# CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Settlement Agreement") is entered into between and among the Class Representatives, all Class Members, and Jeffrey Slocum & Associates, Inc. ("Slocum").

## 1. Article 1 – Recitals

**1.1** On November 11, 2015, Plaintiffs Lorraine M. Ramos, Constance R. Williamson, Karen F. McLeod, Robert Moffitt, Charlene M. Goodale, Lynda Ann Heyrman, and Delri Hanson, individually and as representatives of a class of participants and beneficiaries of the Banner Health Employees 401(k) Plan (the "Plan"), filed their complaint in the United States District Court for the District of Colorado. Case No. 15-2556, Doc. 1. Plaintiffs brought this action under 29 U.S.C. § 1132 alleging that Defendant Banner Health and a group of Banner Health employees (collectively, the "Banner Defendants") breached their fiduciary duties and committed prohibited transactions relating to the management, operation, and administration of the Plan. They sought to recover all losses to the Plan resulting from each breach of duty under 29 U.S.C. § 1109(a) and for other equitable and remedial relief.

**1.2** Plaintiffs filed an amended complaint on November 9, 2016, in which they named Slocum as a Defendant in this action, along with the Banner Defendants. Doc. 118. Slocum previously served as the Plan's investment advisor under 29 U.S.C. § 1002(21)(A)(ii) until Slocum ceased operations effective October 24, 2016. Plaintiffs alleged that Slocum breached its fiduciary duties under 29 U.S.C. § 1104 through the advice it provided to the fiduciaries of the Plan, including the Banner Health Defendants.

**1.3** Slocum's motion to dismiss was denied on September 29, 2017. (Doc. 251.) The parties then proceeded to merits discovery. Plaintiffs, the Banner Defendants, and Slocum engaged in extensive discovery. Slocum produced over 25,000 pages of documents, and the Banner Defendants produced close to 100,000 pages of documents. These materials included all meeting minutes of the Plan's fiduciaries, materials prepared in connection with those meetings, plan documents, service provider agreements, fee and performance disclosures, and other materials requested by Class Counsel. The parties also took over 20 depositions.

**1.4** Through litigation, the Court pared down the claims against Slocum. First, on March 28, 2018, the Court denied Plaintiffs' motion to certify a class as to claims against Slocum (though it certified a class as to claims against the Banner Defendants). Doc. 296. The Court reaffirmed this ruling on January 29, 2019. Doc. 345. Second, on April 23, 2018, the Court granted partial summary judgment on Plaintiffs' claims against Slocum. Doc. 372. It also held that Plaintiffs could not pursue their claims on behalf of the Plan as a whole, and Slocum could only be liable for damages to the seven named Plaintiffs.

**1.5** The parties engaged in mediation of this matter in Atlanta with respected mediator Hunter Hughes in July 2019. The mediation did not result in a settlement. Slocum and Plaintiffs continued to exchange settlement offers over the summer and fall of 2019.

**1.6** The district court scheduled a trial in this matter for January 6, 2020. Slocum and Plaintiffs continued to discuss a potential settlement of this matter in December 2019. On December 30, 2019, one week before trial was scheduled to begin, Plaintiffs and Slocum came to an agreement on the terms of a settlement. This settlement does not include the Banner Defendants. The terms of the settlement reached by Plaintiffs and Slocum are memorialized in this Settlement Agreement.

**1.7** The Class Representatives and Class Counsel, as defined below, consider it desirable and in the Class Members' best interests that the claims against Slocum 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.

**1.8** Slocum admits no wrong doing or liability with respect to any of the allegations or claims in this action. 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 Slocum or any of the Released Parties, as defined below.

**1.9** The Settling Parties, as defined below, have concluded it is desirable that this matter be finally settled upon the terms and conditions set forth in this Settlement Agreement.

**1.10** 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, 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, including but not limited to the fees of the Plan's recordkeeper to identify the names and addresses of Class Members; (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 to the Plan to offset recordkeeping fees under the

Plan of Allocation, including but not limited to the fees of the Plan's recordkeeper associated with implementing this Settlement Agreement; (d) all fees and expenses of the Independent Fiduciary, 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 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 the Plan with a balance greater than $0 as of the Settlement Date, as defined below.

**2.3** "Alternate Payee" means a person other than a participant or Beneficiary in the Plan who is entitled to a benefit under the Plan as a result of a Qualified Domestic Relations Order.

**2.4** "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 $166,667, 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, including the pre-litigation investigation period, not to exceed $56,562.40, which also shall be recovered from the Gross Settlement Amount.

**2.5** "Banner" means Banner Health and all current and former Banner employees who were named as defendants in the operative Amended Complaint in the Class Action.

**2.6** "Banner's Counsel" means counsel for the Banner Defendants, including McDermott, Will & Emery LLP.

**2.7** "Beneficiary" means a person who currently is entitled to receive a benefit under the Plan upon the death of a plan participant, 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 *Ramos, et al., v. Banner Health, et al.*, Case No. 1:15-cv-2556, in the United States District Court for the District of Colorado.

**2.11** "Class Counsel" means Schlichter, Bogard & Denton LLP.

**2.12** "Class Members" means all individuals in the Settlement Class, including the Class Representatives, on behalf of themselves and the Plan.

**2.13** "Class Period" means the period from November 9, 2010 to the entry of the Preliminary Order, as defined below.

**2.14** "Class Representatives" means Lorraine M. Ramos, Constance R. Williamson, Karen F. McLeod, Robert Moffitt, Charlene M. Goodale, Lynda Ann Heyrman, and Delri Hanson.

**2.15** "Class Representatives' Compensation" means an amount to be determined by the Court, but not to exceed $2,500 for each Class Representative, which shall be paid from the Gross Settlement Amount directly to each Class Representative.

**2.16** "Court" means the United States District Court for the District of Colorado.

**2.17** "Current Participant" means a person who participated in the Plan during the Class Period and had an Active Account as of the Settlement Date.

**2.18** "Slocum" means Jeffrey Slocum & Associates, Inc..

**2.19** "Escrow Agent" means an entity agreed to by the Settling Parties.

**2.20** "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 under Fed. R. Civ. P. 23.

**2.21** "Final Order" 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 4 hereto.

**2.22** "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-five (35) calendar days after its entry by the Court.

**2.23** "Gross Settlement Amount" means the sum of five hundred thousand dollars ($500,000), contributed to the Qualified Settlement Fund in accordance with 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 Slocum in connection with the Settlement effectuated through this Settlement Agreement. Slocum and its insurers will make no additional payment in connection with the Settlement of the Class Action.

**2.24** "Independent Fiduciary" means an independent fiduciary who will serve as a fiduciary to the Plan in accordance with Article 3 that has no relationship or interest in any of the Settling Parties and is mutually agreed to by the Settling Parties.

**2.25** "Mediator" means Hunter R. Hughes, Esq., or, if he is unavailable, another mediator mutually agreed upon by the Settling Parties.

**2.26** "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.

**2.27** "Plaintiffs" means the Class Representatives and the Class Members.

**2.28** "Plan" means The Banner Health Employees 401(k) Plan as well as any predecessor or successor plans that existed during the Class Period.

**2.29** "Plan of Allocation" means the methodology for allocating and distributing the Net Settlement Amount in accordance with Article 6 herein.

**2.30** "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, attached as Exhibit 1 hereto, as described in Paragraph 3.2.

**2.31** "Qualified Settlement Fund" or "Settlement Fund" means the interest-bearing, settlement fund account to be established and maintained by the Escrow Agent in accordance with Article 5 herein and referred to as the Qualified Settlement Fund (within the meaning of Treas. Reg. § 1.468B-1).

**2.32** "Released Parties" means (a) Slocum, (b) Slocum's past or present insurers**,** co-insurers, and reinsurers, (c) Slocum's past, present, and future parent corporation(s), (d) Slocum's past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns, and with respect to (a) through (d) above, each of their respective

board of directors and managers, past, present and future members of the boards of directors, officers, trustees, partners, agents, managers, members, shareholders (in their capacity as such), employees, attorneys, insurers, co-insurers, reinsurers, accountants, auditors, personal representatives, owners, spouses, heirs, executors, administrators, and members of their immediate families, and all persons acting under, by, through, or in concert with any of them. Released Parties specifically excludes Banner. Nothing herein shall release any claims against Banner or any other Defendants in the pending case described above in 1.1.

**2.33** "Released Claims" means any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys' fees, expenses, costs, and causes of action, whether arising under federal, state or local law, whether by statute, contract or equity, whether brought in an individual or representative capacity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, arising from conduct occurring from November 9, 2010, to the entry of the Preliminary Order that were or could have been brought against Slocum and:

**2.33.1** That were asserted in the Class Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the amended complaint, in any complaint previously filed in the Class Action, including the operative Amended Complaint (Doc. 118); or

**2.33.2** That arise out of, relate in any way to, are based on, or have any connection with: (1) advice provided in connection with the selection, oversight, retention, monitoring, compensation, fees, or performance of the Plan's investment options and service providers; (2) fees, costs, or expenses charged to, or paid or reimbursed by, the Plan or any Class Member; (3) disclosures or failures to disclose information regarding the Plan's investment options or service providers; (4) the investment options offered to Plan participants; (5) the compensation received by the Plan's service providers; (6) the services provided to the Plan or the costs of those services; (7) the payment of compensation based on a percentage of total assets; or (8) alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions; or

**2.33.3** That would be barred by *res judicata* based on entry of the Final Order; or

**2.33.4** That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund in accordance with the Plan of Allocation; or

**2.33.5** That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

**2.33.6** "Released Claims" exclude (1) those claims not related to 2.33.1 – 2.33.5 above; (2) claims arising exclusively from conduct occurring before November 9, 2010, or after the entry of the Preliminary Order; and (3) claims against Banner.

**2.34** "Settlement" or "Settlement Agreement" refers to the agreement embodied in this agreement and its exhibits.

**2.35** "Settlement Administrator" means an independent contractor to be retained by Class Counsel to administer the Settlement and Plan of Allocation.

**2.36** "Settlement Agreement Execution Date" means that date on which the final signature is affixed to this Settlement Agreement.

**2.37** "Settlement Class" means the Class Representatives and all current participants and beneficiaries of the Banner Health Employees 401(k) Plan with an Active Account as of the date the Court enters the Preliminary Approval Order, excluding the Banner Health Defendants.

**2.38** "Settlement Effective Date" means the date on which the Final Order is Final, provided that by such date the Settlement has not been terminated in accordance with Article 10.

**2.39** "Settlement Notice" means the Notices of Class Action Settlement and Fairness Hearing to be sent to Class Members identified by the Settlement Administrator following the Court's issuance of the Preliminary Order, in substantially the form attached hereto as Exhibit 3. The Settlement Notice informs 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.

**2.40** "Settlement Period" shall be from the Settlement Effective Date and continuing for a period one year thereafter.

**2.41** "Settlement Website" means the internet website established in accordance with Paragraph 11.2.

**2.42** "Settling Parties" means Slocum and the Class Representatives, on behalf of themselves, the Plan, and each of the Class Members.

**2.43** "Slocum's Counsel" means counsel for Slocum including Morgan, Lewis & Bockius, LLP.

## 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 Slocum, and retained by Class Counsel on behalf of the Plan, shall have the following responsibilities including whether to approve and authorize the settlement of Released Claims on behalf of the Plan.

**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.

**3.1.2** The Independent Fiduciary shall notify Class Counsel directly of its determination, in writing (with copies to Slocum's Counsel), which notification shall be delivered no later than thirty (30) calendar days before the Fairness Hearing. Class Counsel shall notify Banner's Counsel of the Independent Fiduciary's determination within ten (10) calendar days of its receipt.

**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** Slocum's Counsel and Class Counsel shall respond to reasonable requests by the Independent Fiduciary for information so that the Independent Fiduciary can review and evaluate the Settlement Agreement.

**3.1.5** If Class Counsel concludes that the Independent Fiduciary's determination does not comply with PTE 2003-39 or is otherwise deficient, Class Counsel shall so inform the Independent Fiduciary within fifteen (15) calendar days of receipt of the determination, copying Slocum's Counsel and Banner's Counsel.

**3.2** Class Representatives, through Class Counsel, on December 31, 2019, filed with the Court a motion seeking preliminary approval of this Settlement Agreement, certification of the Settlement Class, and the entry of a proposed Preliminary Order. An updated version of the proposed Preliminary Order is attached hereto as Exhibit 1. If granted, the proposed Preliminary Order would, among other things:

**3.2.1** Grant the motion to certify the Settlement Class under Fed. R. Civ. P. 23(b)(1);

**3.2.2** Approve the text of the Settlement Notice for sending by electronic means to Class Members to notify them (1) of the Settlement Agreement, (2) of the Fairness Hearing, and (3) 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 Settlement Class through the Settlement Website without requiring additional mailed or electronic notice;

**3.2.3** Determine that under 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 electronic means, the Settlement Notice to each Class Member identified by the Settlement Administrator, based upon the data provided by the Plan's recordkeeper;

**3.2.5** Set the Fairness Hearing for no sooner than one hundred twenty (120) calendar days after the date that this Settlement Agreement 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;

**3.2.6** 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 Slocum's 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 Fairness 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;

**3.2.7** Provide that any party may file a response to an objection by a Class Member at least fourteen (14) days before the Fairness Hearing; and

**3.2.8** 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** Slocum and Slocum's Counsel shall use reasonable efforts to respond timely to written requests, including by e-mail, from the Settlement Administrator and shall use reasonable efforts to coordinate with Banner's Counsel and the Plan's recordkeeper to obtain 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 Plan's recordkeepers, that are necessary to perform such work shall be Administrative Expenses to be deducted from the Gross Settlement Amount, except that the Plan's recordkeeper(s) shall not receive compensation for crediting the Plan in order to offset the Plan's recordkeeper's fees.

