

**UNITED STATES 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.

PROSPECT CHARTERCARE, LLC, ET AL.,

Defendants.

C.A. No. 1:18-cv-00328-WES-LDA

**DIOCESAN DEFENDANTS' RESPONSE  
TO PLAINTIFFS' STATEMENT OF UNDISPUTED AND  
DISPUTED MATERIAL FACTS CONCERNING JUDICIAL ESTOPPEL**

Defendants Roman Catholic Bishop of Providence, a corporation sole ("RCB"), Diocesan Administration Corporation ("DAC") and Diocesan Service Corporation ("DSC" and with RCB and DAC, the "Diocesan Defendants") provide this response to paragraphs 40 through 154 of Plaintiffs' Statement of Undisputed and Disputed Material Facts ("Judicial Estoppel Statements").

In a blatant attempt to distract the Court from the substantive merits of the Diocesan Defendants' motion, Plaintiffs front-loaded their "Statement of Undisputed and Disputed Material Facts" with 115 paragraphs concerning their frivolous judicial estoppel defense. The estoppel theory fails as a matter of law and the Court need not even read the "facts" that Plaintiffs offer in support to reject it. None of the Judicial Estoppel Statements are material for the reasons set out in the Diocesan Defendants' reply brief in further support of their motion for summary judgment filed contemporaneously herewith. Diocesan Defs.' Reply in Further Supp. of Mot. for Summ. J. ("Diocesan MSJ Reply") at Part III. They are also not

material because Plaintiffs have failed to sufficiently plead facts establishing a fraud or conspiracy or tying the Diocesan Defendants' to alleged improper activity for the reasons set out in the Diocesan Defendants' renewed motion to dismiss. Diocesan Defs.' Renewed Mot. to Dismiss ("Diocesan MTD"), ECF No. 238, at 7-12, 17-43, 52-78.

To that end, and to simplify the Court's review of the actual subject of the Diocesan Defendants' motion, the Diocesan Defendants have relegated their response to the Judicial Estoppel Statements to this separate filing. In the event Plaintiffs clear the hurdles summarized in the preceding paragraph (they cannot), the Diocesan Defendants provide the below response to the Judicial Estoppel Statements to preserve their rights.<sup>1</sup>

***THE DIOCESAN DEFENDANTS' RESPONSE TO STATEMENT NOS. 40-154***

**PLAINTIFFS' STATEMENT NO. 40:**

SJHSRI was formed in 1892 as the corporation named St. Joseph Hospital. In 1970, St. Joseph Hospital (pursuant to a merger) acquired Our Lady of Fatima Hospital. Exhibit 1 (An Act Providing for the Merger of St. Joseph's Hospital and Our Lady of Fatima Hospital). In 1995, St. Joseph Hospital was renamed St. Joseph Health Services of Rhode Island. Exhibit 2 (Articles of Amendment). SJHSRI operated Our Lady of Fatima Hospital ("Fatima") as a completely independent Catholic Hospital from 1970 until January 4, 2010. Diocesan Defendants' Statement of Undisputed Material Facts ("DD SUMF") Exhibit 10 (SJHSRI's amended and restated bylaws).

**DIOCESAN DEFENDANTS' RESPONSE NO. 40:**

Undisputed.

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<sup>1</sup> The Diocesan Defendants apologize in advance for the length of this document. As Plaintiffs' estoppel argument essentially overlaps with their merits case, it required the Diocesan Defendants to respond with what amounts to a partial documentary merits defense.

**PLAINTIFFS' STATEMENT NO. 41:**

From 1995 to January 4, 2010, the Bishop of Providence appointed all members of the board of SJHSRI, who served at his pleasure. Exhibit 3 (SJHSRI's 1995 bylaws) at 4 (Article II, § 1). He was also the Chairman of and appointed all of the members to SJHSRI's Retirement Board, which administered the Plan. DD SUMF Exhibit 2 (St. Joseph Health Services of Rhode Island Retirement Plan as Amended and Restated effective July 1, 1995) § 18.1.

**DIOCESAN DEFENDANTS' RESPONSE NO. 41:**

Response No. 41.1 (First Sentence): Undisputed that the Most Reverend Bishop of the Roman Catholic Diocese of Providence appointed the "Members of the Corporation" (not less than five), who served at his pleasure. ECF No. 243-3 (1995 SJHSRI Bylaws), Art. II, § 1. Disputed that "from 1995 to January 4, 2010, the Bishop of Providence appointed all members of the board of SJHSRI." ECF No. 243-3 provides that the "Members of the Corporation shall reserve to themselves the following powers . . . Appointment of Trustees and Officers of the Corporation." *Id.*, Art. II, § 2. Trustees could "be involuntarily removed . . . by action initiated by the Members of the Corporation." *Id.* Art. V, § 2.A.

Response No. 41.2 (Second Sentence): Undisputed, provided "he" refers to the Most Reverend Bishop.

Response No. 41.3: Throughout their Statement of Undisputed and Disputed Facts, Plaintiffs fail to distinguish between the Most Reverend Bishop (as an individual and ecclesiastical officer) and the Roman Catholic Bishop of Providence, a corporation sole ("RCB"). At various times, the Most Reverend Bishop had a role and powers relative to the Plan, as did RCB. *Compare* ECF No. 237-2 (1995 Plan) § 18.1 (providing for a Retirement

Board that serves at the pleasure of the Most Reverend Bishop) *with id.* § 20.1 (providing that SJHSRI could modify, amend, or terminate the Plan by action of RCB). By the 1999 Plan however, RCB's role with respect to the Plan had ceased. *See generally* ECF No. 237-3 (1999 Plan) (no longer reflecting a role for RCB in the management of the Plan).

The Most Reverend Bishop also had a role in the governance of SJHSRI at various times. *See* ECF No. 237-10 (Secretary's Certificate) at 9 (identifying Bishop Tobin as the Chair and Treasurer of SJHSRI). RCB did not assume any role with respect to the governance of SJHSRI until January 4, 2010 when, by dint of an amendment to SJHSRI's Articles of Incorporation, it became SJHSRI's Class B member. *See* ECF No. 190-8 (SJHSRI Amended Articles), Ex. A at Part A (naming RCB as SJHSRI's Class B member, "Effective January 4, 2010"). And, as noted *infra* at Response No. 46 and the Diocesan Defendants' Response to Prospect's Statement of Facts, ECF No. 199, at Resp. No. 2, this role was limited.

This issue, and many of the other disputes the Diocesan Defendants raise in response to Statement Nos. 40-114 are questions of fact. None of them, however, are material to the Court's analysis of Plaintiffs' estoppel defense for the reasons set forth in the Diocesan Defendants' summary judgment reply brief, filed contemporaneously herewith.

**PLAINTIFFS' STATEMENT NO. 42:**

In May of 2008, SJHSRI and Roger Williams Hospital ("RWH") entered into a "Memorandum of Understanding" ("MOU") and agreed in principle to an affiliation to create a new health care system. DD SUMF ¶ 8; DD SUMF Exhibit 6 (May 12, 2008 Memorandum of Understanding).

**DIOCESAN DEFENDANTS' RESPONSE NO. 42:**

Undisputed.



**PLAINTIFFS' STATEMENT NO. 43:**

The MOU expressly provided that it was “a fundamental understanding of the Parties that the System shall be structured and governed in a manner that will preserve the Catholicity of SJHSRI ...” DD SUMF Exhibit 6 (MOU) at 1. Pursuant to the MOU, “SJHSRI will maintain its designation as a Catholic hospital operating in full compliance with the social and ethical teachings of the Catholic Church, including the Religious and Ethical Directives for Catholic Health Care Services, as promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop (‘ERDs’).” DD SUMF Exhibit 6 (MOU) at 4.

**DIOCESAN DEFENDANTS' RESPONSE NO. 43:**

Undisputed that the MOU contains, *inter alia*, the quoted language. The MOU speaks for itself.

**PLAINTIFFS' STATEMENT NO. 44:**

As of February 2, 2009, SJHSRI, RWH and the Bishop entered into a Health Care System Affiliation and Development Agreement. DD SUMF ¶ 19; DD SUMF Exhibit 9 (Health Care System Affiliation and Development Agreement).

**DIOCESAN DEFENDANTS' RESPONSE NO. 44:**

Undisputed, provided that “the Bishop” refers to RCB.

**PLAINTIFFS' STATEMENT NO. 45:**

The affiliation involved the creation of a new “healthcare system” under a new entity, then-known as CharterCARE Health Partners (“CCHP”). CCHP would be the sole member of RWH, and the sole Class A member of SJHSRI. The Bishop of Providence was the sole Class B Member of SJHSRI, with each member of SJHSRI having different voting rights.

See DD SUMF ¶¶ 19 & 20; DD SUMF Exhibit 9 (Health Care System Affiliation and Development Agreement); DD SUMF Exhibit 10 (2010 SJHSRI By-laws) at 4.

**DIOCESAN DEFENDANTS' RESPONSE NO. 45:**

Undisputed that Statement No. 45 accurately describes in summary fashion one of the effects of the Affiliation between CCHP, RWH, and SJHSRI, provided that “the Bishop of Providence” refers to RCB. The changes wrought by the affiliation are covered in greater detail in the Affiliation Agreement, ECF No. 237-9, and SJHSRI’s 2010 Bylaws, ECF No. 237-10, which speak for themselves.

**PLAINTIFFS' STATEMENT NO. 46:**

Notably, the Affiliation Agreement included provisions to ensure that SJHSRI would remain a Catholic hospital despite being affiliated with a secular system. DD SUMF Exhibit 9 (Affiliation Agreement) at 2, 5, 7, 12, 14. By these provisions the parties expressly agreed that CCHP “[would] encourage and support the maintenance and support the maintenance of Catholicity at SJHSRI” and SJHSRI “[would] be a Catholic hospital.” *Id.* at 12.

**DIOCESAN DEFENDANTS' RESPONSE NO. 46:**

Response 46.1: Undisputed that the Affiliation Agreement included such provisions and contained, *inter alia*, the quoted language, with the exception that “and support the maintenance” only appears once on page 12 of the Affiliation Agreement. ECF No. 237-9 (Aff. Agmt) § 3.1. The Affiliation Agreement speaks for itself.

Response 46.2: Disputed. The immaterial characterization of these specific provisions of the Affiliation Agreement, as opposed to any other, as particularly “notable,” given SJHSRI’s longstanding history as a Catholic Hospital. *See, e.g.,* Pls.’ Statement of Undisputed and Disputed Material Facts (“PSUDF”), ECF No. 243, ¶ 40.

Response 46.3: Disputed to the extent this paragraph intimates that RCB or the Most Reverend Bishop controlled SJHSRI on or after January 4, 2010. As Plaintiffs explained earlier in this litigation, that was not the case:

Disputed. CCHP's and SJHSRI's Bylaws establish by their express terms that the Bishop did not control SJHSRI, CCHP's and SJHSRI's Board of Trustees, or the governance and operation of CCHP – not during the initial term of the Initial Board of Trustees (January 4, 2010 through January 4, 2013) and not at any time thereafter. CCHP Bylaws (ECF # 174-24); SJHSRI Amended Bylaws (ECF# 174-15). To the contrary, CCHP was controlled by its Board of Trustees, and SJHSRI's trustees were selected by CCHP. Moreover, once an individual was appointed to the boards of trustees of SJHSRI or CCHP, that individual owed a fiduciary obligation to that entity. Each of the trustees appointed to the CCHP Board by either the Bishop or RWH owed a duty of loyalty to CCHP; those individuals appointed (by CCHP) to the SJHSRI Board owed a similar duty to SJHSRI. These legal duties prevented board members from favoring the interests of the Bishop over the interests of CCHP or SJHSRI.

Pls.' Resp. to Prospect Defs.' Statement of Facts, ECF No. 196, Resp. No. 29; *see id.* Resp. Nos. 30, 49, 87; *see also* Pls.' Opp'n to Prospect Defs.' Mot. for Summ. J., ECF No. 202, at 46 ("As discussed, 'controlled' means corporate control. SJHSRI was not controlled by the Catholic Church."); Diocesan Defs.' Statement of Disputed Facts in Resp. to Prospect's Statement of Undisputed Facts, ECF No. 199, Resp. No. 2.

**PLAINTIFFS' STATEMENT NO. 47:**

Following the reorganization, the Bishop or his designee was an *ex officio* member of the Board of Trustees with voting rights. DD SUMF Exhibit 10 (2010 SJHSRI By-laws) § 4.2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 47:**

Undisputed, provided that "the Bishop" refers to RCB and "the Board of Trustees" refers to SJHSRI's Board. To the extent Statement No. 47 is offered in support of the

Most Reverend Bishop's or RCB's purported control of SJHSRI after January 4, 2010, disputed for the reasons set out *supra* at Response No. 46.3.

**PLAINTIFFS' STATEMENT NO. 48:**

Following the reorganization, the Bishop or his designee was also the Chairperson of SJHSRI's Board of Trustees. DD SUMF Exhibit 10 (2010 SJHSRI By-laws) § 6.2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 48:**

Undisputed, provided that "the Bishop" refers to RCB. To the extent this paragraph is offered in support of the Most Reverend Bishop's or RCB's purported control of SJHSRI after January 4, 2010, disputed for the reasons set out *supra* at Response No. 46.3. Further disputed that RCB's designee to the SJHSRI Board acted for, or on behalf of, RCB. When appointed to the SJHSRI Board, the designee owed a legal duty to SJHSRI, as discussed *supra* at Response No. 46.3, and acted only in the designee's capacity as a board member.

**PLAINTIFFS' STATEMENT NO. 49:**

The Bishop or his designee remained Chairman of SJHSRI's Board of Trustees throughout the period from January 4, 2010 through at least April 2016. See Exhibit 4 (2010 SJHSRI Board of Trustees membership list); Exhibit 5 (2014 SJHSRI Board of Trustees membership list); Exhibit 6 (Bishop Tobin's letter of April 25, 2016 acknowledging Monsignor Paul D. Theroux's request to resign effective as of the end of 2016).

**DIOCESAN DEFENDANTS' RESPONSE NO. 49:**

Response No. 49.1: Undisputed that RCB's designee was Chairman of SJHSRI's Board of Trustees from January 4, 2010 until December 15, 2014. To the extent this paragraph is offered in support of the Most Reverend Bishop's or RCB's purported control of SJHSRI after January 4, 2010, disputed for the reasons set out *supra* at Response No. 46.3.

Response No. 49.2: Disputed that RCB or its designee was Chairman of SJHSRI's Board for any period on or after December 15, 2014. CCHP<sup>2</sup> amended SJHSRI's Bylaws by written consent, dated December 15, 2014, to strip RCB (or its designee) of its *ex-officio* board seat or chairman role. ECF No. 243-89, Tab A (Written Consent) (eliminating RCB's board seat and appointing a new slate of directors). Plaintiffs stated this very thing in their complaint: "By resolution dated December 15, 2014, SJHSRI's bylaws were amended to eliminate even Bishop Tobin's nominal role in the appointment of directors or officers of SJHSRI." FAC, ECF No. 60, ¶ 89.

Following the 2014 Asset Sale, Msgr. Theroux became chairman of the board for Prospect CharterCARE SJHSRI LLC. He was not appointed to that position by RCB or the Most Reverend Bishop. Rather, he was appointed by vote of the CCHP Board. Ex. 23<sup>3</sup> (April 30, 2014 Minutes of CCHP Board) at 5 ("He [Donald McQueen] called for a motion to appoint the following individuals to the new Prospect St. Joseph Health Services of Rhode Island Board, as recommended by the Nominating Committee: 1) Monsignor Paul Theroux, Chair").

As such, the two letters that Plaintiffs ostensibly cite in support of Msgr. Theroux's continued service on the SJHSRI Board after December 15, 2014, pertain to his role on the Prospect CharterCARE SJHSRI Board. Monsignor addressed his letter of resignation to Edwin Santos (Chair of the Prospect CharterCARE LLC Board), with copies to Lester Schindel (the CEO Prospect CharterCARE LLC) and Thomas Hughes (the President of Prospect CharterCARE SJHSRI), and not Daniel Ryan (the President of SJHSRI). *See* ECF No. 243-6 (Apr. 19, 2016 Letter from Msgr. Theroux) at 2 (addressed to Edwin Santos, as "Chairman of the

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<sup>2</sup> Wind-down CCHP acted under the name of CharterCARE Community Board ("CCCB") following the 2014 Asset Sale. For simplicity's sake, the Diocesan Defendants will refer to wind-down CCHP as CCHP.

<sup>3</sup> The Diocesan Defendants pick up their exhibit numbering from where they left off in their Statement of Undisputed Facts, ECF No. 237.

Board” of CharterCARE Health Partners, which in April 2016, was the fictitious name under which Prospect CharterCARE LLC operated its business, PSUDF, ECF No. 243, ¶ 149); Ex. 24 (Letters reflecting roles of Messrs. Schinel and Hughes); ECF No. 243-89, Tab A (Written Consent) (naming Mr. Ryan the President of SJHSRI).

**PLAINTIFFS' STATEMENT NO. 50:**

Following the reorganization, the Bishop had the exclusive right to appoint the Vice Chairperson of SJHSRI’s Board of Trustees. DD SUMF Exhibit 10 (2010 SJHSRI By-laws) § 6.2.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 50:**

Undisputed, provided that Statement No. 50 pertains to the time period between January 4, 2010 and December 15, 2014 and “the Bishop” refers to RCB. To the extent Statement No. 50 is offered in support of the Most Reverend Bishop’s or RCB’s purported control of SJHSRI after January 4, 2010, disputed for the reasons set out *supra* at Response No. 46.3.

**PLAINTIFFS' STATEMENT NO. 51:**

SJHSRI’s actuaries informed SJHSRI that minimum recommended contributions that would be required if the Plan were subject to ERISA for the following Plan years: 2010, 2011, 2012, 2013, and 2014. DD Motion to Dismiss at 45; DD Motion to Dismiss Exhibit 9<sup>□</sup> (chart labeled “St. Joseph Hospital Services of Rhode Island Retirement Plan Historical Actuarial Information 7/1/2003-6/30/2013”); Exhibit 7 hereto (Actuarial Valuation for Plan Year Ending June 30, 2014) at 12. [Footnote Omitted].

**DIOCESAN DEFENDANTS’ RESPONSE NO. 51:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 52:**

However, SJHSRI made no contributions in 2010, 2011, 2012, or 2013, and no contribution in 2014 until June 20, 2014 when \$14,000,000 was contributed to the Plan in connection with the 2014 Asset Sale. DD SUMF ¶¶ 31–33.

**DIOCESAN DEFENDANTS' RESPONSE NO. 52:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 53:**

There is no documentation evidencing that SJHSRI ever 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. Exhibit 8 (Declaration of Stephen P. Sheehan dated April 18, 2022 ("Sheehan Dec.")) ¶ 21.

**DIOCESAN DEFENDANTS' RESPONSE NO. 53:**

*Response No. 53.1:* Disputed. Plan participants and the United Nurses & Allied Professionals ("UNAP") union were regularly advised and understood that there were significant issues with the Plan and its funding. This includes, among other things:

- notices concerning freezes of the Plan, Ex. 25 (August 27, 2009 Notice of Plan Freeze);
- education sessions, Ex. 26 (July 11, 2008 SJHSRI Finance Committee Meeting Minutes) at 4-5 ("The Hospital had Mr. Jeffrey Bauer, President of The Angell Pension Group, Inc., the Hospital's Plan Administrator, attend a bargaining session where he educated the union executive board as to the structure and status of the Hospital's pension plans. Mr. Fogarty indicated that this educational session was not well received by union representatives.");

- awareness of, and efforts, to independently assess the impact of the \$14 million contribution to the Plan that Prospect proposed to make, Ex. 27 (September 26, 2013 Email Exchange between Darlene Souza and Lynn Blais);
- a contract between CCHP, Prospect CharterCARE LLC and UNAP in which UNAP agreed “that Prospect, its affiliated parties, and Prospect CharterCARE, LLC will not have any obligations to the Defined Benefit Plan,” ECF No. 243-27 at Ex. 2 (January 20, 2014 Memorandum of Understanding (“MOU”)) § 11; and
- an understanding that CCHP and SJHSRI were not promising that accrued benefits were guaranteed/insured, Ex. 28 (Draft July 29, 2013 Letter from Lynn Blais) (“Right off the bat, CharterCare management is telling us that we have to agree to a freeze of our pension plan if the joint venture is going to go through. They’ve made no assurances as to whether or not the benefits we’ve already accrued are guaranteed (insured).”).

UNAP regularly discussed the Plan with SJHSRI and CCHP officials. That dialogue covered, among other things, amendments to the Plan (copies of which were available to Plan participants and possessed by UNAP) and requests for actuarial reports, so that UNAP and its consultants could independently evaluate the Plan. Ex. 29 (August 30, 2013 Email Chain between Darlene Souza and Lynn Blais); Ex. 27 (September 26, 2013 Souza-Blais Email Chain).

The above is separate and apart from reports in industry and local news media concerning the Plan’s funding problems. ECF No. 243-70 (February 21, 2014 Moody’s Report) at 1 (“St. Joseph’s unfunded pension liability is more than three times the bonded debt at \$73 million as of September 30, 2013. The plan, however, is not subject to ERISA funding guidelines given its status as a church plan.”); *id.* (“We note an agreement has been reached to partially fund the pension and maintain it as a separate entity once Prospect’s acquisition of St.



Joseph is complete”); ECF No. 243-71 (March 3, 2014 WPRI Report) (“Its [SJHSRI’s] unfunded liability for pension benefits was \$73 million as of Sept. 30, though the hospital group isn’t required to fund the retirement plan under federal rules because of its affiliation with the Catholic Church.”).

Response No. 53.2: Disputed that “the purpose of the 2014 Asset Sale was to separate (and hopefully insulate) SJHSRI’s operating assets from SJHSRI’s pension liability.” ECF No. 243-8 (Sheehan Decl.) ¶ 21. As the Rhode Island Attorney General’s Decision indicated, the purpose of the 2014 Asset Sale was to address the following concerns:

Although a significant improvement, CCHP realized that the losses it was continuing to experience cannot be sustained and still ensure its continued viability. Furthermore, although capital expenditures have been made, the physical plants at the Existing Hospitals are aging and need upgrading.

Of additional concern to CCHP is its pension funding (an issue that is impacting many hospitals throughout the country). If pension losses are taken into consideration, in fiscal year 2012, the CCHP system sustained losses of over \$8 million dollars which are increasing without additional contributions. Such losses cannot be sustained by CCHP. Facing these significant financial concerns, CCHP realized it needed additional capital to ensure its continued viability to fulfill its responsibilities to the citizens of Rhode Island which it serves.

ECF No. 243-82 (AG Decision) at 8-9 (footnotes omitted).

#### **PLAINTIFFS' STATEMENT NO. 54:**

Moreover, the seven individual Named Plaintiffs have submitted their Declarations attesting to the fact that they were never informed that SJHSRI 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. Declarations of Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque attached hereto as Exhibits 9 – 15 respectfully. See id. ¶ 3.

**DIOCESAN DEFENDANTS' RESPONSE NO. 54:**

Undisputed that the Named Plaintiffs' Declarations say as much. Disputed that the Named Plaintiffs (or the putative class) were actually uninformed or otherwise unaware that there were significant issues with the Plan, its funding, or the transaction with Prospect for the reasons set out *supra* at Response No. 53.1. Further disputed that the purpose of the 2014 Asset Sale was as it is described in Statement No. 54 for the reasons provided *supra* at Response No. 53.2.

**PLAINTIFFS' STATEMENT NO. 55:**

In March 2011, the leadership of CCHP decided to seek a capital partner. See Exhibit 16 (Bishop Tobin's September 27, 2013 letter to the Congregation for the Clergy) at 1; Exhibit 17 (March 17, 2011 minutes of the SJHSRI Board of Trustees) at 2- 3.

**DIOCESAN DEFENDANTS' RESPONSE NO. 55:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 56:**

In the Fall of 2011, SJHSRI's balance sheet showed an accumulated deficit owed on the Plan of approximately \$72,000,000. Exhibit 18 (November 15, 2011 CCHP Finance, Audit & Compliance Committee Meeting minutes) at 2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 56:**

Undisputed that the CCHP Finance Committee meeting minutes at Exhibit 18 (ECF No. 243-18) provide: "The September 30, 2011 unfunded status of the Plan is \$72M versus \$51M for the period ended September 30, 2010." Disputed that the minutes are a balance sheet or financial statement. They are not.

**PLAINTIFFS' STATEMENT NO. 57:**

Prospect Medical Holdings, Inc. (“Prospect”) was identified as one possible partner. Exhibit 19 (August 16, 2012 CCHP Board of Trustees minutes) at 3.

**DIOCESAN DEFENDANTS' RESPONSE NO. 57:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 58:**

Prospect did not want to assume liability for the deficit or satisfy the obligation. Exhibit 20 (September 24, 2012 Letter of Intent) at 2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 58:**

Undisputed that Prospect refused to assume liability for the Plan or be responsible for completely satisfying the obligation. Disputed that Prospect did not contemplate that the obligation would be satisfied. ECF No. 243-20 proposes a strategy “to eliminate the gap in [the Plan’s] current funding” and discharge the obligation. ECF No. 243-20 (September 24, 2012 Letter of Intent) at 3.

**PLAINTIFFS' STATEMENT NO. 59:**

On September 10, 2012, Prospect’s representative Tom Reardon sent an email to CCHP and SJHSRI’s CEO Ken Belcher requesting a meeting “to talk more about a creative solution to the pension issue and talk joint venture LOI [Letter of Intent] terms.” Exhibit 21 (September 10, 2012 email) at 2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 59:**

Undisputed that ECF No. 243-21 contains, *inter alia*, the quoted language.

**PLAINTIFFS' STATEMENT NO. 60:**

Tom Reardon, Ken Belcher, and Jeff Bauer of The Angell Pension Group, Inc. (“Angell”) met on September 12, 2012. Exhibit 21 (September 10, 2012 email); Exhibit 22 (September 12, 2012 email).

**DIOCESAN DEFENDANTS' RESPONSE NO. 60:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 61:**

On November 5, 2012 Ken Belcher advised SJHSRI’s Board of Trustees that Prospect’s position with respect to the pension liability of \$72 million was to “develop a [separate] board to manage the Pension fund.” Exhibit 23 (November 5, 2012 SJHSRI Board of Trustees meeting minutes) at 3.

**DIOCESAN DEFENDANTS' RESPONSE NO. 61:**

Undisputed that ECF No. 243-23 contains, *inter alia*, the quoted language. ECF No. 243-23 also references an “unfunded pension liability of \$72 million,” but not in connection with Prospect’s proposal. ECF No. 243-23 (November 5, 2012 SJHSRI Board of Trustees meeting minutes) at 3. This exhibit speaks for itself.

**PLAINTIFFS' STATEMENT NO. 62:**

On September 20, 2012, another potential suitor, LHP Hospital Group, Inc. (“LHP”) sent CCHP, SJHSRI, and RWH a draft letter of intent which proposed, *inter alia*, that “[t]hrough the transaction, LHP will contribute ~\$160 million in cash which will be used, in part, to retire CCHP’s long-term debt of ~\$33 million and resolve CCHP’s pension liability of ~\$72 million.” Exhibit 24 (September 20, 2012 LHP Draft Letter of Intent).

**DIOCESAN DEFENDANTS' RESPONSE NO. 62:**

Response No. 62.1: Undisputed that LHP sent CCHP, SJHSRI, and RWH a draft letter of intent that contained, *inter alia*, the quoted language.

Response No. 62.2: Disputed that the draft Letter of Intent (“LHP LOI”) ever constituted a formal offer. The LHP LOI states that it is a “DRAFT - For discussion purposes only.” ECF No. 243-24 (LHP LOI) at 1. The LHP LOI also establishes that these figures are based on an assumed valuation of CCHP’s assets and that LHP would appraise true value during due diligence. *Id.* §§ 3, 11. The CCHP Executive Committee recognized that contingency in weighing LHP’s communications and Prospect’s offer. Ex. 30 (September 27, 2012 CCHP Executive Committee Meeting Minutes) at 2 (“It was noted that although the net value of transactions submitted was higher for the LHP LOI, this amount would be subject to a valuation of assets to be completed only after execution of the LOI as well as completion of the due diligence process.”). Likewise, the LHP LOI indicated that LHP would not assume the Plan or make payments going forward to the Plan, ECF No. 243-24 (LHP LOI) § 10.a, and also contemplated the evaluation “of other development opportunities within Rhode Island.” *Id.* at 1.

Plaintiffs’ suggestion that CCHP/SJHSRI decided to forgo a LHP alternative that was superior to the deal CCHP ultimately struck with Prospect is misplaced. Various documents indicate that LHP lost interest in proceeding with CCHP because:

- LHP’s vision for proceeding was contingent on LHP acquiring a third hospital (or a viable path to such an acquisition) in Rhode Island before moving forward with CCHP and that never materialized and
- The uncertainty of the pension liability.

