

COHEN MILSTEIN SELLERS & TOLL, PLLC.
1100 NEW YORK AVENUE, N.W., STE. 500, WASHINGTON, DC 20005

KELLER ROHRBACK L.L.P.
1201 THIRD AVENUE, STE 3200, SEATTLE, WASHINGTON 98101

1 COHEN MILSTEIN SELLERS & TOLL, PLLC
Bruce Rinaldi (CA Bar No. 55133)
2 Karen L. Handorf (*pro hac vice*)
Michelle C. Yau (*pro hac vice*)
3 1100 New York Avenue, N.W.
Suite 500, West Tower
4 Washington, D.C. 20005
Tel: (202) 408-4600 / Fax: (202) 408-4699
5 Email: brinaldi@cohenmilstein.com
khandorf@cohenmilstein.com
6 myau@cohenmilstein.com

7 KELLER ROHRBACK L.L.P.
Lynn L. Sarko (*pro hac vice*)
8 Havila C. Unrein (*pro hac vice*)
Matthew M. Gerend (*pro hac vice*)
9 1201 Third Avenue, Suite 3200
Seattle, WA 98101
10 Tel: (206) 623-1900 / Fax: (206) 623-3384
Email: lsarko@kellerrohrback.com
11 hunrein@kellerrohrback.com
mgerend@kellerrohrback.com
12

13 KELLER ROHRBACK L.L.P.
Juli E. Farris, Esq. (CA Bar No. 141716)
1129 State Street, Suite 8
14 Santa Barbara, CA 93101
Tel: (805) 456-1496 / Fax: (805) 456-1497
15 Email: jfarris@kellerrohrback.com

16 *Additional Counsel for Plaintiff on Signature Page*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 STARLA ROLLINS on behalf of herself,
individually, and on behalf of all others
20 similarly situated,

21 Plaintiff,

22 v.

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

27 Defendants.
28

No. 13-CV-1450 TEH

PLAINTIFF'S NOTICE OF MOTION,
MOTION FOR PARTIAL SUMMARY
JUDGMENT PURSUANT TO FED. R.
CIV. P. 56, AND SUPPORTING
MEMORANDUM

Date: March 31, 2014
Time: 10:00 a.m.
Ctrm: 2
Judge: Hon. Thelton E. Henderson

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KELLER ROHRBACK L.L.P.
1201 THIRD AVENUE, STE 3200, SEATTLE, WASHINGTON 98101

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1100 NEW YORK AVENUE, N.W., STE. 500, WASHINGTON, DC 20005

KELLER ROHRBACK L.L.P.
1201 THIRD AVENUE, STE 3200, SEATTLE, WASHINGTON 98101

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NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT

Please take notice that on Monday, March 31, 2014 at 10:00 a.m. or as soon thereafter as counsel may be heard in the courtroom of the Honorable Thelton E. Henderson, United States District Judge for the Northern District of California, located at the United States Courthouse, 450 Golden Gate Avenue, San Francisco California 94102, Plaintiff Starla Rollins will and hereby does move the Court under Fed. R. Civ. P. 56(a) for an order granting summary judgment in her favor on Count I of her Complaint (“Compl.”), ECF No. 1, and granting the relief requested in Section A of the Complaint’s Prayer for Relief.

The undisputed facts demonstrate that Dignity Health (“Dignity”) established the Dignity Health Pension Plan (the “Dignity Plan”) and that Dignity is not a church. Because the Dignity Plan was not established by a church, the Dignity Plan is not exempt from ERISA as a “church plan” as a matter of law. Pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiff is entitled to equitable relief to enforce the provisions of ERISA, including: (1) declaratory relief that the Dignity Plan is not a “church plan” within the meaning of ERISA section 3(33), 29 U.S.C. § 1002(33) and thus is subject to the provisions of Title I and Title IV of ERISA, Compl. ¶ 106; and (2) orders directing Defendants to bring the Dignity Plan 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, Compl. ¶ 107.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF ISSUES TO BE DECIDED

1. Whether Plaintiff is entitled to judgment as a matter of law that the Dignity Plan is not exempt from ERISA as a church plan because the undisputed facts demonstrate that the Dignity Plan was established by Dignity and that Dignity is not a church.

2. Whether Plaintiff is entitled to the requested equitable relief to enforce the provisions of ERISA with respect to the Dignity Plan.

II. INTRODUCTION

The Dignity Plan is a defined benefit pension plan covering most employees of Dignity, a

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1 non-profit hospital conglomerate. Defendants have deprived plan participants of critical ERISA
 2 safeguards based on their erroneous contention that the Dignity Plan is exempt from ERISA as a
 3 church plan. However, the Dignity Plan is not a church plan as a matter of law because the
 4 undisputable facts demonstrate that the Dignity Plan was not established by a church.

5 ERISA defines a “church plan” as one “*established and maintained . . . for its employees . . .*
 6 *by a church* or by a convention or association of churches.” 29 U.S.C. § 1002(33)(A) (2011)
 7 (emphasis added). In its December 12, 2013 Order Denying Defendants’ Motion to Dismiss
 8 (“Order”), ECF No. 84, the Court interpreted the ERISA church plan definition and concluded that
 9 “both the [statutory] text and the [legislative] history confirm that a church plan must still be
 10 established by a church.” *Rollins v. Dignity Health (“Dignity”)*, No. 13-1450, ___ F. Supp. 2d
 11 ___, 2013 WL 6512682, at *7 (N.D. Cal. Dec. 12, 2013).