**3.3.1** The Settlement Administrator shall be bound by any non-disclosure or security protocol required by the Settling Parties.

**3.3.2** The Settlement Administrator shall use the data provided by Slocum's Counsel, Banner's Counsel and the Plan's recordkeepers solely for the purpose of meeting its obligations as Settlement Administrator, and for no other purpose.

**3.3.3** At the request of the Settling Parties, the Settlement Administrator shall provide a written protocol 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 sent 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 Exhibit 3 and approved by the Court. The Settlement Notice shall be sent to the last known e-mail address of each Class Member provided by the Slocum's Counsel, the Plan's recordkeepers and/or Banner's Counsel (or their designee(s)), unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided by to the Settlement Administrator. Class Counsel also shall post a copy of the Settlement Notice on the Settlement Website, and a link to the Settlement Website will also appear on Class Counsel's website.. The Settlement Administrator shall use commercially reasonable efforts to locate any Class Member whose

Settlement Notice is returned and re-send such documents one additional time.

**3.5** No later than ten (10) calendar days after the filing of this Settlement Agreement, the Settlement Administrator shall serve the CAFA notices in substantially the form attached as Exhibits 5-A through 5-C hereto on 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.

## 4. Article 4 – Final Settlement Approval

**4.1** No later than ten (10) business days before the Fairness Hearing, Class Counsel shall submit to the Court a motion for entry of the Final Order (Exhibit 4) in the form approved by Class Counsel and Slocum's Counsel, 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** 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 Plan 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** A determination under 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** Dismissal with prejudice of the Class Action as against Slocum and all Released Claims asserted therein whether asserted by Class Representatives on their own behalf or on behalf of the Class Members, or on behalf of the Plan, as against Slocum, without costs to any of the Settling Parties other than as provided for in this Settlement Agreement;

**4.1.4** That the Court shall retain jurisdiction to enforce Article 8 of the Settlement Agreement;

**4.1.5** That the Plan and 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 the Released Parties from all

Released Claims, and (ii) barred and enjoined from suing the Released Parties in any action or proceeding alleging any of the Released Claims. The provisions (i) and (ii) shall apply 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 receive a monetary benefit from the Settlement, 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;

**4.1.6** That each Class Member shall release the Released Parties, Slocum's Counsel, Class Counsel, Banner, and Banner's Counsel 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 allocation of the Net Settlement Amount to the Plan in order to defray recordkeeping fees in accordance with the Plan of Allocation approved by the Court;

**4.1.9** That, with respect to any matters that arise concerning the implementation of the Plan of Allocation, all questions not resolved by the Settlement Agreement shall be resolved by Slocum in accordance with applicable law and governing terms of the Plan; and

**4.1.10** That within twenty-one (21) calendar days following the issuance of all settlement payments to the Plan as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall prepare and provide to Class Counsel and Slocum's Counsel an affidavit containing the details of the settlement payment from the Qualified Settlement Fund to the Plan to offset the Plan's recordkeeping fees, and the amount of such payment.

**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 Plan 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 ten (10) 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 Slocum, Slocum's insurers or Slocum's 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 the Plan 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 the Released Parties, Slocum's Counsel, Class Counsel, Banner, nor Banner's 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 twenty-one (21) calendar days after the later of (a) the date the Preliminary Order is entered, or (b) the date the escrow account described in Paragraph 5.1 is established and the Escrow Agent shall have furnished to Slocum's Counsel in writing the escrow account name, IRS W-9 Form, and all necessary wiring instructions, Slocum and/or its insurer shall deposit the Gross Settlement Amount of five hundred thousand dollars ($500,000) 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 Slocum's 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 (e) fifth, the Net Settlement Amount will be distributed in accordance with 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. The Released Parties, Slocum's Counsel, Class Counsel, Banner, and/or Banner's 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 Slocum, its insurers, or agents make a transfer to the Qualified Settlement Fund in accordance with the terms of this Article 5, Slocum, its 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 Slocum, its 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 Plan in accordance with the Plan of Allocation set forth in this Article 6 and as ordered by the Court.

**6.2** The Net Settlement Amount will be distributed in its entirety to the Plan to be used to offset reasonable recordkeeping fees incurred by the Plan. No settlement payment shall be made to any individual Class Member.

**6.2.1** The Settlement Administrator shall determine the total settlement payment available to the Plan by calculating the Net Settlement as set forth above.

**6.2.2** The total payment that the Settlement Administrator shall authorize from the Qualified Settlement Fund to the Plan shall not exceed the Net Settlement Amount.

**6.2.3** The Settlement Administrator shall inform Class Counsel and Slocum's counsel within thirty (30) business days after the Settlement Effective Date of the total payment that shall be made to the Plan to offset recordkeeping fees.

**6.2.4** Within twenty (20) business days' written notice to Slocum's Counsel with the total amount that shall be transferred to the Plan to offset recordkeeping fees, the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund to the Plan's recordkeeper of the Net Settlement Amount.

**6.2.5** Slocum's Counsel and/or Banner's Counsel (or its designee) shall direct the Plan's recordkeeper to apply the Net Settlement Amount to offset the Plan's recordkeeping fees, with such offset applying at an early practicable time and no later than December 31, 2020. No portion of the Net Settlement Amount shall be deposited in any Plan participant's individual Plan account.

**6.2.6** The Released Parties, Banner, and Banner's Counsel shall not have any responsibility for or liability whatsoever with respect to the Plan of Allocation, including, but not limited to, the determination of the Plan of Allocation or the reasonableness of the Plan of Allocation.

**6.2.7** Neither the Released Parties, Slocum's Counsel, Class Counsel, Banner, nor Banner's Counsel shall have any responsibility for or liability whatsoever with respect to any tax advice given to Class Members in connection with this Settlement Agreement.

**6.3** 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 or electronic 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.

**6.4** Within ten (10) business days of completing all aspects of this Plan of Allocation, the Settlement Administrator shall send to Class Counsel and Slocum's Counsel one or more affidavits stating the following: (a) the name of each Class Member to whom the Settlement Administrator sent the Settlement Notice, and the electronic mail address of such mailing; (b) the name and/or electronic mail address of each Class Member whose Settlement Notice was returned as undeliverable; (c) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice for each such Class Member; and (d) the date on which the Settlement Administrator transmitted the Net Settlement Amount to the Plan's recordkeeper to be applied to offset recordkeeping fees incurred by the Plan.

**6.5** The Settling Parties acknowledge that any payments to Class Representatives, their attorneys (including Class Counsel), or the Plan may be subject to

applicable tax laws. Slocum, Slocum's Counsel, Slocum's agents and/or insurers, Class Counsel, Class Representatives, Banner, and Banner's Counsel 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.

**6.6** Each Class Member, Beneficiary, or Alternate Payee whose recordkeeping fees through the Plan are offset by virtue of a payment made 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 such Class Member, Beneficiary, or Alternate Payee shall hold the Released Parties, Slocum's 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 the Released Parties, Slocum's 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.

**6.7** 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, taxes and interest-earned on the Qualified Settlement Fund, shall be paid to the Plan for the purpose of defraying recordkeeping fees that would otherwise be charged to the Plan's participants. In no event shall any part of the Settlement Fund be used to reimburse any Slocum or otherwise offset settlement related costs incurred by any Slocum.

## 7. Article 7 – Attorneys' Fees and Costs

**7.1** Class Counsel intends to seek to recover their attorneys' fees not to exceed $166,666.67, and litigation costs and expenses advanced and carried by Class Counsel for the duration of this litigation, not to exceed $56,562.40, which shall be recovered from the Gross Settlement Amount. Class Counsel also intends to seek Class Representatives' Compensation, in an amount not to exceed $2,500 each for Class Representative (Lorraine M. Ramos, Constance R. Williamson, Karen F. McLeod, Robert Moffitt, Charlene M. Goodale, Lynda Ann Heyrman, and Delri Hanson), 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.

## 8. Article 8 – Release and Covenant Not to Sue

**8.1** As of the Settlement Effective Date, the Plan (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), on their own behalves and on behalf of the Plan, shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged all Released Parties from the Released Claims, whether or not such Class Members have received a monetary benefit from the Settlement, and 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.

**8.2** As of the Settlement Effective Date, the Class Representatives, the Class Members and the Plan (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 in accordance with the procedures set forth in this Settlement Agreement.

**8.3** Class Counsel, the Class Representatives**,** Class Members, or the Plan 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 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 Plan 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 Representatives**,** Class Members and the Plan 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 Representative, each Class Member, and the Plan 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 against Slocum, 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 or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Also, the Class Representatives and Class Members shall, upon entry of the Final Order with respect to the Released Claims, 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 – Termination, Conditions of Settlement, and Effect of Disapproval, Cancellation, or Termination

**10.1** The Settlement Agreement shall automatically terminate, and thereby become null and void with no further force or effect if:

**10.1.1** Under Paragraph 3.1, (1) either the Independent Fiduciary does not approve the Settlement Agreement or disapproves the Settlement Agreement for any reason whatsoever, or Class Counsel reasonably concludes that the Independent Fiduciary's approval does not include the determinations required by the PTE 2003-39; 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 PTE 2003-39.

**10.1.2** The Preliminary Order or the Final Order is not entered by the Court in substantially the form submitted by the Settling Parties or in a form which is otherwise agreed to by the Settling Parties;

**10.1.3** The Settlement Class is not certified as defined herein or in a form which is otherwise agreed to by the Settling Parties;

**10.1.4** This Settlement Agreement is disapproved by the Court or fails to become effective for any reason whatsoever; or

**10.1.5** 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.

**10.2** 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 Slocum, its 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 10.4.

**10.3** 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 and/or modifies any of

the proposed orders relating to Attorneys' Fees and Costs and/or Class Representatives' Compensation.

**10.4** 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 Slocum and/or its insurers or agents, on the other hand.

## 11. Article 11 – Confidentiality of the Settlement Negotiations and Permitted Settlement-Related Communications

**11.1** Except as set forth explicitly below, the Settling Parties, Class Counsel, and Slocum's 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, and the Settling Parties' tax, legal, and regulatory 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 11 in all other respects.

**11.2** 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, 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 6.4.

## 12. Article 12 – General Provisions

**12.1** 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 reasonably in advance of filing.

**12.2** 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 any Released Party of any wrongdoing, fault, or liability whatsoever by any Released Party, 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 Slocum and Released Parties admit no wrong doing, fault, 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. Subject to Federal Rule of Evidence 408, the Settlement and the negotiations related to it are not admissible as substantive evidence, for purposes of impeachment, or for any other purpose.

**12.3** Neither the Settling Parties, Class Counsel, Slocum's Counsel, Banner, nor Banner's 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, Class Counsel shall not have any responsibility for, or liability whatsoever with respect to, any act, omission, or determination of Slocum Counsel in connection with the administration of the Gross Settlement Amount or otherwise. Further, neither Slocum nor Slocum's 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.

**12.4** Only Class Counsel shall have standing to seek enforcement of this Settlement Agreement on behalf of Plaintiffs and Class Members. Any individual concerned about Slocum's 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. Any action by Class Counsel to monitor or enforce the Settlement Agreement shall be done without additional fee or reimbursement of expenses beyond the Attorneys' Fees and Costs determined by the Court.

**12.5** 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, Colorado law.

**12.6** 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:

**12.6.1** If 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;

**12.6.2** Within twenty (20) days after receiving the notice described in Paragraph 12.6.1, the receiving party shall respond in writing with its position and the facts and arguments it relies on in support of its position;

**12.6.3** For a period of not more than twenty (20) days following mailing of the response described in Paragraph 12.6.2, the Settling Parties shall undertake good-faith negotiations, which may include meeting in person or conferring by telephone, to attempt to resolve the dispute;

**12.6.4** If the dispute is not resolved during the period described in Paragraph 12.6.3, the Settling 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;

**12.6.5** 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 submit the dispute to the Mediator for final and binding arbitration.

**12.6.6** 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 under Paragraphs 12.6.4 and 12.6.5, 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 arbitrator will make his decision based solely on the papers, documents, testimony, and arguments of counsel presented to him.

**12.6.7** 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.

**12.6.8** In any arbitration or mediation under Paragraphs 12.6.4 and 12.6.5, each party shall bear its own attorneys' fees and costs.

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

**12.6.10** 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 Paragraph 12.6.7. The arbitrator's award may be enforced in the Court under federal law governing arbitration awards. Each party shall bear its own attorneys' fees and costs in any such action.

**12.7** The Settling Parties agree that the Court has personal jurisdiction over the Settlement Class and Slocum and shall maintain personal and subject matter jurisdiction for purposes of resolving any disputes between the Settling Parties concerning compliance with Article 8 of this Settlement Agreement**.** Any motion or action to enforce Article 8 of this Settlement Agreement—including by way of injunction—may be filed in the U.S. District Court for the District of Colorado, and or asserted by way of an affirmative defense or counterclaim in response to any action asserting a violation of Article 8 of the Settlement Agreement.

