IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:15-cv-02556-MJM-NRN

LORRAINE M. RAMOS, *et al.,*

Plaintiffs,

v.

BANNER HEALTH, *et al.*,

Defendants

MOTION FOR FINAL APPROVAL OF SETTLEMENT

Plaintiffs move under Federal Rule of Civil Procedure 23(e)(2) that the Court approve the Settlement in this case. Defendant Jeffrey Slocum & Associates, Inc. ("Slocum") joins in seeking final approval of the Settlement[1], but does not join in the following memorandum.

After years of extensive ligation and lengthy arm's-length negotiations with the assistance of a national mediator and further direct negotiations up to the eve of trial, Plaintiffs and Slocum reached a settlement. Settlement of this action provides all current Plan participants in the Settlement Class meaningful relief by applying a substantial sum of money towards the defraying of the Plan's recordkeeping fees. All amounts deposited in the Qualified Settlement Fund will be distributed in accordance with the Settlement and no residual monies will revert back to Slocum. As of the filing of this motion, and after the rolling out of the Court-approved notice program, no objections to this

[1] Capitalized terms are as defined in the Revised Settlement Agreement. Dkt. 468-1.

Settlement have been filed. The lack of any objection supports the approval of the Settlement.

On May 19, 2020, the Court entered its Order preliminarily approving the revised Settlement Agreement (Dkt. 469) in this case and setting November 6, 2020 as the date for the fairness hearing under Federal Rule of Civil Procedure 23(e). Dkt. 469 at 5. In that same order, the Court certified a class for settlement purposes only. *Id*. at 3. The items for the Court to determine at the fairness hearing include: (A) whether the Settlement Agreement is fair, reasonable, and adequate; (B) whether the notice of Settlement program was performed; (C) whether to approve the Motion for Attorney Fees, Expenses, and Class Representative Awards from the Slocum Settlement Fund (Dkt. 497). Each item is addressed below.

A. The Settlement is fair, reasonable, and adequate and should be finally approved.

"The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed.R.Civ.P. 23(e). The Court may approve the settlement "only after a hearing and on finding that it is fair, reasonable, and adequate." Fed.R.Civ.P. 23(e)(2). The law favors and encourages settlements, especially in complex actions. *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). In determining whether this Settlement is reasonable, the Court considers four 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). Each factor supports approval of this Settlement.

1. The settlement was fairly and honestly negotiated.

This Settlement was the result of lengthy negotiations that concluded only on the eve of trial. Dkts. 421 at 1−3; 422 at ¶¶4−5; 468 at 1−2. Those negotiations were preceded by extensive discovery and litigation by Class Counsel, including pre-filing investigation of the claims in this case, filing the amended complaint on November 9, 2016, briefing on certification as a class action, and briefing on Slocum's motion for summary judgment. Dkt. 421 at 2−3. Discovery included the examination of over 125,000 pages of documents produced by defendants, the taking of over 20 depositions, and significant expert discovery. *Id*. at 3.

Through litigation, the Court significantly 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. In particular, it granted summary judgment in favor of Slocum 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 remained against Slocum for trial concerned the advice that it gave to the Plan's fiduciaries regarding the Fidelity Freedom Funds. *Id*. at 22-24. Given the lack of class certification against Slocum, Slocum could only have been liable for damages on this claim to the seven individual Plaintiffs, totaling $22,000. Dkt. 421 at 3.

In this light and against these odds, the Gross Settlement Amount is a substantial recovery and was made possible only through substantial negotiations that lasted months. *Id*. at 3, 11. These negotiations included a national mediator and continued thereafter with direction negotiations. *Id*. at 11. Ultimately, on the eve of trial, Plaintiffs and Slocum successfully came to the agreed terms of a settlement. *Id*.

