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

16 STARLA ROLLINS and PATRICIA WILSON,
17 on behalf of themselves, individually, on behalf
of all others similarly situated, and on behalf of
18 the Dignity Plan,

19 Plaintiffs,

20 v.

21 DIGNITY HEALTH, a California Non-profit
Corporation, HERBERT J. VALLIER, an
individual, DARRYL ROBINSON, an
22 individual, the Dignity Health Retirement Plans
Subcommittee, and JOHN and JANE DOES,
23 each an individual, 1-20,

24 Defendants.

Case No: 13-CV-01450-JST

**AMENDED CLASS ACTION
COMPLAINT**

The Honorable Jon S. Tigar

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1 Plaintiffs Starla Rollins and Patricia Wilson, individually and on behalf of all those
2 similarly situated, as well as on behalf of the Dignity Plan, as defined herein, by and through
3 their attorneys, hereby allege as follows:

4 **I. INTRODUCTION**

5 1. Defendant Dignity Health, for itself and by and through its subsidiaries,
6 subordinate corporations and/or affiliates (“Dignity”), operates a health care conglomerate in
7 California, Arizona and Nevada and ancillary care facilities in nineteen states. This case
8 concerns Dignity’s failure to properly maintain its pension plan under the applicable federal law
9 regulating pension plans, the Employee Retirement Income Security Act of 1974, as amended
10 (“ERISA” or the “Act”). In the alternative, even if the pension plans are not subject to ERISA,
11 Dignity has breached its duties under state law. In particular, whether under federal or state law,
12 Dignity has failed to adequately fund the Plan, creating a significant risk that the Plan will be
13 unable to pay the benefits to which Dignity’s employees are entitled. As demonstrated herein,
14 Dignity’s failures harm its more than 80,000 participants in the Plan who rely on these promised
15 pension benefits and who count on these benefits for their retirement.

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

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

24 James Wooten, *The Employee Retirement Income Security Act of 1974: A Political History* 3
(Univ. of Cal. Press 2005).

1 3. This class action is brought on behalf of all participants, former participants, and
2 beneficiaries of the Dignity Health Pension Plan (the “Dignity Plan” or simply the “Plan”), a
3 defined benefit pension plan that is maintained and sponsored by Dignity and is operated as, or
4 claimed to be, a “church plan” under ERISA (the “Class”).

5 4. Dignity is violating numerous provisions of ERISA—including, on information
6 and belief, underfunding the Dignity Plan by \$1.8 billion—while erroneously claiming that the
7 Plan is exempt from ERISA’s protections because it is a church plan. The Dignity Plan does not
8 meet the definition of a church plan under ERISA because a church plan generally must be
9 “maintained” by a church or a convention or association of churches, and because Dignity, which
10 maintains the Dignity Plan, plainly is not a church or a convention or association of churches.

11 5. Dignity may claim that the Dignity Plan is “maintained” by internal Dignity
12 retirement committees and thus qualifies for a special accommodation for plans maintained by
13 church-associated “organizations” whose “principal purpose” is funding or administering benefit
14 plans. But it is Dignity, and not any committees, that maintains the Dignity Plan, and Dignity’s
15 principal purpose is providing healthcare, not funding or administering retirement plans. Even if
16 the committees did “maintain” the Plan, the Plan still would not qualify as a “church plan”
17 because these committees are internal committees of Dignity and are not distinct
18 “organizations,” as required by ERISA’s “principal purpose” accommodation.

19 6. Furthermore, even if the Dignity Plan was somehow “maintained” by a
20 permissible entity, the church plan exemption still would not apply because other aspects of the
21 definition are not satisfied, including that Dignity is not “controlled by” or “associated with” a
22 church, within the meaning of ERISA. Dignity is a non-profit healthcare corporation, not unlike
23 other non-profit healthcare systems with which Dignity competes in its commercial healthcare
24

1 activities. Dignity is not owned or operated by a church and does not receive funding from a
2 church. No denominational requirement exists for Dignity employees. Indeed, Dignity tells
3 prospective employees that any choice of faith, or lack thereof, is not a factor in the recruiting
4 and hiring of Dignity employees. In choosing to recruit and hire from the population at large,
5 Dignity must also be willing to accept neutral, generally applicable regulations, such as ERISA,
6 imposed to protect those employees' legitimate interests. Moreover, Dignity is affiliated with
7 numerous healthcare facilities, including many that claim to be secular and have no relationship
8 with any church.

9 7. Likewise, Dignity's internal Retirement Committees are not "controlled by" or
10 "associated with" a church, within the meaning of ERISA.

11 8. Even if, however, the Dignity Plan could otherwise qualify for church plan status,
12 it would be specifically excluded from such status because substantially all of the participants in
13 the Plan are *not* employed by either the Catholic Church or an organization that is controlled by
14 or associated with the Catholic Church, within the meaning of ERISA. Dignity is not controlled
15 by the Catholic Church and is not "associated with" the Catholic Church within the meaning of
16 ERISA because it does not share common religious bonds and convictions with the Catholic
17 Church.

18 9. A sampling of facts reveals Dignity as a non-profit health care network, not unlike
19 other non-profit health care networks:

20 A. Ownership, Operation, Funding. It is not owned or operated by the
21 Catholic Church and does not receive funding from the Catholic Church. ;

22 B. Employees. With respect to recruiting and hiring its employees—those
23 who then become Dignity Plan participants—Dignity informs prospective employees that
24

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

9 C. Growth Model. Over the years the Dignity network has grown, in large
10 part, through the acquisition of hospitals and ancillary care facilities that had no claimed
11 ties to religion. Indeed, Dignity's current growth model specifically targets the
12 acquisition of additional healthcare facilities that have no claimed ties to religion. These
13 facilities do not purport, and have never purported, to adhere to the moral and doctrinal
14 teaching of the Catholic Church, and Dignity continues to operate these facilities in such
15 fashion; and

16 D. The Catholic Church Has Distanced Itself from Dignity. Following
17 Dignity's substantial corporate reorganization in 2012, numerous official statements
18 made clear that Dignity is not associated with the Catholic Church, including: (i) the
19 Archbishop of San Francisco's declaration that Dignity's name "will not suggest a direct
20 association with the Catholic Church" and that Dignity "will not be recognized as
21 Catholic"; (ii) a statement of the Phoenix Diocese that Dignity is "secular"; and (iii) a
22 statement of two moral theologians that Dignity "will not be Catholic."
23
24

1 10. Even if the Court determined that the Dignity Plan fell within the scope of the
2 church plan exemption, the church plan exemption would then be, as applied to Dignity, an
3 unconstitutional accommodation in violation of the Establishment clause of the First
4 Amendment. Dignity claims, in effect, that it must be relieved of its ERISA financial obligations
5 because Dignity claims certain religious beliefs. The Establishment Clause, however, does not
6 allow such an economic preference for religious adherents that is not available to non-adherents,
7 at least where, as here, an accommodation is not required to relieve a substantial burden on
8 religious practice or to avoid government entanglement in religion. Extension of the church plan
9 exemption to Dignity: (A) is not necessary to further the stated purposes of the exemption;
10 (B) harms Dignity workers; (C) puts Dignity competitors at an economic disadvantage;
11 (D) relieves Dignity of no genuine religious burden created by ERISA; and (E) creates more
12 government entanglement with alleged religious beliefs than compliance with ERISA creates.

13 11. Dignity's claim of church plan status for its defined benefit pension plan fails
14 under both ERISA and the First Amendment.

15 12. Plaintiffs seek an Order requiring Dignity to comply with ERISA and afford the
16 Class all the protections of ERISA with respect to the Dignity Plan, as well as an Order finding
17 that the church plan exemption, as claimed by Dignity, is unconstitutional because it violates the
18 Establishment Clause of the First Amendment.

19 13. Yet even if the church plan exemption did apply to the Dignity Plan, and even if
20 the application of the exemption were constitutionally permissible, Dignity nonetheless has
21 breached its contractual obligations under the Dignity Plan documents and has breached its
22 common law fiduciary duties by failing to make required contributions to the Dignity Plan trust.
23 By refusing to fund the Dignity Plan, in contravention of its obligations under the Dignity Plan
24

1 documents, its fiduciary duties, and its repeated promises to Dignity Plan participants, Dignity
2 has left the Dignity Plan severely underfunded. On information and belief, the Dignity Plan trust
3 currently holds assets worth only approximately 72% of the accrued benefit obligations.
4 Because of Dignity's failures to fund the Dignity Plan, there exists a substantial risk that the
5 Dignity Plan will be unable to pay the accrued pension benefits to which Plaintiffs and the other
6 Class members are entitled. Accordingly, Plaintiffs seek an Order requiring Dignity to make all
7 contributions to the Dignity Plan trust necessary to fund, on an actuarial basis, all accrued
8 pension benefits.

9 II. JURISDICTION AND VENUE

10 14. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because
11 this is a civil action arising under the laws of the United States and pursuant to 29 U.S.C.
12 § 1132(e)(1), which provides for federal jurisdiction of actions brought under Title I of ERISA.
13 This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C.
14 § 1367 because the state law claims are so related to Plaintiffs' other claims in this action that
15 they form part of the same case or controversy.

16 15. In addition, this Court has subject matter jurisdiction under the Class Action
17 Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one class member is of diverse
18 citizenship from one defendant, there are 100 or more class members nationwide, and the
19 aggregate amount in controversy exceeds \$5,000,000. In addition, on information and belief,
20 fewer than two-thirds of the members of all proposed plaintiff classes in the aggregate are
21 citizens of California.

22 16. This Court has personal jurisdiction over all Defendants because ERISA provides
23 for nationwide service of process. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). All of the
24 Defendants are either residents of the United States or subject to service in the United States,

1 and the Court therefore has personal jurisdiction over them. The Court also has personal
2 jurisdiction over them pursuant to Federal Rule of Civil Procedure (“Rule”) 4(k)(1)(A) because
3 they would all be subject to a court of general jurisdiction in California as a result of the
4 individual Defendants’ states of residence, and Defendant Dignity transacting business in and
5 having significant contacts with this District.

6 17. Venue is proper in this district pursuant to ERISA section 502(e)(2), 29 U.S.C.
7 § 1132(e)(2), because (a) the Plan is administered in this District, (b) some or all of the violations
8 of ERISA took place in this District, and/or (c) Dignity may be found in this District.

9 18. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because Dignity
10 is headquartered in this District, and systematically and continuously does business in this
11 District, and because a substantial part of the events or omissions giving rise to the claims
12 asserted herein occurred within this District.

13 III. PARTIES

14 19. Plaintiff Starla Rollins. Plaintiff Starla Rollins was employed by Dignity as the
15 MCH Billing Coordinator at San Bernardino Community Hospital in San Bernardino, California
16 from 1986 until 2012. Plaintiff Rollins is a participant in the Dignity Plan maintained by Dignity
17 because she is or will become eligible for pension benefits under the Plan to be paid at normal
18 retirement age. Additionally and alternatively, Plaintiff has a colorable claim to benefits under
19 the Dignity Plan maintained by Dignity and is a participant within the meaning of ERISA section
20 3(7), 29 U.S.C. § 1002(7), and is therefore entitled to maintain an action with respect to the
21 Dignity Plan pursuant to ERISA section 502(a)(1)(A)-(B), (a)(2)-(3), (c)(1), (c)(3), 29 U.S.C.
22 § 1132(a)(1)(A)-(B), (a)(2)-(3), (c)(1), (c)(3).

23 20. Plaintiff Patricia Wilson. Plaintiff Patricia Wilson has been employed since
24 1995 as a registered nurse at Chandler Regional Medical Center in Chandler, Arizona, which

1 Dignity acquired in 1999. Plaintiff Wilson is a participant in the Dignity Plan maintained by
2 Dignity because she is or will become eligible for pension benefits under the Plan to be paid at
3 normal retirement age. Plaintiff Wilson accrues benefits in the Dignity Plan under the “PEP
4 Plus” formula for benefit accrual, as it may have been amended. Additionally and alternatively,
5 Plaintiff has a colorable claim to benefits under the Dignity Plan maintained by Dignity and is a
6 participant within the meaning of ERISA section 3(7), 29 U.S.C. § 1002(7), and is therefore
7 entitled to maintain an action with respect to the Dignity Plan pursuant to ERISA section
8 502(a)(1)(A)-(B), (a)(2)-(3), (c)(1), (c)(3), 29 U.S.C. § 1132(a)(1)(A)-(B), (a)(2)-(3), (c)(1),
9 (c)(3).

10 21. Defendant Dignity. Dignity is a 501(c)(3) non-profit corporation organized
11 under, and governed by, the California Corporations Code, including Division 2 thereof, the
12 California Nonprofit Corporation Law, and is headquartered in San Francisco, California.
13 Dignity is the employer responsible for maintaining the Dignity Plan and is, therefore, the plan
14 sponsor of the Dignity Plan within the meaning of ERISA section 3(16)(B), 29 U.S.C.
15 § 1002(16)(B).

16 22. Defendant Herb J. Vallier. Defendant Vallier was Executive Vice President and
17 Chief Human Resources Officer for Dignity from at least 2010 until January, 2013. In 2010
18 Defendant Vallier received total compensation in excess of \$580,000. Upon information and
19 belief, Defendant Vallier’s job responsibilities included fiduciary oversight of the Dignity Plan,
20 and Defendant Vallier is a fiduciary of the Plan within the meaning of ERISA.

