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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF HUMBOLDT

17 OLIVER KNIGHT,
18
19 Plaintiff,
20
21 vs.

22 ST. JOSEPH HEALTH NORTHERN
23 CALIFORNIA, LLC d/b/a ST. JOSEPH
24 HOSPITAL - EUREKA,
25
26 Defendant.

Case No. DR190259

DEFENDANT ST. JOSEPH HOSPITAL –
EUREKA’S DEMURRER TO PLAINTIFF
OLIVER KNIGHT’S COMPLAINT

Concurrently Filed With:
(1) Request for Judicial Notice
(2) Declaration of Colin M. McGrath

Date: September 27, 2019
Time: 10:30 a.m.
Courtroom: 4

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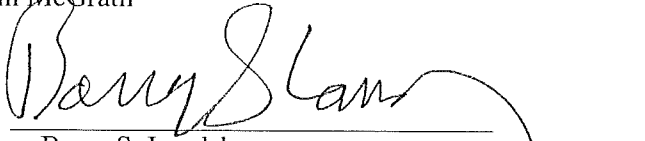
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on September 27, 2019, at 10:30 a.m., or as soon thereafter as this matter may be heard in Courtroom 4 of the above-entitled Court, located at 825 Fifth Street, Eureka, California 95501, defendant St. Joseph Health Northern California, LLC d/b/a St. Joseph Hospital – Eureka (“St Joseph”) will and hereby does demur to plaintiff Oliver Knight’s (“Knight”) Complaint under California Code of Civil Procedure section 430.10, subdivision (e), on the ground that the Complaint fails to state facts sufficient to constitute a cause of action against St. Joseph.

The Demurrer will be based upon this Notice, the accompanying Demurrer and Memorandum of Points and Authorities, the concurrently filed Request for Judicial Notice, the concurrently filed Declaration of Colin M. McGrath, the pleadings and papers on file in this action, and any other evidence or argument the Court shall permit at the hearing on this matter.

Dated: July 12, 2019

MANATT, PHELPS & PHILLIPS, LLP
Barry S. Landsberg
Harvey L. Rochman
Colin McGrath

By: 
Barry S. Landsberg
Attorneys for Defendant
ST. JOSEPH HEALTH NORTHERN
CALIFORNIA, LLC D/B/A ST. JOSEPH
HOSPITAL - EUREKA

1 **DEMURRER**

2 Defendant St. Joseph Health Northern California, LLC d/b/a St. Joseph Hospital – Eureka
3 (“St Joseph”) demurs to the Complaint filed by plaintiff Oliver Knight (“Knight”) as follows:

4 1. St. Joseph demurs to the first cause of action for violations of the Unruh Civil
5 Rights Act, Civil Code § 51(b), on the following grounds:

6 (a) The Complaint does not state facts sufficient to state a cause of action
7 because the Complaint fails to allege any intentional act of discrimination by St. Joseph, as is
8 required to state a claim under the statute. *See Harris v. Capital Growth Investors XIV*, 52 Cal.3d
9 1142, 1172 (1991).

10 (b) The Complaint does not state facts sufficient to state a cause of action
11 because the allegation that St. Joseph discriminated against him on the basis of his medical
12 condition of gender dysphoria is not actionable under the Unruh Act. *See Civ. Code § 51(c),*
13 *(e)(3); Gov’t Code § 12926, subd. (i).*

14 (c) The Complaint does not state facts sufficient to state a cause of action
15 because the Unruh Act cannot be enforced in a manner that would violate St. Joseph’s
16 constitutional rights of free exercise of religion and freedom of expression.

17 (d) The Complaint does not state facts sufficient to state a cause of action
18 because the relief sought under the Unruh Act would excessively entangle the court in Catholic
19 religious doctrine and impermissibly intrude on matters of church governance. *See Means v. U.S.*
20 *Conf. of Catholic Bishops*, 2015 WL 3970046, *12 (W.D. Mich. June 30, 2015), *aff’d*, 836 F.3d
21 643 (6th Cir. 2016).

22 2. St. Joseph demurs to the second cause of action for negligent infliction of
23 emotional distress on the ground that the cause of action does not exist in California, as “[t]here is
24 no independent tort of negligent infliction of emotional distress.” *Potter v. Firestone Tire &*
25 *Rubber Co.*, 6 Cal.4th 965, 984 (1993).

26 3. St. Joseph demurs to the third cause of action for intentional infliction of
27 emotional distress on the ground that the Complaint does not allege that St. Joseph engaged in
28

1 any "outrageous conduct" that was "outside the bounds of human decency", or intended to cause
2 Knight mental distress, as is required.

