

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
(WESTERN DIVISION)**

IN RE MERCY HEALTH ERISA LITIGATION

Civil Action No.: 1:16-cv-00441-SJD

MASTER CONSOLIDATED COMPLAINT

Plaintiffs David Lupp, Janet Whaley, Leslie Beidleman, Patricia Blockus, Charles Bork, Marilyn Gagne, Karl Mauger, Patricia Mauger, Beth Zaworski, Nancy Zink, Mary Alban, and Linda Derrick (collectively, “Plaintiffs”), by and through their attorneys, on behalf of themselves and all others similarly situated, and on behalf of the Mercy Pension Plans (defined below), allege the following based on personal knowledge with respect to their own circumstances and based upon information and belief pursuant to the investigation of counsel as to all other allegations:

INTRODUCTION

1. This is a class action brought on behalf of all participants and beneficiaries of the following defined benefit plans sponsored and operated by Defendant Mercy Health¹ that claim exemption from the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”) as “church plans,” together with other defined benefit plans that were previously merged into these Plans:

- The Mercy Health Partners – Northern Region Retirement Plan (the “Northern Region Plan”);
- The Mercy Health Partners Pension Plan (the “NEPA Plan”);

¹ Mercy Health was formerly known as Catholic Health Partners. The name was changed to Mercy Health in July 2014. See <http://www.mercy.com/corporate/at-a-glance.aspx>.

- The Community Health Partners Regional Medical Center Employees' Defined Benefit Pension Plan (the "Community Health Plan");
- The Mercy Health Partners Wilkes-Barre Employees Pension Plan ("Wilkes-Barre Plan"); and
- The Mercy Health Partners of Greater Cincinnati Retirement Plan (the "Cincinnati Plan").

2. The Northern Region Plan, the NEPA Plan, the Community Health Plan, the Wilkes-Barre Plan, and the Cincinnati Plan each include other defined benefit plans that were previously merged into them. The Northern Region Plan, the Community Health Plan, the NEPA Plan, the Wilkes-Barre Plan, and the Cincinnati Plan, together with the Plans that were merged into them (as described more fully below) are collectively referred to herein as the "Mercy Pension Plans."

3. As described herein, the Mercy Pension Plans do not meet ERISA's requirements for the "church plan" exemption because they are not maintained by an organization whose principal purpose is to administer or fund a retirement plan. The Mercy Pension Plans are maintained by Mercy Health, which is a healthcare company whose principal purpose is healthcare, not the administration of retirement plans for its employees. *See, e.g.*, About Mercy Health, "As the largest nonprofit healthcare system in Ohio, Mercy Health has a mission to serve the entire community, especially the poor and underserved," *available* at: <https://www.mercy.com/cincinnati/about-us/about-us>.

4. The Mercy Pension Plans are also not "church plans" because Mercy Health is not a church and is it not controlled by or associated with a church. Mercy Health does not "share common religious bonds and convictions" with a church. Mercy Health does not receive funding from a church or have a denominational requirement for its employees.

5. Mercy Health's failure to operate the Mercy Pension Plans in accordance with ERISA has real and significant effects on participants. As of December 31, 2016, the Mercy Pension Plans were collectively underfunded by \$177 million; slightly improved from the prior year's level of underfunding which exceeded \$233 million. See Consolidated Financial Statements and Supplementary Information, Mercy Health, Years Ended Dec. 31, 2016 and Dec. 31, 2015, at 55 ("2016 Financial Statements"). Moreover, Mercy Health avoids its obligations under ERISA to pay premiums to the Pension Benefit Guaranty Corporation (PBGC), which provide participants with insurance if the Plans default on their obligations or are terminated with insufficient assets. In doing so, Mercy Health puts participants' retirement savings at risk and obtains a competitive advantage over other healthcare providers which meet their financial obligations under the law.

6. Mercy Health also wrongfully uses the "church plan" exemption to short-change participants of their hard-earned retirement benefits. Participants in the cash balance plans who work between three and five years are denied retirement benefits in violation of ERISA §§ 203(a)(2) and (f)(2), 29 U.S.C. §§ 1053(a)(2) and (f)(2). Moreover, participants who choose to have their retirement benefits paid out in a lump sum are given less than they deserve because Mercy Health uses outdated actuarial assumptions that violate ERISA. Mercy Health also violates ERISA's anti-backloading provisions.

7. Since the Mercy Pension Plans are governed by ERISA, this action seeks to compel Defendants to comply with all of ERISA's funding, fiduciary, and notice requirements.

8. Plaintiffs also assert claims for breach of fiduciary duty under ERISA § 502 against the Mercy Health Retirement Plan Committee and all other committees that have served as the Plan Administrator and/or named fiduciaries since 2010, and John Does 1-20, the Committee members.

9. Plaintiffs also challenge under the First Amendment's Establishment Clause ERISA's "church plan" exemption as applied to the Mercy Pension Plans because Mercy Health is not a church and complying with ERISA would not cause it an undue religious burden.

10. In the alternative, if the Mercy Health Church Plans are not subject to ERISA's requirements, then Mercy Health has breached its duties under state law. Accordingly, Plaintiffs assert claims against Defendants for breach of fiduciary duty and breach of contract under Ohio law for failing to adequately fund the Mercy Pension Plans in accordance with the Plans' governing documents and for not acting in the best interests of the Mercy Pension Plans' participants.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it is a civil action arising under the laws of the United States, and pursuant to 29 U.S.C. § 1332(e)(1), which provides for federal jurisdiction of actions brought under Title I of ERISA.

12. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367 because the state law claims are so related to Plaintiffs' other claims in this action that they form part of the same case or controversy.

13. This Court also has subject matter jurisdiction over Plaintiffs' alternative state law claims pursuant to 28 U.S.C. § 1332(d)(2), as this is a class action, the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest or costs, and there is diversity of citizenship between some members of the class and some defendants.

14. This Court has personal jurisdiction over Defendants because they are headquartered and transact business in, or reside in, and have significant contacts with, this

District, and because ERISA provides for nationwide service of process. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

15. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because some or all of the violations of ERISA occurred in this District and Defendants reside and may be found in this District.

16. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because Defendants do business in this District and a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District.

PARTIES

I. Plaintiffs

17. Plaintiff David Lupp is a citizen and resident of Ohio. He was employed by Mercy Health or its predecessors from 1984 to 1996. He is a vested participant in the Cincinnati Plan,² which Mercy Health maintains and contends is a “church plan.”

18. Plaintiff Janet Whaley is a citizen and resident of Ohio. She was employed by Mercy Health or its predecessors from 1966 until 2013. She is a vested participant in the St. Vincent Plan (defined in ¶ 44 below), which Mercy Health maintains and contends is a “church plan.”

19. Plaintiff Leslie Beidleman is a citizen and resident of Ohio. She was employed by Mercy Health or its predecessors from 1983 until 2013. She is a vested participant in the Northern Region Plan and the St. Vincent Plan (defined in ¶ 44 below), both of which Mercy Health maintains and contends are “church plans.”

² Upon information and belief, Mercy Health referred to the Cincinnati Plan as the “Mercy Health Partners Retirement Plan” in communications with Mr. Lupp.

20. Plaintiff Patricia Blockus is a citizen and resident of Pennsylvania. She was employed by Mercy Health or its predecessors from 1977 until 2009. She is a vested participant in the Wilkes-Barre Plan, which Mercy Health maintains and contends is a “church plan.”

21. Plaintiff Charles Bork is a citizen and resident of Ohio. He was employed by Mercy Health or its predecessors from 1974 until 2015. He is a vested participant in the Northern Region Plan and the St. Vincent Plan (defined in ¶ 44 below), both of which Mercy Health maintains and contends are “church plans.”

22. Plaintiff Marilyn Gagne is a citizen and resident of Michigan. She was employed by Mercy Health or its predecessors from 1973 until 2013. She was a vested participant in the Northern Region Plan and the St. Vincent Plan (defined in ¶ 44 below), both of which Mercy Health maintains and contends are “church plans.”

23. Plaintiff Karl Mauger is a citizen and resident of Pennsylvania. He was employed by Mercy Health or its predecessors from 1984 until 2011. He was a vested participant in the NEPA Plan, which Mercy Health maintains and contends is a “church plan.”

24. Plaintiff Patricia Mauger is a citizen and resident of Pennsylvania. She was employed by Mercy Health or its predecessors from 1995 until 2011. She is a vested participant in the NEPA Plan, which Mercy Health maintains and contends is a “church plan.”

25. Plaintiff Beth Zaworski is a citizen and resident of Ohio. She was employed by Mercy Health or its predecessors from 1987 until 2014. She is a vested participant in the Community Health Plan³, which Mercy Health maintains and contends are “church plans.”

³ Upon information and belief, Mercy Health referred to the Cincinnati Plan and its predecessor plans as the “Catholic Health Partners Pension Plan,” the “Mercy Employees’ Defined Benefit Pension Plan,” the “Community Health Partners of Ohio Employees Defined Benefit Pension Plan,” the “Community Health Partners of Ohio Defined Benefit Retirement Plan”; and the “Retirement Plan for the Employees of St. Joseph Hospital and Health Center” in communications with Ms. Zaworski.

26. Plaintiff Nancy Zink is a citizen and resident of Ohio. She was employed by Mercy Health or its predecessors from 1976 until 2013. She is a vested participant in the Northern Region Plan and the St. Vincent Plan (defined in ¶ 44 below), both of which Mercy Health maintains and contends are “church plans.”

27. Plaintiff Mary Alban is a citizen and resident of Cincinnati, Ohio. She was employed by Mercy Health from May 2001 to June 2015. She is a vested participant in the Cincinnati Plan⁴, which Mercy Health maintains and contends is a “church plan.”

28. Plaintiff Linda Derrick is a citizen and resident of Cincinnati, Ohio. She was employed by Mercy Health from May 1991 to June 2015. She is a vested participant in the Cincinnati Plan, which Mercy Health maintains and contends is a “church plan.”

29. Each of the Plaintiffs is a participant in one or more of the Mercy Pension Plans within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7) and therefore each of the Plaintiffs is able to maintain an action with respect to the Plans pursuant to ERISA §§ 502(a)(1), (2), (3) and (c), 29 U.S.C. §§ 1132(a)(1), (2), (3) and (c).

II. Defendants

30. Defendant Mercy Health is a 501(c)(3) non-profit corporation organized under the laws of Ohio which maintains its headquarters in Cincinnati, Ohio. Defendant Mercy Health is the employer responsible for maintaining the Mercy Pension Plans and is, therefore, the plan sponsor of the Mercy Pension Plans within the meaning of ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B).

⁴ Upon information and belief, Mercy Health referred to the Cincinnati Plan as the “Mercy Health Partners of SW OH Retirement Plan” in communications with Ms. Alban.

31. Furthermore, pursuant to ERISA section 3(16)(A)(ii), 29 U.S.C. § 1002 (16)(A)(ii), Mercy Health is a plan administrator to any of the Mercy Pension Plans that do not otherwise specifically designate a plan administrator in their governing documents.

32. The Mercy Health Retirement Plan Committee is an unincorporated association, which, upon information and belief, is the Administrator and/or named fiduciary for some, or possibly all, of the Mercy Pension Plans.

33. John Does 1-20 are the individual members of the Mercy Health Retirement Plan Committee and members of any other committee(s) which administer the Mercy Pension Plans. The identity of the members of the Committee, and any of the other committee(s) which was (or were) responsible for carrying out the provisions of the Mercy Pension Plans, is currently not known. Upon information and belief, John Does 1-20 are senior executive officers of Mercy Health who knew or should have known the facts alleged herein. John Does 1-20 are hereafter collectively referred to as the “Committee Members.”

CLASS ACTION ALLEGATIONS

34. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and the class (the “Class”) defined as follows:

All participants in and beneficiaries of the Mercy Pension Plans.
Excluded from the Class are Defendants and any individuals who are subsequently to be determined to be fiduciaries of the Plans.

35. The members of the Class are so numerous that joinder of all members is impractical. Upon information and belief, the Class includes thousands of persons.

36. Plaintiffs’ claims are typical of the claims of the members of the Class because Plaintiffs’ claims, and the claims of all Class members, arise out of the same conduct, policies, and

practices of Defendants as alleged herein, and all members of the Class are similarly affected by Defendants' wrongful conduct.

37. There are questions of law and fact common to the Class and these questions predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

- A. Whether the Mercy Pension Plans are exempt from ERISA as Church Plans;
- B. Whether the Mercy Pension Plans' Administrator(s) failed to comply with ERISA, including ERISA's reporting and disclosure provisions;
- C. Whether the Mercy Pension Plans' fiduciaries failed to establish a funding policy in compliance with the Plans' documents and ERISA;
- D. Whether the Mercy Pension Plans' fiduciaries breached their fiduciary duties in failing to comply with the provisions of ERISA set forth above
- E. Whether the Committee Defendants have breached the fiduciary duty they owe to the Mercy Pension Plans' participants;
- F. Whether Mercy Health breached the fiduciary duty it owes to the Mercy Health Plan's participants; and
- G. Whether Mercy Health breached its contract with the Plans' participants by not adequately funding the Plans.

