

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

In re: CHARTERCARE HEALTH PARTNERS :
FOUNDATION; ROGER WILLIAMS :
HOSPITAL; and ST. JOSEPH HEALTH :
SERVICES OF RHODE ISLAND, INC., :
Petitioners :

C.A. NO: KM-2015-0035

v. :

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, :

Respondents and Third :
Party Petitioners :

v. :

RHODE ISLAND COMMUNITY :
FOUNDATION, d/b/a RHODE ISLAND :
FOUNDATION, :

Third Party Respondent :

**JOINT PETITION TO MODIFY APRIL 20, 2015 CY PRES ORDER,
VACATE JUNE 29, 2018 ORDER CONCERNING PRESERVATION OF CCF ASSETS,
AND FOR ENTRY OF FINAL JUDGMENT**

All parties to this action—Petitioners CharterCARE Health Partners Foundation n/k/a CharterCARE Foundation (“CCF”), Roger Williams Hospital (“RWH”), and St. Joseph Health Services of Rhode Island (“SJHSRI”) (collectively the “Petitioners”), together with Respondents/Third Party Petitioners, Stephen Del Sesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”), Gail J. Major, Nancy

Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque (collectively hereinafter “Counter Petitioners”) and Third Party Respondent Rhode Island Community Foundation d/b/a Rhode Island Foundation (“RIF”)—now jointly move for the following relief in order to finalize and effectuate the terms of their Proposed Settlement Agreement dated November 21, 2018 (hereinafter the “PSA” or “Settlement B”). The Parties respectfully request that this Court:

- a. modify the terms of its previously issued April 20, 2015 *Order on Petition for Approval of Disposition of Charitable Assets* (hereinafter, the “2015 *Cy Pres* Order”) in order to:
 - i. approve a transfer of \$3,900,000 (or up to \$4,500,000 if RSUI breaches its side agreement)¹ of CCF Funds² to the Receiver to be used (after payment of Counter Petitioners’ counsel fees and expenses³) for the benefit of the Plan pursuant to the terms of the PSA; and
 - ii. otherwise affirm the continued validity and enforceability of the 2015 *Cy Pres* Order with respect to all remaining CCF Funds;
- b. vacate its previously issued June 29, 2018 *Order Preserving Assets Pending Litigation* in order to effectuate the aforementioned transfer; and
- c. enter Final Judgment on the docket in the form of a separate document that recites the relief described above in paragraph (a), and in substantially the same form as the proposed Final Judgment attached hereto at **Exhibit A**.

¹ See *infra* at fn.8.

² As used herein, the term “CCF Funds” shall refer to all funds held by CCF, either through RIF or directly.

³ Counter Petitioners’ counsel fees and expenses associated with the PSA are the subject of pending approvals in the United States District Court for the District of Rhode Island in the now-pending matter of *Stephen Del Sesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan v. Prospect CharterCARE, LLC et al.*, No. 1:18-cv-00328 (hereinafter the “Federal Court Action”).

As grounds for this Joint Petition, the Parties state as follows.

1. The above-captioned proceeding originally commenced with Petitioners' filing of a *Petition for Approval of Disposition of Charitable Assets Including Application of Doctrine of Cy Pres* (the "2015 *Cy Pres* Petition") on January 13, 2015. That 2015 *Cy Pres* Petition addressed how charitable donations to RWH and SJHSRI (collectively, the "Heritage Hospitals") should be disposed of following the Heritage Hospitals' 2014 sale of their health care assets to a for-profit acquirer. Petitioners proposed that certain of those charitable assets (approximately \$23,255,708) remain with the Heritage Hospitals to satisfy certain "Outstanding Pre and Post Closing Liabilities" during their wind-down period, and that the remaining charitable assets (approximately \$8,410,287) be transferred to CCF, a non-profit charitable foundation, to be administered as close to the original donors' intent as possible, pursuant to the doctrine of *cy pres*. (Id. ¶¶ 20-23, 26).

2. Following a hearing on April 6, 2015, this Court granted Petitioners' requests and issued the 2015 *Cy Pres* Order on April 20, 2015. By way of reference, a copy of that 2015 *Cy Pres* Order is attached hereto at **Exhibit B**. Pursuant to that Order, CCF thereafter received approximately \$8.2 million⁴ of the Heritage Hospitals' charitable assets (hereinafter referred to as the "*Cy Pres* Transfer"), and engaged RIF to act as a custodian with respect to those funds. In the four years since CCF received those funds, CCF has applied their proceeds towards grants and scholarships to promote accessible, affordable health care in Rhode Island, consistent with the terms of the 2015 *Cy Pres* Order.

⁴ Fluctuation in the value of the underlying assets explains why the 2015 *Cy Pres* Petition (which was filed on January 13, 2015) recited that CCF should receive assets valued at approximately \$8,410,287, but CCF later received the lesser sum of approximately \$8,227,916.77 in May and June, 2015.

3. As this Court is aware, circumstances have changed since the Court issued its 2015 *Cy Pres* Order. On August 18, 2017, SJHSRI filed a petition seeking appointment of a receiver to administer the Plan due to severe underfunding and the imminent possibility of significant across-the-board reductions in benefits paid to Plan beneficiaries. This Court appointed Mr. Del Sesto as the Receiver for the Plan, and approved his engagement of Wistow, Sheehan, & Loveley, P.C. as Special Counsel for the Receiver. Following several months of investigating potential claims for recovery of assets into the Plan, Special Counsel filed the Federal Court Action⁵ on June 18, 2018 against various defendants including CCF. The Counter Petitioners in this *cy pres* proceeding action are the Plaintiffs in the related Federal Court Action.

4. In their Complaint in the Federal Court Action, Plaintiffs asserted claims against CCF for, *inter alia*, violation of the Rhode Island Fraudulent Transfer Act, R.I. Gen. Laws § 6-16-4 and -5, fraudulent scheme, conspiracy, and aiding and abetting breaches of fiduciary duty. Substantially all these claims arise from the *Cy Pres* Transfer that this Court approved by way of its 2015 *Cy Pres* Order. The gravamen of Plaintiffs' claims against CCF is that the *Cy Pres* Transfer was unlawful because: (a) the Plan and/or its beneficiaries were creditors of SJHSRI at the time the 2015 *Cy Pres* Petition was filed; (b) Petitioners made false and/or misleading statements in the 2015 *Cy Pres* Petition implying that the Heritage Hospitals only needed to apply *some* of their charitable assets to satisfy their "Outstanding Pre and Post Closing Liabilities," inclusive of the SJHSRI pension liability, when in fact the Plan was so deeply underfunded that *all* of those charitable assets (and more) were necessary to satisfy the outstanding pension liability; (c) Petitioners should have notified Plan beneficiaries of the pendency of the 2015 *Cy Pres* Petition; and (d) as creditors of dissolving non-profit corporations

⁵ See supra fn. 3.

(SJHSRI and RWH), R.I. Gen. Laws § 7-6-51⁶ afforded the Plan and/or its beneficiaries a priority claim to *all* the Heritage Hospitals' charitable assets before *any* portion of such assets, restricted or otherwise, could be transferred to another charity such as CCF under the doctrine of *cy pres*.

5. Contemporaneous with the filing of their Federal Court Complaint, Counter Petitioners also filed a motion to intervene in this action on June 18, 2018 (hereinafter the "Intervention Motion"). Through that motion, Counter Petitioners sought to vacate the 2015 *Cy Pres* Order in its entirety and freeze all of CCF's assets, including those held by custodian RIF, pending the ultimately resolution of their claims in the Federal Court Action.

6. On June 28, 2018, CCF and Counter Petitioners presented the Court with an agreed-upon *Order Preserving Assets Pending Litigation* (hereinafter, the "Preservation Order"). Through that Order (which entered on June 29, 2018), CCF agreed that, while the litigation was pending, it would limit distributions received from RIF to not more than 4.5% of its fund corpus per year. A copy of that Preservation Order is attached hereto at **Exhibit C**.

7. CCF and Counter Petitioners thereafter filed extensive briefing on the pending Intervention Motion. As a procedural matter, CCF argued that the Intervention Motion was untimely because the 2015 *Cy Pres* Order qualified as a final judgment under Super. R. Civ. P. 58. On a substantive basis, CCF also vigorously contested Counter Petitioners' underlying claims. CCF argued that: (a) neither the Plan nor its beneficiaries qualified as creditors of SJHSRI; (b) none of the Petitioners misrepresented any facts in the 2015 *Cy Pres* Petition; (c) Petitioners had no obligation to notify Plan participants of the pendency of the 2015 *Cy Pres* Petition; and (d) even if they did qualify as creditors, Counter Petitioners did not have a statutory

⁶ Discussed more fully below at infra ¶¶ 14-15.

priority to restricted charitable assets of a dissolving non-profit corporation because their interpretation of R.I. Gen. Laws § 7-6-51 was incorrect. Counter Petitioners, in turn, vigorously disputed CCF's arguments in their reply brief in further support of the Intervention Motion.

8. Following a hearing on September 13, 2018, this Court issued a bench decision on September 17, 2018 granting Counter Petitioners' Intervention Motion. As part of its decision, this Court held that the 2015 *Cy Pres* Order did not qualify as a final judgment, and accordingly, this proceeding remained (and still remains) open and pending.