3
4 Dated: July 12, 2019

MANATT, PHELPS & PHILLIPS, LLP
Barry S. Landsberg
Harvey L. Rochman
Colin McGrath

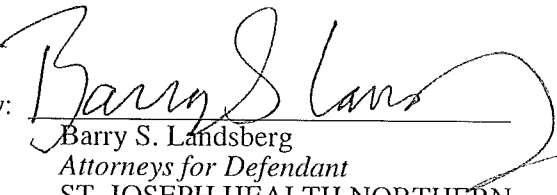
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Oliver Knight, a transgender man, seeks to hold a Catholic hospital liable for intentional
4 sex discrimination and torts because it followed binding Catholic religious doctrine and did not
5 allow Knight to have a hysterectomy as part of his gender transition.¹ No court has ever imposed
6 such a requirement, and to do so here would violate defendant St. Joseph’s constitutional rights to
7 freedom of religion. Indeed, the Complaint presents a direct attack on St. Joseph’s right to be a
8 Catholic hospital, because St. Joseph adheres to the binding Catholic doctrine, including the
9 Ethical and Religious Directives for Catholic Health Care Services (the “ERDs”).² As Knight
10 admits in the Complaint, the ERDs prohibit the procedure he sought.

11 There is no authority for Knight’s claim that a court can force a Catholic hospital to
12 violate binding Catholic doctrine. As discussed below, the facts alleged do not state a claim for
13 intentional sex discrimination under the Unruh Act, which mandates pleading of an *intent* to
14 discriminate, as opposed to policies or actions that adversely *impact* the plaintiff. Nor does
15 Knight state claims for infliction of emotional distress, whether negligent or intentional.
16 Moreover, St. Joseph’s constitutional right to refuse to perform procedures barred by Catholic
17 religious doctrine bars each of Knight’s claims and precludes the relief he seeks in the Complaint.

18 As Knight admits, the procedure at issue – a hysterectomy to treat gender dysphoria – is
19 barred by the ERDs, which are binding on St. Joseph and its medical staff. Case law has long and
20 repeatedly emphasized that a Catholic hospital may comply with such binding religious doctrine.
21 *See Taylor v. St. Vincent’s Hosp.*, 523 F.2d 75, 77 (9th Cir. 1975) (“If the hospital’s refusal to
22 perform sterilization infringes upon any constitutionally cognizable right to privacy, such
23

24 ¹ Defendant St. Joseph Health Northern California, LLC d/b/a St. Joseph Hospital – Eureka (“St.
25 Joseph”).

26 ² Plaintiff’s counsel has failed with similar claims against other Catholic hospitals. *See, e.g.,*
27 *Chamorro v. Dignity Health*, San Francisco Sup. Ct. No. CGC-15-549626; *Minton v. Dignity*
28 *Health*, San Francisco Sup. Ct. No. CGC 17-558259, August 30, 2017 Order Sustaining Dignity
Health’s Demurrer to Verified Complaint. The Superior Court’s August 30, 2017 Order in
Minton v. Dignity Health is currently on appeal before the First Appellate District, Division 4,
Case No. A153662. In both cases, the court dismissed claims under the Unruh Act on demurrers.

1 infringement is outweighed by the need to protect the freedom of religion of denominational
2 hospitals ‘with religious or moral scruples against sterilizations and abortions’”) (citation
3 omitted); *Watkins v. Mercy Med. Ctr.* 364 F.Supp. 799, 803 (D. Idaho 1973) (“Mercy Medical
4 Center has the right to adhere to its own religious beliefs and not be forced to make its facilities
5 available for services which it finds repugnant . . .”); *aff’d*, 520 F.2d 894 (9th Cir. 1975); *Allen v.*
6 *Sisters of St. Joseph*, 361 F.Supp. 1212, 1214 (N.D. Tex. 1973) (the public interest “in the
7 establishment and operation of hospitals by religious organizations is paramount to any
8 inconvenience that would result to the plaintiff in requiring her to either be moved or await a later
9 date for her sterilization”), *aff’d*, 490 F.2d 81 (5th Cir. 1974).

10 Knight’s first cause of action for violations of the Unruh Act, Cal. Civ. Code § 51(b) fails
11 as a matter of law because the Complaint does not allege *intentional* discrimination by St. Joseph,
12 as is required to state a claim under the statute. *See Harris v. Capital Growth Investors XIV*, 52
13 Cal.3d 1142, 1172 (1991) (the Unruh Act only prohibits “*intentional* acts of discrimination”
14 (emphasis in original); *Koebke v. Bernardo Heights Country Club*, 36 Cal.4th 824, 854 (2005)
15 (same). St. Joseph’s mandated adherence to the ERDs is the practice of religion, not intentional
16 discrimination against anyone. Further, the ERDs prohibit direct sterilization procedures
17 *regardless* of the sex or gender identity of the patient seeking the procedure. As such, the
18 hospital applied a facially neutral policy that is not prohibited by the Unruh Act *even if the*
19 *application of the policy had a disparate impact on a protected class.* Civ. Code § 51(c); *Turner*
20 *v. Association of American Medical Colleges*, 167 Cal.App.4th 1401, 1408 (2008) (“A policy that
21 is neutral on its face is not actionable under the Unruh Act, *even when it has a disproportionate*
22 *impact on a protected class*” (emphasis added)). Nowhere in the Complaint does Knight allege
23 that the hospital refused (or would ever refuse) to allow Knight to receive any other treatment or
24 procedure that is not barred by the ERDs.

