

**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-WES-LDA

**DIOCESAN DEFENDANTS' STATEMENT OF DISPUTED FACTS
IN RESPONSE TO PROSPECT'S STATEMENT OF UNDISPUTED FACTS**

Defendants Roman Catholic Bishop of Providence, a corporation sole ("RCB"), Diocesan Administration Corporation ("DAC") and Diocesan Service Corporation ("DSC" and with RCB and DAC, the "Diocesan Defendants") provide this statement of disputed facts in response to Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC and Prospect Chartercare RWMC, LLC's (collectively, "Prospect") Statement of Undisputed Facts. A huge number of Prospect's statements are legal conclusions couched as fact. Cautious of the maxim that silence gives consent, the Diocesan Defendants respond to such statements as well.

PROSPECT'S STATEMENT NO. 1:

At all relevant times up until the assets sale that closed on June 20, 2014 (the "2014 Assets Sale"), St. Joseph Health Services of Rhode Island ("SJHSRI"), functioned as a tax exempt nonprofit hospital corporation located in North Providence, Rhode Island. (Plaintiffs' Exhibit 11, Memorandum of Understanding ("MOE") at 1; Plaintiffs' Exhibit 15, Amended and

Restated Bylaws of St. Joseph Health Services of Rhode Island (“SJHSRI Bylaws”) at sect. 2; Plaintiffs’ Exhibit 14; Health Care System Affiliation and Development Agreement dated February 2, 2009 (the “Affiliation Agreement”) at 1.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 1:

Undisputed.

PROSPECT’S STATEMENT NO. 2:

At all relevant times, SJHSRI was controlled by and associated with the Roman Catholic Church (the “Catholic Church”), and its hospitals were operated consistent with the healing mission of the Catholic Church. (Plaintiffs’ Exhibit 14, Affiliation Agreement at p. 2, 12, 51; Plaintiffs’ Exhibit 1, Petition for the Appointment of a Receiver at para. 6.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 2:

Undisputed that SJHSRI was associated with the Catholic Church. Disputed that RCB or the Most Reverend Bishop controlled SJHSRI or SJHSRI’s Board of Trustees at any time after the effective date of the Affiliation, January 4, 2010. *See infra* at Resp. No. 12 at 12.2 (addressing effective date of the Affiliation). RCB did not appoint a controlling majority of the SJHSRI Board of Trustees on or after January 4, 2010. Such power rested with CharterCARE Health Partners (“CCHP” or “CharterCARE”), which could fill thirteen of fifteen seats on the SJHSRI Board (eleven elected trustees and two *ex-officio* seats for the CCHP CEO and CCHP COO). ECF No. 174-15 (SJHSRI Bylaws, effective January 4, 2010 (“SJHSRI Bylaws”)) § 4.2; ECF No. 174-24 (CCHP Bylaws) § 4.10(c). CCHP exercised that authority to elect the initial slate of post-affiliation SJHSRI trustees on January 4, 2010. Ex. 8 (Jan. 4, 2010 CCHP Board Resolutions) at 3. Moreover, there was no denominational requirement for members of SJHSRI’s Board of Trustees either before or after January 4, 2010. *See generally* ECF No. 174-

15 (SJHSRI Bylaws) § 4.2 (reflecting no denominational requirement); Ex. 1 (2007 SJHSRI Bylaws) at Art. 5 (same).

Rather, from January 4, 2010 forward, SJHSRI was not controlled by RCB or the Most Reverend Bishop. From that point on, RCB only served as SJHSRI's Class B member, with reserved powers relative to Catholicity. *See* ECF No. 190-8 (Articles of Amendment to SJHSRI's Articles of Incorporation ("SJHSRI Amended Articles")), Ex. A at Part A & D; ECF No. 174-15 (SJHSRI Bylaws) §§ 2.1, 4.13. Between January 4, 2010 and December 15, 2014, RCB could also appoint one *ex-officio* member to the SJHSRI Board of Trustees and select the chairman and vice-chairman of SJHSRI's Board. ECF No. 174-15 (SJHSRI Bylaws) §§ 4.2, 6.2; ECF No. 190-25 (Dec. 15, 2014 Written Consent of CCHP) (deleting § 6.2 of SJHSRI Bylaws and rewriting § 4.2 to remove RCB's *ex-officio* board seat). All other members of the SJHSRI Board of Trustees were "appointed and removed exclusively by the Class A member," CCHP. ECF No. 174-15 (SJHSRI Bylaws) § 4.2.

Apart from RCB's reserved powers respecting Catholicity, all financial, strategic and administrative authority rested with the Class A member, CCHP. For example, beyond appointing and removing SJHSRI's trustees (except RCB's one *ex-officio* designee and the *ex-officio* seat for the president of SJHSRI's medical staff), CCHP was empowered to appoint and/or remove SJHSRI's President/Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Secretary, and Treasurer. ECF No. 190-8 (SJHSRI Amended Articles), Ex. A at Part B(ii) & (iv); ECF No. 174-15 (SJHSRI Bylaws) §§ 4.2, 6.2, 7.2. Thus, as Kenneth Belcher, President and CEO of CCHP and SJHSRI testified:

Q. All right. We earlier had discussed that, once the affiliation took place and the bylaws of St. Joseph's were amended, that CharterCARE Health Partners appointed all of the members of the Board of Trustees of St. Joseph's, other than the four *ex-officio* members. Do you recall that?

A. I do.

Q. And once that occurred, do you agree that the St. Joseph's Health Services of Rhode Island, as an entity, was not controlled by the Bishop?

MR. WAGNER: Objection.

MR. SHEEHAN: Did I lose you?

A. I think that's accurate.

ECF No. 196-1 (Belcher Dep.) 141:19–142:7.

Finally, as these claims are related and repeated throughout Prospect's Statement and will be discussed in greater detail *infra* at Response Nos. 29 and 49, RCB did not control CCHP and therefore could not control SJHSRI through CCHP. Specifically, neither RCB nor the Most Reverend Bishop controlled CCHP's Finance, Audit & Compliance Committee ("CCHP Finance Committee"), or CCHP's Investment Committee, nor were those committees associated with the Catholic Church. *See* ECF No. 174-24 (CCHP Bylaws) §§ 4.4(c) & (f). The purpose or function of CCHP and these committees specifically did not share the faith or mission of the Catholic Church, their business did not concern religious matters, and none of them were listed in the Official Catholic Directory. *See id.*; ECF No. 190-1 (Prospect's Br.) at 64 (acknowledging that CCHP was not listed in the Official Catholic Directory); *see also infra* Resp. No. 29 at 29.1-A(6) & Resp. No. 49 at 49.5. Rather, the CCHP Bylaws placed the power of appointment for CCHP board committees with the CCHP Board. ECF No. 174-24 (CCHP Bylaws) § 4.4. The constituent members of the CCHP Finance Committee and Investment Committee were in no way dominated by RCB Appointees. The facts as documented in these committees' minutes show just the opposite. *See infra* Resp. No. 29 at 29.1-C(2) & Resp. No. 49 at 49.5.

The Affiliation Agreement and CCHP's Bylaws, moreover, affirmatively declare that CCHP was to be a secular organization. ECF No. 174-14 (Aff. Agmt) §§ 2.1.3, 3.2; *see* ECF No. 174-24 (CCHP Bylaws) § 5.1(k) ("'Secular Member' means CharterCARE and each

affiliate of the CharterCARE System that is not Under Catholic Sponsorship.”) (emphasis and underlining in original). CCHP was not required to adhere to the Ethical and Religious Directives (“ERDs”) of the United States Conference of Catholic Bishops. ECF No. 174-14 (Aff. Agmt) § 3.8 (“other than the provisions of this Agreement relating to the Prohibited Procedures, no Member of the CharterCARE System (other than SJHSRI) is required to comply with the ERDs.”). And, there was no denominational requirement for members of the CCHP Board or its committees. ECF No. 174-24 (CCHP Bylaws) §§ 4.2, 4.4 (reflecting responsibilities of CCHP committees and lack of denominational requirement). CCHP was intended to be a secular entity and it, its Board, and its committees, were intended to manage the administrative and secular aspects of the businesses of CCHP, RWH, and SJHSRI as noted by Prospect itself in Statement Nos. 23 and 47. ECF No. 190-5 (Prospect’s Statement of Undisputed Facts) ¶¶ 23, 47; *infra* Resp. No. 29 at 29.1-A(1).

PROSPECT’S STATEMENT NO. 3:

At all relevant times, SJHSRI was associated with the Catholic Church and was listed in the Official Catholic Directory (the “Directory”) as a subordinate organization that was “operated, supervised, or controlled by or in connection with the [] Catholic Church.” (Declaration of Marshall Raucci dated June 26, 2020 (“Raucci Decl.”) at para 5.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 3:

Undisputed that SJHSRI was associated with the Catholic Church. Also undisputed that SJHSRI was listed in the Official Catholic Directory, as a subordinate organization that was operated, supervised, or controlled by or in connection with the Catholic Church through 2017.

PROSPECT'S STATEMENT NO. 4:

From 1965 through June 30, 1995, employees of SJHSRI participated in a defined-benefit pension plan that the Roman Catholic Bishop of Providence, the Diocesan Administration Corporation, and the Diocesan Service Corporation had established for the employees of the Diocese, known as the Diocese of Providence Retirement Plan (the “Diocesan Plan”). (Plaintiffs’ Statement of Undisputed Material Facts at para. 7. A copy of what purports to be the first iteration of the Diocesan Plan is attached as Exhibit 7 to Plaintiffs’ Statement of Undisputed Material Facts.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 4:

Response 4.1. Disputed. Plaintiffs’ Statement of Undisputed Facts does not identify who established the Diocese of Providence Retirement Plan. ECF No. 174 (Plaintiffs’ Statement of Undisputed Facts) ¶ 7.

Response 4.2. Disputed. DSC and DAC did not establish the Diocese of Providence Retirement Plan. Neither existed in 1965. DSC was incorporated on November 1, 1996. *See* Ex. 2 (DSC’s Articles of Incorporation). DAC was incorporated on November 19, 1999. *See* Ex. 3 (DAC’s Articles of Incorporation).

Response 4.3. Undisputed that from 1965 through June 30, 1995, employees of SJHSRI participated in a defined-benefit pension plan for eligible employees known as the “Diocese of Providence Retirement Plan” that was established by RCB.

PROSPECT'S STATEMENT NO. 5:

In 1995, SJHSRI and the Diocese of Providence removed SJHSRI employees from the Diocesan Plan and simultaneously established the St. Joseph Health Services of Rhode Island Pension Plan (the “Plan”) as a separate retirement plan for those SJHSRI employees, and

for qualifying newly-hired employees. (Plaintiffs' Statement of Undisputed Material Facts at para. 8. The Plan as effective July 1, 1995 is attached as Exhibit 8 to Plaintiffs' Statement of Undisputed Material Facts.)

DIOCESAN DEFENDANTS' RESPONSE NO. 5:

Response 5.1. Disputed. The "Diocese of Providence" is not a legal entity and was incapable of taking the actions attributed to it in Statement No. 5. The 1995 Plan indicates that "the Roman Catholic Bishop of Providence and St. Joseph Hospital have caused this amendment and restatement of the Plan to be executed." ECF No. 174-8 (1995 Plan) at 44.

Response 5.2. Also disputed that SJHSRI employees were "removed" from any retirement plan. The 1995 Plan states that it "amends, restates, and continues the Diocese of Providence Retirement Plan -- Part A (St. Joseph Hospital) originally effective July 1, 1965." *Id.* § 1.2. The document speaks for itself.

PROSPECT'S STATEMENT NO. 6:

At all relevant times, the Plan's controlling Plan document has explicitly declared that the Plan is intended to qualify as a non-electing church plan exempt from the Employee Retirement Income Security Act, as amended ("ERISA"). (Plaintiffs' Statement of Undisputed Facts at Para. 11; Plaintiffs' Exhibit 8 (1995 Plan) at 1; Plaintiffs' Exhibit 9 (1999 Plan) at 1; Plaintiffs' Exhibit 10 (2011 Plan) at 1; and Plaintiffs' Exhibit 3 (2016 Plan) at 1.)

DIOCESAN DEFENDANTS' RESPONSE NO. 6:

Undisputed that the 1995 Plan, the 1999 Plan, the 2011 Plan, and the 2016 Plan stated that the Plan was intended to qualify as a non-electing church plan exempt from the Employee Retirement Income Security Act, as amended.

PROSPECT'S STATEMENT NO. 7:

At all relevant times, the Plan was consistently treated by SJHSRI, and by its trustees, officers and employees, as a non-electing church plan exempt from the provisions of ERISA. (Plaintiffs' Exhibit 1; Petition for the Appointment of a Receiver, Para. 6; Raucci Decl. at para. 4; Declaration of Kenneth H. Belcher dated June 26, 2020 ("Belcher Decl.") at para 4.)

DIOCESAN DEFENDANTS' RESPONSE NO. 7:

Undisputed that the Most Reverend Bishop and, at relevant times, RCB understood that the Plan was intended to be treated as a non-electing church plan exempt from the provisions of ERISA. The Diocesan Defendants take no position as to whether the Plan was "consistently treated" as such after the adoption of the 2011 Plan.

PROSPECT'S STATEMENT NO. 8:

During the period from its inception effective July 1, 1995, until the restatement of the Plan effective July 1, 2011, responsibility for the general administration of the Plan was held by a Retirement Board whose members were appointed by the Bishop and served at his pleasure. (Plaintiffs' Statement of Undisputed Facts at Para. 12; Plaintiffs' Exhibit 8 (1995 Plan) at 31; Plaintiffs' Exhibit 9 (1999 Plan) at 30.)

DIOCESAN DEFENDANTS' RESPONSE NO. 8:

Response 8.I. Undisputed that from July 1, 1995, until the restatement of the Plan, effective July 1, 2011, responsibility for the general administration of the Plan was held by a Retirement Board whose members were appointed by the Most Reverend Bishop of the Roman Catholic Diocese of Providence and served at his pleasure. ECF No. 174-8 (1995 Plan) § 18.1; ECF No. 174-9 (1999 Plan) § 18.1.

Response 8.2. Disputed to the extent this paragraph uses “the Bishop” as an undefined, generic term. Throughout their undisputed statement of facts, Prospect fails to distinguish between the Most Reverend Bishop (as an individual and ecclesiastical officer) and the Roman Catholic Bishop of Providence, a corporation sole (“RCB”). At various times, the Most Reverend Bishop had a role and powers relative to the Plan, as did RCB. *Compare* ECF No. 174-8 (1995 Plan) § 18.1 (providing for a Retirement Board that serves at the pleasure of the Most Reverend Bishop) *with id.* § 20.1 (providing that SJHSRI could modify, amend, or terminate the Plan by action of RCB). By the 1999 Plan however, RCB’s role with respect to the Plan had ceased. *See generally* ECF No. 174-9 (1999 Plan) (no longer reflecting a role for RCB in the management of the Plan).

The Most Reverend Bishop also had a role in the governance of SJHSRI at various times. *See* ECF No. 174-15 (Secretary’s Certificate) at 9 (identifying Bishop Tobin as the Chair and Treasurer of SJHSRI). RCB did not assume any role with respect to the governance of SJHSRI until January 4, 2010 when, by dint of an amendment to SJHSRI’s Articles of Incorporation, it became SJHSRI’s Class B member. *See* ECF No. 190-8 (SJHSRI Amended Articles), Ex. A at Part A (naming RCB as SJHSRI’s Class B member, “Effective January 4, 2010”). And, as noted *supra* at Response No. 2, this role was limited.

PROSPECT’S STATEMENT NO. 9:

Pursuant to the terms of the Plan, during the period from its inception effective July 1, 1995, until the restatement of the Plan effective July 1, 2011, “the general administration of the Plan shall be placed in a Retirement Board consisting of the Most Reverend Bishop of the Diocese of Providence and (a) at least three members of the Board of Trustees, and (b) up to six others (who may or may not be members of the Board of Trustees) each of whom is appointed

from time to time by the Most Reverend Bishop of the Diocese of Providence to serve at the pleasure of the Bishop.” (Plaintiffs’ Statement of Undisputed Facts at Para. 13; Plaintiffs’ Exhibit 8 (1995 Plan) at 31; Plaintiffs’ Exhibit 9 (1999 Plan) at 30.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 9:

Undisputed.

PROSPECT’S STATEMENT NO. 10:

The “Powers of the Retirement Board” included, *inter alia*, “to allocate and delegate its fiduciary responsibilities under the Plan and to designate other persons, including a committee, to carry out any of its fiduciary responsibilities under the Plan, any such allocation, delegation, or designation to be by written instrument...” (Plaintiffs’ Exhibit 8 (1995 Plan) at 31-2; Plaintiffs’ Exhibit 9 (1999 Plan) at 30-1.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 10:

Undisputed.

PROSPECT’S STATEMENT NO. 11:

During the period when the responsibility for the general administration of the Plan was held by a Retirement Board chaired by the Bishop, SJHSRI, the SJHSRI Board of Trustees (the “SJHSRI Board”), and the SJHSRI Finance Committee of the SJHSRI Board of Trustees (the “SJHSRI Finance Committee”) handled significant administrative duties with respect to the Plan, from the day-to-day administrative duties to overseeing consultants and actuaries, to selecting and supervising the portfolio managers investing the Plan’s assets. (Rauci Decl. at 2.)

DIOCESAN DEFENDANTS' RESPONSE NO. 11:

Undisputed to the extent that “the Bishop” as used in Statement No. 11 refers to the Most Reverend Bishop.

PROSPECT'S STATEMENT NO. 12:

Under the terms of the Plan, as set forth in Article 18 of its 1999 Restatement, the Retirement Board remained responsible for the general administration of the Plan, at the commencement of the Affiliation in 2009, throughout the Transition Period that ended June 30, 2010 (the “Transition Period”), and well into 2011 when the SJHSRI Board amended and restated the Plan, on or about August 25, 2011. (Plaintiffs' Exhibit 9 (1999 Plan) at 30; Plaintiffs' Exhibit 10 (2011 Plan).

DIOCESAN DEFENDANTS' RESPONSE NO. 12:

Response 12.1. Undisputed that under the terms of the 1999 Plan, the SJHSRI Retirement Board remained responsible for the general administration of the Plan from July 1, 1999 (the effective date of the 1999 Plan) until July 1, 2011 (the effective date of the 2011 Plan). ECF No. 174-9 (1999 Plan) §§ 1.2, 18.1; ECF No. 174-10 (2011 Plan) §§ 1.9, 8.1.

Response 12.2. Disputed as it concerns Prospect's characterization of the “commencement of the Affiliation in 2009” or a “Transition Period that ended June 30, 2010.” This chronology is not supported by the documents that Prospect cites in Statement No. 12 (the 1999 Plan and the 2011 Plan), nor is it supported by the legally controlling documents that it does not cite.

A. The Preclosing Period To The Affiliation Effective Date

The Affiliation Agreement and the CCHP Bylaws define a transition period that dates from the incorporation of CCHP until the effective date of the affiliation. *See* ECF No.

