

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, sc.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF
RHODE ISLAND, INC.,

vs.

No. PC-2017-3856

ST. JOSEPHS HEALTH SERVICES OF
RHODE ISLAND RETIREMENT PLAN, as
amended

**NON-PARTY ROMAN CATHOLIC BISHOP OF PROVIDENCE,
A CORPORATION SOLE'S MEMORANDUM IN SUPPORT OF OBJECTION
TO SPECIAL COUNSEL'S MOTION TO COMPEL COMPLIANCE WITH SUBPOENA**

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The Roman Catholic Bishop of Providence, a corporation sole (“RCB”)¹, submits this memorandum of law in support of its objection to the motion to compel (the “Motion”) filed by Special Counsel to the court-appointed receiver for St. Joseph Health Services of Rhode Island Retirement Plan (“Special Counsel”).

PRELIMINARY STATEMENT

The Motion grossly mischaracterizes RCB’s position relative to the production of documents responsive to the subpoena that Special Counsel served on RCB (the “Subpoena”). RCB informed Special Counsel from the outset that it would work with Special Counsel to provide relevant documents. Immediately upon receiving the Subpoena, counsel for RCB requested that the finance department, controller’s office, the office of the Bishop, and the office of the Chancellor search their paper and electronic records for responsive documents, and all documents produced by that search were reviewed for the December 4 production. In addition, on multiple occasions since the Subpoena was served, counsel for RCB personally went to the chancery building in order to review and identify potentially responsive documents, and physically reviewed all of the following:

- Documents in the custody and control of the office of the Bishop relating to the hospitals, SJHSRI, or the Plan;
- Documents in the custody and control of the office of the finance department relating to the hospitals and SJHSRI, including financing from the Inter-Parish Loan Fund, Inc.

¹ The Subpoena was served upon the registered agent for Roman Catholic Bishop of Providence, a corporation sole, which is a corporate entity with the distinct and limited purpose of holding and conveying property for religious purposes. *See Doe v. Gelineau*, 732 A.2d 43, 46-47 (R.I. 1999); *Doe v. O’Connell*, No. PC 86-0077, 1989 WL 1110566, at *2-3 (R.I. Super. Ct. Nov. 21, 1989). Despite the fact that the subpoena was served upon an entity without responsive records, rather than delay the process due to Special Counsel’s failure to properly observe the applicable corporate formalities, counsel has been moving toward production of relevant documents in the various offices described in the Preliminary Statement, in the cooperative spirit detailed herein.

- Documents in the custody and control of the office of the controller relating to the Plan, the Lay Employee Retirement Plan, the hospitals, SJHSRI, and pension benefits for employees of the hospitals and SJHSRI;
- Documents in the custody and control of the office of the chancellor relating to the hospitals, SJHSRI, or the Plan, including several filing cabinet drawers full of corporate documents and miscellaneous administrative filings, which ran to tens of thousands of pages in and of itself; and
- Documents contained in the chancery basement/archives relating to the hospitals, SJHSRI, or the Plan.

From this document harvest and review, counsel for RCB has been compiling its production. It will make that production on schedule (and before the hearing on the Motion).

Simultaneously, given the considerable breadth, scope, and vagueness inherent in many of the Subpoena's definitions and individual document requests, RCB reached out to Special Counsel and offered to meet and confer with them to better understand the documents that Special Counsel was interested in.

Special Counsel rebuffed that customary and reasonable overture. Instead, it demanded "substantial production" within a thirteen-day, eight business day window.

In response to that extraordinary rejection, RCB proceeded to timely serve its written objections to the Subpoena as expressly provided and allowed in Rule 45.² In its correspondence, RCB represented that it would diligently search its records for documents responsive to the Subpoena's requests, as best as RCB could understand them in the face of the refusal to meet and confer, and that it *would produce documents on or before December 4, 2017*. RCB also reiterated its

continued willingness to discuss the Subpoena and RCB's objections with Special Counsel in the hopes of reaching a mutually-acceptable scope of production and avoiding expensive and needless conflict.

Instead of making any attempt to clarify its requests and resolve any differences, Special Counsel once again chose to pick a fight and prematurely filed the Motion. RCB first learned of the filing of the Motion by reading about it in a published news article rather than from Special Counsel by phone call, email, or service of the Motion. That news story and those that followed quote Special Counsel as saying RCB was being dilatory. Nothing is further from the truth. RCB has been moving forward to produce documents and resolve disputes. Special Counsel has been grandstanding. The Motion, filed without any meaningful communication between counsel to limit the scope of this fight, is a waste of time and money.

Tellingly, Special Counsel apparently continues to insist on moving forward by way of an expensive and time consuming motion to compel and hearing, even though that hearing is scheduled for December 5, the day after RCB told Special Counsel it will be producing documents (December 4). The Motion will be moot before it is heard. The hearing will be a waste of time and money.

The Motion also grossly mischaracterizes the scope and nature of the Subpoena and RCB's objections. Rule 45(c)(1) mandates that a party serving a subpoena "take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena" and provides that the "court on behalf of which the subpoena was issued shall enforce this duty." The Subpoena fails to satisfy *Special Counsel's obligation to* minimize the burden on the recipient of a subpoena by requesting documents with reasonable particularity.

² All references to "Rule 45" are to Rule 45 of the Rhode Island Superior Court Rules of Civil Procedure, unless otherwise

Many of the Subpoena's requests are overbroad, seek irrelevant material, contain vague terms, and/or otherwise impose an improper burden on RCB. Part IV, *infra* at 11-26, sets forth RCB's detailed review of the overbreadth of the Subpoena, request by request. By way of illustration, reference to just three of its seventeen requests for documents establish the unreasonable nature of the Subpoena:

Request No. 3: "All documents concerning the actions or role of the Bishop of Providence as a member of the Board of Trustees of SJHSRI" (emphasis removed).

Request No. 12: "All documents concerning any assistance, including but not limited to financial assistance, provided by the Bishop of Providence, the Diocese, or the Roman Catholic Church to SJHSRI" (emphasis removed).

Request No. 15: "All documents that list the entities associated with the Bishop of Providence and/or the Diocese, including but not limited to any such lists that include SJHSRI, Charter Care, and/or the Hospitals" (emphasis removed).

The Subpoena defines "SJHSRI" to include "St. Joseph Health Services of Rhode Island and each of its *predecessors or successors.*" Exhibit A ¶ g (Subpoena's Schedule A) (emphasis added). "Predecessors" of SJHSRI date back to 1892, when the Catholic Church first organized and established St. Joseph's Hospital to serve those who needed healthcare. The Subpoena defines "concerning" to mean "anything connected, associated, related to, evidencing, or in any manner whatsoever having to do with the substance or subject matter of the information or document requested herein." *Id.* ¶ b. And, it defines "Diocese" to include, among other things, the "Diocese of Providence" and "all of its "bishops, clergy, officers, executives, employees, agents, and designees." *Id.* ¶ j. The above requests, therefore, cover a 125-year period spanning from 1892 to the present, including decades before the Plan (as defined in the Subpoena) was ever adopted. The requests potentially apply to many situations where RCB was "connected" or "associated with" SJHSRI or countless other entities, but *in ways wholly unrelated to the Plan.*

noted.

Such blunderbuss discovery requests would be wholly beyond the pale in full-fledged litigation. So, too, would the refusal to meet and confer and the insistence on moving forward with a moot motion. The failure to present well-crafted requests and definitions or even to speak to RCB's counsel to clarify these requests are of particular concern here, where the fees paid to Special Counsel are taken directly from funds that otherwise would be used to increase the assets available to Plan participants. So, too, is the Special Counsel's needless leap to discovery motion practice when RCB is making efforts to produce documents and resolve disputes—not create them. Special Counsel should act in a manner that does not unduly waste time, energy, and limited resources. Motion practice should not be deployed when a meeting would have sufficed and undue burdens should not be imposed by asking for 125 years of irrelevant documents when the documents that reasonably could support a legally enforceable and prudent claim by Special Counsel are far more limited.