21 23. Defendant Darryl Robinson. Defendant Darryl Robinson is Executive Vice
22 President and Chief Human Resources Officer for Dignity, and has held that position since
23 August, 2013. In 2014 Defendant Robinson received total compensation in excess of
24

1 \$1.4 million. Upon information and belief, Defendant Robinson's's job responsibilities include
2 fiduciary oversight of the Dignity Plan, and Defendant Robinson is a fiduciary of the Plan within
3 the meaning of ERISA.

4 24. Defendant Dignity Health Retirement Plans Subcommittee. On information and
5 belief, the Human Resources and Compensation Committee of the Dignity Board has appointed a
6 subcommittee that Dignity describes as the Dignity Health Retirement Plans Subcommittee
7 (the "Retirement Committee"). The Retirement Committee is the person specifically designated
8 as the "administrator" by the terms of the instrument under which the Dignity Plan is operated,
9 as provided in ERISA section 3(16)(A)(i), 29 U.S.C. § 1002(3)(16)(A)(i).

10 25. Defendants John and Jane Does 1-20. Defendants John and Jane Does 1-20 are
11 individuals who through discovery are found to have fiduciary responsibilities with respect to the
12 Dignity Plan and are fiduciaries within the meaning of ERISA. These individuals will be added
13 by name as defendants in this action upon motion by Plaintiffs at an appropriate time.
14 Defendants Vallier, Robinson, and John and Jane Does 1-20 are referred to herein collectively as
15 the "Individual Defendants."

16 **IV. THE BACKGROUND OF THE CHURCH PLAN EXEMPTION**

17 **A. The Adoption of ERISA**

18 26. Following years of study and debate, and with broad bi-partisan support,
19 Congress adopted ERISA in 1974, and the statute was signed into law by President Ford on
20 Labor Day of that year. Among the factors that led to the enactment of ERISA were the widely
21 publicized failures of certain defined benefit pension plans, especially the plan for employees of
22 Studebaker Corporation, an automobile manufacturing company which defaulted on its pension
23 obligations in 1965. *See generally* John H. Langbein et al., *Pension and Employee Benefit Law*
24 67-71 (6th ed. 2015).

1 27. As originally adopted in 1974, and today, ERISA protects the retirement savings
2 of pension plan participants in a variety of ways. As to participants in traditional defined benefit
3 pension plans, such as the Plan at issue here, ERISA mandates, among other things, that such
4 plans be currently funded and actuarially sound, that participants' accruing benefits vest pursuant
5 to certain defined schedules, that the administrators of the plan report certain information to
6 participants and to government regulators, that the fiduciary duties of prudence, diversification,
7 loyalty, and so on apply to those who manage the plans, and that the benefits promised by the
8 plans be guaranteed, up to certain limits, by the Pension Benefit Guaranty Corporation
9 ("PBGC"). *See, e.g.*, ERISA §§ 303, 203, 101-06, 404-06, 409, 4007, 4022, 29 U.S.C. §§ 1083,
10 1053, 1021-26, 1104-06, 1109, 1307, 1322.

11 28. ERISA is centered on pension plans, and particularly defined benefit pension
12 plans, as is reflected in the very title of the Act, which addresses "retirement income security."
13 However, ERISA also subjects to federal regulation defined contribution pension plans (such as
14 401(k) plans) and welfare plans, which provide health care, disability, severance and related non-
15 retirement benefits. ERISA § 3(34), (1), 29 U.S.C. § 1002(34), (1).

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

17 29. As adopted in 1974, ERISA provided an exemption for certain plans, in particular
18 governmental plans and church plans. Plans that met the statutory definitions were exempt from
19 all of ERISA's substantive protections for participants. ERISA § 4(b)(2), 29 U.S.C. § 1003(b)(2)
20 (exemption from Title I of ERISA); ERISA § 4021(b)(3), 29 U.S.C. § 1321(b)(3) (exemption
21 from Title IV).

1 30. ERISA defined a “church plan” as a plan “established and maintained . . . for its .
2 . . . employees by a church or by a convention or associations of churches.”¹

3 31. Under the 1974 legislation, although a church plan was required to be established
4 and maintained by a church, it could also include employees of certain pre-existing agencies of
5 such church (*i.e.*, there was a grandfather provision), but only until 1982 (*i.e.*, there was a sunset
6 provision).² ERISA § 3(33)(C) (1974), 29 U.S.C. § 1002(33)(C) (1974) (Pub. L. No. 93-406,
7 § 3(33), 88 Stat. 829 (1974), (current version as amended at 29 U.S.C. § 1002(33) (2012)). Thus,
8 under the 1974 legislation, a pension plan that was not established and maintained by a church
9 could not be a church plan. *Id.*

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

11 32. The church plan definition was amended in 1980. Multiemployer Pension Plan
12 Amendments Act of 1980 (“MPPAA”), Pub.L. No. 96-364, § 407, 94 Stat. 1208 (1980). The
13 amended definition is current law.

14 33. The grandfather and sunset provisions, concerning employees of church agencies,
15 were dropped. Congress achieved this by including a new definition of “employee” in
16 subsection (C)(ii)(II) of section 3(33) of ERISA. 29 U.S.C. § 1002(33)(C)(ii)(II) (1980) (current
17 version at 29 U.S.C. § 1002(33)(C)(ii)(II) (2012)). As amended, an “employee” of a church or a
18 convention/association of churches includes an employee of an organization “which is controlled
19 by or associated with a church or a convention or association of churches.” *Id.* The phrase
20 “associated with” is then defined in ERISA section 3(33)(C)(iv) to include only those

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

² H.R. Rep. No. 93-1280 (1974) (Conf. Rep.), *reprinted in* 1974 U.S.C.C.A.N. 5038, 5044.

1 organizations that “share[] common religious bonds and convictions with that church or
2 convention or association of churches.” 29 U.S.C. § 1002(33)(C)(iv) (1980) (current version at
3 29 U.S.C. § 1002(33)(C)(iv) (2012)). Accordingly, this new definition of “employee” permitted
4 a “church plan” to include among its participants employees of organizations controlled by or
5 associated with the church, convention, or association of churches.

6 34. The 1980 amendments also permitted church plans to be maintained either by a
7 church or by:

8 [A]n organization, whether a civil law corporation or otherwise, *the principal*
9 *purpose or function of which is the administration or funding of a plan or*
10 *program for the provision of retirement benefits or welfare benefits, or both, for*
11 *the employees of a church or a convention or association of churches, if such*
12 *organization is controlled by or associated with a church or a convention or*
13 *association of churches.*

14 ERISA § 3(33)(C)(i) (1980), 29 U.S.C. § 1002(33)(C)(i) (1980) (emphasis added) (current
15 version at 29 U.S.C. § 1002(33)(C)(i) (2012). For convenience, this type of organization is
16 referred to here, as it is in the case law, as a “principal-purpose organization.”

17 35. Finally, the Supreme Court recently interpreted the 1980 amendment and held that
18 a church plan that is maintained by a principal-purpose organization need not have been
19 established by a church. *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1658
20 (2017).³ The Supreme Court expressly declined to interpret the meaning of “principal-purpose
21 organization” or to express an opinion on whether the plans at issue in the cases before it – which
22 included the Dignity Plan itself – were maintained by principal-purpose organizations. *Id.* at
23 1657 n.2.

24 ³ Advocate consolidated appeals from cases in three circuits, including the Ninth Circuit opinion
in this case. *Kaplan v. Saint Peter's Healthcare Sys.*, 810 F.3d 175 (3d Cir. 2015); *Stapleton v.*
Advocate Health Care Network, 817 F.3d 517 (7th Cir. 2016); *Rollins v. Dignity Health*,
830 F.3d 900 (9th Cir. 2016).

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

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

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

22 42. As recently as July, 2012 Dignity acquired U.S. HealthWorks, the largest
23 independent for profit operator of occupational medicine and urgent care centers in the United
24 States. With the acquisition of U.S. HealthWorks, Dignity added a network of 172 medical

1 centers that have no claimed ties to religion, which collectively employ 2,700 employees who
2 deliver health care to more than 12,000 patients a day. These facilities do not purport, and have
3 never purported, to adhere to the moral and doctrinal teaching of the Catholic Church, and
4 Dignity continues to operate these facilities in such fashion.

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

8 44. The principal purpose or function of Dignity is not the administration or funding
9 of a plan or program for the provision of retirement or welfare benefits, or both, for the
10 employees of a church or a convention or association of churches.

11 45. Rather, the principal purpose or function of Dignity is the provision of health
12 care. According to Article III of Dignity's Bylaws:

13 This Corporation is organized as a California public benefit Corporation and the
14 Corporation's primary purpose is to provide health care services and related support
15 functions. This Corporation operates, directly or through subsidiaries or affiliates, both
16 Catholic sponsored health care services as well as health care services that are not
17 Catholic sponsored, working together to provide a continuum of compassionate, high
18 quality care to its various local communities. Such collaboration enables responsible
19 stewardship of health care resources and helps provide access to care to a wide range of
20 persons, including persons who are poor and disenfranchised.

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

1 47. The Dignity Board currently consists of thirteen members, all but two of whom
2 are lay persons. The Executive Leadership Team is comprised entirely of lay persons.

3 48. The Executive Officers of Dignity that make up the Executive Leadership Team
4 receive compensation in line with executive officers of large publicly traded companies. For
5 example, in 2014 the President and CEO received \$7.6 million in total compensation, the CFO
6 received \$2.6 million in total compensation, and the COO received total compensation of
7 \$5.3 million. In addition, at least thirteen other officers received over \$1 million in
8 compensation in 2014.

9 49. Dignity is not owned by the Catholic Church. Dignity does not receive funding
10 from the Catholic Church or the other religious organizations that may have once owned and
11 operated hospitals that have since been acquired by Dignity.

12 50. Dignity is not owned by a church.

13 51. Dignity does not receive funding from any church.

14 52. Dignity does not claim that any church has any liability for Dignity's debts or
15 obligations.

16 53. No church has any role in the maintenance and/or administration of the Dignity
17 Plan.

18 54. The governance of Dignity, including the management of Dignity's affairs, is
19 vested in Dignity's Board of Directors, not in any church.

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

23 56. Dignity does not claim to be a church and is not one.
24

1 57. Dignity is not a convention or association of churches.

2 58. In the annual returns of a tax-exempt organization (Form 990) that Dignity files
3 with the IRS, Dignity claims that the reason for its public charity status is that it is “[a] hospital
4 or a cooperative hospital service organization described in [26 U.S.C.] section 170(b)(1)(A)(iii).”

5 59. Dignity does not impose any religious beliefs or practices on its clients/patients,
6 and specifically offers spiritual care to its patients without regard to any religion or creed. For
7 those patients who are religious, Dignity offers contact with the minister, priest, rabbi, or
8 spiritual leader of their patients’ choosing. In some of its hospitals, Dignity provides a
9 nondenominational chapel, as many airports do.

10 60. Dignity purports to disclose, and not keep confidential, its own highly complex
11 financial records. For example, Dignity is required and in some cases has voluntarily elected to
12 comply with a broad array of elaborate state and federal regulations and reporting requirements,
13 including Medicare and Medicaid. In addition, Dignity makes public its consolidated financial
14 statements, which describe Dignity’s representations as to its own highly complex operations and
15 financial affairs. Finally, Dignity financial information is regularly disclosed to the rating
16 agencies and the public when tax exempt revenue bonds are issued.

17 **B. The Dignity Plan**

18 61. Dignity maintains the Dignity Plan, which is a non-contributory defined benefit
19 pension plan covering substantially all of its employees.

20 62. The Dignity Plan incorporates a number of other plans that have been merged into
21 the Dignity Plan.

22 63. In 2011 the Dignity Plan was amended to, among other things, freeze certain
23 ongoing final average pay formulas and replace them with cash balance formulas, and freeze
24

1 certain past service benefits for employees already in cash balance formulas (the “2011
2 Amendments”).

3 64. The Dignity Plan is, in part, a cash balance plan, because, to the extent a cash
4 balance formula applies to a participant, it computes accrued benefits by reference to
5 hypothetical account balances or equivalent amounts and is therefore required to comply with the
6 special rules for cash balance plans, including but not limited to ERISA section 203(f)(2),
7 29 U.S.C. § 1053(f)(2), which requires that any employee who has completed at least 3 years of
8 service has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived from
9 employer contributions. In other words, the maximum vesting period allowable for a cash
10 balance plan is 3 years.

11 65. The Dignity Plan generally requires participants in the Plan to complete 5 years of
12 service to be vested.

13 66. The Dignity Plan was amended and restated as of January 1, 2014, while this
14 litigation was pending.

15 67. There are over 80,000 participants in the Dignity Plan.

16 68. The Dignity Plan is not maintained by a church or a convention or association of
17 churches.

18 69. Dignity maintains the Dignity Plan.

19 70. Dignity has the power to continue, amend, or terminate the Dignity Plan.

20 71. Dignity is the employer and, therefore, the plan sponsor with respect to the
21 Dignity Plan.

22 72. The Dignity Plan was originally established on January 1, 1989, as a plan subject
23 to ERISA, and for three and a half years was treated as an ERISA plan.

24

1 73. However, on July 20, 1992, the Board of Directors passed a resolution to
2 retroactively treat the Dignity Plan as a church plan.

3 74. Dignity, as the employer and plan sponsor of the Dignity Plan, has the obligation
4 —under ERISA as well as under the express or implied terms of the Dignity Plan documents—to
5 make contributions to the Dignity Plan trust and to fund the Dignity Plan.

6 75. Dignity has an obligation to make contributions to the Dignity Plan trust in an
7 amount which is sufficient, on an actuarial basis, to fund all accrued benefits under the Dignity
8 Plan.

