

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

LAURIE NICHOLSON, individually and on  
behalf of herself and all others similarly situated,

Plaintiff,

vs.

Franciscan Missionaries of Our Lady Health  
System, Franciscan Missionaries of Our Lady  
Health System Investment Committee, and John  
Does 1-20,

Defendants.

**Civil Action No.: 16-258**

**COMPLAINT**

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

**INTRODUCTION**

1. This is a class action against Defendants Franciscan Missionaries of Our Lady Health System, Inc. (“FMOLHS” or the “Company”), the Franciscan Missionaries of Our Lady Health System Investment Committee (the “Committee”),<sup>1</sup> and John Does 1-20 (the “Committee members”) concerning the Pension Plan for Employees of Our Lady of the Lake Regional Medical Center, Inc. (the “Our Lady of the Lake Plan”), and all other defined benefit plans

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<sup>1</sup> And/or any other committee with responsibility for managing/administering the Plans (defined below).

established and/or maintained by FMOLHS and/or its subsidiaries and affiliates, (collectively, the “Plans”).<sup>2</sup>

2. As of June 30, 2013, the Plans were underfunded by \$264.95 million. *See* Franciscan Missionaries of Our Lady Health System, Inc. and Affiliated Consolidated Financial Statements and Supplemental Schedules June 30, 2014 and 2013 (“FMOLHS Consolidated Financial Statements”), at 42.<sup>3</sup>

3. As of June 30, 2014, the underfunded status of the Plans increased to more than \$298 million. *See id.* This reported underfunding level is based on unrealistic assumptions as to the Plans’ discount rate and expected return on assets. If realistic assumptions are used, the Plans are underfunded to an even greater degree.

4. Defendants excuse the severe underfunding on the grounds that the Plans are “church plans” and therefore are exempt from the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”).

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

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<sup>2</sup> Upon information and belief, the Our Lady of the Lake Plan may also be known as the Retirement Plan of Our Lady of the Lake Hospital and Affiliated Organizations.

<sup>3</sup> Upon information and belief, FMOLHS administers several pension plans for its employees. *See* FMOLHS Consolidated Financial Statements at 42 (“FMOLHS Affiliates sponsor various defined benefit plans (the Plans).”). Accordingly, this shortfall amount may apply to one or more plans in addition to the Our Lady of the Lake Plan.

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

### **JURISDICTION AND VENUE**

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

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

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

### **PARTIES**

#### **Plaintiff**

10. Plaintiff Nicholson is a citizen and resident of Baton Rouge, Louisiana. Plaintiff Nicholson was employed by Our Lady of the Lake Regional Medical Center in Baton Rouge, Louisiana, a subsidiary of FMOLHS, from February 1993 until her retirement in March 2013, in various roles including Clinical Social Worker in the Family Center, the In-patient Mental and

Behavioral Health Program, and the Intensive Out-Patient Program, and also in the marketing department in the Mental and Behavioral Health Division. Plaintiff Nicholson is a current participant in the Our Lady of the Lake Plan.

**Defendants**

11. Defendant FMOLHS is a not-for-profit, nonstock membership corporation, headquartered in Baton Rouge, Louisiana. *See* FMOLHS Consolidated Financial Statements at 9.

12. The Committee is an unincorporated association, which, upon information and belief, is the Plan Administrator and/or named fiduciary for the Plans. *See* FMOLHS Consolidated Financial Statements at 44 (“Asset allocations and investment performance are formally reviewed quarterly by the FMOLHS Investment Committee.”).

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

**CLASS ACTION ALLEGATIONS**

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

All participants in and beneficiaries in the Pension Plan for Employees of Our Lady of the Lake Regional Medical Center, Inc., as well as the other defined benefit pension plans established and/or maintained by Franciscan Missionaries of Our Lady Health

System, Inc. (the “Plans”). Excluded from the Class are Defendants and any individuals who are subsequently to be determined to be fiduciaries of the Plans.

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

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

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

- A. Whether the Plans are covered by ERISA;
- B. Whether the Plan Administrator failed to comply with ERISA’s reporting and disclosure provisions;
- C. Whether the Plans’ fiduciaries failed to fund the Plans and establish a funding policy in compliance with ERISA; and
- D. Whether the Plans’ fiduciaries breached their fiduciary duties in failing to comply with the provisions of ERISA set forth above.

