

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LISA FEATHER, STANLEY)
BEIERMANN, and HOLLY PYATT, on)
behalf of themselves, and all others)
similarly situated, and on behalf of the)
SSM PENSION PLANS,)

Plaintiffs,)

v.)

SSM HEALTH CARE CORPORATION)
d/b/a SSM HEALTH, a Missouri Non-profit)
Corporation, SSM HEALTH CARE)
PENSION COMMITTEE, JOHN and)
JANE DOES 1-20, MEMBERS OF THE)
SSM HEALTH CARE PENSION)
COMMITTEE, each an individual, and)
JOHN AND JANE DOES 21-40, each an)
individual,)

Defendants.)

No. 4:16-cv-01669-HEA

FIRST AMENDED COMPLAINT

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I. INTRODUCTION

1. Defendant SSM Health Care Corporation d/b/a SSM Health, by and through its subsidiaries and/or affiliates (“SSM Health” or “Defendant”), operates a healthcare conglomerate in Illinois, Missouri, Wisconsin, and Oklahoma that employs over 35,000 people. This case concerns SSM Health’s failure to properly maintain its pension plans under the applicable federal law regulating pension plans, the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). In the alternative, even if the pension plans are not subject to ERISA, SSM Health has breached its duties under state law. In particular, whether under federal or state law, SSM Health has failed to adequately fund its pension plans, creating a substantial risk that the plans will be unable to pay the benefits to which SSM Health’s employees are entitled. As demonstrated herein, SSM Health’s failures harm the thousands of employees who have worked, or continue to work, for SSM Health, and who, like employees throughout the country, are depending on the pension benefits they worked hard to earn throughout their careers to support their retirement.

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: A Political History* 3 (Univ. of Cal. Press 2005).

3. This class action is brought on behalf of all participants and beneficiaries of three pension plans sponsored by SSM Health Care Corporation: (i) the Retirement Plan for

Employees of SSM Health Care; (ii) the Retirement Plan for Employees of Certain Illinois Entities Related to SSM Health Care; and (iii) the Retirement Plan for Employees of St. Mary's Hospital, Centralia, Illinois (collectively referred to herein as the "SSM Pension Plans" or simply the "Plans").

4. The SSM Pension Plans are defined benefit pension plans that are established, maintained, administered, and sponsored by SSM Health.

5. SSM Health is violating numerous provisions of ERISA—including, on information and belief, underfunding the SSM Pension Plans—while erroneously claiming that the Plans are exempt from ERISA's protections because they are "church plans." But the SSM Pension Plans do not meet the definition of "church plan" under ERISA because a "church plan" generally must be "maintained" by a church or a convention or association of churches, and SSM Health, the entity that maintains the SSM Pension Plans, is plainly not a church or a convention or association of churches.

6. SSM Health may claim that the SSM Pension Plans are "maintained" by internal SSM Health retirement committees and thus qualify for a special accommodation for plans maintained by church-associated "organizations" whose "principal purpose" is funding or administering benefit plans. But it is SSM Health, and not any committees, that maintains the SSM Pension Plans, and SSM Health's principal purpose is providing healthcare, not funding or administering retirement plans.

7. Even if the committees did "maintain" the Plans, the SSM Pension Plans still would not qualify as "church plans" because these committees are internal committees of SSM Health and are not distinct "organizations," as required by ERISA's "principal purpose" accommodation.

8. Furthermore, even if the SSM Pension Plans were somehow “maintained” by a permissible entity, the church plan exemption still would not apply because other aspects of the definition are not satisfied, including that neither SSM Health nor the retirement committees are “controlled by” or “associated with” a church, within the meaning of ERISA.

9. SSM Health is a non-profit healthcare conglomerate, not unlike other non-profit healthcare conglomerates with which SSM Health competes in its commercial healthcare activities. SSM Health is not owned or operated by a church and does not receive funding from a church. No denominational requirement exists for SSM Health employees. Indeed, SSM Health tells prospective employees that any choice of faith, or lack thereof, is not a factor in the recruiting and hiring of SSM Health employees. In choosing to recruit and hire from the population at large, SSM Health must also be willing to accept neutral, generally applicable regulations, such as ERISA, imposed to protect those employees’ legitimate interests.

10. Even if the Court determined that the SSM Pension Plans fell within the scope of the “church plan” exemption, the “church plan” exemption would then be, as applied to SSM Health, an unconstitutional accommodation in violation of the Establishment Clause of the First Amendment. SSM Health contends, in effect, that it must be relieved of its ERISA financial obligations because SSM Health claims certain religious beliefs. The Establishment Clause, however, does not allow such an economic preference for religious adherents that is not available to non-adherents, at least where, as here, an accommodation is not required to relieve a substantial burden on religious practice or to avoid government entanglement in religion. Extension of the church plan exemption to SSM Health (a) is not necessary to further the stated purposes of the exemption; (b) harms SSM Health workers; (c) puts SSM Health competitors at an economic disadvantage; (d) relieves SSM Health of no genuine religious burden created by

ERISA; and (e) creates more government entanglement with alleged religious beliefs than compliance with ERISA creates. Plaintiffs make no claim in this case that the “church plan” exemption is unconstitutional as to a true church plan, established and maintained by a church.

11. SSM Health’s claim of “church plan” status for the Plans fails under both the statutory church plan definition and the First Amendment. Plaintiffs seek an Order requiring SSM Health to comply with ERISA and afford the Class all the protections of ERISA with respect to the SSM Pension Plans. In the alternative, Plaintiffs seek an Order finding that if ERISA’s “church plan” exemption applies to SSM Health, the statute is, to that extent, unconstitutional because it violates the Establishment Clause of the First Amendment.

12. Yet even if the “church plan” exemption did apply to the SSM Pension Plans and even if the application of the exemption were constitutionally permissible, SSM Health nonetheless has breached its contractual obligations under the SSM Pension Plans’ documents and has breached its common law fiduciary duties by failing to make required contributions to the SSM Health Care System Master Trust Fund (“SSM Health Trust”). By refusing to properly fund the SSM Pension Plans, in contravention of its obligations under the SSM Pension Plans’ documents and its repeated promises to SSM Pension Plan participants, SSM Health has left the SSM Pension Plans significantly underfunded. On information and belief, the SSM Health Trust holds assets worth only approximately 63% of the accrued benefit obligations as of December 31, 2016. Because of SSM Health’s failures to fund the SSM Pension Plans, there exists a substantial risk that the SSM Pension Plans will be unable to pay the accrued pension benefits to which Plaintiffs and the other Class members are entitled. Accordingly, Plaintiffs seek an Order requiring SSM Health to make all contributions to the SSM Health Trust necessary to fund, on an actuarial basis, all accrued pension benefits.

II. JURISDICTION AND VENUE

13. **Subject Matter Jurisdiction.** This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States and pursuant to 29 U.S.C. § 1132(e)(1), which provides for federal jurisdiction of actions brought under Title I of ERISA. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367 because the state law claims are so related to Plaintiffs' other claims in this action that they form part of the same case or controversy.

14. In addition, this Court has subject matter jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because at least one class member is of diverse citizenship from one defendant, there are 100 or more class members nationwide, and the aggregate amount in controversy exceeds \$5,000,000. In addition, fewer than two-thirds of the members of the proposed plaintiff class are citizens of Missouri.

15. **Personal Jurisdiction.** This Court has personal jurisdiction over all Defendants because ERISA provides for nationwide service of process. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). All of the Defendants are either residents of the United States or subject to service in the United States, and the Court therefore has personal jurisdiction over them. The Court also has personal jurisdiction over them pursuant to Federal Rule of Civil Procedure 4(k)(1)(A) because they would all be subject to a court of general jurisdiction in Missouri as a result of Defendant SSM Health transacting business in, and/or having significant contacts with this District.

16. **Venue.** Venue is proper in this district pursuant to ERISA section 502(e)(2), 29 U.S.C. § 1132(e)(2), because (a) some or all of the violations of ERISA took place in this District, and/or (b) Defendant SSM Health may be found in this District through its operation of

multiple hospitals in the St. Louis region, including SSM Health DePaul Hospital and SSM Health St. Mary's Hospital.

17. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because Defendant SSM Health 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

A. Plaintiffs

18. **Plaintiff Lisa Feather** is a citizen and resident of Wayne County, Illinois, was employed as a nurse and later as a physician's assistant at SSM Health Good Samaritan Hospital, located in Mt. Vernon, Illinois (Jefferson County), from December of 1982 until September of 2005, and again from February of 2007 until December of 2014. Plaintiff Feather is a vested participant in the Retirement Plan for Certain Illinois Entities Related to SSM Health Care and the Retirement Plan for Employees of SSM Health Care.

