UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

MARILYN OVERALL, on behalf of herself, individually, and on behalf of all others similarly situated, Plaintiff, v. ASCENSION HEALTH, a non-profit corporation; ASCENSION HEALTH ALLIANCE, a non-profit corporation; CATHOLIC HEALTH INVESTMENT MANAGEMENT COMPANY, a non-profit corporation; DEREK BEECHER, an individual; JEAN DEBLOIS, an individual; ERIC FEINSTEIN, an individual; WILLIAM FINLAYSON, an individual; TIMOTHY FLESCH, an individual; TRENNIS JONES, an individual; KATHLEEN KELLY, an individual; ELLEN KRON, an individual; TOM LANGSTON, an individual; LAURA LENTENBRINK, an individual; PATRICK MCGUIRE, an individual; JOSEPH O. MURDOCK, an individual; THERESA PECK, an individual; BARBARA POTTS, an individual; LARRY SMITH, an individual; ANTHONY TERSIGNI, an individual; HERBERT VALLIER, an individual; DOUGLAS WAITE, an individual; FRANK WARNING, an individual; CAROL WHITTINGTON, an individual; and JOHN and JANE DOES 1-20, Defendants.	Civil No. _____ Judicial Officer: _____ **CLASS ACTION COMPLAINT** **CLAIM OF UNCONSTITUTIONALITY**

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Plaintiff Marilyn Overall, individually and on behalf of all those similarly situated, as well as on behalf of the Ascension Plans, as defined herein, by and through her attorneys, hereby alleges as follows:

I. INTRODUCTION

1. Plaintiff agrees that Defendant Ascension Health Alliance, by and through its subsidiaries ("Ascension"), operates a hospital conglomerate in 21 states and the District of Columbia and provides good healthcare services in the communities it serves. That is not what this case is about. Instead, this case is about whether Ascension properly maintains its pension plans under the Employee Retirement Income Security Act ("ERISA"). As demonstrated herein, Ascension fails to do so, to the detriment of its 122,000 employees who deserve better.

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

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

James Wooten, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, at 3 (U. Cal. 2004).

3. This class action is brought on behalf of participants and beneficiaries of defined benefit pension plans maintained by Ascension and operated as or claimed to be "Church Plans" under ERISA (collectively referred to as the "Ascension Plans" or simply the "Plans"). Ascension is violating numerous provisions of ERISA—including underfunding the Ascension Plans by over $444.5 million—while erroneously claiming that the Plans are exempt from ERISA's protections because they are "Church Plans." But none of the Ascension Plans meet

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the definition of a Church Plan because Ascension plainly is not a church or a convention or association of churches and because none of the Ascension Plans were established by a church or convention or association of churches. That should be the end of the inquiry under ERISA, resulting in a clear finding that the Ascension Plans are not Church Plans.

4. Even if, however, these facts were different, and the Ascension Plans could otherwise qualify for Church Plan status, they would be specifically excluded from such status because substantially all of the participants in the Plans are *not* employed by an organization that is controlled by or associated with the Catholic Church, within the meaning of ERISA. Ascension is not controlled by the Catholic Church and is not "associated with" the Catholic Church within the meaning of ERISA because it does not share common religious bonds and convictions with the Catholic Church.

5. A sampling of facts reveals Ascension as a non-profit hospital conglomerate, not unlike other non-profit hospitals. It is not owned or operated by the Catholic Church and does not receive funding from the Catholic Church. Moreover, Ascension deliberately chooses to distance itself from, or even abrogate, many religious convictions of the Catholic Church when it is in its economic interest to do so, such as when it hires employees, partners in economic joint ventures, performs or authorizes medical procedures forbidden by the Catholic Church, invests in various business enterprises, and encourages its clients to seek divergent and even contradictory spiritual support.

A. Employees. With respect to recruiting and hiring its employees—those who then become the Ascension Plan participants—Ascension is regularly asked whether a prospective employee should be Catholic, a question which Ascension unequivocally answers in the negative. Like many employers, Ascension promotes itself by insisting

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that it hires regardless of whether there are any common religious convictions. In other words, Ascension recruits retirement plan participants, in part, by assuring them that their religiosity, or absence thereof, is not relevant.

B. Joint Venture Partners. With respect to its partnering in various for-profit ventures, Ascension similarly does not require religious convictions common to the Catholic Church. For example, Ascension Health Care Network is a joint venture between Ascension Health and Oak Hill Capital Partners, a private equity firm, to provide an alternative funding source for the acquisition of non-profit hospitals and other healthcare provider entities which will be converted to for-profit entities. Ascension also entered into a partnership with Narayana Hrudayalaya Hospitals of India to build a $2 billion for-profit healthcare city in the Grand Cayman Islands.

C. Medical Procedures. Hospitals inside of Ascension's system perform elective, contraceptive sterilization procedures on patients despite the fact that the Catholic Church officially denounces such procedures as intrinsically immoral, evil, and illegal.

D. Other Investments. With respect to its investing in various enterprises, Ascension similarly does not restrict itself to investments related to the Catholic Church. For example, Ascension's venture capital arm, Ascension Health Ventures ("AHV"), recently closed on a $225 million venture capital fund with Intermountain Healthcare and Decatur Memorial Hospital as partners in the fund. Neither partner has any relationship with the Catholic Church, and in fact Intermountain Healthcare can trace its roots to 15 hospitals run by the Church of Jesus Christ of Latter-day Saints.

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E. Spiritual Guidance. With respect to its offering of spiritual support to its clients/patients, Ascension specifically chooses not to promote the Catholic faith. And Ascension does not just remain neutral on this issue and allow patients to do as they please with respect to their religiosity, or lack thereof. Instead, Ascension actively encourages its patients to reach out to their own ministers, rabbis or spiritual advisors for guidance. One of its "Health Ministries," Borgess Health, provides a Muslim prayer room for its patients. Ascension thus encourages its clients to seek spiritual counseling from individuals—including protestant ministers, Jewish rabbis and spiritual advisors—who hold religious convictions that the Catholic Church views as clear error.

6. In short, Ascension operates in most respects like other non-profit hospital conglomerates. It expressly chooses not to prioritize the convictions of the Catholic Church (i) when it hires its employees—who become Ascension Plan participants, (ii) when it partners with joint venture partners, (iii) when it performs or authorizes medical procedures forbidden by the Catholic Church, (iv) when it selects its business investments, and (v) when it encourages its clients to contact myriad ministers, rabbis or spiritual advisors.

7. Whether Ascension makes these choices without forethought, or whether it makes them deliberately, to satisfy large non-Catholic donors, its employees, its clients/patients, the spiritual community, the secular community, and/or its management, is unknown.

8. On the other side of the scale is Ascension's attempt to claim "Church Plan" status for the Ascension Plans—it wants to maintain and impose a religious status not on its employees, or in any of the areas detailed above, but instead on the *retirement dollars* of its employees. Ascension imposes religion on those retirement dollars because in doing so, according to Ascension, it may underfund the Ascension Plans by over $444 million and be

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excused from the necessary protections that ERISA provides. Fortunately, as set forth below, ERISA does not allow non-Church entities to selectively impose religious status to shirk their responsibility to protect the retirement dollars of their employees.

9. And, even if the Ascension Plans could clear all the ERISA Church Plan hurdles, the Church Plan exemption, as claimed by Ascension, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective. It harms Ascension's employees, unfairly disadvantages Ascension's competitors, and accommodates no undue burden caused by ERISA on any of Ascension's religious practices.

10. It is worth noting in this Summary that this case is not akin to the disputes concerning mandatory contraceptive coverage by religious institutions. ERISA does not require retirement plans to afford protections to employees that may be contrary to religious doctrine. In fact, when it was in its interest to do so, Ascension specifically elected to comply with ERISA as to other benefit plans it offers to its employees.

11. Ascension's claim of Church Plan status for its defined benefit pension plans fails under both ERISA and the First Amendment. That is what this case is about.

12. Plaintiff seeks an Order requiring Ascension to comply with ERISA and afford the Class all the protections of ERISA with respect to the Ascension Plans, as well as an Order finding that the Church Plan exemption, as claimed by Ascension, is unconstitutional because it violates the Establishment Clause of the First Amendment.

II. JURISDICTION AND VENUE

13. This Court has jurisdiction over this action 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(e)(1), which provides for federal jurisdiction of actions brought under Title I of ERISA.

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14. This Court has personal jurisdiction over Defendants Ascension Health and Ascension Health Alliance because they transact business in, and have significant contacts with, this District, and because ERISA provides for nationwide service of process. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

15. This Court has personal jurisdiction over each of the Individual Defendants (defined below) because they have significant contacts with this District and ERISA provides for nationwide service of process. *Id.*

16. Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because (a) the Plans are administered in this District, (b) some or all of the violations of ERISA took place in this District, and/or (c) Defendants Ascension Health and Ascension Health Alliance may be found in this District.

17. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because Defendants Ascension Health and Ascension Health Alliance systematically and continuously do business in this District, and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District.

III. PARTIES

18. Plaintiff Marilyn Overall. Plaintiff Overall is a resident of Detroit, Michigan. She was an employee of St. John Providence Health System ("St. John"), a member of Ascension Health and a Detroit-based non-profit corporation that owns and operates 5 hospitals and more than 125 medical facilities in the state of Michigan. St. John is a $2 billion health system and the largest single component of Ascension Health. One of the largest employers in metro Detroit, St. John employs over 18,000 people. Plaintiff was first hired at St. John in 1991, and worked at St. John's Detroit Riverview Medical Center, a division of St. John's

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Riverview Hospital. Plaintiff is not a member of the Catholic Church; in fact, she is Baptist. Plaintiff is a participant in a pension plan maintained by Ascension because she is or will become eligible for pension benefits under the Plan to be paid at normal retirement age. Additionally and alternatively, Plaintiff has a colorable claim to benefits under a pension plan maintained by Ascension and is a participant within the meaning of ERISA section 3(7), 29 U.S.C. § 1002(7), and is therefore entitled to maintain an action with respect to the Ascension Plans pursuant to ERISA sections 502(a)(1)(A) and (B), (a)(2), (a)(3), and (c)(1) and (3), 29 U.S.C. § 1132(a)(1)(A) and (B), (a)(2), (a)(3), and (c)(1) and (3).

19. Defendant Ascension Health. Defendant Ascension Health is a Missouri 501(c)(3) non-profit corporation organized under, and governed by, the Missouri Corporations, Associations, and Partnerships law, including Chapter 355 thereof, the Missouri Nonprofit Corporation Act. Defendant Ascension Health is headquartered in St. Louis, Missouri. Ascension Health is the largest non-profit healthcare system in the United States in terms of revenue, and in fact is the third largest healthcare system overall. Prior to its recent reorganization, Ascension Health was the parent company to various subsidiaries, in addition to operating a healthcare system comprised of over 1,400 facilities located in twenty-one states and the District of Columbia. Ascension Health is now the largest subsidiary of Defendant Ascension Health Alliance. Defendant Ascension Health's sole corporate member is Defendant Ascension Health Alliance. On information and belief, Defendant Ascension Health is designated as the "administrator" of the Ascension Plans by the terms of the instrument under which the Ascension Plans are operated. Plaintiff bases this information and belief on the fact that Ascension Health provides her with communications regarding the Ascension Plans; states that it administers the Ascension Plans; and provides a Pension Services Center at which she

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and other Ascension Plan participants can obtain information regarding the Plans. In the alternative, if no administrator is designated in the documents governing the Ascension Plans, Ascension Health is the employer that establishes or maintains the Ascension Plans and thus is plan sponsor of the Ascension Plans within the meaning of ERISA section 3(16)(B), 29 U.S.C. § 1002(16)(B). By virtue of being the plan sponsor, Defendant Ascension Health is also the plan administrator within the meaning of ERISA section 3(16)(A), 29 U.S.C. § 1002(16)(A). Defendant Ascension Health is also a fiduciary of the Ascension Plans within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A).

