

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:13-cv-01249-REB-KLM

JANEEN MEDINA, individually, on behalf of all others similarly situated, and on behalf
of the CHI Plans,

Plaintiff,

v.

CATHOLIC HEALTH INITIATIVES, a Colorado corporation,
PATRICIA G. WEBB,
CAROL KEENAN, and
JOHN and JANE DOES, 1-20,

Defendants.

DEFENDANTS' MOTION TO DISMISS WITH MEMORANDUM IN SUPPORT

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MOTION TO DISMISS

Defendants Catholic Health Initiatives, Patricia G. Webb and Carol Keenan (collectively, “Defendants” or “CHI”), by and through their undersigned counsel, hereby move this Court, pursuant to Rules 12(b)(1) (for the ERISA claims) and 12(b)(6) (for the Establishment Clause claim) of the Federal Rules of Civil Procedure, to dismiss the Complaint with prejudice. The grounds for this Motion, as more fully set forth below, are that (1) the Catholic Health Initiatives Retirement Plan (“CHI Plan” or “Plan”) is a “church plan” and is thus exempted from the requirements of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, *et seq.* (“ERISA”); and (2) ERISA’s church plan exemption does not violate the Establishment Clause.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Plaintiff, a participant in the CHI Plan, a defined benefit pension plan maintained by CHI, alleges that CHI violated ERISA’s reporting, disclosure, and funding requirements. Plaintiff’s claims fail, however, because the CHI Plan *is* a church plan, and therefore, is exempt from ERISA requirements that apply to non-church plans.

In 1974, Congress enacted ERISA to protect the interests of employees in their benefit plans. Compl. ¶¶ 24-25. At the same time, Congress decided to exempt “church plans” (benefit plans that are established or maintained by churches) from ERISA’s reporting, disclosure, and funding requirements. See ERISA § 3(33)(A), 29

U.S.C. § 1002(33)(A). The purpose of the church plan exemption is to prevent unwarranted intrusions by the federal government into churches and their religious activities. See 124 Cong. Rec. H12106 (daily ed. May 2, 1978) (statement of Rep. Conable). While excluded from ERISA's requirements, these church plans are still subject to certain Internal Revenue Code ("IRC") requirements, as well as fiduciary obligations under trust law to protect the interests of church plan participants. See Restatement (Third) of Trusts § 2 cmt. b (2003).

In 1980, Congress extended the church plan exemption to plans established and maintained by non-profit entities that are "controlled by" or "associated with" a church. See ERISA § 3(33)(C), 29 U.S.C. § 1002(33)(C). The CHI Plan meets both the "controlled by" and "associated with" tests.

CHI and the committee that administers the CHI Plan (the CHI and Affiliates Defined Benefit Plan Subcommittee, or "Subcommittee") are controlled for purposes of the ERISA definition of church plan by the Roman Catholic Church ("Catholic Church" or "Church") through Catholic Health Care Federation ("CHCF"), a public juridic person of pontifical right. *Codex Iuris Canonici*, Code cc.113 § 2, 116 § 1 (1983)¹; see also ERISA § 3(33).

CHI has both a civil and a canonical identity. The civil identity is CHI, a corporation established under the laws of Colorado. The canonical identity is CHCF,

¹ A copy of the *Codex Iuris Canonici*, the Code of Canon Law, may be found at the Vatican's website, http://www.vatican.va/archive/ENG1104/_INDEX.HTM.

an entity of the Roman Catholic Church established under canon law by the Holy See (the Vatican). Thus, CHI and CHCF are two sides of the same coin – one civil law side (CHI) and one canonical side (CHCF).

Alternatively, the CHI Plan is a church plan because CHI is “associated with” the Catholic Church. The Catholic Church has recognized CHI as sharing common religious bonds and convictions with the Church and has listed CHI in the Official Catholic Directory.² Further, based on that recognition, the Internal Revenue Service (“IRS”) has issued a Private Letter Ruling (“PLR”)³ confirming that CHI is associated with the Catholic Church and that the CHI Plan is a church plan. Moreover, CHI furthers the healing ministry of the Catholic Church to cure the sick, heal the afflicted, serve the poor, and protect the vulnerable – regardless of religion. CHI is committed to Roman Catholic values and operates its business in a manner that complies with the Church’s mission. Consequently, CHI is associated with the Church within the meaning of ERISA § 3(33).

Even if the CHI Plan had failed to meet certain requirements of a church plan, ERISA § 3(33)(D)(i) and IRC § 414(e)(4)(A) grant plans the ability to correct any such

² The Official Catholic Directory is the authoritative publication that contains information on every diocese, parish, bishop, priest, group, institution, or organization affiliated with or sponsored by the Roman Catholic Church in the United States. In order to be listed in the Official Catholic Directory, an organization must submit an initial application for inclusion in the Directory to the local diocese. The local diocese then reviews and confirms that the organization is affiliated with or sponsored by the Church. Thereafter, the organization must submit renewal statements annually. The Directory, which was first published in 1817, is recognized by the courts, the IRS and the DOL as showing common religious convictions for organizations under the auspices of the Roman Catholic Church. See, e.g., *Olga Torres and Pedro Bonilla v. Bella Vista Hospital, et al.*, 2008 WL 7210806 (D. P.R.), PLRs 8734033, 8606038, 8326165, and 8919066. See also GCM 39007; DOL Adv. Ops. 86-19A and 86-04A. THE OFFICIAL CATHOLIC DIRECTORY, <http://www.officialcatholicdirectory.com/print-directory.html> (last visited July 24, 2013).

³ A Private Letter Ruling (“PLR”) is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer’s specific set of facts. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described.

defects through filings with the IRS prior to forfeiture of their church plan status. Thus, even if the CHI Plan were deemed by this Court not to satisfy all elements of the church plan exemption, the Plan may, within a specified correction period, retroactively cure any such defects by filing a new application for IRS determination on its qualification as a church plan. Accordingly, Counts I-VII of the Complaint based on lack of church plan status should be dismissed.

Count VIII of the Complaint claims that application of the church plan exemption to CHI violates the First Amendment's Establishment Clause. However, courts have long recognized that accommodating religious exercise by exempting religious organizations from regulatory requirements, such as ERISA, is permitted and consistent with the Establishment Clause. Thus, the church plan exemption easily satisfies the controlling test of *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

II. BACKGROUND

A. CHI and its Role in the Catholic Church's Healing Ministry

1. The Catholic Church's Healing Ministry

From the early days of the Catholic Church, the mission of the Church "has included healing as a major part."⁴ Through its healing ministry, the Church seeks "to embody our Savior's concern for the sick."⁵ Declaration of Sister Peggy Martin ("Martin

⁴ United States Conference of Catholic Bishops, *Health and Health Care: A Pastoral Letter of the American Catholic Bishops*, 1981, at 4, available at <http://old.usccb.org/sdwp/national/HEALTH.PDF>.

