

SCOTT LEMPert, NJBN 035281995  
(A Member of the Bar of this Court)  
**Cohen Milstein Sellers & Toll PLLC**  
1100 New York Ave. NW  
Suite 500, West Tower  
Washington, DC 20005  
Telephone: (202) 408-4600

*Counsel for Plaintiff and Proposed Class*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

|                                       |   |                                |
|---------------------------------------|---|--------------------------------|
| DONNA GARBACCIO, individually         | ) |                                |
| and on behalf of all others similarly | ) |                                |
| situated,                             | ) | Civil Action                   |
|                                       | ) |                                |
| Plaintiff,                            | ) | No. 2:16-cv-02740 (JMV) (JBC)  |
|                                       | ) |                                |
| v.                                    | ) | Honorable John Michael Vazquez |
|                                       | ) | United States District Judge   |
| ST. JOSEPH'S HOSPITAL AND             | ) |                                |
| MEDICAL CENTER AND                    | ) | Honorable James B. Clark       |
| SUBSIDIARIES, et al.,                 | ) | United States Magistrate Judge |
|                                       | ) |                                |
| Defendants.                           | ) | Motion Day: September 19, 2016 |

---

MARY LYNN BARKER, ANNE )  
MARIE DALIO, AND DOROTHY )  
FLAR, individually and on behalf of )  
all others similarly situated, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
ST. JOSEPH’S HOSPITAL AND )  
MEDICAL CENTER AND )  
SUBSIDIARIES, et al., )  
) )  
Defendants. )

---

MOTION TO APPOINT INTERIM LEAD PLAINTIFF  
AND INTERIM CO-LEAD COUNSEL

---

Plaintiff Donna Garbaccio respectfully moves the Court to be appointed as Interim Lead Plaintiff, and to appoint her counsel, Cohen Milstein Sellers & Toll, PLLC (“Cohen Milstein”) and Ron Kilgard of Keller Rohrback L.L.P. (“Keller Rohrback”), as Interim Co-Lead Counsel. The proposed Order is attached to this motion.

As explained in the accompanying memorandum, “Cohen Milstein and Keller Rohrback have the most experience litigating this complicated issue of statutory and constitutional interpretation” and “are more qualified to serve as interim lead class counsel in this action.” *Hodges v. Bon Secours*, No. 1:16-cv-

1079 at 3, 5 (D. Md. August 24, 2016); *see also Sanzone v. Mercy Health*, No. 4:16-cv-923-CDP (E.D. Mo. Aug. 4, 2016) (holding these firms “are *best* able to represent the interests of the class”) (emphasis added). These firms conducted a full and comprehensive investigation of the ERISA claims against St. Joseph’s Hospital and Medical Center (“St. Joseph’s”), which is reflected in the *Garbaccio* complaint.

These firms’ demonstrated record of success includes opinions from three Courts of Appeals affirming their plaintiffs’ case theory: a church plan is one that can only be established by a church. Cohen Milstein and Keller Rohrback originated the legal theories and litigation strategies for the recent church plan litigation and hence have the greatest experience, subject-matter knowledge, skills, and resources to support the full and efficient litigation of this case. Indeed, in adjudicating competing motions to be appointed as lead counsel brought by (1) Cohen Milstein & Keller Rohrback and (2) Kessler Topaz Meltzer & Check and IZard Kindall & Raabe, one court recently concluded “that both counsel groups are adequate but that . . . Keller Rohrback L.L.P. and . . . Cohen Milstein Sellers & Toll, PLLC, *are best able to represent the interests of the class.*” *Sanzone* , 4:16 CV 923, Dkt. No. 91 at 1 (E.D. Mo. Aug. 4, 2016) (emphasis added). Plaintiff

Garbaccio requests that this Court find likewise and enter the proposed order appointing her Interim Lead Plaintiff and her counsel Interim Co-Lead Counsel.

Dated: August 26, 2016

Respectfully,

/s/ Scott Lempert

Scott Lempert, NJBN 035281995  
Karen L. Handorf, *admitted pro hac vice*  
Michelle C. Yau, *admitted pro hac vice*  
Kira L. Hettinger, *admitted pro hac vice*  
**COHEN MILSTEIN SELLERS  
& TOLL, PLLC**  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, DC 20005  
Tel: (202) 408-4600  
Fax: (202) 408-4699  
Email: slempert@cohenmilstein.com  
khandorf@cohenmilstein.com  
myau@cohenmilstein.com  
khettnger@cohenmilstein.com

Laura R. Gerber, *admitted pro hac vice*  
Lynn Lincoln Sarko, *admitted pro hac vice*  
Havila C. Unrein, *admitted pro hac vice*  
**KELLER ROHRBACK L.L.P.**  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
Tel.: (206) 623-1900  
Fax: (206) 623-3384  
Email: lgerber@kellerrohrback.com  
lsarko@kellerrohrback.com

hunrein@kellerrohrback.com

Ron Kilgard, *admitted pro hac vice*  
**KELLER ROHRBACK L.L.P.**  
3101 North Central Avenue, Suite 1400  
Phoenix, AZ 85012  
Tel.: (602) 248-0088  
Fax: (602) 248-2822  
Email: rkilgard@kellerrohrback.com

*Attorneys for Plaintiff*

## CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2016, I electronically filed the above referenced motion with the Clerk of the Court using the ECF system.

/s/ Scott Lempert

Scott Lempert, NJBN 035281995

**COHEN MILSTEIN SELLERS  
& TOLL, PLLC**

1100 New York Avenue, N.W.

Suite 500, West Tower

Washington, DC 20005

Tel: (202) 408-4600

Fax: (202) 408-4699

Email: [slempert@cohenmilstein.com](mailto:slempert@cohenmilstein.com)

*Attorney for Plaintiff Garbaccio*