

STATE OF RHODE ISLAND
PROVIDENCE, SC.

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 :

Hearing: Nov. 2, 2018
@ 9:30 a.m.

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

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November 1, 2018

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INTRODUCTION

The Receiver, Stephen F. Del Sesto, Esq. (the "Receiver") of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), submits this memorandum in reply to Prospect Chartercare, LLC's ("Prospect Chartercare's") Objection to the Receiver's Motion to Adjudge Prospect Chartercare in Contempt for Willful Failure to Comply with Subpoena and Deliberate Interference with the Receiver's Collection of the Assets of the Receivership Estate.

Prospect Chartercare fundamentally understates the scope of its contempt. While it is in contempt of the subpoena, it is also in contempt of the Court's order directing the Receiver to collect assets of the Receivership estate, because it is intentionally blocking the Receiver's efforts to obtain documents that are necessary to define and maximize the value of those assets. It is this combination that leads the Receiver to ask the Court to adjudge Prospect Chartercare in contempt, rather than merely seeking an order compelling production of documents. The fact that the same conduct intentionally frustrating the Receiver's efforts also makes a mockery of Prospect Chartercare's obligations to comply with a subpoena simply renders its conduct all the more impermissible.

Moreover, Prospect Chartercare has offered no valid reason for its obstruction of the Receiver's appropriate inquiry into whether Prospect Chartercare (along with the other Prospect entities) is in breach of the obligations to invest \$90 million in the hospitals over the last past years as required by Prospect Chartercare's own Amended & Restated Limited Liability Company Agreement. That question should have a simple answer, readily verified by documents already prepared by Prospect Chartercare and

submitted annually in compliance with the conditions imposed by the Attorney General in his May 2014 regulatory approvals.

ARGUMENT

I. Prospect Chartercare is in contempt of the Receiver's subpoena

A. The subpoena encompassed all documents submitted to the Attorney General regarding with the 2014 hospital conversion, including the monitoring reports that Prospect Chartercare is refusing to produce

As discussed in the Receiver's principal Memorandum in support of the instant motion, the subpoena in question sought "[a]ll documents submitted (inclusive of supplemental submissions and exhibits) to the Attorney General's office. . . regarding . . . hospital conversions or mergers, including without limitation the conversion transactions approved in . . . 2014":

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.

Exhibit 1 hereto (subpoena). These documents necessarily included the annual reports submitted to the Attorney General "concerning the funding of its [Prospect Chartercare's] routine and non-routine capital commitments under the Asset Purchase Agreement until the long term capital commitment as defined in the Asset Purchase Agreement has been satisfied." Receiver's Memo. at 3 (quoting condition #18).

Prospect Chartercare suggests that the annual reports did not fall within the subpoena. See Prospect Chartercare's Memo. at 9 ("It is fundamental that PCLLC [Prospect Chartercare] 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.”). This suggestion is baseless. Prospect Chartercare’s submissions to the Attorney General’s office in compliance with the conditional approval of the 2014 hospital conversion transaction are documents submitted to the Attorney General’s office regarding hospital conversions.

Fishing for ambiguity or uncertainty in the subpoena where none exists, Prospect Chartercare focuses on the phrase in the subpoena “supplemental submissions and exhibits” and insists that that phrase should only “refer to the supplemental submissions and exhibits that the transacting parties submitted to the Attorney General”, i.e. “information provided in response to requests for additional information after the filing of the initial applications and prior to the final regulatory decisions.” See Prospect Chartercare’s Memo. at 10. That argument is specious: certainly the request—for “[a]ll documents submitted (inclusive of supplemental submissions and exhibits). . .” *included* the documents Prospect Chartercare now refers to, but it was in no way limited to them.