9. In a related development, on October 29, 2018, this Court issued a decision in the Receivership Proceeding⁷ that permitted the Receiver to proceed with seeking Federal Court approval of Counter Petitioners' separate settlement agreement with CharterCARE Community Board ("CCCB") and the Heritage Hospitals (hereinafter referred to as "Settlement A"). As this Court will recall, in Settlement A, CCCB agreed to, upon final approval of Settlement A, exercise its claimed sole membership interest in CCF to replace CCF's Board of Directors, amend CCF's Articles of Incorporation, take control of the CCF Funds in question, and irrevocably transfer them to the Receiver for the benefit of the Plan.

10. Against the backdrop of those proceedings, in the fall of 2018, CCF's counsel and the Receiver's Special Counsel entered into discussions to explore the possibility of resolving the claims against CCF. These discussions thereafter culminated in the Parties' detailed, comprehensive PSA dated November 21, 2018, a copy of which is attached (without its voluminous exhibits) hereto at **Exhibit D**.

11. The PSA's basic terms are as follows. CCF agrees to pay the Receiver a total settlement payment of \$4,500,000, of which it is anticipated \$3,900,000 will come from the CCF

⁷ *St. Joseph Health Services of Rhode Island v. St. Joseph Health Services of Rhode Island Retirement Plan*, No. PC-2017-3856.

Funds and \$600,000 is anticipated to be paid by CCF's liability insurer, RSUI.⁸ In exchange, CCF receives the following consideration: (a) releases from all Counter Petitioners, CCCB, and the Heritage Hospitals; (b) dismissal with prejudice of all Plaintiffs' claims against CCF and RIF; (c) entry of a final judgment in this 2015 *Cy Pres* proceeding affirming CCF's continued right to administer CCF's remaining funds to be used as close to the original donors' intent as possible; and (d) the irrevocable transfer to CCF of all CCCB's purported interests in CCF and the CCF Funds.

12. By its terms, the PSA is contingent upon three successive judicial approvals. The first two judicial approvals already have issued. In an Order dated December 27, 2018 in the Receivership Proceeding, this Court approved the PSA as being in the best interests of the receivership estate and the Plan's participants and beneficiaries. In an Order dated September 30, 2019 in the Federal Court Action, Chief Judge William E. Smith of the United States District Court approved the PSA as "the product of good faith" and as "fair, reasonable, and adequate" under Fed. R. Civ. P. 23 governing class actions. A copy of Judge Smith's September 30, 2019 Order is attached hereto at **Exhibit E**.

13. In the Instant Petition, the Parties now request that this Court issue the third and final required approval. This Court should approve the PSA because it represents a fair and reasonable settlement of the Parties' competing claims to the charitable assets in question. Rhode Island has a strong public policy encouraging voluntary settlement of disputes such as the one presented here. See Ryan v. Roman Catholic Bishop of Providence, 941 A.2d 174, 186-87 (R.I. 2008). "Our judicial system encourages settlement because it serves several laudable

⁸ CCF represents that in a side agreement between CCF and RSUI dated December 11, 2018, RSUI agreed to tender the full limits of its \$1 million policy, with \$400,000 allocated to CCF's defense costs and the remaining \$600,000 allocated to CCF's settlement payment to the Receiver.

purposes, among them lessening the strain on scarce judicial resources and preventing litigants from sustaining significant costs.” Id. at 186. “Where the parties, acting in good faith, settle a controversy, the courts will enforce the compromise without regard to what the result might, or would have been, had the parties chosen to litigate rather than settle.” Homar, Inc. v. North Farm Assocs., 445 A.2d 288, 290 (R.I. 1982) (quoting J. Kahn & Co. v. Clark, 178 F.2d 111, 114 (5th Cir. 1949)).

14. Here, the Parties elected to settle their competing claims to the charitable funds in question in view of the expense, uncertainty, and delay associated with litigation. Absent settlement, none of the Parties can predict with certainty exactly how their competing claims to the charitable funds would be finally resolved. In large part, this uncertainty reflects that Counter Petitioners’ claims against CCF turn upon on a novel issue of statutory interpretation concerning the Rhode Island Nonprofit Corporation Act, R.I. Gen. Laws, § 7-6-51. That statute provides as follows.

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

- (1) *All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made for their payment and discharge;*
- (2) *Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with the requirements;*
- (3) *Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation,*

pursuant to a plan of distribution adopted as provided in this chapter or as otherwise provided in its articles of incorporation or bylaws;

- (4) Any other assets shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;
- (5) Any remaining assets may be distributed to any persons, societies, organizations, or domestic or foreign corporations, whether for profit or nonprofit, that may be specified in a plan of distribution adopted as provided in this chapter.

R.I. Gen. Laws § 7-6-51 (emphasis added). There are no decisions interpreting this statute.

15. Counter Petitioners contend that R.I. Gen. Laws § 7-6-51 creates an order of priority, such that creditor claims described in subpart (1) must be satisfied before any *cy pres* transfers described in subpart (3) may take place. As precedent, they rely upon a bankruptcy court decision that interpreted a similar District of Columbia code provision concerning dissolving nonprofits as creating an order of priority in favor of creditors. See In re Crossroad Health Ministry, Inc., 319 B.R. 778, 781 (Bankr. D.D.C. 2005), aff'd by Bierbower v. McCarthy, 334 B.R. 478 (D.D.C. 2005). CCF contests that interpretation, and notes that R.I. Gen. Laws § 7-6-51 omits the type of ordinal language that one would expect to see if the legislature intended to endorse such a hierarchy. Cf. R.I. Gen. Laws § 34-44-12(c) (requiring receiver to disburse proceeds from a sale of abandoned property “in the following order of priority”); R.I. Gen. Laws § 46-25-18(a) (requiring Narragansett Bay Commission to apply certain federal funds “in the following order of priority”).

16. Absent settlement, final resolution of this novel issue of statutory interpretation would require prolonged litigation at trial court level, likely followed by a time-consuming, expensive appeal and/or certified question to the Rhode Island Supreme Court or the First Circuit

Court of Appeals. Indeed, in explaining the reasonableness of the PSA, Chief Judge Smith's recent Order noted "the complexity of this case and lack of settled law with respect to the claims asserted against CCF. . . ." (Exhibit E, at p. 9).

17. As a small non-profit foundation, CCF is particularly ill-suited to finance prolonged litigation. Its only available insurance for the defense costs associated with these claims is a liability policy from RSUI with a \$1 million aggregate limit *inclusive* of defense costs, i.e. a so-called "wasting" policy. Absent a settlement, CCF would quickly exhaust the entire \$1 million proceeds of its "wasting" insurance policy. After depleting all its available insurance, CCF then would be forced to petition this Court for *seriatim* modification of the Preservation Order simply to keep funding its continued defense costs. That would place CCF in the position of asking this Court's permission to use charitable gifts to vindicate CCF's right to continue administering those charitable gifts. The PSA prevents CCF from being forced into that difficult position.⁹

18. As noted above, the PSA calls for CCF to transfer \$3,900,000 of its charitable assets to the Receiver.¹⁰ One of the purposes of this Petition is to permit the Attorney General an opportunity to comment on whether, under the unique circumstances presented here, the proposed transfer of \$3,900,000 in charitable assets represents an appropriate disposition of charitable assets. See R.I. Gen. Laws § 18-9-1; Israel v. Nat'l Bd. Of Young Men's Christian

⁹ From CCF's perspective, the prospective burden of prolonged litigation became more acute following this Court's October 29, 2018 decision granting preliminary approval of Settlement A. As noted above, in Settlement A, CCCB essentially agreed to "sell" CCF and all the CCF Funds to the Receiver. Absent settlement, in order to survive, CCF would need to simultaneously litigate the Federal Court Action, the Counter Petitioners' claims in this *cy pres* action, and also file a new action against CCCB to oppose the Settlement A terms concerning CCF. In that new suit, CCF would request a preliminary injunction barring CCCB from effectuating the Settlement A terms concerning CCF unless and until the court had the opportunity to adjudicate CCF's claim that CCCB previously had abandoned its claimed interest in CCF and/or that the Settlement A terms concerning CCF violated Rhode Island law.

¹⁰ Or up to \$4,500,000 if RSUI fails to contribute \$600,000 in accordance with the side agreement between CCF and RSUI. See supra at fn.8.

Ass'n, 369 A.2d 646, 649 (R.I. 1977). The Parties note that the proposed \$3,900,000 transfer is roughly equivalent to a figure that the Attorney General previously offered as a recommended settlement amount. In his September 27, 2018 response to Settlement A in the Receivership Proceeding, the Attorney General stated as follows.

If this Court approves the Proposed Settlement Agreement allowing the Receiver access to those assets, the Attorney General requests that this Court limit transfer of restricted charitable assets for pension purposes to those assets listed under “General Use” in the [2015] *Cy Pres* Petition.

Response of the Rhode Island Attorney General to the Receiver’s Petition for Instructions, C.A. No. PC-2017-3856, at 10. (Sept. 27, 2018) (attached at **Exhibit F**). The “amount of the assets listed under ‘General Use’ in the [2015] *Cy Pres* Petition” was \$3,714,310. *Id.* at 10 fn. 5; see also (2015 *Cy Pres* Petition, ¶ 22). Expressed in today’s dollars, the \$3,900,000 figure in the PSA roughly corresponds to the \$3,714,310 figure in the 2015 *Cy Pres* Petition after taking into account the approximate 10.6% net appreciation of CCF Funds from 2015 to the present.

