



decided. Accordingly, the parties respectfully request that the Court allow Defendants 60 days following the date of the Supreme Court's ruling on the consolidated church plan cases to answer or otherwise respond to the Second Consolidated Amended Class Action Complaint.

### **PROCEDURAL BACKGROUND**

1. Plaintiff Hodges filed her initial Class Action Complaint on April 11, 2016, and Plaintiff Miller filed her initial Class Action Complaint on April 18, 2016.

2. On August 24, 2016, the Court consolidated the cases under the *Hodges* caption, appointed Plaintiffs Hodges and Miller as lead plaintiffs, appointed Plaintiff Hodges' counsel, Cohen, Milstein, Sellers & Toll, PLLC, as interim lead class counsel, and ordered that class counsel file a Consolidated Amended Complaint (CAC). (ECF 57).

3. On October 11, 2016, Plaintiffs filed the CAC. (ECF 69).

4. On December 5, 2016, Defendants filed a motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6). (EFC 70).

5. On the preceding business day, December 2, 2016, the Supreme Court granted *certiorari* in three other consolidated church plan cases, *Advocate Health Care Network v. Stapleton*, 817 F.3d 517 (7th Cir. 2016), *cert. granted*, 85 U.S.L.W. 3039 (U.S. Dec. 2, 2016) (No. 16-74); *St. Peter's Healthcare System v. Kaplan*, 810 F.3d 175 (3d Cir. 2015), *cert. granted*, 85 U.S.L.W. 3052 (U.S. Dec. 2, 2016) (No. 16-86); and *Dignity Health v. Rollins*, 830 F.3d 900 (9th Cir. 2016), *cert. granted*, 85 U.S.L.W. 3080 (U.S. Dec. 2, 2016) (No. 16-258) (together, the "Other Church Plan Cases"). The Supreme Court has set a briefing schedule, with oral argument expected to occur in March 2017, and a decision anticipated in or before June 2017.

**DEFENDANTS' CONSENT FOR LEAVE TO AMEND COMPLAINT**

6. Plaintiffs now intend to file an amended complaint, with Defendants' written consent pursuant to Rule 15(a)(2), in order, *inter alia*, to name an additional Plaintiff, Gary T. Brown, who, plaintiffs allege, is a vested participant in a cash balance pension plan maintained by Defendants and is entitled to an accrued pension benefit as a result of his three years of service with Defendants. Plaintiffs allege that the Plan violated ERISA by requiring five years of service in order to vest in the cash balance pension plan while ERISA requires only three years. Plaintiffs allege that Plaintiff Brown suffered a total loss of his accrued pension benefits because of the Plan's three-year vesting requirement.

7. The Second Consolidated Amended Class Action Complaint also adds Bon Secours, Inc. as an additional defendant and contains other changes intended to address arguments made in Defendants' motion to dismiss.

**STAY OF ALL CASE PROCEEDINGS**

8. In addition, the parties respectfully request to stay all further proceedings in this action, including discovery, pending the United States Supreme Court's ruling on the Other Church Plan Cases. The Other Church Plan cases all seek resolution of the same key legal issue presented here: whether only a church or convention or association of churches may establish a church plan under section 3(33) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(33) ("ERISA"). Resolution by the Supreme Court therefore will directly affect the claims and defenses available to the parties in this case. Because it would be inefficient for the parties and the Court in this particular case to spend time and resources on discovery and resolving a motion to dismiss before the Supreme Court rules, the parties respectfully request a stay.

**A. The Court has Inherent Power to Stay this Case**

9. It is well settled that federal courts have the inherent authority to control their dockets, including the power to stay proceedings pending before them. *See United States v. Clark Constr. Grp., LLC*, No. PJM 15-2885, 2016 WL 4269078, at \*7 (D. Md. Aug. 15, 2016) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). The Supreme Court has held that a federal district court has the authority to stay proceedings pending the disposition of another lawsuit involving similar issues. *See Landis*, 299 U.S. at 254; *see also Dignity Health v. Rollins*, No. 16-258 (U.S. September 21, 2016) (granting Defendants’ request to stay mandate of Ninth Circuit pending disposition of petition for writ of *certiorari*); *Carver v. Presence Health Network*, No. 1:15CV02905 (N.D. Ill. Oct. 13, 2016), ECF No. 78 (granting stay pending ruling on petitions for *certiorari* in church plan cases); *Cent. Valley Chrysler-Jeep Inc. v. Witherspoon*, No. CVF 04-6663 AWI LJO, 2007 WL 135688, at \*10 (E.D. Cal. Jan. 16, 2007) (granting stay where Supreme Court’s decision in pending case was likely to simplify issues before district court); *Yaakov v. Varitronics, LLC*, Civ. No. 14-5008 ADM/FLN, 2015 WL 5092501 (D. Minn. Aug. 28, 2015) (granting stay while Supreme Court ruled on an issue relevant to the case).

