Period or Settlement Period.

ON BEHALF OF PLAINTIFFS Karolyn Kruger, M.D., Candace Culton, Frances Baillie, Eileen Schneider, Judy Lewis, Linda Christensen, and Teresa Powell Individually and as Representatives of the Class

Dated: November 9, 2015

SCHLICHTER, BOGARD & DENTON
LLP



Jerome J. Schlichter (admitted pro hac vice)
Troy A. Doles (admitted pro hac vice)
Heather Lea (admitted pro hac vice)
Mark G. Boyko (admitted pro hac vice)
100 South Fourth Street
St. Louis, MO 63102
Telephone: (314) 621-6115
Facsimile: (314) 621-7151
Attorneys for Plaintiffs and Class
Representatives

ON BEHALF OF ALL DEFENDANTS

Dated: _____

Peter S. Brunstetter
EVP and Chief Legal Officer
Novant Health, Inc.
2085 Frontis Plaza Blvd.
Winston-Salem, NC 27103

- 13.21** The Settling Parties acknowledge that, upon the Settlement Effective Date, the Plan Fiduciary shall and does assign to Novant any claims that the Plans may have against the Plans' service providers and/or their owners or employees related to services provided with respect to the Plans or the fees received by the Plans' service providers for Plan-related services at any time during the Class Period.
- 13.22** As additional consideration above and beyond the consideration set forth in Paragraph 13.21 herein, Novant shall defend, indemnify and hold harmless the Class Representatives, Plaintiffs, the Settlement Class, and the Plans against any claims (whether direct claims, counter claims, or otherwise) by Plan service providers or their employees or owners related to Plan-related services or contracts for such services, arising during the Class Period or Settlement Period.

ON BEHALF OF PLAINTIFFS Karolyn Kruger, M.D., Candace Culton, Frances Baillie, Eileen Schneider, Judy Lewis, Linda Christensen, and Teresa Powell Individually and as Representatives of the Class

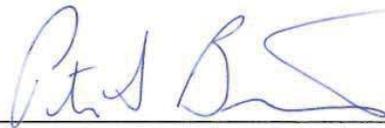
Dated: _____

SCHLICHTER, BOGARD & DENTON
LLP

Jerome J. Schlichter (admitted pro hac vice)
Troy A. Doles (admitted pro hac vice)
Heather Lea (admitted pro hac vice)
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100 South Fourth Street
St. Louis, MO 63102
Telephone: (314) 621-6115
Facsimile: (314) 621-7151
Attorneys for Plaintiffs and Class
Representatives

ON BEHALF OF ALL DEFENDANTS

Dated: November 9, 2015



Peter S. Brunstetter
EVP and Chief Legal Officer
Novant Health, Inc.
2085 Frontis Plaza Blvd.
Winston-Salem, NC 27103

Novant 401(k) Settlement Administrator
P.O. Box 200X
Chanhassen, MN 55317-200X
www.Novant401kSettlement.com

FORMER PARTICIPANT CLAIM FORM

ABC1234567890

Claim Number: 1111111



JOHN Q CLASSMEMBER
123 MAIN ST
APT 1
ANYTOWN, ST 12345

This Former Participant Claim Form is **ONLY** for Class Members who are **Former Participants**, or the beneficiaries, alternate payees or attorneys-in-fact of Former Participants (all of whom will be treated as Former Participants). A Former Participant is a Class Member who no longer had an Active Account as of September 30, 2015.

This form must be completed, signed and received by the Settlement Administrator no later than [Time] PM Central Standard Time on [Date] in order for you to receive your share of the Settlement proceeds. **Former Participants who do not complete and timely return this form will not receive any Settlement payment.** Please review the instructions below carefully. If you have questions regarding this Claim Form, you may contact the Settlement Administrator as indicated below.

PART 1: INSTRUCTIONS FOR COMPLETING FORMER PARTICIPANT CLAIM FORM

1. Complete this claim form and keep a copy of all pages of your Former Participant Claim Form, including page 1 with the address label, for your records.
2. **Mail your completed Former Participant Claim Form to the following address so that it is received by the Settlement Administrator no later than [Time] PM Central Standard Time on [Date]:**

Novant 401(k) Settlement Administrator
P.O. Box 200X
Chanhassen, MN 55317-200X

It is your responsibility to ensure the Settlement Administrator has timely received your Former Participant Claim Form.

3. Other Reminders:
 - You must provide date of birth, signature and a completed Substitute IRS Form W-9, which is attached as Part 5 to this form.
 - If you desire to do a rollover and you do not complete in full the rollover information in Part 4 Payment Election of the Settlement Distribution Form, payment will be made to the participant.
 - If you change your address after sending in your Former Participant Claim Form, please send your new address to the Settlement Administrator.
 - **Timing Of Payments To Eligible Settlement Class Members.** Please note that Settlement payments are subject to the Settlement Agreement's receiving final Court approval. If the Settlement Agreement is approved and if you are entitled to a Settlement payment under the terms of the Settlement, such payments will be distributed no earlier than late-201X due to the need to process and verify information for all Settlement Class Members who are entitled to a payment and to compute the amount of each payment. Payments may be further delayed if any appeals are filed.
4. **Questions?** If you have any questions about this Former Participant Claim Form, please call the Settlement Administrator at XXX-XXX-XXXX. The Settlement Administrator will provide advice only regarding completing this form and will not provide financial, tax or other advice concerning the Settlement. You therefore may want to consult with your financial or tax advisor. Information about the status of the approval of the Settlement, the Settlement administration and claim processing is available on the lawsuit website, www.Novant401kSettlement.com.

You are eligible to receive a payment from a class action settlement. The court has preliminarily approved the class settlement of *Karolyn Kruger M.D., et. al. v. Novant Health, Inc., et al.*, Case No. 14-cv-208. That settlement provides allocation of monies to the individual accounts of Settlement Class Members who had plan accounts with a positive balance ("Active Account") in the Plans as of September 30, 2015 ("Current Participants"). Settlement Class Members who are entitled to a distribution but who no longer had Active Accounts as of September 30, 2015 ("Former Participants") will receive their allocation in the form of a check or rollover if and only if they submit a valid Former Participant Claim Form received by the Settlement Administrator by PM Central Standard Time on [Date]. For more information about the settlement, please see www.Novant401kSettlement.com, or call XXX-XXX-XXXX.

Because you are a former participant (or beneficiary of a former participant) in the Plans, you must decide whether you want your payment (1) sent payable to you directly or (2) to be rolled over into another eligible retirement plan or into an individual retirement account ("IRA"). To make that choice, please complete and return this Former Participant Claim Form, so that it is received by the Settlement Administrator by PM Central Standard Time on [Date]. If you do not indicate a payment election, your payment will be sent payable to you directly.

PART 2: PARTICIPANT INFORMATION

First Name	Middle	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Mailing Address		
<input type="text"/>		
City	State	Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Home Phone	Work Phone or Cell Phone	
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>	
Participant's Social Security Number	Participant's Date of Birth	
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> /	
	M M	D D Y Y Y Y
Email Address		
<input type="text"/>		

Check here if you were a Former Participant, but did **not** receive this Claim Form in the mail. This may be because you were a participant in the plans only for a brief period.

