

**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 REQUESTED¹

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

DATED: December 21, 2018

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

By Their Attorneys,

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

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

PRELIMINARY STATEMENT

As a threshold matter, the Diocesan Defendants have no objection to millions of dollars in liquid assets from SJHSRI, RWH, and CCCB (collectively, the “Settling Defendants”) pouring into the SJHSRI Retirement Plan (“the Plan”). In fact, substantial portions of these funds appear to have been already destined for the Plan long before this litigation or even the state court receivership action commenced in part to facilitate that transfer. *Infra* at Part II.C. Nothing appears to stand in the way of the Settling Defendants transferring such unrestricted monies to the Plan, except the overreaching nature of the settlement terms proffered to this Court. Those terms present a panoply of legal obstacles to the approval of Movants’ proposed settlement, which extend far beyond the transfer of these assets. As the Prospect Entities² have thoroughly described in their opposition, many of these legal obstacles concern the applicability of the Employee Retirement Income Security Act (“ERISA”), the validity of Plaintiff Del Sesto’s (the “Receiver”) management of an ERISA plan, and the relevance of R.I. Gen. Laws § 23-17.14-35 to this Plan and the proposed settlement.

² “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.

These ERISA-related issues, standing alone, prevent this Court from approving the proffered settlement. Beyond those issues, there are a number of irregularities and/or deficiencies surrounding the Settlement and Fee Motions. On the present record, this Court should not approve the Movants' settlement agreement³ (the "Agreement") pursuant to § 23-17.14-35 or Plaintiffs' Counsel's companion motion for attorneys' fees for four reasons. *First*, ERISA preempts § 23-17.14-35 and precludes Movants' request for approval of the Agreement as a "good faith" settlement under § 23-17.14-35. *Second*, § 23-17.14-35 runs afoul of the Equal Protection and Due Process Clauses of the United States and Rhode Island Constitutions and also forecloses § 23-17.14-35 approval of the Agreement. *Third*, questionable terms in the Agreement and a lack of information concerning the context of settlement negotiations raises questions as to possible collusion that should be resolved before the Court can approve the Agreement as a "good faith" settlement under § 23-17.14-35. *Fourth*, the present record is inadequate for the Court to assess the reasonableness of the attorneys' fees requested.

For these reasons, the Court should decline to approve the Agreement and deny the request for attorneys' fees. The Diocesan Defendants encourage Movants to present a revised proposal to the Court shorn of these legal obstacles to allow for the immediate infusion of the Settling Defendants' liquid assets into the Plan.

JOINDER OF ARGUMENTS OF OTHER DEFENDANTS

The PBGC is a necessary and indispensable party. The Diocesan Defendants join generally in the Prospect Entities' argument concerning the Pension Benefit Guaranty Corporation's ("PBGC") status as a necessary and indispensable party to these proceedings.

³ The Settlement Agreement is attached as Exhibit A to the memorandum in support of Plaintiffs and Settling Defendants' joint motion for settlement class certification, appointment of class counsel, and preliminary settlement approval, ECF No. 63-2, and is hereinafter cited as the "Agreement".

Assuming the Court agrees that the PBGC is an indispensable party, the Court should order Plaintiffs to join the PBGC in these proceedings before considering the Settlement Motion or the Fee Motion.

ERISA Preemption Arguments. The Diocesan Defendants join generally in the Prospect Entities' federal preemption arguments filed in opposition to the Settlement Motion.

ARGUMENT

I. APPROVAL OF THE SETTLEMENT UNDER R.I. GEN. LAWS § 23-17.14-35 SHOULD BE DENIED

A. ERISA Preempts R.I. Gen. Laws § 23-17.14-35

The Diocesan Defendants agree with the Prospect Entities that ERISA preempts R.I. Gen. Laws § 23-17.14-35 and incorporate those arguments herein. Succinctly, ERISA preempts all state laws that “relate to” any employee benefit plan governed by ERISA. 29 U.S.C. § 1144(a); *see Zipperer v. Raytheon Co.*, 493 F.3d 50, 53 (1st Cir. 2007) (“ERISA preempts any and all State laws insofar as they may now or hereafter relate to any employee benefit plan” (internal quotation marks omitted)). Section 23-17.14-35 applies “solely and exclusively to judicially approved good-faith settlements of claims relating to the St. Joseph Health Services of Rhode Island retirement plan[.]” Plaintiffs’ allege that the Plan is currently an ERISA plan, and has been one since 2009.⁴ Am. Compl. (“FAC”), ECF No. 60, ¶ 68.

Under Plaintiffs’ own theory of the case, therefore, § 23-17.14-35 on its face is directed at an ERISA plan and seeks to control contribution and setoff without regard to ERISA. This is improper. ERISA preempts state laws purporting to interfere with this

⁴ The Diocesan Defendants agree that the Plan is indisputably an ERISA plan as of at least August 2017 for the reasons set forth in the Prospect Entities’ brief (*i.e.* the Plan cannot be a church plan because the Receiver is not controlled by, or associated with, a church). *See* 29 U.S.C. § 1002(33)(C)(iv). The Diocesan Defendants take no position at this time as to whether the Plan lost church plan status prior to its placement in receivership.

system. *See Anthony v. JetDirect Aviation, Inc.*, 725 F. Supp. 2d 249, 255-58 (D. Mass. 2010). It does so to ensure “a uniform regulatory regime over employee benefit plans.” *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004). Federal law, accordingly, controls the rights of contribution and setoff in ERISA cases.⁵ *See In re Masters Mates & Pilots Pension Plan & IRAP Litig.*, 957 F.2d 1020, 1026-1032 (2d Cir. 1992) (surveying contribution and setoff rights under ERISA and noting that the district court should have considered “relative fault” before approving a contribution bar in an ERISA class action). Because § 23-17.14-35 interferes with this federal regulatory scheme, it is preempted by ERISA and this Court should not approve the Agreement as a “good-faith” settlement under the state statute.

B. Alternatively, Section 23-17.14-35 Violates The Equal Protection And Due Process Clauses Of The United States And Rhode Island Constitutions

1. Equal Protection

Alternatively, the Court should deny the Agreement approval under § 23-17.14-35 because the state statute violates the Equal Protection Clauses of the United States and Rhode Island Constitutions. Section 23-17.14-35 eliminates joint tortfeasors’ rights to setoff based on proportionate liability and non-settling defendants’ rights to contribution from settling defendants. Significantly, the statute states that its “provisions apply *solely and exclusively* to judicially approved good-faith settlements of claims *relating to the St. Joseph Health Services of Rhode Island retirement plan*[.]” *Id.* (emphasis added). When a law neither infringes on fundamental rights nor creates a suspect class, courts apply rational basis review, which requires

⁵ How contribution operates under federal law is a matter of some dispute. The United States Courts of Appeals are split as to whether there is a right to contribution under ERISA. *See Anthony*, 725 F. Supp. 2d at 255 (recognizing split in authority). There is also disagreement among district courts within the First Circuit (as the First Circuit has yet to opine). *Compare id.* (concluding that there is no right to contribution under ERISA) with *Duncan v. Santaniello*, 900 F. Supp. 547, 551 (D. Mass. 1995) (reaching the opposite conclusion). At this point, the Court need only determine that federal law preempts § 23-17.14-35 and that state law does not apply here.

that statutes bear a rational relationship to a legitimate governmental interest. *Boucher*, 459 A.2d at 92; *R.I. Depositors Econ. Prot. Corp. v. Brown*, 659 A.2d 95, 100 (R.I. 1995). That level of review, though deferential, “does not equal abdication.” *Westenfelder v. Ferguson*, 998 F. Supp. 146, 156 (D.R.I. 1998).

Section 23-17.14-35 does not serve any legitimate governmental interest, as its sole purpose is to aid a single private pension plan, in a single private lawsuit, while infringing on the rights of the non-settling defendants in that suit. There is, therefore, “no satisfactory reason for the separate and unequal treatment that [the statute] imposes on” defendants in this lawsuit compared with all other defendants in all other suits in Rhode Island. *Boucher*, 459 A.2d at 93. It is unconstitutional. *Id.* at 94; *see also City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440-441 (1985).

As the Rhode Island Supreme Court has held, when a “statute constitutes special class legislation enacted solely for the benefit of specially defined” individuals, it violates the Equal Protection Clause. *Id.* at 93-94. In *Boucher*, the Court struck down a law that gave medical doctors and hospitals special treatment in medical malpractice suits that were unavailable to other tortfeasors. *Id.* The Court held that “these class distinctions constitute a patent violation of one of the most fundamental tenets of equal protection, namely, that persons similarly situated shall be treated in a like manner.” *Id.* at 93. Here, the statute is even more egregious than the law that was struck down in *Boucher*, because it seeks to benefit a single private pension plan, as opposed to an entire class of litigants (medical malpractice plaintiffs). *Id.* at 93-94. This type of special legislation, which favors a single private entity (and its members) over all other similar entities (and individuals), is precisely what the Equal Protection Clause was designed to prevent. *Id.*; *Osborn v. State*, No. NC84-0101, 1992 WL 813531, at *7

(R.I. Super. Ct. Mar. 23, 1992) (holding that “a special act favoring individual citizens denies others similarly situated equal protection of the laws”); *Lewis v. Webb*, 3 Me. 326, 336 (1825) (“On principle then it can never be within the bounds of legitimate legislation, to enact a special law, or pass a resolve dispensing with the general law, in a particular case, and granting a privilege and indulgence to one man, by way of exemption from the operation and effect of such general law, leaving all other persons under its operation. Such a law is neither just or reasonable in its consequences.”).

The only purpose cited by Movants for enacting § 23-17.14-35 is facilitating settlements. Movants’ Mem. In Supp. Of J. Mot. For Settlement Class Certification, Appointment Of Class Counsel, & Preliminary Settlement Approval, ECF No. 63-1, at 24 (“Settlement Mem.”). However, the statute does not provide a rational means of achieving this end. Instead, the statute serves to arbitrarily grant privileges to one—and only one—private pension plan to the detriment of the non-settling defendants in this particular lawsuit. R.I. Gen. Laws § 23-17.14-35. Courts have struck down statutes under rational basis review when the challenged law imposes unjustifiable burdens on an arbitrarily selected class of persons. The Rhode Island Supreme Court has held that this type of statute will not withstand rational basis review. *Boucher*, 459 A.2d at 94 (holding that legislation which “confers salutary privileges while imposing unjustifiable disabilities upon arbitrarily selected classes of persons [was] in violation of equal-protection standards”).

Similarly, in *Westenfelder*, this Court held that a state law that reduced welfare benefits by 30% to otherwise eligible residents who had lived in the state for fewer than twelve consecutive months violated the Equal Protection Clause under both heightened and rational basis review. 998 F. Supp. at 146, 149, 156-57. The State argued that it had legitimate public

purposes—namely, encouraging welfare recipients to obtain work and reduce their dependence on governmental aid and protecting the integrity of its welfare program by reducing overall expenditures. *Id.* at 155-156. The Court agreed that those purposes may be legitimate, but held the statute was still unconstitutional even under rational basis review because the durational residency requirement did not bear a rational relationship to the espoused purposes. *Id.* at 156.

This analysis applies here. “Encouraging settlement” cannot justify this statute under rational basis review. That justification fails to explain why § 23-17.14-35 is limited only to this particular private pension plan, this particular group of private plaintiffs and this particular group of defendants. It cannot because the articulated purpose is not rationally related to the limitation of the law to this particular case and these particular defendants alone.⁶

Put bluntly, the prospect of settlement exists in every lawsuit filed in every state and federal proceeding. It should not be left to the legislature to interject itself on a case-by-case basis, to change generally applicable law to aid one side or another in one particular dispute. This kind of special legislation cannot withstand judicial scrutiny (even under rational basis review) under the federal and Rhode Island constitutions. *See McGrath v. Distefano*, C.A. Nos. 87-4050, 87-4617, 1992 WL 813621, at *1-2 (R.I. Super. Ct. Oct. 1, 1992) (striking down special statute as violating equal protection in derogation of both federal and state constitutions

⁶ In *Cleburne Living Center*, the United States Supreme Court struck down—under rational basis review—a city requirement for a special use permit for a facility for those with mental disabilities when the city did not require a special permit for apartment houses, multiple dwellings, boarding and lodging houses, dormitories, hospitals, sanitariums, nursing homes, and other similarly situated uses as violating equal protection. 473 U.S. at 448. Consequently, the question under equal protection analysis is whether the distinction drawn is rationally related to a legitimate public purpose; not whether any public purpose could relate to any theoretical law or regulation in the area. *See id.* In short, the question in *Cleburne Living Center* was not whether the city had the power to require a special permit for a facility for those with mental disabilities, but whether it could require a special permit for that use while not requiring it for similarly situated uses. *See id.* Here too, the question is not whether encouraging settlements in the abstract is a legitimate public purpose, but whether the law’s application only to this single private pension plan and the plaintiffs and defendants in this case (and only this case) is rationally justified in light of that goal and the statute’s exclusion of other alleged tort victims and defendants in similar situations.

where the law granted plaintiffs—and only plaintiffs (members of an election board whose salaries were reduced when the board’s size was increased from four to seven by the General Assembly)—with the statutory right to bring suit against the government for breach of contract with damages up to \$100,000 for their reduced compensation). In *McGrath*, the government argued, and the Court held, that there was no rational basis to distinguish between the plaintiffs who were essentially seeking damages from the government for an alleged breach of contract, and other persons who may have been similarly harmed. *Id.* at *3. As in *McGrath*, there is no rational basis to distinguish between the plaintiffs in this suit and other plaintiffs in identical causes of action or alleged victims of underfunded private pension plans in Rhode Island. This law is simply a legislative ad hoc dispensation from general contribution rules applicable to all similar and even identical claims. *Id.* It cannot be rationally justified to apply to only this case and for these pensioners.⁷

Moreover, none of the cases cited by Movants are sufficiently analogous to the case at hand to support a finding of constitutionality. The Courts in both *Brown* and *Rhode Island Economic Development Corp. v Wells Fargo Securities LLC*, No. PB 12-5616, 2014 WL 3709683, (R.I. Super. Ct. July 22, 2014), emphasized that the legitimate governmental interest in encouraging settlements in those cases existed because settlement “would ultimately relieve . . . the taxpayers’ cost of the bailout.” *Wells Fargo*, 2014 WL 3709683, at *6 (quoting *Brown*, 659 A.2d at 104). Where the government will be on the hook for amounts not recovered through litigation, the public interest can clearly be identified. *See id.* However, where there is no government backstop and the legislature arbitrarily chooses to grant special rights to one private

⁷ This ad hoc treatment directed at a single private pension plan also flies in the face of one of ERISA’s primary purposes: “a uniform regulatory regime over employee benefit plans.” *Davila*, 542 U.S. at 208.

pension plan, to the exclusion of all others plans, the interests sought to be achieved can hardly be labeled as legitimately governmental. *See Boucher*, 459 A.2d at 93-94.

Additionally, Movants' citation of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and related cases provides little authority for this case. Settlement Mem. at 24-25. The section of CERCLA that eliminates liability for contribution applies to an entire class of litigants in actions brought by public entities, namely any "person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement" 42 U.S.C. § 9613(f)(2). Thus, there is a clear governmental interest achieved by the statute's application to a reasonably defined class. *Id.* ⁸

Movants have only cited cases where a statute affected a full class of persons equally or where the government had a legitimate interest in protecting its assets. Settlement Mem. at 24-26. Movants cite to no case where an individual entity was granted special rights for a single lawsuit in which the government has no monetary interest. That is because legislation of this type is unconstitutional. *Boucher*, 459 A.2d at 94; *Osborn*, 1992 WL 813531, at *7.

2. Due Process

Rhode Island Gen. Laws § 23-17.14-35 also violates the Due Process Clauses of the United States and Rhode Island Constitutions. Courts have held that "[t]o comport with the requirements of due process, a statute may not retroactively abrogate a property interest unless that action is, at a minimum, justified by a legitimate legislative purpose furthered by rational means." *Brown*, 659 A.2d at 102 (citing *Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467

⁸ The last two cases cited by Movants also provide no support for their position. Settlement Mem. at 26 & n.57. The statute in *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1317 (2016), was not challenged on Equal Protection grounds, and the Court's decision was based instead on a Separation of Powers analysis. Moreover, the statute at issue did not apply to a single case as Movants assert. *Id.* ("The statute, we point out, is not fairly portrayed as a 'one-case-only regime.' . . . Rather, it covers a category of postjudgment execution claims filed by numerous plaintiffs . . . in multiple civil actions."). *Patchak v. Zinke*, 138 S. Ct. 897, 902, 911 (2018), was also decided on Separation of Powers grounds by a mere plurality of the Court.

U.S. 717, 730 (1984)). If a legitimate public purpose exists, courts apply a balancing test to determine whether that purpose, “on balance, outweighs the unfairness of retroactivity.” *Id.*

In applying this test, “the two major factors to be weighed in determining the validity of a retroactive statute are the strength of the public interest it serves and the unfairness created by its retroactive operation[.]” *Lawrence v. Anheuser-Busch, Inc.*, 523 A.2d 864, 870 (R.I. 1987) (quoting Charles B. Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harv. L. Rev. 692 (1960)). Additionally, courts will examine “whether retroactive application of the statute leads to a ‘particularly harsh and oppressive result.’”⁹ *O’Reilly v. Town of Glocester*, 621 A.2d 697, 706 (R.I. 1993) (quoting *R.A. Gray*, 467 U.S. at 733).

Section 23-17.14-35 is unconstitutional because it serves no public purpose and leads to the harsh and unfair retroactive elimination of vested property rights of non-settling defendants. As set forth above with respect to the Equal Protection analysis, this statute serves no legitimate governmental purpose. Encouraging settlement in a single lawsuit may benefit private plaintiffs in that suit, but that benefit cannot rationally be described as serving any public interest. *See Lewis*, 3 Me. at 336. Instead, the passage of this statute merely constitutes a decision by the legislature to grant special rights to certain parties—at the expense of the others—in a lawsuit between private litigants. This is not a legitimate governmental purpose. *O’Reilly*, 621 A.2d at 706-07; *see also Matthies v. Positive Safety Mfg. Co.*, 628 N.W.2d 842, 856 (Wis. 2001) (holding that the “public purpose supporting retroactivity under a due process

⁹ Although courts have also examined as an additional factor the reasonable reliance of a party on the state of the law existing prior to passage of the retroactive statute, this factor is not the sine qua non of a finding of unconstitutionality. *See R.A. Gray*, 467 U.S. at 733; *see also O’Reilly v. Town of Glocester*, 621 A.2d 697, 706 (R.I. 1993) (stating that the U.S. Supreme Court in *R.A. Gray* did not “inquire into the reliance interests of the parties”).

analysis must . . . be substantial, valid and intended to remedy a general economic or social issue”).

Furthermore, in evaluating a purported public interest, courts “must take into consideration the extent to which this interest ‘can be implemented only through legislation which operates to alter the legal incidents of preexisting rights.’” *Lawrence*, 523 A.2d at 871 (quoting Hochman, 73 Harv. L. Rev. at 701). To the extent Movants claim that the statute’s purpose is to encourage settlements, this inquiry reveals that the law was focused only on private interests. The General Assembly certainly could have passed a prospective statute that applied to all cases going forward. As such, the purported public interest could have been achieved without retroactive application or altering particular defendants’ preexisting rights. However, the retroactivity of § 23-17.14-35 exposes the truth that its purpose is to bolster the private interests of plaintiffs in one case, not to encourage settlement for any public purpose.

Moreover, in the only two cases addressing the constitutionality of similar Rhode Island statutes, with respect to due process, the sole governmental interest that justified those statutes does not exist here. *Brown*, 659 A.2d at 104; *Wells Fargo*, 2014 WL 3709683, at *6. In both cases, the courts relied solely on the “great public interest in minimizing the taxpayers’ liability for the” cost of government bailouts. *Brown*, 659 A.2d at 104; *Wells Fargo*, 2014 WL 3709683, at *6. Here, no such public interest exists and, as such, the unconstitutionality of § 23-17.14-35 is patent. See *O’Reilly*, 621 A.2d at 706-07 (holding that where “the General Assembly enacted this legislation not with the intention of forwarding the broad public purpose of shielding itself from damage claims on a statewide basis but for the singular purpose of eliminating the rights of these plaintiffs We do not believe this is a rational legislative purpose” and that “this conclusion is sufficient to find the retroactivity provision of this statute unconstitutional”).

Furthermore, § 23-17.14-35 also fails the test for constitutionality because of the unfair, “harsh and oppressive” result that it allows. *R.A. Gray*, 467 U.S. at 733. With no right to contribution or setoff based on proportionate liability, non-settling defendants may be punished merely for defending themselves through the full litigation process. Settling defendants will be freed from their actual liability and non-settling defendants, who in the end may be found minimally liable, could be inequitably required to pay for harm that they did not cause. This result compels a finding of unconstitutionality. *O’Reilly*, 621 A.2d at 706-07; *See Matthies*, 628 N.W.2d at 858-60.

**C. The Court Should Decline To Approve The Settlement
Under R.I. Gen. Laws § 23-17.14-35 Because It Is Improperly Collusive**

Even assuming that ERISA and the United States and Rhode Island Constitutions do not invalidate R.I. Gen. Laws § 23-17.14-35, the Court should decline to approve the compromise here as a “good faith settlement” because the Agreement is facially and contextually collusive. *First*, the Agreement bears multiple indicia of collusion. The problems with the Agreement are obvious when compared with the deal that Plaintiffs struck with Chartercare Foundation (“CCF”). *Second*, the Agreement appears contextually collusive in light of its timing, Plaintiffs’ Counsel’s fee arrangement, the Settling Defendants’ wind-down status, and the reality that a substantial (albeit presently undefined amount) of the Settling Defendants’ assets appear to have been intended to pour into the Plan wholly apart from any litigation. As such, the Court should deny § 23-17.14-35 approval to the Agreement or, in the alternative, require supplemental information and/or modification of the proposed settlement from the Movants, or allow the non-settling defendants to take discovery concerning the negotiation of the Agreement.

1. Legal Standard

Section 23-17.14-35's contribution bar is restricted to judicially approved "good faith settlements of claims" relating to the Plan. A "good faith settlement is one that does not exhibit collusion, fraud, dishonesty or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s)." § 23-17.14-35(3). A "good faith" inquiry is crucial because § 23-17.14-35 provides for judgment setoff on a *pro tanto* basis, enhancing the potential for collusion. *See In re Masters Mates*, 957 F.2d at 1029 ("Moreover, the *pro tanto* method leaves 'the field of settlement very much open to collusive arrangement between a plaintiff and a favored joint tortfeasor.'" (citation omitted)). The prospect for collusion, moreover, is heightened in the class action context. *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003) ("We have characterized these inherent dangers of class settlements as encompassing the possibility that the agreement . . . is the product of fraud or overreaching by, or collusion between, the negotiating parties" (citation and internal quotation marks omitted)); *Weinberger v. Great N. Nekoosa Corp.*, 925 F.2d 518, 524 (1st Cir. 1991) ("It is because of the potential risk that plaintiffs' attorneys and defendants will team up to further parochial interests at the expense of the class that the Rule 23(e) protocol employed by several circuits explicitly includes scrutinizing settlements for indicia of collusion[.]").

"Collusion may not always be evident on the face of a settlement[.]" *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). "Courts therefore must be particularly vigilant not only for explicit collusion, but also for more subtle signs that class counsel have allowed pursuit of their own self-interests . . . to infect the negotiations." *Id.* "When an alliance harmful to the nonsettling party is the essential object" of a settlement

agreement, that settlement “is not [made] in good faith.” *Dacotah Mktg. & Research, LLC v. Versatility, Inc.*, 21 F.Supp.2d 570, 579 (E.D. Va. 1998).

2. *The Agreement Is Collusive On Its Face*

Although collusion “may not always be evident on the face of a [typical] settlement,” the Agreement is far from typical. Rather, the Agreement contains questionable and unnecessary terms that make no sense and evidence collusion.

i. Unusually, The Settling Defendants Admit Liability On Plaintiffs’ Claims And “Agree” That Damages Are At Least \$125 Million

Admissions of liability and damages are “contrary to the basic principles which underlie settlements.” *See City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 459 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2003); *see also In re Cabletron Sys., Inc. Secs. Litig.*, 239 F.R.D. 30, 34 n.4 (D.N.H. 2006) (Smith, J., by designation) (“Defendants, of course, support the settlement but do not concede liability.”). Rather, “[o]ne of the underlying premises on which [settlement] negotiations are based . . . is that defendants never have to concede their guilt.” *Grinnell Corp.*, 495 F.2d at 459. Instead, “[t]hey can protest their innocence of any wrongdoing and assert that they are settling for purely pragmatic business reasons.” *Id.* The Agreement’s concession of liability and damages bucks these first principles of settlement, Agreement ¶ 28, is entirely unnecessary to effect the transfer of funds and intangible assets from the Settling Defendants to Plaintiffs, and suggests that the Agreement was less than arms-length. *See Grinnell Corp.*, 495 F.2d at 459.

ii. Plaintiffs’ And The Settling Defendants “Agree” That The Latter’s Proportionate Fault “Is Small Compared To The Proportionate Fault Of The Other Defendants” Despite Plaintiffs’ Complaint Placing The Settling Defendants At The Center Of Nearly Every Alleged Nefarious Act

The Movants’ purported agreement that the Settling Defendants’ proportionate fault is small compared to other defendants is absurd and improperly aimed at gaining a tactical advantage in these proceedings. Agreement ¶ 32. It is clear from a review of Plaintiffs’ own allegations that the Settling Defendants were at the very center of all of the supposed wrongful conduct Plaintiffs have charged. Plaintiffs allege:

- SJHSRI was the class’s employer, FAC ¶ 55(a), the Plan’s sponsor since 1995, *id.* ¶¶ 214-217, and responsible for administering the Plan’s investments since at least 2009, *id.* ¶ 75;
- The Settling Defendants rejected an offer from LHP Hospital Group, Inc. that would have fully funded the Plan, *id.* ¶¶ 132-133;
- The Settling Defendants made the bulk of the purported false statements to Plan Participants concerning their retirement benefits, *id.* ¶¶ 256-305;
- The Settling Defendants had been considering terminating the Plan for years, *id.* ¶¶ 362-369; and
- The Settling Defendants organized an elaborate conspiracy to abandon the Plan for the sake of retaining “local control” over the hospitals¹⁰ and to trick state regulators into thinking that the Settling Defendants would make future contributions to the Plan when they never intended to do so.¹¹

The agreement by Plaintiffs—who made these very serious and voluminous allegations—and Settling Defendants—the target of these allegations—that the Settling Defendants’ purported proportionate fault is minimal is facially ridiculous. Taking the complaint’s allegations as true and the Plaintiffs’ claims as viable (which they are not), it is hard to see how the Settling Defendants are anything other than the lead conspirators and wrongdoers in Plaintiffs’ tale.

¹⁰ FAC ¶¶ 117-118, 130-134 (discussing motives of Settling Defendants); *id.* ¶ 55 (summarizing conspiracy).

¹¹ FAC ¶¶ 341-361.

They were the Plan's sponsor and responsible for administering the Plan during the very time that the complaint alleges that the Plan became underfunded. FAC ¶¶ 55, 216-217, 235-247.

Second, this "agreement" is clearly intended as a hedge in the event that the Court ultimately considers proportional fault and limits any liability to a non-settling defendant's responsibility to its proportionate share of liability to the plaintiff. *See Masters Mates*, 957 F.2d at 1032 (noting that the district court should have considered "relative fault" before approving a contribution bar in an ERISA class action). This provision mitigates against a finding that the Agreement is a "good faith" settlement.

iii. The Settling Defendants Agree To Not Object To Plaintiffs' Counsel's Request For An Award Of Attorney's Fees

Courts treat clear sailing provisions on attorneys' fees—like the one at paragraph 36 of the Agreement—with suspicion. *Weinberger*, 925 F.2d at 520. "The absence of adversariness makes heightened judicial oversight of this type of agreement highly desirable." *Id.* at 525; *Trombley v. Bank of Am. Corp.*, No. 08-cv-456-JD, 2012 WL 1599041, at *3 (D.R.I. May 4, 2012) ("The settlement terms, including the 'clear sailing' provision for fees, are warning signs that require careful scrutiny of the settlement agreement."). "The existence of [clear-sailing] clauses thus illustrates the danger of collusion in class actions between class counsel and the defendant, to the detriment of the class members." *Redman v. RadioShack Corp.*, 768 F.3d 622, 637 (7th Cir. 2014); *accord Bluetooth*, 654 F.3d at 947.