9 76. Upon information and belief, as of June 30, 2016, the Dignity Plan was
10 underfunded by nearly \$1.8 billion. Thus, as of June 30, 2016, the Dignity Plan was only funded
11 at approximately 72%.

12 77. Although Dignity has an obligation to make contributions to the Dignity Plan trust
13 that are sufficient, on an actuarial basis, to fund all accrued benefits under the Plan, the Dignity
14 Plan provides that if the Dignity Plan terminates, Plan participants' accrued benefits will be
15 nonforfeitable only to the extent that the Dignity Plan trust is funded.

16 78. These fund-specific promises, triggered upon the termination of the Dignity Plan,
17 are not permissible under ERISA and place the participants' benefits at great risk.

18 79. Participants and beneficiaries' benefits under the Plan are guaranteed only by the
19 assets of the Plan.

20 80. Participants' benefits in the Plan are not protected by PBGC guarantees.

21 81. No church guarantees the obligations of the Plan.

22 82. No religious order guarantees the obligations of the Plan.

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1 **C. The Dignity Plan Meets the Definition of an ERISA Defined Benefit Plan**

2 83. The Dignity Plan is a plan, fund, or program that was established or maintained
3 by Dignity and which, by its express terms and surrounding circumstances, provides retirement
4 income to employees and/or results in the deferral of income by employees to the termination of
5 their employment or beyond.

6 84. The Dignity Plan meets the definition of “employee pension benefit plan” within
7 the meaning of ERISA section 3(2)(A), 29 U.S.C. § 1002(2)(A).

8 85. The Dignity Plan does not provide for an individual account for each participant
9 and does not provide benefits solely upon the amount contributed to a participant’s account.
10 As such, the Dignity Plan is a “defined benefit plan” within the meaning of ERISA section 3(35),
11 29 U.S.C. § 1002(35), and is not an individual account plan or a “defined contribution plan”
12 within the meaning of ERISA section 3(34), 29 U.S.C. § 1002(34).

13 **1. The Defendants Are Each ERISA Fiduciaries**

14 **a. Nature of Fiduciary Status**

15 86. Every ERISA plan must have “one or more named fiduciaries.” ERISA
16 § 402(a)(1), 29 U.S.C. 1102(a)(1). The person named as the “administrator” in the plan
17 instrument is automatically a fiduciary and, in the absence of such a designation, the sponsor is
18 the administrator. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

19 87. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under
20 section 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who in fact perform
21 fiduciary functions. Thus, a person is a fiduciary to the extent “(i) he exercises any discretionary
22 authority or discretionary control respecting management of such plan or exercises any authority
23 or control respecting management or disposition of its assets, (ii) he renders investment advice
24 for a fee or other compensation, direct or indirect, with respect to any moneys or other property

1 of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary
2 authority or discretionary responsibility in the administration of such plan.” ERISA § 3(21)(A),
3 29 U.S.C. § 1002(21)(A).

4 88. Each of the Defendants was a fiduciary with respect to the Dignity Plan and owed
5 fiduciary duties to the Plan and its participants and beneficiaries under ERISA in the manner and
6 to the extent set forth in the Plan’s documents and/or through their conduct.

7 89. As fiduciaries, Defendants were required by ERISA section 404(a)(1), 29 U.S.C.
8 § 1104(a)(1), to manage and administer the Plan and the Plan’s investments solely in the interest
9 of the Plan’s participants and beneficiaries and with the care, skill, prudence, and diligence under
10 the circumstances then prevailing that a prudent man acting in a like capacity and familiar with
11 such matters would use in the conduct of an enterprise of a like character and with like aims.

12 90. Plaintiffs do not allege that each Defendant was a fiduciary with respect to all
13 aspects of the Plan’s management and administration. Rather, as set forth below, Defendants
14 were fiduciaries to the extent of the specific fiduciary discretion and authority assigned to or
15 exercised by each of them, and, as further set forth below, the claims against each Defendant are
16 based on such specific discretion and authority.

17 91. ERISA permits fiduciary functions to be delegated to insiders without an
18 automatic violation of the rules against prohibited transactions, ERISA section 408(c)(3),
19 29 U.S.C. § 1108(c)(3), but insider fiduciaries, like external fiduciaries, must act solely in the
20 interest of participants and beneficiaries, not in the interest of the plan sponsor.

21 **b. Defendants Are Each ERISA Fiduciaries**

22 92. As Defendant Dignity is and has been the plan sponsor of the Dignity Plan,
23 Defendant Dignity is an “administrator” of the Dignity Plan within the meaning of ERISA
24 section 3(16)(A), 29 U.S.C. § 1002(16)(A); a named fiduciary within the meaning of ERISA

1 section 402, 29 U.S.C. § 1102; and a functional fiduciary with respect to the Plan within the
2 meaning of ERISA section 3(21)(A)(iii), 29 U.S.C. § 1002(21)(A)(iii).

3 93. Upon information and belief, Defendant Dignity's responsibilities include
4 fiduciary oversight of the Dignity Plan. Upon further information and belief, Defendant Dignity,
5 by and through its Board of Directors, has the responsibility to appoint, and hence to monitor and
6 remove, the plan administrators and other fiduciaries of the Dignity Plan.

7 A. Dignity has the power to appoint and remove the Plan Administrator,
8 *i.e.*, the Retirement Committee.

9 B. Under the terms of the Dignity Plan, Dignity is a fiduciary to the Plan.

10 C. Dignity is required to establish a funding policy and method for the
11 Dignity Plan.

12 D. Dignity has promised and has an express or implied obligation under the
13 Dignity Plan documents to make ongoing contributions to the Dignity Plan in an amount
14 which is sufficient, on an actuarial basis, to provide for the retirement benefits and other
15 benefits provided under the Dignity Plan.

16 E. Dignity has an obligation to periodically review the performance of any
17 fiduciary or other person to whom duties have been delegated or allocated by Dignity
18 under the provisions of the Dignity Plan or pursuant to procedures established under the
19 Plan document.

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

3 95. **Retirement Committee.** Alternatively, upon information and belief, the terms of
4 the instrument, or instruments, under which the Dignity Plan is operated specifically designate
5 the Retirement Committee as the Plan Administrator within the meaning of ERISA section
6 3(16)(A)(i), 29 U.S.C. § 1002(16)(A)(i). As such, Defendant Retirement Committee is a named
7 fiduciary within the meaning of ERISA section 402, 29 U.S.C. § 1102, and a functional fiduciary
8 within the meaning of ERISA section 3(21)(A)(iii), 29 U.S.C. § 1002(21)(A)(iii).

9 96. On information and belief, the primary responsibility of the Retirement
10 Committee is to administer the Dignity Plan solely in the interests of its participants and
11 beneficiaries, subject to the specific terms of the Dignity Plan.

12 97. As Plan Administrator, the Retirement Committee has full power to administer,
13 construe and apply all provisions of the Dignity Plan. The Retirement Committee, as Plan
14 Administrator, has the full and complete authority, responsibility and control, in its sole and
15 absolute discretion, over the management, administration, and operation of the Dignity Plan,
16 including but not limited to the following: (1) to interpret the Plan, carry out the provisions of
17 the Plan, and decide questions relating to eligibility, crediting of service for vesting and benefit
18 accrual, and benefit amounts; (2) to finally decide disputes regarding the rights of employees,
19 participants, spouses, and beneficiaries under the Plan; (3) to obtain information from Dignity as
20 necessary to determine rights and benefits under the Plan; (4) to compile and maintain records
21 necessary for the Plan; (5) to authorize payments of benefits; (6) to adopt rules and regulations
22 for the administration of the Plan; (7) to report to Dignity the amount and due dates of the
23 contributions which are required to maintain the Plan as a qualified plan; (8) to make

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1 determinations regarding qualified domestic relations orders; (9) to publish and transmit Plan
2 summaries, reports and statements; (10) provide for a valuation of trust assets; and (11) perform
3 such other actions as may be provided for in the Plan.

4 98. The Retirement Committee has authority and responsibility to provide input to the
5 Dignity Health Investment Committee regarding investment of Plan assets, but the Retirement
6 Committee is not responsible for the investment strategy and performance analysis of the assets
7 of the Plan.

8 99. The Retirement Committee does not have the power to add to, subtract from, or
9 modify any of the terms of the Dignity Plan.

10 100. Defendant Retirement Committee is a fiduciary with respect to the Dignity Plan
11 within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A), because it exercises
12 discretionary authority or discretionary control respecting management of the Dignity Plan,
13 exercises authority and control respecting management or disposition of the Dignity Plan's
14 assets, and/or has discretionary authority or discretionary responsibility in the administration of
15 the Dignity Plan.

16 101. **Defendant Vallier.** As Executive Vice President and Chief Human Resources
17 Officer of Dignity, Defendant Vallier is also a fiduciary with respect to the Dignity Plan within
18 the meaning of ERISA section 3(21), 29 U.S.C. § 1002(21), because, upon information and
19 belief, he exercises discretionary authority or discretionary control respecting management of the
20 Dignity Plan, exercises authority and control respecting management or disposition of the
21 Dignity Plan's assets, and/or has discretionary authority or discretionary responsibility in the
22 administration of the Dignity Plan.

1 102. **Defendant Robinson.** As Executive Vice President and Chief Human Resources
2 Officer of Dignity, Defendant Robinson is also a fiduciary with respect to the Dignity Plan
3 within the meaning of ERISA section 3(21), 29 U.S.C. § 1002(21), because, upon information
4 and belief, he exercises discretionary authority or discretionary control respecting management
5 of the Dignity Plan, exercises authority and control respecting management or disposition of the
6 Dignity Plan’s assets, and/or has discretionary authority or discretionary responsibility in the
7 administration of the Dignity Plan.

8 103. Plaintiffs reserve the right to amend this Complaint to name other or additional
9 Defendants once they have had the opportunity to conduct further discovery on these issues.

10 **2. Dignity Operates Other ERISA Plans**

11 104. Although Dignity, including specifically through its Human Resources
12 Department and the Retirement Committee, maintains that its defined benefit pension plan is
13 exempt from ERISA coverage as a church plan, it claims ERISA status for its health and welfare
14 benefit plans, dependent life insurance plans, and short term disability plans and complies with
15 ERISA requirements for those plans, including by filing form 5500’s annually with the Internal
16 Revenue Service and the U.S. Department of Labor and making its records subject to inspection
17 upon request.

18 105. Compliance with ERISA creates no undue, genuine burden on any religious
19 practice of Dignity, as evidenced by Dignity’s claimed compliance with ERISA for its health and
20 welfare benefit plans, dependent life insurance plans, and short term disability plans.

1 **3. Dignity Does Not Disclose Information About the Dignity Plan or the**
2 **Benefits Available to Participants Under the Plan**

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

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

13 108. After more than 90 days had elapsed since Plaintiff Rollins made these requests in
14 writing to the Plan Administrator of the Dignity Plan, Plaintiff Rollins had not been provided
15 with a response and had not received a benefits statement or any of the requested materials.

16 **4. Dignity Drastically Reduced Accrual of Retirement Benefits Without Giving**
17 **Notice, in Violation of ERISA**

18 109. The Dignity Plan provides several different formulas for accrual of benefits
19 depending on, among other things, the occupation and location of a particular type of employee.

20 110. Prior to April, 2014, the Dignity Plan set out a formula for accrual of benefits
21 designated as “PEP Plus,” which applied to registered nurses covered under a collective
22 bargaining agreement, as well as certain other registered nurses who were not in the union,
23 including Plaintiff Wilson. The PEP Plus formula provided for small accruals of benefits in the
24 early years of a participant’s employment, but the accruals increased dramatically during the
later years, rewarding long-time employees.

1 111. The PEP Plus formula is referred to as a “backloaded” formula. A “backloaded”
2 formula is prohibited by ERISA unless the accrual of benefits under the formula meets at least
3 one of three tests. ERISA § 204(b)(1), 29 U.S.C. § 1054(b)(1).

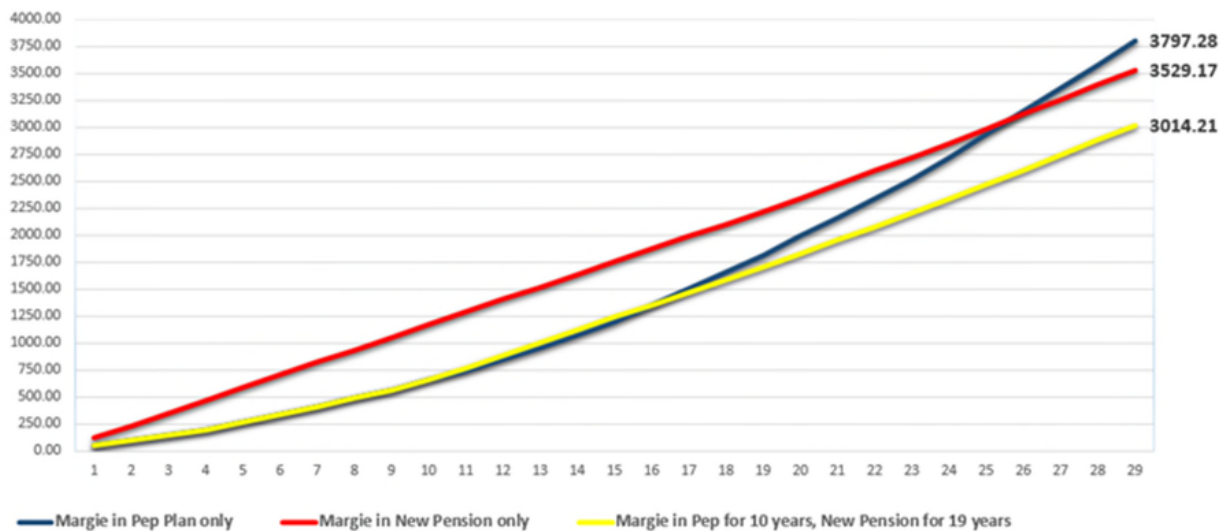
4 112. Dignity was aware that the PEP Plus backloaded formula violated ERISA. As
5 Christine Doten of Towers Watson, the Dignity Plan actuary, explained to Dignity in May, 2009,
6 the Dignity Plan did not comply with ERISA, and in particular the PEP subpart of the Plan
7 “would not pass accrual rules under Section 411 of the code,” noting that the “PEP formula is
8 fairly back loaded .” Decl. of M. Gerend in Supp. Pl.’s Mot. for Permanent Inj. & Partial J.,
9 Ex. E (May 22, 2009 email exchange between Christine Doten and Mary Connick), at
10 DIGNITY00018324-25, ECF No. 181-5.

