

1 MANATT, PHELPS & PHILLIPS, LLP
2 Barry S. Landsberg (SBN 117284)
3 Harvey L. Rochman (SBN 162751)
4 Craig S. Rutenberg (SBN 205309)
5 Colin M. McGrath (SBN 286882)
6 11355 West Olympic Boulevard
7 Los Angeles, CA 90064-1614
8 Telephone: (310) 312-4000
9 Facsimile: (310) 312-4224
10 blandsberg@manatt.com
11 hrochman@manatt.com
12 crutenberg@manatt.com
13 cmcgrath@manatt.com

14 David L. Shapiro (*pro hac vice*)
15 1563 Mass. Ave.
16 Cambridge, MA 02138
17 Telephone: (617) 495-4618
18 Facsimile: (617) 495-1950
19 dshapiro@law.harvard.edu

20 Attorneys for Defendants

NIXON PEABODY, LLP
Charles M. Dyke (SBN 183900)
One Embarcadero Center, 18th Floor
San Francisco, CA 94111
Telephone: (415) 984-8315
Facsimile: (415) 421-2017
cdyke@nixonpeabody.com

TRUCKER HUSS
R. Bradford Huss (SBN 71303)
Sean T. Strauss (SBN 245811)
One Embarcadero Center, 12th Floor
San Francisco, CA 94111
Telephone: (415) 788-3111
Facsimile: (415) 421-2017
bhuss@truckerhuss.com
sstraus@truckerhuss.com

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 SAN FRANCISCO DIVISION

24 STARLA ROLLINS and PATRICIA
25 WILSON, on behalf of themselves,
26 individually, and on behalf of all others
27 similarly situated, and on behalf of the
28 Dignity Plan

Plaintiff,

v.

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

Defendants.

No. 13-C-1450 JST

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

Date: March 22, 2018
Time: 2:00 p.m.
Courtroom: 9
Judge: Hon. Jon S. Tigar

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

1 **I. INTRODUCTION.**

2 The Court should grant Defendants' Request for Judicial Notice. As a threshold matter,
3 Plaintiffs do not object to judicial notice of Dignity Health's Amended and Restated Bylaws,
4 Restated Articles of Incorporation, the *nihil obstat*, or the Retirement Plans. (Exs. 1, 2, 8, 11, and
5 13.) Plaintiffs' remaining objections generally relate to Dignity Health's website, the Official
6 Catholic Directory, and the Retirement Sub-Committee Charter. However, Plaintiffs' arguments
7 are not supported by law.

8 Ultimately, Plaintiffs do not object to the authenticity of any of the documents. Plaintiffs
9 cannot articulate any reasonable dispute, and their objections to the materials proffered are
10 manifestly unreasonable; tellingly, Plaintiffs do not even attempt to explain the basis for any of
11 them. Plaintiffs cannot make this case about cherry-picked facts, while ignoring the contrary
12 facts in the same documents and public record. Judicial notice exists to prevent such a
13 manipulation.

14 **II. THE COURT SHOULD GRANT DEFENDANTS' REQUEST FOR JUDICIAL**
15 **NOTICE.**

16 **A. Plaintiffs Do Not Object to Judicial Notice of Exhibits 1, 2, 8, 11, and 13.**

17 As an initial matter, Plaintiffs do not object to the Court taking judicial notice of Exhibits
18 1, 2, 8, 11, 13. Plaintiffs' objection that the Court "may not take judicial notice of the truth of
19 assertions therein" is meritless.¹ (Pls.' Opp'n to Defs.' RJN 2:5-10.) Plaintiffs themselves admit
20 that these documents are referenced in the Amended Complaint and are documents that Plaintiffs
21 rely upon, yet they want to cherry-pick what portions are considered by the Court. The doctrine
22 of incorporation by reference bars such tactics.

