

**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-S-LDA
ORAL ARGUMENT REQUESTED

**DIOCESAN DEFENDANTS' OPPOSITION TO PLAINTIFFS'
CONDITIONAL RULE 56(D) MOTION FOR DISCOVERY ON JUDICIAL ESTOPPEL**

DATED: June 29, 2022

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

By Their Attorneys,

PARTRIDGE SNOW & HAHN LLP

Howard Merten (#3171)
Eugene G. Bernardo II (#6006)
Paul M. Kessimian (#7127)
Christopher M. Wildenhain (#8619)
40 Westminister Street, Suite 1100
Providence, RI 02903
(401) 861-8200
(401) 861-8210 FAX
hmerten@psh.com
ebernardo@psh.com
pkessimian@psh.com
cwildenhain@psh.com

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Defendants Roman Catholic Bishop of Providence, a corporation sole (“RCB”), Diocesan Administration Corporation (“DAC”) and Diocesan Service Corporation (“DSC”, and collectively with RCB and DAC, the “Diocesan Defendants”) respectfully submit this opposition to Plaintiffs’ Conditional Rule 56(d) Motion to Defer or Deny Diocesan Defendants’ Motion for Summary Judgment Pending Discovery on Judicial Estoppel, ECF No. 246.

PRELIMINARY STATEMENT

Plaintiffs’ current tactic in this litigation is to delay and/or avoid decision of an issue—when ERISA attached to the Plan—that they acknowledged at paragraph 66 of their amended complaint is “essential” to determining the rights of the parties, and that they once moved to resolve on summary judgment. Their Rule 56(d) motion is a meritless, stalling tactic and should be denied for two reasons.

First, Plaintiffs have not shown good cause for their failure to take discovery on the judicial estoppel theory during the limited discovery period. Pursuant to a scheduling order they helped draft *and* submitted jointly to the Court, Plaintiffs had their opportunity to do so and chose not to do so as a tactical matter. Plaintiffs were on notice that the Diocesan Defendants had invoked various defenses that could only be available if ERISA applied (e.g., preemption of Plaintiffs’ state law claims and limitations on relief under 29 U.S.C. § 1132(a)(3)). They knew the Diocesan Defendants were not contending that a principal purpose organization maintained the Plan during the period covered by their motion. The decision not to pursue this evidence during the discovery period was tactical.

Second, Plaintiffs cannot demonstrate that the facts they hope to adduce from discovery would influence the outcome of the Diocesan Defendants’ motion for summary judgment. Plaintiffs’ judicial estoppel theory fails as a matter of law, as the Diocesan

Defendants have explained in their summary judgment reply. Most prominently, an intervening change in the law wrought by a 2017 decision of the U.S. Supreme Court, *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017), reconciles and justifies any change in position.

Plaintiffs' proffered "new" evidence has no effect on the pertinent legal analysis.

Accordingly, Plaintiffs' conditional Rule 56(d) motion should be unconditionally denied.

LEGAL STANDARD

Rule 56(d) relief requires that the movant "(i) explain[] his or her current inability to adduce the facts essential to filing an opposition, (ii) provide[] a plausible basis for believing that the sought-after facts can be assembled within a reasonable time, and (iii) indicate[] how those facts would influence the outcome of the pending summary judgment motion." *Hicks v. Johnson*, 755 F.3d 738, 743 (1st Cir. 2014) (quotation omitted).

"When, as is often the case, the reason [for a proffer of "inability"] relates to incomplete discovery, the party's explanation must take a special form: it should show good cause for the failure to have discovered the facts sooner; it should set forth a plausible basis for believing that specified facts, susceptible of collection within a reasonable time frame, probably exist; and it should indicate how the emergent facts, if adduced, will influence the outcome of the pending summary judgment motion." *Resolution Trust Corp. v. N. Bridge Assocs., Inc.*, 22 F.3d 1198, 1203 (1st Cir. 1994); *accord Hicks*, 755 F.3d at 743.

ARGUMENT

The pending motion claims that Rule 56(d) entitles Plaintiffs to additional discovery on an issue (judicial estoppel) about which they had long been on notice. Rule 56(d) does no such thing. Plaintiffs had ample opportunity to adduce the evidence they now seek

during the period designated for that purpose by the Court. They chose not to pursue such discovery.