B. Prospect Chartercare’s boilerplate objections do not mitigate its contempt, especially now that Prospect Chartercare has revealed it was silently withholding documents

Prospect Chartercare asserts it is not in contempt of the subpoena, because it previously asserted objections to the subpoena, and the Receiver has not yet moved to overrule those objections. However, by asserting boilerplate objections, Prospect Chartercare waived any objection to the requests. Smith v. Bayer Material Science, LLC, Civ. No. 5:12-cv-171., 2013 WL 3153467 *1 (N.D. W.Va. 2013) (“[G]eneralized, boilerplate objections that regurgitate the language from Rule 26—irrelevant, overly broad, and unduly burdensome—are highly disfavored and will usually result in a waiver

of the objection.”) (citations omitted). Moreover, at the same time as it asserted its boilerplate objections, Prospect Chartercare stated it was not withholding documents on the basis of those utterly boilerplate objections.

In response to Request #21, Prospect Chartercare stated:

(a) “Overbroad” shall mean that PCLLC [Prospect Chartercare] 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 [Prospect Chartercare] 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 [Prospect Chartercare] objects on the basis that Respondent seeks information or documents that are equally available to both parties.

* * *

(e) “Privilege” shall mean that PCLLC [Prospect Chartercare] 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).

* * *

[Documents Requested]

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 [Prospect Chartercare] will produce responsive documents in its possession, custody or control.**

In other words, while Prospect Chartercare was asserting these three boilerplate objections, it indicated it would nevertheless produce the responsive documents in its possession, custody, or control. A party is not shielded from contempt by asserting boilerplate objections, while affirmatively undertaking to produce all responsive documents, all the while intentionally withholding some responsive documents. To the contrary, such deliberate misconduct is by definition contumacious.

The Court in this action has previously admonished parties not to assert boilerplate objections to subpoenas. See December 5, 2018 Hearing Transcript at 20-22. Such boilerplate objections are inevitably inappropriate. Howard v. Segway, Inc., 11-CV-688-GKF-PJC, 2013 WL 869955, at *4 (N.D. Okla. Mar. 7, 2013); Cipriani v. Migliori, No. PC 2002-6206, 2005 WL 668368, at *6 (R.I. Super. Mar. 4, 2005) (party's "complete lack of explanation concerning the nature of the documents withheld and his failure to provide a means to support his privilege claim" demonstrated his "objections were made in clear violation of S.Ct. R. Civ. P. 26(b)(5)"); Smith v. Bayer Material Science, LLC, *supra*, 2013 WL 3153467, at *1 (N.D. W.Va. 2013) ("Any objection to discovery requests must be lodged with some specificity so the requesting party, and the Court if it becomes involved, can ascertain the basis for the objection. Accordingly, generalized, boilerplate objections that regurgitate the language from Rule 26—irrelevant, overly broad, and unduly burdensome—are highly disfavored and will usually result in a waiver of the objection.") (citations omitted).

As the court in Howard v. Segway, Inc. stated regarding similar litigation practice:

The biggest single problem with Segway's document responses, however, is that when Defendant indicates documents will be produced, it is unclear what is being produced and what is not. Most of Segway's responses state that "Without waiving and subject to said objections, see ———." In many instances, the documents Segway produced are identified by Bates numbers. In other instances, Segway has identified types of documents or information that will be produced. In some cases, Segway has indicated only that the information/documents sought "are matters of public record."

Thus, while Segway's document responses state that some documents have been or will be produced, Segway does not specify what body of documents is being produced. The fundamental question is: Are all responsive documents being produced? If not, what portion of the universe of responsive documents is being produced? How did Segway determine the universe of responsive documents? Segway has not made this clear. Once a party has decided to produce documents, it has the duty—at a minimum—to identify what it is producing. A party that objects and produces creates an ambiguity as to what documents, if any, have been withheld.

Howard v. Segway, Inc., No. 11-CV-688-GKF-PJC, 2013 WL 869955, at *3–4 (N.D.

Okla. Mar. 7, 2013) (citations to the record omitted).

C. The Receiver has not improperly delayed seeking to enforce the subpoena

Prospect Chartercare inappropriately faults the Receiver for not having moved to compel compliance with the subpoena before it became clear what information Prospect Chartercare had improperly withheld. See Prospect Chartercare's Memo. at 11. This is utterly backwards. It only recently came to the Receiver's attention what documents Prospect Chartercare had withheld, precisely because Prospect Chartercare had withheld them. The Receiver has only recently arrived on the scene, while Prospect Chartercare was a party to the underlying transactions and familiar with the universe of

its own documents. Moreover, the Receiver should not be faulted for failing to embroil the Court in discovery-related motion practice to compel production of unidentified documents before it even became clear why those withheld documents were critically important.