The Court should deny the Motion in full and order Special Counsel to review the documents to be produced on or before December 4 *and then* meet and confer with RCB before filing any additional motions to compel relative to the Subpoena.

ARGUMENT

I. THE MOTION WILL BE MOOT BY THE TIME IT IS HEARD

As a threshold matter, by the time the Court hears the Motion, RCB will have produced documents in response to the Subpoena – as it said it would – rendering review of the Motion nothing more than an academic exercise. The Motion should be denied in full because it is moot. *See, e.g., Bright v. Evonik Cyro, LLC*, No. 3:11-cv-00180-SWW, 2012 WL 5396399, at *2 (E.D. Ark. Nov. 5, 2012) (denying motion to compel as moot as where discovery responses provided); *see also Gallipeau v. Moran*, No. P.C. 86-1807, 1987 WL 859862, at *1 (R.I. Super. Ct. Apr. 21, 1987) (same).

II. THIRTEEN DAYS (EIGHT BUSINESS DAYS) IS AN UNREASONABLE PERIOD OF TIME TO DEMAND THAT A NON-PARTY RESPOND TO THE SUBPOENA

Again, by the time the Court hears this motion, RCB will have not only responded to the Subpoena as expressly set forth in Rule 45 by providing objections to the Subpoena, **but also by producing documents.** For some mysterious reason, Special Counsel insists on pressing the Motion and forcing RCB to respond. Again, this is a waste of resources and money.

Special Counsel served RCB with the Subpoena on the afternoon of November 2, 2017 and demanded RCB's response on November 15, 2017.³ S.C. Mem., Ex. 2 (see executed Proof of Service). This thirteen day response period included four weekend days (November 4-5 and November 11-12) and a business holiday in observation of Veterans Day (on November 13). Because of this short time frame and the Subpoena's overly broad requests for documents, counsel for RCB telephoned Special Counsel. Special Counsel admits that counsel for RCB advised that "we wanted to work with the Receiver to reach agreements as to the scope of the requested documents and provide responsive records" and "asked that we agree to a date for us to discuss the scope of the subpoena and attempt to identify the information that you really want and need." See Exhibit B (RCB's Written Objections). During that call RCB's counsel also indicated RCB was already in the process of collecting and reviewing documents. Counsel for RCB also informed Special Counsel that lead counsel would be at a conference and leadership at the Chancery would be attending a biennial clergy convocation and also unavailable for three of the eight business days afforded for a response. Practically, this left RCB with five business days to respond to the Subpoena after RCB's counsel had a chance to confer with its clients and gain some knowledge as to relevant records. Counsel for RCB

³ Special Counsel inaccurately stated that it served RCB on November 1, Resp't Mem. in Supp. of Mot. to Overrule RCB's Objs. To Subpoena and Compel Resp. To Subpoena Duces Tecum (hereinafter "S.C. Mem.") at 2, as indicated by the proof of service that Special Counsel filed as an exhibit to its memorandum, *id.*, Ex. 2.

suggested that it would be prudent for the parties to discuss the time frame and scope of the Subpoena. Special Counsel replied via email that it could not “agree to the delays you propose” and requested “a substantial production on schedule.” Exhibit C (Email from Special Counsel).

Given Special Counsel’s position, on November 15, 2017, RCB served written objections to the Subpoena pursuant to Rule 45(c)(2)(B) through a letter to Special Counsel. That letter is attached as Exhibit A to this objection. This letter did not just state RCB’s concerns about the Subpoena. It also advised that “we are working to produce relevant documents and we will continue to work to gather the records as best we can, given our understanding of the requests being made and the objections made here.” Ex. B at 1. It also stated that RCB expected to produce all such records by December 4, 2017. *Id.* at 4. RCB has been reviewing decades’ worth of documents since the Subpoena was served, and does in fact expect to produce responsive documents by December 4, 2017.⁴

Rule 45(c)(3)(A)(i) provides that a court must quash or modify a subpoena if it “[f]ails to allow reasonable time for compliance.” *See* Super. R. Civ. P. 45(c)(3)(A) (“On timely motion, the court by which a subpoena was issued *shall* quash or modify the subpoena” (emphasis added)). Although Rule 45 does not define what constitutes a “reasonable” time to respond to a subpoena, courts interpreting Rule 45’s federal counterpart quash subpoenas like this one. *See Nguyen v. La. State Bd. of Cosmetology*, No. 14-80-BAJ-RLB, 2016 WL 320152, at *2 (M.D. La. Jan. 26, 2016)

⁴ Special Counsel’s suggestion that RCB should have started gathering documents responsive to the Subpoena before it had received the Subpoena is, predictably, not accompanied by citation to any legal authority. RCB was under no legal obligation to guess whether Special Counsel would serve a subpoena, much less guess at what documents Special Counsel might request. If RCB had guessed, it certainly would not have guessed that the Subpoena would be so broad and unreasonable. Also, RCB had an explicit right to review the request and lodge objections to the subpoena. *See D’Amario v. State*, 686 A.2d 82, 86 (R.I. 1996) (“But parties who promulgate improper discovery requests are not entitled to send their victims scurrying to see if the requested documents exist before any objection to such requests can be certified.”).

(quashing subpoena that required compliance “just 8 days after service” where request for correspondence between non-party and defendants was not limited “as to subject matter or time”).

Critically, RCB did not file a motion to quash on these grounds. Rather, it served its objections in a timely manner, *twice* asked to meet and confer, *and* committed to making a good faith production in a more than reasonable timeframe. Special Counsel fired off a motion to compel, without reaching out to RCB’s counsel at all.

Courts deny motions to compel compliance with subpoenas that, like the Subpoena here, make broad requests for information and afford insufficient time for a response. *See Thomas v. IEM, Inc.*, No. 06-886-B-M2, 2008 WL 695230, at *3 (M.D. La. Mar. 12, 2008). In *Thomas*, the court denied a motion to compel where “the subpoena demanded production of the requested information within fifteen (15) days,” but only allowed nine business days to respond because of weekends and business holidays. *See id.* The court reasoned that nine business days was “clearly [an] inadequate amount of time to conduct the extensive search” of the nine custodians’ email boxes that the subpoena, unconstrained in subject matter or scope, would have required. *Id.* at *2-3 & n.6. Here, the circumstances are even more egregious than in *Thomas*, as the Subpoena afforded fewer total days (thirteen instead of fifteen) and business days (eight instead of nine), and would require the review of substantially more custodians’ records. *See id.; supra* at 2-4 (discussing breadth of Subpoena); *cf. Butera v. Boucher*, 798 A.2d 340, 344-45 (R.I. 2002) (holding that trial court properly refused to enforce eve of trial “blunderbuss subpoena” that requested party defendant “to produce reams of documents . . . without giving him adequate time to gather, review, and produce the requested records”).

For the same reason, Special Counsel’s assertions that RCB waived its objections by stating it would produce documents “subject to” and “without waiving” objections or “to the extent”

those objections applied are also without merit. *See D’Amario v. State*, 686 A.2d 82, 86 (R.I. 1996) (“Before parties are put to the burden of complying with such [improper] requests, they are entitled to present valid and timely objections to doing so.”). This is particularly the case where, as here, the recipient of the subpoena is a non-party, the requests are so sweeping, and the definitions so all-encompassing.⁵

Because thirteen days (and only eight business days) is an unreasonable amount of time to require production of documents over such a broad swath of time, subject matter, and potential record-keepers, the Motion should be denied.

III. MEET AND CONFER WOULD HAVE LIKELY OBIATED THE NEED FOR THE MOTION

As RCB observes at various points throughout this brief, engaging in a reasonable meet and confer practice would have likely avoided the need for court intervention, or at least significantly narrowed the issues. That is why courts universally encourage, or even require, meet and confer meetings prior to filing motions to compel. The failure of Special Counsel to engage in any meet and confer either before or after receiving RCB’s objections to the Subpoena is concerning.

