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

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| 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. | ) | |

**ORDER**

Presently before this court is Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs. (Doc. 56.) In Plaintiffs' motion, Class Counsel requests this Court's approval for a fee relating to its role and contributions in obtaining a settlement of class claims as identified in the Settlement Agreement (herein "Settlement"). (Pls.' Mem. in Supp. of Joint Mot. for Preliminary Approval of Class Settlement, Ex. A (Doc.

44-2.)[1] In support of this motion, Plaintiffs have submitted the declarations of the Centre for Fiduciary Excellence, the AARP, the Pension Rights Center, Stewart Brown, Ph.D, Thomas R. Theado, Jerome J. Schlichter, Troy A. Doles, and Sheri O'Gorman. (Pls.' Mem. in Supp. of Mot. for Attorneys' Fees ("Pls.' Mem."), Attachs. 1-8 (Docs. 57-1 to 57-8).)

The Settlement provides a $32 million monetary recovery for the benefit of as many as 70,000 current and former participants in the Novant retirement plans identified as 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"); 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.; and the Retirement Plus Plan Wrap Nonqualified 457(b)/457(f) Plan of Novant Health, Inc. (herein collectively referred to as the "Plans"). (Settlement (Doc. 44-2) at 14.) In addition to the $32 million recovery, the Settlement also provides substantial affirmative relief that will alter the design, administration, and management of the

[1] All capitalized terms have the meaning assigned to them in Article 2 of the Settlement, unless otherwise specified herein.

Plans for years to come. (Id. at 24-29.) Further, the Settlement will significantly reduce fees in the process, thereby saving participants additional millions of dollars. (Pls.' Mem., Declaration of Stewart Brown (Doc. 57-4) at 4-7.) As noted by the Centre for Fiduciary Excellence, the impact of this affirmative relief is that the Novant employees and retirees will be provided with state-of-the-art retirement plans with fiduciary best practices assured. (Pls.' Mem., Declaration of Carlos Panksep (Doc. 57-1) ¶ 47.)

Class Counsel asks this court to approve a fee award of $10,666,666.00, which constitutes 33 1/3% of the monetary settlement obtained. Class Counsel alleges that additional improvements to the Plans bring the true value to the class higher, with a total potential value estimated by some at over $100 million. Class Counsel has also asked this court to award it $68,887.43 as reimbursement for reasonable costs and expenses. Finally, Class Counsel has requested this Court approve individual case contribution awards of $25,000.00 to each of the Class Representatives, who are Karolyn Kruger, M.D., Candace Culton, Frances Baillie, Eileen Schneider, Judy Lewis, Linda Christensen, and Teresa Powell. (Pls.' Mem. (Doc. 57).) In its review of the Settlement, the Independent Fiduciary for the

Plans also reviewed and approved Class Counsel's requested attorneys' fees and costs sought herein, finding them to be "reasonable" under the circumstances. (Joint Mot. for Final Approval of Class Settlement, Ex. 2 (Doc. 58-2) at 3.)

Pursuant to the Settlement (Doc. 44-2) and the court's Preliminary Approval Order (Doc. 54), Class Counsel directed the mailing of individual notices to the Class Members and created a Class Member website to provide information to the class. Over 70,000 individual notices were mailed to potential Class Members and no Class Member has filed an objection to the Settlement or to Class Counsel's various requests for fees, reimbursement of costs or award of case contribution awards. (Doc. 59 at 8-9.) See Phillips v. Triad Guar., Inc., 1:09CV71, 2016 WL 2636289, at *8 (M.D.N.C. May 9, 2016) (stating that no objections to request for attorneys' fees and expenses "demonstrates the class members' approval of the fees request and is further support of the reasonableness . . . ."); In re Neustar, Inc. Sec. Litig., 1:14cv885 (JCC/TRJ), 2015 WL 8484438, at *7 (E.D. Va. Dec. 8, 2015) ("Thus, the lack of objections supports finding the fee request reasonable."); Singleton v. Domino's Pizza, LLC, 976 F. Supp. 2d 665, 684 (D. Md. 2013) ("The lack of objections tends to show that at least from the class members' perspective, the

requested fee is reasonable for the services provided and the benefits achieved by class counsel."). In context, the response rate among those Class Members required to return a claim form (i.e., Former Participants) has been as high as almost 30%.

