

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 STATEMENT OF UNDISPUTED MATERIAL FACTS

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"), pursuant to Federal Rule of Civil Procedure 56(c) and Local Rule 56(a), and hereby respectfully submit this Statement of Undisputed Material Facts in support of their Motion for Summary Judgment on Count IV of the Plaintiffs' First Amended Complaint.

UNDISPUTED MATERIAL FACTS

1. At all relevant times up until the assets sale that closed on June 20, 2014 (the "2014 Assets Sale"), St. Joseph Health Services of Rhode Island ("SJHSRI"), functioned as a tax exempt nonprofit hospital corporation located in North Providence, Rhode Island. (Plaintiffs' Exhibit 11, Memorandum of Understanding ("MOE") at 1; Plaintiffs' Exhibit 15, Amended and Restated Bylaws of St. Joseph Health Services of Rhode Island ("SJHSRI Bylaws") at sect. 2; Plaintiffs' Exhibit 14; Health Care

System Affiliation and Development Agreement dated February 2, 2009 (the “Affiliation Agreement”) at 1.)

2. At all relevant times, SJHSRI was controlled by and associated with the Roman Catholic Church (the “Catholic Church”), and its hospitals were operated consistent with the healing mission of the Catholic Church. (Plaintiffs’ Exhibit 14, Affiliation Agreement at p. 2, 12, 51; Plaintiffs’ Exhibit 1, Petition for the Appointment of a Receiver at para. 6.)
3. At all relevant times, SJHSRI was associated with the Catholic Church and was listed in the Official Catholic Directory (the “Directory”) as a subordinate organization that was “operated, supervised, or controlled by or in connection with the [] Catholic Church.” (Declaration of Marshall Raucci dated June 26, 2020 (“Raucci Decl.”) at para 5.)
4. From 1965 through June 30, 1995, employees of SJHSRI participated in a defined-benefit pension plan that the Roman Catholic Bishop of Providence, the Diocesan Administration Corporation, and the Diocesan Service Corporation had established for the employees of the Diocese, known as the Diocese of Providence Retirement Plan (the “Diocesan Plan”). (Plaintiffs’ Statement of Undisputed Material Facts at para. 7. A copy of what purports to be the first iteration of the Diocesan Plan is attached as Exhibit 7 to Plaintiffs’ Statement of Undisputed Material Facts.)
5. In 1995, SJHSRI and the Diocese of Providence removed SJHSRI employees from the Diocesan Plan and simultaneously established the St. Joseph Health Services of Rhode Island Pension Plan (the “Plan”) as a separate retirement plan for those SJHSRI employees, and for qualifying newly-hired employees. (Plaintiffs’ Statement of Undisputed Material Facts at para. 8. The Plan as effective July 1, 1995 is attached as Exhibit 8 to Plaintiffs’ Statement of Undisputed Material Facts.)
6. At all relevant times, the Plan’s controlling Plan document has explicitly declared that the Plan is intended to qualify as a non-electing church plan exempt from the Employee Retirement Income Security Act, as amended (“ERISA”). (Plaintiffs’ Statement of Undisputed Facts at Para. 11; Plaintiffs’ Exhibit 8 (1995 Plan) at 1; Plaintiffs’ Exhibit 9 (1999 Plan) at 1; Plaintiffs’ Exhibit 10 (2011 Plan) at 1; and Plaintiffs’ Exhibit 3 (2016 Plan) at 1.)
7. At all relevant times, the Plan was consistently treated by SJHSRI, and by its trustees, officers and employees, as a non-electing church plan exempt from the provisions of ERISA. (Plaintiffs’ Exhibit 1; Petition for the Appointment of a Receiver, Para. 6; Raucci Decl. at para. 4; Declaration of Kenneth H. Belcher dated June 26, 2020 (“Belcher Decl.”) at para 4.)

8. During the period from its inception effective July 1, 1995, until the restatement of the Plan effective July 1, 2011, responsibility for the general administration of the Plan was held by a Retirement Board whose members were appointed by the Bishop and served at his pleasure. (Plaintiffs' Statement of Undisputed Facts at Para. 12; Plaintiffs' Exhibit 8 (1995 Plan) at 31; Plaintiffs' Exhibit 9 (1999 Plan) at 30.)
9. Pursuant to the terms of the Plan, during the period from its inception effective July 1, 1995, until the restatement of the Plan effective July 1, 2011, "the general administration of the Plan shall be placed in a Retirement Board consisting of the Most Reverend Bishop of the Diocese of Providence and (a) at least three members of the Board of Trustees, and (b) up to six others (who may or may not be members of the Board of Trustees) each of whom is appointed from time to time by the Most Reverend Bishop of the Diocese of Providence to serve at the pleasure of the Bishop." (Plaintiffs' Statement of Undisputed Facts at Para. 13; Plaintiffs' Exhibit 8 (1995 Plan) at 31; Plaintiffs' Exhibit 9 (1999 Plan) at 30.)
10. The "Powers of the Retirement Board" included, *inter alia*, "to allocate and delegate its fiduciary responsibilities under the Plan and to designate other persons, including a committee, to carry out any of its fiduciary responsibilities under the Plan, any such allocation, delegation, or designation to be by written instrument..." (Plaintiffs' Exhibit 8 (1995 Plan) at 31-2; Plaintiffs' Exhibit 9 (1999 Plan) at 30-1.)
11. During the period when the responsibility for the general administration of the Plan was held by a Retirement Board chaired by the Bishop, SJHSRI, the SJHSRI Board of Trustees (the "SJHSRI Board"), and the SJHSRI Finance Committee of the SJHSRI Board of Trustees (the "SJHSRI Finance Committee") handled significant administrative duties with respect to the Plan, from the day-to-day administrative duties to overseeing consultants and actuaries, to selecting and supervising the portfolio managers investing the Plan's assets. (Raucci Decl. at 2.)
12. Under the terms of the Plan, as set forth in Article 18 of its 1999 Restatement, the Retirement Board remained responsible for the general administration of the Plan, at the commencement of the Affiliation in 2009, throughout the Transition Period that ended June 30, 2010 (the "Transition Period"), and well into 2011 when the SJHSRI Board amended and restated the Plan, on or about August 25, 2011. (Plaintiffs' Exhibit 9 (1999 Plan) at 30; Plaintiffs' Exhibit 10 (2011 Plan).
13. Prior to the 2011 restatement of the Plan, the SJHSRI Finance Committee played a significant role in administering the Plan, and making recommendations to the SJHSRI Board and to the Retirement Board. (Raucci Decl. at para 10 through 15; Belcher Decl. at 18.)

