

FILED

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

2016 OCT 28 PM 4:00

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DISTRICT

DONNA SHEEDY, On Behalf of Herself and
All Others Similarly Situated,

Plaintiffs,

vs.

ADVENTIST HEALTH SYSTEM SUNBELT
HEALTHCARE CORPORATION d/b/a
ADVENTIST HEALTH SYSTEM
(HEALTHCARE CORPORATION),
ADVENTIST RETIREMENT BOARD,
ADVENTIST RETIREMENT PLAN
ADMINISTRATIVE COMMITTEE, and JOHN
DOES 1-20,

Defendants.

Civil Action No.: _____

6:16 CV 1893-ORL-31 GJK

CLASS ACTION COMPLAINT

**CLAIM OF
UNCONSTITUTIONALITY**

Plaintiff Donna Sheedy, by and through her attorneys, on behalf of herself and all others similarly situated, based on personal knowledge with respect to her own circumstances, and based upon information and belief pursuant to the investigation of her counsel as to all other allegations, alleges the following:

INTRODUCTION

1. This is a class action against Defendants Adventist Health System Sunbelt Healthcare Corporation d/b/a Adventist Health System (Healthcare Corporation) ("Adventist Health System" or the "Company"), the Adventist Retirement Board, the Adventist Retirement

Plan Administrative Committee which administers the Plan (the “Committee”),¹ and John Does 1-20 (the Committee members) concerning the Adventist Hospital Retirement Plan Trust (the “Old Plan”) and the noncontributory defined benefit pension plans that certain of the Company’s entities sponsored that were frozen in December 2010 (the “Frozen Plans”) (collectively, the “Plans”).²

2. As discussed in greater detail below, the 2013 Consolidated Financial Statements state that “[p]rior to January 1, 1992, certain of Adventist Health System’s entities participated in a multiemployer, noncontributory defined benefit retirement plan, the Seventh-day Adventist Hospital Retirement Plan Trust (Old Plan) administered by the General Conference of Seventh-day Adventists that is exempt from ERISA.” *Id.* at 25. The 2013 Consolidated Financial Statements further explain that “[d]uring 1992, the Old Plan was suspended and the Plan was established.” *Id.*³

¹ And/or any other committee with responsibility for managing/administering the Plans (defined below), including but not limited to, the Retirement Plan Committee for the Seventh-day Adventist Hospital Retirement Plan.

² Upon information and belief, Adventist administers several pension plans for its employees. *See* Adventist Health System Audited Consolidated Financial Statements for year ending December 31, 2013 (“2013 Consolidated Financial Statements”), at 25 (“Prior to January 1, 1992, certain of the System’s entities participated in a multiemployer, noncontributory defined benefit retirement plan, the Seventh-day Adventist Hospital Retirement Plan Trust (Old Plan) administered by the General Conference of Seventh-day Adventists that is exempt from ERISA.”), *id.* at 26 (“Certain of the System’s entities sponsored noncontributory defined benefit pension plans (Pension Plans)”). Plaintiff therefore brings this action on behalf of any defined benefit pension plan managed/administered by Defendants which they purport is a “church plan” under ERISA.

³ Upon information and belief, the Plan that was established in 1992 referenced in this sentence of the 2013 Consolidated Financial Statements is not a noncontributory defined benefit retirement plan improperly claiming the “church plan” exemption from ERISA and is therefore not part of this action. Plaintiff reserves her right to amend her allegations should information obtained confirm otherwise.

3. However, the 2013 Consolidated Financial Statements also note that Adventist Health System “may be required to make future contributions to the Old Plan to fund any difference between the present value of the Old Plan benefits and the fair value of the Old Plan assets.” *Id.*

4. As reported in the 2013 Consolidated Financial Statements, the total plan assets for the Old Plan are \$837,236,000 whereas the actuarial present value of accumulated plan benefits for the Old Plan is \$949,943,000. *Id.* This means that the Old Plan was underfunded by \$112 million as of December 31, 2012. Moreover, given that the Company “did not make contributions to the Old Plan for the years ended December 31, 2013 or 2012,” the Old Plan was underfunded by \$112 million as of December 31, 2013. *Id.*

5. Additionally, as of December 31, 2013, the Frozen Plans were underfunded by over \$22,000,000. *See id.* at 26.⁴

6. Defendants excuse the severe underfunding on the grounds that the Plans were “church plans” and therefore is exempt from the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”). *See, e.g.*, 2013 Consolidated Financial Statements at 25 (stating the Old Plan “is exempt from ERISA”).

7. To the contrary, as described herein, the Plans do not meet ERISA’s requirements for the “church plan” exemption because they were not “established,” and are not “maintained” by a church. Rather, the Plans were established and are maintained by Adventist Health System, which is a business – not a church or a convention or association of churches.

⁴ Given that it appears that Adventist administers more than one pension plan for its employees, *see supra* n.2, this shortfall amount may apply to one or more plans in addition to the Plans. *See, e.g.*, 2013 Consolidated Financial Statements at 6 (“The accompanying consolidated financial statements include the accounts of Adventist Health System/Sunbelt, Inc. (Sunbelt), the [SunSystem Development Corporation] Foundation and other affiliates organizations that are controlled by Healthcare Corporation.”)

8. Consequently, the Plans are governed by all of the funding, fiduciary and notice requirements of ERISA. This action seeks to require Defendants to comply with all of those requirements, and to pay damages and penalties as a result of their past failures to do so.

JURISDICTION AND VENUE

9. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it is a civil action arising under the laws of the United States, and pursuant to 29 U.S.C. § 1332(e)(1), which provides for federal jurisdiction of actions brought under Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”).

10. This court has personal jurisdiction over Defendants because they are headquartered and transact business in, or reside in, and have significant contacts with, this District, and because ERISA provides for nationwide service of process.

11. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because some or all of the violations of ERISA occurred in this District and Defendants reside and may be found in this District. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because Defendants conduct business in this District and a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District.

PARTIES

A. Plaintiff

12. Plaintiff Donna Sheedy is a resident of the State of Illinois and a participant in the Plans adversely affected by the conduct of the Defendants as alleged herein.

B. Defendants

13. Adventist Health System is a 501(c)(3) not-for-profit corporation organized under the laws of Florida. Its principal place of business is located at 900 Hope Way, Altamonte Springs, Florida, 32714.

14. The Seventh-Day Adventist Hospital Retirement Plan, as Amended and Restated effective January 1, 2012 (the “2012 Old Plan Document”)⁵ defines the Board as “the Adventist Retirement Board.” *See id.* at § 1.3. The 2012 Old Plan Document further notes that the “Board shall be the Plan administrator and a fiduciary of the Plan.” *See id.* at § 7.1

15. The Committee is an unincorporated association which, upon information and belief, is the Plan Administrator and/or named fiduciary of the Plans. *See id.* at Section 1.1 (“‘Administrative Committee’ shall mean the Adventist Retirement Plan Administrative Committee, if any, appointed by the Board pursuant to Section 7.5 hereof.”)..

16. John Does 1-20 are the individual members of the Committee and members of any other committee(s) which administer the Plans. The identity of the members of the Committee, and any of the other committee(s) which was or were responsible for carrying out the provisions of the Plans, is currently not known. Upon information and belief, John Does 1-20 are senior executive officers of the Company who knew or should have known the facts alleged herein. The Committee and John Does 1-20 are hereafter collectively referred to as the “Committee Defendants.”

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and the class (the “Class”) defined as follows:

⁵ The 2012 Old Plan Document is available at: <http://www.adventistretirement.org/wp-content/uploads/2015/02/Hospital-Plan.pdf>. The 2012 Old Plan Document discusses both the Old Plan and the Seventh-day Adventist Retirement Plan for North America (*see id.* at § 1.4), which is not the subject of the instant Complaint.

All participants in and beneficiaries of the Seventh-day Adventist Hospital Retirement Plan Trust (the "Old Plan") and/or the noncontributory defined benefit pension plans that certain of the Company's entities sponsored that were frozen in December 2010 (the "Frozen Plans") (collectively, the "Plans"). Excluded from the Class are Defendants and any individuals who are subsequently to be determined to be fiduciaries of the Plans.

18. The members of the Class are so numerous that joinder of all members is impractical. Upon information and belief, the Class includes thousands of persons.

19. Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff's claims, and the claims of all Class members, arise out of the same conduct, policies, and practices of Defendants as alleged herein, and all members of the Class are similarly affected by Defendants' wrongful conduct.

20. There are questions of law and fact common to the Class and these questions predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

- (a) Whether the Plans are covered by ERISA;
- (b) Whether the Plans' Administrator(s) failed to comply with ERISA's reporting and disclosure provisions;
- (c) Whether Defendants failed to establish a funding policy in compliance with ERISA; and
- (d) Whether the Defendant-fiduciaries breached their fiduciary duties in failing to comply with the provisions of ERISA set forth above.

21. Plaintiff will fairly and adequately represent the Class and has retained counsel experienced and competent in the prosecution of ERISA class action litigation. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the

vigorous prosecution of this action, and anticipates no difficulty in the management of this litigation as a class action.

22. This action may be properly certified under either subsection of Rule 23(b)(1). Class action status in this action is warranted under Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendant. Class action status is also warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

23. In the alternative, certification under Rule 23(b)(2) is warranted 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.

24. In the alternative, certification under Rule 23(b)(3) is also appropriate. A class action is superior to other available methods for the fair and efficient adjudication of the controversy within the meaning of Rule 23(b) and in consideration of the matters set forth in Rule 23(b)(3)(A)-(D). Because of the amount of the individual Class members' claims relative to the complexity of the litigation and the financial resources of the Defendants, few, if any, members of the Class would seek legal redress individually for the wrongs complained of herein. The maintenance of separate actions would place a substantial and unnecessary burden on the courts, and could result in inconsistent adjudications, while a single class action can determine,

with judicial economy, the rights of all Class members. Absent a class action, Class members will continue to suffer damages, and Defendants' misconduct will proceed without remedy.

SUBSTANTIVE ALLEGATIONS

A. Defendant Adventist Health System's Business

25. Defendant Adventist Health System is a not-for-profit health conglomerate operating in 10 states – Colorado, Florida, Georgia, Illinois, Kansas, Kentucky, North Carolina, Tennessee, Texas and Wisconsin. *See* www.adventisthealthsystem.com/page.php?section=locations. *See also* 2013 Consolidated Financial Statements at 6 (noting the Company is a “healthcare corporation that operates and controls hospitals, nursing homes and philanthropic foundations” . . . in 10 states – Colorado, Florida, Georgia, Illinois, Kansas, Kentucky, North Carolina, Tennessee, Texas and Wisconsin.”).

26. The Company consists of 46 hospitals, 19 skilled nursing facilities, 23 home health care and hospice facilities, and Adventist University of Health Sciences, a medical school in Downtown Orlando. *See* www.adventisthealthsystem.com/page.php?section=locations. *See also* 2013 Consolidated Financial Statements at 6 (referencing “the System’s 43 hospitals,⁶ 16 nursing homes and philanthropic foundation”).

27. The Company has more than 78,000 employees. *See* www.adventisthealthsystem.com/page.php?section=about.

28. The Company is not, and does not claim to be, a church.

29. In fact, the 2013 Consolidated Financial Statements refer to Adventist as a “*healthcare corporation*.” 2013 Consolidated Financial Statements at 6 (emphasis added).

⁶ The Company currently lists 46 hospitals on its website. *See* <http://www.adventisthealthsystem.com/page.php?section=careers&page=facilities&filter=name>.