20. Defendant Ascension Health Alliance. Defendant Ascension Health Alliance is a Missouri 501(c)(3) non-profit corporation organized under, and governed by, the Missouri Corporations, Associations, and Partnerships law, including Chapter 355 thereof, the Missouri Nonprofit Corporation Act. Defendant Ascension Health Alliance is headquartered in St. Louis, Missouri. Ascension Health Alliance is a new parent holding company resulting from the internal reorganization of Ascension Health in 2011. Plaintiff is informed and believes that Defendant Ascension Health Alliance's responsibilities include fiduciary oversight of the Ascension Plans, including managing and exerting discretionary authority or control over the assets of the Ascension Plans. Therefore, Defendant Ascension Health Alliance is a fiduciary of the Plans within the meaning of ERISA. Plaintiff reserves the right to amend this Complaint to name Defendant Ascension Health Alliance as a Plan Administrator defendant within the meaning of ERISA section 3(16)(A), 29 U.S.C. § 1002(16)(A), if facts are revealed in discovery to suggest that Defendant Ascension Health Alliance holds that role.

21. Defendant Catholic Health Investment Management Company ("CHIMCO"). Defendant CHIMCO is a 501(c)(3) non-profit corporation organized under, and governed by,

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the Missouri Corporations, Associations, and Partnerships law, including Chapter 355 thereof, the Missouri Nonprofit Corporation Act. Defendant CHIMCO's headquarters are in Clayton, Missouri. It was organized in January 2011 as a wholly owned subsidiary of Ascension Health. When it was originally formed, CHIMCO only managed the assets of Ascension Health. In December 2011, CHIMCO and Ascension Health became wholly owned subsidiaries of Ascension Health Alliance. In 2012, CHIMCO registered as an investment advisor with the United States Securities & Exchange Commission ("SEC") so that it could begin managing assets for outside investors, in addition to the assets of Defendant Ascension Health Alliance. As of June 30, 2012, CHIMCO managed more than $18.6 billion in assets on a discretionary basis. On information and belief, these assets include the assets of the Ascension Plans. CHIMCO touts its significant assets under management – which, upon information and belief, include the Ascension Plans' assets – in order to attract outside clients to its investment advisory business. Plaintiff is informed and believes that CHIMCO's responsibilities include fiduciary oversight of the Ascension Plans, including managing and exerting discretionary authority or control over the assets of the Ascension Plans. Additionally, on information and belief, CHIMCO renders investment advice for a fee to the Ascension Plans. Therefore, CHIMCO is a fiduciary of the Plans within the meaning of ERISA.

22. Defendant Derek Beecher. Defendant Beecher is a financial professional with the firm of Edward Jones, in its St. Louis, Missouri office. Upon information and belief, Defendant Beecher is a member of the Ascension Health Pension Committee, and has held that position since 2010. Upon information and belief, Defendant Beecher's responsibilities include fiduciary oversight of the Ascension Plans, and Defendant Beecher is a fiduciary of the Plans within the meaning of ERISA.

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23. Defendant Jean deBlois. Upon information and belief, Defendant deBlois serves on the Board of Trustees of Ascension Health and is a member of the Ascension Health Pension Committee. On information and belief, she has held that position since at least 2006. Upon further information and belief, Defendant deBlois's responsibilities include fiduciary oversight of the Ascension Plans, and Defendant deBlois is a fiduciary of the Plans within the meaning of ERISA.

24. Defendant Eric Feinstein. Defendant Feinstein served on the Pension Sub-Committee of the Board of Trustees of Ascension Health during at least fiscal year 2010. Upon information and belief, at some or all relevant times, Defendant Feinstein's responsibilities have included fiduciary oversight of the Ascension Plans, and Defendant Feinstein is a fiduciary of the Plans within the meaning of ERISA.

25. Defendant William Finlayson. Defendant Finlayson served on the Pension Committee of the Board of Trustees of Ascension Health during at least fiscal year 2010. Upon information and belief, at some or all relevant times, Defendant Finlayson's responsibilities have included fiduciary oversight of the Ascension Plans, and Defendant Finlayson is a fiduciary of the Plans within the meaning of ERISA.

26. Defendant Timothy Flesch. Defendant Flesch is the President and CEO of St. Mary's Health System, which is a member of Ascension Health based in Indiana. Upon information and belief, Defendant Flesch serves on the Board of Trustees of Ascension Health and is a member of the Ascension Health Pension Committee. On information and belief, he has held that position since at least 2009. He is paid an annual salary in excess of $1.6 million. Upon information and belief, Defendant Flesch's responsibilities include fiduciary oversight of

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the Ascension Plans, and Defendant Flesch is a fiduciary of the Plans within the meaning of ERISA.

27. Defendant Trennis Jones. Defendant Jones is a Senior Vice President and the Chief Administrative Officer/Corporate Responsibility Officer at the Seton Healthcare Family, which is a member of Ascension Health based in Texas. Upon information and belief, Defendant Jones serves on the Board of Trustees of Ascension Health and is a member of the Ascension Health Pension Committee. Defendant Jones joined Seton in 2007 and, on information and belief, has been a member of Ascension's Pension Committee since 2011. Upon information and belief, Defendant Jones's responsibilities include fiduciary oversight of the Ascension Plans, and Defendant Jones is a fiduciary of the Plans within the meaning of ERISA.

28. Defendant Kathleen Kelly. Defendant Kelly is the Board Chair of the Ascension Health Alliance Board of Directors, a Board Member of Ascension Health Care Network, a for-profit joint venture, and Director of Development at St. Mary's Academy. Upon information and belief, Defendant Kelly serves on the Board of Trustees of Ascension Health and is a member of the Ascension Health Pension Committee. Upon information and belief, Defendant Kelly's responsibilities include fiduciary oversight of the Ascension Plans, and Defendant Kelly is a fiduciary of the Plans within the meaning of ERISA.

29. Defendant Ellen Kron. Defendant Kron is the Vice President of Community Health Ministries at Ascension Health and a member of the Daughters of Charity. Upon information and belief, Defendant Kron serves on the Board of Trustees of Ascension Health and is a member of the Ascension Health Pension Committee. On information and belief, she has held that position since 2007. Upon further information and belief, Defendant Kron's

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responsibilities include fiduciary oversight of the Ascension Plans, and Defendant Kron is a fiduciary of the Plans within the meaning of ERISA.

30. Defendant Tom Langston. Defendant Langston served on the Pension Committee of the Ascension Health Board of Trustees during at least fiscal year 2009. Upon information and belief, at some or all relevant times, Defendant Langston's responsibilities have included fiduciary oversight of the Ascension Plans, and Defendant Langston is a fiduciary of the Plans within the meaning of ERISA.

31. Defendant Laura Lentenbrink. Defendant Lentenbrink is a registered nurse and Vice President for Human Resources at Borgess Health, which is a member of Ascension Health based in Michigan. Upon information and belief, Defendant Lentenbrink serves on the Board of Trustees of Ascension Health and is a member of the Ascension Health Pension Committee. On information and belief, she has held that position since at least 2006. During fiscal year 2010, Defendant Lentenbrink served as the Chair of the Pension Sub-Committee of the Ascension Health Board of Trustees. Upon information and belief, Defendant Lentenbrink's responsibilities include fiduciary oversight of the Ascension Plans, and Defendant Lentenbrink is a fiduciary of the Plans within the meaning of ERISA.

32. Defendant Patrick McGuire. Defendant McGuire is the Chief Financial Officer of St. John Providence Health System and the Chief Financial Officer of Ascension Health Michigan. Upon information and belief, Defendant McGuire serves on the Board of Trustees of Ascension Health and is a member of the Ascension Health Pension Committee. On information and belief, he has held that position since at least 2009. Upon further information and belief, Defendant McGuire's responsibilities include fiduciary oversight of the Ascension Plans, and Defendant McGuire is a fiduciary of the Plans within the meaning of ERISA.

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33. Defendant Joseph O. Murdock. Defendant Murdock served on the Pension Committee of the Ascension Health Board of Trustees during at least fiscal year 2009. Upon information and belief, at some or all relevant times, Defendant Murdock's responsibilities have included fiduciary oversight of the Ascension Plans, and Defendant Murdock is a fiduciary of the Plans within the meaning of ERISA.

34. Defendant Theresa Peck. Defendant Peck served on the Pension Committee of the Ascension Health Board of Trustees during at least fiscal years 2009 and 2010. In 2009, she served as Chair of the Pension Committee. Upon information and belief, at some or all relevant times, Defendant Peck's responsibilities have included fiduciary oversight of the Ascension Plans, and Defendant Peck is a fiduciary of the Plans within the meaning of ERISA.

35. Defendant Barbara Potts. Defendant Potts served on the Pension Sub-Committee of the Ascension Health Board of Trustees during at least fiscal year 2010. Upon information and belief, at some or all relevant times, Defendant Potts's responsibilities have included fiduciary oversight of the Ascension Plans, and Defendant Potts is a fiduciary of the Plans within the meaning of ERISA.

36. Defendant Larry Smith. Upon information and belief, Defendant Smith serves on the Board of Trustees of Ascension Health and is a member of the Ascension Health Pension Committee. On information and belief, he has held that position since at least 2009. Upon further information and belief, Defendant Smith's job responsibilities include fiduciary oversight of the Ascension Plans, and Defendant Smith is a fiduciary of the Plans within the meaning of ERISA.

37. Defendant Anthony Tersigni. Defendant Tersigni is Ascension Health Alliance's President and CEO. Upon information and belief, Defendant Tersigni serves on the Board of

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Trustees of Ascension Health and is a member of the Ascension Health Pension Committee. Defendant Tersigni was the CEO of St. John Health System from 1995 to 2000, before and during the merger of St. John's sponsor with another health system in 1999, which led to the creation of Ascension Health. Defendant Tersigni also served as Ascension Health's Executive Vice President and Chief Operating Officer from 2001 to 2003, and then as President and CEO from 2004 to 2012; he assumed the role of President and CEO of Ascension Health Alliance after the reorganization. He is paid an annual salary in excess of $3 million. Upon information and belief, Defendant Tersigni's responsibilities include fiduciary oversight of the Ascension Plans, and Defendant Tersigni is a fiduciary of the Plans within the meaning of ERISA.

38. Defendant Herbert Vallier. Defendant Vallier is an Executive Vice President and Chief Human Resources Officer at Ascension Health Alliance. Defendant Vallier serves on the Board of Trustees of Ascension Health as the Board Vice Chair. Upon information and belief, he is a member of the Ascension Health Pension Committee. While Defendant Vallier has held his executive position with Ascension Health Alliance since only February 2013, he has held his position on the Ascension Health Board of Trustees since 2006 and, upon information and belief, his position on the Ascension Health Pension Committee since at least 2009. Upon information and belief, Defendant Vallier's responsibilities include fiduciary oversight of the Ascension Plans, and Defendant Vallier is a fiduciary of the Plans within the meaning of ERISA.

39. Defendant Douglas Waite. Defendant Waite served on the Pension Committee of the Ascension Health Board of Trustees during at least fiscal years 2009 and 2010. Upon information and belief, at some or all relevant times, Defendant Waite's responsibilities have

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included fiduciary oversight of the Ascension Plans, and Defendant Waite is a fiduciary of the Plans within the meaning of ERISA.