Meet and confer prior to motion practice is the best and preferred practice in the context of document requests, whether pursuant to Rule 34 or Rule 45. *See, e.g., The Sedona Conference, The Sedona Conference Commentary On Non-Party Production & Rule 45 Subpoenas*, 9

⁵ The cases Special Counsel cited on these points are also readily distinguishable, as none of them involved a subpoena to a non-party. All, instead, involved objecting parties to lawsuits who had significantly more time to prepare their objections than the thirteen days RCB had. *Cipriani v. Migliori*, No. PC 2002-6206, 2005 WL 668368, at *1, *5, *7-9 (R.I. Super. Ct. Mar. 4, 2005) (involving Super. R. Civ. P. 34 request for production to defendant and concomitant forty day response time, as well as stonewalling tactics); *see Smith v. Beyer Material Sci., LLC*, No. 5:12-cv-171, 2013 WL 3153467, at *1-3 (N.D. W. Va. June 19, 2013) (involving federal Rule 34 requests, as well as some effort “to resolve the dispute without Court intervention” prior to filing motion to compel); *Howard v. Segway, Inc.*, No. 11-CV-688-GKF-PJC, 2013 WL 869955, at *2, *5-6 (N.D. Okla. Mar. 7, 2013) (involving federal Rule 34 requests and responding party who ignored the demands for supplementation and meet and confer requests for months); *Leisure Hosp., Inc. v. Hunt Props., Inc.*, 09-cv-272-GKF-PJC, 2010 WL 3522444, at *1, *3 (N.D. Okla. Sept. 8, 2010) (same); *Pamlab, L.L.C. v. Rite Aid Corp.*, No. Civ. A 04-1115-CJB-SS, 2005 WL 1588238, at *1 (E.D. La. June 27, 2005) (involving federal Rule 34 requests); *Sonnino v.*

Sedona Conf. J. 197, 201 (2008) (“Even in the absence of such a [meet and confer] requirement [under Fed. R. Civ. P. 45], prior to issuing a subpoena to a non-party, the issuing party should, when feasible, contact the non-party to discuss burden, form of production, cost, retention of important information, [and] scope”); *see also Kolon Indus., Inc. v. E.I. Dupont De Nemours & Co.*, No. 3:11cv622, 2012 WL 12894840, at *4 (E.D. Va., 2012) (denying motion to compel response to federal Rule 34 production request and observing “[h]ad the parties actually conferred about this issue earlier, there would have likely been no need to file this motion.”). Thus, “[b]efore seeking either to quash or to enforce a subpoena, the parties and non-party should have a substantive discussion to try to resolve the dispute.” 9 Sedona Conf. J. at 201.

No meet and confer occurred here. Motion practice should not be the first place where the requesting party or the responding party discuss the substance of a particular request or objection. This is perhaps no clearer than in the case of Special Counsel’s concerns as to RCB’s objections to the Subpoena’s definitions of “Bishop of Providence” and “Diocese” and RCB’s use of purported “hypothetical” objections. A brief discussion with RCB would have confirmed that (a) RCB had not withheld documents pursuant to those definitional objections⁶ and (b) there was nothing “hypothetical” about RCB’s objections to the Subpoena. It is perplexing that Special Counsel would forgo RCB’s offer to meet and confer and resort to costly motion practice, unless he was looking to score points in the media. *Mirbeau of Geneva Lake LLC v. City of Lake Geneva*, No. 08-CV-693, 2009 WL 3347101, at *4 (E.D. Wis. Oct. 15, 2009) (“Again, needless resources are wasted when the parties, in lieu of open and honest communication, lean on the court to resolve spats that could easily be settled with a simple phone call or an email to opposing counsel.”).

Univ. of Kan. Hosp. Auth., 221 F.R.D. 661, 663 (D. Kan. 2004) (same).

⁶ Of course, that was also expressly stated in the objection itself.

To avoid a repetition of such circumstances, the Court should not only deny the Motion for all the reasons discussed herein, but also require Special Counsel to review the documents already produced *and* meet and confer with RCB before filing further motions to compel relative to the Subpoena. Such an order will not only work to conserve Plan assets and judicial resources, but also likely result in production of documents with greater alacrity and relevance, and in reducing the needless burden foisted on entities seeking in good faith to respond to the Subpoena and provide relevant records. *See id.*

IV. SPECIAL COUNSEL FAILED TO REQUEST DOCUMENTS WITH REASONABLE PARTICULARITY AND, AS A RESULT, THE SUBPOENA IS OVERBROAD, UNDULY BURDENSOME AND VAGUE

In contesting RCB’s objections to the Subpoena, Special Counsel ignores his own duty and obligation to request documents with “reasonable particularity.” *See Regan-Touhy v. Walgreen Co.*, 526 F.3d 641, 649-50 (10th Cir. 2008). Rule 45(c)(1) mandates that a party serving a subpoena “take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena” and provides that the “court on behalf of which the subpoena was issued shall enforce this duty.” Accordingly, “the petition demanding the production of the documents shall describe the documents or papers ‘relating to the case with *particularity* so that the discovery sought will appear to be reasonably warranted.’” *Cent. Soya Co. v. Henderson*, 208 A.2d 110, 114-15 (R.I. 1965) (emphasis added); *Am. Fed’n of Musicians of the U.S. & Can. v. Skodam Films, LLC*, 313 F.R.D. 39, 43 (N.D. Tex. 2015) (stating that “reasonable particularity requirement should apply with no less force to a subpoena’s document requests to a non-party.”).

The Rhode Island Supreme Court acknowledged, even before it adopted the Superior Court Rules of Civil Procedure in 1966, that a “subpoena is not sustainable” if “the specification is so broad and indefinite as to be oppressive and in excess of the demandant’s necessities” *Cent.*

Soya, 208 A.2d at 114-15 (applying reasonable particularity standard to subpoena and affirming portion of trial court’s order that quashed requests that lacked specificity, while reversing portions that quashed specific requests). The “reasonable particularity” obligation is heightened moreover, where the subpoena targets a non-party or seeks production on an expedited schedule. *See Patel v. Snapp*, No. 10-2013-JTM, 2013 WL 5876435, at *1 (D. Kan. Oct. 31, 2013) (“Non-parties responding to a [federal] Rule 45 subpoena are generally offered heightened protection from discovery abuse.”); *T-Mobile USA, Inc. v. My Wireless Wholesale, Inc.*, No. 11-12334, 2011 WL 13220787, at *3 (E.D. Mich. Aug. 19, 2011) (denying request for expedited discovery that was “without bounds” and “cover[ed] virtually every issue involved in the litigation.”).

Special Counsel failed to comply with its Rule 45(c)(1) obligation to serve reasonably particular document requests. Instead, it served a Subpoena containing definitions and requests that were overbroad, used vaguely, incredibly broad defined or undefined terms, and/or would impose an undue burden or capture material irrelevant to the Plan and Special Counsel’s ability to bring a prudent, enforceable claim to recover assets for the Plan. RCB addresses below Special Counsel’s challenges to each of RCB’s objections.

A. Request No. 3

Request No. 3: All documents concerning the actions or role of the Bishop of Providence as a member of the Board of Trustees of SJHSRI.

RCB’s Objection: Objection to Subpoena Request 3 as overbroad to the extent it seeks documents “concerning” any actions or role of the “Bishop of Providence” as a member of the SJHSRI Board of Trustees, without any limitation of subject matter or time, particularly as “SJHSRI” as defined in the subpoena dates back to 1892. To the extent that we locate reasonably accessible, responsive, non-privileged documents related to the “Plan,” those documents will be produced.⁷

⁷ All bold, emphasis, and underlining have been removed from the quotations of requests and objections recited in Part IV.

RCB agreed to produce documents as described in the above objection. Beyond that, RCB's objections are well-placed. As a threshold matter, Special Counsel—in its apparent rush to file the Motion instead of meet and confer with RCB—mistakenly quoted the text of a narrower “Request No. 3” in Special Counsel’s memorandum supporting the Motion, rather than the *actual* broader Request No. 3 in the Subpoena. *Compare* S.C. Mem. at 8 (“Request #3 seeks: ‘All documents concerning the actions or role of the Bishop of Providence as a Class B member of the Board of Trustees of SJHSRI.’” (emphasis removed)) *with* Ex. A ¶ 3 (“All documents concerning the actions or role of the Bishop of Providence as a member of the Board of Trustees of SJHSRI.” (emphasis removed)). RCB will speak to Request No. 3 as that request appeared in the Subpoena, rather than as erroneously described in Special Counsel’s memorandum.

