

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

DAVID CLARK, *et al.*,  
Plaintiffs,  
v.

Case No. 1:16-CV-01044-CCE-LPA

DUKE UNIVERSITY, *et al.*,  
Defendants.

KATHI LUCAS, *et al.*,  
Plaintiffs,  
v.

Case No. 1:18-CV-00722-CCE-LPA

DUKE UNIVERSITY,  
Defendant.

**PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF  
CLASS SETTLEMENT**

Plaintiffs move under Federal Rule of Civil Procedure 23(e) for final approval of the class action settlement and for the Court to enter the proposed Final Order and Judgment. Defendants do not oppose the motion.

For Plaintiffs' part, this motion is supported by Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Class Settlement (Doc. 150), Plaintiffs' Supplemental Brief in Response to Court Order Regarding Motion for Preliminary Approval (Doc. 156), Plaintiffs' Memorandum in Support of Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs (Doc. 160), the Declaration of Dr. Stewart Brown (Doc. 160-5), the Declaration of Analytics, LLC, the Statement of Newport Trust Company, serving as the Independent Fiduciary, approving of the Settlement, including attorneys' fees and expenses (attached as

Exhibit 1), this Court's Order preliminarily approving this Settlement (Doc. 158), the Declaration of Abbey Glenn, counsel for Defendants, as well as Plaintiffs' accompanying memorandum in support of this motion.

June 4, 2019

Respectfully submitted:

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*Local Counsel for all Plaintiffs*

### **CERTIFICATE OF SERVICE**

I certify that on June 4, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send notification of filing to all counsel of record.

/s/ Jerome J. Schlichter

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

DAVID CLARK, *et al.*,  
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DUKE UNIVERSITY,  
Defendant.

Case No. 1:16-CV-01044-CCE-LPA

Case No. 1:18-CV-00722-CCE-LPA

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR  
FINAL APPROVAL OF CLASS SETTLEMENT**

Plaintiffs brought two separate but related actions alleging that Defendant Duke University and other individually named defendants breached their duties under the Employee Retirement Income Security Act of 1974 (ERISA) by causing the Duke University Faculty and Staff Retirement Plan (Plan) to pay unreasonable administrative expenses, maintaining underperforming investment options, engaging in prohibited transactions, and failing to remedy the breaches of other Plan fiduciaries. The Settlement reached in this case provides significant monetary relief through a \$10.65 million Gross Settlement Fund and substantial future relief that will benefit virtually every participant in the Plan. In light of the litigation risks further prosecution of this action would inevitably entail, this Court should grant final approval of the Settlement.

## BACKGROUND

### I. Procedural Posture.

On August 10, 2016, Plaintiffs filed their complaint in *Clark v. Duke University*. Doc. 1; Doc. 72 (Counts III–V); Doc. 111.<sup>1</sup> Plaintiffs allege: (1) Defendants breached their duties under ERISA by causing the Plan to incur unreasonable recordkeeping expenses; (2) Defendants committed prohibited transactions under ERISA by allowing four vendors to provide recordkeeping services to the Plan and receive Plan assets from which they retained unreasonable compensation; and (3) Defendants failed to prudently monitor Plan investment options resulting in the use of high-cost and low-performing funds compared to alternatives available to the Plan. Doc. 72 (Counts III–V); Doc. 48 (dismissing Counts I–II, VI, and VIII); Doc. 111.

On May 11, 2017, the Court denied in part and granted in part Defendants’ motion to dismiss in *Clark*. Doc. 48. The Court also granted class certification on April 13, 2018. Doc. 96. Since the *Clark* filing, the parties engaged in over two years of intense litigation that included production of over 762,000 pages of documents, designation and depositions of 8 experts, and 20 lengthy fact depositions. Doc. 150 at 3.

On May 3, 2018, Plaintiffs moved to amend their complaint to add Count IX asserting claims of prohibited transactions and fiduciary breaches regarding Duke University (“Duke”) using Plan assets to pay for salaries and fringe benefits of certain Duke employees. Doc. 99. The Court denied Plaintiffs leave to file this complaint. Doc.

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<sup>1</sup> “Doc.” references are to the *Clark* docket unless otherwise indicated.

107. As a result, Plaintiffs then filed *Lucas v. Duke University*, on August 20, 2018, against Duke, asserting those claims. *Lucas* Doc. 1.

On November 29, 2018, the parties notified the Court that they reached a settlement in principle after an all-day session with a national mediator and multiple follow-up calls with the mediator. *See* Nov. 29, 2018 Dkt. Text. However, Class Counsel demanded that non-monetary improvements be made to the Plan. On January 16, 2019, after more than six months of arm's length negotiation with the mediator, the parties reached an agreement on monetary and non-monetary terms. Doc. 149-2.

## **II. The terms of the Settlement.**

In exchange for releases and for the dismissal of the actions and for entry of a judgment as provided for in the Settlement, the Duke Defendants will make available to Class Members the benefits described below.

### **A. Monetary Relief.**

The Duke Defendants will deposit \$10,650,000 in an interest-bearing settlement account (the "Gross Settlement Fund"). The Gross Settlement Fund will be used to pay the recoveries to Class Members, as well as Class Counsel's attorneys' fees and expenses, Administrative Expenses of the Settlement, and the Class Representatives' Compensation as described in the Settlement. All amounts deposited in the Gross Settlement Fund will be distributed in accordance with the terms of the Settlement. No residual monies remaining in the Gross Settlement Fund will be reverted back to Duke University or any individually named defendant.

The majority of Class Members will automatically receive their distributions directly into their tax-deferred retirement account. Those who already left the Plan and no longer have an active account will be given the option to receive their distributions in the form of a check made out to them individually or as a roll-over into another tax-deferred account. As a result, most Class Members will receive their distributions tax-deferred, further enhancing the significant monetary recovery.

**B. Additional Terms.**

In addition to the monetary component of the Settlement, the Settling Parties agreed to certain non-monetary terms that provide additional value to the Plan and Class Members above and beyond the monetary recovery.

These additional terms include: (1) within 30 calendar days after the end of the first and second year of the Settlement Period, Duke will provide to Class Counsel a list of the Plan's investment options and fees, and a copy of the Plan's Investment Policy Statement (if any); (2) no later than January 1, 2020, Duke shall communicate, in writing, with current Plan participants and inform them of the investment options available in the new lineup, including the annuity option, and provide a link to a webpage containing the fees and performance information for the new investment options and the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen annuity accounts to another fund in the Plan; (3) during the third year of the Settlement Period, the Plan's fiduciaries shall retain an independent consultant to provide a recommendation regarding whether the Plan

fiduciaries should issue Requests for Proposals for recordkeeping and administrative services provided to the Plan; (4) during the Settlement Period, in considering Plan investment options, the Plan's fiduciaries shall consider, among other factors: (a) the cost of different share classes available for any particular mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; and (b) the availability of revenue sharing rebates on any share class available for any investment option considered for inclusion in the Plan; (c) other factors that the Plan fiduciaries deem appropriate under the circumstances; and (5) during the Settlement Period, Duke shall not cause Plan assets or assets held in the Plan's ERISA revenue credit or reimbursement account to be used to pay salaries and fringe benefits and other expenses incurred by Duke for services performed by Duke employees.

### **III. Preliminary approval of the Settlement and Plaintiffs' motion for attorneys' fees.**

Plaintiffs filed their motion for preliminary approval of the Settlement on January 16, 2019. Doc. 149. In accordance with the terms of the Settlement, the Duke Defendants served the CAFA notice on the appropriate officials. Decl. of Abbey Glenn, ¶3. On February 7, 2019, the Court preliminarily approved the Settlement. Doc. 158. And on April 19, 2019, Plaintiffs filed a Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs. Doc. 159.

### **IV. Class Member reaction.**

Class Members were provided the opportunity to object to the Settlement by writing the Court and lodging their formal objection to the Settlement. On April 19, 2019, 58,594



notices were sent to Class Members. Decl. of Analytics, ¶5. With an objection deadline of May 19, 2019, Doc. 158 at 17 (¶9(B)), *no Class Member* has filed an objection to any portion of the Settlement or Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs.

### **ARGUMENT**

This Circuit favors resolution of litigation prior to trial. *Crandell v. U.S.*, 703 F.2d 74, 75 (4th Cir. 1983)(“Public policy, of course, favors private settlement of disputes.”); *S.C. Nat’l Bank v. Stone*, 749 F.Supp. 1419, 1423 (D.S.C. 1990)(“The voluntary resolution of litigation through settlement is strongly favored by the courts.”).

Settlements in class actions are particularly important because those cases typically involve complex factual and legal issues, and a settlement relieves the courts of the strain that such litigation imposes. *S.C. Nat’l Bank*, 749 F.Supp. at 1423. There is a strong presumption that a settlement is fair and reasonable when it is the result of arm’s-length negotiations. *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158–159 (4th Cir. 1991); *see also Newberg on Class Actions* §11.41 at 11-88 (3d ed. 1992).

Once this presumption is established, the Court should consider the following factors: “(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.” *Jiffy Lube*, 927 F.2d at 158–59; Doc. 155 at

2–3. As previously explained in Plaintiffs’ prior briefing related to this Settlement (Docs. 150, 156, 160), and incorporated herein by reference, all relevant factors are met.

**I. The Settlement is fair because it is the product of extensive arm’s length negotiations.**

The Settlement was reached only after lengthy negotiations extending over a period of approximately six months. Doc. 149-2, ¶1.3. The parties began settlement discussions in early July 2018 but were unable to reach an agreement on all terms, including non-monetary relief, until January 2019. *Id.* Counsel on both sides are experienced and thoroughly familiar with the factual and legal issues presented. Indeed, Class Counsel is the preeminent law firm in ERISA fiduciary breach litigation. Doc. 160 at 15–18. All parties’ counsel believe that this Settlement is fair and reasonable. The opinion of experienced and informed counsel is entitled to considerable weight. *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975); *S.C. Nat’l Bank*, 139 F.R.D. at 339; *In re MicroStrategy, Inc. Sec. Litig.*, 148 F.Supp.2d 654, 665 (E.D. Va. 2001); Doc. 150-1, ¶2.

**II. All relevant factors weigh in favor of approving the Settlement.**

**A. The Settlement is reasonable in light of the relative strength of Plaintiffs’ claims and the existence of Defendants’ defenses.**

The first and second factors require this Court “to examine how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult case.” *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 256 (E.D.Va. 2009). The Settlement represents an outstanding recovery in light of both the strength of Plaintiffs’ claims but also in light of the strength of

Defendants' defenses. As previously noted, Plaintiffs maintain that they have strong underlying claims for breach of fiduciary duty against Defendants. Doc. 156 at 2–7. However, the existence of significant legal obstacles and Defendants' legal defenses render any recovery in this case uncertain. Doc. 156 at 7–9; Doc. 160 at 5–9. This makes the monetary recovery of \$10.65 million exceptional even without considering the value of the non-monetary terms and the changes Defendants made to the Plan as a result of this litigation. Taking into account the benefit of tax deferral and the economic value of the non-monetary relief, the Settlement is valued at \$39.6 million. Doc. 160 at 16; Doc. 160-5 (Brown Decl.). At the time the parties entered into a settlement, the Settlement represented the largest settlement amount in any ERISA 403(b) plan excessive fee lawsuit. *See* Doc. 156 at 14.