19. In sum, this Court should approve the PSA as a fair and reasonable compromise of competing claims to charitable assets, and an appropriate disposition of such assets. Accordingly, the Parties now request that this Court modify its 2015 *Cy Pres* Order and vacate the Preservation Order to permit the parties to implement their PSA.

20. The Parties also request that, separate and apart from an Order granting this Petition, this Court also enter Final Judgment on the docket. A proposed form of Final Judgment is attached at **Exhibit A**. As noted above, the lack of such a Final Judgment contributed to Counter Petitioners’ ability to intervene and challenge the validity of the 2015 *Cy Pres* Order more than three years after it was issued. Because it is the intent of the Parties to fully and finally resolve any and all claims regarding the 2015 *Cy Pres* Order, and to permit CCF to

continue administering the remaining CCF Funds consistent with donor intent, the Parties request that this Court conclusively end this proceeding by entering a Final Judgment.¹¹

WHEREFORE, the Parties respectfully request that this Court **GRANT** this motion and the aforesaid relief.

CHARTERCARE FOUNDATION,

By its attorneys,

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¹¹ CCF cannot rule out the possibility that, at a future date, it may determine that its post-settlement trust corpus is too small to be administered by an independent foundation. Accordingly, CCF reserves the right to, at a later date, file a new *cy pres* petition seeking permission to transfer the post-settlement trust corpus to a different foundation, which then would take on the responsibility of administering the charitable assets consistent with donor intent.

RHODE ISLAND COMMUNITY
FOUNDATION,

By its attorneys,

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STEPHEN DEL SESTO, AS RECEIVER
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ISLAND RETIREMENT PLAN, GAIL J.
MAJOR, NANCY ZOMPA, RALPH
BRYDEN, DOROTHY WILLNER, CAROLL
SHORT, DONNA BOUTELLE, AND
EUGENIA LEVESQUE

By their attorneys,

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Dated: October 15, 2019

CERTIFICATE OF SERVICE

I hereby certify that, on the 15th day of October, 2019, I filed and served the foregoing document through the electronic filing system on the following users of record:

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

/s/ Max Wistow

Exhibit A

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

In re: CHARTERCARE HEALTH PARTNERS :
FOUNDATION; ROGER WILLIAMS :
HOSPITAL; and ST. JOSEPH HEALTH :
SERVICES OF RHODE ISLAND, INC., :
Petitioners :

C.A. NO: KM-2015-0035

v. :

STEPHEN DEL SESTO, AS RECEIVER AND :
ADMINISTRATOR OF THE ST. JOSEPH :
HEALTH SERVICES OF RHODE ISLAND :
RETIREMENT PLAN; GAIL J. MAJOR; :
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DONNA BOUTELLE; and EUGENIA :
LEVESQUE, :

Respondents and Third :
Party Petitioners :

v. :

RHODE ISLAND COMMUNITY :
FOUNDATION, d/b/a RHODE ISLAND :
FOUNDATION, :

Third Party Respondent :

[PROPOSED] FINAL JUDGMENT

This action came on before the Court, Stern, Justice, presiding, and for the reasons explained in this Court's bench decision on April 6, 2015, the Court's *Order on Petition for Approval of Deposition of Charitable Assets* dated April 20, 2015 (hereinafter the "2015 Cy Pres Order"), and the Court's subsequent _____, 2019 bench decision on the parties' *Joint Petition to Modify April 20, 2015 Cy Pres Order, Vacate June 29, 2018 Order Concerning Preservation of CCF Assets, and for Entry of Final Judgment*, it is hereby:

ORDERED, ADJUDGED, and DECREED

1. CharterCARE Foundation (“CCF”) shall, within the time frames set forth in the parties’ Settlement Agreement dated November 21, 2018, cause the sum of THREE MILLION NINE HUNDRED THOUSAND DOLLARS (\$3,900,000.00) to be transferred to Stephen Del Sesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”), from the funds originally transferred to CCF by virtue of the 2015 *Cy Pres* Order (or up to \$4,500,000 if RSUI breaches its side agreement with CCF concerning the aforementioned Settlement Agreement), with such funds to be used by the Receiver (after payment of Counter Petitioners’ counsel fees and expenses) for the benefit of the Plan;
2. Excepting the funds to be transferred to the Receiver as described above, all other terms of the Court’s 2015 *Cy Pres* Order are hereby affirmed and shall continue to be in full force and effect; and
3. Each party to this action shall bear its own fees, costs, and expenses.

For the avoidance of doubt, the foregoing is intended as a final judgment from which an appeal lies pursuant to R.I. Super. R. Civ. P. 58(a) and/or 54(b).

ORDERED:

ENTERED:

Stern, J.
Dated:

Dep. Clerk
Dated:

Presented by:

/s/ Andrew R. Dennington
Russell F. Conn (*pro hac vice*)
Andrew R. Dennington (#7528)
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2272901.1 02611.000

Exhibit B

Case Number: KM-2015-0035
Filed in Kent County Superior Court
Submitted: 4/6/2015 4:25:29 PM
Envelope: 146811
Reviewer: Demonica Lynch

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

In re: CHARTERCARE HEALTH :
PARTNERS FOUNDATION, :
ROGER WILLIAMS HOSPITAL and :
ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND :

C.A. No. KM – 2015-0035

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

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

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

1. As set forth in paragraph 20 of the Petition, *cy pres* approval is granted for CCHP Foundation to use the funds in the amount of \$17,465.79, at the discretion of CCHP Foundation’s Board of Directors, to serve the Foundation mission.

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

- Temporarily restricted funds in the amount of \$284,710.34

Case Number: KM-2015-0035
Filed in Kent County Superior Court
Submitted: 4/6/2015 4:25:29 PM
Envelope: 146811
Reviewer: Demonica Lynch

- Permanently restricted funds in the amount of \$4,209,522.00
 - Temporarily restricted earnings in the amount of \$2,242,366.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets.
3. As set forth in paragraph 24 of the Petition, approval is granted for RWH to use the following funds:
- \$12,288,848.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets to satisfy the Outstanding Pre and Post Closing Liabilities as and when due.
4. As set forth in paragraph 25 of the Petition, *cy pres* approval is granted for RWH to use the following funds:
- Continuing medical education funds in the amount of \$26,310.29 to support continuing medical education for the medical staff at RWMC over and above the routine budgeted cost of necessary continuing medical education at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.
 - Dedicated funds in the aggregate amount of \$300,349.75 as more fully identified in paragraph 25B of the Petition to enhance surgical oncology physician and fellow training and education over and above the routine budgeted costs of necessary academic and research programs at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.
5. As set forth in paragraph 26 of the Petition, *cy pres* approval is granted for the transfer of the following SJHSRI funds to CCHP Foundation, to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation mission:
- \$258,961.61 in restricted cash
 - \$196,496.00 in endowment investment earnings (temporarily restricted scholarship funds in the amount of \$76,254.00 and temporarily restricted endowment interest in the amount of \$120,241.00)
 - \$1,200,765.00 in permanently restricted scholarships and endowments (\$1,066,281.00 in endowments and \$134,484.00 in scholarships)

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

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

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

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

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

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

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

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

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

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

ENTER:

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

PER ORDER:

/s/ Carin Miley
Clerk (Deputy)

Presented by:

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

By their attorneys,

/s/ Patricia K. Rocha
PATRICIA K. ROCHA (#2793)
JOSEPH AVANZATO (#4774)
LESLIE D. PARKER (#8348)
ADLER POLLOCK & SHEEHAN P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903
Tel: 401-274-7200
Fax: 401-351-4607
procha@apslaw.com
Dated: April 6, 2015

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Reviewer: Demonica Lynch

CERTIFICATE OF SERVICE

I hereby certify that, on April 6, 2015

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

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

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

And emailed a copy to the above listed counsel.

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

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

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

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

/s/ Patricia K. Rocha

Exhibit C

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

In re: CHARTERCARE HEALTH :
PARTNERS FOUNDATION, :
ROGER WILLIAMS HOSPITAL and :
ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND, INC. :

C.A. No: KM-2015-0035

**ORDER PRESERVING ASSETS PENDING LITIGATION
AND SETTING SCHEDULE FOR HEARING ON MOTION TO INTERVENE**

In accordance with the agreement of Proposed Intervenors and CharterCare Foundation (“CCF”), and for the reasons discussed at the hearing on June 28, 2018, the Court hereby orders as follows:

1. All funds presently held by the Rhode Island Foundation (“RIF”) pursuant to a so-called Instrument of Transfer (attached hereto at Exhibit A) dated April 14, 2015, or otherwise (such funds being, hereinafter, “Fund Corpus”) shall continue to be held, managed and administered by RIF pursuant to the terms of such Instrument of Transfer (including the annual administrative support fee) until such time as this Court, or another Court of competent jurisdiction,¹ finally adjudicates on the merits Proposed Intervenors’ claims to entitlement to the Fund Corpus² and either all appeals have been exhausted or the time for taking any appeals has expired without any appeals taken, with distributions only as provided in paragraph 2 below.
2. RIF may continue to make distributions to CCF, on an annual basis each December, on the Fund Corpus consisting of not more than 4.5% of the Fund Corpus (“Fund Corpus Income”) pursuant to the terms of the Instrument of Transfer. From the Fund Corpus Income, CCF may continue to pay the following: (1) expenses incurred in the ordinary course of business, including rent, salaries, utilities, insurance, usual accounting and legal fees, and the same types of expenses CCF has typically paid as part its operations; (2) its legal fees in this action and the Related Actions; and (3) its usual charitable grants as awarded by CCF each year. The forgoing payments and all other expenditures in total shall not exceed the Fund Corpus Income received each

¹ Besides proposing to intervene in the present action, the Proposed Intervenors have initiated suits in the United States District Court for the District of Rhode Island, Civil Action No. 18-cv-00328-WES-LDA, and in the Rhode Island Superior Court, Civil Action No. PC-2018-4386. The three actions together are called “the Related Actions.”