Special Counsel contests RCB’s objection to producing documents that do not themselves relate to the Plan (as that term was defined in the Subpoena). Special Counsel’s concerns are misplaced for two reasons.

First, Special Counsel reads RCB’s objection in an overly narrow fashion by suggesting that RCB would only produce “documents that refer to the Plan.” S.C. Mem. at 9. RCB made no such objection, but instead advised that it would produce “documents *related* to the ‘Plan’.” *Supra* at 12 (emphasis added). Again, Special Counsel’s concern could and should have been resolved through a meet and confer. *Mirbeau*, 2009 WL 3347101, at *4.

Second, Request No. 3 is not reasonably particular, but improperly broad in time and scope for the reasons discussed *supra* at 2-4. As written, Request No. 3 covers a period spanning from 1892 (when St. Joseph’s Hospital was founded) to the present, well before any pension plan was in place and before the enactment of ERISA. Moreover, as indicated earlier, the Bishop of Providence served as a member of SJHSRI’s board of trustees for decades, and was tangentially involved in many

issues associated with or concerning SJHSRI that were wholly and utterly unrelated to the Plan.

Special Counsel cannot maintain that every document concerning the “actions or role” of the “Bishop of Providence” as the latter term is defined in the Subpoena as a member of the Board of SJHSRI over the past 125 years are relevant to whether the Plan qualified as a “church plan” under federal law or any other claim that would be prudent for Special Counsel to pursue for contributions to the Plan. For example, the Bishop of Providence was involved in many different SJHSRI matters—including offering spiritual support to Board members, patients and SJHSRI personnel, naming the hospital chaplains, and approving invitations to the Bishop’s Ball—areas which are entirely untethered from the Plan, but arguably fall within the scope of Request No. 3. *See Patel*, 2013 WL 5876435, at *3 (“Courts may find a request overly broad or unduly burdensome on its face, if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope”). The Motion should be denied as Request No. 3 lacks reasonable particularity.

B. Request No. 4

Request No. 4: All documents concerning the sponsorship of SJHSRI by the Roman Catholic Church

RCB’s Objection: Objection to Subpoena Request 4 to the extent the term “sponsorship” is vague, undefined, and therefore overbroad. We will respond to the subpoena by producing any reasonably accessible, responsive, non-privileged documents that relate to the “sponsorship” of SJHSRI as those terms are used and defined in the operative documents surrounding the Charter Care and Prospect transactions or the post-transaction governing documents of SJHSRI.

RCB agreed to produce documents as described in the above objection. Beyond that, Request No. 4 is not reasonably particular. Special Counsel objects to RCB’s statement that it would limit its production to documents that relate to the “sponsorship” of SJHSRI as those terms are used and defined in the “operative documents surrounding the Charter Care and Prospect transactions or the

post-transaction governing documents of SJHSRI.” Request No. 4, however, is overly vague and not reasonably particular, as Special Counsel failed to define the term “sponsorship” in the Subpoena, and refused to meet and confer to discuss and define the term, as requested by RCB. Without some sort of definition of “sponsorship,” this request is limitless. For example, does Special Counsel wish to review documents from individuals seeking intercession from the Bishop regarding their employment at St. Joseph’s Hospital? Correspondence regarding donations to support the chapel at the hospital? The Roman Catholic Church provided funding and support for St. Joseph Hospital programs and projects for over a hundred years, including millions of dollars to build the hospital buildings in the 1950s and 1960s, keep the hospitals open, and ensure that health care remained accessible to underserved populations regardless of profit. Is all of that “sponsorship”?

When Special Counsel refused to provide a limit or clarification, RCB devised a definition as best it could, so that RCB could search for and produce documents responsive to the request that relate to Special Counsel’s inquiries. The Motion should be denied as to Request No. 4. *See Patel*, 2013 WL 5876435, at *3; *Cent. Soya*, 208 A.2d at 114-15.

C. Request No. 5

Request No. 5: All documents concerning any communications to or from any present or former employees of SJHSRI concerning pension benefits, including but not limited to the Plan.

RCB’s Objection: Objection to Subpoena Request 5 to the extent it seeks documents concerning communications “concerning” pension benefits unrelated to the Plan at issue here. This request is overbroad and unduly burdensome because, read literally, it calls for any communication with any employee of SJHSRI, regardless of the date and regardless of the content of the communication. Several separate pension plans, both defined benefit and defined contribution, are maintained for priests, for lay employees, and for union employees that work for entities wholly unrelated to SJHSRI. Additionally, as drafted, the request seeks documents likely to contain sensitive, confidential, or otherwise protected information regarding individuals. The need to identify and redact such information from these documents represents an onerous, time-consuming, and expensive burden. We will produce any reasonably accessible,

responsive, non-privileged documents responsive to this request that are related to the Plan as defined in the subpoena.

RCB agreed to produce documents as described in the above objection. Beyond that, Request No. 5, as written, is not reasonably particular, and is overbroad in the burden of the search it would require and the irrelevant material it seeks produced. As it relates to Request No. 5's overbreadth, RCB refers to its written objection, as set forth above. *Supra* at 15-16.

Likewise, RCB's objection to producing communications to SJHSRI employees relating to pension or pension benefits unrelated to the Plan is proper because they are irrelevant. Such communications have no tie to the funding or management of the Plan at issue here, result in potential invasions of privacy for thousands of individuals, and would lead to production of significant amounts of irrelevant documents. *Butera*, 798 A.2d at 345 (holding that subpoena was properly quashed as overbroad "insofar as it sought to obtain documents pertaining to the builder's other continuing construction project."); *Cent. Soya*, 208 A.2d at 114-15 (holding that request for documents in subpoena that sought all correspondence between parties without any restriction on subject matter was improper).

First, any communications with SJHSRI employees that mentions or otherwise are "related to" the Plan will be produced, even if they also mention or primarily relate to another pension plan. However, other communications about other pension plans are not relevant to this proceeding, even if a present or former SJHSRI employee received those communications. *See Butera*, 798 A.2d at 345. For example, RCB has voluminous records of payments to, or correspondence concerning individual former employees that go back decades relating to a 401(k)-type plan that has absolutely no connection to the Plan in receivership, but would be subject to this request if any current or former SJHSRI employees participated. Those records, apart from being private, are irrelevant to the inquiries Special Counsel is authorized to pursue.

Second, Special Counsel’s argument that documents related to other pension plans are relevant because the Plan contains provisions incorporating and interlocking with provisions of other pension plans is without merit. It is not true to say there are provisions that incorporate or interlock the Plan with provisions of the other pension plans mentioned in the objection. In point of fact, there is one single provision in the Plan that mentions one other pension plan – the Lay Employee Retirement Plan – solely with respect to credited service. To the extent that RCB located any communication that concerns the one place in which the Plan references such plan, that communication would be “related to the Plan,” and will be produced.

Finally, Special Counsel’s alternative suggestion that communications to SJHSRI employees about any pension plan are “potentially relevant to the beliefs and understandings . . . as to their own pension benefits under the Plan that is the subject of the Receivership” is unfounded. S.C. Mem. at 11. Only communications that mention, relate to, or concern the Plan are likely to be relevant as to the beliefs and understanding of benefits under the Plan. *See Cent. Soya*, 208 A.2d at 114-15. Special Counsel cannot credibly suggest that communications by an entity other than SJHSRI about pension plans unrelated to SJHSRI over an unlimited time period could provide legal support for a potential claim that Special Counsel could prudently bring to force anyone to contribute to the Plan. More importantly, Special Counsel cannot credibly argue that SJHSRI and Plan participants should underwrite the cost of investigating such tenuous claims.

