

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE WHEATON FRANCISCAN
FRANCISCAN ERISA LITIGATION

Case No. 16-cv-04232

Honorable Gary Feinerman

**DECLARATION OF JULIE GOLDSMITH REISER AND LYNN LINCOLN SARKO IN
SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF
SETTLEMENT AGREEMENT AND CERTIFICATION OF SETTLEMENT CLASS
AND UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES, EXPENSES,
AND FOR INCENTIVE AWARDS TO NAMED PLAINTIFFS**

Julie Goldsmith Reiser and Lynn Sarko respectfully submit this Declaration of Class Counsel in Support of Plaintiffs' Unopposed Motion for Final Approval of Settlement Agreement and Unopposed Motion for Award of Attorneys' Fees, Expenses, and for Incentive Awards to Named Plaintiffs. This Settlement,¹ if approved by the Court, will resolve in its entirety this class action litigation, *In re Wheaton Franciscan ERISA Litigation*, No. 16-cv-4232 (N.D. Ill. filed Apr. 11, 2016). We declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. Julie Goldsmith Reiser is a Partner with the law firm of Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein"), one of the firms preliminarily approved by this Court as Class Counsel for Plaintiffs and the Settlement Class. She is a member in good standing of the bars of the State of Washington and District of Columbia. She has personal knowledge of the facts set forth below (except for such facts as are within the exclusive personal knowledge of another Declarant) and, if called as witness, she could and would testify competently thereto.

¹ Capitalized terms not otherwise defined in this Declaration shall have the same meaning ascribed to them in the Class Action Settlement Agreement. A copy of the Settlement Agreement is attached as Exhibit A to Plaintiffs' Unopposed Motion for Final Approval of Settlement Agreement ("Final Approval Motion"), filed contemporaneously herewith.

2. Lynn Lincoln Sarko is the Managing Partner of Keller Rohrback, L.L.P (“Keller Rohrback”), also one of the firms preliminarily approved by this Court as Class Counsel for Plaintiffs and the Settlement Class. He is a member in good standing of the bars of Washington, Wisconsin, and the District of Columbia. He has personal knowledge of the facts set forth below (except for such facts as are within the exclusive personal knowledge of another Declarant) and, if called as witness, he could and would testify competently thereto.

3. Class Counsel have been responsible for the prosecution of the above-captioned action, and for negotiation of the Settlement Agreement.

4. The Court preliminarily approved the Settlement Agreement and Notice Procedures on September 13, 2017 (“Preliminary Approval Order”). The Settlement Agreement binds the Settlement Class, which consists of participants and beneficiaries of the Wheaton Franciscan System Retirement Plan (the “Plan”).

5. The Settlement provides that Defendant Ascension Health will guarantee the payment of the first \$29,500,000 of benefits that are distributable from the Plan to Settlement Class members in the event trust assets attributable to the Plan become insufficient to pay such benefits. Ascension Health or other Releasees under the Settlement Agreement may buy out this guarantee obligation by making contributions to the Plan’s trust that total in the aggregate \$25,000,000 (twenty-five million dollars). Additionally, the Settlement provides that current participants in the Plan will receive certain ERISA-like reporting, disclosure, and administrative protections. Notably, Plan participants will receive notice on an annual basis about the retirement benefits that they have accrued as well as the funded status of the Plan, its liabilities and its fiduciaries. Finally, the settlement prevents Ascension Health from decreasing any plan participant’s accrued benefit for the next seven and one-half years.

6. Class Counsel committed considerable time and resources to develop and prosecute this matter without any guarantee of payment. Class Counsel worked closely with the Named Plaintiffs, who invested time and effort in helping to develop the claims in the complaint and overseeing the mediation strategy. As detailed below, this case involved extensive investigation, consultation with experts, review of documents, and legal research, and motions practice, all of which were necessary to achieve a positive result for the Class.

I. PROCEDURAL & FACTUAL BACKGROUND

A. Initial Investigation into the Church Plan Exemption

7. This case is one of a number of cases pending around the country that challenge whether hospitals with a history of religious affiliations such as Wheaton Franciscan are entitled to claim that their pension plans are exempt from ERISA as “church plans,” defined in 29 U.S.C. § 1002(33).

8. Class Counsel, Cohen Milstein and Keller Rohrback, were responsible for developing this area of the law more than seven years ago, with the assistance of the main public interest organization concerned with pension rights, the Pension Rights Center (“PRC”). Through the PRC, Class Counsel learned that tens of thousands of hospital employees were being denied the rights and protections of ERISA, including funding, vesting rights, and disclosure rules, because hospitals claimed their pension plans were exempt from ERISA as church plans.