Class Counsel's request will be granted.

## I. FINDINGS

The Supreme Court has recognized that a lawyer "who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980). "Although an award of attorneys' fees to counsel for the prevailing party in a class action [common fund] case is anticipated, a court has 'an independent obligation to ensure the reasonableness of any fee request.'" Phillips, 2016 WL 2636289, at *2 (quoting In re MicroStrategy, Inc. Sec. Litig., 172 F. Supp. 2d 778, 785 (E.D. Va. 2001)). "The Fourth Circuit has not required a particular method for calculating attorneys' fees in common fund cases," id., but "[w]ithin this Circuit, the percentage-of-recovery approach is not only permitted, but is the preferred approach to determine attorney's fees." Savani v. URS Prof'l Solutions LLC, 121 F. Supp. 3d 564, 568 (D.S.C. 2015).

This court has recognized that "in a[n] [ERISA] common fund case such as this, a reasonable fee is normally a percentage of the Class recovery." Smith v. Krispy Kreme Doughnut Corp., No. 1:05CV00187, 2007 WL 119157, at *1 (M.D.N.C. Jan. 10, 2007); see Savani, 121 F. Supp. 3d at 568 (applying percentage-of-recovery method and citing numerous courts in the Fourth Circuit to do the same); Goldenberg v. Marriott PLP Corp., 33 F. Supp. 2d 434, 438 (D. Md. 1998) (same); see also Strang v. JHM Mortg. Sec. Ltd. P'ship, 890 F. Supp. 499, 503 (E.D. Va. 1995) ("[T]he percentage method is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases.").

Additionally, courts have found that "[a] one-third fee is consistent with the market rate" in a complex ERISA 401(k) fee case such as this matter. Spano v. Boeing Co., Case No. 06-CV-743-NJR-DGW, 2016 WL 3791123, at *2 (S.D. Ill. Mar. 31, 2016); Krueger v. Ameriprise Fin., Inc., No. 11-CV-2781 (SRN/JSM), 2015 WL 4246879, at *2 (D. Minn. July 13, 2015); Abbott v. Lockheed Martin Corp., No. 06-cv-701-MJR-DGW, 2015 WL 4398475, at *2 (S.D. Ill. July 17, 2015); Beesley v. Int'l Paper Co., No. 3:06-cv-703-DRH-CJP, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014); Nolte v. Cigna Corp., No. 2:07-cv-2046-HAB-DGB, 2013 U.S. Dist.

LEXIS 184622, at *8 (C.D. Ill. Oct. 15, 2013); George v. Kraft Foods Glob., Inc., Nos. 1:08-cv-3799, 1:07-cv-1713, 2012 U.S. Dist. LEXIS 166816, at *8 (N.D. Ill. June 26, 2012); Will v. Gen. Dynamics Corp., Civil No. 06-698-GPM, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010); Martin v. Caterpillar Inc., No. 07-cv-1009, 2010 U.S. Dist. LEXIS 145111, at *2-3, 17-18 (C.D. Ill. Sept. 10, 2010) (all awarding a fee of 33 1/3% of the monetary recovery in 401(k) excessive fee cases).