174-14 (Aff. Agmt) §§ 2.1, 2.1.1, 4.1; ECF No. 174-24 (CCHP Bylaws) § 4.2(a); *see also* ECF No. 174-14 (Aff. Agmt) at 2 (“The Parties anticipate that the reorganization of the RWMC Group and the SJHSRI Group into a new System to be known as CharterCARE Health Partners ... will be effective upon the Closing (the ‘Effective Date’) by the Parties.”). The CCHP Bylaws provided that “Upon the incorporation,” a transition board of trustees, “shall serve for a term (the ‘Transition Period’) commencing on the date of incorporation of the Corporation and continuing until the ‘Effective Date’ (the ‘Affiliation Effective Date’)” as set forth in the Affiliation Agreement. ECF No. 174-24 (CCHP Bylaws) § 4.2(a) (emphasis and underlining in original).

The Affiliation Agreement called this transition board the “Preclosing Board,” which would manage CCHP until the system went live on the “Effective Date.”¹ ECF No. 174-14 (Aff. Agmt) §§ 2.1, 2.1.1 & Art. 4 (preamble); Ex. 4 (Exhibit 2.1(C) to the Affiliation Agreement) (setting out Preclosing Board and Officers for CCHP). The Affiliation Agreement also provided: “The date on which the Closing has occurred is referred to herein as the ‘Effective Date[]’ and shall be evidenced by the date and time set forth in a Closing Certificate executed by the [sic] RWH and SJHSRI as provided in Section 2.1 above.” ECF No. 174-14 (Aff. Agmt) § 4.1.

The Affiliation closed on January 4, 2010. Consistent with the terms of the Affiliation Agreement, the parties executed a “Closing Certificate” to confirm the closing. The certificate appeared at Tab 10, volume 2 of the closing binder for the Affiliation. A copy of Tab 10, with volume 2 cover sheet and index dated January 4, 2010, is enclosed at Exhibit 5. *See also* ECF No. 196-5 (Ltr. From Mr. Belcher to Attorney General Lynch) (“I am pleased to inform you that the Affiliation by and between Roger Williams Medical Center and St. Joseph

¹ The “Preclosing Board” consisted of four members: Edwin Santos and Kenneth Belcher (for RWH) and John Fogarty and Msgr. Paul Theroux (for SJHSRI). Ex. 4 (Exhibit 2.1(C) to the Affiliation Agreement).

Health Services of Rhode Island was completed effective today, January 4, 2010 and CharterCARE is now operational.”).

Thus, on January 4, 2010, the Affiliation became effective and CCHP’s Initial Board of Trustees (the “Initial Board”) supplanted the Preclosing Board. ECF No. 174-14 (Aff. Agmt) § 2.1.1 (“As of the Closing, the Preclosing Board will be replaced by a fifteen (15) member Board of Trustees (the ‘Initial Board’).”); ECF No. 174-24 (CCHP Bylaws) § 4.2(c) (providing that the Initial Board’s term would commence “on the Affiliation Effective Date”). CCHP assumed oversight responsibility for SJHSRI therefore on January 4, 2010, not June 30, 2010. ECF No. 174-15 (Secretary’s Certificate) at 3 (recognizing CCHP as SJHSRI’s Class A Member “effective January 4, 2010”). Accordingly, with respect to SJHSRI, CCHP (as SJHSRI’s Class A Member) could “take any action permitted or required of such Member herein by vote of its Board of Trustees . . . in accordance with the Bylaws of the Class A Member” as of January 4, 2010. *Id.* (SJHSRI Bylaws) § 2.2.

B. The Affiliation Effective Date to June 30, 2010

The SJHSRI Bylaws addressed another, different period from the effective date of the Affiliation (January 4, 2010) to June 30, 2010. Prospect improperly describes this timeframe as a “Transition Period” where the SJHSRI Finance Committee functioned independent from CCHP, retaining powers that it did not transfer to CCHP until June 30, 2010. Prospect draws this conclusion from an incomplete read of SJHSRI’s bylaws.

Section 4.5 of SJHSRI’s amended and restated bylaws provided in pertinent part:

Notwithstanding the foregoing, until June 30, 2010 (which time may be extended by the Trustees) the Finance and Audit Committees existing on the day immediately prior to the date these Bylaws are adopted and as then constituted shall continue to perform their duties set forth in the prior Bylaws ***but in an advisory capacity only, reporting to the Finance, Audit and Compliance Committee of the Class A Member [CCHP].***

Id. § 4.5 (emphasis added). Although certain pre-existing committees at SJHSRI continued to function after January 4, 2010, they did so in an “advisory capacity only,” **reporting** to the CCHP Finance, Audit, and Compliance Committee. *Id.*

Prospect’s own exhibits evidence that SJHSRI’s Finance Committee’s role ended earlier than June 30, 2010. At a meeting of the SJHSRI Board of Trustees on May 20, 2010, John Fogarty (President and CEO of SJHSRI and Executive Vice President and COO of CCHP) explained “the SJHSRI Finance Committee had been dissolved per the affiliation agreement and the Finance Committee function has been moved up to the CharterCARE level.” ECF No. 190-15 (May 20, 2010 SJHSRI Board of Trustees Mtg. Mins.) at 2.

Prospect’s erroneous treatment of the “Transition Period” occurs frequently throughout its Statement of Undisputed Facts. As such, this dispute will be incorporated going forward with the following response: “Disputed. Erroneous characterization of ‘Transition Period’ as running beyond January 4, 2010. *See supra* Resp. No. 12 at 12.2.”

PROSPECT’S STATEMENT NO. 13:

Prior to the 2011 restatement of the Plan, the SJHSRI Finance Committee played a significant role in administering the Plan, and making recommendations to the SJHSRI Board and to the Retirement Board. (Raucci Decl. at para 10 through 15; Belcher Decl. at 18.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 13:

Undisputed.

PROSPECT’S STATEMENT NO. 14:

Attached hereto as Exhibit A are the approved minutes of a meeting on July 13, 2007 of the SJHSRI Finance Committee of the Board of Trustees (“SJHSRI Finance Committee”).

DIOCESAN DEFENDANTS' RESPONSE NO. 14:

Undisputed that Exhibit A features a portion of the minutes of a meeting on July 13, 2007 of the SJHSRI Finance Committee. The Diocesan Defendants cannot comment on whether the excerpt of the minutes at Exhibit A was ever “approved.”

PROSPECT'S STATEMENT NO. 15:

The July 13, 2007 minutes of the SJHSRI Finance Committee indicate that a motion was duly made, seconded and passed to recommend, for approval by the SJHSRI Board of Trustees and the Retirement Board, the implementation of a “soft freeze” of the Plan and the implementation of a defined contribution pension plan for all new hires after September 30, 2007. (Exhibit A.)

DIOCESAN DEFENDANTS' RESPONSE NO. 15:

Undisputed.

PROSPECT'S STATEMENT NO. 16:

Attached as Exhibit B is the Decision of the Department of the Rhode Island Attorney General (“RIAG”) dated May 16, 2014 under the Hospital Conversions Act. (“RIAG Decision”)

DIOCESAN DEFENDANTS' RESPONSE NO. 16:

Undisputed.

PROSPECT'S STATEMENT NO. 17:

Roger Williams Medical Center (“RWH”) was a Rhode Island non-profit corporation that owned the hospital it operated under the name Roger Williams Hospital until it sold all, or substantially all, of its operating assets to a newly formed entity owned by Prospect Medical Holdings, Inc. (“Prospect Holdings”) and CCHP, which had been renamed

CharterCARE Community Board (“CCCB”), in June of 2014. (Plaintiffs’ First Amended Complaint at para.17, 18; Belcher Decl. at para. 7.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 17:

Undisputed.

PROSPECT’S STATEMENT NO. 18:

In 2008 and 2009, the RWH and SJHSRI hospital systems were separate non-profit health care systems losing in excess of \$8 million a year. (Belcher Decl. at para. 11; Exhibit B, RIAG Decision at 7.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 18:

Undisputed.

PROSPECT’S STATEMENT NO. 19:

To help address the ongoing and significant financial issues RWH and SJHSRI were both facing, SJHSRI and RWH entered into a “Memorandum of Understanding” (“MOU”) in May of 2008 and agreed in principle to an affiliation to create a new health care system. (Belcher Decl. at para. 12; Plaintiffs’ Exhibit 11, Memorandum of Understanding dated May 12, 2008 (“MOU”) at 11.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 19:

Undisputed.

PROSPECT’S STATEMENT NO. 20:

The purpose of the RWH-SJHSRI affiliation was to realize approximately \$15 million dollars in savings over 5 years, by utilizing efficiencies created by combining the two hospital systems, as well as to preserve and expand the health care services being provided to the existing hospital communities. (Belcher Decl. at para. 13; RIAG Decision at 7.)

DIOCESAN DEFENDANTS' RESPONSE NO. 20:

Undisputed.

PROSPECT'S STATEMENT NO. 21:

The MOU expressly provided that it was “a fundamental understanding of the Parties that the System shall be structured and governed in a manner that will preserve the Catholicity of SJHSRI ...” (Plaintiffs’ Exhibit 11, MOU at 1; Belcher Decl. at para. 14.)

DIOCESAN DEFENDANTS' RESPONSE NO. 21:

Undisputed that the MOU contains, *inter alia*, the quoted language.

PROSPECT'S STATEMENT NO. 22:

Pursuant to the MOU, “SJHSRI will maintain its designation as a Catholic hospital operating in full compliance with the social and ethical teachings of the Catholic Church, including the Religious and Ethical Directives for Catholic Health Care Services, as promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop (“ERDs”).” (Plaintiffs’ Exhibit 11, MOU at 4.)

DIOCESAN DEFENDANTS' RESPONSE NO. 22:

Undisputed.

PROSPECT'S STATEMENT NO. 23:

Consistent with the MOU, as of February 2, 2009, SJHSRI, RWH, and the Most Reverend Bishop of the Diocese of Providence (the “Bishop”) entered into a Health Care System Affiliation and Development Agreement (the “Affiliation Agreement”) which committed those parties to reorganize the two hospitals into a combined health system and organize CCHP as a new tax-exempt Rhode Island non-profit corporation called CharterCARE Health Partners (alternatively, “CCHP” or “CCCB”) which would function as a parent organization for both

SJHSRI and RWH and not only provide strategic oversight but also provide financial, administrative and organizational support to both of those operating entities on all matters except for certain religious, pastoral and related matters. (Plaintiffs' Exhibit 14, Health Care System Affiliation and Development Agreement dated February 2, 2009 (the "Affiliation Agreement"); Belcher Decl. at para 16, 17.)

DIOCESAN DEFENDANTS' RESPONSE NO. 23:

Undisputed.

PROSPECT'S STATEMENT NO. 24:

The Affiliation Agreement was entered into by SJHSRI, RWH and the Bishop in February of 2009, and executed by Kenneth Belcher as President and CEO of RWH and RWMC; Edwin Santos as Board Chair of RWH and RWMC; John Fogarty as President and CEO of SJHSRI, and Bishop Thomas Tobin for SJHSRI and for the Roman Catholic Bishop of Providence. (Plaintiffs' Exhibit 14; Affiliation Agreement at pp. 7, 59-60; Belcher Decl. at para. 16.)

DIOCESAN DEFENDANTS' RESPONSE NO. 24:

Undisputed.

PROSPECT'S STATEMENT NO. 25:

The corresponding changes to the articles and bylaws of CCHP and SJHSRI, incorporating and implementing the principle provisions of the Affiliation Agreement, were approved on or about January 4, 2010. (Plaintiffs' Exhibit 15, SJHSRI's Bylaws; Plaintiffs' Exhibit 24, CCHP's Bylaws.)

DIOCESAN DEFENDANTS' RESPONSE NO. 25:

Response 25.1. Undisputed that the SJHSRI Secretary's Certificate and CCHP Bylaws are dated January 4, 2010. ECF No. 174-15 (Secretary's Certificate) at 9; ECF No. 174-24 (CCHP Bylaws) at 1.

Response 25.2. Disputed that changes to the articles of incorporation and bylaws of CCHP and SJHSRI were approved on January 4, 2010. Changes to SJHSRI's articles of incorporation and bylaws were approved on December 9, 2009, at a meeting of the members of SJHSRI, and the next day, at a meeting of the SJHSRI Board of Trustees, and became "effective January 4, 2010." ECF No. 174-15 (Secretary's Certificate) at 1-3, 5-7. The members of SJHSRI also approved "the Articles of Incorporation of CharterCARE, as amended, in the form filed with the Rhode Island Secretary of State" and the CCHP Bylaws on December 9, 2009. *Id.* at 1-3. The SJHSRI Board of Trustees did the same on December 10, 2009. *Id.* at 5-6.

PROSPECT'S STATEMENT NO. 26:

Attached hereto as Exhibit C is a copy of the Articles of Amendment to Articles of Incorporation for SJHSRI effective January 4, 2010 ("SJHSRI Amended Articles").

DIOCESAN DEFENDANTS' RESPONSE NO. 26:

Undisputed.

PROSPECT'S STATEMENT NO. 27:

The Affiliation Agreement called for organizational changes to be made to each of the operating entities' articles and bylaws, to cause activities that had been conducted at the operating entity level to, in effect, migrate and transfer to the newly-formed parent organization, CCHP, on or about June 30, 2010. That notably included functions that the operating organizations' boards of trustees and board-level committees had been performing. Changes

accordingly were made to the Bylaws of SJHSRI and CCHP and the Articles of Incorporation of SJHSRI. (Plaintiffs' Exhibit 14, Affiliation Agreement at Article 2; Plaintiffs' Exhibit 15, CCHP's Bylaws; Plaintiffs' Exhibit 24; Exhibit C, SJHSRI Amended Articles.)

DIOCESAN DEFENDANTS' RESPONSE NO. 27:

Undisputed that after the effective date of the Affiliation, activities that had been conducted at the operating level of SJHSRI and RWH migrated and transferred to CCHP. *See* ECF No. 174-15 (SJHSRI Bylaws) § 4.5. Disputed in that the Affiliation Agreement, the CCHP Bylaws, the SJHSRI Amended Articles, and the SJHSRI Bylaws did not state that the "activities that had been conducted at the operating entity level" would "in effect, migrate and transfer to" CCHP by June 30, 2010. Rather, these documents show that oversight of SJHSRI shifted to CCHP on **January 4, 2010**. *Supra* Resp. No. 12 at 12.2. Further, the SJHSRI Bylaws stated that hospital board level committees (*e.g.*, the SJHSRI Finance Committee) that continued to function after that date served in an advisory capacity only, reporting to the CCHP Finance Committee. *Supra* Resp. No. 12 at 12.2.

PROSPECT'S STATEMENT NO. 28:

Pursuant to the Affiliation Agreement, the Bishop retained a continuing, controlling and permanent role over all religious, pastoral and related matters at SJSHRI. The Affiliation Agreement included provisions to ensure that SJHSRI would remain a Catholic hospital despite being affiliated with a non-Catholic hospital and that "SJHSRI [would] continue to operate consistent with the principles and mission of a Catholic hospital responsive to the needs of the poor and disenfranchised." (Plaintiffs' Exhibit 14; Affiliation Agreement at p. 2.)

DIOCESAN DEFENDANTS' RESPONSE NO. 28:

Response 28.1. Undisputed that, pursuant to the Affiliation Agreement, RCB was to retain authority over Catholicity matters at SJHSRI. ECF No. 174-14 (Aff. Agmt) §§ 2.4.7-2.4.8, 3.1-3.10. Further, undisputed that page two of the Affiliation Agreement states, *inter alia*, that “SJHSRI will continue to operate consistent with the principles and mission of a Catholic hospital responsive to the needs of the poor and disenfranchised.” *Id.* at 2.

Response 28.2. Disputed that RCB’s role was permanent or irrevocable. *Id.* § 2.4.9 (describing circumstances where role in Catholicity matters could be lost); ECF No. 174-15 (SJHSRI Bylaws) § 5.6 (same).

PROSPECT’S STATEMENT NO. 29:

From its inception, the Affiliation – starting with the incorporation of CCHP itself on February 2, 2009 – was structured to ensure that the Bishop, and thereby the Catholic Church, not only would maintain its close association with SJHSRI, but also would have control, or effective control, over the governance and operation of CCHP, and therefore over SJHSRI, for at least a period of years. (Plaintiffs’ Exhibit 24, CCHP’s Bylaws; Plaintiffs’ Exhibit 15, SJHSRI’s Bylaws; Exhibit C, SJHSRI Amended Articles; Belcher Decl. at para. 17, 23; Raucci Decl. at para. 23, 24, 22, 27.)

DIOCESAN DEFENDANTS' RESPONSE NO. 29:

Prospect asserts in this Statement and repeatedly throughout its Statement of Undisputed Facts that “the Bishop” controlled CCHP. *See, e.g.*, ECF No. 190-5 (Prospect’s Statement of Undisputed Facts) ¶¶ 36-39. The Diocesan Defendants dispute this demonstrably incorrect conclusion (not fact) and respond to it in full here. This response will be incorporated where appropriate in response to other statements making related false claims of control.

Response 29.1. Disputed that Statement No. 29 constitutes a statement of fact, as opposed to a legal conclusion contradicted by the legally controlling documents identified in Statement No. 29—CCHP’s and SJHSRI’s Bylaws. Those documents conclusively establish by their express terms that neither the Most Reverend Bishop nor RCB controlled CCHP or SJHSRI, their Boards of Trustees, or the governance and operation of either – not during the initial term of the Initial CCHP Board of Trustees (January 4, 2010 through January 4, 2013) and not any time thereafter. *Supra* Resp. No. 2 (responding to SJHSRI control argument).

Further, the Diocesan Defendants dispute the wholly incorrect legal conclusion that forms the foundation of Prospect’s argument (not fact) that the power to appoint someone to an initial board of trustees equates with the power to control that person or, through them, the board or the entity, especially when it is not coupled with the power to remove those appointees. Once an individual is appointed to a board of trustees, that individual owes a fiduciary obligation to the entity. Each of the trustees appointed to the CCHP Board by either RCB or RWH owed a duty of loyalty to CCHP; those individuals appointed to the SJHSRI Board owed a similar duty to SJHSRI. These legal duties prevented board members from favoring the interests of RCB over the interests of CCHP or SJHSRI. Beyond this fundamental legal error, other legal and factual errors contradict Prospect’s conclusion as evidenced by the terms of the Affiliation Agreement and CCHP Bylaws and based upon the realities of corporate governance documented in the minutes of the CCHP Board and its committees.

A. The CCHP Bylaws And Affiliation Agreement Conclusively Demonstrate That RCB Did Not Control CCHP Or The CCHP Board of Trustees

1. CCHP was intended to be, and was defined as, a secular organization. The Affiliation Agreement and CCHP’s Bylaws affirmatively declare that CCHP is to be a secular organization. ECF No. 174-14 (Aff. Agmt) §§ 2.1.3, 3.2; *see* ECF No. 174-24 (CCHP Bylaws) §

5.1(k) (“Secular Member’ means CharterCARE and each Affiliate of the CharterCARE System that is not Under Catholic Sponsorship.”) (emphasis and underlining in original).