9. Cohen Milstein and Keller Rohrback devoted many hours to researching the definition of a “Church Plan” found in both ERISA and the Internal Revenue Code, 29 U.S.C. § 1002(33) and 26 U.S.C. § 414(e), including analyzing the statutory text, its interaction with other provisions in the U.S. Code, the legislative history of the statute, and agency and court

interpretations of the statute. Cohen Milstein and Keller Rohrback concluded, based upon their investigation, that there were three independent and alternative statutory prerequisites for a plan to be a Church Plan—that it be “established” by a church; that it be “maintained” by either a church or a so-called “principal-purpose organization”, and that the participants be employed by either a church or an entity “controlled by or associated with” a church, as those terms were defined under ERISA. The firms concluded that with respect to a typical hospital pension plan, none of these requirements were met.

10. Cohen Milstein and Keller Rohrback also understood, based upon their research, that filing Church Plan cases like this one would challenge private letter rulings from the IRS and informal Advisory Opinions of the U.S. Department of Labor. They also knew that the defense would maintain that the small amount of Church Plan case law then in existence would favor a defense reading of the Church Plan exemption. And they knew that once even a few of the cases were filed, the major hospitals claiming religious ties, which employ hundreds of thousands of people, would be arrayed against them.

11. Nevertheless, Cohen Milstein and Keller Rohrback decided to take on this high-stakes, high-risk litigation. They were the only lawyers to do so at that time. They filed the first cases in March of 2013. The early results in the district courts were mixed,² but when the first three cases reached the appellate courts, Cohen Milstein and Keller Rohrback achieved

² Compare, e.g., *Kaplan v. Saint Peter’s Healthcare Sys.*, No. 13-2941, 2014 WL 1284854 (D.N.J. Mar. 31, 2014); *Rollins v. Dignity Health*, 19 F. Supp. 3d 909 (N.D. Cal. 2013); and *Stapleton v. Advocate Health Care Network*, 76 F. Supp. 3d 796 (N.D. Ill. 2014), with *Overall v. Ascension Health*, 23 F. Supp. 3d 816 (E.D. Mich. 2014); *Medina v. Catholic Health Initiatives*, No. 13-1249, 2014 WL 4244012 (D. Colo. Aug. 26, 2014).

unanimous rulings in favor of the plaintiffs in the Third, Seventh, and Ninth Circuit.³ Those courts held that the hospital plans there at issue were not Church Plans because they were not established by a church; none of the courts of appeal reached the plaintiffs' alternative statutory arguments.

12. The defendants then sought review in the Supreme Court. The Supreme Court granted certiorari and consolidated the three cases in December 2016.⁴ Cohen Milstein and Keller Rohrback represented the plaintiffs in the Supreme Court; oral argument was heard March 27, 2017. The Supreme Court issued its unanimous decision on June 5, 2017, reversing the holdings of the appellate courts. *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017) ("*Advocate*"). After *Advocate*, Cohen Milstein and Keller Rohrback continue to pursue, on behalf of the plaintiffs, several other arguments in the district courts where these cases were originally filed. They have continued to amend complaints in other Church Plan cases to reflect the *Advocate* decision and to pursue plaintiffs' arguments that the pension plans of these hospital systems are not Church Plans.

13. The Settlement could not have been achieved without the firms' total immersion in these issues and continual commitment to the participants of these plans.

B. The Wheaton Franciscan Investigation and Litigation

14. In 2016, while Class Counsel was in the process of litigating more than a dozen "church plan" cases, Class Counsel began working with Plaintiffs Bruce Bowen and Cheryl

³ *Rollins v. Dignity Health*, 830 F.3d 900, 905 (9th Cir. 2016); *Stapleton v. Advocate Health Care Network*, 817 F.3d 517 (7th Cir. 2016); *Kaplan v. Saint Peter's Healthcare Sys.*, 810 F.3d 175 (3d Cir. 2015).

⁴ See *Dignity Health v. Rollins*, 137 S. Ct. 547 (Dec. 2, 2016); *Saint Peter's Healthcare Sys. v. Kaplan*, 137 S. Ct. 546 (Dec. 2, 2016); *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 546 (Dec. 2, 2016).

Mueller to investigate claims they might have against Wheaton Franciscan and Ascension.

15. Together, Class Counsel worked with Plaintiffs Bowen and Mueller to investigate the facts, circumstances, and legal issues associated with the allegations and defenses in the action.

16. This investigation included, *inter alia*: (a) inspecting, reviewing, and analyzing documents produced by or otherwise relating to Defendants, the Plan, and the administration and funding of the Plan; (b) researching the applicable law with respect to the claims asserted in this case and the possible defenses thereto; and (c) researching and analyzing governmental and other publicly-available sources concerning the Defendants, the Plan, and the industry.