⁵ According to Bible accounts, Jesus cleansed a man with leprosy (Matthew 8:1-4; Mark 1:40-42 (NABRE)); gave sight to two people who were blind (Matthew 20:29-34; Mark 10:46-52 (NABRE)); enabled one who was mute to speak (Luke 11:14 (NABRE)); cured a woman who accounts, Jesus cleansed a man with leprosy (Matthew 8:1-4; Mark 1:40-42 (NABRE)); gave sight to two people who were blind (Matthew 20: was hemorrhaging (Matthew 9:20-22; Mark 5:25-34 (NABRE)); and brought a young girl back to life (Matthew 9:18, 23-25; Mark 5:35-42 (NABRE)). In the parable of the Good Samaritan told by Jesus, a foreign traveler came upon a victim of robbery, "poured oil and wine

Decl.”), Ex. A at 6. Jesus explained to his followers that “whatever you did for one of these least brothers of mine, you did for me.” Matthew 25:40. In keeping with this “biblical mandate to care for the poor,” Catholic health care ministry devotes “particular attention . . . to the health care needs of the poor, the uninsured, and the underinsured.” Martin Decl., Ex. A at 10.

2. CHI: History and Governance

CHI is a national nonprofit health system based in Denver, Colorado. Compl. ¶ 20. The health system includes 80 hospitals, 40 long-term care facilities, assisted living facilities and residential units; two community-based health organizations; two accredited nursing colleges; and 46 home health agencies, located in 18 states. Declaration of Troy Lindon (“Lindon Decl.”), Ex. A at 7.

CHI’s dedication to the Catholic Church’s healing ministry extends back more than 100 years. In the late 19th and early 20th centuries, ten religious orders of Sisters of the Roman Catholic Church established hospitals to care for the poor and the sick to further the Catholic Church’s healing ministry.⁶ Martin Decl., Ex. B at 2-5. These religious orders “sponsored” three large Catholic health care systems: Catholic Health Corporation, Sisters of Charity Health Care Systems, and Franciscan Health System. *Id.* at 6. “Sponsorship” of a Church ministry refers to the oversight, endorsement, and

over his wounds and bandaged them,” and then “lifted him up on his own animal and took him to an inn and cared for him. (Luke 10:25-37 (NABRE)). The New American Bible, Revised Edition (NABRE).

⁶ The ten religious orders are: Benedictine Sisters of Mother of God Monastery; Congregation of the Dominican Sisters of St. Catherine of Siena of Kenosha; Franciscan Sisters of Little Falls, Minnesota; Nuns of the Third Order of St. Dominic; Sisters of Charity of Cincinnati; Sisters of the Holy Family of Nazareth; Sisters of Mercy of Americas, Regional Community of Omaha; Sisters of the Presentation of the Blessed Virgin Mary; Sisters of St. Francis of Colorado Springs; and Sisters of St. Francis of Philadelphia. Martin Decl., Ex. B at 2-5.

support by a group that commits to advancing the healing ministry of Jesus, which enables the ministry to have a Catholic identity. *Id.*, Exs. B at 7; C at 3.

Beginning in the early 1990s, the ten religious orders faced internal issues of aging members and declining growth in their congregations. *Id.*, Ex. D at 109-10. They also faced external issues of increasing costs of health care delivery, the vast number of uninsured, and the lack of access to health care for many persons, particularly the poor, the orphaned, the uneducated, and the sick. *Id.* To strengthen the Church's healing ministry for the future, these religious orders decided to consolidate the three health care systems into one national health care system. *Id.* at 110-11. Their vision focused on a new model of Catholic Church sponsorship of the health care system with participation by both vowed religious and lay members. On July 1, 1996, the three health care systems officially consolidated into a single entity, CHI. *Id.* at 111.

The torch of Catholic Church sponsorship of the health care ministries passed from the ten founding religious orders to a new entity upon CHI's creation. *Id.*, Ex. B at 7. CHI and CHCF are not two distinct entities. Rather, they are one entity with two different identities – one civil and the other Catholic.⁷ In other words, CHI and CHCF are two sides of the same coin.

CHCF was established in 1991 by Catholic Health Corporation, one of the three health care systems that became CHI. *Id.* ¶ 9. CHCF is a "Public Juridic Person of Pontifical Right," an entity of the Roman Catholic Church that operates in the name of the Church. *Id.*, Ex. F, Art. One; *Codex Iuris Canonici*, Code cc.113 § 2, 116 § 1 (1983).

⁷ See, Francis Morrissey, *Public Juridic Persons: A Practical Guide*, CHAC Review, at 5 (Spring 1997), <http://www.chac.ca/alliance/review/docs/sponsorship1.pdf>.

As part of the transition to CHCF sponsorship, the ten religious orders transferred the assets used in the health care ministries to CHCF. Martin Decl., Ex. D at 114. Because the “temporal” goods of CHCF are “ecclesiastical” goods under canon law, these goods are administered in accordance with canon law.⁸ *Codex Iuris Canonici*, Code cc.1273-89 (1983).

CHCF is accountable to the Congregation, an office of the Holy See. *Codex Iuris Canonici*, Code cc.360-61 (1983). In 1991, as required by canon law (the law of the Catholic Church), CHCF’s statutes were approved by the Congregation. Martin Decl. ¶ 9 Ex. P at 1. According to its statutes, CHCF’s purpose is to “embody the mission of the healing ministry of Jesus in the Church through the ownership, management and governance of health ministries, and the offering of programs and services consistent with that purpose in keeping with the Gospel imperative.” *Id.*, Ex. F, Art. Two. The Congregation must approve any:

- Change in the purpose of CHCF;
- Transaction described as an alienation by canon law (a transfer of stable patrimony⁹) above the threshold amount approved by the United States Conference of Catholic Bishops;
- Dissolution of CHCF; and
- Changes in the statutes of CHCF.

Id., Ex. F, Art. Five. The Congregation also:

⁸ “Temporal goods” are materials goods of the world, while “ecclesiastical goods” are goods of the Church. Temporal goods of a Public Juridic Person are ecclesiastical goods which must be used for Church purposes and are subject to canon law. *Codex Iuris Canonici*, Code cc.1254, 1257 § 1 (1983).

⁹ Stable patrimony is immovable or fixed capital owned by a Public Juridic Person, which includes lands and buildings, long-term investments and endowments, and restricted funds set aside for a specific purpose. Fr. Frank Morrissey, *What is Stable Patrimony?*, Health Progress, Mar. – Apr. 2008, available at <http://www.chausa.org/docs/default-source/health-progress/canon-law---what-is-stable-patrimony-pdf.pdf?sfvrsn=0>.

- Maintains vigilance that the integrity of faith and morals is preserved and the activities of CHCF is for the common good;
- Receives the annual report of CHCF; and
- Monitors the use of the temporal goods of CHCF to ensure that the use is in accord with the purpose of CHCF.

Id. CHCF is also accountable directly to the Holy See, which must approve any changes to the Statutes of CHCF. *Id.*, Ex. F, Art. Ten.

