

**HEARING DATE: NOVEMBER 2, 2018, 9:30 A.M. (STERN, J.)**

STATE OF RHODE ISLAND  
PROVIDENCE, S.C.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF :  
RHODE ISLAND, INC. :

vs. :

C.A. No.: PC - 2017-3856

ST. JOSEPH HEALTH SERVICES OF :  
RHODE ISLAND RETIREMENT PLAN, :  
As Amended :

**MEMORANDUM IN SUPPORT OF PROSPECT CHARTERCARE, LLC'S  
OBJECTION TO RECEIVER'S MOTION TO ADJUDGE PCLLC IN  
CONTEMPT FOR WILLFUL FAILURE TO COMPLY WITH SUBPOENA AND  
DELIBERATE INTERFERENCE WITH THE RECEIVER'S COLLECTION OF  
THE ASSETS OF THE RECEIVERSHIP ESTATE**

This Court's October 29, 2018 Decision should be instructive to the Receiver and on the motion at issue. If the Decision is properly honored, the Receiver should withdraw its motions and more restraint before making contempt accusations when someone – namely, Prospect CharterCARE, LLC ("PCLLC") – does not jump at the Receiver's command and is simply attempting to protect its contractual and corporate rights. The Court has now stated that (i) it does not intend to be the locus for resolving a host of issues that the Receiver seems to want to have adjudicated here as opposed to elsewhere, and (ii) the Receiver should not take actions as if the Settlement Agreement's grants of rights and powers have been effectuated unless and until the federal court also approves the settlement.

As such, the Court's ruling should largely moot this contempt motion, because the entire underpinnings of the motion is that the Receiver has not obtained information that he contends is relevant to his acquisition of an interest in PCLLC and his analysis and valuation of his put option under which he would be able to force the sale of CharterCARE Community Board's ("CCCB") 15% interest in PCLLC – matters that clearly were not the subject of the original

subpoena and that have now been put off until after the federal court decides whether to approve the settlement.

As addressed below, this motion is wholly improper procedurally – the law is clear that the proper way to seek documents that are not produced under a subpoena is through a motion to compel and, if that is obtained and not complied with, only *then* is a motion for contempt proper. None of that happened here. Instead, what happened, tellingly, is this: the Receiver, puppeteering CCCB, had CCCB demand that PCLLC provide CCCB with the information that is the very subject of this contempt motion. When PCLLC indicated that it was willing to provide this sensitive financial information to CCCB, but only on the condition that it agree not to share it with any third party, this contempt motion – from the Receiver – followed. That is not a proper procedural background to a contempt motion. And, importantly, this puppeteering by which the Receiver is directing how CCCB should act in its role as a member of PCLLC with substantial rights must stop – indeed, the Court specifically directed as much in its October 29 order, and this is one specific example where the Receiver has again overreached his current authority. This motion is procedurally improper and substantively defective, and should be denied.

## **BACKGROUND**

On December 4, 2017, counsel for the Receiver served a 64-topic subpoena on PCLLC, a non-party to the Receivership proceeding (the “Subpoena”). PCLLC undertook and completed a massive review of information. PCLLC timely served a written response to the Subpoena, including objections, on May 11, 2018 (“Resp. and Obj.”),<sup>1</sup> and made a rolling production that

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<sup>1</sup> The time period for objecting to the Subpoena had been extended by agreement of counsel.

was completed on or about August 30, 2018, together with comprehensive itemized privilege logs.

On June 18, 2018, the Receiver initiated litigation against PCLLC and others in the United States District Court for the District of Rhode Island (“Federal Action”) and this Court (collectively, the “Pension Actions”). On August 31, 2018, the Receiver and certain defendants in the Pension Actions entered into a conditional settlement agreement (“Settlement Agreement”), and, on September 4, 2018, the Receiver filed a Petition for Settlement Instructions seeking this Court’s approval. The Settlement Agreement, among other things, provides for a transfer by CCCB of its 15% membership interest in PCLLC (“CCCB Interest”) to the Receiver. PCLLC is not a party to the Settlement Agreement, and objects to the transfer of the CCCB Interest for reasons previously submitted to the Court. On October 29, 2018, this Court issued its ruling approving the Settlement Agreement but also placing certain limitations on the ability of the Receiver to effectuate certain of its provisions unless and until the judge in the Federal Action also approves the Settlement Agreement.

After filing his Petition for Settlement Instructions, but in advance of obtaining the approval of this Court and the United States District Court (“Federal Court”), the Receiver demanded, and also caused CCCB to demand, information regarding the capital contributions of PCLLC and Prospect East Holdings, Inc. (the 85% member of PCLLC) to the operating hospitals pursuant to the Amended & Restated Limited Liability Company Agreement of PCLLC (“PCLLC Agreement”) (the “Information”). The Receiver took the position that the Settlement Agreement was in full effect and that it had the right to obtain such information because he now controlled CCCB’s interest in PCLLC. When PCLLC objected, and then offered to CCCB that it would provide the information only if CCCB would agree to a confidentiality provision that it

would not share it with any third party, the Receiver turned around and filed this contempt motion. Before doing so, the Receiver never directed a communication to, nor made any attempt to confer with, PCLLC concerning the application of the Subpoena to the desired Information, and did not seek an order of this Court compelling production of that information. In short, he leapfrogged the normal process to compel production and went directly for contempt.