30. Moreover, the Company's "About Us" page notes that it is "a national leader in quality, safety and patient satisfaction."

<http://www.adventisthealthsystem.com/page.php?section=about>.

31. Moreover, the Company routinely refers to the numerous hospitals, nursing homes and other healthcare entities it owns and controls as "the Corporation" and "the System." *See, e.g.*, 2013 Consolidated Financial Statements at 6.

32. However, "each Adventist Health System facility operates independently in delivering care and services to best meet the needs of the local communities they serve." *See* <http://www.adventisthealthsystem.com/page.php?section=about>.

33. In 2013, Adventist Health Systems earned over \$500 million in income from its healthcare service operations and an additional \$79 million in investment income. *See* 2013 Consolidated Financial Statements at 3.

34. In addition to its substantial income, the Company uses government-issued bonds to fund its healthcare business. At the end of 2013, the Company had over \$3.4 billion in outstanding bonds. *See id.* at 22.

35. For example, the Company's status as a healthcare business is shown by issuance of \$160 million in governmental bonds in 2014 through Orange County (Florida) Health Facilities Authority and the Highlands County (Florida) Health Facilities Authority, governmental entities whose stated purpose is to assist the funding of health facilities. *See* <http://www.bizjournals.com/orlando/blog/2014/06/exclusive-adventist-health-system-to-spend-190m-on.html>. Adventist Health System referred to these bonds as a "corporate financing with a municipal underlay." *Id.*

36. Despite the Plans' status as ERISA plans, the Company has invoked "church plan" status to evade ERISA's protections to which its employees are entitled. *See, e.g.*, 2013 Consolidated Financial Statements at 25 (stating the Old Plan "is exempt from ERISA"); 2012 Old Plan Document at § 12.10 ("Notwithstanding any other provision hereof, (a) the Plan is a 'church plan' under [IRS] Code Section 414(e) for which no election has been made under [IRS] Code Section 410(b), and (b) the Plan is not subject to ERISA.").

37. The Company's failure to treat the Plans as ERISA plans puts the Plans' participants at risk of receiving pension payouts drastically lower than those proposed, and deprives the Plans' participants of material information as alleged below.

38. Moreover, by avoiding ERISA's requirements, the Company obtains a competitive advantage over other healthcare entities that comply with ERISA.

B. The Plans

39. As noted above, there are multiple Plans at issue here which are grouped into two categories – the "Old Plan" and the "Frozen Plans."

40. Upon information and belief, the Old Plan and the Frozen Plans were established and are maintained by the Company to provide retirement income to employees. Thus, the Old Plan and the Frozen Plans were not established and are not maintained by a church or convention or association of churches.

(1) Overview of the Old Plan

41. The Old Plan – the Seventh-day Adventist Hospital Retirement Plan – was adopted by the General Conference of Seventh-day Adventists effective September 25, 1980 and has been amended from time to time since its establishment. *See* 2012 Old Plan Document at 1.

42. As the 2013 Consolidated Financial Statements note, “[p]rior to January 1, 1992, certain of the System’s entities participated in a multiemployer, noncontributory defined benefit retirement plan, the Seventh-day Adventist Hospital Retirement Plan Trust (Old Plan).” 2013 Consolidated Financial Statements at 25. “During 1992, the Old Plan was suspended.” *Id.*

43. Despite the fact that the Old Plan was suspended during 1992, Plaintiff brings this action on behalf of participants in the Old Plan given the underfunded status of the Old Plan, which as noted above was \$112 million as of year-end 2012. *See* 2013 Consolidated Financial Statements at 25.

44. Upon information and belief, the Old Plan is still underfunded. *See id.* (noting “Adventist Health System did not make contributions to the Old Plan for the years ended December 31, 2013 or 2012”).

45. The Old Plan was established by the Company to provide retirement income to the Company’s employees. Section 1.20 of the 2012 Old Plan Document *allowed*, but did not *require*, hospitals or other organizations to apply to become “Participating Employers.” The process culminated in those entities adopting – and funding – the Old Plan for the benefit of their employees. *See id.*, at §§ 1.20 and 5.2.

46. Thus, the Old Plan was established for the employees of each participating employer at the time that such employer adopted the Old Plan. It was not established by a church or convention or association of churches.

47. Continued responsibility for funding the Old Plan rests with the Participating Employers, such as the Company, with respect to the funding obligations for their own employees. *See id.*, § 5.2 (“The Participating Employers shall make contributions under the Plan

in at least such amounts as, in the aggregate, are sufficient to satisfy applicable legal requirements.”). Thus, the Participating Employers, like the Company, maintain the Old Plan.

48. The Old Plan is an “employee pension benefit plan” within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(a)(A).

49. The Old Plan is a defined benefit plans within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35).

50. Upon information and belief, there are two main sets of Defendants with the duties and responsibilities for the Old Plan – the Board and the Administrative Committee.

51. Upon information and belief, at all relevant times, the Company, acting through its Board of Directors, officers, and employees, is responsible for all of the acts alleged herein. *See, e.g.*, 2012 Old Plan Document at § 1.3 (“Board” shall mean the Adventist Retirement Board”).

52. In particular, the Board has been the Administrator of the Old Plan within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A). *See, e.g.*, 2012 Old Plan Document at § 7.1 (“The Board shall be Plan administrator and a fiduciary of the Plan.”).

53. They have also been fiduciaries of the Old Plan within the meaning of ERISA § 3(1621A), 29 U.S.C. § 1002(21)(A) because they have exercised authority or control respecting the management or disposition of the Old Plan’s assets, or have had discretionary authority or discretionary responsibility in the administration of the Old Plan. *See, e.g., id.* (“The principal purpose of the Board shall be the administration of the Plan....”).

