UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ALBERT R. CHAVIES and THOMAS HOLLAND, on behalf of themselves, individually, and on behalf of all others similarly situated, and on behalf of the CHE Plans, Plaintiffs, v. CATHOLIC HEALTH EAST, a Pennsylvania Non-profit Corporation, ANTHONY CAMARATTO, an individual CLAYTON FITZHUGH, an individual, and JOHN and JANE DOES, each an individual, 1-20, Defendants.	Civil Action No. _____ **COMPLAINT – CLASS ACTION**

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Plaintiffs Albert Chavies and Thomas Holland, individually and on behalf of all those similarly situated, as well as on behalf of the CHE Plans, as defined herein, by and through their attorneys, hereby allege as follows:

I. INTRODUCTION

1. Plaintiffs agree that Defendant Catholic Health East ("CHE" or "Defendant") operates a hospital conglomerate in 11 states and provides good healthcare services in the communities it serves. That is not what this case is about. Instead, this case is about whether CHE properly maintains its pension plans under The Employee Retirement Income Security Act ("ERISA"). As demonstrated herein, CHE fails to do so, to the detriment of its 60,000 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 CHE and operated as or claimed to be "Church Plans" under ERISA (collectively referred to as the "CHE Plans" or simply the "Plans"). CHE is violating

numerous provisions of ERISA—including underfunding the CHE Plans by over $438 million—while erroneously claiming that the Plans are exempt from ERISA's protections because they are "Church Plans." But none of the CHE Plans meet the definition of a Church Plan because CHE plainly is not a church or a convention or association of churches and because none of the CHE Plans was 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 CHE Plans are not Church Plans.

4. Even if, however, these facts were different, and the CHE 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. CHE is not controlled by the Catholic Church and, despite its name, 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 CHE 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. It is long since removed from the days when nuns once ran the hospitals, spread their gospel, and faithfully stewarded retirement assets for their employees. Moreover, although not in name, in actuality CHE 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 divergent and contrary spiritual support to its clients.

A. Employees. With respect to recruiting and hiring its employees—those who then become the CHE Retirement Plan participants—CHE is regularly asked whether a prospective employee should be Catholic, a question which CHE unequivocally answers in the negative. Like many employers, CHE promotes itself by insisting that it hires regardless of whether there are any common religious convictions. In other words, CHE 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 joint ventures, CHE similarly does not require religious convictions common to the Catholic Church. For example, CHE is in a separate joint venture with at least one Baptist hospital. It is axiomatic that the Baptists religion does not share even the most basic of religious convictions with the Catholic Church, such as the Authority of the Pope. And in one instance when CHE merged with a system claiming no religious affiliation of any kind, it allowed a separately incorporated facility to operate on one floor of a jointly owned hospital that allowed women having babies to have post-partum tubal ligations – a procedure forbidden by the Catholic Church.

C. Medical Procedures. With respect to medical procedures, CHE hospitals encourage patients to discuss their religious and ethical choices with doctors on their staff, some of whom perform abortions and vasectomies, dispense contraceptives and perform in vitro fertilizations in their separate medical practices – all forbidden by the Catholic Church. Certain CHE hospitals perform elective, contraceptive sterilizations – also forbidden by the Catholic Church. CHE also operates Medicaid managed care

programs that facilitate provision of contraceptive services, female sterilization, male sterilization and abortions – also forbidden by the Catholic Church.

D. Other Investments. With respect to its investing in various enterprises, CHE similarly does not restrict itself to investments related to the Catholic Church. For example, CHE owns a captive insurance company and participates in a venture capital group to invest in various high risk fields.

E. Spiritual Guidance. With respect to its offering of spiritual support to its clients/patients, CHE specifically chooses not to promote the Catholic faith. And CHE 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, CHE provides non-denominational worship space (as many airports do) and actively encourages its patients to reach out to their own priests, ministers, rabbis or spiritual advisors for guidance. It is axiomatic that these individuals, whom the CHE clients are encouraged to seek—including the protestant ministers, Jewish rabbis and spiritual advisors—have religious convictions that the Catholic Church views as clear error.

6. In short, CHE 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—and its CHE Retirement Plan participants, (ii) when it partners with joint venture partners, (iii) when CHE hospitals perform or authorize medical procedures forbidden by the Catholic Church, (iv) when it selects its business investments, and (v) when it encourages its clients to contact myriad priests, ministers, rabbis or spiritual advisors.