**B. The Settlement avoids lengthy and costly litigation.**

This Court's consideration of the anticipated duration and expenses of additional litigation is "based on a sound policy of conserving the resources of the Court and the certainty that unnecessary and unwarranted expenditure of resources and time benefits all parties." *Mills Corp*, 265 F.R.D. at 256 (internal quotation marks and alterations omitted). Without this Settlement, the parties would incur very substantial expenses in continuing this litigation due to the complexity of the issues involved. As previously explained by Plaintiffs, both parties would incur substantial litigation expenses to reach a final judgment. Doc. 156 at 10; Doc. 160 at 11–12. Even if Plaintiffs prevailed at trial, further delay in recovery and additional expenses would be incurred through years of appeal,

which has been the experience of Class Counsel. Doc. 156 at 10–11; Doc. 160 at 8–9, 11–12. This case was vigorously contested at every stage. There is no reason to believe this case would proceed differently than prior ERISA class actions handled by Class Counsel.

**C. There is no evidence Defendants would be unlikely to satisfy any judgment.**

As previously explained, there is no evidence that Duke University, a non-profit institution of higher education and one of North Carolina’s largest employers, would be unable to satisfy any judgment if ordered by the Court. Doc. 156 at 12.

**D. With no objections to the Settlement, the Class has unanimously reacted favorably to the Settlement.**

As of the objection deadline of May 19, 2019, and as of the filing of this Memorandum, of the over 58,000 Class Members who were sent notices, *no Class Member* has filed an objection to any aspect of the Settlement, including Plaintiffs’ requested attorneys’ fees and reimbursement of expenses, or the case contribution awards sought for the Named Plaintiffs. This is noteworthy because a comprehensive notice program was achieved in this Settlement. Analytics Decl., ¶¶4–9. The fact that no one filed an objection weighs heavily in favor of granting final approval. *See Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 212 (E.D. Pa. 2011)(two objectors in a class of approximately 40,000 weighs in favor of approving the settlement). In addition to the unanimous support for the Settlement by Class Members, the Independent Fiduciary has thoroughly reviewed all aspects of the Settlement and has approved the Settlement and

Plaintiffs' attorneys' fees and expenses as reasonable. *See* Ex. 1 (Statement of Newport Trust Company).

## CONCLUSION

The Court should grant final approval of the Settlement.

June 4, 2019

Respectfully submitted:

/s/ Jerome J. Schlichter  
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### **CERTIFICATE OF COMPLIANCE**

Pursuant to the Civil Local Rules of Practice for the United States District Court for the Middle District of North Carolina, this is to certify that the foregoing document complies with the font and point selections approved by the Court in Local Rule 7.3(d)(1). The foregoing was prepared on computer using Times New Roman font (13 point). I certify that the above-referenced Memorandum contains 2,264 words.

/s/ Jerome J. Schlichter

### **CERTIFICATE OF SERVICE**

I certify that on June 4, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send notification of filing to all counsel of record.

/s/ Jerome J. Schlichter

May 17, 2019

Pamela Bernard, Esq.  
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Re: Statement of Independent Fiduciary – Settlement of *Clark, et al. v. Duke University, et al.* and *Lucas, et al. v. Duke University*

Ms. Bernard:

This statement is made by Newport Trust Company (“Newport Trust”) in its capacity as independent fiduciary for the Duke University Faculty and Staff Retirement Plan (the “Plan”) in connection with the proposed settlement (the “Settlement”) of the class action lawsuits captioned *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-01044, and *Lucas, et al. v. Duke University*, Case No. 1:18-cv-0072, both in the United States District Court for the Middle District of North Carolina (collectively, the “Litigation”).

Newport Trust was engaged by Duke University (the “University”) 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 Plan 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 releases;
5. Reviewed the plan of allocation proposed by the parties; and
6. Reviewed Plaintiffs' request for attorneys' fees, expenses and class representative awards.

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, including the scope of the release of claims, the \$10.65 million Settlement amount and non-monetary relief 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 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.





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

CC (via email):

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

DAVID CLARK, et al.,

Plaintiffs,

v.

DUKE UNIVERSITY, et al.,

Defendants.

1:16-CV-1044

KATHI LUCAS, et al.,

Plaintiffs,

v.

DUKE UNIVERSITY, et al.,

Defendant.

1:18-CV-722

**DECLARATION OF ABBEY M. GLENN**

I, Abbey M. Glenn, declare as follows:

1. I am an associate with the law firm of Morgan, Lewis & Bockius LLP (“Morgan Lewis”), attorneys for Defendants in the above-styled action. In my capacity as an attorney with responsibility for managing the defense of this litigation, I have personal knowledge of the factual information stated in this declaration and, if called as a witness, I could and would testify competently thereto.

2. On January 16, 2019, I obtained from Duke University a list of settlement class members, the participants and beneficiaries of the Duke University Faculty and

Staff Retirement Plan since August 10, 2010. The list identified the names of these individuals and their current or last known addresses and states of residence.

3. In accordance with this Court's Order Granting Motion for Certification of Settlement Class and Order Granting Motion for Preliminary Approval of Class Action Settlement ("Order") (Dkt. 158), and the Class Action Fairness Act, 28 U.S.C. § 1715, on January 25, 2019, Morgan Lewis sent notice of the parties' proposed settlement in this matter via Federal Express to the Attorney General of the United States, the United States Secretary of Labor, and the Attorneys General of the states in which a settlement class member resides: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming (the "Notices").

4. The Notices included a CD containing copies of the Class Action Complaint, First Amended Complaint, and Second Amended Complaint filed in *Clark, et al. v. Duke University, et al.*, Civ. No. 1:16-CV-1044 (M.D.N.C.), the Class Action Complaint filed in *Lucas, et al. v. Duke University*, Civ. No. 1:18-CV-00722 (M.D.N.C.), the Notices of Class Action Settlement and Fairness Hearing to Class Members, and the

Settlement Agreement. The Notices also included lists with the names of settlement class members believed to be residing in each respective state.

5. The Notices provided instructions for accessing, via Pacer, details regarding the final fairness hearing regarding the settlement, the final judgment or notice of dismissal, and any written judicial opinion relating to the settlement.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on June 3, 2019, in Washington, DC.

/s/ Abbey M. Glenn  
Abbey M. Glenn



Class Action Settlement and Fairness Hearing (“the Notice”), the Claim Form, and other administrative activities in accordance with the Settlement Agreement.

3. Analytics was responsible for providing Notice to Settlement Class Members. Specifically, the Notice was to be sent by electronic means or mailed by first class mail, postage prepaid, to the last known address or e-mail address of each Settlement Class Member who could be identified by the Plan’s recordkeepers.

4. Analytics received from the Plan’s recordkeepers data files containing the names, addresses, and social security numbers of members of the Settlement Class. Additionally, some records contained e-mail addresses for members of the Settlement Class. The data was consolidated into a single database, and was updated using the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“USPS”);<sup>1</sup> certified via the Coding Accuracy Support System (“CASS”);<sup>2</sup> and verified through Delivery Point Validation (“DPV”).<sup>3</sup> This resulted in mailing address or e-mail records for 58,594 Settlement Class Members.

5. On April 19, 2019, Analytics caused Settlement Notice to be mailed or e-mailed to all 58,594 Settlement Class Members as follows: 1.) 3,948 Former Participant Notice and Claim Forms were mailed to Class Members for which no e-mail address was provided and whom were determined to be Former Participants, meaning persons who participated in the Plan during the Class Period and on December 31, 2018 did not have a Plan balance greater than \$0. 2.) 6,776 Former Participant Notices with a link to an electronic version of the Former Participant Claim Form were e-mailed to Class Members

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<sup>1</sup> The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms, and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and last known address.

<sup>2</sup> Coding Accuracy Support System is a certification system used by the USPS to ensure the quality of ZIP + 4 coding systems.

<sup>3</sup> Records that are ZIP + 4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses, and reports exactly what is wrong with incorrect addresses.

for which an e-mail address was provided and whom were determined to be Former Participants, meaning persons who participated in the Plan during the Class Period and on December 31, 2018 did not have a Plan balance greater than \$0. 3.) 12,793 Current Participant Notices were mailed to Class Members for which no e-mail address was provided and whom were determined to be Current Participants, meaning persons who participated in the Plan during the Class Period and on December 31, 2018 had a positive Plan balance. 4.) 35,077 Current Participant Notices were e-mailed to Class Members for which an e-mail address was provided and whom were determined to be Current Participants, meaning persons who participated in the Plan during the Class Period and on December 31, 2018 had a positive Plan balance. Copies of Former Participant Notice and Claim Form as well as the Current Participant Notice in both mail and e-mail format are attached as Exhibit A.

6. Prior to the distribution of Class Notice described above, Analytics verified that the Notices and Claim Form were published on a Settlement website maintained by Class Counsel. Additionally, Analytics developed an electronic Former Participant Claim Form application which was also placed on the website maintained by Class Counsel and referenced in the e-mail version of the Former Participant Notice sent to Class Members. The Former Participant Claim Form application allows Class Members to fill out and electronically submit Former Participant Claim Forms and supporting documentation.

7. Shortly after Settlement Notices were sent, Analytics analyzed the records to determine the Class Members who were sent e-mail Notice and promptly mailed Notice to Class Members whose e-mail Notice was undeliverable as follows: 1.) 738 Former Participant Notice and Claim Forms were mailed to Former Participant Class Members. 2.) 1,854 Current Participant Notices were mailed to Current Participant Class Members.

8. As of the date of this declaration, the USPS has returned 164 Notices with an updated address for the Class Member (the period in which the USPS automatically forwards the notice had expired). Analytics re-mailed the Notices to these Class Members

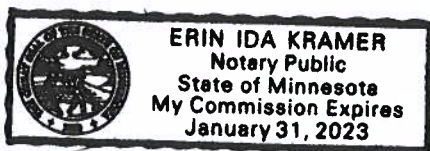
at their updated addresses. An additional 3,147 Notices were returned by the USPS as undeliverable. Of these undeliverable Notices, Analytics located 1,157 new addresses through a third-party commercial data source, Experian. Analytics re-mailed the Notices to those 1,157 Class Members at these updated addresses.

8. Analytics established and is maintaining a toll-free phone number (1-888-245-4655) for the Settlement to provide Class Members with additional information regarding the settlement. The toll-free number became operational on April 19, 2019, and automated service was available twenty-four hours a day, seven days a week. As of the date of this declaration, Analytics has received a total of 799 telephone calls out of which 410 Class Members requested to speak with a customer service representative for assistance, all of which have been responded to in a timely manner. In response to telephone requests for Notices made directly to Analytics, an additional 13 Notices were mailed.

9. The Settlement Agreement provides that Former Participants must file a completed Claim Form in order to be eligible for a settlement payment by June 3, 2019. As of the date of this declaration, Analytics has received 2,739 completed Claim Forms.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 4th day of June, 2019 in Minneapolis, Minnesota.



Christopher D. Amundson

Project Manager – Analytics LLC

06/04/2019



# **EXHIBIT A**

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

DAVID CLARK, *et al.*,  
Plaintiffs,

v.

DUKE UNIVERSITY, *et al.*,  
Defendants.

Case No. 1:16-CV-01044-CCE-LPA

KATHI LUCAS, *et al.*,  
Plaintiffs,

v.

DUKE UNIVERSITY,  
Defendant.