17. Cohen Milstein and Keller Rohrback used this research to carefully draft the 100-page Complaint.

18. While Class Counsel was researching and drafting this Complaint, Plaintiff Diann Curtis, through her Counsel, filed a complaint against Wheaton Franciscan in the Northern District of Illinois for similar ERISA violations. *Curtis v. Wheaton Franciscan et al.* 1:16-cv-4232 (N.D. Ill. filed Apr. 11, 2016) (“*Curtis*”). On April 28, 2016, Defendants filed a motion to transfer *Curtis* out of the Northern District of Illinois and into the Eastern District of Missouri. ECF Nos. 12-14.

19. Following six weeks of briefing on Defendants’ motion to transfer the *Curtis* action, and before this Court ruled on the motion, Plaintiffs Bowen and Mueller, through Class Counsel, filed their Complaint in the Northern District of Illinois on June 28, 2016. *Bowen v. Wheaton Franciscan, et al.* 1:16-cv-6783 (N.D. Ill. filed Jun. 28, 2016) (“*Bowen*”). On July 8, 2016 “*Bowen*” was designated as related to *Curtis*, and was reassigned to this Court. ECF No. 44. On July 20, 2016, Defendants filed a supplemental motion to transfer the related cases out of

the Northern District of Illinois and into the Eastern District of Missouri. ECF No. 45. Following several months of briefing, on October 31, 2016, this Court denied Defendants' motion. ECF No. 58.

20. At almost the same time, on July 1, 2016, the law firm representing Plaintiff Diann Curtis filed a motion asking this Court to appoint it Interim Lead Class Counsel. ECF Nos. 38-40. Class Counsel, on behalf of the *Bowen* Plaintiffs, opposed this motion, arguing that they were the law firms best equipped to helm the two related cases as Interim Co-Lead Class Counsel. ECF Nos. 61-62. The briefing on this issue ran concurrently with the briefing on Defendants' motion to transfer the case. On January 4, 2017, this Court entered an order consolidating the *Bowen* and *Curtis* cases, and appointing Cohen Milstein and Keller Rohrback Interim Co-Lead Class Counsel. ECF No. 77.

21. At this point in the litigation, the parties and Court determined it would be most efficient to stay the litigation pending the Supreme Court's ruling in *Advocate*. On January 4, 2017, this Court ordered such a stay.

22. Throughout this litigation, Class Counsel have worked vigorously to ensure that Plaintiffs were represented by the law firms with the most experience and deepest understanding of the relevant law, and that Plaintiffs retained the right to litigate this case in the forum of their choosing.

C. Settlement Process

23. During the stay pending the resolution of the *Advocate* case, the parties began engaging in settlement negotiations, and attended an initial in-person mediation session on February 9, 2017 in Los Angeles, California. Both Class Counsel and Defendants' Counsel provided the mediator with their respective confidential mediation statements and also

exchanged multiple proposals and counter-proposals with each other concerning potential settlement terms.

24. The Settlement negotiations were extensive and took place over the course of several months. These negotiations were overseen by a third-party JAMS mediator, Robert A. Meyer, Esq. Mr. Meyer has substantial experience mediating cases involving ERISA and retirement plan issues, including cases involving the church plan exemption.

25. Although the mediation was ultimately unsuccessful in February, the parties agreed to continue seeing if a resolution could be achieved. After the Supreme Court ruled in the *Advocate* case, on June 27, 2017, the parties attended another in-person mediation session in Los Angeles, California, followed by numerous calls. The mediator was in constant contact with the parties both orally and in writing.

26. Following this second mediation session, with Mr. Meyer's assistance and after considering all relevant factors, the parties reached an agreement in principle to settle the case. It then took another month of negotiations to agree upon the provisions that were ultimately set forth in the Term Sheet executed on August 11, 2017.

27. The Settlement Agreement now before the Court, Exhibit A to Plaintiffs' Unopposed Motion for Final Approval of Settlement Agreement, is a comprehensive agreement based on the Term Sheet. It was executed by all parties on September 1, 2017. The Settlement is the result of lengthy arm's-length negotiations between the parties. The process was thorough, adversarial, and professional.

D. Settlement Agreement

28. Class Counsel crafted the Settlement Agreement to take into account the fact that the Plan was frozen as of February 29, 2016 and therefore would not be taking on additional Plan

participants. The Settlement Agreement was also motivated by the Plan's current funding level, the financial strength of Ascension, and the desire of Plan participants to better understand the amount of pension benefits they had accrued as well as the general financial status of the Plan.

29. Under the Settlement, for the next seven and one-half years, Ascension cannot reduce any participant's accrued benefit. Ex. A at §§ 8.1-8.2.