If there is some reasonable subset of documents related to the other plans that Special Counsel might believe to be relevant, those documents should have been identified in the Subpoena itself or by engaging in discussions with RCB’s counsel before engaging the Court.

D. Request Nos. 6, 7, and 8

Request No. 6: All documents concerning any communications to or from any present or former employees of Charter Care concerning pension benefits, including but not limited to the Plan.

Request No. 7: All documents provided or made available to any present or former employees of SJHSRI concerning pension benefits, including but not limited to the Plan.

Request No. 8: All documents provided or made available to any present or former employees of Charter Care concerning pension benefits, including but not limited to the Plan.

RCB responded to Request Nos. 6, 7, and 8 by incorporating its objection to Request No. 5. RCB agreed to produce documents as described in the incorporated objection. Beyond that, this trio of requests is not reasonably particular, but overbroad in terms of the burden of the search they would require and the irrelevant material they seek produced. Special Counsel contests the limitations on production that RCB asserted as to each request and raises the same argument as it did with respect to Request No. 5. S.C. Mem. at 11. The Court should reject Special Counsel's argument and deny the Motion as to Requests Nos. 6, 7, and 8 for the same reasons that RCB properly objected to Request No. 5. *Supra* at 15-17.

E. Request No. 11

Request No. 11: All documents concerning the official role of the Bishop of Providence, the Diocese, or the Roman Catholic Church in the governance of SJHSRI.

RCB's Objection: Objection to Subpoena Request 11 to the extent that the request is vague, overbroad, unduly burdensome and unlimited in time and scope as the term "official role" is undefined. We will respond to this request by producing any reasonably accessible, responsive, non-privileged documents concerning the corporate capacity and functions ascribed to the Bishop in corporate documents related to SJHSRI.

RCB agreed to produce documents as described in the above objection. Beyond that, Request No. 11 is not reasonably particular, as it contemplates that RCB will search and review

documents going back to the founding of St. Joseph's Hospital more than a hundred years ago. It is overbroad and imposes an undue burden for the same reasons as Request No. 3. *Supra* at 2-4, 12-14. Despite the breadth of Request No. 11 as written, Special Counsel questions RCB's limitation of its response to documents "concerning the corporate capacity and functions ascribed to the Bishop in corporate documents related to SJHSRI." Special Counsel's complaint is not sustainable.

First, this limitation was necessary to inform RCB's search for responsive documents because Special Counsel failed to define the phrase "official role." RCB defined "official role" reasonably by reference to the controlling corporate documents. That is where the "official roles" of individuals involved in corporate governance are found. RCB and its lawyers are not mind readers and cannot be expected to guess at what Special Counsel might mean beyond that or respond to discovery requests that contain such "vague and ambiguous wording." *See Dubin v. E.F. Hutton Grp. Inc.*, 125 F.R.D. 372, 376 (S.D.N.Y. 1989) (sustaining defendants' objections to "vague and ambiguous wording" in discovery requests). As Special Counsel refused efforts to meet and confer, RCB was forced to define "official role" on its own. Accordingly, RCB reasonably limited the request to simply requesting documents "concerning the corporate capacity and functions ascribed to the Bishop in corporate documents related to SJHSRI."

Second, and contrary to Special Counsel's suggestion otherwise, RCB did not limit its search for documents responsive to Request No. 11 to just the "corporate documents related to SJHSRI." S.C. Mem. at 12-13. For example, the December 4 production will include documents relating to the request to the Vatican to approve the alienation of the property of SJHSRI, and will include the September 27, 2013 correspondence referenced in Special Counsel's memorandum, to the extent a copy was within the possession and control of RCB. Special Counsel would have known that if it deigned to meet and confer with RCB's counsel on this issue rather than making false

assumptions and precipitously running into court. Accordingly, the Court should sustain the Bishop's objection and deny the Motion.

F. Request No. 12

Request No. 12: All documents concerning any assistance, including but not limited to financial assistance, provided by the Bishop of Providence, the Diocese, or the Roman Catholic Church to SJHSRI

RCB's Objection: Objection to Subpoena Request 12 to the extent that the request is vague, overbroad, unduly burdensome and unlimited in time and scope. The term "assistance" is undefined and would encompass forms of tangible and intangible aid or support, including emotional and spiritual aid and encouragement. We will respond to this request by producing any reasonably accessible, responsive, non-privileged documents concerning financial aid or support to SJHSRI.

RCB agreed to produce documents as described in the above objection. Beyond that, Request No. 12 is not reasonably particular. Special Counsel, nonetheless, contends that the Court should overrule RCB's objection to Request No. 12 to the extent that the request is vague, overbroad, unduly burdensome and unlimited in time and scope and characterizes it as a "hypothetical objection." S.C. Mem. at 13. There is nothing hypothetical as to this objection. Request No. 12 is overbroad, vague, and unduly burdensome precisely because it is not limited in time and or as to the types of assistance at issue, as set forth in RCB's objection above.⁸ *Supra* at 2-4, 12-14, 20. *See Cent. Soya*, 208 A.2d at 114-15 (holding that request for documents in subpoena that sought all correspondence between parties without any restriction on subject matter was improper). The Court, therefore, should conclude that RCB properly objected to Request No. 12 and limited its production to documents concerning the provision of financial assistance.

⁸ The Bishop's Ball is a shining example of the overbreadth of this request. It was held for years to assist in raising funds to support St. Joseph's Hospital. This request, as written, would literally call for the collection and production of every document having anything whatsoever to do with the planning, organization, advertising, attendance, menu, silent auction items, etc., for the Ball. These documents would be responsive to this request, but have nothing to do with anything relevant here.

G. Request No. 14

Request No. 14: All documents concerning the status of the Plan as a church plan, including but not limited to communications to or from the Internal Revenue Service or the United States Department of Labor concerning the status of the Plan as a church plan.

RCB's Objection: Objection to Subpoena Request 14 to the extent that the request is vague, overbroad, unduly burdensome, irrelevant and unlimited in time and scope. The term "church plan" is undefined. We will respond to this request by producing any reasonably accessible, responsive, non-privileged documents concerning the status of the Plan as a "church plan," as defined in 29 U.S.C. § 1002(33)(A).

RCB agreed to produce documents as described in the above objection. Beyond that, Request No. 14 is not reasonably particular. As in the case of Request No. 12, Request No. 14 is also overbroad, vague, irrelevant, and unduly burdensome because it is not limited in time or recipients of communications and leaves a key term undefined. *Cent. Soya*, 208 A.2d at 114-15; *Patel*, 2013 WL 5876435, at *3. The Court should sustain RCB's objection.

Special Counsel also contends that RCB improperly stated that it would limit its response to documents "concerning the status of the Plan as a 'church plan,' as defined in 29 U.S.C. § 1002(33)(A)." Special Counsel's complaint is puzzling, as it created this issue by failing to define the term "church plan" in the Subpoena. Therefore, as in the case of Request No. 11, Special Counsel left it to RCB to give additional meaning to the term to help inform RCB's search for responsive documents. Accordingly, RCB utilized the definition provided at 29 U.S.C. § 1002(33)(A).

As a practical matter, this limitation did not restrict the scope of the search that RCB conducted or the documents that will be produced. 29 U.S.C. § 1002(33)(A) was a reasonable guess at Special Counsel's intent, since it is the codification of Section 3(33) of ERISA, and ERISA is the federal law that defines "church plan" for purposes of ERISA exemption and coverage by Pension Benefit Guaranty Corporation insurance. Special Counsel's citation to the Plan's definition of "church plan" – which includes the meaning that RCB used and the meaning assigned in Section 414(e) of the

Internal Revenue Code – is perfectly acceptable as well, and wholly consistent with the definition used by RCB in its December 4 production.

If Special Counsel intended a different or more extensive meaning of “church plan” than that included in the laws directed at, and defining, this very concept, then Special Counsel should have defined the term as such or communicated that to RCB prior to filing the Motion. *See Dubin*, 125 F.R.D. at 376 (sustaining defendants’ objections to “vague and ambiguous wording” in discovery requests). We should not be having this discussion for the first time through motion practice.