Beyond just the monetary recovery, this court must also consider the overall benefit to the lass, including non-monetary benefits, when evaluating a fee request. See Decohen v. Abbasi, LLC, 299 F.R.D. 469, 481 (D. Md. 2014); Beesley, 2014 WL 375432, at *1 (citing Manual for Complex Litigation, Fourth, § 21.71, at 337 (2004); Principles of the Law of Aggregate Litigation, § 3.13; and Blanchard v. Bergeron, 489 U.S. 87, 95 (1989) (cautioning against an "undesirable emphasis" on monetary "damages" that might "shortchange efforts to seek effective injunctive or declaratory relief")). Considering the non-monetary benefits and relief created by counsel's efforts is important because it encourages attorneys to obtain meaningful affirmative relief. In this case, Class Counsel's efforts have not only resulted in a significant monetary award to the class

but have also brought improvement to the manner in which the Plans are operated and managed which will result in participants and retirees receiving significant savings in the coming four years.

In valuing the non-monetary relief, Class Counsel submitted the declaration of Dr. Stewart Brown, Professor Emeritus of Finance at Florida State University. (Pls.' Mem., Declaration of Stewart Brown (Doc. 57-4).) As to the reductions in investment fees charged by the new investment line-up created as a result of this litigation and Settlement, Dr. Brown calculated potential fee savings to participants in the Retirement Plus Plan alone to be from $45 million to $69 million during the Settlement period (2016–2019). (Id. at 6.) As to the reductions in recordkeeping and administrative fees created as a result of this litigation and Settlement, Dr. Brown calculated those savings to be $9.6 million during the Settlement period. (Id. at 7.) In total, the potential value of the Settlement could be found to be substantial.

Further, for a period of four years, an Independent Consultant will annually review and evaluate the Plans to ensure compliance with the Settlement and prudent practices. (Settlement (Doc. 44-2) at 25-29.) This provides participants

and this court assurance that the Plans will be prudently managed. The Centre for Fiduciary Excellence has confirmed that the non-monetary relief Class Counsel obtained is consistent with prudent fiduciary practices. (Pls.' Mem. (Doc. 57).) In addition, alleged conflicted service providers will be removed from further involvement in the Plans. (Settlement (Doc. 44-2).) More broadly, and as a result of this Settlement, Novant Health is in the process of disassociating itself from D.L. Davis & Company, an association central to Plaintiffs' claims of fiduciary breaches in this case. (Id. at 24-25.)

Class Counsel worked for over six months before filing suit, investing hundreds of hours of attorney time investigating and developing this matter. Class Counsel's work included meeting with the Plans' participants, obtaining documents from public sources and the Retirement Plus Plan administrator, reviewing and analyzing plan documents and financial statements, building on expertise regarding industry practices, conducting extensive legal research, and fashioning the causes of action.

Courts within the Fourth Circuit have cautioned against the lodestar approach in determining attorneys' fees in common fund cases such as this. See, e.g., Archbold v. Wells Fargo Bank, N.A., Civil Action No. 3:13-cv-24599, 2015 WL 4276295, at *4

(S.D. W.Va. July 14, 2015) (stating a "clear consensus among the federal and state courts . . . that the award of attorneys' fees in common fund cases should be based on a percentage of the recovery" because "the percentage of fund approach is the better-reasoned and more equitable method of determining attorneys' fees in such cases."); DeWitt v. Darlington Cty., Civil Action No. 4:11-cv-00740-RBH, 2013 WL 6408371, at *6 (D.S.C. Dec. 6, 2013) ("The percentage-of-the-fund approach rewards, counsel for efficiently and effectively bringing a class action case to a resolution, rather than prolonging the case in the hopes of artificially increasing the number of hours worked on the case to inflate the amount of attorney's fees on an hourly basis."); Strang, 890 F. Supp. at 503 ("[T]he percentage method is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases."); see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 121 (2d Cir. 2005) (stating the lodestar method "create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up their hours, and compel[s] district courts to engage in a gimlet-eyed review of line-item fee audits"

(alterations in original)(citations and internal quotations omitted)).