2. RCB did not appoint a majority of the CCHP Board. The Affiliation Agreement provided: “The Initial Board shall consist of eight (8) Trustees designated by the Bishop [the “RCB Appointees”] and seven (7) trustees designated by the Board of Trustees of RWH [the “RWH Appointees”].” ECF No. 174-14 (Aff. Agmt) § 2.1.1.

The CCHP Bylaws, which became effective on January 4, 2010, added two additional *ex-officio* voting members to the CCHP Board, the President and CEO of CCHP and the Executive Vice President and COO of CCHP. ECF No. 174-24 (CCHP Bylaws) § 4.2(b). These two officers had to be appointed by seventy-five percent of the CCHP Board. *Id.* § 4.9(g). The two voting *ex officio* members brought the total number of Initial Board members to seventeen. Of that number, only eight, or forty-seven percent, were appointed by RCB. As a matter of simple arithmetic, RCB never had the ability to appoint a majority of the CCHP Board.

3. RCB had no power to remove CCHP Board members and thus could not control them. Although RCB may have had the power to initially appoint certain members to the CCHP Board, it did not have the power to remove any of CCHP’s trustees and therefore could not compel them to act. *Id.* § 7.2. Instead, such power rested with the CCHP Board of Trustees, which could remove a trustee by a vote of seventy-five percent of the CCHP Board. *Id.* (“A Trustee or Officer may be removed with or without cause by the vote of seventy-five percent (75%) of the Trustees then in office”). Removal, then, required the consent of board members appointed by both RCB and RWH.

4. Numerous provisions of the CCHP Bylaws required supermajority approval for certain actions, ensuring appointees from RWH and RCB supported such decisions. In this same

fashion, CCHP's Bylaws made sure that the new, secular entity, CCHP, would be "controlled" by consensus and cooperation rather than particular factions. Beyond the removal of trustees, CCHP's Bylaws are replete with instances where the CCHP Board needed the assent of seventy-five percent of the then-sitting board members to act, including the appointment of its President/CEO and its Executive Vice President/COO and taking the "Major Actions" or exercising the "Reserved Powers" set out in the CCHP Bylaws. *Id.* §§ 4.9-4.10 (requiring vote of seventy-five percent of trustees for "Major Actions" and "Reserved Powers" and appointment of CEO/COO); ECF No. 174-14 (Aff. Agmt) § 2.4.2 (providing similarly for CCHP's "Reserved Powers").

Prospect absurdly concludes that "the Bishop" controlled CCHP because the CCHP Bylaws require supermajority approval before CCHP could take certain actions. As a matter of logic, common sense and experience, requiring a supermajority is designed to *prevent* domination by a majority and to *require* broader consensus. *See, e.g.*, ECF No. 174-24 (CCHP Bylaws) §§ 4.9-4.10; ECF No. 174-14 (Aff. Agmt) § 2.4.2. In keeping with that purpose, that the Rhode Island Attorney General also made a condition of approving the Affiliation that CCHP "develop and provide to the Attorney General policies and procedures to address any perception that individuals affiliated with one of the affiliated hospitals may have bias toward it rather than the other affiliate hospital." Ex. 6 (Oct. 28, 2009 Decision of R.I. Attorney General, approving CCHP's Hospital Conversion Act application) at 41.

5. The CCHP Bylaws and Affiliation Agreement demonstrate that RCB did not control the CCHP Nominating Committee. First, section 4.4(d) of the CCHP Bylaws provides in relevant part:

During the Initial Term and until such time as the members of the First Successor Board have been elected, the Nominating Committee shall consist **of four (4)**

Trustees, two (2) of whom shall be appointed by RWMC and two (2) of whom shall be appointed by the Bishop. All nominations made to the Board by the Nominating Committee shall be made with the unanimous agreement of all members of the Nominating Committee (without abstentions). In the event that a vacancy occurs in the Nominating Committee prior to the election of the First Successor Board with respect to a member of the Nominating Committee who was chosen by RWMC, the appointment [of] any successor to fill such vacancy shall be chosen by the majority vote of the Trustees who were appointed by RWMC; and if the vacancy occurs with respect to a member of the Nominating Committee who was chosen by the Bishop, the appointment [of] any successor to fill such vacancy shall be chosen by the majority vote of the Trustees who were appointed by [the] Bishop.

ECF No. 174-24 (CCHP Bylaws) § 4.4(d) (emphasis added); *see also* ECF No. 174-14 (Aff. Agmt) § 2.1.3 (providing for equal representation between RWH and RCB Appointees on the Nominating Committee during the initial term of the CCHP Board).

Because RCB Appointees and RWH Appointees had equal representation on the Nominating Committee, the RCB Appointees to that committee could not control it to any greater or lesser degree than the RWH Appointees. Nominating Committee recommendations, moreover, had to be unanimous. ECF No. 174-24 (CCHP Bylaws) § 4.4(d); ECF No. 174-14 (Aff. Agmt) § 2.1.3. The structure of the committee negated the ability of any constituent to control the process and instead required the broadest possible cooperation and consensus.

Second, the CCHP Bylaws require the Nominating Committee to be non-partisan: “Nominations shall be made without regard to any historical allegiance to SJHSRI, the Bishop, or RWMC.” *See* ECF No. 174-24 (CCHP Bylaws) § 4.4(d); *see also* ECF No. § 174-14 (Aff. Agmt) § 2.1.3 (providing same).

Third, after RCB named its two appointees to the Nominating Committee, it had no further say in the committee’s membership. In the event of a departure of an RCB Appointee from the Nominating Committee during the CCHP Board’s initial term, a majority of the RCB Appointees on the CCHP Board (not RCB) would select the replacement. ECF No. 174-24

(CCHP Bylaws) § 4.4(d). After the initial term expired, power over the size and membership of the Nominating Committee shifted to the full CCHP Board of Trustees. *Id.* (restricting size of the Nominating Committee and limiting who could vote for replacement members until the election of the “First Successor Board”). In both instances, because RCB had no way to control its appointees due to its lack of power to remove them from office, it could not control how they filled (or did not fill) vacancies on the Nominating Committee.² *Id.* § 7.2; *supra* Resp. No. 29 at 29.1-A(3).

6. The CCHP Bylaws and Affiliation Agreement Demonstrate that RCB Did Not Control the CCHP Finance or Investment Committees. To the extent that Prospect’s broad conclusory statement that “the Bishop . . . would have control, or effective control, over the governance and operation of CCHP” is intended to assert that RCB or the Most Reverend Bishop had control over the Finance or Investment Committees of CCHP, that statement is likewise disputed and demonstrably incorrect. The CCHP Bylaws placed the power of appointment to those committees with the CCHP Board. ECF No. 174-24 (CCHP Bylaws) § 4.4. The constituent members of those committees were in no way dominated by RCB Appointees. The facts show just the opposite. *See infra* Resp. No. 29 at 29.1-C(2) & Resp. No. 49 at 49.5.

B. RCB’s Appointing Power Expired After Three Years

Provisions in the Affiliation Agreement and CCHP’s Bylaws (1) expressly terminated RCB’s role in the trustee appointment process following the expiration of the Initial Board’s term and (2) transferred such power to CCHP. ECF No. 174-24 (CCHP Bylaws) §§ 4.2(b)-(d), 4.4(d); ECF No. 174-14 (Aff. Agmt) §§ 2.1.1-2.1.4. The Affiliation Agreement

² As discussed *infra* at Response No. 29 at 29.1-C, the RCB Appointees did not fill a 2010 vacancy on the Nominating Committee caused by the resignation of a RCB Appointee, resulting in a RWH Appointee majority on the committee for most of its existence. Ex. 20 (compiling CCHP Nominating Committee membership and meeting attendance).

provided that “[t]he Initial Board members shall serve for a term of three (3) years (the “Initial Term”).” ECF No. 174-14 (Aff. Agmt) § 2.1.1.

The Initial Term began on January 4, 2010, meaning RCB’s appointing power expired on January 4, 2013. *See id.; supra* Resp. No. 12 at 12.2 (explaining that January 4, 2010 was the effective date of the Affiliation). “Upon the expiration of the Initial Term, the Trustees”—not RCB—“shall elect their successors (the ‘First Successor Board’) from candidates recommended by the Nominating Committee to staggered terms” ECF No. 174-14 (Aff. Agmt) § 2.1.4. Consistent with this reality, the CCHP Nominating Committee minutes from its April 10, 2012 meeting state: “It was noted that at the conclusion of the Transition Board on December 31, 2012, Bishop Tobin will no longer have authority for appointing Trustees”³ Ex. 7 (Apr. 10, 2012 CCHP Nom. Comm. Mtg. Mins.) at 3. Thus, from the expiration of the Initial Term (January 4, 2013) forward, CCHP was free to replace any or all of the RCB Appointees on the CCHP Board or the Nominating Committee. ECF No. 174-14 (Aff. Agmt) §§ 2.1.3-2.1.4; *see also* ECF No. 174-24 (CCHP Bylaws) §§ 4.2(d), 4.4(d) (providing similarly).

The CCHP Board therefore, and not RCB or the Most Reverend Bishop, was in control of CCHP Board appointments when it decided to keep all remaining RWH and RCB Appointees in place on the CCHP Board. ECF No. 174-14 (Aff. Agmt) §§ 2.1.3-2.1.4; ECF No. 174-24 (CCHP Bylaws) §§ 4.2(d), 4.4(d). CCHP’s control over this decision is evidenced by the minutes of the October 15, 2013 meeting of the CCHP Governance Committee. At that meeting, the committee discussed the need to defer the election of the First Successor Board due to the impending transaction with Prospect:

³ In the context of this meeting, “Transition Board” means the “Initial Board.” *See* ECF No. 174-14 (Aff. Agmt) § 2.1.1. The December 31, 2012 date for the conclusion of the Initial Term referenced in Exhibit 7 appears to be an estimate. Ex. 15 (Jul. 27, 2011 Email from Kimberly O’Connell to Kenneth Belcher) (reviewing CCHP Bylaws and identifying the “3 year anniversary of the affiliation (1/4/2013)” as the expiration date of the Initial Term).

Ms. O’Connell explained to the Committee that with the impending affiliation closing the early part of next year, her recommendation was to retain the current Trustee rosters on each of the three Boards *in order to allow continuity and defer new appointments and changes until such time*. . . .

Ms. O’Connell presented a draft Resolution to be placed on the agenda at next week’s Board Meeting. The Resolution extends the term of Trustees on all three Boards for one year or unless and until a restructuring of the Board occurs in conjunction with a change in Effective Control. The Committee approved the Resolution

ECF No. 196-7 (Oct. 15, 2013 CCHP Gov. Comm. Mtg Mins) at 1-2 (emphasis added). The minutes from this meeting do not reference any of the attendees even suggesting that the committee inquire what RCB or the Most Reverend Bishop thought about this decision. *See id.* Instead, the committee simply moved forward with the resolution.⁴ *Id.*

C. Prospect’s Control Arguments Do Not Account For Actual Board Membership, Resignations, And Meeting Attendance As Reflected In Relevant Board And Committee Minutes

Beyond the Affiliation Agreement and the CCHP Bylaws, the actual membership of the CCHP Board of Trustees and its subordinate committees, as well as actual attendance at CCHP Board and committee meetings, negate Prospect’s claim that RCB or RCB Appointees controlled CCHP. Prospect fails to account for not only the two *ex-officio* voting trustees in its mathematical arguments, but also neglects to account for (1) the actual number of CCHP Board members in light of resignations from that board and (2) actual attendance at CCHP Board and committee meetings. *See, e.g.*, Ex. 9 (2013 CCHP Board of Trustees Roster) (documenting resignations from CCHP Board).

⁴ RWH and CCHP appointed members on the committee outnumbered RCB Appointees at this meeting five to one. In attendance were: Donald McQueen (RWH Appointee to the CCHP Board), Christopher Chihlas, M.D. (RWH Appointee to the CCHP Board), Edwin Santos (RWH Appointee to the CCHP Board), Gary Pannone, Esq. (RWH Board member), Kenneth Belcher (*ex-officio* member of the CCHP Board) and Joseph DiStefano (RCB Appointee to the CCHP Board). ECF No. 196-7 (Oct. 15, 2013 CCHP Gov. Comm. Mtg. Mins.) at 1.

1. *The Ex-Officio Voting Members and RCB Appointee Resignations*

John Fogarty, one of the two original *ex-officio* voting members of the CCHP Board, resigned effective October 15, 2010. *See* Ex. 10 (Sept. 16, 2010 CCHP Board Mtg. Mins.) at 1. Mr. Fogarty had been SJHSRI's President and CEO prior to the Affiliation and was elected Executive Vice President and COO of CCHP on January 4, 2010. *See* ECF No. 174-14 (Aff. Agmt.) at 60 (signed by Mr. Fogarty as SJHSRI's President and CEO); Ex. 5 (Excerpted Affiliation Closing Binder, Vol. 2) at Tab 8 (identifying Mr. Fogarty as CCHP's Executive Vice President and Chief Operating Officer).

Following Mr. Fogarty's departure, the CCHP Board—not RCB—appointed Mr. Belcher as President of SJHSRI. *See* Ex. 10 (Sept. 16, 2010 CCHP Board Mtg. Mins.) at 2. Mr. Belcher had been President and CEO of RWH since 2005. ECF No. 190-2 (Belcher Decl.) ¶ 2. The role of Executive Vice President and COO, with its *ex-officio* voting seat on the CCHP Board, however, remained vacant. Ex. 10 (Sept. 16, 2010 CCHP Board Mtg. Mins.) at 1.

Three RCB Appointees also resigned from the CCHP Board of Trustees between January 2010 and June 2014. CCHP Board records report:

- Hon. Joseph R. Weisberger (RCB Appointee) resigned from the CCHP Board of Trustees in summer 2011. *See* ECF No. 190-22 (Exhibit Q) at 4. His position was not filled. Ex. 9 (2013 CCHP Board of Trustees Roster).
- Marshall Raucci (RCB Appointee) resigned from the CCHP Board of Trustees, effective December 31, 2013. *Id.* His position was not filled. *See* Ex. 19 (compiling membership and attendance at CCHP Board of Trustee meetings); ECF No. 196-7 (Oct. 15, 2013 CCHP Gov. Comm. Mtg. Mins.) at 1-2 (reflecting decision to “defer new appointments and changes” on the CCHP, SJHSRI, and RWMC Boards of Trustees on account of “the impending affiliation” with Prospect).
- Msgr. Theroux (RCB Appointee) resigned from the CCHP Board of Trustees and the role of CCHP Vice Chairman in late 2010. Ex. 11 (Nov. 4, 2010 CCHP Board Mtg. Mins.) at 6 (recounting Monsignor's decision to resign from the CCHP Board of Trustees).

- Msgr. Theroux's vacant seat on the CCHP Board was filled by Rev. Timothy Reilly. Ex. 9 (2013 CCHP Board of Trustees Roster) (reflecting Father Reilly's appointment as Msgr. Theroux's replacement).
 - Daniel Ryan assumed the post of Vice-Chairman. Ex. 12 (Dec. 21, 2010 CCHP Board Mtg. Mins.) at 2 (reflecting resolution appointing Mr. Ryan as CCHP Vice-Chairman).
 - Msgr. Theroux's vacant seats on the CCHP Executive and Nominating Committees, however, were not filled, reducing RCB Appointee representation on those committees. *See* Ex. 13 (2011 CCHP Committee Roster) (reflecting vacancies on the Executive and Nominating Committees); *see also* Ex. 20-21 (compiling membership and attendance at CCHP Executive and Nominating Committee meetings from January 2010 to June 2014).⁵
2. *Meeting Minutes Demonstrate that CCHP Board and Committee Members who were NOT Appointed by RCB Were In The Majority At Most Board and Committee Meetings*

A review of the minutes from the relevant CCHP Board and committee meetings shows that for most of 2010 through 2014, persons appointed by RWH and CCHP⁶ constituted an outright majority at most meetings.

CCHP Board of Trustees (January 2010 to June 2014)

From January 2010 to June 2014, there were twenty-nine (29) meetings of the CCHP Board of Trustees. RWH/CCHP Appointees had a majority at twenty-five (25) meetings, RCB Appointees had a majority at one (1) meeting, and there was parity at three (3) meetings. See Exhibit 19, which breaks down board voting membership and meeting attendance.

⁵ Laurie Lauzon Clabo, an RWH Appointee, also resigned from the CCHP Board in Winter/Spring 2012. *See* Ex. 7 (Apr. 10, 2012 CCHP Nom. Comm. Mtg Mins.) at 3; Ex. 19 (reflecting Dr. Clabo as among the absent members of the CCHP Board at February 26, 2012 board meeting, but no longer among listed members by April 26, 2012). She was not replaced. Even with her departure, RCB Appointees never constituted a majority of sitting trustees. From January 2010 to June 2014, the number of sitting trustees declined from seventeen (8 RCB Appointees, 7 RWH Appointees, and 2 *ex-officio*) to sixteen following Mr. Fogarty's September 2010 resignation (8 RCB Appointees, 7 RWH Appointees, and 1 *ex-officio*) to fifteen following Judge Weisberger's summer 2011 resignation (7 RCB Appointees, 7 RWH Appointees, and 1 *ex-officio*), to fourteen following Dr. Clabo's winter 2012 resignation (7 RCB Appointees, 6 RWH Appointees, and 1 *ex-officio*) to thirteen following Mr. Raucchi's December 2013 resignation (6 RCB Appointees, 6 RWH Appointees, and 1 *ex-officio*). *See id.*

⁶ A person appointed by CCHP refers to the *ex-officio* trustees on the CCHP Board and trustees that CCHP selected to the RWH and SJHSRI boards. ECF No. 174-24 (CCHP Bylaws) § 4.2(b) (providing that CCHP CEO and COO serve as *ex-officio* trustees to CCHP with voting rights); *id.* §§ 4.9(g), 4.10(c) (empowering CCHP to appoint its CEO and COO and appoint or remove members of affiliate hospital boards by vote of seventy-five percent of CCHP trustees).

CCHP Nominating Committee (January 2010 to June 2014)

From January 2010 to June 2014, there were four (4) meetings of the CCHP Nominating Committee.⁷ RWH/CCHP Appointees had a majority at all of those meetings. See Exhibit 20, which breaks down committee voting membership and meeting attendance.

From 2011 forward, the Nominating Committee membership consisted of Edwin Santos (RWH Appointee), Donald McQueen (RWH Appointee), Kenneth Belcher (*ex-officio* trustee appointed by CCHP) and Joseph DiStefano, Esq. (RCB Appointee). See Ex. 20. Mr. DiStefano, although historically affiliated with SJHSRI, does not appear to have been appointed to the Nominating Committee by RCB. Rather, he seems to have joined the Nominating Committee in 2010 by vote at a joint meeting of the Governance and Nominating Committee (where a majority of voting members in attendance were appointed by RWH and CCHP). See Ex. 16 (May 27, 2010 Gov. & Nom. Comm. Mtg Mins.) at 4.

CCHP Executive Committee (January 2010 to June 2014)

From January 2010 to June 2014, there were thirty-one (31) meetings of the CCHP Executive Committee. RWH/CCHP Appointees had a majority at all of them. See Exhibit 21, which breaks down committee voting membership and meeting attendance.