**12.8** 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.

**12.9** 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.

**12.10** 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."

**12.11** 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.

**12.12** 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.

**12.13** 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.

**12.14** 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.

**12.15** The provisions of this Settlement Agreement are not severable.

**12.16** 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.

**12.17** All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. The exhibits shall be: Exhibit 1 – Revised Proposed Preliminary Order; Exhibit 2 – Motion for Preliminary Approval of Settlement (Doc. 421) and Affidavit of Troy Doles in Support (Doc. 422); Exhibit 3 –

Revised Notice of Class Action Settlement and Fairness Hearing; Exhibit 4 – Proposed Final Order; and Exhibits 5A-C – Form of CAFA Notices.

**12.18** 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.

**12.19** 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:

SCHLICHTER, BOGARD & DENTON, LLP
Attn: The Banner 401(k) Slocum Settlement
100 S. Fourth Street, Suite 1200
St. Louis, Missouri 63102
Tel: (314) 621-6115
Fax: (314) 621-5934

IF TO SLOCUM:

MORGAN, LEWIS & BOCKIUS LLP
Attn: Sari Alamuddin
77 W. Wacker Dr.
5th Floor
Chicago, IL 60601
Tel: (312) 324-1158
Fax: (312) 324-1001

ON BEHALF OF PLAINTIFFS, Individually and as Representatives of the Class:

Dated: 5/18/2020

SCHLICHTER, BOGARD & DENTON LLP

Jerome J. Schlichter
Troy A. Doles

100 South Fourth Street, Suite 1200
St. Louis, MO 63102
Tel: (314) 621-6115
Fax: (314) 621-5934
Attorneys for Plaintiffs and Class Representatives

ON BEHALF OF DEFENDANT JEFFREY SLOCUM & ASSOCIATES, Inc.:

Dated: May 18, 2020

MORGAN, LEWIS & BOCKIUS LLP

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Attorneys for Defendant Jeffrey Slocum & Associates, Inc.

**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.

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**[PROPOSED] ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT AGREEMENT, DIRECTING NOTICE, AND SETTING FAIRNESS HEARING**

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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 "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 Court preliminarily CERTIFIES the following class for settlement purposes only 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. 468-2, 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

Settlement Agreement. Distribution of the class notice will commence a 75-day notice period during which class members may object to the Settlement Agreement;

7. Class members who wish to object to the Court's approval of the Settlement 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 Settlement 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 Settlement 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 Settlement Agreement.

Dated this [__] day of May, 2020.

BY THE COURT:

_____
William J. Martínez
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

| | |
|---|---|
| LORRAINE M. RAMOS, et al.,<br><br>Plaintiffs,<br><br>v.<br><br>BANNER HEALTH, et al.,<br><br>Defendants. | Case No.: 1:15-cv-02556<br><br>Honorable William J. Martinez<br><br>Magistrate Judge N. Reid Neureiter |

**PLAINTIFFS' CONSENT MOTION FOR CLASS CERTIFICATION AND PRELIMINARY APPROVAL OF CLASS SETTLEMENT AS TO CLAIMS AGAINST JEFFREY SLOCUM & ASSOCIATES, INC. AND MEMORANDUM IN SUPPORT**

Plaintiffs, by and through their undersigned counsel, and pursuant to Fed. R. Civ. P. 23, respectfully submit this Consent Motion for Class Action Settlement As to Claims Against Defendant Jeffrey Slocum & Associates, Inc. ("Slocum").[1] Defendant Slocum consents to this motion.

## INTRODUCTION

Plaintiffs brought this action alleging that the Banner Defendants and Slocum breached their duties under the Employee Retirement Income Security Act of 1974 ("ERISA"). They alleged that Slocum, the investment consultant for the Banner Health 401(k) Plan (the Plan"), breached its fiduciary duties under ERISA by allowing the Plan to pay excessive recordkeeping fees and maintain underperforming investment options. After extensive litigation, lengthy discovery, and protracted arm's-length negotiations with the assistance of a national mediator, Plaintiffs and Slocum have reached a proposed Settlement that provides meaningful relief to a class of all current Plan

[1] Pursuant to D.C.Colo.L.R.7.1(a), counsel for Plaintiffs and Slocum discussed this motion extensively via telephone and email on December 30 and 31, and counsel for Slocum does not object to the relief requested here. Additionally, counsel for the Banner Defendants was informed of this motion and the Settlement.

participants and beneficiaries (the "Settlement Class")—relief rendered all the more meaningful given the chance that most members of the Settlement Class would have to continue protracted litigation, including certain appellate work, in order to obtain *any* recovery at all from Slocum.[2] In light of the litigation risks further prosecution of this action would entail, Plaintiffs respectfully request that the Court: (1) certify the Settlement Class and appoint Schlichter Bogard & Denton as Class Counsel; (2) preliminarily approve the proposed Settlement based on the material terms described herein; (3) approve the proposed form and method of notice to the Settlement Class; and (4) schedule a hearing to consider final approval of the Settlement.

## BACKGROUND

### I. Plaintiffs' Claims

Plaintiffs filed their putative class complaint against a set of Banner Defendants on November 20, 2015. Dkt. 1. On November 9, 2016, they filed an amended class complaint adding Slocum as a defendant. Dkt. 118. Although the Amended Complaint contains five counts, only two are directed at Slocum. Both allege that Slocum breached its duty of prudence under 29 U.S.C. § 1104(a), by allowing the Plan: (1) to pay unreasonable fees to its recordkeeper, Fidelity (Count I); and (2) to maintain underperforming investment options, namely, the Fidelity Freedom Funds, and the Plan's Level 3 designated investment options referred to internally by the Defendants as the "Mutual Fund Window" (Count II).

### II. Status of the Litigation

Plaintiffs, Slocum, and the Banner Defendants have engaged in extensive discovery. Slocum

[2] Given the nature of the proposed Settlement, Plaintiffs have excluded past participants from the class definition.

alone produced over 25,000 pages of documents, in addition to the almost 100,000 pages the Banner Defendants produced. The parties also took over 20 depositions. Slocum—which ceased operations effective October 24, 2016—secured the cooperation of two former employees, plus Mr. Jeffrey Slocum, to sit for depositions. The parties also engaged in extensive expert discovery.

Through litigation, the Court pared down claims against Slocum. First, on March 28, 2018, the Court denied Plaintiffs' motion to certify a class as to claims against Slocum (though it certified a class as to the Banner Defendants). Dkt. 296 at 26. The Court reaffirmed this ruling on January 29, 2019. Dkt. 345. Second, on April 23, 2019, the Court granted partial summary judgment on Plaintiffs' claims against Slocum. Dkt. 372. It granted summary judgment on Plaintiffs' recordkeeping and Mutual Fund Window claims, finding that Slocum was not a fiduciary with regard to the commentary and advice it gave on either. *Id.* at 19-22, 24-27. Accordingly, the only claim that remains against Slocum for trial concerns the advice that it gave to the Plan's fiduciaries regarding the Fidelity Freedom Funds. *Id.* at 22-24. Currently, Slocum can only be liable for damages to the seven individual Plaintiffs, totaling $22,000 as of June 28, 2019, when Plaintiffs served amended Rule 26(a) disclosures. Trial is scheduled for January 6, 2020.

## III. Terms of the Proposed Settlement

### A. Settlement Fund

Given that Plaintiffs and Slocum only reached agreement on settlement yesterday, they have not yet executed a settlement agreement.[3] However, in light of upcoming trial and to preserve resources, they have agreed on all material terms. Namely, the Settlement Class will consist of

[3] The parties propose to submit an executed settlement agreement within 30 days following completion of the trial set for January 6, 2020.

"All current participants and beneficiaries of the Banner Health Employees 401(k) Plan, excluding Defendants." In exchange for a release of all ERISA claims against Slocum, its former owners, employers, directors, and other associated parties, Slocum will deposit $500,000 ("Gross Settlement Amount") in an interest-bearing settlement account (the "Settlement Fund"). The Settlement Fund will be used to defray only the Plan's recordkeeping expenses that are deemed to be reasonable. The Settlement Fund will also be used to pay Class Counsel's attorneys' fees and expenses, Administrative Expenses of the Settlement, and the Class Representatives' Compensation as described in the Settlement. All amounts deposited in the Settlement Fund will be distributed in accordance with the terms of the proposed Settlement. No residual monies remaining in the Settlement Fund will revert back to Slocum.

**B. Notice and Class Representatives' Compensation**

The costs to administer the proposed Settlement and incentive payments in an amount approved by the court for the named Plaintiffs will be paid from the Settlement Fund. Plaintiffs will solicit proposals from candidates to serve as Independent Fiduciary and Settlement Administrator. Based on Plaintiffs' experience, they estimate the Settlement Administrator, in its limited role, will charge approximately $5,000 to administer the Settlement, and the Independent Fiduciary will charge approximately $10,000-$15,000.

Plaintiffs will seek incentive awards of $2,500 for each named Plaintiff. This is consistent with precedent recognizing the value of individuals stepping forward to represent a class, particularly in contested litigation like this where the potential benefit to any individual does not outweigh the cost of prosecuting class-wide claims and there are significant risks of no recovery.

### C. Attorneys' Fees and Costs

Similar to other ERISA class actions, Class Counsel will request attorneys' fees to be paid out of the Settlement Fund in an amount not more than one-third of the Settlement Fund, or $166,666.67, as well as reimbursement for costs incurred of no more than $56,562.40. Class Counsel will not seek attorneys' fees (1) from the interest earned on the Gross Settlement Amount; (2) for time associated with administering the settlement; and (3) for work required to enforce the proposed Settlement, if necessary. Class Counsel will submit a formal application for attorneys' fees and costs and for the Class Representatives' incentive awards at least 30 days prior to the deadline for Class Members to file objections to the proposed Settlement.

## ARGUMENT

### I. The Court Should Certify A Class For Settlement Purposes.

In order to certify the Settlement Class, the Court must find that it satisfies each requirement of Rule 23(a) and at least one subpart of Rule 23(b). *Walmart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). The standard for certifying a class for settlement purposes is more lenient than that applied in certifying a class for trial, as the court need not inquire whether the class would be manageable for trial purposes. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

### A. The Proposed Class Satisfies Rule 23(a).

Rule 23(a) sets forth four requirements the Settlement Class must meet: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. The Court has already ruled that the first three requirements have been met in this case. Dkt. 296.

With respect to the fourth requirement, Plaintiffs acknowledge that the Court previously declined to certify a class against Slocum on adequacy grounds because it found that the named

Plaintiffs lacked sufficient detailed knowledge of Slocum's role. Dkt. 296 at 26. However, that is not a bar to certification for settlement purposes. "Courts … regularly certify settlement classes that might not have been certifiable for trial purposes." William B. Rubenstein, Newberg on Class Actions § 4:63 (5th ed. 2016). Indeed, the Ninth Circuit recently upheld certification for settlement purposes even where the lower court had issued a tentative ruling declining to certify a class for purposes of trial, explaining that the "criteria for class certification are applied differently in litigation classes and settlement classes." *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (en banc).

For example, in *In re Diebold ERISA Litig.*, the court denied certification in an ERISA class action also on adequacy grounds, finding that there were "potential conflicts . . . likely to undermine the adequacy of representation of class members." 2009 WL 9120614, at *5 (N.D. Ohio Mar. 11, 2009). That did not stop the court, however, from certifying a class for settlement purposes. *In re Diebold ERISA Litig.*, No. 06-cv-170 (N.D. Ohio Feb. 11, 2011), ECF No. 118; *see also Da Silva Moore v. Publicis Groupe SA*, No. 11-cv-1279 (S.D.N.Y. Jan. 13, 2016), ECF No. 612 (certifying settlement classes after denying class certification for trial purposes).

Likewise, here, the Court's prior ruling is not an impediment to certifying the Settlement Class. The Court's concern regarding the named Plaintiffs' ability to represent the class has been mooted given their achievement of procuring from Slocum class-wide relief, in the form of defraying only reasonable Plan recordkeeping expenses, relief that would not have been available to them absent this Settlement. Moreover, the named Plaintiffs' interests in pursuing a recovery on a classwide basis here are aligned with those of the Settlement Class. In addition, given that

this is a classwide settlement with the relief directed to the benefit of the Plan, Plaintiffs' interests in pursuing their representative claims against Banner Defendants are uncompromised.

Finally, through their vigorous pursuit of this lawsuit, the named Plaintiffs and Class Counsel have adequately represented the Settlement Class. The named Plaintiffs have been actively investigating and litigating this case for over four years. They have spent a great deal of time assisting the lawyers, preparing for their depositions, responding to written discovery, and now, preparing for trial. And, as discussed further below, Schlichter Bogard & Denton is an expert in the field that has zealously represented Plaintiffs in this suit. (*See* Part II, *infra*.).

Thus, Rule 23(a)'s requirements are satisfied for purposes of certifying a Settlement Class.

