

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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

Plaintiffs :

v. :

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

PROSPECT CHARTERCARE, LLC, ET AL. :

Defendants. :

ORDER

This matter having come before the Court on Plaintiffs' Motion for Preliminary Partial Settlement Approval, Settlement Class Certification, Appointment of Class Counsel, and a Finding of Good Faith Settlement ("Plaintiffs' Motion for Preliminary 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, Carol Short, Donna Boutelle, and Eugenia Levesque, individually and on behalf of the settlement class (collectively "Plaintiffs"), which attaches thereto the Settlement Agreement (the "Settlement Agreement," which memorializes the "Settlement") between the Plaintiffs and Thomas Hemmendinger (as the Liquidating Receiver for CharterCARE Community Board ("CCCB")) (the

“Liquidating Receiver”), on the one hand, and Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, Prospect Chartercare RWMC, LLC, (collectively referred to herein as “Prospect”), and The Angell Pension Group, Inc. (“Angell”), Sam Lee, and David Topper (Prospect, Angell, Sam Lee and David Topper are referred to collectively as the “Settling Defendants”), on the other hand (all of the parties thereto are the “Settling Parties”). Having duly considered the papers,

THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

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

5. Members of the preliminarily approved Settlement Class 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. The Court hereby preliminarily appoints the Individual Named 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.
7. The Court preliminary appoints Plaintiffs’ Counsel Wistow, Sheehan & Loveley, PC (“WSL”) to represent the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.
8. No later than April 9, 2021, WSL shall file its motion for attorneys’ fees for representing the Settlement Class and supporting papers. The Plan Receiver will publish such filing by placing a copy on the website maintained by the Receiver at <https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan>, and the Plan Receiver shall give written notice to all Plan participants of such publication.
9. On July 20, 2021, at 2 p.m., via Zoom remote conference, this Court will hold a final approval hearing on the fairness, adequacy, and reasonableness of the Settlement Agreement to determine whether (i) final certification of the Settlement Class should be granted for purposes of this Settlement only, (ii) final approval of Settlement as embodied by the Settlement Agreement should be granted, and (iii) WSL's application for attorneys’ fees should be granted, and if so, in what amount.
10. The Court directs the Settling Parties to replace the second sentence of the tenth paragraph of the proposed Class Notice with the following: "The Plan/Prospect/Angell Settlement Agreement provides for certification of the Class as a non-opt-out class action under Federal Rule of Civil Procedure 23(b)(1)(B), and the Court has determined that it will likely certify the Settlement Class under that rule."
11. In all other respects, the Court approves the proposed notice plan submitted by Plaintiffs in connection with their Motion for Preliminary Settlement Approval for giving notice to the settlement class (i) directly, by sending them the proposed Class Notice by first class mail; and (ii) by publishing the Motion for Preliminary Settlement Approval, with all exhibits thereto, including but not limited to the Settlement Agreement, on the website maintained by the Receiver at <https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan>. The Court hereby directs the Settling Parties, and specifically the Receiver, to complete the notice plan no later than April 5, 2021, which is ten (10) days after the entry of this Order.
12. Settlement Class members who wish to object to Settlement Agreement or to WSL’s Motion for Attorneys’ Fees must do so by June 18, 2021 (the “Objection Deadline”).

12. To object to the Settlement Agreement, to certification of the settlement class, or to WSL's Motion for Attorneys' Fees, Settlement Class members must follow the directions in the Class Notice and file a written objection with the Court by the Objection Deadline. In a written objection, a Settlement Class member must state his or her full name, address, and home or cellular telephone number(s), pursuant to which the Settlement Class member may be contacted. The member must also state the reasons for the member's objection, and whether the member intends to appear at the final 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 attorney that assisted or provided advice as to the case or such objection. No objection will be considered unless all the information described above is included. Copies of all papers filed with the Court must be simultaneously delivered to counsel for all parties by mail to the addresses listed in the Class Notice, or by email to the email addresses listed in the Class Notice.
13. If a Settlement Class member does not submit a written comment on the proposed Settlement Agreement or the application of WSL for attorneys' fees in accordance with the deadline and procedure set forth in the Class Notice and this Order, and if the Settlement Class member wishes to appear and be heard at the final fairness hearing, the Settlement Class member must file a notice of intention to appear with the Court and serve a copy upon counsel for all parties in the manner provided in Paragraph 15 of the Class Notice, no later than the Objection Deadline, and comply with all other requirements that may be established by the Court for such an appearance.
14. Any Settlement Class member who fails to give notice of his or her intent to appear at the final fairness hearing in accordance with the terms of this Order and as detailed in the Class Notice, or who fails at the same time to provide copies to counsel for all parties, may be barred from appearing at the final fairness hearing. Any Settlement Class member who fails to object in accordance with the requirements of this Order and as detailed in the Class Notice shall be foreclosed from seeking any review of the Settlement Agreement by appeal or other means; shall be deemed to have waived the member's objections; and shall be forever barred from making any such objections. All members of the Settlement Class will be bound by all determinations and judgments in this action, whether favorable or unfavorable to the Settlement Class.
15. The Settling Parties other than the Plaintiffs may (but are not required to) file papers in support of final class action approval of the Settlement Agreement, so long as they do so no later than June 26, 2021, which is twenty-four (24) days prior to the final approval hearing.
16. The Non-Settling Defendants may (but are not required to) file papers in opposition or in support of final class action approval of the Settlement Agreement, so long as they do so no later than June 26, 2021, which is twenty-four (24) days prior to the final approval hearing.

17. No later than July 6, 2021, which is fourteen (14) days prior to the final approval hearing, Plaintiffs must file papers in support of final class action approval of the Settlement Agreement and respond to any written objections.
18. No later than July 6, 2021, which is fourteen (14) days prior to the final approval hearing, WSL shall respond to any written objections to its motion for attorneys' fees.
19. If the Settlement Agreement is not approved or consummated for any reason whatsoever, the Settlement Agreement and all proceedings in connection with the Settlement Agreement will be without prejudice to the right of all parties to assert any right or position that could have been asserted as if the Settlement Agreement had never been reached or proposed to the Court. In such an event, the Settling Parties will return to the *status quo ante* in this action and the certification of the preliminarily approved Settlement Class will be deemed vacated. The certification of the class for settlement purposes will not be considered as a factor in connection with any subsequent class certification decision.
20. Counsel for Plaintiffs are hereby authorized to use all reasonable procedures in connection with the approval and administration of the Settlement Agreement 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 believe are reasonable and necessary, including such changes or supplements as may be reasonable or necessary to give the Plan participants notice if the final approval hearing is to be conducted by video conference with remote attendance. 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.
21. The Settling Defendants will file with the Court by no later than July 6, 2021, which is fourteen (14) days prior to the final fairness hearing, proof that the Class Notice was provided by any Settling Parties to the appropriate state and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, if required.
22. Plaintiffs' Motion is granted without prejudice to the right of the Non-Settling Defendants to argue later in this litigation or in a future proceeding that R.I. Gen. Laws § 23-17.14-35 is preempted and/or unconstitutional.

IT IS SO ORDERED.



Hon. William E. Smith
United States District Judge

Date: March 26, 2021