

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

LOREN L. CASSELL *et al.*,

Plaintiffs,

v.

VANDERBILT UNIVERSITY *et al.*,

Defendants.

Civil Action No.16-cv-2086

Chief Judge Crenshaw
Magistrate Judge Brown

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

Plaintiffs Loren L. Cassell, Pamela M. Steele, John E. Rice, Penelope A. Adgent, Dawn E. Crago, and Lynda Payne, and on behalf of all others similarly situated (“Plaintiffs”) by and through their counsel, hereby 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 Vanderbilt University, the Vanderbilt Retirement Plan Oversight Committee, Donald Brady, Anders Hall, Eric Kopstain, John Manning, Traci Nordberg, Brett Sweet, Richard Willis, and Barbara L. Carroll (“Defendants”) do not oppose the motion.

This motion is supported by Plaintiffs’ Memorandum in Support of Motion for Preliminary Approval of Class Settlement (Doc. 146), Plaintiffs’ Memorandum in Support of Motion for Attorneys’ Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs (Doc. 154), the Declaration of James C. Sturdevant (Doc. 155-2), this Court’s Order preliminarily approving this Settlement (Doc. 153), as well as Plaintiffs’ accompanying memorandum in support of this motion and the attachments thereto: the Declaration of Abbey Glenn, counsel for Defendants, the Declaration of Analytics, LLC, the settlement administrator,

and the Statement of Newport Trust Company, serving as the Independent Fiduciary, approving of the Settlement, including attorneys' fees and expenses.

WHEREFORE, Plaintiffs respectfully request that the Court grant their Unopposed Motion for Final Approval of Class Settlement.

Dated: October 8, 2019

Respectfully Submitted,

SCHLICHTER, BOGARD & DENTON, LLP

/s/ Andrew D. Schlichter .

Jerome J. Schlichter (*pro hac vice*)

Troy Doles (*pro hac vice*)

Heather Lea (*pro hac vice*)

Andrew D. Schlichter (*pro hac vice*)

Alexander L. Braitberg (*pro hac vice*)

100 South Fourth Street, Ste. 1200

St. Louis, MO 63102 Phone: (314) 621-6115

Fax: (314) 621-5934

jschlichter@uselaws.com

tdoles@uselaws.com

hlea@uselaws.com

aschlichter@uselaws.com

abraitberg@uselaws.com

Lead Counsel for Plaintiffs

HAWKINS HOGAN, PLC

William B. Hawkins, III

205 17th Avenue North, Suite 202

Nashville, TN 37203

Phone: (615) 726-0050

Fax: (315) 726-5177

whawkins@hawkinshogan.com

Local Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2019 the foregoing document was filed and served electronically on all parties and counsel of record, including the below, via the Court's CM/ECF system. Parties may access this filing through the Court's ECF system.

Anthony J. McFarland
Robert E. Cooper, Jr.
BASS BERRY & SIMS PLC
150 Third Avenue South
Nashville, TN 37201
Telephone: (615) 742-7250
Fax: (615) 742-2750
amcfarland@bassberry.com
rcooper@bassberry.com

Abbey M. Glenn
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave, NW
Washington, DC 20001
Telephone: (202) 739-3000
Fax: (202) 739-3001
abbey.glenn@morganlewis.com

Sari M. Alamuddin
Allison N. Powers
MORGAN, LEWIS & BOCKIUS LLP
77 West Wacker Drive Chicago, IL 60601
Telephone: (312) 324-1000
Fax: (312) 324-1001
sari.alamuddin@morganlewis.com
allison.powers@morganlewis.com

Jeremy P. Blumenfeld
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-5000
Fax: (215) 963-5001
jeremy.blumenfeld@morganlewis.com

Jason Kellogg
LEVINE KELLOGG LEHMAN SCHNIEDER
+ GROSSMAN LLP
201 S. Biscayne Boulevard – 22nd Floor
Miami, FL 33131
Telephone: (315) 403-8788
jk@lklsg.com

Paulino Nuñez
RODRIGUEZ TRAMONT & NUÑEZ, P.A.
255 Alhambra Circle, Suite 1150
Coral Gables, FL 33134
Telephone: (305) 350-2300
pan@rgn-law.com

Frank R. Rodriguez
RODRIGUEZ TRAMONT & NUÑEZ, P.A.
255 Alhambra Circle, Suite 1150
Coral Gables, FL 33134
Telephone: (305) 350-2300
frr@rgn-law.com

Michael B. Bressman
VANDERBILT LAW SCHOOL
131 21st Avenue South
Nashville, Tennessee 37203
Telephone: (615) 322-4964
Fax: (615) 343-6562
michael.bressman@vanderbilt.edu

/s/ Andrew D. Schlichter

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Plaintiffs,

v.

VANDERBILT UNIVERSITY *et al.*,

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Civil Action No.16-cv-2086

Chief Judge Crenshaw
Magistrate Judge Brown

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

Plaintiffs brought this action alleging that Defendant Vanderbilt University and other individually named Defendants breached their duties under the Employee Retirement Income Security Act of 1974 (ERISA), including by causing the Vanderbilt University Retirement Plan and the Vanderbilt University New Faculty Plan (the “Plan”) to pay unreasonable administrative and investment management fees, maintaining underperforming investment options in the Plan, and failing to protect confidential participant information from being used by one of the Plan’s recordkeepers, TIAA, to market a variety of TIAA’s financial products to the Plan’s participants.

The Settlement reached in this case provides significant monetary relief through a \$14.5 million Gross Settlement Amount¹ 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.

¹ Capitalized terms that are not defined herein are as defined in the Settlement Agreement, Doc. 147-1.

BACKGROUND

A. Procedural Posture.

On August 10, 2016, Plaintiffs filed their Complaint. Doc. 1. Plaintiffs allege that Defendants (1) breached their duty of prudence under 29 U.S.C. § 1104(a)(1)(A) and (B) by retaining or failing to remove underperforming investments (Count I); (2) breached their duty of prudence under 29 U.S.C. §1104(a)(1)(A) and (B) by allowing the Plan's vendors to charge excessive recordkeeping and administrative fees and failing to monitor those fees, allowing the vendors to place their expensive proprietary investments into the Plan, and failing to account for the value of the vendors' access to Plan participants and their data for marketing purposes (Count III); (3) breached their duty of prudence under 29 U.S.C. § 1104(a)(1)(A) and (B) by allowing Plan participants to be charged unreasonable investment management fees and unnecessary 12b-1 and mortality and expense risk fees, selecting and retaining among the Plan's investment options poorly performing and expensive mutual funds and variable annuities, and failing to engage in a prudent process for monitoring Plan investments and removing imprudent investments within a reasonable period (Count V); (4) breached their duties of loyalty and prudence under 29 U.S.C. §1104(a)(1)(A) and (B) by allowing TIAA to use its position as the Plan's recordkeeper to obtain access to participants and their private information, and to profit from that access (Count VIII); and (5) engaged in transactions prohibited under 29 U.S.C. §1106(a)(1) by allowing TIAA to use its position as the Plan's recordkeeper to obtain access to participants and their private information, and to profit from that access (Count IX). Doc. 102.