14. Attached hereto as Exhibit A are the approved minutes of a meeting on July 13, 2007 of the SJHSRI Finance Committee of the Board of Trustees (“SJHSRI Finance Committee”).
15. The July 13, 2007 minutes of the SJHSRI Finance Committee indicate that a motion was duly made, seconded and passed to recommend, for approval by the SJHSRI Board of Trustees and the Retirement Board, the implementation of a “soft freeze” of the Plan and the implementation of a defined contribution pension plan for all new hires after September 30, 2007. (Exhibit A.)
16. Attached as Exhibit B is the Decision of the Department of the Rhode Island Attorney General (“RIAG”) dated May 16, 2014 under the Hospital Conversions Act. (“RIAG Decision”)

The 2009 Affiliation

17. Roger Williams Medical Center (“RWH”) was a Rhode Island non-profit corporation that owned the hospital it operated under the name Roger Williams Hospital until it sold all, or substantially all, of its operating assets to a newly formed entity owned by Prospect Medical Holdings, Inc. (“Prospect Holdings”) and CCHP, which had been renamed CharterCARE Community Board (“CCCB”), in June of 2014. (Plaintiffs’ First Amended Complaint at para.17, 18; Belcher Decl. at para. 7.)
18. In 2008 and 2009, the RWH and SJHSRI hospital systems were separate non-profit health care systems losing in excess of \$8 million a year. (Belcher Decl. at para. 11; Exhibit B, RIAG Decision at 7.)
19. To help address the ongoing and significant financial issues RWH and SJHSRI were both facing, SJHSRI and RWH entered into a “Memorandum of Understanding” (“MOU”) in May of 2008 and agreed in principle to an affiliation to create a new health care system. (Belcher Decl. at para. 12; Plaintiffs’ Exhibit 11, Memorandum of Understanding dated May 12, 2008 (“MOU”) at 11.)
20. The purpose of the RWH-SJHSRI affiliation was to realize approximately \$15 million dollars in savings over 5 years, by utilizing efficiencies created by combining the two hospital systems, as well as to preserve and expand the health care services being provided to the existing hospital communities. (Belcher Decl. at para. 13; RIAG Decision at 7.)
21. The MOU expressly provided that it was “a fundamental understanding of the Parties that the System shall be structured and governed in a manner that will

preserve the Catholicity of SJHSRI ...” (Plaintiffs’ Exhibit 11, MOU at 1; Belcher Decl. at para. 14.)

22. Pursuant to the MOU, “SJHSRI will maintain its designation as a Catholic hospital operating in full compliance with the social and ethical teachings of the Catholic Church, including the Religious and Ethical Directives for Catholic Health Care Services, as promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop (“ERDs”).” (Plaintiffs’ Exhibit 11, MOU at 4.)
23. Consistent with the MOU, as of February 2, 2009, SJHSRI, RWH, and the Most Reverend Bishop of the Diocese of Providence (the “Bishop”) entered into a Health Care System Affiliation and Development Agreement (the “Affiliation Agreement”) which committed those parties to reorganize the two hospitals into a combined health system and organize CCHP as a new tax-exempt Rhode Island non-profit corporation called CharterCARE Health Partners (alternatively, “CCHP” or “CCCB”¹) which would function as a parent organization for both SJHSRI and RWH and not only provide strategic oversight but also provide financial, administrative and organizational support to both of those operating entities on all matters except for certain religious, pastoral and related matters. (Plaintiffs’ Exhibit 14, Health Care System Affiliation and Development Agreement dated February 2, 2009 (the “Affiliation Agreement”); Belcher Decl. at para 16, 17.)
24. The Affiliation Agreement was entered into by SJHSRI, RWH and the Bishop in February of 2009, and executed by Kenneth Belcher as President and CEO of RWH and RWMC; Edwin Santos as Board Chair of RWH and RWMC; John Fogarty as President and CEO of SJHSRI, and Bishop Thomas Tobin for SJHSRI and for the Roman Catholic Bishop of Providence. (Plaintiffs’ Exhibit 14; Affiliation Agreement at pp. 7, 59-60; Belcher Decl. at para. 16.)
25. The corresponding changes to the articles and bylaws of CCHP and SJHSRI, incorporating and implementing the principle provisions of the Affiliation Agreement, were approved on or about January 4, 2010. (Plaintiffs’ Exhibit 15, SJHSRI’s Bylaws; Plaintiffs’ Exhibit 24, CCHP’s Bylaws.)
26. Attached hereto as Exhibit C is a copy of the Articles of Amendment to Articles of Incorporation for SJHSRI effective January 4, 2010 (“SJHSRI Amended Articles”).
27. The Affiliation Agreement called for organizational changes to be made to each of the operating entities’ articles and bylaws, to cause activities that had been conducted at the operating entity level to, in effect, migrate and transfer to the newly-formed parent organization, CCHP, on or about June 30, 2010. That notably

¹ CCHP was later renamed the CharterCare Community Board, or “CCCB.”

included functions that the operating organizations' boards of trustees and board-level committees had been performing. Changes accordingly were made to the Bylaws of SJHSRI and CCHP and the Articles of Incorporation of SJHSRI. (Plaintiffs' Exhibit 14, Affiliation Agreement at Article 2; Plaintiffs' Exhibit 15, CCHP's Bylaws; Plaintiffs' Exhibit 24; Exhibit C, SJHSRI Amended Articles.)