19. **Plaintiff Stanley Beiermann** is a citizen and resident of St. Louis County, Missouri. Plaintiff Beiermann was employed by SSM Health for thirty-one years, from 1964 to 1995, serving in various roles including as a Staff Pharmacist for approximately ten years, and then as Associate Director of Pharmacy for the rest of his employment. Plaintiff Beiermann is a vested participant in the Retirement Plan for Employees of St. Mary's Hospital, Centralia, Illinois.

20. **Plaintiff Holly Pyatt** is a citizen and resident of St. Louis County, Missouri. Plaintiff Pyatt was employed by SSM Health, from October 2007 to December 2013, serving in various roles in the Electronic Health Records Implementation Department, including serving as the Corporate Manager – Organizational Effectiveness from September 2008 until the end of her

employment. Plaintiff Pyatt is a vested participant in the Retirement Plan for Employees of SSM Health Care.

B. Defendants

21. As discussed below, all Defendants are ERISA fiduciaries.

22. **Defendant SSM Health Care Corporation d/b/a SSM Health (“SSM Health”)**. Defendant SSM Health is a 501(c)(3) non-profit corporation organized under, and governed by, Missouri law. SSM Health is headquartered in St. Louis, Missouri. SSM Health operates in Illinois, Missouri, Wisconsin, and Oklahoma, and includes 20 hospitals, 63 outpatient care sites, a pharmacy benefit company, an insurance company, two nursing homes, comprehensive home care and hospice services, a technology company, and two Accountable Care Organizations. In 2016, SSM Health had annual operating revenues of approximately \$4.5 billion and assets of approximately \$6.7 billion. SSM Health employs more than 35,000 people.

23. **Defendant SSM Health Care Pension Committee and Defendants John and Jane Does, 1-20**, Members of Defendant SSM Health Care Pension Committee (the “Pension Committee”). Defendant Pension Committee is the Plan Administrator of the SSM Pension Plans. Defendants John and Jane Does 1-20 are individuals who, through discovery, are found to be members of the Pension Committee. These individuals will be added by their true names as Defendants in this action upon motion by Plaintiffs at an appropriate time.

24. **Defendants John and Jane Does 21-40**. Defendants John and Jane Does 21-40 are individuals who, through discovery, are found to have fiduciary responsibilities with respect to the SSM Pension Plans and are fiduciaries within the meaning of ERISA. These individuals will be added by their true names as Defendants in this action upon motion by Plaintiffs at an appropriate time.

25. Defendant Members of the Pension Committee and John and Jane Does 21-40 are collectively referred to herein as the “Individual Defendants.”

IV. THE BACKGROUND OF THE CHURCH PLAN EXEMPTION

A. The Adoption of ERISA

26. Following years of study and debate, and broad bipartisan support, 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* 67-71 (6th ed. 2015).

27. 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 (“PBGC”). *See, e.g.*, ERISA §§ 303, 203, 101-06, 404-06, 409, 4007, 4022, 29 U.S.C. §§ 1083, 1053, 1021-26, 1104-06, 1109, 1307, 1322.

28. ERISA centers on pension plans, 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), (1), 29 U.S.C. § 1002(34), (1).

B. The Scope of the Church Plan Exemption in 1974

29. As adopted in 1974, ERISA provided an exemption from compliance for certain plans, in particular governmental plans and church plans. Plans that met those statutory definitions were exempt from all of ERISA's substantive protections for participants. ERISA § 4(b)(2), 29 U.S.C. § 1003(b)(2) (exemption from Title I of ERISA); ERISA § 4021(b)(3), 29 U.S.C. § 1321(b)(3) (exemption from Title IV of ERISA).

30. 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

31. Although the 1974 legislation required church plans to be established and maintained by a church, employees of certain pre-existing agencies of such church were grandfathered, but that provision had a sunset clause and was set to expire in 1982.² ERISA § 3(33)(C) (1974), 29 U.S.C. § 1002(33)(C) (1974) (current version as amended at 29 U.S.C. § 1002(33) (2012)). Thus, under the 1974 legislation, no pension plan could qualify for the church plan exemption unless it was both established and maintained by a church. *Id.*

C. The Changes to the Church Plan Exemption in 1980

32. The church plan definition was amended in 1980. Multiemployer Pension Plan Amendments Act of 1980 (“MPPAA”), Pub. L. No. 96-364, § 407, 94 Stat. 1208 (1980). The amended definition is current law.

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).

² H.R. Rep. No. 93-1280 (1974) (Conf. Rep.), *reprinted in* 1974 U.S.C.C.A.N. 5038, 5044.

33. The 1980 amendments to ERISA dropped the grandfather and sunset provisions concerning employees of church agencies. Congress achieved this by including 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) (2012)). As amended, an “employee” of a church or a convention/association of churches includes an employee of an organization “which is controlled by or associated with a church or a convention or association of churches.” *Id.* The phrase “associated with” is then defined in ERISA section 3(33)(C)(iv) to include only those organizations that “share[] common religious bonds and convictions with that church or convention or association of churches.” 29 U.S.C. § 1002(33)(C)(iv) (1980) (current version at 29 U.S.C. § 1002(33)(C)(iv) (2012)). Accordingly, 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.

34. The 1980 amendments also expanded the definition of the entities that could maintain a church plan to include “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) (2012)). For convenience, this type of organization is referred to here, as it is in the case law, as a “principal-purpose organization.”

35. The Supreme Court recently determined that a church plan that is maintained by a principal-purpose organization qualifies for the church plan exemption even if it was not

established by a church. *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1658 (2017). The Supreme Court expressly declined to interpret the meaning of “principal purpose organization” or to express an opinion on whether the plans at issue in the cases before it were maintained by principal purpose organizations. *Id.* at 1657 n.2.

36. However, a typical hospital benefit plan plainly is not maintained by a principal-purpose organization. It is maintained by the hospital itself, usually through its board of directors. Thus even if a hospital were “controlled by or associated with” a church, it could not maintain its own “church plan” because a hospital’s principal purpose or function is the provision of health care, not “the administration or funding of a plan or program for the provision of retirement benefits.” ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

V. SSM HEALTH

A. SSM Health’s Operations

37. SSM Health was formed in 1986 as a 501(c)(3) non-profit corporation organized under, and governed by, Missouri law. Headquartered in St. Louis, Missouri, SSM Health employs more than 35,000 people across Missouri, Illinois, Wisconsin, and Oklahoma.

38. In Missouri, SSM Health owns and operates 10 hospitals, including seven in the St. Louis area, and various physician offices.

39. SSM Health provides a full range of health services in the Southern Illinois region, including eight family health centers, two convenient care facilities, and two regional hospitals, including SSM Health St. Mary’s Hospital in Centralia, Illinois.

40. SSM Health in Wisconsin consists of three hospitals, approximately 60 primary and specialty care clinics, two senior care centers, and a health insurance provider.

41. SSM Health in Oklahoma includes three hospitals and various physician offices.

42. As of its 2016 fiscal year end, SSM Health had approximately \$6.7 billion in assets and annual operating revenues of approximately \$6.1 billion.

43. In addition to its hospital network, SSM Health has branched out to include numerous subsidiaries and/or related entities, including for-profit corporations. For example, in September 2013 SSM Health acquired Dean Health Systems, a for-profit network that consists of more than 60 clinics in south-central Wisconsin, Davis Duehr Dean Eye Care, the insurance provider Dean Health Plan, and pharmacy benefits company Navitus Health Solutions.

44. Like other large non-profit hospital systems, SSM Health 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.

45. In the annual returns of a tax-exempt organization (Form 990s) that SSM Health files with the IRS, SSM Health claims that the reason for its public charity status is that it is “[a]n organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in section 509(a)(1) or section 509(a)(2).”

46. SSM Health’s facilities, including those of subsidiaries, have no denominational requirement for their employees and medical staff.

47. SSM Health has no denominational requirement for its employees.

48. Employees and medical staff of SSM Health’s facilities and the facilities of its subsidiaries are not required to sign or abide by a statement of faith or hold any particular religious beliefs.

49. SSM Health’s healthcare facilities and/or the healthcare facilities of its subsidiaries have no denominational requirement for their patients and/or clients.

50. SSM Health does not limit its focus to the needs of a particular religious population, and it does not market to, or target, a particular religious population.

51. SSM Health does not have a mission to serve only patients of a particular religion.

52. SSM Health is required and has elected to comply with a broad array of elaborate state and federal regulations and reporting requirements, including health and safety, Medicare and Medicaid, fraud and abuse, tax, anti-trust, environmental and labor laws, among others.

