

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

DEFENDANTS PROSPECT MEDICAL HOLDINGS, INC., PROSPECT EAST HOLDINGS, INC., PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC, AND PROSPECT CHARTERCARE RWMC, LLC'S REPLY IN SUPPORT OF THEIR MOTION TO EXTEND

Now come Defendants Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect CharterCARE, LLC, Prospect CharterCARE SJHSRI, LLC and Prospect CharterCARE RWMC, LLC (together, the "Prospect Entities"), and hereby respectfully submit this reply in support of their Motion to Extend the deadlines set forth in the Third Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 183) ("Third Stipulation and Consent Order") by ninety (90) days. The Prospect Entities also request that the Court rule on this matter in an expedited fashion.

I. Introduction.

The Prospect Entities are simply requesting a reasonable extension of deadlines in light of extraordinary current events which have impacted all Parties' ability to obtain deposition testimony. In response, Plaintiffs present to the Court an incendiary sixteen-page opposition brief littered with baseless allegations of bad faith, completely unsupported by the record. Plaintiffs assert that the Prospect Entities want to unilaterally and "indefinitely postpone resolution of Plaintiffs' pending motion for summary judgment." This could not be further from the truth: the

Prospect Entities merely seek a reasonable extension to avoid the risk in-person depositions would pose to the health and safety of attorneys, witnesses, and administrative staff. This is not an ordinary time; all parties in this case—including Plaintiffs—face an unprecedented global pandemic that renders in-person fact-finding unfeasible. Rather than scrambling to arrange complex technical solutions for remote depositions involving over a dozen individuals, it would serve the interests of all parties—and of justice—to extend deadlines until we are able to better assess the developing situation and identify effective options for proceeding with discovery.

II. There is Good Cause to Extend the Deadlines in the Third Stipulation and Order.

As Plaintiffs' counsel is well aware, their motion for summary judgment required the review of nearly one million documents, which they have had access to for over two years. To respond to that motion, the Prospect Entities, *as strangers to the Plan* and to the day-to-day maintenance of the Plan, have, by and through their counsel, diligently reviewed and, (to the extent possible, given the abbreviated time) analyzed those documents. Following that timely and thorough review, counsel for the Prospect Entities have identified a number of individuals who possess information relevant to the issue of whether the Plan was in fact maintained by an organization, the principal purpose or function of which was the administration or funding of the Plan. At least one of those individuals resides out of state, in New York—the epicenter of the COVID-19 outbreak in the United States. The list of individuals the Prospect Entities currently intend to depose includes:

- Rule 30(b)(6) Deposition of CCCB;
- Rule 30(b)(6) Deposition of SJHSRI;
- Darleen Souza, former employee of CCCB;
- Brenda Ketner, former employee of CCCB;

- Kimberly O’Connell, former employee of CCCB;
- Kenneth Belcher, former President of CCCB;
- Edwin Santos, former Chairman of the CCCB’s Board of Trustees;
- Marshall Raucci, Jr., former Member of CCCB’s Board of Trustees; and
- Richard Land, Esq., on behalf of SJHSRI.

As of today, the State of Rhode Island remains in a state of emergency. Extensive social distancing guidelines remain in effect through at least May 8.¹ As a result, in-person depositions have been rendered impossible. “[P]arties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means[.]” Fed. R. Civ. P. 30(b)(4). However, social distancing restrictions have also rendered the remote depositions extremely difficult, particularly in cases of this size and complexity. Under the existing guidelines, *all* parties, each of their attorneys (both in and out-of-state), the witness, and the stenographer—in total potentially more than a dozen people per deposition—will all have to connect remotely from separate locations. Separate “breakout” connections will have to be set up between each party and their attorneys, or between different parties sharing a common interest. Given these circumstances, the potential for a deposition to be derailed by technical difficulties is extremely high. Moreover, all parties are more likely to face difficulties in compelling the attendance of critical third-party witnesses, given the significant impact the pandemic has had on the daily lives of many individuals across the country.

¹ These include an order that “all Rhode Islanders should stay home unless getting food, medicine, gas, or going to work” until at least May 8, 2020, a ban on all public gatherings of more than five people, and a requirement that most people coming into Rhode Island from out of state self-quarantine for fourteen days, *Rhode Island COVID-19 Information*, State of Rhode Island Department of Health, available at <https://health.ri.gov/covid/>.

