

**COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT**

SJC No. DAR-\_\_\_\_  
Appeals Court No. 2026-P-0625

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**MARJORIE OETTINGER**  
Plaintiff- Appellant

v.

**MASSACHUSETTS GENERAL PHYSICIANS' ORGANIZATION**  
Defendant-Appellees

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ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT FOR  
SUFFOLK COUNTY, NO. 2584CV00644

**APPELLANT MARJORIE OETTINGER'S  
APPLICATION FOR DIRECT APPELLATE REVIEW**

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## **I. REQUEST FOR DIRECT APPELLATE REVIEW**

The issues raised in this action strike at the heart of a foundational constitutional principle: that the Legislature may not selectively extinguish the longstanding wage rights of thousands of Massachusetts healthcare workers in order to rescue chosen institutional defendants from accountability for their own statutory violations, nor may courts extend such targeted immunity beyond its plain text to shield individual corporate officers the Legislature never mentioned. This action also presents a question of first impression under both Federal and Massachusetts constitutional law: where a plaintiff rejected a substantial settlement offer in reasonable reliance on existing law, only to have the Legislature retroactively eliminate her rights while her case was pending, does that concrete and irrevocable reliance satisfy due process requirements for challenging retroactive legislation? As such, pursuant to Rule 11 of the Massachusetts Rules of Appellate Procedure, Plaintiff-Appellant Dr. Marjorie Oettinger (“Plaintiff” or “Dr. Oettinger”) respectfully requests that this Court grant direct appellate review of the decision of the Suffolk County Superior Court (Barry-Smith, J.) granting Defendant Massachusetts General Physicians’ Organization, Inc.’s (“Defendant” or “MGPO”) motion for judgment on the pleadings.

This appeal involves the constitutionality of Section 113 of Chapter 9 of the Acts and Resolves of 2025, which was signed into law on July 4, 2025. The

questions concerning the constitutionality of Section 113 Chapter 9 of the Acts and Resolves of 2025 (“Section 113”) are the same as those pending before this Court in *Martin et al. v. Amherst College*, DAR-30709. Section 113 provides immunity to both nonprofit institutions of higher education and nonprofit organizations comprising a healthcare delivery system from lawsuits targeting the monthly payment of wages under the Massachusetts Wage Act, M.G.L. c. 149, § 148, stating:

Nonprofit institutions of higher education and nonprofit organizations that comprise a health care delivery system shall be immune from liability with regard to any claim or cause of action seeking a legal or equitable remedy or other relief commenced between July 1, 2024 and September 30, 2028, inclusive, that alleges that the institution’s or organization’s payment of wages on a monthly basis or pursuant to any written policy, schedule, or agreement presented or made available to an employee concerning payment for work performed over an academic term violated section 148 of chapter 149 of the General Laws; provided, however, that earned wages shall have been paid in full within 6 days of the termination of a pay period occurring: (i) on a monthly basis; or (ii) pursuant to any written policy, schedule or agreement presented to an employee concerning payment for work performed over a specific period or an academic term.

Section 113.

On March 6, 2025, Dr. Oettinger filed a putative class action complaint in Suffolk County Superior Court alleging that MGPO violated the Wage Act by paying her and other exempt employees on a monthly basis on the 26th day of each month, despite never electing to be paid monthly. Dr. Oettinger’s complaint was

among at least six class action lawsuits filed against colleges, universities, and healthcare systems challenging monthly pay practices.

In addition to the issues presented in *Martin*, DAR-30709, Dr. Oettinger rejected a substantial settlement offer to resolve this litigation, acting in reasonable reliance on her ability to pursue her claims under the Massachusetts Wage Act. Had she known the Legislature would retroactively eliminate her rights, she obviously would have accepted settlement.

After the passage of Section 113, MGPO moved for judgment on the pleadings on the grounds that Section 113 provides clear and categorical statutory immunity. Meanwhile, Dr. Oettinger sought leave to file a Second Amended Complaint adding MGPO's President, Dr. Marcela G. Del Carmen, and Treasurer, Sally Mason Boemer, as individual defendants under the Wage Act's explicit provisions for individual officer liability. The Superior Court allowed Dr. Oettinger's motion to amend but granted MGPO's motion for judgment on the pleadings, holding that Section 113 is constitutional and that "the immunity provided to nonprofit institutions and organizations under Section 113 extends also to the officers of those employers."

Dr. Oettinger contends that the Superior Court erred in upholding Section 113's constitutionality despite her demonstrated settlement reliance and in extending Section 113's organizational immunity to individual officers not named

in the statute. Dr. Oettinger requests direct appellate review because: (1) the appeal raises constitutional challenges under both the Commonwealth and United States Constitutions regarding retroactive immunity legislation and judicial extension of statutory immunity beyond express terms; and (2) the issues are of substantial public importance affecting thousands of healthcare workers and implicating whether individual corporate officers remain personally liable for Wage Act violations when their organizations receive legislative immunity.

At least one other significant action remains pending in Superior Court raising the same constitutional issues. Without direct appellate review, multiple appeals on identical issues may proceed through intermediate review, creating delay, uncertainty, and risk of inconsistent rulings. Direct review by this Court will provide unified guidance applicable to all pending and future cases implicating Section 113.

## **II. STATEMENT OF PRIOR PROCEEDINGS**

### **A. Commencement of the Litigation**

On March 6, 2025, Dr. Oettinger filed a Class Action Complaint alleging that MGPO violated M.G.L. c. 149, § 148 by paying employees monthly without obtaining employee elections authorizing such payment schedules. Compl. ¶¶ 8-15. The Business Litigation Session accepted the case for assignment the following day.

On March 24, 2025, Dr. Oettinger filed an Amended Complaint correcting certain allegations about MGPO’s specific payment date. Am. Compl. ¶ 10. The amended pleading clarified that MGPO paid wages on the 26th day of each month rather than the last calendar day. *Id.*

MGPO filed its Answer on May 5, 2025, asserting seventeen additional defenses. Answer pp. 14-18. These defenses included arguments that: Dr. Oettinger suffered no actual harm warranting multiple damages under due process principles (First Additional Defense); MGPO acted in good faith (Second Additional Defense); the Wage Act does not apply to hospital employees absent their request for weekly payment (Fifth Additional Defense); any damages are capped by charitable immunity statute (Sixth Additional Defense); and Dr. Oettinger knowingly accepted monthly payment (Ninth Additional Defense). *Id.*

**B. The Enactment of Section 113**

The Legislature enacted and Governor Healey signed Chapter 9 of the Acts and Resolves of 2025, including Section 113 as part of emergency budget legislation, on July 4, 2025. Acts and Resolves of 2025, c. 9, § 113. The emergency preamble rendered the statute effective immediately. *Id.* Section 113 provides immunity to nonprofit healthcare delivery systems and educational institutions from Wage Act claims based on monthly payment for any claims “commenced between July 1, 2024 and September 30, 2028.” *Id.*

### C. The Curtis-Wilding Decision

The United States District Court for the District of Massachusetts decided *Curtin-Wilding v. Trustees of Boston University*, addressing a constitutional challenge to Section 113 virtually identical to the challenge raised in Dr. Oettinger's case. *See* No. 25-10432-RGS, 2025 U.S. Dist. LEXIS 166666 at \*2 (D. Mass. Aug. 27, 2025). The district court upheld Section 113 against due process, Article X, and Article XI challenges, relying heavily on the First Circuit's recent decision in *Dutra v. Trustees of Boston University*, 96 F.4th 15 (1st Cir. 2024), which had addressed different retroactive immunity legislation protecting universities from COVID-19-related liability. *Curtin-Wilding*, 2025 U.S. Dist. LEXIS 166666 at \*6-\*10.

The *Curtin-Wilding* court held that Section 113 serves public interests by protecting Massachusetts educational and healthcare institutions from devastating financial impact, that any reliance on Wage Act rights was not reasonable given recent legislative attention to these claims, and that the statute is appropriately tailored because it affects a limited number of cases over a finite time period. *Id.*

Significantly, the *Curtin-Wilding* court also addressed whether Section 113's immunity extends to individual officers. The plaintiff there, like Dr. Oettinger, had sought to add individual officers as defendants under M.G.L. c. 149, § 148. *Id.* at \*4. The district court held that individual officer liability under the Wage Act is

“derivative” of organizational liability, concluding that where no viable claim exists against the organization, no claim can exist against its officers either. *Id.* The court reasoned this interpretation was necessary to effectuate legislative intent and avoid an “absurd result.” *Id.*

The Superior Court in this case found the *Curtin-Wilding* analysis persuasive, stating: “I agree with MGPO and find persuasive the United States District Court decision in *Curtin-Wilding v. Trustees of Boston Univ.*, 2025 WL 2469312 (D. Mass. Aug. 27, 2025).” Decision and Order at 7.

#### **D. Motion Practice in Oettinger v. MGPO**

After the legislature enacted Section 113, MGPO filed an Amended Answer on July 25, 2025, adding Section 113 immunity as its Eighteenth Additional Defense. Am. Answer p. 18. On October 9, 2025, MGPO filed its Motion for Judgment on the Pleadings, arguing Section 113 provided complete immunity from all of Dr. Oettinger’s claims. *See* Def.’s Mem. in Supp. of Mot. for J. on the Pleadings at 1.

Dr. Oettinger responded by moving for leave to file a Second Amended Complaint adding two individual defendants: Dr. Marcela G. Del Carmen, MGPO’s President, and Sally Mason Boemer, MGPO’s Treasurer. The motion argued that M.G.L. c. 149, § 148 explicitly imposes personal liability on corporate presidents and treasurers regardless of any organizational immunity. Pl.’s Mem.

ISO Mot. to Amend at 4-9. The proposed Second Amended Complaint also added the critical allegation that Dr. Oettinger had rejected a substantial settlement offer in reliance on her ability to pursue all available claims under existing Massachusetts law. Second Am. Compl. ¶ 19.

Dr. Oettinger filed her Opposition, advancing three constitutional challenges: (1) Section 113 violates Article X by selectively exempting certain employers from standing laws; (2) its retroactive application violates due process under both federal and state constitutions, particularly given Dr. Oettinger's demonstrated settlement reliance; and (3) it violates Article XI by eliminating all remedies for healthcare workers at nonprofit systems while preserving identical remedies for all other employees. *See* Pl.'s Opp'n to Def.'s Mot. for J. on the Pleadings at 2.

On January 12, 2025, the Superior Court issued its Decision and Order. The Court allowed Dr. Oettinger's motion to amend, accepting the Second Amended Complaint for filing. Decision and Order at 1. However, it then granted MGPO's motion for judgment on the pleadings, dismissing all claims. *Id.* at 13.

The court rejected each of Dr. Oettinger's constitutional challenges. Decision and Order at 2-8. The court stated that it agreed with MGPO and found "persuasive the United States District Court decision in *Curtin-Wilding*." *Id.* at 7. It held that retroactive application of Section 113 satisfies due process because the

statute serves public interests in protecting educational and healthcare institutions, affects rights where reliance expectations were not reasonable, and is appropriately tailored to address legislative concerns. *Id.* at 4-7. The court dismissed Dr. Oettinger’s settlement reliance argument in a footnote, stating that “litigation activity, including declining a settlement offer, is not the type of reliance that can impact the due process analysis.” *Id.* at 7 n.3.

The court also rejected Dr. Oettinger’s Article X and Article XI challenges. *Id.* at 7-8. It held that Section 113 does not constitute impermissible special legislation because it “applies equally to all nonprofit institutions of higher education and healthcare delivery systems,” and does not violate Article XI because the Legislature may amend its statutes including through grants of immunity. *Id.*

Most critically for this appeal, the court extended Section 113’s immunity to the individual officer defendants despite the statute’s silence regarding individual liability. *Id.* at 9-13. The court held that “officer liability under the Wage Act is derivative of the employer’s liability” and concluded that “the immunity provided to nonprofit institutions and organizations under Section 113 extends also to the officers of those employers.” *Id.* at 9, 11. The court reasoned that because no viable claim exists against MGPO, “it follows that there can be no joint and several liability chargeable to its officers.” *Id.* at 11. The court also stated it agreed with

Judge Stearns’ reasoning in *Curtin-Wilding* that Section 113 cannot reasonably be interpreted to immunize employers while maintaining liability for their officers, as that “would effectively shift Wage Act liability from the employer to the employer’s individual officers, a result that contradicts providing ‘immunity’ to [covered] nonprofit organizations.” *Id.* at 11-12.

On February 11, 2026, the Superior Court entered judgment allowing Plaintiff’s motion for leave to amend her complaint, while also allowing Defendant’s motion for judgment on the pleadings and dismissing the Second Amended Complaint. That same day Dr. Oettinger filed her Notice of Appeal. Plaintiff then submitted notice that the hearing transcript had been ordered. Case 2026-P-0625 was docketed on May 5, 2026.

### **III. STATEMENT OF RELEVANT FACTS**

#### **A. Dr. Oettinger’s Employment and MGPO’s Payment Practices**

Dr. Marjorie Oettinger began working for MGPO in 1991 as a molecular biologist, serving dual appointments at Massachusetts General Hospital and as a Professor of Genetics at Harvard Medical School. Second Am. Compl. ¶ 9. Between 2022 and 2024, her annual compensation ranged from approximately \$288,913 to \$306,547. *Id.*

Throughout the three years preceding this lawsuit, MGPO served as the sole entity responsible for compensating Dr. Oettinger. Second Am. Compl. ¶ 10.

MGPO paid her exclusively on the 26th day of each month. Second Am. Compl. ¶ 11. Dr. Oettinger never elected to receive monthly payment, nor did MGPO ever request such an election from her. Second Am. Compl. ¶ 12.

The Massachusetts Wage Act mandates that employers pay wages to salaried employees “weekly, bi-weekly, or semi-monthly” within six days of the pay period’s close. M.G.L. c. 149, § 148. An employer may pay monthly only if the employee makes a voluntary written election for such payment. *Id.* Because MGPO paid Dr. Oettinger monthly without the requisite election, wages she earned during the first fifteen days of each month were allegedly paid approximately ten days late—around the 26th rather than by approximately the 21st as the statute requires for semi-monthly payment. Second Am. Compl. ¶¶ 14-16.

Over the relevant three-year limitations period, MGPO paid Dr. Oettinger total wages of approximately \$900,470. Second Am. Compl. ¶ 13. Under a semi-monthly payment calculation, approximately \$450,235 of those wages were paid late. Second Am. Compl. ¶ 16.

Dr. Oettinger believes, based on information and belief, that at least fifty and likely significantly more MGPO employees received monthly payment during the relevant period. Second Am. Compl. ¶ 23. MGPO is a Massachusetts nonprofit corporation that operates as part of a healthcare delivery system affiliated with

Massachusetts General Hospital. Second Am. Compl. ¶ 2; Def.'s Mem. in Supp. of Mot. for J. on the Pleadings at 2.

Dr. Marcela G. Del Carmen serves as MGPO's President, holding the organization's highest executive position with ultimate responsibility for establishing and implementing corporate policies, including wage payment practices. Second Am. Compl. ¶ 17. Sally Mason Boemer serves as MGPO's Treasurer with direct authority over the organization's financial operations, including responsibility for wage payment decisions. Second Am. Compl. ¶ 18.

The Massachusetts Wage Act provides that "[t]he president and treasurer of a corporation and any officers or agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation" subject to personal liability for violations. M.G.L. c. 149, § 148. Dr. Oettinger sought to add Del Carmen and Boemer as defendants pursuant to this express statutory mandate. Pl.'s Mem. ISO Mot. to Amend at 4-9.

**C. Dr. Oettinger Rejected a Substantial Settlement Offer in Reliance on Her Ability to Pursue All Claims Available Under the Wage Act.**

Prior to the enactment of Section 113, Dr. Oettinger received a substantial settlement offer to resolve this litigation. Second Am. Compl. ¶ 19; Pl.'s Mem. ISO Mot. to Amend at 2. She declined the offer, making that decision in reasonable reliance on her ability to pursue all claims available under the Massachusetts Wage

Act as it then existed. *Id.* At the time she rejected settlement, Section 113 had not been enacted, and she possessed every reason to expect that her statutory protections would remain intact throughout the litigation. Pl.'s Opp'n to Def.'s Mot. for J. on the Pleadings at 18.

This reliance was objectively reasonable. The Wage Act's payment frequency requirements have existed in substantially similar form since 1955. The statute has long imposed strict liability on employers without regard to good faith or actual employee harm. *Reuter v. Methuen*, 489 Mass. 468-469 (2022). Dr. Oettinger had no basis to anticipate that the Legislature might retroactively immunize her employer from liability for systematic violations of these longstanding requirements.

Had Dr. Oettinger known the Legislature would subsequently enact Section 113 to eliminate her claims retroactively, she obviously would have accepted the settlement offer. Pl.'s Opp'n to Def.'s Mot. for J. on the Pleadings at 18. Her rejection of that offer represents an irrevocable strategic decision made in reliance on vested legal rights that she can no longer reclaim.

#### **D. The Enactment of Section 113**

The legislative process culminating in Section 113 began with bills introduced by Senator Michael F. Rush and Representative Jeffrey N. Roy. Def.'s

Mem. in Supp. of Mot. for J. on the Pleadings at 2. The Joint Committee on Labor and Workforce Development held a hearing. *Id.*

At that hearing, Rob McCarron, President of the Association of Independent Colleges and Universities in Massachusetts, testified that the proposed legislation would address “unintended consequences” of the Wage Act revealed by “the filing of four class action lawsuits against colleges and universities in Massachusetts.” *Id.* He emphasized the need to address “the devastating financial impact to these institutions that would result from these lawsuits,” referencing claims seeking “hundreds of millions of dollars and even billions of dollars” in penalties. *Id.* The testimony characterized the violations as “technical” despite affecting systematic payment practices maintained over many years. *Id.*; Pl.’s Opp’n to Def.’s Mot. for J. on the Pleadings at 8.

The Senate proposed amendments following a supplemental budget hearing, and a conference committee reconciled differences between House and Senate versions. Def.’s Mem. in Supp. of Mot. for J. on the Pleadings at 2. Both chambers enacted the budget legislation. *Id.* Governor Healey signed the bill with an emergency preamble, making Section 113 effective immediately. *Id.*

The statute contains no reference to individual officers, directors, presidents, treasurers, or any natural persons. Acts and Resolves of 2025, c. 9, § 113. It speaks only of “institutions” and “organizations.” *Id.*

#### **IV. ISSUES OF LAW RAISED BY THIS APPEAL**

1. Whether Section 113's retroactive elimination of Dr. Oettinger's Wage Act claims violates due process under the United States and Massachusetts Constitutions where she demonstrably relied on existing law by rejecting a substantial settlement offer before the statute's enactment.
2. Whether Section 113 constitutes an impermissible selective exemption from standing laws in violation of Article X of the Massachusetts Declaration of Rights by suspending Wage Act enforcement against nonprofit healthcare and educational institutions while maintaining full enforcement against all other employers.
3. Whether Section 113 violates Article XI of the Massachusetts Declaration of Rights by completely eliminating legal remedies for healthcare workers employed by nonprofit systems while preserving identical remedies for all other Massachusetts employees.
4. Whether the plain language of Section 113, which grants immunity only to "nonprofit institutions" and "nonprofit organizations," extends to individual corporate officers who are nowhere mentioned in the statute.

Each issue was raised and properly preserved by Plaintiff in the Superior Court.

## V. ARGUMENTS ON APPEAL

### A. **Section 113's Retroactive Application Violates Due Process Because Dr. Oettinger Demonstrably Relied on Existing Law by Rejecting Settlement Before the Statute's Enactment.**

Retroactive legislation eliminating vested rights raises acute constitutional concerns. While not categorically prohibited, such statutes must advance legitimate public interests through appropriately tailored means that do not unreasonably impair private rights. *Dutra*, 96 F.4th at 20; *Leibovich*, 410 Mass. at 577. Courts evaluate: (1) the public interest motivating the legislation; (2) the nature of rights affected and reasonableness of reliance expectations; and (3) whether the statute is narrowly tailored. *Id.* Section 113 fails this test.

#### 1. **Section 113 Serves No Legitimate Public Interest.**

The first factor examines what public interest motivated retroactive action. A statute cannot satisfy due process merely by benefiting private parties; it must serve broader societal purposes justifying disruption of settled expectations. *Am. Mfrs. Mut. Ins. Co.*, 374 Mass. at 189-90. Section 113 fails because it protects select institutional defendants from legal accountability without advancing any cognizable public interest. The legislative history reveals the purpose: to shield universities and hospitals from “devastating financial impact” caused by class action litigation over monthly payment practices. Def.’s Mem. in Supp. of Mot. for

J. on the Pleadings at 2. Protecting sophisticated organizations from liability for their own systematic statutory violations is a private interest, not a public one.

*Dutra* involved fundamentally different circumstances—a statute protecting universities from novel common-law liability arising from compliance with government-mandated COVID-19 protocols during an unprecedented emergency. 96 F.4th at 18-19. The First Circuit found compelling public interest in ensuring institutions could respond to urgent health crises without fear of litigation. Section 113 presents no analogous emergency. MGPO violated requirements existing since 1955. Section 113 merely relieves particular defendants of past liability with no corresponding public benefit.

Moreover, Section 113 actively undermines the substantial public interest embodied in the Wage Act. The Wage Act was enacted “for the protection of employees, who are often dependent for their daily support upon the prompt payment of their wages.” *Reuter v. Methuen*, 489 Mass. 465, 468 (2022) (quoting *Commonwealth v. New York Cent. & H.R.R.R.*, 206 Mass. 417, 424 (1910)). By eliminating enforcement against select employers, Section 113 signals that powerful institutions can obtain legislative exemption from worker protection laws, chilling enforcement and undermining public confidence in equal application of employment statutes.

**2. Dr. Oettinger’s Demonstrated Settlement Reliance Creates Constitutionally Protected Expectations.**

Parties challenging retroactive statutes must show they “acted in reasonable reliance upon the previous state of the law” and “would have acted differently” had they known the statute would be enacted. *Dupont*, 57 Mass. App. Ct. at 694; *Parello*, 46 Mass. App. Ct. at 791.

Dr. Oettinger satisfies this standard. She rejected a substantial settlement offer before Section 113 existed, acting in reasonable reliance that her statutory protections would continue throughout litigation. Second Am. Compl. ¶ 19; Pl.’s Mem. ISO Mot. to Amend at 2. She obviously would have accepted settlement had she known the Legislature would subsequently eliminate any remedy she had to a violation of the statute. Pl.’s Opp’n to Def.’s Mot. for J. on the Pleadings at 18.

The contrast with *Parello* illustrates why Dr. Oettinger’s position is constitutionally compelling. In *Parello*, the plaintiff failed to show concrete reliance—there was no evidence he “had taken any steps toward taking advantage of what was a relatively recent statutory addition, or that he had relied on that statute.” 46 Mass. App. Ct. at 791. Dr. Oettinger presents the opposite: documented reliance on longstanding protections through an irrevocable strategic decision.

The Superior Court dismissed this argument in a footnote, suggesting litigation activity cannot impact due process analysis. Decision and Order at 7 n.3. This reasoning cannot withstand scrutiny. Causes of action constitute “property

protected by the Fourteenth Amendment Due Process Clause.” *Logan*, 455 U.S. at 428. When a party makes irrevocable strategic decisions premised on vested rights, retroactive elimination violates due process.

Dr. Oettinger’s underlying claims possess clear merit. *Omori* recognized that claim strength affects constitutional analysis. 711 F. Supp. 3d at 38. MGPO does not dispute that it paid employees monthly without obtaining written elections—the core Wage Act violation alleged. This strengthens Dr. Oettinger’s constitutional position.

The Wage Act’s treble damages serve compensatory purposes distinct from purely punitive penalties. This Court has recognized the statute compensates workers for “the special injury imposed on workers whose employers unlawfully retain their wages for even short periods of time.” *Boston Police Patrolmen’s Ass’n*, 435 Mass. at 720. These compensatory protections combined with Dr. Oettinger’s documented settlement reliance create constitutional interests that Section 113 unreasonably impairs.

### **3. Section 113 Is Neither Narrowly Tailored Nor Appropriately Limited.**

Courts consider whether retroactive legislation “is short-term or of infinite duration” and “narrowly tailored to address the concerns that motivated its enactment.” *Anderson*, 463 Mass. at 313; *Doe*, 450 Mass. at 792. Section 113 fails dramatically. It does not limit remedies, cap damages, require proof of harm, or

create safe harbors for good-faith compliance. Instead, it provides absolute immunity—the most extreme intervention possible.

The temporal scope confirms excessive breadth. Section 113 affects claims “commenced between July 1, 2024 and September 30, 2028.” Given the Wage Act’s three-year statute of limitations period, this creates an approximately seven-year window of absolute immunity. What is more, this extended timeframe bears no relationship to any emergency. *See Dutra*, 96 F.4th at 18-19 (upholding statute affecting four to five months during pandemic).

Section 113 also reveals lack of tailoring through selective application. It protects only nonprofit healthcare and educational institutions—a small subset of employers—while leaving identical claims against all others to proceed. This selectivity demonstrates the statute was crafted not to address systematic problems but to provide targeted relief to specific defendants.

**B. Section 113 Violates Article X by Suspending Wage Act Enforcement for Select Employers.**

Section 113 violates Article X of the Massachusetts Declaration of Rights, which guarantees each person legal protection “in the enjoyment of [their] life, liberty, and property, according to standing laws.” Mass. Const. pt. 1, art. X. The Legislature lacks authority to “suspend any of the general laws, limiting the suspension to an individual person, and leaving the law still in force in regard to everyone else.” *Paddock*, 347 Mass. at 236. Section 113 operates exactly this way.

It suspends Wage Act enforcement for nonprofit healthcare systems and nonprofit educational institutions while maintaining full enforcement against every other employer in the Commonwealth.

This selective suspension is the paradigmatic Article X violation. In *Opinion of the Justices*, this Court rejected legislation immunizing trade unions and employer associations from tort liability, holding it violated Article X by “giv[ing] to certain favored [entities], selected arbitrarily, immunity from that equal liability for civil wrongs which is a sign of equality between citizens and residents.” 211 Mass. at 619. The Court emphasized such legislation impermissibly “frees one set of employers from obligations to which their competitors, who are independent of the association, are subjected.” *Id.* Section 113 presents identical defects. MGPO competes with for-profit healthcare organizations for employees and resources and now has a competitive advantage.

The constitutional violation extends beyond competitive concerns to fundamental inequality created for employees. Dr. Oettinger works as a molecular biologist—a role common across nonprofit research institutions, for-profit biotechnology companies, and pharmaceutical manufacturers. Yet Section 113 eliminates her Wage Act protections while her colleagues at for-profit organizations retain all their rights.

Employment relationships implicate fundamental constitutional rights deserving heightened protection. “Included in the right of personal liberty and the right of private property partaking of the nature of each is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment.” *In re Opinion of Justices*, 267 Mass. at 610. Section 113’s selective elimination of wage protection for certain employees based solely on employer identity constitutes precisely the arbitrary interference this precedent condemns.

The Superior Court’s reasoning that Section 113 “applies equally to all nonprofit institutions” and therefore “does not benefit an individual in the way Article X prohibited” misapprehends the violation. Decision and Order at 7-8. The problem is not that Section 113 singles out one nonprofit over another. The problem is that it suspends wage law enforcement for a select subset of employers while leaving enforcement operative for all others. *Paddock*, 347 Mass. at 236. Whether the favored class comprises one or one hundred institutions is constitutionally irrelevant.

**C. Section 113 Violates Article XI by Eliminating All Remedies for Certain Workers.**

Article XI guarantees that every person “ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character.” Mass. Const. pt. 1, art. XI. Section 113 violates this

guarantee by completely eliminating recovery for healthcare workers at nonprofit systems while preserving identical rights for all other employees.

Section 113 does not eliminate the underlying obligation—only the remedy. With Section 113, it is still illegal for nonprofit healthcare and educational institutions to pay their employees monthly unless such employees elect monthly pay at their own option. M.G.L. c. 149, §148. The Legislature simply stripped all impacted employees of any remedy for such illegal action.

Dr. Oettinger’s demonstrated reliance makes this violation concrete rather than theoretical. She rejected settlement in reasonable expectation that wage law would apply equally to all employers. When the Legislature retroactively strips certain workers of all remedies while preserving identical protections for others, it violates Article XI’s guarantee that every citizen shall find “a certain remedy, by having recourse to the laws, for all injuries or wrongs.”

**D. The Superior Court Erred by Extending Section 113’s Organizational Immunity to Individual Officers Not Mentioned in the Statute.**

Even if Section 113 constitutionally immunizes MGPO—which it does not—the Superior Court erred by extending that immunity to individual officers whom the statute does not mention. This error warrants reversal independent of constitutional challenges because it contradicts Section 113’s plain language and violates fundamental principles of statutory construction.

Section 113 provides that “[n]onprofit institutions of higher education and nonprofit organizations that comprise a health care delivery system shall be immune from liability.” Acts and Resolves of 2025, c. 9, § 113. The Legislature chose precise, limiting language: “institutions” and “organizations.” The statute contains no reference to individual officers, directors, presidents, treasurers, executives, or any natural persons. *Id.*

This textual choice is dispositive. Courts must interpret statutes according to their plain language. When statutory language is clear, courts must give effect to that language rather than speculate about unstated legislative intentions. The Legislature knows how to impose individual liability explicitly when it chooses to do so. The Wage Act itself demonstrates this: “The president and treasurer of a corporation and any officers or agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.” M.G.L. c. 149, § 148. This provision specifically identifies corporate officers by title and function, making unmistakably clear that individuals bear personal responsibility. The legislature chose not to immunize them.

The legislative history confirms this interpretation. Testimony supporting Section 113 focused exclusively on protecting institutions from “devastating financial impact” of massive class action judgments. Def.’s Mem. in Supp. of Mot. for J. on the Pleadings at 2. Nothing in the legislative record suggests concern

about individual officer liability or any intent to eliminate personal accountability for corporate decision-makers. This serves coherent legislative purposes: organizational immunity protects institutional finances while individual officer liability preserves deterrence through personal responsibility for decision-makers. This balanced framework reflects rational legislative policy.

By dismissing Dr. Oettinger's claims against MGPO officers Del Carmen and Boemer the Superior Court effectively rewrote the statute to add language the Legislature deliberately excluded. Courts lack authority to engage in such revision. *Cook v. Patient Edu, LLC*, 465 Mass. 548, 554 (2013) ("we will not add words to a statute that the Legislature did not put there.").

## **VI. REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE**

Direct appellate review is appropriate because this case presents significant constitutional questions and issues of substantial public importance requiring definitive resolution by the full Court.

### **A. Constitutional Questions Warranting Direct Review**

This appeal raises multiple substantial constitutional challenges. The due process challenge involves novel questions about the constitutional significance of demonstrated settlement reliance when evaluating retroactive legislation. The Superior Court held that "litigation activity, including declining a settlement offer, is not the type of reliance that can impact the due process analysis." Decision and

Order at 7 n.3. If that holding stands, it would effectively eliminate due process protection for any retroactive statute affecting pending litigation—a significant constitutional question requiring this Court’s attention.

The Article X challenge presents important questions about the Legislature’s power to selectively suspend standing laws. While *Paddock* established that the Legislature cannot suspend general laws for select persons while leaving them operative for others, this case requires application of that principle to modern employment legislation affecting thousands of workers. *See* 347 Mass. at 236.

The Article XI challenge raises fundamental issues about equal access to remedies. When the Legislature eliminates all remedies for certain employees while preserving identical remedies for others—not by generally amending the statute but by granting select defendants retroactive immunity—does this violate Article XI’s guarantee? This question has significant implications beyond this case.

### **B. Issues of Substantial Public Importance**

The issues affect thousands of healthcare and academic workers throughout Massachusetts. MGPO is affiliated with Massachusetts General Hospital, one of the Commonwealth’s largest employers. Similar questions affect employees at Harvard University, Boston University, and numerous other nonprofit systems across the state.

The question of whether individual officers may be held personally liable despite organizational immunity has immediate practical significance. If Section 113's immunity extends to officers—despite the statute's silence—then corporate decision-makers at nonprofit healthcare systems face no personal consequences for wage payment violations.

Multiple similar cases remain pending. *Brown v. President & Fellows of Harvard College* raises identical constitutional challenges. Without direct review, these cases may proceed through separate intermediate appeals, creating risk of inconsistent rulings and prolonging uncertainty. Direct review will provide unified authoritative guidance.

The questions are purely legal, requiring no factual development. The Superior Court granted judgment on the pleadings based on the face of the pleading and Section 113's text. Decision and Order at 1. The questions before this Court involve interpretation of statutory language, application of constitutional principles, and assessment of legislative intent—matters ideally suited for direct appellate review.

For these reasons, Dr. Oettinger respectfully requests that this Court grant direct appellate review.

## **VII. CONCLUSION**

For the foregoing reasons, Plaintiff-Appellant Dr. Marjorie Oettinger respectfully requests that this Court grant direct appellate review to resolve questions of constitutional and statutory interpretation that affect thousands of Massachusetts workers and establish important precedent regarding: (1) the constitutional limits on retroactive immunity legislation, particularly where plaintiffs demonstrably relied on existing law through irrevocable litigation decisions; (2) the Legislature's power under Article X to selectively suspend worker protection laws for favored employers; (3) Article XI's guarantee of equal access to remedies; and (4) whether courts may extend statutory immunity to individuals not mentioned in statutory text.