54. Upon information and belief, the Board is not controlled by a church. Rather, the Board is appointed by NADCOM, the Committee for the North American Division of the General Conference of Seventh-day Adventists. *See id.* at §§ 1.3, 1.17.

55. The 2012 Old Plan Document grants the Board with “the discretionary power and responsibility to administer the Plan” and specifically vests the Board with the power to, *inter alia*, “construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payments of any benefits hereunder,” “prepare and distribute, in such manner as the Board determines to be appropriate, information explaining the Plan,” and “establish rules for the administration of the Plan and the transaction of its business.” 2012 Old Plan Document §§ 7.2 (a), (d), (j).

56. The 2012 Old Plan Document also notes that the Board has the duty to “report to NADCOM significant changes and financial trends involving the Plan on an annual basis.” *Id.* at § 7.2(l).

57. Additionally, the Company has also been a party-in-interest under ERISA §3(14), 29 U.S.C. § 1002(14), both because it is a fiduciary and because it is an employer whose employees are covered by the Old Plan.

58. The 2012 Old Plan also notes that the members of the Board may, by resolution, allocate powers or responsibilities of the Board among themselves, and may, by resolution, designate one or more persons, including the Administrative Committee, other than members of the Board, to carry out all or any portion of the powers or responsibilities of the Board under the Plan.” *Id.* at § 7.4. “Whenever the term ‘Board’ is used herein,” the 2012 Old Plan Document continues, “it shall include the Administrative Committee....” *Id.* See also *id.* at § 7.5 (“The members of the Administrative Committee, if any, shall be selected in accordance with the bylaws of the Board.”).

59. The 2012 Old Plan Document notes that the Administrative Committee “shall be responsible for those duties delegated to it from time to time by the Board” which include,

among others, the duty to “retain such legal and/or financial consultants as it deems advisable,” “make recommendations to the Board regarding financial statements, audit reviews and budgets,” and make recommendations to the Board on amendments to the Plan.” 2012 Old Plan Document §§ 7.7 (b), (c), (d).

60. The 2012 Old Plan specifically confirms the fiduciary status of the Board and Administrative Committee, noting “[i]n administering the Plan, neither the Board nor any person (including the Administrative Committee) to whom it may properly delegate any duty or power in connection with administering the Plan shall be liable for any action or failure to act *so long as* the Board or any such person or persons to whom it has delegated responsibility has *acted 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....” *Id.* at § 7.9 (emphasis added). Defendants’ failure to act with the requisite care, skill, prudence and diligence under the circumstances is the reason for the instant Complaint.

(2) Overview of the Frozen Plans

61. The 2013 Consolidated Financial Statements specify that “certain of the System’s entities sponsored noncontributory defined benefit pension plans (Pension Plans).” *Id.* at 26.

62. The Frozen Plans were established and are maintained by the Company to provide retirement income to the Company’s employees. The Frozen Plans were thus not established and are not maintained by a church or convention or association of churches.

63. This purpose is specifically reflected in the Company’s Consolidated Financial Statements, which provide: “The [Frozen] Plans’ assets are invested in a portfolio designed to

protect principal and obtain competitive investment returns and long-term investment growth, consistent with actuarial assumptions, with a reasonable and prudent level of risk.” *Id.* at 27.

64. Indeed, the 2013 Consolidated Financial Statements further note “[t]he [Frozen] Plans’ assets are managed solely in the interest of the participants and their beneficiaries.” *Id.*

65. The 2013 Consolidated Financial Statements further note that “[t]he System froze the Pension Plans in December 2010, such that no new benefits will accrue in the future.” *Id.*

66. The Frozen Plans are each an “employee pension benefit plan” within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(a)(A).

67. The Frozen Plans are each a defined benefit plans within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35).

68. Upon information and belief, the same two entities with the duties and responsibilities for the Old Plan — the Board and the Administrative Committee — have the same roles with respect to the Frozen Plans.

69. Specifically, upon information and belief, at all relevant times, the Committee Defendants have been the Administrators of the Frozen Plans within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A). They have also been fiduciaries of the Frozen Plans within the meaning of ERISA § 3(1621A), 29 U.S.C. § 1002(21)(A) because they have exercised authority or control respecting the management or disposition of the Frozen Plans’ assets, or have had discretionary authority or discretionary responsibility in the administration of the Frozen Plans.

70. The Company is a fiduciary of the Frozen Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because it has exercised authority or control respecting

management or disposition of the Plans' assets, or has had discretionary authority or discretionary responsibility in the administration of the Plans.

71. In particular, the Company, acting through its Board of Directors, officers, and employees, is responsible for all of the acts alleged herein.

72. Additionally, the Company has also been a party-in-interest under ERISA §3(14), 29 U.S.C. § 1002(14), both because it is a fiduciary and because it is an employer whose employees are covered by the Frozen Plans.

(3) The Plans are not "Church Plans" under ERISA

73. The Plans are not ERISA "Church Plans."

74. As alleged above, several factors demonstrate that Adventist Health System is not a church or conventions or association of churches. *See* ¶¶ 25-38.

75. Under Section 3(33)(A) of ERISA, 29 U.S.C. § 1002(33)(A), a plan must be both *established* and *maintained* by a *church* or by a convention or association of churches to qualify for the church plan exception.

76. As discussed above, the Plans were *established* by the Company and/or its affiliated entities, not a church or convention or association of churches. *See, e.g.*, 2013 Consolidated Financial Statements at 26 (in discussing the Frozen Plans, noting "[c]ertain of the System's entities sponsored noncontributory defined benefit pension plans")

77. The Old Plan was "established" for the employees of the Company and each participating hospital or entity when the participating hospital or entity adopted and funded the Old Plan for the benefit of its employees. Accordingly, the Old Plan was not established by a church or convention of churches.

78. The Frozen Plans were established by the affiliated entities when they adopted and funded each of the Frozen Plans, and thus they were not established by a church.