38. Plaintiffs will fairly and adequately represent the Class and have retained counsel experienced and competent in the prosecution of ERISA class actions and complex litigation. Plaintiffs have no interests antagonistic to those of other members of the Class. Plaintiffs are committed to the vigorous prosecution of this action, and anticipate no difficulty in the management of this litigation as a class action.

39. This action may be properly certified under either subsection of Rule 23(b)(1). Class action status in this action is warranted under Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendant. Class action status is also warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

40. In the alternative, certification under Rule 23(b)(2) is warranted because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

41. In the alternative, certification under Rule 23(b)(3) is also appropriate. A class action is superior to other available methods for the fair and efficient adjudication of the controversy within the meaning of Rule 23(b) and in consideration of the matters set forth in Rule 23(b)(3)(A)-(D). Because of the amount of the individual Class members' claims relative to the complexity of the litigation and the financial resources of the Defendants, few, if any, members of the Class would seek legal redress individually for the wrongs complained of herein. The maintenance of separate actions would place a substantial and unnecessary burden on the courts, and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members. Absent a class action, Class members will continue to suffer damages, and Defendants' misconduct will proceed without remedy.

SUBSTANTIVE ALLEGATIONS

I. The Mercy Pension Plans

A. The Northern Region Plan

42. Mercy Health is the plan sponsor for the Northern Region Plan. *See* Second Amended Northern Region Plan Document at § 4, MERCY_00000142.

43. The Northern Region Plan was formerly known as the “St. Charles Mercy Hospital Retirement Plan” (the “St. Charles Plan”). *See* Northern Region Plan Document at Introduction, MERCY_00000009.

44. Effective January 1, 2003, the St. Vincent Medical Center Defined Benefit Plan (the “St. Vincent Plan”) and the Riverside Mercy Hospital Retirement Plan (a/k/a the St. Anne Mercy Hospital Retirement Plan) (the “St. Anne Plan”) merged into the St. Charles Plan. The resulting merged plan was renamed the Northern Region Plan. *See* Northern Region Plan Document at Introduction, MERCY_00000009.

45. The Northern Region Plan was amended effective January 1, 2003 to add a cash balance account feature. *See* Northern Region Plan Document at Introduction, MERCY_00000009.

46. Effective December 31, 2005, the Mercy Hospital Retirement Plan of Tiffin, Ohio (the “Tiffin Plan”) merged into the Northern Region Plan. *See* Northern Region Plan Document at Introduction, MERCY_00000009.

47. Participants in the St. Anne Plan, the St. Charles Plan, the St. Vincent Plan, and the Tiffin Plan remained participants in those plans and were able to receive the benefits they accrued prior to when their respective plan merged. *See* Northern Region Plan Document at § 2.1.8, MERCY_00000012.

48. These participants were each referred to in the Northern Region Plan Document as “Old Plan Participants.” See Northern Region Plan Document at § 2.1.27, MERCY_00000019.

49. Old Plan Participants who continued to work for Mercy Health after their respective plan merged also became “Cash Balance Participants” in the Northern Region Plan. See Northern Region Plan Document at § 2.1.8(ii), MERCY_00000012.

50. At all times prior to January 1, 2017, Mercy Health was the named fiduciary for the Northern Region Plan. See Northern Region Plan Document at § 22.6 and First Amendment to Northern Region Plan Document at ¶ 4, MERCY_00000092 and MERCY_000000137.

51. The Northern Region Plan Document provides Mercy Health “the right by action of its board of trustees) to amend or terminate the (Northern Region) Plan retroactively or prospectively.” See Third Amendment to Northern Region Plan Document at ¶ 12, MERCY_00000147.

52. Mercy Health is responsible for appointing the members of the committee that administer the Northern Region Plan, each of which “serve at the pleasure of (Mercy Health).” See Northern Region Plan Document at § 13.1, MERCY_00000068.

53. Between January 1, 2013 and December 31, 2013, the committee that administered the Northern Region Plan was the “Committee of the Plan.” See Northern Region Plan Document at § 2.1.10, MERCY_00000012.

54. Effective January 1, 2014, the “Committee of the Plan” became the “Catholic Health Partners Retirement Plan Committee or other person(s) appointed by (Mercy Health) in accordance with Section 13.1” of the Northern Region Plan Document. See First Amendment to Northern Region Plan Document at ¶ 1, MERCY_00000137.

55. At all times since January 1, 2015, the “Committee” as the term is defined by the Northern Region Plan Document has been the “Mercy Health Plan Retirement Committee.” See Third Amendment to Northern Region Plan Document at ¶ 1, MERCY_00000141.

56. The Mercy Health Plan Retirement Committee has the power to amend or terminate the Northern Region Plan “if the estimated annual financial impact of the amendment or termination does not exceed \$15 million.” See Third Amendment to Northern Region Plan Document at ¶ 1, MERCY_00000141.

57. Mercy Health’s senior vice president of human resources has the authority “to amend or terminate the Northern Region Plan “if the estimated annual financial impact of the amendment of termination does not exceed \$1 million.” See Third Amendment to Northern Region Plan Document at ¶ 1, MERCY_00000141.

58. The Mercy Health Retirement Plan Committee is responsible setting a funding policy by determining the financial needs of the Northern Region Plan and communicating them to Mercy Health. See Northern Region Plan Document at § 13.6, MERCY_00000068.

59. All contributions to provide benefits under the Northern Region Plan are made by the “Employers.” See Northern Region Plan Document at § 10, MERCY_00000061. Participants are not allowed to make contributions. *Id.*

60. The Northern Region Plan Document defines the term “Employer” as “Mercy Health System – Northern Region, St. Anne Mercy Hospital, St. Charles Mercy Hospital, St. Vincent Mercy Medical Center and Lifestar Ambulance, Inc.” See Northern Region Plan Document at § 2.1.16, MERCY_00000014. The term also includes Mercy Hospital of Tiffin, Ohio for periods on or after January 1, 2006 and Mercy Medical Partners, Northern Region, LLC for periods on or after January 1, 2012. *Id.*

61. The Mercy Health Retirement Plan Committee is supposed to be responsible for administering the Northern Region Plan. See Northern Region Plan Document at § 13.1, MERCY_00000142.

62. The Mercy Health Retirement Plan Committee, however, “may authorize one or more of its members or such other agent or agents as it determines to execute and deliver any instrument.” See Second Amendment to Northern Region Plan Document at ¶ 9, MERCY_00000142.

63. Effective January 1, 2017, the Mercy Health Retirement Plan Committee became the named fiduciary for the Northern Region Plan. See Fourth Amendment to Northern Region Plan Document at ¶ 8, MERCY_00000151.

64. Mercy Health is still responsible for appointing members of the Mercy Health Retirement Plan Committee. See Northern Region Plan Document at 13.2, MERCY_00000068.

1. Cash balance component of the Northern Region Plan

65. The Northern Region Plan added a cash balance feature effective January 1, 2003 that established “a bookkeeping account known as a ‘Cash Balance Account’ for each person who becomes a Cash Balance Participant.” See Northern Region Plan Document at § 6.1, MERCY_00000038.

66. Subject to limited exceptions, participants in the St. Anne, St. Vincent Plan, and the St. Charles Plan who were below age 55 and any new employees of Mercy Health who were eligible to participate in the Northern Region Plan after January 1, 2003 became “Cash Balance Participants.” See Northern Region Plan Document at § 2.1.8, MERCY_00000012.

67. Participants' cash balance accounts are credited with an amount each year known as a "Contribution Credit." Between January 1, 2003 and January 1, 2007, the Contribution Credits were as follows:

Participant's Age	Percent of Compensation	Minimum Credit
Under 30	3%	\$600.00
30 – 39	4%	\$800.00
40 – 44	5%	\$1,000.00
45 – 49	6%	\$1,200.00
50 – 54	7%	\$1,400.00
55 and over	8%	\$1,600.00

See Northern Region Plan Document at § 6.3(a)(i), MERCY_00000038-39.

68. The Contribution Credits for the Plan Years beginning on or after January 1, 2007 have been:

Participant's Age	Percent of Compensation	Minimum Credit
Under 30	3%	\$750.00
30 – 39	4%	\$1,000.00
40 – 44	5%	\$1,250.00
45 – 49	6%	\$1,500.00
50 – 54	7%	\$1,750.00
55 and over	8%	\$2,000.00

See Northern Region Plan Document at § 6.3(a)(i), MERCY_00000039.

69. Amounts in participants' cash balance accounts are credited with additional amounts each year after January 1, 2003 at a rate "equal to the average monthly rate of return of ten-year United States Treasury Bonds for the twelve months ending with October of Plan Year prior to the subject Plan Year." See Northern Region Plan Document at § 6.6(a), MERCY_00000043.

70. Section 4.5 of the Northern Region Plan Document states that only those participants who have at least five years of vesting service will be eligible to receive the Normal Retirement Benefit. See Northern Region Plan Document at § 6.1, MERCY_00000030.

2. The St. Anne Plan

71. Participants in the St. Anne Plan (including those over the age of 55 at the time of the merger that did not elect to become Cash Balance Participants in the Northern Region Plan) are entitled to receive a monthly payment based on their final annual earnings and the years of service. *See* Northern Region Plan Document at Appendix A, § A.3, MERCY_00000094.

72. Participants in the St. Anne Plan who were not older than 55 as of January 1, 2003 (and thus not eligible to convert their accrued benefits to a cash balance account in the Northern Region Plan) are able to choose “a lump sum cash payment which is actuarially equivalent” to the single life annuity the participant would have otherwise have received. *See* Northern Region Plan Document at Appendix A, § A.15(d), MERCY_00000101.

73. Between January 1, 2003 and December 31, 2013, to determine if a lump sum cash payment was actuarially equivalent to the single life annuity the participant would have otherwise have received, the St. Anne Plan used the mortality table from Revenue Ruling 2001-62 and an interest rate assumption of 9.0%. *See* Northern Region Plan Document at Appendix A, § A.16(d), MERCY_00000102.

74. Beginning January 1, 2014, the St. Anne Plan began applying a 7% interest rate assumption to calculate a lump sum cash payout. *See* Second Amendment to Northern Region Plan Document at ¶ 3, MERCY_00000139.

3. The St. Charles Plan

75. Participants in the St. Charles Plan (including those over the age of 55 at the time of the merger that did not elect to become Cash Balance Participants in the Northern Region Plan) are entitled to receive a monthly payment based on their final annual earnings and the years of service. *See* Northern Region Plan Document at Appendix B, § B.3, MERCY_00000104.

76. Participants in the St. Charles Plan who were not older than 55 as of January 1, 2003 (and thus not eligible to convert their accrued benefits to a cash balance account in the Northern Region Plan) are able to choose “a lump sum cash payment which is actuarially equivalent” to the single life annuity the participant would have otherwise have received. See Northern Region Plan Document at Appendix B, § B.17(d), MERCY_00000114.

77. Between January 1, 2003 and December 31, 2013, to determine if a lump sum cash payment was actuarially equivalent to the single life annuity the participant would have otherwise have received, the St. Charles Plan used the mortality table from Revenue Ruling 2001-62 and an interest rate assumption of 9.0%. See Northern Region Plan Document at Appendix B, § B.18(d), MERCY_00000115.

78. Beginning January 1, 2014, the St. Charles Plan began applying a 7% interest rate assumption to calculate a lump sum cash payout. See Second Amendment to Northern Region Plan Document at ¶ 4, MERCY_00000140.

4. The St. Vincent Plan

79. Participants in the St. Vincent Plan (including those over the age of 55 at the time of the merger that did not elect to become Cash Balance Participants in the Northern Region Plan) are entitled to receive a monthly payment based on their final annual earnings and the years of service. See Northern Region Plan Document at Appendix C, § C.2, MERCY_00000117.

80. Participants in the St. Charles Plan who were not older than 55 as of January 1, 2003 (and thus not eligible to convert their accrued benefits to a cash balance account in the Northern Region Plan) are able to choose a lump sum that is actuarially equivalent to the single life annuity the participant would have otherwise have received. See Northern Region Plan Document at Appendix C, § C.12(f), MERCY_00000125.

81. Between January 1, 2003 and December 31, 2013, to determine if a lump sum cash payment was actuarially equivalent to the single life annuity the participant would have otherwise have received, the St. Charles Plan used the UP-1984 Mortality Table and an interest rate assumption of 9.0%. See Northern Region Plan Document at Appendix B, § B.18(d), MERCY_00000115.

82. Beginning January 1, 2014, the St. Charles Plan began applying a 7% interest rate assumption to calculate a lump sum cash payout. See Second Amendment to Northern Region Plan Document at ¶ 4, MERCY_00000140.

B. The NEPA Plan

83. The NEPA Plan is a cash balance plan.

84. The NEPA Plan combined two defined benefit plans that Mercy Health System Northeast Region maintained prior to December 1, 1995. See NEPA Plan Document at Preamble, MERCY_00000157.