PART 3: BENEFICIARY OR ALTERNATE PAYEE INFORMATION (IF APPLICABLE)

Check here if you are the **surviving spouse or other beneficiary** for the Former Participant and the Former Participant is deceased. **Documentation must be provided showing current authority of the representative to file on behalf of the deceased.** Please complete the information below and then continue on to Parts 4 and 5 on the next page.

Check here if you are an **alternate payee under a qualified domestic relations order (QDRO), or attorney-in-fact** for the Former Participant. The Settlement Administrator may contact you with further instructions. Please complete the information below and then continue on to Parts 4 and 5 on the next page.

Your First Name	Middle	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Your Social Security Number or Tax ID Number	Your Date of Birth	
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> /	
	M M	D D Y Y Y Y
Your Mailing Address		
<input type="text"/>		
City	State	Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

KAROLYN KRUGER, M.D., et al.,

Plaintiffs,

v.

NOVANT HEALTH, INC., et al.,

Defendants.

No. 1:14-cv-208

Judge William Osteen, Jr.

Magistrate Judge Joi Elizabeth Peake

**[PROPOSED] FINDINGS AND ORDER GRANITNG PRELIMINARY
APPROVAL TO PROPOSED SETTLEMENT, APPROVING FORM AND
DISSEMINATION OF CLASS NOTICE, AND SETTING DATE FOR
HEARING ON FINAL APPROVAL**

This litigation arose out of claims involving alleged breaches of fiduciary duties in violation of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001 et seq., with respect to the Savings and Supplemental Retirement Plan of Novant Health, Inc. and the Tax Deferred Savings Plan of Novant Health, Inc. (collectively referred to herein as the “Retirement Plus Plan”).

Presented to the Court for preliminary approval is a settlement of the litigation as against all Defendants. The terms of the Settlement are set out in a Class Action Settlement Agreement dated November 9, 2015 (the “Settlement Agreement”), executed by counsel on behalf of the Named Plaintiffs and the Defendants. Except as otherwise defined herein, all capitalized terms used herein shall have the same meaning as are ascribed to them in the Settlement Agreement.

On _____, the Court preliminarily considered the Settlement to determine, among other things, whether to certify a class for settlement purposes only and whether the Settlement is sufficient to warrant the issuance of notice to members of the Settlement Class. Upon reviewing the record and good cause appearing therefor,

It is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. Preliminary Findings Regarding Proposed Settlement: The Court preliminarily finds that:

A. The proposed settlement resulted from extensive arm's-length negotiations;

B. The Settlement Agreement was executed only after Class Counsel had conducted extensive pre-settlement investigation and discovery, and after negotiations had continued for months, including in-person mediation and numerous and extensive telephonic and email communications between counsel;

C. Class Counsel has concluded that the Settlement Agreement is fair, reasonable and adequate; and

D. The Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Settlement Class.

2. Fairness Hearing: A hearing is scheduled at the United States District Court for the Middle District of North Carolina, Chief William L. Osteen presiding, at _____m. on _____, 2015, (the "Fairness Hearing") to determine, among other issues:

- A. Whether the Settlement Agreement should be approved as fair, reasonable, and adequate;
- B. Whether the notice, publication notice and notice methodology were performed as directed by this Court;
- C. Whether the motion for attorneys' fees and costs to be filed by Class Counsel should be approved;
- D. Whether the motion for compensation to Class Representatives should be approved; and
- E. Whether the Administrative Expenses specified in the Settlement Agreement and requested by the parties should be approved for payment from the Settlement Fund.

3. Establishment of Qualified Settlement Fund: A common fund is agreed to by the parties in the Settlement Agreement and is hereby established and shall be known as the *Kruger v. Novant Health, Inc.* Litigation Settlement Fund (the "Settlement Fund"). The Settlement Fund shall be a "qualified settlement fund" within the meaning of Treasury Regulations § 1.468-1(a) promulgated under Section 468B of the Internal Revenue Code. The Settlement Fund shall consist of \$32,000,000.00 and any interest earned thereon. The Settlement Fund shall be administered as follows:

- A. The Settlement Fund is established exclusively for the purposes of: (a) making distributions to eligible claimants pursuant to the claims process described in the Settlement Agreement; (b) making distributions to Class Representatives and Settlement

Class Members as specified in the Settlement Agreement; (c) making payments for all settlement administration costs and costs of notice, including payments of all Administrative Expenses specified in the Settlement Agreement; (d) making payments of all Attorneys' Fees and Costs to Class Counsel as awarded by the Court in this action; and (e) paying employment, withholding, income and other applicable taxes, all in accordance with the terms of the Settlement Agreement and this Order. Other than the payment of Administrative Expenses or as otherwise expressly provided in the Settlement Agreement, no distribution shall be made from the Settlement Fund until after the Settlement Effective Date.

B. Within the time period set forth in the Settlement Agreement, Defendants shall cause \$32,000,000 to be deposited into the Settlement Fund.

C. The Settlement Fund shall be a single qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1 *et seq.* Defendants shall timely furnish a statement to the Settlement Administrator that complies with Treasury Regulation § 1.468B-3(e)(2) (a “§ 1.468B-3 Statement”), which may be a combined statement under Treasury Regulation § 1.468B-3(e)(2)(ii), and shall attach a copy of the statement to their federal income tax returns filed for the taxable year in which Defendants make a transfer to the Settlement Fund.

D. Defendants shall have no withholding, reporting or tax reporting responsibilities with regard to the Settlement Fund or its distribution, except as otherwise specifically identified herein. Moreover, Defendants shall have no liability, obligation, or

responsibility for administration of the Settlement Fund or the disbursement of any monies from the Settlement Fund except for: (1) their obligation to cause the Gross Settlement Amount to be deposited into the Settlement Fund as set forth in the Settlement Agreement; and (2) their agreement to cooperate in providing information that is necessary for settlement administration set forth in the Settlement Agreement.

E. The oversight of the Settlement Fund is the responsibility of the Settlement Administrator. The status and powers of the Settlement Administrator are as defined by this Order.

F. The Gross Settlement Amount caused to be paid by Defendants into the Settlement Fund pursuant to the Settlement Agreement, and all income generated by that Amount, shall be *in custodia legis* and immune from attachment, execution, assignment, hypothecation, transfer or similar process by any person. Once the Settlement Fund vests, it is irrevocable during its term and Defendants have divested themselves of all right, title or interest, whether legal or equitable, in the Settlement Fund, if any; provided, however, in the event the Settlement Agreement is not approved by the Court or the Settlement set forth in the Settlement Agreement is terminated or fails to become effective in accordance with its terms (or, if following approval by this Court, such approval is reversed or modified), the Settling Parties shall be restored to their respective positions in this Case as of the day prior to the Settlement Agreement Execution Date; the terms and provisions of the Settlement Agreement and this Order shall be void and have no force and effect and shall not be used in this case or in any proceeding for any purpose; and the

Settlement Fund and income earned thereon shall immediately be returned to the entity that funded the Settlement Fund. Further provided that, if the Settlement Agreement is terminated after Defendants have deposited the Gross Settlement Amount into the Settlement Fund, but prior to the entry of an order granting Final Approval of the settlement, the funds in the Settlement Fund shall be disposed of as set forth in the Settlement Agreement.

G. The Settlement Administrator may make disbursements out of the Settlement Fund only in accordance with this Order or any additional Orders issued by the Court.