79. The Plans are *maintained* by the Company, not by a church or convention or association of churches. The obligation to continue funding the Plans rests, and always has rested, with the participating hospitals in the system, not with a church.

80. Additionally, Section 3(33)(C)(i) of ERISA, 29 U.S.C. § 1002(33)(C)(i), provides that a plan maintained by a church or 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.

81. The principal purpose of the Company – and of the other hospitals and entities whose financial sponsorship continues to maintain the Plans – is to provide healthcare services, not to operate a pension system.

82. Since the Plans are maintained by healthcare companies, they are *not* maintained by “an organization ... the principal purpose of which is the administration or funding of a plan or program for the provision of retirement benefits....” 11 U.S.C. § 1002 (33)(C)(i).

83. Moreover, the Plans are not maintained for employees of any church or convention or association of churches; they are maintained for employees of the Company and other participating hospitals – *a health system*.

C. Defendants’ Breaches of Fiduciary Duty

- (1) **Defendants Breached Their Fiduciary Duty to Ensure the Plans are Fully Funded**

84. Under ERISA, the Plans must have an annual actuarial report addressing the Plans' funding needs. *See* ERISA § 103(d), 29 U.S.C. § 1023(d).

85. Defendants are further required to fund the Plans each year according to a funding plan that meets the funding standards of ERISA and is based on reasonable actuarial assumptions. *See* ERISA §§ 302, 303, 29 U.S.C. §§ 1083, 1083.

86. Defendants are responsible for setting the funding requirements and the funding policy for the Plans.

87. Defendants failed to set a funding policy that will adequately fund the anticipated obligations of the Plans or fund the Plans.

88. As of December 31, 2013, the Old Plan was more than \$112 million underfunded while the Frozen Plans were more than \$22 million underfunded. *See* 2013 Consolidated Financial Statements at 25-26.

(2) Defendants Breached Their Fiduciary Duty to Avoid Conflicts of Interest

89. By continuing to set an inadequate funding policy, which has resulted in the Plans becoming underfunded by millions of dollars, Defendants have acted at all times in the interest of the Company, and have not acted solely in the interests of the Plans' participants as is required of a fiduciary under ERISA.

90. The Company benefits from Defendants' decision not to fund the Plans adequately, and Defendants have a conflict of interest that prevents them from carrying out their fiduciary duties in a manner consistent with ERISA.

91. Despite this conflict of interest, Adventist Health System has failed to appoint fiduciaries who could carry out their duties to protect the Plans' participants in a manner consistent with ERISA or to take other appropriate steps to address the conflict.

92. As a result of this conflict of interest, and in light of Defendants' repeated and ongoing breaches of fiduciary duties, the Court should appoint an independent fiduciary who can protect the interests of Plans' participants and carry out his or her duties consistent with ERISA.

FIRST CLAIM FOR RELIEF

Declaratory and Equitable Relief

(Declaratory Judgment Act and ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3))

93. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint.

94. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to: "(A) 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 title or the terms of the plan."

95. Pursuant to this provision, 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiff seeks declaratory relief that the Plans are not "church plans" within the meaning of ERISA § 3(33), 29 U.S.C. § 1002(33), and is thus subject to the provisions of Title I and Title IV of ERISA.

96. Plaintiff further seeks orders directing all Defendants to bring the Plans into compliance with ERISA, including the reporting and funding requirements of ERISA, 29 U.S.C. §§ 1021, 1023, 1082, 1102, and 1104, and by remedying the additional violations set forth below.

97. Additionally, Plaintiff seeks an order that Adventist Health System make all contributions to the Plans as necessary to remedy the Plans' funding shortfalls.

SECOND CLAIM FOR RELIEF

Violation of Reporting and Disclosure Provisions

(ERISA §§ 101-104, 502(a)(1)(A), (a)(3), 29 U.S.C. §§ 1021-1024, 1132(a)(1)(A), (a)(3))

98. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint.

99. ERISA § 502(a)(1)(A), 29 U.S.C. 1132(a)(1)(A), permits a plan participant to bring a suit for penalties when a defendant violates the recordkeeping obligations set forth in ERISA.

100. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

A. Annual Reports

101. Under ERISA § 103, 29 U.S.C. § 1023, employee benefit plans are required to file an annual report with the Secretary of Labor. This report, submitted via Form 5500, must include certain specified information about the plan's finances, participants, and administration.

102. Defendants failed to file an annual report concerning the Plans with the Secretary of Labor in compliance with ERISA § 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 § 103, 29 U.S.C. § 1023.

103. Defendants have violated ERISA § 104(a), 29 U.S.C. § 1024(a), by failing to file annual reports with respect to the Plans with the Secretary of Labor in compliance with ERISA § 103, 29 U.S.C. § 1023, or Form 5500s and associated schedules and attachments.

B. Notification of Failure to Meet Minimum Funding Standards

104. Under ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1), employers maintaining employee benefit plans are required to issue a notice to beneficiaries and participants whenever

the plan fails to make a required installment or other payment required to meet the minimum funding standards under ERISA.

105. Adventist Health System has failed to furnish the Plaintiff or any member of the Class with a Notice with respect to the Plans pursuant to ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1), informing them that Adventist Health System failed to make payments required to comply with ERISA § 302, 29 U.S.C. § 1082.

C. Funding Notices

106. Under ERISA § 101(f), 29 U.S.C. § 1021(f), administrators of defined benefit plans are required to provide annual plan funding notices to all participants and beneficiaries of such defined benefit plans.

107. At no time have Defendants furnished Plaintiff or any member of the Class with a Funding Notice with respect to the Plans pursuant to ERISA § 101(f), 29 U.S.C. § 1021(f).

