

UNITED STATE DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

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

Plaintiffs, :  
v. :

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

PROSPECT CHARTERCARE, LLC, et al. :

Defendants. :

**JOINT MOTION FOR SETTLEMENT CLASS CERTIFICATION,  
APPOINTMENT OF CLASS COUNSEL, AND PRELIMINARY SETTLEMENT  
APPROVAL, BY PLAINTIFFS AND DEFENDANTS CHARTERCARE  
FOUNDATION, ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND,  
ROGER WILLIAMS HOSPITAL, AND CHARTERCARE COMMUNITY BOARD**

All Plaintiffs and Defendants CharterCARE Foundation, CharterCARE  
Community Board, St. Joseph Health Services of Rhode Island, and Roger Williams  
Hospital (the “Settling Defendants”) hereby move for entry of the proposed order  
attached to their Settlement Agreement, or as the Court may otherwise direct, which  
essentially:

1. Grants approval of the settlement between Plaintiffs and Defendants CCF, SJHSRI, CCCB, and RWH as a good faith settlement pursuant to R.I. Gen. Laws § 23-17.14-35;
2. Preliminarily certifies all of the Plan participants as the Settlement Class;
3. Grants preliminary approval of the settlement pursuant to Fed. R. Civ. P. Rule 23(e);
4. Preliminarily appoints Wistow, Sheehan & Loveley, P.C. to represent the Settlement Class;

5. Authorizes the Receiver to issue the Class Notice to the Settlement Class;  
and
6. Schedules the hearing for final approval of the settlement and approval of Wistow, Sheehan & Loveley, P.C.'s motion for an award of attorneys' fees.

Movants rely in support on their Memorandum of Law submitted herewith and on the Declaration of Max Wistow dated November 21, 2018 and Supplemental Declaration of Max Wistow dated January 4, 2019.

Respectfully submitted,

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Dated: January 4, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that an exact copy of the within document was electronically filed on the 4th day of January, 2019 using the Electronic Case Filing system of the United States District Court and is available for viewing and downloading from the Electronic Case Filing system. The Electronic Case Filing system will automatically generate and send a Notice of Electronic Filing to the following Filing Users or registered users of record:

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HEALTH SERVICES OF RHODE ISLAND :  
RETIREMENT PLAN, ET AL. :  
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Plaintiffs :  
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v. : C.A. No:1:18-CV-00328-WES-LDA  
PROSPECT CHARTERCARE, LLC, ET AL. :  
:  
Defendants. :

**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR SETTLEMENT  
CLASS CERTIFICATION, APPOINTMENT OF CLASS COUNSEL, AND  
PRELIMINARY SETTLEMENT APPROVAL, BY PLAINTIFFS AND  
DEFENDANTS CHARTERCARE FOUNDATION, ST. JOSEPH HEALTH  
SERVICES OF RHODE ISLAND, ROGER WILLIAMS HOSPITAL, AND  
CHARTERCARE COMMUNITY BOARD**

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January 4, 2019

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## I. INTRODUCTION

Plaintiffs Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the “Receiver”), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carol Short, Donna Boutelle, and Eugenia Levesque, individually as named plaintiffs (“Named Plaintiffs”) and on behalf of all class members<sup>1</sup> as defined herein (collectively “Plaintiffs”), and Defendants CharterCARE Foundation (“CCF”), CharterCARE Community Board (“CCCB”), St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital (“RWH”) (collectively the “Settling Defendants”) (Plaintiffs and the Settling Defendants being referred to collectively as the “Settling Parties”), submit this memorandum in support of their joint motion for preliminary approval of a class action settlement (the “Proposed Settlement”).

The Settling Parties seek judicial approval both because it is required for settlement of class actions under Rule 23(e) of the Federal Rules of Civil Procedure, and because it is required by the recently enacted Rhode Island statute specifically addressed to settlements involving the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”), R.I. Gen. Laws § 23-17.14-35.

This is the second settlement in this case. On November 21, 2018, Plaintiffs and Defendants SJHSRI, RWH, and CCCB filed their Joint Motion for Class Certification, Appointment of Class Counsel, and Preliminary Settlement Approval (the “First Settlement”). At the same time, Plaintiffs’ Counsel filed a Motion for Attorneys’ Fees in connection with that settlement, and the Declaration of Max Wistow Sworn to on

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<sup>1</sup> Contingent upon the Court certifying the Settlement Class and appointing them Class Representatives.



November 21, 2018 (“Wistow Dec.”). That motion is pending: approval of the First Settlement continues to be sought, in parallel with approval of the instant Proposed Settlement.

Those submissions in connection with the First Settlement are directly relevant to both the Joint Motion and Plaintiff’s Counsel’s Motion for Attorneys’ Fees in connection with the proposed settlement between Plaintiffs and CCF. They detail, *inter alia*:

- the role and actions of the Rhode Island Superior Court in the Receivership Proceedings concerning the retention of Plaintiffs’ Counsel;
- circumstances and terms of Plaintiffs’ Counsel’s representation of the Receiver and the Named Plaintiffs,
- the investigative phase of Plaintiffs’ Counsel’s representation,
- the commencement and prosecution of this action and the related state court cases up to November 21, 2018,
- the negotiation of that settlement, and
- the Rhode Island Superior Court’s approval of the First Settlement.

Rather than burdening the record with redundant information, these filings are incorporated by reference.

## II. OVERVIEW

A copy of the settlement agreement (the “Settlement Agreement”) between Plaintiffs and the Settling Defendants is attached hereto as Exhibit 1.<sup>2</sup> The Settlement Agreement is signed by representatives of Plaintiffs and Defendants CCF, SJHSRI, CCCB, and RWH.<sup>3</sup> The First Settlement was fairly complex, and included various

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<sup>2</sup> Exhibit 1 is an executed copy of the Settlement Agreement between and among the Plaintiffs and Defendants CCF, CCCB, SJHSRI, and RWH, with exhibits attached, which is subject to Court approval. See Exhibit 1 at ¶ 26.

<sup>3</sup> Although not a signatory to the Settlement Agreement, the proposed settlement obligates Plaintiffs and Defendants SJHSRI, RWH, and CCCB to release Defendant Rhode Island Foundation from liability, since

transfers, including the transfer to the Receiver of certain rights that Defendant CCCB had in CCF. The Proposed Settlement includes the Receiver re-transferring to Defendant CCF any such rights the Receiver receives from Defendant CCCB.

However, the Proposed Settlement between the Plaintiffs and the Settling Defendants is *not* conditioned upon the First Settlement being approved. In other words, if approved, the Proposed Settlement will take effect regardless of whether the First Settlement is approved.

As detailed below, if approved, the Proposed Settlement entails the transfer to the Receiver of \$4,500,000, for deposit into the Plan assets pursuant to the orders of the Rhode Island Superior Court in the Receivership Proceedings, after payment of attorneys' fees and costs. In return the Plaintiffs and Defendants SJHSRI, CCCB, and RWH will release CCF and Rhode Island Foundation<sup>4</sup> from liability. In addition, the Receiver will transfer to CCF any rights in CCF which the Receiver has in CCF. The Plaintiffs will continue to pursue their claims against the remaining Defendants.

In this Joint Motion, the Settling Parties ask the Court to

1. certify that the Proposed Settlement is a good faith settlement within the meaning of R.I. Gen. Laws § 23-17.14-35;
2. preliminarily certify the class consisting of all Plan participants ("the Settlement Class") solely for purposes of the Proposed Settlement;
3. preliminarily approve the Proposed Settlement of the class action;
4. approve the Notice Plan to Class Members;
5. preliminarily appoint Wistow, Sheehan & Loveley, P.C. to represent the Settlement Class; and

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Rhode Island Foundation's sole role in this case is as a custodian for Defendant CCF's investment assets.

<sup>4</sup> Id.

6. schedule the hearing on final settlement approval and final class certification.

By separate motion served herewith, Plaintiffs' Counsel Wistow, Sheehan & Loveley, P.C. are seeking an award of attorneys' fees, that they ask be heard in connection with the hearing on final settlement approval.

### **III. THE RECEIVERSHIP PROCEEDINGS**

#### **A. The Rhode Island Superior Court has Instructed the Receiver to Proceed with the Proposed Settlement**

The Receiver is seeking settlement approval from the Court pursuant to the order of the Rhode Island Superior Court granting his Petition for Settlement Approval, which the Receiver filed in the Receivership Proceedings.<sup>5</sup>

The Receiver's Petition for Settlement Instructions was made available to all of the Plan participants and the general public, on the web site established by the Receiver in connection with the Receivership Proceedings.<sup>6</sup> There were no objections by any of the Plan participants.<sup>7</sup> The court in the Receivership Proceedings held a hearing on the Petition for Settlement Approval on December 14, 2018.<sup>8</sup> At the hearing, Judge Stern stated that he had analyzed the Proposed Settlement under the factors set forth by the First Circuit in Jeffrey v. Desmond, 70 F.3d 183, 185 (1<sup>st</sup> Cir. 1995) for judicial approval of settlements in bankruptcy cases, and concluded that the Proposed Settlement was fair and reasonable and in the best interests of the Plan and of the Plan

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<sup>5</sup> Supplemental Declaration of Max Wistow ("Supp. Wistow Dec.") ¶ 6, Exhibit 4 (Petition for Settlement Approval).

<sup>6</sup> See Receiver's website, <https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan>.

<sup>7</sup> Supp. Wistow Dec. ¶ 8, Exhibit 6 (transcript of hearing on December 14, 2018) at 3.

<sup>8</sup> Supp. Wistow Dec. ¶ 8, Exhibit 6 (transcript of hearing on December 14, 2018).

participants.<sup>9</sup> On December 27, 2018, Judge Stern issued his order expressly finding that the Proposed Settlement was in the best interests of the Plan and the Plan participants, and authorized and directed the Receiver to apply to this Court for settlement approval.<sup>10</sup>

**B. The Proposed Settlement has the Support of all of the Plan Participants that are Represented by Counsel in the Receivership Proceedings**

Over 1,000 of the Plan participants are represented by counsel in the Receivership Proceedings.<sup>11</sup> All of these Plan participants through their counsel have affirmatively indicated their support for the Proposed Settlement.<sup>12</sup>

**IV. SETTLEMENT NEGOTIATIONS**

The proposed settlement was negotiated after the Rhode Island Superior Court granted Plaintiffs' motion to intervene in the 2015 *Cy Pres* Proceeding, by bench decision on September 17, 2018 and order entered on October 2, 2018.<sup>13</sup>

**V. FACTS CONCERNING LIABILITY AND DAMAGES**

The allegations concerning the merits of the claims of the Plaintiffs against CCF are set forth in the First Amended Complaint filed in this action, the State Court

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<sup>9</sup> Supp. Wistow Dec. ¶ 8, Exhibit 6 (transcript of hearing on December 14, 2018) at 8-9 (referring to "Jeffrey factors").