11 113. In April, 2014, Dignity amended the Dignity Plan, retroactive to January 1, 2014,
12 to change or eliminate the “PEP Plus” benefit accrual formula on a prospective basis, such that
13 new benefits accrued on or after January 1, 2014, were no longer “backloaded” but increased at a
14 steady rate over time. The result of this change could have a dramatic negative impact on Plan
15 participants.

16 114. Under the new formula, a new employee will accrue more benefits during the
17 early years of employment than she would have under the old formula but will accrue less total
18 benefits during the entire course of a 30-year career. However, employees who had worked for
19 Dignity for a number of years at the time Dignity amended the Plan are particularly harmed by
20 this change. This is because, prior to 2014, these employees earned benefits under the old back-
21 loaded formula. Accordingly, these employees will have earned disproportionately lower
22 benefits at the front end of their careers and have now been deprived of the substantial increase
23 in accrual rate at the end of their careers under the old backloaded plan.

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1 115. The following graph illustrates the impact of the change:



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10 The blue line represents accrual of benefits over a 30-year career exclusively under the old
11 PEP Plus formula, while the straight red line represents accrual of benefits over a 30-year career
12 exclusively under the formula Dignity adopted in 2014. The yellow line, however, demonstrates
13 the negative impact of Dignity’s amendment on employees who began their careers under the old
14 Pep Plus formula and were transferred to the new straight-line formula mid-career.

15 116. This specific example shows what happened to a hypothetical employee who was
16 a third of the way through her 30-year career when the change was made in 2014, and who
17 finishes her career with final average pay of \$100,000. This employee will finish her career with
18 **monthly** benefits that are \$780 **less** than she would have received had she remained under the
19 PEP Plus formula, and \$515 **less** than she would have received had the amended formula been
20 applied retroactively. The following is an abbreviated chart comparing the accrual of benefits
21 under that scenario at intervals of five years:

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Years of service	1	5	10	15	20	25	29
Pep Pension Plan annual accrual of monthly benefit	46.54	259.40	651.71	1,190.90	1,986.41	2,932.71	3,797.28
New pension annual accrual of monthly benefit	116.67	583.33	1,166.67	1,750.00	2,333.33	2,979.17	3,529.17
Hybrid (1st 10 years in PEP, last 19 years in new pension)	46.54	259.40	651.71	1,235.05	1,818.38	2,464.21	3,014.21

117. The new formula significantly reduced the rate of future benefit accruals for affected employees, particularly for employees with one or two decades of service.

118. The new formula was also an enormous cost savings for Dignity, which would otherwise have had to fund those accruals. On information and belief, the PEP Plus formula was altered for the purpose of reducing Dignity's obligations under the Dignity Plan.

119. Under ERISA section 204(h), 29 U.S.C. § 1054(h), a formula for accrual of benefits can be changed by amendment to a plan, but if the amendment significantly reduces the rate of future benefit accruals, the plan administrator is required to give notices to, among other parties, participants in the plan who are affected by the change.

120. Because the new formula significantly reduced the rate of future benefit accruals, under ERISA, Dignity was required to, but failed to, give notice of the change to the benefit accrual formula to affected persons before it took effect. Instead, Dignity relied solely on the union to give notice of the change in the PEP Plus formula to union members, and did not give notice to non-union nurses affected by the change.

121. Plaintiff Wilson only discovered by chance that the PEP Plus formula had been amended over a year later, on May 8, 2015, when she reviewed a summary plan description that had been posted online by Dignity.

1 **5. The Dignity Plan Is Not a Church Plan**

2 122. Dignity claims the Dignity Plan is a church plan under ERISA section 3(33),
3 29 U.S.C. § 1002(33), and the analogous section of the Internal Revenue Code (“IRC”), and is
4 therefore exempt from ERISA’s coverage under ERISA section 4(b)(2), 29 U.S.C. § 1003(b)(2).

5 **a. Only Two Types of Entities May Maintain a Church Plan and
6 Dignity Is Neither**

7 123. Under section 3(33) of ERISA, 29 U.S.C. § 1002(33), only the following two
8 provisions address which types of entities may maintain a church plan:

- 9 • First, under ERISA section 3(33)(A), 29 U.S.C. § 1002(33)(A), a church plan
10 may be maintained by a church or convention or association of churches; and
11 • Second, under ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i), a church
12 plan may be maintained by an *organization, the principal purpose or function of*
13 *which* is the administration or funding of a retirement plan, if such organization is
14 controlled by or associated with a church or convention or association of churches.

15 124. Although other portions of ERISA section 3(33)(C) address, among other matters,
16 who can be *participants* in church plans—in other words, which employees can be in church
17 plans, etc.—these other portions of ERISA section 3(33)(C) do not add any other type of entity
18 that may *maintain* a church plan. ERISA § 3(33)(C), 29 U.S.C. § 1002(33)(C).

19 125. The Dignity Plan does not qualify as a church plan under either ERISA section
20 3(33)(A) or (C)(i), 29 U.S.C. § 3(33)(A) or (C)(i).

21 126. First, the Dignity Plan is not maintained by any church or convention or
22 association of churches within the meaning of ERISA section 3(33)(A), 29 U.S.C.
23 § 1002(33)(A). The Dignity Plan is maintained by Dignity for its own, or its affiliates’ own,
24 employees. Because Dignity is not a church or a convention or association of churches, and does
not claim to be a church or a convention or association of churches, the Dignity Plan may not

1 qualify as a church plan within the meaning of ERISA section 3(33)(A), 29 U.S.C.
2 § 1002(33)(A).

3 127. Second, the Dignity Plan is not maintained by an “organization” described in
4 ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i)—*i.e.*, one whose principal purpose or
5 function is the administration or funding of a plan or program for the provision of retirement
6 benefits or welfare benefits, or both. Because the principal purpose or function of Dignity is to
7 provide healthcare services rather than to administer or fund benefit plans, the Dignity Plan may
8 not qualify as a church plan within the meaning of ERISA section 3(33)(C)(i), 29 U.S.C.
9 § 1002(33)(C)(i).

10 128. In the alternative, to the extent Dignity claims that the Dignity Plan is
11 “maintained” by a principal-purpose organization within the meaning of ERISA section
12 3(33)(C)(i) because it is *administered* by a committee within Dignity that has a principal purpose
13 of administering benefit plans, the claim fails because the committee purportedly
14 “administering” the Dignity Plan does not have the full range of powers and responsibilities
15 required to “maintain” a plan. The entity that maintains the plan “has the primary ongoing
16 responsibility (and potential liability) to plan participants.” *Advocate Healthcare Network*,
17 137 S. Ct. at 1661. The only entity with the power to “maintain” the Dignity Plan, which
18 includes the power to fund, continue, amend, and/or terminate the Plan, is Dignity. The claim
19 further fails because even if a committee within Dignity “maintained” the Plan, such an internal
20 committee of Dignity does not qualify as a distinct principal-purpose “organization” within the
21 meaning of ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

1 **b. Even if the Dignity Plan Were Maintained by a Permissible Entity, It**
2 **Nonetheless Fails to Satisfy Other Elements of the Church Plan**
3 **Definition.**

4 129. Under both ERISA section 3(33)(A) and (C)(i), a church plan must be maintained
5 for the employees of a church or a convention or association of churches. 29 U.S.C.
6 § 1002(33)(A), (C)(i). The Dignity Plan does not qualify. The 80,000 participants in the Dignity
7 Plan are or were the employees of Dignity, a non-profit healthcare system. Dignity is not a
8 church or a convention or association of churches, and its employees are not employees of a
9 church or a convention or association of churches within the meaning of ERISA.

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

16 131. Dignity is organized as a non-profit corporation under California law.

17 132. Dignity is governed by its Board of Directors and operated by a lay Executive
18 Leadership Team selected by Dignity's Board of Directors.

19 133. Dignity's Board of Directors owes fiduciary duties to the non-profit corporation.

20 134. Dignity is not controlled by a church or convention or association of churches.

21 135. Dignity is not owned by a church or convention or association of churches.

22 136. Dignity is not operated by a church or convention or association of churches.

23 137. Dignity does not receive funding from a church or convention or association of
24 churches.

1 138. In addition, Dignity is not “associated with” a church or convention or association
2 of churches. Under ERISA section 3(33)(C)(iv), 29 U.S.C. § 1002(33)(C)(iv), an organization
3 “is associated with a church or a convention or association of churches if it shares common
4 religious bonds and convictions with that church or convention or association of churches.”
5 Dignity does not share common religious bonds and convictions with a church or a convention or
6 association of churches.

7 139. Dignity does not impose any denominational requirement on its employees.
8 Indeed, Dignity tell prospective employees that religious affiliation is not a factor in the
9 recruiting and hiring of Dignity employees.

10 140. Dignity has a practice of affiliating with hospitals that claim no religious
11 affiliation, including hospitals like Chandler Regional Medical Center in Chandler, Arizona.
12 In choosing to compete in the commercial arena of healthcare services and to embark upon a
13 business plan that targets healthcare facilities with no claimed ties to any particular religion, or
14 to religion generally, Dignity must be willing to accept neutral regulations, such as ERISA,
15 imposed to protect its employees’ legitimate interests.

16 141. Dignity provides non-denominational chapels and encourages its clients to seek
17 the faith of their own choosing.

18 142. Dignity does not impose any denomination requirement on its patients.

19 143. Accordingly, Dignity is not “associated with” the Catholic Church within the
20 meaning of ERISA section 3(33)(C)(iv), 29 U.S.C. § 1002(33)(C)(iv), and thus its employees are
21 not “employees” of a church or convention or association of churches within the meaning of
22 ERISA section 3(33)(C)(ii), 29 U.S.C. § 1002(33)(C)(ii). Because the Dignity Plan was not
23 established and maintained for the provision of retirement benefits for “employees of a church or
24

1 convention or association of churches,” the Dignity Plan fails to qualify as a church plan under
2 ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

3 144. For these same reasons, the Dignity Plan further fails to satisfy the requirements
4 of ERISA section 3(33)(C)(i) because, even if the Dignity Plan was “maintained” by the internal
5 committees and even if the committees qualified as principal-purpose “organizations,” ERISA
6 section 3(33)(C)(i) requires that a principal-purpose organization be “controlled by or associated
7 with” a church or convention or association of churches within the meaning of ERISA.
8 29 U.S.C. § 1002(33)(C)(i). Dignity’s internal committees, like Dignity itself, are not controlled
9 by or associated with a church or convention or association of churches within the meaning of
10 ERISA.

11 **c. Even if the Dignity Plan Could Otherwise Qualify as a Church Plan**
12 **Under ERISA Section 3(33)(A), It Is Excluded From Church Plan**
Status Under ERISA Section 3(33)(B)(ii)

13 145. Under ERISA section 3(33)(B)(ii), 29 U.S.C. § 1002(33)(B)(ii), a plan is
14 specifically excluded from church plan status if less than substantially all of the plan participants
15 are members of the clergy or employed by an organization controlled by or associated with a
16 church or convention or association of churches. Even if the Dignity Plan could otherwise
17 qualify as a church plan under ERISA section 3(33)(A) or (C)(i), and even if Dignity itself was
18 controlled by or associated with a church, the Dignity Plan still would be foreclosed from church
19 plan status under section 3(33)(B)(ii), 29 U.S.C. § 1002(33)(B)(ii), because, on information and
20 belief, the Dignity Plan covers more than an insubstantial number of employees that work for
21 subsidiaries or affiliates that are not controlled by or associated with any church or convention or
22 association of churches and/or are not tax-exempt.

1 **d. Even if the Dignity Plan Could Otherwise Qualify as a Church Plan**
2 **Under ERISA, the Church Plan Exemption, as Claimed by Dignity,**
3 **Violates the Establishment Clause, and Is Therefore Void and**
4 **Ineffective**

5 146. The church plan exemption is an accommodation *for churches* that establish and
6 maintain pension plans, and it allows such plans to be exempt from ERISA.

7 147. The Establishment Clause guards against the establishment of religion by the
8 government. The government “establishes religion” where, as here, it exempts religious entities,
9 but not secular entities, from a neutral, generally applicable law and such exemption is not
10 required to alleviate a substantial burden on religious practice or to avoid government
11 entanglement in religion. ERISA is a neutral statute that governs pension benefits, and thus
12 application of the church plan exemption to Dignity relieves Dignity of no genuine religious
13 burden. Moreover, application of the church plan exemption to Dignity creates more
14 government entanglement with alleged religious beliefs than does compliance with ERISA.
15 Accordingly, application of the church plan exemption to Dignity is not a valid religious
16 accommodation. Extension of the church plan exemption to Dignity and other hospital systems
17 that are not themselves churches, but that claim ties to a church, but not to analogous secular
18 hospital systems, unconstitutionally privileges religious adherents over non-adherents.