H. The Settlement Fund shall expire after the Settlement Administrator distributes all of the assets of the Settlement Fund in accordance with the Settlement Agreement, provided, however, that the Settlement Fund shall not terminate until its liability for any and all government fees, fines, taxes, charges and excises of any kind, including income taxes, and any interest, penalties or additions to such amounts, are, in the Settlement Administrator's sole discretion, finally determined and all such amounts have been paid by the Settlement Fund.

I. The Settlement Fund shall be used to make payments to Class Members under the Plan of Allocation set forth in the Settlement Agreement. Individual payments to Class Members will be subject to tax withholding as required by law and as described in the Class Notice and its attachments. In addition, all Class Representatives'

Compensation, Administrative Expenses, and all Attorneys' Fees and Costs of Class Counsel shall be paid from the Settlement Fund.

J. The Court and the Settlement Administrator recognize that there will be tax payments, withholding and reporting requirements in connection with the administration of the Settlement Fund. The Settlement Administrator shall, pursuant to the Settlement Agreement, determine, withhold, and pay over to the appropriate taxing authorities any taxes due with respect to any distribution from the Settlement Fund and shall make and file with the appropriate taxing authorities any reports or returns due with respect to any distributions from the Settlement Fund. The Settlement Administrator also shall determine and pay any income taxes owing with respect to the income earned by the Settlement Fund. Additionally, the Settlement Administrator shall file returns and reports with the appropriate taxing authorities with respect to the payment and withholding of taxes.

K. The Settlement Administrator, in its discretion, may request expedited review and decision by the IRS or the applicable state or local taxing authorities, with regard to the correctness of the returns filed for the Settlement Fund and shall establish reserves to assure the availability of sufficient funds to meet the obligations of the Settlement Fund itself and the Settlement Administrator as fiduciaries of the Settlement Fund. Reserves may be established for taxes on the Settlement Fund income or on distributions.

L. The Settlement Administrator and Defendants shall provide to and exchange with each other such information as shall be reasonably necessary to file notices, reports and returns and to make timely determinations of withholding obligations.

M. The Settlement Administrator shall have all the necessary powers, and take all necessary ministerial steps, to effectuate the terms of the Settlement Agreement, including the payment of all distributions. Such powers include receiving and processing information from Former Participants pertaining to their claims and investing, allocating and distributing the Settlement Fund, and in general supervising the administration of the Settlement Agreement in accordance with its terms and this Order.

N. The Settlement Administrator shall keep detailed and accurate accounts of all investments, receipts, disbursements and other transactions of the Settlement Fund. All accounts, books and records relating to the Settlement Fund shall be open for reasonable inspection by such persons or entities as the Court orders. Included in the Settlement Administrator's records shall be complete information regarding actions taken with respect to the award of any payments to any person; the nature and status of any payment from the Settlement Fund and other information which the Settlement Administrator considers relevant to showing that the Settlement Fund is being administered, and awards are being made, in accordance with the purposes of the Settlement Agreement, this Order, and any future orders that the Court may find it necessary to issue.

O. The Settlement Administrator may establish protective conditions concerning the disclosure of information maintained by the Settlement Administrator if publication of such information would violate any law, including rights to privacy. Any person entitled to such information who is denied access to the Settlement Fund's records may submit a request to the Court for such information. However, the Settlement Administrator shall supply such information to any claimant as may be reasonably necessary to allow him or her to accurately determine his or her federal, state and local tax liabilities. Such information shall be supplied in the form and manner prescribed by relevant law.

P. This Order will bind any successor Settlement Administrator. The successor Settlement Administrator(s) shall have, without further act on the part of anyone, all the duties, powers, functions, immunities, and discretion granted to the original Settlement Administrator. Any Settlement Administrator(s) who is replaced (by reason other than death) shall execute all instruments, and do all acts, that may be necessary or that may be ordered or requested in writing by the Court or by any successor Settlement Administrator(s), to transfer administrative powers over the Settlement Fund to the successor Settlement Administrator(s). The appointment of a successor Settlement Administrator(s), if any, shall not under any circumstances require any Defendant to make any further payment of any nature into the Settlement Fund or otherwise.

4. Class Notice: The Settling Parties have presented to the Court proposed forms of notice regarding the settlement to be issued to Class Members ("Class Notice").

- A. The Court finds that the proposed forms and content therein fairly and adequately:
- i. Describe the terms and effect of the Settlement Agreement and of the Settlement;
 - ii. Notify the Settlement Class concerning the proposed Plan of Allocation;
 - iii. Notify the Settlement Class that Class Counsel will seek compensation from the Settlement Fund for the Class Representatives, Attorneys' Fees and Costs;
 - iv. Notify the Settlement Class that Administrative Expenses related to the implementation of the Settlement will be paid from the Settlement Fund;
 - v. Give notice to the Settlement Class of the time and place of the Fairness Hearing; and
 - vi. Describe how the recipients of the Class Notice may object to any of the relief requested and the rights of the Parties to discovery concerning such objections.

B. The Settling Parties have proposed the following manner of communicating the notice to members of the Settlement Class, and the Court finds that such proposed manner is the best notice practicable under the circumstances, and directs that the Settlement Administrator shall 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 Settling Parties, to be mailed, by first-class mail, postage prepaid, to the last known address of each member of the Settlement Class who can be identified through commercially reasonable means. Defendants shall cooperate with the Settlement Administrator by providing, in electronic format, the names, addresses and social security numbers of members of the Settlement Class. The names, addresses, and Social Security numbers obtained pursuant to this Order shall be used solely for the purpose of providing notice of this settlement and as required for purposes of tax withholding and reporting, and for no other purpose.

C. For any Class Notice returned as undeliverable, the Settlement Administrator shall utilize the provided Social Security number to attempt to determine the current address of the Person and shall mail notice to that address.

D. At or before the Fairness Hearing, Class Counsel or the Settlement Administrator shall file with the Court a proof of timely compliance with the foregoing requirements.

E. The Court directs Class Counsel, no later than 60 days before the Fairness Hearing, to cause the Class Notice to be published on the website identified in the Class Notice.

5. Objections to Settlement: Any member of the Settlement Class who wishes to object to the fairness, reasonableness or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of

attorneys' fees and costs, or to any request for compensation for the Class Representatives must file an Objection in the manner set out in this Order.

A. A member of the Settlement Class, or any sub-class, wishing to raise an objection to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of Attorneys' Fees and Costs, or to any request for compensation for the Class Representatives must do the following: (A) file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support or evidence that such objector wishes to bring to the Court's attention or introduce in support of such objection; and (B) serve copies of the objection and all supporting authorities or evidence to Class Counsel and Defense Counsel. The addresses for filing objections with the Court and for service of such objections on counsel for the parties to this matter are as follows:

Clerk of the Court
United States District Court
for the Middle District of North Carolina
251 N. Main Street
Winston-Salem, NC 27101
Case No. 14-cv-208

To Class Counsel:
Jerome J. Schlichter
Schlichter, Bogard & Denton LLP
100 S. 4th Street
St. Louis, MO 63102

To Defendants' Counsel:
Christopher J. Boran
Morgan, Lewis & Bockius LLP
77 West Wacker Drive
Chicago, IL 60601

B. The objector or his, her, or its counsel (if any) must serve copies of the objection(s) on the attorneys listed above and file it with the Court by no later than thirty (30) days before the date of the Fairness Hearing.