In addition, it is well recognized that even under normal circumstances, remote depositions, whether telephonic or video, are inherently less effective than in-person depositions especially when the case involves multiple parties and is document-intensive. The problems with remote depositions include: reduced ability to fully observe, evaluate, and effectively examine the witness; dampening or attenuation of interaction with the witness; concerns about improper notes or communications during the deposition; difficulties making sure everyone is focused on the same document; difficulties sharing documents and marking exhibits; difficulties with obtaining an accurate record because of problems keeping track of who is speaking; unwieldy objections; and technological and logistical issues. **These problems are compounded during the COVID-19 pandemic because all participants have to be in separate locations.**

In a recent case, *Quarrie v. Wells*, 2020 U. S. Dist. LEXIS 63710 (D.N.M. Apr. 10, 2020), the plaintiff filed a motion for leave to conduct remote depositions due to the COVID-19 pandemic. All parties agreed that in-person depositions should not be conducted in light of the COVID-19 crisis. Defendants opposed remote depositions and requested an extension of all discovery deadlines. The Court (Wormuth, M.J.) denied the plaintiff's request for remote depositions citing "the prejudicial nature of remotely-taken depositions . . . including the complexity of the case, the need to present documents, the probable length of the deponent's testimony, the possibility of technological difficulties, and the difficulty of preparing witnesses remotely." *Quarrie*, 2020 U.S. Dist. LEXIS 63710, at *3. The Court held that the "current global pandemic and the 'Stay-at-Home' order issued by New Mexico's Governor qualify as good cause to delay discovery deadlines." *Id.* at *4. Therefore, the Court extended the discovery deadlines to August 3, 2020. *Id.*

District courts in other jurisdictions have likewise granted motions to extend discovery deadlines as a result of the COVID-19 pandemic. *See, e.g., Sifuentes v. Ola*, 2020 U.S. Dist. LEXIS 69092 (E.D. Cal. Apr. 20, 2020) (extending discovery and dispositive motion deadlines 90 days because of COVID-19 crisis); *Nichols v. Cantoro's Cafe, L.L.C.*, 2020 U.S. Dist. LEXIS 65942 (E.D. Mich. Apr. 15, 2020) (discovery deadline extended 60 days in part due to COVID-19 outbreak); *Jones v. Johnson*, 2020 U.S. Dist. LEXIS 70079 (E.D. Mich. Apr. 21, 2020) (discovery deadline extended 69 days subject to change considering evolving public health environment); *Sitton v. LVMPD*, 2020 U.S. Dist. LEXIS 59259 (D. Nev. Mar. 31, 2020 (extending discovery deadlines over six months in part due to COVID -19 pandemic); *Ensminger v. Credit Law Ctr.*, 2020 U.S. Dist. LEXIS 64539 (D. Kan. Apr. 7, 2020) (extending discovery deadline 90 days due to ongoing COVID-19 pandemic); *Pearlstein v. Blackberry Ltd.*, 2020 U.S. Dist. LEXIS 47032 (S.D.N.Y. Mar. 16, 2020) (extending discovery deadlines 60 days); *Limon v. Circle K Stores Inc.*, 2020 U.S. Dist. LEXIS 56415 (E.D. Cal. Mar. 30, 2020) (extending discovery deadlines 90 days in part due to COVID-19 outbreak); *Occidental Chem. Corp. v. 21st Century Fox Am., Inc.*, 2020 U.S. Dist. LEXIS 72077 (D.N.J. Apr. 24, 2020) (extending discovery deadlines 45 days in accordance with Standing Order 20-04 extending all filing and discovery deadlines in civil matters that occur between March 25, 2020 and April 30, 2020, by 45 days in light of COVID-19 pandemic); *Hudson v. Wal-Mart Stores E., LP*, 2020 U.S. Dist. LEXIS 63765 (D. Ga. Apr. 13, 2020) (extending discovery 90 days due to COVID-19 pandemic); *Shelby v. Lakeview Loan Servicing, LLC*, 2020 U.S. Dist. LEXIS 64445 (E.D. Mich. Apr. 7, 2020) (extending deadlines for discovery and dispositive motions 90 days due to COVID-19 pandemic).

Here, there is good cause for a limited, ninety-day extension of the deadlines in the Third Stipulation and Order. In moving for this extension of time, the Prospect Entities ask only that

this case continue to proceed in an orderly and—more importantly—safe manner. Indeed, even Plaintiffs have failed to identify or propose any logistical solution that would allow them to conduct their own document-intensive depositions, which illustrates the shared problem faced by all the parties. The Prospect Entities, together with *all the parties*, need additional time to assess whether in person depositions may safely proceed in the summer months. In the alternative, even if the Court determines that remote depositions are appropriate here, all parties require additional time to determine how exactly the numerous attorneys, witnesses, and administrative staff can parse through and examine documents through videoconference.

III. The Prospect Entities Have Diligently Proceeded in Responding to Plaintiffs’ Discovery Requests and Propounding Discovery.

Plaintiffs also assert that the Prospect Entities “chose not to conduct discovery” at the outset of the Limited Period of Discovery Concerning Summary Judgment Motions. That is not the case.

