

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

IN RE WHEATON FRANCISCAN
ERISA LITIGATION

Case No. 16-cv-04232

Honorable Gary Feinerman

DECLARATION OF HOWARD SHAPIRO

Pursuant to 28 U.S.C. § 1746, I, HOWARD SHAPIRO, declare as follows:

1. I am an partner in the law firm of Proskauer Rose LLP, counsel to Defendants, Wheaton Franciscan Services, Inc., d/b/a Wheaton Franciscan Healthcare, an Illinois Non-Profit Corporation, Wheaton Board Benefit Plans Committee, the Operations Committee of the Board of Directors of Wheaton Franciscan Services, Inc., Members of the Operations Committee, Wheaton Franciscan System Retirement Plan Committee, John and Jane Does 1-20, Members of The Wheaton Board Benefit Plans 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 (collectively, “Defendants”), in the above-captioned matter.

2. I submit this Declaration detailing Defendants’ compliance with the notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.* (“CAFA”).

3. Attached hereto as Exhibit 1 is a true and correct copy of the letter sent pursuant to CAFA (“CAFA Notice”) on September 7, 2017, to the United States Attorney General. *See* 28 U.S.C. § 1715(a)(1). A substantially similar letter was sent to the Attorney General for all United States and United States Territories in which “some or all of the matters alleged in the

class action are subject to regulation.” *See* 28 U.S.C. § 1715(a)(2).¹

4. As required by 28 U.S.C. § 1715(b), the CAFA Notice provided the definition of the Settlement Class. Enclosed with the CAFA Notice were copies of: (i) the Class Action Complaints in both matters prior to consolidation; (ii) the Motion for Preliminary Approval, and all supporting exhibits, including the Settlement Agreement; the proposed Order Preliminarily Approving the Settlement; the proposed notice to class members; the Declaration of Julie Goldsmith Reiser in Support of the Motion for Preliminary Approval; Plaintiffs’ Counsel’s firm résumés; and the proposed Final Judgment Order.; and (iii) a table providing a reasonable estimate of the number of class members residing in each state. (*See* Exhibit 1).

5. In response to the CAFA Notice, the Office of the Attorney General of the State of Washington sent an email dated October 17, 2017, to Proskauer acknowledging receipt of the CAFA Notice. Attached hereto as Exhibit 2 is a true and correct copy of that email.

6. Other than the communication described in this Declaration, Proskauer has not received any communications from the recipients of the CAFA Notice.

7. To the best of my knowledge, Defendants have fully complied with CAFA and have satisfied all their obligations thereunder.

¹ Specifically, notices were sent to the Attorneys General for Alabama; Alaska; Arizona; Arkansas; California; Colorado; Connecticut; Delaware; District of Columbia; Florida; Georgia; Hawaii; Idaho; Illinois; Indiana; Iowa; Kansas; Kentucky; Louisiana; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Montana; Nebraska; Nevada; New Hampshire; New Jersey; New Mexico; New York; North Carolina; North Dakota; Ohio; Oklahoma; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Tennessee; Texas; Utah; Vermont; Virginia; Washington; West Virginia; Wisconsin; Wyoming; and U.S. Virgin Islands. Upon request, Defendants will make available for the Court’s review all sent CAFA Notices.

I declare under penalty of perjury that the foregoing statements are true and correct.

s/ Howard Shapiro
HOWARD SHAPIRO

Dated: November 28, 2017
New Orleans, Louisiana

EXHIBIT 1



Proskauer Rose LLP 650 Poydras Street, Suite 1800 New Orleans, LA 70130-6146

Howard Shapiro
Member of the Firm
d 504.310.4085
f 504.310.2022
howshapiro@proskauer.com
www.proskauer.com

September 7, 2017

By First Class Mail Return; Receipt Requested

The Honorable Jefferson Beauregard Sessions, III
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: *In re: Wheaton Franciscan ERISA Litigation*, 1:16-cv-4232,
United States District Court for the Northern District of Illinois

Dear Attorney General Sessions:

Pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, Defendants Wheaton Franciscan Services, Inc. d.b.a. Wheaton Franciscan Healthcare (“Wheaton”), the Wheaton Franciscan System Retirement Plan Committee (collectively, “Wheaton”), and Ascension Health Alliance and Ascension Health (collectively, “Ascension”), through undersigned counsel, write to give notice of a proposed settlement in the above-referenced matter.