The clear-sailing agreement is also detrimental to the non-settling defendants because the complaint seeks orders compelling the full funding of the Plan. That is, as more settlement funds flow to Plaintiffs' Counsel, fewer go to improve the funding status of the Plan, meaning greater outlays would be required of the non-settling defendants in the event a full funding order issues or, alternatively and more likely, the Plan Participants receive less of the

recovered funds. *See, e.g.*, FAC, Count III (Wherefore Clause).

iv. Plaintiffs Agree To Release Claims Against Persons That Plaintiffs Strongly Imply Participated In The Settling Defendants’ Misconduct, As Well As Some—But Not All—Of The Settling Defendants’ Officers And Directors

Where concerns about the solvency of a settling party have driven the settlement, courts scrutinize the release to ensure that it does not unfairly release other potentially responsible parties. *In re Telectronics Pacing Sys., Inc.*, 221 F.3d 870, 873-74 (6th Cir. 2000) (“[Settling defendants’] corporate parents were released from liability without close scrutiny by the parties as to whether they might be liable.”). Here, Plaintiffs have made various representations as to the solvency (or lack thereof) of the Settling Defendants and therefore enhanced scrutiny of the release is warranted.¹²

The complaint strongly implies that parties being released assisted the Settling Defendants’ alleged conspiracy. For example: “The individuals who made these false and misleading misrepresentations and omissions [to state regulators] were most immediately the same set of lawyers who acted on behalf of all of Defendants SJHSRI, RWH, and CC Foundation in the [2015] *Cy Pres* proceedings, which also indicated CCCB’s total control over CC Foundation.”¹³ FAC ¶ 402; *see also id.* ¶ 314. Plaintiffs also claim that agents, directors and officers of the Settling Defendants are implicated in (or at the very heart of) the alleged conspiracy.¹⁴ FAC ¶¶ 94-113, 186-199, 314-318. A release to these non-party lawyers, officers,

¹² Settlement Mem. at 22 (“The Settling Defendants admit liability on at least some of the claims asserted against them . . . and that Plaintiffs’ damages are at least \$125,000,000[.]”); *id.* at 40 (“Settling Defendants’ admit . . . that Plaintiffs’ damages greatly exceed Settling Defendants’ collective assets[.]”).

¹³ By way of comparison, Plaintiffs and CCF specifically exclude Adler Pollock & Sheehan, P.C. (“APS”) from their release. Ex. 1 (CCF Settlement), Ex. 8 (release).

¹⁴ Movants excluded Rev. Timothy Reilly, who is a member of the Settling Defendants’ board of directors from the scope of the release. Father Reilly did not accept compensation for his board service and is immunized from liability pursuant to R.I. Gen. Laws § 7-6-9. Movants suggest that they excluded Father Reilly from the release to avoid any argument that Plaintiffs had released their claims against the Diocesan Defendants. Settlement Mem. at 23 n.55. This argument is of little merit, given that this goal could have been accomplished by explicitly excluding RCB, DAC, and DSC from the releases (which the releases already do). *See* Agreement, Exs. 9-11.

and directors is harmful to the non-settling defendants (to say nothing of the Plan Participants), as it would deprive the non-settling defendants of their right to seek contribution from these persons. Yet Movants provide no assessment as to why they appear to be releasing claims as to these non-parties. *See e.g.*, Agreement, Ex. 11 at 2 (“As used herein, ‘SJHSRI’ or ‘Releasee’ refers to St. Joseph Health Services of Rhode Island, Inc., and those of its officers, directors, attorneys, and agents who have only served in such capacities since June 20, 2014[.]”).

The Agreement should not be approved.

v. The Lack Of “Good Faith” In The Agreement Is Glaring When Compared To The Plaintiffs’ Proposed Compromise With CCF

The questionable nature of the Agreement is even starker when compared to the compromise that Plaintiffs reached with CCF (“CCF Settlement”). Ex. 1 (Settlement Agreement Between The Receiver And CCF).¹⁵ The CCF Settlement contains no admission of liability or concession on damages, no tactical statements concerning proportionate fault, and no consent to judicial liquidation by the Receiver, and more restrictive release language. *See generally* Ex. 1 (CCF Settlement). Rather, the CCF Settlement ensures CCF’s continued survival, which the Agreement had jeopardized by purporting to transfer CCCB’s membership interest in CCF to the Receiver. *See* Agreement ¶ 13.¹⁶

3. The Settlement Is Contextually Collusive

Courts “must be particularly vigilant not only for explicit collusion, but also for more subtle signs that class counsel have allowed pursuit of their own self-interests . . . to infect

¹⁵ The CCF Settlement is also attached as Exhibit A to the Receiver’s petition to the Rhode Island Superior Court for approval of his settlement with CCF, which can be found on the Receiver’s website at: <https://www.pierceatwood.com/sites/default/files/Petition%20for%20Settlement%20Approval%20%28CCF%20%26%20RIF%29%2011.28.18.pdf>.

¹⁶ The Diocesan Defendants observe that the CCF Settlement contains a clear-sailing provision. *See* Ex. 1 (CCF Settlement) ¶ VI.9. The lack of other facially and contextually collusive features to the CCF Settlement, however, suggests a greater probability of an arms-length transaction, which simply cannot be presumed in the Agreement’s case.

the [settlement] negotiations.” *See Bluetooth*, 654 F.3d at 947. Here, the context around the Agreement (and the lack of information concerning that context) raises unanswered questions as to improper collusion by Movants:

- The absence in the record of information concerning Movants’ attempts to reach a pre-litigation settlement. *Infra* at II.A.
- The absence in the record of information concerning efforts to procure the Agreement apart from work that has already been paid for. *Infra* at II.B.
- The fact that a significant (albeit presently undefined) portion of the initial lump sum payment component of the settlement appears as if it would have poured into the Plan without any litigation at all. *Infra* at Part II.C.

The lack of information concerning these three issues suggests the possibility for collusion akin to that raised by clear-sailing provisions. *Supra* at Part I.C.2.iii. As more settlement funds go to places other than the Plan, they impact not only the class, but also the non-settling defendants (by increasing the amount that they would have to pay in the event a full funding order issues against any of them).

The conduct and logistics of settlement negotiations are relevant to whether a settlement is fair and in good faith. *In re Gen. Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1124 (7th Cir. 1979) (reversing approval of class action settlement and observing: “We think that the conduct of the negotiations was relevant to the fairness of the settlement and that the trial court’s refusal to permit discovery or examination of the negotiations constituted an abuse of discretion”). For example, in *Noyes v. Raymond*, 548 N.E.2d 196, 198 (Mass. App. Ct. 1990), a case cited by Movants, the court received specific evidence concerning the content and conduct of settlement negotiations before holding a settlement in good faith. *Id.* (“[B]efore making the \$10,000 offer on [settling defendant’s] behalf [which plaintiff accepted], Liberty Mutual made other offers to [plaintiff] which were lower and were rejected[.]”). As explained

infra at Part II.A, evidence of such a “back and forth” is not present here. In light of the lack of information concerning pre- and post-lawsuit efforts to procure the Agreement and the details of which the Settling Defendants’ liquid assets were already earmarked for the Plan, Movants have not provided a sufficient record to permit § 23-17.14-35 approval. *See Infra* Part II.A-C.

4. *Movants’ Reliance On The Superior Court’s Decision And Factors Concerning The Purported Fairness Of The Settlement To The Class Miss The Mark*

Movants’ arguments concerning the “good faith” of the Agreement do not change the analysis. First, Movants’ reliance on the Rhode Island Superior Court’s decision approving the settlement is misplaced. The Superior Court, at the request of Plaintiffs’ Counsel, limited its analysis to whether the Agreement was “in the ‘best interests’ of the Plan’s estate.”¹⁷ *See St. Joseph Health Servs. of R.I., Inc., v. St. Josephs Health Servs. of R.I. Ret. Plan*, No. PC-2017-3856, 2018 WL 5792151, at *2 (R.I. Super. Ct. Oct. 29, 2018). The Superior Court, instead, deferred § 23-17.14-35 review to this Court and did not address whether the Agreement is collusive to the non-settling defendants.¹⁸ *Id.* at *8 n.13. As such, the fact that “the Receiver is a judicially appointed officer of the Rhode Island Superior Court, charged with maximizing the potential recovery for the Plan,” Settlement Mem. at 30, hardly precludes the conclusion that the Agreement might benefit the Plan, but still be improperly harmful and collusive to third parties like the non-settling defendants. *See Masters Mates*, 957 F.2d at 1026 (“Moreover, if third parties complain to a judge that a decree will be inequitable because it will harm them unjustly, he cannot just brush their complaints aside.” (internal quotation marks omitted)).

¹⁷ Given that the Plan is presently an ERISA plan, it is unclear if the Superior Court had the jurisdiction to make this determination or to ratify the Receiver’s determination.

¹⁸ Rather, the Superior Court held that the Prospect Entities and CCF had no standing in the receivership proceedings to argue that the Agreement was collusive or harmful to them. *See St. Joseph Health*, 2018 WL 5792151, at *8-10.

Second, Movants raise concerns relevant to the fairness of the Agreement to the class, such as: the risk that Plaintiffs may not prevail against the Settling Defendants; the precarious financial position of the Settling Defendants; the potential for litigation expenses to absorb the Settling Defendants' assets; the complexity of the case; and the possibility that Plaintiffs may not recover against other defendants. Settlement Mem. at 30-32. All of these factors may very well weigh in favor of approving the Agreement under Fed. R. Civ. P. 23(e), but they do not dictate that the Court should also deem the Agreement a "good faith" settlement under § 23-17.14-35, nor do they change the questionable terms and conduct flagged here.¹⁹ *Gerber v. MTC Elec. Techs. Co.*, 329 F.3d 297, 302 (2d Cir. 2003) ("This Court has also observed that where the rights of one who is not a party to a settlement are at stake, the fairness of the settlement to the settling parties is not enough to earn the judicial stamp of approval." (internal quotation marks omitted)). Movants, for example, could have preserved the substance of the Agreement, without including the improper collusive terms discussed *supra* at Part I.C.2. They could have preserved the substance of the Agreement (indeed, potentially enhanced it for the class) had they tried to negotiate a settlement with dissolving corporations willing to concede liability and transfer virtually all of their assets to the Receiver prior to filing this lawsuit. *Infra* at Part II.A. But Movants did not. Instead, they struck a deal that raises substantial concerns as to facial and contextual collusion. This Court, therefore, should decline to approve the Agreement as a "good faith settlement" under § 23-17.14-35.

¹⁹ Movants admit as much, given that they argue that the Agreement would pass muster under Rule 23(e), even if it does not survive § 23-17.14-35 scrutiny. Settlement Mem. at 27.

5. *The Court Should Permit The Non-Settling Defendants To Conduct Discovery Into The Conduct Of Movants' Settlement Negotiations*

In light of the terms of the Agreement and the circumstances surrounding it, there are substantial reasons to deny the settlement approval under § 23-17.14-35. To the extent that the Court desires further information, it should allow the non-settling defendants to conduct discovery concerning Movants' settlement negotiations. *See Engine Interchange Litig.*, 594 F.2d at 1124 (“We think that the conduct of the negotiations was relevant to the fairness of the settlement and that the trial court’s refusal to permit discovery or examination of the negotiations constituted an abuse of discretion.”). The Court should also disregard any suggestion from Movants that such discovery is improper or against public policy concerning settlements. “To the extent such inquiry discourages settlements, it should only discourage those negotiated in circumstances so irregular as to cast substantial doubt on their fairness.” *Id.* at 1124 n.20 (reversing order approving settlement, in part due to trial court’s denial of discovery concerning conduct of settlement negotiations to objectors).

The Agreement here is such an “irregular” settlement. Its terms and context suggest collusion and unfairness as to the non-settling defendants and the class. Accordingly, to the extent that the Court is not prepared to deny § 23-17.14-35 approval to the Agreement outright, the Court should permit the non-settling defendants to take discovery into the conduct of the settlement negotiations between the Movants.

II. **THE PRESENT RECORD IS INSUFFICIENT TO GRANT THE FEE MOTION**

Apart from the issues of ERISA preemption and the role of the PBGC in this litigation, which preclude any resolution of the Fee Motion at this juncture, the Diocesan Defendants’ objection with regard to the Fee Motion is limited to concerns that there is insufficient information in the record to grant the Fee Motion’s request relative to the initial

lump sum payment. Specifically, the Fee Motion seeks in excess of \$2 million of the \$11.15 million lump sum payment. There are multiple questions concerning this portion of the settlement fund that the Fee Motion leaves unanswered.

A. The Absence In The Record Of Information Concerning Movants Attempts To Reach A Pre-Litigation Settlement

Plaintiffs' Counsel's fee arrangement with the Receiver provides that Plaintiffs' Counsel will receive 10% of any recovery obtained prior to the filing of a complaint and 23 1/3% of any recovery obtained after the complaint has been filed. Pls.' Counsel's Mem. In Supp. Of Mot. For Award Of Att'ys' Fees ("Fee Mem."), ECF No. 64-1, at 2-3. Plaintiffs' Counsel was paid \$375.00 an hour for work conducted prior to initiating this lawsuit (and ultimately compensated in excess of half a million dollars for those efforts). *Id.* at 5. Because Plaintiffs reached their agreement with the Settling Defendants after a complaint was filed, Plaintiffs' Counsel has requested 23 1/3% of the prospective recovery (minus a \$552,281.25 credit against the Settling Defendants' proposed lump sum payment of \$11.15 million, for fees paid during the investigative phase).²⁰

Plaintiffs' Counsel submitted a lengthy declaration in support of their request. Decl. of Max Wistow, ECF No. 65. That Declaration does not detail what settlement efforts Movants made prior to filing this lawsuit. That no details respecting such negotiations are set

²⁰ To the extent that Plaintiffs' Counsel contests the Diocesan Defendants' standing to challenge the Fee Motion, the Diocesan Defendants have a legitimate interest in the resolution of Plaintiffs' Counsel's fee request for the reasons discussed *supra* at Part I.C.2.iii & I.C.3. Moreover, even assuming lack of standing (which is denied), the Court should still consider the Diocesan Defendants' concerns and allow them to raise these issues for consideration by the class. As the United States Court of Appeals for the Seventh Circuit has observed: "It is desirable to have as broad a range of participants in the fairness hearing as possible because of the risk of collusion over attorneys' fees and the terms of settlement generally." *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 288 (7th Cir. 2002) (reversing approval of class action settlement and award of attorneys' fees); *see In re Fleet/Norstar Secs. Litig.*, 974 F.Supp. 155, 158 (D.R.I. 1997) ("Given that the defendants generally have no interest in this issue, in that they have already paid out the amount of the settlement and have no concern with how the fund is distributed, the court is left without the benefit of adversarial presentation of the issues of fees and expenses.").

forth in the Declaration is especially noteworthy here, given that the Settling Defendants were willing to admit liability and in financial circumstances suggesting that they had no incentive to litigate. Plaintiffs themselves acknowledge that the Settling Defendants are corporations in effective long-term wind-down, with limited assets that are insufficient to satisfy Plaintiffs' claims.²¹ The Settling Defendants settled early in this case and before engaging in any meaningful litigation here. Consequently, based on the record presented, it is completely unclear why initiation of this lawsuit was required to procure the settlement proffered here, where settlement talks stood prior to suit and what role, if any, initiating litigation had in actually resolving claims against the Settling Defendants or materially impacting the amount of liquid assets transferred to the Plan.²²

B. The Absence In The Record Of Information Concerning Efforts To Procure The Agreement Apart From Work That Has Already Been Paid For

Plaintiffs' Counsel's Declaration spells out in some detail the number of hours spent *before* suit was filed on discovery and developing claims against various parties. *Id.* ¶¶ 9-18. Plaintiffs' Counsel also declares that they "devoted a minimum of 1,120 hours of time in prosecuting the claims of the Receiver and the Plaintiffs" since this action was commenced. Fee Mem. at 12. That Declaration, however, contains no detail on the number of hours specifically spent on negotiations with the Settling Defendants *after* suit was filed. Plaintiffs' Counsel were, of course, paid by the hour for all of the pre-suit work. *Id.* ¶ 18.

²¹ FAC ¶ 55(d) (alleging that SJHSRI was stripped of "virtually all value"); *id.* ¶ 521 ("Defendants SJHSRI, RWH, and CCCB have ceased ordinary business and dissolved and/or have become in essence empty shells."); *see also* Settlement Mem. at 40 ("Settling Defendants' admit . . . that Plaintiffs' damages greatly exceed Settling Defendants' collective assets[.]").

²² A pre-litigation settlement under the same terms would have resulted in a reduced initial fee award of \$562,718.75 (assuming Plaintiffs' Counsel's continued willingness to extend the same generous credit to the class for fees paid for investigative work). 10% of \$11,150,000 = \$1,115,000, minus \$552,281.25 = \$562,718.75.

Certainly, not all 1,120 hours were devoted to prosecuting claims as to the Settling Defendants or even this litigation. Fee Mem. at 12. Rather, Plaintiffs' Counsel spent substantial portions of this time litigating a motion to intervene in *In re Chartercare Health Partners Foundation et al.*, No. KM-2015-0035 (R.I. Super. Ct.) ("the 2015 *Cy Pres* Proceedings") against CCF, *id.* at 10-11, and twice seeking to hold Prospect Chartercare LLC in contempt in the receivership proceedings, *id.* at 7-9. The Court should have a more complete understanding of the efforts that Plaintiffs' Counsel made to procure the Agreement with the Settling Defendants, especially as regards the "transfer" of the \$11.15 million in liquid assets, *see infra* at Part II.A, beyond the work for which they have already been compensated, before an attorneys' fee award is approved here. *See Heien v. Archstone*, 837 F.3d 97, 101-02 (1st Cir. 2016) (affirming fee award smaller than requested where class action settled promptly after filing of complaint and the settlement followed from resolution of related litigation, where class counsel had already been compensated).

C. A Substantial (Albeit Undefined) Portion Of The Settling Defendants' Liquid Assets Were Predestined To Pour Into The Plan

A review of the receivership petition in the Superior Court, pleadings from the 2015 *Cy Pres* Proceedings, and the Asset Purchase Agreement indicates that a significant (albeit presently undefined) portion of the initial lump sum payment would have poured into the Plan without any litigation at all. Put another way, *years before* this lawsuit and the appointment of the Receiver and his special counsel, it appears that a large portion of the initial lump sum payment in the Agreement was already slated for the Plan (and consequently cannot be attributed to any efforts by Plaintiffs' Counsel to have added any new substantive benefit to the Plan). For example, the Receivership Petition indicates:

Petitioner [SJHSRI], and, Petitioner's affiliates, Roger Williams Hospital and CCCB, are winding down their respective affairs. Upon conclusion of such wind-down efforts, the net assets of Petitioner, RWH and CCCB may become available to assist with the Plan. While the availability of additional funds is uncertain at this time, such additional funds could be used to support the Plan for long-term payouts to beneficiaries or provide supplemental distributions to beneficiaries whose benefit payments might be reduced as part of the Plan's wind-down process.

Ex. 2 (Receivership Pet.) ¶ 16 (internal footnote omitted).

The 2015 *Cy Pres* Petition confirms the language in the Receivership Petition that additional assets were destined for the Plan. Specifically, the 2015 *Cy Pres* Petition indicates that “it was necessary for each of the Heritage Hospitals [SJHSRI and RWH] at the closing [of the transaction with Prospect Medical Holdings] to . . . satisfy outstanding pre and post closing liabilities during their subsequent wind-down period (the “Outstanding Pre and Post Closing Liabilities”) as is more fully set forth in the [Asset Purchase Agreement].”²³ Ex. 3 (2015 *Cy Pres* Pet. and selected exhibit) ¶ 12 & Ex. C. To that end, RWH requested approval to use \$12,288,848 to satisfy Outstanding Pre and Post Closing Liabilities “as more fully described in Exhibit C.” *Id.* ¶¶ 24 & Ex. C. With few exceptions, Exhibit C to the 2015 *Cy Pres* Petition does not distinguish between SJHSRI and RWH's post-closing liabilities. *Id.*, Ex. C.

Additionally, RWH sought approval to use the annual income or principal distributions of certain perpetual trusts “to pay the Outstanding Pre and Post Closing Liabilities on its behalf and after such payments are made in full . . . to transfer such annual distributions to SJHSRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf.” *Id.* ¶¶ 27-29.

The 2015 *Cy Pres* Petition makes clear that SJHSRI's Outstanding Pre and Post Closing

²³ The Asset Purchase Agreement specifically identified “[a]ll Liabilities related to the Retirement Plan” as one of the liabilities of SJHSRI and RWH that would remain with SJHSRI and RWH post-closing in Schedule 2.4 of that agreement. Schedule 2.4 of the Asset Purchase Agreement is a part of Exhibit 11 of the Diocesan Defendants' Motion to Dismiss. Diocesan Defs.' Mem. in Supp. of Mot. to Dismiss, Ex. 11 at PCEC000274.

Liabilities consisted of “non-pension and pension” liabilities. *Id.* ¶ 27. Additionally, SJHSRI requested approval to use the annual income from perpetual trusts to satisfy “non-pension and pension liabilities.” *Id.* ¶ 30. The Superior Court approved the 2015 *Cy Pres* Petition. Ex. 4 (2015 *Cy Pres* Order) ¶ 3 (allowing request in paragraph 24 of the 2015 *Cy Pres* Petition to use \$12,288,848 “to satisfy the Outstanding Pre and Post Closing Liabilities as and when due”); *id.* ¶¶ 6-8 (approving requests in paragraphs 28-30 of the 2015 *Cy Pres* Petition).

Based on pleadings submitted to the Superior Court in 2015 and 2017 by the Settling Defendants therefore, a substantial part of the funds obtained via the proposed settlement appear to have been destined to pour into the Plan. The Receiver spoke to this reality at a town hall meeting with Plan Participants, where he admitted that funds that have gone to pay the Receiver and Plaintiffs’ Counsel would have otherwise gone to the Plan. Ex. 5 (Partial Transcript of Video of Dec. 4 Meeting - Part 2 of 3 - St. Josephs Health Services Retirement Plan) (“Those monies, once those entities [SJHSRI and RWH] are wound down, would ultimately, according to a *cy pres* order—it’s an order entered by the court—would ultimately flow into the Plan. Those are the monies right now that are being used to compensate me, my fees and expenses, Mr. Wistow’s fees and expenses.”).²⁴

This Court should have a complete record concerning the funds already predestined for the Plan and Movants’ pre- and post- litigation settlement efforts before approving any settlement or fee award. Did their litigation efforts materially alter the amount of funds that the Plan will ultimately receive? The consequences of including all of the funds going to the Plan in the “settlement” amount without explanation of what portion of those funds were

²⁴ The Receiver has posted videos of his town hall meetings on the internet. A video recording of the December 4, 2017 town hall meeting which is partially transcribed at Exhibit 5 can be found at the following webpage: https://www.youtube.com/watch?v=JCqtahhEwPA&index=2&list=PL_8Q8T8_4DLr8xdtLWztXIHNexPTILRYp. The language quoted is at 1:19-1:42 of the video.

headed there anyway (sans the compulsion of litigation) are significant for the class and the non-settling defendants.

D. The Lodestar Does Not Square With The Percentage Of Fund Requested

Courts use the lodestar method of calculating fees awards as a check when considering fee applications. *See Heien*, 837 F.3d at 101-02. Here, such a calculation is impossible, as the only information before the Court is the total number of hours Plaintiffs' Counsel say they devoted to all of the claims of the Receiver and the class since suit was filed. Yet even if the Court were to make the obviously overbroad assumption that all of those hours were somehow related to this proposed settlement, such a lodestar calculation makes clear just how excessive the proposed fee award appears.

Accepting all 1,120 hours worked by Plaintiffs' Counsel after the filing of the complaint and multiplying these hours by the \$375.00 investigatory rate approved by the Superior Court indicates a reasonable attorneys' fee of \$420,000. The Fee Motion seeks a multiple of nearly five times the lodestar for all of these hours ($2,049,013.80/420,000 = 4.878$). Put another way, the Fee Motion seeks compensation at a rate of approximately \$1,829.48 per hour for post suit-filing work ($2,049,013.80/1120 = 1,829.476$). The Fee Motion does not explain why such a significant divergence between the lodestar and the percentage of fund method is appropriate.

In light of the above-referenced issues, before granting the Fee Motion, the Court should require Plaintiffs' Counsel to (a) describe any pre-suit settlement efforts with the Settling Defendants; (b) more clearly define the efforts Plaintiffs' Counsel took to procure the Agreement for which it has not already been compensated; (c) make a fuller demonstration as to what portion of the initial lump sum payment was predestined for the Plan without litigation and what

portions, if any, were added to that sum by Plaintiffs' Counsel's litigation efforts; and (d) provide facts supporting a multiplier of nearly 5 times the lodestar.

CONCLUSION

For the foregoing reasons, the Court should decline to approve the Agreement under R.I. Gen. Laws § 23-17.14-35 and deny the request for attorneys' fees.

Respectfully Submitted,

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

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December 2018, 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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EXHIBIT 1

SETTLEMENT AGREEMENT

This settlement agreement (referred to herein as the "Settlement B Agreement" or "Settlement B") is entered into as of November 21, 2018, between and among Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the "Receiver") and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque, said persons acting individually and¹ on behalf of all class members as defined herein (the Receiver and said persons are collectively referred to herein as "Plaintiffs"), CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH") (CCCB, SJHSRI, and RWH are collectively referred to herein as the "Heritage Hospital Defendants"), and CharterCARE Foundation ("CCF"). For purposes of this Settlement B Agreement, Plaintiffs, the Heritage Hospital Defendants, and CCF are collectively referred to as the "Settlement B Settling Parties" and each of them are referred to individually as a Settlement B Settling Party.

RECITALS

WHEREAS, on August 18, 2017, SJHSRI filed a petition to place the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan") into receivership in that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the "Receivership Proceedings"), and the Receiver was appointed by the Court in that proceeding; and

¹ Contingent upon the Court certifying the Class as provided herein.

WHEREAS, on June 18, 2018, Plaintiffs asserted claims against the Heritage Hospital Defendants, CCF, and several other defendants in a lawsuit filed in the United States District Court for the District of Rhode Island (C.A. No: 1:18-CV-00328-WES-LDA) (the “Federal Court Action”), and in a lawsuit filed in the Rhode Island Superior Court (C.A. NO.: PC-2018-4386) (the “State Court Action”), which lawsuits concern, *inter alia*, the alleged underfunded status of the Plan; and

WHEREAS, on June 18, 2018, Plaintiffs also filed a motion to intervene in the civil action entitled *In re: CharterCARE Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island*, C.A. No: KM-2015-0035 (the “2015 *Cy Pres* Proceeding”), filed in Providence County Superior Court in the State of Rhode Island, which motion to intervene subsequently was allowed, and Plaintiffs are seeking an order vacating the order entered in the 2015 *Cy Pres* Proceeding on April 20, 2015 (the “2015 *Cy Pres* Order”) and directing that all assets transferred to CCF pursuant to that 2015 *Cy Pres* Order be disposed of in accordance with the orders of the Court in the Federal Court Action in connection with the adjudication of the merits of Plaintiffs’ claims, or, if the merits of Plaintiffs’ claims are adjudicated in the State Court Action, in accordance with the orders of the court in the State Court Action; and

WHEREAS, on or about August 31, 2018, Plaintiffs and the Heritage Hospital Defendants entered into a settlement agreement (hereinafter referred to “Settlement A” or the “Settlement A Agreement”), and promptly thereafter began the process of seeking necessary judicial approvals for Settlement A in both the Receivership Proceedings and the Federal Court Action; and

WHEREAS, Settlement A includes certain terms providing that, within five (5) business days of Settlement A's final approval in the Federal Court Action, CCCB will deliver to Plaintiffs' Counsel a document denominated as "Consent of CharterCARE Community Board as Sole Member of CharterCARE Foundation" by which CCCB, *inter alia*, exercises its purported rights as CCF's sole member to appoint new directors for CCF, amend CCF's by-laws and articles of incorporation, and appoint the Receiver as CCF's sole member;² and

WHEREAS, Settlement A includes further terms providing that, within ten (10) business days after Settlement A's final approval in the Federal Court Action, CCCB shall deliver to Plaintiffs' Counsel a so-called "Irrevocable Assignment re CharterCARE Foundation" by which CCCB irrevocably assigns to the Receiver any and all claims, rights, and interests that CCCB may have against or in CCF, including but not limited to the right to recover funds transferred to CCF pursuant to the 2015 *Cy Pres* Order, and any and all rights and interests appurtenant to CCCB's present or former status as a member or sole member of CCF;³ and

WHEREAS, CCF and Plaintiffs dispute whether or not Plaintiffs have a basis to vacate the 2015 *Cy Pres* Order or recover assets transferred to CCF pursuant to the 2015 *Cy Pres* Order; and

WHEREAS, CCF and Plaintiffs likewise dispute whether or not CCCB has a basis to exercise any purported rights to appoint new directors for CCF, amend CCF's by-laws and articles of incorporation, appoint the Receiver as CCF's sole member, or

² See Settlement A Agreement, ¶ 12 and exhibit 12.