18. Plaintiff will fairly and adequately represent the Class and has retained counsel experienced and competent in the prosecution of ERISA class action litigation. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action, and anticipates no difficulty in the management of this litigation as a class action.

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

20. In the alternative, certification under Rule 23(b)(2) is warranted because Defendant has 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.

21. In the alternative, certification under Rule 23(b)(3) is also appropriate. A class action is superior to other available methods for the fair and efficient adjudication of the controversy within the meaning of Rule 23(b) and in consideration of the matters set forth in Rule 23(b)(3)(A)-(D). Because of the amount of the individual Class members' claims relative to the complexity of the litigation and the financial resources of the Defendants, few, if any, members of the Class would seek legal redress individually for the wrongs complained of herein. The maintenance of separate actions would place a substantial and unnecessary burden on the courts, and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members. Absent a class action, Class members will continue to suffer damages, and Defendants' misconduct will proceed without remedy.

#### **SUBSTANTIVE ALLEGATIONS**

**A. Defendant's Business**

22. Defendant FMOLHS is a not-for-profit healthcare conglomerate serving the needs of communities in Louisiana for over 100 years. *See* <https://fmolhs.org/Pages/Home.aspx>.

23. The Company is headquartered in Baton Rouge, Louisiana with 1,799 licensed beds, 10,897 full time employees, and 2,095 active medical staff.

24. This network includes a teaching college and five major hospitals:

- Our Lady of the Lake Regional Medical Center – Baton Rouge, Louisiana
- Our Lady of the Lake Ascension Community Hospital, Inc. (d.b.a. St. Elizabeth Hospital) – Gonzales, Louisiana
- Our Lady of Lourdes Regional Medical center, Inc. – Lafayette, Louisiana
- St. Francis Medical Center, Inc. – Monroe, Louisiana
- Our Lady of the Angels, Inc. – Bogalusa, Louisiana

*See* FMOLHS Consolidated Financial Statements, at 9.

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

26. Rather, the Company's focus is healthcare. *See* <https://fmolhs.org/Pages/About-FMOLHS.aspx>. (“Headquartered in Baton Rouge, Louisiana, we serve patients across Louisiana through a network of hospitals, clinics, physicians, elderly housing and integrated information systems.”).

27. One of the hospitals operated by the Company is Our Lady of the Lake Regional Medical Center, Inc. (“Lady of the Lake”) in Baton Rouge, Louisiana, which a private, not-for-profit corporation, “committed to building a healthy community through excellence in patient care and education.” *See* <https://ololrhc.com/Pages/About-Us.aspx>. Lady of the Lake also includes a children's hospital, a 350-provider primary care physician group, a free-standing

emergency room in Livingston Parish, an imaging and surgery center, Assumption Community Hospital, a number of urgent care clinics and Our Lady of the Lake College. *Id.*

28. The other FMOLHS medical centers – Our Lady of Lourdes Regional Medical Center, Inc., St. Francis Medical Center, Our Lady of the Lake Ascension Community Hospital d.b.a St. Elizabeth Hospital, and Our Lady of the Angels – combine with Our Lady of the Lake to provide care to “more than 1.8 million individuals, representing more than 40% of Louisiana’s population.” *See* <https://lourdesrhc.com/Pages/about-us/franciscan-missionaries-of-our-lady-health-system.aspx>.

29. FMOLHS also owns a captive insurance company. *See* FMOLHS Consolidated Financial Statements, at 9.

30. FMOLHS funds its operations through over \$500 million in government revenue bonds. *See* FMOLHS Consolidated Financial Statements, at 31-35. It manages its finances through a number of sophisticated investment and cash management instruments, including limited partnerships and offshore investment funds that invest in futures and forward contracts, options and swaps. *See* FMOLHS Consolidated Financial Statements, at 23-24, 35-36. It is a highly sophisticated healthcare business.

31. In fact, the Company touts its size and presence in the Louisiana healthcare system, noting it is the “leading healthcare innovator in Louisiana.” *See* <https://fmlhs.org/Pages/About-FMOLHS.aspx>.

32. The Company website continues, noting:

With hospitals, clinics and physicians located throughout our state, our health system is the largest in Louisiana. In fact, we provide care to almost half of Louisiana’s citizens. Because of our size and the partnerships we have with other local organizations, we are able to pool our resources and share cost and service efficiencies and learn from each other, thereby accelerating our ability to improve care and solve challenges.

