

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

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

*Plaintiffs,*

v.

Novant Health Inc., et al.,

*Defendants.*

Case No. 14-cv-208

Judge William Osteen, Jr.

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

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

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

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

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

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

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

- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on September 23, 2016, at 2:00 PM, before Judge William Osteen, Jr. at the United States District Court, 324 W. Market Street, Greensboro, North Carolina 27401.
- Any objections to the Settlement, to the petition for Attorneys’ Fees and Costs or to Class Representatives’ Compensation, must be served in writing on Class Counsel and Defendants’ Counsel, as identified on page six of this Settlement Notice.
- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at [www.Novant401ksettlement.com](http://www.Novant401ksettlement.com).

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

**YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:**

<p><b>OUR RECORDS INDICATE THAT YOU ARE A CURRENT PARTICIPANT. YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT.</b></p>	<p><u>Our records indicate that you are a Current Participant.</u> If, however, you are a “Former Participant” who participated in the Plans during the Class Period and on September 30, 2015 did not have an Active Account in any of the Plans, or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must mail a Former Participant Claim Form postmarked on or before September 12, 2016 to receive a check for your share of the Net Settlement Amount. If you are a Former Participant, and you do not mail the Former Participant Claim Form postmarked on or before September 12, 2016 you will forfeit your share of the Net Settlement Amount. We have not included a claim form in your notice because Current Participants do not need to submit a claim form, and our records indicate that you are a Current Participant. However, if you believe you are a Former Participant, a claim form may be obtained by accessing <a href="http://www.Novant401ksettlement.com">www.Novant401ksettlement.com</a>.</p>
<p><b>YOU CAN OBJECT (NO LATER THAN AUGUST 24, 2016)</b></p>	<p>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.</p>
<p><b>YOU CAN ATTEND A HEARING ON SEPTEMBER 23, 2016</b></p>	<p>If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel of your intention to appear at the hearing by August 24, 2016.</p>

**The Class Action**

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

Committee of Novant Health, Inc., and the Novant Health Retirement Plan Committee. The Class Representatives' claims are described below, and additional information about them is available at [www.Novant401ksettlement.com](http://www.Novant401ksettlement.com).

### **The Settlement**

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

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

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

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

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

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

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

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

The Court caused this Settlement Notice to be sent to you because Novant's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves

the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

## **2. What Is The Class Action About?**

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

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

## **3. Why Is There A Settlement?**

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

## **4. What Does The Settlement Provide?**

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

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

All Class Members and anyone claiming through them will fully release the Plans as well as Defendants and their "Released Parties" from "Released Claims." The Released Parties include Defendants and any past, present, and future related entities, and all of their past, present, and future officers, directors, employees, attorneys, and agents. The Released Claims include all claims that were asserted in the Class Action, as well as any claims that relate to: (1) the selection, oversight, retention, or performance of the Plans' investment options and service providers, (2) fees, costs, or expenses charged to, paid, or reimbursed by the Plans, (3) disclosures or failures to disclose information regarding the Plans' investment options or

service providers, (4) disclosures or failures to disclose relationships among fiduciaries, service providers, and investment managers for the Plans, (5) engaging in self-dealing or prohibited transactions, and/or (6) collecting compensation based on a percentage of total assets.

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

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

The entire Settlement Agreement is available at [www.Novant401ksettlement.com](http://www.Novant401ksettlement.com).

## 5. How Much Will My Distribution Be?

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

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

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

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

There are approximately 70,683 Class Members.

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

## 6. How Can I Receive My Distribution?

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

## 7. When Will I Receive My Distribution?

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

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

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

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

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

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

## 10. How Will The Lawyers Be Paid?

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

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

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Kruger, et al. v. Novant Health, Inc., et al.*, Case No. 14-208. Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than August 24, 2016. The Court's address is Clerk of the Court, U.S. District Court, Middle District of North Carolina, 324 W. Market Street, Greensboro, N.C. 27401. Your written objection also must be mailed to the lawyers listed below, **no later than August 24, 2016**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL	DEFENDANTS' COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Novant 401(k) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 Novant401ksettlement@uselaws.com Tel: (314) 621-6115 Fax: (314) 621-5934	Morgan, Lewis & Bockius, LLP Charles C. Jackson Christopher J. Boran Emily A. Glunz 77 West Wacker Drive Chicago, IL 60601 Tel: (312) 324-1000 Fax: (312) 324-1001

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

The Court will hold a Fairness Hearing at 2:00 PM on September 23, 2016, at the U.S. District Court, Middle District of North Carolina, 324 W. Market Street, Greensboro, N.C. 27401.

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

### **13. Do I Have To Attend The Fairness Hearing?**

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

### **14. May I Speak At The Fairness Hearing?**

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a “Notice of Intention to Appear at Fairness Hearing in “*Kruger, et al. v. Novant Health, Inc., et al.*, Case No. 14-208.” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 11, **no later than August 24, 2016.**

### **15. What Happens If I Do Nothing At All?**

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

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

### **16. How Do I Get More Information?**

If you have general questions regarding the Settlement, you can visit this website: [www.Novant401ksettlement.com](http://www.Novant401ksettlement.com), call (855) 720-1156, or write to the Settlement Administrator at:

Novant 401(k) Settlement Administrator  
P.O. Box 2002  
Chanhassen, MN 55317-2002

**Novant 401(k) Settlement Administrator**

P.O. Box 2002

Chanhassen, MN 55317-2002