

**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 THE PRINCIPAL PURPOSE ORGANIZATION REQUIREMENT**

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") respond to paragraphs 155 through 185 of Plaintiffs' Statement of Undisputed and Disputed Material Facts (the "Principal Purpose Organization Statements").

**I. NOTHING IN PLAINTIFFS' STATEMENT
CREATES MATERIAL DISPUTES OF FACT**

Plaintiffs' Statement of Undisputed and Disputed Material Facts goes on at great length, but heft should not be mistaken for substance. Nor should Plaintiffs' obvious tactic of intentional obfuscation be rewarded.

Further, more than two-thirds of Plaintiffs' Statements—Statements Nos. 40 to 154—are addressed to Plaintiffs' frivolous estoppel theory, not the merits of the pending motion for summary judgment. Only Statements No. 155 to 185 pertain to the merits of the pending

motion. That motion seeks the very relief originally sought by Plaintiffs, on the very grounds originally documented by Plaintiffs—a declaration that as of April 29, 2013 (at the latest) the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”) failed to qualify as a church plan because there was no principal purpose organization administering the Plan by that time.

To forestall Plaintiffs’ attempt at misdirection, the Diocesan Defendants file this separate response to Statement Nos. 155 to 185. These averments present the *possibility* that *maybe* there was another entity that qualified as a principal purpose organization that Plaintiffs missed when they filed their original motion and that this entity, *maybe*, cured the defect Plaintiffs identified. Plaintiffs do not provide any admissible evidence that creates a disputed issue of material fact sufficient to defeat the Diocesan Defendants’ Motion for Summary Judgment, for which Plaintiffs provided the template. Plaintiffs’ submissions are rife with evidentiary and procedural flaws. To avoid repetition, those issues are addressed below.¹

Plaintiffs’ Statements violate LR Cv 56(a). Local Rule 56(a) requires that Statements of Undisputed Fact “concisely set forth” facts and that “[e]ach ‘fact’ shall be set forth in a separate numbered paragraph...” This Rule is repeatedly and routinely violated by Plaintiffs, whose proposed Statements consist of multiple sentences and compound assertions. This renders responding to the individual assertions in these statements difficult and confusing. Paragraphs 155, 156, 162, 163, 168, 169, 174, 175, 181, 182, 183, and 184 should be stricken for this reason. *See Cady v. Sheahan*, 467 F.3d 1057, 1060 (7th Cir. 2006) (providing that the “statement of material facts [] did not comply with Rule 56.1 as it failed to adequately cite the

¹ The Diocesan Defendants have responded in a separate filing to the one-hundred fifteen paragraphs directed to Plaintiffs’ estoppel argument. They do so out of an abundance of caution. The Court need not consider *any* of those factual averments because the estoppel argument should be rejected as a matter of law. *See* Diocesan Defs.’ Reply in Further Support of Mot. for Summ. J. (“Diocesan MSJ Reply”) at Part III.

record and was filled with irrelevant information, legal arguments, and conjecture”). For brevity, the Diocesan Defendants will reference this objection as “Violates LR Cv 56.”

Plaintiffs’ Statements are rife with conclusions and mischaracterizations.

Numerous paragraphs in Plaintiffs’ submission germane to the substance of the Diocesan Defendants’ motion contain unsupported and impermissible mischaracterizations. A characterization of the evidence is not a “fact.” A conclusion of law is not a “fact.” Speculation is not a “fact.” Plaintiffs seek to create the illusion of a factual dispute where no such dispute exists, and such characterizations and conclusions should be omitted from the Court’s analysis. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”); *Medina-Munoz, v. R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990) (“[S]ummary judgment may be appropriate if the nonmoving party rests merely upon conclusory allegations, improbable inferences, and unsupported speculation.”); *see also United States v. Pfizer, Inc.*, 188 F. Supp. 3d 122, 130 (D. Mass 2016) (“The purpose of summary judgment ‘is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit.’”), *aff’d sub nom. U.S. ex rel. Booker v. Pfizer, Inc.*, 847 F.3d 52 (1st Cir. 2017); *see also Phillips v. Quality Terminal Servs., LLC*, 855 F. Supp. 2d 764, 771 (N.D. Ill. 2012) (“Opinion, suggested inferences, legal arguments, and conclusions are not the proper subject matter of a [Local Rule 56.1] statement. Including legal arguments . . . is wholly improper, redundant, unpersuasive and irksome.”).

For brevity, the Diocesan Defendants will reference this objection as “Does not set forth admissible facts” where statements contain speculation, opinions, mischaracterizations and/or legal conclusions.

Plaintiffs’ Statements contain assertions that improperly contradict earlier sworn testimony and judicial admissions. In purporting to offer facts, Plaintiffs present statements that contradict Plaintiffs’ own complaint and statements under oath and the prior sworn testimony of their affiant, Richard Land. These facts should be disregarded. *See Schott Motorcycle Supply, Inc. v. Am. Honda Motor Co., Inc.*, 976 F.2d 58, 61 (1st Cir. 1992) (“A party’s assertion of fact in a pleading is a judicial admission by which it normally is bound throughout the course of the proceeding.”); *A.J. Amer Agency, Inc. v. Astonish Results, LLC*, No. 13-351 S, 2014 WL 3496964, at *12 (D.R.I. July 11, 2014) (“This [sham affidavit] doctrine bars reliance on portions of an affidavit that are contradicted by the affiant’s prior deposition testimony.”); *see also* Diocesan MSJ Reply at Part II.A-B. For brevity, the Diocesan Defendants will reference this objection as “Contradicts prior admission or sworn testimony.”

II. THE DIOCESAN DEFENDANTS’ RESPONSE (STATEMENT NOS. 155-185)

PLAINTIFFS’ STATEMENT NO. 155:

Attorney Richard P. Land of the law firm Chace Ruttenberg & Freedman, LLP (“CRF”) acted as attorney and agent for CCHP, SJHSRI, and RWH. Exhibit 89 (Affidavit of Richard P. Land dated March 8, 2022 (“Land Aff.”)) ¶ 2. Throughout that representation, he was the attorney from CRF with primary responsibility for the work done on behalf of or in connection with CCHP, SJHSRI, and RWH. Exhibit 89 (Land Aff.) ¶ 3. Indeed, he was expressly authorized to act “in connection with the administration, management and potential

wind-down of the” Plan. Exhibit 89 (Land Aff.) Tab A (Written Consent of the Class A Member of St. Joseph Health Services of Rhode Island as of December 15, 2014) at 2.

DIOCESAN DEFENDANTS’ RESPONSE NO. 155:

Objection: Violates LR Cv 56.

Response No. 155.1 (First and Second Sentence): Undisputed.

Response No. 155.2 (Third Sentence): Undisputed that the quoted language appears in the Written Consent at Tab A of Mr. Land’s 2022 affidavit, ECF No. 243-89. The Diocesan Defendants refer to that document for its complete content, which also expressly authorized Mr. Land and Daniel Ryan “to approve for payment all ordinary and necessary expenses of the Corporation,” to effect “the dissolution of the Corporation,” prepare and file “final tax returns and other documents and instruments required thereby,” and “to execute any and all documents, instruments, certificates or other writings which each of them in the exercise of his sole discretion shall deem necessary or desirable in order to effectuate the intent of the foregoing resolutions, and the wind-down of the Corporation.” ECF No. 243-89, Tab A (Written Consent), at SJHSRI1726-1727.

PLAINTIFFS’ STATEMENT NO. 156:

Attorney Land continued in that capacity until December 18, 2019, when Attorney Thomas Hemmendinger (the “Liquidating Receiver”) was appointed by the Rhode Island Superior Court as temporary liquidating receiver of CCHP, SJHSRI and RWH in connection with the petitions for judicial liquidation of CCHP, SJHSRI, and RWH that were filed on December 13, 2019 in the Superior Court action captioned In re: CharterCARE Community Board; St. Joseph Health Services of Rhode Island; and Roger Williams Hospital, PC-2019-11756 (the “Liquidating Receivership”). Exhibit 89 (Land Aff.) ¶ 4. Attorney

Hemmendinger was thereafter appointed permanent liquidating receiver, on January 17, 2020.

Id.

DIOCESAN DEFENDANTS' RESPONSE NO. 156

Objection: Violates LR Cv 56.

Response No. 156.1 (First Sentence-1): Undisputed, to the extent “in that capacity” refers to Mr. Land’s service as the attorney from CRF with primary responsibility for the work done on behalf of or in connection with CCCB, SJHSRI, and RWH.

Response No. 156.2 (First Sentence-2): Disputed if this sentence suggests that Mr. Land remained expressly authorized to act in connection with the administration, management and potential wind-down of the Plan until December 18, 2019. Mr. Land’s 2022 affidavit does not so provide and Plaintiffs cite no other evidence. Plaintiff Receiver, further, assumed such authority no later than October 20, 2017, by resolution of the SJHSRI Board of Trustees. Diocesan Defs.’ Statement of Facts, ECF No. 237, ¶ 30.

Response No. 156.3 (Second Sentence): Undisputed.

PLAINTIFFS' STATEMENT NO. 157:

From the outset of the Liquidating Receivership, Attorney Land provided the Liquidating Receiver with transition briefings and consultations. Exhibit 89 (Land Aff.) ¶ 5. On January 9, 2020, the Superior Court granted the Liquidating Receiver’s petition to retain CRF as Special Counsel in the Liquidating Receivership “to continue providing valuable transition services to the Liquidating Receiver and to represent the Liquidating Receiver on certain other matters where its intimate knowledge is particularly helpful.” Id. Since then, CRF has acted as Special Counsel upon request of the Liquidating Receiver, and Attorney Land was the attorney

from CRF with primary responsibility for the work done on behalf or in connection with the Liquidating Receivership. Id.

DIOCESAN DEFENDANTS' RESPONSE NO. 157:

Undisputed.

PLAINTIFFS' STATEMENT NO. 158:

While he was acting as agent and attorney for CCHP, SJHSRI, and RWH, Attorney Land was aware that on or about June 20, 2014, SJHSRI, RWH, and CCHP sold their operating assets to Prospect Chartercare and various other entities in the Prospect group of companies. Exhibit 89 (Land Aff.) ¶ 6. He was also aware that it was intended that, thereafter, RWH and SJHSRI would go into wind-down, RWH would be liquidated, but SJHSRI's funding obligations and obligations as the Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan would continue. Id.

DIOCESAN DEFENDANTS' RESPONSE NO. 158:

Undisputed.

PLAINTIFFS' STATEMENT NO. 159:

Throughout his service as attorney and agent for SJHSRI, Attorney Land participated in the wind-down of SJHSRI and RWH, which consisted of the payment of obligations incurred while SJHSRI operated Fatima Hospital and thereafter in connection with the wind-down, and while RWH operated Roger Williams Hospital and thereafter in connection with the wind-down, and collection of all debts owed to SJHSRI and RWH. Exhibit 89 (Land Aff.) ¶ 8.

DIOCESAN DEFENDANTS' RESPONSE NO. 159:

Undisputed that the wind-down of SJHSRI and RWH consisted, among other things, of the payment of obligations incurred while SJHSRI operated Fatima Hospital and thereafter in connection with the wind-down, and while RWH operated Roger Williams Hospital and thereafter in connection with the wind-down, and collection of all debts owed to SJHSRI and RWH.

PLAINTIFFS' STATEMENT NO. 160:

SJHSRI and RWH were left with certain financial assets after the sale of SJHSRI and RWH's operating assets to Prospect Chartercare and related entities. SJHSRI and RWH were nonprofit corporations, and a significant portion of their remaining assets were charitable bequests, the disposition of which was subject to the approval of the Rhode Island Attorney General ("RIAG") and the Superior Court. Exhibit 89 (Land Aff.) ¶ 9.

DIOCESAN DEFENDANTS' RESPONSE NO. 160:

Undisputed.

PLAINTIFFS' STATEMENT NO. 161:

The RIAG's conditions of approval included the requirement that the assets of SJHSRI and RWH that were retained by those entities (not sold to Prospect) be allocated and distributed pursuant to a Cy Pres proceeding, based upon the submission of a Cy Pres petition approved by the RIAG. Exhibit 89 (Land Aff.) ¶ 10. The RIAG's Decision included Condition No. 8 on page 52, as follows:

8. That (a) a proposed opening balance sheet for the CCHP Foundation and the Heritage Hospitals as of the close of the transaction identifying the source and detail of all charitable assets to be transferred to the CCHP Foundation be provided to the Attorney General promptly following the close of the transaction; (b) a proposed Cy Pres petition satisfactory to the Attorney General be prepared promptly following the

close of the transaction allowing certain charitable assets to be transferred to the CCHP Foundation and requesting that other charitable assets remain with the Heritage Hospitals, in each case for disbursement in accordance with donor intent, **with such proposed modifications as agreed to by the Attorney General, and (c) the approved Cy Pres petition be filed with the Rhode Island Superior Court.**

[Emphasis supplied]

Exhibit 89 (Land Aff.) ¶ 10.

DIOCESAN DEFENDANTS' RESPONSE NO. 161:

Undisputed that the RIAG's Decision contains, *inter alia*, the quoted language, but further asserted that the entire content of that document controls and speaks for itself.

PLAINTIFFS' STATEMENT NO. 162:

Accordingly, the disposition of SJHSRI's charitable assets following the sale to Prospect was pursuant to the conditions imposed by the RIAG, including the requirements for a Cy Pres petition satisfactory to the RIAG, and were not subject to the discretion of SJHSRI or SJHSRI's Board of Trustees as would have been the case if SJHSRI were operating without such control. Exhibit 89 (Land Aff.) ¶ 11.

DIOCESAN DEFENDANTS' RESPONSE NO. 162:

Objection: Violates LR Cv 56. Does not set forth admissible facts. Contradicts prior admission or sworn testimony.

Response No. 162.1: This is not a statement of fact, but a conclusion of law based on a mischaracterization of legal documents and the Court should disregard it. The RIAG's Decision and the Cy Pres Petition are in the Summary Judgment record and speak for themselves. ECF No. 243-89, Tab B (RIAG Decision) & Tab C (Cy Pres Petition).

Response No. 162.2: The Cy Pres Order and RIAG's decision as a matter of law do not eliminate SJHSRI's discretion in doing all things necessary to wind down SJHSRI, as

explained in the Diocesan Defendants' summary judgment reply filed contemporaneously herewith. Diocesan MSJ Reply at Part I.D.

Response No. 162.3: Statement No. 162 directly contradicts prior testimony by Mr. Land and positions that Plaintiffs have successfully asserted earlier in this litigation. It is in service of creating a sham dispute to defeat the Diocesan Defendants' motion for summary judgment and therefore should be disregarded under the sham affidavit and judicial estoppel doctrines, as explained in the Diocesan Defendants summary judgment reply. Diocesan MSJ Reply at Part II.A-B.

