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November 14, 2025

Via ECF

Hon. Anne Y. Shields, U.S.M.J.
U.S. District Court for the Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Re: *UFCW Local 1500 Welfare Fund v. The New York & Presbyterian Hosp.*, 2:25-cv-5023 (E.D.N.Y.)
Cement and Concrete Workers DC Benefit Fund v. The New York & Presbyterian Hospital, No. 25-cv-5571 (E.D.N.Y.)
Response to Defendant's Letter Motion re Initial Case Scheduling (ECF No. 23)

Dear Judge Shields:

Counsel for Plaintiffs UFCW Local 1500 Welfare Fund ("UFCW") and Cement and Concrete Workers DC Benefit Fund ("Cement Workers" and, together with UFCW, "Plaintiffs") write to respond to Defendant's Letter Motion re Initial Case Scheduling (ECF No. 23) (the "Letter Motion"). The letter contains several mischaracterizations of Plaintiffs' positions and other misrepresentations that require immediate correction.

I. The Court Should Consolidate the Currently Filed Cases

Contrary to Defendant's misrepresentation, Plaintiffs are in favor of consolidating the *UFCW* and *Cement Workers* cases. The cases share common questions of law and fact and otherwise satisfy Rule 42(a)(2). Defendant's contention that Plaintiffs oppose consolidation (ECF 23 at 2) is simply false. Plaintiffs did not so state on the parties' November 10, 2025 meet and confer, nor at any other time; it simply is not true.[1] Indeed, the Letter Motion acknowledges that Plaintiffs "have already committed to filing a consolidated complaint." ECF No. 23 at 3.

What is true is that once the Court transferred the *Cement Workers* case to this Court, it became clear that the most efficient way to discuss an interim schedule was to wait for the Clerk to appoint a District Judge. Because the judges' individual practices differ, knowing which judge will preside will make the schedule negotiations more efficient. But Defendant appears to be

[1] Unfortunately, this statement is only one of multiple misrepresentations in the Letter Motion. For instance, the allegation that "Plaintiffs seek to delay the filing of any Consolidated Complaint and Motion to Dismiss until they have been appointed interim class counsel" is false for the reasons stated below; and despite acknowledging that "plaintiffs have not given [Defendant] authorization to include their position in this letter" (ECF No. 23 at 1), Defendant nonetheless submitted to the Court a week-old draft of Plaintiffs' proposal (ECF No. 23-2).

evading assignment of a District Judge to this case, which is currently governed by this District's Administrative Order 2023-23 (the "Administrative Order"). Although Defendant has indicated its intent to move to dismiss the Complaints (ECF No. 21), it refuses to file with the Court a letter "expressing such intent"—as it is required to do. *See* Admin Order ¶ 4.[2] Such gamesmanship should not be countenanced.

While Plaintiff suggested waiting for assignment of a presiding District Judge to make any proposed stipulation regarding consolidation and scheduling more efficient, Defendant instead sought the Court's intervention on two relatively minor issues: whether the case schedule should establish a process for consolidation of future cases and set dates for a submission regarding interim class counsel. Plaintiffs say yes; Defendant says no.

Plaintiffs maintain that the Court should appoint a District Judge before ruling on any of the issues below. But Plaintiffs cannot let Defendant's misstatements of the law and Plaintiffs' positions go unanswered. Plaintiffs' proposed schedule is attached hereto as Ex. A. Plaintiffs respectfully ask the Court to adopt that schedule for the following reasons.

II. The Court Should Consolidate Future-Filed Cases

Once the Court consolidates the above-captioned actions, if other plaintiffs come forward with related cases, Plaintiffs submit that the most efficient way forward is for the Court to promptly consolidate them with this case. Plaintiffs' proposed schedule provides accordingly. Ex. A ¶ 3. Courts routinely adopt this mechanism in the interest of effective case management. *See, e.g.*, *In re Dental Supplies Antitrust Litig.*, No. 2:16-cv-696 (E.D.N.Y. 2016), ECF No. 2 at *1, *3 (consolidating existing cases and "all other actions filed hereafter asserting substantially similar claims against defendants"). Indeed, such consolidation would benefit Defendant, since it would eliminate any need to respond to such later complaints. *See, e.g.*, *In re Novartis and Par Antitrust Litig.*, No. 18-cv-4361 (S.D.N.Y. 2018), ECF No. 59 (CMO) at 4 ¶ 3 (ordering future cases making "substantially similar allegations" to be "deemed consolidated" and that "Defendants need not respond" to any such complaint).