After the filing of this case, the parties engaged in over two years of hard-fought litigation. Doc 155-3. On October 11, 2016, Defendants filed a motion to dismiss Plaintiffs' complaint in its entirety. Doc. 30. Plaintiffs subsequently filed a first amended complaint,

which Defendants moved to dismiss in its entirety. Docs. 38 & 42. After lengthy briefing, the Court denied in part and granted in part Defendants' motion to dismiss on January 5, 2018. Doc. 66. Plaintiffs moved to certify a class, which Defendants opposed. Docs. 94 & 106. After extensive briefing, the Court granted class certification on October 23, 2018. Doc. 127. On June 6, 2018, Plaintiffs filed their second amended complaint (Doc. 102), which is the operative complaint. Discovery in this case included the production of over 100,000 pages of documents and depositions of eight Vanderbilt witnesses and six named Plaintiffs. Doc. 155-3.

On February 25, 2019, the parties notified the Court that they reached a settlement in principle after an in-person session with a well-renowned private mediator and subsequent settlement discussions. Doc. 142. However, Class Counsel demanded that non-monetary improvements be made to the Plan. On April 18, 2019, after approximately three months of arm's length negotiation with the mediator, the parties reached an agreement on monetary and non-monetary terms. Doc. 155-3, ¶ 21.

B. The Terms of the Settlement.

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

1. Monetary Relief.

The Vanderbilt Defendants will deposit \$14,500,000 in an interest-bearing settlement account (the "Gross Settlement Amount"). The Gross Settlement Amount 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 Agreement. The Gross Settlement Amount will be distributed in

accordance with the terms of the Settlement. No residual monies remaining in the Settlement Fund will revert back to any Defendant.

The majority of Class Members will automatically receive their distributions directly into their tax-deferred retirement accounts. Those who already left the Plan and no longer have active accounts 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.

2. 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 thirty (30) calendar days after the end of the first and second years of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, the Vanderbilt Defendants will provide Class Counsel a list of the Plan's investment options and the fees for those investment options, as well as a copy of the Investment Policy Statement for the Plan; (2) no later than January 31, 2020, Vanderbilt University will communicate by email with currently employed Plan participants identifying current investment options in the Plan, providing a link to a disclosure of the fees and performance of the frozen annuity accounts and the current investment options, and providing contact information for the individual or entity that can facilitate a fund transfer; the form of this communication shall be approved by Class Counsel; (3) on or before April 1, 2022, the Plan's fiduciaries shall conduct a request for proposals ("RFP") for recordkeeping and administrative

services for the Plan to at least three qualified service providers; the RFP shall request that any proposal for basic recordkeeping services express fees on a per-participant basis; (4) after conducting the RFP, the Plan fiduciaries may decide to retain the current recordkeeper or retain a new recordkeeper; the Plan's fiduciaries shall contractually prohibit the recordkeeper from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan to Plan participants unless a request for such products or services is initiated by a Plan participant; (5) within thirty (30) days of the decision to retain or select a new recordkeeper, Vanderbilt University shall provide to Class Counsel the best and final bid amounts that were submitted in response to the RFP and a copy of the agreed-upon contract for recordkeeping services; (6) throughout the Settlement Period, the Plan's fiduciaries shall, when evaluating Plan investment options, consider the cost of different share classes available for the Plan's current investment options, among other factors; (7) Vanderbilt University shall inform Fidelity, the Plan's current recordkeeper, that when communicating with current Plan participants, Fidelity must refrain from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan unless a request for such products or services is initiated by a Plan participant; (8) during the Settlement Period, Vanderbilt University shall continue its engagement with AonHewitt to provide ongoing investment monitoring services for the Plan, or shall engage another investment consultant to provide a comparable or greater level of information and services; in considering Plan investment options, the Plan's fiduciaries shall consider information provided by investment consultant(s).

C. Preliminary Approval of the Settlement and Plaintiffs' Motion for Attorneys' Fees.

Plaintiffs filed their motion for preliminary approval of the Settlement on April 22, 2019.

Doc. 145. In accordance with the terms of the Settlement, counsel for the Vanderbilt Defendants served the CAFA notice on the appropriate officials. Decl. of Abbey Glenn, ¶¶2–5. On May 30, 2019, the Court preliminarily approved the Settlement. Doc. 153. On April 19, 2019, Plaintiffs filed a Motion for Attorneys’ Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs. Doc. 159.

D. 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 August 23, 2019, 56,550 notices were sent to Class Members. Decl. of Analytics, ¶ 5. With an objection deadline of September 22, 2019, Doc. 153 at 13 (¶5(B)), only one Class member has filed an objection to any portion of the Settlement.² No Class Member has filed any objection to Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs.

ARGUMENT

“Public policy strongly favors settlement of disputes without litigation.” *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1372 (6th Cir. 1976). “There is a strong public interest in encouraging settlement of complex litigation and class action suits because they are ‘notoriously difficult and unpredictable’ and settlement conserves judicial resources.” *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 530 (E.D. Mich. 2003), citing *Granada Investments, Inc. v. DWG Corp.*, 962 F.2d 1203, 1205 (6th Cir. 1992). There is a strong presumption that a class action settlement is fair and reasonable when it is the result of arm’s-length negotiations. *In re Amazon.com, Inc., Fulfillment Ctr. Fair Labor Standards Act (FLSA) & Wage & Hour Litig.*,

² Plaintiffs will separately file their Response to this Objection.

No. 3:14-CV-290-DJH, 2016 WL 9558953, at *2 (W.D. Ky. Oct. 31, 2016), citing *Newberg on Class Actions* § 13:43 (5th ed. 2016).

The Sixth Circuit has identified the following factors for evaluating the fairness of class action settlements: “(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.” *Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 277 (6th Cir. 2016). As explained in Plaintiffs’ prior briefing related to this Settlement (Docs. 146, 155), and incorporated herein by reference, all of these factors are met. This Court should issue final approval of the Settlement.

I. All Relevant Factors Weigh in Favor of Approving the Settlement.

A. The Settlement Was the Product of Extensive Arm’s-Length Negotiations Without Collusion.

“The participation of an independent mediator in the settlement negotiations virtually insures that the negotiations were conducted at arm’s length and without collusion between the parties.” *Hainey v. Parrott*, 617 F. Supp. 2d 668, 673 (S.D. Ohio 2007). This Settlement was reached only after a private session with an independent mediator, followed by negotiations over an extended period of time. Doc. 155-3, ¶ 21. The parties began settlement discussions in early February 2019 but were unable to reach an agreement on all terms, including non-monetary relief, until April 2019. *Id.*

The Settlement does not include features that might give Courts a “heightened duty” to scrutinize settlements, such as “clear sailing provisions []or kicker clauses.” *See Gascho*, 822 F.3d at 291. Further, “if the terms of the proposed settlement are fair, then the court may assume

the negotiations were proper.” *Bowling v. Pfizer, Inc.*, 143 F.R.D. 141, 152 (S.D. Ohio 1992). Here, the results for the class are exceptional, including monetary relief in excess of what has ever been achieved in a comparable case, plus additional significant non-monetary relief that will improve the Plan for all participants. That the Settlement was the product of extensive arm’s-length negotiations without collusion weighs in favor of approval of the Settlement.