12 Here the undisputed facts demonstrate that the Dignity Plan was established by Dignity and
 13 that Dignity is not a church. Although Dignity has, in recent filings with this Court, attempted to
 14 deny that it established the Dignity Plan, this dispute is not genuine. This recent position—which
 15 represents an about-face from Defendants’ arguments prior to the Courts’ December 12 Order—is
 16 contradicted by the plain language of the Dignity Plan documents produced in this action,
 17 including two such documents submitted by Defendants in support of their motion to dismiss.

18 Because the Dignity Plan was established by Dignity, and thus was not established by a
 19 church, Plaintiff is entitled to judgment as a matter of law on Count I of her Complaint, which
 20 seeks equitable relief declaring that the Dignity Plan is not exempt from ERISA as a “church plan”
 21 and requiring Defendants to bring the Dignity Plan into compliance with ERISA’s substantive
 22 requirements.

23 III. UNDISPUTED MATERIAL FACTS

24 The following facts cannot genuinely be disputed:

25 1. **Plaintiff is a participant in the Dignity Plan.** *See* Defendants’ Answer to
 26 Plaintiff’s Complaint (“Answer”) ¶ 3, ECF No. 86 (defining the “Plan” to mean the Dignity Health
 27 Pension Plan); *Id.* ¶ 18 (“Defendants further admit that Rollins is a participant in the Plan and is
 28 vested in the Plan under its terms.”).

1 2. **The Dignity Plan is a defined benefit pension plan.** *See* Answer ¶ 53

2 (“defendants admit that the Plan is a non-contributory defined benefit pension plan that covers
3 most of Dignity Health’s employees.”); *id.* at ¶ 56 (“defendants admit that the Plan is a defined
4 benefit pension plan” and “further admit that the Plan provides retirement income to participants
5 and beneficiaries following the termination of participants’ employment.”).

6 3. **Dignity established the Dignity Plan.** *See, e.g.,* Answer ¶ 3 (defining the “Plan” to
7 mean the Dignity Health Pension Plan and addressing “plans *established* by Dignity Health,
8 including the Plan in which Rollins participates”) (emphasis added). Numerous amendments to
9 the Dignity Plan explicitly state that “the Plan was established by Dignity Health to benefit its
10 eligible employees.” *See, e.g.* Ex.¹ 1 (Amend. No. 25 to the Dignity Plan)² at Bates No.
11 DIGNITY00000609;³ Ex. 2 (Amend. No. 26 to the Dignity Plan) at Bates No. 0611 (same); Ex. 3
12 (Amend. No. 27 to the Dignity Plan) at Bates No. 0614 (same); Ex. 4 (Amendment No. 15 to the
13 Dignity Plan) at Bates No. 0596 (“the Plan was established by CHW to benefit its eligible
14 employees . . .”).⁴ The Dignity Plan restatement, dated January 1, 2005, states that “[t]his Plan
15 document constitutes an amendment and complete restatement of the original Plan *entered into by*
16 *the Employer* as of January 1, 1989 (and subsequently amended).” Ex. 5 (Catholic Healthcare

17 ¹ Exhibits 1 through 7 are attached as exhibits to the Declaration of Matthew M. Gerend In Support
18 of Plaintiff’s Motion for Partial Summary Judgment.

19 ² A copy of this document was previously submitted as Exhibit H to the Declaration of Bernita
20 McTernan in Support of Defendants’ Motion to Dismiss (“McTernan Decl.”), ECF No. 44
21 (stating that the document is “maintained by Dignity in the normal course of business”).

22 ³ For brevity, all subsequent citations herein to Bates numbers omit the prefix and leading zeros,
23 but in each instance relate to documents with Bates numbers beginning “DIGNITY0000.”

24 ⁴ Prior to January 17, 2012, Dignity Health went by the name Catholic Healthcare West and the
25 Dignity Plan went by the name the Catholic Healthcare West Pension Plan; Prior to January 1,
26 2012, the Dignity Plan went by the name the “Catholic Healthcare West Retirement Plan.” *See*
27 Ex. 1 at Bates No. 0609 (noting that “on January 17, 2012, Dignity Health changed its name from
28 Catholic Healthcare West to Dignity Health”); *Id.* (“The name of the Plan is changed to the
Dignity Health Pension Plan and all references to ‘CHW Pension Plan’ and ‘Catholic Healthcare
West Pension Plan’ are changed to ‘Dignity Health Pension Plan.’”); *id.* (“due to Catholic
Healthcare West changing its name to Dignity Health, all references in the Plan to ‘CHW’ or
‘Catholic Healthcare West’ refer to Dignity Health.”); Ex. 4 at Bates No. 0596 (“effective
January 1, 2012, the name of the Plan is changed to the Catholic Healthcare West Pension Plan
and all references within the Plan document to ‘Catholic Healthcare West Retirement Plan’ and
‘CHW Retirement Plan’ are changed to ‘Catholic Healthcare West Pension Plan’ and ‘CHW
Pension Plan,’ respectively.”).