23 The doctrine of incorporation by reference prevents a plaintiff from relying on a
24 misleading excerpt of a document by allowing the Court to consider the document in its entirety.
25 For example, Plaintiffs cite to and rely on Dignity Health's Bylaws in its Amended Complaint.
26 *See* Pls.' Am. Compl. ¶ 45. While they want the portions of the Bylaws they cite in the Amended
27 Complaint to be taken as true factual allegations, they dispute the same being done for the entirety

28 ¹ Defendants do not rely on the truth of the matters asserted in any of these documents; rather, they demonstrate that the documents exist and contain the referenced statements.

1 of the document. Plaintiffs cannot selectively rely on excerpts of Dignity Health’s Bylaws
 2 without reckoning for the entire document that speaks to the same subjects. *Swartz v. KPMG*
 3 *LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (“[I]n order to ‘[p]revent [] plaintiffs from surviving a
 4 Rule 12(b)(6) motion by deliberately omitting . . . documents upon which their claims are based,’
 5 a court may consider a writing referenced in a complaint but not explicitly incorporated therein if
 6 the complaint relies on the document and its authenticity is unquestioned.”) (internal citations
 7 omitted); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569 n.13 (2007).²

8 **B. The Court May Take Judicial Notice of Matters Posted on Dignity Health’s**
 9 **Website.**

10 The Court may take judicial notice of any fact that “is not subject to reasonable dispute”
 11 regardless of whether the document is specifically referenced in a pleading. Fed. R. Evid. 201(b).
 12 Contrary to Plaintiffs’ claim, “[i]t is not uncommon for courts to take judicial notice of factual
 13 information found on the world wide web.” *O’Toole v. Northrop Grumman Corp.*, 499 F.3d
 14 1218, 1225 (10th Cir. 2007). Nor is there authority for the proposition that a party’s own website
 15 may not be the subject of judicial notice. To the contrary, “[f]or purposes of a 12(b)(6) motion to
 16 dismiss, a court may take judicial notice of information publicly announced on a party’s website,
 17 as long as the website’s authenticity is not in dispute and “it is capable of accurate and ready
 18 determination.” *Doron Precision Sys., Inc. v. FAAC, Inc.*, 423 F. Supp. 2d 173, 179 n.8
 19 (S.D.N.Y. 2006). Here, the Declaration of Elizabeth Meckenstock authenticates Dignity Health’s
 20 website, and provides the internet addresses demonstrating that the website and its contents are
 21 capable of accurate and ready determination. That is all that is required for judicial notice of

22 ² Plaintiffs wrongly contend that whether Dignity Health complied with any of the plan
 23 documents is a question of fact that cannot be decided on a motion to dismiss. (RJN Opp. at 6.)
 24 In fact, Plaintiffs’ Amended Complaint admits that the plan was administered by the Sub-
 25 Committee. (AC, ¶¶ 24, 95-97.) Accordingly, if Plaintiffs’ interpretation of the maintenance
 26 requirement is wrong as a matter of law, discovery on the subject of maintenance is foreclosed.
 27 To the extent the documents bear upon the question of association, the existence of the statements
 28 establishes “bona fide” association. Plaintiffs’ desire for discovery on that issue violates the
 prohibition on excessive entanglement. *See N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S.
 490, 502 (1979) (declaring unconstitutional agency practice of examining whether a school is
 “completely religious” or merely “religiously associated” to determine jurisdiction); *Mitchell v.*
Helms, 530 U.S. 793, 828 (2000) (plurality opinion) (“it is well established, in numerous other
 contexts, that courts should refrain from trolling through a person’s religious beliefs”); *see*
University of Great Falls v. N.L.R.B., 278 F.3d 1335, 1344 (D.C. Cir. 2002) (inquiry related to
 agency jurisdiction limited to existence of “bona fide” association).

