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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF HUMBOLDT

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, **v.** **ST. JOSEPH'S HEALTH NORTHERN CALIFORNIA, LLC; DOES 1-10,** Defendants.	Case No. CV2401832 **PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA'S OPPOSITION TO DEFENDANT'S REQUEST FOR JUDICIAL NOTICE** Date: February 14, 2025 Time: 10:30 a.m. Dept: 4 Judge: Hon. Timothy A. Canning Action Filed: September 30, 2024

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INTRODUCTION

The People respectfully request that the Court deny Defendant St. Joseph Health Northern California LLC's (SJH's) request for judicial notice of how it interprets and applies Exhibit 3 (Ethical and Religious Directives (ERDs)) and how it interprets Exhibit 1 (Consent Agreement). Although SJH does not make these requests explicitly in its request for judicial notice (RJN), SJH nevertheless advances and relies on its interpretations regarding these documents throughout the Demurrer. In doing so, SJH oversteps the proper boundaries of judicial notice, for the law is clear that interpretations of a document's contents cannot be judicially noticed as fact.[1]

The ERDs (RJN, Exhibit 3). Although a court has discretion to take judicial notice of indisputable and readily verifiable facts under Evidence Code section 452, subdivision (h), including in some cases the existence of a document, judicial notice does not reflexively extend to a particular interpretation of the document's contents or permit a court to take as true any assumptions regarding the nature or manner of the document's application. (See *Fremont Indem. Co. v. Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 113.) The People do not object to this Court taking judicial notice of the existence of the ERDs. But how SJH interprets and applies them at Providence St. Joseph Hospital in Eureka are not judicially noticeable facts. (See *ibid.*) Yet the Demurrer is brimming with both impermissible interpretations and assumptions regarding the ERDs.

First, SJH purports to interpret the ERDs in the Demurrer and determine conclusively which procedures the ERDs prohibit. (E.g., Dem. at p. 12 [arguing the People's injunction would "forc[e] SJH to permit procedures not permitted under the ERDs"].) This is an improper use of judicially noticed exhibits. How SJH interprets the ERDs and the conclusions SJH draws from them are not facts subject to judicial notice—particularly given SJH's acknowledgement that interpreting the ERDs involves significant discretion. (See *id.* at pp. 3-4 ["The ERDs distinguish between pregnancy terminations that are strictly prohibited and other interventions that may result in the termination of a pregnancy, which are allowed in certain cases."].)

[1] The People take no position on Exhibits 2 and 4 of SJH's RJN.

Second, SJH presumes that by simply stating the text of an ERD, this Court can accept—on demurrer—that SJH has applied that ERD in a particular manner. For instance, SJH sets forth and emphasizes language from ERD 5: "'Catholic health care services *must adopt these Directives as a policy*, [and] *require adherence to them* within the institution as a condition for medical privileges and employment.'" (Dem. at p. 3.) By detailing this text, SJH urges the Court to assume that the ERDs themselves represent SJH's relevant hospital policies. But the Court cannot accept this as fact any more than it can presume SJH has promulgated separate controlling hospital policies that apply the ERDs or that SJH has applied them in some other manner.

The Conditions Agreement (RJN, Exhibit 1). The same reasoning outlined above applies equally to written agreements. Taking judicial notice of an agreement's contents is not the same as taking judicial notice of a particular interpretation of the agreement, which is impermissible. (*Chacon v. Union Pac. Railroad* (2020) 56 Cal.App.5th 565, 573.) SJH asserts in its Demurrer that the Attorney General (AG) "acknowledged," in a provision of the Conditions Agreement, that SJH would be applying the ERDs on a case-by-case basis. (Dem. at pp. 2, 4, 15.) The People have no concern with judicial notice of this provision's plain language. But to the extent SJH seeks to attach any further import to this provision, such information is an impermissible interpretation of the agreement's contents and not subject to judicial notice. (See *ibid.*) For instance, the AG could not have foreseen how SJH would interpret and apply the ERDs and certainly did not consent to the violation of state laws.