<sup>10</sup> Supp. Wistow Dec. ¶ 9, Exhibit 7 (Order by the Hon. Brian P. Stern, Associate Justice of the Rhode Island Superior Court entered on December 27, 2018).

<sup>11</sup> Supp. Wistow Dec. ¶ 8, Exhibit 6 (transcript of hearing on December 14, 2018) at 4-5, 7, 8.

<sup>12</sup> Supp. Wistow Dec. ¶ 8, Exhibit 6 (transcript of hearing on December 14, 2018) at 5, 7, 8; Supp. Wistow Dec. ¶ 7, Exhibit 5 (Miscellaneous Motion filed in the Receivership Proceedings by Arlene Violet on December 10, 2018).

<sup>13</sup> Supp. Wistow Dec. ¶¶ 3-4, Exhibits 1 & 2.

Complaint,<sup>14</sup> and Plaintiff's memorandum in support of their motion to intervene in the 2015 *Cy Pres* Proceeding,<sup>15</sup> and are only summarized herein.

CCF is a Rhode Island non-profit corporation. The Receiver's and the Named Plaintiffs' claims against CCF arise principally from a 2015 transaction in which SJHSRI and RWH transferred approximately \$8,200,000 of their assets to CCF (the "*Cy Pres* Transfer"). In this Action and a related action pending in the Rhode Island Superior Court known as *In re: CharterCARE Health Partners Foundation et al.*, C.A. No. KM-2015-0035 (hereinafter referred to as the "2015 *Cy Pres* Proceeding"), the Receiver and the Named Plaintiffs allege that the *Cy Pres* Transfer was a fraudulent transfer in violation of R.I. Gen. Laws §§ 6-16-4(a)(1), 6-16-4(a)(2) and/or 6-16-5(a). Plaintiffs also allege that, because the *Cy Pres* Transfer took place in connection with the anticipated dissolution of Defendants SJHSRI and RWH, the provisions of R.I. Gen. Laws §§ 7-6-51 & 7-6-61(c)(1) entitled creditors such as Plaintiffs to be paid before any funds could be transferred pursuant to the doctrine of *cy pres*. CCF denies all of those allegations.

In addition, if the First Settlement between Plaintiffs and SJHSRI, RWH, and CCCB is approved, Plaintiffs will have additional claims to assert against Defendant CCF based upon certain rights that Defendant CCCB claims in Defendant CCF that are being transferred to Plaintiffs in connection with that proposed settlement.

CCF denies liability to Plaintiffs. Indeed, CCF filed a motion to dismiss Plaintiffs' initial complaint, with an extensive supporting memorandum detailing the grounds upon which CCF claimed that Plaintiffs' claims should be dismissed. If the proposed

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<sup>14</sup> Wistow Dec. Exhibit 7 (Plaintiff's Complaint in the State Court Action).

<sup>15</sup> See Wistow Dec. Exhibits 8-10 (Proposed Intervenor's memorandum in support of their motion to intervene in the 2015 *Cy Pres* Proceeding, CharterCARE Foundation's memorandum in opposition thereto, and Proposed Intervenor's reply memorandum).

settlement between Plaintiffs and CCF is not approved, CCF intends to file a motion to dismiss Plaintiffs First Amended Complaint.<sup>16</sup>

Moreover, if CCF's motion to dismiss is not fully successful, CCF can be expected to vigorously defend this case on the merits. Notably, there is no precedent in Rhode Island directly addressing Plaintiffs' claim that the provisions of R.I. Gen. Laws §§ 7-6-51 & 7-6-61(c)(1) entitled creditors such as Plaintiffs to be paid before any funds could be transferred pursuant to the doctrine of *cy pres*. Plaintiffs rely upon precedents from other jurisdictions, but CCF can be expected to reject the applicability of those precedents and to offer other precedents in support of its position that charitable funds cannot be used to pay creditors. In addition, CCF can be expected to argue that Plaintiffs are not *bona fide* creditors of SJHSRI and RWH. Although Plaintiffs contend that such provisions are unenforceable, the Plan documents contain provisions that perhaps may tend to exculpate SJHSRI and RWH from, *inter alia*, any obligation to fund the Plan.<sup>17</sup> It would not be prudent to contend that there is absolutely no risk to Plaintiffs of these defenses' prevailing.

Defendant CCF also disputes the contention that Defendant CCCB has any rights in Defendant CCF, and contends that, assuming *arguendo* that Defendant CCCB has any such rights, those rights cannot be transferred to the Plaintiffs in connection with the First Settlement between Plaintiffs and Defendants SJHSRI, RWH, and CCCB. The resolution of these issues also would likely involve factual disputes that may necessitate trial.

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<sup>16</sup> See Dkt 66 (Joint Motion by Plaintiffs and Defendant CharterCARE Foundation to Stay CharterCARE Foundation's Deadline to Answer or Otherwise Respond to Amended Complaint, Pending Judicial Approval of Proposed Settlement).

<sup>17</sup> See Plaintiffs' First Amended Complaint ("FAC") ¶¶ 218-23.

## **VI. THE PROPOSED SETTLEMENT**

The Settlement Agreement establishes the terms of the Proposed Settlement. In summary, it provides for payment of \$4,500,000, \$3,900,000 by Defendant CCF, and \$600,000 by Defendant CCF's insurance carrier.<sup>18</sup> According to asset disclosure that Defendant CCF made in connection with the negotiation of the proposed settlement, Defendant CCF's total investment assets as of August 31, 2018 were \$9,108,334.<sup>19</sup> Thus, the Proposed Settlement of \$4,500,000 is approximately 50% of what Plaintiffs could hope to recover if Plaintiffs were awarded all of CCF's assets, and if those assets were not diminished by costs of defense.

The First Settlement involved (*inter alia*) the assignment to the Receiver of, and gave the Receiver the beneficial interest in, Defendant CCCB's interest in CCF. The Settlement Agreement provides that such interest will be transferred to CCF, or otherwise disposed of in a manner upon which the parties have agreed will ensure the ongoing independence of CCF.

The Settlement Agreement also obligates the Plaintiffs and Defendants SJHSRI, RWH, and CCCB to release Defendants CCF and Rhode Island Foundation.

## **VII. ARGUMENT**

### **A. The Proposed Settlement Satisfies R.I. Gen. Laws § 23-17.14-35**

R.I. Gen. Laws § 23-17.14-35 provides:

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<sup>18</sup> CCF informed the Superior Court that it has a separate agreement with the insurance carrier to fund the \$600,000. See Supp. Wistow Dec. ¶ 8, Exhibit 6 (transcript of hearing on December 14, 2018) at 6. However, Defendant CCF is liable to pay the \$600,000 if its insurance carrier fails to do so. See Exhibit 1 (Settlement Agreement) at 12.

<sup>19</sup> Supp. Wistow Dec. ¶ 10.

The following provisions apply solely and exclusively to judicially approved good faith settlements of claims relating to the St. Joseph Health Services of Rhode Island Retirement Plan, also sometimes known as the St. Joseph Health Services of Rhode Island pension plan:

- (1) A release by a claimant of one joint tortfeasor, whether before or after judgment, does not discharge the other joint tortfeasors unless the release so provides, but such release shall reduce the claim against the other joint tortfeasors in the amount of the consideration paid for the release.
- (2) A release by a claimant of one joint tortfeasor relieves them from liability to make contribution to another joint tortfeasor.
- (3) For purposes of this section, a good faith settlement is one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), irrespective of the settling or non-settling tortfeasors' proportionate share of liability.

R.I. Gen. Laws § 23-17.14-35.

This statute marks the fifth time the Rhode Island General Assembly has enacted a statute retroactively amending the law of joint tortfeasor releases for claims pending at the time of enactment. See R.I. Gen. Laws § 42-116-40 ("the DEPCO statute"); R.I. Gen. Laws § 27-1-16.2 (receivers of domestic insurance companies); R.I. Gen. Laws §§ 10-6-7 and 10-6-8 (mass torts resulting in 25 or more deaths from a single occurrence<sup>20</sup>); and R.I. Gen. Laws § 42-64-40 (the "38 Studios statute"). In order to facilitate settlements of claims falling within their ambits, these statutes eliminate the statutory joint tortfeasor right of set-off based on proportionate liability. Rhode Island Depositors Econ. Prot. Corp. v. Brown, 659 A.2d 95, 99 (R.I. 1995).

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<sup>20</sup> Most notably—and, thus far, exclusively—the Station Night Club Fire.



The constitutionality of the DEPCO statute was affirmed by the Rhode Island Supreme Court in R.I. Depositors Econ. Prot. Corp. v. Brown, 659 A.2d 95, 100 (R.I. 1995). R.I. Gen. Laws §§ 10-6-7 and 10-6-8 were construed and applied by the United States District Court for the District of Rhode Island in Gray v. Derderian, CA 04-312L, 2009 WL 1575189 (D.R.I. June 4, 2009) (Lagueux, S.D.J., accepting Report and Recommendation of Martin, M.J.). The Rhode Island Superior Court upheld the constitutionality of the 38 Studios statute in Rhode Island Economic Development Corp. v Wells Fargo Securities LLC., No. PB 12-5616, 2014 WL 3709683, at \*13 (R.I. Super. July 22, 2014) (Silverstein, J.), as to which the Rhode Island Supreme Court denied the non-settling defendants' petition for *certiorari*. Rhode Island Economic Development Corporation v. Wells Fargo Securities, LLC, et al., No. 14- 230 M.P. (R.I. Supreme Court, Oct. 20, 2014) (Order).

