

UNITED STATE DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND	:	
ADMINISTRATOR OF THE ST. JOSEPH	:	
HEALTH SERVICES OF RHODE ISLAND	:	
RETIREMENT PLAN, et al.	:	
	:	
Plaintiffs,	:	
v.	:	C. A. No. 18-cv-00328-WES-LDA
	:	
	:	
PROSPECT CHARTERCARE, LLC, et al.	:	
	:	
Defendants.	:	

REPLY OF THE ANGELL PENSION GROUP, INC. TO  
PLAINTIFFS’ OBJECTION TO REQUEST FOR JUDICIAL NOTICE

In connection with The Angell Pension Group, Inc.’s (“Angell”) Motion to Dismiss<sup>1</sup>, Angell requested that the Court take judicial notice of five documents: (1) the Services Agreement between Angell and SJHSRI; (2) the 2014 PowerPoint; (3) the 2016 PowerPoint; (4) the 94.9% Projection; and (5) an exemplar of the Participant Statement provided to Plan participants. (Dkt. No. 69) (the “RJN”). The Plaintiffs objected. (Dkt. No. 98). For the reason set forth in the RJN, the Court should overrule the Plaintiffs’ objection and take judicial notice of each of the documents as requested. Angell replies to the Plaintiffs’ objection to the RJN to correct an inadvertent error with respect to one of these documents—the 94.9% Projection.

The version of the 94.9% Projection that accompanied Angell’s Motion to Dismiss was a practically identical draft that of the version that was ultimately sent to SJHSRI. The correct version of the 94.9% Projection is attached to the accompanying the Declaration of Peter Karlson. The inadvertent filing of the draft 94.9% Projection (Bates stamped 111602 and 111603) resulted from the fact that it is identical to the final version (Bates stamped 101721 and

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<sup>1</sup> Unless otherwise indicated capitalized terms shall have the meanings ascribed to them in Angell’s memorandum of law in support of its motion to dismiss the First Amended Complaint.

101722) save for two immaterial details. First, the two pages of the Final 94.9% Projection were numbered (“Page 1 of 2” and “Pages 2 of 2”) whereas the pages of the draft projection were not. Second, the footnote on the second page of the projections differed. The footnote on page two of the draft 94.9% Projection reads “For the Plan Year beginning 7/1/2014, the recommended contribution is an estimate that is subject to change based on the Plan assets and the Plan’s discount rate.” The same footnote on the final 94.9% Projection reads “The information presented for 7/1/2013 and 7/1/2014 are estimates based on assumptions described on page 1 and is subject to change.” In all other respects the versions of the 94.9% Projection were identical, and the Plaintiffs have not disputed a single factual statement in the Motion to Dismiss regarding the contents of the 94.9% Projection.

That the two versions of the 94.9% Projection are practically identical is well known to the Plaintiffs since the Bates stamps on both versions resulted from the production of these documents to Mr. DelSesto in the course of his pre-litigation discovery. Despite this, the Plaintiffs persist in their mischaracterization of the 94.9% Projection in the FAC and the Opposition to keep the Court from considering a document that is the principal basis of a number of claims against Angell. This only clarifies the extent to which the survival of the FAC depends upon demonstrably false allegations and unreasonable inferences. Judicial notice of documents integral to a complaint is intended to stop such specious claims from advancing. *See Shaw v. Digital Equip. Corp.*, 82 F.3d 1194, 1220 (1st Cir. 1996); *Rzepiennik v. Archstone-Smith, Inc.*, 331 F. App’x 584, 588 (10th Cir. 2009) (noting that a district court may review documents referred to in a plaintiff’s complaint because, otherwise, “a plaintiff with a deficient claim could survive a motion to dismiss simply by not attaching a dispositive document upon which the plaintiff relied”).

For the foregoing reasons, Angell requests that the Court take judicial notice of the 94.9% Projection (Bates stamped 101721 and 101722) that is attached to the Declaration of Peter Karlson and is explicitly relied upon by the Plaintiffs in the FAC.