D. The Receiver has not improperly failed to meet and confer with Prospect Chartercare

Prospect Chartercare contends the Receiver improperly failed to make “any attempt to confer with” Prospect Chartercare before filing the instant motion. Of course, the fact that Prospect Chartercare to this day has not produced the requested documents clearly shows that this contention is an attempt to create a purely technical defense. In any event, the obligation to meet and confer does not apply to subpoena practice directed at third parties under Super. R. Civ. P. 45. Instead it applies only to motions to compel discovery sought from parties under Super. R. Civ. P. 30, 31, 33, and 34:

(2) Motion. If a deponent fails to answer a question propounded or submitted under **Rules 30 and 31**, or a corporation or other entity fails to make a designation under **Rule 30(b)(6)** or **31(a)**, or a party fails to answer an interrogatory submitted under **Rule 33**, or if a party, in response to a request for production or inspection submitted under **Rule 34**, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling production or inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

Super. R. Civ. P. 37(a)(2) (omitting Super. R. Civ. P. 45).

Obviously the Receiver would not be wasting the Court's time with motion practice to compel production of documents that could have been obtained by meeting with opposing counsel. However, when the Receiver filed his motion to adjudge Prospect Chartercare in contempt, Prospect Chartercare had already made clear its intention to frustrate the Receiver's attempts to obtain those documents. When CCCB repeatedly requested these same documents and Prospect Chartercare rebuffed them, Prospect Chartercare construed the requests as having made on behalf of the Receiver:

As stated in my letter to you of October 5, it is obvious that you continue to act on behalf of the Receiver of St. Joseph Health Services of Rhode Island Retirement Plan.

Exhibit 2 hereto (October 17, 2018 letter from Attorney Cavanagh to Attorney Land). Indeed, Prospect Chartercare refused to provide them to CCCB unless CCCB agreed not to provide them to the Receiver. See Exhibit 3 hereto (October 2, 2018 letter from Attorney Cavanagh to Attorney Land). Prospect Chartercare cannot have it both ways, contending that the prior communications were sent on behalf of the Receiver¹ *and* that the Receiver failed to "meet and confer" with Prospect Chartercare.

E. The Receiver is a judicial officer, and subpoenas issued by Special Counsel are entitled to compliance

Prospect Chartercare quotes a comment to Fed. R. Civ. P. 45 that because subpoenas are ordinarily issued by counsel, not directly by the Court, "contempt should be very sparingly applied when the non-party witness has been overborne by a party or

¹ As discussed at the October 25, 2018 hearing on the first motion to adjudge Prospect Chartercare in contempt, the Receiver is not CCCB's puppet master.

attorney.” See Prospect Chartercare’s Memo. at 10. We agree that “contempt should be very sparingly applied,” but, as this comment confirms, contempt is appropriate in the exceptional case. This is the exceptional case. Moreover, the contention that Prospect Chartercare is entitled to leniency because the subpoena was issued by an attorney ignores that the Receiver himself is a judicial officer, and that Special Counsel was engaged, pursuant to court order, on behalf of the Receiver and the Receivership Estate, which is in the custody of the Court. This contention also overlooks how Prospect Chartercare has now received all the notice and all the clarity in the world and yet still refuses to turn over the subpoenaed documents.

We also agree that ordinarily the party issuing the subpoena should first apply to the court for an order compelling compliance, prior to seeking to have the subpoenaed party adjudged in contempt. This is not the ordinary case, however. Here Prospect Chartercare clearly intentionally obstructed the Receiver and affirmatively concealed its intentional violation of the subpoena.