30. Also, effective immediately and as a permanent condition of settlement, the plan administrator for the Plan will be required to furnish participants with yearly notifications informing participants about the funded status of the Plan, a statement of each participant's individual benefit, the Plan's total income, the assets and liabilities of the Plan, and other information about the Plan's financial health. *Id.* § 8.3. This provision of the settlement mimics ERISA's notification requirements and was designed to provide Class members with ERISA-like informational protections so that they are able to plan for their retirement.

31. The absence of these protections meant that previously, some Plan participants were unaware of the benefits they had accrued or the resources available to meet the Plan's obligations. Class Counsel have received dozens of calls since the Class Notice was sent on October 13, from Class members seeking basic information about the Plan and their benefits. For instance, Class Counsel have received calls from Class members asking for an account of the Plan's assets and liabilities, and even calls from Class members asking if they are participants in the Plan. This is all information that participants will receive each year under the settlement. Ex. A at § 8.3.

32. In negotiating the Settlement, Class Counsel also remained cognizant of the Plan's funding level, which according to Defendants, has more than sufficient assets to pay actuarially estimated liabilities which necessitated a creative approach to providing a guarantee

or insurance in the event that there was a future shortfall in Plan assets.

33. Further, because Wheaton was purchased by Ascension—an organization with \$22 billion in net assets, over \$500 million of which is net cash—Class Counsel and the Class have every reason to believe that Plan participants' retirement benefits are more secure than if the sponsor was in financial distress.

34. Nevertheless, if the Plan's funding ever drops such that it cannot pay its liabilities, Ascension Health guarantees the first \$29.5 million of benefits payable from the Plan as a result of any such underfunding. Ex. A at § 7.1.2. This guarantee functions as a type of insurance that may not otherwise be available.

35. In Class Counsel's opinion, especially given the Supreme Court's recent decision in *Advocate*, and the time and expense necessary to litigate the ancillary issues surrounding whether this particular plan is properly maintained as an ERISA-exempt Church Plan, this settlement represents a particularly strong and near-term resolution for the Class.

E. Preliminary Approval

36. The Court preliminarily approved the Settlement, including the Notice Program, on September 13, 2017.

37. In accordance with the Preliminary Approval Order, the Notice Program consisted of (a) a mailed Class Notice sent to the last known address of members of the Settlement Class and (b) an internet publication of the Settlement Agreement, Class Notice, and other information about the litigation and the settlement.

38. The Class Notice detailed information about the Settlement, including: (1) a comprehensive summary of the Settlement's terms; (2) notice of Class Counsel's intent to request attorneys' fees, reimbursement of expenses, and class representative Incentive Awards

for the services performed by Named Plaintiffs; and (3) detailed information about the Released Claims.

39. In addition, the Class Notice provided information about the Fairness Hearing date, rights of members of the Settlement Class to object (and deadlines and procedures for objecting), and the procedures to receive additional information.

40. The mailed Class Notice provided members of the Settlement Class with contact information for Class Counsel, information on the toll-free phone number for inquiries, and two websites for further information: www.cohenmilstein.com/Wheaton-settlement and www.kellersettlements.com. Thus, the Class Notice fully informed Settlement Class members of the lawsuit and proposed Settlement, and enabled them to make an informed decision about their rights.

41. Before October 13, 2017, Class Counsel posted the Settlement Agreement, the Class Notice, the preliminary approval motion and order, and other case documents on a website identified in the Class Notice: www.cohenmilstein.com/Wheaton-settlement.

42. Before October 13, 2017, Class Counsel also posted the same information and documents on the second website identified in the Class Notice: www.kellersettlements.com.

43. Garden City Group, LLC, a professional services company retained by Defendants, mailed the notice to class members on October 13, 2017.

44. To date, Class Counsel have not received any objections to the proposed settlement.

45. Class Counsel received one letter from class member Diane L. Walter, who wrote to the Court within 24 hours of receiving her notice, expressing concerns about her retirement. Class Counsel attempted to call her several times after receiving her letter, in order to address her

concerns. On November 7, 2017, Julie Reiser spoke to Ms. Walter for approximately 40 minutes. By the end of the call, Ms. Walter said to Ms. Reiser, “Knowing what you have told me, I now understand and don’t have any concerns.” She reiterated, “My concerns are satisfied.” Ms. Walter later mailed Class Counsel a letter confirming that her concerns were satisfied and that she did not object to the settlement. ECF No. 93 (*filed* Nov. 20, 2017).

II. CLASS COUNSEL’S REQUEST FOR ATTORNEYS’ FEES AND EXPENSES

46. With respect to the statements in Sections II and III, below, the Declarants each make their declarations with respect to the fees and expenses incurred by their respective law firms only, and not as to those of each other’s law firms.

