UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, ET AL.	:	
Plaintiffs	:	
v.	:	C.A. No:1:18-CV-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, ET AL.	:	
Defendants.	:	

PLAINTIFFS' CONDITIONAL RULE 56(d) MOTION TO DEFER OR DENY DIOCESAN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PENDING DISCOVERY

Plaintiffs Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the "Plan Receiver"), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, individually as named plaintiffs (the "Individual Named Plaintiffs") (the Plan Receiver and the Individual Named Plaintiffs being collectively the "Plaintiffs") file this conditional motion pursuant to Fed. R. Civ. P. 56(d) to defer or deny the Diocesan Defendants' Motion for Summary Judgment pending discovery.

Plaintiffs rely in support on their memorandum of law and the Declaration of Stephen P. Sheehan filed as Exhibit 8 to Plaintiff's LR Cv 56(a)(4) Statement of Disputed and Undisputed Facts. Plaintiffs are also filing their opposition on the merits to the Diocesan Defendants' Motion for Summary Judgment. If the Diocesan Defendants' Motion for Summary Judgment is denied, then Plaintiffs' Rule Fed. R. Civ. P. 56(d) motion should be denied as moot.

Respectfully submitted,
Plaintiffs,
By their Attorneys,

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Dated: April 18, 2022

LR CV 7(C) REQUEST FOR ORAL ARGUMENT

Pursuant to LR Cv 7(c), Plaintiffs respectfully request oral argument and estimate that forty-five minutes will be required.

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, ET AL.	:	
Plaintiffs	:	
v.	:	C.A. No:1:18-CV-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, ET AL.	:	
Defendants.	:	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF CONDITIONAL RULE 56(D) MOTION TO DEFER OR DENY DIOCESAN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PENDING DISCOVERY ON JUDICIAL ESTOPPEL

Plaintiffs Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the "Plan Receiver"), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque, individually as named plaintiffs (the "Individual Named Plaintiffs") (the Plan Receiver and the Individual Named Plaintiffs being collectively the "Plaintiffs") file this memorandum of law in support of their conditional motion pursuant to Fed. R. Civ. P. 56(d) to defer or deny the Diocesan Defendants' Motion for Summary Judgment pending discovery on the factual issues involved in Plaintiffs' claim for judicial estoppel.

Plaintiffs also file herewith the Declaration of Stephen P. Sheehan ("Sheehan Dec.").[1]

[1] The Declaration of Stephen P. Sheehan is filed as Exhibit 8 to Plaintiffs' LR Cv 56(a)(4) Statement of Undisputed and Disputed Material Facts in Opposition to the Diocesan Defendants' Motion for Summary Judgment ("Plaintiffs' LR Cv 56(a)(4) Statement").

Plaintiffs are also filing their opposition to the Diocesan Defendants' Motion for Summary Judgment ("Plaintiffs' Opp. Memo."), asserting that motion should be denied on the merits. If the Diocesan Defendants' Motion for Summary Judgment is denied on the merits, then Plaintiffs' Fed. R. Civ. P. 56(d) motion should be denied as moot.

I. Prior Proceedings Concerning Discovery

The prior round of summary judgment motions is discussed in detail in Plaintiffs' memorandum in support of their merits-based opposition to the Diocesan Defendants' Motion for Summary Judgment ("Plaintiffs' Opp. Memo.). Plaintiffs' Opp. Memo. at 1–5. Some aspects of it are also relevant to Plaintiffs' Rule 56(d) Motion, to explain why Plaintiffs have not already sought the discovery they now seek pursuant to this motion.

The origin of the prior round of summary judgment motions was at the hearing on September 10, 2019, on the motions to dismiss filed by the Diocesan Defendants and other defendants, when the Court agreed with Prospect's counsel's suggestion that the Court entertain summary judgment motions on the issue of whether the Plan was subject to ERISA.[2] Plaintiffs objected that approach might result in undue delay, and asked instead that the Court "[l]et the parties litigate."[3] The Court overruled that objection and directed the parties to work together to agree upon the procedure for that approach which would involve discovery limited to the issue of the applicability of ERISA.[4]

The result was a series of stipulations agreed to by the parties and entered by the Court. In sum, these Stipulations and Orders provided that

[2] ECF # 222-1 (Sept. 10, 2019 afternoon hearing transcript) at 40, 69-71.

[3] ECF # 221-1 (Sept. 10, 2019 afternoon hearing transcript) at 70.

[4] ECF # 222-1 (Sept. 10, 2019 afternoon hearing transcript) at 74.

- First, Plaintiffs would produce to the Defendants the documents that Plaintiff Receiver had obtained by subpoena and court orders in the receivership proceeding;
- then Plaintiffs would file their motion for summary judgment;
- which would be followed by a short period of discovery limited to the issues raised by Plaintiffs' motion;
- then the Defendants were directed to file their opposition and their own cross-motions for summary judgment;
- which would be followed by another short period of discovery limited to the issues raised by that opposition and Defendants' cross-motions for summary judgment;
- concluding with the submission of reply memoranda.[5]

What actually happened pursuant to these stipulations is important to this Rule 56(d) motion.

On December 17, 2019, Plaintiffs filed their Motion for Partial Summary Judgment on Count IV of the First Amended Complaint, claiming as follows:

> Plaintiffs are entitled to summary judgment declaring that as of April 29, 2013 at the very latest, the Plan was not "maintained by an organization, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits" as required by I.R.C. § 414(e) (26 U.S.C. § 414(e)) and ERISA § 3(33)(C)(i) (29 U.S.C. § 1002(33)(C)(i)).
>
> Accordingly, Plaintiffs are entitled to summary judgment declaring that as of April 29, 2013 at the latest, the Plan did not qualify as a non-electing church plan.

[5] ECF # 170 (Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions) ¶ 1(f-g); "TEXT ORDER entering [170] Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motion…So Ordered by Chief Judge William E. Smith on 10/29/2019"; ECF # 175 (Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions) ¶¶ 2-5; "TEXT ORDER Entering [175] Stipulation and Schedule for Limited Discovery and Briefing Schedule on Related Summary Judgment Motions. So Ordered by District Judge William E. Smith on 1/13/2020."