C. If an objector hires an attorney to represent him, her, or it for the purposes of making such objection pursuant to this paragraph, the attorney must serve a notice of appearance on the attorneys listed above and file it with the Court by no later than thirty (30) days before the date of the Fairness Hearing.

D. Failure to serve objections(s) on either the Court or counsel for the parties shall constitute a waiver of the objection(s). 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 Order shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

E. Any party wishing to obtain discovery from any objector may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two (2) hours in length, on any objector within ten (10) days of receipt of the objection and that any responses to discovery or depositions must be completed within ten (10) days of the request being served on the objector.

F. Any party wishing to file a response to an objection must do so, and serve the response on all parties, no later than ten (10) days before the Fairness Hearing.

6. Appearance at Fairness Hearing: Any objector who files and serves a timely, written objection in accordance with the terms of this Order as set out in

Paragraph 5 above may also appear at the Fairness Hearing either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to speak at the Fairness Hearing must serve a notice of intention to speak setting forth, among other things, the name, address, and telephone number of the objector (and, if applicable, the name, address, and telephone number of the objector's attorney) on Class Counsel and Defense Counsel (at the addresses set out above) and file it with the Court by no later than thirty (30) days before the date of the Fairness Hearing. Any objector (or objector's attorney) 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.

7. Claim Form Deadline: All valid claim forms must be received by the settlement administrator by ___ p.m. Central Standard Time on _____, 2015.

8. Service of Papers: Defense Counsel and Class Counsel shall promptly furnish each other with copies of all objections that come into their possession.

9. Termination of Settlement: This Order shall become null and void, and shall be without prejudice to the rights of the Settling Parties, all of whom shall be restored to their respective positions existing the day before the Settlement Agreement Execution Date, if the Settlement is terminated in accordance with the Settlement Agreement.

10. Use of Order: This Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability or a waiver of any claims or defenses, including but not limited to those as to the

propriety of any pleadings or the propriety and scope of class certification. This Order shall not be construed or used as an admission, concession, or declaration by or against Class Members or the Settlement Class (including the sub-classes) that their claims lack merit, or that the relief requested in the Class Action is inappropriate, improper or unavailable. This Order shall not be construed or used as a waiver by any party of any arguments, defenses, or claims he, she, or it may have, including, but not limited to, any objections by Defendants to class certification in the event that the Settlement Agreement is terminated.

11. Continuance of Hearing: The Court will not continue the Fairness Hearing without a showing of good cause.

IT IS SO ORDERED.

DATED: _____, 2015

HON. WILLIAM L. OSTEEN, JR.
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

Karolyn Kruger, M.D., et al.,

Plaintiffs,

Novant Health Inc., et al.,

Defendants.

Case No. 14-cv-208

Judge William Osteen, Jr.

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

Your legal rights might be affected if you are a member of the following class:

All current and former participants and beneficiaries who participated in any of the following retirement plans (herein collectively referred to as the “Plans”) between October 1, 1998 and September 30, 2015 (the “Class Period”):

- The Savings and Supplemental Retirement Plan of Novant Health, Inc. and the Tax Deferred Savings Plan of Novant Health, Inc. (collectively, the “Retirement Plus Plan”);
- The Franklin/Upstate 401(k) Plan;
- The Presbyterian Women’s Care Corp. 401(k) Plan;
- The Lakeside/Q-Neck 401(k) Plan;
- The 457(b) Retirement Plan of Novant Health, Inc.(the “457(b) Plan”); or
- The Retirement Plus Plan Wrap Nonqualified 457(b)/457(f) Plan of Novant Health, Inc. (the “457(f) Plan”).

Excluded from the class are members of the Novant Health Retirement Plan Committee, the Administrative Committee and members of Novant Health, Inc.’s Board of Trustees since October 1, 1998.

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.

- The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Novant Health Retirement Plus Plan (“Plan”) against Novant Health, Inc. (“Novant”) and other alleged fiduciaries to the Plan, alleging violations of the Employee Retirement Income Security Act (“ERISA”). Defendants deny all claims and nothing in the Settlement is an admission or concession on Defendants’ part of any fault or liability whatsoever.
- The Settlement will provide, among other things, for the allocation of monies directly into the individual accounts of Class Members who had one or more accounts with a positive balance (an “Active Account”) in the Plans as of September 30, 2015 (“Current Participants”). Current Participants with an Active Account in the 457(f) Plan and/or an account in one or more of the other Plans that was no longer an Active Account as of September 30, 2015, will receive their allocation for these accounts in the form of a check mailed to their last known address or a rollover, if available and elected. Class Members who are entitled to a distribution but who no longer had any Active Accounts as of September 30, 2015 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if available and elected.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated October 15, 2015. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at www.Novant401ksettlement.com. Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any possible amendments to the Settlement Agreement or other

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changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on XXXXXX, 2015, at XX:XXa.m./p.m., before Judge William Osteen, Jr. at the United States District Court, 324 W. Market Street, Greensboro, North Carolina 27401.
- Any objections to the Settlement, to the petition for Attorneys’ Fees and Costs or to Class Representatives’ Compensation, must be served in writing on Class Counsel and Defendants’ Counsel, as identified on page six of this Settlement Notice.
- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at www.Novant401ksettlement.com.

According to the Plans’ records, you are a Current Participant. If you believe that you meet the definition of a Former Participant, please contact the Settlement Administrator. Current Participants include both participants currently employed at Novant and participants who are no longer employed by Novant but continue to have an account balance in one or more of the Plans.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:	
OUR RECORDS INDICATE THAT YOU ARE A CURRENT PARTICIPANT. YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT.	Our records indicate that you are a Current Participant. If, however, you are a “Former Participant” who participated in the Plans during the Class Period and on September 30, 2015 did not have an Active Account in any of the Plans, or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must return a Former Participant Claim Form by XXXXXX to receive a check for your share of the Net Settlement Amount. If you are a Former Participant, and you do not return the Former Participant Claim Form by XXXXXXXX, you will forfeit your share of the Net Settlement Amount. We have not included a claim form in your notice because Current Participants do not need to submit a claim form, and our records indicate that you are a Current Participant. However, if you believe you are a Former Participant, a claim form may be obtained by accessing www.Novant401ksettlement.com .
YOU CAN OBJECT (NO LATER THAN XXXXX, 2015)	If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.
YOU CAN ATTEND A HEARING ON XXXX	If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel of your intention to appear at the hearing by XXXXX, 2015.

The Class Action

The case is called *Karolyn Kruger M.D., et. al. v. Novant Health, Inc., et al.*, Case No. 14-208 (the “Class Action”). It has been pending since March 12, 2014. The Court supervising the case is the U.S. District Court for the Middle District of North Carolina. The individuals who brought this suit are called Class Representatives, and the entities they sued are called Defendants. The Class Representatives are participants in the Plan. The Defendants are Novant Health, Inc., the Administrative Committee of Novant Health, Inc., and

the Novant Health Retirement Plan Committee. The Class Representatives' claims are described below, and additional information about them is available at www.Novant401ksettlement.com.

The Settlement

After almost two years of litigation, a Settlement has been reached. As part of the Settlement, a Qualified Settlement Fund of \$32,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$32,000,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representatives' Compensation, and other approved expenses of the litigation. The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court.