19 148. Such a naked preference for religion is particularly improper where, as here, the
20 burdens of the exemption are imposed on Dignity’s employees. Extension of the church plan
21 exemption to Dignity privileges Dignity for its claimed religious beliefs at the expense of its
22 employees, who are told that religion is not a prerequisite to their employment, yet who are then
23 denied the benefit of insured, funded pensions, as well as many other important ERISA
24 protections. Similarly, Dignity has a privileged economic advantage over its competitors in the
 commercial arena it has chosen, based solely on Dignity’s claimed religious beliefs.

1 149. As set forth in more detail below in Count X, the extension of the church plan
2 exemption to Dignity, which is not a church, violates the Establishment Clause and thus is void
3 and ineffective.

4 **VI. CLASS ALLEGATIONS**

5 150. Plaintiffs brings this action as a class action pursuant to Rule 23 on behalf of
6 themselves and the following class of persons similarly situated:

7 All participants, former participants, or beneficiaries of the Dignity Health
8 Pension Plan.

9 In addition, Plaintiff Wilson brings a claim on behalf of herself and the following subclass
10 (the "Subclass") of Class members similarly situated:

11 All participants, former participants, or beneficiaries of the Dignity Health
12 Pension Plan as of January 1, 2014, whose benefit accruals are calculated using
13 the "PEP Plus" formula and who Dignity did not, within the time required by
14 ERISA, notify of an amendment to the Dignity Health Pension Plan changing
15 the PEP Plus formula effective January 1, 2014.

16 Excluded from the Class and Subclass are any high-level executives at Dignity or any
17 employees who have responsibility or involvement in the administration of the Plan, or who are
18 subsequently determined to be fiduciaries of the Dignity Plan, including the Individual
19 Defendants.

20 **A. Numerosity**

21 151. The exact number of Class and Subclass members is unknown to Plaintiffs at this
22 time, but is believed to be approximately 80,000 individuals. Thus, the Class is so numerous that
23 joinder of all members is impracticable.

24 152. Defendant Dignity operates hospitals in Arizona, Nevada and California as well
as over 400 ancillary healthcare facilities spread across twenty-two states. Upon information and

1 belief, Dignity's employees and, therefore, the members of the Class are geographically
2 dispersed across at least twenty-two states.

3 **B. Commonality**

4 153. The issues regarding liability in this case present common questions of law and
5 fact, with answers that are common to all members of the Class, including: (1) whether the Plan
6 is exempt from ERISA as a church plan; (2) whether the fiduciaries of the Plan have failed to
7 administer and enforce the funding obligation of the Plan in accordance with ERISA; (3) whether
8 the church plan exemption, as claimed by Dignity, violates the Establishment Clause of the First
9 Amendment; and (4) whether Dignity has failed to comply with its obligations to fund the Plan
10 under ERISA, the plan documents, and/or the common law.

11 154. The issues regarding liability as to the Subclass present additional questions
12 common to all members of the Subclass, namely: (1) whether Dignity violated ERISA by
13 improperly amending the Plan to reduce the benefits of Subclass members without notice;
14 (2) whether Dignity gave notice of the amendment to the PEP Plus benefit accrual formula
15 within the time required by ERISA; and (3) whether the PEP Plus formula, as in effect prior to
16 that amendment, "backloaded" the accrual of benefits in a manner prohibited by ERISA.

17 155. The issues regarding the relief are also common to the members of the Class as
18 the relief will consist of: (1) a declaration that the Plan is an ERISA covered plan; (2) an order
19 requiring that the Plan complies with ERISA's administration and funding requirements; (3) an
20 order requiring Dignity to pay civil penalties to the Class, in the same statutory daily amount for
21 each member of the Class; and/or (4) an order requiring Dignity to comply with its obligations to
22 fund the Plan.

1 156. The issues regarding relief as to the Subclass are also common to the members of
2 the Subclass, as the relief will consist of declaratory relief as to ERISA violations, and injunctive
3 relief requiring compliance.

4 **C. Typicality**

5 157. Plaintiffs' claims are typical of the claims of the other members of the Class
6 because Plaintiffs' claims arise from the same event, practice and/or course of conduct, namely
7 Defendants' failure to maintain the Plan in accordance with ERISA, the requirements of the Plan
8 documents, and/or the common law. Plaintiffs' claims are also typical because all Class
9 members are similarly affected by Defendants' wrongful conduct.

10 158. Plaintiff Wilson's claims are typical of the claims of the other members of the
11 Subclass because Plaintiff Wilson's claims arise from the same event, practice and/or course of
12 conduct, namely Defendants' failure to give notice of the amendment to the PEP Plus accrual
13 formula in accordance with ERISA. Plaintiff Wilson's claims are also typical because all
14 Subclass members are similarly affected by Defendants' wrongful conduct.

15 159. Plaintiffs' claims are also typical of the claims of the other members of the Class
16 and Subclass because, to the extent Plaintiffs seeks equitable relief, it will affect all Class
17 members equally. Specifically, the equitable relief sought consists primarily of: (i) a declaration
18 that the Dignity Plan is not a church plan; and (ii) a declaration that the Dignity Plan is an
19 ERISA covered plan that must comply with the administration and funding requirements of
20 ERISA. In addition, to the extent Plaintiffs seek monetary relief, it is for civil fines to the Class,
21 in the same statutory daily amount for each member of the Class.

22 160. Dignity does not have any defenses unique to Plaintiffs' claims that would make
23 Plaintiffs' claims atypical of the remainder of the Class.

24

1 **D. Adequacy**

2 161. Plaintiffs will fairly and adequately represent and protect the interests of all
3 members of the Class.

4 162. Plaintiff Wilson will fairly and adequately represent and protect the interests of all
5 members of the Subclass.

6 163. Plaintiffs do not have any interests antagonistic to or in conflict with the interests
7 of the Class or the Subclass.

8 164. Defendant Dignity and the Individual Defendants have no unique defenses against
9 either of the Plaintiffs that would interfere with Plaintiffs' representation of the Class, or that
10 would interfere with Plaintiff Wilson's representation of the Subclass.

11 165. Plaintiffs have engaged counsel with extensive experience prosecuting class
12 actions in general and ERISA class actions in particular.

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

14 166. The requirements of Rule 23(b)(1)(A) are satisfied because prosecution of
15 separate actions by the members of the Class or the Subclass would create a risk of establishing
16 incompatible standards of conduct for Defendants.

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

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

22 168. Class action status is also warranted under Rule 23(b)(2) because Defendants
23 have acted or refused to act on grounds generally applicable to the Class and the Subclass,
24

1 thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief
2 with respect to the Class as a whole, and to the Subclass as a whole.

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

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

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

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

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

22 D. This litigation is properly concentrated in this forum, which is where
23 Defendant Dignity is headquartered; and

24 E. There are no difficulties managing this case as a class action.

1 174. ERISA section 502(a)(2), 29 U.S.C. § 1132(2), authorizes a participant or
2 beneficiary to bring a civil action for appropriate relief under 29 U.S.C. § 1109(a), against a
3 fiduciary “who breaches any of the responsibilities, obligations, or duties imposed upon
4 fiduciaries” and the fiduciary “shall be personally liable to make good to such plan any losses to
5 the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary
6 which have been made through use of assets of the plan by the fiduciary, and shall be subject to
7 such other equitable or remedial relief as the court may deem appropriate.” ERISA § 409(a),
8 29 U.S.C. § 1109(a). Because the operation of the Plan as a non-ERISA Plan was a breach of
9 Defendants’ fiduciary duties, Defendants breached their fiduciary duties and Plaintiffs also seek
10 Plan-wide equitable and remedial relief under ERISA section 502(a)(2).

11 175. As the Dignity Plan is not a church plan within the meaning of ERISA section
12 3(33), 29 U.S.C. § 1002(33), and meets the definition of a pension plan under ERISA section
13 3(2), 29 U.S.C. § 1002(2), the Dignity Plan should be declared to be an ERISA-covered pension
14 plan, and Defendants should be ordered to bring the Dignity Plan into compliance with ERISA,
15 including by remedying the violations set forth below.

16 **COUNT II**
17 **(Claim for Violation of Reporting and Disclosure Provisions Against All Defendants)**

18 176. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if
19 fully set forth herein.

20 **A. Summary Plan Descriptions**

21 177. At no time has the Retirement Committee or, in the alternative, Defendant
22 Dignity, provided Plaintiffs or any member of the Class with a Summary Plan Description with
23 respect to the Dignity Plan that meets the requirements of ERISA section 102, 29 U.S.C. § 1022,
24 and the regulations promulgated thereunder.

1 178. Because the Retirement Committee or, in the alternative, Dignity, has been the
2 Plan Administrator of the Plan at all relevant times, the Retirement Committee (or Dignity)
3 violated ERISA section 104, 29 U.S.C. § 1024, by failing to provide Plaintiffs and members of
4 the Class with adequate Summary Plan Descriptions.

5 **B. Annual Reports**

6 179. At no time has the Retirement Committee, or, in the alternative, Dignity, filed an
7 annual report with respect to the Dignity Plan with the Secretary of Labor in compliance with
8 ERISA section 103, 29 U.S.C. § 1023, nor have they filed a Form 5500 and associated schedules
9 and attachments which the Secretary has approved as an alternative method of compliance with
10 ERISA section 103, 29 U.S.C. § 1023.

11 180. Because the Retirement Committee, or, in the alternative, Dignity, has been the
12 Plan Administrator of the Dignity Plan at all relevant times, the Retirement Committee (or
13 Dignity) has violated ERISA section 104(a), 29 U.S.C. § 1024(a), by failing to file annual reports
14 with respect to the Dignity Plan with the Secretary of Labor in compliance with ERISA section
15 103, 29 U.S.C. § 1023, nor Form 5500s and associated schedules and attachments that the
16 Secretary has approved as an alternate method of compliance with ERISA section 103, 29 U.S.C.
17 § 1023.

18 **C. Summary Annual Reports**

19 181. At no time has the Retirement Committee, or, in the alternative, Dignity,
20 furnished Plaintiffs or any member of the Class with summary annual reports with respect to the
21 Dignity Plan in compliance with ERISA section 104(b)(3), 29 U.S.C. § 1024(b)(3), and
22 regulations promulgated thereunder.

23
24

1 182. Because the Retirement Committee, or in the alternative, Dignity, has been the
2 Plan Administrator of the Dignity Plan at all relevant times, the Retirement Committee (or
3 Dignity) has violated ERISA section 104(b)(3), 29 U.S.C. § 1024(b)(3), by failing to furnish
4 Plaintiffs or any member of the Class with summary annual reports with respect to the Dignity
5 Plan in compliance with ERISA section 104(b)(3), 29 U.S.C. § 1024(b)(3), and regulations
6 promulgated thereunder.

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

8 183. At no time has Dignity furnished Plaintiffs or any member of the Class with
9 notices of failure to meet minimum funding standards with respect to the Dignity Plan pursuant
10 to ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1), informing them that Dignity had failed to
11 make payments required to comply with ERISA section 302, 29 U.S.C. § 1082, with respect to
12 the Dignity Plan.

13 184. Defendant Dignity is the employer that maintains the Dignity Plan.

14 185. At no time has Defendant Dignity funded the Dignity Plan in accordance with
15 ERISA section 302, 29 U.S.C. § 1082.

16 186. As the employer maintaining the Dignity Plan, Defendant Dignity has violated
17 ERISA section 302, 29 U.S.C. § 1082, by failing to fund the Dignity Plan, is liable for its own
18 violations of ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1), and as such may be required by
19 the Court to pay Plaintiffs and each Class member up to \$110 per day (as permitted by 29 C.F.R.
20 § 2575.502c-3 (2016)) for each day that Defendant has failed to provide Plaintiffs and each Class
21 member with the notice required by ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1).

1 **E. Funding Notices**

2 187. At no time has the Retirement Committee, or, in the alternative, Dignity,
3 furnished Plaintiffs or any member of the Class with a Funding Notice with respect to the
4 Dignity Plan pursuant to ERISA section 101(f), 29 U.S.C. § 1021(f).

5 188. Because the Retirement Committee, or, in the alternative, Dignity, has been the
6 Plan Administrator of the Dignity Plan at all relevant times, it has violated ERISA section 101(f)
7 by failing to provide each participant and beneficiary of the Dignity Plan with the funding notice
8 required by ERISA section 101(f), and as such may be required by the Court to pay Plaintiffs and
9 each Class member up to \$110 per day (as permitted by ERISA section 502(c)(1), 29 U.S.C.
10 § 1132(c)(1), amended by 29 C.F.R. § 2575.502c-1(2016)) for each day that the Retirement
11 Committee (or Dignity) has failed to provide Plaintiffs and each Class member with the notice
12 required by ERISA section 101(f), 29 U.S.C. § 1021(f).

13 **F. Pension Benefit Statements**

14 189. At no time has the Retirement Committee, or in the alternative Dignity, furnished
15 Plaintiffs or any member of the Class with a pension benefit statement with respect to the
16 Dignity Plan pursuant to ERISA section 105(a)(1), 29 U.S.C. § 1025(a)(1).

17 190. Because the Retirement Committee, or, in the alternative, Dignity, has been the
18 Plan Administrator of the Dignity Plan at all relevant times, it has violated ERISA section
19 105(a)(1) and as such may be required by the Court to pay Plaintiffs and each Class member up
20 to \$110 per day (as permitted by ERISA section 502(c)(1), 29 U.S.C. § 1132(c)(1), amended by
21 29 C.F.R. § 2575.502c-1 (2016)) for each day that the Retirement Committee (or Dignity) has
22 failed to provide Plaintiffs and each Class member with the pension benefit statements required
23 by ERISA section 105(a)(1)(B), 29 U.S.C. § 1025(a)(1)(B).

