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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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

Plaintiff,

v.

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

Defendants.

Case No. 3:13-cv-1450 TEH

DEFENDANTS' NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

Date: June 9, 2014
Time: 10:00 a.m.
Courtroom: 2
Judge: Hon. Thelton E. Henderson

Complaint Filed: April 1, 2013
Trial Date: None Set

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NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that on Monday, June 9, 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, defendants Dignity Health, Herbert J. Vallier, and the Members of the Dignity Health Retirement Plans Sub-Committee (collectively, "Dignity Health"), will and hereby does move the Court for partial summary judgment on plaintiff Starla Rollins's ("Rollins") request for declaratory relief that the Dignity Health Retirement Plan (the "Plan") is not a church plan within the meaning of ERISA section 3(33), 29 U.S.C. § 1002(33), which is raised in Rollins's Count I claim for equitable relief pursuant to 29 U.S.C. § 1132(a)(3). Dkt. No. 1, Compl. ¶ 106.

Defendants bring this motion under Rule 56 of the Federal Rules of Civil Procedure on the grounds that Rollins's claim for declaratory relief fails because there is no genuine issue of material fact for the following reasons:

1. Dignity Health is entitled to Partial Summary Judgment on its Sixth Affirmative Defense. Rollins's claim for declaratory relief fails as a matter of law because Dignity Health received four favorable Private Letter Rulings ("PLRs") from the Internal Revenue Service ("IRS") concluding that the Dignity Health Pension Plan (the "Plan") and the plans merged into it were church plans exempt from ERISA's requirements. The Plan fiduciaries relied upon the PLRs in administrating the Plan because: (1) the IRS issued the PLRs with respect to the Plan and (2) the definition of "church plan" in ERISA is identical in all relevant respects to, and cross-references, the definition in the Internal Revenue Code. In addition, the IRS has yet to rule on Dignity Health's 2012 request for a PLR; therefore a declaration regarding the whether the Plan is now a church plan would be premature. For each of these reasons, the declaration of Plan status that Rollins requests should be denied because it is not "appropriate equitable relief" within the meaning of ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

2. Dignity Health is also entitled to Partial Summary Judgment on its Eighth Affirmative Defense. Rollins's claim for declaratory relief fails as a matter of law because it is

time-barred under ERISA's 6-year statute of repose, Section 413, 29 U.S.C. § 1113, Section 413's 3-year statute of limitations, and any applicable state law statute of limitations.

Dignity Health's arguments in support of its Motion for Partial Summary Judgment on its Sixth and Eighth Affirmative Defenses negate Rollins' declaratory relief claim as a matter of law and thus are encompassed within the Court's order that Dignity Health include all arguments that it intends to raise "for exemption from ERISA aside from the church plan exemption." Order Narrowing Scope of Parties' Partial Summary Judgment Motions and Granting in Part Defendants' Motion to Enlarge Time (Dkt. No. 105) at 2:10-12.[1]

Dignity Health bases its motion on this notice of motion and motion, the supporting memorandum of points and authorities, the declarations of Mary Connick, Liz Meckenstock, Samuel Hoffman, Tari Williams, and Roberta Vespremi and attached exhibits, and such other evidence and arguments as defendants may present on reply and at oral argument.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court should grant Dignity Health's Motion for Partial Summary Judgment because the declaration that Rollins seeks – that the Plan is not a church plan within the meaning of ERISA Section 3(33) (29 U.S.C. § 1002(33)) (Dkt. No. 1, Compl. ¶ 106)—is not "appropriate equitable relief" within the meaning of ERISA and Rollins's claim is barred by ERISA's statute of repose and/or the applicable statute of limitations.

First, Dignity Health, the Plan, and its fiduciaries relied for over twenty years on four separate PLRs issued by the IRS, each of which ruled that the Plan (and the plans merged with the Plan) were church plans. In response to the Plan's detailed requests to the IRS, the IRS repeatedly determined that the Plan met the definition of "church plan" in the Internal Revenue Code, a definition that is identical in all material respects to the definition in ERISA. The IRS rulings confirming the Plan's church plan status, coupled with the Plan's reliance on those rulings

[1] In the event the Court did not intend such threshold arguments to be briefed in this motion, Dignity Health respectfully requests leave to seek Partial Summary Judgment on its Sixth and Eighth Affirmative Defenses because these defenses bar Rollins's claim and preclude a declaration that the Plan is not a church plan.

for over twenty years, means that a declaration subjecting the Plan to ERISA is not "appropriate" under ERISA Section 502(a)(3)(29 U.S.C. § 1132(a)(3)), which permits only declarations that constitute "*appropriate* equitable relief." In addition, any determination of the Plan's current ERISA status would be premature given the pendency of the Plan's 2012 PLR request.

Second, ERISA's statute of repose/limitations precludes Rollins from asserting that the Plan is not properly maintained as a church plan. ERISA Section 413(1) (29 U.S.C. § 1113(1)) provides a six-year statute of repose for claims seeking equitable relief under ERISA's statutory enforcement provisions and forecloses prosecution of any claim filed more than six years after the alleged breach or violation occurred. ERISA therefore bars Rollins' declaratory relief claim because the undisputed facts are that the Plan was established and has been maintained as a church plan since at least 1992, more than *20 years* before Rollins filed this action claiming that ERISA should govern the Plan. And, Rollins's lawsuit was filed more than 14 years after Rollins became a participant in the Plan, and had actual knowledge that the Plan was established as a church plan after she received the Summary Plan Description ("SPD") for the Plan in 1998. Thus, Rollins's claim is also barred by ERISA's three-year limitations and any applicable state law statute of limitation.

II. STATEMENT OF ISSUES TO BE DECIDED.

A. Whether Rollins's claim for declaratory judgment fails because Dignity Health, the Plan, and its fiduciaries properly relied upon four IRS PLRs that determined the Plan (and the plans that merged with the Plan) were church plans, making a declaration inappropriate and inequitable under ERISA § 502(a)(3).

B. Whether Rollins's claim for declaratory judgment is premature because Dignity Health has requested a PLR from the IRS which is pending.

C. Whether Rollins's claim for declaratory judgment is time-barred under Section 29 U.S.C. § 1113 or any applicable state law statute of limitations.

