UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, et al	:	
Plaintiffs,	:	
v.	:	C. A. No. 18-cv-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, et al.	:	
Defendants.	:	

PLAINTIFFS' OBJECTION TO THE PROSPECT DEFENDANTS' MOTION FOR DISCOVERY OF SETTLEMENT NEGOTIATIONS

Plaintiffs hereby object to the motion for discovery of settlement negotiations (Dkt # 103), filed by Defendants Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC and Prospect Chartercare RWMC, LLC. Plaintiffs rely in support on their memorandum of law filed herewith.

Respectfully submitted,
All Plaintiffs,
By their Attorney,

/s/ Max Wistow

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Dated: March 4, 2019

REQUEST FOR ORAL ARGUMENT

Pursuant to LR Cv 7(c), Plaintiffs request oral argument and estimate that 15 minutes will be required to address the Prospect Defendants' motion.

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the within document was electronically filed on the 4th day of March, 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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Plaintiffs	:	
v.	:	C.A. No:1:18-CV-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, ET AL.	:	
Defendants.	:	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR OBJECTION TO THE PROSPECT DEFENDANTS' MOTION FOR DISCOVERY OF SETTLEMENT NEGOTIATIONS

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March 4, 2019

TABLE OF CONTENTS

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 as named plaintiffs ("Named Plaintiffs") and on behalf of all class members[1] as defined herein (the Receiver and the Named Plaintiffs are referred to collectively as "Plaintiffs") submit this memorandum in support of their objection to the Prospect Defendants'[2] motion for leave to conduct discovery of the settlement negotiations between Plaintiffs and the Settling Defendants, i.e. Defendants CharterCARE Community Board, St. Joseph Health Services of Rhode Island, and Roger Williams Hospital.

Obtaining the type of discovery the Prospect Defendants seek, of other parties' settlement negotiations, requires meeting a strict standard that the Prospect Defendants neither acknowledge nor satisfy, one requiring the Prospect Defendants to have demonstrated from independent evidence that the settlement is collusive. Indeed, the Prospect Defendants' motion consists of a naked request for leave to propound discovery, accompanied by no case law or legal standard for the Court to apply, since even acknowledging the applicable standard would have demonstrated that the motion must be denied.

In fact, the discovery the Prospect Defendants seek would be unavailable to them if the Prospect Defendants were objecting class members, which they are not.

[1] Contingent upon the Court certifying the Class and appointing them Class Representatives.

[2] Defendants Prospect Medical Holdings, Inc. ("Prospect Medical"), Prospect East Holdings, Inc. ("Prospect East"), Prospect Chartercare, LLC ("Prospect Chartercare"), Prospect Chartercare SJHSRI, LLC ("Prospect SJHSRI"), and Prospect Chartercare RWMC, LLC ("Prospect RWH") (collectively the "Prospect Defendants").

They are meddlesome non-settling Defendants who have no real stake in opposing approval of the Settlement but have chosen, for other reasons, to oppose the Plaintiffs' and Settling Defendants' efforts to obtain Court approval of a Settlement of enormous benefit to the proposed class. The Prospect Defendants' loud but unfounded accusations of collusion are no basis for granting discovery (and no basis for declining to approve the Settlement).

I. The Prospect Defendants' motion lacks any procedural, factual, or legal basis

A. There is no procedural premise for the Prospect Defendants' motion

The Prospect Defendants contend that they should be entitled to discovery into the settling parties' settlement discussions to the extent the Court "intends to make a good faith determination" under the standard of R.I. Gen. Laws § 23-17.14-23. See Prospect Defendants' Memo. at 2. The Prospect Defendants do not meet the strict standard for obtaining discovery of settlement negotiations, for the reasons discussed *infra*. At the outset, however, it must be observed that both the settling parties and the objecting non-settling parties[3] have submitted proposed orders that preliminarily find that the settlement was entered into at arm's length. See Dkt ## 108, 108-1, & 108-2 (both sides' proposed orders). The objecting nonsettling parties' proposed order states in relevant part:

> I. Preliminary Approval of Settlement.
>
> 1. The Court Preliminarily Approves the Parties' Proposed Settlement.

[3] The objecting non-settling parties are the Prospect Defendants and the Diocesan Defendants. The remaining Defendants (The Angell Pension Group, Inc., CharterCARE Foundation, and Rhode Island Foundation) have not objected to the 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.
>
> [Emphasis supplied]

Dkt # 108-2.