In addition to the monetary component of the Settlement, the parties to the Settlement have agreed to certain additional terms. Defendants have agreed to conclude an RFP competitive bidding process for recordkeeping, investment consulting and participant education services for the Plans and to engage a mutually agreed upon Independent Consultant to assess the adequacy of the RFP process and assess Defendants' anticipated selection of service providers for the Plans. In addition, Defendants have agreed, during the four-year Settlement Period, to: (1) ensure that Plans' administrative service providers are not reimbursed for their services based on a percentage-of-plan-assets basis; (2) review all current investment options in the Plans and revise the investment options, as needed, ensuring that those options are selected or retained for the exclusive best interests of the Plans' participants; (3) the Independent Consultant reviewing the investment option selection process and providing recommendations, if necessary; (4) the Independent Consultant conducting an annual review of Novant's management of the Plans; (5) removing DL Davis, Inc. and related entities from any involvement with the Plans; (6) removing DL Davis and related entities from Novant employee benefit plans; (7) not enter into any new real estate or business relationships with DL Davis and related entities; (8) not offer any Mass Mutual investments in the Plans or any other investment that provides compensation to DL Davis and related entities; (9) provide accurate communications to participants in the Plans; (10) not offer any brokerage services to the Plans; and (11) adopt a new investment policy statement to ensure that the Plans are operated for the exclusive best interests of the Plans' participants.

Statement Of Attorneys' Fees and Costs Sought in the Class Action

Class Counsel have devoted many hours to bringing this case and pursuing it for almost two years. During that time, they also have advanced costs for expert consulting services, substantial investigation, intensive document analysis and other costs necessary to pursue the case. Class Counsel have defended a motion to dismiss and engaged in substantial investigation and analysis of the Plans in order to obtain the monetary and other benefits in this settlement. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending before the District Court. Class Counsel also has agreed to undertake the additional risk of paying half of the administrative costs of the settlement process if the Settlement is not approved. In addition, Class Counsel agrees to take any action necessary to enforce the Settlement Agreement for a four-year period, including any necessary mediations, arbitrations, and Court proceedings, without seeking additional payment from the Settlement Fund.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$10,666,666, in addition to no more than \$95,000.00 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$25,000, for each of the seven Class Representatives who took on the risk of litigation, provided discovery, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual

investigation of the case by Class Counsel and giving overall support to the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full and formal application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, www.Novant401ksettlement.com

1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because Novant's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

2. What Is The Class Action About?

In the Class Action, Class Representatives claim that, during the Class Period, Defendants violated ERISA by imprudently and disloyally selecting high-priced investment options and by causing the Plan to pay excessive investment management, administrative, and brokerage fees.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plans have suffered any harm or damage for which Defendants could or should be held responsible. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability whatsoever.

3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel, and an all-day mediation session with a private mediator. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are experienced in this kind of matter, believe that the Settlement is best for all Class Members.

4. What Does The Settlement Provide?

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing Plan accounts, except that allocations associated with the 457(f) Plan and accounts in the Plans that are no longer Active Accounts as of September 30, 2015, will be distributed to Current Participants by check mailed to their last known address or, if available and they elect, as a rollover to a qualified retirement account. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if available and they elect, as a rollover to a qualified retirement account.

As discussed above, Defendants have agreed to conclude an RFP competitive bidding process for recordkeeping, investment consulting and participant education services for the Plans and to engage a mutually agreed upon Independent Consultant to assess the adequacy of the RFP process and assess Defendants' anticipated selection of service providers for the Plans. In addition, Defendants have agreed, during the four-year Settlement Period, to: (1) ensure that Plans' administrative service providers are not reimbursed for their services based on a percentage-of-plan-assets basis; (2) review all current investment options in the Plans and revise the investment options, as needed, ensuring that those options are selected or retained for the exclusive best interests of the Plans' participants; (3) the Independent Consultant reviewing the investment option selection process and providing recommendations, if necessary; (4) the Independent Consultant conducting an annual review of Novant's management of the Plans; (5) removing DL Davis, Inc. and related entities from any involvement with the Plans; (6) removing DL Davis and related entities from Novant employee benefit plans; (7) not enter into any new real estate or business relationships with DL Davis and related entities; (8)

not offer any Mass Mutual investments in the Plans or any other investment that provides compensation to DL Davis and related entities; (9) provide accurate communications to participants in the Plans; (10) not offer any brokerage services to the Plans; and (11) adopt a new investment policy statement to ensure that the Plans are operated for the exclusive best interests of the Plans' participants.

All Class Members and anyone claiming through them will fully release the Plans as well as Defendants and their "Released Parties" from "Released Claims." The Released Parties include Defendants and any past, present, and future related entities, and all of their past, present, and future officers, directors, employees, attorneys, and agents. The Released Claims include all claims that were asserted in the Class Action, as well as any claims that relate to: (1) the selection, oversight, retention, or performance of the Plans' investment options and service providers, (2) fees, costs, or expenses charged to, paid, or reimbursed by the Plans, (3) disclosures or failures to disclose information regarding the Plans' investment options or service providers, (4) disclosures or failures to disclose relationships among fiduciaries, service providers, and investment managers for the Plans, (5) engaging in self-dealing or prohibited transactions, and/or (6) collecting compensation based on a percentage of total assets.

"Released Claims" specifically exclude (1) claims not related to those identified in the preceding paragraph; (2) claims of denial of benefits from the Plans; (2) labor or employment claims unrelated to the Plans; and, (3) claims arising from conduct outside the Class Period.

This is *only* a summary of the Released Parties and Released Claims and is not a binding description of either. The governing releases are found within the Settlement Agreement at www.Novant401ksettlement.com. Generally, the release means that Class Members will not have the right to sue the Plans, the Defendants or related parties for conduct during the Class Period arising out of or relating to the allegations in the Class Action.

The entire Settlement Agreement is available at www.Novant401ksettlement.com.

5. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plans' recordkeeper. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as defined on page 1 or (2) an "Authorized Former Participant" (a "Former Participant" as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Net Settlement Amount will be divided among all Class Members pro rata based on their Modified Average Account Balance during the Class Period. The Modified Average Account Balance is calculated by determining each participant's average, aggregate quarter-ending balance across all of his or her accounts in the Plans for two separate periods: (1) March 31, 2008 through September 30, 2015 (the "Period 1 Average"); and (2) December 31, 1998 through December 31, 2007 (the "Period 2 Average"). Next, the Period 1 Average shall be multiplied by 4 to determine the Modified Period 1 Average. Then, the Modified Period 1 Average shall be combined with the Period 2 Average and the total divided by 2, to determine the participant's Modified Average Account Balance.

The Settlement Administrator shall then determine the total settlement payment available to each Class Member by calculating each such participant's pro-rata share of the Net Settlement fund based on his or her Modified Average Account Balance. To the extent a participant has more than one account in the Plans, the Settlement Administrator shall calculate the proportionate share of the total settlement distribution available to the participant (rounded to the nearest dollar or smaller increment, as determined by the Settlement Administrator) that shall be allocated to each of the participant's accounts, based upon the most recent quarter-ending balance in each such account.

There are approximately 33,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, your portion of the Settlement will be distributed pursuant to the terms of that order.

6. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **According to Novant’s records, you are a Current Participant. Therefore, you do not need to do anything to receive your share of the Settlement.**

7. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur early in 2016.

There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.