III. SUMMARY OF UNDISPUTED FACTS

A. The Plan And Its Church Plan Status.

The Plan is a non-contributory defined benefit pension plan that was formed in 1989 through the merger of seven pension plans: (1) St. Joseph's Hospital and Medical Center Retirement Plan; (2) Catholic Healthcare West Multi-Employer Retirement Plan for the Employees of Mercy Hospital-Bakersfield-previously the Sisters of Mercy Multi-Employer Retirement Plan-Bakersfield; (3) Catholic Healthcare West Multi-Employer Retirement Plan for the Employees of St. John's Regional Medical Center-previously the Sisters of Mercy Multi-Employer Retirement Plan-Oxnard; (4) Catholic Healthcare West Multi-Employer Retirement Plan for the Employees of Mercy Hospital and Medical Center, San Diego-previously the Sisters of Mercy Multi-Employer Retirement Plan-San Diego; (5) Catholic Healthcare West Multi-Employer Retirement Plan for the Employees of Sisters of Mercy, Burlingame-previously the Sisters of Mercy Multi-Employer Retirement Plan-Burlingame; (6) Catholic Healthcare West Retirement Income Plan-previously the Mercy Health Care Organization Retirement Income Plan; and (7) Mercy Health Care Organization Retirement Plan (Mt. Shasta). Catholic Healthcare West[2] ("CHW") became the sponsor of this plan as a result of the merger of Mercy Health System and Mercy Health Care organization in 1986. Declaration of Mary Connick ("Connick Decl."), Ex. A; Compl. ¶¶ 53, 58.

On July 20, 1992 and July 22, 1992, respectively, the Board of Directors (the "Board") of CHW passed and adopted, and the Sponsoring Congregation's Corporate Member Board (composed of eight nuns) approved, resolutions (the "Board Resolutions") that expressed the Board's "desire to affirm the Plan's status as a Church Plan within the meaning of Section 414(e) of the Code and Section 3(33) of ERISA." Connick Decl. ¶ 3, Exs. B-D. The Board Resolutions provided for the amendment of the Plan document to state expressly "[t]his Plan is, and has been since its establishment, intended to be a Church Plan within the meaning of Section 414(e) of the Code and Section 3(33) of ERISA." *Id.*, Exs. B, E. In July 1992, the Plan was amended to

[2] Catholic Healthcare West was renamed Dignity Health in connection with a restructuring of the non-profit's governance, but remains the same corporation. Declaration of Bernita McTernan ("McTernan Decl.") ¶¶ 13-14.

expressly state, "This Plan is, and has been since its establishment, intended to be a Church Plan within the meaning of Section 414(e) of the Code and Section 3(33) of ERISA." Connick Decl., Ex. F (Amendment 12 to the CHW Retirement Plan passed and adopted on July 20, 1992).

B. The IRS Affirms That CHW Is Associated With The Church For Church Plan Purposes Four Separate Times.

Over a period of twenty years, CHW made four separate requests to the IRS for a determination that the Plan (and plans maintained by hospitals brought into CHW) qualified as church plans under the Code's parallel provisions to ERISA and relied upon the detailed rulings provided by the IRS. The IRS issued four separate PLRs ruling that the Plan and the plans of hospitals affiliated with CHW were church plans. Declaration of Samuel Hoffman ("Hoffman Decl."), Exs. D, F, H, J. Each of the requests presented complete and accurate information, and CHW officers executed declarations under penalty of perjury to that effect. *Id.* ¶ 16.

1993 PLR. In its 1993 PLR, issued retroactive to the Plan's 1989 inception, the IRS found that CHW employed "church employees." It also found that the CHW Retirement Program Committee was associated with the Catholic Church and had the primary purpose of administering the Plan within the meaning of Code Section 414(e)(3)(A) (the Internal Revenue Code's definition, which is identical in all relevant respects to the definition in ERISA § 3(33)(C)(i)). *Id.* ¶ 5, Ex. D (IRS PLR 9409042 (1993)). The IRS concluded that the Plan had been a church plan since its establishment, stating: "it is ruled that [the Plan] is a church plan within the meaning of section 414(e) of the Code, and has been a church plan since its effective date . . ." and "[i]t is further ruled that Prior Plans P-1, P-2, P-3, P-4, P-5, and P-6 [the plans being merged into the Plan upon CHW's acquisition of other hospitals] were church plans within the meaning of section 414(e) of the Code, from their respective ERISA effective dates until they were merged and consolidated into Plan X." *Id.* at p. 5.

Based on the IRS' determination and its own review of the Plan's status, in September 1995 the Pension Benefit Guaranty Corporation ("PBGC")—the agency created by ERISA and charged with overseeing the insurance of ERISA plans—refunded insurance premiums that CHW

had paid prior to the determination that the Plan was not subject to ERISA. Hoffman Decl. ¶ 6, Ex. E.

1995 PLR. On December 23, 1993, Dignity Health entered into an affiliation agreement with a California nonprofit hospital (St. Francis Memorial Hospital), which was neither affiliated with nor controlled by the Catholic church. Prior to the affiliation, St. Francis had maintained its own ERISA-governed pension plans, which were carried over as part of the affiliation agreement. On April 29, 1994, Dignity Health submitted a PLR request to the IRS to confirm that St. Francis's plans qualified as church plans as of the date of the affiliation between Dignity Health and St. Francis. Hoffman Decl. ¶ 7. On March 28, 1995, the IRS issued a PLR stating that the St. Francis plans qualified for church plan status under section 414(e) of the Code as of the date of the affiliation between Dignity Health and St. Francis. *Id.* ¶ 8, Ex. F, p. 8.

1997 PLR. On August 18, 1995, Dignity Health submitted a PLR to the IRS seeking confirmation that its proposed merger of one of St. Francis's plans into the Plan would not adversely affect the Plan's church plan status. Hoffman Decl. ¶ 9, Ex. G. On January 31, 1997, the IRS issued a PLR stating that the proposed plan merger would not adversely affect the Plan's church plan status. *Id.* ¶ 10, Ex. H, p. 6.

