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12
 13 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 14 **SAN FRANCISCO DIVISION**

15 STARLA ROLLINS on behalf of herself,
 16 individually, and on behalf of all others
 similarly situated,

17 Plaintiff,

18 v.

19 DIGNITY HEALTH, a California Non-profit
 Corporation, HERBERT J. VALLIER, an
 20 individual, the members of the Dignity
 Retirement Committee, and JOHN and JANE
 21 DOES, each an individual, 1-20,

22 Defendants.

C 13 1450

Case No: _____

DMR

CLASS ACTION COMPLAINT

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1 Plaintiff Starla Rollins, individually and on behalf of all those similarly situated, as well
2 as on behalf of the Dignity Plans, as defined herein, by and through her attorneys, hereby alleges
3 as follows:

4 **I. INTRODUCTION**

5 1. Plaintiff agrees that Defendant Dignity Health (“Dignity” or “Defendant”),
6 operates a health care conglomerate in California, Arizona and Nevada and ancillary care
7 facilities in sixteen states and provides good healthcare services in the communities it serves.
8 That is not what this case is about. Instead, this case is about whether Dignity properly
9 maintains its pension plans under The Employee Retirement Income Security Act (“ERISA”).
10 As demonstrated herein, Dignity fails to do so, to the detriment of its 60,000 employees who
11 deserve better.

12 2. As its name implies, ERISA was crafted to protect employee retirement funds. A
13 recent comprehensive history of ERISA put it this way:

14 Employees should not participate in a pension plan for many years only to lose
15 their pension . . . because their plan did not have the funds to meet its obligations.
16 The major reforms in ERISA—fiduciary standards of conduct, minimum vesting
17 and funding standards, and a government-run insurance program—aimed to
18 ensure that long-service employees actually received the benefits their retirement
19 plan promised.

20 James Wooten, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, at 3 (U. Cal.
21 2004).

22 3. This class action is brought on behalf of participants and beneficiaries of defined
23 benefit pension plans maintained by Dignity and operated as or claimed to be “Church Plans”
24 under ERISA (collectively referred to as the “Dignity Plans” or simply the “Plans”). Dignity is

1 violating numerous provisions of ERISA—including underfunding the Dignity Plans by over
2 \$1.2 billion—while erroneously claiming that the Plans are exempt from ERISA’s protections
3 because they are “Church Plans.” But none of the Dignity Plans meet the definition of a Church
4 Plan because Dignity plainly is not a church or a convention or association of churches and
5 because the Dignity Plans were not established by a church or a convention or association of
6 churches. That should be the end of the inquiry under ERISA, resulting in a clear finding that
7 the Dignity Plans are not Church Plans.

8 4. Even if, however, these facts were different, and the Dignity Plans could
9 otherwise qualify for Church Plan status, they would be specifically excluded from such status
10 because substantially all of the participants in the Plans are *not* employed by either the Catholic
11 Church or an organization that is controlled by or associated with the Catholic Church, within the
12 meaning of ERISA. Dignity is not controlled by the Catholic Church and, despite its name, is
13 not “associated with” the Catholic Church within the meaning of ERISA because it does not
14 share common religious bonds and convictions with the Catholic Church.

15 5. A sampling of facts reveals Dignity as a non-profit health care network, not unlike
16 other non-profit health care networks. It is not owned or operated by the Catholic Church and
17 does not receive funding from the Catholic Church. It is long since removed from the days when
18 nuns once ran the hospitals, spread their gospel, and faithfully stewarded retirement assets for
19 their employees. Dignity deliberately chooses to distance itself from, or even abrogate, many
20 religious convictions of the Catholic Church, when it is in its economic interest to do so, such as
21 when it hires employees, performs or authorizes medical procedures forbidden by the Catholic
22 Church, and encourages divergent and contrary spiritual support to its clients.

23

24

1 A. Employees. With respect to recruiting and hiring its employees—those
2 who then become Dignity Plan participants— Dignity informs prospective employees
3 that Catholic faith is not a factor in the hiring process. Like many employers, Dignity
4 promotes itself by insisting that it hires regardless of whether there are any common
5 religious convictions. In other words, Dignity recruits retirement plan participants, in
6 part, by assuring them that their religiosity, or absence thereof, is not relevant. Moreover,
7 many of Dignity’s employees became employees of Dignity as a result of Dignity’s
8 acquisition of hospitals and healthcare facilities that do not purport, and have never
9 purported, to adhere to the moral and doctrinal teaching of the Catholic Church and that
10 Dignity continues to operate in such fashion.

11 B. Medical Procedures. Hospitals and medical care facilities inside of
12 Dignity’s system also perform elective, contraceptive sterilization procedures on patients
13 despite the fact that the Catholic Church officially denounces such procedures as
14 intrinsically immoral, evil, and illegal. Dignity has also entered into a partnership
15 through which it facilitates the performance of contraceptive services, female
16 sterilizations, and male sterilizations, which are procedures forbidden by the Catholic
17 Church.

18 C. Spiritual Guidance. With respect to its offering of spiritual support to its
19 clients/patients, Dignity specifically chooses not to promote the Catholic faith. Dignity
20 does not just remain neutral on this issue and allow patients to do as they please with
21 respect to their religiosity, or lack thereof. Instead, Dignity provides non-denominational
22 worship space (as many airports do) and offers its patients contact with priests, ministers,
23 rabbis or spiritual advisors for guidance. It is axiomatic that these individuals, with
24

1 whom Dignity offers contact—including the protestant ministers, Jewish rabbis and
2 spiritual advisors—have religious convictions that the Catholic Church views as clear
3 error.

4 D. Growth Model. Over the years the Dignity network has grown, in large
5 part, through the acquisition of hospitals and ancillary care facilities that had no claimed
6 ties to religion. Indeed, Dignity’s current growth model specifically targets the
7 acquisition of additional healthcare facilities that have no claimed ties to religion. These
8 facilities do not purport, and have never purported, to adhere to the moral and doctrinal
9 teaching of the Catholic Church, and Dignity continues to operate these facilities in such
10 fashion.

11 6. In short, Dignity operates in most respects like other non-profit hospitals and
12 health care conglomerates. Dignity expressly chooses not to prioritize the convictions of the
13 Catholic Church (i) when it hires its employees—and Dignity Plan participants; (ii) when it
14 performs or authorizes medical procedures forbidden by the Catholic Church; (iii) when it
15 provides support for the spiritual needs of patients regardless of religious preference; and (iv)
16 when it pursues a growth model that emphasizes the acquisition of additional facilities that do
17 not purport, and have never purported, to adhere to the moral and doctrinal teaching of the
18 Catholic Church and when Dignity continues to operate these facilities in such fashion.

19 7. Whether Dignity makes these choices without forethought, or whether it makes
20 them deliberately to satisfy large non-Catholic donors, its employees, its clients/patients, the
21 spiritual community, the secular community, and/or its management, is unknown.

22 8. On the other side of the scale is Dignity’s attempt to claim “Church Plan” status
23 for the Dignity Plans—it wants to maintain and impose a religious status not on its employees, or
24

1 in any of the areas detailed above, but instead on the *retirement dollars* of its employees.
2 Dignity imposes religion on those retirement dollars because in doing so, according to Dignity, it
3 may underfund the Dignity Plans by over \$1.2 billion and be excused from the necessary
4 protections that ERISA provides. Fortunately, as set forth below, ERISA does not allow non-
5 Church entities to selectively impose religious status to shirk their responsibility to protect the
6 retirement dollars of their employees.

7 9. And, even if the Dignity Plans could clear all the ERISA Church Plan hurdles,
8 the Church Plan exemption, as claimed by Dignity, is an unconstitutional accommodation under
9 the Establishment Clause of the First Amendment, and is therefore void and ineffective. It harms
10 Dignity employees, unfairly disadvantages Dignity competitors, and accommodates no undue
11 burden caused by ERISA on any Dignity religious practices.

12 10. It is worth noting in this Summary that this case is not akin to the disputes
13 concerning mandatory contraceptive coverage by religious institutions. ERISA does not require
14 retirement plans to afford protections to employees that may be contrary to religious doctrine.

15 11. Dignity's claim of Church Plan status for its defined benefit pension plan fails
16 under both ERISA and the First Amendment. That is what this case is about.

17 12. Plaintiff seeks an Order requiring Dignity to comply with ERISA and afford the
18 Class all the protections of ERISA with respect to the Dignity Plans, as well as an Order finding
19 that the Church Plan exemption, as claimed by Dignity, is unconstitutional because it violates the
20 Establishment Clause of the First Amendment.

21 II. JURISDICTION AND VENUE

22 13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because
23 this is a civil action arising under the laws of the United States and pursuant to 29 U.S.C. §
24 1132(e)(1), which provides for federal jurisdiction of actions brought under Title I of ERISA.

1 19. Defendant Dignity. Dignity is a 501(c)(3) non-profit corporation organized
2 under, and governed by, the California Corporations Code, including Division 2 thereof, the
3 California Nonprofit Corporation Law, and is headquartered in San Francisco, California.
4 Dignity is the employer responsible for maintaining the Dignity Plans and is, therefore, the plan
5 sponsor of the Dignity Plans within the meaning of ERISA section 3(16)(B), 29 U.S.C. §
6 1002(16)(B).