Federal courts have likewise acknowledged the importance of eliminating contribution claims against settling defendants in order to encourage settlements, notwithstanding that doing so negates proportional liability. For example, when the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 et seq., was amended by the Superfund Amendments Act of 1986 (SARA) to create an express statutory right of contribution, it simultaneously amended the statute to say that the right of contribution does not run against parties that settle with the government, but that settlement payments to the government reduce the liability of the non-settling defendants. Section 9613(f)(2) provides:

A person who has resolved its liability to the United States or a State in **an administrative or judicially approved settlement** shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable

persons unless its terms so provide, **but it reduces the potential liability of the others by the amount of the settlement.**

42 U.S.C. § 9613(f)(2) (emphasis supplied). Because only the amount of the settlement, and not the proportionate liability attributable to the settling party, is subtracted from the aggregate liability of the remaining parties, § 9613(f)(2) “envisions that nonsettling parties may bear disproportionate liability.” United Technologies Corp. v. Browning-Ferris Indus., Inc., 33 F.3d 96, 103 (1st Cir. 1994). As the First Circuit has noted, “[t]his paradigm is not a scrivener’s accident.” Id. Rather, it “was designed to encourage settlements” by providing settling parties “a measure of finality in return for their willingness to settle.” Id.

The statute immunizes settling parties from liability for contribution and provides that only the amount of the settlement—not the pro rata share attributable to the settling party—shall be subtracted from the liability of the nonsettlers. This can prove to be a substantial benefit to settling PRPs—and a corresponding detriment to their more recalcitrant counterparts. Although such immunity creates a palpable risk of disproportionate liability, that is not to say that the device is forbidden. To the exact contrary, Congress has made its will explicit and the courts must defer. Disproportionate liability, a technique which promotes early settlements and deters litigation for litigation's sake, is an integral part of the statutory plan. discouraging “exhaustive litigation” over “who is ‘really’ responsible for how much[.]”

United States v. Cannons Engineering Corp., 899 F.2d 79, 91-92 (1st Cir. 1990) (quoting Akzo Coatings, Inc. v. Aigner Corp., 30 F.3d 761, 773 (7th Cir. 1994)) (other citations omitted). The First Circuit, like other circuits, has upheld the constitutionality of CERCLA’s retroactive application. See O’Neil v. Picillo, 883 F.2d 176, 183 n.12 (1st Cir.

1989). In recent years, the U.S. Supreme Court has upheld the constitutionality of other retroactive special legislation directed at pending litigation.<sup>21</sup>

Likewise, the design and purpose of R.I. Gen. Laws § 23-17.14-35 was to reduce the risk of Plan participants or their representatives reaching early settlements with various defendants before the proportionate shares of all defendants' liabilities have been judicially determined. The primary mechanism to achieve that design and purpose was the elimination of the role of proportionate liability in settlements, while providing settling defendants with protection from contribution claims. The risk for plaintiffs of early settlement under R.I. Gen. Laws §§ 10-6-7 and 10-6-8 has now been transformed, under R.I. Gen. Laws § 23-17.14-35, into the risk to defendants of not settling and incurring disproportionate liability.

For the risk-shifting benefits of R.I. Gen. Laws § 23-17.14-35 to apply to a settlement, however, it must be a "judicially approved good faith" settlement. As quoted *supra*, R.I. Gen. Laws § 23-17.14-35 defines a "good faith settlement" as "one that does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s), **irrespective of the settling or non-settling tortfeasors' proportionate share of liability.**" *Id.* (emphasis supplied). Thus, approval of the settlement does not depend on whether the settlement payment is consistent with CCF's proportionate share of liability.

This statute expressly adopts the standard of "good faith" judicially adopted in cases such as Noyes v. Raymond, 548 N.E.2d 196, 199 (Mass. App. Ct. 1990) and

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<sup>21</sup> See Bank Markazi v. Peterson, 136 S. Ct. 1310, 1326 (2016) (upholding statute that retroactively prescribed a rule for a single pending case identified by caption and docket number); Patchak v. Zinke, 138 S. Ct. 897, 905 (2018) ("[T]he legislative power is the power to make law, and Congress can make laws that apply retroactively to pending lawsuits, even when it effectively ensures that one side wins.") (upholding a statute that directed that a particular pending lawsuit "shall be promptly dismissed").

Dacotah Marketing & Research, L.L.C. v. Versatility, Inc., 21 F. Supp. 2d 570 (E.D. Va. 1998). Under the provisions of Massachusetts General Laws c. 231B, § 4(b), "[w]hen a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury . . . [i]t shall discharge the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor."

The Noyes court concluded that the primary and legitimate objective of the Massachusetts "good faith" settlement statute was to encourage settlements. Noyes, 548 N.E.2d at 189. The term "good faith" was intended to mean the absence of "collusion, fraud, dishonesty, and other wrongful conduct[,]" and the fact that a settlement might be low in comparison to the plaintiff's estimated damages is not, by itself, material to that question. Id. "A relatively low settlement might reflect uncertainty about whether the settling party would be found liable, the uncertainty of the plaintiff's provable damages, or "the general unpredictability of juries on both liability and the damages issues." Id.

Likewise, the Dacotah Marketing court concluded that Virginia's joint tortfeasor contribution statute barred only releases "based on collusion or other tortious or wrongful conduct such as fraud or dishonesty between the plaintiff and the settling tortfeasor." Dacotah Marketing, 21 F. Supp. 2d at 576. The court explained that a non-collusive, good faith settlement was one negotiated at "arm's length" where "plaintiffs attempt to obtain as much as possible and defendants seek to pay as little as possible." Id. at 577. Collusion in violation of this standard occurs only where "the principal purpose of a release is to facilitate a collusive alliance" against the remaining defendants, id. at 579, and:

when the release is given with the tortious purpose of intentionally injuring the interests of nonsettling parties, rather than as the product of arm's length bargaining based on the facts of the case and the merits of the claim.

Dacotah Marketing, 21 F. Supp. 2d at 578. In short, “[w]hen an alliance harmful to the nonsettling party is the essential object of a release, that release is not given in good faith.” Id. at 579.

Under the “non-collusive, non-tortious” standard, the parties opposing settlement have the burden of proof:

It is the non-settling Defendants’ burden to prove that the settlement was not made in good faith. See *Dacotah Mktg. & Research, L.L.C. v. Versatility, Inc.*, 21 F. Supp. 2d 570, 578 (E.D. Va. 1998); *Gray v. Derderian*, CA 04-312L, 2009 WL 1575189 (D.R.I. June 4, 2009) (“[T]here is a presumption that the settlement has been made in good faith, and the burden is on the challenging party to show that the settlement is infected with collusion or other tortious or wrongful conduct.”).

Rhode Island Economic Development Corp. v Wells Fargo Securities LLC., No. PB 12-5616, 2014 WL 3709683, at \*2 n.3 (R.I. Super. July 22, 2014) (Silverstein, J.). See also

Barmat v. John & Jane Doe Partners A-D:

Once the settling party introduces proof of the settlement and the amount thereof, the burden shifts to the party challenging the settlement to show that the amount paid by the claimant in settlement was not paid in good faith. We note that other jurisdictions that have adopted the Uniform Contribution Among Tortfeasors Act (UCATA) place the burden on the challenging party to prove lack of good faith. . . . We do not assume that parties to an agreement acted collusively. We presume that they acted in good faith and require the challenging party to prove a lack thereof.

Barmat v. John & Jane Doe Partners A-D, 797 P.2d 1223, 1227-28 (Ariz. App. 1990)

(citations and quotations omitted). See also Fairfax Radiological Consultants, P.A. v.

My Q. Bui, 72 Va. Cir. 570 (2002):

Analysis begins with the presumption that the settlement has been made in good faith, and the burden is on the challenging party to show that the settlement is infected with collusion or other tortious or wrongful conduct.” *Dacotah Marketing and Research, L.L.C. v. Versatility, Inc.*, 21 F.Supp.2d 570, 578 (E.D.Va.1998); see also *Smith v. Monongahela Power Co.*, 429 S.E.2d 643 (W.Va.1993) (“Settlements are presumptively made in good faith. A defendant seeking to establish that a settlement made by a plaintiff and a joint tortfeasor lacks good faith has the burden of doing so by clear and convincing evidence.”). Accordingly, the burden is on Fairfax Radiological to show that the Benitez–Bui settlement agreement was not a good faith settlement.

See also Gray v. Derderian, No. 03-483L, 2009 WL 1575189 (D.R.I. June 4, 2009)

(“Thus, there is a presumption that the settlement has been made in good faith, and the burden is on the challenging party to show that the settlement is infected with collusion or other tortious or wrongful conduct.”) (Lagueux, S. D. J., adopting report and recommendation of Martin, Mag. J.); Noyes, 548 N.E. 2d at 191 (same).

The Proposed Settlement so clearly meets this definition of "good faith" that is difficult to conceive how the non-settling Defendants might contend otherwise. CCF is paying \$4,500,000, which is approximately 50% of the total recovery that Plaintiffs might obtain if judgment were entered against CCF for the full amount of its investment assets, and those assets were not reduced by litigation or other expenses. The Proposed Settlement causes no tortious injury to the non-settling Defendants. Indeed, the only prejudice to the non-settling Defendants is the lawful elimination of their contribution rights and reduction of the settlement credit to the amount of the settlement. That does not cause a tortious injury and does not disprove good faith. Otherwise, no settlement could ever qualify as a good faith settlement under the statute, and the statute would be self-negating, because the benefit the statute affords would have the effect of precluding the statute from affording the benefit.

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

It is not possible to forecast exactly which type of outcome would occur if this Action and the 2015 *Cy Pres* Proceeding were to continue against CCF. The Receiver and the Named Plaintiffs could succeed in recovering all of the approximately \$8,200,000 in charitable assets that were transferred to CCF, plus the appreciation that has accrued on those funds since 2015. However, prolonged litigation could potentially result in CCF having to use certain of its charitable funds to defend itself in the Action and the 2015 *Cy Pres* Proceeding. If that happened, that would reduce the funds that are available to benefit the Plan, even if the Receiver and the Named Plaintiffs are successful in obtaining a judgment against CCF. This is because CCF's counsel is being paid through a "wasting" insurance policy issued by RSUI with a \$1 million coverage limit. A "wasting" insurance policy is one in which ongoing defense costs erode the \$1 million coverage limit. If this Action and the 2015 *Cy Pres* Proceeding were to continue against CCF, then CCF could end up exhausting the entire \$1 million limits of its insurance coverage on defense costs before this Action and/or the 2015 *Cy Pres* Proceeding is fully litigated to a conclusion. If that happened, then CCF may be

permitted to use its charitable assets to pay its defense costs, and that would have the effect of reducing assets that might instead be made available to benefit the Plan.