Case No. 1:18-CV-00722-CCE-LPA

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

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

All persons who are or were participants or beneficiaries in the Duke University Faculty and Staff Retirement Plan (“Plan”) at any time during the Class Period, including any beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and/or Alternate Payee, in the case of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are certain individuals identified in the Settlement Agreement.

The Class Period is defined as August 10, 2010 through the date of entry of the Preliminary Order. 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”) comprised of two class action lawsuits brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act (“ERISA”). The first case (the “Clark case”) was filed against Duke University, the Duke University Investment Advisory Committee, and certain individual defendants. The second case (the “Lucas case”) was filed against Duke University. Although the Lucas case is separate from the Clark case, both cases are related and assert ERISA claims concerning the management, operation and administration of the Plan. The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of December 31, 2018 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of December 31, 2018 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated January 16, 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.duke403bsettlement.com](http://www.duke403bsettlement.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 June 18, 2019, at 10:00 a.m. before U.S. District Court Judge Catherine C. Eagles in Courtroom G-3, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 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 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.duke403bsettlement.com](http://www.duke403bsettlement.com).

**Our records indicate that 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 Duke University and those who are no longer employed by Duke University but continued to have an account balance in the Plan as of December 31, 2018.**

#### **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 because you had an account balance in the Plan greater than \$0 as of December 31, 2018.</u> If, however, you are a "Former Participant" who participated in the Plan during the Class Period and did not have a balance greater than \$0 as of December 31, 2018 or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must return a Former Participant Claim Form that is postmarked by June 3, 2019 to receive a check for your share of the Net Settlement Amount. If you are a Former Participant, and you do not return the Former Participant Claim Form that is postmarked by June 3, 2019, 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.duke403bsettlement.com">www.duke403bsettlement.com</a>.</p>
<p><b>YOU CAN OBJECT (NO LATER THAN MAY 19, 2019).</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 Settling 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 JUNE 18, 2019.</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 May 19, 2019.</p>

### **The Class Actions**

The litigation involves two separate but related class actions called *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-cv-00722 (the “Class Actions”). The Court supervising the cases is the United States District Court for the Middle District of North Carolina. The individuals who brought this suit are called Class Representatives, and the individuals and entities they sued are called the defendants. The Class Representatives are current and former participants in the Plan. The Class Representatives’ claims are described below, and additional information about them is available at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

### **The Settlement**

The Settlement was reached on January 16, 2019. Class Counsel filed the Clark case on August 10, 2016 and the Lucas case on August 20, 2018. Since the filing of the Clark case and for a period of almost three years, the parties engaged in substantial litigation. During the course of the litigation, over 760,000 pages of documents were produced, which required Class Counsel to devote substantial time and effort to review and analyze those documents to support their underlying claims. Class Counsel took over 15 depositions of fact and expert witnesses, and also retained experts intimately familiar with the retirement plan industry and prudent practices of fiduciaries for defined contribution plans to provide their opinions based on the record and their experience. The Settling Parties participated in mediation before a nationally recognized mediator who has extensive experience in resolving similar claims involving other retirement plans. The Settling Parties also engaged in substantial settlement discussions without a mediator. Only after months of extensive arm’s length negotiation following the mediation were the Settling Parties able to agree to the terms of the Settlement.

As part of the Settlement, a Qualified Settlement Fund or Gross Settlement Amount of \$10,650,000 will be established to resolve the Class Actions. The Net Settlement Amount is \$10,650,000 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 Settling Parties have agreed to certain additional terms: (1) within 30 calendar days after the end of the first and second year of the Settlement Period, Duke will provide to Class Counsel a list of the Plan’s investment options and fees, and a copy of the Plan’s Investment Policy Statement (if any); (2) no later than January 1, 2020, Duke shall communicate, in writing, with current Plan participants and inform them of the investment options available in the new lineup, including the annuity option, and provide a link to a webpage containing the fees and performance information for the new investment options and the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen annuity accounts to another fund in the Plan; (3) during the third year of the Settlement Period, the Plan’s fiduciaries shall retain an independent consultant to provide a recommendation regarding whether the Plan fiduciaries should issue Requests for Proposals for recordkeeping and administrative services provided to the Plan; (4) during the Settlement Period, in considering Plan investment options, the Plan’s fiduciaries shall consider, among other factors: (a) the cost of different share classes available for any particular mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; and (b) the availability of revenue sharing rebates on any share class available for any investment option considered for inclusion in the Plan; (c) other factors that the Plan fiduciaries deem appropriate under the circumstances; and (5) during the Settlement Period, Duke shall not cause Plan assets or assets held in the Plan’s ERISA revenue credit or reimbursement account to be used to pay salaries and fringe benefits and other expenses incurred by Duke for services performed by Duke employees.

### **Statement Of Attorneys’ Fees and Costs Sought in the Class Actions**

Since mid-2016, Class Counsel have devoted thousands of hours investigating potential claims and bringing the Class Actions. Class Counsel reviewed thousands of pages of documents prior to filing of the Clark case and thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel also reviewed and analyzed in detail three-quarters of a million pages of documents, including thousands of electronic files, produced in the Clark case to support their claims in that case and those that were later brought in the Lucas case. 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 the Class Actions. Due to the highly complex nature of this litigation, Class Counsel was required to advance substantial costs to investigate and extensively develop Plaintiffs’ claims. These included expenses associated with experts who were necessary and critical in supporting Plaintiffs’ claims, as well as the substantial costs incurred during the discovery phase to review hundreds of thousands of pages of documents and take over 15 depositions of fact and expert witnesses at multiple locations across the country. Class Counsel has agreed: (1) to undertake the additional

risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) monitor for three years compliance with the Settlement Agreement; (3) bring an enforcement action in court, if necessary, to insure compliance with the Settlement Agreement; and (4) do each of these without pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the Class Actions. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$3,550,000, in addition to no more than \$825,000 in litigation costs, which have been incurred. 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 each for the Class Representatives in the Clark Case, and \$30,000 for the Class Representatives that were class representatives in both the Clark and Lucas cases, who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the Class Actions to conclusion. Their activities also included assisting in the factual investigation of the cases by Class Counsel and giving overall support to the cases. 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.duke403bsettlement.com](http://www.duke403bsettlement.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 are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

### **2. What Are The Class Actions About?**

In the Class Actions, Class Representatives claim that, during the Class Period, the defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. 1001, *et seq.*, with respect their management, operation and administration of the Plan.

The defendants have denied and continue to deny the allegations, claims and contentions of the Class Representatives, deny that they are liable at all to the Settlement Class, and deny that the Settlement Class or the Plan have suffered any harm or damage for which the defendants could or should be held responsible, as the defendants deny all allegations of wrongdoing and deny that the Plan suffered harm or damage from those claims.

### **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 the Duke Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defense Counsel during an all-day session with a private mediator, and several months of additional arm's-length negotiations. The Settling Parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

### **4. What 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. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.



In addition to the monetary component of the Settlement, as discussed above, the Settlement also provides certain additional terms that provide substantial value to Class Members and materially add to the total value of the Settlement above the already significant monetary component. These additional terms include: (1) within 30 calendar days after the end of the first and second year of the Settlement Period, Duke will provide to Class Counsel a list of the Plan's investment options and fees, and a copy of the Plan's Investment Policy Statement (if any); (2) no later than January 1, 2020, Duke shall communicate, in writing, with current Plan participants and inform them of the investment options available in the new lineup, including the annuity option, and provide a link to a webpage containing the fees and performance information for the new investment options and the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen annuity accounts to another fund in the Plan; (3) during the third year of the Settlement Period, the Plan's fiduciaries shall retain an independent consultant to provide a recommendation regarding whether the Plan fiduciaries should issue Requests for Proposals for recordkeeping and administrative services provided to the Plan; (4) during the Settlement Period, in considering Plan investment options, the Plan's fiduciaries shall consider, among other factors: (a) the cost of different share classes available for any particular mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; and (b) the availability of revenue sharing rebates on any share class available for any investment option considered for inclusion in the Plan; (c) other factors that the Plan fiduciaries deem appropriate under the circumstances; and (5) during the Settlement Period, Duke shall not cause Plan assets or assets held in the Plan's ERISA revenue credit or reimbursement account to be used to pay salaries and fringe benefits and other expenses incurred by Duke for services performed by Duke employees.

All Class Members and anyone claiming through them will fully release the Plan as well as the Duke Defendants and the "Released Parties" from "Released Claims." The Released Parties include: (a) Duke University, the Duke University Investment Advisory Committee, Duke University Health System, Inc. d/b/a Duke University Hospital, the Private Diagnostic Clinic, PLLC, and certain individual defendants identified in the Settlement Agreement; (b) their insurers, co-insurers, and reinsurers, (c) their past, present, and future parent corporation(s), (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns, (e) their past, present and future members of their respective boards of trustees, agents, officers, employees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them, and (f) the Plan and the Plan's fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include claims that were asserted in the Class Actions or that relate to any of the allegations, facts or occurrences asserted in the Class Actions or would be barred by the principles of res judicata or collateral estoppel had the claims asserted been fully litigated and resulted in final judgment; and all claims relating to the implementation of the Settlement. 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.duke403bsettlement.com](http://www.duke403bsettlement.com). Generally, the release means that Class Members will not have the right to sue the Duke Defendants, the Plan, or the Released Parties for conduct during the Class Period arising out of or relating to the allegations in the Class Actions.

This is only a summary of the Settlement. The entire Settlement Agreement is at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

## **5. How Much Will My Distribution Be?**

The amount, if any, that will be allocated to you will be based upon the Plan records, or, if on December 31, 2018, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. 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 that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

1. The quarterly balances for the Class Period of Current and Authorized Former Participants are identified for each quarter;
2. All quarterly balances identified in step 1 will be summed together for each Participant;
3. An average quarterly balance for each Current Participant and each Authorized Former Participant will be calculated for the Class Period;
4. For each Current Participant and each Authorized Former Participant, the average quarterly balance of step 3 will be divided by the average quarterly balance for the Class Period of all Current and Authorized Former Participants;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.

No amount shall be distributed to a Class Member that is five dollars (\$5.00) or less, because such an amount is de minimis and would cost more in processing than its value. The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

There are approximately 58,110 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive a check if and to the extent you are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

## 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 our records, you are a Current Participant. If so, 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 no earlier than late 2019.

**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 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 Actions for all claims that were asserted in the Class Actions or are otherwise included as Released Claims under the Settlement.

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

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel in the Class Actions. 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. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$3,550,000 in fees and \$825,000 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 *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-00722. 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 May 19, 2019. The Court's address is Clerk of the Court, United States District Courthouse, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 27401. Your written objection also must be mailed to the lawyers listed below, **no later than May 19, 2019**. 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 calendar days of the request being served on the objector.

CLASS COUNSEL	DEFENDANTS' COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Duke 403(b) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 duke403bsettlement@uselaws.com Tel: (314) 621-6115 Fax: (314) 621-5934	MORGAN, LEWIS & BOCKIUS LLP Attn: Abbey M. Glenn 1111 Pennsylvania Ave NW Washington, DC 20004

## 12. 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 June 18, 2019, in Courtroom G-3 at the United States District Courthouse for the Middle District of North Carolina, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 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 *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-00722." 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 May 19, 2019**.