Mirbeau, 2009 WL 3347101, at *4. The Court should sustain RCB’s objection and deny the Motion.

H. **Request No. 15**

Request No. 15: All documents that list the entities associated with the Bishop of Providence and/or the Diocese, including but not limited to any such lists that include SJHSRI, Charter Care, and/or the Hospitals.

RCB’s Objection: Objection to Subpoena Request 15 to the extent that the request is vague, overbroad, unduly burdensome and unlimited in time and scope. The term “associated” is undefined and would include many “lists” wholly unrelated to any factual or legal issue involved here. For example, an old newspaper article reporting that Bishop McViney spoke at the same event as other speakers could be a list of entities “associated with the Bishop of Providence.” Without a more precise definition, it would be an impossible task to locate any and all such “lists.”

Request No. 15 is not reasonably particular. As discussed relative to Request Nos. 12 and 14, Request No. 15 is also overbroad, vague, and unduly burdensome because it is not limited in time and leaves a key term undefined, as set forth in RCB’s objection. *Cent. Soya*, 208 A.2d at 114-15.

RCB properly objected to the failure of Special Counsel to define “associated” or otherwise limit Request No. 15 to make it intelligible. As stated in RCB’s objection, Request No. 15 was so vague and broad that any attempt to collect documents would have resulted in the production of vast amounts of irrelevant matter that Special Counsel presumably has no interest in reviewing. *See*

Am. Fed'n of Musician, 313 F.R.D. at 54 (concluding that plaintiff's "document requests are facially overbroad and pose an undue burden on [defendant] because they call for [defendant] to turn over apparently every document related to the Movie that [defendant] . . . was created and exists to make, regardless of the documents' direct connection to [plaintiff's] claims").

It is not an overstatement to say that this request would require the production of virtually any document that references any Bishops, any clergy, and any officers, executives, employees, agents or designees of any entity "controlled" in whole or in part by the Bishop or Diocese of Providence, on the one hand, and any other "entity" on the other, whether or not that document had anything to do with SJHSRI or the Plan. The example of the Bishop's Ball applies here as well. Documents list the names of sponsors for the Ball. Such documents fell within the scope of the request as written but have absolutely nothing to do with anything related to this proceeding.

More importantly, though, Special Counsel indicates in its memorandum that this request is designed to identify documents relating to the Plan's status as a "church plan." S.C. Mem. at 15. If that intent had been made clear – which it likely would have been had Special Counsel agreed to meet and confer as requested by RCB – the request could have been appropriately limited to lists that might implicate church plan status for the Plan, and no objection would have been necessary. This issue should not – need not – be resolved by motion practice. Indeed, at that point the request is redundant of Request No. 14 that seeks documents concerning "church" plans, and such documents will be produced. The Motion should be denied.

I. Request No. 16

Request No. 16: All documents concerning any loans or other transfers of funds to or from SJHSRI and any entity associated with the Bishop of Providence or the Diocese, including but not limited to the Inter-Parish Loan Fund, Inc.

RCB's Objection: Objection to Subpoena Request 16 to the extent that the request is vague, overbroad, unduly burdensome and unlimited in time and scope as the term

“associated” is undefined. We will respond to this request by producing any reasonably accessible, responsive, non-privileged documents in its care, custody and control that concern any loans or other transfer of funds to or from SJHSRI, regardless of the source of those funds.

RCB agreed to produce documents as described in the above objection. Beyond that, Request No. 16 is not reasonably particular. As discussed relative to Request Nos. 12, 14, and 15 and the above objection, Request No. 16 is also overbroad and unduly burdensome because it is not limited in time and fails to define a key term. The Court should sustain this objection. *See Am. Fed’n of Musicians*, 313 F.R.D. at 54; *Cent. Soya*, 208 A.2d at 114-15.

Additionally, Special Counsel asks the Court to order RCB “to segregate the documents relating to loans or transfers of funds from entities associated with the Bishop or the Diocese, so as not to bury the requested documents in a mass of other documents.” S.C. Mem. at 16. The failure of RCB to define “associated” renders this an impossible task. For example, is an individual resident of the Diocese of Providence, or an individual clergy member, who made donations to St. Joseph’s Hospital an “entity associated with the Bishop of Providence or the Diocese”? *See Patel*, 2013 WL 5876435, at *4. Such segregation is impossible absent further clarification. The Court, therefore, should decline this request and deny the Motion.

J. Request No. 17

Request No. 17: All documents concerning the Plan or the Trust Funds not otherwise identified above.

RCB’s Objection: Objection to Subpoena Request 17 to the extent that the request is nothing more than a waste-basket catch-all thrown in at the end of a long list of overbroad requests, fails to describe any category of documents with reasonable particularity and to the extent it is vague, overbroad, unduly burdensome and unlimited in time and scope.

Request No. 17 is also not reasonably particular. As discussed relative to Request Nos. 12, 14, 15, and 16, Request No. 17 is overbroad and unduly burdensome because it is not limited in

time and scope. Special Counsel's contention that the request "is hardly unlimited in time and scope, where the Plan and the Trust Funds have been in existence for a finite timespan" is laughable. S.C. Mem. at 16. The entirety of a subject matter's existence is not a meaningful temporal limitation. Courts have recognized as much and refused to compel compliance with such requests. *See Am. Fed'n of Musicians*, 313 F.R.D. at 54. The Court should do the same.

Moreover, as Special Counsel concedes, Request No. 17 "requests the remaining universe of documents 'concerning the Plan or the Trust Funds.'" S.C. Mem. at 16. Courts have routinely deemed such catch-all requests as improper and refused to compel their enforcement. *See Regan-Touhy*, 526 F.3d at 649-50 (10th Cir. 2008) (holding that request seeking "all documents ... that refer to, mention or relate in any way to Plaintiff, Whitlock, or the litigation or the allegations, facts and circumstances concerning the litigation," is "overly broad" and not reasonably particular (ellipsis in original)). To hold otherwise would allow Special Counsel to skirt his obligation to make reasonably particularized requests. *Cent. Soya*, 208 A.2d at 114-15; *see Regan-Touhy*, 526 F.3d at 649 (stating that requesting party has "the duty to state discovery requests with 'reasonable particularity.'"). The Motion should be denied.

K. Requests Nos. 1-2, 9-10, and 13

RCB did not raise specific objections as to Request Nos. 1, 2, 9, 10, and 13. Special Counsel, nonetheless, asks the Court to overrule RCB's allegedly "baseless general or definitional objections discussed above," and to compel production of documents responsive to Request No. 1, 2, 9, 10, 13. S.C. Mem. 8, 12, 14. Notwithstanding the fact that there will be nothing for the Court to compel relative to these requests because RCB will have produced documents on or before December 4, Special Counsel's arguments are meritless for the reasons outlined *supra* at 8-9 (addressing "subject

to,” “without waiving” and “to the extent argument”) and *supra* at 10 (addressing “definitional objections”).

V. RCB PRESERVED ITS PRIVILEGE CLAIM THROUGH ITS OBJECTION AND WILL SERVE A PRIVILEGE LOG WITHIN A REASONABLE TIME

Special Counsel’s claim that RCB’s representation that it would “produce any reasonably accessible, responsive, non-privileged documents in its care, custody and control” is ineffective to preserve the privilege is misplaced. Given the tight timeframe for response demanded by the Subpoena, RCB was not in a position to identify all potentially responsive documents covered by the attorney-client privilege, work product doctrine, or other applicable privilege and compile a privilege log by November 15. Courts have recognized the difficulty posed by such a circumstance. *In re Dep’t of Justice Subpoenas to ABC*, 263 F.R.D. 66, 70 (D. Mass. 2009) (observing that “the investment of time necessary to review all responsive documents for privileged material . . . does not lend itself to the limited fourteen (14) day time period [for objections under Fed. R. Civ. P. 45]” (internal quotation marks and citations omitted)). Thus, recipients of subpoenas can preserve the privilege by objecting to producing privileged matter “within the fourteen days provided in Rule 45(c)(2)(B)” and serving a privilege log “within a reasonable time.” *Id.* (internal quotation marks and citation omitted). RCB has followed this path. That is, RCB asserted the privilege in its timely written objections to the Subpoena and will serve a privilege log within a reasonable time of making its production. Accordingly, the Court should conclude that RCB has effectively preserved the privilege and deny the Motion.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion and order that Special Counsel should meet and confer with RCB before filing additional motions to compel relative to the Subpoena or any other request for information.