² As of April 30, 2018, CCF’s balance at RIF was \$8,783,572.83.

year by CCF from RIF, except as set forth in the second sentence of paragraph 3 below.

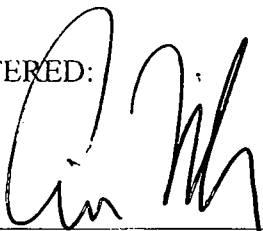
3. Payments received by CCF from the Malmstead Foundation will be paid by CCF to RIF and become part of the Fund Corpus. Miscellaneous charitable gifts, grants, or bequests received by CCF each year up to a grand total of \$25,000 annually may be retained and paid by CCF, and shall be excluded from the cap set forth in paragraph 2, and any excess shall be paid by CCF to RIF.
4. CCF will file its objection to the Motion to Intervene and its supporting memorandum by July 24, 2018. The Proposed Intervenor will file any reply by July 31, 2018. The Court will hear the motion soon thereafter.
5. This Order is entered (a) without prejudice to Proposed Intervenor's claim to a right to intervene herein; (b) without prejudice to Proposed Intervenor's claims herein or in another action (including the Related Actions) to the Fund Corpus; (c) without prejudice to CCF's denial that the Proposed Intervenor has a right to intervene herein; and (d) without prejudice to CCF's denial herein or in another action (including the Related Actions) that the Proposed Intervenor is entitled to the Fund Corpus.

ORDERED:



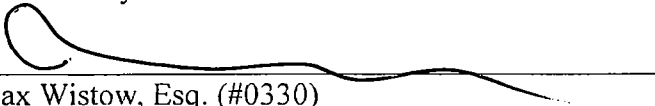
Stern, J.
Dated: 6/29/18

ENTERED:



Dep. Clerk
Dated: 6/29/18

Presented by:



Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
Wistow, Sheehan & Loveley, PC
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Russell Conn, Esq. (pro hac vice) ~~application pending~~

Carol Starkey, Esq. (pro hac vice application pending)

Andrew Dennington, Esq. (#7528)

Christopher Sweeney, Esq. (#9689)

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1860204.1 02611.000

Exhibit A



**RHODE ISLAND
FOUNDATION**

Lead, Transform, Inspire

**RHODE ISLAND FOUNDATION
INSTRUMENT OF TRANSFER
CharterCARE Foundation Fund**

Subject to the Option to Recover in Part II below, as of this 14th day of April, 2015, CharterCARE Health Partners Foundation ("Donor") hereby irrevocably transfers, conveys, assigns and pays over to the Rhode Island Foundation, a Rhode Island non-profit corporation (the "Foundation"), and the Foundation accepts, the property described in Exhibit A hereto, to create the CharterCARE Foundation Fund, (the "Fund"). The Fund shall be treated as an anonymous fund by the Foundation until further notice by the Donor. Additional contributions to the Fund may be made by us or others provided the contributed property is acceptable to the Foundation.

The Fund, together with any additions thereto, shall be held, managed and administered by the Foundation, either directly or through the use of an agency account, employing a corporate fiduciary or investment advisor, as the Foundation may deem appropriate, from time to time.

The assets hereby contributed shall be held by the Foundation, and the income and principal of the Fund shall be commingled with other Foundation assets held by the Foundation. The Fund assets shall be accounted for separately and any earnings from the common fund accruing to the Fund shall be credited to the account of the Fund.

Annual distributions from the Fund, as determined by the Foundation's spending rule in effect at that time, which at this time is 4.5% of the Fund's 16 trailing quarter average market balance, shall be paid to or for the support of Donor, a tax-exempt charitable organization under Internal Revenue Code §501(c)(3).

Notwithstanding the foregoing, Donor understands that the Articles of Association of the Foundation and applicable tax laws require that the Board of Directors of the Foundation have variance power over the assets donated to the Fund should "circumstances have so changed since the execution of this instrument as to render unnecessary, undesirable, impractical or impossible a literal compliance with the terms of this instrument." It is also understood that no restrictions or conditions may be imposed upon the administration of the Fund which will prevent the Foundation from employing the transferred assets or income therefrom in furtherance of its exempt status. The Foundation also retains the power in the Foundation's sole discretion to modify or withhold any distribution of income or principal if such distribution would otherwise fail to qualify for a charitable purpose as defined in Section 170(c) of the Internal Revenue Code. It is the policy of the Foundation that with respect to the Fund, the Foundation will seek the approval of the Rhode Island Attorney General prior to exercising the foregoing variance power. In all respects the use of the Fund, together with any additions thereto contributed by the Donor or by any third-party, shall be in

accordance with the terms of this instrument, the charitable purposes of the Foundation, and subject to the approval of the Foundation's Board of Directors.

The provisions of this instrument directing distributions from the Fund to be made as determined by the Foundation's spending rule shall apply, irrespective of the provisions of any state's Uniform Management of Institutional Funds Act or Uniform Prudent Management of Institutional Funds Act, as currently in force or as hereinafter enacted, amended or superseded. The Foundation assumes no responsibility as to the ability of the Donor to access principal, either under the Uniform Prudent Management of Institutional Funds Act or any law. Donor shall indemnify the Foundation against any claims or damages relating to any violations of donor restrictions on any portion of the Fund.

Donor attests that this transfer has been duly approved by all appropriate corporate action, including without limitation Donor's Board of Directors as described in the attached Certificate of Secretary.

II. Option to Recover: Donor hereby acknowledges that the property transferred and contributed to the Foundation shall belong to the Foundation in perpetuity, subject to changes in circumstances under which the Donor in its discretion may terminate part or all of the Fund and to have part or all of the Fund paid as a distribution to Donor.

Donor acknowledges and accepts that, to encourage permanence, while still allowing flexibility, the following provisions shall apply with respect to any distribution of the principal of the Fund made to Donor at the direction of Donor.

- (A) Directed distributions are allowed with ninety (90) days advance notice.
- (B) In addition to the annual Foundation administrative support fee, a withdrawal fee shall apply as follows:
 - (i) Year one: 5% of amount distributed.
 - (ii) Year two: 4% of amount distributed.
 - (iii) Year three: 3% of amount distributed.
 - (iv) Year four: 2% of amount distributed.
 - (v) Year five and thereafter: 1% of amount distributed.

III. All funds are subject to the Foundation's annual administrative support fee. Provided that the initial funding amount of the Fund from Donor shall be a minimum of eight-million dollars (\$8,000,000.00), the Foundation's annual administrative support fee on the Fund shall be .65% of the Fund's 16 trailing quarter average market balance. The initial funding amount as described in this paragraph shall be defined as all funds received by Donor for the Fund by September 30, 2015.

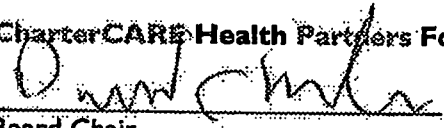
The following attachments are incorporated herein and made a part of this instrument:

- (A) The Foundation Investment Policy Statement, as currently in effect; and
- (B) The most recent quarterly report of Prime Buchholz, the Foundation's current investment consultant.

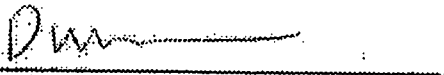
This instrument shall be construed and enforced in accordance with the laws of the State of Rhode Island and all provisions of the Articles of Incorporation and Bylaws of the Foundation as they may be amended from time to time.

Donor:

~~Charter~~ CARE Health Partners Foundation


 Board Chair

4/14/15
 Date

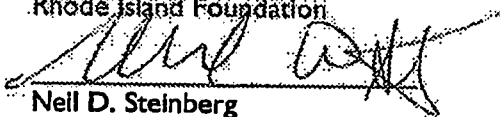

 Board Treasurer

4/14/15
 Date


 Executive Director

4/14/15
 Date

Accepted:
 Rhode Island Foundation


 Neil D. Steinberg
 President and CEO

4/17/15
 Date

Exhibit A

RHODE ISLAND FOUNDATION

INSTRUMENT OF TRANSFER

CharterCARE Foundation Fund

Cash Transfer:- \$5,752,655.00 -- May 28, 2015

Cash Transfer:- \$1,974,537.44 -- May 29, 2015

Exhibit D

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, Carol Short, Donna Boutelle, and Eugenia Levesque, said persons acting individually and¹ on behalf of all class members as defined herein (the Receiver and said persons are collectively referred to herein as "Plaintiffs"), CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and Roger Williams Hospital ("RWH") (CCCB, SJHSRI, and RWH are collectively referred to herein as the "Heritage Hospital Defendants"), and CharterCARE Foundation ("CCF"). For purposes of this Settlement B Agreement, Plaintiffs, the Heritage Hospital Defendants, and CCF are collectively referred to as the "Settlement B Settling Parties" and each of them are referred to individually as a Settlement B Settling Party.

RECITALS

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

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

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

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

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

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

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

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

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

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

³ See Settlement A Agreement, ¶ 13.