Earlier in this litigation, the Diocesan Defendants challenged the good faith of a settlement between Plaintiffs and SJHSRI and the propriety of Plaintiffs' counsel's request for millions of dollars in attorney fees. In support of their argument, the Diocesan Defendants argued that a significant percentage of the lump sum payment of the settlement was already earmarked for the Plan by virtue of the Cy Pres Petition and Cy Pres Order. Diocesan Defs.' Resp. in Opp'n to Joint Mot. for Prelim. Settlement Approval & Mot. for Award of Fees, ECF No. 73, at 20, 26-28; Diocesan Defs.' Post Hr'g Br. Addressing Proposed Orders on Prelim. Settlement Approval, ECF No. 115 at 7-8.

Plaintiffs (and their counsel) vigorously contested this argument in favor of their then preferred vision of the 2015 Cy Pres proceedings as a fraud that did not obligate SJHSRI to do anything with respect to the Plan. For example, Plaintiffs argued:

In the face of these realities, the Diocesan Defendants offer only reckless misreadings of the Petition for Appointment of a Receiver, the 2015 Cy Pres Petition, and other documents discussed in the First Amended Complaint, which Plaintiffs have addressed in their prior Reply memorandum (Dkt # 82).

The Diocesan Defendants inaccurately claim:

The 2015 Cy Pres Petition confirms the language in the Receivership Petition that additional assets were destined for the Plan. Specifically, the 2015 Cy Pres Petition indicates that “it was necessary for each of the Heritage Hospitals [SJHSRI and RWH] at the closing [of the transaction with Prospect Medical Holdings] to . . . satisfy outstanding pre and post closing liabilities during their subsequent wind-down period (the “Outstanding Pre and Post Closing Liabilities”) as is more fully set forth in the [Asset Purchase Agreement].” Ex. 3 (2015 Cy Pres Pet. and selected exhibit) ¶ 12 & Ex. C. To that end, RWH requested approval to use \$12,288,848 to satisfy Outstanding Pre and Post Closing Liabilities “as more fully described in Exhibit C.” *Id.* ¶¶ 24 & Ex. C.

Dkt # 73 at 27 (bracketed insertions by the Diocesan Defendants). It is false to suggest that the Asset Purchase Agreement set forth anything of the sort alleged above. The Diocesan Defendants fail to point to anything in the Asset Purchase Agreement actually saying so, because they cannot. In fact, Exhibit C to the Cy Pres Petition allocated only the single \$14 million payment which was made in connection with the June 20, 2014 closing, *and nothing thereafter*. See Dkt # 73-3 at 24. The Diocesan Defendants are parroting and doubling down on some of the very misrepresentations for which Plaintiffs brought suit against the Settling Defendants (and for that matter, against Defendant CharterCARE Foundation, whose settlement is separately pending before the Court).

Notwithstanding that not a single penny has been paid into the Plan since the last (inadequate) payment in 2014, the Diocesan Defendants insist that the Settling Defendants were destined to turn over all their assets to the Plan (however small that sum might prove to be, at some indeterminate future time). Even if (*arguendo*) the Settling Defendants had made that commitment absent the Settlement (which they had not), it would simply be another basis for Plaintiffs’ existing claim for breach of contract (Count XI).

Pls., Defs. CCCB, SJHSRI, & RWH Post-Hr’g Mem., ECF No. 109, at 11-12 (footnotes omitted). Later, Plaintiffs reiterated this same position, which is contrary to Statement No. 162:

The Diocesan Defendants also falsely assert that the 2015 Cy Pres Petition “sought permission to use these funds to pay post-closing liabilities as defined by the Asset Purchase Agreement, including liabilities relating to the Plan.” Diocesan Defendants’ Memo. at 8. The 2015 Cy Pres Petition sought permission to use funds to pay post-closing liabilities *as defined by the 2015 Cy Pres Petition*, which only allocated \$14 million to the Plan (which was paid in 2014). See the Settling Parties’ post-hearing memorandum (Dkt # 109) at 11-12 (quoting the 2015 Cy Pres Petition and citing Exhibit C thereto).

Pls.' Reply to Diocesan Defs.' Post-Hr'g Mem. in Opp'n to Settlement Mot., ECF No. 120, at 14.

Plaintiffs took the same position in a third filing to the Court:

To attempt to prove that SJHSRI intended to eventually pay its assets into the Plan without this litigation, the Non-Settling Defendants point to SJHSRI's statements in the petition that commenced the 2015 Cy Pres Proceeding and in the Receivership Petition. However, as already discussed, the 2015 Cy Pres Proceeding was intended to and did transfer SJHSRI's assets to other entities, beyond the reach of both SJHSRI and the Plan participants, which would effectively preclude SJHSRI from paying those assets into the Plan even if SJHSRI wanted to, whereas the purpose of the Receivership Petition was to reduce SJHSRI's obligations under the Plan to a sum that existing Plan assets were sufficient to pay. As such, those statements were part of what Plaintiffs allege to be a sleight of hand.

The statements in the 2015 Cy Pres Petition upon which the Non-Settling Defendants rely are analyzed below, but prior to that it must be noted that the consummate irony of the Non-Settling Defendants' reliance on those statements is that Plaintiffs expressly allege in the Complaint that the very same statements were intended to give the court in the 2015 Cy Pres Proceeding false assurance that the Plan was fully funded, to deceive the court into allowing \$8,200,000 to be transferred to CharterCARE Foundation which should have been paid to the Plan.
...

In short, nothing SJHSRI did or said before this litigation was brought even tends to prove that SJHSRI would have paid its assets into the Plan even if this litigation had not been brought, and a great deal of what SJHSRI did and said before this litigation was brought tends to prove the opposite. What blew up SJHSRI's scheme to shield its assets from the Plan was the Receiver's appointment, and the investigation by WSL, as Special Counsel to the Receiver, culminating in the 139 page complaint that commenced this action and which for the first time disclosed (and detailed) SJHSRI's fraudulent scheme.

Pls.' Counsel Final Mem. in Supp. of Mot. for Fees, ECF No. 150 at 15-18 (footnotes omitted).

Further, in support of their earlier position, Plaintiffs elicited testimony from Mr. Land, where he stated under oath that the 2015 Cy Pres Order did not require

SJHSRI to do anything, but merely gave it permission to take action (actions that Plaintiffs claimed SJHSRI had not taken):

Q. [Mr. Sheehan] Now, at the time you wrote that, you understood that it was the plaintiff's contention that the references in the Cy Pres petition to the pension plan were intended to lull the court into believing that there was sufficient money to pay the plan.

A. [Mr. Land] I do understand that that was the plaintiff's position.

Q. And you understand that the Order that the court entered did not -- let me back up a bit. The Order that the court entered allowed certain funds that Roger Williams had to be used to pay liabilities of St. Joseph's. Correct?

A. Correct.

Q. It did not, however, order that those funds be used to pay St. Joseph's liabilities. Correct? It gave permission.

A. That's how I understand it, yes.

Ex. 39² (2019 Land Dep.) 133:13–134:3. The Special Master accepted the Plaintiffs' argument, ECF No. 165 at 17-18, which the Court adopted via text order, dated October 24, 2019. The Court should disregard Statement No. 162.

Response No. 162.4: Whether the Court should disregard Statement No. 162

because it constitutes a sham, or because it asserts conclusions of law, presents questions of law that the Court should resolve. Likewise, assuming the Court decides to consider the substance of Statement No. 162, whether the Cy Pres Order and Attorney General Decision support the conclusion that those documents eliminated the discretion of SJHSRI's Board is likewise a pure question of law based upon the content of those legally operative documents that should be decided by the Court. Nothing in Statement No. 162 presents an obstacle to summary judgment or a factual dispute requiring a trier of fact.

² The Diocesan Defendants' continue numbering exhibits from where they left off in their response to paragraphs 40-154 of Plaintiffs' statement of facts concerning judicial estoppel.

PLAINTIFFS' STATEMENT NO. 163:

SJHSRI, RWH, and an affiliated foundation, CharterCARE Foundation (“CCF”), were the petitioners in the Cy Pres proceeding and were represented by Adler Pollock & Sheehan P.C. (“APS”). Exhibit 89 (Land Aff.) ¶ 12. APS prepared and secured the RIAG’s advance approval for the Cy Pres petition which was filed on January 13, 2015. Exhibit 89 (Land Aff.) ¶ 12; Land Aff. Tab C. The petition referred in paragraph 14 to the RIAG’s condition concerning charitable assets as follows:

The AG decision discussed the proposed disposition of charitable assets at pages 23 through 32 having reviewed draft cy pres petition outlines submitted during the HCA review. Among other things, it approved the concept of (1) the transfer of certain of the charitable assets to the CCHP Foundation and (2) the use of certain of the charitable assets during the Heritage Hospitals’ wind down to satisfy the Outstanding Pre and Post Closing Liabilities subject to cy pres approval from this Court. It also required the filing of this Petition to address such disposition of the charitable assets post closing.

Exhibit 89 (Land Aff.) ¶ 12.

DIOCESAN DEFENDANTS’ RESPONSE NO. 163:

Objection: Violates LR Cv 56.

Response No. 163.1 (First and Second Sentences): Undisputed.

Response No. 163.2 (Third Sentence): Undisputed that Mr. Land’s affidavit accurately quotes the Cy Pres Petition. The Diocesan Defendants refer to that document for its complete content. ECF No. 243-89, Tab C (Cy Pres Petition).

PLAINTIFFS' STATEMENT NO. 164:

The Cy Pres petition in its paragraphs 24, 27-29, and 32 sought Superior Court approval for RWH to retain charitable assets totaling \$17,109,003.04 to pay its pre and post-

closing liabilities and to transfer any remaining balance to SJHSRI for SJHSRI to use to pay its pre and post-closing liabilities, including its pension obligations. Exhibit 89 (Land Aff.) ¶ 13.

DIOCESAN DEFENDANTS' RESPONSE NO. 164:

Undisputed.

PLAINTIFFS' STATEMENT NO. 165:

The Cy Pres petition in its paragraphs 27, 30, and 32 sought court approval for SJHSRI to retain charitable assets totaling \$6,473,365 to pay its pre and post-closing liabilities, including its pension obligations. Exhibit 89 (Land Aff.) ¶ 14.

DIOCESAN DEFENDANTS' RESPONSE NO. 165:

Undisputed.

PLAINTIFFS' STATEMENT NO. 166:

The Cy Pres petition in its paragraph 17 expressly noted that SJHSRI's pension obligations would remain after its other pre and post-closing liabilities were paid:

17. As set forth on Exhibit C, at the Joint Venture closing, certain obligations of RWH and SJHSRI were paid, i.e., bond, pension and account payable liabilities, using sales proceeds from PMH and unrestricted cash. In addition, the Outstanding Pre and Post Closing Liabilities remain to be paid, including, without limitation, malpractice insurance tail policies, third party payor obligations and worker's compensation payments. It is anticipated that the Outstanding Pre and Post Closing Liabilities will be paid during the Wind-down period of RWH and SJHSRI over the next approximately three years. The SJHSRI pension funding obligation will continue after the wind-down period concludes.

Exhibit 89 (Land Aff.) ¶ 15.

DIOCESAN DEFENDANTS' RESPONSE NO. 166:

Undisputed that Mr. Land's affidavit accurately quotes this portion of the Cy Pres Petition. ECF No. 243-89, Tab C (Cy Pres Petition). The Cy Pres Petition is a legal document that speaks for itself.

PLAINTIFFS' STATEMENT NO. 167:

The Cy Pres petition was granted by the Rhode Island Superior Court by order dated April 20, 2015. Exhibit 89 (Land Aff.) ¶ 16.

DIOCESAN DEFENDANTS' RESPONSE NO. 167:

Undisputed.

PLAINTIFFS' STATEMENT NO. 168:

Consequently, virtually all ordinary business decisions which a board of trustees normally would be expected to supervise were pre-determined or non-existent for SJHSRI's Board of Trustees following the sale of SJHSRI's operating assets. Exhibit 89 (Land Aff.) ¶ 17. There were no operating issues to be managed or for the Board to supervise, because SJHSRI had no remaining operating business or operating assets. *Id.* In addition, the sources and amount of SJHSRI's charitable and other assets and SJHSRI's obligation to apply them to pay its pre and post-closing liabilities were already determined in the Cy Pres proceeding and the prior Decision of the RIAG. *Id.*

DIOCESAN DEFENDANTS' RESPONSE NO. 168:

Objection: Violates LR Cv 56. Does not set forth admissible facts. Contradicts prior admission or sworn testimony.

Response No. 168.1 (First Sentence): This is not a statement of fact, but a legal conclusion based on Mr. Land's construction of the RIAG Decision, Cy Pres Petition, and Cy Pres Order and the Court should disregard it. Those legal documents speak for themselves. Their terms do not deprive SJHSRI of agency over how to conduct its wind-down, including how and in what priority it paid outstanding pre- and post-closing liabilities, "including, without limitation, malpractice insurance tail policies, third party payor obligations and worker's

compensation payments,” and how and whether it might compromise ongoing disputes. ECF No. 243-89, Tab C (Cy Pres Petition) ¶ 17. The Diocesan Defendants discussed the legal effect of the RIAG Decision and the 2015 Cy Pres proceedings in their summary judgment reply.

Diocesan MSJ Reply at Part I.D.

Response No. 168.2 (Second Sentence): This statement must be disregarded by the Court because Mr. Land testified in 2019 that SJHSRI continued to have “operating” expenses “and costs of running, you know, winding down the business.” Ex. 39 (2019 Land Dep.) 20:4-9 (“Q. Have any portion of those funds been used to pay liabilities over the past four years? A. Oh, absolutely. There’s been ongoing liabilities. There’s -- including just ordinary operating expenses and costs of running, you know, winding down the business.”). Mr. Land’s 2019 testimony thus contradicts his 2022 testimony that there were no “operating issues to be managed or for the [SJHSRI] Board to supervise,” ECF No. 243-89 (2022 Land Aff.) ¶ 17, and is precluded by the sham affidavit doctrine. Diocesan MSJ Reply at Part II.B.2; *see infra* Resp. No. 169.3.

Response No. 168.3 (Third Sentence-1): This is not a statement of fact, but a legal conclusion based on Mr. Land’s construction of the RIAG Decision, Cy Pres Petition, and Cy Pres Order. Those legal documents speak for themselves. *See supra* Resp. No. 168.1.

Response No. 168.4 (Third Sentence-2): This statement must be disregarded by the Court because it contradicts Plaintiffs’ prior successful arguments and Mr. Land’s earlier testimony as discussed *supra* at Response No. 162.3. The Court should disregard this averment for another reason. Mr. Land now asserts: “the sources and amount of SJHSRI’s charitable and other assets and SJHSRI’s obligation to apply them to pay its pre and post-closing liabilities

were already determined in the Cy Pres proceeding and the prior Decision of the RIAG.” ECF No. 243-89 (2022 Land Aff.) ¶ 17. In 2019, however, he testified:

Q. [Mr. Halperin] What is it that caused those funds to go from being a relatively small amount of one to three million, I think you testified, up to this \$14 million over the last four years?

A. [Mr. Land] Um, there are a lot of factors. I mean, there were investment returns which can cause part of it. There were settlements with the Medicare, Medicaid, CMS that resulted in significantly greater recoveries than were anticipated and was anticipated by the -- that folks at the hospital who prepared the sources and use funds in the analysis at the time of sale. That might be the most significant portion. There were some settlements of litigation matters that were disputed that resulted in considerably greater returns than again the same folks estimated at the time of the sale. And we’ve had some charitable trust distributions. The charitable trust ran for a period of time. I believe there are charitable remainder trusts and those resulted in distributions. So that’s a considerable portion as well.