All of these facts demonstrate that this Settlement was fairly and honestly negotiated. *See Aragon v. Clear Water Prods. LLC*, No. 15-2821-PAB, 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"); *Reiskin v. Reg'l Transp. Dist.*, No. 14-3111-CMA, 2017 WL 5990103, at *2 (D. Colo. July 11, 2017) (settlement fairly and honestly negotiated where "case involved intensive discovery," "expert witness reports," depositions, and "[n]umerous motions"). When a "settlement resulted from arm's length negotiations between experienced counsel after significant discovery had occurred, the Court may presume the settlement to be fair, adequate, and reasonable." *Lucas v. Kmart Corp*., 234 F.R.D. 688, 693 (D. Colo. 2006).

This Settlement meets those standards.

2. The ultimate outcome of the litigation was in doubt.

There were serious questions of law and fact that put in doubt the ultimate outcome of Plaintiffs' claims against Slocum both at trial and on appeal. As noted above, the Court entered judgment for most of the claims as to Slocum with only the named Plaintiffs' claim regarding the Freedom Funds remaining. Dkt. 421 at 11−12. Indeed, given Slocum's limited role and authority in the Plan, Plaintiffs faced an incredible uphill battle and the risk of no recovery for the Plan at all against Slocum. Moreover, for the Settlement Class to have recovered from Slocum at all in a contested litigation, 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. There is no doubt that there was a "real prospect that plaintiffs would not have obtained any recovery had the case proceeded to trial", which weighs in favor of approving the settlement. *Id*.

3. The value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation.

There is a public policy presumption in favor of voluntary settlement agreements, which is "is especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *Diaz v. Lost Dog Pizza, LLC*, No. 17- 2228-WJM, 2019 WL 2189485, at *2–3 (D. Colo. May 21,

2019) (quoting *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010)). Class members will be "better off receiving compensation now as opposed to being compensated, if at all, several years down the line". *McNeely v. Nat'l Mobile Health Care, LLC*, No. 07-933, 2008 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008). This Settlement provides a guaranteed source of payment from Slocum. Slocum ceased operations in 2016, and Slocum's attorneys' alerted Plaintiffs' attorneys that Slocum was operating on a limited insurance policy. Dkt. 422 at ¶4−5. There is no question that, coupled with the uncertainty of the outcome of this case, further litigation, including appeals, would have depleted these funds. Thus, this factor also weighs in favor of granting approval.

Indeed, two cases in which Class Counsel were involved demonstrate the risk of prolonged litigation and appeals. In *Tibble v. Edison International*, a case filed in 2007, the district court entered judgment in favor of the plaintiffs on a limited portion of their claims in 2010. No. 07-5359, 2010 WL 2757153 (C.D.Cal. July 8, 2010). That case then went through six years of appeals, including the Supreme Court, until it ultimately was remanded for another trial in 2016. 843 F.3d 1187 (9th Cir. 2016). Only this year did the plan finally recover its damages. No. 07-5359, Dkt. 612, (C.D.Cal. June 9, 2020). In *Tussey v. ABB, Inc.*, the plaintiffs filed suit in 2006 and obtained a judgment in their favor in 2012. No. 06-4305, 2012 WL 1113291 (W.D.Mo. March 31, 2012). That judgment was reversed in substantial part, 746 F.3d 327 (8th Cir. 2014), on remand the judgment was substantially reduced, 850 F.3d 951, 954–56 (8th Cir. 2017), that judgment was reversed on a second appeal, *id.* at 959–61, and on remand the case

ultimately was settled in 2019, No. 06-4305, Dkt. 869, (W.D.Mo. Aug. 16, 2019). In contrast to these protracted cases, the Settlement here provides immediate relief and current Plan participants will benefit from the defraying of the Plan's reasonable recordkeeping fees. *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at *5 (M.D.N.C. Sep. 29, 2016).

4. The judgment of the parties that the settlement is fair and reasonable.

The Court may give considerable weight to counsel's judgment that the Settlement is fair. *Aragon*, 2018 WL 6620724, at *3 (quoting *Hapka v. CareCentrix, Inc.*, No. 16-2372, 2018 WL 1871449, at *5 (D.Kan. Feb. 15, 2018)). Here, Class Counsel is experienced in class action litigation generally and, in particular, class litigation arising from breaches of fiduciary duty under ERISA. Dkt. 422 at 23−24. Class Counsel pioneered this area of litigation in 401(k) retirement plans, and are intimately familiar with this unique and complex area of law. See *Kruge*r, 2016 WL 6769066, at *5 (noting "endorsements [from] the AARP and the Pension Rights Center" for Class Counsel's efforts in retirement plan litigation), *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").