40. Defendant Frank Warning. Defendant Warning served on the Pension Sub-Committee of the Ascension Health Board of Trustees during at least fiscal year 2010. Upon information and belief, at some or all relevant times, Defendant Warning's responsibilities have included fiduciary oversight of the Ascension Plans, and Defendant Warning is a fiduciary of the Plans within the meaning of ERISA.

41. Defendant Carol Whittington. Defendant Whittington is the Vice President for Human Resources for Sacred Heart Health System, which is a member of Ascension Health and is based in Florida. Upon information and belief, Defendant Whittington serves on the Board of Trustees of Ascension Health and is a member of the Ascension Health Pension Committee. She is paid an annual salary in excess of $400,000. Upon information and belief, Defendant Whittington's job responsibilities include fiduciary oversight of the Ascension Plans, and Defendant Whittington is a fiduciary of the Plans within the meaning of ERISA.

42. Defendants John and Jane Does 1-20. Defendants John and Jane Does 1-20 are individuals who through discovery are found to have fiduciary responsibilities with respect to the Ascension Plans and are fiduciaries within the meaning of ERISA. These individuals will be added by name as defendants in this action upon motion by Plaintiff at an appropriate time.

43. Defendants Beecher, deBlois, Feinstein, Finlayson, Flesch, Jones, Kelly, Kron, Langston, Lentenbrink, McGuire, Murdock, Peck, Potts, Smith, Tersigni, Vallier, Waite, Warning, Whittington, and John and Jane Does 1-20 are referred to herein collectively as the "Individual Defendants."

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IV. THE BACKGROUND OF THE CHURCH PLAN EXEMPTION

A. The Adoption of ERISA

44. Following years of study and debate, and broad bi-partisan support, the Congress adopted ERISA in 1974, and the statute was signed into law by President Ford on Labor Day of that year. Among the factors that led to the enactment of ERISA were the widely publicized failures of certain defined benefit pension plans, especially the plan for employees of Studebaker Corporation, an automobile manufacturing company which defaulted on its pension obligations in 1965. *See generally* John Langbein *et al*., PENSION AND EMPLOYEE BENEFIT LAW 78-83 (2010) ("The Studebaker Incident").

45. As originally adopted in 1974, and today, ERISA protects the retirement savings of pension plan participants in a variety of ways. As to participants in traditional defined benefit pension plans, such as the plans at issue here, ERISA mandates, among other things, that such plans be currently funded and actuarially sound, that participants' accruing benefits vest pursuant to certain defined schedules, that the administrators of the plan report certain information to participants and to government regulators, that the fiduciary duties of prudence, diversification, loyalty, and so on apply to those who manage the plans, and that the benefits promised by the plans be guaranteed, up to certain limits, by the Pension Benefit Guaranty Corporation. *See, e.g.*, ERISA §§ 303, 203, 101-106, 404-406, 409, 4007, 4022, 29 U.S.C. §§ 1083, 1053, 1021-1026, 1104-1106, 1109, 1307, 1322.

46. ERISA is centered on pension plans, and particularly defined benefit pension plans, as is reflected in the very title of the Act, which addresses "retirement income security." However, ERISA also subjects to federal regulation defined contribution pension plans (such as

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401(k) plans) and welfare plans, which provide health care, disability, severance and related non-retirement benefits. ERISA § 3(34) and (1), 29 U.S.C. § 1002(34) and (1).

B. The Scope of the Church Plan Exemption in 1974

47. As adopted in 1974, ERISA provided an exemption for certain plans, in particular governmental plans and Church Plans. Plans that met the statutory definitions were exempt from all of ERISA's substantive protections for participants. ERISA § 4(a) and (b), 29 U.S.C. § 1003(a) and (b).

48. ERISA defined a Church Plan as a plan "established and maintained for its employees by a church or by a convention or associations of churches."[1]

49. Under the 1974 legislation, although a Church Plan was required to be established and maintained by a church, it could also include employees of certain pre-existing agencies of such church, but only until 1982. ERISA § 3(33)(C) (1974), 29 U.S.C. § 1002(33)(C) (1974) (current version as amended at 29 U.S.C. § 1002(33) (West 2013)). Thus, under the 1974 legislation, a pension plan that was not established and maintained by a church could not be a Church Plan. *Id.*

C. The Changes to the Church Plan Exemption in 1980

50. Church groups had two major concerns about the definition of "Church Plans" in ERISA as adopted in 1974. The first, and far more important, concern was that Church Plans after 1982 could not include the lay employees of agencies of a church. The second concern that arose in the church community after 1974 was more technical. Under the 1974 statute, all

[1] ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A). ERISA is codified in both the labor and tax provisions of the United States Code, titles 29 and 26 respectively. Many ERISA provisions appear in both titles. For example, the essentially identical definition of Church Plan in the Internal Revenue Code is found at 26 U.S.C. § 414(e).

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Church Plans, single-employer or multiemployer, had to be "established and maintained" by a church or a convention/association of churches. This ignored the role of the churches' financial services organizations in the day-to-day management of the pension plans. In other words, although Church Plans were "established" by a church, in practice they were often "maintained" by a separate financial services organization of the church, usually incorporated and typically called a church "pension board."

51. These two concerns ultimately were addressed when ERISA was amended in 1980 in various respects, including a change in the definition of "Church Plan." Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), P.L. 96-364. The amended definition is current law.

52. As to the first concern (regarding employees of agencies of a church), Congress included a new definition of "employee" in subsection (C)(ii)(II) of section 3(33) of ERISA. 29 U.S.C. § 1002(33)(C)(ii)(II) (1980) (current version at 29 U.S.C. § 1002(33)(C)(ii)(II) (West 2013)). As amended, an "employee" of a church or a convention/association of churches includes an employee of an organization "which is controlled by or associated with a church or a convention or association of churches." *Id.* The phrase "associated with" is then defined in ERISA section 3(33)(C)(iv) to include only those organizations that "share[] common religious bonds and convictions with that church or convention or association of churches." 29 U.S.C. § 1002(33)(C)(iv) (1980) (current version at 29 U.S.C. § 1002(33)(C)(iv) (West 2013)). Although this new definition of "employee" permitted a "Church Plan" to include among its participants employees of organizations controlled by or associated with the church, convention, or association of churches, it remains the case that a plan covering such "employees" cannot qualify

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as a "Church Plan" unless it was "established by" the church, convention, or association of churches. ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A) (West 2013).

53. As to the second concern (regarding plans "maintained by" a separate church pension board), the 1980 amendments spoke to the issue as follows:

> 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.

ERISA § 3(33)(C)(i) (1980), 29 U.S.C. § 1002(33)(C)(i) (1980) (emphasis added) (current version at 29 U.S.C. § 1002(33)(C)(i) (West 2013)). Accordingly, under this provision, a plan "established" by a church or by a convention or association of churches could retain its "Church Plan" status even if the plan was "maintained by" a distinct organization, so long as (1) "the principal purpose or function of [the organization] is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits"; and (2) the organization is "controlled by or associated with" the church or convention or association of churches. ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i) (1980) (current version at 29 U.S.C. § 1002(33)(C)(i) (West 2013)).

54. This church "pension board" clarification has no bearing on plans that were not "established" by a church or by a convention or association of churches. Thus, a plan "established" by an organization "controlled by or associated with" a church would not be a "Church Plan" because it was not "established" by a church or by a convention or association of churches.

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55. Further, this "pension board" clarification has no bearing on plans that were not "maintained" by a church pension board. Thus, even if a plan were "established" by a church, and even if it were "maintained by" an organization "controlled by or associated with" a church, such as a school, hospital, or publishing company, it still would not be a "Church Plan" if the principal purpose of the organization was *other than* the administration or funding of the plan. In such plans, the plan is "maintained" by the school, hospital or publishing company, and usually through the human resources department of such entity. It is not maintained by a church pension board: No "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" maintains the plan. *Compare with* ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i) (1980) (current version at 29 U.S.C. § 1002(33)(C)(i) (West 2013)).

56. The requirements for Church Plan status under ERISA, both as originally adopted in 1974 and as amended in 1980 are, as explained above, very clear. And there is no tension between the legislative history of the 1980 amendment and the amendment itself: The Congress enacted exactly what it wanted to enact. Fundamental to the scheme, both as originally adopted and as fine-tuned in 1980, was that neither an "affiliate" of a church (using the 1974 language) nor "an organization controlled by or associated with" a church (using the 1980 language) could *itself* establish a Church Plan. Its employees could be *included* in a Church Plan, but if it sponsored its own plan, that was not a Church Plan. With respect to "pension boards," the 1980 legislation simplify clarified the long standing practice that churches could use their own financial organizations to manage their Church Plans.

57. Unfortunately, in 1983, in response to a request for a private ruling, the Internal Revenue Service ("IRS") issued a short General Counsel Memorandum that misunderstood the

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statutory framework. The author incorrectly relied on the "pension board" clarification to conclude that a non-church entity could sponsor its own Church Plan as long as the plan was managed by some "organization," that was controlled by or associated with a Church. This of course is not what the statute says, nor what Congress intended. In any event, this mistake was then repeated, often in verbatim language, in subsequent IRS determinations and, after 1990, in DOL determinations. Under the relevant law, these private rulings may only be relied upon by the parties thereto, within the narrow confines of the specific facts then disclosed to the agencies, and are not binding on this Court in any event. A few district court cases have relied on these letters to reach the same erroneous conclusion.

V. ASCENSION

A. Ascension's Operations

58. Defendant Ascension Health Alliance is a Missouri 501(c)(3) non-profit corporation organized under, and governed by, the Missouri Corporations, Associations, and Partnerships law, including Chapter 355 thereof, the Missouri Nonprofit Corporation Act. It operates in 21 states and the District of Columbia. It is the sole member of Defendant Ascension Health, which is the nation's largest non-profit health system, as well as the third-largest system overall (based on revenues). Defendant Ascension Health is also a 501(c)(3) non-profit corporation organized under, and governed by, the Missouri Corporations, Associations, and Partnerships law, including Chapter 355 thereof, the Missouri Nonprofit Corporation Act. Ascension Health owns and operates 80 hospitals and over 1,300 other healthcare facilities. At the end of fiscal year 2012, Ascension Health Alliance had approximately $23.7 billion in assets, and operating revenues of approximately $16.6 billion. Defendant Ascension Health employs approximately 122,000 employees.

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1. Origins of Defendant Ascension Health Alliance

59. The entity that is now known as Ascension Health Alliance began in 1999 when two health systems merged to form the hospital conglomerate Ascension Health. Over the course of a little more than a decade, Ascension Health grew exponentially – expanding to include more than 1,300 locations in 21 states and the District of Columbia.

60. In addition to the expansion of its nationwide hospital network, Ascension Health branched out to form numerous subsidiaries, including a registered investment advisor, an offshore captive insurance company, an internal audit company, a healthcare equipment service provider, a network medical device security company, an ultrasound repair company, a venture capital fund, and an acquisitive, for-profit joint venture with a private equity firm.[2]

61. By 2011, Ascension Health had grown so far beyond its origins that it went through an internal reorganization, creating a new parent corporation on September 13, 2011: Ascension Health Alliance. Ascension Health Alliance began operations on January 1, 2012. Many of the subsidiaries which were part of Ascension Health are now subsidiaries of Ascension Health Alliance. Ascension Health Alliance is the parent and only corporate member of Ascension Health. Most of the top executives from Ascension Health are now the top executives in the same capacity at Ascension Health Alliance. The former Chief Operating Officer of Ascension Health is now serving as its CEO as well as Executive Vice President at Ascension Health Alliance.