Defendant's concern that such consolidation would cause prejudice falls flat because Plaintiffs' proposed order permits any newly-filed plaintiff an opportunity to object to consolidation. Ex. A ¶ 3 (providing for consolidation of future cases "unless objected to within 10 days"). In *Crowe v. JPMorgan Chase & Co.*, the court considered an order that "provided for the automatic consolidation of any new actions related to the consolidated actions unless a party objects 'within ten (10) days . . . .'" 2009 WL 3852381, at *1 (S.D.N.Y. Nov. 18, 2009). The opportunity to object was sufficient there and is sufficient here.

[2] Under the Administrative Order, Defendant's letter of intent was due when its response to the *UFCW* Complaint was due, or November 12, 2025. *Id.* Defendant has repeatedly refused to explain when it plans to file this letter except to say, "we will file such letter when we believe it is necessary and appropriate." ECF No. 23-3 at 4. Because the Court extended Defendant's deadline for responding to the Complaint to November 19, 2025, Plaintiffs respectfully ask the Court to clarify that Defendant's letter of intent is due by that date if not earlier.

Defendant would have this Court leave the door open indefinitely "for other plaintiffs' lawyers to find their named plaintiffs and get their cases on file" and, no matter how far progressed this case is, disrupt it. ECF No. 23 at 4. It is unclear why this would benefit the Class; indeed, since Defendant is antagonistic to the Class, the Court has good reason to be skeptical. Instead, this position seems intended merely to sow conflict among Class counsel, which benefits no one but Defendant. In short, providing for consolidation of future-filed cases is a routine case management procedure. Doing so here should not be controversial.

III. The Court Should Set a Deadline for a Submission Regarding Appointment of Interim Class Counsel

Likewise, the schedule should set a date for Plaintiffs to "either present a stipulation regarding, or file a motion for appointment of, interim lead class counsel." Ex. A ¶ 4. When that date comes, counsel for UFCW and counsel for Cement Workers may move together for lead counsel, or they may move separately. Regardless, appointing counsel to lead this case *before* preparing a consolidated complaint or briefing the motion to dismiss will ensure a clear, efficient way forward.

"Designation of interim counsel clarifies responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement." *In re GEICO Customer Data Breach Litig.*, 2022 WL 22910573, at *2 (E.D.N.Y. Apr. 8, 2022) (quoting Manual For Complex Litigation (Fourth) § 21.11 (2004)); *see also In re SSA Bonds Antitrust Litig.*, 2016 WL 7439365, at *2 (S.D.N.Y. Dec. 22, 2016) (similar). "In cases where multiple overlapping and duplicative class actions have been transferred to a single district for the coordination of pretrial proceedings, designation of interim class counsel is encouraged, and indeed is probably essential for efficient case management." *Delre v. Perry*, 288 F.R.D. 241, 247 (E.D.N.Y. 2012) (cleaned up) (quoting *In re Air Cargo Shipping Servs. Antitrust Litig.*, 240 F.R.D. 56, 57 (E.D.N.Y. 2006)).[3] "When appointing interim class counsel, courts generally look to the same factors used in determining the adequacy of class counsel under Rule 23(g)." *In re GSE Bonds Antitrust Litig.*, 377 F. Supp. 3d 437, 437 (S.D.N.Y. 2019) (citations omitted). Those factors support appointment of interim lead class counsel here, as Plaintiffs will explain. In the meantime, suffice to say that for upcoming tasks, such as filing a consolidated amended complaint and responding to Defendant's forthcoming motion to dismiss, the buck has to stop somewhere. Appointing interim lead class counsel will clarify the lines of authority and ensure that the process goes smoothly.