Ex. 31 (February 14, 2013 CCHP Board of Trustees Committee meeting minutes) at 4 (“LHP Hospital Group - No additional information since last Board Meeting. Concerns by LHP with regard to addition of a third hospital and pension liability matter preclude the venture capital group from advancing discussion at this time.”). A closer review of facts, as conducted by the CCHP Board indicates that the potential LHP transaction was illusory.

**PLAINTIFFS' STATEMENT NO. 63:**

According to the minutes of the meetings of SJHSRI’s Board of Trustees, they did not want to devote so much capital to paying the pension liability. See Exhibit 25 (January 17, 2013 SJHSRI Board of Trustees meeting minutes) at 3.

**DIOCESAN DEFENDANTS' RESPONSE NO. 63:**

Disputed. The minutes attached at ECF No. 243-25 do not state that the SJHSRI Board of Trustees “did not want to devote so much capital to paying the pension liability.” Instead, the minutes indicate that talks with LHP had “slowed with the initial reason being the increase in the accounting valuation of the pension plan.” ECF No. 243-25 (January 17, 2013 SJHSRI Board of Trustees meeting minutes) at 3. As “[t]he pension fund liability is \$87 million,” the SJHSRI Board believed that, “the capital would all go into the pension fund.” *Id.* The minutes also reference an “additional issue around the third hospital in Rhode Island,” *id.*, which was another condition of LHP proceeding with CCHP. *Supra* Resp. No. 62.2.

**PLAINTIFFS' STATEMENT NO. 64:**

On September 24, 2012, Prospect sent CCHP a letter of intent which proposed, *inter alia*, the formation of a new company to hold the assets of RWH and SJHSRI. This letter of intent stated that the new company would not assume SJHSRI’s pension plan, and instead:

**Discharge of Pension Plan Liability.** As stated above the pension plan liability of SJHSRI as reflected on CCHP’s financial records

will not be assumed by Newco. Furthermore, \$86 million of cash and investments held by Bank of America and designated for the discharge of the pension plan obligations shall not be contributed to Newco. We propose that the \$14 million cash contribution of CCHP be transferred to SJHSRI to augment the assets available to discharge the Pension plan liability. . . We anticipate that we would need to negotiate the discharge of the pension liability with SJHSRI's unions.

Exhibit 20 (Prospect's September 24, 2012 Letter of Intent).

**DIOCESAN DEFENDANTS' RESPONSE NO. 64:**

Undisputed that Prospect sent the above-referenced letter and that ECF No. 243-20 contained, *inter alia*, the quoted language.

**PLAINTIFFS' STATEMENT NO. 65:**

Union approval was required for such discharge of the Plan liability. Exhibit 20 (Prospect's September 24, 2012 Letter of Intent) at 3.

**DIOCESAN DEFENDANTS' RESPONSE NO. 65:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 66:**

On or about March 18, 2013 Prospect signed its final Letter of Intent to purchase the assets of CCHP, RWH, and SJHSRI, pursuant to an asset purchase agreement (the "APA"). The Letter of Intent stipulated that the purchaser would not assume, and SJHSRI would remain liable for, "Seller's... pension liability," and provided for the "SJHSRI Pension Plan Discharge" as follows:

**SJHSRI Pension Plan Discharge**

- a. Seller will work diligently to freeze the SJHSRI pension obligations in an amount equal to \$100 million (the "Final balance"). This process may include creation of a separate fund, and appointment of a small board and investment CEO to manage the Final balance. The intent of this action is to maintain the pension plan as a "Church Plan",

- b. The gap between the current SJHSRI Retirement Plan assets and the Final Balance will be funded by contributions from the Seller.

The signed Letter of Intent is attached hereto as Exhibit 26.

**DIOCESAN DEFENDANTS' RESPONSE NO. 66:**

Undisputed that Prospect signed the final letter of intent on March 18, 2013 and that ECF No. 243-26 contained, *inter alia*, the quoted language.

**PLAINTIFFS' STATEMENT NO. 67:**

One of the lead union negotiators was Christopher Callaci of United Nurses and Allied Professionals (“UNAP”). Exhibit 27 (Declaration of Christopher Callaci (“Callaci Dec.”)) ¶ 5. During the period from 1998 up to June 20, 2014, senior executives from SJHSRI informed him on many occasions that the Plan was exempt from ERISA because it was a “church plan.” Exhibit 27 (Callaci Dec.) ¶ 4.

**DIOCESAN DEFENDANTS' RESPONSE NO. 67:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 68:**

The new owners requested UNAP’s support for the proposed sale. Exhibit 27 (Callaci Dec.) ¶ 5. They advised him they were completely unwilling to accept liability for the Plan. Exhibit 27 (Callaci Dec.) ¶ 18. In connection therewith, UNAP’s president signed the Memorandum of Understanding (“MOU”) between UNAP, Prospect Chartercare, LLC, and CharterCARE Community Board. Exhibit 27 (Callaci Dec.) ¶ 12.

**DIOCESAN DEFENDANTS' RESPONSE NO. 68:**

Response No. 68.1 (First and Third Sentence): Undisputed, provided “the new owners” refers to Prospect and its affiliates.



Response No. 68.2 (Second Sentence): Disputed that Prospect was “completely” unwilling to accept liability for the Plan. Prospect contributed \$14 million to the Plan as part of the 2014 Asset Sale. ECF No. 237-14 (Flow of Funds from 2014 Asset Sale) at 2. This was an outsized contribution based upon the valuation of SJHSRI (not even counting Plan related debt). See ECF No. 238-25 (Cain Bros. Valuation of SJHSRI) at S3C-PHCA00010.

**PLAINTIFFS' STATEMENT NO. 69:**

The MOU was accepted by UNAP under the then understanding that the Plan was exempt from ERISA. Exhibit 27 (Callaci Dec.) ¶ 12. Several provisions in the MOU in particular were premised on that understanding, including but not limited to the following term:

11. On or before Closing, CharterCARE will contribute \$14 million to the St. Joseph Health Services Retirement Plan (the “Defined Benefit Plan”). UNAP agrees that Prospect, its affiliated parties, and Prospect CharterCARE, LLC will not have any obligations to the Defined Benefit Plan and that the Defined Benefit Plan shall become frozen upon closing.

Exhibit 27 (Callaci Dec.) ¶ 12.

**DIOCESAN DEFENDANTS' RESPONSE NO. 69:**

Response No. 69.1: Undisputed that ECF No. 243-27 accurately quotes a portion of the MOU. The MOU speaks for itself.

Response No. 69.2: Disputed that UNAP understood or accepted that the Plan was exempt from ERISA when it agreed to the MOU. As part of UNAP’s negotiations with CCHP/SJHSRI, the latter requested on August 28, 2013 that UNAP agree “that effective as of the date of Closing, the parties’ defined benefit pension plan (the ‘Pension Plan’) will remain a church plan with Saint Joseph Health Services of RI . . . .” Ex. 32 (September 18, 2013 Email from Darlene Souza to Joanne Dooley, enclosing UNAP and CCHP/SJHSRI proposals) at PCLLC 094386. UNAP acknowledged that this proposal was “under consideration.” *Id.* at

PCLLC 094383. In light of the final text of the MOU, UNAP did not accede to CCHP's request that UNAP agree that the Plan was a church plan. *See generally* ECF No. 243-27 at Ex. 2 (January 20, 2014 MOU). Rather, UNAP's actions manifest doubt with respect to the Plan's exemption from ERISA.

Response No. 69.3: If UNAP actually did understand that the Plan was a church plan when it entered the MOU, it is disputed that UNAP formed that understanding simply because the parties it was negotiating with "informed" UNAP or that UNAP would have fulfilled its duty to its members without making any efforts to verify the accuracy of that representation. UNAP could not have "understood" that the Plan was a church plan simply because it was so "informed" by SJHSRI. UNAP had the Plan documents in its possession and had negotiated contracts and benefits, including pension benefits, for their members. Ex. 33 (August 29, 2013 Email from Lynn Blais to Brenda Ketner); *supra* Resp. 69.2.

Response No. 69.4: Disputed further that the Plan's qualification for the church plan exemption was knowable as a matter of fact for the reasons set out in the Diocesan Defendants' Renewed Motion to Dismiss, ECF No. 238, at 33-38, and as demonstrated by UNAP's apparent inability or unwillingness to agree that the Plan was a church plan. *Supra* Resp. No. 69.2.

#### **PLAINTIFFS' STATEMENT NO. 70:**

On the other hand, if UNAP had been informed that in fact the Plan was governed by ERISA, UNAP would have passed that information on to all union members who were employed by SJHSRI, and would have approached UNAP's negotiations with Prospect and SJHSRI from a different posture. Exhibit 27 (Callaci Dec.) ¶ 16. At a minimum, UNAP would have insisted that UNAP and SJHSRI's employees be provided with additional information

concerning the Plan, including all the disclosures required under ERISA. Exhibit 27 (Callaci Dec.) ¶ 16. UNAP certainly would have demanded an explanation of why a plan that had been reported to be a church plan over many years was at that time, in 2013-2014, being described instead as an ERISA plan. Exhibit 27 (Callaci Dec.) ¶ 17.

**DIOCESAN DEFENDANTS' RESPONSE NO. 70:**

This is not a statement of fact, but rather a speculative, counterfactual. To the extent necessary, disputed. Negotiations over the MOU indicate that UNAP did not blindly accept, and certainly was unwilling to agree, that the Plan was a church plan exempt from ERISA for the reasons discussed *supra* at Response Nos. 69.2, 69.3, and 69.4.

Since Plaintiffs and Mr. Callaci are engaged in surmise, the Diocesan Defendants also dispute the suggestion that UNAP necessarily made its decision to support the 2014 Asset Sale based on representations concerning the pension. Given SJHSRI's extremely precarious financial condition, ECF No. 243-82 (AG Decision) at 8-9, the Plan was hardly guaranteed to receive more if the 2014 Asset Sale did not go forward. Rather, discovery indicates that UNAP used their need to approve a freeze of the Plan as leverage to obtain other concessions. *See* Ex. 32 (September 18, 2013 Email from Darlene Souza to Joanne Dooley, enclosing UNAP and CCHP/SJHSRI proposals) at PCLLC 094383.

**PLAINTIFFS' STATEMENT NO. 71:**

UNAP was not provided which LHP's draft letter of intent, which proposed, *inter alia*, that "[t]hrough the transaction, LHP will contribute ~\$160 million in cash which will be used, in part, to retire CCHP's long-term debt of ~\$33 million and resolve CCHP's[ ] pension liability of ~\$72 million." Exhibit 27 (Callaci Dec.) ¶ 19.

**DIOCESAN DEFENDANTS' RESPONSE NO. 71:**

Undisputed that ECF No. 243-27 accurately quotes from LHP's September 20, 2012 draft letter of intent. The Diocesan Defendants deny knowledge sufficient to form a belief as to whether the remainder of this statement should be disputed or undisputed. They, note, however, that any potential LHP transaction was illusory and speculative for the reasons discussed *supra* at Response No. 62.2.

**PLAINTIFFS' STATEMENT NO. 72:**

Pursuant to SJHSRI's by-laws following the 2009/2010 reorganization, for so long as SJHSRI was "Under Catholic Sponsorship," the affirmative votes of both the Class A Member of the Corporation and the Class B Member were required to act on certain matters, including "the sale, mortgaging or leasing of any real or personal property of the Corporation having a value in excess of the relevant canonical threshold as the same may exist from time to time...." DD SUMF Exhibit 10<sup>1</sup> (2010 SJHSRI By-laws) § 4.13(a). [Footnote omitted].

**DIOCESAN DEFENDANTS' RESPONSE NO. 72:**

Undisputed that the SJHSRI Bylaws contain, *inter alia*, the quoted language and so provided after January 4, 2010. ECF No. 237-10 (SJHSRI Bylaws) § 4.13(a). To the extent this paragraph is offered in support of the Most Reverend Bishop's or RCB's purported control of SJHSRI after January 4, 2010, disputed for the reasons set out *supra* at Response No. 46.3.

**PLAINTIFFS' STATEMENT NO. 73:**

Pursuant to SJHSRI's by-laws following the reorganization, "Under Catholic Sponsorship" meant that both of the following conditions are met: "(i) SJHSRI was sponsored by the Roman Catholic Church, as determined by the Bishop; and (ii) SJHSRI was listed in the Official Catholic Directory, or if the Official Catholic Directory ceased to exist, the St. Joseph

Health Services of Rhode Island Retirement Plan (the ‘Plan’) continued to be a Church Plan.”

DD SUMF Exhibit 10<sup>1</sup> (2010 SJHSRI By-laws) § 5(k). [Footnote omitted].

**DIOCESAN DEFENDANTS’ RESPONSE NO. 73:**

Undisputed that the SJHSRI Bylaws contain, *inter alia*, the quoted language and so provided after January 4, 2010, with the exception that § 5(k) uses the phrase “continues to be a Church Plan.” ECF No. 237-10 (SJHSRI Bylaws) § 5(k). To the extent this paragraph is offered in support of the Most Reverend Bishop’s or RCB’s purported control of SJHSRI after January 4, 2010, disputed for the reasons set out *supra* at Response No. 46.3.

**PLAINTIFFS’ STATEMENT NO. 74:**

Pursuant to the directives of the United States Conference of Bishops (“USCB”), the entities within a Catholic Diocese are eligible to be listed in the Official Catholic Directory only if the entities were under the sponsorship of the Diocese. See Exhibit 28 (Group Ruling and OCD Reportable Changes instructions).

**DIOCESAN DEFENDANTS’ RESPONSE NO. 74:**

Undisputed that entities within a Catholic diocese are eligible to be listed in the Official Catholic Directory if, among other things, the entities are “operated, supervised, or controlled by or in connection with the Roman Catholic Church in the United States.” ECF No. 238-18 (Memorandum from the Office of General Counsel of the U.S. Conference of Catholic Bishops (“USCCB”) concerning 2017 Group Ruling) (“2017 USCCB Memo”) at 2. Disputed that ECF No. 243-28 contains the language in Statement No. 74. *See generally* ECF No. 243-28 (Group Ruling and OCD Reportable Changes).

**PLAINTIFFS' STATEMENT NO. 75:**

The Diocese of Providence, under supervision of a diocesan attorney, determines what entities should be listed in the Official Catholic Directory under the sponsorship of the Diocese of Providence. Exhibit 28 (Group Ruling and OCD Reportable Changes instructions).

**DIOCESAN DEFENDANTS' RESPONSE NO. 75:**

Response No. 75.1: Undisputed that the Diocese of Providence, under the supervision of a diocesan attorney, determines what entities satisfy the United States Conference of Catholic Bishops' requirements for listing in the Official Catholic Directory. Entities qualify for listing in the Official Catholic Directory if, among other things, they are "operated, supervised, or controlled by or in connection with the Roman Catholic Church in the United States." ECF No. 238-18 (2017 USCCB Memo) at 2.

Response No. 75.2: Disputed that ECF No. 243-28 references "sponsorship" of a diocese as a requirement. *See generally* ECF No. 243-28 (Group Ruling and OCD Reportable Changes). Further, to the extent Statement No. 75 is offered in support of the Most Reverend Bishop's or RCB's purported control of SJHSRI after January 4, 2010, disputed for the reasons set out *supra* at Response No. 46.3. SJHSRI was operated in connection with the Roman Catholic Church on or after January 4, 2010. *See, e.g.*, ECF No. 237-10 (SJHSRI Bylaws) §§ 4.13, 5.1-5.5 (outlining Catholicity protections); Diocesan MTD, ECF No. 238, at 69-72.

**PLAINTIFFS' STATEMENT NO. 76:**

At all times from SJHSRI's acquiring ownership of Fatima Hospital until SJHSRI filed the petition to place the Plan into receivership on August 18, 2017, SJHSRI was listed in the Official Catholic Directory as under the sponsorship of the Diocese of Providence. Exhibit 29 (1970 Official Catholic Directory listing); Exhibit 30 (1996 Official Catholic Directory listing);

Exhibit 31 (2010 Official Catholic Directory listing); Exhibit 32 (2014 Catholic Directory listing); Exhibit 33 (2015 Official Catholic Directory listing); Exhibit 34 (2016 Official Catholic Directory listing); Exhibit 35 (2017 Official Catholic Directory listing).

**DIOCESAN DEFENDANTS' RESPONSE NO. 76:**

Response No. 76.1: Undisputed that SJHSRI was listed in the Official Catholic Directory from 1970 through 2017 as an organization that was “operated, supervised, or controlled by or in connection with the Roman Catholic Church” in the Diocese of Providence. ECF No. 238-18 (2017 USCCB Memorandum) at 2.

Response No. 76.2: Disputed that ECF No. 243-29 through ECF No. 243-35 say anything about “sponsorship” by the Diocese of Providence. Further, to the extent Statement No. 76 is offered in support of the Most Reverend Bishop’s or RCB’s purported control of SJHSRI after January 4, 2010, disputed for the reasons set out *supra* at Response Nos. 46.3 & 75.2.

**PLAINTIFFS' TATEMENT NO. 77:**

Accordingly, the Plan was “Under Catholic Sponsorship” according to the terms of the APA.

**DIOCESAN DEFENDANTS' RESPONSE NO. 77:**

Disputed. The APA does not use the term “Under Catholic Sponsorship.” *See generally* ECF No. 243-50 (September 24, 2013 Executed Asset Purchase Agreement). Undisputed that SJHSRI was “Under Catholic Sponsorship,” within the meaning of the SJHSRI Bylaws, ECF No. 237-10 § 5(k), through 2017. The phrase “Under Catholic Sponsorship” in the SJHSRI Bylaws pertained to SJHSRI, not the Plan. *Id.*

**PLAINTIFFS' STATEMENT NO. 78**

The sale of SJHSRI's assets in 2014 exceeded the canonical threshold. Exhibit 36 (Minutes of Meeting of College of Consultors on September 26, 2013) (quoting the Bishop as stating that "this transaction will require canonical action from the Consultors", and that "[g]iven that the financial amounts involved in the alienation exceed the maximum amount set by the United states Conference of Catholic Bishops, the transaction will require the additional consent of the Holy See...").

**DIOCESAN DEFENDANTS' RESPONSE NO. 78:**

Undisputed, provided "the Bishop" refers to the Most Reverend Bishop.

**PLAINTIFFS' STATEMENT NO. 79:**

Accordingly, pursuant to SJHSRI's by-laws following the 2009/2010 reorganization, the Bishop's approval as the sole Class B member of SJHSRI was required for SJHSRI to enter into the APA. DD SUMF Exhibit 10 (2010 SJHSRI By- laws) § 4.13(a).

**DIOCESAN DEFENDANTS' RESPONSE NO. 79:**

*Response No. 79.1:* Undisputed, provided that "the Bishop" refers to RCB. RCB's consent was necessary for the sale of assets above the canonical thresholds, which included the transaction contemplated by the APA.

*Response No. 79.2:* Disputed that the need for RCB to approve the asset sale meant that RCB or the Most Reverend Bishop controlled SJHSRI for the reasons set forth *supra* at Response No. 46.3.

**PLAINTIFFS' STATEMENT NO. 80:**

Expressing concern over committing to the asset sale without this issue being resolved, CCHP's Chief Executive Officer Kenneth Belcher at a meeting of the Executive



Committee of CCHP's Board of Trustees on July 25, 2013 raised the possibility of signing an asset sale agreement with the Prospect Entities but making it "'subject to' if Bishop signs off on the pension piece." Exhibit 37 (handwritten notes of the July 25, 2013 executive board meeting) at Bates # SJHSRI-128528. The impact of failure to obtain the "support" of the "Diocese/Bishop" was also discussed, concluding "no sponsorship is a problem esp. w/ pension plan". *Id.* The conclusion of this meeting of the Executive Committee was to share the current version of the APA with Bishop Tobin, and seek his support and agreement to maintaining SJHSRI in the Catholic Directory, prior to SJHSRI, RWH, and CCHP's signing the Asset Purchase Agreement. Exhibit 38 (July 25, 2013 CCHP Executive Committee minutes) at 2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 80:**

*Response No. 80.1 (First Sentence):* Undisputed that ECF No. 243-37 contains, *inter alia*, the quoted language. Disputed that RCB's authority to approve the sale of canonical assets under SJHSRI's bylaws afforded either RCB or the Most Reverend Bishop any authority to "sign off on the pension piece." SJHSRI's bylaws do not connect the sale of assets to the Plan and do not afford RCB (or the Most Reverend Bishop) any authority over the Plan. *See* ECF No. 237-10 (SJHSRI's Bylaws) §§ 4.13, 5.2-5.6 (setting out areas requiring RCB's consent, without mentioning the Plan). Instead, the bylaws merely reference the Plan's qualification as a church plan as a substitute condition for SJHSRI to remain considered "Under Catholic Sponsorship" in the event the Official Catholic Directory ceased to exist. *Id.* § 5(k) ("Under Catholic Sponsorship' means that both of the following conditions are met . . . (ii) the Corporation is listed in the Official Catholic Directory, or if the Official Catholic Directory has ceased to exist, the Pension Plan continues to be a Church Plan.").

CCHP and SJHSRI officers, directors, and employees regularly confused and conflated approval of the asset sale with a non-existent ability of the Most Reverend Bishop to maintain the Plan's church plan exemption from ERISA. CCHP and SJHSRI often thought, without basis, that there was a special requirement that RCB or the Most Reverend Bishop approve how the sale would impact the Plan. ECF Nos. 243-37 and 243-38 are emblematic of this misunderstanding. *See* ECF No. 243-37 (Handwritten Notes from July 25, 2013 CCHP Executive Committee meeting) at SJHSRI-128528; ECF No. 243-38 (July 25, 2013 CCHP Executive Committee meeting minutes) at 2. Neither SJHSRI's bylaws, nor the operative Plan documents in July 2013 (the 2011 Plan), afforded RCB or the Most Reverend Bishop with such authority. *See generally* ECF No. 237-4 (2011 Plan); Diocesan Defs.' Statement of Undisputed Facts, ECF No. 237, ¶ 23.

*Response No. 80.2 (Second Sentence):* Undisputed that ECF No. 243-37 contains, *inter alia*, the quoted language and that such a discussion occurred. Disputed, for the reasons discussed *supra* at Response No. 80.1, that the CCHP directors and executives at the July 25, 2013 CCHP Executive Committee meeting understood RCB's authority under the SJHSRI bylaws or the rights that RCB or the Most Reverend Bishop had with respect to the Plan.

*Response No. 80.3 (Third Sentence):* Undisputed that ECF No. 243-38 provides that "a revised APA will be forwarded to Bishop Tobin for review." ECF No. 243-38 (July 25, 2013 CCHP Executive Committee meeting minutes) at 2. Disputed that ECF No. 243-38 reflects any other component of this sentence. The minutes do not indicate that anyone would seek Bishop Tobin's support and agreement as to anything and make no mention of the Official Catholic Directory whatsoever. The handwritten notes and draft minutes at ECF No. 243-37 similarly do not mention the Official Catholic Directory.

**PLAINTIFFS' STATEMENT NO. 81:**

On August 8, 2013, SJHSRI's counsel provided the Diocesan Defendants (by email to the Chancellor of the Diocese of Providence) with the current draft of the APA. Exhibit 39 (August 8, 2013 email). That draft contained the following statement as part of the "Warranties of Sellers": "Each Church Plan has at all times been administered by an organization described in Section 414(e)(3)(A) of the Code and Seller has not made, with respect to any Seller Plan listed on Schedule [...], an election pursuant to Section 410(d) of the Code." Exhibit 40 (draft APA) § 4.17(i) (bracketed cross-reference code omitted).

**DIOCESAN DEFENDANTS' RESPONSE NO. 81:**

*Response No. 81.1 (First Sentence):* Undisputed that SJHSRI's counsel provided Chancellor Reilly a draft of the APA on August 8, 2013. Disputed that the Chancellor received the document on behalf of the Diocesan Defendants or in any capacity other than in his canonical/ecclesiastical role as Chancellor of the Diocese of Providence. ECF No. 243-39 does not indicate otherwise. The chancellor is a canonical official established in the canon law and appointed by his bishop. 1983 Code c.482, §§ 1-3. The draft APA named the "Bishop of the Diocese of Rhode Island," as a third-party beneficiary, not any of the Diocesan Defendants. ECF No. 243-40 (August 7, 2013 Draft APA) § 15.5(b). A diocesan bishop, such as the Most Reverend Bishop, is a canonical official entrusted with the care of a diocese by the Supreme Pontiff. 1983 Code c.376 & 377.

*Response No. 81.2 (Second Sentence):* Undisputed that ECF No. 243-40 contains, *inter alia*, the quoted language. Disputed that the Diocesan Defendants, Chancellor Reilly or any diocesan official read or understood the quoted legal language, which appears on one page in a

contract (with exhibits) that exceeded one hundred pages, and which the Diocesan Defendants did not sign. ECF Nos. 243-39 and 243-40 certainly do not indicate that.

**PLAINTIFFS' STATEMENT NO. 82**

On August 14, 2013, counsel for SJHSRI, CCHP, and RWH (including at least Keith Anderson), together with CCHP's "senior leadership" (including at least Kenneth Belcher and Edwin Santos) met at the offices of Corporation Sole, Diocesan Administration, and Diocesan Service to obtain their cooperation. See Exhibit 41 (August 14, 2013 CCHP Executive Committee minutes following the meeting). That meeting was also attended by Bishop Tobin, Rev. Timothy Reilly (the Chancellor of the Diocese of Providence), and Msgr. Paul Theroux (who was a member of the Diocesan Finance Council).

**DIOCESAN DEFENDANTS' RESPONSE NO. 82:**

Response No. 82.1: Undisputed that a meeting between Keith Anderson, Kenneth Belcher, Edwin Santos, the Most Reverend Bishop, Chancellor Reilly, and Msgr. Theroux occurred on August 14, 2013. Also, undisputed that Msgr. Theroux was a member of the Diocesan Finance Council.

Response No. 82.2: Disputed that the meeting occurred at "the offices of Corporation Sole, Diocesan Administration, or Diocesan Service." ECF No. 243-41 provides that the meeting occurred at "the Providence Diocese." ECF No. 243-41 (August 14, 2013 CCHP Executive Committee meeting minutes) at 1. One Cathedral Square is the business address for RCB, DAC, DSC, and at least seventy-seven other diocesan civil corporations. Ex. 34 (One Cathedral Square Search Results from RI Secretary of State Records). There is nothing in ECF No. 243-41 to suggest that this meeting was specific to any of them.

One Cathedral Square, moreover, is the diocesan chancery, a canonical location. 1983 Code c. 482, § 1 (“In every curia, a chancellor is to be appointed whose principal function, unless particular law establishes otherwise, is to take care that acts of the curia are gathered, arranged, and safeguarded in the archive of the curia.”); Chancery Offices, Diocese of Providence, <https://dioceseofprovidence.org/chancery> (last visited May 20, 2022) (“The Chancery includes those offices and persons who directly assist the Bishop in the pastoral and administrative governance of the Diocese.”). Given that the August 7, 2013 draft APA named “the Bishop of the Diocese of Rhode Island” a third-party beneficiary and conditioned the transaction on obtaining “ecclesiastical approvals required from officials within the Roman Catholic Church,” including “the authorization of the Bishop of the Roman Catholic Diocese of Providence, Rhode Island,” the meeting on August 14, 2013 concerned approvals required under canon law. ECF No. 243-40 (August 7, 2013 Draft APA) §§ 7.5(e), 15.5(b); *see, e.g.*, 1983 Code c. 1292, §§ 1-2 (concerning requisite approvals for the alienation of canonical assets).

Response No. 82.3: Disputed that the Most Reverend Bishop, Chancellor Reilly, or Msgr. Theroux attended the August 14, 2013 meeting on behalf of any of the Diocesan Defendants. ECF No. 243-41 does not indicate that they did so. Instead, it states that they appeared at “The Providence Diocese.” ECF No. 243-41 (August 14, 2013 CCHP Executive Committee meeting minutes) at 1. Given the terms of the draft APA, their attendance related to canonical concerns and required canonical approvals. *Supra* Resp. No. 82.2.

Response No. 82.4: Disputed to the extent Statement No. 82 intimates that “the cooperation” sought at the August 14, 2013 meeting was improper or the foundation for an illegal conspiracy. Mr. Anderson simply presented “an overview of the strategic transaction” and attendees discussed the Catholicity covenants in the proposed transaction and how they

overlapped with those that CCHP and SJHSRI were already under. ECF No. 243-41 (August 14, 2013 CCHP Executive Committee meeting minutes) at 2-4. As the Diocesan Defendants explained in their renewed motion to dismiss, nothing in Mr. Anderson's presentation suggested a nefarious scheme. Diocesan MTD, ECF No. 238, at 81-82.