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

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

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

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

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

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

I. DEFINITIONS.

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

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

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

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

iii. seek to vacate the Preservation Order.⁶

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

⁶ See infra at p. 10, ¶ 27.

⁷ See infra at p. 9, ¶ 21.

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

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

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

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

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

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

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

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

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

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

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

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

II. **BASIC SETTLEMENT TERMS.**

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

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

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

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

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

III. NECESSARY COURT APPROVALS.

A. Approval in Receivership Proceedings.

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

B. Approval in Federal Court Action.

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

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

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

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

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

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

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

C. Amended *Cy Pres* Petition.

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

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

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

IV. INTERPLAY BETWEEN SETTLEMENT A AND SETTLEMENT B APPROVALS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. MISCELLANEOUS.

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

- long as the time to object to Settlement A has not yet passed. Moreover, in the event Settlement B is disapproved, CCF reserves the right to claim or argue in any other proceeding – i.e., a proceeding other than the process for Federal Court Approval of Settlement A -- to challenge or enforce CCCB's Foundation Interests that any rights granted pursuant to Settlement A Terms Regarding CCCB's Foundation Interests, including but not limited to the Settlement A Consent of Sole Member or the Irrevocable Assignment re. CharterCARE Foundation, but excluding CCCB's Hospital Interests, are illegal and/or unenforceable, including without limitation CCF's claim that CCCB abandoned or waived any rights or interests against or in CCF.
2. Within five (5) business days after this Settlement B Agreement is executed by all Settlement B Settling Parties, the Settlement B Settling Parties shall file a joint motion in the Federal Court Action to enlarge CCF's deadline to answer or otherwise respond to Plaintiffs' Amended Complaint in said action until thirty (30) days after either (a) the Court in the Receivership Proceeding refuses to approve Settlement B (but not earlier than December 5th), (b) the Federal Court refuses to approve Settlement B, or (c) the Court in the 2015 *Cy Pres* Proceeding (including after an appeal to the Rhode Island Supreme Court) refuses to enter the *Cy Pres* Final Judgment.
 3. Within five (5) business days after this Settlement B Agreement is executed by all Settlement B Settling Parties, CCF, Plaintiffs, SJHSRI, and RWH shall file a joint motion in the 2015 *Cy Pres* Proceeding seeking a stay of same until such time as the Settlement B Settling Parties file the Amended *Cy Pres* Petition, as set forth in

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

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

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

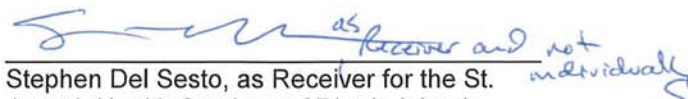
13. CCF, on the one hand, and Plaintiffs and the Heritage Hospital Defendants, on other hand, further agree that no promise or inducement has been offered with respect to the subject matter of this Settlement B Agreement between CCF, on the one hand, and Plaintiffs and the Heritage Hospital Defendants,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

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

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

[Signatures on pages to follow]

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


Stephen Del Sesto, as Receiver for the St. Joseph Health Services of Rhode Island Retirement Plan *not individually*


STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

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


NOTARY PUBLIC
My Commission Expires: 4/7/2022

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



GAIL J. MAJOR

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

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



NOTARY PUBLIC
My Commission Expires: 5/4/22

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

Nancy Zompa
NANCY ZOMPA

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

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

Max Weston 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

Case 1:18-cv-00328-WES-LDA Document 77-2 Filed 01/04/19 Page 33 of 131 PageID #: 4317

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.


NOTARY PUBLIC
My Commission Expires: MAX WISTOW

Case 1:18-cv-00328-WES-LDA Document 77-2 Filed 01/04/19 Page 34 of 131 PageID #: 4318

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 Carol 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

Case 1:18-cv-00328-WES-LDA Document 77-2 Filed 01/04/19 Page 35 of 131 PageID #: 4319

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

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



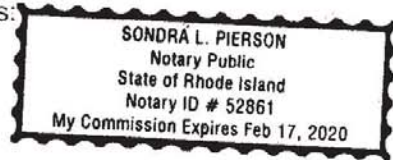
David Hirsch
President
CharterCARE Community Board

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

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



NOTARY PUBLIC
My Commission Expires:



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



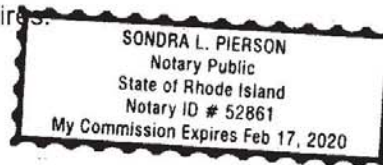
David Hirsch
President
St. Joseph health Services of Rhode Island

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

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



NOTARY PUBLIC
My Commission Expires _____



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



David Hirsch
President
Roger Williams Hospital

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

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



NOTARY PUBLIC
My Commission Expires



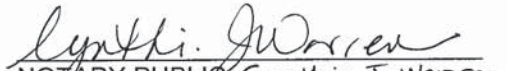
IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this 21st day of November, in the year 2018.



Donald C. McQueen
President
CharterCARE Foundation

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

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



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

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Exhibit E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)	
STEPHEN DEL SESTO, AS RECEIVER AND)	
ADMINISTRATOR OF THE ST. JOSEPH)	
HEALTH SERVICES OF RHODE ISLAND)	
RETIREMENT PLAN, ET AL.)	
)	
Plaintiffs,)	
)	C.A. No. 18-328 WES
v.)	
)	
PROSPECT CHARTERCARE, LLC, ET AL.,)	
)	
Defendants.)	
_____)	

MEMORANDUM OF DECISION

WILLIAM E. SMITH, Chief Judge.

Before the Court is a request for final approval of a settlement reached between Plaintiff Stephen Del Sesto ("Receiver"), as state appointed receiver and administrator of the St. Joseph Health Services of Rhode Island Retirement Plan ("Plan"), Named Plaintiffs Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque, individually and on behalf of others similarly situated (collectively, "Plaintiffs"), and Defendants St. Joseph Health Services of Rhode Island ("SJHSRI"), Roger Williams Hospital ("RWH"), CharterCARE Community Board ("CCCB"), and CharterCARE Foundation ("CCF")(collectively, the "Settling Defendants"). Two

groups of defendants -- the Diocesan Defendants¹ and the Prospect Entities² (collectively, the "Non-Settling Defendants") -- object to approval of the settlement.

Following preliminary approval of the settlement, a fairness hearing was held on August 29, 2019. At the conclusion of that hearing, the Court GRANTED final approval of the settlement. See Docket Min. Entry for Aug. 29, 2019. This memorandum addresses the reasons for the Court's decision and also certifies the class, class representatives, and class counsel.³

I. Background

This action stems from alleged underfunding of a retirement plan for nurses and other hospital workers employed by SJHSRI. Am. Compl. ¶ 54, ECF No. 60. According to the amended complaint, the Plan, which has 2,729 participants, is insolvent. Id. After the Plan was placed into receivership in 2017, the Receiver and several named participants, individually and on behalf of a purported class of plan participants, filed a twenty-three-count

¹ The Diocesan Defendants consist of the Roman Catholic Bishop of Providence, a corporation sole, the Diocesan Administration Corporation, and the Diocesan Service Corporation.

² The Prospect Entities include Prospect CharterCARE, LLC, Prospect CharterCARE SJHSRI, LLC, Prospect CharterCARE RWMC, LLC, Prospect East Holdings, Inc., and Prospect Medical Holdings, Inc.

³ This memorandum addresses only the merits of this settlement agreement. Plaintiffs' Motion for Attorneys' Fees in connection with the settlement, ECF No. 78, is currently being reviewed by the Special Master appointed by the Court on September 5, 2019. See Order Appointing Special Master, ECF No. 152.

complaint in this Court against several defendants, alleging violations of the Employee Retirement Income Security Act ("ERISA") for failure to meet minimum funding requirements and breach of fiduciary duty, as well as various state law claims. See generally Am. Compl.

A number of defendants have agreed to settle with Plaintiffs, resulting in two separate settlement agreements. This memorandum addresses the settlement agreement between Plaintiffs and Defendants SJHSRI, RWH, CCCB, and CCF, ECF No. 77-2 ("Settlement B").⁴ Pursuant to Settlement B, the Receiver will be transferred \$4.5 million for deposit into the Plan assets by CCF and its insurer. See Settlement B 13; Joint Motion for Settlement Class Certification, Appointment of Class Counsel, and Preliminary Settlement Approval 8 ("Joint Mot."), ECF No 77-1. In exchange, Plaintiffs and Defendants SJHSRI, CCCB, and RWH will release CCF and the Rhode Island Foundation⁵ from liability. See Settlement Agreement B 13. In addition, the Receiver will transfer to CCF any rights he holds in CCF. See Joint Mot. 8.

Plaintiffs and Settling Defendants sought preliminary approval of the settlement, to which the Non-Settling Defendants objected. See generally Joint Mot.; Diocesan Defs. Response in

⁴ Final approval of the other settlement, "Settlement A," is currently pending before this Court.

⁵ The Rhode Island Foundation is a custodian for CCF's investment assets. See Joint Mot. 4 n.4.

Opp. To Joint Mot., ECF No. 80; Prospect Entities Opp. To Joint Mot., ECF No 81. On May 17, 2019, the Court preliminarily approved the settlement and directed the settling parties to give notice to the purported class. See Order Granting Preliminary Approval 13, 16, ECF No. 123.

