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

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

20 Plaintiff,

21 v.

22 DIGNITY HEALTH, a California non-
profit corporation, HERBERT J.
23 VALLIER, an individual, DARRYL
ROBINSON, an individual, THE
24 DIGNITY HEALTH RETIREMENT
PLANS SUBCOMMITTEE, and JOHN
25 and JANE DOES, each an individual, 1-20,

26 Defendants.

No. 13-C-1450 JST

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION TO DISMISS**

Date: March 15, 2018
Time: 2:00 p.m.
Courtroom: 9
Judge: Hon. Jon S. Tigar

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

1 **PLEASE TAKE NOTICE THAT** pursuant to Federal Rule of Evidence 201, Defendants
2 respectfully request that the Court take judicial notice of Exhibits 1-11 attached to the Declaration
3 of Elizabeth Meckenstock in support of Dignity Health’s Motion to Dismiss.

4 Federal Rule of Evidence 201(b) provides that the Court may take judicial notice of a fact
5 not subject to reasonable dispute that is either (1) generally known within the territorial
6 jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to
7 sources whose accuracy cannot reasonably be questioned. Exhibits 1-11 to the Declaration of
8 Elizabeth Meckenstock are documents that are either in the public record and which are not
9 subject to reasonable dispute and are capable of accurate and ready determination by resort to
10 sources whose accuracy cannot be reasonably questioned, or they are documents that are
11 selectively quoted or referenced to in Plaintiffs’ Amended Complaint, which have been produced
12 in discovery, and have been previously filed in Court during the course of the parties’ nearly four
13 years litigating this case.

14 Exhibit 1 is a true and correct copy of The Amended and Restated Bylaws of Dignity
15 Health.

16 Courts routinely take judicial notice of documents referenced in a Complaint but not
17 attached. *See, e.g., Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (“If the
18 documents are not physically attached to the complaint, they may be considered if the documents’
19 “authenticity ... is not contested” and “the plaintiff’s complaint necessarily relies” on them.”);
20 *Shenwick v. Twitter, Inc.*, No. 16-CV-05314-JST, 2017 WL 4642001, at *1 (N.D. Cal. Oct. 16,
21 2017); *Rosen v. Uber Techs., Inc.*, 164 F. Supp. 3d 1165, 1170 (N.D. Cal. 2016); *Perkins v.*
22 *LinkedIn Corp.*, 53 F. Supp. 3d 1190, 1204 (N.D. Cal. 2014) (“Under the doctrine of
23 incorporation by reference, the Court may consider on a Rule 12(b)(6) motion not only
24 documents attached to the complaint, but also documents whose contents are alleged in the
25 complaint, provided the complaint “necessarily relies” on the documents or contents thereof, the
26 document’s authenticity is uncontested, and the document’s relevance is uncontested. The
27 purpose of this rule is to prevent plaintiffs from surviving a Rule 12(b)(6) motion by deliberately
28 omitting documents upon which their claims are based.”) (internal citations and quotations

1 omitted); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569 n.13 (2007) (court is “entitled to
 2 take notice of the full contents of the published articles referenced in the complaint, from which
 3 the truncated quotations were drawn”). Dignity Health previously produced this document in
 4 discovery, and Plaintiffs selectively rely upon the Bylaws in their Amended Class Action
 5 Complaint (“FAC”). *See, e.g.*, ¶45.

6 Exhibit 2 is a true and correct copy of the Restated Articles of Incorporation of Catholic
 7 Healthcare West.

8 Articles of Incorporation are publicly filed and are the proper subject of judicial notice.
 9 *See Singleton v. Volunteers of Am.*, No. C 12-5399 LHK (PR), 2013 WL 5934647, at *2 (N.D.
 10 Cal. Nov. 4, 2013).

11 Exhibit 3 is a true and correct copy of Dignity Health’s “Mission” printed from
 12 <https://www.dignityhealth.org/about-us/our-organization/mission-vision-and-values>.