2000 PLR. On September 28, 1998, CHW Southern California, a wholly-controlled subsidiary of CHW, merged with UniHealth, a California nonprofit public benefit corporation and parent holding company of eight health care facilities in Southern California. Hoffman Decl. ¶ 11, Ex. I. As part of this merger, CHW assumed control of UniHealth's ERISA-governed pension plan (the "CHW UniHealth Plan"). *Id.* On December 3, 1998, Dignity Health restructured the CHW UniHealth Plan to be administered by a newly-appointed committee, which had as its principal function the administration of the CHW UniHealth Plan and other Dignity Health retirement plans. *Id*. On October 29, 1999, Dignity Health submitted a PLR to the IRS seeking confirmation that the CHW UniHealth Plan qualified as a church plan as of December 3, 1998. *Id*. On March 20, 2000, the IRS issued a PLR stating: "we conclude that [the CHW UniHealth Plan] is, and has been since December 3, 1998, a 'church plan' within the meaning of Section 414(e) of the Code." *Id*., Ex. J.

The Plan's fiduciaries relied upon the above PLRs as definitive determinations and reaffirmations that the Plan was a church plan, exempt from ERISA, in their continued maintenance and day-to-day management of the Plan. Connick Decl. ¶ 4; Declaration of Roberta Vespremi, Ex. A (Deposition Transcript of Herbert Vallier (April 2, 2014) at 60:13-24, 230:3-8).

On September 27, 2012, following its restructuring and name change, Dignity Health requested a PLR from the IRS seeking confirmation that the Plan maintains its status as a church plan within the meaning of section 414(e) of the Internal Revenue Code. Hoffman Decl. ¶ 13, Ex. K. Dignity Health has not yet received a response from the IRS regarding this request. *Id.* ¶ 17.

C. Rollins's Participation In The Plan.

Rollins was employed at the Community Hospital of San Bernardino ("CHSB") from 1986 until 2012. Compl. ¶ 18; Declaration of Tari Williams ("Williams Decl.") ¶ 7. In 1998, CHW affiliated with CHSB. Williams Decl. ¶ 8. CHSB adopted the Plan effective January 1, 1999. Declaration of Liz Meckenstock ("Meckenstock Decl.") ¶ 2. Rollins became a participant in the Plan in 1999. *Id.* ¶ 3. In November 1998, Rollins and other CHSB employees received a memorandum stapled to their paychecks announcing that CHSB was adopting the CHW-Sponsored Retirement Plans. Williams Decl. ¶ 13, Ex. A. The SPD was attached to the memo. *Id.*

The first page of text in the SPD, in a section entitled "To Our Employees," expressly states: "**The CHW Retirement Plan is intended to qualify as a 'Church Plan' within the meaning of Section 414(e) of the Internal Revenue Code and Section 3(33) of the Employee Retirement Income Security Act of 1974 (ERISA)**." *Id.* ¶ 10, Ex. A, p. 4 (emphasis added). Additionally, consistent with the statement on page 1 of the SPD, the formal Plan document was kept in a binder in the Human Resources office and was available for review by Rollins and all CHSB employees. *Id.* ¶ 11.

IV. LEGAL STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R.

Civ. P. 56(a). Material facts are those that may affect the outcome of the case. *Valerio v. San Francisco State University*, Case No. 12–cv–04744–TEH, 2014 WL 1339618, at *1 (N.D. Cal. Apr. 2, 2014). A dispute as to a material fact is "genuine" if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.* The purpose of summary judgment "is to isolate and dispose of factually unsupported claims or defenses." *Celotex v. Catrett*, 477 U.S. 317, 323–24 (1986). "To obtain a summary judgment in favor of a claim, 'the moving party must offer evidence sufficient to support a finding upon every element of his [or her] claim ..., except those elements admitted ...' by the adversary" *Watts v. United States*, 703 F.2d 346, 347 (9th Cir. 1983) (internal quotation omitted). As set forth below, partial summary judgment is appropriate because the undisputed facts show that the declaration sought by Rollins is inequitable and not appropriate, and that Rollins's declaratory relief claim is time-barred.

V. THE COURT SHOULD GRANT PARTIAL SUMMARY JUDGMENT IN FAVOR OF DIGNITY HEALTH.

A. Dignity Health Is Entitled To Judgment On Its Sixth Affirmative Defense: The Declaration Sought by Rollins Is Not Appropriate Equitable Relief Because Dignity Health Relied Upon the PLRs.

Dignity Health is entitled to judgment treating the Plan as exempt from ERISA because the Plan's fiduciaries relied on the IRS's PLRs ruling that the Plan was a church plan for purposes of both the Internal Revenue Code and ERISA. Connick Decl. ¶ 4; Vallier Dep. (attached to Vespremi Decl. as Ex. A) at 60:13-24, 230:3-8. *Cf. Okerman v. Life Ins. Co. of North America*, No. CIV-S-00-0186, 2001 WL 36203082, at *4 (E.D. Cal. Dec. 24, 2001) (finding CHW retirement disability plan was a "church plan" exempt from ERISA). Therefore, it would be inequitable to declare that the Plan was not exempt from ERISA. Nor should the Court declare that the Plan is not exempt from ERISA prior to the IRS's ruling on Dignity Health's pending PLR request.

1. The IRS And The Private Letter Rulings.

The IRS is one of the agencies responsible for enforcing and interpreting ERISA, *see Lyons v. Georgia-Pacific Corp. Salaried Employees Retirement Plan*, 221 F.3d 1235, 1245 (11th Cir. 2000), and its determination that Dignity Health's plan was a church plan meant that the plan

was exempt from ERISA on that basis. *See Tynes v. PBGC*, No. Civ.A 04-2725 (JAP), 2005 WL 1828578, at *3 (D.N.J. Aug. 2, 2005); *Humphreys v. Sisters of St. Francis Health Servs., Inc.*, 979 F. Supp. 781, 786 (N.D. Ind. 1997); *Sportscare of Am., P.C. v. Multiplan, Inc.*, No. 2:10-cv-04414, 2013 WL 1661018, at *12 (D.N.J. Apr. 17, 2013).

A PLR is a written statement issued by the IRS to a specific taxpayer in response to a written inquiry from that individual or an organization that interprets and applies tax laws to a specific set of facts. 26 C.F.R. § 601.201(a)(2); *see also IRS Prac. & Proc.*, ¶ 3.03[1]; Rev. Proc. 2014-1 § 2.01. The IRS has authority to issue such rulings under Congress's delegation to the agency to make rules regarding and to enforce the tax laws.[3] *See* 26 C.F.R. § 601.201. The IRS also has jurisdiction over aspects of ERISA, specifically Title II, which is codified in the Internal Revenue Code and "include[s] parallel, 'mirror image' tax qualification requirements" for employee benefit plans. *See* ERISA LITIGATION HANDBOOK § 1.02. In fact, the ERISA definition of a church plan expressly cross-reference the Internal Revenue Code. *See, e.g.*, 29 U.S.C. § 1002(33)(A), (B)(i), (C)(ii)(II), (C)(v)(II).