**B. The Proposed Class Satisfies Rule 23(b)(1).**

In addition to meeting Rule 23(a)'s requirements, the proposed class must satisfy a subpart of Rule 23(b). "Most ERISA class action cases are certified under Rule 23(b)(1)," *In re Northrop Grumman Corp. ERISA Litig.*, 2011 WL 3505264, at *15 (C.D. Cal. Mar. 29, 2011) (citation omitted), under which a class may be certified due to the risk (A) of inconsistent adjudications that would establish incompatible standards of conduct for the defendant, or (B) that separate actions would establish be dispositive of the interests of other participants not parties to those actions, or substantially impair other participants' ability to protect their interests. Fed. R. Civ. P. 23(b)(1)(B). "[N]umerous courts have held" that "breach of fiduciary duty claims brought under [29 U.S.C. § 1132(a)(2)] are paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class." *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 604 (3d Cir. 2009); *see also Kanawi v. Bechtel Corp.*, 254 F.R.D. 102, 112 (N.D. Cal. 2008).

In its original class order, the Court found "Plaintiffs' arguments for certification under Rules

23(b)(1)(A) &(B) to be particularly persuasive, given the recognition of many other courts that 'ERISA fiduciary litigation presents a paradigmatic example of a Rule 23(b)(1) class.'" Dkt. 296 at p. 27. Indeed, on subpart (A), individual adjudications would open Slocum up to vast and varying liability from individual plaintiffs based on different aspects of the Plan. On subpart (B), any determination as to Slocum would certainly be used by Slocum in any subsequent action, which would impair the interest of other Plan participants. Moreover, in light of Slocum's dissolution and limited resources (*see* Part III, *infra*), any determination in this action would impair the ability of future Plan participants to collect anything from Slocum whatsoever. Accordingly, the Court should certify the Class under Rule 23(b)(1) for settlement purposes.

The Settlement Class thus meets Rule 23's requirements and should be certified.

## II. The Court Should Appoint Schlichter Bogard & Denton As Class Counsel.

When the Court certifies a class, it must also appoint class counsel who will represent the interests of the class fairly and adequately. Fed. R. Civ. P. 23(c)(1)(B), (g)(1). In doing so, the Court must consider: (1) the work counsel has done on the action; (2) counsels' relevant experience; (3) counsel's knowledge of the applicable law; and (4) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

*First*, Schlichter has done enormous work on this action (as evidenced by the over 400 filings on the docket), and continues to represent a class as to claims against the Banner Defendants.

*Second*, Schlichter has extensive experience. Courts have found that it is the "preeminent firm" in excessive fee litigation having "achieved unparalleled results on behalf of its clients" in the face of "enormous risks." *Nolte v. Cigna Corp*., 2013 WL 12242015, at *2 (C.D.Ill Oct. 15, 2013).

*Third*, Schlichter has relevant knowledge to act as Class Counsel. They are "experts in ERISA

litigation," *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at *2 (D.Minn. July 13, 2015) (citation omitted), and "highly experienced," *Waldbuesser v. Northrop Grumman Corp.*, 2017 WL 9614818, at *4 (C.D.Cal. Oct. 24, 2017). Moreover, the firm was class counsel in *Tibble v. Edison Int'l*, in which the Supreme Court held in a unanimous 9–0 decision that ERISA fiduciaries have "a continuing duty to monitor investments and remove imprudent ones[.]" 575 U.S. 523, 135 (2015).

*Fourth*, the firm will continue to devote resources to this case. It continues to represent a class in claims against the Banner Defendants, and it is committed to devoting all necessary resources to representing the class and vigorously prosecuting this action.

Thus, Schlichter Bogard & Denton is a highly qualified legal representative of the Settlement class and should be appointed Class Counsel under Rule 23(g).

## III. The Court Should Grant Preliminary Approval To The Settlement.

Rule 23(e) requires judicial approval for class-wide settlements, which is subject to the Court's sound discretion. *United States v. Hardage*, 982 F.2d 1491, 1495 (10th Cir. 1993). The law favors and encourages settlements, especially in complex actions. *See Amoco Prod. Co. v. Fed. Power Comm'n*, 465 F.2d 1350, 1354 (10th Cir. 1972); *Big O Tires, Inc. v. Bigfoot 4x4, Inc.*, 167 F. Supp. 2d 1216, 1229 (D. Colo. 2001). At the preliminary approval stage, a court "makes a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms." *Rhodes v. Olson Assocs., P.C.*, 308 F.R.D. 664, 666 (D. Colo. 2015). The Court must find that the settlement is "likely" to be approved. Fed. R. Civ. P. 23(e)(1)(B).

In order to determine whether a proposed settlement is fair, reasonable, and adequate, courts consider the following factors:

> (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.

*Rutter & Wilbanks Corp. v. Shell Oil Co*., 314 F.3d 1180, 1188 (10th Cir. 2002)). The Agreement in this case easily satisfies each of these four prongs and Rule 23's requirements.

### A. The Settlement Is Fair and Reasonable, And The Product of Informed, Fair, Honest, and Non-Collusive Negotiations.

There is a presumption that settlements are informed and non-collusive if the class is represented by experienced counsel, the settlement is the result of arms-length negotiation before an experienced mediator, and substantial discovery occurs prior to the settlement. *See* Newberg on Class Actions 5th § 13:14, n.6 (collecting cases).

Such is the case here. The parties have "'vigorously advocated their respective positions throughout the pendency of the case.'" *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006) (quoting *Wilkerson v. Martin Marietta Corp*., 171 F.R.D. 273, 284 (D. Colo. 1997)). Over the past three-plus years of litigation, the parties have exchanged ample discovery, engaged in substantial motion practice, and have investigated their claims thoroughly. *See Aragon v. Clear Water Prods. LLC,*, 2018 WL 6620724, at *3 (D. Colo. Dec. 18, 2018) ("no evidence of collusion" where case had been "pending for nearly three years, during which time the parties have briefed several motions and engaged in formal discovery, including written discovery and depositions"); *see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 F.3d 96, 116 (2nd Cir. 2005) (holding that "'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery'") (quoting Manual for Complex Litigation (Third) §30.42 (1995)).

In addition, Plaintiffs and Slocum have been discussing settlement for months. All parties engaged in mediation with the assistance of respected mediator Hunter Hughes in Atlanta, Georgia, in July 2019. Following the unsuccessful mediation, Slocum and Plaintiffs exchanged settlement offers over the course of the summer. Finally, counsel for Plaintiffs and Slocum exchanged multiple phone calls and email correspondence over the past week, discussing the strengths and weakness of Plaintiffs' case against Slocum.

Because the settlement was a product of "arms' length" negotiation by experienced counsel, with the help of "an experienced and respected mediator," this factor weighs in favor of the settlement being "fair, reasonable, and adequate." *Decoteau v. Raemisch*, 2016 WL 8416757, at *7 (D. Colo. July 6, 2016) (Martinez, J.).

**B. Questions of Law and Fact Exist, Placing the Ultimate Outcome of Plaintiffs' Claims Against Slocum in Doubt.**

Although it is not appropriate at this stage of the litigation to evaluate the merits, *see Carson v. American Brands, Inc*., 450 U.S. 79, 88 n. 14 (1981), "a court cannot truly consider whether serious questions of law or fact exist in a case without assessing the strength of each party's claims. This assessment necessarily requires some evaluation of the case's underlying merits." *Bailes v. Lineage Logistics, LLC*, 2016 WL 4415356, at *5 (D. Kan. Aug. 19, 2016).

Here, the Court has entered judgment for most of the claims as to Slocum; only the seven Plaintiffs' claim regarding the Freedom Funds remains. Given Slocum's limited role and authority in the Plan, Plaintiffs face an uphill battle and the risk of no recovery for the Plan at all against Slocum, as illustrated by the judgement recently entered in favor of defendants in another 401(k) class action. *See Wildman v. Am. Cent. Servs., LLC*, 2017 WL 6045487 (W.D. Mo. Dec. 6, 2017). What is more, for the Settlement Class to have recovered from Slocum at all, Plaintiffs would have

had to appeal the Court's denial of class certification, prevail on appeal, and then relitigate issues as to Slocum. In light of the risks, cost, and delay of future litigation, in addition to the "real prospect that plaintiffs would not have obtained any recovery had the case proceeded to trial," *Aragon*, 2018 WL 6620724, at *3, it was reasonable and appropriate for Plaintiffs to reach a settlement on the terms that were negotiated and this factor weighs in favor of preliminary approval. *See Kruger v. Novant Health, Inc.*, 2016 WL 6769066, at *5 (M.D.N.C. Sept. 29, 2016) (settlement of a 401(k) class action "benefits the employees and retirees in multiple ways.")

**C. The Value of Immediate Recovery Outweighs the Mere Possibility of Future Relief After Years of Protracted and Expensive Litigation.**

This action has already been pending for over four years. As noted, for the Settlement Class to recover anything at all from Slocum, Plaintiffs would need to appeal the Court's class certification ruling, prevail on appeal, and then relitigate the matter as to Slocum—all of which would take a number of years. "By contrast, the proposed settlement agreement provides the class with substantial, guaranteed relief." *Lucas*, 234 F.R.D. 688 at 694*; see also McNeely v. Nat'l Mobile Health Care, LLC*, 2008 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008) (class "is better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted"). The Settlement also provides a guaranteed source of payment from Slocum, while such guarantee still exists: Slocum ceased to exist in 2016, and Slocum's attorneys' have alerted Plaintiffs' attorneys that Slocum is operating on a limited insurance policy. Further litigation is almost sure to deplete these funds. Thus, this factor also weighs in favor of granting approval.

**D. The Parties and Experienced Counsel on Both Sides Believe the Settlement is Fair and Reasonable.**

"Counsels' judgment as to the fairness of the agreement is entitled to considerable weight." *Aragon*, 2018 WL 6620724, at *3. Here, Class Counsel is experienced in class action litigation generally and, in particular, class litigation arising from breaches of fiduciary duty under ERISA. They pioneered this area of litigation in 401(k) retirement plans, and are intimately familiar with this unique and complex area of law. *See Kruger*, 2016 WL 6769066, at *5 (noting "endorsements [from] the AARP and the Pension Rights Center" for Class Counsel's efforts in retirement plan litigation); *Ramsey v. Philips N. Am. LLC*, No. 18-1099, Doc. 27 at 7 (S.D. Ill. Oct. 15, 2018) ("Schlichter Bogard & Denton has left an indelible mark on the 401(k) industry by bringing comprehensive changes to fiduciary practices in order to ensure that employees and retirees have the opportunity to save for retirement through prudently administered retirement programs."); *Tussey v. ABB, Inc.*, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012), vacated on other grounds, 746 F.3d 327 (8th Cir. 2014) ("Plaintiffs' attorneys are clearly experts in ERISA litigation").

It is Class Counsel's opinion that the Settlement is fair and reasonable. See Declaration of Troy A. Doles at ¶¶ 4-5. As set forth above, absent the Settlement, and in the face of significant appellate practice, the Settlement Class would have significant challenges in obtaining *any classwide relief from Slocum*, even if Plaintiffs had prevailed at trial. This shows that Class Counsel and the named Plaintiffs have "adequately represented the class" and will continue to do so. Fed. R. Civ. P. 23(e)(2)(A). Moreover, the relief will defray only the Plan's reasonable administrative costs—costs that Plaintiffs continue to challenge in the continued litigation against Banner Defendants. And because the relief will be applied to the Plan's recordkeeping costs as a whole, it "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Counsel is also mindful

that because Slocum has not operated for over three years, there are extremely limited funds available. Even if Plaintiffs were to prevail at trial against Slocum, Slocum's limited insurance policy may have been used up entirely at that point, leaving Plaintiffs with no choice but to continue in protracted litigation to recover any award.

Moreover, although the seven named Plaintiffs will request small "incentive awards" of $2,500, these types of awards of well-supported in existing case law. *See, e.g., Beesley v. Int'l Paper Co.*, 2014 WL 375432, at *4 (S.D. Ill. Jan. 31, 2014) (approving service awards of $25,000 each to six of the named plaintiffs and $15,000 to one of the named plaintiffs); *Krueger*, 2015 WL 4246879, at *3 (approving service awards of $25,000 each to five named plaintiffs). Plaintiffs' requested participation awards therefore do not undermine the fairness, reasonableness, and adequacy of the Settlement Agreement. In addition, these small awards do not affect their continued adequacy to represent the class for the claims against Banner Defendants.

Nor do the requested Attorneys' Fees. "[I]n a common fund case such as this, a reasonable fee is normally a percentage of the Class recovery." *Smith v. Krispy Kreme Doughnut Corp.*, 2007 WL 119157, at *1 (M.D.N.C. Jan. 10, 2007); *see also Boeing Co. v. VanGemert*, 444 U.S. 472, 478 (1980). The requested one-third of the Settlement Fund is in line with similar cases. *See, e.g.*, *Davis v. Crilly*, 292 F. Supp. 3d 1167, 1174 (D. Colo. 2018) (approving 37% in fees which was "well within the normal range for a contingent fee award"); *Whittington v. Taco Bell of Am., Inc*., 2013 WL 6022972, at *6 (D. Colo. Nov. 13, 2013) (39% of settlement fund as fees); *Vaszlavik v. Storage Tech. Corp*., 2000 WL 1268824, at *4 (D. Colo. Mar. 9, 2000) (fee "in the middle of the ordinary 20%–50% range . . . is presumptively reasonable").

There are thus "no grounds to doubt [the Settlement's] fairness and no other obvious deficiencies (such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation for attorneys)[.]" *Reade-Alvarez v. Eltman, Eltman & Cooper, P.C.*, 237 F.R.D. 26, 33 (E.D.N.Y. 2006). All four factors thus weigh in favor of settlement.

