

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ADILSON MONTEIRO, KAREN  
GINSBURG, JASON LUTAN, and  
BRIAN MINSK, Individually and as  
representatives of a class of similarly  
situated persons, on behalf of the  
CHILDREN'S HOSPITAL  
CORPORATION TAX-DEFERRED  
ANNUITY PLAN,

Plaintiffs,

v.

THE CHILDREN'S HOSPITAL  
CORPORATION, THE BOARD OF  
DIRECTORS OF THE CHILDREN'S  
HOSPITAL CORPORATION, THE  
CHILDREN'S HOSPITAL CORPORATION  
RETIREMENT COMMITTEE; and DOES No.  
1-20, Whose Names Are Currently  
Unknown,

Defendants.

Case No: 1:22-cv-10069

**CLASS ACTION COMPLAINT**

**I. INTRODUCTION**

1. Plaintiffs, Adilson Monteiro ("Monteiro"), Karen Ginsburg ("Ginsburg"), Jason Lutan ("Lutan"), and Brian Minsk ("Minsk") (collectively, "Plaintiffs"), individually and as participants of the Children's Hospital Corporation Tax-Deferred Annuity Plan ("Plan"), bring this action under 29 U.S.C. § 1132, on behalf of the Plan and a class of similarly-situated participants and beneficiaries of the Plan, against Defendants, the Children's Hospital Corporation, doing business as Boston Children's

Hospital (“Boston Children’s”), the Children’s Hospital Corporation Board of Directors (“Board”), the Children’s Hospital Corporation Retirement Committee (“Administrative Committee” or “Committee”), and Does No. 1-20, who are members of the Administrative Committee or the Board or other fiduciaries of the Plan and whose names are currently unknown (collectively, “Defendants”), for breach of their fiduciary duties under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 *et seq.*, and related breaches of applicable law beginning six years prior to the date this action is filed and continuing to the date of judgment, or such earlier date that the Court determines is appropriate and just (“Class Period”).

2. Defined contribution plans (*e.g.*, 401(k) and 403(b) plans) that are qualified as tax-deferred vehicles have become the primary form of retirement saving in the United States and, as a result, America’s *de facto* retirement system. Unlike traditional defined benefit retirement plans, in which the employer typically promises a calculable benefit and assumes the risk with respect to high fees or under-performance of pension plan assets used to fund defined benefits, 401(k) and 403(b) plans operate in a manner in which participants bear the risk of high fees and investment underperformance.

3. The importance of defined contribution plans to the United States retirement system has become pronounced as employer-provided defined benefit plans have become increasingly rare as an offered and meaningful employee benefit.

4. As of December 31, 2020, the Plan had 18,580 participants with account balances and assets totaling over \$1.1 billion, placing it in the top 0.1% of all defined

contribution plans by plan size.<sup>1</sup> Defined contribution plans with substantial assets, like the Plan, have significant bargaining power and the ability to demand low-cost administrative and investment management services within the marketplace for administration of defined contribution plans and the investment of defined contribution assets. The marketplace for defined contribution retirement plan services is well-established and can be competitive when fiduciaries of defined contribution retirement plans act in an informed and prudent fashion.

5. Defendants maintain the Plan, and are responsible for selecting, monitoring, and retaining the service provider(s) that provide investment, recordkeeping, and other administrative services. Defendants are fiduciaries under ERISA, and, as such, owe a series of duties to the Plan and its participants and beneficiaries, including obligations to act for the exclusive benefit of participants, ensure that the investment options offered through the Plan are prudent and diverse, and ensure that Plan expenses are fair and reasonable.

6. Defendants have breached their fiduciary duties to the Plan. As detailed below, Defendants: (1) failed to fully disclose the expenses and risk of the Plan's investment options to participants; (2) allowed unreasonable expenses to be charged to participants; and (3) selected, retained, and/or otherwise ratified high-cost and poorly-performing investments, instead of offering more prudent alternative investments

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<sup>1</sup>The Brightscope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2018 (pub. July 2021).

when such prudent investments were readily available at the time Defendants selected and retained the funds at issue and throughout the Class Period.

7. To remedy these fiduciary breaches and other violations of ERISA, Plaintiffs bring this class action under Sections 404, 409 and 502 of ERISA, 29 U.S.C. §§ 1104, 1109 and 1132, to recover and obtain all losses resulting from each breach of fiduciary duty. In addition, Plaintiffs seek such other equitable or remedial relief for the Plan and the proposed class (“Class”) as the Court may deem appropriate and just under all of the circumstances.

8. Plaintiffs specifically seek the following relief on behalf of the Plan and the Class:

- a. A declaratory judgment holding that the acts of Defendants described herein violate ERISA and applicable law;
- b. A permanent injunction against Defendants prohibiting the practices described herein and affirmatively requiring them to act in the best interests of the Plan and its participants;
- c. Equitable, legal or remedial relief for all losses and/or compensatory damages;
- d. Attorneys’ fees, costs and other recoverable expenses of litigation; and
- e. Such other and additional legal or equitable relief that the Court deems appropriate and just under all of the circumstances.

## II. THE PARTIES

9. Monteiro is a former employee of Boston Children's and former participant in the Plan under 29 U.S.C. § 1002(7). Monteiro is a resident of Randolph, Massachusetts. During the Class Period, Monteiro maintained an investment through the Plan in the Fidelity Freedom 2045 Fund and was subject to the excessive recordkeeping and administrative costs alleged below.

10. Ginsburg is a former employee of Boston Children's and former participant in the Plan under 29 U.S.C. § 1002(7). Ginsburg is a resident of Swampscott, Massachusetts. During the Class Period, Ginsburg maintained an investment through the Plan in the Fidelity Freedom 2025 Fund and was subject to the excessive recordkeeping and administrative costs alleged below.

11. Lutan is a former employee of Boston Children's and former participant in the Plan under 29 U.S.C. § 1002(7). Lutan is a resident of Boston, Massachusetts. During the Class Period, Lutan maintained an investment through the Plan in the Fidelity Freedom 2040 Fund and was subject to the excessive recordkeeping and administrative costs alleged below.

12. Minsk is a former employee of Boston Children's and former participant in the Plan under 29 U.S.C. § 1002(7). Minsk is a resident of Quincy, Massachusetts. During the Class Period, Minsk maintained an investment through the Plan in the Fidelity Freedom 2055 Fund and was subject to the excessive recordkeeping and administrative costs alleged below.

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