85. In 1995, the two defined benefit pension plans were merged and converted to a cash balance plan called “the Mercy Health System Northeast Region Cash Balance Pension Plan.” See NEPA Plan Document at Preamble, MERCY_00000157. In 1998, the name was changed to “Mercy Health Partners Pension Plan” (the “NEPA Plan”). See NEPA Plan Document at Preamble, MERCY_00000157.

86. Mercy Health is the sponsor for the NEPA Plan. See NEPA Plan Document at § 1.20, MERCY_00000163.

87. The NEPA Plan’s named fiduciary is the “Pension Committee.” See NEPA Plan Document at § 10.1, MERCY_00000208.

88. Mercy Health Partners is the “employer” for the NEPA Plan. *See* NEPA Plan Document at Preamble, MERCY_00000157. Other employers that participate in the NEPA Plan are Mercy Hospital, Scranton, Mercy Hospital, Wilkes-Barre, Mercy Special Care Hospital, and Mercy Med-Care. *See* NEPA Plan Document at Appendix D, MERCY_00000239.

89. Benefits under the NEPA Plan are paid from a trust that is “financed exclusively by contributions made by” Mercy Health Partners. *See* NEPA Plan Document at § 9.2, MERCY_00000206.

90. Participants are not permitted to contribute to the NEPA Plan. *See* NEPA Plan Document at § 9.7, MERCY_00000207.

91. Mercy Health Partners has the “power to amend or terminate the (NEPA) Plan at any time by action of its Board of Directors.” *See* NEPA Plan Document at § 11.1.(a), MERCY_00000212.

92. Mercy Health appoints the members of the “Pension Committee.” *See* NEPA Plan Document at § 1.11 and First Amendment to Plan Document at ¶ 1, MERCY_00000212 and MERCY_00000261.

93. Between May 1, 2011 and December 31, 2013, the NEPA Plan defined the term “Pension Committee” as “the committee appointed by Catholic Health Partners through its Senior Vice-President of Human Resources, or any other person(s) appointed by (Mercy Health Partners’) Board, to supervise the administration of the Plan...” *See* NEPA Plan Document at § 1.11, MERCY_00000161.

94. Between January 1, 2014 and December 31, 2014, the NEPA Plan defined “Pension Committee” as “the Catholic Health Partners Retirement Plan Committee or other person(s)

appointed by (Mercy Health Partners) to administer the Plan.” See First Amendment to NEPA Plan Document at ¶ 1, MERCY_00000257.

95. At all times since December 1, 2015, the NEPA Plan has defined “Pension Committee” as the Mercy Health Retirement Plan Committee. See Third Amendment to NEPA Plan Document at ¶ 2, MERCY_00000261.

96. The “Pension Committee” for the NEPA Plan has “all powers necessary to administer the Plan in accordance with its terms and applicable law, and shall also have discretionary authority to determine eligibility for participation or benefits and to construe the terms of the Plan.” See NEPA Plan Document at § 10.2, MERCY_00000208-209.

97. The “Pension Committee” has the authority to “establish a funding policy” for the NEPA Plan. See NEPA Plan Document at § 10.2(b)(3), MERCY_00000209.

98. The Pension Committee may delegate any of its duties to administer the NEPA Plan from “time to time to any other person(s).” See NEPA Plan Document at § 10.2(b)(8), MERCY_00000209.

99. At all times since January 1, 2014, the “Pension Committee” has had the authority to amend the NEPA Plan if the estimated annual financial impact does not exceed \$15 million. See First Amendment to NEPA Plan Document at ¶ 2, MERCY_00000257.

100. At all times since January 1, 2014, Mercy Health’s senior vice president of human resources has had the authority to amend the NEPA Plan if the estimated annual financial impact of the amendment of termination does not exceed \$1 million. See Third Amendment to NEPA Plan Document at ¶ 2, MERCY_00000257.

101. At all times since January 1, 2014, the “Pension Committee” has had the authority to terminate the NEPA Plan if the estimated annual financial impact does not exceed \$15 million. *See* Third Amendment to NEPA Plan Document at ¶ 7, MERCY_00000266.

102. At all times since January 1, 2014, Mercy Health’s senior vice president of human resources has had the authority to terminate the NEPA Plan if the estimated annual financial impact of the amendment of termination does not exceed \$1 million. *See* Third Amendment to NEPA Plan Document at ¶ 7, MERCY_00000266.

103. Participants in the NEPA Plan have a hypothetical account whose value is based on the initial contributions made when the NEPA Plan converted from a defined benefit plan to a cash balance plan in 1995. *See* NEPA Plan Document at § 4.1, MERCY_00000180. Additional amounts were credited to participants’ accounts for each additional year of service after 1995 and balances accrued interest, regardless of whether participants were still employed by Mercy Health Partners. *See* NEPA Plan Document at § 4.1, MERCY_00000180.

104. The NEPA Plan is frozen. No participants have been accruing benefits as of May 1, 2011. *See* NEPA Plan Document at § 1.2, MERCY_00000159.

105. Participants in the NEPA Plan become vested when they have worked for Mercy Health Partners or any of its affiliated entities for five years. *See* NEPA Plan Document at Appendix § 6.1(a), MERCY_00000191.

C. The Community Health Plan.

106. The Community Health Plan is a defined benefit plan.

107. Participants in the Community Health Plan are entitled to receive a retirement benefit based on their compensation and years of service. *See* Community Health Plan Document at § 4.3, MERCY_00000294-295.

108. The Community Health Plan is the result of a merger in 1994 of the St Joseph Hospital and Health Center Defined Benefit Pension Plan and the Lorain Community Hospital Defined Benefit Pension Plan. *See* Community Health Plan Document at Background, MERCY_00000273.

109. Mercy Health is the plan sponsor for the Community Health Plan. *See* Community Health Plan Document at § 1.67, MERCY_00000284.

110. Mercy Health-Regional maintains the Community Health Plan. *See* Community Health Plan Document at § 3.21, MERCY_00000321.

111. Mercy Health may amend or terminate the Community Health Plan at any time. *See* Community Health Plan Document at §§ 11.5(a) and 11.6(b), MERCY_00000318 and MERCY_00000319.

112. Mercy Health-Regional Medical Center, LLC (“Mercy Health-Regional”) is the “employer” for the Community Health Plan. *See* Community Health Plan Document at § 1.37, MERCY_00000280.

113. The Community Health Plan Document states that “Mercy Health-Regional (and/or Mercy Health) intends, but does not guarantee, to contribute to the (Community Health) Plan the amounts necessary to provide Plan benefits.” *See* Community Health Plan Document at § 12.1, MERCY_00000320.

114. Mercy Health selects the members Mercy Health Retirement Committee and monitors their performance. *See* Community Health Plan Document at §§ 11.3, MERCY_00000315.

115. The Mercy Health Retirement Plan Committee is the plan administrator for the Community Health Plan. See Community Health Plan Document at §§ 1.65 and 1.66, MERCY_00000283-284.

116. The Mercy Health Retirement Plan Committee “may delegate all or any portion of its (Community Health) Plan duties and responsibilities.” See Community Health Plan Document at § 11.1(c), MERCY_00000315.

117. The Mercy Health Retirement Plan Committee has the authority to amend or terminate the Community Health Plan if the estimated annual financial impact does not exceed \$15 million. See Community Health Plan Document at §§ 11.5(b) and 11.6(b), MERCY_00000318 and MERCY_00000319.

118. Mercy Health’s senior vice president of human resources has the authority to amend or terminate the Community Health Plan “if the estimated annual financial impact of the amendment or termination does not exceed \$1 million.” See Community Health Plan Document at §§ 11.5(b) and 11.6(b), MERCY_00000318 and MERCY_00000319.

119. The Mercy Health Retirement Committee “has the sole and absolute discretionary authority to construe and interpret the (Community Health Plan) and to make factual and legal determinations.” See Community Health Plan Document at § 11.1(b), MERCY_00000315.

120. The Mercy Health Retirement Committee “may delegate all of any portion of its Plan duties and responsibilities” and “may retain, dismiss and replace, the services of counsel, accountants, and any other agents it deems advisable.” See Community Health Plan Document at §§ 11.1(b) and (c), MERCY_00000315.

D. The Wilkes-Barre Plan.

121. The Wilkes-Barre Plan consists of a cash balance plan and a defined benefit plan. *See* Wilkes-Barre Plan Document at Preamble, MERCY_00000331.

122. On or about December 1, 2005, Mercy Health Partners sold its Wilkes-Barre facilities to Geisinger Health System Foundation and, as of that date, “all employees at the Wilkes-Barre facility” ceased being employees of Mercy Health Partners. *See* Wilkes-Barre Plan Document at Preamble, MERCY_00000331.

123. Mercy Health Partners, however, retained the liabilities associated with the Wilkes-Barre Plan after the sale to Geisinger Health System Foundation.

124. Effective January 1, 2007, Mercy Health Partners “spun-off and transferred all of assets and liabilities related to the Wilkes-Barre facilities,” establishing the Wilkes-Barre Plan. *See* Wilkes-Barre Plan Document at Preamble, MERCY_00000332; *see also* Wilkes-Barre Plan Document at § 1.22, MERCY_00000337.

125. “All (Wilkes-Barre) Plan Participants are either retirees or terminated vested participants as a result of the sale of the Wilkes-Barre facilities to the Geisinger Health System Foundation.” *See* Wilkes-Barre Plan Document at § 2.1, MERCY_00000342.

126. Mercy Health Partners is the “Employer” for the Wilkes-Barre Plan. *See* Wilkes-Barre Plan Document at § 1.20, MERCY_00000337.

127. Benefits to participants in the Wilkes-Barre Plan are “financed exclusively by contributions made to the Trustee by the (Mercy Health Partners).…” *See* Wilkes-Barre Plan Document at § 9.2, MERCY_00000367.

128. Participants are not permitted to contribute to the Wilkes-Barre Plan. *See* Wilkes-Barre Plan Document at § 9.7, MERCY_00000368.

129. Effective May 1, 2011, Catholic Health Partners became the plan sponsor for the Wilkes-Barre Plan. *See* Wilkes-Barre Plan Document at § 1.20, MERCY_00000337.

130. On January 23, 2012, Catholic Health Partners (now Mercy Health) amended and restated the Wilkes-Barre Plan to “continue to separately ***maintain*** the (Wilkes-Barre) Plan covering Wilkes-Barre employees...” *See* Wilkes-Barre Plan Document at Preamble, MERCY_00000332 (emphasis added).

131. The named fiduciary for the Wilkes-Barre Plan is the “Pension Committee.” *See* Wilkes-Barre Plan Document at § 10.1, MERCY_00000369.

132. Between January 1, 2011 and April 30, 2011, the Pension Committee consisted of the “person(s) appointed by the (Mercy Health Partners’) Board of Directors to supervise the administration of the (Wilkes-Barre) Plan.” *See* Wilkes-Barre Plan Document at § 1.13, MERCY_00000335.

133. Between May 1, 2011 and December 31, 2013, the Pension Committee was “the committee appointed by Catholic Health Partners through its Senior Vice-President of Human Resources, or any other person(s) appointed by the (Mercy Health Partners’) Board, to supervise the administration of the (Wilkes-Barre) Plan...” *See* Wilkes-Barre Plan Document at § 1.13, MERCY_00000335.

134. Between January 1, 2014 and December 31, 2014, the Pension Committee was the “Catholic Health Partners Retirement Plan Committee or other person(s) appointed by (Mercy Health Partners) to administer the (Wilkes-Barre) Plan. *See* First Amendment to Wilkes-Barre Plan Document at ¶ 1, MERCY_00000429.

135. Since January 1, 2015, the Pension Committee has been the Mercy Health Retirement Committee. See Second Amendment to Wilkes-Barre Plan Document at ¶ 2, MERCY_00000430.

136. Mercy Health Partners has the power to amend or terminate the Wilkes-Barre Plan at any time by action of its Board. See Wilkes-Barre Plan Document at § 11.1(a), MERCY_00000373; See also generally First Amendment to Wilkes-Barre Plan Document, MERCY_00000429; Second Amendment to Wilkes-Barre Plan Document, MERCY_00000430; Third Amendment to Wilkes-Barre Plan Document, MERCY_00000437.

137. Participants in the Wilkes-Barre Plan who were part of the defined benefit component under Document # 3 were eligible to receive a monthly pension benefit based on their average monthly earnings and years of service. See Wilkes-Barre Plan Document at Appendix F, § F.1, MERCY_00000403.

138. Participants in the Wilkes-Barre Plan who were part of the cash balance component under Document # 1 or Document # 2 were eligible to receive a pension benefit based on the value of their hypothetical account. See Wilkes-Barre Plan Document at Appendix G, § G.1, MERCY_00000408.

139. Participants in the Wilkes-Barre Plan became vested in their benefits when they worked for five or more years or if they were employed by Mercy Health Partners when they reached “normal retirement age.” See Wilkes-Barre Plan Document at § 6.1(a), MERCY_00000350.