> As a result, Plaintiffs are entitled to summary judgment declaring that by April 29, 2013 at the latest, the Plan was not exempt from, and therefore was covered by, ERISA. [6]

Following that filing, the parties entered into a ninety-day period of discovery "limited to whether the St. Joseph Health Services of Rhode Island Retirement Plan ('Plan'), St. Joseph Health Services of Rhode Island, or any other person or entity responsible therefore complied with the so-called 'principal purpose organization' requirement referenced in 29 U.S.C. § 1002(33)(C)(i) regarding church plans exempt from ERISA."[7]

Following the conclusion of that period of limited discovery, the remaining defendants were required to file both 1) their opposition to Plaintiffs' motion and 2) their "cross-motions for summary judgment, if any, limited to Count IV of the Plaintiffs' First Amended Complaint, and their contention that the Plan was a church plan exempt from ERISA."[8] Following those filings, there would be another ninety-day period of discovery "limited to the issues raised by those cross-motions in addition to the principal purpose issue."[9]

The Prospect Defendants filed both an opposition to Plaintiffs' motion for summary judgment, and their own cross-motion.[10] The cross-motion asserted that the requirement that the Plan be administered by a "principal purpose organization" was satisfied until "December 15, 2014, when the reconstituted and repopulated SJHSRI

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[6] ECF # 173 at 26.

[7] ECF # 175 (Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions) ¶ 2.

[8] ECF # 175 (Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions) ¶¶ 3-4.

[9] ECF # 175 (Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions) ¶ 5.

[10] ECF # 193 (Prospect's Objection and Cross-Motion for Summary Judgment).

Board effectively turned control of the Plan over to two individuals tasked with arranging for the Plan's eventual termination and liquidation."[11] Prospect also asserted a fallback position, in the event that the Court did not agree with the date of December 15, 2014:

> Even if that weren't the date the Plan permanently lost its way, it certainly came on April 15, 2019, the date Del Sesto filed an irrevocable election to subject the Plan to ERISA.[12]

Accordingly, Prospect requested "that the Court enter summary judgment in their favor as to Count IV of Plaintiffs' Amended Complaint, in accordance with Federal Rule of Civil Procedure 56(c), finding that the Plan lost its church plan status on, and as of, December 15, 2014, but in any event no later than April 15, 2019."[13]

This jockeying over dates was due to the fact that the 2014 Asset Sale closed on June 20, 2014, when the hospital assets were transferred to Prospect CharterCARE LLC. As Plaintiffs informed the Court in their motion papers,[14] if Plaintiffs were correct that the Plan had already lost church plan status and was governed by ERISA before that date, then Prospect CharterCARE was obtaining the operating assets and all of the employees of an entity (SJHSRI) which had an ongoing ERISA plan, and Plaintiffs were

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[11] ECF # 190-1 at 11.

[12] ECF # 190-1 at 70-71.

[13] ECF # 190-1 at 71.

[14] See ECF # 202 (Plaintiffs' Memorandum of Law in Opposition to the Prospect Defendants' Cross Motion for Summary Judgment on Count IV of the Complaint) at 5 n.10 ("Although successor liability is not before the Court in connection with either of the pending motions for summary judgment, the Prospect Entities hope that the finding they seek through their cross motion for summary judgment that the Plan retained church plan status until after Prospect began to operate Fatima Hospital will limit if not eliminate the risk that, in subsequent proceedings, it may be determined that the Prospect Entities have successor liability for the Plan under ERISA. Conversely, if Plaintiffs' motion for summary judgment is granted, and the Court concludes that church plan status was lost by April 23, 2013 at the latest, Plaintiffs contend that Prospect is liable for the failure to fund the Plan from that day forward, under the doctrine of successor liability that is applicable to ERISA plans.") (citations omitted).

a long way towards proving their claim that Prospect had successor liability for the Plan under the liberal federal common law standard for successor liability.

The Diocesan Defendants, on the other hand, did not file any opposition or substantive response to Plaintiffs' motion, did not file their own cross-motion, and neither joined in nor opposed Prospect's cross-motion. Indeed, although the Diocesan Defendants claimed that they "strongly believe that a prompt resolution of this legal question will benefit the Court,"[15] the Diocesan Defendants expressly disclaimed having any position concerning either Plaintiffs' assertions or the Prospect defendants' assertions regarding the applicability of ERISA to the Plan, stating in their initial submission on June 26, 2020[16] as follows:

> First, the Diocesan Defendants state that they take no position concerning the only question posed in Plaintiffs' pending Motion: Whether the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan") became subject to ERISA by April 29, 2013 because of an alleged failure to meet any principal purpose organization requirement.

and again on November 20, 2020, [17] when the Diocesan Defendants stated as follows:

> The Diocesan Defendants take no position on whether St. Joseph Health Services of Rhode Island, Inc. ("SJHSRI") satisfied the principal purpose organization requirement under ERISA for Church Plans after 2010. They also take no position on how the Court should resolve the dispute between Plaintiffs and Prospect as to whether SJHSRI failed to meet the requirements for qualification of a Church Plan on or before April 29, 2013 (Plaintiffs' position) or on or after December 15, 2014 (Prospect's position).

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[15] ECF # 183 at 1.

[16] ECF # 189 at 1.

[17] ECF # 200 at 1.

ECF # 200 at 1.

Following Prospect's submission of its opposition and cross-motion, and the Diocesan Defendants' express refusal to take any position on either Plaintiffs' motion or the Prospect defendants' cross-motion, there was another ninety-day period of discovery limited to Prospect's cross-motion and the issue of whether the Plan was administered by a principal purpose organization.[18] That discovery closed on September 25, 2020.[19] Plaintiffs did not conduct any discovery during that period concerning the issues relevant to whether the Diocesan Defendants are judicially estopped from asserting that the Plan was not a church plan, because the Diocesan Defendants had not taken that (or any) position.[20]

The briefing in connection with Plaintiffs' motion for summary judgment and the Prospect Defendants' cross-motion was completed on December 8, 2020.[21] However, on January 8, 2021,[22] Plaintiffs, the Prospect defendants and Defendant The Angell Pension Group, Inc. ("Angell") filed a joint motion which attached a settlement agreement between them dated as of December 30, 2020, and requested "a stay of all proceedings as among themselves, pending the judicial approvals (vel non) of the

[18] ECF # 175 (Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions) ¶ 5.

