

UNITED STATES DISTRICT COURT
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.

Case No. 1:18-cv-00328-WES-LDA

**JOINT MOTION FOR LEAVE TO FILE SUR-REPLY TO PLAINTIFFS’
REPLY (ECF NO. 83)**

NOW COME Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC (collectively, “Prospect Entities”), by and through their attorneys, and pursuant to Local Rule 7(a) respectfully request that the Court grant them leave to file a sur-reply.

On November 21, 2018, the plaintiffs in the above-captioned matter (“Plaintiffs”) filed a Joint Motion for Settlement and Settlement Class Certification (“Motion for Settlement,” ECF No. 63), seeking the Court’s approval of a settlement by and between Stephen Del Sesto, acting in his capacity as receiver of and as Administrator (“Receiver”) for the St. Joseph Health Services of Rhode Island Retirement Plan (“Plan”), Chartercare Community Board (“CCCB”), St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital (“RWH”). The Prospect Entities filed an opposition to the Settlement Motion (“Opposition,” ECF No. 75), arguing, *inter alia*, that Settlement Motion should be denied because (1) at all times relevant to this litigation and to the related state court proceedings, the Plan has been a retirement plan subject to both Title I and Title IV of the Employee Retirement Income Security Act, as

amended (“ERISA”); (2) ERISA Title I explicitly displaces and supersedes all state law, subject to certain exceptions not relevant here; (3) based on the Receiver’s own complaint in this litigation, the Plan is, or shortly will be, functionally insolvent and unable to pay benefits when due, one of the predicate conditions for intervention by the Pension Benefit Guaranty Corporation (“PBGC”), making it a necessary party to this litigation; and (4) as a matter of statute, ERISA vests federal courts with exclusive jurisdiction over actions for equitable relief brought under ERISA Title I, including claims for breach of fiduciary duty and claims for violation of one or more of ERISA’s statutory requirements, which causes the state court to be without jurisdiction to entertain the fiduciary breach and federal statutory claims the Receiver has brought against CCCB and others, much less settle them. Plaintiffs filed a lengthy, ninety-page reply (one hundred eighteen pages including exhibits) to the Opposition (“Reply,” ECF No. 83), taking issue with all or substantially all of the grounds cited by the Prospect Defendants.

Due to the length and scope of the Reply, the Reply’s assertion of arguments outside the scope of those set forth in the Opposition, and the novelty of the issues presented, the Prospect Entities request that the Court grant them leave to file a sur-reply to the Reply to assist the Court in its determination of the issues before it. To the extent that the Court deems it necessary, the Prospect Entities request a hearing on this motion, and anticipated that such hearing would be no longer than one hour.

[SIGNATURE PAGE TO FOLLOW]

PROSPECT MEDICAL HOLDINGS, INC.
and PROSPECT EAST HOLDINGS, INC.

By their attorneys,

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/s/ Thomas V. Reichert, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2019, I have caused the within Motion to be filed with the Court via the ECF filing system. As such, this document will be electronically sent to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Christopher J. Fragomeni, Esq.