25 Nor is the allegation that St. Joseph discriminated against Knight because the hospital
26 allows hysterectomies for certain medical conditions (such as cancer) but does not allow
27 hysterectomies as a treatment for gender dysphoria actionable. Although the Unruh Act prohibits
28 discrimination on the basis of a medical condition, “medical condition” is narrowly defined in the

1 statute and does not include gender dysphoria. *See* Civ. Code § 51(c), (e)(3); Gov't Code §
2 12926, subd. (i) (defining “medical condition” under the Unruh Act to encompass specific listed
3 conditions, *not including* gender dysphoria).

4 Additionally, even if the Unruh Act were to be applied here (and it should not be), the
5 statute cannot be enforced in a manner that would violate St. Joseph’s constitutional rights of free
6 exercise of religion and freedom of expression. *See North Coast v. Women’s Care Med. Grp. v.*
7 *Superior Court*, 44 Cal.4th 1145, 1158 (2008); *see also id.* at 1162-63 (conc. opn. of Baxter, J.);
8 *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 189 (2012);
9 *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S.Ct. 1719, 1727 (2018)
10 (that “a member of the clergy who objects to gay marriage on moral and religious grounds could
11 not be compelled to perform [a same-sex wedding] ceremony without denial of his or her right to
12 free exercise of religion” is so self-evident that it may be “assumed”). And it would be
13 impossible for St. Joseph to express the core religious message embodied in the ERDs while
14 simultaneously violating the ERDs. *See Masterpiece*, 138 S.Ct. at 1745 (conc. opn. of Thomas,
15 J.) (“Because the government cannot compel speech, it also cannot ‘require speakers to affirm in
16 one breath that which they deny in the next.’”).

17 Likewise, determining whether St. Joseph’s religiously compelled refusal to permit
18 Knight’s hysterectomy, in compliance with the ERDs, violates the Unruh Act would excessively
19 entangle the court in Catholic religious doctrine and impermissibly intrude on matters of church
20 governance, which include Catholic hospitals. *See Means v. U.S. Conf. of Catholic Bishops*, 2015
21 WL 3970046, *12 (W.D. Mich. June 30, 2015) *aff’d*, 836 F.3d 643 (6th Cir. 2016) (dismissing
22 action because court would be required to interpret the ERDs to determine whether their
23 application constituted negligence, and “application of the [ERDs]” is “inextricably intertwined
24 with the Catholic Church’s religious tenets”).

25 Finally, ordering St. Joseph to permit a procedure prohibited under the ERDs could have
26 devastating consequences because such a ruling would likely force St. Joseph and other Catholic
27 hospitals to refuse to provide hysterectomies to anyone, under any circumstances, so that the
28 hospitals could remain faithful to Catholic doctrine while avoiding claims of discrimination.

1 Knight's second cause of action for negligent infliction of emotional distress fails as a
2 matter of law because "[t]here is no independent tort of negligent infliction of emotional distress."
3 *Potter v. Firestone Tire & Rubber Co.*, 6 Cal.4th 965, 984 (1993). Even under ordinary
4 principles of negligence, St. Joseph did not have a duty to perform a procedure that is prohibited
5 by the ERDs.

6 Knight's third cause of action for intentional infliction of emotional distress fails as a
7 matter of law because the Complaint does not allege that St. Joseph engaged in any "outrageous
8 conduct" that was "outside the bounds of human decency", or intended to cause Knight mental
9 distress, as is required. As Knight admits, the hysterectomy he requested was not allowed
10 because St. Joseph's is a Catholic hospital and the procedure did not meet the hospital's
11 parameters for a permissible sterilization under the ERDs.

12 Accordingly, each of Knight's causes of action fail as a matter of law and are incurably
13 defective. Therefore, the Court should sustain St. Joseph's demurrer, without leave to amend.

14 **II. RELEVANT ALLEGATIONS AND BACKGROUND FACTS**

15 St. Joseph is a Catholic hospital.³ Complaint, ¶ 18. St. Joseph is listed in the Official
16 Catholic Directory ("OCD"), establishing that it is an official part of the Catholic church.
17 Request for Judicial Notice ("RJN"), Ex. 1.⁴ As a Catholic hospital, St. Joseph is required to
18 follow the policies spelled out in the ERDs issued by the United States Conference of Catholic
19 Bishops ("USCCB"). Complaint, ¶ 18. The ERDS "provide authoritative guidance" to all
20 Catholic health care facilities, including St. Joseph. Complaint, ¶ 19; *see also Means*, 2015 WL
21 3970046, *3 (the ERDs' purpose is to "reaffirm the ethical standards of behavior in health care

22
23 ³ St. Joseph has been a Catholic hospital for 99 years, dating from 1920 when the Sisters of St.
24 Joseph purchased and began operating a defunct hospital to provide essential health care to the
25 community. *See* <https://www.stjoehumboldt.org/about-us/history-and-milestones/> (last accessed
26 July 10, 2019). The Complaint does not allege that St. Joseph has ever received any regulatory
27 deficiency stemming from its compliance with the ERDs.