³ See Settlement A Agreement, ¶ 13.

irrevocably assign to the Receiver any claims, rights and interests that CCCB may have against or in CCF; and

WHEREAS, CCF has filed objections in the Receivership Proceeding to those portions of Settlement A relating to CCF, and has otherwise claimed that CCCB abandoned or waived any rights or interests against or in CCF; and

WHEREAS, the Settlement B Settling Parties now desire to fully and finally resolve their disputes in order to avoid the uncertainty and expense associated with further litigation; and

WHEREAS, it is the intent of the Settlement B Settling Parties that this Settlement B shall not delay or interfere with the ongoing process of seeking judicial approvals for Settlement A; and

WHEREAS, it is the further intent of the Settlement B Settling Parties that Settlement A and Settlement B shall be treated as two separate and independent agreements, and that the approval, effectiveness, and/or validity of Settlement A is not dependent in any way upon the approval, effectiveness, and/or validity of Settlement B, and likewise the approval, effectiveness, and/or validity of Settlement B is not dependent in any way upon the approval, effectiveness, and/or validity of Settlement A.

NOW, THEREFORE, in consideration for the mutual exchange of promises contained herein, the adequacy and sufficiency of which is hereby acknowledged, the Settlement B Settling Parties hereby agree as follows.

I. DEFINITIONS.

- A. For purposes of this Settlement B Agreement, and in addition to other terms that are defined elsewhere in this Settlement B Agreement, the following terms shall have the meanings specified herein.
1. “Amended *Cy Pres* Order” shall mean a final order (including but not limited to an order certified as final under Rule 54(b) of the Superior Court Rules of Civil Procedure) of the Rhode Island Superior Court (unless an appeal of that final order is filed and the final order is not upheld on appeal), granting approval of the Amended *Cy Pres* Petition.
 2. “Amended *Cy Pres* Petition” shall mean a petition jointly filed by CCF, Plaintiffs, SJHSRI, and RWH in the 2015 *Cy Pres* Proceeding⁴ that, in full resolution of Plaintiffs’ claims as intervenors in that proceeding, shall:
 - i. seek judicial *cy pres* approval of a transfer of THREE MILLION NINE HUNDRED THOUSAND DOLLARS (\$3,900,000.00) of CCF Funds to the Receiver⁵ to be used (after payment of Plaintiffs’ counsel fees and expenses as approved by the Court) for the benefit of the Plan; and
 - ii. otherwise seek to affirm the continued validity and enforceability of the 2015 *Cy Pres* Order, including with respect to all other CCF

⁴ While CCCB is not a party to the 2015 *Cy Pres* Proceeding, CCCB shall fully support the request for approval of the Amended *Cy Pres* Petition, as provided herein.

⁵ Part of the consideration for the Settlement B Settlement Agreement is the payment of an additional \$600,000 referred to in Section I(A)(34)(ii) herein, such that the total Settlement Payment is \$4,500,000 to be paid to the Receiver to be used (after payment of Plaintiffs’ counsel fees and expenses as approved by the Court) for the benefit of the Plan. The Amended *Cy Pres* Order should provide for such payment by CCF, pursuant to Section I(A)(34)(ii) if necessary.

Funds, whether remaining with RIF following the aforementioned transfer, or as otherwise held by CCF, which funds shall continue to be used as close to the original donors' intent as possible, at the discretion of CCF's Board of Directors, to serve CCF's mission, as set forth at paragraphs 2 and 5 of the 2015 *Cy Pres* Order; and

iii. seek to vacate the Preservation Order.⁶

3. "Attorney General" shall mean the Rhode Island Office of Attorney General.
4. "CAFA Notice" means the notice of the proposed Settlement B in compliance with the requirements of the federal Class Action Fairness Act, 28 U.S.C. § 1711 et seq.
5. "CCF Funds" shall refer to all funds held by CCF, either through RIF pursuant to the Instrument of Transfer⁷, or directly.
6. "Class Member" means a member of the Settlement B Settlement Class.
7. "CCCB's Foundation Interests" means all of the claims, rights and interests of CCCB against or in CharterCARE Foundation (f/k/a CharterCARE Health Partners Foundation (f/k/a St. Josephs Health Services Foundation))), including but not limited to the right to recover funds transferred to CharterCARE Foundation in connection with the 2015 *Cy Pres* Proceeding, and any rights and interests appurtenant to

⁶ See infra at p. 10, ¶ 27.

⁷ See infra at p. 9, ¶ 21.

CCCB's present or former status as a member or sole member of CharterCARE Foundation.

8. "CCCB's Hospital Interests" means all of the claims, rights and interests against or in Prospect CharterCare, LLC that CCCB received in connection with the LLC Agreement or subsequently obtained, including but not limited to the 15% membership interest in Prospect CharterCare LLC, and any rights or interests that SJHSRI or RWH may have in connection therewith.
9. "Class Notice" means the notice to be provided to Class Members of the Final Federal Court Approval Hearing, in the form attached hereto as Exhibit 1, or as the Federal Court may otherwise direct.
10. "Class Representatives" mean Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, who will first seek to be appointed as representatives of the Settlement B Settlement Class for settlement purposes in connection with this Settlement B Agreement, and, thereafter, will seek such appointment for the assertion along with the Receiver of the merits of the Plaintiffs' claims against the remaining defendants.
11. "Cy Pres Final Judgment" shall mean a final judgment entered by the Rhode Island Superior Court on the docket in the 2015 *Cy Pres* Proceeding pursuant to R.I. Super. Ct. R. Civ. P. 58, which shall consist of a separate document that is titled "Final Judgment" and recites the relief granted by the "Amended *Cy Pres* Order".

12. "Counsel for CCF" means Attorneys Russell F. Conn and Andrew R. Dennington of the law firm of Conn Kavanaugh Rosenthal Peisch & Ford, LLP, and Scott F. Bielecki of Cameron & Mittleman, LLP, or such other counsel as the Current CCF Board of Directors or its representative may designate in writing to Plaintiffs' Counsel.
13. The "Current CCF Board of Directors" shall refer to the current CCF Board of Directors and/or such other members as CCF may elect.
14. "Deadline for Objection to Settlement" means the date identified in the Class Notice by which a Class Member must file or serve written objections, if any, to Settlement B. The Deadline for Objection to Settlement shall be no later than ten (10) days prior to the Final Federal Court Approval Hearing or as the Federal Court may otherwise direct.
15. "Deadline for Objection to Award of Attorneys' Fees" means the date identified in the Class Notice by which a Class Member must file or serve written objections, if any, to the proposed award of attorneys' fees. The Deadline for Objection to Award of Attorneys' Fees shall be no later than ten (10) days prior to the Final Federal Court Approval Hearing or as the Federal Court may otherwise direct.
16. "Donors" shall refer to the "original donors" referenced in paragraphs 2 and 5 of the 2015 *Cy Pres* Order.
17. The "Effective Date" shall mean:

1. in the event that no timely appeal of the *Cy Pres* Final Judgment is filed, the date that is twenty (20) days after entry of the *Cy Pres* Final Judgment; and
2. in the event that a timely appeal(s) of the *Cy Pres* Final Judgment is/are filed, the date that is five (5) business days after issuance of a decision by the Rhode Island Supreme Court denying any such appeal(s) and said decision is no longer subject to a request for reargument pursuant to Rule 25 of the Rhode Island Supreme Court Rules of Appellate Procedure.

18. "Federal Court" means the United States District Court for the District of Rhode Island.

19. "Federal Court Order Granting Preliminary Settlement Approval" means, unless otherwise ordered by the Court, the order in the form attached hereto as Exhibit 2, 1) certifying the Settlement B Settlement Class for purposes of determining whether Settlement B is fair, reasonable, and adequate; 2) appointing Plaintiffs' Counsel to represent the Settlement B Settlement Class, 3) preliminarily approving Settlement B; 4) scheduling hearing on final approval of Settlement B and Plaintiffs' Counsel's application for attorneys' fees; and 5) approving the Notice Plan, or as the Federal Court may otherwise direct.

20. "Federal Court Order Granting Final Settlement Approval" means the order approving Settlement B 1) as fair, reasonable, and adequate, 2) as a good faith settlement under R.I. Gen. Laws § 23-17.14-35, 3) awarding attorneys' fees to Plaintiffs' Counsel, and 4) such other and further relief as the Federal Court may direct.
21. "Federal Court Triggering Event" means the issuance of an order of the Federal Court approving at least the Settlement A Terms Regarding CCF as 1) fair, reasonable, and adequate, and 2) a good faith settlement under R.I. Gen. Laws § 23-17.14-35.
22. "Final Federal Court Approval Hearing" means the hearing at which the Federal Court will make a final determination as to 1) whether the terms of Settlement B are fair, reasonable, and adequate, as to the Settlement Class, such that Settlement B should be finally approved by the Federal Court, 2) whether to approve Settlement B as a good faith settlement under R.I. Gen. Laws § 23-17.14-35, 3) what attorneys' fees should be awarded to Plaintiffs' Counsel, and 4) such other and further relief as the Federal Court may direct.
23. "Instrument of Transfer" shall refer to the "Instrument of Transfer" executed between CCF and RIF and dated April 14, 2015, a copy of which is attached to the Preservation Order.
24. The "Irrevocable Assignment re CharterCARE Foundation" shall refer to the "Irrevocable Assignment re CharterCARE Foundation" referenced at paragraphs 11 and 13 of the Settlement A Agreement.

25. "Joint Motion" means the motion, supporting memorandum, and the exhibits thereto in the form that the Settlement B Settling Parties have agreed will be filed with the Federal Court in connection with this Settlement B Agreement, with such revisions as are necessary to accurately refer to the actions of the court in the Receivership Proceedings in connection with the Receiver's Petition for Settlement Instructions.
26. "Notice Plan" means the form, contents, and method of delivery of the Class Notice to be provided to Class Members.
27. "Plaintiffs' Counsels' Motion for Attorneys' Fees" means the motion for attorneys' fees in connection with their representation of the Settlement B Settlement Class that Plaintiffs' Counsel will submit at the same time as the Joint Motion.
28. "Plaintiffs' Counsel" means the law firm of Wistow, Sheehan & Loveley, P.C. and the attorneys of said firm.
29. The "Preservation Order" shall refer to the *Order Preserving Assets Pending Litigation and Setting Schedule for Hearing on Motion to Intervene* that was entered by the Court in the 2015 *Cy Pres* Proceeding on June 29, 2018.
30. "RIF" shall refer to the Rhode Island Community Foundation d/b/a the Rhode Island Foundation.

31. "RSUI Policy" shall refer to the Directors and Officers Liability Policy issued by RSUI Indemnity Company to CCF and denominated Policy #NHP672444.
32. "Settlement A Consent of Sole Member" shall refer to CCCB's "Consent of Sole Member"⁸ referenced at paragraphs 11 and 12 and Exhibit 12 of the Settlement A Agreement.
33. "Settlement A Terms Regarding CCF" shall refer to the agreements recited in paragraphs 11 through 14 of the Settlement A Agreement, and the provisions of the Settlement A Agreement designed to implement and effectuate those agreements.⁹
34. The "Settlement Payment" shall mean the sum of FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS (\$4,500,000.00) consisting of:
 - i. \$3,900,000.00 of CCF Funds for which transfer is approved by the Amended *Cy Pres* Order; and
 - ii. an additional \$600,000.00 that shall be paid from the RSUI Policy, provided, however, that if \$600,000.00 is not paid from the RSUI Policy, then CCF will make the payment from CCF Funds.
35. "Settlement B Settlement Class" means all participants of the Plan, including:

⁸ Sometimes also referred to in the Settlement A Agreement as CCCB's "Consent as Sole Member." See Settlement A Agreement, ¶ 12.

⁹ See Settlement A Agreement, ¶¶ 11 to 14 and Exhibit 12 referencing the "Irrevocable Assignment re CharterCARE Foundation" and CCCB's "Consent of Sole Member."

- i. all surviving former employees of SJHSRI who are entitled to benefits under the Plan; and
- ii. all representatives and beneficiaries of deceased former employees of SJHSRI who are entitled to benefits under the Plan.

II. **BASIC SETTLEMENT TERMS.**

The following is a summary description of the basic terms of this Settlement B.¹⁰

Under this Settlement B, CCF agrees to pay the Receiver \$4,500,000 (consisting of \$3,900,000 from funds CCF holds through RIF and \$600,000 to be paid from the RSUI Policy) in return for the following consideration:

1. releases by Plaintiffs and the Heritage Hospital Defendants of CCF (including all its past and present directors, officers, and employees but only for their actions and omissions in their capacities as ostensible or actual directors, officers, and employees of CCF) and RIF as described below;
2. dismissal with prejudice of all Plaintiffs' claims against CCF and RIF in the Federal Court Action and State Court Action;
3. entry of a final judgment in the 2015 *Cy Pres* Proceeding affirming CCF's continued right to administer CCF's remaining funds to be used as close to the Donors' intent as possible;
4. transfer to CCF of CCCB's Foundation Interests (but not CCCB's Hospital Interests); and

¹⁰ This Section II is intended solely to serve as a summary description of Settlement B. The precise terms of this Settlement B are set forth in the remaining portions thereof.

5. agreement by Plaintiffs and the Heritage Hospital Defendants as to terms and conditions reflecting CCF's independence as a Rhode Island non-profit independent foundation.

As set forth below, Settlement B is further contingent upon obtaining (a) approval thereof in the Receivership Proceedings, (b) the Federal Court Order Granting Final Settlement Approval, and (c) approval of an Amended *Cy Pres* Petition and entry of the Amended *Cy Pres* Order and *Cy Pres* Final Judgment in the 2015 *Cy Pres* Proceeding.

III. NECESSARY COURT APPROVALS.

A. Approval in Receivership Proceedings.

The Receiver agrees that, within five (5) business days of the execution of this Settlement B Agreement by the Settlement B Settling Parties, the Receiver will file his Petition for Settlement Instructions with the court in the Receivership Proceedings, and serve or cause to be served a copy thereof on all counsel of record in the Receivership Proceedings (including but not limited to the Rhode Island Attorney General), asking for authority to proceed with this Settlement B. If such authority is not obtained for any reason, this Settlement B will be null and void and the Settlement B Settling Parties will return to their respective positions as if this Settlement B had never been negotiated, drafted, or executed.

B. Approval in Federal Court Action.

1. The Settlement B Settling Parties agree if the court in the Receivership Proceedings authorizes the Receiver to proceed with this Settlement B,

Plaintiffs will file the Joint Motion in the Federal Court Action within ten (10) business days of such authorization.

2. The Receiver shall serve, or cause to be served, an as-filed copy of the Joint Motion to the Attorney General and all counsel of record in the Federal Court Action within one (1) business day after said filing.
3. Plaintiffs agree that prior to the filing of the Joint Motion, they will provide Counsel for CCF with a list of all known Class members, including the states in which they reside. Within ten (10) business days following the filing of the Joint Motion, CCF agrees to serve the CAFA Notice in the form and with the exhibits thereto attached hereto as Exhibit 3, by mailing a copy thereof through the United States Postal Service, First Class Mail, to the Rhode Island Attorney General, the Director of the Rhode Island Department of Business Regulation, the Attorney General for every other State where a Class Member resides, and to the Attorney General of the United States, and, no later than fourteen (14) days prior to the Final Federal Court Approval Hearing, to provide the Federal Court and the Receiver with written confirmation substantially in the form attached hereto as Exhibit 4 that they have done so, which shall list each recipient and the address to which the CAFA Notice was sent.
4. As set forth in the Joint Motion, the Settlement B Settling Parties will request that the Federal Court certify the Settlement B Settlement Class pursuant to Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure, on the grounds that CCF's alleged conduct was uniform with respect to each

Class Member and the relief sought inures to the benefit of the Plan as a whole and not directly to any of the Class Members, that CCF has limited funds that are greatly exceeded by the claims of the Plaintiffs, and that adjudications of claims against CCF by individual members of the Settlement B Settlement Class would, as a practical matter, be dispositive of the interests of the other Class Members not parties to the actions, and substantially impair or impede the ability of other members of the Settlement B Settlement Class to protect their interests as to CCF.

5. It is the belief of the Settlement B Settling Parties that there is no right of any Class Members to opt out of the Settlement B Settlement Class, because the relief Plaintiffs are seeking is payment into the Plan, from which all of the Class Members have rights of payment.
6. The Settlement B Settling Parties agree to seek certification of the Settlement B Settlement Class solely for the purpose of permitting the Settlement B Settlement Class to participate in the settlement of Plaintiffs' claims against CCF, without prejudice to the rights of the remaining defendants in the Federal Court Action or the State Court Action to oppose class certification in connection with Plaintiffs' claims against them.
7. In the event the Federal Court grants the Joint Motion, and unless otherwise directed by the Federal Court, the Federal Court Order Granting Preliminary Settlement Approval shall be in the form attached hereto as Exhibit 2 and shall require that within ten (10) days of the entry thereof,

the Receiver will send the Class Notice to Class Members by mail, through the United States Postal Service, First Class Mail, in the form attached hereto as Exhibit 1, or as the Court may otherwise direct.

8. CCF agrees to cooperate with Plaintiffs and the Heritage Hospital Defendants and to take all reasonable measures requested by them to obtain the Federal Court Order Granting Preliminary Settlement Approval and the Federal Court Order Granting Final Settlement Approval.

C. Amended *Cy Pres* Petition.

1. The Settlement B Settling Parties agree that, within ten (10) business days of issuance of the Federal Court Order Granting Final Settlement Approval, CCF, Plaintiffs, SJHSRI, and RWH shall jointly file the Amended *Cy Pres* Petition. CCCB will fully support the request of CCF, Plaintiffs, SJHSRI, and RWH for approval of the Amended *Cy Pres* Petition.
2. The Receiver shall serve, or cause to be served, an as-filed copy of said Amended *Cy Pres* Petition to the Attorney General within one (1) business day after said filing.
3. Within ten (10) business days of filing the Amended *Cy Pres* Petition, CCF shall give written notice of said filing to the Donors or their representatives, to the extent they are known and can be located.
4. While it is the intent of the Settlement B Settling Parties that the approval, effectiveness, and/or validity of this Settlement B shall not be dependent or contingent upon whether or not the Attorney General supports or opposes the Amended *Cy Pres* Petition, all the Settlement B Settling

Parties reasonably shall cooperate with each other in seeking the Attorney General's support for the Amended *Cy Pres* Petition.

5. In the event that the Court shall issue the Amended *Cy Pres* Order, CCF, Plaintiffs, SJHSRI, and RWH shall jointly move that the *Cy Pres* Final Judgment be issued and entered on the docket, and that the Preservation Order thereupon be modified to the extent necessary to enable payment of the \$4,500,000 Settlement Payment, and that after such payment shall be made, the Preservation Order shall be vacated. CCCB will fully support such motion.
6. Each of the Settlement B Settling Parties agrees to waive any and all rights of appeal from the *Cy Pres* Final Judgment, with each Settlement B Settling Party to bear its own fees and costs.

IV. INTERPLAY BETWEEN SETTLEMENT A AND SETTLEMENT B APPROVALS.

Settlement A and Settlement B are two separate and independent agreements, and the approval, effectiveness, and/or validity of Settlement A is not dependent in any way upon the approval, effectiveness, and/or validity of Settlement B, and likewise the approval, effectiveness, and/or validity of Settlement B is not dependent in any way upon the approval, effectiveness, and/or validity of Settlement A. The Settlement B Settling Parties agree that Settlement B shall be implemented as follows depending upon the timing of all Court approvals or disapprovals as to Settlement A and Settlement B.

- A. Approval of Settlement A Terms Regarding CCF Occurring Before Decision on Approval of Settlement B.

In the event that the Federal Court Triggering Event occurs before the Effective Date of this Settlement B, then the Settlement B Settling Parties shall proceed as follows.

1. Plaintiffs' Counsel shall hold in escrow the Settlement A Consent of Sole Member and the Irrevocable Assignment re CharterCARE Foundation upon the following basis:
 - i. if this Settlement B is approved (such that its Effective Date occurs), then the Settlement B Settling Parties shall proceed to follow the provisions of this Settlement B Agreement set forth below at Section V; but
 - ii. if this Settlement B is not approved (such that the Effective Date of this Settlement B does not occur), then Plaintiffs' Counsel may release to the Receiver the Settlement A Consent of Sole Member and the Irrevocable Assignment re CharterCARE Foundation from escrow, and 1) Plaintiffs and the Heritage Hospitals shall be free to seek enforcement of the Settlement A Terms Regarding CCF, 2) the Settlement B Settling Parties shall treat this Settlement B as null and void, 3) Plaintiffs and the Heritage Hospital Defendants shall be released from the obligations set forth below at paragraph V of this Settlement B Agreement, and 4) CCF and the Current CCF Board of Directors shall be free to challenge the effectiveness, validity, enforceability, and/or legality of CCCB's Foundation Interests (but not CCCB's Hospital Interests).

2. The Settlement B Settling Parties will cooperate in a common effort to seek approval of Settlement B. While the Settlement B Settling Parties are in the process of seeking such approval and consummating Settlement B, neither Plaintiffs nor the Heritage Hospital Defendants will seek in any way to enforce the Settlement A Consent of Sole Member or the Irrevocable Assignment re CharterCARE Foundation, and those parties further agree that they will not take any action to disrupt, alter, vacate, or change in any way any aspect of CCF's current business operations, the composition of the Current CCF Board of Directors, and/or the Current CCF Board of Directors' right and ability to select and appoint legal counsel to represent CCF, provided that such failure to act will not constitute laches or a waiver of, or in any way prejudice, any rights that may be exercised if such approval is not obtained. This paragraph, however, is not in any way intended to curtail or delay the rights and ability of Plaintiffs and the Heritage Hospital Defendants to seek judicial approval of Settlement A.
3. The Preservation Order shall remain in full force and effect pending entry of the *Cy Pres* Final Judgment pursuant to the provision of Section III(C)(5).

B. Disapproval of Settlement A Terms Regarding CCF Occurring Before Decision on Approval of Settlement B.

In the event that either the Court in the Receivership Proceedings or the Federal Court disapproves of the Settlement A Terms Regarding CCF (such that the Federal Court Triggering Event does not occur) before the Effective Date of this Settlement B,

then the Settlement B Settling Parties shall proceed to follow the provisions of this Settlement B Agreement set forth below at Section V, to the extent applicable. This means that the provisions of Section V.1.(b)-(e) will apply but that as to subsection (d), only CCCB shall deliver a Consent in the form attached as Exhibit 5, consenting to the filing of Restated Articles of Incorporation of CCF.

C. Approval of Settlement B Occurring Before Decision on Approval on Settlement A Terms Regarding CCF.

In the event that the Effective Date of this Settlement B occurs before the Federal Court issues a final decision either approving or disapproving of Settlement A, then the Settlement B Settling Parties shall proceed to follow the provisions of this Settlement B Agreement set forth below at Section V.

V. EXCHANGE OF RELEASES, IRREVOCABLE ASSIGNMENT, SETTLEMENT PAYMENT, OTHER SETTLEMENT B TERMS, AND STIPULATIONS OF DISMISSAL.

1. Upon the Effective Date of this Settlement B, and subject to the provisions of Section IV, the Settlement B Settling Parties shall proceed as follows.
 - a. Within five (5) business days after such Effective Date, the Receiver will execute and deliver to Counsel for CCF an irrevocable assignment, in the form attached hereto at Exhibit 6, to CCF of CCCB's Foundation Interests (but not CCCB's Hospital Interests) and the Irrevocable Assignment re CharterCARE Foundation, to be held in escrow by CCF's Counsel until the

Settlement Payment has been received by Plaintiffs' Counsel on behalf of the Plaintiffs.¹¹

- b. Within seven (7) business days after such Effective Date, Plaintiffs and the Heritage Hospital Defendants will respectively execute and deliver to Counsel for CCF the releases of CCF and RIF in the form attached hereto as Exhibits 7-10, to be held in escrow by CCF's Counsel until the Settlement Payment has been received by Plaintiffs' Counsel on behalf of the Plaintiffs.
- c. Within fifteen (15) business days after the Effective Date, CCF shall pay the sum of \$600,000.00 to the Receiver, reflecting that portion of the Settlement Payment derived from the RSUI Policy. Within twenty (20) business days after the Effective Date, CCF will cause RIF to pay the balance of the Settlement Payment (i.e. \$3,900,000.00) to CCF, and then within ten (10) business days after CCF's receipt of said funds, CCF shall pay those funds to the Receiver.
- d. Once the entirety of the Settlement Payment has been made, 1) Plaintiffs agree, forever and unconditionally, not to take any action with respect to the Settlement A Terms Regarding CCF, 2) Plaintiffs and the Heritage Hospital Defendants shall execute and deliver Consents in the form attached hereto as Exhibits 11 and 5, respectively consenting to the filing of Restated Articles of Incorporation for CCF, 3) CCCB and the Receiver

¹¹ As provided above, if the Settlement A Terms Regarding CCF are disapproved, then the provisions of this Section V.1.a shall not be applicable.

otherwise irrevocably waive, renounce, and/or relinquish any claimed interest against or in CCF.

- e. Within five (5) business days of receipt by Plaintiffs' Counsel of the entirety of the Settlement Payment, Plaintiffs' Counsel shall file in both the Federal Court Action and the State Court Action either:
 - i. a stipulation of dismissal of all claims asserted against CCF and RIF, with prejudice and without costs, waiving all rights of appeal from the judgment(s) entered on the dismissal, with each party bearing its own attorneys' fees; or
 - ii. if necessary, a motion pursuant to R.I. Super. R. Civ. P. 41 or Fed. R. Civ. P. 41 seeking to dismiss all claims asserted against CCF and RIF, with prejudice and without costs, waiving all rights of appeal from the judgment(s) entered on the dismissal, with each party bearing its own attorneys' fees.
- f. The Settlement B Settling Parties otherwise will cooperate in seeking CCF's dismissal with prejudice from the Federal Court Action and State Court Action.

VI. MISCELLANEOUS.

- 1. Unless and until the Federal Court Order Granting Settlement Approval or the Cy Pres Final Judgment is not entered for any reason, CCF agrees that it will not object to Plaintiffs' and Heritage Hospitals' Defendants' requests for Federal Court approval of Settlement A. In the event that this Settlement B is disapproved, CCF may object to Federal Court approval of the Settlement A Terms Regarding CCF so

long as the time to object to Settlement A has not yet passed. Moreover, in the event Settlement B is disapproved, CCF reserves the right to claim or argue in any other proceeding – i.e., a proceeding other than the process for Federal Court Approval of Settlement A -- to challenge or enforce CCCB's Foundation Interests that any rights granted pursuant to Settlement A Terms Regarding CCCB's Foundation Interests, including but not limited to the Settlement A Consent of Sole Member or the Irrevocable Assignment re. CharterCARE Foundation, but excluding CCCB's Hospital Interests, are illegal and/or unenforceable, including without limitation CCF's claim that CCCB abandoned or waived any rights or interests against or in CCF.

