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16  
17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 OAKLAND DIVISION

20 JOSEF ROBINSON,

21 Plaintiff,

22 v.

23 DIGNITY HEALTH d/b/a CHANDLER  
24 REGIONAL MEDICAL CENTER,

25 Defendant.

Case No. 4:16-cv-03035-YGR

**PLAINTIFF’S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANT’S  
MOTION TO DISMISS OR TRANSFER  
PURSUANT TO RULE 12(b)(3) AND 28  
U.S.C. § 1406(a), OR IN THE  
ALTERNATIVE TO TRANSFER  
PURSUANT TO 28 U.S.C. § 1404(a)**

Hearing Date: September 20, 2016  
Hearing Time: 2:00 p.m.  
Hon. Yvonne Gonzalez Rogers

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1 Plaintiff Josef Robinson respectfully submits this memorandum of points and authorities  
2 in opposition to Defendant Dignity Health’s motion to dismiss or transfer venue pursuant to  
3 Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a), or in the alternative to transfer  
4 venue pursuant to 28 U.S.C. § 1404(a).

5  
6 **STATEMENT OF ISSUES TO BE DECIDED**

7 1. Whether the Complaint’s undisputed allegations that Dignity Health’s Chief  
8 Human Resources Officer (“CHRO”) and other senior corporate-level employees held a meeting  
9 on November 5, 2015, at Dignity Health’s corporate headquarters in San Francisco where they  
10 decided that covering medically necessary transition-related care would be inconsistent with the  
11 company’s “values,” “internal policy,” and “ethical & religious directives” establish that the  
12 Northern District of California is a “district in which the alleged unlawful employment practice  
13 was committed” under 42 U.S.C. § 2000e-5(f)(3), which allows plaintiffs to claim venue “in *both*  
14 the forum where the employment decision is made *and* the forum in which that decision is  
15 implemented or its effects are felt.” *Passantino v. Johnson & Johnson Consumer Prods., Inc.*,  
16 212 F.3d 493, 506 (9th Cir. 2000) (emphasis added).

18 2. Whether the Complaint’s undisputed allegations that Dignity Health’s CHRO and  
19 other corporate-level employees held a meeting on November 5, 2015, at Dignity Health’s  
20 corporate headquarters in San Francisco where they decided that covering medically necessary  
21 transition-related care would be inconsistent with the company’s “values,” “internal policy,” and  
22 “ethical & religious directives” establish that this district is the most convenient forum under 28  
23 U.S.C. § 1404(a).

24  
25 **INTRODUCTION**

26 Dignity Health’s decision to continue excluding insurance coverage for transition-related  
27 care was made at the highest levels of the organization at the corporate headquarters in San  
28

1 Francisco. On November 5, 2015, the Chief Human Resources Officer (“CHRO”) of Dignity  
 2 Health convened a high-level meeting at the San Francisco headquarters to decide whether  
 3 Dignity Health should cover transition-related care for Arizona employees. *See* Dkt. No. 1  
 4 (“Compl.”) ¶¶ 12-14 & Ex. H at 1. After considering the issue based on Dignity Health’s  
 5 “values,” “internal policy,” and “ethical & religious directives,” the participants at the meeting  
 6 decided to continue excluding “sex transformation” procedures, *see id.* Ex. C at 62, from the  
 7 health plans offered to Arizona employees. *Id.* Ex. H at 1.<sup>1</sup>

9       These undisputed allegations establish that the Northern District of California is a proper  
 10 venue for Plaintiff’s Title VII claims because it is a “district in the State in which the unlawful  
 11 employment practice is alleged to have been committed.” 42 U.S.C. § 2000e-5(f)(3). For  
 12 purposes of determining where an unlawful employment practice is alleged to have been  
 13 committed under Title VII, “venue is proper in *both* the forum where the employment decision is  
 14 made *and* the forum in which that decision is implemented or its effects are felt.” *Passantino v.*  
 15 *Johnson & Johnson Consumer Prods., Inc.*, 212 F.3d 493, 506 (9th Cir. 2000) (emphasis added).  
 16 Dignity Health’s insurance exclusion may have been implemented and felt in Arizona, but the  
 17 decision to maintain the exclusion was made in San Francisco. *See* Compl. ¶¶ 12-14. Moreover,  
 18 from Plaintiff’s perspective, the Northern District of California is the most convenient forum  
 19 because the critical witnesses who need to be deposed are the Dignity Health employees who  
 20 participated in the November 5, 2015 meeting, and the relevant documents are documents  
 21 concerning the policy choices made at that meeting.