Accordingly, the People request that the Court deny SJH's request for judicial notice of how it interprets and applies the ERDs (Exhibit 3) and how it interprets the Conditions Agreement (Exhibit 1).

LEGAL STANDARD

The Court has discretion under Evidence Code section 452, subdivision (h) to take judicial notice of certain "[f]acts and propositions" if they (1) "are not reasonably subject to dispute," and (2) "are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." This includes, for instance, "facts which are widely accepted as established by experts and specialists in the natural, physical, and social sciences which can be

verified by reference to treatises, encyclopedias, almanacs and the like by persons learned in the subject matter." (*Gould v. Maryland Sound Indus.* (1995) 31 Cal.App.4th 1137, 1144, citing Comment, Assem. Judiciary Comm. accompanying enactment of Evid. Code, § 452.) This may also include the existence of a document, but "the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable." (*Fremont Indem. Co.*, 148 Cal.App.4th at pp. 113, 115 ["A court ruling on a demurrer therefore cannot take judicial notice of the proper interpretation of a document submitted in support of the demurrer."].) The same is true for written agreements. (*Chacon*, 56 Cal.App.5th at p. 573 ["Taking judicial notice of a written agreement's *contents* is not the same as taking judicial notice of a particular *interpretation* of the agreement."].)

"[A] court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what the evidence appears to show." (*Fremont Indem. Co.*, 148 Cal.App.4th at p. 115.) As such, "if there [is] any possibility of dispute, the fact cannot be judicially noticed." (*Communist Party of U.S. of Am. v. Peek* (1942) 20 Cal.2d 536, 546, internal quotation marks omitted.)

ARGUMENT

I. THE COURT SHOULD DENY SJH'S REQUEST FOR JUDICIAL NOTICE OF SJH'S INTERPRETATION AND APPLICATION OF THE ERDS (EXHIBIT 3)

SJH asks the Court to take judicial notice of the ERDs themselves under Evidence Code section 452, subdivision (h), but specifies no associated "facts" or "propositions" for the Court's consideration. (RJN at p. 3.) While the People do not oppose judicial notice of the existence of the ERDs, it is improper for SJH to ask the Court to take judicial notice of SJH's own interpretations and applications of the ERDs. This information is not properly subject to judicial notice—not only because it goes well beyond the four corners of the ERD document, but also because it is disputable and not capable of immediate and accurate verification.

The ERDs have been widely described as a "guidance" document that is susceptible to more than one reasonable interpretation. (See, e.g., Dem. at p. 3 [stating the ERDs "'provide

authoritative guidance' to all Catholic health care facilities"]; *Means v. U.S. Conf. of Catholic Bishops* (W.D. Mich. June 30, 2015) 2015 WL 3970046, at *3 ("The Directives 'express the Church's moral teachings,' but 'do not cover in detail all of the complex issues that confront Catholic health care today.'"); see also Catholic Health Ass'n of the United States, *Ethical and Religious Directives, ERD Orientation Video (Long Version)* (last visited Jan. 27, 2025), https://www.chausa.org/ethics/ethical-and-religious-directives ("The ERDs consist of statements that affirm solid moral teaching . . . they are not a step-by-step manual but rather provide guiding principles"). Given this, courts have acknowledged that the ERDs may require ethical consultation—whether from the local diocesan bishop, an ethics committee, or other body—to interpret and apply. (See *Religious Sisters of Mercy v. Becerra* (8th Cir. 2022) 55 F.4th 583, 592, fn. 3 [noting that one Catholic hospital system abides by the ERDs "[as] interpreted by the local bishop"]; *Hall v. USAble Life* (E.D. Ark. 2011) 774 F.Supp.2d 953, 959 [same]; *Al-Tiae v. Physician Network* (D. Neb. Feb. 6, 2020) 2020 WL 13700271, at *3 [noting that, at one Catholic hospital, the physician employment agreement required compliance with the ERDs "as interpreted by the local bishop"]; see also Catholic Health Ass'n of the United States, *Ethical and Religious Directives, ERD Orientation Video (Short Version)*, last visited Jan. 27, 2025, https://www.chausa.org/ethics/ethical-and-religious-directives ["The ERDs are not a simple list of do's and don'ts. Ministry ethicist and ethics committees help navigate how they are applied."].)