In this Motion, the Receiver asserts that the Information falls within the scope of Request No. 21. That Request states:

21. All documents submitted (inclusive of supplemental submissions and exhibits) to the Attorney General's office, the Rhode Island Department of Health, or any other agency of state or federal government, regarding the Plan or hospital conversions or mergers, including without limitation the conversion transactions approved in 2009 and 2014.

On May 11, 2018, in its responses and objections to the Subpoena, PCLLC objected and responded to Item #21 as follows:

Response: Overbroad<sup>2</sup>, Relevance<sup>3</sup>, Equally Available<sup>4</sup>. Without waiving objections, PCLLC will produce responsive documents in its possession, custody and control.

A copy of Responses and Objections of Interest Party [PCLLC] to Subpoena Issued by Respondent St. Josephs Health Services of Rhode Island Retirement Plan ("Responses and Objections") is Exhibit A hereto. Further, in connection with PCLLC's final production under the Subpoena, it expressly continued to reserve its objections as it had in connection with each rolling production throughout the compliance process, including through and beyond August 31, 2018. *See* Letter from PCLLC counsel to Receiver's Counsel dated August 30, 2018, Exhibit 4

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<sup>2</sup> Defined in the Responses and Objections as "unduly burdensome, oppressive, vague and ambiguous, overly broad, unreasonably cumulative and/or duplicative."

<sup>3</sup> Defined in the Responses and Objections as "neither relevant to the subject matter involved in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence."

<sup>4</sup> Defined in the Responses and Objections as "equally available to both parties."

to Receiver's Memorandum of Law in Support of His Motion to Adjudge [PCLLC] in Contempt for Willful Failure to Comply With Subpoena and Deliberate Interference With the Receiver's Collection of the Assets of the Receivership Estate ("Receiver's Memo").

## ARGUMENT

The instant Motion should be denied because (i) PCLLC objected to Request No. 21 and cannot be held in contempt in the absence of an intervening order from this Court compelling further production; (ii) when Request No. 21 is strictly construed, as it must be in the context of a contempt proceeding, it does not extend to the Information; and (iii) the Receiver's contention that PCLLC is interfering with the rights of the Receiver under the Settlement Agreement has been at least temporarily mooted by this Court's ruling on the Settlement Agreement.

### **I. PCLLC Cannot be Adjudged in Contempt Because it Duly Objected to Request No. 21 of the Subpoena and Has Not Breached Any Order of this Court.**

Super. Ct. R. Civ. P. Rule 45(e) provides that the "failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court in which the action is pending." The Receiver erroneously jumps to the conclusion that this means that he can wield the Subpoena as a "sword," asserting any interpretation of it to suit his needs, and that if PCLLC does not comply the immediate consequence is contempt sanctions. That is not the law: Rule 45(c) affords clear procedural protections to a subpoena recipient. It states:

[A] person commanded to produce and permit inspection . . . may . . . serve upon the . . . attorney designated in the subpoena written objection . . . . If objection is made, the party serving the subpoena shall not be entitled to inspect . . . except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Rule 45(c)(2)(B.)

*See also United States SEC v. Hyatt*, 621 F.3d 687, 694 (7th Cir. 2010) (noting "subsection (c) of the [FRCP 45] requires an intervening court order if the recipient of the subpoena objects in

writing to the production of documents or things.”); *Pennwalt Corp. v. Durand-Wayland, Inc.*, 708 F.2d 492, 494 n.5 (9th Cir. 1983) (noting that when the person subpoenaed objects in writing, “the party seeking discovery must obtain a court order directing compliance” before contempt will be available); *Tranchant v. Envtl. Monitoring Serv.*, C.A. No. 00-2196, 2010 U.S. Dist. LEXIS 16320 at \*2 (E.D. La., Oct. 2, 2001) (“A contempt order is not available where the person subpoenaed timely objects to the subpoena.”).<sup>5</sup>

PCLLC served timely written objections to Request No. 21 and made a responsive production notwithstanding its objections. Rather than reach out to PCLLC, the Receiver has been directing CCCB to demand the Information *pursuant to the PCLLC Agreement*, not the Subpoena. Before filing this contempt motion, the Receiver never advised PCLLC that it considered the Information to be covered by the Subpoena nor did he engage in any meet and confer communication with PCLLC concerning its responsive production or objections to Request No 21.<sup>6</sup>

There is no legal basis to excuse the Receiver from its disregard of Rule 45(c)(2)’s procedural requirements. On the contrary, Rule 45(c)(1) imposes an affirmative duty on the attorney responsible for the issuance and service of a subpoena to “take reasonable steps to avoid imposing undue burden or expense on the person subject to the subpoena.” Rule 45(c)(1)

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<sup>5</sup> *Heal v. Heal*, 762 A.2d 463, 466-67 (R.I. 2000) (“[W]here the Federal rule and our state rule are substantially similar, we will look to the Federal courts for guidance or interpretation of our own rule.”).