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[2] Specifically, Ascension's other subsidiaries include the following organizations: Ascension Health Care Network, AH Holdings, LLC, Ascension Health Alliance Global Mission, Clinical Holdings Corporation, Ascension Health Ventures, LLC, CHIMCO, The Resource and Supply Management Group, LLC, Ascension Health Information Services ("AHIS"), CHAN Healthcare, Ascension Health Insurance, Ltd. ("AHIL"), Edessa Insurance Company, Ltd., and Ascension Health Leadership Academy, LLC.

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2. Ascension's Subsidiaries and Investments

62. Like other large non-profit hospital systems, Ascension relies upon revenue bonds to raise money, and it has significant sums invested in, among other things, fixed-income securities, equity securities, and hedge funds. Indeed, Ascension prioritizes its obligations to bondholders over its purported religious and charitable mission to serve the poor and vulnerable. As explained in more detail, *infra*, Ascension closed down the only hospital that existed in one of Detroit's poorest neighborhoods for one basic reason: to repay Ascension's bond obligations.

63. Ascension also owns two captive insurance companies, one incorporated in the Cayman Islands and another in Bermuda: Ascension Health Insurance, Ltd. ("AHIL"), and Edessa Insurance Company, Ltd. AHIL originated as a wholly-owned captive insurance company within Ascension Health, incorporated in 1986. With the acquisition of the Alexian Brothers Health System in 2012, Ascension gained their captive insurance company, Edessa Insurance, as well.

64. Ascension entered the venture capital world in 2001 when it created Ascension Health Ventures ("AHV") with a commitment of $125 million to finance for-profit healthcare companies. AHV is a limited partnership that offers its partners the ability to earn venture-level financial returns while providing early insight to future healthcare developments. AHV has invested in companies such as the following: Impulse Monitoring, which provides intraoperative neurophysiological monitoring; Interventional Spine, an early stage developer of a spinal device platform enabling percutaneous approaches for spinal fusion; Isto Technologies, an early stage developer of orthobiologic products for sports medicine and spinal therapy applications; Millennium Pharmacy Systems, which provides pharmaceutical management

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services to the long-term care industry; and United Surgical Partners, which operates ambulatory and short-stay surgical facilities in the United States and owns private hospitals in Europe. In January 2013, AHV closed on its third venture capital fund, bringing its total capital under management to $550 million. This third fund, CHV III, will invest in healthcare firms that specialize in information technology, medical devices, and diagnostic services. Two of the partners in CHV III are Intermountain Healthcare of Salt Lake City and Decatur Memorial Hospital of Decatur, Illinois. Intermountain Healthcare began with a donation of 15 hospitals from the Church of Jesus Christ of Latter-day Saints, and Decatur Memorial is a hospital claiming no religious affiliation of any kind.

65. In 2004, after having invested in the company, Ascension became the first and largest customer of Accretive Health Inc., a medical debt collection firm. As of 2012, Ascension held a 7% interest in Accretive, which started as primarily a consultant to Ascension, went public in 2010, and has since become one of the nation's largest medical debt collectors. Sixty percent of Accretive's revenue in 2009 came from Ascension Health hospitals. Accretive utilizes heavy-handed tactics that include stationing bill collectors in hospital emergency rooms, using rewards to incentivize collection, and threatening to fire collectors who don't meet collection quotas. These practices led to an investigation by the Minnesota Attorney General and an eventual settlement resulting in a $2.5 million fine and Accretive being banned from the state of Minnesota for two years. Accretive's practices have also been challenged in court in Illinois, New York, Oregon, Michigan, California, Vermont, Florida, and Tennessee. Ascension Health, however, just signed a new five-year contract with Accretive worth up to $1.7 billion.

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66. Although Ascension asserts that its mission is to provide healthcare to the poor, Ascension ties how much capital it allocates to each subsidiary, in part, to its profitability. In 2007, Ascension closed Riverview Hospital, which was part of the St. John Providence Health System and where Plaintiff had been employed. The third hospital Ascension had shut down in Detroit in the past ten years, Riverview Hospital was in one of Detroit's poorest neighborhoods. In fact, Riverview Hospital was the only hospital that remained in Detroit's impoverished east side, a neighborhood where thirty-four percent of the population lives below the poverty line and infant mortality is more than double the national average. Riverview, with nearly 50% of its patients uninsured or on Medicaid and 42% on Medicare, lost $16 million in 2006, and its chief of staff was told that the hospital could not afford to spend $5,000 on its annual community health-and-immunization fair. That same year, St. John spent $9 million in design and architecture fees related to its new construction projects, one of which was a new $224 million, state-of-the-art hospital in the affluent Detroit suburb of Novi. Ascension executives convinced local regulators to approve the new construction with the argument that the new facility's profits would help ensure the continued existence of hospitals within Detroit's city limits by subsidizing the losses from the inner city hospitals. Instead, however, St. John shut down Riverview Hospital and left a bare-bones emergency room in place for twelve months; this facility closed permanently in June 2008. In September 2008, the Novi hospital opened, with private rooms that feature flat-screen televisions and large windows so that patients can enjoy views of the campus's lush grounds. Ascension and its agents defended the decision to close Riverview by asserting that Ascension's more profitable operations should not be used to subsidize struggling hospitals, and that the closure was justified in order to repay bondholders.

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67. In February 2011, Ascension turned heads in the non-profit healthcare world by creating an acquisitive, equity-based, for-profit healthcare system, Ascension Health Care Network ("AHCN"). AHCN is a joint venture between Ascension and private equity firm Oak Hill Capital Partners. In March 2012, Resource and Supply Management Group, LLC, a subsidiary of Ascension Health Alliance, announced that it had formed a Group Purchasing Organization ("GPO"). A GPO represents a number of organizations, acting as the contracting agent for all its participants, leveraging the combined volume of purchases to secure lower prices and better total value in areas ranging from supplies to professional services to utilities. In addition to serving the hospitals that already comprise Ascension Health, RSMG will also make its services available to other healthcare entities, hospitals and health systems.

68. In March 2012, Ascension Health Alliance's subsidiary, CHIMCO, registered with the SEC as an investment adviser so that it could manage the assets of non-Ascension clients in addition to Ascension's assets. As of July 31, 2012, CHIMCO managed approximately $23 billion in assets, of which approximately $18 billion belongs to Ascension. On further information and belief, Ascension's pension plans comprise roughly $6 billion, or approximately 25%, of CHIMCO's assets under management. CHIMCO uses its significant assets under management – a fair percentage of which, on information and belief, include the assets of Ascension's pension plans – to attract outside investors to its investment advisory practice.

69. That same month, Ascension entered into a partnership with Narayana Hrudayalaya Hospitals of India to build a $2 billion for-profit "health city" in the Grand Cayman Islands. Ascension claims that this is not a medical tourism facility but is instead designed to care for the poor people in the Caribbean and South America. Residents of the

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Cayman Islands, however, enjoy a standard of living equivalent to that of Switzerland. To promote the HealthCity, Ascension and Narayana play up the pleasant weather and world-class shopping, restaurants, and accommodations of the Cayman Islands. The HealthCity will be run for profit and is strategically located only an hour's flight away from the United States.

70. The Executive Officers of Ascension receive compensation in line with executive officers of other hospital systems. For example, in 2010, Ascension Health's President and CEO, Anthony Tersigni, received reportable compensation of $3.6 million. Both Robert J. Henkel and Anthony J. Speranzo, who were then Executive Vice Presidents of Ascension Health, received compensation of over $2 million in 2010. At least five other officers of Ascension Health received compensation in excess of $1 million in 2010.

71. Ascension is not owned by the Catholic Church. Ascension does not receive funding from the Catholic Church or the other religious organizations that once owned and operated hospitals that have since been acquired by Ascension.

72. Ascension specifically does not limit employment to those of the Catholic faith, but instead hires employees without any reference to creed or religion. Indeed, Plaintiff in this case does not belong to the Catholic Church.

73. Ascension does not claim to be a church and is not one.

74. Ascension does not impose its beliefs or religious practices on its clients/patients. In fact, Ascension offers contact with the ministers, rabbis, or spiritual leaders of their patients' choosing. In some of its hospitals, Ascension provides interfaith chapels, as many airports do. St. Vincent's Healthcare, in Jacksonville, Florida, informs patients that their pastoral care team includes Protestant ministers, and patients are encouraged to invite their own minister, rabbi or other faith leader to visit them while they are hospitalized. Columbia St. Mary's in Milwaukee,

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Wisconsin, tells patients that its chaplains are trained professionals who recognize and respect all faiths and who can help facilitate the rites and rituals of patients and families of all faiths. Columbia St. Mary's also provides Jewish chaplaincy services available upon request. St. Joseph's Regional Medical Center, in Pasco, Washington, informs patients that chaplains support the healing source of beliefs, traditions, and cultural backgrounds chosen by each individual. Borgess Health in Kalamazoo, Michigan, provides, as part of its commitment to diversity, a Muslim prayer room within its interfaith chapel. In addition, Borgess chaplains have received special theological education, as well as clinical training to prepare them to meet many diverse spiritual needs.

75. Ascension either provides for or facilitates family planning services that are prohibited by the Catholic Church. Hospitals and physicians within the Ascension system provide elective, contraceptive sterilization procedures that the Catholic Church considers intrinsically immoral, evil, and illegal.

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

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B. Ascension's Plans

77. Ascension maintains the Ascension Plans, which are non-contributory defined benefit pension plans covering substantially all of its employees.

78. As of the end of fiscal year 2012, the Ascension Plans were underfunded by approximately $444.5 million.

1. Ascension's Plans Meet the Definition of an ERISA-Defined Benefit Plan

79. The Ascension Plans are plans, funds, or programs that were established or maintained by Ascension and which by their express terms and surrounding circumstances provide retirement income to employees and/or result in the deferral of income by employees to the termination of their employment or beyond. As such, the Ascension Plans meet the definition of "employee pension benefit plans" within the meaning of ERISA section 3(2)(A), 29 U.S.C. § 1002(2)(A).

80. The Ascension Plans do not provide for an individual account for each participant and do not provide benefits based solely upon the amount contributed to a participant's account. As such, the Ascension Plans are defined benefit plans within the meaning of ERISA section 3(35), 29 U.S.C. § 1002(35), and are not individual account plans or "defined contribution plans" within the meaning of ERISA section 3(34), 29 U.S.C. § 1002(34).

2. Ascension Health is the Plan Sponsor, Plan Administrator and a Fiduciary; and All Defendants are Fiduciaries

81. On information and belief, Defendant Ascension Health is the person designated as the "administrator" of the Ascension Plans by the terms of the instrument under which the Ascension Plans are operated. Plaintiff bases this information and belief on statements from Ascension Health that it administers the Ascension Plans, communications from Ascension

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Health concerning the Ascension Plans, and Ascension Health's establishment of a Pension Services Center which assists Ascension Plan participants.

82. Alternatively, on information and belief, Defendant Ascension Health is the employer that establishes and/or maintains the Ascension Plans, and therefore Defendant Ascension Health is and has been the Plan Sponsor of the Ascension Plans within the meaning of ERISA section 3(16)(B), 29 U.S.C. § 1002(16)(B), at least since 1999.

83. In the absence of a Plan Administrator specifically designated in or pursuant to any instrument governing the Plans, the Plan Sponsor of the Ascension Plans is the Plan Administrator, under ERISA section 3(16)(A)(ii), 29 U.S.C. § 1002(16)(A)(ii).