24

COUNT III

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

191. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if fully set forth herein.

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

193. Dignity was responsible for making the contributions that should have been made to the Dignity Plan pursuant to ERISA section 302, 29 U.S.C. § 1082, at a level commensurate with that which would be required under ERISA.

194. At all relevant times, Dignity has failed to make contributions to the Dignity Plan in satisfaction of the minimum funding standards of ERISA section 302, 29 U.S.C. § 1082.

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

COUNT IV

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

196. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if fully set forth herein.

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

1 funding policy and method constituent with the objectives of the plan and the requirements of
2 [Title I of ERISA].” ERISA § 402, 29 U.S.C. § 1102.

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

7 199. As Defendant Dignity has been responsible for maintaining the Dignity Plan and
8 has amendment power over the Dignity Plan, Defendant Dignity violated section 402 by failing
9 to promulgate written instruments in compliance with ERISA section 402 to govern the Dignity
10 Plan’s operations and administration. ERISA § 402, 29 U.S.C. § 1102.

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

14 200. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if
15 fully set forth herein.

16 201. ERISA section 403, 29 U.S.C. § 1103, provides, subject to certain exceptions not
17 applicable here, that “all assets of an employee benefit plan shall be held in trust by one or more
18 trustees,” that the “trustees shall be either named in the trust instrument or in the plan
19 instrument” described in section 402(a), 29 U.S.C. § 1102(a), “or appointed by a person who is a
20 named fiduciary.” ERISA § 403(a), 29 U.S.C. § 1103(a).

21 202. Although the Dignity Plan’s assets have been held in trust, upon information and
22 belief, the trust does not meet the requirements of ERISA section 403, 29 U.S.C. § 1103.

23 203. As Defendant Dignity has been responsible for maintaining the Dignity Plan and
24 has amendment power over the Dignity Plan, Defendant Dignity violated section 403 by failing

1 to put the Dignity Plan’s assets in trust in compliance with ERISA section 403, 29 U.S.C.
2 § 1103.

3 **COUNT VI**

4 **(Claim for Clarification of Future Benefits Under ERISA Section 502(a)(1)(B) and (a)(3)**
5 **Against All Defendants)**

6 204. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if
7 fully set forth herein.

8 205. ERISA section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), provides, in part, that a
9 participant or beneficiary may bring a civil action to “clarify his rights to future benefits under
10 the terms of the plan.” ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B).

11 206. Plaintiffs and members of the Class have not been provided ERISA-compliant
12 benefit statements.

13 207. Pursuant to ERISA section 502(a)(1)(B), (3), 29 U.S.C. § 1132(a)(1)(B), (3), once
14 the Plan is made compliant with ERISA, Plaintiffs seek to clarify their rights under the terms of
15 the Plan and to require the Retirement Committee and/or Defendant Dignity to provide Plaintiffs
16 and the Class with ERISA-compliant benefit statements.

17 **COUNT VII**

18 **(Claim for Civil Money Penalty Pursuant to ERISA Section 502(a)(1)(A) Against**
19 **Defendant Dignity and/or Retirement Committee)**

20 208. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if
21 fully set forth herein.

22 209. ERISA section 502(a)(1)(A), 29 U.S.C. § 1132(a)(1)(A), provides that a
23 participant may bring a civil action for the relief provided in ERISA section 502(c), 29 U.S.C.
24 § 1132(c).

1 210. ERISA section 502(c)(3), 29 U.S.C. § 1132(c)(3), as provided in 29 C.F.R.
2 § 2575.502c-3 (2016), provides that an employer maintaining a plan who fails to meet the notice
3 requirement of ERISA section 101(d), 29 U.S.C. § 1021(d), with respect to any participant and
4 beneficiary may be liable for up to \$110 per day from the date of such failure. ERISA
5 § 502(c)(3), 29 U.S.C. § 1132(c)(3).

6 211. ERISA section 502(c)(1), 29 U.S.C. § 1132(c)(1), as provided in 29 C.F.R.
7 § 2575.502c-3 (2016), provides that an administrator of a defined benefit pension plan who fails
8 to meet the notice requirement of ERISA section 101(f), 29 U.S.C. § 1021(f), with respect to any
9 participant and beneficiary may be liable for up to \$110 per day from the date of such failure.

10 212. ERISA section 502(c)(1), 29 U.S.C. § 1132(c)(1), as provided in 29 C.F.R.
11 § 2575.502c-3 (2016), provides that an administrator of a defined benefit pension plan who fails
12 to provide a Pension Benefit Statement at least once every three years to a participant with a
13 nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time
14 the statement is to be furnished as required by ERISA section 105(a), 29 U.S.C. § 1025(a), may
15 be liable for up to \$110 per day from the date of such failure. ERISA § 502(c)(1), 29 U.S.C.
16 §1132(c)(1).

17 213. Because Defendant Dignity, as the employer, has failed to give the notices
18 required by ERISA section 101(d), 29 U.S.C. § 1021(d) as set forth in Count II Subpart D,
19 Defendant Dignity is liable to Plaintiffs and each member of the Class in an amount up to
20 \$110 per day from the date of such failures until such time that notices are given and the
21 statement is provided, as the Court, in its discretion, may order.

22 214. Because the Retirement Committee, or, in the alternative, Dignity, is the Plan
23 Administrator of the Dignity Plan and has failed to give the notice required by ERISA section
24

1 101(f), 29 U.S.C. § 1021(f), and the Pension Benefit Statements required by ERISA section
2 105(a), 29 U.S.C. § 1025(a), as set forth in Count II Subparts E & F, the Retirement Committee
3 (or Dignity) is liable to Plaintiffs and each member of the Class in an amount up to \$110 per day
4 from the date of such failures until such time that notices are given and the statements are
5 provided, as the Court, in its discretion, may order.

6 **COUNT VIII**
7 **(Claim for Breach of ERISA Fiduciary Duties Against All Defendants)**

8 215. Plaintiffs incorporate and reallege by reference the foregoing paragraphs as if
9 fully set forth herein.

10 216. Plaintiffs bring this Count VIII for breach of fiduciary duty pursuant to ERISA
11 section 502(a)(2), 29 U.S.C. § 1132(a)(2).

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

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

16 (a) for the exclusive purpose of:

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

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

19 (b) with the care, skill, prudence and diligence under the circumstances then
20 prevailing that a prudent man acting in a like capacity and familiar with such
21 matters would use in the conduct of an enterprise of a like character and with like
22 aims; [and]

23 (c) in accordance with the documents and instruments governing the plan
24 insofar as such documents and instruments are consistent with the provisions of
this [Title I of ERISA] and [Title IV].

ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1).

1 218. As fiduciaries with respect to the Dignity Plan, Defendants had the authority to
2 enforce each provision of ERISA alleged to have been violated in the foregoing paragraphs
3 pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3). Having the authority to enforce
4 the provisions of ERISA at those respective times, ERISA section 404(a)(1)(A)-(D), 29 U.S.C.
5 § 1104(a)(1)(A)-(D), imposed on Defendants the respective duty to enforce those provisions in
6 the interest of the participants and beneficiaries of the Dignity Plan during the times that each
7 was a fiduciary of the Dignity Plan.

8 219. Defendants have never enforced any of the provisions of ERISA set forth in
9 Counts I-V with respect to the Dignity Plan.

10 220. By failing to enforce the provisions of ERISA set forth in Counts I-V, Defendants
11 breached the fiduciary duties that they owed to Plaintiffs and the Class.

12 221. The failure of Defendants to enforce the funding obligations owed to the Plan has
13 resulted in a loss to the Dignity Plan equal to the foregone funding and earnings thereon, and
14 profited Defendant Dignity by providing it the use of money owed to the Dignity Plan for its
15 general business purposes.

16 **B. Prohibited Transactions**

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

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

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

5 225. As fiduciaries with respect to the Plan and, with respect to Dignity, as an
6 employer of employees covered by the Plan, and, with respect to Defendants Vallier and
7 Robinson as Officers of Dignity, Defendants at all relevant times were parties in interest with
8 respect to the Dignity Plan pursuant to ERISA section 3(14)(A), (C), 29 U.S.C. § 1002(14)(A),
9 (C).

10 226. By failing to enforce the funding obligations created by ERISA and owed to the
11 Plan, Defendants extended credit from the Dignity Plan to Dignity in violation of ERISA section
12 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), when Defendants knew or should have known that their
13 failure to enforce the funding obligation constituted such an extension of credit.

14 227. By failing to enforce the funding obligations created by ERISA and owed to the
15 Dignity Plan, Defendants used Dignity Plan assets for Dignity's own benefit, when Defendants
16 knew or should have known that their failure to enforce the funding obligations constituted
17 such a use of Dignity Plan assets, in violation of ERISA section 406(a)(1)(D), 29 U.S.C.
18 § 1106(a)(1)(D).

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

1 229. The failure of Defendants to enforce the funding obligations owed to the Dignity
2 Plan has resulted in a loss to the Dignity Plan equal to the foregone funding and earnings
3 thereon.

4 230. The failure of Defendants to enforce the funding obligations owed to the Dignity
5 Plan has profited Defendant Dignity by providing it the use of money owed to the Dignity Plan
6 for its general business purposes.

7 **C. Failure to Monitor Fiduciaries**

8 231. This sub-Count alleges fiduciary breach against Defendant Dignity.

9 232. As alleged above, at all relevant times, Defendant Dignity was a named fiduciary
10 pursuant to ERISA section 402(a)(1), 29 U.S.C. § 1102(a)(1), or a de facto fiduciary within the
11 meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, it was bound by
12 the duties of loyalty, exclusive purpose, and prudence.

13 233. The scope of the fiduciary responsibilities of Dignity included the responsibility
14 to appoint, and remove, and thus, monitor the performance of other fiduciaries.

15 234. Under ERISA, a monitoring fiduciary must ensure that the monitored fiduciaries
16 perform their fiduciary obligations, including those with respect to the investment and holding of
17 plan assets, and must take prompt and effective action to protect the plan and participants when
18 they are not.

19 235. The monitoring duty further requires that appointing fiduciaries have procedures
20 in place so that they may review and evaluate, on an ongoing basis, whether the “hands-on”
21 fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work
22 and the plan’s performance, and by ensuring that they have a prudent process for obtaining the
23 information and resources they need). In the absence of a sensible process for monitoring their
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1 appointees, the appointing fiduciaries would have no basis for prudently concluding that their
2 appointees were faithfully and effectively performing their obligations to plan participants or for
3 deciding whether to retain or remove them.

4 236. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with
5 the complete and accurate information in their possession that they know or reasonably should
6 know that the monitored fiduciaries must have in order to prudently manage the plan and the
7 plan assets, or that may have an extreme impact on the plan and the fiduciaries' investment
8 decisions regarding the plan.

9 237. Defendant Dignity breached its fiduciary monitoring duties by, among other
10 things: (a) failing to appoint persons who would run the Plan as an ERISA Plan; (b) failing to
11 ensure that the monitored fiduciaries appreciated the true extent of not running the Plan as an
12 ERISA Plan; (c) to the extent any appointee lacked such information, failing to provide complete
13 and accurate information to all of their appointees such that they could make sufficiently
14 informed fiduciary decisions with respect to the Plan; and (d) failing to remove appointees whose
15 performance was inadequate in that they continued to run the Plan as a non-ERISA Plan, and
16 who breached their fiduciary duties under ERISA.

17 238. The failure of Defendant Dignity to enforce the funding obligations owed to the
18 Plan has resulted in a loss to the Dignity Plan equal to the foregone funding and earnings
19 thereon, and profited Defendant Dignity by providing it the use of money owed to the Dignity
20 Plan for its general business purposes.

21 **D. Co-Fiduciary Liability**

22 239. As alleged above, all Defendants were named fiduciaries pursuant to ERISA
23 section 402(a)(1), 29 U.S.C. § 1102(a)(1), or de facto fiduciaries within the meaning of ERISA
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1 section 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of
2 loyalty, exclusive purpose, and prudence.

3 240. ERISA section 405(a), 29 U.S.C. § 1105, imposes liability on a fiduciary, in
4 addition to any liability which he may have under any other provision, for a breach of fiduciary
5 responsibility of another fiduciary with respect to the same plan if he knows of a breach and fails
6 to remedy it, knowingly participates in a breach, or enables a breach. Defendants breached all
7 three provisions.

8 241. **Knowledge of a Breach and Failure to Remedy.** ERISA section 405(a)(3),
9 29 U.S.C. § 1105(3), imposes co-fiduciary liability on a fiduciary for a fiduciary breach by
10 another fiduciary if he has knowledge of a breach by such other fiduciary, unless he makes
11 reasonable efforts under the circumstances to remedy the breach. Each of the Defendants knew
12 of the breaches by the other fiduciaries and made no efforts, much less reasonable ones, to
13 remedy those breaches.

14 242. Because Defendants knew that the Plan was not being run as an ERISA Plan,
15 Defendants knew that the other Defendants were breaching their duties by not complying with
16 ERISA. Yet, they failed to undertake any effort to remedy these breaches.

17 243. **Knowing Participation in a Breach.** ERISA section 405(a)(1), 29 U.S.C.
18 § 1105(1), imposes liability on a fiduciary for a breach of fiduciary responsibility by another
19 fiduciary with respect to the same plan if he knowingly participates in, or knowingly undertakes
20 to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach.
21 Dignity knowingly participated in the fiduciary breaches of the other Defendants in that it
22 benefited from the Plan not being run as an ERISA Plan.