<sup>6</sup> In his memorandum in support of the instant Motion, the Receiver includes an excerpt from the transcript of the October 10, 2018 hearing on the Petition for Settlement Instructions wherein his counsel threatened a contempt motion based on PCLLC’s refusal to provide information to CCCB’s counsel. That statement conflated CCCB’s purported rights under the PCLLC Agreement with compliance with the Subpoena and was directed to the Court, not PCLLC. More relevantly, it did not request or result in an order of this Court compelling the production of any information.

explicitly directs the court on behalf of which the subpoena was issued to “enforce this duty” and impose appropriate sanctions on an attorney who breaches it.

PCLLC timely served written objections to Request No. 21. In the absence of a duly noticed motion to compel further production by the Receiver and a resulting order from this Court compelling production of the Information, the Receiver’s contempt Motion fails by reason of Rule 45(c)(2) and must be denied.

In light of the legal backdrop that demands the breach of a court order before imposition of a severe sanction like contempt, it is disturbing that the Receiver makes no mention of PCLLC’s duly served objections or of his own failure to take procedural steps to identify an alleged deficiency in PCLLC’s production before running into court seeking contempt. Apparently impatient for the materials he believes he needs to effectuate his (purported) ownership interest in PCLLC, the Receiver leapfrogged over the normal motion to compel process, assuming that because “defiance of a subpoena” can “expose[] the defiant witness to contempt sanctions,” he “[d]id not need to obtain a court order compelling production” before seeking a contempt finding. *See* Receiver’s Memo at 12-13. In support of this proposition, he offers a parenthetical citation to two cases: *Waste Conversion, Inc. v. Rollins Environmental Services, Inc.*, 893 F.2d 605 (3rd Cir. 1990) and *Fisher v. Marubent Cotton Corp.*, 526 F.2d 1338 (8th Cir. 1975).

The Receiver’s reliance on *Waste Conversion* is problematic. That decision involved an instance where the Third Circuit *reversed* a procedurally improper contempt finding of the trial court and, thus, militates *against* the Receiver’s position. Beyond that, the Third Circuit’s decision is laden with comments that directly refute the proposition that the Receivers cites it for. *Waste Conversion* dealt with a trial judge’s finding two attorneys in contempt after they assumed

their filing a motion to dismiss would effectively stay discovery and, on that basis, advised a subpoena recipient not to attend a duly noticed deposition. *Id.* at 606-07. The court first observed that the fact that the contempt finding had not been the result of appropriate procedural travel was “troublesome and present[ed] questions of plain error.” *Id.* at 607. Thereafter, in a series of statements that directly support PCLLC and undermine the Receiver’s position, the Third Circuit explained that the contempt was inappropriate precisely because the basic procedural steps of civil discovery were the better method of addressing the matter:

This case grows out of a routine discovery dispute of the type foreseen by the drafters of the Federal Rules of Civil Procedure. Rule 37(a) enables a party to obtain discovery by applying [sic] the court for an order. Rule 26(c)(1) provides that on motion of a party the court may enter a protective order barring discovery. Rule 45(b) permits the quashing of a subpoena directing attendance for production of documents “upon motion made promptly and in any event at or before the time specified in the subpoena.

The district court properly criticized the failure to observe the procedures provided in the rules.

*Id.* at 611. In other words, the Third Circuit *rejected* the use of contempt power as a means of addressing discovery disputes under Rule 45 and instead urged the application of the basic discovery procedures, including a motion to compel. Again, that the Receiver attempts to excuse his bypassing of these very procedures and taxation of the Court and other litigants by resort to the *Waste Conversion* decision in this connection is puzzling.

The second case cited by the Receiver purportedly in support of the proposition that he need not obtain an order compelling discovery as a prerequisite to his contempt motion is equally unavailing. *Fisher v. Marubeni Cotton Corp.*, 526 F.2d 1338 (8th Cir. 1975), like *Waste Conversion*, involved an appellate court’s *reversal* of a trial court’s contempt finding for procedural deficiencies on the part of the moving party. There, the *pro se*, non-party subpoena recipient who was the subject of the contempt order never objected to the subpoena, rendering



*Fisher* factually inapposite and thus irrelevant. The Receiver’s flawed presentation of the legal framework underlying the instant Motion is particularly concerning where it represents the *second contempt motion against PCLLC to be heard within a span of eight days*.

It is worth stepping back and considering the scope of the argument that the Receiver is making here. According to him, whenever someone does not fully comply with a third-party subpoena to the satisfaction of the issuing party, the proper next step is not to seek to compel production – as you would with a regular party to a proceeding – but, instead, to bypass that and jump immediately to contempt proceedings. So a party to a proceeding would have substantially greater rights than a non-party, and would be exposed to contempt sanctions with far fewer protections. That is not how our legal system works – even for a court-appointed Receiver. The proper course is a motion to compel, not a motion for sanctions. For this reason alone, the motion should be denied.