E. The Cincinnati Plan

140. The Cincinnati Plan combined the Anderson Mercy Hospital Retirement Plan (“Anderson Plan”), the Clermont Mercy Hospital Retirement Plan (the “Clermont Plan”) and The

Sisters of Mercy of Hamilton, Ohio Retirement Plan (the “Hamilton Plan”).⁵ See Cincinnati Plan Document at Introduction, MERCY_00000443.

141. Mercy Health is the plan sponsor for the Cincinnati Plan. See Cincinnati Plan Document at § 1.142, MERCY_00000460.

142. Mercy Health Partners, Mercy Hospital Anderson, Clermont Mercy Hospital, Mercy Hospital of Anderson and Fairfield, Mercy Medical Associates, Mercy St. Theresa Center, Mercy Home Care, Mercy Urgent Care, Mercy Foundation, Mercy Life Management Systems, Mercy Milford Imaging, Mercy Anderson Healthplex and Mercy Fairfield Healthplex are the participating employers (collectively, the “Cincinnati Plan Employers”) in the Cincinnati Plan. See Cincinnati Plan Document at § 1.136, MERCY_00000459.

143. The Cincinnati Plan is funded by contributions to a trust. Each of the Cincinnati Plan Employers “intend(), but do() not guaranty, to contribute to the (Cincinnati) Plan the amounts actuarially necessary to provide the benefits under the (Cincinnati) Plan.” See Cincinnati Plan Document at § 19.1, MERCY_00000640.

144. The Cincinnati Plan Document states that neither Mercy Health, the Cincinnati Plan Employers nor the Mercy Health Retirement Plan Committee “shall have any obligation to pay any benefits due under the (Cincinnati Plan) other than from the Trust.” See Cincinnati Plan Document at § 19.7, MERCY_00000641.

145. Participants are not permitted to contribute to the Cincinnati Plan. See Cincinnati Plan Document at § 19.2, MERCY_00000640.

⁵ Upon information and belief, the Hamilton Plan used to be known as the Retirement Plan for Mercy Hospital of Hamilton and Fairfield.

146. The Cincinnati Plan has a defined benefit component and a cash balance component.

147. The Anderson Plan, Clermont Plan and Hamilton Plan are each defined benefit plans.

148. Effective January 1, 1997, the cash balance component was added to the Cincinnati Plan. *See* Cincinnati Plan Document at § 1.22, MERCY_00000447.

149. Certain participants in the Anderson Plan, Clermont Plan, and Hamilton Plan who were actively employed by Mercy Health on January 1, 1997 had their accrued benefits converted to an initial cash balance account in the Cincinnati Plan. *See* Cincinnati Plan Document at §§ 3.3(a), MERCY_00000477.

150. Mercy Health may amend or terminate the Cincinnati Plan at any time. *See* Cincinnati Plan Document at §§ 21.1 and 21.2, MERCY_00000644.

151. The Cincinnati Plan Document states that the Cincinnati Plan is administered by the Mercy Health Retirement Plan Committee. *See* Second Amendment to Cincinnati Plan Document at ¶ 3, MERCY_00000657.

152. The Mercy Health Retirement Plan Committee is permitted to “delegate all or any portion of its duties and responsibilities...” *See* Cincinnati Plan Document at § 20.8, MERCY_00000643.

153. Participants receive an annual credit to their hypothetical cash balance accounts based on their annual compensation and how many years they have worked for Cincinnati Plan Employer. *See* Cincinnati Plan Document at §§ 6.4(b) and 6.9, MERCY_00000520 and MERCY_00000527.

154. The annual credit is the total of a “base contribution credit” and an “excess contribution credit.” See Cincinnati Plan Document at § 6.9, MERCY_00000527. The formula for the “base contribution credit” is:

Years of Service	Percentage of compensation contributed
Less than 10	4%
10-19	6%
20 or more	8%

See Cincinnati Plan Document at § 6.9(a)(1), MERCY_00000527.

155. The formula for the “excess contribution percentage” is:

Years of Service	Percentage of compensation contributed
Less than 10	6%
10-19	8%
20 or more	10%

See Cincinnati Plan Document at § 6.9(a)(2), MERCY_00000527.

156. Balances of participants’ cash balance accounts earn interest each year at a rate set forth in the Cincinnati Plan Document. See Cincinnati Plan Document at §§ 1.29 and 6.13, MERCY_00000447 and MERCY_00000534.

157. Participants in the Cincinnati Plan must have five years of service to become vested in their cash balance accounts. See Cincinnati Plan Document at § 7.3(b), MERCY_00000539.

II. Mercy Health’s Business

158. Mercy Health is a healthcare conglomerate serving Kentucky and Ohio, operating in eight regional markets – Cincinnati, Ohio, Irvine, Kentucky, Lima, Ohio, Lorain, Ohio, Paducah, Kentucky, Springfield, Ohio, Toledo, Ohio, and Youngstown, Ohio.

159. Mercy Health “provides management direction to these separately organized market delivery systems...” See 2016 Financial Statements at 6.

160. Mercy Health has 23 hospitals, 250 health facilities and nearly 32,000 employees. It is the largest health system in Ohio, and the fourth largest employer in Ohio.

161. Mercy Health boasts that it is “one of the largest nonprofit health systems in the United States,” operating “more than 200 healthcare organizations that meet the healthcare needs of people in Ohio and Kentucky.” See <http://www.mercy.com/mercy-health-at-a-glance.pdf>.

162. Mercy Health’s 2016 Financial Statements state that “Mercy Health, formerly Catholic Health Partners (CHP) is a Catholic health organization, supervising market delivery system consisting of hospitals, nursing homes, and other organizations providing health-related services.” See 2016 Financial Statements at 6.

163. Mercy Health’s name change further underscores that it is a healthcare conglomerate, not a church or association of churches.

164. Mercy Health is not, and does not claim to be, a church or a convention or association of churches.

165. Mercy Health’s 2016 Financial Statements represent that it is a “health organization” that is “sponsored” by Partners in Catholic Health Ministries, a public juridic person of the Roman Catholic Church. See 2016 Consolidated Financial Statements at 6.

166. However, neither the Partners in Catholic Health Ministries nor the Roman Catholic Church has any ownership interest in Mercy Health.

167. Mercy Health does not receive funding from Partners in Catholic Health Ministries or the Roman Catholic Church. Moreover, neither Partners in Catholic Health Ministries nor the Roman Catholic Church has any liability for any of Mercy Health’s debts or obligations.

168. Mercy Health is not owned by any church or convention or association of churches.

169. Mercy Health does not receive funding from any church or convention or association of churches.

170. Mercy Health does not claim that any church or convention or association of churches has liability for Mercy Health's debts are obligations.

171. Mercy Health does not impose any denominational requirement on its employees.

172. Mercy health has no denominational requirement for its patients or clients.

173. As of December 31, 2016, Mercy Health had over \$6.3 billion in net assets and a net operating revenue of nearly \$4.5 billion. *See* 2016 Financial Statements at 3, 4.

174. While Mercy Health has a policy of treating certain patients regardless of their ability to pay, Mercy Health's direct and indirect costs of charity care, *i.e.*, the cost of free or discounted health services provided to persons who cannot afford to pay, fell from \$160 million in 2013 to \$57 million in 2014, to \$39 million in 2015 and was again \$39 million in 2016. *See* 2016 Financial Statement at 23.

175. Upon information and belief, the "charity care" Mercy Health provides is substantially similar to other hospitals that do not claim to be religiously affiliated.

176. In addition to its extensive hospital network, Mercy Health has numerous subsidiaries and related entities, including HealthSpan, a health maintenance organization and many taxable, for-profit organizations that include laboratory services companies, surgery centers, dialysis centers, insurance business, real estate management, property rental and medical equipment sales. Mercy Health also owns a captive insurance company in the Cayman Islands, CHP Insurance (SPC), Ltd.

177. Mercy Health is an integrated healthcare company. It is clearly not a church.

178. Mercy Health also relies on revenue bonds, not parishioner donations, to raise money. In 2015, Mercy Health issued \$100 million of hospital facilities revenue bonds and \$150 million of taxable bonds to fund capital projects at Jewish Hospital and Anderson Hospital, both of which are in Cincinnati. In rating the bonds that Mercy Health issued, Fitch Ratings stated that “23-hospital system holds the leading market share in Ohio” and “consistent operating profitability.” See <http://www.beckershospitalreview.com/finance/mercy-health-raises-new-debt-for-capital-projects.html>

179. Mercy Health’s Board of Trustees is not controlled by a church. Mercy Health’s website states:

Board members at Mercy Health are offered a unique opportunity to: improve the health of the community; advocate change for those in need; grow intellectually, spiritually and emotionally; expand their knowledge; share their expertise; and interact with others in an environment which challenges and stimulates their thinking. Board membership is a synergistic partnership with the organization to develop each other to their fullest potential.

See <https://www.mercy.com/global/about-us/mercy-health-system-leadership>.

180. Of the fifteen (15) individuals on Mercy’s Board of Directors, two-thirds are laypeople. See *id.*

181. Further, Mercy Health’s executive leadership is comprised almost entirely of laypeople, with only one out of 20 – Mark Skaja – from the clergy or a religious order. See <https://www.mercy.com/global/about-us/mercy-health-system-leadership>.

182. The principal purpose or function of Mercy Health is not the administration or funding of a plan or program for the provision of retirement or welfare benefits, or both, for the employees of a church or a convention or association of churches.

183. As noted on the website, “Mercy Health’s corporate board of trustees provides overall system direction, approves appointments to regional boards, and appoints and evaluates the system CEO.” Moreover, it “approves system and regional strategic and financial plans,” and it is “also responsible for mergers, acquisitions, divestitures and dissolutions of subsidiaries.” <https://www.mercy.com/global/about-us/mercy-health-system-leadership>.

184. Mercy Health’s corporate board also “approves debt and expenditures in excess of the amount authorized for the CEO,” and “annually appoints an external auditing firm.” *Id.*

185. Mercy Health is required and has elected to comply with a broad array of elaborate state and federal regulations and reporting requirements, including health and safety, Medicare and Medicaid, fraud and abuse, tax, anti-trust, environmental and labor laws, among others.

186. In addition, Mercy Health purports to disclose, and not keep confidential, its own highly complex financial records. Mercy Health makes public its consolidated financial statements, which describe Mercy Health’s representations as to its own highly complex operations and financial affairs. Mercy Health’s financial information is regularly disclosed to the rating agencies and the public when tax-exempt revenue bonds are issued.

III. The Mercy Pension Plans are not “church plans” under ERISA because they are not maintained by a church or association of churches.

A. Mercy Health maintains the Mercy Pension Plans.

187. None of the Mercy Pension Plans are “Church Plans.”

188. Mercy Health is not church or convention or association of churches. *See* ¶ 164.

189. Under Section 3(33)(A) of ERISA, 29 U.S.C. § 1002(33)(A), a plan must be both *established* and *maintained* by a *church* or by a convention or association of churches to qualify for the church plan exemption.

190. Each of the Mercy Pension Plans are ***maintained*** by the Mercy Health, not by a church or convention or association of churches. *See, e.g.*, ¶ 110 (Mercy Health maintains the Community Health Plan) and ¶ 130 (Mercy Health maintains the Wilkes-Barre Plan).

191. Mercy Health has the power to continue, amend and terminate the Mercy Pension Plans. *See, e.g.*, ¶ 51 (Northern Region Plan), ¶ 91 (NEPA Plan), ¶ 111 (Community Health Plan), ¶ 136 (Wilkes-Barre Plan), and ¶ 150 (Cincinnati Plan).

192. No church has the power to continue, amend, or terminate any of the Mercy Pension Plans.

193. Mercy Health funds each of the Mercy Pension Plans. *See, e.g.*, ¶¶ 59-60 (Northern Region Plan), ¶¶ 89-90 (NEPA Plan), ¶ 113 (Community Health Plan), ¶ 127 (Wilkes-Barre Plan), and ¶ 143 (Cincinnati Plan).

194. No church funds any of the Mercy Pension Plans.

195. Additionally, Section 3(33)(C)(i) of ERISA, 29 U.S.C. § 1002(33)(C)(i), provides that a plan maintained by a church or a convention or association of churches includes a plan

maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

196. Mercy Health's principal purpose is to supervise "market delivery systems consisting of hospitals, physician clinics, and other organizations providing health-related services." *See* 2016 Financial Statements at 6.

197. Mercy Health's principal purpose is not to fund or administer a retirement plan.

198. Since the Mercy Health Plans are maintained by Mercy Health, a healthcare company, they are **not** maintained by “an organization ... the principal purpose of which is the administration or funding of a plan or program for the provision of retirement benefits....” See ERISA § 3(33)(C)(i), 29 U.S.C. § 1002 (33)(C)(i).

199. The Mercy Pension Plans are not maintained for employees of any church or convention or association of churches. They are maintained for employees of the Mercy Health - **- a hospital system.**

200. Although ERISA §§ 3(33)(C)(ii) and (iii), 29 U.S.C. § 1002(33)(C)(ii) and (iii) provide that employees of a tax exempt organization that is controlled by or associated with a church may participate in properly established and maintained church plan, Mercy Health is not controlled by or associated with a church or convention or association of churches within the meaning of ERISA.