Plaintiffs and Settling Defendants now seek final approval of the settlement. One class member objects on the basis that the \$4.5 million amount transferred to the Plan is insufficient. The Non-Settling Defendants also reiterate their objections to the settlement, which will be explained in further detail below.

II. Discussion

a. Jurisdiction

In order to approve the settlement, the Court must first determine that it has jurisdiction over the dispute. A federal court has subject matter jurisdiction under 28 U.S.C. § 1331 so long as "the plaintiff's well-pleaded complaint. . . exhibit[s], within its four corners, either an explicit federal cause of action or a state-law cause of action that contains an embedded question of federal law that is both substantial and disputed." R.I. Fishermen's All. v. R.I. Dept. of Env'tl. Mgmt., 585 F.3d 42, 48 (1st Cir. 2009); see 28 U.S.C. § 1331. Plaintiffs' complaint alleges four claims which arise under ERISA -- a federal statute.

Moreover, Plaintiffs must meet statutory and constitutional requirements for standing as part of the threshold jurisdictional

analysis. See In re Deepwater Horizon, 739 F.3d 790, 798 (5th Cir. 2014). As to statutory standing, the civil enforcement provision under ERISA, 29 U.S.C. § 1132, allows claims by plan participants, beneficiaries, and fiduciaries for breach of fiduciary duty and equitable relief. See 29 U.S.C. § 1132(a)(2) & (3). The named plaintiffs are all current participants of the Plan, and the purported class includes participants and beneficiaries of the Plan. Am. Compl. ¶¶ 3-9, 35. Furthermore, the Receiver is an ERISA fiduciary because he, as Plan administrator, “exercises discretionary control or authority over the plan’s management, administration, or assets[.]” Mertens v. Hewitt Assoc., 508 U.S. 248, 251 (1993); 29 U.S.C. § 1102(a).

Constitutional standing under Article III requires an injury in fact, a causal connection between the injury and the defendant’s conduct, and the likelihood that a favorable outcome will redress the injury. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). While an injury must be particularized and concrete, “[t]his does not mean, however, that the risk of real harm cannot satisfy the requirement of concreteness.” Spokeo, Inc. v. Robins, 136 S.Ct. 1540, 1549 (2016). “At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice[.]” Lujan, 504 U.S. at 561; see In re Deepwater Horizon, 739 F.3d at 804 (“[I]t is sufficient for standing purposes that the plaintiffs seek recovery for an economic

harm that they allege they have suffered because for each class member we must assume arguendo the merits of his or her legal claim at the Rule 23 stage.”) (internal citation omitted).

In the amended complaint, Plaintiffs allege that the Plan is “grossly underfunded” because the Plan’s sponsor did not make required contributions for many years, particularly from 2010 to 2016, and that Defendants knew that the sponsor of the Plan faced liabilities well exceeding its assets as of 2014. Am. Compl. ¶ 63, 448. Plaintiffs also allege that, “[a]s a result of SJHSRI’s failure to fund the Plan in accordance with ERISA’s minimum funding standards, Plaintiffs pensions will be lost or at least severely reduced.”⁶ Id. ¶ 458. Given that the Court must accept these allegations as true at this stage of the proceedings, the Court is satisfied that Plaintiffs have alleged an injury sufficient for standing. See Dezelan v. Voya Ret. Ins. Annuity Co., No. 3:16-cv-1251, 2017 WL 2909714, at *5 (D. Conn. July 6, 2017) (“Generally, a plaintiff has standing to bring an ERISA claim where the plaintiff alleges a causal connection between defendants’ actions and actual harm to an ERISA plan in which the plaintiff participates.”)(citing LaRue v. DeWolff, Boberg & Assoc., Inc., 552 U.S. 248, 255-56 (2008)(recognizing that an ERISA claim for

⁶ The Plaintiffs further allege that when the Plan was placed into receivership, there was a request that “the Rhode Island Superior Court approve a virtually immediate 40% across-the-board reduction in benefits.” Am. Compl. ¶ 54.

breach of fiduciary duty "does not provide a remedy for individual injuries distinct from plan injuries" and stating that "[m]isconduct by the administrators of a defined benefit plan will not affect an individual's entitlement to a defined benefit unless it creates or enhances the risk of default by the entire plan.")).

Therefore, the Court finds that it has jurisdiction over the subject matter and parties in this dispute.

b. Final Approval Under Rule 23(e)

A Court may approve a settlement in a class action only upon a finding that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Some of the factors in this consideration include:

(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, and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Baptista v. Mutual of Omaha Ins. Co., 859 F. Supp. 2d 236, 240-41 (D.R.I. 2012) (citing City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974)). However, although "[t]he case law offers 'laundry lists of factors' pertaining to reasonableness. . . 'the ultimate decision by the judge involves balancing the advantages

and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement.'" Bezdek v. Vibram USA, Inc., 809 F.3d 78, 82 (1st Cir. 2015) (quoting Nat'l Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund, 582 F.3d 30, 44 (1st Cir. 2009)).

Additionally, "[i]f the parties negotiated at arm's length and conducted sufficient discovery, the district court must presume the settlement is reasonable." Id. (quoting In re Pharm. Indus. Average Wholesale Price Litig., 588 F.3d 24, 32-33 (1st Cir. 2009)). "[T]he lack of any serious objection to the settlement agreement from members of the class weighs in favor of approving the settlement." Medoff v. CVS Caremark Corp., No. 09-cv-554-JNL, 2016 WL 632238, at *6 (D.R.I. Feb. 17, 2016); see Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396 F.3d 96, 118 (2d Cir. 2005) ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.")(internal citation omitted).

The Court finds that this settlement has been entered into in good faith and that its terms are fair, adequate, and reasonable. See Fed. R. Civ. P. 23(e). Without question, this case involves the determination of complex legal questions which would be costly and time-consuming to litigate through trial. See Kemp-DeLisser v. Saint Francis Hospital and Medical Center, No. 15-CV-1113(VAB),

2016 WL 6542707, at *7 (D. Conn. Nov. 3, 2016) (“Many courts recognize the particular complexity of ERISA breach of fiduciary duty cases such as this one.”) Indeed, hundreds of pages of briefing have already been filed at this stage of the litigation.

Furthermore, Plaintiffs have provided evidence demonstrating that hundreds of class members support the settlement. See Declaration of Christopher Callaci, ECF No. 141; Affidavit of Arlene Violet, ECF No. 142; Declaration of Jeffrey W. Kastle, ECF No. 143. Only one member of the purported class of more than 2,700 members has objected on the basis that the amount of money to be transferred to the Receiver is only half of the money which should have gone into the Plan.⁷ See Response in Opp. to Settlement, ECF No. 128. However, as Plaintiffs have acknowledged, given the complexity of this case and lack of settled law with respect to the claims asserted against CCF, Plaintiffs are not without risk in proving liability should the case move forward. See Pl. Mem. in Supp. of Mot. for Final Approval 9, 27, ECF No. 139. In light of that risk, the settlement amount appears to be reasonable.

Additionally, as explained below, the Non-Settling Defendants do not object to Settlement B on the basis that it is the product of bad faith or collusion. On the contrary, as the Court noted in

⁷ The allegations against CCF in the complaint turn on an alleged improper transfer of approximately \$8.2 million in charitable funds to CCF in a 2015 cy pres proceeding. Am. Compl. ¶ 390, 400-09.

its preliminary approval order, this settlement appears to be the product of arm's length negotiations by highly experienced and informed counsel after significant document exchange by the parties. Order Granting Preliminary Approval 4; see Pl. Mem. in Supp. of Mot. for Final Approval 37.

For these reasons, the Court finds that Settlement B is the product of good faith and is fair, reasonable, and adequate.

c. Non-Settling Defendants' Objections

The Non-Settling Defendants have objected to final approval of the settlement on several grounds. A number of these objections turn on an unsettled legal question regarding whether ERISA applies to the Plan or whether the Plan is exempt from ERISA as a "church plan." See Diocesan Defs. Opp. To Final Settlement Approval ("Diocesan Opp.") 2, ECF No. 136; Prospect Defs. Opp. To Final Settlement Approval 3 n. 2 ("Prospect Opp."), ECF No. 138; see also Pl. Mem. in Supp. of Mot. for Final Approval 19. More directly related to the settlement, the Non-Settling Defendants also argue that R.I. Gen. Laws § 23-17.14-35 ("Settlement Statute"), a statute specifically enacted to apply to settlements arising out of claims brought by participants of the Plan, is preempted by ERISA or is unconstitutional.⁸ Diocesan Opp. 2-3; Prospect Opp. 3 n.2.

⁸ The Settlement Statute allows a settling tortfeasor to avoid liability for contribution if the settlement has been judicially approved and is the product of good faith. R.I. Gen. Laws § 23-17.14-35. The Settlement Statute reads, in full:

The Court is satisfied that it need not address questions related to the applicability of ERISA in order to approve this settlement. See Kemp-DeLisser, 2016 WL 65427, at *7-8 (approving settlement prior to determining ERISA church-plan exemption issue). Similarly, the Court need not determine the constitutionality or potential preemption of the Settlement Statute, and therefore expressly declines to rule on these issues at this time. The Court's approval of this settlement shall be without prejudice to the Non-Settling Defendants' right to assert these arguments later in this litigation or in future proceedings.