[19] ECF # 220 (Fourth order Concerning Limited Discovery and Summary Judgment Motions) ¶ 6 ("The January 13, 2020 Stipulation and Consent Order and the Third Stipulation and Consent Order are hereby amended to provide that the period for Limited Discovery Concerning Defendants' Cross-Motions for Summary Judgment shall commence June 27, 2020 and shall conclude September 25, 2020.").

[20] Sheehan Dec. ¶ 11.

[21] See ECF # 203; ECF # 204.

[22] Before the hearing on the motions for summary judgment were scheduled.

Settlement Agreement."[23] The motion "specifically" did "not request that the proceedings be stayed as to Plaintiffs' claims against the" Diocesan Defendants who "are not parties to the Settlement Agreement."[24] The motion was granted and the stay was entered on February 16, 2021, and the Court noted that the stay did not apply to Plaintiffs' claims against the Diocesan Defendants.[25]

On July 29, 2021 the Court granted final approval to the settlement between Plaintiffs, the Prospect defendants, and Angell.[26] On August 31, 2021, more than fourteen months after they claimed to have no position and nearly a year after discovery closed, the Diocesan Defendants filed their much belated "Assent" to Plaintiffs' Motion for Summary Judgment on Count IV of the First Amended Complaint, and a memorandum of law asserting that Plaintiffs' motion had not been mooted by the settlement involving Plaintiffs, the Prospect defendants and Angell.[27] The circumstances concerning that filing are fully discussed in Plaintiffs' Opp. Memo. and are not repeated herein. It is sufficient here to note that this was the first time the Diocesan Defendants took this position, and that the period for discovery concerning their position had long since expired. Plaintiffs on August 31, 2021 filed their

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[23] ECF # 205 at 1-2.

[24] ECF # 205 at 3-4.

[25] See Text Order dated February 16, 2021 ("TEXT ORDER granting [205] Motion to Stay. All proceedings and deadlines between the settling parties are stayed pending approval of the settlement agreement by both the Rhode Island Superior Court and this Court or disapproval by either court. The settling parties are instructed to submit a joint status report on March 15, 2021 and every 30 days thereafter, until a motion for preliminary settlement approval has been filed in this Court, or until the stay is lifted. The stay does not apply to Plaintiffs' claims against the Roman Catholic Bishop of Providence, the Diocesan Administration Corporation, or the Diocesan Service Corporation. So Ordered by District Judge William E. Smith on 2/16/2021.").

[26] ECF # 217.

[27] ECF # 222 & ECF # 221.

memorandum of law asserting that Plaintiffs' motion had been mooted by the settlement.[28]

Pursuant to the Court's direction, Plaintiffs on October 13, 20121 filed their motion to withdraw their motion for summary judgment.[29] In support of their motion, Plaintiffs noted that "the parties have not yet been permitted to conduct discovery into the facts pertinent to the doctrine of judicial estoppel, including all of the circumstances surrounding the Bishop's involvement in the 2013-2014 administrative proceedings."[30] The Diocesan Defendants filed their reply memorandum on November 10, 2021.[31] They did not dispute Plaintiffs' contention that the parties had not been permitted discovery on the issues relevant to judicial estoppel. They did, however, "vigorously dispute Plaintiffs' factual recitation, including whether any of the statements cited by Plaintiffs are properly attributable to these defendants, or were made to, relied upon, or a subject of decision by regulators."[32] They also asserted that Plaintiffs' arguments concerning judicial estoppel "could be dispatched as a matter of law."[33] Plaintiffs filed their reply memorandum on December 7, 2021, in which Plaintiffs noted their disagreement with that contention and cited numerous cases noting that judicial estoppel involves issues of fact which are for the jury to decide.[34] The Court granted

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[28] ECF # 223.

[29] ECF # 226.

[30] ECF # 226-1 at 14.

[31] ECF # 228.

[32] ECF # 228 at 18.

[33] ECF # 228 at 6 n.8.

[34] ECF # 231 at 13 n.11.

Plaintiffs' motion on December 10, 2021, and declared that Plaintiffs' motion was withdrawn and the Prospect defendants' cross-motion was denied as moot.[35]

II. Argument

A. The standard for Rule 56(d) relief

Rule 56(d) of the Federal Rules of Civil Procedure provides that "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." Fed. R. Civ. P. 56(d).

> "Rule 56(d) serves a valuable purpose." *Rivera–Almodóvar*, 730 F.3d at 28. "It protects a litigant who justifiably needs additional time to respond in an effective manner to a summary judgment motion." Id. (citing *Vargas–Ruiz v. Golden Arch Dev., Inc.*, 368 F.3d 1, 3 (1st Cir.2004)). It "provides a safety valve for claimants genuinely in need of further time to marshal 'facts, essential to justify [their] opposition ... to a summary judgment motion.' " *Reid v. New Hampshire*, 56 F.3d 332, 341 (1st Cir.1995) (alteration in original) (quoting *Mattoon v. City of Pittsfield*, 980 F.2d 1, 7 (1st Cir.1992)).

In re PHC, Inc. S'holder Litig., 762 F.3d 138, 143 (1st Cir. 2014).

> In order to gain the benefit of Rule 56(d), the party opposing summary judgment must make a sufficient proffer: "the proffer should be

[35] See Text Order dated December 10, 2021 ("TEXT ORDER granting [226] Plaintiffs' Motion to Withdraw Motion for Summary Judgment on Count IV of the Complaint, without prejudice to refiling or prejudice to any party. Plaintiffs' Motion for Summary Judgment on Count IV of the Complaint, ECF No. [173], is withdrawn. Defendants Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI, LLC, and Prospect Chartercare RWMC, LLC's Cross-Motion for Summary Judgment, ECF No. [193], is DENIED as MOOT. As discussed in a conference held on December 10, 2021, Defendants Diocesan Administration Corporation, Diocesan Service Corporation, and Roman Catholic Bishop of Providence, shall file their Motion for Summary Judgment on or before January 21, 2022. Plaintiffs' response to the Diocesan Defendants' motion is due on or before February 21, 2022. The Diocesan Defendants' reply is due on or before March 7, 2022. So Ordered by District Judge William E. Smith on 12/10/2021.").