Respectfully Submitted,  
MARJORIE OETTINGER,  
individually, and on behalf of all  
others similarly situated,  
By Her Attorneys,

Dated: May 26, 2026

/s/ Eric R. LeBlanc

Eric R. LeBlanc (BBO No. 666786)

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24 Thorndike Street, Suite 300

Cambridge, MA 02141

(617) 577-8800

# **ADDENDUM**

## ADDENDUM TABLE OF CONTENTS

	<b>PAGE</b>
Superior Court Docket Entries .....	33
Class Action Complaint and Jury Demand, filed March 6, 2025 .....	38
Amended Complaint, filed March 24, 2025.....	50
Answer to Amended Complaint, Filed May 5, 2025.....	62
Amended Answer to Amended Complaint, Filed July 25, 2025.....	82
Defendant’s Memorandum ISO Motion for Judgment on the Pleadings.....	103
Plaintiff’s Opposition to Defendant’s Motion for Judgment on the Pleadings....	119
Plaintiff’s Memorandum ISO Motion for Leave to File Second Amended Complaint.....	141
Defendant’s Opposition to Plaintiff’s Motion for Leave to File Second Amended Complaint.....	164
Decision and Order on Defendant’s Motion for Judgment on the Pleadings and Plaintiff’s Motion to Amend Complaint, dated January 12, 2026.....	183
Second Amended Complaint filed, January 13, 2026.....	196
Acts and Resolves of 2025, c. 9, § 113.....	206
<i>Curtin-Wilding v. Boston University</i> , Memorandum and Order on Motion for Judgment on the Pleadings, Motion to Amend the Complaint, and Motion to Certify Questions of Law, dated August 28, 2025.....	207

# 2584CV00644 Oettinger, Marjorie vs. Massachusetts General Physicians' Organization, INC.

- Case Type
- Business Litigation
- Case Status:
- Open
- File Date
- 03/06/2025
- DCM Track:
- B - Special Track (BLS)
- Initiating Action
- Employment Agreements
- Status Date:
- 03/06/2025
- Case Judge
- 
- Next Event:
- 07/22/2026

## Party Information

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- Plaintiff

Alias

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[More Party Information](#)

**Massachusetts General Physicians' Organization, INC.**  
Defendant

Alias

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[More Party Information](#)

**Events**




Date	Session	Location	Type	Event Judge	Result
05/27/2025 02 00 PM	Business Litigation 1	BOS 10th FL, CR 1015 (SC)	BLS Rule 16 Litigation Control Conference	Krupp, Hon Peter B	Held as Scheduled
11/13/2025 02:00 PM	Business Litigation 1	BOS-10th FL, CR 1015 (SC)	Motion Hearing to Amend Complaint	Barry-Smith, Hon. Christopher K	Held - Under advisement
11/13/2025 02 00 PM	Business Litigation 1	BOS 10th FL, CR 1015 (SC)	Hearing for Judgment on Pleading	Barry Smith, Hon Christopher K	Held Under advisement
12/17/2025 02:00 PM	Business Litigation 1	BOS-10th FL, CR 1015 (SC)	Conference to Review Status	Barry-Smith, Hon. Christopher K	Rescheduled
07/22/2026 02 00 PM	Business Litigation 1	BOS 10th FL, CR 1015 (SC)	Hearing on Class Action Certification	Barry Smith, Hon Christopher K	

**Docket Information**

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/06/2025	Complaint electronically filed	1	
03/06/2025	Civil action cover sheet filed	2	
03/10/2025	General correspondence regarding Notice of Acceptance into Business Litigation Session Accepted into BLS1 (Dated 3/7/2025) Notice sent 3/10/2025	3	 
03/24/2025	Amended: amended complaint filed by Marjorie Oettinger Class Action Complaint	4	 

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/24/2025	Docket Note: summons sent via mail		
04/10/2025	Affidavit of Acceptance of Service  Massachusetts General Physicians' Organization, INC Defendant Service accepted by counsel 04/10/2025  Applies To Massachusetts General Physicians' Organization, INC (Defendant)	5	 <a href="#">Image</a>
04/14/2025	Attorney appearance On this date Eric Lassar, Esq. added for Plaintiff Marjorie Oettinger		
04/14/2025	Attorney appearance electronically filed		 <a href="#">Image</a>
05/05/2025	Answer to amended complaint  Applies To Massachusetts General Physicians' Organization, INC (Defendant)	6	 <a href="#">Image</a>
05/09/2025	The following form was generated:  Notice to Appear - BLS was generated and sent to: Plaintiff: Eric R LeBlanc, Esq. eleblanc@bennettandbelfort.com Plaintiff: Eric Lassar, Esq. elassar@bennettandbelfort.com Defendant: Barry James Miller, Esq. bmiller@seyfarth.com Sent On: 05/09/2025 14:36:42		
05/12/2025	Attorney appearance electronically filed		 <a href="#">Image</a>
05/12/2025	Attorney appearance electronically filed		 <a href="#">Image</a>
05/12/2025	Attorney appearance electronically filed		 <a href="#">Image</a>
05/27/2025	Event Result BLS Rule 16 Litigation Control Conference scheduled on 05/27/2025 02 00 PM Has been Held as Scheduled Hon Peter B Krupp, Presiding		 <a href="#">Image</a>
05/29/2025	ORDER: Scheduling Order See paper #7 dated (5/27/25) Notice sent 6/2/25	7	 <a href="#">Image</a>
07/25/2025	Amended Answer to amended complaint  Applies To Massachusetts General Physicians' Organization, INC (Defendant)	8	 <a href="#">Image</a>
08/22/2025	Defendant Massachusetts General Physicians' Organization, INC.'s Notice of Motion for Judgment on the Pleadings	9	 <a href="#">Image</a>
10/09/2025	Defendant Massachusetts General Physicians' Organization, INC 's Motion for Judgment on the Pleadings	10	 <a href="#">Image</a>
10/09/2025	Massachusetts General Physicians' Organization, INC.'s Memorandum in support of Motion for Judgment on the Pleadings	11	 <a href="#">Image</a>
10/09/2025	Marjorie Oettinger's Memorandum in opposition to Defendant's Motion for Judgment on the Pleadings	12	 <a href="#">Image</a>
10/09/2025	Reply/Sur-reply  Defendant's Reply in Support of its Motion for Judgment on the Pleadings	13	 <a href="#">Image</a>
10/09/2025	Superior Court Rule 9A Notice of Filing	14	 <a href="#">Image</a>
10/09/2025	Defendant Massachusetts General Physicians' Organization, INC 's Notice of Supplemental Authority In Support Of Its Motion For Judgment On The Pleadings	15	 <a href="#">Image</a>
10/14/2025	Plaintiff Marjorie Oettinger's Motion for Leave to File Second Amended Complaint	16	 <a href="#">Image</a>
10/14/2025	Marjorie Oettinger's Memorandum in support of Motion for Leave to File Second Amended Complaint	17	 <a href="#">Image</a>
10/14/2025	Opposition to Motion for Leave to File Second Amended Complaint filed by Massachusetts General Physicians' Organization, INC.	18	 <a href="#">Image</a>
10/14/2025	Reply/Sur reply  Reply in Support of Motion for Leave to File Second Amended Complaint	19	 <a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/14/2025	Notice of Filing	20	
10/14/2025	Certificate of Service	21	
10/14/2025	Certificate of Compliance with Superior Court Rule 9C	22	
10/14/2025	Affidavit of Compliance with Superior Court Rule 9A	23	
10/20/2025	Attorney appearance electronically filed.		
11/11/2025	Defendant Massachusetts General Physicians' Organization, INC.'s Notice of Supplemental Authority in Support of its Motion for Judgment on the Pleadings	24	
11/13/2025	Matter taken under advisement Motion Hearing to Amend Complaint scheduled on 11/13/2025 02 00 PM Has been Held Under advisement Hon Christopher K Barry Smith, Presiding		
11/13/2025	Matter taken under advisement: Hearing for Judgment on Pleading scheduled on: 11/13/2025 02:00 PM Has been: Held - Under advisement Hon. Christopher K Barry-Smith, Presiding		
12/17/2025	Event Result Conference to Review Status scheduled on 12/17/2025 02 00 PM Has been Rescheduled For the following reason By Court prior to date Hon Christopher K Barry Smith, Presiding Staff Gloria Brooks, Assistant Clerk Magistrate		
01/13/2026	ORDER: Decision and Order on Defendant's Motion for Judgment on the Pleading and Plaintiff's Motion to Amend Complaint Oettinger's motion for leave to amend her complaint is allowed and the Second Amended Complaint may shall be docketed. MGPO's motion for judgment on the pleadings is allowed as to the Second Amended Complaint, and the Second Amended Complaint shall be dismissed. So ordered. See paper #25 (Dated 1/12/26) Notice sent 1/15/2026	25	
02/09/2026	Amended Second amended complaint filed by Marjorie Oettinger (Filed 1/13/26)	26	
02/10/2026	Plaintiff Marjorie Oettinger's Notice of Appeal	27	
02/11/2026	JUDGMENT It is hereby Ordered and Adjudged 1 That plif's motion for leave to amended her complaint is ALLOWED and the Second Amended Complaint shall be docketed, and 2 That deft's motions for Judgment on the pleadings is ALLOWED and the Second Amended complaint is hereby Dismissed Entered on docket pursuant to Mass R Civ P 58(a) and notice sent to parties pursuant to Mass R Civ P 77(d)  Judge Barry Smith, Hon Christopher K	28	
02/11/2026	Plaintiff Marjorie Oettinger's Notice of Appeal	29	
02/11/2026	Notice of appeal filed (See p#29)  Notice sent 2/12/26  Applies To Oettinger, Marjorie (Plaintiff)		
02/24/2026	Plaintiff Marjorie Oettinger's Submission of Notice Regarding Transcript  Transcript of 11/13/25 ordered	30	
04/09/2026	Transcript of 11/13/25 received from transcriber Jennifer Ferris (via email)		
04/17/2026	Plaintiff Marjorie Oettinger's Notice of Constitutional Challenge	31	
04/27/2026	Appeal Statement of the Case on Appeal (Cover Sheet)		
04/27/2026	Notice of assembly of record sent to Counsel		
			

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
04/27/2026	Notice to Clerk of the Appeals Court of Assembly of Record		
05/06/2026	Notice of Entry of appeal received from the Appeals Court In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case (2026-P-0625) was entered in this Court on May 5, 2026.	32	 

**Case Disposition**

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed by Court Finding	02/11/2026	

ER

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

MARJORIE OETTINGER, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.,

Defendant.

Docket No. \_\_\_\_\_

**CLASS ACTION COMPLAINT AND DEMAND FOR TRIAL BY JURY**

**I. INTRODUCTION**

1. This class action is brought by Marjorie Oettinger (“Oettinger” or “Plaintiff”) on behalf of herself and all other similarly situated employees of Defendant Massachusetts General Physicians’ Organization (“Defendant” or “MGPO”) for Defendant’s failure to pay Plaintiff within the deadlines required by the Wage Act for the three years preceding the commencement of this action. Defendant paid Plaintiff on a monthly pay schedule, typically paying her on the last day of each month. However, the Massachusetts Wage Act, M.G.L. c. 149, § 148 requires that employer pay exempt employees no less frequently than semi-monthly, and within six days of the termination of the pay period in which such wages were earned. Accordingly, Defendant has paid Plaintiff all wages earned in the first half of each month of her employment approximately ten days late, thereby violating the Wage Act.

## II. PARTIES

2. Plaintiff Dr. Margorie Oettinger is an adult resident of Middlesex County, Massachusetts.

3. Defendant Massachusetts General Physicians Organization is a Massachusetts Nonprofit Corporation with a principal place of business at 55 Fruit Street, Boston, MA 02114.

## III. JURISDICTION, VENUE, AND STATUTORY PREREQUISITS

4. This action arises under M.G.L. c. 149, §§ 148 and 150.

5. This Court has original jurisdiction over this action, as it is a civil action in which more than \$50,000 is in controversy.

6. Prior to filing suit, Plaintiff filed a complaint with the Massachusetts Attorney General's Office.

7. Venue in the Business Litigation Session is proper, as the matter concerns complex wage-and-hour issues that affect a large number of Defendant's current and former inside sales employees

## IV. STATEMENT OF FACTS

8. Plaintiff began her employment with the MGPO in 1991. From 2022 to 2024, Plaintiff's yearly salary has ranged from approximately \$229,931 to \$300,343.

9. In the three years preceding the commencement of this action, MGPO has been the sole entity responsible for paying Plaintiff's salary.

10. In the three years preceding the commencement of this action, MGPO has paid Plaintiff only on the last day of each month. *See* Plaintiff's Paychecks, attached hereto as Exhibit A.

11. At no point in her employment did Plaintiff elect to be paid monthly.

12. In the three years preceding this action, MGPO paid Plaintiff approximately \$897,527 in monthly wages.

13. For every month in the three years preceding the commencement of this action, Plaintiff has been paid according to an illegal pay schedule.

14. Thus, Defendant has paid Plaintiff \$897,527 according to an illegal pay schedule in the three years preceding this action.

15. In the alternative, for every month in the three years preceding the commencement of this action, Defendant has paid Plaintiff more than six days after the termination of the semi-monthly pay schedule for the first half of the month. Accordingly, approximately \$448,763 of Plaintiff's wages have been paid illegally late in violation of Massachusetts Wage Act, M.G.L. c. 149, § 148.

#### **V. CLASS ALLEGATIONS**

16. Plaintiff brings this action individually, and on behalf of all other members of the Class.

17. The Class is defined as follows:

All Massachusetts employees employed by Defendant, who were paid monthly during the three years immediately preceding the date of the filing of this action and continuing through the date of final judgment in this matter.

18. The members of the Rule 23 class are readily ascertainable because the number and identity of the Rule 23 class members are determinable from Defendant's records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendant. Notice can be provided by means permissible under Rule 23. This action is properly maintainable as a class action under Mass. R. Civ. P. 23(a)-(b).

19. The Rule 23 class members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. Upon information and belief, there are at least 50, if not significantly more, Rule 23 class members for the pertinent period of time.

20. Plaintiff's claims are typical of those claims which could be alleged by any Rule 23 class member, and the relief sought is typical of the relief which would be sought by each Rule 23 class member in separate actions. All the Rule 23 class members were subject to the same corporate practices of Defendant, as alleged herein: failure to pay employees on a weekly, bi-weekly, or semi-monthly pay schedule.

21. Plaintiff and other Rule 23 class members sustained similar losses, injuries, and damages resulting from Defendant's failure to pay them on, at minimum, a semi-monthly pay schedule in compliance with the Massachusetts Wage Act and the Rule 23 class members have all been injured in that they have been paid late due to Defendant's policies, practices and patterns of conduct. Defendant's company-wide policies and practices affected all Rule 23 class members similarly, and Defendant benefitted from the same type of unfair and/or wrongful acts as to each of the Rule 23 class members. Although the amount of the individual class members' damages may vary depending on their periods of employment and salaries, those damages are readily ascertainable from the Defendant's financial records. As a result, common issues of liability predominate over individualized issues of damages.

22. Plaintiff is able to fairly and adequately protect the interest of the Rule 23 class members and has no interests antagonistic to the Rule 23 class members. Plaintiff is represented by attorneys who are experienced and competent in both employment litigation and class action litigation.

23. A class action is superior to other available methods for the fair and efficient adjudication of these claims, particularly in the context of wage-and-hour litigation where individual class members may lack the financial resources to vigorously prosecute a lawsuit against corporate defendants and are often hesitant to assert their rights out of fear of direct or indirect retaliation. Among other things, individual adjudications would result in highly inefficient duplication of discovery, briefing of legal issues, and court proceedings. If appropriate, the Court is empowered to fashion methods to efficiently manage this action as a class action.

24. Common questions of law and fact exist as to the Rule 23 class members that predominate over any question only affecting Plaintiff and the Rule 23 class members individually. These questions include whether Defendant paid employees according to an illegal pay schedule and whether Defendant paid employees within the timeframe allowed by M.G.L. c. 149, § 148.

25. Plaintiff seeks certification of a class of similarly situated MGPO employees who worked for MGPO at any time within three years prior to the commencement of this action up through the time of judgment.

## **VI. COUNTS OF THE COMPLAINT**

### **Count I**

#### **Violation of M.G.L. c. 149, § 148 for Late Payment of Wages**

26. Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

27. The Massachusetts Wage Act, M.G.L. c. 149, § 148 generally requires every person having employees in his service to pay, within a specified time period, to such employee the wages earned by him.

28. Defendant paid Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly.

29. MGPO's failure to pay Plaintiff all wages due to her within the timeframe allowed by the Wage Act denied Plaintiff prompt and timely payment of her wages and the use of those wages in violation of M.G.L. c. 149, § 148.

30. This claim is brought pursuant to M.G.L. c. 149, § 150.

31. As a result of Defendant's actions, Plaintiff has suffered damages.

32. Defendant is liable to Plaintiff and the Class for three times the amount of the late paid wages, plus interest, costs, and attorneys' fees.

## **Count II**

### **Declaratory Judgment – Chapter 231A**

33. Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

34. An actual controversy exists between the parties with respect to the matters stated above, and more particularly including, but not limited to:

- a. Whether MGPO's payment scheme of paying Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly is illegal pursuant to The Massachusetts Wage Act, M.G.L. c. 149, § 148.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court enter the following relief:

1. Certify this Action as a class action pursuant to M.G.L. c. 149, § 148;
2. In the alternative, certify this case as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure;
3. Appoint Plaintiff Oettinger as Class Representative;
4. Appoint the undersigned as Class Counsel;
5. An award of damages for all wages and other losses to which Plaintiff and similarly situated employees are entitled;
6. Statutory trebling of all wage-related damages pursuant to M.G.L. c. 149, §§ 148 and 150;
7. Award Plaintiff and the Class all pre-judgment and post-judgment interest on these damages pursuant to M.G.L. c. 149, §§ 148 and 150;
8. Award attorneys' fees and costs incurred by Plaintiff in prosecuting this action pursuant to M.G.L. c. 149, §§ 148 and 150;
9. On Count II – judgment declaring whether MGPO's practice of paying Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly is illegal pursuant to The Massachusetts Wage Act, M.G.L. c. 149, § 148.
10. Such further relief as this Court deems fair and just.

#### **VIII. JURY DEMAND**

Plaintiff demands a TRIAL BY JURY on all claims so triable.

Respectfully Submitted,  
MARJORIE OETTINGER, individually,  
and on behalf of all others similarly situated,  
By Her Attorneys,

Dated: Thursday, March 06, 2025

/s/ Eric R. LeBlanc  
Eric R. LeBlanc, BBO No. 666786  
eleblanc@bennettandbelfort.com  
William E. Petrone, BBO No. 711524  
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Eric R. Lassar, BBO no. 710036  
elassar@bennettandbelfort.com  
Bennett & Belfort, P.C.  
24 Thorndike Street, Suite 300  
Cambridge, MA 02141  
(617) 577-8800

# EXHIBIT A

MGPO  
 55 Fruit Street  
 Boston, MA 02114

Pay Group: MGP-Monthly Salaried  
 Pay Begin Date: 12/01/2022  
 Pay End Date: 12/31/2022

Business Unit: 1300  
 Advice #: 000000048330415  
 Advice Date: 12/27/2022

<b>Marjorie A Oettinger</b> 171 North Ave Weston, MA 02493	Employee ID: 002079595 Department: GP1009-Oettinger Group Physicians Location: Charles River Plaza Contact: Caitlin Numrych	<b>TAX DATA:</b> Marital Status: Single Allowances: 0 Addl. Percent: N/A Addl. Amount:	<b>Federal</b> H-of-H 3	<b>MA State</b>

HOURS AND EARNINGS						TAXES		
Description	Rate	Current		YTD		Description	Current	YTD
		Hours	Earnings	Hours	Earnings			
Regular			24,924.79		290,965.80	Fed Withholding	6,292.74	59,748.89
Bonus- Fringe Pensionable			3,000.00		4,500.00	Fed MED/EE	416.96	4,344.99
Former Spouse Imputed Income			1,003.99		12,047.88	Fed OASDI/EE	0.00	9,114.00
Retro Regular			493.56		493.56	Fed Addl Med	258.80	896.89
						MA FLI/EE	0.00	176.40
						MA Withholding	1,203.20	12,167.75
<b>TOTAL:</b>		<b>0.00</b>	<b>28,418.35</b>	<b>0.00</b>	<b>295,959.36</b>	<b>TOTAL:</b>	<b>8,171.70</b>	<b>86,448.92</b>

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			OTHER		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
Plus	475.65	5,707.80	Long Term Disability	137.34	1,599.92	Basic Life*	165.01	1,910.62
Delta Dental	46.58	512.38	Parking(TX)	195.00	2,340.00			
457(b) Deferred Comp	1,625.00	19,500.00						
Traditional 403(b)	2,166.66	25,999.92						
Health Care Account	237.50	2,850.00						
Parking	72.00	864.00						
Mass Paid Medical Leave	0.00	329.28						
<b>TOTAL:</b>	<b>4,623.39</b>	<b>55,763.38</b>	<b>TOTAL:</b>	<b>332.34</b>	<b>3,939.92</b>	<b>*TAXABLE</b>		

	TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current	28,418.35	24,963.96	8,171.70	4,955.73	15,290.92
YTD	295,959.36	254,154.48	86,448.92	59,703.30	149,807.14

YEAR-TO-DATE	MA Sick Time
Start Balance	0.00
+ Earned	0.00
- Taken	0.00
+ Adjustments	0.00
<b>End Balance</b>	<b>0.00</b>

NET PAY DISTRIBUTION		
Advice #000000048330415	Checking	15,290.92
<b>TOTAL:</b>		<b>15,290.92</b>

MESSAGE:

MGPO  
 55 Fruit Street  
 Boston, MA 02114

Pay Group: MGP-Monthly Salaried  
 Pay Begin Date: 12/01/2023  
 Pay End Date: 12/31/2023

Business Unit: 1300  
 Advice #: 000000051828930  
 Advice Date: 12/26/2023

<b>Marjorie A Oettinger</b> 171 North Ave Weston, MA 02493	Employee ID:	002079595	<b>TAX DATA:</b> Marital Status: Single Allowances: 0 Addl. Percent: N/A Addl. Amount:	<b>Federal</b> Single 0 N/A	<b>MA State</b> H-of-H 3
	Department:	GPX256-M_MOLBIO FACULTY			
	Location:	Charles River Plaza			
	Contact:	Jeannie Lee			

HOURS AND EARNINGS						TAXES		
Description	Rate	Current		YTD		Description	Current	YTD
		Hours	Earnings	Hours	Earnings			
Regular			25,547.91		300,343.72	Fed Withholding	5,787.94	67,372.29
Former Spouse Imputed Income			1,097.50		13,170.00	Fed MED/EE	376.26	4,428.81
Bonus			0.00		100.00	Fed OASDI/EE	0.00	9,932.40
Retro Regular			0.00		623.12	Fed Addl Med	233.54	948.92
						MA FLI/EE	0.00	176.22
						MA Withholding	1,158.70	13,606.81
<b>TOTAL:</b>		<b>0.00</b>	<b>25,547.91</b>	<b>0.00</b>	<b>301,066.84</b>	<b>TOTAL:</b>	<b>7,556.44</b>	<b>96,465.45</b>

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			OTHER		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
Plus	519.95	6,239.40	Long Term Disability	140.77	1,654.94	Basic Life*	169.61	1,989.32
457(b) Deferred Comp	1,875.00	22,500.00	Roth 403(b)	2,500.00	30,000.00			
Health Care Account	254.16	3,050.00	Parking(TX)	175.00	2,100.00			
Parking	92.00	1,104.00						
Mass Paid Medical Leave	0.00	397.30						
<b>TOTAL:</b>	<b>2,741.11</b>	<b>33,290.70</b>	<b>TOTAL:</b>	<b>2,815.77</b>	<b>33,754.94</b>	<b>*TAXABLE</b>		

	TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current	25,547.91	24,073.91	7,556.44	5,556.88	12,434.59
YTD	301,066.84	282,935.46	96,465.45	67,045.64	137,555.75

YEAR-TO-DATE	MA Sick Time
Start Balance	0.00
+ Earned	0.00
- Taken	0.00
+ Adjustments	0.00
<b>End Balance</b>	<b>0.00</b>

NET PAY DISTRIBUTION		
Advice #000000051828930	Checking	12,434.59
<b>TOTAL:</b>		<b>12,434.59</b>

MESSAGE:

MGPO  
 55 Fruit Street  
 Boston, MA 02114

Pay Group: MGP-Monthly Salaried	Business Unit: 1300
Pay Begin Date: 09/01/2024	Advice #: 000000054546668
Pay End Date: 09/30/2024	Advice Date: 09/26/2024

<b>Marjorie A Oettinger</b> 171 North Ave Weston, MA 02493	Employee ID: 002079595	<b>TAX DATA:</b>	<b>Federal</b>	<b>MA State</b>
	Department: GPX374-M_MOLBIO FACULTY	Marital Status: Single		H-of-H
	Location: Charles River Plaza	Allowances: 0		3
	Contact: Caitlin Numrych	Addl. Percent: N/A		
		Addl. Amount:		

HOURS AND EARNINGS						TAXES		
Description	Rate	Current		YTD		Description	Current	YTD
		Hours	Earnings	Hours	Earnings			
Regular			25,547.91		229,931.19	Fed Withholdng	5,449.85	49,471.91
MGH/MGPO Financial Plan			0.00		1,500.00	Fed MED/EE	363.10	3,285.43
Prog						Fed OASDI/EE	0.00	10,453.20
Other Services			0.00		60.00	Fed Addl Med	225.37	239.23
						MA FLI/EE	0.00	303.48
						MA Withholdng	1,119.57	10,123.82
<b>TOTAL:</b>		<b>0.00</b>	<b>25,547.91</b>	<b>0.00</b>	<b>231,491.19</b>	<b>TOTAL:</b>	<b>7,157.89</b>	<b>73,877.07</b>

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			OTHER		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
457(b) Deferred Comp	1,916.67	17,250.03	Roth 403(b)	2,541.67	22,875.03	Basic Life*	169.62	1,526.58
Parking	107.00	963.00	Parking(TX)	160.00	1,440.00			
Health Care FSA	266.66	2,399.94	LTD After-Tax	151.76	1,365.84			
Medical Before-Tax	302.56	2,723.04	Retiree Medical Savings Acct	375.00	3,375.00			
Mass Paid Medical Leave	0.00	350.69						
<b>TOTAL:</b>	<b>2,592.89</b>	<b>23,686.70</b>	<b>TOTAL:</b>	<b>3,228.43</b>	<b>29,055.87</b>	<b>*TAXABLE</b>		

	TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current	25,547.91	23,124.64	7,157.89	5,821.32	12,568.70
YTD	231,491.19	209,331.07	73,877.07	52,742.57	104,871.55

YEAR-TO-DATE	MA Sick Time
Start Balance	0.00
+ Earned	0.00
- Taken	0.00
+ Adjustments	0.00
<b>End Balance</b>	<b>0.00</b>

NET PAY DISTRIBUTION		
Advice #000000054546668	Checking	12,568.70
<b>TOTAL:</b>		<b>12,568.70</b>

MESSAGE:

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

MARJORIE OETTINGER, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.,

Defendant.

Docket No. 2584CV00644-BLSI

**[AMENDED] CLASS ACTION COMPLAINT AND DEMAND FOR TRIAL BY JURY**

**I. INTRODUCTION**

1. This class action is brought by Marjorie Oettinger (“Oettinger” or “Plaintiff”) on behalf of herself and all other similarly situated employees of Defendant Massachusetts General Physicians’ Organization (“Defendant” or “MGPO”) for Defendant’s failure to pay Plaintiff within the deadlines required by the Wage Act for the three years preceding the commencement of this action. Defendant paid Plaintiff on a monthly pay schedule, typically paying her on the 26th day of each month. However, the Massachusetts Wage Act, M.G.L. c. 149, § 148 requires that employer pay exempt employees no less frequently than semi-monthly, and within six days of the termination of the pay period in which such wages were earned. Accordingly, Defendant has paid Plaintiff all wages earned in the first half of each month of her employment approximately ten days late, thereby violating the Wage Act.

## II. PARTIES

2. Plaintiff Dr. Marjorie Oettinger is an adult resident of Middlesex County, Massachusetts.

3. Defendant Massachusetts General Physicians Organization is a Massachusetts Nonprofit Corporation with a principal place of business at 55 Fruit Street, Boston, MA 02114.

## III. JURISDICTION, VENUE, AND STATUTORY PREREQUISITES

4. This action arises under M.G.L. c. 149, §§ 148 and 150.

5. This Court has original jurisdiction over this action, as it is a civil action in which more than \$50,000 is in controversy.

6. Prior to filing suit, Plaintiff filed a complaint with the Massachusetts Attorney General's Office.

7. Venue in the Business Litigation Session is proper, as the matter concerns complex wage-and-hour issues that affect a large number of Defendant's current and former inside sales employees

## IV. STATEMENT OF FACTS

8. Plaintiff began her employment with the MGPO in 1991. From 2022 to 2024, Plaintiff's yearly salary has ranged from approximately \$288,913 to \$306,547.

9. In the three years preceding the commencement of this action, MGPO has been the sole entity responsible for paying Plaintiff's salary.

10. In the three years preceding the commencement of this action, MGPO has paid Plaintiff only on the 26th day of each month. *See* Plaintiff's Paychecks, attached hereto as Exhibit A.

11. At no point in her employment did Plaintiff elect to be paid monthly.

12. In the three years preceding this action, MGPO paid Plaintiff approximately \$900,470 in monthly wages.

13. For every month in the three years preceding the commencement of this action, Plaintiff has been paid according to an illegal pay schedule.

14. Thus, Defendant has paid Plaintiff \$900,470 according to an illegal pay schedule in the three years preceding this action.

15. In the alternative, for every month in the three years preceding the commencement of this action, Defendant has paid Plaintiff more than six days after the termination of the semi-monthly pay schedule for the first half of the month. Accordingly, approximately \$450,235 of Plaintiff's wages have been paid illegally late in violation of Massachusetts Wage Act, M.G.L. c. 149, § 148.

#### **V. CLASS ALLEGATIONS**

16. Plaintiff brings this action individually, and on behalf of all other members of the Class.

17. The Class is defined as follows:

All Massachusetts employees employed by Defendant, who were paid monthly during the three years immediately preceding the date of the filing of this action and continuing through the date of final judgment in this matter.

18. The members of the Rule 23 class are readily ascertainable because the number and identity of the Rule 23 class members are determinable from Defendant's records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendant. Notice can be provided by means permissible under Rule 23. This action is properly maintainable as a class action under Mass. R. Civ. P. 23(a)-(b).

19. The Rule 23 class members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. Upon information and belief, there are at least 50, if not significantly more, Rule 23 class members for the pertinent period of time.

20. Plaintiff's claims are typical of those claims which could be alleged by any Rule 23 class member, and the relief sought is typical of the relief which would be sought by each Rule 23 class member in separate actions. All the Rule 23 class members were subject to the same corporate practices of Defendant, as alleged herein: failure to pay employees on a weekly, bi-weekly, or semi-monthly pay schedule.

21. Plaintiff and other Rule 23 class members sustained similar losses, injuries, and damages resulting from Defendant's failure to pay them on, at minimum, a semi-monthly pay schedule in compliance with the Massachusetts Wage Act and the Rule 23 class members have all been injured in that they have been paid late due to Defendant's policies, practices and patterns of conduct. Defendant's company-wide policies and practices affected all Rule 23 class members similarly, and Defendant benefitted from the same type of unfair and/or wrongful acts as to each of the Rule 23 class members. Although the amount of the individual class members' damages may vary depending on their periods of employment and salaries, those damages are readily ascertainable from the Defendant's financial records. As a result, common issues of liability predominate over individualized issues of damages.

22. Plaintiff is able to fairly and adequately protect the interest of the Rule 23 class members and has no interests antagonistic to the Rule 23 class members. Plaintiff is represented by attorneys who are experienced and competent in both employment litigation and class action litigation.

23. A class action is superior to other available methods for the fair and efficient adjudication of these claims, particularly in the context of wage-and-hour litigation where individual class members may lack the financial resources to vigorously prosecute a lawsuit against corporate defendants and are often hesitant to assert their rights out of fear of direct or indirect retaliation. Among other things, individual adjudications would result in highly inefficient duplication of discovery, briefing of legal issues, and court proceedings. If appropriate, the Court is empowered to fashion methods to efficiently manage this action as a class action.

24. Common questions of law and fact exist as to the Rule 23 class members that predominate over any question only affecting Plaintiff and the Rule 23 class members individually. These questions include whether Defendant paid employees according to an illegal pay schedule and whether Defendant paid employees within the timeframe allowed by M.G.L. c. 149, § 148.

25. Plaintiff seeks certification of a class of similarly situated MGPO employees who worked for MGPO at any time within three years prior to the commencement of this action up through the time of judgment.

## **VI. COUNTS OF THE COMPLAINT**

### **Count I**

#### **Violation of M.G.L. c. 149, § 148 for Late Payment of Wages**

26. Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

27. The Massachusetts Wage Act, M.G.L. c. 149, § 148 generally requires every person having employees in his service to pay, within a specified time period, to such employee the wages earned by him.

28. Defendant paid Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly.

29. MGPO's failure to pay Plaintiff all wages due to her within the timeframe allowed by the Wage Act denied Plaintiff prompt and timely payment of her wages and the use of those wages in violation of M.G.L. c. 149, § 148.

30. This claim is brought pursuant to M.G.L. c. 149, § 150.

31. As a result of Defendant's actions, Plaintiff has suffered damages.

32. Defendant is liable to Plaintiff and the Class for three times the amount of the late paid wages, plus interest, costs, and attorneys' fees.

## **Count II**

### **Declaratory Judgment – Chapter 231A**

33. Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

34. An actual controversy exists between the parties with respect to the matters stated above, and more particularly including, but not limited to:

- a. Whether MGPO's payment scheme of paying Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly is illegal pursuant to The Massachusetts Wage Act, M.G.L. c. 149, § 148.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court enter the following relief:

1. Certify this Action as a class action pursuant to M.G.L. c. 149, § 148;
2. In the alternative, certify this case as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure;
3. Appoint Plaintiff Oettinger as Class Representative;
4. Appoint the undersigned as Class Counsel;
5. An award of damages for all wages and other losses to which Plaintiff and similarly situated employees are entitled;
6. Statutory trebling of all wage-related damages pursuant to M.G.L. c. 149, §§ 148 and 150;
7. Award Plaintiff and the Class all pre-judgment and post-judgment interest on these damages pursuant to M.G.L. c. 149, §§ 148 and 150;
8. Award attorneys' fees and costs incurred by Plaintiff in prosecuting this action pursuant to M.G.L. c. 149, §§ 148 and 150;
9. On Count II – judgment declaring whether MGPO's practice of paying Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly is illegal pursuant to The Massachusetts Wage Act, M.G.L. c. 149, § 148.
10. Such further relief as this Court deems fair and just.

#### **VIII. JURY DEMAND**

Plaintiff demands a TRIAL BY JURY on all claims so triable.

Respectfully Submitted,  
MARJORIE OETTINGER, individually,  
and on behalf of all others similarly situated,  
By Her Attorneys,

Dated: Monday, March 24, 2025

/s/ Eric R. LeBlanc  
Eric R. LeBlanc, BBO No. 666786  
eleblanc@bennettandbelfort.com  
William E. Petrone, BBO No. 711524  
wpetrone@bennettandbelfort.com  
Eric R. Lassar, BBO no. 710036  
elassar@bennettandbelfort.com  
Bennett & Belfort, P.C.  
24 Thorndike Street, Suite 300  
Cambridge, MA 02141  
(617) 577-8800

# EXHIBIT A

**MGPO**  
 55 Fruit Street  
 Boston, MA 02114

Pay Group: MGP-Monthly Salaried  
 Pay Begin Date: 12/01/2022  
 Pay End Date: 12/31/2022

Business Unit: 1300  
 Advice #: 00000048330415  
 Advice Date: 12/27/2022

<b>Marjorie A Oettinger</b> 171 North Ave Weston, MA 02493	Employee ID: 002079595 Department: GP1009-Oettinger Group Physicians Location: Charles River Plaza Contact: Caitlin Numrych	<b>TAX DATA:</b> Marital Status: Single Allowances: 0 Addl. Percent: N/A Addl. Amount:	<b>Federal</b> H-of-H 3	<b>MA State</b>

HOURS AND EARNINGS						TAXES		
Description	Rate	Current		YTD		Description	Current	YTD
		Hours	Earnings	Hours	Earnings			
Regular			24,924.79		290,965.80	Fed Withholding	6,292.74	59,748.89
Bonus- Fringe Pensionable			3,000.00		4,500.00	Fed MED/EE	416.96	4,344.99
Former Spouse Imputed Income			1,003.99		12,047.88	Fed OASDI/EE	0.00	9,114.00
Retro Regular			493.56		493.56	Fed Addl Med	258.80	896.89
						MA FLI/EE	0.00	176.40
						MA Withholding	1,203.20	12,167.75
<b>TOTAL:</b>	<b>0.00</b>	<b>28,418.35</b>	<b>0.00</b>	<b>295,959.36</b>	<b>TOTAL:</b>	<b>8,171.70</b>	<b>86,448.92</b>	

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			OTHER		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
Plus	475.65	5,707.80	Long Term Disability	137.34	1,599.92	Basic Life*	165.01	1,910.62
Delta Dental	46.58	512.38	Parking(TX)	195.00	2,340.00			
457(b) Deferred Comp	1,625.00	19,500.00						
Traditional 403(b)	2,166.66	25,999.92						
Health Care Account	237.50	2,850.00						
Parking	72.00	864.00						
Mass Paid Medical Leave	0.00	329.28						
<b>TOTAL:</b>	<b>4,623.39</b>	<b>55,763.38</b>	<b>TOTAL:</b>	<b>332.34</b>	<b>3,939.92</b>	<b>*TAXABLE</b>		

	TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current	28,418.35	24,963.96	8,171.70	4,955.73	15,290.92
YTD	295,959.36	254,154.48	86,448.92	59,703.30	149,807.14

YEAR-TO-DATE	MA Sick Time
Start Balance	0.00
+ Earned	0.00
- Taken	0.00
+ Adjustments	0.00
<b>End Balance</b>	<b>0.00</b>

NET PAY DISTRIBUTION		
Advice #00000048330415	Checking	15,290.92
<b>TOTAL:</b>		<b>15,290.92</b>

MESSAGE:

MGPO  
 55 Fruit Street  
 Boston, MA 02114

Pay Group: MGP-Monthly Salaried  
 Pay Begin Date: 12/01/2023  
 Pay End Date: 12/31/2023

Business Unit: 1300  
 Advice #: 000000051828930  
 Advice Date: 12/26/2023

<b>Marjorie A Oettinger</b> 171 North Ave Weston, MA 02493	Employee ID: 002079595 Department: GPX256-M_MOLBIO FACULTY Location: Charles River Plaza Contact: Jeannie Lee	<b>TAX DATA:</b>	<b>Federal</b>	<b>MA State</b>
		Marital Status: Single Allowances: 0 Addl. Percent: N/A Addl. Amount:		H-of-H 3

HOURS AND EARNINGS						TAXES		
Description	Rate	Current		YTD		Description	Current	YTD
		Hours	Earnings	Hours	Earnings			
Regular			25,547.91		300,343.72	Fed Withholding	5,787.94	67,372.29
Former Spouse Imputed Income			1,097.50		13,170.00	Fed MED/EE	376.26	4,428.81
Bonus			0.00		100.00	Fed OASDI/EE	0.00	9,932.40
Retro Regular			0.00		623.12	Fed Addl Med	233.54	948.92
						MA FLI/EE	0.00	176.22
						MA Withholding	1,158.70	13,606.81
<b>TOTAL:</b>		<b>0.00</b>	<b>25,547.91</b>	<b>0.00</b>	<b>301,066.84</b>	<b>TOTAL:</b>	<b>7,556.44</b>	<b>96,465.45</b>

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			OTHER		
Description	Current	YTD	Description	Current	YTD	Description	Current	YTD
Plus	519.95	6,239.40	Long Term Disability	140.77	1,654.94	Basic Life*	169.61	1,989.32
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Health Care Account	254.16	3,050.00	Parking(TX)	175.00	2,100.00			
Parking	92.00	1,104.00						
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<b>TOTAL:</b>	<b>2,741.11</b>	<b>33,290.70</b>	<b>TOTAL:</b>	<b>2,815.77</b>	<b>33,754.94</b>	<b>*TAXABLE</b>		

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YEAR-TO-DATE	MA Sick Time
Start Balance	0.00
+ Earned	0.00
- Taken	0.00
+ Adjustments	0.00
<b>End Balance</b>	<b>0.00</b>

NET PAY DISTRIBUTION		
Advice #000000051828930	Checking	12,434.59
<b>TOTAL:</b>		<b>12,434.59</b>

MESSAGE:

MGPO  
 55 Fruit Street  
 Boston, MA 02114

Pay Group: MGP-Monthly Salaried	Business Unit: 1300
Pay Begin Date: 09/01/2024	Advice #: 000000054546668
Pay End Date: 09/30/2024	Advice Date: 09/26/2024

<b>Marjorie A Oettinger</b> 171 North Ave Weston, MA 02493	Employee ID: 002079595	<b>TAX DATA:</b>	<b>Federal</b>	<b>MA State</b>
	Department: GPX374-M_MOLBIO FACULTY	Marital Status: Single		H-of-H
	Location: Charles River Plaza	Allowances: 0		3
	Contact: Caitlin Numrych	Addl. Percent: N/A		
		Addl. Amount:		

HOURS AND EARNINGS						TAXES		
Description	Rate	Current		YTD		Description	Current	YTD
		Hours	Earnings	Hours	Earnings			
Regular			25,547.91		229,931.19	Fed Withholding	5,449.85	49,471.91
MGH/MGPO Financial Plan			0.00		1,500.00	Fed MED/EE	363.10	3,285.43
Prog						Fed OASDI/EE	0.00	10,453.20
Other Services			0.00		60.00	Fed Addl Med	225.37	239.23
						MA FLI/EE	0.00	303.48
						MA Withholding	1,119.57	10,123.82
<b>TOTAL:</b>		<b>0.00</b>	<b>25,547.91</b>	<b>0.00</b>	<b>231,491.19</b>	<b>TOTAL:</b>	<b>7,157.89</b>	<b>73,877.07</b>

BEFORE-TAX DEDUCTIONS			AFTER-TAX DEDUCTIONS			OTHER		
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Health Care FSA	266.66	2,399.94	LTD After-Tax	151.76	1,365.84			
Medical Before-Tax	302.56	2,723.04	Retiree Medical Savings Acct	375.00	3,375.00			
Mass Paid Medical Leave	0.00	350.69						
<b>TOTAL:</b>	<b>2,592.89</b>	<b>23,686.70</b>	<b>TOTAL:</b>	<b>3,228.43</b>	<b>29,055.87</b>	<b>*TAXABLE</b>		

	TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current	25,547.91	23,124.64	7,157.89	5,821.32	12,568.70
YTD	231,491.19	209,331.07	73,877.07	52,742.57	104,871.55

YEAR-TO-DATE	MA Sick Time
Start Balance	0.00
+ Earned	0.00
- Taken	0.00
+ Adjustments	0.00
<b>End Balance</b>	<b>0.00</b>

NET PAY DISTRIBUTION		
Advice #000000054546668	Checking	12,568.70
<b>TOTAL:</b>		<b>12,568.70</b>

MESSAGE:

SR

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 2584CV00644-BLSI

MAJORIE OETTINGER, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.,

Defendant.