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 24  
 25 <sup>1</sup> Dignity Health’s CHRO—who convened the meeting—is based in San Francisco, and the other  
 26 participants were representatives from corporate-level groups such as “HR Policy, Employee  
 27 Benefits, Total Rewards, Mission Integration[,] and Ethics.” Compl. Ex. H at 1. Dignity Health  
 28 does not present any evidence to demonstrate that the meeting was not held at the San Francisco  
 corporate headquarters.

1 In its motion to dismiss or transfer venue, Dignity Health does not even mention the  
2 November 5, 2015 meeting. Instead, it attempts to elide the fact that the challenged decision was  
3 made at the November 5, 2015 meeting by relying on verbal sleights of hand. Dignity Health  
4 presents declarations from Arizona employees stating that, as a general matter, “decisions  
5 regarding the level and types of benefits, as well as coverage exclusions, in the self-funded plans  
6 offered to Arizona employees of Dignity Health have been made locally in Arizona by the  
7 Arizona Benefits Steering Committee.” Dkt. No. 28-1 (“Palermo Decl.”) at ¶ 10. But the fact  
8 that coverage decisions for Arizona employees are usually made in Arizona does not negate the  
9 fact that this particular decision was made by corporate-level employees at a meeting convened  
10 by the CHRO, who is based in San Francisco. Notably, none of the declarations submitted by  
11 Dignity Health states that the specific decision to continue excluding transition-related health  
12 care was made in Arizona. And none of the declarations asserts that anyone in Arizona played  
13 any role in creating the initial exclusion for transition-related care or deciding whether to lift it.  
14 Indeed, Dignity Health admits that the exclusion of coverage for transition-related care was  
15 originally made as part of Dignity Health’s system-wide insurance program before the Arizona  
16 Benefits Steering Committee came into existence. *See id.* ¶ 4.

19 There is a reason why Dignity Health did not treat the “sex transformation” exclusion as  
20 a run-of-the-mill question about employee benefits to be decided locally. The decision was  
21 made by corporate-level employees because it implicated Dignity Health’s “values,” “internal  
22 policy,” and “ethical & religious directives.” Compl. Ex. H at 1. The U.S. Conference of  
23 Catholic Bishops, which is responsible for creating the ethical and religious directives governing  
24 Dignity Health, has argued to the U.S. Department of Health & Human Services and the  
25 Supreme Court that providing insurance coverage for transition-related care would conflict with  
26  
27  
28

1 Catholic religious convictions about “the sexual differences between men and women.”<sup>2</sup>

2 Moreover, Dignity Health has confirmed in other litigation that its corporate bylaws prohibit  
3 administrators from “facilitat[ing] procedures contrary to Catholic teaching.”<sup>3</sup> Dignity Health  
4 did not delegate major questions implicating the organizations’ “values,” “internal policy,” and  
5 “ethical & religious directives,” Compl. Ex. H at 1, to a local benefits steering committee in  
6 Arizona.  
7

8 Because the proper and most convenient venue is the Northern District of California,  
9 Defendant’s motion to dismiss or transfer venue should be denied. In the alternative, the Court  
10 should defer ruling on the motion until the completion of limited venue-related discovery.  
11

## 12 BACKGROUND

13 Since before 1999, at a time when Dignity Health was known as Catholic Healthcare  
14 West, the company has categorically excluded transition-related care from the only insurance  
15 plans it offers to Arizona employees. Palermo Decl. ¶¶ 2, 4. At that time Dignity Health  
16 operated only one hospital in Arizona, and insurance coverage for hospital employees was  
17 provided as part of the system-wide Catholic Healthcare West Flexible Benefits Plan. *Id.* ¶ 14.  
18 That system-wide plan excluded coverage for “transsexual or gender reassignment procedures.”  
19 *Id.*<sup>4</sup>  
20