8. Can I Get Out Of The Settlement?

No. The Class has been certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement. If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement.

9. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys’ Fees and Costs. This petition will be considered at the Fairness Hearing. Defendants do not oppose the amount of Attorneys’ Fees and Costs or any Class Representatives’ Compensation consistent with the terms of the Settlement Agreement. Class Counsel has agreed to limit their application for an award of Attorneys’ Fees and Costs to not more than \$10,666,666 in fees and \$95,000.00 in costs. The Court will determine what fees and costs will be approved.

11. How Do I Tell The Court If I Don’t Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Kruger, et al. v. Novant Health, Inc., et al.*, Case No. 14-208. Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than XXXXXX, 2015. The Court’s address is Clerk of the Court, U.S. District Court, Middle District of North Carolina, 324 W. Market Street, Greensboro, N.C. 27401. Your written objection also must be mailed to the lawyers listed below, **no later than XXXXXX, 2015**. Please note that the Court’s Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL	DEFENDANTS' COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Novant 401(k) Settlement 100 S. Fourth St. St. Louis, MO 63102 Novant401ksettlement@uselaws.com Tel: (314) 621-6115 Fax: (314) 621-7151	Morgan, Lewis & Bockius, LLP Charles C. Jackson Christopher J. Boran Emily A. Glunz 77 West Wacker Drive Chicago, IL 60601 Tel: (312) 324-1000 Fax: (312) 324-1001

12. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Fairness Hearing at XX:XX p.m. on XXXX, 2015, at the U.S. District Court, Middle District of North Carolina, 324 W. Market Street, Greensboro, N.C. 27401.

At the Fairness 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 give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

13. Do I Have To Attend The Fairness Hearing?

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

14. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Kruger, et al. v. Novant Health, Inc., et al.*, Case No. 14-208." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 11, **no later than XXXXX, 2015**.

15. What Happens If I Do Nothing At All?

If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.

If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY.**

16. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: www.Novant401ksettlement.com, call 1-XXXXXXX, or write to the Settlement Administrator at Novant 401(k) Settlement Administrator, _____.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

Karolyn Kruger, M.D., et al.,

Plaintiffs,

Novant Health Inc., et al.,

Defendants.

Case No. 14-cv-208

Judge William Osteen, Jr.

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

Your legal rights might be affected if you are a member of the following class:

All current and former participants and beneficiaries who participated in any of the following retirement plans (herein collectively referred to as the “Plans”) between October 1, 1998 and September 30, 2015 (the “Class Period”):

- The Savings and Supplemental Retirement Plan of Novant Health, Inc. and the Tax Deferred Savings Plan of Novant Health, Inc. (collectively, the “Retirement Plus Plan”);
- The Franklin/Upstate 401(k) Plan;
- The Presbyterian Women’s Care Corp. 401(k) Plan;
- The Lakeside/Q-Neck 401(k) Plan;
- The 457(b) Retirement Plan of Novant Health, Inc.; or
- The Retirement Plus Plan Wrap Nonqualified 457(b)/457(f) Plan of Novant Health, Inc. (the “457(f) Plan”).

Excluded from the class are members of the Novant Health Retirement Plan Committee, the Administrative Committee and members of Novant Health, Inc.’s Board of Trustees since October 1, 1998.

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.

- The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Novant Health Retirement Plus Plan (“Plan”) against Novant Health, Inc. (“Novant”) and other alleged fiduciaries to the Plan, alleging violations of the Employee Retirement Income Security Act (“ERISA”). Defendants deny all claims and nothing in the Settlement is an admission or concession on Defendants’ part of any fault or liability whatsoever.
- The Settlement will provide, among other things, for the allocation of monies directly into the individual accounts of Class Members who had one or more accounts with a positive balance (an “Active Account”) in the Plans as of September 30, 2015 (“Current Participants”). Current Participants with an Active Account in the 457(f) Plan and/or an account in one or more of the other Plans that was no longer an Active Account as of September 30, 2015, will receive their allocation for these accounts in the form of a check mailed to their last known address or a rollover, if available and elected. Class Members who are entitled to a distribution but who no longer had any Active Accounts as of September 30, 2015 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if available and elected.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated October 15, 2015. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at www.Novant401ksettlement.com. Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any possible amendments to the Settlement Agreement or other

changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on XXXXXX, 2015, at XX:XXa.m./p.m., before Judge William Osteen, Jr. at the United States District Court, 324 W. Market Street, Greensboro, North Carolina 27401.
- Any objections to the Settlement, to the petition for Attorneys’ Fees and Costs or to Class Representatives’ Compensation, must be served in writing on Class Counsel and Defendants’ Counsel, as identified on page six of this Settlement Notice.
- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at www.Novant401ksettlement.com.

According to the Plans’ records, you are a Former Participant. If you believe that you meet the definition of a Current Participant, please contact the Settlement Administrator. Current Participants include both participants currently employed at Novant and participants who are no longer employed by Novant but continue to have an account balance in the Plan.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:	
OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. YOU MUST RETURN A CLAIM FORM BY XXXXX TO PARTICIPATE IN THE SETTLEMENT	<u>Our records indicate that you are a Former Participant.</u> You must return a Former Participant Claim Form by XXXXXX to receive a check for your share of the Net Settlement Amount. If you do not return the Former Participant Claim Form by XXXXXXXX, you will forfeit your share of the Net Settlement Amount.
YOU CAN OBJECT (NO LATER THAN XXXXX, 2015)	If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.
YOU CAN ATTEND A HEARING ON XXXX	If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel of your intention to appear at the hearing by XXXXX, 2015.

The Class Action

The case is called *Karolyn Kruger M.D., et. al. v. Novant Health, Inc., et al.*, Case No. 14-208 (the “Class Action”). It has been pending since March 12, 2014. The Court supervising the case is the U.S. District Court for the Middle District of North Carolina. The individuals who brought this suit are called Class Representatives, and the entities they sued are called Defendants. The Class Representatives are participants in the Plan. The Defendants are Novant Health, Inc., the Administrative Committee of Novant Health, Inc., and the Novant Health Retirement Plan Committee. The Class Representatives’ claims are described below, and additional information about them is available at www.Novant401ksettlement.com.

The Settlement

After almost two years of litigation, a Settlement has been reached. As part of the Settlement, a Qualified Settlement Fund of \$32,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$32,000,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representatives' Compensation, and other approved expenses of the litigation. The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court.

In addition to the monetary component of the Settlement, the parties to the Settlement have agreed to certain additional terms. Defendants have agreed to conclude an RFP competitive bidding process for recordkeeping, investment consulting and participant education services for the Plans and to engage a mutually agreed upon Independent Consultant to assess the adequacy of the RFP process and assess Defendants' anticipated selection of service providers for the Plans. In addition, Defendants have agreed, during the four-year Settlement Period, to: (1) ensure that Plans' administrative service providers are not reimbursed for their services based on a percentage-of-plan-assets basis; (2) review all current investment options in the Plans and revise the investment options, as needed, ensuring that those options are selected or retained for the exclusive best interests of the Plans' participants; (3) the Independent Consultant reviewing the investment option selection process and providing recommendations, if necessary; (4) the Independent Consultant conducting an annual review of Novant's management of the Plans; (5) removing DL Davis, Inc. and related entities from any involvement with the Plans; (6) removing DL Davis and related entities from Novant employee benefit plans; (7) not enter into any new real estate or business relationships with DL Davis and related entities; (8) not offer any Mass Mutual investments in the Plans or any other investment that provides compensation to DL Davis and related entities; (9) provide accurate communications to participants in the Plans; (10) not offer any brokerage services to the Plans; and (11) adopt a new investment policy statement to ensure that the Plans are operated for the exclusive best interests of the Plans' participants.