**ANSWER TO PLAINTIFF'S AMENDED CLASS ACTION COMPLAINT**

Marjorie Oettinger, Ph.D. (“Oettinger” or “Plaintiff”) is a highly compensated member of the Molecular Biology Department of Massachusetts General Hospital and a Professor at Harvard Medical School, who has earned more than \$900,000 over the past three years. By and through her Amended Class Action Complaint (“Complaint”), Oettinger now seeks to extract an exorbitant sum in statutory penalties – likely amounting to ***billions of dollars*** – from a non-profit healthcare institution, Defendant Massachusetts General Physicians Organization, Inc. (“MGPO” or “Defendant”), based on an asserted technical violation of the timely payment requirements of the Wage Act. Plaintiff makes these outrageous demands, despite the fact that neither she nor any member of the class she aspires to represent has been deprived of any compensation or harmed in any material way.

More specifically, Oettinger claims that her monthly salary schedule was inherently “illegal,” such that she is owed three times the amount of her total salary payments during the applicable limitations period (i.e., \$2,700,000) to compensate her for theoretical and unspecified

“damages” over the past three years. The theory of liability underlying Oettinger’s claims is so predatory that it raises several categories of due process concerns under the federal Constitution and the Massachusetts Declaration of Rights. By seeking to collect statutory damages for herself and “similarly-situated” class members that exceed any harm they can plausibly claim to have incurred by many orders of magnitude, Oettinger seeks an enormous windfall without any thought to the downstream effects such a loss of hospital and higher-education funding may cause to her colleagues, the medical community, or the public.

In addition, Oettinger’s effort to pursue her claims on a class action basis will necessarily be frustrated by the fact that her theory of liability inherently raises factual questions that are individual to each employee. For example, to succeed on her claims, Oettinger will need to show that each putative class member did not “elect” to be paid monthly, a cadence that the Wage Act expressly permits. Further, Oettinger will need to show that she and the members of the class she aspires to represent do not fall within the exceptions in the Wage Act expressly permitting monthly payments to “teachers” or employees of a “hospital,” both of which would naturally apply to Oettinger and many members of the class she aspires to represent based on the common understanding of those terms.

Oettinger’s specific allegations are addressed below. Any allegation in the Complaint which is not expressly admitted is denied.

## **INTRODUCTION**

### **COMPLAINT ¶1:**

This class action is brought by Marjorie Oettinger (“Oettinger” or “Plaintiff”) on behalf of herself and all other similarly situated employees of Defendant Massachusetts General Physicians’ Organization (“Defendant” or “MGPO”) for Defendant’s failure to pay Plaintiff within the deadlines required by the Wage Act for the three years preceding the commencement of this action. Defendant paid Plaintiff on a monthly pay schedule, typically paying her on the 26th day of each month. However, the Massachusetts Wage Act, M.G.L. c. 149, § 148 requires that employer pay exempt employees no less frequently than semi-monthly, and within six days

of the termination of the pay period in which such wages were earned. Accordingly, Defendant has paid Plaintiff all wages earned in the first half of each month of her employment approximately ten days late, thereby violating the Wage Act.

**ANSWER:**

MGPO admits that Oettinger is identified as the Plaintiff in the Complaint and that her paychecks are issued by MGPO. The remainder of this paragraph consists of legal conclusions and citations which do not require a response. To the extent a response is deemed required, denied. Responding further, Oettinger is also a Professor of Genetics at Harvard Medical School and performs hospital services for Massachusetts General Hospital. Moreover, the Wage Act permits exempt employees, like researchers and professors, to elect monthly payment, exempts hospitals from its scope, and contains special provisions governing pay to teachers.

**PARTIES**

**COMPLAINT ¶2:**

Plaintiff Dr. Marjorie Oettinger is an adult resident of Middlesex County, Massachusetts.

**ANSWER:**

Admitted.

**COMPLAINT ¶3:**

Defendant Massachusetts General Physicians Organization is a Massachusetts Nonprofit Corporation with a principal place of business at 55 Fruit Street, Boston, MA 02114.

**ANSWER:**

Admitted.

**JURISDICTION, VENUE, AND STATUTORY PREREQUISITES**

**COMPLAINT ¶4:**

This action arises under M.G.L. c. 149, §§ 148 and 150.

**ANSWER:**

This paragraph reflects legal conclusions and statements of intent, which do not require a response. To the extent a response is deemed required, MGPO denies that any cause of action arises under M.G.L. c. 149, §§ 148 and 150 which is applicable to Oettinger.

**COMPLAINT ¶5:**

This Court has original jurisdiction over this action, as it is a civil action in which more than \$50,000 is in controversy.

**ANSWER:**

This paragraph reflects legal conclusions which do not require a response. To the extent a response is required, denied.

**COMPLAINT ¶6:**

Prior to filing suit, Plaintiff filed a complaint with the Massachusetts Attorney General's Office.

**ANSWER:**

MGPO lacks sufficient knowledge to form a conclusion as to the truth or falsity of the allegation in this paragraph and denies it on that basis.

**COMPLAINT ¶7:**

Venue in the Business Litigation Session is proper, as the matter concerns complex wage-and-hour issues that affect a large number of Defendant's current and former inside sales employees

**ANSWER:**

This paragraph reflects legal conclusions which do not require a response. To the extent a response is required, denied. Responding further, this statement appears to apply to a different lawsuit, specifically, one involving inside sales employees, which are not at issue in this litigation. To the extent that Oettinger claims to be an inside sales employee, that allegation is denied.

## STATEMENT OF FACTS

### COMPLAINT ¶8:

Plaintiff began her employment with the MGPO in 1991. From 2022 to 2024, Plaintiff's yearly salary has ranged from approximately \$288,913 to \$306,547.

### ANSWER:

Denied. Responding further, MGPO admits only that in 1991, Oettinger was hired as a Molecular Biologist at Massachusetts General Hospital and was appointed to the faculty of Harvard Medical School as an Assistant Professor of Genetics. She continues to serve both institutions and is now a full Professor at Harvard Medical School. She is paid through the MGPO, the physician organization affiliated with MGH of which Oettinger is not a member. Regarding earnings, MGPO records show that in 2022, Oettinger earned \$290,966, in 2023, Oettinger earned \$300,344, and in 2024, Oettinger earned \$306,575.

### COMPLAINT ¶9:

In the three years preceding the commencement of this action, MGPO has been the sole entity responsible for paying Plaintiff's salary.

### ANSWER:

Denied. While Oettinger's paychecks are administratively issued by MGPO, Oettinger performs services for Massachusetts General Hospital and Harvard Medical School. Massachusetts General Hospital is responsible for the funding and oversight of Oettinger's employment.

### COMPLAINT ¶10:

In the three years preceding the commencement of this action, MGPO has paid Plaintiff only on the 26th day of each month. See Plaintiff's Paychecks, attached hereto as Exhibit A.

### ANSWER:

MGPO admits that it paid Oettinger monthly, on the 26<sup>th</sup> day of each month. To the extent any additional claims are embedded in this paragraph, they are denied.

**COMPLAINT ¶11:**

At no point in her employment did Plaintiff elect to be paid monthly.

**ANSWER:**

Denied. Responding further, Oettinger was consistently paid on a monthly basis over a period of decades, and, prior to her assertion of the claims in this litigation, she never complained about that arrangement or did anything to suggest that she would prefer to be paid on a more frequent basis.

**COMPLAINT ¶12:**

In the three years preceding this action, MGPO paid Plaintiff approximately \$900,470 in monthly wages.

**ANSWER:**

Denied. Responding further, Defendant notes Oettinger's earnings as described in its response to Paragraph 8.

**COMPLAINT ¶13:**

For every month in the three years preceding the commencement of this action, Plaintiff has been paid according to an illegal pay schedule.

**ANSWER:**

Denied.

**COMPLAINT ¶14:**

Thus, Defendant has paid Plaintiff \$900,470 according to an illegal pay schedule in the three years preceding this action.

**ANSWER:**

Denied.

**COMPLAINT ¶15:**

In the alternative, for every month in the three years preceding the commencement of this action, Defendant has paid Plaintiff more than six days after the termination of the semi-monthly pay schedule for the first half of the month. Accordingly, approximately \$450,235 of Plaintiff's

wages have been paid illegally late in violation of Massachusetts Wage Act, M.G.L. c. 149, § 148.

**ANSWER:**

Denied.

**CLASS ALLEGATIONS**

**COMPLAINT ¶16:**

Plaintiff brings this action individually, and on behalf of all other members of the Class.

**ANSWER:**

This paragraph reflects legal conclusions and statements of intent, which do not require a response. To the extent a response is deemed required, denied. Responding further, MGPO states that the class that Oettinger aspires to represent is not proper for certification pursuant to Rule 23 for several reasons. For example, one of MGPO's key defenses –that its employees elected monthly payment—presents a fundamentally individualized question that cannot be assessed or adjudicated on a class wide basis. Further, certain such employees have elected monthly payment in connection with their employment agreements. Moreover, putative class members who perform services for a hospital or a medical school, such as Oettinger, are subject to further defenses based on their status as teachers and/or employees of a hospital, which will require individualized analysis.

**COMPLAINT ¶17:**

The Class is defined as follows:

All Massachusetts employees employed by Defendant, who were paid monthly during the three years immediately preceding the date of the filing of this action and continuing through the date of final judgment in this matter.

**ANSWER:**

This paragraph reflects legal conclusions and statements of intent, which do not require a response. To the extent a response is deemed required, denied. Responding further, MGPO states

that the class that Oettinger aspires to represent is not proper for certification pursuant to Rule 23, including for the reasons stated above.

**COMPLAINT ¶18:**

The members of the Rule 23 class are readily ascertainable because the number and identity of the Rule 23 class members are determinable from Defendant's records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendant. Notice can be provided by means permissible under Rule 23. This action is properly maintainable as a class action under Mass. R. Civ. P. 23(a)-(b).

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is deemed required, denied. Responding further, MGPO states that this matter is not proper for certification pursuant to Rule 23, including for the reasons stated above.

**COMPLAINT ¶19:**

The Rule 23 class members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. Upon information and belief, there are at least 50, if not significantly more, Rule 23 class members for the pertinent period of time.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is required, denied. Responding further, MGPO reiterates that Oettinger's claims are not suited for class action treatment.

**COMPLAINT ¶20:**

Plaintiff's claims are typical of those claims which could be alleged by any Rule 23 class member, and the relief sought is typical of the relief which would be sought by each Rule 23 class member in separate actions. All the Rule 23 class members were subject to the same corporate practices of Defendant, as alleged herein: failure to pay employees on a weekly, bi-weekly, or semi-monthly pay schedule.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is required, Defendant denies that Oettinger's claims are typical of the proposed class.

For example, she is subject to specialized defenses which apply to her as a professor at Harvard Medical School and molecular biologist at Massachusetts General Hospital.

**COMPLAINT ¶21:**

Plaintiff and other Rule 23 class members sustained similar losses, injuries, and damages resulting from Defendant's failure to pay them on, at minimum, a semi-monthly pay schedule in compliance with the Massachusetts Wage Act and the Rule 23 class members have all been injured in that they have been paid late due to Defendant's policies, practices and patterns of conduct. Defendant's company-wide policies and practices affected all Rule 23 class members similarly, and Defendant benefitted from the same type of unfair and/or wrongful acts as to each of the Rule 23 class members. Although the amount of the individual class members' damages may vary depending on their periods of employment and salaries, those damages are readily ascertainable from the Defendant's financial records. As a result, common issues of liability predominate over individualized issues of damages.

**ANSWER:**

This paragraph reflects legal conclusions and requests for relief, which do not require a response. To the extent a response is required, denied. Responding further, there is no respect in which any individual's ostensible damages could be ascertained from payroll records. Plaintiff's allegations in this regard reflect the fundamental and fatal flaw in her claims; she seeks to recover billions of dollars of statutory penalties on behalf of a group of individuals who suffered no cognizable injury and no material consequential damages.

**COMPLAINT ¶22:**

Plaintiff is able to fairly and adequately protect the interest of the Rule 23 class members and has no interests antagonistic to the Rule 23 class members. Plaintiff is represented by attorneys who are experienced and competent in both employment litigation and class action litigation.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is deemed required, denied. Responding further, Defendant states that the fundamental nature of Plaintiff's class action claim – through which she seeks to extort billions of dollars in statutory penalties from a non-profit healthcare institution – are fundamentally antagonistic to the

members of the class that she aspires to represent to the extent that such individuals have an interest in the continuation of their gainful employment or the continued availability of quality medical care.

**COMPLAINT ¶23:**

A class action is superior to other available methods for the fair and efficient adjudication of these claims, particularly in the context of wage-and-hour litigation where individual class members may lack the financial resources to vigorously prosecute a lawsuit against corporate defendants and are often hesitant to assert their rights out of fear of direct or indirect retaliation. Among other things, individual adjudications would result in highly inefficient duplication of discovery, briefing of legal issues, and court proceedings. If appropriate, the Court is empowered to fashion methods to efficiently manage this action as a class action.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is deemed required, denied. Responding further, given the specialized defenses and host of individualized issues applicable to the putative class members, this case cannot be adjudicated efficiently on a class wide basis.

**COMPLAINT ¶24:**

Common questions of law and fact exist as to the Rule 23 class members that predominate over any question only affecting Plaintiff and the Rule 23 class members individually. These questions include whether Defendant paid employees according to an illegal pay schedule and whether Defendant paid employees within the timeframe allowed by M.G.L. c. 149, § 148.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is deemed required, denied. Responding further, individualized issues would inevitably predominate over common questions of law and fact if this case were certified as a class action.

**COMPLAINT ¶25:**

Plaintiff seeks certification of a class of similarly situated MGPO employees who worked for MGPO at any time within three years prior to the commencement of this action up through the time of judgment.

**ANSWER:**

This paragraph reflects legal conclusions and statements of intent, which do not require a response. To the extent a response is deemed required, denied. MGPO reiterates that Plaintiff's claims are not suited to class wide resolution.

**COUNTS OF THE COMPLAINT**

**Count I**

**Violation of M.G.L. c. 149, § 148 for Late Payment of Wages**

**COMPLAINT ¶26:**

Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

**ANSWER:**

MGPO hereby restates and incorporates its responses to the foregoing allegations as if fully stated herein.

**COMPLAINT ¶27:**

The Massachusetts Wage Act, M.G.L. c. 149, § 148 generally requires every person having employees in his service to pay, within a specified time period, to such employee the wages earned by him.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is deemed required, denied.

**COMPLAINT ¶28:**

Defendant paid Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly.

**ANSWER:**

Denied.

**COMPLAINT ¶29:**

MGPO's failure to pay Plaintiff all wages due to her within the timeframe allowed by the Wage Act denied Plaintiff prompt and timely payment of her wages and the use of those wages in violation of M.G.L. c. 149, § 148.

**ANSWER:**

Denied.

**COMPLAINT ¶30:**

This claim is brought pursuant to M.G.L. c. 149, § 150.

**ANSWER:**

This paragraph reflects legal conclusions and statements of intent, which do not require a response. To the extent a response is deemed required, denied.

**COMPLAINT ¶31:**

As a result of Defendant's actions, Plaintiff has suffered damages.

**ANSWER:**

Denied.

**COMPLAINT ¶32:**

Defendant is liable to Plaintiff and the Class for three times the amount of the late paid wages, plus interest, costs, and attorneys' fees.

**ANSWER:**

Denied.

**Count II  
Declaratory Judgment – Chapter 231A**

**COMPLAINT ¶33:**

Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

**ANSWER:**

MGPO hereby restates and incorporates its responses to the foregoing allegations as if fully stated herein.

**COMPLAINT ¶34:**

An actual controversy exists between the parties with respect to the matters stated above, and more particularly including, but not limited to:

- a. Whether MGPO's payment scheme of paying Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly is illegal pursuant to The Massachusetts Wage Act, M.G.L. c. 149, § 148.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is deemed required, denied.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court enter the following relief:

1. Certify this Action as a class action pursuant to M.G.L. c. 149, § 148;
2. In the alternative, certify this case as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure;
3. Appoint Plaintiff Oettinger as Class Representative;
4. Appoint the undersigned as Class Counsel;
5. An award of damages for all wages and other losses to which Plaintiff and similarly situated employees are entitled;
6. Statutory trebling of all wage-related damages pursuant to M.G.L. c. 149, §§ 148 and 150;
7. Award Plaintiff and the Class all pre-judgment and post-judgment interest on these damages pursuant to M.G.L. c. 149, §§ 148 and 150;
8. Award attorneys' fees and costs incurred by Plaintiff in prosecuting this action pursuant to M.G.L. c. 149, §§ 148 and 150;
9. On Count II – judgment declaring whether MGPO's practice of paying Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid

monthly is illegal pursuant to The Massachusetts Wage Act, M.G.L . c. 149, § 148.

10. Such further relief as this Court deems fair and just.

**ANSWER:**

MGPO denies that Plaintiffs are entitled to any of the relief sought.

**JURY DEMAND**

Plaintiff demands a TRIAL BY JURY on all claims so triable.

**ANSWER:**

MGPO also demands a trial by jury.

**ADDITIONAL DEFENSES<sup>1</sup>**

**FIRST ADDITIONAL DEFENSE**

Oettinger's claims for statutory multiple damages under the Wage Act seek to recover billions of dollars from MGPO in relation to a practice that caused no material economic or other harm to her or any member of the putative class she aspires to represent. As such, an award of the statutory multiple damages that Oettinger seeks would be radically disproportionate to any harm for which the statute provides a remedy, in violation of the due process provisions of the United States Constitution and analogous provisions of the Massachusetts Declaration of Rights.

**SECOND ADDITIONAL DEFENSE**

MGPO acted in good faith and with reasonable grounds to believe that it was not violating the law. As such, any claim for multiple, liquidated, or otherwise enhanced damages in this case

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<sup>1</sup> By advancing the Additional Defenses noted below, MGPO seeks only to put Oettinger and the Court on notice of those defenses to Oettinger's claims that are not captured by MGPO's responses to the specific allegations in the Complaint. MGPO in no way assumes the burden of proof on any issue as to which Oettinger bears the burden under the governing legal standards.

would violate the due process provisions of the United States Constitution and analogous provisions of the Massachusetts Declaration of Rights.<sup>2</sup>

### **THIRD ADDITIONAL DEFENSE**

Certification of the class that Oettinger aspires to represent would violate the due process rights of certain putative class members, in violation of the United States Constitution and analogous provisions of the Massachusetts Declaration of Rights, because the Massachusetts Rules of Civil Procedure prohibit members of a certified class from excluding themselves from the action, curtailing their ability to pursue damages that may arise from their individual circumstances (instead of or in addition to statutory multiple damages) and/or imposing on members of the putative class a material claim against their employer that they do not wish to pursue.

### **FOURTH ADDITIONAL DEFENSE**

Oettinger's claims are not suitable for class treatment because, among other reasons, the claims could not be tried without shifting her burden of proof with respect to whether class members elected to be paid monthly, in violation of MGPO's due process rights, including those arising under the Seventh Amendment to the United States Constitution and/or the Massachusetts Declaration of Rights.

### **FIFTH ADDITIONAL DEFENSE**

Oettinger's and/or the putative class members' claims fail because G.L. c. 149, § 148 "shall not apply to an employee of a hospital which is supported in part by contributions from the commonwealth or from any city or town, nor to an employee of an incorporated hospital which provides treatment to patients free of charge, or which is conducted as a public charity, unless such

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<sup>2</sup> Contemporaneously with the filing of this Answer, MGPO will provide notice of its intent to pursue constitutional defenses in this matter to the Attorney General in accordance with Mass. R. Civ. P. 24(d).

employee requests such hospital to pay him weekly.” Oettinger has never asked that MGPO pay her weekly, nor does she contend otherwise in her Complaint.

#### **SIXTH ADDITIONAL DEFENSE**

Some or all of Oettinger’s and/or the putative class members’ claims and/or claimed damages are barred by the charitable immunity statute, G.L. c. 231, § 85K.

#### **SEVENTH ADDITIONAL DEFENSE**

Oettinger’s claims and/or the putative class members’ claims are barred, in whole or in part, for failure to exhaust the required administrative remedies and/or comply with statutory or jurisdictional prerequisites, including with respect to standing.

#### **EIGHTH ADDITIONAL DEFENSE**

Some or all of the claims asserted in the Complaint are barred, in whole or in part, by the applicable statutes of limitation.

#### **NINTH ADDITIONAL DEFENSE**

Oettinger, in addition to at least some members of the class she aspires to represent, have reposed and acquiesced in the cadence of pay described in the Complaint without ever suggesting to MGPO that they have not effectively elected to be paid monthly or requesting that they be paid on any other cadence during their employment with MGPO. As such, they are equitably estopped from pursuing substantial statutory penalties in relation to an arrangement to which they never objected or communicated the basis for any legal claim to MGPO before commencing this action in pursuit of substantial statutory penalties.

#### **TENTH ADDITIONAL DEFENSE**

Oettinger’s and/or the putative class members’ claims are barred, in whole or in part, to the extent Oettinger’s and/or the putative class members’ recovery, if any, is subject to a valid set-off and/or the doctrine of payment.

#### **ELEVENTH ADDITIONAL DEFENSE**

The damages claimed by Oettinger and/or the putative class members are barred to the extent they are speculative in nature.

#### **TWELFTH ADDITIONAL DEFENSE**

Some of or all of the claims asserted in the Complaint and/or some of the potential claims of putative class members are barred by the equitable doctrines of laches, waiver by conduct or writing, forfeiture of entitlement, estoppel, unjust enrichment, *in pari delicto*, and/or unclean hands.

#### **THIRTEENTH ADDITIONAL DEFENSE**

Some or all of the claims in the Complaint are barred because, even if any of the alleged harms did occur, which is specifically denied, Oettinger and/or the putative class members did not suffer any injury resulting directly or proximately therefrom, or such injuries were *de minimis* and therefore not compensable.

#### **FOURTEENTH ADDITIONAL DEFENSE**

Some or all of the putative class members' claims are barred by the doctrines of accord and satisfaction and/or release to the extent that they have entered into contracts with MGPO concerning their employment or separation therefrom.

#### **FIFTEENTH ADDITIONAL DEFENSE**

Oettinger is not entitled to pursue a class action pursuant to Massachusetts Rule of Civil Procedure 23 because she has not identified, and cannot identify, a group of similarly-situated employees and any putative class is not ascertainable because an essential question posed by Oettinger's claims is whether each member of the putative class "elected" to be paid on the cadence described in the Complaint, which necessarily implicates detailed factual inquiries regarding each

class member and his/her relationship with MGPO, including with respect to any unions which may be associated with employees of MGPO.

#### **SIXTEENTH ADDITIONAL DEFENSE**

Certification of the class proposed in the Complaint is improper because, among other reasons, Oettinger's interests are in conflict with the interests of all or certain members of the alleged group of persons Oettinger aspires to represent, because Oettinger is an inadequate representative of the alleged group of persons she purports to represent, because Oettinger's claims are not typical of the members of the class she aspires to represent, and because any issue common to members of the putative class will be overwhelmed by individualized issues relating to the varied circumstances of putative class members with respect to the liability issues raised in the Complaint.

#### **SEVENTEENTH ADDITIONAL DEFENSE**

Oettinger's and/or the putative class members' claims fail because G.L. c. 149, § 148 provide that compensation paid to certain employees of educational institutions, such as Harvard Medical School, "shall be deemed to be fully earned at the end of the school year," and the statute expressly permits educational institutions to defer salaries for such employees, including by paying some or all of their employees in "equal payments . . . for a 12 month period."

#### **RESERVATION OF RIGHTS**

MGPO has insufficient knowledge or information upon which to form a belief as to whether additional defenses are available, and therefore reserves the right to amend its Answer to plead, assert, rely upon additional defenses, or withdraw or delete existing defenses, including those which may be disclosed or discovered through further assertions by Oettinger or discovery.

**DEMAND FOR RELIEF**

WHEREFORE, MGPO requests that:

1. The Complaint against it be dismissed with prejudice;
2. Each and every prayer for relief in the Complaint be denied;
3. Judgment be entered in favor of MGPO;
4. MGPO be awarded its costs, attorneys' fees, and expenses in the amount and

manner permitted by applicable law; and

Such other relief as this Court deems just and proper.

DATED: May 5, 2025

Respectfully submitted,

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.,

By its attorneys:

*/s/ Elizabeth L. Sherwood*

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 5, 2025, a true and correct copy of the foregoing document was served via email on Plaintiff's counsel.

*/s/ Elizabeth L. Sherwood*

\_\_\_\_\_  
Elizabeth L. Sherwood

MH

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 2584CV00644-BLSI

MAJORIE OETTINGER, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.,

Defendant.

**DEFENDANT'S AMENDED ANSWER**  
**TO PLAINTIFF'S AMENDED CLASS ACTION COMPLAINT<sup>1</sup>**

Marjorie Oettinger, Ph.D. (“Oettinger” or “Plaintiff”) is a highly compensated member of the Molecular Biology Department of Massachusetts General Hospital and a Professor at Harvard Medical School, who has earned more than \$900,000 over the past three years. By and through her Amended Class Action Complaint (“Complaint”), Oettinger now seeks to extract an exorbitant sum in statutory penalties – likely amounting to ***billions of dollars*** – from a non-profit healthcare institution, Defendant Massachusetts General Physicians Organization, Inc. (“MGPO” or “Defendant”), based on an asserted technical violation of the timely payment requirements of the Wage Act. Plaintiff makes these outrageous demands, despite the fact that neither she nor any member of the class she aspires to represent has been deprived of any compensation or harmed in any material way.

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<sup>1</sup> Counsel for Plaintiff has provided written assent to the filing of this amended pleading pursuant to Mass. R. Civ. P. 15(a).

More specifically, Oettinger claims that her monthly salary schedule was inherently “illegal,” such that she is owed three times the amount of her total salary payments during the applicable limitations period (i.e., \$2,700,000) to compensate her for theoretical and unspecified “damages” over the past three years. The theory of liability underlying Oettinger’s claims is so predatory that it raises several categories of due process concerns under the federal Constitution and the Massachusetts Declaration of Rights. By seeking to collect statutory damages for herself and “similarly-situated” class members that exceed any harm they can plausibly claim to have incurred by many orders of magnitude, Oettinger seeks an enormous windfall without any thought to the downstream effects such a loss of hospital and higher-education funding may cause to her colleagues, the medical community, or the public.

In addition, Oettinger’s effort to pursue her claims on a class action basis will necessarily be frustrated by the fact that her theory of liability inherently raises factual questions that are individual to each employee. For example, to succeed on her claims, Oettinger will need to show that each putative class member did not “elect” to be paid monthly, a cadence that the Wage Act expressly permits. Further, Oettinger will need to show that she and the members of the class she aspires to represent do not fall within the exceptions in the Wage Act expressly permitting monthly payments to “teachers” or employees of a “hospital,” both of which would naturally apply to Oettinger and many members of the class she aspires to represent based on the common understanding of those terms.

Further, since the filing of this action, the Legislature has passed and the Governor has signed into law a bill that provides MGPO with categorical immunity to all claims that Plaintiff has asserted in this action.

Oettinger's specific allegations are addressed below. Any allegation in the Complaint which is not expressly admitted is denied.

## INTRODUCTION

### COMPLAINT ¶1:

This class action is brought by Marjorie Oettinger ("Oettinger" or "Plaintiff") on behalf of herself and all other similarly situated employees of Defendant Massachusetts General Physicians' Organization ("Defendant" or "MGPO") for Defendant's failure to pay Plaintiff within the deadlines required by the Wage Act for the three years preceding the commencement of this action. Defendant paid Plaintiff on a monthly pay schedule, typically paying her on the 26th day of each month. However, the Massachusetts Wage Act, M.G.L. c. 149, § 148 requires that employer pay exempt employees no less frequently than semi-monthly, and within six days of the termination of the pay period in which such wages were earned. Accordingly, Defendant has paid Plaintiff all wages earned in the first half of each month of her employment approximately ten days late, thereby violating the Wage Act.

### ANSWER:

MGPO admits that Oettinger is identified as the Plaintiff in the Complaint and that her paychecks are issued by MGPO. The remainder of this paragraph consists of legal conclusions and citations which do not require a response. To the extent a response is deemed required, denied. Responding further, Oettinger is also a Professor of Genetics at Harvard Medical School and performs hospital services for Massachusetts General Hospital. Moreover, the Wage Act permits exempt employees, like researchers and professors, to elect monthly payment, exempts hospitals from its scope, and contains special provisions governing pay to teachers.

## PARTIES

### COMPLAINT ¶2:

Plaintiff Dr. Marjorie Oettinger is an adult resident of Middlesex County, Massachusetts.

### ANSWER:

Admitted.

**COMPLAINT ¶3:**

Defendant Massachusetts General Physicians Organization is a Massachusetts Nonprofit Corporation with a principal place of business at 55 Fruit Street, Boston, MA 02114.

**ANSWER:**

Admitted.

**JURISDICTION, VENUE, AND STATUTORY PREREQUISITES**

**COMPLAINT ¶4:**

This action arises under M.G.L. c. 149, §§ 148 and 150.

**ANSWER:**

This paragraph reflects legal conclusions and statements of intent, which do not require a response. To the extent a response is deemed required, MGPO denies that any cause of action arises under M.G.L. c. 149, §§ 148 and 150 which is applicable to Oettinger.

**COMPLAINT ¶5:**

This Court has original jurisdiction over this action, as it is a civil action in which more than \$50,000 is in controversy.

**ANSWER:**

This paragraph reflects legal conclusions which do not require a response. To the extent a response is required, denied.

**COMPLAINT ¶6:**

Prior to filing suit, Plaintiff filed a complaint with the Massachusetts Attorney General's Office.

**ANSWER:**

MGPO lacks sufficient knowledge to form a conclusion as to the truth or falsity of the allegation in this paragraph and denies it on that basis.

**COMPLAINT ¶7:**

Venue in the Business Litigation Session is proper, as the matter concerns complex wage-and-hour issues that affect a large number of Defendant's current and former inside sales employees

**ANSWER:**

This paragraph reflects legal conclusions which do not require a response. To the extent a response is required, denied. Responding further, this statement appears to apply to a different lawsuit, specifically, one involving inside sales employees, which are not at issue in this litigation. To the extent that Oettinger claims to be an inside sales employee, that allegation is denied.

**STATEMENT OF FACTS**

**COMPLAINT ¶8:**

Plaintiff began her employment with the MGPO in 1991. From 2022 to 2024, Plaintiff's yearly salary has ranged from approximately \$288,913 to \$306,547.

**ANSWER:**

Denied. Responding further, MGPO admits only that in 1991, Oettinger was hired as a Molecular Biologist at Massachusetts General Hospital and was appointed to the faculty of Harvard Medical School as an Assistant Professor of Genetics. She continues to serve both institutions and is now a full Professor at Harvard Medical School. She is paid through the MGPO, the physician organization affiliated with MGH of which Oettinger is not a member. Regarding earnings, MGPO records show that in 2022, Oettinger earned \$290,966, in 2023, Oettinger earned \$300,344, and in 2024, Oettinger earned \$306,575.

**COMPLAINT ¶9:**

In the three years preceding the commencement of this action, MGPO has been the sole entity responsible for paying Plaintiff's salary.

**ANSWER:**

Denied. While Oettinger's paychecks are administratively issued by MGPO, Oettinger performs services for Massachusetts General Hospital and Harvard Medical School. Massachusetts General Hospital is responsible for the funding and oversight of Oettinger's employment.

**COMPLAINT ¶10:**

In the three years preceding the commencement of this action, MGPO has paid Plaintiff only on the 26th day of each month. See Plaintiff's Paychecks, attached hereto as Exhibit A.

**ANSWER:**

MGPO admits that it paid Oettinger monthly, on the 26<sup>th</sup> day of each month. To the extent any additional claims are embedded in this paragraph, they are denied.

**COMPLAINT ¶11:**

At no point in her employment did Plaintiff elect to be paid monthly.

**ANSWER:**

Denied. Responding further, Oettinger was consistently paid on a monthly basis over a period of decades, and, prior to her assertion of the claims in this litigation, she never complained about that arrangement or did anything to suggest that she would prefer to be paid on a more frequent basis.

**COMPLAINT ¶12:**

In the three years preceding this action, MGPO paid Plaintiff approximately \$900,470 in monthly wages.

**ANSWER:**

Denied. Responding further, Defendant notes Oettinger's earnings as described in its response to Paragraph 8.

**COMPLAINT ¶13:**

For every month in the three years preceding the commencement of this action, Plaintiff has been paid according to an illegal pay schedule.

**ANSWER:**

Denied.

**COMPLAINT ¶14:**

Thus, Defendant has paid Plaintiff \$900,470 according to an illegal pay schedule in the three years preceding this action.

**ANSWER:**

Denied.

**COMPLAINT ¶15:**

In the alternative, for every month in the three years preceding the commencement of this action, Defendant has paid Plaintiff more than six days after the termination of the semi-monthly pay schedule for the first half of the month. Accordingly, approximately \$450,235 of Plaintiff's wages have been paid illegally late in violation of Massachusetts Wage Act, M.G.L. c. 149, § 148.

**ANSWER:**

Denied.

**CLASS ALLEGATIONS**

**COMPLAINT ¶16:**

Plaintiff brings this action individually, and on behalf of all other members of the Class.

**ANSWER:**

This paragraph reflects legal conclusions and statements of intent, which do not require a response. To the extent a response is deemed required, denied. Responding further, MGPO states that the class that Oettinger aspires to represent is not proper for certification pursuant to Rule 23 for several reasons. For example, one of MGPO's key defenses –that its employees elected monthly payment—presents a fundamentally individualized question that cannot be assessed or

adjudicated on a class wide basis. Further, certain such employees have elected monthly payment in connection with their employment agreements. Moreover, putative class members who perform services for a hospital or a medical school, such as Oettinger, are subject to further defenses based on their status as teachers and/or employees of a hospital, which will require individualized analysis.

**COMPLAINT ¶17:**

The Class is defined as follows:

All Massachusetts employees employed by Defendant, who were paid monthly during the three years immediately preceding the date of the filing of this action and continuing through the date of final judgment in this matter.

**ANSWER:**

This paragraph reflects legal conclusions and statements of intent, which do not require a response. To the extent a response is deemed required, denied. Responding further, MGPO states that the class that Oettinger aspires to represent is not proper for certification pursuant to Rule 23, including for the reasons stated above.

**COMPLAINT ¶18:**

The members of the Rule 23 class are readily ascertainable because the number and identity of the Rule 23 class members are determinable from Defendant's records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendant. Notice can be provided by means permissible under Rule 23. This action is properly maintainable as a class action under Mass. R. Civ. P. 23(a)-(b).

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is deemed required, denied. Responding further, MGPO states that this matter is not proper for certification pursuant to Rule 23, including for the reasons stated above.

**COMPLAINT ¶19:**

The Rule 23 class members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. Upon

information and belief, there are at least 50, if not significantly more, Rule 23 class members for the pertinent period of time.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is required, denied. Responding further, MGPO reiterates that Oettinger's claims are not suited for class action treatment.

**COMPLAINT ¶20:**

Plaintiff's claims are typical of those claims which could be alleged by any Rule 23 class member, and the relief sought is typical of the relief which would be sought by each Rule 23 class member in separate actions. All the Rule 23 class members were subject to the same corporate practices of Defendant, as alleged herein: failure to pay employees on a weekly, bi-weekly, or semi-monthly pay schedule.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is required, Defendant denies that Oettinger's claims are typical of the proposed class. For example, she is subject to specialized defenses which apply to her as a professor at Harvard Medical School and molecular biologist at Massachusetts General Hospital.

**COMPLAINT ¶21:**

Plaintiff and other Rule 23 class members sustained similar losses, injuries, and damages resulting from Defendant's failure to pay them on, at minimum, a semi-monthly pay schedule in compliance with the Massachusetts Wage Act and the Rule 23 class members have all been injured in that they have been paid late due to Defendant's policies, practices and patterns of conduct. Defendant's company-wide policies and practices affected all Rule 23 class members similarly, and Defendant benefitted from the same type of unfair and/or wrongful acts as to each of the Rule 23 class members. Although the amount of the individual class members' damages may vary depending on their periods of employment and salaries, those damages are readily ascertainable from the Defendant's financial records. As a result, common issues of liability predominate over individualized issues of damages.

**ANSWER:**

This paragraph reflects legal conclusions and requests for relief, which do not require a response. To the extent a response is required, denied. Responding further, there is no respect in

which any individual's ostensible damages could be ascertained from payroll records. Plaintiff's allegations in this regard reflect the fundamental and fatal flaw in her claims; she seeks to recover billions of dollars of statutory penalties on behalf of a group of individuals who suffered no cognizable injury and no material consequential damages.

**COMPLAINT ¶122:**

Plaintiff is able to fairly and adequately protect the interest of the Rule 23 class members and has no interests antagonistic to the Rule 23 class members. Plaintiff is represented by attorneys who are experienced and competent in both employment litigation and class action litigation.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is deemed required, denied. Responding further, Defendant states that the fundamental nature of Plaintiff's class action claim – through which she seeks to extort billions of dollars in statutory penalties from a non-profit healthcare institution – are fundamentally antagonistic to the members of the class that she aspires to represent to the extent that such individuals have an interest in the continuation of their gainful employment or the continued availability of quality medical care.

**COMPLAINT ¶123:**

A class action is superior to other available methods for the fair and efficient adjudication of these claims, particularly in the context of wage-and-hour litigation where individual class members may lack the financial resources to vigorously prosecute a lawsuit against corporate defendants and are often hesitant to assert their rights out of fear of direct or indirect retaliation. Among other things, individual adjudications would result in highly inefficient duplication of discovery, briefing of legal issues, and court proceedings. If appropriate, the Court is empowered to fashion methods to efficiently manage this action as a class action.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is deemed required, denied. Responding further, given the specialized defenses and host

of individualized issues applicable to the putative class members, this case cannot be adjudicated efficiently on a class wide basis.

**COMPLAINT ¶24:**

Common questions of law and fact exist as to the Rule 23 class members that predominate over any question only affecting Plaintiff and the Rule 23 class members individually. These questions include whether Defendant paid employees according to an illegal pay schedule and whether Defendant paid employees within the timeframe allowed by M.G.L. c. 149, § 148.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is deemed required, denied. Responding further, individualized issues would inevitably predominate over common questions of law and fact if this case were certified as a class action.

**COMPLAINT ¶25:**

Plaintiff seeks certification of a class of similarly situated MGPO employees who worked for MGPO at any time within three years prior to the commencement of this action up through the time of judgment.