1 Exhibits 3-7.

2 Plaintiffs conflate “public records” (*i.e.*, documents filed with or obtained from the
3 government) with “matters of public record.” (RJN Opp., 3:2-8.) Judicial notice is concerned
4 with the latter, and is not limited to the former, as evidenced by the fact that Courts routinely take
5 judicial notice of “matters of public record” that are not themselves “public records.” *See, e.g.*,
6 *Neeld v. Nat'l Hockey League*, 594 F.2d 1297, 1300 (9th Cir. 1979) (“We take judicial notice that
7 ice hockey is a very rough physical contact sport . . .”).

8 Plaintiffs do not dispute that Exhibits 3-6 can be found on Dignity Health’s own website.³
9 Rather, their chief complaint is that documents posted on Dignity Health’s own website are “self-
10 serving.” However, that is not the standard for judicial notice, and Plaintiffs’ objection is actually
11 an admission that the website is authentic and its contents are capable of accurate and ready
12 determination. Plaintiffs’ real complaint is that these judicially noticeable facts refute implausible
13 allegations in their Amended Complaint. But Dignity Health, then Catholic Healthcare West, was
14 established more than thirty years ago in this judicial district, where it also has maintained its
15 principal place of business. Dignity Health’s St. Mary’s Medical Center was founded in San
16 Francisco in 1857 by the Sisters of Mercy, one of the Sponsoring Congregations. Indeed, Dignity
17 Health has been repeatedly sued in this judicial district for its adherence to the Ethical and
18 Religious Directives for Catholic Health Care (“ERDs”).⁴ It is simply unreasonable for Plaintiffs
19 to dispute that it is generally known within the Court’s territorial jurisdiction who and what
20 Dignity Health is, or that it cannot be accurately and readily determined from sources whose
21 accuracy cannot be questioned. Fed. R. Evid. 201(b).⁵

22 _____
23 ³ Nor do they dispute the authenticity of the Catholic Healthcare Association’s website,
www.chausa.org, with respect to Exhibit 7.

24 ⁴ *See, e.g., Robinson v. Dignity Health*, Case No. 16-CV-3035 YGR (N.D. Cal.), *Chamorro v.*
Dignity Health, Case No. CGC-15-549626, and *Minton v. Dignity Health*, CGC-17-558259, all
25 filed in the Superior Court for the County of San Francisco. All of these cases also received press
26 coverage specifically referencing Dignity Health’s adherence to the ERDs. *See, e.g.*,
<https://www.sfgate.com/health/article/State-s-doctors-to-join-suit-over-health-7379555.php>;
<http://www.sacbee.com/news/local/health-and-medicine/article145477264.html>;
<http://www.modernhealthcare.com/article/20160810/NEWS/160809895>.

27 ⁵ With respect to Exhibit 7, Plaintiffs do not object to judicial notice of the *nihil obstat*, which
28 they reference in their complaint. The *nihil obstat* was directed to, among other people, Sister
Judy Carle, the author of Exhibit 7.

1 **C. The Court May Take Judicial Notice of the Official Catholic Directory.**

2 Plaintiffs objection to the Court taking judicial notice of the Official Catholic Directory
3 (“OCD”) is meritless. The Court simply is not required to accept a party’s allegation that the
4 world is flat because the party asserts unreasonable objections to universally accepted facts. Any
5 claim by the Plaintiffs that the significance of being listed in the OCD is “disputed” is patently
6 unreasonable. *Cf. Medina v. Catholic Health Initiatives*, 147 F. Supp. 3d 1190, 1200 (D. Colo.
7 2015) (“[C]onsideration of plaintiff’s argument [that inclusion in the OCD is disputed] would
8 require the court to determine whether the Catholic Church properly has designated CHI as an
9 official part of the Church. As discussed further below, that path is not one which a judicial
10 officer is authorized to follow”), *judgment entered*, No. 13-CV-01249-REB-KLM, 2015 WL
11 8146404 (D. Colo. Dec. 8, 2015), *and aff’d*, 877 F.3d 1213 (10th Cir. 2017)