201. Mercy Health is a non-profit corporation under Ohio law and is governed by its Board of Trustees, which must act in the best interests of Mercy Health and must avoid conflicts of interest and situations that create a reasonable appearance of a conflict of interest. Mercy Health is not operated by any church or convention or association of churches.

202. Mercy Health is not “associated with” a church or convention or association of churches within the meaning of ERISA. Under ERISA § 3(33)(C)(iv), 29 U.S.C. § 1002(33)(C)(iv), an organization “is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.” Mercy Health does not share common religious bonds and convictions with a church or association of churches.

203. For example, upon information and belief, Mercy Health tells prospective employees that religious affiliation is not a factor in the recruiting and hiring of Mercy Health employees. In choosing to recruit and hire from the population at large, Mercy Health must also be willing to accept generally applicable, neutral regulations, such as ERISA, which protect those employees' legitimate interests.

204. In addition, Mercy Health has a practice of partnering and affiliating with hospitals that claim no religious affiliation, including community hospitals such as Community Mercy Health Partners in Springfield, Ohio, and Allen Medical Center in Oberlin, Ohio. In choosing to compete in the commercial arena of healthcare services and to embark upon a business plan that includes healthcare facilities with no claimed ties to any particular religion, or to religion generally, Mercy Health must be willing to accept neutral regulations, such as ERISA, imposed to protect its employees' legitimate interests.

205. Mercy Health provides non-denominational chapels and upon information and belief encourages its clients to seek the faith of their own choosing.

206. Accordingly, none of the Mercy Pension Plans qualify as "church plans" under ERISA.

B. The Mercy Health Retirement Plan Committee does not maintain any of the Mercy Pension Plans.

207. Mercy Health created the Mercy Health Retirement Plan Committee as an attempt for the Mercy Pension Plans to qualify as "church plans."

208. However, as set forth above, the Mercy Health Retirement Plan Committee does *not* maintain any of the Mercy Pension Plans. See ¶¶ 187-206. Mercy Health *maintains* the Mercy Pension Plans. *Id.*

209. The Mercy Health Retirement Plan Committee is not an organization to be able to maintain the Mercy Pension Plans.

210. The entity that maintains the plan “has the primary ongoing responsibility (and potential liability) to plan participants.” *Advocate Healthcare Network v. Stapleton*, 137 S. Ct. 1652, 1661 (June 5, 2017).

211. The Mercy Health Retirement Plan Committee is merely part of Mercy Health under Ohio law. *See* R.C. § 1702.33.

212. The Mercy Health Retirement Plan Committee does not have any assets or conduct any business.

213. The Mercy Health Retirement Plan Committee does not fund any of the Mercy Pension Plans.

214. The Mercy Health Retirement Plan Committee has never amended or terminated any of the Mercy Pension Plans.

215. The Mercy Health Retirement Plan Committee does not even **administer** the Mercy Pension Plans as it claims.

216. Each of the Mercy Health Plan Documents give the Mercy Retirement Plan Committee the power to delegate administrative responsibilities to other persons or entities. *See, e.g.,* Northern Region Plan Document at § 13.9 (“The Committee may delegate to any person or persons any or all of its rights and duties hereunder.”).

217. Mercy Health and/or the Mercy Health Retirement Plan Committee previously hired Xerox to process participants’ claims, answer their questions and other recordkeeping services. Those tasks are currently performed by Conduent HR Services, LLC. They are not done by the Mercy Health Retirement Plan Committee.

218. Any administrative tasks that are performed by Mercy Health are done by its human resources department in the ordinary course of business.

219. Accordingly, the Mercy Health Retirement Plan Committee does not “maintain” any of the Mercy Pension Plans.

IV. Defendants breached their ERISA Fiduciary Duties by operating the Mercy Pension Plans as “church plans.”

A. Defendants are fiduciaries.

220. Each of the Defendants is and/or was a fiduciary of the Mercy Pension Plans.

221. Mercy Health is a fiduciary of the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because it has exercised authority or control respecting management or disposition of the Mercy Pension Plans’ assets, or has had discretionary authority or discretionary responsibility in the administration of the Mercy Pension Plans.

222. The Mercy Health Retirement Plan Committee and the Committee Members have been and/or are the named administrators of the Mercy Pension Plans within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A). *See* First Amendment to Northern Region Plan Document at ¶ 1, MERCY_00000137; NEPA Plan Document at § 10.1(a), MERCY_00000208; Community Health Plan Document at §§ 1.65 and 11.1(a), MERCY_00000283 and MERCY_00000315; Wilkes-Barre Plan Document at § 10.1(a), MERCY_00000369; and Cincinnati Plan Document at § 1.139, MERCY_00000460.

223. Mercy Health’s responsibilities include fiduciary oversight of the Mercy Pension Plans. Mercy Health, by and through its Board of Trustees, had the responsibility to appoint, and hence to monitor and remove, the members of the Mercy Health Retirement Plan Committee and other fiduciaries of the Mercy Pension Plans. *See* Northern Region Plan Document at § 13.1(a) (members of the Mercy Health Retirement Plan Committee “serve at the pleasure of (Mercy

Health)"); NEPA Plan Document at § 10.1(b) ("The (Mercy Health Retirement Plan) Committee shall be appointed by (Mercy Health's) Board of Directors"); Community Health Plan Document at § 11.3(a) (Mercy Health "is responsible for the selection and monitoring of the Plan Administrator."); Wilkes-Barre Plan Document at § 10.1(b) ("The (Mercy Health Retirement Plan) Committee shall be appointed by (Mercy Health's) Board of Directors."); and Cincinnati Plan Document at § 20.6 (Mercy Health is responsible for the selection and evaluation of the Mercy Health Retirement Plan Committee).

224. The Mercy Health Plan Committee and the Committee Members have also been fiduciaries of the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because they exercise discretionary authority or discretionary control respecting management of the Plans, have exercised authority or control respecting management or disposition of the Plans' assets, or have had discretionary authority or discretionary responsibility in the administration of the Plans.

225. The Mercy Health Retirement Plan Committee and the Committee Members are also the named fiduciaries for the NEPA Plan and the Wilkes-Barre Plan. See NEPA Plan Document at § 10.1, MERCY_00000208; see Wilkes-Barre Plan Document at § 10.1, MERCY_00000369.

226. Additionally, Mercy Health has also been a party-in-interest under ERISA § 3(14), 29 U.S.C. § 1002(14), both because it is a fiduciary and because it is an employer whose employees are covered by the Mercy Pension Plans.

B. Defendants breached their fiduciary duties and violated ERISA

227. Mercy Health claims the Mercy Pension Plans are "church plans" to avoid complying with ERISA's requirements and, in doing so, deprive participants of the protections to which they are entitled. Mercy Health's failure to treat the Mercy Pension Plans as ERISA plans

puts participants at risk of receiving pension payouts drastically lower than those proposed and has caused them to be deprived of the retirement benefit that they earned as described below.

228. Under ERISA, each of the Mercy Pension Plans must have an annual actuarial report assessing its funding needs. *See* ERISA § 103(d), 29 U.S.C. § 1023(d).

229. Defendants are required to fund the Mercy Pension Plans each year according to a funding plan that meets ERISA's standards and is based on reasonable actuarial assumptions. *See* ERISA §§ 302, 303, 29 U.S.C. §§ 1082, 1083.

230. Defendants are also responsible for setting the funding requirements and the funding policy for the Mercy Pension Plans.

231. Defendants failed to set a funding policy that will adequately fund the anticipated obligations of the Plans or fund the Mercy Pension Plans in accordance with ERISA.

232. As of December 31, 2016, the Mercy Pension Plans were underfunded by more than \$177 million. *See* 2016 Financial Statements at 52.

233. By continuing to set inadequate funding policies, which has resulted in the Plans becoming underfunded by over \$177 million, Defendants have acted at all times in the interest of the Mercy Health, and not solely in the interests of the Mercy Pension Plans' participants as is required of a fiduciary under ERISA.

234. Mercy Health benefits from Defendants' decision not to fund the Plans adequately, and Defendants have a conflict of interest that prevents them from carrying out their fiduciary duties in a manner consistent with ERISA.

235. By wrongfully claiming the Plans are "church plans," Defendants have deprived participants of ERISA's protections and the hard-earned retirement income that they were promised.

236. The St. Anne Plan, the St Charles Plan, and the St. Vincent Plan (which are all part of the Northern Region Plan) do not comply with ERISA's present value requirements in §§ 203(e)(2) and 205(g), 29 U.S.C. §§ 203(e)(2) & 1055(g). ERISA requires that when a participant's accrued benefit is offered as a lump sum distribution, it must be calculated using the "applicable mortality table" and the "applicable interest rate," which are determined by the Internal Revenue Code's regulations.

237. Mercy Health offers participants in the St. Anne Plan, the St. Charles Plan and the St. Vincent Plan the "option" of taking a lump sum in lieu of their normal retirement benefit but the lump sum benefit that is offered, however, is not calculated in accordance with ERISA because the interest rates that are used, which have been as high as 9%, are much higher than has been in effect under ERISA during the same periods, resulting in a value that is substantially reduced from what it should have been if it were done in accordance with ERISA.

238. The Northern Region Plan, the NEPA Plan, the Wilkes-Barre Plan and the Cincinnati Plan are cash balance plans that are required to comply with ERISA § 203(f)(2), 29 U.S.C. § 1053(f)(2)'s three-year maximum vesting period. These cash balance plans, however, are being operated in violation of ERISA because they require participants to complete five years of service to be fully vested. *See* ¶ 70 (Northern Region Plan), ¶ 105 (NEPA Plan), ¶ 139 (Wilkes-Barre Plan), and ¶ 157 (Cincinnati Plan).

239. The Northern Region Plan and the Cincinnati Plan also violate the anti-backloading rules in ERISA § 204, 29 U.S.C. § 1054, which prohibit an employer from awarding a significantly higher percentage of an employee's total benefits in the employee's later years of service.

240. The "133-1/3 rule" requires that the benefit accrual rate for any year of service cannot be more than 133-1/3% of the rate in any other year of service. As set forth above, the

Northern Region Plan and the Cincinnati Plan violated this rule. See ¶¶ 67-68 (Northern Region Plan), and ¶¶ 154-155 (Cincinnati Plan).

241. Mercy Health benefits from Defendants' decisions not to apply ERISA's vesting, lump sum distribution requirements and anti-backloading. These decisions result in Mercy Health keeping more money, at the expense of participants.

242. Despite this conflict of interest, Mercy Health has failed to appoint fiduciaries who could carry out their duties to protect the Plans' participants in a manner consistent with ERISA or to take other appropriate steps to address the conflict.

243. As a result of this conflict of interest, and in light of Defendants' repeated and ongoing breaches of fiduciary duties, the Court should appoint an independent fiduciary who can protect the interests of the Plans' participants and carry out his or her duties consistent with ERISA.

V. Even if the Mercy Pension Plans qualify as “church plans,” application of the church plan exemption to the Mercy Pension Plans violates the First Amendment’s Establishment Clause

244. The “church plan” exemption is an accommodation for *churches* that establish and maintain pension plans, and it allows such plans to be exempt from ERISA.

245. The First Amendment guards against the establishment of religion by the government. The government “establishes religion” where it exempts religious entities, but not secular entities, from a neutral, generally applicable law and such exemption is not required to alleviate a substantial burden on religious practice or to avoid government entanglement in religion.

246. ERISA is a neutral statute that governs pension benefits, and thus application of the church plan exemption to Mercy Health on the basis of Mercy Health's purported religious ties relieves Mercy Health of no genuine religious burden.

247. Moreover, application of the “church plan” exemption to Mercy Health creates more government entanglement with alleged religious beliefs than does compliance with ERISA. Accordingly, application of the “church plan” exemption to Mercy Health is not a valid religious accommodation.

248. Although Mercy Health maintains that the Mercy Pension Plans are exempt from ERISA coverage, Mercy Health is operating other defined benefit plans, including the Retirement Income Plan for Employees of Warren General Hospital, the Tyler Memorial Hospital Pension Plan, and the Community Hospital Retirement Plan under ERISA.

249. Compliance with ERISA thus creates no undue, genuine burden on any purported religious practice of Mercy Health, as evidenced by Mercy Health’s claimed compliance with ERISA for its other defined benefit plans

250. Extension of the “church plan” exemption to Mercy Health rewards Mercy Health for its purported religious beliefs at the expense of its employees, who are told that religion is not a prerequisite to their employment, yet who are then denied the benefit of insured, funded pensions, as well as many other important ERISA protections, including to simply receive the full value of the retirement benefits that they earned through years of hard work.

251. Similarly, Mercy Health receives a substantial economic advantage over its competitors in the commercial arena it has chosen, based solely on Mercy Health’s purported religious beliefs.

252. The church plan exemption was enacted to avoid “examination of books and records” that “might be regarded as an unjustified invasion of the confidential relationship ... with regard to churches and their religious activities,” S. Rep. No. 93-383 (1973). However, Mercy Health participates in Medicare and Medicaid and issues tax exempt bonds. Thus, it already

discloses its financial records and relationships in detail. Application of the church plan exemption to Mercy Health thus does not advance the goal of protecting the confidentiality of the books and records of any church or religious activity.