Ex. 39 (2019 Land Dep.) 19:9–20:3. Both of these statements cannot be true. The Court should disregard Statement No. 168.

Response No. 168.5: Whether the Court should disregard Statement No. 168

because it constitutes a sham, or because it asserts conclusions of law, presents questions of law that the Court should resolve. Likewise, assuming the Court decides to consider the substance of Statement No. 168, whether the Cy Pres Order and Attorney General Decision support the conclusion that those documents eliminated the discretion of SJHSRI’s Board is likewise a pure question of law based upon the content of those legally operative documents that should be decided by the Court. Nothing in Statement No. 168 presents an obstacle to summary judgment or a factual dispute requiring a trier of fact.

PLAINTIFFS' STATEMENT NO. 169:

However, SJHSRI remained Plan Administrator with full power and authority to amend or terminate the Plan. Exhibit 89 (Land Aff.) ¶ 18. Moreover, the ultimate goal of the wind-down of RWH and SJHSRI was to fund SJHSRI’s obligations under the Plan. *Id.* Thus, the

principal matter going forward for SJHSRI and SJHSRI's Board of Trustees was the maintenance and funding of the Plan. Id. That was no mere formality. To the contrary, it was clear that the Plan was not sufficiently funded to pay all its obligations to the Plan participants. Id. In other words, if nothing were done to address the problem, those Plan participants who were already receiving benefits would receive some or all the benefits they expected, whereas Plan participants who had not yet retired would receive much less or possibly nothing because the Plan would run out of money. Id.

DIOCESAN DEFENDANTS' RESPONSE NO. 169:

Objection: Violates LR Cv 56. Does not set forth admissible facts. Contradicts prior admission or sworn testimony.

Response No. 169.1 (First Sentence): Undisputed.

Response No. 169.2 (Second and Third Sentences): These sentences are opinions that are immaterial to the resolution of the Diocesan Defendants' motion as they do not bear on the legal determination of whether the Plan was maintained by a principal purpose organization. As the Diocesan Defendants explained in their summary judgment reply, SJHSRI (and its Board of Trustees) could not qualify as a principal purpose organization as a matter of law because SJHSRI was a hospital in winddown and not created to maintain, administer, or fund the Plan and did not change its corporate mission to that end. Diocesan MSJ Reply at Part I.A-C. SJHSRI (or more accurately, its corporate predecessor, St. Joseph's Hospital) was incorporated in 1892 "for the purpose of providing medical aid and surgical treatment for the sick of all denominations." *See* Ex. 40 (1892 Act of Incorporation of St. Joseph's Hospital). Likewise, SJHSRI's bylaws, effective January 4, 2010, described SJSHRI's mission as: "[T]o foster an environment of collaboration among its partners, medical staff and employees that supports high

quality, patient focused and accessible care that is responsive to the needs of the communities it serves.” ECF No. 237-10 (SJHSRI Bylaws) § 3.2. Although SJHSRI’s bylaws were amended in certain respects following the 2014 Asset Sale, they retained this description of SJHSRI’s mission. *See* ECF No. 243-89, Tab A (Written Consent) at SJHSRI1725.

Response No. 169.3: To the extent Statement No. 169 is offered in support of the proposition that SJHSRI and its Board of Trustees was functioning as a principal purpose organization following the 2014 Asset Sale, thus curing any previous lapse in the Plan’s qualification for the church plan exemption, the statement is aimed at creating a sham dispute of facts in contradiction of Mr. Land’s 2019 affidavit, his 2019 deposition testimony, and Plaintiffs’ complaint, Plaintiff Receiver’s interrogatory answers, and Plaintiffs’ arguments earlier in this litigation. As explained in the Diocesan Defendants’ summary judgment reply, such efforts are barred under the judicial admissions and sham affidavit doctrines. Diocesan MSJ Reply at Part II.B. The Court should disregard Statement No. 169.

1. Mr. Land’s 2022 Testimony Versus Mr. Land’s 2019 Testimony

Mr. Land now avers that “the principal matter going forward for SJHSRI and SJHSRI’s Board of Trustees was the maintenance and funding of the Plan” and that “the ultimate goal of the wind-down of RWH and SJHSRI was to fund SJHSRI’s obligations under the Plan.” ECF No. 243-89 (2022 Land Aff.) ¶ 18. Yet, he acknowledges that, “when needed, the [SJHSRI] Board also provided supervision over some of the more discretionary decisions involved in the wind-down, such as authorizing settlement of claims pursuant to my recommendations.” *Id.* ¶ 18 n.2. In 2019, Mr. Land went much further.

Approximately three years ago, Mr. Land described the wind-down activities that CCCB, RWH, and SJHSRI were supervising:

Q. [Mr. Halperin] So what were your responsibilities generally over the last four years as agents for those entities?

A. [Mr. Land] So, I think it's easier to -- I'll describe it this way. When the hospitals were -- when hospital operating entities were sold to Prospect, there were no employees left, and so I performed, as agent, essentially functions that employees would do to try to wind down ordinary operating issues and all of the issues that might come up in a wind-down of an entity.

Q. So is it fair to say that the wind-down of the entities was your principal role in some way, shape or form either as agent or attorney?

A. I guess that's fair. Principal role.

Q. What other roles were there other than that which related to the wind-down of the entities?

A. Well, I counseled the board of directors in the context of my services as a -- as an attorney.

Q. So, that would be in connection with, like, routine corporate matters?

A. Routine corporate matters, what was going on with the wind-down itself, legal issues that might arise during that process.

Ex. 39 (2019 Land Dep.) 9:8–10:5.

Q. [Mr. Halperin] Did you communicate with a board in making decisions as to how monies were going to be spent, or was this something you had some level of authority to do independently?

A. [Mr. Land] When you say "spent," we -- there were wind-down expenses, so wind-down expenses were paid with -- you know, to the extent that board approval was required for extraordinary expenses or settlement of disputes or things like -- of that nature, I involved Dan Ryan, and Dan would have determined what to do next.

Id. 12:15–12:24.

Q. [Mr. Halperin] So if I understood your answer, approximately 13 million is available for liabilities? Wind-down liabilities?

A. [Mr. Land] Yeah, approximately. Today.

Q. Yes, yes. Let's mark the Order on the Petition as Exhibit Number 2, please. (Exhibit No. 2 marked)

Q. What is it that caused those funds to go from being a relatively small amount of one to three million, I think you testified, up to this \$14 million over the last four years?

A. Um, there are a lot of factors. I mean, there were investment returns which can cause part of it. There were settlements with the Medicare, Medicaid, CMS that resulted in significantly greater recoveries than were anticipated and was anticipated by the -- that folks at the hospital who prepared the sources and use funds in the analysis at the time of sale. That might be the most significant portion. There were some settlements of litigation matters that were disputed that resulted in considerably greater returns than again the same folks estimated at the

time of the sale. And we've had some charitable trust distributions. The charitable trust ran for a period of time. I believe there are charitable remainder trusts and those resulted in distributions. So that's a considerable portion as well.

Q. Have any portion of those funds been used to pay liabilities over the past four years?

A. Oh, absolutely. There's been ongoing liabilities. There's -- including just ordinary operating expenses and costs of running, you know, winding down the business. There have been CMS claims back against the hospitals for recoupment as well. So the net positive effect of those transactions is what you see now in the increase in assets, but there were negative transactions as well.

Id. 19:2–20:13

Mr. Land also explained the thought-process as to where the Plan figured in the wind-down:

Q. [Mr. Halperin] What did CCCB contemplate would happen with respect to the money under its control after the wind-down period concluded?

MR. SHEEHAN: Objection, beyond the scope of the deposition.

A. [Mr. Land] After the wind-down period concluded, there would be a process undertaken to finalize the wind-down and to -- ultimately if the only -- if the only remaining obligation of these entities in the aggregate, assuming all to be one, was the pension, then presumably we would have sought to have the pension get the remaining assets.

Q. So your -- the way you are handling this was to deal with the liabilities as part of the wind-down, and then afterwards the pension would have been addressed in some way, shape or form. Is that fair?

A. That's how I understood the paradigm.

Id. 24:23–25:13. In defending the good faith of the settlement struck between SJHSRI and

Plaintiff, Mr. Land reiterated that the wind-down was not completed when SJHSRI put the Plan

into receivership: “At the time of filing of the Petition to Appoint Receiver, the Heritage

Hospitals were not certain of how much, if any, funds might be available for the Plan following

completion of the wind down of the Heritage Hospitals.” ECF No. 109-2 (2019 Land Aff.) ¶ 5.

Indeed, it was “anticipated that the wind down of the Heritage Hospitals could take several years,

if not longer, to complete.” *Id.* ¶ 6.

The above testimony contradicts Mr. Land's (and Plaintiffs') current position that SJHSRI was principally focused on the Plan following the 2014 Asset Sale. Rather, it is consistent with Plaintiffs' earlier position that SJHSRI's focus was elsewhere—"the hundreds of purposes and actions involved in winding down a hospital and related entities." Ex. 41 (Pl. Receiver's Interrog. Answers) at 11 (answer to No. 5). The Plan was just one of SJHSRI's responsibilities, First Am. Compl. ("FAC"), ECF No. 60, ¶ 16, one that SJHSRI was looking to shirk. *See* Pls.' Counsel Final Mem. in Supp. of Mot. for Fees, ECF No. 150, at 15-18. Plaintiffs (and Mr. Land) told one story three years ago and now that this story is inconvenient for them, they weave a different tale to defeat the Diocesan Defendants' request for the same declaration that Plaintiffs asked for in 2019. The Court should disregard Statement No. 169 under the sham affidavit doctrine, as discussed in the Diocesan Defendants' summary judgment reply. Diocesan MSJ Reply at Part II.B.2.

2. Plaintiffs' Contradictory Allegations and Arguments

Plaintiffs' current position that the principal matter going forward for SJHSRI and SJHSRI's Board of Trustees was the maintenance and funding of the Plan following the 2014 Asset Sale, thus curing the defect discussed in Plaintiffs' prior (and the Diocesan Defendants' current) motion for summary judgment, is in direct opposition to Plaintiffs' allegations, testimony and earlier arguments to this Court. As such, their new position (and Statement No. 169) is barred by the judicial admissions doctrine, as explained in the Diocesan Defendants' summary judgment reply. Diocesan MSJ Reply at Part II.B.1.

First, in their complaint, Plaintiffs asserted:

After the closing of the 2014 Asset Sale, *SJHSRI's Board of Trustees* and the CCCB Finance Committee *ceased any administration of the Plan*. By resolution dated December 15, 2014, CCCB caused SJHSRI to delegate "the administration, management and potential wind-down" of the Plan to SJHSRI's president and to

one of SJHSRI's attorneys, "each acting alone." Neither of these individuals was an organization, much less a principal-purpose organization, or associated with a church.

FAC, ECF No. 60, ¶ 80 (emphasis added); *see* Compl., ECF No. 1, ¶ 82 (same).

Second, Plaintiff Receiver swore under oath:

- "It is also the Receiver's conclusion that from the closing of the asset sale on June 20, 2014 until the Plan was placed into Receivership in August of 2017, the principal purpose of SJHSRI was winding down its operations". Ex. 41 (Pl. Receiver's Interrog. Answers) at 6 (answer to No. 3).
- "Following the closing of the asset sale on June 20, 2014 until the Plan was placed into Receivership in August of 2017, SJHSRI's other purposes and activities (in addition to administering, maintaining, and funding the Plan) were *the hundreds of purposes and actions involved in winding down a hospital and related entities.*". *Id.* at 11 (answer to No. 5) (emphasis added).

Third, Plaintiffs explained that "it is indisputable" that the principal purpose organization defect identified in Plaintiffs' earlier, and the Diocesan Defendants' pending, motion for summary judgment "was not corrected." Pls.' Reply to Prospect's Mem. of Law in Opp'n to Pls.' Mot. for Summ. J. ("Pls.' Prospect Reply"), ECF No. 197, at 96-98. If Plaintiffs' complaint and Plaintiff Receiver's interrogatory answers left any doubt as to whether Plaintiffs had considered if there was a cure, their vigorous defense of the lack of a cure forecloses any argument that they did not consider the issue:

In any event, it is indisputable that if the Court agrees with Plaintiffs that the Plan lacked a "principal purpose organization" between July 1, 2011 and June 20, 2014, that deficiency was not corrected. Prospect does not contend, because it cannot, that either CCHP's Finance, Audit, & Compliance Committee or CCHP's Investment Committee ever met again after June 20, 2014. Beginning June 20, 2014 and continuing for at least six months, until at least December 20, 2014, the Department of Human Resources for Prospect (in its fictitious name "CharterCARE Health Partners") took over administration of the Plan, under a Transition Services Agreement, and Prospect was paid a fee for administering the Plan. Prospect was unqualified to be a "principal purpose organization" for two reasons: it was not controlled by nor associated with a church, and Plan maintenance and funding was not its principal purpose or function. To the

contrary, over those six months Prospect was responsible for the operation of both Fatima and Roger Williams Hospital.

Prospect itself contends that there was no principal purpose organization as of December 15, 2014, when administration of the Plan was turned over to SJHSRI's lay President Daniel Ryan and an outside attorney, Richard Land.

After that date, no apparent efforts were made to put any organization (much less a PPO) in charge of the Plan's administration or the Plan's funding until the Plan was petitioned into receivership on August 17, 2017, and Del Sesto was put in charge of it.

Prospect's Opp. Memo. at 49. Prospect's conclusion is unequivocal:

With no principal purpose organization in place, and no steps to correct the problems that this caused, the law and facts compel the conclusion that the Plan's status as a non-electing church plan came to an end on or about December 15, 2014.

Prospect's Opp. Memo. at 68.

The 2011 Plan was followed by the 2016 Plan, and again stated that "[t]he Employer shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Trustees, shall designate a person or committee of persons to be the Administrator and named fiduciary." There is no evidence that a separate Retirement Board was established by SJHSRI's Board of Trustees under this 2016 Plan, until October 20, 2017 when the SJHSRI Board of Trustees designated the Receiver as Plan Administrator. The Receiver certainly did not qualify as a principal purpose organization, for several reasons including that he is not controlled by or associated with a church.

In short, there was no principal purpose organization maintaining or administering the Plan from July 1, 2011 to the present.

Pls.' Prospect Reply, ECF No. 197, at 96-98 (footnotes omitted).

Plaintiffs had access to all of the documents they (and Mr. Land) presently rely on to make their 2022 argument that SJHSRI cured its principal purpose organization defect when Plaintiffs moved for summary judgment in 2019 and took the opposite position, including contesting that there was a cure. They also had access to Mr. Land. The only thing that has changed is Plaintiffs' perception of what position is most advantageous for them to have.

Plaintiffs' current position contradicts not just arguments they have briefed, but their complaint and sworn testimony of Plaintiff Receiver. The Court should disregard Statement No. 169 under the judicial admissions doctrine. Diocesan MSJ Reply at Part II.B.1.

