

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 15-cv-02556-WJM-NRN

LORRAINE M. RAMOS, *et al.*,

Plaintiff,

v.

BANNER HEALTH, *et al.*,

Defendant.

**ORDER PRELIMINARILY APPROVING PROPOSED REVISED SETTLEMENT
AGREEMENT WITH DEFENDANT SLOCUM, DIRECTING NOTICE TO CLASS,
AND SETTING FAIRNESS HEARING**

This litigation arises out of claims involving alleged breaches of fiduciary duty under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001, *et seq.*, against Banner Health, certain of its current and former employees, and Jeffrey Slocum & Associates, Inc. (“Slocum”), for the operation of the Banner Health 401(k) Plan. The matter is currently before the Court on “Plaintiffs’ Consent Motion for Class Certification and Preliminary Approval of Class Settlement As To Claims Against Jeffrey Slocum & Associates, Inc. And Memorandum In Support” (“Certification Motion”) (ECF No. 421), and Plaintiffs’ and Slocum’s “Joint Motion for Entry of Preliminary Approval and Setting of Final Approval Hearing Date” (“Approval Motion”) (ECF No. 461), as amended by the “Joint Motion to Approve the Revised Settlement Agreement” (“Revised Motion”) (ECF No. 468).

The Revised Motion filed by the parties on May 18, 2020, has appended to it the revised settlement agreement (“Revised Agreement”) (ECF No. 468-1), the final proposed class notice, and a revised proposed order.

As part of the Revised Agreement, Plaintiffs and Slocum have agreed to a settlement class under Federal Rule of Civil Procedure 23(b)(1) defined as “The Class Representatives and all current participants and beneficiaries of the Banner Health Employees 401(k) Plan as of the date the Court enters this Preliminary Approval Order, excluding Defendants.” (ECF No. 468-1 at 7.)

“The purpose of the preliminary approval process is to determine whether there is any reason not to notify the class members of the proposed settlement and to proceed with a fairness hearing.” *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). “[T]he standard that governs the preliminary approval inquiry is less demanding than the standard that applies at the final approval stage.” *Rhodes v. Olson Assocs., P.C.*, 308 F.R.D. 664, 666 (D. Colo. 2015) (internal quotation marks omitted). A proposed settlement should be preliminarily approved if it “appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible [judicial] approval.” William B. Rubenstein, *Newberg on Class Actions* § 13:10 (5th ed., Nov. 2018 update) (internal quotation marks omitted).

As drafted and presented to the Court, the Revised Agreement appears to be the product of serious negotiations, conducted at arms-length, has no obvious deficiencies, does not grant improper preferential treatment to the class representatives, and

generally falls within the range of possible judicial approval.

The Court having reviewed the Revised Agreement, being fully advised, and having satisfied itself that it would likely be able to approve the Revised Agreement, hereby ORDERS as follows:

1. Plaintiffs' Consent Motion for Class Certification and Preliminary Approval of Class Settlement As To Claims Against Jeffrey Slocum & Associates, Inc. And Memorandum In Support (ECF No. 421), as amended by the Revised Motion (ECF No. 468), is GRANTED;
2. The parties' Joint Motion for Entry of Preliminary Approval and Setting of Final Approval Hearing Date (ECF No. 461), as amended by the Revised Motion (ECF No. 468), is GRANTED;
3. The Court preliminarily CERTIFIES the following class for settlement purposes only:

The Class Representatives and all current participants and beneficiaries of the Banner Health Employees 401(k) Plan as of the date the Court enters this Preliminary Approval Order, excluding Defendants;
4. The Revised Agreement (ECF No. 468-1) is PRELIMINARILY APPROVED as fair and reasonable;
5. The form and contents of notice to be given to the class members, submitted at ECF No. 468-1 at 63–70, are APPROVED;
6. The Settlement Administrator shall distribute the Court-approved notice to all Class Members no later than **July 22, 2020** in the manner described in the Revised Agreement. Distribution of the class notice will commence a 75-day

- notice period during which class members may object to the Revised Agreement;
7. Class members who wish to object to the Court's approval of the Revised Agreement must submit any objection to the Court. Objections must be received by **October 5, 2020**. If counsel for the parties receive any objection that is not filed on the docket, within seven days of the parties' receipt, counsel shall promptly file any such objection with the Court. Counsel for the parties may file a response to any objection no later than **October 21, 2020**. Plaintiffs' counsel may communicate with class members regarding their objections and may advise the Court of any class members who have communicated that they wish to withdraw their objections;
 8. Any class member who wishes to speak at the hearing, or to have counsel speak on his or her behalf, may do so, provided that the class member notify the Court and the parties of that intention in writing, and the document must be received by the Court no later than **October 5, 2020**;
 9. The Parties' motion seeking final approval of the settlement, including counsel's final request for attorneys' fees and costs, and any incorporated responses to objections received, shall be filed with the Court and served on any timely objectors no later than **October 7, 2020**, 30 days before the fairness hearing. Any written responses to this motion shall be filed with the Court no later than **October 22, 2020**, 15 days before fairness hearing. These deadlines for Court filings do not alter the obligation to comply with the period for submitting and responding to any written objections;

10. A fairness hearing is scheduled for **November 6, 2020 at 10 a.m.** at the United States District Court for the District of Colorado, Alfred A. Arraj Courthouse, 901 19th Street, Denver, Colorado, **in Courtroom A801** to determine whether the Court will grant final certification to the proposed settlement class and give final approval to the Revised Agreement. Should access to the Alfred A. Arraj U.S. Courthouse be limited on that date due to the ongoing COVID-19 pandemic, this fairness hearing may be converted to a telephonic hearing. If such a change is necessary, the Court will provide further details to the parties in advance of the fairness hearing, and the parties will be responsible for notifying class members;
11. Any class member who has submitted an objection in writing by the deadline set forth above may appear at the fairness hearing and be heard as to why the Revised Agreement should not be approved as fair, reasonable, and adequate, why a judgment should not be entered upon the settlement, or why attorneys' fees and expenses should not be awarded to class counsel. Any class members who fails to object or otherwise request to be heard will be deemed to have waived the right to object to the Revised Agreement.

Dated this 19th day of May, 2020.

BY THE COURT:



William J. Martinez
United States District Judge