These proposed orders (including the one jointly proposed by the Prospect Defendants and the Diocesan Defendants) were proposed and filed eight days after the Prospect Defendants filed the instant motion. Assuming the Court enters either of these proposed orders, the Prospect Defendants' motion for discovery should be denied as moot.

B. The Prospect Defendants' motion lacks a legal or factual basis

As noted above, perhaps nothing more clearly demonstrates the baselessness of their motion than the fact that the Prospect Defendants have not mustered a single case in support. As discussed *infra*, the governing standard is an insurmountable one.[4]

The motion is also deficient in factual basis. The only basis offered by the Prospect Defendants for their motion is their repeated assertion that two entirely banal provisions of the Settlement Agreement (¶¶ 28 & 30) "conclusively demonstrate collusion". Prospect Defendants' Motion at 2. These provisions do nothing of the sort,

[4] The Prospect Defendants' motion also does not identify or meet the standards for obtaining "expedited" discovery while the motions to dismiss are pending and prior to the Rule 26(f) conference. See Laughlin v. Orthofix Int'l, N.V., 293 F.R.D. 40, 41–42 (D. Mass. 2013). This is a separate and independently sufficient ground for denying the motion.

as discussed extensively in Plaintiffs' prior submissions. See Dkt # 83 (Plaintiffs' reply to the Prospect Defendants' objections to the settlement) at 80-84; Dkt # 109 (Plaintiffs' and Settling Defendants' post-hearing memorandum) at 4-7. See also Dkt # 82 (Plaintiffs' reply to the Diocesan Defendants' objection) at 33-49 (addressing the Diocesan Defendants' arguments about collusion, which the Prospect Defendants do not join). Indeed, if the Prospect Defendants truly believed their representation to the Court that ¶¶ 28 and 30 "conclusively demonstrate collusion" (emphasis supplied), discovery can add nothing.

II. Discovery of other parties' settlement negotiations is "rare" and impermissible unless the movant has already preliminarily established from independent sources that the settlement is collusive, which the Prospect Defendants have not done

In determining whether to approve a class action settlement, "[a] court should not allow discovery into the settlement-negotiation process unless the objector[5] makes a preliminary showing of collusion or other improper behavior." Manual Complex Lit. § 21.643 (4th ed.) (citing Bowling v. Pfizer, 143 F.R.D. 141, 153, 153 n.10 (S.D. Ohio 1992)). This preliminary showing requires the movants to "furnish additional independent evidence of collusion" before they can obtain leave to rifle through their opponents files. See Bowling, 143 F.R.D. at 146:

> Objectors may discover the details of a class counsel's negotiations with the defendants only where the objectors lay a foundation **by adducing from independent sources** of evidence that the settlement may be collusive. *Mars Steel Corp. v. Continental Ill. Nat'l Bank and Trust*, 834 F.2d 677, 684 (7th Cir. 1987). . . . **Therefore, the Objectors must furnish additional independent evidence of collusion** before it is

[5] The cases addressing the issue almost universally involve objecting class members, not non-settling defendants. As noted *supra*, the Prospect Defendants are mere interlopers.

> reasonable for this Court to compel the proponents of the settlement to furnish discovery material concerning the negotiations of the settlement.
>
> . . . .We conclude that the Green firm has failed to provide any independent evidence of collusion.
>
> [Emphasis supplied]

Bowling v. Pfizer, Inc., 143 F.R.D. 141, 146 (S.D. Ohio 1992) (denying discovery).

Discovery into class action settlement negotiations is nearly always denied as "unusual" and improper:

> **Discovery of settlement negotiations in ongoing litigation is unusual because it would give a party information about an opponent's strategy**, and it was not required in the circumstances of this case. Suppose [rival plaintiffs' counsel] Joyce and Kubasiak[6], allowed to discover the details of Continental's negotiations with [settlement class counsel] Torshen, had found out that Continental had acknowledged certain weaknesses in its defense; Joyce and Kubasiak could have used that information to drive a harder bargain with Continental or, if settlement negotiations had broken down, to undermine Continental's defense at trial. **Such discovery is proper only where the party seeking it lays a foundation by adducing from other sources evidence indicating that the settlement may be collusive, as in the General Motors case, where negotiations with one class counsel were carried out in violation of the district court's order.** *See* 594 F.2d at 1126. There is no indication of such hanky-pank here. Nothing in the terms or timing or other circumstances of the Mars settlement-a settlement highly favorable to the class, as we have said-suggests that Torshen was selling out the class in an effort to beat Joyce and Kubasiak to the attorney's fee trough.
>
> [Emphasis supplied]