On October 29, 2019, this Court entered a stipulated order authorizing “discovery, as set forth below, limited to Count IV of Plaintiffs’ First Amended Complaint, concerning when, if at any time, the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”) ceased to be a church plan exempt from ERISA.” Stipulation & Proposed Order Concerning Limited Discovery and Related Summ. J. Mots., ECF No. 170, ¶ 2 (entered via text order on October 29, 2019). Two months later, Plaintiffs filed a Motion for Summary Judgment against all defendants, seeking a determination that “by April 29, 2013 at the latest, the Plan was not an ERISA exempt church plan within the meaning of 29 U.S.C. § 1002(33).” Pls.’ Mot. for Summ. J., ECF No. 173, at 4. A period of discovery then ensued pertaining to Plaintiffs’ motion, followed by a second period of discovery limited to issues raised by any cross-motions filed “in addition to the principal purpose issue.” Stip. & Consent Order Concerning Limited Discovery & Related Summ. J. Mots., ECF No. 175, ¶¶ 2, 5.

The Diocesan Defendants’ pending summary judgment motion now seeks the same relief on the same asserted bases as in Plaintiffs’ original Motion for Summary Judgment: an order declaring that “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.” Diocesan Defs.’ Mot. for Summ. J., ECF No. 236, at 19. Rather than assent, Plaintiffs filed an Opposition, Pls.’ Mem. in Opp’n to the Diocesan Defs.’ Mot. for Summ. J. (“Pls.’ MSJ Opp’n”), ECF No. 245, and the instant Conditional Rule 56(d) Motion, ECF No. 246.

Regardless of the bizarre and troubling path that brought us to this point, the time for the contemplated discovery came and went with the period expressly ordered by the Court.

Plaintiffs did not pursue the discovery they now claim is necessary. Plaintiffs cannot demonstrate the required “good cause” for their delay.

I. NO GOOD CAUSE EXISTS FOR PLAINTIFFS’ FAILURE TO PURSUE THE REQUESTED DISCOVERY DURING THE PERIOD SET BY THE COURT.

Plaintiffs’ briefing and affidavit do not demonstrate the required good cause for their inability to have discovered or marshalled the necessary facts earlier in the proceedings. *See Hicks*, 755 F.3d at 743. There is no acceptable explanation for Plaintiffs’ decision not to seek discovery purportedly necessary to oppose the Diocesan Defendants’ Motion for Summary Judgment during the period expressly designated by the Court for that purpose.

Certainly, Plaintiffs present excuses for why they did not seek this discovery previously. But none are availing. Plaintiffs cannot blame constraints on the scope of discovery aimed at Count IV – they stipulated to those very constraints. Plaintiffs cannot blame the “new” issue of judicial estoppel – they have been on notice at least since the Diocesan Defendants argued in their 2018 Motion to Dismiss that ERISA precluded the recovery that Plaintiffs sought (even leaving aside the fact that Plaintiffs have prospectively argued for judicial estoppel against various named defendants in this case since its inception).

Plaintiffs indisputably felt that they had sufficient evidence for the Court to enter summary judgment on Count IV pursuant to the pending motion -- they would not have moved for summary judgment against the Diocesan Defendants otherwise. Nothing prevented Plaintiffs from seeking this discovery during the designated period, other than their own decision not to do so for tactical advantage.

A. A prior strategic decision not to seek available discovery does not constitute good cause for Rule 56(d) relief

A 56(d) movant “must demonstrate due diligence ... in conducting discovery before the emergence of the summary judgment motion.” *Rivera-Almodovar v. Instituto Socioeconomico Comunitario, Inc.*, 730 F.3d 23, 29 (1st. Cir. 2013). And a party who makes a tactical decision not to seek otherwise available discovery cannot demonstrate the required due diligence or “good cause” for later seeking that discovery. *See In re Thorpe Insulation Co.*, 671 F.3d 1011, 1024-25 (9th Cir. 2012) (affirming denial of additional discovery to contest dispositive claim objection where the movant’s “tactical decision to defer discovery,” which the movant argued “should be conducted in ... arbitration,” did “not constitute good cause for continuing the hearing.”); *Floyd v. Se. Cherokee Const., Inc.*, No. 2:07cv577–MEF, 2008 WL 2782737, at *2 (M.D. Ala. July 15, 2008) (denying request for discovery where plaintiff had an “opportunity to engage in meaningful discovery” and “[a]ny failure by Plaintiff to take advantage of that opportunity prior to Defendant’s summary judgment having been filed is a product of Plaintiff’s own strategic decisions.”).