108. As the Administrator of the Plans, the Committee has violated ERISA § 101(f), 29 U.S.C. § 1021(f), by failing to provide each participant and beneficiary of the Plans with the Funding Notice required by ERISA § 101(f), 29 U.S.C. § 1021(f), 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. § 2575.502(c)(3)) for each day that the Committee has failed to provide Plaintiff and each Class member with the Funding Notice required by ERISA § 101(f), 29 U.S.C. § 1021(f).

THIRD CLAIM FOR RELIEF

**Failure to Provide Minimum Funding
(ERISA §§ 302 and 502(a)(3), 29 U.S.C. §§ 1082, 1132(a)(3))**

109. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint.

110. ERISA § 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.

111. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

112. As the employer maintaining the plan, Adventist Health System was responsible for making the contributions that should have been made pursuant to ERISA § 302, 29 U.S.C. § 1082, at a level commensurate with ERISA's requirements.

113. Defendants have failed to make contributions in satisfaction of the minimum funding standards of ERISA § 302, 29 U.S.C. § 1082.

114. By failing to make the required contributions to the Plans, Adventist Health System has violated ERISA § 302, 29 U.S.C. § 1082.

115. As a result of the failure of Adventist Health System to fund the Plans in accordance with ERISA's minimum funding standards, Plaintiff faces substantial risk of her pension being lost or severely reduced.

FOURTH CLAIM FOR RELIEF

Failure to Establish the Plans Pursuant to a Written Instrument Under ERISA (ERISA §§ 402, 502(a)(3), 29 U.S.C. §§ 1102, 1132(a)(2))

116. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint.

117. ERISA § 402, 29 U.S.C. § 1102, provides that every plan will be established pursuant to a written instrument which will, among other things, "provide a procedure for

establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of [Title I of ERISA].”

118. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring a suit to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

119. The Plans have not been established pursuant to a written instrument meeting the requirements of ERISA § 402, 29 U.S.C. § 1102.

120. As Defendants have been responsible for maintaining the Plans and has amendment power over the Plans, it violated § 402, 29 U.S.C. § 1102, by failing to promulgate written instruments in compliance with these sections to govern the operation and administration of the Plans.

FIFTH CLAIM FOR RELIEF

(Claim for Failure to Establish a Trust Meeting the Requirements of ERISA section 403 Against Defendant Adventist Health System)

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

122. 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.

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

124. Defendant Adventist Health System violated section 403 by failing to put the Plans' assets in trust in compliance with ERISA section 403, 29 U.S.C. § 1103.

SIXTH CLAIM FOR RELIEF

(Claim for Clarification of Future Benefits Under ERISA sections 502(a)(1)(B) and 502(a)(3) Against Defendant Adventist Health System)

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

126. ERISA section 502(a)(1)(B), 29 U.S.C. § 1102(a)(1)(B), provides, in part, that a participant or beneficiary may bring a civil action to "clarify his rights to future benefits under the terms of the plan."

127. Plaintiff and members of the class have not been provided ERISA-compliant benefit statements.

128. Pursuant to ERISA section 502(a)(3), 29 U.S.C. §§ 1132(a)(3), once the Plans are made compliant with ERISA, Plaintiff seeks to clarify their rights under the terms of the Plans and to require Defendant Adventist Health System to provide Plaintiff and the Class with ERISA compliant benefit statements.

SEVENTH CLAIM FOR RELIEF

(Claim for Civil Money Penalty Pursuant to ERISA section 502(a)(1)(A) Against Defendant Adventist Health System and/or the Plan Administrator Defendant)

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

130. 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).

131. ERISA section 502(c)(3), 29 U.S.C. § 1132(c)(3), as provided in 29 C.F.R. § 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.

132. ERISA section 502(c)(3), 29 U.S.C. § 1132(c)(3), as provided in 29 C.F.R. § 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.

133. ERISA section 502(c)(3), 29 U.S.C. § 1132(c)(3), as provided in 29 C.F.R. § 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 non-forfeitable 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.

134. Because Defendant Adventist Health System, as the employer, has failed to give the notices required by ERISA section 101(d), 29 U.S.C. § 1021(d), as set forth in Count IV Subpart 4, Defendant Adventist Health System is liable to 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.

135. Because Defendant Adventist Health System, as Plan Administrator of the Plans, has failed to give the notices required by ERISA section 101(f), 29 U.S.C. § 1021(f), and the Pension Benefit Statements required by ERISA section 105(a), 29 U.S.C. § 1025(a), as set forth in Count IV Subparts 5 through 6, Defendant Adventist Health System 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 statements are provided, as the Court, in its discretion, may order.

EIGHTH CLAIM FOR RELIEF

(Claim for Breach of the Fiduciary Duty of Prudence and Loyalty Against All Defendants)

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

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

138. 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.

139. As fiduciaries with respect to the 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 sections 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 Plans during the times that each was a fiduciary of the Plans.

140. Defendants have never enforced any of the provisions of ERISA as set forth above with respect to the Plans.

141. By failing to enforce the provisions of ERISA set forth above, Defendants breached the fiduciary duties that they owed to Plaintiff and the Class.

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

NINTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty By Engaging in Prohibited Transactions Against All Defendants)

143. 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.

144. 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.

145. 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 for his or her own interest or for his or her own account.

146. As fiduciaries with respect to the Plans and, with respect to Defendant Adventist Health System, as an employer of employees covered by the Plans, the Defendants at all relevant times were parties in interest with respect to the Plans pursuant to ERISA sections 3(14)(A) and (C), 29 U.S.C. §§ 1002(14)(A) and (C).

147. By failing to enforce the funding obligations created by ERISA and owed to the Plans, Defendants extended credit from the Plans to Adventist Health System 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.

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

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

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

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

TENTH CLAIM FOR RELIEF

**(Breach of Fiduciary Duty as to Failure to Monitor Fiduciaries As Against
Defendant Adventist Health System)**

152. As alleged above, during the Class Period, Defendant Adventist Health System was a named fiduciary pursuant to ERISA section 402(a)(1), 29 U.S.C. § 1102(a)(1), or a *de facto* fiduciary within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, it was bound by the duties of loyalty, exclusive purpose, and prudence.