Response No. 169.4: Whether the Court should disregard Statement No. 169 because it constitutes a sham, or because it asserts conclusions of law or reflects Mr. Land's individual but immaterial state of mind, presents questions of law that the Court should resolve. Likewise, assuming the Court decides to consider the substance of Statement No. 169, whether the Cy Pres Order and Attorney General Decision support the conclusion that those documents eliminated the discretion of SJHSRI's Board is likewise a pure question of law based upon the content of those legally operative documents that should be decided by the Court. Nothing in Statement No. 169 presents an obstacle to summary judgment or a factual dispute requiring a trier of fact.

PLAINTIFFS' STATEMENT NO. 170:

In connection with the Plan receivership in the Rhode Island Superior Court, captioned St. Joseph Health Services of Rhode Island, Inc. v. St. Joseph Health Services of Rhode Island Retirement Plan, C.A. No: PC-2017-3856, SJHSRI was served with a subpoena duces tecum that requested, inter alia, "[a]ll documents relating to the establishment, functions, or conduct of any board, committee, or subcommittee that administers or administered the Plan, including any board or committee or subcommittee resolutions and any appointments to such board, committee, or subcommittee." Exhibit 89 (Land Aff.) ¶ 19.

DIOCESAN DEFENDANTS' RESPONSE NO. 170:

Undisputed.

PLAINTIFFS' STATEMENT NO. 171:

Attorney Land responded to the subpoena on behalf of SJHSRI and produced all such documents in the possession or control of SJHSRI and does not recall seeing any document by or on behalf of SJHSRI or SJHSRI's Board of Trustees indicating that SJHSRI's Board of Trustees ever intended to or in fact appointed the Finance Committee of CharterCARE Health Partners (under that name or as renamed CharterCARE Community Board) to act with respect to any matters related to the Plan. Exhibit 89 (Land Aff.) ¶ 19.

DIOCESAN DEFENDANTS' RESPONSE NO. 171:

Undisputed.

PLAINTIFFS' STATEMENT NO. 172:

The records of SJHSRI reveal that SJHSRI did not designate an Administrator or named fiduciary, and, thus, SJHSRI remained the Administrator and named fiduciary of the Plan until October 20, 2017, when the Board of Trustees of SJHSRI irrevocably designated Plaintiff Receiver as administrator of the Plan. DD SUMF ¶ 30; DD SUMF Exhibit 11 (October 20, 2017 Resolution).

DIOCESAN DEFENDANTS' RESPONSE NO. 172:

Undisputed that the records of SJHSRI do not indicate that SJHSRI designated an Administrator or named fiduciary of the Plan. Disputed as to the legal conclusion that SJHSRI is a principal purpose organization. *See* Diocesan MSJ Reply at Part I.

PLAINTIFFS' STATEMENT NO. 173:

During the period of Attorney Land's involvement from mid-November, 2014 through the filing of the petition to put the Plan into receivership on August 18, 2017, there was no active Finance Committee of CharterCARE Health Partners, and no one purporting to act on

behalf of the Finance Committee of CharterCARE Health Partners exercised any authority over the Plan. Exhibit 89 (Land Aff.) ¶ 20.

DIOCESAN DEFENDANTS' RESPONSE NO. 173:

Undisputed.

PLAINTIFFS' STATEMENT NO. 174:

The issue of what to do with the Plan, and specifically the problems resulting from the Plan's underfunded status, were always a matter of primary importance to SJHSRI and SJHSRI's Board of Trustees throughout the period from November 2014 through the filing of the Petition to place the Plan into receivership. Exhibit 89 (Land Aff.) ¶ 21. One of the members of that board until he resigned on May 1, 2015 was Christopher N. Chihlas, M.D. *Id.* His email to Attorney Land announcing his resignation reflects his primary concern for the Plan, which was shared by SJHSRI's Board of Trustees as a whole:

My only parting request is to tirelessly work to develop a pension plan strategy that is equitable and thus acceptable to those who worked many years expecting the Church plan to provide for them in their retirement.

Exhibit 89 (Land Aff.) ¶ 21; Land Aff. Tab F.

DIOCESAN DEFENDANTS' RESPONSE NO. 174:

Objection: Violates LR Cv 56. Does not set forth admissible facts. Contradicts prior admission or sworn testimony.

Response No. 174.1: Statement No. 174 is immaterial to the resolution of the Diocesan Defendants' motion as Mr. Land's opinion of what was of primary importance to SJHSRI and its Board, and the request of a SJHSRI trustee does not bear on the legal determination of whether the Plan was maintained by a principal purpose organization for the reasons stated *supra* at Response No. 169.2.

Response No. 174.2: To the extent Statement No. 174 is offered in support of the proposition that SJHSRI or its Board of Trustees was functioning as a principal purpose organization following the 2014 Asset Sale, thus curing any previous lapse in the Plan's qualification for the church plan exemption, the statement is aimed at creating a sham dispute of facts in contradiction of Mr. Land's 2019 affidavit and 2019 deposition testimony, and Plaintiffs' complaint, Plaintiff Receiver's interrogatory answers, and Plaintiffs' arguments earlier in this litigation. Statement No. 174 is thus barred by the judicial admissions and sham affidavit doctrines and the Court should disregard it for the reasons set out *supra* at Response Nos. 162.3, 168.2, 168.4, and 169.3.

Response No. 174.3 (First Sentence): This sentence is conclusory and opinion. The Court should disregard it.

Response No. 174.4 (Second Sentence): Undisputed.

Response No. 174.5 (Third Sentence): Undisputed that Dr. Chihlas' email contains, *inter alia*, the quoted language. The remainder of the third sentence is Mr. Land's or Plaintiffs' characterization of Dr. Chihlas' email, which the Court should disregard. Dr. Chihlas' email speaks for itself.

Response No. 174.6: Whether the Court should disregard Statement No. 174 because it constitutes a sham, or because it asserts conclusions of law, or reflects individual but immaterial states of mind, presents questions of law that the Court should resolve. Likewise, assuming the Court decides to consider the substance of Statement No. 174, whether the Cy Pres Order and Attorney General Decision support the conclusion that those documents eliminated the discretion of SJHSRI's Board is likewise a pure question of law based upon the content of those

legally operative documents that should be decided by the Court. Nothing in Statement No. 174 presents an obstacle to summary judgment or a factual dispute requiring a trier of fact.

PLAINTIFFS' STATEMENT NO. 175:

Dealing with this concern was the principal responsibility and focus of SJHSRI and SJHSRI's Board of Trustees throughout Attorney Land's involvement with SJHSRI, up to the filing of the petition to place the Plan into receivership on August 18, 2017. Exhibit 89 (Land Aff.) ¶ 22; Land Aff. Tab G. Consistent with that concern, the receivership petition in its paragraph 15 sought an order reducing all Plan participants' benefits by 40% so that the shortfall would be shared equally. Exhibit 89 (Land Aff.) ¶ 22.

DIOCESAN DEFENDANTS' RESPONSE NO. 175:

Objection: Violates LR Cv 56. Does not set forth admissible facts. Contradicts prior admission or sworn testimony.

Response No. 175.1: Statement No. 175 is immaterial to the resolution of the Diocesan Defendants' motion as it does not bear on the legal determination of whether the Plan was maintained by a principal purpose organization for the reasons stated *supra* at Response No. 169.2.

Response No. 175.2: To the extent Statement No. 175 is offered in support of the proposition that SJHSRI and its Board of Trustees was functioning as a principal purpose organization following the 2014 Asset Sale, thus curing any previous defect in the Plan's qualification for the church plan exemption, the statement is aimed at creating a sham dispute of facts in contradiction of Mr. Land's 2019 affidavit and 2019 deposition testimony, and Plaintiffs' complaint, Plaintiff Receiver's interrogatory answers, and Plaintiffs' arguments earlier in this litigation. Statement No. 175 is thus barred by the judicial admissions and sham affidavit

doctrines and the Court should disregard it for the reasons set out *supra* at Response Nos. 162.3, 168.2, 168.4, and 169.3.

Response No. 175.3 (First Sentence): This sentence is entirely conclusory and not sufficient to create a genuine dispute of material fact.

Response No. 175.4 (Second Sentence): Undisputed that paragraph 15 of the receivership petition sought an order reducing all Plan participants' benefits by 40%. The Diocesan Defendants refer to the receivership petition for its complete content.

Response No. 175.5: Whether the Court should disregard Statement No. 175 because it constitutes a sham, or because it asserts conclusions of law or reflects Mr. Land's individual but immaterial state of mind, presents questions of law that the Court should resolve. Likewise, assuming the Court decides to consider the substance of Statement No. 175, whether the Cy Pres Order and Attorney General Decision support the conclusion that those documents eliminated the discretion of SJHSRI's Board is likewise a pure question of law based upon the content of those legally operative documents that should be decided by the Court. Nothing in Statement No. 175 presents an obstacle to summary judgment or a factual dispute requiring a trier of fact.

PLAINTIFFS' STATEMENT NO. 176:

The Plan was discussed during the first meeting Attorney Land attended of SJHSRI's Board of Trustees on December 15, 2014. Exhibit 89 (Land Aff.) ¶ 23.

DIOCESAN DEFENDANTS' RESPONSE NO. 176:

Undisputed, although Statement No. 176 overlooks that other matters, such as amendments to SJHSRI's bylaws, the election of a new slate of trustees, and the authorization of Messrs. Ryan and Land "to approve for payment all ordinary and necessary expenses of the

Corporation,” to effect “the dissolution of the Corporation,” prepare and file “final tax returns and other documents and instruments required thereby,” and “to execute any and all documents, instruments, certificates or other writings which each of them in the exercise of his sole discretion shall deem necessary or desirable in order to effectuate the intent of the foregoing resolutions, and the wind-down of the Corporation,” were covered as well. ECF No. 243-89, Tab A (Written Consent), at SJHSRI1726-1727.

PLAINTIFFS' STATEMENT NO. 177:

The Plan was discussed again during the next meeting of SJHSRI's Board of Trustees on January 21, 2015. Exhibit 89 (Land Aff.) ¶ 24; Land Aff. Tab H (agenda for meeting). The agenda highlights the importance to the board of a range of “Pension Matters,” including the “underfunding issue” and the related “Church plan issue.” Exhibit 89 (Land Aff.) ¶ 24.

DIOCESAN DEFENDANTS' RESPONSE NO. 177:

Response No. 177.1 (First Sentence): Undisputed that the Plan was discussed during the January 21, 2015 meeting of the SJHSRI Board of Trustees.

Response No. 177.2 (Second Sentence): Undisputed that the referenced agenda contains the quoted language. The agenda speaks for itself and also indicates that “Pension Matters” was one of three topics at the meeting, the other two being “Administrative Matters” and “Prospect Issues.”

PLAINTIFFS' STATEMENT NO. 178:

The “Church plan issue” that was discussed with the Board concerned reasons why the Plan might cease to qualify as a “church plan” exempt from ERISA. Exhibit 89 (Land Aff.) ¶ 25. It was Attorney Land's understanding that insofar as the Plan qualified for this

exemption, SJHSRI was not obligated under ERISA to fund the Plan. Id. However, throughout Attorney Land's involvement with SJHSRI and SJHSRI's Board of Trustees, it was always the policy of SJHSRI and SJHSRI's Board of Trustees that SJHSRI had at least a moral obligation to fund the Plan and to honor that moral obligation to the extent possible. Id.

DIOCESAN DEFENDANTS' RESPONSE NO. 178:

Undisputed. This statement is irrelevant to the Diocesan Defendants' Motion for Summary Judgment.

PLAINTIFFS' STATEMENT NO. 179:

Attorney Land was aware that one possible reason that the Plan might not qualify as a "church plan" was the possibility that the church plan exemption did not apply to plans established and maintained by organizations that were supported by, but were not themselves, churches. Exhibit 89 (Land Aff.) ¶ 26.

DIOCESAN DEFENDANTS' RESPONSE NO. 179:

Undisputed. This statement is irrelevant to the Diocesan Defendants' Motion for Summary Judgment.

PLAINTIFFS' STATEMENT NO. 180:

The second possible reason of which Attorney Land was aware was the fact that even if the Plan was currently entitled to exempt status as a church plan, SJHSRI would lose its status as a public charity at some point over the next several years. Exhibit 89 (Land Aff.) ¶ 27. As noted in the petition for receivership, that was likely to occur on or before December 31, 2018. Id.

DIOCESAN DEFENDANTS' RESPONSE NO. 180:

Undisputed. This statement is irrelevant to the Diocesan Defendants' Motion for Summary Judgment.

PLAINTIFFS' STATEMENT NO. 181:

The first possible reason why the Plan might lose its status as a “church plan” was resolved in favor of the Plan retaining its exemption from ERISA by the decision of the United States Supreme Court on June 5, 2017 in Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (2017), which held that organizations such as SJHSRI that are not themselves churches can establish and maintain “church plans.” Exhibit 89 (Land Aff.) ¶ 28. However, the second possibility remained a problem. Id. Indeed, as noted in the petition to put the Plan into receivership, it appeared that on or before December 31, 2018, SJHSRI would lose its status as a public charity and, therefore, the Plan’s “church plan” exemption from ERISA. Id.

DIOCESAN DEFENDANTS' RESPONSE NO. 181:

Objection: Violates LR Cv 56. Does not set forth admissible facts.

Response No. 181.1: Statement No. 181 is not a statement of fact, but a legal analysis that the Court should disregard.

Response No. 181.2 (Second Sentence): The Diocesan Defendants deny knowledge to admit or dispute Mr. Land’s characterization of the potential loss of SJHSRI’s status as a public charity as a “problem.”

Response No. 181.3 (Third Sentence): Undisputed that the receivership petition indicates, *inter alia*, that the Plan would likely lose its church plan status on or before December 31, 2018. The receivership petition speaks for itself.

PLAINTIFFS' STATEMENT NO. 182:

The problems associated with the Plan's underfunded status were also the key issues for the meeting of SJHSRI's Board of Trustees which took place on April 8, 2015. Exhibit 89 (Land Aff.) ¶ 29. As noted in the email dated April 2, 2015, that meeting was attended by Albert Krayter, Angell's Director of Defined Benefit Department, who explained the underfunding problem and discussed with the Board various strategies to deal with the problem. Id. Those strategies included "two additional benefit and funding scenarios – reducing benefits by 25% and 30%, and solving for the rates of return needed to keep the Plan solvent, assuming that the Plan will continue as a church plan," as noted in the email dated April 2, 2015. Id.

DIOCESAN DEFENDANTS' RESPONSE NO. 182:

Objection: Violates LR Cv 56. Does not set forth admissible facts. Contradicts prior admission or sworn testimony.

Response No. 182.1: Statement No. 182 is immaterial to the resolution of the Diocesan Defendants' motion as it does not bear on the legal determination of whether the Plan was maintained by a principal purpose organization for the reasons stated *supra* at Response No. 169.2.