## 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 Actions as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

## 16. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: [www.duke403bsettlement.com](http://www.duke403bsettlement.com), call 1-888-245-4655, or write to the Settlement Administrator at Duke 403(b) Settlement Administrator, P.O. Box 2003, Chanhassen, MN 55317-2003.



**Duke 403(b) Settlement Administrator**

P.O. Box 2003

Chanhassen, MN 55317-2003

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

DAVID CLARK, *et al.*,  
Plaintiffs,

v.

DUKE UNIVERSITY, *et al.*,  
Defendants.

Case No. 1:16-CV-01044-CCE-LPA

KATHI LUCAS, *et al.*,  
Plaintiffs,

v.

DUKE UNIVERSITY,  
Defendant.

Case No. 1:18-CV-00722-CCE-LPA

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

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

All persons who are or were participants or beneficiaries in the Duke University Faculty and Staff Retirement Plan (“Plan”) at any time during the Class Period, including any beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and/or Alternate Payee, in the case of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are certain individuals identified in the Settlement Agreement.

The Class Period is defined as August 10, 2010 through the date of entry of the Preliminary Order. 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”) comprised of two class action lawsuits brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act (“ERISA”). The first case (the “Clark case”) was filed against Duke University, the Duke University Investment Advisory Committee, and certain individual defendants. The second case (the “Lucas case”) was filed against Duke University. Although the Lucas case is separate from the Clark case, both cases are related and assert ERISA claims concerning the management, operation and administration of the Plan. The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of December 31, 2018 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of December 31, 2018 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated January 16, 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.duke403bsettlement.com](http://www.duke403bsettlement.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 June 18, 2019, at 10:00 a.m. before U.S. District Court Judge Catherine C. Eagles in Courtroom G-3, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 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 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.duke403bsettlement.com](http://www.duke403bsettlement.com).

**Our records indicate that you are a Former Participant. If you believe that you meet the definition of a Current Participant, please contact the Settlement Administrator. Former Participants are individuals who no longer had an account balance in the Plan as of December 31, 2018.**

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

##### **OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. YOU MUST RETURN THE ENCLOSED FORMER PARTICIPANT CLAIM FORM BY JUNE 3, 2019 TO PARTICIPATE IN THE SETTLEMENT**

Our records indicate that you are a Former Participant. You must return a Former Participant Claim Form that is postmarked by June 3, 2019 to receive your share of the Net Settlement Amount. If you do not return the Former Participant Claim Form that is postmarked by June 3, 2019, you will forfeit your share of the Net Settlement Amount. A claim form is enclosed with this notice but may also be obtained by accessing [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

##### **YOU CAN OBJECT (NO LATER THAN MAY 19, 2019)**

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 Settling 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 JUNE 18, 2019**

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 May 19, 2019.

### **The Class Actions**

The litigation involves two separate, but related class actions called *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-cv-00722 (the “Class Actions”). The Court supervising the cases is the United States District Court for the Middle District of North Carolina. The individuals who brought this suit are called Class Representatives, and the individuals and entities they sued are called the defendants. The Class Representatives are current and former participants in the Plan. The Class Representatives’ claims are described below, and additional information about them is available at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

### **The Settlement**

The Settlement was reached on January 16, 2019. Class Counsel filed the Clark case on August 10, 2016 and the Lucas case on August 20, 2018. Since the filing of the Clark case and for a period of almost three years, the parties engaged in substantial litigation. During the course of the litigation, over 760,000 pages of documents were produced, which required Class Counsel to devote substantial time and effort to review and analyze those documents to support their underlying claims. Class Counsel took over 15 depositions of fact and expert witnesses, and also retained experts intimately familiar with the retirement plan industry and prudent practices of fiduciaries for defined contribution plans to provide their opinions based on the record and their experience. The Settling Parties participated in mediation before a nationally recognized mediator who has extensive experience in resolving similar claims involving other retirement plans. The Settling Parties also engaged in substantial settlement discussions without a mediator. Only after months of extensive arm’s length negotiation following the mediation were the Settling Parties able to agree to the terms of the Settlement.

As part of the Settlement, a Qualified Settlement Fund or Gross Settlement Amount of \$10,650,000 will be established to resolve the Class Actions. The Net Settlement Amount is \$10,650,000 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 Settling Parties have agreed to certain additional terms: (1) within 30 calendar days after the end of the first and second year of the Settlement Period, Duke will provide to Class Counsel a list of the Plan’s investment options and fees, and a copy of the Plan’s Investment Policy Statement (if any); (2) no later than January 1, 2020, Duke shall communicate, in writing, with current Plan participants and inform them of the investment options available in the new lineup, including the annuity option, and provide a link to a webpage containing the fees and performance information for the new investment options and the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen annuity accounts to another fund in the Plan; (3) during the third year of the Settlement Period, the Plan’s fiduciaries shall retain an independent consultant to provide a recommendation regarding whether the Plan fiduciaries should issue Requests for Proposals for recordkeeping and administrative services provided to the Plan; (4) during the Settlement Period, in considering Plan investment options, the Plan’s fiduciaries shall consider, among other factors: (a) the cost of different share classes available for any particular mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; and (b) the availability of revenue sharing rebates on any share class available for any investment option considered for inclusion in the Plan; (c) other factors that the Plan fiduciaries deem appropriate under the circumstances; and (5) during the Settlement Period, Duke shall not cause Plan assets or assets held in the Plan’s ERISA revenue credit or reimbursement account to be used to pay salaries and fringe benefits and other expenses incurred by Duke for services performed by Duke employees.

### **Statement Of Attorneys’ Fees and Costs Sought in the Class Actions**

Since mid-2016, Class Counsel have devoted thousands of hours investigating potential claims and bringing the Class Actions. Class Counsel reviewed thousands of pages of documents prior to filing of the Clark case and thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel also reviewed and analyzed in detail three-quarters of a million pages of documents, including thousands of electronic files, produced in the Clark case to support their claims in that case and those that

were later brought in the Lucas case. 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 the Class Actions. Due to the highly complex nature of this litigation, Class Counsel was required to advance substantial costs to investigate and extensively develop Plaintiffs' claims. These included expenses associated with experts who were necessary and critical in supporting Plaintiffs' claims, as well as the substantial costs incurred during the discovery phase to review hundreds of thousands of pages of documents and take over 15 depositions of fact and expert witnesses at multiple locations across the country. Class Counsel has agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) monitor for three years compliance with the Settlement Agreement; (3) bring an enforcement action in court, if necessary, to insure compliance with the Settlement Agreement; and (4) do each of these without pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the Class Actions. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$3,550,000, in addition to no more than \$825,000 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 each for the Class Representatives in the Clark Case, and \$30,000 for the Class Representatives that were class representatives in both the Clark and Lucas cases, who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the Class Actions to conclusion. Their activities also included assisting in the factual investigation of the cases by Class Counsel and giving overall support to the cases. 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.duke403bsettlement.com](http://www.duke403bsettlement.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 are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

### **2. What Are The Class Actions About?**

In the Class Actions, Class Representatives claim that, during the Class Period, the defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. 1001, *et seq.*, with respect to their management, operation and administration of the Plan.

The defendants have denied and continue to deny the allegations, claims and contentions of the Class Representatives, deny that they are liable at all to the Settlement Class, and deny that the Settlement Class or the Plan have suffered any harm or damage for which the Duke Defendants could or should be held responsible, as the defendants deny all allegations of wrongdoing and deny that the Plan suffered harm or damage from those claims.

### **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 the Duke Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defense Counsel during an all-day session with a private mediator, and several months of additional arm's-length negotiations. The Settling Parties have taken into account the uncertainty and risks of

litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

#### **4. What 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. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

In addition to the monetary component of the Settlement, as discussed above, the Settlement also provides certain additional terms that provide substantial value to Class Members and materially add to the total value of the Settlement above the already significant monetary component. These additional terms include: (1) within 30 calendar days after the end of the first and second year of the Settlement Period, Duke will provide to Class Counsel a list of the Plan's investment options and fees, and a copy of the Plan's Investment Policy Statement (if any); (2) no later than January 1, 2020, Duke shall communicate, in writing, with current Plan participants and inform them of the investment options available in the new lineup, including the annuity option, and provide a link to a webpage containing the fees and performance information for the new investment options and the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen annuity accounts to another fund in the Plan; (3) during the third year of the Settlement Period, the Plan's fiduciaries shall retain an independent consultant to provide a recommendation regarding whether the Plan fiduciaries should issue Requests for Proposals for recordkeeping and administrative services provided to the Plan; (4) during the Settlement Period, in considering Plan investment options, the Plan's fiduciaries shall consider, among other factors: (a) the cost of different share classes available for any particular mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; and (b) the availability of revenue sharing rebates on any share class available for any investment option considered for inclusion in the Plan; (c) other factors that the Plan fiduciaries deem appropriate under the circumstances; and (5) during the Settlement Period, Duke shall not cause Plan assets or assets held in the Plan's ERISA revenue credit or reimbursement account to be used to pay salaries and fringe benefits and other expenses incurred by Duke for services performed by Duke employees.

All Class Members and anyone claiming through them will fully release the Plan as well as the Duke Defendants and the "Released Parties" from "Released Claims." The Released Parties include: (a) Duke University, the Duke University Investment Advisory Committee, Duke University Health System, Inc. d/b/a Duke University Hospital, the Private Diagnostic Clinic, PLLC, and certain individual defendants identified in the Settlement Agreement; (b) their insurers, co-insurers, and reinsurers, (c) their past, present, and future parent corporation(s), (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns, (e) their past, present and future members of their respective boards of trustees, agents, officers, employees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them, and (f) the Plan and the Plan's fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include claims that were asserted in the Class Actions or that relate to any of the allegations, facts or occurrences asserted in the Class Actions or would be barred by the principles of res judicata or collateral estoppel had the claims asserted been fully litigated and resulted in final judgment; and all claims relating to the implementation of the Settlement. 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.duke403bsettlement.com](http://www.duke403bsettlement.com). Generally, the release means that Class Members will not have the right to sue the Duke Defendants, the Plan, or the Released Parties for conduct during the Class Period arising out of or relating to the allegations in the Class Actions.

This is only a summary of the Settlement. The entire Settlement Agreement is at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

## 5. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon the Plan records, or, if on December 31, 2018, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. 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 that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

1. The quarterly balances for the Class Period of Current and Authorized Former Participants are identified for each quarter;
2. All quarterly balances identified in step 1 will be summed together for each Participant;
3. An average quarterly balance for each Current Participant and each Authorized Former Participant will be calculated for the Class Period;
4. For each Current Participant and each Authorized Former Participant, the average quarterly balance of step 3 will be divided by the average quarterly balance for the Class Period of all Current and Authorized Former Participants;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.

No amount shall be distributed to a Class Member that is five dollars (\$5.00) or less, because such an amount is de minimis and would cost more in processing than its value. The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

There are approximately 58,110 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive a check if and to the extent you are entitled to receive a portion of a Current Participant’s or Authorized Former Participant’s allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

## 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 our records, you are a Former Participant. Therefore, you need to return your claim form 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 no earlier than late 2019.

## **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 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 Actions for all claims that were asserted in the Class Actions or are otherwise included as Released Claims under the Settlement.