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 the release shall reduce the claim against the other joint tortfeasors in the amount of 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.

d. Certification of Class, Class Representatives, and Class
Counsel

The Settling Parties also ask the Court to grant final certification of the class, class representatives, and class counsel under Rule 23. In order to meet the standard for class certification, the purported class must meet the requirements under Rule 23(a) and one of the categories of Rule 23(b). See Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 621 (1997). A class satisfies Rule 23(a) if

(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the class or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). Moreover, Rule 23(b)(1)(B) requires a purported class to demonstrate that separate actions by individual members "would create a risk of. . . 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[.]"

The Court outlined its reasons for finding these factors to have been met in the order granting preliminary approval of the settlement. See Order Granting Preliminary Settlement Approval 5-9. The Court is satisfied that its analysis of these factors has

not changed for purposes of final settlement approval. Additionally, the Non-Settling Defendants' objections do not relate to certification of the class, its representatives, or its counsel.

Accordingly, for purposes of this settlement only, the Court certifies the following class: All participants of the St. Joseph Health Services of Rhode Island Retirement Plan, including all surviving former employees of St. Joseph Health Services of Rhode Island who are entitled to benefits under the Plan and all representatives and beneficiaries of deceased former employees of St. Joseph Health Services of Rhode Island who are entitled to benefits under the Plan. Furthermore, the Court appoints Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque as settlement class representatives and Wistow, Sheehan & Lovely, P.C. as class counsel.

III. Conclusion

For the reasons stated herein, the court GRANTS final approval of Settlement B and, for purposes of this settlement only, certifies the class, class representatives, and class counsel.

IT IS SO ORDERED.



William E. Smith
Chief Judge
Date: September 30, 2019

Exhibit F

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES :
OF RHODE ISLAND :

v. :

C.A. No. PC-2017-3856

ST. JOSEPH HEALTH SERVICES :
OF RHODE ISLAND RETIREMENT :
PLAN, as amended. :

**RESPONSE OF THE RHODE ISLAND ATTORNEY GENERAL TO THE RECEIVER'S
PETITION FOR INSTRUCTIONS**

Now comes Attorney General Peter F. Kilmartin (“Attorney General”) and hereby files this Response to the Receiver’s Petition for Settlement Instructions (“Petition”).

As set forth more fully below, after reviewing relevant documents and applicable law, the Attorney General has concluded that while the Proposed Settlement Agreement terms may conflict with the conditions the Attorney General imposed as part of his 2014 approval of the Prospect/CharterCARE transaction, the more immediate issue—and the one the Attorney General believes requires the Court’s attention at this juncture—is the status of approximately \$8.2 million in charitable assets that were the subject of this Court’s 2015 *Cy Pres* order.¹

¹ See Objection of CharterCARE Foundation to Receiver’s Petition for Settlement Instructions and Emergency Cross-Motion to Postpone September 13, 2018 Hearing as it Related to Proposed Settlement Terms Regarding CharterCARE Community Board’s Alleged Membership Interest in CharterCARE Foundation, p.2, filed September 5, 2018 in the instant matter.

I. The Rhode Island Hospital Conversions Act.

a. The Attorney General's Authority under the Hospital Conversions Act.

By enacting the Hospital Conversions Act (“HCA”), R.I. Gen. Laws § 23-17.14-1 *et seq.*, the General Assembly sought in part to “protect . . . public and charitable assets” by “establish[ing] standards and procedures” for a non-profit hospital’s acquisition by a for-profit hospital network. R.I. Gen. Laws § 23-17.14-2(9). *See also id.* § 23-17.14-3(4). A non-profit hospital cannot be converted to a for-profit entity without the Attorney General’s approval, *id.* §§ 23-17.14-5(a), 23-17.14-6(a), which the Department of Attorney General (“Department”) bestows only after engaging in an exhaustive factual investigation. *See* R.I. Gen. Laws §§ 23-17.14-6, 23-17.14-7, 23-17.14-13, 23-17.14-14.

One of the explicit mechanisms the General Assembly employs to achieve its stated goals in this area is the creation of an independent non-profit foundation “to hold and distribute” the proceeds of the hospital conversion “consistent with the acquiree’s original purpose[,] or for the support and promotion of health care and social needs in the affected community.” *Id.* § 23-17.14-3(5); *see also id.* § 23-17.14-22, 23-17.14-25, 23-17.14-27. The HCA also authorizes the Attorney General to condition a for-profit conversion on “the acquiror’s adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit.” *Id.* § 23-17.14-28(c).

The HCA mandates continued regulatory oversight of the newly established for-profit hospital network after the conversion occurs. For example, the Attorney General retains continuing jurisdiction under its charitable trust powers to monitor compliance with the conditions the Department imposed as part of the conversion. *Id.* §§ 23-17.14-5(a), 23-17.14-21, 23-17.14-28(c)-(d). The General Assembly has authorized the Attorney General to take corrective action,

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both civilly and criminally, should information come to light suggesting that the parties which engaged in the original hospital conversion transaction have failed to adhere in whole or in part to the Department's conditions. *Id.* §§ 23-17.14-17, 23-17.14-30. Additionally, the non-profit foundation established in the wake of a for-profit conversion must comply on an ongoing basis with applicable federal tax laws and keep the General Assembly as well as the Court, Governor, and the Attorney General apprised of such compliance. *See id.* § 23-17.14-26. This Court may engage in limited judicial review of the conditions imposed by the Attorney General if an appropriate action is brought by an aggrieved "transacting party." *Id.* § 23-17.14-34.

b. The Attorney General's 2014 HCA Decision.

Pursuant to its authority under the HCA as outlined above, in 2014 the Attorney General approved of the Prospect/CharterCARE acquisition and conversion from a non-profit to for-profit hospital network subject to a number of explicit conditions. *See Exhibit A*, HCA Decision, pp. 51-54. Some of these conditions were designed to ensure the structural and ethical integrity of the transaction's outcome, and therefore held the resulting entities to certain conflict-of-interest and corporate governance standards. *See* HCA Decision, *e.g.*, Conditions #1-#3. Other conditions sought to protect the public's interest in the appropriate use of the original non-profit's charitable assets through a carefully vetted *cy pres* petition and the creation and maintenance of the requisite non-profit foundation. *See e.g.* HCA Decision, Condition #8. In order to avoid thwarting the entire conversion process, Condition #9 sought to prevent the transacting parties from departing in any way from the transaction they had outlined in their original HCA application: "That the transaction be implemented as outlined in the Initial Application, including all Exhibits and Supplemental Responses."

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The Attorney General notes that none of the transacting parties ever disputed the factual basis for any of the conditions imposed or sought judicial relief from one or more of them. *See* R.I. Gen. Laws § 23-17.14-34.

c. The Proposed Settlement Agreement in View of the 2014 HCA Decision.

The question has now arisen whether the Proposed Settlement Agreement (sometimes hereinafter “the Agreement”) violates the numerous conditions the Attorney General imposed in its 2014 HCA decision. Generally speaking, there appears to be a complete failure on the part of any of the transacting parties to notify the Attorney General in timely fashion (*i.e.*, between 2014 and 2017) about any of the issues that resulted in the current Proposed Settlement Agreement.

More fundamentally, it seems apparent that the implementation of the Proposed Settlement Agreement as currently drafted would at the very least violate Conditions #1 and #2, concerning the CharterCARE Foundation’s (“the Foundation”) board membership, and Condition #9, which requires the Prospect/CharterCARE acquisition to “be implemented as outlined in the Initial Application.” To illustrate the point, note that § 2.01 of the Foundation’s by-laws preclude the board’s membership from being “assigned or transferred or encumbered in any manner whatsoever, either voluntarily or by operation of law,” and declares void any such “proposed or attempted assignment, transfer or termination of membership.” The substitution of the Receiver as the Foundation’s sole member is impermissible under the current terms of § 2.01 of the by-laws. Further, the Proposed Settlement Agreement tries to bind the current board of the Foundation in order to alter § 2.01 of the by-laws even though the current board is not a party to the Proposed Settlement Agreement. In addition, the Agreement’s proposed changes to the by-laws, whereby the board is stacked with compliant members in order to redirect the use of the Foundation’s funds, creates conflicts of interest for these board members in terms of their fiduciary duty to the

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Foundation itself. These proposed changes therefore appear to violate the overarching Condition #9, as well as the more specific Conditions # 1 and #2.

The Proposed Settlement Agreement seeks to alter the corporate structure and governance of the Foundation—an entity the creation of which is statutorily required under the HCA—and then to divert charitable assets from the Foundation for the plaintiffs’ benefit without regard to the restrictions donors had previously imposed on the intended use of those assets.² The Proposed Settlement Agreement’s terms thus set entirely at naught the extensive HCA application and investigation process undertaken by the Attorney General before he approved the Prospect/CharterCARE acquisition in 2014.

The Attorney General is aware that the requirements and perhaps the application of Conditions #1, #2, and #9, as well as other conditions, are necessarily intertwined with the allegations of fraudulent misrepresentation plaintiffs have made in their pending state and federal lawsuits. Absent the presentation of evidence establishing plaintiffs’ allegations as fact, however, the Attorney General believes that there is, at the very least, a potentially irremediable conflict between the terms of the Proposed Settlement Agreement and Conditions #1, #2, and #9 of the 2014 HCA decision.

The Attorney General has serious concerns that judicial review of the May 16, 2014 HCA Decision and Conditions is time-barred some *four years* after their imposition. *Compare* R.I. Gen. Laws § 23-17.14-34 *with id.* § 42-35-15(b). The Attorney General also doubts the plaintiffs’ standing to seek such review, since they were not “transacting parties” in the 2014 conversion.³

² The Attorney General deals specifically with the attempted diversion of the \$8.2 million in charitable assets from the Foundation in the *cy pres* section of this memorandum, *infra* pp. 6-10.