CHCF's "governing body" consists of individuals who are called Members. The majority of Members must be Roman Catholics. *Id.*, Ex. F, Art. Three. Each Member must take a canonical oath as required in canon law. *Id.* ¶ 10. Under the canonical oath, Members pledge "in keeping with Christ's healing mission . . . loyal support of Catholic health care" and promising "to promote and champion its growth and continuation, to reflect Catholic values, and foster holistic and compassionate care with special regard for the poor and underserved." *Id.*, Ex. C at 8. Members must also participate in formation programs, which involve leadership conferences, educational sessions, as well as small group discussions focused around the Catholic Church's theological roots, social justice tradition, ethical framework, and the foundations of Catholic health care ministry. *Id.* ¶ 10. In addition every three years Members along with invited CHI executive leaders and representatives from the Participating Congregations pilgrimage to Rome. *Id.*, Ex. Q at 1.

CHI's governing board is called the Board of Stewardship Trustees. By virtue of being elected to serve as a Member of CHCF, an individual is seated on CHI's Board of Stewardship Trustees. *Id.*, Ex. E, Secs. 4.1-4.2. The term of each Stewardship Trustee

coincides with that individual's term as a Member of CHCF. *Id.*, Ex. E, Sec. 4.3. In addition, under canon law, CHCF must approve the purchase, sale, lease, or other form of alienation of any property used by CHI in its health care ministry that is considered stable patrimony owned by CHCF. *Id.*, Ex. E, Sec. 1.6; *Codex Iuris Canonici*, Code cc.1291-92 (1983).

As the Catholic Church "sponsor" of CHI and its market-based organizations, community health service organizations, and those assets managed under Joint Operating Agreements, CHCF is also responsible for ensuring the continuation of the Catholic identity of CHI's health care ministry, including the Church's healing mission and adherence to Catholic doctrine and teachings. *Id.*, Exs. B at 7; C at 4. CHCF does so through training and oversight activities, as detailed in CHCF's Annual Report to the Congregation. These activities include implementing ethics training programs for health care professionals to strengthen understanding of health care ethics, the ERDS and ethics consultation; creating progressive gospel-centered responses to new health care challenges such as community benefit and charity care programs to improve the health and well-being of the communities that CHI serves; expanding the role of mission leaders to advance CHI's Catholic identity in its emerging markets of information technology, home health, and research; ensuring key elements of CHI's Mission and Catholic identity are integral to its decision-making, systems, structures, and processes; holding leadership conferences to strengthen and perpetuate CHI as a Catholic ministry of the Roman Catholic Church; deepening CHI's advocacy commitment based on the

social teachings of the Church to advance the mission, vision, and values of the organization. *Id.*, Ex. P at 24-28.

The ten religious orders that founded CHI (the “Sponsoring Congregations”) have ceded Catholic sponsorship of CHI’s health care ministries to CHCF. However, these religious orders along with other religious orders of the Catholic Church that later joined CHI (collectively, “Participating Congregations”), continue to exercise a certain degree of control over CHI through their right to approve any substantial change in the mission or philosophical direction of CHI, approve amendments to CHI’s Articles of Incorporation or Bylaws relating to the Participating Congregations, participate in the distribution of assets upon the dissolution of CHI; select a representative to exercise these rights and duties, participate in CHI’s advocacy efforts, and participate in Board of Stewardship Trustees meetings. *Id.*, Exs. E, Sec. 3.1; K at 1, 4.

B. The Plan and the Subcommittee

The Plan is a defined benefit pension plan sponsored by CHI. Compl. ¶ 54. By its terms, the Plan “is intended to continue to qualify . . . as a church plan (within the meaning of Code Section 414(e) and ERISA Section 3(33)) exempt from Title I of ERISA.” Lindon Decl., Ex. B at 2. The Plan is administered by the Subcommittee, a subcommittee of the Human Resources Committee of the Board of Stewardship Trustees. *Id.* ¶ 3; Ex. B, Sec. 1.32. In administering the Plan, the Subcommittee “shall be mindful of the Employer’s Philosophy and Mission, and the teachings and tenets of the Roman Catholic Church and of the Sponsoring Congregations of CHI.” *Id.*, Ex. B, Sec.12.2. Members of the Subcommittee are appointed and removed by the Board of

Stewardship Trustees. *Id.*, Exs. B, Sec 12.1; C at 2. The Subcommittee reports to the Human Resources Committee of the Board of Stewardship Trustees at least annually. *Id.*, Ex. C at 6. The Subcommittee begins each meeting with a reflection as CHI believes that whenever three or more gather, God is also present. The reflection centers around the purpose of coming together, CHI's mission, and how the meeting relates to CHI's ministry of healing. *Id.* ¶ 3; Ex. D at 1.

C. The Plan's Favorable IRS Private Letter Ruling

In 2002, the IRS issued a ruling confirming that the Plan qualifies as a church plan because it is controlled by or associated with the Catholic Church. Lindon Decl., Ex. E. Citing IRC §§ 414(e)(3)(B) and (C), the IRS further determined that employees of CHI are deemed to be employees of the Catholic Church. *Id.* The IRS also found that the committee that administers the Plan was controlled by or associated with the Catholic Church and had the primary purpose of administering the Plan within the meaning of IRC § 414(e)(3)(A).¹⁰ *Id.* The IRS concluded that the Plan has been a church plan since its establishment.¹¹ *Id.*

III. LEGAL STANDARD

Plaintiff has the burden of demonstrating subject matter jurisdiction to avoid dismissal under Rule 12(b)(1), and a court must determine whether it has subject matter jurisdiction before addressing the merits of the complaint. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95, 104 (1998). On a 12(b)(1) motion, this Circuit

¹⁰ 26 U.S.C. § 414(e)(3) is substantially identical to ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

¹¹ As the "authority on the interpretation and application of the Internal Revenue Code," the IRS has the authority to determine whether a plan qualifies as a "church plan" within the meaning of Section 414 of the Code, which is parallel to Section 1002(33) of ERISA. *Tualatin Valley Builders Supply, Inc. v. United States*, 522 F.3d 937, 942 (9th Cir. 2008).

permits Defendants to challenge the facts in the complaint, and “a district court may not presume the truthfulness of the complaint’s factual allegations.” *Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995). In a factual challenge, a court has “wide discretion” to allow “affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts.”¹² *Id.*

Courts reviewing a motion to dismiss under Rule 12(b)(6) “must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff,” *Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1215 (10th Cir. 2007), but are not bound to accept the legal conclusions of the non-moving party. *Berneike v. CitiMortgage, Inc.*, 708 F.3d 1141, 1144 (10th Cir. 2013).

IV. **ARGUMENT**

A. **Counts I-VII Fail as a Matter of Law Because the Plan is a Church Plan.**

Whether the Plan is a church plan as defined by ERISA is dispositive of Counts I - VII, which allege violations of ERISA. *Thorkelson v. Publ’g House of the Evangelical Lutheran Church in Am.*, 764 F. Supp. 2d 1119, 1124 (D. Minn. 2011) (“Whether or not the Plan is a ‘church plan’ as defined by ERISA is dispositive with respect to the claims asserted thereunder, as ERISA’s provisions do not apply to such plans”). Because the Plan is a church plan, the Court lacks subject matter jurisdiction over Counts I – VII.