B. The Settlement Is Reasonable and in the Public Interest, Especially in Light of the Complexity, Expense and Likely Duration of the Litigation.

Class actions have value to society at large, “both as deterrents to unlawful behavior—particularly when the individual injuries are too small to justify the time and expense of litigation—and as private law enforcement regimes that free public sector resources.” *Gascho*, 822 F.3d at 287. “[T]here is a strong public interest in encouraging settlement of complex litigation and class action suits because they are ‘notoriously difficult and unpredictable’ and settlement conserves judicial resources.” *New York State Teachers’ Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 241 (E.D. Mich. 2016), *aff’d sub nom. Marro v. New York State Teachers’ Ret. Sys.*, No. 16-1821, 2017 WL 6398014 (6th Cir. Nov. 27, 2017).

The Sixth Circuit considers “complexity, expense, and likely duration of the litigation” in part to ensure the “conserv[ation of] judicial resources” *Does 1-2 v. Deja Vu Servs., Inc.*, 925 F.3d 886, 898 (6th Cir. 2019). Without this Settlement, the parties would incur very substantial expenses in continuing this litigation due to the complexity of the issues involved. 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. 155-1, ¶¶ 30–31, 33–35. 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. The Settlement Is Reasonable in Light of the Amount of Discovery Taken in the Case.

“The amount of discovery conducted is a factor in considering the fairness of a proposed settlement, but it is not a dispositive factor.” *Bowling v. Pfizer, Inc.*, 143 F.R.D. 141, 161 (S.D. Ohio 1992). The amount of discovery is relevant to determining whether the Settlement is fair and reasonable because “counsel must demonstrate access to sufficient information regarding the facts of their case” to justify a settlement. *Id.* Here, the parties engaged in extensive discovery, including interrogatories, requests for production, multiple meet-and-confer discussions, extensive discussions regarding and production of electronically stored information (ESI), extensive document productions from seven non-party entities, production, review, and analysis of over 24,000 documents (over 100,000 pages), as well as six depositions of the named Plaintiffs, and eight lengthy depositions of fact witnesses from Vanderbilt University. Doc. 155-3, ¶¶ 13–20. This evidence obtained in discovery informed the parties’ arms-length negotiations, including preparations of their detailed mediation statements. *See* 155-3, ¶ 21. The extensive discovery conducted in this case weighs in favor of approval of the Settlement.

D. The Settlement Is Reasonable Given the Likelihood of Success of Plaintiffs’ Claims and the Existence of Defendants’ Defenses.

“[T]he most important of the factors to be considered in reviewing a settlement is the probability of success on the merits.” *Deja Vu Servs., Inc.*, 925 F.3d 886 at 895, citing *Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235, 245 (6th Cir. 2011). The Settlement represents an outstanding recovery in light of both the strength of Plaintiffs’ claims and the strength of Defendants’ defenses.

Plaintiffs maintain that they have strong underlying claims against Defendants related

to their management and administration of the Plan. Plaintiffs allege that Defendants caused the Plan to pay unreasonable recordkeeping and administrative expenses. Doc. 101 ¶¶ 243–52 (Count III). One of the fiduciary’s duties is to ensure those administrative expenses are reasonable. 29 U.S.C. §1104(a)(1)(A). Minimizing costs is a fundamental element of the fiduciary’s duty of prudence. *Tibble v. Edison Int’l*, 834 F.3d 1187, 1198 (9th Cir. 2016)(en banc).

Plaintiffs also claim that Defendants breached their fiduciary duties by selecting and retaining higher-cost share classes of investments in the Plan. Doc. 101 ¶¶259–272 (Count V). Under fundamental trust law principles, a fiduciary “cannot ignore the power the trust wields to obtain favorable investment products, particularly when those products are substantially identical—other than their lower cost—to products the trustee has already selected.” *Tibble*, 843 F.3d at 1198. Given these principles, Plaintiffs maintain that the facts supporting Plaintiffs’ higher-cost share class claim have been found to support a finding of fiduciary breach. *Tibble v. Edison Int’l*, 135 S.Ct. 1823 (2015); *Tibble v. Edison Int’l*, No. 07-5359, 2017 WL 3523737, at *11–12 (C.D. Cal. Aug. 16, 2017); *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 1113291, at *26–28 (W.D. Mo. Mar. 31, 2012).

Relevant to Plaintiffs’ investment performance claims, in a case handled by undersigned Class Counsel, the Supreme Court unanimously held that plan fiduciaries have “a continuing duty to monitor investments and remove imprudent ones[.]” *Tibble*, 135 S. Ct. at 1829. Fiduciaries must exercise prudence in the selection and retention of investments. *Griffin v. Flagstar Bancorp, Inc.*, 492 F. App’x 598, 603 (6th Cir. 2012). Plaintiffs claim that Defendants violated these duties and failed to prudently monitor Plan investment options resulting in the use of high-cost and low-performing funds relative to available alternatives. *See* Doc. 101 ¶¶ 259–

72 (Count V).

Although Class Counsel continues to believe in the underlying merits of these claims, there are significant legal obstacles and defenses that render recovery in this case uncertain. Defendants continue to “deny all allegations of wrongdoing and deny all liability for the allegations and claims” made in this litigation, and continue to maintain “that the Plan has been managed, operated and administered at all relevant times in compliance with ERISA and applicable regulations, including the fiduciary and prohibited transaction provisions of ERISA.” Doc. 147-1 at 1–2 (¶1.5).

This action is among the first class actions brought under ERISA against a private institution of higher education alleging that the plan fiduciaries caused their 403(b) plan to incur unreasonable investment and administrative expenses and to suffer from other losses caused by underperforming and high-cost investments.³ It is uncertain whether Plaintiffs would prevail on these claims at trial. Only one 403(b) excessive fee case has gone to trial in history. *Sacerdote v. New York Univ.*, 328 F.Supp.3d 273 (S.D.N.Y. 2018). That trial, handled by Plaintiffs’ undersigned Class Counsel, occurred in April 2018, and a bench judgment was issued on July 31, 2018, finding in favor of New York University and against the plaintiffs. In particular, the district court in *Sacerdote* found that the 403(b) plan fiduciaries did not breach their duty of prudence despite failing to consolidate recordkeepers, failing to conduct more frequent RFPs, and maintaining the CREF Stock Account and TIAA Real Estate Account, among other findings. *Id.* at 297–99, 312–15. Similarly, on September 27, 2019, after lengthy litigation, partial

³ Tara Siegel Bernard, *Employees Sue Four More Universities Over Retirement Plan Fees*, N.Y. TIMES (Aug. 11, 2016), <https://www.nytimes.com/2016/08/12/business/employees-sue-four-more-universities-over-retirement-plan-fees.html>.

summary judgment was issued against the plaintiffs in a case against Cornell University, which also alleged, among other things, excessive recordkeeping fees, imprudent retention of high-cost share classes of investments, and the imprudent retention of the CREF Stock Account and TIAA Real Estate Account. *Cunningham v. Cornell University*, No. 16-cv-6525 (PKC) (Sept. 27, 2019), Doc. 352. Class Counsel anticipates that Defendants would rely on these decisions in the case at bar.