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21 <sup>2</sup> See U.S. Conf. of Catholic Bishops, *et al.*, Comments Regarding Proposed Regulation for  
22 Nondiscrimination in Health Programs & Activities (Nov. 6, 2015), *available at*  
23 [http://www.usccb.org/about/general-counsel/rulemaking/upload/Comments-Proposal-HHS-Reg-](http://www.usccb.org/about/general-counsel/rulemaking/upload/Comments-Proposal-HHS-Reg-Nondiscrimination-Federally-Funded-Health.pdf)  
24 [Nondiscrimination-Federally-Funded-Health.pdf](http://www.usccb.org/about/general-counsel/rulemaking/upload/Comments-Proposal-HHS-Reg-Nondiscrimination-Federally-Funded-Health.pdf); Br. of U.S. Conf. of Catholic Bishops, *et. al.*, as  
Amici Curiae Supporting Petitioner, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (Nos. 14-1418, 14-  
1453, 14-1505, 15-35, 15-105, 15-119, 15-191), 2016 WL 106617 at \*26 n.69.

25 <sup>3</sup> Mem. of Points & Authorities in Support of Demurrer at 2, *Chamorro v. Dignity Health*, No.  
26 CGC 15-549626 (Cal. Superior Ct. May 4, 2016) (attached as Exhibit A).

27 <sup>4</sup> Dignity Health has not provided any evidence indicating that its exclusion of transition-related  
28 care does not apply to employees outside of Arizona. Instead of making an affirmative statement  
on its own behalf, Dignity Health states that “the complaint indicates that . . . coverage for sex



1 Dignity Health subsequently acquired or created four additional hospitals in Arizona,  
2 including Chandler Regional Medical Center. *Id.* ¶ 6; Dignity Health—Arizona,  
3 <http://www.dignityhealth.org/cm/content/pages/arizona.asp> (last visited August 11, 2016). At  
4 some point in time, Dignity Health created an Arizona Benefits Steering Committee. Palermo  
5 Decl. at ¶ 10. Dignity Health states in general terms that “decisions regarding the level and types  
6 of benefits, as well as coverage exclusions, in the self-funded plans offered to Arizona  
7 employees of Dignity Health have been made locally in Arizona by the Arizona Benefits  
8 Steering Committee.” *Id.* The Arizona Benefits Steering Committee, however, was not  
9 responsible for adopting the original exclusion for transition-related care, an exclusion that  
10 existed before the Committee was created. *Id.* at ¶ 4. Dignity Health does not assert—or present  
11 any evidence indicating—that the Arizona Benefits Steering Committee played any role in  
12 deliberating whether to lift the “sex transformation” exclusion at any time.

13  
14  
15 Mr. Robinson began working at Chandler Regional Medical Center in 2015 as an  
16 employee of Dignity Health. *Id.* at ¶ 11. His health plan, like all of the health plans offered to  
17 Dignity Health employees in Arizona, categorically excluded coverage for “[t]reatment, drugs,  
18 medicines, services and supplies for, or leading to, sex transformation surgery.” Compl. Ex. C at  
19 62. The exclusion categorically prohibits all “treatment related to th[e] diagnosis” of gender

20  
21  
22 transformation surgery is already available to Dignity Health employees in California.” Dkt. No.  
23 28 (“Dignity Mem.”) at 11 (citing Compl. Ex. G). The exhibit Dignity Health cites for that  
24 assertion is an email written by Mr. Robinson’s fiancée in which she states that Mr. Robinson  
25 “could pack up and move to California where he would be guaranteed health insurance that  
26 would cover the necessary surgeries.” Compl. Ex. G at 5. Far from constituting evidence that  
27 Dignity Health’s insurance plan would cover transition-related care for California employees, the  
28 email merely confirms that California state law, unlike Arizona state law, mandates insurance  
coverage for such care. Cal. Dep’t of Managed Health Care, Director Letter No. 12-K, Gender  
Nondiscrimination Requirements (Apr. 9, 2013), *available at*  
[www.dmhc.ca.gov/Portals/0/LawsAndRegulations/DirectorsLettersAndOpinions/dl12k.pdf](http://www.dmhc.ca.gov/Portals/0/LawsAndRegulations/DirectorsLettersAndOpinions/dl12k.pdf).