28 ⁴ "An entity is listed in the [OCD] only if a bishop of the Roman Catholic Church determines the
entity is 'operated, supervised, or controlled by or in connection with the Roman Catholic
Church.' Courts view the [OCD] listing as a public declaration by the Roman Catholic Church
that an organization is associated with the Church." *Overall v. Ascension*, 23 F.Supp.3d 816, 831
(E.D. Mich. 2014) (citation omitted).

1 that flow from the Church’s teachings about the dignity of the human person” and “to provide
2 authoritative guidance on certain moral issues that face Catholic health care today”).

3 Directive 5 of the ERDS provides that “Catholic health care services *must adopt these*
4 *Directives as a policy, [and] require adherence to them* within the institution as a condition for
5 medical privileges and employment” RJN, Ex. 2, p. 9 (emphasis added). Catholic hospitals
6 that fail to adhere to the ERDs would thus violate their own mission and the basic rules of the
7 Catholic faith applicable to Catholic hospitals. A hospital that violates the ERDs may no longer
8 qualify as a “Catholic” entity or be permitted to describe itself as “Catholic.”⁵

9 The Complaint alleges that direct sterilization procedures are prohibited under the ERDs.
10 Complaint, ¶ 20. Directive 53 provides: “Direct sterilization of *either men or women*, whether
11 permanent or temporary, is not permitted Procedures that induce sterility are permitted when
12 their direct effect is the cure or alleviation of a present and serious pathology and a simpler
13 treatment is not available.” RJN, Ex. 2, p. 19 (emphasis added). ERD 53 applies to all people –
14 men, women, transgender men and transgender women. Directive 70 also prohibits cooperation
15 with direct sterilization: “Catholic health care institutions are not permitted to engage in
16 immediate material cooperation in actions that are intrinsically immoral, such as . . . direct
17 sterilization.” RJN, Ex. 2, p. 25. As the Complaint admits, the USCCB has concluded that
18 “medical and surgical interventions that attempt to alter one’s sex” are not permitted under the
19 ERDs. Complaint, ¶ 22.

20 Knight is a transgender man. *Id.*, ¶ 2. Knight alleges that he first began to identify as
21 male and to wear masculine clothing in 2013, and he was subsequently diagnosed with gender
22 dysphoria. *Id.*, ¶ 24. Knight began hormone replacement therapy in August 2015 and had a
23 bilateral mastectomy in August 2016. *Id.* As part of his gender transition, his surgeon, Dr.

24
25 ⁵ See <http://archive.azcentral.com/ic/pdf/1221olmsted-decree.pdf>;
26 [http://abcnews.go.com/Health/abortion-debate-hospital-stripped-catholic-](http://abcnews.go.com/Health/abortion-debate-hospital-stripped-catholic-status/story?id=12455295)
27 [https://www.aclu.org/report/report-health-care-](https://www.aclu.org/report/report-health-care-denied?redirect=report/health-care-denied)
28 [denied?redirect=report/health-care-denied](https://www.aclu.org/report/report-health-care-denied?redirect=report/health-care-denied) at p. 7 (“[D]eviation [from the ERDs] can sometimes
carry penalties – including loss of the hospital’s ‘Catholic’ status”) (last accessed July 9,
2019).

1 Deepak Stokes (“Dr. Stokes”), scheduled a hysterectomy for Knight at St. Joseph for August 30,
2 2017. *Id.* On the day of the scheduled procedure, Knight alleges that he underwent pre-op
3 procedures, but shortly before his procedure was to begin St. Joseph canceled the procedure
4 because it “did not meet [its] parameters for a sterilization.” *Id.*, ¶ 3. The decision to cancel
5 Knight’s procedure was based on an “Ethics Assessment” completed by St. Joseph personnel.
6 Complaint, ¶ 30. The Complaint does not allege that Knight or Dr. Stokes informed the hospital
7 prior to the pre-op procedures that Knight sought a hysterectomy as part of a sex transition.

8 Upon learning of the cancellation of his procedure, Knight allegedly suffered an anxiety
9 attack. *Id.*, ¶ 32. St. Joseph responded by providing Knight with an anti-anxiety medication,
10 Ativan, to alleviate his anxiety prior to discharging him from the hospital. *Id.*, ¶ 33. Dr. Stokes
11 also had surgical privileges at Mad River Community Hospital in Arcata, California. Four days
12 later, on September 3, 2017, Knight underwent a hysterectomy at Mad River Community
13 Hospital. *Id.*, ¶¶ 35-37.