Statement Of Attorneys' Fees and Costs Sought in the Class Action

Class Counsel have devoted many hours to bringing this case and pursuing it for almost two years. During that time, they also have advanced costs for expert consulting services, substantial investigation, intensive document analysis and other costs necessary to pursue the case. Class Counsel have defended a motion to dismiss and engaged in substantial investigation and analysis of the Plans in order to obtain the monetary and other benefits in this settlement. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending before the District Court. Class Counsel also has agreed to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved. In addition, Class Counsel agrees to take any action necessary to enforce the Settlement Agreement for a four-year period, including any necessary mediations, arbitrations, and Court proceedings, without seeking additional payment from the Settlement Fund.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$10,666,666, in addition to no more than \$95,000.00 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$25,000, for each of the seven Class Representatives who took on the risk of litigation, provided discovery, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and giving overall support to the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full and formal application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, www.Novant401ksettlement.com

1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because Novant's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

2. What Is The Class Action About?

In the Class Action, Class Representatives claim that, during the Class Period, Defendants violated ERISA by imprudently and disloyally selecting high-priced investment options and by causing the Plan to pay excessive investment management, administrative, and brokerage fees.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plans have suffered any harm or damage for which Defendants could or should be held responsible. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability whatsoever.

3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel, and an all day mediation session with a private mediator. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are experienced in this kind of matter, believe that the Settlement is best for all Class Members.

4. What Does The Settlement Provide?

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing Plan accounts, except that allocations associated with the 457(f) Plan and accounts in the Plans that are no longer Active Accounts as of September 30, 2015, will be distributed to Current Participants by check mailed to their last known address or, if available and they elect, as a rollover to a qualified retirement account. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if available and they elect, as a rollover to a qualified retirement account.

As discussed above, Defendants have agreed to conclude an RFP competitive bidding process for recordkeeping, investment consulting and participant education services for the Plans and to engage a mutually agreed upon Independent Consultant to assess the adequacy of the RFP process and assess Defendants' anticipated selection of service providers for the Plans. In addition, Defendants have agreed, during the four-year Settlement Period, to: (1) ensure that Plans' administrative service providers are not reimbursed for their services based on a percentage-of-plan-assets basis; (2) review all current investment options in the Plans and revise the investment options, as needed, ensuring that those options are selected or retained for the exclusive best interests of the Plans' participants; (3) the Independent Consultant reviewing the investment option selection process and providing recommendations, if necessary; (4) the Independent Consultant conducting an annual review of Novant's management of the Plans; (5) removing DL Davis, Inc. and related entities from any involvement with the Plans; (6) removing DL Davis and related entities from Novant employee benefit plans; (7) not enter into any new real estate or business relationships with DL Davis and related entities; (8) not offer any Mass Mutual investments in the Plans or any other investment that provides compensation to DL Davis and related entities; (9) provide accurate communications to participants in the Plans; (10) not offer any

brokerage services to the Plans; and (11) adopt a new investment policy statement to ensure that the Plans are operated for the exclusive best interests of the Plans' participants.

All Class Members and anyone claiming through them will fully release the Plans as well as Defendants and their "Released Parties" from "Released Claims." The Released Parties include Defendants and any past, present, and future related entities, and all of their past, present, and future officers, directors, employees, attorneys, and agents. The Released Claims include all claims that were asserted in the Class Action, as well as any claims that relate to: (1) the selection, oversight, retention, or performance of the Plans' investment options and service providers, (2) fees, costs, or expenses charged to, paid, or reimbursed by the Plans, (3) disclosures or failures to disclose information regarding the Plans' investment options or service providers, (4) disclosures or failures to disclose relationships among fiduciaries, service providers, and investment managers for the Plans, (5) engaging in self-dealing or prohibited transactions, and/or (6) collecting compensation based on a percentage of total assets.

"Released Claims" specifically exclude (1) claims not related to those identified in the preceding paragraph; (2) claims of denial of benefits from the Plans; (2) labor or employment claims unrelated to the Plans; and, (3) claims arising from conduct outside the Class Period.

This is *only* a summary of the Released Parties and Released Claims and is not a binding description of either. The governing releases are found within the Settlement Agreement at www.Novant401ksettlement.com. Generally, the release means that Class Members will not have the right to sue the Plans, the Defendants or related parties for conduct during the Class Period arising out of or relating to the allegations in the Class Action.

The entire Settlement Agreement is available at www.Novant401ksettlement.com.

5. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plans' recordkeeper, and your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as defined on page 1 or (2) an "Authorized Former Participant" (a "Former Participant" as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Net Settlement Amount will be divided among all Class Members pro rata based on their Modified Average Account Balance during the Class Period. The Modified Average Account Balance is calculated by determining each participant's average, aggregate quarter-ending balance across all of his or her accounts in the Plans for two separate periods: (1) March 31, 2008 through September 30, 2015 (the "Period 1 Average"); and (2) December 31, 1998 through December 31, 2007 (the "Period 2 Average"). Next, the Period 1 Average shall be multiplied by 4 to determine the Modified Period 1 Average. Then, the Modified Period 1 Average shall be combined with the Period 2 Average and the total divided by 2, to determine the participant's Modified Average Account Balance.

The Settlement Administrator shall then determine the total settlement payment available to each Class Member by calculating each such participant's pro-rata share of the Net Settlement fund based on his or her Modified Average Account Balance. To the extent a participant has more than one account in the Plans, the Settlement Administrator shall calculate the proportionate share of the total settlement distribution available to the participant (rounded to the nearest dollar or smaller increment, as determined by the Settlement Administrator) that shall be allocated to each of the participant's accounts, based upon the most recent quarter-ending balance in each such account.

There are approximately 33,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, your portion of the Settlement will be distributed pursuant to the terms of that order

6. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **According to Novant’s records, you are a Former Participant. Therefore, you must return a valid, timely claim form to receive your share of the Settlement.**

7. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur early in 2016.

There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.

8. Can I Get Out Of The Settlement?

No. The Class has been certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement. If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement.

9. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys’ Fees and Costs. This petition will be considered at the Fairness Hearing. Defendants do not oppose the amount of Attorneys’ Fees and Costs or any Class Representatives’ Compensation consistent with the terms of the Settlement Agreement. Class Counsel has agreed to limit their application for an award of Attorneys’ Fees and Costs to not more than \$10,666,666 in fees and \$95,000.00 in costs. The Court will determine what fees and costs will be approved.