53. SSM Health purports to disclose, and not keep confidential, its own highly complex financial records. For example, SSM Health 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, SSM Health makes public its consolidated financial statements, which describe SSM Health's representations as to its own highly complex operations and financial affairs. Finally, SSM Health's financial information is regularly disclosed to the rating agencies and the public when tax-exempt revenue bonds are issued.

54. The principal purpose or function of SSM Health is not the administration or funding of a plan or program for the provision of retirement or welfare benefits, or both, for the employees of a church or a convention or association of churches.

55. Rather, the principal purpose or function of SSM Health is the provision of general healthcare services to residents within communities served.

56. SSM Health complies with ERISA for one of its noncontributory defined benefit pension plans, the Pension Plan of SSM Audrain Health Care, Inc. ("Audrain ERISA Plan").

57. SSM Health is not a church.

58. SSM Health's subsidiaries and/or related entities—including, for example, FPP, Inc., a holding company, and FPP Acquisition Corporation—are not churches.

59. SSM Health is not a convention or association of churches.

60. SSM Health's subsidiaries and/or related entities are not a convention or association of churches.

61. SSM Health is not owned by a church.

62. SSM Health does not receive financial support from a church.

63. SSM Health does not claim that any church has any liability for SSM Health's debts or obligations.

64. On information and belief, neither the Catholic Church nor any other church has any role in the governance of SSM Health.

65. The governance of SSM Health, including the management of SSM Health's affairs, is vested in SSM Health's Board of Directors.

66. The senior management of SSM Health, referred to as "System Management," includes the CEO, the Presidents of Hospital Operations and of Physician and Ambulatory Services, Senior Vice Presidents for Finance, Human Resources, and Strategic Development, the CIO, the General Counsel, the Chief Medical Officer and the Chief Nursing Officer. Within the last six weeks, SSM Health added an Interim Senior Vice President for Mission Integration and Ethics, who is the only member of the leadership team who appears to be affiliated with a religious order, and the first to be so affiliated in at least the last three years. The other ten positions are primarily filled by persons with lengthy backgrounds in healthcare administration, as well as law, finance, medicine and nursing. Two members of the senior team have medical degrees, three have MBAs, but other than the recently added Senior Vice President for Mission

Integration and Ethics, none have degrees relating to theology, canon law, or other church-related academic disciplines. The stated duties of the System Management team are, unsurprisingly, focused on running a large healthcare system:

All strategic, operating, human resource, capital, policy and procedure questions impacting the entire system are brought to this group for input and/or decision. System Management focuses on the operational and strategic priorities of each entity, network and system-wide issues affecting our patients and their communities.³

67. Executive Officers of SSM Health receive compensation in line with executive officers of other hospital systems. For example, in 2015, the SSM Health President received reportable compensation of \$2.25 million.

68. No church has any role in the maintenance and/or administration of the SSM Pension Plans.

B. The SSM Pension Plans

69. The SSM Pension Plans are non-contributory defined benefit pension plans covering substantially all of SSM Health's employees. Under the Plans, employees earn a defined benefit based on their pay and years of service. Employees can earn a year of service and a year of credited service for each calendar year in which they are credited with at least 1,000 hours of service. Participants are fully vested after they are credited with five calendar years of service.

70. On information and belief, the SSM Pension Plans provide for a lump sum option as a form of benefit available to retirees who are eligible under the terms of the Plans.

³ *System Management*, SSMHealth.com, <http://www.ssmhealth.com/system/about-ssm/leadership-team> (last visited Sept. 6, 2017).

71. For example, SSM offered Plaintiff Feather a lump sum value of \$141,982.78, calculated as of February 1, 2016, as full satisfaction for Plaintiff Feather's vested monthly benefit of \$2,836.32, starting at age 65. Plaintiff Feather will turn 65 in 2028.

72. On information and belief, the lump sum value offer was pursuant to the terms of the Plans.

73. SSM Health, or its predecessor(s) or affiliate(s), established each of the SSM Pension Plans and has the power to continue or terminate the Plans.

74. SSM Health maintains each of the SSM Pension Plans.

75. SSM Health is the plan sponsor with respect to the SSM Pension Plans.

76. SSM Health, as the employer and plan sponsor of the SSM Pension Plans, has the obligation—under ERISA as well as the express and implied terms of the SSM Pension Plan documents—to make contributions to the SSM Health Trust and to fund the SSM Pension Plans.

77. As SSM Health stated in materials sent to participants:

The Retirement Plan for Employees of SSM Health Care is the primary retirement plan that SSM Health Care (SSMHC) provides to eligible employees. *It is funded entirely by SSMHC; you do not contribute or assume any financial risk or responsibility.*⁴

78. SSM Health has an obligation to make contributions to the SSM Health Trust that are sufficient to fund all accrued benefits.

79. SSM Health does not fund the Plans consistent with ERISA's minimum funding requirements.

80. The SSM Pension Plans together are currently underfunded by at least \$813 million according to SSM Health's most recently published financial statements. Plans so

⁴ *Planning for Your Future: Your SSM Health Care Defined Benefit Pension Plan at 2*, SSM Health Care (2012) (emphasis added).

significantly underfunded are at substantial risk of defaulting on their obligations to their participants.

81. Because the SSM Pension Plans were underfunded by over \$813 million as of December 31, 2016, the Plans were only funded at approximately 63%.

82. Participants' benefits in the Plans are not protected by PBGC guarantees.

83. No church guarantees the obligations of the Plans.

84. No religious order guarantees the obligations of the Plans.

C. The SSM Pension Plans Each Meet the Definition of an ERISA Defined Benefit Plan

85. The SSM Pension Plans are plans, funds, or programs that were established and maintained by SSM Health and which, by their express terms and surrounding circumstances, provide retirement income to employees and/or results in the deferral of income by employees to the termination of their employment or beyond.

86. The SSM Pension Plans each satisfy the definition of an "employee pension benefit plan" within the meaning of ERISA section 3(2)(A), 29 U.S.C. § 1002(2)(A).

87. The SSM Pension Plans do not provide for individual accounts for each participant and do not provide benefits based solely upon the amount contributed to a participant's account. As such, the SSM Pension 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).

D. Defendants Meet the Definition of ERISA Fiduciaries

1. Nature of Fiduciary Status

88. Every ERISA plan must have one or more "named fiduciaries." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1). The person named as the "administrator" in the plan

instrument is automatically a named fiduciary and, in the absence of such a designation, the sponsor is the administrator. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

89. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under ERISA section 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who in fact perform fiduciary functions. Thus, a person is a fiduciary to the extent “(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.” ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

90. Each of the Defendants was a fiduciary with respect to the Plans and owed fiduciary duties to the Plans and their participants and beneficiaries under ERISA in the manner and to the extent set forth in the Plans’ documents and/or through their conduct.

91. As fiduciaries, Defendants were required by ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1), to manage and administer the Plans and the Plans’ investments solely in the interest of the Plans’ participants and beneficiaries and 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.

92. Plaintiffs do not allege that each Defendant was a fiduciary with respect to all aspects of the Plans’ management and administration. Rather, as set forth below, Defendants were fiduciaries to the extent of the specific fiduciary discretion and authority assigned to or

exercised by each of them, and, as further set forth below, the claims against each Defendant are based on such specific discretion and authority.

93. ERISA permits fiduciary functions to be delegated to insiders without an automatic violation of the rules against prohibited transactions, ERISA § 408(c)(3), 29 U.S.C. § 1108(c)(3), but insider fiduciaries, like external fiduciaries, must act solely in the interest of participants and beneficiaries, not in the interest of the plan sponsor.

2. Defendants Are Each an ERISA Fiduciary

94. **SSM Health**. SSM Health is the employer responsible for maintaining the SSM Pension Plans and is, therefore, the plan sponsor of the SSM Pension Plans within the meaning of ERISA section 3(16)(B), 29 U.S.C. § 1002(16)(B). The SSM Pension Plan documents also state that SSM Health is the Sponsor of the Plans. Upon information and belief, Defendant SSM Health's responsibilities include fiduciary oversight of the SSM Pension Plans. Upon information and belief, Defendant SSM Health had the responsibility to appoint, and hence to monitor and remove, the members of the Pension Committee.

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

96. **SSM Health Care Pension Committee Defendants**. The terms of the instrument, or instruments, under which the SSM Pension Plans are operated specifically designate Defendant SSM Health Care Pension Committee as a Plan Administrator sufficient to meet the requirements of ERISA section 402, 29 U.S.C. § 1102.

97. As the Plan Administrator, Defendant SSM Health Care Pension Committee has the full and complete authority, responsibility, and control in its sole and absolute discretion over the administration of the Plans, including but not limited to the following: (1) administering the Plans in accordance with their terms; (2) interpreting the Plans; (3) providing each participant with all notices and information required by law with respect to election of benefits; (4) appointing and removing any trustee or investment manager; (5) employing agents to help carry out its duties and responsibilities under the Plans, including legal and actuarial counsel; and (7) issuing directions to the Trustee concerning all benefits payable from the Trust Fund.