II. The Court’s recent Decision does not entitle Prospect Chartercare to withhold documents from the Receiver or CCCB

Prospect Chartercare incorrectly contends that the Court’s Decision of October 29, 2018 hamstring the Receiver from obtaining information responsive to the subpoena or relating to the subject matter of the Settlement Agreement. See Prospect Chartercare’s Memo. at 12. Prospect Chartercare goes so far as to contend that the Court has washed its hands of deciding any disputes whatsoever among the Receiver, CCCB, and Prospect Chartercare relating to the receiver’s rights under the Settlement

Agreement until the Federal Court decides someday to grant final approval to the Settlement. See id.

Respectfully, the Receiver believes Prospect Chartercare is misreading the Court's Decision. While the Court did state that the Receiver should "refrain from **exercising** any rights under the PSA [Settlement Agreement] prior to the federal-court's determination of whether to approve the PSA," see Decision at 30 (emphasis supplied), the Court did not prohibit the Receiver from obtaining the information he needs *to prepare to exercise* those rights upon approval of the Proposed Settlement. Nor did the Court prohibit CCCB from exercising its own rights during the interim, on its own behalf or on behalf of the Receiver.

As stated in its principal Memorandum on the instant motion, the Receiver urgently needs the information now to begin evaluating whether and how to exercise the June 20, 2019 Put Option under the LLC Agreement. See Receiver's principal Memo. at 4. The process of obtaining Federal Court approval of the Settlement Agreement is expected to take many months—not least because as it is the settlement of a class action, the Federal Court will need to wait a minimum of ninety days after various statutorily required notices are served in accordance with the Class Action Fairness Act before granting any final approval. See 28 U.S.C. § 1715(d). The Receiver also urgently needs the information now to evaluate whether Prospect Chartercare is in breach of its obligations (as its behavior suggests), a fact that would have a significant impact on the valuation and evaluation of the Put Option. See Receiver's prior Memo. at 5.

Indeed, the failure of the Prospect entities to have funded the \$50 million long term capital commitment would have far-reaching implications for both the Settlement and the parties. The very premise that CCCB owns 15% of Prospect Chartercare while Prospect East Holdings, Inc. owns 85% of Prospect Chartercare is itself premised on the full funding of the \$50 million long term capital commitment. See Exhibit 4 hereto (Exhibit B to Amended & Restated Limited Liability Company Agreement of Prospect CharterCare, LLC) (noting that Prospect East's 85% interest is based upon the cash purchase price of \$45 million plus the \$50 million capital commitment, compared to CCCB's deemed capital contribution of \$16.76 million). If that \$50 million has not been funded, CCCB would actually own—and thus the Receiver would receive under the Settlement Agreement²—more than 27% of the ownership units of Prospect Chartercare, because CCCB's capital commitment would be more than 27% of the combined contributions of Prospect East and CCCB.

More than a year ago, the Court expanded the Receiver's powers "to include the power and authority to issue subpoenas as he, in his sole discretion, deems necessary and appropriate to compel the production of documents and/or records . . . to any and all individuals or entities that the Receiver believes will assist his investigation of possible claims on behalf of the Receivership Estate and/or the Plan participants." See Order entered on September 13, 2017. It is absurd to suggest that the Court in approving the Proposed Settlement this week intended to impose a condition that would retroactively reduce the Receiver's investigatory powers now that some claims also

² Under the Settlement Agreement, the Receiver receives *all* of CCCB's claims, interests, and rights in or against Prospect Chartercare, whatever they may be.

relate to the Settlement Agreement. To the contrary, the fair reading is that actions taken pursuant to the Receiver's existing authority to investigate claims are not limited by the conditions imposed in connection with the Court's approval of the Proposed Settlement. Moreover, Prospect Chartercare's violations of the subpoena and intentional obstruction of the Receiver *preceded* the Court's decision approving the Proposed Settlement. Certainly there can be no suggestion that the Court intended to excuse past noncompliance with the subpoena that has only recently come to light.

CONCLUSION

For all of the foregoing reasons, and the reasons stated in Respondent's principal memorandum, the Respondent's motion should be granted and, at a minimum, Prospect Chartercare should be ordered to produce the requested documents.

