

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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

Plaintiffs :

v. :

PROSPECT CHARTERCARE, LLC, ET AL. :

Defendants. :

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

Notice of Proposed Orders

Pursuant to the Court’s direction at the February 12, 2019 hearing, the parties have exchanged forms of proposed order preliminarily approving the first settlement.

Attached at Tab 1 is Plaintiffs’ and the Settling Defendants’ proposed order.

Attached at Tab 2 is the Prospect Defendants’ and Diocesan Defendants’ proposed order.

Attached at Tab 3 is a redline of Plaintiffs’ and Settling Defendants’ proposed order showing the Prospect Defendants’ and Diocesan Defendants’ proposed deletions and additions, i.e. showing the differences between Tabs 1 and 2.

Respectfully submitted,

All Plaintiffs,
By their Attorney,

/s/ Max Wistow

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Dated: February 26, 2019

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the within document was electronically filed on the 26th day of February, 2019 using the Electronic Case Filing system of the United States District Court and is available for viewing and downloading from the Electronic Case Filing system. The Electronic Case Filing system will automatically generate and send a Notice of Electronic Filing to the following Filing Users or registered users of record:

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/s/ Max Wistow

Tab 1

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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

Plaintiffs :

v. :

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

PROSPECT CHARTERCARE, LLC, ET AL. :

Defendants. :

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

WILLIAM E. SMITH, Chief Judge.

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

THE COURT HEREBY ORDERS AS FOLLOWS:

I. Preliminary Approval of Settlement.

1. The Court Preliminarily Approves the Parties' Proposed Settlement.
2. The Court preliminarily finds that the proposed settlement, as set forth in the parties' Settlement Agreement (see ECF No. 63-2) appears to be fair, reasonable, and adequate as regards to the proposed class subject to all the terms of this order.
3. The settlement appears to have been entered into in good faith, and at arm's-length by highly experienced and informed counsel. Therefore, the court preliminarily approves the proposed settlement as regards to the proposed class subject to all the terms of this order.

II. Certification of Class.

1. The Court, pursuant to Rule 23(a) and Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure, preliminarily certifies, for purposes of this Settlement only, the following Settlement Class:

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

- i) all surviving former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan; and
 - ii) all representatives and beneficiaries of deceased former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan.
2. The Court hereby preliminarily appoints Plaintiffs Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carol Short, Donna Boutelle, and Eugenia Levesque, as Representatives of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.
 3. The Court preliminary appoints Plaintiffs' Counsel Wistow, Sheehan & Loveley, P.C. to represent the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

III. Notice to Potential Class Members is Adequate.

1. The Court finds the form and content of the proposed Official Court Notice of Settlement of Class Action (the "Notice") adequate to provide notice to all absent class members and potential class members (See ECF No. 63-2, page ID #1538).

2. The Court approves the proposed Notice Plan for giving notice to the Settlement Class (i) directly, by first class mail, per the Class Notice of Hearing for Final Settlement Approval (“Class Notice”) attached to the Settlement Agreement as Exhibit 1; and (ii) by publishing the Joint Motion with all exhibits thereto, including but not limited to the Settlement Agreement, on the web site maintained by the Receiver Attorney Stephen Del Sesto at the web address of the Receiver, <https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan>, as more fully described in the Settlement Agreement. The Notice Plan, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Settling Parties and specifically the Receiver to complete all aspects of the Notice Plan no later than [MONTH DAY], 2019, in accordance with the terms of the Settlement Agreement.
3. The Settling Defendants will file with the Court by no later than [MONTH DAY], 2019, which is fourteen (14) days prior to the Final Approval Hearing, proof that Notice was provided was provided by each of the Settling Defendants to the appropriate State and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.