7 20. Defendant Herb J. Vallier. Defendant Vallier is Executive Vice President and
8 Chief Human Resources Officer for Dignity, and he has held that position since at least 2010. In
9 2010 Defendant Vallier received total compensation in excess of \$580,000. Upon information
10 and belief, Defendant Vallier's job responsibilities include fiduciary oversight of the Dignity
11 Plans, and Defendant Vallier is a fiduciary of the Plans within the meaning of ERISA.

12 21. Defendant members of the Dignity Retirement Committee. The members of the
13 Dignity Retirement Committee are, on information and belief, persons specifically designated by
14 Dignity to serve as the Administrator for some or all of the Dignity Pension Plans and therefore
15 are the Administrators of some or all of the Dignity Pension Plans within the meaning of ERISA
16 section 3(16)(A)(i), 29 U.S.C. § 1002(16)(A)(i). Defendants John and Jane Does 1-20 are
17 individuals who through discovery are found to be members of the Dignity Retirement
18 Committee. These individuals will be added by name as defendants in this action upon motion
19 by Plaintiff at an appropriate time.

20 22. Defendants John and Jane Does 21-40. Defendants John and Jane Does 21-40 are
21 individuals who through discovery are found to have fiduciary responsibilities with respect to the
22 Dignity Plans and are fiduciaries within the meaning of ERISA. These individuals will be added
23 by name as defendants in this action upon motion by Plaintiff at an appropriate time. Defendant
24

1 Vallier, the members of the Dignity Retirement Committee, and John and Jane Does 21-40 are
2 referred to herein collectively as the “Individual Defendants.”

3 IV. THE BACKGROUND OF THE CHURCH PLAN EXEMPTION

4 A. The Adoption of ERISA

5 23. Following years of study and debate, and broad bi-partisan support, the Congress
6 adopted ERISA in 1974, and the statute was signed into law by President Ford on Labor Day of
7 that year. Among the factors that led to the enactment of ERISA were the widely publicized
8 failures of certain defined benefit pension plans, especially the plan for employees of Studebaker
9 Corporation, an automobile manufacturing company which defaulted on its pension obligations
10 in 1965. *See generally* John Langbein *et al.*, PENSION AND EMPLOYEE BENEFIT LAW 78-83 (2010)
11 (“The Studebaker Incident”).

12 24. As originally adopted in 1974, and today, ERISA protects the retirement savings
13 of pension plan participants in a variety of ways. As to participants in traditional defined benefit
14 pension plans, such as the plans at issue here, ERISA mandates, among other things, that such
15 plans be currently funded and actuarially sound, that participants’ accruing benefits vest pursuant
16 to certain defined schedules, that the administrators of the plan report certain information to
17 participants and to government regulators, that the fiduciary duties of prudence, diversification,
18 loyalty, and so on apply to those who manage the plans, and that the benefits promised by the
19 plans be guaranteed, up to certain limits, by the Pension Benefit Guaranty Corporation. *See, e.g.*,
20 ERISA §§ 303, 203, 101-106, 404-406, 409, 4007, 4022, 29 U.S.C. §§ 1083, 1053, 1021-1026,
21 1104-1106, 1109, 1307, 1322.

22 25. ERISA is centered on pension plans, and particularly defined benefit pension
23 plans, as is reflected in the very title of the Act, which addresses “retirement income security.”
24 However, ERISA also subjects to federal regulation defined contribution pension plans (such as

1 401(k) plans) and welfare plans, which provide health care, disability, severance and related non-
2 retirement benefits. ERISA § 3(34) and (1), 29 U.S.C. § 1002(34) and (1).

3 **B. The Scope of the Church Plan Exemption in 1974**

4 26. As adopted in 1974, ERISA provided an exemption for certain plans, in particular
5 governmental plans and Church Plans. Plans that met the statutory definitions were exempt from
6 all of ERISA substantive protections for participants. ERISA § 4(a) and (b), 29 U.S.C. § 1003(a)
7 and (b).

8 27. ERISA defined a Church Plan as a plan “established and maintained for its
9 employees by a church or by a convention or associations of churches.”¹

10 28. Under the 1974 legislation, although a Church Plan was required to be established
11 and maintained by a church, it could also include employees of certain pre-existing agencies of
12 such church, but only until 1982. ERISA § 3(33)(C) (1974), 29 U.S.C. § 1002(33)(C) (1974)
13 (current version as amended at 29 U.S.C. § 1002(33) (West 2013)). Thus, under the 1974
14 legislation, a pension plan that was not established and maintained by a church could not be a
15 Church Plan. *Id.*

16 **C. The Changes to the Church Plan Exemption in 1980**

17 29. Church groups had two major concerns about the definition of “Church Plans” in
18 ERISA as adopted in 1974. The first, and far more important, concern was that Church Plans
19 after 1982 could not include the lay employees of agencies of the Church. The second concern
20 that arose in the church community after 1974 was more technical. Under the 1974 statute, all

21 _____
22 ¹ ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A). ERISA is codified in both the labor and tax
23 provisions of the United States Code, titles 29 and 26 respectively. Many ERISA provisions
24 appear in both titles. For example, the essentially identical definition of Church Plan in the
Internal Revenue Code is found at 26 U.S.C. § 414(e).

1 Church Plans, single-employer or multiemployer, had to be “established and maintained” by a
2 church or a convention/association of churches. This ignored the role of the churches’ financial
3 services organizations in the day-to-day management of the pension plans. In other words,
4 although Church Plans were “established” by a church, in practice they were often “maintained”
5 by a separate financial services organization of the church, usually incorporated and typically
6 called a church “pension board.”

7 30. These two concerns ultimately were addressed when ERISA was amended in
8 1980 in various respects, including a change in the definition of “Church Plan.” Multiemployer
9 Pension Plan Amendments Act of 1980 (“MPPAA”), P.L. 96-364. The amended definition is
10 current law.

11 31. As to the first concern (regarding employees of agencies of a church), Congress
12 included a new definition of “employee” in subsection (C)(ii)(II) of section 3(33) of ERISA. 29
13 U.S.C. § 1002(33)(C)(ii)(II) (1980) (current version at 29 U.S.C. § 1002(33)(C)(ii)(II) (West
14 2013)). As amended, an “employee” of a church or a convention/association of churches
15 includes an employee of an organization “which is controlled by or associated with a church or a
16 convention or association of churches.” *Id.* The phrase “associated with” is then defined in
17 ERISA section 3(33)(C)(iv) to include only those organizations that “share[] common religious
18 bonds and convictions with that church or convention or association of churches.” 29 U.S.C. §
19 1002(33)(C)(iv) (1980) (current version at 29 U.S.C. § 1002(33)(C)(iv) (West 2013)). Although
20 the new definition of “employee” permitted a “Church Plan” to include among its participants
21 employees of organizations controlled by or associated with the church, convention, or
22 association of churches, it remains the case that a plan covering such “employees” cannot qualify
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1 as a “Church Plan” unless it was “established by” the church, convention, or association of
 2 churches. ERISA 3(33)(A), 29 U.S.C. § 1002(33)(A) (West 2013).

3 32. As to the second concern (regarding plans “maintained by” a separate church
 4 pension board) the 1980 amendments spoke to the issue as follows:

5 A plan established and maintained for its employees (or their beneficiaries) by a
 6 church or by a convention or association of churches includes a plan maintained
 7 by an organization, whether a civil law corporation or otherwise, *the principal*
 8 *purpose or function of which is the administration or funding of a plan or*
 9 *program for the provision of retirement benefits or welfare benefits, or both, for*
 10 *the employees of a church or a convention or association of churches, if such*
 11 *organization is controlled by or associated with a church or a convention or*
 12 *association of churches.*

13 ERISA § 3(33)(C)(i) (1980), 29 U.S.C. § 1002(33)(C)(i) (1980) (emphasis added) (current
 14 version at 29 U.S.C. § 1002(33)(C)(i) (West 2013). Accordingly, under this provision, a plan
 15 “established” by a church or by a convention/association of churches could retain its “Church
 16 Plan” status even if it was “maintained by” a distinct organization, so long as (1) “the principal
 17 purpose or function of [the organization] is the administration or funding of a plan or program
 18 for the provision of retirement benefits or welfare benefits”; and (2) the organization is
 19 “controlled by or associated with” the convention or association of churches. ERISA §
 20 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i) (1980) (current version at 29 U.S.C. § 1002(33)(C)(i)
 21 (West 2013)).

22 33. This church “pension board” clarification has no bearing on plans that were not
 23 “established” by a church or by a convention or association of churches. Thus, a plan
 24 “established” by an organization “controlled by or associated with” a church would not be a
 “Church Plan” because it was not “established” by a church or a convention or association of
 churches.

1 34. Further, this “pension board” clarification has no bearing on plans that were not
2 “maintained” by a church pension board. Thus, even if a plan was “established” by a church,
3 and even if it was “maintained by” an organization “controlled by or associated with” a church,
4 such as a school, hospital, or publishing company, it still would not be a “Church Plan” if the
5 principal purpose of the organization was *other than* the administration or funding of the plan. In
6 such plans, the plan is “maintained” by the school, hospital or publishing company, and usually
7 through the human resources department of such entity. It is not maintained by a church pension
8 board: No “organization, whether a civil law corporation or otherwise, the principal purpose or
9 function of which is the administration or funding of a plan or program for the provision of
10 retirement benefits” maintains the plan. *Compare with* ERISA § 3(33)(C)(i), 29 U.S.C. §
11 1002(33)(C)(i) (1980) (current version at 29 U.S.C. § 1002(33)(C)(i) (West 2013)).