2. Within five (5) business days after this Settlement B Agreement is executed by all Settlement B Settling Parties, the Settlement B Settling Parties shall file a joint motion in the Federal Court Action to enlarge CCF's deadline to answer or otherwise respond to Plaintiffs' Amended Complaint in said action until thirty (30) days after either (a) the Court in the Receivership Proceeding refuses to approve Settlement B (but not earlier than December 5th), (b) the Federal Court refuses to approve Settlement B, or (c) the Court in the 2015 *Cy Pres* Proceeding (including after an appeal to the Rhode Island Supreme Court) refuses to enter the *Cy Pres* Final Judgment.
3. Within five (5) business days after this Settlement B Agreement is executed by all Settlement B Settling Parties, CCF, Plaintiffs, SJHSRI, and RWH shall file a joint motion in the 2015 *Cy Pres* Proceeding seeking a stay of same until such time as the Settlement B Settling Parties file the Amended *Cy Pres* Petition, as set forth in

Section III(C)(1), or until such time as either the Court in the Receivership Proceeding or the Federal Court refuses to approve this Settlement B.

4. The Settlement B Settling Parties herein acknowledge that this Settlement B Agreement represents a compromise of disputed claims, and shall not in any way be construed or considered as an admission of liability or wrongdoing on the part of any Settlement B Settling Party and/or RIF.
5. The Settlement Payment shall be administered by the Receiver for the benefit of the Plan and in accordance with the orders of the Court in the Receivership Proceeding and the Amended *Cy Pres* Order.
6. Plaintiffs and the Heritage Hospital Defendants agree that, in the event this Settlement B is approved and consummated, they shall not support, aid, or assist any effort, whether initiated by themselves or by individuals or entities who are not parties to this Settlement B Agreement, or to claim or assert that the CCF's past, present, or future board of directors was not legitimately appointed.
7. The Settlement B Settling Parties herein acknowledge that this Settlement B Agreement does not contain any assignment, waiver, or release of claims or potential claims that CCF or RSUI (as subrogee) may have against CCF's former legal counsel Adler Pollock & Sheehan P.C. ("AP&S") and/or AP&S's current and former partners, shareholders, employees, and/or insurers, and that CCF and/or RSUI Indemnity Company ("RSUI") (to the extent of RSUI's subrogation rights set forth in the RSUI Policy) will continue to own and control all such claims or potential claims after this Settlement B Agreement is executed and consummated.

8. If the Federal Court Order Granting Final Settlement Approval or the *Cy Pres* Final Judgment is not entered for any reason, then this Settlement B Agreement will be null and void and the Settlement B Settling Parties will return to their respective positions as if this Settlement B Agreement had never been negotiated, drafted, or executed.
9. The Settlement B Settling Parties agree that, in connection with the filing of the Joint Motion, Plaintiffs' Counsel may apply to the Federal Court for an award of attorneys' fees and expenses. CCF agrees not to object to such award or the requested amount of the award, and that, unless otherwise directed by the Federal Court, Plaintiffs' Counsel may make their motion returnable on the same day as the Federal Court sets for the Final Federal Court Approval Hearing.
10. The drafting of this Settlement B Agreement is a result of lengthy and intensive arm's-length negotiations, and the presumption that ambiguities shall be construed against the drafter does not apply. None of the Settlement B Settling Parties will be deemed the drafter of this Settlement B Agreement for purposes of construing its provisions.
11. The Federal Court shall retain continuing jurisdiction over the Settlement B Settling Parties, including the Class Representatives and all Class Members, for purposes of the administration and enforcement of this Settlement B Agreement.
12. This Settlement B Agreement may be executed by the Settlement B Settling Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. CCF, on the one hand, and Plaintiffs and the Heritage Hospital Defendants, on other hand, further agree that no promise or inducement has been offered with respect to the subject matter of this Settlement B Agreement between CCF, on the one hand, and Plaintiffs and the Heritage Hospital Defendants, on other hand, except as herein set forth, and that this Settlement B Agreement contains the entire agreement between CCF, on the one hand, and Plaintiffs and the Heritage Hospital Defendants, on other hand, and supersedes any and all prior agreements, understandings, representations, and discussions, whether written or oral, between CCF, on the one hand, and Plaintiffs and the Heritage Hospital Defendants, on other hand.

14. The signatories below for CCF, CCCB, RWH, and SJHSRI all warrant that the respective Board of Directors for each entity has authorized the execution of this Settlement B Agreement.

15. The Settlement B Settling Parties agree that Rhode Island law (excluding its conflict of laws rules) shall govern this Settlement B Agreement.

[Signatures on pages to follow]

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 21st day of November, in the year 2018.

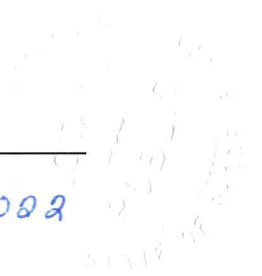
[Signature] *as Receiver and not individually*

Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 21st day of November, 2018, before me personally appeared Stephen Del Sesto, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

[Signature: Julie Zauagnini]
NOTARY PUBLIC
My Commission Expires: 4/7/2022




IN WITNESS WHEREOF, I have hereunto set my hand this 23 day of Nov, in the year 2018.



GAIL J. MAJOR

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 23 day of Nov, 2018, before me personally appeared Gail J. Major, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.



NOTARY PUBLIC
My Commission Expires: 5/4/22

IN WITNESS WHEREOF, I have hereunto set my hand this 21 day of Nov, in the year 2018.

Nancy Zompa
NANCY ZOMPA

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 21 day of Nov, 2018, before me personally appeared Nancy Zompa, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

Max Weston
NOTARY PUBLIC
My Commission Expires: 5/4/22


IN WITNESS WHEREOF, I have hereunto set my hand this 21 day of Nov in the year 2018.



RALPH BRYDEN

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 21 day of Nov, 2018, before me personally appeared Ralph Bryden, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.




NOTARY PUBLIC
My Commission Expires: 6/4/22

IN WITNESS WHEREOF, I have hereunto set my hand this 21 day of Nov, in the year 2018.



DOROTHY WILLNER

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 21 day of Nov, 2018, before me personally appeared Dorothy Willner, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.



MAX WISTOW
NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this 21 day of Nov, in the year 2018.


CAROLL SHORT

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 21 day of Nov, 2018, before me personally appeared Caroll Short, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.


NOTARY PUBLIC
My Commission Expires: 5/4/22


IN WITNESS WHEREOF, I have hereunto set my hand this 21 day of Nov, in the year 2018.



DONNA BOUTELLE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 21 day of Nov, 2018, before me personally appeared Donna Boutelle, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.




NOTARY PUBLIC
My Commission Expires: 6/4/22

IN WITNESS WHEREOF, I have hereunto set my hand this 21 day of Nov, in the year 2018.



EUGENIA LEVESQUE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 21 day of Nov, 2018, before me personally appeared Eugenia Levesque, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.


NOTARY PUBLIC
My Commission Expires: 5/4/22 MAX WISTOW

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 20 day of Nov, in the year 2018.



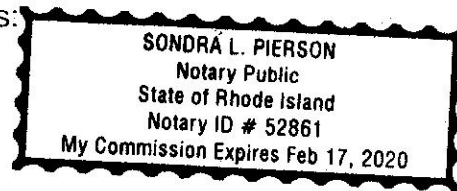
David Hirsch
President
CharterCARE Community Board

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 20th day of November, 2018, before me personally appeared David Hirsch, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.



NOTARY PUBLIC
My Commission Expires:



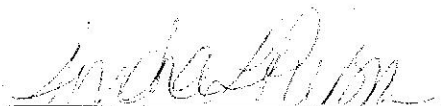
IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 20 day of NOV, in the year 2018.



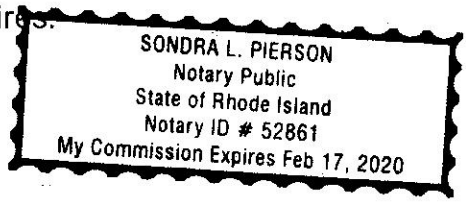
David Hirsch
President
St. Joseph health Services of Rhode Island

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 20th day of November, 2018, before me personally appeared David Hirsch, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.



NOTARY PUBLIC
My Commission Expires:



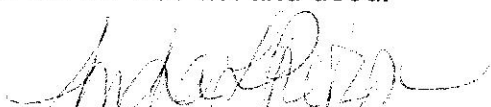
IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 20 day of Nov, in the year 2018.



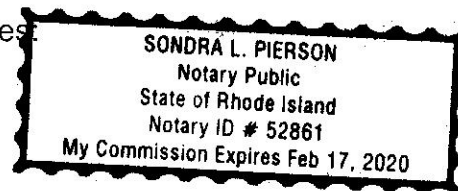
David Hirsch
President
Roger Williams Hospital

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

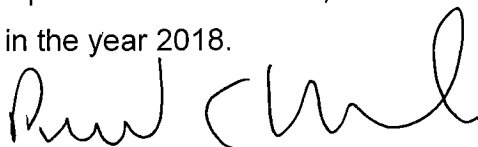
On this 20th day of November, 2018, before me personally appeared David Hirsch, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.



NOTARY PUBLIC
My Commission Expires




IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 21st day of November, in the year 2018.



Donald C. McQueen
President
CharterCARE Foundation

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this 21st day of November, 2018, before me personally appeared Donald C. McQueen, to me known, and known to me to be the same person described in and who executed the above instrument and ~~he~~ she acknowledged to me that ~~he~~ she executed the same as ~~his~~ her free act and deed.


NOTARY PUBLIC Cynthia J. Warren
My Commission Expires: 1/3/2022

1967761.2 02611.000
1973693.3 02611.000

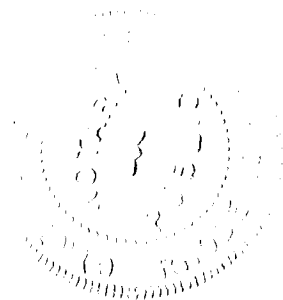


Exhibit 1

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

Del Sesto et al. v. Prospect Chartercare, LLC et al.

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

NOTICE OF CLASS ACTION PARTIAL SETTLEMENT

YOUR LEGAL RIGHTS MIGHT BE AFFECTED IF YOU ARE A MEMBER OF THE FOLLOWING CLASS (the "Class"):

All participants of the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan"), including:

- i) all surviving former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan; and
- ii) all representatives and beneficiaries of deceased former employees of SJHSRI who are entitled to benefits under the Plan.

PLEASE READ THIS NOTICE CAREFULLY. A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER. YOU HAVE NOT BEEN SUED.

Chief Judge William E. Smith of the United States District Court for the District of Rhode Island (the "Court") has preliminarily approved a proposed partial settlement (the "Partial Settlement") of a class action lawsuit brought under the Employee Retirement Income Security Act of 1974 ("ERISA") and state common law. The Partial Settlement will provide for payments to the Plan, in return for releasing certain defendants from any liability, and the lawsuit will continue as to the remaining defendants. The Partial Settlement is summarized below.

The Court has scheduled a hearing (the "Final Approval Hearing") to consider the Named Plaintiffs' motion for final approval of the Partial Settlement, including Plaintiffs' Counsel's application for attorneys' fees. The Final Approval Hearing before U.S. District Chief Judge William E. Smith has been scheduled for _____, 2019 at ____ a.m./p.m., in the United States District Court for the District of Rhode Island,

Federal Courthouse, 1 Exchange Terrace, Providence, Rhode Island 02903. Any objections to the Partial Settlement or the application for attorneys' fees must be served in writing on Plaintiffs' Counsel and on the Settling Defendants' attorneys, as identified on Page ___ of this Notice of Class Action Partial Settlement ("Mailed Notice"). The procedure for objecting is described below.

This Mailed Notice contains summary information with respect to the Partial Settlement. The terms and conditions of the Partial Settlement are set forth in a Settlement Agreement (herein referred to as the "Settlement B Agreement").¹ Capitalized terms used in this Mailed Notice but not defined in this Mailed Notice have the meanings assigned to them in the Settlement B Agreement. The Settlement B Agreement, and additional information with respect to this lawsuit (the "Action") and the Partial Settlement, is available at the internet site www._____.com ("the Receiver's Web Site") that was established by Attorney Stephen Del Sesto as Court-Appointed Receiver and Administrator of the Plan (hereinafter the "Receiver") in that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the "Receivership Proceedings").

PLEASE READ THIS MAILED NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE CLASS, THE PARTIAL SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE PARTIAL SETTLEMENT, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE PARTIAL SETTLEMENT BY FOLLOWING THE PROCEDURES DESCRIBED BELOW.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE PARTIAL SETTLEMENT

YOU WILL NOT RECEIVE A DIRECT PAYMENT IN CONNECTION WITH THIS SETTLEMENT

The Partial Settlement provides for payment of certain funds to increase the assets of the Plan, and to put the Plan on a better financial position than it would be without the Partial Settlement to meet payment obligations to Plan participants and their

¹ The separate settlement agreement dated September 4, 2018 and executed between and among the the Receiver and the Named Plaintiffs, on the one hand, and St. Joseph Health Services of Rhode Island ("SJHSRI"), Roger Williams Hospital ("RWH"), and CharterCARE Community Board ("CCCB") (herein collectively referred to as the "Heritage Hospital Defendants"), on the other hand, is herein referred to as the "Settlement A Agreement."

beneficiaries in accordance with their rights under the Plan and applicable law. It is not expected that the Partial Settlement will increase Plan assets sufficiently to make the Plan fully funded to meet its benefit obligations. However, the case will go on against the non-settling defendants. Plan participants or beneficiaries of Plan participants will not receive any direct payments in connection with this Partial Settlement.

If the Partial Settlement is approved by the Court and you are a member of the Class, you will not need to do anything.

THIS PARTIAL SETTLEMENT WILL NOT REDUCE YOUR RIGHTS TO COMMENCE OR CONTINUE TO RECEIVE A BENEFIT FROM THE PLAN

If the Partial Settlement is approved by the Court and you are a member of the Class, your entitlement to commence or receive a benefit at the time and in the form provided under the terms of the Plan will not be reduced or diminished as a result of your participation in the Partial Settlement. To the contrary, the effect if the Partial settlement is approved by the Court will be to increase the assets available to pay benefits under the Plan.

YOU MAY OBJECT TO THE SETTLEMENT BY

_____, 2019.

If you wish to object to any part of the Partial Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Partial Settlement.

YOU MAY ATTEND THE FINAL APPROVAL HEARING TO BE HELD ON _____, 2018.

If you submit a written objection to the Partial Settlement to the Court and counsel before the Court-approved deadline, you may (but do not have to) attend the Final Approval Hearing about the Partial Settlement and present your objections to the Court. You may attend the Final Approval Hearing even if you do not file a written objection, but you will only be allowed to speak at the Final Approval Hearing if you file a written notice of objection in advance of the Final Approval Hearing AND you file a Notice of Intention To Appear. To file a written notice of objection and Notice of Intention to Appear, you must follow the instructions set forth in answer to Question 13 in this Mailed Notice.

- These rights and options—and the deadlines to exercise them—are explained in this Mailed Notice.
- The Court still has to decide whether to approve the Partial Settlement. Payments will be made only if the Court approves the Partial Settlement and that approval is upheld in the event of any appeal.

Further information regarding this Action and this Mailed Notice may be obtained by contacting the following Plaintiffs' Counsel:

Max Wistow, Esq., Stephen P. Sheehan, Esq.,
or Benjamin Ledsham, Esq.
WISTOW, SHEEHAN & LOVELEY, PC
61 Weybosset Street
Providence, RI 02903
401-831-2700 (tel.)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

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SUMMARY OF PARTIAL SETTLEMENT

This Action is a class action in which the Named Plaintiffs claim that the Plan is underfunded such that it will not be able to pay all of the benefits to which plan participants are entitled, and that the defendants are liable for that underfunding, as well as related claims. Copies of the Complaint and First Amended Complaint filed in the Action are available at the Receiver’s Web Site, www._____.

The Settling Defendant is a Rhode Island non-profit foundation called CharterCARE Foundation (“CCF”). The Receiver’s and the Named Plaintiffs’ claims against CCF arise principally from a 2015 transaction in which St. Joseph’s Health Services of Rhode Island (“SJHSRI”) and Roger Williams Hospital (“RWH”) transferred approximately \$8,200,000 of their charitable assets to CCF. In this Action and a related action pending in the Rhode Island Superior Court known as *In re: CharterCARE Health Partners Foundation et al.*, C.A. No. KM-2015-0035 (hereinafter referred to as the “2015 *Cy Pres* Proceeding”), the Receiver and the Named Plaintiffs allege that CCF should not have received any of those funds, and that those funds instead should have been used for the benefit of the Plan. Other claims against CCF by the Receiver and the Named Plaintiffs are set forth in the First Amended Complaint in this Action, all of which CCF denies.

In this Partial Settlement, CCF agrees to pay the Receiver a total settlement payment of four million five hundred thousand dollars (\$4,500,000) (hereinafter referred to as the "Settlement Payment") to be used for the benefit of the Plan (from which Settlement Payment will be deducted attorney's fees and costs). That Settlement Payment will consist of three million nine hundred thousand dollars (\$3,900,000) of charitable assets that CCF received in 2015 from SJHSRI and RWH and now holds through the Rhode Island Foundation ("RIF"), plus an additional six hundred thousand dollars (\$600,000) that will be paid by CCF's liability insurer, RSUI Indemnity Company ("RSUI").

As of August 31, 2018, CCF's fund balance with RIF was \$9,108,384. The Settlement Payment is approximately 49.4% of such amount.

In consideration for CCF's Settlement Payment to the Receiver, the Receiver and the Named Plaintiffs agree to release CCF and RIF and to dismiss all claims against CCF and RIF that were asserted or could have been asserted in this Action or the related 2015 *Cy Pres* Proceeding. The terms and conditions of those releases are more fully described in the Settlement B Agreement.

As part of this Partial Settlement, the Receiver and CharterCARE Community Board ("CCCB") also agree to: (1) transfer to CCF all of "CCCB's Foundation Interests" (as that term is defined in the Settlement A Agreement) that the Receiver may acquire or which he did acquire in the Settlement A Agreement; and (2) certain other terms and conditions reflecting CCF's independence as a Rhode Island non-profit independent foundation.

This Partial Settlement is contingent upon: (1) final approval by the United Street District Court for the District of Rhode Island in this Action; and (2) the Rhode Island Superior Court's entry of a final judgment approving an amended *cy pres* petition authorizing CCF to transfer \$3,900,000 from charitable funds currently held at RIF to the Receiver. Further details regarding this Partial Settlement are described below.

STATEMENT OF POTENTIAL OUTCOME OF THE ACTION

If this Partial Settlement had not been agreed to, or if this Partial Settlement does not receive the necessary final approvals from both the United States District Court for the District of Rhode Island in this Action and the Rhode Island Superior Court in the 2015 *Cy Pres* Proceeding, CCF would dispute the claims asserted in the Action and in the 2015 *Cy Pres* Proceeding.

The Receiver and the Named Plaintiffs would face an uncertain outcome if the Action were to continue. There is no assurance that the Receiver or the Named Plaintiffs will secure recoveries from any of the Defendants, including CCF and the non-settling defendants. In that case, this proposed Partial Settlement may be the only opportunity to significantly increase the assets of the pension fund to pay benefits as and when they are due, and the consequence of not approving the Partial Settlement may be that the pension fund runs out of money sooner than if the Partial Settlement were approved.

It is not possible to forecast exactly which type of outcome would occur if this Action and the 2015 *Cy Pres* Proceeding were to continue against CCF. The Receiver and the Named Plaintiffs could succeed in recovering all of the approximately \$8,200,000 in charitable assets that were transferred to CCF, plus the appreciation that has accrued on those funds since 2015. Alternatively, the Receiver and the Named Plaintiffs could be unsuccessful, and could end up recovering nothing from CCF. Another possibility is that the Receiver and the Named Plaintiffs could succeed in recovering some, but not all, of the charitable funds that were transferred to CCF in 2015.

Another way that the Receiver could recover funds from CCF would be through a successful effort to enforce the rights in and against CCCB's Foundation Interests that the Receiver may acquire or which he did acquire in the Settlement A Agreement. If those rights were successfully enforced, the Receiver potentially could acquire all or some of CCF's charitable assets and use them for the benefit of the Plan. However, CCF disputes the legality and enforceability of the rights in and against CCCB's Foundation Interests that the Receiver acquired in the Settlement A Agreement. If this Action and the 2015 *Cy Pres* Proceeding were to continue against CCF, then CCF would resist the enforcement of the Receiver's rights in and against CCCB's Foundation Interests that the Receiver may acquire or which he did acquire in the Settlement A Agreement. That possibility of further litigation adds an additional element of uncertainty if this Action and the 2015 *Cy Pres* Proceeding were to continue against CCF.

In summary, the Receiver, the Named Plaintiffs, and CCF do not agree on liability. Nor do they agree on the enforceability of the rights in and against CCCB's Foundation Interests that the Receiver may acquire in the Settlement A Agreement. They also do not agree on the amount that would be recoverable even if the Receiver and the Named Plaintiffs were to prevail at trial against CCF. If this Partial Settlement had not been agreed to, or if this Partial Settlement is not approved, CCF would strongly deny all claims and contentions by the Plaintiffs and deny any wrongdoing with respect to the Plan. CCF further would deny that they are liable to the members of the Settlement Class and would contest whether the members of the Settlement Class have suffered any damages for which CCF could be held legally responsible.

Nevertheless, having considered the uncertainty and expense inherent in any litigation, particularly in a complex case such as this, the Receiver and the Named Plaintiffs and CCF have concluded that it is desirable that the Action be fully and finally settled as between them, on the terms and conditions set forth in the Settlement Agreement.

STATEMENT OF ATTORNEYS' FEES SOUGHT IN THE ACTION

Plaintiffs' Counsel will apply to the Court for an order awarding attorneys' fees in accordance with the Retainer Agreement previously approved by the Rhode Island Superior Court in the Receivership Proceedings concerning Plaintiffs' Counsel's representation of the Receiver in this and other cases, in the amount of 23.5% of the Settlement Payment. Any amount awarded will be paid from the Settlement Payment. CCF will not oppose Plaintiffs' Counsel's application and otherwise has no responsibility for payment of such fees. Previously, in connection with Settlement A, although not required to do so, Plaintiffs' Counsel volunteered to reduce their fees for that settlement by the sum of five hundred and fifty two thousand dollars and 21 cents (\$552,281.25), representing attorneys' fees that Plaintiffs' Counsel were paid in connection with the investigation of whether there were any possibly meritorious claims to be asserted on behalf of the Plan. In the event Settlement A is not approved, Plaintiffs' Counsel will voluntarily reduce their fees for this Settlement by that amount. **WHAT WILL THE**

CLASS REPRESENTATIVES GET?

Neither the Named Plaintiffs nor any of the Class Members will receive any direct payments in connection with the Partial Settlement. The Receiver will receive the Net Settlement Amount for deposit into the assets of the Plan in accordance with the orders of the Superior Court in the Receivership Proceeding. The benefit the Named Plaintiffs or any of the Class members will receive will be that the funds paid to the Plan in connection with the Partial Settlement will increase the amount of the assets of the Plan available to pay benefits to the Plan participants and the beneficiaries of the Plan participants.

BASIC INFORMATION

1. WHY DID I GET THIS NOTICE PACKAGE?

You are a member of the Settlement Class, because you are a Participant in the Plan, or are the Beneficiary of someone who is a participant in the Plan.

The Court directed that this Mailed Notice be sent to you because since you were identified as a member of the Settlement Class, you have a right to know about the Partial Settlement and the options available to you regarding the Partial Settlement

before the Court decides whether to approve the Partial Settlement. This Mailed Notice describes the Action and the Partial Settlement.

The Court in charge of this Lawsuit is the United States District Court for the District of Rhode Island . The persons who sued are Stephen Del Sesto (as Receiver and Administrator of the Plan), and seven Plan participants, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque. These Plan participants are called the “Named Plaintiffs,” and the people they sued are called “Defendants.” The Defendants are Prospect Chartercare LLC, CharterCARE Community Board, St. Joseph Health Services of Rhode Island, Inc., Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWH, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., the corporation Roger Williams Hospital, Chartercare Foundation, the Rhode Island Community Foundation, the Roman Catholic Bishop of Providence, the Diocesan Administration Corporation, the Diocesan Service Corporation, and the Angell Pension Group, LLC. The Lawsuit is known as Del Sesto et al. v. Prospect Chartercare LLC, et al., C.A. No: 1:18-CV-00328-WES-LDA .

2. WHAT IS THE ACTION ABOUT?

The Named Plaintiffs claim that, under the Employees Retirement Income Security Act of 1974, as amended (“ERISA”), and state law, the Defendants were obligated to fully fund the Plan, and other related claims, including allegations of fraud and misrepresentation. One of those related claims is that SJHSRI’s and RWH’s transfer of approximately \$8,200,000 of charitable assets to CCF in 2015 was a fraudulent transfer, and that those assets instead should have applied for the benefit of the Plan. Defendants deny the claims in the Lawsuit, deny that they were obligated to fully fund the Plan and Plaintiffs’ related claims, and deny that they have engaged in any wrongdoing.

SETTLEMENT DISCUSSIONS

The proposed Partial Settlement is the product of negotiations between Plaintiffs’ Counsel, the Heritage Hospital Defendants’ counsel, and CCF’s counsel, including asset disclosure, after the filing of the complaint in this proceeding.

3. WHY IS THIS CASE A CLASS ACTION?

In a class action, one or more plaintiffs, called “class representatives” sue on behalf of people who have similar claims. All of these people who have similar claims collectively make up the “class” and are referred to individually as “class members.” One case

resolves the issues for all class members together. Because the purported wrongful conduct alleged in this Action affected a large group of people—participants in the Plan—in a similar way, the Named Plaintiffs filed this case as a proposed class action.

4. WHY IS THERE A SETTLEMENT?

As in any litigation, all parties face an uncertain outcome. On the one hand, continuation of the case against CCF could result in a judgment greater than this Partial Settlement.

However, prolonged litigation could potentially result in CCF having to use certain of its charitable funds to defend itself in the Action and the 2015 *Cy Pres* Proceeding. If that happened, that would reduce the funds that are available to benefit the Plan, even if the Receiver and/or the Named Plaintiffs are successful in obtaining a judgment against CCF. This is because CCF's counsel is being paid through a "wasting" insurance policy issued by RSUI with a \$1 million coverage limit. A "wasting" insurance policy is one in which ongoing defense costs erode the \$1 million coverage limit. If this Action and the 2015 *Cy Pres* Proceeding continued against CCF, then CCF could end up exhausting the entire \$1 million limits of its insurance coverage on defense costs before this Action and/or the 2015 *Cy Pres* Proceeding is fully litigated to a conclusion. If that happened, then CCF would seek permission to use its charitable assets to pay its defense costs, and that would have the effect of reducing assets that might instead be made available to benefit the Plan.

Moreover, continuing the case could result in no recovery at all for the Receiver and/or the Named Plaintiffs from CCF. Based on these factors, the Receiver, the Named Plaintiffs, and Plaintiffs' Counsel have concluded that the proposed Partial Settlement is in the best interests of all members of the Class.

5. WHY IS THIS ONLY A PARTIAL SETTLEMENT?

This is a Partial Settlement because it only resolves the Receiver's and the Plaintiffs' claims against CCF. (The Partial Settlement also resolves the Receiver's and Plaintiffs' claims against RIF, because those claims are dependent upon and derivative of the claims against CCF.) Plaintiffs' claims against the remaining defendants are not being settled. (The Settling Parties note, however, that if the separate "Settlement A Agreement" between the Receiver and the Named Plaintiffs, on the one hand, and the Heritage Hospital Defendants, on the other hand, is approved and consummated before this new "Settlement B Agreement" is approved, then the Heritage Hospital Defendants (i.e. SJHSRI, RWH, and CCCB) may no longer be defendants in this Action.) If this Settlement B Agreement is approved, the only expected effect of this Partial Settlement on the Plaintiff's claims against the remaining defendants is that the remaining

defendants may be entitled to reduce their liability to the Plaintiffs by the Settlement Payment.

The following hypothetical example may help explain the reduction to which the non-settling defendants may be entitled.

Imagine a personal injury lawsuit brought by a plaintiff against two defendants, in which the plaintiff claims the defendants were negligent, and settled his or her claims against one defendant for \$100, and proceeded to trial against the remaining defendant against whom the plaintiff obtained an award of \$500. The effect of the prior settlement would be at most to reduce the \$500 award by \$100, so that the plaintiff's total recovery would be \$100 from the settlement and an additional \$400 from the defendant against whom the plaintiff went to trial.