Respondent,
Stephen F. Del Sesto, Esq., Solely in
His Capacity as Permanent Receiver of
the Receivership Estate,
By his Attorneys,

/s/ Max Wistow

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Dated: November 1, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on the 1st day of November, 2018, I filed and served the foregoing document through the electronic filing system on the following users of record:

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The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Max Wistow

Exhibit 1

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



SUPERIOR COURT
SUBPOENA - CIVIL

Plaintiff/Petitioner St. Joseph Health Services of Rhode Island, Inc.	Civil Action File Number PC-2017-3856
Defendant/Respondent St. Josephs Health Services of Rhode Island Retirement Plan	

<input type="checkbox"/> Murray Judicial Complex Newport County 45 Washington Square Newport, Rhode Island 02840-2913 *(401) 841-8330	<input type="checkbox"/> Noel Judicial Complex Kent County 222 Quaker Lane Warwick, Rhode Island 02886-0107 *(401) 822-6900
<input type="checkbox"/> McGrath Judicial Complex Washington County 4800 Tower Hill Road Wakefield, Rhode Island 02879-2239 *(401) 782-4121	<input checked="" type="checkbox"/> Licht Judicial Complex Providence/Bristol County 250 Benefit Street Providence, Rhode Island 02903-2719 *(401) 222-3230

TO: PROSPECT CHARTERCARE, LLC
 of c/o CT Corporation System, 450 Veterans Memorial Parkway, Ste 7a, East Providence, RI 02914

YOU ARE HEREBY COMMANDED to appear in the Superior Court listed above at the date, time, and courtroom specified below to testify in the above-entitled case and bring with you:

Courtroom	Date	Time

If you need language assistance, please contact the Office of Court Interpreters at (401) 222-8710 or by email at interpreterfeedback@courts.ri.gov before your court appearance.

* If an accommodation for a disability is necessary, please contact the Superior Court Clerk's Office at the telephone number listed above as soon as possible. TTY users can contact the Superior Court through Rhode Island Relay at 7-1-1 or 1-800-745-5555 (TTY) to voice number.



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPERIOR COURT

YOU ARE HEREBY COMMANDED to appear at the location, date, and time specified below to testify at the taking of a deposition in the above-entitled case.

Location of Deposition	Date	Time

YOU ARE HEREBY COMMANDED to produce and permit inspection and copying of the following documents or objects at location, date, and time specified below (list documents or objects):

See Schedule A hereto for requests for documents.


Location	Date	Time
61 Weybosset St, Providence, RI 02903	December 18, 2017	11:00 a.m.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. (Rule 30(b)(6) of the Superior Court Rule of Civil Procedure).

/s/ <u>Max Wistow</u> Attorney for the <input type="checkbox"/> Plaintiff/Petitioner <input checked="" type="checkbox"/> Defendant/Respondent or <input type="checkbox"/> Plaintiff/Petitioner <input type="checkbox"/> Defendant/Respondent	Rhode Island Bar Number: 0330
	Date: 12/1/2017
Telephone Number: (401) 831-2700	

Issued by <input type="checkbox"/> Clerk, <input checked="" type="checkbox"/> Notary, or <input type="checkbox"/> Issuing Official pursuant to G.L. 1956 § 9-17-3	Date: 12/1/2017
---	--------------------

/s/ _____
 Clerk

Benjamin Ledsham
 Name of Notary

 Signature of Notary
 Notary commission expires: 11/9/2019
 Notary identification number: 753498

 Name of Issuing Official

 Signature of Issuing Official

STATE OF RHODE ISLAND AND



PROVIDENCE PLANTATIONS

SUPERIOR COURT

The following information is being provided pursuant to Rule 45(c), (d), and (e) of the Superior Court Rules of Civil Procedure.

(c) Protection of Persons Subject to Subpoenas.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the self-represented litigant or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises 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. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
- (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:
 - (i) Fails to allow reasonable time for compliance;
 - (ii) Requires disclosure of privileged or other protected matter and no exception or waiver applies; or
 - (iii) Subjects a person to undue burden.
(B) If a subpoena
 - (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
 - (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
 - (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (e) **Contempt.** 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.