Defendant's suggestion that the Court cannot appoint interim lead counsel until after a ruling on its motion to dismiss (ECF No. 23 at 3) is inconsistent with Rule 23(g)(3) and a misstatement of relevant law.[4] *See, e.g.*, *DDMB, Inc. v. Visa, Inc.*, 2021 WL 6221326, at *38

[3] Defendant's attempt to distinguish *Delre* is confusing, since defendants there took the same position as Defendant here: that appointment of counsel was premature. 288 F.R.D. at 247. The court rejected that argument. *Id.*

[4] Defendant relies on three cases in which there was only one suit on file. *Sullivan v. Barclays*, 2013 WL 2933480, at *1 (S.D.N.Y. 2013) ("no overlapping, duplicative or competing suits"); *Shiloah v. GEICO Indemn. Co.*, 2025 WL 2314761, at *3 (W.D.N.Y. 2025) (similar); *Beck v.*

(E.D.N.Y. Sept. 27, 2021) (noting appointment of interim class counsel prior to filing of operative complaint and motion to dismiss opposition); *Khan v. Bd. of Dirs. of Pentegra Defined Contribution Plan*, 2021 WL 663386, at *3 (S.D.N.Y. Feb. 18, 2021) (appointing interim lead counsel before motion to dismiss); *In re HSBC Bank, USA, N.A.*, 1 F. Supp. 3d 34, 39 (E.D.N.Y. 2014) (noting appointment of interim class counsel prior to filing of consolidated complaint).

Defendant insinuates that UFCW counsel and Cement Workers counsel have entered some kind of "backroom deal" to move jointly as interim lead counsel to the exclusion of latecomers. Not so. Counsel for the two Plaintiffs *are* working together on, for example, this letter and a proposed schedule. But there is nothing untoward about collaborating in litigating two cases that all parties agree should be consolidated. When the time comes to move for lead, the various counsel may move separately or together; that is perfectly proper, too. Indeed, courts often encourage such "private ordering," whereby counsel agree to collaborate on a case rather than contest leadership. *See, e.g.*, Manual for Complex Litigation (Fourth) at § 21.272; *Redner's Markets, Inc. v. Lamb Weston Holdings, Inc. et al.*, Civ. No. 1:24-cv-11801-JIC-GAF (N.D. Ill. Feb. 13, 2025), ECF No. 62 (approving co-lead counsel application supported by private ordering); *Doe v. GoodRx Holdings, Inc.*, 2023 WL 4384446, at *2 (N.D. Cal. July 7, 2023) (same). Courts favor this approach for its efficiency. But whether by agreement or contested application, Plaintiffs' counsel will move the court for appointment, and under Rule 23(g), it is the Court—not Defendant—that decides who will best represent the interests of the class. To permit defense counsel—who is *antagonistic* to the class—to have any role in that process would turn the rule on its head.

But the Court need not reach this issue at all, and Defendant's contention that Plaintiffs wish to halt all progress until they are appointed is yet another misrepresentation. ECF No. 23 at 3. In fact, Plaintiffs' Proposed Order would *not* appoint interim lead counsel—it would merely set a deadline for Plaintiffs to file a stipulation or motion with the Court. Ex. A ¶ 5. Plaintiffs will explain their reasoning in that submission. The Court is the ultimate decider, and will have the opportunity to consider such application and rule on the merits as it deems appropriate.

IV. Defendant May Not Dictate the Appropriate Attorneys' Fees

Finally, the Court should not permit Defendant to dictate what fee, if any, to award at the conclusion of the case. If Plaintiffs succeed in recovering damages for the Class in the form of a settlement or judgment, Plaintiffs will move the Court for attorneys' fees. Any such motion would be subject to authorization by the class representatives, notice to the class and an opportunity to object, and ultimately Court approval. It will turn on factors such as "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *In re Parking Heaters, Antitrust Litig.*, 2019 WL 8137325, at *7 (E.D.N.Y. Aug. 15, 2019) (citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000)). There is no logical way to apply these factors other than at the end of the case.