6. WILL THIS LAWSUIT CONTINUE AFTER THE PARTIAL SETTLEMENT?

This lawsuit will continue against the defendants who are not parties to the Partial Settlement. Those defendants are Prospect Chartercare LLC, Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWH, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., the Roman Catholic Bishop of Providence, the Diocesan Administration Corporation, the Diocesan Service Corporation, and the Angell Pension Group, LLC. . As noted above, if the separate "Settlement A Agreement" between the Receiver and the Named Plaintiffs, on the one hand, and the Heritage Hospital Defendants, on the other hand, is approved and consummated before this new "Settlement B Agreement" is approved, then the Heritage Hospital Defendants (i.e. SJHSRI, RWH, and CCCB) may no longer be defendants in this Action.) There are no assurances that Plaintiffs' claims against the remaining defendants will be successful or result in any recovery.

7. HOW DO I KNOW WHETHER I AM PART OF THE PARTIAL SETTLEMENT?

You are a member of the Settlement Class if you fall within the criteria for the Settlement Class approved by Chief Judge William E. Smith:

All participants of the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan"), including:

- i) all surviving former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan; and

- ii) all representatives and beneficiaries of deceased former employees of SJHSRI who are entitled to benefits under the Plan.

8. WHAT DOES THE PARTIAL SETTLEMENT PROVIDE?

This Partial Settlement provides for a total Settlement Payment to the Receiver of \$4,500,000.

This Partial Settlement is contingent upon: (1) final approval by the United Street District Court for the District of Rhode Island in this Action; and (2) the Rhode Island Superior Court's entry of a final judgment approving an amended *cy pres* petition authorizing CCF to transfer \$3,900,000 from charitable funds currently held at RIF to the Receiver.

If this Partial Settlement receives final approval by the United Street District Court for the District of Rhode Island in this Action, then the Settling Parties will cooperate in filing and seeking approval of an amended *cy pres* petition in the 2015 *Cy Pres* Proceeding in the Rhode Island Superior Court. That amended *cy pres* petition will request that the Rhode Island Superior Court approve CCF's transfer to the Receiver of \$3,900,000 of charitable funds that it received in 2015 from SJHSRI and RWH and now holds at RIF. If the Rhode Island Superior Court enters a final judgment approving that amended *cy pres* petition, then CCF will complete the Settlement Payment to the Receiver by paying the \$3,900,000 of charitable funds that CCF holds at RIF, plus the \$600,000 from the RSUI insurance policy.

If the Rhode Island Superior Court does not approve the amended *cy pres* petition and proceed to enter final judgment thereon, then this Partial Settlement will be considered null and void, the Settling Parties will be restored to the respective positions that they occupied before this Partial Settlement was signed, and the Action and the 2015 *Cy Pres* Proceeding will both continue to proceed against CCF and RIF.

If instead this Partial Settlement receives all the necessary approvals from the United Street District Court for the District of Rhode Island in this Action and the Rhode Island Superior Court in the 2015 *Cy Pres* Proceeding, then CCF will proceed to make the complete Settlement Payment to the Receiver. In exchange, CCF will receive the following consideration from the Receiver, the Named Plaintiffs, and the Heritage Hospital Defendants.

First, all members of the Settlement Class shall be deemed to fully release CCF and RIF from the Released Claims (the "Settlement Releases").² The Settlement Releases will release CCF and RIF, together with each of their past and present officers, directors, or attorneys, but only to the extent that such individuals or entities were acting in their capacity as officers, directors, or attorneys for CCF and RIF, respectively, but not for any other entity or entities. The Released Claims mean any and all past, present and future causes of action, claims, damages, awards, equitable, legal, and administrative relief, interest, demands or rights that are based upon, related to, or connected with, directly or indirectly, in whole or in part, the allegations, facts, subjects or issues that have been, could have been, may be or could be set forth or raised in the Lawsuit, including but not limited to any and all claims seeking damages because of the underfunded status of the Plan. The Settlement B Agreement and its exhibits provides a complete description of the scope of the Settlement Releases. Together with those Settlement Releases, the Partial Settlement provides that the Receiver and the Named Plaintiffs will dismiss with prejudice all claims that were asserted or could have been asserted against CCF and RIF in this Action and the 2015 *Cy Pres* Proceeding.

Second, CCF will receive the benefit of having a final judgment entered in the 2015 *Cy Pres* Proceeding that confirms CCF's continued right to use and administer all of the charitable funds that it received in 2015 from SJHSRI and RWH excepting the funds that CCF agrees to transfer to the Receiver as part of this Partial Settlement.

Third, the Receiver and the Heritage Hospital Defendants will assign and transfer to CCF all of "CCCB's Foundation Interests," as that term is used in the Settlement A Agreement. Furthermore, the Receiver and the Heritage Hospital Defendants agree to execute certain documents that recognize CCF's right to operate as an independent Rhode Island non-profit foundation, free from control or oversight by the Receiver or any of the Heritage Hospital Defendants, immediately upon CCF's payment of the Settlement Payment.

The above description of the proposed Partial Settlement is only a summary. The complete terms, including the definitions of the Released Parties and Released Claims, are set forth in the Settlement B Agreement (including its exhibits), which may be obtained at the Receiver's Web Site, [www._____](http://www._____.).

² As part of the Settlement B Agreement, the Heritage Hospital Defendants are also providing releases to CCF and RIF under the terms and conditions set forth in the Settlement B Agreement.

9. CAN I GET OUT OF THE PARTIAL SETTLEMENT?

You do not have the right to exclude yourself from the Partial Settlement. The Settlement B Agreement provides for certification of the Class as a non-opt-out class action under Federal Rule of Civil Procedure 23(b)(1)(B), and the Court has determined that the requirements of that rule have been satisfied. As a member of the Class, you will be bound by any judgments or orders that are entered in the Action for all claims that were or could have been asserted in the Action or are otherwise released under the Partial Settlement.

Although you cannot opt out of the Partial Settlement, you can object to the Partial Settlement and ask the Court not to approve it. For more information on how to object to the Partial Settlement, see the answer to Question 13 below.

10. WHO ARE THE LAWYERS REPRESENTING THE CLASS

Plaintiffs' Counsel Wistow, Sheehan & Loveley, P.C. have been preliminarily appointed to represent the Class.

11. DO I HAVE A LAWYER IN THE CASE?

The Court has appointed Plaintiffs' Counsel Wistow, Sheehan & Loveley, P.C. to represent the Class in the Action. You will not be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. HOW WILL THE LAWYERS BE PAID?

Plaintiffs' Counsel will file a motion for the award of attorneys' fees of 23.5% of the Settlement Payment. The percentage of 23.5% is the same percentage applicable to Plaintiffs' Counsel's representation of Attorney Stephen Del Sesto as Receiver in this lawsuit, and was previously approved by Associate Justice Brian P. Stern of the Rhode Island Superior Court in connection with the case captioned *St. Joseph Health Services of Rhode Island, Inc., Petitioner, v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended*, PC-2017-3856 (the "Receivership Proceedings"). The petition filed on behalf of St. Joseph Health Services of Rhode Island, Inc. alleged that the Plan was insolvent and sought an immediate reduction in benefits of 40% for all Plan participants. The Superior Court in the Receivership Proceedings authorized the retention of Wistow, Sheehan & Loveley, P.C. as Special Counsel to the Receiver, to

investigate and assert possible claims that may benefit the Plan, pursuant to Wistow, Sheehan & Loveley, P.C.'s retainer agreement which was approved by the Superior Court.

Copies of Plaintiffs' Counsel's Motion for Award of Attorneys' Fees and Costs may be obtained at the Receiver's Web Site, [www._____](http://www._____.). This motion will be considered at the Final Approval Hearing described below. CCF will not take any position on that matter before the Court.

In the event the separate Settlement A is not approved by the Court, then instead of seeking 23.5% of the Settlement Payment, Plaintiff's Counsel will seek 23.5% of the Settlement Payment, reduced by the sum of \$552,281.25, which is the amount of attorneys' fees previously paid to Plaintiffs' Counsel in connection with their investigation of claims prior to commencing this lawsuit.

OBJECTING TO THE ATTORNEYS' FEES

By following the procedures described in the answer to Question 13, you can tell the Court that you do not agree with the fees and expenses the attorneys intend to seek and ask the Court to deny their motion or limit the award.

13. HOW DO I TELL THE COURT IF I DO NOT LIKE THE PARTIAL SETTLEMENT?

If you are a member of the Settlement Class, you can object to the Partial Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. To object, you must send a letter or other writing saying that you object to the Partial Settlement in Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No: 1:18-CV-00328-WES-LDA. Be sure to include your name, address, telephone number, signature, and a full explanation of all the reasons why you object to the Partial Settlement. Your written objection must be sent to the following counsel and must be postmarked by no later than _____, 2019.

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Prospect CharterCare SJHSRI, LLC
Prospect CharterCare RWMC, LLC

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Prospect Medical Holdings, Inc.
Prospect East Holdings, Inc.

Howard Merten, Esq.
Paul M. Kessimian, Esq.

Roman Catholic Bishop of Providence
Diocesan Administration Corporation

Christopher M. Wildenhain, Esq.
Eugene G. Bernardo, II, Esq.
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pk@psh.com
cmw@psh.com
egb@psh.com
ses@psh.com

Diocesan Service Corporation

You must also file your objection with the Clerk of the Court of the United States District Court for the District of Rhode Island by mailing it to the address set forth below. The objection must refer prominently to Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No: 1:18-CV-00328-WES-LDA . Your objection must be postmarked no later than _____, 2019. The address is:

Clerk of the Court
United States District Court for the
District of Rhode Island
Federal Courthouse
1 Exchange Terrace
Providence, Rhode Island 02903

14. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE PARTIAL SETTLEMENT?

THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Partial Settlement as fair, reasonable, and adequate (the "Final Approval Hearing"). You may attend the Final Approval Hearing, but you do not have to attend.

The Court will hold the Final Approval Hearing at __:00 .m. on _____, 201, at the United States District Court for the District of Rhode Island, Federal Courthouse, 1 Exchange Terrace, Providence, Rhode Island 02903, in the courtroom then occupied by United States Chief District Judge William E. Smith. The Court may adjourn the Final Approval Hearing without further notice to the members of the Settlement Class, so if

you wish to attend, you should confirm the date and time of the Final Approval Hearing with Plaintiffs' Counsel before doing so. At that hearing, the Court will consider whether the Partial Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also rule on the motions for attorneys' fees. The Parties do not know how long these decisions will take or whether appeals will be taken.

15. DO I HAVE TO COME TO THE HEARING?

No, but you are welcome to come at your own expense. If you file an objection, you do not have to come to the Final Approval Hearing to talk about it. As long as you mailed your written objection on time, it will be before the Court when the Court considers whether to approve the Partial Settlement. You also may pay your own lawyer to attend the Final Approval Hearing, but such attendance is also not necessary.

16. MAY I SPEAK AT THE HEARING?

If you submit a written objection to the Partial Settlement to the Court and counsel before the Court-approved deadline, you may (but do not have to) attend the Final Approval Hearing and present your objections to the Court. You may attend the Final Approval Hearing even if you do not file a written objection, but you will only be allowed to speak at the Final Approval Hearing if you file a written objection in advance of the Final Approval Hearing AND you file a Notice of Intention To Appear, as described in this paragraph. To do so, you must send a letter or other paper called a "Notice of Intention To Appear at Final Approval Hearing in Del Sesto et al. v. Prospect Chartercare, LLC et al., C.A. No: 1:18-CV-00328-WES-LDA ." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention To Appear must be sent to the attorneys listed in the answer to Question 13 above, postmarked no later than _____, 2019, and must be filed with the Clerk of the Court by mailing it (post-marked no later than ____, 2019) to the address listed in the answer to Question 13.

17. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing and you are a member of the Settlement Class, you will participate in the Partial Settlement of the Action as described above in this Mailed Notice.

GETTING MORE INFORMATION

18. ARE THERE MORE DETAILS ABOUT THE PARTIAL SETTLEMENT?

Yes. This Mailed Notice summarizes the proposed Partial Settlement. The complete terms are set forth in the Settlement B Agreement. Copies may be obtained at the Receiver's Web Site, @www._____.com. You are encouraged to read the complete Settlement B Agreement.

DATED: _____, 201_

1972357.1 02611.000

Exhibit 2

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: 1:18-CV-00328-WES-LDA

PROSPECT CHARTERCARE, LLC, ET AL. :

Defendants. :

**[PROPOSED]
ORDER (1) PRELIMINARILY CERTIFYING A SETTLEMENT CLASS, (2)
PRELIMINARILY APPOINTING COUNSEL FOR THE SETTLEMENT CLASS, (3)
PRELIMINARILY APPROVING CLASS ACTION PARTIAL SETTLEMENT, (4)
APPROVING NOTICE PLAN, AND (5) SETTING FINAL FEDERAL COURT
APPROVAL HEARING**

WILLIAM E. SMITH, Chief Judge.

This matter having come before the Court on the Joint Motion for Class Certification, Appointment of Class Counsel, and Preliminary Partial Settlement Approval in the above captioned case (the “Action”), filed by Plaintiffs Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan)(the “Receiver”), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, individually and on behalf of the settlement class (collectively “Plaintiffs”), Defendants CharterCARE Community Board (“CCCB”), St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital (“RWH”) (collectively the “Heritage Hospital Defendants”),

and Defendant CharterCARE Foundation (referred to herein as “CCF” or the “Settling Defendant”) (Plaintiffs, the Heritage Hospital Defendants, and CCF are referred to collectively as the “Settling Parties”) which attaches thereto the Settling Parties’ Settlement B Agreement (the “Settlement B Agreement,” which memorializes the “Settlement B”)¹. Having duly considered the papers,

THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of the Action, the Settling Parties, and all Settlement B Settlement Class Members.
2. Unless defined herein, all defined terms in this Order shall have the meanings ascribed to them in the Settlement B Agreement.
3. The Court has conducted a preliminary evaluation of Settlement B as set forth in the Settlement B Agreement for fairness, adequacy, and reasonableness. Based on this evaluation, the Court finds there is cause to believe that: (i) the Settlement B Agreement is fair, reasonable, and adequate, and within the range of possible approval; (ii) the Settlement B Agreement has been negotiated in good faith at arms-length between experienced attorneys familiar with the legal and factual issues of this case; and (iii) with respect to the forms of notice of the material terms of the Settlement B Agreement to Settlement B Settlement Class Members for their consideration and reaction, that notice is appropriate and warranted. Therefore, the Court grants preliminary approval of Settlement B.
4. The Court, pursuant to Rule 23(a) and Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure, preliminarily certifies, for purposes of this Settlement B only, the following Settlement B Settlement Class:

All participants of the St. Joseph Health Services of Rhode Island Retirement Plan (“the Plan”), including:

¹ The terms “Settlement B” and the “Settlement B Agreement” are used to distinguish the Settlement B Agreement presently before this Court from the separate settlement agreement dated September 4, 2018 and executed between and among the the Receiver and the Named Plaintiffs, on the one hand, and St. Joseph Health Services of Rhode Island (“SJHSRI”), Roger Williams Hospital (“RWH”), and CharterCARE Community Board (“CCCB”) (herein collectively referred to as the “Heritage Hospital Defendants”), on the other hand, which the Settling Parties refer to as the “Settlement A Agreement.”

- i) all surviving former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan; and
 - ii) all representatives and beneficiaries of deceased former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan.
5. The Court hereby preliminarily appoints Plaintiffs Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque, as Representatives of the Settlement B Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.
6. The Court preliminary appoints Plaintiffs' Counsel Wistow, Sheehan & Loveley, P.C. to represent the Settlement B Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.
7. On [MONTH DAY], 2019, in courtroom [insert] of the United States District Court for the District of Rhode Island, Federal Courthouse, 1 Exchange Terrace, Providence, Rhode Island, or at such other date and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Settlement B Agreement and to determine whether (i) final approval of Settlement B as embodied by the Settlement B Agreement should be granted, and (ii) Plaintiffs' Counsel's application for attorneys' fees for representing the Settlement B Settlement Class, should be granted, and in what amount.
8. No later than [MONTH DAY], 2019, which is fourteen (14) days prior to the Final Approval Hearing, Plaintiffs must file papers in support of final class action approval of Settlement B and respond to any written objections.
9. The Settling Defendants may (but are not required to) file papers in support of final class action approval of Settlement B, so long as they do so no later than [MONTH DAY], 2019.
10. The non-settling Defendants may (but are not required to) file papers in opposition or in support of final class action approval of Settlement B, so long as they do so no later than [MONTH DAY], 2019.
11. The Court approves the proposed Notice Plan for giving notice to the Settlement B Settlement Class (i) directly, by first class mail, per the Class Notice of Hearing for Final Settlement Approval ("Class Notice") attached to the Settlement B Agreement as Exhibit 1; and (ii) by publishing the Joint Motion with all exhibits thereto, including but not limited to the Settlement B Agreement, on the web site maintained by the Receiver Attorney Stephen Del Sesto at the web address of the Receiver, www._____, as more fully described in the Settlement B Agreement. The Notice Plan, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Settling

Parties and specifically the Receiver to complete all aspects of the Notice Plan no later than [MONTH DAY], 2019, in accordance with the terms of the Settlement B Agreement.

12. The Settling Defendant will file with the Court by no later than [MONTH DAY], 2019, which is fourteen (14) days prior to the Final Federal Court Approval Hearing, proof that Notice was provided was provided by the Settling Defendant to the appropriate State and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.
14. Settlement B Settlement Class Members do not have the right to exclude themselves or opt-out of the settlement. Consequently, all Settlement B Settlement Class Members will be bound by all determinations and judgments concerning the Settlement B Settlement Agreement.
15. Settlement B Settlement Class Members who wish to object to Settlement B, or to Plaintiffs' Counsel's Motion for Award of Attorneys, Fees, must do so by the Objection Deadline of [MONTH DAY], 2019, which is sixty (60) calendar days after the Settlement B Notice Date.
16. To object to Settlement B, or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees, Settlement B Settlement Class Members must follow the directions in the Notice and file a written Objection with the Court by the Objection Deadline. In the written Objection, the Settlement B Settlement Class Member must state his or her full name, address, and home or cellular telephone number(s) by which the Settlement B Settlement Class Member may be called. He or she must also state the reasons for his or her Objection, and whether he or she intends to appear at the Fairness Hearing on his or her own behalf or through counsel. Any documents supporting the Objection must also be attached to the Objection. Any and all objections shall identify any lawyer that assisted or provided advice as to the case or such objection. No Objection will be valid unless all of the information described above is included. Copies of all papers filed with the Court must be simultaneously delivered to Class Counsel, counsel for the Settling Defendant, and counsel for the non-settling defendants by mail utilizing the United States Postal Service First Class Mail, to the addresses listed herein below, or by email to the email addresses listed herein below.
17. If a Settlement B Settlement Class Member does not submit a written comment on the proposed Settlement B or the application of Class Counsel for attorneys' fees in accordance with the deadline and procedure set forth in the Notice, and the Settlement B Settlement Class Member wishes to appear and be heard at the Final Federal Court Approval Hearing, the Settlement B Settlement Class Member must file a notice of intention to appear with the Court and serve a copy upon Class Counsel, counsel for the Settling Defendant, and counsel for the

non-settling defendants, in the manner provided herein, no later than Objection Deadline, and comply with all other requirements of the Court for such an appearance.

18. Any Settlement B Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Federal Court Approval Hearing in accordance with the terms of this Order, above and as detailed in the Settlement B Class Notice, and at the same time provide copies to Class Counsel, counsel for the Settling Defendant, and counsel for the non-settling defendants as provided herein, shall not be permitted to object to the Settlement B Agreement or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees at the Final Federal Court Approval Hearing, shall be foreclosed from seeking any review of the Settlement B Agreement by appeal or other means, shall be deemed to have waived his, her, or its objections, and shall be forever barred from making any such objections in the Action. All members of the Settlement B Settlement Class will be bound by all determinations and judgments in the Action, whether favorable or unfavorable to the Settlement B Settlement Class.
19. If Settlement B is not approved or consummated for any reason whatsoever, Settlement B and all proceedings in connection with Settlement B will be without prejudice to the right of the Settling Defendant, the Heritage Hospital Defendants, the Receiver, or the Settlement B Settlement Class representatives to assert any right or position that could have been asserted if the Settlement B Agreement had never been reached or proposed to the Court. In such an event, the Settling Parties will return to the *status quo ante* in the Action and the certification of the Settlement B Settlement Class will be deemed vacated. The certification of the Settlement B Settlement Class for settlement purposes will not be considered as a factor in connection with any subsequent class certification decision.
20. Counsel for the Settling Parties are hereby authorized to use all reasonable procedures in connection with approval and administration of Settlement B that are not materially inconsistent with this Order or the Settlement B Agreement, including making, without further approval of the Court, minor changes to the form or content of the Settlement B Class Notice, and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Settlement B Agreement with such modifications, if any, as may be agreed to by the Settling Parties without further notice to the members of the Settlement B Settlement Class.

ORDERED:

ENTERED:

Smith, C. J.

Dep. Clerk

Dated:

Dated:

EXHIBIT 1

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Prospect Medical Holdings, Inc.
Prospect East Holdings, Inc.

Howard Merten, Esq.

Roman Catholic Bishop of Providence

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Diocesan Administration Corporation
Diocesan Service Corporation

1973518.1 02611.000

Exhibit 3

[on letterhead of Conn Kavanaugh Rosenthal & Peisch, LLP]

[date]

VIA FIRST CLASS MAIL

[INSERT ADDRESSEE]

Re: Stephen Del Sesto et al. v. Prospect Chartercare LLC, et al., C.A. No: 1:18-CV-00328-WES-LDA (D.R.I.)

Dear Sir or Madam:

Pursuant to the Class Action Fairness Act, 28 U.S.C. §1715, CharterCARE Foundation (“CCF”) hereby provides this notice of its proposed class action settlement in the above-referenced matter currently pending in the U.S. District Court for the District of Rhode island.

A motion for preliminary approval of the proposed settlement was filed with the court on _____, 201__ and the court granted preliminary approval on _____, 2019. In compliance with 28 U.S.C. §§ 1715(b)(1) you may find copies of the following documents on the World Wide Web at <https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan>:

1. Complaint, filed June 18, 2018 [Exhibit 1].
2. Amended Complaint, filed October 5, 2018 [Exhibit 2].

In compliance with 28 U.S.C. §§ 1715(b)(4) & (5), please find enclosed copies of the following documents.

3. Joint Motion for Preliminary Settlement Approval filed _____, 201__, with accompanying memorandum and exhibits thereto [Exhibit 3].

With regard to 28 U.S.C. §1715(b)(2), a fairness hearing regarding SJHSRI's settlement is currently scheduled for _____, 2019.

With regard to 28 USC § 1715(b)(3), no right to request exclusion from the class exists and Class Counsel were ordered to provide all potential class members with Notice of Proposed Class Action Settlement via first class mail no later than _____, 2019. [Exhibit 4]

With regard to 28 USC § 1715(b)(5), there has been no other settlement or agreement contemporaneously made between class counsel and counsel for CCF.

With regard to USC § 1715(b)(6) and (8), there has been no final judgment or notice of dismissal yet filed relating to CCF's proposed settlement.

On _____, 201__ the Court entered an Order granting preliminary approval of SJHSRI's settlement. [Exhibit 4]

With regard to 28 U.S.C. § 1715(b)(7), attached is a list of the names and states of residence of all class members, totaling 2,729. However, CCF cannot provide the "estimated proportionate share of the claims of such members to the entire settlement," 28 U.S.C. §§ 1715(b)(7)(A), 1715(b)(7)(B), because the settlement will be paid into the St. Joseph Health Services of Rhode Island Retirement Plan, not distributed to individual class members. Moreover, the final amount of the settlement has not yet been determined, as it depends on subsequent collection efforts by Plaintiffs and Plaintiffs' Counsel.

Please contact the undersigned if you have any questions about this notice or require additional information.

Sincerely,

[Russell F. Conn]

Enclosures

1973551.1 02611.000

Exhibit 4

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: 1:18-CV-00328-WES-LDA

PROSPECT CHARTERCARE, LLC, ET AL. :

Defendants. :

**DECLARATION OF RUSSELL F. CONN, ESQ. REGARDING NOTICE
OF PROPOSED SETTLEMENT PURSUANT TO 28 U.S.C. S 1715 ON
BEHALF OF CHARTERCARE FOUNDATION**

Russell F. Conn hereby declares and states as follows:

1. I have personal knowledge of the matters stated herein, and if called to testify as a witness, I could and would testify competently to the following facts.
2. I am an attorney with the law firm of Conn Kavanaugh Rosenthal Peisch & Ford, LLP, which serves as counsel for Defendant CharterCARE Foundation (“CCF”) in the above-captioned action.
3. I submit this declaration upon personal knowledge to demonstrate CCF’s compliance with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”).
4. On _____, 201_, Plaintiffs, Defendants St. Joseph Health Services of Rhode Island (“SJHSRI”), CharterCARE Community Board (“CCCB”), and Roger Williams Hospital (“RWH”) (collectively the “Heritage Hospital Defendants”), and CCF (all collectively referred to herein as the “Settlement B Settling Parties”) filed their Joint Motion for Preliminary Approval of Partial Settlement.

5. On _____, 201__, this Court signed an order preliminarily approving the proposed class action settlement between the Settlement B Settling Parties in the above-captioned action.

6. On _____, 201__, pursuant to 28 U.S.C. §1715 (a) & (b), Conn Kavanaugh Rosenthal & Peisch, LLP staff, acting under my direction and supervision, served the CAFA Notice, which consisted of a cover letter and certain accompanying documents, upon the U.S. Attorney General and the appropriate government officials for all of the states in which proposed members of the Settlement Class reside, based on information provided to me by Attorney Stephen Del Sesto as Receiver and Administrator for the St. Joseph Health Services of Rhode Island Retirement Plan, by mail using the United States Postal Service First Class Mail.

7. Attached hereto as Exhibit A is a true and correct copy of the letter that was mailed as described in paragraph 6.

8. Attached hereto as Exhibit B is the list of names and addresses of the government officials upon whom the CAFA Notice was served.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this _____ of _____, 201__ in Massachusetts.

_____ [sign] _____

EXHIBIT A

[same as Ex 03 to Settlement B Agreement]

EXHIBIT B

Name	Title	Address	City	State	Zip	Phone
------	-------	---------	------	-------	-----	-------

[insert for RI Secretary of State, RI Attorney General, and Attorney Generals for all American states, territories, etc. where any class member resides]

1973584.1 02611.000

Exhibit 5

CERTIFICATE OF THE SECRETARY OF CHARTERCARE COMMUNITY BOARD

I, the undersigned, Secretary of CharterCARE Community Board, do hereby certify to the following:

1. Attached hereto as Exhibit I is a true, complete and accurate copy of a resolution duly adopted by CharterCARE Community Board on _____, 201_, which resolution has not, as of the date hereof, been amended, modified or repealed and is in full force and effect.
2. The above-referenced resolution was adopted at a meeting at which a duly constituted quorum of the Board of Directors of CharterCARE Community Board was present and acting throughout pursuant to notice of a meeting duly posted in compliance with all applicable laws and regulations.

IN WITNESS WHEREOF, I have signed this Certificate as of the __ day of _____, 201_.

CHARTERCARE COMMUNITY BOARD

By: _____

Its Secretary

Exhibit I

**CONSENT OF CHARTERCARE COMMUNITY BOARD
AS SOLE MEMBER OF CHARTERCARE FOUNDATION**

The undersigned, CharterCARE Community Board (“CCCB”), in its capacity as sole member of CharterCARE Foundation (“CCF”), and by and through its directors, hereby approves, authorizes, and consents to the following actions, pursuant to CCCB’s inherent powers and R.I. Gen. Laws § 7-6-104:

1. Effective as of the last date set forth below, CCCB hereby authorizes, approves, and consents to the filing by CCF of Restated Articles of Incorporation of CCF in the form attached hereto as Exhibit A;
2. Effective as of the last date set forth below, the President of CCF is hereby authorized, empowered, and directed to perform any such actions as may be necessary to ensure that the Rhode Island Secretary of State’s Office accepts for filing the aforementioned Restated Articles of Incorporation of CCF; and
3. Effective upon the filing of the aforementioned Restated Articles of Incorporation at the Rhode Island Secretary of State’s Office, CCCB resigns from its position as sole member of CCF, and CCCB further irrevocably waives, renounces, and/or relinquishes any claimed interest against or in CCF.