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPERIOR COURT

Plaintiff/Petitioner St. Joseph Health Services of Rhode Island, Inc.	Civil Action File Number PC-2017-3856
Defendant/Petitioner St. Josephs Health Services of Rhode Island Retirement Plan	

PROOF OF SERVICE

I hereby certify that on the date below I served a copy of this Subpoena on
A/S CT Coop. Systems 450 Veterans Mem. Pkwy. East Providence RI Bldg. 7-A personally.

I hereby certify that I was unable to make service after the following reasonable attempts:

SERVICE DATE: <u>12/4/17</u> Month Day Year	SERVICE FEE \$ <u>45.00</u> \$ <u>11.00</u> # <u>3876</u>
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Signature of SHERIFF or DEPUTY SHERIFF or CONSTABLE

SIGNATURE OF PERSON OTHER THAN A SHERIFF or DEPUTY SHERIFF or CONSTABLE MUST BE NOTARIZED.

[Signature] Thomas Noury
P.O. Box 114026
North Providence, RI 02911

Signature _____

State of RI
County of Providence

On this 4 day of Dec, 2017, before me, the undersigned notary public, personally appeared Thomas Noury

personally known to the notary or proved to the notary through satisfactory evidence of identification, which was _____, to be the person who signed above in my presence, and who swore or affirmed to the notary that the contents of the document are truthful to the best of his or her knowledge.

Notary Public: Dora Noury-Keating
My commission expires: 5-17-21
Notary identification number: Dora Noury-Keating

Notary Public
My Commission Exp.

SCHEDULE A

Definitions

- a. The word "**documents**" as used herein is meant in the broad and liberal sense and includes hand-written, typed, recorded, electronically stored, or graphic material of any kind and description, and whether a draft, copy, original, or master, including, but not limited to, e-mails, electronic versions of documents, accounts, advertisements, letters, memoranda, prospectuses, resolutions, legislation, notes of conversations, contracts, agreements, drawings, tape recordings, inter-office and intra-office memoranda, studies, working papers, corporate records, minutes of meetings, checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type, and documents stored on data storage modules, databases, servers, computers, tapes, discs or other memory devices, or other information retrievable from storage systems. If any document has been prepared in multiple copies which are not identical, each modified copy or non-identical copy is a separate "document." The word "**document**" also includes data compilations from which information can be obtained and translated, if necessary, by the requesting party in a reasonably usable form.
- b. The term "any" and the term "all" are intended to mean "any and all."
- c. Any word in the singular also includes the plural and vice versa.
- d. The term "**Verified Petition**" refers to the Petition for the Appointment of a Receiver filed in *St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan* (PC 2017-3856).
- e. The term "**Plan**" refers to the St. Joseph Health Services of Rhode Island Retirement Plan and any of its versions or amendments.
- f. The term "**SJHSRI**" refers to St. Joseph Health Services of Rhode Island and each of its predecessors or successors.
- g. The term "**CHARTERCARE**" refers to CharterCARE Health Partners and CharterCARE Community Board, and each of their predecessors or successors.
- h. The term "**RWH**" refers to Roger Williams Medical Center and Roger Williams Hospital, and each of their predecessors or successors.
- i. The term "**Prospect**" refers to Prospect CharterCARE, LLC, Prospect CharterCare SJHSRI, LLC, Prospect CharterCare RWMC, LLC, Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., and Prospect East Hospital Advisory Services, LLC, and each of their predecessors or successors.