The "taxpayer ordinarily may rely upon a private letter ruling received from the IRS. *See* 26 C.F.R. § 601.201(l). Only in the rare and unusual circumstance will the IRS revoke or modify a private letter ruling and retroactively apply the change to the taxpayer who originally received the letter ruling. See 26 C.F.R. § 601.201(l)(5)." *Porter v. Ogden, Newell & Welch*, 241 F.3d 1334, 1337 n.2 (11th Cir. 2001); *see also W. Co. of N. Am. v. United States*, 699 F.2d 264, 276 (5th Cir. 1983) ("It is well established that a taxpayer must itself seek a ruling in order to claim the benefit of favorable treatment"); *Suriel v. C.I.R.*, 367-12, 2013 WL 6283646 (T.C. Dec. 4,

[3] *See United States v. Correll*, 389 U.S. 299, 306-07 (1967) (courts "do not sit as a committee of revision to perfect the administration of the tax laws. Congress has delegated to the Commissioner, not to the courts, the task of prescribing 'all needful rules and regulations for the enforcement' of the Internal Revenue Code. In this area of limitless factual variations 'it is the province of Congress and the Commissioner, not the courts, to make the appropriate adjustments.' The rule of the judiciary in cases of this sort begins and ends with assuring that the Commissioner's regulations fall within his authority to implement the congressional mandate in some reasonable manner.") (citations omitted); *RJR Nabisco, Inc. v. United States*, 955 F.2d 1457, 1464 (11th Cir. 1992) ("The Supreme Court has been particularly deferential in the area of tax laws because it is 'not in the business of administering the tax laws of the Nation. Congress has delegated that task to the Secretary of the Treasury, 26 U.S.C. § 7805(a), and regulations promulgated under this authority, if found to 'implement the congressional mandate in some reasonable manner must be upheld.'") (citations omitted).

2013) ("A private letter ruling (PLR) can be relied upon only by the taxpayer to whom the ruling is addressed.").

The PBGC, which insures ERISA plans, adheres to the IRS's determination of church plan status. PGBC Opinion Ltr. 78-1 (1978) ("To insure uniform administration of the Act, 'church plan' status should be determined by IRS . . . . The IRS ruling will control our determination under the 'church plan' exemption of § 4021(b)(3) of the Act."). Thus, the IRS's determination that a plan is a church plan means that the plan is exempt from ERISA. *Tynes*, 2005 WL 1828578, at *3; *Humphreys*, 979 F. Supp. at 786; *Sportscare*, 2013 WL 1661018, at *12.

2. Exempting The Plan From ERISA Requirements Is Consistent With IRS Policy.

The manner in which the IRS treats taxpayers who rely on PLRs supports treating the Plan as exempt from ERISA.[4] For purposes of IRS determination of tax liability, taxpayers are entitled to rely on PLRs that the IRS issued to the particular taxpayer based upon a full disclosure of controlling facts.[5] *See Porter*, 241 F.3d at 1337. The IRS will not impose a penalty on a taxpayer who acted and relied upon a PLR issued by the IRS to that taxpayer. *See* Donald E. Osteen, Nelson F. Crouch & Phoebe Bennett, *Obtaining Private Guidance From the Internal Revenue Service*, *in* U.S.C. TAX LAW INST. 17-15, ¶ 1704.6 (2002) ("This general policy of allowing taxpayers to rely upon PLRs is the foundation of the PLR process. Without it, PLRs would not be worth the paper they are written on"); *see also id.* ¶ 1705.1 ("a taxpayer who completes a transaction in reliance on a PLR will be protected by it"); Donald L. Korb, *The Four R's Revisited: Regulations, Rulings, Reliance and Retroactivity in the 21st Century: A View From*

[4] It is important to note that Dignity Health is *not* contending here that this Court should afford *deference* to the PLRs when it considers the question of whether the Plan is or is not a church plan exempt from ERISA. This Court has already ruled that the PLRs are not entitled to deference in that context. Order Denying Motion to Dismiss, 5:7, n.3. Rather, Dignity Health argues that because the Plan and its fiduciaries relied on the PLRs, a declaration that the Plan is not a church plan and is subject to ERISA would not be appropriate equitable relief.

[5] IRS regulations provide that PLRs apply *only* to the individual or entity to which it is addressed, and may not be relied upon by other taxpayers. 26 C.F.R. § 601.201(*l*)(1); Rev. Proc. 2014-1 § 11.02.

Within, 46 Duq. L. Rev. 323, 347–48 (Spring 2008) ("The present statement of Service policy . . . makes a stronger case for reliance upon letter rulings by providing for retroactivity upon revocation only in 'unusual circumstances.'").

The IRS does retain discretion to modify or revoke a PLR, even retroactively. *See* 26 U.S.C. § 7805(b)(3). This has not happened here. Moreover, the IRS generally will not revoke PLRs retroactively, particularly where the taxpayer has relied in good faith on the PLR.[6] Rev. Proc. 2014-1 § 11.06. Even if the facts change such that the IRS determines that it would be appropriate to revoke a PLR where it "is later found to be in error or no longer in accord with the position of the Service, the appropriate Associate Chief Counsel ordinarily will limit the retroactive effect of the revocation or modification to a date that is not earlier than that on which the letter ruling is revoked or modified. For example, the retroactive effect of the revocation or modification of a letter ruling covering a continuing action or series of actions ordinarily would be limited . . . when the letter ruling is in error or no longer in accord with the position of the Service." *Id.* § 11.08. In this circumstance, there is no basis for the IRS to revoke its finding of church plan status or apply that revocation retroactively.

3. Exempting The Plan From ERISA Requirements Is Consistent With Case Law.

No court has found that a plan may be held liable under ERISA where it acted in accordance with a PLR issued to it by the IRS on the specific issue. There are, however, two discrete lines of authority that, while distinguishable and inapposite on the facts here, are instructive and provide strong support for the conclusion that a declaration requiring the Plan to comply with ERISA would not be appropriate.