Defendants would also likely have argued that in 2015, prior to the filing of the lawsuit, they dramatically reformed the Plan, reducing the number of recordkeepers and investment options, and obtaining improved pricing for recordkeeping services. Defendants likely would contend this reduced potential damages and benefitted participants. Defendants would also presumably have argued that these changes show they were monitoring the Plan and acting prudently.

These precedents show the monetary recovery of \$14.5 million to be an exceptional result, even without considering the value of the non-monetary terms. Doc. 155. Taking into account the benefit of tax deferral and not including the economic value of the non-monetary relief, the Settlement is valued at \$16.7 million. Doc. 155 at 7. To date, the Settlement represents the largest settlement amount in any ERISA 403(b) plan excessive fee lawsuit. This is an extraordinary result for the class. This Court should therefore grant final approval.

E. The Opinions of Class Counsel and Class Representatives, and the Reaction of Absent Class Members, Support the Reasonableness of the Settlement.

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. 155 at 15–18. Class Counsel is not only experienced and competent, but has

been recognized as the leading firm in this complex area of law by numerous federal courts. Doc. 155-1, ¶¶ 6–10. Class Counsel and counsel for Defendants believe that this Settlement is fair and reasonable. The opinion of experienced and informed counsel is entitled to considerable weight. *New York State Teachers' Ret. Sys.*, 315 F.R.D. at 238.

As of the objection deadline of September 22, 2019, and as of the filing of this Memorandum, of the over 56,000 Class Members who were sent notices, just one Class Member has filed an objection to any aspect of the Settlement, and no Class Member has filed any objection to 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., ¶¶ 5–10. In total, more than 99.99% of the Class did not register any objection to the Settlement.

The fact that just one objection was filed weighs heavily in favor of granting final approval. *See Deja Vu Servs., Inc.*, 925 F.3d at 899 (six objectors in a class of approximately 24,500 weighed in favor of approving the settlement). In addition to the overwhelming 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).

As to the lone objector to the Settlement, while Class Counsel appreciates the stated concerns of the objector, those concerns, individually and collectively, are insufficient bases for this Court to reject the Settlement, as will be set forth in separate briefing. Indeed, the Independent Fiduciary, in its review of the Settlement, has expressed the opinion that the Settlement complies with applicable requirements and is fair and reasonable. Ex. 1.

CONCLUSION

The Court should grant final approval of the Settlement.

Dated: October 8, 2019

Respectfully Submitted,

SCHLICHTER, BOGARD & DENTON, LLP

/s/ Andrew D. Schlichter
Jerome J. Schlichter (*pro hac vice*)
Troy Doles (*pro hac vice*)
Heather Lea (*pro hac vice*)
Andrew D. Schlichter (*pro hac vice*)
Alexander L. Braitberg (*pro hac vice*)
100 South Fourth Street, Ste. 1200
St. Louis, MO 63102 Phone: (314) 621-6115
Fax: (314) 621-5934
jschlichter@uselaws.com
tdoles@uselaws.com
hlea@uselaws.com
aschlichter@uselaws.com
abraitberg@uselaws.com

Lead Counsel for Plaintiffs

HAWKINS HOGAN, PLC
William B. Hawkins, III
205 17th Avenue North, Suite 202
Nashville, TN 37203
Phone: (615) 726-0050
Fax: (315) 726-5177
whawkins@hawkinshogan.com

Local Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2019 the foregoing document was filed and served electronically on all parties and counsel of record, including the below, via the Court's CM/ECF system. Parties may access this filing through the Court's ECF system.

Anthony J. McFarland
Robert E. Cooper, Jr.
BASS BERRY & SIMS PLC
150 Third Avenue South
Nashville, TN 37201
Telephone: (615) 742-7250
Fax: (615) 742-2750
amcfarland@bassberry.com
rcooper@bassberry.com

Abbey M. Glenn
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave, NW
Washington, DC 20001
Telephone: (202) 739-3000
Fax: (202) 739-3001
abbey.glenn@morganlewis.com

Sari M. Alamuddin
Allison N. Powers
MORGAN, LEWIS & BOCKIUS LLP
77 West Wacker Drive Chicago, IL 60601
Telephone: (312) 324-1000
Fax: (312) 324-1001
sari.alamuddin@morganlewis.com
allison.powers@morganlewis.com

Jeremy P. Blumenfeld
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-5000
Fax: (215) 963-5001
jeremy.blumenfeld@morganlewis.com

Jason Kellogg
LEVINE KELLOGG LEHMAN SCHNIEDER
+ GROSSMAN LLP
201 S. Biscayne Boulevard – 22nd Floor
Miami, FL 33131
Telephone: (315) 403-8788
jk@lklsg.com

Paulino Nuñez
RODRIGUEZ TRAMONT & NUÑEZ, P.A.
255 Alhambra Circle, Suite 1150
Coral Gables, FL 33134
Telephone: (305) 350-2300
pan@rgn-law.com

Frank R. Rodriguez
RODRIGUEZ TRAMONT & NUÑEZ, P.A.
255 Alhambra Circle, Suite 1150
Coral Gables, FL 33134
Telephone: (305) 350-2300
frr@rgn-law.com

Michael B. Bressman
VANDERBILT LAW SCHOOL
131 21st Avenue South
Nashville, Tennessee 37203
Telephone: (615) 322-4964
Fax: (615) 343-6562
michael.bressman@vanderbilt.edu

/s/ Andrew D. Schlichter



September 23, 2019

Ruby Z. Shellaway, Esq.
Vice Chancellor, General Counsel
Vanderbilt University
2201 West End Ave
Nashville, TN 37235

Re: Statement of Independent Fiduciary – Settlement of *Cassell v. Vanderbilt University, et al.*

Dear Ms. Shellaway:

This statement is made by Newport Trust Company (“Newport Trust”) in its capacity as independent fiduciary for the Vanderbilt University Retirement Plan and the Vanderbilt University New Faculty Plan (the “Plan”) in connection with the proposed settlement (the “Settlement”) of the class action lawsuit captioned *Cassell v. Vanderbilt University, et al.*, Case No. 3:16-cv-02086, in the United States District Court for the Middle District of Tennessee (the “Litigation”).