**IV. The Court Should Approve the Notice Plan.**

The Court should also approve the form, content, and method of distributing the proposed Settlement Notice, attached hereto as Exhibit A. A class notice should be written in clear, straightforward language, and set out the key facts about the Settlement. Fed. R. Civ. P. 23(c)(2)(B); Fed. Judicial Ctr., Manual for Complex Litigation, § 21.312 (4th ed. 2004). The methods of notice must be the best "practicable." Fed. R. Civ. P. 23(c)(2)(B) & (e)(1)(B). Due process and Rule 23(e) do not require that each Class Member receive notice, but do require that the class notice be "reasonably calculated, under all 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).

The proposed notice plan meets these standards, as it consists of multiple components designed to reach Class Members designed for their effectiveness. Fed. R. Civ. P. 23(e)(2)(c)(ii). First, the Settlement Notice will be sent by electronic email to all Settlement Class Members who have a current email address known to the Plan's recordkeeper, Fidelity, and/or Banner Health shortly after entry of the Preliminary Approval Order. Email addresses of the Class Members are maintained by Banner Health, as the Plan fiduciary, and/or the Plan's recordkeeper, Fidelity, who use

this information for, *inter alia*, delivering Plan notices and other plan-related information. Class Members include both current and former employees of Banner Health. In addition to the Settlement Notice, Class Counsel will develop a dedicated website solely for the Settlement, and a link to that website will appear on Class Counsel's website (www.uselaws.com). In addition, Class Counsel will disseminate the Settlement Notice via targeted publication on social media targeted to areas of significant Banner Health employees. This notice program will provide class members with the best notice practicable under the circumstances. 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.

**CONCLUSION**

For the foregoing reasons, the parties respectfully request that the Court: (1) certify the Settlement Class and appoint Schlichter Bogard & Denton Class Counsel; (2) grant preliminary approval of the Settlement; (3) find that the proposed plan to provide notice to the class and proposed forms of notice satisfy the requirements of Rule 23 and due process; and (4) schedule a Fairness Hearing for the earliest convenient date approximately six months after preliminary approval to determine whether the proposed Settlement Agreement is fair, reasonable, and adequate and therefore should be approved.

DATED: December 31, 2019

Respectfully submitted,

/s/ Troy A. Doles
SCHLICHTER, BOGARD & DENTON LLP
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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on December 31, 2019, I served this document on all parties via the Court's CM/ECF system.

/s/ Troy A. Doles

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

| | |
|---|---|
| LORRAINE M. RAMOS, et al.,<br><br>Plaintiffs,<br><br>v.<br><br>BANNER HEALTH, et al.,<br><br>Defendants. | Case No.: 1:15-cv-02556<br><br>Honorable William J. Martinez<br><br>Magistrate Judge N. Reid Neureiter |

**DECLARATION OF TROY DOLES**

1. I am a partner of the law firm of Schlichter Bogard & Denton, LLP, counsel for Plaintiffs in this case. I am familiar with the facts set forth below and able to testify to them.

2. I received my Bachelor of Arts from Indiana University in 1992 and my Juris Doctorate from Saint Louis University in 1996. I have been in the private practice of law for over 22 years. I have been actively engaged in complex litigation, including class actions, since 1999. I have been exclusively involved in national ERISA excessive fee class actions involving 401(k) plans and other defined contribution plans since 2006.

3. I have been active in all aspects of this litigation. I am familiar with the facts set forth below and able to testify to them based on my personal knowledge or review of the records and files maintained by this firm in the regular course of its representation of Plaintiffs in this case.

4. There has been no collusion or complicity of any kind in connection with the negotiations for, or the agreement to, settle the claims against Defendant Jeffrey Slocum & Associates, Inc. ("Slocum"). As illustrated in Plaintiffs' Memorandum, all settlement negotiations in this case were conducted at arm's length by adverse parties, represented by

competent counsel. The negotiations were extensive and adversarial, and the parties engaged a highly experienced ERISA mediator. It is my opinion that the proposed settlement with Solcum is not only within the range of reasonableness for ERISA cases, but also is fair, reasonable, adequate, and in the best interest of the Plan and its current participants in light of the procedural and substantive risks Plaintiffs would face if litigation were to continue along with the risk of recovery from Solcum, who ceased operations in October 2016. Through these discussions, Slocum's attorneys' have alerted our firm that Slocum is operating on a limited insurance policy. Based on my experience, further litigation will undoubtedly deplete these funds.

5. Based on the above circumstances, and based on this firm's experience that is explained in detail below, it is my opinion that the proposed Settlement with Slocum is fair and reasonable. The components of the Settlement's administration are closely defined and streamlined to ensure a significant recovery directly to the Plan to be used to offset only reasonable recordkeeping fees and costs. For instance, the notice program as described will be the most efficient and least costly available. Further, given the significant costs of allocating the net proceeds to the Class members, coupled with the size of the current class, the relative small amount of individual recoveries are far outweighed by using those net proceeds to directly offset the Plan's reasonable recordkeeping fees.

6. Each named plaintiff in this litigation has a contract with this firm agreeing to a one-third fee to Schlichter Bogard & Denton, LLP in the event of any recovery.

7. Beginning in early 2005, the law firm of Schlichter Bogard & Denton, LLP began thoroughly investigating industry practices in large 401(k) plans, and identifying potential claims on behalf of employees and retirees who rely on such plans for their retirement security.

8. After more than a year and a half of investigation of the industry, in September 2006, the firm began pursuing class actions on behalf of 401(k) employees' and retirees' alleging breaches of fiduciary duties under ERISA based on excessive fees, conflicts of interests and prohibited transactions. At the time these cases were filed, no such cases had not been pursued either by other private lawyers or the United States Department of Labor, which is responsible for enforcing ERISA.

9. Since 2006, the firm has filed over 30 ERISA class actions alleging excessive fees in large 401(k) and 403(b) plans. These cases have been filed in judicial districts throughout the United States, including districts within the First, Second, Third, Fourth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits.

10. In each of the above cases in which the issue of class counsel was decided, the court appointed the firm as class counsel—over 30 cases, including the following: *Munro v. University of Southern California*, No. 16-6191, Doc. 202 (C.D.Cal. Dec. 20, 2019); *Bell v. Pension Cmte. of ATH Holding Co.*, No. 15-2062, Doc. 347 (S.D.Ind. Jan. 24, 2019); *Cunningham v. Cornell Univ.*, No. 16-6525, Doc. 219 (S.D.N.Y. Jan. 22, 2019); *Cassell v. Vanderbilt Univ.*, No. 16-2086, Doc. 126 (M.D.Tenn. Oct. 23, 2018); *Cates v. Trustees of Columbia Univ.*, No. 16-6524, Doc. 218 (S.D.N.Y. Nov. 15, 2018); *Henderson v. Emory Univ.*, No. 16-2920, Doc. 167 (N.D.Ga. Sept. 13, 2018); *Tracey v. MIT,* No. 16-11620, Doc. 157 (D.Mass. Oct. 19, 2018); S*acerdote v. New York University*, No. 16-6284, 2018 U.S.Dist.LEXIS 23540, 16 (S.D.N.Y. Feb. 13, 2018); *Clark v. Duke Univ*., No. 16-1044, 2018 U.S.Dist.LEXIS 62532 (M.D.N.C. Apr. 13, 2018); *Ramos v. Banner Health*, No. 15-2556, Doc. 296 (D.Colo. Mar. 23, 2018); *Troudt v. Oracle Corp*., No. 16-175, 2018 U.S.Dist.LEXIS 15151 (D.Colo. Jan. 30, 2018); *Pledger v. Reliance Trust*, No. 15-4444, Doc. 101 (N.D.Ga. Nov. 7, 2017); *Marshall*

*v. Northrop Grumman Corp*., No. 16-6794, Doc. 130 (C.D.Cal. Nov. 3, 2017); *Sims v. BB&T Corp*., No. 15-732, 2017 U.S. Dist. LEXIS 137738 (M.D.N.C. Aug. 28, 2017); *Gordan v. Massachusetts Mutual Life Insurance Co*., No. 13-30184, Doc. 112 (D.Mass. June 22, 2016); *Kruger v. Novant Health*, No. 14-208, Doc. 53 (M.D.N.C. May 17, 2016); *Krueger v. Ameriprise Financial*, Inc., 304. F.R.D. 559 (D.Minn. 2014); *Abbott v. Lockheed Martin Corp*., 286 F.R.D. 388 (S.D.Ill. 2012), and *Abbott*, No. 06-701, Doc. 403 (S.D.Ill. Aug. 1, 2014); *Beesley v. Int'l Paper Co*., No. 06-703, Doc. 240 (S.D.Ill. Sept. 30, 2008), and Doc. 543 (S.D.Ill. Oct. 10, 2013); *Nolte v. Cigna Corp*., No. 07-2046, 2013 U.S.Dist.LEXIS 101165 (C.D.Ill. July 3, 2013); *Spano v. Boeing Co*., 294 F.R.D. 114 (S.D.Ill. 2013); *George v. Kraft Foods Global Inc*., No. 08-3799, 2012 U.S.Dist.LEXIS 26536 (N.D.Ill. Feb. 29, 2012)(*George II*); *In re Northrop Grumman Corp. ERISA Litig*., No. 06-6213, 2011 U.S. 94451 (C.D.Cal. Mar. 29, 2011); *Will v. General Dynamics Corp*., No. 06-698, 2010 U.S.Dist.LEXIS 95630 (S.D.Ill. Nov. 22, 2010); *Martin v. Caterpillar Inc*., No. 07-1009, Doc. 173 (C.D.Ill. April 21, 2010); *Tibble v. Edison Int*'l, No. 07-5359, 2009 U.S. Dist. LEXIS 120939 (C.D.Cal. June 30, 2009); *George v. Kraft Foods Global Inc*., 251 F.R.D. 338 (N.D.Ill. 2008)(*George I*); *Taylor v. United Tech. Corp*., No. 06-1494, 2008 U.S.Dist.LEXIS 43655 (D.Conn. June 3, 2008); *Kanawi v. Bechtel Corp*., 254 F.R.D. 102 (N.D.Cal. 2008); *Tussey v. ABB Inc.*, No. 06-4305, 2007 U.S.Dist.LEXIS 88668 (W.D.Mo. Dec. 3, 2007); *Loomis v. Exelon Corp*., No. 06-4900, 2007 U.S.Dist.LEXIS 46893 (N.D.Ill. June 26, 2007).

11. As of this time, few law firms nationally have brought similar cases, and no other law firm has brought the number of cases our firm has brought, or devoted the level of resources to pursuing similar cases. Schlichter Bogard & Denton litigated the first full trial of a 401(k) excessive fee case, resulting in a judgment of $36.9 million for the plaintiffs that was affirmed in

part by the Eighth Circuit. *Tussey v. ABB*, *Inc*., No. 06-4305, 2012 U.S.Dist.LEXIS 45240 (W.D.Mo. Mar. 31, 2012), aff'd in part, rev'd in part, 746 F.3d 327 (8th Cir. 2014). As the court noted in *Tussey*, "[i]t is well established that complex ERISA litigation involves a national standard and specialized expertise. Plaintiffs' attorneys are clearly experts in ERISA litigation." *Tussey v. ABB, Inc*., No. 06-4305, 2012 U.S.Dist.LEXIS 157428, at *9–10 (W.D. Mo. Nov. 2, 2012)(citations omitted).

12. These cases require a commitment up front to tremendous time and resources. For example, in the *Tussey* case, Plaintiffs' counsel has advanced over $2 million in out-of-pocket costs, most of which are expert witness fees, and has been carrying those advanced costs without reimbursement since they were incurred. Only recently has a settlement been reached in *Tussey*, and for almost 13 years prior to settlement, my firm did not receive any compensation for its time.

13. Schlichter Bogard & Denton has obtained monetary settlements on behalf of 401(k) and 403(b) plan participants in numerous cases, as well as substantial and valuable affirmative relief. These settlements include, among others: *Cassell v. Vanderbilt Univ.*, No. 16-2086 (M.D.Tenn.); *Clark v. Duke Univ.,* No. 16-1044 (M.D.N.C.); *Tussey v. ABB, Inc.*, No. 06-4305 (W.D.Mo.); *Bell v. Pension Cmte. of ATH Holding Co.*, No. 15-2062 (S.D.Ind.); *Sims v. BB&T Corp.*, No. 15-732 (M.D.N.C.); *Ramsey v. Philips N.A.*, No. 18-1099 (S.D.Ill.); *In re Northrop Grumman ERISA Litig.*, No. 06-6213 (C.D.Cal.); *Abbott v. Lockheed Martin Corp.,* No. 06-701 (S.D.Ill.); *Spano v. Boeing Co*., No. 06-743 (S.D.Ill.); *Gordan v. Mass. Mutual Life Ins. Co.,* No. 13-30184 (D.Mass.); *Kruger v. Novant Health, Inc*., No. 14-208 (M.D.N.C); *Krueger v. Ameriprise Financial, Inc*., No. 11-2781 (D.Minn.); *Kanawi. v. Bechtel Corp.,* No. 06-5566 (N.D. Cal.); *Beesley v. Int'l Paper Co*., No. 06-703 (S.D.Ill.); *Will* v. *General Dynamics*

*Corp.*, No. 06-698 (S.D.Ill.); *Nolte v. Cigna Corp.,* No. 07-2046 (C.D.Ill); *George v. Kraft Foods Global, Inc.,* Nos. 07-1713 & 08-3799 (N.D.Ill.); and *Martin v. Caterpillar, Inc.,* No. 07-1009 (C.D. Ill.). No other firm can match Schlichter, Bogard & Denton's track record of success in ERISA excessive fee litigation.

