

**UNITED STATES 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.

PROSPECT CHARTERCARE, LLC; ET AL.,

Defendants.

C.A. No. 1:18-CV-00328-S-LDA

ORAL ARGUMENT REQUESTED<sup>1</sup>

**THE DIOCESAN DEFENDANTS' RESPONSE IN  
OPPOSITION TO JOINT MOTION FOR SETTLEMENT  
CLASS CERTIFICATION, APPOINTMENT OF CLASS COUNSEL  
AND PRELIMINARY SETTLEMENT APPROVAL AND MOTION FOR  
AWARD OF ATTORNEYS' FEES CONCERNING CHARTERCARE FOUNDATION**

Defendants Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation and Diocesan Service Corporation (collectively, the “Diocesan Defendants”) submit this response in opposition to Plaintiffs and Defendants St. Joseph Health Services of Rhode Island, Inc. (“SJHSRI”), Roger Williams Hospital (“RWH”), Chartercare Community Board (“CCCB”), and Chartercare Foundation’s (“CCF”) joint motion for settlement class certification, appointment of class counsel, and preliminary settlement approval (the “CCF Settlement Motion”), and the motion by Plaintiffs’ Counsel for an award of attorneys’ fees (the “CCF Fee Motion”).

The CCF Settlement Motion and CCF Fee Motion share many of the same defects as the motions filed in connection with Plaintiffs’ proposed settlement with SJHSRI, RWH, and

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<sup>1</sup> Pursuant to Local Rule 7(c), the Diocesan Defendants request oral argument and estimate that their portion will take no more than fifteen minutes.

CCCB. The Diocesan Defendants discussed these problems in detail in their response to those earlier motions. Therefore, in the interests of judicial economy and the preservation of resources for all parties, the Diocesan Defendants succinctly summarize the grounds for their opposition and incorporate and adopt the arguments previously made in earlier filings.

For the following reasons set forth more fully in the Diocesan Defendants and/or the Prospect Entities'<sup>2</sup> responses in opposition to the earlier settlement and fee motions, the CCF Settlement Motion and CCF Fee Motion should be denied:

1. The Court should deny the CCF Settlement Motion and CCF Fee Motion on account of Plaintiffs' failure to join the Pension Benefit Guaranty Corporation ("PBGC") to these proceedings or, in the alternative, defer resolution of the motions until the PBGC has been joined. J. Mem. Of Prospect Entities In Opp'n To J. Mot. For Settlement Class Certification, Appointment of Class Counsel, & Prelim. Settlement Approval Of SJHSRI, RWH, & CCCB (hereinafter "Prospect SJHSRI Settlement Opp'n.") 10-12, ECF No. 75-1.

2. Approval of the settlement under R.I. Gen. Laws § 23-17.14-35 should be denied because ERISA preempts § 23-17.14-35. Diocesan Defs.' Resp. In Opp'n To The J. Mot. For Settlement Class Certification, Appointment Of Class Counsel, & Prelim. Settlement Approval & Mot. For Award Of Att'ys' Fees (hereinafter "Diocesan Defs.' SJHSRI Settlement Opp'n") 4-5, ECF No. 73; Prospect SJHSRI Settlement Opp'n 3-5, 13-21.

3. Additionally, the Court should deny the settlement approval under § 23-17.14-35 because § 23-17.14-35 violates the Equal Protection and Due Process Clauses of the United States and Rhode Island Constitutions. Diocesan Defs.' SJHSRI Settlement Opp'n 5-13.

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<sup>2</sup> "Prospect Entities" refers to Defendants Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect CharterCARE, LLC, Prospect CharterCARE SJHSRI, LLC, and Prospect CharterCARE RWMC, LLC.

4. With regard to the CCF Fee Motion, Plaintiffs' Counsel has not broken down the hours that Plaintiffs' Counsel devoted to litigation with CCF or procuring the settlement from that defendant.<sup>3</sup> *Id.* at 25-26. Instead, the CCF Fee Motion refers to the collective hours expended since this litigation was filed,<sup>4</sup> rendering more difficult this Court's task in assessing the reasonableness of the motion's request for a \$1,049,850 fee award.<sup>5</sup> *Id.*

5. The CCF Fee Motion also improperly asks that the Court consider how the class benefited from Plaintiffs' Counsel's investigative efforts, work for which they have already been paid.<sup>6</sup> *Id.*; *cf. Heien v. Archstone*, 837 F.3d 97, 101-02 (1st Cir. 2016).