The first line of authority involves a taxpayer's attempt to rely on a PLR issued to a *different taxpayer*. Courts have uniformly rejected such attempts because the PLR in question

[6] The IRS may revoke a PLR retroactively in circumstances involving a material misstatement or omission of controlling facts or where the taxpayer did not reasonably rely on the PLR. Rev. Proc. 2014-1 § 11.05. But here there is no evidence whatsoever that the IRS did not have all of the relevant and accurate facts before it when it made each of its four decisions that the Plan was a church plan, and the evidence establishes that the Plan fiduciaries reasonably relied on the PLRs in good faith.

was not directed specifically to the party in the litigation. In such circumstances, the PLR has no direct relevance and is merely an agency pronouncement entitled to little or no deference. *See, e.g.*, *Lucky Stores, Inc. & Subsidiaries v. Comm'r*, 153 F.3d 964, 966 n.5 (9th Cir. 1998) ("Taxpayers *other* than those to whom such rulings or memoranda were issued are not entitled to rely on them.") (emphasis added); *Norman Corp. v. District Director of Internal Revenue*, 446 F.2d 1374, 1375 (9th Cir. 1971) (rejecting party's argument that it could rely on a technical advice memorandum, holding "[t]he advice was not directed to them specifically").[7]

Here, in contrast, Dignity Health relied on four PLRs that the IRS issued specifically to Dignity Health to rule on the specific question of the Plan's (and the plans of hospitals affiliated with Dignity Health) church plan status. The courts in the above cases would not have made the express point that the party before the court was not the recipient of the PLR if that fact were not dispositive. By extension, where the party in the judicial proceeding relied on a PLR that was issued to *that party*, the party should be entitled to rely in good faith on the conclusion in the PLR and conduct itself accordingly without fear of liability. Dignity Health should not be treated as effectively subject to ERISA when it had been relying on the IRS's rulings that specifically said it was exempt. To hold otherwise would not only be grossly unfair and inequitable and would penalize Dignity Health for an entirely unforeseeable result, but it would also nullify the PLR scheme and render it meaningless.

The second line of authority involves another sort of guidance issued by the IRS – "determination letters." These are very different from PLRs, in that determination letters are separately defined under 26 C.F.R. § 601.201(a)(3), will only be issued when a determination can be made "on the basis of clearly established rules," *id.*; *see also* Rev. Proc. 2014-1 § 2.03, and are issued by IRS District Directors as opposed to the National Office. 26 C.F.R. § 601.201(a)(3); *cf.*

[7] *See also Amergen Energy Co., LLC ex rel Exelon Generation Co., LLC v. U.S.*, 94 Fed. Cl. 413, 417–20 (2010) (plaintiffs could not rely on PLRs issued to other taxpayers as precedent for interpreting the Internal Revenue Code); *Florida Power & Light Co. v. United States*, 56 Fed. Cl. 328, 332 (2003) ("private letter rulings have no precedential value in that they do not represent the IRS's position as to taxpayers generally and thus are irrelevant in the context of litigation brought by other taxpayers"), *aff'd*, 375 F.3d 1119 (Fed. Cir. 2004) (emphasis added); *Abdel-Fattah v. Comm'r*, 134 T.C. 190, 202 (April 27, 2010) (declining to consider private letter rulings issued to other taxpayers and offered by plaintiff in support of his tax claim).

id. § 601.201(a)(2). Indeed, the IRS has expressly stated that it will *not* issue determination letters regarding whether a plan is a "church plan" under 26 U.S.C. § 414(e). IRS Publication 794 at 2 (2013).

In the specific context of determination letters, courts have rejected taxpayer arguments regarding their reliance on determination letters they received from the IRS. *See Esden v. Bank of Boston*, 229 F.3d 154, 176 (2d Cir. 2000) (subject plan's reliance on IRS determination letters did not shield it from liability in suit for ERISA violations brought by plan participant); *Lyons v. Georgia-Pacific Corporation Salaried Employees Retirement Plan*, 221 F.3d 1235, 1252 (11th Cir. 2000) (IRS determination letter "may protect the Plan from adverse tax treatment, but it does not protect the Plan from liability to participants").[8] Thus, while neither line of authority is directly on point, together they support the conclusion that the Plan is entitled to be deemed exempt from ERISA for the periods during which the fiduciaries relied on the PLRs.

4. Finding Dignity Health Subject to ERISA Would Be Manifestly Unfair and Contrary to ERISA's Authorization of Judgments That Are "Appropriate" and "Equitable."

"A declaratory judgment, like other forms of equitable relief, should be granted only as a matter of judicial discretion, exercised in the public interest. It is always the duty of a court of equity to strike a proper balance between the needs of the plaintiff and the consequences of giving the desired relief." *Eccles v. Peoples Bank of Lakewood Vill., Cal.*, 333 U.S. 426, 431 (1948) (internal citations omitted). The consequence of granting Rollins her desired relief in this case would be to inequitably punish Dignity Health for its reasonable and appropriate reliance upon

[8] In addition to the fact that determination letters are a less authoritative form of guidance, and require less IRS analysis and decision-making than do PLRs, the above cases also are clearly distinguishable on their facts. In *Esden*, the determination letters were found to be in conflict with Treasury regulations and an IRS notice, 229 F.3d at 175, did not address the specific issue before the court, *id.* at 176, were based on inaccurate and incomplete information provided by the taxpayer, id., and specifically disclaimed any impact outside the tax status of the plan. *Id.* In *Lyons*, the IRS had specifically asked the court not to consider the letter because it was based on a possible error by the IRS, and the determination letter was found to be inconsistent with IRS statutes and formal guidance and did not address the specific issue before the court. 221 F.3d at 1252. Finally, in both cases, the plans at issue were undisputedly ERISA plans; the determination letters provided only that the plans were entitled to favorable tax treatment by meeting certain requirements. *Esden*, 229 F.3d at 176; *Lyons*, 221 F.3d at 1252.

PLRs. Moreover, it would invalidate the entire PLR process, creating nationwide uncertainty because recipients of PLRs could not rely upon them to insulate from retroactive liability.

