

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LINDA GRIFFITH and JEANETTE WENZL,  
on behalf of themselves, individually, and on  
behalf of the Providence Health & Services  
Cash Balance Retirement Plan,

Plaintiffs,

v.

PROVIDENCE HEALTH & SERVICES;  
RETIREMENT PLANS COMMITTEE;  
ELLEN WOLF; JOHN and JANE DOES 1-20,  
inclusive, MEMBERS OF THE RETIREMENT  
PLANS COMMITTEE; JOHN or JANE DOE  
21, PLAN DIRECTOR; HUMAN  
RESOURCES COMMITTEE OF THE BOARD  
OF DIRECTORS; JOHN and JANE DOES 22-  
40, inclusive, MEMBERS OF THE HUMAN  
RESOURCES COMMITTEE OF THE BOARD  
OF DIRECTORS; ROD HOCHMAN; BOARD  
OF DIRECTORS OF PROVIDENCE HEALTH  
& SERVICES; MICHAEL HOLCOMB;  
CHAUNCEY BOYLE; ISIAAH CRAWFORD;  
MARTHA DIAZ ASZKENAZY; PHYLLIS  
HUGHES; SALLYE LINER; KIRBY  
McDONALD; DAVE OLSEN; AL PARRISH;  
CAROLINA REYES; PETER J. SNOW;  
MICHAEL A. STEIN; CHARLES WATTS;  
BOB WILSON; JOHN and JANE DOES 41-50,  
inclusive,

Defendants.

CASE NO. C14-1720-JCC

ORDER PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT  
AGREEMENT

1 This litigation involves claims for alleged violations of the Employee Retirement Income  
2 Security Act of 1974, as amended, 29 U.S.C. §§ 1001, *et seq.* (“ERISA”), with respect to the  
3 Providence Health & Services Cash Balance Retirement Plan (“Plan”).<sup>1</sup>

4 Presented to the Court for preliminary approval is a settlement of the litigation as against  
5 all Defendants. The terms of the Settlement are set forth in the Class Action Settlement  
6 Agreement (the “Settlement” or “Settlement Agreement”), executed by counsel on October 20,  
7 2016 on behalf of all of the Plaintiffs and Defendants (the “Parties”). Plaintiffs have filed an  
8 Unopposed Motion for Preliminary Approval of Settlement Agreement (“Preliminary Approval  
9 Motion”), pursuant to which the Court has considered the Settlement to determine, among other  
10 things, whether to approve preliminarily the Settlement, certify preliminarily a Settlement Class,  
11 authorize the dissemination of Class Notice to members of the Settlement Class, and set a date  
12 and time for the Fairness Hearing. Upon reviewing the Settlement Agreement, it is hereby  
13 ORDERED as follows:

14 1. Class Findings. The Court preliminarily finds that the requirements of the Federal  
15 Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other  
16 applicable law have been met as to the “Settlement Class” defined below, in that:

17 A. The Court preliminarily finds that the Settlement Class is ascertainable  
18 from records kept with respect to the Plan and from other objective criteria, and the  
19 members of the Settlement Class are so numerous that their joinder before the Court  
20 would be impracticable. Rule 23(a)(1) is satisfied.

21 B. The Court preliminarily finds that there are one or more questions of fact  
22 and/or law common to the Settlement Class. Rule 23(a)(2) is satisfied.

23 C. The Court preliminarily finds that the Named Plaintiffs’ claims are typical  
24 of the claims of the Settlement Class. Rule 23(a)(3) is satisfied.

25  
26 \_\_\_\_\_  
27 <sup>1</sup> Capitalized terms not otherwise defined in this order shall have the same meaning as ascribed  
to them in the Class Action Settlement Agreement.

1           D.     The Court preliminarily finds that the Named Plaintiffs will fairly and  
2 adequately protect the interests of the Settlement Class in that: (i) the Named Plaintiffs’  
3 interests and the nature of claims alleged are consistent with those of the members of the  
4 Settlement Class; (ii) there appear to be no conflicts between or among the Named  
5 Plaintiffs and the Settlement Class; and (iii) the Named Plaintiffs and the members of the  
6 Settlement Class are represented by qualified, reputable counsel who are experienced in  
7 preparing and prosecuting large, complicated ERISA class actions. Rule 23(a)(4) is  
8 satisfied.

9           E.     The Court preliminarily finds that the prosecution of separate actions by  
10 individual members of the Settlement Class would create a risk of: (i) inconsistent or  
11 varying adjudications as to individual class members that would establish incompatible  
12 standards of conduct for Defendants; or (ii) adjudications as to individual class members  
13 that would, as a practical matter, be dispositive of the interests of the other members not  
14 parties to the adjudications, or substantially impair or impede those persons’ ability to  
15 protect their interests. Rule 23(b)(1) is satisfied.