See <https://fmolhs.org/Pages/About-FMOLHS.aspx>.

33. Indeed, as noted on the Company website, “[o]ur health system has partnered with the State of Louisiana as it transforms its healthcare delivery system. The partnership includes inpatient acute care and primary care delivery in Baton Rouge and Bogalusa.” See <https://fmolhs.org/Pages/About-FMOLHS.aspx>.

34. The Company’s Consolidated Financial Statements state its results are subject to the “Healthcare Industry Environment,” such that its management closely monitors the healthcare provider industry, including the “impacts of the federal healthcare reform legislation.” See FMOLHS Consolidated Financial Statements, at 17-18.

35. Moreover, the Company’s Board of Directors is not controlled by a church. In fact, the Board of Directors members currently listed on the Company’s website include:

- Jim Prince, Chairman
- Gerald Boudreaux
- John J. Finan, Jr.
- Claude Harbarger
- Howard Harvill
- John S. Lore
- C.W. “Bill” Lovell II, M.D.
- James W. Moore, Jr.
- Steven R. Nathanson
- Sr. Brendan Mary Ronayne, F.M.O.L.
- Kevin Schexnayder
- Karen Williams, M.D.

See <https://fmolhs.org/pages/about-fmolhs/leadership.aspx>.

36. Thus, of the twelve (12) individuals on the Board, eleven (11) are laypeople. The fact that more than ninety percent (90%) of the Board is comprised of lay people underscores that FMOLHS is concerned with healthcare and not religion.

37. The website also lists a “Leadership” group for FMOLHS. The individuals currently listed include:

- John J. Finan, Jr., President & CEO
- Robert Ramsey, Senior Vice President & CFO
- Elizabeth (Beth) Bayes, Vice President of Human Resources
- Jolee H. Bollinger, Esq., Vice President of Corporate Integrity & General Counsel
- Pete Guarisco, Vice President of Mission
- William Mosser, Vice President of Materials Management
- Karen Allen, President & CEO FMOL Health System Senior Services
- Stephanie A. Mills, M.D., President & CEO, Franciscan Health and Wellness
- Richard Vath, M.D., President, Clinical Network
- K. Scott Wester, President, Hospital Operation Group
- Sr. Brendan Mary Ronayne, F.M.O.L., FMOL & FMOLHS Mission Liaison
- Redfield E. Bryan, M.D., Executive Consultant
- Kevin Guidry, FMOLHS Director of Special Projects
- Craig Vitrano, M.D., Physician Executive

*See id.*

38. Thus, the Company’s executive leadership is comprised almost entirely of laypeople, with only one out of 13 members from the clergy or a religious order. *See id.*

39. Moreover, the Presidents of the Company’s five hospitals and the affiliated college are all laypeople. *See id.*

40. The Company’s strategic plan is thus also focused on healthcare, improving its delivery systems and the quality of its care. As detailed on its website:

The strategic plan of the Franciscan Missionaries of Our Lady Health System is an essential guide to the work of the health system in an era of a constantly evolving healthcare environment.

*See* <https://fmolhs.org/Pages/StrategicPlan.aspx>.

41. As stated by the Company, “[a]bove all else, our goal is to always deliver excellent, safe care.” *See* <https://fmolhs.org/Pages/About-FMOLHS/Quality-Care.aspx>.

42. In providing healthcare to the surrounding community, FMOLHS recorded \$1.308 billion in net patient service revenue as of June 30, 2013. *See* FMOLHS Consolidated

Financial Statements, at 4. As of June 30, 2014, net patient service revenue had increased to \$1.477 billion. *Id.*

43. At bottom, upon information and belief, there are no requirements with respect to religious beliefs, practices, rules, restrictions, directions, or guidelines in any of the Company's operations.

44. Despite the Plan's status as an ERISA plan, the Company has invoked "Church Plan" status to evade ERISA's protections to which its employees are entitled. The Company's failure to treat the Plan as an ERISA plan puts the Plan's participants at risk of receiving pension payouts drastically lower than those proposed, and deprives Plan participants of material information as alleged below.

