IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

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

Plaintiff,

v.

CATHOLIC HEALTH INITIATIVES, a Colorado Non-profit Corporation,
PATRICIA G. WEBB, an individual,
CAROL KEENAN, an individual, and
JOHN AND JANE DOES, each an individual, 1-20

Defendants.

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**MINUTE ORDER**

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**ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX**

This matter is before the Court on Defendants' **First Amended Motion to Dismiss With Memorandum in Support** [Docket No. 43; Filed August 2, 2013] (the "Motion"). The Motion was filed pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Generally, a court may not consider documents or other evidence outside of plaintiff's complaint in deciding a motion to dismiss pursuant to Rule 12(b)(6) without converting it to a Rule 56 motion for summary judgment. *Dean Witter Reynolds, Inc. v. Howsam*, 261 F.3d 956, 961 (10th Cir. 2001), *rev'd on other grounds*. There are certain exceptions to this general rule. *See Pringle v. United States*, 208 F.3d 1220, 1222 (10th Cir. 2000) (documents relating to a factual attack on the court's subject matter jurisdiction may be considered, but court must convert motion to dismiss into motion for summary judgment when "resolution of the jurisdictional question is intertwined with the merits of the case."); *Tal v. Hogan*, 453 F.3d 1244, 1265 n.24 (10th Cir. 2006) (documents subject to judicial notice may be taken into account without converting a motion to dismiss into a motion for summary judgment); *GFF Corp. v. Associated Wholesale Grocers*, 130 F.3d 1381, 1384 (10th Cir. 1997) (documents referred to in the complaint that are central to plaintiff's claims may be considered by the court when considering a motion to dismiss). Defendants appear to believe that the Declaration of Troy Lindon [#32], Declaration of Peggy Martin [#24], and all of the associated exhibits can be properly considered by the Court because part of the Motion challenges the Court's subject matter jurisdiction pursuant to Rule 12(b)(1). *Motion* [#23] at 11-12. The Court disagrees and finds that the Motion should be converted into a motion

for summary judgment.

Even though a motion to dismiss for lack of subject matter jurisdiction generally cannot be converted into a motion for summary judgment pursuant to Rule 56, *Wheeler v. Hurdman*, 825 F.2d 257, 259 (10th Cir. 1987), *cert. denied*, 484 U.S. 986 (1987), such a motion can be converted into a motion for summary judgment "[i]f the jurisdictional question is intertwined with the merits of the case." *Id*. "When subject matter jurisdiction is dependent upon the same statute which provides the substantive claim in the case, the jurisdictional claim and the merits are considered to be intertwined." *Id*. Here, the Complaint alleges that the Court has jurisdiction "pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States and pursuant to 29 U.S.C. § 1132(3)(1), which provides for federal jurisdiction of actions brought pursuant to Title I of ERISA." *Compl*. [#1] at ¶ 13. The Complaint, among other things, seeks a declaratory judgment that Defendant Catholic Health Initiatives' benefit plans "are not Church Plans within the meaning of ERISA section 3(33) . . ., and thus are subject to the provisions of Title I and Title IV of ERISA." *Compl*. [#1] at ¶ 103. When determining if conversion is appropriate, the Court must consider "whether resolution of the jurisdictional question requires resolution of an aspect of the substantive claim." *Sizova v. Nat. Institute of Standards & Tech.*, 282 F.3d 1320, 1324 (10th Cir. 2002). Defendants' argument for dismissal pursuant to Rule 12(b)(1) is that "[b]ecause the Plan is a church plan, the Court lacks subject matter jurisdiction over Counts I - VII." *Motion* [#23] at 12. Therefore, it is clear that the jurisdictional question is intertwined with the merits of the case. *See, e.g., Redmon By & Through Redmon,* 934 F.2d at 1155 (finding that "determination of whether the FTCA excepts the government's actions from its waiver of sovereign immunity involves both jurisdictional and merits issues").

Typically, the Court must provide the parties with notice that it intends to convert a Rule 12 motion to dismiss into a Rule 56 motion for summary judgment to avoid unfair surprise. *See Nichols v. United States*, 796 F.2d 361, 364 (10th Cir.1986). The parties are hereby notified that the Court will convert Defendant's Motion [#43] into a motion for summary judgment pursuant to Rule 56. Accordingly,

IT IS HEREBY **ORDERED** that a Status Conference is **SET** for **September 4, 2013** at **1:30 p.m.** in Courtroom C-204 of the Byron G. Rogers United States Courthouse, 1929 Stout Street, Denver, Colorado. Counsel should be prepared to address the proper scope

and amount of discovery to be conducted regarding the Motion [#43].[1]

Dated: August 5, 2013

[1] The Court notes that even if it did not convert the Motion into a motion for summary judgment, Plaintiff may still be entitled to take discovery on the factual issues raised by the portion of Defendant's Motion brought pursuant to Rule 12(b)(1). *See Sizova*, 282 F.3d at 1326 ("[w]hen a defendant moves to dismiss for lack of jurisdiction, either party should be allowed discovery on the factual issues raised by that motion"); *see also Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1189 (10th Cir. 2010) (noting that refusal to grant discovery is only reversible error when it is prejudicial to a litigant).