84. Since, upon information and belief, Defendant Ascension Health is and has been the Plan Sponsor of the Ascension Plans, Defendant Ascension Health also is and has been the Plan Administrator of the Plans within the meaning of ERISA section 3(16)(A), 29 U.S.C. § 1002(16)(A). As such, Defendant Ascension Health also is and has been a fiduciary with respect to the Plans within the meaning of ERISA section 3(21)(A)(iii), 29 U.S.C. § 1002(21)(A)(iii), because the Plan Administrator, by the very nature of the position, has discretionary authority or responsibility in the administration of the Plans.

85. Plaintiff reserves the right to amend this Complaint to name other or additional Plan Sponsors and Plan Administrators once she has had the opportunity to conduct discovery on these issues.

86. Defendant Ascension Health is also a fiduciary with respect to the Ascension Plans within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A), because it exercises discretionary authority or discretionary control respecting management of the Ascension Plans, exercises authority or control respecting management or disposition of the

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Ascension Plans' assets, and/or has discretionary authority or discretionary responsibility in the administration of the Ascension Plans.

87. Defendant Ascension Health Alliance is a fiduciary with respect to the Ascension Plans within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A), because it exercises discretionary authority or discretionary control respecting management of the Ascension Plans, exercises authority or control respecting management or disposition of the Ascension Plans' assets, and/or has discretionary authority or discretionary responsibility in the administration of the Ascension Plans.

88. Defendant CHIMCO, as the entity which, upon information and belief, manages the assets of the Ascension Plans, is also a fiduciary with respect to the Ascension Plans within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A), because, upon information and belief, CHIMCO exercises authority or discretionary control respecting management of the Ascension Plans; exercises authority or control respecting management or disposition of the Ascension Plans' assets; and/or, as a registered investment advisor, renders investment advice for a fee or other compensation with respect to property of the Ascension Plans.

89. The Individual Defendants are also fiduciaries with respect to the Ascension Plans within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A), because, upon information and belief, as members of the Ascension Health Pension Committee and/or Ascension Health Pension Sub-Committee, they exercised discretionary authority or discretionary control respecting management of the Ascension Plans, exercised authority or control respecting management or disposition of the Ascension Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Ascension Plans.

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90. Although Defendant Ascension Health maintains that its defined benefit pension plans are exempt from ERISA coverage as Church Plans, it claims ERISA status for its 401(k) plans, welfare benefit plans, and long term disability plans. In fact, Defendant Ascension Health takes these inconsistent positions with respect to the plans which cover Plaintiff herself. Plaintiff is a participant in the Ascension defined benefit pension plan, for which Defendant Ascension Health claims a church plan exemption, as well as the Ascension Health Long-Term Disability Plan, for which Defendant Ascension Health claims ERISA status.

3. Defendant Ascension Health Provided Just a Few Days' Notice Before It Froze the Ascension Plans.

91. Defendant Ascension Health acted to further its own interests, rather than the interests of Ascension Plan participants and beneficiaries, when it froze the Ascension Plans effective January 1, 2013. Under the freeze, Plaintiff's and Class members' future benefits were eliminated – that is, Ascension would no longer accrue additional pension benefits, including credited service, for participants in the Ascension Plans after December 31, 2012.

92. On information and belief, as early as February 2012, Defendant Ascension Health knew it would be making changes to the Ascension Plans that would freeze the Plans and eliminate future benefit accruals. However, Defendant Ascension Health did not allow its agents to promptly inform Plaintiff and the Class about the changes. Instead, for months, Defendant Ascension Health repeatedly assured Plan participants that they would continue to accrue benefits in the Ascension Plans.

93. Thus, while Plaintiff and the Class went about their lives secure in the understanding that they would continue accruing credited service, Ascension Health was quietly amassing a team of individuals – composed of leaders from Health Ministry Operations, Finance,

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Human Resources, Nursing, Ethics, and Mission– to ***freeze*** the Ascension Plans and to cease the accrual of pension benefits for Plaintiff and the Class.

94. Rather than give Plaintiff and the Class 45 days' notice of this reduction in future benefits, as required by ERISA § 204(h), 29 U.S.C. § 1054(h), and corresponding regulations, Defendant Ascension Health instead waited until ***four days prior to the effective date of the amendment –*** December 28, 2012 – ***to even mail notice of this freeze to Plaintiff and the Class.*** On information and belief, this letter did not reach the Ascension Plans' participants until, at the earliest, Saturday, December 29, 2012. As a result, Plaintiff and the Class had ***one business day*** – Monday, December 31 – in which to take any action in response to the freeze.

95. These actions were taken in the interests of Defendants, not the participants and beneficiaries of the Ascension Plans. On information and belief, Defendants made, or cooperated in making, the decision to freeze the Ascension Plans, and delayed informing the participants of the Plans of this change, in order to improve Ascension Health Alliance's credit ratings, strengthen its balance sheet, and appear more attractive to bond investors.

4. The Ascension Plans Are Not Church Plans

96. Ascension claims the Ascension Plans are Church Plans under ERISA section 3(33), 29 U.S.C. § 1002(33), and the analogous section of the Internal Revenue Code ("IRC"), and are therefore exempt from ERISA's coverage under ERISA section 4(b)(2), 29 U.S.C. § 1003(b)(2).

a. Only Two Types of Plans May Qualify as Church Plans and the Ascension Plans are Neither

97. Under section 3(33) of ERISA, 29 U.S.C. § 1002(33), only the following two types of plans may qualify as Church Plans:

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- First, under section 3(33)(A) of ERISA, 29 U.S.C. § 1002(33)(A), a plan *established and maintained* by a church or convention or association of churches, can qualify under certain circumstances and subject to the restrictions of section 3(33)(B) of ERISA, 29 U.S.C. § 1002(33)(B); and
- Second, under section 3(33)(C)(i) of ERISA, 29 U.S.C. § 1002(33)(C)(i), a plan *established* by a church or by a convention or association of churches that is *maintained* by an organization, *the principal purpose or function of which* is the administration or funding of a retirement plan, if such organization is controlled by or associated with a church or convention or association of churches, can qualify under certain circumstances and subject to the restrictions of section 3(33)(B) of ERISA, 29 U.S.C. § 1002(33)(B).

Both types of plans must be "established" by a church or by a convention or association of churches in order to qualify as "Church Plans."

98. Although other portions of ERISA section 3(33)(C) address, among other matters, who can be *participants* in Church Plans—in other words, which employees can be in Church Plans, etc.—these other portions of ERISA section 3(33)(C) do not allow any other type of *plan* to be a Church Plan. 29 U.S.C. § 1002(33)(C). The only two types of plans that can qualify as Church Plans are those described in ERISA section 3(33)(A) and in section 3(33)(C)(i). 29 U.S.C. §§ 3(33)(A) and (C)(i). The Ascension Plans do not qualify as Church Plans under either ERISA section 3(33)(A) or section 3(33)(C)(i). 29 U.S.C. §§ 3(33)(A) or (C)(i).

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99. First, under ERISA section 3(33)(A), a Church Plan is "a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26." ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A).

100. The Ascension Plans at issue here are not Church Plans as defined in ERISA section 3(33)(A), 29 U.S.C. § 1002(33)(A), because the Ascension Plans were established and maintained by Ascension for its own employees. Because Ascension is not a church or a convention or association of churches, nor does it claim to be, the Ascensions Plans were not "established and maintained by" a church or by a convention or association of churches and were not maintained for employees of any church or convention or association of churches. That is the end of the inquiry under ERISA section 3(33)(A), 29 U.S.C. § 1002(33)(A).

101. Second, under ERISA section 3(33)(C)(i), a Church Plan also includes a plan "established" by a church or by a convention or association of churches that is "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." ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

102. The Ascension Plans are not Church Plans as defined in ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i), because the Ascension Plans were not "established" by a church or by a convention or association of churches. Moreover, the Ascension Plans do not qualify as "Church Plans" under section 3(33)(C)(i) because they were maintained by Ascension, whose principal purpose or function is not the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both. Instead, the

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principal purpose of Ascension is to own and operate hospitals and healthcare related entities. This ends any argument that the Ascension Plans could be Church Plans under ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

103. However, even if the Ascension Plans had been "established" by a church and even if the principal purpose or function of Ascension *were* the administration or funding of the Ascension Plans (instead of running a hospital conglomerate), the Ascension Plans still would not qualify as Church Plans under ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i), because the principal purpose of the Plans is not to provide retirement or welfare benefits *to employees of a church or convention or association of churches*. The 122,000 participants in the Ascension Plans work for Ascension, a non-profit hospital conglomerate. Ascension is not a church or convention or association of churches, and its employees are not employees of a church or convention or association of churches.

104. Under ERISA section 3(33)(C)(ii), 29 U.S.C. § 1002(33)(C)(ii), however, an employee of a tax-exempt organization that is controlled by or associated with a church or a convention or association of churches also may be considered an employee of a church. But the Ascension Plans also fail this part of the definition, because Ascension is not controlled by or associated with a church or convention of churches within the meaning of ERISA.

105. Though this fact may be disputed by Ascension, Ascension is not an entity that is controlled by a church or convention or association of churches. Ascension is not owned or operated by the Catholic Church and does not receive funding from the Catholic Church.[3]

[3] Notably, if Ascension was "controlled by" the Catholic Church, then the Catholic Church itself would be exposed to significant potential liability stemming from medical malpractice and other legal claims related to the provision of medical care by Ascension.

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106. Moreover, Ascension is not "associated with" a church or convention or association of churches. Under ERISA section 3(33)(C)(iv), 29 U.S.C. § 1002(33)(C)(iv), an organization "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 association of churches." Ascension does not share common religious bonds and convictions with a church or association of churches. Instead, it purports to share only some religious convictions with the Catholic Church, while deliberately choosing to distance itself from, and/or deny, other religious convictions of the Catholic Church when it is in its economic interest to do so, such as when it hires employees, partners in economic joint ventures, performs or authorizes medical procedures forbidden by the Catholic Church, invests in various business enterprises, and encourages divergent and contrary spiritual support to its patients.

107. The Catholic Church insists, for example, that the mystery of Christ be a part of every facet of a Catholic healthcare ministry, including by animating health care with the Gospel of Jesus Christ and seeing death as an opportunity to have communion with Christ. Further, the Catholic Church requires that its healthcare employees, *as a condition of employment*, agree that their services be animated by the Gospel of Jesus Christ. Ascension Health, however, specifically chooses not to make animation of healthcare through the Gospel of Jesus Christ a condition of employment. In fact, Ascension touts its non-denominational employment policies to prospective employees, informing them that Catholic faith is not a factor in the hiring process. Instead, Ascension recruits and hires from the greatest employment pool possible—one not restricted by any faith—in an attempt to hire the most qualified healthcare workers. Certain of Ascension's hospitals have also engaged in contraceptive sterilization procedures, even though these practices are considered immoral, illegal, and evil by

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the Catholic Church. For example, data indicate that between 2007 and 2009, hospitals and physicians within the Ascension system performed more than 1,950 elective, contraceptive sterilization procedures on patients in contravention of Catholic directives. Ascension includes investing in high risk venture capital projects as part of its business plan, a practice which is not animated by the Gospel of Jesus Christ. Perhaps most unlike a church, Ascension boasts non-denominational chapels and *encourages* its clients to seek the faiths of their own choosing, including Judaism, Islam, and other faiths that the Catholic Church views as clear error. So while Ascension may purport to share common religious bonds and convictions with the Catholic Church, it in fact only *selectively chooses to share a bare few such bonds and convictions*, and ignores or abandons Catholic convictions when it is in its economic interest to do so.