Newport Trust was engaged by Vanderbilt University (the University”), acting 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

Newport Trust Company

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by the Plan and the amount of the attorneys' fees and other amounts paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone; (ii) the terms and conditions of the transaction are no less favorable to the Plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances; and (iii) the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

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

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

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

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

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



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6. Reviewed Plaintiffs' counsel's request for attorneys' fees.

Based on its evaluation of the relevant documents and information associated with the class action and the Settlement, and taking into account the fiduciary obligations imposed by ERISA, Newport Trust has concluded, consistent with the requirements of the Class Exemption, that: (i) the Settlement terms, including the scope of the release of claims, the \$14.5 million Settlement amount and the prospective 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

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");¹ certified via the Coding Accuracy Support System ("CASS");² and verified through Delivery Point Validation ("DPV").³ This resulted in mailing address or e-mail records for 56,550 Settlement Class Members.

5. On August 23, 2019, Analytics caused Settlement Notice to be mailed or e-mailed to all 56,550 Settlement Class Members as follows: 1.) 14,080 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, 2.) 20,989 Former Participant Notices with a link to an electronic version of the Former Participant Claim Form were e-mailed to Class Members for which an e-mail address was provided and whom were determined to be Former Participants, 3.) 11,718 Current Participant Notices were mailed to Class Members for which no e-mail address was provided and whom were determined to be Current Participants 4.) 9,763 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. 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

¹ 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.

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

³ 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.

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 and Class Counsel became aware some Former Participant Class Members were misclassified as Former Participants based on incomplete data. Analytics worked with the parties to identify 15,476 Class Members who were originally determined to be Former Participants should rather be Current Participants. Per the September 12, 2019 Joint Motion for Approval of Additional Class Notices and the subsequent September 13, 2019 Order; Analytics caused correct Current Participant Notices to be sent under cover of the letter attached here as **Exhibit B** to all 15,476 affected Class Members.

8. As of the date of this declaration, the USPS has returned 422 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 4,277 Notices were returned by the USPS as undeliverable. Of these undeliverable Notices, Analytics located 3,328 new addresses through a third-party commercial data source, Experian. Analytics re-mailed the Notices to those 3,328 Class Members at these updated addresses.

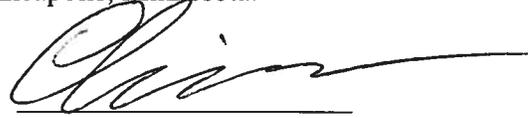
9. Analytics established and is maintaining a toll-free phone number (1-855-930-1070) for the Settlement to provide Class Members with additional information regarding the settlement. The toll-free number became operational on August 23, 2019, and automated service was available twenty-four hours a day, seven days a week. As of the date of this declaration, Analytics has received a total of 2939 telephone calls out of which 1538 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 298 Notices were mailed.

10. The Settlement Agreement provides that Former Participants must file a completed Claim Form in order to be eligible for a settlement payment by October 12, 2019. As of the date of this declaration, Analytics has received 6,982 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 8th day of October, 2019 in Minneapolis, Minnesota.

A handwritten signature in black ink, appearing to read 'C. Amundson', written over a horizontal line.

Christopher D. Amundson

Project Manager – Analytics LLC

EXHIBIT A

Vanderbilt 403(b) Settlement Administrator
P.O. Box 2007
Chanhassen, MN 55317-2007
www.vanderbilt403bsettlement.com

FORMER PARTICIPANT CLAIM FORM

ABC1234567890



JOHN Q CLASSMEMBER
123 MAIN ST
APT 1
ANYTOWN, ST 12345

Claim Number: 1111111

PIN: 12345

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 March 31, 2019 and did not have a balance in the Vanderbilt University Medical Center Retirement Plan greater than \$0 as of March 31, 2019.

This form must be completed, signed and mailed with a postmark date no later than **October 12, 2019** to the Settlement Administrator or electronically submitted online at www.vanderbilt403bsettlement.com using the Claim Number and PIN referenced at the top of this Claim Form 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.

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. Submit electronically online at www.vanderbilt403bsettlement.com using the Claim Number and PIN referenced at the top of this Claim Form no later than **October 12, 2019** or mail your completed Former Participant Claim Form that is postmarked no later than **October 12, 2019** to the Settlement Administrator at following address:

Vanderbilt 403(b) Settlement Administrator
P.O. Box 2007
Chanhassen, MN 55317-2007

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 early 2020 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 1-855-930-1070. 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. For more information about the settlement, please see www.vanderbilt403bsettlement.com, or call 1-855-930-1070.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

LOREN L. CASSELL, et al.,

Plaintiffs,

v.

VANDERBILT UNIVERSITY, et al.,

Defendants.

Civil Action No. 3:16-cv-02086

Chief Judge Crenshaw

Magistrate Judge Brown

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 Vanderbilt University Retirement Plan and the Vanderbilt University New Faculty Plan (the “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 March 31, 2019. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.

- The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act (“ERISA”). 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 March 31, 2019 plus former Plan participants who had a balance greater than \$0 in the Vanderbilt University Medical Center Retirement Plan as of March 31, 2019 (both are called “Current Participants” here). Class Members who no longer had an account with a balance greater than \$0 in the Plan or the Vanderbilt University Medical Center Retirement Plan as of March 31, 2019 (“Former Participants”) will need to file a claim form and 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 April 22, 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.vanderbilt403bsettlement.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 October 22, 2019, at 9:00 a.m., before U.S. District Court Judge Waverly D. Crenshaw in Courtroom A859, Estes Kefauver Federal Building & Courthouse, 801 Broadway #800, Nashville, Tennessee 37203.

- 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.vanderbilt403bsettlement.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 (or the Vanderbilt University Medical Center Retirement Plan) as of March 31, 2019.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:	
<p>OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. YOU MUST RETURN THE ENCLOSED FORMER PARTICIPANT CLAIM FORM BY OCTOBER 12, 2019 TO PARTICIPATE IN THE SETTLEMENT.</p>	<p><u>Our records indicate that you are a Former Participant.</u> You must return a Former Participant Claim Form that is postmarked by October 12, 2019 or electronically submitted online at www.vanderbilt403bsettlement.com using the Claim Number and PIN referenced at the top of the Claim Form you received in the mail no later than October 12, 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 by October 12, 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.vanderbilt403bsettlement.com.</p>
<p>YOU CAN OBJECT (NO LATER THAN SEPTEMBER 22, 2019).</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>YOU CAN ATTEND A HEARING ON OCTOBER 22, 2019.</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 October 12, 2019.</p>

The Litigation

The litigation involves a class action called *Cassell, et al. v. Vanderbilt University, et al.*, Case No. 3:16-CV-02086 (the “Litigation”). The Court supervising the cases is the United States District Court for the Middle District of Tennessee, Nashville Division. 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.vanderbilt403bsettlement.com.