1. **ERISA’s Church Plan Exemption Applies to Plans Established or Maintained by Non-Church Entities.**

Congress created ERISA’s church plan exemption because of its concern that

¹² If the Court converts CHI’s Rule 12(b)(1) motion to a motion for summary judgment under Rule 56, CHI requests that it “be given a reasonable opportunity to present all the material that is pertinent to the motion” as required under Rule 12(d) of the Federal Rules of Civil Procedure.

imposing ERISA's complex requirements on church plans might generate unwarranted intrusions into "the confidential relationship that is believed to be appropriate with regard to churches and their religious activities." S. Rep. No. 93-383 at 81 (1973). At its initial adoption in 1974, the church plan exemption applied only to plans established and maintained by churches. ERISA § 3(33), 29 U.S.C. § 1002(33)(C) (1974).

Amendments to ERISA in 1980 broadened the definition of a "church plan" to include plans established and maintained by non-profit entities that are "controlled by" or "associated with" a church, with the addition of the definition of "employee" in ERISA § 1002(33)(C)(ii)(II). Pension Benefit Guaranty Corp., Pub. L. No. 96-364 § 407, 94 Stat. 1208 (1980). ERISA's current definition of a "church plan" provides, in relevant part:

- (A) The term "church plan" means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches *which is exempt from tax under section 501 of Title 26.*
- (C) For purposes of this paragraph—
 - (i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches *includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.*
 - (ii) *The term employee of a church or a convention or association of churches includes—*
 - (II) *an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of Title 26 and which is controlled by or associated with a church or a convention or association of*

churches;

- (iii) A church or a convention or association of churches which is exempt from tax under section 501 of Title 26 *shall be deemed the employer of any individual included as an employee under clause (ii).*
- (iv) *An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or associations of churches.*

29 U.S.C. § 1002(33) (emphasis added).

Plaintiff erroneously claims that only a church may establish and maintain a church plan. Compl. ¶¶ 70 – 72. Plaintiff’s interpretation has been rejected by every court to consider the issue, as well as by the IRS and Department of Labor (“DOL”). In *Thorkelson*, the District of Minnesota rejected the exact argument Plaintiff makes here. 764 F. Supp. 2d at 1119. The plaintiffs in *Thorkelson* argued that a defined benefit plan was not a church plan because it was sponsored by Augsburg Fortress Publishers (“AFP”), a Lutheran publisher. *Id.* at 1125. AFP argued that ERISA §1002(33)(C) broadens the definition of a church plan to include plans of a tax-exempt organization that is controlled by or associated with a church, and the court agreed. *Id.* at 1125, 1127.

In *Thorkelson*, the court reached its decision by analyzing the statutory language, case law, and agency guidance. Looking to the statutory text, the court found that “the statute’s plain language does not support Plaintiff’s interpretation” that a church plan must be established by a church. *Id.* at 1129. The court then turned to case law and agency guidance, and found that they “support this straightforward interpretation of the

relevant ERISA language – that this analysis should focus on whether the Plan is sponsored by a tax-exempt entity and whether such entity is controlled by or associated with a church.” *Id.* at 1127.¹³

2. The Plan is a Church Plan under ERISA Because CHI is a Tax-Exempt Entity Controlled By and Associated with the Roman Catholic Church.

To qualify as a church plan, the Plan must be (1) sponsored by a Section 501 tax-exempt organization that is (2) controlled by or associated with a church. 29 U.S.C. § 1002(33); *see also Thorkelson*, 764 F. Supp. 2d at 1127. The Plan satisfies both requirements.

a. CHI is a Section 501(c)(3) Non-Profit Corporation.

CHI is a tax-exempt, nonprofit Colorado corporation organized under 26 U.S.C. § 501(c)(3). Compl. ¶ 20; Martin Decl., Ex. K.

b. The Catholic Church Exercises the Requisite Degree of Control Over CHI.

Courts have found that an organization is “controlled by” a church within the

¹³ *See also, Chronister v. Baptist Health*, 442 F.3d 648, 652 (8th Cir. 2006) (“In this case, we must determine whether Baptist Health is controlled by or associated with the Baptist church or convention or association of churches, giving rise to an exception from ERISA’s governance”); *Lown v. Cont’l Cas. Co.*, 238 F.3d 543, 547 (4th Cir. 2001) (“[A] plan established by a corporation associated with a church can still qualify as a church plan.”); *Rinehart v. Life Ins. Co. of N. Am.*, C08-5486-RBL, 2009 WL 995715, *3 (W.D. Wash. Apr. 14, 2009) (“ERISA brings a plan established or maintained by a non-church organization within the general definition of a ‘church plan’ if that organization is ‘controlled by’ or ‘associated with’ a church”) (citation omitted); *Welsh v. Ascension Health*, 3:08-cv-348-MCR/EMT, 2009 WL 1444431, *6 (N.D. Fla. May 21, 2009) (following *Rinehart*); *Catholic Charities of Maine v. City of Portland*, 304 F. Supp. 2d 77, 85-86 (D. Me. 2004) (holding that a plan established and maintained by a non-church entity was a church plan because its sponsor was controlled by and associated with the Catholic Church); DOL Adv. Op. No. 94-04A (Mar. 8, 1994) (finding a church plan where the plan was sponsored by tax-exempt hospital organization controlled by or associated with the Roman Catholic Church); DOL Adv. Op. No. 94-05A (Mar. 8, 1994) (same); DOL Adv. Op. No. 94-09A (Mar. 17, 1994) (same); DOL Adv. Op. No. 95-13A (same); IRS PLR. 201319036 (Feb. 8, 2013) (plan maintained by hospitals is church plan because hospital is associated with a church and maintained by a pension committee). Although DOL and IRS interpretations are not binding on the Court, they do carry weight. *Williams v. Wright*, 927 F.2d 1540, 1545 (11th Cir. 1991) (“[T]he views of the agency entrusted with interpreting and enforcing the ERISA statute carry considerable weight”); *see also Estate of Monroe v. C.I.R.*, 124 F.3d 699, 709-10 (5th Cir. 1997) (while private letter rulings may not be cited as precedent, they are “properly cited as evidence of how the Commissioner has interpreted the law in the past”).

meaning of Section 1002(33)(C)(ii) when the church exercises corporate control over the entity, such as control over the appointment of a majority of the non-church organization's board of directors. *Chronister*, 442 F.3d at 652 (“For example, an organization is controlled by a church when a majority of the officers or directors are appointed by a church’s governing board or by officials of a church”).¹⁴

Church control over a non-church organization may also be established by a church’s right to amend or repeal the Articles of Incorporation or Bylaws of the non-church organization; adopt or change the non-church organization’s mission, philosophy, and values; and approve the acquisition of assets, the incurrence of debt, and the dissolution or merger with another entity. *Rinehart*, 2009 WL 995715, at *4 n.10.¹⁵ In addition, an organization may be controlled by a church even when that control is indirect. *Okerman v. Life Ins. Co. of N. Am.*, CIV-S-00-0186 GEBPAN, 2001 WL 36203082, *4 (E.D. Cal. Dec. 21, 2001) (control found where church controls various organizations that control entity that in turn controls hospital).