28. Pursuant to the Affiliation Agreement, the Bishop retained a continuing, controlling and permanent role over all religious, pastoral and related matters at SJHSRI. The Affiliation Agreement included provisions to ensure that SJHSRI would remain a Catholic hospital despite being affiliated with a non-Catholic hospital and that "SJHSRI [would] continue to operate consistent with the principles and mission of a Catholic hospital responsive to the needs of the poor and disenfranchised." (Plaintiffs' Exhibit 14; Affiliation Agreement at p. 2.)
29. From its inception, the Affiliation – starting with the incorporation of CCHP itself on February 2, 2009 – was structured to ensure that the Bishop, and thereby the Catholic Church, not only would maintain its close association with SJHSRI, but also would have control, or effective control, over the governance and operation of CCHP, and therefore over SJHSRI, for at least a period of years. (Plaintiffs' Exhibit 24, CCHP's Bylaws; Plaintiffs' Exhibit 15, SJHSRI's Bylaws; Exhibit C, SJHSRI Amended Articles; Belcher Decl. at para. 17, 23; Raucci Decl. at para. 23, 24, 22, 27.)

Formation, Structuring of CCHP

30. The Affiliation Agreement specified that the initial Board of Trustees of CCHP (the "CCHP Board") would consist of eight (8) individuals designated by the Bishop and seven (7) individuals designated by the Board of Trustees of RWH (the "Initial Board"), and that the Initial Board would serve for a general term of three (3) years, at the conclusion of the transition period provided for in the Affiliation Agreement (the "Initial Term"). The Initial Board provided the Bishop – at least for a period of years – with the power to directly control the CCHP Board. (Plaintiffs' Exhibit 14, Affiliation Agreement at sec 2.1.1.)
31. The Affiliation Agreement further provided that the initial Vice-Chair of the CCHP Board would be Monsignor Paul Theroux, who was considered the Bishop's designate (Affiliation Agreement, sect. 2.1.8.), and that vacancies on the CCHP Board occurring during the Initial Term would be filled by the party that had appointed the first to fill that vacancy. (Plaintiffs' Exhibit 14; Affiliation Agreement, sect. 2.1.2.)
32. The eight CCHP trustees designated by the Bishop consisted of Monsignor Theroux (designated as Vice-Chair); Reverend Brian Shanley; and incumbent SJHSRI board

members Marshall Raucci, Jr.; Dan Ryan; Kevin Stiles; Joseph DiStefano; the Honorable Joseph Weisberger; and Peter DeBlasio. (Raucci Decl. at para. 21, 22.)

33. The governance provisions specified in the Affiliation Agreement, including the Bishop's power(s) of appointment, all were incorporated into CCHP's Bylaws. (Plaintiffs' Exhibit 24, CCHP Bylaws, sect. 4.)
34. Additional provisions, not addressed by the Affiliation Agreement, also were set forth in CCHP's Bylaws, including a provision ("Term of Office") which specified that a Trustee "shall hold office for the term of the class to which he or she is elected and until his or her successor is elected and qualified, or until he or she sooner dies, resigns, is removed or becomes disqualified." (Plaintiffs' Exhibit 24, CCHP Bylaws, sect. 2.1.2., 4.3.)
35. The individuals appointed by the Bishop to serve on the Initial Board of CCHP also served on various board committees charged with taking over many of the rights, duties and obligations previously held by the board committees that had served SJHSRI and RWH, as the activities historically handled by the SJHSRI Board and its constituent committees migrated to the CCHP Board and its constituent committees. (Raucci Decl. at para. 24; Belcher Decl. at para. 24; Plaintiffs' Exhibit 15, SJHSRI's Bylaws at sect. 4.5 (providing for the systematic transfer of committee responsibilities from SJHSRI board committees to counterpart CCHP committees, on or about June 30, 2010); Plaintiffs' Exhibit 24, CCHP's Bylaws at sect. 4.4 (providing for the establishment of various standing committees, mirroring those found at SJHSRI and, presumably, at RWH).)
36. The process of electing CCHP Board members, at the conclusion of and following the Initial Term, was two-pronged and designed to prevent wholesale changes from occurring in the CCHP Board. First, new CCHP Board members could only be elected by the affirmative vote of a super-majority (75%) of the existing CCHP Board members – a process requiring the affirmative vote of twelve (12) of the then-fifteen (15) members (including at least five of the eight hand-picked by the Bishop). (CCHP Bylaws, sect. 4.2(b), (d).) Second, new candidates (or, incumbent board members sitting for re-election) had to be nominated by a Nominating Committee consisting of four (4) CCHP Board members, two (2) of whom were appointed by the Bishop, and a candidate could only be put forward by unanimous vote of the Nominating Committee. (Plaintiffs' Exhibit 14, Affiliation Agreement, sect. 2.1.3; Plaintiffs' Exhibit 24, CCHP Bylaws, sect. 4.4(d).)
37. The Nominating Committee was explicitly required to determine that each candidate recommended for the CCHP Board (as well as for the positions of Chief Executive Officer ("CEO") and Chief Operating Officer ("COO")) understand, and

acknowledge in writing, that CCHP was the operator of a Catholic hospital and indicate that such candidate would be able to support CCHP's mission and the Catholicity principles set forth in the Affiliation Agreement. (Plaintiffs' Exhibit 14, Affiliation Agreement, sect. 2.1.3; 2.2.) These key provisions also were incorporated into CCHP's Bylaws. (Plaintiffs' Exhibit 24, CCHP Bylaws, sect. 4.4(d).)