12 35. The requirements for Church Plan status under ERISA, both as originally adopted
13 in 1974 and as amended in 1980 are, as explained above, very clear. There is no tension between
14 the legislative history of the 1980 amendment and the amendment itself: The Congress enacted
15 exactly what it wanted to enact. Fundamental to the scheme, both as originally adopted and as
16 fine-tuned in 1980, was that neither an “affiliate” of the church (using the 1974 language) nor
17 “an organization controlled by or associated with” a church (using the 1980 language) could
18 *itself* establish a Church Plan. Its employees could be *included* in a Church Plan, but if it
19 sponsored its own plan, that was not a Church Plan. With respect to “pension boards,” the 1980
20 legislation simply clarified the long standing practice that churches could use their own financial
21 organizations to manage their Church Plans.

22 36. Unfortunately, in 1983, in response to a request for a private ruling, the Internal
23 Revenue Service (“IRS”) issued a short General Counsel Memorandum that misunderstood the
24

1 statutory framework. The author incorrectly relied on the “pension board” clarification to
 2 conclude that a non-church entity could sponsor its own Church Plan as long as the plan was
 3 managed by some “organization,” that was controlled by or associated with a church. This, of
 4 course, is not what the statute says, nor what Congress intended. In any event, the mistake was
 5 then repeated, often in verbatim language, in subsequent IRS determinations and, after 1990, in
 6 DOL determinations. Under the relevant law, these private rulings may only be relied upon by
 7 the parties thereto, within the narrow confines of the specific facts then disclosed to the agencies,
 8 and are not binding on this Court in any event. A few district court cases have relied on these
 9 letters to reach the same erroneous conclusion.

10 V. DIGNITY

11 A. Dignity’s Operations.

12 37. Defendant Dignity is a not-for-profit corporation organized under, and governed
 13 by, the California Corporations Code, including Division 2 thereof, the California Nonprofit
 14 Corporation Law, and it operates 40 hospitals in California, Arizona and Nevada and over 300
 15 ancillary health care facilities in sixteen states which provide urgent care, outpatient services,
 16 home healthcare services, occupational healthcare, preventive care and rehabilitative care. As
 17 of its fiscal 2012 year end, Dignity had approximately \$13.5 billion in assets, and operating
 18 revenues of approximately \$10.5 billion.

19 38. Dignity is currently the fifth largest healthcare system in the United States.

20 39. Dignity employs approximately 60,000 employees.

21 40. Since its founding in 1986 Dignity has pursued a growth plan which has included
 22 the acquisition of more than 150 ancillary healthcare facilities and the following hospitals that
 23 have no claimed ties to religion:

24 i) Barrow Neurological Institute, Phoenix, Arizona in 1986;

- 1 ii) Bakersfield Memorial Hospital, Bakersfield, California in 1996;
- 2 iii) Sequoia Hospital, Redwood City, California in 1996;
- 3 iv) Sierra Nevada Memorial Hospital, Grass Valley, California in 1996;
- 4 v) Woodland Healthcare, Woodland, California in 1996.
- 5 vi) Marian Regional Medical Center, Santa Maria, California in 1997;
- 6 vii) California Hospital Medical Center, Los Angeles, California in 1998;
- 7 viii) Community Hospital of San Bernardino, San Bernardino, California in
- 8 1998;
- 9 ix) Glendale Memorial Hospital and Health Center, Glendale, California in
- 10 1998;
- 11 x) Northridge Hospital Medical Center, Los Angeles, California in 1998;
- 12 xi) Oak Valley Hospital, Oakdale, California in 1998;
- 13 xii) Chandler Regional Medical Center, Chandler, Arizona in 1999; and
- 14 xiii) Arroyo Grande Community Hospital, Arroyo Grande, California in 2004.

15 These facilities do not purport, and have never purported, to adhere to the moral and doctrinal
16 teaching of the Catholic Church, and Dignity continues to operate these facilities in such
17 fashion.

18 41. In order to maximize its future growth and partnership opportunities in the
19 changing United States health care system, Dignity's current growth model calls for it to acquire
20 additional outpatient clinics and ambulatory care service centers that have no claimed ties to
21 religion. These facilities do not purport, and have never purported, to adhere to the moral and
22 doctrinal teaching of the Catholic Church, and Dignity continues to operate these facilities in
23 such fashion.

24

1 42. As recently as July, 2012 Dignity acquired U.S. HealthWorks, the largest
2 independent for profit operator of occupational medicine and urgent care centers in the United
3 States. With the acquisition of U.S. HealthWorks, Dignity added a network of 172 medical
4 centers that have no claimed ties to religion, which collectively employ 2,700 employees who
5 deliver health care to more than 12,000 patients a day. These facilities do not purport, and have
6 never purported, to adhere to the moral and doctrinal teaching of the Catholic Church, and
7 Dignity continues to operate these facilities in such fashion.

8 43. Like other large non-profit hospital systems, Dignity relies upon revenue bonds to
9 raise money, and it has significant sums invested in, among other things, fixed-income securities,
10 equity securities, and hedge funds.

11 44. The present governance and leadership of Dignity is composed of two groups: (i)
12 the Board of Directors, which holds all key operational powers, including approving long-range
13 strategic plans, the allocation of capital, joint ventures, and major acquisitions and sales; and (ii)
14 the Executive Leadership Team which is appointed by the Board and charged with providing
15 leadership and organizational management in the areas of operations, mission integration,
16 finance and support services, as well as leadership in the strategic direction of the organization.

17 45. The Dignity Board currently consists of nine members, all but two of which are
18 lay people. The Executive Leadership Team is comprised entirely of lay people.

19 46. The Executive Officers of Dignity that make up the Executive Leadership Team
20 receive compensation in line with executive officers of large publicly traded companies. For
21 example, in 2010 the President and CEO received \$5.1 million in total compensation, the CFO
22 received \$2.9 million in total compensation, and the COO received total compensation of \$2.3

1 million. In addition, at least nine other officers received over \$1 million in compensation in
2 2010.

3 47. Dignity is not owned by the Catholic Church. Dignity does not receive funding
4 from the Catholic Church or the other religious organizations that may have once owned and
5 operated hospitals that have since been acquired by Dignity.

6 48. Dignity specifically does not limit employment to those of any particular faith,
7 but instead hires employees without any reference to creed or religion in an attempt to hire the
8 most qualified healthcare workers.

9 49. Dignity does not claim to be a church and is not one.

10 50. Dignity does not impose any religious beliefs or practices on its clients/patients,
11 and specifically offers spiritual care to its patients without regard to any religion or creed. For
12 those patients who are religious, Dignity offers contact with the minister, priest, rabbi, or
13 spiritual leader of their patients' choosing. In some of its hospitals, Dignity provides a
14 nondenominational chapel, as many airports do.

15 51. Dignity either provides for or facilitates family planning services that are
16 prohibited by the Catholic Church. At least 21 of the Dignity hospitals which provide elective,
17 contraceptive sterilization procedures, such as tubal ligation, that the Catholic Church considers
18 immoral, evil, and illegal. Dignity has also entered into a partnership through which it facilitates
19 the performance of contraceptive services, female sterilization, and male sterilization.

20 52. Dignity purports to disclose, and not keep confidential, its own highly complex
21 financial records. For example, Dignity is required and in some cases has voluntarily elected to
22 comply with a broad array of elaborate state and federal regulations and reporting requirements,
23 including Medicare and Medicaid. In addition, Dignity makes public its consolidated financial
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1 statements, which describe Dignity's representations as to its own highly complex operations and
2 financial affairs. Finally, Dignity financial information is regularly disclosed to the rating
3 agencies and the public when tax exempt revenue bonds are issued.

4 **B. Dignity's Pension Plans**

5 53. Dignity maintains the Dignity Plans, which are non-contributory defined benefit
6 pension plans covering substantially all of its employees.

7 54. In 2011 the Dignity Plans were amended to, among other things, freeze certain
8 ongoing final average pay formulas and replace them with cash balance formulas, and freeze
9 certain past service benefits for employees already in cash balance formulas (the "2011
10 Amendments").

11 55. As of June 30, 2012, the Dignity Plans were unfunded by \$1.2 billion.

12 **1. Dignity's Plans Meet the Definition of an ERISA Defined Benefit Plan**

13 56. The Dignity Plans are plans, funds, or programs that were established or
14 maintained by Dignity and which by their express terms and surrounding circumstances provide
15 retirement income to employees and/or result in the deferral of income by employees to the
16 termination of their employment or beyond. As such, the Dignity Plans meet the definition of
17 "employee pension benefit plans" within the meaning of ERISA section 3(2)(A), 29 U.S.C. §
18 1002(2)(A).

19 57. The Dignity Plans do not provide for an individual account for each participant
20 and do not provide benefits solely upon the amount contributed to a participant's account. As
21 such, the Dignity Plans are defined benefit plans within the meaning of ERISA section 3(35), 29
22 U.S.C. § 1002(35), and are not individual account plans or "defined contribution plans" within
23 the meaning of ERISA section 3(34), 29 U.S.C. § 1002(34).
24

1 **2. The Sponsor and Fiduciaries of the Dignity Plans**

2 58. As an employer establishing and/or maintaining the Dignity Plans, Defendant
3 Dignity is and has been the Plan Sponsor of the Dignity Plans within the meaning of ERISA
4 section 3(16)(B), 29 U.S.C. § 1002(16)(B), at least since 1986.