Alternatively, the Receiver and the Named Plaintiffs could be unsuccessful, and could end up recovering nothing from CCF. As mentioned, the First Amended Complaint itself notes that the Plan documents contain provisions that perhaps may tend to exculpate SJHSRI and RWH from any liability to fund the Plan.<sup>22</sup> If Plaintiffs have no claims against SJHSRI and RWH, Plaintiffs' fraudulent transfer claims against CCF will presumably fail. Although Plaintiffs contend that such exculpatory provisions are unenforceable and that SJHSRI and RWH's various defenses are invalid, it would not be prudent to contend that there is absolutely no risk of these defenses prevailing.

Another possibility is that the Receiver and the Named Plaintiffs could succeed in recovering some, but not all, of the charitable funds that were transferred to CCF in 2015.

Another way that the Receiver could recover funds from CCF would be through a successful effort to enforce the rights in and against CCCB's Foundation Interests that the Receiver will acquire in connection with the First Settlement (if such First Settlement is finally approved). If those rights were successfully enforced, the Receiver potentially could acquire all or some of CCF's charitable assets and use them for the benefit of the Plan. However, CCF disputes the legality and enforceability of the rights in and against CCCB's Foundation Interests that the Receiver would acquire in the First Settlement. If this Action and the 2015 *Cy Pres* Proceeding were to continue against CCF, then CCF would seek to resist the enforcement of the Receiver's rights in and against CCCB's

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<sup>22</sup> See *supra* at 7 n.17.



Foundation Interests that the Receiver may acquire or which he did acquire in the First Settlement. That possibility of further litigation adds an additional element of uncertainty if this action and the 2015 *Cy Pres* Proceeding were to continue against CCF.

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

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

The Receiver is a judicially appointed officer of the Rhode Island Superior Court, charged with maximizing the potential recovery for the Plan, and acting under the supervision and with the approval of the Superior Court. The Proposed Settlement itself was reviewed and approved by Judge Stern. Notably, Judge Stern handled both the 2015 *Cy Pres* Proceeding and the Receivership Proceedings that have been pending

for over a year, and thus has extensive familiarity and experience concerning many of the important facts in the case before this Court and concerning the Proposed Settlement. Given this context, it cannot be argued that the Proposed Settlement somehow exhibits “collusion, fraud, dishonesty, or other wrongful conduct,” so as to fail the good faith standard set forth in R.I. Gen. Laws § 23-17.14-35.

**B. The Court Should Preliminarily Approve the Settlement**

The requirements for approval of class action settlements are set forth in Rule 23(e) of the Federal Rules of Civil Procedure, which states in pertinent part as follows:

(e) SETTLEMENT, VOLUNTARY DISMISSAL, OR COMPROMISE. The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) Notice to the Class.

(A) *Information That Parties Must Provide to the Court.* The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

(B) *Grounds for a Decision to Give Notice.* The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:

(i) approve the proposal under Rule 23(e)(2); and

(ii) certify the class for purposes of judgment on the proposal.

(2) *Approval of the Proposal.* If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

(3) *Identifying Agreements.* The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

Fed. R. Civ. P. 23(e).

Thus, the procedure for approval of a class settlement involves an initial, preliminary determination by the Court in connection with the decision whether to direct notice to the class. “[T]he goal of preliminary approval is for a court to determine whether notice of the proposed settlement should be sent to the class, not to make a final determination of the settlement’s fairness. Accordingly, the standard that governs the preliminary approval inquiry is less demanding than the standard that applies at the final approval phase.” Newberg on Class Actions § 13:13 (citations omitted). “At the preliminary approval stage, on motion of the plaintiffs, the court reviews the proposed terms of the settlement and makes a preliminary determination on the fairness, reasonableness and adequacy of the settlement terms.” McLaughlin on Class Actions

§ 6:7 (14th ed.) (citations omitted). “At this stage, the court can only determine whether the proposed settlement appears to fall within the range of possible final approval. . . . All findings and rulings for purposes of preliminary approval are contingent on the parties achieving successful final approval of the Settlement Agreement.” Trombley v. Bank of America Corp., No. 08-CV-456-JD, 2011 WL 3740488, at \*4 (D.R.I. Aug. 24, 2011) (citing Am. Int’l Group, Inc. v. ACE INA Holdings, Inc., 2011 WL 3290302, at \*6 (N.D. Ill. July 26, 2011)).

Rule 23 was amended, effective December 1, 2018. “With respect to proposed settlements, the amendments are conforming with respect to actual practice in class action settlements.” John M. Barkett, The 2018 Amendments to the Federal Class Action Rule.<sup>23</sup> Under amended Rule 23(e)(1), the standard for purposes of preliminary settlement approval is whether the movants have made a “showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” F. Civ. P. 23(e)(2). The Advisory Committee Note states as follows:

Regarding the proposed settlement, many types of information might appropriately be provided to the court. A basic focus is the extent and type of benefits that the settlement will confer on the members of the class. Depending on the nature of the proposed relief, that showing may include details of the contemplated claims process and the anticipated rate of claims by class members. Because some funds are frequently left unclaimed, the settlement agreement ordinarily should address the distribution of those funds.

The parties should also supply the court with information about the likely range of litigated outcomes, and about the risks that might attend full

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<sup>23</sup> <https://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2017-2018/2018-sac/written-materials/miami-class-actions-amendments-to-the-federal-class.pdf> (accessed December 18, 2018).

litigation. Information about the extent of discovery completed in the litigation or in parallel actions may often be important. In addition, as suggested by Rule 23(b)(3)(B), the parties should provide information about the existence of other pending or anticipated litigation on behalf of class members involving claims that would be released under the proposal.

The proposed handling of an award of attorney's fees under Rule 23(h) ordinarily should be addressed in the parties' submission to the court. In some cases, it will be important to relate the amount of an award of attorney's fees to the expected benefits to the class. One way to address this issue is to defer some or all of the award of attorney's fees until the court is advised of the actual claims rate and results.

Another topic that normally should be considered is any agreement that must be identified under Rule 23(e)(3).

The parties may supply information to the court on any other topic that they regard as pertinent to the determination whether the proposal is fair, reasonable, and adequate. The court may direct the parties to supply further information about the topics they do address, or to supply information on topics they do not address. The court should not direct notice to the class until the parties' submissions show it is likely that the court will be able to approve the proposal after notice to the class and a final approval hearing.

Fed. R. Civ. P. 23 2018 Advisory Committee Note.

Since in making the decision whether to direct notice, the Court must decide whether it “will likely be able to: (i) approve the proposal under Rule 23(e)(2),” the Court must make a preliminary determination of whether the proposed settlement will meet the requirements for final approval. However, “[t]he First Circuit has not established a fixed test for evaluating the fairness of a settlement” in connection with a motion for final approval. Gulbankian v. MW Mfrs., Inc., No. CIV.A. 10-10392-RWZ, 2014 WL 7384075, at \*1 (D. Mass. Dec. 29, 2014) (citing New England Carpenters Health Benefits Fund v. First Databank, Inc., 602 F. Supp. 2d 277, 280 (D. Mass. 2009)). “There is no single

litmus test for a settlement's approval; it is instead examined as a gestalt to determine its reasonableness in light of the uncertainty of litigation.” Id. (citing Bussie v. Allmerica Fin. Corp., 50 F. Supp. 2d 59, 72 (D. Mass. 1999)).

The courts of this district have frequently used the factors articulated by the Second Circuit to examine the fairness of settlements:

(1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

*New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, 602 F.Supp.2d 277, 280 81 (D.Mass.), *aff'd sub nom. Nat'l Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30 (1st Cir.2009) (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir.1974).

Where the settlement was the product of arms-length negotiation following extensive discovery, its fairness is presumed. *In re Pharm. Indus. Average Wholesale Price Litig.*, 588 F.3d 24, 32–33 (1st Cir.2009); *In re Celexa & Lexapro Mktg. & Sales Practices Litig.*, No. MDL 09–2067–NMG, 2014 WL 4446464, at \*5 (D.Mass. Sept.8, 2014).

Gulbankian v. MW Mfrs., Inc., *supra*, 2014 WL 7384075, at \*2.

Given Special Counsel’s extensive discovery in the Receivership Proceedings, and the indisputable arms-length negotiations that led to the Proposed Settlement, its fairness is presumed. In re Pharm. Indus. Average Wholesale Price Litig., *supra*, 588 F.3d at 32–33.

The possible objection that the Proposed Settlement is premature given the lack of formal discovery *in this case* should be rejected. Although there has been no formal

discovery in this action, such discovery would serve no purpose here. It would not assist in the determination of either liability or damages. On the other hand, requiring such discovery would unjustifiably diminish the potential settlement fund by litigation-related expenses that CCF likely would incur to participate in formal discovery in this case, and other possible future expenses that are not known or knowable at this time.

Formal discovery is not always required for class action settlement approval:

A lack of much formal discovery is not necessarily fatal: given the law's preference for speedy resolution of complex litigation, making extensive formal discovery a prerequisite for approval could be counterproductive. Hence, courts will look beyond formal discovery to see if the parties had other avenues to gather information concerning the merits of the case. These "informal" avenues can include:

- past litigation presenting similar legal issues or factual similarities;
- the results of publicly available government investigations;
- documents exchanged and witnesses produced informally, perhaps through the mediation process; and
- so-called "confirmatory discovery" that may occur after the parties reach a tentative settlement.

Newberg on Class Actions, *supra*, § 13.50 (citations omitted). The discovery in the Receivership Proceedings should not be described as an "informal avenue" for information gathering. Rather, it was both formal and conducted under the supervision of the Superior Court who adjudicated numerous discovery disputes in the Receivership Proceedings.<sup>24</sup> The Proposed Settlement was only entered into after all of the aforementioned avenues of information have been explored in this case.

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<sup>24</sup> Wistow Dec. ¶ 15.