153. The scope of the fiduciary responsibilities of Adventist Health System, through its Board of Trustees, included the responsibility to appoint, and remove, and thus, monitor the performance of other fiduciaries, including the Retirement Plan Administrative Committee, and the Individual Defendants.

154. In the case of the Retirement Plan Administrative Committee, these monitoring duties included the duty to monitor any entity or person, subcommittee, or entity to whom the members of the Retirement Plan Administrative Committee delegated or allocated responsibility for the Plans, including any responsibility for the Plans' investments and/or funding.

155. Under ERISA, a monitoring fiduciary must ensure that the monitored fiduciaries perform their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and effective action to protect the plan and participants when they are not.

156. The monitoring duty further requires that appointing fiduciaries have procedures in place so that they may review and evaluate, on an ongoing basis, whether the "hands-on" fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work and the plan's performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their appointees, the appointing fiduciaries would have no basis for prudently concluding that their

appointees were faithfully and effectively performing their obligations to plan participants or for deciding whether to retain or remove them.

157. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with the complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan assets, or that may have an extreme impact on the plan and the fiduciaries' investment decisions regarding the plan.

158. Defendant Adventist Health System, and the Retirement Plan Administrative Committee members breached their fiduciary monitoring duties by, among other things: (a) failing to appoint persons who would run the Plans as ERISA plans; (b) failing to ensure that the monitored fiduciaries appreciated the true extent of not running the Plans as ERISA Plans; (c) to the extent any appointee lacked such information, failing to provide complete and accurate information to all of their appointees such that they could make sufficiently informed fiduciary decisions with respect to the Plans; and (d) failing to remove appointees whose performance was inadequate in that they continued to run the Plans as non-ERISA Plans, and who breached their fiduciary duties under ERISA.

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

ELEVENTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty as to Co-Fiduciary Liability As Against All Defendants)

160. As alleged above, all Defendants were named fiduciaries pursuant to ERISA section 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

161. ERISA section 405(a), 29 U.S.C. § 1105(a), imposes liability on a fiduciary, in addition to any liability which he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if he knows of a breach and fails to remedy it, knowingly participates in a breach, or enables a breach. Defendants breached all three provisions.

162. ERISA section 405(a)(3), 29 U.S.C. § 1105(a)(3), imposes co-fiduciary liability on a fiduciary for a fiduciary breach by another fiduciary if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach. Each of the Defendants knew of the breaches by the other fiduciaries and made no efforts, much less reasonable ones, to remedy those breaches.

163. Because Defendants knew that the Plans were not being run as ERISA Plans, Defendants knew that the other Defendants were breaching their duties by not complying with ERISA. Yet, they failed to undertake any effort to remedy these breaches.

164. ERISA section 405(a)(1), 29 U.S.C. § 1105(a)(1), imposes liability on a fiduciary for a breach of fiduciary responsibility by another fiduciary with respect to the same plan if he knowingly participates in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach. Adventist Health System knowingly participated in the fiduciary breaches of the other Defendants in that it benefited from the Plans not being run as ERISA Plans.

165. ERISA section 405(a)(2), 29 U.S.C. § 1105(a)(2), imposes liability on a fiduciary if, by failing to comply with ERISA section 404(a)(1), 29 U.S.C. §1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled another fiduciary to commit a breach.

166. The failure of Defendant Adventist Health System to monitor the other Defendants enabled those other Defendants to breach their duties.

167. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans are currently underfunded, meaning that the Plans do not have sufficient assets to pay all accrued benefits they have promised to their participants and beneficiaries and are legally obligated to pay under ERISA.

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

TWELFTH CLAIM FOR RELIEF

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

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

170. The ERISA Church Plan exemption is an accommodation that exempts churches and associations of churches, under certain circumstances, from compliance with ERISA.

171. The ERISA Church Plan exemption, as claimed by Adventist Health System, is an attempt to extend the accommodation beyond churches and associations of churches, to

Adventist Health System—a non-profit hospital conglomerate that has chosen to compete with commercial businesses, including other non-profits as well as for-profits, by entering the economic arena and trafficking in the marketplace. Extension of the Church Plan exemption to Adventist Health System violates the Establishment Clause because it (A) is not necessary to further the stated purposes of the exemption, (B) harms Adventist Health System workers, (C) puts Adventist Health System competitors at an economic disadvantage, (D) relieves Adventist Health System of no genuine religious burden created by ERISA, and (E) creates more government entanglement with alleged religious beliefs than compliance with ERISA creates.

A. Not Necessary to Further Stated Purpose. Congress enacted the Church Plan exemption to avoid “examination of books and records . . . an unjustified invasion of the confidential relationship with regard to churches and their religious activities.” *See* 2 S. Rep. No. 93-383 (1972), *reprinted in* 1974 U.S.C.C.A.N. 4889, 4965. This purpose has no application to Adventist Health System, which is neither run by nor intimately connected to any church financially. And, unlike a church, Adventist Health System has *no confidential books and records* to shield from government scrutiny. Adventist Health System already purports to disclose all material financial records and relationships when it seeks Medicare and Medicaid reimbursements and issues government-related bonds.

B. Harms Workers. Employers, including Adventist Health System, 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. Adventist Health System tells prospective employees that any choice of faith, or lack thereof, is not a factor in the recruiting and hiring of Adventist Health System employees. Thus, as a practical matter, and by Adventist Health System’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. In choosing to recruit and hire from the public at large, Adventist Health System must be willing to accept neutral regulations, such as ERISA, imposed to protect those employees' legitimate interests. To be constitutional, an accommodation such as the Church Plan exemption must not impose burdens on non-adherents without due consideration of their interests. The Church Plan exemption, as claimed by Adventist Health System, places its many thousands of longtime employees' justified reliance on their pension benefits at great risk, including because the Plans are -- upon information and belief -- uninsured and, upon information and belief, underfunded. In addition, Adventist Health System fails to provide the multitude of other ERISA protections designed to safeguard its employees' pensions. The Church Plan exemption, as claimed by Adventist Health System, provides no consideration of the harm that it causes to Adventist Health System's employees.