11. How Do I Tell The Court If I Don’t Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Kruger, et al. v. Novant Health, Inc., et al.*, Case No. 14-208. Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than XXXXXX, 2015. The Court’s address is Clerk of the Court, U.S. District Court, Middle District of North Carolina, 324 W. Market Street, Greensboro, N.C. 27401. Your written objection also must be mailed to the lawyers listed below, **no later than XXXXXX, 2015**. Please note that the Court’s Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL	DEFENDANTS' COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Novant 401(k) Settlement 100 S. Fourth St. St. Louis, MO 63102 Novant401ksettlement@uselaws.com Tel: (314) 621-6115 Fax: (314) 621-7151	Morgan, Lewis & Bockius, LLP Charles C. Jackson Christopher J. Boran Emily A. Glunz 77 West Wacker Drive Chicago, IL 60601 Tel: (312) 324-1000 Fax: (312) 324-1001

12. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Fairness Hearing at XX:XX p.m. on XXXX, 2015, at the U.S. District Court, Middle District of North Carolina, 324 W. Market Street, Greensboro, N.C. 27401.

At the Fairness 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 give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

13. Do I Have To Attend The Fairness Hearing?

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

14. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Kruger, et al. v. Novant Health, Inc., et al.*, Case No. 14-208." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 11, **no later than XXXXX, 2015**.

15. What Happens If I Do Nothing At All?

If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY**.

16. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: www.Novant401ksettlement.com, call 1-XXXXXXX, or write to the Settlement Administrator at Novant 401(k) Settlement Administrator, _____.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

KAROLYN KRUGER, M.D., et al.,

Plaintiffs,

v.

NOVANT HEALTH, INC., et al.,

Defendants.

No. 1:14-cv-208

Judge William Osteen, Jr.

Magistrate Judge Joi Elizabeth Peake

[PROPOSED] FINAL ORDER AND JUDGMENT

Wherefore, this ___ day of _____, 2015, upon consideration of the Settling Parties' joint motion for final approval of the settlement pursuant to the terms of a the settlement agreement dated November 9, 2015, (herein the "Settlement"), the Court hereby orders and adjudges as follows:

1. For purposes of this Final Order and Judgment, except as otherwise defined herein, all capitalized terms used herein shall have the same meaning as are ascribed to them in the Settlement Agreement.

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

3. Pursuant to Fed. R. Civ. P. 23(e)(1)(A) and (C), the Court hereby approves and confirms the Settlement embodied in the Settlement Agreement as being a fair, reasonable, and adequate settlement and compromise of the claims asserted in the Class Action.

4. The Court hereby approves the Settlement and orders that the Settlement shall be consummated and implemented in accordance with its terms and conditions.

5. In accordance with the Court's Orders, and as determined by this Court previously, notice was timely distributed by first-class mail to all Class Members who could be identified with reasonable effort, and notice was published on the website maintained by Class Counsel. In addition, pursuant to the Class Action Fairness Act, 29 U.S.C. § 1711, *et seq.*, notice was provided to the Attorneys General for each of the states in which a Class Member resides, the Attorney General of the United States, and the United States Secretary of Labor.

6. The form and methods of notifying the Class Members of the terms and conditions of the proposed Settlement Agreement met the requirements of Fed. R. Civ. P. 23(c)(2), any other applicable law, and due process, and constituted the best notice practicable under the circumstances; and due and sufficient notices of the fairness hearing and the rights of all Class Members have been provided to all people, powers and entities entitled thereto.

7. All requirements of the Class Action Fairness Act, 29 U.S.C. § 1711, *et seq.*, have been met.

8. As mentioned above, the Court finds that the Settlement is fair, reasonable, and adequate, based on the following findings of fact, conclusions of law, and determination of mixed fact/law questions:

- a. The Settlement was negotiated vigorously and at arm's length by experienced Class Counsel on behalf of the Settlement Class seeking plan-wide relief for the Plans pursuant to ERISA §§409 and 502(a)(2);
- b. This Class Action settled after Class Counsel and Defense Counsel engaged in settlement negotiations, with the assistance of an experienced mediator, over the course of several months. The Settlement Parties were well positioned to evaluate the value of the Class Action;
- c. If the Settlement had not been achieved, both Plaintiffs and Defendants faced the expense, risk, and uncertainty of extended litigation;
- d. The amount of the Settlement – \$32,000,000 – is fair, reasonable, and adequate. The Settlement amount is within the range of reasonable settlements that would have been appropriate in this case;
- e. At all times, the Class Representatives have acted independently;
- f. Class Members had the opportunity to be heard on all issues regarding the resolution and release of their claims by submitting objections to the Settlement Agreement to the Court.
- g. Each and every Objection to the settlement is overruled with prejudice.

9. The motion for final approval of the Settlement Agreement is hereby GRANTED, the settlement of the Class Action is APPROVED as fair, reasonable and adequate to the Plans and the Settlement Class, and the Settling Parties are hereby directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

10. The operative complaint and all claims asserted therein whether asserted by Class Representatives on their own behalf or on behalf of the Class Members, or derivatively to secure relief for the Plans, are hereby dismissed with prejudice and without costs to any of the Settling Parties, except as otherwise provided for in the Settlement Agreement.

11. The Plans and the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors and assigns) hereby fully, finally and forever settle, release, relinquish, waive and discharge Defendants and Released Parties from the Released Claims, whether or not such Class Members have executed and delivered a Former Participant Claim Form, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

12. The Class Members and the Plans acting individually or together, or in combination with others, are hereby barred from suing or seeking to institute, maintain, prosecute, argue, or assert in any action or proceeding (including an IRS determination letter proceeding, Department of Labor proceeding or proceeding before a state insurance department or commissioner) any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of the Settlement Agreement pursuant to the procedures set forth in the Settlement Agreement.

13. Class Counsel, the Class Members, or the Plans may hereafter discover facts in addition to or different from those which they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with Defendants, the Plans and the Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or might have affected the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, each Class Member and the Plans hereby fully, finally and forever settled, released, relinquished, waived and discharged any and all Released Claims.

14. The Class Members and the Plans hereby settle, release, relinquish, waive and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims, including without limitation, Section 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.” The Class Members and the Plans with respect to the Released Claims also hereby waive any and all provisions, rights and benefits conferred by any law of any State or territory of the United States or any foreign country, or any principle of common law, which are similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

15. The Court finds that it has subject matter jurisdiction over the claims herein and personal jurisdiction over Class Members herein pursuant to the provisions of ERISA,

and expressly retains that jurisdiction for purposes of enforcing this Final Order and/or Article 8 and 13.7 of the Settlement Agreement. Any motion to enforce paragraphs 10 through 14 this Final Order or Article 8 of the Settlement Agreement, including by way of injunction, may be filed in this Court, and the provisions of the Settlement Agreement and/or this Final Order may also be asserted by way of an affirmative defense or counterclaim in response to any action that is asserted to violate Article 8 of the Settlement Agreement.

16. Each Class Member shall hold harmless Defendants, Defense Counsel, the Released Parties, and the Plans for any claims, liabilities, attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses;

17. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant and each Authorized Former Participant;

18. With respect to payments or distributions to Authorized Former Participants, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its sole and exclusive discretion;

19. With respect to any matters that arise concerning distributions to Current Participants (after allocation decisions have been made by the Settlement Administrator

in its sole discretion), all questions not resolved by the Settlement Agreement shall be resolved by the Plan Fiduciary pursuant to the applicable law and governing Plan terms;

20. At a reasonable date following the issuance of all settlement payments to Class Members, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who was issued a settlement payment and the amount of such payment;

21. Upon entry of this Order, all Class Members and the Plans shall be bound by the Settlement Agreement as amended and by this Final Order.

SO ORDERED:

DATED: _____, 2015

Hon. William L. Osteen
United States District Court Chief Judge