B. Plaintiffs chose not to seek this discovery during the designated period

The Court ordered, pursuant to the stipulation of the then-Parties, “discovery ... limited to Count IV of Plaintiffs’ First Amended Complaint, concerning when, if at any time, the ... Plan ceased to be a church plan exempt from ERISA.” Stipulation & Proposed Order, ECF No. 170, ¶ 2. The period for this discovery expired on September 25, 2020, as conceded by Plaintiffs. Pls.’ Mem. in Supp. 56(d) Mot. (“Pls.’ 56(d) Mem.”), ECF No. 246-1, at 7; *see also* Fourth Order Concerning Limited Discovery & Related Summ. J Mots., ECF No. 188, ¶ 6.

Plaintiffs did not seek the contemplated discovery regarding judicial estoppel during the open period. Indeed, they had already sought summary judgment on Count IV against

all defendants seeking a determination that the Plan *was* an ERISA plan. And they admit why -- for a tactical advantage against a former co-defendant. Plaintiffs sought a ruling that the plan was an ERISA plan as to all Defendants, because doing so would mean “Plaintiffs were a long way towards proving their claim that Prospect had successor liability for the Plan....” Pls.’ 56(d) Mem., ECF No. 246-1, at 5-6.

Plaintiffs offer a series of excuses to distract attention from their own tactical decision-making, each of which is addressed in turn below. But the Court need not overcomplicate the analysis. Plaintiffs had sufficient evidence to seek summary judgment *against the Diocesan Defendants* on Count IV, even before the period of limited discovery opened. They did, in fact, seek that relief against the Diocesan Defendants without any reference to this contrived estoppel argument. The Diocesan Defendants current pending summary judgment motion seeks the same relief on the same bases as Plaintiffs’ prior motion. Yet Plaintiffs now claim that they lacked the opportunity to adduce evidence material to the very same request for relief they previously presented.

The Court does not need to find that Plaintiffs’ belated excuses are *post hoc* falsehoods aimed at reconciling Plaintiffs’ prior effort to seek summary judgment on Count IV against the Diocesan Defendants with their current effort to oppose the same relief. Instead, it is enough that Plaintiffs already had a fair opportunity to take this discovery, and they chose not to do it. No good cause exists for Plaintiffs’ failure – only their own conceded tactical decisions.

C. Plaintiffs’ belated excuses for not seeking this discovery sooner are fabrications

With that said, Plaintiffs’ belated excuses are *post hoc* falsehoods. The Diocesan Defendants will respond to each in turn. None present the “good cause” necessary for relief under Rule 56(d).

1. Plaintiffs' contention that they would have taken discovery on judicial estoppel, had they known the Diocesan Defendants would agree with their summary judgment motion cannot be true

Plaintiffs claim that they “could (and would) have raised the issue of judicial estoppel [during the open discovery period] and conducted discovery on that issue,” if only the Diocesan Defendants had “adopted Plaintiffs’ position” during the discovery period. Decl. of Stephen P. Sheehan (“Sheehan Decl.”), ECF No. 246-2, ¶ 12. This cannot be true.

First, Plaintiffs filed for summary judgment *against the Diocesan Defendants* during the open discovery period. Plaintiffs themselves intentionally preempted any claim of judicial estoppel against the Diocesan Defendants. They sought a relief as to the Diocesan Defendants that (Plaintiffs now argue) the Diocesan Defendants would have been judicially estopped from seeking. Under Plaintiffs’ (new and incredibly flawed) theory of the case, the Diocesan Defendants *could not* file their own motion or cross-motion for the same ruling under Count IV – the Diocesan Defendants would have been then, as they are now, “judicially estopped from now asserting that the Plan did not qualify for the ‘Church Plan’ Exemption.” Pls.’ Statement of Undisputed & Disputed Material Facts (“PSUDF”), ECF No. 243, at 2.