14. In many of these cases, settlements were reached only after years of litigation and after Schlichter Bogard & Denton conducted extensive discovery, defeated motions to dismiss and for summary judgment, obtained class certification, and, in some, handled one or more interlocutory appeals. In *Spano v. Boeing Co*., No. 06-743 (S.D.Ill.), filed September 28, 2006, a provisional settlement was reached on the day that trial was scheduled to commence, August 26, 2015, after nine years of litigation, including an interlocutory appeal to the Seventh Circuit, 633 F.3d 574. Similarly, in *Abbott v. Lockheed Martin Corp*., No. 06-701 (S.D.Ill.), filed September 11, 2006, the parties reached a settlement on December 14, 2014, the day before trial, after over eight years of litigation and two interlocutory class certification appeals, including Schlichter, Bogard & Denton successfully obtaining reversal of a denial of class certification, 725 F.3d 803 (7th Cir. 2013), and a petition for writ of certiorari that the firm successfully opposed.

15. My firm has devoted all the necessary resources to litigating cases brought on behalf of participants and retirees, including devoting those resources in this litigation.

16. For instance, in *Tibble v. Edison Int'l*, No. 07-5359 (C.D. Cal.), after partial summary judgment for the defendants and a partial judgment for the plaintiffs at trial, the parties cross-appealed to the Ninth Circuit, which affirmed the district court in all respects, 729 F.3d 1110 (9th Cir. 2013). Schlichter Bogard & Denton successfully petitioned the Supreme Court for a writ of certiorari on the issue of whether ERISA's six-year statute of limitations bars a claim that the fiduciary breached its ongoing duty to remove imprudent retail investments more than

six years after the funds were first included in the Plan. This was the first 401(k) excessive fee case the Supreme Court ever took. Numerous amici supported the plaintiffs, including the United States Solicitor General, AARP, and the National Pension Rights Center. The Supreme Court ruled in favor of plaintiffs unanimously 9–0, and remanded for further proceedings. *Tibble v. Edison Int'l*, 135 S. Ct. 1823, 1829 (2015). Thereafter, on December 16, 2016, the Ninth Circuit, sitting en banc, unanimously reversed a Ninth Circuit panel decision following the Supreme Court's decision and remanded for trial. *Tibble v. Edison Int'l*, 843 F.3d 1187 (9th Cir. 2016). Following remand, in August 2017, the plaintiffs obtained a judgment of $13.4 million in plan losses and investment opportunity. *Tibble,* No. 07-5359, 2017 WL 3523737 (C.D.Cal. Aug. 16, 2017); *Tibble,* Docs. 570, 572.

17. In *Tussey v. ABB, Inc*., No. 06-4305, following the month long trial in 2010 and the district court's judgment, 2012 U.S.Dist.LEXIS 45240 (W.D.Mo. Mar. 31, 2012), the Eighth Circuit affirmed in part, reversed in part, and remanded for further proceedings on one of the plaintiff's claims, 746 F.3d 327 (8th Cir. 2014). On March 9, 2017, the plaintiffs prevailed on a second appeal to the Eighth Circuit, which affirmed the district court's finding that the company breached its duties and remanded for the district court to determine an award of damages. *Tussey v. ABB, Inc.*, 850 F.3d 951 (8th Cir. 2017). Only recently did the parties finally reached a settlement in the case and obtained final approval of the settlement.

18. The firm also handled the first excessive 403(b) case in history to go to trial. *Sacerdote v. New York Univ*., 328 F.Supp.3d 273 (S.D.N.Y. 2018). That trial occurred in April 2018, and judgment was entered on July 31, 2018, finding in favor of New York University and against the plaintiffs. The plaintiffs have appealed the judgment. Their appeal remains pending.

19. In short, Schlichter, Bogard & Denton has demonstrated its commitment to devoting all the necessary resources to pursuing ERISA fiduciary breach claims on behalf of 401(k) and 403(b) participants, and has done so in this case.

20. Based on handling numerous ERISA excessive fee class actions, Schlichter Bogard & Denton has extensive experience handling the complex nuances present in all phases of these claims, including the pleading stage, discovery, class certification, dispositive motions, trial, and appeals.

21. The firm's expertise in successfully handling these cases has been noted by numerous federal judges. In *Beesley v. International Paper*, a similar ERISA excessive fee case that resulted in a settlement of $30 million plus substantial affirmative relief following seven years of litigation, Judge David Herndon observed: "Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination. Schlichter Bogard & Denton and lead attorney Jerome Schlichter's diligence and perseverance, while risking vast amounts of time and money, reflect the finest attributes of a private attorney general." *Beesley v. Int'l Paper Co*., No. 06-703-DRH, 2014 U.S.Dist.LEXIS 12037, at *8 (S.D.Ill. Jan. 31, 2014).

22. In *Will v. General Dynamics*, another ERISA excessive fee case that settled for $16.5 million plus significant affirmative relief after four years of litigation, Judge Patrick Murphy found that litigating the case and achieving a successful result for the class "required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans." *Will v. General Dynamics Corp.*, No. 06-698, 2010 U.S.Dist.LEXIS 123349, at *9 (S.D.Ill. Nov. 22, 2010).

23. In connection with approving a settlement reached after six plus years of litigation that included a monetary recovery of $35 million and "powerful affirmative relief" in the form of "market-priced recordkeeping services, state-of-the-art fee and expense disclosures to participants; and other steps to control investment expenses," Judge Harold Baker stated that Schlichter, Bogard & Denton is the "preeminent firm in 401(k) fee litigation" and has "persevered in the face of the enormous risks of representing employees and retirees in this area." *Nolte v. Cigna Corp.,* No. 07-2046, 2013 WL 12242015, at *2 (C.D.Ill. Oct. 15, 2013). The Court noted that "[t]he fee reduction attributed to Schlichter, Bogard & Denton's fee litigation and the Department of Labor's fee disclosure regulations approach $2.8 billion in annual savings for American workers and retirees." *Id.*

24. After recognizing "their persistence and skill of their attorneys", Judge Rosenstengel similarly noted in another excessive 401(k) fee case that Schlichter, Bogard & Denton "has significantly improved 401(k) plans across the country by bringing cases [.]" *Spano v. Boeing Co*., No. 06-743, 2016 WL 3791123, at *3 (S.D.Ill. Mar. 31, 2016). These statements were made in connection with a settlement that provided $57 million monetary recovery for over 244,000 current and former participants.

25. In *Abbott v. Lockheed Martin Corp*., which resulted, after eight plus years of litigation, in a settlement that included $62 million in monetary relief as well as substantial affirmative relief, Chief Judge Michael Reagan observed that "Mr. Schlichter and the firm of Schlichter, Bogard & Denton have demonstrated its well-earned reputation as a pioneer and the leader in the field" of 401(k) plan excessive fee litigation. *Abbott v. Lockheed Martin Corp*., No. 06-701, 2015 U.S.Dist.LEXIS 93206, at *4–5 (S.D.Ill. July 17, 2015).

26. In awarding attorney fees after the month-long trial in *Tussey v. ABB, Inc*., *supra*, Judge Nanette Laughrey found that "Plaintiffs' attorneys are clearly experts in ERISA litigation." 2012 U.S.Dist.LEXIS 157428, at *10. On remand from the Eighth Circuit, Judge Laughrey further found that as a result of Plaintiffs' counsel pursuing the case, the litigation had "clarified ERISA standards in the context of investment fees" and "educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees and separating a fiduciary's corporate interest from its fiduciary obligations. *Tussey v. ABB, Inc.,* No. 06-4305, 2015 U.S.Dist.LEXIS 164818, at *7–8 (W.D.Mo. Dec. 9, 2015).

27. In approving a settlement including $32 million plus significant affirmative relief, Chief Judge William Osteen in *Kruger v. Novant Health, Inc.*, No. 14-208, Doc. 61 at 7–8 (M.D.N.C. Sept. 29, 2016) found that "Class Counsel's efforts have not only resulted in a significant monetary award to the class but have also brought improvement to the manner in which the Plans are operated and managed which will result in participants and retirees receiving significant savings[.]"

28. On November 3, 2016, Judge Michael Ponsor found that by securing a $30.9 million settlement, Schlichter, Bogard & Denton had achieved an "outstanding result for the class," and "demonstrated extraordinary resourcefulness, skill, efficiency and determination." *Gordan v. Mass Mutual Life Ins., Co.*, No. 14-30184, Doc. 144 at 5 (D.Mass. Nov. 3, 2016).

29. In the decades of my private practice, I have never been reprimanded, sanctioned or otherwise disciplined with respect to any aspect of the practice of law.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 31st day of December, 2019, in St. Louis, Missouri.

/s/ Troy Doles
Troy Doles



Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

LORRAINE M. RAMOS *et al.*,

Plaintiffs,

v. No. 1:15-cv-02556-WJM-NRN

BANNER HEALTH *et al.*,

Defendants.

**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 participants and beneficiaries of the Banner Health Employees 401(k) Plan, excluding Defendants.

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

**Your rights and options—and the deadlines to exercise them—are explained in this Settlement Notice ("Notice").**

- The Court has given its preliminary approval to a proposed settlement (the "Settlement") of a class action lawsuit brought by certain participants in Banner Health Employees 401(k) Plan ("Plan") against Jeffrey Slocum & Associates, Inc. ("Slocum"), alleging violations of the Employee Retirement Income Security Act ("ERISA"). The Settlement will provide for the deposit of the monies to be directly contributed to the Plan to offset costs of recordkeeping and administration of the Plan.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated XXXXX. The Settlement Agreement is available at www.banner401kslocumsettlement.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 subsequent 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.
- The Court still has to decide whether to give its final approval to the Settlement. Payment to the Plan 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 **November 6, 2020 at 10:00 a.m.**, before United States District Court Judge William J. Martínez in Courtroom A801, United States Courthouse, 901 19th Street, Denver, CO 80294-3589.
- Any objections to the Settlement, to the petition for Attorneys' Fees and Costs, or to Class Representatives' Compensation must be sent in writing to Class Counsel and Slocum's Counsel, as identified on page 7 of this Settlement Notice.
- Capitalized terms used in this Notice but not defined in this Notice have the meanings assigned to them in the Settlement Agreement, which is incorporated herein by reference.
- 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, is available at www.banner401kslocumsettlement.com.

**According to the Plan's records, you are a Current Participant or Beneficiary.**

**Current Participants include both participants currently employed at Banner Health and participants who are no longer employed by Banner Health but continue to have an account balance in the Plan.**

| YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT: | |
|---|---|
| **DO NOTHING** | Our records indicate that you are a Current Participant because you had an account balance in the Plan as of December 30, 2019.<br><br>If you are a Current Participant and do nothing, you will be bound by the terms of the Settlement. |
| **YOU CAN OBJECT (NO LATER THAN OCTOBER 5, 2020)** | 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 NOVEMBER 6, 2020 AT 10:00 A.M.** | If you submit a written objection to the Settlement to the Court and counsel by the **October 5, 2020** deadline, you may attend the hearing about the Settlement and present your objections to the Court on November 6, 2020 at 10:00 a.m.<br><br>You may attend the hearing even if you do not file a written objection. If you intend to speak at the hearing, you must notify the Court and counsel of your intention , but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by **October 5, 2020**, of your intention to appear at the hearing. |

## 1. Why Did I Receive This Settlement Notice?

The Court ordered that this Settlement Notice to be sent to you because the Plan'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, if any, are resolved, the Net Settlement Amount will be allocated according to a Court-approved Plan of Allocation.

There are approximately 51,000 Class Members.

## 2. What Is The Class Action About?

The case is called *Lorraine M. Ramos, et al. v. Banner Health, et al.*, Case No. 1:15-cv-2556 (D. Colo.) (the "Class Action"). The Court supervising the case is the United States District Court for the District of Colorado. Class Counsel filed this action on November 20, 2015. The individuals who brought this suit are called Class Representatives. The Class Representatives are current and former participants in the Plan. The Defendants in the Class Action include Banner Health, Banner Health Board of Directors, Laren Bates, Wilford A. Cardon, Ronald J. Creasman, Gilbert Davila, William M. Dwyer, Peter S. Fine, Susan B. Fotte, Michael J. Frick, Michael Garnreiter, Richard N. Hall, Barry A. Hendin, David Kikumoto, Larry S. Lazarus, Steven W. Lynn, Anne Mariucci, Martin L. Shultz, Mark N. Sklar, Quentin P. Smith, Jr., Christopher Volk, Cheryl Wenzinger, Banner Health Retirement Plans Advisory Committee, Brenda Schaffer, Bruce E. Pearson, Charles P. Lehn, Colleen Hallberg, Dan Weinman, Dennis Dahlen, Ed Niemann, Jr., Ed Oxford, Jeff Buehrle, Jennier Sherwood, Julie Nunley, Margaret Dehaan, Patrick K. Block, Paulette Friday, Richard O. Sutton, Robert Lund, Michael Gillen, Steven L. Seiler, Thomas R. Koelbl, (collectively "Banner Defendants") and Defendant Slocum.