5 59. Upon information and belief, at least from 1986 to the present, the terms of the
6 instrument, or instruments, under which some or all of the Dignity Plans are operated do not
7 specifically designate any person as a Plan Administrator sufficient to meet the requirements of
8 ERISA section 402, 29 U.S.C. § 1102.

9 60. In the absence of a Plan Administrator specifically designated in or pursuant to
10 any instrument governing the Plans, the Plan Sponsor of the Dignity Plans under ERISA section
11 3(16)(A)(ii), 29 U.S.C. § 1002(16)(A)(ii), is the Plan Administrator.

12 61. As Defendant Dignity is and has been the Plan Sponsor of the Dignity Plans,
13 Defendant Dignity was also the Plan Administrator of the Plans within the meaning of ERISA
14 section 3(16)(A), 29 U.S.C. § 1002(16)(A). As such, Defendant Dignity also is and has been a
15 fiduciary with respect to the Plans within the meaning of ERISA section 3(21)(A)(iii), 29
16 U.S.C. § 1002(21)(A)(iii), because the Plan Administrator, by the very nature of the position,
17 has discretionary authority or responsibility in the administration of the Plans.

18 62. Defendant Dignity is also a fiduciary with respect to the Dignity Plans within the
19 meaning of ERISA section 3(21), 29 U.S.C. § 1002(21), because it exercises discretionary
20 authority or discretionary control respecting management of the Dignity Plans, exercises
21 authority and control respecting management or disposition of the Dignity Plans' assets, and/or
22 has discretionary authority or discretionary responsibility in the administration of the Dignity
23 Plans.

1 63. Alternatively, upon information and belief, the terms of the instrument, or
2 instruments, under which some or all of the Dignity Plans are operated specifically designate the
3 Dignity Retirement Committee as the Plan Administrator within the meaning of ERISA section
4 3(16)(A)(i), 29 U.S.C. § 1002(16)(A)(i) sufficient to meet the requirements of ERISA section
5 402, 29 U.S.C. § 1102. As such, the Defendant members of the Dignity Retirement Committee
6 are and have been fiduciaries with respect to some or all of the Dignity Plans within the meaning
7 of ERISA section 3(21)(A)(iii), 29 U.S.C. § 1002(21)(A)(iii), because the persons administering
8 the Plans, by the very nature of their positions, have discretionary authority or responsibility in
9 the administration of the Plans.

10 64. Defendant Vallier, as Executive Vice President and Chief Human Resources
11 Officer of Dignity, is also a fiduciary with respect to the Dignity Plans within the meaning of
12 ERISA section 3(21), 29 U.S.C. § 1002(21), because, upon information and belief, he exercises
13 discretionary authority or discretionary control respecting management of the Dignity Plans,
14 exercises authority and control respecting management or disposition of the Dignity Plans'
15 assets, and/or has discretionary authority or discretionary responsibility in the administration of
16 the Dignity Plans.

17 65. Although Dignity, including specifically through its Human Resources
18 Department and the Dignity Retirement Committee, maintains that it's defined benefit pension
19 plans are exempt from ERISA coverage as Church Plans, it claims ERISA status for its health
20 and welfare benefit plans, dependent life insurance plans, and short term disability plans and
21 complies with ERISA requirements for those plans, including by filing form 5500's annually
22 with the Internal Revenue Service and the U.S. Department of Labor and making its records
23 subject to inspection upon request.

24

1 **3. The Dignity Pension Plans Do Not Disclose Information About The Dignity**
2 **Plans or the Benefits available to Participants under the Plans**

3 66. Plaintiff Rollins requested in writing that the Plan Administrator for the Dignity
4 Pension Plans provide her with a benefit statement that included a description of all pension
5 benefits to which she is entitled under the Dignity Pension Plans.

6 67. Plaintiff also requested that the Plan Administrator for the Dignity Pension Plans
7 provide her with the following materials regarding any of the Dignity Pension Plans under which
8 she was entitled to receive pension benefits: (1) the latest updated summary plan description; (2)
9 any summaries of material modifications; (3) the latest annual report, (4) any terminal report; (5)
10 the latest annual financial report; and (6) the bargaining agreement, trust agreement, contract, or
11 other instruments under which such plans are established or operated, and any applicable
12 amendments.

13 68. Although it has been more than 90 days since Plaintiff made these requests in
14 writing to the Plan Administrator of the Dignity Pension Plans, the Plaintiff has not been
15 provided with a response and has not received a benefits statement or any of the requested
16 materials.

17 **4. The Dignity Plans Are Not Church Plans**

18 69. Dignity claims the Dignity Plans are Church Plans under ERISA section 3(33), 29
19 U.S.C. § 1002(33), and the analogous section of the Internal Revenue Code (“IRC”), and are
20 therefore exempt from ERISA’s coverage under ERISA section 4(b)(2), 29 U.S.C. § 1003(b)(2).

21 **a. Only Two Types of Plans May Qualify as Church Plans and The**
22 **Dignity Plans are Neither**

23 70. Under section 3(33) of ERISA, 29 U.S.C. § 1002(33), only the following two
24 types of plans may qualify as Church Plans:

- 1 • First, under section 3(33)(A) of ERISA, 29 U.S.C. § 1002(33)(A), a plan *established*
2 *and maintained* by a church or convention or association of churches, can qualify
3 under certain circumstances and subject to the restrictions of section 3(33)(B) of
4 ERISA, 29 U.S.C. § 1002(33)(B); and
- 5 • Second, under section 3(33)(C)(i) of ERISA, 29 U.S.C. § 1002(33)(C)(i), a plan
6 *established* by a church or by a convention or association of churches that is
7 *maintained* by an organization, *the principal purpose or function of which* is the
8 administration or funding of a retirement plan, if such organization is controlled by or
9 associated with a church or convention or association of churches, can qualify under
10 certain circumstances and subject to the restrictions of section 3(33)(B) of ERISA, 29
11 U.S.C. § 1002(33)(B).

12 Both types of plans must be “established” by a church or by a convention or association of
13 churches in order to qualify as “Church Plans.”

14 71. Although other portions of ERISA section 3(33)(C) address, among other matters,
15 who can be *participants* in Church Plans—in other words, which employees can be in Church
16 Plans, etc. -- these other portions of ERISA section 3(33)(C) do not add any other type of *plan*
17 that can be a Church Plan. 29 U.S.C. § 1002(33)(C), The only two types of plans that can
18 qualify as Church Plans are those described in ERISA section 3(33)(A) and in section
19 3(33)(C)(i), 29 U.S.C. §§ 3(33)(A) and (C)(i). The Dignity Plans do not qualify as Church Plans
20 under either ERISA section 3(33)(A) or section 3(33)(C)(i), 29 U.S.C. §§ 3(33)(A) or (C)(i).

21 72. First, under ERISA section 3(33)(A), a Church Plan is “a plan established and
22 maintained for its employees by a church or by a convention or association of churches which is
23 exempt from tax under section 501 of title 26.” ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A).

24

1 73. The Dignity Plans at issue here are not and have never been Church Plans as
2 defined in ERISA section 3(33)(A), 29 U.S.C. § 1002(33)(A), because the Dignity Plans were
3 established and maintained by Dignity for its own employees. Because Dignity is not a church
4 or a convention or association of churches, nor does it claim to be, the Dignity Plans were not
5 “established and maintained by” a church or a convention or association of churches and were
6 not maintained for employees of a church or a convention or association of churches. That is the
7 end of the inquiry under ERISA section 3(33)(A), 29 U.S.C. § 1002(33)(A).

8 74. Second, under ERISA section 3(33)(C)(i), a Church Plan also includes a plan
9 “established” by a church or by a convention or association of churches that is “maintained by an
10 organization, whether a civil law corporation or otherwise, the principal purpose or function of
11 which is the administration or funding of a plan or program for the provision of retirement
12 benefits or welfare benefits, or both, for the employees of a church or a convention or association
13 of churches, if such organization is controlled by or associated with a church or a convention or
14 association of churches.” ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

15 75. The Dignity Plans are not Church Plans as defined in ERISA section 3(33)(C)(i),
16 29 U.S.C. § 1002(33)(C)(i), because the Dignity Plans were not “established” by a church or a
17 convention or association of churches. Moreover, the Dignity Plans do not qualify as “Church
18 Plans” under section 3(33)(C)(i) because they were maintained by Dignity, whose principal
19 purpose or function is not the administration or funding of a plan or program for the provision of
20 retirement benefits or welfare benefits, or both. Instead, the principal purpose of Dignity is to
21 own and operate hospitals and ancillary healthcare entities. This ends any argument that the
22 Dignity Plans could be Church Plans under ERISA section 3(33)(C)(i), 29 U.S.C. §
23 1002(33)(C)(i).

24

1 76. However, even if the Dignity Plans had been “established” by a church or even if
2 the principal purpose or function of Dignity *was* the administration or funding of the Dignity
3 Plans (instead of running a hospital conglomerate), the Dignity Plans still would not qualify as
4 Church Plans under ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i), because the
5 principal purpose of the Plans is not to provide retirement or welfare benefits *to employees of a*
6 *church or convention or association of churches*. The 60,000 participants in the Dignity Plans
7 work for Dignity, a non-profit hospital conglomerate. Dignity is not a church or a convention or
8 association of churches, and its employees are not employees of a church or a convention or
9 association of churches.