If Plaintiffs intended to judicially estop the Diocesan Defendants from agreeing that the plan was an ERISA plan, they could and would also have filed their summary judgment motion *only as to the former co-defendants*. They did not. Plaintiffs’ declaration cannot rewrite the history of this litigation.

Second, Plaintiffs’ feigned ignorance as to the potential applicability of judicial estoppel cannot be reconciled with their own prior filings. Plaintiffs have prospectively contended that counter-parties would be judicially estopped from various statements for years.¹

¹ Pls.’ R.I. Super. Ct. Compl., ECF 65-7, ¶ 115 (“Having succeeded in obtaining those approvals based upon the those representations, SJHSRI, RWH, CCCB, CC Foundation, and the Prospect Entities are judicially estopped from

And there is no argument as to whether Plaintiffs knew – during the open discovery period – that judicial estoppel was potentially at issue with respect to the Diocesan Defendants. *They have admitted as much.* Per Plaintiffs in 2018, “Both [the state and federal court proceedings] involve the claim that SJHSRI was liable to fully fund the Plan under either ERISA or state law, including the law of contracts, promissory estoppel, **and judicial estoppel.**” Pls.’ R.I. Super. Ct. Mem. in Supp. of Mot. for Leave to Intervene, ECF No. 65-8, at 43. Per Plaintiffs now, “SJHSRI’s statements to the regulators are attributed to the Diocesan Defendants for purposes of judicial estoppel.” PSUDF, ECF No. 243, at 2.

Taking Plaintiffs at their own word, there is no excuse for Plaintiffs’ failure to take this discovery on judicial estoppel during the designated period, other than their conceded tactical decision to prioritize claims against Prospect or perhaps their confidence that wrapping their meritless arguments within the claims of sympathetic clients would carry the day.

2. Regardless, Plaintiffs were in fact on notice of their purported judicial estoppel argument prior to, and during, the discovery period

Plaintiffs were specifically on notice regarding the application of judicial estoppel as to the Diocesan Defendants prior to and during the open discovery period. They contend in their summary judgment opposition that the “Diocesan Defendants are judicially estopped from now asserting that the Plan was not an ERISA-exempt Church Plan.” Pls.’ MSJ Opp’n, ECF No. 245, at 83. They contend in their 56(d) briefing that the Diocesan Defendants “are directly

contending otherwise, and from enforcing the Exculpatory Provisions insofar as they would relieve SJHSRI of any such liability...”; *id.* ¶ 266 (“Defendants SJHSRI, RWH, CCCB, and CC Foundation are judicially estopped from denying that the \$8,200,000 transferred to the CC Foundation was in connection with winding down their affairs and dissolution...”); Pls.’ R.I. Super. Ct. Mem. in Supp. of Mot. for Leave to Intervene, ECF No. 65-8, at 27 (“Petitioners may attempt to dispute that they were (and are) in the process of dissolution. However, judicial estoppel bars them from even making that argument.”); *Id.* at 43 (“Thus both the Related Proceedings [including this action] and this Proceeding are based on the contentions that SJHSRI and RWH brought the 2015 *Cy Pres* Proceeding intending thereby to hinder and delay their creditors and that SJHSRI was insolvent at the time. Both involve the claim that SJHSRI was liable to fully fund the Plan under either ERISA or state law, including the law of contracts, promissory estoppel, and judicial estoppel.”).

responsible for Plaintiffs not having taken discovery on the issues involved in judicial estoppel” because the Diocesan Defendants did not “give[] Plaintiffs notice that they claimed that the Plan lost Church Plan status on or before April 29, 2013.” Pls.’ 56(d) Mem., ECF No. 246-1, at 16.