47. Pursuant to the Settlement Agreement, the Parties have agreed that Plaintiffs will seek no more than \$2.25 million of the \$25 million guarantee buyout value, to compensate Class Counsel for attorneys’ fees and expenses. The Parties have also agreed that Plaintiffs will seek incentive awards of \$10,000 each for Named Plaintiffs Bowen, Curtis, and Mueller, to be paid out of the \$2.25 million award request.

48. In total, Class Counsel and Counsel for Plaintiff Curtis expended 2,045.5 professional hours litigating and settling this case. This includes time spent on the following: (1) researching the law bearing on the Church Plan exemption and concluded large hospital systems were not entitled to the exemption and investigating the non-profit hospital business as it bore on liability and defenses; (2) investigating the facts of this case, and drafting and filing the Complaint; (3) reviewing hundreds of pages of documents, including publicly available information about the plans; (4) conducting factual and legal research; (5) engaging in motion practice to consolidate the *Bowen* action with the *Curtis* action, successfully opposing Defendants’ motion to transfer this case out of the Northern District of Illinois, appoint interim

lead counsel, and appoint interim lead plaintiffs; (6) monitoring developments in all the Church Plan cases in order to determine the impact on this case; (7) negotiating and crafting a comprehensive Settlement Agreement after arm's-length negotiations overseen by a third-party mediator; (8) successfully moving for preliminary approval of the Settlement; (9) drafting the Class Notice materials and posting them on two dedicated settlement websites; and (10) individually responding to hundreds of class member inquiries concerning the Class Notices, the Settlement, and this litigation.

49. As this case moves ahead through final approval proceedings, Class Counsel expects that they will continue to devote at least another one hundred hours to this matter. Indeed, Class Counsel still needs to: (1) prepare for and attend the final approval hearing; (2) research, draft, and prepare any additional submissions requested by the Court; (3) assist Settlement Class members with their inquiries; (4) respond to any objections that may arise; and (5) handle any resulting appeal.

50. This work represents 1,212.75 hours from professionals at Cohen Milstein, 327.90 hours from professionals at Keller Rohrback, 447.60 hours from Kessler Topaz Meltzer and Check, LLC ("Kessler Topaz") and 57.25 hours from The Collins Law Firm. *See also* Declaration of Mark K. Gyandoh, ¶4; Declaration of Robert L. Dawidiuk, ¶4.

51. All Plaintiffs' Counsel kept files contemporaneously documenting all time spent developing, investigating, and prosecuting the claims in this case. These time and expense reports for our respective firms are summarized herein and attached as Exhibits C (Cohen Milstein fees); D (Keller Rohrback fees); E (Declaration of Mark Gyandoh regarding Kessler Topaz's fees and expenses); F (Declaration of Robert L. Dawidiuk regarding The Collins Law Firm's fees and expenses); G (Cohen Milstein expenses); and H (Keller Rohrback expenses)

hereto.

52. The 2,045.5 hours Plaintiffs' Counsel collectively expended on this case were reasonably spent, especially given the high-stakes, high-risk nature of this litigation.

53. At Plaintiffs' Counsel's standard hourly rates, which are comparable to those of other class action attorneys, Plaintiffs' Counsel's total lodestar for this case comes to \$1,232,092.65.

54. The \$2,178,165.54 that Plaintiffs request in attorneys' fees for Class Counsel therefore represents a multiplier of less than 1.77.

55. Work was allocated across the firms to maximize efficiency. Plaintiffs' Counsel carefully distributed work to minimize the fees in this case; thus, senior attorneys did not do the work that could be accomplished by more junior attorneys, and attorneys did not do the work that could be completed by paralegals. Class Counsel assigned tasks depending on a number of considerations, with the goal of minimizing duplication of effort. If Class Counsel had not been stringent in these efforts, the number of hours devoted to the case would have been much higher.

56. Presenting an ERISA case of this type on the merits invites substantial risks, expense, and delay. Defendants have defended their actions with respect to the Plan to date, and there is no reason to believe they would not continue to do so through trial and on appeal if necessary. Their counsel, Proskauer Rose LLP, is highly experienced in defending complex ERISA class actions, which further required sufficient devotion of time and resources to this case.

57. Class Counsel have served in leadership positions in the past, and the hours spent on this case are consistent with Class Counsel's experience in those cases. The client representation agreements between Plaintiffs Curtis, Bowen, Mueller, and Class Counsel each

state that “counsel may seek an award of up to 33 1/3 % of any recovery,” which is also consistent with Class Counsel’s experience in similar cases.