1 West Retirement Plan, Amended and Restated January 1, 2005) at Bates No. 0155 (emphasis
 2 added);⁵ *Id.* at Bates No. 0162, § 1.19 (“‘Employer’ means CATHOLIC HEALTHCARE WEST . .
 3 .”). Numerous other provisions of the Dignity Plan restatement make clear that the Dignity Plan
 4 was established by Dignity (formerly known as Catholic Healthcare West). *See, e.g., Id.* at Bates
 5 No. 0268 (“Catholic Healthcare West has caused this restated Plan document for the CHW
 6 Retirement Plan to be executed by its duly authorized officers . . .”).⁶ That Dignity established the
 7 Dignity Plan is further confirmed by statements in the Master Trust Agreement for the Dignity
 8 Plan. *See* Ex. 6 (Master Trust Agreement Between Catholic Healthcare West and Bankers Trust
 9 Company of California, N.A., Effective July 1, 1989) at Bates No. 1301 (“CHW desires to
 10 establish a master retirement trust which will serve as a funding medium for eligible employee
 11 benefit plans of CHW and its subsidiaries and affiliates”).⁷

12 4. **Dignity is not a church.** *Compare* Compl. ¶ 76 (“Dignity is not a church or a
 13 convention or association of churches . . .”) with Answer ¶ 76 (“defendants admit that Dignity
 14 Health is a church ministry *rather than a church.*”) (emphasis added); *see also* Ex. 7 (Internal
 15 Revenue Service, 2011 Form 990: Return of Organization Exempt from Income Tax: Dignity
 16 Health, Schedule A) (listing Dignity’s reason for public charity status, describing Dignity as “[a]
 17 hospital or a cooperative hospital service organization described in section 170(b)(1)(A)(iii)”
 18 rather than “a church, convention of churches, or association of churches.”), *available at*
 19 https://bulk.resource.org/irs.gov/eo/2013_08_EO/94-1196203_990_201206.pdf; Defs’ Motion to
 20 Dismiss (“MTD”) 2, ECF No. 41 (noting agency interpretations and court rulings that had found
 21 _____

22 ⁵ A copy of this document was previously submitted as Exhibit G to the McTernan Decl. (stating
 23 that the document is “maintained by Dignity in the normal course of its business.”).

24 ⁶ *See also* Ex. 5 at Bates No. 0155 (“The Catholic Healthcare West Retirement Plan is a defined
 25 benefit pension plan established to provide retirement benefits to employees of Catholic
 26 Healthcare West”); *Id.* at Bates No. 0263, § 14.01 (“The Plan is purely voluntary on the part of
 27 the Employer and neither the establishment of the Plan nor any amendment thereof, nor the
 28 creation of any fund or account, nor the payment of any benefits shall be construed as giving any
 employee or any person any legal or equitable right as against the Employer”).

⁷ *See also* Ex. 6 at Bates No. 1307, § 2.1 (“Eligibility” extends only to “[a]ny employee benefit
 plan established by the Company, or a subsidiary or an affiliate of the Company . . .”); *Id.* at
 Bates No. 1303, § 1.2(j) (“‘Company’ shall mean Catholic Healthcare West or any successor
 thereto.”).

1 that “the exemption can apply to plans established and maintained by *non-church entities*, such as
2 religious . . . hospital systems.”) (emphasis added).

3 5. **Dignity is the sponsor of the Dignity Plan.** *See* Joint Case Management
4 Statement 8, ECF No. 54 (stating that Dignity is “the Plan’s’ sponsor”); *Id.* at 17 (same); MTD at 9
5 (“The Plan is a non-contributory defined benefit pension plan sponsored by Dignity.”).

6 6. **The Dignity Health Retirement Plans Sub-Committee is a fiduciary of the**
7 **Dignity Plan.** Answer ¶¶ 61, 63 (“defendants admit that the Dignity Health Retirement Plans Sub-
8 Committee is the primary fiduciary of the Plan and has discretionary authority and control of the
9 Plan and its administration.”).

10 7. **Defendants have not operated the Dignity Plan in conformance with ERISA.**
11 *Compare* Compl. ¶ 150 (“Defendants have never enforced any of the provisions of ERISA set
12 forth in Counts I-V with respect to the Dignity Plans.”), *with* Answer ¶ 150 (“defendants admit that
13 they could not and did not ‘enforce’ the ERISA provisions in connection with the Plan”); *see also*
14 Answer ¶ 112 (“defendants admit that they have not filed an annual report with respect to the
15 Plan”); *Id.* at ¶ 114 (“defendants admit that they have not furnished Rollins with a Summary
16 Annual Report”); *Id.* at ¶ 116 (addressing Plaintiff’s allegation that Defendants failed to provide
17 notification of failure to meet ERISA’s minimum funding requirements and stating “defendants
18 admit that they have not furnished Rollins with a Notice with respect to the Plan”); *Id.* at ¶ 120
19 (“defendants admit that they have not furnished Rollins with a Funding Notice with respect to the
20 Plan”); MTD at 2 (“Of course Dignity, like the majority of faith-based employers, has not sought
21 to conform the Plan to all of ERISA’s reticulated requirements . . .”).

22 IV. LEGAL STANDARD

23 Summary judgment is proper if the movant can show “there is no genuine dispute as to any
24 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).
25 “[T]his standard provides that the mere existence of *some* alleged factual dispute between the
26 parties will not defeat an otherwise properly supported motion for summary judgment; the
27 requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*,
28 477 U.S. 242, 247-48 (1986) (emphasis in original). “A genuine issue of fact is one that could

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1 reasonably be resolved in favor of either party.” *Ellison v. Robertson*, 357 F.3d 1072, 1075 (9th
2 Cir. 2004). “[A] party opposing a properly supported motion for summary judgment may not rest
3 upon mere allegations or denials of his pleading, but must set forth specific facts showing that
4 there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. Although the court must “construe
5 all facts in the light most favorable to the non-moving party, *Ellison*, 357 F.3d at 1075, “[b]ald
6 assertions that genuine issues of material fact exist are insufficient.” *Galen v. Cnty. of Los*
7 *Angeles*, 477 F.3d 652, 658 (9th Cir. 2007). Moreover, if the evidence submitted by the non-
8 moving party “is merely colorable, or is not significantly probative, summary judgment may be
9 granted.” *Anderson*, 477 U.S. at 249-50 (citations omitted). The Court’s power to grant partial
10 summary judgment, long recognized in practice, is now expressly codified in section (a) of Rule
11 56.