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

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel in the Class Actions. 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. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$3,550,000 in fees and \$825,000 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 *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-00722. 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 May 19, 2019. The Court's address is Clerk of the Court, United States District Courthouse, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 27401. Your written objection also must be mailed to the lawyers listed below, **no later than May 19, 2019**. 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 calendar days of the request being served on the objector.

<b>CLASS COUNSEL</b>	<b>DUKE DEFENDANTS' COUNSEL</b>
SCHLICHTER, BOGARD & DENTON Attn: Duke 403(b) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 duke403bsettlement@uselaws.com Tel: (314) 621-6115 Fax: (314) 621-5934	MORGAN, LEWIS & BOCKIUS LLP Attn: Abbey M. Glenn 1111 Pennsylvania Ave NW Washington, DC 20004

### **12. 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 June 18, 2019, in Courtroom G-3 at the United States District Courthouse for the Middle District of North Carolina, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 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 *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-00722." 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 May 19, 2019.**

### **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 Actions as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

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

If you have general questions regarding the Settlement, you can visit this website: [www.duke403bsettlement.com](http://www.duke403bsettlement.com), call 1-888-245-4655, or write to the Settlement Administrator at Duke 403(b) Settlement Administrator, P.O. Box 2003, Chanhassen, MN 55317-2003.

## **SPECIAL TAX NOTICE FROM THE SETTLEMENT ADMINISTRATOR**

### **YOUR ROLLOVER OPTIONS**

You are receiving this notice because all or a portion of a payment you are receiving as a result of the Settlement may be eligible to be rolled over to an individual retirement account (“IRA”) or an employer-sponsored retirement plan. This notice is intended to help you decide whether to do such a rollover.

This notice describes the rollover rules that apply to payments from the Settlement that are not from a designated Roth account (a type of account with special tax rules in some employer plans).

Rules that apply to most payments are described in the “General Information About Rollovers” section below. Special rules that only apply in certain circumstances are described in the “Special Rules and Options” section below.

*This Notice does not constitute legal or tax advice, and you should consult with a professional tax advisor if you have specific questions about your specific tax situation.*

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### **GENERAL INFORMATION ABOUT ROLLOVERS**

#### **How can a rollover affect my taxes?**

You will be taxed on a payment from the Settlement if you do not roll it over. If you are under age 59½ and do not do a rollover, you will also have to pay a 10% additional income tax on early distributions (unless an exception applies). However, if you do a rollover, you will not have to pay tax until you receive payments later and the 10% additional income tax will not apply if those payments are made after you are age 59½ (or if an exception applies).

#### **Where may I roll over the payment?**

You may roll over the payment to either an IRA (an individual retirement account or individual retirement annuity) or an employer plan (a tax-qualified plan, section 403(b) plan, or governmental section 457(b) plan) that will accept the rollover. The rules of the IRA or employer plan that holds the rollover will determine your investment options, fees, and rights to payment from the IRA or employer plan (for example, no spousal consent rules apply to IRAs and IRAs may not provide loans). Further, the amount rolled over will become subject to the tax rules that apply to the IRA or employer plan.

#### **How do I do a rollover?**

There are two ways to do a rollover. You can do either a direct rollover or a 60-day rollover.

If you do a direct rollover, the Settlement Administrator will make the payment directly to your IRA or an employer plan. You should contact the IRA sponsor or the administrator of the employer plan for information on how to do a direct rollover.

If you do not do a direct rollover, you may still do a rollover by making a deposit into an IRA or eligible employer plan that will accept it. You will have 60 days after you receive the payment from the Settlement Administrator to deposit it into the IRA or eligible employer plan. If you do not do a direct rollover, the Settlement Administrator is required to withhold 20% of the payment for federal income taxes (up to the amount of cash and property received other than employer stock). This means that, in order to roll over the entire payment in a 60-day rollover, you must use other funds to make up for the 20% withheld. If you do not roll over the entire amount of the payment, the portion not rolled over will be taxed and will be subject to the 10% additional income tax on early distributions if you are under age 59½ (unless an exception applies).

**How much may I roll over?**

If you wish to do a rollover, you may roll over all or part of the amount eligible for rollover.

**If I don't do a rollover, will I have to pay the 10% additional income tax on early distributions?**

If you are under age 59½, you will have to pay the 10% additional income tax on early distributions for any payment from the Settlement (including amounts withheld for income tax) that you do not roll over, unless one of the exceptions listed below applies. This tax is in addition to the regular income tax on the payment not rolled over.

**Will I owe state income taxes?**

This notice does not describe any state or local income tax rules (including withholding rules).

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**SPECIAL RULES AND OPTIONS****If you miss the 60-day rollover deadline**

Generally, the 60-day rollover deadline cannot be extended. However, the IRS has the limited authority to waive the deadline under certain extraordinary circumstances, such as when external events prevented you from completing the rollover by the 60-day rollover deadline. To apply for a waiver, you must file a private letter ruling request with the IRS. Private letter ruling requests require the payment of a nonrefundable user fee. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

**If you were born on or before January 1, 1936**

If you were born on or before January 1, 1936, and receive a lump sum distribution that you do not roll over, special rules for calculating the amount of the tax on the payment might apply to you. For more information, see IRS Publication 575, Pension and Annuity Income.

**If you roll over your payment to a Roth IRA**

If you roll over the payment to a Roth IRA, later payments from the Roth IRA that are qualified distributions will not be taxed (including earnings after the rollover). A qualified distribution from a Roth IRA is a payment made after you are age 59½ (or after your death or disability, or as a qualified first-time homebuyer distribution of up to \$10,000) and after you have had a Roth IRA for at least 5 years. In applying this 5-year rule, you count from January 1 of the year for which your first contribution was made to a Roth IRA. Payments from the Roth IRA that are not qualified distributions will be taxed to the extent of earnings after the rollover, including the 10% additional income tax on early distributions (unless an exception applies). You do not have to take required minimum distributions from a Roth IRA during your lifetime. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

You cannot roll over a payment to a designated Roth account in an employer plan.

**If you are not a Plan participant**

Payments after death of the Plan participant. If you receive a distribution after the Plan participant's death that you do not roll over, the distribution will generally be taxed in the same manner described elsewhere in this notice. However, the 10% additional income tax on early distributions does not apply, and the special rule described under the section "If you were born on or before January 1, 1936" applies only if the participant was born on or before January 1, 1936.

**If you are a surviving spouse**

If you receive a payment from the Settlement as the surviving spouse of a deceased Plan participant, you have the same rollover options that the Plan participant would have had, as described elsewhere in this notice. In addition, if you choose to do a rollover to an IRA, you may treat the IRA as your own or as an inherited IRA.

An IRA you treat as your own is treated like any other IRA of yours, so that payments made to you before you are age 59½ will be subject to the 10% additional income tax on early distributions (unless an exception applies) and required minimum distributions from your IRA do not have to start until after you are age 70½.

If you treat the IRA as an inherited IRA, payments from the IRA will not be subject to the 10% additional income tax on early distributions. However, if the Plan participant had started taking required minimum distributions, you will have to receive required minimum distributions from the inherited IRA. If the Plan participant had not started taking required minimum distributions from the Plan, you will not have to start receiving required minimum distributions from the inherited IRA until the year the Plan participant would have been age 70½.

**If you are a surviving beneficiary other than a spouse**

If you receive a payment from the Settlement because of the Plan participant's death and you are a designated beneficiary other than a surviving spouse, the only rollover option you have is to do a direct rollover to an inherited IRA. Payments from the inherited IRA will not be subject to the 10% additional income tax on early distributions. You will have to receive required minimum distributions from the inherited IRA.

**Payments under a qualified domestic relations order**

If you are the spouse or former spouse of the Plan participant who receives a payment from the Settlement under a QDRO, you generally have the same options the participant would have (for example, you may rollover the payment to your own IRA or an eligible employer plan that will accept it). Payments under the QDRO will not be subject to the 10% additional income tax on early distributions.

**If you are a nonresident alien**

If you are a nonresident alien and you do not do a direct rollover to a U.S. IRA or U.S. employer plan, instead of withholding 20%, the Settlement is generally required to withhold 30% of the payment for federal income taxes. If the amount withheld exceeds the amount of tax you owe (as may happen if you do a 60-day rollover), you may request an income tax refund by filing Form 1040NR and attaching your Form 1042-S. See Form W-8BEN for claiming that you are entitled to a reduced rate of withholding under an income tax treaty. For more information, see also IRS Publication 519, U.S. Tax Guide for Aliens, and IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

**Other special rules**

If your payments for the year are less than \$200 (not including payments from a designated Roth account in the Plan), the Settlement is not required to allow you to do a direct rollover and is not required to withhold for federal income taxes. However, you may do a 60-day rollover.

You may have special rollover rights if you recently served in the U.S. Armed Forces. For more information, see IRS Publication 3, Armed Forces' Tax Guide.

**FOR MORE INFORMATION**

You may wish to consult with the Settlement Administrator, or a professional tax advisor before taking a payment from the Settlement. Also, you can find more detailed information on the federal tax treatment of payments from employer plans in: IRS Publication 575, Pension and Annuity Income; IRS Publication 590, Individual Retirement Arrangements (IRAs); and IRS Publication 571, Tax-Sheltered Annuity Plans (403(b) Plans). These publications are available from a local IRS office, on the web at [www.irs.gov](http://www.irs.gov), or by calling 1-800-TAX-FORM.

Duke 403(b) Settlement Administrator  
P.O. Box 2003  
Chanhassen, MN 55317-2003  
[www.duke403bsettlement.com](http://www.duke403bsettlement.com)

**FORMER PARTICIPANT CLAIM FORM**

This Former Participant Claim Form is **ONLY** for Class Members who are **Former Participants**, or the beneficiaries, alternate payees or attorneys-in-fact of Former Participants (all of whom will be treated as Former Participants). A Former Participant is a Class Member who did not have a Plan Account with a balance greater than \$0 as of December 31, 2018.

This form must be completed, signed and mailed with a postmark date no later than **June 3, 2019** to the Settlement Administrator in order for you to receive your share of the Settlement proceeds. **Former Participants who do not complete and timely return this form will not receive any Settlement payment.** Please review the instructions below carefully. If you have questions regarding this Claim Form, you may contact the Settlement Administrator as indicated below.

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**PART 1: INSTRUCTIONS FOR COMPLETING FORMER PARTICIPANT CLAIM FORM**

1. Complete this claim form and keep a copy of all pages of your Former Participant Claim Form, including page 1 with the address label, for your records.
2. Mail your completed Former Participant Claim Form that is postmarked no later than **June 3, 2019** to the Settlement Administrator at following address:

Duke 403(b) Settlement Administrator  
P.O. Box 2003  
Chanhassen, MN 55317-2003

It is your responsibility to ensure the Settlement Administrator has timely received your Former Participant Claim Form.