Response No. 182.2: To the extent Statement No. 182 is offered in support of the proposition that SJHSRI or its Board of Trustees was functioning as a principal purpose organization following the 2014 Asset Sale, thus curing any previous lapse in the Plan's qualification for the church plan exemption, the statement is aimed at creating a sham dispute of facts in contradiction of Mr. Land's 2019 affidavit and 2019 deposition testimony, and Plaintiffs' complaint, Plaintiff Receiver's Interrogatory Answers, and Plaintiffs' arguments earlier in this litigation. Statement No. 182 is barred by the judicial admissions and sham affidavit doctrines

and the Court should disregard it for the reasons set out *supra* at Response Nos. 162.3, 168.2, 168.4, and 169.3.

Response No. 182.3 (First Sentence): This sentence is conclusory and the Court should disregard it.

Response No. 182.4 (Second and Third Sentences): The April 2, 2015 emails at Tabs I and J of Mr. Land's 2022 affidavit speak for themselves. Undisputed that the email at Tab J contains, *inter alia*, the quoted language.

Response No. 182.5: Whether the Court should disregard Statement No. 182 because it constitutes a sham, or because it asserts conclusions of law or reflects Mr. Land's individual but immaterial state of mind, presents questions of law that the Court should resolve. Likewise, assuming the Court decides to consider the substance of Statement No. 182, whether the Cy Pres Order and Attorney General Decision support the conclusion that those documents eliminated the discretion of SJHSRI's Board is likewise a pure question of law based upon the content of those legally operative documents that should be decided by the Court. Nothing in Statement No. 182 presents an obstacle to summary judgment or a factual dispute requiring a trier of fact.

PLAINTIFFS' STATEMENT NO. 183:

The problem of what to do with the Plan was a primary concern of SJSHRI and SJHSRI's Board of Trustees throughout Attorney Land's involvement, but it came to a head beginning in the Winter of 2016–2017, culminating on August 7, 2017 when the Board of Trustees after a great deal of deliberation authorized and directed Attorney Land to file the petition for receivership. Exhibit 89 (Land Aff.) ¶ 30. The Board's written consent is signed by only two of the three Trustees, because Father Reilly advised Attorney Land that, although he

agreed with and approved of the decision, it was not necessary for him to consent in writing. Id.;
Land Aff. Tab K (Board's written consent).

DIOCESAN DEFENDANTS' RESPONSE NO. 183:

Objection: Violates LR Cv 56. Does not set forth admissible facts. Contradicts
prior admission or sworn testimony.

Response No. 183.1: Statement No. 183 is immaterial to the resolution of the
Diocesan Defendants' motion as it does not bear on the legal determination of whether the Plan
was maintained by a principal purpose organization for the reasons stated *supra* at Response No.
169.2.

Response No. 183.2: To the extent Statement No. 183 is offered in support of the
proposition that SJHSRI or its Board of Trustees was functioning as a principal purpose
organization following the 2014 Asset Sale, thus curing any previous lapse in the Plan's
qualification for the church plan exemption, the statement is aimed at creating a sham dispute of
facts in contradiction of Mr. Land's 2019 affidavit and 2019 deposition testimony, and Plaintiffs'
complaint, Plaintiff Receiver's Interrogatory Answers, and Plaintiffs' arguments earlier in this
litigation. Statement No. 183 is barred by the judicial admissions and sham affidavit doctrines
and the Court should disregard it for the reasons set out *supra* at Statement Nos. 162.3, 168.2,
168.4, and 169.3.

Response No. 183.3 (First Sentence-1): The portion of this sentence beginning
with "[T]he problem of what to do with" and ending in "culminating on August 7, 2017" is
conclusory and not sufficient to create a genuine dispute of material fact.

Response No. 183.4 (First Sentence-2): Undisputed that SJHSRI's Board directed Mr. Land to file the receivership petition on August 7, 2017. The Diocesan Defendants deny knowledge to admit or dispute whether a "great deal of deliberation" occurred.

Response No. 183.5 (Second Sentence): Undisputed, but irrelevant.

Response No. 183.6: Whether the Court should disregard Statement No. 183 because it constitutes a sham, or because it asserts conclusions of law or reflects Mr. Land's individual but immaterial state of mind, presents questions of law that the Court should resolve. Likewise, assuming the Court decides to consider the substance of Statement No. 183, whether the Cy Pres Order and Attorney General Decision support the conclusion that those documents eliminated the discretion of SJHSRI's Board is likewise a pure question of law based upon the content of those legally operative documents that should be decided by the Court. Nothing in Statement No. 183 presents an obstacle to summary judgment or a factual dispute requiring a trier of fact.

PLAINTIFFS' STATEMENT NO. 184:

On April 15, 2019, the Plaintiff Receiver filed an election with the United States Department of Labor, electing to have the Plan become subject to ERISA, regardless of whether it was entitled to the Church Plan exemption, effective July 1, 2017. See ECF # 126-1 (attachment to the Plan's first Form 5500). As a result, the Plan became subject to ERISA by April 15, 2019, effective as of July 1, 2017.

DIOCESAN DEFENDANTS' RESPONSE NO. 184:

Objection: Violates LR Cv 56. Does not set forth admissible facts.

Response No. 184.1 (First Sentence): Undisputed that Plaintiff Receiver filed the election on April 15, 2019. The election speaks for itself.

Response No. 184.2 (Second Sentence): This is not a statement of fact. The effect of the election is a question of law, as is its relevance, given that ERISA attached to the Plan no later than April 29, 2013. *See generally* Diocesan Defs.’ Mot. for Summ. J., ECF No. 236.

PLAINTIFFS’ STATEMENT NO. 185:

The Secretary of the Treasury has never sent SJHSRI (or anyone else) a notice of default with respect to SJHSRI’s failure to have met the requirement of a “principal purpose” organization under 29 U.S.C. §1002(33).

DIOCESAN DEFENDANTS’ RESPONSE NO. 185:

Undisputed.

Respectfully submitted,

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

By Their Attorneys,

PARTRIDGE SNOW & HAHN LLP

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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

4287209.5/1444-35

EXHIBIT 39

In The Matter Of:
Stephen Del Sesto, et al v.
Prospect CharterCARE, LLC, et al

Richard Land
July 24, 2019



401-352-6869 / www.premierlegalsupport.com

Original File 07-24-19-Richard Land.txt
Min-U-Script® with Word Index

1 (Commenced at 10:02 a.m.)

2 RICHARD LAND

3 Being duly sworn, deposes and testifies as follows:

4 MR. HALPERIN: Mr. Land, my name is Preston
5 Halperin, as you know, and I'm representing the
6 Prospect entities for purposes of this deposition.

7 Before we start I'd like to suggest that we go
8 around the room and let counsel identify themselves and
9 who they represent so we'll have a record of who's here
10 today.

11 So, as I said, I'm Preston Halperin. I'll go to
12 my left.

13 MR. KESSIMIAN: Paul Kessimian, I'm counsel
14 for the Roman Catholic Bishop of Providence, a
15 corporation sole, Diocesan Administration Corporation,
16 and Diocesan Service Corporation, known in this case as
17 the Diocesan defendants.

18 MR. FRAGOMENI: Chris Fragomeni for the
19 Prospect entities.

20 MR. BOYAJIAN: Steve Boyajian for the Angel
21 Pension Group.

22 MR. DENNINGTON: Andrew Dennington for
23 CharterCARE Foundation.

24 MS. DIETER: Christine Dieter for Rhode
25 Island Community Foundation.

1 MR. WISTOW: Max Wistow for the plaintiffs.

2 MR. SHEEHAN: Stephen Sheehan for the
3 plaintiffs.

4 MR. LEDSHAM: Benjamin Ledsham for the
5 plaintiffs.

6 MR. FINE: Robert Fine for CCCB, St. Joseph,
7 Roger Williams, and also the deponent.

8 MR. HALPERIN: Thank you.

9 EXAMINATION BY MR. HALPERIN

10 Q. Would you please state your full name.

11 A. Richard J. Land.

12 Q. Mr. Land, I'm going to ask you questions. If you don't
13 understand them, I'll be glad to try to rephrase them.
14 Have you ever been deposed before?

15 A. Yes.

16 Q. By whom are you currently employed?

17 A. Chace Ruttenberg & Freedman, LLP. I'm a partner.

18 Q. How long have you been with Chace Ruttenberg?

19 A. Started with them July 1, 2012.

20 Q. And you've been -- how long have you been practicing
21 law?

22 A. Since 1996.

23 Q. You're here today in what capacity, sir?

24 A. You deposed me individually, and you also served a
25 30(b)(6) deposition notice for the CharterCARE

1 defendants, and so I'm in that capacity as well.

2 Q. What is your current role for CharterCARE Community
3 Board?

4 A. I'm counsel for the entity, as well as an agent for
5 purposes of the administrative aspects of winding down
6 the entities.

7 Q. Is that agency in a written document?

8 A. There's a corporate vote that authorized it.

9 Q. And are you agent for specific purposes or anything in
10 general, or how is it phrased?

11 A. It was -- my recollection it was a generic agency for
12 purposes of winding down the entities.

13 Q. And how long have you had that role?

14 A. I believe that vote was in early 2015.

15 Q. And what had been your responsibilities over the past
16 four or so years as agent for -- I'm going to refer to
17 CharterCARE Community Board as CCCB.

18 A. For CCCB alone or for -- I'm sorry.

19 Q. Okay, that's a fair point. Let's define the parties
20 here.

21 So you mentioned that you're here on behalf of
22 CharterCARE Community Board, which I will refer to as
23 CCCB, but that entity has responsibility for two other
24 entities, correct?

25 A. Correct.

1 Q. And what are those two other entities?

2 A. CCCB owns St. Joseph's Health Services of Rhode Island
3 and Roger Williams Hospital.

4 Q. And so in your capacity as agent, did you also perform
5 some services or acts on behalf of the two entities
6 owned by CCCB?

7 A. Yes.

8 Q. So what were your responsibilities generally over the
9 last four years as agents for those entities?

10 A. So, I think it's easier to -- I'll describe it this
11 way.

12 When the hospitals were -- when hospital operating
13 entities were sold to Prospect, there were no employees
14 left, and so I performed, as agent, essentially
15 functions that employees would do to try to wind down
16 ordinary operating issues and all of the issues that
17 might come up in a wind-down of an entity.

18 Q. So is it fair to say that the wind-down of the entities
19 was your principal role in some way, shape or form
20 either as agent or attorney?

21 A. I guess that's fair. Principal role.

22 Q. What other roles were there other than that which
23 related to the wind-down of the entities?

24 A. Well, I counseled the board of directors in the context
25 of my services as a -- as an attorney.

1 Q. So, that would be in connection with, like, routine
2 corporate matters?

3 A. Routine corporate matters, what was going on with the
4 wind-down itself, legal issues that might arise during
5 that process.

6 Q. I'm going to show you the 30(b)(6) Notice of
7 Deposition. If you could look at the schedule on the
8 last page.

9 (Witness perusing document)

10 Q. Mr. Land, on behalf of CCCB, are you able to testify
11 with respect to the matters set forth on Attachment A?

12 A. Yes, but I'll note I believe 4 is outside the scope of
13 what the judge authorized, but I am prepared. I can
14 discuss all these issues.

15 MR. HALPERIN: Okay. Thank you. We'll mark
16 that as Exhibit 1.

17 (Exhibit 1 marked)

18 MR. SHEEHAN: Just for the record, we're
19 going to object to the testimony with respect to
20 subsection 4. I presume it's going to go forward but
21 we want to make it clear that our position is going to
22 be that any testimony on those issues should not be
23 considered in this litigation, so. Just put that on
24 the record.

25 MR. FINE: I join in that objection and

1 notation by Mr. Sheehan.

2 MR. WISTOW: Just to be clear, will you allow
3 testimony on 4 with an objection, or are you going to
4 instruct him not to answer?

5 Well, why don't we -- I don't want to put you --
6 why don't you decide that when you --

7 MR. FINE: And I will need to discuss that
8 with the deponent.

9 MR. HALPERIN: And just from the standpoint
10 of how this deposition is going to proceed, I think it
11 really makes sense for one of your team to take the
12 role of objecting and speaking on the record. I don't
13 think we should have more than one attorney from a
14 party speaking. I don't care who it is.

15 MR. WISTOW: That's your suggestion but
16 unless it becomes disruptive, if either one of us wants
17 to say something, I don't see a problem with that. But
18 let's not fight about everything.

19 (Arrival of Attorney Mark Russo)

20 MR. HALPERIN: Off the record.

21 (Off the record)

22 BY MR. HALPERIN:

23 Q. Mr. Land, during the last several years while you acted
24 as agent and attorney for CCCB, did you have any role
25 in the oversight of the financial aspects of CCCB in

1 terms of what it was using its money for?

2 A. Yes.

3 Q. And who was -- what was your responsibility with
4 respect to financial management?

5 A. Bills, all the bills, all the revenues came through my
6 office. Earlier in the -- earlier in the process, I
7 was working primarily with Dan Ryan who was the
8 chairman, reviewing matters with Dan. But primarily
9 from a financial perspective, ordinary expenses were
10 paid. Ordinary -- revenues that came in were deposited
11 and either invested in various vehicles or maintained
12 in checking -- bank accounts. Most issues, if not all,
13 were discussed with Dan Ryan, and he ultimately made
14 decisions on -- on how things went.

15 Q. Did you communicate with a board in making decisions as
16 to how monies were going to be spent, or was this
17 something you had some level of authority to do
18 independently?

19 A. When you say "spent," we -- there were wind-down
20 expenses, so wind-down expenses were paid with -- you
21 know, to the extent that board approval was required
22 for extraordinary expenses or settlement of disputes or
23 things like -- of that nature, I involved Dan Ryan, and
24 Dan would have determined what to do next.

25 Q. Were you familiar when you took on the role of agent

1 with the order that entered in the Cy Pres superior
2 court decision that resulted in monies being in the
3 hands of CCCB after the Prospect transaction?

4 A. So, that order actually entered after I got involved
5 and so, yes, I was familiar with it. That matter was
6 primarily handled by Adler, Pollock & Sheehan. I would
7 consider myself more of an observer of that process
8 than actively involved in it.

9 Q. Did the terms of that order and/or the petition that
10 led to that order inform you as to any -- how you were
11 to -- how CCCB was to administer its assets?

12 A. My recollection of that order is that primarily related
13 to -- well, let me rephrase that.

14 The answer to your question basically is yes, but
15 that's an incomplete response in the sense that that
16 order didn't address all the assets of any of the
17 entities.

18 Q. Some amount of the assets of the entities ended up
19 under control of CCCB as a result of the order; is that
20 true?

21 MR. SHEEHAN: Objection to the form.

22 MR. FINE: You can answer.

23 A. Um, I don't believe that order caused assets of CCCB.
24 I don't know if this is just being imprecise or being
25 overly technical, but I don't believe that that order

1 addressed assets of CCCB itself. It addressed assets
2 of Roger Williams Hospital and St. Joseph's Health
3 Services of Rhode Island, and it spoke to -- the
4 starting point for that order was -- or in the petition
5 was the charitable assets that were held by those
6 entities and what was to happen with those charitable
7 assets and how they were to be divided up between the
8 CharterCARE Foundation and maintained and continued to
9 be used for charitable purposes, and what I'll
10 characterize as the Oldco entities -- Roger Williams
11 Hospital and St. Joseph's Health Services of Rhode
12 Island -- and what assets would be free to be used to
13 satisfy liabilities -- freed from the charitable
14 aspect, to be used to pay the liabilities of the Oldco
15 entities.