CCHP Governance Committee (January 2010 to June 2014)

From January 2010 to June 2014 there were fifteen (15) meetings of the CCHP Governance Committee. RWH/CCHP Appointees had a majority at all of them. See Exhibit 22, which breaks down committee voting membership and meeting attendance.

CCHP Finance Committee (January 2010 to June 2014)

From January 2010 to June 2014, there were twenty-two (22) meetings of the

⁷ Joint meetings of the CCHP Governance and Nominating Committees were counted among the Governance Committee meetings to avoid double-counting and are omitted from the Nominating Committee tally.

CCHP Finance Committee. For the twenty-one meetings for which records of attendance or minutes have been produced, RWH/CCHP Appointees had a majority at eighteen (18) meetings, RCB Appointees had a majority at one (1) meeting, and there was parity at two (2) meetings.⁸ See Exhibit 23, which breaks down committee voting membership and meeting attendance.

CCHP Investment Committee (January 2010 to June 2014)

From June 2010 through January 2014, there were nineteen (19) meetings of the CCHP Investment Committee. RWH/CCHP Appointees had a majority at eighteen (18) meetings, RCB Appointees had a majority at no (0) meetings, and there was parity at one (1) meeting. See Exhibit 24, which breaks down committee voting membership and meeting attendance.

In light of the facts set out above, *supra* at Response No. 29 at 29.1, it was no surprise that Mr. Belcher testified:

Q. Now, the Board of Trustees of CharterCARE Health Partners was not controlled by the Bishop of Providence, was it?

MR. WAGNER: Objection.

A. Correct.

ECF No. 196-1 (Belcher Dep.) 140:18-22.

Response 29.2. Disputed. From January 4, 2010 forward, neither RCB or the Most Reverend Bishop had control of SJHSRI, either directly or through CCHP. *See supra* Resp. No. 2 & Resp. No. 29 at 29.1.

Response 29.3. Additionally, disputed that the Affiliation started “with the incorporation of CCHP itself on February 2, 2009.” The Affiliation became effective on January

⁸ The Diocesan Defendants have been unable to locate minutes from the March 1, 2010 meeting of the CCHP Finance Committee within the document production. Although Prospect references this meeting in its brief, it does not include the minutes in its summary judgment package. ECF No. 190-1 (Prospect Br.) at 61.

4, 2010 and the preclosing governance of CCHP was evenly split between trustees from RWH and trustees from SJHSRI. *See supra* Resp. No. 12 at 12.2 & n.1.

Response 29.4. Finally, disputed to the extent this paragraph uses the generic term “Bishop” to reference the Most Reverend Bishop. *See supra* Resp. No. 8 at 8.2.

PROSPECT’S STATEMENT NO. 30:

The Affiliation Agreement specified that the initial Board of Trustees of CCHP (the “CCHP Board”) would consist of eight (8) individuals designated by the Bishop and seven (7) individuals designated by the Board of Trustees of RWH (the “Initial Board”), and that the Initial Board would serve for a general term of three (3) years, at the conclusion of the transition period provided for in the Affiliation Agreement (the “Initial Term”). The Initial Board provided the Bishop – at least for a period of years – with the power to directly control the CCHP Board. (Plaintiffs’ Exhibit 14, Affiliation Agreement at sec 2.1.1.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 30:

Response 30.1. Undisputed that the Affiliation Agreement stated that CCHP’s initial board of trustees would consist of eight individuals appointed by RCB and seven individuals appointed by the RWH Board of Trustees. Disputed, however, that the CCHP Board was actually constituted in such a fashion as the CCHP Bylaws that became effective on January 4, 2010 stated that the board would also contain two *ex-officio* members with full voting rights. ECF No. 174-24 (CCHP Bylaws) § 4.2(b).

Response 30.2. Disputed as to the remaining statements in this paragraph relative to issues of control of CCHP. *See supra* Resp. No. 29.

Response 30.3. Disputed. Erroneous characterization of “Transition Period” as running beyond January 4, 2010. *See supra* Resp. No. 12 at 12.2.

PROSPECT’S STATEMENT NO. 31:

The Affiliation Agreement further provided that the initial Vice-Chair of the CCHP Board would be Monsignor Paul Theroux, who was considered the Bishop’s designate (Affiliation Agreement, sect. 2.1.8.), and that vacancies on the CCHP Board occurring during the Initial Term would be filled by the party that had appointed the first to fill that vacancy. (Plaintiffs’ Exhibit 14; Affiliation Agreement, sect. 2.1.2.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 31:

Undisputed that the Affiliation Agreement provided that the initial Vice Chair of the CCHP Board would be Msgr. Theroux, and that vacancies on the CCHP Board occurring during the “Initial Term” (as that term is defined in the Affiliation Agreement), would be filled by the party whose appointee’s departure created the vacancy.

PROSPECT’S STATEMENT NO. 32:

The eight CCHP trustees designated by the Bishop consisted of Monsignor Theroux (designated as Vice-Chair); Reverend Brian Shanley; and incumbent SJHSRI board members Marshall Raucci, Jr.; Dan Ryan; Kevin Stiles; Joseph DiStefano; the Honorable Joseph Weisberger; and Peter DeBlasio. (Raucci Decl. at para. 21, 22.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 32:

Undisputed, to the extent “Bishop” as used in this Statement refers to RCB. *See supra* Resp. No. 8 at 8.2.

PROSPECT’S STATEMENT NO. 33:

The governance provisions specified in the Affiliation Agreement, including the Bishop’s power(s) of appointment, all were incorporated into CCHP’s Bylaws. (Plaintiffs’ Exhibit 24, CCHP Bylaws, sect. 4.)

DIOCESAN DEFENDANTS' RESPONSE NO. 33:

Undisputed to the extent “the Bishop” as used in this Statement refers to RCB and that the Affiliation Agreement and CCHP Bylaws both contain provisions concerning appointment of trustees to the Initial Board. Those documents speak for themselves and are not identical as to the voting members of the Initial Board. *See supra* Resp. No. 29 at 29.1-A(2).

PROSPECT'S STATEMENT NO. 34:

Additional provisions, not addressed by the Affiliation Agreement, also were set forth in CCHP's Bylaws, including a provision (“Term of Office”) which specified that a Trustee “shall hold office for the term of the class to which he or she is elected and until his or her successor is elected and qualified, or until he or she sooner dies, resigns, is removed or becomes disqualified.” (Plaintiffs' Exhibit 24, CCHP Bylaws, sect. 2.1.2., 4.3.)

DIOCESAN DEFENDANTS' RESPONSE NO. 34:

Undisputed, except there is no section 2.1.2 to the CCHP Bylaws. *See generally* ECF No. 174-24 (CCHP Bylaws) (not containing a section 2.1.2).

PROSPECT'S STATEMENT NO. 35:

The individuals appointed by the Bishop to serve on the Initial Board of CCHP also served on various board committees charged with taking over many of the rights, duties and obligations previously held by the board committees that had served SJHSRI and RWH, as the activities historically handled by the SJHSRI Board and its constituent committees migrated to the CCHP Board and its constituent committees. (Raucci Decl. at para. 24; Belcher Decl. at para. 24; Plaintiffs' Exhibit 15, SJHSRI's Bylaws at sect. 4.5 (providing for the systematic transfer of committee responsibilities from SJHSRI board committees to counterpart CCHP committees, on or about June 30, 2010); Plaintiffs' Exhibit 24, CCHP's Bylaws at sect. 4.4 (providing for the

establishment of various standing committees, mirroring those found at SJHSRI and, presumably, at RWH.)

DIOCESAN DEFENDANTS' RESPONSE NO. 35:

Response 35.1. Undisputed that section 4.4 of the CCHP Bylaws provided for the establishment of various standing committees. ECF No. 174-24 (CCHP Bylaws) § 4.4.

Response 35.2. Undisputed also that the individuals appointed to serve on the Initial Board of CCHP both by RCB and RWH also served, alongside one another, on various CCHP board committees charged with taking over many of the rights, duties and obligations previously held by the board committees that had served SJHSRI and RWH, as the activities historically handled by the SJHSRI Board and the RWH Board and their constituent committees migrated to the CCHP Board and its constituent committees. *Supra* Resp. No. 29 at 29.1-A & 29.1-C (discussing cooperation among trustees and numerical dominance on CCHP committees by trustees appointed by RWH and CCHP).

Response 35.3. Disputed as to erroneous characterization of “Transition Period” as running beyond January 4, 2010 or a “systematic transfer” of responsibilities occurring on June 30, 2010. *See supra* Resp. No. 12 at 12.2.

PROSPECT'S STATEMENT NO. 36:

The process of electing CCHP Board members, at the conclusion of and following the Initial Term, was two-pronged and designed to prevent wholesale changes from occurring in the CCHP Board. First, new CCHP Board members could only be elected by the affirmative vote of a super-majority (75%) of the existing CCHP Board members – a process requiring the affirmative vote of twelve (12) of the then- fifteen (15) members (including at least five of the eight hand-picked by the Bishop). (CCHP Bylaws, sect. 4.2(b), (d).) Second, new candidates (or,

incumbent board members sitting for re-election) had to be nominated by a Nominating Committee consisting of four (4) CCHP Board members, two (2) of whom were appointed by the Bishop, and a candidate could only be put forward by unanimous vote of the Nominating Committee. (Plaintiffs' Exhibit 14, Affiliation Agreement, sect. 2.1.3; Plaintiffs' Exhibit 24, CCHP Bylaws, sect. 4.4(d).)

DIOCESAN DEFENDANTS' RESPONSE NO. 36:

Response 36.1 (First Sentence-1). Undisputed that the process of electing CCHP Board members at the conclusion of and following the Initial Term (as defined in the Affiliation Agreement and CCHP Bylaws) was two-pronged. ECF No. 174-14 (Aff. Agmt.) §§ 2.1.3-2.1.4; ECF No. 174-24 (CCHP Bylaws) §§ 4.2(d), 4.4(d).

Response 36.2 (First Sentence-2). Disputed that the Affiliation Agreement or CCHP Bylaws state that this process was "designed to prevent wholesale changes from occurring in the CCHP Board," disputed that this is a statement of fact, and disputed as a matter of logic and contract interpretation that such a conclusion flows from the language those documents used. That language much more directly supports the conclusion that the process was designed to encourage cooperation and consensus between RCB/SJHSRI affiliated members and RWH affiliated members in choosing their successors. *Supra* Resp. No. 29 at 29.1-A(4)-(5).

Response 36.3 (Second Sentence-1). Undisputed that, at the conclusion of and following the Initial Term, CCHP Board members could only be elected by the affirmative vote of seventy-five percent of the CCHP Board of Trustees. ECF No. 174-24 (CCHP Bylaws) § 4.2(d).

Response 36.4 (Second Sentence-2). Disputed that this process required "the affirmative vote of twelve (12) of the then- fifteen (15) members (including at least five of the

eight hand-picked by the Bishop)” (assuming “Bishop” here to mean RCB) because Prospect’s math fails to account for two *ex-officio* voting members on the CCHP Board and for trustees who resigned and were not replaced. ECF No. 174-24 (CCHP Bylaws) § 4.2(b) (providing for two *ex-officio* voting members); *supra* Resp. No. 29 at 29.1-C.

Response 36.5 (Third Sentence-1). Undisputed that new candidates (or, incumbent board members sitting for re-election) had to be nominated by the CCHP Nominating Committee and that candidates could only be put forward by unanimous vote of the Nominating Committee. ECF No. 174-14 (Aff. Amgt.) § 2.1.3; ECF No. 174-24 (CCHP Bylaws) §§ 4.2(d), 4.4(d). Also undisputed that the Affiliation Agreement and CCHP Bylaws provided that the RWH and RCB Appointees would each have two seats on the Nominating Committee “[d]uring the Initial Term and at least until the members of the ‘First Successor Board’” have been elected. ECF No. 174-14 (Aff. Agmt) § 2.1.3.

Response 36.6 (Third Sentence-2). Disputed that the Nominating Committee was actually composed as described in Statement No. 36 because for most, if not all, of the time period from January 2010 through June 2014, RWH Appointees held a majority of seats on the Nominating Committee. *See supra* Resp. No. 29 at 29.1-C(2).

PROSPECT’S STATEMENT NO. 37:

The Nominating Committee was explicitly required to determine that each candidate recommended for the CCHP Board (as well as for the positions of Chief Executive Officer (“CEO”) and Chief Operating Officer (“COO”)) understand, and acknowledge in writing, that CCHP was the operator of a Catholic hospital and indicate that such candidate would be able to support CCHP’s mission and the Catholicity principles set forth in the Affiliation Agreement. (Plaintiffs’ Exhibit 14, Affiliation Agreement, sect. 2.1.3; 2.2.) These key

provisions also were incorporated into CCHP's Bylaws. (Plaintiffs' Exhibit 24, CCHP Bylaws, sect. 4.4(d).)

DIOCESAN DEFENDANTS' RESPONSE NO. 37:

Undisputed that such provisions appeared, *inter alia*, in the Affiliation Agreement and the CCHP Bylaws.

PROSPECT'S STATEMENT NO. 38:

Given the structural barriers to identifying and seating new CCHP Board members, ranging from the Nominating Committee screening process requiring unanimity to the requirement that the CCHP Board vote overwhelmingly in favor of seating new members (at least 12 of the 15 CCHP Board members), to the provision that a Trustee was to serve until his or her replacement was elected and qualified, all of the then-sitting CCHP Board members were re-elected at the conclusion of the Initial Term, ultimately leaving control over CCHP in the hands of the Bishop and RWH, with the Bishop holding eight votes to RWH's seven. (Plaintiffs' Exhibit 24, CCHP Bylaws.)

DIOCESAN DEFENDANTS' RESPONSE NO. 38:

Response 38.1. Disputed that the characterization of the CCHP Bylaws above constitutes a statement of fact and that such characterization is in any way accurate. As a matter of document construction, the so-called "structural barriers" in the Bylaws referenced in Statement No. 38 contributed to the creation of an independent CharterCARE, un beholden to RWH, SJHSRI or RCB. *Supra* Resp. No. 29 at 29.1-A(4)-(5). The CCHP Bylaws state clearly that the power to appoint Trustees at the conclusion of the Initial Term was "in the hands" of the CCHP Board. *See supra* Resp. No. 29 at 29.1-B. The idea that the Affiliation Agreement or CCHP Bylaws intended that RCB would retain control is negated by the very presence of an

“Initial Term” because that Initial Term *terminates* any role for RCB in the CCHP Board process. *See supra* Resp. No. 29 at 29.1-B.

Response 38.2. Additionally, disputed that the CCHP Bylaws required “at least 12 of the 15 CCHP Board members” to seat new members or that at the end of the Initial Term, RCB had “eight votes to RWH’s seven”. Such assertions ignore events like resignations that impacted the CCHP Board’s composition, as well as the presence of *ex-officio* voting trustees. *Supra* Resp. No. 29 at 29.1-A(2) & 29.1-C(1).

Response 38.3. Disputed that the so-called “structural barriers” identified by Prospect were the reason that all CCHP Board members were re-appointed at the conclusion of the Initial Term. Minutes from the CCHP Governance Committee meeting on October 15, 2013 negate this wholly unsupported conclusion and rather contemporaneously and expressly declare that retention of the CCHP Board was to maintain continuity and defer board changes until after the looming transaction with Prospect. ECF No. 196-7 (Oct. 15, 2013 CCHP Gov. Comm. Mtg. Mins) at 1-2; *supra* Resp. No. 29 at 29.1-B.

Response 38.4. Disputed that the CCHP Bylaws contained a provision “that a Trustee was to serve until his or her replacement was elected and qualified.” The CCHP Bylaws permitted Trustees to resign from their post. ECF No. 174-24 (CCHP Bylaws) § 4.3. Multiple trustees did so, many of them RCB Appointees. This contributed to RWH/CCHP Appointee majorities on the CCHP Board and committees for most of the period from January 2010 to June 2014. *Supra* Resp. No. 29 at 29.1-C.

PROSPECT’S STATEMENT NO. 39:

This immutable advantage, held by the Bishop over the CCHP Board, played an outsized role in how CCHP Board exercised its oversight of SJHSRI and made critical decisions

there. While the CCHP Board could exert substantial control over SJHSRI's strategic, financial and medical activities (the "Major Actions"), both CCHP's Bylaws and SJHSRI's amended Articles and Bylaws only permitted the CCHP Board to actually exercise such control by super majority vote – again, the affirmative vote of 75% of the CCHP Board's members, or 12 of the 15 incumbent Board members. (Plaintiffs' Exhibit 15, SJHSRI's Bylaws; Plaintiffs' Exhibit 24, CCHP's Bylaws.)

DIOCESAN DEFENDANTS' RESPONSE NO. 39:

Response 39.1 (First Sentence). Disputed that the characterization of the CCHP and SJHSRI Bylaws above constitutes a statement of fact or that such characterization is in any way accurate. The so-called "undisputed" fact above is nothing more than legal argument— unsupported by fact and wholly and completely contrary to the legally controlling documents cited by Prospect either in Statement No. 39 or elsewhere. The Affiliation Agreement and CCHP Bylaws did not afford RCB or the Most Reverend Bishop control or an "immutable advantage" or "outsized role" over the CCHP Board. Those documents ensured meaningful input and influence by all involved constituencies. *Supra* Resp. No. 29 at 29.1-A(4)-(6).

Likewise, the Affiliation Agreement, the CCHP Bylaws, and SJHSRI Bylaws did not permit RCB to play "an outsized role" in how the CCHP Board exercised its oversight of SJHSRI. *Supra* Resp. No. 29 at 29.1-A(4)-(6). The cited supermajority provisions instead ensured that no party had an "outsized" role in CCHP, and that each party to the Affiliation, SJHSRI and RWH, needed the consent and cooperation of the other. *Supra* Resp. No. 29 at 29.1-A. Regarding the SJHSRI Bylaws, far from ensuring an "immutable advantage" for the Most Reverend Bishop, those bylaws were amended, effective January 4, 2010, to actually remove the authority of the Most Reverend Bishop to pick a majority of SJHSRI's trustees. ECF

No. 174-15 (SJHSRI Bylaws) §§ 4.2, 7.2-7.3. The bylaws instead declared that, but for one RCB designee and the president of the medical staff, the hospital's entire board would be exclusively chosen by CCHP. *Id.*; see ECF No. 174-24 (CCHP Bylaws) § 4.10(c) (providing CCHP shall have "exclusive" authority to remove affiliate hospital board members).

Beyond the blatant misreading of the legally controlling documents, Prospect fails to cite to the factual record of actual meeting attendance. That record contradicts their legal conclusions. As discussed above, the minutes of CCHP Board and committee meetings show that as a matter of historical record, if anyone "dominated" almost all meetings, it was the RWH/CCHP Appointees who routinely outnumbered RCB Appointees. Thus, if any party played an "outsized role" in CCHP then, it was the RWH/CCHP Appointees. *See supra* Resp. No. 29 at 29.1-C(2); *see also supra* Resp. No. 2 (regarding control over SJHSRI).