**PLAINTIFFS' STATEMENT NO. 83:**

Counsel for SJHSRI, CCHP, and RWH brought to the meeting on August 14, 2013 with Bishop Tobin, Rev. Timothy Reilly, and Msgr. Paul Theroux a document on the joint letterhead of counsel and CCHP, entitled "Overview of the Strategic Transaction with Prospect Medical Holdings, Inc., Presentation to the Board of Directors," referring to the Board of Trustees for SJHSRI, CCHP, and RWH. A copy of that document is attached hereto as Exhibit 42. That document outlined the salient details of the 2014 Asset Sale, whereby SJHSRI, CCHP, and RWH would sell "substantially all of their assets to Prospect CharterCARE LLC ('Newco')." Exhibit 42 at 2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 83:**

Response No. 83.1 (First and Second Sentences): Undisputed.

Response No. 83.2 (Third Sentence): Undisputed that ECF No. 243-42 outlined the details of the proposed 2014 Asset Sale and contains, *inter alia*, the quoted language. Disputed to the extent that ECF No. 243-42 or Statement No. 83 are offered in support of Plaintiffs' position that the Diocesan Defendants unlawfully conspired with anyone for the reasons set out *infra* at Response No. 86.

**PLAINTIFFS' STATEMENT NO. 84:**

The very first page of the presentation (after the cover page) noted that only \$14 million of the sales proceeds would be paid into “the Church-sponsored retirement plan (the ‘Church Plan’).” Exhibit 42 at 2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 84:**

Undisputed that the page following the cover page at ECF No. 243-42 provided, *inter alia*: “Proposed Uses of the Cash Proceeds . . . Approximately \$14 million for the Church-sponsored retirement plan (the ‘Church Plan’).” ECF No. 243-42 (August 14, 2013 Presentation) at 2. Disputed that ECF No. 243-42 characterized the proposed payment as “only \$14 million,” as suggested in Statement No. 84. In 2013/2014, SJHSRI was valued between \$15 million and \$25 million, ECF No. 238-25 (Cain Bros. Valuation of SJHSRI) at S3C-PHCA00022, and had roughly \$16.5 million in secured debt, *id.* at S3C-PHCA00010. Given that, the \$14 million was, if anything, an outsized contribution, especially when SJHSRI only accounted for 43.7% of the 2013 combined revenue of RWH and SJHSRI. *Id.*

**PLAINTIFFS' STATEMENT NO. 85:**

The document then detailed certain promises that would be made to the Corporation Sole, Diocesan Administration, and Diocesan Service as part of the transaction, which were described as follows:

Catholic identity covenants of Prospect and Newco

- Our Lady of Fatima Hospital and other legacy SJHSRI facilities will be operated in compliance with the ERDs<sup>¶</sup>
- Roger Williams Medical Center and its facilities will not engage in prohibited activities
  - Abortion

- Euthanasia
- Physician-assisted suicide
- Any hospital or facility acquired or established after Closing must comply with restrictions on prohibited activities
- The Bishop has a direct right to enforce the Catholicity covenants
- CCHP intends to propose that the Bishop may require a name change of Our Lady of Fatima Hospital and other legacy SJHSRI facilities if he is unsuccessful in enforcing the covenants

Exhibit 42 at 7. [Footnote omitted].

**DIOCESAN DEFENDANTS' RESPONSE NO. 85:**

Undisputed that page 7 of ECF No. 243-42 contains, *inter alia*, the quoted language. Disputed that this exhibit reflects “promises that would be made to Corporation Sole, Diocesan Administration, and Diocesan Service” or that anyone attended the August 14, 2013 meeting on behalf of those corporations for the reasons discussed *supra* at Response Nos. 82.2-82.3. ECF No. 243-42 does not refer to DAC, DSC, or RCB. ECF No. 243-42 (August 14, 2013 Presentation) (failing to refer to DAC, DSC, or RCB). Rather, the term “the Bishop” in ECF No. 243-42 refers to “the Bishop of the Diocese of Rhode Island,” who is identified as a third-party beneficiary in the August 7, 2013 draft of the APA, ECF No. 243-40 (August 7 Draft APA) § 15.5(b), and means the person who holds the canonical office of Most Reverend Bishop of the Diocese of Providence appointed by the Supreme Pontiff. 1983 Code c. 376 (“Bishops to whom the care of some diocese is entrusted are called diocesan[.]”); *id.* c. 377, § 1 (“The Supreme Pontiff freely appoints bishops or confirms those legitimately elected.”).

**PLAINTIFFS' STATEMENT NO. 86:**

This “Overview of the Strategic Transaction” that counsel reviewed with Bishop Tobin, Rev. Timothy Reilly, and Msgr. Paul Theroux during the meeting on August 14, 2013,



then laid out the *quid pro quo* for freeing New Fatima Hospital from the unfunded liabilities of the Plan, and granting these extensive and perpetual “Catholic identity covenants” for New Fatima Hospital and New Roger Williams Hospital. Defendants SJHSRI, RWH, and CCHP, through their counsel, informed Bishop Tobin, Rev. Timothy Reilly, and Msgr. Paul Theroux at this meeting that it was a “requirement” of the parties to the Asset Purchase Agreement that Defendants Corporation Sole, Diocesan Administration, and Diocesan Service “[m]aintain the retirement plan of St. Joseph Health Services of Rhode Island as a ‘Church Plan’.” Exhibit 42 at 8.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 86:**

Response No. 86.1: This statement is a mix of Plaintiffs’ supposition and conclusory (mis)characterization of a document and should be disregarded. ECF No. 243-42 speaks for itself.

Response No. 86.2: Disputed. ECF No. 243-42 does not reflect an offer directed at the Diocesan Defendants, let alone the “quid pro quo” described in Statement No. 86 for the reasons set forth in the Diocesan Defendants’ Renewed Motion to Dismiss, ECF No. 238, at 81-82.

Response No. 86.3: Also disputed because Bishop Tobin, Chancellor Reilly, and Msgr. Theroux were not attending this meeting on the behalf of the Diocesan Defendants for the reasons discussed *supra* at Response No. 82.2 and 82.3.

Response No. 86.4: Disputed as well because RCB, DAC, and DSC had no role in the process of actually determining whether SJHSRI should continue to be listed in the OCD. As ECF No. 243-28 makes clear, this role is played by “the chancellor or other diocesan official in charge of Group Ruling maintenance,” in consultation with the diocesan attorney. ECF No.

243-28 (Group Ruling and OCD Reportable Changes Memo) at 1-2. In the Diocese of Providence, the Chancellor plays that function. The Chancellor is a position established under canon law. 1983 Code c.482, § 1.

Response No. 86.4: Finally, disputed because RCB, DAC, and DSC had no ability to maintain the Plan as a church plan. The considerations and requirements for listing an organization in the OCD are *not* equivalent to the complex legal requirements necessary to maintaining a pension plan as a church plan. The former involves inquiry into an organization's connection with a diocese and status as a "public charity" under the Internal Revenue Code. *See* ECF No. 238-18 (2017 USCCB Memorandum) at 2-3. The latter requires the presence of different and additional elements, meaning listing in the OCD could not convey church plan status. *See* 29 U.S.C. § 1002(33).

Plaintiffs' complaint makes this distinction between OCD listing and church plan status clear. Plaintiffs allege that a pension plan of a non-church organization controlled by or associated with a church must be maintained by an organization that has a principal purpose of administering or funding the plan, which is also controlled by or associated with a church. FAC, ECF No. 60, ¶ 70. So, too, does Plaintiffs' withdrawn motion for summary judgment. Pls.' Mot. for Summ. J., ECF No. 173, at 20-24. There is no requirement for a principal purpose organization for listing in the OCD. *Compare* 29 U.S.C. § 1002(33)(A) & C(ii)(II) (defining church plan under ERISA); FAC, ECF No. 60, ¶ 70 (describing principal purpose organization requirement for church plan status) *with* ECF No. 237-18 (2017 USCCB Memo) (describing OCD listing considerations, without reference to principal purpose organization element). Accordingly, even assuming the Diocesan Defendants had any role in the determination of whether the Plan was a church plan or SJHSRI was listed in the OCD—which they did not—they

could not ensure that the Plan would be treated as a church plan simply by listing SJHSRI in the OCD.

**PLAINTIFFS' STATEMENT NO. 87:**

On September 11, 2013, SJHSRI through its counsel provided the Diocesan Defendants (by email to the Chancellor of the Diocese of Providence) with a draft of the APA for their review and approval. Exhibit 43. That draft had the same language quoted previously from the version that the Diocesan Defendants had received on August 8, 2013 which stated that “Each Church Plan has at all times been administered by an organization described in Section 414(e)(3)(A) of the Code and Seller has not made, with respect to any Seller Plan listed on Schedule [...], an election pursuant to Section 410(d) of the Code.” Exhibit 44 (bracketed cross-reference code omitted) at page Bates # PMH\_00098932 (§ 4.17(i)).

**DIOCESAN DEFENDANTS' RESPONSE NO. 87:**

Response No. 87.1: Undisputed that, on September 11, 2013, counsel for SJHSRI emailed Chancellor Reilly another draft of the APA. Also undisputed that ECF No. 243-44 contains, *inter alia*, the quoted language and that such quoted language also appeared, *inter alia*, in ECF No. 243-40.

Response No. 87.2: Disputed that ECF No. 243-43 reflects a request that the Diocesan Defendants review and approve the draft APA. This exhibit does not reference any of the Diocesan Defendants. ECF No. 243-43 (September 11, 2013 Email from Mr. Anderson to Chancellor Reilly).

Response No. 87.3: Also disputed that SJHSRI provided “the Diocesan Defendants” with the referenced draft of the APA. ECF No. 243-43 states to whom SJHSRI provided the document: Chancellor Reilly. Chancellor Reilly did not receive the September 11,

2013 draft APA on behalf of the Diocesan Defendants for the same reason he did not receive the August 7, 2013 draft APA on their behalf (as discussed *supra* at Response No. 81.1) or attend the August 14, 2013 meeting on their behalf (as discussed *supra* at Response No. 82.3).<sup>4</sup>

**PLAINTIFFS' STATEMENT NO. 88:**

On September 12, 2013, SJHSRI through its counsel provided the Diocesan Defendants (by email to the Chancellor of the Diocese of Providence) with a copy of the presentation that had been shared with them on August 14, 2013, at the Diocesan Defendants' request so they could share it with the Diocese of Providence Finance Council. Exhibit 45 (September 12, 2013 email). The presentation states that it was "For the Bishop of the Roman Catholic Diocese of Providence, Rhode Island," and was *CONFIDENTIAL*. Exhibit 46 (presentation).

**DIOCESAN DEFENDANTS' RESPONSE NO. 88:**

Response No. 88.1 (First Sentence-1): Undisputed that on September 12, 2013, counsel for SJHSRI emailed Chancellor Reilly a slide presentation that was substantially similar to the presentation that had been shared with Chancellor Reilly, Msgr. Theroux, and the Most Reverend Bishop on August 14, 2013. Also undisputed that Chancellor Reilly requested the presentation so he could share it with the Diocesan Finance Council.

Response No. 88.2 (First Sentence-2): Disputed that SJHSRI or its counsel did, or intended to, provide the presentation to the "Diocesan Defendants" or that Chancellor Reilly received the presentation on behalf of the Diocesan Defendants for the same reasons he did not receive drafts of the APA or attend the August 14, 2013 meeting or their behalf. *Supra* Resp.

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<sup>4</sup> The September 10, 2013 draft of the APA identified "the Bishop of the Roman Catholic Diocese of Providence, Rhode Island," as a third party beneficiary, as opposed to "the Bishop of the Diocese of Rhode Island" (the terminology used in the August 7, 2013 draft APA). That does not change the analysis from Response No. 82.3.

Nos. 81.1, 82.3, and 87.3. ECF No. 243-46 makes no reference to the Diocesan Defendants and rather indicates it is: “For the Bishop of the Roman Catholic Diocese of Providence, Rhode Island.” ECF No. 243-46 (Presentation provided on September 12, 2013) at 1.

Chancellor Reilly, rather, received the presentation on behalf of the Most Reverend Bishop of the Diocese of Providence, a religious official, and the Diocesan Finance Council (of which the Most Reverend Bishop was a member). ECF No. 243-45 (September 12, 2013 Email Chain between Mr. Anderson and Chancellor Reilly) at 1 (“Thanks again for offering to update and revise the presentation, so that we can share the information with our Finance Council”); ECF No. 243-47 (September 17, 2017 Diocesan Finance Council meeting minutes) at 1 (reflecting Bishop Tobin’s membership); 1983 Code c. 1292, § 1 (“the competent authority [to approve certain alienations of assets] is the diocesan bishop with the consent of the finance council”). The Diocesan Finance Council is an entity organized under canon law, 1983 Code c.492, § 1, and required to approve alienation of assets above applicable canonical thresholds set by the USCCB. *Id.* c.1292, § 1. RCB, DAC, and DSC have no connection or role with respect to the Diocesan Finance Council and ECF Nos. 243-45 and 243-46 do not indicate otherwise.

Response No. 88.3 (Second Sentence): Undisputed that ECF No. 243-46 contained, *inter alia*, the quoted language and stated it was “CONFIDENTIAL”.

**PLAINTIFFS' STATEMENT NO. 89:**

On September 17, 2013, the Finance Council of the Diocese of Providence met with Ken Belcher, the CEO of CharterCARE Health Partners and SJHSRI to review the terms of the APA. See Exhibit 47 (Finance Council minutes). At the meeting it was stated that the cash

proceeds from the sale would include “\$14 million for the Church sponsored retirement plan (referred to as the ‘Church Plan...’). Exhibit 47 (Finance Council minutes) at 1.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 89:**

Response No. 89.1: Undisputed that the Diocesan Finance Council met with Mr. Belcher on September 17, 2013 and discussed the proposed transaction between CCHP, RWH, SJHSRI, and Prospect and the Catholicity covenant provisions in the APA. ECF No. 243-47 (Sept. 17, 2013 Diocesan Finance Council meeting minutes) at 1-2. Also undisputed that ECF No. 243-47 contains, *inter alia*, the quoted language.

Response No. 89.2: To the extent Statement No. 89 implies that § 4.17(i) of the August 7, 2013 and September 10, 2013 drafts of the APA quoted in Statement Nos. 81 and 87 were discussed, disputed. The meeting minutes do not reference this provision. ECF No. 243-47 (September 17, 2013 Diocesan Finance Council meeting minutes) at 1-3.

**PLAINTIFFS’ STATEMENT NO. 90:**

At the meeting there was a discussion of the “Catholicity covenant part of the” APA, which the Chancellor described as “very solid.” Exhibit 47 (Finance Council minutes) at 2.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 90:**

Undisputed that ECF No. 243-47 contains, *inter alia*, the quoted language.

**PLAINTIFFS’ STATEMENT NO. 91:**

It was noted at the meeting of the College of Consultors that “[o]nce [the APA is] approved by the Finance Council, the College of Consultors and the Bishop, who has the final say, the documentation will be sent to the Vatican for final approval.” Exhibit 47 (Finance Council minutes) at 2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 91:**

Undisputed that the quoted language appears, *inter alia*, in ECF No. 243-47.

Disputed that this exhibit concerns a meeting of the College of Consultors. ECF No. 243-47 is the minutes from the September 17, 2013 meeting of the Diocesan Finance Council, not the College of Consultors. ECF No. 243-47 (September 17, 2013 Diocesan Finance Council meeting minutes). The College of Consultors is a separate religious entity established under the canon law, 1983 Code c.501, § 1, with its own role in approving the alienation of canonical assets, *id.* c.1292, § 1.

**PLAINTIFFS' STATEMENT NO. 92:**

At the meeting, the Bishop asked for a motion to be made to approve the “proposal of alienation of CharterCARE, St. Joseph Health Services to Prospect (Newco), and the motion was made, seconded and accepted.” Exhibit 47 (Finance Council minutes) at 3.

**DIOCESAN DEFENDANTS' RESPONSE NO. 92:**

Undisputed, provided that “the Bishop” refers to the Most Reverend Bishop and “the meeting” means the September 17, 2013 meeting of the Diocesan Finance Council.

**PLAINTIFFS' STATEMENT NO. 93:**

On September 18, 2013, the Chancellor by email provided SJHSRI’s counsel with a draft of the Bishop’s letter to the Vatican seeking approval for the transaction, and solicited counsel’s comments. Exhibit 48 (email attaching draft letter). The letter recounted the “merger” of SJHSRI and RWH into CCHP in 2009, and stated that “[s]hortly thereafter, in the wake of the global economic downturn, CharterCARE soon began to experience the need for increased capital and was confronted with a **spiraling and gaping unfunded liability within its employee-pension system**” (emphasis added). Exhibit 48.

**DIOCESAN DEFENDANTS' RESPONSE NO. 93:**

*Response No. 93.1 (First Sentence):* Undisputed, provided that “the Bishop” refers to the Most Reverend Bishop. Disputed to the extent “the Bishop” refers to RCB. The request to the Vatican is a canonical activity, 1983 Code c.1292, § 2, in which RCB has no role. RCB is a corporation created by act of the Rhode Island General Assembly at its January Session, 1900, for the distinct and limited purpose of holding and conveying property. *Doe v. O'Connell*, No. PC 86-0077, 1989 WL 1110566, at \*1-\*3 (R.I. Super. Nov. 21, 1989); *see also Devaney v. Kilmartin*, 88 F. Supp. 3d 34, 58 (D.R.I. 2015); *Doe v. Gelineau*, 732 A.2d 43, 46 (R.I. 1999). RCB did not own SJHSRI. Canonical approvals were required, rather, because “SJHSRI/Our Lady of Fatima is subject to the juridic person of the Diocese of Providence.” ECF No. 243-36 (September 26, 2013 College of Consultors meeting minutes) at 2.

*Response No. 93.2 (Second Sentence):* Undisputed that ECF No. 243-48 contains, *inter alia*, the quoted language. Disputed to the extent Statement No. 93 suggests that the affiliation between SJHSRI and Roger Williams Hospital under the CCHP umbrella became effective before January 4, 2010. The Diocesan Defendants explained this timing issue at length in their response to Prospect’s Statement of Undisputed Facts. They do not believe this issue is material to their motion or Plaintiffs’ opposition. To the extent the Court believes it is, the Diocesan Defendants incorporate their prior argument by reference. Diocesan Defs.’ Resp. to Prospect’s Statement of Facts, ECF No. 199, at Response 12.2.

**PLAINTIFFS' STATEMENT NO. 94:**

On September 24, 2013 SJHSRI’s counsel provided the Diocesan Defendants (by email to the Chancellor) with red-lined revisions to the Bishop’s letter to the Vatican, which deleted the reference to “spiraling and gaping” pension liability, and substituted “significant”



liability, stating that he preferred the revision “in the event this letter was ever subject to discovery in a civil lawsuit” (emphasis added). Exhibit 49.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 94:**

Response No. 94.1: Undisputed that, on September 24, 2013, SJHSRI’s counsel emailed Chancellor Reilly with red-lined revisions of the Most Reverend Bishop’s letter to the Vatican, which substituted “significant” in place of “spiral and gaping” because “significant” was “technically more accurate (e.g., the unfunded liability has narrowed somewhat recently).” ECF No. 243-49 (Draft Vatican Letter) at RCB11167. Also undisputed that the quoted language in Statement No. 94 appears, *inter alia*, in ECF No. 243-49.

Response No. 94.2: Disputed that Chancellor Reilly received the red-lined revisions on behalf of the Diocesan Defendants for the same reasons he did not receive drafts of the APA or the slide presentation on behalf of those entities. *Supra* Resp. Nos. 81.1, 82.3, 87.3, 88.2. The request to the Vatican is a canonical activity, 1983 Code c.1292, § 2, and as such the Most Reverend Bishop and the Chancellor were acting in their capacity as religious officials.

The Diocesan Defendants had no role in or connection to the preparation of the Most Reverend Bishop’s letter to the Vatican. RCB is a corporation created by act of the Rhode Island General Assembly at its January Session, 1900, for the distinct and limited purpose of holding and conveying property. *Supra* Resp. No. 93.1. DSC provides administrative, financial and other support services to diocesan corporations organized to conduct the temporal affairs of the Roman Catholic Church in the Diocese of Providence. ECF No. 199-2 (DSC’s Articles of Incorporation) at 3. DAC provides administrative, bookkeeping and other support services to corporations organized to conduct the temporal affairs for the Roman Catholic Church in the Diocese of Providence. ECF No. 199-3 (DAC’s Articles of Incorporation) at Ex. A.

**PLAINTIFFS' STATEMENT NO. 95:**

On September 24, 2013 the APA was signed. A copy of the APA (exhibits omitted) as signed on September 24, 2013 is attached hereto as Exhibit 50.

**DIOCESAN DEFENDANTS' RESPONSE NO. 95:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 96:**

The APA included Warranties and Representations of Sellers. Exhibit 50 (APA) at 14-36.

**DIOCESAN DEFENDANTS' RESPONSE NO. 96:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 97:**

Many of the Warranties and Representations of Sellers were qualified as being “[t]o Sellers’ knowledge.” See, e.g., Exhibit 50 (APA) at 18, 19, 21 & 23.

**DIOCESAN DEFENDANTS' RESPONSE NO. 97:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 98:**

Certain other Warranties and Representations of Sellers were not qualified. See, e.g., Exhibit 50 (APA) at 19.

**DIOCESAN DEFENDANTS' RESPONSE NO. 98:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 99:**

Certain of the Warranties and Representations of Sellers concerned the Plan, which the APA referred to as the “Retirement Plan.” See, e.g., Exhibit 50 (APA) at A-13.

**DIOCESAN DEFENDANTS' RESPONSE NO. 99**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 100:**

The Warranties and Representations of Sellers as to the Plan were not qualified, but, rather, were categorical, such as follows:

The Retirement Plan is a Church Plan.<sup>[FN]10</sup> The Retirement Plan has been a Church Plan since the date on which the Retirement Plan was established, and has continuously maintained such status since that date. **The Retirement Plan has at all times been administered by an organization described in Section 414(e)(3)(A) of the Code** and Seller has not made, with respect to the Retirement Plan, an election pursuant to Section 410(d) of the Code.

Exhibit 50 (APA) at 28 (emphasis supplied). [FN10: The APA defined “Church Plan” as “a ‘church plan’ within the meaning of [IRS] Code Section 414(e)].

**DIOCESAN DEFENDANTS' RESPONSE NO. 100:**

Response No. 100.1: Undisputed that the APA contains, *inter alia*, the quoted language.

Response No. 100.2: Disputed that all “Warranties and Representations of Sellers as to the Plan” were categorical and not qualified, as this is a legal opinion and conclusion and ignores other language in the APA. ECF No. 243-50 (Executed APA) § 4.17(b) (“The Retirement Plan and each Seller Plan that is intended to be tax-qualified under Section 401(a) of the Code is so qualified and, **to Sellers’ Knowledge**, there are no currently existing circumstances that could reasonably result in revocation of any such qualification.”) (emphasis added); *id.* § 4.17(c) (“The Purchased Assets are not, and **to Sellers’ Knowledge** there is no existing factual basis for the Purchased Assets to become, subject to a lien imposed under the Code or under Title I or Title IV of ERISA or by operation of state law”) (emphasis added); *id.* § 4.17(f)(i) (“[N]o Legal Proceeding has been instituted or, **to Sellers’ Knowledge**, threatened

against or involving any Seller Plan or the Retirement Plan (other than routine claims for benefits), any trustee or fiduciaries thereof, or Sellers”) (emphasis added).

Response No. 100.3: Disputed that any of the “Sellers” as defined in the APA included the Diocesan Defendants or the Most Reverend Bishop. *Id.* at 1 (listing entities among “Sellers” and not including the Diocesan Defendants or the Most Reverend Bishop).

**PLAINTIFFS' STATEMENT NO. 101:**

Section 2.4 of the APA stated:

2.4 Excluded Liabilities of Sellers. Notwithstanding anything herein to the contrary, the Company and/or the Company Subsidiaries are assuming only the Assumed Liabilities and are not assuming and shall not become liable for the payment or performance of any other Liability of Sellers (collectively, the "Excluded Liabilities"). The Excluded Liabilities are and shall remain Liabilities of the Sellers. Without limiting the generality of the foregoing, the term "Excluded Liabilities" includes any Liability: (i) that is not related to the Business; (ii) relating to any Material Indebtedness; (iii) that is described on Schedule 2.4; or (iv) pertaining to any Excluded Asset.

Exhibit 50 (APA) at 8 (underlining in the original).

**DIOCESAN DEFENDANTS' RESPONSE NO. 101:**

Undisputed that ECF No. 243-50 contains, *inter alia*, the quoted language.

**PLAINTIFFS' STATEMENT NO. 102:**

Schedule 2.4 to the APA, captioned “Certain Excluded Liabilities,” listed as one bulleted item: “All Liabilities related to the Retirement Plan.” Exhibit 51 (Schedule 2.4).

**DIOCESAN DEFENDANTS' RESPONSE NO. 102:**

Undisputed that ECF No. 243-51 contains, *inter alia*, the quoted language.

**PLAINTIFFS' STATEMENT NO. 103:**

On September 26, 2013, there was a meeting of the Roman Catholic Diocese College of Consultors, including the Bishop, at which the presentation previously reviewed by

the Bishop on August 14, 2013 was presented to and reviewed by the College of Consultors. Exhibit 36 (College of Consultors minutes). The Bishop informed them that “this transaction will require canonical action from the Consultors”, and that “[g]iven that the financial amounts involved in the alienation exceed the maximum amount set by the United States Conference of Catholic Bishops, the transaction will require the additional consent of the Holy See...” Exhibit 36 (College of Consultors minutes) at 2. The Bishop “reminded the College that because SJHSRI/Our Lady of Fatima Hospital is subject to the juridic person of the Diocese of Providence, the College’s formal consent was required.” Exhibit 36 (College of Consultors minutes) at 2. A motion was then made, seconded and voted “[t]o consent to the alienation of substantially all assets of SJHSRI/Our Lady of Fatima to Prospect CharterCARE, LLC...” Exhibit 36 (College of Consultors minutes) at 2.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 103:**

*Response No. 103.1 (First Sentence-1):* Undisputed that the College of Consultors met on September 26, 2013 and that the Most Reverend Bishop is a member of the College of Consultors and attended this meeting. Undisputed that the College of Consultors reviewed the presentation that was previously reviewed by the Diocesan Finance Council (i.e., ECF No. 243-46), and that this presentation was substantially similar to the presentation the Most Reverend Bishop, Chancellor Reilly, and Msgr. Theroux reviewed on August 14, 2013 (i.e., ECF No. 243-42).

*Response No. 103.2 (First Sentence-2):* Disputed if “the Bishop” in Statement No. 103 refers to RCB. The College of Consultors is a separate religious entity established under the canon law, 1983 Code c.501, § 1, with its own role in approving the alienation of canonical assets, *id.* c.1292, § 1. RCB has no function or connection with the College of Consultors for the

same reasons it had no role in the preparation of the Vatican letter. *Supra* Resp. No. 93.1. ECF No. 243-36 does not indicate otherwise.

Response No. 103.3 (Third Sentence): Undisputed that ECF No. 243-36 contains, *inter alia*, the quoted language, with the exception that the exhibit provides that “the College’s formal consent was necessary.” ECF No. 243-36 (College of Consultors Mtg Mins.) at 2. Also undisputed, provided “the Bishop” refers to the Most Reverend Bishop.

Response No. 103.3 (Remaining Sentences): Undisputed, provided “the Bishop” refers to the Most Reverend Bishop.

**PLAINTIFFS' STATEMENT NO. 104:**

On September 27, 2013 the Diocesan Defendants (through the Bishop) sent their letter to the Vatican seeking approval for the transaction. Exhibit 16. The letter enclosed the signed APA in its entirety. Exhibit 16 at 3 (identifying the enclosures). It also enclosed the presentation by SJHSRI’s counsel that the Bishop had reviewed on August 14, 2013, September 17, 2013, and September 26, 2013. The letter to the Vatican states that this presentation “provides an overview of the transaction’s details.” Exhibit 16 at 3. The letter also made the following statements (*inter alia*):

[W]ithout this transaction, it appears that a consistent Catholic healthcare presence in the Diocese of Providence would be gravely compromised, and the financial future for employee-beneficiaries of the pension plan would be at significant risk. I believe that the APA between CharterCARE and Prospect will help avoid the catastrophic implications of such a failure, and at the same time, enhance the quality of care at SJHSRI/Our Lady of Fatima. The alienation will allow the Diocese, through CharterCARE, to better attain the goals of fulfilling the mission of serving the poor and those in need, while respecting Catholic medical ethics and the Gospel of Life. We are grateful for the strong local presence of SJHSRI/Our Lady of Fatima Hospital that has been a foundation for Catholic healthcare here for over 100 years.