The Proposed Settlement meets the requirements for preliminary approval under the revisions to Rule 23(e) that became effective on December 1, 2018. In other words, the Settling Parties have provided the Court with “a solid record supporting the conclusion that the proposed settlement will likely earn final approval after notice and an opportunity to object.” 2018 Advisory Committee Note, *supra*.

That “solid record” includes the Settlement Agreement itself. That record also includes the Receiver’s Petition for Settlement Instructions in the Receivership Proceedings,<sup>25</sup> the transcript of the hearing on that Petition,<sup>26</sup> including Judge Stern’s opinion that the Proposed Settlement is fair and reasonable under the Jeffrey factors, and Judge Stern’s Order, based upon the court’s extensive knowledge of the facts, authorizing and directing the Receiver to proceed with the Proposed Settlement because it is fair and equitable for the Plan and the Plan participants.<sup>27</sup> Finally, the “solid record” includes the fact that the Proposed Settlement has the support of the over 1,000 Plan participants that are represented by counsel in the Receivership Proceedings.<sup>28</sup>

**C. Statement Identifying Agreements in Connection with Proposed Settlement.**

In compliance with the express requirements of Fed. R. Civ. P. 23(e)(3), the Settling Parties by their undersigned counsel hereby state that there are no agreements

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<sup>25</sup> Supp. Wistow Dec. ¶ 6, Exhibit 4 (Petition for Settlement Approval).

<sup>26</sup> Supp. Wistow Dec. ¶ 8, Exhibit 6 (transcript of hearing on December 14, 2018).

<sup>27</sup> Supp. Wistow Dec. ¶ 9, Exhibit 7 (Order by the Hon. Brian P. Stern, Associate Justice of the Rhode Island Superior Court, entered on December 27, 2018).

<sup>28</sup> Supp. Wistow Dec. ¶ 8, Exhibit 6 (transcript of hearing on December 14, 2018) at 8.



made in connection with the Proposed Settlement other than the Settlement Agreement itself.

**D. The Proposed Settlement Class Should Be Preliminarily Certified to Participate in the Settlement**

It should be noted at the outset that the Settling Parties seek certification of the Settlement Class solely for the purpose of permitting the Settlement Class to participate in the settlement of Plaintiffs' claims against CCF, without prejudice to the rights of the remaining Defendants to oppose class certification in connection with Plaintiffs' claims against them.

The requirements for certification of a *litigation class* are set forth in the Manual on Complex Litigation:

To obtain an order to prevail in their efforts to certify a class, proponents must satisfy two sets of requirements: those set forth in Rule 23(a) and those contained in Rule 23(b). Rule 23(a) requires that (1) the proposed class be sufficiently numerous; (2) there is at least one common question of fact or law; (3) the named plaintiff's claims are typical of the class as a whole; and (4) the named plaintiff will adequately represent the class.

Rule 23(b) permits maintenance as a class action if the action satisfies Rule 23(a)'s prerequisites and meets one of three alternative criteria for maintainability. First, Rule 23(b)(1)(A) permits certification to prevent inconsistent rulings regarding defendants' required conduct. Standards for certifying a class under Rule 23(b)(1)(B) relate primarily to limited fund settlements and are discussed below in section 21.132. Second, Rule 23(b)(2) permits a class action if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Third, Rule 23(b)(3) permits a class action if "the court finds that questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

Manual on Complex Litigation § 21.131 (Certifying a Litigation Class) (4th Ed. 2004)  
(citations omitted).

The standard for certifying a *settlement class* is similar, with one difference:

Rule 23(a) and (b) standards apply equally to certifying a class action for settlement or for trial, with one exception. In *Amchem Products, Inc. v. Windsor*, the Supreme Court held that because a settlement class action obviates a trial, a district judge faced with a request to certify a settlement class action “need not inquire whether the case, if tried, would present intractable management problems” under Rule 23(b)(3)(D).

Manual on Complex Litigation, *supra*, § 21.132 (Certifying a Settlement Class) (citing *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997)).

“Just as the settlement approval unfolds through two levels of judicial review (preliminary and final), so, too, does the motion for settlement class certification.” Newberg on Class Actions, *supra*, § 13:16. “If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined. The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b).” Manual on Complex Litigation, *supra*, § 21.632. See also 2018 Advisory Committee Note to Fed R. Civ. P. Rule 23 (“The ultimate decision to certify the class for purposes of settlement cannot be made until the hearing on final approval of the proposed settlement.”).

### **1. Under Rule 23(a)**

The Complaint and the additional submissions in connection with this motion adequately set forth the reasons why such certification is appropriate based upon the

following factors which support class certification for purposes of settlement under Rule 23(a) of the Federal Rules of Civil Procedure.

**a. Numerosity**

There are 2,729 Plan participants.<sup>29</sup> All of those persons are members of the Settlement Class, and, thus, the Settlement Class is so numerous that joinder of all members is impracticable.

**b. Commonality**

The issues raised by Plaintiffs' claims against CCF present common issues of law and fact, with answers that are common to all members of the Settlement Class, including but not limited to the determination of (1) the Plan participants' rights under the Plan, and whether those obligations were breached and those rights violated; (2) whether SJHSRI, RWH, and/or CCF committed fraud; (3) whether the transfers of assets by SJHSRI and RWH in connection with the 2015 *Cy Pres* Proceeding were fraudulent transfers; and (4) the extent of CCCB's rights in CCF and the validity and effect of CCCB's transfer of those rights to the Receiver in connection with the First Settlement.

The issues regarding the relief Plaintiffs seek from CCF are also common to the members of the Class, as the relief will include, but is not limited to (1) a judgment avoiding the transfers in connection with the 2015 *Cy Pres* Proceeding; (2) a declaratory judgment concerning the extent of CCCB's rights in CCF and the validity and effect of CCCB's transfer of those rights to the Receiver in connection with the First Settlement;

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<sup>29</sup> Wistow Dec., Exhibit 4 (Transcript of Hearing in Receivership Proceedings on October 11, 2017) at 6.

and (3) awarding to Plaintiffs' counsel attorneys' fees as provided by the common fund doctrine, 29 U.S.C. § 1132(g), and/or other applicable doctrine.

**c. Typicality**

The Proposed Class Representatives' claims are typical of the claims of the other members of the Settlement Class, because their claims arise from the same events, practices and/or courses of conduct, including, but not limited to, CCF's transfer of assets in connection with the 2015 *Cy Pres* Proceeding, and the transfer of CCCB's rights in CCF in connection with the First Settlement. The Proposed Class Representatives' claims are also typical, because all Class members are similarly affected by the alleged wrongful conduct of SJHSRI, RWH, and CCF.

**d. Adequacy**

The Proposed Class Representatives through the Proposed Settlement will fairly and adequately represent and protect the interests of all members of the Class. The Proposed Class Representatives do not have any interests antagonistic to or in conflict with the interests of the Class. Moreover, Plaintiff's Counsel's Retainer Agreements with each of the Proposed Class Representatives obligates them to act fairly on behalf of the class:

In non-class litigation, parties asserting claims are free to pursue only their own interests; they need not take into account the interests of others. Class actions are different, and require both class representatives and the lawyers in their capacity as lawyers for the class to consider and pursue only the common claims and interests of the class as a whole. This means that you must always act in the best interest of the class as a whole and consider the interests of the class ahead of your own individual or personal interests. If at any time you fail or refuse to prioritize the

interests of the class, you will not be able to serve as a class representative, and WSL will not be able to continue representing you.

Wistow Dec. ¶ 27 (Exhibits 12-18 at 3).

One possible area of conflict between and among the Proposed Class Representatives and the Settlement Class has been obviated by the terms of Plaintiffs' Counsel's Retainer Agreements with the Proposed Class Representatives, each of which contain the following provision, to prevent conflicting interests from interfering with Plaintiffs' Counsel's representation of the class in connection with a settlement involving aggregated payments, such as the Proposed Settlement *sub judice*:

An aggregate settlement may be insufficient to completely compensate each claimant individually and disagreements may arise concerning how to allocate, or divide, an aggregate settlement. If there is insufficient proceeds or assets to cover the claims of each of the respective Clients, there can be disputes regarding how to allocate the proceeds or assets as between the joint Clients. If any disputes should arise between the joint Clients, WSL will not advise or represent any of the Clients (including the Receiver) in connection with such disputes. WSL will remain able to advocate an overall settlement but not how such settlement should be divided.<sup>[30]</sup>

Wistow Dec. ¶ 28 (Exhibits 12-18 at 3).

The Proposed Class Representatives have engaged counsel (a) experienced in complex litigation, (b) who have already subpoenaed fifteen individuals or entities, obtained many documents informally, devoted over sixteen hundred hours of attorney time, and reviewed over 1,000,000 pages of documents,<sup>31</sup> to investigate and prosecute these and related claims, (c) who, with the approval of the Rhode Island Superior Court,

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<sup>30</sup> This provision applies to a conflict that could arise if, at some point, the funding of the Plan is such that a reduction in benefits is required, and the beneficiaries' other counsel cannot agree as to how any reduction should apply.

<sup>31</sup> The activities and efforts of Plaintiffs' Counsel are detailed in their motion for an award of attorneys' fees which is filed and served herewith.

represent the Receiver whose interests in the Proposed Settlement are identical to the interests of the Proposed Class Representatives, (d) who have presented the Proposed Settlement to the Superior Court in the Receivership Proceedings and obtained that court's approval of the Proposed Settlement, and, perhaps most importantly, (e) have negotiated the Proposed Settlement of the case against CCF that is fair and reasonable.

**2. Class certification is proper under Rule 23(b)(1)(B)**

The Settling Parties seek class certification under Fed. R. Civ. P. 23(b)(1)(B), which does not permit class members to opt out of the settlement. Fed. R. Civ. P. 23(b)(1)(B) states as follows:

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

\* \* \*

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. . . .

Plaintiffs' claims are such that "adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests." Plaintiffs' fraudulent transfer claims against CCF are predicated upon proof that Plaintiffs are creditors of SJHSRI and RWH. Plaintiffs' claims to be creditors of SJHSRI and RWH are based upon claims that

SJHSRI and RWH breached fiduciary duties and statutory funding obligations under ERISA, or, if ERISA is inapplicable, then Plaintiffs' claims to be creditors of SJHSRI and RWH are based upon SJHSRI and RWH's breach of contract, fraud, and common law breach of fiduciary duty.

Rule 23(b)(1) certification is proper under either approach.