Response 39.2 (Second Sentence-1). Undisputed that the CCHP Board could exert substantial control over SJHSRI's strategic, financial and medical activities. Disputed that all matters concerning strategic, financial and medical activities at SJHSRI constituted "Major Actions" or "Reserved Powers" as those terms are defined under either the CCHP Bylaws or the SJHSRI Bylaws. ECF No. 174-24 (CCHP Bylaws) §§ 4.9-4.11; ECF No. 174-15 (SJHSRI Bylaws) § 4.12-4.13. Also disputed that the SJHSRI Amended Articles use the term "Major Actions." *See generally* ECF No. 190-8 (SJHSRI Amended Articles).

Response 39.3 (Second Sentence-2). Undisputed that the CCHP Bylaws and SJHSRI's amended articles of incorporation identify certain activities that would require support of seventy-five percent of the CCHP Board. Disputed that the SJHSRI Bylaws directly imposed such a requirement on CCHP, instead of simply requiring CCHP to act in accordance with CCHP's own bylaws. ECF No. 174-15 (SJHSRI Bylaws) § 4.12.

Response 39.4 (Second Sentence-3). Disputed that a vote of 12 of the 15 incumbent CCHP Board members was required for such activities because Prospect's math fails to account for *ex-officio* voting members on the CCHP Board of Trustees or trustees who resigned and were not replaced. *See supra* Resp. No. 29 at 29.1-A(2) & 29.1-C.

PROSPECT'S STATEMENT NO. 40:

An examination of CCHP Board minutes, dating from 2010 (during the Transition Period) and 2011 (after the Transition Period had ended), confirm the Bishop's control over CCHP. (See e.g., Exhibit Q; Belcher Decl. at para. 23; Raucci Decl. at para. 23, 24.)

DIOCESAN DEFENDANTS' RESPONSE NO. 40:

Response 40.1. Disputed that Statement No. 40 constitutes a statement of fact or that Messrs. Belcher or Raucci's Declarations conduct an examination of CCHP Board minutes to confirm "the Bishop's control over CCHP." *See generally* ECF No. 190-2 (Belcher Decl.); ECF No. 190-3 (Raucci Decl.).

Response 40.2. Disputed that RCB or the Most Reverend Bishop controlled CCHP or that a review of CCHP Board of Trustees minutes at any point in time could "confirm" such control. A review of CCHP Board and committee minutes from 2010 through 2014 (and the attendance at those meetings) indicates the opposite. *See supra* Resp. No. 29 at 29.1-C(2).

Exhibit Q, cited in support of Statement No. 40, is a perfect example of how RCB and its appointees were **not** in control of CCHP. ECF No. 190-22 (Exhibit Q) at 1. These minutes of the July 28, 2011 meeting of the Executive Committee of the CCHP Board of Trustees indicate that the following trustees were present (with no trustees absent):

- Edwin Santos (RWH Appointee)
- Kenneth Belcher (*ex-officio* voting trustee, historically affiliated with RWH)
- Joseph DiStefano, Esq. (RCB Appointee)
- Elaine Jones, M.D. (RWH Appointee)

- Donald McQueen (RWH Appointee)
- Daniel Ryan (RCB Appointee)
- Sheri Smith, Ph.D. (RWH Appointee)

Id.; see Ex. 5 (Excerpted Affiliation Closing Binder, Vol. 2) at Tab 8 (Initial Board Listing, identifying RWH and RCB Appointees). Thus, RWH Appointees outnumbered RCB Appointees—both on the CCHP Executive Committee and at this particular meeting—4 to 2. ECF No. 190-22 (Exhibit Q) at 1. (5 to 2, if one includes Mr. Belcher due to his historical affiliation with RWH). ECF No. 190-2 (Belcher Decl.) ¶ 2 (averring that Mr. Belcher had served as RWH’s President and CEO from 2005 to 2014).

These minutes do not “confirm” RCB or the Most Reverend Bishop’s control over CCHP. See ECF No. 190-22 (Exhibit Q) at 3. Despite being over three single-spaced pages in length and covering many topics, the minutes restrict reference to the man that purportedly controlled CCHP to three sentences:

At SJHSRI, Matthew Smith and Dr. Steven Colagiovanni’s terms [on the SJHSRI Board] will expire creating two vacancies. A discussion ensued concerning the Bishop’s role in appointing Trustees to the CCHP and SJHSRI Boards. A suggestion was made to have a letter sent to the Bishop requesting a replacement for Judge Weisberger. Mr. Belcher stated that he will contact Monsignor Theroux to inform him of the letter that will be sent to the Bishop.

Id. The fact that the Executive Committee would suggest that CCHP send a letter “to the Bishop requesting a replacement for Judge Weisberger” indicates nothing more than a desire on the part of the committee to comply with provisions in the Affiliation Agreement and CCHP Bylaws related to vacancies on the CCHP Board during its Initial Term. ECF No. 174-14 (Aff. Agmt.) § 2.1.2; ECF No. 174-24 (CCHP Bylaws) § 4.2(c). The minutes do not indicate that Bishop Tobin was controlling the CCHP Executive Committee (a majority of which consisted of persons he did

not appoint) or CCHP.⁹ See ECF No. 190-22 (Exhibit Q) at 1, 3. Moreover, the record presented by Prospect does not reflect that anyone at CCHP ever followed through on this suggestion. Rather, the meeting minutes made available through discovery indicated that Judge Weisberger's seat on the CCHP Board of Trustees remained vacant. See *supra* Resp. No. 29 at 29.1-C; see also Ex. 19 (compiling CCHP Board meeting attendance).

Response 40.3. Disputed as to erroneous characterization of "Transition Period" as running beyond January 4, 2010. See *supra* Resp. No. 12 at 12.2.

PROSPECT'S STATEMENT NO. 41:

Attached hereto as Exhibit D are the approved minutes of a meeting on October 13, 2010 of the CCHP Governance Committee which included Msgr. Paul Theroux and Rev. Brian Shanley.

DIOCESAN DEFENDANTS' RESPONSE NO. 41:

Undisputed that minutes of an October 13, 2010 meeting of the CCHP Governance Committee, which reflect the attendance of Msgr. Theroux and Rev. Shanley among others, are attached at Exhibit D. The Diocesan Defendants cannot comment on whether the minutes at Exhibit D were "approved."

PROSPECT'S STATEMENT NO. 42:

The October 13, 2010 minutes reflect a discussion regarding expiration of trustee term limits and extensions for SJHSRI Board members. "Monsignor Theroux reported that he recently met with [Kenneth] Belcher and had expressed a desire to resign from the CCHP Board

⁹ The minutes' silence on another matter is equally telling. Despite upcoming vacancies on the SJHSRI Board, the minutes do not indicate that CCHP would consult Bishop Tobin about them. See ECF No. 190-22 (Exhibit Q) at 3. Such silence is inconsistent with Prospect's claim that "the Bishop" controlled CCHP or SJHSRI. It is consistent, however, with the reality that power to fill vacant seats on the SJHSRI Board of Trustees rested with CCHP. ECF No. 174-15 (SJHSRI Bylaws) § 4.2; ECF No. 174-24 (CCHP Bylaws) § 4.10(c).

and only serve on the SJHSRI Board... In addition, Monsignor Theroux reported that since the SJHSRI Board does not have a Vice Chairman of the CCHP Board, Reverend Timothy Reilly could serve as the Bishop's appointee to the CCHP Board. It was thereupon suggested that Monsignor Theroux discuss these appointments with Bishop Tobin after which Mr. Belcher will follow up with these individuals. After discussion, a motion was made to recommend the CCHP Board organizational changes for presentation to Bishop Tobin." (Exhibit D.)

DIOCESAN DEFENDANTS' RESPONSE NO. 42:

Disputed to the extent this paragraph does not contain an accurate quote from the minutes of the October 13, 2010 meeting of the CCHP Governance Committee. ECF No. 190-9 (Exhibit D) at 3. Those minutes speak for themselves. Also disputed to the extent Statement No. 42 suggests that RCB or the Most Reverend Bishop had control over CCHP Board organizational changes. Rather, as explained *supra*, Response No. 40 at 40.2, any contemplated consultation with Bishop Tobin simply reflected CCHP's effort to comply with the Affiliation Agreement and CCHP Bylaws, which permitted RCB to fill a vacancy caused by a departing RCB Appointee during the Initial Term.

PROSPECT'S STATEMENT NO. 43:

Attached hereto as Exhibit E are the approved minutes of a meeting on September 15, 2011 of the CCHP Governance Committee.

DIOCESAN DEFENDANTS' RESPONSE NO. 43:

Undisputed that minutes of a September 15, 2011 meeting of the CCHP Governance Committee are attached at Exhibit E. The Diocesan Defendants cannot comment on whether the minutes at Exhibit E were "approved."

PROSPECT'S STATEMENT NO. 44:

The September 15, 2011 minutes reflect a discussion regarding the role of the various boards and overlap membership on boards. “Mr. DiStefano referred to the June 2, 2010 minutes which raised the question as to whether a member of the SJHSRI Board must be of Catholic faith. Mr. DiStefano stated that in prior discussions with Monsignor Theroux he did not believe that Bishop Tobin would be opposed to non-Catholic members serving on the SJHSRI Board. Monsignor Theroux informed Mr. DiStefano that the Bishop had expressed receiving suggestions for membership from the Nominating Committee. ...” (Exhibit E.)

DIOCESAN DEFENDANTS' RESPONSE NO. 44:

Undisputed that the September 15, 2011 minutes contain, *inter alia*, the quoted language. Disputed to the extent this paragraph suggests RCB or the Most Reverend Bishop controlled the appointment of trustees to the SJHSRI Board of Trustees on or after January 4, 2010. Such appointing power rested with CCHP, for all but the *ex-officio* seats on the SJHSRI Board for RCB's designee and the president of the medical staff. ECF No. 174-15 (SJHSRI Bylaws) § 4.2; ECF No. 174-24 (CCHP Bylaws) § 4.10(c); *see also supra* Resp. No. 2.

PROSPECT'S STATEMENT NO. 45:

Pursuant to the Affiliation Agreement, the Articles and Bylaws of SJHSRI were amended to provide that effective January 4, 2010, CCHP would be SJHSRI's sole Class A Member, and the Bishop, or his designee, would be the sole Class B Member. (Exhibit C, SJHSRI Amended Articles, sect. 2, exhibit A, part A; Plaintiffs' Exhibit 15, SJHSRI Bylaws, sect. 2.1.)

DIOCESAN DEFENDANTS' RESPONSE NO. 45:

Undisputed, to the extent “the Bishop” refers to RCB.

PROSPECT'S STATEMENT NO. 46:

During the transition period in 2009, the SJHSRI Finance Committee continued to have a significant role in administering the Plan. The SJHSRI Finance Committee made investment decisions and made recommendations to the SJHSRI Board. (Raucci Decl. at para. 11.)

DIOCESAN DEFENDANTS' RESPONSE NO. 46:

Response 46.1. Undisputed that, in 2009, the SJHSRI Finance Committee had a role in administering the Plan and made investment decisions and recommendations to the SJHSRI Board and in its capacity as “investment Advisory Committee” to the SJHSRI Retirement Board. Ex. 1 (SJHSRI 2007 Bylaws) Art. 5, § 6C. The Diocesan Defendants do not have a position on Prospect’s characterization of how significant this role was.

Response 46.2. Disputed as to erroneous characterization of the “Transition Period” as running beyond January 4, 2010. *See supra* Resp. No. 12 at 12.2.

PROSPECT'S STATEMENT NO. 47:

Once the Transition Period was over, subject to the reserved powers of the Bishop as the permanent Class B Member, operational control over SJHSRI – from appointing and removing individual SJHSRI board members, to taking one or more so-called “Major Actions” such as incurring material debt, modifying hospital services, filing for certificates of need, and adopting SJHSRI’s strategic plan – rested exclusively with CCHP, first acting through its own board of trustees (as the Class A Member) during the Transition Period, and ultimately acting through both its board and its standing board committees once the Transition Period ended. (Plaintiffs’ Exhibit 24, CCHP Bylaws, sect. 4.9; Belcher Decl. at para. 19; Raucci Decl. at para. 19, 20.)

DIOCESAN DEFENDANTS' RESPONSE NO. 47:

Response 47.1. Undisputed that, effective January 4, 2010, subject to the reserved powers of RCB as Class B member of SJHSRI, operational control over SJHSRI rested exclusively with CCHP, acting through its own board of trustees (as SJHSRI's Class A Member) and CCHP's standing board committees. *Supra* Resp. No. 2.

Response 47.2. Disputed as to the erroneous characterization of "Transition Period" as running beyond January 4, 2010. *See supra* Resp. No. 12 at 12.2.

PROSPECT'S STATEMENT NO. 48:

Conspicuously absent from the list of activities or matters considered to be "Major Actions" was anything to do with sponsoring or administering the Plan, or funding the Plan outside the general approval of SJHSRI's budget. That meant that the SJHSRI Board, alone, had authority over the sponsorship, administration and funding of the Plan. (Plaintiffs' Exhibit 24, CCHP Bylaws, sect. 4.9.)

DIOCESAN DEFENDANTS' RESPONSE NO. 48:

Response 48.1. Undisputed that section 4.9 of the CCHP Bylaws does not specifically list sponsoring, administering, or funding the Plan as a "Major Action."

Response 48.2. Disputed that Prospect's assertion that this absence was "conspicuous" is a statement of fact. Disputed also that the conclusion drawn in Statement No. 48—that the SJHSRI Board alone had authority over the administration or funding of the Plan—constitutes a statement of fact or is any way accurate for several reasons.

First, section 4.9 of the CCHP Bylaws primarily concerns "Major Actions" internal to CCHP, not SJHSRI. ECF No. 174-24 (CCHP Bylaws) § 4.9. CCHP's "Reserved Powers" with respect to SJHSRI are set forth at § 4.10 of the CCHP Bylaws and those Reserved

Powers are expansive and reach financial and administrative matters connected with the Plan. *Id.* § 4.10. Sections 4.12 through 4.14 of the SJHSRI Bylaws also define similar “Major Actions” that CCHP must approve and the “Reserved Powers” it might exercise with respect to SJHSRI. ECF No. 174-15 (SJHSRI Bylaws) §§ 4.12-4.14.

Second, CCHP was SJHSRI’s Class A member with “substantial control over SJHSRI’s strategic, financial and medical activities.” ECF No. 190-5 (Prospect’s Statement of Undisputed Facts) ¶ 39; *see* ECF No. 174-15 (SJHSRI Bylaws) § 2.1. CCHP not only had “the power and authority to approve capital and operating budgets and any unbudgeted transaction or expenditure” of SJHSRI in excess of an amount set by CCHP, but also the “exclusive authority to appoint or remove the members of the governing board of” SJHSRI, “exclusive power to appoint or remove the president/chief executive officer and the executive vice president/chief operating officer” of SJHSRI, and “the exclusive power and authority to approve and authorize the incurrence of any debt by any Affiliate in excess of an amount” set by CCHP. ECF No. 174-24 (CCHP Bylaws) § 4.10. Such authority would encompass engaging actuaries, attorneys and other consultants to assist in administering the Plan. *See* ECF No. 190-19 (Mar. 19, 2010 CCHP Inv. Comm. Mtg. Mins.) at 3 (discussing request for proposal to investment consultants).

Third, according to Prospect itself, the CCHP Finance, Audit and Compliance Committee and CCHP Investment Committee had roles in administering the Plan and managing its investments. ECF No. 190-2 (Belcher Decl.) ¶¶ 28, 30; ECF No. 190-3 (Raucci Decl.) ¶ 26.

PROSPECT’S STATEMENT NO. 49:

The shifts in the more day-to-day responsibilities on or about June 30, 2010, did not signal a wholesale relinquishment by the Bishop of influence and control over SJHSRI (except for, e.g., pastoral matters, etc.). Rather, care had been taken to preserve and perpetuate

the Bishop's substantial role and influence within CCHP when it was organized and incorporated by positioning the Bishop to pack the CCHP Board and subject all major decisions involving SJHSRI to a super-majority vote his appointees could block at will. Accordingly, the transfer of most functions – and most board and committee responsibilities – from SJHSRI to CCHP at the conclusion of the Transition Period remained subject to approval by the Bishop. (Plaintiffs' Exhibit 24, CCHP Bylaws; Belcher Decl. at para. 23; Raucci Decl. at para. 23, 24.)

DIOCESAN DEFENDANTS' RESPONSE NO. 49:

Response 49.1. Disputed that Statement No. 49 constitutes a statement of fact.

Response 49.2 (First Sentence-1). Disputed that a shift to “more day-to-day responsibilities” occurred “on or about June 30, 2010.” CCHP and its committees were in operational control of SJHSRI, effective January 4, 2010, by the terms of the Affiliation Agreement, the CCHP Bylaws and the SJHSRI Bylaws. Further, disputed that this shift in such responsibilities in any way required the approval of RCB or the Most Reverend Bishop, but rather occurred pursuant to the terms of those documents. *See supra* Resp. No. 12 at 12.2.

Response 49.3 (First Sentence-2). Disputed that RCB or the Most Reverend Bishop controlled SJHSRI on or after January 4, 2010, other than with respect to Catholicity. *See supra* Resp. No. 2.

Response 49.4 (Second Sentence). Disputed that the CCHP Bylaws permitted RCB or the Most Reverend Bishop to control CCHP or perpetuated either RCB or RWH's “role and influence” within CCHP. The supermajority provisions in the CCHP Bylaws ensured that neither RCB Appointees or RWH Appointees could dominate the other, encouraging cooperation between RCB Appointees and RWH Appointees and contributing to the creation of an independent CharterCARE, un beholden to RWH, SJHSRI, or RCB. *Supra* Resp. No. 29 at 29.1-

A(4)-(5) & 29.1-B. The inclusion of such provisions demonstrates, therefore, that there was no intent or design to “preserve and perpetuate” the role of either RCB or the Most Reverend Bishop. *Supra* Resp. No. 38.

Response 49.5 (Third Sentence-1). Disputed that the transfer of board and committee responsibilities from SJHSRI to CCHP was subject to the approval of RCB or the Most Reverend Bishop. The CCHP Bylaws did not provide for any role for RCB or the Most Reverend Bishop in setting CCHP committee membership or responsibilities. Section 4.4 of the CCHP Bylaws provides that “the [CCHP] Board shall appoint the members and the chairpersons of standing and other committees from nominations submitted by the Nominating Committee[.]” ECF No. 174-24 (CCHP Bylaws) § 4.4. As explained earlier, RCB and the Most Reverend Bishop did not control the CCHP Board or the Nominating Committee. *See supra* Resp. No. 29 at 29.1-A.

Further, as the Class B member of SJHSRI, RCB’s authority was limited to issues of Catholicity, not “strategic, financial and medical activities.” ECF No. 190-5 (Prospect’s Statement of Undisputed Facts) ¶ 39. Management of the pension fund, and more generally, the work of the CCHP Finance Committee and the CCHP Investment Committee, did not involve religious or pastoral matters, but instead strategic financial concerns and therefore fell within the areas controlled by CCHP and/or SJHSRI. *See id.* ¶ 23 (CCHP “would function as a parent organization for both SJHSRI and RWH and not only provide strategic oversight but also provide financial, administrative and organizational support to both of these operating entities on all matters except for certain religious, pastoral and related matters); *id.* ¶ 47 (“subject to the reserved powers of the Bishop as the permanent Class B member, operational control over SJHSRI... rested exclusively with CCHP”). Neither CCHP’s Finance Committee nor CCHP’s

Investment Committee were associated with the Catholic Church. The purpose or function of these committees did not involve or share the faith or mission of the Church, and they were not listed in the Official Catholic Directory. *See supra* Resp. No. 2.