16 Q. Right, so some amount of money was made available to
17 satisfy liabilities following the -- as a result of the
18 Cy Pres order; is that accurate?

19 A. That's correct.

20 Q. Okay. And was it part of your role to administer those
21 funds in order to satisfy liabilities?

22 A. On behalf of the Oldco entities. I was the agent doing
23 that work.

24 Q. So that was part of what you were charged with doing?

25 A. I guess you could characterize it that way.

1 Q. Show you the order and ask you if you can identify it
2 for the record.

3 A. This is a document captioned Order on Petition for
4 Approval of Disposition of Charitable Assets. It has a
5 Rhode Island Superior Court stamp on the top left
6 corner with the case number, indicating that it's filed
7 in Kent County Superior Court. Hard to read but it
8 appears to have been submitted on 4/6/2015. There's an
9 envelope number, a reviewer. The last page has a
10 certification by Patricia Rocha who's an attorney at
11 Adler Pollock & Sheehan. And the prior page has the
12 electronic signatures of Judge Stern and his clerk,
13 Carin Miley.

14 Q. And this is the order we were just discussing, the
15 Cy Pres order, correct?

16 A. Without having reviewed the detail of it, it does
17 appear to be that order, yes.

18 Q. And take a look at the second page, paragraph 3,
19 please.

20 Have you -- do you see the language that says that
21 there's approval for Roger Williams Hospital to use
22 \$12,288,848 for pre and post-closing liabilities?

23 A. I do see that.

24 (Phone interruption)

25 MR. HALPERIN: Off the record.

1 (Off the record)

2 MR. HALPERIN: Can you do me a favor, the
3 last question.

4 (The record was read by the
5 court reporter, as requested)

6 Q. Mr. Land, was that twelve million -- approximately
7 twelve million dollars of funds that you had or CCCB
8 had under its control during the last several years
9 that you were agent?

10 A. So, this refreshes my memory on -- from an aspect of
11 the Cy Pres order that I didn't recall. So the Cy Pres
12 order also dealt with accumulated earnings that weren't
13 charitable assets, and those funds, for the most part,
14 did not come into my possession. By the time I got
15 involved, a significant portion, if not all of those
16 funds -- and I'd have to go back and review the
17 records, but they had already been used by the Oldco
18 entities before I ever even got involved, or, earlier
19 in the process before the Cy Pres petition was actually
20 entered. And I can't answer really why that was done
21 and who did it. I just know that there was a gap
22 between the sale and when I was brought in, and during
23 that gap period other people were doing things, and
24 these assets were used to pay Oldco liabilities.

25 Q. Approximately how much money was under the control of

1 the Oldco entities when you became involved?

2 A. I don't recall precisely but I do recall that there was
3 a sources and uses of funds document created in
4 connection with the sale of the entities. And the only
5 thing I can specifically recall is that the net amount
6 of money that was projected to remain after full
7 liquidation -- and this was a projection done at the
8 time of sale so it didn't really contemplate everything
9 that's actually transpired since. But the net amount
10 was -- for all of these entities, in cash was about
11 \$3.1 million. That's my recollection. So, taking into
12 account that the sources and uses contemplated spending
13 all these -- a significant portion of these funds down,
14 so the net result was about \$3.1 million.

15 Q. But the question that I was asking is approximately how
16 much money was under your control or whether Oldco
17 controls --

18 A. I don't specifically recall what it was at that time,
19 but it was -- I'd be speculating, but it was small. It
20 was in the single digits, low millions. In the
21 aggregate.

22 Q. And approximately how much money is under Oldco's
23 control now in connection with the settlement that is
24 being discussed?

25 A. It's over \$14 million. Some of those funds have some

1 limitations on them. Some of which is noted in the --
2 in the settlement agreement itself. Some of those
3 funds, as per the Cy Pres, are to be used for
4 educational purposes relating to the ongoing operations
5 that are being conducted by Prospect. But in the
6 aggregate it's a slightly more than \$14 million.

7 MR. SHEEHAN: Could I ask to have the
8 question read back, I didn't hear it.

9 MR. HALPERIN: The question?

10 MR. SHEEHAN: Just the question.

11 MR. HALPERIN: Can you please read the last
12 question back.

13 (The record was read by the
14 court reporter, as requested)

15 Q. And of the money that is under Oldco's control now, do
16 you know approximately how much of that is available to
17 satisfy liabilities as opposed to restricted funds?

18 A. I'm -- I believe about a million dollars, plus or
19 minus, is restricted at this stage. Seven hundred
20 fifty of that, approximately, is referenced in the
21 settlement agreement and relates to the Roger Williams
22 Workers' Compensation reserve that the Department of
23 Labor is requiring. The balance relates to the -- what
24 I'll call the continuing medical education funds that
25 are to be used per the Cy Pres for education programs

1 at the hospital conducted by Prospect physicians.

2 Q. So if I understood your answer, approximately
3 13 million is available for liabilities? Wind-down
4 liabilities?

5 A. Yeah, approximately. Today.

6 Q. Yes, yes. Let's mark the Order on the Petition as
7 Exhibit Number 2, please.

8 (Exhibit No. 2 marked)

9 Q. What is it that caused those funds to go from being a
10 relatively small amount of one to three million, I
11 think you testified, up to this \$14 million over the
12 last four years?

13 A. Um, there are a lot of factors. I mean, there were
14 investment returns which can cause part of it. There
15 were settlements with the Medicare, Medicaid, CMS that
16 resulted in significantly greater recoveries than were
17 anticipated and was anticipated by the -- that folks at
18 the hospital who prepared the sources and use funds in
19 the analysis at the time of sale. That might be the
20 most significant portion. There were some settlements
21 of litigation matters that were disputed that resulted
22 in considerably greater returns than again the same
23 folks estimated at the time of the sale. And we've had
24 some charitable trust distributions. The charitable
25 trust ran for a period of time. I believe there are

1 charitable remainder trusts and those resulted in
2 distributions. So that's a considerable portion as
3 well.

4 Q. Have any portion of those funds been used to pay
5 liabilities over the past four years?

6 A. Oh, absolutely. There's been ongoing liabilities.
7 There's -- including just ordinary operating expenses
8 and costs of running, you know, winding down the
9 business. There have been CMS claims back against the
10 hospitals for recoupment as well. So the net positive
11 effect of those transactions is what you see now in the
12 increase in assets, but there were negative
13 transactions as well.

14 Q. I'm going to ask you to move to another area, and that
15 is the St. Joseph's retirement plan itself. What was
16 your role, or CCCB's role in connection with the
17 retirement plan over the last four years?

18 MR. SHEEHAN: Objection to the form.

19 A. Um, so, again, as agent I was working with the board to
20 evaluate what to do with the plan eventually. In terms
21 of CCCB, again -- you know, so the plan is the
22 St. Joseph's Health Services of Rhode Island Plan. The
23 entity is a separate -- St. Joseph's Health Services of
24 Rhode Island is a separate entity from CCCB. There was
25 a separate board for St. Joseph's Health Services of

1 Rhode Island. Same people but we had separate boards.
2 So when I worked with -- we worked collectively, but
3 when you ask the question what CharterCARE's role was,
4 I viewed it as St. Joseph's although CharterCARE was
5 the owner of the entity.

6 Q. During the last four years, did you consider CCCB or
7 any of the Oldco entities to have a financial
8 obligation or liability to the pension plan?

9 A. The only connection that I saw between St. Joseph's
10 pension plan and Roger Williams would have flowed from
11 the Cy Pres petition and order. And that -- that says
12 what it says.

13 Q. And based upon the Cy Pres order and the petition, was
14 it your understanding that any amount of the assets
15 under Oldco's control could be applied to the pension
16 plan?

17 A. Um, can I take a minute to look at it because I don't
18 want to misquote what the order says.

19 Q. Before you do that, I'm going to provide you with the
20 petition as well, and I'm going to mark as Exhibit
21 Number 3 the Petition for Approval of the Disposition
22 of Charitable Assets.

23 (Exhibit No. 3 marked)

24 Q. If you could identify that just for the record. You
25 don't need to go into quite as much detail, just tell

1 us what it is.

2 A. It's the Petition for Approval of Disposition of
3 Charitable Assets Including Application of Doctrine of
4 Cy Pres. And it has a case number at the top, it
5 appears to be court stamped.

6 Q. Is this a document you're familiar with?

7 A. I've read it.

8 Q. All right, so if you could look at that, as well as the
9 Order, and I'll ask you the same question with regard
10 to pension liabilities.

11 (Witness perusing document)

12 Q. You had a chance to look at that?

13 All right. Having reviewed the petition, Exhibit
14 Number 3, does it refresh your memory as to whether or
15 not the pension obligation was considered a liability
16 of the Oldco entities, any of them?

17 MR. SHEEHAN: Objection.

18 A. I don't -- I don't read the document to indicate that.

19 Q. Let me refer you to page 12, at the top, paragraph 27,
20 the portion that continues at the top of page 12. And
21 the sentence that starts with "Likewise." Would you
22 read that sentence to yourself.

23 (Witness reading)

24 A. Okay.

25 Q. Do you know if the reference in there to pension is a

1 reference to the St. Joseph's retirement plan that's
2 the subject of this litigation, or is that referring to
3 some other pension?

4 A. I believe it's referring to the St. Joseph's Health
5 Services pension plan.

6 Q. So that parenthetical is a parenthetical that comes
7 after post-closing liabilities in the document,
8 correct?

9 MR. SHEEHAN: Objection.

10 A. Correct.

11 Q. Was it -- did you have an understanding over the last
12 four years as to whether there was an obligation on the
13 part of the Oldco entities to provide any kind of
14 funding to the plan?

15 A. So again, just to be precise, I understood that
16 St. Joseph's Health Services of Rhode Island, having
17 satisfied all of its other liabilities, would then use
18 whatever funds were available to it for the pension
19 plan. That was my understanding. Whether that's right
20 or wrong, that was my understanding. With respect to
21 the other Oldco entities, I don't recall, frankly,
22 CharterCARE -- anything specific relating to
23 CharterCARE. And with respect to Roger Williams, I
24 think -- I believe there was potentially a partial
25 waterfall. In looking at this document I believe it

1 relates to the charitable assets with waterfall.

2 Potentially.

3 Q. Let me refer you to paragraph 17 as well and I'll ask
4 you some more questions.

5 On page 7, I'll ask you to look at the last
6 sentence in paragraph 17 of Exhibit 3.

7 "It is anticipated" is the beginning of that
8 sentence. The final sentence in paragraph 17.

9 A. The final sentence in paragraph 17 says --

10 Q. Oh, I'm sorry, the second to last sentence.

11 A. I'm just going to read the whole paragraph.

12 Q. Go right ahead.

13 (Witness reading)

14 A. Okay, I've read it.

15 Q. The last sentence of paragraph 17 says: "The SJHSRI
16 pension funding obligation will continue after the
17 wind-down period concludes."

18 Is that the understanding you had during the last
19 several years, that once the wind-down period
20 concluded, the pension would be funded in some way?

21 MR. SHEEHAN: Objection to the form.

22 A. Yes, but not -- not an automatic funding. But yes.

23 Q. What did CCCB contemplate would happen with respect to
24 the money under its control after the wind-down period
25 concluded?

1 MR. SHEEHAN: Objection, beyond the scope of
2 the deposition.

3 A. After the wind-down period concluded, there would be a
4 process undertaken to finalize the wind-down and to --
5 ultimately if the only -- if the only remaining
6 obligation of these entities in the aggregate, assuming
7 all to be one, was the pension, then presumably we
8 would have sought to have the pension get the remaining
9 assets.

10 Q. So your -- the way you are handling this was to deal
11 with the liabilities as part of the wind-down, and then
12 afterwards the pension would have been addressed in
13 some way, shape or form. Is that fair?

14 A. That's how I understood the paradigm.

15 MR. SHEEHAN: Objection.

16 Q. Now, at some point in time, a decision was made to
17 petition the plan into receivership; is that correct?

18 A. That's correct.

19 Q. And you filed a petition for receivership, yes?

20 A. Correct.

21 Q. At some point did you have a discussion with the
22 Receiver or anyone on behalf of the Receiver as to how
23 the assets under the control of CCCB would be
24 disbursed?

25 A. It's certainly possible I would have had a conversation

1 about that.

2 Q. When you spoke with Mr. DelSesto, either before or
3 after his appointment, was there a discussion as to how
4 the assets that CCCB had under its control would be
5 utilized, if at all, in connection with the
6 receivership?

7 A. I don't recall that conversation -- a conversation like
8 that.

9 Q. So, when was the first time that there was a
10 conversation whereby CCCB or Oldco assets would be used
11 to satisfy pension obligations?

12 A. A conversation with whom?

13 Q. Either Mr. DelSesto or someone on his behalf.

14 A. I don't recall precisely, but I believe we might have
15 had conversations about the Cy Pres petition and order
16 early on in the receivership, simply because they were
17 part of the history of it, these entities.

18 Q. Would that discussion have included the fact that the
19 monies under CCCB's control would ultimately be paid to
20 the plan?

21 MR. SHEEHAN: Objection to the form, calls
22 for speculation.

23 A. I just don't recall.

24 Q. Don't recall. Okay.

25 When was the first time, if you can recall, that

1 Right?

2 A. I see that.

3 Q. So, if there's a surplus in the plan, it goes first to
4 the employer, which would have been St. Joseph's Health
5 Services of Rhode Island?

6 A. Mm-hmm.

7 Q. And if St. Joseph's was no longer in existence, it
8 would go to a diocesan entity identified by the Bishop.

9 A. That's what that says, yes.

10 (Exhibit D marked)

11 MR. SHEEHAN: I'm going to mark the same one
12 in the earlier version.

13 MR. HALPERIN: Can we go off the record for a
14 second.

15 (Off the record)

16 (Exhibit E marked)

17 Q. What I've given to you, Mr. Land, is the section
18 concerning termination of the plan that was part of the
19 plan you initially filed with the receivership
20 petition. And I just ask you to confirm that the
21 provisions we read into the record concerning what
22 happens with a surplus are the same in this plan as
23 they were in the other?

24 A. They appear to be identical.

25 MR. SHEEHAN: Now, could I have the Exhibit 5

1 for the defendant.

2 Q. You have Exhibit 5 in front of you?

3 A. I do.

4 Q. Now, in the first paragraph, there's a reference -- and
5 I'm going to -- it's in the middle of the sentence but
6 I'm just going to read this phrase because it starts,
7 quote, as demonstrated by the release sought in the
8 Cy Pres Petition and the resulting Order that any
9 remaining funds be paid into the St. Joseph's Health
10 Services of Rhode Island Pension Plan, closed quote.
11 Do you see that phrase?

12 A. I do.

13 Q. Now, at the time you wrote that, you understood that it
14 was the plaintiff's contention that the references in
15 the Cy Pres petition to the pension plan were intended
16 to lull the court into believing that there was
17 sufficient money to pay the plan.