Given that courts in the Fourth Circuit approve of the percentage-of-fund method for awarding fees in common fund cases, "[i]t is not necessary for the Court to conduct a lodestar analysis[.]" Krispy Kreme, 2007 WL 119157, at *3. However, courts in this Circuit will review the lodestar method to serve as a "cross-check" to ensure that the percentage award is fair and reasonable. DeWitt, 2013 WL 6408371, at *7; Phillips, 2016 WL 2636289, at *7-8. A lodestar figure is calculated by "determin[ing] the hours reasonably expended by counsel," and then "multiply[ing] that figure by a reasonable hourly rate." Phillips, 2016 WL 2636289, at *6 (internal quotations omitted). The hourly rate should be in line with the market rate for "similar services by lawyers of reasonably comparable skill, experience, and reputation." Certain v. Potter, 330 F. Supp. 2d 576, 589 (M.D.N.C. 2004) (internal quotations omitted).

This court finds the relevant market rate for cases such as the present case to be a nationwide market rate. This is consistent with the findings of courts in which Class Counsel has litigated similar 401(k) excessive fee cases. See, e.g.,

Spano, 2016 WL 3791123, at *3; Abbott, 2015 WL 4398475, at *3; Nolte, 2013 U.S. Dist. LEXIS 184622, at *13; Beesley, 2014 WL 375432, at *2; Caterpillar Inc., 2010 U.S. Dist. LEXIS 145111, at *12-14; Will, 2010 WL 4818174, at *2 (all finding national market rates to apply to Class Counsel's work in 401(k) fee cases).

As of July 25, 2016, Class Counsel has spent 3,270 hours of attorney time, along with 282.60 hours of legal assistant time, litigating this case. Class Counsel has conservatively estimated spending another 200 attorney hours between its initial fee application and final approval of the Settlement, as well as 200 attorney hours administering and monitoring the Settlement. (Pls.' Mem. (Doc. 57) at 21.)[2]

The "reasonable hourly rate" is "a fee rate based on the current market or by using the historical fee rate with reasonable interest added." Marks Constr. Co. v. Huntington Nat'l Bank, Civil Action No. 1:05CV73, 2010 WL 3418329, at *9 (N.D. W.Va. Aug. 27, 2010). Although Class Counsel works solely on a contingent fee basis, this court finds that reasonable national rates for this work are found in a similar 401(k)

[2] All citations in this Order to documents filed with the court refer to the page numbers located at the bottom right-hand corner of the documents as they appear on CM/ECF.

excessive fee case handled by Class Counsel earlier this year. Spano, 2016 WL 3791123. In finding that a national rate applied, the Spano court determined that Class Counsel's reasonable national rates in 2016 to be the following:

- $998/hour for attorneys with at least 25 years of experience;
- $850/hour for attorneys with 15–24 years of experience;
- $612/hour for attorneys with 5–14 years of experience;
- $460/hour for attorneys with 2–4 years of experience;
- $309/hour for Paralegals and Law Clerks; and,
- $190/hour for Legal Assistants.[3]

Id. at *3.

In light of the close similarities between the claims in the Spano case and this one, Class Counsel being the same as here, and the recency of the decision, the court finds that the same rates are appropriate. Using these rates, the lodestar is $2,891,175.70. However, in cases where "the risks of the litigation are immense and [there is a] risk of receiving little or no recovery," like this one, the court may apply a risk

[3] These rates represent a small increase from the rates approved the year before in Abbott, another 401(k) case handled by Class Counsel. 2015 WL 4398475, at *3.

multiplier to compensate the attorneys for the risk of nonpayment in the event the litigation was unsuccessful. See Savani, 121 F. Supp. 3d at 572. Here, Class Counsel assumed significant risk of nonpayment, particularly in light of the novel nature of this case and adverse precedents, such as, Hecker v. Deere & Co., 556 F.3d 575 (7th Cir. 2009), and other cases that were dismissed. See, e.g., Renfro v. Unisys Corp., 671 F.3d 314 (3d Cir. 2011).