- j. The term “**Prospect CharterCARE**” refers to Prospect CharterCARE, LLC and each of its successors or subsidiaries
- k. The term “**Diocese**” refers to the Diocese of Providence and any other diocese or archdiocese or component of the Catholic Church having any connection of any nature with the **Plan**, and each of their bishops, clergy, officers, executives, employees, agents, and designees;
- l. The term “**Bishop of Providence**” includes the Roman Catholic Bishop of Providence, a corporation sole; Bishop Tobin; and any individual designees of the Roman Catholic Bishop of Providence or Bishop Tobin;
- m. The term “**Mercer**” means Mercer Investment Consulting LLC and any of its parents, subsidiaries, affiliates, as well as any parents, subsidiaries, affiliates, or components of Marsh & McLennan Companies;
- n. The term “**Asset Purchase Agreement**” refers to the Asset Purchase Agreement dated as of September 24, 2013, as well as any amendments, supplements, or successive agreements relating thereto;
- o. The term “**November 28 Letter**” refers to the letter dated November 28, 2017 from Richard J. Land to Max Wistow (a copy of which is attached hereto as Exhibit 1), a portion of which states:

SJHSRI continues to collect, review and process potentially responsive documents. SJHSRI has requested access to documents owned by Prospect that may be responsive. Prospect continues to provide access to physical files, subject to Prospect’s review of the documents for attorney client privilege, work product or other applicable privilege/objection. With respect to Prospect’s electronic data, we have discussed with Prospect collection of electronic data, and while we anticipate some difficulty in retrieving and searching the electronic data due to the broad scope of the subpoena requests, Prospect intends to provide access consistent with SJHSRI’s access to physical files subject to Prospect’s review of the documents for attorney client privilege, work product or other applicable privilege/objection. We view this process as facilitating a rolling delivery of responsive documents as you previously agreed.

Documents Requested^[1]

1. All documents and information to which Section 13.7 of the **Asset Purchase Agreement** pertains;
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);
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;
4. All documents concerning the **Plan**, including any plan documents, reports, and actuarial valuations;
5. All trust agreements, or modifications of trust agreements, relating to the **Plan**;
6. All documents relating to authorizations regarding purchases or sales for accounts held by or relating to the **Plan**;

¹ Please see **Exhibit 1** for a discussion of why many of these requests which may superficially seem more appropriately directed to other entities are being made to Prospect CharterCARE.

7. All documents relating to investments or recommendations concerning the assets of the **Plan**;
8. All records of transactions since January 1, 2003 for assets or accounts referenced in Request #6 above;
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;
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;
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;
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;
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;
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;
15. All documents relating to payroll or expense records for employees of **SJHSRI**, the **Plan**, **RWH**, or **CHARTERCARE**, after May 2014;
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**;
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;
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**;

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;
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;
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;
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**;
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**;
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**;
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**;
26. All documents concerning any ERISA fidelity bonds;
27. All insurance policies (including umbrella and excess policies) under which:
 - a. **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
 - b. **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**);

28. All insurance documents relating to:
 - a. 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
 - b. 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**);
29. All audited or unaudited financial statements relating to **SJHSRI** or the **Plan**;
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**;
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;
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;
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 plaintiff's counsel and all settlement documents;
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;
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;

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;
37. All documents (including accounting records) relating to transfers or dispositions of assets that are or were the subject of any *cy pres* petition;
38. All documents relating to reporting and/or accounting of profits from **Prospect CharterCARE**;
39. All documents relating to the assets of **SJHSRI** (as distinguished from those of its affiliated entities) since 2003;
40. All documents relating to the assets of **SJHSRI** (as consolidated with its affiliated entities) since 2003;
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;
42. All QuickBooks files (or files for similar accounting software) for the **Plan**, **SJHSRI**, **RWH**, **CHARTERCARE**, or **Prospect CharterCARE** since 2003;
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;
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;
45. All documents relating to document retention policies;
46. All documents relating to the purchase price or valuations of assets for the transaction referred to in paragraph 5 of the **Verified Petition**;
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**;

48. All documents relating to the continuation of “affiliation during and after the sale” referred to in paragraph 6 of the **Verified Petition**;
49. All documents relating to the different “concept[s] of ‘funding’” referred to in footnote 3 of the **Verified Petition**;
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**;
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”;
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**;
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;
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**;
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**;
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;
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**;
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**;
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;

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”;
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;
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**;
63. All documents relating to the “impairment of participant claims” referred to in footnote 9 of the **Verified Petition**; and
64. All documents relating to the “Allocation” referred to in section 2.11 of the **Asset Purchase Agreement**.