Mars Steel Corp. v. Cont'l Illinois Nat. Bank & Tr. Co. of Chicago, 834 F.2d 677, 684 (7th Cir. 1987). See White v. Nat'l Football League, 822 F. Supp. 1389, 1429 (D. Minn. 1993) ("Moreover, if there is no evidence of collusion in the negotiation process,

[6] The law firm Joyce and Kubasiak had filed a dueling class action against the same defendant.

objectors have no right to seek discovery concerning the negotiations of a class action settlement.").

> We conclude the district court did not abuse its discretion in denying this requested discovery. Settlement negotiations involve sensitive matters. *See Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 684 (7th Cir. 1987). **We agree with the Seventh Circuit that "discovery [of settlement negotiations] is proper only where the party seeking it lays a foundation by adducing from other sources evidence indicating that the settlement may be collusive."** *Id.* [Objecting class member] Havird made no foundational showing of collusion. Her requested discovery of the settlement negotiations, therefore, was properly denied.

Lobatz v. U.S. W. Cellular of California, Inc., 222 F.3d 1142, 1148 (9th Cir. 2000).

Such discovery of settlement discussions is available only in "rare" cases under circumstances not present here, i.e. where an independent showing has been made from other sources that the proposed settlement is collusive:

> With respect to the Landowners' request for discovery, an objector may be entitled to discovery which is relevant to the determination of whether the proposed settlement is fair, adequate and reasonable. *See e.g.*, *In re Ford Motor Co. Bronco II Products Liability Litigation*, 1994 WL 593998, *3 (E.D. La. 1994). In such a case, the requesting party must show what specific information is needed from the settling parties and how that information will assist the court in its determination of the fairness of the proposed settlement.
>
> However, "[d]iscovery of evidence pertaining to settlement negotiations is appropriate only in rare circumstances." *See In re Wachovia Corp. "Pick-apayment Mortgage Marketing and Sales Practices Litigation*, 2011 WL 1496342 (N.D. Cal. Apr. 20, 2011) (citing *Hemphill v. San Diego Ass'n of Realtors, Inc.*, 225 F.R.D. 616, 620 (S.D. Cal. 2005)). In fact, it is well established that objectors are not entitled to discovery concerning settlement negotiations absent evidence from other sources indicating that the settlement may be collusive. *See e.g.*, *True v. American Honda Motor Co.*, 749 F. Supp. 2d 1052 (C.D. Cal. 2010) ("An objector is only entitled to discovery of settlement negotiations if he or she lays a foundation by adducing from other sources evidence indicating that the settlement may be collusive.") (quoting *Lobatz v. U.S. West Cellular of California, Inc.*, 222

> F.3d 1142, 1148 (9th Cir. 2000)); *Mars Steel Corp. v. Continental Illinois Nat. Bank and Trust Co. of Chicago*, 834 F.2d 677, 684 (7th Cir. 1987) (same). Generally, courts presume the absence of fraud or collusion in negotiating a settlement, unless evidence to the contrary is offered. *See Hemphill*, 225 F.R.D. at *621.
>
> Here, the Landowners have requested broad discovery in relation to the adequacy of the proposed settlement at hand, as well as into the Settlement counsels' legal fees underlying the settlement. **However, the Landowners have failed to lay a proper foundation relying on outside sources evidencing [that the] proposed settlement is collusive.** While the Landowners' counsel have **speculated** that Settlement counsel and Chesapeake may have engaged in collusion by "perhaps" conducted a reverse auction and failing to notify the court of the pending arbitration or Landowners' counsel of the instant action, which they claim resulted in an inadequate proposed recovery and overbroad release, **no outside evidence has been presented to the court in this regard**.