The APA states that SJHSRI/Our Lady of Fatima Hospital will retain its

Catholic identity, its existing policies on charitable and pastoral care, and its community benefit program. Additionally, it will continue to approach labor relations from a social justice perspective. The transaction will provide Our Lady of Fatima Hospital with much-needed capital for infrastructure, programs and pensions, while it continues to provide high- quality hospital services in accord with the Ethical and Religious Directives for Catholic Health Care Services, (the “Directives”) as provided by the United States Conference of Catholic Bishops. The APA states that the Bishop of Providence has a direct right to enforce the Catholicity covenants, and that the Bishop shall be the sole arbiter with respect to matters relating to compliance with the Directives at the SJHSRI/Our Lady of Fatima locations. In the event of non-compliance, the Bishop may request that Prospect CharterCARE, LLC cease operating under the names “St. Joseph” or “Our Lady of Fatima” or any other name that implies Catholicity. Any hospital or facility that Prospect CharterCARE, LLC subsequently acquires or establishes must comply with the restrictions on prohibited activities.

**The transaction is subject to customary civil law closing requirements, including approvals from the Rhode island Attorney general and the Rhode island department of health, and will be subject to the conditions of the Hospital Conversions Act. Hearings in both those offices will begin shortly, and we expect that the necessary approvals will be obtained in the next 60 days. Should any unexpected issues arise, I will notify you.**

As noted, this alienation has been approved by the CharterCARE Board of Trustees. In addition, it has also received the consent of the diocesan Finance Council on September 16, 2013 and the consent of the College of Consultors on September 26, 2013 – all in accord with Canon 1292, §1. I have no objection to the alienation.

\* \* \*

As you can see, this alienation is the culmination of a long process. **It is my sincere hope that Your Excellency will understand the important role of this alienation for the faithful of the Diocese of Providence, and the thousands of patients, employees, and pensioners of SJHSRI. Since we expect civil approvals in the coming weeks, I respectfully request your permission to proceed, so that the Diocese of Providence (through CharterCARE and affiliate SJHSRI/Our Lady of Fatima Hospital) may complete the final steps within the desired timeframe.**

Exhibit 16 (emphasis supplied) at 1–3.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 104:**

Response No. 104.1 (First Sentence): Undisputed that the Most Reverend Bishop sent the letter at ECF No. 243-16 on September 27, 2013. Disputed that the Most Reverend Bishop did so on behalf of the Diocesan Defendants and the content and context of that letter affirmatively negate any such conclusory assertion. ECF No. 243-16 does not indicate that the Most Reverend Bishop sent the letter on their behalf or in his capacity as an officer of any of those corporations. Instead, the exhibit indicates the letter is from the “Office of the Bishop” of the “Diocese of Providence,” notes that CharterCARE consulted with “the Diocese of Providence” and states that the “Diocese of Providence was grateful to CharterCARE,” referring to the religious officer (Office of the Bishop) and religious community (Diocese of Providence) respectively. ECF No. 243-16 (Executed Vatican Letter) at 1-2. As explained *supra* at Response No. 94.2, RCB, DAC, and DSC had no role in the preparation of the Vatican letter, which was a canonical function. ECF No. 243-16 (Executed Vatican Letter) at 1 (“In accord with Canon 1292, § 2 of the *Code of Canon Law*, I write to request canonical permission for a proposed alienation involving the only Catholic healthcare provider here in the Diocese of Providence.”).

Response No. 104.2 (Second Sentence): Undisputed.

Response No. 104.3 (Third Sentence): For purposes of summary judgment, undisputed.

Response No. 104.4 (Fourth Sentence): Undisputed that ECF No. 243-16 contains, *inter alia*, the quoted language.

Response No. 104.5 (Fifth Sentence): Undisputed that ECF No. 243-16 contains, *inter alia*, the quoted language, except that the exhibit indicates “the consent of the diocesan



Finance Council” was received “on September 17, 2013.” The Diocesan Defendants also observe that the paragraph beginning with “[t]he transaction is subject to” is reproduced with capitalization and spelling errors that do not appear in ECF No. 243-16.

**PLAINTIFFS' STATEMENT NO. 105:**

On October 18, 2013, CCHP, RWH, SJHSRI, Prospect Medical, Prospect East Advisory Services, LLC, Prospect East Holdings, Inc. (“Prospect East Holdings”), Prospect CharterCARE, LLC (“Prospect CharterCARE”), Prospect CharterCARE RWMC, LLC, and Prospect CharterCARE SJHSRI, LLC (collectively the HCA Applicants”) submitted to the Rhode Island Department of Health and the Rhode Island Attorney General a hospital conversion application (“HCA Application”) pursuant to the Rhode Island Hospital Conversion Act, for permission to convert all health care facilities owned and operated by non-profit RWH and non-profit SJHSRI, including Our Lady of Fatima Hospital and Roger Williams Hospital, to a for-profit joint venture Prospect CharterCARE in which Prospect East Holdings would initially have an 85% interest and CCHP would have the remaining 15% interest. The HCA Application submitted October 18, 2013 (exhibits omitted) is attached hereto as Exhibit 52.

**DIOCESAN DEFENDANTS' RESPONSE NO. 105:**

Undisputed that this paragraph provides an accurate summary of a portion of the HCA Application. The HCA Application is a lengthy document that speaks for itself.

**PLAINTIFFS' STATEMENT NO. 106:**

The HCA Application contained a sworn and notarized certification signed by all of the HCA Applicants, including SJHSRI, which certified that “all the information contained in this application is complete, accurate and true.” Exhibit 52 at pages Bates ## SJHSRI 103679–103699.

**DIOCESAN DEFENDANTS' RESPONSE NO. 106:**

Response No. 106.1: Undisputed that the HCA Application contained, *inter alia*, the quoted language. The HCA Application is lengthy document that speaks for itself.

Response No. 106.2: To the extent Statement No. 106 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan's alleged status as a church plan in approving the HCA Application, disputed. The regulatory decisions indicate no such thing. *See* ECF No. 243-82 (AG Decision); ECF No. 243-78 (RIDOH HCA Decision); ECF No. 243-80 (Project Review Committee Change-in-Effective Control Report); *see also* Diocesan MSJ Reply at Part III.B (discussing this issue in detail).

**PLAINTIFFS' STATEMENT NO. 107:**

The information contained in the HCA Application included the APA dated as of September 24, 2013. *See* Exhibit 52 (HCA) at 47 (referring to and attaching the APA as an exhibit).

**DIOCESAN DEFENDANTS' RESPONSE NO. 107:**

Undisputed that the HCA Application included, *inter alia*, the APA. To the extent Statement No. 107 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan's alleged status as a church plan in approving the HCA Application, disputed for reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 108:**

Although the Bishop was not a signatory to the APA, the APA expressly provides that the Bishop is a third party beneficiary of the APA. Exhibit 50 (APA) at 76 (§ 15.5(b)).

**DIOCESAN DEFENDANTS' RESPONSE NO. 108:**

Undisputed that none of the Diocesan Defendants or the Most Reverend Bishop was a signatory to the APA. Undisputed that the Most Reverend Bishop was a third-party beneficiary of the APA. Disputed that RCB, DSC, or DAC were third-party beneficiaries of the APA because it named “the Bishop of the Roman Catholic Diocese of Providence, Rhode Island” as third-party. ECF No. 243-50 (Executed APA) § 15.5(b); *supra* Resp. Nos. 82.2, 87.3.

**PLAINTIFFS' STATEMENT NO. 109:**

The APA states that the Sellers, including SJHSRI, “shall promptly apply for and use commercially reasonable efforts to obtain those ecclesiastical approvals required from officials within the Roman Catholic Church (the ‘Church’) in order to consummate the Transactions, including the authorization of the Bishop of the Roman Catholic Diocese of Providence, Rhode Island, and the permission of the Holy See through the Vatican Congregation of Bishops (the ‘Church Approvals.’).” Exhibit 50 (APA) at 45 (§ 7.5(e)).

**DIOCESAN DEFENDANTS' RESPONSE NO. 109:**

Undisputed that the APA contains, *inter alia*, the quoted language.

**PLAINTIFFS' STATEMENT NO. 110:**

The Sellers’ obligations under the APA were subject to the condition precedent of “Sellers shall have received the Church Approvals.” Exhibit 50 (APA) at 54 (§ 10.4(b)).

**DIOCESAN DEFENDANTS' RESPONSE NO. 110:**

Undisputed that the APA contains, *inter alia*, the quoted language.

**PLAINTIFFS' STATEMENT NO. 111:**

At a meeting of the CCHP Investment Committee on November 15, 2013, Committee Chairman Marshall Raucci informed the Committee that the projected \$14,000,000

contribution to the Plan in connection with the proposed asset sale “would bring the funding level to 90% or better.” Exhibit 53 at 5.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 111:**

Response No. 111.1: Undisputed that ECF No. 243-53 reflects, *inter alia*, the quoted language, although it is unclear whether the statement is appropriately attributed to Mr. Raucci, as it is preceded by: “The discussion regarding the Plan continued.” ECF No. 243-53 (November 15, 2013 CCHP Investment Committee meeting minutes) at 5. The Diocesan Defendants are also without sufficient knowledge to know or understand what significance the members of the CCHP Investment Committee ascribed to that statement or what further context they had to assess its impact.

Response No. 111.2: To the extent Statement No. 111 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan’s alleged status as a church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS’ STATEMENT NO. 112:**

The Investment Adviser for the Plan in 2013 was Mercer Investment Consulting, Inc. (“Mercer”). See Exhibit 54 (2012 agreement between CCHP and Mercer Investment Management, Inc.) at 1 referencing separate agreement with Mercer Investment Consulting, Inc.).

**DIOCESAN DEFENDANTS’ RESPONSE NO. 112:**

Undisputed.

**PLAINTIFFS’ STATEMENT NO. 113:**

On December 17, 2013, Chris Cozzini, who was one of the principals of Mercer,

contacted the Chief Operating Officer of CCHP Michael Conklin and noted that the CCHP Investment Committee “is under the impression that the funded status of the plan will get to 90%.” Exhibit 55 at 1. Mr. Cozzini informed Mr. Conklin that conclusion was based upon the actuary assuming a future rate of return on Plan assets of 8%. He also noted that “[s]ince the plan is a church plan, you can set their own assumptions...,” but that “[u]sing current market discount rates the funded status will only improve to about 60%....” Id.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 113:**

Undisputed that ECF No. 243-55 contains, *inter alia*, the quoted language. To the extent Statement No. 113 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan’s alleged status as a church plan in approving the HCA Application, disputed for reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS’ STATEMENT NO. 114:**

Moreover, if the Plan were not exempt from ERISA as a “Church Plan,” the funded status of the Plan would have to be determined using the projected future rates of return required by ERISA, which were much less than 8%. Exhibit 56 (Declaration of James E. Holland dated April 6, 2022 (“Holland Dec.”)) at 6. Using the rates required by ERISA, the funded status of the Plan would be from 62.97% (using the rate required by the Pension Benefit Guaranty Corporation) to 74.39% (using the rates ERISA required for determination of the required minimum contribution). Exhibit 56 (Holland Dec.) at 6. In addition, a notice would have to be sent to the Plan participants every year, reporting the funded status of the Plan using both rates, and informing the Plan participants every year when SJHSRI failed to make the required minimum contribution to the Plan. Exhibit 56 (Holland Dec.) at 8.

**DIOCESAN DEFENDANTS' RESPONSE NO. 114:**

*Response No. 114.1 (First Sentence):* This is not a statement of fact, but a legal conclusion.

*Response No. 114.2 (Second Sentence):* The Diocesan Defendants deny knowledge sufficient to form a belief as to whether the opinions and analysis set forth herein should be disputed or undisputed. Further, the analysis assumes a state of affairs where ERISA would apply to this Plan, something Plaintiffs are now actively contesting in their response to the Diocesan Defendants' motion.

The Diocesan Defendants do note, however, that it was reasonable for all parties to believe the Plan was a church plan given the state of the law in 2013-2014 regarding church plans and principal purpose organizations and in light of the retroactive cure provisions. *See* Diocesan Defs.' Mot. for Summ. J., ECF No. 236, at 14 (discussing state of the law); Diocesan MTD, ECF No. 238, at 33-36 (same); Pls.' Mem. of Law in Opp'n to the Dioc. Defs.' Mot. for Summ. J., ECF No. 245, at 68-72 (discussing cure provision).

*Response No. 114.3 (Third Sentence):* This is not a statement of fact, but a legal conclusion.

**PLAINTIFFS' STATEMENT NO. 115:**

On January 2, 2014, the HCA Applicants resubmitted the HCA Application, accompanied by the same certification. The HCA Application resubmitted January 2, 2014 (exhibits omitted) is attached hereto as Exhibit 57.

**DIOCESAN DEFENDANTS' RESPONSE NO. 115:**

*Response No. 115.1:* Undisputed that the HCA Applicants resubmitted the HCA Application on January 2, 2014 and that the resubmitted HCA Application is attached at ECF No. 243-57. The exhibit speaks for itself.

*Response No. 115.2:* To the extent Statement No. 115 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan's alleged status as a church plan in approving the HCA Application, disputed for reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 116:**

Without the Bishop's participation, it would have been impossible for SJHSRI to claim that the Plan was a "church plan" exempt from ERISA. The Bishop signed a resolution as of April 29, 2013 (the "Bishop's Resolution"). It states in pertinent part as follows:

RESOLVED: That the Plan is intended to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code") as a non-electing church plan within the meaning of Section 414(e) of the Code and Section 3(33) of the Employee Retirement Income Security Act of 1974, as amended.

DD SUMF Exhibit 18 (Bishop's April 29, 2013 Resolution).<sup>□</sup> [Footnote omitted].

**DIOCESAN DEFENDANTS' RESPONSE NO. 116:**

*Response No. 116.1:* Disputed that the first sentence in Statement No. 116 has anything to with the second and third sentences therein.

*Response No. 116.2 (First Sentence):* Disputed. Plaintiffs offer no explanation for their conclusion that "it would have been impossible for SJHSRI to claim that the Plan was a 'church plan' exempt from ERISA" absent "the Bishop's participation." The Most Reverend Bishop's April 29, 2013 Resolution certainly offers no such explanation. As the Diocesan

Defendants explained *supra* at Response No. 86.4, it was not possible for the Diocesan Defendants to ensure that the Plan could remain a church plan. The same is true of the Most Reverend Bishop. SJHSRI's Bylaws contemplate that the Plan could remain a church plan in a world where "the Official Catholic Directory has ceased to exist." ECF No. 237-10 (SJHSRI Bylaws) §5.1(k).

Response No. 116.3 (Second Sentence): Undisputed that the Most Reverend Bishop signed the April 29, 2013 Resolution and that said resolution contains, *inter alia*, the quoted language. Disputed that the Diocesan Defendants had any connection or role with respect to the April 29, 2013 Resolution. The 1999 Plan and 2011 Plan afforded them no such authority. ECF No. 237-3 (1999 Plan) (failing to authorize RCB, DAC, and DSC to take the action reflected in the April 29, 2013 Resolution); ECF No. 237-4 (2011 Plan) (same).

Response No. 116.4 (Third Sentence): Undisputed that the April 29, 2013 Resolution contains, *inter alia*, the quoted language. Disputed to the extent Plaintiffs characterize this portion of the April 29, 2013 resolution as anything other than a statement of *intent* regarding the status of the Plan under ERISA. ECF No. 237-18 (April 29, 2013 Resolution).

**PLAINTIFFS' STATEMENT NO. 117:**

The Bishop was also directly involved and cooperated with SJHSRI in the determination of the entity that would have responsibility for administration of the Plan. The Bishop's Resolution which SJHSRI provided to the Bishop for his signature also addressed that issue, as follows:

RESOLVED: That the Board of Trustees of St. Joseph Health Services of Rhode Island is the Retirement Board with respect to the Plan and acts on behalf of St. Joseph Health Services of Rhode Island as the Plan Administrator of the Plan.



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

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

DD SUMF Exhibit 18.<sup>□</sup> (Bishop's April 29, 2013 Resolution). [Footnote omitted].

**DIOCESAN DEFENDANTS' RESPONSE NO. 117:**

*Response No. 117.1 (First Sentence):* This sentence is nothing more than a conclusory, characterization of the April 29, 2013 Resolution and should be disregarded.

Undisputed that the Most Reverend Bishop signed the April 29, 2013 Resolution. The resolution speaks for itself.

*Response No. 117.2 (Second Sentence):* Undisputed that SJHSRI provided the April 29, 2013 Resolution to the Most Reverend Bishop for his signature. Also undisputed that the quoted language appears, *inter alia*, in the April 29, 2013 Resolution. Disputed that the Diocesan Defendants had any connection to the resolution for the reasons set out *supra* at Response No. 116.

**PLAINTIFFS' STATEMENT NO. 118:**

There is virtually no documentation concerning the circumstances that led to the creation and execution of the Bishop's Resolution. Exhibit 8 (Sheehan Dec.) ¶ 20.

**DIOCESAN DEFENDANTS' RESPONSE NO. 118:**

Disputed. Documents produced by Prospect CharterCARE LLC establish that SJHSRI and CCHP human resources recognized a possible church plan exemption issue created

by the adoption of the 2011 Plan in January 2013 and took steps in an attempt to correct it, which culminated in the April 29, 2013 Resolution. Specifically, at some point following the CCHP Affiliation, CCHP human resources executive, Darlene Souza, commented that the Affiliation caused responsibility for administering the Plan to shift to the CCHP Finance Committee:

Mrs. Souza provided the Committee with some background information regarding the SJHSRI Pension Plan and provisions of the Plan document relating to the pension appeal process. Prior to the affiliation, the SJHSRI Finance Committee served as the Committee that reviewed appeals as submitted to the SJHSRI Retirement Board . . . . As a result of the affiliation, the responsibilities and oversight of the previously acting SJHSRI Retirement Board now fall under the CCHP Finance Committee.

ECF No. 191-12 (July 19, 2011 CCHP Finance Committee meeting minutes) at 3. This belief seems to stem from the fact that the SJHSRI Finance Committee previously functioned as an advisor to the SJHSRI Retirement Board, ECF No. 199-1 (SJHSRI 2007 Bylaws) Art. 5, § 6C, and the post-Affiliation SJHSRI Bylaws provided that the CCHP Finance, Audit and Compliance Committee would advise SJHSRI as the SJHSRI Finance Committee had, ECF No. 237-10 (SJHSRI 2010 Bylaws) § 4.5. There is no documentation indicating that the SJHSRI Retirement Board formally acknowledged that the SJHSRI Finance Committee's advisory role transferred to the CCHP Finance Committee.

The 2011 Plan abolished the SJHSRI Retirement Board and made SJHSRI Administrator of the Plan, absent written delegation otherwise. ECF No. 237-4 (2011 Plan) § 8.1. CCHP officials, including Ms. Souza, discovered that these changes might create an issue for the Plan's exemption from ERISA in January 2013. Ex. 35 (January 2, 2013 Email from Joseph D'Alesandro to Peter Karlson, cc: Darleen Souza). Ms. Souza, presumably with the advice of counsel, prepared the April 29, 2013 Resolution to try to square how the Plan had been administered since 2011 with the terms of the Plan. Ex. 36 (April 18, 2013 Letter from Ms.

Souza to Msgr. Theroux) at 1. There is no documentation indicating that Ms. Souza sought or obtained the action from the SJHSRI Board of Trustees described in the April 29, 2013 Resolution. The resolution did not have the effect of preserving the Plan's exemption from ERISA, as the CCHP Finance Committee was not a principal purpose organization. Diocesan Defs.' Mot. for Summ. J., ECF No. 236, at 11-13, 18-19.

**PLAINTIFFS' STATEMENT NO. 119:**

On February 7, 2014, R. Otis Brown, purportedly acting on behalf of CCHP, sent an email to the Diocesan Defendants (through the Chancellor), copied to the CEO of CCHP and SJHSRI, that requested that the Bishop "author" a "letter... of support" for the HCA Application to the Members of the Rhode Island Health Services Council. Exhibit 58 (R. Otis Brown's email). Mr. Brown evidently attached to his email a draft letter from the Bishop to the members of the Health Services Council, which he stated was a "sample draft." See id. Neither CCHP nor the Diocesan Defendants produced a copy of that attachment in response to the Receiver's subpoenas in the Receivership Proceeding, although it was clearly encompassed by the subpoenas. Exhibit 8 (Sheehan Dec.) ¶ 20.

**DIOCESAN DEFENDANTS' RESPONSE NO. 119:**

Response No. 119.1 (First Sentence-1): Undisputed that Mr. Brown emailed Chancellor Reilly to request that the Most Reverend Bishop write a letter to the Health Services Council. Undisputed that ECF No. 243-58 contains, *inter alia*, the quoted language.

Response No. 119.2 (First Sentence-2): Disputed that Mr. Brown emailed the "Diocesan Defendants" or that Chancellor Reilly received Mr. Brown's email on their behalf. ECF No. 243-58 negates any such claim; it does not mention RCB, DSC, or DAC at all. ECF No. 243-58 (Feb. 7, 2014 Email from Mr. Brown to Chancellor Reilly) at 1. Rather, it states:

“[T]he committee will accept letters of support from key groups, including political and community leaders, as well as others. We are hoping that the Bishop would author such a letter.” Bishop Tobin’s letter to the Health Services Council indicated it was from the “Office of the Bishop” of the “Diocese of Providence”. ECF No. 243-60 (HSC Letter) at 1. It was not on letterhead of RCB, DAC, or DSC. *Id.* On its face, moreover, the letter indicated that it was written in Bishop Tobin’s capacity as a religious official and interested citizen and expressed the gratitude of “the Diocese of Providence,” not the Diocesan Defendants. *Id.* This sort of activity is beyond the purpose and function of RCB, DAC, or DSC. *Supra* Resp. Nos. 93.1 & 94.2.

*Response No. 119.3 (Second Sentence):* Undisputed that Mr. Brown attached a draft letter from the Most Reverend Bishop to the members of the Health Services Council and that ECF No. 243-58 contains, *inter alia*, the quoted language.

*Response No. 119.4 (Third Sentence):* Disputed. The “sample draft” was produced at RCB10799. Ex. 37 (Sample Draft of Health Services Council Letter).

**PLAINTIFFS' STATEMENT NO. 120:**

On February 14, 2014, the Diocesan Defendants (through the Chancellor) informed Mr. Brown that “Bishop Tobin today signed the letter you requested” and attached an electronic (unsigned) copy. See Exhibit 59 (Father Reilly’s email). The Chancellor informed Mr. Brown that “[w]e’ve not put the signed original in the mail yet ... so let us know if you have any comments once you read it. Otherwise, we’ll mail it directly to the Health Services Council at the address you provided.” *Id.* (ellipsis in original). A copy of the Bishop’s signed letter is attached hereto as Exhibit 60.

**DIOCESAN DEFENDANTS' RESPONSE NO. 120:**

Response No. 120.1 (First Sentence): Undisputed that Chancellor Reilly emailed Mr. Brown on February 14, 2014 and that ECF No. 243-59 contains, *inter alia*, the quoted language. Disputed that Chancellor Reilly contacted Mr. Brown on behalf of the Diocesan Defendants for the reasons set out *supra* at Response Nos. 119.2.

Response No. 120.2 (Second Sentence): Undisputed that ECF No. 243-59 contains, *inter alia*, the quoted language.

Response No. 120.3 (Third Sentence): Undisputed that ECF No. 243-60 is the Most Reverend Bishop's signed letter to the Health Services Council. Disputed to the extent "the Bishop" refers to RCB, DAC, and DSC for the reasons set out *supra* at Response Nos. 119.2.

**PLAINTIFFS' STATEMENT NO. 121:**

On February 20, 2014, the Rhode Island Department of Health Office of Health Systems Development received the letter signed by Bishop Tobin. It stated in pertinent part as follows:

Dear Members of the Health Services Council:

**I write on behalf of the proposed partnership between CharterCARE Health Partners and Prospect Medical Holdings**, which will assure that Rhode Islanders continue to have the choice of Catholic- sponsored health care at Our Lady of Fatima Hospital, and at St. Joseph Community health Center in South Providence – which provides critical primary and specialty care to thousands of less fortunate citizens each year.

\* \* \*

The Diocese of Providence is grateful to CharterCARE for all it has done to preserve the healing ministry of SJHSRI/Our Lady of Fatima Hospital, all within difficult financial circumstances. **However, without this transaction, it appears that a consistent Catholic health care presence in the Diocese of Providence would be gravely compromised, and the financial future for**

**employee-beneficiaries of the pension plan would be at significant risk. I believe that the partnership will help avoid the catastrophic implications of such a failure,** and at the same time, enhance the quality of care at SJHSRI/Our Lady of Fatima. The transaction will also allow the Diocese, through CharterCARE, to better attain the goals of fulfilling the mission of serving the poor and those in need, while respecting Catholic medical ethics and Church Law. We are grateful for the strong local presence of SJHSRI/Our Lady of Fatima Hospital that has been a foundation for Catholic healthcare here for over 100 years.

I respectfully ask you to look favorably on this proposed transaction.

Sincerely yours,

Thomas J. Tobin Bishop of Providence

[Emphasis supplied]

Exhibit 60 (Bishop Tobin's signed letter).

**DIOCESAN DEFENDANTS' RESPONSE NO. 121:**

Undisputed that the Health Services Council received ECF No. 243-60 on February 20, 2014 and that the exhibit contains, *inter alia*, the quoted language. Disputed that this excerpt of ECF No. 243-60 is any more "pertinent" than the non-excerpted parts. In the exhibit, the Most Reverend Bishop discussed, among other things, enhancing CCHP's ability to provide "quality, affordable health services," "preserv[ing] jobs in Providence and North Providence," and obtaining capital to "fulfill the potential" of important health initiatives. ECF No. 243-60 (Most Reverend Bishop's Letter to the Health Services Council) at 1. He referenced the "very difficult financial circumstances" SJHSRI found itself in and the likelihood that, absent the transaction, it appeared that SJHSRI's future viability would be "gravely compromised." *Id.* at 1. The Most Reverend Bishop was prompted to write to the Health Services Council for all of these reasons.

**PLAINTIFFS' STATEMENT NO. 122:**

The HCA process included the Attorney General addressing written questions to the HCA Applicants and the HCA Applicants providing formal written responses. The Department of Health and the Attorney General advised the HCA Applicants that these governmental agencies “will consider the answers to these questions as a supplement to the Initial Application.” See, e.g., Exhibit 61 (March 24, 2014 cover letter to applicants’ counsel); Exhibit 62 at 2 (April 7, 2014 cover letter to applicants’ counsel). Accordingly, the answers of the HCA Applicants were subject to their certification that the information contained in their responses was “complete, accurate and true.”

**DIOCESAN DEFENDANTS' RESPONSE NO. 122:**

Response No. 122.1 (First Sentence): Undisputed that the HCA process included the activity referenced herein, but also included the submission of many pages of supporting documentation and numerous public hearings. *See generally* ECF No. 243-57 (Jan. 2, 2014 HCA Application) (referencing various exhibits); ECF No. 243-69 (Apr. 8, 2014 Hr’g Tr.); ECF No. 243-79 (May 6, 2014 Project Review Committee Hr’g Tr.).

Response No. 122.2 (Second Sentence): Undisputed that ECF No. 243-61 provides, *inter alia*, as such. The exhibit speaks for itself.

Response No. 122.3 (Third Sentence): Undisputed that the HCA Application at ECF Nos. 243-52 and 243-57 required certifications that the application was “complete, accurate and true,” and that the HCA Applicants (which did not include the Most Reverend Bishop or DAC, DSC, or RCB) made those certifications.

Response No. 122.4: To the extent Statement No. 122 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan’s alleged status as a

church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 123:**

At the same time that the Rhode Island Department of Health was considering the HCA Applications, it was also considering separate applications by the applicants for Change in Effective Control (“CEC Applications”) of the hospital facilities being transferred. On February 21, 2014, the Rhode Island Department of Health sent the HCA Applicants a list of questions to supplement the record of the CEC Applications, which included a request for a status report on the church approvals required for the transaction. Exhibit 63. The question and the HCA Applicants’ response on March 7, 2014 were as follows:

6. Asset Purchase Agreement. Please address the following:

a. Section 7.5(e) of the APA relates to seller obtaining ecclesiastical approvals from the Roman Catholic Church including the authorization of the Bishop of the Roman Catholic Diocese of Providence, Rhode Island and the permission of the Holy See through the Vatican Congregation of Bishops. Please identify the status of and expected date for obtaining such approvals.