16           F.     Alternatively, the Court preliminarily finds that Defendants have acted or  
17 refused to act on grounds generally applicable to the Settlement Class, and such conduct  
18 may be subject to appropriate final injunctive relief or corresponding declaratory relief  
19 with respect to the Settlement Class as a whole. Rule 23(b)(2) is satisfied.

20           G.     The Court preliminarily finds that Keller Rohrback L.L.P. and Cohen  
21 Milstein Sellers & Toll, PLLC (“Class Counsel”) are capable of fairly and adequately  
22 representing the interests of the Settlement Class. Class Counsel have done extensive  
23 work identifying or investigating potential claims in the action and have litigated the  
24 validity of those claims through the motion to dismiss this case. Class Counsel are  
25 experienced in handling class actions, other complex litigation, and claims of the type  
26 asserted in this Action. Class Counsel are knowledgeable about the applicable law and  
27

1 have committed the necessary resources to represent the Settlement Class. Rule 23(g) is  
2 satisfied.

3 2. Class Certification. Based on the findings set forth above, the Court preliminarily  
4 certifies the following class under Federal Rules of Civil Procedure 23(b)(1) and/or (2) and 23(e)  
5 in this litigation (the “Settlement Class”):

6 All persons who are or were participants, whether vested or non-vested, in the  
7 Plan on or after January 1, 2008, and their beneficiaries.

8 The Court preliminarily appoints Linda Griffith and Jeanette Wenzl, the Named  
9 Plaintiffs, as the class representatives for the Settlement Class, and Keller Rohrback L.L.P. and  
10 Cohen Milstein Sellers & Toll, PLLC as Class Counsel for the Settlement Class.

11 3. Preliminary Findings Regarding Proposed Settlement. The Court preliminarily  
12 finds that:

13 A. The proposed Settlement resulted from informed, extensive arm’s-length  
14 negotiations that took place over multiple weeks and were facilitated by a third-party  
15 mediator, Robert Meyer, Esq.;

16 B. Class Counsel has concluded that the proposed Settlement is fair,  
17 reasonable, and adequate; and

18 C. The proposed Settlement is sufficiently fair, reasonable, and adequate to  
19 warrant sending notice of the Settlement to the Settlement Class.

20 4. Final Fairness Hearing. A hearing is scheduled for Tuesday, March 21, 2017, at  
21 9:00 a.m. (“Fairness Hearing”) to determine, among other things:

22 A. Whether the Settlement should be approved as fair, reasonable, and  
23 adequate;

24 B. Whether the Complaint should be dismissed with prejudice pursuant to the  
25 terms of the Settlement Agreement;

26 C. Whether the Class Notice provided for by the Settlement Agreement:  
27 (i) constituted the best practicable notice; (ii) constituted notice that was reasonably

1 calculated, under the circumstances, to apprise members of the Settlement Class of the  
2 pendency of the litigation, their right to object to the Settlement, and their right to appear  
3 at the Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient  
4 notice to all persons entitled to notice; and (iv) met all applicable requirements of the  
5 Federal Rules of Civil Procedure and any other applicable law;

6 D. Whether Class Counsel adequately represented the Settlement Class for  
7 purposes of entering into and implementing the Settlement Agreement;

8 E. Whether the application for payment of attorney fees and expenses to  
9 Class Counsel should be approved; and

10 F. Whether the application for an Incentive Fee for the Named Plaintiffs  
11 should be approved.

12 5. Class Notice. A proposed form of Class Notice is attached as Exhibit 3 to  
13 Plaintiffs' Preliminary Approval Motion. With respect to such form of Class Notice, the Court  
14 finds that such form fairly and adequately:

15 A. Describes the terms and effect of the Settlement Agreement;

16 B. Notifies the Settlement Class that Class Counsel's attorney fees and  
17 expenses, and Named Plaintiffs' Incentive Fees, will be paid according to § 8.1.5 of the  
18 Settlement Agreement;

19 C. Gives notice to the Settlement Class of the time and place of the Fairness  
20 Hearing;

21 D. Advises members of the Settlement Class that they do not have the right to  
22 opt out of the Settlement Class;

23 E. Advises members of the Settlement Class of the binding effect of a  
24 judgment on members of the Settlement Class; and

25 F. Describes how the recipients of the Class Notice may object to any of the  
26 relief requested. The Court directs that:

1           i.       No later than 60 days prior to the Fairness Hearing, the Class  
2 Notice, with such non-substantive modifications thereto as may be agreed upon  
3 by the Parties, shall be sent to each Person within the Settlement Class who can be  
4 identified by the Plan's current record-keeper. Such notice shall be in a form that  
5 the Parties have deemed to be cost effective and sent to the last known address for  
6 members of the Settlement Class. Providence will pay the cost for notice to the  
7 Settlement Class as part of the settlement administration.