1 251. Even if Dignity amended the PEP Plus formula for the purpose of curing an
2 impermissibly backloaded accrual formula, to the extent such amendment results in a reduction
3 of benefit accruals for current employees, it does not cure any harm that was imposed by the
4 impermissibly backloaded Pep Plus formula.

5 252. At all times relevant to this action, ERISA section 204(h), 29 U.S.C. § 1054(h),
6 required advance notice (“204(h) Notice”) to participants in a defined benefit pension plan of any
7 amendment whose effect is to “provide for a significant reduction in the rate of future benefit
8 accrual.” ERISA § 204(h)(1), 29 U.S.C. § 1054(h)(1).

9 253. According to Treasury Regulations, the 204(h) Notice must be given at least
10 45 days before the effective date of any ERISA section 204(h) amendment. 26 C.F.R.
11 § 54.4980F-1 (2009) at Q-9, A-9(a). The 204(h) Notice must be provided to each participant in
12 the plan, and must be provided in a manner that results in actual notice to the participant,
13 *i.e.*, by first class mail to the last known address or by hand delivery. *Id.* at Q-10, A-10(a), A-
14 13(a). The posting of a notice is not considered acceptable. *Id.* at Q-13, A-13(a).

15 254. The 204(h) Notice must: (1) be written in a manner calculated to be understood
16 by the average plan participant; (2) apprise the applicable participant of the significance of the
17 notice; (3) include a description of the benefit or allocation formula prior to the amendment, a
18 description of the benefit or allocation formula under the plan as amended, and the effective
19 date of the amendment; and (4) include sufficient information for each applicable individual to
20 determine the approximate magnitude of the expected reduction for that individual. *Id.* at Q-11,
21 A-11(a)(1)-(4).

1 255. Defendant Dignity amended the Plan in April, 2014, in a manner that significantly
2 reduced the rate of future benefit accruals for employees whose benefits had been accruing under
3 the PEP Plus formula.

4 256. Defendant Dignity never provided the requisite 204(h) Notice of the drastic
5 change in accrual of their benefits to Plaintiff Wilson and the Subclass. That failure was
6 egregious. First, the failure to meet the notice requirements was entirely within the control of
7 Dignity. Second, it was either (1) an intentional failure or (2) a failure, whether or not
8 intentional, to provide most of the individuals with most of the information they are entitled to
9 receive. *Id.* at Q-14, A-14(a)(1)-(2). The egregious nature of Dignity's failure is evidenced by the
10 fact that Dignity negotiated the new formula in union negotiations, and allowed the union to
11 provide notice to its members, but utterly failed to let other Plan participants know *at all*.
12 Instead of having a 45-day period in advance of the effectiveness of the change in which to take
13 action, the Subclass got no notice at all. No notice was prepared and timely delivered to the
14 members of the Subclass; and Plaintiffs only stumbled upon the truth accidentally, more than a
15 year later.

16 257. Defendants' failures to comply with the timing, content, and method of
17 distribution requirements of the notice and disclosure laws violated ERISA section 204(h),
18 29 U.S.C. § 1054(h), and all applicable regulations.

19 258. As a consequence of these violations of ERISA section 204(h), 29 U.S.C.
20 § 1054(h), and all applicable regulations, the Dignity Plan amendment that purported to change
21 the accrual of additional pension benefits never became effective. Defendants' acts and/or
22 omissions prejudiced or likely prejudiced Plaintiff Wilson and the Subclass because the failure to
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1 receive adequate notice precluded their full understanding of the impact of these Plan
2 amendments and/or prevented them from further supplementing their retirement savings.

3 259. Defendants' acts and/or omissions render the Dignity Plan amendments
4 unenforceable. Pursuant to ERISA section 204(h)(6), 29 U.S.C. § 1054(h)(6), as a result of
5 Defendants' egregious failures to provide notice, the provisions of the Dignity Plan must be
6 applied, to the extent they are consistent with ERISA, as if the plan amendment entitled all
7 applicable individuals to the greater of: (1) the benefits to which the participants would have
8 been entitled without regard to such amendment; or (2) the benefits under the plan with regard to
9 such amendment.

10 260. Pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek
11 equitable relief to enforce ERISA section 204(h), 29 U.S.C. § 1054(h). Specifically, Plaintiffs
12 seek an order declaring that Defendants' failure to provide the requisite 204(h) notice was
13 egregious. Plaintiffs further seek an order enforcing the provisions of ERISA section 204(h)(6),
14 29 U.S.C. § 1054(h)(6), including the requirement that the provisions of the Dignity Plan be
15 applied as if the April, 2014 amendment entitled all applicable individuals to the greater of: (1)
16 the benefits to which the participants would have been entitled to without regard to such
17 amendment; or (2) the benefits under the plan with regard to such amendment. ERISA
18 § 204(h)(6), 29 U.S.C. § 1054(h)(6).

19 261. Additionally, irrespective of whether Defendant's failure to provide notice was
20 egregious, Plaintiffs are entitled to remedies under ERISA section 502, 29 U.S.C. § 1132, for
21 Defendant's failure to provide the requisite 204(h) notice. *See* 26 C.F.R. § 54.4980F-1 (2009)
22 at Q-14, A-14.

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1 268. Application of the church plan exemption to hospital systems like Dignity—
2 entities that have chosen to compete with commercial businesses by entering the economic arena
3 and trafficking in the marketplace—would effect an exemption from a neutral, generally
4 applicable statute that is available to hospital systems with some connection to religion but not to
5 analogous secular hospital systems.

6 269. An exemption from a neutral, generally applicable statute that is available
7 exclusively to religious entities is an unconstitutional establishment of religion unless the
8 exemption is necessary to alleviate a substantial, state-imposed burden on religious exercise or to
9 avoid substantial government entanglement in religion. Application of the church plan
10 exemption to hospital systems like Dignity accomplishes neither purpose.

11 270. An exemption from ERISA for hospital systems like Dignity is not required to
12 alleviate a substantial, state-imposed burden on religious exercise. ERISA is a neutral statute that
13 governs pension benefits. It is materially indistinguishable from the array of neutral
14 Congressional enactments that do not significantly burden religious exercise when applied to
15 commercial activities. Dignity maintains multiple separate ERISA-governed plans, which
16 further evidences that ERISA creates no undue burden on any genuine religious practice of
17 Dignity.

18 271. An exemption from ERISA for hospital systems like Dignity is not required to
19 avoid government entanglement in religion. ERISA does not require government entanglement
20 in religion. Although Congress enacted the church plan exemption to avoid “examination of
21 books and records” that “might be regarded as an unjustified invasion of the confidential
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1 relationship with regard to churches and their religious activities,”⁴ this purpose has no
2 application to hospital systems like Dignity. Dignity is not a church and is neither run by, nor
3 financially connected to, any church. Unlike a church, Dignity has no confidential books and
4 records to shield from government scrutiny because Dignity already purports to disclose all
5 material financial records and relationships when it seeks Medicare and Medicaid
6 reimbursements and issues tax-exempt bonds. Thus, application of the exemption to hospital
7 systems like Dignity is not necessary to further Congress’ stated purpose for enacting the church
8 plan exemption.

9 272. Indeed, an exemption from ERISA for hospital systems like Dignity creates more
10 government entanglement in religion than would the application of ERISA. Dignity’s claim to
11 the church plan exemption requires courts and government agencies to examine religious
12 “convictions” of a hospital system like Dignity to determine whether they are “shared” with a
13 church, in the absence of any actual church responsibility for the pensions. This creates
14 entanglement between government and putative religious beliefs. ERISA compliance, on the
15 other hand, requires zero entanglement with religion for Dignity because ERISA is a neutral
16 statute that regulates pension protections and Dignity has no relevant confidential books, records
17 or relationships.

18 273. Because it is not necessary to alleviate substantial government burden on religious
19 exercise or to avoid government entanglement in religion, application of the church plan
20 exemption to hospital systems like Dignity serves no purpose but to demonstrate government
21 endorsement of religion.

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24 ⁴ S. Rep. No. 93-383 (1974), *reprinted in* 1974 U.S.C.C.A.N. 4889, 4965.

1 274. Even if the application of the church plan exemption to hospital systems like
2 Dignity were a permissible religious accommodation, it still would run afoul of the
3 Establishment Clause because the costs and burdens of the exemption are imposed on Dignity
4 workers. To be constitutional, a religious accommodation must not impose burdens on non-
5 adherents without due consideration of their interests. Dignity tells prospective employees that
6 their choice of faith, or lack thereof, is not a factor in the recruiting and hiring of Dignity
7 employees. Thus, as a practical matter, and by Dignity's own design, the Dignity Plan's
8 participants include people of a vast number of divergent faiths. The church plan exemption, as
9 claimed by Dignity, places its thousands of longtime employees' justified reliance on their
10 pension benefits at great risk, including because the Plan is uninsured and underfunded. In
11 addition, Dignity fails to provide the multitude of other ERISA protections designed to safeguard
12 its employees' pensions. The church plan exemption, as claimed by Dignity, provides no
13 consideration of the harm that it causes to Dignity's employees.

14 275. The church plan exemption, as applied to hospital systems like Dignity, also fails
15 because it does not provide consideration for the harms imposed on competing hospital systems
16 that do not claim religious affiliations. Dignity's commercial rivals face material disadvantages
17 in their competition with Dignity because the rivals must use their current assets to fully fund,
18 insure (through premiums to the PBGC), and administer their pension plans, as well as providing
19 other ERISA protections. In claiming that the Dignity Plan is an exempt church plan, Dignity
20 enjoys a material competitive advantage because it is able to divert significant cash, which
21 otherwise would be required to fund, insure (through premiums to the PBGC), and administer the
22 Dignity Plan, to its competitive growth strategy. The church plan exemption, as claimed by
23 Dignity, provides no consideration of the disadvantage it creates for Dignity's competitors.

24

1 Dignity Plan restatements, summary plan descriptions, and benefit statements issued to Plaintiffs
2 and the other Class members.

3 282. The promises made in the Dignity Plan documents were clearly communicated to
4 Plaintiffs and the other Class members, including through summary plan descriptions, benefits
5 statements, and other Dignity Plan documents, such that Plaintiffs and the other Class members
6 could reasonably understand that Dignity (or its predecessor in interest) had made an offer, in
7 exchange for their continued service, to make ongoing contributions to the Dignity Plan trust
8 sufficient to pay for their accrued pension benefits.

9 283. Plaintiffs and the other Class members accepted Dignity's offer by commencing
10 or continuing to work after learning of Dignity's promises to pay and fund pension benefits.

11 284. Plaintiffs' and the other Class members' continued work for Dignity constituted
12 consideration for the promises contained in the Dignity Plan documents.

13 285. Accordingly, the Dignity Plan documents constitute enforceable contracts.

14 286. By continuing to work for Dignity, Plaintiffs and the other Class members
15 performed their obligations under the contracts and satisfied the conditions of Dignity's duty to
16 make sufficient contributions to fund accrued pension benefits.

17 287. Defendant Dignity breached its obligations under the contracts by failing to make
18 contributions to the Dignity Plan trust that were sufficient to pay for all accrued pension benefits.

19 288. Defendant Dignity further breached the implied covenant of good faith and fair
20 dealing. Defendant Dignity failed to exercise good faith in the performance of its obligation to
21 make contributions to the Dignity Plan trust in an amount which is sufficient, on an actuarial
22 basis, to fund all accrued benefits under the Dignity Plan.

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1 289. Dignity willfully failed to perform, evaded the spirit of the bargain, and failed to
2 act consistent with the reasonable expectations of Plaintiffs and the Class to the extent it (a)
3 sought to satisfy its funding obligation by making only partial contributions to the Dignity Plan
4 trust; or (b) interpreted its funding obligation as being satisfied by its partial contributions, which
5 as of 2016 resulted in the Dignity Plan being funded at only 72% of its accrued benefit
6 obligations.

7 290. A promise to pay pension benefits—as was made in the Dignity Plan documents
8 and repeated in benefit statements and other communications sent to Plaintiffs and the other
9 Class members—is meaningful only if there is money in the plan trust that is sufficient, on an
10 actuarial basis, to pay the accrued benefits. Plaintiffs believed, and a reasonable plan participant
11 would expect, that in light of the promise to pay defined pension benefits upon retirement and
12 the promise to make contributions sufficient to fund that promise, Dignity would have made
13 contributions sufficient, on an actuarial basis, to fund the full amount of the accrued benefit, not
14 72% of that amount.

15 291. Defendant Dignity had an improper motive to make insufficient contributions to
16 the Dignity Plan: Plaintiffs and the other Class members continued in their employment, relying
17 in whole or in part on Dignity’s promises, while Dignity simultaneously retained hundreds of
18 millions of dollars for its own account that should have been contributed to the Dignity Plan.

19 292. Because Defendant Dignity breached its obligation to make contributions to the
20 Dignity Plan, Plaintiffs and the other Class members have been deprived of their contractual
21 right to a sufficiently funded trust supporting their accrued pension benefits. Dignity’s failure to
22 make sufficient contributions to the Dignity Plan trust has left the Dignity Plan severely
23 underfunded, creating a significant risk that the Dignity Plan will be unable to pay promised
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1 pension benefits. This risk is further amplified by Dignity’s designation of the Dignity Plan as
2 an ERISA-exempt “church plan,” which has left it uninsured by the PBGC.