These factors demonstrate that the Catholic Church has the necessary control over CHI for purposes of the ERISA definition of church plan. Members of CHI’s board of directors, the Board of Stewardship Trustees, are seated by virtue of being elected as Members of CHCF, an entity of the Catholic Church that operates in the name of the

¹⁴ See also *Lown*, 238 F.3d at 547 (same); *Catholic Charities of Maine*, 304 F. Supp. 2d at 85 (“Courts have interpreted [controlled by] as referring to corporate control, such as church control over appointment of a majority of the non-church organization’s officers or Board of Directors”); *Rinehart*, 2009 WL 995715, at *4 (health system controlled by Catholic Church where order of religious sisters had power to appoint and remove board members). The IRS regulation interpreting the analogous provision under the Code, 26 U.S.C. § 414(e)(3)(B)(ii), similarly provides that “an organization, a majority of whose officers or directors are appointed by a church’s governing board or by officials of a church, is controlled by a church within the meaning of this paragraph.” 26 C.F.R. § 1.414(e)-1(d)(2).

¹⁵ See also *Catholic Charities of Maine*, 304 F. Supp. 2d at 85 (Bishop’s approval needed for Catholic Charities to sell any of its property or assets, suggesting control by Catholic Church).

Catholic Church. Martin Decl., Exs. E, Secs. 4.1-4.2; K at 1; *Codex Iuris Canonici*, Code c.113 § 2, c.116 § 1 (1983). CHCF is accountable to the Congregation (an office of the Holy See). *Id.*, Ex. F, Arts. Five, Ten. The Board of Stewardship Trustees are the same individuals as the Members of CHCF, and the majority of the Board must be Roman Catholics.¹⁶ *Id.*, Exs. H, Secs. 5.2.1, 6.1; F, Art. Three. In addition, under canon law, CHCF must approve the purchase, sale, lease, or other form of alienation of any property used by CHI in its health care ministry that is considered stable patrimony. *Id.*, Ex. E, Sec. 1.6; *Codex Iuris Canonici*, Code cc.1291-92 (1983).

The Catholic Church also exercises a certain degree of control over CHI through the Participating Congregations. The Participating Congregations must approve any substantial change in the mission or philosophical direction of CHI; approve amendments to CHI's Articles of Incorporation or Bylaws relating to the Participating Congregations; participate in the distribution of assets upon the dissolution of CHI; select a representative to exercise these rights and duties; participate in CHI's advocacy efforts; and participate in Board of Stewardship Trustees meetings. Martin Decl., Exs. E, Sec. 3.1; I at 1, 4.

c. CHI is Associated With the Catholic Church.

¹⁶ The involvement of laity in the leadership of CHCF and CHI does not make their mission and purpose any less Catholic. The Holy See invites the laity to participate actively in Roman Catholic ministries, consistent with Vatican II's mandate. Post-Synodal Apostolic Exhortation *Christifideles Laici* of His Holiness John Paul II, *On the Vocation and the Mission of the Lay Faithful in the Church and in the World*, 1988, available at http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_30121988_christifideles-laici_en.html. In addition, the leaders of CHCF and CHI are educated on the Catholic health care mission and healing ministry. Martin Decl., Ex. Q at 1. Finally, CHCF, and therefore CHI, remains subject to the authority and control of the Congregation. Martin Decl., Ex. F, Arts. Five, Ten.

An organization is “associated with” a church “if it shares common religious bonds and convictions with that church.” 29 U.S.C. § 1002(33)(C)(iv); 26 C.F.R. § 1.414(e)–1(d)(2). The statute provides, and courts have found, that “associated with” is a separate, alternative test from “controlled by,” and that an organization may qualify for the church plan exemption by satisfying either test; it is not required to satisfy both. See 29 U.S.C. § 1002(33)(C)(ii)(II) (a plan is a church plan if the organization is “controlled by **or** associated with a church”) (emphasis added).¹⁷ Thus, because CHI is controlled by the Catholic Church (as shown in part A.2.b. above), the Court does not need to decide the “associated with” question here. But even if Catholic Church control was lacking—which is not the case—CHI’s close affiliation with the Church unquestionably satisfies the “associated with” test, as shown below.

There is no single definitive test for assessing whether an organization is associated with a church. Rather, courts have looked at a variety of facts and circumstances when determining whether an organization shares common religious bonds and convictions with a church. These factors, while not exhaustive, include whether an entity is listed in the Official Catholic Directory; the involvement of a church or related religious order in the organization’s corporate governance; whether the entity’s business operations comply with and promote the church’s tenets and teachings; and the extent to which the organization adheres to the Ethical and Religious

¹⁷ See *Medellin v. CommunityCare HMO, Inc.*, 787 F. Supp. 2d 1259, 1264 (N.D. Okla. 2011) (explaining that “to qualify as a ‘church plan,’ a plan must be maintained by an organization that is ‘controlled by or associated with’ a church or an association of churches) (emphasis added); *Lown*, 238 F.3d at 548 (stating that even though a hospital failed the control test, its plan could still be a church plan under the associated with test); *Catholic Charities of Maine*, 304 F. Supp. 2d at 84-85 (declining to apply the control test since the charity was undeniably associated with the Catholic Church); *Rinehart*, 2009 WL 995715 at *4 (finding that an organization need only satisfy the “controlled by” or “associated with” test to qualify for the church plan exemption).

Directives for Catholic Health Care Services (“Ethical and Religious Directives” or “ERDs”) in its ordinary course of business.¹⁸ Courts also take note of whether the IRS or DOL has issued interpretive guidance and/or concluded that the plan is a church plan.

Here, CHI undeniably shares common religious bonds and convictions with the Church. First, the Catholic Church has formally recognized CHI as sharing the Church’s common religious bonds and convictions by listing CHI in the Official Catholic Directory. Martin Decl., Ex. L at 375. The Catholic Church also recognized CHI as part of its ministry by including it in the United States Conference of Catholic Bishops’ 2013 group tax exemption issued by the IRS. *Id.*, Ex. K.

CHI’s unequivocal commitment to the Catholic Church’s healing ministry is reflected in its corporate governance structure. As discussed in part A.2.b. above,

¹⁸ See, e.g., *Hall v. USAble Life*, 774 F. Supp. 2d 953, 959-60 (E.D. Ark. 2011) (holding that a medical center was “associated with” the Catholic Church because a religious order established the medical center to promote religion and care for the sick; Mother Superior and Sister of religious order were members of the Board of Directors; religious order provided overall supervision to medical center; the director of pastoral care was Catholic; priests provided sacraments to patients; medical center adhered to the ERDs; was listed in the Official Catholic Directory; and part of Church’s tax group exemption); *Ward v. Unum Life Ins. Co. of Am.*, 2010 WL 4337821 at *2 (E.D. Wis. Oct. 25, 2010) (reasoning that a hospital was “associated with” the Church because the hospital’s purpose was to assist a religious order to achieve its apostolic mission; religious order played key role in the organization; there was a strong relationship between the Church, the religious order, and the hospital; eight out of sixteen members of the hospital’s board were Sisters as well as two of the five officers of the company were Sisters from the religious order; and finding denominational requirement for patients and employees irrelevant to analysis); *Catholic Charities of Maine*, 304 F. Supp. 2d at 85 (finding that non-profit social service organization was “associated with” the Church because its Mission Statement was to “. . . implement the social teachings of Jesus Christ as taught by the Catholic Church”; the local diocese provided financial assistance on an annual basis; and it was listed in the Official Catholic Directory); *Rinehart*, 2009 WL 995715 at *4 (determining that hospital satisfied the associated with test where the hospital’s bylaws required its medical staff to adhere to the ERDs as a condition of employment, the hospital’s medical research was bound by Catholic moral principles, and DOL and IRS both concluded that association with Catholic Church existed); *Okerman*, 2001 WL 36203082 *4 (determining that health system was “associated with” Church since it was sponsored by a religious order; Articles of Incorporation stated that organization’s the primary purpose was “to conduct all of the activities . . . in a manner consistent with and supportive of the Mission and Philosophy of” various Catholic Congregations; members of the religious order sat on board of directors; and entity was listed in the Official Catholic Directory).