> authoritative; it should be advanced in a timely manner; and it should explain why the party is unable currently to adduce the facts essential to opposing summary judgment." *Resolution Trust Corp.*, 22 F.3d at 1203. If the reason the party cannot "adduce the facts essential to opposing summary judgment" is incomplete discovery, the party's explanation (i.e., the third requirement) should: (i) "show good cause for the failure to have discovered the facts sooner"; (ii) "set forth a plausible basis for believing that specific facts ... probably exist"; and (iii) "indicate how the emergent facts ... will influence the outcome of the pending summary judgment motion." *Id.* Thus, in a case involving incomplete discovery, the Rule 56(d) proffer requirements can be categorized as: "authoritativeness, timeliness, good cause, utility, and materiality." *Id.* "[T]hese requirements are not inflexible and.... one or more of the requirements may be relaxed, or even excused, to address the exigencies of a given case." *Id.* When all the requirements are satisfied, "a strong presumption arises in favor of relief." *Id.*

In re PHC, Inc. S'holder Litig., *supra*, 762 F.3d at 143 (quoting and citing Resolution Trust Corp. v. N. Bridge Assocs., Inc., 22 F.3d 1198, 1203 (1st Cir. 1994)).

If "[m]uch of the information sought [is] within [the opposing party's] control," that is "'a factor which weighs heavily in favor of relief under Rule 56(f).'" In re PHC, Inc. S'holder Litig., *supra*, 762 F.3d at 143 (quoting Reid v. New Hampshire, 56 F.3d 332, 342 (1st Cir. 1995)).

> In a case like this when "plaintiffs' case turns so largely on their ability to secure evidence within the possession of defendants, courts should not render summary judgment because of gaps in a plaintiff's proof without first determining that plaintiff has had a fair chance to obtain necessary and available evidence from the other party."

In re PHC, Inc. S'holder Litig., *supra*, 762 F.3d at 143 (quoting Carmona v. Toledo, 215 F.3d 124, 133 (1st Cir. 2000)). "Unless the movant has been dilatory, or the court reasonably concludes that the motion is a stalling tactic or an exercise in futility, it should be treated liberally." Resolution Trust Corp., *supra*, 22 F.3d at 1203 (citing 6 Moore's Federal Practice ¶ 56.24, at 797–800 (2d ed. 1993)).

"An important aspect of a Rule 56(d) affidavit or declaration is that it need not contain evidentiary facts going to the merits of the case; rather, it is merely a sworn statement explaining why these facts cannot yet be presented." 10B Fed. Prac. & Proc. Civ. § 2740 (4th ed.). "Because 'evaluating the potential significance of unknown facts in regard to unadjudicated issues is something of a metaphysical exercise.... [T]he threshold of materiality at this stage of a case is necessarily low.'" In re PHC, Inc. S'holder Litig., *supra*, 762 F.3d at 143 (quoting Resolution Trust Corp., *supra*, 22 F.3d at 1203).

Plaintiffs contend that the Diocesan Defendants' motion should be denied on the merits and are also asking that it be denied or deferred pending discovery if the Court disagrees. Plaintiffs are entitled to take both positions. See Adickes v. S. H. Kress & Co., 398 U.S. 144, 160-161 (1970) (nonmovant who contended that motion for summary judgment was deficient but who also had no opportunity to present opposing facts should have also moved for discovery with affidavit explaining need for discovery) ("Even though not essential here to defeat respondent's motion, the submission of such an affidavit would have been the preferable course for petitioner's counsel to have followed."). Indeed, parties sometimes combine both positions in a single motion. See, e.g., Hausauer v. City of Mesa, No. CV-20-00653-PHX-DWL, 2021 WL 4133968, at *1 (D. Ariz. Sept. 10, 2021) (referring to plaintiff's "combined opposition to the defendants' motion [for summary judgment] and Rule 56(d) request for leave to pursue additional discovery before responding"); Carlson Produce, LLC v. Clapper, No. 18-CV-07195-VKD, 2021 WL 292031, at *5 (N.D. Cal. Jan. 28, 2021) (referring to plaintiff's "combined

Rule 56(d) motion and opposition to Mr. Clapper's cross-motion for summary judgment").

In those cases in which the court agrees with the nonmovant's position on the merits, the court denies the motion for summary judgment and denies the motion for discovery as moot. See, e.g., Carlson Produce, LLC v. Clapper, *supra*, 2021 WL 292031, at *8 (denying cross-motion for summary judgment and denying opposing party's "Rule 56(d) motion as moot.").

B. Plaintiffs' motion should be granted

1. Plaintiffs' showing is authoritative

As the prerequisite was originally expressed, a party seeking relief under Rule 56(d) must either comply with the express language of the rule calling for submission of an affidavit (or declaration) or provide some "authoritative" substitute. Jones v. Secord, 684 F.3d 1, 6 (1st Cir. 2012) ("A party opposing summary judgment who wishes to invoke Rule 56(d) must act diligently and proffer to the trial court an affidavit or other authoritative submission…"); Vargas-Ruiz v. Golden Arch Development, Inc., 368 F.3d 1, 4 (1st Cir. 2004) ("'The statement must be made, if not by affidavit, then in some authoritative manner—say, by the party under penalty of perjury or by written representations of counsel subject to the strictures of Fed. R. Civ. P. 11—and filed with the court.'") (quoting Paterson–Leitch Co. v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985, 988 (1st Cir. 1988)).