38. Given the structural barriers to identifying and seating new CCHP Board members, ranging from the Nominating Committee screening process requiring unanimity to the requirement that the CCHP Board vote overwhelmingly in favor of seating new members (at least 12 of the 15 CCHP Board members), to the provision that a Trustee was to serve until his or her replacement was elected and qualified, all of the then-sitting CCHP Board members were re-elected at the conclusion of the Initial Term, ultimately leaving control over CCHP in the hands of the Bishop and RWH, with the Bishop holding eight votes to RWH's seven. (Plaintiffs' Exhibit 24, CCHP Bylaws.)
39. This immutable advantage, held by the Bishop over the CCHP Board, played an outsized role in how CCHP Board exercised its oversight of SJHSRI and made critical decisions there. While the CCHP Board could exert substantial control over SJHSRI's strategic, financial and medical activities (the "Major Actions"), both CCHP's Bylaws and SJHSRI's amended Articles and Bylaws only permitted the CCHP Board to actually exercise such control by super majority vote – again, the affirmative vote of 75% of the CCHP Board's members, or 12 of the 15 incumbent board members. (Plaintiffs' Exhibit 15, SJHSRI's Bylaws; Plaintiffs' Exhibit 24, CCHP's Bylaws.)
40. An examination of CCHP Board minutes, dating from 2010 (during the Transition Period) and 2011 (after the Transition Period had ended), confirm the Bishop's control over CCHP. (See e.g., Exhibit Q; Belcher Decl. at para. 23; Raucci Decl. at para. 23, 24.)
41. Attached hereto as Exhibit D are the approved minutes of a meeting on October 13, 2010 of the CCHP Governance Committee which included Msgr. Paul Theroux and Rev. Brian Shanley.
42. The October 13, 2010 minutes reflect a discussion regarding expiration of trustee term limits and extensions for SJHSRI Board members. "Monsignor Theroux reported that he recently met with [Kenneth] Belcher and had expressed a desire to resign from the CCHP Board and only serve on the SJHSRI Board... In addition, Monsignor Theroux reported that since the SJHSRI Board does not have a Vice Chairman of the CCHP Board, Reverend Timothy Reilly could serve as the Bishop's appointee to the CCHP Board. It was thereupon suggested that

Monsignor Theroux discuss these appointments with Bishop Tobin after which Mr. Belcher will follow up with these individuals. After discussion, a motion was made to recommend the CCHP Board organizational changes for presentation to Bishop Tobin.” (Exhibit D.)

43. Attached hereto as Exhibit E are the approved minutes of a meeting on September 15, 2011 of the CCHP Governance Committee.
44. The September 15, 2011 minutes reflect a discussion regarding the role of the various boards and overlap membership on boards. “Mr. DiStefano referred to the June 2, 2010 minutes which raised the question as to whether a member of the SJHSRI Board must be of Catholic faith. Mr. DiStefano stated that in prior discussions with Monsignor Theroux he did not believe that Bishop Tobin would be opposed to non-Catholic members serving on the SJHSRI Board. Monsignor Theroux informed Mr. DiStefano that the Bishop had expressed receiving suggestions for membership from the Nominating Committee. ...” (Exhibit E.)

Impact of Affiliation on SJHSRI

45. Pursuant to the Affiliation Agreement, the Articles and Bylaws of SJHSRI were amended to provide that effective January 4, 2010, CCHP would be SJHSRI’s sole Class A Member, and the Bishop, or his designee, would be the sole Class B Member. (Exhibit C, SJHSRI Amended Articles, sect. 2, exhibit A, part A; Plaintiffs’ Exhibit 15, SJHSRI Bylaws, sect. 2.1.)
46. During the transition period in 2009, the SJHSRI Finance Committee continued to have a significant role in administering the Plan. The SJHSRI Finance Committee made investment decisions and made recommendations to the SJHSRI Board. (Raucci Decl. at para. 11.)
47. Once the Transition Period was over, subject to the reserved powers of the Bishop as the permanent Class B Member, operational control over SJHSRI – from appointing and removing individual SJHSRI board members, to taking one or more so-called “Major Actions” such as incurring material debt, modifying hospital services, filing for certificates of need, and adopting SJHSRI’s strategic plan – rested exclusively with CCHP, first acting through its own board of trustees (as the Class A Member) during the Transition Period, and ultimately acting through both its board and its standing board committees once the Transition Period ended. (Plaintiffs’ Exhibit 24, CCHP Bylaws, sect. 4.9; Belcher Decl. at para. 19; Raucci Decl. at para. 19, 20.)
48. Conspicuously absent from the list of activities or matters considered to be “Major Actions” was anything to do with sponsoring or administering the Plan, or funding

the Plan outside the general approval of SJHSRI's budget. That meant that the SJHSRI Board, alone, had authority over the sponsorship, administration and funding of the Plan. (Plaintiffs' Exhibit 24, CCHP Bylaws, sect. 4.9.)

49. The shifts in the more day-to-day responsibilities on or about June 30, 2010, did not signal a wholesale relinquishment by the Bishop of influence and control over SJHSRI (except for, e.g., pastoral matters, etc.). Rather, care had been taken to preserve and perpetuate the Bishop's substantial role and influence within CCHP when it was organized and incorporated by positioning the Bishop to pack the CCHP Board and subject all major decisions involving SJHSRI to a super-majority vote his appointees could block at will. Accordingly, the transfer of most functions – and most board and committee responsibilities – from SJHSRI to CCHP at the conclusion of the Transition Period remained subject to approval by the Bishop. (Plaintiffs' Exhibit 24, CCHP Bylaws; Belcher Decl. at para. 23; Raucci Decl. at para. 23, 24.)