The law is clear that claims based upon ERISA should be certified under Rule 23(b)(1). See Newberg on Class Actions (5th Ed.) § 4:21 (The " 'derivative nature of ERISA breach of fiduciary duty claims' makes them 'paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class.' ") (quoting In re Schering Plough Corp. ERISA Litigation, 589 F.3d 585, 604 (3d Cir. 2009)).

This is so because 'any decision regarding whether the defendants breached their fiduciary duties would necessarily affect the interests of other participants.' Indeed, the Supreme Court noted in *Ortiz* that Rule 23(b)(1)(B) explicitly aimed to cover actions charging "a breach of trust by an indenture trustee or other fiduciary similarly affecting the members of a large class of beneficiaries, requiring an accounting or similar procedure to restore the subject of the trust." . . .

Newberg on Class Actions, *supra* (quoting Thomas v. SmithKline Beecham Corp., 201 F.R.D. 386, 397 (E.D. Pa. 2001) and Ortiz v. Fibreboard Corp., 527 U.S. 815 (1999)).

Plaintiffs also claim that SJHSRI and RWH violated ERISA's minimum funding requirements (29 U.S.C. § 1082). See Complaint ¶¶ 430-438. Such claims are also appropriate for certification as a Rule 23(b)(1) class, since they seek "[p]lan-wide relief" and "[n]o specific monetary damages are awarded to any individual." Jones v. Singing River Health Sys., No. 1:14CV447-LG-RHW, 2016 WL 6106521, at \*10 (S.D. Miss. June 2, 2016) (certifying Rule 23(b)(1) settlement class consisting of retirement plan participants, alleging violations of ERISA's minimum funding requirements), *rev'd on*

*other grounds*, Jones v. Singing River Health Services Found., 865 F.3d 285, 303 (5th Cir. 2017). See also Colesberry v. Ruiz Food Prod., Inc.:

The relief which Plaintiffs seek from Defendants would ensure that the Plan was made whole. If the primary relief is to the Plan as a whole, then adjudications with respect to individual members of the class would, as a practical matter, alter the interests of other members of the class. If one plaintiff succeeds in obtaining a judgment that requires the Defendants to pay damages to the Plan, the benefit would affect everyone who has a right to disbursements from the Plan. Thus, the proposed class clearly falls within Rule 23(b)(1)(B) because adjudications with respect to individual class members would impact the interests of the other members not parties to this action and/or could substantially impair or impede their ability to protect their interests.

\* \* \*

The propriety of Rule 23(b)(1) certification in this action is confirmed by the vast number of cases in which courts have certified ERISA class actions pursuant either to Rule 23(b)(1)(A) or Rule 23(b)(1)(B), or both. See, e.g., *Piazza v. Ebsco Industries, Inc.*, 273 F.3d 1341, 1352-53 (11th Cir.2001); *Rogers v. Baxter Intern. Inc.*, 2006 WL 794734, \*10 (N.D.Ill.,2006); *In re Williams Companies ERISA Litigation*, 231 F.R.D. 416, 425 (N.D.Okla .2005); *In re Syncor Erisa Litigation*, 227 F.R.D. 338, 347 (C.D.Cal.2005); *In re CMS Energy Erisa Litigation*, 225 F.R.D. 539, 546 (E.D.Mich.2004). Thus, based on this authority and the parties' stipulation, the court will certify the class as a Rule 23(b)(1)(B) class.

Colesberry v. Ruiz Food Prod., Inc., No. CVF 04-5516 AWISMS, 2006 WL 1875444, at

\*4–5 (E.D. Cal. June 30, 2006). See also Newberg on Class Actions:

The trust-like nature of ERISA cases therefore generally supports certification whether one focuses on the incompatible standards that might arise for the trustee (in which case certification under Rule 23(b)(1)(A) is typically apt) or upon the indivisible interests of the members of the plan (in which case certification under Rule 23(b)(1)(B) is typically apt). ERISA cases may also be certified under both (b)(1)(A) and (b)(1)(B) simultaneously.

Newberg on Class Actions, *supra*, at § 4:44.



Even if ERISA were inapplicable to Plaintiffs' claims (because the Plan is a "church plan" excepted from ERISA or for any other reason), this would still be a situation for which certification is proper under Rule 23(b)(1)(B). The Plan was originally established, and continues to operate, as a trust.<sup>32</sup> Accordingly, if not subject to ERISA, the Plan is governed by the law of trusts. See MacNeill v. The Benefits Plan of the Presbyterian Church (U.S.A.), 89 F.Supp.3d 1080, 1083 (D. Wa. 2016) ("In this case, as a threshold matter, the Court agrees with defendants' assertion that the plan under which plaintiffs seek reimbursement is an ERISA-exempt church plan governed by Pennsylvania trust law."); McAninch-Ruenzi v. Board of Pensions of The Presbyterian Church (U.S.A.), 2007 WL 1039495 \*5 (D. Or. 2007) (ERISA-exempted church plan is subject to the state law of trusts); Leacock v. Board of Pensions of Presbyterian Church USA, 2010 WL 2653345 \*1 (W.D. Ky. 2010) ("Because the death and disability plan at issue is structured as a trust, trust law principles guide the standard of review.") (church plan governed by law of trusts).

It is that law of trusts that would make Rule 23(b)(1)(B) appropriate here, even if ERISA were not applicable to the Plan. Claims by trust beneficiaries for breach of fiduciary duty or for injuries to the trust corpus are to be certified as class actions under Rule 23(b)(1)(B) because adjudications with respect to individual beneficiaries would, as a practical matter, substantially impair or impede the ability of non-party beneficiaries to protect their interests. See Meyer v. Citizens and Southern Nat. Bank, 106 F.R.D. 356, 362 (M.D. Ga. 1985) (certifying class of trust beneficiaries under Rule 23(b)(1)(B)) ("Furthermore, an adjudication either that the Defendant did breach its duty in

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<sup>32</sup> See, e.g., Plaintiffs' First Amended Complaint ¶¶ 231, 277, 282.

management of the Common Trust Fund assets or that it did not would as a practical matter be dispositive of the interests of all other beneficiaries whose trusts hold participating units in the Fund.”). Moreover, it would be both anomalous and unjust if Participants (or their beneficiaries) could “have their cake and eat it too” by opting out of the settlement while still enjoying the benefit of the increased funding to the Retirement Plan.

The Second Circuit has also noted that Rule 23(b)(1)(B) certification is required in cases alleging breach of trust, because the interests of all trust beneficiaries are affected:

Ordinarily, when a beneficiary brings suit against a trustee on behalf of the trust, other beneficiaries “should be joined as parties, either as plaintiffs or as defendants, if their interests would be affected by the decree.” See 3 Austin W. Scott et al., *The Law of Trusts* § 214 (4th ed.2001). But, as a case decided shortly before the enactment of ERISA noted:

“[There] are two well-established exceptions to the general rule that the cestuis que trustent are necessary parties in actions by or against a trustee relating to the trust or its property. The first is where the absent parties are properly represented.... The second exception to the general rule arises where the beneficiaries are very numerous, so that the delay and expense of bringing them in becomes oppressive and burdensome. In such case they will not be deemed necessary parties where the trustee representing them is made a party.”

*Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1027, 105 Cal.Rptr. 172, 178 (1972) (quoting *Anderson v. Elliott*, 117 N.E.2d 876, 879, 1 Ill.App.2d 448 (1954)) (alterations in *Hebbard*; emphasis omitted). In the latter situation, a class action is the appropriate procedural device. See *id.*; see also *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 833–34, 119 S.Ct. 2295, 144 L.Ed.2d 715 (1999) (noting that “actions charging ‘a breach of trust by an indenture trustee or other fiduciary similarly affecting the members of a large class’ of beneficiaries, requiring an accounting or similar procedure ‘to restore the subject of the trust,’ ” are among the “[c]lassic examples” of Rule

23(b)(1)(B) class actions (quoting Advisory Committee's Notes on Fed.R.Civ.P. 23)).

Coan v. Kaufman, 457 F.3d 250, 260-261 (2d Cir. 2006).

**E. The Court should approve the proposed Notice Plan and Class Notice**

Fed. R. Civ. P. 23(e)(1) states as follows:

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

“But while Rule 23(e) directs the giving of notice, it leaves the form of the notice to the court's discretion; for this reason, courts have sometimes overlooked the absence of notice where there was clearly no prejudice to class members.” Navarro-Ayala v.

Hernandez-Colon, 951 F.2d 1325, 1337 (1st Cir. 1991) (citations omitted). See also

Wright, Miller & Kane, Federal Practice and Procedure § 1797.6:

**The court has complete discretion in determining what constitutes a reasonable notice scheme, both in terms of how notice is given and what it contains.** As indicated in the discussion of the other notice provisions in Rule 23, subdivision (c)(2) and subdivision (d)(2), there is no single way in which the notice must be transmitted. **Of course, notice by mail to all of the identified class members informing them of the proposed action and indicating that they have a right to participate and voice their objections will suffice.** But other approaches including the use of television, radio, the internet, and various print publications also may be utilized. In some cases, such as in prisoner litigation, when the class members are all in one location, posting or other publication may be deemed sufficient.

Wright, Miller & Kane, Federal Practice and Procedure § 1797.6 (citations omitted) (emphasis supplied).

Plaintiffs have submitted a proposed Class Notice for the Court's approval.<sup>33</sup> The Receiver has already been acting as the Administrator of the Plan, and, accordingly, has compiled a database that includes the mailing addresses for all of the Plan participants. Under the Notice Plan proposed by the Settling Parties, if the Court grants preliminary settlement approval, then, within ten (10) days after an order granting preliminary approval is entered, the Receiver will mail the Class Notice to all Plan participants via first-class mail.

The proposed Class Notice is sufficiently detailed but not overly legalistic, and written in plain, easily understood language. The proposed Class Notice will inform the Class Members of their rights and the manner and deadline to object to the settlement and request for attorneys' fees.<sup>34</sup> The Class Notice also will inform them of the claims to be released.<sup>35</sup> The Class Notice will further contain a link to a website through which Class Members can access pertinent Court documents, including the Settlement Agreement, and any orders and judgment entered in this matter.<sup>36</sup> The proposed Class Notice also provides the contact information for all counsel in the case, whom the Settlement Class Members may contact if they have questions.<sup>37</sup>

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<sup>33</sup> Exhibit 1 (Settlement Agreement) Exhibit 1 (Class Notice).