**ANSWER:**

This paragraph reflects legal conclusions and statements of intent, which do not require a response. To the extent a response is deemed required, denied. MGPO reiterates that Plaintiff's claims are not suited to class wide resolution.

**COUNTS OF THE COMPLAINT**

**Count I**

**Violation of M.G.L. c. 149, § 148 for Late Payment of Wages**

**COMPLAINT ¶26:**

Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

**ANSWER:**

MGPO hereby restates and incorporates its responses to the foregoing allegations as if fully stated herein.

**COMPLAINT ¶27:**

The Massachusetts Wage Act, M.G.L. c. 149, § 148 generally requires every person having employees in his service to pay, within a specified time period, to such employee the wages earned by him.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is deemed required, denied.

**COMPLAINT ¶28:**

Defendant paid Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly.

**ANSWER:**

Denied.

**COMPLAINT ¶29:**

MGPO's failure to pay Plaintiff all wages due to her within the timeframe allowed by the Wage Act denied Plaintiff prompt and timely payment of her wages and the use of those wages in violation of M.G.L. c. 149, § 148.

**ANSWER:**

Denied.

**COMPLAINT ¶30:**

This claim is brought pursuant to M.G.L. c. 149, § 150.

**ANSWER:**

This paragraph reflects legal conclusions and statements of intent, which do not require a response. To the extent a response is deemed required, denied.

**COMPLAINT ¶31:**

As a result of Defendant's actions, Plaintiff has suffered damages.

**ANSWER:**

Denied.

**COMPLAINT ¶32:**

Defendant is liable to Plaintiff and the Class for three times the amount of the late paid wages, plus interest, costs, and attorneys' fees.

**ANSWER:**

Denied.

**Count II  
Declaratory Judgment – Chapter 231A**

**COMPLAINT ¶33:**

Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

**ANSWER:**

MGPO hereby restates and incorporates its responses to the foregoing allegations as if fully stated herein.

**COMPLAINT ¶34:**

An actual controversy exists between the parties with respect to the matters stated above, and more particularly including, but not limited to:

- a. Whether MGPO's payment scheme of paying Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly is illegal pursuant to The Massachusetts Wage Act, M.G.L. c. 149, § 148.

**ANSWER:**

This paragraph reflects legal conclusions, which do not require a response. To the extent a response is deemed required, denied.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court enter the following relief:

1. Certify this Action as a class action pursuant to M.G.L. c. 149, § 148;
2. In the alternative, certify this case as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure;
3. Appoint Plaintiff Oettinger as Class Representative;
4. Appoint the undersigned as Class Counsel;
5. An award of damages for all wages and other losses to which Plaintiff and similarly situated employees are entitled;
6. Statutory trebling of all wage-related damages pursuant to M.G.L. c. 149, §§ 148 and 150;
7. Award Plaintiff and the Class all pre-judgment and post-judgment interest on these damages pursuant to M.G.L. c. 149, §§ 148 and 150;
8. Award attorneys' fees and costs incurred by Plaintiff in prosecuting this action pursuant to M.G.L. c. 149, §§ 148 and 150;
9. On Count II – judgment declaring whether MGPO's practice of paying Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly is illegal pursuant to The Massachusetts Wage Act, M.G.L. c. 149, § 148.
10. Such further relief as this Court deems fair and just.

**ANSWER:**

MGPO denies that Plaintiffs are entitled to any of the relief sought.

**JURY DEMAND**

Plaintiff demands a TRIAL BY JURY on all claims so triable.

**ANSWER:**

MGPO also demands a trial by jury.

## **ADDITIONAL DEFENSES<sup>2</sup>**

### **FIRST ADDITIONAL DEFENSE**

Oettinger's claims for statutory multiple damages under the Wage Act seek to recover billions of dollars from MGPO in relation to a practice that caused no material economic or other harm to her or any member of the putative class she aspires to represent. As such, an award of the statutory multiple damages that Oettinger seeks would be radically disproportionate to any harm for which the statute provides a remedy, in violation of the due process provisions of the United States Constitution and analogous provisions of the Massachusetts Declaration of Rights.

### **SECOND ADDITIONAL DEFENSE**

MGPO acted in good faith and with reasonable grounds to believe that it was not violating the law. As such, any claim for multiple, liquidated, or otherwise enhanced damages in this case would violate the due process provisions of the United States Constitution and analogous provisions of the Massachusetts Declaration of Rights.<sup>3</sup>

### **THIRD ADDITIONAL DEFENSE**

Certification of the class that Oettinger aspires to represent would violate the due process rights of certain putative class members, in violation of the United States Constitution and analogous provisions of the Massachusetts Declaration of Rights, because the Massachusetts Rules of Civil Procedure prohibit members of a certified class from excluding themselves from the action, curtailing their ability to pursue damages that may arise from their individual circumstances

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<sup>2</sup> By advancing the Additional Defenses noted below, MGPO seeks only to put Oettinger and the Court on notice of those defenses to Oettinger's claims that are not captured by MGPO's responses to the specific allegations in the Complaint. MGPO in no way assumes the burden of proof on any issue as to which Oettinger bears the burden under the governing legal standards.

<sup>3</sup> Contemporaneously with the filing of this Answer, MGPO will provide notice of its intent to pursue constitutional defenses in this matter to the Attorney General in accordance with Mass. R. Civ. P. 24(d).

(instead of or in addition to statutory multiple damages) and/or imposing on members of the putative class a material claim against their employer that they do not wish to pursue.

#### **FOURTH ADDITIONAL DEFENSE**

Oettinger's claims are not suitable for class treatment because, among other reasons, the claims could not be tried without shifting her burden of proof with respect to whether class members elected to be paid monthly, in violation of MGPO's due process rights, including those arising under the Seventh Amendment to the United States Constitution and/or the Massachusetts Declaration of Rights.

#### **FIFTH ADDITIONAL DEFENSE**

Oettinger's and/or the putative class members' claims fail because G.L. c. 149, § 148 "shall not apply to an employee of a hospital which is supported in part by contributions from the commonwealth or from any city or town, nor to an employee of an incorporated hospital which provides treatment to patients free of charge, or which is conducted as a public charity, unless such employee requests such hospital to pay him weekly." Oettinger has never asked that MGPO pay her weekly, nor does she contend otherwise in her Complaint.

#### **SIXTH ADDITIONAL DEFENSE**

Some or all of Oettinger's and/or the putative class members' claims and/or claimed damages are barred by the charitable immunity statute, G.L. c. 231, § 85K.

#### **SEVENTH ADDITIONAL DEFENSE**

Oettinger's claims and/or the putative class members' claims are barred, in whole or in part, for failure to exhaust the required administrative remedies and/or comply with statutory or jurisdictional prerequisites, including with respect to standing.

#### **EIGHTH ADDITIONAL DEFENSE**

Some or all of the claims asserted in the Complaint are barred, in whole or in part, by the applicable statutes of limitation.

#### **NINTH ADDITIONAL DEFENSE**

Oettinger, in addition to at least some members of the class she aspires to represent, have reposed and acquiesced in the cadence of pay described in the Complaint without ever suggesting to MGPO that they have not effectively elected to be paid monthly or requesting that they be paid on any other cadence during their employment with MGPO. As such, they are equitably estopped from pursuing substantial statutory penalties in relation to an arrangement to which they never objected or communicated the basis for any legal claim to MGPO before commencing this action in pursuit of substantial statutory penalties.

#### **TENTH ADDITIONAL DEFENSE**

Oettinger's and/or the putative class members' claims are barred, in whole or in part, to the extent Oettinger's and/or the putative class members' recovery, if any, is subject to a valid set-off and/or the doctrine of payment.

#### **ELEVENTH ADDITIONAL DEFENSE**

The damages claimed by Oettinger and/or the putative class members are barred to the extent they are speculative in nature.

#### **TWELFTH ADDITIONAL DEFENSE**

Some of or all of the claims asserted in the Complaint and/or some of the potential claims of putative class members are barred by the equitable doctrines of laches, waiver by conduct or writing, forfeiture of entitlement, estoppel, unjust enrichment, *in pari delicto*, and/or unclean hands.

### **THIRTEENTH ADDITIONAL DEFENSE**

Some or all of the claims in the Complaint are barred because, even if any of the alleged harms did occur, which is specifically denied, Oettinger and/or the putative class members did not suffer any injury resulting directly or proximately therefrom, or such injuries were *de minimis* and therefore not compensable.

### **FOURTEENTH ADDITIONAL DEFENSE**

Some or all of the putative class members' claims are barred by the doctrines of accord and satisfaction and/or release to the extent that they have entered into contracts with MGPO concerning their employment or separation therefrom.

### **FIFTEENTH ADDITIONAL DEFENSE**

Oettinger is not entitled to pursue a class action pursuant to Massachusetts Rule of Civil Procedure 23 because she has not identified, and cannot identify, a group of similarly-situated employees and any putative class is not ascertainable because an essential question posed by Oettinger's claims is whether each member of the putative class "elected" to be paid on the cadence described in the Complaint, which necessarily implicates detailed factual inquiries regarding each class member and his/her relationship with MGPO, including with respect to any unions which may be associated with employees of MGPO.

### **SIXTEENTH ADDITIONAL DEFENSE**

Certification of the class proposed in the Complaint is improper because, among other reasons, Oettinger's interests are in conflict with the interests of all or certain members of the alleged group of persons Oettinger aspires to represent, because Oettinger is an inadequate representative of the alleged group of persons she purports to represent, because Oettinger's claims are not typical of the members of the class she aspires to represent, and because any issue common to members of the putative class will be overwhelmed by individualized issues relating to the

varied circumstances of putative class members with respect to the liability issues raised in the Complaint.

#### **SEVENTEENTH ADDITIONAL DEFENSE**

Oettinger's and/or the putative class members' claims fail because G.L. c. 149, § 148 provide that compensation paid to certain employees of educational institutions, such as Harvard Medical School, "shall be deemed to be fully earned at the end of the school year," and the statute expressly permits educational institutions to defer salaries for such employees, including by paying some or all of their employees in "equal payments . . . for a 12 month period."

#### **EIGHTEENTH ADDITIONAL DEFENSE**

All of Oettinger's and the putative class members' claims are barred in whole because Defendant has full immunity from such claims pursuant to the Acts and Resolves of 2025, Chapter 9, Section 113, which was signed into law by the Governor on July 4, 2025.

#### **RESERVATION OF RIGHTS**

MGPO has insufficient knowledge or information upon which to form a belief as to whether additional defenses are available, and therefore reserves the right to amend its Answer to plead, assert, rely upon additional defenses, or withdraw or delete existing defenses, including those which may be disclosed or discovered through further assertions by Oettinger or discovery.

#### **DEMAND FOR RELIEF**

WHEREFORE, MGPO requests that:

1. The Complaint against it be dismissed with prejudice;
2. Each and every prayer for relief in the Complaint be denied;
3. Judgment be entered in favor of MGPO;

4. MGPO be awarded its costs, attorneys' fees, and expenses in the amount and manner permitted by applicable law; and

Such other relief as this Court deems just and proper.

DATED: July 25, 2025

Respectfully submitted,

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.,

By its attorneys:

*/s/ Barry J. Miller*

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2025, a true and correct copy of the foregoing document was served via email on Plaintiff's counsel.

*/s/ Barry J. Miller*

\_\_\_\_\_  
Barry J. Miller

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 2584CV00644-BLSI

MAJORIE OETTINGER, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.,

Defendant.

**DEFENDANT'S MEMORANDUM IN SUPPORT  
OF ITS MOTION FOR JUDGMENT ON THE PLEADINGS**

On July 4, 2025, Governor Maura Healey signed a bill into law that is specifically designed to terminate the predatory claims in this action and several other recent class action cases against non-profit institutions based on their monthly payment of wages to salaried employees. That legislation, Section 113 of Chapter 9 of the Acts and Resolves of 2025 ("Section 113"), provides immunity to Defendant Massachusetts General Physicians Organization, Inc. ("MGPO" or "Defendant") from "any claim or cause of action ... that alleges that the institution's ... payment of wages on a monthly basis ... violated section 148 of chapter 149 of the General Laws." Section 113 squarely covers Plaintiff Marjorie Oettinger's ("Oettinger" or "Plaintiff") claims in this case. As such, pursuant to Mass. R. Civ. P. 12(c), MGPO hereby moves for judgment on the pleadings and requests that the Court dismiss Plaintiff's complaint in its entirety and with prejudice.

## BACKGROUND

### I. FACTUAL AND PROCEDURAL BACKGROUND

MGPO is a nonprofit organization that is part of a health care delivery system.<sup>1</sup> *See* Amend. Compl. ¶ 3 (“Defendant Massachusetts General Physicians Organization is a Massachusetts Nonprofit Corporation ....”).<sup>2</sup> Plaintiff filed her Complaint against MGPO on March 6, 2025, alleging that MGPO violated the timely payment requirements of the Massachusetts Wage Act (Mass. Gen. Laws ch. 149, §§ 148, 150) (the “Wage Act”), by paying salaried employees on a monthly basis on the 26th day of each month, rather than weekly, biweekly, or semimonthly.<sup>3</sup> *Id.* ¶ 10 (“In the three years preceding the commencement of this action, MGPO has paid Plaintiff only on the 26th day of each month”); *Id.* ¶ 10 (“All the Rule 23 class members were subject to the same corporate practices of Defendant, as alleged herein: failure to pay employees on a weekly, bi-weekly, or semi-monthly pay schedule.”). Plaintiff thus alleges that MGPO should have paid her for the work she performed during the first half of each month,

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<sup>1</sup> The Court make take judicial notice of MGPO’s status as an organization that is part of a health care delivery system based on records maintained by the Massachusetts Attorney General as AG Charity No. 018223, including 2023 Form-PC, which states that MGPO’s primary purpose is “Direct health services.” *See Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000) (in evaluating the motion, “matters of public record ... may be taken into account”); *Healey v. Uber Techs., Inc.*, No. 2084CV01519-BLS1, 2021 WL 1222199, at \*3 (Mass. Super. Ct. Mar. 25, 2021) (taking judicial notice of defendants’ Form 10-K disclosures filed with the Securities and Exchange Commission in context of motion to dismiss).

<sup>2</sup> In moving for leave to file her Second Amended Complaint, Plaintiff concedes that Section 113 applies to MGPO, insofar as that proposed amendment is plainly designed to avoid the impact of Section 113 on her claims against MGPO by adding the President and Treasurer of MGPO as individual defendants and stating “with the subsequent passage of Section 113, the legal landscape under which Plaintiff now has to litigate her claims has fundamentally changed.” Motion to Amend., p. 10.

<sup>3</sup> Plaintiff’s original Complaint alleged MGPO paid Plaintiff and the purported class on the last day of each month. Original Compl. ¶¶ 10, 20. On March 24, 2025, Plaintiff filed an Amended Complaint alleging that payments were made on the 26th day of each month. Amend. Compl. ¶¶ 10, 20.

no later than six days after the close of that theoretical semi-monthly pay period, or on approximately the 21st day of each month. *Id.* ¶ 15. As such, the fundamental premise of Plaintiff's claim in this litigation is that half of the wages that MGPO paid to salaried employees each month were paid approximately five days late. In conjunction with these assertions, Plaintiff seeks to extract an exorbitant sum in statutory penalties from MGPO based on an asserted technical violation of the timely payment requirements of the Wage Act, both on her own behalf and on behalf of a putative class of employees of MGPO who were paid monthly at any time since March 6, 2022. *Id.* ¶¶ 16, 17, 32.

MGPO filed its Answer to Plaintiff's Amended Complaint on May 5, 2025, asserting various defenses to Plaintiff's claims, including that that it acted in a good faith effort to comply with the law at all times (2nd Add'l Defense), that the Wage Act does not apply to employees of hospitals unless they request weekly payment—which Plaintiff never did (5th Add'l Defense), that it was subject to the charitable immunity cap on any damages Plaintiff may pursue (6th Add'l Defense) and that Plaintiff knowingly accepted a monthly basis of pay (9th Add'l Defense).

On July 25, 2025, MGPO filed an Amended Answer, asserting an additional defense based on Section 113 immunity.

Shortly thereafter, on July 31, 2025, Plaintiff served a Motion for Leave to File a Second Amended Complaint, in which Plaintiff seeks to avoid the impact of Section 113 by asserting claims against MGPO's President and Treasurer in their individual capacities and to add a factual allegation to her Complaint regarding the parties' pre-suit settlement negotiations. In parallel briefing, MGPO opposes that motion on the grounds that the proposed amendment is futile and cannot help Plaintiff avoid the Legislature's plain intent to terminate the claims she has asserted in this matter.

## II. MASSACHUSETTS PASSES LEGISLATION PROVIDING IMMUNITY

While this matter was still in its most preliminary stages and prior to any discovery, Governor Maura Healey signed legislation that included Section 113 into law. That legislation provides immunity to nonprofit health care institutions from lawsuits targeting those organizations' monthly payment of wages. Section 113 states:

Nonprofit institutions of higher education and nonprofit organizations that comprise a health care delivery system shall be immune from liability with regard to any claim or cause of action seeking a legal or equitable remedy or other relief commenced between July 1, 2024 and September 30, 2028, inclusive, that alleges that the institution's or organization's payment of wages on a monthly basis or pursuant to any written policy, schedule, or agreement presented or made available to an employee concerning payment for work performed over an academic term violated section 148 of chapter 149 of the General Laws; provided, however, that earned wages shall have been paid in full within 6 days of the termination of a pay period occurring: (i) on a monthly basis; or (ii) pursuant to any written policy, schedule or agreement presented to an employee concerning payment for work performed over a specific period or an academic term.

Section 113 (available here: <https://budget.digital.mass.gov/summary/fy26/outside-section/section-113-payment-of-wages-of-certain-nonprofit-organizations/>). Section 113 was enacted in direct response to multiple class action lawsuits brought under the Massachusetts Wage Act against nonprofit colleges and universities and healthcare organizations that have historically paid employees on a monthly basis, including the present action.<sup>4</sup>

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<sup>4</sup> See *Curtin-Wilding v. Trs. of Boston Univ.*, C.A. No. 1:12-cv-10432-RGS (D. Mass. 2025); *Brown, et al. v. President & Fellows of Harvard Coll.*, C.A. No. 2581-cv-00143 (Middlesex Sup. Ct. 2025); *MacIntyre v. Curry Coll.*, C.A. No. 1:25-10585-NMG (D. Mass. 2025); *Martin, et al. v. Amherst Coll.*, C.A. No. 2480-cv-00146 (Hampshire Sup. Ct. 2024).

A series of bills<sup>5</sup> that ultimately led to the passage of Section 113 were first introduced on February 27, 2025, by Senator Michael F. Rush<sup>6</sup> and Representative Jeffrey N. Roy.<sup>7</sup> See Bill S.1369; Bill H.2164. On April 16, 2025, the Joint Committee on Labor and Workforce Development held a hearing at which the two bills were discussed. Joint Committee on Labor and Workforce Development, April 16, 2025 Hearing (available here: <https://malegislature.gov/Events/Hearings/Detail/5135/Video1>). At that hearing, Rob McCarron, the President of the Association of Independent Colleges and Universities in Massachusetts, provided testimony to the Joint Committee on the two proposed bills. He explained the proposed legislation would correct “unintended consequences” of the Massachusetts Wage Act, which became apparent with the “filing of four class action lawsuits against colleges and universities in Massachusetts.” *Id.* Mr. McCarron testified as follows:

House 2164 and Senate 1369 seek to address the devastating financial impact to these institutions that would result from these lawsuits. [ . . . ] the Supreme Judicial

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<sup>5</sup> The Court may take judicial notice of the legislative history of Section 113. *Blue Hills Cemetery, Inc. v. Bd. of Reg. in Embalming & Funeral Directing*, 379 Mass. 368, 375 n.10 (1979) (citing *Pereira v. New England LNG Co.*, 364 Mass. 109, 122 (1973) (notice of legislative history is permitted); see also *Getty Petroleum v. Capital Terminal Co.*, 391 F.3d 312, n. 12 (1st Cir. 2004) (taking judicial notice of legislative history under Federal Rules); *Daggett v. Comm'n on Gov't Ethics & Election Practices*, 205 F.3d 445, 456 n. 9 (1st Cir. 2000) (“The [Federal] Rules of Evidence state that the court may take judicial notice of legislative facts whether requested or not.”); *Jarosz v. Palmer*, 436 Mass. 526, 530 (2002) (judge may “consider on a rule 12(c) motion those facts of which judicial notice can be taken”).

<sup>6</sup> S.1369 stated: “With respect to any claim or cause of action seeking any legal or equitable remedy or relief commenced on or after July 1, 2024, a nonprofit institution of higher education shall be immune from civil liability under claims alleging that the institution’s payment of wages on a monthly basis violated this Section.” Bill S.1369, An Act Relative to Nonprofit Institutions of Higher Education, available here: <https://malegislature.gov/Bills/194/S1369> (“Bill S.1369”).

<sup>7</sup> H.2164 stated: “With respect to any claim or cause of action seeking any legal or equitable remedy or relief commenced on or after July 1, 2024, a nonprofit institution of higher education shall be immune from civil liability under claims alleging that the institution’s payment of wages on a monthly basis violated this Section.” Bill H.2164, An Act Relative to Institutions of Higher Education, available here: <https://malegislature.gov/Bills/194/H2164> (“Bill H.2164”).

Court decision in the *Reuter*<sup>8</sup> case greatly amplifies the potential damages in a way that does not align with the legislative intent of the statute. [The lawsuits] place[] hundreds of millions of dollars and even billions of dollars at issue. It is very important to note that all of the employees of the institutions that have been targeted by these class action lawsuits received their full pay and on a regularly scheduled basis. There are no allegations that any employee was paid less than what they were owed, and there are no allegations that any employee was paid later than the established pay structure. Again, the intent of the [Wage Act] is to go after those unscrupulous employers and there is no allegation of any of that in these cases. And the financial harm to the institutions is entirely disproportionate to the damages suffered by the affected employees, and the resulting harm to the institutions would dramatically affect their ability to serve students and employees.

*Id.*

In response to Mr. McCarron's statement, Representative Paul McMurty stated: "we in the legislature, we try to do the best we can, but we don't get it right all of the time. And occasionally, there's an unintended consequence .... "[We] have an opportunity to go back and ... address these matters.... [This is] an issue that we're hearing about on a daily basis, and it's, important for you to share, the impact that it's going to have on the institutions of higher education and others across the Commonwealth." *Id.*

Later during that April 16 hearing, Sam Larson, Vice President of Government Affairs, Associated Industries Massachusetts ("AIM"), also spoke. He stated that AIM is focused on representing employers in different industries, and that he was concerned with "gotcha" lawsuits that plaintiffs are filing under the Wage Act to target employers on technical violations, as mentioned in connection with higher education earlier in the session, noting that such lawsuits are also prevalent in industries other than higher education.

Following the hearing noted above, the bills were discussed at a supplemental budget hearing on May 29, 2025. Supplemental Budget Hearing, May 29, 2025

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<sup>8</sup> *Reuter v. City of Methuen*, 489 Mass. 465 (2022).

(<https://malegislature.gov/Events/Hearings/Detail/5198>). From there, the Senate proposed amendments to the legislation, and a joint conference committee was appointed to reconcile the differences. On June 30, 2025, the House and Senate accepted the Conference Committee reports and enacted the budget legislation. On July 4, 2025, Governor Healey signed the legislation into law with an emergency preamble, rendering it immediately effective.

### **ARGUMENT**

A Rule 12(c) motion is a motion for judgment on the merits and should be granted when no genuine issue of material fact remains in dispute and the moving party is entitled to judgment as a matter of law. *See Mullins v. Corcoran*, 488 Mass. 275, 281 (2021) (“A motion for judgment on the pleadings under Mass. R. Civ. P. 12 (c) is actually a motion to dismiss ... that argues that the complaint fails to state a claim upon which relief can be granted.”) (internal quotations and citations omitted). Like a Rule 12(b)(6) motion, a Rule 12(c) motion applies the “plausibility” standard: “What is required at the pleading stage are factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief.” *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 635-36 (2008). Dismissal is appropriate if the pleadings, viewed in the light most favorable to the non-moving party, fail to support a plausible entitlement to relief. *Mullins v. Corcoran*, 488 Mass. 275, 281 (2021).

#### **I. SECTION 113 APPLIES TO AND PRECLUDES PLAINTIFF’S CLAIMS**

Judgment is appropriate here because Section 113 provides clear and categorical statutory immunity to MGPO to all claims Plaintiff has asserted in this action. Section 113 provides immunity to “nonprofit organizations that comprise a health care delivery system ... with regard to any claim ... commenced between July 1, 2024 and September 30, 2028 ... that alleges that the institution’s ... payment of wages on a monthly basis ... violated section 148 of chapter 149 of the General Laws.” Plaintiff affirmatively pled that MGPO is a “Massachusetts Nonprofit

Corporation.” Amend. Compl. ¶ 3. It is also beyond dispute that Plaintiff filed her original Complaint in this case on March 6, 2025, squarely within the statutory immunity period that Section 113 provides. She alleges that MGPO violated the Massachusetts Wage Act by paying certain employees on a monthly basis. Amend. Compl. ¶¶ 10, 20. These allegations are specifically covered by Section 113.

Plaintiff’s complaint also asserts that MGPO paid those monthly wages on a monthly schedule, thus satisfying Section 113’s requirement that “earned wages shall have been paid in full within 6 days of the termination of a pay period occurring: (i) on a monthly basis . . .” Plaintiff affirmatively alleges that MGPO had a practice of paying wages for each monthly pay period on the 26th day of that month. Amend. Compl. ¶¶ 10, 20. There is no allegation that MGPO ever paid wages more than six days after the close of the monthly pay period in which they were earned. Accordingly, Plaintiff’s own factual allegations place all of her claims squarely within the immunity provided by Section 113.

Nor can there be any dispute that the Legislature intended Section 113 to apply retroactively, including to Plaintiff’s claims in this action. Section 113 applies to claims “commenced” after July 1, 2024, regardless of when the wage payments occurred. Plaintiff’s complaint was filed in March 2025 and therefore falls within the immunity window. Indeed, the legislative history demonstrates that the impetus for the legislation was to terminate the predatory claims asserted in cases just like this one.

Here, the Massachusetts Legislature clearly intended Section 113 to apply retroactively based on the plain language of the legislation. Courts construe such unambiguous statutory directives as dispositive. *See, e.g., Boston Edison Co. v. Mass. Water Res. Auth.*, 459 Mass. 724, 743 (2011) (“We acknowledge the general rule [that] statutes operate prospectively unless a

contrary legislative intent is clearly shown. But the Legislature made its contrary intent plain ... when it declared that the amended statute ‘shall apply to those pending cases in which no final judgment has entered as of the effective date of this act.’”) (internal citation omitted). Moreover, the legislative history makes clear that Section 113 was passed to address class action litigation like this action.

## **II. SECTION 113 IS A CONSTITUTIONAL EXERCISE OF THE LEGISLATURE’S POWER**

In the parties’ conferrals preceding the service of this motion, Plaintiff’s counsel stated an intention to challenge the application of Section 113 to Plaintiff’s claims in this matter as violative of constitutional due process considerations. Any challenge to the retroactive application of Section 113 on constitutional grounds fails. “A legislative enactment carries with it a presumption of constitutionality, and the challenging party must demonstrate beyond a reasonable doubt that there are no ‘conceivable grounds’ which could support its validity.” *Leibovich v. Antonellis*, 410 Mass. 568, 984 (1991). Courts must solely consider “whether the statute falls within the legislative power to enact,” even if the law may seem “unwise, improvident, or out of harmony with a particular school of thought.” *Dutra v. Trs. of Bos. Univ.*, 96 F.4th 15, 20 (1st Cir. 2024) (internal citation omitted).<sup>9</sup> Retroactive legislation “must satisfy the due process test: ‘a legitimate legislative purpose furthered by rational means.’” *Id.* at 19 (quoting *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992); see also *Am. Mfrs. Mut. Ins. Co. v. Comm’r. of Ins.*, 374 Mass. 181, 190 (1978) (“[W]e apply the test of reasonableness to the retroactive aspect of [a statute].”).

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<sup>9</sup> “The legal analysis of whether retroactive statutes violate the Due Process Clause of the United States Constitution is that also followed as to the Massachusetts Constitution.” *Dutra*, 96 F.4th at 19 (citing *Nantucket Conservation Found., Inc. v. Russell Mgmt., Inc.*, 380 Mass. 212, 503 (1980)).

In evaluating the reasonableness of a retroactive statute, courts consider the following factors: (1) the nature of the public interest which explicitly or may have motivated the Legislature to enact the retroactive statute; (2) the nature of the rights affected retroactively and the reasonableness of any reliance expectations on those rights; and (3) the extent or scope of the statutory effect or impact, including whether the statute is appropriate and narrowly tailored. *Dutra*, 96 F.4th at 20 (citing *Leibovich*, 410 Mass. at 577). “In any evaluation of reasonableness, the objectors face a heavy burden, for we give credit to every rational presumption in favor of the legislation.” *In re Liquidation of Am. Mut. Liab. Ins. Co.*, 434 Mass. 272, 282 (2001).

**A. Section 113 Protects the Public Interest**

Courts “defer to legislative judgment as to the necessity and reasonableness of a particular measure,” which “is customary in reviewing economic and social regulation.” *Dutra*, 96 F.4th at 20 (citing *U.S. Tr. Co. of N.Y. v. New Jersey*, 431 U.S. 1, 22-23 (1977)); *see also Com. v. Henry’s Drywall Co., Inc.*, 366 Mass. 539, 544 (1974) (“It is not our function to consider the expediency of an enactment or the wisdom of its provisions.”).

Even if this Court was in a position to second-guess the Legislature’s policy judgment underlying Section 113, it is plain that the legislation protects the public interest. As explained by Mr. McCarron and Mr. Larson, these types of “gotcha” class action lawsuits that plaintiffs are filing under the Wage Act to target employers on technical violations have put hundreds of millions, and in some cases—including this one—billions of dollars at issue and are entirely disproportionate to any alleged damages suffered by the affected employees. Indeed, Plaintiff is not shy about her demand to recover many millions of dollars in this action, despite her concession that all of the employees at issue were paid in full and on the schedule that MGPO promised. *See* Amend. Compl. ¶¶ 15, 19, 32. This lawsuit, and the others like it, threaten the very existence of

some of Massachusetts' most well-known and longstanding non-profit institutions, which have a multi-billion-dollar impact on the economy of the Commonwealth.

Courts have routinely held that legislation protecting institutions of higher education and non-profit healthcare providers legitimately protect the public interest. *Wright v. Shriners Hosp. for Crippled Children*, 412 Mass. 469, 475 (1992) (“... the provision of good medical care by hospitals is in the public interest.”); *Springfield Hosp. v. Comm’r of Pub. Welfare*, 350 Mass. 704, 709 (1966) (“Nonprofit hospitals . . . conduct enterprises greatly affected with a general public interest . . .”); see also *Dutra*, 96 F.4th at 22 (finding retroactive application of statute providing immunity to colleges and universities in actions against higher education institutions in response to emergency COVID-19 orders constitutional, noting “[t]he Legislature is well aware that Massachusetts is home to a number of colleges and universities, and they are vital to the state’s economy”); *Rodrigues v. Boston Coll.*, 710 F. Supp. 3d 95, 100 (D. Mass. 2024) (same, rejecting plaintiffs’ contention that retroactive legislation furthered interests of “deep-pocketed” private institutions, holding statute applies uniformly to private and public institutions and “[t]he Commonwealth greatly benefits from private institutions of higher education located within its borders”). The first factor in the constitutional analysis thus favors a finding that retroactive application of Section 113 is constitutional.

**B. Section 113 Affects Only Plaintiff’s Attempt to Recover a Windfall, and She Cannot Claim to Have Relied on a Right to Be Paid More Frequently**

In this case, Plaintiff challenges only the cadence of her monthly pay; she does not contend she and the putative class members were paid later than promised, much less does she claim that they have been underpaid by even a single cent. Parties challenging the reasonableness of a retroactive statute ““must show that they acted in reasonable reliance upon the previous state of the law”” and ““would have acted differently had [they] known [the statute at issue] would be

enacted.”” *Dupont v. Chief of Police of Pepperell*, 57 Mass. App. Ct. 690, 694 (quoting *Leibovich*, 410 Mass. at 578).

Plaintiff has no prospect of making such a showing. In *Dutra*, for example, the plaintiffs were seeking to avail themselves of a benefit that they had and expected to continue to have at the time the parties’ relationship was formed: in-person classes. Even in that case, where plaintiffs could point to a tangible interest they no longer had as a result of the legislation, the First Circuit found the law in question did not unreasonably affect that right. Here, in more than thirty years of employment with MGPO, Plaintiff was never paid more frequently than monthly, and she had no reason to expect that MGPO would provide her a more frequent basis of pay at any point in the future. And even before Section 113 was passed, Plaintiff’s claimed entitlement to a more frequent cadence of pay was very much in doubt, including based on the provisions of the Wage Act excluding it from applying to employees of a hospital, which MGPO asserted among its defenses in this action prior to the passage of the legislation. Having been paid monthly without objection throughout her employment, there is no logical way that Plaintiff could have relied on any ostensible right to be paid more often. Nothing in Plaintiff’s Complaint suggests that she relied on any such legal entitlement to do anything other than extract damages from MGPO in this litigation.

In her proposed Second Amended Complaint Plaintiff seeks to add an allegation that she “rejected a substantial settlement offer to resolve this litigation” in an attempt to lend substance to her claim that she relied on the provisions of the Wage Act pertaining to pay frequency, and in hopes of bolstering a contention that Section 113 undermines her constitutional interests in her claims in this litigation. *See* Proposed Second Amended Compl., ¶ 19. As detailed in Defendant’s Opposition to Plaintiff’s Motion for Leave to File Second Amended Complaint, this amendment

should not be permitted because it is an improper attempt to rely on confidential settlement communications and because the proposed amendment is futile, insofar as Plaintiff's interests in pursuing a statutory windfall is not the sort of vested right implicated by the governing constitutional standard. *See Opp.* to Plaintiff's Motion to Amend, pp. 14-18.

Thus, the second factor in the governing constitutional analysis also favors a finding that retroactive application of Section 113 is constitutional.

**C. Section 113 Balances the Interests of Nonprofit Health Care Delivery Systems and the Requirements of the Wage Act**

Section 113 is narrowly tailored to provide immunity to the entities targeted by the recent wave of class action lawsuits challenging monthly pay. In considering the third prong of the governing constitutional test, courts weigh the “duration of the burden imposed by the retroactive statute and ‘whether the scope of the statute is narrowly drawn to treat the problem perceived by the legislature.’” *Dutra*, 96 F.4th at 24 (citing *Sliney v. Previte*, 473 Mass. 283, 294 (2015)).

In *Dupont*, the Appeals Court upheld a statute retroactively prohibiting the issuance of firearms licenses to “those who have been convicted of a misdemeanor punishable by more than two years” because the statute was “the result of some consideration” and did not affect “everyone who has been convicted of any misdemeanor, but instead [drew] a distinction among them based on the seriousness of their offense.” 57 Mass. App. Ct. at 694. Similarly, in *Dutra*, the First Circuit upheld a statute's retroactive effect because “its application [wa]s confined to suits that commence[d] within the specified time frame, which were based on acts or omissions that occurred during the spring 2020 academic term.” 96 F.4th at 24 (internal citation omitted). Here, Section 113 is similarly limited to lawsuits filed between July 1, 2024, and September 30, 2028.<sup>10</sup> Finally,

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<sup>10</sup> Section 113 is also narrowly tailored in its prospective application—providing immunity only for lawsuits filed through September 30, 2028. In view of the Wage Act's three-year statute of limitations, Section 113 requires any employers seeking to avail themselves of the full protections

this “statute will affect a relatively small number of cases,” which weighs in favor of finding the statute’s retroactive application constitutional. *Parello v. McKinney*, 46 Mass. App. Ct. 785, 792 (1999) (citing *Leibovich*, 410 Mass. at 579). The third and final factor in the constitutional analysis thus also favors a finding that retroactive application of Section 113 is constitutional.

A retroactive application of Section 113 easily meets each prong of the tripartite test for constitutional muster. Plaintiff’s disappointment at being deprived of the opportunity to extract supermassive statutory penalties from MGPO is no basis for this Court to override the pronouncements of the Legislature in its efforts to correct for unintended consequences of the Wage Act.

### **CONCLUSION**

WHEREFORE, Defendant MGPO respectfully requests that the court grant MGPO’s Motion for Judgment on the Pleadings and dismiss Plaintiff’s complaint in its entirety with prejudice and grant such other and further relief as the Court deems just and proper.

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of the legislation to implement changes in any practices implicated by Section 113 before October 1, 2025, less than three months after Section 113’s effective date.

DATED: August 22, 2025

Respectfully submitted,

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.,

By its attorneys:

*/s/ Barry J. Miller*

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2025, a true and correct copy of the foregoing document was served via email on Plaintiff's counsel.

*/s/ Barry J. Miller*

\_\_\_\_\_  
Barry J. Miller

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

MARJORIE OETTINGER, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.,

Defendant.

Docket No. 2584CV00644-BLSI

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S  
MOTION FOR JUDGMENT ON THE PLEADINGS**

For over sixty years, Massachusetts has maintained a simple promise to its workers: earned wages will be paid in compliance with clear, uniform standards that apply to “each such employee.” *See* M.G.L. c. 149 § 148. Plaintiff, Dr. Marjorie Oettinger, relied on that promise when she rejected a substantial pre-litigation settlement offer in this matter, trusting that the Massachusetts Wage Act, M.G.L. c. 149 § 148, 150 (“Wage Act”) would protect her rights equally alongside every other worker in the Commonwealth. But when the Massachusetts General Physicians’ Organization, Inc. (“MGPO”) and a handful of other powerful institutions faced accountability for systematically violating the Wage Act, they turned not to the judiciary for vindication, but to the State House for a legislative rescue. The result was Section 113 of Chapter 9 of the Acts and Resolves of 2025 (“Section 113”)—a statute that strips employees of a handful of non-profit healthcare and educational institutions of legal protections available to every other Massachusetts employee, transforming a universal worker protection into a privilege denied to those who asserted their rights in a legal forum. Worse yet, the statute purports to apply

retroactively, thereby robbing Massachusetts employees of existing legal entitlements for work already performed.