7. Whether CHE 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 CHE's attempt to claim "Church Plan" status for its CHE Plans—it wants to maintain and impose a religious status not on its employees, or in any of the areas detailed above, but instead only on the *retirement dollars* of its employees. CHE imposes religion on those retirement dollars because in so doing, according to CHE, it may underfund the CHE Plans by over $438 million and be 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 CHE Plans could clear all the ERISA Church Plan hurdles, the Church Plan exemption, as claimed by CHE, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective. It harms CHE employees, unfairly disadvantages CHE competitors, and accommodates no undue burden caused by ERISA on any CHE 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.

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

12. Plaintiffs seek an Order requiring CHE to comply with ERISA and afford the Class all the protections of ERISA with respect to the CHE Plans, as well as an Order finding

that the Church Plan exemption, as claimed by CHE, is unconstitutional because it violates the Establishment Clause of the First Amendment.

II. JURISDICTION AND VENUE

13. This Court has subject matter 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.

14. This Court has personal jurisdiction over Defendant CHE because CHE is headquartered and transacts business in, and has 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 all the Individual Defendants (defined below) because, upon information and belief, they are Officers and/or Committee members of CHE and work in this District and because 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) CHE may be found in this District.

17. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because CHE is headquartered in this District, and systematically and continuously does 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 Thomas Holland. Plaintiff Thomas Holland was an employee of CHE from 1988 until 2006. Plaintiff Holland is a participant in a pension plan maintained by CHE because he is or will become eligible for pension benefits under the Plan to be paid at normal retirement age. Additionally and alternatively, Plaintiff Holland has a colorable claim to benefits under a pension plan maintained by CHE and is a participant within the meaning of ERISA section 2(7), 29 U.S.C. § 1002(7), and is therefore entitled to maintain an action with respect to the CHE 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. Plaintiff Albert Chavies. Plaintiff Albert Chavies was an employee of CHE from 1998 until 2006. Plaintiff Chavies is a participant in a pension plan maintained by CHE because he is or will become eligible for pension benefits under the Plan to be paid at normal retirement age. Additionally and alternatively, Plaintiff Chavies has a colorable claim to benefits under a pension plan maintained by CHE and is a participant within the meaning of ERISA section 2(7), 29 U.S.C. § 1002(7), and is therefore entitled to maintain an action with respect to the CHE 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).

20. Defendant CHE. CHE is a Pennsylvania 501(c)(3) non-profit corporation organized under, and governed by, the Pennsylvania Corporations and Business Associations Code, including Chapter 41 thereof, the Pennsylvania Nonprofit Corporations law. CHE is headquartered in Newtown Square, Pennsylvania. CHE is the employer responsible for maintaining the CHE Plans and is, therefore, the plan sponsor of the CHE Plans within the meaning of ERISA section 3(16)(B), 29 U.S.C. § 1002(16)(B).

21. Defendant Anthony Camaratto. Defendant Camaratto is Vice President, Compensation and Benefits of CHE. Upon information and belief, Defendant Camaratto's job responsibilities include fiduciary oversight of the CHE Plans, and Defendant Camaratto is a fiduciary of the Plans within the meaning of ERISA.

22. Defendant Clayton Fitzhugh. Defendant Fitzhugh is Executive Vice President of Shared Services and is also CHE's Chief Human Resources Director. In 2010 Defendant Fitzhugh was paid an annual salary in excess of $715,000. Upon information and belief, Defendant Fitzhugh's job responsibilities include fiduciary oversight of the CHE Plans, and Defendant Fitzhugh is a fiduciary of the Plans within the meaning of ERISA.

23. 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 CHE Plans and are fiduciaries within the meaning of ERISA. These individuals will be added by name as defendants in this action upon motion by Plaintiffs at an appropriate time. Defendants Fitzhugh, Camaratto, and John and Jane Does 1-20 are referred to herein collectively as the "Individual Defendants."

IV. THE BACKGROUND OF THE CHURCH PLAN EXEMPTION

A. The Adoption of ERISA

24. 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").

25. 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.

26. 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 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

27. 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 substantive protections for participants. ERISA § 4(a) and (b), 29 U.S.C. § 1003(a) and (b).

28. 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]

29. 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

30. 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 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."