12 **V. ARGUMENT**

13 Summary judgment in favor of Plaintiff is appropriate because the undisputed facts show
14 that the Dignity Plan was established by Dignity and that Dignity is not a church. Because only a
15 church may establish a “church plan,” the Dignity plan is not a “church plan” as a matter of law.

16 **A. As the Court Has Already Determined, a Church Plan Must Be Established by a**
17 **Church.**

18 ERISA section 3(33)(A) provides that “[t]he term ‘church plan’ means a plan established
19 and maintained . . . for its employees . . . by a church or by a convention or association of
20 churches.” 29 U.S.C. § 1002(33)(A). As the Court explained in its December 12 Order, “[a]
21 straightforward reading of this section is that a church plan ‘means,’ and therefore by definition,
22 must be ‘a plan established . . . by a church.’” *Dignity*, 2013 WL 6512682, at *4 (alteration in
23 original).

24 Although ERISA section 3(33)(C) provides that a church plan may be *maintained* by a
25 church-associated organization whose “principal purpose or function . . . is the administration or
26 funding of a plan,” 29 U.S.C. § 1002(33)(C)(i), and that employees of a church-associated
27 organization may be *included* in that church’s plan, *id.* at § 1002(33)(C)(ii), the Court made clear
28 that neither provision of section 3(33)(C) alters the basic requirement in ERISA section 3(33)(A)

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KELLER ROHRBACK L.L.P.
1201 THIRD AVENUE, STE 3200, SEATTLE, WASHINGTON 98101

1 that a church plan must be *established* by a church. *Dignity*, 2013 WL 6512682, at *6 (“The Court
2 is not compelled by the legal gymnastics required to infer from section C’s grant of permission to
3 church associations to maintain a church plan, or its broad view of which employees may be
4 covered by a church plan—that a church plan may be established by any entity other than a church
5 or a convention or association of churches as set forth in section A.”). Accordingly, the Court
6 concluded that:

7 [B]oth the [statutory] text and the [legislative] history confirm that a church plan
8 must still be established by a church. Because *Dignity* is not a church or an
9 association of churches, and does not argue that it is, the Court concludes that
10 *Dignity* does not have the statutory authority to establish its own church plan, and is
11 not exempt from ERISA as a matter of law.

12 *Dignity*, 2013 WL 6512682, at *7.

13 **B. Because *Dignity* Established the *Dignity* Plan and *Dignity* is Not a Church, the
14 *Dignity* Plan is Not a Church Plan.**

15 **1. *Dignity* Established the *Dignity* Plan.**

16 Defendants’ Answer admits that the *Dignity* Plan is a plan “established by *Dignity* Health.”
17 Answer ¶ 3. The *Dignity* Plan documents, and amendments thereto, also make clear that the
18 *Dignity* Plan was established by *Dignity*. Numerous plan amendments explicitly state that the
19 *Dignity* Plan “was established by *Dignity* Health to benefit its eligible employees.” *See, e.g.*, Ex.
20 1. at Bates No. 0609; Ex. 2. at Bates No. 0611; Ex. 3 at Bates No. 0614. The January 1, 2005
21 *Dignity* Plan restatement states that *Dignity*, then known as Catholic Healthcare West, “caused this
22 restated Plan document . . . to be executed by its duly authorized officers.” Ex. 5 at Bates No.
23 0268. Indeed, the 2005 *Dignity* Plan restatement, which defines the “Employer” as Catholic
24 Healthcare West, expressly provides that it “constitutes an amendment and complete restatement
25 of the original Plan *entered into by the Employer* as of January 1, 1989.” *Id.* at Bates Nos. 0155,
26 0162 (emphasis added). The 2005 restatement further provides that the *Dignity* Plan “is purely
27 voluntary *on the part of the Employer*,” Catholic Healthcare West, and that “the establishment of
28 the Plan” shall not “be construed as giving any employee or any person any legal or equitable right
against the Employer.”). *Id.* at Bates No. 0263 (emphasis added).

One key factor in determining whether an entity “established” a plan within the meaning of

1 ERISA is whether that entity funds the plan. *See Gualandi v. Adams*, 385 F.3d 236, 243 (2d Cir.
 2 2004). Here, the Plan restatement provides that “[t]he Employer shall contribute to the Plan an
 3 amount which is sufficient on an actuarial basis to provide for the retirement benefits and other
 4 benefits provided under the Plan.” Ex. 5 at Bates No. 0235.

5 Another relevant factor—in fact according to the Third Circuit, the “crucial factor”—“is
 6 whether the employer has expressed an intention to provide benefits on a regular and long-term
 7 basis.” *Gruber v. Hubbard Bert Karle Weber, Inc.*, 159 F.3d 780, 789 (3d Cir. 1998). Here, the
 8 Dignity plan documents and amendments thereto make perfectly clear that Dignity expressed its
 9 intention to provide retirement benefits for its employees through the Dignity Plan. For example,
 10 the amendments to the plan expressly state that the Dignity Plan “was established by Dignity
 11 Health to benefit its eligible employees,” *e.g.* Ex. 1 at Bates No. 0609 (emphasis added).
 12 Moreover, the 2005 Dignity Plan restatement—which makes clear that Dignity voluntarily entered
 13 into the Dignity Plan on January 1, 1989—explains that the Dignity Plan “is a defined benefit
 14 pension plan established to provide retirement benefits to employees of Catholic Healthcare West”
 15 and that it “is created and maintained for the exclusive benefit of Eligible Employees of the
 16 Employer and their beneficiaries in the event of their retirement, death or disability.” Ex. 5 at
 17 Bates No. 0155.