**Response: On September 17, 2013, the Finance Council of the Diocese of Providence voted to consent to the alienation of substantially all of the assets of Saint Joseph Health Services of Rhode Island including Our Lady of Fatima Hospital to Prospect CharterCARE, a newly-formed affiliate of CCHP and PMH.**

**On September 26, 2013, the Roman Catholic diocese of Providence College of Consultors voted to consent to the alienation of substantially all of the assets of Saint Joseph Health Services of Rhode Island including Our Lady of Fatima Hospital to Prospect CharterCARE.**

**On September 27, 2013, Bishop Thomas J. Tobin, bishop of the Diocese of Providence, sent correspondence to Most Reverend Celso Morgia Izurubieta, Secretary, Congregation for the Clergy in Vatican City, indicating that he has no objection to the alienation and requesting canonical permission for the proposed alienation of substantially all of the assets of Saint Joseph Health**



**Services of Rhode Island including Our Lady of Fatima Hospital to Prospect CharterCARE.**

**At the request of the Congregation for the Clergy, additional information was sent to Cardinal Beniamino Stella, Prefect, Congregation for the Clergy on February 17, 2014. A response is anticipated in the next few weeks.**

Exhibit 64 (Responses to the Supplemental Questions to the Change in Effective Control Application) at 11-12.

**DIOCESAN DEFENDANTS' RESPONSE NO. 123:**

*Response No. 123.1 (First Sentence):* Undisputed.

*Response No. 123.2 (Second Sentence):* Undisputed that ECF No. 243-63 included, *inter alia*, a request for a status report on “ecclesiastical approvals” to the HCA Applicants (not the Diocesan Defendants), which concerned approvals “from the Roman Catholic Church including the authorization of the Bishop of the Roman Catholic Diocese of Providence, Rhode Island and the permission of the Holy See through the Vatican Congregation of Bishops,” again not the Diocesan Defendants. ECF No. 243-63 (February 21, 2014 Letter Enclosing Supplemental Questions) at 3.

*Response No. 123.3 (Third Sentence):* Undisputed that ECF No. 243-64 contains, *inter alia*, the quoted language (except that Plaintiffs have misspelled Archbishop Iruzubieta’s surname), does not reference RCB, DSC, or DAC, and does not reference any approvals from the Roman Catholic Church related to the Plan.

**PLAINTIFFS' STATEMENT NO. 124:**

On March 28, 2014, the Diocesan Defendants (through the Chancellor) emailed to SJHSRI the “Vatican Approval letter” dated March 20, 2014, which the Chancellor stated was “good news” which “informs Bishop Tobin of the Holy See’s approval of the transaction.” Exhibit 65 at 1. The Vatican’s Approval Letter expressly states that it had been issued at the

request of the Bishop pursuant to the Bishop's letter dated September 27, 2013. See Exhibit 65 at 2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 124:**

Response No. 124.1 (First Sentence): Undisputed that on March 28, 2014, Chancellor Reilly emailed SJHSRI's president a letter, dated March 20, 2014, indicating, *inter alia*, the Vatican's approval and that ECF No. 243-65 contains, *inter alia*, the quoted language. Disputed that Chancellor Reilly sent this email on behalf of the Diocesan Defendants and it is baseless to claim otherwise. Nothing in ECF No. 243-65 indicates as much. Rather, the email provides that it was sent by the "Chancellor" of the "Diocese of Providence." ECF No. 243-65 (March 28, 2014 Email from Chancellor Reilly to Kenneth Belcher, enclosing Vatican Approval Letter) at 1. The Chancellor is a position established under canon law. 1983 Code c.482 § 1. On its face, the email is a report of the receipt of canonical/ecclesiastical approvals. *See* ECF No. 243-65 (March 28, 2014 Email from Chancellor Reilly to Kenneth Belcher, enclosing Vatican Approval Letter) at 1-2.

Response No. 124.2 (Second Sentence-1): Disputed that the Vatican's Approval Letter "expressly states that it had been issued at the request of the Bishop pursuant to the Bishop's letter dated September 27, 2013." The Vatican's Approval Letter does not "expressly" use that formulation. ECF No. 243-65 states:

This Congregation has received Your Excellency's letter of 27 September 2013, together with the additional information of 17 February 2014, with which you requested a *Nihil Obstat* concerning the proposed alienation of Saint Joseph Health Services of Rhode Island/Our Lady of Fatima Hospital, which currently belongs to the Diocese of Providence. With this letter, the *Nihil Obstat* is hereby granted.

ECF No. 243-65 (March 28, 2014 Email from Chancellor Reilly to Kenneth Belcher, enclosing Vatican Approval Letter) at 2.

Response No. 124-3 (Second Sentence-2): Disputed to the extent “the Bishop” refers to RCB, DAC or DSC. The Diocesan Defendants had no role in submitting the request to the Vatican for the reasons discussed *supra* at Response Nos. 93.1, 94.2, and 104.1.

**PLAINTIFFS' STATEMENT NO. 125:**

On April 28, 2014 the HCA Applicants forwarded the Vatican Approval letter to the Attorney General. Exhibit 66.

**DIOCESAN DEFENDANTS' RESPONSE NO. 125:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 126:**

Certain of the Department of Health's and the Attorney General's written questions to the HCA Applicants concerned the Plan, including SJHSRI's liabilities under the Plan and the sufficiency of the Plan's assets to funds the Plan's obligations to pay retirement benefits. See, e.g., Exhibit 62 (Third Set of Supplemental Questions) at 4.

**DIOCESAN DEFENDANTS' RESPONSE NO. 126:**

Undisputed that some of the state regulators' questions to the HCA Applicants concerned the Plan.

**PLAINTIFFS' STATEMENT NO. 127:**

The list of questions that the Department of Health submitted to the HCA Applicants on February 21, 2014 included a question regarding the use of the purchase price. Exhibit 63 at 3. The relevant portions of the question and the relevant answers (highlighted in bold) which the HCA Applicants provided on March 7, 2014 were as follows:

5. Purchase Price and Uses. The purchase price for the proposed transaction is \$45 million (reflecting 85% ownership interest of Prospect). Please address the following:

\* \* \*

b. Additionally, please discuss the intend uses of the \$45 million that will be going to CharterCARE and how those uses for spending those funds would be established.

**Response:**

\* \* \*

**d. \$14,000,000 shall be applied to the St. Joseph Pension Plan.**

c. Please identify the extent to which, if any, the purchase price will be used by CharterCARE for community benefit versus paying off debts.

**Response: The use of the sale proceeds as described in Section (b) above will benefit the community in three ways:**

\* \* \*

**b. The use of \$14M to strengthen the St. Joseph Pension Plan will be of significant benefit to the community as it will assure that the pensions and retirement of many former employees, who reside in this community, are protected.**

Exhibit 64 at 10–11. These answers were signed by CCHP and SJHSRI CEO Ken Belcher, under the attestation that “the information contained in this material is true, accurate, and complete.”

Id. at 16 & 17.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 127:**

Response No. 127.1: Undisputed that state regulators sent a list of questions to the HCA Applicants on February 21, 2014 and that ECF No. 243-64 contains, *inter alia*, the quoted language.

Response No. 127.2: Undisputed that Statement No. 127 accurately describes some of the inquiries made by the Rhode Island Department of Health and the responses thereto by the HCA Applicants concerning the Plan. The HCA application process involved the

submission of various documents and testimony concerning the Plan. *See, e.g.*, ECF No. 243-50 (Executed APA, provided to regulators) §§ 4.29, 9.12-9.13; ECF No. 243-52 (October 18, 2013 HCA Application) at 7, 65; ECF No. 243-57 (January 2, 2014 HCA Application) at 8, 74; ECF No. 243-67 (Confidential Responses to Third Supplemental Questions to HCA Application) at 4; ECF No. 243-68 (Confidential Exhibits to Responses to Third Supplemental Questions) at S3C-PHCA00062–S3C-PHCA00090. The complete regulatory record speaks for itself.

Response No. 127.3: To the extent Statement No. 127 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan's alleged status as a church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 128:**

On April 7, 2014 the Department of Health and the Attorney General issued questions to the HCA Applicants numbered S3-1 through S3- 65.<sup>[FN]13</sup> Exhibit 62. Question number S3-46 stated as follows:

Please provide:

- a. the most recent actuarial valuation of the Pension Plan;
- b. the documentation as to the determination that \$14M<sup>[FN]14</sup> will stabilize the plan, and a description of any written information of the understanding with employee representatives with respect to the freezing and funding of the plan;
- c. how many employees are eligible for this pension; and
- d. how many employees will be affected by the freeze.

Exhibit 62 at 7. [FN13: "S3" meaning third set of supplemental questions.]

[FN14: Referring to the \$14 million that would be deposited into the Plan if and when the HCA Application was approved and the asset sale closed]

**DIOCESAN DEFENDANTS' RESPONSE NO. 128:**

Response No. 128.1: Undisputed that state regulators sent to the HCA Applicants questions numbered S3-1 through S3-65 on April 7, 2014 and that ECF No. 243-62 contains, *inter alia*, the quoted language.

Response No. 128.2: Undisputed that Statement No. 128 accurately describes some of the inquiries made by the Rhode Island Department of Health and Attorney General to the HCA Applicants concerning the Plan. The HCA application process involved the submission of various documents and testimony concerning the Plan. *See supra* Resp. 127.2 (citing various regulatory submissions and testimony). The complete regulatory record speaks for itself.

Response No. 128.3: To the extent Statement No. 128 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan's alleged status as a church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 129:**

On April 14, 2014 the HCA Applicants provided the Attorney General and the Department of Health with their written responses to these questions. Exhibit 67. They responded to Question S3-46 as follows:

**Response:**

- a. See attached **Confidential Exhibit S3-46A;**
- b. See attached **Confidential exhibit S3-46B;**
- c. There are 2,828 eligible participants including actives, inactive per-diems, terms with vested balances and retirees and beneficiaries; and
- d. 199 employees.

Exhibit 67 (emphasis in original).

**DIOCESAN DEFENDANTS' RESPONSE NO. 129:**

Response No. 129.1 (First Sentence): Undisputed.

Response No. 129.2 (Second Sentence): Undisputed that ECF No. 243-67 contains, *inter alia*, the quoted language.

Response No. 129.3: Undisputed that Statement No. 129 accurately describes some of the responses provided by the HCA Applicants to the Rhode Island Department of Health and Attorney General concerning the Plan. The HCA application process involved the submission of various documents and testimony concerning the Plan. *See supra* Resp. 127.2 (citing various regulatory submissions and testimony). The complete regulatory record speaks for itself.

Response No. 129.4: To the extent Statement No. 129 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan's alleged status as a church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 130:**

Confidential Exhibit S3-46B included an analysis prepared by Angell of the effect that the \$14,000,000 contribution would have to "stabilize" the Plan. Exhibit 68. In that analysis, Angell stated that "[i]t is assumed that the Plan will remain a non- electing Church Plan and will not become subject to ERISA." Exhibit 68 at Bates # S3C-PHCA00090. The analysis concluded that with the \$14,000,000 contribution, the Plan would be 94.9% funded as of July 1, 2014. *Id.* That calculation was expressly based upon the assumption that the existing Plan assets plus the \$14,000,000 would earn a future rate of return of 7.75%. *Id.*

**DIOCESAN DEFENDANTS' RESPONSE NO. 130:**

*Response No. 130.1 (Second Sentence):* Undisputed that ECF No. 243-68 contains, *inter alia*, the quoted language, but that it appears at S3C-PHCA00089.

*Response No. 130.2 (Remainder of Statement):* Undisputed that Statement No. 130 accurately describes some of the information provided by the HCA Applicants to the Rhode Island Department of Health and Attorney General concerning the Plan. The HCA application process involved the submission of various documents and testimony concerning the Plan. *See supra* Resp. 127.2 (citing various regulatory submissions and testimony). The complete regulatory record speaks for itself.

*Response No. 130.3:* To the extent Statement No. 130 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan's alleged status as a church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 131:**

This computation was the subject of sworn testimony of the Chief Executive Officer of SJHSRI Kenneth Belcher at a public hearing on April 7, 2014 in connection with the HCA Applications. Exhibit 69 (April 7, 2014 hearing transcript). Mr. Belcher was asked to address three questions that had been raised by a recent report on SJHSRI by Moody's Investor Services. *See* Exhibit 69 (hearing transcript) at 61-62.

**DIOCESAN DEFENDANTS' RESPONSE NO. 131:**

*Response No. 131.1 (First Sentence):* Disputed. It is not clear at all from ECF No. 243-69 that the parties were discussing the computation at Exhibit S3-46B discussed in



Statement No. 130. For example, Mr. Belcher references a funding level of “91 and a half percent” as opposed to 94.9%. ECF No. 243-69 (April 7, 2014 hearing transcript) at 66.

Response No. 131.2 (Second Sentence): Undisputed.

**PLAINTIFFS' STATEMENT NO. 132:**

Moody's report dated February 21, 2014 is attached hereto as Exhibit 70.

WPRI's March 3, 2014 news article summarizing the report stated that it warned that SJHSRI's “dwindling cash and large pension liabilities may force it to default on its bonds.” Exhibit 71 (WPRI's March 3, 2014 news article).

**DIOCESAN DEFENDANTS' RESPONSE NO. 132**

Undisputed that ECF No. 243-70 reflects the referenced Moody's report and that ECF No. 243-71 contains, *inter alia*, the quoted language.

**PLAINTIFFS' STATEMENT NO. 133:**

The third question to CEO Belcher related to Moody's' concern over the funded status of employee retirement accounts, including the Plan. See Exhibit 69 (hearing transcript) at 62; Exhibit 70 (Moody's report) at 2. Mr. Belcher testified as follows:

MR. BELCHER: . . . **But the third part was on the pension fund, and the impact on the pension fund with this -- and I think you know we shared information up-front is that at the time of the closing we'll be putting millions of dollars into the pension fund which will bring it to a level of roughly 91 and a half percent funding which is above the safe level that you need for sort of a quote safe level. So all of this really helps stabilize the pension fund as well.**

Exhibit 69 (hearing transcript) at 65-66 (emphasis supplied).

**DIOCESAN DEFENDANTS' RESPONSE NO. 133:**

Response No. 133.1 (First Sentence): Undisputed.

Response No. 133.2 (Second Sentence): Undisputed that ECF No. 243-69 contains, *inter alia*, the quoted language, but it also references that another expert witness (Dr. John Schibler) will appear on this issue and that time with the current witness (Dr. Cooper) was running short. ECF No. 243-69 (April 8, 2014 Hr’g Tr.) 62:6-23. The exhibit speaks for itself.

Response No. 133.3: To the extent Statement No. 133 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan’s alleged status as a church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 134:**

This computation was also the subject of additional submissions to the Attorney General and the Department of Health to secure approval of the HCA Application. On May 2, 2014 the HCA Applicants submitted “the Transacting Parties’ Final Supplemental HCA Responses” with exhibits to the Department of Health and the Attorney General. Their cover letter is attached hereto as Exhibit 72. This submission included the “Confidential Final Supplemental Responses to the HCA Application” (the “Final Confidential Responses”) which is attached hereto as Exhibit 73. The Final Confidential Responses included the following statement with respect to the Plan:

Pension:

**Please see attached at Confidential Miscellaneous Exhibit 3 is the requested information regarding the Pension Plan.**

Exhibit 73 (Final Confidential Responses) at 6.

**DIOCESAN DEFENDANTS' RESPONSE NO. 134:**

Response No. 134.1 (First Sentence): Disputed. It is not clear at all from ECF No. 243-73 that the parties were discussing the computation at Exhibit S3-46B discussed in Statement No. 130 or another computation.

Response No. 134.2 (Second, Third and Fourth Sentence): Undisputed.

Response No. 134.3 (Fifth Sentence): Undisputed that ECF No. 243-73 contains, *inter alia*, the quoted language.

Response No. 134.5: To the extent Statement No. 134 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan's alleged status as a church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 135:**

**Confidential Miscellaneous Exhibit 3** is attached hereto as Exhibit 74. It consists of a narrative captioned the "**Confidential Response Regarding Pension**" and Attachment 1 thereto. The **Confidential Response Regarding Pension** states as follows:

**Confidential Response Regarding Pensions**

Enclosed herein at Attachment 1 is a listing of the projected contributions necessary to keep the St. Joseph Health Services of Rhode Island Retirement Plan (the "Pension Plan") funded at recommended levels. **First, it is important to note that these contributions are not mandatory. Secondly, it is important to note that upon receipt of the \$14 M contribution that will be made in connection with the proposed transaction, the Pension Plan will be funded in excess of ninety percent (90%).**

That being said, there are three potential sources of funding through which additional contributions can be made to the Pension Plan. They are as follows:

1. The Perpetual Trust income of St. Joseph Health Services of Rhode Island, which has over the last few years averaged

approximately \$300,000.00;

2. The second pool of income will be distributions from the fifteen percent (15%) ownership interest that CCHP will maintain in the joint venture; and
3. The third possible stream of funds is the RWMC Perpetual Trust income, which has averaged approximately \$170,000.00 over the last few years.

The first source can and will be utilized. The second source, combined with the first source, may satisfy the funding recommendations as the Hospitals reach a level of profitability. Research is being done as to the potential use of the third source.

Exhibit 74 (Confidential Response Regarding Pension) at 1 (emphasis supplied).

**DIOCESAN DEFENDANTS' RESPONSE NO. 135:**

Response No. 135.1 (First and Second Sentences): Undisputed.

Response No. 135.2 (Third Sentence): Undisputed that ECF No. 243-74 contains, *inter alia*, the quoted language, but also discloses that the Plan could run out of money as soon as 2032. ECF No. 243-74 (Confidential Response Regarding Pension) at SFC-PHCA00035.

Response No. 135.3: Undisputed that Statement No. 135 accurately describes some of the information provided by the HCA Applicants to the Rhode Island Department of Health and Attorney General concerning the Plan. The HCA application process involved the submission of various documents and testimony concerning the Plan. *See supra* Resp. 127.2 (citing various regulatory submissions and testimony). The complete regulatory record speaks for itself.

Response No. 135.4: To the extent Statement No. 135 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan's alleged status as a church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 136:**

On May 2, 2014, Assistant Attorney General Genevieve M. Martin requested that SJHSRI's counsel "send me your legal analysis as to the ability to use RWMC perpetual trust income to pay St. Joseph's expenses, including its pension expenses." Exhibit 75 (email). On May 8, 2014, SJHSRI's counsel forwarded documentation to Ms. Martin the following:

Finally, attached is the Roger Williams Medical Center (RWMC) Board of Trustees Resolution authorizing the use of the RWMC Board Designated Funds to satisfy the St. Joseph Health Services of Rhode Island (SJHSRI) liabilities at close and any potential future funding and expenses related to the SJHSRI pension plan, and any surplus shall be transferred to the CCHP Foundation.

Exhibit 76 (counsel's email attaching the resolution).

**DIOCESAN DEFENDANTS' RESPONSE NO. 136:**

Response No. 136.1 (First Sentence): Undisputed that on May 2, 2014, Ms. Martin sent SJHSRI's counsel an email that contained, *inter alia*, the quoted language.

Response No. 136.2 (Second Sentence): Undisputed that on May 8, 2014, SJHSRI's counsel sent an email to Ms. Martin and others that contained, *inter alia*, the quoted language and the resolution from the RWMC Board of Trustees referenced therein.

Response No. 136.3: To the extent Statement No. 136 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan's alleged status as a church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 137:**

The Resolution identifies \$6,666,874 in "RWMC Board Designated Funds" and "approves and directs use of the RWMC Board Designated Funds to satisfy SJHSRI's liabilities

at close and any potential future funding and expenses related to the SJHSRI pension plan, and any surplus shall be transferred to the CCHP Foundation.” Exhibit 76 at 4.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 137:**

Undisputed.

**PLAINTIFFS’ STATEMENT NO. 138:**

The Attorney General retained James P. Carris, C.P.A. “to review and evaluate the Proposed transaction and to provide expert witness testimony if the Proposed Transaction proceeds to litigation.” Exhibit 77 (Carris Retainer Agreement as March 25, 2014) at 2. In particular, Mr. Carris was retained to “[a]nalyze all financial aspects of the Proposed Transaction...” *Id.* at 3.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 138:**

*Response No. 138.1 (First Sentence):* Undisputed.

*Response No. 138.2 (Second Sentence):* Undisputed that Mr. Carris was retained to, among other things, analyze “all financial aspects of the Proposed Transaction.” The quoted phrase in the second sentence of Statement No. 138, however, does not appear as quoted in ECF No. 243-77.

**PLAINTIFFS’ STATEMENT NO. 139:**

The Department of Health retained Harborview Consulting, LLC to provide expert analysis (principally through Dr. John J. Schibler). The Department of Health’s May 19, 2014 Decision with Conditions approving the HCA conversions summarized that scope of services and the Department of Health’s reliance thereon:

For this conversion review, the Department contracted with Harborview Consulting, LLC ("Harborview"), the principal of which is John J. Schibler, CPA, Ph.D., to work directly with staff to interpret and analyze financial information supplied by the transacting parties. Additionally, Harborview's

services included the analysis of financial documents, papers, and related financial records provided by the transacting parties, that included audited and internal financial and operating statements, and any financial or utilization data provided to the Department by the transacting parties as part of the conversion review. The purpose of the contract was to obtain consulting services of an expert in the hospital/health care accounting industry to develop a financial assessment of the proposed conversion.

Exhibit 78 (Decision with Conditions) at 2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 139:**

*Response No. 139.1 (First Sentence):* Undisputed.

*Response No. 139.2 (Second Sentence):* Undisputed that the quoted language appears, *inter alia*, in ECF No. 243-78.

**PLAINTIFFS' STATEMENT NO. 140:**

On May 6, 2014, Dr. John J. Schibler testified before the Project Review Committee:

REVEREND SHIRE: Thank you very much, Doctor. Let me start with a question. I'm interested in hearing more about the unfunded pension liability. Can you say a few words about that.

DR. SCHIBLER: Yeah, I looked at the unfunded pension liability. I have looked at a report. Let me qualify this by one thing. Usually, typically what I would want to look at is either the footnote in the audited financial statements or I would want to look at the actual actuary's report. I did see a projection, and in essence what that projection said was that with that \$14 million being added to the pension plan, that it was going to require about an additional \$600,000 a year to fund that pension plan, and that they were intending that that was to come from some perpetual trusts that are part of St. Joseph's, and then it was also indicated that possibly anything that they would receive on their 15 percent from the joint venture. So, again, the reason I qualify that is it's been represented that the pension plan with the \$14 million is funded to the 90 percent level. I have not seen an actuary's report that actually specifies that 90 percent level, so that's the only qualification.

Exhibit 79 (May 6, 2014 Project Review Committee hearing transcript) at 24-25.

**DIOCESAN DEFENDANTS' RESPONSE NO. 140:**

Undisputed that ECF No. 243-79 contains, *inter alia*, the quoted language. To the extent Statement No. 140 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan's alleged status as a church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 141:**

At the conclusion of the May 6, 2014 Project Review Committee hearing, the committee voted to approve the HCA applications and recommend further approval by the Health Services Council. Exhibit 79 (May 6, 2014 Project Review Committee hearing transcript) at 87-89.

**DIOCESAN DEFENDANTS' RESPONSE NO. 141:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 142:**

The Project Review Committee issued a written report to the Health Services Council on May 13, 2014. Exhibit 80.

**DIOCESAN DEFENDANTS' RESPONSE NO. 142:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 143:**

On May 13, 2014, the Health Services Council of the Rhode Island Department of Health approved the Project Review Committee's written report, recommending that the Department of Health approve the CEC Applications with certain conditions. Exhibit 80 (May 13, 2014 Health Services Council hearing transcript) at 98.



**DIOCESAN DEFENDANTS' RESPONSE NO. 143:**

Undisputed that the Health Services Council approved the Project Review Committee's written report with revisions on May 13, 2014. *See* Health Services Council CEC Decision.<sup>5</sup> Disputed that ECF No. 243-80 is a hearing transcript or reflects the Health Services Council's approval of the Project Review Committee's written report.

**PLAINTIFFS' STATEMENT NO. 144:**

On May 14, 2014, Mr. Carris submitted his report to the Attorney General.  
Exhibit 81.

**DIOCESAN DEFENDANTS' RESPONSE NO. 144:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 145:**

The Attorney General conditionally approved the HCA Application by written decision dated May 16, 2014. Exhibit 82. One of the "conditions" imposed by the Attorney General:

9. That the transaction be implemented as outlined in the Initial Application, including all Exhibits and Supplemental Responses.

Exhibit 82 at 52.

**DIOCESAN DEFENDANTS' RESPONSE NO. 145:**

*Response No. 145.1 (First Sentence):* Undisputed.

*Response No. 145.2 (Second Sentence):* Undisputed that ECF No. 243-82 contains, *inter alia*, the quoted language. To the extent Statement No. 145 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan's alleged

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<sup>5</sup> Available from the Department of Health's website at <https://drive.google.com/file/d/0B9lx-sHDAL9qRmJPWmd1MXNpbEk/view?resourcekey=0-MP1U6B9AOyFHDm6JpR981w>.

status as a church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 146:**

The Rhode Island Department of Health conditionally approved the HCA Application on May 19, 2014. Exhibit 78. One of the “conditions” imposed by the Rhode Island Department of Health was:

1. The transacting parties shall implement the conversion, as detailed in the initial application, and as conditionally approved by the Director of Health.

Exhibit 78 at 33.

**DIOCESAN DEFENDANTS' RESPONSE NO. 146:**

Response No. 146.1 (First Sentence): Undisputed.

Response No. 146.2 (Second Sentence): Undisputed that ECF No. 243-78 contains, *inter alia*, the quoted language. To the extent Statement No. 146 is offered for the purposes of establishing that state regulators decided, accepted, or relied on the Plan’s alleged status as a church plan in approving the HCA Application, disputed for the reasons identified *supra* at Response No. 106.2.

**PLAINTIFFS' STATEMENT NO. 147:**

The asset sale closed on June 20, 2014. See Exhibit 83 (June 23, 2014 email from the Diocese of Providence to Michael Conklin acknowledging receiving \$638,838.25 from the closing proceeds).

**DIOCESAN DEFENDANTS' RESPONSE NO. 147:**

Undisputed that the sale of substantially all of SJHSRI, RWH, and CCHP’s assets closed on June 20, 2014. Statement No. 147 overlooks that the referenced acknowledgement of receipt of \$638,838.25 in closing proceeds was repayment of a valid loan from the Inter-Parish

Loan Fund. ECF No. 243-83 (June 23, 2014 Email Chain between Cheryl Brennan and Michael Conklin) at 1.

**PLAINTIFFS' STATEMENT NO. 148:**

At 10:17 a.m. on June 20, 2014, CCHP filed articles of amendment with the Rhode Island Secretary of State, changing its name from “CharterCARE Health Partners” to “CharterCARE Community Board.” Exhibit 84 (Articles of Amendment) at 1.

**DIOCESAN DEFENDANTS' RESPONSE NO. 148:**

Undisputed.

**PLAINTIFFS' STATEMENT NO. 149:**

One minute later, at 10:18 a.m. on June 20, 2014, Prospect Chartercare, LLC filed a “fictitious business name statement” with the Rhode Island Secretary of State, stating that it would operate under the “fictitious name” of “CharterCARE Health Partners,” which was the same name under which SJHSRI, RWH, and CCHP had operated Old Fatima Hospital and Old Roger Williams Hospital from 2009 right up to the day of the closing of the 2014 Asset Sale. Exhibit 85 (fictitious business name statement) at 1.

**DIOCESAN DEFENDANTS' RESPONSE NO. 149:**

Undisputed that at 10:18 AM on June 20, 2014, Prospect Chartercare LLC filed a “fictitious business name statement” with the Rhode Island Secretary of State, stating that it would operate under the “fictitious name” of “CharterCARE Health Partners,” which was the same name of the hospital system of which SJHSRI, RWH and CCHP operated Old Fatima Hospital and Old Roger Williams Hospital from January 4, 2010 until the day of the closing of the 2014 Asset Sale. Disputed that SJHSRI, RWH, or CCHP operated Old Fatima Hospital or Old Roger Williams Hospital under the name of CharterCARE Health Partners at any time

before January 4, 2010. The CCHP system did not become effective/operational until January 4, 2010, as discussed *supra* at Response No. 93.2

**PLAINTIFFS' STATEMENT NO. 150:**

Moreover, the new entities retained existing management, including the executives that had led the effort for regulatory approval such as Ken Belcher and Michael Conklin. See Exhibit 57 (January 2, 2014 HCA Application) at 39 (“[T]he CEO of the Licensed Entities, Ken Belcher, will report to the President of Prospect East. . . The Chief Financial Officer (‘CFO’) of Prospect CharterCARE, LLC, Mike Conklin, will report to the CEO of Prospect CharterCARE, LLC”).