Courts have subsequently referred to the prerequisite as requiring an "authoritative" showing. In re PHC, Inc. S'holder Litig., *supra*, 762 F.3d at 143 (quoting Resolution Trust Corp., *supra*, 22 F.3d at 1203) ("In order to gain the benefit of Rule

56(d), the party opposing summary judgment must make a sufficient proffer: 'the proffer should be authoritative; it should be advanced in a timely manner; and it should explain why the party is unable currently to adduce the facts essential to opposing summary judgment.'"). However, it is clear that the requirement for an "authoritative" showing is satisfied by an affidavit or declaration. Lester v. C&J Well Servs., Inc., No. 5:17CV46, 2018 WL 2164883, at *5 (N.D. W. Va. May 10, 2018) ("The Rule 56(d) proffer was authoritative because it included an affidavit….").

In any event, it is clear that Plaintiffs' counsel's sworn declaration, based upon personal knowledge, is sufficiently "authoritative" under the First Circuit's standards:

> The affidavit is of record and has been duly served on the opposing party. It is signed by a person who possesses firsthand knowledge and who is competent to address the specifics of the matters discussed. The fact that the affiant is also the borrowers' attorney does not undermine the proffer; after all, the borrowers themselves would know the relevant particulars only through communications from counsel. Since they could hardly speak either to the cause or the effect of discovery delays, requiring that the supporting affidavit be signed by them rather than by a lawyer would mindlessly exalt form over substance. Attorney Brooks' affidavit is, therefore, sufficiently authoritative.

Resolution Trust Corp., *supra*, 22 F.3d at 1204. Plaintiffs' counsel attests to his years of experience with this case, his familiarity with the facts and legal issues, and his personal knowledge concerning the discovery that has occurred in this case and in the Receivership Proceeding.[36]

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[36] Sheehan Dec. ¶¶ 7 & 9.

2. Plaintiffs' motion is timely

Plaintiffs' motion is timely because it has been filed within a reasonable time after the Diocesan Defendants filed their motion for summary judgment:

> In the absence of an applicable time limit, we hold that a party must invoke Rule 56(f) within a reasonable time following receipt of a motion for summary judgment.

Resolution Trust Corp., *supra*, 22 F.3d at 1204.

3. Plaintiffs are entitled to discovery

"If the reason the party cannot 'adduce the facts essential to opposing summary judgment' is incomplete discovery, the party's explanation (i.e., the third requirement) should: (i) 'show good cause for the failure to have discovered the facts sooner'; (ii) 'set forth a plausible basis for believing that specific facts ... probably exist'; and (iii) 'indicate how the emergent facts ... will influence the outcome of the pending summary judgment motion.'" In re PHC, Inc. S'holder Litig., *supra*, 762 F.3d at 143 (quoting Resolution Trust Corp., *supra*, 22 F.3d at 1203).

a. Plaintiffs have shown good cause

Plaintiffs have met the requirement of showing "good cause for the failure to have discovered the facts sooner." The individual named plaintiffs have no relevant information, and Plaintiff Receiver had no personal knowledge concerning any of the events in question, since he was not appointed until 2017.[37] There has been no Rule 16 conference in this case, and the only discovery that has been allowed has been

[37] Sheehan Dec. ¶ 7.

narrowly cabined, as discussed above. See Armijo v. Bd. of Cty. Commissioners of Cty. of Socorro, No. CV 20-355 GBW/SMV, 2020 WL 4734771, at *4 (D.N.M. Aug. 14, 2020) (noting absence of Rule 16 conference in granting Rule 56(d) relief); Bland v. LVNV Funding, LLC, No. 4:15 CV 425 RWS, 2015 WL 10963745, at *1 (E.D. Mo. Oct. 15, 2015) (similarly noting absence of Rule 16 conference).

In fact, the Diocesan Defendants are directly responsible for Plaintiffs' not having conducted discovery on the issues involved in judicial estoppel. If at the proper time the Diocesan Defendants had given Plaintiffs notice that they claimed that the Plan lost Church Plan status on or before April 29, 2013, Plaintiffs could (and would) have conducted discovery during that ninety-day period relevant to the issue of judicial estoppel.[38] Since the Diocesan Defendants did not take that (or any) position, there was nothing the Diocesan Defendants could be estopped from asserting and Plaintiffs conducted no discovery on those issues.[39] Indeed, if Plaintiffs had sought to conduct discovery on the issues relevant to judicial estoppel back when the Diocesan Defendants were taking no position, the Diocesan Defendants would have been entitled to oppose it on the grounds that judicial estoppel was irrelevant since there was nothing they could be estopped from asserting.

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[38] Sheehan Dec. ¶ 11. In that event Plaintiffs would have argued judicial estoppel against the Diocesan Defendants. However, judicial estoppel would not have applied against Prospect because judicial estoppel only applies when the party who asserted the contradictory positions would derive an unfair advantage absent estoppel. Díaz-Báez v. Alicea-Vasallo, 22 F.4th 11, 21 (1st Cir. 2021) ("'[T]he party seeking to assert the inconsistent position must stand to derive an unfair advantage if the new position is accepted by the court.'") (quoting Knowlton v. Shaw, 704 F.3d 1, 10 (1st Cir. 2013)). The applicability of ERISA offered no advantage to the Prospect Defendants but, rather, increased their potential for successor liability.

[39] Sheehan Dec. ¶ 11.

Plaintiffs certainly could not have been expected to predict that the Diocesan Defendants would obtain leave for a new round of summary judgment motions on the same issue but with no provision for discovery. An irony of the current situation is that the Diocesan Defendants were very much in favor of the initial round of summary judgment motions on the issue of the applicability of ERISA to the Plan, yet when the time came for them to state their position, they said they had none. Then, to make matters worse, after the time for discovery closed, they filed their own motion for summary judgment on the issue of the applicability of ERISA to the Plan, which they should have done back in 2020. Accordingly, the Diocesan Defendants are entirely to blame both for Plaintiffs' lack of discovery on the issues involved in judicial estoppel and for the delay and duplication of effort entailed by their motion for summary judgment.

b. There is a plausible basis for believing that specific facts probably exist

Plaintiffs' factual opposition to the Diocesan Defendants' motion for summary judgment sets forth an especially sound basis for concluding that additional facts supporting their claim of judicial estoppel "plausibly exist." That factual opposition is due to the Plaintiff Receiver's efforts in the Receivership Proceeding to obtain all documents concerning the Plan.[40] However, the Plaintiff Receiver did not seek documents in the Receivership Proceeding focused on the issue of judicial estoppel and did not take any depositions whatsoever.[41] Plaintiffs are entitled to conduct discovery focused on that issue, including depositions.