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

**B. The Plans**

**(1) Overview of the Plans**

**(a) The Plans**

46. The Plans were established and are maintained by the Company to provide retirement income to employees.

47. The Plans are "employee pension benefit plans" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(a)(A).

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

49. Upon information and belief, at all relevant times, the Committee Defendants have been the Administrators of the Plans within the meaning of ERISA § 3(16)(A), 29 U.S.C. §

1002(16)(A). They have also been fiduciaries of the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because they have exercised authority or control respecting management or disposition of the Plans' assets, or have had discretionary authority or discretionary responsibility in the administration of the Plans.

50. The Company is a fiduciary of the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because it has exercised authority or control respecting management or disposition of the Plans' assets, or has had discretionary authority or discretionary responsibility in the administration of the Plans.

51. In particular, the Company, acting through its Board of Directors, officers, and employees, is responsible for all of the acts alleged herein. The Consolidated Financial Statements confirm this, noting, "FMOLHS provides investment oversight for all of the FMOLHS Affiliates' defined benefit plans." *See* FMOLHS Consolidated Financial Statements, at 44.

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

**(b) The Our Lady of the Lake Plan**

53. The Our Lady of the Lake Plan "provides [participants] with additional financial security during [their] retirement." *See* Retirement Plan of Our Lady of the Lake Hospital and Affiliated Organization, Retirement Plan Booklet, attached hereto as Exhibit A, at 37. The Our Lady of the Lake Plan "provides retirement income at [a participant's] normal retirement age, or a reduced pension benefit as early as age 55, provided [the participant] has earned the right to a pension benefit." *Id.*

54. The Our Lady of the Lake Plan is “made available to the employees of the following Employers:”

- Our Lady of the Lake Hospital, Inc.
- Franciscan Missionaries of Our Lady North American Province, Inc.
- Franciscan Missionaries of Our Lady of the Lake Health System, Inc.
- Our Lady of the Lake Foundation, Inc.
- Villa St. Francis
- Assisi Village
- Ollie Stelle Burden Manor
- St. Elizabeth Hospital
- Southern Regional Physician Services, Inc.
- Our Lady of the Lake College, Inc.

*Id.*

55. “The Employers pay the full cost of [a participant’s] pension benefit.” *Id.*

56. A participant’s benefit is calculated when the participant retires or leaves employment, using the Plan’s benefit formula. “Generally, [a participant] earns retirement benefits as [he/she] works for the Employers.” *Id.*

57. Specifically, a participant’s “benefit at normal retirement is based on [his/her] average monthly compensation (“AMC”), [his/her] monthly covered compensation (Covered compensation is the average of the Social Security taxable wages for the 35-year period ending with the calendar year in which [the participant] attains or will attain Social Security retirement age), and [the participant’s] years of benefit service.” *Id.* at 38.

58. The formula is:

- [a participant’s] AMC **X** years of benefit service up to maximum of 35 **X** 1.8%
- **PLUS** [the participant’s] AMC minus monthly covered compensation **X** years of benefit service up to a maximum of 35 **X** 0.6%

*Id.*

59. A participant's enrollment is automatic on January 1 of the year in which the participant is employed, provided that he/she is credited with 1,000 hours of service in that calendar year and is at least 20 ½ years old. *See id.* at 38.

60. The Our Lady of the Lake Plan's eligibility requirements are that a participant must be at least 20 ½ years old, must complete a year of service, and the FTE (Full time Equivalent) status is greater than zero. *Id.* at 39.

61. A participant will "automatically become a participant in the [Lady of the Lake] Plan on January 1 of the year in which [he/she] meets all the eligibility requirements." *Id.*

62. Participants in the Our Lady of the Lake Plan become vested when they complete five years of service. *Id.* A participant completes "a year of service for each calendar year [he/she] is credited with at least 1,000 hours of service." *Id.*

63. "Our Lady of the Lake Hospital, Inc. has overall fiduciary responsibility for the administration of the Plan and management of the Plan's assets." *Id.* at 45. Our Lady of the Lake Hospital, Inc. is also identified as the Plan Sponsor. *See id.* at 47.

64. "The Employers deposit all contributions into a 'Trust Fund,' which has been established for the exclusive benefit of [Lady of the Lake] Plan participants and beneficiaries." *Id.* The Plan's Trustees "are responsible for administering the Trust Fund." *Id.*

65. "The Trustees pay all benefits to Plan participants and beneficiaries at the direction of the Plan Administrator." *Id.*

66. "Except to the extent expressly conferred upon others by Our Lady of the Lake Hospital, Inc., the Plan Administrator has the sole responsibility for general plan administration, and has the full power and authority to:

- Interpret the terms and provisions of the Plan

- Resolve questions about individual eligibility for participation in the Plan
- Determine the amount of pension benefits payable to participants
- Authorize payments to participants.