18 A. I do understand that that was the plaintiff's position.

19 Q. And you understand that the Order that the court
20 entered did not -- let me back up a bit.

21 The Order that the court entered allowed certain
22 funds that Roger Williams had to be used to pay
23 liabilities of St. Joseph's. Correct?

24 A. Correct.

25 Q. It did not, however, order that those funds be used to

1 pay St. Joseph's liabilities. Correct? It gave
2 permission.

3 A. That's how I understand it, yes.

4 Q. And you understood that in connection with the 2000 --
5 well, let me back up a bit.

6 You came onto the scene after the asset sale had
7 gone through, right?

8 A. Quite a bit of time, yes.

9 Q. Are you aware today that at one point the Board of
10 Directors of Roger Williams Hospital had a resolution
11 that authorized a certain sum to be used to pay
12 St. Joseph's liabilities, including pension
13 obligations?

14 A. I understand there was a resolution for \$14 million to
15 go into the pension. I'm not sure if that's what
16 you're referring to.

17 Q. That's the 14 million that went as part of the sale
18 proceeds, right?

19 A. Right.

20 Q. You're talking probably about something else.

21 MR. SHEEHAN: Mark this as the next
22 plaintiff's exhibit. Is it E?

23 THE WITNESS: No, it's F.

24 (Exhibit F marked)

25 Q. Have you ever seen this resolution before that you can

C E R T I F I C A T E

I, Lori P. Hamel, a Notary Public in and for the State of Rhode Island, do hereby certify that I am expressly approved as a person qualified and authorized to take depositions pursuant to Rules of Civil Procedure of the Superior Court, especially but without restriction thereto, under Rule 30(e) of said Rules; that the deponent was first sworn by me; that this deposition was stenographically reported by me and later reduced to print through Computer-Aided transcription; that the foregoing is a full and true record of the proceedings; and that a review of the transcript by the deponent was not requested.

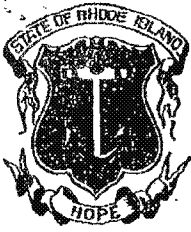
IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of August, 2019.



Lori P. Hamel
Certified Court Reporter
Notary Public

My Commission Expires 6/24/21

EXHIBIT 40



State of Rhode Island, &c. F-8a

IN GENERAL ASSEMBLY.

January SESSION, A. D. 189*7*
AN ACT

*to incorporate St. Joseph's
Hospital of Providence, R.I.*

It is enacted by the General Assembly as follows:

SECTION 1. *Matthew Harkins, William
Stang,*

their associates and successors are hereby made a corporation by the name of
St. Joseph's Hospital.

for *the purpose of providing medical and
surgical treatment for the sick of
all denominations.*

with all the powers and privileges, and subject to all the duties and liabilities set forth
in Chapter 152 of the Public Statutes, and in any acts in amendment thereof or in
addition thereto.

Sec. 2. Said corporation may take, hold, transmit and convey real and personal
estate to an amount not exceeding *one hundred*
thousand dollars, *which property shall be*
lower exempt from taxation

E000119

AN ACT

To incorporate

St. Joseph's
Hospital

IN HOUSE OF R. 1-26-1892
REFERRED TO COMMITTEE ON
EDUCATION.

Lee CLERK.

Feb 2 1892
Committee on Education
recommended passage
of within Act.
Little

IN HOUSE OF R. 2-3-1892
READ AND PASSED.

Lee CLERK.

IN SENATE *Feb 2* 1892
REFERRED TO COMMITTEE ON
Education
E. F. Starnes CLERK.

IN SENATE *Feb 11* 1892
THE COMMITTEE ON EDUCATION
RECOMMEND THE PASSAGE OF THE

WITHIN *in concurrence*
Y. H. Nelson

IN SENATE *February 11* 1892
REFERRED TO COMMITTEE ON
Education
E. F. Starnes CLERK.

Passed Feb 12, 1892

E000120

To the Honorable General Assembly of the State of Rhode Island, &c.,
at its January Session, A. D. 1892.

The undersigned petitioners, respectfully represent that they desire to become a body
corporate under the name of St. Joseph's Hospital

for the purpose of providing medical aid and
surgical treatment for the sick
of all denominations.

in conformity with the accompanying bill.

Wherefore, they pray your honorable body to grant their request creating them a
corporation, and as in duty bound they will ever pray.

Matthew Harkins
William Stang.

Mary Magdalena Hirt

Sophie Bundschuh

Anna Gmelin

For the Committee,

E000121

E000122

THE PETITION OF

Matthew H. Kline et al
FOR AN ACT TO INCORPORATE

St Joseph's
Hospital

PRESENTED BY

John J. Hoffman

IN HOUSE OF R. 1-26 1897
REFERRED TO COMMITTEE ON
EDUCATION.
Lee CLERK.

IN SENATE 1-26 1897
REFERRED TO COMMITTEE ON
Education
E. J. Porter

EXHIBIT 41

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND :
ADMINISTRATOR OF THE ST. JOSEPH :
HEALTH SERVICES OF RHODE ISLAND :
RETIREMENT PLAN, ET AL. :

Plaintiffs :

v. :

PROSPECT CHARTERCARE, LLC, ET AL. :

Defendants. :

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

**STEPHEN DEL SESTO'S ANSWERS TO DEFENDANTS PROSPECT MEDICAL
HOLDINGS, INC. AND PROSPECT EAST HOLDINGS, INC.'S FIRST SET OF
INTERROGATORIES IN CONNECTION WITH THE PRINCIPAL PURPOSE
ORGANIZATION ISSUE**

Plaintiff Stephen Del Sesto, in his capacity as receiver (the "Receiver") of and for the St. Joseph Health Services Retirement Plan (the "Plan") hereby responds to Defendants' Prospect Medical Holdings, Inc. and Prospect East Holdings, Inc.'s first set of interrogatories in connection with the principal purpose organization issue.

INTERROGATORIES

INTERROGATORY NO. 1: State the full name, address, and date of birth of the PERSON executing the responses to these Interrogatories.

ANSWER NO. 1:

Stephen F. Del Sesto; One Financial Plaza 26th Floor, Providence, RI 02903;
June 17, 1970.

INTERROGATORY NO. 2: For each of the calendar years from 2008 to the present date, IDENTIFY each and every entity, organization, and/or PERSON which was responsible for administering, maintaining, and/or funding the PLAN.

OBJECTIONS TO INTERROGATORY NO. 2:

Objection to the definition of “PERSON” as amorphous and incapable of application, inasmuch as it includes any “other form of . . . arrangement.”

Objection to the definition of “IDENTIFY” as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

ANSWER NO. 2:

Pursuant to Fed R. Civ. P. Rule 33(d), the Receiver states that the answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to the Receiver in the Receivership Proceeding, and refers Defendants to those records for the answer to this interrogatory. Indeed, the Receiver’s answer would have to be derived from those documents, since the Receiver’s knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the

parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. That contention is based in part on the fact that at least since the 2011 Plan, St. Joseph Health Services of Rhode Island ("SJHSRI") was administering and maintaining and funding (to the limited extent it was funded) the Plan.

Although Plaintiffs have not made contentions concerning who was administering and maintaining the Plan prior to 2011, and Defendants can and should determine the answer to this interrogatory by themselves referring to the documents, it is the Receiver's conclusion based upon his (through counsel) review of the documents that in 2008 and part of 2009, the Retirement Board (a board apparently consisting of the Bishop, at least three members of SJHSRI's Board of Trustees, and up to six others (who may or may not have been members of SJHSRI's Board of Trustees), all appointed by the Bishop to serve at the pleasure of the Bishop) (the "Retirement

Board”) was administering and maintaining the Plan. However, the last action of the Retirement Board with respect to the Plan appears to have occurred on July 16, 2009, when the Retirement Board as its final resolution (or other official action) adopted an amendment to the Plan, to cease benefit accruals to Plan participants who were not subject to a collective bargaining agreement. Between that date and the adoption of the 2011 Plan, it appears that SJHSRI was in fact administering and maintaining the Plan. SJHSRI was always the entity funding (to the limited extent it was funded) the Plan during the period from 2008 until the Plan was placed into Receivership in 2017.

INTERROGATORY NO. 3: For each of the calendar years from 2008 to the present date, IDENTIFY the principal purpose of the entity, organization, and/or PERSON which was in any way responsible for administering, maintaining, and/or funding the PLAN.

OBJECTIONS TO INTERROGATORY NO. 3:

Objection to the definition of “IDENTIFY” as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

Objection to the definition of “PERSON” as amorphous and incapable of application, inasmuch as it includes any “other form of . . . arrangement.”

Objection that this interrogatory presupposes there was only one single entity, organization, or person that was in any way responsible for administering, maintaining, and/or funding the Plan.

ANSWER NO. 3:

The answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to the Receiver in the Receivership Proceeding. Indeed, the Receiver's answer would have to be derived from those documents, since the Receiver's knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the

latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. That contention is based in part on the fact that at least since the 2011 Plan, St. Joseph Health Services of Rhode Island (“SJHSRI”) was administering and maintaining and funding (to the limited extent it was funded) the Plan, but the principal purpose of SJHSRI was operating Fatima Hospital until the asset sale closed on June 20, 2014.

Although Plaintiffs have not made contentions concerning who was administering and maintaining the Plan prior to 2011, or since the asset sale closed on June 20, 2014, and Defendants can and should determine the answer to this interrogatory by themselves referring to the documents, it is the Receiver’s conclusion based upon his (through counsel’s) review of the documents that in 2008 and part of 2009, the Retirement Board was administering and maintaining the Plan. It also appears that may have been the principal purpose of the Retirement Board, although the Retirement Board also administered a number of other retirement plans for SJHSRI. However, the last action of the Retirement Board with respect to the Plan appears to have occurred on July 16, 2009, when the Retirement Board as its final resolution (or other official action) adopted an amendment to the Plan, to cease benefit accruals to Plan participants who were not subject to a collective bargaining agreement. Between that date and the adoption of the 2011 Plan, it appears that SJHSRI was administering and maintaining the Plan, even though the 2009 Plan gave that function to the Retirement Board. It is also the Receiver’s conclusion that from the closing of the asset sale on June 20, 2014 until the Plan was placed into Receivership in August of 2017, the principal purpose of SJHSRI was winding down its operations. It is also the Receiver’s

conclusion that SJHSRI was always the entity funding (to the limited extent it was funded) the Plan during the period from 2008 until the Plan was placed into Receivership in 2017.

INTERROGATORY NO. 4: For each of the calendar years from 2008 to the present, IDENTIFY each and every entity, organization, and/or PERSON(S) with which, or with whom, YOU communicated RELATING TO the administration, maintenance, and/or funding of the PLAN, including, but not limited to SJHSRI, the CHURCH, and CCCB.

OBJECTIONS TO INTERROGATORY NO. 4:

Objection to the definition of “IDENTIFY” as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

Objection to the definition of “YOU” as including “predecessors . . . and/or any other PERSON(S) acting on their behalf or for their benefit”.

Objection to the definition of “RELATING TO” as meaning anything other than its usual and customary meaning.

Objection to the definition of “PERSON” as amorphous and incapable of application, inasmuch as it includes any “other form of . . . arrangement.”

Objection to the definitions of “CHURCH”, “SJHSRI”, and “CCCB” as being broadly defined to include all the Defendants.

Objection to answering this interrogatory for years from 2017 to the present as exceeding the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment

Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175), inasmuch as Defendants do not dispute that the Plan has been subject to ERISA at all times since the effective date of the Receiver's election.

ANSWER NO. 4:

The answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to the Receiver in the Receivership Proceeding. Indeed, the Receiver's answer would have to be derived from those documents, since the Receiver's knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. These documents include communications by SJHSRI with other persons and entities concerning the administration, maintenance, and funding of the Plan.

INTERROGATORY NO. 5: For each entity, organization, and or PERSON(S) identified in YOUR response to Interrogatory Nos. 2, 3, and 4, state all purposes, activities or functions that did not directly or indirectly constitute, or involve, the administration, maintenance, or funding of the PLAN.

OBJECTIONS TO INTERROGATORY NO. 5:

Objection to the definition of "PERSON" as amorphous and incapable of application, inasmuch as it includes any "other form of . . . arrangement."

Objection that this interrogatory is overly broad, unduly burdensome, and not proportional to the needs of the case, in that it calls for listing all the activities of SJHSRI (or any of the other Defendants) that did not directly or indirectly constitute, or involve, the administration, maintenance, or funding of the Plan. There were literally hundreds of such activities in connection with the operation of Fatima Hospital and the winddown of SJHSRI alone.

ANSWER NO. 5:

The answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to the Receiver in the Receivership Proceeding. Indeed, the Receiver's answer would have to be derived from those documents, since the Receiver's knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the

latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. That contention is based in part on the fact that at least since the 2011 Plan, St. Joseph Health Services of Rhode Island (“SJHSRI”) was administering and maintaining and funding (to the limited extent it was funded) the Plan, but the principal purpose of SJHSRI was operating Fatima Hospital until the asset sale closed on June 20, 2014.

Although Plaintiffs have not made contentions in connection with the pending motion for summary judgment concerning who was administering and maintaining the Plan prior to 2011, or since the asset sale closed on June 20, 2014, and Defendants can and should determine the answer to this interrogatory by themselves referring to the documents, it is the Receiver’s conclusion based upon his review (through counsel) of the documents that in 2008 and part of 2009, the Retirement Board was administering and maintaining the Plan. It also appears that was the principal purpose of the Retirement Board, and that the Retirement Board’s other purposes and activities also included administering and maintaining the other Retirement Plans for SJHSRI. Between 2009 and the closing of the asset sale on June 20, 2014, SJHSRI’s other purposes and activities (in addition to administering, maintaining, and funding the Plan) were the hundreds of purposes and actions involved in operating a hospital. Following the closing of the asset sale on June 20, 2014 until the Plan was placed into Receivership in August of 2017, SJHSRI’s other purposes and activities (in addition to administering, maintaining, and funding the Plan) were the hundreds of purposes and actions involved in winding down a hospital and related entities.

INTERROGATORY NO. 6: Describe in full detail each and every COMMUNICATION identified in YOUR response to Interrogatory No. 4.

OBJECTIONS TO INTERROGATORY NO. 6:

Objection to the definition of “YOUR” as including “predecessors . . . and/or any other PERSON(S) acting on their behalf or for their benefit”.

Objection that the interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case, in that, insofar as the definition of “YOU” includes SJHSRI, Roger Williams Hospital, and CCCB, the interrogatory asks the Receiver to describe in detail hundreds of communications between SJHSRI and the Retirement Board during the period when the Retirement Board was administering and maintaining the Plan, hundreds (and possibly thousands) of communication by SJHSRI during the period when SJHSRI was administering and maintaining the Plan, and hundreds (and possibly thousands) of communications by SJHSRI concerning funding of the Plan. For example, it would require identification of each and every communication between Defendants The Angell Pension Group, Inc. (“Angell”) and Plan participants since 2008. It appears that Angell communicated every year with all Plan participants, sometimes more than once. Even if it were only once a year, there would be over 20,000 communications between 2008 and 2017.