8           ii.       No later than 60 days prior to the Fairness Hearing, Class Counsel  
9 shall cause the Settlement Agreement and the Class Notice to be published on the  
10 websites identified in the Class Notice.

11           iii.       At or before the Fairness Hearing, Class Counsel shall file with the  
12 Court a proof of timely compliance with the foregoing Class Notice mailing and  
13 publication requirements.

14           iv.       No later than 45 days before the Fairness Hearing, Class Counsel  
15 shall file motions for final approval of the Settlement, attorney fees and expenses,  
16 and Incentive Fees to the Named Plaintiffs.

17           v.       Seven days prior to the Fairness Hearing, Class Counsel shall file a  
18 reply in support of the motions for final approval of the Settlement, attorney fees  
19 and expenses, and Incentive Fees to the Named Plaintiffs. The Parties must also  
20 respond to any comments or objections to the Settlement.

21       6.       Objections to Settlement. Any member of the Settlement Class who wishes to  
22 object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the  
23 Settlement Agreement, to the application for payment of attorney fees and expenses, or to the  
24 application for Incentive Fees for the Named Plaintiffs, may timely file an objection in writing  
25 no later than February 21, 2017. All written objections and supporting papers must: (1) clearly  
26 identify the case name and number "*Griffith, et al. v. Providence Health & Services, et al.*, Case  
27 No. 14-cv-01720-JCC"; (2) be filed with the Court and postmarked and mailed or faxed to Class

1 Counsel and Defendants' Counsel at the addresses below on or before February 21, 2017; (3) set  
2 forth the objector's full name, current address, and telephone number; (4) set forth a statement of  
3 the position the objector wishes to assert, including the factual and legal grounds for the position;  
4 (5) set forth the names and a summary of testimony of any witnesses that the objector might  
5 want to call in connection with the objection; (6) provide copies of all documents that the  
6 objector wishes to submit in support of his/her position; (7) provide the name(s), address(es) and  
7 phone number(s) of any attorney(s) representing the objector; and (8) state the name, court, and  
8 docket number of any class action litigation in which the objector and/or his/her attorney(s) has  
9 previously appeared as an objector or provided legal assistance with respect to an objection; and  
10 (9) include the objector's signature.

11 The addresses for filing objections with the Court and service on counsel are as follows:

12 To the Court:

13 Clerk of the Court  
14 United States District Court  
15 Western District of Washington  
16 700 Stewart Street, Suite 2310  
17 Seattle, WA 98101  
18 Re: *Griffith, et al. v. Providence Health & Services*, No. 14-cv-01720-JCC

19 To Class Counsel:

20 Lynn Lincoln Sarko  
21 KELLER ROHRBACK L.L.P  
22 1201 Third Avenue, Suite 3200  
23 Seattle, WA 98101  
24 Fax: (206) 623-3384

25 Ron Kilgard  
26 KELLER ROHRBACK L.L.P  
27 3101 North Central Avenue, Suite 1400  
Phoenix, AZ 85012  
Fax: (602) 248-2822

Karen L. Handorf  
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1100 New York Avenue, N.W.

1 Suite 500, West Tower  
2 Washington, D.C. 20005  
3 Fax: (202) 408-4699

4 To Defendants' Counsel:

5 Howard Shapiro  
6 Stacey C.S. Cerrone  
7 PROSKAUER ROSE, LLP  
8 650 Poydras Street, Suite 1800  
9 New Orleans, LA 70130  
10 Fax: (504) 310-2022

11 If an objector hires an attorney to represent him or her for the purposes of making such  
12 objection pursuant to this paragraph, the attorney must both effect service of a notice of  
13 appearance on counsel listed above and file it with the Court by no later than February 21, 2017.  
14 Any member of the Settlement Class or other person who does not timely file and serve a written  
15 objection complying with the terms of this paragraph shall be deemed to have waived, and shall  
16 be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be  
17 barred.

18 7. Appearance at Fairness Hearing. Any objector who files and serves a timely  
19 written objection in accordance with paragraph 6 above may also appear at the Fairness Hearing  
20 either in person or through counsel retained at the objector's expense. Objectors or their  
21 attorneys intending to appear at the Fairness Hearing must effect service of a notice of intention  
22 to appear setting forth, among other things, the name, address, and telephone number of the  
23 objector (and, if applicable, the name, address, and telephone number of the objector's attorney)  
24 on Class Counsel and on the Defendants' counsel at the addresses set out above. The objector  
25 must also file the notice of intention to appear with the Court by no later than February 21, 2017.  
26 Any objector who does not timely file and serve a notice of intention to appear in accordance  
27 with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good  
cause shown.



1 Presented by:

2

3 By: s/ Lynn Lincoln Sarko

4 s/ Erin M. Riley

5 s/ Laura Gerber

6 s/ Gretchen S. Obrist

7 s/ Havila C. Unrein

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