10 77. Under ERISA section 3(33)(C)(ii), 29 U.S.C. § 1002(33)(C)(ii), however, an
11 employee of a tax exempt organization that is controlled by or associated with a church or a
12 convention or association of churches also may be considered an employee of a church. But the
13 Dignity Plans also fail this part of the definition, because Dignity is not controlled by or
14 associated with a church or a convention or association of churches within the meaning of
15 ERISA.

16 78. Though this fact may be disputed by Dignity, Dignity is not an entity that is
17 controlled by a church or a convention or association of churches. Dignity is not owned by the
18 Catholic Church and does not receive funding from the Catholic Church. Moreover, although
19 the lack of funding of, and control over, the operations of Dignity precludes a finding that the
20 Catholic Church controlled Dignity within the meaning of ERISA, Dignity’s governance
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1 structure further demonstrates a lack of control, as Dignity is operated by a lay Executive
2 Leadership Team selected by its Board of Directors.²

3 79. Moreover, Dignity is not “associated with” a church or convention or association
4 of churches. Under ERISA section 3(33)(C)(iv), 29 U.S.C. § 1002(33)(C)(iv), an organization
5 “is associated with a church or a convention or association of churches if it shares common
6 religious bonds and convictions with that church or convention or association of churches.”
7 Dignity does not share common religious bonds and convictions with a church or a convention or
8 association of churches. Instead, it purports to share only some religious convictions with the
9 Catholic Church, while deliberately choosing to distance itself from, and/or deny, other religious
10 convictions of the Catholic Church, when it is in its economic interest to do so, such as when it
11 hires employees, invests in various business enterprises, encourages divergent and contrary
12 spiritual support to its patients, and performs or authorizes medical procedures forbidden by the
13 Catholic Church.

14 80. The Catholic Church insists, for example, that the mystery of Christ be a part of
15 every facet of a Catholic healthcare ministry, including by animating health care with the Gospel
16 of Jesus Christ and seeing death as an opportunity to have communion with Christ. Further, the
17 Catholic Church requires that its healthcare employees, *as a condition of employment*, agree that
18 their services be animated by the Gospel of Jesus Christ. Dignity, however, specifically chooses
19 not to make animation of healthcare through the Gospel of Jesus Christ a condition of
20 employment and informs prospective employees that Catholic faith is not a factor in the hiring
21 process. Indeed, Dignity recruits and hires from the greatest employment pool possible—one not

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23 ² Notably, if Dignity was “controlled by” the Catholic Church, then the Catholic Church itself would be exposed to
24 significant potential liability stemming from medical malpractice and other legal claims related to the provision of
medical care by Dignity.

1 restricted by any faith—in an attempt to hire the most qualified healthcare workers. Moreover,
2 at least 21 of the Dignity hospitals which provide obstetric care perform elective, contraceptive
3 sterilization procedures on patients in contravention of Catholic directives.

4 81. Perhaps most unlike a church, Dignity provides non-denominational chapels and
5 offers its patients contact with priests, ministers, rabbis or spiritual advisors of their choice. It is
6 axiomatic that these individuals, with whom Dignity offers contact—including the protestant
7 ministers, Jewish rabbis and spiritual advisors—have religious convictions that the Catholic
8 Church views as clear error. Dignity specifically chooses not to promote Catholic faith to its
9 clients and patients. Finally, Dignity has pursued a growth model that focuses on the
10 acquisition of health care facilities that have no claimed ties to religion. These facilities do not
11 purport, and have never purported, to adhere to the moral and doctrinal teaching of the Catholic
12 Church, and Dignity continues to operate these facilities in such fashion. Thus, in pursuing this
13 growth model, Dignity has deliberately chosen to further distance itself from adherence to the
14 religious convictions of the Catholic Church in order increase its opportunities for future growth
15 and partnership and to capture a larger share of the changing healthcare market nationally. So
16 while Dignity may purport to share common religious bonds and convictions with the Catholic
17 Church, it in fact only *selectively chooses to share a bare few such bonds and convictions*, and
18 ignores or abandons Catholic convictions when it is in its economic interest to do so.

19 82. Accordingly, Dignity is not “associated with” the Catholic Church within the
20 meaning of ERISA section 3(33)(C)(iv), 29 U.S.C. § 1002(33)(C)(iv), and thus its employees
21 are not “employees” of a church or convention or association of churches within the meaning of
22 ERISA section 3(33)(C)(ii), 29 U.S.C. § 1002(33)(C)(ii). Because the Dignity Plans were not
23 established and maintained for the provision of retirement benefits for “employees of a church or
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1 convention or association of churches,” the Dignity Plans fail to qualify as “Church Plans” under
2 ERISA section 3(33)(C)(i). 29 U.S.C. § 1002(33)(C)(i).

3 83. The Dignity Plans further fail to satisfy the requirements of ERISA section
4 3(33)(C)(i) because this section requires the organization that maintains the plans to be
5 “controlled by or associated with” a church or convention or association of churches within the
6 meaning of ERISA. 29 U.S.C. § 1002(33)(C)(i). Thus, even if (1) the church had “established”
7 the Dignity Plans (which it did not); (2) the principal purpose or function of Dignity was the
8 administration or funding of the Dignity Plans (instead of running a hospital conglomerate); and
9 (3) Dignity employees were employees of a church or convention or association of churches
10 (which they are not), the Dignity Plans still would not qualify as Church Plans under ERISA
11 section 3(33)(C)(i) because—for the reasons outlined above—Dignity is not controlled by or
12 associated with a church or convention or association of churches within the meaning of ERISA.
13 29 U.S.C. § 1002(33)(C)(i).

14 84. Finally, even if Dignity were “controlled by or associated with” a church, and
15 thus its employees were deemed “employees” of a church under ERISA section 3(33)(C)(ii)(2),
16 and even if the Dignity Plans were “maintained by” either a church or “pension board” satisfying
17 the requirements of ERISA section 3(33)(C)(i), the Dignity Plans would still not be “Church
18 Plans” because *all* “Church Plans” must be “established” by a church or by a convention or
19 association of churches. 29 U.S.C. §§ 1002(33)(A), (C)(i). Although a church may be deemed
20 an “employer” of the employees of an organization that it “controls” or with which it is
21 “associated,” see ERISA § (3)33(C)(iii), 29 U.S.C. § 1002(33)(C)(iii), nothing in ERISA
22 provides that the church may be deemed to have “established” a retirement plan that was in fact
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1 established by the “controlled” or “associated” organization. Accordingly, because Dignity
2 established the Dignity Plans, the plans cannot be “Church Plans” within the meaning of ERISA.

3 **b. Even if the Dignity Plans Could Otherwise Qualify as Church Plans**
4 **under ERISA Section 3(33)(A), They are Excluded From Church**
5 **Plan Status under ERISA Section 3(33)(B)(ii)**

6 85. Under ERISA section 3(33)(B)(ii), 29 U.S.C. § 1002(33)(B)(ii), a plan is
7 specifically excluded from Church Plan status if less than substantially all of the plan participants
8 are members of the clergy or employed by an organization controlled by or associated with a
9 church or convention or association of churches. In this case, there are 60,000 participants in the
10 Dignity Plans, and very nearly all of them are non-clergy healthcare workers.

11 86. If the 60,000 participants in the Dignity Plans do not work for an organization that
12 is controlled by or associated with a church or convention or association of churches, then even
13 if the Dignity Plans could otherwise qualify as Church Plans under either ERISA section
14 3(33)(A) or (C)(ii), they still would be foreclosed from Church Plan status under section
15 3(33)(B)(ii), 29 U.S.C. § 1002(33)(B)(ii).

16 87. As set forth above, Dignity is not controlled by a church or association of
17 churches, nor does it share common religious bonds and convictions with a church or association
18 of churches. Instead, it purports to share only some religious convictions with the Catholic
19 Church, while deliberately choosing to distance itself from, the convictions of the Catholic
20 Church, when it is in its economic interest to do so.

21 **c. Even if the Dignity Plans Could Otherwise Qualify as Church Plans**
22 **under ERISA, the Church Plan Exemption, as Claimed By Dignity,**
23 **Violates the Establishment Clause of the First Amendment of the**
24 **Constitution, and Is Therefore Void and Ineffective**

88. The Church Plan exemption is an accommodation *for churches* that establish and
maintain pension plans, and it allows such plans to be exempt from ERISA. As set forth in more

1 detail below in Count VIII, the extension of that accommodation to Dignity, which is not a
2 church, violates the Establishment Clause because it harms Dignity workers, puts Dignity
3 competitors at an economic disadvantage, and relieves Dignity of no genuine religious burden
4 created by ERISA. Accordingly, the Church Plan exemption, as claimed by Dignity, is void and
5 ineffective.

6 VI. CLASS ALLEGATIONS

7 89. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal
8 Rules of Civil Procedure on behalf of herself and the following class of persons similarly
9 situated: All participants or beneficiaries of any Dignity Plans operated as or claimed by Dignity
10 to be Church Plans as of the date of the filing of this Complaint. Excluded from the Class are
11 any high-level executives at Dignity or any employees who have responsibility or involvement in
12 the administration of the Plan, or who are subsequently determined to be fiduciaries of one or
13 more of the Dignity Plans, including the Individual Defendants.

14 A. Numerosity

15 90. The exact number of Class members is unknown to Plaintiff at this time, but may
16 be readily determined from records maintained by Dignity. Dignity currently employs
17 approximately 60,000 individuals. Upon information and belief, many if not all of those persons
18 are likely members of the Class, and thus the Class is so numerous that joinder of all members is
19 impracticable.