In light of these risks, Class Counsel's requested attorneys' fee is appropriate and reflects an award consistent with the fact that each of the Class Representatives separately entered into a 33 1/3% contingent contract with Class Counsel. (Pls.' Mem., Declaration of Jerome J. Schlichter (Doc. 57-6) ¶ 21.) Finally, the Independent Fiduciary for the Plans previously conducted a detailed review and assessment of the Settlement terms, including Class Counsel's request for attorneys' fees and costs, and determined that Class Counsel's fee award and costs were reasonable in light of the Settlement achieved.

Based on the above, Class Counsel's requested fee of $10,666,666.00 is 3.69 times the lodestar. This multiplier is within the range of reasonableness, as "[c]ourts have generally

held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorney's fee." Decohen, 299 F.R.D. at 483 (approving lodestar multiplier of 3.9). Courts both within this Circuit and across the country routinely approve fee awards with higher lodestar multipliers. See Nieman v. Duke Energy Corp., No. 3:12-cv-456-MOC-DSC, 2015 U.S. Dist. LEXIS 148260, at *4 (W.D.N.C. Nov. 2, 2015) ("A multiplies [sic] of 4.5 would, in the circumstances of this case, be inappropriately too low."); Jones v. Dominion Res. Servs., Inc., 601 F. Supp. 2d 756, 766 (S.D. W.Va. 2009) (approving lodestar multiplier between 3.4 and 4.3); DeLoach v. Philip Morris Cos., No. 1:00CV01235, 2003 WL 23094907, at *11 (M.D.N.C. Dec. 19, 2003) (lodestar multiplier of 4.45 "represent[ed] a reasonable fee for the services provided"), rev'd on other grounds, sub. nom. DeLoach v. Lorillard Tobacco Co., 391 F.3d 551 (4th Cir. 2004); see also New Eng. Carpenters Health Benefits Fund v. First Databank, Civil Action No. 05-11148-PBS, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (multiplier of 8.3); In re Enron Corp. Sec., Derivative & ERISA Litig., 586 F. Supp. 2d 732, 741–42 (S.D. Tex. 2008) (multiplier of 5.2); In re Cardinal Health Inc. Sec. Litigs., 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (multiplier of 6); In re Rite Aid Corp. Sec. Litig., 362 F. Supp. 2d 587,

589 (E.D. Pa. 2005) (multiplier of 6.96); In re AremisSoft Corp. Sec. Litig., 210 F.R.D. 109, 135 (D.N.J. 2002) (multiplier of 4.3); Maley v. Del Global Techs. Corp., 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (multiplier of 4.65); Ingram v. Coca-Cola Co., 200 F.R.D. 685, 696 (N.D. Ga. 2001) (multiplier between 2.5 and 4); Conley v. Sears, Roebuck & Co., 222 B.R. 181, 182 (D. Mass. 1998) (multiplier of 8.9); Roberts v. Texaco, Inc., 979 F. Supp. 185, 197 (S.D.N.Y. 1997) (multiplier of 5.5); In re RJR Nabisco Sec. Litig., MDL No. 818 (MBM), No. 88 Civ. 7905 (MBM), 1992 WL 210138, at *5 (S.D.N.Y. Aug. 24, 1992) (multiplier of six).

Finally, Class Counsel's requested fee of $10,666,666 is supported by the endorsements offered by the AARP and the Pension Rights Center. (Pls.' Mem., Declaration of Mary Ellen Signorille (Doc. 57-2); Declaration of Karen W. Ferguson (Doc. 57-3).) The AARP specifically notes Class Counsel's body of work to date in contributing to the "dramatic reductions in fees paid by 401(k) plan participants throughout the United States, through heightened awareness and scrutiny of fees, self-dealing, and imprudent investment options in 401(k) plans." (Signorille Decl. (Doc. 57-2) ¶ 12.)