**II. PCLLC Cannot Be Held in Contempt Pursuant to Rule 45(e) Because Request No. 21 Does Not Cover the Information.**

The Receiver’s contempt motion fails not only on procedural grounds, but on substantive grounds as well. It is fundamental that PCLLC cannot be held in contempt for failure to comply with a subpoena if that subpoena does not clearly cover the Information sought by the Receiver. “To establish civil contempt, there must be a showing by clear and convincing evidence that a specific order of the court has been violated.” *State v. Lead Indus., Ass’n. Inc.* 951, A.2d 428, 466 (R.I. 2008). “To be the basis of a contempt finding, the court’s [] order must be sufficiently clear.” *State v. Lead Indus.* at 465. “The terms of the order should be specific, clear and precise so that one need not resort to inference or implications to ascertain his duty or obligation thereunder.” *Id.* at 466. “[T]he clarity of an order must be evaluated by a reasonableness standard, considering both the context in which it was entered and the audience to which it was

addressed.” *Id.* (citing *United States v. Cutler*, 58 F.3d 825, 835 (2d Cir. 1995)). “Because of the severe consequences of a civil-contempt finding, courts have read court decrees to mean *precisely* what they say.” *Id.* at 467 (citing *NBA Properties, Inc. v. Gold*, 895 R.2d 30, 32 (1st Cir. 1990) (emphasis added)). “Any ambiguities and uncertainties in court orders are read in the light most favorable to the person charged with contempt.” *Id.* See also *Sunbeam Corp. v. Ross Simons, Inc.*, 86 R.I. 189, 195, 134 A.2d 160, 163 (R.I. 1957) (respondent is entitled to rely on a narrow, literal construction of court’s order).

Moreover, in the context of the Subpoena – an order drafted not by the Court but by Special Counsel – there strict adherence to these specificity requirements is critical. “Because the command of the subpoena is not in fact one uttered by a judicial officer, contempt should be very sparingly applied when the non-party witness has been overborne by a party or attorney.” Fed. R. Civ. P. 45(e) advisory committee's note (1991 amend.) (citation omitted).

The Information requested by the Receiver (through CCCB and pursuant to the PCLLC Agreement) does not align with Request No. 21 of the Subpoena. PCLLC reasonably interpreted the phrase “supplemental submissions and exhibits” to refer to the supplement submissions and exhibits that the transacting parties submitted to the Attorney General in connection with the applications in support of the 2009 and 2014 conversion transactions. Indeed, these were the very terms (“supplemental” and “exhibits”) formally used by the Attorney General and transacting parties to describe information provided in response to requests for additional information after the filing of the initial applications and prior to the final regulatory decisions.

The Receiver believes that the relevance of the Information has been elevated by the proposed transfer of the CCCB Interest to the Receiver pursuant to the Settlement Agreement. However, during the time PCLLC was engaged in harvesting, reviewing and producing

document in compliance with the Subpoena, it did not anticipate the proposed transfer, and, quite reasonably, did not view Request No. 21 through that lens. In fact, it is doubtful that the Receiver himself actually intended the Subpoena to cover the Information at the time he drafted and served it. The Subpoena was served in December 2017; the Settlement Agreement under which he purportedly acquired some interest in PCLLC was entered into only in September 2018. His attempt to invoke the Subpoena only when his efforts to obtain the Information indirectly through CCCB under the PCLLC Agreement were met with valid objection suggests that this use of the Subpoena to obtain information that he did not get after attempting to assert his rights under the Settlement Agreement – which this Court has now instructed should be placed on hold unless and until the federal court similarly approves the settlement – is at best pretextual.

**III. The Receiver’s Contention that PCLLC be Adjudged in Contempt for Interference With the Receiver’s Collection of Assets of the Receivership Estate Lacks Supporting Law Should Be Denied in Light of this Court’s Decision of October 29.**

The Receiver also argues PCLLC’s refusal to provide information to CCCB somehow constitutes contempt in the instant proceeding. He cites a series of cases that collectively support the general proposition that a party may not interfere with property in the possession of the receivership estate. Receiver’s Memo at 13-15. From there, he concludes, and urges the Court to decide, that a nonparty’s refusal to provide records to another nonparty pursuant to a collateral agreement can support a contempt finding within a receivership proceeding so long as the receiver asserts a conditional right under the collateral agreement. Not surprisingly, the Receiver cited no law for this contention and the Court should dismiss it out of hand. Further, unlike in

his first contempt motion, the Receiver has not even alleged that PCLLC breached this Court's Order Appointing Permanent Receiver ("Receivership Order").<sup>7</sup>