98. Defendant SSM Health Care Pension Committee and Defendants John and Jane Does 1-20, as members of the SSM Health Care Pension Committee, are fiduciaries with respect to the SSM Pension Plans within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A), because they exercise discretionary authority or discretionary control respecting management of the SSM Pension Plans, exercise authority and control respecting management or disposition of the SSM Pension Plans' assets, and/or have discretionary authority or discretionary responsibility in the administration of the SSM Pension Plans.

99. Plaintiffs reserve the right to amend this Complaint to name other or additional Defendants once they have had the opportunity to conduct discovery on these issues.

100. Although SSM Health maintains that the SSM Pension Plans are exempt from ERISA coverage as "church plans," it claims ERISA status for the Audrain ERISA Plan, as well as, on information and belief, its 401(k) plan and welfare benefit plans.

101. Compliance with ERISA thus creates no undue, genuine burden on any religious practice of SSM Health, as evidence by SSM Health's claimed compliance with ERISA for the Audrain ERISA Plan and, on information and belief, its 401(k) plan and welfare benefit plans.

E. The SSM Pension Plans Are Not Church Plans

102. SSM Health claims that the SSM Pension 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).

1. Only Two Types of Entities May Maintain a “Church Plan,” and SSM Health Is Neither

103. Under section 3(33) of ERISA, 29 U.S.C. § 1002(33), only the following two provisions address which of entities may maintain a church plan:

- First, under section 3(33)(A) of ERISA, 29 U.S.C. § 1002(33)(A), a church plan may be maintained by a church or by a convention or association of churches; and
- Second, under section 3(33)(C)(i) of ERISA, 29 U.S.C. § 1002(33)(C)(i), a church plan may be 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.

104. 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 entity that may *maintain* a church plan. ERISA § 3(33)(C); 29 U.S.C. § 1002(33)(C).

105. The SSM Pension 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).

106. First, the SSM Pension Plans are not maintained by any church or convention or association of churches within the meaning of ERISA section 3(33)(A), 29 U.S.C. § 1002(33)(A).

107. The SSM Pension Plans are maintained by SSM Health for its own, or its affiliates’ own, employees. Because neither SSM Health nor its affiliates are a church or a

convention or association of churches, and do not claim to be a church or a convention or association of churches, the SSM Pension Plans may not qualify as church plans within the meaning of ERISA section 3(33)(A), 29 U.S.C. § 1002(33)(A).

108. Second, the SSM Pension Plans are not maintained by an “organization” described in ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i)—*i.e.*, one whose principal purpose or function is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both. Because the principal purpose or function of SSM Health is to provide healthcare services rather than to administer or fund a benefit plan, the SSM Pension Plans may not qualify as church plans within the meaning of ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

109. In the alternative, to the extent that SSM Health claims that the SSM Pension Plans are “maintained” by a principal-purpose organization within the meaning of section 3(33)(C)(i) because it is *administered* by a committee within SSM Health that has a principal purpose of administering benefit plans, the claim fails because the committee purportedly “administering” the SSM Pension Plans does not have the full range of powers and responsibilities required to “maintain” a plan. The entity that maintains the plan “has the primary ongoing responsibility (and potential liability) to plan participants.” *Advocate*, 137 S. Ct. at 1661. The only entity with the power to “maintain” the SSM Pension Plans, which includes the power to fund, continue, and/or terminate the Plans, is SSM Health. The claim also fails because even if a committee within SSM Health “maintained” the Plans, such an internal committee of SSM Health is not a distinct principal-purpose “organization” within the meaning of ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

2. Even if the SSM Pension Plans Were Maintained by a Permissible Entity, They Would Nonetheless Fail to Satisfy Other Elements of the Church Plan Definition

110. Under both ERISA section 3(33)(A) and section 3(33)(C)(i), a church plan must be maintained for the employees of a church or a convention or association of churches.

29 U.S.C. § 1002(33)(A), (C)(i). The SSM Pension Plans do not qualify. The approximately 35,000 participants in the SSM Pension Plans are or were employees of SSM Health, a non-profit healthcare system. SSM Health 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 within the meaning of ERISA.

111. Under ERISA section 3(33)(C)(ii)(II), 29 U.S.C. § 1002(33)(C)(ii)(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. The SSM Pension Plans also fail this part of the definition, because SSM Health is not controlled by or associated with a church or convention or association of churches within the meaning of ERISA.

112. SSM Health is organized as a non-profit corporation under Missouri law.

113. SSM Health is governed by its Board of Directors.

114. SSM Health's Board of Directors must act in the best interests of SSM Health at all times.

115. SSM Health's Board of Directors owes fiduciary duties to the non-profit corporation.

116. SSM Health is not controlled by any church.

117. SSM Health is not controlled by a convention or association of churches.

118. SSM Health is not operated by a church.

119. SSM Health is not operated by a convention or association of churches.

120. SSM Health does not receive funding from a church.

121. SSM Health does not receive funding from a convention or association of churches.

122. In addition, SSM Health is not “associated with” a church or convention or association of churches within the meaning of ERISA. 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.” SSM Health does not share common religious bonds and convictions with a church or a convention or association of churches. *See Chronister v. Baptist Health*, 442 F.3d 648, 653 (8th Cir. 2006) (adopting the Fourth Circuit’s non-exclusive three-part test to determine whether an organization shares common bonds and convictions with a church and holding that Baptist Health’s plan was not a “church plan” under ERISA).

123. SSM Health does not impose any denominational requirement on its employees. Indeed, SSM Health tells prospective employees that religious affiliation is not a factor in the recruiting and hiring of SSM Health employees.

124. In addition, SSM Health has a practice of partnering with healthcare service providers that claim no religious affiliation, such as Dean Health. In choosing to compete in the commercial arena of healthcare services and to embark upon a business plan that targets healthcare facilities with no claimed ties to any particular religion, or to religion generally, SSM Health must be willing to accept neutral regulations, such as ERISA, imposed to protect its employees’ legitimate interests.

125. SSM Health does not impose any denominational requirement on its patients.

126. For these same reasons, the SSM Pension Plans further fail to satisfy the requirements of ERISA section 3(33)(C)(i) because even if the SSM Pension Plans were “maintained” by the internal committee and even if the committee qualified as principal-purpose “organization,” section 3(33)(C)(i) requires that a principal-purpose organization be “controlled by or associated with” a church or convention or association of churches. ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i). SSM Health’s internal committee, like SSM Health, is not *controlled by or associated with* a church or convention or association of churches within the meaning of ERISA. *See id.*

3. Even if the SSM Pension Plans Could Otherwise Qualify as “Church Plans” under ERISA Sections 3(33)(A) or (C)(i), They Are Excluded From “Church Plan” Status under ERISA Section 3(33)(B)(ii)

127. 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. Even if the SSM Pension Plans could otherwise qualify as church plans under ERISA sections 3(33)(A) or (C)(i), and even if SSM Health itself were controlled by or associated with a church, the SSM Pension Plans still would be foreclosed from church plan status under section 3(33)(B)(ii), 29 U.S.C. § 1002(33)(B)(ii), because, on information and belief, the SSM Pension Plans cover more than an insubstantial number of employees that work for entities are not controlled by or associated with the Catholic Church, and/or are not tax-exempt.

4. Even if the SSM Pension Plans Could Otherwise Qualify as “Church Plans” Under ERISA, the Church Plan Exemption, as Claimed by SSM Health, Violates the Establishment Clause of the First Amendment of the Constitution, and Is Therefore Void and Ineffective

128. 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.

129. The Establishment Clause guards against the establishment of religion by the government. The government “establishes religion” where it exempts religious entities, but not secular entities, from a neutral, generally applicable law and such exemption is not required to alleviate a substantial burden on religious practice or to avoid government entanglement in religion. ERISA is a neutral statute that governs pension benefits, and thus application of the church plan exemption to SSM Health on the basis of SSM Health’s purported religious ties relieves SSM Health of no genuine religious burden. Moreover, application of the “church plan” exemption to SSM Health creates more government entanglement with alleged religious beliefs than does compliance with ERISA. Accordingly, application of the “church plan” exemption to SSM Health is not a valid religious accommodation.

130. Extension of the “church plan” exemption to SSM Health privileges SSM Health for its purported religious beliefs at the expense of its employees, who are told that religion is not a prerequisite to their employment, yet who are then denied the benefit of insured, funded pensions, as well as many other important ERISA protections. Similarly, SSM Health has a privileged economic advantage over its competitors in the commercial arena it has chosen, based solely on SSM Health’s purported religious beliefs.