CHI was founded by religious orders that consolidated three health care systems into one national health care system. Martin Decl., Ex. D at 110-11. These founding religious orders remain a vital part of the organization by approving substantial changes in CHI's mission, sitting on committees, and appointing representatives. *Id.*, Exs. E, Sec. 3.1; I at 1, 4. By virtue of being elected to serve as a Member of CHCF, the Catholic canonical entity which sponsors CHI, an individual is seated on CHI's board of directors (Board of Stewardship Trustees). Thus, CHI's board of directors is comprised of the same individuals as the Members of CHCF, and the majority of the Board must be Roman Catholics.¹⁹ *Id.*, Exs. H, Secs. 5.2.1, 6.1; F, Art. Three. Further, CHCF has the power to elect and remove members of CHI's board of directors as well as the authority to approve certain transactions involving property as used by CHI in its health care ministry. *Id.*, Ex. E, Sec. 1.6.

CHI's significant affiliation with the Catholic Church is also reflected in its articles of incorporation, bylaws, and official policies. For instance:

- **CHI Mission Statement** is “to nurture the healing ministry of the Church by bringing it new life, energy, and viability in the 21st century. Fidelity to the Gospel urges us to emphasize human dignity and social justice as we move toward the creation of healthier communities.” Martin Decl., Ex. E, Sec. 1.2.
- **CHI Bylaws Explain its Close Ties with the Catholic Church:** “[CHI] was founded by Religious Institutes of the Roman Catholic Church. Health and human services are among the ministries of these Religious Institutes.” *Id.*, Ex. E, Sec. 1.4.

¹⁹ The involvement of laity in the leadership of CHCF and CHI does not make their mission and purpose any less Catholic. The Holy See invites the laity to participate activity in Roman Catholic ministries, consistent with Vatican II's mandate. Pope John Paul II, *On the Vocation and the Mission of the Lay Faithful in the Church and in the World (Christifideles Laici)*, 1988, available at http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_30121988_christifideles-laici_en.html. In addition, the leaders of CHCF and CHI are educated on the Catholic health care mission and healing ministry. Martin Decl., Ex. Q at 1. Finally, CHCF, and therefore CHI, remains subject to the authority and control of the Congregation. Martin Decl., Ex. F, Arts. Five, Ten.

- **CHI Bylaws Describe the Role of the Religious Orders in the Organization:** “Religious Institutes of Consecrated Life of the Roman Catholic Church that agree to accept the mission and vision of the Corporation, that comply with such other requirements as may be established by the Board of Stewardship Trustees, and that are approved pursuant to this Section 3.1.” *Id.*, Ex. E, Sec. 3.1.
- **CHI Articles of Incorporation Illustrate its Catholic Sponsorship:** CHI is “sponsored by Catholic Health Care Federation, a public juridic person within the meaning of canon law.” *Id.*, Ex. J, Art. Five.
- **CHI’s Core Values and Ethics Guide Establish its Commitment to the Catholic Church’s Healing Ministry** by “. . . creating healthy communities and defending the human dignity of each community member, especially the poor and underserved.” *Id.*, Ex. M at 6.

Consequently, CHI’s common religious bonds and convictions with the Catholic Church are embodied in its corporate structure and governing documents.

Plaintiff argues that CHI is not “associated with” the Catholic Church because it allegedly does not require its employees to be Catholic, Compl. ¶ 77; provides non-denominational worship spaces in its facilities, Compl. ¶ 78; and encourages patients to reach out to non-Catholic religious advisers in their time of need, Compl. ¶ 78. Contrary to Plaintiff’s allegations, a church is not required to impose a denominational requirement on its employees to qualify for the church plan exemption.²⁰ Thus, CHI supports the Catholic Church’s healing ministry by hiring the most qualified individuals, regardless of their religion, to treat the sick.

Moreover, to discriminate against non-Catholics as Plaintiff suggests would run afoul of Catholic tenets and teachings. Pope Paul VI recognized that Catholics should

²⁰ See *Catholic Charities of Maine*, 304 F. Supp. 2d at 85 (notwithstanding that Catholic Charities did not impose a denominational requirement on its employees, court found plan was a church plan); *Ward*, 2010 WL 4337821 at *2 (“it is difficult to imagine a health provider that would discriminate against non-Catholic patients and hire only Catholic doctors, nurses and other staff. In fact the statutory test does not ask about the employees and patients or customers but about the organization itself...”).

engage in fellowship and promote unity among all men regardless of religion: “The Church reproves, as foreign to the mind of Christ, any discrimination against men or harassment of them because of their race, color, condition of life, or religion.”²¹

Accordingly, CHI promotes Catholic teachings by providing care medical, spiritual, and holistic care its patients regardless of their religion. Martin Decl., Ex. N at 2.

CHI is committed to Roman Catholic values and also operates its business in a manner that complies with the Church’s mission to heal the sick and serve the poor. Plaintiff argues that CHI is not “associated with” the Catholic Church because it allegedly partners in economic joint ventures with non-Catholics, Compl. ¶¶ 5, 76, 77; performs or authorizes medical procedures which violate Catholic doctrine, such as tubal ligation and vasectomies, Compl. ¶¶ 52, 77; defended a malpractice suit where, according to Plaintiff, it argued that a fetus was not a person, and therefore the fetus’ death did not give rise to malpractice liability,²² Compl. ¶ 78; owns a captive insurance company, Compl. ¶ 78; invests in fixed-income securities, equity securities, and hedge funds, Compl. ¶ 78; and discloses its highly complex financial records, Compl. ¶53.

²¹ Pope Paul VI, *Declaration of Relation of the Church to Non-Christian Religions*, 1965, available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_nostra-aetate_en.html.