253. As set forth in more detail below in the Ninth Claim for Relief, the extension of the church plan exemption to Mercy Health, which is not a church, violates the First Amendment's Establishment Clause and thus is void and ineffective.

FIRST CLAIM FOR RELIEF
Declaratory and Equitable Relief
(Declaratory Judgement Act and ERISA Sections 502(a)(2) and 502(a)(3), 29 U.S.C. §§
1132(a)(2) and 1132(a)(3), Against All Defendants)

254. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Master Consolidated Complaint.

255. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to: “(A) enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan.”

256. ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2), authorizes a participant or beneficiary to bring a civil action for appropriate relief, including “such other equitable or remedial relief as the court may deem appropriate,” against a fiduciary “who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries.”

257. The Declaratory Judgment Act provides that “any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought” (28 U.S.C. § 2201), and provides in addition that “[f]urther necessary or proper relief based on a

declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.” 28 U.S.C. § 2202.

258. As set forth above, the Mercy Pension Plans are not “church plans” within the meaning of ERISA section 3(33), 29 U.S.C. § 1002(33), and each meet the definition of a pension plan under ERISA section 3(2), 29 U.S.C. § 1002(2).

259. Pursuant to ERISA § 502(a)(2) and § 502(a)(3), 29 U.S.C. §§ 1132(a)(2)-(3), and 28 U.S.C. § 2201, Plaintiffs seek declaratory relief that the Plans are not “church plans” within the meaning of ERISA § 3(33), 29 U.S.C. § 1002(33), and are thus subject to the provisions of Title I and Title IV of ERISA.

260. Pursuant to ERISA § 502(a)(2) and § 502(a)(3), 29 U.S.C. §§ 1132(a)(2)-(3), and 28 U.S.C. § 2202, Defendants should be ordered to bring the Mercy Pension Plans into full compliance with ERISA, including by remedying the violations set forth below.

SECOND CLAIM FOR RELIEF
Failure to Provide Minimum Funding Against Defendant Mercy Health
(ERISA §§ 302 and 502(a)(3), 29 U.S.C. §§ 1082, 1132(a)(3))

261. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Master Consolidated Complaint.

262. ERISA § 302, 29 U.S.C. § 1082, establishes minimum funding standards for defined benefit plans that require employers to make minimum contributions to their plans so that each plan will have assets available to fund plan benefits if the employer maintaining the plan is unable to pay benefits out of its general assets.

263. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

264. As the employer maintaining the plan, Mercy Health was responsible for making the contributions that should have been made pursuant to ERISA § 302, 29 U.S.C. § 1082, at a level commensurate with ERISA's requirements.

265. Mercy Health has failed to make contributions in satisfaction of the minimum funding standards of ERISA § 302, 29 U.S.C. § 1082.

266. By failing to make the required contributions to the Plans, Mercy Health has violated ERISA § 302, 29 U.S.C. § 1082.

267. As a result of the failure of Mercy Health to fund the Plans in accordance with ERISA's minimum funding standards, Plaintiffs face a substantial risk of their pensions being lost or severely reduced.

THIRD CLAIM FOR RELIEF
Violation of ERISA Vesting Requirements Against All Defendants
(ERISA §§ 203(f) and 502(a)(2) and (a)(3), 29 U.S.C. §§ 1053, 1132(a)(2) and (a)(3))

268. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Master Consolidated Complaint.

269. ERISA § 203(f)(2), 29 U.S.C. § 1053(f)(2), requires that any employee who has completed at least three years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions in a cash-balance type plan.

270. Several of the Mercy Pension Plans have a cash-balance component (including the Northern Region Plan, the NEPA Plan, the Wilkes-Barre Plan, and the Cincinnati Plan), with a five-year vesting requirement.

271. The five-year vesting provisions of cash-balance components of any of the Mercy Pension Plans violates ERISA's vesting provisions.

272. Pursuant to ERISA § 502(a)(2) and § 502(a)(3), 29 U.S.C. §§ 1132(a)(2)-(3), and 28 U.S.C. § 2201, Plaintiffs seek declaratory judgment that all participants in a Mercy Health Plan

that is a cash balance plan who have completed three years of service are fully vested in their accrued benefits under that plan.

273. Pursuant to ERISA § 502(a)(2) and § 502(a)(3), 29 U.S.C. §§ 1132(a)(2)-(3), and 28 U.S.C. § 2202, Plaintiffs seek an order directing Defendants to retroactively amend the Mercy Pension Plans that are cash balance plans, including the Northern Region Plan, the NEPA Plan, the Wilkes-Barre Plan, and the Cincinnati Plan, to comply with the vesting requirements of ERISA section 203(f)(2), 29 U.S.C. §1053(f)(2).

274. Pursuant to ERISA § 502(a)(2) and § 502(a)(3), 29 U.S.C. §§ 1132(a)(2)-(3), and 28 U.S.C. § 2202, Plaintiffs seek an order requiring the Plan sponsor to contribute additional funding to the Mercy Pension Plans, as required by ERISA § 302, 29 U.S.C. § 1052, to cover the additional Plan liabilities resulting from the accrued benefits owed to all participants who have completed three years of service but less than five years of service and therefore to date have not been considered to be fully vested in their accrued benefits under the Mercy Pension Plans.

275. Pursuant to ERISA § 502(a)(2) and § 502(a)(3), 29 U.S.C. §§ 1132(a)(2)-(3), and 28 U.S.C. § 2202, Plaintiffs seek an order requiring the Plan Administrator to furnish all participants in a Mercy Health Plan that is a cash balance plan with a benefit statement that is compliant with ERISA and that states their account balance based on a three-year vesting period.

FOURTH CLAIM FOR RELIEF

**Violation of ERISA Lump-Sum Benefit Requirements Against All Defendants
(ERISA §§ 204(c)(3), 203(e)(2), 205(g)(3) and 502(a)(2) and (a)(3), 29 U.S.C. §§ 1053(e)(2),
1054(c)(3), 1055(g)(3) and 1132(a)(2) and (a)(3))**

276. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Master Consolidated Complaint.

277. ERISA section 204(c)(3) provides that “in the case of any defined benefit plan, if an employee’s accrued benefit is to be determined as an amount other than an annual benefit

commencing at normal retirement age [*e.g.*, a lump-sum distribution] . . . the employee’s accrued benefit . . . shall be the actuarial equivalent of such benefit . . .” ERISA section 204(c)(3), 29 U.S.C. § 1054(c)(3).

278. ERISA sections 203(e)(2) and 205(g)(3) also require that the present value of any optional form of benefit, such as a lump sum distribution, cannot be less than the present value of the plan’s normal retirement benefit, calculated using the “applicable mortality table” and “applicable interest rate.” ERISA §§ 203(e)(2), 205(g)(3), 29 U.S.C. §§ 1053(e)(2), 1055(g)(3); *see also* 26 U.S.C. §§ 411(a)(11)(B); 417(e)(3) (corresponding IRC provisions); 26 C.F.R. § 1.417(e)-1 (implementing regulations).

279. Upon information and belief, the terms of the Mercy Pension Plans governing lump sum distributions of benefits are not actuarial equivalents of the Plans’ normal retirement benefits as required by ERISA section 204(c)(3), nor are they calculated in accordance with the applicable mortality table and interest rates in ERISA sections 203(e)(2) and 205(g)(3).

280. Defendants’ failure to comply with ERISA’s provisions governing lump-sum distributions results in participants who take a lump sum distribution suffering a reduction in their retirement benefits. Members of the Class who have received a lump sum distribution amount that is less than the actuarial equivalent of their accrued benefit commencing at normal retirement age, calculated using the applicable mortality table and applicable interest rate, have suffered an unlawful forfeiture of benefits to which they are entitled.

281. Pursuant to ERISA § 502(a)(2) and § 502(a)(3), 29 U.S.C. §§ 1132(a)(2)-(3), and 28 U.S.C. § 2202, Plaintiffs seek an order directing the Mercy Pension Plans’ sponsor and administrator to retroactively amend all the Mercy Pension Plans that provide for a “lump sum” option as a form of benefit available to certain retirees, including but not limited to the St. Anne

Plan, the St. Charles Plan and the St. Vincent Plan to comply with all the special rules for offering lump sum distributions as an optional form of benefit, including ERISA sections 203(e), 204(c)(3), and 205(g); 29 U.S.C. §§ 1053(e), 1054(c)(3), 1055(g).

282. Pursuant to ERISA § 502(a)(2) and § 502(a)(3), 29 U.S.C. §§ 1132(a)(2)-(3), and 28 U.S.C. § 2202, Plaintiffs seek an order requiring the Retirement Plan Committee Defendants to calculate the amount of the lump sum payments participants would have received under the Plan document retroactively amended to comply with ERISA and to pay to participants the additional monies to which they are entitled.

283. Pursuant to ERISA § 502(a)(2) and § 502(a)(3), 29 U.S.C. §§ 1132(a)(2)-(3), and 28 U.S.C. § 2202, Plaintiffs seek an order requiring the Mercy Health Plan Administrator to furnish all participants in a Mercy Health Plan that provides for a “lump sum” option as a form of benefit available to certain retirees with a benefit statement that is compliant with ERISA and that provides a lump sum distribution value that is calculated in accordance with ERISA.

284. Pursuant to ERISA § 502(a)(2) and § 502(a)(3), 29 U.S.C. §§ 1132(a)(2)-(3), and 28 U.S.C. § 2202, Plaintiffs seek an order requiring Mercy Health to contribute additional funding to the Mercy Pension Plans, as required by ERISA section 302, 29 U.S.C. §§ 1052, to cover the additional liabilities for the Plans resulting from the additional benefits owed to participants who were offered and elected to receive a lump sum distribution of their benefits that was less than the actuarial equivalent of their accrued benefit commencing at normal retirement age, calculated using the applicable mortality table and applicable interest rate, in accordance with ERISA.

FIFTH CLAIM FOR RELIEF
Violation of Reporting and Disclosure Provisions
Against All Defendants as Fiduciaries of the Plans
(ERISA §§ 101-104, 502(a)(1)(A), (a)(3), 29 U.S.C. §§ 1021-1024, 1132(a)(1)(A), (a)(3))

285. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Master Consolidated Complaint.

286. ERISA § 502(a)(1)(A), 29 U.S.C. 1132(a)(1)(A), permits a plan participant to bring a suit when a defendant violates the recordkeeping obligations set forth in ERISA.

287. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

A. Annual Reports

288. Under ERISA § 103, 29 U.S.C. § 1023, employee benefit plans are required to file an annual report with the Secretary of Labor. This report, submitted via Form 5500, must include certain specified information about the plan's finances, participants, and administration.

289. Defendants failed to file an annual report concerning the Plans with the Secretary of Labor in compliance with ERISA § 103, 29 U.S.C. § 1023, or a Form 5500 and associated schedules and attachments which the Secretary has approved as an alternative method of compliance with ERISA § 103, 29 U.S.C. § 1023.

290. Defendants have violated ERISA § 104(a), 29 U.S.C. § 1024(a), by failing to file annual reports with respect to the Plans with the Secretary of Labor in compliance with ERISA § 103, 29 U.S.C. § 1023, or Form 5500s and associated schedules and attachments.

291. Pursuant to ERISA §§ 502(a)(1)(A), 502(a)(2) and 502(a)(3), 29 U.S.C. §§ 1132(a)(1)(A) and 1132(a)(2)-(3), and 28 U.S.C. § 2202, Plaintiffs seek an order requiring Defendants to comply with the annual report requirements of ERISA § 103, 29 U.S.C. § 1023.

B. Notification of Failure to Meet Minimum Funding Standards

292. Under ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1), employers maintaining employee benefit plans are required to issue a notice to beneficiaries and participants whenever the plan fails to make a required installment or other payment required to meet the minimum funding standards under ERISA.

293. Mercy Health has failed to furnish the Plaintiffs or any member of the Class with a Notice with respect to the Plans pursuant to ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1), informing them that the Company failed to make payments required to comply with ERISA § 302, 29 U.S.C. § 1082.

294. Pursuant to ERISA §§ 502(a)(1)(A), 502(a)(2) and 502(a)(3), 29 U.S.C. §§ 1132(a)(1)(A) and 1132(a)(2)-(3), and 28 U.S.C. § 2202, Plaintiffs seek an order requiring Defendants to comply with the notice requirements of ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1), and for such other and additional relief as the Court, in its discretion, may order.

C. Funding Notices

295. Under ERISA § 101(f), 29 U.S.C. § 1021(f), administrators of defined benefit plans are required to provide annual plan funding notices to all participants and beneficiaries of such defined benefit plans.

296. At no time have any of the Defendants furnished Plaintiffs or any member of the Class with a Funding Notice with respect to the Plans pursuant to ERISA § 101(f), 29 U.S.C. § 1021(f).