131. As set forth in more detail below in Count IX, the extension of the church plan exemption to SSM Health, which is not a church, violates the Establishment Clause and thus is void and ineffective.

VI. CLASS ALLEGATIONS

132. 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 and beneficiaries of the Retirement Plan for Employees of SSM Health Care, the Retirement Plan for Employees of Certain Illinois Entities Related to SSM Health Care, and the Retirement Plan for Employees of St. Mary's Hospital, Centralia, Illinois.

133. Excluded from the Class are any high-level executives at SSM Health or any employees who have responsibility or involvement in the administration of the Plans, or who are subsequently determined to be fiduciaries of the SSM Pension Plans, including the Individual Defendants.

A. Numerosity

134. The exact number of Class members is unknown to Plaintiffs at this time, but may be readily determined from records maintained by SSM Health. SSM Health currently employs approximately 35,000 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.

B. Commonality

135. The issues regarding liability in this case present common questions of law and fact, with answers that are common to all members of the Class, including: (1) whether the Plans are exempt from ERISA as "church plans"; (2) whether the fiduciaries of the Plans have failed to administer and enforce the funding obligations of the Plans in accordance with ERISA; (3) whether the "church plan" exemption, as claimed by SSM Health, violates the Establishment Clause of the First Amendment; and (4) whether SSM Health has failed to comply with its obligations to fund the Plans under ERISA, the plan documents, and/or the common law.

136. The issues regarding the relief sought are also common to the members of the Class as the relief sought will consist of: (1) a declaration that the Plans are ERISA-covered plans; (2) an order requiring that the Plans comply with ERISA's administration, funding, reporting, and disclosure obligations; and/or (3) an order requiring SSM Health to comply with its obligations to fund the Plans.

C. Typicality

137. 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 fully fund the Plans or to maintain the Plans in accordance with ERISA, the requirements of the Plans' documents, and/or the common law. Plaintiffs' claims are also typical because all Class members are similarly affected by Defendants' wrongful conduct.

138. 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: (1) a declaration that the SSM Pension Plans are not "church plans"; (2) a declaration that the SSM Pension Plans are ERISA-covered plans; (3) injunctive relief requiring Defendants to comply with the administration, funding, reporting, and disclosure obligations of ERISA; and (4) an order requiring SSM Health to comply with its obligations to fund the Plans.

139. In addition, Plaintiffs' claims for monetary relief are for civil fines to the Class in the same statutory daily amount for each member of the Class.

140. SSM Health does not have any defenses unique to Plaintiffs' claims that would make Plaintiffs' claims atypical of the remainder of the Class.

D. Adequacy

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

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

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

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

E. Rule 23(b)(1) Requirements

145. 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.

146. 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

147. 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

148. If the Class is not certified under Rule 23(b)(1) or (b)(2), then certification under Rule 23(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,” (2) if not, whether the fiduciaries of the Plans have failed to administer, and/or enforce the funding and reporting obligations of the Plans in accordance with ERISA; (3) whether the “church plan” exemption, as claimed by SSM Health, violates the Establishment Clause of the First Amendment; and (4) whether SSM Health has failed to comply with its obligations to fund the Plans under ERISA, the plan documents, and/or the common law.

149. 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 Plans 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 SSM Health transacts business; 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 Sections 502(a)(2) and 502(a)(3) Against All Defendants)

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

151. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to obtain “appropriate equitable relief . . . to enforce any provisions of this [title].” Pursuant to this provision, 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiffs seek declaratory relief that the SSM Pension 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.

152. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), also authorizes a participant or beneficiary to bring a civil action “(A) to enjoin any act or practice which violates any provision of this subchapter 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 SSM Pension Plans’ Sponsor and Administrator to bring the SSM Pension Plans into compliance with ERISA.

153. ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2), authorizes a participant or beneficiary to bring a civil action for appropriate relief under ERISA section 409(a), 29 U.S.C. § 1109(a), against a fiduciary “who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries” and the fiduciary “shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any

profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate.” Because the operation of the Plans as non-ERISA plans was a breach of Defendants’ fiduciary duties, the Defendants breached their fiduciary duties and Plaintiffs also seek plan-wide equitable and remedial relief under ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2).

154. As the SSM Pension Plans are not “church plans” within the meaning of ERISA section 3(33), 29 U.S.C. § 1002(33), and each meet the definition of a pension plan under ERISA section 3(2), 29 U.S.C. § 1002(2), the SSM Pension Plans should be declared to be ERISA-covered pension plans, and the SSM Pension Plans’ Sponsor and Administrator should be ordered to bring the SSM Pension 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 Pension Committee and John and Jane Does 1-20, the Pension Committee Member Defendants)

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

1. Summary Plan Descriptions

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

157. Because the Pension Committee 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.

2. Annual Reports

158. At no time has the Pension Committee or its members filed an Annual Report with respect to the SSM Pension Plans with the Secretary of Labor in compliance with ERISA section 103, 29 U.S.C. § 1023, nor have they filed a Form 5500 and associated schedules and attachments, which the Secretary has approved as an alternative method of compliance with ERISA section 103, 29 U.S.C. § 1023.

159. Because the Pension Committee has been the Plan Administrator of the SSM Pension Plans at all relevant times, the Pension Committee Defendants have violated ERISA section 104(a), 29 U.S.C. § 1024(a), by failing to file annual reports with respect to the SSM Pension 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, which the Secretary has approved as an alternate method of compliance with ERISA section 103, 29 U.S.C. § 1023.

3. Summary Annual Reports

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

161. Because the Pension Committee has been the Plan Administrator of the SSM Pension Plans at all relevant times, the Pension Committee Defendants have 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 SSM Pension Plans in compliance with ERISA section 104(b)(3), 29 U.S.C. § 1024(b)(3), and the regulations promulgated thereunder.

4. Notification of Failure to Meet Minimum Funding

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

163. Defendant SSM Health has been the employer that established and/or maintained the SSM Pension Plans.

164. On information and belief, Defendant SSM Health has not funded the SSM Pension Plans at levels that would satisfy ERISA section 302, 29 U.S.C. § 1082 for years prior to the initiation of this action.

165. As the employer maintaining the SSM Pension Plans, Defendant SSM Health is liable for failing to provide Plaintiffs and each Class member with the notice required by ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1).

5. Funding Notices

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

167. Because the Pension Committee has been the Plan Administrator of the SSM Pension Plans at all relevant times, it has violated ERISA section 101(f), 29 U.S.C. § 1021(f), by failing to provide each participant and beneficiary of the SSM Pension Plans with the Funding Notice required by ERISA section 101(f), 29 U.S.C. § 1021(f).

6. Pension Benefit Statements

168. At no time has the Pension Committee or its members furnished Plaintiffs or any member of the Class with an ERISA-compliant Pension Benefit Statement with respect to the SSM Pension Plans pursuant to ERISA section 105(a)(1), 29 U.S.C. § 1025(a)(1).

169. Because the Pension Committee has been the Plan Administrator of the SSM Pension Plans at all relevant times, it has violated ERISA section 105(a)(1), 29 U.S.C. § 1025(a)(1)(B), by failing to provide Plaintiffs and each Class member with the Pension Benefit Statements required by ERISA section 105(a)(1)(B), 29 U.S.C. § 1025(a)(1)(B).

COUNT III

(Claim for Failure to Provide Minimum Funding Against Defendant SSM Health)

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

171. 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.

172. SSM Health was responsible for making the contributions that should have been made pursuant to ERISA section 302, 29 U.S.C. § 1082, at a level commensurate with that which would be required under ERISA.

173. Since at least 2013, SSM Health has failed to make contributions in satisfaction of the minimum funding standards of ERISA section 302, 29 U.S.C. § 1082.

174. By failing to make the required contributions to the SSM Pension Plans, either in whole or in partial satisfaction of the minimum funding requirements established by ERISA

section 302, 29 U.S.C. § 1082, Defendant SSM Health has violated ERISA section 302, 29 U.S.C. § 1082.

COUNT IV

(Claim for Equitable Relief Pursuant to ERISA Section 502(a)(3) for Violation of ERISA Sections 203(e), 204(c)(3), and 205(g) Against Defendants SSM Health and Pension Committee)

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

176. ERISA section 204(c)(3), 29 U.S.C. § 1054(c)(3), provides that “in the case of any defined benefit plan, if an employee’s accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age [*e.g.*, a lump-sum distribution] . . . the employee’s accrued benefit . . . shall be the actuarial equivalent of such benefit[.]”