14 **III. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION.**

15 **A. The First Cause of Action For Violations Of The Unruh Act Fails As A**
16 **Matter Of Law.**

17 1. Knight Fails To Allege Intentional Discrimination By St. Joseph.

18 The Complaint alleges that St. Joseph did not allow Knight’s physician to perform a
19 hysterectomy on Knight as a treatment for gender dysphoria, but that the hospital allows
20 physicians to perform hysterectomies to treat other conditions. Complaint, ¶¶ 2-4, 27, 43. The
21 Complaint further alleges that the hospital made this distinction because it is a Catholic hospital
22 and the procedure is prohibited by binding Catholic doctrine, including the ERDs. *Id.*, ¶¶ 3, 18-
23 20, 22-23, 42. These allegations do not state a claim under the Unruh Act, which prohibits only
24 “*intentional* acts of discrimination.” *Harris*, 52 Cal.3d at 1172 (emphasis in original); *Koebke*, 36
25 Cal.4th at 854 (2005). Indeed, facially neutral policies are not prohibited by the Unruh Act at all.
26 This is true even if the application of such a policy has a disparate impact on a protected class.
27 Civ. Code § 51(c); *Turner*, 167 Cal.App.4th at 1408 (“A policy that is neutral on its face is not
28 actionable under the Unruh Act, *even when it has a disproportionate impact on a protected*

1 *class*”) (emphasis added); *Harris*, 52 Cal.3d at 1172 (landlord’s minimum income policy did not
2 violate Unruh Act notwithstanding disparate impact on women); *Koebke*, 36 Cal.4th at 853
3 (club’s policy extending benefits to spouses did not violate the Unruh Act notwithstanding
4 disparate impact on unmarried same sex couples).

5 As a Catholic health care facility, St. Joseph is required to follow the ERDs as policy.
6 Complaint, ¶ 18; RJN Ex. 2, p. 9 (Directive 5). The ERDs prohibit direct sterilization procedures
7 *regardless* of the sex or gender identity of the patient seeking the procedure. Complaint, ¶ 20;
8 RJN Ex. 2, p. 19 (Directive 53, which states: “Direct sterilization of *either men or women*,
9 whether permanent or temporary, is not permitted”) (emphasis added). Thus, the ERDs are
10 procedure-specific and do not target or distinguish between cisgender and transgender people.
11 The Complaint alleges that Knight’s requested sterilization procedure was not permitted because
12 it “did not meet [St. Joseph’s] parameters for sterilization”. Complaint, ¶ 3.⁶ St. Joseph’s
13 compliance with the facially neutral policy set forth in the ERDs does not constitute intentional
14 discrimination. The procedure-focused nature of the allegations in the Complaint is confirmed by
15 the lack of any factual allegation that St. Joseph did or would ever decline to allow Knight (or any
16 transgender person) to receive any acute care-related hospital treatment or procedure that is *not*
17 prohibited by the ERDs.

18 As a Catholic hospital, St. Joseph treats all its patients with respect and compassion. The
19 Church articulated this requirement at the Second Vatican Council in 1965, stating: “with respect
20 to the fundamental right of the person, *every type of discrimination*, whether social or cultural,
21 whether based on sex, race, color, social condition, language or religion, is to be overcome and
22 eradicated as contrary to God’s intent.”⁷ And ERD 23 provides that “[t]he inherent dignity of the

23 _____
24 ⁶ The allegation that Dr. Stokes told Knight that “this meant the procedure was being denied
25 because Mr. Knight is transgender” (Complaint, ¶ 3) does not state a claim for intentional
26 discrimination under the Unruh Act against St. Joseph. Dr. Stokes was not and cannot be an
27 employee of St. Joseph, a private hospital. See Bus. & Prof. Code § 2052(a) (establishing the
28 corporate practice of medicine bar that prohibits private hospital entities from employing
physicians). Accordingly, Dr. Stokes did not and could not speak for the hospital.

⁷ http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html (Vatican Council II, Pastoral Constitution of the Church in the Modern World, n. 29 (emphasis added)).

1 human person must be respected and protected regardless of the nature of the person’s health
2 problem or social status. The respect for human dignity extends to *all persons who are served by*
3 *Catholic health care.*” RJN, Ex. 2, p. 13 (emphasis added).

4 2. Discrimination On The Basis Of The Medical Condition Of Gender
5 Dysphoria Is Not Actionable Under The Unruh Act.

6 Additionally, the factual allegations in the complaint actually focus on discrimination
7 based upon Knight’s medical condition, gender dysphoria. Specifically, St. Joseph allegedly
8 refused to allow Knight to undergo a hysterectomy as treatment for gender dysphoria even though
9 it allows the procedure as treatment for other medical conditions. *See, e.g.*, Complaint, ¶¶ 3-4,
10 27, 42-43. However, while the Unruh Act prohibits discrimination based upon medical condition,
11 “medical condition” is narrowly defined under the statute and does not include gender dysphoria.
12 Civ. Code § 51(c), (e)(3); Gov’t Code § 12926, subd. (i).