As noted previously, it is Class Counsel's opinion that the Settlement is fair and reasonable. Dkt. 422 at ¶¶ 4−5. As set forth above, absent the Settlement, and in the face of protracted appellate practice, the Settlement Class would have significant challenges in obtaining any class-wide relief from Slocum, even if Plaintiffs had prevailed at trial. Moreover, the relief will defray only the Plan's reasonable

recordkeeping costs. *Id*. at ¶5. Because the relief will be applied to these costs as a whole, it "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D).

In addition, an Independent Fiduciary reviewed the revised Settlement Agreement and determined that the settlement is fair and reasonable. *See* Declaration of Troy A. Doles, Exhibit 1. Also, notice of this Settlement has been provided to all attorneys general as required under CAFA and no attorney general objects. Filed herewith is the Declaration of Chris Amundson, Project Manager at Analytics Consulting LLC, the Settlement Administrator, which provides proof of compliance at ¶3.

For all of these reasons, the settlement is fair, reasonable, and adequate and the Court should approve it.

B. Notice of the Settlement was provided as directed by the Court.

The Court ordered the Settlement Administrator to disseminate the Settlement Notice to the Settlement Class no later than July 22, 2020. Dkt. 469 at 3−5. Notice of the proposed settlement was individually emailed to the Settlement Class members on July 22, 2020. Amundson Decl. at ¶4.

The Court-approved Settlement Notice was also published with a dedicated Settlement Website hosted by Class Counsel. Doles Decl. at ¶3. Plaintiffs' counsel established that website (www.banner401kslocumsettlement.com) and published the Court-approved Settlement Notice with the revised Settlement Agreement on that website on May 19, 2020. *Id.* In addition, the Settlement Administrator hosted a toll-free number for automated and live information and interaction for members of the

Settlement Class. Amundson Decl. at ¶5. As of the date of that declaration there had been a total of 78 calls. Id. at Par. 5 Of those calls, 22 were connected with a live agent. *Id*.

C. The motion for attorneys' fees and costs should be approved.

Class Counsel have submitted a detailed and unopposed motion and supporting declarations that demonstrates that they should receive from the Gross Settlement Fund $166,667.00 in attorney fees and $8,199.40 in expenses. Dkt. 497. The Independent Fiduciary has determined that this compensation is reasonable. Doles Decl. Exhibit 1. For the reasons stated therein, Class Counsel requests that those fees and expenses be awarded from the Gross Settlement Amount.

D. The compensation for Class Representatives should be approved.

Plaintiffs have requested that the Court award from the Gross Settlement Amount to each of the Class Representatives $2,500 as an incentive award. Dkt. 497 at 13−14. The total compensation to the Class Representatives is $17,500. For the reasons stated in Plaintiffs' motion, that award is reasonable and fair compensation for the work provided and risks undertaken by those representatives. *Id*.

For all of the foregoing reasons, the Plaintiffs request that the Court finally approve the Settlement in this case.

Dated: October 7, 2020

Respectfully Submitted,

/s/ Troy A. Doles
SCHLICHTER BOGARD & DENTON LLP
Jerome J. Schlichter
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2020, a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will provide notice of the filing to all counsel of record.

/s/ Troy A. Doles

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:15-cv-02556-MJM-NRN

LORRAINE M. RAMOS, *et al.,*

Plaintiffs,

v.

BANNER HEALTH, *et al.*,

Defendants

DECARATION OF TROY A. DOLES

I, Troy A. Doles, declare under 28 U.S.C. §1746:

1. I am an attorney with Schlichter Bogard and Denton, LLP ("SBD"), class counsel in this case, and am one of the attorneys who represent the plaintiffs and the class in this case.

2. Exhibit 1 filed herewith is a true and correct copy of the October 5, 2020 letter from the Independent Fiduciary, Newport Trust Company.