[Signatures on following page]

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this ____ day of _____, in the year 201_.

[insert name]
[insert title]
CharterCARE Community Board

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

Exhibit A

Filing Fee: \$10.00

ID Number: 161987



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Office of the Secretary of State
Division of Business Services
148 W. River Street
Providence, Rhode Island 02904-2615

NON-PROFIT CORPORATION

RESTATED ARTICLES OF INCORPORATION

Pursuant to the provisions of Section 7-6-42 of the General Laws of Rhode Island, 1956, as amended, the undersigned corporation executes the following Restated Articles of Incorporation for the purpose of restating its Articles of Incorporation, as amended, in a single instrument:

1. The name of the corporation is CharterCARE Foundation

2. The Restated Article and if applicable, designated amendment(s), were adopted in the following manner (check one box only):

The restated articles and/or amendment(s) were adopted at a meeting of the members held on _____, at which meeting a quorum was present, and the correction received at least a majority of the votes which members present or represented by proxy at such meeting were entitled to cast.

The restated articles and/or amendment(s) were adopted by a consent in writing on _____, signed by all members entitled to vote with respect thereto.

The restated articles and/or amendment(s) were adopted at a meeting of the Board of Directors held on _____ and received the vote of a majority of the directors in office, there being no members entitled to vote with respect thereto.

3. Briefly describe amendments in space below. If there are no such amendments, state "NONE":

Article 3 is amended to revise the operational purposes of the Corporation and to specify the charitable purposes applicable to an organization recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time (the "Code").

Article 4 is amended to describe changes to the internal affairs of the corporation relating to governance.

The amendments to Article 3 and Article 4 are set forth on Exhibit A attached hereto and made a part hereof.

- 4. The attached restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation, as previously amended, and the restated articles of incorporation, together with the designated amendments, if any, supersede the original articles of incorporation and all previous amendments to the articles of incorporation.
- 5. Date when the restated article is to become effective upon filing
(not prior to, nor more than 30 days after, the filing of these restated articles)

Under penalty of perjury, we declare and affirm that we have examined these Restated Articles of Incorporation, including any accompanying attachments, and that all statements contained herein are true and correct.

Date: _____

CharterCARE Foundation

Print Corporate Name

By _____
 Donald C. McQueen

President or Vice President (check one)

AND

By _____
 Peter F. DeBlasio, Jr., M.D.

Secretary or Assistant Secretary (check one)

CharterCARE Foundation

Exhibit A

to

RESTATED ARTICLES OF INCORPORATION

1. The name of the Corporation is CharterCARE Foundation.
2. The period of its duration is perpetual.
3. The specific purpose or purposes for which the corporation is organized are:

The corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time (the "Code"), and the regulations promulgated thereunder.

Such purposes shall include granting funds to nonprofit organizations for health and wellness initiatives and to individuals for health-related educational purposes.

In addition, the corporation may conduct such other activities as may be carried out by a corporation organized under the Rhode Island Nonprofit Corporation Act and described in Section 501(c)(3) of the Code.

4. Provisions, if any, not inconsistent with the law, which the incorporators elect to set forth in these articles of incorporation for the regulation of the internal affairs of the corporation are:
 1. Members. This corporation shall have no members.
 2. Powers. Subject to all the limitations set forth in, or referred to by, other provisions of these Articles of Incorporation, this corporation shall have, and may exercise in furtherance of its corporate purposes:
 - (a) all of the powers specified in Rhode Island General Laws Section 7-6-5, as amended from time to time; and
 - (b) all other lawful powers necessary or convenient to effect any or all of the purposes for which the corporation was formed; provided, however, that no such power shall be exercised in a manner inconsistent with the Rhode Island Nonprofit

Corporation Act or any other chapter of the Rhode Island General Laws or with the exemption from taxation under the Code.

3. Bylaws. The bylaws may be adopted, amended, or repealed by a majority vote of the directors at a meeting at which a quorum shall be present. The proposed adoption, alteration, or repeal of any bylaws shall be included in the notice of such meeting of the Board of Directors at which such adoption, alteration, or repeal is acted upon.
4. Transactions with Interested Persons. The bylaws may contain provisions providing that no contract or transaction of the corporation shall be void or voidable by reason of the fact that any officer or director of the corporation may have held an interest therein.
5. Elimination of Directors' Personal Liability. No director shall be personally liable to the corporation for monetary damages for breach of his or her duty as a director, notwithstanding any provision of law imposing such liability; provided, however, that this provision shall not eliminate or limit the liability of a director:
 - (a) for any breach of the director's duty of loyalty to the corporation or any members;
 - (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or
 - (c) for any transaction from which the director derived an improper personal benefit.

No amendment, modification or repeal of this paragraph, directly or by adoption of an inconsistent provision of these Articles of Incorporation, shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment, modification or repeal.

6. Tax Exempt Status. It is the intent of the corporation that it be exempt from federal income taxation pursuant to Section 501(c)(3) of the Code. Accordingly, notwithstanding anything else to the contrary in these Articles of Incorporation, the corporation shall be operated exclusively for such permissible purposes as described herein, and all purposes and powers herein shall be construed consistent with this intent.

7. No Private Inurement. No part of the assets or net earnings of the corporation shall inure to the benefit of, or be distributable to, any director or officer of the corporation or any other private person, except that the corporation may pay reasonable compensation for services rendered and make payments and distributions in furtherance of exempt purposes.

8. Distribution in Liquidation. In the event of any liquidation, dissolution, termination, or winding up of the corporation (whether voluntary, involuntary or by operation of law), the property or assets of the corporation remaining after providing for the payment of its debts and obligations shall be distributed as then determined by the corporation's Board of Directors to one or more organizations that operate exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code or corresponding section of any future federal tax code, the purposes of which are the advancement of health care and educational and other activities in support thereof.

9. Successor Laws. All references herein (a) to the Code refer to the Code as now in force or as hereafter amended, or any successor statute and (b) to the Rhode Island General Laws, or any chapter thereof, refer to said laws now in force or as hereafter amended.

Exhibit 6

IRREVOCABLE ASSIGNMENT

Pursuant to the Settlement Agreement dated November ____, 2018 between and among Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the “Receiver”) and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, said persons acting individually and on behalf of all class members as defined therein, CharterCARE Community Board (“CCCB”), St. Joseph Health Services of Rhode Island (“SJHSRI”), Roger Williams Hospital (“RWH”), and CharterCARE Foundation (“CCF”), (hereinafter, the “Settlement B Agreement”), the Receiver hereby irrevocably assigns, transfers, and conveys to CCF any and all of “CCCB’s Foundation Interests” (but not “CCCB’s Hospital Interests”) that the Receiver acquired in the “Settlement A Consent of Sole Member” and “Irrevocable Assignment re CharterCARE Foundation” (those four terms having been defined in the Settlement B Agreement), the originals of which are attached hereto.

[Signature on following page]

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this ____ day of _____, in the year 201_.

Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

1965709.1 02611.000

1973741.1 02611.000

Exhibit 7

JOINT TORTFEASOR RELEASE

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN; GAIL J. MAJOR; NANCY ZOMPA; RALPH BRYDEN; DOROTHY WILLNER; CAROLL SHORT; DONNA BOUTELLE; and EUGENIA LEVESQUE (collectively the “Releasers”), on behalf of themselves and their predecessors, successors, and assigns, grant this joint tortfeasor release (the “Joint Tortfeasor Release”) and do hereby release and forever discharge CharterCARE Foundation (“CCF”) (“Releasee”) of and from any and all actions, claims and demands against CCF of every kind and nature, both at law and in equity (hereinafter the “Released Claims”),

- a) arising out of or in any respect relating to the St. Joseph Health Services of Rhode island Retirement Plan (“the Plan”);
- b) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan, et al. v. Prospect Chartercare LLC, et al.*, C.A. No. 2018-4386, filed in Providence County Superior Court in the State of Rhode Island (the “State Court Action”);
- c) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan, et al. v. Prospect CharterCare LLC, et al.*, C.A. No. 1:18-CV-00328-WES-LDA, filed in the United States District Court for the District of Rhode Island (the “Federal Court Action”);
- d) that were or could have been asserted in connection with that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the “State Court Receivership Action”);
- e) that were or could have been asserted in connection with that certain civil action entitled *In re: CharterCare Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island, Inc.*, C.A. No. KM-2015-0035 (the “2015 Cy Pres Action”);

- f) arising out of or in any respect relating to the appointment and composition of CCF's board of directors, the internal management of CCF, or any other aspect of CCF's business operations; and
- g) arising out of or in any respect relating to funds transferred to CCF pursuant to the April 20, 2015 order entered in the 2015 *Cy Pres* Action, and the subsequent disbursement or management of any such funds.

Notwithstanding the foregoing, any claims the Releasors may have arising out of or relating to any breach of the Settlement B Agreement dated as of November __, 2018 (the "Settlement Agreement") are not released.

As used herein, "CCF" or "Releasee" refers to CharterCARE Foundation, and all of its past and present, actual or ostensible, directors, officers, trustees, employees, committee members, attorneys, insurers (including without limitation RSUI Indemnity Company or RSUI), and agents, except that this release applies solely to their actions and/or omissions in their capacity as actual or ostensible officers, directors, attorneys, and agents of CCF and does not apply to, or otherwise release them from liability in connection with, their roles as directors, officers, trustees, employees, committee members, attorneys, insurers, or agents of any other entity or in any other capacity.

The following persons or entities are expressly not released: Monsignor Timothy Reilly, Roman Catholic Bishop of Providence, Diocesan Administration Corporation, Diocesan Service Corporation, Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, Prospect CharterCare RWMC, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., Adler Pollock & Sheehan, P.C., and The Angell Pension Group, Inc.

This release shall not operate to release or limit any claims that CCF or RSUI may have against CCF's former legal counsel Adler Pollock & Sheehan P.C. ("AP&S") and /or AP&S's current and former partners, shareholders, employees, and/or insurers.

Releasors reduce their claims or potential future claims against any party determined to be a joint tortfeasor with Releasee under Rhode Island General Laws § 23-17.14-35 in the amount of the Settlement Payment set forth in the Settlement B Agreement only (i.e. \$4,500,000).

This Release may be executed in one or more counterparts, which, when taken together, shall constitute a single instrument. A true copy of each counterpart shall be deemed an original.

Rhode Island law (excluding its conflict of laws rules) shall govern this Release.

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this ____ day of _____, in the year 201_.

Stephen Del Sesto, as receiver for the St. Joseph Health Services of Rhode Island Retirement Plan

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

GAIL J. MAJOR

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

NANCY ZOMPA

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

RALPH BRYDEN

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

DOROTHY WILLNER

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

CAROLL SHORT

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

DONNA BOUTELLE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

EUGENIA LEVESQUE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

1958591.1 02611.000
1973742.1 02611.000

Exhibit 8

JOINT TORTFEASOR RELEASE

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN; GAIL J. MAJOR; NANCY ZOMPA; RALPH BRYDEN; DOROTHY WILLNER; CAROLL SHORT; DONNA BOUTELLE; and EUGENIA LEVESQUE (collectively the "Releasers"), on behalf of themselves and their predecessors, successors, and assigns, grant this joint tortfeasor release (the "Joint Tortfeasor Release") and do hereby release and forever discharge the Rhode Island Community Foundation d/b/a Rhode Island Foundation ("RIF") ("Releasee") of and from any and all actions, claims and demands against RIF of every kind and nature, both at law and in equity (hereinafter the "Released Claims"),

- a) arising out of or in any respect relating to the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan");
- b) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan, et al. v. Prospect Chartercare LLC, et al.*, C.A. No. 2018-4386, filed in Providence County Superior Court in the State of Rhode Island (the "State Court Action");
- c) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan, et al. v. Prospect CharterCare LLC, et al.*, C.A. No. 1:18-CV-00328-WES-LDA, filed in the United States District Court for the District of Rhode Island (the "Federal Court Action");
- d) that were or could have been asserted in connection with that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the "State Court Receivership Action");
- e) that were or could have been asserted in connection with that certain civil action entitled *In re: CharterCare Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island, Inc.*, C.A. No. KM-2015-0035 (the "2015 Cy Pres Action");

- f) arising out of or in any respect relating to funds transferred to CharterCARE Foundation (“CCF”) pursuant to the April 20, 2015 order entered in the 2015 *Cy Pres* Action, and RIF’s subsequent disbursement or management of any such funds.

As used herein, “RIF” or “Releasee” refers to the Rhode Island Community Foundation d/b/a Rhode Island Foundation, and all of its past and present directors, officers, trustees, employees, committee members, attorneys, insurers, and agents, except that this release applies solely to their roles as officers, directors, attorneys, and agents of RIF and does not apply to, or otherwise release them from liability in connection with, their roles as directors, officers, trustees, employees, committee members, attorneys, insurers, or agents of any other entity or in any other capacity.

The following persons or entities are expressly not released: Monsignor Timothy Reilly, Roman Catholic Bishop of Providence, Diocesan Administration Corporation, Diocesan Service Corporation, Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, Prospect CharterCare RWMC, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., Adler Pollock & Sheehan, P.C., and The Angell Pension Group, Inc.

Releasors reduce their claims or potential future claims against any party determined to be a joint tortfeasor with Releasee under Rhode Island General Laws § 23-17.14-35 in the amount of the Settlement Payment set forth in the Settlement B Agreement only (i.e. \$4,500,000).

This Release may be executed in one or more counterparts, which, when taken together, shall constitute a single instrument. A true copy of each counterpart shall be deemed an original.

Rhode Island law (excluding its conflict of laws rules) shall govern this Release.

[Signatures on pages to follow]

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this ____ day of _____, in the year 201_.

Stephen Del Sesto, as receiver for the St. Joseph Health Services of Rhode Island Retirement Plan

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

GAIL J. MAJOR

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

NANCY ZOMPA

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

RALPH BRYDEN

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

DOROTHY WILLNER

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

CAROLL SHORT

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

DONNA BOUTELLE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, in the year 201_.

EUGENIA LEVESQUE

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

1958593.1 02611.000
1973745.1 02611.000

Exhibit 9

JOINT TORTFEASOR RELEASE

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND; ROGER WILLIAMS HOSPITAL; and CHARTERCARE COMMUNITY BOARD (collectively the “Releasers”), on behalf of themselves and their predecessors, successors, and assigns, grant this joint tortfeasor release (the “Joint Tortfeasor Release”) and do hereby release and forever discharge CharterCARE Foundation (“CCF”) (“Releasee”) of and from any and all actions, claims and demands against CCF of every kind and nature, both at law and in equity (hereinafter the “Released Claims”),

- a) arising out of or in any respect relating to the St. Joseph Health Services of Rhode Island Retirement Plan (“the Plan”);
- b) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan, et al. v. Prospect Chartercare LLC, et al.*, C.A. No. 2018-4386, filed in Providence County Superior Court in the State of Rhode Island (the “State Court Action”);
- c) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan, et al. v. Prospect CharterCare LLC, et al.*, C.A. No. 1:18-CV-00328-WES-LDA, filed in the United States District Court for the District of Rhode Island (the “Federal Court Action”);
- d) that were or could have been asserted in connection with that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the “State Court Receivership Action”);
- e) that were or could have been asserted in connection with that certain civil action entitled *In re: CharterCare Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island, Inc.*, C.A. No. KM-2015-0035 (the “2015 Cy Pres Action”);
- f) arising out of or in any respect relating to the appointment and composition of CCF’s board of directors, the internal management of CCF, or any other aspect of CCF’s business operations;

- g) arising out of or in any respect relating to funds transferred to CCF pursuant to the April 20, 2015 order entered in the 2015 *Cy Pres* Action, and the subsequent disbursement or management of any such funds.

Notwithstanding the foregoing, any claims the Releasors may have arising out of or relating to any breach of the Settlement B Agreement dated as of November __, 2018 (the "Settlement Agreement") are not released.

As used herein, "CCF" or "Releasee" refers to CharterCARE Foundation, and all of its past and present, actual or ostensible, directors, officers, trustees, employees, committee members, attorneys, insurers (including without limitation RSUI Indemnity Company), and agents, except that this release applies solely to their actions and/or omissions in their capacity as actual or ostensible officers, directors, attorneys, and agents of CCF and does not apply to, or otherwise release them from liability in connection with, their roles as directors, officers, trustees, employees, committee members, attorneys, insurers, or agents of any other entity or in any other capacity.

The following persons or entities are expressly not released: Monsignor Timothy Reilly, Roman Catholic Bishop of Providence, Diocesan Administration Corporation, Diocesan Service Corporation, Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, Prospect CharterCare RWMC, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., Adler Pollock & Sheehan, P.C., and The Angell Pension Group, Inc.

This release shall not operate to release or limit any claims that CCF or RSUI may have against CCF's former legal counsel Adler Pollock & Sheehan P.C. ("AP&S") and /or AP&S's current and former partners, shareholders, employees, and/or insurers.

Releasors reduce their claims or potential future claims against any party determined to be a joint tortfeasor with Releasee under Rhode Island General Laws

§ 23-17.14-35 in the amount of the Settlement Payment set forth in the Settlement B Agreement only (i.e. \$4,500,000).

This Release may be executed in one or more counterparts, which, when taken together, shall constitute a single instrument. A true copy of each counterpart shall be deemed an original.

Rhode Island law (excluding its conflict of laws rules) shall govern this Release.

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this ____ day of _____, in the year 201_.

[insert name]
[insert title]
CharterCARE Community Board

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this ____ day of _____, in the year 201_.

[insert name]
[insert title]
St. Joseph health Services of Rhode Island

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this ____ day of _____, in the year 201_.

[insert name]
[insert title]
Roger Williams Hospital

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

1958592.2 02611.000
1973749.1 02611.000

Exhibit 10

JOINT TORTFEASOR RELEASE

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND; ROGER WILLIAMS HOSPITAL; and CHARTERCARE COMMUNITY BOARD (collectively the “Releasers”), on behalf of themselves and their predecessors, successors, and assigns, grant this joint tortfeasor release (the “Joint Tortfeasor Release”) and do hereby release and forever discharge the Rhode Island Community Foundation d/b/a Rhode Island Foundation (“RIF”) (“Releasee”) of and from any and all actions, claims and demands against RIF of every kind and nature, both at law and in equity (hereinafter the “Released Claims”),

- a) arising out of or in any respect relating to the St. Joseph Health Services of Rhode island Retirement Plan (“the Plan”);
- b) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan, et al. v. Prospect Chartercare LLC, et al.*, C.A. No. 2018-4386, filed in Providence County Superior Court in the State of Rhode Island (the “State Court Action”);
- c) that were or could have been asserted in connection with that certain civil action entitled *Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan, et al. v. Prospect CharterCare LLC, et al.*, C.A. No. 1:18-CV-00328-WES-LDA, filed in the United States District Court for the District of Rhode Island (the “Federal Court Action”);
- d) that were or could have been asserted in connection with that certain civil action entitled *St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan*, C.A. No. PC-2017-3856, filed in Providence County Superior Court in the State of Rhode Island (the “State Court Receivership Action”);
- e) that were or could have been asserted in connection with that certain civil action entitled *In re: CharterCare Health Partners Foundation, Roger Williams Hospital and St. Joseph Health Services of Rhode Island, Inc.*, C.A. No. KM-2015-0035 (the “2015 Cy Pres Action”);
- f) arising out of or in any respect relating to funds transferred to CharterCARE Foundation (“CCF”) pursuant to the April 20, 2015 order

entered in the 2015 *Cy Pres* Action, and RIF's subsequent disbursement or management of any such funds.

As used herein, "RIF" or "Releasee" refers to the Rhode Island Community Foundation d/b/a Rhode Island Foundation, and all of its past and present directors, officers, trustees, employees, committee members, attorneys, insurers, and agents, except that this release applies solely to their roles as officers, directors, attorneys, and agents of RIF and does not apply to, or otherwise release them from liability in connection with, their roles as directors, officers, trustees, employees, committee members, attorneys, insurers, or agents of any other entity or in any other capacity.

The following persons or entities are expressly not released: Monsignor Timothy Reilly, Roman Catholic Bishop of Providence, Diocesan Administration Corporation, Diocesan Service Corporation, Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, Prospect CharterCare RWMC, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., Adler Pollock & Sheehan, P.C., and The Angell Pension Group, Inc.

Releasors reduce their claims or potential future claims against any party determined to be a joint tortfeasor with Releasee under Rhode Island General Laws § 23-17.14-35 in the amount of the Settlement Payment set forth in the Settlement B Agreement only (i.e. \$4,500,000).

This Release may be executed in one or more counterparts, which, when taken together, shall constitute a single instrument. A true copy of each counterpart shall be deemed an original.

Rhode Island law (excluding its conflict of laws rules) shall govern this Release.

[Signatures on pages to follow]

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this ____ day of _____, in the year 201_.

[insert name]
[insert title]
CharterCARE Community Board

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this ____ day of _____, in the year 201_.

[insert name]
[insert title]
St. Joseph health Services of Rhode Island

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this ____ day of _____, in the year 201_.

[insert name]
[insert title]
Roger Williams Hospital

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 201_, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

1958594.1 02611.000
1973751.1 02611.000

Exhibit 11

CONSENT OF RECEIVER

Pursuant to the Settlement Agreement dated November ____, 2018 between and among Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the "Receiver") and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, said persons acting individually and on behalf of all class members as defined therein, CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), Roger Williams Hospital ("RWH"), and CharterCARE Foundation ("CCF"), (hereinafter, the "Settlement B Agreement"):

1. the Receiver hereby authorizes, approves, and consents to the filing by CCF of Restated Articles of Incorporation of CCF, in the form attached hereto as Exhibit A;
2. the Receiver hereby authorizes, approves, and consents to execution by CCCB of the so-called "Consent of CharterCARE Community Board as Sole Member of CharterCARE Foundation", in the form attached hereto as Exhibit B; and
3. the Receiver otherwise further waives, renounces, and/or relinquishes any claimed interest against or in CCF.

[Signature on following page]

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this _____ day of _____, in the year 2018.

Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

1965716.1 02611.000

EXHIBIT 2

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

St. Joseph Health Services of Rhode
Island, Inc.

Vs.

PC 2017-

St. Josephs Health Services of Rhode
Island
Retirement Plan, as amended

PETITION FOR THE APPOINTMENT OF A RECEIVER

Petitioner respectfully represents that:

1. Petitioner, a Rhode Island domestic non-profit corporation, formerly provided hospital and related medical services to communities in northern Rhode Island. In connection therewith, Petitioner coordinated compensation and benefits for its employees, including a defined benefit pension plan.¹

2. In June 2014, Petitioner sold substantially all of its operating assets to a newly-formed entity (the "Hospital Purchaser") owned by Prospect Medical Holdings, Inc. ("Prospect") and CharterCARE Community Board ("CCCB"),² and specifically organized for such purpose. As a result of the sale, Petitioner ceased operating as a health care institution and entered into a "wind-down" phase.

3. Respondent, a defined benefit pension plan, was organized by Petitioner

¹ Generally speaking, a "defined benefit pension plan" is a retirement vehicle which pays out to a beneficiary a defined annuity payment based upon the employee's compensation during employment and length of employment. By comparison, a "defined contribution pension plan" is a retirement vehicle which pays out to a beneficiary a variable annuity or lump sum payment based upon the contributions made to the plan during the employee's employment.

² CCCB was organized in 2009 to seek operating efficiencies and to stem the on-going losses from the operations of Petitioner and Roger Williams Hospital.

as of July 1, 1965 (and amended from time to time), for the benefit of Petitioner's employees (the Respondent pension plan, as amended, shall be hereinafter referred to as the "Plan"). A copy of the latest Plan document is attached as Exhibit 1.

4. Prior to the sale, eligibility for employee participation in the Plan was terminated, thereby closing the Plan to new participants. At the time of the sale, the Plan was estimated to be approximately 90% funded.³ In connection with the sale, additional benefit accruals for existing plan participants were terminated effectively "freezing" benefits for then-eligible employees. Neither Prospect nor the Hospital Purchaser assumed the Plan or any liability with respect thereto as clearly stated in the asset purchase agreement among the parties.⁴

5. At the time of the transaction with the Hospital Purchaser, Petitioner elected to contribute \$14,000,000 to the Plan as a one-time contribution.

6. Throughout its history, Petitioner has been affiliated with the Catholic Church. Petitioner has continued that affiliation during and after the sale to the Hospital Purchaser. As an affiliate of the Catholic Church, the Plan qualified as a "church plan," which is exempt from the provisions of the Employment Retirement Income Security Act of 1974 ("ERISA") governing defined benefit pension plans. As a result of the "church plan" exemption, Petitioner was not required to make annual minimum contributions to the Plan, or make pension insurance payments to the

³ As will be discussed below, the concept of "funding" of a pension plan has different meanings under different circumstances. Here, the assumptions made about the funding level at the time of the transaction with the Hospital Purchaser did not consider all of the long-term issues affecting the Plan.

⁴ Prospect had no role in the evaluation of the Plan or its funding level.

Pension Benefit Guaranty Corporation (“PBGC”).⁵

7. Petitioner is advised and believes that the Plan will lose “church plan” status on or before December 31, 2018.

8. If the Plan loses its status as a “church plan,” Petitioner would be required to make minimum annual contributions and annual payments to PBGC, and would otherwise be required to comply with ERISA. Petitioner does not have the financial resources to make such payments, or to comply with the other financial and regulatory requirements of ERISA.

9. Angell Pension Group, Inc. (“Angell”) performs valuable administrative services for the Plan and serves as the Plan’s actuary. Angell prepares an annual actuarial report of the Plan, the most recent of which is attached hereto as Exhibit 2 (the “Actuarial Report”).

10. Pursuant to the Actuarial Report, the Plan is severely underfunded and requires additional capital of over \$43,000,000 to reach a 100% funding level. See Actuarial Report, p. 2. One of the underlying assumptions in the actuarial calculation, an annual rate of return of 7.75%, has been consistently attributed to the Plan and, historically, constituted a reasonable estimate of performance. However, going forward there is concern that 7.75% projected annualized return is unlikely to be sustained in the long term. Applying a lower anticipated annual rate of return would result in a higher underfunding projection.

11. In light of the considerable underfunding and the imminent loss of “church plan” status, Petitioner requested that Angell perform analyses of different

⁵ PGBC is the quasi-governmental entity that insures defined benefit pension plans.

Plan termination and liquidation scenarios to facilitate an evaluation of options for the Plan and its beneficiaries. Angell provided an analysis dated May 8, 2017, attached hereto as Exhibit 3 (the “Initial Termination Analysis”).

12. The Initial Termination Analysis demonstrated that upon an immediate termination of the Plan, beneficiaries currently receiving benefits would receive a payout of approximately 60% of their accrued benefits and all other beneficiaries would receive no distributions whatsoever. Petitioner believes that such an outcome represents the least favorable result.

13. Following review and evaluation of the Initial Termination Analysis, in an effort to identify better options for Plan beneficiaries, Petitioner requested that Angell perform an analysis of the Plan based upon a uniform reduction of 40% for all current and future beneficiaries’ benefits, and assuming more conservative annualized rates of return. In response to such request, Angell provided an analysis dated May 24, 2017, attached hereto as Exhibit 4 (the “Benefit Adjustment Analysis”).

14. The Benefit Adjustment Analysis demonstrates:

a. That at an annualized rate of return of 6.66%, the Plan will pay out 60% of accrued benefits to 100% of Plan beneficiaries;

b. That at an annualized rate of return of 6.5%, the Plan will pay out 60% of accrued benefits to almost all of the Plan beneficiaries, with the last “allocation group” receiving approximately 48.6% of their accrued benefits; and

c. That at an annualized rate of return of 6.0%, the Plan will pay out 60% of accrued benefits to almost all of the Plan beneficiaries, with the last

“allocation group” receiving only 9% of their accrued benefits.⁶

15. Petitioner believes that a uniform reduction of 40% of pension benefits is likely the most reasonable approach to achieving an equitable resolution for all beneficiaries and therefore requests that the receiver be given authority to make such uniform reduction immediately in order to preserve the Pension assets for the benefit of all beneficiaries.

16. Petitioner, and, Petitioner’s affiliates, Roger Williams Hospital and CCCB,⁷ are winding down their respective affairs. Upon conclusion of such wind-down efforts, the net assets of Petitioner, RWH and CCCB may become available to assist with the Plan.⁸ While the availability of additional funds is uncertain at this time, such additional funds could be used to support the Plan for long-term pay-outs to beneficiaries or provide supplemental distributions to beneficiaries whose benefit payments might be reduced as part of the Plan’s wind-down process. The potential for additional Plan funds is not contemplated by the Benefit Adjustment Analysis.

