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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

STARLA ROLLINS, on behalf of herself, individually, and on behalf of all others similarly situated, Plaintiff, v. DIGNITY HEALTH, *et al.*, Defendants.	Case No.: 3:13-cv-01450-TEH **NOTICE OF INTERVENTION**

Pursuant to Federal Rules of Civil Procedure 5.1(c) and 24(a)(1), and the authorization of the Solicitor General of the United States, *see* 28 C.F.R. § 0.21, the United States hereby intervenes in this case. Plaintiff Starla Rollins alleges that the employee benefits plans of defendants Dignity Health, et al., do not qualify for the "church plan" exception to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq. *See* Compl. ¶¶ 69-

84, ECF No. 1; 29 U.S.C. §§ 1002(33), 1003(b)(2). Plaintiff further alleges that, even if the Dignity plans could otherwise qualify as church plans under ERISA, they are excluded from that status because "less than substantially all of the plan participants are members of the clergy or employed by an organization controlled by or associated with a church or convention or association of churches." Compl. ¶ 85. Finally, plaintiff alleges that, if her statutory objections fail and the Dignity plans do qualify for the "church plan" exception to ERISA, then that exception violates the Establishment Clause of the First Amendment as applied to Dignity. *Id.* ¶ 88. Plaintiff suggests that assessment of her as-applied constitutional claim requires "the determination of factual matters." Pl's Opp. to Mot. to Dismiss at 21 n.35, ECF No. 58. Defendants have moved to dismiss the complaint, arguing that their plans qualify for the exemption and that the exemption is constitutional as applied. ECF No. 41.

The United States is entitled to intervene in this case pursuant to the Federal Rules of Civil Procedure and by statute. Federal Rule of Civil Procedure 5.1(c) permits the Attorney General to intervene in an action when, as here, the constitutionality of a federal statute has been challenged. Federal Rule of Civil Procedure 24(a)(1) further permits a non-party to intervene when the non-party "is given an unconditional right to intervene by a federal statute." Fed. R. Civ. P. 24(a)(1). The United States is specifically authorized by federal statute to intervene in any federal action in which the constitutionality of an Act of Congress is drawn into question. 28 U.S.C. § 2403(a) ("In any action . . . wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court . . . shall permit the United States to intervene . . . for argument on the question of constitutionality.").

As noted above, plaintiff in this case has asserted only a contingent constitutional challenge. This Court has a duty to resolve plaintiff's threshold statutory claims before

adjudicating her constitutional contention. *See Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 205 (2009) (noting the "well-established principle" that courts normally "will not decide a constitutional question if there is some other ground upon which to dispose of the case") (citation omitted). Moreover, it is possible that, even if the Court rejects plaintiff's statutory arguments, its reasoning and analysis will inform resolution of the constitutional question. Finally, it is also possible that, as plaintiff has contended, the Court will determine that further factual development would inform resolution of plaintiff's constitutional claim. In light of those circumstances and the contingent nature of plaintiff's constitutional claim, the United States is intervening at this time but will not to file a brief at this time regarding the pending motion to dismiss. The United States will decide when and if to address plaintiff's as-applied constitutional claim in light of further developments in the case.

Dated: October 31, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which sent notice of such filing to all parties.

/s/ Michael C. Pollack
MICHAEL C. POLLACK