Dignity Health relied on the official conclusions of the IRS made after the IRS's consideration of a full and complete recitation of the relevant facts. *See Tynes*, 2005 WL 1828578, at *3 (noting the "designation of the Plan as a 'church plan' by the [Internal Revenue] Commissioner and the consequent exemption of the Plan from ERISA"); *Humphreys*, 979 F. Supp. at 786 (IRS opinion letter that plan was a church plan, under the identical definition as in ERISA, was evidence that plan was a church plan under ERISA, not merely tax-exempt); *Sportscare*, 2013 WL 1661018, at *12 (where the "[t]he IRS has designated [the plan] as a tax-exempt church plan," it was not subject to ERISA).

Accordingly, Dignity Health should be afforded a *de facto*, if not *de jure*, exemption from ERISA to the extent that the Court may conclude ERISA should otherwise apply. Any other result would be manifestly unfair and inconsistent with the need to act equitably. The Court may read an exception into the federal statute in the interest of doing equity. *See, e.g., Moser v. United States*, 341 U.S. 41, 46-47 (1951) (finding in favor of an applicant for citizenship on the basis that he relied on advice (which may have been incorrect) from "the highest authority to which he could turn").

It also would be inconsistent with ERISA's requirement that determinations be "appropriate" and "equitable." Under these circumstances, entering a declaration and finding that the Plan is an ERISA plan—especially retroactively—would not constitute an "appropriate" declaration within the meaning of ERISA § 502(a)(3)'s provision for "appropriate equitable relief." *See, e.g., Mertens v. Hewitt Associates*, 508 U.S. 248, 255–57 (1993) (stating that equitable relief under § 502(a)(3) must be appropriate); *accord* Restatement of Trusts (Third) section 95, comment d.

Here, a finding that the plan was an ERISA plan and required to be treated as such would not be appropriate because the Plans' fiduciaries operated the Plan as a church plan based on, among other things, PLRs determining that the Plan is a church plan, case law interpreting the church plan statute, and the prevailing understanding of the IRS, fiduciaries, and the legal

community of the meaning of ERISA's church plan definition. Dkt. No. 41 at 9:1–26; Dkt. No. 61 at 3–7. *See Okerman*, 2001 WL 36203082, at *4.

In addition, any ruling would be premature until the IRS rules on Dignity Health's pending PLR request. *See Tynes*, 2005 WL 1828578 at *3 (court deferred ruling on question of whether a plan was a "church plan" under ERISA until IRS could respond to pending PLR request, recognizing "the need to protect agencies from judicial interference until they have completed their work" and finding "intervention by this Court at this juncture of the proceedings . . . would inappropriately interfere with any further administrative action that might be taken by the Commissioner"). Here, should the IRS determine that the Plan is no longer a church plan, the IRS likely would notify Dignity Health of its opportunity to impose statutory corrective measures to enable the Plan to retain its church plan status. ERISA § 3(33)(D).

Accordingly, Dignity Health respectfully requests the Court grant Dignity Health summary judgment and deny entry of an adverse declaration relating to the Plan's church plan status.

B. Dignity Health Is Entitled To Judgment On Its Eighth Affirmative Defense: Rollins's Declaratory Judgment Claim Is Barred By The Statute Of Limitations.

Rollins's request for a declaratory judgment under ERISA Section 502(a)(3) that the Plan is subject to ERISA is barred by the applicable statute of repose because Rollins's lawsuit was filed more than six years after the affirmative act constituting the alleged breach or violation of fiduciary duty – the 1992 decision to administer the Plan as an ERISA-exempt "church plan" (and, indeed, more than six years after Rollins became a plan participant in 1999). In addition, Rollins's lawsuit was filed far more than three years after she had actual knowledge of the relevant facts giving rise to her claim, no later than January 1, 1999 when she became a Plan participant and had received the SPD that expressly states that the Plan is a church plan.

1. Rollins's Claim Is Barred By The ERISA Statute Of Limitations.

To establish a claim under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), the plaintiff must establish that the defendant is an ERISA fiduciary acting in its fiduciary capacity, and must violate ERISA-imposed fiduciary obligations. *Mathews v. Chevron Corp.*, 362 F.3d 1172, 1178

(9th Cir. 2004) (internal citations omitted). Claims founded on alleged violations of ERISA-imposed fiduciary obligations are subject to the time limits set forth in 29 U.S.C. § 1113.[9] *See Tibble v. Edison Int'l*, 729 F.3d 1110, 1120 (9th Cir. 2013) (applying Section 1113's limitations periods to request for declaration under Section 502(a)(3)), *petition for cert. filed*, 82 U.S.L.W. 3284 (U.S. Oct. 30, 2103) (No. 13-550) (related to accrual under Section 1113 and application of *Firestone* deference); *see also David v. Alphin*, 704 F.3d 327 (4th Cir. 2013) (affirming dismissal of prohibited transaction claims because the challenged decision was made more than six years before plaintiffs filed their complaint); *Fuller v. SunTrust Banks, Inc.*, 744 F.3d 685, 687 (11th Cir. 2014) (affirming dismissal on the pleadings of prohibited transaction claims challenging defendants' investment decision more than six years prior to complaint's filing).

ERISA's statute of repose and limitations periods provide two alternative periods:

> No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the <u>earlier</u> of —
>
> (1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission the latest date on which the fiduciary could have cured the breach or violation, or
>
> (2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation; except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

29 U.S.C. § 1113 (emphasis added). Simply stated, the plaintiff's knowledge is irrelevant if application of a three-year period would allow a suit to be filed more than six years after the actual violation.

Repose statutes such as Section 1113(1) are enacted for the purpose of quieting rights and to promote the "avoidance of litigation involving lost and distorted evidence." *Miller v. Fortis Benefits Ins. Co.*, 475 F.3d 516, 522 (3d Cir. 2007) (quoting *Romero v. Allstate Corp.*, 404 F.3d 212, 233 (3d Cir. 2005)). As explained by the Ninth Circuit in *Tibble*, the language of Section

[9] *See also Bruno v. Time Warner Pension Plan*, 534 Fed. Appx. 654, 655 (9th Cir. 2013) (holding that claim for equitable relief under Section 1132(a)(3) is subject to the Section 1113 statute of limitations).