IV. Final Approval Hearing; Approval of Legal Fees.

1. On [MONTH DAY], 2019, in Courtroom [insert] of the United States District Court for the District of Rhode Island, Federal Courthouse, 1 Exchange Terrace, Providence, Rhode Island, or at such other date and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Settlement Agreement and to determine whether (i) final approval of the Settlement embodied by the Settlement Agreement should be granted, and (ii) Plaintiffs’ Counsel’s application for attorneys’ fees for representing the Settlement Class, should be granted, and in what amount.
2. No later than [MONTH DAY], 2019, which is fourteen (14) days prior to the Final Approval Hearing, Plaintiffs must file papers in support of final approval of the Settlement and respond to any written objections.
3. The Settling Defendants may (but are not required to) file papers in support of final approval of the Settlement, so long as they do so no later than [MONTH DAY], 2019.
4. The non-settling Defendants may (but are not required to) file papers in opposition or in support of final approval of the Settlement, so long as they do so no later than [MONTH DAY], 2019.
5. As the settlement involves a limited fund, which is expected to be fully disposed of in connection with the Settlement, Settlement Class Members do not have the right to exclude themselves or opt-out of the settlement. Consequently, all Settlement Class

Members will be bound by all determinations and judgments concerning the Settlement Agreement.

6. Settlement Class Members who wish to object to the Settlement, or to Plaintiffs' Counsel's Motion for Award of Attorneys, Fees, must do so by the Objection Deadline of [MONTH DAY], 2019, which is sixty (60) calendar days after the Settlement Notice Date.
7. To object to the Settlement, or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees, Settlement Class Members must follow the directions in the Notice and file a written Objection with the Court by the Objection Deadline. In the written Objection, the Settlement Class Member must state his or her full name, address, and home or cellular telephone number(s) by which the Settlement Class Member may be called. He or she must also state the reasons for his or her Objection, and whether he or she intends to appear at the Fairness Hearing on his or her own behalf or through counsel. Any documents supporting the Objection must also be attached to the Objection. Any and all objections shall identify any lawyer that assisted or provided advice as to the case or such objection. No Objection will be valid unless all of the information described above is included. Copies of all papers filed with the Court must be simultaneously delivered to Class Counsel, counsel for the Settling Defendants, and counsel for the non-settling defendants by mail utilizing the United States Postal Service First Class Mail, to the addresses listed hereinbelow, or by email to the email addresses listed hereinbelow.
8. If a Settlement Class Member does not submit a written comment on the proposed Settlement or the application of Class Counsel for attorneys' fees in accordance with the deadline and procedure set forth in the Notice, and the Settlement Class Member wishes to appear and be heard at the Final Approval Hearing, the Settlement Class Member must file a notice of intention to appear with the Court and serve a copy upon Class Counsel, counsel for the Settling Defendants, and counsel for the non-settling defendants, in the manner provided herein, no later than Objection Deadline, and comply with all other requirements of the Court for such an appearance.
9. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Order, above and as detailed in the Class Notice, and at the same time provide copies to Class Counsel, counsel for the Settling Defendants, and counsel for the non-settling defendants as provided herein, shall not be permitted to object to the Settlement Agreement or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees at the Final Approval Hearing, shall be foreclosed from seeking any review of the Settlement Agreement by appeal or other means, shall be deemed to have waived his, her, or its objections, and shall be forever barred from making any such objections in the Action. All members of the Settlement Class will be bound by all determinations and judgments in the Action, whether favorable or unfavorable to the Settlement Class.

10. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings in connection with the Settlement will be without prejudice to the right of Defendant or the Settlement Class representatives to assert any right or position that could have been asserted if the Settlement Agreement had never been reached or proposed to the Court. In such an event, the Parties will return to the *status quo ante* in the Action and the certification of the Settlement Class will be deemed vacated. The certification of the Settlement Class for settlement purposes will not be considered as a factor in connection with any subsequent class certification decision.
11. Counsel for the Settling Parties are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice, and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Settlement Agreement with such modifications, if any, as may be agreed to by the Settling Parties without further notice to the members of the Settlement Class.