50. To bolster the Bishop's ability to exercise control over CCHP and SJHSRI, in case his ability to exercise control through his board appointees proved to not be sufficient, two provisions were added to SJHSRI's Articles as it was being revised to reflect the Affiliation. Part D of SJHSRI's Amended Articles gave the Bishop significant power and authority to block certain actions the SJHSRI Board otherwise might attempt to take, simply by withholding his consent:

“D. Provided that the corporation continues under Catholic sponsorship, as determined in the sole discretion of the Class B member, and is listed in the Official Catholic Directory [] unless otherwise permitted by the Class B member, the following actions shall require the approval of both the Class A member [] and the Class B member:

- (i) the sale, mortgaging, or leasing of any real or personal property of the corporation with a value in excess of the canonical threshold then in effect;
- (ii) the dissolution of the corporation;
- (iii) any change to the corporation's charity care policy;
- (iv) all matters regarding pastoral care, including without limitation, funding;

*
*
*

- (vi) any amendment to the Articles [], bylaws, or other governing documents of the corporation relating to the Ethical and Religious Directives for Catholic Health Care Services as promulgated by the United States Conference of Catholic Bishops . . .”

(Exhibit C, SJHSRI Amended Articles, sect. 2, Exhibit A, Part D.)

51. Part E SJHSRI's Amended Articles acknowledges the Bishop's unique ability to recognize (or withhold recognition) of SJHSRI as a Catholic Church-affiliated institution by causing it to be included in the Official Catholic Directory, thereby enabling the Plan (and SJHSRI) to avoid ERISA's potentially crippling funding and regulatory requirements, which SJHSRI was not then in a position to afford, by providing that so long as the Bishop cooperated and enabled the Plan to remain a "church plan" SJHSRI would not allow or permit any of a series of so-called "prohibited procedures" such as abortion or euthanasia to be performed at the Catholic Hospitals:

"E. So long as the corporation remains sponsored by the Roman Catholic Church as determined by the Bishop, and continues to be listed in the Official Catholic Directory, as long as the Catholic Directory exists, [] the corporation will not cause or permit any of the Prohibited Procedures to be performed."

(Exhibit C, SJHSRI Amended Articles, sect. 2, Exhibit A, Part E.)

Impact of Affiliation On the Plan

52. During the Transition Period in 2009, the SJHSRI Finance Committee remained involved in various Plan matters such as renewing its 2007 recommendation to partially freeze the Plan at a meeting held June 29, 2009. (Raucci Decl. at para. 11 through 15.)

53. Attached as Exhibit F are the approved minutes of a meeting on May 1, 2009 of the SJHSRI Finance Committee.

54. The May 1, 2009 minutes reflect a discussion regarding a "Pension Plan Action". "Darlene Souza attended the meeting to report on a Pension Plan matter relating to [...] a retired Registered Nurse ... [who] disagrees with the Hospital's interpretation of Article 6 and contests that she does not agree with the rules as the Hospital interpreted them. [She] ... has requested a review of this decision by the Hospital's Pension Board. The Finance Committee agrees with Management's position on this matter and recommends to the Pension Board its concurrence...." (Exhibit F.)

55. On July 16, 2009, the SJHSRI Board voted to approve the recommendation of the SJHSRI Finance Committee to freeze the Plan to non-union employees. Attached as Exhibit G are the approved minutes of a meeting on July 16, 2009 of the SJHSRI Board as well the minutes evidencing the SJHSRI's Board's votes and the action of the Retirement Board on July 16, 2009.

56. The July 16, 2009 minutes indicate that Jeffrey Bauer from the Angell Pension Group and the SJHSRI Finance Committee had recommended a hard freeze of the Plan as of September 30, 2009 therefore ceasing further accruals to the Plan. The SJHSRI Board voted to approve the recommendation of the SJHSRI Finance Committee to cease accruals to the defined benefit plan as of September 30, 2009 and offer a 403(b) savings plan in its place with a Hospital match. (Exhibit G.)
57. On that same day, July 16, 2009, the Retirement Board, chaired by Bishop Tobin, approved a resolution to amend the Plan to freeze the Plan to non-union employees.
58. One action the SJHSRI Finance Committee took, at a meeting held November 6, 2009, involved determining that “the future Investment Committee of [CCHP] would be the setting where Plan investments would be reviewed to make sure they are keeping pace with the agreed upon format”. Attached as Exhibit H are the approved minutes of a meeting on November 6, 2009 of the SJHSRI Finance Committee.
59. Attached hereto as Exhibit I is an e-mail dated January 6, 2010 from Joseph D’Alessandro (Director, Compensation/Benefits at SJHSRI) to Louis Squillante and copying Darlene Souza which identifies the following individuals as members of the Retirement Board: Bishop Thomas J. Tobin; Monsignor Paul D. Theroux; Joseph R. DeStefano, Esq.; Daniel Ryan, CPA; Kevin Stiles; John Fogarty; Darlene Souza; and Kathleen Kenny.
60. Meetings held by the Retirement Board, following the action taken in July of 2009 to close the Plan to non-union employees, continued but were markedly less frequent. Nonetheless, the Retirement Board – then, consisting of eight individuals including the Bishop – continued to function throughout the approximately eighteen month Transition Period. (Exhibit I.)
61. Throughout 2010 the SJHSRI Board continued to be involved with overseeing the Plan and receiving input from the SJHSRI Finance Committee regarding the Plan, until the SJHSRI Finance Committee’s functions were moved up to the CCHP level in accordance with the Affiliation Agreement. Attached as Exhibit J are the approved minutes of a meeting on May 20, 2010 of the SJHSRI Board. (Belcher Decl. at para. 19, 21, 22, 24.)