10. In this District, courts consider three factors when evaluating a request for a stay: “(1) the interests of judicial economy; (2) hardship and equity to the moving party if the action is not stayed; and (3) potential prejudice to the non-moving party.” *Davis v. Biomet Orthopedics, LLC*, Civ. No. JKB–12–3738, 2013 WL 682906 (D. Md. Feb. 22, 2013) (citations and internal quotation marks omitted). As demonstrated below, in this particular case, it is appropriate for the Court to exercise its broad discretion to issue a stay pending the Supreme Court’s disposition in the Other Church Plan Cases.

**B. Judicial Economy Favors a Stay**

11. The first factor the Court should consider weighs heavily in favor of granting a stay. The issue before the Supreme Court is identical to a key statutory interpretation issue in this case: “The question presented is whether the church plan exemption applies so long as a pension plan is maintained by an otherwise qualifying church-affiliated organization, or whether the exemption applies only if, in addition, a church initially established the plan.” See Petition for Writ of Certiorari, at i, *Advocate Health Care Network v. Stapleton*, No. 16-74 (U.S. July 15, 2016); Petition for Writ of Certiorari, at i, *Saint Peter’s Healthcare Sys. v. Kaplan*, No. 16-86 (U.S. July 18, 2016); Petition for Writ of Certiorari, at i, *Dignity Health et al. v. Rollins*, No. 16-258 (U.S. Aug. 29, 2016). Thus, the Supreme Court’s ruling will directly affect the claims and defenses available to the parties in this case and streamline the issues. It would be highly inefficient and a waste of resources for the Defendants and the Plaintiff to brief the issue of whether only a church may establish a church plan on a motion to dismiss – and for this Court to hear oral argument and decide that issue – when the Supreme Court has agreed to decide the issue. For similar reasons, in this particular case, it would be inefficient for the parties to proceed with discovery before the Supreme Court clarifies the church plan definition, which directly affects the parties’ claims and defenses. By contrast, a brief stay until the Supreme Court’s ruling on this issue will clarify and streamline the issues before this Court. Accordingly, judicial economy strongly favors a stay.

**C. Neither Party will be Disadvantaged or Prejudiced by a Stay**

Given that both parties have consented to and jointly filed this motion, it is clear that neither party will be disadvantaged or prejudiced by a stay. The parties agree that it is in the best interests of all involved to stay this case while the Supreme Court resolves a key statutory

interpretation issue. By contrast, Defendants would be harmed if a stay is not entered, because they would be required to prepare and file a responsive pleading without knowing the legal standard that will ultimately govern a central issue in this case. Moreover, as noted above, a decision from the Supreme Court is anticipated in or before June 2017, so the stay would not be lengthy. Courts have found stays of six months to 18 months to be reasonable and not prejudicial. *See, e.g., Audio MPEG, Inc. v. Hewlett-Packard Comp.*, No. 2:15CV73, 2015 WL 5567085, at \*5 (E.D. Va. Sept. 21, 2015) (nothing that “. . . a stay of at most eighteen months will not unduly prejudice plaintiffs . . .”); *Lopez v. Miami-Dade Cty.*, 145 F. Supp. 3d 1206, 1208 (S.D. Fla. 2015) (ruling that stay would not prejudice plaintiff where decision by Supreme Court was expected within the year); *Cent. Valley Chrysler-Jeep, Inc.*, 2007 WL 135688, at \*15 (“Plaintiffs’ exposure to potential inequity or hardship if [their requested relief] is delayed for six months is negligible and not sufficient to warrant this court moving forward in these proceedings without the benefit of whatever simplification of the issues the Supreme Court’s decision [] may afford.”); *Cortes v. Bd. of Governors*, No. 89 C 3449, 1991 WL 148181, at \*1 (N.D. Ill. July 19, 1991) (finding that although stay of proceedings pending resolution of Supreme Court case on analogous issue would delay trial for as much as a year or more, stay would not be unduly prejudicial). For these reasons, the parties agree that a stay would not be prejudicial or cause a hardship for any party.

### **CONCLUSION**

NOW, THEREFORE, the Defendants hereby provide written consent to the filing of Plaintiffs’ Second Consolidated Amended Class Action Complaint in this action, a true and correct copy of which is attached hereto as Exhibit A.

Further, to save the parties unnecessary time and expense, and in the interest of judicial economy, the parties respectfully request that the Court stay all proceedings in this case, including discovery, pending the Supreme Court's disposition of the Other Church Plan cases. The parties further request that the Court order that Defendants answer or otherwise respond to the Second Consolidated Amended Class Action Complaint on or before 60 days following the date of the Supreme Court's ruling on the Other Church Plan Cases.

DATED: January 13, 2017

**COHEN MILSTEIN SELLERS  
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s/ R. Joseph Barton

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**CERTIFICATE OF SERVICE**

I, Scott M. Lempert, attorney for Plaintiffs, hereby certify that on January 13, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which in turn sent notice to all counsel of record.

By: /s/ Scott M. Lempert