18 **2. Dignity Is Not a Church.**

19 Defendants admit in their Answer that Dignity is not a church. Answer ¶ 76. Specifically,
 20 Defendants admit that “Dignity Health is a church ministry *rather than a church.*” *Id.* (emphasis
 21 added). Although the term “church ministry” is ambiguous, Defendants’ Answer makes clear that
 22 regardless of this term’s meaning, Dignity is not a church. This is consistent with Dignity’s Form
 23 990 filed with the IRS, which represents that Dignity is “[a] hospital or cooperative service
 24 organization described in section 170(b)(1)(A)(iii)” rather than “a church, convention of churches,
 25 or association of churches.” Ex. 7 at Schedule A. *See also* IRC § 170(b)(1)(A)(iii) (describing “an
 26 organization the principal purpose or functions of which are the providing of medical or hospital
 27 care or medical education or medical research, if the organization is a hospital . . .”). That
 28 Dignity, a non-profit hospital conglomerate, is not a church is further confirmed by Defendants’

1 statements in their motion to dismiss that “religious . . . hospital systems” are “non-church
2 entities.” MTD at 2.

3 Because the undisputed facts demonstrate that the Dignity Plan was established by Dignity
4 and that Dignity is not a church, the Dignity Plan is not a church plan as a matter of law.

5 **3. Defendants’ Contradictory Admission and Denial Regarding Dignity’s**
6 **Establishment of the Dignity Plan Does Not Raise a Genuine Dispute.**

7 After the Court issued its December 12 Order interpreting the statute as requiring that a
8 church plan be established by a church, Defendants reversed course from their prior litigation
9 posture, denying that the Dignity Plan was established by Dignity, *see* Answer ¶ 56, and
10 ambiguously stating that “Dignity Health does not concede” that the Dignity Plan was not
11 established by a church. Defs’ Reply in Support of Motion to Certify Interlocutory Appeal
12 (“1292(b) Reply”) 4 n.3, ECF No. 88. Any oblique attempt by Defendants to preserve an
13 argument that the Dignity Plan was established by a church requires a conclusion that either (a)
14 Dignity is a church, or (b) a church (and not Dignity) established the Dignity Plan. However, as
15 discussed above, neither is true, as it is undisputed that Dignity is not a church and that Dignity
16 established the Dignity Plan.

17 Prior to the Court’s Order, Defendants had *never* argued that the Dignity Plan was
18 established by a church. Indeed, Defendants’ Civil L.R. 3-16 certification confirms that no church
19 has “(i) a financial interest (of any kind) in the subject matter in controversy or in a party to the
20 proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of
21 the proceeding.” ECF No. 46. The dramatic nature of Defendants’ change in position is illustrated
22 by the fact that even Defendants’ Answer is not consistent on this point. *Compare* Answer ¶ 56
23 (denying that Dignity established the Dignity Plan), *with* Answer ¶ 3 (defining the “Plan” to mean
24 the Dignity Health Pension Plan and addressing “plans *established* by Dignity Health, including
25 the Plan in which Rollins participates”) (emphasis added). Denials in a party’s pleading—
26 particularly when contradicted in the *same pleading*—do not demonstrate a genuine issue of fact.
27 *See, e.g., Anderson*, 477 U.S. at 256 (nonmoving party “may not rest upon mere allegations or
28 denials of his pleading”).

1 Yet if it is actually Defendants' position that a church established the Dignity Plan,
 2 Defendants spent an inordinate amount of effort—and wasted substantial time and resources of
 3 both the parties and the Court—attempting to convince the Court that a non-church entity like
 4 Dignity could establish a church plan. *See, e.g.*, Joint Case Management Statement 8, ECF No. 54
 5 (listing the first issue in “Defendants’ Statement of the Legal Issues” as: “Whether ERISA’s
 6 church plan exemption *permits a tax-exempt, non-profit organization* controlled by or associated
 7 with a church or convention or association of churches *to establish* and/or sponsor a church plan.”)
 8 (emphasis added); MTD 2 (“agency interpretations and court rulings have affirmed and clarified
 9 that the exemption can apply to plans established and maintained by non-church entities, such as
 10 religious publishing houses and hospital systems.”);⁸ Def’s Reply to Opp. to MTD (“MTD Reply”)
 11 1, ECF No. 61 (“As a matter of law, plaintiff fails to state a claim upon which relief can be
 12 granted; *faith-based non-profits can establish church plans.*”) (emphasis added);⁹ MTD Hr’g Tr.
 13 5:2-17, Nov. 4, 2013, ECF No. 83 (“The plaintiffs state their legal theory on their claim that a plan,
 14 a church plan, has to be established by a church in order to qualify for the exemption. . . . [W]e’re
 15 going to show in a moment why we believe that view of the statute is erroneous and why this case
 16 can be dismissed under 12(B)(6).”).