3. On May 19, 2020 Class Counsel established a settlement website and published the Court-approved Settlement Notice with the revised Settlement Agreement on that website.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on October 7, 2020.

/s/ Troy A. Doles

NEWPORT
retirement services

September 30, 2020

Troy A. Doles
Schlichter, Bogard & Denton, LLP
100 South Fourth Street, Suite 1200
St. Louis, Missouri 63102

Re: Statement of Independent Fiduciary – Settlement of, *Ramos et al. v. Banner Health, et al*

Dear Mr. Doles:

This statement is made by Newport Trust Company ("Newport Trust") in its capacity as independent fiduciary in connection with the proposed settlement (the "Settlement") solely involving the claims against Defendant Jeffrey Slocum & Associates in the class action lawsuit captioned *Ramos, et al. v. Banner Health, et al, case* No. 1:15-cv-02556-WJM-MJW in the United States District Court for the District of Colorado (the "Litigation").

Newport Trust was engaged by Schlichter, Bogard & Denton, LLP (the "Company"), Class Counsel for Plan participants who brought is action on behalf of the Plan, pursuant to U.S. Department of Labor Prohibited Transaction Class Exemption 2003-39, as amended, 75 Fed. Reg. 33,830 (June 15, 2010) (the "Class Exemption"), to serve as the independent fiduciary for the limited purpose of determining whether to authorize the Plan's participation in the Settlement as described below. Newport Trust has extensive experience in serving in the capacity of an independent fiduciary on behalf of employee benefit plans in connection with the settlement of litigation, and is closely familiar with the fiduciary obligations imposed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

The Class Exemption permits a plan subject to ERISA, such as the Plan, to release a claim against a party in interest in exchange for consideration, provided certain requirements are met. Among these requirements is the authorization of the plan's participation in the settlement by a fiduciary that "has no relationship to, or interest in, any of the parties involved in the litigation, other than the plan, that might affect the exercise of such person's best judgment as a fiduciary." The Class Exemption is designed to ensure that, subject to court approval, a party that is independent of the plan sponsor (here, a defendant in the Litigation) represents the plan's interests in settling a claim. Absent the Class Exemption, an ERISA plan's entry into such a settlement could be a prohibited transaction under Section 406 of ERISA, 29 U.S.C. §1106.

In accordance with the conditions of the Class Exemption, Newport Trust may authorize the Plan's participation in the Settlement if the Settlement satisfies the applicable conditions of the Class Exemption including that: (i) the terms of the Settlement, including the scope of the release of claims; the amount of cash and the value of any non-cash assets and other consideration received by the Plan and the amount of the attorneys' fees and other amounts paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone; (ii) the terms and conditions of the transaction are no less favorable to the Plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances; and (iii) the transaction is not part of an agreement,

arrangement, or understanding designed to benefit a party in interest.

Consistent with the requirements of the Class Exemption: (i) Newport Trust has no relationship to, or interest in, any of the parties involved in the Litigation that might affect the exercise of its best judgment as an independent fiduciary; (ii) the terms of the Settlement are specifically described in a written settlement agreement; (iii) Newport Trust has acknowledged in writing that it is a fiduciary on behalf of the Plan with respect to the Settlement; and (iv) Newport Trust will maintain or cause to be maintained for a period of six years the records described in the Class Exemption.

In making the determinations described above and deciding whether to accept or reject the Settlement on behalf of the Plan, Newport Trust is required to act in accordance with the fiduciary responsibility standards of ERISA. Consistent with the Class Exemption, Newport Trust can authorize the Settlement on behalf of the Plan if, after a review of the Settlement, Newport Trust concludes that the chances of obtaining any further relief for the Plan from the settling defendants are not justified by the expense and risk involved in pursuing such relief. In determining whether the Settlement is reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone, Newport Trust is obligated to weigh these factors pursuant to a prudent decision-making process, given the facts and circumstances of the Litigation.