13 “Proper subjects of judicial notice when ruling on a motion to dismiss include . . .
 14 publically accessible websites.” *Perkins v. LinkedIn Corp.*, 53 F. Supp. 3d 1190, 1204 (N.D. Cal.
 15 2014); *see also Lorenz v. Safeway, Inc.*, 241 F. Supp. 3d 1005, 1012–13 (N.D. Cal. 2017).

16 Exhibit 4 is at true and correct copy of Dignity Health’s Standards for Mission Integration
 17 printed from [https://www.dignityhealth.org/-/media/cm/media/documents/PDFs/standards-for-](https://www.dignityhealth.org/-/media/cm/media/documents/PDFs/standards-for-mission-integration-2.ashx?la=en)
 18 [mission-integration-2.ashx?la=en](https://www.dignityhealth.org/-/media/cm/media/documents/PDFs/standards-for-mission-integration-2.ashx?la=en).

19 “Proper subjects of judicial notice when ruling on a motion to dismiss include . . .
 20 publically accessible websites.” *Perkins*, 53 F. Supp. 3d at 1204; *see also Lorenz v. Safeway,*
 21 *Inc.*, 241 F. Supp. 3d at 1012–13.

22 Exhibit 5 is a true and correct copy of the Ethical and Religious Directives for Catholic
 23 Health Care printed from <https://www.dignityhealth.org/about-us/our-organization/ethics> and
 24 also available at [http://www.usccb.org/issues-and-action/human-life-and-dignity/health-](http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf)
 25 [care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf](http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf)

26 “[T]he Court may take judicial notice of the Ethical and Religious Directives for Catholic
 27 Health Care Services. This is a publication promulgated by the United States Council Conference
 28 of Bishops. The Ethical and Religious Directives are widely disseminated and must be followed

1 by all Catholic Health Organizations. As the Ethical and Religious Directives are from a source
2 whose accuracy cannot reasonably be questioned, the Court may take judicial notice of this
3 document.” *Overall v. Ascension*, 23 F. Supp. 3d 816, 825 (E.D. Mich. 2014) (internal citation
4 omitted). “Proper subjects of judicial notice when ruling on a motion to dismiss include . . .
5 publically accessible websites.” *Perkins*, 53 F. Supp. 3d at 1204; *see also Lorenz v. Safeway,*
6 *Inc.*, 241 F. Supp. 3d at 1012–13.

7 Exhibit 6 is a true and correct copy of the Statement of Common Values printed from
8 <https://www.dignityhealth.org/about-us/our-organization/ethics>.

9 “Proper subjects of judicial notice when ruling on a motion to dismiss include . . .
10 publically accessible websites.” *Perkins*, 53 F. Supp. 3d at 1204; *see also Lorenz v. Safeway,*
11 *Inc.*, 241 F. Supp. 3d at 1012–13.

12 Exhibit 7 is a true and correct Sister Judith Carle, RSM’s article “Dignity Health: New
13 Name, Same Mission” printed from [https://www.chausa.org/publications/health-](https://www.chausa.org/publications/health-progress/article/july-august-2013/dignity-health-new-name-same-mission)
14 [progress/article/july-august-2013/dignity-health-new-name-same-mission](https://www.chausa.org/publications/health-progress/article/july-august-2013/dignity-health-new-name-same-mission).

15 “Proper subjects of judicial notice when ruling on a motion to dismiss include . . .
16 publically accessible websites.” *Perkins*, 53 F. Supp. 3d at 1204; *see also Lorenz v. Safeway,*
17 *Inc.*, 241 F. Supp. 3d at 1012–13.

18 Exhibit 8 is a true and correct copy of the Catholic Healthcare West Retirement Plan
19 Amended & Restated January 1, 2005 (and amendments thereto).