17. Petitioner believes that the Plan should not be terminated immediately, but rather, that the Court should oversee a long-term wind-down of the Plan through a judicial receivership in the nature of a liquidating trust.

18. Petitioner anticipates that a long-term judicial wind-down could achieve the following goals:

⁶ This 15% payout is more than this group would receive under an immediate liquidation.

⁷ The wind-down of CCCB could potentially take a long time due to its ownership interest in the Hospital Purchaser.

⁸ Petitioner anticipates that the wind-down of RWH and SJHSRI is likely to take several years to complete.

a. Afford all of the Plan beneficiaries the opportunity to receive periodic payments of at least the estimated amount that would result from an immediate termination of the Plan;

b. Afford beneficiaries the opportunity to benefit from the contribution of additional funds to the Plan to increase benefit pay-outs over time;

c. Afford beneficiaries the opportunity to benefit from higher than expected returns should the Plan investments outperform the returns assumed in the Benefit Adjustment Analysis.

19. Petitioner is informed and believes that the Plan is unsustainable absent court intervention and will be unable to pay all accrued benefits as they become due.

20. Absent judicial intervention, Petitioner anticipates that the Plan will be terminated and its funds distributed in a manner that will result in current Plan beneficiaries receiving approximately 60% of their accrued benefits and all others receiving nothing.

21. In the opinion of Petitioner, it is urgent and advisable that a Temporary Receiver be appointed immediately to take charge of the affairs, assets, estate, effects and property of the Plan to preserve the same for the interest of all creditors and the benefit of all interested parties. Petitioner further believes that the current administrators and actuaries of the Plan should remain in place for administrative purposes and to continue to render services to the Plan consistent with past practice, so as to avoid unnecessary additional delay, cost and expense.⁹

⁹ Since the commencement of the wind-down process, administrative expenses of the

22. Petitioner, together with RWH and CCCB are authorized, in the sole discretion of their respective officers and directors, to fund the fees and expenses of the Receiver from time to time, in an effort to avoid further impairment of the Plan's assets to the extent possible.¹⁰

23. This Petition is made in good faith for the protection of the Plan and for the benefit of its beneficiaries, and the appointment of a Temporary Receiver is most desirable pending final hearing on the appointment of a Permanent Receiver.

24. This Petition is filed to seek relief as requested by virtue of and pursuant to this Court's equity powers and pursuant to its powers as authorized by the laws and statutes of the State of Rhode Island.

WHEREFORE, Petitioner respectfully requests that (1) the Court appoint a Temporary Receiver forthwith and also appoint a Permanent Receiver to take charge of the assets, affairs, estate, effects and property of the Plan, (2) that the Temporary Receiver and Permanent Receiver be authorized to continue to operate the Plan, (3) that the request for appointment of a permanent receiver and for an immediate 40% uniform reduction in benefits be set for hearing thirty (30) days

Plan, other than investment management and custodian fees, have been paid for with non-Plan assets. Petitioner anticipates that such expenses will continue to be paid for using non-Plan assets so as to avoid further impairment of participant claims. Investment management and custodial fees and expenses would continue to be paid from Plan assets.

¹⁰ This authorization should not be construed as an obligation of, or affirmative undertaking by, Petitioner, RWH or CCCB, who may determine, in their sole discretion, not to fund such expenses at any given time.

from the date this petition is heard, (4) that notice of such hearing and the relief requested be given to all present and future Plan beneficiaries, at their last known addresses, and to the representative(s) of any unions and other organizations collectively representing any groups of beneficiaries, and (5) that Petitioner have such other and further relief as this Court shall deem proper.

PETITIONER,

St. Joseph Hospital Services
Rhode Island

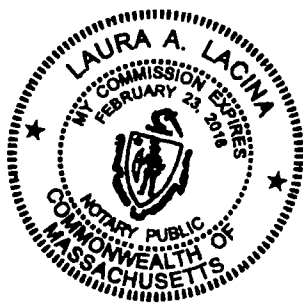
By 

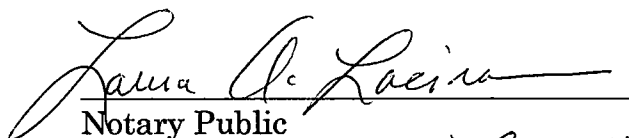


David Hirsch, President

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Barnstable

In Barnstable on the 16 day of August, 2017, before me personally appeared David Hirsch, who made oath that he subscribed to the foregoing Petition, that he knows the contents thereof and that the same are true, excepting those matters stated on information and belief, and as to those matters he believes them to be true.





Notary Public

My commission expires: Feb. 23, 2018

On this 16 day of August, 20 17
before me, the undersigned notary public, personally
appeared David M. Hirsch proved to me
through satisfactory evidence of identification, which were
RI driver's License, to be the
person whose name is signed on the preceding or attached
document, and acknowledge to me that (he) (she) signed it
voluntarily for its stated purpose.

CERTIFICATE OF ATTORNEY

I, the undersigned, Attorney for the Petitioner, certify that this Petition is made in good faith for the protection of the Plan and for the benefit of beneficiaries, and that the appointment of a Temporary Receiver is desirable pending a hearing for the appointment of a Permanent Receiver.



Richard J. Land (5592)
Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
Tel.: 401-453-6400
Email: rland@crflp.com

EXHIBIT 3

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

In re: CHARTERCARE HEALTH :
PARTNERS FOUNDATION, :
ROGER WILLIAMS HOSPITAL and : C.A. No. PC14-_____
ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND :

**PETITION FOR APPROVAL OF DISPOSITION OF CHARITABLE ASSETS
INCLUDING APPLICATION OF DOCTRINE OF *CY PRES***

PARTIES

1. Petitioner, CharterCARE Health Partners Foundation, is a Rhode Island 501(c)(3) non-profit corporation (“CCHP Foundation”). CCHP Foundation’s sole member is CharterCARE Community Board, formerly known as CharterCARE Health Partners (“CCCB”). Prior to June 20, 2014, the CCHP Foundation’s mission included raising funds for the benefit of CCCB and its affiliates, Roger Williams Hospital (“RWH”), formerly known as Roger Williams Medical Center, and St. Joseph Health Services of Rhode Island (“SJHSRI”). RWH and SJHSRI are collectively referred to as the “Heritage Hospitals” herein. On June 20, 2014, a closing on the transaction approved by the Rhode Island Department of Health (“DOH”) and Rhode Island Attorney General’s Office (“AG”) occurred in which certain of the assets of CCCB, RWH and SJHSRI were transferred to the newly formed for-profit joint venture between CCCB and Prospect Medical Holdings, Inc. (“PMH”) known as Prospect CharterCARE, LLC, and its affiliates (the “Joint Venture”). Subsequent to June 20, 2014 and in recognition that the charitable assets at issue in this Petition cannot be used for the benefit of the for-profit Joint Venture, the CCHP Foundation changed its mission to reflect service as a community resource to provide accessible, affordable and responsive health care and health care related services,

including, without limitation, disease prevention, education and research grants, scholarships, clinics and activities within the communities the Heritage Hospitals previously provided services, to facilitate positive changes in the health care system (the “Foundation Mission”). A copy of the Amendment to CCHP Foundation’s Articles of Incorporation is attached at **Exhibit A**.

2. Petitioner, RWH, formerly known as Roger Williams Medical Center, is a Rhode Island 501(c)(3) non-profit corporation that, prior to the June 20, 2014 Joint Venture closing, owned and operated a 220-bed acute care community hospital located in Providence, Rhode Island.

3. Petitioner, SJHSRI is a Rhode Island 501(c)(3) non-profit corporation that, prior to the June 20, 2014 Joint Venture closing, owned and operated a 278-bed acute care community hospital located in North Providence, Rhode Island, known as Our Lady of Fatima Hospital.

4. CCCB is a Rhode Island 501(c)(3) non-profit corporation and the sole member of the CCHP Foundation, RWH and the controlling member of non-religious matters of SJHSRI, with religious matters in the control of the Roman Catholic Bishop of the Diocese of Providence, or his designee.

JURISDICTION

5. This Petition is brought pursuant to R.I. General Laws § 18-4-1 *et seq.* entitled “Application of Cy Pres Doctrine” § 18-9-1 *et seq.* entitled “Division of Charitable Assets” and § 18-12.1-1 *et seq.* entitled “Uniform Prudent Management of Institutional Funds Act” (“UPMIFA”).

6. Peter F. Kilmartin, in his capacity as Attorney General for the State of Rhode Island, and pursuant to his statutory and common law responsibilities with respect to the preservation and protection of charitable assets, has been given notice of this Petition.

7. Bank of America, N.A., the trustee of certain trusts referenced in paragraphs 27–30 herein, has been given notice of this Petition.

BACKGROUND

8. In 2008 and 2009, RWH and SJHSRI combined were losing in excess of \$8 million a year in operations alone. In an effort to stem those losses, those independent systems agreed to affiliate through the creation of CharterCARE Health Partners (“Old CharterCARE”). The purpose of the affiliation was to realize approximately \$15M in savings over five years, utilizing efficiencies created by the combined hospital systems, as well as to preserve and expand health care services to the existing hospitals’ communities. In 2009, the proposed affiliation was approved by the DOH and the AG. If Old CharterCARE had not been approved, the RWH and SJHSRI systems would have had difficulty operating independently. As part of the Old CharterCARE affiliation and in connection with the approval of a Petition for Cy Pres, In Re: CharterCARE Health Partners Foundation, P.B. No. 11-6822, the organizational documents of St. Joseph Health Services Foundation, Inc., originally created to hold and raise funds for the behalf of SJHSRI, were revised to change the entity’s name to CharterCARE Health Partners Foundation, to make CCCB its sole member and to change the mission to raise funds for the benefit of Old CharterCARE and its affiliates. On September 9, 2011, CCHP Foundation secured from the IRS a determination that it was 1) exempt from tax under section 501 (c) (3) of the Internal Revenue Code (IRC) and 2) a public charity under section 509 (a) (3) of the IRC.

9. As a result of the formation of Old CharterCARE, significant operational efficiencies were achieved based on operating revenue alone. Old CharterCARE reduced operating losses to approximately \$3 million per year. Although a significant improvement, the parties recognized that those continuing losses could not be sustained. Furthermore, although capital expenditures were made, the physical plants at the existing hospitals were aging and in need of upgrading. In addition, there were additional concerns regarding the SJHSRI pension funding. In fiscal year 2012, taking into consideration pension losses, Old CharterCARE sustained losses of over \$8 million. The parties recognized that such level of loss could not be maintained. Notwithstanding Old CharterCARE's laudable efforts to drastically reduce such losses, the parties recognized the need for access to additional capital to ensure that the existing hospitals could continue to provide high-quality, accessible services to the communities they served.

10. In an effort to ensure the continued viability of the existing hospitals, in December 2011, Old CharterCARE issued a Request for Proposal ("RFP") seeking a partner. The RFP process was comprehensive, transparent and evaluated a variety of partners who responded to the RFP, including PMH. In March 2013, after a joint meeting of the boards of Old CharterCARE and the existing hospitals, and with the aid of outside consultants who evaluated the different proposals, Old CharterCARE chose PMH's proposal. In March, 2013, the parties executed a Letter of Intent. After an extended period of due diligence, the parties executed an Asset Purchase Agreement on September 24, 2013 (the "APA").

11. Pursuant to the terms of the APA, PMH and Old CharterCARE would own an 85% and 15% interest, respectively, in the Joint Venture; however, the governing structure would include a "50/50 Board" with PMH and Old CharterCARE each appointing 50% of the

Prospect CharterCARE LLC board membership, ensuring that Old CharterCARE would have a significant stake in the continued governance of the hospitals. Accordingly, the existing hospitals would retain their local community mission and local leadership representation while, at the same time, receiving access to necessary capital and resources that PMH could provide. After the transaction, for tax purposes, Prospect CharterCARE LLC would be classified as a for-profit entity and the CCHP Foundation, CCCB, RWH and SJSHRI would each retain their status as tax-exempt organizations under Section 501(c)(3) of the Tax Code. Accordingly, the charitable assets held by the CCHP Foundation, RWH and SJHSRI, post closing, could not be used for the operations of the existing hospitals due to the change of the entities comprising Prospect CharterCARE, LLC and its affiliates to for-profit status.

12. In order to structure the Joint Venture with PMH (and ensure the continued viability of the hospitals to provide high quality, cost-effective, accessible services to the communities they serve) and to secure PMH's commitment to contribute funds at the closing and on a future basis for growth of the hospitals, it was necessary for each of the Heritage Hospitals at the closing to discharge various pre-existing liabilities incurred during the period the Heritage Hospitals provided services to their patients prior to the closing and satisfy outstanding pre and post closing liabilities during their subsequent wind-down period (the "Outstanding Pre and Post Closing Liabilities") as is more fully set forth in the APA.

13. On October 18, 2013, the transacting parties submitted the required Hospital Conversions Act ("HCA") Application to the DOH and the AG. During the HCA review, the transacting parties responded to numerous inquiries by DOH and the AG, including six sets of AG supplemental questions consisting of 213 questions. In addition, the AG conducted interviews of representatives of both Old CharterCARE and PMH.

14. On May 16, 2014 and May 19, 2014, both the AG and the DOH, respectively, approved the HCA Application with conditions. The AG decision discussed the proposed disposition of charitable assets at pages 23 through 32 having reviewed draft *cy pres* petition outlines submitted during the HCA review. Among other things, it approved the concept of (1) the transfer of certain of the charitable assets to the CCHP Foundation and (2) the use of certain of the charitable assets during the Heritage Hospitals' wind down to satisfy the Outstanding Pre and Post Closing Liabilities subject to *cy pres* approval from this Court. It also required the filing of this Petition to address such disposition of the charitable assets post closing. A copy of the charitable assets section of the Decision is attached as **Exhibit B**¹.

15. On June 20, 2014, the Joint Venture transaction was consummated. Accordingly, Prospect CharterCARE, LLC, the for-profit joint venture company, doing business as CharterCARE Health Partners, now operates Roger Williams Medical Center and Fatima Hospital. PMH and CCCB equally share seats on the Prospect CharterCARE LLC's eight-member governing board, with Edwin Santos, the former Chair of Old CharterCARE serving as the new Chair of the Board of Directors.

16. During the course of the AG HCA review, Old CharterCARE submitted a proposed Sources and Uses of Funds Analysis (the "Analysis") as of the closing date, and Estimated Opening Summary Balance Sheets for CCHP Foundation and the Heritage Hospitals, as well as outlines for the proposed *cy pres* petitions for RWH and SJHSRI, all of which were reviewed by the AG with the understanding that final Sources and Uses Analysis and Summary Balance Sheets would be submitted after closing. A comparison of the proposed and final

¹ None of the charitable assets at issue in this Petition are owned by CCCB. They are owned by CCHP Foundation, RWH and SJHSRI. CCCB's assets include its ownership interests in CCHP Foundation, RWH and SJHSRI. Accordingly, the only assets available to satisfy the Outstanding Pre and Post Closing Liabilities are those described in this Petition and identified in Exhibits C, D and E.

Sources and Uses of Funds Analyses as of the June 20, 2014 closing is attached as **Exhibit C**. The final Summary Balance Sheets for CCHP Foundation and the Heritage Hospitals, respectively, are attached as **Exhibits D² and E**.

17. As set forth on Exhibit C, at the Joint Venture closing, certain obligations of RWH and SJHSRI were paid, i.e., bond, pension and account payable liabilities, using sales proceeds from PMH and unrestricted cash. In addition, the Outstanding Pre and Post Closing Liabilities remain to be paid, including, without limitation, malpractice insurance tail policies, third party payor obligations and worker's compensation payments. It is anticipated that the Outstanding Pre and Post Closing Liabilities will be paid during the wind-down period of RWH and SJHSRI over the next approximately three years. The SJHSRI pension funding obligation will continue after the wind-down period concludes.

18. As set forth in the AG Decision, during the course of the HCA review, the parties recognized that notwithstanding the expected proceeds that would be received by the Heritage Hospitals post-closing, including Medicare settlements, *i.e.*, reconciliation of monies due and paid for the fiscal years 2011, 2012, 2013 and 2014, the liabilities of the Heritage Hospitals would exceed the available funds. Accordingly, Old CharterCARE, subject to Court approval, proposed that certain RWH and SJHSRI assets remain with the Heritage Hospitals during their wind-down period to satisfy the Outstanding Pre and Post Closing Liabilities.

19. The Petitioners bring this Petition for approval of the disposition of charitable assets including the application of the doctrine of *cy pres* because the charitable assets cannot be used for the benefit of the for-profit Joint Venture.

² As set forth further herein, the proposed \$8,410,287.66 transfer to CCHP Foundation exceeds the projected transfer of \$7,200,000 identified during the HCA review process.

CCHP FOUNDATION

20. CCHP Foundation requests that this Court grant *cy pres* approval for the use of the following remaining funds in the amount of \$17,465.79, at the discretion of the CCHP Foundation’s Board of Directors to serve the Foundation Mission³:

Account No.	Description	Amount
11.2900.3076	Dental School Graduation Fund	\$2,888.00
11.2900.4007	Fatima Annual Campaign	\$75.00
11.2900.4008	2014 Golf Tournament	\$13,467.79
11.2900.4009	RWMC Campaign	\$1,000.00
11.2900.4018	Elmhurst Extended Care Campaign	\$35.00
	Total:	\$17,465.79

The underlying documentation for such accounts is included at **Tab 1** of the disk to be provided to the Court.

**ROGER WILLIAMS HOSPITAL
TRANSFER TO CCHP FOUNDATION**

21. RWH requests that this Court grant *cy pres* approval for the transfer of the temporarily restricted funds in the total amount of \$284,710.34 to CCHP Foundation to be used as close to the original donors’ intent as possible, at the discretion of CCHP Foundation’s Board of Directors to serve the Foundation Mission. A breakdown of such funds is attached as **Exhibit F** and the underlying documentation is included at **Tabs F1-F23** of the disk to be provided to the Court⁴.

22. RWH requests that this Court grant *cy pres* approval for the transfer of permanently restricted assets in the amount of \$4,209,523 to CCHP Foundation with annual

³ The \$17,465.79 was raised to provide direct support for the Heritage Hospitals. As a result of the Joint Venture for-profit status, the funds cannot be used for the existing hospitals.

⁴ By way of example, and without limitation, such funds may be used for cancer and arthritis research and support.

income therefrom, to be used as close to the original donors’ intent as possible⁵, at the discretion of the CCHP Foundation’s Board of Directors’ to serve the Foundation Mission as follows:

Wanebo Surgical Oncology	\$ 146,791
Free Care	\$ 348,421
General Use	<u>\$3,714,310</u>
Total:	\$4,209,522

A breakdown of the permanently restricted assets is attached as **Exhibit G** and the underlying documentation is included at **Tabs G1-G47** of the disk to be provided to the Court. The average annual income from the permanently restricted assets referenced above is \$210,000.

23. RWH requests that this Court grant *cy pres* approval for the transfer of \$2,242,366 reflecting unrestricted accumulated earnings from RWH permanently restricted assets subject to UPMIFA, to be used at the discretion of the CCHP Foundation’s Board of Directors to serve the Foundation Mission.

TO REMAIN WITH RWH

24. RWH requests that this Court grant approval to use the \$12,288,848⁶, reflecting unrestricted accumulated earnings from RWH permanently restricted assets subject to UPMIFA, to satisfy the Outstanding Pre and Post Closing Liabilities as and when due, as more fully described in Exhibit C.

25. RWH requests that this Court grant *cy pres* approval to use \$326,660.04 in temporarily restricted funds, including Continuing Medical Education (“CME”) funds in the amount of \$26,310.29 and Dedicated Funds in the aggregate amount of \$300,349.75 as follows:

⁵ By way of example, and without limitation, income from permanently restricted assets designated for free care at the Heritage Hospitals may be used for free health care services to those in need and funds designated for scholarships to the former St. Joseph School of Nursing may be used for scholarships for community nursing school students.

⁶ Although the \$12,288,848 exceeds the seven percent calculation set forth in RIGL §18-12.1-4(d), it is prudent under the circumstances to use such funds to satisfy the Outstanding Pre and Post Closing Liabilities.

A) The CME Funds, with a balance of \$26,310.29, maintained annual registration fees and a variety of program expenses for CME programs for medical staff at RWMC. RWH requests that this Court grant *cy pres* approval to use these funds to support CME for the medical staff at RWMC over and above the routine, budgeted costs of necessary CME at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.

B) The Dedicated Funds identified below, in the aggregate amount of \$300,349.75, were established to provide surgical oncology training and academic and research programs for on-staff physicians and fellows at RWMC. RWH requests that this Court grant *cy pres* approval to use these funds to enhance surgical oncology training and academic and research programs over and above the routine, budgeted cost of necessary training and academic and research programs for on-staff physicians and fellows at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.

- Account No. 24.2750.1801
Name: Dedicated Fund Somasundar
Balance: \$43,485.60
- Account No. 24.2750.1802
Name: Dedicated Fund Katz
Balance: \$8,486.50
- Account No. 24.2750.1803
Name: Dedicated Fund Koness
Balance: \$51,060.66
- Account No. 24.2750.1806
Name: Dedicated Fund Dr. Espat
Balance: \$193,618.40
- Account No. 24.2750.1807
Name: Dedicated Fund Baldwin
Balance: \$3,698.59

The underlying documentation for the CME and Dedicated Funds is included at **Tabs F24-F28** of the disk, to be provided to the Court.

SJHSRI
TRANSFER TO CCHP FOUNDATION

26. SJHSRI requests that this Court grant *cy pres* approval for the transfer of the following funds to CCHP Foundation to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation Mission.

- 1) \$258,961.61 in restricted cash,
- 2) \$196,496 in endowment investment earnings (temporarily restricted scholarship funds in the amount of \$76,254 and temporarily restricted endowment interest in the amount of \$120,242) and
- 3) \$1,200,765 in permanently restricted scholarship and endowment funds (\$134,484.00 in scholarships and \$1,066,281.00 in endowments)

A breakdown of such funds is attached as **Exhibit H** and the underlying documentation is included at **Tabs H1-H82** of the disk to be provided to the Court.

TRUST INSTRUMENTS

27. RWH and SJHSRI are the beneficiaries of certain perpetual trusts providing annual income or principal distributions as described further herein. RWH seeks approval for the use of such annual distributions to pay the Outstanding Pre and Post Closing Liabilities on its behalf and after such payments are made in full, RWH seeks *cy pres* approval to transfer such annual distributions to SJHSRI to satisfy the Outstanding Pre and Post Closing Liabilities on its

behalf.⁷ Likewise, SJHSRI seeks approval to use such annual distributions to pay the Outstanding Pre and Post Closing Liabilities (both non-pension and pension) on its behalf and when such liabilities have been paid, to transfer use of such annual distributions to the CCHP Foundation. The underlying documentation for the trusts identified in paragraphs 28-30 herein is included at **Tabs G48-G54** of the disk to be provided to the Court.

RWH

28. RWH, consistent with the trusts' language, requests approval for the continued use of the annual income or principal distributions from the five trusts identified below to pay the Outstanding Pre and Post Closing Liabilities on its behalf. The average annual income or principal distributions is \$160,000 with trust corpus value of \$4,410,154⁸.

- The Trust under Will of Sarah S. Brown dated June 21, 1911
Beneficiary: RWH – 9.5% of total trust's funds

Pursuant to Article Tenth of the Will and a subsequent Superior Court order dated June 20, 1972, the trustee is to distribute all income in equal shares to Rhode Island Hospital and RWH (originally Homeopathic Hospital) for the use of these two organizations in carrying out the work for which they were incorporated and organized. The trust language includes provision to:

distribute...said net income in quarterly payments, share and share alike, equally between the Rhode Island Hospital in Providence and the Homeopathic Hospital of Rhode Island in Providence, both being corporations organized under the laws of Rhode Island, *for the use of said corporations in carrying on the work for which they were created and organized.*
(emphasis added)

- The Trust under Will of C. Prescott Knight dated November 14, 1932

⁷ Pursuant to the 2009 Old CharterCARE affiliation, RWH and SJSHRI as affiliates of Old CharterCARE shared the same mission; namely, to foster an environment of collaboration among its partners, medical staff and employees that supported high quality, patient focused and accessible care that was responsive to the needs of the communities they served. In addition, the Old CharterCARE Board had reserved powers to make decisions regarding the sale and/or merger of the assets of both RWH and SJSHRI. In order to ensure the success of the Joint Venture, the Old CharterCARE Board approved the use of RWH funds for the benefit of SJSHRI to be used towards payment of the Outstanding Pre and Post Closing Liabilities.

⁸ The total trust corpus value including the value of the Boyden trusts described in paragraph 29 is \$4,493,495.

Beneficiary: RWH – 3.3% of total trust’s funds

Pursuant to Article Twelfth, paragraph 1 of the Will, the trustee is to pay all income of the trust share set aside for RWH (originally Homeopathic Hospital) for its general uses and purposes. The trust language provides:

...the net income from said trust fund to be paid over by said trustee to said Homeopathic Hospital of Rhode Island and to be used by it *for the general charitable uses and purposes of said corporation.* (emphasis added)

- The Trust under Will of George Luther Flint dated June 25, 1935
Beneficiary: RWH – 4.9% of total trust’s funds

Pursuant to the Article SECOND of the Will, the trustee is to split the net income between Rhode Island Hospital and RWH (originally Homeopathic Hospital) for the general uses and purposes of each. The trust language provides:

...to pay the income...in equal parts, one-half (1/2) part to Rhode Island Hospital located in the City and County of Providence, in the State of Rhode Island, such income to be used for the general uses and purposes of said Hospital, and the other one-half (1/2) part paid to Homeopathic Hospital located in said Providence, *for the general uses and purposes of said Hospital.* (emphasis added)

- The Miriam C. Horton Trust dated August 9, 1948, as amended by its entirety and restated on June 12, 1963 and modified by a Memorandum of Understanding dated June 24, 2004 between Fleet National Bank (now Bank of America, N.A.), RWH and Brown University
Beneficiary: RWH – 22.3% of total trust’s funds

Pursuant to Article FIFTH, Paragraph C, a sum of up to Five Thousand Dollars (\$5,000) of the net income is to be paid, every third year, to RWH for the upkeep and maintenance of a memorial room in the memory of Harry M. Horton, the husband of Miriam C. Horton. Pursuant to Article FIFTH, Paragraph D of the trust, the balance of the net income is to be distributed in such manner as a committee may determine for the use and benefit of such public, charitable, educational and religious purposes which would be deductible from the gross estate of a decedent under §2055 of the Internal Revenue Code. Section 2055 allows for a deduction for any bequest, legacy or devise to a 501(c)(3) organization. Pursuant to Article FIFTH, Paragraph E of the trust, the committee consists of the Superintendent of RWH, the President of Brown University, and the President of Bank of America, N.A. (formerly Industrial National Bank of Providence). Pursuant to Article FIFTH, Paragraph F of the trust, if the

committee does not make a decision three (3) months after the close of the calendar year, the trustee can direct a distribution that is consistent with the terms of the trust. The language of the trust provides:

...the net income of the fund...shall be expended annually by the Trustee in such manner as said committee shall direct *for the use and benefit of such public, charitable, educational and religious purposes* as, under the provisions of Section 2055 of the Internal Revenue Code...would be the kind or type of public, charitable, educational or religious purpose to which devises, bequests, or legacies are deductible from the gross estate of a decedent; (emphasis added)

On June 24, 2004, the committee agreed by Memorandum of Understanding that beginning in 2005, the trustee would submit to the committee a proposal for distribution of net trust income on an annual basis. Absent the written objection of two or more committee members, the trustee may commence the income distributions as outlined in such proposal. In the event that two or more committee members object, the committee shall meet to determine the income distributes for that year.

- The Trust under Will of Albert K. Steinert dated July 11, 1927
Beneficiary: RWH – 0.5% of total trust’s funds

Pursuant to Article THIRTEENTH of the Will, the trustee is to pay income as follows:

one-sixth to Rhode Island Hospital, one-sixth to Miriam Hospital, one-sixth to SJHSRI, one-sixth to RWH (originally Homeopathic Hospital) one-sixth to Lying-In Hospital and one-sixth to be split between Wellesley College for a scholarship and Brown University for a scholarship.