Newport Trust primarily considered the merits of the parties' claims and their respective arguments; the amount of cash consideration paid and other consideration provided for in connection with the Settlement; and the terms of the Settlement, including but not limited to the scope of the release, the plan of allocation, and the amount of legal fees requested by Plaintiffs' counsel.

In fulfilling its responsibilities and in evaluating the reasonableness of the Settlement, Newport Trust has taken the following actions:

1. Reviewed court documents and other information and documents in the Litigation that it deemed relevant;
2. Interviewed counsel for the parties;
3. Evaluated the strengths and weaknesses of the legal and factual arguments on which the Litigation was based;
4. Reviewed and analyzed the terms of the Settlement, including but not limited to the Settlement consideration and the scope of the Settlement release;
5. Reviewed the plan of allocation proposed by the parties; and
6. Reviewed Plaintiffs' counsel's request for attorneys' fees.

Based on its evaluation of the relevant documents and information associated with the class action and the Settlement, and taking into account the fiduciary obligations imposed by ERISA, Newport Trust has concluded, consistent with the requirements of the Class Exemption, that: (i) the Settlement terms, the $500,000 Settlement amount provided for in the Settlement, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone; (ii) the scope of the release of claims is reasonable and is consistent

with the release of other ERISA settlements we have reviewed in the past year; (iii) the terms and conditions of the transaction are no less favorable to the Plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances; and (iv) the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

As a result, Newport Trust has determined that the Plan should not object to the Settlement or any portion thereof, including but not limited to the requested attorneys' fees and costs, and as such authorizes the Plan's participation in the Settlement.

Very truly yours,

By: _____
Name: William E. Ryan III
Title: President and Chief Fiduciary Officer

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

LORRAINE M. RAMOS, et. al. Plaintiffs, vs. BANNER HEALTH et al., Defendants.	Civil Action No. 1:15-cv-02556--WJM-NRN CLASS ACTION DECLARATION OF CHRISTOPHER D. AMUNDSON OF ANALYTICS CONSULTING LLC REGARDING IMPLEMENTATION OF CAFA NOTICE AND THE COURT APPROVED NOTICE PROGRAM TO CLASS MEMBERS

I, Christopher D. Amundson, have personal knowledge of the facts and opinions set forth herein, and I believe them to be true and correct to the best of my knowledge. If called to do so, I would testify consistent with the sworn testimony set forth in this Declaration. Under penalty of perjury, I state as follows:

SCOPE OF ENGAGEMENT

1. I am a Project Manager with Analytics Consulting LLC ("Analytics").

2. Pursuant to its Order Preliminarily Approving Proposed Revised Settlement Agreement with Defendant Slocum, Directing Notice to Class and Setting Fairness Hearing issued on May 19, 2020 (the "Preliminary Approval Order"), the Court approved the retention of Analytics to administer the notice procedure for the above-captioned action (the "Action"). I submit this Declaration to provide the Court with proof of implementing the Court-approved Notice.

CAFA NOTICE

3. As required by the Class Action Fairness Act ("CAFA"), Analytics caused to be served by Federal Express or Certified Return Receipt Requested First-Class mail, where applicable, a Notice of Proposed Settlement to all applicable State and Federal officials. A copy of the Notice of Proposed Settlement, excluding exhibits, is attached hereto as **Exhibit A**.

E- MAILING OF NOTICE TO CLASS MEMBERS

4. Pursuant to the Preliminary Approval Order, Analytics received from the Defendants a list containing the names and e-mail addresses of all 50,877 Class Members. On July 22, 2020 Analytics Caused e-mail Notice attached here as **Exhibit B** to be sent to all Class Members.

TOLL-FREE TELEPHONE LINE

5. Beginning on July 22, 2020, Analytics established and continues to maintain a toll-free telephone number for the Action, 1-888-490-0843. This toll-free telephone line connects callers with an Interactive Voice Recording ("IVR"). By calling this number, Class Members were able to listen to pre-recorded answers to Frequently Asked Questions ("FAQs") or request to speak with a live agent. The toll-free telephone line and IVR have been available 24 hours a day, 7 days a week. As of the date of this declaration there has been a total of 78 calls to the telephone line; of those calls, 22 requested to speak with a live agent; all 22 were connected with a live agent and had their questions answered.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 6, 2020

DocuSigned by:
C7AFF7307946408...