20 91. Defendant Dignity operates hospitals in Arizona, Nevada and California as well
21 as over 300 ancillary healthcare facilities spread across sixteen states. Upon information and
22 belief, Dignity's employees and, therefore, the members of the Class are geographically
23 dispersed across at least sixteen states.

24

1 **B. Commonality**

2 92. The issues regarding liability in this case present common questions of law and
3 fact, with answers that are common to all members of the Class, including (1) whether the Plans
4 are exempt from ERISA as Church Plans, and, if not, (2) whether the fiduciaries of the Plans
5 have failed to administer and fund the Plans in accordance with ERISA.

6 93. The issues regarding the relief are also common to the members of the Class as
7 the relief will consist of (1) a declaration that the Plans are ERISA covered plans; (2) an order
8 requiring that the Plans comply with the administration and funding requirements of ERISA; and
9 (3) an order requiring Dignity to pay civil penalties to the Class, in the same statutory daily
10 amount for each member of the Class.

11 **C. Typicality**

12 94. Plaintiff's claims are typical of the claims of the other members of the Class
13 because her claims arise from the same event, practice and/or course of conduct, namely
14 Defendants' failure to maintain the Plans in accordance with ERISA. Plaintiff's claims are also
15 typical because all Class members are similarly affected by Defendants' wrongful conduct.

16 95. Plaintiff's claims are also typical of the claims of the other members of the Class
17 because, to the extent Plaintiff seeks equitable relief, it will affect all Class members equally.
18 Specifically, the equitable relief sought consists primarily of (i) a declaration that the Dignity
19 Plans are not Church Plans; and (ii) a declaration that the Dignity Plans are ERISA covered plans
20 that must comply with the administration and funding requirements of ERISA. In addition, to
21 the extent Plaintiff seeks monetary relief, it is for civil fines to the Class, in the same statutory
22 daily amount for each member of the Class.

23 96. Dignity does not have any defenses unique to Plaintiff's claims that would make
24 Plaintiff's claims atypical of the remainder of the Class.

1 **D. Adequacy**

2 97. Plaintiff will fairly and adequately represent and protect the interests of all
3 members of the Class.

4 98. Plaintiff does not have any interests antagonistic to or in conflict with the interests
5 of the Class.

6 99. Defendant Dignity and the Individual Defendants have no unique defenses against
7 the Plaintiff that would interfere with Plaintiff's representation of the Class.

8 100. Plaintiff has engaged counsel with extensive experience prosecuting class actions
9 in general and ERISA class actions in particular.

10 **E. Rule 23(b)(1) Requirements.**

11 101. The requirements of Rule 23(b)(1)(A) are satisfied because prosecution of
12 separate actions by the members of the Class would create a risk of establishing incompatible
13 standards of conduct for Defendants.

14 102. The requirements of Rule 23(b)(1)(B) are satisfied because adjudications of these
15 claims by individual members of the Class would, as a practical matter, be dispositive of the
16 interests of the other members not parties to the actions, or substantially impair or impede the
17 ability of other members of the Class to protect their interests.

18 **F. Rule 23(b)(2) Requirements.**

19 103. Class action status is also warranted under Rule 23(b)(2) because Defendants
20 have acted or refused to act on grounds generally applicable to the Class, thereby making
21 appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the
22 Class as a whole.

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1 **G. Rule 23(b)(3) Requirements.**

2 104. If the Class is not certified under Rule 23(b)(1) or (b)(2) then certification under
3 (b)(3) is appropriate because questions of law or fact common to members of the Class
4 predominate over any questions affecting only individual members. The common issues of law
5 or fact that predominate over any questions affecting only individual members include: (1)
6 whether the Plans are exempt from ERISA as Church Plans, and, if not, (2) whether the
7 fiduciaries of the Plans have failed to administer and fund the Plans in accordance with ERISA;
8 and (3) whether the Church Plan exemption, as claimed by Dignity, violates the Establishment
9 Clause of the First Amendment. A class action is superior to the other available methods for the
10 fair and efficient adjudication of this controversy because:

11 A. Individual class members do not have an interest in controlling the
12 prosecution of these claims in individual actions rather than a class action because the
13 equitable relief sought by any Class member will either inure to the benefit of the Plan or
14 affect each class member equally;

15 B. Individual Class members also do not have an interest in controlling the
16 prosecution of these claims because the monetary relief that they could seek in any
17 individual action is identical to the relief that is being sought on their behalf herein;

18 C. There is no other litigation begun by any other Class members
19 concerning the issues raised in this litigation;

20 D. This litigation is properly concentrated in this forum, which is where
21 Defendant Dignity is headquartered.

22 E. There are no difficulties managing this case as a class action.
23
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VII. CAUSES OF ACTION

COUNT I

(Claim for Equitable Relief Pursuant to ERISA Section 502(a)(3) Against Defendant Dignity)

105. Plaintiff repeats and re-alleges the allegations contained in all foregoing paragraphs herein.

106. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to obtain “appropriate equitable relief ... to enforce any provisions of this title.” Pursuant to this provision, and 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiff seeks declaratory relief that the Dignity Plans are not Church Plans within the meaning of ERISA section 3(33), 29 U.S.C. § 1002(33), and thus are subject to the provisions of Title I and Title IV of ERISA.

107. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), also authorizes a participant or beneficiary to bring a civil action to “(A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.” Pursuant to these provisions, Plaintiff seeks orders directing the Dignity Plans’ sponsor and administrator, Dignity, to bring the Dignity Plans into compliance with ERISA, including the reporting, vesting, and funding requirements of Parts 1, 2 and 3 of ERISA, 29 U.S.C. §§ 1021-31, 1051-61, 1081-85.

108. As the Dignity Plans are not Church Plans within the meaning of ERISA section 3(33), 29 U.S.C. § 1002(33), and meet the definition of a pension plan under ERISA section 3(2), 29 U.S.C. § 1002(2), each of the Dignity Plans should be declared to be an ERISA-covered pension plan, and the Dignity Plans’ sponsor, Dignity, should be ordered to bring the Dignity Plans into compliance with ERISA, including by remedying the violations set forth below.

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COUNT II
(Claim for Violation of Reporting and Disclosure Provisions Against Defendant Dignity and/or the members of the Dignity Retirement Committee)

109. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

A. Summary Plan Descriptions

110. At no time have Dignity and/or the members of the Dignity Retirement Committee provided Plaintiff or any member of the Class with a Summary Plan Description with respect to the Dignity Plans that meets the requirements of ERISA section 102, 29 U.S.C. § 1022, and the regulations promulgated thereunder.

111. Because Dignity and/or the members of the Dignity Retirement Committee have been the Plan Administrator of the Plans at all relevant times, and/or the members of the Dignity Retirement Committee have violated ERISA section 104, 29 U.S.C. § 1024, by failing to provide Plaintiff and members of the Class with adequate Summary Plan Descriptions.

B. Annual Reports

112. At no time has an annual report with respect to the Dignity Plans been filed with the Secretary of Labor in compliance with ERISA section 103, 29 U.S.C. § 1023, or a Form 5500 and associated schedules and attachments which the Secretary has approved as an alternative method of compliance with ERISA section 103, 29 U.S.C. § 1023.

113. Because Dignity and/or the members of the Dignity Retirement Committee have been the Plan Administrator of the Dignity Plans at all relevant times, Dignity and/or the members of the Dignity Retirement Committee have violated ERISA section 104(a), 29 U.S.C. § 1024(a), by failing to file annual reports with respect to the Dignity Plans with the Secretary of Labor in compliance with ERISA section 103, 29 U.S.C. § 1023, or Form 5500s and associated

1 schedules and attachments that the Secretary has approved as an alternate method of compliance
2 with ERISA section 103, 29 U.S.C. § 1023.

3 **C. Summary Annual Reports**

4 114. At no time have Dignity and/or the members of the Dignity Retirement
5 Committee furnished Plaintiff or any member of the Class with a Summary Annual Report with
6 respect to the Dignity Plans in compliance with ERISA section 104(b)(3) and regulations
7 promulgated thereunder. 29 U.S.C. § 1024(b)(3).

8 115. Because Dignity and/or the members of the Dignity Retirement Committee have
9 been the Plan Administrator of the Dignity Plans at all relevant times, Dignity and/or the
10 members of the Dignity Retirement Committee have violated ERISA section 104(b)(3), 29
11 U.S.C. § 1024(b)(3), by failing to furnish Plaintiff or any member of the Class with a Summary
12 Annual Report with respect to the Dignity Plans in compliance with ERISA section 104(b)(3)
13 and regulations promulgated thereunder. 29 U.S.C. § 1024(b)(3).

14 **D. Notification of Failure to Meet Minimum Funding**

15 116. At no time has Dignity furnished Plaintiff or any member of the Class with a
16 Notice with respect to the Dignity Plans pursuant to ERISA section 101(d)(1), 29 U.S.C. §
17 1021(d)(1), informing them that Dignity had failed to make payments required to comply with
18 ERISA section 302, 29 U.S.C. § 1082, with respect to the Dignity Plans.

19 117. Defendant Dignity has been the employer that established and/or maintained the
20 Dignity Plans.

21 118. At no time has Defendant Dignity funded the Dignity Plans in accordance with
22 ERISA section 302, 29 U.S.C. § 1082.