Section 113 represents prohibited selective legislative favoritism, which violates fundamental principles of constitutional law. Section 113 creates an arbitrary exemption from general laws in violation of Article X of the Massachusetts Declaration of Rights. *See* Mass. Const. pt. 1, art. X. It operates retroactively to eliminate established legal rights without adequate justification, violating due process protections under both state and federal constitutions. Additionally, it strips thousands of employees of non-profit healthcare and educational institutions of all legal remedies while preserving identical protections for employees throughout the Commonwealth, violating Article XI's guarantee that every citizen shall find "a certain remedy, by having recourse to the laws, for all injuries or wrongs." *See* Mass. Const. pt. 1, art. XI.

For these reasons, as further discussed herein, Defendant's Motion for Judgment on the Pleadings must be denied.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

MGPO is a Massachusetts nonprofit corporation that is "affiliated" with Massachusetts General Hospital which "administratively" issues paychecks on the hospital's behalf. Am. Ans. ¶¶ 8-9.

Dr. Oettinger began her employment in 1991, serving in dual roles as a Molecular Biologist at Massachusetts General Hospital and as a Professor of Genetics at Harvard Medical School. Am. Compl. at ¶ 8. In the three years preceding the commencement of this action, MGPO has been the sole entity responsible for paying Dr. Oettinger's salary. *Id.* at ¶ 9.

Throughout this period, MGPO paid Dr. Oettinger only on the 26th day of each month. *Id.* at ¶ 10. At no point in her employment did Dr. Oettinger elect to be paid monthly. *Id.* at ¶ 11.

For every month in the three years preceding the commencement of this action, Dr. Oettinger has been paid according to an illegal pay schedule. *Id.* at ¶ 13. In the alternative, for every month in the three years preceding the commencement of this action, MGPO paid Dr. Oettinger more than six days after the termination of the semi-monthly pay schedule for the first half of the month. *Id.* at ¶ 15. On March 6, 2025, Dr. Oettinger filed this class action challenging MGPO's monthly payment practices as violations of the Massachusetts Wage Act. Similar lawsuits were also filed against educational institutions for identical payment violations.

Importantly, before the Legislature enacted Section 113, Dr. Oettinger was presented with a substantial settlement offer to resolve this litigation. *See* Memorandum in Support of Plaintiff's Motion for Leave to File Second Amended Complaint, Ex. 1, p. 2. Dr. Oettinger rejected this offer in reasonable reliance on her ability to pursue her claims under the Massachusetts Wage Act, reasonably expecting that this worker protection statute would continue to apply equally to all employers. *See Id.*

On July 4, 2025, Governor Healey signed Section 113 into law, granting retroactive immunity to “nonprofit organizations that comprise a health care delivery system” and “nonprofit institutions of higher education” from Wage Act claims “for payment of wages on a monthly basis” filed between July 1, 2024, and September 30, 2028. Section 113 (available here: <https://budget.digital.mass.gov/summary/fy26/outside-section/section-113-payment-of-wages-of-certain-nonprofit-organizations/>). The selective relief affects a select handful of employers among the thousands of businesses in Massachusetts, while allowing identical claims against all

other employers to proceed. Consequently, Section 113 also affects the rights of thousands of Massachusetts employees under the Massachusetts Wage Act.

## II. ARGUMENT

### A. Section 113 Violates Article X of the Massachusetts Declaration of Rights by Creating an Impermissible Exemption from Standing Laws.

#### 1. Massachusetts Precedent Prohibits Selective Legislative Exemptions.

Article X guarantees that “[e]ach individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws.” Mass. Const. pt. 1, art. X. Article X “denies legislative power to single out an individual [or group] for treatment which departs from that which is being accorded the public . . . under law.” *See Commissioner of Pub. Health v. Bessie M. Burke Memorial Hosp.*, 366 Mass. 734, 742 (1975). The legislature has “no authority by the constitution to suspend any of the general laws, limiting the suspension to an individual person, and leaving the law still in force in regard to everyone else.” *Paddock v. Town of Brookline*, 347 Mass. 230, 236 (1964) (internal quotations omitted) (quoting *In re Picquet*, 22 Mass 65, 71-72 (1827)). Section 113 violates this fundamental constitutional requirement by granting immunity from Massachusetts Wage Act liability to a handful of select targeted employers, specifically those nonprofit healthcare and educational institutions currently facing monthly pay lawsuits, while leaving every other employer in the Commonwealth subject to the same employee pay obligations. In fact, Defendant’s Memorandum of Law in Support of its Motion for Judgment on the Pleadings states that “Section 113 was enacted in **direct response**” to these monthly pay class action lawsuits. *See* Defendant’s Memorandum In Support of its Motion for Judgment on the Pleadings p. 4 (emphasis added).

The Massachusetts Supreme Judicial Court has consistently applied Article X to invalidate laws that create selective exemptions from general laws. In *In re Opinion of Justices*, the Supreme Judicial Court held that proposed legislation immunizing trade unions and employer associations from tort liability violated Article X because it “gives to certain favored [entities], selected arbitrarily, immunity from that equal liability for civil wrongs which is a sign of equality between citizens and residents.” *See In re Opinion of Justices*, 211 Mass. 618, 619 (1912). The Court reasoned such legislation violated Article X because it “frees one set of employers from obligations to which their competitors, who are independent of the association, are subjected.” *See id.*

The parallels between the 1912 opinion and Section 113 are striking. Just as the rejected legislation by the SJC would have freed certain employer associations from tort liability while leaving their competitors subject to the same laws, Section 113 frees solely healthcare and academic institutions from Wage Act obligations while leaving all other Massachusetts employers, subject to identical requirements. *See id.* The constitutional violation is identical in both scope and effect, and therefore Section 113 must be deemed unconstitutional. This competitive inequality is both arbitrary and constitutionally impermissible. MGPO competes with numerous other for-profit healthcare organizations for employees and resources, yet only MGPO has received immunity from monthly pay wage law violations.<sup>1</sup> Its competitors must continue to comply with requirements that MGPO can now ignore with complete impunity, creating an unlevel playing field that favors certain employers based solely on their litigation status rather than any legitimate policy distinction.

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<sup>1</sup> Considering Dr. Oettinger’s position was that of a molecular biologist, MGPO would also compete with other non-healthcare related entities, such as bio-tech companies, research institutions and other science based employers, to hire and retain employees such as Dr. Oettinger.

This prohibition against laws that cannot be applied generally extends beyond the 1912 precedent, as the legislature has “no authority by the constitution to suspend any of the general laws, limiting the suspension to an individual person, and leaving the law still in force in regard to everyone else.” *See Paddock*, 347 Mass. at 236 (invalidating a statute exempting a plaintiff from a statutory notice requirement for her lawsuit). This legislative prohibition encompasses not just individual persons but extends to groups and organizational entities that receive special legislative favor through selective exemptions from generally applicable laws. *See Opinion of the Justs. to the Senate*, 373 Mass. 883, 885 (1977) (holding that Article X did not permit legislation that would have allowed a particular high school to continue operating a female-only program as it “singles out the young men of [the school] and diminishes their rights under G.L. c. 76, s 5, while leaving the statute in full force and effect for all other public school students of the Commonwealth.”) Section 113 similarly suspends Wage Act enforcement against two specific types of defendant corporations while leaving the law “still in force in regard to everyone else.” *See id.*

Compounding this constitutional violation, Section 113’s selective invalidation of the Wage Act specifically targets employment relationships, which Massachusetts courts have long recognized as involving fundamental constitutional rights that demand heightened protection. The SJC recognized that employment contracts represent both personal liberty and property rights. *See In re Opinion of Justices*, 267 Mass. 607, 610 (1929) (“Included in the right of personal liberty and the right of private property partaking of the nature of each is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property.”); *see also In re Opinion of Justices*, 271 Mass. 598 (1930). This principle establishes

that employment relationships, including the terms governing wage payments, are not merely commercial arrangements but are core constitutional rights that cannot be “struck down or arbitrarily interfered with” without causing “substantial impairment of liberty in the long-established constitutional sense.” *Id.* Section 113’s selective and retroactive invalidation of wage protection to certain healthcare and educational employers as compared to the lack of invalidation for all other Massachusetts employers constitutes precisely the type of arbitrary interference with employment contract rights that this precedent condemns.

By stripping Dr. Oettinger and other similarly situated healthcare workers of legal remedies available to employees in every other industry, Section 113 impairs the fundamental liberty interest in fair and equal treatment under employment law that has been protected under Massachusetts constitutional principles for over a century. The legislature did not have the authority to create this selective exemption for a standing law. Therefore, Defendant’s Motion for Judgment on the Pleadings must be denied.

## **2. The Legislative History of Section 113 Reveals Section 113 is Unconstitutional Targeted Relief for Specific Litigants.**

The legislative record demonstrates that Section 113 was a calculated effort to define systematic Wage Act violations as mere “technicalities” to justify selective immunity for powerful institutional employers.<sup>2</sup> Rob McCarron, the President of the Association of Independent Colleges and Universities in Massachusetts, provided testimony to the Joint Committee on the proposed Section 113. McCarron’s testimony exemplifies this troubling

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<sup>2</sup> The fact that the legislature failed to obtain testimony from any affected employees or employee rights groups underscores the bias with which this legislative change was made. This was certainly not the legislature acting on behalf of all residents of the Commonwealth of Massachusetts; instead, it was the legislature kneeling at the altar of the lobbying interests of some of the most powerful employers in Massachusetts, solely for those companies’ own benefit.

approach, repeatedly using euphemistic language to minimize clear violations of Massachusetts workers' legal right to be paid within the well-established, strict time frames imposed by statutes.

McCarron's characterization of systematic monthly payment violations as "unintended consequences" of the Massachusetts Wage Act is particularly disingenuous. Joint Committee on Labor and Workforce Development, April 16, 2025 Hearing (available here: <https://malegislature.gov/Events/Hearings/Detail/5135/Video1>); *see also* Defendant's Memorandum In Support of its Motion for Judgment on the Pleadings p. 5. When employers systematically violate wage payment requirements for decades, the resulting legal accountability is not an "unintended consequence" but the statute working as intended to protect Massachusetts workers from precisely this type of employer conduct.

Sam Larson, Vice President of Government Affairs, Associated Industries Massachusetts ("AIM"), also provided testimony and referenced these Wage Act violations as "technical violations." *Id.* This is a deliberate attempt to trivialize substantive violations of longstanding worker protections. There is nothing "technical" about systematically paying workers' wages late in violation of clear statutory requirements. They are simply unlawful, late-paid wages.<sup>3</sup>

McCarron's testimony also attempted to narrow the Wage Act's protective scope by arguing that "the intent of the Mass[achusetts] Wage Act is to go after those unscrupulous employers and there is no allegation of any of that in these cases." *Id.* This characterization is both legally and historically incorrect. The Massachusetts Supreme Judicial Court has repeatedly emphasized that the Wage Act "imposes strict liability on employers" who must "suffer the consequences of violating the statute regardless of intent." *Reuter v. Methuen*, 489 Mass. 468-

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<sup>3</sup> While McCarron and Larson spoke on behalf of the pro-legislation lobby at the April 16, 2025 hearing, due to Section 113 being embedded within the budget bill rather than considered as standalone legislation, there was no advocate present to oppose the legislation, as the broader public and potential opponents were unaware of its inclusion in the budget process. *See* Joint Committee on Labor and Workforce Development, April 16, 2025 Hearing (available here: <https://malegislature.gov/Events/Hearings/Detail/5135/Video1>).

469 (2022) (quoting *Dixon v. Malden*, 464 Mass. 446, 452 (2013); *Melia v. Zenhire, Inc.*, 462 Mass. 164, 170 (2012)). The Legislature’s adoption of such euphemistic language cannot transform systematic violations of worker protection laws into harmless “technicalities” deserving of immunity. This process exemplifies precisely the type of selective favoritism toward powerful interests that constitutional protections against special legislation are designed to (and do) prevent.

**B. The Unreasonable Retroactive Application of Section 113 Violates Dr. Oettinger’s Due Process Rights.**

The retroactive application of Section 113 is unreasonable, and therefore, violates Dr. Oettinger’s due process rights. “Ultimately, the principal inquiry as to reasonableness is essentially a review of whether it is equitable to apply the retroactive statute against the plaintiff.” *See Anderson v. BNY Mellon, N.A.*, 463 Mass. 299, 308 (2012) (internal quotations omitted) (internal citations omitted). Courts consider three factors to assess the reasonableness of the legislation: (1) “the nature of the public interest” served by the retroactive law; (2) “the nature of the rights affected retroactively,” and (3) “the extent or scope of the statutory effect or impact, including whether the statute is appropriate and narrowly tailored.” *Dutra v. Trustees of Boston Univ.*, 96 F.4th 15, 20 (1st Cir. 2024).

**1. Section 113 Serves No Legitimate Public Interest and Actually Undermines the Substantial Public Interest in Enforcing the Massachusetts Wage Act.**

The first factor of the *Dutra* test requires examining whether Section 113 advances a genuine public purpose rather than merely serving private interests. Far from serving any legitimate public interest, Section 113 actively undermines the substantial and well-established public interest in protecting Massachusetts workers through effective enforcement of the Wage Act. The Massachusetts Supreme Judicial Court has repeatedly recognized that the Wage Act

serves a fundamental public purpose that extends far beyond the individual employees directly affected by wage violations. *See Melia*, 462 Mass. at 171 (describing history of Wage Act and noting “the Legislature has highlighted [its] fundamental importance ... by repeatedly expanding its protections”).

As the SJC recognized, the Wage Act was enacted “for the protection of employees, who are often dependent for their daily support upon the prompt payment of their wages.”

*See Commonwealth v. New York Cent. & H.R.R.R.*, 206 Mass. 417, 424 (1910). This protection serves not only individual workers but broader societal interests, as the Wage Act was intended to prevent the long-term and unreasonable detention of wages. *See Lipsitt v. Plaud*, 466 Mass. 240, 245 (2013). The Wage Act’s dual purpose of protecting both workers and society demonstrates the substantial public interest that Section 113 undermines, particularly where, as here, certain powerful employers can get a law they breached invalidated through targeted legislative action. *See Parham-Johnson v. Pyramid Bldrs. Assoc.*, 33 Mass. L. Rep. 275 (2016) (“There is a considerable public interest in the effective enforcement of the Wage Act.”).

The urgency and importance of wage payment timing cannot be overstated, as “a day matters for the many people in this Commonwealth who live paycheck to paycheck.” *See Turgut v. Hitachi Rail STS USA, Inc.*, Civil Action No. 24-CV-10660-AK, 2025 U.S. Dist. LEXIS 36290, at \*21 (D. Mass. 2025). This recognition underscores that delayed wage payments, which would include monthly pay, create real hardship for working families, making the Wage Act’s enforcement a matter of great public importance. Section 113’s elimination of wage protections directly contradicts this established public interest. Creating a two-tiered system where some Massachusetts workers retain full Wage Act protections while others are stripped of these protections serves no conceivable public purpose and instead prioritizes the private financial

interests of a handful of powerful institutional employers over the broader public interest in uniform wage protection.

This case is fundamentally distinguished from *Omori v. Brandeis University*, where retroactive immunity legislation was upheld in the context of COVID-19 emergency measures. *See Omori v. Brandeis Univ.*, 711 F. Supp. 3d 34 (D. Mass. 2024). The *Omori* court found compelling public interest in ensuring that educational institutions could respond to an unprecedented global pandemic without fear of litigation, recognizing that the emergency circumstances required immediate legislative response to protect public health and safety. *See id.* No such emergency circumstances exist here. Section 113 addresses no public health crisis, no unforeseeable external force, and no emergency situation requiring immediate legislative intervention. Monthly payment practices have existed for decades, and the Massachusetts Wage Act's requirements have been clear and stable since 1955. *See St. 1955, c. 506; see also M.G.L. c. 149 §§ 148, 150.* The only "emergency" addressed by Section 113 is the financial exposure of certain institutional defendants to liability for their own systematic violations of long-standing and clearly articulated employee pay requirements. Unlike the genuine public health emergency in *Omori* that threatened the ability of educational institutions to protect students and communities during a pandemic, Section 113 protects a few employers from facing financial consequences because of their clear breach of long-established wage laws.

Moreover, while *Omori* involved immunity designed to encourage compliance with public health orders for the protection of the broader community, Section 113 provides immunity for acknowledged non-compliance with worker protection laws. *See Omori, supra.* The immunity in *Omori* served the public interest by ensuring institutions would be "more likely to respond appropriately to future health crises and comply with federal, state and local guidance if

they believe that their choices will not expose them to legal liability.” *Id.* at 37. Section 113 serves only private interests by relieving specific employers of financial liability for Wage Act violations.

Most fundamentally, there is a very legitimate and substantial public interest in NOT striking down Massachusetts employees’ rights under the Wage Act. The systematic elimination of worker protections for certain employees, those who work for non-profit healthcare or educational institutions, undermines the integrity of the Wage Act and signals that sufficiently powerful employers can obtain legislative relief from legal obligations that apply to all other employers. This creates a dangerous precedent that chills enforcement of worker protection laws and undermines public confidence in the equal application of employment statutes specifically and the law generally.

## **2. Dr. Oettinger’s Settlement Reliance Creates Strong Constitutional Protection.**

Dr. Oettinger demonstrably relied on her existing legal protections in multiple ways, which strengthens her constitutional challenge to Section 113. At the most basic level, Dr. Oettinger filed this lawsuit in March 2025 in reasonable reliance of her rights under the Massachusetts Wage Act, expecting that this longstanding worker protection statute would continue to apply equally to all employers in Massachusetts, particularly given the strong public interest in protecting these rights. A right of action is considered a vested property interest, demonstrating Dr. Oettinger’s reliance on her rights under the Wage Act. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) (“[A] cause of action is a species of property protected by the Fourteenth Amendment Due Process Clause.”); *Prichard v. Norton*, 106 U.S. 124, 132 (1882) (“[A] vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary interference.”)

Most significantly, Dr. Oettinger’s constitutional challenge is strengthened by her demonstrated reliance on existing legal protections. When she rejected a substantial settlement offer before Section 113’s enactment, she acted in reasonable reliance on her Wage Act rights, creating precisely the type of settled expectation that retroactive legislation cannot constitutionally disturb. Dr. Oettinger’s rejection of the settlement offer was based on her reasonable expectation that Massachusetts wage law would continue to apply equally to all employers, including MGPO. This rejection occurred before Section 113’s enactment, when she had every reason to expect that her well-established legal protections would remain intact throughout the litigation. Her rights were not merely abstract legal entitlements, but formed the concrete foundation for strategic decisions that she cannot now undo. Section 113’s purported, retroactive elimination of these rights after she relied on their continued existence to forgo a substantial settlement represents exactly the type of governmental action that due process protections are designed to prevent, the arbitrary “sweep[ing] away [of] settled expectations suddenly and without individualized consideration” that undermines the fundamental fairness essential to constitutional governance. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, at 266 (1994).

“Generally, persons challenging a retroactive statute must show that they acted in reasonable reliance upon the previous state of the law.” *See Parello v. McKinney*, 46 Mass. App. Ct. 785, 791 (1999) (quoting *Leibovich v. Antonellis*, 410 Mass. 568, 578, 574 N.E.2d 978 (1991)). In *Parello* the Appeals Court found no constitutional violation precisely because the plaintiff could not make this essential showing. There was no evidence the plaintiff “had taken any steps toward taking advantage of what was a relatively recent statutory addition, or that he had relied on that statute.” *See id.*

Dr. Oettinger’s case presents the polar opposite factual scenario from *Parello*, demonstrating exactly the type of concrete, documented reliance that *Parello* established as constitutionally significant. While the *Parello* plaintiff failed to show any concrete actions taken in reliance on the statute, Dr. Oettinger rejected a substantial settlement offer in reliance on her continued rights under the Wage Act. *See St. Germaine v. Pendergast*, 416 Mass. 698, 703-704 (1993) (finding art. 10 violation to create liability retroactively where defendant could reasonably have relied on existing law at time he acted and no significant public interest served by creating liability). *Cf. Leibovich v. Antonellis*, 410 Mass. 568, 578 (1991) (finding no reliance by defendant; statute retroactively creating rights not unconstitutional).

The *Parello* decision emphasized the critical requirement that challengers show they “would have acted differently had [they] known [the statute eliminating liability] would be enacted.” *See Parello*, 46 Mass. App. Ct. at 791. Dr. Oettinger can credibly make this exact showing—she would have certainly accepted the settlement offer had she known the Legislature would retroactively eliminate her rights under the Wage Act. Additionally, the temporal distinction between Dr. Oettinger’s case and *Parello* further strengthens her constitutional position, as the court noted that the plaintiff could not show any “steps toward taking advantage of what was a relatively recent statutory addition.” *See id.* Here, Dr. Oettinger’s reliance was on long-established wage protections that have existed for decades, not a recent statutory addition. In this case, a “recent statutory addition” is precisely what invalidates Dr. Oettinger’s reliance, which clearly exhibits why the law is unconstitutional. Indeed, her expectation that these protections would continue was entirely reasonable. Therefore, Dr. Oettinger’s settlement decision undeniably represents reasonable reliance.

Dr. Oettinger's position is further strengthened because of the underlying strength of her Wage Act claims. The *Omori* court recognized, in comparing the Plaintiff's claims in its case as to a case of a very similar nature, that "[t]he right of students here to pursue a contract cause of action against Brandeis is stronger than the concomitant right of the [other] plaintiffs in that the underlying breach of contract claim is more viable." *Omori*, 711 F. Supp. 3d at 38. While the court ultimately did not hold the legislation unreasonable on these grounds alone, it recognized that the strength of a claim has an impact on the analysis of the nature of the claim. Here, Dr. Oettinger's wage act claim against MGPO has clear merit on the pleadings, as MGPO does not dispute that it paid employees monthly without proper election, making her reliance on continued and well-established legal protections all the more reasonable and her constitutional challenge to Section 113 all the more compelling.

The Massachusetts Appeals Court in *Eastern Casualty Insurance Co. v. Roberts* also supports a finding that Dr. Oettinger's demonstrated reliance creates constitutionally protected interests. 52 Mass. App. Ct. 619, 628 (2001). The *Eastern Casualty* court's analysis focused heavily on the nature and purpose of the rights at issue, emphasizing that penalties serving "punitive, not compensatory, purposes" do not create constitutionally protected interests. *Eastern Cas.*, 52 Mass. App. Ct. at 628. The court specifically noted that the workers' compensation penalties in that case were "enacted not to confer rights on employees, but instead to persuade insurers to make timely payments," and therefore "were [not] designed . . . to create vested rights." *See id.* at 628-629 (internal quotations omitted).

Unlike the purely punitive penalty in *Eastern Casualty*, Dr. Oettinger's claims serve the compensatory purpose of protecting workers from the economic harm of delayed wage payments, a core worker protection. The Massachusetts Supreme Judicial Court has recognized

that the Wage Act exists specifically to protect workers from “the special injury imposed on workers whose employers unlawfully retain their wages for even short periods of time,” demonstrating that these protections serve employee welfare rather than mere regulatory enforcement. *See Bos. Police Patrolmen’s Ass’n, Inc. v. City of Bos.*, 435 Mass. 718, 720 (2002) (discussing “evil of unreasonable detention of wages”). This compensatory and protectionary purpose, combined with Dr. Oettinger’s demonstrated settlement reliance, creates the type of constitutional protection that *Eastern Casualty* contemplates while distinguishing her case from the purely punitive context where no such protection was found.

For the reasons above, the second *Dutra* factor therefore weighs decisively for finding Section 113’s retroactive application of the Wage Act in violation of Article X.

**3. Section 113 Is Neither Appropriately Tailored Nor Narrowly Drawn.**

The third *Dutra* factor examines whether the retroactive statute appropriately addresses the perceived problem, whether “the burden imposed by the retroactive statute” is “reasonable in scope and extent.” *Doe v. Sex Offender Registry Bd.*, 450 Mass. 792 (2008). “Only those statutes which, on a balancing of opposing considerations, are deemed to be unreasonable, are held to be unconstitutional.” *American Mfrs. Mut. Ins. Co.*, 374 Mass. at 189-190). “Factors this court has taken into account include whether the retroactive legislation is short-term or of infinite duration, and whether it is narrowly tailored to address the concerns that motivated its enactment.” *See Anderson*, at 313 (2012) (internal quotations omitted) (citing *Doe*, 450 Mass. at 792).

Section 113 fails this constitutional test because it is neither appropriately tailored nor narrowly drawn to address any legitimate legislative concern. Most fundamentally, Section 113 does not just limit Dr. Oettinger’s rights; it completely eliminates them. The legislation provides absolute immunity rather than addressing any specific policy concern about wage payment

timing or compliance burdens. This total elimination of worker protections represents a very heavy-handed approach and cannot satisfy the narrow tailoring requirement.

First, this legislation affects only a handful of non-profit healthcare and educational organizations among the hundreds operating in Massachusetts, while leaving identical claims against all other employers to proceed. This selective application reveals that Section 113 was not designed to address any systematic problem affecting these employers generally, but rather to provide targeted relief to specific defendants who were facing significant litigation exposure for their violations of law. If the Legislature genuinely believed the Wage Act created inappropriate liability for non-profits, it could have amended the statute prospectively to address that concern for all non-profit employers. Instead, it chose to immunize only those non-profits in the healthcare and educational space while leaving the underlying law unchanged for everyone else.

Section 113's temporal scope confirms its excessive breadth. The statute affects claims that accrued as far back as July 2021 (the entire statute of limitations period for any conceivable plaintiff or class member) and continues to affect the rights of parties through October 2028. This expansive timeframe extends far beyond the narrow emergency circumstances that courts have found justify retroactive immunity legislation. *See Dutra*, 96 F.4<sup>th</sup> at 18-19 (holding that legislation affecting legal claims over a course of approximately four to five months is sufficiently narrow to be held constitutional); *see also Omori*, 711 F. Supp. 3d (holding legislation constitutional where it affects one academic term, approximately four to five months). Unlike statutes that address specific time-limited crises, Section 113 creates an ongoing immunity that has an effect on claims that span seven years based solely on the filing date of lawsuits rather than any underlying policy rationale.<sup>4</sup>

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<sup>4</sup> This is separate and apart from the fact that the legislature is essentially rewarding employers who have been in breach of the Wage Act for decades without consequence.

The Legislature had numerous less restrictive alternatives available that would have addressed any legitimate concerns without completely eliminating Wage Act protections for a small subset of potential employees. If the Legislature worried about damage calculations or compliance burdens on healthcare providers, it could have addressed those issues through far less drastic means. The Legislature could have limited damages to interest only, added intent requirements as it did in *Dutra*, or extended existing charitable immunity provisions to apply to Wage Act claims. *See* M.G.L. c. 231 § 85K. It also could have created prospective safe harbors for certain employers who implement compliant payment systems going forward. Foreclosing healthcare workers employed by select few institutions from any form of recovery was neither necessary nor narrowly tailored to meet any articulated policy goal.

Section 113 represents impermissible legislative adjudication of individual cases. Rather than establishing general rules of future conduct, the statute provides *ad hoc, retroactive* benefits to specifically identified employers in pending litigation. Defendant indeed confirms that Section 113 was crafted specifically to terminate a handful of lawsuits with the same issues as Dr. Oettinger, not to address any broader policy concern. This type of targeted intervention in ongoing judicial proceedings cannot satisfy the narrow tailoring requirement because it serves no purpose beyond relieving specific defendants from legal consequences.

The third *Dutra* factor therefore weighs decisively against finding Section 113's retroactive application constitutional.

**C. Section 113 Violates Article XI's Remedies Clause by Stripping Workers of All Legal Recourse.**

Article XI of the Massachusetts Declaration of Rights guarantees that every citizen "ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which [s]he may receive in his person, property, or character." Mass. Const. pt. 1., art. XI. Section 113

violates this guarantee by completely eliminating legal remedies for wage violations by certain favored employers.

Massachusetts courts have applied Article XI to invalidate legislation that creates barriers to court access, even when those barriers are less severe than the complete immunity granted here. *See Murphy v. Comm'r of Dep't of Indus. Accidents*, 415 Mass 218, 233 (1993) (striking down a filing fee that applies to only certain litigants under Article XI); *see Ventrice v. Ventrice*, 87 Mass. App. Ct. 190, 193-94 (2015) (disallowing a requirement that parties hire a mediator before they may file in court under Article XI); *see also Graizzaro v. Graizzaro*, 36 Mass App. Ct. 911, 911 (1994) (striking down a requirement that parties engage in settlement discussions before their suit may proceed under Article XI). This precedent establishes that legislative barriers to court access, whether financial, procedural, or temporal, violates Article XI when they deny citizens their constitutional right to legal remedies.

The remedy guaranteed by Article XI is particularly important in the employment context, where, as discussed herein, Massachusetts courts have repeatedly recognized the special importance of protecting workers from employers who unlawfully retain their wages. *See Lipsitt* at 240, 245 (holding that the Wage Act was intended to prevent the unreasonable detention of wages); *see also Turgut* at \*21 (D. Mass. 2025) (“a day matters” with respect to receiving their earned wages for employees in the Commonwealth). By eliminating all remedies for healthcare workers that happen to work at non-profit healthcare institutions, such as Dr. Oettinger, while preserving them for most all other employees in the Commonwealth, Section 113 violates the fundamental principle that all citizens deserve equal access to legal remedies.

Importantly, Dr. Oettinger’s demonstrated reliance on continued legal protection, as evidenced by her rejection of a substantial settlement offer in reasonable expectation that

Massachusetts wage law would apply equally to all employers in the Commonwealth makes this constitutional violation concrete rather than theoretical. Her decision was premised on Article XI's foundational principle that legal remedies remain available to all citizens equally, not subject to selective legislative elimination based on favoritism. When the Legislature strips certain workers of all legal remedies while preserving identical protections for others, it violates Article XI's promise that every citizen shall find "a certain remedy, by having recourse to the laws, for all injuries or wrongs." Const. pt. 1., art. XI. This arbitrary denial of constitutional rights cannot survive Article XI's demanding requirement that all citizens receive equal treatment in their access to legal remedies for acknowledged wrongs. This is particularly true here, where the legislature did not choose to fully invalidate the monthly pay requirements of the Wage Act. Indeed, monthly pay without an employee election still remains illegal in Massachusetts. The huge problem is that Section 113 has created a construct in which employees of non-profit healthcare delivery systems and educational institutions have no remedy for their employers' clear breach of the Wage Act, whereas every other employee in Massachusetts does have a remedy under the law. Simply stated, Section 113 is exactly what it seems to be, a law passed to mollify some of Massachusetts biggest and most powerful employers at the expense of their employees and Massachusetts citizens, generally. Therefore, under Article XI of the Massachusetts Declaration of Rights, Defendant's motion must be denied.

### **III. CONCLUSION**

The Legislature cannot cure decades of illegal wage payment practices by selected employers through retroactive immunity legislation that singles out certain favored defendants while leaving identical claims against other employers to proceed. Such selective legislation violates the fundamental principle that all citizens have a right to be protected according to standing laws. Employees of these select non-profit healthcare and educational institutions

deserve the same wage protections as every other employee in Massachusetts. Section 113's arbitrary exemption of certain healthcare employers while preserving worker protections for all others cannot survive constitutional scrutiny.

Here, Dr. Oettinger's demonstrated reliance on existing legal protections when rejecting a settlement offer makes the constitutional violations particularly clear. She reasonably expected Massachusetts wage law to continue to protect her rights, not to be stripped away because she brought a legitimate lawsuit against her powerful and influential employer.

Plaintiff, therefore, respectfully requests that this Court deny Defendant's Motion for Judgment on the Pleadings and grant such other relief as this Court deems just and proper.

Respectfully Submitted,  
MARJORIE OETTINGER, individually,  
and on behalf of all others similarly situated,  
By Her Attorneys,

Dated: Tuesday, September 30, 2025

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**CERTIFICATE OF SERVICE**

I, Eric R. LeBlanc, counsel to the Plaintiff, hereby certify that I served a true copy of the foregoing on September 30, 2025, via electronic mail upon counsel to the Defendant at the following addresses:

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CN

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

MARJORIE OETTINGER, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.,

Defendant.

Docket No. 2584CV00644-BLSI

**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND  
AMENDED COMPLAINT**

Plaintiff, Marjorie Oettinger ("Plaintiff"), on behalf of herself and all others similarly situated, hereby moves that this Honorable Court grant leave to file a Second Amended Complaint to add Dr. Marcela G. Del Carmen, M.D., President of Massachusetts General Physicians' Organization, Inc. ("MGPO"), and Sally Mason Boemer, Treasurer of MGPO, as individual defendants. *See* Exhibit 1, Plaintiff's Proposed Second Amended Complaint. This amendment is necessary because Dr. Del Carmen and Ms. Boemer, by virtue of their executive roles and decision-making authority over MGPO's wage payment practices, are personally liable under the Massachusetts Wage Act for the violations affecting Plaintiff and the putative class members. All claims alleged are timely and within the statute of limitations. As explained further below, Dr. Del Carmen and Ms. Boemer must be added as individual defendants because their positions as President and Treasurer gave them direct control over and responsibility for the wage payment decisions that form the basis of this litigation, making them personally liable

under the Massachusetts Wage Act regardless of any alleged potential organizational immunity that may apply to MGPO itself.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

This class action arises from MGPO's alleged violations of the Massachusetts Wage Act, M.G.L. c. 149, § 148, through its practice of paying employees on a monthly basis without proper election by those employees. Amended Compl. ¶ 1. Plaintiff Dr. Marjorie Oettinger is an adult resident of Middlesex County, Massachusetts. Amended Compl. ¶ 2. Defendant Massachusetts General Physicians Organization is a Massachusetts Nonprofit Corporation with a principal place of business at 55 Fruit Street, Boston, MA 02114. Amended Compl. ¶ 3. Plaintiff began her employment with MGPO in 1991, and from 2022 to 2024, Plaintiff's yearly salary has ranged from approximately \$288,913 to \$306,547. Amended Compl. ¶ 8.

In the three years preceding the commencement of this action, MGPO has been the sole entity responsible for paying Plaintiff's salary. Amended Compl. ¶ 9. MGPO has paid Plaintiff only on the 26th day of each month. Amended Compl. ¶ 10. At no point in her employment did Plaintiff elect to be paid monthly. Amended Compl. ¶ 11. In the three years preceding this action, MGPO paid Plaintiff approximately \$900,470 in monthly wages. Amended Compl. ¶ 12. For every month in the three years preceding the commencement of this action, Plaintiff has been paid according to an allegedly illegal pay schedule. Amended Compl. ¶ 13.

The Massachusetts Wage Act, M.G.L. c. 149, § 148 generally requires every person having employees in his service to pay, within a specified time period, to such employee the wages earned by him. Amended Compl. ¶ 27. Defendant paid Plaintiff monthly even though Plaintiff and the putative class members did not elect to be paid monthly. Amended Compl. ¶ 28. MGPO's failure to pay Plaintiff all wages due to her within the timeframe allowed by the Wage

Act allegedly denied Plaintiff prompt and timely payment of her wages and the use of those wages in violation of M.G.L. c. 149, § 148. Amended Compl. ¶ 29.

This litigation commenced on March 6, 2025, when Plaintiff filed her Class Action Complaint. The case was accepted into the Business Litigation Session on March 7, 2025. On March 24, 2025, Plaintiff filed her Amended Class Action Complaint. After effective service, MGPO filed its Answer to the Amended Complaint on May 5, 2025. The Court conducted a BLS Rule 16 Litigation Control Conference on May 27, 2025, before the Honorable Peter B. Krupp, which resulted in a Scheduling Order dated May 27, 2025.

Plaintiff has now identified Dr. Marcela G. Del Carmen, M.D. as the President of MGPO and Sally Mason Boemer as the Treasurer of MGPO. As corporate officers with fiduciary duties and decision-making authority over MGPO's payroll practices, these individuals are individually liable for the wage violations affecting Plaintiff and the putative class members.

## **II. LEGAL STANDARD**

A party may amend their pleading “by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” Mass. R. Civ. P. 15(a). A party may amend their Complaint by adding further counts “at any time before final judgment.” *Henri Peladeau, Limitee v. Fred Gillespie Lumber Co.*, 285 Mass. 10, 14 (1933). The decision is discretionary with the judge, and leave should be granted “unless some good reason appears for denying it.” *Castellucci v. United States Fid. & Guar. Co.*, 372 Mass. 288, 289 (1977). Those reasons include “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.” *Id* at 290. None of these reasons to deny a motion to amend exist here.

By statute, a judge may allow an amendment to add a party so long as the amendment relates to the original pleading. G.L. c. 231, § 51. Here, the proposed amendment to add Dr. Del Carmen and Ms. Boemer as individual defendants relates directly to the original pleading, as both the corporate and individual claims arise from the same operative facts regarding MGPO's alleged wage payment violations.

Once a pleading is amended, the amendment relates back to the original time of filing. Mass. R. Civ. P. 15(c). The relation-back doctrine under Massachusetts Rule of Civil Procedure 15(c) provides that once a pleading is amended, the amendment relates back to the original time of filing. This ensures that statute of limitations concerns do not bar otherwise proper amendments. Here, Plaintiff's claims are well within the statute of limitations, and the proposed amendment does not materially prejudice Defendants.<sup>1</sup>

### III. ARGUMENT

#### A. Plaintiff's Motion to Amend Meets the Legal Standard and Should Be Granted.

This motion to amend should be granted because it satisfies all requirements under Massachusetts Rule of Civil Procedure 15(a) and presents none of the factors that would justify denial. The proposed amendment serves the interests of justice by ensuring all responsible parties are held accountable for the alleged wage violations, promotes judicial efficiency, and causes no prejudice to any party.

The timing of this amendment request is entirely reasonable and presents no undue delay. In *Lebel v. Thornton*, the court found undue delay where “the defendant answered interrogatories and was deposed” six months prior to the date of the decision. *See Lebel v. Thornton*, 33 Mass. L. Rep. 93 (2014). The *Lebel* court continued and stated, “there is no justification offered by the

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<sup>1</sup> In the Proposed Second Amended Complaint, Plaintiff has made an edit due to a typo and has removed the words “inside sales” from paragraph 8. *See* Ex. 1. For reference to the Court and the Defendant, the corresponding paragraph in the First Amended Complaint is paragraph 7.

plaintiffs for the delay in pursuing that discovery or for not moving at that point to add [the proposed] defendant.” *Id.* The situation here is markedly different and demonstrates the absence of undue delay. Unlike in *Lebel*, no depositions have taken place in this case, no discovery has been exchanged, and no discovery has been answered. This litigation remains in very early stages with MGPO’s Answer filed less than three months ago.