3. Other Reminders:
  - You must provide date of birth, signature and a completed Substitute IRS Form W-9, which is attached as Part 5 to this form.
  - If you desire to do a rollover and you do not complete in full the rollover information in Part 4 Payment Election of the Settlement Distribution Form, payment will be made to the participant.
  - If you change your address after sending in your Former Participant Claim Form, please send your new address to the Settlement Administrator.
  - **Timing Of Payments To Eligible Settlement Class Members.** Please note that Settlement payments are subject to the Settlement Agreement's receiving final Court approval. If the Settlement Agreement is approved and if you are entitled to a Settlement payment under the terms of the Settlement, such payments will be distributed no earlier than late 2019 due to the need to process and verify information for all Settlement Class Members who are entitled to a payment and to compute the amount of each payment. Payments may be further delayed if any appeals are filed.
4. **Questions?** If you have any questions about this Former Participant Claim Form, please call the Settlement Administrator at 1-888-245-4655. The Settlement Administrator will provide advice only regarding completing this form and will not provide financial, tax or other advice concerning the Settlement. You therefore may want to consult with your financial or tax advisor. Information about the status of the approval of the Settlement, the Settlement administration and claim processing is available on the lawsuit website, [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

You are eligible to receive a payment from a class action settlement. The Court has preliminarily approved the class settlement of *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-01044, and *Lucas, et al. v. Duke University*, Case No. 1:18-cv-00722. That settlement provides allocation of monies to the individual accounts of Settlement Class Members who had retirement plan accounts with a positive balance in the Duke University Faculty and Staff Retirement Plan ("Plan") as of December 31, 2018 ("Current Participants"). Settlement Class Members who are entitled to a distribution but who did not have a Plan account with a positive balance as of December 31, 2018 ("Former Participants") will receive their allocation in the form of a check or rollover if and only if they mail a valid Former Participant Claim Form that is postmarked no later than June 3, 2019 to the Settlement Administrator. For more information about the settlement, please see [www.duke403bsettlement.com](http://www.duke403bsettlement.com), or call 1-888-245-4655.

Because you are a Former Participant (or beneficiary of a Former Participant) in the Plan, you must decide whether you want your payment (1) sent payable to you directly or (2) to be rolled over into another eligible retirement plan or into an individual retirement account ("IRA"). To make that choice, please complete and mail this Former Participant Claim Form that is postmarked no later than **June 3, 2019** to the Settlement Administrator. If you do not indicate a payment election, your payment will be sent payable to you directly.

## PART 2: PARTICIPANT INFORMATION

First Name

M.I.

Last Name

Mailing Address

City

State

Zip Code

Home Phone

Work Phone or Cell Phone

Participant's Social Security Number

Participant's Date of Birth

Email Address

M M D D Y Y Y Y

☐ Check here if you were a Former Participant, but did not receive this Claim Form in the mail. This may be because you were a participant in the Plan only for a brief period.

## PART 3: BENEFICIARY OR ALTERNATE PAYEE INFORMATION (IF APPLICABLE)

☐ Check here if you are the **surviving spouse or other beneficiary** for the Former Participant and the Former Participant is deceased. **Documentation must be provided showing current authority of the representative to file on behalf of the deceased.** Please complete the information below and then continue on to Parts 4 and 5 on the next page.

☐ Check here if you are an **alternate payee under a qualified domestic relations order (QDRO), or attorney-in-fact** for the Former Participant. The Settlement Administrator may contact you with further instructions. Please complete the information below and then continue on to Parts 4 and 5 on the next page.

Your First Name

M.I.

Last Name

Your Social Security Number or Tax ID Number

Your Date of Birth

Your Mailing Address

M M D D Y Y Y Y

City

State

Zip Code

☐ **Payment to Self** – A check subject to mandatory federal and applicable state withholding tax will be mailed to your address on the previous page.

☐ Government 457(b)

☐ 401(a)/401(k)

☐ 403(b)

☐ Direct Rollover to a Traditional IRA☐ Direct Rollover to a Roth IRA (*subject to ordinary income tax*)

Company or Trustee's Name (to whom the check should be made payable)

[illegible]

Company or Trustee's Mailing Address 1

[illegible]

Company or Trustee's Mailing Address 2

[illegible]

Company or Trustee's City

State

Zip Code

[illegible]

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### Your Account Number

Company or Trustee's Phone Number

[illegible]

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UNDER PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, I CERTIFY THAT ALL OF THE INFORMATION PROVIDED ON THIS FORMER PARTICIPANT CLAIM FORM IS TRUE, CORRECT AND COMPLETE AND THAT I SIGNED THIS FORMER PARTICIPANT CLAIM FORM.

1. The Social Security number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. person (including a U.S. resident alien).

M	M		D	D		Y	Y	Y	Y
		—			—				

### Participant Signature

**Date Signed (Required)**

**Note:** If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above. The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

**QUESTIONS? VISIT: [WWW.DUKE403BSETTLEMENT.COM](http://WWW.DUKE403BSETTLEMENT.COM), OR CALL 1-888-245-4655**



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

DAVID CLARK, *et al.*,  
Plaintiffs,

Case No. 1:16-CV-01044-CCE-LPA

v.

DUKE UNIVERSITY, *et al.*,  
Defendants.

KATHI LUCAS, *et al.*,  
Plaintiffs,

Case No. 1:18-CV-00722-CCE-LPA

v.

DUKE UNIVERSITY,  
Defendant.

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

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

All persons who are or were participants or beneficiaries in the Duke University Faculty and Staff Retirement Plan ("Plan") at any time during the Class Period, including any beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and/or Alternate Payee, in the case of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are certain individuals identified in the Settlement Agreement.

The Class Period is defined as August 10, 2010 through the date of entry of the Preliminary Order. 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") comprised of two class action lawsuits brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act



(“ERISA”). The first case (the “Clark case”) was filed against Duke University, the Duke University Investment Advisory Committee, and certain individual defendants. The second case (the “Lucas case”) was filed against Duke University. Although the Lucas case is separate from the Clark case, both cases are related and assert ERISA claims concerning the management, operation and administration of the Plan. The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of December 31, 2018 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of December 31, 2018 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.

- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated January 16, 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.duke403bsettlement.com](http://www.duke403bsettlement.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 June 18, 2019, at 10:00 a.m. before U.S. District Court Judge Catherine C. Eagles in Courtroom G-3, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 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 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.duke403bsettlement.com](http://www.duke403bsettlement.com).

**Our records indicate that 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 Duke University and those who are no longer employed by Duke University but continued to have an account balance in the Plan as of December 31, 2018.**

#### **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 greater than \$0 as of December 31, 2018. If, however, you are a "Former Participant" who participated in the Plan during the Class Period and did not have a balance greater than \$0 as of December 31, 2018 or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must return a Former Participant Claim Form that is postmarked by June 3, 2019 to receive a check for your share of the Net Settlement Amount. If you are a Former Participant, and you do not return the Former Participant Claim Form that is postmarked by June 3, 2019, 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 [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

**YOU CAN OBJECT (NO LATER THAN MAY 19, 2019)**

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 Settling 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 JUNE 18, 2019**

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 May 19, 2019.

**The Class Actions**

The litigation involves two separate, but related class actions called *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-cv-00722 (the "Class Actions"). The Court supervising the cases is the United States District Court for the Middle District of North Carolina. The individuals who brought this suit are called Class Representatives, and the individuals and entities they sued are called the defendants. The Class Representatives are current and former participants in the Plan. The Class Representatives' claims are described below, and additional information about them is available at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

**The Settlement**

The Settlement was reached on January 16, 2019. Class Counsel filed the Clark case on August 10, 2016 and the Lucas case on August 20, 2018. Since the filing of the Clark case and for a period of almost three years, the parties engaged in substantial litigation. During the course of the litigation, over 760,000 pages of documents were produced, which required Class Counsel to devote substantial time and effort to review and analyze

those documents to support their underlying claims. Class Counsel took over 15 depositions of fact and expert witnesses, and also retained experts intimately familiar with the retirement plan industry and prudent practices of fiduciaries for defined contribution plans to provide their opinions based on the record and their experience. The Settling Parties participated in mediation before a nationally recognized mediator who has extensive experience in resolving similar claims involving other retirement plans. The Settling Parties also engaged in substantial settlement discussions without a mediator. Only after months of extensive arm's length negotiation following the mediation were the Settling Parties able to agree to the terms of the Settlement.

As part of the Settlement, a Qualified Settlement Fund or Gross Settlement Amount of \$10,650,000 will be established to resolve the Class Actions. The Net Settlement Amount is \$10,650,000 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 Settling Parties have agreed to certain additional terms: (1) within 30 calendar days after the end of the first and second year of the Settlement Period, Duke will provide to Class Counsel a list of the Plan's investment options and fees, and a copy of the Plan's Investment Policy Statement (if any); (2) no later than January 1, 2020, Duke shall communicate, in writing, with current Plan participants and inform them of the investment options available in the new lineup, including the annuity option, and provide a link to a webpage containing the fees and performance information for the new investment options and the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen annuity accounts to another fund in the Plan; (3) during the third year of the Settlement Period, the Plan's fiduciaries shall retain an independent consultant to provide a recommendation regarding whether the Plan fiduciaries should issue Requests for Proposals for recordkeeping and administrative services provided to the Plan; (4) during the Settlement Period, in considering Plan investment options, the Plan's fiduciaries shall consider, among other factors: (a) the cost of different share classes available for any particular mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; and (b) the availability of revenue sharing rebates on any share class available for any investment option considered for inclusion in the Plan; (c) other factors that the Plan fiduciaries deem appropriate under the circumstances; and (5) during the Settlement Period, Duke shall not cause Plan assets or assets held in the Plan's ERISA revenue credit or reimbursement account to be used to pay salaries and fringe benefits and other expenses incurred by Duke for services performed by Duke employees.

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

Since mid-2016, Class Counsel have devoted thousands of hours investigating potential claims and bringing the Class Actions. Class Counsel reviewed thousands of pages of documents prior to filing of the Clark case and thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel also reviewed and analyzed in detail three-quarters of a million pages of documents, including thousands of electronic files, produced in the Clark case to support their claims in that case and those that were later brought in the Lucas case. 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 the Class Actions. Due to the highly complex nature of this litigation, Class Counsel was required to advance substantial costs to investigate and extensively develop Plaintiffs' claims. These included expenses associated with experts who were necessary and critical in supporting Plaintiffs' claims, as well as the

substantial costs incurred during the discovery phase to review hundreds of thousands of pages of documents and take over 15 depositions of fact and expert witnesses at multiple locations across the country. Class Counsel has agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) monitor for three years compliance with the Settlement Agreement; (3) bring an enforcement action in court, if necessary, to insure compliance with the Settlement Agreement; and (4) do each of these without pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the Class Actions. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$3,550,000, in addition to no more than \$825,000 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 each for the Class Representatives in the Clark Case, and \$30,000 for the Class Representatives that were class representatives in both the Clark and Lucas cases, who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the Class Actions to conclusion. Their activities also included assisting in the factual investigation of the cases by Class Counsel and giving overall support to the cases. 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.duke403bsettlement.com](http://www.duke403bsettlement.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 are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

### **2. What Are The Class Actions About?**

In the Class Actions, Class Representatives claim that, during the Class Period, the defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. 1001, *et seq.*, with respect their management, operation and administration of the Plan.

The defendants have denied and continue to deny the allegations, claims and contentions of the Class Representatives, deny that they are liable at all to the Settlement Class, and deny that the Settlement Class or the Plan have suffered any harm or damage for which the Duke Defendants could or should be held responsible, as the defendants deny all allegations of wrongdoing and deny that the Plan suffered harm or damage from those claims.