6. Finally, as with the prior motion for fees (the "First Fee Motion"), the Court should look to the usual lodestar method at least as a check on the fees requested here. That is difficult without any detail as to what was billed with respect to this settlement, the prior settlement, and/or work wholly unrelated to claims against CCF, CCCB, SJHSRI, or RWH. Diocesan Defs.' SJHSRI Opp'n at 26, 29. Accepting that all 1,350 hours of post-filing attorney time could be attributed to the settlement with CCF and multiplying those hours by the \$375 investigatory rate approved by the Rhode Island Superior Court indicates a reasonable attorneys' fee of \$506,250.

7. Given that Plaintiffs' Counsel has also asked the Court to consider 1,120 of the 1,350 hours referenced in the CCF Fee Motion in connection with the First Fee Motion

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<sup>3</sup> See Pls.' Counsel's Mem. In Supp. Of Mot. For Award Of Att'ys' Fees In Connection With Settlement Between Pls. & Defs. CCF, SJHSRI, RWH & CCCB (hereinafter "CCF Fee Mem.") 7-8, ECF No. 78-1 (failing to identify amount of hours specific to litigation with CCF or procuring settlement with CCF and instead referring to total hours worked since this suit was filed).

<sup>4</sup> *Supra* note 3.

<sup>5</sup> CCF Fee Mem. at 1 (requesting \$1,049,850 fee award).

<sup>6</sup> See CCF Fee Mem. at 14 (suggesting that the Court consider that the class "fully benefited from Plaintiffs' Counsel's representation of the Receiver during the Investigative Phase" in setting a reasonable attorneys' fee).

however,<sup>7</sup> the Court should not lodestar crosscheck the CCF Fee Motion, without reference to the earlier fee request. The First Fee Motion seeks \$2,049,013.80.<sup>8</sup> Taken together, the CCF Fee Motion and the First Fee Motion request \$3,098,863.80 (2,049,013.80 (First Fee Motion) + 1,049,850 (CCF Fee Motion) = 3,098,863.80). This is more than 6 times the reasonable fee indicated by the lodestar for the total hours worked ( $3,098,863.80/506,250 = 6.121$ ). Put another way, the CCF Fee Motion and the First Fee Motion seek combined compensation at a rate of \$2,295.45 per hour for post suit-filing work ( $3,098,863.80/1,350 = 2,295.454$ ). The CCF Fee Motion does not explain why such a significant divergence between the lodestar and the percentage of fund method is appropriate.

8. Trying to benchmark the requested fees against any kind of lodestar calculation is also fairly confusing and unclear at this point because, as this second motion for fees makes plain, the Court does not have the whole picture as to what Plaintiffs' total recovery and requested fees might be. Any decision on fees, therefore, is premature.

### CONCLUSION

For the foregoing reasons, the Court should deny the CCF Settlement Motion and the CCF Fee Motion.

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<sup>7</sup> See CCF Fee Mem. at 7-8 (“Since filing suit, Plaintiffs’ Counsel have devoted a minimum of 1,350 hours of attorney time to the representation of Plaintiffs in this and related matters.<sup>□</sup> This includes the 1,120 hours of attorney time between filing suit and November 21, 2018 [the date that the First Fee Motion was filed]”); *see also* Pls.’ Counsel’s Mem. In Supp. Of Mot. For Award Of Att’ys’ Fees In Connection With Settlement Between Pls. & Defs. SJHSRI, RWH, & CCCB (hereinafter “First Fee Mem.”) 12, ECF No. 64-1 (“Since this action was commenced on June 18, 2018, attorneys at WSL have devoted a minimum of 1,120 hours of time in prosecuting the claims of the Receiver and the Plaintiffs”).

<sup>8</sup> First Fee Mem. at 18 & n.44 (requesting \$2,049,013.80 initial fee award).

Respectfully Submitted,

ROMAN CATHOLIC BISHOP OF  
PROVIDENCE, A CORPORATION SOLE,  
DIOCESAN ADMINISTRATION  
CORPORATION and DIOCESAN SERVICE  
CORPORATION

By Their Attorneys,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of January 2019, the foregoing document has been filed electronically through the Rhode Island ECF system, is available for viewing and downloading, and will be sent electronically to the counsel who are registered participants identified on the Notice of Electronic Filing.

/s/ Howard Merten

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