**DIOCESAN DEFENDANTS' RESPONSE NO. 150:**

Undisputed that ECF No. 243-57 provides that Mr. Belcher and Mr. Conklin would be retained following the 2014 Asset Sale. Disputed that either person continued in their management role for any substantial period. Rather, both were preparing to leave their employment almost immediately after the 2014 Asset Sale closed. Mr. Belcher announced his retirement on July 7, 2014, effective August 29, 2014. Ex. 38 (Belcher Resignation Letter) at 1. Mr. Conklin had his duties curtailed, claimed “de facto termination” on July 10, 2014 under his employment contract, and became embroiled in a dispute with Prospect CharterCARE LLC that resulted in litigation. *Prospect CharterCARE LLC v. Conklin*, 185 A.3d 538, 541 (R.I. 2018).

**PLAINTIFFS' STATEMENT NO. 151:**

On July 24, 2014, the Chancellor of the Diocese of Providence, Father Timothy Reilly, contacted the Editor of the *Rhode Island Catholic* about doing a story on the sale of Our Lady of Fatima Hospital, which would be a “great way to emphasize the positives of this

transaction.” Exhibit 86 (Father Reilly’s July 24, 2014 email). In his email Father Reilly made the following statement:

Given the financial challenges for SJHSRI/Fatima Hospital over the past five years, the new joint venture presents the best possible alternative so that Catholic healthcare continues to be available here in Rhode Island. The Catholic Church will remain involved in the ongoing mission of SJHSRI/Fatima Hospital, especially regarding pastoral care. That will not change.

And, since the new parent company is contractually bound by “Catholicity covenants”, the Catholic identity of Fatima Hospital remains as well (the covenants provide for, among other things, the continued presence of a Catholic priest-chaplain; a specifically Catholic chapel in which the Blessed Sacrament is kept; as well as the signage, crucifixes, and statues that serve as visible reminders that Our Lady of Fatima is a Catholic hospital.

Exhibit 86 at 1.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 151:**

Undisputed.

**PLAINTIFFS’ STATEMENT NO.152:**

Not coincidentally, over those five years SJHSRI had accrued accumulated liabilities on the Plan of over \$72,000,000. See *supra* at ¶ 56. However, as a result of the Asset Sale, the entity that owned Fatima Hospital no longer carried liability for the Plan on its balance sheet. Exhibit 87 (Prospect Chartercare, LLC’s 2014/2015 audited financial statements) *passim*.

**DIOCESAN DEFENDANTS’ RESPONSE NO. 152:**

Response No. 152.1 (First Sentence): Undisputed that SJHSRI had accrued pension liability and that the November 15, 2011 CCHP Finance Committee meeting minutes cited at Statement No. 56 place the liability at \$72 million. Disputed that there was any connection between Statement No. 151 and the facts set forth in Statement No. 152 as implied by the words “not coincidentally.”

Response No. 152.2 (Second Sentence): Undisputed that the liability for the Plan remained with SJHSRI after the 2014 Asset Sale and that it was not assumed by the entity that acquired Fatima Hospital (Prospect CharterCARE SJHSRI LLC) or Prospect CharterCARE LLC. ECF No. 238-11 (Executed APA, with selected exhibits) § 2.4 & Schedule 2.4 (indicating that the Plan is among “certain excluded liabilities” that would not be assumed by Prospect CharterCARE LLC and its subsidiaries).

**PLAINTIFFS' STATEMENT NO. 153:**

On August 21, 2014, the *Rhode Island Catholic* published its story. Exhibit 88. The Bishop was interviewed in connection with the story, and stated as follows:

For all intents and purposes, Fatima Hospital will retain its Catholicity, and that is guaranteed by contract now. It's not just an aspiration, it's guaranteed by contract that the Catholic identity of Fatima Hospital itself is still under the supervision of the local bishop and that in all of its ministries and external signs Fatima Hospital will be as Catholic as it has ever been.

Even though we are out of the direct delivery of healthcare services itself, we will still have a hospital that's thoroughly Catholic in many ways.

Exhibit 88 at 2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 153:**

Undisputed, provided that “the Bishop” refers to the Most Reverend Bishop. Disputed to the extent “the Bishop” refers to RCB, DSC, or DAC. Nothing in ECF No. 243-88 indicates that the Most Reverend Bishop gave this interview on behalf of RCB, DSC, or DAC, rather than in his role as the canonical leader of the Diocese of Providence. 1983 Code c.376 & 377.

**PLAINTIFFS' STATEMENT NO. 154:**

Ken Belcher (formerly SJHSRI's CEO) was also interviewed and stated as follows:

The new partnership will continue to uphold its commitments to preserve the Catholic identity of the facilities just as CharterCARE had promised the diocese it would do when it initially became the parent company.

We have been very careful to make sure that we have maintained all the promises that we said we would, particularly within the affiliated structure and respecting the ethical and religious directives.

Exhibit 88 at 2.

**DIOCESAN DEFENDANTS' RESPONSE NO. 154:**

Undisputed that ECF No. 243-88 contains, *inter alia*, the quoted language, although it appears that the first paragraph is a paraphrase of what Mr. Belcher communicated to the article's author, rather than a direct quote.

ROMAN CATHOLIC BISHOP OF  
PROVIDENCE, A CORPORATION SOLE,  
DIOCESAN ADMINISTRATION  
CORPORATION and DIOCESAN SERVICE  
CORPORATION

By Their Attorneys,

PARTRIDGE SNOW & HAHN LLP

/s/ Howard Merten

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of June, 2022, the foregoing document has been filed electronically through the Rhode Island ECF system, is available for viewing and downloading, and will be sent electronically to the counsel who are registered participants identified on the Notice of Electronic Filing.

/s/ Howard Merten

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# **EXHIBIT 23**



**CharterCARE Health Partners  
Board of Trustees Meeting**

Wednesday, April 30, 2014 – 3:00 p.m.  
RWMC – Kay Auditorium

Present: E. Santos, Chairman; K. Belcher, C. Chihlas, M.D., P. DeBlasio, M.D.,  
J. DiStefano, Esq., D. McQueen, C. Maynard, D. Ryan,  
Rev. T. Reilly, K. Stiles

Absent: E. Jones, M.D., Rev. B. Shanley, O.P., S. Smith, Ph.D.

Staff: J. Dooley, R.N., P. Nadle, R.N., K. O'Connell, Esq., D. Souza, D. Spicuzza

1. **Call to Order**

Mr. Santos called the meeting to order at 3:05 p.m.

2. **Approval of Meeting Minutes**

A motion was made to approve the minutes of the February 27, 2014 meeting with one minor revision. The motion was accepted and unanimously approved.

3. **Report of the Chairman**

Mr. Santos reported that he had received favorable feedback regarding The Providence Journal article pertaining to the DOH/AG public hearing held on April 28. Mr. Santos stated that the presentations which took place at the hearing provided an opportunity for the Project Review Committee and the public to learn about the strategic direction of the Prospect CharterCARE joint venture and ongoing commitment to deliver quality patient care through best practices. Mr. Santos stated that senior leadership from Prospect and CCHP, union leadership, trustees and employees were in attendance at the hearing and many provided comments in support of the joint venture. Mr. Santos thanked Mr. McQueen and Dr. Smith for attending the hearing and speaking on behalf of CCHP and the Board of Trustees.

4. **Consent Agenda**

A motion was made to approve the following meeting minutes: RWMC Board of Trustees of January 9, 2014; SJHSRI Board of Trustees of January 23, 2014; CCHP Executive Committee of January 23, 2014; CCHP Finance Committee of January 14, 2014; CCHP Governance Committee of January 28, 2014 and CCHP Quality Committee of December 19, 2013. The motion was seconded and unanimously approved.

5. President's Report

▪ Quality Update

Ms. Nadle reported that as part of the HCA process she met with Dr. Mary Cooper, a local and national quality, patient care and safety expert contracted by the DOH/AG. She stated that Dr. Cooper had done an extensive review on the background of CCHP quality and performance improvement programs, core measures, patient satisfaction scores and certifications, as well as performance improvement activities at Prospect Medical. She reported that Dr. Cooper was complimentary of the quality programs at CCHP and Prospect and noted that the joint venture would provide a well balanced program with the strengths of each partners.

Ms. Nadle reported that the Quality Committee is in the process of revising the format of the quality report. The new report will include graphs and provide data in a more meaningful format.

Mr. Belcher reported that the Department of Health was in the process of completing its survey at Elmhurst Extended Care today. He noted that there were 10 surveyors present as part of a training group. Ms. O'Connell attended the survey exit conference this afternoon at Elmhurst and therefore will arrive late for today's Board meeting.

The Board discussed core measures scores under the "Effective" heading and the reasons national targets have not been met. Mr. Belcher suggested that an educational session on core measures could be scheduled for a future meeting.

▪ Rhode Island Healthcare Update

▪ Hospital Association of Rhode Island

Mr. Belcher reported that Ed Quinlan will be retiring tomorrow as President from The Hospital Association of Rhode Island. Michael Souza, HARI CFO, will serve as interim President during the search process. Mr. Belcher noted that Dr. Smith is the chairperson of a committee at HARI.

▪ South County Hospital

Mr. Belcher reported that South County Hospital remains in an exclusivity arrangement with South Coast Health System.

▪ Prime Healthcare

Mr. Belcher thanked Mr. Santos, Mr. McQueen, Dr. Smith, Monsignor Theroux, employees and physicians for testifying at the public hearing on behalf of CCHP. He reported that the hearing went well and that press thus far has been favorable.

Mr. Belcher stated that the presentations included a review of the historical facts and criteria used during the RFP process and that resulted in selection of Prospect Medical as a joint venture partner. Additionally, he reported that the presentations outlined the review process by

the Board with regard to Prime's proposal and subsequent correspondence. Mr. Belcher reviewed Prime's proposal for members of the Board which included development of an acquisition model versus joint venture. He noted that correspondence was being drafted to be sent to Attorney General Kilmartin from the Board of Trustees, prior to the next hearing, outlining the timeline and steps taken during the review process. He further noted that correspondence was also in the process of being sent from Union leadership to the Attorney General.

Mr. Belcher reported that the next hearing before the Project Review Committee (PRC) will be held on May 6<sup>TH</sup> at 2:30 p.m. and stated that members of the Board were welcome to attend this session. At this hearing, the PRC will vote on a recommendation to the full Health Services Council scheduled for May 13<sup>th</sup>. He stated that a final decision on the application is expected to be rendered by Dr. Michael Fine and Attorney General Kilmartin on or before May 19<sup>th</sup>.

▪ **Financial Update**

In Mr. Conklin's absence, Mr. Belcher provided a financial report for the period ending March 2014.

Mr. Belcher reported that SJHSRI had a profitable month with a net gain from operations of \$286,000, although year-to-date the Hospital reported an unfavorable loss of \$5.3 million. At RWMC, he reported a \$475,000 net loss from operations and an unfavorable year-to-date loss of \$2.2 million.

Mr. Belcher reported that volume at both heritage hospitals continues to be a challenge. He noted that inpatient volume is down throughout the state and that there has been a shift toward patients utilizing outpatient services. He reported that financial statements for this period reflect several one-time expenses, including tail liability coverage for Residents, costs related to the affiliation, i.e., consultants, legal, DOH/AG expert and consultant fees. In addition, he stated that Two Midnight Rule criteria have been responsible for a significant number of patients moved into observation status.

Mr. Belcher reported that revenue streams continue to be identified. He reported that progress continues on development of the IPA and recruitment of physician practices. Senior management continues to meet regularly to identify further expense reductions. Mr. Belcher provided an update on the cash position at both heritage hospitals. He reported that Our Lady of Fatima implemented a new program for wait time in the Emergency Department and, as a result, there has been an increase in the number of E.D. visits.

Mr. Belcher stated that in light of the pending transaction date for the affiliation, Mr. Conklin, Ms. O'Connell and Ms. Kane were in the process of reviewing charitable asset structure.

▪ **Elmhurst Extended Care Update**

Mr. Belcher reported that the Department of Health was concluding its survey this afternoon and that there were several items requiring corrective action.

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Board of Trustees Meeting - April 30, 2014

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▪ **External Affairs/Development Update**

Mr. Belcher reported that RWMC hosted the New England Oncology Symposium on April 13 and 14 at the Providence Biltmore. The two-day event was well attended by a number of local and national clinicians and included academic programs and a Saturday evening gala.

Mr. Belcher reminded members of the Board that the CharterCARE Annual Golf Tournament will be held on May 12.

Mr. Belcher reviewed the following media/marketing correspondence distributed at the meeting:

- CCHP - Rhode Island Monthly "Top Docs"
- RWMC Bariatric Surgery Program
- SJHSRI Emergency Department Online Waiting Time Program.

▪ **CCHP Retirement Plan**

Ms. Souza discussed the current CharterCARE retirement plans. She reviewed proposed changes to the Plans that must occur as a result of the for-profit status effective upon close. She presented the following Resolutions for each Plan that includes adoption of an Amendment and termination of the Plan effective May 31, 2014 and establishment of a replacement qualified plan effective June 1, 2014:

- 1) RWMC Defined Contribution Plan (Attachment 1)
- 2) RWMC Tax Sheltered Annuity Program (Attachment 2)
- 3) SJHSRI 403(b) Savings Plan (Attachment 3)

The Board discussed ramifications if the closing were to take place after June 1, 2014. There was general consensus amongst the members that the current Plans be retained in the event of a later closing date.

After discussion, the Board voted to adopt Resolutions for the (1) RWMC Defined Contribution Plan; (2) RWMC Tax Sheltered Annuity Program; and (3) SJHSRI 403(b) Savings Plan as presented and contingent upon (i) a June 1, 2014 closing date or alternate to be determined date, and (ii) that the current Plans be retained until such closing date occurs.

**6. Report of Committee Chairs**

- **Executive Committee** - No further business to report.
- **Finance, Audit & Compliance** - No further business to report.
- **Governance and Nominating Committee** -

Mr. McQueen reported that the Governance and Nominating Committee had met several times to develop rosters for each of the various Boards post-closing. He noted that

consideration was given to members based on interest expressed in the Board survey, although he noted that appointments were limited to a single board.

Mr. McQueen reported that the new Prospect CharterCARE Board will be comprised of eight (8) seats, four (4) members appointed by Prospect and four (4) members appointed by CCHP, with the requirement that one (1) CCHP member is a physician. Mr. McQueen explained that there was considerable discussion amongst members of the Nominating Committee as to whether the fourth slot should be filled by an internal or external candidate. He indicated that there was general consensus to nominate an external candidate who was highly visible in the community and possessed a strong professional background and skill set. A recommendation was brought forth to nominate Mr. Edward Quinlan who was retiring tomorrow as President of The Hospital Association of Rhode Island.

After discussion, Mr. McQueen called for a motion to appoint the following individuals to the **Prospect CharterCARE Board LLC**, as recommended by the Nominating Committee:

1) Edwin Santos 2) Joseph DiStefano, Esq. 3) Elaine Jones, M.D. and 4) Edward Quinlan. The motion was seconded and unanimously approved.

Mr. McQueen discussed the roles and responsibilities of the "Old" CCHP Board going forward. The Board's primary responsibility will be for oversight and monitoring of transition activities, satisfying liabilities, and ensuring compliance with terms of the Operating Agreement. After discussion, Mr. McQueen called for a motion to appoint the following individuals to the **"Old" CCHP Board**, as recommended by the Nominating Committee:

1) Daniel Ryan, Chair 2) Nancy Rogers 3) Christopher Chihlas, M.D. 4) Fr. Kenneth Sicard 5) Joseph Mazza, M.D. 6) Gary Pannone, Esq. and 7) Fr. Timothy Reilly. The motion was seconded and unanimously approved.

Mr. McQueen stated that the Roger Williams Medical Center Board will continue to meet under the post-affiliation structure with six (6) appointees, 50% which are physicians. He called for a motion to appoint the following individuals to the new **Prospect Roger Williams Medical Center Board**, as recommended by the Nominating Committee: 1) Sheri Smith, Ph.D., Chair 2) Louis Mariorenzi, M.D. 3) Charles Maynard 4) James Melfi, Pharm.D.

5) Medical Staff President and 6) Medical Staff Vice President. The motion was seconded and unanimously approved.

Mr. McQueen stated that the St. Joseph Health Services of Rhode Island board will continue to meet under the post-affiliation structure with six (6) appointees, 50% which are physicians. He called for a motion to appoint the following individuals to the new **Prospect St. Joseph Health Services of Rhode Island Board**, as recommended by the Nominating Committee: 1) Monsignor Paul Theroux, Chair 2) Fr. Robert Forcier, R.Ph. 3) Leslie Martineau 4) Joseph Samartano, Jr., DDS 5) Medical Staff President and 6) Medical Staff Vice President. The motion was seconded and unanimously approved.

Ms. O'Connell reported that the both the new RWMC and SJHSRI Boards will become for-profit entities and will fall under the Prospect CharterCARE Board LLC. The old RWMC and SJHSRI Boards will remain as non-profit entities and fall under the "Old" CCHP Board.



Mr. McQueen stated that the role of the CharterCARE Foundation Board post-close will be to monitor charitable assets given that these funds will remain with CCHP and not be transferred to the joint venture. Mr. DiStefano indicated that a certain number of funds within the Foundation will need to be brought before the courts in the form of Cy Pres requests. Ms. O'Connell discussed the organizational structure of this Board post-close.

McQueen reported that he has volunteered to Chair the CCHP Foundation Board. He noted that there was no restriction regarding the number of members who may be appointed. After discussion, he presented the following individuals for appointment to the **CCHP Foundation Board**, as recommended by the Nominating Committee: 1) Donald McQueen, Chair 2) Ellen McCarty 3) D. Faye Sanders 4) Richard Beretta, Esq. and 5) Patricia Wegrzyn McGreene. A motion was made to appoint these individuals. The motion was seconded and unanimously approved.

Mr. Santos thanked Mr. McQueen for chairing the Nominating Committee and overseeing this process and also thanked those Trustees who have agreed to continue to serve.

- **Investment Committee** – No further business to report.
- **Quality Committee** – No further business to report.
- **Strategic Planning Committee** – No further business to report.

#### 7. Report of the Medical Staff Presidents

SJHSRI – No new business to report.

RWMC – Dr. Chihlas reported that implementation of ICD 10 has been delayed another year.

#### 8. Executive Session

The Board went into Executive Session and staff members were excused. The Board discussed the State's application process, including the public comments from Prime Medical. Feedback from CCHP physicians was also shared.

Respectfully submitted,

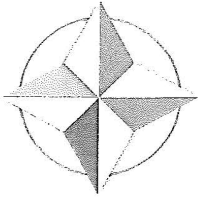
**DRAFT**

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Kimberly A. O'Connell, Esq., Secretary

# **EXHIBIT 24**





WWW.CHARTERCARE.ORG

**CharterCARE**  
HEALTH PARTNERS

March 2, 2015

Raymond Rusin  
Chief  
Office of Facilities Regulation  
Rhode Island Department of Health  
Three Capitol Hill  
Providence, RI 02908-5097

Dear Mr. Rusin:

Enclosed please find the Prospect CharterCARE LLC March 1, 2015 Status Report on the RI Department of Health Hospital Conversion Act Conditions of Approval.

If any further information or clarification is needed, please contact Moshe Berman, Esq, General Counsel for CharterCARE Health Partners at 401-456-2498 or via email at [moshe.berman@chartercare.org](mailto:moshe.berman@chartercare.org).

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Lester P. Schindel". The signature is fluid and cursive, with the first and last names being more prominent.

Lester P. Schindel  
Chief Executive Officer

Enclosures



WWW.SAINTJOSEPHRI.COM

200 HIGH SERVICE AVENUE  
NORTH PROVIDENCE, RI 02904  
(401) 456-3000

March 1, 2015

Michael Fine, M.D.  
Director of Health  
Rhode Island Department of Health  
Three Capitol Hill  
Providence, RI 02908

Dear Dr. Fine,

This letter confirms compliance with Condition 6 of the Hospital Conversions Act decision issued by the Rhode Island Department of Health on May 19, 2014.

Condition 6 states: *"As long as St. Joseph Health Services of Rhode Island continues to provide prenatal care at its clinic, the new hospitals shall, subject to the Ethical and Religious Directives, participate in all local (defined as the primary service area) and statewide coalitions that work to improve prenatal care and to prevent teen pregnancies, including the Rhode Island Alliance and the Rhode Island statewide prematurity task force."*

Prospect CharterCARE SJHSRI, LLC has addressed the concerns expressed in Condition 6. Prospect CharterCARE SJHSRI, LLC has in effect a contract with Women & Infants Hospital which provides coverage and clinical oversight related to the obstetrical and gynecological services provided by the St. Joseph Health Center. This agreement ensures continuity, efficiency, quality and safety of the prenatal services provided to patients.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Hughes".

Thomas C. Hughes, MHA, FACHE  
President

TCH:lmh

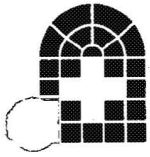


AN AFFILIATE OF **CharterCARE**  
HEALTH PARTNERS

DIVISIONS:

OUR LADY OF FATIMA HOSPITAL | ST. JOSEPH CENTER FOR HEALTH & HUMAN SERVICES

# **EXHIBIT 25**



## St. Joseph Health Services of Rhode Island

200 High Service Avenue  
No. Providence, RI 02904  
401-456-3000

August 27, 2009

Dear Fellow Employees:

We all know the importance of retirement savings. The past year has made us acutely aware of how volatile and complex the economy and stock market can be. As a result, we are writing to inform you that, after several months of intense review and analysis by our pension consultant, it has been determined that the risks and costs associated with the Defined Benefit Pension Plan have necessitated that the Hospital change the way it provides retirement benefits to employees. The uncertainty of future value and prohibitive costs associated with the Hospital's Defined Benefit Pension Plan, and the desire to preserve our current pension assets require prompt action. As a result, *the Hospital will freeze benefits under the Defined Benefit Pension Plan effective September 30, 2009 and offer an employer matched 403(b) retirement plan as a competitive alternative retirement benefit to our workforce.*

*Under this change, the retirement benefits earned by eligible employees under the Defined Benefit Pension Plan through September 30, 2009 will not be affected*, but future service will not be credited in determining benefits. Eligible employees will, however, continue to earn vesting credit while employed with the Hospital and are still entitled to receive a retirement benefit from the Defined Benefit Pension Plan.

The decision to freeze the Defined Benefit Pension Plan was driven by the same market conditions that have resulted in the discontinuance of thousands of employer defined benefit plans throughout the country. These recent market conditions, specifically investment volatility, have and will continue to increase costs of the Defined Benefit Pension Plan. As a result, the Hospital made a decision to protect the current assets of the Plan, and prevent future funding losses that likely would have jeopardized the entire plan in the long term.

The following are examples of the effect that the freeze of benefits, under the Defined Benefit Pension Plan, has on specific groups of participants:

- Active employees age 55 with 85 points are still eligible to receive the full benefit they were entitled to prior to the September 30, 2009 freeze. However, the calculation of the benefit will not take into consideration future salary and service.
- Active employees over age 60 with 30 years of service are still eligible to receive the full benefit they were entitled to prior to the September 30, 2009 freeze. However, the calculation of the benefit will not take into consideration future salary and service.
- Active employees with less than 5 years of service will continue to receive credit for vesting as long as they remain active employees of the Hospital.
- Early Retirement Incentive - employees who have 85 points but have not yet attained age 55 will not be eligible to receive the early retirement incentive if age and years of service do not meet the eligibility criteria on September 30, 2009.

### Divisions:



200 High Service Avenue  
North Providence, RI 02904



21 Peace Street  
Providence, RI 02907



153 Dean Street  
Providence, RI 02903

# **EXHIBIT 26**



ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND

FINANCE COMMITTEE MEETING  
of the  
BOARD of TRUSTEES

FRIDAY, JULY 11, 2008

<b>Call to Order</b>	The meeting of the Finance Committee of the Board of Trustees of St. Joseph Health Services of Rhode Island was called to order in Conference Room "1" at the St. Joseph Hospital for Specialty Care at 8:05 a.m. Mr. Daniel Ryan, Chairman of the Finance Committee.
<b>Present</b>	Mr. Daniel Ryan, Chairman – Finance Committee Mr. John M. Fogarty Ms. Karen DelPonte Mr. Kevin Stiles
<b>Administrative Staff</b>	Ms. Kathleen A. Kenny Chief Financial Officer  Ms. Pat O'Connor Interim Chief Operating Officer
<b>Excused</b>	Mr. Jeffrey Massotti
<b>Guest</b>	Mr. Christopher A. Ferraro Administrative Director of Finance St. Joseph Health Services of Rhode Island
<b>Minutes</b>	The minutes of the Finance Committee meeting held on June 6, 2008 were approved as written.
<b>Investments Requiring Approval</b>	<p>Ms. Kenny reported that there were no investments during the period June 7, 2008 through July 10, 2008.</p> <p>In reference to the UBS/PaineWebber Fund and State Street Global bank, Ms. Kenny reported that Ms. Mary Cove of Cambridge Associates provided the following information:</p> <p><u>UBS/PaineWebber Fund</u> Ms. Kenny reviewed with the Committee the most recent recommendation from Cambridge Associates regarding UBS/Paine Webber and the Hospital's Operating Investments. The recommendation is to move the funds from UBS Select Prime Money Market Fund to UBS Select Treasury Fund. Ms. Kenny indicated that this fund is more conservative and has only a slightly lower yield and carries a lower return 2.5% vs. 1.89%.</p> <p><b><u>Motion:</u> A motion was duly made, seconded and passed to move the current funds invested in UBS/PaineWebber Select Prime Money Market Fund to UBS/PaineWebber Select Treasury Fund.</b></p> <p><u>State Street Global Bank</u> Ms. Kenny reviewed the latest information with regard to the State Street Global Pension Investment. Currently the Hospital has been offered a 20% loss settlement. Cambridge Associates has indicated that potentially more room exists (60% and 50%) in increasing the loss settlement. Cambridge Associates has communicated to the Hospital that they are not available to provide legal advice and cannot comment on whether or not to accept a settlement offer nor can they negotiate a settlement on behalf of the Hospital.</p>

Ms. Kenny indicated that she was looking for guidance from Cambridge Associates to structure a counter offer letter. Since Cambridge Associates has declined such participation in this process, Ms. Kenny will ask Mr. Raucci as well as Cambridge Associates for a recommendation of an attorney to assist in drafting such correspondence.

**May 2008  
Financial  
Report**

Ms. Kenny reviewed the operating results for May 2008. Net income (loss) from operations for the month of May was (\$111,152) resulting in an unfavorable budget variance of (\$251,074). On a year-to-date basis, net income from operations was (\$2,210,425) versus a budget of \$1,367,507 resulting in an unfavorable budget variance of (\$3,577,932).

Inpatient Net Revenue was \$240,331 over budget for May due to the following:

- Medical/Surgical Net Revenue was over budget by \$1,153,294 as a result of a prior year (1992 – 1994) Medicare settlement and favorable variances in case mix, payor mix and charity care. These positive variances were partially offset by discharges and length of stay being lower than budget (Blue Cross reimburses on a per diem basis).
- Psychiatric Net Revenue was under budget by \$92,424 due to an unfavorable variance in patient days (3.1%). This was somewhat offset by positive changes in payor mix.
- Rehabilitation Net Revenue was under budget by \$668,996 due to discharges being 7.4% below budget and patient days being 10.6% below budget.
- Transitional Care Net Revenue was under budget by \$151,543 due to the closing of the unit on May 9<sup>th</sup>.

Mr. Stiles asked if the \$925,567 of the Medicare Settlement could be reported below the line so that the operating loss for the month can be reflected appropriately. Ms. Kenny agreed that the information will be restated. The actual loss from operations for May 2008 was (\$1,036,719).

Mr. Fogarty indicated that the Hospital's admissions are one percent higher than last year, but outpatient volume continues to be unfavorable. The Emergency Room volume continues to be unfavorable due to a decline in walk-in patients coming to the facility. This decline is also being seen in other Emergency Rooms throughout the state.

Outpatient net revenue was (\$429,928) under budget for May and year-to-date outpatient net revenue was under budget by (\$2,659,934). Month-to-date Emergency Room volume is under budget (16.5%), which is having an unfavorable impact on other ancillary outpatient services. Outpatient surgical volume is unfavorable for the month of May (19.6%) and year to date (12.4%) due to competition from free standing ambulatory surgical centers.

Ms. Kenny noted that expenses were unfavorable for the month of May.