While there is no undue delay here, Massachusetts courts have consistently held that “undue delay” alone is insufficient to justify denial of a motion to amend. As the court explained in *Manfrates v. Lawrence Plaza Ltd. Pshp.*, “while ‘undue delay’ may justify a denial, this court has usually required some factor other than delay, such as the imminence of trial or the plaintiff’s attempting to introduce a totally new theory of liability.” *Manfrates v. Lawrence Plaza Ltd. Pshp.*, 41 Mass. App. Ct. 409, 414 (1996). Here, trial is not imminent, and Plaintiff is not introducing a new theory of liability but rather seeking to hold additional parties accountable under the same Massachusetts Wage Act violations already alleged against MGPO.

The proposed amendment does not introduce a “markedly different theory of liability” that would justify denial. The Supreme Judicial Court held that a motion to amend should have been allowed where plaintiffs “were not attempting to introduce or substitute a ‘markedly’ different theory of liability, nor was trial any longer imminent.” *See Goulet v. Whitin Mach. Works. Inc.*, 399 Mass. 547, 552 (1987). Similarly, here, Plaintiff seeks to add individual defendants under the same Massachusetts Wage Act theory already pleaded against the corporate defendant. The claims against Dr. Del Carmen and Ms. Boemer arise from identical operative facts as Plaintiff’s first amended complaint, MGPO’s monthly payment schedule and Plaintiff’s allegation that she never elected monthly payment. *See Ex. 1.*

Massachusetts courts apply Rule 15(a)'s liberal amendment standard to promote resolution of disputes on their merits. The addition of individual defendants who were directly involved in the challenged conduct serves this goal by ensuring complete adjudication of all related claims and avoiding multiplicity of suits. Without amendment, claims against Dr. Del Carmen and Ms. Boemer would require separate litigation, resulting in duplicative proceedings, increased costs, and risk of inconsistent adjudications of the same wage payment practices. Furthermore, the proposed defendants will suffer no prejudice because, as corporate officers of MGPO, they have been aware of this litigation since its inception and likely share counsel with the existing defendant. Therefore, Plaintiff moves that this court grant her leave to file a Second Amended Complaint adding Dr. Del Carmen and Ms. Boemer as individual defendants.

**B. Individual Liability Attaches to Corporate Officers Under the Wage Act, and Precedent Supports Adding Them as Defendants.**

Pursuant to the Massachusetts Wage Act, a corporation's "president, treasurer," and any officers or agents "having the management of such corporation," face individual liability. M.G.L. c. 149 § 148. Dr. Del Carmen is the President of MGPO and Ms. Boemer is the Treasurer, making them individually liable under the Wage Act's plain language. *See Segal v. Genitrix LLC*, 478 Mass. 551, 559 (2017) (holding that it was the intent of the Legislature "to impose personal liability for Wage Act violations on the president and treasurer of the corporation...") Dr. Del Carmen, as President of MGPO, holds the highest executive position and bears ultimate responsibility for corporate policies. Ms. Boemer, as Treasurer, has direct authority over MGPO's financial operations and wage disbursements. Their title and positions undeniably place them squarely within the category of those individually liable under the Wage Act.

"A judge has discretion to permit amendment of a complaint at any time to add a real party in interest." *Shields Pharmacy, LLC v. Guilfoile*, No. PLCV2016-00323, 2019 Mass.

Super. LEXIS 3485, at \*6 (Mar. 28, 2019) (citing *Berman v. Linnane*, 434 Mass. 301, 304 (2001)). Dr. Del Carmen and Ms. Boemer are real parties in interest because their individual authority over MGPO's wage payment decisions makes them directly liable for the alleged violations under the broad framework established by the Supreme Judicial Court. Recently, the Massachusetts Superior Court in *Whalley v. Diesel Direct* granted a motion to amend a complaint to add Wage Act claims on both the corporation and the President of the corporation. In *Whalley*, even though the original claims were not claims under the Massachusetts Wage Act, the court granted the motion, establishing that such amendments are proper when they arise from the same operative facts as the original claims. *See Whalley v. Diesel Direct*, No. 1984CV02072-BLS2, 2022 Mass. Super. LEXIS 80 at \*2 (May 19, 2022); *see also DeSantis v. Commonwealth Energy System*, 68 Mass. App. Ct. 759, 766 n.10 (2007) (applying Mass. R. Civ. P. 15(c) to Wage Act claim). Here, one of the existing claims is indeed a claim for the violation of the Massachusetts Wage Act for late payment of wages, the same claims Plaintiff now wants to file against Dr. Del Carmen and Ms. Boemer. The claims against Dr. Del Carmen and Ms. Boemer arise from identical operative facts as the claim against MGPO- MGPO's monthly payment schedule where MGPO paid Plaintiff only on the 26th day of each month despite her lack of election for monthly payment. Therefore, this court must grant leave to file a Second Amended Complaint adding Dr. Del Carmen and Ms. Boemer as individual defendants.

**C. Section 113 of Chapter 9 of the Acts of 2025 Does Not Bar Individual Officer Liability.**

Section 113 of Chapter 9 of the Acts of 2025, recently passed by the Massachusetts Legislature states,

**“Nonprofit institutions** of higher education and **nonprofit organizations** that comprise a health care delivery system shall be immune from liability with regard to any claim or cause of action seeking a legal or equitable remedy or other relief

commenced between July 1, 2024 and September 30, 2028, inclusive, that alleges that the institution's or organization's payment of wages on a monthly basis or pursuant to any written policy, schedule, or agreement presented or made available to an employee concerning payment for work performed over an academic term violated section 148 of chapter 149 of the General Laws; provided, however, that earned wages shall have been paid in full within 6 days of the termination of a pay period occurring: (i) on a monthly basis; or (ii) pursuant to any written policy, schedule or agreement presented to an employee concerning payment for work performed over a specific period or an academic term."

*See* Section 113 of Chapter 9 of the Acts of 2025 (emphasis added).

Section 113 creates no barrier to individual officer liability for several compelling reasons. The statute's deliberate limitation to organizational entities, with no mention of individual officers, demonstrates clear legislative intent to preserve personal accountability for those who control wage payment decisions. Dr. Del Carmen and Ms. Boemer are individual natural persons, not "nonprofit institutions" or "nonprofit organizations." They acted in their individual capacities as corporate officers when making decisions about MGPO's wage payment practices, creating personal liability that exists independently of any organizational immunity.

A critical distinction exists between the Massachusetts Wage Act's reference to "employers" and Section 113's reference to "organizations." The Wage Act applies to "every person having employees in his service" and uses the term "employer" throughout its provisions. *See* M.G.L. c. 149 § 148. In contrast, Section 113 grants immunity exclusively to specific "institutions" and "organizations." This deliberate use of different terminology demonstrates that the Legislature intended these statutes to operate in distinct spheres - the Wage Act governing the relationship between employers (including individual officers who control wage decisions) and employees, while Section 113 providing limited organizational immunity that does not extend to individual actors.

The Massachusetts Wage Act applies to “every person having employees in his service” and contains no exemption for individual corporate officers who participate in wage payment decisions. *See id.* As supported by the plain language of the statute, Massachusetts courts have consistently held that corporate officers, specifically the President and Treasurer, can be held individually liable for wage violations when they have sufficient control over or participation in the employer’s wage payment practices. *See Segal v. Genitrix LLC*, 478 Mass. 551, 559 (2017). Section 113 does not alter this fundamental principle of individual accountability under the Wage Act. The holding in *Segal v. Genitrix, LLC* that the Legislature intended “to impose personal liability for Wage Act violations on the president and treasurer of the corporation” remains fully operative, as Section 113 contains no language modifying or superseding this established framework. *See id.*

Allowing corporate officers to escape liability through organizational immunity would create a significant enforcement gap regarding violations of the Massachusetts Wage Act. If individual decision-makers could avoid accountability while making the very decisions that allegedly violate workers’ rights, it would effectively nullify the deterrent effect of the Wage Act and contravene the Legislature’s clear intent to impose personal liability on corporate officers who control wage payments. Therefore, Section 113 does not apply to Dr. Del Carmen or Ms. Boemer and Plaintiff respectfully requests that this Court grant leave to file a Second Amended Complaint adding Dr. Del Carmen and Ms. Boemer as individual defendants.

**D. Plaintiff’s Rejection of Settlement in Reliance on Available Legal Remedies Demonstrates the Reasonableness of This Motion’s Timing and the Necessity of Amendment to Ensure Complete Relief.**

Shortly before Section 113 was passed, Plaintiff rejected a substantial settlement offer. Plaintiff turned down this settlement offer in reliance on her ability to pursue complete relief

against all responsible parties under the Massachusetts Wage Act. At the time of the settlement discussions, Section 113 of Chapter 9 of the Acts of 2025 had not yet been enacted, and Plaintiff reasonably expected to be able to pursue her claims against the corporate defendant for the full scope of alleged violations.

However, with the subsequent passage of Section 113, the legal landscape under which Plaintiff now has to litigate her claims has fundamentally changed. While this statute does not bar individual officer liability, as discussed above, it creates new circumstances that make the addition of individual defendants Dr. Del Carmen and Ms. Boemer essential to ensure complete relief for Plaintiff and the putative class members. Justice requires allowing this amendment to allow Plaintiff to pursue the relief she reasonably expected when making the decision to reject settlement and proceed with litigation. To deny this motion would effectively penalize Plaintiff for relying on the legal framework that existed at the time of her litigation decisions and would prevent her from obtaining the relief that she seeks under the Massachusetts Wage Act.

#### **IV. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that this Court grant her Motion for Leave to File a Second Amended Complaint to add Dr. Marcela G. Del Carmen, M.D., President of MGPO, and Sally Mason Boemer, Treasurer of MGPO, as individual defendants.

This motion is timely, introduces no new theory of liability, and causes no prejudice to any party. The proposed amendment arises from the same operative facts already being litigated and will promote judicial efficiency by ensuring complete resolution of all related claims in a single proceeding. Dr. Del Carmen and Ms. Boemer as President and Treasurer, are proper individual defendants under the Massachusetts Wage Act as these positions carry direct individual liability under M.G.L. c. 149, § 148. Section 113 presents no barrier to individual

officer liability, as it provides immunity only to organizational entities, not to individual officers who made corporate wage payment decisions.

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Grant Plaintiff's Motion for Leave to File a Second Amended Complaint, Exhibit 1;
2. Allow Plaintiff to add Dr. Marcela G. Del Carmen, M.D. and Sally Mason Boemer as individual defendants; and
3. Grant such other relief as this Court deems just and proper.

Respectfully Submitted,  
MARJORIE OETTINGER, individually,  
and on behalf of all others similarly situated,  
By Her Attorneys,

Dated: Thursday, July 31, 2025

/s/ Eric R. LeBlanc  
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(617) 577-8800

**CERTIFICATE OF SERVICE**

I, Eric R. LeBlanc, counsel to the Plaintiff, hereby certify that I served a true copy of the foregoing on July 31, 2025, via electronic mail upon counsel to the Defendant at the following addresses:

Barry J. Miller  
Molly C. Mooney  
Elizabeth L. Sherwood  
SEYFARTH SHAW LLP  
Seaport East  
Two Seaport Lane, Suite 1200  
Boston, Massachusetts 02210  
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[bsherwood@seyfarth.com](mailto:bsherwood@seyfarth.com)

Dated: July 31, 2025

/s/ Eric R. LeBlanc  
Eric R. LeBlanc

# **EXHIBIT 1**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

MARJORIE OETTINGER, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.;  
DR. MARCELA G. DEL CARMEN;  
SALLY MASON BOEMER

Defendants.

Docket No. 2584CV00644-BLSI

**[SECOND AMENDED] CLASS ACTION COMPLAINT AND  
DEMAND FOR TRIAL BY JURY**

**I. INTRODUCTION**

This class action is brought by Marjorie Oettinger (“Oettinger” or “Plaintiff”) on behalf of herself and all other similarly situated employees of Defendant Massachusetts General Physicians’ Organization (“MGPO”) for Defendants’ failure to pay Plaintiff within the deadlines required by the Wage Act for the three years preceding the commencement of this action. Dr. Marcela G. Del Carmen, M.D. is the current President of MGPO and Sally Mason Boemer is the current Treasurer of MGPO (collectively, with MGPO, “Defendants”). As corporate officers with fiduciary duties and decision-making authority over MGPO’s payroll practices, these individuals are individually liable for the Wage Act violations affecting Plaintiff and the putative class members. Defendants paid Plaintiff on a monthly pay schedule, typically paying her on the 26th day of each month. However, the Massachusetts Wage Act, M.G.L. c. 149, § 148 requires

that employer pay exempt employees no less frequently than semi-monthly, and within six days of the termination of the pay period in which such wages were earned. Accordingly, Defendants have paid Plaintiff all wages earned in the first half of each month of her employment approximately ten days late, thereby violating the Wage Act. Additionally, Plaintiff has rejected a substantial settlement offer in reliance on the ability to litigate her claims against the Defendants on their merits.

## **II. PARTIES**

1. Plaintiff Dr. Marjorie Oettinger is an adult resident of Middlesex County, Massachusetts.

2. Defendant Massachusetts General Physicians Organization is a Massachusetts Nonprofit Corporation with a principal place of business at 55 Fruit Street, Boston, MA 02114.

3. Upon information and belief, Defendant Dr. Marcela G. Del Carmen, M.D. is an adult resident of the Commonwealth of Massachusetts.

4. Upon information and belief, Defendant Sally Mason Boemer is an adult resident of Middlesex County, Massachusetts.

## **III. JURISDICTION, VENUE, AND STATUTORY PREREQUISITES**

5. This action arises under M.G.L. c. 149, §§ 148 and 150.

6. This Court has original jurisdiction over this action, as it is a civil action in which more than \$50,000 is in controversy.

7. Prior to filing suit, Plaintiff filed a complaint with the Massachusetts Attorney General's Office.

8. Venue in the Business Litigation Session is proper, as the matter concerns complex wage-and-hour issues that affect a large number of MGPO's current and former employees.

#### **IV. STATEMENT OF FACTS**

9. Plaintiff began her employment with the MGPO in 1991. From 2022 to 2024, Plaintiff's yearly salary has ranged from approximately \$288,913 to \$306,547.

10. In the three years preceding the commencement of this action, MGPO has been the sole entity responsible for paying Plaintiff's salary.

11. In the three years preceding the commencement of this action, MGPO has paid Plaintiff only on the 26th day of each month. *See* Plaintiff's Paychecks, attached hereto as Exhibit A.

12. At no point in her employment did Plaintiff elect to be paid monthly.

13. In the three years preceding this action, MGPO paid Plaintiff approximately \$900,470 in monthly wages.

14. For every month in the three years preceding the commencement of this action, Plaintiff has been paid according to an illegal pay schedule.

15. Thus, Defendants have paid Plaintiff \$900,470 according to an illegal pay schedule in the three years preceding this action.

16. In the alternative, for every month in the three years preceding the commencement of this action, Defendants have paid Plaintiff more than six days after the termination of the semi-monthly pay schedule for the first half of the month. Accordingly, approximately \$450,235 of Plaintiff's wages have been paid illegally late in violation of Massachusetts Wage Act, M.G.L. c. 149, § 148.

17. Dr. Del Carmen, as the President of MGPO, holds the highest executive position and bears ultimate responsibility for corporate policies.

18. Ms. Boemer, as Treasurer of MGPO, has direct authority over MGPO's financial operations.

19. Plaintiff rejected a substantial settlement offer to resolve this litigation.

## **V. CLASS ALLEGATIONS**

20. Plaintiff brings this action individually, and on behalf of all other members of the Class.

21. The Class is defined as follows:

All Massachusetts employees employed by MGPO, who were paid monthly during the three years immediately preceding the date of the filing of this action and continuing through the date of final judgment in this matter.

22. The members of the Rule 23 class are readily ascertainable because the number and identity of the Rule 23 class members are determinable from MGPO's records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from MGPO. Notice can be provided by means permissible under Rule 23. This action is properly maintainable as a class action under Mass. R. Civ. P. 23(a)-(b).

23. The Rule 23 class members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. Upon information and belief, there are at least 50, if not significantly more, Rule 23 class members for the pertinent period of time.

24. Plaintiff's claims are typical of those claims which could be alleged by any Rule 23 class member, and the relief sought is typical of the relief which would be sought by each Rule 23 class member in separate actions. All the Rule 23 class members were subject to the

same corporate practices of MGPO, as alleged herein: failure to pay employees on a weekly, bi-weekly, or semi-monthly pay schedule.

25. Plaintiff and other Rule 23 class members sustained similar losses, injuries, and damages resulting from Defendants' failure to pay them on, at minimum, a semi-monthly pay schedule in compliance with the Massachusetts Wage Act and the Rule 23 class members have all been injured in that they have been paid late due to Defendants' policies, practices and patterns of conduct. MGPO's company-wide policies and practices affected all Rule 23 class members similarly, and Defendants benefitted from the same type of unfair and/or wrongful acts as to each of the Rule 23 class members. Although the amount of the individual class members' damages may vary depending on their periods of employment and salaries, those damages are readily ascertainable from MGPO's financial records. As a result, common issues of liability predominate over individualized issues of damages.

26. Plaintiff is able to fairly and adequately protect the interest of the Rule 23 class members and has no interests antagonistic to the Rule 23 class members. Plaintiff is represented by attorneys who are experienced and competent in both employment litigation and class action litigation.

27. A class action is superior to other available methods for the fair and efficient adjudication of these claims, particularly in the context of wage-and-hour litigation where individual class members may lack the financial resources to vigorously prosecute a lawsuit against corporate defendants and are often hesitant to assert their rights out of fear of direct or indirect retaliation. Among other things, individual adjudications would result in highly inefficient duplication of discovery, briefing of legal issues, and court proceedings. If

appropriate, the Court is empowered to fashion methods to efficiently manage this action as a class action.

28. Common questions of law and fact exist as to the Rule 23 class members that predominate over any question only affecting Plaintiff and the Rule 23 class members individually. These questions include whether Defendants paid employees according to an illegal pay schedule and whether Defendants paid employees within the timeframe allowed by M.G.L. c. 149, § 148.

29. Plaintiff seeks certification of a class of similarly situated MGPO employees who worked for MGPO at any time within three years prior to the commencement of this action up through the time of judgment.

## **VI. COUNTS OF THE COMPLAINT**

### **Count I**

#### **Violation of M.G.L. c. 149, § 148 for Late Payment of Wages *Plaintiff v. MGPO***

30. Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

31. The Massachusetts Wage Act, M.G.L. c. 149, § 148 generally requires every person having employees in his service to pay, within a specified time period, to such employee the wages earned by him.

32. MGPO paid Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly.

33. MGPO's failure to pay Plaintiff all wages due to her within the timeframe allowed by the Wage Act denied Plaintiff prompt and timely payment of her wages and the use of those wages in violation of M.G.L. c. 149, § 148.

34. This claim is brought pursuant to M.G.L. c. 149, § 150.

35. As a result of MGPO's actions, Plaintiff has suffered damages.

36. MGPO is liable to Plaintiff and the Class for three times the amount of the late paid wages, plus interest, costs, and attorneys' fees.

**Count II**  
**Declaratory Judgment – Chapter 231A**  
***Plaintiff v. MGPO***

37. Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

38. An actual controversy exists between the parties with respect to the matters stated above, and more particularly including, but not limited to:

- a. Whether MGPO's payment scheme of paying Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly is illegal pursuant to The Massachusetts Wage Act, M.G.L. c. 149, § 148.

**Count III**  
**Violation of M.G.L. c. 149, § 148 for Late Payment of Wages**  
***Plaintiff v. Dr. Marcela G. Del Carmen***

39. Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

40. Dr. Del Carmen, as the President of MGPO, managed MGPO for purposes of the Massachusetts Wage Act, M.G.L. c. 149, § 148.

41. Dr. Del Carmen, as the President of MGPO, holds the highest executive position and bears ultimate responsibility for corporate policies.

42. The Massachusetts Wage Act, M.G.L. c. 149, § 148 generally requires every person having employees in his service to pay, within a specified time period, to such employee the wages earned by him.

43. Dr. Del Carmen paid Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly.

44. Dr. Del Carmen's failure to pay Plaintiff all wages due to her within the timeframe allowed by the Wage Act denied Plaintiff prompt and timely payment of her wages and the use of those wages in violation of M.G.L. c. 149, § 148.

45. This claim is brought pursuant to M.G.L. c. 149, § 150.

46. As a result of Dr. Del Carmen's actions, Plaintiff has suffered damages.

47. Dr. Del Carmen is liable to Plaintiff and the Class for three times the amount of the late paid wages, plus interest, costs, and attorneys' fees.

#### **Count IV**

##### **Violation of M.G.L. c. 149, § 148 for Late Payment of Wages *Plaintiff v. Sally Mason Boemer***

48. Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

49. Ms. Boemer, as the Treasurer of MGPO, managed MGPO for purposes of the Massachusetts Wage Act, M.G.L. c. 149, § 148.

50. Ms. Boemer, as Treasurer of MGPO, has direct authority over MGPO's financial operations.

51. The Massachusetts Wage Act, M.G.L. c. 149, § 148 generally requires every person having employees in his service to pay, within a specified time period, to such employee the wages earned by him.

52. Ms. Boemer paid Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly.

53. Ms. Boemer's failure to pay Plaintiff all wages due to her within the timeframe allowed by the Wage Act denied Plaintiff prompt and timely payment of her wages and the use of those wages in violation of M.G.L. c. 149, § 148.

54. This claim is brought pursuant to M.G.L. c. 149, § 150.

55. As a result of Ms. Boemer's actions, Plaintiff has suffered damages.

56. Ms. Boemer is liable to Plaintiff and the Class for three times the amount of the late paid wages, plus interest, costs, and attorneys' fees.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court enter the following relief:

1. Certify this Action as a class action pursuant to M.G.L. c. 149, § 148;
2. In the alternative, certify this case as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure;
3. Appoint Plaintiff Oettinger as Class Representative;
4. Appoint the undersigned as Class Counsel;
5. An award of damages for all wages and other losses to which Plaintiff and similarly situated employees are entitled;
6. Statutory trebling of all wage-related damages pursuant to M.G.L. c. 149, §§ 148 and 150;
7. Award Plaintiff and the Class all pre-judgment and post-judgment interest on these damages pursuant to M.G.L. c. 149, §§ 148 and 150;

8. Award attorneys' fees and costs incurred by Plaintiff in prosecuting this action pursuant to M.G.L. c. 149, §§ 148 and 150;

9. On Count II – judgment declaring whether MGPO's practice of paying Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly is illegal pursuant to The Massachusetts Wage Act, M.G.L. c. 149, § 148.

10. Such further relief as this Court deems fair and just.

### **VIII. JURY DEMAND**

Plaintiff demands a TRIAL BY JURY on all claims so triable.

Respectfully Submitted,  
MARJORIE OETTINGER, individually,  
and on behalf of all others similarly situated,  
By Her Attorneys,

Dated: Thursday, July 31, 2025

/s/  
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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 2584CV00644-BLSI

MAJORIE OETTINGER, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.,

Defendant.

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION  
FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Plaintiff Marjorie Oettinger's ("Oettinger" or "Plaintiff") motion for leave to file a Second Amended Complaint is a transparent attempt to circumvent the legislative intent underlying a provision that Governor Healey recently signed into law, which was specifically intended to terminate Plaintiff's predatory claims in this matter. Section 113 of Chapter 9 of the Acts and Resolves of 2025 ("Section 113") was passed by the Legislature in direct response to this lawsuit and several others like it, which seek to extract hundreds of millions or, as in this case, billions of dollars from non-profit health care and higher education institutions based on a perceived technical violation of the Massachusetts Wage Act (Mass. Gen. Laws ch. 149, §§ 148, 150) (the "Wage Act"). Undeterred by the Legislature's clear rejection of those efforts, Plaintiff now seeks to add Dr. Marcela del Carmen, as President of Massachusetts General Physicians Organization, Inc. ("Defendant" or "MGPO"), and Sally Mason Boemer, as MGPO's Treasurer, as defendants in their individual capacities, on the unfounded theory that, while MGPO is immune from her monthly pay claims, Plaintiff can nonetheless extract supermassive statutory penalties from those

individual officers of the organization. In addition to being contrary to the clear legislative intent of Section 113, this effort to elude the immunity provided by the legislation is ineffective and futile because the individual officers' asserted liability under the Wage Act is entirely derivative of the ostensible liability of MGPO as the employer and, if the organization has no liability by virtue of Section 113, there is no basis for any derivative liability against its corporate officers.

Likewise, Plaintiff's bid to add a reference to the parties' legally protected pre-suit settlement negotiations to her Complaint is improper, and even if it were permitted, would be futile because it cannot help Plaintiff avoid the impact of Section 113. While Plaintiff appears to contend that she has avoided an improper disclosure by referencing only the fact that the parties engaged in unproductive settlement conversations, the reasons for her proposed disclosure belie any such contention. Plaintiff seeks to undergird a constitutional challenge to Section 113 by arguing that she rejected a "substantial" settlement offer from MGPO in hopes of cashing in on a windfall based on the statutory damages provided by the Wage Act, and that she is deprived of a constitutionally protected right to that potential windfall by operation of Section 113. This approach necessarily places the protected substance of the parties' settlement discussion at issue in this litigation and is thus impermissible. Further, Plaintiff's disappointment at seeing her bid to extort massive penalties from MGPO deflated is not the sort of interest that the federal Constitution or the Massachusetts Declaration of Rights protects, and Plaintiff's improper disclosure of settlement communications does nothing to salvage her claims from the immunity provided by Section 113.

For these reasons, and as set forth below, the Court should deny Plaintiff's Motion for Leave to File a Second Amended Complaint.

## BACKGROUND

### I. FACTUAL AND PROCEDURAL BACKGROUND

On March 6, 2025, Plaintiff filed a Complaint alleging that MGPO violated the timely payment requirements of the Wage Act by paying salaried employees on a monthly basis on the 26th day of each month, rather than weekly, biweekly, or semimonthly.<sup>1</sup> The Wage Act expressly permits employers to pay salaried employees on a monthly basis, if they elect that cadence of pay, which Plaintiff contends she did not do. 1<sup>st</sup> Am. Compl., ¶¶ 11-14. She thus alleges that MGPO should have paid her for the work she performed during the first half of each month no later than six days after the close of each theoretical semi-monthly pay period and paid her wages for the first half of each month on approximately the 21st day of each month. 1<sup>st</sup> Am. Compl., ¶¶ 15-16. The gravamen of Plaintiff's claims is thus that her wages for the first half of each month were paid about five days late. In conjunction with these assertions, Plaintiff seeks to extract billions of dollars in statutory penalties from MGPO based on this asserted technical violation on behalf of a putative class of employees of MGPO who were paid monthly at any time since March 6, 2022.

MGPO filed its Answer to Plaintiff's Amended Complaint on May 5, 2025, asserting various defenses to Plaintiff's claims, including that the Wage Act does not apply to employees of hospitals unless they expressly request weekly payment—which Plaintiff never did (5th Add'l Defense), that it was subject to the charitable immunity cap on any damages Plaintiff may pursue (6th Add'l Defense), and that Plaintiff knowingly accepted a monthly basis of pay in a manner consistent with the requirements of the Wage Act (9th Add'l Defense).

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<sup>1</sup> Plaintiff's original Complaint alleged MGPO paid Plaintiff and the purported class on the last day of each month. Compl. ¶¶ 10, 20. On March 24, 2025, Plaintiff filed an Amended Complaint alleging that payments were made on the 26th day of each month. 1<sup>st</sup> Am. Compl. ¶¶ 10, 20.

On July 4, 2025, Governor Maura Healey signed Section 113 into law, subject to an emergency preamble providing for its immediate effect. The legislation provides that, as one of the “nonprofit organizations that comprise a health care delivery system,” MGPO “shall be immune from liability with regard to any claim or cause of action ... that alleges that the institution’s ... payment of wages on a monthly basis ... violated section 148 of chapter 149 of the General Laws.” The legislation was specifically intended to apply retroactively to claims pending as of the time that Section 113 was enacted and to any claims that might be filed within the few months following its July 4, 2025 effective date, as evidenced by its reference to lawsuits “commenced between July 1, 2024 and September 30, 2028, inclusive.”

Section 113 was intended to address unintended consequences of the Wage Act and to prevent nonprofit institutions from suffering devastating financial harm as a result of alleged technical violations of the statute. The Legislature’s enactment of Section 113 was in direct response to this lawsuit and others like it filed against several non-profit colleges and universities. On April 16, 2025, President Rob McCarron of the Association of Independent Colleges and Universities in Massachusetts (“McCarron”) testified at a hearing before the Joint Committee on Labor and Workforce. Joint Committee on Labor and Workforce Development, April 16, 2025 Hearing (available here: <https://malegislature.gov/Events/Hearings/Detail/5135/Video1>). McCarron specifically referenced this lawsuit and others like it during the hearing in connection with bill language which would become Section 113:

[The lawsuits] place[] hundreds of millions of dollars and even billions of dollars at issue. It is very important to note that all of the employees of the institutions that have been targeted by these class action lawsuits received their full pay and on a regularly scheduled basis. There are no allegations that any employee was paid less than what they were owed, and there are no allegations that any employee was paid later than the established pay structure. Again, the intent of the Mass[achusetts] Wage Act is to go after those unscrupulous employers and there is no allegation of any of that in these cases. And the financial harm to the

institutions is entirely disproportionate to the damages suffered by the affected employees, and the resulting harm to the institutions would dramatically affect their ability to serve students and employees.

*Id.* In response, Representative Paul McMurty stated: “we in the legislature, we try to do the best we can, but we don’t get it right all of the time. And occasionally, there’s an unintended consequence .... “[We] have an opportunity to go back and ... address these matters...” *Id.*

Until Section 113 was passed, none of the plaintiffs in any of the pending cases that the legislation was designed to terminate asserted claims against individual officers of the defendant institutions.<sup>2</sup> The Legislature thus had no reason to specifically immunize individual officers of the defendant organizations, in addition to the institutions themselves, in crafting Section 113.

Within days after the passage of Section 113, counsel for MGPO contacted Plaintiff’s counsel to request that she dismiss her claims in this matter based on the immunity provisions of the statute. In subsequent conferrals, Plaintiff declined to do so and stated that she would seek to amend her Complaint in an effort to avoid the effects of the legislation. In those same conferrals, based on Plaintiff’s refusal to stipulate to the dismissal of her claims, MGPO apprised Plaintiff that it would seek to amend its Answer to incorporate a defense based on Section 113 and move for dismissal of her claims on that basis.

Following the parties’ conferrals, on July 25, 2025, MGPO filed an Amended Answer, asserting an additional defense based on the immunity provided by Section 113. Dkt. Entry 8, p. 19. In a motion parallel to the briefing of Plaintiff’s proposal to further amend her Complaint,

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<sup>2</sup> See *Martin, et al. v. Amherst Coll.*, C.A. No. 2480-cv-00146 (Hampshire Sup. Ct. 2024); *Brown, et al. v. Pres. & Fellows of Harvard Coll.*, C.A. No. 2581-cv-00143 (Middlesex Sup. Ct. 2025); *Curtin-Wilding v. Tr. of Boston Univ.*; C.A. No. 1:25-CV-1-432-RGS (D. Mass. 2025); *MacIntyre v. Curry Coll.*, C.A. No. 1:25-CV-10585-NMG (D. Mass. 2025).

MGPO moves for judgment on the pleadings pursuant to Mass. R. Civ. P. 12(c), asking that the Court dismiss all claims asserted in this action based on the immunity provided by Section 113.

On July 31, 2025, Plaintiff served her Motion for leave to file a Second Amended Complaint, in which she seeks to avoid the impact of Section 113's immunity by asserting claims against MGPO's President and Treasurer in their individual capacities. Plaintiff makes no allegations whatsoever about any conduct by either of these officers that relates in any way to the monthly payment claims she seeks to pursue; she proposes to implead them in this matter solely by virtue of the titles they hold with MGPO.<sup>3</sup> See Proposed 2<sup>nd</sup> Am. Compl., ¶¶ 17-18. The proposed Second Amended Complaint also includes an allegation that "Plaintiff rejected a substantial settlement offer to resolve this litigation." *Id.*, ¶ 19.

### ARGUMENT

Under Mass. R. Civ. P. 15(a), courts may deny leave to amend a pleading where the proposed amendment would be futile—i.e., where it fails to state a claim upon which relief can be granted. *Castellucci v. U.S. Fidelity & Guaranty Co.*, 372 Mass. 288, 289 (1977) (reasons that may justify denial of a motion to amend include "futility of the amendment") (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Goulet v. Whiten Mach. Works, Inc.*, 399 Mass. 547, 549-50 (1987) (futility is a "good reason" for denying a motion to amend). Futility is assessed under the same standard as a motion to dismiss, and where a proposed amended complaint would not survive a motion to dismiss, denial of the amendment is proper. *Jessie v. Boynton*, 372 Mass. 293, 295-96 (1977) ("a judge properly may deny a motion to amend because the complaint as amended

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<sup>3</sup> While Plaintiff's Motion to Amend includes rhetoric suggesting that Dr. del Carmen and or Ms. Boemer "acted in their individual capacities when making decisions about MGPO's wage payment practices" (Motion to Amend, p. 8), her proposed Second Amended Complaint is conspicuously devoid of any allegation that either officer ever took any steps that related to the monthly pay practices she challenges in this litigation. She offers no allegations whatsoever about any conduct of either individual, beyond the titles and authority they hold as corporate officers.

would fail to state a claim on which relief could be granted. Consequently, we analyze ... the allegations of the complaint, as proposed to be amended, to determine whether the plaintiffs have alleged a claim which may entitle them to relief”); *Mancuso v. Kinchla*, 60 Mass. App. Ct. 558, 572 (2004) (affirming denial of motion to amend where “allegations ... failed to state a viable claim because they would have been futilely raised, in that they would not have survived a motion to dismiss...” (citations omitted).

Here, Plaintiff’s proposed amendments are plainly futile. Her bid to add MGPO’s President and Treasurer as individual defendants controverts the legislative intent underlying Section 113, which was to terminate her claims in this matter for statutory penalties under the Wage Act. This gambit also fails as a logical matter because the liability of any individual officers of an organization under the Wage Act is entirely derivative of the liability of the organizational employer, and here, MGPO as the organizational employer is categorically immune from the claims at issue. There is thus no basis from which to derive any liability against the individual officers.

Plaintiff’s bid to import confidential settlement conversations into the pleadings in this matter is also futile. First, the allegation she seeks to add cannot be relied upon as evidence in this matter and thus cannot help her support any legal argument regarding the application of Section 113 to her claims. More fundamentally, the new allegation that Plaintiff seeks to plead necessarily fails its intended purpose and is thus futile. Plaintiff seeks to add allegations about the parties’ confidential settlement communications to her Complaint in hopes of showing that she had a constitutionally protected interest of which she is deprived by the application of Section 113 to her claims. However, allegations about the parties’ settlement communications, the massive sums that Plaintiff sought to extort from MGPO in asserted statutory penalties, and the magnitude of the

settlement offers that Plaintiff rejected cannot help her achieve her aim of substantiating a constitutional challenge. The legal interests that the federal Constitution and Massachusetts Declaration of Rights protects are limited to secured, existing rights and do not include a party's ambitions to extract massive penalties from her employer based on a disputed statutory claim. Plaintiff's proposal to plead facts relating to the parties' settlement negotiations is thus futile.

**I. PLAINTIFF'S PROPOSED AMENDMENT TO NAME MGPO'S PRESIDENT AND TREASURER AS INDIVIDUAL DEFENDANTS IS FUTILE.**

Plaintiff's attempt to sidestep the immunity provided by Section 113 by naming MGPO's President and Treasurer as defendants in their individual capacities disregards both the legislative purpose of Section 113 and the structure of the Wage Act. In her proposed amendment, Plaintiff seeks to bring class action claims against MGPO's President and Treasurer solely by virtue of their titles and language in the Wage Act providing that "[t]he president and treasurer of a corporation . . . shall be deemed to be the employers of the employees of the corporation within the meaning of this section." Plaintiff's essential contention is that, in passing Section 113, the Legislature sought to immunize non-profit organizational defendants as employers from outsized claims for statutory penalties, but chose to leave the corporate officers of those institutions exposed to those same claims as "deemed employers." This interpretation is absurd on its face and contrary to the legislative history of Section 113.

Plaintiff's bid to implead MGPO's corporate officers is also contrary to the structure of the Wage Act and its provisions for individual liability. Under the Wage Act, individual corporate officers stand in the shoes of the organizational employer, and their liability as "deemed employers" is entirely derivative of the organization's liability as an employer. Where, as here, the organizational employer has no liability, there is no basis from which to derive liability with respect to any individual defendant. The immunity that Section 113 provides to MGPO thus

necessarily extends to its President and Treasurer, and Plaintiff's bid to sue those officers in their individual capacities is futile.

**A. Plaintiff's Interpretation of Section 113  
Flies in the Face of Clear Legislative Intent**

Plaintiff's interpretation of Section 113, whereby an organizational employer would be completely immunized from billions of dollars in statutory penalties, but individual officers would be left to be held responsible as deemed employers for those same statutory penalties, cannot be reconciled with the self-evident purpose of the legislation. In interpreting statutes, courts consider not only the statutory language but also the legislative history and purpose. *Segal v. Genitrix, LLC*, 478 Mass. 551, 567 (2017). The Supreme Judicial Court has directed that courts should:

look to the intent of the Legislature 'ascertained from all its words ... considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated. ... In addition, our respect for the Legislature's considered judgment dictates that we interpret the statute to be sensible, rejecting unreasonable interpretations....

*Indus. Fin. Corp. v. State Tax Comm'n*, 367 Mass. 360, 364 (1975).

In passing Section 113, the "mischief or imperfection to be remedied" was the efforts of litigants like Plaintiff to extract massive sums in statutory penalties from non-profit institutions based on asserted technical violations of the Wage Act. As confirmed by the testimony at the legislative hearings that preceded Section 113, the "main object to be accomplished" by the legislation was to terminate Plaintiff's predatory claims in this matter – not to shift liability to individual officers who played no role in the payroll practices at issue and lack the means to satisfy the extraordinary damages sought in this case. *See* Joint Committee on Labor and Workforce Development, April 16, 2025 Hearing ("... all of the employees of the institutions that have been targeted by these class action lawsuits received their full pay and on a regularly scheduled basis. There are no allegations that any employee was paid less than what they were owed, and there are

no allegations that any employee was paid later than the established pay structure. Again, the intent of the [Wage Act] is to go after those unscrupulous employers and there is no allegation of any of that in these cases.”).