C. Puts Adventist Health System's Competitors at an Economic Disadvantage.

Adventist Health System's commercial rivals face material disadvantages in their competition with Adventist Health System because the rivals must use their current assets to fully fund, insure (through premiums to the PBGC), and administer their pension plans, as well as providing other ERISA protections. In claiming that the Adventist Health System Plans are exempt Church Plans, Adventist Health System enjoys a material competitive advantage because it is able to divert significant cash, which otherwise would be required to fund, insure (through premiums to the PBGC), and administer the Adventist Health System Plans, to its competitive growth strategy. To be constitutional, an accommodation such as the Church Plan exemption must take adequate account of harm to non-beneficiaries. The Church Plan exemption, as applied by

Adventist Health System, provides no consideration of the disadvantage it creates for Adventist Health System's competitors.

D. Relieves No Genuine Religious Burden Imposed by ERISA. An exemption exclusively for religion must alleviate a significant, *state-imposed* interference with religious exercise. The Church Plan exemption, as claimed by Adventist Health System, responds to no genuine burden created by ERISA on any of Adventist Health System's religious practices. ERISA is materially indistinguishable from the array of neutral Congressional enactments that do not significantly burden religious exercise when applied to commercial activities.

E. Creates Government Entanglement with Alleged Religious Beliefs. An Adventist Health System exemption requires courts and agencies to examine unilateral religious "convictions" of a non-church entity and determine if they are "shared" with a church, in the absence of any actual church claiming responsibility for the pensions. This *creates* entanglement between government and putative religious beliefs. ERISA compliance, on the other hand, requires zero entanglement with religion for Adventist Health System because ERISA is a neutral statute that regulates pension protections and Adventist Health System has no relevant confidential books, records or relationships. Thus, an extension of the Church Plan exemption to Adventist Health System produces state entanglement with alleged religious beliefs while compliance with ERISA creates no meaningful state entanglement with alleged religious beliefs.

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

JURY DEMAND

Plaintiff demands a jury.

PRAYER FOR RELIEF

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

- A. Certifying this action as a class pursuant to FED. R. Civ. P. 23;
- B. Declaring that the Plans are an employee benefit plan within the meaning of ERISA section 3(2), 29 U.S.C. § 1002(2), 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 ERISA section 3(33), 29 U.S.C. § 1002(33);
- C. Ordering Defendants to reform the Plans to bring them into compliance with ERISA, including, but not limited to, requiring Defendants to fund the Plans in accordance with ERISA's funding requirements, disclose required information to the Plans' participants and beneficiaries, and otherwise comply with all other reporting, vesting, accrual, and funding requirements of Title I of ERISA;
- D. Requiring Defendants to make the Plans whole for all contributions that should have been made pursuant to ERISA funding standards, and for interest and investment income on such contributions, and requiring Defendants to disgorge any profits accumulated as a result of their fiduciary breaches;
- E. Requiring Defendants to comply with ERISA reporting and disclosure requirements, including by filing Form 5500 reports, distributing ERISA-compliant Summary Plan Descriptions, Summary Annual Reports, and ERISA-compliant Participant Benefit Statements, and providing Notices of the Mercy Health Plans' funding status and deficiencies;
- F. Requiring clarification of rights to future benefits pursuant to ERISA section 502(a)(1)(B), 29 U.S.C. § 1102(a)(1)(B);

G. Requiring the establishment of a trust in compliance with ERISA section 403, 29 U.S.C. §1103;

H. Granting a preliminary and permanent injunction removing Defendants as the Plans' fiduciaries, and appointing one or more independent fiduciaries to hold the Plans' assets in trust, to manage and administer the Plans and their assets, and to enforce the terms of ERISA;

I. Requiring Defendants to pay a civil money penalty of up to \$110 per day to Plaintiff and each Class member for each day they failed to inform Plaintiff and each Class member of Defendants' failure to fund the Plans in accordance with ERISA's requirements;

J. Requiring the Plan Administrator Defendant to pay civil money penalties of up to \$110 per day to Plaintiff and each Class Member for each day it failed to provide to Plaintiff and each Class Member with a Funding Notice;

K. Requiring the Plan Administrator Defendant to pay civil money penalties 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);

L. 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 Plans;

M. 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, and such appropriate equitable relief as the Court may order, including, but limited to, an accounting, surcharge, disgorgement of profits, equitable lien, constructive trust, or other remedy;

N. Awarding to Plaintiff's counsel 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 law;

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

P. Awarding to Plaintiff pre-judgment interest on any amounts awarded pursuant to law; and

Q. Granting to Plaintiff and the Class such other, further or different relief which the Court deems just and proper.

Dated: October 28, 2016

Respectfully submitted,

**SHEPPARD, WHITE, KACHERGUS,
& DEMAGGIO, P.A.**

By: /s/William J. Sheppard

William J. Sheppard

Bryan DeMaggio

215 Washington Street

Jacksonville, Florida 32202

Tel: (904) 356-9661

Fax: (904) 356-9667

Email: sheplaw@att.net

GAINEY McKENNA & EGLESTON

Thomas J. McKenna

Gregory M. Egleston

440 Park Avenue, 5th Floor

New York, NY 10016

Tel: (212) 983-1300

Fax: (212) 983-0383

Email: tjmckenna@gme-law.com

Email: gegleston@gme-law.com

Counsel for Plaintiff