1 dysphoria. *Id.* Ex. F. The plan leaves no role for the third-party administrator to assess whether  
2 any particular treatment is medically necessary for any particular patient.

3 As a result of the categorical exclusion, Mr. Robinson had to pay out of pocket for  
4 medically necessary hormone therapy throughout 2015. *Id.* ¶ 37. Mr. Robinson was also forced  
5 to pay out of pocket for a medically necessary chest surgery performed on August 24, 2015. *Id.*  
6 ¶¶ 39-41. In rejecting Mr. Robinson’s request for coverage and subsequent appeals, the third-  
7 party administrator relied exclusively on the “sex transformation” exclusion in the self-funded  
8 plan. *Id.* Exs. D, E, F.

9  
10 Looking ahead to 2016, Mr. Robinson faced the prospect of more medically necessary  
11 hormone therapy and medically necessary phalloplasty scheduled for March 2016, which he  
12 could not afford to pay out of pocket. *Id.* ¶¶ 42-43. Disheartened and frustrated, Mr. Robinson’s  
13 fiancée, Melissa Mayo, wrote to Dignity Health’s Chief Executive Officer (“CEO”) in San  
14 Francisco and asked for Dignity Health to provide “a fully inclusive equitable benefits plan” in  
15 2016 to cover medically necessary transition-related care in accordance with standards  
16 established by the World Professional Association for Transgender Health. *Id.* Ex. G at 7.

17  
18 In response to the email from Mr. Robinson’s fiancée, Dignity Health’s CEO wrote:  
19 “Thanks for sharing this very unfortunate situation. I am asking our head of HR to look into this  
20 matter and to then follow up with you. Thanks for bringing this to my attention.” *Id.* ¶ 45 & Ex.  
21 G at 4. On October 26, 2015, the CHRO provided the following information to Mr. Robinson’s  
22 fiancée by email:

23  
24 You have raised a unique issue that warrants more thought and review. I have  
25 spoken with our employee benefits team as well as our policy staff. All agree that  
26 the issue you have raised is both unique and important. Rather than provide an  
27 answer that is not thoroughly and carefully considered from all angles, I’d like to  
convene a small team of individuals from HR, Mission, Ethics and potentially  
operations to discuss your situation.

28 *Id.* ¶ 46 & Ex. G at 1. On November 6, 2015, the CHRO provided the following update:

1 Thank you for raising this issue for contemplation and discernment. We held our  
2 discussion with representatives from HR Policy, Employee Benefits, Total  
3 Rewards, Mission Integration and Ethics on Thursday morning, November 5th.  
4 We discussed your situation through the lens of our values, our internal policy and  
5 our ethical & religious directives. We also considered our medical plan insurance  
6 coverages for both fully insured plans in California and self-funded plans in  
7 Arizona and individual state requirement statutes, but we did not have an  
8 employment attorney involved in the meeting.

6 With specific intent, we deliberated whether our existing policies were  
7 discriminatory and inconsistent with our organization values as you stated in your  
8 letter. We found no evidence of discriminatory practice in the employee benefit  
9 plan documents, internal practice or the administration of the plan.

9 *Id.* ¶ 47 & Ex H at 1. With respect to insurance coverage for 2016, the email advised Mr.  
10 Robinson and his fiancée “to complete the open enrollment process and make selections that are  
11 important to you.” *Id.* Ex. H at 2.