17 That Defendants’ 1292(b) Reply insinuates that the Dignity Plan was established by a
 18

19 ⁸ *See also* MTD at 11 (“Amendments in 1980 broadened the church plan definition to include
 20 plans established and maintained by non-profit entities ‘controlled by’ or ‘associated with’ a
 21 church . . .”); *Id.* (“ERISA’s Church Plan Exemption Applies To Plans Established Or Sponsored
 22 By Non-Church Entities.”); *Id.* at 12 (“By the plain language of the statute, an organization may
 23 establish and maintain a church plan if it (1) has tax exempt status under 26 U.S.C. § 501, and (2)
 24 is associated with a church by ‘shar[ing] common religious bonds and convictions.”); *Id.* at 13
 25 (citing district court opinion, which Defendants characterize as holding that “‘the statute’s plain
 26 language does not support [p]laintiffs’ interpretation’ that only a church can establish a church
 27 plan.”); *Id.* at 17-18 (“every court to consider the issue and the DOL have found that Section
 28 1002(33)(C)(i) applies to a plan established by a non-church organization.”). In fact, in
 characterizing the IRS private letter rulings on which Defendants purport to rely, Defendants
 stated that “[t]he IRS based its findings on CHW’s tax-exempt status and association with the
 Roman Catholic Church,” and did not reference any church having established the Dignity plan.
Id. at 2 n.2.

⁹ *See also* MTD Reply at 1 (“No law supports plaintiff’s radical position that only a place of
 worship can establish a church plan.”); *Id.* (“The 1980 Amendment Of ERISA’s Church Plan
 Definition Refutes Plaintiff’s Position That Only Churches Can Establish Church Plans.”).

1 church is particularly astonishing in light of the fact that in the very same brief, as well as in the
 2 underlying motion and memorandum, Defendants repeatedly represent to the Court that the
 3 question presented in the Court’s Order—regarding whether a non-church entity may establish a
 4 church plan—is a controlling question of law. *See, e.g.*, 1292(b) Reply at 3 (“the core issue
 5 presented—*whether a civil law corporation associated with a church can establish a church*
 6 *plan—is indisputably a controlling issue of law . . .*”) (emphasis added); Defs’ Motion to Certify
 7 Interlocutory Appeal 1, ECF No. 85 (the Court’s Order “involves the controlling issue of law of
 8 whether a civil law corporation associated with a church can establish a church plan within the
 9 meaning of 29 U.S.C. § 1002(33)); *id.* at 2 (“whether the church plan exemption . . . can apply only
 10 to plans *established* by a church itself . . . is a controlling question of law. The nature and
 11 interpretation of this threshold issue will ultimately determine Rollins’ seven ERISA counts.”).¹⁰

12 If Defendants’ position is actually that a church has established the Dignity Plan, the Court’s
 13 legal conclusion that a non-church cannot establish a church plan would not be controlling at all.
 14 Defendants repeated insistence that this is a controlling question should be taken for what it is: an
 15 admission that the Dignity Plan was not established by a church.

16 “When opposing parties tell two different stories, one of which is blatantly contradicted by
 17 the record, so that no reasonable jury could believe it, a court should not adopt that version of the
 18 facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372,
 19 380 (2007). *See also Ah Quin v. Cnty. of Kauai Dep’t of Transp.*, 733 F.3d 267, 289 (9th Cir.
 20 2013) (a party “cannot create a genuine issue of material fact and thus avoid summary judgment
 21 simply by swearing to facts that are contradicted by the record.”).

22 **C. Because the Dignity Plan Is Not a Church Plan, It Is Subject to ERISA.**

23 Defendants admit that the Dignity Plan “is a non-contributory defined benefit pension plan
 24 that covers most of Dignity Health’s employees,” Answer ¶ 53, and that “provides retirement
 25

26 ¹⁰ *See also* 1292(b) Reply at 3 (arguing that substantial grounds for difference opinion exist
 27 because “the Department of Labor (“DOL”) has issued approximately 70 opinion letters and the
 28 IRS has issued close to 500 private letter rulings to religiously-affiliated entities confirming that
 their plans qualify for ERISA’s church plan exemption *regardless of whether a church*
established the plan.”) (emphasis added).

1 income to participants and beneficiaries following the termination of participants' employment."
 2 *Id.* ¶ 56. Accordingly, the undisputed facts demonstrate that the Dignity Plan is an employee
 3 pension benefit plan within the meaning of ERISA section 3(2). 29 U.S.C. § 1002(2).

4 Unless specifically exempted from ERISA, *see* 29 U.S.C. §§ 1003(b)(2), 1321(b)(3)
 5 (exempting "church plans" from Titles I and IV of ERISA), employee pension benefit plans,
 6 including defined benefit plans, are subject to all of the requirements of ERISA. *See* 29 U.S.C. §§
 7 1003(a) ("this subchapter shall apply to any employee benefit plan if it is established or maintained
 8 . . . by any employer engaged in commerce or in any industry or activity affecting commerce . . .");
 9 1321(a) ("this subchapter applies to any . . . employee pension benefit plan (as defined in
 10 paragraph (2) of section 1002 of this title) established or maintained . . . by an employer engaged
 11 in commerce or in any industry or activity affecting commerce . . .). Because the undisputed facts
 12 establish that the Dignity Plan is not a church plan, the Dignity Plan is subject to ERISA as a
 13 matter of law.

14 **D. Plaintiff Is Authorized to Seek the Requested Relief.**

15 ERISA section 502(a)(3) authorizes a plan participant or beneficiary to bring a civil action
 16 to "enjoin any act or practice which violates any provision of this subchapter . . . or to obtain
 17 appropriate equitable relief . . . to enforce any provisions of this subchapter." 29 U.S.C. §
 18 1132(a)(3). The parties do not dispute that Plaintiff is a participant in the Dignity Plan. *See*
 19 Answer ¶ 18. Accordingly, Plaintiff is entitled to seek relief pursuant to ERISA section 502(a)(3).