It is hard to reconcile that assertion with the reality that Plaintiffs were on notice that the Diocesan Defendants intended to assert certain defenses under ERISA well before the limited discovery period started.² In their September 17, 2018 motion to dismiss Plaintiffs’ original complaint, the Diocesan Defendants argued that Count III (Aiding & Abetting a Breach of ERISA) must be dismissed because ERISA precluded the recovery that Plaintiffs sought. Mem. in Supp. of Diocesan Defs.’ Mot. to Dismiss, ECF No. 54-1, at 63-68. The Diocesan Defendants also joined their co-defendants’ arguments that ERISA preempted Plaintiffs’ state law claims. *Id.* at 6. So there could be no mistake, the Diocesan Defendants repeated both arguments when they moved to dismiss Plaintiffs’ amended complaint on December 4, 2018. Mem. in Supp. of Diocesan Defs.’ Mot. to Dismiss FAC, ECF No. 67-1, at 7, 77-81. The Diocesan Defendants then argued again that ERISA limited Plaintiffs’ relief in their March 4, 2019 reply brief in support of their motion to dismiss. Diocesan Defs.’ Reply in Further Supp. of Mot. to Dismiss FAC, ECF No. 114, at 67-72. The parties then submitted a stipulation to the Court that provided that following resolution of Count IV the Court would “hold a status conference to discuss next steps (for example, and without any implied admission by any party that such step may be appropriate or necessary . . . dispositive motions on ERISA preemption grounds.)”. Stipulation & Proposed Order, ECF No. 170, ¶ 4. What did Plaintiffs think would happen if they prevailed on their now-withdrawn motion for summary judgment?

² Indeed, when Plaintiffs’ filed their complaint they recognized that their state law claims “may be pre-empted,” signaling, that they anticipated preemption arguments from the defendants. Compl., ECF No. 1, ¶ 34.

But if that was not enough, it is hard to understand what Plaintiffs made of the Diocesan Defendants' response to Plaintiffs' Interrogatory No. 1 during the open discovery period. Plaintiffs had asked the Diocesan Defendants to "identify each and every organization that you contend maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i)." Ex. A (Diocesan Defs.' Feb. 12, 2020 Answers to Pls.' Interrogs.) at 2 (Interrog. No. 1). Per Plaintiffs' theory of judicial estoppel, there was only one permissible answer to this Interrogatory: the Diocesan Defendants must identify a principal purpose organization for the Plan, because they were estopped from contradicting "the express assertion that the Plan was administered by a principal purpose organization." Pls.' MSJ Opp'n, ECF No. 245, at 9.

That was not the Diocesan Defendants' answer. On February 12, 2020 (i.e. during the open discovery period), the Diocesan Defendants answered instead that "they have not formed any contention at this point in the proceedings as to any organization that maintained the Plan or had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i) for the years referenced in this interrogatory." Ex. A (Diocesan Defs.' Feb. 26, 2020 Answers to Pls.' Interrogs.) at 3 (answer to No. 1). On June 26, 2020, the Diocesan Defendants supplemented their answer to Interrogatory No. 1 to clarify that, for the period 2011 to 2017, they "have no contention as to whether an organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i)." Ex. B (Diocesan Defs.' June 26, 2020 Supplemental Answers to Pls.' Interrogs.) at 4 (supplemental answer to No. 1).

In other words, the Diocesan Defendants twice communicated to Plaintiffs that they were not contending that an organization maintained the Plan and had as its principal

purpose or function the administration or funding of the Plan for a period covered by Plaintiffs' now-withdrawn motion for summary judgment.

At that juncture, Plaintiffs were on notice (if they were not already) regarding the potential application and relevance of their (bunk) judicial estoppel theory as to the Diocesan Defendants. Any suggestion otherwise is disingenuous.

3. And Plaintiffs cannot complain about limitations
imposed by their own stipulated discovery agreements

Plaintiffs also cavil obliquely about the "limited" discovery available during the open discovery period relating to Count IV. Pls.' 56(d) Mem., ECF No. 246-1, at 9 (reiterating Plaintiffs' "contention that the parties **had not been permitted** discovery on the issues relevant to judicial estoppel") (emphasis added); *accord id.* at 7; Sheehan Decl., ECF 246-2, ¶ 10.