Description	Current	Year-to-Date
Salary	\$63,886	(\$970,087)
Temporary Help	39,903	282,832
Benefits	(205,037)	(317,053)
Other Non-Salary	313,980	586,208
Depreciation	0	750
Interest	(2,893)	(31,281)
<b>Subtotal</b>	<b>\$209,819</b>	<b>(\$448,631)</b>
Bad Debts	(466,715)	(389,296)
<b>Total</b>	<b>(\$256,896)</b>	<b>(\$837,927)</b>

( ) Denotes unfavorable expense variance



- Salary expense had a favorable variance for May primarily due to the reduction in force that took place in March as well as tighter management of nursing overtime. The year-to-date unfavorable variance is primarily in direct patient care areas and is a result of higher than budgeted overtime costs.
- Temporary Help expense is favorable for May due to travel nurse contracts coming to an end. The year-to-date favorable variance partially offsets the unfavorable salary variance in direct patient care areas.
- Benefits had an unfavorable variance for May primarily in medical/dental insurance. The variance is particularly higher in May due to the settlement of the Blue Cross contract which ended in December 2007. The December run-out was increasingly high due to employees having services performed prior to the change to United Health. Medical/Dental Insurance will continue to have unfavorable monthly variances due to more employees adding coverage that were not previously covered through the Hospital, in addition to under estimating the overall increase in these programs at the time the budget was prepared.
- Other non-salary expenses are favorable for May. The Hospital recognized reductions in costs within Pharmacy and Ambulatory Care Center primarily due to lower than expected volume. On a year-to-date basis the Hospital has a favorable variance overall. The unfavorable variances, primarily in Operating Room (billable supplies) and Laboratory are revenue-related costs and Administration (QHR and Temporary Staffing) and are offset by positive variances in Pharmacy, Engineering and Ambulatory Care Center.
- Bad Debt is over budget due to a larger amount of self-pay write offs than budgeted. Ms. Kenny indicated that the hospital typically has a favorable variance in Accounts Receivable but at the end of May there is no variance. The favorable variance is typically used to increase the Allowance for Bad Debt. Due to the ratio of self pay accounts receivable to Allowance for Bad Debt being lower than where the hospital was at the end of last fiscal year, additional reserves have been recorded this month and will also be done for the remainder of this fiscal year.

Days Cash on Hand has decreased to 38.97 days from 39.68 days last month, Days in Accounts Receivable decreased to 53.78 days, which is a net change of 1.47 days compared to last month (55.25) and Days in Accounts Payable decreased to 51.99 days compared to 56.02 days last month. The Debt Service Coverage ratio was 1.54 at the end of the month. The Hospital's Bond Covenant requires a ratio of 1.10 by the end of the calendar year.

#### **Financial Projections**

Ms. Kenny reviewed the Projected Statement of Operations for Fiscal Year 2008. The Hospital is projecting a loss of \$4 million based on the following assumptions:

##### Inpatient Volume and Revenue

Medical/Surgical is projected to be 2.2% under budget at year-end  
 Psychiatry is projected to be 2.6% under budget at year-end  
 Rehab is projected to be 2.0% under budget at year-end  
 Transitional Care Unit – Closed on May 7, 2008

##### Outpatient Volume and Revenue

May year-to-date trends projected forward except for improvement in the following departments:

- Dental will meet budget from March forward
- Partial Hospitalization will meet budget from May forward
- Sleep Lab will meet budget from May forward
- Outpatient Physical Therapy will meet budget from May forward



Expenses

- Salaries
  - ✓ Includes the impact of the TCU closing
  - ✓ Improvement in variance from Mar – July and then on budget August forward
- Temp Help
  - ✓ February year-to-date trends projected forward
- Benefits
  - ✓ Includes the impact of the TCU closing
  - ✓ Health Insurance is expected to exceed budget \$420k as a result of more employees on our insurance and the mix of individual versus family plans
- Expenses
  - ✓ Improvement in variance from April forward due to standardizing neuro implants (billable OR supplies)
- Prov. for Bad Debt
  - ✓ Bad debt is expected to be over budget by 8.8% by year end

The current projection reflects an operating loss of \$4.09 million. Ms Kenny informed the Committee that the Hospital could incur a loss of \$3.9 million before a bond covenant is pierced. The Hospital currently has \$3.6 million in unallocated reserves that it could use to offset any losses that would pierce a bond covenant.

**Cash-Flow Statement**

Ms. Kenny reviewed the cash-flow statement. Cash has increased by \$2 million since March. Management has worked with the State and restructured the payments due for the Medicaid Settlement for fiscal years 2005 & 2006. The Hospital will pay \$1.2 million in June 2008; then \$311,891 from July 2008 until June 2009; then \$411,891 from July 2009 until June 2010. By July 2010 the liabilities for these fiscal years will be settled, and future settlements with the State will be less due to the adjustment in the payment formula. It was also noted that this payment schedule contains no interest provision.

**Strategic Planning Update**

Mr. Fogarty updated the Committee members on the Campus Consolidation Plan. He noted that the State on July 11, 2008 approved the application for Campus Consolidation in addition to an accelerated review of this process.

Mr. Fogarty then reviewed with the Committee the current plan to mitigate the operating losses the Hospital has been experiencing. In the short term, QHR data has been reviewed in an effort to restructure the organization based on productivity and changes in volume. Positions have been identified that could be reduced by the end of the fiscal year.

The Hospital's medium range plan would consist additional reductions based on benchmarks in outpatient clinical and support areas. Mr. Fogarty noted that consolidating some of the outpatient services would be necessary in order to compete externally. In addition, before the Hospital can reduce any of its work force, we would need to reorganize workflow within in these departments.

The Hospital's long range plan would consist of moving forward with the Campus Consolidation Plan, continue to move forward with the affiliation with Roger Williams Medical Center, to expand upon the nursing home services we currently offer and proceed with the Interventional Radiology initiative.

**Other Updates**


Mr. Fogarty updated the Committee members with the current state of the Hospital's labor negotiations with UNAP. The Hospital is seeking a soft freeze to the Defined Benefit Pension Plan where all new nurse hires would go into a Defined Contribution Plan. The Hospital had Mr. Jeffrey Bauer, President of the The Angell Pension Group, Inc., the Hospital's Plan Administrator, attend a bargaining session where he educated the union executive board as to the structure and status of the Hospital's pension plans.

Mr. Fogarty indicated that this educational session was not well received by union representatives.

Ms. Kenny updated the Committee on the current state of contract negotiations with Blue Cross /Blue Shield of Rhode Island. The current contract expires October 1, 2008 and negotiations are moving slowly. Blue Cross has offered a 2 year contract with the following increases each year: with Commercial lines, Senior Plan and increase on Rite Care. The Hospital has counter offered with a increase in Commercial, on Senior and on Rite Care for each year.

There being no further business to come before the Finance Committee the meeting adjourned at 9:35 a.m.

Respectfully submitted,



Kathleen A. Kenny  
Recording Secretary

K2:bt

# **EXHIBIT 27**

**From:** Souza, Darleen </O=CHARTERCARE/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=SOUZA, DARLEEN>  
**Sent:** Thursday, September 26, 2013 6:41 PM  
**To:** Blais303 <blais303@comcast.net>  
**Subject:** Re: Info request.

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You too!  
Thank you

Sent from my iPhone

On Sep 26, 2013, at 6:19 PM, "Blais303" <blais303@comcast.net> wrote:

> Very good and I will see you at the 10:30 forum Monday.  
> Have a nice long weekend.  
> Lynn

>  
> Sent from my iPhone  
>

> On Sep 26, 2013, at 4:32 PM, "Souza, Darleen" <DSouza@chartercare.org> wrote:  
>

>> Hi Lynn,  
>>

>> Let me work on this request. I am off tomorrow. I will follow up with you on Monday.

>>  
>> Thank you  
>>

>> -----Original Message-----

>> From: Blais303 [mailto:blais303@comcast.net]

>> Sent: Thursday, September 26, 2013 1:22 PM

>> To: Souza, Darleen

>> Subject: Info request.

>>

>> Hello

>> Was looking for some information on a few fronts :

>> 1. The most recent actuary report on pension so we can have the Browns evaluate what a \$14 million deposit does to securing the longevity of the pension 2. Copy of the APA signed on the 24th 3. The operation agreement (LLC) 4. A copy of the management advisory agreement referenced in the Sept 24th Please advise and call with an questions Thanks Lynn

>>

>> Sent from my iPhone

# **EXHIBIT 28**

July \_\_, 2013

Dear colleague:

I thought it would be a good time to write with an update regarding the joint venture between CharterCare Health Partners (CharterCare) and Prospect Medical Holdings, Inc. (Prospect). As you well know, CharterCare and Prospect signed a letter of intent to pursue a joint venture back in March of this year. The parties may file an application with state regulators (the Office of the Attorney General and the Department of Health) as early as this month to get approval to go forward.

While the joint venture has potential in many respects, it is also fraught with significant risk for us and our families. Right off the bat, CharterCare management is telling us that we have to agree to a freeze of our pension plan if the joint venture is going to go through. They've made no assurances as to whether or not the benefits we've already accrued are guaranteed (insured). So right off the bat, we're being asked to make a huge concession on our retirement benefits in exchange for virtually nothing.

In addition, management has all but ignored the concerns we've raised regarding jobs, clinical lines of service, and the very existence of our union. We had one initial meeting with management to discuss the joint venture back on May 7, 2013. At that meeting, management again asked for a concession on the pension. They then said that they wanted to meet with us to continue discussing the joint venture. Since then, nothing has happened. They abruptly cancelled the only other meeting we had scheduled, and we haven't heard from them since.

It is difficult to imagine how it is that management expects us to support the joint venture when they have all but refused to discuss the impact that joint venture might have on our retirement benefits, our jobs and other terms and conditions of our employment. We may all be relatively young; but we certainly weren't born yesterday!

We stand ready to discuss how we might throw our undivided support behind the joint venture. We are not prepared, however, to support a joint venture that results in the freezing of our pension, and has the potential to put our jobs, our families, clinical lines of service or our hospital at risk.

Please let me know if you have any questions. In the meantime, future updates will be forthcoming.

Sincerely,

Lynn Blais, RN  
President, Local 5110



Filename: 283A7C0D683C45248B2561A0C8DB7399\_114952.doc  
Directory: C:\lawprnsrvr  
Template: C:\Users\lab\AppData\Roaming\Microsoft\Templates\Normal.dotm  
Title: Dear colleague:  
Subject:  
Author: Chris  
Keywords:  
Comments:  
Creation Date: 5/14/2001 4:27:00 PM  
Change Number: 9  
Last Saved On: 7/22/2013 3:36:00 PM  
Last Saved By: Chris Callaci  
Total Editing Time: 166 Minutes  
Last Printed On: 3/28/2018 3:46:00 PM  
As of Last Complete Printing  
Number of Pages: 1  
Number of Words: 405 (approx.)  
Number of Characters: 1,961 (approx.)

# **EXHIBIT 29**



**From:** Souza, Darleen </O=CHARTERCARE/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=SOUZA, DARLEEN>  
**Sent:** Friday, August 30, 2013 8:14 AM  
**To:** Lynn Blais <blais303@comcast.net>  
**Cc:** Ketner, Brenda <bketner@chartercare.org>  
**Subject:** Re: Letter

---

Hi Lynn,

I really appreciate the speed in which you are working on getting this done. We both know how important this is. You do deserve recognition for this. There have been no changes to the DB plan. The only thing we did is restate the plan to include all amendments in the plan document. We can get you a copy if you would like. Angell committed to having the data request to us by end of day today. We would need to review internally to ensure it captures the information. Is the beginning of the week okay?

Let me know

Thank you

Sent from my iPad

On Aug 29, 2013, at 8:19 PM, "Lynn Blais" <[blais303@comcast.net](mailto:blais303@comcast.net)> wrote:

Hello

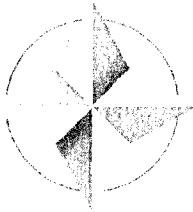
Wanted to let you know I have sent a letter to members today to give an update of the meetings we have had. I will forward a copy of the letter to you tomorrow.

Also sent request to Brenda today related to if any changes have occurred in the defined benefit plan since 8/2011 so I can be sure are people are reviewing the most accurate data. Also any progress on getting the other data requested related to the pension so we can have that assed as well.

Thanks

Lynn

# **EXHIBIT 30**



**Charter CARE**  
HEALTH PARTNERS

***Executive Committee of the Board of Trustees***

Thursday, September 27, 2012 – 8:00 a.m.

RWMC –President’s Conference Room

Present: Edwin Santos, Chair; Kenneth Belcher, Joseph DiStefano, Esq.,  
Elaine Jones, M.D., Donald McQueen, Daniel Ryan, Sheri Smith, Ph.D.

Staff: Michael Conklin, Kim O’Connell, Esq., Debra Spicuzza

Guest: Brandon Klar, The Camden Group

**Call to Order**

Mr. Santos called the meeting to order at 12:10 p.m.

**Minutes of Meeting**

A motion was made to accept the minutes of meeting of July 23, 2012. The motion was seconded and duly approved.

**Chairman’s Report**

Mr. Santos reported that today’s meeting would focus on a review and comparison of Letters of Intent submitted by LHP Hospital Group, Inc. and Prospect Medical Holdings, LLC. He emphasized the importance of identifying a strategic partner who would best meet the needs of CCHP.

**President’s Report**

➤ **Rhode Island Healthcare Update**

Mr. Belcher provided an update on planning activities occurring at local hospitals and systems in the state.

- **Steward Health Care/Landmark Medical Center** - Although not confirmed by Steward representatives, an article in today’s Providence Journal cited the possibility of Steward’s withdrawal from the Landmark acquisition. Mr. Belcher noted that he recently placed two telephone calls to Steward who promised a return call. He stated that to date Steward has not returned either call.

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- **Memorial Hospital of Rhode Island/Care New England** - Due diligence process underway. Memorial reporting significant financial loss for this fiscal year. Question whether this will impact CNE's decision to proceed.
- **Westerly Hospital/Lawrence & Memorial** - Affiliation discussions continue and yesterday the organizations were granted an expedited application review.
- **South County Hospital** - Consultant engaged and the Hospital is in the early stages of a strategic planning review and exploration of affiliation options. Messrs. Santos, DiStefano and Belcher met with Chair Eve Keenan and Lou Giancola who expressed continued interest in partnering with CCHP.
- **Connecticut** - LHP continues to face obstacles with regard to the secular/catholic affiliation between Waterbury and St. Mary's Hospitals as a result of recent mandates by the Archbishop of the Hartford Region.

Mr. Santos stated that additional capital would serve to strengthen CCHP's position in the market.

➤ **RFP Status**

Mr. Klar distributed a report comparing key elements of the Letters of Intent (LOI) submitted by LHP Hospital Group, Inc. and Prospect Medical Holdings, LLC. The report also included information with regard to desirable elements identified by CCHP. He explained that the LHP joint venture model provides for an 80%/20% structure, with CCHP receiving a 20% membership interest while the Prospect model provides for an 85%/15% structure, with CCHP receiving a 15% membership interest.

Mr. Belcher reported that LHP has expressed interest in building a hospital system beyond the CCHP two-hospital network. In addition, Prospect indicated that they would like to develop a system on the east coast and they also expressed interest in reaching out to Landmark.

Mr. Conklin presented a financial comparison for each of the LOI submissions. He discussed key aspects of each model with regard to pension, long term debt, South Providence Property, net working capital infusion, cash asset limitation, third party payors, malpractice reserves, capital commitment at closing and capital commitment over a three-year period.

It was noted that although the net value of transactions submitted was higher for the LHP LOI, this amount would be subject to a valuation of assets to be completed only after execution of the LOI as well as completion of the due diligence process.

The Committee discussed issues of governance, management structure, employee retention, union aspects, medical staff development plans, and catholicity as they pertain to the LOI.

Ms. O'Connell stated that due to the exclusivity of this arrangement and costs associated with this process, she recommended that a non-refundable fee structure be implemented and aligned with major milestone activities during the due diligence effort. There was general consensus amongst members that this condition should be added to the LOI.

Mr. Santos asked members of the Committee to review the LOI documents and provide their comments directly to Mr. Klar by Monday with a copy Mr. Belcher and him.

Mr. Belcher reported that an asset evaluation process will commence shortly which will provide an estimate for this component.

➤ **Financial Update**

Mr. Conklin presented the financial report for SJHSRI for the month ending August which reflected a \$380,000 net loss from operations. Year to date the Hospital reported a \$5.5 million operating loss. The expected Blue Cross rate relief which will not come through this fiscal year accounts for \$1.9 million of this loss. Revenue remains unfavorable to budget due to softening inpatient volume levels. Mr. Conklin stated that the recent change in the physician E.D. group and continued monitoring of staffing levels, strong case management practices and coding improvements are all positive steps that should lead to improved financial results in fiscal year 2013.

At RWMC, he reported the Hospital had a \$64,000 net gain and cited a decline in surgery volume over the summer months as impacting operations. In response to a question, it was noted that RWMC performs more surgical procedures on average than SJHSRI. Discussion followed.

➤ **University Medical Group**

Mr. Belcher reviewed the background and history on financial challenges which University Medical Group (UMG) has experienced over the past few years, including a former loan request to RWMC from the forty-member physician group.

Mr. Belcher explained that he currently serves as a member of the UMG Board and has been aware of the financial hardship the group is facing. He reported that UMG engaged a consultant to review its model and he discussed recommendations made by the consultant. He stated that UMG is presently seeking funds from the Hospital to be used as working capital over the next three months and is requesting a loan in the amount of \$200-250K. Mr. Belcher added that any loan agreement entered into between RWMC and UMG would require inclusion of specific conditions related to repayment. A discussion ensued amongst members of the Committee with regard to: 1) ramifications of not providing a loan; 2) the three month timeline status if a loan were to be provided to UMG; 3) possible model and/or restructuring options for the group.

After discussion, Mr. DiStefano called for a motion authorizing the President and CEO of RWMC to enter into an agreement with UMG for a secured loan in an amount not to exceed \$250,000. The motion was seconded and duly approved.

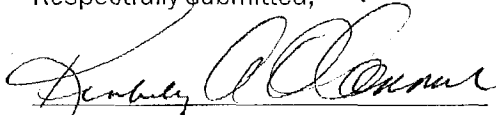
CCHP Executive Committee  
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Executive Session

The Committee went into Executive Session and, with the exception of Mr. Belcher, the staff members were excused. The Committee discussed workload issues during the RFP process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kimberly A. O'Connell", written over a horizontal line.

Kimberly A. O'Connell, Esq.

Secretary

# **EXHIBIT 31**



**CharterCARE Health Partners  
Board of Trustees Meeting**

Thursday, February 14, 2013 - 3:00 p.m.  
RWMC - Kay Auditorium

Present: E. Santos, Chairman; K. Belcher, C. Chihlas, M.D, P. DeBlasio, M.D.,  
E. Jones, M.D., D. McQueen, C. Maynard, D. Ryan, CPA, K. Stiles, S. Smith, Ph.D.

Absent: J. DiStefano, Esq., M. Raucci, Jr., Rev. T. Reilly, Rev. B. Shanley, O.P.

Staff: S. Cerrone Abely, O. Brown, K. O'Connell, Esq., J. Dooley, R.N., M. Conklin,  
P. Nadle, R.N., K. O'Connell, Esq., D. Spicuzza

1. Call to Order

Mr. Santos called the meeting to order at 3:10 p.m.

2. Approval of Meeting Minutes

A motion was made to approve the minutes of the Annual Meeting of December 18, 2012.  
The motion was seconded and unanimously approved.

3. Report of the Chairman

Mr. Santos expressed thanks to Joanne Dooley, R.N. for arranging a hospital tour for a Brown University medical student and him during the pre-storm emergency preparedness last Friday. Mr. Santos stated that he received positive feedback from the student who indicated that the tour provided a meaningful look at planning and implementation of protocols during weather related emergencies.

4. Consent Agenda

The consent agenda was reviewed. A motion was made to approve the consent agenda in full.  
The motion was seconded and unanimously approved.



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5. Report of the President

o Quality Report

Ms. O'Connell stated that Dashboard Reports for both Hospitals were included with the agenda. She reported that the CCHP Quality Committee approved new financial reporting measures for the Dashboard Report. She reviewed a handout on the financial impact of Pay for Performance Measures. She stated that this information is currently tracked on the Dashboard however future reports will reflect financial impact and will be reviewed on a quarterly basis. In addition, she reviewed new measures established for the Emergency Department including (1) Left Without Being Seen, (2) Median Time from ED Arrival to ED Departure for Admitted ED patients and (3) ED Admit Decision Time to ED Departure Time for Admitted patients. Dr. Smith stated that these new measures should provide a more meaningful connection between quality and financial impact. Ms. O'Connell stated that the new measures will be incorporated into the Dashboard Report for quarterly monitoring.

Ms. Nadle reported that the SJHSRI Quality and Patient Safety Committee recently approved the Hospital's Quality Plan for this year and incorporated the new measures into the Plan.

o Financial Update

Mr. Conklin reviewed the statement of operations for SJHSRI for month ending January 2013. He reported a \$242,000 gain from operations versus a projected loss of \$98,000. Total revenue for the month was \$139,000 favorable to budget due in part to a favorable case mix index.

Mr. Conklin reported that January year-to-date SJHSRI reported a \$2.4 million unfavorable variance to budget for total revenue. He noted that lower than average outpatient and medical/surgical volume as well as competition and expansion of local behavioral health programs were factors contributing to the revenue decline during the four month year to date period. Total operating expenses were favorable to budget by 1.9 million on a year-to-date basis. The Hospital reported a \$1.5 million loss from operations versus a budgeted loss of \$1.1 million. Mr. Conklin stated that FTI savings initiatives will be incorporated into the last six months of the FY '13 budget.

Mr. Conklin reviewed the statement of operations for RWMC for month ending January 2013. He reported a \$12,000 gain from operations versus a projected loss of \$67,000. Total expenses for the month were \$447,000 favorable to budget.

Mr. Conklin stated that RWMC reported a \$1.1 million loss from operations versus a budgeted loss of \$1.2 million.

A discussion was had regarding the need to focus on strategic planning for psychiatry and behavioral health programs. Mr. Belcher reported that consideration is currently being given to unifying the behavioral health programs at the heritage hospitals. He discussed a preliminary structure which would provide for a more academic focused program and possibly designate behavioral health as a separate department with oversight by a single Chair. He reported that Domenic Ciraulo, M.D., Chief of Psychiatry and Professor and Chairman of Psychiatry at Boston

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University Medical Center, will assist in a program review at the hospital sites and provide recommendations which may include participation from students at the Boston University School of Medicine.

Mr. Belcher provided an update on the Rhode Island Health Care Planning and Accountability Advisory Council, a committee established to review healthcare planning for Rhode Island. He discussed various issues under review by the Council. He reported that the Council is reviewing a report compiled by The Lewin Group which outlines inpatient bed distribution by geographic region in Rhode Island. In addition, he reported that the Council has established two subcommittees to examine C.O.N. and HCA conditions.

Mr. Belcher discussed the RESPECT Program for indigent patients requiring behavioral health program services and the financial impact that may result if the state reduces Medicaid funding for this program. Ms. Nadle explained the current trend by payors to redirect patients to an outpatient setting.

Mr. Belcher stated that he testified before the House Senate Finance Committee on reductions in DSH and Medicaid funding.

- o **Elmhurst Extended Care**

In Mr. Gamache's absence, Mr. Belcher reported that the Nursing Home recently received notice of union activity. Ms. Souza reported that a petition was received from the Laborers Union Non-Professional Bargaining Unit which includes Certified Nursing Assistants, food service workers, and others. Mr. Belcher stated that the Nursing Home may receive media focus as a result of this issue.

- o **PR/Development Update**

Mr. Brown reviewed the following upcoming events and media activities:

- ❖ ***CCHP Annual Board Retreat*** at Wannamoisett Country Club – Wednesday, March 13

Notice sent out to Trustees on all three Boards last month. Another notice will be sent asking level of participation, i.e., half day, full day. Agenda for the session is in the process of being finalized. Chris Koller, RI State Insurance Commissioner, will be a special guest at the Retreat and provide an update on healthcare planning.

- ❖ ***CCHP Annual Golf Classic*** – Monday, May 13

Two venues will be utilized for this event. Mr. Brown thanked Mr. McQueen and Dr. Chihlas for offering their assistance with this event.

- ❖ ***Senior Friendly Emergency Departments***

Mr. Brown reported that this program is expected to begin sometime in March at the heritage hospitals. RWMC and SJHSRI will be the first hospital locations in the state to

implement this program in the ED. An aggressive ad campaign will take place to coincide with commencement of these programs.

❖ *Fatima Marketing*

Mr. Brown referred to the following correspondence enclosed with the agenda: (1) Joint Commission recognition of SJHSRI certifications in advanced diabetes care, advanced primary stroke care, knee surgery and hip surgery; (2) Article from The Valley Breeze on those certifications; and (3) Providence Business News interview with Dr. Buonnano.

Mr. Brown noted that an advertising campaign announcing the certifications will take place via television, local print ads and billboard locations. In addition, he reported that an advertising campaign for Orthopedics will be launched next month. He reported that this is the first time that marketing activities of this scope have occurred for SJHSRI.

❖ *RWMC Marketing*

Mr. Brown reported that radio and television advertising for the Cancer Center and bariatric program have begun and will be ongoing. He noted release of "Survive and Thrive", a Cancer Center newsletter.

○ *Rhode Island Healthcare Status*

- ❖ *Landmark/Prime Healthcare* – Mr. Belcher referred to an article distributed with the agenda in which Prime acknowledges that it is the subject of two separate federal probes. The first investigation relates to Medicare billing practices and the other on violation of patient confidentiality laws. Prime Healthcare denies any wrongdoing.
- ❖ *Memorial Hospital/Care New England* – Care New England continues to review financial and volume issues at Memorial.
- ❖ *Westerly/Lawrence & Memorial* – Regulatory process ongoing.
- ❖ *South County* – The Hospital continues to explore strategic planning options and remain interested in CCHP's strategic direction.
- ❖ *Rhode Island Healthcare Planning and Accountability Advisory Council* – Next meeting in two weeks.

○ *RFP Update*

- ❖ *LHP Hospital Group* – No additional information since last Board Meeting. Concerns by LHP with regard to addition of a third hospital and pension liability matter preclude the venture capital group from advancing discussion at this time.
- ❖ *Lifespan* – Lifespan remains interested despite no recent discussions.
- ❖ *Prospect Medical Holdings Inc.* – Received preliminary proposal.

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- ❖ Prime Healthcare Services – Received proposal last night.
- ❖ Vanguard – See discussion under LOI Update.

o Letter of Intent Update

Mr. Belcher reviewed major elements from proposals submitted by Prospect Medical Holdings Inc. and Prime Healthcare Services. He reported that Prospect's proposal included an 85/15 joint venture model and Prime an acquisition based model. Mr. Belcher presented a financial comparison for each proposal related to capitalization, cash, and valuation as well as a plan to address the pension liability. In addition, he noted that Prospect has expressed interest in developing a larger system beyond CCHP. He reported that the anticipated timeline for a decision on either proposal was one to two weeks.

Mr. Belcher provided an update on discussions with Cain Brothers relative to the two proposals as well as other potential affiliation partners identified by Cain. A discussion ensued concerning the benefits and disadvantages of each organization.

Mr. Belcher provided an update on an earlier meeting held today with representatives of Vanguard Health Systems. He discussed Vanguard's involvement at the onset of the RFP process and stated at that time the health system expressed that they were not interested in Rhode Island as a point of expansion, in part due to demographics and regulatory conditions. Cain Brothers re-contacted Vanguard to see if their position had changed with regard to a CCHP affiliation and the for-profit system agreed to meet and revisit this opportunity.

Mr. Belcher reported that at today's meeting with Vanguard, Mr. Santos, Mr. Conklin, Mr. Brown, Ms. O'Connell and representatives of Cain Brothers were in attendance and provided an update on the current status of the CCHP RFP. In addition, Vanguard representatives discussed their management structure, operations and plan to preserve leadership within CCHP. Mr. Belcher reported that CCHP has provided Vanguard with financial data and that a Non-Disclosure Agreement has been executed between both organizations. It was noted that Vanguard was a public company with a favorable reputation. Mr. Belcher stated that the next step is to have Vanguard review financial data and determine the feasibility of partnering with CCHP. He noted that based upon that review, a strategic alignment may be determined and a model proposed. He added that if Vanguard is interested in partnering, consideration will be given to a joint venture model, however, the model will likely be contingent upon financial conclusions. He added that as a result of LHP's withdrawal from the Waterbury/St. Mary's affiliation in Connecticut, Vanguard has expressed interest in that location which is in close proximity to Vanguard facilities in nearby Massachusetts.

Mr. Belcher reported that Board structure under the Prospect proposal was a 50/50 split and that the current management structure would remain. A question was raised regarding whether there were any hospitals with a religious affiliation in the Prospect hospital network. The Board discussed Prospect's willingness to provide adequate capital funding.

A discussion was had concerning the differences between a joint venture model and an acquisition model and it was noted that control was the distinguishing factor between the two. Mr. Belcher stated that over the past three years CCHP had achieved a high level of quality



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patient care and that it was CCHP's intent moving forward to preserve and maintain this same level of care.

It was reported that Cain Brothers has also reached out to Ascension Healthcare and Capella Healthcare to determine if either organization is interested in affiliation opportunities with CCHP.