### **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 the Duke Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defense Counsel during an all-day session with a private mediator, and several months of additional arm's-length negotiations. The Settling Parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

#### **4. What 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. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

In addition to the monetary component of the Settlement, as discussed above, the Settlement also provides certain additional terms that provide substantial value to Class Members and materially add to the total value of the Settlement above the already significant monetary component. These additional terms include: (1) within 30 calendar days after the end of the first and second year of the Settlement Period, Duke will provide to Class Counsel a list of the Plan's investment options and fees, and a copy of the Plan's Investment Policy Statement (if any); (2) no later than January 1, 2020, Duke shall communicate, in writing, with current Plan participants and inform them of the investment options available in the new lineup, including the annuity option, and provide a link to a webpage containing the fees and performance information for the new investment options and the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen annuity accounts to another fund in the Plan; (3) during the third year of the Settlement Period, the Plan's fiduciaries shall retain an independent consultant to provide a recommendation regarding whether the Plan fiduciaries should issue Requests for Proposals for recordkeeping and administrative services provided to the Plan; (4) during the Settlement Period, in considering Plan investment options, the Plan's fiduciaries shall consider, among other factors: (a) the cost of different share classes available for any particular mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; and (b) the availability of revenue sharing rebates on any share class available for any investment option considered for inclusion in the Plan; (c) other factors that the Plan fiduciaries deem appropriate under the circumstances; and (5) during the Settlement Period, Duke shall not cause Plan assets or assets held in the Plan's ERISA revenue credit or reimbursement account to be used to pay salaries and fringe benefits and other expenses incurred by Duke for services performed by Duke employees.

All Class Members and anyone claiming through them will fully release the Plan as well as the Duke Defendants and the "Released Parties" from "Released Claims." The Released Parties include: (a) Duke University, the Duke University Investment Advisory Committee, Duke University Health System, Inc. d/b/a Duke University Hospital, the Private Diagnostic Clinic, PLLC, and certain individual defendants identified in the Settlement Agreement; (b) their insurers, co-insurers, and reinsurers, (c) their past, present, and future parent corporation(s), (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns, (e) their past,



present and future members of their respective boards of trustees, agents, officers, employees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them, and (f) the Plan and the Plan's fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include claims that were asserted in the Class Actions or that relate to any of the allegations, facts or occurrences asserted in the Class Actions or would be barred by the principles of res judicata or collateral estoppel had the claims asserted been fully litigated and resulted in final judgment; and all claims relating to the implementation of the Settlement. 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.duke403bsettlement.com](http://www.duke403bsettlement.com). Generally, the release means that Class Members will not have the right to sue the Duke Defendants, the Plan, or the Released Parties for conduct during the Class Period arising out of or relating to the allegations in the Class Actions.

This is only a summary of the Settlement. The entire Settlement Agreement is at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

## **5. How Much Will My Distribution Be?**

The amount, if any, that will be allocated to you will be based upon the Plan records, or, if on December 31, 2018, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. 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 that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

1. The quarterly balances for the Class Period of Current and Authorized Former Participants are identified for each quarter;
2. All quarterly balances identified in step 1 will be summed together for each Participant;
3. An average quarterly balance for each Current Participant and each Authorized Former Participant will be calculated for the Class Period;
4. For each Current Participant and each Authorized Former Participant, the average quarterly balance of step 3 will be divided by the average quarterly balance for the Class Period of all Current and Authorized Former Participants;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.

No amount shall be distributed to a Class Member that is five dollars (\$5.00) or less, because such an amount is de minimis and would cost more in processing than its value. The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

There are approximately 58,110 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive a check if and to the extent you are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

## **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 our records, you are a Current Participant. If so, 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 no earlier than late 2019.

**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 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 Actions for all claims that were asserted in the Class Actions or are otherwise included as Released Claims under the Settlement.

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

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel in the Class Actions. 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. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$3,550,000 in fees and \$825,000 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 *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-00722. 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 May 19, 2019**. The Court's address is Clerk of the Court, United States District Courthouse, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 27401. Your written objection also must be mailed to the lawyers listed below, no later than May 19, 2019. 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 calendar days of the request being served on the objector.

#### **CLASS COUNSEL**

SCHLICHTER, BOGARD & DENTON  
Attn: Duke 403(b) Settlement  
100 S. Fourth St., Suite 1200  
St. Louis, MO 63102  
[duke403bsettlement@uselaws.com](mailto:duke403bsettlement@uselaws.com)

Tel: (314) 621-6115  
Fax: (314) 621-5934

#### **DUKE DEFENDANTS' COUNSEL**

MORGAN, LEWIS & BOCKIUS LLP  
Attn: Abbey M. Glenn  
1111 Pennsylvania Ave NW  
Washington, DC 20004

### **12. 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 June 18, 2019, in Courtroom G-3 at the United States District Courthouse for the Middle District of North Carolina, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 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 *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-00722." 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 May 19, 2019**.

#### **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 Actions as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

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

If you have general questions regarding the Settlement, you can visit this website: [www.duke403bsettlement.com](http://www.duke403bsettlement.com), call 1-888-245-4655, or write to the Settlement Administrator at Duke 403(b) Settlement Administrator, P.O. Box 2003, Chanhassen, MN 55317-2003.

*Email Ref: 88888*

Duke 403(b) Settlement Administrator | PO Box 2003, Chanhassen, MN 55317

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

DAVID CLARK, *et al.*,  
Plaintiffs,

Case No. 1:16-CV-01044-CCE-LPA

v.

DUKE UNIVERSITY, *et al.*,  
Defendants.

KATHI LUCAS, *et al.*,  
Plaintiffs,

Case No. 1:18-CV-00722-CCE-LPA

v.

DUKE UNIVERSITY,  
Defendant.

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

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

All persons who are or were participants or beneficiaries in the Duke University Faculty and Staff Retirement Plan ("Plan") at any time during the Class Period, including any beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and/or Alternate Payee, in the case of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are certain individuals identified in the Settlement Agreement.

The Class Period is defined as August 10, 2010 through the date of entry of the Preliminary Order. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

[File Your Claim](#)

**Claim:** 88888  
**PIN:** PinNo

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY**

- The Court has given its preliminary approval to a proposed settlement (the “Settlement”) comprised of two class action lawsuits brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act (“ERISA”). The first case (the “Clark case”) was filed against Duke University, the Duke University Investment Advisory Committee, and certain individual defendants. The second case (the “Lucas case”) was filed against Duke University. Although the Lucas case is separate from the Clark case, both cases are related and assert ERISA claims concerning the management, operation and administration of the Plan. The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of December 31, 2018 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of December 31, 2018 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated January 16, 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.duke403bsettlement.com](http://www.duke403bsettlement.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 June 18, 2019, at 10:00 a.m. before U.S. District Court Judge Catherine C. Eagles in Courtroom G-3, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 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 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.duke403bsettlement.com](http://www.duke403bsettlement.com).

**Our records indicate that you are a Former Participant. If you believe that you meet the definition of a Current Participant, please contact the Settlement Administrator. Former Participants are individuals who no longer had an account balance in the Plan as of December 31, 2018.**

## YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:

### **OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. YOU MUST RETURN THE ENCLOSED FORMER PARTICIPANT CLAIM FORM BY JUNE 3, 2019 TO PARTICIPATE IN THE SETTLEMENT**

Our records indicate that you are a Former Participant. You must return a Former Participant Claim Form that is postmarked by June 3, 2019 or electronically submitted on-line at [www.duke403bsettlement.com](http://www.duke403bsettlement.com) using the Claim Number and Pin referenced at the top of the Claim Form you received in the mail no later than June 3, 2019 to receive your share of the Net Settlement Amount. If you do not return the Former Participant Claim Form that is postmarked or electronically submitted no later than **June 3, 2019**, you will forfeit your share of the Net Settlement Amount. A claim form is enclosed with this notice but may also be obtained by accessing [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

File Your Claim

**Claim:** 88888  
**PIN:** PinNo

### **YOU CAN OBJECT (NO LATER THAN MAY 19, 2019)**

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 Settling 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 JUNE 18, 2019**

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 May 19, 2019.

### **The Class Actions**

The litigation involves two separate, but related class actions called *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-cv-00722 (the "Class Actions"). The Court supervising the cases is the United States District Court for the Middle District of North Carolina. The individuals who brought this suit are called Class Representatives, and the individuals and entities they sued are called the defendants. The Class Representatives are current and former participants in the Plan. The Class Representatives' claims are described below, and additional information about them is available at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

### **The Settlement**

The Settlement was reached on January 16, 2019. Class Counsel filed the Clark case on August 10, 2016 and the Lucas case on August 20, 2018. Since the filing of the Clark case and for a period of almost three years, the parties engaged in substantial litigation. During the course of the litigation, over 760,000 pages of documents were produced, which required Class Counsel to devote substantial time and effort to review and analyze

those documents to support their underlying claims. Class Counsel took over 15 depositions of fact and expert witnesses, and also retained experts intimately familiar with the retirement plan industry and prudent practices of fiduciaries for defined contribution plans to provide their opinions based on the record and their experience. The Settling Parties participated in mediation before a nationally recognized mediator who has extensive experience in resolving similar claims involving other retirement plans. The Settling Parties also engaged in substantial settlement discussions without a mediator. Only after months of extensive arm's length negotiation following the mediation were the Settling Parties able to agree to the terms of the Settlement.

As part of the Settlement, a Qualified Settlement Fund or Gross Settlement Amount of \$10,650,000 will be established to resolve the Class Actions. The Net Settlement Amount is \$10,650,000 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 Settling Parties have agreed to certain additional terms: (1) within 30 calendar days after the end of the first and second year of the Settlement Period, Duke will provide to Class Counsel a list of the Plan's investment options and fees, and a copy of the Plan's Investment Policy Statement (if any); (2) no later than January 1, 2020, Duke shall communicate, in writing, with current Plan participants and inform them of the investment options available in the new lineup, including the annuity option, and provide a link to a webpage containing the fees and performance information for the new investment options and the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen annuity accounts to another fund in the Plan; (3) during the third year of the Settlement Period, the Plan's fiduciaries shall retain an independent consultant to provide a recommendation regarding whether the Plan fiduciaries should issue Requests for Proposals for recordkeeping and administrative services provided to the Plan; (4) during the Settlement Period, in considering Plan investment options, the Plan's fiduciaries shall consider, among other factors: (a) the cost of different share classes available for any particular mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; and (b) the availability of revenue sharing rebates on any share class available for any investment option considered for inclusion in the Plan; (c) other factors that the Plan fiduciaries deem appropriate under the circumstances; and (5) during the Settlement Period, Duke shall not cause Plan assets or assets held in the Plan's ERISA revenue credit or reimbursement account to be used to pay salaries and fringe benefits and other expenses incurred by Duke for services performed by Duke employees.