12 Dignity has provided no evidence that any Dignity Health employee in Arizona played  
13 any role in deciding whether or not to create or maintain the “sex transformation” exclusion in  
14 the Arizona self-funded plan. At no point during their email exchanges did Dignity Health’s  
15 CEO or CHRO advise Mr. Robinson or his fiancée to contact the Arizona Benefits Steering  
16 Committee or suggest that the Committee was the entity responsible for deciding whether to lift  
17 the “sex transformation” exclusion.  
18

19 The evidence indicates that Dignity Health did not treat the “sex transformation”  
20 exclusion as a run-of-the-mill question about employee benefits to be decided locally because a  
21 decision to provide coverage for transition-related care would potentially conflict with the views  
22 of the United States Conference of Catholic Bishops. Specifically, the email by Dignity  
23 Health’s CHRO states that participants at the November 5, 2015 meeting discussed the insurance  
24 exclusion through the “lens” of the organization’s “values, “internal policy,” and the Ethical and  
25 Religious Directives for Catholic Health Care Services promulgated by the United States  
26  
27  
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1 Conference of Catholic Bishops.<sup>5</sup> Although the ethical directives do not directly address the  
2 issue of transition-related care, the U.S. Conference of Catholic Bishops submitted comments to  
3 the U.S. Department of Health and Human Services stating that proposed regulations for Section  
4 1557 would violate their religious liberty. According to the comments, by “forc[ing] employers  
5 to include services related to gender transition in the health coverage they offer to their  
6 employees,” the proposed regulations “would condition the availability of federal financial  
7 assistance on the performance of acts that conflict with religious convictions about the sexual  
8 differences between men and women.”<sup>6</sup> Moreover, Dignity Health has asserted in other  
9 litigation that its corporate bylaws prohibit officers of the organization from “facilitat[ing]  
10 procedures contrary to Catholic teaching.”<sup>7</sup>

11  
12 As a result of Dignity Health’s refusal to lift its exclusion for “sex transformation”  
13 procedures, Mr. Robinson was forced to cancel his scheduled surgery for phalloplasty and lose  
14 the money he had paid as a deposit. Compl. ¶ 43. Mr. Robinson also continues to pay out of  
15 pocket for his medically necessary hormone therapy. *Id.* at ¶ 37. The decision made at the  
16 November 5, 2015 meeting in San Francisco continues to deprive him of medically necessary  
17 healthcare to this day.  
18  
19  
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21 <sup>5</sup> U.S. Conf. of Catholic Bishops, Ethical and Religious Directives for Catholic Health Care (5th  
22 ed. 2009), *available at* [https://www.dignityhealth.org/cm/media/documents/  
Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf](https://www.dignityhealth.org/cm/media/documents/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf).

23 <sup>6</sup> U.S. Conf. of Catholic Bishops, *et al.*, Comments Regarding Proposed Regulation for  
24 Nondiscrimination in Health Programs & Activities (Nov. 6, 2015), *available at*  
25 [http://www.usccb.org/about/general-counsel/rulemaking/upload/Comments-Proposal-HHS-Reg-  
Nondiscrimination-Federally-Funded-Health.pdf](http://www.usccb.org/about/general-counsel/rulemaking/upload/Comments-Proposal-HHS-Reg-Nondiscrimination-Federally-Funded-Health.pdf); *see also* Br. of U.S. Conf. of Catholic Bishops,  
26 *et. al.*, as Amici Curiae Supporting Petitioner, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (Nos. 14-  
1418, 14-1453, 14-1505, 15-35, 15-105, 15-119, 15-191), 2016 WL 106617 at \*26 n.69.

27 <sup>7</sup> Mem. of Points & Authorities in Support of Demurrer at 2, *Chamorro v. Dignity Health*, No.  
28 CGC 15-549626 (Cal. Superior Ct. May 4, 2016) (attached as Exhibit A).



1 made at a meeting convened on November 5, 2015 at Dignity Health’s headquarters in San  
2 Francisco.<sup>8</sup> See Compl. ¶¶ 12-14 & Ex. H at 1.