#### 6. Report of Committee Chairs

- **Executive Committee** - No business to report.
- **Finance, Audit & Compliance** – Mr. Ryan reported that the Committee met with KPMG to review preliminary financial statements. Going concern still remains an issue.
- **Governance Committee** – Mr. McQueen encouraged Board Members to attend the Annual Retreat in March. He reported that Joel Goloskie, Deputy General Counsel, attended the most recent Governance Committee Meeting to discuss consolidation of the current Ethics and Code of Conduct Policy at the heritage hospitals.
- **Nominating Committee** - No business to report.
- **Investment Committee** – Mr. Conklin reported that the next meeting is scheduled for next Friday.
- **Quality Committee** – Dr. Smith reported that the next meeting is scheduled for next week.
- **Strategic Planning Committee** – No further business to report.

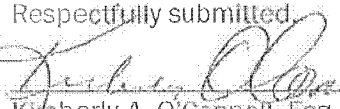
#### 7. Report of the Medical Staff

- **SJHSRI** – Dr. DeBlasio reported on behalf of the Medical Staff. He informed the Board of an interesting article in American Medical News regarding fines which will be imposed this coming year concerning HIPAA privacy and regulatory compliance.
- **RWMC** – Dr. Chihlas reported on behalf of the Medical Staff. He expressed the fact that there was a level of anxiety amongst physicians concerning future strategic planning and direction.

#### 8. Executive Session

The Board went into Executive Session and staff members were excused. There was further discussion on the LOI process.

Respectfully submitted,

  
Kimberly A. O'Connell, Esq.  
Secretary

# **EXHIBIT 32**

**From:** Souza, Darleen </O=CHARTERCARE/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=SOUZA, DARLEEN>  
**Sent:** Wednesday, September 18, 2013 10:55 AM  
**To:** Dooley, Joanne M <jdooley@chartercare.org>  
**Subject:** FW: Memorandum  
**Attach:** 201309100959.pdf; 823813unapproposal.docx

---

Hi Joanne,  
Please see attached UNAP proposal along with CCHP proposal.  
Thank You

## Proposed Memorandum

CharterCare, NewCo and the United Nurses & Allied Professionals, Local 5110 ("Union"), hereby agree as follows:

- The collective bargaining agreement (CBA) currently in effect between St. Joseph Health Services of RI and the Union shall be extended for five (5) years (through June 30 2019).
- Base rates of pay shall be increased by 3% effective the first full pay period in May of each year of the extension.
- The parties agree to execute the attached MoA regarding the registered nurses at Roger Williams Medical Center.
- The parties agree to execute the attached MoA regarding neutrality.
- The attached MoA regarding neutrality shall apply to after acquired acute care hospitals and ambulatory care centers in the State of RI, and newly built acute care hospitals and ambulatory care centers in the State.
- CharterCare's proposal of August 28, 2013 regarding the pension is under consideration.
- CharterCare's proposal of August 28, 2013 regarding the Union's support of the CharterCare/Prospect joint venture is under consideration.
- This agreement is conditioned upon the successful consummation of the joint venture between CharterCare and Prospect.

For CharterCare

NewCo

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

For the Union

\_\_\_\_\_

\_\_\_\_\_  
Date



### Memorandum of Agreement

This agreement is made and entered into by and between CharterCare, Newco (Respectively "Employer") and the United Nurses & Allied Professionals, Local 5110 (Union):

- CharterCare and NewCo agree to operate Roger Williams Medical Center (Roger Williams) and Our Lady of Fatima Hospital (Fatima) as a single employer, the result of which would be that the RNs at both facilities would share a community of interest and the Union would have majority status.
- As such, CharterCare and NewCo agree that the Union shall be recognized as the exclusive bargaining agent for all union eligible RNs at Roger Williams who are not currently covered by the CBA between St. Joseph's Health Services of RI and the Union.
- Within ninety (90) days of the execution of this agreement, the parties shall commence negotiations to bring the RNs at Roger Williams under the existing CBA referenced above.
- For a period of one hundred and eighty (180) days after the parties successfully bring the RNs at Roger Williams under that CBA, there shall be a moratorium on any layoffs and/or movement of work between the two (2) facilities during which time the parties shall negotiate an agreement to address issues such as the movement of work, layoffs, bumping and recall rights.
- The parties agree that if any dispute over the interpretation or application of this agreement arises, they will meet as soon as possible to attempt reconciliation. If the parties fail to reconcile, the dispute shall be submitted for resolution pursuant to the *Expedited Labor Arbitration Rules* of the American Arbitration Association.
- The decision of the arbitrator shall be final and binding upon the parties.
- The fees and expenses of arbitration shall be shared equally by the parties.
- The parties agree to waive any and all rights to take such disputes to the National Labor Relations Board or the State or Federal Courts.

\_\_\_\_\_  
For the Union Date

\_\_\_\_\_  
For CharterCare Date

\_\_\_\_\_  
For Newco Date

### Memorandum of Agreement

This Agreement is made and entered into by and between CharterCare, Newco (respectively "Employer") and the United Nurses and Allied Professionals (Union):

The Employer and the Union hereby establish the following guidelines pursuant to which the Employer's eligible full time and regular part time employees may exercise their rights under Section 7 of the National Labor Relations Act (NLRA):

\*Upon the date of the signing of this agreement, the Employer shall furnish the Union with a complete list of eligible employees employed by Roger Williams Hospital and separately Fatima Hospital identifying their respective job classification, home addresses and phone numbers. Thereafter, the Employer shall provide updated lists monthly.

\*For the purposes of this Agreement, appropriate bargaining units shall be established by job classification or job classifications among employees employed at either Roger Williams Hospital or Fatima Hospital.

\*The Union will notify the Employer of its intent to visit either of its locations, and will be allowed access to designated areas to meet with employees on non-work time upon such notification. The Employer will grant access to employees on its premises provided such access does not interfere with the delivery of patient care or patient care services.

\*The Employer shall not take any action nor make any statement that will directly or indirectly state or imply any opposition by the Employer to the selection by the employees of a collective bargaining agent.

\*A disinterested, neutral party, mutually satisfactory to the Employer and the Union, shall be selected to conduct a review of employee's authorization cards should the Union choose to submit such cards thereto. Should that disinterested, neutral party determine that a majority of employees has signed authorization cards designating the Union as their exclusive bargaining agent, the Employer shall recognize the Union as such agent.

\*The parties agree that if any dispute over the interpretation or application of this agreement shall arise, they will meet as soon as possible to attempt reconciliation. If the parties fail to reconcile, the dispute shall be submitted for resolution pursuant to the *Expedited Labor Arbitration Rules* of the American Arbitration Association. The decision of the arbitrator shall be final and binding upon the parties. The fees and expenses of arbitration shall be shared equally by the parties. The parties agree to waive any and all rights to take such disputes to the National Labor Relations Board or the State or Federal Courts.

For the Union

For CharterCare

\_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

For Newco

\_\_\_\_\_ Date \_\_\_\_\_

August 28, 2013

**SAINT JOSEPH HEALTH SERVICES/UNAP**  
**(Package)**

1. CharterCare will require that NewCo recognize UNAP and adopt the parties' collective bargaining agreement (CBA) with the modifications set forth below.
2. The term of the CBA will be extended two years (through June 30, 2016) with a reopener on health insurance in 2014.
3. A 1.5% increase in base rate effective the first full pay period in May, 2015, and an additional 1.5% increase in base rate effective the first full pay period in May, 2016.
4. UNAP agrees that effective as of the date of Closing, the parties' defined benefit pension plan (the "Pension Plan") will remain a church plan with Saint Joseph Health Services of RI and participating bargaining unit members will no longer accrue additional benefits under the Pension Plan. Effective as of the date of Closing, bargaining unit members would be eligible to participate in NewCo's 401(k) plan, which will be substantially equivalent to the 403(b) plan presently in effect for employees at Our Lady of Fatima Hospital.
5. \$14 million will be contributed to the Pension Plan assets. NewCO and its affiliates will not have any obligation to UNAP or employees with respect to the Pension Plan and UNAP agrees that NewCo and its affiliates will have no obligation to provide a defined benefit pension plan of any kind.
6. In the event that NewCo acquires (and is the 100% owner of) any acute care hospital or ambulatory care center within the State of Rhode Island (whose nurses are not represented by another labor union), the attached Election Procedures agreement would apply pursuant to the terms stated therein. This agreement would not apply to physician offices, laboratories, diagnostic imaging centers, clinics or any other kind of facility.
7. The Affiliation Side Letter will be expanded to apply to any new acute care hospital or ambulatory care center built by NewCo in the State of Rhode Island.
8. UNAP agrees to actively support the transaction. Such support shall include direct communications to UNAP members, legislators, media, regulators and/or other key stakeholders.
9. If these discussions lead to any agreement, it will be formalized into contract language. If such an agreement is reached, it will be null and void if the transaction with Prospect Medical Holdings is not consummated.

*August 28, 2013*

**DRAFT**

**AGREEMENT**

WHEREAS NewCo ("NewCo") and United Nurses and Allied Professionals ("Union") are desirous of establishing a positive, ongoing relationship based upon mutual respect; and

WHEREAS the parties wish to establish an orderly approach to labor relations in the contemplation that there may be acquisitions of acute care hospitals and/or ambulatory care centers in the State of Rhode Island; and

WHEREAS the parties want to insure that the proper rights of employees and management are honored and protected;

IT IS HEREBY AGREED AS FOLLOWS:

1. The National Labor Relations Act, as amended, (the "NLRA") shall be the governing standard for the resolution of any issue related to an election arising under this Agreement, except as otherwise specifically set forth herein.

2. This Agreement shall apply to registered nurses at an acute care hospital and/or ambulatory care center acquired by NewCo in the State of Rhode Island during the term hereof. Each site shall presumptively be an appropriate separate bargaining unit.

3. A Petition for a Registered Nurse unit filed by the Union with the National Labor Relations Board (the "NLRB") during the term of this Agreement must be filed no later than forty-five (45) days prior to the expiration of this Agreement. The Agreement shall be extended until such time as the election is held if the NLRB is unable to process the Petition by the expiration of this Agreement.

4. The NLRB's rules and regulations with respect to elections shall apply to any issue related to an election arising under this Agreement, except as otherwise specifically set



*August 28, 2013*

forth in paragraph 5 below.

5. Any alleged objections to campaign conduct or violation of this Agreement shall be subject to the Arbitrator's jurisdiction. Such alleged violations must be submitted to the Arbitrator and filed with the NLRB within five (5) business days of the date of the election. The NLRB will hold the filed objections and/or alleged violations of the Agreement in abeyance and will not certify the results of the election until the Arbitrator renders his/her decision. Upon the Arbitrator's decision, either party will withdraw its objections or complaints of conduct violating the Agreement pending before the NLRB region. In the event that the Arbitrator renders an award directing a re-run election, this Agreement will be extended for the period necessary to re-run the election.

6. The parties shall abide by the rules set forth in this Agreement with respect to the conduct of any campaigning and the nature of communications during the campaign. Each party shall take the steps necessary to communicate the requirements of this Agreement to its agents and to insure that its agents act in accordance with these rules. Each party shall designate an officer with responsibility for implementing the Agreement on behalf of the party.

7. The parties shall abide by this code of conduct:
- a. NewCo and the Union agree that employees shall be entitled to make a decision regarding union representation free from coercion and intimidation.
  - b. NewCo and the Union agree that their representatives will communicate only material that is factual and that they will do so in a way that does not personally attack officers, executives, representatives or employees of either NewCo or the Union.
  - c. The Union agrees that all Union campaigning shall be truthful, conducted in a

*August 28, 2013*

positive manner, without any personal attacks and without any disparagement of NewCo or any of its employees.

- d. No employee will be threatened or suffer any adverse action because he or she chooses to support or oppose the Union.
- e. NewCo will not inform eligible voters that they will lose benefits, wages or be subjected to less favorable working conditions by unionizing or receive any more favorable benefit, wages or working conditions if voters reject the union.

8. Lawrence Katz shall be designated by the parties as the Arbitrator under this Agreement. Any disputes as to improper conduct or compliance with this Agreement shall be referred to Arbitrator Katz for immediate resolution. The parties agree to waive their rights to have the NLRB resolve any of the issues that are the subject of the Arbitrator's jurisdiction under this Agreement. The Arbitrator shall have authority to decide any issue that may come before him that otherwise might have been raised by either party before the NLRB, provided that any such decision is based on the NLRA. The Arbitrator has forty-eight (48) hours from the close of the parties' presentation of their case within which to render a decision and award. In addition, the parties agree as follows:

- a. The fees and expenses of the Arbitrator shall be borne equally by the Parties.
- b. The Arbitrator shall have no power to add to, subtract from, or otherwise amend or modify this Agreement.
- c. The Arbitrator's determinations under this Agreement shall be final, conclusive and binding on the parties.

9. Term: This Agreement shall commence as of \_\_\_\_\_ and shall expire June 30, 2016 unless the parties shall renew it in writing.

*August 28, 2013*

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[NEWCO]

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[UNION]

# **EXHIBIT 33**



**Peter Karlson**

---

**From:** Albert Krayter  
**Sent:** Thursday, August 29, 2013 4:42 PM  
**To:** Peter Karlson  
**Cc:** Brian Corbett; David P. Ward  
**Subject:** FW: Pension - St Joseph Health Services of RI Retirement Plan (A4360A)

101354

Hi Peter,

Please see the email below.

I am not aware of any changes other than freeze of the small Union.

Please let me know if you agree.

Thank you,  
Albert.

Phone: (401) 438-9250 x 183  
Fax: (401) 438-7278  
E-mail: [akrayter@angellpensiongroup.com](mailto:akrayter@angellpensiongroup.com)

Send me an Encrypted Email

The Angell Pension Group, Inc. cannot render tax or legal advice. You may wish to discuss any issues with your tax advisor or legal counsel.

Disclosure Required Under IRS Circular 230: To ensure compliance with requirements imposed by the IRS, we advise you that any discussion of tax issues contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, to avoid any Federal tax-related penalties, or to promote, market or recommend to another party any transaction or matter addressed herein.

THE INFORMATION CONTAINED IN THIS EMAIL IS LEGALLY PRIVILEGED AND INCLUDES CONFIDENTIAL INFORMATION AS IT IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE(S). IF THE RECIPIENT OF THIS EMAIL IS NOT THE ADDRESSEE(S), YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS EMAIL IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS EMAIL BY MISTAKE, PLEASE IMMEDIATELY NOTIFY US BY EMAIL OR TELEPHONE AND DESTROY ANY EMAIL RECEIVED. THANK YOU.

-----Original Message-----

From: Ketner, Brenda [<mailto:bketner@chartercare.org>]  
Sent: Thursday, August 29, 2013 4:39 PM  
To: Albert Krayter  
Subject: FW: Pension

Hi Albert,

Please see below. Please can you confirm that no additional changes have been made (amendments) to the DB plan doc since 8/2011? I am not aware of any, but wanted to double check with APG on this first given the sensitivity.

Thank you.

101355

- Brenda

Brenda Ketner

Manager, CCHP Compensation, Benefits & HRIS CharterCARE Health Partners The affiliation of Roger Williams Medical Center, St. Joseph Health Services, and Elmhurst Extended Care

200 High Service Avenue

North Providence, Rhode Island 02904

Phone: 401-456-3202/ Fax: 401-456-3824

[bketner@chartercare.org](mailto:bketner@chartercare.org)

-----Original Message-----

From: Blais303 [<mailto:blais303@comcast.net>]

Sent: Thursday, August 29, 2013 12:51 PM

To: Ketner, Brenda

Cc: Souza, Darleen; Chris Callaci

Subject: Pension

Hello Brenda

I wanted to check if any changes have been made to defined benefit summary document since 8/2011 which is my last copy.

Please advise and if any changes have been made please forward a new copy to me and Chris Callaci at the Unap Thanks  
Lynn

Sent from my iPhone

# **EXHIBIT 34**



State of Rhode Island  
**Nellie M. Gorbea**  
SECRETARY OF STATE



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## Entity results

Number of records: 78

Number of pages: 4

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Entity Name	ID Number	NAICS	Inactive status	Address
<b>All Saints Academy</b>	000027390	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>BISHOP HENDRICKEN HIGH SCHOOL</b>	000027308	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Bishop McVinney Auditorium</b>	001705028	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Bishop McVinney Regional School</b>	000028275	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>CATHOLIC CEMETERIES</b>	000028279	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>CATHOLIC CHARITY FUND</b>	000028286	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Catholic Foundation of Rhode Island</b>	000028292	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Catholic Inner City Apostolate, Inc.</b>	000028305	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Catholic Investment Trust, Inc.</b>	000075273	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Catholic Social Services of RI</b>	000026255	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>CATHOLIC TEACHERS' COLLEGE OF PROVIDENCE</b>	000028318	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>CATHOLIC YOUTH ORGANIZATION OF THE DIOCESE OF PROVIDENCE</b>	000028328	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Christ the Redeemer Academy</b>	000141160	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Church of Our Lady of Charity of Providence</b>	000029045	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Church of Our Lady of Mount Carmel, Providence</b>	000029096	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>De La Salle Academy Corporation</b>	000026133	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>DiMed Corp.</b>	000156597	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Diocesan Administration Corporation</b>	000109318	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Diocesan Catholic Telecommunications Network of Rhode Island</b>	000026260	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Diocesan Plant Fund</b>	000506856	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Diocesan School Financial Services</b>	000096222	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Diocesan Service Corporation</b>	000092074	813110		ONE CATHEDRAL SQUARE

		PROVIDENCE, RI 02903 USA
<b>F.A.C.E. of Rhode Island (Financial Aid for Children's Education of Rhode Island).</b>	000159491 813110	ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Father Barry CYO Center</b>	000027084 813110	ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Grateful for God's Providence</b>	001675180 813110	ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
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Entity Name	ID Number	NAICS	Inactive status	Address
<b>HOLY SPIRIT CATHOLIC COMMUNITY</b>	000095640	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>House of the Good Shepherd of Providence</b>	000026657	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Inter-Parish Loan Fund, Inc.</b>	000075274	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Little Sisters of the Assumption Woonsocket, Rhode Island</b>	000028010	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Mandamiento Nuevo Corporation</b>	000112842	624120		ONE CATHEDRAL SQUARE C/O DIOCESE OF PROVIDENCE PROVIDENCE, RI 02903 USA
<b>Marian Association of Northern Rhode Island</b>	000028277	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>MONASTERY OF DISCALCED CARMELITES AT NAYATT, BARRINGTON, RHODE ISLAND</b>	000028616	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Mont St. Francois, of Woonsocket R.I.</b>	000028640	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Mother of Hope Camp</b>	000506858	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>NEW ENGLAND CONFERENCE OF DIOCESAN DIRECTORS OF RELIGIOUS EDUCATION, INCORPORATED</b>	000059224	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>OLP Center, Inc.</b>	000084986	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>OUR LADY OF PEACE RETREAT HOUSE</b>	000028832	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Our Lady of Providence Preparatory Seminary</b>	000028844	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Our Lady, Queen of the Clergy</b>	000028850	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Parish Investment Group</b>	000115708	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>PIUS X SALVAGE BUREAU</b>	000031794	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>PLEASANT VIEW, LLC</b>	000159221	531390		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Project Hope/Projecto Esperanza, Inc.</b>	000086512	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>RETREAT HOUSE OF THE IMMACULATE HEART OF MARY</b>	000032059	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>RHODE ISLAND CATHOLIC CONFERENCE, LLC</b>	000610043	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Rhode Island Home for Working Boys</b>	000030283	813110		ONE CATHEDRAL SQUARE

		PROVIDENCE, RI 02903 USA
<b>Roman Catholic Bishop of Providence</b>	000031279 813110	ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Saint Antoine Residence</b>	000027786 813110	ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Saint Casimir's Church of Warren</b>	000033870 813110	ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Saint Casimir's Church, Providence, Rhode Island</b>	000029261 813110	ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
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Entity Name	ID Number	NAICS	Inactive status	Address
<b>Saint Elizabeth Ann Seton Academy</b>	000141750	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>SAINT FRANCIS HOUSE, WOONSOCKET, RHODE ISLAND</b>	000029407	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Saint Lawrence Church of Centredale</b>	000030233	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>SAINT MARGARET'S HOME</b>	000030259	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>SAINT RAPHAEL'S ACADEMY</b>	000030836	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Saint Raphael's Industrial Home and School</b>	000030838	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Saint Teresa's Church Providence Rhode Island</b>	000030862	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Saint Vincent de Paul Infant Asylum</b>	000030881	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Saint William's Church Corporation</b>	000030889	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Seminary of Our Lady of Providence</b>	000031111	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Shepherds of Hope Inc.</b>	000601323	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>Society for the Propagation of the Faith, Diocese of Providence</b>	000029183	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>St. Anne's Church, Cranston, Rhode Island</b>	000028553	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>ST. CASIMIR PLACE, LLC</b>	000326073	531390		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>St. Charles Borromeo's Church, Woonsocket, Rhode Island</b>	000029283	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>St. John's Church of Providence Rhode Island</b>	000030131	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>ST. MARIA GORETTI CHURCH CORPORATION, PAWTUCKET</b>	000030263	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>St. Martin de Porres Center</b>	000030307	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>ST. MARY ACADEMY OF THE VISITATION</b>	000030327	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>St. Vincent de Paul Home, Woonsocket</b>	000030883	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>STELLA MARIS HOME FOR CONVALESCENTS</b>	000028264	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>The Frassati Residence</b>	000104782	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA





State of Rhode Island  
**Nellie M. Gorbea**  
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<a href="#">The Saint Clare Home</a>	000029306	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<a href="#">Vision of Hope Fund, Inc.</a>	000080052	813110		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<a href="#">Visitor Printing Company</a>	000014969	999999		ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
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<b>The Mercy Home and School</b>	000028404 813110	ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>The Prout School</b>	000030884 813110	ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
<b>The Rhode Island Catholic Orphan Asylum</b>	000029538 813110	ONE CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
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Number of records: 3 [Print results](#)

Entity Name	ID Number	NAICS	Inactive status	Address
Multi-Pure International	000121475	454390		7251 CATHEDRAL ROCK DR LAS VEGAS, NV 89128 US
Saint Maria Society	000030267	813110		1 CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA
The Interfaith Community Dire Emergency Fund	000033879	624230		1 CATHEDRAL SQUARE PROVIDENCE, RI 02903 USA

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# **EXHIBIT 35**

**From:** DAlessandro, Joseph <JDAlessandro@chartercare.org>  
**Sent:** Wednesday, January 2, 2013 5:15 PM  
**To:** 'Peter Karlson' <pKarlson@AngellPensionGroup.com>  
**Cc:** Souza, Darleen <DSouza@chartercare.org>  
**Subject:** St. Joseph Health Services of RI Retirement Plan - Restatement Update

---

Peter,

Please redraft the SJHS pension plan document as restated earlier to include Article 18 entitled "Administration of the Plan" from the previous plan document dated July 1, 1999. Additionally, can we introduce this updated version retroactively to August 1, 2011? If not, why? There have been no material and/or process changes to the plan during this period.

Please call me in the morning to discuss.

Thanks,

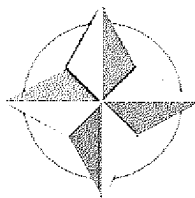
*Joseph P. D'Alessandro*

Joseph P. D'Alessandro  
Director  
Compensation, Benefits & HRIS

**CharterCARE Health Partners**

200 High Service Avenue  
No. Providence, RI 02904  
Phone: (401) 456-3202  
Fax: (401) 752-8172  
jdalessandro@chartercare.org

# **EXHIBIT 36**



WWW.CHARTERCARE.ORG

**CharterCARE**  
HEALTH PARTNERS

April 18, 2013

Reverend Monsignor Paul D. Theroux  
St. Francis of Assisi  
114 High Street  
Wakefield, RI 02879

Dear Reverend Monsignor Theroux,


In follow up to our discussion on March 17th, I am enclosing the documents related to the St. Joseph Health Services Pension Plan. These documents are a result of the recent amendments, resolutions and appointment of the Pension Board.

The first document, Resolution of the Bishop of the Diocese of Providence, is a summation of the aforementioned changes that, in accordance the plan document, require review and signature. In essence the resolutions cover the following:

- Amendment of the pension plan to freeze benefits for collective bargaining members under Federation of Nurses and Health Professionals (FNHP) effective September 30, 2011.
- Restatement of the pension plan to include the above freeze of benefits.
- Confirmation of authority under the pension plan document that the St Joseph Health Services Board of Trustees is the plan administrator and as such has authorized CharterCARE Health Partners Finance Committee to act on administrative matters related to the plan.
- The St. Joseph Health Services Plan is intended to qualify as a church plan under section 401(a) of the IRS revenue code.

Thank you for taking the time to help with the coordination of this process. If I can be of further assistance please do not hesitate to contact me at 401-456-3201.

Respectfully Submitted,



Darleen Souza  
Vice President, Human Resources

Cc: Kenneth H. Belcher, President and CEO  
Kimberly O'Connell, Vice President and General Counsel

825 CHALKSTONE AVENUE, PROVIDENCE, RHODE ISLAND 02908 • TEL: (401) 456-2001 • FAX: (401) 456-2029

ROGER WILLIAMS MEDICAL CENTER

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND

PCLLC 146115

# **EXHIBIT 37**



February x, 2014

Health Services Council  
c/o Michael Dexter  
Office of Health System Development  
3 Capitol Hill Room 410  
Providence, RI 02908

Dear Health Services Council:

I am writing today to express my support for the proposed partnership between CharterCARE Health Partners and Prospect Medical Holdings. If approved, this innovative partnership will sustain and extend CharterCARE's mission of preserving community-based health and hospital care.

Just as important, the proposed partnership will assure that Rhode Islanders continue to have the choice of Catholic-sponsored health care at Our Lady of Fatima Hospital. It will also help to maintain the St. Joseph Community Health Center in South Providence which provides critical primary and specialty care to thousands of less fortunate citizens each year.

When CharterCARE was formed in 2009 through the affiliation of Roger Williams Medical Center and St. Joseph Health Services of Rhode Island (Fatima Hospital's corporate parent), great care was taken to ensure that Fatima would continue to observe Catholic canonical law regarding delivery of health care. That same level of diligence is reflected in the current proposal.

In addition, Prospect's investment in the planned partnership will strengthen CharterCARE financially, will ensure that quality, affordable health services continue to be available to patients and will preserve jobs in Providence and North Providence.

CharterCare has been and continues to be an essential part of Rhode Island's health care system. Since its inception in 2010, CharterCare has demonstrated its commitment to quality, efficiency, and collaboration. By consolidating administrative functions between Our Lady of Fatima Hospital and Roger Williams Medical Center, CharterCARE has been able to take close to \$30 million in costs out of the health care system.

Together, CharterCARE's two hospitals continue to develop clinical centers of excellence in cancer, elder health, behavioral health and digestive diseases. While this progress has been substantial, CharterCARE needs a strong capital partner if it is to be able to fulfill the potential of these and other clinical initiatives.

The proposed partnership before the Department differs from any other hospital transaction/conversion in the State of Rhode Island to date. First and foremost, the partnership puts a premium on shared governance and local control. The 50/50 board composition exemplifies the two organizations' commitment to the state of Rhode Island and the communities that the CharterCARE hospitals serve.

The CharterCARE-Prospect partnership presents a unique opportunity to significantly advance Rhode Island's health care delivery system reform goals. In particular, Prospect's experience operating in

managed care and risk arrangements will be critically important as our state's health care system continues to evolve.

Again, the partnership with Prospect will continue to provide a Catholic health alternative to the thousands of Rhode Islanders who seek it. And, it will prove to be beneficial for CharterCARE, its patients, employees and the communities that CharterCARE serves. I urge you to look favorably on this proposed transaction.

Sincerely in Christ,

Bishop Thomas Tobin

Cc: Dr. Michael Fine, Director

# **EXHIBIT 38**

**Belcher, Ken**

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July 7, 2014

Edwin J. Santos  
Chairman of the Board  
Prospect CharterCARE LLC

Dear Ed,

As we have been discussing for quite some time now, I have been planning for my retirement to spend time with my family and to travel and do other things that have just not been possible with my busy schedule here. I recognize that despite our discussions I have not given you my formal notice of retirement. Please use this document as such. My last day at CharterCARE will be Friday, August 29<sup>th</sup>.

It has been my privilege to serve our various institutions and our system for almost 9 years. I cherish the support and trust you and the various Boards have provided me all these years as well as your collective guidance as we have moved from hospital stabilization, to system creation and finally to a joint venture future. We have accomplished much together with very tight funding. The key has been the human capital, the dedication of almost 3,000 members of the CharterCARE family and Boards who have worked tirelessly, selflessly, to keep our hospitals alive, our system growing and our quality of care second to none.

I will miss you all.

Sincerely,



Kenneth H. Belcher  
President and CEO