²²The case Plaintiff refers to is *Stodghill v. Pelner, M.d.*, 2010 WL 9103730 (D. Col. Dec. 5, 2010). At oral arguments, CHI, through its attorneys, cited to the Colorado Wrongful Death Act which provides, as a matter of established state law, that a “person” does not include a fetus which was not born or delivered alive. CRS § 13-21-202. Plaintiff takes this citation out of context and ask this Court to make an illogical leap that by merely referring to this statute, CHI deviated from the moral and social teachings of the Church, and thus is no longer “associated with” the Church. This argument is without substance. First, the plaintiff’s argument in *Stodghill* turned on whether Colorado law recognized the personhood of a fetus such that the fetus’ death would give rise to medical malpractice liability—not whether CHI believed that a fetus was a person or not. 2010 WL 9103730 at *2. CHI “has never stated that a fetus is not a person; this position would contradict the ethical foundation of its health care ministry and would diametrically oppose the moral and social teachings of the Catholic Church.” Martin Decl. ¶ 8. CHI strictly adheres to the moral and social obligations of the Church in every respect, including as it pertains to the dignity and sanctity of human life, which begins at the moment of conception. *Id.*

Contrary to Plaintiff's assertions, CHI strictly adheres to the principles and directives set out in the Ethical and Religious Directives for Catholic Health Care Services ("Ethical and Religious Directives" or "ERDs") as promulgated by the United States Conference of Catholic Bishops. The purpose of the ERDs is to reaffirm the ethical standards of behavior in health care that flow from the Church's teaching about the dignity of the human person. Martin Decl., Ex. M at 49. The ERDs also provide guidance in applying the medical-moral teachings of the Catholic Church when handling ethical issues or complex decisions. *Id.*

Services provided in CHI's hospitals and health care facilities must comply with the ERDs and Catholic social teachings and principles. *Id.*, Exs. M at 32; N at 2. Specifically, CHI's many affiliation agreements and employment contracts require employees, independent contractors, agents, vendors, third-parties, affiliates, and individuals associated with CHI to abide by the ERDs as a condition of such employment and/or engagement. *Id.*, Ex. O at 1. Further, any partnerships or joint ventures it forms with other organizations must support Catholic values and the Church's mission and cannot cause CHI to be out of compliance with the ERDs. *Id.*

Failure to comply with the ERDs, as provided in CHI's Core Values and Ethics Reference Guide for Employees ("Ethics Guide") and each affiliation agreement is deemed a material breach of employment and may result in disciplinary action including suspension, termination of employment, termination of contractual relationship or removal from office or board membership, or prosecution, and assessment of substantial fines. *Id.*, Ex. M at 49. Therefore, CHI is committed to conducting its

business in a way that abides by the values and principles of the Catholic Church's healing ministry.

In addition, the IRS has long taken the position that an organization listed in the Official Catholic Directory shares common religious bonds and convictions with the Catholic Church and is, generally, deemed "associated with" the Catholic Church within the meaning of the church plan exception. See, e.g., PLR 8315054; PLR 8326165 ("Any organization listed in [the Official Catholic Directory] is considered associated with the Roman Catholic Church in the United States"). The IRS applied that principle here as one basis for confirming the CHI Plan's status as a church plan. Lindon Decl., Ex. E.

Plaintiff's subjective view on whether CHI is sufficiently Catholic is, ultimately, not relevant to the "associated with" test. Rather, the question is whether the Roman Catholic Church has officially recognized CHI as sharing common religious bonds and convictions with the Church. Here, the Church (acting through the Congregation) determined that CHI complies with Catholic doctrine and teachings, and has listed it in the Official Catholic Directory. CHI's unequivocal commitment to the Church's healing ministry is reflected through its corporate structure. The original religious orders that founded CHI remain a vital part of the organization by being Members of CHCF, and by virtue of being Members of CHCF, sitting on CHI's Board of Stewardship Trustees. CHI's articles of incorporation, bylaws, and official policies also reflect its commitment to the Church's mission. CHI promotes Catholic teachings by employing the most qualified health care professionals and by providing care to its patients regardless of religion. CHI strictly adheres to the ERDs in operating its business. In short, CHI

irrefutably shares common religious bonds and convictions with the Catholic Church, and thus is associated with the Catholic Church within the meaning of 29 U.S.C. § 1002(33)(C)(iv).

3. The Plan Also Qualifies As a Church Plan Because it is Maintained By a Non-Church Entity Associated With or Controlled By a Church with the Principal Purpose of Administering a Retirement Plan.

A plan also qualifies as a church plan if it is maintained by a non-church organization controlled by or associated with a church that has the principal purpose of administering a retirement plan. 29 U.S.C. § 1002(33)(C)(i). Despite Plaintiff's suggestion to the contrary (Compl. ¶¶ 33, 35), the statute does not require that the plan administrator be an incorporated entity or trust. The statute instead provides that the administrator may be "a civil law corporation *or otherwise.*" *Id.* (emphasis added). See also *Thorkelson*, 764 F. Supp. 2d at 1129 (finding church plan where plan administered by pension committee of a publisher associated with a church). Further, Plaintiff's claim that Section 1002(33)(C)(i) only applies to plans that are established by a church (Compl. ¶¶ 32-34) is wrong. Every court to consider the issue has recognized that this section also applies to plans established by a non-church organization.²³ DOL agrees.²⁴

²³ See, e.g., *Welsh*, 2009 WL 1444431 at *6 ("[T]here are two ways in which a plan established by a corporation that is controlled by or associated with a church can qualify as a church plan. 29 U.S.C. § 1002(33)(C)(i) provides the first means"); *Rinehart*, 2009 WL 995715, at *3-4 (same); *Catholic Charities of Maine, Inc.*, 304 F. Supp. 2d at 86 n.4 (same).

²⁴ The DOL has issued dozens of advisory opinions finding that Section 1002(33)(C)(i) applies to plans established by a non-church organization. See, e.g., DOL Adv. Op. Nos. 96-19A (Sept. 30, 1996), 95-30A (Dec. 7, 1995), 95-13A (Jun. 19, 1995), 95-12A (Jun. 19, 1995), 95-10A (Jun. 16, 1995), 95-09A (Jun. 16, 1995), 95-08A (Jun. 16, 1995), 95-07A (Jun. 16, 1995), 95-02A (Mar. 6, 1995), 94-36A (Nov. 10, 1994), 94-34A (Nov. 3, 1994), 94-18A (May 23, 1994), 94-16A (Apr. 20, 1994), 94-15A (Apr. 20, 1994), 94-13A (Apr. 4, 1994), 94-12A (Apr. 4, 1994), 94-11A (Mar. 23, 1994), 94-10A (Mar. 17, 1994), 94-09A (Mar. 17, 1994), 94-08A (Mar. 17, 1994), 94-06A (Mar. 8, 1994), 94-05A (Mar. 8, 1994), 94-04A (Feb. 17, 1994), 93-08A (Mar. 9, 1993), 93-07A (Mar. 9, 1993), 93-03A (Jan. 12, 1993), 93-01A (Jan. 6, 1993), 92-09A (Mar. 24, 1992), 91-46A (Dec. 20, 1991), 91-41A (Nov. 12, 1991), 91-22A (Jul. 3, 1991), 91-

The Plan at issue here similarly qualifies as a church plan because it is administered and maintained by the Subcommittee, which has as its sole purpose the management and administration of the Plan. Lindon Decl., Ex. B, Secs. 1.32, 12.1. The Subcommittee is a subcommittee of the Human Resources Committee of the Board of Stewardship Trustees of CHI, and its members are appointed and may be removed by the Board of Stewardship Trustees, which are one and the same with the Members of CHCF. *Id.*; Ex. B, Sec. 12.1; Ex. C at 2. The Subcommittee reports to the Human Resources Committee at least annually. *Id.*, Ex. C at 6. The Subcommittee begins each meeting with a reflection. *Id.* ¶ 3; Ex. D at 1. In administering the Plan, the Subcommittee “shall be mindful of the Employer’s Philosophy and Mission, and the teachings and tenets of the Roman Catholic Church and of the Sponsoring Congregations of CHI.” *Id.*, Ex. B, Sec. 12.2. In addition, the Subcommittee “shares common religious bonds with the Roman Catholic Church and the Sponsoring Congregations of CHI.” *Id.* Based on these characteristics, the Subcommittee is at least associated with, if not controlled by, the Catholic Church.