20 Relief pursuant to section 502(a)(3) is required because it is undisputed that Defendants
 21 have erroneously operated the Dignity Plan as a church plan exempt from ERISA and have not
 22 conformed with ERISA's substantive requirements. Defendants "admit that they could not and did
 23 not 'enforce'" the ERISA provisions addressed in Counts I-V of Plaintiff's Complaint, Answer
 24 ¶ 150, and indeed have expressly stated that "[o]f course Dignity, like the majority of faith-based
 25 employers, has not sought to conform the Plan to all of ERISA's reticulated requirements"
 26 MTD at 2. Defendants have also already explicitly admitted to violations of a number of ERISA's
 27 notice and reporting requirements. *See* Answer ¶ 112 ("defendants admit that they have not filed
 28 an annual report with respect to the Plan"); *Id.* at ¶ 114 ("defendants admit that they have not

1 furnished Rollins with a Summary Annual Report”) *Id.* at ¶ 116 (addressing Plaintiff’s allegation
 2 that Defendants failed to provide notification of failure to meet ERISA’s minimum funding
 3 requirements, “defendants admit that they have not furnished Rollins with a Notice with respect to
 4 the Plan”); *Id.* at ¶ 120 (“defendants admit that they have not furnished Rollins with a Funding
 5 Notice with respect to the Plan”).

6 Count I of Plaintiff’s Complaint seeks the following relief: (1) declaratory relief that the
 7 Dignity Plan is not a “church plan” within the meaning of ERISA section 3(33), 29 U.S.C.
 8 § 1002(33), and thus is subject to the provisions of Title I and Title IV of ERISA, Compl. ¶ 106;
 9 and (2) orders directing Defendants bring the Dignity Plan into compliance with ERISA, including
 10 the reporting, vesting, and funding requirements of Parts 1, 2, and 3 of ERISA, 29 U.S.C. §§ 1021-
 11 31, 1051-61, 1081-85, Compl. ¶ 107.

12 **1. Plaintiff Is Entitled to the Requested Declaratory Relief.**

13 Plaintiff’s requested declaratory relief is authorized by 28 U.S.C. § 2201(a), Fed. R. Civ. P.
 14 57, and ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3). “In a case of actual controversy within
 15 its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may
 16 declare the rights and other legal relations of any interested party seeking such declaration”
 17 28 U.S.C. § 2201(a). ERISA section 502(a)(3) also authorizes an award of declaratory relief. *See,*
 18 *e.g., Smith v. Med. Benefit Adm’rs Grp., Inc.*, 639 F.3d 277, 284 (7th Cir. 2011) (“section
 19 502(a)(3) does authorize an award of declaratory and injunctive relief. . . . [D]eclaratory and
 20 injunctive relief would serve to define the parties’ respective rights and obligations and to prevent
 21 the types of fiduciary breaches Smith has alleged from recurring.”); *Transamerica Occidental Life*
 22 *Ins. Co. v. DiGregorio*, 811 F.2d 1249, 1252 (9th Cir. 1987) (“A declaratory judgment might also
 23 be sought to ‘enforce’ an ERISA term by establishing that the party against whom it is brought is
 24 charged with carrying out an ERISA duty which that party is allegedly disregarding.”).¹¹

25
 26
 27 ¹¹ *See also Caplan v. CNA Short Term Disability Plan*, 479 F. Supp. 2d 1108, 1112-13 (N.D. Cal.
 28 2007) (plaintiff could maintain claim for equitable relief under section 502(a)(3), “including a
 declaration that Hartford’s use of UDC as a medical records reviewer constituted a breach [*sic.*]
 of fiduciary duty to him and to the Plans”); *Smith*, 639 F.3d at 284 (“the court could declare that

COHEN MILSTEIN SELLERS & TOLL, PLLC.
1100 NEW YORK AVENUE, N.W., STE. 500, WASHINGTON, DC 20005

KELLER ROHRBACK L.L.P.
1201 THIRD AVENUE, STE 3200, SEATTLE, WASHINGTON 98101

1 Because the undisputed facts establish as a matter of law that the Dignity Plan is a defined
2 benefit pension plan within the meaning of ERISA and is not exempt from ERISA as a church
3 plan, Plaintiff is entitled to a declaration that the Dignity Plan is not a “church plan” and is subject
4 to the requirements of ERISA. *See also In re New Century Holdings, Inc.*, 387 B.R. 95, 106-07
5 (Bankr. D. Del. 2008) (“the Court concludes that the Plaintiff may bring a request for declaratory
6 judgment under § 1132(a)(3)(B),” where plaintiff sought “a declaration that the Plan is not a top
7 hat plan” exempt from certain ERISA requirements).