Demchak Partners Ltd. P'ship v. Chesapeake Appalachia, LLC., No. CIV.A. 3:13-2289, 2014 WL 4955259, at *6–7 (M.D. Pa. Sept. 30, 2014). See also:In re Domestic Air Transp. Antitrust Litig., 144 F.R.D. 421, 424 (N.D. Ga. 1992) ("However, objectors are not entitled to discovery concerning settlement negotiations between the parties in the absence of evidence indicating that there was collusion between plaintiffs and defendants in the negotiating process. Objectors have neither alleged nor submitted evidence of collusion in the settlement negotiating process and all indications to the Court thus far indicate that the settlement process was an arm's length dealing between all parties.") (citing Mars Steel Corp.); Hemphill v. San Diego Ass'n of Realtors, Inc., 225 F.R.D. 616, 621-22 (S.D. Cal. 2005) ("Movants contend that the class settlement is collusive, relying heavily on this argument in support of their discovery requests. . . . Discovery of settlement negotiations is proper only where the party seeking it 'lays a foundation by adducing from other sources evidence that the settlement may be collusive.' Movants have not made the required showing. As a result, they are not

entitled to any discovery of settlement negotiations, including communications, correspondence and e-mails between Class Counsel and counsel for Defendants.") (citations omitted).

Discovery is inappropriate even where the Court agrees that "there are issues as to the fairness of the settlement" since unfairness is not the same as collusion:

> Peterman's requests for discovery about class counsel's conduct during settlement negotiations, as well as "why" monetary relief did not form a greater part of the settlement are evaluated under an even stricter standard. An objector is only entitled to discovery of settlement negotiations if he or she "lays a foundation by adducing from other sources evidence indicating that the settlement may be collusive." *Lobatz v. U.S. West Cellular of Cal., Inc.*, 222 F.3d 1142, 1148 (9th Cir.2000). *See also Horton v. USAA Casualty Ins. Co.*, No. CV 06–2810–PHX–DGC, 2009 WL 2372187, at *2 (D. Ariz. Aug. 3, 2009); *Hemphill*, 225 F.R.D. at 621. **While the Court agrees with the Objectors that there are issues as to the fairness of the settlement, there is no evidence that there was improper collusion between the parties, and thus the request for discovery is DENIED.**
>
> [Emphasis supplied]

True v. Am. Honda Motor Co., 749 F. Supp. 2d 1052, 1081 n.31 (C.D. Cal. 2010).

> "Class members who object to a class action settlement do not have an absolute right to discovery; the Court may, in its discretion, limit the discovery or presentation of evidence to that which may assist it in determining the fairness and adequacy of the settlement." "The fundamental question is whether the district judge has sufficient facts before him to intelligently approve or disapprove the settlement." "The criteria relevant to the court's decision of whether or not to permit discovery are the nature and amount of previous discovery, reasonable basis for the evidentiary requests, and number and interests of the objectors." "Discovery should be minimal and conditioned on a showing of need, because it will delay settlement, introduce uncertainty, and might be undertaken primarily to justify an award of attorney fees to the objector's counsel." **The burden is higher when a party seeks discovery of settlement negotiations. "It is only proper where 'the party seeking it lays a foundation by adducing from other sources evidence indicating that the settlement may be collusive."**

> [Emphasis supplied]

Epstein v. Wittig, No. 03-4081-JAR, 2005 WL 3276390, at *7 (D. Kan. Dec. 2, 2005) (citations omitted).

> Third, Farrar has presented no credible evidence suggesting collusion on the part of the plaintiff and ExxonMobil. The only grounds cited by Farrar for such a conclusion, as noted earlier, are two recent decisions which Farrar suggests compromised the ability of the plaintiff class to present its claims free from a statute of limitations defense by ExxonMobil. An examination of those cases, however, demonstrates that Farrar's **claims of collusion are unjustified and purely speculative**.
>
> [Emphasis supplied]

Hershey v. ExxonMobil Oil Corp., No. 07-1300-JTM, 2012 WL 4758040, at *2 (D. Kan. Oct. 5, 2012) (denying discovery).