In November 2019, pursuant to the October 29, 2019 Order in this case (ECF No. 170), the parties exchanged the comprehensive and voluminous document discovery that had been produced in the Rhode Island Superior Court receivership. Shortly thereafter, on December 17, 2019, Plaintiffs moved for partial summary judgment. On January 13, 2020, the Court, via text order, entered the parties’ second stipulation, providing for two ninety-day periods of limited discovery. (ECF No. 175). That same day—when discovery began—Plaintiffs served interrogatories, document requests, and voluminous requests for admission.

However, Plaintiffs fail to mention that, after the Prospect Entities diligently and timely responded to Plaintiffs’ interrogatories, document requests, and requests for admission, Plaintiffs almost immediately sent out draft motions to compel, which totaled over forty pages. Instead of quarreling with Plaintiffs’ counsel, however, the Prospect Entities submitted supplemental

responses to Plaintiffs' discovery, taking additional time to parse through the voluminous documents to produce even more detailed answers and responses. But when the Prospect Entities propounded similar discovery on Plaintiffs, some of which were nearly identical to Plaintiffs' requests, Plaintiffs responded with the same objections that they claimed formed the basis for motions to compel. Plaintiffs provided very little in the way of any substantive responses and instead merely stated that the answers could be derived from the voluminous documents produced by the various parties.

It is true that the Prospect Entities propounded discovery—interrogatories and document requests—on Plaintiffs on March 6, 2020. They did so after responding to Plaintiffs' discovery, providing initial and supplemental responses, and dealing with Plaintiffs' motions to compel. On March 18, 2020, the parties all agreed to extend the deadlines to complete the first period of limited discovery to May 12, 2020. Plaintiffs claim that the Prospect Entities should have been aware at that time of the extent of the COVID-19 pandemic, foreseen the evolving social distancing mandates, and simply noticed depositions then. This argument fails for two reasons. First, on March 18, 2020, Rhode Island had 33 confirmed COVID-19 cases, and social distancing guidelines were not yet fully in place. Today, Rhode Island has 8,962 COVID-19 cases and 279 deaths. The idea that anyone could have foreseen the full extent of this crisis in mid-March is simply divorced from reality. Second, even if these depositions had been noticed on March 18th, it would likely have been a fruitless task. The mere fact that the depositions were noticed in advance would not alleviate the logistical difficulties caused by an unprecedented global pandemic.

Likewise, CCCB and SJHSRI, were served with interrogatories and document requests on March 12, 2020. CCCB and SJHSRI, however, provided their discovery responses—which, like

Plaintiffs' responses, were boilerplate in nature—on April 24, 2020, well after the April 13, 2020 deadline. But instead of moving to compel further responses from Plaintiffs, and in the spirit of cooperation, providing CCCB and SJHSRI's counsel with time to provide responses, the Prospect Entities filed this sensible motion to provide everyone with more time to assess how to proceed forward in the face of an unprecedented health crisis. The other option was to file a motion to compel CCCB, and SJHSRI to provide adequate and meaningful discovery responses, which, under the January 8, 2020 Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions, will extend the first period of limited discovery. (ECF No. 175, ¶ 6). That, like Plaintiffs' opposition here, will just create unnecessary court intervention.

Therefore, in no way have the Prospect Entities sought to delay the resolution of this important issue; they have diligently responded to discovery, provided supplemental responses, and propounded timely discovery on the relevant parties. Only once it became abundantly clear that this unprecedented health crisis would persist did the Prospect Entities seek leave from the Court to extend the deadlines in the Third Stipulation and Order—leave that was only became necessary after Plaintiffs' counsel refused to consent to a Fourth Stipulation.

IV. Plaintiffs' allegation that the Prospect Entities are seeking a tactical advantage through delay are without basis

As a seeming afterthought attached to the end of their sixteen-page brief, Plaintiffs allege that the Prospect Entities are seeking to delay discovery in order to judgment-proof Prospect Medical Holdings, Inc. The only evidence they offer in support of this sensational allegation is a regulatory application submitted to the Rhode Island Department of Health, and Prospect Medical Holdings, Inc.'s financial statements *for the years 2017 and 2018*.

Neither of these documents provide any support whatsoever for Plaintiffs' allegation, and are nothing more than a desperate attempt to use general and unsupported insinuations of bad faith to derail the Prospect Entities' reasonable request for ninety days of additional time.

V. Conclusion.

Accordingly, in the interest of preserving the safety of all the parties in this case, and given the good cause established by the circumstances surrounding the COVID-19 pandemic, this Court should grant the Prospect Entities' Motion, extending the deadlines in the Third Stipulation and Order for ninety (90) days.

Respectfully submitted,

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

By their attorneys,

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Dated: May 2, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May 2020, I have caused the within document 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/ Edward D. Pare III, Esq.