On September 1, 2017, Plaintiffs’ Counsel filed Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement Agreement (“Motion for Preliminary Approval”) and exhibits.

The Settlement Agreement contemplates that the Court will certify a class, for settlement purposes only, defined as: All persons who, as of July 31, 2017, are former and/or current Wheaton Franciscan System Retirement Plan (the “Plan”) participants, whether vested or non-vested, and their beneficiaries.

Enclosed with this letter are the following materials: (i) the Class Action Complaints in both matters prior to consolidation; (ii) the Motion for Preliminary Approval, and all supporting exhibits, *i.e.*, the Settlement Agreement; the proposed Order Preliminarily Approving the Settlement; the proposed notice to class members; the Declaration of Julie Goldsmith Reiser in Support of the Motion for Preliminary Approval; Plaintiffs’ Counsel’s firm résumés; and the proposed Final Judgment Order. Also, I provide a table with reasonable estimates of the number of class members residing in each state.



The Honorable Jefferson Beauregard Sessions, III
Attorney General of the United States
September 7, 2017
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Under the terms of the Settlement Agreement, for as long as the Plan is sponsored by any of the Defendants, Ascension Health guarantees the payment of the first Twenty-Nine Million, Five Hundred Thousand Dollars (\$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. Any of the Defendants, in their sole discretion, may satisfy Ascension Health's guaranty obligation at any time after the effective date of the Settlement, by making contributions to the Plan Trust that in the aggregate total Twenty-Five Million Dollars (\$25,000,000). The settlement also calls for certain agreed-upon plan provisions to be followed by the Plan. Because defined benefit plan trust funds hold assets collectively in trust for the benefit of all plan participants and beneficiaries, the guaranty amount is not allocable to any single settlement class member.

The Settlement Agreement also provides for the payment of up to \$2.25 million, to be awarded in the Court's sole discretion, for Plaintiffs' Counsel's fees, Plaintiffs' expenses and/or incentive fees for Plaintiffs.

There are no judicial hearings scheduled at this time. There are no other agreements between class counsel and counsel for Defendants, there are no final judgments or notices of dismissal in this matter, and there are no written judicial opinions relating to the materials described under 28 U.S.C. §§ 1715(b)(3)-(6).

We appreciate your time and attention to this matter. Please contact me with any questions or concerns.

Sincerely yours,

A handwritten signature in blue ink that reads "Howard Shapiro".

Howard Shapiro

cc, via e-mail:

Karen L. Handorf, Esq.
Lynn L. Sarko, Esq.

EXHIBIT 2

From: ATG MI WA CAFA-PrivateCP Lawsuits <privatecpa@ATG.WA.GOV>

Date: October 17, 2017 at 10:47:10 AM PDT

To: "howshapiro@proskauer.com" <howshapiro@proskauer.com>

Subject: RE: Matter # 10777247, Wheaton Franciscan ERISA Litigation

Sent on behalf of Assistant Attorney General Amy Teng:

Dear Mr. Shapiro:

This message acknowledges that we have received notice from you regarding the above mentioned case pursuant to the Class Action Fairness Act of 2005, 28 U.S.C § 1715 (CAFA).

Thank you for bringing this matter to the attention of the Washington State Attorney General's Office, Consumer Protection Division.

Sincerely,

Donnelle Brooke

Paralegal

Office of the Attorney General

Consumer Protection Division

Phone-206-464-6562