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[40] Sheehan Dec. ¶ 14.

[41] Sheehan Dec. ¶ 8.

The "specific facts" which "plausibly exist," but which have not yet been the specific focus of discovery, or the subject of a deposition of the knowledgeable individuals, include the following:

- the Bishop controlled SJHSRI's participation in the 2014 Asset Sale;[42]
- the Bishop and SJHSRI had a sufficient identity of interest in the 2014 Asset Sale being approved by state regulators such that the Bishop and SJHSRI should be treated as the same party for purposes of judicial estoppel;[43]
- SJHSRI and the Bishop expressly agreed that the Plan would continue as a "church plan" and that the state regulators would be so informed;[44]
- The Bishop intended to deceive state regulators by his representation that approval of the Asset Sale would benefit the Plan participants;[45]
- Both SJHSRI and the Bishop understood that if the Plan were governed by ERISA, the decision to "orphan" the Plan with an entity (SJHSRI) stripped of its operating assets would violate ERISA;[46]
- The Bishop expressly agreed to issue the "Bishop's Resolution"[47] to facilitate SJHSRI's warranty that the Plan was a "church plan" and that the Plan was "administered by an organization described in Section 414(e)(3)(A) of the Code;"[48]
- SJHSRI and the Bishop's representation that the plan was a "church plan" was not a "mistake" made in "good faith" as they may now contend;[49] and

[42] Sheehan Dec. ¶ 16.

[43] Sheehan Dec. ¶ 16.

[44] Sheehan Dec. ¶ 16.

[45] Sheehan Dec. ¶ 16.

[46] Sheehan Dec. ¶ 16.

[47] The "Bishop's resolution" is fully addressed at pages 6, 32–33, 87–89 in Plaintiffs' Opp. Memo., which for the sake of brevity are hereby incorporated by reference rather than repeated herein.

[48] Sheehan Dec. ¶ 16.

[49] Sheehan Dec. ¶ 16.

- Assuming, *arguendo*, it was a “mistake” in “good faith”, neither SJHSRI nor the Bishop exercised ordinary care as would be required to constitute a defense to judicial estoppel.[50]

To be clear, Plaintiffs believe that these factual assertions are already adequately supported in Plaintiffs’ LR Cv 56(a)(4) Statement or have been admitted by the Diocesan Defendants in their motion for summary judgment. Plaintiffs are able to make that showing because Plaintiffs’ counsel has sifted through the hundreds of thousands of pages of document production obtained in the Receivership Proceeding in response to subpoenas seeking documents concerning the Plan. Plaintiffs seek focused discovery concerning these issues, including depositions, to bolster Plaintiffs’ factual submissions in the event the Court were to find Plaintiffs’ LR Cv 56(a)(4) Statement to be insufficient to establish these assertions at least as disputed issues of fact. Plaintiffs also strongly believe that such discovery will likely lead to the discovery of additional factual issues relevant to the applicability of judicial estoppel.[51]

c. These facts are material

As noted, “[b]ecause ‘evaluating the potential significance of unknown facts in regard to unadjudicated issues is something of a metaphysical exercise.... [T]he threshold of materiality at this stage of a case is necessarily low.’” In re PHC, Inc. S'holder Litig., *supra*, 762 F.3d at 143 (quoting Resolution Trust Corp., 22 F.3d at 1203).

Plaintiffs easily cross the threshold of materiality. Indeed, the materiality of these specific facts is obvious upon review of the section on judicial estoppel in Plaintiffs’ Opp.

[50] Sheehan Dec. ¶ 16.

[51] Sheehan Dec. ¶ 17.

Memo.[52] From that it is clear how each of these specific facts would be relevant to the adjudication of Plaintiffs' claim that the Diocesan Defendants are judicially estopped.

III. Conclusion

For the foregoing reasons, the Plaintiffs' Conditional Rule 56(d) Motion should be granted, unless the Court denies the Diocesan Defendants' motion for summary judgment on the merits, in which event this motion will be moot.

If Plaintiffs' motion is granted, Plaintiffs request that the Court allow them a reasonable period of time and the right to use all discovery tools concerning any issues that are relevant to or which may lead to the discovery of admissible evidence concerning whether the Diocesan Defendants should be judicially estopped from their current assertion that the Plan did *not* qualify as a "church plan and was *not* "administered by an organization described in Section 414(e)(3)(A) of the Code."

Respectfully submitted,
Plaintiffs,
By their Attorneys,

/s/ Max Wistow
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Dated: April 18, 2022

[52] See Plaintiffs' Opp. Memo at 74–97.

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, ET AL.	:
Plaintiffs	:
v.	: C.A. No:1:18-CV-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, ET AL.	:
Defendants.	:

DECLARATION OF STEPHEN P. SHEEHAN

Stephen P. Sheehan hereby declares and states as follows:

1. I along with Max Wistow and Benjamin Ledsham of the firm Wistow, Sheehan & Loveley, PC ("WSL") am counsel for the Plaintiffs in this action.

2. I am submitting this declaration in support of Plaintiffs' Conditional Rule 56(d) Motion to Defer or Deny the Diocesan Defendants' Motion for Summary Judgment Pending Discovery on Judicial Estoppel.

3. I am also submitting this declaration in support of certain factual assertions set forth in Plaintiffs' Memorandum in Opposition to the Diocesan Defendants' Motion for Summary Judgment ("Plaintiffs' Opp. Memo."), concerning whether certain documents were ever produced to Plaintiffs or ever existed.

4. Although this action commenced with the filing of suit on June 18, 2018, WSL was retained in October 2017 by Plaintiff Receiver Stephen Del Sesto (the "Receiver").