Christopher D. Amundson
Project Manager
Analytics Consulting LLC

EXHIBIT A

Morgan Lewis

Sari Alamuddin
Partner
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sari.alamuddin@morganlewis.com

April 23, 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,

Sari Alamuddin

Enclosures

EXHIBIT B

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 ("Plan"), excluding Defendants.

For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.

- The Court has given its preliminary approval to a proposed settlement (the "Settlement") of a class action lawsuit brought by certain participants in 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 only reasonable costs of recordkeeping and administration of the Plan.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated December 31, 2019. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at www.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.
- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. 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. Martinez 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 served in writing on Class Counsel and Slocum's Counsel, as identified on page 5 of this Settlement Notice.
- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at www.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:	
OUR RECORDS INDICATE THAT YOU ARE A CURRENT PARTICIPANT. YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT	Our records indicate that you are a Current Participant because you had an account balance in the Plan as of December 30, 2019.
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	If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by October 5, 2020, of your intention to appear at the hearing.

The Class Action

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. 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. **This Settlement is only between the Plaintiffs and Slocum. The claims against the Banner Defendants continue.** The Class Representatives' claims are described below, and additional information about them is available at www.banner401kslocumsettlement.com.

What Does the Settlement Provide?

The partial Settlement was reached on December 30, 2019. Class Counsel filed this action on November 20, 2015. 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 Defendants and many other documents, including U.S. Department of Labor Forms 5500 and other publicly available documents, to support their underlying claims. The 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.

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 only reasonable recordkeeping fees incurred by the Plan.

Release

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 at www.banner401kslocumsettlement.com. 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.

This is only a summary of the Settlement. The entire Settlement Agreement is at www.banner401kslocumsettlement.com.

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

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.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, $166,666.67, in addition to no more than $56,562.40 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed $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 Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, www.banner401kslocumsettlement.com.

1. Why Did I Receive This Settlement Notice?

The Court caused 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.

2. What Is The Class Action About?

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.

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.

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. How Will The Settlement Be Distributed?

The Settlement Funds will be paid to the Plan and used to defray only the Plan's reasonable recordkeeping expenses, which are paid by Plan participants, that are deemed by the Plan's fiduciaries to be reasonable. 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.

There are approximately 43,000 Class Members.

5. Is There a Distribution?

The distribution of the Net Settlement Amount will be deposited directly to the Plan and used to offset only reasonable recordkeeping fees and costs.

6. 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.

7. 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.

8. 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. If you want to be represented by your own lawyer, you may hire one at your own expense.

9. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than $166,666.67 in fees and $65,000 in costs and 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. The Court will determine what fees and costs will be approved.

10. 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. Col.). 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**. The Court's address is Clerk of the Court, United States District Court for the District of Colorado, 901 19th Street, Denver, CO 80294. Your written objection also must be mailed to the lawyers listed below, **no later than October 5, 2020.** Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

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

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

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

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

12. 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.

13. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Ramos v. Banner Health,* Case No. 1:15-cv-2556." Be sure to include your name, address, telephone number, and

your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than October 5, 2020**.

14. What Happens If I Do Nothing At All?

If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved. 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 1-888-490-0843 or write to the Settlement Administrator at The Banner 401(k) Slocum Settlement Administrator, P.O. Box 2002, Chanhassen, MN 55317-2002.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

LORRAINE M. RAMOS, et al. Plaintiffs, v. BANNER HEALTH, et al., Defendants.	Case No.: 1:15-cv-02556 Honorable William J. Martinez 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

[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.

distributed by electronic mail to all Class Members who had a current email address known to the Plan's recordkeeper, Fidelity, and/or Banner Health.

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 no objections to the Settlement; and

k. The Settlement Agreement was reviewed by an Independent Fiduciary, Newport Retirement Services, 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 $174,866.40, to be paid from the Gross Settlement Amount. The Court awards each Class Representative $2,500 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