Plan Administration from September 1, 2011 to June 30, 2014

62. Pursuant to the Affiliation Agreement, the SJHSRI Finance Committee’s responsibilities were to be placed under the supervision of the CCHP Board, and, after a transition period in which the SJHSRI Finance Committee would continue

to function in order to provide continuity and oversight, a new CCHP Finance Committee would take over its actual responsibilities. However, it was also determined that a separate Investment Committee of CCHP would take over administration of the Plan investments. (Raucci Decl. at para. 13, 14, 19, 20.)

63. Following the close of the Transition Period in 2010, and in accordance with the Affiliation Agreement, the authority held by the SJHSRI Finance Committee and SJHSRI's other standing board committees transferred to comparably-named CCHP Board committees, often populated by many of the same individuals that had served on the SJHSRI committees. (Belcher Decl. at para. 24, 25.)
64. The CCHP Finance Committee assumed some, but not all, of the Plan administrative and oversight responsibilities that were previously handled by the SJHSRI Finance Committee. (Belcher Decl. at para. 28.)
65. The CCHP Finance Committee had a significant role in overseeing the administration of the Plan following the Affiliation and the expiration of the Transition Period. (Belcher Decl. at para. 28, 29.)
66. One of the roles of the CCHP Finance Committee was monitoring the financial status and outlook of the Plan. (Belcher Decl. at para. 28, 29; Raucci Decl. at para. 20.)
67. Attached as Exhibit K are the approved minutes of a meeting on March 15, 2011 of the CCHP Finance Committee.
68. The March 15, 2011 minutes reflect that Jeffrey Bauer from the Angell Pension Group made a presentation on the Plan and explained that if the Plan lost its church plan status, there would be a "significant impact from a cash flow perspective" due to required funding levels, and potential penalties if those levels are not met. (Exhibit K.)
69. Attached as Exhibit L are the approved minutes of a meeting on July 19, 2011, of the CCHP Finance Committee.
70. The July 19, 2011 minutes reflect that the Committee was discussing the "Susan Romano Pension Board Benefit Appeal. "Mrs. Souza provided the Committee with some background information regarding the SJHSRI Pension Plan ... Prior to the affiliation, the SJHSRI Finance Committee served as the Committee that reviewed appeals as submitted to the SJHSRI Retirement Board. [...] As a result of the affiliation, the responsibilities and oversight of the previously acting SJHSRI Retirement Board now fall under the CCHP Finance Committee."(Exhibit L.)

71. Attached as Exhibit M are the approved minutes of a meeting on November 15, 2011, of the CCHP Finance Committee.
72. The November 15, 2011 minutes reflect that Darlene Souza, Michael Conklin and Jeffrey Bauer from the Angell Pension Group were reporting on the Plan. Jeff Bauer provided an overview of the existing Plan and significant items affecting the Plan. It was determined that Darlene Souza “will check in semi-annually with the Committee to keep them apprised of the valuation of the Pension assets and liabilities...” “The Finance Committee noted this was a valued overview and acknowledges a semi-annual update would be appreciated...” (Exhibit M.)
73. The CCHP Investment Committee handled significant maintenance and administrative matters with respect to the Plan. (Belcher Decl. at para 30; Raucci Decl. at para 26, 27.)
74. The CCHP Investment Committee was primarily responsible for overseeing the Plan’s investments and its funded status; reviewing and approving the investment guidelines governing the pooled fund investments for the Plan; selecting, evaluating and reviewing the performance and portfolios of the investment managers the Committee retained to manage the Plan’s assets; advising as to the Plan’s asset allocation; reviewing reports as to the Plan’s funding status; and making recommendations to CCHP’s Board of Trustees. (Raucci Decl. at para. 26.)
75. In addition to its oversight of the Plan, the CCHP Investment Committee also handled investment oversight of a handful of much smaller endowment funds of RWH and SJHSRI. (Raucci Decl. at para. 28.)
76. The Plan’s financial well-being was the paramount concern to the CCHP Investment Committee. (Raucci Decl. at para. 28.)
77. Attached as Exhibit N are the approved minutes of a meeting on March 19, 2010, of the CCHP Investment Committee.
78. The March 19, 2010 minutes reflect a discussion about the role of the Investment Committee which included a discussion of the Plan. It was noted that the Plan continues to be underfunded. “The market recovery has improved the unfunded position. Mr. Raucci noted that the unfunded liability has had a significant impact on the SJHRI Balance Sheet. Because the Plan is a Church Plan, it is not held to ERISA rules and is not required to be funded. The [Plan] was frozen last year for all employees not covered by the collective bargaining agreement. The freeze has resulted in a significant reduction in the liability. There is a Pension Board at SJHSRI whose purpose is to provide administrative oversight of the [Plan]. Their responsibilities include: Fiduciary Administration, Plan Documents and

Participation. The Pension Committee meets two times a year to maintain compliance with Church Plan....” (Exhibit N.)

79. Attached as Exhibit U are the approved minutes of a meeting on November 18, 2011 of the CCHP Investment Committee.
80. The November 18, 2011 meeting minutes reflect that the CCHP Investment Committee voted on changes to the Investment Policies and Statements of Operating Procedures “so that they may be presented to the CCHP full Board.” (Exhibit U).
81. Attached as Exhibit O are the approved minutes of a meeting on December 15, 2011, of the CCHP Board.
82. The December 15, 2011 minutes reflect after receiving a report from the chairman of the CCHP Investment Committee, Marshall Raucci, Jr., the Board approved the Investment Policy Statements as presented. (Exhibit O.)
83. The Plan was amended and restated effective July 1, 2011. (*See* Plaintiffs’ Statement of Undisputed Material Facts at Para. 28; Plaintiffs’ Exhibit 10 (2011 Plan).)
84. The 2011 restatement of the Plan (the “2011 Plan”) identified the “Employer” (SJHSRI) as the 2011 Plan’s Administrator, and left it up to the SJHSRI Board to either re-designate the Retirement Board to serve as the Administrator or take some other action(s). There is no evidence in the record created at that time that the SJHSRI Board intended to abolish the Retirement Board outright, or in any way limit the Bishop’s historically substantial reach or involvement. (Plaintiffs’ Exhibit 10, 2011 Plan.)
85. Attached as Exhibit P are the approved minutes of a meeting on July 21, 2011, of the SJHSRI Board of Trustees.
86. The July 21, 2011 minutes reflect that the SJHSRI Board voted to approve certain amendments to the Plan, the freezing of participation in the Plan, and the adoption of the restatement of the Retirement Plan. (Exhibit P.)
87. The July 21, 2011 minutes also reflect that “possible new board members will be presented to the Bishop for his approval” thus evidencing the Bishop’s continuing control over the SJHSRI Board. (Exhibit P.)
88. On July 28, 2011, the Executive Committee of the CCHP Board ratified the decisions made by the SJHSRI Board regarding the Plan including the approval of certain amendments to the Plan, the freezing of participation in the Plan, and the