297. Defendants have violated ERISA § 101(f), 29 U.S.C. § 1021(f), by failing to provide each participant and beneficiary of the Plan with the Funding Notice required by ERISA § 101(f), 29 U.S.C. § 1021(f).

298. Pursuant to ERISA §§ 502(a)(1)(A), 502(a)(2) and 502(a)(3), 29 U.S.C. §§ 1132(a)(1)(A) and 1132(a)(2)-(3), and 28 U.S.C. § 2202, Plaintiffs seek an order requiring Defendants to comply with the notice requirements of ERISA § 101(f), 29 U.S.C. § 1021(f), and for such other and additional relief as the Court, in its discretion, may order.

D. Summary Plan Descriptions

299. At no times has the Committee or its members provided Plaintiffs or any member of the Class with a Summary Plan Description with respect to the Plan that meets the requirements of ERISA § 102, 29 U.S.C. § 1022, and the regulations promulgated thereunder.

300. Because the Committee has been the Plan Administrator of the Plan at all relevant times, it has violated ERISA § 104(b), 29 U.S.C. § 104(b) by failing to provide Plaintiffs and the members of the Class with adequate Summary Plan Descriptions.

301. Pursuant to ERISA §§ 502(a)(1)(A), 502(a)(2) and 502(a)(3), 29 U.S.C. §§ 1132(a)(1)(A) and 1132(a)(2)-(3), and 28 U.S.C. § 2202, Plaintiffs seek an order requiring Defendants to comply with ERISA § 104(b), 29 U.S.C. § 104(b) by providing Plaintiffs and members of the Class with a Summary Plan Description, and for such other and additional relief as the Court, in its discretion, may order.

E. Pension Benefit Statements

302. Section 105(a)(1) of ERISA requires the administrator of a defined benefit plan to furnish a pension benefit statement to each employee-participant with a nonforfeitable accrued benefit at least once every three-years. 29 U.S.C. § 1025(a)(1).

303. At no time has Mercy Health furnished Plaintiffs or any member of the Class with a Pension Benefit Statement with respect to the Mercy Pension Plans pursuant to ERISA § 105(a)(1), 29 U.S.C. § 1025(a)(1).

304. As the Administrator of the Plans, the Mercy Health Retirement Plan Committee has violated ERISA section 105(a)(1).

305. Pursuant to ERISA §§ 502(a)(1)(A), 502(a)(2) and 502(a)(3), 29 U.S.C. §§ 1132(a)(1)(A) and 1132(a)(2)-(3), and 28 U.S.C. § 2202, Plaintiffs seek an order requiring Defendants to comply with the notice requirements of ERISA § 105(a)(1), 29 U.S.C. § 1025(a)(1), and for such other and additional relief as the Court, in its discretion, may order.

F. Summary Annual Reports

306. At no time has the Committee or its members provided Plaintiffs or any member of the Class with a Summary Annual Report with respect to the Plan pursuant to ERISA § 104(b)(3), 29 U.S.C. § 1024(b)(3), and regulations promulgated thereunder.

307. Because the Committee has been the Plan Administrator of the Plan at all relevant times, it has violated ERISA § 104(b)(3), 29 U.S.C. § 1024(b)(3) by failing to furnish Plaintiffs or any members of the Class with a Summary Annual Report with respect to the Plan pursuant to ERISA 104(b)(3), 29 U.S.C. § 1024(b)(3), and the regulations promulgated thereunder.

SIXTH CLAIM FOR RELIEF
Failure to Establish the Plan Pursuant to a Written Instrument Under ERISA
Against Mercy Health
(ERISA §§ 402, 502(a)(3), 29 U.S.C. §§ 1102, 1132(a)(2))

308. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Master Consolidated Complaint.

309. ERISA § 402, 29 U.S.C. § 1102, provides that every plan will be established pursuant to a written instrument which will, among other things, “provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of [Title I of ERISA].”

310. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

311. The Plans have not been established pursuant to a written instrument meeting the requirements of ERISA § 402, 29 U.S.C. § 1102.

312. As Mercy Health has been responsible for maintaining the Plans and has amendment power over the Plans, it violated § 402, 29 U.S.C. § 1102, by failing to promulgate written instruments in compliance with these sections to govern the Plans' operation and administration.

SEVENTH CLAIM FOR RELIEF
Breach of Fiduciary Duty
Against All Defendants
(ERISA §§ 404, 409, 502(a)(2), 29 U.S.C. §§ 1104, 1109, 1132(a)(2))

313. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Master Consolidated Complaint.

314. Plaintiffs bring this Count VII for breach of fiduciary duty pursuant to ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2).

A. Breach of the Duty of Prudence and Loyalty

315. This sub-Count alleges fiduciary breach against all Defendants.

316. ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1), provides in pertinent part that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –

- a) for the exclusive purpose of:
 - i. providing benefits to participants and beneficiaries; and
 - ii. defraying reasonable expenses of administering the plan;

b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims . . . [and]

c) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this [title I of ERISA] and title IV.

317. As fiduciaries with respect to the Mercy Pension Plans, Defendants had the authority to enforce each provision of ERISA alleged to have been violated in the foregoing paragraphs pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3). Having the authority to enforce the provisions of ERISA at those respective times, ERISA sections 404(a)(1)(A)-(D), 29 U.S.C. §§ 1104(a)(1)(A)-(D), imposed on Defendants the respective duty to enforce those provisions in the interest of the participants and beneficiaries of the Mercy Pension Plans during the times that each was a fiduciary of the Mercy Pension Plans.

318. Defendants have never enforced any of the provisions of ERISA set forth in Counts I-VI with respect to the Mercy Pension Plans.

319. By failing to enforce the provisions of ERISA set forth in Counts I-VI, Defendants breached the fiduciary duties that they owed to Plaintiffs and the Class.

320. The failure of Defendants to enforce the funding obligations owed to the Plans has resulted in a loss to the Mercy Pension Plans equal to the foregone funding and earnings thereon, and profited Defendant Mercy Health by providing it the use of the money owed to the Mercy Pension Plans for its general business purposes.

B. Prohibited Transactions

321. This sub-Count alleges violations on behalf of all Defendants.

322. ERISA section 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), prohibits a fiduciary with respect to a plan from directly or indirectly causing a plan to extend credit to a party in interest, as

defined in ERISA section 3(14), 29 U.S.C. § 1002(14), if he or she knows or should know that such transaction constitutes an extension of credit to a party in interest.

323. ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), prohibits a fiduciary with respect to a plan from directly or indirectly causing a plan to use assets for the benefit of a party in interest if he or she knows or should know that such transaction constitutes a use of plan assets for the benefit of a party in interest.

324. ERISA section 406(b)(1), 29 U.S.C. § 1106(b)(1), prohibits the use of plan assets by a fiduciary with respect to a plan for his or her own interest or for his or her own account.

325. As fiduciaries with respect to the Plans and, with respect to Mercy Health, as an employer of employees covered by the Plans, the Defendants at all relevant times were parties in interest with respect to the Mercy Pension Plans pursuant to ERISA sections 3(14)(A) and (C), 29 U.S.C. §§ 1002(14)(A) and (C).

326. By failing to enforce the funding obligations created by ERISA and owed to the Plans, Defendants extended credit from the Mercy Pension Plans to Mercy Health in violation of ERISA section 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), when Defendants knew or should have known that their failure to enforce the funding obligation constituted such an extension of credit.

327. By failing to enforce the funding obligations created by ERISA and owed to the Mercy Pension Plans, Defendants used Mercy Pension Plan assets for Mercy Health's own benefit, when Defendants knew or should have known that their failure to enforce the funding obligations constituted such a use of the Mercy Pension Plans' assets, in violation of ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

328. By failing to enforce the funding obligations created by ERISA and owed to the Mercy Pension Plans, Defendants used Mercy Pension Plans' assets in Mercy Health's interest in violation of ERISA section 406(b)(1), 29 U.S.C. § 1106(b)(1).

329. The failure of Defendants to enforce the funding obligations owed to the Mercy Pension Plans has resulted in a loss to the Mercy Pension Plans equal to the foregone funding and earnings thereon.

330. The failure of Defendants to enforce the funding obligations owed to the Mercy Pension Plans has profited Defendant Mercy Health by providing it the use of money owed to the Mercy Pension Plans for its general business purposes.

C. Failure to Monitor Fiduciaries

331. This sub-Count alleges fiduciary breach against Defendant Mercy Health.

332. As alleged above, during the Class Period, Defendant Mercy Health was a named fiduciary pursuant to ERISA section 402(a)(1), 29 U.S.C. § 1102(a)(1), or a *de facto* fiduciary within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, it was bound by the duties of loyalty, exclusive purpose, and prudence.

333. The scope of the fiduciary responsibilities of Mercy Health included the responsibility to appoint, and remove, and thus, monitor the performance of other fiduciaries.

334. Under ERISA, a monitoring fiduciary must ensure that the monitored fiduciaries perform their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and effective action to protect the plan and participants when they are not.

335. The monitoring duty further requires that appointing fiduciaries have procedures in place so that they may review and evaluate, on an ongoing basis, whether the "hands-on" fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work and

the plan's performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their appointees, the appointing fiduciaries would have no basis for prudently concluding that their appointees were faithfully and effectively performing their obligations to plan participants or for deciding whether to retain or remove them.

336. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with the complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan assets, or that may have an extreme impact on the plan and the fiduciaries' investment decisions regarding the plan.

337. Defendant Mercy Health breached its fiduciary monitoring duties by, among other things: (a) failing to appoint persons who would run the Plans as ERISA plans; (b) failing to ensure that the monitored fiduciaries appreciated the true extent of not running the Plans as ERISA Plans; (c) to the extent any appointee lacked such information, failing to provide complete and accurate information to all of their appointees such that they could make sufficiently informed fiduciary decisions with respect to the Plans; and (d) failing to remove appointees whose performance was inadequate in that they continued to run the Plans as non-ERISA Plans, and who breached their fiduciary duties under ERISA.

338. The failure of Defendants to enforce the funding obligations owed to the Plans has resulted in a loss to the Mercy Pension Plans equal to the foregone funding and earnings thereon, and profited Defendant Mercy Health by providing it the use of money owed to the Mercy Pension Plans for its general business purposes.

D. Co-Fiduciary Liability

339. This sub-Count alleges co-fiduciary liability against all Defendants.

340. As alleged above, all Defendants were named fiduciaries pursuant to ERISA section 402(a)(1), 29 U.S.C. § 1102(a)(1), or de facto fiduciaries within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

341. ERISA section 405(a), 29 U.S.C. § 1105, imposes liability on a fiduciary, in addition to any liability which he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if he knows of a breach and fails to remedy it, knowingly participates in a breach, or enables a breach.

342. Defendants breached all three provisions.

i. Knowledge of a Breach and Failure to Remedy

343. ERISA section 405(a)(3), 29 U.S.C. § 1105, imposes co-fiduciary liability on a fiduciary for a fiduciary breach by another fiduciary if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach. Each of the Defendants knew of the breaches by the other fiduciaries and made no efforts, much less reasonable ones, to remedy those breaches.

344. Because Defendants knew that the Plans were not being run as ERISA plans, Defendants knew that the other Defendants were breaching their duties by not complying with ERISA. Yet, they failed to undertake any effort to remedy these breaches.

ii. Knowing Participation in a Breach

345. ERISA section 405(a)(1), 29 U.S.C. § 1105(1), imposes liability on a fiduciary for a breach of fiduciary responsibility by another fiduciary with respect to the same plan if he knowingly participates in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach. All Defendants knowingly participated in the

fiduciary breaches of the other Defendants in that they benefited from the Plans not being run as ERISA plans.

iii. Enabling a Breach

346. ERISA section 405(a)(2), 29 U.S.C. § 1105(2), imposes liability on a fiduciary if, by failing to comply with ERISA section 404(a)(1), 29 U.S.C. §1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled another fiduciary to commit a breach.

347. The failure of all Defendants to exercise fiduciary oversight over other Defendants and monitor other Defendants enabled those Defendants to breach their duties.

348. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans are significantly underfunded, meaning that the Plans do not have sufficient assets to pay all accrued benefits they have promised to their participants and beneficiaries and are legally obligated to pay under ERISA.

349. The failure of Defendants to enforce the funding obligations owed to the Plans has resulted in a loss to the Mercy Pension Plans equal to the foregone funding and earnings thereon, and profited Defendant Mercy Health by providing it the use of money owed to the Mercy Pension Plans for its general business purposes.

EIGHTH CLAIM FOR RELIEF
Clarification of Future Benefits
(ERISA §§ 502(a)(1)(B), (a)(3), 29 U.S.C. §§ 1132(a)(1)(B), (a)(3))

350. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Master Consolidated Complaint.

351. ERISA section 502(a)(1)(B), 29 U.S.C. § 1102(a)(1)(B), provides, in part, that a participant or beneficiary may bring a civil action to “clarify his rights to future benefits under the terms of the plan.”