The Settlement

The Settlement was reached on April 22, 2019. Class Counsel filed the case on August 10, 2016. Since the filing of the case and for a period of almost three years, the parties engaged in substantial litigation. During the course of the litigation, over 135,000 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 eight depositions of fact witnesses. 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 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 \$14,500,000 will be established to resolve the Litigation. The Net Settlement Amount is \$14,500,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representatives' Compensation, and other approved expenses of the litigation. The Net Settlement Amount will be allocated to 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 thirty (30) calendar days after the end of the first and second years of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, the Vanderbilt Defendants will provide Class Counsel a list of the Plan's investment options and the fees for those investment options, as well as a copy of the Investment Policy Statement for the Plan; (2) no later than January 31, 2020, Vanderbilt University will communicate by email with currently employed Plan participants identifying current investment options in the Plan, providing a link to a disclosure of the fees and performance of the frozen annuity accounts and the current investment options, and providing contact information for the individual or entity that can facilitate a fund transfer; the form of this communication shall be approved by Class Counsel; (3) on or before April 1, 2022, the Plan's fiduciaries shall conduct a request for proposals ("RFP") for recordkeeping and administrative services for the Plan to at least three qualified service providers; the RFP shall request that any proposal for basic recordkeeping services express fees on a per-participant basis; (4) after conducting the RFP, the Plan fiduciaries may decide to retain the current recordkeeper or retain a new recordkeeper; the Plan's fiduciaries shall contractually prohibit the recordkeeper from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan to Plan participants unless a request for such products or services is initiated by a Plan participant; (5) within thirty (30) days of the decision to retain or select a new recordkeeper, Vanderbilt University shall provide to Class Counsel the best and final bid amounts that were submitted in response to the RFP and a copy of the agreed-upon contract for recordkeeping services; (6) throughout the Settlement Period, the Plan's fiduciaries shall, when evaluating Plan investment options, consider the cost of different share classes available for the Plan's current investment options, among other factors; (7) Vanderbilt University shall inform Fidelity, the Plan's current recordkeeper, that when communicating with current Plan participants, Fidelity must refrain from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan unless a request for such products or services is initiated by a Plan participant; (8) during the Settlement Period, Vanderbilt shall continue its engagement with AonHewitt to provide ongoing investment monitoring services for the Plan, or shall engage another investment consultant to provide a comparable or greater level of information and services; in considering Plan investment options, the Plan's fiduciaries shall consider information provided by investment consultant(s).

Statement Of Attorneys' Fees and Costs Sought in the Litigation

Since mid-2016, Class Counsel have devoted thousands of hours investigating potential claims and bringing the Litigation. Class Counsel reviewed thousands of pages of documents prior to filing of the 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 over 135,000 pages of documents, including thousands of electronic files, produced in the case to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing the Litigation. 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 substantial costs incurred during the discovery phase to review hundreds of thousands of pages of documents and take eight depositions of fact witnesses. 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 Litigation. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$4,833,333, in addition to no more than \$225,000 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, who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the Litigation 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.vanderbilt403bsettlement.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 Is The Litigation About?

In the Litigation, 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 Vanderbilt 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 Vanderbilt 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 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 thirty (30) calendar days after the end of the first and second years of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, the Vanderbilt Defendants will provide Class Counsel a list of the Plan's investment options and the fees for those investment options, as well as a copy of the Investment Policy Statement for the Plan; (2) no later than January 31, 2020, Vanderbilt University will communicate by email with currently employed Plan participants identifying current investment options in the Plan, providing a link to a disclosure of the fees and performance of the frozen annuity accounts and the current investment options, and providing contact information for the individual or entity that can facilitate a fund transfer; the form of this communication shall be approved by Class Counsel; (3) on or before April 1, 2022, the Plan's fiduciaries shall conduct a request for proposals (RFP) for recordkeeping and administrative services for the Plan to at least three qualified service providers; the RFP shall request that any proposal for basic recordkeeping services express fees on a per-participant basis; (4) after conducting the RFP, the Plan fiduciaries may decide to retain the current recordkeeper or retain a new recordkeeper; the Plan's fiduciaries shall contractually prohibit the recordkeeper from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan to Plan participants unless a request for such products or services is initiated by a Plan participant; (5) within thirty (30) days of the decision to retain or select a new recordkeeper, Vanderbilt University shall provide to Class Counsel the best and final bid amounts that were submitted in response to the RFP and a copy of the agreed-upon contract for recordkeeping services; (6) throughout the Settlement Period, the Plan's fiduciaries shall, when evaluating Plan investment options, consider the cost of different share classes available for the Plan's current investment options, among other factors; (7) Vanderbilt University shall inform Fidelity, the Plan's current recordkeeper, that when communicating with current Plan participants, Fidelity must refrain from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan unless a request for such products or services is initiated by a Plan participant; (8) during the Settlement Period, Vanderbilt shall continue its engagement with AonHewitt to provide ongoing investment monitoring services for the Plan, or shall engage another investment consultant to provide a comparable or greater level of information and services; in considering Plan investment options, the Plan's fiduciaries shall consider information provided by investment consultant(s).

All Class Members and anyone claiming through them will fully release the Plan as well as the Vanderbilt Defendants and the "Released Parties" from "Released Claims." The Released Parties include: (a) Vanderbilt University, Vanderbilt University Medical Center, the Vanderbilt University Retirement Plan Oversight Committee, 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 Litigation or that relate to any of the allegations, facts or occurrences asserted in the Litigation 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.vanderbilt403bsettlement.com. Generally, the release means that Class Members will not have the right to sue the Vanderbilt Defendants, the Plan, or the Released Parties for conduct during the Class Period arising out of or relating to the allegations in the Litigation.

This is only a summary of the Settlement. The entire Settlement Agreement is at www.vanderbilt403bsettlement.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 March 31, 2019, you either no longer had a Plan (or Vanderbilt University Medical Center Retirement 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 are summed together for each Participant;
3. An average quarterly balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
4. For each Current Participant and each Authorized Former Participant, the average quarterly balance of step 3 is 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.vanderbilt403bsettlement.com.

There are approximately 55,449 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 in early 2020.

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 Litigation for all claims that were asserted in the Litigation 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 Litigation. 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 \$4,833,333 in fees and \$225,000 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 *Cassell, et al. v. Vanderbilt University, et al.*, Case No. 3:16-CV-02086. Be sure to include your name, address, telephone number, signature, the case name and number, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court **no later than September 22, 2019**. The Court’s address is Clerk of the Court, United States District Courthouse, Estes Kefauver Federal Building & Courthouse, 801 Broadway #800, Nashville, TN 37203. Your written objection also must be mailed to the lawyers listed below, **no later than September 22, 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	VANDERBILT DEFENDANTS' COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Vanderbilt 403(b) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 www.vanderbilt403bsettlement.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 9:00 a.m. on October 22, 2019, in Courtroom A859 at the United States District Courthouse for the Middle District of Tennessee, Estes Kefauver Federal Building & Courthouse, 801 Broadway, Nashville, Tennessee 37203.