[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).

31. 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.

32. 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 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 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).

33. As to the second concern (regarding plans "maintained by" a separate church pension board), the 1980 amendment 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 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 of 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)).

34. 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.

35. 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)).

36. 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 simply clarified the long standing practice that churches could use their own financial organizations to manage their Church Plans.

37. 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 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 those letters to reach the same erroneous conclusion.

V. CHE

A. CHE's Operations.

38. Defendant CHE is a Pennsylvania not-for-profit corporation organized under, and governed by, the Pennsylvania Corporations and Business Associations Code, including Chapter 41 thereof, the Pennsylvania Nonprofit Corporations law, and it operates in 11 states. CHE owns and operates 33 acute-care hospitals, five long term acute hospitals, 24 freestanding and hospital based long term care facilities, 39 home health/hospice agencies, 11 assisted living facilities, four continuing care retirement communities, seven behavioral health and rehabilitation facilities, and numerous ambulatory and community based health services. As of its fiscal 2011 year end, CHE had approximately $6.8 billion in assets, and operating revenues of approximately $4.3 billion.

39. CHE is comprised of 19 Regional Health Corporations. CHE also owns interests in three hospital systems that are operated under the terms of joint operating agreements as well as multiple other joint ventures.

40. CHE employs more than 60,000 employees.

41. CHE owns a captive insurance company, Stella Maris Insurance Company in the Cayman Islands.

42. CHE has investments in Ascension Health Ventures, a venture capital arm of Ascension Health.

43. Like other large non-profit hospital systems, CHE 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.

44. The management of CHE is comprised primarily of lay people, and Executive Officers of CHE receive compensation in line with executive officers of other hospital systems. For example, in 2010 CHE's CEO received reportable compensation of $2.4 million.

45. CHE is not owned by the Catholic Church. CHE 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 CHE.

46. CHE specifically does not limit employment to those of the Catholic faith, but instead hires employees without any reference to creed or religion.

47. CHE does not claim to be a church and is not one.

48. CHE does not impose its beliefs or religious practices on its clients/patients. In fact, CHE offers contact with the minister, priest, rabbi, or spiritual leader of their patients' choosing. In some of its hospitals, CHE provides a nondenominational chapel, as many airports do.

49. CHE either provides for or facilitates family planning services that are prohibited by the Catholic Church. CHE hospitals provide elective, contraceptive sterilization services. CHE hospitals also encourage patients to consult with CHE physicians who provide abortion, sterilization and in vitro fertilization services in their private practices. CHE also facilitates the provision of abortions, sterilizations and in vitro fertilization services through its Medicaid managed care plans.

50. CHE purports to disclose, and not keep confidential, its own highly complex financial records. For example, CHE 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, CHE makes public its consolidated financial

statements, which describe CHE's representations as to its own highly complex operations and financial affairs. Finally, CHE financial information is regularly disclosed to the rating agencies and the public when tax exempt revenue bonds are issued.

B. CHE's Plans

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

52. At least two plans sponsored by CHE, the Retirement Plan for Jeannette District Memorial Hospital and the Employees' Retirement Plan of Our Lady of Lourdes Health Care Services, Inc., were previously administered as ERISA-covered plans but were merged with other CHE Plans in 2010 and are now administered as church plans.

53. As of December 31, 2011, the CHE Plans were underfunded by approximately $438.5 million.

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

54. The CHE Plans are plans, funds, or programs that were established or maintained by CHE 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 CHE 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).

55. The CHE Plans do not provide for an individual account for each participant and do not provide benefits solely upon the amount contributed to a participant's account. As such, the CHE 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. CHE is the Plan Sponsor, Plan Administrator and a Fiduciary; and Defendants Fitzhugh and Camaratto are Fiduciaries

56. As an employer establishing and/or maintaining the CHE Plans, Defendant CHE is and has been the Plan Sponsor of the CHE Plans within the meaning of ERISA section 3(16)(B), 29 U.S.C. § 1002(16)(B), at least since 1997.

57. Upon information and belief, at least from 1997 to the present, the terms of the instrument, or instruments, under which the CHE Plans are operated do not specifically designate any person as a Plan Administrator sufficient to meet the requirements of ERISA section 402, 29 U.S.C. § 1102.

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

59. As Defendant CHE is and has been the Plan Sponsor of the CHE Plans, Defendant CHE was also 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 CHE 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.