THE ANGELL PENSION GROUP, INC.

By its attorneys,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of March, 2019, I have caused the within *Reply of The Angell Pension Group, Inc. to Plaintiff's Objection to Request for Judicial Notice* to be filed with the Court via the ECF filing system. As such, this document will be electronically sent to the registered participants identified on the Notice of Electronic Filing (NEF).

/s/ Steven J. Boyajian  
Steven J. Boyajian

**ATTACHMENT TO  
REPLY OF THE ANGELL PENSION GROUP,  
INC.'S TO PLAINTIFF'S  
OBJECTION TO REQUEST FOR JUDICIAL  
NOTICE**

UNITED STATE DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND :  
ADMINISTRATOR OF THE ST. JOSEPH :  
HEALTH SERVICES OF RHODE ISLAND :  
RETIREMENT PLAN, et al. :

Plaintiffs, :  
v. :

C. A. No. 18-cv-00328-WES-LDA

PROSPECT CHARTERCARE, LLC, et al. :

Defendants. :

DECLARATION OF PETER L. KARLSON

I, Peter L. Karlson, on pains and penalties of perjury, hereby state as follows:

1. I am over the age of eighteen and have personal knowledge of the facts set forth herein.
2. I am Director of ERISA Services for The Angell Pension Group, Inc. (“Angell”).
3. On April 10, 2014 at 1:13 P.M. three employees of Angell, Brian Corbett, David Ward, and Albert Krayter, received an email from Brenda Ketner of CharterCARE Health Partners requesting that Angell produce a calculation showing the “stabilizing effect of the incoming \$14M to the plan with no other future information shown”.
4. In response to that request David Ward produced the projection attached hereto (bearing Bates stamp numbers 101721 and 101722 ) (the “Final Projection”) and sent it via email on April 11, 2014 at 4:29 P.M. to Brenda Ketner and Darleen Souza. I was copied on this email, along with Brian Corbett, Brenda Almeida, and Albert Krayter. The Final Projection does not use the term “stabilizing” and does show a \$14 million contribution for the plan year beginning July 1, 2013 (and ending June 30, 2014) and with an additional column showing projected results for the plan year starting July 1, 2014,

including a recommended contribution for that year of \$1,391,000, including a 10-year amortization of the unfunded actuarial accrued liability of \$1,291,000. Thus, the Final Projection did show “future information” after the \$14 million contribution, including a recommended annual contribution to be continued for 10 years.

5. A prior version of this projection (bearing Bates stamped numbers 111602 and 111603) (the “Draft Projection”) was attached to the Memorandum of Law in Support of Angell’s Motion to Dismiss the First Amended Complaint (“Angell’s Memorandum”) and was referred to therein as the “94.9% Projection”. The attachment of the Draft Projection instead of the Final Projection was an error.
6. The projection bearing Bates stamp numbers 101721 and 101722 is the projection that was produced in response to Ms. Ketner’s request as described in paragraph 3.
7. The Final Projection should have been attached to Angell’s Memorandum in place of the Draft Projection that was actually attached and referred to as the “94.9% Projection” in Angell’s Memorandum.
8. There are only two differences between the Draft Projection and the Final Projection, other than the Bates stamps.
9. One of these differences is that the Final Projection contains page numbers (“Page 1 of 2” and “Page 2 of 2”) that were not included in the Draft Projection.
10. The other difference is that at the bottom of page 2, the Draft Projection states, “For the Plan Year beginning 7/1/2014, the recommended contribution is an estimate that is subject to change based on the Plan assets and the Plan’s discount rate.” In the Final Projection, the text quoted above is replaced, in its entirety, with “The information

presented for 7/1/2013 and 7/1/2014 are estimates based on assumptions described on page 1 and is subject to change.”

