

**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,

v.

WHEATON FRANCISCAN SERVICES, INC.  
d.b.a. Wheaton Franciscan Healthcare, Wheaton  
Franciscan System Retirement Plan Committee,  
and John Does 1-20,  
Defendants.

Case No. 16-cv-04232

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,

v.

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

Case No. 1:16-cv-06782

Honorable Gary Feinerman

***BOWEN* PLAINTIFFS' MOTION FOR ENTRY OF [PROPOSED] PRETRIAL ORDER  
CONSOLIDATING CASES, APPOINTING COHEN MILSTEIN SELLERS & TOLL  
PLLC AND KELLER ROHRBACK L.L.P. AS INTERIM CO-LEAD 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, Plaintiffs Bruce Bowen and Cheryl Mueller (the “*Bowen* Plaintiffs”), by and through their undersigned counsel, respectfully move this Court for the entry of [Proposed] Pretrial Order (the “Proposed Order”) consolidating the above captioned cases, appointing Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”) and Keller Rohrback, L.L.P. (“Keller Rohrback”) as Interim Co-Lead Class Counsel, and establishing procedures for the consolidation of future-filed cases. A proposed Order is attached. In support of this Motion, the *Bowen* Plaintiffs state as follows:

1. On June 28, 2016, the *Bowen* Plaintiffs filed a class action complaint pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. (“ERISA”) on behalf of themselves and all similarly situated employees of Defendant Wheaton Franciscan Services, Inc., now under the ownership of Defendant Ascension Health Services (collectively, “Wheaton Franciscan”). The *Bowen* Plaintiffs alleged that Wheaton Franciscan violated ERISA by, among other things, underfunding the Wheaton Franciscan System Retirement Plan (the “Plan”), and erroneously claiming that the Plan is exempt from ERISA’s requirements under ERISA’s “church plan” exemption, in violation of the Establishment Clause of the First Amendment of the United States Constitution. The action was styled *Bowen v. Wheaton Franciscan Servs., Inc.*, No. 1:16-cv-06782 (N.D. Ill.) (the “*Bowen* Action” or “*Bowen*”).
2. The *Bowen* Complaint seeks, among other things, a declaration that the Plan is an ERISA-regulated plan, and an order requiring the Plan to be reformed to comply with ERISA, including deeming employees with at least three but less than five years of vesting service fully vested participants, and approximately \$128 million to remedy unlawful reductions in benefits.

3. In total, the *Bowen* Complaint alleges 12 counts of ERISA violations in addition to the constitutional claim (*i.e.*, that Defendants' erroneous claim to be operating a "church plan" violates the Establishment Clause.)
4. On April 11, 2016, Diann M. Curtis filed a similar complaint against Wheaton Franciscan Services—although not against Ascension Health, the current Plan sponsor. In her Complaint, Plaintiff Curtis alleges that Defendants are, among other things, underfunding the Plan in violation of ERISA and wrongfully claiming the Plan is a "church plan." That action was styled *Curtis v. Franciscan Wheaton Services, Inc.*, No. 16-cv-4232 (N.D. Ill.) (the "*Curtis* Action" or "*Curtis*").
5. In total, the *Curtis* Complaint alleges five counts of ERISA violations, all of which were also alleged in the *Bowen* complaint. However, the *Curtis* Complaint does **not** allege the seven additional violations uncovered by the *Bowen* Plaintiffs and their Counsel, nor does the *Curtis* Complaint allege a violation of the Constitution.
6. The *Bowen* and *Curtis* 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 *Bowen* Plaintiffs respectfully submit for this Court's consideration a proposed Order that provides for: (a) the consolidation of the *Bowen* and *Curtis* actions (the "Consolidated Actions"), and any actions arising from the same facts and circumstances as the Consolidated Actions filed in or transferred to this District in the future; and (b) for the appointment of Cohen Milstein and Keller Rohrback as Interim Co-Lead Class Counsel for all plaintiffs and the proposed class.
7. The *Bowen* Plaintiffs respectfully submit that because they filed a stronger complaint, containing more allegations of ERISA violations, additional defendants, and a

constitutional claim, their counsel, Cohen Milsten and Keller Rohrback, is best suited to protect the interests of the entire putative class.

8. In support of this Motion, the *Bowen* Plaintiffs also submit an accompanying Memorandum of Law, which also responds to the *Curtis* Plaintiff's previously filed 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, ECF No. 38; the Declaration of Karen L. Handorf, together with three exhibits; and Declarations from Ron Kilgard, Mary Ellen Signorille, and Karen W. Ferguson.
9. The Bowen Plaintiffs have contemporaneously filed a [Proposed] Order for this Court's consideration.

Dated: November 17, 2016

Respectfully,

/s/ Carol V. Gilden

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*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 17, 2016, I electronically filed the above notice with the Clerk of the Court using the Court's ECF system, which in turn sent notice to all attorneys of record.

/s/ Julie G. Reiser