See also In re Initial Pub. Offering Sec. Litig., 226 F.R.D. 186, 205 (S.D.N.Y. 2005) (“The agreements themselves do not affect the rights of, or consideration to, the proposed Settlement classes. For these reasons, I am not concerned that any of the disclosed agreements ‘influenced the terms of the settlement by trading away possible advantages for the class in return for advantages for others.’ The Underwriters' request for discovery relating to the disclosed agreements is therefore denied.”); In re Urethane Antitrust Litig., No. 04-MD-1616-JWL-DJW, 2006 WL 2620347, at *3 (D. Kan. Aug. 25, 2006) (denying non-settling defendants leave to serve interrogatories concerning settlement negotiations as irrelevant to class certification issues).

As noted, even objecting class members would not be entitled to such discovery. Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. v. Gen. Motors Corp., 497 F.3d 615, 635 (6th Cir. 2007) (“Objecting class members also do not have a vested ‘entitlement to discovery.’ A district court, moreover, need grant objectors discovery only if they can make a colorable claim that the settlement should not be

approved."); Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1189 (10th Cir. 2002) (affirming district court's certification of class settlement over objections of class members who had "alleged 'collusion' in the settlement negotiations" and had "moved to take expedited discovery and sought to depose everyone involved in the settlement, which was denied," because they could "point to little concrete evidence in support of this allegation" of collusion). The Prospect Defendants, as non-settling defendants, are certainly not entitled to any greater solicitude in their efforts to obstruct the settlement.

Here, the Prospect Defendants have offered no independent evidence of collusion. The Settlement Agreement provisions that they point to are not even objectionable, much less collusive; and the Prospect Defendants have nothing else.

III. Such discovery would prejudice Plaintiffs and the proposed class

The discovery sought by the Prospect Defendants would be prejudicial to Plaintiffs in at least three ways: 1) it would permit the Prospect Defendants (and the Diocesan Defendants) to obtain a unilateral advantage by deposing the Receiver and obtaining document production in the case prior to the Rule 26(f) conference and the Court's ruling on the motions to dismiss;[7] 2) it would result in protracted motion practice; and 3) it would squander settlement funds by obligating the Settling Defendants to incur attorneys' fees and other litigation expenses in connection with the proposed discovery.

The first two forms of prejudice are self-explanatory. The third is due to the extremely favorable terms of the settlement, under which the St. Joseph Health Services of Rhode Island Retirement Plan will receive virtually all of the Settling

[7] The Prospect Defendants' motion also does not acknowledge, much less meet the good cause standard for obtaining "expedited" discovery while the motions to dismiss are pending and prior to the Rule 26(f) conference. See Laughlin v. Orthofix Int'l, N.V., 293 F.R.D. 40, 41–42 (D. Mass. 2013). This is a separate and independently sufficient ground for denying the motion.

Defendants' assets, either directly in connection with the settlement, or through the judicial liquidations the Settling Defendants are obligated to undertake. As noted by Judge Stern:

> The PSA obligates the Settling Defendants to remit the bulk of their assets in favor of the Plan's estate and, therefore, it appears every dollar the Settling Defendants spend in continuing to litigate is a dollar less available to the Plan for the ultimate benefit of the Plan's beneficiaries.

St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, No. PC-2017-3856, 2018 WL 5792151, at *13 (R.I. Super. Oct. 29, 2018).

Even the Prospect Defendants' motion for discovery is draining the proposed settlement through unnecessary litigation expenses. Moreover, the cost of allowing such discovery should not be minimized. In addition to possibly lengthy depositions, it likely will also entail further motion practice. The Prospect Defendants claim that the proposed discovery will be "solely on the issue of whether the settlement was executed in good faith."[8] They do not, however, identify any standards pursuant to which "good faith" should be determined. It is extremely likely that Plaintiffs and the Settling Defendants would disagree with the scope of inquiry the Prospect Defendants would seek to exercise under that rubric. Just how much inquiry should the Prospect Defendants be permitted into the facts and circumstances of the proposed settlement and the merits of the claims being settled? To what extent will the Prospect Defendants seek to intrude on attorney client privilege, and the work product doctrine? It seems self-evident that the settlement proceeds would be further drained to subsidize possibly several rounds of motion practice.

[8] Prospect Motion at 1 & 3.

In short, the Prospect Defendants' request for discovery is contrary to the very purposes for which the settlement has been reached.

IV. Conclusion

The Prospect Defendants' motion should be denied.

Respectfully submitted,

All Plaintiffs,
By their Attorney,

/s/ Max Wistow

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Dated: March 4, 2019

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the within document was electronically filed on the 4th day of March, 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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