Manhattan College, No. 1:20-cv-03229 (S.D.N.Y. 2021), ECF No. 44 (similar). That is not the situation here.

Defendant's purported interest in the issue again reflects a misrepresentation of the relevant law and procedure. If Plaintiffs recover damages, Defendant will pay those damages into a "common fund" held in escrow. Plaintiffs will move the Court for an award of fees that reflects a portion of the sum that Defendant has *already paid*. As such, as to the fee, Defendant will not be "a party from whom payment is sought." Fed. R. Civ. P. 23(h). As the Second Circuit has explained, "[t]he settling defendant's focus is on its bottom line, and once that bottom line has been inked, the defendant's interest in how class members and class counsel spend the settlement money dwindles." *Fresno Cnty. Emp. Ret. Ass'n v. Isaacson/Weaver Fam. Trust*, 925 F.3d 63, 70 (2d Cir. 2019) (contrasting a common fund case with one in which defendant must pay a fee "in addition to any monetary judgment"). Thus, Defendant's argument that Rule 23(h) gives Defendant standing to dispute any request for attorneys' fees rests on a false premise. ECF No. 23 at 4 (citing Rule 23(h)).

What's more, the vast majority of courts have rejected proposals, like Defendant's, to provoke a bidding war or auction among plaintiffs' counsel. *See* Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 Fordham L. Rev. 1151, 1165-66 (2021) (finding the obstacles are so severe that experimentation with fee auctions has all but ceased); *see generally* Stephen A. Saltzburg et al., *Third Circuit Task Force Report on Selection of Class Counsel*, 74 Temp. L. Rev. 689, 737 (2001) (similar).[5]

Without support in the case law, Defendant attacks Plaintiffs for staffing 14 attorneys to the matter. But this is a large, complex case, likely to involve years of litigation, hundreds of thousands of documents, dozens of fact and expert witnesses, and a complex jury trial. If anything, the number of attorneys who have appeared underscores Plaintiffs' counsel's willingness to devote the requisite resources to achieve the best possible recovery, even though that recovery might be zero. *See Khan*, 2021 WL 663386, at *2 (appointing lead counsel, in part, because of the number of attorneys available with requisite experience). While Defendant is represented by a single firm, that firm has more than 800 lawyers—far more than all of Plaintiffs' firms combined.[6] That they work for a single firm, or may not all appear on the signature block, does not change the fact that Defendant, too, will devote substantial resources to this matter.

Unsupported by the facts and law, Defense counsel's claim that it is looking out for the best interests of the Class is suspect. More likely, their focus on a fee that counsel may someday seek appears aimed at removing any incentive for success and thus discouraging counsel from vigorously litigating this case. If that is Defendant's intention, it will not work. And Defendant's attempt to do so should not sway the Court.

[5] The rare trial courts that have used auctions did so in cases involving a larger set of plaintiffs and proposed class counsel. For instance, the *In re Auction Houses Antitrust Litig.* case on which Defendant relies involved a "large number of individual and class action complaints." 197 F.R.D. 71, 72 (S.D.N.Y. 2000).

[6] *See* Proskauer Rose: Locations, https://www.proskauer.com/locations.

At bottom, this dispute remains a simple matter of case management. Plaintiffs' proposed order would help this case move forward efficiently and expeditiously. Plaintiffs respectfully ask that the Court enter it.