*Id.*

67. “The Plan Administrator has delegated the day-to-day administration of the Plan to the Lake’s Human Resource Department.” *Id.*

**(3) The Plans are not “Church Plans” under ERISA**

68. The Plans are not “Church Plans.”

69. As alleged above, FMOLHS is not church or convention or association of churches. *See* ¶¶ 22-45.

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

71. The Plans were *established* by the Company or its predecessors, not by a church or convention or association of churches.

72. The Plans are *maintained* by the Company, not by a church or convention or association of churches.

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

*maintained* by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

74. The principal purpose of FMOLHS is to provide healthcare services, not to operate a pension system.

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

76. Moreover, the Plans are not maintained for employees of any church or convention or association of churches. They are maintained for employees of the Company -- *a health system*.

**C. Defendants’ Breaches of Fiduciary Duty**

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

77. Under ERISA, the Plans must have an annual actuarial report assessing the plan’s funding needs. *See* ERISA § 103(d), 29 U.S.C. § 1023(d).

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

79. Defendants are responsible for setting the funding requirements and the funding policy for the Plan.

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

81. As of June 30, 2014, the Plans were underfunded by \$298 million. *See* FMOLHS Consolidated Financial Statements, at 42.

82. As of June 30, 2013, the Plans were underfunded by \$264.95 million. *Id.*

83. Moreover, this funding level assumes that the future benefit obligations are discounted by 5.17% and that the expected future return on assets will be 7.5%. *See* FMOLHS Consolidated Financial Statements, at 43. These assumptions are not remotely realistic. The effect of the use of these assumptions is to sharply deflate the level of underfunding. If realistic discount rates and investment return assumptions were used, the Plans would be underfunded to a much greater degree.

84. Moreover, FMOLHS misled participants as to its funding obligation. As set forth above, FMOLHS represented that it would “pay the full cost of [a participant’s] pension benefit.” In fact, FMOLHS has no such obligation under the Plan. For example, FMOLHS admits that in the event it elects to amend or terminate the plan, which it can do in its sole discretion at any time, “only the assets of the Plan will be used to pay benefits for its participants, to the extent possible.” Only ERISA provides the requirement that FMOLHS adequately fund the Plans and ensure that FMOLHS will “pay the full cost of [a participant’s] pension benefit.” *See* Retirement Plan of Our Lady of the Lake Hospital and Affiliated Organization, Retirement Plan Booklet, attached hereto as Exhibit A, at 46.

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

85. By continuing to set an inadequate funding policy, which has resulted in the Plans becoming underfunded by close to three hundred million dollars even under the most unrealistic assumptions, Defendants have acted at all times in the interest of the Company, and have not acted solely in the interests of the Plan participants as is required of a fiduciary under ERISA.

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

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

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

**FIRST CLAIM FOR RELIEF**  
**Declaratory and Equitable Relief**  
**(Declaratory Judgment Act and ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3))**

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

90. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to: “(A) enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan.”

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

92. Plaintiff further seeks orders directing all Defendants to bring the Plans into compliance with ERISA, including the reporting and funding requirements of ERISA, 29 U.S.C.

§§ 1021, 1023, 1082, 1102, and 1104, and by remedying the additional violations set forth below.

93. Additionally, Plaintiff seeks an order that FMOLHS make all contributions to the Plans as necessary to remedy the Plans' funding shortfall.

**SECOND CLAIM FOR RELIEF**  
**Violation of Reporting and Disclosure Provisions**  
**(ERISA §§ 101-104, 502(a)(1)(A), (a)(3), 29 U.S.C. §§ 1021-1024, 1132(a)(1)(A), (a)(3))**

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

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

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

**A. Annual Reports**

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

98. Defendants failed to file an annual report concerning each Plan with the Secretary of Labor in compliance with ERISA § 103, 29 U.S.C. § 1023, or a Form 5500 and associated schedules and attachments which the Secretary has approved as an alternative method of compliance with ERISA § 103, 29 U.S.C. § 1023.