177. ERISA sections 203(e)(2) and 205(g)(3), 29 U.S.C. §§ 1053(e)(2), 1055(g)(3), also require that the present value of any optional form of benefit, such as a lump sum distribution, cannot be less than the present value of the plan’s normal retirement benefit, calculated using the “applicable mortality table” and “applicable interest rate.” *See also* 26 U.S.C. §§ 411(a)(11)(B); 417(e)(3) (corresponding IRC provisions); 26 C.F.R. § 1.417(e)-1 (implementing regulations).

178. On information and belief, the SSM Pension Plans provide for a “lump sum” option as a form of benefit available to certain retirees who are eligible to take their retirement benefits in the form of a lump sum.

179. For example, SSM Health offered Plaintiff Feather a lump sum value of \$141,982.78, calculated as of February 1, 2016, as full satisfaction for Plaintiff Feather’s vested monthly benefit of \$2,836.32, starting at age 65. Plaintiff Feather will turn 65 in 2028.

180. On information and belief, this offer was made pursuant to the relevant terms of the Plans. The terms of the Plans governing lump sum distributions of benefits are not in compliance with ERISA sections 203(e)(2), 204(c)(3), and 205(g)(3), 29 U.S.C. §§ 1053(e)(2), 1054(c)(3), and 1055(g)(3), and such non-compliance results in participants who take a lump sum distribution suffering a 40% reduction in their retirement benefits.

181. By offering participants a lump sum distribution amounts that were substantially less than the actuarial equivalent of their accrued benefit commencing at normal retirement age, calculated using the applicable mortality table and applicable interest rate, Defendants have violated ERISA sections 203(e), 204(c)(3), and 205(g), 29 U.S.C. §§ 1053(e), 1054(c)(3), 1055(g); their tax counterparts, IRC §§ 411(a)(11) and 417(e), 26 U.S.C. §§ 411(a)(11) and 417(e); and the implementing regulations at 26 C.F.R. § 1.417(e)-1.

182. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action “(A) to enjoin any act or practice which violates any provision of this subchapter 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.”

183. Pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek an order directing the Pension Committee to retroactively amend the SSM Pension Plans to comply with all the special rules for offering lump sum distributions as an optional form of benefit, including ERISA sections 203(e), 204(c)(3), and 205(g), 29 U.S.C. §§ 1053(e), 1054(c)(3), 1055(g); their tax counterparts, IRC §§ 411(a)(11) and 417(e), 26 U.S.C. §§ 411(a)(11), 417(e); and the implementing regulations at 26 C.F.R. § 1.417(e)-1.

184. Pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek an order requiring the Pension Committee to furnish all Plan participants who were offered “lump sum” options as a form of benefit with a benefit statement that is compliant with ERISA and that provides a lump sum distribution value that is calculated in accordance with ERISA.

185. To the extent the members of the Class have received lump sum distribution amounts that are less than the actuarial equivalent of their accrued benefit commencing at normal retirement age, calculated using the applicable mortality table and applicable interest rate, there has been an unlawful forfeiture of benefits to which participants are entitled.

186. The Pension Committee has violated ERISA section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), to the extent it has followed Plan documents that are inconsistent with ERISA. Pursuant to ERISA sections 404(a)(1)(D) and 502(a)(3), 29 U.S.C. §§ 1104(a)(1)(D), 1132(a)(3), Plaintiffs seek an order requiring the Pension Committee to calculate the amount of the lump sum payments participants would have received under the Plan documents retroactively amended to comply with ERISA and to pay to participants the additional monies to which they are entitled.

187. Pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek an order requiring SSM Health to contribute additional funding to the SSM Pension Plans, as required by ERISA section 302, 29 U.S.C. § 1052, to cover the additional liabilities for the Plans resulting from the additional benefits owed to participants who were offered and elected to receive a lump sum distribution of their benefits that was less than the actuarial equivalent of their accrued benefit commencing at normal retirement age, calculated using the applicable mortality table and applicable interest rate, in accordance with ERISA.

COUNT V

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

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

189. 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].”

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

191. Defendant SSM Health violated ERISA section 402, 29 U.S.C. § 1102, by failing to promulgate written instruments in compliance with ERISA section 402, 29 U.S.C. § 1102, to govern the SSM Pension Plans’ operations and administration.

COUNT VI

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

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

193. 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 a trust by one or more

trustees, that the trustees shall be either named in the trust instrument or in the plan instrument described in ERISA section 402(a), 29 U.S.C. § 1102(a), or appointed by a person who is a named fiduciary.

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

195. Defendant SSM Health violated ERISA section 403, 29 U.S.C. § 1103, by failing to put the SSM Pension Plans' assets in a trust in compliance with ERISA section 403, 29 U.S.C. § 1103.

COUNT VII

(Claim for Clarification of Future Benefits Under ERISA Sections 502(a)(1)(B) and 502(a)(3) Against Defendant Pension Committee)

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

197. ERISA section 502(a)(1)(B), 29 U.S.C. § 1132(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.”

198. Plaintiffs and members of the Class have not been provided ERISA-compliant benefit statements.

199. Pursuant to ERISA sections 502(a)(1)(B) and (3), 29 U.S.C. § 1132(a)(1)(B) and (3), once the Plan is made compliant with ERISA, Plaintiffs seek to clarify their rights under the terms of the Plans, and to require Defendant Pension Committee to provide Plaintiffs and the Class ERISA-compliant benefit statements.

COUNT VIII

(Claim for Breach of ERISA Fiduciary Duties Against All Defendants)

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

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

1. Breach of the Duty of Prudence and Loyalty

202. This sub-Count alleges fiduciary breach against all Defendants.

203. 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

(D) 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].

204. As fiduciaries with respect to the SSM Pension 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 SSM Pension Plans during the times that each was a fiduciary of the SSM Pension Plans.

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

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

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

2. Prohibited Transactions

208. This sub-Count alleges violations on behalf of all Defendants.

209. 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.

210. 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.

211. 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.

212. As fiduciaries with respect to the Plans and, with respect to SSM Health, as an employer of employees covered by the Plans, the Defendants at all relevant times were parties in

interest with respect to the SSM Pension Plans pursuant to ERISA sections 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

213. By failing to enforce the funding obligations created by ERISA and owed to the Plans, Defendants extended credit from the SSM Pension Plans to SSM Health 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.

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

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

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

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

3. Failure to Monitor Fiduciaries

218. This sub-Count alleges fiduciary breach against Defendant SSM Health.

219. As alleged above, during the Class Period, Defendant SSM Health 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.

220. The scope of the fiduciary responsibilities of SSM Health included the responsibility to appoint, and remove, and thus, monitor the performance of other fiduciaries.

221. 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.

222. 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.

223. 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.

224. Defendant SSM Health breached its 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.

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

4. Co-Fiduciary Liability

226. This sub-Count alleges co-fiduciary liability against all Defendants.

227. 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.

228. 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.

229. Defendants breached all three provisions.

a. Knowledge of a Breach and Failure to Remedy

230. 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.

231. 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.

b. Knowing Participation in a Breach

232. 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. All Defendants knowingly participated in the fiduciary breaches of the other Defendants in that they benefited from the Plans not being run as ERISA plans.

c. Enabling a Breach

233. 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.

234. The failure of all Defendants to exercise fiduciary oversight over other Defendants and monitor other Defendants enabled those Defendants to breach their duties.

235. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans are significantly 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.

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

COUNT IX

(Claim for Declaratory Relief that the Church Plan Exemption, if Applied to the Plans, Violates the Establishment Clause of the First Amendment of the Constitution, and Is Therefore Void and Ineffective as to the Plans)

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

238. The church plan exemption is an accommodation that exempts churches and conventions and associations of churches, under certain circumstances, from compliance with ERISA.

239. Application of the church plan exemption to SSM Health, an entity that has chosen to compete with commercial businesses by entering the economic arena and trafficking in the marketplace would result in an exemption from a neutral, generally applicable statute that is available to hospital systems with claimed ties to a religion, but not to analogous secular hospital systems.

240. An exemption from a neutral, generally applicable statute that is available exclusively to SSM Health on the grounds of a claimed religious affiliation is an unconstitutional establishment of religion unless the exemption is necessary to alleviate a substantial, state-imposed burden on religious exercise or to avoid substantial government entanglement in religion. Application of the church plan exemption to SSM Health accomplishes neither purpose.

241. An exemption from ERISA for SSM Health is not required to alleviate a substantial, state-imposed burden on religious exercise. ERISA is a neutral statute that governs

pension benefits. It is materially indistinguishable from the array of neutral Congressional enactments that do not significantly burden religious exercise when applied to commercial activities. On information and belief, SSM Health maintains separate ERISA-governed plans, which further evidences that ERISA creates no undue burden on any genuine religious practice of SSM Health.