108. Accordingly, Ascension is not "associated with" the Catholic Church within the meaning of ERISA section 3(33)(C)(iv), 29 U.S.C. § 1002(33)(C)(iv), and thus its employees are not "employees" of a church or convention or association of churches within the meaning of ERISA section 3(33)(C)(ii), 29 U.S.C. § 1002(33)(C)(ii). Because the Ascension Plans were not established and maintained for the provision of retirement benefits for "employees of a church or convention or association of churches," the Ascension Plans fail to qualify as "Church Plans" under ERISA section 3(33)(C)(i). 29 U.S.C. § 1002(33)(C)(i).

109. The Ascension Plans further fail to satisfy the requirements of ERISA section 3(33)(C)(i) because this section requires the organization that maintains the plans to be "controlled by or associated with" a church or convention or association of churches within the meaning of ERISA. 29 U.S.C. § 1002(33)(C)(i). Thus, even if (1) the church had "established" the Ascension Plans (which it did not); (2) the principal purpose or function of Ascension was

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the administration or funding of the Ascension Plans (instead of running a hospital conglomerate); and (3) Ascension's employees were employees of a church or convention or association of churches (which they are not), the Ascension Plans still would not qualify as Church Plans under ERISA section 3(33)(C)(i) because—for the reasons outlined above—Ascension is not *controlled by or associated with* a church or convention or association of churches within the meaning of ERISA. 29 U.S.C. § 1002(33)(C)(i).

110. Finally, even if Ascension were "controlled by or associated with" a church, and thus its employees were deemed "employees" of a church under ERISA section 3(33)(C)(ii)(2), and even if the Ascension Plans were "maintained by" either a church or "pension board" satisfying the requirements of ERISA section 3(33)(C)(i), the Ascension Plans would still not be "Church Plans" because *all* "Church Plans" must be "established" by a church or by a convention or association of churches. 29 U.S.C. §§ 1002(33)(A), (C)(i). Although a church may be deemed an "employer" of the employees of an organization that it "controls" or with which it is "associated," *see* ERISA § 3(33)(C)(iii), 29 U.S.C. § 1002(33)(C)(iii), nothing in ERISA provides that the church may be deemed to have "established" a retirement plan that was in fact established by the "controlled" or "associated" organization. Accordingly, because Ascension established the Ascension Plans, the plans cannot be "Church Plans" within the meaning of ERISA.

b. Even *if* the Ascension Plans Could Otherwise Qualify as Church Plans under ERISA Section 3(33)(A), They are Excluded From Church Plan Status under ERISA Section 3(33)(B)(ii)

111. Under ERISA section 3(33)(B)(ii), 29 U.S.C. § 1002(33)(B)(ii), a plan is specifically excluded from Church Plan status if less than substantially all of the plan participants are members of the clergy or employed by an organization controlled by or

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associated with a church or convention or association of churches. In this case, there are approximately 122,000 participants in the Ascension Plans, and very nearly all of them are non-clergy healthcare workers.

112. If the 122,000 participants in the Ascension Plans do not work for an organization that is controlled by or associated with a church or convention or association of churches, then even if the Ascension Plans could otherwise qualify as Church Plans under ERISA section 3(33)(A) or (C)(i), 29 U.S.C. § 1002(33)(A) or (C)(i), they still would be foreclosed from Church Plan status under section 3(33)(B)(ii), 29 U.S.C. § 1002(33)(B)(ii).

113. As set forth above, Ascension Health is not controlled by a church or association of churches, nor does it share common religious bonds and convictions with a church or association of churches. Instead, it purports to share only some religious convictions with the Catholic Church, while deliberately choosing to distance itself from, and/or deny, other religious convictions of the Catholic Church, when it is in its economic interest to do so.

c. Even *if* the Ascension Plans Could Otherwise Qualify as Church Plans under ERISA, the Church Plan Exemption, as Claimed By Ascension, Violates the Establishment Clause of the First Amendment of the Constitution, and Is Therefore Void and Ineffective

114. The Church Plan exemption is an accommodation *for churches* that establish and maintain pension plans, and it allows such plans to be exempt from ERISA. As set forth in more detail below in Count IX, the extension of that accommodation to Ascension Health, which is not a church, violates the Establishment Clause because it harms Ascension's workers, puts Ascension's competitors at an economic disadvantage, and relieves Ascension of no genuine religious burden created by ERISA. Accordingly, the Church Plan exemption, as claimed by Ascension, is void and ineffective.

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VI. CLASS ALLEGATIONS

115. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and the following class of persons similarly situated: All participants or beneficiaries of any Ascension Plans operated as or claimed by Ascension to be Church Plans as of the date of the filing of this Complaint. Excluded from the Class are any high-level executives at Ascension Health or Ascension Health Alliance or any employees who have responsibility or involvement in the administration of the Plan, or who are subsequently determined to be fiduciaries of one or more of the Ascension Plans, including the Individual Defendants.

A. Numerosity

116. The exact number of Class members is unknown to Plaintiff at this time, but may be readily determined from records maintained by Defendants Ascension Health and Ascension Health Alliance. Defendant Ascension Health currently employs approximately 122,000 individuals. Upon information and belief, many if not all of those persons are likely members of the Class, and thus the Class is so numerous that joinder of all members is impracticable.

117. Defendant Ascension Health operates 80 hospitals and over 1,300 other healthcare facilities in the states of Alabama, Arizona, Arkansas, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, New York, Pennsylvania, Tennessee, Texas, Washington, and Wisconsin. Upon information and belief, Ascension's employees and, therefore, the members of the Class, are geographically dispersed across at least the following states: Alabama, Arizona, Arkansas, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, New York, Pennsylvania, Tennessee, Texas, Washington, and Wisconsin.

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B. Commonality

118. The issues regarding liability in this case present common questions of law and fact, with answers that are common to all members of the Class, including (1) whether the Plans are exempt from ERISA as Church Plans, and, if not, (2) whether the fiduciaries of the Plans have failed to administer and fund the Plans in accordance with ERISA.

119. The issues regarding the relief are also common to the members of the Class as the relief will include (1) a declaration that the Plans are ERISA covered plans; (2) an order requiring that the Plans comply with the administration and funding requirements of ERISA; (3) an order requiring Ascension to pay civil penalties to the Class, in the same statutory daily amount for each member of the Class; and (4) a declaration that Defendant Ascension Health's freezing of the Ascension Plans is unenforceable.

C. Typicality

120. Plaintiff's claims are typical of the claims of the other members of the Class because her claims arise from the same event, practice and/or course of conduct, namely Defendant's failure to maintain the Plans in accordance with ERISA. Plaintiff's claims are also typical because all Class members are similarly affected by Defendants' wrongful conduct.

121. Plaintiff's claims are also typical of the claims of the other members of the Class because, to the extent Plaintiff seeks equitable relief, it will affect all Class members equally. Specifically, the equitable relief sought consists primarily of (i) a declaration that the Ascension Plans are not Church Plans; and (ii) a declaration that the Ascension Plans are ERISA covered plans that must comply with the administration and funding requirements of ERISA. In addition, to the extent Plaintiff seeks monetary relief, it is for civil fines to the Class in the same statutory daily amount for each member of the Class.

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122. Ascension does not have any defenses unique to Plaintiff's claims that would make Plaintiff's claims atypical of the remainder of the Class.

D. Adequacy

123. Plaintiff will fairly and adequately represent and protect the interests of all members of the Class.

124. Plaintiff does not have any interests antagonistic to or in conflict with the interests of the Class.

125. Defendants Ascension Health, Ascension Health Alliance, CHIMCO, and the Individual Defendants have no unique defenses against the Plaintiff that would interfere with Plaintiff's representation of the Class.

126. Plaintiff has engaged counsel with extensive experience prosecuting class actions in general and ERISA class actions in particular.

E. Rule 23(b)(1) Requirements

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

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

F. Rule 23(b)(2) Requirements

129. Class action status is also warranted under Rule 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making

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appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

G. Rule 23(b)(3) Requirements

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

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

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

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

D. This litigation is properly concentrated in this forum, which is where the ERISA breaches took place; and

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

VII. CAUSES OF ACTION

COUNT I
(Claim for Equitable Relief Pursuant to ERISA Section 502(a)(3) Against Defendant Ascension Health)

131. Plaintiff repeats and re-alleges the allegations contained in all foregoing paragraphs herein.

132. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to obtain "appropriate equitable relief ... to enforce any provisions of this title." Pursuant to this provision, 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiff seeks declaratory relief that the Ascension Plans are not Church Plans within the meaning of ERISA section 3(33), 29 U.S.C. § 1002(33), and thus are subject to the provisions of Title I and Title IV of ERISA.

133. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), also authorizes a participant or beneficiary to bring a civil action to "(A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." Pursuant to these provisions, Plaintiff seeks orders directing the Ascension Plans' sponsor and administrator, Ascension Health, to bring the Ascension Plans into compliance with ERISA, including the reporting, vesting, and funding requirements of Parts 1, 2 and 3 of Title I of ERISA, 29 U.S.C. §§ 1021-31, 1051-61, 1081-85.

134. As the Ascension Plans are not Church Plans within the meaning of ERISA section 3(33), 29 U.S.C. § 1002(33), and meet the definition of a pension plan under ERISA section 3(2), 29 U.S.C. § 1002(2), each of the Ascension Plans should be declared to be an

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ERISA-covered pension plan, and the Ascension Plans' sponsor and administrator, Ascension Health, should be ordered to bring the Ascension Plans into compliance with ERISA, including by remedying the violations set forth below.

COUNT II
(Claim for Failure to Provide Notice of Reduction in Benefit Accruals under ERISA Section 204(h) Against Defendant Ascension Health)

135. Plaintiff repeats and re-alleges the allegations contained in all foregoing paragraphs herein.

136. At all times relevant to this action, ERISA section 204(h), 29 U.S.C. § 1054(h), required advance notice ("204(h) Notice") to participants in a defined benefit pension plan of any amendment whose effect is to "provide for a significant reduction in the rate of future benefit accrual." 29 U.S.C. § 1054(h)(1). A reduction in the rate of future benefit accrual includes the elimination or cessation of benefits. 26 C.F.R. § 54.4980F-1 (A-5(c)).

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

138. The 204(h) Notice must: (1) be written in a manner calculated to be understood by the average plan participant; (2) apprise the applicable participant of the significance of the notice; (3) include a description of the benefit or allocation formula prior to the amendment, a description of the benefit or allocation formula under the plan as amended, and the effective date of the amendment; and (4) include sufficient information for each applicable individual to

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determine the approximate magnitude of the expected reduction for that individual. 26 C.F.R. § 54.4980F-1 (Q-11).

139. Defendant Ascension Health never provided the requisite 204(h) Notice to Plaintiff and Class Members. Such failure was egregious. First, the failure to meet the notice requirements was within the control of Ascension Health. Second, it was either (1) an intentional failure or (2) a failure, whether or not intentional, to provide most of the individuals with most of the information they are entitled to receive. 26 C.F.R. § 54.4980F-1 (Q-14). The egregious nature of such failures is evidenced by the fact that, as early as February 2012, Defendant Ascension Health was taking steps to freeze the Ascension Plans and reduce future benefit accruals. However, on information and belief, agents at Defendant Ascension Health were not permitted to inform Ascension Plan participants of these changes. Instead, Defendant Ascension Health waited until December 28, 2012, four days prior to the effective date of January 1, 2013, to even mail notice of the reduction in future benefits to Plaintiff and the Class. Thus, by the time this notice actually reached Plaintiff and the Class, they had only one business day to take actions in response.