ANSWER NO. 6:

The answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to

the Receiver in the Receivership Proceeding. Indeed, the Receiver's answer would have to be derived from those documents, since the Receiver's knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. Many of these exhibits constitute communications between the Retirement Board and SJHSRI when those entities administered, maintained, and/or funded the Plan.

INTERROGATORY NO. 7: IDENTIFY each and every DOCUMENT and COMMUNICATION RELATING TO the PLAN that YOU sent to, or that YOU received from, any entities, organizations, and/or PERSON(S), including, but not limited to, SJHSRI, the CHURCH, and CCCB.

OBJECTIONS TO INTERROGATORY NO. 7:

Objection to the definition of “IDENTIFY” as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

Objection to the definition of “DOCUMENT” as meaning anything other than documents within the meaning of Fed. R. Civ. P. 34.

Objection to the definition of “PERSON(S)” as amorphous and incapable of application, inasmuch as it includes any “other form of . . . arrangement.”

Objection to the definitions of “CHURCH”, “SJHSRI”, and “CCCB” as being broadly defined to include all the Defendants.

Objection to the definition of “YOU” as including “predecessors . . . and/or any other PERSON(S) acting on their behalf or for their benefit”.

Objection that this interrogatory exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175), in that it asks for identification of tens if not hundreds of thousands of documents that are completed unrelated to the issue of the principal purpose organization.

Objection that the interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case, in that, insofar as the definition of “YOU” includes SJHSRI, Roger Williams Hospital, and CCCB, the interrogatory asks the Receiver to identify tens if not hundreds of thousands of communications between SJHSRI and the Retirement Board during the period when the Retirement Board was administering and maintaining the Plan, hundreds (and possibly thousands) of communication by SJHSRI during the period when SJHSRI was administering and maintaining the Plan, and hundreds (and possibly thousands) of communications concerning the Plan. For example, it would require identification of each and every communication between Angell and Plan participants since 2008. As noted above, it appears that Angell communicated every year with all Plan participants, sometimes more than once. Even if it were only once a year, there would be over 20,000 communications between 2008 and 2017.

Objection to identifying documents from 2017 to the present, which exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175), inasmuch as Defendants do not dispute that the Plan has been subject to ERISA at all times since the effective date of the Receiver’s election.

ANSWER NO. 7:

The answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning

Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to the Receiver in the Receivership Proceeding. Indeed, the Receiver's answer would have to be derived from those documents, since the Receiver's knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. Many of those exhibits are communications concerning the Plan.

INTERROGATORY NO. 8: For each of the calendar years from 2008 to the present date, IDENTIFY each PERSON who served as a member, director, or other individual with management or voting authority over SJHSRI, including, without limitation, any PERSON who is or was a member of SJHSRI's Board of Trustees or any board, committee, or subcommittee thereof.

OBJECTIONS TO INTERROGATORY NO. 8:

Objection to the definition of "IDENTIFY" as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

Objection to the definition of "PERSON" as amorphous and incapable of application, inasmuch as it includes any "other form of . . . arrangement."

Objection to the definition of "SJHSRI" as being broadly defined to include all the Defendants.

Objection that this interrogatory exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175), because most of the individuals that are the subject of the interrogatory had nothing to do with the principal purpose requirement.

ANSWER NO. 8:

The answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the

Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to the Receiver in the Receivership Proceeding. Indeed, the Receiver's answer would have to be derived from those documents, since the Receiver's knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. Some of those exhibits identify individuals who were officers and directors of SJHSRI.

INTERROGATORY NO. 9: For each of the calendar years from 2008 to the present date, IDENTIFY any and all DOCUMENTS that RELATE TO the governance of SJHSRI and each and every board, committee, or subcommittee thereof, including, without limitation, bylaws, meeting minutes, agenda, or other similar DOCUMENTS.

OBJECTIONS TO INTERROGATORY NO. 9:

Objection to the definition of “IDENTIFY” as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

Objection to the definition of “PERSON” as amorphous and incapable of application, inasmuch as it includes any “other form of . . . arrangement.”

Objection to the definitions of “SJHSRI” as being broadly defined to include all the Defendants.

Objection to the definition of “RELATE TO” as meaning anything other than its usual and customary meaning.

Objection to the definition of “DOCUMENTS” as meaning anything other than documents within the meaning of Fed. R. Civ. P. 34.

Objection to identifying “similar” documents as amorphous and undefined.

Objection that this interrogatory exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions

(ECF No. 175), because most of the governance of SJHSRI had nothing to do with the Plan, much less the principal purpose issue.

Objection that identifying documents for years from 2017 to the present exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175), inasmuch as Defendants do not dispute that the Plan has been subject to ERISA at all times since the effective date of the Receiver's election.

ANSWER NO. 9:

The answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to the Receiver in the Receivership Proceeding. Indeed, the Receiver's answer would have to be derived from those documents, since the Receiver's knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved

in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. Many of those exhibits relate to the governance of SJHSRI.

INTERROGATORY NO. 10: For each of the calendar years from 2008 to the present date, IDENTIFY each and every PERSON who served as a member of, director of, or other individual with management or voting authority over CCCB, including, without limitation, the Executive Committee of CCCB and the Finance Committee of CCCB.

OBJECTIONS TO INTERROGATORY NO. 10:

Objection to the definition of "IDENTIFY" as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

Objection to the definition of "PERSON" as amorphous and incapable of application, inasmuch as it includes any "other form of . . . arrangement."

Objection to the definitions of “CCCB” as being broadly defined to include all the Defendants.

Objection to the use of the phrase “the Executive Committee of CCCB” in light of the overbreadth of the definition of “CCCB”.

Objection to the use of the phrase “the Finance Committee of CCCB” in light of the overbreadth of the definition of “CCCB”.

Objection that this interrogatory exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175), because most of the individuals who served as a member of, director of, or other individual with management or voting authority over CCCB never had anything to do with administering, maintaining, or funding the Plan.

Objection that the post-2017 temporal scope of this interrogatory exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175), inasmuch as Defendants do not dispute that the Plan has been subject to ERISA at all times since the effective date of the Receiver’s election.

ANSWER NO. 10:

The answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning

Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to the Receiver in the Receivership Proceeding. Indeed, the Receiver's answer would have to be derived from those documents, since the Receiver's knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. Some of those exhibits identify individuals who

served as a member of, director of, or other individual with management or voting authority over CCCB.

INTERROGATORY NO. 11: For each of the calendar years from 2008 to the present date, IDENTIFY any and all DOCUMENTS that RELATE TO the governance of CCCB, the Executive Committee of CCCB, the Finance Committee of CCCB, and any other boards, committees, or subcommittees including, without limitation, bylaws, meeting minutes, agenda, or other similar DOCUMENTS.

OBJECTIONS TO INTERROGATORY NO. 11:

Objection to the definition of “IDENTIFY” as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

Objection to the definition of “PERSON” as amorphous and incapable of application, inasmuch as it includes any “other form of . . . arrangement.”

Objection to the definitions of “CCCB” as being broadly defined to include all the Defendants.

Objection to use of the phrase “the Executive Committee of CCCB” in light of the overbreadth of the definition of “CCCB”.

Objection to use of the phrase “the Finance Committee of CCCB” in light of the overbreadth of the definition of “CCCB”.

Objection to the phrase “any other boards, committees, or subcommittees” as unmoored to any entity.

Objection to the definition of “DOCUMENTS” as meaning anything other than documents within the meaning of Fed. R. Civ. P. 34.

Objection to the phrase “similar DOCUMENTS” as amorphous and undefined.

Objection to the definition of “RELATE TO” as meaning anything other than its usual and customary meaning.

Objection that this interrogatory exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175), because most of the governance of CCCB had nothing to do with the Plan, much less the principal purpose issue. .

Objection that the post-2017 temporal scope of this interrogatory exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175), inasmuch as Defendants do not dispute that the Plan has been subject to ERISA at all times since the effective date of the Receiver's election.

ANSWER NO. 11:

The answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to the Receiver in the Receivership Proceeding. Indeed, the Receiver's answer would

have to be derived from those documents, since the Receiver's knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. Some of those exhibits concern the governance of CCCB.

INTERROGATORY NO. 12: For each of the calendar years from 2008 to the present date, IDENTIFY each and every PERSON RELATED TO CCCB who held

themselves out as having any control, supervision, responsibility, or any other administrative duties RELATING TO THE PLAN.

OBJECTIONS TO INTERROGATORY NO. 12:

Objection to the definition of “IDENTIFY” as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

Objection to the definition of “PERSON” as amorphous and incapable of application, inasmuch as it includes any “other form of . . . arrangement.”

Objection to the definitions of “CCCB” as being broadly defined to include all the Defendants.

Objection to the definition of “RELATED TO” and “RELATING TO” as meaning anything other than its usual and customary meaning.

Objection that the post-2017 temporal scope of this interrogatory exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175), inasmuch as Defendants do not dispute that the Plan has been subject to ERISA at all times since the effective date of the Receiver’s election.

ANSWER NO. 12:

The answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the

Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to the Receiver in the Receivership Proceeding. Indeed, the Receiver's answer would have to be derived from those documents, since the Receiver's knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. Some of those exhibits identify individuals who from CharterCARE Community Board's finance committee that were involved in administering the Plan.

INTERROGATORY NO. 13: For each of the calendar years from 2008 to the present date, IDENTIFY each and every PERSON RELATED TO SJHSRI who held themselves out as having any control, supervision, responsibility, or any other administrative duties RELATING TO THE PLAN.

OBJECTIONS TO INTERROGATORY NO. 13:

Objection to the definition of “IDENTIFY” as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

Objection to the definition of “PERSON” as amorphous and incapable of application, inasmuch as it includes any “other form of . . . arrangement.”

Objection to the definitions of “SJHSRI” as being broadly defined to include all the Defendants.

Objection to the definition of “RELATED TO” and “RELATING TO” as meaning anything other than its usual and customary meaning.

Objection that the post-2017 temporal scope of this interrogatory exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175), inasmuch as Defendants do not dispute that the Plan has been subject to ERISA at all times since the effective date of the Receiver's election.

ANSWER NO. 13:

The answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to the Receiver in the Receivership Proceeding. Indeed, the Receiver's answer would have to be derived from those documents, since the Receiver's knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the

latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. Some of those exhibits identify persons related to SJHSRI who held themselves out as having any control, supervision, responsibility, or any other administrative duties relating to the Plan.

INTERROGATORY NO. 14: From 2008 to the present date, IDENTIFY each and every payment that YOU received RELATING TO the PLAN.

OBJECTIONS TO INTERROGATORY NO. 14:

Objection to the definition of “YOU” as including “predecessors . . . and/or any other PERSON(S) acting on their behalf or for their benefit”.

Objection to the definition of “IDENTIFY” as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

Objection to the definition of “RELATING TO” as meaning anything other than its usual and customary meaning.

Objection that the interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case, in that, insofar as the definition of “YOU” includes SJHSRI, Roger Williams Hospital, and CCCB, the interrogatory asks the Receiver to describe in detail every payment they received from any source since 2008 relating to the Plan.

Objection that this interrogatory exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions

(ECF No. 175), since insofar as the definition of “YOU” includes SJHSRI, Roger Williams Hospital, and CCCB, the interrogatory asks the Receiver to describe in detail every payment they received from any source since 2008 relating to the Plan, which is irrelevant to the principal purpose issue.

Objection that the post-2017 temporal scope of this interrogatory exceeds the scope of the limited discovery allowed pursuant to the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Consent Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 175), inasmuch as Defendants do not dispute that the Plan has been subject to ERISA at all times since the effective date of the Receiver's election.

ANSWER NO. 14:

The answer to this interrogatory may be derived from the documents identified in and produced in connection with the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171), consisting of documents produced to the Receiver in the Receivership Proceeding. Indeed, the Receiver's answer would have to be derived from those documents, since the Receiver's knowledge and information is based upon those documents.

The burden of extracting the answer this interrogatory from the documents identified in the Stipulation and Proposed Order Concerning Limited Discovery and Related Summary Judgment Motions (ECF No. 170) and the Stipulation and Proposed Order (ECF No. 171) is substantially the same (in fact, much less burdensome) for the

parties serving the interrogatory as for the Receiver. Unlike the Receiver, all of the Defendants, together with all members of their controlled groups, were directly involved in and/or responsible for administering, maintaining, and/or funding the St. Joseph Health Services of Rhode Island Retirement Plan at various times for each of the calendar years from 2008 to the present date. Moreover, some Defendants, such as Prospect Chartercare, LLC, took custody of the relevant documents in 2014 which included all of the records for the Plan for many years, extending long before 2008.

In connection with the Receiver's motion for summary judgment on the principal purpose issue, the Receiver referred to (and attached as exhibits) certain of those documents in support of the Receiver's contention that, because of the failure to comply with the requirements for a principal purpose organization, by April 29, 2013 at the latest, the Plan was not a Church Plan within the meaning of 29 U.S.C. § 1002(33) and, therefore, was subject to ERISA. Those exhibits include documents that identify the \$14 million payment to SJHSRI for the Plan in 2014.

INTERROGATORY NO. 15: IDENTIFY any and all DOCUMENTS upon which YOU relied in responding to these Interrogatories.

OBJECTIONS TO INTERROGATORY NO. 15:

Objection to the definition of "YOU" as including "predecessors . . . and/or any other PERSON(S) acting on their behalf or for their benefit".

Objection to the definition of "IDENTIFY" as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

Objection to the definition of “DOCUMENTS” as meaning anything other than documents within the meaning of Fed. R. Civ. P. 34.

ANSWER NO. 15:

See the exhibits to the Receiver’s motion for summary judgment on the principal purpose issue.

INTERROGATORY NO. 16: IDENTIFY each and every PERSON(S) that YOU consulted, conferred with, interviewed, or who otherwise provided YOU with information in connection with preparation of YOUR responses to these Interrogatories.

OBJECTIONS TO INTERROGATORY NO. 16:

Objection to the definition of “YOU” as including “predecessors . . . and/or any other PERSON(S) acting on their behalf or for their benefit”.

Objection to the definition of “IDENTIFY” as overbroad, unduly cumbersome, not proportional to the needs of the case, and entailing an impermissible number of subparts.

ANSWER NO. 16:

The undersigned consulted with his litigation counsel in connection with preparing these responses to interrogatories.

Declaration

I, Stephen Del Sesto, declare under the penalties of perjury that I have read the foregoing Answers to Defendants Prospect Medical Holdings, Inc. and Prospect East Holdings, Inc.'s First Set of Interrogatories in Connection with the Principal Purpose Organization Issue, and based upon matters within my personal knowledge and on information that has been assembled and provided to me, the foregoing amended answers to the Interrogatories are correct, according to the best of my knowledge.



Stephen Del Sesto, in his capacity as Receiver
of and for the St. Joseph Health Services
Retirement Plan

Executed this 5th day of April, 2020

As to Objections:

Plaintiff Stephen Del Sesto, as Plan Receiver
By his Attorneys,

/s/ Stephen P. Sheehan
Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
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April 6, 2020