<sup>34</sup> Exhibit 1 (Settlement Agreement) Exhibit 1 (Class Notice) at 8.

<sup>35</sup> Exhibit 1 (Settlement Agreement) Exhibit 1 (Class Notice) at 13.

<sup>36</sup> Exhibit 1 (Settlement Agreement) Exhibit 1 (Class Notice) at 1.

<sup>37</sup> Exhibit 1 (Settlement Agreement) Exhibit 1 (Class Notice) at 15-16.

**F. Plaintiffs' Counsel Should be Appointed to Represent the Settlement Class**

Plaintiffs are seeking the appointment of Plaintiffs' Counsel to represent the Settlement Class, without prejudice to the issue of who should represent any other classes to be certified later in this case. Plaintiffs' Counsel are experienced in complex litigation, have already devoted over sixteen hundred hours to these matters prior to the commencement of suit, have devoted hundreds of hours since then, and has secured and reviewed approximately one million pages of documents in investigating those claims, and, with the approval of the Rhode Island Superior Court, already represent the Receiver in this case, whose interests are identical to the interests of the Proposed Class Representatives. WSL has negotiated what is believed to be a favorable settlement of Plaintiffs' claims against the First Settling Defendants. WSL has also negotiated what is believed to be a favorable settlement of Plaintiffs' claims against CCF.

**VIII. CONCLUSION**

The Court is respectfully requested to enter the proposed order attached to the Settlement Agreement,<sup>38</sup> or as the Court may otherwise direct, which essentially:

1. grants approval of the settlement between Plaintiffs and Defendants CCF, SJHSRI, CCCB, and RWH as a good faith settlement pursuant to R.I. Gen. Laws § 23-17.14-35;
2. preliminarily certifies all of the Plan participants as the Settlement Class;
3. grants preliminary approval of the settlement pursuant to Fed. R. Civ. P. Rule 23(e);
4. preliminarily appoints Wistow, Sheehan & Loveley, P.C. to represent the Settlement Class;

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<sup>38</sup> Exhibit 1 (Settlement Agreement) Exhibit 2.

5. authorizes the Receiver to issue the Class Notice to the Settlement Class;  
and
6. schedules the hearing for final approval of the settlement and approval of  
Wistow, Sheehan & Loveley, P.C.'s motion for an award of attorneys' fees.

Respectfully submitted,

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By their Attorney,

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Dated: January 4, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that an exact copy of the within document was electronically filed on the 4th day of January, 2019 using the Electronic Case Filing system of the United States District Court and is available for viewing and downloading from the Electronic Case Filing system. The Electronic Case Filing system will automatically generate and send a Notice of Electronic Filing to the following Filing Users or registered users of record:

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/s/ Max Wistow\_\_\_\_\_

# Exhibit 1

## **SETTLEMENT AGREEMENT**

This settlement agreement (referred to herein as the “Settlement B Agreement” or “Settlement B”) is entered into as of November 21, 2018, between and among Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the “Receiver”) and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque, said persons acting individually and<sup>1</sup> on behalf of all class members as defined herein (the Receiver and said persons are collectively referred to herein as “Plaintiffs”), CharterCARE Community Board (“CCCB”), St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital (“RWH”) (CCCB, SJHSRI, and RWH are collectively referred to herein as the “Heritage Hospital Defendants”), and CharterCARE Foundation (“CCF”). For purposes of this Settlement B Agreement, Plaintiffs, the Heritage Hospital Defendants, and CCF are collectively referred to as the “Settlement B Settling Parties” and each of them are referred to individually as a Settlement B Settling Party.

## **RECITALS**

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

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<sup>1</sup> Contingent upon the Court certifying the Class as provided herein.

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

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

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

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

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

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

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

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<sup>2</sup> See Settlement A Agreement, ¶ 12 and exhibit 12.

<sup>3</sup> See Settlement A Agreement, ¶ 13.

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

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

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

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

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

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

**I. DEFINITIONS.**

A. For purposes of this Settlement B Agreement, and in addition to other terms that are defined elsewhere in this Settlement B Agreement, the following terms shall have the meanings specified herein.

1. "Amended *Cy Pres* Order" shall mean a final order (including but not limited to an order certified as final under Rule 54(b) of the Superior Court Rules of Civil Procedure) of the Rhode Island Superior Court (unless an appeal of that final order is filed and the final order is not upheld on appeal), granting approval of the Amended *Cy Pres* Petition.
2. "Amended *Cy Pres* Petition" shall mean a petition jointly filed by CCF, Plaintiffs, SJHSRI, and RWH in the 2015 *Cy Pres* Proceeding<sup>4</sup> that, in full resolution of Plaintiffs' claims as intervenors in that proceeding, shall:
  - i. seek judicial *cy pres* approval of a transfer of THREE MILLION NINE HUNDRED THOUSAND DOLLARS (\$3,900,000.00) of CCF Funds to the Receiver<sup>5</sup> to be used (after payment of Plaintiffs' counsel fees and expenses as approved by the Court) for the benefit of the Plan; and
  - ii. otherwise seek to affirm the continued validity and enforceability of the 2015 *Cy Pres* Order, including with respect to all other CCF

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

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

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

iii. seek to vacate the Preservation Order.<sup>6</sup>

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

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<sup>6</sup> See infra at p. 10, ¶ 27.

<sup>7</sup> See infra at p. 9, ¶ 21.



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

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

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

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

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

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

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

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

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

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

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

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

## II. **BASIC SETTLEMENT TERMS.**

The following is a summary description of the basic terms of this Settlement B.<sup>10</sup> Under this Settlement B, CCF agrees to pay the Receiver \$4,500,000 (consisting of \$3,900,000 from funds CCF holds through RIF and \$600,000 to be paid from the RSUI Policy) in return for the following consideration:

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

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

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

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

### III. **NECESSARY COURT APPROVALS.**

#### A. **Approval in Receivership Proceedings.**

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

#### B. **Approval in Federal Court Action.**

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



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

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

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

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

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

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

C. Amended *Cy Pres* Petition.

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

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

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

**IV. INTERPLAY BETWEEN SETTLEMENT A AND SETTLEMENT B APPROVALS.**

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

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

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

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

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

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

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

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

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

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

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

Settlement Payment has been received by Plaintiffs' Counsel on behalf of the Plaintiffs.<sup>11</sup>

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

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



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

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

**VI. MISCELLANEOUS.**

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

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

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

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

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

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


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

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

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

*[Signatures on pages to follow]*

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

  
Stephen Del Sesto, as Receiver for the St. <sup>Receiver and not</sup> Joseph Health Services of Rhode Island <sup>individually</sup>  
Retirement Plan

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

  
NOTARY PUBLIC  
My Commission Expires: 4/7/2022




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

  
\_\_\_\_\_  
GAIL J. MAJOR

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 5/4/22 HAN WISTOW

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

Nancy Zompa  
NANCY ZOMPA

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

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




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

  
\_\_\_\_\_  
RALPH BRYDEN

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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


  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 6/4/22 Max WISTOW

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

  
DOROTHY WILLNER

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

  
MAX WISTOW  
NOTARY PUBLIC  
My Commission Expires:

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

  
CAROLL SHORT

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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


  
NOTARY PUBLIC  
My Commission Expires: 5/4/22

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

  
DONNA BOUTELLE

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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


  
NOTARY PUBLIC  
My Commission Expires: 6/4/22

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

  
EUGENIA LEVESQUE

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

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


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



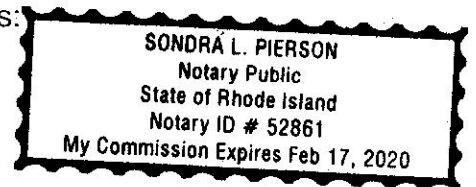
\_\_\_\_\_  
David Hirsch  
President  
CharterCARE Community Board

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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



\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:



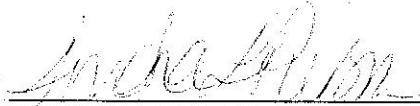
IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 20 day of NOV, in the year 2018.



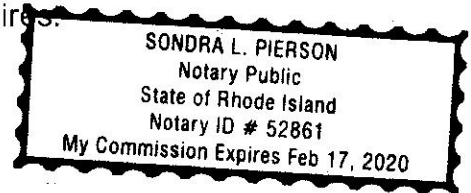
\_\_\_\_\_  
David Hirsch  
President  
St. Joseph health Services of Rhode Island

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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



\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:



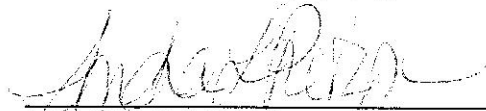
IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 20 day of Nov, in the year 2018.



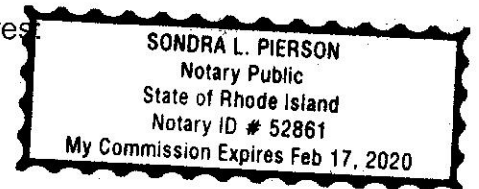
David Hirsch  
President  
Roger Williams Hospital

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

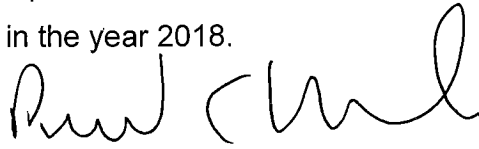


NOTARY PUBLIC  
My Commission Expires






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



Donald C. McQueen  
President  
CharterCARE Foundation

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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



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

1967761.2 02611.000  
1973693.3 02611.000



# Exhibit 1

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

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

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

**NOTICE OF CLASS ACTION PARTIAL SETTLEMENT**

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

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

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

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

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

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

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

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

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

**YOUR LEGAL RIGHTS AND OPTIONS UNDER THE PARTIAL SETTLEMENT**

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

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

---

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

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

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

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

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

**YOU MAY OBJECT TO THE SETTLEMENT BY**

\_\_\_\_\_, 2019.