Respectfully Submitted,

**ROMAN CATHOLIC BISHOP OF
PROVIDENCE, A CORPORATION
SOLE**

By its attorneys,

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Date: December 1, 2017

CERTIFICATE OF SERVICE

I hereby certify that, on the 1st day of December, 2017:

I filed and served this document through the electronic filing system on all parties registered therein to receive notice in this case.

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The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Howard A. Merten

EXHIBIT A

EXHIBIT A

Instructions

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Definitions

- a. The word "**documents**" as used herein is meant in the broad and liberal sense and includes hand-written, typed, recorded, electronically stored, or graphic material of any kind and description, and whether a draft, copy, original, or master, including, but not limited to, e-mails, electronic versions of documents, accounts, advertisements, letters, memoranda, prospectuses, resolutions, legislation, notes of conversations, contracts, agreements, drawings, tape recordings, internal policies or procedures, inter-office and intra-office memoranda, studies, working papers, corporate records, minutes of meetings, checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type, and documents stored on data storage modules, databases, servers, computers, tapes, discs or other memory devices, or other information retrievable from storage systems. If any document has been prepared in multiple copies which are not identical, each modified copy or non-identical copy is a separate "document." The word "document" also includes data compilations from which information can be obtained and translated, if necessary, by the requesting party in a reasonably usable form.
- b. The word "**concerning**" means anything connected, associated, related to, evidencing, or in any manner whatsoever having to do with the substance or subject matter of the information or document requested herein.
- c. The term "**any**" and the term "**all**" are intended to mean "**any and all**."
- d. Any word in the singular also includes the plural and vice versa.
- e. The term "**Hospitals**" refers to Our Lady of Fatima Hospital and/or St. Joseph Hospital;
- f. The term "**Plan**" refers to the St. Joseph Health Services of Rhode Island Retirement Plan and any of its versions or amendments.

- g. The term “**SJHSRI**” refers to St. Joseph Health Services of Rhode Island and each of its predecessors or successors.
- h. The term “**Charter Care**” includes Charter Care Health Partners and Charter Care Community Board and any related entities;
- i. The term “**Bishop of Providence**” includes the Roman Catholic Bishop of Providence, a corporation sole; Bishop Tobin; and any individual designees of the Roman Catholic Bishop of Providence or Bishop Tobin;
- j. The term “**Diocese**” includes the Diocese of Providence and any other diocese or archdiocese or component of the Catholic Church having any connection of any nature with the **Plan**, and each of their bishops, clergy, officers, executives, employees, agents, and designees. The term “**Diocese**” also includes any corporation or entity controlled in whole or in part by the **Bishop of Providence** or **Diocese** having any connection of any nature with the **Plan**, including the Inter-Parish Loan Fund, Inc.
- k. The term “**Prospect**” includes Prospect Medical Holdings, Inc. or any related entity, including subsidiaries and subsidiaries of subsidiaries;
- l. The term “**Trust Funds**” means such sums of money or other property paid or delivered to the Bank of America (as defined above) pursuant to the Plan (as defined above), and all property acquired using such sums of money or the proceeds from the sale or exchange of such other property, together with all earnings, profits, increments, dividends, and accruals thereon, and all amounts charged, withdrawn, or deducted by way of fees or compensation to Bank of America in relation to the Plan.

Documents Requested

- 1. All **documents** concerning the functions, duties, or responsibilities of the **Diocese**, the **Bishop of Providence**, or any individual appointed by the **Diocese** or the **Bishop of Providence**, concerning the **Plan** or the **Trust Funds**;
- 2. All **documents** concerning the actions or role of the **Bishop of Providence** as a Class B member of **SJHSRI**;
- 3. All **documents** concerning the actions or role of the **Bishop of Providence** as a member of the Board of Trustees of **SJHSRI**;
- 4. All **documents** concerning the sponsorship of **SJHSRI** by the Roman Catholic Church;
- 5. All **documents** concerning any communications to or from any present or former employees of **SJHSRI** concerning pension benefits, including but not limited to the **Plan**;

6. All **documents** concerning any communications to or from any present or former employees of **Charter Care** concerning pension benefits, including but not limited to the **Plan**;
7. All **documents** provided or made available to any present or former employees of **SJHSRI** concerning pension benefits, including but not limited to the **Plan**;
8. All **documents** provided or made available to any present or former employees of **Charter Care** concerning pension benefits, including but not limited to the **Plan**;
9. All **documents** concerning **SJHSRI** and the Catholic Directory for the period from January 1, 2005 through the present, including but not limited to documents concerning the inclusion, exclusion, status, or classification of **SJHSRI** in the Catholic Directory and any change of such status or classification;
10. All **documents** concerning press releases issued by or on behalf of the **Diocese**, the **Bishop of Providence**, or **SJHSRI** concerning the following:
 - a. The **Plan** or the **Trust Funds**;
 - b. The affiliation of the **Hospitals** and/or **SJHSRI** with **Charter Care** or any related entity; or
 - c. The affiliation of the **Hospitals**, **SJHSRI**, or **Charter Care**, with **Prospect**;
11. All **documents** concerning the official role of the **Bishop of Providence**, the **Diocese**, or the Roman Catholic Church in the governance of **SJHSRI**;
12. All **documents** concerning any assistance, including but not limited to financial assistance, provided by the **Bishop of Providence**, the **Diocese**, or the Roman Catholic Church to **SJHSRI**;
13. All **documents** concerning any denominational requirement for any employee of **SJHSRI** or any patient of the **Hospitals**;
14. All **documents** concerning the status of the **Plan** as a church plan, including but not limited to communications to or from the Internal Revenue Service or the United States Department of Labor concerning the status of the **Plan** as a church plan;
15. All **documents** that list the entities associated with the **Bishop of Providence** and/or the **Diocese**, including but not limited to any such lists that include **SJHSRI**, **Charter Care**, and/or the **Hospitals**;
16. All documents concerning any loans or other transfers of funds to or from **SJHSRI** and any entity associated with the **Bishop of Providence** or the **Diocese**, including but not limited to the Inter-Parish Loan Fund, Inc.; and

17. All **documents** concerning the **Plan** or the **Trust Funds** not otherwise identified above.

EXHIBIT B

PARTRIDGE SNOW & HAHN LLP

Howard A. Merten
(401) 861-8277
hm@psh.com

November 15, 2017

Stephen P. Sheehan, Esq.
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903

Re: St. Joseph's Health Services of Rhode Island Receivership

Dear Stephen:

I am writing with regard to the subpoena issued in the St. Joseph's Health Services of Rhode Island Receivership served upon Eugene G. Bernardo, II, Esq. registered agent for the Roman Catholic Bishop of Providence, a corporation sole, on the afternoon of November 2, 2017. That subpoena seeks seventeen broad categories of documents. It contained a number of vague and overbroad definitions that multiply and complicate the issues raised by the individual subpoena requests. I called to tell you that we wanted to work with the Receiver to reach agreements as to the scope of the requested documents and provide responsive records. I asked that we agree to a date for us to discuss the scope of the subpoena and attempt to identify the information that you really want and need. In my experience, such discussions tend to focus the parties' efforts in responding to such requests and, if applicable, limit and define any remaining disputes so that they can be resolved expeditiously and with minimal court intervention. Your email response stated that you could not agree to any delays and demanded "a substantial production on schedule."