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

61. Defendant Fitzhugh, as the Executive Vice President and Chief Human Resources Director of CHE, is also a fiduciary with respect to the CHE Plans within the meaning of ERISA section 3(21), 29 U.S.C. § 1002(21), because, upon information and belief, he exercises discretionary authority or discretionary control respecting management of the CHE Plans, exercises authority and control respecting management or disposition of the CHE Plans' assets, and/or has discretionary authority or discretionary responsibility in the administration of the CHE Plans.

62. Defendant Camaratto, as Vice President, Compensation and Benefits of CHE, is also a fiduciary with respect to the CHE Plans within the meaning of ERISA section 3(21), 29 U.S.C. § 1002(21), because, upon information and belief, he exercises discretionary authority or discretionary control respecting management of the CHE Plans, exercises authority and control respecting management or disposition of the CHE Plans' assets, and/or has discretionary authority or discretionary responsibility in the administration of the CHE Plans.

3. The CHE Plans Are Not Church Plans

63. CHE claims the CHE 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 CHE Plans are Neither

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

- 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."

65. 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 add any other type of *plan* that can 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 CHE 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).

66. 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).

67. The CHE 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 CHE Plans were established and maintained by

CHE for its own employees. Because CHE is not a church or a convention or association of churches, nor does it claim to be, the CHE 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).

68. 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).

69. The CHE Plans are not Church Plans as defined in ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i), because the CHE Plans were not "established" by a church or by a convention or association of churches. Moreover, the CHE Plans do not qualify as "Church Plans" under section 3(33)(C)(i) because they were maintained by CHE, 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 principal purpose of CHE is to own and operate hospitals and healthcare related entities. This ends any argument that the CHE Plans could be Church Plans under ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

70. However, even if the CHE Plans had been "established" by a church and even if the principal purpose or function of CHE was the administration or funding of the CHE Plans (instead of running a hospital conglomerate), the CHE 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 60,000 participants in the CHE Plans work for CHE, a non-profit hospital conglomerate. CHE 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.

71. 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 CHE Plans also fail this part of the definition, because CHE is not controlled by or associated with a church or convention of churches within the meaning of ERISA.

72. Though this fact may be disputed by CHE, CHE is not an entity that is controlled by a church or convention or association of churches. CHE is not owned or operated by the Catholic Church and does not receive funding from the Catholic Church.[2]

73. Moreover, CHE 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." CHE 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

[2] Notably, if CHE 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 CHE.

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.

74. 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. CHE, however, specifically chooses not to make animation of healthcare through the Gospel of Jesus Christ a condition of employment. In fact, CHE states to prospective employees that Catholic faith is not a factor in the hiring process. Indeed, CHE 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. CHE itself engages in elective, contraceptive sterilization practices and employs doctors who perform abortions, vasectomies and in vitro fertilization and dispense contraceptives, when these practices are considered immoral, illegal and evil by the Catholic Church. CHE owns an insurance company and includes investing in high risk venture capital projects as part of its business plan, neither of which are animated by the Gospel of Jesus Christ. Perhaps most unlike a church, CHE states that its chapels are non-denominational and *encourages* its clients to seek the faith of their own choosing, including Judaism and other faiths that the Catholic Church views as clear error. So while CHE 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.

75. Accordingly, CHE 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 CHE Plans were not established and maintained for the provision of retirement benefits for "employees of a church or convention or association of churches," the CHE Plans fail to qualify as "Church Plans" under ERISA section 3(33)(C)(i). 29 U.S.C. § 1002(33)(C)(i).

76. The CHE 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 CHE Plans (which it did not); (2) the principal purpose or function of CHE was the administration or funding of the CHE Plans (instead of running a hospital conglomerate); and (3) CHE's employees were employees of a church or convention or association of churches (which they are not), the CHE Plans still would not qualify as Church Plans under ERISA section 3(33)(C)(i) because—for the reasons outlined above—CHE 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).

77. Finally, even if CHE 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 CHE Plans were "maintained by" either a church or "pension board" satisfying the

requirements of ERISA section 3(33)(C)(i), the CHE 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 CHE established the CHE Plans, the plans cannot be "Church Plans" within the meaning of ERISA.

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

78. 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 associated with a church or convention or association of churches. In this case, there are approximately 60,000 participants in the CHE Plans, and very nearly all of them are non-clergy healthcare workers.