But the Court's October 29 order approving the Settlement Agreement but setting conditions unless and until the federal court also approves the agreement moots this argument. The Decision both directs that the question over the transferability of the CCCB Interest be adjudicated in another forum, *see, e.g.*, Decision on Petition for Settlement Instructions at 19 ("a dispute between CCCB and the Prospect Entities belongs in a different proceeding—one where a court can dedicate appropriate judicial resources to resolving that isolated dispute"), and precludes the Receiver from exercising any purported rights under the Settlement Agreement in advance of Federal Court approval. *Id.* at 30 ("the Receiver [shall] refrain[] from exercising any rights under the [Settlement Agreement] prior to the federal-court's determination of whether to approve the [Settlement Agreement]."). Unless and until the CCCB Interest becomes an asset of the Receivership estate, meaning the Settlement Agreement is approved by this Court, the Federal Court, and survives collateral adjudication, the Receiver should not be permitted to "stand in the shoes" of CCCB and hurl contempt motions at third parties. His purported need for the Information is based entirely on his assertion that the CCCB Interest is *already* an asset of the Receivership estate. What is plain from the Receiver's statements to this Court is that he is seeking the Information that is the subject of this contempt motion in order to help him proceed under his purported acquisition of the CCCB Interest and his power to exercise CCCB's put option and force Prospect East Holdings, Inc. (the 85% member of PCLLC) to acquire that

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<sup>7</sup> In any event, the Receivership Order does not include language precluding "interference" with the Receivership estate.

interest.<sup>8</sup> In light of the Court's Decision instructing the Receiver not to exercise his rights under the Settlement Agreement pending the decisions of the federal court, the justification for him obtaining this information has been removed; certainly, when he has been instructed not to carry forward, a contempt proceeding for not providing him with this information is wholly misguided.

### CONCLUSION

For the foregoing reasons, the Court should deny the Receiver's Motion to Adjudge PCLLC in Contempt.

PROSPECT CHARTERCARE, LLC,

By its attorneys,

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<sup>8</sup> The Receiver's professed need for the Information is to make a determination as to whether he should exercise a put option on the CCCB Interest that will ripen under the PCLLC Agreement in June of 2019, and to otherwise protect the CCCB Interest as an asset of the Receivership estate.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of October, 2018, the within document was electronically filed through the Rhode Island Superior Court Case Management System by means of the EFS and is available for downloading by all counsel of record.

/s/ Joseph V. Cavanagh, III

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF  
RHODE ISLAND, INC.

v

ST. JOSEPHS HEALTH SERVICES OF  
RHODE ISLAND RETIREMENT PLAN,  
as amended.

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C.A. No: PC-2017-3856

**RESPONSES AND OBJECTIONS OF INTERESTED PARTY PROSPECT  
CHARTERCARE, LLC, TO SUBPOENA ISSUED BY RESPONDENT ST. JOSEPHS  
HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN**

Interested Party, Prospect CharterCare, LLC (“PCLLC”) hereby responds and objects to the subpoena served upon it on December 4, 2017 by Respondent, St. Josephs Health Services of Rhode Island Retirement Plan (“Respondent”).

**Definitions and Instructions**

1. The following terms when used herein for purposes of asserting objections to the requests set forth in the Subpoena (the “Requests”) shall refer to the meanings as set forth below:

(a) “Overbroad” shall mean that PCLLC objects on the basis that the request is unduly burdensome, oppressive, vague and ambiguous, overly broad, unreasonably cumulative and/or duplicative.

(b) “Relevance” shall mean that PCLLC objects on the basis that Respondent seeks documents or responses that are neither relevant to the subject matter involved in this litigation, nor reasonably calculated to lead to the discovery of admissible evidence.

(c) “Equally Available” shall mean that PCLLC objects on the basis that Respondent seeks information or documents that are equally available to both parties.

(d) “Not Available” shall mean that PCLLC objects on the basis that Respondent seeks the production of documents that are not presently in Defendant’s possession, custody or control, or call upon Defendant to create or recreate any documents that are not presently in existence.

(e) “Privilege” shall mean that PCLLC objects on the basis that Respondent seeks the production of documents covered by the attorney-client privilege, the work-product doctrine, or any other applicable privilege recognized by law. In the event that any privileged document is produced by PCLLC, its production is inadvertent and does not constitute a waiver of any privilege. With respect to any otherwise discoverable information that PCLLC withholds due to privilege, work-product protection, or other privilege recognized by law, PCLLC will expressly make the claim and describe the nature of the documents, communications, or things not produced or disclosed in a manner that consistent with Super.R.Civ.P. 26 (b) (5).

2. PCLLC objects to the Requests to the extent they seek the production of documents containing confidential or proprietary information. Without waiving objections, PCLLC will produce records subject to terms of the Order governing disclosure of confidential materials entered by the Court on January 12, 2018.

3. PCLLC objects to the Requests to the extent that they call for PCLLC to produce electronically stored information in an amount or manner other than as provided for in Super.R.Civ. P. 26 or from sources that are not reasonably accessible because of undue burden or expense including due to the scope of information requested and/or the manner or location of its storage.

4. The responses set forth herein are based on and therefore necessarily limited by the records and information presently recollected and/or thus far discovered in the course of



preparation of these responses, and currently available to PCLLC. Consequently, PCLLC reserves the right to assert further objections or make any changes in or additions to any of these responses if it appears at any time that errors or omissions have been made therein.