In light of your response, we feel compelled at this point to respond in writing pursuant to Super. R. Civ. P. 45(c)(2)(B) with the following objections to the subpoena issued by your firm. Please understand that we are working to produce relevant documents and we will continue to work to gather the records as best we can, given our understanding of the requests being made and the objections made here. We also stand ready to discuss, and try to reach agreements as to, the issues raised in this letter, as suggested in my original call to you. Many of the objections below are, I would suggest, the result of attempts to be all-encompassing in various requests, but with the effect of requesting records that you do not really want or need at the end of the day. However, given your email and the return date on your subpoena, we need to state the following objections for the record.

Objection to the timeframe provided in the subpoena for the production of records. The subpoena demanded production of responsive documents by November 15 – a mere thirteen days after the subpoena was served. Super. R. Civ. P. 34 provides that an actual

Stephen P. Sheehan, Esq.
November 15, 2017
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party to a lawsuit is allowed forty (40) days to respond to a request for production – three times the length of time set forth in your subpoena, served on a non-party. That timeframe is unreasonable as a general matter, but is particularly burdensome given the scope of the subpoena and the unlimited nature of some of these requests. We have already begun the process of searching for responsive records and will produce documents in a reasonable timeframe, but such production will not be occurring within thirteen days and the request that such occur was and is unreasonable.

Objection to the definition of “concerning” as the definition of this term supplied in the subpoena is all-encompassing and renders many of the 17 individual requests overbroad and vague.

Objection to definition of “Bishop of Providence.” The subpoena was served upon the registered agent for the Roman Catholic Bishop of Providence, a corporation sole distinct legal entity. The definition of “Bishop of Providence” in the subpoena appears to go beyond requesting records from the corporation sole. We note the distinction in order to preserve that distinction for the record, but do not intend to contest the adequacy of service on Bishop Thomas Tobin. Rather, we will move forward with providing the Receiver with the records we understand to be sought by the subpoena, subject to the objections contained in this letter. We raise a separate objection for this definition to the extent that it includes the undefined phrase, “and any individual designee.” That phrase renders many of the 17 individual requests overbroad and vague. That phrase will be interpreted to mean “designee” as specifically referenced in any corporate documents relevant hereto.

Objection to the definition of the term “Diocese” to the extent it is an attempt to define the ecclesiastical term, “Diocese,” as such definition is incorrect, and to the extent that it purports to describe a legal entity that does not exist. To the extent the definition is proffered as an attempt to define the alleged reach of the care, custody and control retained or exercised by either the Roman Catholic Bishop of Providence, a corporation sole, or of Bishop Thomas Tobin, with respect to documents sought by the subpoena, it is legally inaccurate and overbroad. To the extent that the subpoena purports to seek documents from “any other Diocese or component of the Catholic Church” the request is overbroad unless such documents happen to be in the care, custody and control of the Roman Catholic Bishop of Providence, a corporation sole or of Bishop Thomas Tobin. We are not aware of any such records, but our search is continuing. Finally, we object to the implicit legal conclusion in this definition that the Inter-Parish Loan Fund, Inc. is controlled in whole or in part by the Roman Catholic Bishop of Providence, a corporation sole, or by Bishop Thomas Tobin. Without waiving this objection, to the extent that the Roman Catholic Bishop of Providence, a corporation sole, or Bishop Tobin, or his designee (as defined above) has reasonably accessible, responsive, non-privileged documents related to the Inter-Parish Loan Fund, Inc., those documents will be produced.

Objection to Subpoena Request 3 as overbroad to the extent it seeks documents “concerning” any actions or role of the “Bishop of Providence” as a member of the SJHSRI Board of Trustees, without any limitation of subject matter or time, particularly as “SJHSRI” as

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defined in the subpoena dates back to 1892. To the extent that we locate reasonably accessible, responsive, non-privileged documents related to the "Plan," those documents will be produced.

Objection to Subpoena Request 4 to the extent the term "sponsorship" is vague, undefined, and therefore overbroad. We will respond to the subpoena by producing any reasonably accessible, responsive, non-privileged documents that relate to the "sponsorship" of SJHSRI as those terms are used and defined in the operative documents surrounding the Charter Care and Prospect transactions or the post-transaction governing documents of SJHSRI.

Objection to Subpoena Request 5 to the extent it seeks documents concerning communications "concerning" pension benefits unrelated to the Plan at issue here. This request is overbroad and unduly burdensome because, read literally, it calls for any communication with any employee of SJHSRI, regardless of the date and regardless of the content of the communication. Several separate pension plans, both defined benefit and defined contribution, are maintained for priests, for lay employees, and for union employees that work for entities wholly unrelated to SJHSRI. Additionally, as drafted, the request seeks documents likely to contain sensitive, confidential, or otherwise protected information regarding individuals. The need to identify and redact such information from these documents represents an onerous, time-consuming, and expensive burden. We will produce any reasonably accessible, responsive, non-privileged documents responsive to this request that are related to the Plan as defined in the subpoena.

Objection to Subpoena Request 6. See Objection to Request 5, incorporated herein.

Objection to Subpoena Request 7. See Objection to Request 5, incorporated herein.

Objection to Subpoena Request 8. See Objection to Request 5, incorporated herein.

Objection to Subpoena Request 11 to the extent that the request is vague, overbroad, unduly burdensome and unlimited in time and scope as the term "official role" is undefined. We will respond to this request by producing any reasonably accessible, responsive, non-privileged documents concerning the corporate capacity and functions ascribed to the Bishop in corporate documents related to SJHSRI.

Objection to Subpoena Request 12 to the extent that the request is vague, overbroad, unduly burdensome and unlimited in time and scope. The term "assistance" is undefined and would encompass forms of tangible and intangible aid or support, including emotional and spiritual aid and encouragement. We will respond to this request by producing any reasonably accessible, responsive, non-privileged documents concerning financial aid or support to SJHSRI.

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Objection to Subpoena Request 14 to the extent that the request is vague, overbroad, unduly burdensome, irrelevant and unlimited in time and scope. The term “church plan” is undefined. We will respond to this request by producing any reasonably accessible, responsive, non-privileged documents concerning the status of the Plan as a “church plan,” as defined in 29 U.S.C. § 1002(33)(A).

Objection to Subpoena Request 15 to the extent that the request is vague, overbroad, unduly burdensome and unlimited in time and scope. The term “associated” is undefined and would include many “lists” wholly unrelated to any factual or legal issue involved here. For example, an old newspaper article reporting that Bishop McVinney spoke at the same event as other speakers could be a list of entities “associated with the Bishop of Providence.” Without a more precise definition, it would be an impossible task to locate any and all such “lists.”

Objection to Subpoena Request 16 to the extent that the request is vague, overbroad, unduly burdensome and unlimited in time and scope as the term “associated” is undefined. We will respond to this request by producing any reasonably accessible, responsive, non-privileged documents in its care, custody and control that concern any loans or other transfer of funds to or from SJHSRI, regardless of the source of those funds.

Objection to Subpoena Request 17 to the extent that the request is nothing more than a waste-basket catch-all thrown in at the end of a long list of overbroad requests, fails to describe any category of documents with reasonable particularity and to the extent it is vague, overbroad, unduly burdensome and unlimited in time and scope.

We are moving forward with efforts to identify and produce documents responsive to the subpoena as best as we can understand them and pursuant to the objections and clarifications outlined above. We expect to be in a position to produce records by December 4, which would be thirty-two (32) days from receipt of the subpoena, well short of the forty days referenced in Rule 34 for parties to respond to requests for production.

Sincerely,



Howard A. Merten

HM:tmp

3195994.1/1444-35

EXHIBIT C

Wildenhain, Christopher M.

From: Stephen P. Sheehan <sps@wistbar.com>
Sent: Thursday, November 9, 2017 9:33 PM
To: Merten, Howard
Cc: Max Wistow; Benjamin Ledsham; carmaxabbey@aol.com; Daria Souza
Subject: Bishop's compliance with subpoena

Hi Howard

We appreciate it is inconvenient but with 2700 plan participants facing imminent pension cuts we cannot agree to the delays you propose. Can your client at least make a substantial production on schedule with further production at an agreed date thereafter?

Steve

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