3 None of the declarations attached to Dignity’s motion to dismiss or transfer venue  
4 disputes these allegations. The declarations state that “from 1999 to the present, decisions  
5 regarding the level and types of benefits, as well as coverage exclusions, in the self-funded plans  
6 offered to Arizona employees of Dignity Health have been made locally in Arizona by the  
7 Arizona Benefits Steering Committee.” Palermo Decl. at ¶ 10. But the fact that coverage  
8 decisions are usually made in Arizona does not negate Plaintiff’s undisputed allegations that this  
9 particular decision was made in San Francisco. Indeed, Dignity Health does not assert—or  
10 provide any evidence indicating—that human resource officers in Arizona or the Arizona  
11 Benefits Steering Committee played any role whatsoever in developing or maintaining the “sex  
12 transformation” exclusion.  
13  
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15 Dignity Health attempts to minimize the significance of the November 5, 2015 meeting  
16 by ignoring Mr. Robinson’s claims regarding Dignity Health’s continued denial of coverage for  
17 medically necessary care beyond the chest surgery performed in August 2015. Dignity Health  
18 thus asserts that “Ms. Mayo[] sent her first email *after* the alleged unlawful employment practice  
19 was already complete—*i.e.* after Robinson had already obtained his double mastectomy and was  
20 denied coverage under the Arizona Health Plan.” Dignity Mem. at 11-12 (emphasis in original).  
21 To the contrary, the unlawful exclusion of transition-related care continues to deprive Mr.  
22 Robinson of coverage for medically necessary hormone therapy and phalloplasty surgery. The  
23  
24

25 <sup>8</sup> Dignity Health’s CHRO—who convened the meeting—is based in San Francisco, and the other  
26 participants were representatives from corporate-level groups such as “HR Policy, Employee  
27 Benefits, Total Rewards, Mission Integration[,] and Ethics.” Compl. Ex. H at 1. Dignity Health  
28 does not present any evidence to demonstrate that the meeting was not held at the San Francisco  
corporate headquarters.

1 decision made at the November 5, 2015 meeting in San Francisco continues to deprive him of  
2 medically necessary healthcare to this day.<sup>9</sup>

3           There is a reason why Dignity Health did not treat the “sex transformation” exclusion as  
4 a run-of-the-mill question about employee benefits to be decided locally. The decision was  
5 made by corporate-level employees because it implicated Dignity Health’s “values,” “internal  
6 policy,” and “ethical & religious directives.” Compl. Ex. H at 1. As noted above, the U.S.  
7 Conference of Catholic Bishops has publicly taken the position that providing health care  
8 coverage to employees for transition-related care would “conflict with religious convictions  
9 about the sexual differences between men and women.”<sup>10</sup> Moreover, Dignity Health has  
10 asserted in other litigation that its corporate bylaws prohibit officers of the organization from  
11 “facilitat[ing] procedures contrary to Catholic teaching.”<sup>11</sup> If this were an issue left up to the  
12 Arizona Benefits Steering Committee, then the CHRO would have asked the Committee to  
13 resolve the question instead of convening a meeting himself with representatives from “Mission  
14 Integration and Ethics.” Compl. Ex. H at 1.  
15  
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19 <sup>9</sup> Dignity Health also selectively quotes from the EEOC’s determination letter. Dignity Health  
20 suggests that Mr. Robinson’s claims are limited to allegations that he was “denied authorization  
21 in two separate letters” for chest surgery. Dignity Mem. at 8. In fact, the determination letter  
22 was based on Mr. Robinson’s allegations that he was denied “coverage for medically necessary  
23 care, including his medically necessary surgery in August 2015 *and any additional medically  
24 necessary surgeries in the future.*” Compl. Ex. A at 1 (emphasis added).

25 <sup>10</sup> U.S. Conf. of Catholic Bishops, *et al.*, Comments Regarding Proposed Regulation for  
26 Nondiscrimination in Health Programs & Activities (Nov. 6, 2015), *available at*  
27 [http://www.usccb.org/about/general-counsel/rulemaking/upload/Comments-Proposal-HHS-Reg-](http://www.usccb.org/about/general-counsel/rulemaking/upload/Comments-Proposal-HHS-Reg-Nondiscrimination-Federally-Funded-Health.pdf)  
28 *et al.*, as Amici Curiae Supporting Petitioner, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (Nos. 14-  
1418, 14-1453, 14-1505, 15-35, 15-105, 15-119, 15-191), 2016 WL 106617 at \*26 n.69.