CCHP was intended to be a secular entity and it, its Board, and its committees, as noted by Prospect itself in Statement Nos. 23 and 47, were intended to manage the administrative and secular aspects of the businesses of CCHP, RWH, and SJHSRI. ECF No. 190-5 (Prospect's Statement of Undisputed Facts) ¶¶ 23, 47; *supra* Resp. No. 2.

Response 49.6 (Third Sentence-2). Disputed to the extent "Transition Period" in Statement No. 49 refers to a singular period running from January 2009 to June 30, 2010, or a time where the Affiliation was effective, but CCHP was not in control of SJHSRI. *See supra* Resp. to Statement No. 12 at 12.2.

PROSPECT'S STATEMENT NO. 50:

To bolster the Bishop's ability to exercise control over CCHP and SJHSRI, in case his ability to exercise control through his board appointees proved to not be sufficient, two provisions were added to SJHSRI's Articles as it was being revised to reflect the Affiliation. Part D of SJHSRI's Amended Articles gave the Bishop significant power and authority to block certain actions the SJHSRI Board otherwise might attempt to take, simply by withholding his consent:

- "D. Provided that the corporation continues under Catholic sponsorship, as determined in the sole discretion of the Class B member, and is listed in the Official Catholic Directory [] unless otherwise permitted by the Class B member, the following actions shall require the approval of both the Class A member [] and the Class B member:
- (i) the sale, mortgaging, or leasing of any real or personal property of the corporation with a value in excess of the canonical threshold then in effect;
 - (ii) the dissolution of the corporation;
 - (iii) any change to the corporation's charity care policy;
 - (iv) all matters regarding pastoral care, including without limitation, funding;

*
*
*

- (vi) any amendment to the Articles [], bylaws, or other governing documents of the corporation relating to the Ethical and Religious Directives for Catholic Health Care Services as promulgated by the United States Conference of Catholic Bishops . . .”

(Exhibit C, SJHSRI Amended Articles, sect. 2, Exhibit A, Part D.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 50:

Response 50.1. Undisputed that SJHSRI’s amended articles of incorporation contain, *inter alia*, the quoted language in that section of the SJHSRI Amended Articles that discuss RCB’s authority to preserve the Catholicity of SJHSRI.

Response 50.2 (First Sentence). Disputed that the remainder of Statement No. 50 constitutes a statement of fact or is in any way accurate. Part D and Part E were not added to SJHSRI’s amended articles of incorporation to bolster RCB’s or the Most Reverend Bishop’s ability to exercise control over the finances and administration of CCHP and SJHSRI. Such provisions, rather, resulted from:

extensive discussions to determine if by joining together they [SJHSRI and RWH] can collectively enhance their ability to serve their communities and provide assurance to the Bishop that SJHSRI will continue to operate consistent with the principles and mission of a Catholic hospital responsive to the needs of the poor and disenfranchised.

Through these discussions the Parties have determined that by joining the RWMC Group and the SJHSRI Group together to create a new healthcare system (which will be known as “CharterCARE Health Partners”), they can enhance their respective charitable purposes and missions and better serve the health care needs of the communities they serve in a manner that will preserve the Catholicity of SJHSRI and enhance RWH’s historic mission of medical research and education.

ECF No. 174-14 (Aff. Agmt) at 2 (Recitals). Parts D and E of SJHSRI’s Amended Articles then, are a product of the promise in the Affiliation Agreement “that CharterCARE will encourage and support the maintenance of Catholicity at SJHSRI and that, unless otherwise agreed or

determined by the Class B Member of SJHSRI, SJHSRI shall be a Catholic Hospital. . . .” *Id.* §

3.1. A comparison of the provisions in the Affiliation Agreement with SJHSRI’s Amended Articles bears this out. *Compare* ECF No. 174-14 (Aff. Agmt) §§ 2.4.7, 3.2, 3.4 *with* ECF No. 190-8 (SJHSRI’s Amended Articles), Ex. A at Part D & E.

Response 50.3 (Second Sentence-1). Undisputed that Part D of SJHSRI’s Amended Articles sets forth certain activities that require both the approval of seventy-five percent of the CCHP Board of Trustees and the consent of RCB. ECF No. 190-8 (SJHSRI’s Amended Articles), Ex A. at Part D. Disputed that such authority placed RCB or the Most Reverend Bishop in control of SJHSRI, and in particular in control of SJHSRI’s secular business (e.g., finances and administration). *Supra* Resp. Nos. 2 & 49.

Response 50.4 (Second Sentence-2). The Diocesan Defendants note that Prospect selectively quotes from Part D of SJHSRI’s amended articles of incorporation. The document speaks for itself. ECF No. 190-8 (SJHSRI’s Amended Articles), Ex. A at Part D.

PROSPECT’S STATEMENT NO. 51:

Part E SJHSRI’s Amended Articles acknowledges the Bishop’s unique ability to recognize (or withhold recognition) of SJHSRI as a Catholic Church-affiliated institution by causing it to be included in the Official Catholic Directory, thereby enabling the Plan (and SJHSRI) to avoid ERISA’s potentially crippling funding and regulatory requirements, which SJHSRI was not then in a position to afford, by providing that so long as the Bishop cooperated and enabled the Plan to remain a “church plan” SJHSRI would not allow or permit any of a series of so-called “prohibited procedures” such as abortion or euthanasia to be performed at the Catholic Hospitals:

“E. So long as the corporation remains sponsored by the Roman Catholic Church as determined by the Bishop, and continues to be listed in the Official Catholic

Directory, as long as the Catholic Directory exists, [] the corporation will not cause or permit any of the Prohibited Procedures to be performed.”

(Exhibit C, SJHSRI Amended Articles, sect. 2, Exhibit A, Part E.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 51:

Response 51.1. Undisputed that the Most Reverend Bishop had the authority to recognize SJHSRI as operated in connection with the Roman Catholic Church within the Diocese of Providence and to cause SJHSRI to be listed in the Official Catholic Directory, if SJHSRI qualified for such listing. *See* ECF No. 67-19 (2017 Memo from the United States Conference of Catholic Bishops concerning the requirements for listing in the Official Catholic Directory).

Response 51.2. Disputed that the remainder of Statement No. 51 constitutes a statement of fact or is in any way accurate. Disputed that the quote of Part E of SJHSRI’s Amended Articles of Incorporation is accurate or complete.

Response 51.3. Also disputed that the Most Reverend Bishop or RCB had any ability to preserve the Plan’s status as a church plan or that listing SJHSRI in the Official Catholic Directory would qualify the Plan as a church plan. SJHSRI’s Amended Articles belie Prospect’s contention to the contrary:

So long as the corporation remains sponsored by the Roman Catholic Church as determined by the Bishop, and continues to be listed in the Official Catholic Directory, as long as the Official Catholic Directory exists, ***or in the event such directory no longer exists, then so long as the pension plan of St. Joseph Health Services of Rhode Island is a church plan*** within the meaning of Section 414(e) of the Internal Revenue Code of 1986, as amended, and Section 3(33) of the Employment Retirement Income Security Act of 1974, or any successor provisions of such the Internal Revenue Code or Employment Retirement Income Security Act, or such successor code or act, unless otherwise permitted by the Bishop, the corporation will not cause or permit any of the Prohibited Procedures to be performed.

ECF No. 190-8 (SJHSRI Amended Articles), Ex. A at Part E (emphasis added). When read in full, Part E of the SJHSRI Amended Articles clearly contemplated that the Plan could remain a church plan in the event the Official Catholic Directory “no longer exists.” *Id.* Directory listing, in and of itself, then could not have been essential to the Plan’s qualification as a church plan and did not mean one way or another that (a) the Plan qualified as a “church plan” or that (b) the Most Reverend Bishop or any of the Diocesan Defendants could decide whether the Plan had such status by listing SJHSRI in the Directory.

Response 51.4. Disputed also that Part E of the Amended Articles reflected an arrangement between SJHSRI and the Most Reverend Bishop or any of the Diocesan Defendants to list SJHSRI in the Official Catholic Directory in exchange for SJHSRI not causing or permitting the performance of “Prohibited Procedures.” The provision in Part E that expressly contemplated a world where the Official Catholic Directory no longer existed, but the prohibited procedures were still not performed, refutes such an assertion. *Id.* Moreover, SJHSRI was a Catholic hospital. ECF No. 174-14 (Aff. Agmt) at 2 (noting that one of the purposes of the Affiliation Agreement is to enable SJHSRI to “continue to operate consistent with the principles and mission of a Catholic hospital”). A quintessential component of Catholic healthcare is not performing the “Prohibited Procedures.” *See* ECF No. 67-21 (Ethical and Religious Directives for Catholic Health Care Services) at 18-22.

PROSPECT’S STATEMENT NO. 52:

During the Transition Period in 2009, the SJHSRI Finance Committee remained involved in various Plan matters such as renewing its 2007 recommendation to partially freeze the Plan at a meeting held June 29, 2009. (Raucci Decl. at para. 11 through 15.)

DIOCESAN DEFENDANTS' RESPONSE NO. 52:

Response 52.1. Undisputed that the SJHSRI Finance Committee remained involved in various Plan matters in 2009.

Response 52.2. Disputed that the SJHSRI Finance Committee *renewed* a recommendation from 2007 to partially freeze the Plan at a meeting held on June 29, 2009. Paragraphs 11 through 15 of Mr. Raucci's declaration do not so provide. ECF No. 190-3 (Raucci Decl.) ¶¶ 11-15. The Plan was frozen to new employees by amendment dated, July 19, 2007. ECF No. 174-9 (Amendment Number 6) (located at final two pages of ECF No. 174-9). The Plan was frozen for all non-union employees by amendment dated, July 16, 2009. ECF No. 190-12 (July 16, 2009 Amendment to the SJHSRI Retirement Plan) (located at last two pages of ECF No. 190-12).

Response 52.3. Disputed as to the erroneous characterization of "Transition Period" as running beyond January 4, 2010. *See supra* Resp. No. 12 at 12.2.

PROSPECT'S STATEMENT NO. 53:

Attached as Exhibit F are the approved minutes of a meeting on May 1, 2009 of the SJHSRI Finance Committee.

DIOCESAN DEFENDANTS' RESPONSE NO. 53:

Undisputed that Exhibit F features a portion of the minutes of a meeting on May 1, 2009 of the SJHSRI Finance Committee. The Diocesan Defendants cannot comment on whether the excerpt of the minutes at Exhibit F was ever "approved."

PROSPECT'S STATEMENT NO. 54:

The May 1, 2009 minutes reflect a discussion regarding a "Pension Plan Action". "Darlene Souza attended the meeting to report on a Pension Plan matter relating to [...] a retired

Registered Nurse ... [who] disagrees with the Hospital's interpretation of Article 6 and contests that she does not agree with the rules as the Hospital interpreted them. [She] ... has requested a review of this decision by the Hospital's Pension Board. The Finance Committee agrees with Management's position on this matter and recommends to the Pension Board its concurrence...."

(Exhibit F.)

DIOCESAN DEFENDANTS' RESPONSE NO. 54:

Undisputed that Exhibit F contains, *inter alia*, the quoted language.

PROSPECT'S STATEMENT NO. 55:

On July 16, 2009, the SJHSRI Board voted to approve the recommendation of the SJHSRI Finance Committee to freeze the Plan to non-union employees. Attached as Exhibit G are the approved minutes of a meeting on July 16, 2009 of the SJHSRI Board as well the minutes evidencing the SJHSRI's Board's votes and the action of the Retirement Board on July 16, 2009.

DIOCESAN DEFENDANTS' RESPONSE NO. 55:

Undisputed, except that the Diocesan Defendants cannot comment on whether the minutes at Exhibit G were "approved."

PROSPECT'S STATEMENT NO. 56:

The July 16, 2009 minutes indicate that Jeffrey Bauer from the Angell Pension Group and the SJHSRI Finance Committee had recommended a hard freeze of the Plan as of September 30, 2009 therefore ceasing further accruals to the Plan. The SJHSRI Board voted to approve the recommendation of the SJHSRI Finance Committee to cease accruals to the defined benefit plan as of September 30, 2009 and offer a 403(b) savings plan in its place with a Hospital match. (Exhibit G.)

DIOCESAN DEFENDANTS' RESPONSE NO. 56:

Undisputed.

PROSPECT'S STATEMENT NO. 57:

On that same day, July 16, 2009, the Retirement Board, chaired by Bishop Tobin, approved a resolution to amend the Plan to freeze the Plan to non-union employees.

DIOCESAN DEFENDANTS' RESPONSE NO. 57:

Undisputed.

PROSPECT'S STATEMENT NO. 58:

One action the SJHSRI Finance Committee took, at a meeting held November 6, 2009, involved determining that “the future Investment Committee of [CCHP] would be the setting where Plan investments would be reviewed to make sure they are keeping pace with the agreed upon format”. Attached as Exhibit H are the approved minutes of a meeting on November 6, 2009 of the SJHSRI Finance Committee.

DIOCESAN DEFENDANTS' RESPONSE NO. 58:

Response 58.1. Undisputed that Exhibit H features a portion of the minutes of a meeting on November 6, 2009 of the SJHSRI Finance Committee. The Diocesan Defendants cannot comment on whether the excerpt of the minutes at Exhibit H was ever “approved.”

Response 58.2. Disputed that Statement No. 58 accurately quotes the minutes from the November 6, 2009 meeting. The minutes provide: “The Committee also agreed that the future Investment Committee of CharterCARE would be the setting where such pension investments would be reviewed to make sure they are keeping pace with the agreed upon format.” ECF No. 190-13 (excerpt of Nov. 6, 2009 SJHSRI Finance Comm. Mtg. Mins.) at 2.

Response 58.3. Disputed that Exhibit H evidences the conclusion that the SJHSRI Finance Committee actively “determined” that the CCHP Investment Committee would be the setting for future review of pension investments at the November 6, 2009 meeting, as opposed to agreeing, in an observational sense, that the CCHP Investment Committee would be the setting for future review of such investments. *Id.*

PROSPECT’S STATEMENT NO. 59:

Attached hereto as Exhibit I is an e-mail dated January 6, 2010 from Joseph D’Alessandro (Director, Compensation/Benefits at SJHSRI) to Louis Squillante and copying Darlene Souza which identifies the following individuals as members of the Retirement Board: Bishop Thomas J. Tobin; Monsignor Paul D. Theroux; Joseph R. DeStefano, Esq.; Daniel Ryan, CPA; Kevin Stiles; John Fogarty; Darlene Souza; and Kathleen Kenny.

DIOCESAN DEFENDANTS’ RESPONSE NO. 59:

Undisputed, except that the email was to “Lois” Squillante, not “Louis.” ECF No. 190-14 (Jan. 6, 2010 email) at 1.

PROSPECT’S STATEMENT NO. 60:

Meetings held by the Retirement Board, following the action taken in July of 2009 to close the Plan to non-union employees, continued but were markedly less frequent. Nonetheless, the Retirement Board – then, consisting of eight individuals including the Bishop – continued to function throughout the approximately eighteen month Transition Period. (Exhibit I.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 60:

Response 60.1. Undisputed that the Retirement Board continued to meet, following the action taken in July of 2009 to close the Plan to non-union employees. The

Diocesan Defendants have no position on the frequency of Retirement Board meetings before or after July 2009.

Response 60.2. Undisputed that as of July 2009, the Retirement Board consisted of eight individuals, including the Most Reverend Bishop. The Diocesan Defendants have no position on whether the Retirement Board remained at eight members following Kathleen Kenny's resignation from SJHSRI. ECF No. 190-14 (Jan. 6, 2010 Email) at 1 (noting Ms. Kenny's resignation).

Response 60.3. Disputed that the process of reorganizing SJHSRI and RWH from standalone hospitals to affiliates under the CharterCARE umbrella was eighteen months. CCHP assumed control over SJHSRI on January 4, 2010. Additionally, disputed as to the erroneous characterization of the "Transition Period" running beyond January 4, 2010. *See supra* Resp. No. 12 at 12.2.

PROSPECT'S STATEMENT NO. 61:

Throughout 2010 the SJHSRI Board continued to be involved with overseeing the Plan and receiving input from the SJHSRI Finance Committee regarding the Plan, until the SJHSRI Finance Committee's functions were moved up to the CCHP level in accordance with the Affiliation Agreement. Attached as Exhibit J are the approved minutes of a meeting on May 20, 2010 of the SJHSRI Board. (Belcher Decl. at para. 19, 21, 22, 24.)

DIOCESAN DEFENDANTS' RESPONSE NO. 61:

Response 61.1. Undisputed that during 2010 the SJHSRI Board continued to be involved with overseeing the Plan and received input from the SJHSRI Finance Committee regarding the Plan. Also undisputed that minutes of the May 20, 2010 meeting of the SJHSRI

Board of Trustees are at Exhibit J. The Diocesan Defendants cannot comment on whether the minutes at Exhibit J were “approved.”

Response 61.2. Disputed that the SJHSRI Finance Committee on or after January 4, 2010 functioned in anything but an advisory capacity reporting to, and subject to the authority of, the CCHP Finance Committee, until the SJHSRI Finance Committee’s functions were fully absorbed by the CCHP Finance Committee. ECF No. 174-15 (SJHSRI Bylaws) § 4.5.

Response 61.3. Disputed that the Affiliation Agreement provided that the SJHSRI Finance Committee would function at all in 2010 after the Affiliation. *See generally* ECF No. 174-14 (Aff. Agmt) (failing to address continuing role for SJHSRI Finance Committee after the effective date of the Affiliation). That matter was instead addressed in § 4.5 of the SJHSRI Bylaws.¹⁰ ECF No. 174-15 (SJHSRI Bylaws) § 4.5.

PROSPECT’S STATEMENT NO. 62:

Pursuant to the Affiliation Agreement, the SJHSRI Finance Committee’s responsibilities were to be placed under the supervision of the CCHP Board, and, after a transition period in which the SJHSRI Finance Committee would continue to function in order to provide continuity and oversight, a new CCHP Finance Committee would take over its actual responsibilities. However, it was also determined that a separate Investment Committee of CCHP would take over administration of the Plan investments. (Raucci Decl. at para. 13, 14, 19, 20.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 62:

Response 62.1 (First Sentence-1). Disputed. The Affiliation Agreement does not provide that the SJHSRI Finance Committee would continue to function after the effective date

¹⁰ The draft version of the SJHSRI bylaws that was an exhibit to the Affiliation Agreement did not discuss a continuing role for the SJHSRI Finance Committee. That role was added to the version of the bylaws that became effective on January 4, 2010. *Compare* Ex. 14 (Draft SJHSRI Bylaws attached to Affiliation Agreement) § 4.5 *with* ECF No. 174-15 (SJHSRI Bylaws) § 4.5.

of the Affiliation. *See generally* ECF No. 174-14 (Aff. Agmt) (not addressing the SJHSRI Finance Committee post-affiliation). This matter was addressed in § 4.5 of the SJHSRI Bylaws. The SJHSRI Bylaws provide that, on and after January 4, 2010, the SJHSRI Finance Committee would only function in an advisory capacity reporting to, and subject to the authority of, the CCHP Finance Committee, until the SJHSRI Finance Committee's functions were fully absorbed by the CCHP Finance Committee. ECF No. 174-15 (SJHSRI Bylaws) § 4.5.