58. The schedule attached as Exhibit C is a summary of time spent by Cohen Milstein attorneys and other professional support staff in this case and the lodestar calculation based on the firm’s current billing rates from the inception of the case through November 17, 2017.

59. The hourly rates charged by Cohen Milstein in this case have been approved in many judicial settlement hearings, and are consistent with rates approved in this Circuit and others in many recent class action cases.

60. The schedule attached hereto as Exhibit D is a summary of time spent by Keller Rohrback attorneys and other professional support staff in this litigation and the lodestar calculation based on the firm’s current billing rates from the development and inception of this case through November 17, 2017.

61. The hourly rates charged by Keller Rohrback in this case have been approved in many judicial settlement hearings, and are consistent with rates approved in this Circuit and others in many recent class action cases.

62. The Declaration of Mark Gyandoh attached hereto as Exhibit E contains a summary of time spent by Kessler Topaz and the lodestar calculation based on the firm’s average billing rates from the development and inception of this case through November 6, 2017. The hourly rates charged by Kessler Topaz in this case are commensurate with rates approved in other litigation, and are consistent with rates approved in this Circuit and others in many recent class action cases.

63. The Declaration of Robert L. Dawidiuk attached hereto as Exhibit F contains a summary of time spent by The Collins Law Firm and the lodestar calculation based on the firm’s

average billing rates from the development and inception of this case through February 8, 2017. The hourly rates charged by The Collins Law Firm in this case are commensurate with rates approved in other litigation, and are consistent with rates approved in this Circuit and others in many recent class action cases.

64. The lodestar figures provided above are based on the given firm's current billing rates and contemporaneous time records regularly prepared and maintained by our respective firms. Expense items are billed separately and such charges are not duplicated in a firm's billing rates.

65. Cohen Milstein's rates range from \$280 to \$880 per hour for 1,212.75 hours performed; Keller Rohrback's rates range from \$260 to \$940 per hour for 327.90 hours performed; Kessler Topaz's rates range from \$250 to \$850 per hour for 447.60 hours performed; and the Collins Law Firm's rates range from \$80 to \$325 per hour for 57.25 hours performed. *See Exhibits C, D, E, F.* The lower end represents rates charged by support staff such as paralegals, while the higher end represents rates charged by the senior partners.

66. These rates are reasonable given the complexity of this litigation, which, as mentioned previously, involved nuanced factual and legal issues against the backdrop of a fast-developing and hotly disputed area of the law.

67. The rates are justified when considering the host of risks presented to Plaintiffs in this contingent litigation. While this case was progressing, the threshold issue of whether a Church Plan must be established by a church reached the Supreme Court. The first settlement negotiation in this case took place shortly before the Supreme Court heard oral argument on March 27, 2017. Settlement negotiations continued after the argument; Plaintiffs were well aware of the risks of an adverse decision by the Supreme Court throughout the pendency of this

case. Additionally, Plaintiffs recognize both that the *Advocate* ruling had a negative impact on Plaintiffs' case, and also that post-*Advocate*, additional factual and legal issues remain in this litigation, including how the Supreme Court's ruling will apply to the specific facts of this case; class certification; liability; and damages.

68. Class Counsel's rates have been approved in other church plan cases. Most recently, Cohen Milstein and Keller Rohrback submitted fee petitions in cases in which they reported hourly rates at amounts comparable to those sought herein, and the courts approved the fee awards. *See Butler v. Holy Cross Hosp.*, Order Finally Approving Class Settlement, ¶ 21, No. 16-5907 (N.D. Ill. Jun. 29, 2017); *Griffith v. Providence Health & Services*, Pls. Motion for Attorney Fees and Expenses, and Incentive Fees to Named Plaintiffs, No. 14-01720 (W.D. Wash. Feb. 3, 2017) (seeking fees at identical rates to the present Action), Dkt # 57; Order Finally Approving Class Settlement ¶ 10, *Griffith v. Providence Health & Services*, No. 14-cv-1720 (W.D. Wash. Mar. 21, 2017), Dkt. # 69; *Overall v. Ascension Health*, Pl.'s Mot. for Awards of Att'ys' Fees, Expenses & Incentive Fee, No. 13-11396 (E.D. Mich. Aug. 17, 2015), Dkt. # 97; Order and Final Judgment ¶ 8, *Overall v. Ascension Health*, No. 13-11396 (E.D. Mich. Sept. 17, 2015), Dkt. # 115.