Plaintiff argues that Section 113’s “deliberate limitation to organizational entities, with no mention of individual officers, demonstrates clear legislative intent to preserve personal accountability for those who control wage payment decisions.” Motion to Amend, p. 8. This contention enjoys no basis in the legislative history of Section 113. At the time the legislation was passed, none of the monthly pay claims that Section 113 was specifically designed to address included claims against any individual officer, nor had any such claims been threatened or proposed by the plaintiffs in any of those cases. The Legislature had no reason to predict that Plaintiff would attempt to skirt Section 113 by suing MGPO’s or any other institutional defendant’s individual officers, and the fact that it did not address the prospect of claims against individual officers in the legislation is not evidence that it intended to limit the scope of the immunity provided by Section 113.

Plaintiff further claims that the passage of Section 113 “creates new circumstances that make the addition of individual defendants Dr. Del Carmen and Ms. Boemer essential to ensure complete relief for Plaintiff and the putative class members.” Motion to Amend., p. 10. This argument provides the very reason that Plaintiff’s proposed amendment should be denied. Her express intent is to outmaneuver the Legislature in its efforts to terminate her predatory claims. The function of the courts is to ensure that the Legislature’s intentional policy decisions are given effect, not to aid litigants like Plaintiff in dodging those policy decisions. *Harmon v. Comm’r of Correction*, 487 Mass. 470, 478, 168 N.E.3d 320, 328 (2021) (“[A] statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary

and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.”) (citations omitted); *Adams v. City of Bos.*, 461 Mass. 602, 609 (2012) (where the “intent of the Legislature is unambiguously conveyed by the statutory language, we simply end our analysis and give effect to the legislative intent”); *Regan v. United States*, 421 F. Supp. 2d 319, 326 (D. Mass. 2006) (“a court’s analysis will end . . . when the legislative intent is clear.”).

The practical ramifications of Plaintiff’s effort to pursue MGPO’s President and Treasurer further confirm the misguided nature of her proposed amendments. The notion that the Legislature sought to transfer liability for astronomical statutory penalties – in this case amounting to billions of dollars – from MGPO to its officers is absurd because it would be self-defeating. The Legislature enacted Section 113 based on its predictable catastrophic financial impacts on large, institutional employers. Joint Committee on Labor and Workforce Development, April 16, 2025 Hearing (“the financial harm to the institutions is entirely disproportionate to the damages suffered by the affected employees, and the resulting harm to the institutions would dramatically affect their ability to serve students and employees”). Very few individuals – much less the officers of non-profit institutions – would be in a position to satisfy such damages awards. The notion that the Legislature, in enacting Section 113, intended to shift liability to those officers defies common sense, in that it would only leave litigants like Plaintiff to pursue supermassive judgments that they could never collect.

Plaintiff’s effort to sidestep the Legislature’s efforts to protect MGPO from the claims she has asserted in this matter by naming individual officers as defendants from whom to pursue the very same statutory penalties is an incoherent construction of the Legislature’s intent. Any faithful

reading of Section 113 necessarily extends the immunity that the legislation provides to any individual who could be sued as a proxy for the immunized organizational employer. Accordingly, MGPO's President and Treasurer as deemed employers logically must be immunized to the same extent as the organizational employer they serve.

**B. Liability of Individual Officers Under the Wage Act is Derivative, and There Is No Basis for Individual Liability where the Organizational Employer Has None**

In addition to being contrary to the legislative intent underlying Section 113, Plaintiff's bid to impose individual liability on MGPO's President and Treasurer is contrary to the legislative scheme underlying the Wage Act, itself. In moving to amend her operative Complaint in response to Section 113, Plaintiff effectively concedes that her Wage Act claims against MGPO now fail. Any liability imposed upon corporate officers under the Wage Act is derivative of the liability of the organizational employers that those officers manage. It is thus a matter of syllogism that the individual officers of MGPO cannot be liable for an asserted violation of the Wage Act where the organizational employer has no such liability.

Plaintiff's claim that there is a "critical distinction" between the Wage Act's reference to "employers" and Section 113's reference to "organizations" is unfounded. *See* Motion to Amend, p. 8. The language of the Wage Act precludes any such distinction because the statute provides that those officers "shall be deemed to be the employers" for purposes of any asserted violations of its substantive commands. M.G.L. c. 149, § 149, ¶ 6. The SJC has further held that individual corporate officers are merely a proxy for the organizational employer under the statute, in recognizing that the Wage Act "defines 'employer' as a 'person having employees in his [or her] service'" and provides that "[f]or corporations, such persons are the 'president and treasurer of [the] corporation' ... in addition to the corporation itself." *Segal*, 478 Mass. at 567 (quoting M.G.L. c. 149, § 148). As such, "a president and treasurer of a corporation are 'jointly and

severally liable with the corporation for the payment of unpaid wages.” *Ellicott v. Am. Cap. Energy, Inc.*, No. CV 14-12152-FDS, 2017 WL 1294437, at \*3 (D. Mass. Apr. 3, 2017), *aff’d*, 906 F.3d 164 (1st Cir. 2018). Such joint and several liability requires that all of the relevant parties have some liability. *See Tilcon Capaldi, Inc. v. Feldman*, 249 F.3d 54, 62 (1st Cir. 2001) (“... the phrase ‘joint and several’ refers to the liability of multiple wrongdoers ... It means that damages are a single sum specified in the judgment, that each wrongdoer is liable for the full amount...”). Here, MGPO has no liability, and there is thus no liability in which its President and Treasurer can be compelled to share.

The Supreme Judicial Court has repeatedly held that where a claim is barred by statute against the employer, a plaintiff cannot circumvent that immunity by suing an officer or supervisor of the employer for the same claim. *See Est. of Moulton v. Puopolo*, 467 Mass. 478, 489 (2014) (employer’s motion to dismiss claims against its directors should have been granted because directors were the plaintiff’s employer for purposes of workers’ compensation exclusivity); *Anzalone v. Massachusetts Bay Transp. Auth.*, 403 Mass. 119, 125 (1988) (affirming dismissal of plaintiff’s claims against supervisor when based on conduct that arose in the course of plaintiff’s employment, rendering all claims covered by exclusivity provisions of workers’ compensation statute). The basic premise of these cases is that if the putative defendant officer is acting within the scope of her employment, the employer’s immunity from suit necessarily extends to the officer.

The President and Treasurer of an organizational employer stand in the shoes of that employer for purposes of the Wage Act – and equally so for purposes of the immunity provided by Section 113. Plaintiff’s proposed claims against MGPO’s President and Treasurer by virtue of their titles necessarily fails, and her proposed amendment to her Complaint to add those individuals as defendants is thus futile.

## **II. PLAINTIFF’S ALLEGATIONS REGARDING PRE-LITIGATION SETTLEMENT NEGOTIATIONS ARE IMPROPER AND FUTILE**

Plaintiff’s bid to use pre-suit settlement negotiations to salvage her claims from the immunity provided by Section 113 is both improper and futile. Plaintiff proposes to add to her Complaint an allegation that she “rejected a substantial settlement offer” (Proposed 2<sup>nd</sup> Am. Compl., ¶ 19), and she proposes to argue that she did so in reliance on her ability to pursue statutory penalties in this matter “for the full scope of the alleged violations.” Motion to Amend, pp. 9-10. This proposed allegation seeks to put the substance of confidential settlement communications into evidence and is thus prohibited. The proposed allegation also fails as the premise for an argument that Section 113 deprived Plaintiff of a constitutionally protected interest because the governing constitutional considerations protect only vested rights, not unsecured aspirations of collecting on a potential windfall.

### **A. Plaintiff’s Proposed Allegations Regarding Prior Settlement Discussions Are Improper**

It is axiomatic that a party may not rely on settlement communications as evidence in support of an argument intended to bolster a bid to establish an adversary’s liability in a civil case. *See* Mass. G. Evid. § 408. In proposing to allege that she “rejected a substantial settlement offer” prior to the passage of Section 113, Plaintiff overtly transgresses this rule, and the Court should deny her motion to amend her Complaint to add this improper allegation.

Courts consistently exclude settlement communications from evidence to preserve the integrity of settlement discussions and encourage resolution without litigation. “As is well established, evidence of a compromise offer is inadmissible to prove or disprove the validity or amount of a disputed claim.” *Filbey v. Carr*, 98 Mass. App. Ct. 455, 457 (2020); *Enga v. Sparks*, 315 Mass. 120, 124 (1943) (“The evidence offered by the plaintiff which, in substance, amounted to an offer of compromise or a settlement of liability was properly excluded.”). It is also clear that

this evidentiary rule applies to pre-litigation discussions and “a dispute need not ‘crystalize to the point of threatened litigation’ for the ... exclusion rule to apply.” *Id. at 459* (citations omitted). The scope of the relevant evidentiary rule is broad, and its purposes are directly implicated by Plaintiff’s proposed allegations regarding the parties’ settlement negotiations.

In addition to the judicial interest in promoting settlement, the relevant evidentiary rule is also based on pragmatic considerations relating to the deleterious impact on pending litigation of permitting parties to put confidential communications into evidence. *See* Fed. R. Evid. 408, Committee Notes on 2006 Amendment at ¶ 8 (“The protections of Rule 408 cannot be waived unilaterally because the Rule, by definition, protects both parties from having the fact of negotiation disclosed to the jury. Moreover, proof of statements and offers made in settlement would often have to be made through the testimony of attorneys, leading to the risks and costs of disqualification.”).<sup>4</sup> Here, Plaintiff cannot make the argument she foreshadows without a broad waiver of the attorney-client privilege, including all discussions with her counsel regarding the viability of her Wage Act and other employment claims she was asserting, her exposure to the various defenses that MGPO raised to those various claims, and the settlement value of those claims. To the extent that Plaintiff attempts to limit the scope of her disclosure of the parties’ confidential settlement communications or her discussions with her counsel regarding her claims, any such attempt to hold the door half-open will fail. To support an argument that Section 113 deprives her of a constitutionally protected interest, she must show the significance and “nature of

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<sup>4</sup> Case law bearing on the applicable Federal Rule of Evidence applies equally to the Massachusetts state law prohibition on admitting settlement communications. *Filbey*, 98 Mass. App. Ct. at 457 (analogizing Massachusetts compromise offers to settlement communications made under Fed. R. Evid. 408); *Com. v. Wood*, 90 Mass. App. Ct. 271, 278 (2016) (with respect to “Federal rules at play in Federal decisions” which “are analogous to guidelines at issue here in the Massachusetts Guide to Evidence, we also find the Federal precedent a useful touchstone”) (citations omitted).

the rights affected retroactively and the reasonableness of any reliance expectations on those rights,” as compared to the public interest which motivated the legislature to act. *Dutra v. Trs. of Bos. Univ.*, 96 F.4th 15, 19 (1st Cir. 2024). And any argument about the significant nature of the right of which she claims to have been deprived necessarily implicates all facts relating to the strength of the claim she asserts she has lost and the value that she and her counsel believed it had. This opening of the floodgates will turn this proceeding into a litigation about those collateral issues and give rise to a significant likelihood that Plaintiff’s counsel will be disqualified from representing her in this action as a potential fact witness. These are among the concerns that Rule 408 is designed to avoid, and the Court should not permit Plaintiff to create a sideshow of the parties’ pre-suit negotiations in a bid to resurrect her efforts to extract massive statutory penalties from MGPO.

**B. Plaintiff’s Proposed Allegations Regarding Settlement Discussions Are Futile**

Even if Plaintiff could rely on the inadmissible settlement communications she proposes to add to her Complaint, that amendment would be futile because Plaintiff’s ostensible reliance on the possibility of collecting outsized statutory penalties in this matter is not the sort of interest that the constitution protects. Courts presume retroactive legislation is reasonable unless the plaintiff meets a heavy burden. *See In re Liquidation of Am. Mut. Liab. Ins. Co.*, 434 Mass. 272, 282 (2001) (“In any evaluation of reasonableness, the objectors face a heavy burden, for we give credit to every rational presumption in favor of the legislation.”); *see also Dutra*, 96 F.4<sup>th</sup> at 20, 24 (affirming retroactive legislative immunity in an analogous lawsuit against Boston University after balancing the parties’ interests and finding that the statute served the public interest).

Plaintiff has no prospect of making such a showing based on her alleged reliance on her ability to pursue her Wage Act claim when she rejected Defendant’s “substantial settlement offer” to settle her various employment related claims. While Plaintiff is coy about making an allegation

that she was relying both on her ability to establish liability under the Wage Act and to recover massive statutory penalties—that is clearly the implication and purpose of her proposed amendment. Plaintiff’s purported reliance on her ability to capitalize on what the Legislature characterized as the “unintended consequences” of the Wage Act was unreasonable, and a litigant’s efforts to exploit such statutory loopholes are not cognizable in the constitutional analysis. *Dupont v. Comm’rs of Essex Cnty.*, 46 Mass. App. Ct. 235, 239-40 (1999) (“Considering what might have motivated the Legislature to pass the retroactive statute, we are entitled to surmise that the Legislature was attempting to excuse procedural slips on the part of public employers which might threaten—as did the plaintiffs’ lawsuit—to cost the public entities amounts out of proportion both to the employers’ faults and to the just deserts of employee claimants.”).

Plaintiff’s purported reliance was also unreasonable because her claim under the Wage Act and the massive statutory penalties she seeks were always subject to substantial defenses. Specifically, MGPO’s potential defenses to Plaintiff’s Wage Act claim always included: (1) that the Wage Act does not apply to employees of a hospital; (2) that the Wage Act permits monthly pay for salaried employees who elect at their own option to be paid monthly, and the argument that Plaintiff’s acceptance of monthly pay—by accepting that cadence of pay for decades without ever raising any issue—constituted such an election; and (3) that Plaintiff is equitably estopped from seeking penalties for a pay arrangement she accepted without protest. Each of those defenses were included in MGPO’s Answer and operative against Plaintiff’s claims prior to the passage of Section 113. Additionally, even if she established liability, Plaintiff’s asserted reliance on her recovery of a massive windfall was not reasonable in the relevant constitutional sense because: (1) no court has ever imposed such damages for the type of alleged monthly pay violation that Plaintiff asserts in this matter; (2) due process considerations preclude Plaintiff’s bid for statutory damages in the

billions of dollars, where the class she aspires to represent suffered no harm of any similar magnitude, and (3) a statutory cap applied to damages against non-profit charitable institutions like MGPO. In those circumstances, Plaintiff's purported reliance on her ability to extract statutory penalties from MGPO based on an asserted technical violation of the Wage Act was unreasonable and not cognizable in any constitutional challenge she may assert to the retroactive application of Section 113. *See Dupont*, 46 Mass. App. Ct. at 238-39 (holding plaintiff's reliance on employment-related statute that was repealed after he filed suit was no grounds for constitutional challenge to retroactivity of statute, where plaintiff's claim was always subject to multiple defenses and uncertain); *Dutra*, 96 F.4th at 24 (plaintiffs had no vested right to rely on implied contracts which were subject to affirmative defenses). In short, Plaintiff's claims in this matter were always a roll of the dice, and the fact that she chose to keep rolling, rather than accept a "substantial settlement offer" is not grounds to undo the immunity that the Legislature provided in Section 113. Plaintiff's proposal to add reference in her Complaint to the parties' pre-suit settlement negotiations cannot help her avoid Section 113 on constitutional grounds.

**CONCLUSION**

Because Plaintiff's proposed amendments are improper and futile, MGPO respectfully requests that the Court deny Plaintiff's Motion for Leave to File a Second Amended Complaint.

DATED: August 22, 2025

Respectfully submitted,

MASSACHUSETTS GENERAL  
PHYSICIANS' ORGANIZATION, INC.,

By its attorneys:

*/s/ Barry J. Miller*

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2025, a true and correct copy of the foregoing document was served via email on Plaintiff's counsel.

*/s/ Barry J. Miller*

Barry J. Miller

**NOTIFY**

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
CIVIL ACTION  
No. 2584cv00644-BLS-1**

**MARJORIE OETTINGER**

**vs.**

**MASSACHUSETTS GENERAL PHYSICIANS' ORGANIZATION, INC.**

**DECISION AND ORDER ON DEFENDANT'S MOTION FOR JUDGMENT ON THE  
PLEADINGS AND PLAINTIFF'S MOTION TO AMEND COMPLAINT**

The plaintiff, Marjorie Oettinger, commenced this class action on March 6, 2025 against her employer, Massachusetts General Physicians' Organization, Inc. ("MGPO") alleging violation of the Wage Act, G.L. c. 149, §§ 148, 150. Specifically, Oettinger alleges that MGPO violated the Wage Act by paying Oettinger and other employees on a monthly basis, when the Wage Act requires payment of wages on a weekly or bi-weekly basis. The class action sought treble damages authorized by the Wage Act, for three years preceding the lawsuit, for Oettinger and many other MGPO employees who were paid on a monthly basis. On July 4, 2025, Massachusetts enacted legislation, effective when signed, that immunized non-profit higher education and non-profit health care organizations against lawsuits alleging Wage Act violations based on monthly payment of wages. Section 113 of Chapter 9 of the Acts and Resolves of 2025 ("Section 113"). MGPO has moved for judgment on the pleadings due to the enactment of Section 113. Oettinger opposes the motion, and has moved to amend her complaint to add MGPO's president and treasurer as individual defendants, and to allege additional facts concerning a settlement offer MGPO made prior to enactment of Section 113. I held a hearing on November 13, 2025. For the reasons discussed below, Oettinger's motion for leave to file a

Second Amended Complaint will be allowed. MGPO's motion for judgment on the pleadings also is allowed, and the Second Amended Complaint will be dismissed.

### BACKGROUND

Dr. Oettinger commenced this action on March 6, 2025. Her Second Amended Complaint alleges the following facts; accepted as true for purposes of MGPO's motion for judgment on the pleadings.

Dr. Oettinger is a molecular biologist employed by MGPO since 1991. In the three years preceding this lawsuit, MGPO paid Oettinger annual salary ranging from \$288,913 to \$306,547. During that time period, MGPO paid Oettinger on a monthly basis—specifically, on the 26th day of each month. At no time did Oettinger elect or agree to be paid on a monthly basis.

Because the Wage Act requires that employers pay wages on a weekly or bi-weekly basis, G.L. c. 149, § 148 (mandating payment of wages weekly, bi-weekly, or semi-monthly, within six days of end of pay period), Oettinger alleges she has been paid pursuant to an “illegal pay schedule.” MGPO has paid Oettinger \$900,470 over three years pursuant to this “illegal pay schedule.” Or, alternatively, if considered through the lens of a semi-monthly pay schedule, MGPO paid Oettinger six days late with respect to the first half of each month. Employing that approach, MGPO paid Oettinger \$450,253 in violation of the Wage Act, over the three years preceding this lawsuit.

Oettinger brought this suit for herself individually, and on behalf of all MGPO employees who were paid on a monthly basis. She seeks certification of a class of all MGPO employees who were paid on a monthly basis during the three-year period preceding her lawsuit (March 6, 2022-March 6, 2025). Oettinger alleges there are at least fifty, “if not significantly more” class members. Second Amended Complaint, ¶ 23.

Dr. Marcela Del Carmen is the president of MGPO and bears ultimate responsibility for MGPO corporate policies. Sally Mason Boemer is Treasurer of MGPO and has direct authority over MGPO's financial operations. Relying on the Wage Act, G.L. c. 149, § 148, sixth para., Oettinger seeks to hold Del Carmen and Boemer responsible for MPGO's Wage Act violations, together with MGPO.

On July 4, 2025, Massachusetts Governor Maura Healey signed legislation enacting a budget, which the Massachusetts House and Senate had passed on June 30, 2025. That budget legislation included Section 113, which provides:

Nonprofit institutions of higher education and nonprofit organizations that comprise a health delivery system shall be immune from liability with regard to any claim or cause of action seeking a legal or equitable remedy or other relief commenced between July 1, 2024 and September 30, 2028, inclusive, that alleges that the institution's or organization's payment of wages on a monthly basis or pursuant to any written policy, schedule or agreement presented or made available to an employee concerning payment for work performed over an academic term violated Section 148 of chapter 149 of the General Laws; provided, however, that the earned wages shall have been paid in full within 6 days of the termination of a pay period occurring: (i) on a monthly basis; or (ii) pursuant to any written policy, schedule or agreement presented to an employee concerning payment for work performed over a specific period or academic term.

The budget legislation signed on July 4, 2025 contained an emergency preamble, making it effective immediately.

#### **STANDARD OF REVIEW**

A complaint may be dismissed under Mass. R. Civ. Pro. 12(b)(6) when the factual allegations contained within it do not suggest a plausible entitlement to relief. *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 635-636 (2008); *Fraelick v. PerkettPR, Inc.*, 83 Mass. App. Ct. 698, 699-700 (2013). The standard of review for judgment on the pleadings under Mass. R. Civ. P. 12(c) is functionally identical. *Ridgeley Mgt. Corp. v. Planning Bd. of Gosnold*, 82 Mass. App. Ct. 793, 797 (2012). In ruling on the motions, the court accepts the factual allegations as

true and draws all reasonable inferences in the non-moving party's favor. *Fraelick*, 83 Mass. App. Ct. at 699-700.

### ANALYSIS

MGPO's motion for judgment on the pleadings relies on Section 113, where the Legislature provided "immunity" against Wage Act lawsuits like this one, for nonprofit education institutions and nonprofit health delivery systems, so long as those employers paid wages in full, albeit on a monthly basis. Because Oettinger's lawsuit fits squarely within the Legislative protection from suit provided by Section 113, Oettinger challenges Section 113 as violative of her rights under the Massachusetts Declaration of Rights and Constitutional Due Process. Each of these arguments is addressed below.

#### **A. Oettinger's Motion for Leave to Amend Complaint**

At the threshold, I will allow Oettinger's motion for leave to amend her complaint (Pleading No. 16). In her Second Amended Complaint, Oettinger adds: i) two individual defendants, the president and treasurer of MGPO, consistent with the Wage Act's authorization to seek Wage Act recovery from persons in those positions; and ii) new allegations concerning Oettinger declining a meaningful settlement offer, which allegations Oettinger suggests are relevant to her reliance position. This case remains in the pleadings stage and the new allegations do not meaningfully change the Oettinger's theory nor expand the scope of facts involved in the case. Those circumstances support applying a liberal approach to Oettinger's request for leave to amend. MGPO suggests that I should decide its motion for judgment on the pleadings with respect to Oettinger's First Amended Complaint, and then deny Oettinger's motion for leave to amend on futility grounds. Although the substance of the parties arguments remains the same in either procedural posture, the better course is to allow Oettinger leave to

amend and then apply MGPO's substantive arguments against Oettinger's preferred iteration of her claims—namely, her Second Amended Complaint.

Oettinger's motion for leave to amend her complaint (Pleading No. 16) is **allowed** and the Second Amended Complaint attached to Oettinger's Memorandum in Support of Leave to File a Second Amended Complaint (Pleading No. 17) may be docketed. I will apply the parties' substantive arguments to Second Amended Complaint.

#### **B. The Impact of Section 113 on Oettinger's Lawsuit**

Section 113 by its terms provides immunity to certain entities from liability for lawsuits under the Wage Act, where those lawsuits are based on an employer paying wages on a monthly basis. Inspection of Section 113 discloses that the Legislature provided immunity from suit if the following statutory criteria are satisfied:

- The defendant is a nonprofit institution of higher education or a nonprofit organization that comprises a health care delivery system;
- The defendant is subject to a claim or cause of action seeking a legal or equitable remedy or other relief commenced between July 1, 2024 and September 30, 2028;
- The claim against defendant alleges that the institution's or organization's payment of wages (i) on a monthly basis, or (ii) pursuant to any written policy, schedule or agreement presented or made available to an employee concerning payment for work performed over an academic term, violated the Wage Act; and
- The defendant paid in full all earned wages within six days of the termination of a pay period occurring: (i) on a monthly basis; or (ii) pursuant to any written policy, schedule or agreement presented or made available to an employee concerning payment for work performed over an academic term.

See Section 113.

Each of these four statutory criteria are satisfied with respect to Oettinger's lawsuit against MGPO, and Oettinger does not argue otherwise. MGPO is a nonprofit organization that comprises a health care delivery system. Oettinger sued MGPO on March 6, 2025, within the

temporal window set forth in Section 113. Oettinger’s lawsuit alleges violation of the Wage Act based on MGPO’s payment of wages on a monthly basis. And MGPO in fact paid Oettinger on a monthly basis, always within six days of the end of a *monthly* period (MGPO paid wages within the monthly period). Because MGPO satisfies the statutory criteria, Section 113 provides “immunity” for MGPO against Oettinger’s Wage Act lawsuit.

Although legislation typically operates prospectively, the plain text of Section 113 demonstrates that the statute applies retroactively, impacting cases that were pending at the time of enactment. See Section 113 (applying to claims “commenced” after July 1, 2024); see also *Boston Edison Co. v. Mass Water Res. Auth.*, 459 Mass. 724, 743 (2011) (acknowledging general rule that statutes are prospective unless contrary legislative intent is clearly shown, but finding statute retroactive where it stated that statute “shall apply to those pending cases in which no final judgment has entered as of the effective date of this act”).

**C. Oettinger’s Challenge to Section 113 based on the Massachusetts Declaration of Rights and Constitutional Due Process**

Faced with retroactive legislation that immunized MGPO and other healthcare and educational nonprofit organizations from Wage Act lawsuits like this one, Oettinger asserts that Section 113 violates Constitutional Due Process and the Massachusetts Declaration of Rights. Specifically, Oettinger contends that Section 113 violates Article X of the Declaration of Rights because it is an impermissible selective exemption from generally applicable law, namely, the Wage Act. Oettinger also asserts that Section 113’s retroactive application violates her Due Process rights, in part because she relied on the pre-Section 113 state of the law when she declined an offer to settle her case before enactment of Section 113. Oettinger likewise asserts that Section 113 is the type of barrier to court access forbidden by Article XI of the Declaration of Rights, which provides that every citizen “ought to find a certain remedy, by having recourse

to the laws, for all injuries or wrongs which he may receive in his person, property or character.”  
Mass. Const. pt. 1, art. XI.

MGPO, in response, contends that Section 113 is constitutional because it satisfies the Due Process requirements applied to retroactive statutes, and that Articles X and XI provide Oettinger no additional rights that would invalidate the Legislature’s decision to immunize certain nonprofit entities from certain Wage Act lawsuits. I agree with MGPO and find persuasive the United States District Court decision in *Curtin-Wilding v. Trustees of Boston Univ.*, 2025 WL 2469312 (D. Mass. Aug. 27, 2025). It is rare for the Legislature to offer immunity to certain entities against particular types of statutory lawsuits, including lawsuits already pending, but that is a permissible policy choice for the Legislature to make, within certain constitutional parameters. Section 113 satisfies those parameters.

Retroactive legislation like Section 113 “must satisfy the due process test: ‘a legitimate legislative purpose furthered by rational means.’” *Dutra v. Trustees of Boston Univ.*, 96 F. 4th 15, 20 (1<sup>st</sup> Cir.2024), quoting *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992). To assess the constitutionality of a retroactive statute, courts consider three factors: (1) “the nature of the public interest” served by the retroactive law; (2) “the nature of the rights affected retroactively;” and (3) “the extent or scope of the statutory effect or impact, including whether the statute is appropriate and narrowly tailored.” *Id.* A presumption of constitutionality attaches to legislative enactments, such that a challenging party “must demonstrate beyond a reasonable doubt that there are no conceivable grounds which could support [the law’s] validity.” After balancing opposing considerations, only those statutes “deemed to be unreasonable, are held to be unconstitutional.” *Id.*, quoting *Am. Mfgs. Mut. Ins. Co. v. Comm’r of Ins.*, 374 Mass. 181, 189-190 (1978); see *Bird Anderson v. BNY Mellon, N.A.*, 463 Mass. 299, 308 (2012)

(“Ultimately, the principal inquiry as to reasonableness is essentially a review of whether it is equitable to apply the retroactive statute against the plaintiff.” (citations omitted)).

Here, Section 113 reflects the Legislature’s decision that, notwithstanding the Wage Act’s strict rules governing the timing of wage payments (at least bi-weekly), the Legislature wanted to protect nonprofit healthcare and educational institutions from the Wage Act’s remedial scheme (treble damages, including for untimely payments). This policy decision served the public interest—as determined by the Legislature—by protecting nonprofit healthcare and educational entities from potentially large judgments under the Wage Act. Oettinger asserts that even if Section 113 advanced that public interest, it simultaneously *undermined* the important public interest embodied in the Wage Act—oft acknowledged by the SJC—in enforcing the timely payment of wages. Both propositions are true. But it is for the Legislature to balance those competing public interests and make policy decisions, which sometimes involves elevating one public interest over another.

That is what happened here: so long as Wage Act lawsuits concerned only the *timing* of wages—and not whether wages were paid at all—the Legislature chose to immunize certain nonprofits against the remedies of the Wage Act. Although the Legislature’s decision ends lawsuits like Oettinger’s, its approach was reasonably restrained. That is, the Legislature did not change Wage Act timing-of-payment protections for all employers, but only for non-profit health care delivery systems and educational institutions. For those employers, the Legislature did not change Wage Act timing-of-payment protections permanently, but temporarily, effectively providing those employers three months to ensure that their timing-of-payment practices comply with the Wage Act. And critically, the Legislature’s immunity for prior Wage Act violations extends only to those employers who in fact *paid in full* their employees’ wages, but did so on a

monthly, instead of bi-weekly, basis.<sup>1</sup> This latter aspect of Section 113 is essential to its satisfaction of the three *Dutra* factors. The Legislature did not insulate certain nonprofit employers from their obligation to pay employees, nor destroy employees' right to be paid earned wages. It instead immunized certain employers against significant Wage Act remedies for timing-of-payment claims, deciding it was more important to protect those nonprofit employers against large judgments than to protect workers, at least where worker claims were limited to timing-of-payment violations. Oettinger disagrees with the Legislature's policy decision. But that policy disagreement does not support her constitutional claims.<sup>2</sup>

Articles X and XI to the Massachusetts Declaration of Rights do not alter the conclusion that Section 113 is a constitutional exercise of legislative authority. Article X provides individuals the right to be protected "in the enjoyment of [their] life, liberty, property, according to standing laws." Mass. Const. pt. 1, art. X. Article X has been interpreted to prohibit "the enactment of special legislation that singles out any person for special privileges or advantages at

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<sup>1</sup> Noting this distinction is not to classify the employers' timing-of-wages practices as "technical" violations of the wage Act; I consider them *statutory* violations of the Wage Act. But the Legislature's balancing of public interests would be far different if it immunized employers against claims for non-payment of wages, rather than claims concerning timing-of-wages.

<sup>2</sup> This conclusion is not altered by Oettinger's argument that she relied on the pre-Section 113 state of the law by declining to accept a settlement offer prior to the enactment of Section 113. First, I am not persuaded that litigation activity, including declining a settlement offer, is the type of reliance that can impact the due process analysis. Instead, a person's reliance on the prior state of the law typically involves reliance on the substantive law at issue—here the Wage Act's provisions requiring bi-weekly (and not monthly) payment of wages. Oettinger has made no allegation that she did anything differently during her long employment with MGPO due to the Wage Act's timing-of-payment requirements. The only reliance argument advanced concerns her litigation activity. If litigation activity supports reliance sufficient to support a due process violation, then no statute that retroactively impacts pending lawsuits would pass constitutional muster. But the precedent holds otherwise. See, e.g., *Dutra*, 96 F. 4th at 17 (upholding retroactive legislation that ended pending lawsuits alleging breach of contract due to college changing to online instruction during COVID emergency).

Second, even presuming that Oettinger's reliance argument can properly impact the second *Dutra* consideration—the nature of the rights affected retroactively—that impact would not outweigh my overall consideration of all three *Dutra* factors. Even if I were to accept that Oettinger relied on the existing state of the law in rejecting a settlement demand from MGPO, my balancing of all *Dutra* factors would still demonstrate the constitutionality of section 113. The Legislature plainly chose to protect certain nonprofits from Wage Act judgments based on timing-of-payment claims, even if it undermined statutory worker protections concerning timing-of-pay. That was a reasonable policy decision, enacted in a meaningfully tailored way.

the expense of the rights of another.” *Keinzler v. Dalkin Shield Claimants Trust*, 426 Mass. 87, 89 (1997). Section 113 identifies two categories of employers—nonprofit health care delivery systems and nonprofit educational institutions—that are provided protections not extended to all employers. But those categories are easily distinguished from impermissible special legislation that benefited individuals and, importantly, the Legislature’s decision to immunize educational and health care nonprofits was supported by a public interest. See *Keinzler*, 426 Mass. at 90-91 (upholding extension of statute of limitations even though it helped a limited number of persons, because it was supported by a legitimate public interest). Section 113 does not qualify as impermissible special legislation.

Article XI provides that every person in the Commonwealth “ought to have a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person property or character. . . . conformably with laws.” Mass. Const., pt. 1, art. XI. Article XI’s promise of a remedy refers specifically to “the laws.” The timing-of-payment remedy that Oettinger seeks to enforce is provided by the Wage Act. Nothing in Article XI restricts the Legislature’s ability to amend its laws, which it did with Section 113. Especially because Oettinger’s lawsuit seeks to enforce statutory remedies, Article XI does not restrict the Legislature’s ability to amend laws, including through Section 113’s provision of immunity. See *Curtin-Wilding*, 2025 WL 2469312 at \*\*12-13.

#### **D. Individual Liability in Light of MGPO Immunity**

Oettinger has amended her complaint to add the president and treasurer of MGPO as defendants. See G.L. c. 149, § 148 (“The president and treasurer of a corporation and any officers or agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation within the meaning of [the Wage Act].”). Having

allowed Oettinger's amendment and concluded above that MGPO is immune from this Wage Act lawsuit, the question presented is whether these individual defendants may be liable under the Wage Act where the employer—MGPO—is immune from liability. Oettinger asserts that Section 113 grants immunity only to “nonprofit *institutions*” and “nonprofit *organizations*,” makes no mention of individuals that may be liable, and therefore, the important Wage Act remedies remain enforceable against the individual defendants. MGPO responds that officer liability under the Wage Act is derivative of the employer's liability, such that the immunity granted to MGPO necessarily extends to its officers. I agree with MGPO.

First, the Wage Act and the cases interpreting it reflect that officer liability derives from the employer's failure to conform to the Wage Act. The clause on which Oettinger relies provides that a president and treasurer “shall be deemed to be employers” for purposes of the Wage Act; those officers thus can be held responsible for the Wage Act violations of an employer. See G.L. c. 149, § 148. Courts have described those officers as “jointly and severally liable *with the corporation* for the payment of unpaid wages.” *Ellicott v. Am. Cap. Energy, Inc.*, 2017 WL 1294437, at \*3 (D. Mass. 2017)(emphasis supplied), *aff'd*, 906 F.3d 164 (1st Cir. 2018); see *Perrin v. Collaborative Engineers, Inc.*, 84 Mass. App. Ct. 1121, at \*1 n.2 (2013) (Rule 1:28 decision) (Wage Act identifies “class of individuals subject to joint and several liability with the corporation” including president and treasurer). Where the Legislature has extinguished the employer's liability via Section 113, no basis remains for liability of the officers who are “deemed employers” under the Wage Act.

Second, I agree with Judge Stearns' reasoning in *Curtin-Wilding* that Section 113 cannot reasonably be interpreted to immunize employers like MGPO but maintain liability for MGPO's officers. *Curtin-Wilding*, *supra*, at \*\*16-17. That interpretation would effectively shift Wage

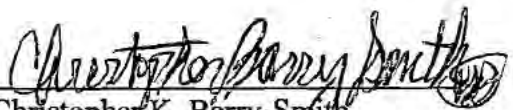
Act liability from the employer to the employer's individual officers, a result that contradicts providing "immunity" to "[n]onprofit institutions of higher education" and "nonprofit organizations that comprise a health delivery system." Section 113 (providing that those entities "shall be immune" from liability). Although Section 113 does not explicitly address officer liability, the statute must be interpreted with "reason and common sense" to determine legislative intent. *Wild v. Constantini*, 415 Mass. 663, 668 (1993), quoting *VanDresser v. Firlings*, 305 Mass. 51, 53-54 (1940). And legislative intent is to be ascertained "'not alone from the literal meaning of its words, but from a view of the whole system of which it is but a part . . .'" *Killam v. March*, 316 Mass. 646, 650 (1944), quoting *Boston v. Quincy Mkt. Cold Storage & Warehouse Co.*, 312 Mass. 638, 644 (1942). Nothing in Section 113 suggests the Legislature intended to shift liability from the organizational employer to its officers. That result would wholly undermine the legislative intent—to immunize certain nonprofit employers—and defy common sense. *Cook v. Patient Edu, LLC*, 465 Mass. 548, 554 (2013) (declining to interpret Wage Act in a manner that would undermine intent of the statute).

In light of the Wage Act's provisions that authorize officer liability together with the clarity of Legislature's intention to immunize certain nonprofits from timing-of-payment lawsuits, the immunity provided to nonprofit institutions and organizations under Section 113 extends also to the officers of those employers. MGPO is entitled to judgment on the pleadings as to Oettinger's claims against MGPO's president and treasurer set forth in the Second Amended Complaint.

**CONCLUSION**

For the reasons set forth above, Oettinger's motion for leave to amend her complaint is **allowed** and the Second Amended Complaint may shall be docketed. MGPO's motion for judgment on the pleadings is **allowed** as to the Second Amended Complaint, and the Second Amended Complaint shall be **dismissed**.

**So ordered.**

  
Christopher K. Barry-Smith  
Justice of the Superior Court

DATE: January 12, 2026

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

MARJORIE OETTINGER, on behalf of herself and all others similarly situated,

Plaintiff,

v.

MASSACHUSETTS GENERAL PHYSICIANS' ORGANIZATION, INC.; DR. MARCELA G. DEL CARMEN; SALLY MASON BOEMER

Defendants.

Docket No. 2584CV00644-BLSI

SUFFOLK SUPERIOR COURT CIVIL CLERK'S OFFICE FILED JAN 13 2026 JOHN E. POWERS, III CLERK MAGISTRATE

SECOND AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR TRIAL BY JURY

I. INTRODUCTION

This class action is brought by Marjorie Oettinger ("Oettinger" or "Plaintiff") on behalf of herself and all other similarly situated employees of Defendant Massachusetts General Physicians' Organization ("MGPO") for Defendants' failure to pay Plaintiff within the deadlines required by the Wage Act for the three years preceding the commencement of this action. Dr. Marcela G. Del Carmen, M.D. is the current President of MGPO and Sally Mason Boemer is the current Treasurer of MGPO (collectively, with MGPO, "Defendants"). As corporate officers with fiduciary duties and decision-making authority over MGPO's payroll practices, these individuals are individually liable for the Wage Act violations affecting Plaintiff and the putative class members. Defendants paid Plaintiff on a monthly pay schedule, typically paying her on the 26th day of each month. However, the Massachusetts Wage Act, M.G.L. c. 149, § 148 requires

that employer pay exempt employees no less frequently than semi-monthly, and within six days of the termination of the pay period in which such wages were earned. Accordingly, Defendants have paid Plaintiff all wages earned in the first half of each month of her employment approximately ten days late, thereby violating the Wage Act. Additionally, Plaintiff has rejected a substantial settlement offer in reliance on the ability to litigate her claims against the Defendants on their merits.