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

Since mid-2016, Class Counsel have devoted thousands of hours investigating potential claims and bringing the Class Actions. Class Counsel reviewed thousands of pages of documents prior to filing of the Clark case and thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel also reviewed and analyzed in detail three-quarters of a million pages of documents, including thousands of electronic files, produced in the Clark case to support their claims in that case and those that were later brought in the Lucas case. 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 the Class Actions. Due to the highly complex nature of this litigation, Class Counsel was required to advance substantial costs to investigate and extensively develop Plaintiffs' claims. These included expenses associated with experts who were necessary and critical in supporting Plaintiffs' claims, as well as the

substantial costs incurred during the discovery phase to review hundreds of thousands of pages of documents and take over 15 depositions of fact and expert witnesses at multiple locations across the country. Class Counsel has agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) monitor for three years compliance with the Settlement Agreement; (3) bring an enforcement action in court, if necessary, to insure compliance with the Settlement Agreement; and (4) do each of these without pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the Class Actions. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$3,550,000, in addition to no more than \$825,000 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 each for the Class Representatives in the Clark Case, and \$30,000 for the Class Representatives that were class representatives in both the Clark and Lucas cases, who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the Class Actions to conclusion. Their activities also included assisting in the factual investigation of the cases by Class Counsel and giving overall support to the cases. 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.duke403bsettlement.com](http://www.duke403bsettlement.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 are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

### **2. What Are The Class Actions About?**

In the Class Actions, Class Representatives claim that, during the Class Period, the defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. 1001, *et seq.*, with respect their management, operation and administration of the Plan.

The defendants have denied and continue to deny the allegations, claims and contentions of the Class Representatives, deny that they are liable at all to the Settlement Class, and deny that the Settlement Class or the Plan have suffered any harm or damage for which the Duke Defendants could or should be held responsible, as the defendants deny all allegations of wrongdoing and deny that the Plan suffered harm or damage from those claims.

### **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 the Duke Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defense Counsel during an all-day session with a private mediator, and several months of additional arm's-length negotiations. The Settling Parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

#### **4. What 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. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

In addition to the monetary component of the Settlement, as discussed above, the Settlement also provides certain additional terms that provide substantial value to Class Members and materially add to the total value of the Settlement above the already significant monetary component. These additional terms include: (1) within 30 calendar days after the end of the first and second year of the Settlement Period, Duke will provide to Class Counsel a list of the Plan's investment options and fees, and a copy of the Plan's Investment Policy Statement (if any); (2) no later than January 1, 2020, Duke shall communicate, in writing, with current Plan participants and inform them of the investment options available in the new lineup, including the annuity option, and provide a link to a webpage containing the fees and performance information for the new investment options and the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen annuity accounts to another fund in the Plan; (3) during the third year of the Settlement Period, the Plan's fiduciaries shall retain an independent consultant to provide a recommendation regarding whether the Plan fiduciaries should issue Requests for Proposals for recordkeeping and administrative services provided to the Plan; (4) during the Settlement Period, in considering Plan investment options, the Plan's fiduciaries shall consider, among other factors: (a) the cost of different share classes available for any particular mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; and (b) the availability of revenue sharing rebates on any share class available for any investment option considered for inclusion in the Plan; (c) other factors that the Plan fiduciaries deem appropriate under the circumstances; and (5) during the Settlement Period, Duke shall not cause Plan assets or assets held in the Plan's ERISA revenue credit or reimbursement account to be used to pay salaries and fringe benefits and other expenses incurred by Duke for services performed by Duke employees.

All Class Members and anyone claiming through them will fully release the Plan as well as the Duke Defendants and the "Released Parties" from "Released Claims." The Released Parties include: (a) Duke University, the Duke University Investment Advisory Committee, Duke University Health System, Inc. d/b/a Duke University Hospital, the Private Diagnostic Clinic, PLLC, and certain individual defendants identified in the Settlement Agreement; (b) their insurers, co-insurers, and reinsurers, (c) their past, present, and future parent corporation(s), (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns, (e) their past,

present and future members of their respective boards of trustees, agents, officers, employees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them, and (f) the Plan and the Plan's fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include claims that were asserted in the Class Actions or that relate to any of the allegations, facts or occurrences asserted in the Class Actions or would be barred by the principles of res judicata or collateral estoppel had the claims asserted been fully litigated and resulted in final judgment; and all claims relating to the implementation of the Settlement. 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.duke403bsettlement.com](http://www.duke403bsettlement.com). Generally, the release means that Class Members will not have the right to sue the Duke Defendants, the Plan, or the Released Parties for conduct during the Class Period arising out of or relating to the allegations in the Class Actions.

This is only a summary of the Settlement. The entire Settlement Agreement is at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

## **5. How Much Will My Distribution Be?**

The amount, if any, that will be allocated to you will be based upon the Plan records, or, if on December 31, 2018, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. 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 that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

1. The quarterly balances for the Class Period of Current and Authorized Former Participants are identified for each quarter;
2. All quarterly balances identified in step 1 will be summed together for each Participant;
3. An average quarterly balance for each Current Participant and each Authorized Former Participant will be calculated for the Class Period;
4. For each Current Participant and each Authorized Former Participant, the average quarterly balance of step 3 will be divided by the average quarterly balance for the Class Period of all Current and Authorized Former Participants;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.



No amount shall be distributed to a Class Member that is five dollars (\$5.00) or less, because such an amount is de minimis and would cost more in processing than its value. The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at [www.duke403bsettlement.com](http://www.duke403bsettlement.com).

There are approximately 58,110 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive a check if and to the extent you are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

## **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 our records, you are a Former Participant. Therefore, you need to return your claim form 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 no earlier than late 2019.

**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 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 Actions for all claims that were asserted in the Class Actions or are otherwise included as Released Claims under the Settlement.

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

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel in the Class Actions. 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. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$3,550,000 in fees and \$825,000 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 *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-00722. 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 May 19, 2019**. The Court's address is Clerk of the Court, United States District Courthouse, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 27401. Your written objection also must be mailed to the lawyers listed below, no later than May 19, 2019. 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 calendar days of the request being served on the objector.

#### **CLASS COUNSEL**

SCHLICHTER, BOGARD & DENTON  
Attn: Duke 403(b) Settlement  
100 S. Fourth St., Suite 1200  
St. Louis, MO 63102  
[duke403bsettlement@uselaws.com](mailto:duke403bsettlement@uselaws.com)

Tel: (314) 621-6115  
Fax: (314) 621-5934

#### **DUKE DEFENDANTS' COUNSEL**

MORGAN, LEWIS & BOCKIUS LLP  
Attn: Abbey M. Glenn  
1111 Pennsylvania Ave NW  
Washington, DC 20004

### **12. 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 June 18, 2019, in Courtroom G-3 at the United States District Courthouse for the Middle District of North Carolina, L. Richard Preyer Federal Building, 324 West Market Street, Suite 1, Greensboro, NC 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 *Clark, et al. v. Duke University, et al.*, Case No. 1:16-cv-1044, and *Lucas, et al. v. Duke University*, Case No. 1:18-00722." 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 May 19, 2019.

#### **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 Actions as described above in this Settlement Notice if the Settlement is finally approved, BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.

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

If you have general questions regarding the Settlement, you can visit this website: [www.duke403bsettlement.com](http://www.duke403bsettlement.com), call 1-888-245-4655, or write to the Settlement Administrator at Duke 403(b) Settlement Administrator, P.O. Box 2003, Chanhassen, MN 55317-2003.

Duke 403(b) Settlement Administrator | PO Box 2003, Chanhassen, MN 55317

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

DAVID CLARK, *et al.*,  
Plaintiffs,  
v.

Case No. 1:16-CV-01044-CCE-LPA

DUKE UNIVERSITY, *et al.*,  
Defendants.

KATHI LUCAS, *et al.*,  
Plaintiffs,  
v.

Case No. 1:18-CV-00722-CCE-LPA

DUKE UNIVERSITY,  
Defendant.

**[PROPOSED] FINAL ORDER AND JUDGMENT**

EAGLES, U.S. District Court Judge:

Wherefore, this \_\_\_\_ day of \_\_\_\_\_, 2019, upon consideration of the Plaintiffs' Motion for Final Approval of the Settlement of the actions (collectively referred to as the "Class Actions") under the terms of a Class Action Settlement Agreement dated January 16, 2019, (the "Settlement Agreement"), the Court hereby orders and adjudges as follows:

1. For purposes of this Final Order and Judgment, capitalized terms used herein have the definitions set forth in the Settlement Agreement, which is incorporated herein by reference.
2. In accordance with the Court's Preliminary Approval Order, Settlement Notice was timely distributed by electronic or first-class mail to all Class Members who

could be identified with reasonable effort, and Settlement Notice was published on the Settlement Website maintained by Class Counsel. In addition, pursuant to the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*, notice was provided to the Attorneys General for each of the states in which a Class Member resides, the Attorney General of the United States, and the United States Secretary of Labor.

3. The form and methods of notifying the Settlement Class of the terms and conditions of the proposed Settlement Agreement met the requirements of Fed. R. Civ. P. 23(c)(2), any other applicable law, 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.

4. All requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*, have been met.

5. 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 to the Court.

6. Each and every objection to the settlement is overruled with prejudice.

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

8. The operative complaints and all claims asserted therein in the Class Actions are hereby dismissed with prejudice and without costs to any of the Settling Parties other than as provided for in the Settlement Agreement.

9. The Plan, the Class Representatives, and the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, successors, assigns, agents, and attorneys) on their own behalves and on behalf of the Plan, hereby fully, finally, and forever settle, release, relinquish, waive, and discharge all Released Parties from the Released Claims, regardless of whether or not such Class Member receives a monetary benefit from the Settlement, executed and delivered a Former Participant Claim Form, filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and whether or not the objections or claims for distribution of such Class Member have been approved or allowed.

10. The Class Representatives, the Class Members, and the Plan, acting individually or together, or in combination with others, are hereby barred from suing or seeking to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of the Settlement Agreement in accordance with the procedures set forth in the Settlement Agreement.

11. Class Counsel, the Class Representatives, the Class Members, or the Plan may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with the Duke Defendants and the Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, each Class Representative, Class Member, and the Plan has hereby fully, finally and forever settled, released, relinquished, waived, and discharged any and all Released Claims. The Class Representatives, Class Members, and the Plan have hereby acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in the Settlement Agreement of which this release is a part.

12. Each Class Representative, Class Member, and the Plan hereby settle, release, relinquish, waive and discharge 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 Representatives, 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 or of any State or territory within the

United States or any foreign country, or any principle of common law, which is similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

13. The Court finds that it has subject matter jurisdiction over the claims herein and personal jurisdiction over Class Members herein pursuant to the provisions of ERISA, and expressly retains that jurisdiction for purposes of enforcing this Final Order and the Settlement Agreement. Any motion to enforce paragraphs 8 through 12 of this Final Order or the Settlement Agreement, including by way of injunction, may be filed in this Court, and the provisions of the Settlement Agreement and/or this Final Order may also be asserted by way of an affirmative defense or counterclaim in response to any action that is asserted to violate the Settlement Agreement.

14. Each Class Member shall hold harmless the Duke Defendants, Defense Counsel, the Released Parties, and the Plan for any claims, liabilities, 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.

15. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant and each Authorized Former Participant.

16. With respect to payments or distributions to Authorized Former Participants, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its sole and exclusive discretion.



17. With respect to any matters that arise concerning distributions to Current Participants (after allocation decisions have been made by the Settlement Administrator in its sole discretion), all questions not resolved by the Settlement Agreement shall be resolved by the Plan's administrator pursuant to the applicable law and governing Plan terms.

18. Within twenty-one (21) calendar days following the issuance of all settlement payments to Class Members, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who was issued a settlement payment or contribution and the amount of such payment or contribution.

19. Upon entry of this Order, all Class Members and the Plan shall be bound by the Settlement Agreement (including any amendments) and by this Final Order.

SO ORDERED:

DATED: \_\_\_\_\_, 2019

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Hon. Judge Catherine C. Eagles  
United States District Court Judge