3 293. Plaintiffs and the Class are entitled to specific performance of the obligations
4 contained in the Dignity Plan documents, including (a) Dignity’s obligation to make
5 contributions to the Dignity Plan trust in an amount which is sufficient, on an actuarial basis, to
6 pay for all accrued pension benefits; and (b) Dignity’s implied obligation to act fairly and in
7 good faith in the performance of its contractual obligations.

8 **COUNT XII**

9 **(Alternative Claim for Unjust Enrichment Against Defendant Dignity)**

10 294. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if
11 fully set forth herein.

12 295. Plaintiffs assert a state law claim for unjust enrichment against Defendant Dignity
13 to the extent that the Dignity Plan did not create an enforceable contractual relationship between
14 Dignity and Plaintiffs and the other Class members.

15 296. Plaintiffs and the other Class members conferred substantial benefits on Dignity,
16 including their continued employment.

17 297. Dignity promised to pay and fund defined benefit pensions to Plaintiffs and the
18 other Class members in order to recruit them and encourage them to continue working at
19 Dignity, as previously alleged.

20 298. In reliance in whole or in part on these promises, Plaintiffs and other Class
21 members worked for Dignity for longer periods and lower wages than they would have in the
22 absence of the promised benefits.

23 299. Dignity benefitted from the contributions of Plaintiffs and other Class members of
24 their time, effort, experience, training, and ideas.

1 300. Dignity directly saved hundreds of millions of dollars by not contributing those
2 amounts to the Dignity Plan, as previously alleged.

3 301. Dignity also avoided the cost of higher employee turnover as a result of Plaintiffs
4 and the other Class members remaining employees of Dignity. Costs of employee turnover can
5 include: the time of management and human resources personnel devoted to exit interviews and
6 organizing work left behind by departing employees; severance benefits and variable
7 unemployment insurance costs; advertising for replacement employees; the time of management
8 devoted to reviewing applications and conducting interviews and reference checks; the time of
9 managers and co-workers devoted to training new replacement employees; and reduced
10 productivity of replacement employees due to inexperience.

11 302. Dignity retained these benefits to the detriment of Plaintiffs and the Class. The
12 hundreds of millions of dollars that Dignity has retained for its own account should have been
13 paid into the Dignity Plan trust to fund the already accrued pension benefits of Plaintiffs and the
14 other Class members.

15 303. Dignity's failure to make sufficient contributions to the Dignity Plan trust has left
16 the Dignity Plan severely underfunded, creating a significant risk that the Dignity Plan will be
17 unable to pay the pension benefits to which Plaintiffs and the other Class members are entitled.
18 This risk is further amplified by Dignity's designation of the Dignity Plan as an ERISA-exempt
19 "church plan," which has left it uninsured by the PBGC.

20 304. Additionally, Plaintiffs and the other Class members continued working for
21 Dignity relying in whole or in part on their reasonable expectations that Dignity would contribute
22 that money into the Dignity Plan trust in exchange for their continued employment. By working
23 for Dignity in reliance on this reasonable expectation, Plaintiffs and the other Class members
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1 forewent opportunities to seek alternative employment that would have paid them benefits,
2 including retirement benefits. Plaintiffs and the other Class members can never undo those years
3 spent working for Dignity and cannot reverse time to work for an employer that will actually
4 honor its promises to pay pension benefits.

5 305. If Dignity does not honor its promises to adequately fund the promised pension
6 benefits, Plaintiffs and the other Class members will retire with far less income than they
7 expected and will have been deprived of the opportunity to make up for that lost pension income.

8 306. Accordingly, Dignity's retention of the benefits described herein would violate
9 fundamental principles of justice, equity, and good conscience.

10 307. The amount of Defendant Dignity's unjust enrichment, including the amounts
11 retained by Dignity that should have been contributed to the Dignity Plan, should be disgorged
12 and paid to the Dignity Plan trust.

13 **COUNT XIII**

14 **(Alternative Claim for Breach of Common Law Fiduciary Duty Against the Retirement
15 Committee)**

16 308. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if
17 fully set forth herein.

18 309. The Dignity Plan assets are held in a trust.

19 310. Plaintiffs and the other Class members are beneficiaries of the Dignity Plan trust.

20 311. The Retirement Committee is a trustee within the meaning of the common law of
21 trusts.

22 312. Alternatively, the Retirement Committee is a fiduciary trust manager or trust
23 protector within the meaning of the common law of trusts.
24

1 313. Additionally, the Retirement Committee is a fiduciary pursuant to the Dignity
2 Plan documents.

3 314. As a fiduciary of the Dignity Plan, the Retirement Committee owed Plaintiffs and
4 the other Class members the duty of loyalty, including the duty to act solely in the interests of
5 Plaintiffs and the other Class members.

6 315. The Retirement Committee, which was obligated by the Dignity Plan documents
7 to take actions in accordance with the provisions of the Plan, had a duty under the Dignity Plan
8 documents to report to Dignity the amount and due dates of the contributions which are required
9 to maintain the Plan as a qualified plan under the appropriate Code Sections, as set forth in the
10 provisions of the Dignity Plan, and to provide for an annual valuation of trust assets.

11 316. The Retirement Committee, as common law trustee, had a fiduciary duty to
12 preserve and maintain trust assets, which includes the duties to determine what property
13 constitutes the subject matter of the trust, to use reasonable diligence to discover the location of
14 trust property, and to use reasonable diligence to take control of trust property without
15 unnecessary delay. If an entity obligated to make contributions to a trust retains possession of
16 trust assets, this duty entails the duty to hold that entity to its obligation to place trust assets in
17 trust.

18 317. The Retirement Committee possesses discretionary powers and authority
19 necessary to carry out the provisions of the Dignity Plan.

20 318. The Retirement Committee breached its fiduciary duties by failing to use
21 reasonable diligence to take control of trust property without unnecessary delay, including by
22 failing to take reasonable steps to hold Dignity to its obligation to make contributions in an
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1 amount which is sufficient, on actuarial basis, to fund all accrued benefits under the Dignity
2 Plan.

3 319. As a direct and proximate result of the fiduciary breaches by the Retirement
4 Committee, the Dignity Plan trust and its beneficiaries, including Plaintiffs and the other Class
5 members, have been deprived of contributions to which they are entitled under the terms of the
6 Dignity Plan and the Dignity Plan trust has become severely underfunded, creating a significant
7 risk that the Dignity Plan will be unable to pay to Plaintiffs and the other Class members the
8 pension benefits to which they are entitled under the Dignity Plan.

9 320. Plaintiffs seek an order enforcing these fiduciary duties, and enjoining the
10 Retirement Committee's ongoing breaches thereof, including an order directing the Retirement
11 Committee to review actuarial reports and other relevant information regarding the funded status
12 of the Dignity Plan and use all reasonable diligence to require Dignity to make contributions to
13 the Dignity Plan that are sufficient, on an actuarial basis, to fund all accrued pension benefits.

14 321. The Retirement Committee is liable to restore the losses to the Dignity Plan
15 caused by their breaches of fiduciary duties alleged in this Count. Plaintiffs further request other
16 equitable relief as appropriate.

17 **VIII. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray that judgment be entered against Defendants on all claims and
19 request that the Court award the following relief:

20 A. Certifying the Class and the Subclass, under Rule 23, appointing Plaintiffs as
21 Class Representatives, and appointing their attorneys as Class Counsel to represent the members
22 of the Class and Subclass;

23 B. Declaring that the Dignity Plan is an employee benefit plan within the meaning of
24 ERISA section 3(2), 29 U.S.C. § 1002(2), is a defined benefit pension plan within the meaning

1 of ERISA section 3(35), 29 U.S.C. § 1002(35), and is not a church plan within the definition of
2 section 3(33) of ERISA, 29 U.S.C. § 1002(33);

3 C. Ordering Dignity to reform the Dignity Plan to bring the Dignity Plan into
4 compliance with ERISA and to have the Dignity Plan comply with ERISA including as follows:

5 1. Revising Plan documents to reflect that the Plan is a defined benefit plan
6 regulated by ERISA;

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

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

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

15 5. Requiring the establishment of a trust in compliance with ERISA section
16 403, 29 U.S.C. § 1103;

17 D. Ordering Defendants to comply with ERISA reporting and disclosure
18 requirements, including by filing Form 5500 reports, distributing ERISA-compliant Summary
19 Plan Descriptions, Summary Annual Reports and Participant Benefit Statements, and providing
20 Notice of the Dignity Plan's funding status and deficiencies;

21 E. Ordering clarification of rights to future benefits pursuant to ERISA section
22 502(a)(1)(B), 29 U.S.C. § 1102(a)(1)(B);

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1 F. Ordering Dignity, as a fiduciary of the Plan, to make the Dignity Plan whole for
2 any losses and disgorge any profits Dignity accumulated as a result of fiduciary breaches;

3 G. Appointing an Independent Fiduciary to hold the Dignity Plan's assets in trust, to
4 manage and administer the Dignity Plan and its assets, and to enforce the terms of ERISA;

5 H. Ordering Dignity to pay a civil money penalty of up to \$110 per day to Plaintiffs
6 and each Class member for each day it failed to inform Plaintiffs and each Class member of its
7 failure to properly fund the Plan;

8 I. Ordering the Retirement Committee, or in the alternative Dignity, to pay a civil
9 money penalty of up to \$110 per day to Plaintiffs and each Class member for each day it failed to
10 provide Plaintiffs and each Class member with a funding notice;

11 J. Ordering the Retirement Committee, or, in the alternative, Dignity, to pay a civil
12 money penalty of up to \$110 per day to Plaintiffs and each Class member for each day it failed to
13 provide a benefit statement under ERISA section 105(a)(1)(B), 29 U.S.C. § 1025(a)(1)(B);

14 K. Ordering declaratory and injunctive relief as necessary and appropriate, including
15 enjoining Defendants from further violating the duties, responsibilities, and obligations imposed
16 on them by ERISA, with respect to the Dignity Plan;

17 L. Ordering declaratory and injunctive relief that Defendants' failure to provide the
18 requisite 204(h) notice of the April, 2014 amendment was egregious, and that the provisions of
19 the Dignity Plan be applied as if the April, 2014 amendment entitled all applicable individuals to
20 the greater of: (1) the benefits to which the participants would have been entitled without regard
21 to such amendment; or (2) the benefits under the Plan with regard to such amendment. 29 U.S.C.
22 § 1054(h)(6);

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1 M. Ordering declaratory and injunctive relief that the amendment changing or
2 eliminating the PEP Plus accrual formula effective January 1, 2014, is void and unenforceable;
3 enjoining Defendant Dignity from enforcing the amendment; and reforming the Dignity Plan to
4 conform with the terms that existed prior to that ineffective amendment;

5 N. Declaring that the backloaded PEP Plus accrual formula violates ERISA, and
6 ordering that a participants' entire accrued benefit shall be calculated under either the old PEP
7 Plus formula or the new amended formula, whichever provides the greatest total benefit;

8 O. Surcharging Defendants for losses resulting from Dignity's breach of its duty to
9 provide the 204(h) Notice, and disgorging any amounts by which Dignity was unjustly enriched
10 as a result of its decision to drastically change the accrual of future benefits without providing an
11 adequate 204(h) Notice;

12 P. Declaring with respect to Count X, that the church plan exemption, as claimed by
13 Dignity, is an unconstitutional accommodation under the Establishment Clause of the First
14 Amendment, and is therefore void and ineffective;

15 Q. In the alternative to the relief requested pursuant to Counts I-X, if the Court
16 determines that the Dignity Plan is a "church plan" exempt from ERISA, ordering specific
17 performance of Defendant Dignity's contractual obligations under the Dignity Plan documents,
18 including an order requiring Defendant Dignity to make contributions to the Dignity Plan trust
19 that are sufficient, on an actuarial basis, to fund all accrued pension benefits under the Dignity
20 Plan;

21 R. In the alternative to the relief requested pursuant to Counts I-X, if the Court
22 determines that the Dignity Plan is a "church plan" exempt from ERISA, ordering Defendant
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1 Dignity to disgorge and pay to the Dignity Plan trust all monies wrongfully obtained or retained
2 and all revenues and profits derived by Defendant Dignity as a result of its unjust enrichment;

3 S. In the alternative to the relief requested pursuant to Counts I-X, if the Court
4 determines that the Dignity Plan is a “church plan” exempt from ERISA, ordering declaratory,
5 injunctive, and other equitable relief as necessary and appropriate, including ordering Defendants
6 to comply with, and enjoining Defendants from further violating, the duties, responsibilities, and
7 obligations imposed on them by the common law and the Dignity Plan documents with respect to
8 the Dignity Plan;

9 T. In the alternative to the relief requested pursuant to Counts I-X, if the Court
10 determines that the Dignity Plan is a “church plan” exempt from ERISA, requiring Defendants,
11 as trustees and fiduciaries of the Dignity Plan, to make the Dignity Plan whole for any losses and
12 disgorge any profits accumulated as a result of breaches of their fiduciary duties under the
13 common law and the Dignity Plan documents;

14 U. Awarding to Plaintiffs attorneys’ fees and expenses as provided by the common
15 fund doctrine, ERISA section 502(g), 29 U.S.C. § 1132(g) and/or other applicable doctrine;

16 V. Awarding to Plaintiffs taxable costs pursuant to ERISA section 502(g), 29 U.S.C.
17 § 1132(g), 28 U.S.C. § 1920, Fed. R. Civ. P. 54(d)(1), and other applicable law; and

18 W. Awarding to Plaintiffs pre-judgment interest on any amounts awarded pursuant to
19 law.

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1 Dated this 3rd day of November, 2017.

2 KELLER ROHRBACK P.L.C.

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