³ The Attorney General recognizes that plaintiffs have asserted a private cause of action under the HCA and R.I. Gen. Laws § 9-1-2, *see Complaint* in PC-2018-4386, Count 12, but believes any

In any event, this Court’s authority to modify the 2014 HCA conditions under the judicial review provision of the HCA must be predicated on a finding that the Attorney General’s conditions were “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” R.I. Gen. Laws § 23-17.14-34(d)(7). This Court has not yet had the opportunity to make such a finding, and neither the Court nor the Attorney General has been presented with the factual record to support it.

Because of the concerns just outlined, the Attorney General believes that it would be premature for him to determine as a factual matter whether the PSA violates Conditions #1, #2, or #9 of the 2014 HCA decision. Instead, the Attorney General requests that the Court focus more pragmatically on what is currently quite clear in the record: whether and to what extent over \$8 million in Foundation assets can be diverted for the plaintiffs’ benefit.

II. Cy Pres.

a. *The Attorney General: Protector of the Trust and Charitable Assets*

The Attorney General has entered as an interested party in this Rhode Island state court proceeding, in part because the proceedings impact the proposed alternative use of charitable assets. As an interested party in these matters, the role of the Attorney General is to protect restricted charitable assets and the public’s interest as charitable beneficiary. This duty stems from the Attorney General’s enduring, common law *parens patriae* power to protect those who cannot protect themselves, which in this case is the public as an unascertainable and unquantifiable group of potential charitable beneficiaries. Although this authority derives from common law, its principles have been partially codified by the Rhode Island legislature. Most notably, the

such claim is separate and apart from the plaintiffs’ standing to seek judicial review under § 23-17.14-34, review under which is quite explicitly limited to “any transacting party.”

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Charitable Trusts Act, R.I. Gen. Laws § 18-9-1 *et seq.*, entrusts the Attorney General with the power to represent the interests of the public related to any proposed modifications of charitable trusts. The Attorney General is thus deemed an interested party in all cases affecting charitable trusts. *See generally, e.g., Israel v. Nat'l Bd. of Young Men's Christian Ass'n*, 117 R.I. 614, 617-18, 369 A.2d 646, 649 (1977).

The General Assembly further cemented and codified the Attorney General's common law role as protector of the public through the establishment of the Office of Health Care Advocate, R.I. Gen. Laws § 42-9.1-1 *et seq.*, and the HCA, R.I. Gen. Laws § 23-17.14-1 *et seq.* These statutes highlight the role of the Attorney General in protecting charitable assets, especially when the assets relate to health care. Specifically, the General Assembly describes the Attorney General as "the state's legal advisor, advocate *parens patriae*, and protector of the public trust and charitable assets ***." R.I. Gen. Laws § 42-9.1-1. The HCA further provides:

(a) No provision of this chapter shall derogate from the common law or statutory authority of the attorney general nor shall any provision be construed as a limitation on the common law or statutory authority of the attorney general, including the authority to investigate at any time charitable trusts for the purpose of determining and ascertaining whether they are being administered in accordance with law and with the terms and purposes thereof.

R.I. Gen. Laws § 23-17.14-21(a). The Attorney General thus has a well-established obligation to ensure that restricted charitable assets are properly protected in accordance with the application of law and the intent of the original donors.

b. 2015 Cy Pres Petition and Order.

The purpose of a *cy pres* petition is to find a way to carry out a donor's charitable intent as closely as possible in circumstances where it is either illegal, impossible or no longer practicable to comply with the donor's wishes exactly as originally stated. *See* David T. Riedel, *Wills, Trusts*

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& *Gifts* § 734, at 390 (1991) [hereinafter cited as “Riedel, at ___”]. Condition # 8 of the Attorney General’s HCA Decision required certain charitable assets be subject to *cy pres*. An Order on Petition for Approval of Disposition of Charitable Assets (“*Cy Pres* Order”) was approved and entered by this Honorable Court on April 6, 2015 after input from the Attorney General as well as the Bank of America in its capacity as trustee of a number of trusts affected by the *cy pres* petition. *See Exhibit B*, *Cy Pres* Order; *see also Exhibit C*, Attorney General’s Response to the *Cy Pres* Petition; *Exhibit D*, Bank of America Response to *Cy Pres* Petition. According to the *Cy Pres* Order, certain permanently restricted funds and temporarily restricted funds are “to be used as close to the original donors’ intent as possible, at the discretion of CCHP Foundation’s Board of Directors, to serve the Foundation mission.” *Cy Pres* Order, ¶ 2. The Foundation mission states that the purpose of the Foundation “shall include serving as a community resource to provide accessible, affordable, and responsive health care and health care related services, including, without limitation, disease prevention, education and research grants, scholarships, clinics and activities within the communities previously served by St. Joseph Health Services of Rhode Island and Roger Williams Hospital in order to facilitate positive changes in the health care system.” *See Exhibit E*, 2015 Petition for Approval of Disposition of Charitable Assets Including Application of Doctrine of *Cy Pres* (“2015 Petition”), Exhibit A.

c. Cy Pres and the Proposed Settlement Agreement

Under *cy pres*, if a change in factual circumstances is sufficiently established by the record, the Court has discretion to apply the doctrine to the current state of the charitable assets before it as long as the court can determine that it is either illegal, impossible, or at the very least, impracticable, for the donors’ intent to be complied with under current circumstances. *See Riedel*, § 734, at 390; R.I. Gen. Laws § 18-4-1.

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In deciding whether to apply *cy pres*, the Court should keep several conditions in mind. First, it is imperative that the Court initially determine that the circumstances have sufficiently changed from what was established when the 2015 *cy pres* petition was granted such that it is either impossible or impracticable for the intent of one or more of the donors to be complied with under the terms of the existing 2015 *cy pres* order. *See, e.g., In re Estate of Othmer*, 815 N.Y.S.2d 444, 448-50 (N.Y. Sur. Ct. 2006) (applying doctrine of *cy pres* based on changed circumstances to terms of trust that were previously modified under same doctrine).

Second, consistent with the approach of the 2015 *Cy Pres* order, the Court must recognize that some of the Foundation's assets are under restrictions so clear and explicit that neither their income nor their principal can be diverted from the stated purpose without frustrating donor intent. Just as these assets could not be used to pay down hospital pension liabilities in 2015, they cannot be used to fund the pension fund today.

Finally, the Court must determine whether using the income for such a purpose – funding a pension liability - is necessary to avoid the hospitals' collapse. *Cy pres* permits diverting of resources from stated intent only if the facts establish that the donors' overall goal will still be achieved. If diverting this income will not have any impact on the provision of health care by the existing providers, then, in the State's view, application of *cy pres* is not justified. *See In re Edward John Noble Hosp. of Gouverneur*, 959 N.Y.S.2d 623, 627 (N.Y. Sup. Ct. 2013) (“[T]he courts have uniformly held that the intention of a testator in making a general gift to a charitable corporation was the furtherance of the [organization's] charitable purpose. . . . In the case of hospital corporations, such purpose is deemed to be the actual and continued provision of acute patient care services, rather than the satisfaction of creditors' claims.”) (emphasis and citation omitted). Based upon the Attorney General's review of the Proposed Settlement Agreement in

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view of the above *cy pres* principles, it appears that the Proposed Settlement Agreement purports to divert millions of dollars in restricted charitable assets in contravention of the *Cy Pres* Order, specifically Paragraphs 2 and 5, and in contravention of the donors' original intent.⁴

Descriptions of the restricted assets are found in Exhibits F, G, and H to the 2015 *Cy Pres* Petition. *See Exhibit E.* Many of the affected funds are earmarked for very specific uses, none of which appears to comport with funding pension liability. For example, several of the funds in Exhibit G are earmarked for free medical care. Certain funds in Exhibits F, G, and H to the 2015 *Cy Pres* Petition are earmarked for, *inter alia*, cancer research, neurology, breast cancer programs, and purchase of emergency medications for certain medical conditions.

The Attorney General, as *parens patriae* and protector of trusts and charitable assets, must ensure that the donors' original intent is honored. This Honorable Court must not set precedent allowing charitable assets to be used as a financial fail-safe when to do so directly contravenes donors' original intent. If this Court approves the Proposed Settlement Agreement allowing the Receiver access to those assets, the Attorney General requests that this Court limit transfer of restricted charitable assets for pension purposes to those assets listed under "General Use" in the *Cy Pres* Petition.⁵

⁴ Counsel for CharterCARE Foundation confirmed to counsel for the Attorney General that the assets at issue were those delineated in Paragraphs 2 and 5 of the 2015 *Cy Pres* Order.

⁵ Exhibit G to the 2015 *Cy Pres* Petition sets forth approximately \$3,714,310 in charitable assets for "General Use." As the Attorney General has demonstrated in this Response, should this Court determine that the conditions for the application of the *cy pres* doctrine have been met in the pending proceeding, it would need to enter a new *cy pres* order. Until that time, the 2015 *Cy Pres* Order, which was entered in furtherance of Condition #8 of the HCA Decision, remains in effect.

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Respectfully submitted,

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Dated: September 27, 2018

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 27th day of September 2018, I electronically filed and served this document through the electronic filing system to all on record. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Diane B. Milia