20 Courts routinely take judicial notice of documents referenced in a Complaint, but not
21 attached. *See, e.g., Lee*, 250 F.3d at 688; *Shenwick*, No. 16-CV-05314-JST, 2017 WL 4642001,
22 at *1; *Rosen*, 164 F. Supp. 3d at 1170; *Perkins*, 53 F. Supp. 3d at 1204; *see also Twombly*, 550
23 U.S. at 569 n.13. Dignity Health previously produced this document in discovery, and Plaintiffs
24 selectively rely upon the Plan document in their FAC. *See, e.g., ¶ 280, 282, 285.*

25 Specifically, this Court has found that “Courts routinely take judicial notice of ERISA
26 plan documents like those at issue here” where the complaint incorporates each of those
27 documents by reference, necessarily relies on those documents, and neither party questions their
28 authenticity or relevance. *Lorenz*, 241 F. Supp. 3d at 1012–13. While Defendants contend that

1 these are not ERISA documents, the Court’s reasoning was based upon the nature of the
2 documents and the plaintiffs’ claims, not the governing law. Plaintiff Rollins previously relied
3 upon these documents in support of her Motion for Partial Summary Judgment. *See* Declaration
4 of Matthew Gerend in Support of Plaintiff’s Motion for Partial Summary Judgment, ¶¶ 2-6. ECF
5 No. 92.

6 Exhibit 9 is a true and correct copy of the Dignity Health Retirement Plans Sub-
7 Committee Charter.

8 This Court has found that “Courts routinely take judicial notice of ERISA plan documents
9 like those at issue here” where the complaint incorporates each of those documents by reference,
10 necessarily relies on those documents, and neither party questions their authenticity or relevance.
11 *Lorenz*, 241 F. Supp. 3d at 1012–13. While Defendants contend that these are not ERISA
12 documents, the Court’s reasoning was based upon the nature of the documents and the plaintiffs’
13 claims, not the governing law.

14 Exhibit 10 is true and correct excerpts from the Official Catholic Directory reflecting the
15 inclusion of Dignity Health’s Sponsoring Congregations and Catholic hospitals therein.

16 “The [Official Catholic] directory meets the requirements of Fed.R.Evid. 201.” *Overall v.*
17 *Ascension*, 23 F. Supp. 3d 816, 824 (E.D. Mich. 2014).

18 Exhibit 11 is a true and correct copy of the Memorandum regarding the Requested *Nihil*
19 *Obstat* in Directive 68 Ethical and Religious Directives for Catholic Health Care Services issued
20 on November 21, 2011 by the Most Rev. George Niederauer, Archbishop of San Francisco.

21 Courts routinely take judicial notice of documents referenced in a Complaint, but not
22 attached. *See, e.g., Lee*, 250 F.3d at 688; *Shenwick*, No. 16-CV-05314-JST, 2017 WL 4642001,
23 at *1; *Rosen*, 164 F. Supp. 3d at 1170; *Perkins*, 53 F. Supp. 3d at 1204; *see also Twombly*, 550
24 U.S. at 569 n.13. Dignity Health previously produced this document in discovery, and Plaintiffs
25 selectively quote this document in their FAC. *See, e.g., ¶ 9(D)*.

26 Exhibit 13 is a true and copy of the Dignity Health Pension Plan Amended and Restated
27 January 1, 2014.

28 Courts routinely take judicial notice of documents referenced in a Complaint, but not

1 attached. *See, e.g., Lee*, 250 F.3d at 688; *Shenwick*, No. 16-CV-05314-JST, 2017 WL 4642001,
2 at *1; *Rosen*, 164 F. Supp. 3d at 1170; *Perkins*, 53 F. Supp. 3d at 1204; *see also Twombly*, 550
3 U.S. at 569 n.13. Plaintiffs refer to this document in their FAC. *See, e.g., ¶ 66*. Defendants have
4 included Exhibit 8 and Exhibit 13 because it is not clear from the FAC which plan document
5 Plaintiffs rely upon.

6 Specifically, this Court has found that “Courts routinely take judicial notice of ERISA
7 plan documents like those at issue here” where the complaint incorporates each of those
8 documents by reference, necessarily relies on those documents, and neither party questions their
9 authenticity or relevance. *Lorenz*, 241 F. Supp. 3d at 1012–13.

10
11 Dated: December 22, 2017

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