79. If the approximately 60,000 participants in the CHE 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 CHE Plans could otherwise qualify as Church Plans under either ERISA section 3(33)(A), 29 U.S.C. § 1002(33)(A), they still would be foreclosed from Church Plan status under section 3(33)(B)(ii), 29 U.S.C. § 1002(33)(B)(ii).

80. As set forth above, CHE 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 CHE Plans Could Otherwise Qualify as Church Plans under ERISA, the Church Plan Exemption, as Claimed By CHE, Violates the Establishment Clause of the First Amendment of the Constitution, and Is Therefore Void and Ineffective

81. 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 VIII, the extension of that accommodation to CHE, which is not a church, violates the Establishment Clause because it harms CHE workers, puts CHE competitors at an economic disadvantage, and relieves CHE of no genuine religious burden created by ERISA. Accordingly, the Church Plan exemption, as claimed by CHE, is void and ineffective.

VI. CLASS ACTION ALLEGATIONS

82. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and the following class of persons similarly situated: All participants or beneficiaries of any CHE Retirements Plans operated as or claimed by CHE to be Church Plans as of the date of the filing of this Complaint. Excluded from the Class are any high-level executives at CHE 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 CHE Plans, including the Individual Defendants.

A. Numerosity

83. The exact number of Class members is unknown to Plaintiffs at this time, but may be readily determined from records maintained by CHE. CHE currently employs approximately 60,000 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.

84. Defendant CHE operates hospitals and other healthcare facilities in the states of Alabama, Georgia, Connecticut, Delaware, Florida, Massachusetts, Maine, New Jersey, New York, North Carolina and Pennsylvania. Upon information and belief, CHE's employees and, therefore, the members of the Class are geographically dispersed across at least the states of: Alabama, Georgia, Connecticut, Delaware, Florida, Massachusetts, Maine, New Jersey, New York, North Carolina and Pennsylvania.

B. Commonality

85. 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 meet the definition of ERISA-covered Plans or 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.

86. The issues regarding the relief are also common to the members of the Class as the relief will consist of (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; and (3) an order requiring CHE to pay civil penalties to the Class, in the same statutory daily amount for each member of the Class.

C. Typicality

87. Plaintiffs' claims are typical of the claims of the other members of the Class because their claims arise from the same event, practice and/or course of conduct, namely

Defendants' failure to maintain the Plans in accordance with ERISA. Plaintiffs' claims are also typical because all Class members are similarly affected by Defendants' wrongful conduct.

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

89. CHE does not have any defenses unique to Plaintiffs' claims that would make Plaintiffs' claims atypical of the remainder of the Class.

D. Adequacy

90. Plaintiffs will fairly and adequately represent and protect the interests of all members of the Class.

91. Plaintiffs do not have any interests antagonistic to or in conflict with the interests of the Class.

92. Defendant CHE and the Individual Defendants have no unique defenses against the Plaintiffs that would interfere with Plaintiffs' representation of the Class.

93. Plaintiffs have engaged counsel with extensive experience prosecuting class actions in general and ERISA class actions in particular.

E. Rule 23(b)(1) Requirements.

94. 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.

95. 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.

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

G. Rule 23(b)(3) Requirements.

97. 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 CHE, 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 Defendant CHE is headquartered; and

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 CHE)

98. Plaintiffs repeat and re-allege the allegations contained in all foregoing paragraphs herein.

99. 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, and 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiffs seek declaratory relief that the CHE 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.

100. 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, Plaintiffs seek orders directing the CHE Plans' sponsor and administrator, CHE, to bring the CHE Plans into compliance with ERISA, including the reporting, vesting, and funding requirements of Parts 1, 2 and 3 of ERISA, 29 U.S.C. §§ 1021-31, 1051-61, 1081-85.

101. As the CHE 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 CHE Plans should be declared to be an ERISA-covered pension plan, and the CHE Plans' sponsor, CHE, should be ordered to bring the CHE Plans into compliance with ERISA, including by remedying the violations set forth below.

COUNT II
(Claim for Violation of Reporting and Disclosure Provisions Against Defendant CHE)

102. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if fully set forth herein.

A. Summary Plan Descriptions

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

104. Because CHE 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 Plaintiffs and members of the Class with adequate Summary Plan Descriptions.