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

**YOU MAY ATTEND THE FINAL APPROVAL HEARING TO BE HELD ON \_\_\_\_\_, 2018.**

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

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

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

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

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**SUMMARY OF PARTIAL SETTLEMENT**

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

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

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

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

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

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

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

#### **STATEMENT OF POTENTIAL OUTCOME OF THE ACTION**

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



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

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

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

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

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

### **STATEMENT OF ATTORNEYS' FEES SOUGHT IN THE ACTION**

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

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

### **BASIC INFORMATION**

#### **1. WHY DID I GET THIS NOTICE PACKAGE?**

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

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

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

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

## **2. WHAT IS THE ACTION ABOUT?**

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

## **SETTLEMENT DISCUSSIONS**

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

## **3. WHY IS THIS CASE A CLASS ACTION?**

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

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

#### **4. WHY IS THERE A SETTLEMENT?**

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

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

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

#### **5. WHY IS THIS ONLY A PARTIAL SETTLEMENT?**

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

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

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

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

## **6. WILL THIS LAWSUIT CONTINUE AFTER THE PARTIAL SETTLEMENT?**

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

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

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

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

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

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

## **8. WHAT DOES THE PARTIAL SETTLEMENT PROVIDE?**

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

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

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

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

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

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

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

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

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

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

## **9. CAN I GET OUT OF THE PARTIAL SETTLEMENT?**

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

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

## **10. WHO ARE THE LAWYERS REPRESENTING THE CLASS**

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

## **11. DO I HAVE A LAWYER IN THE CASE?**

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

## **12. HOW WILL THE LAWYERS BE PAID?**

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



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

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

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

### **OBJECTING TO THE ATTORNEYS' FEES**

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

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

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

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NONSETTLING DEFENDANTS' LOCAL COUNSEL

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Prospect CharterCare, LLC  
Prospect CharterCare SJHSRI, LLC  
Prospect CharterCare RWMC, LLC

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Prospect East Holdings, Inc.

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Diocesan Administration Corporation

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[ses@psh.com](mailto:ses@psh.com)

Diocesan Service Corporation

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

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

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

##### **THE FINAL APPROVAL HEARING**

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

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

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

**15. DO I HAVE TO COME TO THE HEARING?**

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

**16. MAY I SPEAK AT THE HEARING?**

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

**17. WHAT HAPPENS IF I DO NOTHING AT ALL?**

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

**GETTING MORE INFORMATION**

**18. ARE THERE MORE DETAILS ABOUT THE PARTIAL SETTLEMENT?**

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

DATED: \_\_\_\_\_, 201\_

1972357.1 02611.000

# Exhibit 2

UNITED STATE DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

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

Plaintiffs :

v. :

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

PROSPECT CHARTERCARE, LLC, ET AL. :

Defendants. :

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

WILLIAM E. SMITH, Chief Judge.

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



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

THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

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

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

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

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

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

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

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

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

ORDERED:

ENTERED:

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Smith, C. J.

---

Dep. Clerk

Dated:

Dated:

EXHIBIT 1

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Prospect CharterCare SJHSRI, LLC  
Prospect CharterCare RWMC, LLC

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Prospect East Holdings, Inc.

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Roman Catholic Bishop of Providence

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[ses@psh.com](mailto:ses@psh.com)

Diocesan Administration Corporation  
Diocesan Service Corporation

1973518.1 02611.000



# Exhibit 3

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

[date]

VIA FIRST CLASS MAIL

[INSERT ADDRESSEE]

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

Dear Sir or Madam:

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

[Russell F. Conn]

Enclosures

1973551.1 02611.000

# Exhibit 4

UNITED STATE DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

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

Plaintiffs :

v. :

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

PROSPECT CHARTERCARE, LLC, ET AL. :

Defendants. :

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

Russell F. Conn hereby declares and states as follows:

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

5. On \_\_\_\_\_, 201\_\_, this Court signed an order preliminarily approving the proposed class action settlement between the Settlement B Settling Parties in the above-captioned action.
6. On \_\_\_\_\_, 201\_\_, pursuant to 28 U.S.C. §1715 (a) & (b), Conn Kavanaugh Rosenthal & Peisch, LLP staff, acting under my direction and supervision, served the CAFA Notice, which consisted of a cover letter and certain accompanying documents, upon the U.S. Attorney General and the appropriate government officials for all of the states in which proposed members of the Settlement Class reside, based on information provided to me by Attorney Stephen Del Sesto as Receiver and Administrator for the St. Joseph Health Services of Rhode Island Retirement Plan, by mail using the United States Postal Service First Class Mail.
7. Attached hereto as Exhibit A is a true and correct copy of the letter that was mailed as described in paragraph 6.
8. Attached hereto as Exhibit B is the list of names and addresses of the government officials upon whom the CAFA Notice was served.

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

Executed this \_\_\_\_\_ of \_\_\_\_\_, 201\_\_ in Massachusetts.

\_\_\_\_\_ [sign] \_\_\_\_\_

EXHIBIT A

[same as Ex 03 to Settlement B Agreement]

EXHIBIT B

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

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

1973584.1 02611.000



# Exhibit 5

CERTIFICATE OF THE SECRETARY OF CHARTERCARE COMMUNITY BOARD

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

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

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

CHARTERCARE COMMUNITY BOARD

By: \_\_\_\_\_

Its Secretary

# Exhibit I

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

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

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

*[Signatures on following page]*

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

---

[insert name]  
[insert title]  
CharterCARE Community Board

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

---

NOTARY PUBLIC  
My Commission Expires:

# Exhibit A

Filing Fee: \$10.00

ID Number: 161987



**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

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

**NON-PROFIT CORPORATION**

**RESTATED ARTICLES OF INCORPORATION**

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

1. The name of the corporation is CharterCARE Foundation

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

- The restated articles and/or amendment(s) were adopted at a meeting of the members held on \_\_\_\_\_, at which meeting a quorum was present, and the correction received at least a majority of the votes which members present or represented by proxy at such meeting were entitled to cast.
- The restated articles and/or amendment(s) were adopted by a consent in writing on \_\_\_\_\_, signed by all members entitled to vote with respect thereto.

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

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

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

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

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

4. The attached restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation, as previously amended, and the restated articles of incorporation, together with the designated amendments, if any, supersede the original articles of incorporation and all previous amendments to the articles of incorporation.

5. Date when the restated article is to become effective upon filing  
(not prior to, nor more than 30 days after, the filing of these restated articles)

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

Date: \_\_\_\_\_

CharterCARE Foundation

Print Corporate Name

By Donald C. McQueen

President or  Vice President (check one)

**AND**

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

Secretary or  Assistant Secretary (check one)



CharterCARE Foundation

Exhibit A

to

RESTATED ARTICLES OF INCORPORATION

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

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

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

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

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

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

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

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

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

7. No Private Inurement. No part of the assets or net earnings of the corporation shall inure to the benefit of, or be distributable to, any director or officer of the corporation or any other private person, except that the corporation may pay reasonable compensation for services rendered and make payments and distributions in furtherance of exempt purposes.
8. Distribution in Liquidation. In the event of any liquidation, dissolution, termination, or winding up of the corporation (whether voluntary, involuntary or by operation of law), the property or assets of the corporation remaining after providing for the payment of its debts and obligations shall be distributed as then determined by the corporation's Board of Directors to one or more organizations that operate exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code or corresponding section of any future federal tax code, the purposes of which are the advancement of health care and educational and other activities in support thereof.
9. Successor Laws. All references herein (a) to the Code refer to the Code as now in force or as hereafter amended, or any successor statute and (b) to the Rhode Island General Laws, or any chapter thereof, refer to said laws now in force or as hereafter amended.

# Exhibit 6

## IRREVOCABLE ASSIGNMENT

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

*[Signature on following page]*

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

---

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

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

---

NOTARY PUBLIC  
My Commission Expires:

1965709.1 02611.000

1973741.1 02611.000

# Exhibit 7

## JOINT TORTFEASOR RELEASE

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

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



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

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

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

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

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

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

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

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

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

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

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
GAIL J. MAJOR

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
NANCY ZOMPA

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
RALPH BRYDEN

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
DOROTHY WILLNER

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
CAROLL SHORT

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:



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

\_\_\_\_\_  
DONNA BOUTELLE

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
EUGENIA LEVESQUE

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

1958591.1 02611.000  
1973742.1 02611.000

# Exhibit 8

## JOINT TORTFEASOR RELEASE

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

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

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

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

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

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

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

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

*[Signatures on pages to follow]*

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

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

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
GAIL J. MAJOR

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
NANCY ZOMPA

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:



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

\_\_\_\_\_  
RALPH BRYDEN

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
DOROTHY WILLNER

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
CAROLL SHORT

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
DONNA BOUTELLE

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
EUGENIA LEVESQUE

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

1958593.1 02611.000  
1973745.1 02611.000

# Exhibit 9

## JOINT TORTFEASOR RELEASE

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

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

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

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

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

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

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

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



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

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

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

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

\_\_\_\_\_  
[insert name]  
[insert title]  
CharterCARE Community Board

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

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

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

\_\_\_\_\_  
[insert name]  
[insert title]  
Roger Williams Hospital

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

1958592.2 02611.000  
1973749.1 02611.000

# Exhibit 10

## JOINT TORTFEASOR RELEASE

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

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

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

As used herein, "RIF" or "Releasee" refers to the Rhode Island Community Foundation d/b/a Rhode Island Foundation, and all of its past and present directors, officers, trustees, employees, committee members, attorneys, insurers, and agents, except that this release applies solely to their roles as officers, directors, attorneys, and agents of RIF and does not apply to, or otherwise release them from liability in connection with, their roles as directors, officers, trustees, employees, committee members, attorneys, insurers, or agents of any other entity or in any other capacity. The following persons or entities are expressly not released: Monsignor Timothy Reilly, Roman Catholic Bishop of Providence, Diocesan Administration Corporation, Diocesan Service Corporation, Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, Prospect CharterCare RWMC, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., Adler Pollock & Sheehan, P.C., and The Angell Pension Group, Inc.

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

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

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

*[Signatures on pages to follow]*

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

\_\_\_\_\_  
[insert name]  
[insert title]  
CharterCARE Community Board

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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

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

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:



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

\_\_\_\_\_  
[insert name]  
[insert title]  
Roger Williams Hospital

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

1958594.1 02611.000  
1973751.1 02611.000

# Exhibit 11

## CONSENT OF RECEIVER

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

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

*[Signature on following page]*

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

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

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

1965716.1 02611.000