## **II. PARTIES**

1. Plaintiff Dr. Marjorie Oettinger is an adult resident of Middlesex County, Massachusetts.
2. Defendant Massachusetts General Physicians Organization is a Massachusetts Nonprofit Corporation with a principal place of business at 55 Fruit Street, Boston, MA 02114.
3. Upon information and belief, Defendant Dr. Marcela G. Del Carmen, M.D. is an adult resident of the Commonwealth of Massachusetts.
4. Upon information and belief, Defendant Sally Mason Boemer is an adult resident of Middlesex County, Massachusetts.

## **III. JURISDICTION, VENUE, AND STATUTORY PREREQUISITES**

5. This action arises under M.G.L. c. 149, §§ 148 and 150.
6. This Court has original jurisdiction over this action, as it is a civil action in which more than \$50,000 is in controversy.
7. Prior to filing suit, Plaintiff filed a complaint with the Massachusetts Attorney General's Office.

8. Venue in the Business Litigation Session is proper, as the matter concerns complex wage-and-hour issues that affect a large number of MGPO's current and former employees.

#### IV. STATEMENT OF FACTS

9. Plaintiff began her employment with the MGPO in 1991. From 2022 to 2024, Plaintiff's yearly salary has ranged from approximately \$288,913 to \$306,547.

10. In the three years preceding the commencement of this action, MGPO has been the sole entity responsible for paying Plaintiff's salary.

11. In the three years preceding the commencement of this action, MGPO has paid Plaintiff only on the 26th day of each month. *See* Plaintiff's Paychecks, attached hereto as Exhibit A.

12. At no point in her employment did Plaintiff elect to be paid monthly.

13. In the three years preceding this action, MGPO paid Plaintiff approximately \$900,470 in monthly wages.

14. For every month in the three years preceding the commencement of this action, Plaintiff has been paid according to an illegal pay schedule.

15. Thus, Defendants have paid Plaintiff \$900,470 according to an illegal pay schedule in the three years preceding this action.

16. In the alternative, for every month in the three years preceding the commencement of this action, Defendants have paid Plaintiff more than six days after the termination of the semi-monthly pay schedule for the first half of the month. Accordingly, approximately \$450,235 of Plaintiff's wages have been paid illegally late in violation of Massachusetts Wage Act, M.G.L. c. 149, § 148.

17. Dr. Del Carmen, as the President of MGPO, holds the highest executive position and bears ultimate responsibility for corporate policies.

18. Ms. Boemer, as Treasurer of MGPO, has direct authority over MGPO's financial operations.

19. Plaintiff rejected a substantial settlement offer to resolve this litigation.

## V. CLASS ALLEGATIONS

20. Plaintiff brings this action individually, and on behalf of all other members of the Class.

21. The Class is defined as follows:

All Massachusetts employees employed by MGPO, who were paid monthly during the three years immediately preceding the date of the filing of this action and continuing through the date of final judgment in this matter.

22. The members of the Rule 23 class are readily ascertainable because the number and identity of the Rule 23 class members are determinable from MGPO's records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from MGPO. Notice can be provided by means permissible under Rule 23. This action is properly maintainable as a class action under Mass. R. Civ. P. 23(a)-(b).

23. The Rule 23 class members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. Upon information and belief, there are at least 50, if not significantly more, Rule 23 class members for the pertinent period of time.

24. Plaintiff's claims are typical of those claims which could be alleged by any Rule 23 class member, and the relief sought is typical of the relief which would be sought by each Rule 23 class member in separate actions. All the Rule 23 class members were subject to the

same corporate practices of MGPO, as alleged herein: failure to pay employees on a weekly, bi-weekly, or semi-monthly pay schedule.

25. Plaintiff and other Rule 23 class members sustained similar losses, injuries, and damages resulting from Defendants' failure to pay them on, at minimum, a semi-monthly pay schedule in compliance with the Massachusetts Wage Act and the Rule 23 class members have all been injured in that they have been paid late due to Defendants' policies, practices and patterns of conduct. MGPO's company-wide policies and practices affected all Rule 23 class members similarly, and Defendants benefitted from the same type of unfair and/or wrongful acts as to each of the Rule 23 class members. Although the amount of the individual class members' damages may vary depending on their periods of employment and salaries, those damages are readily ascertainable from MGPO's financial records. As a result, common issues of liability predominate over individualized issues of damages.

26. Plaintiff is able to fairly and adequately protect the interest of the Rule 23 class members and has no interests antagonistic to the Rule 23 class members. Plaintiff is represented by attorneys who are experienced and competent in both employment litigation and class action litigation.

27. A class action is superior to other available methods for the fair and efficient adjudication of these claims, particularly in the context of wage-and-hour litigation where individual class members may lack the financial resources to vigorously prosecute a lawsuit against corporate defendants and are often hesitant to assert their rights out of fear of direct or indirect retaliation. Among other things, individual adjudications would result in highly inefficient duplication of discovery, briefing of legal issues, and court proceedings. If

appropriate, the Court is empowered to fashion methods to efficiently manage this action as a class action.

28. Common questions of law and fact exist as to the Rule 23 class members that predominate over any question only affecting Plaintiff and the Rule 23 class members individually. These questions include whether Defendants paid employees according to an illegal pay schedule and whether Defendants paid employees within the timeframe allowed by M.G.L. c. 149, § 148.

29. Plaintiff seeks certification of a class of similarly situated MGPO employees who worked for MGPO at any time within three years prior to the commencement of this action up through the time of judgment.

## **VI. COUNTS OF THE COMPLAINT**

### **Count I**

#### **Violation of M.G.L. c. 149, § 148 for Late Payment of Wages *Plaintiff v. MGPO***

30. Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

31. The Massachusetts Wage Act, M.G.L. c. 149, § 148 generally requires every person having employees in his service to pay, within a specified time period, to such employee the wages earned by him.

32. MGPO paid Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly.

33. MGPO's failure to pay Plaintiff all wages due to her within the timeframe allowed by the Wage Act denied Plaintiff prompt and timely payment of her wages and the use of those wages in violation of M.G.L. c. 149, § 148.

34. This claim is brought pursuant to M.G.L. c. 149, § 150.
35. As a result of MGPO's actions, Plaintiff has suffered damages.
36. MGPO is liable to Plaintiff and the Class for three times the amount of the late paid wages, plus interest, costs, and attorneys' fees.

**Count II**  
**Declaratory Judgment – Chapter 231A**  
***Plaintiff v. MGPO***

37. Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.
38. An actual controversy exists between the parties with respect to the matters stated above, and more particularly including, but not limited to:
  - a. Whether MGPO's payment scheme of paying Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly is illegal pursuant to The Massachusetts Wage Act, M.G.L. c. 149, § 148.

**Count III**  
**Violation of M.G.L. c. 149, § 148 for Late Payment of Wages**  
***Plaintiff v. Dr. Marcela G. Del Carmen***

39. Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.
40. Dr. Del Carmen, as the President of MGPO, managed MGPO for purposes of the Massachusetts Wage Act, M.G.L. c. 149, § 148.
41. Dr. Del Carmen, as the President of MGPO, holds the highest executive position and bears ultimate responsibility for corporate policies.

42. The Massachusetts Wage Act, M.G.L. c. 149, § 148 generally requires every person having employees in his service to pay, within a specified time period, to such employee the wages earned by him.

43. Dr. Del Carmen paid Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly.

44. Dr. Del Carmen's failure to pay Plaintiff all wages due to her within the timeframe allowed by the Wage Act denied Plaintiff prompt and timely payment of her wages and the use of those wages in violation of M.G.L. c. 149, § 148.

45. This claim is brought pursuant to M.G.L. c. 149, § 150.

46. As a result of Dr. Del Carmen's actions, Plaintiff has suffered damages.

47. Dr. Del Carmen is liable to Plaintiff and the Class for three times the amount of the late paid wages, plus interest, costs, and attorneys' fees.

#### **Count IV**

##### **Violation of M.G.L. c. 149, § 148 for Late Payment of Wages *Plaintiff v. Sally Mason Boemer***

48. Plaintiff hereby restates and incorporates each paragraph of this Complaint as if fully stated herein.

49. Ms. Boemer, as the Treasurer of MGPO, managed MGPO for purposes of the Massachusetts Wage Act, M.G.L. c. 149, § 148.

50. Ms. Boemer, as Treasurer of MGPO, has direct authority over MGPO's financial operations.

51. The Massachusetts Wage Act, M.G.L. c. 149, § 148 generally requires every person having employees in his service to pay, within a specified time period, to such employee the wages earned by him.

52. Ms. Boemer paid Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly.

53. Ms. Boemer's failure to pay Plaintiff all wages due to her within the timeframe allowed by the Wage Act denied Plaintiff prompt and timely payment of her wages and the use of those wages in violation of M.G.L. c. 149, § 148.

54. This claim is brought pursuant to M.G.L. c. 149, § 150.

55. As a result of Ms. Boemer's actions, Plaintiff has suffered damages.

56. Ms. Boemer is liable to Plaintiff and the Class for three times the amount of the late paid wages, plus interest, costs, and attorneys' fees.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court enter the following relief:

1. Certify this Action as a class action pursuant to M.G.L. c. 149, § 148;
2. In the alternative, certify this case as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure;
3. Appoint Plaintiff Oettinger as Class Representative;
4. Appoint the undersigned as Class Counsel;
5. An award of damages for all wages and other losses to which Plaintiff and similarly situated employees are entitled;
6. Statutory trebling of all wage-related damages pursuant to M.G.L. c. 149, §§ 148 and 150;
7. Award Plaintiff and the Class all pre-judgment and post-judgment interest on these damages pursuant to M.G.L. c. 149, §§ 148 and 150;

8. Award attorneys' fees and costs incurred by Plaintiff in prosecuting this action pursuant to M.G.L. c. 149, §§ 148 and 150;

9. On Count II – judgment declaring whether MGPO's practice of paying Plaintiff monthly even though Plaintiff and Class Members did not elect to be paid monthly is illegal pursuant to The Massachusetts Wage Act, M.G.L. c. 149, § 148.

10. Such further relief as this Court deems fair and just.

### VIII. JURY DEMAND

Plaintiff demands a TRIAL BY JURY on all claims so triable.

Respectfully Submitted,  
MARJORIE OETTINGER, individually,  
and on behalf of all others similarly situated,  
By Her Attorneys,

Dated: Thursday, July 31, 2025

/s/  
Eric R. LeBlanc, BBO No. 666786  
eleblanc@bennettandbelfort.com  
Nafisa Bohra, BBO No. 708968  
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SECTION 113. Nonprofit institutions of higher education and nonprofit organizations that comprise a health care delivery system shall be immune from liability with regard to any claim or cause of action seeking a legal or equitable remedy or other relief commenced between July 1, 2024 and September 30, 2028, inclusive, that alleges that the institution's or organization's payment of wages on a monthly basis or pursuant to any written policy, schedule, or agreement presented or made available to an employee concerning payment for work performed over an academic term violated section 148 of chapter 149 of the General Laws; provided, however, that earned wages shall have been paid in full within 6 days of the termination of a pay period occurring: (i) on a monthly basis; or (ii) pursuant to any written policy, schedule or agreement presented to an employee concerning payment for work performed over a specific period or an academic term.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 25-10432-RGS

LYDIA CURTIN-WILDING,  
individually and on behalf of all others similarly situated

v.

TRUSTEES OF BOSTON UNIVERSITY

MEMORANDUM AND ORDER ON MOTION FOR JUDGMENT ON THE  
PLEADINGS, MOTION TO AMEND THE COMPLAINT, AND MOTION TO  
CERTIFY QUESTIONS OF LAW

August 27, 2025

STEARNS, D.J.

**Before the court is defendant Trustees of Boston University's** (BU) motion for judgment on the pleadings, Fed. R. Civ. P. 12(c), as well as plaintiff Lydia Curtin-**Wilding's motions** to amend the Complaint, Fed. R. Civ. P. 15(a)(2), and to certify certain questions of law to the Massachusetts Supreme Judicial Court (SJC), Mass. S.J.C. Rule 1:03. For the following reasons, the motion for judgment on the pleadings is allowed. The motions to amend the Complaint and certify questions of law to the SJC are denied.

BACKGROUND

The court assumes familiarity with the facts of the case. Since August of 2015, BU, a private, nonprofit research institution of higher education

with campuses in Boston, employed Curtin-Wilding as a salaried Lecturer. Compl. (Dkt. # 1) ¶ 13. BU paid Curtin-Wilding on a monthly basis on or about the last business day of each month. *Id.* ¶¶ 15, 18. She claims that **BU's** policy resulted in the wages that she and the putative class members earned in the first half of the month from February 18, 2022, until August 1, 2023, being paid approximately nine days late, in violation of the Massachusetts Wage Act, Mass. Gen. Laws ch. 149, § 148 (Wage Act). *Id.* ¶¶ 18, 23. Curtin-Wilding filed this putative class action on February 21, 2025. *See* Dkt. # 1. **On May 23, 2025, this court denied BU's motion to dismiss** the Complaint. *See* Dkt. # 34. On June 6, 2025, BU filed its Answer. *See* Dkt. # 38.

On July 4, 2025, Massachusetts Governor Maura Healey signed a budget bill into law, which included Section 113 of Chapter 9 of the Acts and Resolves of 2025 (Section 113). Section 113 provides immunity to nonprofit institutions of higher education and nonprofit organizations that comprise a health care delivery system from Wage Act lawsuits targeting the **employers'** monthly payment of wages to employees. *See* 2025 Mass. Acts. ch. 9, § 113.<sup>1</sup>

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<sup>1</sup> On April 16, 2025, the Joint Committee on Labor and Workforce Development held a hearing on two bills, Bill S.1369 and Bill H.2164, which were the precursors of Section 113. *See Daggett v. Comm'n on Gov't Ethics & Election Pracs.*, 205 F.3d 445, 456 n.9 (1st Cir. 2000) (holding that the court may take judicial notice of legislative facts). At the hearing, Rob McCarron, the President of the Association of Independent Colleges and Universities in Massachusetts, testified that the proposed legislation would

Following the passage of Section 113, on July 25, 2025, BU filed a motion for judgment on the pleadings. *See* Dkt. # 39. Three days later, on July 28, 2025, Curtin-Wilding filed a motion to amend the Complaint. *See* Dkt. # 41. On August 1, 2025, she filed a motion to certify a question of law to the SJC. *See* Dkt. # 48. On August 19, 2025, Curtin-Wilding filed another motion to certify additional questions of law to the SJC. *See* Dkt. # 56. Before the court are the pertinent motions, which the court will discuss in turn.

## DISCUSSION

### 1. Motion for Judgment on the Pleadings

Rule 12(c) permits a party to move for judgment on the pleadings at **any time “[a]fter the pleadings are closed,” as long as the motion does not** delay the trial. Fed. R. Civ. P. 12(c). A Rule 12(c) motion differs from a Rule **12(b)(6) motion in that it implicates the pleadings as a whole. “In the**

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correct “unintended consequences” of the Wage Act, manifesting in the filing of multiple class action lawsuits against universities in Massachusetts. *See* Higher Educ. Hearing (Constitutional Amendment/Higher Education: Hearing on S.1369, H.2164 Before the Joint Comm. on Lab. & Workforce Dev., 194th Gen. Ct. (Mass. 2025) (statement of Rob McCarron) (Dkt. # 50-2)) at 2:23. On May 29, 2025, the bills were also discussed at a supplemental budget hearing. The Senate proposed amendments to the legislation and appointed a joint conference committee to reconcile the differences. On June 30, 2025, the House and Senate accepted the conference committee reports and enacted the budget legislation.

archetypical case, the fate of such a motion will depend upon whether the pleadings, taken as a whole, reveal any potential dispute about one or more **of the material facts.**” *Gulf Coast Bank & Trust Co. v. Reder*, 355 F.3d 35, 38 (1st Cir. 2004). **“Because [a Rule 12(c)] motion calls for an assessment of the merits of the case at an embryonic stage, the court must view the facts contained in the pleadings in the light most favorable to the nonmovant and draw all reasonable inferences therefrom. . . .”** *Perez-Acevedo v. Rivero-Cubano*, 520 F.3d 26, 29 (1st Cir. 2008), quoting *R.G. Fin. Corp. v. Vergara-Nunez*, 446 F.3d 178, 182 (1st Cir. 2006).

BU argues that judgment on the pleadings is appropriate because Section 113 provides statutory immunity to BU based on a plain reading of the legislation. *See* Dkt. # 40 at 6. Curtin-Wilding concedes that Section 113 **“grants immunity only to ‘nonprofit institutions,’”** *see* Dkt. # 42-1 at 2, but challenges the constitutionality of Section 113, claiming that it: (a) is an unreasonable and inequitable retroactive statute under the United States and Massachusetts Constitutions, *see* Dkt. # 50 at 9; (b) is an impermissible selective exemption to standing laws in violation of Article X of the Massachusetts Declaration of Rights, *see* Dkt. # 50 at 6; and (c) violates the remedies clause of Article XI of the Massachusetts Declaration of Rights, *see* Dkt. # 50 at 20.

The Wage Act requires that:

Every person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him to within six days of the termination of the pay period during which the wages were earned if employed for five or six days in a calendar week, or to within seven days of the termination of the pay period during which the wages were earned if such employee is employed seven days in a calendar week.

Mass. Gen. Laws ch. 149, § 148. However, Section 113 provides that:

Nonprofit institutions of higher education and nonprofit organizations that comprise a health care delivery system shall be immune from liability with regard to any claim or cause of action seeking a legal or equitable remedy or other relief commenced between July 1, 2024 and September 30, 2028, inclusive, that alleges that the institution's or organization's payment of wages on a monthly basis or pursuant to any written policy, schedule, or agreement presented or made available to an employee concerning payment for work performed over an academic term violated section 148 of chapter 149 of the General Laws; provided, however, that earned wages shall have been paid in full within 6 days of the termination of a pay period occurring: (i) on a monthly basis; or (ii) pursuant to any written policy, schedule or agreement presented to an employee concerning payment for work performed over a specific period or an academic term.

2025 Mass. Acts. ch. 9, § 113. The court agrees with the parties that the plain language of Section 113 immunizes BU from liability for Curtin-**Wilding's** Wage Act claim that BU paid her on a monthly basis. *See Summit Inv. and Development Corp. v. Leroux*, 69 F.3d 608, 610 (1st Cir. 1995) (holding that words in a statute are to be given their plain meaning unless a literal interpretation leads to an absurd result). Curtin-**Wilding's claim, which was**

filed on February 21, 2025, squarely falls within the applicable statutory period.<sup>2</sup>

#### A. Retroactive Application of Law

**“The legal analysis of whether retroactive statutes violate the Due Process Clause of the United States Constitution is that also followed as to the Massachusetts Constitution.”** *Dutra v. Trs. of Bos. Univ.*, 96 F.4th 15, 19-20 (1st Cir. 2024), citing *Nantucket Conservation Found., Inc. v. Russell Mgmt., Inc.*, 380 Mass. 212, 214 (1980); see *Am. Mfrs. Mut. Ins. Co. v. Comm’r of Ins.*, 374 Mass. 181, 194 (1978) (“[W]e perceive no need for separate analysis of [plaintiffs’] various contentions under the impairment-of-contracts clause and under the [D]ue [P]rocess [C]lause of the United States Constitution and cognate State constitutional provisions.”). “Retroactive legislation must satisfy the due process test: ‘a legitimate legislative purpose furthered by rational means.’” *Dutra*, 96 F.4th at 20, quoting *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992). **“A**

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<sup>2</sup> Curtin-Wilding argues that BU must amend its Answer to include its unpled affirmative defense of immunity under Section 113 before moving for judgment on the pleadings. See Dkt. # 50 at 3. BU contends that Section 113 is not an affirmative defense. See **Dkt. # 55 at 2**. **“When an affirmative defense is ‘definitively ascertainable from the complaint and other allowable sources’ and the facts are “suffic[ient] to establish the affirmative defense with certitude,” a court may grant a Rule 12(c) motion.** *Taylor v. Milford Reg’l Med. Ctr., Inc.*, 733 F. Supp. 3d 8, 13 (D. Mass. 2024), quoting *Gray v. Evercore Restructuring L.L.C.*, 544 F.3d 320, 324 (1st Cir. 2008).

legislative enactment carries with it a presumption of constitutionality, and the challenging party must demonstrate beyond a reasonable doubt that **there are no conceivable grounds which could support its validity.**” *Id.* (citation and internal quotation marks omitted). **“Only those statutes which, on a balancing of opposing considerations, are deemed to be unreasonable, are held to be unconstitutional.”** *Id.*

In evaluating the reasonableness of a retroactive statute, the court weighs three factors:

(1) the nature of the public interest which explicitly or may have motivated the Legislature to enact the retroactive statute; (2) the nature of the rights affected retroactively and the reasonableness of any reliance expectations on those rights; and (3) the extent or scope of the statutory effect or impact, including whether the statute is appropriate and narrowly tailored.

*Id.*

As to the first factor, the court finds Section 113 serves the public **interest by addressing “the devastating financial impact” of these Wage Act** claims to Massachusetts institutions of higher education. *See* Higher Educ. Hearing at 3:14-23. McCarron, President of the Association of Independent Colleges and Universities in Massachusetts, testified before the Joint Committee on Labor and Workforce about the bill, which would become Section 113. He referenced this lawsuit and others like it:

[The lawsuits] place[] hundreds of millions of dollars and even billions of dollars at issue. It is very important to note that all of the employees of the institutions that have been targeted by these class action lawsuits received their full pay and on a regularly scheduled basis. There are no allegations that any employee was paid less than what they were owed, and there are no allegations that any employee was paid later than the established pay structure. Again, the intent of the Mass Wage Act is to go after those unscrupulous employers and there is no allegation of any of that in these cases. And the financial harm to the institutions is entirely disproportionate to the damages suffered by the affected employees, and the resulting harm to the institutions would dramatically affect their ability to serve students and employees.

Higher Educ. Hearing at 4:2-20. **At the conclusion of McCarron’s testimony,** Representative McCurty stated:

Look, we and the legislature, we try to do the best we can but we **don’t get it right all the time and occasionally there’s an** unintended consequence. One of the beauties of the work that we do is have an opportunity to go back and, you know, address these matters. So, its really important that you are here.

*Id.* at 6:12-18. **The “Legislature is well aware that Massachusetts is home to a number of colleges and universities, and they are vital to the state’s economy.”** *Dutra*, 96 F.4th at 22. Private, nonprofit colleges in the Commonwealth “educate 290,000 students and employ nearly 100,000 people . . . and represent a \$71 billion impact for the state each year.” *See* Higher Educ. Hearing at 2:14-17. And “[e]ven if the statute disproportionately benefits private actors, that does not mean it was enacted

**contrary to public interest.”** *Rodrigues v. Coll.*, 710 F. Supp. 3d 95, 100 (D. Mass. 2024).

As to the second factor, the court finds that Section 113 is based upon **“reasonable conditions and of a character appropriate to the public purpose justifying its adoption.”** *U.S. Tr. Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977), citing *Hudson Water Co. v. McCarter*, 209 U.S. 349, 445-447 (1908). Although Curtin-Wilding alleges that had she known the Legislature was **“prepared to deny her, but no other category of employee, protection under the Wage Act, she certainly would not have undertaken the time, expense, and personal and professional risk to vindicate her rights,”** see Dkt. # 50 at 17, she does not persuasively show that she would have acted differently, other than forego the filing of her lawsuit, had she known Section 113 would be enacted. See *Dupont v. Chief of Police of Pepperell*, 57 Mass. App. Ct. 690, 694 (2003) (holding that parties challenging the **reasonableness of a retroactive statute “must show that they acted in reasonable reliance upon the previous state of law” and “would not have acted differently had [they] known [the statute at issue] would be enacted”**). There are no allegations that Curtin-Wilding, a BU employee since 2015, otherwise contested her monthly payment of wages. Nor are there any

allegations that BU paid Curtin-Wilding less than what she was owed or later than the established monthly pay structure.

Lastly, under the third factor, the court determines that the “**extent of the impact is not excessive.**” *See Dutra*, 96 F.4th at 25 (courts “weigh the ‘duration of the burden imposed by the retroactive statute’ and ‘whether the scope of the statute is narrowly drawn to treat the problem perceived by the legislature’”), quoting *Sliney v. Previte*, 473 Mass. 283, 294 (2015). The statute will affect a relatively small number of cases and is narrowly drawn to address a public policy concern determined by the Legislature to be detrimental to the welfare of the Commonwealth. *See Parello v. McKinney*, 46 Mass. App. Ct. 785, 792 (1999) (holding that the scope of a statute was not excessive because the statute affected a relatively small number of pending cases), citing *Leibovich v. Antonellis*, 410 Mass. 568, 579 (1991). In this claim, **immunity is “confined to suits that commenced within the specified time frame” between July 1, 2024 and September 30, 2028.** *See* 2025 Mass. Acts. ch. 9, § 113; *Dutra*, 96 F.4th at 24. The legislation only affects those suits in which a technical violation of the Wage Act occurred – Section 113 does not provide immunity to higher education institutions that have not **paid in full employees’ wages “within 6 days of the termination of a pay period occurring: (i) on a monthly basis; or (ii) or pursuant to any written**

**policy, schedule or agreement presented to an employee.”** See 2025 Mass. Acts. ch. 9, § 113. Accordingly, the court finds that a balancing of all three factors weighs in favor of retroactive application of Section 113 to this case.

B. Article X of the Massachusetts Declaration of Rights

Curtin-Wilding contends that Section 113 violates Article X of the **Massachusetts Declaration of Rights because it is a “special legislation”** that is designed to insulate a handful of employers, including Harvard University, Amherst College, Worcester Polytechnic Institute, Curry College, and Mass General Brigham (all of whom face pending Wage Act lawsuits). See Dkt. # 50 at 6.

Article X of the Massachusetts Constitution **provides that “[e]ach** individual of the society has a right to be protected by it in the enjoyment of h[er]s life, liberty and property, according to standing laws.” Mass. Const. pt. 1., art. X. It **thereby “prohibits the enactment of special legislation that** singles out any person for special privileges or advantages at the expense of the rights of another.” *Kienzler v. Dalkin Shield Claimants Tr.*, 426 Mass. 87, 89 (1997) (internal citations and quotations omitted). Courts have defined **“special legislation”** as **“legislation addressed to a particular** situation, that does not establish a rule of future conduct with any substantial

degree of generality, and may provide ad hoc benefits of some kind for an **individual or a number of them.**” *Id.* at 89 n.2.

Section 113 applies equally to all “[n]onprofit institutions of higher education” – it does not benefit an individual in the way Article X prohibited. 2025 Mass. Acts. ch. 9, § 113; *see Donahue v. City of Boston*, 264 F. Supp. 2d 74, 83 (D. Mass. 2003) (holding that a statute at issue was **not a “special legislation” that violated** the Constitution of the Commonwealth of Massachusetts because it applied equally to all applicants to the Boston Police and Fire Departments who took the civil service exam after the **statute’s enactment**). **And as Curtin-**Wilding concedes, Section 113 does not mention by name the six university employers facing Wage Act violation claims. *See* Dkt. # 50 at 7.

### C. Article XI of the Declaration of Rights

Lastly, Curtin-Wilding contends that Section 113 violates the remedies clause of Article XI of the Massachusetts Declaration of Rights because it strips her of all remedies for her untimely pay. *See* Dkt. # 50 at 20.

Article XI of the Massachusetts Declaration of Rights guarantees that:

Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which [s]he may receive in h[er] person, property, or character. [S]he ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

*Graizzaro v. Graizzaro*, 36 Mass. App. Ct. 911, 912 (1994), citing Mass. Const. pt. 1., art. XI. However, the retroactive application of Section 113 to Curtin-Wilding's claim in this case is a reasonable exercise of the Legislature's authority. Moreover, Article XI's guarantee of "a certain remedy . . . for all injuries . . . which [one] may receive' has never been construed to grant to any person 'a vested interest in any rule of law entitling [such person] to insist that it shall remain unchanged for his benefit.'" *Decker v. Black & Decker Mfg. Co.*, 389 Mass. 35, 44 (1983) (alteration in original), quoting *New York Cent. R.R. v. White*, 243 U.S. 188, 198 (1917).<sup>3</sup>

## 2. Motion to Certify Questions of Law to the SJC

Curtin-Wilding asks this court to certify the following questions of law to the SJC:

- (1) Would the retroactive application of the immunities provided by Section 113 of Chapter 9 of the Acts of 2025 violate the due process rights under the Massachusetts Declaration of Rights of the Plaintiff and putative class members who were employees at BU paid monthly in violation of the Wage Act who have pending claims for penalty damages arising out of violations of the Wage Act occurring prior to the enactment of Section 113?

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<sup>3</sup> The Massachusetts Constitution expressly permits the legislature to alter or repeal statutes. *See Pinnick v. Cleary*, 360 Mass. 1, 14 (1971) ("**[C]hanges in prior law are necessary in any ordered society, and to argue that art. 11 prohibits alterations of common law rights as such, especially in the face of the specific provision to the contrary in art. 6, flies in the face of all reason and precedent.**").

- (2) Does Section 113 constitute an impermissible selective exemption to Massachusetts standing laws in violation of Article X of the Massachusetts Declaration of Rights?
- (3) Does Section 113 violate the Article XI of the Massachusetts Declaration of Rights insofar as it extinguishes all legal and equitable remedies available to Plaintiff and the putative class under the Massachusetts Wage Act based on monthly pay violations?

Dkt. # 56 at 4-5.

The SJC permits federal courts to certify questions of Massachusetts law “**which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of [the SJC].**” Mass. S.J.C. Rule 1:03; *see also Nicholls v. Veolia Water Cont. Operations USA, Inc.*, 144 F.4th 354, 358 (1st Cir. 2025). **Certification is necessary only “when ‘the course [the] state court[] would take is [not] reasonably clear.’”** *Easthampton Sav. Bank v. City of Springfield*, 736 F.3d 46, 51 (1st Cir. 2013) (alterations in original).

Here, the **SJC has “clearly articulated the method by which Massachusetts statutes are to be interpreted.”** *Nicholls*, 144 F.4th at 358, citing *MacLaurin v. City of Holyoke*, 475 Mass. 231 (2016). Because the state court and First Circuit have provided the framework to analyze the constitutionality of the retroactive application of a statute and alleged

violations of Article X and Article XI of the Massachusetts Declaration of Rights, certification of the questions of law are not warranted.<sup>4</sup>

### 3. Motion to Amend the Complaint

Curtin-Wilding seeks leave to file an Amended Complaint to: (a) add BU President Melissa L. Gilliam and BU Treasurer Nicole K. Tirella as named defendants; (b) add a cause of action for unjust enrichment under Massachusetts common law; (c) amend the late payment allegations; and (d) **add 28 U.S.C. § 1332(a) as a basis for this court’s jurisdiction.** See Dkt. # 42 at 1.

**A party seeking to amend a complaint more than 21 days after “service of a responsive pleading or . . . motion under Rule 12(b), (e), or (f)” must seek leave of court to do so.** Fed. R. Civ. P. 15(a). When deciding a motion to amend, the **court’s task is to determine whether “justice . . . requires”** that leave to amend be granted. *Id.* A motion to amend may be denied where the exercise is futile. *Hatch v. Dep’t for Child., Youth & Their Fams.*, 274 F.3d 12, 19 (1st Cir. 2001). Futility means that the complaint, as amended, would

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<sup>4</sup> The court additionally notes that Curtin-Wilding filed this suit, solely raising a state-law claim under the Massachusetts Wage Act, in federal court. **A party “who chooses the federal courts in diversity actions is in a peculiarly poor position to seek certification . . . .”** *Ken’s Foods, Inc. v. Steadfast Ins. Co.*, 36 F.4th 37, 44 (1st Cir. 2022), quoting *Cantwell v. Univ. of Mass.*, 551 F.2d 879, 880 (1st Cir. 1977).

fail to state a claim upon which relief could be granted. *Glassman v. Computervision Corp.*, 90 F.3d 617, 623 (1st Cir. 1996). When leave to amend is sought before discovery is complete and neither party has moved for summary judgment, the district court, in reviewing for futility, applies “the same standard of legal sufficiency as applies to a Rule 12(b)(6) motion.” *Id.*

#### **A. BU’s President and Treasurer**

First, Curtin-Wilding seeks to add BU’s President Gilliam and Treasurer Tirella as defendants to her Wage Act claim and argues that Section 113 “grants immunity only to ‘nonprofit institutions’ (not individuals).” See Dkt. # 42-1 at 2.

The court “will not adopt a literal construction of a statute if the consequences of such construction are absurd or unreasonable.” *Att’y Gen. v. Sch. Comm. of Essex*, 387 Mass. 326, 336 (1982); see *Wild v. Constantini*, 415 Mass. 663, 668 (1993) (“Reason and common sense are not to be abandoned in the interpretive process, as it is to be supposed that the Legislature intended to act in accordance with them.”). When such is the case, “[t]he legislative intention in enacting the statute must be ascertained, ‘not alone from the literal meaning of its words, but from a view of the whole system of which it is but a part . . .’” *Killam v. March*, 316 Mass. 646, 650

(1944). No reasonable legislative purpose of Section 113 would be served by immunizing BU, an institution of higher education, yet holding its President and Treasurer<sup>5</sup> liable for purported violations of the Wage Act. To interpret **Section 113 in that way “would produce a result at odds with the intent of the statute”** and defy common sense. *Cook v. Patient Edu, LLC*, 465 Mass. 548, 554 (2013).<sup>6</sup>

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<sup>5</sup> Gilliam and Tirella were not BU officers serving at the time of Curtin-Wilding’s claim, which spans from February 18, 2022, until August 1, 2023 – **Tirella was named BU’s Treasurer in January of 2024, while Gilliam became BU’s President on July 1, 2024.** See Dkts. # 51-1 at 3; 51-2 at 4; *DeMego v. Nisonson*, 2017 WL 3090212, at \*2 (Mass. Super. May 25, 2017) (“**Nothing in the Wage Act or in appellate decisions construing the statute indicates that someone newly hired as the president of the company becomes personally liable on their first day on the job for all wages that were allegedly earned but not paid before that time.**”).

<sup>6</sup> The Wage Act provides that:

The president and treasurer of a corporation and any officers or agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation within the meaning of this section.

Mass. Gen. Laws ch. 149, § 148. Massachusetts courts have interpreted this **provision to mean that “a president and treasurer of a corporation are jointly and severally liable with the corporation for the payment of unpaid wages.”** *Ellicott v. Am. Cap. Energy, Inc.*, 2017 WL 1294437, at \*3 (D. Mass. Apr. 3, 2017), *aff’d*, 906 F.3d 164 (1st Cir. 2018), citing *Bisson v. Ptech, Inc.*, 2004 WL 2434638, at \*1 (Mass. Super. Ct. Oct. 19, 2004); *see also Perrin v. Collaborative Eng’rs, Inc.*, 84 Mass. App. Ct. 1121, 1121 n.2 (2013) (interpreting Wage Act as “**defining class of individuals subject to joint and several liability with corporation**” to include “**the president and treasurer of a corporation**”). Where no viable claim exists against the corporate

## B. Unjust Enrichment Claim

The court finds that adding a cause of action for unjust enrichment is futile. A fundamental prerequisite to any unjust enrichment finding is that **the enrichment be “unjust.”** See *Bonina v. Sheppard*, 91 Mass. App. Ct. 622, 625 (2017) (“The plaintiff must establish ‘not only that the defendant received a benefit, but also that such a benefit was unjust.’”), quoting *Metro. Life Ins. Co. v. Cotter*, 464 Mass. 623, 644 (2013). There are no facts to suggest that Curtin-Wilding had a reasonable expectation that she would be paid other than on a monthly basis nor, as the court previously stated, does she allege that BU failed to pay her in accordance with that monthly schedule or for less than the amount she was owed. See FAC ¶ 32. Even assuming BU enjoyed some small incidental benefit in the few days of retention of Curtin-Wilding’s wages, it is not what a court sitting in equity would deem an affront to “the fundamental principles of justice or equity and good conscience.” *Fleer Corp. v. Topps Chewing Gum, Inc.*, 539 A.2d 1060, 1062 (Del. 1988).

## C. Late Payment Allegations

In her original Complaint, Curtin-Wilding alleged that BU had a **practice of paying her “wages on or about the last business day of each**

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defendant, it follows that there can be no joint and several liability chargeable to its offense.

month, even though Plaintiff and Class members did not choose or elect at **their own option to be paid monthly...**” Compl. ¶ 26. Without any additional factual allegations or explanation, Curtin-Wilding seeks to amend her **Complaint to allege that she was paid at intervals “less frequently” than monthly.** See Dkt. # 42-2 (proposed Amended Complaint) at 7. The court need not credit such a conclusory, unsubstantiated allegation. See *SEC v. Tambone*, 597 F.3d 436, 442 (1st Cir. 2010) (en banc).

Because it is a futile exercise, the court will deny Curtin-**Wilding’s** motion to amend the Complaint.

ORDER

For the foregoing reasons, **BU’s motion** for judgment on the pleadings is ALLOWED. Curtin-**Wilding’s motion to amend the Complaint is DENIED**. Curtin-**Wilding’s motion to certify the questions** of law to the SJC is also DENIED. The Clerk will enter judgment for BU and close the case.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

## CERTIFICATE OF COMPLIANCE

I hereby certify that, to the best of my knowledge, this application complies with the Massachusetts Rules of Appellate Procedure pertaining to the filing of applications, including Rules 11, 16, 20, and 21. The application is in Times New Roman 14-point font, contains 1980 words in the argument section (Sections V), and was prepared using Microsoft Word for Office 365. I have relied on the word count feature of this word processing system in preparing this certificate.

*/s/ Eric R. LeBlanc*

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Dated: May 26, 2026

**CERTIFICATE OF SERVICE**

I, Eric R. LeBlanc, counsel to the Plaintiff, hereby certify that on May 26, 2026, I caused a true and accurate copy of the foregoing to be filed and served via eFileMA, and served by electronic mail with consent of counsel being served, pursuant to Mass. R. A. P. 13(c):

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