The AARP's Senior Staff Attorney has also documented that early settlement of a 401(l) excessive fee case benefits the

employees and retirees in multiple ways. First, the class will receive compensation and be able to invest those funds immediately, rather than having to wait as long as a decade as other classes in similar 401(k) cases have had to do. See Spano, 2016 WL 3791123, at *2 (settlement came after Class Counsel litigated for over nine years). Second, the affirmative relief (valued at nearly $70 million) will go into effect now, as opposed to several years from now, which allows a class to achieve substantial savings and be able to invest those savings immediately – enjoying years' worth of returns that would not otherwise be available. Finally, by settling this case before entering into the formal discovery stage, let alone trial, Class Counsel avoided substantial litigation costs and expenses to the class. To date, Class Counsel has incurred just over $68,000 in costs and expenses. In Spano, by contrast, it incurred over $1.8 million in costs that were ultimately reimbursed from the settlement fund. Id. at *4.

This court further finds that the expenses for which Class Counsel seek reimbursement, in the amount of $68,887.43, were reasonable and necessary. "[C]osts, if reasonable in nature and amount, may appropriately be reimbursed from the common fund."

Phillips, 2016 WL 2636289, at *9 (quoting In re MicroStrategy, 172 F. Supp. 2d at 791).

Finally, the court awards each of the Class Representatives $25,000.00 for their important contributions to this case. "At the conclusion of a successful class action case, it is common for courts, exercising their discretion, to award special compensation to the class representatives in recognition of the time and effort they have invested for the benefit of the class." Krispy Kreme, 2007 WL 119157, at *4. "A substantial incentive award is appropriate in [a] complex ERISA case given the benefits accruing to the entire class in part resulting from [named plaintiff's] efforts." Savani, 121 F. Supp. 3d at 577. Moreover, this award is appropriate given the reputational risk in bringing an action against a prominent company in their community. See Beesley, 2014 WL 375432, at *4 (stating that "[i]ncentive awards are justified when necessary to induce individuals to become named representatives" such as when risks include "alienation from employers or peers"). Thus, a case contribution award of $25,000.00 for each Class Representative, which represents just over one-half of one percent of the Settlement Fund, is reasonable and appropriate given their contributions to the case. Abbott, 2015 WL 4398475, at *4

(awarding six named plaintiffs $25,000 each for their contribution to a case concerning allegedly excessive fees in a 401(k) plan); Krueger, 2015 WL 4246879, *4 (approving awards of $25,000 to each of the named plaintiffs in a 401(k) fee settlement); Beesley, 2014 WL 375432, at *4 (awarding $25,000 to each of the six surviving named plaintiffs in 401(k) fee settlement); Will, 2010 WL 4818174, at *4 (awarding $25,000 to each of the named plaintiffs). Accordingly, the court will award $25,000 each to Karolyn Kruger, M.D., Candace Culton, Frances Baillie, Eileen Schneider, Judy Lewis, Linda Christensen, and Teresa Powell.

## II. CONCLUSION

After consideration of Class Counsel's Motion, and consistent with the findings of the Independent Fiduciary, this court concludes that the requested attorneys' fees and reimbursement of costs are fair, reasonable and merited.

**IT IS THEREFORE ORDERED** that Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs (Doc. 56) is **GRANTED** and that the requested attorneys' fee of $10,666,666.00 is **APPROVED**.

**IT IS FURTHER ORDERED** that the requested reimbursement of costs in the amount of $68,887.43 is **APPROVED**.

**IT IS FURTHER ORDERED** that the Settlement Administrator shall pay the combined sum of $10,735,553.43 to the firm of Schlichter, Bogard & Denton out of the Settlement Fund and shall separately pay Karolyn Kruger, M.D., Candace Culton, Frances Baillie, Eileen Schneider, Judy Lewis, Linda Christensen, and Teresa Powell each $25,000.00.

This the 29th day of September, 2016.

William L. Osteen, Jr.
United States District Judge