8 **2. Plaintiff Is Entitled to the Requested Injunctive Relief.**

9 Plaintiff’s requested injunctive relief is authorized by ERISA section 502(a)(3), 29 U.S.C.
10 § 1132(a)(3). As noted above, section 502(a)(3) authorizes a plan participant to file suit to obtain
11 “appropriate equitable relief . . . to enforce any provisions of this subchapter.” 29 U.S.C.
12 § 1132(a)(3). “Appropriate equitable relief” in this case includes an injunction directing
13 Defendants bring the Dignity Plan into compliance with all of ERISA’s substantive requirements,
14 Compl. ¶¶ 107-08, 165(A), including the reporting, vesting, and funding requirements of Parts 1,
15 2, and 3 of ERISA, 29 U.S.C. §§ 1021-31, 1051-61, 1081-85. *See, e.g., Zhu v. Fujitsu Grp. 401(K)*
16 *Plan*, No. 03-1148, 2003 WL 24030329, at *3-4 (N.D. Cal. Sept. 9, 2003) (plaintiff “state[d] a
17 cognizable claim under section 502(a)(3)” where plaintiff sought “to enjoin defendants from both
18 violating [ERISA’s minimum vesting and service credit standards] by amending the plan and
19 breaching a fiduciary duty by applying invalid plan terms.”); *Carrabba v. Randalls Food Markets,*
20 *Inc.*, 145 F. Supp. 2d 763, 770 (N.D. Tex. 2000), *aff’d*, 252 F.3d 721 (5th Cir. 2001) (“The remedy
21 of the Class lies . . . in the grant of appropriate equitable relief, as contemplated by 29 U.S.C. §
22 1132(a)(3)(B), to address violations of, and to give effect to, the accrual and vesting provisions of
23 ERISA.”); *Callery v. U.S. Life Ins. Co. in City of New York*, 392 F.3d 401, 407 (10th Cir. 2004)
24 (“appropriate equitable relief” under section 502(a)(3) may include order requiring “plan
25 compliance with notice requirements in the future”); *Baker v. Chin & Hensolt, Inc.*, No. 09-4168,
26 2010 WL 147954, at *4 (N.D. Cal. Jan. 12, 2010) (plaintiff stated a claim under 502(a)(3) “[t]o the

27 Auxiant’s method of handling requests for preauthorization either do not comply with the
28 governing regulations”).

1 extent Baker seeks an order directing defendants to provide him with Plan documents”).

2 This “appropriate equitable relief” should include an order requiring defendants to reform
 3 the Dignity Plan, the plan instrument, and other plan documents to be compliant and consistent
 4 with all provisions of ERISA. Compl. ¶ 165(A). *See, e.g., England v. Marriott Int’l, Inc.*, 764 F.
 5 Supp. 2d 761, 778 (D. Md. 2011) (“reformation of the terms of a contract is a form of equitable
 6 relief. Therefore, to the extent that Plaintiffs seek to reform the Retirement Awards’ vesting
 7 provisions to comply with ERISA’s vesting requirements, they seek equitable relief.”) (citing 66
 8 Am. Jur. 2d Reformation of Instruments § 3); *Virtue v. Int’l Bhd. of Teamsters Ret. & Family Prot.*
 9 *Plan*, 886 F. Supp. 2d 32, 36 (D.D.C. 2012) (claim properly brought under section 502(a)(3)
 10 seeking to remedy a violation of ERISA’s benefit accrual requirements by changing the terms of
 11 the plan).

12 VI. CONCLUSION

13 For the reasons set forth above, Plaintiff respectfully requests that the Court grant summary
 14 judgment in favor of Plaintiff on Count I and grant the relief requested in Subsection A of her
 15 Prayer for Relief.

16 DATED February 20, 2014.

17 KELLER ROHRBACK L.L.P.

18 /s/ Lynn L. Sarko

19 Lynn L. Sarko (*pro hac vice*)

20 Havila C. Unrein (*pro hac vice*)

21 Matthew M. Gerend (*pro hac vice*)

1201 Third Avenue, Suite 3200

Seattle, WA 98101

22 Tel: (206) 623-1900 / Fax: (206) 623-3384

23 Email: lsarko@kellerrohrback.com

hunrein@kellerrohrback.com

mgerend@kellerrohrback.com

24 KELLER ROHRBACK L.L.P.

25 Juli E. Farris, Esq. (CA Bar No. 141716)

1129 State Street, Suite 8

26 Santa Barbara, CA 93101

27 Tel: (805) 456-1496 / Fax: (805) 456-1497

28 Email: jfarris@kellerrohrback.com

COHEN MILSTEIN SELLERS & TOLL, PLLC.
1100 NEW YORK AVENUE, N.W., STE. 500, WASHINGTON, DC 20005

KELLER ROHRBACK L.L.P.
1201 THIRD AVENUE, STE 3200, SEATTLE, WASHINGTON 98101

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KELLER ROHRBACK L.L.P.
Ron Kilgard (*pro hac vice*)
3101 North Central Avenue, Suite 1400
Phoenix, AZ 85012
Tel: (602) 248-0088 / Fax: (602) 248- 2822
Email: rkilgard@kellerrohrback.com

COHEN MILSTEIN SELLERS & TOLL, P.L.L.C.
Bruce Rinaldi (CA Bar No. 55133)
Karen L. Handorf (*pro hac vice*)
Michelle C. Yau (*pro hac vice*)
Matthew A. Smith (*pro hac vice*)
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, D.C. 20005
Tel: (202) 408-4600 / Fax: (202) 408-4699
Email: brinaldi@cohenmilstein.com
khandorf@cohenmilstein.com
myau@cohenmilstein.com
msmith@cohenmilstein.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Matthew Gerend, hereby certify that on February 20, 2014, a true copy of the above document was served on the Defendants, through their counsel of record, via ECF.

/s/ Lynn L. Sarko
Lynn L. Sarko

COHEN MILSTEIN SELLERS & TOLL, PLLC.
1100 NEW YORK AVENUE, N.W., STE. 500, WASHINGTON, DC 20005

KELLER ROHRBACK L.L.P.
1201 THIRD AVENUE, STE 3200, SEATTLE, WASHINGTON 98101