13 3. The Unruh Act Cannot Be Enforced In A Manner That Violates St.
14 Joseph’s Constitutional Rights Of Free Exercise Of Religion And Freedom
Of Expression.

15 The right to free exercise of religion is enshrined in the state and federal constitutions.
16 Cal. Const., art. I, § 4; U.S. Const., 1st Am.; *People v. Woody*, 61 Cal.2d 716, 718, n.1, 727
17 (1964) (religious freedom is “guaranteed” under the California Constitution, and “the right to free
18 religious expression embodies a precious heritage of our history”). The right to freedom of
19 expression is also constitutionally protected. Cal. Const., art. I, § 2; U.S. Const., 1st Am. As a
20 result, the California Supreme Court has applied strict scrutiny to state laws that burden a
21 defendant’s religious beliefs under the California Constitution. *Catholic Charities of Sacramento,*
22 *Inc. v. Superior Court*, 32 Cal.4th 527, 562 (2004); *North Coast*, 44 Cal.4th at 1158-59; *Smith v.*
23 *FEHC*, 12 Cal.4th 1143, 1178 (1996). Under strict scrutiny, no law (or court order) can be
24 applied “in a manner that substantially burden[s] a religious belief or practice unless the state
25 show[s] that the law represent[s] the least restrictive means of achieving a compelling interest or,
26 in other words, [is] narrowly tailored.” *Catholic Charities*, 32 Cal.4th at 562.

27 Even if the Unruh Act were applicable here (and it is not), applying the Unruh Act to
28 compel St. Joseph to perform procedures that violate binding religious doctrine would

1 substantially and impermissibly burden St. Joseph’s religious freedom. In *North Coast*, the
2 California Supreme Court held that where individual physicians objected on religious grounds to
3 providing fertility treatment to a lesbian couple but other clinic physicians did not, the physicians’
4 medical clinic could avoid liability under the Unruh Act by “ensur[ing] that every patient [receive
5 the procedure] through a North Coast physician lacking defendants’ religious objections.” *Id.* at
6 1159. However, although the medical clinic in *North Coast* was in principle able to perform the
7 requested procedure through other physicians at the clinic that did not share the same religious
8 objections, Justice Baxter, in his concurring opinion, questioned whether the Unruh Act would
9 apply to a solo practice that objects to a procedure on religious grounds, but where there are no
10 non-objecting physicians who could provide the service consistent with the physician’s faith. *See*
11 *id.* at 1162-63 (conc. opn. of Baxter, J.) (“I question whether the state’s interest in full and equal
12 medical treatment would compel a physician in solo practice [which does not have another
13 physician who could perform the procedure] to provide a treatment to which he or she has sincere
14 religious objections. One might well conclude that, in that situation, application of the Unruh
15 Civil Rights Act against the doctor would not be the means “least restrictive” on religion of
16 furthering the state’s legitimate interest.”) Here, St. Joseph is in a position analogous to the
17 physician in “solo practice” anticipated by Justice Baxter, who is unable to provide care through
18 another non-objecting physician because here the hospital is Catholic and cannot permit the
19 procedure to be performed by anyone at the hospital.

20 Additionally, under federal law, the U.S. Supreme Court has repeatedly affirmed that
21 courts will not compel churches, or those who carry out the church’s mission, to engage in acts
22 prohibited by the church’s fundamental tenets. *See Hosanna-Tabor*, 565 U.S. at 189;
23 *Masterpiece Cakeshop, Ltd.*, 138 S.Ct. at 1727 (overturning finding of liability under Colorado’s
24 public accommodations law against a faith-based baker who refused for religious reasons to bake
25 a wedding cake for a same-sex couple, finding the proposition that “a member of the clergy who
26 objects to gay marriage on moral and religious grounds could not be compelled to perform [a
27 same-sex wedding] ceremony without denial of his or her right to free exercise of religion” so

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1 self-evident that it could merely be “assumed”).⁸

2 Applying the Unruh Act in this way would also severely and impermissibly burden St.
3 Joseph’s ability to express its religious message. “The First Amendment ensures that religious
4 organizations and persons are given proper protection as they seek to teach the principles that are
5 so fulfilling and so central to their lives and faiths” *Obergefell v. Hodges*, 135 S.Ct. 2584,
6 2607 (2015). The ERDs provide that “Catholic health care *expresses* the healing ministry of
7 Christ,” the “Catholic health care ministry is rooted in a commitment to promote and defend
8 human dignity,” and “the biblical mandate to care for the poor requires” Catholic health care
9 institutions “to *express this in concrete action* at all levels of Catholic health care.” RJN, Ex. 2,
10 pp. 7, 8. Directive 5 requires Catholic health care services to adopt the ERDs as policy;
11 Directives 29 and 53 oblige Catholic hospitals to preserve the functional integrity of the human
12 body and prohibit direct sterilization. RJN, Ex. 2, pp. 9, 14, 19. St. Joseph’s religious expression
13 includes its professed mission as provided in the ERDs. It would be impossible for St. Joseph to
14 express the core religious message embodied in the ERDs while simultaneously violating the
15 ERDs. *See Masterpiece*, 138 S.Ct. at 1745 (conc. opn. of Thomas, J.) (“Because the government
16 cannot compel speech, it also cannot ‘require speakers to affirm in one breath that which they
17 deny in the next.’”).