1113 "suggests a judgment by Congress that when six years has passed after a breach or violation, and no fraud or concealment occurs, the value of repose will trump other interests, such as a plaintiff's right to seek a remedy." *Tibble*, 729 F.3d at 1120 (quoting *Larson v. Northrop Corp.*, 21 F.3d 1164, 1172 (D.C. Cir. 1994)); *see also Fuller*, 744 F.3d at 701-02. "Because § [1113's] limitations period begins immediately upon 'the last action which constituted a part of the breach or violation,' § [1113] can most accurately be described as a statute of repose. Accordingly, the limitations period begins running 'when a specific event occurs, regardless of whether a cause of action has accrued or whether any injury has resulted.'" *David*, 704 F.3d at 339. A construction of ERISA that would authorize challenges to practices implemented more than six years before suit "would make hash out of the limitations period and lead to an unworkable result" whereby fiduciaries are obligated to constantly reassess every decision previously made—by themselves or by their predecessors. *Tibble*, 729 F.3d at 1119 (finding that "the act of designating an investment for inclusion starts the six-year period under section 1113(1)(A) for claims asserting imprudence in the design of the plan [investment] menu"); *see also Novella v. Westchester Cnty.*, 661 F.3d 128, 146 (2d Cir. 2011) (holding that ERISA fiduciaries "ha[ve] no obligation to continually reassess" decisions previously made) (internal quotation marks and citation omitted).

While 29 U.S.C. § 1113(1) provides a six-year statute of repose, which does not require the plaintiff to have knowledge of the alleged breach, § 1113(2) shortens the statute to three years after the earliest date on which the plaintiff had "actual knowledge" of the breach or violation. In the Ninth Circuit, "actual knowledge" is shown by establishing plaintiff's "knowledge of the transaction that constituted the alleged violation, not by [plaintiff's] knowledge of the law." *Blanton v. Anzalone*, 760 F.2d 989, 992 (9th Cir. 1985).

Thus, the limitations analysis requires the Court to "isolate and define" the underlying violation upon which the plaintiff's claim is founded (whether it is an "act" or "omission"), to apply the six-year limitations period, and then to evaluate whether the three-year alternative period would result in an *earlier* bar. *Ziegler v. Connecticut General Life Ins. Co.*, 916 F.2d 548, 551-53 (9th Cir. 1990); *Phillips v. Alaska Hotel and Restaurant Employees Pension Fund*, 944 F.2d 509, 520-21 (9th Cir. 1991) ("we analyzed separately the issues of when a cause of action

accrues under § 1113 and when the limitations period begins to run. The latter determination requires the court to apply the three or six-year statute of limitations") (internal citation omitted).

a. Rollins' Claim Is Based on an Affirmative Act and Is Barred by the Six-Year Statute of Repose.

Rollins's claim challenges Dignity Health's affirmative act: its 1992 election to treat the Plans as ERISA-exempt church plans. CHW formally decided to establish the Plan as a church plan in 1992, maintained the plan as a church plan and sought a PLR to that effect. Connick Decl. ¶ 3, Exs. B-E; Hoffman Decl. ¶ 2, Ex. A. It received the favorable PLR affirming that decision in 1993, retroactive to 1989. Hoffman Decl., Exs. D, F, H, J. Accordingly, the "last action which constituted a breach or violation" occurred in 1992. The six-year period of repose passed by 1998, 15 years prior to Rollins's filing of the complaint. *Tibble*, 729 F.3d at 1120. Accordingly, Rollins's claim is barred, and Dignity Health respectfully requests the Court enter summary judgment in its favor as to Rollins's declaratory relief claim.

b. Rollins's Claim Is Not Based n an Omission

Rollins cannot avoid the statute of repose by asserting that the Plan's failure to comply with ERISA is an omission. As discussed above, Rollins's allegations, and the undisputed facts, belie any attempt to characterize what is plainly an affirmative act – the decision to treat the Plan as a church plan, accompanied by a formal election and resolution to do so, as well as Plan Amendment Number 12 expressly stating that the Plan was a church plan – as an omission or failure to act. As set forth above, CHW then applied to the IRS for a PLR that its Plan was exempt from ERISA as a church plan.[10]

The Ninth Circuit has held that the violation occurs when the defendant makes the decision how to fund the benefit plan, and has repeatedly rejected plaintiffs' attempts to mischaracterize a plan fiduciary's failure to correct a prior act as an ongoing omission.[11] For

[10] Moreover, in this case there was nothing to fix. As discussed above, Dignity Health repeatedly sought and obtained favorable PLRs confirming that the Plan met the requirements for church plan status, and Dignity Health relied upon and acted consistent with those PLRs.

[11] Notably, the investment options challenged in *Tibble, Alphin*, and *Fuller* continued to be offered—and plan participants continued to invest in and pay fees on them—into the limitations period. The plaintiffs therefore had alleged, among other things, that "defendants caused the plan "to pay, directly or indirectly, investment management and other fees" during the repose period."

example, in *Tibble*, 729 F.3d 1110, the court held that the statute of limitations for claims alleging "imprudence in plan design" begins to run on the date of the initial investment. *Id.* at 1119 ("We hold that the act of designating an investment for inclusion starts the six-year period under section 413(1)(A) for claims asserting imprudence in the design of the plan menu."). The Ninth Circuit rejected a "continuing violation" theory under § 1113(1), finding that the failure to remedy a breach of an obligation does not constitute a second breach – otherwise plan fiduciaries could be held liable for the decisions made by their predecessors decades earlier. *Id.* at 1120; *see also Pisciotta v. Teledyne, Indus., Inc*., 91 F.3d 1326, 1331 (9th Cir. 1996) (rejecting continuing violation theory under 29 U.S.C. § 1132 and finding that plaintiffs' claim accrued when defendants froze the plaintiffs' monthly Medicare Part-B premium and did not recur each time they received the lower monthly payment); *Phillips v. Alaska Hotel and Restaurant Employees Pension Fund*, 944 F.2d 509 (9th Cir. 1991) (rejecting continuing violation theory in an ERISA benefits case under § 1113(a)(2) where plaintiffs claimed defendants had many opportunities to correct allegedly improper vesting rules).[12]

c. Alternatively, Rollins's Claim Is Also Barred by the 3-Year Statute of Limitations Because She Had Actual Knowledge of the Alleged Breach No Later Than January 1, 1999.