V. Preservation of Rights of Non-Settling Parties.

1. The Court notes that the non-settling defendants, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (collectively, "Prospect Defendants") and Roman Catholic Bishop of Providence, Diocesan Administration Corporation and Diocesan Service Corporation (collectively, the "Diocesan Defendants"), have objected to the Settlement Agreement primarily on the following grounds:
 - a. That certain provisions of the Settlement Agreement allegedly evidence collusion. Specifically, the non-settling Defendants point to paragraphs 28 & 30 in which the Settling Defendants admit to liability and damages of \$125,000,000; and state that their proportionate fault is small compared to the non-settling Defendants;
 - b. That certain provisions in the Settlement Agreement (including, paragraphs 17-19, 24, and 29) are allegedly in violation of the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC; and that certain of those provisions allegedly implicate the Rhode Island Hospital Conversions Act, the Health Care Facility Licensing Act of Rhode Island and/or Health Care Facility Licensing Act of Rhode Island.
 - c. That because state law may be pre-empted by ERISA and/or unconstitutional, the Settlement Agreement allegedly improperly seeks to apply limitations on the rights of contribution by the non-settling parties as provided by R.I. Gen. Laws § 23-17.14-35.

2. In granting preliminary approval of the Settlement Agreement, the Court makes no findings and does not accept, endorse or rely upon the above referenced representations made by the parties to the Settlement Agreement. In addition, the Court expressly declines to rule at this time on the merits of non-Settling Defendants' objections to the applicability, constitutionality or validity of R.I. Gen. Laws § 23-17.14-35.
3. Accordingly, preliminary approval of the Settlement Agreement is without prejudice to any rights of the non-Settling Defendants to assert claims against any party or non-party and/or to assert in this proceeding or in a subsequent proceedings, including without limitation, that (a) there has been a breach of the Prospect Chartercare LLC Agreement, (b) that certain provisions of the Settlement Agreement implicate the Rhode Island Hospital Conversions Act, the Health Care Facility Licensing Act of Rhode Island and/or Health Care Facility Licensing Act of Rhode Island, and (c) that R.I. Gen. Laws § 23-17.14-35 is unconstitutional, or is preempted by ERISA.

IT IS HEREBY ORDERED:

Dated: March __, 2019

BY THE COURT:

William Smith, J.

Tab 2

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND :
ADMINISTRATOR OF THE ST. JOSEPH :
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Defendants. :

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THE COURT HEREBY ORDERS AS FOLLOWS:

I. Preliminary Approval of Settlement.

1. The Court Preliminarily Approves the Parties' Proposed Settlement.
2. The Court preliminarily finds that the proposed settlement, as set forth in the parties' Settlement Agreement (see ECF No. 63-2) appears to be fair, reasonable, and adequate as regards to the proposed class subject to all the terms of this order.
3. The settlement appears to have been entered into at arm's-length by highly experienced and informed counsel. Therefore, the court preliminarily approves the proposed settlement as regards to the proposed class subject to all the terms of this order.

II. Certification of Class.

1. The Court, pursuant to Rule 23(a) and Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure, preliminarily certifies, for purposes of this Settlement only, the following Settlement Class:

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

- i) all surviving former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan; and
 - ii) all representatives and beneficiaries of deceased former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan.
2. The Court hereby preliminarily appoints Plaintiffs Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carol Short, Donna Boutelle, and Eugenia Levesque, as Representatives of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.
 3. The Court preliminary appoints Plaintiffs' Counsel Wistow, Sheehan & Loveley, P.C. to represent the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

III. Notice to Potential Class Members is Adequate.

1. The Court finds the form and content of the proposed Official Court Notice of Settlement of Class Action (the "Notice") adequate to provide notice to all absent class members and potential class members (See ECF No. 63-2, page ID #1538).

2. The Court approves the proposed Notice Plan for giving notice to the Settlement Class (i) directly, by first class mail, per the Class Notice of Hearing for Final Settlement Approval (“Class Notice”) attached to the Settlement Agreement as Exhibit 1; and (ii) by publishing the Joint Motion with all exhibits thereto, including but not limited to the Settlement Agreement, on the web site maintained by the Receiver Attorney Stephen Del Sesto at the web address of the Receiver, <https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan>, as more fully described in the Settlement Agreement. The Notice Plan, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Settling Parties and specifically the Receiver to complete all aspects of the Notice Plan no later than [MONTH DAY], 2019, in accordance with the terms of the Settlement Agreement.
3. The Settling Defendants will file with the Court by no later than [MONTH DAY], 2019, which is fourteen (14) days prior to the Final Approval Hearing, proof that Notice was provided was provided by each of the Settling Defendants to the appropriate State and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.