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20 ⁸ The ACLU itself has conceded that it is inappropriate to require the provision of certain
21 procedures where doing so would “compel devout Catholics to engage in behavior . . . in
22 violation of their Faith.” *See* ACLU Amicus Brief in *Benitez v. North Coast Women’s Care*
23 *Medical Group*, Cal. S.Ct. No. S142892 (Apr. 2, 2007), p. 2; ACLU Amicus Brief in *Catholic*
24 *Charities of Sacramento v. Sup. Ct.*, Cal. S.Ct. No. S009982 (Jan. 18, 2001) p. 37.
25 [https://www.aclu.org/legal-document/aclu-amicus-brief-catholic-charities-sacramento-v-superior-](https://www.aclu.org/legal-document/aclu-amicus-brief-catholic-charities-sacramento-v-superior-court-sacramento-county)
26 [court-sacramento-county](https://www.aclu.org/legal-document/aclu-amicus-brief-catholic-charities-sacramento-v-superior-court-sacramento-county). Similarly, in arguing for the Religious Freedom Restoration Act
27 (“RFRA”), 42 U.S.C. § 2000bb, the ACLU stated that “RFRA was plainly intended to protect
28 religious organizations like Petitioners here from being forced to participate in the provision of
healthcare benefits that conflict with their religious beliefs.” Nadine Strossen, then president of
the ACLU, testified in support of RFRA, noting that the statute safeguarded “such familiar
practices” as “*permitting religiously sponsored hospitals to decline to provide abortion or*
contraception services.” The Religious Freedom Restoration Act: Hearing on S. 2969 Before the
S. Comm. on the Judiciary, 102d Cong. 192 (1992) (Prepared Statement of Nadine Strossen, pp.
80-81 (emphasis added)), [https://www.justice.gov/sites/default/files/jmd/legacy/2014/07/13/hear-](https://www.justice.gov/sites/default/files/jmd/legacy/2014/07/13/hear-99-1992.pdf)
[99-1992.pdf](https://www.justice.gov/sites/default/files/jmd/legacy/2014/07/13/hear-99-1992.pdf).

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4. Knigh’s Claims Would Impermissibly Involve The Court In Church Affairs And Matters of Church Governance.

The relief sought under the Unruh Act would excessively entangle the court in Catholic religious doctrine and impermissibly intrude on matters of church governance. *See Means*, 2015 WL 3970046, *12 (dismissing action because court would be required to interpret the ERDs to determine whether their application constituted negligence, and “application of the [ERDs]” is “inextricably intertwined with the Catholic Church’s religious tenets”). Here, similarly, Plaintiff alleges that St. Joseph violated the Unruh Act *by* adhering to the ERDs.

In addition, the order sought under the Unruh Act would directly interfere with the highly structured Catholic Church governance structure, including the promulgation of the ERDs by the USCCB and the requirement that Catholic health care facilities adopt the ERDs as policy. *See New v. Kroeger*, 167 Cal.App.4th 800, 815 (2008) (“Civil courts cannot interfere in disputes relating to religious doctrine, practice, faith, ecclesiastical rule, discipline, custom, law, or polity”); *Nally v. Grace Comm. Church*, 47 Cal.3d 278, 299 (1988) (refusing to impose a duty of care on pastors). Religious organizations are guaranteed “an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952); *E.E.O.C. v. Catholic University of America*, 83 F.3d 455, 463 (D.C. Cir. 1996) (“the Free Exercise Clause guarantees a church’s freedom to decide how it will govern itself, what it will teach, and to whom it will entrust its ministerial responsibilities . . .”).

5. Using The Unruh Act To Compel Catholic Hospitals To Violate The ERDs Could Lead To Severe And Unnecessary Limits On Procedures At St. Joseph.

Finally, ordering St. Joseph to permit a procedure prohibited under the ERDs, or else violate the law and be subject to contempt of court, could have devastating consequences. Such a ruling could force St. Joseph and other Catholic hospitals to refuse to provide procedures—such as hysterectomies—to anyone, under any circumstances to avoid claims of alleged discrimination. *See Catholic Charities*, 32 Cal.4th at 562 (noting that religious organization could avoid conflict between the Unruh Act and its religious beliefs “simply by not offering

1 coverage for prescription drugs”).