Sincerely,

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Counsel for Plaintiff UFCW Local 1500 Welfare Fund and the Putative Class

CC: Counsel of Record (via ECF)

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UFCW LOCAL 1500 WELFARE FUND, on behalf of itself and all others similarly situated, *Plaintiff,* v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, *Defendant.*	Case No. 2:25-cv-5023
CEMENT AND CONCRETE WORKERS DC BENEFIT FUND, on behalf of itself and all others similarly situated, *Plaintiff,* v. THE NEW YORK AND PRESBYTERIAN HOSPITAL, *Defendant.*	Case No. 1:25-cv-5571

[PROPOSED] SCHEDULING ORDER

Plaintiffs United Food and Commercial Workers Local 1500 Welfare Fund ("UFCW") and Cement and Concrete Workers DC Benefit Fund ("Cement Workers" and, together with UFCW, "Plaintiffs"), by and through their undersigned counsel of record, respectfully submit this proposed order regarding consolidation of the above-captioned actions and scheduling of deadlines relating to appointment of lead counsel, and the filing of Plaintiffs' consolidated complaint and Defendant's anticipated motion to dismiss:

WHEREAS, the above-captioned cases involve common questions of law and fact;

WHEREAS, consolidation of the above-captioned cases will enable more efficient case management by the Court and avoid unnecessary costs and delays by avoiding duplicative discovery and motion practice in each case;

WHEREAS, Plaintiffs and Defendant the New York and Presbyterian Hospital ("Defendant" and, together with Plaintiffs, the "Parties") agree that consolidation is appropriate;

WHEREAS, Plaintiffs intend to file a consolidated complaint;

WHEREAS, Defendant intends to file a motion to dismiss the consolidated complaint;

WHEREAS, the Parties have met and conferred and agree that an enlargement of the otherwise applicable deadlines and page limits under the Federal Rules of Civil Procedure and the Local Civil Rules is appropriate in the context of this case; and

WHEREAS, this Proposed Order is being filed simultaneously in both of the above-captioned cases;

THEREFORE, it is so ordered that:

1. Pursuant to Federal Rule of Civil Procedure 42(a), the above-captioned cases are consolidated for all purposes under the lower civil action number: "2:25-cv-5023."

2. All papers filed in this action shall be filed under Civil Case No. 2:25-cv-5023 and must bear the following case name: *In Re New York Presbyterian Hospital System Antitrust Litigation*.

3. All future related cases, if any, shall be automatically consolidated under Civil Case No. 2:25-cv-5023 and the caption *In Re New York Presbyterian Hospital System Antitrust Litigation*, unless objected to within 10 days.

4. On or before **30 days after the entry of this Order**, Plaintiffs shall either present a stipulation regarding, or file a motion for appointment of, interim lead class counsel.

5. On or before **21 days after the Court's ruling on the stipulation or motion for appointment of interim lead class counsel**, Plaintiffs shall file their consolidated complaint.

6. On or before **10 days after Plaintiffs file their consolidated complaint**, Defendant shall file a pre-motion conference letter.

7. On or before **5 business days after filing of Defendant's pre-motion conference letter**, Plaintiffs shall file a letter in response.

8. On or before **30 days after the Court holds a pre-motion conference or rules on Defendant's pre-motion conference letter**, Defendant shall serve, but not file, its motion to dismiss. The Memorandum of Law accompanying such motion shall not exceed 30 pages.

9. On or before **30 days after Defendant serves its motion to dismiss**, Plaintiffs shall serve, but not file, their opposition to Defendant's motion to dismiss or an amended consolidated complaint. Plaintiffs' opposition shall not exceed 30 pages.

10. On or before **20 days after Plaintiffs serve an opposition to Defendant's motion to dismiss the consolidated complaint**, Defendant shall serve its reply in support of its motion to dismiss, not to exceed 20 pages, and file all motion papers on the docket.

11. Pursuant to Local Civil Rule 73.1 and Administrative Order 2023-23, the parties do not consent to have a magistrate judge conduct all proceedings in the case and order the entry of final judgment.

With respect to the matters addressed by this [Proposed] Scheduling Order, any conflicting deadlines under the Federal Rules of Civil Procedure, this Court's Local Rules, and this Court's Individual Practices, shall not apply. Pending further order of the Court, Defendant need not answer, move against, or respond to the currently operative complaints.

IT IS SO ORDERED.

_____

Dated: _____, 2025