12 “An entity is listed in the directory only if a bishop of the Roman Catholic Church
13 determines the entity is ‘operated, supervised, or controlled by or in connection with the Roman
14 Catholic Church.’” *Overall v. Ascension*, 23 F. Supp. 3d 816, 831 (E.D. Mich. 2014) (“Courts
15 view the Official Catholic Directory listing as a public declaration by the Roman Catholic Church
16 that an organization is associated with the Church.”);⁶ *Catholic Charities of Maine v. City of*
17 *Portland*, 304 F. Supp. 2d 77, 84 (D. Me. 2004) (finding association based upon Catholic
18 Charities’ mission statement, financial support from the local diocese, and listing in the OCD);
19 *Hartwig v. Albertus Magnus Coll.*, 93 F. Supp. 2d 200, 202–03 (D. Conn. 2000) (“the Official
20 Catholic Directory[] is the definitive compilation of Roman Catholic institutions in the United
21 States”). The OCD is accepted by the federal government as conclusive proof that an entity is
22 associated with the Roman Catholic Church. *See, e.g.*, General Counsel Memorandum, 39007
23 (I.R.S. July 1, 1983) (“Any organization listed in this directory is considered associated with the
24 Roman Catholic Church in the United States.”).

25 There is no distinction to draw between Courts taking judicial notice of the OCD on a

26 ⁶ Plaintiffs make an off-handed comment that *Overall* applies a standard for incorporation by
27 reference that is more lenient than is applicable in the Ninth Circuit, however Plaintiffs cite no
28 case law to support this contention. The OCD “is a published book, widely disseminated,
publicly available, and generally known.” *Overall*, 23 F. Supp. 3d at 824. That fits Rule 201 in
all federal courts.

1 motion to dismiss as opposed to a motion for summary judgment. (RJN Opp., 5:2-10.) Rule 201
 2 does not distinguish between the two, but rather imposes a uniform test that numerous courts have
 3 found the OCD easily satisfies.

4 **D. The Court May Take Judicial Notice of The Retirement Plans Sub-**
 5 **Committee Charter.**

6 Dignity Health produced the Retirement Plans Sub-Committee Charter (“Charter”) to
 7 Plaintiffs in discovery on April 21, 2014. The allegations in paragraphs 24 and 95 of the
 8 Amended Complaint rely upon information derived from Exhibit 9. Plaintiffs cannot now assert
 9 that the Sub-Committee is not associated with a church, while objecting to judicial notice of the
 10 entire Charter upon which they relied. (AC, ¶ 7.) *See Swartz*, 476 F.3d at 763; *Twombly*, 550
 11 U.S. at 569 n.13. Plaintiffs do not dispute the authenticity of the Charter, and it is therefore the
 12 proper subject of judicial notice. *See Lorenz v. Safeway*, 241 F. Supp. 3d 1005, 1012-13.⁷

13 **III. CONCLUSION.**

14 For the foregoing reasons, the Court should grant Defendants’ Request for Judicial Notice.

15 Dated: February 23, 2018

MANATT, PHELPS & PHILLIPS, LLP

16 By: s/ Barry S. Landsberg

17 Barry S. Landsberg
 18 Harvey L. Rochman
 19 Craig S. Rutenberg
 Colin M. McGrath
 David L. Shapiro (*pro hac vice*)

20 *Attorneys for Defendants*

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24 _____
 25 ⁷ Once again Plaintiffs cannot create a factual dispute by pretending the Charter does not exist.
 26 The Charter provides, “In performing its duties, the Sub-Committee shall be mindful of the
 27 teachings and tenets of the Roman Catholic Church and of the Sponsors (the Orders of Women
 28 Religious who founded many of Dignity Health’s facilities and who are listed as ‘Sponsors’ in
 Dignity Health’s Bylaws)” Plaintiffs incorrectly believe that they can create a factual
 dispute by arguing that discovery is necessary on the subject of how the Sub-Committee is
 mindful of the teachings and tenets of the Roman Catholic Church. They are wrong. *See*
 footnote 2, *supra*.