242. An ERISA exemption for SSM Health is not required to avoid government entanglement in religion. ERISA does not require government entanglement in religion. Although Congress enacted the church plan exemption to avoid “examination of books and records” that “might be regarded as an unjustified invasion of the confidential relationship . . . with regard to churches and their religious activities,”⁵ this purpose has no application to SSM Health. SSM Health is neither run by, nor connected to, any church. Unlike a church, SSM Health has no confidential books and records to shield from government scrutiny because SSM Health already purports to disclose all material financial records and relationships when it seeks Medicare and Medicaid reimbursements and issues tax-exempt bonds. Thus, application of the exemption to SSM Health is not necessary to further Congress’s stated purpose for enacting the church plan exemption.

243. Indeed, an exemption from ERISA for SSM Health creates more government entanglement in religion than would the application of ERISA. SSM Health’s claim to be a “church plan” requires courts and government agencies to examine SSM Health’s claim of religious “convictions” to determine whether they are “shared” with a church, in the absence of any actual church responsibility for the pensions. This creates entanglement between government and putative religious beliefs. ERISA compliance, on the other hand, requires zero entanglement

⁵ S. Rep. No. 93-383 (1972), *reprinted in* 1974 U.S.C.C.A.N. 4889, 4965.

with religion for SSM Health because ERISA is a neutral statute that regulates pension protections and SSM Health has no relevant confidential books, records or relationships.

244. Because it is not necessary to alleviate substantial government burden on religious exercise or to avoid government entanglement in religion, application of the church plan exemption to SSM Health serves no purpose but to demonstrate government endorsement of a claimed religious affiliation.

245. Even if the application of the church plan exemption to SSM Health were a permissible religious accommodation, it still would run afoul of the Establishment Clause because the costs and burdens of the exemption are imposed on SSM Health's workers. To be constitutional, a religious accommodation must not impose burdens on non-adherents without due consideration of their interests. SSM Health hires employees regardless of their choice of faith, or lack thereof. Thus, as a practical matter, and by SSM Health's own design, the SSM Pension Plans' participants include people of a vast number of divergent faiths. The church plan exemption, as claimed by SSM Health, places its tens of thousands of longtime employees' justified reliance on their pension benefits at great risk, most especially because the exemption permits Defendants to leave the Plans uninsured and underfunded. In addition, SSM Health fails to provide the multitude of other ERISA protections designed to safeguard its employees' pensions. The church plan exemption, as claimed by SSM Health, provides no consideration of the harm that it causes to SSM Health's employees.

246. The church plan exemption, as applied to SSM Health, also fails because it does not provide consideration for the harms imposed on competing hospital systems that do not claim religious affiliations. SSM Health's commercial rivals face material disadvantages in their competition with SSM Health 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 SSM Pension Plans are exempt “church plans,” SSM Health 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 SSM Pension Plans, to its competitive growth strategy. The church plan exemption, as claimed by SSM Health, provides no consideration of the disadvantage it creates for SSM Health’s competitors.

247. Plaintiffs seek a declaration by the Court that application of the church plan exemption to the Plans is unconstitutional under the Establishment Clause of the First Amendment, and is therefore void and ineffective as to the Plans.

COUNT X⁶

(Alternative Claim for Breach of Contract and Specific Performance Against Defendant SSM Health)

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

249. SSM Health has repeatedly promised to fund the pensions of Plaintiffs and the other Class members and to pay defined pension benefits upon retirement in exchange for their continued employment.

250. At all relevant times, SSM Health was the “sponsor” and “employer” with respect to the SSM Pension Plans.

251. In the SSM Pension Plans’ documents, including applicable plan restatements and summary plan descriptions, SSM Health made promises to: (1) pay to Plaintiffs and other Class

⁶ Counts X through XII state alternative claims for relief under State law if the Court determines that the SSM Pension Plans are “church plans” exempt from ERISA.

members, upon retirement, defined benefit pensions in amounts that increased with each year of service; and (2) make ongoing contributions to the SSM Health Trust that were sufficient to pay for the accrued pension benefits.

252. The promises made or assumed by SSM Health to make contributions sufficient to pay promised benefits were further implied in fact and law by the benefit promises contained in the SSM Pension Plans' restatements, summary plan descriptions, and benefit statements issued to Plaintiffs and the other Class members.

253. The promises made in the SSM Pension Plan documents were clearly communicated to Plaintiffs and the other Class members, including through summary plan descriptions, benefits statements, and other SSM Pension Plan documents, such that Plaintiffs and the other Class members could reasonably understand that SSM had made an offer, in exchange for their continued service, to make ongoing contributions to the SSM Health Trust sufficient to pay for their accrued pension benefits.

254. Plaintiffs and the other Class members accepted SSM Health's offer by commencing or continuing to work after learning of SSM Health's promises to pay and fund pension benefits.

255. Plaintiffs and the other Class members continued work for SSM Health constituted consideration for the promises contained in the SSM Pension Plan documents.

256. Accordingly, the SSM Pension Plan documents constitute enforceable contracts.

257. By continuing to work for SSM Health, Plaintiffs and the other Class members performed their obligations under the contracts and satisfied the conditions of SSM Health's duty to make sufficient contributions to fund accrued pension benefits.

258. Defendant SSM Health breached its obligations under the contracts by failing to make contributions to the SSM Health Trust that were sufficient to pay for all accrued pension benefits.

259. Defendant SSM Health further breached the implied covenant of good faith and fair dealing. Defendant SSM Health failed to exercise good faith in the performance of its obligation to make contributions sufficient to fund accrued benefits.

260. SSM Health willfully failed to perform, evaded the spirit of the bargain, and failed to act consistent with the reasonable expectations of Plaintiffs and the Class to the extent it (a) sought to satisfy its funding obligation by making only partial contributions to the SSM Health Trust; or (b) interpreted its funding obligation as being satisfied by its partial contributions, which as of 2016 resulted in the SSM Pension Plans being funded at only 63% of their accrued benefit obligations.

261. A promise to pay pension benefits—as was made in the SSM Pension Plan documents and repeated in benefit statements and other communications sent to Plaintiffs and the other Class members—is meaningful only if there is money in the SSM Health Trust that is sufficient, on an actuarial basis, to pay the accrued benefits. Plaintiffs believed, and a reasonable plan participant would expect, that in light of the promise to pay defined pension benefits upon retirement and the promise to make contributions sufficient to fund that promise, SSM Health would have made contributions sufficient, on an actuarial basis, to fund the *full* amount of the accrued benefit, not less than two-thirds of that amount.

262. Defendant SSM Health had an improper motive to make insufficient contributions to the SSM Pension Plans. SSM Health knew or should have known employees would expect their benefits to be funded and Plaintiffs and other Class members continued working based on

that expectation. SSM Health nonetheless retained hundreds of millions of dollars for its own account that should have been contributed to the SSM Pension Plans.

263. Because Defendant SSM Health breached its obligation to make contributions to the SSM Pension Plans, Plaintiffs and the other Class members have been deprived of their contractual right to a sufficiently funded trust supporting their accrued pension benefits. SSM Health's failure to make sufficient contributions to the SSM Health Trust has left the SSM Pension Plans significantly underfunded, creating a substantial risk that the SSM Pension Plans will be unable to pay promised pension benefits. This risk is further amplified by SSM Health's designation of the SSM Pension Plans as ERISA-exempt "church plans," which has left the Plans uninsured by the PBGC.

264. Plaintiffs and the members of the Class are entitled to specific performance of the obligations contained in the SSM Pension Plans' documents, including: (a) SSM Health's obligation to make contributions to the SSM Health Trust that are sufficient to pay for *all* accrued pension benefits; and (b) SSM Health's implied obligation to act fairly and in good faith in the performance of its contractual obligations.

COUNT XI

(Alternative Claim for Unjust Enrichment Against Defendant SSM Health)

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

266. Plaintiffs assert a state law claim for unjust enrichment against Defendant SSM Health to the extent that the SSM Pension Plans did not create an enforceable contractual relationship between SSM Health and Plaintiffs and the other Class members.

267. Plaintiffs and the other Class members conferred substantial benefits on SSM Health, including their continued employment.

268. SSM Health promised to pay and fund defined benefit pensions to Plaintiffs and the other Class members in order to recruit them and encourage them to continue working at SSM Health, as previously alleged.

269. SSM Health benefitted from the contributions of Plaintiffs and other Class members of their time, effort, experience, training, and ideas.

270. SSM Health directly saved hundreds of millions of dollars by not contributing those amounts to the SSM Pension Plans, as previously alleged.