IV. Final Approval Hearing; Approval of Legal Fees.

1. On [MONTH DAY], 2019, in Courtroom [insert] of the United States District Court for the District of Rhode Island, Federal Courthouse, 1 Exchange Terrace, Providence, Rhode Island, or at such other date and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Settlement Agreement and to determine whether (i) final approval of the Settlement embodied by the Settlement Agreement should be granted, and (ii) Plaintiffs’ Counsel’s application for attorneys’ fees for representing the Settlement Class, should be granted, and in what amount.
2. No later than [MONTH DAY], 2019, which is fourteen (14) days prior to the Final Approval Hearing, Plaintiffs must file papers in support of final approval of the Settlement and respond to any written objections.
3. The Settling Defendants may (but are not required to) file papers in support of final approval of the Settlement, so long as they do so no later than [MONTH DAY], 2019.
4. The non-settling Defendants may (but are not required to) file papers in opposition or in support of final approval of the Settlement, so long as they do so no later than [MONTH DAY], 2019.
5. As the settlement involves a limited fund, which is expected to be fully disposed of in connection with the Settlement, Settlement Class Members do not have the right to exclude themselves or opt-out of the settlement. Consequently, all Settlement Class

Members will be bound by all determinations and judgments concerning the Settlement Agreement.

6. Settlement Class Members who wish to object to the Settlement, or to Plaintiffs' Counsel's Motion for Award of Attorneys, Fees, must do so by the Objection Deadline of [MONTH DAY], 2019, which is sixty (60) calendar days after the Settlement Notice Date.
7. To object to the Settlement, or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees, Settlement Class Members must follow the directions in the Notice and file a written Objection with the Court by the Objection Deadline. In the written Objection, the Settlement Class Member must state his or her full name, address, and home or cellular telephone number(s) by which the Settlement Class Member may be called. He or she must also state the reasons for his or her Objection, and whether he or she intends to appear at the Fairness Hearing on his or her own behalf or through counsel. Any documents supporting the Objection must also be attached to the Objection. Any and all objections shall identify any lawyer that assisted or provided advice as to the case or such objection. No Objection will be valid unless all of the information described above is included. Copies of all papers filed with the Court must be simultaneously delivered to Class Counsel, counsel for the Settling Defendants, and counsel for the non-settling defendants by mail utilizing the United States Postal Service First Class Mail, to the addresses listed hereinbelow, or by email to the email addresses listed hereinbelow.
8. If a Settlement Class Member does not submit a written comment on the proposed Settlement or the application of Class Counsel for attorneys' fees in accordance with the deadline and procedure set forth in the Notice, and the Settlement Class Member wishes to appear and be heard at the Final Approval Hearing, the Settlement Class Member must file a notice of intention to appear with the Court and serve a copy upon Class Counsel, counsel for the Settling Defendants, and counsel for the non-settling defendants, in the manner provided herein, no later than Objection Deadline, and comply with all other requirements of the Court for such an appearance.
9. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Order, above and as detailed in the Class Notice, and at the same time provide copies to Class Counsel, counsel for the Settling Defendants, and counsel for the non-settling defendants as provided herein, shall not be permitted to object to the Settlement Agreement or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees at the Final Approval Hearing, shall be foreclosed from seeking any review of the Settlement Agreement by appeal or other means, shall be deemed to have waived his, her, or its objections, and shall be forever barred from making any such objections in the Action. All members of the Settlement Class will be bound by all determinations and judgments in the Action, whether favorable or unfavorable to the Settlement Class.

10. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings in connection with the Settlement will be without prejudice to the right of Defendant or the Settlement Class representatives to assert any right or position that could have been asserted if the Settlement Agreement had never been reached or proposed to the Court. In such an event, the Parties will return to the *status quo ante* in the Action and the certification of the Settlement Class will be deemed vacated. The certification of the Settlement Class for settlement purposes will not be considered as a factor in connection with any subsequent class certification decision.
11. Counsel for the Settling Parties are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice, and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Settlement Agreement with such modifications, if any, as may be agreed to by the Settling Parties without further notice to the members of the Settlement Class.