<sup>11</sup> Mem. of Points & Authorities in Support of Demurrer at 2, *Chamorro v. Dignity Health*, No.  
CGC 15-549626 (Cal. Superior Ct. May 4, 2016) (attached as Exhibit A).

1 Dignity Health argues there is no venue in this District because “Robinson’s sole alleged  
2 connection to this District is a handful of emails—to which he was not even a party—initiated by  
3 his fiancée and with Dignity Health executives in San Francisco.” Dignity Mem. at 11  
4 (emphasis omitted). In support of that argument, Dignity Health relies extensively on a case in  
5 which a plaintiff failed to establish that the effects of a challenged employment policy were felt  
6 in the district where the plaintiff resided as opposed to the district where the plaintiff worked.  
7 See *Davidson v. Korman*, No. C 09-1695 SBA, 2010 WL 3515760 (N.D. Cal. Sept. 8, 2010).

9 In this case, however, Mr. Robinson does not assert venue based on the location where  
10 the effects of the insurance exclusion were felt; he asserts venue based on “the forum where the  
11 employment decision [wa]s made.” *Passantino*, 212 F.3d at 506; see Compl. ¶¶ 12-14. To the  
12 extent that Dignity Health suggests that venue is proper *only* in the district where a plaintiff  
13 resides or works, its argument distorts the clear holding of *Passantino*. Dignity Health quotes,  
14 with emphasis, *Passantino*’s statement that “venue should be found where the effect of the  
15 unlawful employment practice is felt: where the plaintiff works, and the decision to engage in  
16 that practice is implemented.” *Id.* at 505; Dignity Mem. at 9. But Dignity Health ignores  
17 *Passantino*’s subsequent caveat that “[t]his is not to suggest that an action involving a failure to  
18 promote is not also appropriately brought in the district in which the employment decision is  
19 made.” *Passantino*, 212 F.3d at 506; see also *id.* (noting that Title VII regulations contemplate  
20 more than one appropriate venue).

23 Moreover, because Dignity Health’s decision to create and maintain the exclusion of “sex  
24 transformation” procedures was made at its headquarters in San Francisco, the relevant records  
25 related to that decision are located in this District as well. Dignity Health argues that Mr.  
26 Robinson’s personnel records and the Arizona Health Plan documents are located in Arizona.  
27 Dignity Mem. at 11. Those documents, however, are not relevant to Dignity Health’s actual  
28



1 decision-making process in this case. The relevant documents, including any documents  
 2 addressing how covering transition-related care implicates Dignity Health’s “values,” “internal  
 3 policy,” and “ethical & religious directives” are located at Dignity Health’s corporate  
 4 headquarters in this District.

5 **II. Dignity Health has not carried its burden to justify transferring venue pursuant to**  
 6 **28 U.S.C. § 1404(a).**

7 A party seeking to transfer venue pursuant to 28 U.S.C. § 1404(a) “bears the burden of  
 8 justifying the transfer by a strong showing of inconvenience.” *Wellens v. Daiichi Sankyo Co.*,  
 9 No. C 13-00581 CW, 2013 WL 3242294, at \*2 (N.D. Cal. June 25, 2013).

10 Factors the court may consider include (1) the plaintiff’s choice of forum; (2)  
 11 convenience of the parties; (3) convenience of the witnesses; (4) relative ease of  
 12 access to the evidence; (5) familiarity of each forum with the applicable law; (6)  
 13 feasibility of consolidation with other claims; (7) any local interest in the  
 14 controversy; and (8) the relative court congestion and time to trial in each forum.

15 *Id.* at \*1. Dignity has not satisfied its burden to justify transferring this action to the District of  
 16 Arizona in accordance with these factors.