1 119. As the employer maintaining the Dignity Plans, Defendant Dignity has violated
2 ERISA section 302, 29 U.S.C. § 1082, by failing to fund the Dignity Plans, is liable for its own
3 violations of ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1), and as such may be required by
4 the Court to pay Plaintiff and each class member up to \$110 per day (as permitted by 29 C.F.R.
5 section 2575.502(c)(3)) for each day that Defendant has failed to provide Plaintiff and each Class
6 member with the notice required by ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1).

7 **E. Funding Notices**

8 120. At no time have Dignity and/or the members of the Dignity Retirement
9 Committee furnished Plaintiff or any member of the Class with a Funding Notice with respect to
10 the Dignity Plans pursuant to ERISA section 101(f), 29 U.S.C. § 1021(f).

11 121. At all relevant times, Dignity and/or the members of the Dignity Retirement
12 Committee have been the administrator of the Dignity Plans.

13 122. As the administrator of the Dignity Plans, Dignity and/or the members of the
14 Dignity Retirement Committee have violated ERISA section 101(f) by failing to provide each
15 participant and beneficiary of the Dignity Plans with the Funding Notice required by ERISA
16 section 101(f), and as such may be required by the Court to pay Plaintiff and each class member
17 up to \$110 per day (as permitted by 29 C.F.R. section 2575.502(c)(3)) for each day that
18 Defendant has failed to provide Plaintiff and each Class member with the notice required by
19 ERISA section 101(f). 29 U.S.C. § 1021(f).

20 **F. Pension Benefit Statements**

21 123. At no time have Dignity and/or the members of the Dignity Retirement
22 Committee furnished Plaintiff or any member of the Class with a Pension Benefit Statement with
23 respect to the Dignity Plans pursuant to ERISA section 105(a)(1), 29 U.S.C. § 1025(a)(1).

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1 124. At all relevant times, Dignity and/or the members of the Dignity Retirement
2 Committee have been the administrator of the Dignity Plans.

3 125. As the administrator of the Dignity Plans, Dignity and/or the members of the
4 Dignity Retirement Committee have violated ERISA section 105(a)(1) and as such may be
5 required by the Court to pay Plaintiff and each class member up to \$110 per day (as permitted by
6 29 C.F.R. section 2575.502(c)(3)) for each day that Defendant has failed to provide Plaintiff and
7 each Class member with the Pension Benefit Statements required by ERISA section 105(a)(1).
8 29 U.S.C. § 1025(a)(1).

9 **COUNT III**

10 **(Claim for Failure to Provide Minimum Funding Against Defendant Dignity)**

11 126. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if
12 fully set forth herein.

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

17 128. As the employer maintaining the Plans, Dignity was responsible for making the
18 contributions that should have been made pursuant to ERISA section 302, 29 U.S.C. § 1082, at a
19 level commensurate with that which would be required under ERISA.

20 129. Since at least 1996, Dignity has failed to make contributions in satisfaction of the
21 minimum funding standards of ERISA section 302, 29 U.S.C. § 1082.

22 130. By failing to make the required contributions to the Dignity Plans, either in whole
23 or in partial satisfaction of the minimum funding requirements established by ERISA section
24 302, Defendant Dignity has violated ERISA section 302. 29 U.S.C. § 1082.

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COUNT IV
(Claim for Failure to Establish the Plans Pursuant to a Written Instrument Meeting the Requirements of ERISA Section 402 Against Defendant Dignity)

131. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

132. ERISA section 402, 29 U.S.C. § 1102, provides that every plan will be established pursuant to a written instrument which will provide among other things “for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan” and will “provide a procedure for establishing and carrying out a funding policy and method constituent with the objectives of the plan and the requirements of [Title I of ERISA].”

133. Although the benefits provided by the Dignity Plans were described to the employees and retirees of Dignity (and/or its affiliates and subsidiaries) in various written communications, the Dignity Plans have never been established pursuant to a written instrument meeting the requirements of ERISA section 402, 29 U.S.C. § 1102.

134. As Defendant Dignity has been responsible for maintaining the Dignity Plans and has amendment power over the Dignity Plans, Defendant Dignity violated section 402 by failing to promulgate written instruments in compliance with ERISA section 402 to govern the Dignity Retirement Plans’ operations and administration. 29 U.S.C. § 1102.

COUNT V
(Claim for Failure to Establish a Trust Meeting the Requirements of ERISA Section 403 Against Defendant Dignity)

135. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

136. ERISA section 403, 29 U.S.C. § 1103, provides, subject to certain exceptions not applicable here, that all assets of an employee benefit plan shall be held in trust by one or more

1 trustees, that the trustees shall be either named in the trust instrument or in the plan instrument
2 described in section 402(a), 29 U.S.C. § 1102(a), or appointed by a person who is a named
3 fiduciary.

4 137. Although the Dignity Plans' assets have been held in trust, the trust does not meet
5 the requirements of ERISA section 403, 29 U.S.C. § 1103.

6 138. As Defendant Dignity has been responsible for maintaining the Dignity Plans and
7 has amendment power over the Dignity Plans, Defendant Dignity violated section 403 by failing
8 to put the Dignity Plans' assets in trust in compliance with ERISA section 403. 29 U.S.C. §
9 1103.

10 **COUNT VI**

11 **(Claim for Civil Money Penalty Pursuant to ERISA Section 502(a)(1)(A) Against
12 Defendant Dignity and/or the members of the Dignity Retirement Committee)**

13 139. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if
14 fully set forth herein.

15 140. ERISA section 502(a)(1)(A), 29 U.S.C. § 1132(a)(1)(A), provides that a
16 participant may bring a civil action for the relief provided in ERISA section 502(c), 29 U.S.C. §
17 1132(c).

18 141. ERISA section 502(c)(3), 29 U.S.C. § 1132(c)(3), as provided in 29 C.F.R.
19 section 2575.502c-3, provides that an employer maintaining a plan who fails to meet the notice
20 requirement of ERISA section 101(d), 29 U.S.C. § 1021(d), with respect to any participant and
21 beneficiary may be liable for up to \$110 per day from the date of such failure.

22 142. ERISA section 502(c)(3), 29 U.S.C. § 1132(c)(3), as amended per 29 C.F.R.
23 section 2575.502c-3, provides that an administrator of a defined benefit pension plan who fails to
24 meet the notice requirement of ERISA section 101(f), 29 U.S.C. § 1021(f), with respect to any
participant and beneficiary may be liable for up to \$110 per day from the date of such failure.

1 143. ERISA section 502(c)(3), 29 U.S.C. § 1132(c)(3), as amended per 29 C.F.R.
2 section 2575.502c-3, provides that an administrator of a defined benefit pension plan who fails to
3 provide a Pension Benefit Statement at least once every three years to a participant with a
4 nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time
5 the statement is to be furnished as required by ERISA section 105(a), 29 U.S.C. § 1025(a), may
6 be liable for up to \$110 per day from the date of such failure.

7 144. As Defendant Dignity is the employer maintaining the Dignity Plans and has
8 failed to give the notices required by ERISA section 101(d), 29 U.S.C. § 1021(d) as set forth in
9 Count II Subpart D, Defendant Dignity is liable to the Plaintiff and each member of the Class in
10 an amount up to \$110 per day from the date of such failures until such time that notices are given
11 and the statement is provided, as the Court, in its discretion, may order.

12 145. As Defendant Dignity and/or the members of the Dignity Retirement Committee
13 are the Administrator of the Dignity Plans and have failed to give the notice required by ERISA
14 section 101 (f), 29 U.S.C. § 1021 (f), and the Pension Benefit Statement required by ERISA
15 section 105(a), 29 U.S.C. § 1025(a), as set forth in Count II Subparts E & F, Defendant Dignity
16 and/or the members of the Dignity Retirement Committee are liable to the Plaintiff and each
17 member of the Class in an amount up to \$110 per day from the date of such failures until such
18 time that notices are given and the statement is provided, as the Court, in its discretion, may
19 order.

20 **COUNT VII**
21 **(Claim for Breach of Fiduciary Duty Against All Defendants)**

22 146. Plaintiff incorporates and realleges by reference the foregoing paragraphs as if
23 fully set forth herein.
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1 147. Plaintiff brings this Count VII for breach of fiduciary duty pursuant to ERISA
2 section 502(a)(2), 29 U.S.C. § 1132(a)(2).

3 **A. Breach of the Duty of Prudence and Loyalty**

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

7 (a) for the exclusive purpose of:

8 (i) providing benefits to participants and beneficiaries; and

9 (ii) defraying reasonable expenses of administering the plan;

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

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

17 149. As fiduciaries with respect to the Dignity Plans, Defendants had the authority to
18 enforce each provision of ERISA alleged to have been violated in the foregoing paragraphs
19 pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3). Having the authority to enforce
20 the provisions of ERISA at those respective times, ERISA section 404(a)(1)(A)-(D), 29 U.S.C. §
21 1104(a)(1)(A)-(D), imposed on Defendants the respective duty to enforce those provisions in the
22 interest of the participants and beneficiaries of the Dignity Plans during the times that each was a
23 fiduciary of the Dignity Plans.

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1 150. Defendants have never enforced any of the provisions of ERISA set forth in
2 Counts I-V with respect to the Dignity Plans.

3 151. By failing to enforce the provisions of ERISA set forth in Counts I-V, Defendants
4 breached the fiduciary duties that they owed to Plaintiff and the Class.