RWH seeks approval to use its annual income or principal distributions identified above to pay the Outstanding Pre and Post Closing Liabilities on its behalf consistent with the language in the respective trust documents. After RWH’s liabilities have been paid, RWH seeks *cy pres* approval to transfer the annual income or principal distributions to SJHSRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf. Copies of the underlying documentation are included in **Tabs G48-G52** of the disk to be provided to the Court.

29. RWH, consistent with the language of the trusts under the wills of George E. Boyden and Lydia M. Boyden, described below, requests approval to use the trust funds it will receive upon the death of Barbara S. Boyden, currently valued at \$83,341.02, to pay the Pre and Post Closing Outstanding Liabilities on its behalf. To the extent such obligations have been paid prior to receipt of the trust funds or are fully paid thereafter, RWH seeks *cy pres* approval to transfer the funds to SJHSRI to satisfy the Pre and Post Closing Outstanding Liabilities on its behalf. Copies of the underlying documentation are included in **Tab G53** of the disk to be provided to the Court.

- The trusts under the Will of George E. Boyden dated April 12, 1932, as amended by codicils dated February 10, 1933 and June 13, 1934, and under the Will of Lydia M. Boyden, dated September 25, 1930, as amended by codicil dated June 13, 1934.

Article THIRD, Paragraph 4 of George Boyden's Will provides, *inter alia*, that upon the death of his great-granddaughter, Barbara S. Boyden, 20% of the balance of the trust goes to RWH (originally, Homeopathic Hospital of Rhode Island) for its "general purposes." Article SECOND and FIFTH of Lydia Boyden's Will provides, *inter alia*, that upon the death of her great-granddaughter, Barbara S. Boyden, 25% of the balance of the trust goes to RWH (formerly, Homeopathic Hospital of Rhode Island) for its "general purposes."

SJHSRI

30. SJHSRI, consistent with the trust language described below, requests approval for the continued use of the annual income from the following trusts to pay outstanding liabilities.

The average annual income is \$284,000 with trust corpus value of \$6,473,365.

- Herbert G. Townsend Trust dated January 2, 1929, as restated on June 14, 1949, as amended on October 6, 1955, and as modified by agreement dated November 18, 1971
Beneficiary: St. Joseph's Health Services of Rhode Island – 59% of combined trusts' funds

Pursuant to Article 1 of the trust and the agreement dated November 18, 1971 between Industrial National Bank of Rhode Island (now Bank of

America, N.A.), as trustee, and Rhode Island Hospital, Providence Lying-in Hospital, and SJHSRI, as beneficiaries, the trustee is to distribute to the beneficiaries, on an annual basis, a sufficient amount of income and principal to avoid taxes and penalties under § 4942 of the Internal Revenue Code. Such distributions shall be made in equal shares to the foregoing beneficiaries to support the charitable work carried on by them.

- The Trust under Will of Albert K. Steinert dated July 11, 1927
Beneficiary: SJHSRI – 0.5% of combined trusts' funds

Pursuant to Article THIRTEENTH of the Will, the trustee is to pay income as follows:

one-sixth to Rhode Island Hospital, one-sixth to Miriam Hospital, one-sixth to SJHSRI, one-sixth to RWH (originally Homeopathic Hospital) one-sixth to Lying-In Hospital and one-sixth to be split between Wellesley College for a scholarship and to Brown University for a scholarship.

After SJHSRI's non-pension and pension liabilities have been paid, SJHSRI seeks *cy pres* approval to transfer use of its annual income to CCHP Foundation. Copies of the underlying documentation are included in **Tabs G54** and **G52**, respectively, of the disk to be provided to the Court.

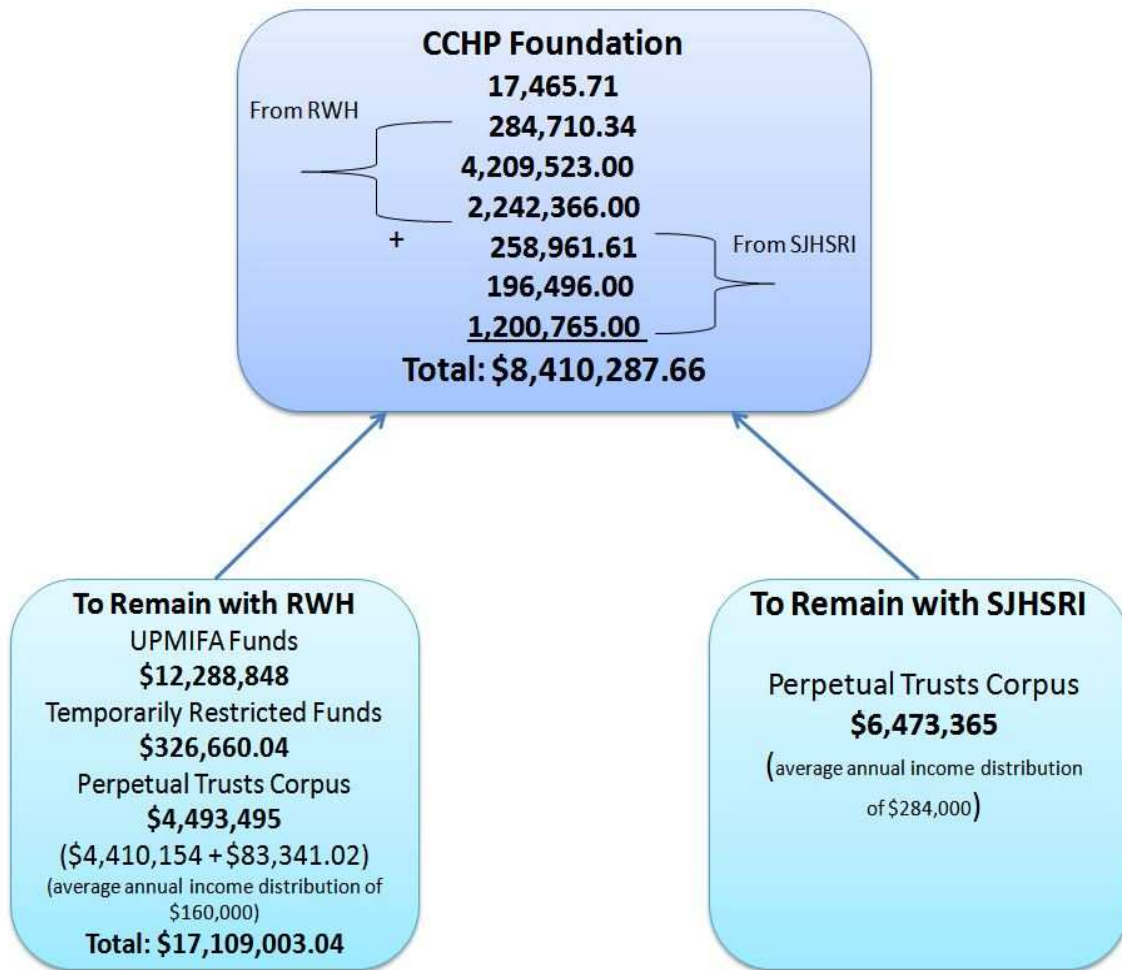
UNKNOWN AND FUTURE CHARITABLE GIFTS

31. RWH and SJHSRI seek *cy pres* approval for any unknown charitable gifts and future charitable gifts that have been or may become known after the June 20, 2014 closing date. At this time, charitable bequests may have already been made naming RWH or SJHSRI as the beneficiary. However, due to the fact that, at times, during the administration of a trust or estate a charity may not be contacted until distributions are ready to be made, RWH or SJHSRI may not be aware of these donations. Also there may be documents already in existence that name RWH or SJHSRI as a charitable beneficiary, but the gift will not vest until the occurrence of some future event. In addition, charitable gifts could be made in the future. RWH and SJHSRI seek *cy pres* approval for the transfer of these unknown and future charitable gifts to CCHP Foundation, if in the discretion of either RWH, SJHSRI or CCCB the gift cannot be used for its

stated purpose, to be used as close to the donors’ intent as possible, in the discretion of CCHP Foundation’s Board of Directors, to serve the Foundation Mission at such time any bequest becomes known by either RWH, SJHSRI or CCCB.

CONCLUSION

32. Accordingly, the Petitioners seek approval from this Court for use of the charitable assets as described in paragraphs 16 through 31 above and illustrated in the chart⁹ below:



⁹ This chart includes only the charitable assets identified in this Petition and does not include the other assets identified in Exhibit E, the disposition of which does not require Court approval, i.e., operating cash, board designated funds and funds held for collateral. As set forth in Exhibit E, the total assets for RWH and SJHSRI are \$23,322,597 and \$12,102,083, respectively.

WHEREFORE, the Petitioners respectfully request that this Court grant this Petition including the following relief:

1. As set forth in paragraph 20, *cy pres* approval for CCHP Foundation to use the remaining funds identified therein, at the discretion of the CCHP Foundation's Board of Directors, to serve the Foundation Mission.

2. As set forth in paragraphs 21, 22 and 23, *cy pres* approval for the transfer of the following RWH funds to CCHP Foundation to be used as close to the original donors' intent as possible, at the discretion of the CCHP Foundation's Board of Directors, to serve the Foundation Mission:

- Temporarily restricted funds in the amount of \$284,710.34
- Permanently restricted funds in the amount of \$4,209,522.00
- Temporarily restricted UPMIFA earnings in the amount of \$2,242,366.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets.

3. As set forth in paragraph 24, approval for RWH to use the following funds as follows:

- \$12,288,848.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets subject to UPMIFA to satisfy the Outstanding Pre and Post Closing Liabilities as and when due.

4. As set forth in paragraph 25, *cy pres* approval for RWH to use the following funds as follows:

- Continuing medical education funds in the amount of \$26,310.29 to support continuing medical education for the medical staff at RWMC over and above the routine budgeted cost of necessary continuing medical education at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.

- Dedicated funds in the aggregate amount of \$300,349.75 as more fully identified in paragraph 25B to enhance surgical oncology physician and fellow training and education over and above the routine budgeted costs of necessary academic and research programs at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.

5. As set forth in paragraph 26, *cy pres* approval for the transfer of the following SJHSRI funds to CCHP Foundation to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation Mission:

- \$258,961.61 in restricted cash
- \$196,496.00 in endowment investment earnings (temporarily restricted scholarship funds in the amount of \$76,254.00 and temporarily restricted endowment interest in the amount of \$120,241.00)
- \$1,200,765.00 in permanently restricted scholarships and endowments (\$1,066,281.00 in endowments and \$134,484.00 in scholarships)

6. As set forth in paragraph 28, approval for RWH to use its annual income or principal distributions from the perpetual trusts identified in paragraph 28 to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf and *cy pres* approval to transfer such annual income distributions to SJHSRI after such RWH liabilities have been satisfied.

7. As set forth in paragraph 29, approval for RWH to use the trust funds that it will receive upon the death of Barbara S. Boyden to pay the Outstanding Pre and Post Closing Liabilities. To the extent such obligations have been paid prior to receipt of the trust funds or are fully paid thereafter, *cy pres* approval to transfer the funds to SJSHRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf.

8. As set forth in paragraph 30, approval for SJHSRI to use its annual income or principal distributions from the perpetual trusts identified in paragraph 30 to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf and *cy pres* approval to transfer such annual income distributions to CCHP Foundation after such liabilities have been satisfied.

9. As set forth in paragraph 31, *cy pres* approval to transfer any unknown charitable gifts and future charitable gifts that may become known at a later date on behalf of RWH and SJHSRI to CCHP Foundation to be used as close to the donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation Mission.

10. Such other and further relief as this Court deems appropriate.

Dated: January 13, 2015

CharterCARE Health Partners Foundation
Roger Williams Hospital
St. Joseph Health Services of Rhode Island

By their attorneys,

/s/ Patricia K. Rocha

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CERTIFICATE OF SERVICE

I hereby certify that, on January 13, 2015:

- I electronically filed and served this document through the electronic filing system on the following parties:

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

- I served this document through the electronic filing system on the following parties:

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

- I mailed or ✓ hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name and address are:

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/s/ Patricia K. Rocha

Exhibit C

Sources and Uses of Funds Analysis-Revised

Sources and Uses of Funds Analysis-Original

Closing Sources and Uses:	
Sources of Funds:	
Permanently Restricted Funds	16,377,148
Temp Restricted Funds	15,615,508
Proceeds from Sales	45,000,000
Funds held with Bond Trustee	297,501
Unrestricted Cash remaining	3,335,622
Unrestricted Case used at Closing Prospect	5,269,944
Unrestricted Cash used at closing-Cain Brother	676,109
Board Designated Funds	6,898,296
Funds Held in Workders Comp Trust Account	270,539
Subtotal : Sources	93,740,667
Uses of Funds:	
N/P Inter-parish SJLC, plus interest	638,838
SJHSRI RIHEBC Tax Exempt Revenue Bonds - Series 1999 payoff amount	14,590,778
RWMC RIHEBC Tax Exempt Revenue Bonds - Series 1998 payoff amount	10,082,033
Citizen Bank - Finance Redemption	1,541,879
SWAP Liability	173,000
RWR Mortgage Note Payable	6,093,413
Operating Loss Loan	paid off prio to close
Debt Interest - included in payoff amounts above	-
RT Note Payable plus interest	650,595
Closing /Affiliation Shared Costs	371,803
Cain Brothers	676,109
Interim Management Fee (plus expenses)	427,605
Insurance Tail Policies	-
Pension Liability	14,000,000
Working Capital True-up	-
Proceeds from Sale of Joint Venture Ownership	1,700,000
Permanently Restricted Funds Transferred to Foundation	4,209,522
Permanently Restricted Funds Transferred to Foundation	1,200,765
Permanently Restricted Funds remaining in Heritage Hospitals	10,966,860
Temporarily Restricted Funds remaining in Heritage Hospitals	326,660
Temp Restricted Funds Transferred to Foundation	3,000,000
Subtotal : Uses	70,649,861
Excess/(shortage)	23,090,806

Closing Sources and Uses:	
Sources of Funds:	
Permanently Restricted Funds	16,190,569
Temp Restricted Funds	15,905,632
Proceeds from Sales	45,000,000
Funds held with Bond Trustee	4,301,096
Unrestricted Cash remaining	5,735,560
Unrestricted Case used at Closing Prospect	-
Unrestricted Cash used at closing-Cain Brother	-
Board Designated Funds	6,666,874
Funds Held in Workders Comp Trust Account	839,630
Subtotal : Sources	94,639,361
Uses of Funds:	
N/P Inter-parish SJLC	622,566
Revenue Bonds - Series 1999	16,550,000
Revenue Bonds - Series 1998	11,062,500
Citizen Bank - Finance Redemption	1,597,222
SWAP Liability	192,836
RWR Mortgage Note Payable	5,864,253
Operating Loss Loan	291,462
Debt Interest	863,762
RT Note Payable	625,000
Closing Costs (Cain/Prospect)	820,000
Insurance Tail Policies	7,943,098
Pension Liability	14,000,000
Working Capital True-up	2,500,000
Proceeds from Sale of Joint Venture Ownership	1,700,000
Permanently Restricted Funds Transferred to Foundation	4,209,522
Permanently Restricted Funds Transferred to Heritage Hospitals	1,200,514
Permanently Restricted Funds remaining in Heritage Hospitals	10,780,533
Temp Restricted Funds Transferred to Foundation	3,000,000
Subtotal : Uses	83,823,268
Excess/(shortage)	10,816,093

Post Close Sources and Uses:	
Sources of Funds:	
Excess cash from closing/Funds held in WC Trust	23,090,806
Split Dollar Policy Premium refunds	1,147,433
Subtotal : Sources	24,238,239
Uses of Funds:	
Working Capital Adjustment	2,125,407
Insurance Tail Policies	7,199,497
Workers Comp Reserve	443,296
Unassumed Affiliation Liabilities	1,890,309
Insurance Deductible (W/C & Mal)RWMC	300,000
Third Party Settlements	6,218,991
Unassumed Contracts:	
Diagnostic Imaging:	
Physician Contract	1,031,611
Billable to JV	(318,750)
Physician Advisor-SJ	14,400
Transition Agreement work	225,000
Foundation: Employees	125,000
Acctng Fees	50,000
Subtotal : Uses	19,304,761
Excess/(shortage)	4,933,478
Collateral Requirement for W/C - Cash not not be used	1,800,000
Adjusted Excess/shortage	3,133,478

Post Close Sources and Uses:	
Sources of Funds:	
Excess cash from closing/Funds held in WC Trust	10,816,093
Medicare Settlement	335,000
Insurance Premium refund (net)	527,500
Subtotal : Sources	11,678,593
Uses of Funds:	
Working Capital Adjustment	0
Insurance Tail Policies	-
Workers Comp Reserve	496,582
Unassumed Affiliation Liabilities	1,029,786
Insurance Deductible	300,000
Third Party Settlements	7,700,000
Subtotal : Uses	9,526,368
Excess/(shortage)	2,152,225

*There is a dispute between the Joint Venture and CCCB regarding the disposition of the split dollar policy premium refunds, a non-charitable asset, that may result in a reduction in the Adjusted Excess/Shortage Amount of \$3,133,478 to \$2,229,781. However, an additional \$567,053 from a recent Medicaid disproportionate share of hospital (DSH) audit is expected to increase the Adjusted Excess/Shortage Amount to \$2,796,834. Additional third party settlements may likewise impact the Adjusted Excess/Shortage Post Close Amount. The dispute between the Joint Venture and CCCB is a separate legal matter, as to which CCCB has its own legal counsel. If those two parties do not resolve this dispute between themselves, the dispute will be resolved, as expeditiously as possible, pursuant to the dispute resolution procedure set forth in the Asset Purchase Agreement.

EXHIBIT 4

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

In re: CHARTERCARE HEALTH :
PARTNERS FOUNDATION, :
ROGER WILLIAMS HOSPITAL and : C.A. No. KM – 2015-0035
ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND :

**ORDER ON PETITION FOR APPROVAL OF
DISPOSITION OF CHARITABLE ASSETS**

This matter came before the Court on April 6, 2015 on CharterCARE Health Partners Foundation (“CCHP Foundation”), Roger Williams Hospital (“RWH”) and St. Joseph Health Services of Rhode Island’s (“SJHSRI”) Petition for Approval of Disposition of Charitable Assets Including Application Of The Doctrine Of *Cy Pres* (the “Petition”), and after review of the Petition, and Responses by the Attorney General for the State of Rhode Island (the “Attorney General”), and Trustee Bank of America, N.A. (the “Trustee”), as well as argument by counsel for the Petitioners, the Attorney General, and the Trustee, it is hereby ORDERED:

The Petition is granted as set forth herein, referencing fund amounts as of July 31, 2014:

1. As set forth in paragraph 20 of the Petition, *cy pres* approval is granted for CCHP Foundation to use the funds in the amount of \$17,465.79, at the discretion of CCHP Foundation’s Board of Directors, to serve the Foundation mission.
2. As set forth in paragraphs 21, 22 and 23 of the Petition, *cy pres* approval is granted for the transfer of the following RWH funds to CCHP Foundation, to be used as close to the original donors’ intent as possible, at the discretion of CCHP Foundation’s Board of Directors, to serve the Foundation mission:
 - Temporarily restricted funds in the amount of \$284,710.34

- Permanently restricted funds in the amount of \$4,209,522.00
- Temporarily restricted earnings in the amount of \$2,242,366.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets.

3. As set forth in paragraph 24 of the Petition, approval is granted for RWH to use the following funds:

- \$12,288,848.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets to satisfy the Outstanding Pre and Post Closing Liabilities as and when due.

4. As set forth in paragraph 25 of the Petition, *cy pres* approval is granted for RWH to use the following funds:

- Continuing medical education funds in the amount of \$26,310.29 to support continuing medical education for the medical staff at RWMC over and above the routine budgeted cost of necessary continuing medical education at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.
- Dedicated funds in the aggregate amount of \$300,349.75 as more fully identified in paragraph 25B of the Petition to enhance surgical oncology physician and fellow training and education over and above the routine budgeted costs of necessary academic and research programs at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.

5. As set forth in paragraph 26 of the Petition, *cy pres* approval is granted for the transfer of the following SJHSRI funds to CCHP Foundation, to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation mission:

- \$258,961.61 in restricted cash
- \$196,496.00 in endowment investment earnings (temporarily restricted scholarship funds in the amount of \$76,254.00 and temporarily restricted endowment interest in the amount of \$120,241.00)
- \$1,200,765.00 in permanently restricted scholarships and endowments (\$1,066,281.00 in endowments and \$134,484.00 in scholarships)

6. As set forth in paragraph 28 of the Petition, (a) approval is granted for RWH to use the annual income or principal distributions from the perpetual trusts identified therein to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf, and (b) *cy pres* approval is granted for RWH and/or the Trustee (or any successor Trustee) to transfer such annual income or principal distributions to SJHSRI after such RWH liabilities have been satisfied and to transfer such annual income or principal distributions to CCHP Foundation after the Outstanding Pre and Post Closing Liabilities of SJHSRI have been satisfied.

7. As set forth in paragraph 29 of the Petition, approval is granted for RWH to use the trust funds that it will receive, if any, upon the death of Barbara S. Boyden to pay the Outstanding Pre and Post Closing Liabilities. To the extent such obligations have been paid prior to receipt of the trust funds or are fully paid thereafter, *cy pres* approval is granted for RWH and/or the Trustee (or any successor Trustee) to transfer the trust funds to SJSHRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf.

8. As set forth in paragraphs 28 through 30 of the Petition, (a) approval is granted for SJHSRI to use the annual income or principal distributions from the perpetual trusts identified therein to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf, and (b) *cy pres* approval is granted for SJHSRI and/or the Trustee (or any successor Trustee) to transfer such annual income or principal distributions to CCHP Foundation after such liabilities have been satisfied.

9. As set forth in paragraph 31 of the Petition, *cy pres* approval is granted to transfer any unknown charitable gifts and future charitable gifts that may become known at a later date on behalf of RWH and SJHSRI to CCHP Foundation, to be used as close to the donors' intent as

possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation mission.

10. At least sixty (60) days prior to the completion of the wind-down period for RWH and SJHSRI, respectively, RWH and SJHSRI shall give written notice to the Trustee of such status.

11. CCHP Foundation shall comply with the following reporting requirements:

1. CCHP Foundation shall submit a report to the Health Care Advocate at the Rhode Island Department of Attorney General of the expenditures of the funds transferred to the CCHP Foundation (the "Report").
2. The Report shall include the amount of funds expended, the purpose of the expenditure, the beneficiary of the funds, and the name and contact information for such beneficiary.
3. The Report shall be submitted annually, with a copy of CCHP Foundation's IRS Form 990 ("990"), five business days after the date the 990 is filed with the IRS, commencing with the 990 filing for the fiscal year ending September 30, 2015. A report shall also be submitted if an expenditure of over \$200,000 occurs more than ninety (90) days after the reporting date, or more than ninety (90) days prior to the reporting date, whichever occurs first.
4. If, at any time, CCHP Foundation decides to relinquish custody and control and transfer the funds to another charitable institution for administration of such funds, regardless of the amount, notice of said transfer shall be provided to the Health Care Advocate at the Rhode Island Department of Attorney General, at least thirty (30) days prior to the transfer. Notice shall precede the

transfer and contain the amount of funds transferred and the name of the institution receiving the funds, and the contact information for the person(s) managing the funds.

5. If and when any assets of the charitable trusts are transferred to CCHP Foundation, it shall provide to the Trustee (or any successor Trustee) copies of all reports and notices under this paragraph when submitted to the Health Care Advocate at the Rhode Island Department of Attorney General.

ENTER:

/s/ Brian P. Stern
Stern, J. 4/20/15

PER ORDER:

/s/ Carin Miley
Clerk (Deputy)

Presented by:

CharterCARE Health Partners Foundation
Roger Williams Hospital
St. Joseph Health Services of Rhode Island

By their attorneys,

/s/ Patricia K. Rocha
PATRICIA K. ROCHA (#2793)
JOSEPH AVANZATO (#4774)
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Dated: April 6, 2015

CERTIFICATE OF SERVICE

I hereby certify that, on April 6, 2015

I electronically filed and served this document through the electronic filing system on the following parties:

Genevieve Martin, Esq.
Kathryn D. Enright, Esq.
Chrisianne Wyrzykowski, Esq.
Office of the Rhode Island Attorney General
150 South Main Street
Providence, RI 02903

Paul A. Silver, Esq.
James Nagelberg, Esq.
Hinckley, Allen & Snyder LLP
50 Kennedy Plaza, #1500
Providence, RI 02903

And emailed a copy to the above listed counsel.

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

I served this document through the electronic filing system on the following parties:

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

I mailed or hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name and address are:

/s/ Patricia K. Rocha

EXHIBIT 5

**Transcript of Video Recording of December 4 Meeting - Part 2 of 3 -
St. Josephs Health Services Retirement Plan (0:00-4:38)¹**

Q (Plan Participant). Regarding the lawyers; we are paying you and Mr. Wistow right now; correct?

A (The Receiver). The funds to pay me are not coming out of the plan, but they are funds that I've received from Roger Williams; and let me; I guess; let me explain that because this is a very sensitive question. So the one thing that was stated right out at the beginning by St. Joe's is that the receiver and the receiver's fees, costs and expenses would not be paid from plan assets. Meaning, the money that is being held right now by the plan, the \$85/\$86 million dollars, that is not getting depleted at all to pay the fees, costs and expenses of this proceeding.

That said, there are monies that are in the what I'll call the old St. Joseph's and the old Roger Williams for their wind down efforts, so when a hospital is sold the way Roger Williams and St. Joe's were, certain things are left behind and certain wind down efforts are required under state law and that costs money to do that, so certain assets were left behind. Those monies, once those entities are wound down, would ultimately, according to a cy pres order, it's an order entered by the court, would ultimately flow into the Plan. Those are the monies right now that are being used to compensate me, my fees and expenses, Mr. Wistow's fees and expenses. I will say with regard to Mr. Wistow, his engagement is an hourly fee at the investigatory stage and then he moves to a contingency fee platform. So his hourly fees will stop once he's determined and made a decision and reported to me who can and can't be sued or who we think we can sue.

Once that happens, the first time we file a lawsuit, then Mr. Wistow's time is based on a contingency basis not hourly. Mine unfortunately, is hourly all the way through.

Q (Plan Participant). But how long do you think this money will last that they have at Roger Williams?

A (The Receiver). Well, that's a good question. I don't know how long that will last, and the reason why is because that money is a little bit of a moving target similar to the pension. They've invested some of the monies they had because they don't need cash immediately available for wind down efforts so their hope is that by investing it they will earn interest income on those investments, investment income, and that that will increase the pile of money. They also have other assets that they can liquidate. I don't know for certain; what I have been told and it was reported in Go Local, is that St. Joe's has approximately 1.5 million, somewhere between 1.5 and 2, and Roger Williams has somewhere in the vicinity \$4 to \$5 million. Those monies, as I've stated, are what is being used to pay my fees, costs and expenses, but also the wind down efforts of those entities, and the only thing that I have any insight into is what I am doing with regard to this Plan. I don't know where the wind down efforts are or how much they've anticipated they will need to wind down 100%. I have asked that question, for them to give me a budget, so I have

¹ A video recording of the portion of the town hall meeting transcribed above can be found at Pierce Atwood, Dec. 4 Meeting – Part 2 of 3 – St. Josephs Health Services Retirement Plan, YouTube (Dec. 15, 2017) at (0:00-4:38), https://www.youtube.com/watch?v=JCqtahhEwPA&index=2&list=PL_8Q8T8_4DLr8xdtLWztXIHnXpTILRYp.

an understanding. Partially the reason I want a budget is because I want to know. The other reason is, for example, if they have, let's say there is \$6 million and they say we anticipate that we're going to need \$3 million to wind down efforts, then my position would be okay well then you don't need 6; give me the 6 and I can put it into this plan and help the plan out a little bit. I'm not sure if I'll be successful in doing that because it would be an estimate and a guess, but just so that you are aware that is kind of my mind set is I'd like to get as much money as I can to come into this plan so that the 85 million becomes 88 or 92 or 95 or something like that. The more money I can collect, the less of a cut I have to make and the better off we are all going to be on that.

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