

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

DIANN M. CURTIS, individually and on behalf  
of herself and all others similarly situated,

Plaintiff,

vs.

Wheaton Franciscan Services, Inc. d.b.a.  
Wheaton Franciscan Healthcare, Wheaton  
Franciscan System Retirement Plan Committee,  
and John Does 1-20,

Defendants.

Civil Action No.: 1:16-cv-4232  
Honorable Gary Feinerman

BRUCE BOWEN and CHERYL MUELLER,  
individually and on behalf of all others similarly  
situated, and on behalf of the Wheaton  
Franciscan System Retirement Plan,

Plaintiffs,

vs.

WHEATON FRANCISCAN services, Inc.,  
d/b/a Wheaton Franciscan Healthcare, an  
Illinois Non-Profit Corporation, OPERATIONS  
COMMITTEE OF THE BOARD OF  
DIRECTORS OF WHEATON FRANCISCAN  
SERVICES, INC., JOHN and JANE DOES 1-  
20, MEMBERS OF THE OPERATIONS  
COMMITTEE, ASCENSION HEALTH, a  
Missouri Non-Profit Corporation, ASCENSION  
HEALTH ALLIANCE, D/B/A ASCENSION, a  
Missouri Non-Profit Corporation, ASCENSION  
HEALTH PENSION COMMITTEE, JOHN and  
JANE DOES 21-40, MEMBERS OF THE  
ASCENSION HEALTH PENSION  
COMMITTEE, each an individual, and JOHN  
and JANE DOES 41-60, each an individual,

Defendants.

Civil Action No.: 1:16-cv-06782  
Honorable John Z. Lee

**PLAINTIFF DIANN M. CURTIS'S MOTION FOR ENTRY OF [PROPOSED]  
PRETRIAL ORDER NO. 1 CONSOLIDATING CASES, APPOINTING KESSLER  
TOPAZ MELTZER & CHECK, LLP AS INTERIM LEAD CLASS COUNSEL,  
APPOINTING THE COLLINS LAW FIRM, P.C. AS INTERIM LIAISON CLASS  
COUNSEL AND ESTABLISHING PROCEDURES FOR CONSOLIDATION OF  
FUTURE-FILED CASES**

Pursuant to Rules 23(g) and 42(a) of the Federal Rules of Civil Procedure, Plaintiff Diann M. Curtis (“Plaintiff Curtis”), through her undersigned counsel, respectfully moves this Court for the entry of [Proposed] Pretrial Order No. 1 (the “Proposed Order”) consolidating cases, appointing Kessler Topaz Meltzer & Check, LLP (“KTMC”) as Interim Lead Class Counsel, appointing The Collins Law Firm, P.C. (“TCLF”) as Interim Liaison Class Counsel, and establishing procedures for the consolidation of future-filed cases. In support of this motion, Plaintiff Curtis avers as follows:

1. On April 11, 2016, Plaintiff Curtis filed a complaint on her behalf and all others similarly situated, styled *Curtis et al. v. Franciscan Wheaton Services, Inc. et al.*, No. 16-cv-4232 (N.D. Ill.), against Wheaton Franciscan Services, Inc. d/b/a Wheaton Franciscan Healthcare (“Wheaton Franciscan” or the “Company”) and related fiduciaries, on behalf of participants and beneficiaries of the Wheaton Franciscan System Retirement Plan (the “Plan”) for violations of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”). *See* Dkt. 1 (Complaint), generally.

2. In her Complaint, Plaintiff Curtis alleges that Defendants are, *inter alia*, substantially underfunding the Plan in violation of ERISA and wrongfully claiming the Plan is a “church plan,” and, therefore, exempt from funding requirements under ERISA. *See id.*

3. Specifically, Plaintiff Curtis alleges that the Plan is not a “church plan” because none of the Defendants are a “church” and that Defendants breached their fiduciary duties under ERISA by: (1) failing to ensure that the Plan is fully funded; and (2) continuing to set an inadequate funding policy that benefits the Company – not the participants of the Plan. *See Curtis* Compl., ¶¶ 40, 97-105. Plaintiff Curtis further alleges that Defendants violated their duties under ERISA by not: (1) filing annual reports with the Secretary of Labor; (2) providing

members of the proposed class required notices regarding the Plan's underfunded status; and (3) failing to provide the full panoply of ERISA information and disclosure obligations of ERISA plan trustees/administrators. *See Curtis Compl.*, ¶¶ 69-96.

4. On June 28, 2016, Bruce Bowen and Cheryl Mueller (collectively "Plaintiffs Bowen") filed a complaint, *Bowen v. Wheaton Franciscan Services, Inc.*, No. 16-cv-06782 (N.D. Ill.) (Lee, J.), Dkt. 1 ("*Bowen Compl.*"), on behalf of the same class of Plan participants, alleging substantively similar violations of ERISA against Defendants in this action. The *Bowen* Complaint includes claims for ERISA violations, breach of fiduciary duties, and for declaratory relief that the purported church-plan exemption violates the Establishment Clause of the First Amendment to the United States Constitution.

5. The *Curtis* and *Bowen* actions are substantially similar. In accordance with Federal Rules of Civil Procedure 23(g)(3) and 42(a), and the recommendations of the MANUAL FOR COMPLEX LITIGATION (FOURTH) (2014) (the "*Manual*"), Plaintiff Curtis submits for the Court's consideration a proposed form of Order that provides for: (a) the consolidation of the *Curtis* and *Bowen* actions (the "ERISA Actions"), and any actions arising from the same facts and circumstances as the ERISA Actions filed in or transferred to this District in the future; and (b) for the appointment of KTMC as Interim Lead Class Counsel for all plaintiffs and the proposed class, and TCLF as Interim Liaison Class Counsel.

6. KTMC, along with assistance from TCLF where necessary and appropriate, will organize the plaintiffs and the proposed class in the conduct of this litigation, and will ensure that the interests of the plaintiffs and the proposed class are represented in the prosecution of the consolidated action. Plaintiff Curtis respectfully submits that the proposed leadership structure will be fitting for the consolidated action.

7. This Motion is supported by the accompanying Memorandum of Law, the Declaration of Mark K. Gyandoh, together with all exhibits thereto, the [Proposed] Pretrial Order No. 1 filed contemporaneously herewith, and all papers and pleadings in this action.

8. Counsel for Plaintiff Curtis conferred with counsel for Defendants regarding this motion, and on July 1, 2016, counsel for Defendants confirmed that Defendants take no position as to KTMC's motion for designation as Interim Lead Class Counsel. On July 1, 2016, Counsel for Plaintiff Curtis also conferred with counsel for Plaintiffs Bowen by email regarding this motion, and while counsel for Plaintiffs Bowen stated that Plaintiffs Bowen intend to oppose appointment of KTMC as Interim Lead Class Counsel, counsel for Plaintiffs Bowen stated no position as to Plaintiff Curtis's proposed consolidation of the ERISA Actions.

9. A [Proposed] Order is provided herewith for the Court's consideration and convenience.

Dated: July 1, 2016

Respectfully submitted,

/s/ Mark K. Gyandoh

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***Counsel for Plaintiff***

**CERTIFICATE OF SERVICE**

On July 1, 2016, I caused to be electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Illinois, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Mark K. Gyandoh  
Mark K. Gyandoh