17 The first factor, plaintiff’s choice of forum, weighs heavily in favor of maintaining venue  
 18 in this District. Plaintiff’s choice of forum is entitled deference, and “a plaintiff’s choice of  
 19 forum is entitled to *greater* deference where a case arises under Title VII.” *Ellis v. Costco*  
 20 *Wholesale Corp.*, 372 F. Supp. 2d 530, 537 (N.D. Cal. 2005), *overruled in part on other*  
 21 *grounds*, 657 F.3d 970, 988 (9th Cir. 2011); *accord Gelber v. Leonard Wood Mem’l for the*  
 22 *Eradication of Leprosy*, No. C 07-01785 JSW, 2007 WL 1795746, at \*2 (N.D. Cal. June 21,  
 23 2007) (“[C]laims arising under Title VII of the Civil Rights Act of 1964 afford greater deference  
 24 to the plaintiff’s choice of forum.”)

25 Dignity Health argues that Mr. Robinson’s choice of venue is not entitled to deference  
 26 because this venue is not “the ‘center of gravity’ for his discrimination claim,” and is not “the  
 27 situs of material events.” Dignity Mem. at 15. Plaintiff strongly disagrees. According to the  
 28

1 undisputed allegations, all the material events occurred in this district on November 5, 2015. *See*  
2 Compl. ¶¶ 12-14 & Ex. H at 1. Human Resources officials in Arizona and the Arizona Benefits  
3 Steering Committee may be involved as a general matter in deciding what exclusions to adopt  
4 for Arizona employees' health care plans. But based on the undisputed allegations in this case,  
5 the decision regarding the particular insurance exclusion at issue here were made in San  
6 Francisco, not Arizona.  
7

8 Similarly, with respect to the third and fourth factors, Dignity argues that “the vast  
9 majority of the witnesses” and all relevant “employment records” are located in Arizona. *Id.*  
10 Once again, Plaintiff strongly disagrees. The critical witnesses who need to be deposed are the  
11 individuals who participated in the November 5, 2015 meeting, and the relevant documents are  
12 documents concerning the policy choices made at that meeting  
13

14 Finally, retaining venue in this District would not—as Dignity Health alleges—require  
15 this Court to “adjudicate health care coverage issues that implicate the laws and policies of a  
16 different state.” *Id.* at 16. The only laws and policies at issue in this case are questions of  
17 federal law.

18 **III. In the Alternative, Plaintiff Requests Leave to Conduct Limited Venue-Related**  
19 **Discovery.**

20 If the Court is inclined to grant Dignity Health's motion to transfer venue based on the  
21 current record, Plaintiff respectfully requests leave to conduct limited discovery regarding the  
22 location and scope of the November 5, 2015 meeting. Such limited discovery is proper because  
23 it would aid the Court in resolving Dignity Health's motion to dismiss or transfer venue, and all  
24 information related to the November 5, 2015 meeting is in Dignity Health's exclusive  
25 possession. *See Hayashi v. Red Wing Peat Corp.*, 396 F.2d 13, 14 (9th Cir. 1968) (“[T]he trial  
26 court may permit discovery on [a motion to dismiss for improper venue], and indeed should do  
27 so where discovery may be useful in resolving issues of fact presented by the motion,  
28

1 particularly since the necessity of resolving such issues is created by the movant himself and the  
2 relevant evidence is peculiarly within the movant's possession."); *see also Powerteq, LLC v.*  
3 *Moton*, No. 15-cv-2626-MMC, 2016 WL 80558, at \*3 (N.D. Cal. Jan. 7, 2016) (quoting  
4 *Hayashi*, deferring ruling on the defendant's motion to dismiss or transfer for improper venue,  
5 and granting leave to "conduct discovery relevant to the issue of whether venue is proper in this  
6 District").  
7

8 **CONCLUSION**

9 For all these reasons, Dignity Health's motion to dismiss or transfer venue pursuant to  
10 Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a), or in the alternative to transfer  
11 venue pursuant to 28 U.S.C. § 1404(a), should be denied. In the alternative, the Court should  
12 defer ruling on the motion until the completion of limited venue-related discovery.  
13

14  
15 Respectfully submitted,

16 Dated: August 15, 2016

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