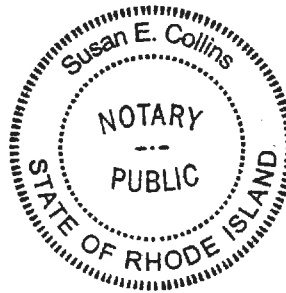
I declare under penalty of perjury that the foregoing is true and correct, and is made pursuant to 28 U.S.C. § 1764. Executed on this 28th day of February, 2019.

  
\_\_\_\_\_  
Peter L. Karlson

SWORN TO AND SUBSCRIBED before me, a Notary Public in and for the State of Rhode Island, in my presence, this 28th day of February, 2019.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 8/21/22





## St. Joseph Health Services of Rhode Island Retirement Plan

101721

### Projection Assumptions

Basis of Projections:	Projections have been based on July 1, 2012 census and valuation.
Discount Rate for Liabilities:	7.75% based on October 1, 2012 Long Term Rate of Return Assumption
Rate of Return on Investments:	7.75%
Market Value of Assets:	This assumption has been selected by St. Joseph Health Services of Rhode Island consistent with direction from the Plan's investment manager regarding long-term expectations for the Plan's rate of return based on the current investment allocation. December 31, 2013 with an assumed contribution of \$14,000,000 made for Plan Year Ending June 30, 2014.
ERISA Effective Date:	It is assumed that the Plan will remain a non-electing Church Plan and will not become subject to ERISA.
Actuarial Value of Assets:	Asset averaging smoothing gains/losses over last five (5) years.
Recommended Contribution:	Based on a 10-year open amortization of the unfunded liability.
DB Plan Freeze:	Benefit accruals under the Plan for non-union participants ceased effective September 30, 2009. Benefit accruals under the Plan for FNHP union participants ceased effective September 30, 2011. Benefit accruals under the Plan for UNAP participants will cease effective June 1, 2014.
Disclosures:	The results contained in this analysis are for illustrative purposes only and are estimates based on the census data and asset information provided by St. Joseph Health Services of Rhode Island to prepare the annual actuarial valuation of the Plan. The results do not reflect all possible future funding and accounting costs. The actual results at a future date will be based on the demographics of the covered population, asset values on the date of the valuation, and the related assumptions applicable for that Plan Year. Unless stated otherwise, the methods and actuarial assumptions in the most recently completed actuarial valuation reports are used in preparing this analysis.  Where exact amounts are known they are represented to the nearest \$1. Where amounts are estimated they are rounded to the nearest \$1,000.

**St. Joseph Health Services of Rhode Island Retirement Plan**  
**Hard Freeze 6/1/2014 - Church Plan**

**Cash Funding Projections - Based on and subject to Projection Assumptions set forth on page 1**

<u>Plan Year Beginning</u>	<u>7/1/2012</u>	<u>7/1/2013*</u>	<u>7/1/2014*</u>
Discount Rate:	8.00%	7.75%	7.75%
Return on Investment Assumed:	n/a	7.75%	7.75%
Market Value of Assets (including receivables)	\$85,872,858	\$88,802,000	\$107,227,000
Actuarial Value of Assets	93,201,405	88,167,000	103,506,000
Actuarial Accrued Liability	108,357,275	113,217,000	112,948,000
Unfunded Actuarial Accrued Liability (UAAL)	15,155,870	25,050,000	9,442,000
Normal Cost	\$738,922	\$737,000	\$0
10-Year Amortization of UAAL	2,091,363	3,426,000	1,291,000
Interest Cost	226,423	323,000	100,000
<b>Recommended Contribution</b>	<b>\$3,056,708</b>	<b>\$4,486,000</b>	<b>\$1,391,000</b>
<b>Total Plan Year Contribution Assumed</b>	<b>\$0</b>	<b>\$14,000,000</b>	<b>N/A</b>
Funding Percentage at Beginning of Plan Year (MVA / AAL)	79.2%	78.4%	<u>94.9%</u>

101722

\* The information presented for 7/1/2013 and 7/1/2014 are estimates based on assumptions described on page 1 and is subject to change.