5 152. The failure of Defendants to enforce the funding obligations owed to the Plan has
6 resulted in a loss to the Dignity Plans equal to the foregone funding and earnings thereon, and
7 profited Defendant Dignity by providing it the use of money owed to the Dignity Plans for its
8 general business purposes.

9 **B. Prohibited Transactions**

10 153. ERISA section 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), prohibits a fiduciary
11 with respect to a plan from directly or indirectly causing a plan to extend credit to a party in
12 interest, as defined in ERISA section 3(14), 29 U.S.C. § 1002(14), if he or she knows or should
13 know that such transaction constitutes an extension of credit to a party in interest.

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

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

20 156. As fiduciaries with respect to the Plans and, with respect to Dignity, as an
21 employer of employees covered by the Plans, and, with respect to Defendant Vallier as an
22 Officer of Dignity, the Defendants at all relevant times were parties in interest with respect to the
23 Dignity Plans pursuant to ERISA section 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

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

5 158. By failing to enforce the funding obligations created by ERISA and owed to the
6 Dignity Plans, Defendants used Dignity Plan assets for Dignity's own benefit, when Defendants
7 knew or should have known that their failure to enforce the funding obligations constituted such
8 a use of Dignity Plan assets, in violation of ERISA section 406(a)(1)(D), 29 U.S.C. §
9 1106(a)(1)(D).

10 159. By failing to enforce the funding obligations created by ERISA and owed to the
11 Dignity Plans, Defendants used Dignity Plan assets in Dignity's interest in violation of ERISA
12 section 406(b)(1), 29 U.S.C. § 1106(b)(1).

13 160. The failure of Defendants to enforce the funding obligations owed to the Dignity
14 Plans has resulted in a loss to the Dignity Plans equal to the foregone funding and earnings
15 thereon.

16 161. The failure of Defendants to enforce the funding obligations owed to the Dignity
17 Plans has profited Defendant Dignity by providing it the use of money owed to the Dignity Plans
18 for its general business purposes.

19 **COUNT VIII**

20 **(Claim for Declaratory Relief That the Church Plan Exemption, as Claimed By Dignity,
21 Violates the Establishment Clause of the First Amendment of the Constitution, and Is
22 Therefore Void and Ineffective)**

23 162. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if
24 fully set forth herein.

1 163. The Establishment Clause of the First Amendment of the Constitution mandates
2 governmental neutrality between religion and nonreligion. U.S. Const. Amend. I. The ERISA
3 Church Plan exemption is an accommodation that exempts churches and associations of
4 churches, under certain circumstances, from compliance with ERISA. The ERISA Church Plan
5 exemption, as claimed by Dignity, is an attempt to extend the accommodation beyond churches
6 and associations of churches, to Dignity—a non-profit hospital and healthcare network. That
7 extension violates the Establishment Clause because it harms Dignity workers, puts Dignity
8 competitors at an economic disadvantage, and relieves Dignity of no genuine religious burden
9 created by ERISA.

10 A. Workers are Harmed. Employers, including Dignity, legally are not
11 required to provide pensions; instead, they choose to provide pensions in order to reap tax
12 rewards and attract and retain employees in a competitive labor market. Dignity hires
13 without regard to the religious faith of prospective employees; indeed, any choice of
14 faith, or lack thereof, is not a factor in the recruiting and hiring of Dignity employees.
15 Thus, as a practical matter, and by Dignity's own design, its pension plan participants
16 include people of a vast number of divergent faiths, as well as those who belong to no
17 faith. To be constitutional, an accommodation such as the Church Plan exemption must
18 not impose burdens on nonadherents without due consideration of their interests. The
19 Church Plan exemption, as invoked by Dignity, places its tens of thousands of longtime
20 employees' justified reliance on their pension benefits at great risk, including because the
21 Plans are underfunded by over \$1.2 billion. In addition, Dignity fails to provide the
22 multitude of other ERISA protections designed to safeguard the pensions. The Church
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1 Plan exemption, as applied by Dignity, provides no consideration of the harm to
2 Dignity's 60,000 employees, including all of those that are non-Catholic.

3 B. Rivals are Disadvantaged. Dignity's commercial rivals face substantial
4 disadvantages in their competition with Dignity because the rivals must use their current
5 assets to fully fund their pension plan obligations and provide the other ERISA
6 protections. To be constitutional, an accommodation such as the Church Plan exemption
7 must take adequate account of any disadvantage it creates for nonbeneficiaries. The
8 Church Plan exemption, as applied by Dignity, provides no consideration of the
9 disadvantage it creates for Dignity's competitors.

10 C. No Genuine Religious Burden is Relieved. Dignity claims the Church
11 Plan exemption to lighten its pension obligations and liabilities, not to adhere to a
12 religious faith. To be constitutional, an accommodation such as the Church Plan
13 exemption, which exempts compliance with ERISA, must relieve a genuine burden upon
14 the recipient's *religious practice*. The Church Plan exemption, as claimed by Dignity,
15 responds to no genuine burden created by ERISA on any Dignity religious practice.

16 164. Plaintiff seeks a declaration by the Court that the Church Plan exemption, as
17 claimed by Dignity, is an unconstitutional accommodation under the Establishment Clause of the
18 First Amendment, and is therefore void and ineffective.

19 **VIII. PRAYER FOR RELIEF**

20 165. WHEREFORE, Plaintiff prays that judgment be entered against the Defendant on
21 all claims and request that the Court award the following relief:

22 A. Declaring that the Dignity Plans are employee benefit plans within the meaning of
23 ERISA section 3(2), 29 U.S.C. § 1002(2), are defined benefit pension plans within the meaning
24 of ERISA section 3(35), 29 U.S.C. § 1002(35), and are not Church Plans within the definition of

1 section 3(33) of ERISA, 29 U.S.C. § 1002(33). Ordering Dignity to reform the Dignity
2 Retirement Plan to bring the Dignity Plans into compliance with ERISA and to have the Dignity
3 Plans comply with ERISA including as follows:

4 1. Revising Plan documents to reflect that the Plans are defined benefit plans
5 regulated by ERISA.

6 2. Requiring Dignity to fund the Dignity Plans in accordance with ERISA's
7 funding requirements, disclose required information to the Dignity Plans, participants and
8 beneficiaries, and otherwise comply with all other reporting, vesting, and funding
9 requirements of Parts 1, 2 and 3 of ERISA, 29 U.S.C. §§ 1021-31, 1051-61, 1081-85.

10 3. Reforming the Dignity Plans to comply with ERISA's vesting and accrual
11 requirements and providing benefits in the form of a qualified joint and survivor annuity.

12 4. Requiring the adoption of an instrument governing the Dignity Plans that
13 complies with ERISA section 402, 29 U.S.C. § 1102.

14 5. Requiring Dignity and/or the Dignity Retirement Committee to comply
15 with ERISA reporting and disclosure requirements, including by filing Form 5500
16 reports, distributing ERISA-compliant Summary Plan Descriptions, Summary Annual
17 Reports and Participant Benefit Statements, and providing Notice of the Dignity Plans'
18 funding status and deficiencies.

19 6. Requiring the establishment of a Trust in compliance with ERISA section
20 403, 29 U.S.C. § 1103.

21 B. Requiring Dignity, as a fiduciary of the Plan, to make the Dignity Plans whole for
22 any losses and disgorge any Dignity profits accumulated as a result of fiduciary breaches.

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1 C. Appointing an Independent Fiduciary to hold the Dignity Plans' assets in trust, to
2 manage and administer the Dignity Plans and their assets, and to enforce the terms of ERISA.

3 D. Requiring Dignity to pay a civil money penalty of up to \$110 per day to Plaintiff
4 and each Class member for each day it failed to inform Plaintiff and each Class member of its
5 failure to properly fund the Plan.

6 E. Requiring Dignity and/or the Dignity Retirement Committee to pay a civil money
7 penalty of up to \$110 per day to Plaintiff and each Class member for each day it failed to provide
8 Plaintiff and each Class member with a Funding Notice.

9 F. Requiring Dignity and/or the Dignity Retirement Committee to pay a civil money
10 penalty of up to \$110 per day to Plaintiff and each Class member for each day it failed to provide
11 a benefit statement under ERISA section 105(a)(1)(B), 29 U.S.C. § 1025(a)(1)(B).

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

15 H. Declaring with respect to Count VIII, that the Church Plan exemption, as claimed
16 by Dignity, is an unconstitutional accommodation under the Establishment Clause of the First
17 Amendment, and is therefore void and ineffective.

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

20 J. Awarding to Plaintiff taxable costs pursuant to ERISA section 502(g), 29 U.S.C. §
21 1132(g), 28 U.S.C. § 1920, and other applicable law.

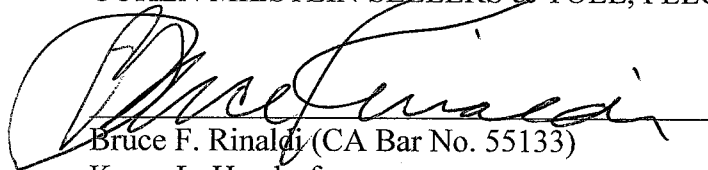
22 K. Awarding to Plaintiff pre-judgment interest on any amounts awarded pursuant to
23 law.

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1 L. Awarding, declaring or otherwise providing Plaintiff and the Class all relief under
2 ERISA section 502(a), 29 U.S.C. § 1132(a), or any other applicable law, that the Court deems
3 proper.
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1 DATED March 28, 2013.

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