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

**B. Notification of Failure to Meet Minimum Funding Standards**

100. Under ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1), employers maintaining employee benefit plans are required to issue a notice to beneficiaries and participants whenever the plan fails to make a required installment or other payment required to meet the minimum funding standards under ERISA.

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

**C. Funding Notices**

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

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

104. As the Administrator of the Plan, the Committee has violated ERISA § 101(f), 29 U.S.C. § 1021(f), by failing to provide each participant and beneficiary of the Plans with the Funding Notice required by ERISA § 101(f), 29 U.S.C. § 1021(f), and as such may be required by the Court to pay Plaintiff and each Class member up to \$110 per day (as permitted by 29

C.F.R. § 2575.502(c)(3)) for each day that the Committee has failed to provide Plaintiff and each Class member with the Funding Notice required by ERISA § 101(f), 29 U.S.C. § 1021(f).

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

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

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

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

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

109. FMOLHS has failed to make contributions in satisfaction of the minimum funding standards of ERISA § 302, 29 U.S.C. § 1082.

110. By failing to make the required contributions to the Plans, FMOLHS has violated ERISA § 302, 29 U.S.C. § 1082.

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

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

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

113. ERISA § 402, 29 U.S.C. § 1102, provides that every plan will be established pursuant to a written instrument which will, among other things, “provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of [Title I of ERISA].”

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

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

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

**FIFTH CLAIM FOR RELIEF**  
**Breach of Fiduciary Duty**  
**(ERISA §§ 404, 409, 502(a)(2), 29 U.S.C. §§ 1104, 1109, 1132(a)(2))**

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

118. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), provides that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, and defraying reasonable expenses of administering the plan, 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.

119. ERISA § 409, 29 U.S.C. § 1109, provides, *inter alia*, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by ERISA shall be personally liable to make good to the plan any losses to the plan resulting from each such breach, and to restore to the plan any profits the fiduciary made through the use of the plan's assets. ERISA § 409 further provides that such fiduciaries are subject to such other equitable or remedial relief as a court may deem appropriate.

120. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), permits a plan participant, beneficiary, or fiduciary to bring a suit for relief under ERISA § 409.

121. As a fiduciary of the Plans, Defendants had the duty to comply with and enforce the provisions of ERISA alleged above.

122. Defendants have not complied with and/or enforced any of the provisions of ERISA set forth above with respect to the Plans.

123. By failing to enforce the provisions of ERISA set forth above, Defendants have breached their fiduciary duties.

124. The failure of Defendants to create and enforce adequate funding for the Plans has resulted in a loss to the Plans equal to the foregone funding and earnings thereon, and this failure has provided FMOLHS by providing it the use for its general business purposes of money that it should have paid to the Plans.

125. Plaintiff is entitled to recover those losses on behalf of the Plans.

**JURY DEMAND**

126. Plaintiff demands a jury.

**PRAYER FOR RELIEF**

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

A. Certifying this action as a class pursuant to FED. R. CIV. P. 23;

B. Declaring that the Plans are employee benefit plans within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2), are defined benefit pension plans within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35), and are not Church Plans within the definition of ERISA § 3(33), 29 U.S.C. § 1002(33);

C. Ordering Defendants to bring the Plans into compliance with ERISA, including, but not limited to, requiring Defendants to fund the Plans in accordance with ERISA's funding requirements, disclose required information to the Plans' participants and beneficiaries, and otherwise comply with all other reporting, vesting, and funding requirements of Title I of ERISA;

D. Requiring Defendants to make the Plans whole for all contributions that should have been made pursuant to ERISA funding standards, and for interest and investment income on such contributions, and requiring Defendants to disgorge any profits accumulated as a result of their fiduciary breaches;

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

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

G. Requiring FMOLHS to pay a civil money penalty of up to \$110 per day to Plaintiff and each Class member for each day it failed to inform Plaintiff and each Class member with a Funding Notice;

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

I. Awarding, declaring, or otherwise providing Plaintiff and the Class all relief under ERISA § 502(a), 29 U.S.C. § 1132(a), or any other applicable law, that the Court deems proper, and such appropriate equitable relief as the Court may order, including an accounting, surcharge, disgorgement of profits, equitable lien, constructive trust, or other remedy; and

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

Dated: April 21, 2016

Respectfully submitted,

By: Robert E. Tarcza  
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