Implementing the ERDs, therefore, appears to be no straightforward task for any hospital—particularly in the context of pregnancy terminations given SJH's acknowledgement that the ERDs afford hospitals discretion in deciding the circumstances under which such procedures are performed. (See Dem. at pp. 3-4 ["The ERDs distinguish between pregnancy terminations that are strictly prohibited and other interventions that may result in the termination of a pregnancy, which are allowed in certain cases."].) Clearly, reasonable minds can differ in how a hospital should interpret and apply the ERDs.

Yet SJH purports to have its own interpretations judicially noticed by this Court as facts. (E.g., Dem. at p. 12 [arguing of the AG's request for an injunction that, "forcing SJH to permit procedures not permitted under the ERDs would substantially burden SJH's religious beliefs"];

id. at p. 14 ["A court cannot force SJH to be associated with procedures that are not permitted under the ERDs . . . [t]he Complaint seeks to compel SJH to permit pregnancy terminations without exceptions for circumstances in which the procedures are 'never permitted'"]; *id.* at p. 15 [arguing the AG is "compelling a religious hospital to violate the ERDs"].) This plainly oversteps the proper boundaries of judicial notice, as SJH's own interpretations of the ERDs are disputable and in fact impossible to readily verify. (See *Rollins v. Dignity Health* (N.D. Cal. 2018) 338 F.Supp.3d 1025, 1034 [denying request for judicial notice of the "Official Catholic Directory" because the parties disputed the document's import]; *Rhodes v. Sutter Health* (E.D. Cal. Feb. 28, 2012) 2012 WL 662462, at *3 [denying request for judicial notice of corporate bylaws because "they are not generally known or above reasonable dispute"].)

Additionally, with every ERD that SJH restates throughout the Demurrer, SJH advances corresponding assumptions about their application. For instance, as discussed above, SJH sets forth ERD 5, suggesting that the ERDs themselves represent the universe of SJH's hospital policies. (See Dem. at p. 3.) In turn, SJH lays out three additional ERDs (44, 45, and 47) purportedly to define for the Court the scope of its policies relevant to the care of pregnant patients. (See *id.* at pp. 3-4.) Finally, SJH states and emphasizes that "ERD 23 provides that '[t]he respect for human dignity extends to *all persons who are served by Catholic health care*,'" as if to contend that by this language's existence, SJH could not possibly commit an Unruh violation. (See *id.* at p. 10.) None of this is permissible. (See *Rhodes*, 2012 WL 662462, at *3 ["While the court will take judicial notice of the articles of incorporation, it will not assume that they were complied with by defendants."]; *Rollins*, 338 F.Supp.3d at 1031, 1033 [denying request for judicial notice of Dignity Health's "Mission," explaining that in offering this document, "Dignity is not explaining or arguing the allegations in [the complaint]—it is trying to factually rebut them"].) The nature and manner in which SJH applies the ERDs is disputable and not readily verifiable, and therefore, is not subject to judicial notice.

SJH cites two federal district court cases in support of its request: *Overall v. Ascension* (E.D. Mich. 2014) 23 F.Supp.3d 816, 822 and *Rollins v. Dignity Health*, 338 F.Supp.3d at 1030. Neither supports SJH's overbroad use of the ERDs. As a threshold matter, in *Overall* the ERDs