The plaintiff's knowledge of the alleged breach is relevant only if applying a three-year limitations period to the date of "actual knowledge" would result in the action being barred at an

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Fuller, 744 F.3d at 690; *see also Tibble v. Edison Int'l*, Nos. 10-56406, 10-56415, 2011 WL 2178417 (9th Cir. May 25, 2011). But these courts held that it did not matter that defendants continued to take actions during the repose period to execute the allegedly wrongful decision. Because plan participants already had more than six full years in which to challenge the "core" alleged wrongdoing – the decision to add these funds to the plan lineup – plaintiffs' claims were barred by ERISA's six-year statute of repose.

[12] *See also Christensen v. Northrop Grumman Corp.*, No. 97-1096, 1997 WL 636811 (4th Cir. Oct. 15, 1997) (unpublished). The Fourth Circuit held that the statute began to run when Northrop made the decision not to provide annuities for pre-retirement death benefits and rejected the argument that the failure to provide such annuities was an omission that could have been subsequently cured. *Id.*, at *3-4. "Characterizing the alleged breach as an 'omission' suggests that Northrop simply overlooked these benefits in its comprehensive termination of the plans. But Northrop understood that in not purchasing annuities it would have to fund whatever benefits accrued through the trust fund. The decisions to take that course were affirmative actions that were completed in 1971 and 1981 . . . ." *Id.*, at *1.

earlier date.[13] Here, Rollins had actual knowledge of Dignity Health's church plan election no later than January 1, 1999, when she became a participant in the Dignity Health Plan – over 14 years before she filed her lawsuit. She alleges that the Plans never qualified as church plans because they were established and maintained by a "hospital conglomerate" for the benefit of the conglomerate's employees. *See, e.g.*, Compl. ¶¶ 5, 6, 37, 40, 49, 75, 76, 78. But she knew that the Plan considered itself a church plan when she became a Plan participant in 1999. In particular, the SPD she was provided in November 1998 expressly states, "The CHW Retirement Plan is intended to qualify as a 'Church Plan' within the meaning of Section 414(e) of the Internal Revenue Code and Section 3(33) of the Employee Retirement Income Security Act of 1974 (ERISA)."

Rollins is charged with knowledge of the content of the SPD. *See, e.g., Brown v. Owens Corning*, 622 F.3d 564, 571 (6th Cir. 2010) (finding that actual knowledge does not require proof that individual plaintiffs actually saw or read documents disclosing the harmful information, but only that the documents provided all the relevant facts); *Edes v. Verizon Commc'ns, Inc.*, 417 F.3d 133, 142 (1st Cir. 2005) (stating "we do not think Congress intended the actual knowledge requirement to excuse willful blindness by a plaintiff"); *Fish v. GreatBanc Trust Co.*, 890 F. Supp. 2d 1060, 1061 (N.D. Ill. 2012) (finding actual knowledge on the part of the participants when the plan administrators had given the participants a Proxy Statement, an FAQ about the transaction, and explanatory letters); *Young v. General Motors Inv. Mgmt. Corp.*, 550 F. Supp. 2d 416, 419 n.3 (S.D.N.Y. 2008) (holding that actual knowledge did not require proof that individual plaintiffs saw or read the relevant documents); *cf. Erhard v. C.I.R.*, 87 F.3d 273, 274 (9th Cir. 1996) (holding that with respect to an IRS deficiency notice that "[a]ctual, physical receipt of the notice is all that is required to have actual notice-the taxpayer does not have to open or read the notice").

Thus, Rollins was aware of the transaction—Dignity Health's election of church plan status exempt from ERISA from the SPD even though Rollins believed that Dignity Health was a

[13] Rollins does not contend that the Plan engaged in any fraud or concealment of the alleged violation, and the evidence establishes that the Plan's church plan status was affirmatively disclosed.

"hospital conglomerate," and she believed that she was not a church employee—more than three years before she filed suit. Therefore, Rollins's claim is also barred by 29 U.S.C. § 1113(2).

2. Rollins's Claim Is Barred Under The Relevant State Law Statute Of Limitations.

Even if the Court finds that Rollins's request for a declaratory judgment does not involve an ERISA breach of fiduciary duty under *Matthews* and *Tibble*, Rollins's claim is still time-barred.[14] In that situation, the Court would apply the most analogous state law statute of limitations to claims under 29 U.S.C. § 1132 that do not assert a breach of fiduciary duty. *See, e.g., Wise v. Verizon Communications, Inc.*, 600 F.3d 1180, 1184 (9th Cir. 2010). To the extent the Court applies a state law statute of limitations, Rollins's claim would be subject to the three-year statute of limitations under California Code of Civil Procedure section 338(a), which governs actions "upon liability created by statute, other than a penalty or forfeiture."

The Ninth Circuit has held that the three-year statute of limitations for violations of a statute without a penalty or forfeiture applies to claims under 29 U.S.C. § 1132(c). *Stone v. Travelers Corp.*, 58 F.3d 434, 438-39 (9th Cir. 1995) ($100 per day "penalty" is a statutory damage award, *not a penalty*). Rollins's declaratory relief claim under § 1132(a) similarly seeks to impose liability created by the ERISA statutes, i.e., "to enforce any provisions of this title." Compl. ¶ 106.

In applying the state law statute of limitations, the Court applies the federal rule of accrual. Accordingly, Rollins's claim accrued, and the statute of limitations began to run, when she knew or had reason to know of the injury that is the basis of the action. *See Pisciotta*, 91 F.3d at 1331. "Actual knowledge is not required, however, as constructive knowledge of the injury will suffice." *Bloom v. Martin*, 865 F. Supp. 1377, 1386 (N.D. Cal. 1994) *aff''d*, 77 F.3d 318 (9th Cir. 1996).

[14] The ERISA statute of limitations should apply based upon Rollins's allegations and request for relief under § 1132(a)(3). There is no specific statute of limitations for a claim under the federal Declaratory Relief Act, which Rollins also cites in paragraph 106 of the Complaint. *See Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 688 (9th Cir. 1993); *see also Zuill v. Shanahan*, 80 F.3d 1366, 1369 (9th Cir. 1996).

As discussed above, Rollins had actual knowledge of her claim no later than January 1, 1999, and therefore the three-year statute of limitations has long since run. Even if the Court finds that Rollins did not have actual knowledge, the evidence indisputably establishes that she had the requisite constructive knowledge that time-bars her claim.

VI. CONCLUSION

For all of the reasons stated above, Dignity Health respectfully requests that the Court grant its motion for partial summary judgment.

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