

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

KAROLYN KRUGER, M.D., CANDACE)
CULTON, FRANCES BAILLIE,)
EILEEN SCHNEIDER, JUDY LEWIS,)
LINDA CHRISTENSEN, and)
TERESA POWELL, individually)
as representatives of a class)
of similarly situated)
persons, and on behalf of the)
Novant Health Retirement Plus)
Plan,)

Plaintiffs,)

v.)

1:14CV208

NOVANT HEALTH, INC.,)
ADMINISTRATIVE COMMITTEE OF)
NOVANT HEALTH, INC., NOVANT)
HEALTH RETIREMENT PLAN)
COMMITTEE, and)
JOHN DOES 1-40,)

Defendants.)

**FINDINGS AND ORDER PRELIMINARILY CERTIFYING A CLASS FOR
SETTLEMENT PURPOSES**

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

Presently before the court is Plaintiffs' Unopposed Motion for Certification of Settlement Class and Motion for Appointment of Schlichter, Bogard & Denton as Class Counsel (the "Unopposed Motion"). (Doc. 45.)

IT IS HEREBY ORDERED as follows:

1. Solely for the purposes of proposed settlement in this matter, this court preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other applicable law have been met as to the certification of the "Settlement Class," defined as follows:

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

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

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

in that:

A. All findings are based on the submissions to the court, including the Settlement Agreement. These findings are not based upon any admissions, representations, assertions, or arguments by Defendants that a contested class can, should, or would be certified in the Action. These findings and the resulting preliminary certification order shall be vacated nunc pro tunc in the event the Settlement does not become final or is terminated pursuant to the Settlement Agreement, with both parties preserving their rights to argue for or against class certification as though the Unopposed Motion and this Order were never filed.

B. The court preliminarily finds that, as required by Rule 23(a)(1), the Settlement Class is ascertainable from records kept with respect to the Plans and from other objective criteria and the members of the Settlement Class are so numerous that their joinder before the court would be impracticable.

C. The court preliminarily finds that, as required by Rule 23(a)(2), there are one or more questions of fact and/or law common to the Settlement Class.

D. The court preliminarily finds that, as required by Rule 23(a)(3), the claims of the Named Plaintiffs are typical of the claims of the Settlement Class.

E. The court preliminarily finds, as required by Rule 23(a)(4), that the Named Plaintiffs will fairly and adequately protect the interests of the Settlement Class in that (i) the interests of the Named Plaintiffs and the nature of their alleged claims are consistent with those of the members of the Settlement Class, and (ii) there appear to be no conflicts between or among the Named Plaintiffs and the Settlement Class, and (iii) the Named Plaintiffs and the members of the Settlement Class are represented by qualified, reputable counsel in Schlichter, Bogard & Denton ("Class Counsel"), who are experienced in preparing and prosecuting large, complicated ERISA class actions.

F. The court preliminarily finds that, as required by Rule 23(b)(1), the prosecution of the separate actions by individual members of the Settlement Class would create a risk of inconsistent or varying adjudications as to individual class members that would establish incompatible standards of conduct for the parties opposing the claims asserted in the ERISA Action, or adjudications as to individual class members would, as a practical matter, be dispositive of the interests of the

other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests.

G. The court preliminarily finds that, as required by Rule 23(g), Class Counsel are capable of fairly and adequately representing the interests of the Settlement Class, in that Class Counsel have done extensive work identifying or investigating potential claims in the action, and have litigated the validity of those claims at the motion to dismiss stage of this case; Class Counsel are experienced in handling class actions and claims of the type asserted in the Action; Class Counsel are knowledgeable of the applicable law; and Class Counsel have committed the necessary resources to represent the Settlement Class.

2. Class Certification - Based solely on the findings set forth above, and not on any admissions, representations, assertions, or arguments by Defendants, the court preliminarily certifies the Settlement Class for settlement purposes under Federal Rules of Civil Procedure 23(b)(1) and 23(e) in this litigation. The court appoints the Named Plaintiffs as the class representatives for the Settlement Class and Class Counsel as counsel for the Settlement Class.

For the reasons stated herein, **IT IS HEREBY ORDERED** that
Plaintiffs' motion (Doc. 45) is **GRANTED**.

This the 17th day of May, 2016.

William L. Astor, Jr.

United States District Judge