5. The Receiver was appointed by the Rhode Island Superior Court in the case captioned St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended, PC-2017-3856 (the "Receivership Proceeding") to act as the Receiver for and Administrator of the Plan.

6. The Receiver requested that the Superior Court authorize him to retain WSL "to conduct an investigation into the circumstances which resulted in the Plan's significant, and likely irreversible, financial distress," pursuant to the terms of a retainer agreement that provided that we would represent him in asserting claims against potentially responsible parties.[1]

7. The Receiver had no prior involvement in these matters and no file or personal knowledge of the relevant events. Accordingly, over the next nine months, WSL issued numerous subpoenas or document requests pursuant to court orders to obtain documents from the relevant parties, primarily having to do with the Plan. Those parties included all of the defendants in this case. I, along with Max Wistow and Benjamin Ledsham, reviewed the hundreds of thousands of pages of documents that were obtained pursuant to subpoena or court order concerning the Plan.

8. However, the applicability of judicial estoppel against the Diocesan Defendants was not identified as an issue or focus for discovery in the Receivership Proceeding. Specifically, there was no indication that the Diocesan Defendants would seek to contradict their many earlier assertions that the Plan was a "church plan"

[1] The Receiver's petition (including the retainer agreement) is ECF # 65-3. The order granting the Receiver's petition is ECF # 65-5. WSL was also later engaged by the seven other named Plaintiffs. See ECF ## 65-12 through 65-18.

exempt from ERISA. Moreover, no depositions were taken involving any matters whatsoever.

9. After suit was commenced on June 18, 2018, I continued to be directly involved in all aspects of the representation of the Plaintiffs in this case. Over the nearly four years this case has been in suit, I personally have devoted thousands of hours to that representation, a great deal of which was involved in the review of documents, which is in addition to the equivalent time that Max Wistow and Benjamin Ledsham have devoted to the representation.

10. As discussed in detail in Plaintiffs' Opp. Memo. at 1–5, this case involved an earlier round of summary judgment motions concerning the applicability of ERISA to the Plan. Plaintiffs' motion was filed December 17, 2019, and the Prospect Defendants' cross-motion and opposition were filed June 23, 2020, pursuant to a procedure where the parties would engage in limited discovery on the issues raised by the motions. That limited discovery closed on September 25, 2020.[2]

11. However, the Diocesan Defendants took no position. Indeed, the Diocesan Defendants expressly disclaimed having any position concerning either Plaintiffs' assertions or the Prospect Defendants' assertions regarding the applicability of ERISA to the Plan. They did so in their initial submission on June 26, 2020,[3] stating as follows:

> First, the Diocesan Defendants state that they take no position concerning the only question posed in Plaintiffs' pending Motion: Whether the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan") became subject to ERISA by April 29, 2013 because of an alleged failure

[2] ECF # 220 (Fourth order Concerning Limited Discovery and Summary Judgment Motions) ¶ 6 ("The January 13, 2020 Stipulation and Consent Order and the Third Stipulation and Consent Order are hereby amended to provide that the period for Limited Discovery Concerning Defendants' Cross-Motions for Summary Judgment shall commence June 27, 2020 and shall conclude September 25, 2020.").

[3] ECF # 189 at 1.

> to meet any principal purpose organization requirement. The Diocesan Defendants strongly believe that a prompt resolution of this legal question will benefit the Court and the Parties.

and again on November 20, 2020,[4] when they stated as follows:

> The Diocesan Defendants take no position on whether St. Joseph Health Services of Rhode Island, Inc. ("SJHSRI") satisfied the principal purpose organization requirement under ERISA for Church Plans after 2010. They also take no position on how the Court should resolve the dispute between Plaintiffs and Prospect as to whether SJHSRI failed to meet the requirements for qualification of a Church Plan on or before April 29, 2013 (Plaintiffs' position) or on or after December 15, 2014 (Prospect's position).

12. The issue of judicial estoppel was not addressed in connection with that prior round of summary judgment motions, nor was any discovery conducted concerning judicial estoppel, because that issue was irrelevant and immaterial at that time. The Diocesan Defendants chose to take no position whatsoever. In that circumstance, there was nothing they could be estopped from asserting. Had they adopted Plaintiffs' position in order to limit their liability, as they now seek to do, Plaintiffs could (and would) have raised the issue of judicial estoppel at that time and conducted discovery on that issue. However, that did not happen while discovery was available and, as a result, Plaintiffs took no discovery on that issue.

13. Those motions for summary judgment were never heard or decided, because Plaintiffs, the Prospect Defendants, and Angell entered into a settlement on December 30, 2020, to which this Court gave final approval on July 29, 2021.

14. However, on August 31, 2021, more than fourteen months after they claimed to have no position and nearly a year after discovery closed, the Diocesan

[4] ECF # 200 at 1.

Defendants filed their much belated "Assent" to Plaintiffs' Motion for Summary Judgment on Count IV of the First Amended Complaint.[5] The circumstances concerning that filing are fully discussed in Plaintiffs' Opp. Memo. at 1–5. It is sufficient here to note that this was the first time the Diocesan Defendants took this position, and that the period for discovery concerning their position had long since expired.

15. Immediately thereafter I, along with Max Wistow and Benjamin Ledsham, began to review anew the by now over a million pages of documents we have accumulated concerning this case, to put together the best possible showing we could in support of Plaintiffs' position that the Diocesan Defendants should be judicially estopped from asserting that the Plan failed to qualify for the ERISA exemption for "church plans" by April 29, 2013 at the latest.

16. That showing is included in Plaintiffs' Opp. Memo. at 74–97. To be clear, we believe that showing is fully adequate to raise at least disputed issues of material fact that support Plaintiffs' claim for judicial estoppel, and that the Diocesan Defendants' motion for summary judgment can and should be denied for that reason, as well as the other reasons set forth in Plaintiffs' opposition.