271. SSM Health also avoided the cost of higher employee turnover as a result of Plaintiffs and the other Class members remaining employees of SSM Health. Costs of employee turnover can include: the time of management and human resources personnel devoted to exit interviews and organizing work left behind by departing employees; severance benefits and variable unemployment insurance costs; advertising for replacement employees; the time of management devoted to reviewing applications and conducting interviews and reference checks; the time of managers and co-workers devoted to training new replacement employees; and reduced productivity of replacement employees due to inexperience.

272. SSM Health retained these benefits to the detriment of Plaintiffs and the Class. The hundreds of millions of dollars that SSM Health has retained for its own account should have been paid into the SSM Health Trust to fund the already accrued pension benefits of Plaintiffs and the other Class members.

273. SSM Health's failure to make sufficient contributions to the SSM Health Trust has left the SSM Pension Plans significantly underfunded, creating a substantial risk that the SSM Pension Plans will be unable to pay the pension benefits to which Plaintiffs and the other Class members are entitled. This risk is further amplified by SSM Health's designation of the

SSM Pension Plans as ERISA-exempt “church plans,” which has left the Plans uninsured by the PBGC.

274. Because SSM Health has not honored its promises to adequately fund the promised pension benefits, Plaintiffs and the other Class members face an increased risk that they will retire with far less income than they expected. At the same time, they will have been deprived of the opportunity to make up for that lost pension income.

275. Accordingly, SSM Health’s retention of the benefits described herein would violate fundamental principles of justice, equity, and good conscience.

276. The amount of Defendant SSM Health’s unjust enrichment, including the amounts retained by SSM Health that should have been contributed to the SSM Pension Plans, should be disgorged and paid to the SSM Health Trust.

COUNT XII

(Alternative Claim for Breach of Common Law Fiduciary Duty Against the Pension Committee)

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

278. The SSM Pension Plan assets are held in the SSM Health Trust.

279. Plaintiffs and the other Class members are beneficiaries of the SSM Health Trust.

280. The Pension Committee is a trustee within the meaning of the common law of trusts.

281. Alternatively, the Pension Committee is a fiduciary trust manager or trust protector within the meaning of the common law of trusts.

282. Additionally, the Pension Committee is a fiduciary pursuant to the SSM Pension Plan documents.

283. As a fiduciary of the SSM Pension Plans, the Pension Committee owed Plaintiffs and the other Class members the duty of loyalty, including the duty to act solely in the interests of Plaintiffs and the other Class members.

284. Defendant Pension Committee, which was obligated by the SSM Pension Plan documents to take actions in accordance with the provisions of the Plans and had a duty to establish funding policies to meet the financial requirements of the Plans.

285. The Pension Committee, as common law trustees, had a fiduciary duty to preserve and maintain trust assets, which includes the duties to determine what property constitutes the subject matter of the trust, to use reasonable diligence to discover the location of trust property, and to use reasonable diligence to take control of trust property without unnecessary delay. If an entity obligated to make contributions to a trust retains possession of trust assets, this duty entails the duty to hold that entity to its obligation to place trust assets in trust.

286. The Pension Committee possessed discretionary powers and authority necessary to carry out the provisions of the SSM Pension Plans.

287. The Pension Committee breached its fiduciary duties by failing to use reasonable diligence to take control of trust property without unnecessary delay, including by failing to take reasonable steps to hold SSM Health to its obligation to make contributions that were sufficient to fund all accrued benefits under the SSM Pension Plans.

288. As a direct and proximate result of the Pension Committee's fiduciary breaches, the SSM Health Trust and its beneficiaries, including Plaintiffs and the other Class members, have been deprived of contributions to which they are entitled and the SSM Health Trust has become significantly underfunded, creating a substantial risk that the SSM Pension Plans will be

unable to pay to Plaintiffs and the other Class members the pension benefits to which they are entitled under the SSM Pension Plan documents.

289. Plaintiffs seek an order enforcing these fiduciary duties, and enjoining Pension Committee's ongoing breaches thereof, including an order directing the Pension Committee to review actuarial reports and other relevant information regarding the funded status of the SSM Pension Plans and use all reasonable diligence to require SSM Health to make contributions to the SSM Pension Plans that are sufficient, on an actuarial basis, to fund *all* accrued pension benefits.

290. The Pension Committee is liable to restore the losses to the SSM Pension Plans caused by its breaches of fiduciary duties alleged in this Count.

291. Plaintiffs further request other equitable relief as appropriate.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered against the Defendants on all claims and requests that the Court award the following relief:

A. Certifying the Class, under Federal Rule of Civil Procedure 23, appointing Plaintiffs as Class Representatives, and appointing their attorneys as Class Counsel to represent the members of the Class;

B. Declaring that the SSM Pension Plans are employee pension 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 ERISA section 3(33), 29 U.S.C. § 1002(33).

C. Ordering SSM Health to reform the SSM Pension Plans to bring them into compliance with ERISA and to have the SSM Pension Plans comply with ERISA, including as follows:

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

ii. Requiring SSM Health to fund the SSM Pension Plans in accordance with ERISA's funding requirements, disclose required information to the SSM Pension 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;

iii. Reforming the SSM Pension Plans to comply with ERISA's vesting, accrual, and lump sum option requirements, and provide benefits in the form of a qualified joint and survivor annuity;

iv. Requiring the adoption of instruments governing the SSM Pension Plans that comply with ERISA section 402, 29 U.S.C. § 1102; and

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

D. Ordering Defendants to comply with ERISA's 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 SSM Pension Plans' funding status and deficiencies;

E. Ordering clarification of rights to future benefits pursuant to ERISA section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B);

F. Appointing an Independent Fiduciary to hold the SSM Pension Plans' assets in trust, to manage and administer the SSM Pension Plans and their assets, and to enforce the terms of ERISA;

G. Ordering SSM Health 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 Plans;

H. Ordering the Pension Committee 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;

I. Ordering the Pension Committee 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);

J. 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 SSM Pension Plans;

K. Awarding, declaring or otherwise providing Plaintiffs and the members of 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;

L. Requiring Defendants, as fiduciaries of the SSM Pension Plans, to make the SSM Pension Plans whole for any losses and disgorge any profits accumulated as a result of their breaches of ERISA fiduciary duties;

M. Declaring, with respect to Count IX, that the church plan exemption, as applied to the Plans, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective as to the Plans;

N. In the alternative to the relief requested pursuant to Counts I-IX, if the Court determines that the SSM Pension Plans are “church plans” exempt from ERISA, ordering specific performance of Defendant SSM Health’s contractual obligations under the SSM Pension Plan documents, including an order requiring Defendant SSM Health to make contributions to

the SSM Health Trust that are sufficient, on an actuarial basis, to fund all accrued pension benefits under the SSM Pension Plans;

O. In the alternative to the relief requested pursuant to Counts I-IX, if the Court determines that the SSM Pension Plans are “church plans” exempt from ERISA, enforcing Defendant SSM Health’s promises to make contributions to the SSM Health Trust that are sufficient, on an actuarial basis, to fund all accrued pension benefits under the SSM Pension Plans;

P. In the alternative to the relief requested pursuant to Counts I-IX, if the Court determines that the SSM Pension Plans are “church plans” exempt from ERISA, ordering Defendant SSM Health to disgorge and pay to the SSM Health Trust all monies wrongfully obtained or retained and all revenues and profits derived by Defendant SSM Health as a result of its unjust enrichment;

Q. In the alternative to the relief requested pursuant to Counts I-IX, if the Court determines that the SSM Pension Plans are “church plans” exempt from ERISA, ordering declaratory, injunctive, and other equitable relief as necessary and appropriate, including ordering Defendants to comply with, and enjoining Defendants from further violating of, the duties, responsibilities, and obligations imposed on them by the common law and the SSM Pension Plan documents with respect to the SSM Pension Plans;

R. In the alternative to the relief requested pursuant to Counts I-IX, if the Court determines that the SSM Pension Plans are “church plans” exempt from ERISA, requiring Defendants, as trustees and fiduciaries of the SSM Pension Plans, to make the SSM Pension Plans whole for any losses and disgorge any profits accumulated as a result of breaches of their fiduciary duties under the common law and the SSM Pension Plan documents;

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

T. Awarding to Plaintiffs taxable costs pursuant to ERISA section 502(g), 29 U.S.C. § 1132(g), 28 U.S.C. § 1920, Federal Rule of Civil Procedure 54(d)(1); and Mo. Ann. Stat. § 408.040.1 (2015), and other applicable law; and

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

RESPECTFULLY SUBMITTED this 6th day of September, 2017.

KELLER ROHRBACK L.L.P.

/s/ Laura R. Gerber

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of September 2017, a copy of the foregoing was filed with the Court and served upon all registered parties using the Court's CM/ECF system.

/s/ Laura R. Gerber