The CCHP Bylaws describe the function of the CCHP Finance Committee as follows:

Finance, Audit and Compliance Committee. The Finance, Audit and Compliance Committee shall review and monitor the financial operations of the Corporation, recommend operational and financial goals and objectives and monitor compliance with the goals and objectives, review and recommend to the Board of Trustees the annual operating and capital budget, and review and make recommendations to the Board regarding plans for financing major capital acquisitions. The Finance, Audit and Compliance Committee shall review the scope and results of the audit of the books of the Corporation and of each company of which the Corporation is the sole member or stockholder and of any other Affiliate of the Corporation, and review such results with the auditors, management and those responsible for internal controls. The Finance, Audit and Compliance Committee will assure that the financing, account, internal controls and financial reporting functions are in keeping with accepted accounting standards. The Finance, Audit and Compliance Committee will annually report to the Board of Trustees of the Corporation as to the performance of the independent auditor engaged to audit the books of the Corporation. The Finance, Audit and Compliance Committee also shall be responsible for approving compliance programs established for the Corporation, overseeing and monitoring such compliance programs, and making appropriate reports and recommendations to the Board of Trustees. The Finance, Audit and Compliance Committee shall be comprised of such Trustees as shall be appointed thereto by the Board of Trustees; provided, that any members of the Committee who are at the time employed by the Corporation shall recuse themselves from any discussion and the taking of any action with respect to the audit functions of the Committee.

ECF No. 174-24 (CCHP Bylaws) § 4.4(c) (underlining in original).

Response 62.2 (First Sentence-2). Disputed as to the erroneous characterization of the “transition period” as running beyond January 4, 2010. *See supra* Resp. No. 12 at 12.2.

Response 62.3 (Second Sentence). Undisputed that, based on review of the minutes of the CCHP Investment Committee meetings appended at Exhibits N and U of Prospect’s Statement of Undisputed Facts, the Plan was a topic of discussion at those meetings. The Diocesan Defendants have no position on whether such discussion signifies a determination that the CCHP Investment Committee “would take over administration of the Plan investments.”

PROSPECT’S STATEMENT NO. 63:

Following the close of the Transition Period in 2010, and in accordance with the Affiliation Agreement, the authority held by the SJHSRI Finance Committee and SJHSRI’s other standing board committees transferred to comparably-named CCHP Board committees, often populated by many of the same individuals that had served on the SJHSRI committees. (Belcher Decl. at para. 24, 25.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 63:

Response 63.1. Undisputed that the authority held by the SJHSRI Finance Committee and SJHSRI’s other standing board committees ultimately transferred to comparably-named CCHP Board committees in 2010. ECF No. 174-15 (SJHSRI Bylaws) § 4.5; *supra* Resp. No. 12 at 12.2.

Response 63.2. Undisputed that some of the members of the SJHSRI Finance Committee also served on the CCHP Finance Committee. Disputed that such persons made up a majority of the CCHP Finance Committee for almost any part of the time period between January 2010 and June 2014. *See supra* Resp. No. 29 at 29.1-C(2); *see* Ex. 23 (compiling membership and meeting attendance at CCHP Finance Committee meetings).

Response 63.3. Disputed that the SJHSRI Finance Committee on or after January 4, 2010 functioned in anything but an advisory capacity reporting to, and subject to the authority of, the CCHP Finance Committee. ECF No. 174-15 (SJHSRI Bylaws) § 4.5.

Response 63.4. Disputed that the Affiliation Agreement addresses the transfer of the SJHSRI Finance Committee's functions after a "Transition Period" sometime in 2010. *See generally* ECF No. 174-14 (Aff. Agmt) (failing to discuss a role for SJHSRI Finance Committee post-affiliation); *supra* Resp. No. 61.3 & n.10.

Response 63.5. Disputed as to the erroneous characterization of the "Transition Period" as running beyond January 4, 2010. *See supra* Resp. No. 12 at 12.2.

PROSPECT'S STATEMENT NO. 64:

The CCHP Finance Committee assumed some, but not all, of the Plan administrative and oversight responsibilities that were previously handled by the SJHSRI Finance Committee. (Belcher Decl. at para. 28.)

DIOCESAN DEFENDANTS' RESPONSE NO. 64:

Undisputed that, based on review of the minutes of the CCHP Finance Committee meetings appended at Exhibits K-M and R of Prospect's Statement of Undisputed Facts, the Plan was a topic of discussion at those meetings. The Diocesan Defendants have no position on whether such discussions can be characterized as "administrative and oversight responsibilities that were previously handled by the SJHSRI Finance Committee."

PROSPECT'S STATEMENT NO. 65:

The CCHP Finance Committee had a significant role in overseeing the administration of the Plan following the Affiliation and the expiration of the Transition Period. (Belcher Decl. at para. 28, 29.)

DIOCESAN DEFENDANTS' RESPONSE NO. 65:

Response 65.1. Undisputed that, based on review of the minutes of the CCHP Finance Committee meetings appended at Exhibits K-M and R of Prospect's Statement of Undisputed Facts, the Plan was a topic of discussion at those meetings. The Diocesan Defendants have no position on whether the Plan was a "significant" topic at those meetings or at CCHP Finance Committee meetings in general, or whether such discussions can be appropriately characterized as "overseeing the administration of the Plan."

Response 65.2. Disputed as to the erroneous characterization of the "Transition Period" as running beyond January 4, 2010. *See supra* Resp. No. 12 at 12.2.

PROSPECT'S STATEMENT NO. 66:

One of the roles of the CCHP Finance Committee was monitoring the financial status and outlook of the Plan. (Belcher Decl. at para. 28, 29; Raucci Decl. at para. 20.)

DIOCESAN DEFENDANTS' RESPONSE NO. 66:

Undisputed that, based on review of the minutes of the CCHP Finance Committee meetings appended at Exhibits K-M and R of Prospect's Statement of Undisputed Facts, the Plan was a topic of discussion at those meetings. The Diocesan Defendants have no position on whether such activities qualify as "monitoring the financial status and outlook of the Plan."

PROSPECT'S STATEMENT NO. 67:

Attached as Exhibit K are the approved minutes of a meeting on March 15, 2011 of the CCHP Finance Committee.

DIOCESAN DEFENDANTS' RESPONSE NO. 67:

Undisputed that Exhibit K contains minutes of a March 15, 2011 meeting of the CCHP Finance Committee. The Diocesan Defendants cannot tell from review of Exhibit K whether the minutes were “approved.”

PROSPECT'S STATEMENT NO. 68:

The March 15, 2011 minutes reflect that Jeffrey Bauer from the Angell Pension Group made a presentation on the Plan and explained that if the Plan lost its church plan status, there would be a “significant impact from a cash flow perspective” due to required funding levels, and potential penalties if those levels are not met. (Exhibit K.)

DIOCESAN DEFENDANTS' RESPONSE NO. 68:

Undisputed that Exhibit K contains, *inter alia*, references to the facts set forth in this Request.

PROSPECT'S STATEMENT NO. 69:

Attached as Exhibit L are the approved minutes of a meeting on July 19, 2011, of the CCHP Finance Committee.

DIOCESAN DEFENDANTS' RESPONSE NO. 69:

Undisputed that Exhibit L contains minutes of a July 19, 2011 meeting of the CCHP Finance Committee. The Diocesan Defendants cannot tell from review of Exhibit L whether the minutes were “approved.”

PROSPECT'S STATEMENT NO. 70:

The July 19, 2011 minutes reflect that the Committee was discussing the “Susan Romano Pension Board Benefit Appeal. “Mrs. Souza provided the Committee with some background information regarding the SJHSRI Pension Plan ... Prior to the affiliation, the

SJHSRI Finance Committee served as the Committee that reviewed appeals as submitted to the SJHSRI Retirement Board. [...] As a result of the affiliation, the responsibilities and oversight of the previously acting SJHSRI Retirement Board now fall under the CCHP Finance Committee."(Exhibit L.)

DIOCESAN DEFENDANTS' RESPONSE NO. 70:

Undisputed that the minutes at Exhibit L reflect that the CCHP Finance Committee discussed Ms. Romano's benefit appeal and contain, *inter alia*, the quoted language. The Diocesan Defendants have no position on whether the quoted language is an accurate summary of the roles of the SJHSRI Finance Committee, the SJHSRI Retirement Board, or the CCHP Finance Committee as it concerns the Plan.

PROSPECT'S STATEMENT NO. 71:

Attached as Exhibit M are the approved minutes of a meeting on November 15, 2011, of the CCHP Finance Committee.

DIOCESAN DEFENDANTS' RESPONSE NO. 71:

Undisputed that Exhibit M contains minutes of a November 15, 2011 meeting of the CCHP Finance Committee. The Diocesan Defendants cannot tell from review of Exhibit M whether the minutes were "approved."

PROSPECT'S STATEMENT NO. 72:

The November 15, 2011 minutes reflect that Darlene Souza, Michael Conklin and Jeffrey Bauer from the Angell Pension Group were reporting on the Plan. Jeff Bauer provided an overview of the existing Plan and significant items affecting the Plan. It was determined that Darlene Souza "will check in semi-annually with the Committee to keep them apprised of the

valuation of the Pension assets and liabilities...” “The Finance Committee noted this was a valued overview and acknowledges a semi-annual update would be appreciated...” (Exhibit M.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 72:

Undisputed that Exhibit M reflects, *inter alia*, the above-referenced discussion.

PROSPECT’S STATEMENT NO. 73:

The CCHP Investment Committee handled significant maintenance and administrative matters with respect to the Plan. (Belcher Decl. at para 30; Raucci Decl. at para 26, 27.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 73:

Undisputed that, based on review of the minutes of the CCHP Investment Committee meetings appended at Exhibits N and U of Prospect’s Statement of Undisputed Facts, the Plan was a topic of discussion at those meetings. The Diocesan Defendants have no position on whether such activities qualify as handling “maintenance and administrative matters with respect to the Plan” at those meetings or at CCHP Investment Committee meetings in general. Likewise, the Diocesan Defendants have no position on whether the activities were “significant.”

PROSPECT’S STATEMENT NO. 74:

The CCHP Investment Committee was primarily responsible for overseeing the Plan’s investments and its funded status; reviewing and approving the investment guidelines governing the pooled fund investments for the Plan; selecting, evaluating and reviewing the performance and portfolios of the investment managers the Committee retained to manage the Plan’s assets; advising as to the Plan’s asset allocation; reviewing reports as to the Plan’s funding status; and making recommendations to CCHP’s Board of Trustees. (Raucci Decl. at para. 26.)

DIOCESAN DEFENDANTS' RESPONSE NO. 74:

Undisputed that, based on review of the minutes of the CCHP Investment Committee meetings appended at Exhibits N and U of Prospect's Statement of Undisputed Facts, the Plan was a topic of discussion at those meetings. The Diocesan Defendants have no position on whether the CCHP Investment Committees' activities vis à vis the Plan at these meetings or in general reflect the responsibilities set out in Statement No. 74 or Paragraph 26 of Mr. Raucci's declaration. Likewise, the Diocesan Defendants have no position on the significance or primacy of such responsibilities to the committee.

PROSPECT'S STATEMENT NO. 75:

In addition to its oversight of the Plan, the CCHP Investment Committee also handled investment oversight of a handful of much smaller endowment funds of RWH and SJHSRI. (Raucci Decl. at para. 28.)

DIOCESAN DEFENDANTS' RESPONSE NO. 75:

Undisputed that the CCHP Investment Committee handled investment oversight of other funds beside the Plan.

PROSPECT'S STATEMENT NO. 76:

The Plan's financial well-being was the paramount concern to the CCHP Investment Committee. (Raucci Decl. at para. 28.)

DIOCESAN DEFENDANTS' RESPONSE NO. 76:

Undisputed that, based on review of the minutes of the CCHP Investment Committee meetings appended at Exhibits N and U of Prospect's Statement of Undisputed Facts, the Plan was a topic of discussion at those meetings. The Diocesan Defendants have no position

on whether the Plan's funding was the "paramount concern" of the committee either at those meetings or in general.

PROSPECT'S STATEMENT NO. 77:

Attached as Exhibit N are the approved minutes of a meeting on March 19, 2010, of the CCHP Investment Committee.

DIOCESAN DEFENDANTS' RESPONSE NO. 77:

Undisputed that Exhibit N contains minutes of a March 19, 2010 meeting of the CCHP Investment Committee. The Diocesan Defendants cannot tell from review of Exhibit N whether the minutes were "approved."

PROSPECT'S STATEMENT NO. 78:

The March 19, 2010 minutes reflect a discussion about the role of the Investment Committee which included a discussion of the Plan. It was noted that the Plan continues to be underfunded. "The market recovery has improved the unfunded position. Mr. Raucci noted that the unfunded liability has had a significant impact on the SJHRI Balance Sheet. Because the Plan is a Church Plan, it is not held to ERISA rules and is not required to be funded. The [Plan] was frozen last year for all employees not covered by the collective bargaining agreement. The freeze has resulted in a significant reduction in the liability. There is a Pension Board at SJHSRI whose purpose is to provide administrative oversight of the [Plan]. Their responsibilities include: Fiduciary Administration, Plan Documents and Participation. The Pension Committee meets two times a year to maintain compliance with Church Plan..." (Exhibit N.)

DIOCESAN DEFENDANTS' RESPONSE NO. 78:

Undisputed that the minutes reflect, *inter alia*, a discussion about the role of the CCHP Investment Committee which included a discussion of the Plan and an observation that

the Plan continues to be underfunded. Also undisputed that Exhibit N contains, *inter alia*, the quoted language.

PROSPECT'S STATEMENT NO. 79:

Attached as Exhibit U are the approved minutes of a meeting on November 18, 2011 of the CCHP Investment Committee.

DIOCESAN DEFENDANTS' RESPONSE NO. 79:

Undisputed that Exhibit U contains minutes of a November 18, 2011 meeting of the CCHP Investment Committee. The Diocesan Defendants cannot tell from review of Exhibit U whether the minutes were "approved."

PROSPECT'S STATEMENT NO. 80:

The November 18, 2011 meeting minutes reflect that the CCHP Investment Committee voted on changes to the Investment Policies and Statements of Operating Procedures "so that they may be presented to the CCHP full Board." (Exhibit U).

DIOCESAN DEFENDANTS' RESPONSE NO. 80:

Undisputed.

PROSPECT'S STATEMENT NO. 81:

Attached as Exhibit O are the approved minutes of a meeting on December 15, 2011, of the CCHP Board.

DIOCESAN DEFENDANTS' RESPONSE NO. 81:

Undisputed that Exhibit O contains minutes of a December 15, 2011 meeting of the CCHP Board of Trustees. The Diocesan Defendants cannot tell from review of Exhibit O whether the minutes were "approved."

PROSPECT'S STATEMENT NO. 82:

The December 15, 2011 minutes reflect after receiving a report from the chairman of the CCHP Investment Committee, Marshall Raucci, Jr., the Board approved the Investment Policy Statements as presented. (Exhibit O.)

DIOCESAN DEFENDANTS' RESPONSE NO. 82:

Undisputed.

PROSPECT'S STATEMENT NO. 83:

The Plan was amended and restated effective July 1, 2011. (See Plaintiffs' Statement of Undisputed Material Facts at Para. 28; Plaintiffs' Exhibit 10 (2011 Plan).)

DIOCESAN DEFENDANTS' RESPONSE NO. 83:

Undisputed.

PROSPECT'S STATEMENT NO. 84:

The 2011 restatement of the Plan (the "2011 Plan") identified the "Employer" (SJHSRI) as the 2011 Plan's Administrator, and left it up to the SJHSRI Board to either re-designate the Retirement Board to serve as the Administrator or take some other action(s). There is no evidence in the record created at that time that the SJHSRI Board intended to abolish the Retirement Board outright, or in any way limit the Bishop's historically substantial reach or involvement. (Plaintiffs' Exhibit 10, 2011 Plan.)

DIOCESAN DEFENDANTS' RESPONSE NO. 84:

Response 84.1. Undisputed that the 2011 restatement of the Plan identified the "Employer" (SJHSRI) as the 2011 Plan's Administrator, "unless the Employer, by action of its Board of Directors, shall designate a person or committee of persons to be the Administrator and named fiduciary." ECF No. 174-10 (2011 Plan) § 8.1(a).

Response 84.2. Disputed to the extent Statement No. 84 asserts that there is no evidence in the record that the SJHSRI Board intended to limit the Most Reverend Bishop's historical reach or involvement. The terms of the 2011 Plan Restatement contradict that conclusion. The 2011 Plan eliminated any reference to the Retirement Board, and specifically eliminated the provisions in Section 18 from the 1999 Plan, including the provision that the Most Reverend Bishop appointed the members of the previously existing Retirement Board, which served at the pleasure of the Most Reverend Bishop. *Compare* ECF No. 174-9 (1999 Plan) § 18.1 *with* ECF No. 174-10 (2011 Plan) § 8.1. Instead, the Plan places the power to choose which entity might perform the functions of a retirement board, and who the members of that entity or committee might be, under the control of the SJHSRI Board of Trustees which, in 2011, was chosen exclusively by SJHSRI's Class A Member, CCHP. ECF No. 174-10 (2011 Plan) § 8.1; *supra* Resp. No. 2 (disputing that the Most Reverend Bishop or RCB controlled SJHSRI).

PROSPECT'S STATEMENT NO. 85:

Attached as Exhibit P are the approved minutes of a meeting on July 21, 2011, of the SJHSRI Board of Trustees.

DIOCESAN DEFENDANTS' RESPONSE NO. 85:

Undisputed that Exhibit P contains minutes of a July 21, 2011 meeting of the SJHSRI Board of Trustees. The Diocesan Defendants cannot tell from review of Exhibit P whether the minutes were "approved."

PROSPECT'S STATEMENT NO. 86:

The July 21, 2011 minutes reflect that the SJHSRI Board voted to approve certain amendments to the Plan, the freezing of participation in the Plan, and the adoption of the restatement of the Retirement Plan. (Exhibit P.)

DIOCESAN DEFENDANTS' RESPONSE NO. 86:

Undisputed.

PROSPECT'S STATEMENT NO. 87:

The July 21, 2011 minutes also reflect that “possible new board members will be presented to the Bishop for his approval” thus evidencing the Bishop’s continuing control over the SJHSRI Board. (Exhibit P.)

DIOCESAN DEFENDANTS' RESPONSE NO. 87:

Response 87.1. Undisputed that the minutes at Exhibit P contains, *inter alia*, the language quoted in Statement No. 87.