were incorporated by reference into the complaint, providing a wholly separate basis for the district court to consider them. (23 F.Supp.3d at p. 825.)[2] Even so, both *Overall* and *Rollins* in fact demonstrate the proper limited scope of judicial notice for document like the ERDs. At issue in both cases was whether the defendant entity's pension plan qualified for the ERISA "church plan exemption." (*Overall*, 23 F.Supp.3d at p. 820; *Rollins*, 338 F.Supp.3d at p. 1030.) The federal district courts took judicial notice of the ERDs to inform the narrow question of whether the plaintiffs had sufficiently alleged that the defendant entities were not "controlled by or associated with a church" (thereby triggering the exemption). (*Overall*, 23 F.Supp.3d at p. 829; *Rollins*, 338 F.Supp.3d at p. 1035.) This limited question left no room for interpretation or assumptions regarding the ERDs—requiring only the court's acknowledgment that they applied to Catholic hospitals. (*Overall*, 23 F.Supp.3d at 825; *Rollins*, 338 F.Supp.3d at 1033.) As such, these cases do not support SJH's attempts to expand the limits of judicial notice here.

The Court should accordingly deny SJH's request for judicial notice of SJH's interpretations and applications of the ERDs.

II. THE COURT SHOULD DENY SJH'S REQUEST FOR JUDICIAL NOTICE OF SJH'S INTERPRETATION OF THE CONSENT AGREEMENT (EXHIBIT 1)

SJH also asks the Court to take judicial notice of "[t]he fact that St. Joseph Hospital – Eureka is required to apply the Ethical and Religious Directives on a case-by-case basis under the [Consent Agreement]." (RJN at p. 2.) As discussed above, while the People do not object to the Court taking judicial notice of the existence of the Consent Agreement, it is improper for SJH to ask this Court to take judicial notice of *how* it interprets the Consent Agreement. (See *Chacon*, 56 Cal.App.5th at 573.) For instance, SJH asserts in the Demurrer:

> [T]he AG cannot use [state laws] to prohibit a Catholic hospital from applying faith-based policies on a case-by-case basis . . . as a Catholic hospital, *SJH has a First Amendment right to apply faith-based policies*, which entail a case-by-case determination of the permissible interventions. *Indeed, the AG expressly acknowledged and agreed* in approving the 2015 ministry affiliation between St. Joseph Health System and Providence Health & Services *that this very process*, specifically including the application of the ERDs, *would continue at SJH*:

[2] The court in *Rollins* does not similarly address as a basis for judicial notice whether the complaint in that case had incorporated the ERDs by reference. (338 F.Supp.3d at 1033.)

(Dem. at p. 2, emphasis added.) By this language, SJH suggests that the AG, by permitting a hospital merger, agreed that SJH has an absolute right to apply faith-based policies even if those policies violate state law. To say the least, that is clearly a disputable interpretation of the Consent Agreement, and thus is not one that SJH can properly ask this Court to make. (See *Fremont Indem. Co.*, 148 Cal.App.4th at p. 112 [holding trial court erred in taking judicial notice of the proper interpretation of a letter agreement and in deciding that question in ruling on demurrer].) Simply because the AG permitted SJH to continue applying the ERDs does not mean the AG had any insight into how SJH would interpret and apply the ERDs, what policies it might promulgate in furtherance of implementing the ERDs, how SJH's application of the ERDs would impact future patients, or whether SJH's application of the ERDs would result in violations of California law. The Court should accordingly deny SJH's request for judicial notice of SJH's interpretations regarding the Consent Agreement.

CONCLUSION

The People respectfully request that the Court deny SJH's request for judicial notice of how SJH interprets and applies the ERDs (Exhibit 3) and any interpretation of the Conditions Agreement (Exhibit 1).

Dated: January 28, 2025

Respectfully submitted,

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DECLARATION OF SERVICE BY E-MAIL

Case Name: **THE PEOPLE OF THE STATE OF CALIFORNIA v. ST. JOSEPH'S HEALTH NORTHERN CALIFORNIA, LLC**
No.: **CV2401832**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On January 28, 2025, I served the attached

1. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA'S OPPOSITION TO DEFENDANT'S DEMURRER**

2. **PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA'S OPPOSITION TO DEFENDANT'S REQUEST FOR JUDICIAL NOTICE**

3. **PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO DEFENDANT'S DEMURRER**

by transmitting a true copy via electronic mail, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 28, 2025, at Los Angeles, California.

Jusua Barbosa
Declarant

Signature

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