5. The responses are made subject to the Stipulation among Receiver, PCLLC and St. Joseph Health Services of Rhode Island, Inc. submitted on March 1, 2018.

### Responses

1. All documents and information to which Section 13.7 of the **Asset Purchase Agreement** pertains.

**Response:** Overbroad, Relevance, Equally Available, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

2. In relation to the statements contained in or subject matter of the **November 28 Letter:**

- a. All documents relating to communications with **SJHSRI, RWH, CHARTERCARE**, or their officers, agents, directors, or attorneys, relating to subpoenas or compliance with subpoenas issued in connection with *St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan* (PC 2017-3856);
- b. All documents provided to **SJHSRI, RWH, CHARTERCARE**, or their officers, agents, directors, or attorneys, relating to subpoenas or compliance with subpoenas issued in connection with *St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan* (PC 2017-3856);
- c. All documents relating to **SJHSRI's** efforts to comply with subpoenas issued in connection with *St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan* (PC 2017-3856);
- d. All documents relating to **Prospect's** efforts to comply with subpoenas issued in connection with *St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan* (PC 2017-3856);

**Response:** Overbroad. Relevance. Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

3. All documents concerning the status or qualification *vel non* of the **Plan** as a church plan, including but not limited to all legal opinion letters that may be referenced in paragraph 7 of the Verified Petition;

**Response:** Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

4. All documents concerning the **Plan**, including any plan documents, reports, and actuarial valuations;

**Response:** Overbroad, Relevance, Equally Available, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

5. All trust agreements, or modifications of trust agreements, relating to the **Plan**;

**Response:** Overbroad, Relevance, Equally Available, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

6. All documents relating to authorizations regarding purchases or sales for accounts held by or relating to the **Plan**;

**Response:** PCLLC will produce responsive documents in its possession, custody or control.

7. All documents relating to investments or recommendations concerning the assets of the **Plan**;

**Response:** Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

8. All records of transactions since January 1, 2003 for assets or accounts referenced in Request #6 above;

**Response:** PCLLC will produce responsive documents in its possession, custody or control.

9. All documents relating to identification or enumeration of trustees, or their appointments, tenures, resignations, or terminations, and all authorizations of trustees

relating to assets or accounts referenced in Request #6 above;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

10. All documents relating to the establishment, functions, or conduct of any board, committee, or subcommittee that administers or administered the **Plan**, including any board or committee or subcommittee resolutions and any appointments to such board, committee, or subcommittee;

**Response:** Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

11. All documents relating to minutes of the boards of directors of **SJHSRI**, the **Plan**, **RWH**, or **CHARTERCARE**, and all documents relating to minutes of any committee or subcommittee thereof;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

12. All documents relating to identification or enumeration of the directors of **SJHSRI**, the **Plan**, **RWH**, or **CHARTERCARE**, or their appointments, tenures, resignations, or terminations, including resumes or curricula vitae;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

13. All documents relating to identification or enumeration of the officers of **SJHSRI**, the **Plan**, **RWH**, or **CHARTERCARE**, or their appointments, tenures, resignations, or terminations, including resumes or curricula vitae;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

14. All documents relating to identification or enumeration of human resources employees of **SJHSRI**, the **Plan**, **RWH**, or **CHARTERCARE**, or their appointments, tenures, resignations, or terminations, including resumes or curricula vitae;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

15. All documents relating to payroll or expense records for employees of **SJHSRI, the Plan, RWH, or CHARTERCARE**, after May 2014;

**Response:** Overbroad, Relevance. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

16. All documents relating to communications (including correspondence and notes of conversations) to or from Bank of America, Fleet Bank, Mercer, the Angell Pension Group, or the Office of the Rhode Island Attorney General, in relation to the **Plan**;

**Response:** Overbroad, Relevance. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

17. All documents relating to communications (including correspondence and notes of conversations) to or from the U.S. Internal Revenue Service and/or the U.S. Department of Labor and/or the Rhode Island Division of Taxation relating to the **Plan**, including any opinion letters and letter rulings and any correspondence relating to opinion letters or letter rulings or requests for same;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

18. All documents relating to communications (including correspondence, notes of conversations, and directives) to or from the **Bishop of Providence** (or his designees or agents) or the **Diocese** (or its designees or agents) concerning the management, administration, governance, finances, or Catholicity of **SJHSRI** or the **Plan**;

**Response:** Overbroad, Relevance, Equally Available, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

19. All documents relating to communications (including correspondence and notes of conversations) to or from the Rhode Island Department of Health or the Health Planning and Accountability Advisory Council regarding hospital mergers or conversions;

**Response:** Overbroad, Relevance, Equally Available, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

20. All contracts between **SJHSRI, RWH, or CHARTERCARE**, on the one hand, and any of Bank of America, Fleet Bank, **Mercer**, and/or the Angell Pension Group, or any of their predecessors or successors;

**Response:** Overbroad, Relevance. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

21. All documents submitted (inclusive of supplemental submissions and exhibits) to the Attorney General's office, the Rhode Island Department of Health, or any other agency of state or federal government, regarding the **Plan** or hospital conversions or mergers, including without limitation the conversion transactions approved in 2009 and 2014;