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

141. As a consequence of these violations of ERISA section 204(h), 29 U.S.C. § 1054(h), and all applicable regulations, the Ascension Plan amendments that purported to freeze the plan and eliminate accrual of additional pension benefits never became effective. Defendant's acts and/or omissions prejudiced or likely prejudiced Plaintiff and Class Members because the failure to receive adequate notice precluded their full understanding of the impact of

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these Plan amendments and/or prevented them from further supplementing their retirement savings.

142. Defendant's acts and/or omissions render the Ascension Plan amendments unenforceable. Pursuant to ERISA § 204(h)(6), 29 U.S.C. § 1054(h)(6), as a result of Defendant's egregious failures to provide notice, the provisions of the Ascension Plans must be applied, to the extent they are consistent with ERISA, as if the plan amendment entitled all applicable individuals to the greater of – (1) the benefits to which the participants would have been entitled without regard to such amendment, or (2) the benefits under the plan with regard to such amendment.

143. Pursuant to ERISA § 502(a)(3), Plaintiff seeks equitable relief to enforce ERISA section 204(h), 29 U.S.C. § 1054(h). Specifically, Plaintiff seeks an order declaring that Defendants' failure to provide the requisite 204(h) notice was egregious. Plaintiff further seeks an order enforcing the provisions of ERISA section 204(h)(6), 29 U.S.C. § 1054(h)(6), including the requirement that the provisions of the Ascension Plan be applied as if the January 1, 2013 amendment entitled all applicable individuals to the greater of: (1) the benefits to which the participants would have been entitled to without regard to such amendment; or (2) the benefits under the plan with regard to such amendment. 29 U.S.C. § 1054(h)(6).

144. Additionally, irrespective of whether Defendant's failure to provide notice was egregious, Plaintiff is entitled to remedies under ERISA § 502, 29 U.S.C. § 1132, for Defendant's failure to provide the requisite 204(h) notice. *See* 26 C.F.R. § 54.4980F-1 (Q-14).

145. Pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiff seeks declaratory relief that the amendment freezing the plans effective January 1, 2013, is void and unenforceable.

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146. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiff seeks an order enjoining Defendant from enforcing the amendment that purportedly froze the plans on January 1, 2013. She also seeks an order reforming the Ascension Plans to conform with the terms that existed prior to that ineffective amendment.

147. Under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiff additionally seeks (1) surcharge for losses resulting from Ascension Health's breach of its duty to provide the 204(h) Notice; and (2) disgorgement of any amounts by which Ascension Health was unjustly enriched as a result of its decision to freeze the Plan and eliminate the accrual of future benefits without providing an adequate 204(h) Notice.

COUNT III
(Claim for Violation of Reporting and Disclosure Provisions Against Defendant Ascension Health)

148. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

A. Summary Plan Descriptions

149. At no time has Defendant Ascension Health provided Plaintiff or any member of the Class with a Summary Plan Description with respect to the Ascension Plans that meets the requirements of ERISA section 102, 29 U.S.C. § 1022, and the regulations promulgated thereunder.

150. Because Defendant Ascension Health has been the Plan Administrator of the Plans at all relevant times, it violated ERISA section 104, 29 U.S.C. § 1024, by failing to provide Plaintiff and members of the Class with adequate Summary Plan Descriptions.

B. Annual Reports

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151. At no time has Defendant Ascension Health filed an annual report with respect to the Ascension Plans with the Secretary of Labor in compliance with ERISA section 103, 29 U.S.C. § 1023, or a Form 5500 and associated schedules and attachments which the Secretary has approved as an alternative method of compliance with ERISA section 103, 29 U.S.C. § 1023.

152. Because Defendant Ascension Health has been the Plan Administrator of the Ascension Plans at all relevant times, Defendant Ascension Health has violated ERISA section 104(a), 29 U.S.C. § 1024(a), by failing to file annual reports with respect to the Ascension Plans with the Secretary of Labor in compliance with ERISA section 103, 29 U.S.C. § 1023, or Form 5500s and associated schedules and attachments that the Secretary has approved as an alternate method of compliance with ERISA section 103, 29 U.S.C. § 1023.

C. Summary Annual Reports

153. At no time has Defendant Ascension Health furnished Plaintiff or any member of the Class with a Summary Annual Report with respect to the Ascension Plans in compliance with ERISA section 104(b)(3) and regulations promulgated thereunder. 29 U.S.C. § 1024(b)(3).

154. Because Defendant Ascension Health has been the Plan Administrator of the Ascension Plans at all relevant times, Defendant Ascension Health has violated ERISA section 104(b)(3), 29 U.S.C. § 1024(b)(3), by failing to furnish Plaintiff or any member of the Class with a Summary Annual Report with respect to the Ascension Plans in compliance with ERISA section 104(b)(3) and regulations promulgated thereunder. 29 U.S.C. § 1024(b)(3).

D. Notification of Failure to Meet Minimum Funding

155. At no time has Defendant Ascension Health furnished Plaintiff or any member of the Class with a Notice with respect to the Ascension Plans pursuant to ERISA section

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101(d)(1), 29 U.S.C. § 1021(d)(1), informing them that Defendant Ascension Health had failed to make payments required to comply with ERISA section 302, 29 U.S.C. § 1082, with respect to the Ascension Plans.

156. Defendant Ascension Health has been the employer that established and/or maintained the Ascension Plans.

157. At no time has Defendant Ascension Health funded the Ascension Plans in accordance with ERISA section 302, 29 U.S.C. § 1082.

158. As the employer maintaining the Ascension Plans, Defendant Ascension Health has violated ERISA section 302, 29 U.S.C. § 1082, by failing to fund the Ascension Plans, is liable for its own violations of ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1), and as such may be required by the Court to pay Plaintiff and each class member up to $110 per day (as permitted by 29 C.F.R. section 2575.502(c)(3)) for each day that Defendant has failed to provide Plaintiff and each Class member with the notice required by ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1).

E. Funding Notices

159. At no time has Defendant Ascension Health furnished Plaintiff or any member of the Class with a Funding Notice with respect to the Ascension Plans pursuant to ERISA section 101(f), 29 U.S.C. § 1021(f).

160. At all relevant times, Defendant Ascension Health has been the administrator of the Ascension Plans.

161. As the administrator of the Ascension Plans, Defendant Ascension Health has violated ERISA section 101(f) by failing to provide each participant and beneficiary of the Ascension Plans with the Funding Notice required by ERISA section 101(f), and as such may

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be required by the Court to pay Plaintiff and each class member up to $110 per day (as permitted by 29 C.F.R. section 2575.502(c)(3)) for each day that Defendant has failed to provide Plaintiff and each Class member with the notice required by ERISA section 101(f). 29 U.S.C. § 1021(f).

F. Pension Benefit Statements

162. At no time has Defendant Ascension Health furnished Plaintiff or any member of the Class with a Pension Benefit Statement with respect to the Ascension Plans pursuant to ERISA section 105(a)(1), 29 U.S.C. § 1025(a)(1).

163. At all relevant times, Defendant Ascension Health has been the administrator of the Ascension Plans.

164. As the administrator of the Ascension Plans, Defendant Ascension Health has violated ERISA section 105(a)(1) and as such may be required by the Court to pay Plaintiff and each class member up to $110 per day (as permitted by 29 C.F.R. section 2575.502(c)(3)) for each day that Defendant has failed to provide Plaintiff and each Class member with the Pension Benefit Statements required by ERISA section 105(a)(1). 29 U.S.C. § 1025(a)(1).

COUNT IV
(Claim for Failure to Provide Minimum Funding Against Defendant Ascension Health)

165. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

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

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167. As the employer maintaining the Plans, Defendant Ascension Health was responsible for making the contributions that should have been made pursuant to ERISA section 302, 29 U.S.C. § 1082, at a level commensurate with that which would be required under ERISA.

168. Since at least 1999, Defendant Ascension Health has failed to make contributions in satisfaction of the minimum funding standards of ERISA section 302, 29 U.S.C. § 1082.

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

COUNT V
(Claim for Failure to Establish the Plans Pursuant to a Written Instrument Meeting the Requirements of ERISA Section 402 Against Defendant Ascension Health)

170. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

171. ERISA section 402, 29 U.S.C. § 1102, provides that every plan will be established pursuant to a written instrument which will provide among other things "for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan" and will "provide a procedure for establishing and carrying out a funding policy and method constituent with the objectives of the plan and the requirements of [Title I of ERISA]."

172. Although the benefits provided by the Ascension Plans were described to the employees and retirees of Defendant Ascension Health (and/or its affiliates and subsidiaries) in

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various written communications, the Ascension Plans have never been established pursuant to a written instrument meeting the requirements of ERISA section 402, 29 U.S.C. § 1102.

173. As Defendant Ascension Health has been responsible for maintaining the Ascension Plans and has amendment power over the Ascension Plans, Defendant Ascension Health violated section 402 by failing to promulgate written instruments in compliance with ERISA section 402 to govern the Ascension Plans' operations and administration. 29 U.S.C. § 1102.

COUNT VI
(Claim for Failure to Establish a Trust Meeting the Requirements of ERISA Section 403 Against Defendant Ascension Health)

174. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

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

176. Although the Ascension Plans' assets have been held in trust, the trust does not meet the requirements of ERISA section 403, 29 U.S.C. § 1103.

177. As Defendant Ascension Health has been responsible for maintaining the Ascension Plans and has amendment power over the Ascension Plans, Defendant Ascension Health violated section 403 by failing to put the Ascension Plans' assets in trust in compliance with ERISA section 403. 29 U.S.C. § 1103.

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COUNT VII
(Claim for Civil Money Penalty Pursuant to ERISA Section 502(a)(1)(A) Against Defendant Ascension Health)

178. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

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

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

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

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

183. As Defendant Ascension Health is the employer maintaining the Ascension Plans and the Ascension Plans' Plan Administrator and has failed to give the notices required by

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ERISA section 101(d) and (f), 29 U.S.C. § 1021(d) and (f), and the Pension Benefit Statement required by ERISA section 105(a), 29 U.S.C. § 1025(a), as set forth in Count III Subparts D through F, Defendant Ascension Health is liable to the Plaintiff and each member of the Class in an amount up to $110 per day from the date of such failures until such time that notices are given and the statement is provided, as the Court, in its discretion, may order.

COUNT VIII
(Claim for Breach of Fiduciary Duty Against All Defendants)

184. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

185. Plaintiff brings this Count VIII for breach of fiduciary duty pursuant to ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2).

A. Breach of the Duty of Prudence and Loyalty

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

> (a) for the exclusive purpose of:
> (i) providing benefits to participants and beneficiaries; and
> (ii) defraying reasonable expenses of administering the plan;
> (b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims . . . [and]
> (c) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this [title I of ERISA] and title IV.

187. As fiduciaries with respect to the Ascension Plans, Defendants had the authority to enforce each provision of ERISA alleged to have been violated in the foregoing paragraphs pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3). Having the authority to enforce

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the provisions of ERISA at those respective times, Defendants were required by ERISA section 404(a)(1)(A)-(D), 29 U.S.C. § 1104(a)(1)(A)-(D), to enforce those provisions in the interest of the participants and beneficiaries of the Ascension Plans during the times that each was a fiduciary of the Ascension Plans.

188. Defendants have never enforced any of the provisions of ERISA set forth in Counts I-VI with respect to the Ascension Plans.