V. Preservation of Rights of Non-Settling Parties.

1. The Court notes that the non-settling defendants, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (collectively, “Prospect Defendants”) and Roman Catholic Bishop of Providence, Diocesan Administration Corporation and Diocesan Service Corporation (collectively, the “Diocesan Defendants”), have objected to the Settlement Agreement primarily on the following grounds:
 - a. That certain provisions of the Settlement Agreement evidence collusion. Specifically, the non-settling Defendants point to paragraphs 28-30 in which the Settling Defendants admit to liability and damages of \$125,000,000; and state that their proportionate fault is small compared to the non-settling Defendants;
 - b. That certain provisions in the Settlement Agreement (including, paragraphs 17-19, 24, and 29) are in violation of the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC; and that certain of those provisions implicate the Rhode Island Hospital Conversions Act, the Health Care Facility Licensing Act of Rhode Island and/or Health Care Facility Licensing Act of Rhode Island.
 - c. That because state law is pre-empted by ERISA and/or unconstitutional, the Settlement Agreement improperly seeks to apply limitations on the rights of contribution by the non-settling parties as provided by R.I. Gen. Laws § 23-17.14-35 (paragraph 1(n), Exhibit 1 -Proposed Order, paragraph 3 – “good faith” finding,

Exhibit 2-Form of Joint Tortfeasor Release-page 3 reference to RIGL§ 23-17.14-35.

2. In granting preliminary approval of the Settlement Agreement, the Court makes no findings and does not accept, endorse or rely upon the above referenced representations made by the parties to the Settlement Agreement. In addition, the Court expressly declines to rule at this time on the merits of non-Settling Defendants' objections to the applicability, constitutionality or validity of R.I. Gen. Laws § 23-17.14-35, including, whether or not the Settlement Agreement is in good faith and free of collusion. The Court will consider making a finding of good faith at or prior to the date of final approval of the Settlement Agreement.
3. Accordingly, preliminary approval of the Settlement Agreement is without prejudice to any rights of the non-Settling Defendants to assert claims against any party or non-party and/or to assert in this proceeding or in a subsequent proceedings, including without limitation, that (a) there has been a breach of the Prospect Chartercare LLC Agreement, (b) that certain provisions of the Settlement Agreement implicate the Rhode Island Hospital Conversions Act, the Health Care Facility Licensing Act of Rhode Island and/or Health Care Facility Licensing Act of Rhode Island, and (c) that R.I. Gen. Laws § 23-17.14-35 is unconstitutional, or is preempted by ERISA or that there are facts that preclude the applicability of R.I. Gen. Laws § 23-17.14-35.

IT IS HEREBY ORDERED:

Dated: March __, 2019

BY THE COURT:

William Smith, J.

Tab 3

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND	:	
ADMINISTRATOR OF THE ST. JOSEPH	:	
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THE COURT HEREBY ORDERS AS FOLLOWS:

I. Preliminary Approval of Settlement.

1. The Court Preliminarily Approves the Parties' Proposed Settlement.
2. The Court preliminarily finds that the proposed settlement, as set forth in the parties' Settlement Agreement (see ECF No. 63-2) appears to be fair, reasonable, and adequate as regards to the proposed class subject to all the terms of this order.
3. The settlement appears to have been entered into ~~in good faith, and~~ at arm's-length by highly experienced and informed counsel. Therefore, the court preliminarily approves the proposed settlement as regards to the proposed class subject to all the terms of this order.

II. Certification of Class.

1. The Court, pursuant to Rule 23(a) and Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure, preliminarily certifies, for purposes of this Settlement only, the following Settlement Class:

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

- i) all surviving former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan; and
 - ii) all representatives and beneficiaries of deceased former employees of St. Joseph Health Services of Rhode Island Inc. ("SJHSRI") who are entitled to benefits under the Plan.
2. The Court hereby preliminarily appoints Plaintiffs Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque, as Representatives of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.
 3. The Court preliminary appoints Plaintiffs' Counsel Wistow, Sheehan & Loveley, P.C. to represent the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

III. Notice to Potential Class Members is Adequate.

1. The Court finds the form and content of the proposed Official Court Notice of Settlement of Class Action (the "Notice") adequate to provide notice to all absent class members and potential class members (See ECF No. 63-2, page ID #1538).