B. Even If the Plan Failed to Meet Certain Requirements of a Church Plan, It May Correct Its Failure With the Treasury Department.

Even if the CHI Retirement Plan failed to meet certain requirements of a church plan (which it does not), it is permitted by statute to retroactively correct its failure. In keeping with the purpose of the church plan exemption to avoid unwarranted government intrusions into religious matters, Congress granted plans the ability to

14A (Mar. 6, 1991), 91-13A (Feb. 26, 1991), 91-12A (Feb. 26, 1991), 91-11A (Feb. 26, 1991), 91-10A (Feb. 26, 1991), 90-13A (May 10, 1990), 90-12A (May 10, 1990).

correct any defects prior to forfeiture of their church plan status. ERISA § 3(33)(D)(i) and IRC § 414(e)(4)(A) both provide that if a plan fails to meet the church plan requirements, the plan is entitled to correct the failure within a defined correction period.²⁵ If a correction is timely made, the plan will be deemed to qualify as a church plan for the year in which the correction is made **and all prior years**. *Id.*²⁶ Here, if the Plan were determined by the Court not to qualify as a church plan, CHI would be entitled to retroactively correct the defect within at least 270 days after the Court's determination. Thus, Plaintiff's claims for equitable relief, money penalties for failure to comply with ERISA, or other remedies would fail.

C. Count VIII Fails as a Matter of Law Because ERISA's Church Plan Exemption Does Not Violate the Establishment Clause.

Plaintiff asserts that applying the church plan exemption to CHI violates the First Amendment Establishment Clause "because it harms CHI workers, puts CHI competitors at an economic disadvantage, and relieves CHI of no genuine religious burden created by ERISA." Compl. ¶ 85. Plaintiff's allegation is insufficient to state an Establishment Clause claim as a matter of law. Nearly 40 years ago, Congress consciously exempted churches from ERISA in order to prevent excessive government entanglement in religion. Since then, no court has held or even suggested that the exemption violates the Establishment Clause. Rather, courts have repeatedly

²⁵ IRC § 3(33)(b)(i) and 414(c)(4)(C) define the correction period to be the later of: (1) the period ending 270 days after the date the Secretary of the Treasury mails a notice of default with respect to the plan's failure to meet one of the requirements; (2) any period set by a court of competent jurisdiction after it makes a final determination that the plan fails to qualify, or if it does not set a period, any reasonable period set by the Secretary of the Treasury, but it cannot be less than 270 days after the final determination; or (3) any additional period that the Secretary of the Treasury determines is reasonable or necessary for correction of the default.

²⁶ See also IRS PLR 9411045 (allowing plan to correct administrative committee requirement defect and granting church plan status retroactively); IRS PLR 9217045 (plan could correct by terminating a non-exempt employer's participation in the plan within the correction period).

acknowledged the need for statutory exemptions, such as the church plan exemption, to avoid entangling the federal government in religious matters. *See, e.g., Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 334 (1987). As a final point, applying the church plan exemption to CHI satisfies the controlling Establishment Clause test as articulated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Thus, the Court should dismiss this count for failure to state a claim upon which relief may be granted.

The Supreme Court has recognized that government may, and, in certain circumstances, must, accommodate religion by alleviating regulatory burdens on religiously affiliated entities. *See, e.g., Amos*, 483 U.S. at 334-40 (upholding Title VII's religious organization exemption as applied to a religious organization's nonprofit secular activities). In assessing whether an accommodation violates the Establishment Clause, courts apply the *Lemon* test. 403 U.S. at 612. To satisfy the *Lemon* test, (1) the statute must have a secular legislative purpose; (2) its principal or primary effect must be one that neither advances nor inhibits religion; and (3) the statute must not foster excessive government entanglement with religion. *Id.* Here, the church plan exemption passes constitutional muster under the *Lemon* test because it keeps church and state separate, and therefore does not violate the Establishment Clause.

1. The Exemption Has a Secular Legislative Purpose.

The secular legislative purpose requirement prevents Congress from enacting laws with the *purpose* of endorsing or disapproving of religion. *See Stratechuk v. Bd. Of Educ., S. Orange-Maplewood Sch. Dist.*, 587 F.3d 597, 604 (3d Cir. 2009). However, "it

is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions.” *Amos*, 483 U.S. at 335. In this regard, Congress sought to prevent impermissible government interference in religion by exempting churches and their affiliated organizations from ERISA.²⁷ Thus, while Plaintiff may desire CHI’s Retirement Plan to comply with copious regulation administered by the DOL and IRS, due to the exemption, CHI has exclusive discretion to determine how to operate its Plan, free from excessive government scrutiny. Accordingly, the first *Lemon* prong is satisfied.

2. The Principal or Primary Effect of the Exemption Neither Advances Nor Inhibits Religion

The principal or primary effect inquiry focuses on whether the government itself has advanced religion through its own activities or influence. *Amos*, 483 U.S. at 337 (“[A] law is not unconstitutional simply because it allows churches to advance religion, which is their very purpose.” Rather, a law has forbidden effects if “the government itself has advanced religion through its own activities or influence.”) While the church plan exemption preserves CHI’s ability to carry out its *own* religious mission, Plaintiff fails to show that government *itself* advance religion through the church plan exemption. To the contrary, if Plaintiff did contend that religion was impermissibly advanced this would contradict Plaintiff’s own allegation that the exemption “relieves CHI of no genuine religious burden created by ERISA.” Compl. ¶ 85. Thus, the second *Lemon* prong is met.

²⁷ In 1974, when we enacted [ERISA], we exempted church plans from the provisions of the act to avoid excessive Government entanglement with religion in violation of the first amendment to the Constitution. 124 Cong. Rec. H12106 (daily ed. May 2, 1978).

3. The Exemption Avoids Excessive Government Entanglement With Religion.

Finally, the excessive entanglement inquiry centers on “whether government involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement.” *Walz*, 397 U.S. 664, 675 (1970). Here, the church plan exemption has the effect of *minimizing* government entanglement in church matters because CHI is exempt from ERISA’s complex disclosure and filing requirements. Therefore, the third *Lemon* prong is fulfilled. Because all three prongs of the *Lemon* test are satisfied, Plaintiff’s Establishment Clause claim must fail.

V. CONCLUSION

For the above reasons, the Court should grant defendants’ motion to dismiss.

Dated: July 30, 2013

Respectfully submitted,

s/ Lars C. Golumbic

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CERTIFICATE OF SERVICE

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