STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

CHARTERCARE COMMUNITY BOARD

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C.A. No.: PC-2019-3654

SAMUEL LEE, ET AL

PLAN RECEIVER'S RESPONSE TO GREEN EQUITY INVESTORS V, LP AND GREEN EQUITY INVESTORS SIDE V, LP'S MOTION TO EXTEND TIME TO RESPOND TO DISCOVERY

Stephen Del Sesto, as Receiver ("Plan Receiver") for the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), hereby responds to the motion of Green Equity Investors V, LP and Green Equity Investors Side V, LP (the "Green Defendants") to extend the time to respond to the jurisdictional discovery propounded by the Plan Receiver on the Green Defendants, which seeks an extension of time for discovery responses until November 10, 2020.

The Plan Receiver does not object to the extension requested by the Green Defendants, so long as they produce fully responsive discovery responses and do not simply assert objections. Those objections (if any) are waived, because the Green Defendants failed to assert any timely objections within the time prescribed, *i.e.* by October 29, 2020.¹ See Super. R. Civ. P. 33(a) ("Failure to serve such objections within

¹ The interrogatories and requests for production of documents were electronically served on the Green Defendants by means of the Superior Court ECF system on September 18, 2020. Pursuant to Super. R. Civ. P. 33 and 34, responses were due within 40 days, extended by an additional day pursuant to Super. R. Civ. P. 6(d) because of the electronic service. Forty-one days following September 18, 2020 is Thursday, October 29, 2020.

the time prescribed shall constitute a waiver thereof."); Super. R. Civ. P. 34(b)(2) (requiring responses and objections within forty days to requests for production).²

Although the Green Defendants filed the instant motion for an extension of time (which is essentially a motion for a protective order), they did not obtain a protective order excusing the timely service of any objections. While the mere pendency of a motion for a protective order may sometimes avert the imposition of discovery sanctions under Rule 37(b) such as entry of a default, <u>see</u> Super. R. Civ. P. 37(d), the mere pendency of such a motion does not preserve untimely objections to discovery requests. <u>See Sturdevant v. Sears, Roebuck & Co.</u>, 32 F.R.D. 426, 428 n.1 (W.D. Mo. 1963) ("The filing of the application for an extension of time [to answer interrogatories] does not stay the running of the time, nor extend the time, for the filing of objections."); <u>In re Toilet Seat Antitrust Litig.</u>, No. MDL 75-184, 1978 WL 1309, at *2 (E.D. Mich. Feb. 22, 1978) ("The mere filing of a motion for an extension of time within which to respond to interrogatories, not acted upon by the court, does not in and of itself extend the time limits set by the Rules. Failure to object within the time fixed by the Rules is a waiver of any objection.") (citing Sturdevant).

The Plan Receiver also files this response to set the record straight on a couple points.

² Super. R. Civ. P. 34(b)(2) provides in relevant part:

The party upon whom the request is served shall serve a written response within forty (40) days after the service of the request. . . . The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection, copying, testing, or sampling will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. . . .

Super. R. Civ. P. 34(b)(2).

First, the Green Defendants contend that their discovery production was due on October 30, 2020. That is incorrect. As noted *supra*, the Green Defendants' discovery production was due on October 29, 2020.

Second, although the Plan Receiver does not object to granting the requested extension of time as discussed *supra*, the Plan Receiver notes that no explanation has been given, either to him or to the Court, for why the extension is actually necessary.³ The Green Defendants have not carried their burden under Super. R. Civ. P. 6(b) to establish "cause shown" to obtain an enlargement of the time for responding to Plaintiff's discovery requests.

Respectfully submitted,

Stephen Del Sesto as Receiver,

By his Attorney,

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Dated: November 9, 2020

³ The most the Green Defendants state by way of explanation is: "Defendants currently have responses prepared that are being reviewed by their clients in California for completeness and accuracy." See Green Defendants' motion at 2.

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CERTIFICATE OF SERVICE

I hereby certify that, on the 9th day of November, 2020, I filed and served the foregoing document through the electronic filing system on the following users of record:

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<u>/s/ Benjamin Ledsham</u>