In the Class Action, Class Representatives claim that, during the Class Period, the Defendant Slocum violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.*, by allowing the Plan to pay unreasonable fees to its recordkeeper and by allowing the Plan to maintain underperforming investment options. The Class Representatives' claims are described below, and additional information about them is available at www.banner401kslocumsettlement.com.

The Settlement of the claims against Slocum was reached on December 30, 2019. Since the filing of the case and for a period of almost four years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze approximately 125,000 pages of documents produced by Banner Defendants and Slocum and many other documents, including U.S. Department of Labor Forms 5500 and other publicly available documents, to support their underlying claims. Plaintiffs and Slocum ("Settling Parties") participated in a mediation with a nationally recognized mediator who has extensive experience in resolving complex class action claims. The Settling Parties also engaged in substantial settlement discussions without a mediator. Only after extensive arm's length negotiation over a period of many months were the Settling Parties able to agree to the terms of the Settlement.

Defendant Slocum has denied and continues to deny the claims and contentions of the Class Representatives, that it is liable at all to the Class, and that the Class or the Plan have suffered any harm or damage for which Defendant could or should be held responsible, as Defendant contends that it acted prudently.

**This Settlement is only between the Plaintiffs and Slocum. The claims against the Banner Defendants continue.**

## 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 Defendant Slocum have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendant Slocum's counsel over five months, including a session with a private national mediator experience in ERISA claims, and additional arm's length negotiations. 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 highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

## 4. What Are The Terms Of The Settlement?

**Under the Settlement, a Qualified Settlement Fund of $500,000 will be established to resolve the claims against Slocum**. The Net Settlement Amount is $500,000 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 the Plan and be used to offset recordkeeping fees incurred by the Plan.

The Settlement also contains a release of claims for all Class Members. Generally, the release means that Class Members will not have the right to sue the Defendant Slocum or the Released Parties for conduct arising out of or relating to the allegations against Slocum in the Class Action.

All Class Members and anyone making a claim on their behalf will fully release Slocum from "Released Claims" only as it relates to Slocum. The Released Parties include only (a) Jeffrey Slocum & Associates, Inc. and its insurers, (b) Slocum's past, present, and future parent corporation(s), (c) Slocum's affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns (d) with respect to (a) through (c) above, each of their respective boards of directors and managers, past, present and future members of the boards of directors, officers, trustees, partners, agents, managers, members, shareholders (in their capacity as such), employees, attorneys, insurers, co-insurers, reinsurers, accountants, auditors, personal representatives, spouses, heirs, executors, administrators, and members of their immediate families.

The Released Claims include all claims that were asserted or might have been asserted against Slocum in the Class Action or would be barred by the principle of res judicata had the claims asserted been fully litigated and resulted in final judgment; and all claims relating to the implementation of the Settlement. **The Release does not apply to the Banner Health Defendants. The claims against the Banner Health Defendants continue.**

This is only a summary of the Released Claims, and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement available at www.banner401kslocumsettlement.com.

## 5. How Will The Settlement Be Distributed?

The Settlement Funds will be paid to the Plan and used to defray only the Plan's recordkeeping expenses, which are paid by Plan participants. The method of making this distribution is described in the Plan of Allocation, found in Article __ of the Settlement Agreement and available at www.banner401kslocumsettlement.com.

## 6. Is There A Distribution?

The distribution of the Net Settlement Amount will be deposited directly to the Plan and used to offset recordkeeping fees and costs. No distribution will be made directly to Class Members.

## 7. When Will the Distribution to the Plan Be Made?

The timing of the distribution of the Net Settlement Amount to the Plan 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 during the second half of 2020.

**There Will Be No Payments to the Plan Under The Settlement If The Settlement Agreement Is Terminated.**

## 8. Can I Get Out Of The Settlement?

No. The Class was 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.

## 9. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter Bogard & Denton, LLP in St. Louis, Missouri, as Class Counsel. You do not have to pay that law firm. 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 apply to the Court for a payment of Attorneys' Fees and Costs. This request will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than $166,667 in fees and $56,562.40 in costs. Class Counsel will also monitor compliance with the Settlement and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. 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 and must be approved by the Court. The Court will determine what fees and costs will be approved.

Since 2015, Class Counsel has devoted many hours investigating potential claims, bringing this case and handling it. Class Counsel reviewed thousands of pages of documents produced in this case and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to enforce the Settlement Agreement in accordance with its terms; and (3) to do each of these without additional pay.

A full application for Attorneys' Fees and Costs will be filed with the Court and made available on the Settlement Website, www.banner401kslocumsettlement.com.

## 11. Does Anyone Get An Award Of Money For This Lawsuit?

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel will ask the Court to approve payments, not to exceed $2,500 each, for seven Class Representatives who took on the risk of litigation, devoted considerable time, 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 providing information for the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, www.banner401kslocumsettlement.com.

## 12. 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 *Ramos v. Banner Health*, Case No.1:15-cv-2556 (D. Colo.). The Court's address is Clerk of the Court, United States District Court for the District of Colorado, 901 19th Street, Denver, CO 80294. 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 October 5, 2020**.

Your written objection also must be mailed to the lawyers listed below, **no later than October 5, 2020.**

| CLASS COUNSEL | DEFENDANT SLOCUM'S COUNSEL |
|---|---|
| SCHLICHTER, BOGARD & DENTON<br>Attn: The Banner 401(k) Slocum Settlement<br>100 S. Fourth St., Suite 1200<br>St. Louis, MO 63102<br>Banner401kslocumsettlement@uselaws.com | MORGAN, LEWIS & BOCKIUS LLP<br>Attn: Sari Alamuddin<br>77 West Wacker Drive<br>5th Floor<br>Chicago, IL 60601-5094 |

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

The Court will hold a Fairness Hearing on **Friday, November 6, 2020 at 10:00 a.m.** at the United States District Court for the District of Colorado, Alfred A. Arraj Courthouse, 901 19th Street., Denver, CO 80294, in Courtroom A801.

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 at that time. 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.

## 14. 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.

## 15. 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 to the Court telling it that you intend to appear at the hearing. The letter must be received by the Court no later than **October 5, 2020**. The subject of your letter or document should be "Notice of Intention to Appear at Fairness Hearing in *Ramos v. Banner Health*, Case No. 1:15-cv-2556." The Court's address is Clerk of the Court, United States District Court for the District of Colorado, 901 19th Street, Denver, CO 80294. Be sure to include your name, address, telephone number, and your signature. You must also send a copy of this letter to the attorneys at the addresses on page 7.

## 14. What Happens If I Do Nothing At All?

**If you are a "Current Participant" as defined on page 2, 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. According to the Plan's records, you are a Current Participant.**

## 15. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: www.banner401kslocumsettlement.com, call 1-_____, or write to the Settlement Administrator at The Banner 401(k) Slocum Settlement Administrator, _____.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

| | |
|---|---|
| LORRAINE M. RAMOS, et al.<br><br>Plaintiffs,<br><br>v.<br><br>BANNER HEALTH, et al.,<br><br>Defendants. | Case No.: 1:15-cv-02556<br><br>Honorable William J. Martinez<br><br>Magistrate Judge N. Reid Neureiter |

**[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**

This litigation arose out of claims involving alleged breaches of fiduciary duty under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001 *et seq.*, against Jeffrey Slocum & Associates, Inc. ("Slocum") and a set of Banner Health Defendants, in connection with the operation of the Banner Health 401(k) Plan (the "Plan"). Slocum previously served as the Plan's investment consultant and a fiduciary pursuant to ERISA § 3(21), 29 U.S.C. § 1002(21)(A)(ii).

Presently before the Court for final approval is a settlement (the "Settlement") of Plaintiffs' claims against Slocum (together, Slocum and Plaintiffs are referred to herein as the "Settling Parties"). The material terms of the Settlement are set out in the Settling Parties' Settlement Agreement. Except as otherwise defined herein, all capitalized terms used herein shall have the same meaning as are ascribed to them in the Settlement Agreement.

**Wherefore, this ____ day of _____, 2020**, upon consideration of Plaintiffs' motion for final approval of the **Settlement Agreement** in the above matter, the Court hereby orders and adjudges as follows:

1. **Class Certification:** The Court confirms that the Class certified for settlement purposes only[1] under Fed. R. Civ. P. 23(b)(1) is appropriate, and the Court certifies the following non-opt-out Class: "The Class Representatives and all current participants and beneficiaries of the Banner Health Employees 401(k) Plan as of the date that the Court enters the Preliminary Approval Order, excluding Defendants."

2. **Class Representatives:** The Court confirms the appointment of Plaintiffs Lorraine Ramos, Delri Hanson, Linda Heyrman, Karen McLeod, Robert Moffitt, Constance Williamson, and Cherlene Goodale as the Representatives for the Settlement Class.

3. **Class Counsel:** The Court confirms the appointment of Schlichter Bogard & Denton as Counsel for the Settlement Class. Under Fed. R. Civ. P. 23(g), the Court has considered: (a) the work Settlement Class Counsel has done in identifying or investigating potential claims in this Action; (b) Settlement Class Counsel's experience in handling class actions and other complex litigation; (c) Settlement Class Counsel's knowledge of the applicable law; and (d) the resources Settlement Class Counsel has committed to representing Plaintiffs and the Settlement Class. Based on these factors, the Court finds that Settlement Class Counsel has and will continue to fairly and adequately represent the interests of the Settlement Class with respect to the Settlement.

4. **Findings Regarding Notice of Settlement:** The Court finds as follows:

a. In accordance with the Court's Preliminary Approval Order, and as reflected in the information from the Settlement Administrator, Settlement Notices were timely distributed by electronic mail to all Class Members who had a current email address known to the

[1] The Court's certification of a Class pursuant to the terms of the Class Action Settlement Agreement shall not constitute and does not constitute, and shall not be construed or used as an admission, concession, or declaration by or against Slocum that (except for the purposes of the settlement) this Action is appropriate for class treatment under Federal Rule of Civil Procedure 23, or any similar federal or state class action statute or rule, for litigation purposes.

Plan's recordkeeper, Fidelity, and/or Banner Health. Of those, ___ (___.___%) were returned as undeliverable. The Settlement Administrator searched for updated electronic mail information for those returned as undeliverable and re-sent notices to those Class Members.

b. In addition, pursuant to the Class Action Fairness Act, 29 U.S.C. § 1711, *et seq.* ("CAFA"), a separate notice of the Settlement ("CAFA Notice") was provided by Slocum via the Settlement Administrator to the Attorneys General for each of the states in which a Class Member resides and the Attorney General of the United States.

c. 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) and (e), 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, consistent with the Federal Rules of Civil Procedure and the requirements of due process under the United States Constitution.

d. All requirements of CAFA have been met, and Slocum has fulfilled its obligations under CAFA.

5. **Approval of Settlement:** Pursuant to Fed. R. Civ. P. 23(e), the Court hereby approves and confirms the Settlement Agreement and the terms therein as being a fair, reasonable, and adequate settlement and compromise of the claims asserted in the Class Action, based on the following findings of fact, conclusions of law, and determination of mixed fact/law questions:

a. The Settlement Agreement resulted from arm's-length negotiations by experienced and competent counsel overseen by a neutral mediator;

b. The Settlement Agreement was negotiated only after the Settling Parties engaged in extensive litigation and discovery, and on the eve of trial, and Class Counsel has received extensive and pertinent information and documents from Slocum;

c. The Settling Parties were well positioned to evaluate the value of the Class Action;

d. If the Settlement Agreement had not been achieved, both Plaintiffs and Slocum faced the expense, risk, and uncertainty of extended litigation;

e. The amount of the Settlement — $500,000 — is fair, reasonable, and adequate;

f. The Plan of Allocation is fair, reasonable and adequate;

g. At all times, the Class Representatives have acted independently;

h. The Class Representatives and Class Counsel have concluded that the Settlement Agreement is fair, reasonable and adequate;

i. 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, including to the proposed Plan of Allocation, any requested Attorneys' Fees and Costs, or the Class Representatives' Compensation, to the Court;

j. There were ____ objections to the Settlement. _____ of those objections were timely. The Court has considered all of them, including the untimely ones, and has overruled them. Each and every Objection to the Settlement Agreement is overruled with prejudice; and

k. The Settlement Agreement was reviewed by an Independent Fiduciary, _____, who has approved the Settlement Agreement on behalf of the Plan.

6. **Final Approval Granted:** The Motion for Final Approval of the Settlement Agreement is hereby GRANTED, the settlement of the Action is APPROVED as fair, reasonable and adequate to the Plan and the Class, and the Settling Parties are hereby directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

7. **Dismissal of the Action:** The operative Complaint and all claims asserted therein, whether asserted by the Class Representative on her own behalf or on behalf of the Class Members, or on behalf of the Plan, are hereby dismissed with prejudice and without costs to any of the Settling Parties, except as otherwise provided for in the Settlement Agreement and in this Final Approval Order.