Exhibit 2



Joseph V. Cavanagh, Jr.
William R. Landry
Edmund L. Alves, Jr.
Scott T. Spear
Mary Cavanagh Dunn
Joseph V. Cavanagh, III
Robert J. Cavanagh, Jr.
Matthew J. Landry
Thomas J. Alves

Commerce Center
30 Exchange Terrace
Providence, RI 02903-1765

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Lynne Barry Dolan
Of Counsel

John H. Blish
(1986-2007)

October 17, 2018

*Via E-mail /
Regular Mail*

Richard J. Land, Esq.
Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903

Re: Prospect CharterCare, LLC; Request for Information

Dear Rick,

I understand that you have recently contacted Ed Santos and Moshe Berman, respectively, Chairman of the Board and General Counsel of Prospect CharterCare, LLC ("PCLLC"), seeking personal contact information of other Board members.

As stated in my letter to you of October 5, it is obvious that you continue to act on behalf of the Receiver of St. Joseph Health Services of Rhode Island Retirement Plan. In addition to entering into the settlement agreement with the Receiver to which PCLLC objects, CharterCare Community Board ("CCB") has also adopted the arguments and positions of the Receiver in the Receivership action. As you know, the Receiver has brought claims against PCLLC in state and federal court and its interests are directly adverse to PCLLC. We continue to regard your actions as improper as to both time and purpose.

Further, according to your client's view of the settlement agreement, CCB has ceded its ownership interest in PCLLC to the Receiver and therefore would no longer be in a position to assert rights as a member of PCLLC or claim fiduciary duties for its benefit.

Please refrain from further direct communications with PCLLC Board members or employees and direct future correspondence to this office.

Very truly yours,

Joseph V. Cavanagh, III

Exhibit 3

Joseph V. Cavanagh, Jr.
William R. Landry
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Lynne Barry Dolan
Of Counsel

John H. Blish
(1986-2007)

*Via E-mail /
Regular Mail*

October 2, 2018

Richard J. Land, Esq.
Chace Ruttenger & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903

Re: Prospect CharterCare, LLC; Request for Information

Dear Rick,

We write in response to your request to Prospect CharterCare, LLC on behalf of CharterCare Community Board for financial information relating to capital contributions made since the 2014 acquisition. Prospect CharterCare, LLC is prepared to provide you with the information on the following conditions:

1. That you identify the purpose for requesting the information pursuant to applicable law. *See Romo v. Klufas*, 2012 R.I. Super. LEXIS 188; and
2. That you agree to execute a confidentiality agreement whereby information provided is to be maintained in confidence by you and by the existing CCCB Board of Directors.

As you are aware from the Notice of Dispute sent to you by Attorney Preston Halperin on September 13, 2018, CCCB has breached the terms of the Amended & Restated Limited Liability Company Agreement of Prospect CharterCare, LLC, based on the terms of the Settlement Agreement with Stephen DelSesto, Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Receiver") and the security agreement already granted to the Receiver. To the extent that you intend to share Prospect CharterCare, LLC's financial information with the Receiver or any other third-party, particularly one that is presently asserting claims against Prospect CharterCare, LLC and Prospect East Holdings, Inc., we would view that as a further breach of your duty to Prospect CharterCare, LLC.

We look forward to your response.

Very truly yours,



Joseph V. Cavanagh, III

Exhibit 4

EXHIBIT B
TO
AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
PROSPECT CHARTERCARE, LLC

Capital Accounts, Units and Sharing Percentages

NAME OF MEMBER	INITIAL CAPITAL ACCOUNT	INITIAL UNITS	INITIAL SHARING PERCENTAGE	ADJUSTED CAPITAL CONTRIBUTION*
CharterCARE Health Partners 825 Chalkstone Avenue Providence, Rhode Island 02908	\$16.76 M	16,760	15%	\$16.76M
Prospect East Holdings, Inc. 10780 Santa Monica Boulevard Suite 400 Los Angeles, California 90025	\$45.00 M	95,000	85%	\$95.00M*

* Assumes full funding of Long-Term Capital Commitment