Response 87.2. Disputed that RCB, the Most Reverend Bishop or any of the Diocesan Defendants had control over SJHSRI on or after January 4, 2010, either directly or through CCHP, or that the Bylaws of SJHSRI or CCHP required RCB’s or the Most Reverend Bishop’s approval for CCHP to exercise its exclusive right to appoint SJHSRI Board members. *See supra* Resp. No. 2 & Resp. No. 29 at 29.1. Shortly after the July 21, 2011 SJHSRI Board meeting, CCHP’s General Counsel emailed Mr. Belcher to confirm CCHP’s control: “Based on the SJHSRI Bylaws, CCHP appoints the trustees” to the SJHSRI Board. Ex. 15 (Jul. 27, 2011 Email from Kimberly O’Connell to Kenneth Belcher) at 1. “That means that the Nominating Committee should vet and put forth Trustees for vote of the CCHP BOT.” *Id.*

PROSPECT'S STATEMENT NO. 88:

On July 28, 2011, the Executive Committee of the CCHP Board ratified the decisions made by the SJHSRI Board regarding the Plan including the approval of certain amendments to the Plan, the freezing of participation in the Plan, and the adoption of the

restatement of the Retirement Plan. Attached as Exhibit Q are the approved minutes of a meeting on July 28, 2011, of the CCHP Board.

DIOCESAN DEFENDANTS' RESPONSE NO. 88:

Response 88.1. Undisputed that Exhibit Q references, *inter alia*, that on July 28, 2011, the Executive Committee of the CCHP Board ratified the decisions made by the SJHSRI Board regarding the Plan.

Response 88.2. Disputed that Exhibit Q contains minutes of a July 28, 2011 meeting of the CCHP Board, as opposed to the CCHP Executive Committee. ECF No. 190-22 (Exhibit Q). The Diocesan Defendants cannot tell from review of Exhibit Q whether these minutes were “approved.”

PROSPECT'S STATEMENT NO. 89:

The July 28, 2011 minutes also reflect a discussion on “Board Membership” which evidences the continued involvement of the Bishop even at the CCHP level. “A discussion ensued concerning the Bishop’s role in appointing Trustees to the CCHP and SJHSRI Boards. A suggestion was made to have a letter sent to the Bishop requesting a replacement for Judge Weisberger. Mr. Belcher stated that he will contact Monsignor Theroux to inform him of the letter that will be sent to the Bishop. The Nominating Committee is responsible for nomination and recommendation of potential Trustees to the various Boards.” (Exhibit Q.)

DIOCESAN DEFENDANTS' RESPONSE NO. 89:

Undisputed that the quoted language appears, *inter alia*, in Exhibit Q. Disputed that this language reflects “the continued involvement of the Bishop even at the CCHP level” or control of CCHP on the part of the Most Reverend Bishop or RCB. Rather, as the Diocesan Defendants already explained in addressing these minutes in response to Statement No. 40, this

language reflects nothing more than a desire to comply with § 2.1.2 of the Affiliation Agreement, which concerns vacancies during the Initial Term of the CCHP Board. ECF No. 174-14 (Aff. Agmt) § 2.1.2; *supra* Resp. No. 40 at 40.2. Moreover, Prospect cites no evidence that anyone at CCHP ever followed through on this suggestion or that Judge Weisberger’s seat was ever filled (it was not). *Supra* Resp. No. 40 at 40.2.

PROSPECT’S STATEMENT NO. 90:

On or about April 29, 2013, the Bishop ratified and confirmed the 2011 Plan, using an instrument styled as a set of resolutions (the “2013 Resolutions”). (Plaintiffs’ Exhibit 22; 2013 Resolutions.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 90:

Undisputed that on April 29, 2013, the Most Reverend Bishop Thomas Tobin signed a document titled “Resolution of the Bishop of the Diocese of Providence.” A portion of that document appears at ECF No. 174-22, although the document references attachments that are not contained in ECF No. 174-22. The Diocesan Defendants have no position on Prospect’s characterization of ECF No. 174-22. The document speaks for itself.

PROSPECT’S STATEMENT NO. 91:

The 2013 Resolutions explicitly identified the SJHSRI Board itself as the “new” Retirement Board, and further recognized that the CCHP Finance Committee had been tasked with handling the 2011 Plan’s ongoing administrative matters:

“RESOLVED, that the Board of Trustees of St. Joseph Health Services of Rhode Island is the Retirement Board with respect to the Plan and acts on behalf of St. Joseph Health Services of Rhode Island as the Plan Administrator of the Plan. [...]

RESOLVED, that the Board of Trustees of St. Joseph Health Services of Rhode Island has the authority, pursuant to the terms of the Plan, to appoint a committee to act on its behalf with respect to administrative matters related to the Plan. [...]

RESOLVED, that the Board of Trustees of St. Joseph Health Services of Rhode Island has appointed the Finance Committee of CharterCARE Health Partners to act on its behalf with respect to administrative matters related to the Plan.

RESOLVED, that the Plan is intended to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended (the “Code”) as a non-electing church plan within the meaning of Section 414(e) of the Code and Section 3(33) of the Employee Retirement Income Security Act of 1974, as amended.” (Plaintiffs’ Exhibit 22, 2013 Resolutions.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 91:

Undisputed that ECF No. 174-22 contains, *inter alia*, the quoted language. The Diocesan Defendants have no position on Prospect’s characterization of ECF No. 174-22. The document speaks for itself.

PROSPECT’S STATEMENT NO. 92:

Pursuant to the above action taken by the Bishop (and pursuant to the 2011 Plan), the SJHSRI Board was designated as the Plan Administrator, the SJHSRI Board was recognized and designated as the Retirement Board, and the SJHSRI Board, acting as the Retirement Board, was recognized as having deputized and appointed the CCHP Finance Committee to act with respect to administrative matters related to the Plan. (Plaintiffs’ Exhibit 22, 2013 Resolutions.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 92:

The Diocesan Defendants have no position on Prospect’s characterization of, nor as to the legal effect of, ECF No. 174-22. The document speaks for itself.

PROSPECT’S STATEMENT NO. 93:

The Plan explicitly allows the Administrator to “(1) employ agents to carry out nonfiduciary responsibilities (other than Trustee responsibilities), (2) consult with counsel who may be counsel to the Employer, and (3) provide for the allocation of fiduciary responsibilities (other than Trustee responsibilities) among its members....”. (Plaintiffs’ Exhibit 10, 2011 Plan at Article 8.1(a).)

DIOCESAN DEFENDANTS' RESPONSE NO. 93:

Undisputed that Article 8.1(a) of the 2011 Plan contains the quoted language.

ECF No. 174-10 (2011 Plan) § 8.1(a).

PROSPECT'S STATEMENT NO. 94:

These relationships and working arrangements remained in effect until the 2014 Assets Sale was consummated on June 20, 2014. (Belcher Decl. at para. 26, 27, 28, 29, 30, 31.)

DIOCESAN DEFENDANTS' RESPONSE NO. 94:

The Diocesan Defendants have no position on this paragraph. The Diocesan Defendants would be guessing as to what is meant by “these relationships and working arrangements.”

PROSPECT'S STATEMENT NO. 95:

In March of 2014, both the SJHSRI Board and the CCHP Finance Committee voted separately on various amendments relating to the Plan effective June 1, 2014, including the freezing of all Plan benefits and the authorization of officers of SJHSRI to effectuate the amendment (the “Pension Freeze”). (Belcher Decl. at para. 29.)

DIOCESAN DEFENDANTS' RESPONSE NO. 95:

Undisputed.

PROSPECT'S STATEMENT NO. 96:

The March 13, 2014 minutes reflect that the SJHSRI Board of Trustees voted on various amendments relating to the Plan effective June 1, 2014, including the freezing of all Plan benefits and the authorization of officers of SJHSRI to effectuate the amendment (the “Pension Freeze”). (Plaintiffs' Exhibit 23.)

DIOCESAN DEFENDANTS' RESPONSE NO. 96:

Undisputed.

PROSPECT'S STATEMENT NO. 97:

Attached as Exhibit R are the approved minutes of a meeting on March 25, 2014, of the CCHP Finance Committee.

DIOCESAN DEFENDANTS' RESPONSE NO. 97:

Undisputed that Exhibit R contains minutes of a March 25, 2014 meeting of the CCHP Finance Committee. The Diocesan Defendants cannot tell from review of Exhibit R whether the minutes were "approved." They appear to be unsigned and incomplete.

PROSPECT'S STATEMENT NO. 98:

The March 13, 2014 minutes reflect that the Pension Freeze amendment was presented to the Committee after the "Amendment had already been presented to the SJHSRI Board at the March 13, 2014 meeting. Mrs. Souza also stated that the CCHP Finance Committee is appointed to oversee the Plan and provide SJHSRI approval to modify the Plan documents." The CCHP Finance Committee approved the Pension Freeze. (Exhibit R.)

DIOCESAN DEFENDANTS' RESPONSE NO. 98:

Undisputed that Exhibit R contains, *inter alia*, the quoted language and that the CCHP Finance Committee approved freezing the accrual of benefits under the Plan at a March 25, 2014 meeting of that committee. Disputed that Exhibit R contains minutes, dated March 13, 2014. ECF No. 190-23 (Exhibit R) at 1 (minutes of March 25, 2014 meeting).

PROSPECT'S STATEMENT NO. 99:

In 2014, both the SJHSRI Board and the CCHP Finance Committee considered and approved Plan amendments adopting the Pension Freeze, effective June 1, 2014. (Belcher Decl. at para. 29; Exhibit R.)

DIOCESAN DEFENDANTS' RESPONSE NO. 99:

Undisputed.

PROSPECT'S STATEMENT NO. 100:

Pursuant to the Plan, “In the event more than one party shall act as Administrator, all actions shall be made by majority decisions. In the administration of the Plan, the Administrator may (1) employ agents to carry out nonfiduciary responsibilities (other than Trustee responsibilities), (2) consult with counsel who may be counsel to the Employer, and (3) provide for the allocation of fiduciary responsibilities (other than Trustee responsibilities) among its members....” (Plaintiffs’ Exhibit 10, 2011 Plan at Article 8.1.)

DIOCESAN DEFENDANTS' RESPONSE NO. 100:

Undisputed that Article 8.1(a) of the 2011 Plan contains the quoted language. ECF No. 174-10 (2011 Plan) § 8.1(a).

PROSPECT'S STATEMENT NO. 101:

The 2014 Assets Sale closed on June 20, 2014. As summarized in the Petition to appoint a receiver filed over three years later: “Prior to the sale, eligibility for employee participation in the Plan was terminated, thereby closing the Plan to new participants. In connection with the sale, additional benefits 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. [Prospect had no role in the evaluation of the Plan or its funding level.]” Petition for the Appointment of a Receiver (August 16, 2017).

DIOCESAN DEFENDANTS’ RESPONSE NO. 101:

Response 101.1. Undisputed that the sale of substantially all of CCHP, SJHSRI, and RWH’s assets to Prospect closed on June 20, 2014 (the 2014 Asset Sale). See generally ECF No. 67-12 (Asset Purchase Agreement) for scope of the sale.

Response 101.2. Undisputed that SJHSRI petitioned the plan into receivership more than three years after the 2014 Asset Sale and undisputed that the petition contains, *inter alia*, the quoted language, although the bracketed sentence, “Prospect had no role in the evaluation of the Plan or its funding level,” appears at footnote 4 of the petition, as opposed to the main body of the text. ECF No. 174-1 (Receivership Petition) ¶ 4 & n.4.

PROSPECT’S STATEMENT NO. 102:

After the 2014 Assets Sale, SJHSRI ceased to own or operate a hospital or otherwise provide health care. (First Amended Complaint at Para. 16.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 102:

Undisputed.

PROSPECT’S STATEMENT NO. 103:

After the 2014 Assets Sale, although SJHSRI no longer operated a hospital, it continued to be listed in the Directory, in the “Miscellaneous Listings” section of the Directory. Attached as Exhibit S is a copy of a letter dated January 20, 2015 from Rev. Timothy D. Reilly to Daniel Ryan. (Exhibit S.)

DIOCESAN DEFENDANTS' RESPONSE NO. 103:

Response 103.1. Undisputed that SJHSRI continued to be listed in the Official Catholic Directory through 2017.

Response 103.2. Undisputed that Exhibit S is a copy of a letter, dated January 20, 2015 from Rev. Timothy D. Reilly to Daniel Ryan.

PROSPECT'S STATEMENT NO. 104:

Representations were made to state regulators in April 2014 that an Investment Committee would continue to monitor the Plan after the 2014 Assets Sale: “The pension liability will remain in place post transaction. Subsequent to the \$14 Million contribution to the Plan upon transaction, future contributions to the Plan will be made based on recommended annual contribution amounts as provided by the Plan’s actuarial advisors. Moving forward, the investment portfolio of the plan will be monitored by the Investment Committee of the Board of Trustees.”

DIOCESAN DEFENDANTS' RESPONSE NO. 104:

The Diocesan Defendants are unable to respond to Statement No. 104 as Prospect does not attribute the quoted language to any particular source or otherwise offer admissible evidence in its support.

PROSPECT'S STATEMENT NO. 105:

After the 2014 Assets Sale, Catholic Church representatives continued to serve on (or be appointed to) the SJHSRI and CCCB Boards, including Reverend Monsignor Theroux, Reverend Forcier, Reverend Kenneth Sicard, and Reverend Timothy Reilly.

DIOCESAN DEFENDANTS' RESPONSE NO. 105:

Response 105.1 (Averments Concerning Church Representation). Undisputed that, after the 2014 Asset Sale, the Roman Catholic clergy identified in Statement No. 105 served on or were appointed to the boards of trustees of SJHSRI or CharterCARE Community Board (“CCCB”) at various times.

Response 105.2 (Averments Concerning SJHSRI Board). Undisputed that Msgr. Theroux, Rev. Forcier, Rev. Reilly, and Rev. Sicard all served on the SJHSRI Board of Trustees after the 2014 Asset Sale at different times.

Disputed that all four priests served on the SJHSRI Board at the same time or as representatives of RCB or the Most Reverend Bishop. Msgr. Theroux and Rev. Forcier were members of the SJHSRI Board prior to the 2014 Asset Sale. *See, e.g.*, ECF No. 174-23 (Mar. 13, 2014 SJHSRI Board Minutes) at 1. Their service may have continued after the 2014 Asset Sale but, in any event, would have ended on December 15, 2014 by operation of the written consent of CCHP, which reduced the size of SJHSRI’s board of trustees and appointed a new slate of trustees. ECF No. 190-25 (Written Consent of Class A Member) at 2.

Disputed that Rev. Reilly or Rev. Sicard “continued to serve” on the SJHSRI Board of Trustees after the 2014 Asset Sale. Rev. Reilly and Rev. Sicard did not begin to serve on the SJHSRI Board until they were appointed to it on December 15, 2014. *Id.* Rev. Sicard stepped down from the SJHSRI Board of Trustees sometime in early 2015. Ex. 17 (Jan. 21, 2015 email from Rev. Sicard to Daniel Ryan resigning from CCCB Board).

Response 105.3 (Averments Concerning CCCB Board Membership). Undisputed that Rev. Reilly continued to serve on the Board of Trustees for CCCB (formerly CCHP) after the 2014 Asset Sale.

Disputed that Msgr. Theroux, Rev. Forcier, or Rev. Sicard “continued to serve” on the CCCB Board of Trustees after the 2014 Asset Sale. Msgr. Theroux resigned from the CCHP Board in 2010. ECF No. 190-9 (Oct. 13, 2010 CCHP Gov. Comm. Mtg. Mins.) at 3 (reporting Msgr. Theroux’s decision “to resign from the CCHP Board and only serve on the SJHSRI Board.”). Rev. Forcier never served on the CCHP/CCCB Board and Prospect cites no evidence in the record indicating otherwise. Rev. Sicard was not appointed to serve on the CCCB Board until April 30, 2014. Ex. 18 (Apr. 30, 2014 CCHP Board Mtg. Mins.) at 5. He stepped down from the CCCB Board in early 2015. Ex. 17.

PROSPECT’S STATEMENT NO. 106:

Attached as Exhibit T are the Written Consents dated as of December 15, 2014 of the Class A Member of SJHSRI (CCCB).

DIOCESAN DEFENDANTS’ RESPONSE NO. 106:

Undisputed that attached at Exhibit T are Written Consents of the Class A Member of SJHSRI, dated December 15, 2014.

PROSPECT’S STATEMENT NO. 107:

The December 15, 2014 written consents reflect that Daniel J. Ryan, President of CCCB, Class A Member, took certain actions by written consent and adopted certain resolutions in accordance with Section 15 of the Bylaws of the Corporation, including authorizing Daniel Ryan and Richard Land to take such actions as either of them deems necessary and advisable in connection with the investment and liquidation of the Corporation’s assets... including the Plan funds... amending the bylaws, and electing the following individuals to the Board of Trustees: Daniel Ryan, Reverend Timothy Reilly, Nancy Rogers, Chris Chihlas, M.D., Reverend Kenneth

Sicard and Joseph Mazza, M.D; and elected as officers of SJHSRI: Daniel J. Ryan, President, Treasurer and Secretary. (Exhibit T.)

DIOCESAN DEFENDANTS' RESPONSE NO. 107:

The Diocesan Defendants have no position on Prospect's characterization of Exhibit T in Statement No. 107. The written consents speak for themselves.

PROSPECT'S STATEMENT NO. 108:

The December 15, 2014 written consents provided, *inter alia*, "That Daniel J. Ryan, President of the Corporation, and Richard J. Land, each acting alone, be, and each hereby is, authorized to take such actions as we deem necessary and appropriate in connection with the administration, management and potential wind-down of the Corporation's pension plan (including, without limitation, negotiation with participants and their representatives)." (Exhibit T.)

DIOCESAN DEFENDANTS' RESPONSE NO. 108:

Undisputed that Exhibit T contains, *inter alia*, the quoted language.

PROSPECT'S STATEMENT NO. 109:

The Plan was administered by SJHSRI, or the individuals appointed by the SJHSRI Board, for more than three (3) years after the 2014 Assets Sale. (Exhibit T.)

DIOCESAN DEFENDANTS' RESPONSE NO. 109:

The Diocesan Defendants have no position on Statement No.109.

PROSPECT'S STATEMENT NO. 110:

In August of 2017, SJHSRI petitioned the Plan into Receivership in the matter entitled St. Joseph's Health Services of Rhode Island, Inc. v. St. Joseph's Health Services of

Rhode Island Retirement Plan, as amended, Rhode Island Superior Court (the “Receivership Court”), PC-2017-3856 (Stern, J.) (Plaintiffs’ Exhibit 1.)

DIOCESAN DEFENDANTS’ RESPONSE NO. 110:

Undisputed.

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

By Their Attorneys,

PARTRIDGE SNOW & HAHN LLP

/s/ Howard Merten

Howard A. Merten (#3171)
Eugene G. Bernardo (#6006)
Paul M. Kessimian (#7127)
Christopher M. Wildenhain (#8619)
40 Westminster Street, Suite 1100
Providence, RI 02903
(401) 861-8200
(401) 861-8210 FAX
hmerten@psh.com
ebercardo@psh.com
pkessimian@psh.com
cwildenhain@psh.com

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of November, 2020, 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