352. Plaintiffs and members of the class have not been provided ERISA-compliant benefit statements.

353. Pursuant to ERISA section 502(a)(3), 29 U.S.C. §§ 1132(a)(3), once the Plans are made compliant with ERISA, Plaintiffs seek to clarify their rights under the terms of the Plans and to require Defendant Mercy Health to provide Plaintiffs and the Class with ERISA-compliant benefit statements

NINTH CLAIM FOR RELIEF
(Declaratory Relief that the Church Plan Exemption, as Applied, to Mercy Health Violates the Establishment Clause of the First Amendment of the Constitution)

354. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Master Consolidated Complaint.

355. The church plan exemption creates an exemption from ERISA, a generally applicable law, exclusively for churches. It is not available to secular entities.

356. Application of ERISA to the Mercy Pension Plans does not impose any substantial government burden on religious exercise and does not require any government entanglement with religion.

357. Application of the church plan exemption to the Mercy Pension Plans burdens Mercy Health's employees and provides Mercy Health with an unfair advantage over competing non-profit healthcare providers.

358. Application of the exemption creates more government entanglement in religion than would compliance with ERISA because it requires courts and government agencies to examine unilateral religious "convictions" of a non-church entity to determine if they are "shared" with a church. See 29 U.S.C. § 1002(33)(C)(iv).

359. Plaintiffs seek a declaration by the Court that the Church Plan exemption, as applied to the Mercy Pension Plans, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective.

TENTH CLAIM FOR RELIEF
Breach of Contract and For Specific Performance Against Mercy Health
(Alternative Claim for Relief Under Common Law)

360. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Master Consolidated Complaint.

361. Mercy Health repeatedly promised to fund the pensions of Plaintiffs and the other Class members and to pay defined pension benefits upon retirement in exchange for their continued employment.

362. At all relevant times, Mercy Health was the “sponsor” and “employer” for the Mercy Pension Plans.

363. In the Mercy Pension Plans’ documents, including applicable plan restatements and summary plan descriptions, Mercy Health promised to: (1) pay to Plaintiffs and other Class members, upon retirement, defined benefit pensions in amounts that increased with each year of service; and (2) make ongoing contributions to the Mercy Pension Plans’ trusts that were sufficient to pay for the accrued pension benefits.

364. The promises made or assumed by Mercy Health to make contributions sufficient to pay promised benefits were further implied in fact and law by the benefit promises contained in Mercy Health Plan Documents.

365. Plaintiffs and the other Class members accepted Mercy Health’s offer by commencing or continuing to work after learning of Mercy Health’s promises to pay and fund pension benefits.

366. Plaintiffs and the other Class members continued work for Mercy Health constituted consideration for the promises Mercy Health made to properly fund and calculate Plaintiffs' retirement benefits.

367. Accordingly, the Mercy Health Plan documents constitute enforceable contracts.

368. By continuing to work for Mercy Health, Plaintiffs and the other Class members performed their obligations under the contracts and satisfied the conditions of Mercy Health's duty to make sufficient contributions to fund accrued pension benefits and to properly calculate the benefits payable to Plaintiffs and other Class Members.

369. Mercy Health breached its obligations under the contracts by failing to make sufficient contributions to pay for all accrued pension benefits.

370. Mercy Health further breached the implied covenant of good faith and fair dealing. Defendant Mercy Health failed to exercise good faith in the performance of its obligation to make contributions sufficient to fund accrued benefits.

371. Mercy Health willfully failed to perform, evaded the spirit of the bargain, and failed to act consistent with the reasonable expectations of Plaintiffs and the Class to the extent it: (a) sought to satisfy its funding obligation by making only partial contributions to the Mercy Pension Plans' trusts; or (b) interpreted its funding obligation as being satisfied by its partial contributions, which resulted in the Mercy Pension Plans being substantially underfunded.

372. A promise to pay pension benefits—as was made in the Mercy Health Plan Documents and repeated in benefit statements and other communications that were sent to Plaintiffs and the other Class members—is meaningful only if there is money in the Mercy Pension Plans' trusts that is sufficient, on an actuarial basis, to pay the accrued benefits. Plaintiffs believed, and a reasonable plan participant would expect, that in light of the promise to pay defined pension

benefits upon retirement and the promise to make contributions sufficient to fund that promise, Mercy Health would have made contributions sufficient, on an actuarial basis, to fund the *full* amount of the accrued benefit, not less than two-thirds of that amount.

373. Mercy Health had an improper motive to make insufficient contributions to the Mercy Pension Plans. Mercy Health retained hundreds of millions of dollars for its own account that should have been contributed to the Mercy Pension Plans.

374. Because Mercy Health breached its obligation to make contributions to the Mercy Pension Plans, Plaintiffs and the other Class members have been deprived of their contractual right to a sufficiently funded trust supporting their accrued pension benefits. Mercy Health's failure to make sufficient contributions has left the Mercy Pension Plans significantly underfunded, creating a substantial risk that the Mercy Pension Plans will be unable to pay promised pension benefits. This risk is further amplified by Mercy Health's designation of the Mercy Pension Plans as ERISA-exempt "church plans," which has left the Mercy Pension Plans uninsured by the PBGC.

375. Plaintiffs and the members of the Class are entitled to specific performance of the obligations contained in the Mercy Pension Plans Documents, including: (a) Mercy Health's obligation to make contributions to fund the Mercy Pension Plans that are sufficient to pay for *all* accrued pension benefits; and (b) Mercy Health's implied obligation to act fairly and in good faith in the performance of its contractual obligations.

ELEVENTH CLAIM FOR RELIEF
Unjust Enrichment Against Mercy Health
(Alternative Claim For Relief Under Common Law)

376. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Master Consolidated Complaint.

377. Plaintiffs assert a state law claim for unjust enrichment against Mercy Health if the Mercy Pension Plans Documents did not create an enforceable contractual relationship between Mercy Health and Plaintiffs and the other Class members.

378. Plaintiffs and the other Class members conferred substantial benefits on Mercy Health, including their continued employment.

379. Mercy Health promised to pay and fund defined benefit pensions to Plaintiffs and the other Class members to recruit them and encourage them to continue working at Mercy Health.

380. Mercy Health benefitted from the contributions of Plaintiffs and other Class members of their time, effort, experience, training, and ideas.

381. Mercy Health directly saved hundreds of millions of dollars by not contributing those amounts to the Mercy Pension Plans.

382. Mercy Health also avoided the cost of higher employee turnover because of Plaintiffs and the other Class members remaining employees of Mercy Health. Costs of employee turnover can include: the time of management and human resources personnel devoted to exit interviews and organizing work left behind by departing employees; severance benefits and variable unemployment insurance costs; advertising for replacement employees; the time of management devoted to reviewing applications and conducting interviews and reference checks; the time of managers and co-workers devoted to training new replacement employees; and reduced productivity of replacement employees due to inexperience.

383. Mercy Health retained these benefits to the detriment of Plaintiffs and the Class. The hundreds of millions of dollars that Mercy Health has retained for its own account should have been paid to fund the Mercy Pension Plans for the already accrued pension benefits of Plaintiffs and the other Class members.

384. Mercy Health's failure to make sufficient contributions to fund the Mercy Pension Plans has caused them to be significantly underfunded, creating a substantial risk that the Mercy Pension Plans will be unable to pay the pension benefits to which Plaintiffs and the other Class members are entitled. This risk is further amplified by Health Health's designation of the Mercy Pension Plans as ERISA-exempt "church plans," which has left them uninsured by the PBGC.

385. Because Mercy Health has not honored its promises to adequately fund the promised pension benefits, Plaintiffs and the other Class members face an increased risk that they will retire with far less income than they expected. At the same time, they will have been deprived of the opportunity to make up for that lost pension income.

386. Accordingly, Mercy Health's retention of the benefits described herein would violate fundamental principles of justice, equity, and good conscience.

387. The amount of Mercy Health's unjust enrichment, including the amounts retained by Mercy Health that should have been contributed to the Mercy Pension Plans, should be disgorged and paid to fund the Mercy Pension Plans.

TWELFTH CLAIM FOR RELIEF
Breach of Fiduciary Duty
Against All Defendants
(Alternative Claim for Relief Under Common Law)

388. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if fully set forth herein.

389. The Mercy Pension Plans' assets are held in trust.

390. Plaintiffs and the other Class members are beneficiaries of the trusts.

391. The Mercy Health Retirement Plan Committee is a trustee within the meaning of the common law of trusts.

392. Alternatively, the Mercy Health Retirement Plan Committee is a fiduciary trust manager or trust protector within the meaning of the common law of trusts.

393. Additionally, the Mercy Health Retirement Plan Committee is a fiduciary pursuant to the Mercy Pension Plans Documents.

394. As a fiduciary, the Mercy Health Retirement Plan Committee owed Plaintiffs and the other Class members the duty of loyalty, including the duty to act solely in the interests of Plaintiffs and the other Class members.

395. The Mercy Health Retirement Plan Committee was obligated by the Mercy Pension Plans Documents to take actions in accordance with the provisions of the Plans and had a duty to establish funding policies to meet the financial requirements of the Plans.

396. The Mercy Health Retirement Plan Committee, as common law trustees, had a fiduciary duty to preserve and maintain trust assets, which includes the duties to determine what property constitutes the subject matter of the trust, to use reasonable diligence to discover the location of trust property, and to use reasonable diligence to take control of trust property without unnecessary delay. If an entity obligated to make contributions to a trust retains possession of trust assets, this duty entails the duty to hold that entity to its obligation to place trust assets in trust.

397. The Mercy Health Retirement Plan Committee possessed discretionary powers and authority necessary to carry out the provisions of the Mercy Pension Plans.

398. The Mercy Health Retirement Plan Committee breached its fiduciary duties by failing to establish a funding policy that was sufficient to fully fund the trust and by failing to take reasonable steps to hold Mercy Health to its obligation to make contributions that were sufficient to fund all accrued benefits under the Mercy Pension Plans.

399. As a direct and proximate result of the Mercy Health Retirement Plan Committee's fiduciary breaches, the Mercy Pension Plans' trust(s) and its beneficiaries, including Plaintiffs and the other Class members, have been deprived of contributions to which they are entitled and the Mercy Pension Plans are significantly underfunded, creating a substantial risk that the Mercy Pension Plans will be unable to pay to Plaintiffs and the other Class members the pension benefits to which they are entitled.

400. Plaintiffs seek an order enforcing these fiduciary duties, and enjoining Mercy Health Retirement Plan Committee's ongoing breaches thereof, including an order directing the Mercy Health Retirement Plan Committee to review actuarial reports and other relevant information regarding the funded status of the Mercy Health and use all reasonable diligence to require Mercy Health to make contributions to the Mercy Pension Plans that are sufficient, on an actuarial basis, to fund *all* accrued pension benefits.

401. The Mercy Health Retirement Plan Committee is liable to restore the losses to the Mercy Pension Plans caused by its breaches of fiduciary duties.

402. Plaintiffs further request other equitable relief as appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgement be entered against Defendants on all claims and requests that the Court awards the following relief:

- A. Certifying this action as a class pursuant to FED. R. CIV. P. 23;
- B. Declaring that the each of the Mercy Pension Plans is an employee benefit plan within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2), is a defined benefit pension plan within

the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35), and is not a Church Plan within the definition of ERISA § 3(33), 29 U.S.C. § 1002(33);

C. Ordering Defendants to bring the Plans into compliance with ERISA, including, but not limited to, requiring Defendants to fund the Plans in accordance with ERISA's funding requirements, comply with ERISA's vesting and benefit calculation requirements, disclose required information to the Plans' participants and beneficiaries, and amend Plans retroactively as necessary to otherwise comply with all other reporting, vesting, and funding requirements of Title I of ERISA;

D. Requiring Defendants to make the Plans whole for all contributions that should have been made pursuant to ERISA funding standards, and for interest and investment income on such contributions, and requiring Defendants to disgorge any profits accumulated as a result of their fiduciary breaches;

E. Granting a preliminary and permanent injunction removing Defendants as fiduciaries of the Plans, and appointing one or more independent fiduciaries to hold the Plans' assets in trust, to manage and administer the Plans and their assets, and to enforce the terms of ERISA;

F. Ordering declaratory and injunctive relief as necessary and appropriate, including enjoining the Defendants from further violating the duties, responsibilities, and obligations imposed on them by ERISA, with respect to the Plans;

G. Declaring that the Church Plan exemption, as applied to the Mercy Pension Plans, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective;

H. Awarding, declaring, or otherwise providing Plaintiffs and the Class all relief under ERISA § 502(a), 29 U.S.C. § 1132(a), or any other applicable law, that the Court deems proper, and such appropriate equitable relief as the Court may order, including an accounting, surcharge, disgorgement of profits, equitable lien, constructive trust, or other remedy; and

I. Awarding to Plaintiffs' counsel attorneys' fees and expenses as provided by the common fund doctrine, ERISA § 502(g), 29 U.S.C. § 1132(g), and/or other applicable doctrine;

J. Awarding such other appropriate relief as is just, equitable, and within the authority of the Court in light of the claims made herein.

Dated: September 14, 2017

Respectfully submitted,

By: /s/ Mark P. Kindall
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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2017, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

/s/ Mark P. Kindall
Mark P. Kindall