2 Accordingly, Knight’s cause of action for violations of the Unruh Act fails as a matter of
3 law and should be dismissed without leave to amend.

4 **B. The Second Cause Of Action For Negligent Infliction Of Emotional Distress**
5 **Fails As A Matter Of Law.**

6 The Supreme Court has clearly held “[t]here is no independent tort of negligent infliction
7 of emotional distress.” *Potter*, 6 Cal.4th at 984; *see also Camenisch v. Superior Court*, 44
8 Cal.App.4th 1689, 1693 (1996) (“negligently causing emotional distress is not an independent
9 tort”); *see also* CACI 1620, Directions for Use (“The doctrine of “negligent infliction of
10 emotional distress” is not a separate tort or cause of action. It simply allows certain persons to
11 recover damages for emotional distress only on a negligence cause of action even though they
12 were not otherwise injured or harmed.”) Moreover, even under ordinary principles of negligence,
13 St. Joseph did not have a duty to perform a procedure that is prohibited by the ERDs. Nor did St.
14 Joseph have a duty to keep Knight admitted to the hospital after it had determined the hospital
15 could not perform the procedure. The Complaint does not plead that the hospital failed to provide
16 any treatment or service that Knight required which was not prohibited by the ERDs.
17 Accordingly, Knight’s claim for negligent infliction of emotional distress fails as a matter of law
18 and should be dismissed.

19 **C. The Third Cause Of Action For Intentional Infliction Of Emotional Distress**
20 **Fails As A Matter Of Law.**

21 To state a claim for intentional infliction of emotional distress, a plaintiff must allege: (1)
22 outrageous conduct by the defendant, (2) that the defendant intentionally caused or recklessly
23 disregarded the probability of causing emotional distress; (3) that the plaintiff suffered severe or
24 extreme emotional distress, and (4) that the defendant’s outrageous conduct was the actual and
25 proximate cause of the plaintiff’s emotional distress. *Trerice v. Blue Cross of Cal.*, 209 Cal.
26 JApp. 3d 878, 883 (1989).⁹ An intentional infliction of emotional distress cause of action “must

27 ⁹ While the issue of outrageousness is normally an issue of fact to be determined by the trier of
28 fact, the court may determine in the first instance whether the defendant’s conduct may
reasonably be regarded as so extreme and outrageous as to permit recovery. *See Trerice*, 209 Cal.
App. 3d at 883.

1 allege facts showing outrageous conduct which is intentional or reckless and is outside the bounds
2 of decency.” *Christensen v. Superior Court*, 54 Cal.3d 868, 904 (1991) (emphasis added).
3 Further, the conduct must be “of a nature which is especially calculated to cause, and does cause,
4 mental distress. . . .” *Molko v. Holy Spirit Ass’n*, 46 Cal.3d 1092, 1120-1122 (1988).

5 Here, there is no allegation that St. Joseph engaged in any “outrageous conduct” that was
6 “outside the bounds of human decency” or intended to cause Knight mental distress. The
7 procedure requested by Knight was not allowed because St. Joseph is a Catholic hospital and the
8 procedure did not meet the hospital’s parameters for a permissible sterilization under the ERDs.
9 Complaint, ¶ 3. Particularly given the constitutional protection afforded to St. Joseph’s exercise
10 of its Catholic faith, as a matter of law, its refusal to allow a procedure barred by the ERDs is not
11 outrageous. As for Knight’s alleged experiences at St. Joseph in preparation for the procedure,
12 the Complaint does not allege that the pre-op procedures Knight underwent were anything other
13 than standard procedures at St. Joseph for any patient preparing to undergo a hysterectomy.
14 Additionally, the Complaint does not allege that St. Joseph intended to cause Knight harm during
15 his discharge from the hospital. To the contrary, St. Joseph provided him with a medication to
16 relieve his anxiety prior to being discharged. Complaint, ¶ 33.

17 Accordingly, Mr. Knight’s cause of action for intentional infliction of emotional distress
18 fails as a matter of law and should be dismissed.

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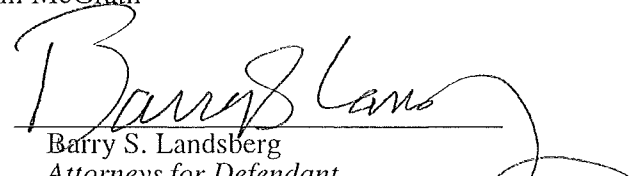
1 **IV. CONCLUSION**

2 St. Joseph, in accordance with Catholic Church teachings, applied the facially neutral
3 ERD 53 to deny the plaintiff a hysterectomy, as it would with any patient, male or female,
4 transgender or cis-. Each of Knight's causes of action fail as a matter of law and are incurably
5 defective. The Court should sustain St. Joseph's demurrer without leave to amend.

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7 Dated: July 12, 2019

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