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 *Cassell, et al. v. Vanderbilt University, et al.*, Case No. 3:16-CV-02086". 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 October 12, 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 Litigation 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 Litigation 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.vanderbilt403bsettlement.com, call 1-855-930-1070, or write to the Settlement Administrator at Vanderbilt 403(b) Settlement Administrator, P.O. Box 2007, Chanhassen, MN 55317-2007.

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.

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).

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, or by calling 1-800-TAX-FORM.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

LOREN L. CASSELL, et al.,

Plaintiffs,

v.

VANDERBILT UNIVERSITY, et al.,

Defendants.

Civil Action No. 3:16-cv-02086

Chief Judge Crenshaw

Magistrate Judge Brown

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 Vanderbilt University Retirement Plan and the Vanderbilt University New Faculty Plan (the “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 March 31, 2019. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.

- The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act (“ERISA”). 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 March 31, 2019 plus former Plan participants who had a balance greater than \$0 in the Vanderbilt University Medical Center Retirement Plan as of March 31, 2019 (both are called “Current Participants” here). Class Members who no longer had an account with a balance greater than \$0 in the Plan or the Vanderbilt University Medical Center Retirement Plan as of March 31, 2019 (“Former Participants”) will need to file a claim form and 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 April 22, 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.vanderbilt403bsettlement.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 October 22, 2019, at 9:00 a.m., before U.S. District Court Judge Waverly D. Crenshaw in Courtroom A859, Estes Kefauver Federal Building & Courthouse, 801 Broadway #800, Nashville, Tennessee 37203.
- 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.vanderbilt403bsettlement.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 participants currently employed at Vanderbilt University, those who are no longer employed by Vanderbilt University but continued to have an account balance in the Plan as of March 31, 2019, and former Plan participants who are employed by Vanderbilt University Medical Center who have an account balance in the Vanderbilt University Medical Center Retirement Plan as of March 31, 2019.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:

<p>OUR RECORDS INDICATE THAT YOU ARE A CURRENT PARTICIPANT. YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT.</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 March 31, 2019 or because you are a former Plan participant who has a balance greater than \$0 in the Vanderbilt University Medical Center Retirement Plan as of March 31, 2019.</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 March 31, 2019 or are the beneficiary, alternate payee, or attorney-in-fact of such a person and did not have a balance in the Vanderbilt University Medical Center Retirement Plan greater than \$0 as of March 31, 2019, then, unlike a Current Participant, you must return a Former Participant Claim Form that is postmarked or electronically submitted by October 12, 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 or electronically submitted by October 12, 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.vanderbilt403bsettlement.com.</p>
<p>YOU CAN OBJECT (NO LATER THAN SEPTEMBER 22, 2019).</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>YOU CAN ATTEND A HEARING ON OCTOBER 22, 2019.</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 October 12, 2019.</p>

The Litigation

The litigation involves a class action called *Cassell, et al. v. Vanderbilt University, et al.*, Case No. 3:16-CV-02086 (the “Litigation”). The Court supervising the cases is the United States District Court for the Middle District of Tennessee, Nashville Division. 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.vanderbilt403bsettlement.com.

The Settlement

The Settlement was reached on April 22, 2019. Class Counsel filed the case on August 10, 2016. Since the filing of the case and for a period of almost three years, the parties engaged in substantial litigation. During the course of the litigation, over 135,000 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 eight depositions of fact witnesses. 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 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 \$14,500,000 will be established to resolve the Litigation. The Net Settlement Amount is \$14,500,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representatives' Compensation, and other approved expenses of the litigation. The Net Settlement Amount will be allocated to 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 thirty (30) calendar days after the end of the first and second years of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, the Vanderbilt Defendants will provide Class Counsel a list of the Plan's investment options and the fees for those investment options, as well as a copy of the Investment Policy Statement for the Plan; (2) no later than January 31, 2020, Vanderbilt University will communicate by email with currently employed Plan participants identifying current investment options in the Plan, providing a link to a disclosure of the fees and performance of the frozen annuity accounts and the current investment options, and providing contact information for the individual or entity that can facilitate a fund transfer; the form of this communication shall be approved by Class Counsel; (3) on or before April 1, 2022, the Plan's fiduciaries shall conduct a request for proposals ("RFP") for recordkeeping and administrative services for the Plan to at least three qualified service providers; the RFP shall request that any proposal for basic recordkeeping services express fees on a per-participant basis; (4) after conducting the RFP, the Plan fiduciaries may decide to retain the current recordkeeper or retain a new recordkeeper; the Plan's fiduciaries shall contractually prohibit the recordkeeper from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan to Plan participants unless a request for such products or services is initiated by a Plan participant; (5) within thirty (30) days of the decision to retain or select a new recordkeeper, Vanderbilt University shall provide to Class Counsel the best and final bid amounts that were submitted in response to the RFP and a copy of the agreed-upon contract for recordkeeping services; (6) throughout the Settlement Period, the Plan's fiduciaries shall, when evaluating Plan investment options, consider the cost of different share classes available for the Plan's current investment options, among other factors; (7) Vanderbilt University shall inform Fidelity, the Plan's current recordkeeper, that when communicating with current Plan participants, Fidelity must refrain from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan unless a request for such products or services is initiated by a Plan participant; (8) during the Settlement Period, Vanderbilt shall continue its engagement with AonHewitt to provide ongoing investment monitoring services for the Plan, or shall engage another investment consultant to provide a comparable or greater level of information and services; in considering Plan investment options, the Plan's fiduciaries shall consider information provided by investment consultant(s).

Statement Of Attorneys' Fees and Costs Sought in the Litigation

Since mid-2016, Class Counsel have devoted thousands of hours investigating potential claims and bringing the Litigation. Class Counsel reviewed thousands of pages of documents prior to filing of the 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 over 135,000 pages of documents, including thousands of electronic files, produced in the case to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing the Litigation. 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 substantial costs incurred during the discovery phase to review hundreds of thousands of pages of documents and take eight depositions of fact witnesses. 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 Litigation. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$4,833,333,

in addition to no more than \$225,000 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, who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the Litigation 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.vanderbilt403bsettlement.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 Is The Litigation About?