17. However, the Diocesan Defendants can be expected to question the adequacy of Plaintiffs' showing and, of course, the determination of the adequacy of Plaintiffs' submission will be up to the Court. In spite of our confidence in Plaintiffs' position, we would be remiss in not seeking discovery. Plaintiffs have not had the opportunity to conduct discovery focused on the issues of judicial estoppel or to take depositions concerning such issues. I strongly believe, based on my extensive

[5] ECF # 221.

involvement in this case, that such discovery will lead to the discovery of admissible evidence that will substantially bolster Plaintiffs' showing with respect to the factual issues already identified in Plaintiffs' Opp. Memo. at 74–97, including the following:

- The Bishop was expressly informed that the transaction required regulatory approvals and worked hand in glove with SJHSRI to secure those approvals;

- The Bishop or his designee was the Chairman of SJHSRI's Board of Trustees and, therefore, was directly involved in the Board's decision to enter into the APA and submit the HCA Application;

- The Bishop of Providence as the sole Class B member in SJHSRI had to affirmatively approve the sale for the transaction to proceed;

- SJHSRI on several occasions before it was signed provided the Bishop with the Asset Purchase Agreement (including the representation that the Plan was a Church Plan "administered by an organization described in Section 414(e)(3)(A) of the Code," i.e., a "principal purpose organization");

- The status of the Plan as a "Church Plan" was controlled by the Bishop;

- The Bishop issued his "Resolution" that SJHSRI's Board of trustees would be Plan Administrator and that the Plan was intended to be a "Church Plan;"

- SJHSRI and SJHSRI's lawyers met with the Diocesan Defendants on several occasions to explain the APA and secure the Bishop's agreement to retain "Church Plan" status, and went over extensive "CONFIDENTIAL" presentations that made clear the Bishop's role in the *quid pro quo* whereby in return for supporting the transaction and retaining sponsorship of SJHSR, the Bishop would obtain a "Catholic Hospital" free of crippling pension liabilities;

- The APA was conditioned upon the Bishop's approval and the Bishop was an express third-party beneficiary;

- The APA was submitted to the regulators as part of the HCA Application, and certified to be "complete, accurate and true," including the express unqualified representation and warranty that the Plan was "administered by an organization described in Section 414(e)(3)(A) of the Code" (i.e., a "principal purpose organization");"

- The Bishop even worked with SJHSRI to secure the approval of the Vatican, which included providing the Papal Nuncio with the signed APA, which approval was submitted to the regulators upon the regulators' specific request; and

- The Bishop personally wrote to the regulators to lobby in favor of the HCA Application, in a letter which SJHSRI approved in advance, and purported to be writing "on behalf of the proposed partnership between CharterCARE Health Partners and Prospect Medical Holdings…"

18. I also strongly believe that such discovery will likely lead to the discovery of new factual issues relevant to the applicability of judicial estoppel.

19. Of course, this Rule 56(d) motion can and should be denied as moot if the Court is satisfied that Plaintiffs have already raised at least disputed issues of material fact that support Plaintiffs' claim for judicial estoppel, and that the Diocesan Defendants' motion for summary judgment can and should be denied for that reason. Indeed, that would be the most expeditious way to proceed, since there is no point in further delaying these proceedings by allowing another period of limited discovery, this time limited to the issue of judicial estoppel, if the Court is satisfied that Plaintiffs' current showing is sufficient to preclude the Diocesan Defendants' motion for summary judgment.

20. It is highly probable from my review of documents that certain documents which should exist and would be very relevant to the issues of judicial estoppel have not been produced by the Defendants in the Receivership Proceedings. Notably, there is virtually no documentation concerning the circumstances that led to the creation and execution of the Bishop' Resolution.[6] Similarly, the documents do not include the original draft of the Bishop's letter to the regulatory agencies in support of the HCA Application,[7] although it was clearly forwarded as an attachment to an email.[8]

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[6] The Bishop's resolution is explained at pages 6, 32–33, 87–89 of Plaintiffs' Opp. Memo.

[7] The significance of that draft letter is addressed at pages 33-34 of Plaintiffs' Opp. Memo.

[8] See Plaintiffs LR Cv 56(a)(4) Statement ¶ 119 & Exhibit 58 (R. Otis Brown's email to Father Timothy Reilly of February 7, 2014).

21. It is also highly probable from my review of the documents that certain other documents neither exist now nor ever existed. Most notably there is no documentation evidencing that SJHSRI ever[9] informed Plan participants that it was not making recommended minimum contributions to the Plan, that the Plan was underfunded, or that the purpose of the 2014 Asset Sale was to separate (and hopefully insulate) SJHSRI's operating assets from SJHSRI's pension liability. While it is impossible to absolutely prove a negative in such circumstances, it is apparent to me that if such documents ever existed they would be in the files that SJHSRI produced to the Receiver in the Receivership Proceedings, since they were clearly encompassed within the subpoenas and court orders pursuant to which such production took place. In the documents that were produced there is no hint that these disclosures were made to any Plan participant. Accordingly, it is reasonable to conclude such documents do not exist and never existed, and such disclosures were never made.

22. After the Diocesan Defendants reversed course twice, first by belatedly choosing to take a position on the issues raised by the cross-motions for summary judgment when for months they claimed to have no position, and second by taking a position that was directly contrary to the position they had taken in connection with the 2014 Asset Sale, I contacted Attorney Richard P. Land who represented SJHSRI following the 2014 Asset Sale and obtained from him the affidavit that sets forth the factual basis for Plaintiffs' claim that SJHSRI qualified as a "principal purpose organization" following the 2014 Asset Sale. Attorney Land had been deposed earlier in the case, in connection with the discovery allowed to explore the Defendants' objection

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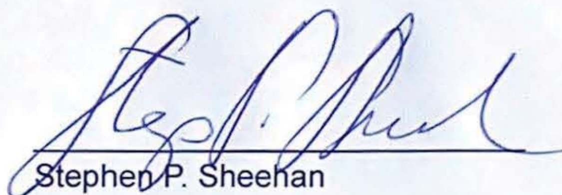
[9] Prior to the filing to place the Plan in receivership on August 18, 2017.

to Plaintiffs' settlement with SJHSRI, RWH and CCCB. However, none of the parties deposed him as part of the limited discovery allowed in the initial round of summary judgments.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18th day of April, 2022 in Woonsocket, Rhode Island.



Stephen P. Sheehan