adoption of the restatement of the Retirement Plan. Attached as Exhibit Q are the approved minutes of a meeting on July 28, 2011, of the CCHP Board.

89. The July 28, 2011 minutes also reflect a discussion on “Board Membership” which evidences the continued involvement of the Bishop even at the CCHP level. “A discussion ensued concerning the Bishop’s role in appointing Trustees to the CCHP and SJHSRI Boards. A suggestion was made to have a letter sent to the Bishop requesting a replacement for Judge Weisberger. Mr. Belcher stated that he will contact Monsignor Theroux to inform him of the letter that will be sent to the Bishop. The Nominating Committee is responsible for nomination and recommendation of potential Trustees to the various Boards.” (Exhibit Q.)

90. On or about April 29, 2013, the Bishop ratified and confirmed the 2011 Plan, using an instrument styled as a set of resolutions (the “2013 Resolutions”). (Plaintiffs’ Exhibit 22; 2013 Resolutions.)

91. The 2013 Resolutions explicitly identified the SJHSRI Board itself as the “new” Retirement Board, and further recognized that the CCHP Finance Committee had been tasked with handling the 2011 Plan’s ongoing administrative matters:

“RESOLVED, that the Board of Trustees of St. Joseph Health Services of Rhode Island is the Retirement Board with respect to the Plan and acts on behalf of St. Joseph Health Services of Rhode Island as the Plan Administrator of the Plan. [...]

RESOLVED, that the Board of Trustees of St. Joseph Health Services of Rhode Island has the authority, pursuant to the terms of the Plan, to appoint a committee to act on its behalf with respect to administrative matters related to the Plan. [...]

RESOLVED, that the Board of Trustees of St. Joseph Health Services of Rhode Island has appointed the Finance Committee of CharterCARE Health Partners to act on its behalf with respect to administrative matters related to the Plan.

RESOLVED, that the Plan is intended to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended (the “Code”) as a non-electing church plan within the meaning of Section 414(e) of the Code and Section 3(33) of the Employee Retirement Income Security Act of 1974, as amended.” (Plaintiffs’ Exhibit 22, 2013 Resolutions.)

92. Pursuant to the above action taken by the Bishop (and pursuant to the 2011 Plan), the SJHSRI Board was designated as the Plan Administrator, the SJHSRI Board was recognized and designated as the Retirement Board, and the SJHSRI Board, acting as the Retirement Board, was recognized as having deputized and appointed the

CCHP Finance Committee to act with respect to administrative matters related to the Plan. (Plaintiffs' Exhibit 22, 2013 Resolutions.)

93. The Plan explicitly allows the Administrator to “(1) employ agents to carry out nonfiduciary responsibilities (other than Trustee responsibilities), (2) consult with counsel who may be counsel to the Employer, and (3) provide for the allocation of fiduciary responsibilities (other than Trustee responsibilities) among its members....”. (Plaintiffs' Exhibit 10, 2011 Plan at Article 8.1(a).)
94. These relationships and working arrangements remained in effect until the 2014 Assets Sale was consummated on June 20, 2014. (Belcher Decl. at para. 26, 27, 28, 29, 30, 31.)
95. In March of 2014, both the SJHSRI Board and the CCHP Finance Committee voted separately on various amendments relating to the Plan effective June 1, 2014, including the freezing of all Plan benefits and the authorization of officers of SJHSRI to effectuate the amendment (the “Pension Freeze”). (Belcher Decl. at para. 29.)
96. The March 13, 2014 minutes reflect that the SJHSRI Board of Trustees voted on various amendments relating to the Plan effective June 1, 2014, including the freezing of all Plan benefits and the authorization of officers of SJHSRI to effectuate the amendment (the “Pension Freeze”). (Plaintiffs' Exhibit 23.)
97. Attached as Exhibit R are the approved minutes of a meeting on March 25, 2014, of the CCHP Finance Committee.
98. The March 13, 2014 minutes reflect that the Pension Freeze amendment was presented to the Committee after the “Amendment had already been presented to the SJHSRI Board at the March 13, 2014 meeting. Mrs. Souza also stated that the CCHP Finance Committee is appointed to oversee the Plan and provide SJHSRI approval to modify the Plan documents.” The CCHP Finance Committee approved the Pension Freeze. (Exhibit R.)
99. In 2014, both the SJHSRI Board and the CCHP Finance Committee considered and approved Plan amendments adopting the Pension Freeze, effective June 1, 2014. (Belcher Decl. at para. 29; Exhibit R.)
100. Pursuant to the Plan, “In the event more than one party shall act as Administrator, all actions shall be made by majority decisions. In the administration of the Plan, the Administrator may (1) employ agents to carry out nonfiduciary responsibilities (other than Trustee responsibilities), (2) consult with counsel who may be counsel to the Employer, and (3) provide for the allocation of fiduciary responsibilities

(other than Trustee responsibilities) among its members....” (Plaintiffs’ Exhibit 10, 2011 Plan at Article 8.1.)