69. District courts have also granted final approval and awarded fees to Cohen Milstein based on the firm's then-current rates in several ERISA cases. *See, e.g., Redington v. Goodyear Tire & Rubber Co.*, No. 07-1999 (N.D. Ohio Sept. 22, 2008), Dkt. #113 (awarding then-current attorneys' rates between \$575 and \$625); *Chesemore v. All. Holdings, Inc.*, No. 09-413, 2014 WL 4415919 (W.D. Wis. Sept. 5, 2014) (awarding then-current attorneys' rates between \$395 and \$895); *Tuten v. United Airlines, Inc.*, 41 F. Supp. 3d 1003 (D. Colo. 2014) (awarding then-current attorneys' rates between \$395 and \$570); *In re Beacon Assocs. Litig.*, No.

09-777 (S.D.N.Y. May 29, 2013), Dkt. # 485 (awarding attorneys' rates between \$295 and \$895); *In re Bear Stearns Mortg. Pass-Through Certificates Litig.*, No. 08-8093 (S.D.N.Y. May 27, 2015), Dkt. # 287 (awarding attorneys' rates between \$210 and \$915); *N.J. Carpenters Health Fund v. RALI Series 2006-Q01 Trust*, No. 08-8781 (S.D.N.Y. July 31, 2015), Dkt. #353 (awarding attorneys' rates between \$240 and \$915); *Me. State Ret. Sys. v. Countrywide Fin. Corp.*, No. 12-5125 (C.D. Cal. Dec. 5, 2013), Dkt. #320 (awarding attorneys' rates between \$330 to \$835); *In re Oppenheimer Rochester Funds Grp. Sec. Litig.*, No. 09-2063 (D. Colo. July 31, 2014), Dkt. #527 (awarding attorneys' rates between \$250 and \$895).

70. Similarly, district courts granted final approval and awarded fees to Keller Rohrback based on the firm's then-current rates in several ERISA cases. *See, e.g., In re Ford Motor Co. ERISA Litig.*, No. 06-11718 (E.D. Mich. Feb. 15, 2011), Dkt. # 291 (awarding then-current attorneys' rates between \$331 and \$740); *In re Delphi Corp. Sec., Derivative & "ERISA" Litig.*, No. 05-1725 (E.D. Mich. May 12, 2010), Dkt. # 493 (awarding then-current attorneys' rates between \$300 and \$675); *In re CMS Energy ERISA Litig.*, No. 02-72834 (E.D. Mich. June 27, 2006), Dkt. #226 (awarding then-current rates between \$300 and \$640); *In re State St. Bank & Trust Co. ERISA Litig.*, No. 07-8488 (S.D.N.Y. Feb. 19, 2010), Dkt. # 191 (awarding then-current attorneys' rates between \$300 and \$740); *In re Bear Stearns Cos. ERISA Litig.*, No. 08-2804 (S.D.N.Y. Sept. 20, 2012), Dkt. #163 (awarding then-current attorneys' rates between \$295 and \$785); *Overall v. Ascension Health*, No. 13-11396 (E.D. Mich. Sept. 17, 2015), Dkt. # 115 (awarding then-current attorneys' rates between \$395 and \$895); *In re Bank of New York Mellon Corp. Forex Transactions Litig.*, MDL No. 2335 (S.D.N.Y. Sept. 24, 2015), Dkt. # 637 (awarding then-current attorneys' rates between \$475 and \$895); *Griffith v. Providence Health & Servs.*, No. 14-1720 (W.D. Wash. Mar. 21, 2017, Dkt. # 69 (awarding then-current attorneys'

rates between \$400 and \$940).

71. Additionally, Class Counsel's rates are on a par with, or even below, plaintiffs' firms with whom they have litigated cases. For example, on May 27, 2015, the Southern District of New York approved fees for attorneys at Bernstein Litowitz Berger & Grossmann ranging from \$340 to \$975 per hour.⁵ And, as a further example, on March 3, 2015, the Southern District of New York approved fees for attorneys at Labaton Sucharow LLP and Berman DeValerio ranging from \$425 to \$975 and \$300 to \$835 per hour, respectively.⁶ And on June 4, 2014, the District of West Virginia approved fees for attorneys at Labaton Sucharow LLP and Robbins Geller Rudman & Dowd LLP ranging from \$275 to \$975 per hour.⁷

72. Class Counsel's rates are also below those of defense firms that are defending Church Plan cases. The *National Law Journal's* annual survey of law firm billing rates in 2014 shows that the 2014 billing rates for attorneys at Proskauer Rose LLP, defense counsel in this case, ranged from \$295 to \$950.⁸ Similarly, the 2014 billing rates for attorneys at Arnold & Porter LLP, defense counsel in the *Dignity Church Plan* case, ranged from \$345 to \$950.⁹

III. CLASS COUNSEL'S EXPENSES

⁵ *In re Bear Stearns Mortg. Pass-Through Certificates Litig.*, No. 08-08903 (S.D.N.Y. May 29, 2015), Dkt. #287.