**Response:** Overbroad, Relevance, Equally Available. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

22. All documents concerning financial assistance, payments, or loans from the **Diocese**, or the Inter-Parish Loan Fund, Inc., or any other entity, to **SJHSRI, the Plan, RWH, or CHARTERCARE;**

**Response:** Overbroad, Relevance, Equally Available. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

23. All documents concerning financial assistance, payments, or loans to the **Diocese** or the Inter-Parish Loan Fund, Inc., or any other entity, from **SJHSRI, the Plan, RWH, or CHARTERCARE;**

**Response:** Overbroad, Relevance, Equally Available. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

24. All articles of incorporation, bylaws, limited liability company agreements, and operating agreements, including any amendments or revisions thereto, of the **Plan, SJHSRI, RWH, CHARTERCARE, or Prospect CharterCARE;**

**Response:** Overbroad, Relevance. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

25. All documents concerning denominational requirements or statements of faith for employees, directors, officers, agents, managers, fiduciaries, members, physicians, nurses, or patients of **SJHSRI** or the **Plan;**

**Response:** Overbroad, Relevance, Equally Available, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

26. All documents concerning any ERISA fidelity bonds;

**Response:** Overbroad, Relevance, Equally Available, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

27. All insurance policies (including umbrella and excess policies) under which:
- SJHSRI** or the **Plan** has been or was provided with insurance coverage during the period from January 1, 2003 through the present, inclusive (whether or not **SJHSRI** contends or denies there is coverage that may be relevant to the **Plan**); or
  - Prospect CharterCARE** has been or was provided with insurance coverage during the period from January 1, 2013 through the Present, inclusive (whether or not **Prospect CharterCARE** contends or denies there is coverage that may be relevant to the **Plan**);

**Response:** Overbroad, Relevance. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

28. All insurance documents relating to:
- self-insurance funds or trusts under which **SJHSRI** or the **Plan** has been or was provided with insurance coverage during the period from January 1, 2003 through the present, inclusive (whether or not **SJHSRI** contends or denies there is coverage that may be relevant to the **Plan**); or
  - self-insurance funds or trusts under which **Prospect CharterCARE** has been or was provided with insurance coverage during the period from January 1, 2013 through the Present, inclusive (whether or not **Prospect CharterCARE** contends or denies there is coverage that may be relevant to the **Plan**);

**Response:** Overbroad, Relevance. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

29. All audited or unaudited financial statements relating to **SJHSRI** or the **Plan**;

**Response:** Overbroad, Relevance. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

30. All federal and state tax returns, including all Form 990 filings or amendments, all Form 990-PF filings or amendments, and all Form 5500 or Form 5500-SF filings and amendments, for **SJHSRI**, the **Plan**, **RWH**, **CHARTERCARE**, or **Prospect CharterCARE**;

**Response:** Overbroad, Relevance. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

31. All applications and submissions to the U.S. Conference of Catholic Bishops relating to taxation or tax exemption (and any related correspondence or responses), including all Form 0928A forms and attachments;

**Response:** Overbroad, Relevance. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

32. All documents produced or obtained in discovery in *Gmuer, M.D. v. St. Joseph Health Services of Rhode Island*, 09-cv-00628 (D.R.I.), including responses to subpoenas *duces tecum* or requests for production of documents, answers to interrogatories, and deposition transcripts;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

33. All other documents relating to *Gmuer, M.D. v. St. Joseph Health Services of Rhode Island*, 09-cv-00628 (D.R.I.), including all correspondence to or from 0's counsel and all settlement documents;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

34. All documents produced or obtained in discovery in *Moniz v. St. Joseph Hospital*, 95-cv-00102 (D.R.I.), including responses to subpoenas *duces tecum* or requests for production of documents, answers to interrogatories, and deposition transcripts;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

35. All other documents relating to *Moniz v. St. Joseph Hospital*, 95-cv-00102 (D.R.I.), including all correspondence to or from plaintiff's counsel and all settlement documents;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

36. All documents (including disks of documents) relating to any *cy pres* petition or matter, including *In re: CharterCARE Health Partners Foundation, Roger Williams Hospital, and St. Joseph Health Services of Rhode Island* (KM-2015- 0035), *In re CharterCARE Health Partners* (PB-2011-6822), *Saint Joseph Health Services and Saint Joseph Health Services Foundation v. Patrick C. Lynch* (PB- 2009-6693), *Roger Williams Hospital v. Patrick C. Lynch* (PB-2009-6694), and *Roger Williams Medical Center v. Patrick Lynch* (PB-2009-6695), including any reports or disclosures submitted to the Attorney General's office relating to *cy pres* matters;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

37. All documents (including accounting records) relating to transfers or dispositions of assets that are or were the subject of any *cy pres* petition;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

38. All documents relating to reporting and/or accounting of profits from **Prospect CharterCARE**;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

39. All documents relating to the assets of **SJHSRI** (as distinguished from those of its affiliated entities) since 2003;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

40. All documents relating to the assets of **SJHSRI** (as consolidated with its affiliated entities) since 2003;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

41. All documents relating to any consideration given or obtained by **CHARTERCARE** in connection with the sale transaction concerning the Asset Purchase Agreement dated as of September 24, 2013, other than the transfer of assets by any of **CHARTERCARE's** subsidiaries;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.