189. By failing to enforce the provisions of ERISA set forth in Counts I-VI, Defendants breached the fiduciary duties that they owed to Plaintiff and the Class.

190. The failure of Defendants to enforce the funding obligations owed to the Plan has resulted in a loss to the Ascension Plans equal to the foregone funding and earnings thereon, and profited Defendants Ascension Health, Ascension Health Alliance, and CHIMCO by providing them the use of money owed to the Ascension Plans for these Defendants' general business purposes.

191. Defendant CHIMCO also breached its fiduciary duties of loyalty and prudence when it managed the Ascension Plans' assets. Defendant CHIMCO touted its significant assets under management – a significant percentage of which, upon information and belief, is comprised of the Ascension Plans' assets – in order to build its investment advisory business and attract outside clients. By using the Ascension Plans' assets to boost its own business, Defendant CHIMCO compromised its willingness and/or ability to act with an eye single to the interests of participants and beneficiaries of the Ascension Plans. Through these actions, Defendant CHIMCO breached its fiduciary duties to Plaintiff and the Class.

B. Prohibited Transactions

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

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

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

195. As fiduciaries with respect to the Plans and, with respect to Defendant Ascension Health, as an employer of employees covered by the Plans, and, with respect to the Individual Defendants, as Officers, Trustees, Pension Committee, and/or Pension Sub-Committee members, the Defendants at all relevant times were parties in interest with respect to the Ascension Plans pursuant to ERISA section 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

196. By failing to enforce the funding obligations created by ERISA and owed to the Plans, Defendants extended credit from the Ascension Plans to Defendants Ascension Health, Ascension Health Alliance, and CHIMCO in violation of ERISA section 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), when Defendants knew or should have known that their failure to enforce the funding obligation constituted such an extension of credit.

197. By failing to enforce the funding obligations created by ERISA and owed to the Ascension Plans, Defendants used the Ascension Plans' assets for the benefit of Defendants

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Ascension Health, Ascension Health Alliance, and CHIMCO, when Defendants knew or should have know that their failure to enforce the funding obligations constituted such a use of the Ascension Plans' assets, in violation of ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

198. By failing to enforce the funding obligations created by ERISA and owed to the Ascension Plans, Defendants used the Ascension Plans' assets in the interest of Defendants Ascension Health, Ascension Health Alliance, and CHIMCO in violation of ERISA section 406(b)(1), 29 U.S.C. § 1106(b)(1).

199. The failure of Defendants to enforce the funding obligations owed to the Ascension Plans has resulted in a loss to the Ascension Plans equal to the foregone funding and earnings thereon.

200. The failure of Defendants to enforce the funding obligations owed to the Ascension Plans has profited Defendants Ascension Health, Ascension Health Alliance, and CHIMCO by providing them the use of money owed to the Ascension Plans for its general business purposes.

201. As fiduciaries, Defendants Ascension Health, Ascension Health Alliance, CHIMCO, and the Individual Defendants violated ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), when they caused the Ascension Plans' assets to be transferred to, or used by or for the benefit of, Defendant CHIMCO. On information and belief, Defendant CHIMCO benefited from, and used, the Ascension Plans' assets in order to build its investment advisory business and attract outside clients.

202. As fiduciaries, Defendants Ascension Health, Ascension Health Alliance, CHIMCO, and the Individual Defendants violated ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1)

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when they froze the Ascension Plans and failed to provide adequate notice of the freeze under ERISA § 204(h), 29 U.S.C. § 1054(h). On information and belief, Defendants' decision to freeze the Ascension Plans, and to delay informing the participants of the Plans of this change, was done in order to improve Ascension Health Alliance's credit ratings, strengthen its balance sheet, and appear more attractive to bond investors. Through these actions, Defendants acted in their own interests or for their own account in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

203. Defendants' violations of ERISA §§ 406(a) and (b), 29 U.S.C. §§ 1106(a) and (b), have profited Defendants Ascension Health, Ascension Health Alliance, and CHIMCO.

COUNT IX
(Claim for Declaratory Relief That the Church Plan Exemption, as Claimed By Defendant Ascension Health, Violates the Establishment Clause of the First Amendment of the Constitution, and Is Therefore Void and Ineffective)

204. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

205. The Establishment Clause of the First Amendment of the Constitution mandates governmental neutrality between religion and nonreligion. U.S. Const. Amend. I. The ERISA Church Plan exemption is an accommodation that exempts churches and associations of churches, under certain circumstances, from compliance with ERISA. The ERISA Church Plan exemption, as claimed by Defendant Ascension Health, is an attempt to extend the accommodation beyond churches and associations of churches, to Ascension Health—a non-profit hospital conglomerate. That extension violates the Establishment Clause because it harms Ascension Health's workers, puts Ascension Health's competitors at an economic disadvantage, and relieves Ascension Health of no genuine religious burden created by ERISA.

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A. Workers are Harmed. Employers, including Ascension Health, are not legally required to provide pensions; instead, they choose to provide pensions in order to reap tax rewards and attract and retain employees in a competitive labor market. Ascension Health hires without regard to the religious faith of prospective employees; indeed, any choice of faith, or lack thereof, is not a factor in the recruiting and hiring of Ascension employees. Thus, as a practical matter, and by Ascension Health's own design, its pension plan participants include people of a vast number of divergent faiths, as well as those who belong to no faith. To be constitutional, an accommodation such as the Church Plan exemption must not impose burdens on nonadherents without due consideration of their interests. The Church Plan exemption, as invoked by Ascension Health, places its tens of thousands of longtime employees' justified reliance on their pension benefits at great risk, including because the Plans are underfunded by over $444 million. In addition, Ascension Health fails to provide the multitude of other ERISA protections designed to safeguard the pensions. The Church Plan exemption, as applied by Ascension Health, provides no consideration of the harm to Ascension Health's 122,000 employees, including all of those who are non-Catholic.

B. Rivals are Disadvantaged. Ascension Health's commercial rivals face substantial disadvantages in their competition with Ascension Health because the rivals must use their current assets to fully fund their pension plan obligations and provide the other ERISA protections. To be constitutional, an accommodation such as the Church Plan exemption must take adequate account of any disadvantage it creates for nonbeneficiaries. The Church Plan exemption, as applied by Ascension Health, provides no consideration of the disadvantage it creates for Ascension Health's competitors.

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C. No Genuine Religious Burden is Relieved. Ascension Health claims the Church Plan exemption to lighten its pension obligations and liabilities, not to adhere to a religious faith. To be constitutional, an accommodation such as the Church Plan exemption, which exempts compliance with ERISA, must relieve a genuine burden upon the recipient's *religious practice*. The Church Plan exemption, as claimed by Ascension Health, responds to no genuine burden created by ERISA on any Ascension Health religious practice.

206. Plaintiff seeks a declaration by the Court that the Church Plan exemption, as claimed by Ascension Health, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against the Defendants on all claims and request that the Court award the following relief:

A. Declaring that the Ascension Plans are employee benefit plans within the meaning of ERISA section 3(2), 29 U.S.C. § 1002(2), are defined benefit pension plans within the meaning of ERISA section 3(35), 29 U.S.C. § 1002(35), and are not Church Plans within the definition of section 3(33) of ERISA, 29 U.S.C. § 1002(33). Ordering Defendant Ascension Health to reform the Ascension Plans to bring the Ascension Plans into compliance with ERISA and to have the Ascension Plans comply with ERISA including as follows:

1. Revising Plan documents to reflect that the Plans are defined benefit plans regulated by ERISA.

2. Requiring Defendant Ascension Health to fund the Ascension Plans in accordance with ERISA's funding requirements, disclose required information to the

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Ascension Plans, participants and beneficiaries, and otherwise comply with all other reporting, vesting, and funding requirements of Parts 1, 2 and 3 of Title I of ERISA, 29 U.S.C. §§ 1021-31, 1051-61, 1081-85.

3. Reforming the Ascension Plans to comply with ERISA's vesting and accrual requirements and providing benefits in the form of a qualified joint and survivor annuity.

4. Requiring the adoption of an instrument governing the Ascension Plans that complies with ERISA section 402, 29 U.S.C. § 1102.

5. Requiring Defendant Ascension Health to comply with ERISA reporting and disclosure requirements, including by filing Form 5500 reports, distributing ERISA-compliant Summary Plan Descriptions, Summary Annual Reports and Participant Benefit Statements, and providing Notice of the Ascension Plans' funding status and deficiencies.

6. Requiring the establishment of a Trust in compliance with ERISA section 403, 29 U.S.C. § 1103.

B. Requiring Defendants Ascension Health, Ascension Health Alliance, CHIMCO, and the Individual Defendants, as fiduciaries of the Ascension Plans, to make the Ascension Plans whole for any losses and disgorge any profits accumulated by Defendants Ascension Health, Ascension Health Alliance, or CHIMCO as a result of fiduciary breaches.

C. Appointing an Independent Fiduciary to hold the Ascension Plans' assets in trust, to manage and administer the Ascension Plans and their assets, and to enforce the terms of ERISA.

D. Declaring that Defendant Ascension Health's failure to provide the requisite 204(h) notice was egregious, enforcing the provisions of ERISA section 204(h)(6), 29 U.S.C. §

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1054(h)(6), and requiring that the provisions of the Ascension Plans be applied as if the January 1, 2013 amendment entitled all applicable individuals to the greater of: (1) the benefits to which the participants would have been entitled to without regard to such amendment; or (2) the benefits under the plan with regard to such amendment.

E. Declaring that the amendment freezing the Ascension Plans effective January 1, 2013, is void and unenforceable, enjoining Defendant Ascension Health from enforcing the amendment, ordering that the Ascension Plans be reformed to conform with the terms that existed prior to that ineffective amendment, and requiring that Defendant Ascension Health pay (1) a surcharge for losses resulting from Ascension Health's breach of its duty to provide the 204(h) Notice; and (2) disgorgement of any amounts by which Ascension Health was unjustly enriched as a result of its decision to freeze the Plan and eliminate the accrual of future benefits without providing an adequate 204(h) Notice.

F. Requiring Defendant Ascension Health to pay a civil money penalty of up to $110 per day to Plaintiff and each Class member for each day it failed to inform Plaintiff and each Class member of its failure to properly fund the Plan.

G. Requiring Defendant Ascension Health to pay a civil money penalty of up to $110 per day to Plaintiff and each Class member for each day it failed to provide Plaintiff and each Class member with a Funding Notice.

H. Requiring Defendant Ascension Health to pay a civil money penalty of up to $110 per day to Plaintiff and each Class member for each day it failed to provide a benefit statement under ERISA section 105(a)(1)(B), 29 U.S.C. § 1025(a)(1)(B).

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I. Ordering declaratory and injunctive relief as necessary and appropriate, including enjoining the Defendants from further violating the duties, responsibilities, and obligations imposed on them by ERISA, with respect to the Ascension Plans.

J. Declaring with respect to Count IX, that the Church Plan exemption, as claimed by Ascension, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective.

K. Awarding to Plaintiff attorneys' fees and expenses as provided by the common fund doctrine, ERISA section 502(g), 29 U.S.C. § 1132(g) and/or other applicable doctrine.

L. Awarding to Plaintiff taxable costs pursuant to ERISA section 502(g), 29 U.S.C. § 1132(g), 28 U.S.C. § 1920, and other applicable law.

M. Awarding to Plaintiff pre-judgment interest on any amounts awarded pursuant to law.

N. Awarding, declaring or otherwise providing Plaintiff and the Class all relief under ERISA section 502(a), 29 U.S.C. § 1132(a), or any other applicable law, that the Court deems proper.

DATED March 28, 2013.

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