⁶ *In re Fannie Mae 2008 Sec. Litig.*, No. 08-7831 (S.D.N.Y. Mar. 3, 2015), Dkt. #552.

⁷ *In re Massey Energy Co. Sec. Litig.*, No. 10-00689 (S.D. W.Va. June 4, 2014), Dkt. #203.

⁸ See *Billing Rates Across the Country: The National Law Journal's Annual Survey of Law Firm Billing Rates for Partners & Associates*, Nat'l L. J. (Jan. 13, 2014), <http://www.nationallawjournal.com/id=1202636785489/Billing-Rates-Across-the-Country?slreturn=20150704133227>.

⁹ See *Billing Rates at the Nation's Priciest Firms*, Nat'l L. J. (Jan. 5, 2015), <http://www.nationallawjournal.com/id=1202713889426?slreturn=20150703191412> (last accessed Aug. 3, 2015).

73. Class Counsel have advanced or incurred \$41,834.46 in expenses to date. Summaries of each firm's expenses are attached hereto as Exhibits G (Cohen Milstein's expenses), H (Keller Rohrback's expenses), E (Declaration of Mark Gyandoh regarding Kessler Topaz's fees and expenses), and F (Declaration of Robert L. Dawidiuk regarding The Collins Law Firm's fees and expenses). The expenses incurred in developing and prosecuting this litigation are commercially reasonable and are reflected on the books and records of each firm. These books and records are prepared from expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred.

74. The categories of expenses for which Class Counsel seek reimbursement are the type of expenses routinely charged to hourly clients and should therefore be reimbursed here. These costs included, *inter alia*: filing fees; travel expenses for court appearances and mediation; copying, delivery and telecommunications charges; expert fees; mediator's charges; and similar litigation expenses. These expenses are typically billed by attorneys to paying clients, and are calculated based on the actual expenses of these services in the markets in which they have been provided. Counsel maintains appropriate back-up documentation for each expense. These expenses incurred were necessary to secure the resolution of this litigation.

IV. INCENTIVE AWARDS TO NAMED PLAINTIFFS

75. Class Counsel also wish to note the efforts made on behalf of the Class by the three Named Plaintiffs—Bruce Bowen, Cheryl Mueller, and Diann Curtis.

76. The Named Plaintiffs have actively worked with Class Counsel throughout the litigation. They collected numerous documents relating to their employment at Wheaton and their participation in the Plan; reviewed drafts of the Complaints and approved the filing of the final version; stayed abreast of the filings and settlement negotiations; monitored developments

in the other church plan cases pending in the courts of appeal and the Supreme Court; and were involved in the mediation and ultimate settlement of this litigation. The Named Plaintiffs communicated with Class Counsel by telephone, email, and by U.S. Mail throughout this lawsuit. They contributed time that could otherwise have been devoted to work and family obligations, and did so in order to help the members of the Settlement Class secure relief.

77. The Class Notice sent to the members of the Settlement Class disclosed that Class Counsel would seek Incentive Awards for these Plaintiffs, to be taken from the \$2.25 million award described in § 8.1.5 of the Settlement Agreement. To date, no objections to these awards have been received.

78. Class Counsel believe that payment of Incentive Awards to these Plaintiffs is justified in this case, and that the amounts are fair and reasonable in light of the benefits that Plaintiffs helped achieve for the Settlement Class.

V. CONCLUSION

For the reasons discussed herein, Class Counsel has concluded that the Settlement is a fair, reasonable, and adequate resolution of the claims against Defendants in this ERISA class action. The requested fees, expenses, and class representative Incentive Awards to the Named Plaintiffs are warranted as well. Thus, Named Plaintiffs and Class Counsel respectfully request that the Court grant their Unopposed Motion for Final Approval of Settlement Agreement and Certification of Settlement Class and approve attorneys' fees and expenses, grant Incentive Awards to the Named Plaintiffs, and enter the final order and judgment in its entirety.

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28TH day of November, 2017, in Washington, D.C.

COHEN MILSTEIN SELLERS & TOLL,
PLLC

By: s/ Julie Goldsmith Reiser

Julie Goldsmith Reiser
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, D.C. 20005
Tel: (202) 408-4600
Fax: (202) 408-4699
Email: jreiser@cohenmilstein.com

Attorney for Plaintiffs

KELLER ROHRBACK L.L.P.

By: s/Lynn Lincoln Sarko

Lynn Lincoln Sarko
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Tel: (206) 623-1900
Fax: (206) 623-3384
Email: lsarko@kellerrohrback.com

CERTIFICATE OF SERVICE

I certify that on November 28, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Julia Horwitz