In the Litigation, 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 Vanderbilt 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 Vanderbilt 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 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 thirty (30) calendar days after the end of the first and second years of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, the Vanderbilt Defendants will provide Class Counsel a list of the Plan's investment options and the fees for those investment options, as well as a copy of the Investment Policy Statement for the Plan; (2) no later than January 31, 2020, Vanderbilt University will communicate by email with currently employed Plan participants identifying current investment options in the Plan, providing a link to a disclosure of the fees and performance of the frozen annuity accounts and the current investment options, and providing contact information for the individual or entity that can facilitate a fund transfer; the form of this communication shall be approved by Class Counsel; (3) on or before April 1, 2022, the Plan's fiduciaries shall conduct

a request for proposals (“RFP”) for recordkeeping and administrative services for the Plan to at least three qualified service providers; the RFP shall request that any proposal for basic recordkeeping services express fees on a per-participant basis; (4) after conducting the RFP, the Plan fiduciaries may decide to retain the current recordkeeper or retain a new recordkeeper; the Plan’s fiduciaries shall contractually prohibit the recordkeeper from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan to Plan participants unless a request for such products or services is initiated by a Plan participant; (5) within thirty (30) days of the decision to retain or select a new recordkeeper, Vanderbilt University shall provide to Class Counsel the best and final bid amounts that were submitted in response to the RFP and a copy of the agreed-upon contract for recordkeeping services; (6) throughout the Settlement Period, the Plan’s fiduciaries shall, when evaluating Plan investment options, consider the cost of different share classes available for the Plan’s current investment options, among other factors; (7) Vanderbilt University shall inform Fidelity, the Plan’s current recordkeeper, that when communicating with current Plan participants, Fidelity must refrain from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan unless a request for such products or services is initiated by a Plan participant; (8) during the Settlement Period, Vanderbilt shall continue its engagement with AonHewitt to provide ongoing investment monitoring services for the Plan, or shall engage another investment consultant to provide a comparable or greater level of information and services; in considering Plan investment options, the Plan’s fiduciaries shall consider information provided by investment consultant(s).

All Class Members and anyone claiming through them will fully release the Plan as well as the Vanderbilt Defendants and the “Released Parties” from “Released Claims.” The Released Parties include: (a) Vanderbilt University, Vanderbilt University Medical Center, the Vanderbilt University Retirement Plan Oversight Committee, 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 Litigation or that relate to any of the allegations, facts or occurrences asserted in the Litigation 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.vanderbilt403bsettlement.com. Generally, the release means that Class Members will not have the right to sue the Vanderbilt Defendants, the Plan, or the Released Parties for conduct during the Class Period arising out of or relating to the allegations in the Litigation.

This is only a summary of the Settlement. The entire Settlement Agreement is at www.vanderbilt403bsettlement.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 March 31, 2019, you either no longer had a Plan (or Vanderbilt University Medical Center Retirement 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 are summed together for each Participant;

3. An average quarterly balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
4. For each Current Participant and each Authorized Former Participant, the average quarterly balance of step 3 is 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.vanderbilt403bsettlement.com.

There are approximately 55,449 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 in early 2020.

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 Litigation for all claims that were asserted in the Litigation 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 Litigation. 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 \$4,833,333 in fees and \$225,000 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 *Cassell, et al. v. Vanderbilt University, et al.*, Case No. 3:16-cv- 02086. Be sure to include your name, address, telephone number, signature, the case name and number, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court **no later than September 22, 2019**. The Court's address is Clerk of the Court, United States District Courthouse, Estes Kefauver Federal Building & Courthouse, 801 Broadway #800, Nashville, TN 37203. Your written objection also must be mailed to the lawyers listed below, **no later than September 22, 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	VANDERBILT DEFENDANTS' COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Vanderbilt 403(b) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 www.vanderbilt403bsettlement.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 **9:00 a.m. on October 22, 2019**, in Courtroom A859 at the United States District Courthouse for the Middle District of Tennessee, Estes Kefauver Federal Building & Courthouse, 801 Broadway, Nashville, Tennessee 37203.

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 *Cassell, et al. v. Vanderbilt University, et al.*, Case No. 3:16-CV-02086". 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 October 12, 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 Litigation 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 Litigation 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.vanderbilt403bsettlement.com, call 1-855-930-1070, or write to the Settlement Administrator at Vanderbilt 403(b) Settlement Administrator, P.O. Box 2007, Chanhassen, MN 55317-2007.

Vanderbilt 403(b) Settlement Administrator

P.O. Box 2007

Chanhassen, MN 55317-2007

EXHIBIT B

Vanderbilt 403(b) Settlement Administrator

P.O. Box 2007

Chanhassen, MN 55317-2007

www.vanderbilt403bsettlement.com

ABC1234567890



Claim Number: 1111111

JOHN Q CLASSMEMBER
123 MAIN ST
APT 1
ANYTOWN, ST 12345

Dear Sir or Madam:

You may have previously received a notice indicating that you are a Former Participant, as defined in the enclosed Notice. Our records have been updated to indicate that you are a Current Participant, as is likewise defined in the enclosed Notice. Please find enclosed a Current Participant Notice of Class Action Settlement and Fairness Hearing.

As explained in the enclosed Notice, as a Current Participant your settlement distribution will be deposited automatically into your account in the Vanderbilt University Medical Center Retirement Plan. You do not need to submit a claim form to receive a settlement distribution. If you have already submitted a claim form, you do not need to take any further action -- you will still receive your settlement distribution automatically. Please note that the amount of your settlement distribution is not affected and does not depend upon whether you are a Current or Former Participant, or which notice you previously received.

Vanderbilt 403(b) Settlement Administrator

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

LOREN L. CASSELL, <i>et al.</i> ,	:	
	:	
	:	Civil Action No.
	:	3:16-cv-02086
Plaintiffs,	:	Jury Demand
	:	
	:	Judge Crenshaw
v.	:	
	:	Magistrate Judge Brown
	:	
VANDERBILT UNIVERSITY, <i>et al.</i> ,	:	
	:	
	:	
Defendants.	:	
	:	

DECLARATION OF ABBEY M. GLENN

I, Abbey M. Glenn, declare as follows:

1. I am an Associate with the law firm 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 April 9, 2019, I obtained from Vanderbilt University a list of settlement class members, the participants and beneficiaries of the Vanderbilt University Retirement Plan and Vanderbilt University New Faculty Plan from August 10, 2010 to March 31, 2019. The list identified the names of these individuals and their current or last known addresses and states of residence.

3. In accordance with the Court’s Order Granting Motion for Preliminary Approval of Class Action Settlement (“Order”) (Dkt. 153), and the Class Action Fairness Act, 28 U.S.C. § 1715, on May 2, 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, Oregon, 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 in this action, 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.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on October 4, 2019, in Washington, DC.

/s/ Abbey M. Glenn
Abbey M. Glenn

DB1/ 107781281.1

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

LOREN L. CASSELL, et al.,

Plaintiffs,

v.

VANDERBILT UNIVERSITY, et al.,

Defendants.

Civil Action No. 3:16-cv-02086

[PROPOSED] FINAL ORDER AND JUDGMENT

CRENSHAW, U.S. Chief District Court Judge:

Wherefore, this ___ day of _____, 2019, upon consideration of the Plaintiffs' Motion for Final Approval of the Settlement of the above-referenced litigation under the terms of a Class Action Settlement Agreement dated April 22, 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 Litigation 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 complaint and all claims asserted therein in the Litigation are hereby dismissed with prejudice and without costs to any of the Settling Parties and Released 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, past and present partners, officers, directors, predecessors, 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 Vanderbilt 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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that if known by him or her would have materially affected his or her settlement with the debtor or released party.” 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 Vanderbilt 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

Hon. Judge Waverly D. Crenshaw, Jr.
United States District Court Judge