42. All QuickBooks files (or files for similar accounting software) for the **Plan, SJHSRI, RWH, CHARTERCARE, or Prospect CharterCARE** since 2003;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

43. All documents given or transmitted to employees or prospective employees referring to the **Plan** or any employee benefits, including without limitation employee handbooks, manuals, summaries and the like, from the inception of the **Plan** to the present time;

**Response:** Overbroad, Relevance. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

44. All documents relating to recruitment advertisements for employees or positions to whom the **Plan** was or could be applicable, from the inception of the **Plan** to the present time;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

45. All documents relating to document retention policies;

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

46. All documents relating to the purchase price or valuations of assets for the transaction referred to in paragraph 5 of the **Verified Petition**;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents.

47. All documents relating to the “elect[ion] to contribute \$14,000,000 to the Plan” referred to in paragraph 5 of the **Verified Petition** in its possession, custody or control.

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents.

48. All documents relating to the continuation of “affiliation during and after the sale” referred to in paragraph 6 of the **Verified Petition**;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

49. All documents relating to the different “concept[s] of 'funding'” referred to in footnote 3 of the **Verified Petition**;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

50. All documents relating to “all of the long-term issues affecting the Plan” that were not “consider[ed]”, referred to in footnote 3 of the **Verified Petition**;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

51. All documents relating to the statement in paragraph 7 of the **Verified Petition** that “Petitioner is advised and believes that the Plan will lose 'church plan' status on or before December 31, 2018”;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

52. All documents relating to or supporting the assertion that “Petitioner does not have the financial resources to make such payments, or to comply with the other financial and regulatory requirements of ERISA” in paragraph 8 of the **Verified Petition**;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

53. All documents concerning the derivation of or rationale for the request in the **Verified Petition** to reduce pension benefits in the specific amount of 40%, including by whom, when, and how the 40% figure was derived;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

54. All documents relating to the “request[ ] that Angell perform an analysis of the Plan based upon a uniform reduction of 40%” in paragraph 13 of the **Verified Petition**;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

55. All documents relating to or supporting the assertion that “Petitioner believes that a uniform reduction of 40% of pension benefits is likely the most reasonable approach to achieving an equitable resolution for all beneficiaries” in paragraph 15 of the **Verified Petition**;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

56. All documents relating to or supporting the statement that “the net assets of Petitioner, RWH and CCB may become available to assist with the Plan” in paragraph 16 of the **Verified Petition**, or to the possible or actual disposition of such net assets;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

57. All documents relating to why the “potential for additional Plan funds is not contemplated by the Benefit Adjustment Analysis” as stated in paragraph 16 of the **Verified Petition**;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of

Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

58. All documents relating to why “Petitioner believes that the Plan should not be terminated immediately” as stated in paragraph 17 of the **Verified Petition**;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

59. All documents relating to the “opportunity to benefit from the contribution of additional funds” referred to in paragraph 18(b) of the **Verified Petition**, including any documents identifying such additional funds and any projections of additional funds;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

60. All documents relating to or supporting the statement in paragraph 21 of the **Verified Petition** that “Petitioner further believes that the current administrators and actuaries of the Plan should remain in place for administrative purposes and to continue to render services to the Plan consistent with past practice”;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

61. All documents relating to how or why “administrative expenses of the **Plan**, other than investment management and custodian fees, have been paid for with non- Plan assets” as referred to in footnote 9 of the **Verified Petition**, including documents relating to whom and when such payments have been made;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

62. All documents relating to the distinction between “administrative expenses” and

“investment management and custodian fees” referred to in footnote 9 of the **Verified Petition**;

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

63. All documents relating to the “impairment of participant claims” referred to in footnote 9 of the **Verified Petition**; and

**Response:** Overbroad, Relevance, Privilege. Further, PCLLC did not prepare the Verified Petition and objects to the extent it is requested to interpret the subjective intent of Petitioner. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

64. All documents relating to the “Allocation” referred to in section 2.11 of the **Asset Purchase Agreement**.

**Response:** Overbroad, Relevance, Privilege. Without waiving objections, PCLLC will produce responsive documents in its possession, custody or control.

PROSPECT CHARTERCARE, LLC,

By its attorneys,

/s/ Joseph V. Cavanagh, III  
Joseph V. Cavanagh, Jr. #1139  
Joseph V. Cavanagh, III #6907  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of May, 2018, the within document was served by hand delivery, First Class mail and electronically served through the Rhode Island Superior Court Case Management System by means of the EFS and is available for downloading to counsel for the Receiver as follows:

Max H. Wistow Esq.  
Stephen P. Sheehan, Esq.  
Benjamin G. Ledsham Esq.  
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61 Weybosset Street  
Providence, RI 02903

/s/ Joseph V. Cavanagh, III