B. Annual Reports

105. At no time has CHE filed an annual report with respect to the CHE Plans with the Secretary of Labor in compliance with ERISA section 103, 29 U.S.C. § 1023, or a Form 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.

106. Because CHE has been the Plan Administrator of the CHE Plans at all relevant times, CHE has violated ERISA section 104(a), 29 U.S.C. § 1024(a), by failing to file annual reports with respect to the CHE 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

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

108. Because CHE has been the Plan Administrator of the CHE Plans at all relevant times, CHE has violated ERISA section 104(b)(3), 29 U.S.C. § 1024(b)(3), by failing to furnish Plaintiffs or any member of the Class with a Summary Annual Report with respect to the CHE 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

109. At no time has CHE furnished Plaintiffs or any member of the Class with a Notice with respect to the CHE Plans pursuant to ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1), informing them that CHE had failed to make payments required to comply with ERISA section 302, 29 U.S.C. § 1082, with respect to the CHE Plans.

110. Defendant CHE has been the employer that established and/or maintained the CHE Plans.

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

112. As the employer maintaining the CHE Plans, Defendant CHE has violated ERISA section 302, 29 U.S.C. § 1082, by failing to fund the CHE 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 Plaintiffs 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 Plaintiffs and each Class member with the notice required by ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1).

E. Funding Notices

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

114. At all relevant times, Defendant CHE has been the administrator of the CHE Plans.

115. As the administrator of the CHE Plans, Defendant CHE has violated ERISA section 101(f) by failing to provide each participant and beneficiary of the CHE Plans with the

Funding Notice required by ERISA section 101(f), and as such may be required by the Court to pay Plaintiffs 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 Plaintiffs and each Class member with the notice required by ERISA section 101(f). 29 U.S.C. § 1021(f).

F. Pension Benefit Statements

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

117. At all relevant times, Defendant CHE has been the administrator of the CHE Plans.

118. As the administrator of the CHE Plans, Defendant CHE has violated ERISA section 105(a)(1) and as such may be required by the Court to pay Plaintiffs 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 Plaintiffs and each Class member with the Pension Benefit Statements required by ERISA section 105(a)(1). 29 U.S.C. § 1025(a)(1).

COUNT III
(Claim for Failure to Provide Minimum Funding Against Defendant CHE)

119. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if fully set forth herein.

120. 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.

121. As the employer maintaining the Plans, CHE 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.

122. Since at least 1997, CHE has failed to make contributions in satisfaction of the minimum funding standards of ERISA section 302, 29 U.S.C. § 1082.

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

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

124. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if fully set forth herein.

125. 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]."

126. Although the benefits provided by the CHE Plans were described to the employees and retirees of CHE (and/or its affiliates and subsidiaries) in various written communications, the CHE Plans have never been established pursuant to a written instrument meeting the requirements of ERISA section 402, 29 U.S.C. § 1102.

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

COUNT V
(Claim for Failure to Establish a Trust Meeting the Requirements of ERISA Section 402 Against Defendant CHE)

128. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if fully set forth herein.

129. 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.

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

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

COUNT VI
(Claim for Civil Money Penalty Pursuant to ERISA Section 502(a)(1)(A) Against Defendant CHE)

132. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if fully set forth herein.

133. 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).

134. 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.

135. 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 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.

136. 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.

137. As Defendant CHE is the employer maintaining the CHE Plans and the CHE Retirement Plan Administrator and has failed to give the notices required by 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 II Subparts D through F, Defendant CHE is liable to the Plaintiffs 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 VII
(Claim for Breach of Fiduciary Duty Against All Defendants)

138. Plaintiffs incorporate and reallege by reference the foregoing paragraphs as if fully set forth herein.

139. Plaintiffs brings this Count VII 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

140. 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.

141. As fiduciaries with respect to the CHE 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 the provisions of ERISA at those respective times, ERISA section 404(a)(1)(A)-(D), 29 U.S.C. § 1104(a)(1)(A)-(D), imposed on Defendants the respective duty to enforce those provisions in the interest of the participants and beneficiaries of the CHE Plans during the times that each was a fiduciary of the CHE Plans.

142. Defendants have never enforced any of the provisions of ERISA set forth in Counts I-V with respect to the CHE Plans.