101. The 2014 Assets Sale closed on June 20, 2014. As summarized in the Petition to appoint a receiver filed over three years later: “Prior to the sale, eligibility for employee participation in the Plan was terminated, thereby closing the Plan to new participants. In connection with the sale, additional benefits accruals for existing plan participants were terminated effectively “freezing” benefits for then eligible employees. Neither Prospect nor the Hospital Purchaser assumed the Plan or any liability with respect thereto as clearly stated in the asset purchase agreement among the parties. [Prospect had no role in the evaluation of the Plan or its funding level.]” Petition for the Appointment of a Receiver (August 16, 2017).

Plan Administration After the 2014 Asset Sale

102. After the 2014 Assets Sale, SJHSRI ceased to own or operate a hospital or otherwise provide health care. (First Amended Complaint at Para. 16.)
103. After the 2014 Assets Sale, although SJHSRI no longer operated a hospital, it continued to be listed in the Directory, in the “Miscellaneous Listings” section of the Directory. Attached as Exhibit S is a copy of a letter dated January 20, 2015 from Rev. Timothy D. Reilly to Daniel Ryan. (Exhibit S.)
104. Representations were made to state regulators in April 2014 that an Investment Committee would continue to monitor the Plan after the 2014 Assets Sale: “The pension liability will remain in place post transaction. Subsequent to the \$14 Million contribution to the Plan upon transaction, future contributions to the Plan will be made based on recommended annual contribution amounts as provided by the Plan’s actuarial advisors. Moving forward, the investment portfolio of the plan will be monitored by the Investment Committee of the Board of Trustees.”
105. After the 2014 Assets Sale, Catholic Church representatives continued to serve on (or be appointed to) the SJHSRI and CCCB Boards, including Reverend Monsignor Theroux, Reverend Forcier, Reverend Kenneth Sicard, and Reverend Timothy Reilly.
106. Attached as Exhibit T are the Written Consents dated as of December 15, 2014 of the Class A Member of SJHSRI (CCCB).
107. The December 15, 2014 written consents reflect that Daniel J. Ryan, President of CCCB, Class A Member, took certain actions by written consent and adopted certain resolutions in accordance with Section 15 of the Bylaws of the

Corporation, including authorizing Daniel Ryan and Richard Land to take such actions as either of them deems necessary and advisable in connection with the investment and liquidation of the Corporation's assets... including the Plan funds... amending the bylaws, and electing the following individuals to the Board of Trustees: Daniel Ryan, Reverend Timothy Reilly, Nancy Rogers, Chris Chihlas, M.D., Reverend Kenneth Sicard and Joseph Mazza, M.D; and elected as officers of SJHSRI: Daniel J. Ryan, President, Treasurer and Secretary. (Exhibit T.)

108. The December 15, 2014 written consents provided, *inter alia*, "That Daniel J. Ryan, President of the Corporation, and Richard J. Land, each acting alone, be, and each hereby is, authorized to take such actions as we deem necessary and appropriate in connection with the administration, management and potential wind-down of the Corporation's pension plan (including, without limitation, negotiation with participants and their representatives)." (Exhibit T.)
109. The Plan was administered by SJHSRI, or the individuals appointed by the SJHSRI Board, for more than three (3) years after the 2014 Assets Sale. (Exhibit T.)
110. In August of 2017, SJHSRI petitioned the Plan into Receivership in the matter entitled *St. Joseph's Health Services of Rhode Island, Inc. v. St. Joseph's Health Services of Rhode Island Retirement Plan, as amended*, Rhode Island Superior Court (the "Receivership Court"), PC-2017-3856 (Stern, J.) (Plaintiffs' Exhibit 1.)

Respectfully submitted,

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

By their attorneys,

/s/ Ekwan E. Rhow, Esq.

/s/ Thomas V. Reichert, Esq.

Ekwan E. Rhow, Esq.

Pro Hac Vice

Thomas V. Reichert, Esq.

Pro Hac Vice

BIRD, MARELLA, BOXER, WOLPERT, NESSIM

DROOKS, LINCENBERG & RHOW, P.C.

1875 Century Park East, 23rd Floor

Los Angeles, California 90067-2561

310-201-2100 Phone

erhow@birdmarella.com

/s/ Preston W. Halperin, Esq.

/s/ Dean J. Wagner, Esq.

Preston W. Halperin, Esq. (#5555)

Dean J. Wagner, Esq. (#5426)

Christopher J. Fragomeni, Esq. (#9476)

Edward D. Pare III, Esq. (#9698)

SHECHTMAN HALPERIN SAVAGE, LLP

1080 Main Street

Pawtucket, RI 02860

401-272-1400 Phone

401-272-1403 Fax

phalperin@shslawfirm.com

dwagner@shslawfirm.com

cfragomeni@shslawfirm.com

epare@shslawfirm.com

/s/ John J. McGowan, Esq.

John J. McGowan, Esq.

Pro Hac Vice

BAKER & HOSTETLER LLP

Key Tower

127 Public Square, Suite 2000

Cleveland, OH 44114

216-861-7475 Phone

jmcgowan@bakerlaw.com

PROSPECT CHARTERCARE, LLC,
PROSPECT CHARTERCARE SJHSRI, LLC,
and PROSPECT CHARTERCARE RWMC,
LLC,

By their attorneys,

/s/ W. Mark Russo, Esq.

W. Mark Russo (#3937)

FERRUCCI RUSSO P.C.

55 Pine Street, 4th Floor

Providence, RI 02903

401-455-1000 Phone

401-455-7778 Fax
mrusso@frlawri.com

Dated: June 26, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June 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/ Dean J. Wagner, Esq.