8. **Final Injunction:** The Court rules as follows:

a. 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 Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged the Released Parties from all Released Claims; and (ii) barred and enjoined from suing any of 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 Member 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 received notice of the Settlement, whether or not such Class Members have filed an objection to the Settlement, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

b. The Plan 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 Plan shall be: (i) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged the Released Parties from all Released Claims; and (ii) barred and enjoined from suing any of the Released Parties in any action or proceeding alleging any of the Released Claims, even if the Plan or any Class Member may thereafter discover facts in addition to or different from those which the Plan or any Class Member now knows or believes to be true with respect to the Class Action and the Released Claims.

9. **Release of Claims:** The Class Members and the Plan hereby settle, release, relinquish, waive and discharge any and all of the Released Claims, including but not limited to 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 Plan 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.

10. **Release of Claims Related to the Settlement:** Each Class Member shall release the Released Parties, Slocum's Counsel, and Class Counsel from 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.

11. **Class Counsel Attorneys' Fees and Costs and Class Representative Compensation:** The Court awards Class Counsel Attorneys' Fees and Costs in the amount of $_____, to be paid from the Gross Settlement Amount. The Court awards each Class Representative $___ as Class Representative Compensation, to be paid from the Gross Settlement Amount.

12. **Jurisdiction:** The Court finds that it has subject matter jurisdiction over the claims herein and personal jurisdiction over Slocum, the Plan and the Class Members pursuant to the provisions of ERISA, and expressly retains that jurisdiction for purposes of enforcing this Final Approval Order and/or the Settlement Agreement. Any motion to enforce this Final Approval Order or the Settlement Agreement, including by way of injunction, shall be filed in this Court, and the provisions of the Settlement Agreement and/or this Final Approval Order may be asserted by way of an affirmative defense or counterclaim in response to any action that is asserted to violate the Settlement Agreement.

13. **Settlement Administrator Authority/Plan of Allocation:** The Court rules as follows:

a. The Settlement Administrator shall have final authority to determine the amount of the Net Settlement Amount and to transmit such amount to the Plan's recordkeeper to be used to offset the Plan's recordkeeping fees, pursuant to the Plan of Allocation discussed in Article 6 of the Settlement Agreement, which the Court finds to be fair and reasonable.

14. **Final and Binding:** Upon the Effective Date of this Final Approval Order, all Settling Parties, Class Members and the Plan shall be bound by the Settlement Agreement and by this Final Approval Order.

15. **No Admission of Liability or Wrongdoing:** Under no circumstances shall this Order, the Settlement Agreement and its exhibits, or any of their terms and provisions, the negotiations and proceedings connected therewith, or any of the documents or statements referred to therein, be construed, deemed or used as an admission, concession or declaration by or against Slocum or Released Parties of any fault, wrongdoing, breach or liability.

16. **Null and Void if Final Approval Order Does Not Become Effective:** If this Final Approval Order does not become Effective, this Order and Judgment shall be null and void and shall be vacated *nunc pro tunc* and Article 10 of the Settlement Agreement shall govern the rights of the Settling Parties thereto.

IT IS SO ORDERED:

DATED: _____, 2020

Hon. William J. Martinez
United States Chief District Court Judge

Morgan Lewis

**Sari M. Alamuddin**
Partner
+1.312.324.1158
sari.alamuddin@morganlewis.com

_____, 2020

**VIA FEDEX**

[Name]
[Department]
[Address]

Re: *Ramos, et al. v. Banner Health, et al.*, Case No. 15-cv-2556 (D. Colo.)
Notice Pursuant to 28 U.S.C. § 1715

Dear Sir or Madam:

Defendant Jeffrey Slocum & Associates, Inc. ("Slocum") hereby provides this Notice of a Proposed Class Action Settlement in the above-referenced class action pursuant to the Class Action Fairness Act of 2005 ("CAFA").

In accordance with its obligations under CAFA, Slocum encloses the following:

**(1) The Complaint, any materials filed with the Complaint, and any Amended Complaints.**

Plaintiffs' Class Action Complaint and First Amended Complaint can be found on the enclosed CD as "Exhibit 1 – Complaints."

**(2) Notice of any scheduled judicial hearing in the class action.**

The Court has not yet scheduled a fairness hearing regarding the settlement. Once the Court sets a hearing date, such date can be found on PACER as follows: (1) enter PACER through https://ecf.cod.uscourts.gov/cgi-bin/login.pl, (2) click on "Query," (3) enter the civil case number, 15-2556, (4) click on "Run Query," and (5) click on the link "Docket Report." The order(s) scheduling the hearing(s) will be found on the docket entry sheet.

**(3) Any proposed or final notification to class members.**

The proposed Notice of Class Action Settlement as submitted to the Court can be found on the enclosed CD as "Exhibit 2 – Notice of Class Action Settlement."

**(4) Any proposed or final class action settlement.**

The Settlement Agreement entered into by the parties and as submitted to the Court can be found on the enclosed CD as "Exhibit 3 – Settlement Agreement." There are no other agreements contemporaneously made between the parties.

**(5) A final judgment or notice of dismissal.**

Final judgment has not yet been entered. Upon entry, a copy of the Final Order and Judgment will be available through PACER and can be accessed online as follows: (1) enter PACER through https://ecf.cod.uscourts.gov/cgi-bin/login.pl, (2) click on "Query," (3) enter the civil case number, 15-2556, (4) click on "Run Query," and (5) click on the link "Docket Report." The order(s) entering final judgment will be found on the docket entry sheet.

**(6) Names of class members who reside in each state and the estimated proportionate share of the claims of such members to the entire settlement.**

Included with this Notice as Attachment A is a list of the names of class members who reside in your state or U.S. territory. Pursuant to the terms of the Settlement Agreement, no individual Settlement Class Member will receive an individual allocation of the settlement proceeds. Instead, the settlement proceeds will be applied to offset the recordkeeping fees of the Banner Health Employees 401(k) Plan, of which each Settlement Class Member is a participant or beneficiary. Accordingly, it is not feasible to determine the estimated proportionate share of the claims of the Settlement Class Members who reside in each state (or U.S. territory) to the entire settlement. Included on the enclosed CD as "Exhibit 4 – Estimated Distribution" is a table showing the percentage of the total Settlement Class that the Settlement Class Members from each state or U.S. territory comprise.

**(7) Any written judicial opinion relating to the materials described in (3) through (5).**

The Court has not yet entered a Preliminary Approval Order or any opinions relating to the materials described in sections (3) through (5). Upon entry, a copy of said order or opinion can be found online through the process described in section (5) above.

Final judgment has also not yet been entered. Upon entry, a copy of said order can also be found online through the process described in section (5) above.

If you have questions about this notice, the lawsuit, or the enclosed materials, please contact me.

Addressee
_____, 2020

Page 3

Regards,

*/s/ DRAFT*

Enclosures

**Attachment A – List of Class Members in State**

[Names of each class member in state will be inserted here.]

Morgan Lewis

**Sari Alamuddin**
Partner
+1.312.324.1158
sari.alamuddin@morganlewis.com

__, 2020

**VIA FEDEX**

The Honorable William Barr
United States Attorney General
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Re: *Ramos, et al. v. Banner Health, et al*., Case No. 15-cv-2556 (D. Colo.)
*Notice Pursuant to 28 U.S.C. § 1715*

Dear Sir:

Defendant Jeffrey Slocum & Associates, Inc. ("Slocum") hereby provides this Notice of a Proposed Class Action Settlement in the above-referenced class action pursuant to the Class Action Fairness Act of 2005 ("CAFA").

In accordance with their obligations under CAFA, Slocum encloses the following:

**(1) The Complaint, any materials filed with the Complaint, and any Amended Complaints.**

Plaintiffs' Class Action Complaint and First Amended Complaint can be found on the enclosed CD as "Exhibit 1 – Complaints."

**(2) Notice of any scheduled judicial hearing in the class action.**

The Court has not yet scheduled a fairness hearing regarding the settlement. Once the Court sets a hearing date, such date can be found on PACER as follows: (1) enter PACER through https://ecf.cod.uscourts.gov/cgi-bin/login.pl, (2) click on "Query," (3) enter the civil case number, 15-2556, (4) click on "Run Query," and (5) click on the link "Docket Report." The order(s) scheduling the hearing(s) will be found on the docket entry sheet.

**(3) Any proposed or final notification to class members.**

The proposed Notice of Class Action Settlement as submitted to the Court can be found on the enclosed CD as "Exhibit 2 – Notice of Class Action Settlement."

**(4) Any proposed or final class action settlement.**

The Settlement Agreement entered into by the parties and as submitted to the Court can be found on the enclosed CD as "Exhibit 3 – Settlement Agreement." There are no other agreements contemporaneously made between the parties.

**(5) A final judgment or notice of dismissal.**

Final judgment has not yet been entered. Upon entry, a copy of the Final Order and Judgment will be available through PACER and can be accessed online as follows: (1) enter PACER through https://ecf.cod.uscourts.gov/cgi-bin/login.pl, (2) click on "Query," (3) enter the civil case number, 15-2556, (4) click on "Run Query," and (5) click on the link "Docket Report." The order(s) entering final judgment will be found on the docket entry sheet.

**(6) Names of class members who reside in each state and the estimated proportionate share of the claims of such members to the entire settlement.**

Pursuant to the terms of the Settlement Agreement, no individual Settlement Class Member will receive an individual allocation of the settlement proceeds. Instead, the settlement proceeds will be applied to offset the recordkeeping fees of the Banner Health Employees 401(k) Plan, of which each Settlement Class Member is a participant or beneficiary. Accordingly, it is not feasible to determine the estimated proportionate share of the claims of the Settlement Class Members who reside in each state (or U.S. territory) to the entire settlement. Included on the enclosed CD as "Exhibit 4 – Estimated Distribution" is a table showing the percentage of the total Settlement Class that the Settlement Class Members from each state or U.S. territory comprise.

In addition, enclosed on the CD as "Exhibit 5 – Complete List of Class Members by State" is a spreadsheet containing the names of Settlement Class Members and the states or U.S. territories in which they reside.

**(7) Any written judicial opinion relating to the materials described in (3) through (5).**

The Court has not yet entered a Preliminary Approval Order or any opinions relating to the materials described in sections (3) through (5). Upon entry, a copy of said order or opinion can be found online through the process described in section (5) above.

Final judgment has also not yet been entered. Upon entry, a copy of said order can also found online through the process described in section (5) above.

If you have questions about this notice, the lawsuit, or the enclosed materials, please contact me.

Regards,

*/s/ DRAFT*

Enclosures

Morgan Lewis

**Sari Alamuddin**
Partner
+1.312.324.1158
sari.alamuddin@morganlewis.com

__, 2020

**VIA FEDEX**

The Honorable Eugene Scalia
Secretary of Labor
200 Constitution Ave NW
C-2318
Washington, DC 20210

Re: *Ramos, et al. v. Banner Health, et al.*, Case No. 15-cv-2556 (D. Colo.)
*Notice Pursuant to 28 U.S.C. § 1715*

Dear Sir:

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**(2) Notice of any scheduled judicial hearing in the class action.**

The Court has not yet scheduled a fairness hearing regarding the settlement. Once the Court sets a hearing date, such date can be found on PACER as follows: (1) enter PACER through https://ecf.cod.uscourts.gov/cgi-bin/login.pl, (2) click on "Query," (3) enter the civil case number, 15-2556, (4) click on "Run Query," and (5) click on the link "Docket Report." The order(s) scheduling the hearing(s) will be found on the docket entry sheet.

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The Settlement Agreement entered into by the parties and as submitted to the Court can be found on the enclosed CD as "Exhibit 3 – Settlement Agreement." There are no other agreements contemporaneously made between the parties.

**(5) A final judgment or notice of dismissal.**

Final judgment has not yet been entered. Upon entry, a copy of the Final Order and Judgment will be available through PACER and can be accessed online as follows: (1) enter PACER through https://ecf.cod.uscourts.gov/cgi-bin/login.pl, (2) click on "Query," (3) enter the civil case number, 15-2556, (4) click on "Run Query," and (5) click on the link "Docket Report." The order(s) entering final judgment will be found on the docket entry sheet.

**(6) Names of class members who reside in each state and the estimated proportionate share of the claims of such members to the entire settlement.**

Pursuant to the terms of the Settlement Agreement, no individual Settlement Class Member will receive an individual allocation of the settlement proceeds. Instead, the settlement proceeds will be applied to offset the recordkeeping fees of the Banner Health Employees 401(k) Plan, of which each Settlement Class Member is a participant or beneficiary. Accordingly, it is not feasible to determine the estimated proportionate share of the claims of the Settlement Class Members who reside in each state (or U.S. territory) to the entire settlement. Included on the enclosed CD as "Exhibit 4 – Estimated Distribution" is a table showing the percentage of the total Settlement Class that the Settlement Class Members from each state or U.S. territory comprise.

In addition, enclosed on the CD as "Exhibit 5 – Complete List of Class Members by State" is a spreadsheet containing the names of Settlement Class Members and the states or U.S. territories in which they reside.

**(7) Any written judicial opinion relating to the materials described in (3) through (5).**

The Court has not yet entered a Preliminary Approval Order or any opinions relating to the materials described in sections (3) through (5). Upon entry, a copy of said order or opinion can be found online through the process described in section (5) above.

Final judgment has also not yet been entered. Upon entry, a copy of said order can also found online through the process described in section (5) above.

If you have questions about this notice, the lawsuit, or the enclosed materials, please contact me.

Regards,

*/s/ DRAFT*

Enclosures