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

144. The failure of Defendants to enforce the funding obligations owed to the Plan has resulted in a loss to the CHE Plans equal to the foregone funding and earnings thereon, and profited Defendant CHE by providing it the use of money owed to the CHE Plans for its general business purposes.

B. Prohibited Transactions

145. 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.

146. 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.

147. 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.

148. As fiduciaries with respect to the Plans and, with respect to CHE, as an employer of employees covered by the Plans, and, with respect to Defendants Camaratto and Fitzhugh, as Officers of CHE, the Defendants at all relevant times were parties in interest with respect to the CHE Plans pursuant to ERISA section 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

149. By failing to enforce the funding obligations created by ERISA and owed to the Plans, Defendants extended credit from the CHE Plans to CHE 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.

150. By failing to enforce the funding obligations created by ERISA and owed to the CHE Plans, Defendants used CHE Plan assets for CHE's own benefit, when Defendants knew or should have known that their failure to enforce the funding obligations constituted such a use of CHE Plan assets, in violation of ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

151. By failing to enforce the funding obligations created by ERISA and owed to the CHE Plans, Defendants used CHE Plan assets in CHE's interest in violation of ERISA section 406(b)(1), 29 U.S.C. § 1106(b)(1).

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

153. The failure of Defendants to enforce the funding obligations owed to the CHE Plans has profited Defendant CHE by providing it the use of money owed to the CHE Plans for its general business purposes.

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

154. Plaintiffs incorporate and reallege by reference the foregoing paragraphs as if fully set forth herein.

155. 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 CHE, is an attempt to extend the accommodation beyond churches and associations of churches, to CHE—a non-profit hospital conglomerate. That extension violates the Establishment Clause because it harms CHE workers, puts CHE competitors at an economic disadvantage, and relieves CHE of no genuine religious burden created by ERISA.

A. Workers are Harmed. Employers, including CHE, legally are not 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. CHE 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 CHE employees. Thus, as a practical matter, and by CHE'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 CHE, 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 $438 million. In addition, CHE fails to provide the multitude of other ERISA protections designed to safeguard the pensions. The Church Plan exemption, as applied by CHE, provides no consideration of the harm to CHE's approximately 60,000 employees, including all of those that are non-Catholic.

B. Rivals are Disadvantaged. CHE's commercial rivals face substantial disadvantages in their competition with CHE 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 CHE, provides no consideration of the disadvantage it creates for CHE's competitors.

C. No Genuine Religious Burden is Relieved. CHE 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 CHE, responds to no genuine burden created by ERISA on any CHE religious practice.

156. Plaintiffs seek a declaration by the Court that the Church Plan exemption, as claimed by CHE, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective.

VIII. PRAYER FOR RELIEF

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

A. Declaring that the CHE 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 CHE to reform the CHE Retirement Plan to bring the CHE Plans into compliance with ERISA and to have the CHE 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 CHE to fund the CHE Plans in accordance with ERISA's funding requirements, disclose required information to the CHE 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 CHE 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 CHE Plans that complies with ERISA section 402, 29 U.S.C. § 1102.

5. Requiring CHE 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 CHE 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 CHE, as a fiduciary of the Plan, to make the CHE Plans whole for any losses and disgorge any CHE profits accumulated as a result of fiduciary breaches.

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

D. Requiring CHE to pay a civil money penalty of up to $110 per day to Plaintiffs and each Class member for each day it failed to inform Plaintiffs and each Class member of its failure to properly fund the Plan.

E. Requiring CHE to pay a civil money penalty of up to $110 per day to Plaintiffs and each Class member for each day it failed to provide Plaintiffs and each Class member with a Funding Notice.

F. Requiring CHE to pay a civil money penalty of up to $110 per day to Plaintiffs 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).

G. 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 CHE Plans.

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

I. Awarding to Plaintiffs 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.

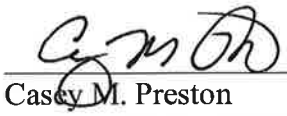
J. Awarding to Plaintiffs taxable costs pursuant to ERISA section 502(g), 29 U.S.C. § 1132(g), 28 U.S.C. § 1920, and other applicable law.

K. Awarding to Plaintiffs pre-judgment interest on any amounts awarded pursuant to law.

L. Awarding, declaring or otherwise providing Plaintiffs 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

COHEN MILSTEIN SELLERS & TOLL, PLLC



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