2. The Court approves the proposed Notice Plan for giving notice to the Settlement Class (i) directly, by first class mail, per the Class Notice of Hearing for Final Settlement Approval (“Class Notice”) attached to the Settlement Agreement as Exhibit 1; and (ii) by publishing the Joint Motion with all exhibits thereto, including but not limited to the Settlement Agreement, on the web site maintained by the Receiver Attorney Stephen Del Sesto at the web address of the Receiver, <https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan>, as more fully described in the Settlement Agreement. The Notice Plan, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Settling Parties and specifically the Receiver to complete all aspects of the Notice Plan no later than [MONTH DAY], 2019, in accordance with the terms of the Settlement Agreement.
3. The Settling Defendants will file with the Court by no later than [MONTH DAY], 2019, which is fourteen (14) days prior to the Final Approval Hearing, proof that Notice was provided as provided by each of the Settling Defendants to the appropriate State and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.

IV. Final Approval Hearing: Approval of Legal Fees.

1. On [MONTH DAY], 2019, in Courtroom [insert] of the United States District Court for the District of Rhode Island, Federal Courthouse, 1 Exchange Terrace, Providence, Rhode Island, or at such other date and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Settlement Agreement and to determine whether (i) final approval of the Settlement embodied by the Settlement Agreement should be granted, and (ii) Plaintiffs’ Counsel’s application for attorneys’ fees for representing the Settlement Class, should be granted, and in what amount.
2. No later than [MONTH DAY], 2019, which is fourteen (14) days prior to the Final Approval Hearing, Plaintiffs must file papers in support of final approval of the Settlement and respond to any written objections.
3. The Settling Defendants may (but are not required to) file papers in support of final approval of the Settlement, so long as they do so no later than [MONTH DAY], 2019.
4. The non-settling Defendants may (but are not required to) file papers in opposition or in support of final approval of the Settlement, so long as they do so no later than [MONTH DAY], 2019.
5. As the settlement involves a limited fund, which is expected to be fully disposed of in connection with the Settlement, Settlement Class Members do not have the right to exclude themselves or opt-out of the settlement. Consequently, all Settlement Class

Members will be bound by all determinations and judgments concerning the Settlement Agreement.

6. Settlement Class Members who wish to object to the Settlement, or to Plaintiffs' Counsel's Motion for Award of Attorneys, Fees, must do so by the Objection Deadline of [MONTH DAY], 2019, which is sixty (60) calendar days after the Settlement Notice Date.
7. To object to the Settlement, or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees, Settlement Class Members must follow the directions in the Notice and file a written Objection with the Court by the Objection Deadline. In the written Objection, the Settlement Class Member must state his or her full name, address, and home or cellular telephone number(s) by which the Settlement Class Member may be called. He or she must also state the reasons for his or her Objection, and whether he or she intends to appear at the Fairness Hearing on his or her own behalf or through counsel. Any documents supporting the Objection must also be attached to the Objection. Any and all objections shall identify any lawyer that assisted or provided advice as to the case or such objection. No Objection will be valid unless all of the information described above is included. Copies of all papers filed with the Court must be simultaneously delivered to Class Counsel, counsel for the Settling Defendants, and counsel for the non-settling defendants by mail utilizing the United States Postal Service First Class Mail, to the addresses listed hereinbelow, or by email to the email addresses listed hereinbelow.
8. If a Settlement Class Member does not submit a written comment on the proposed Settlement or the application of Class Counsel for attorneys' fees in accordance with the deadline and procedure set forth in the Notice, and the Settlement Class Member wishes to appear and be heard at the Final Approval Hearing, the Settlement Class Member must file a notice of intention to appear with the Court and serve a copy upon Class Counsel, counsel for the Settling Defendants, and counsel for the non-settling defendants, in the manner provided herein, no later than Objection Deadline, and comply with all other requirements of the Court for such an appearance.
9. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Order, above and as detailed in the Class Notice, and at the same time provide copies to Class Counsel, counsel for the Settling Defendants, and counsel for the non-settling defendants as provided herein, shall not be permitted to object to the Settlement Agreement or to Plaintiffs' Counsel's Motion for Award of Attorneys' Fees at the Final Approval Hearing, shall be foreclosed from seeking any review of the Settlement Agreement by appeal or other means, shall be deemed to have waived his, her, or its objections, and shall be forever barred from making any such objections in the Action. All members of the Settlement Class will be bound by all determinations and judgments in the Action, whether favorable or unfavorable to the Settlement Class.

10. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings in connection with the Settlement will be without prejudice to the right of Defendant or the Settlement Class representatives to assert any right or position that could have been asserted if the Settlement Agreement had never been reached or proposed to the Court. In such an event, the Parties will return to the *status quo ante* in the Action and the certification of the Settlement Class will be deemed vacated. The certification of the Settlement Class for settlement purposes will not be considered as a factor in connection with any subsequent class certification decision.

11. Counsel for the Settling Parties are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice, and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Settlement Agreement with such modifications, if any, as may be agreed to by the Settling Parties without further notice to the members of the Settlement Class.

V. Preservation of Rights of Non-Settling Parties.

1. The Court notes that the non-settling defendants, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (collectively, "Prospect Defendants") and Roman Catholic Bishop of Providence, Diocesan Administration Corporation and Diocesan Service Corporation (collectively, the "Diocesan Defendants"), have objected to the Settlement Agreement primarily on the following grounds:

- a. That certain provisions of the Settlement Agreement ~~allegedly~~ evidence collusion. Specifically, the non-settling Defendants point to paragraphs 28 ~~&~~ 30 in which the Settling Defendants admit to liability and damages of \$125,000,000; and state that their proportionate fault is small compared to the non-settling Defendants;
- b. That certain provisions in the Settlement Agreement (including, paragraphs 17-19, 24, and 29) are ~~allegedly~~ in violation of the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC; and that certain of those provisions ~~allegedly~~ implicate the Rhode Island Hospital Conversions Act, the Health Care Facility Licensing Act of Rhode Island and/or Health Care Facility Licensing Act of Rhode Island.
- c. That because state law ~~may be~~ pre-empted by ERISA and/or unconstitutional, the Settlement Agreement ~~allegedly~~ improperly seeks to apply limitations on the rights of contribution by the non-settling parties as provided by R.I. Gen. Laws § 23-17.14-35; ~~(paragraph 1(n), Exhibit 1 -Proposed Order, paragraph 3 – "good faith"~~

finding, Exhibit 2-Form of Joint Tortfeasor Release-page 3 reference to RIGL§ 23-17.14-35.

2. In granting preliminary approval of the Settlement Agreement, the Court makes no findings and does not accept, endorse or rely upon the above referenced representations made by the parties to the Settlement Agreement. In addition, the Court expressly declines to rule at this time on the merits of non-Settling Defendants' objections to the applicability, constitutionality or validity of R.I. Gen. ~~Laws § 23-17.14-35.~~ Laws § 23-17.14-35, including, whether or not the Settlement Agreement is in good faith and free of collusion. The Court will consider making a finding of good faith at or prior to the date of final approval of the Settlement Agreement.

3. Accordingly, preliminary approval of the Settlement Agreement is without prejudice to any rights of the non-Settling Defendants to assert claims against any party or non-party and/or to assert in this proceeding or in a subsequent proceedings, including without limitation, that (a) there has been a breach of the Prospect Chartercare LLC Agreement, (b) that certain provisions of the Settlement Agreement implicate the Rhode Island Hospital Conversions Act, the Health Care Facility Licensing Act of Rhode Island and/or Health Care Facility Licensing Act of Rhode Island, and (c) that R.I. Gen. Laws § 23-17.14-35 is unconstitutional, or is preempted by ERISA— or that there are facts that preclude the applicability of R.I. Gen. Laws § 23-17.14-35.

3.

IT IS HEREBY ORDERED:

Dated: March __, 2019

BY THE COURT:

William Smith, J.

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