Any complaint about purported limitations on the discovery available during the open period must be dismissed out of hand. Plaintiffs stipulated to each. Indeed, they helped draft the stipulation. They cannot now seek Rule 56(d) relief on the grounds that their own agreements foreclosed them from broader discovery. *See Paterson-Leitch Co. v. Massachusetts Mun. Wholesale Elec. Co.*, 840 F.2d 985, 989 (1st Cir. 1988) ("[Plaintiff] acquiesced in the order staying discovery. ... [I]t comes with particularly ill grace for [Plaintiff] presently to assert that the stay hampered its defense against summary judgment."); *Strag v. Bd. of Trs., Craven Cmty. Coll.*, 55 F.3d 943, 954 (4th Cir. 1995) ("[T]he primary basis of Strag's motion for extension under Rule 56(f) was that the two depositions of Dr. and Mrs. Quinn were scheduled for the day after her response to the College's motion for summary judgment was due. Because this scheduling decision was Strag's own doing, however, that decision cannot properly form the basis for a Rule 56(f) extension in the instant case."); *Cleveland v. Auto-Owners Ins. Co.*, No. 20-cv-00676-CMA-NRN, 2021 WL 4319564, at *3 (D. Colo. Sept. 23, 2021) ("[E]ven if

Cleveland could show that discovery was necessary to her response, the record shows that the relevant discovery is now complete. ... In fact, the parties stipulated that all discovery would be completed earlier this month. Thus, Cleveland should now have access to all the information she needs to respond to Auto-Owners' summary-judgment motion.”).

II. NONE OF THE PROFFERED FACTS ARE MATERIAL BECAUSE PLAINTIFFS CANNOT MAKE OUT A CASE FOR JUDICIAL ESTOPPEL AS A MATTER OF LAW

The materiality prong of the 56(d) analysis requires an explanation of how the proffered facts “if collected, will suffice to defeat the pending summary judgment motion.” *Rivera-Torres v. Rey-Hernandez*, 502 F.3d 7, 10 (1st Cir. 2007). Plaintiffs have not done so here.

That is, none of Plaintiffs' proffered facts are relevant to the Diocesan Defendants' summary judgment arguments that judicial estoppel is precluded as a matter of law. Diocesan Defs.' Reply in Further Support of Mot. for Summ. J. (“Diocesan MSJ Reply”) at Part III. Most importantly: (1) Plaintiffs cannot skirt the reality that the Supreme Court's decision in *Stapleton* worked an intervening change in the law that precludes application of judicial estoppel; and (2) no discovery is required for this Court to assess whether the regulators actually determined that the Plan was or was not a church plan (they did not), as that is a purely legal question that can be resolved by reviewing the regulators' decisions.

In other words, even if Plaintiffs were to obtain further discovery in support of their proffered facts, they have not and cannot show that those facts suffice to defeat the Diocesan Defendants' motion. No amount of additional discovery will affect whether the *Stapleton* decision effected an intervening change in the law – the Court need only look to the caselaw. See Diocesan MSJ Reply at Part III.A. No amount of additional discovery will affect

the determination that state regulators did not decide on “church plan” status – the Court need look only to the regulators’ decision. *See id.* at Part III.B. And no amount of additional discovery will affect whether the Diocesan Defendants are correct in contending that judicial estoppel is inapplicable here (even under the disputed facts as characterized by Plaintiffs) – the Court need review only Plaintiffs’ own filings and their notable absence of cited authority for the proposition that Diocesan Defendants be estopped from agreeing with Plaintiffs. The Court can and must resolve the summary judgment arguments presented. There is no reason to entertain further delay.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs’ Conditional Rule 56(d) Motion to Defer or Deny Diocesan Defendants’ Motion for Summary Judgment Pending Discovery.

LOCAL RULE 7(c) STATEMENT

Pursuant to Local Rule 7(c), the Diocesan Defendants respectfully request oral argument on their opposition to Plaintiffs’ Conditional Rule 56(d) Motion and estimate that 30 minutes will be needed.

Respectfully Submitted,

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

By Their Attorneys,

PARTRIDGE SNOW & HAHN LLP

/s/ Howard Merten

Howard Merten (#3171)
Eugene G. Bernardo II (#6006)
Paul M. Kessimian (#7127)
Christopher M. Wildenhain (#8619)
40 Westminster Street, Suite 1100
Providence, RI 02903
(401) 861-8200
(401) 861-8210 FAX
hmerten@psh.com
ebernardo@psh.com
pkessimian@psh.com
cwildenhain@psh.com

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

EXHIBIT A

**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

**DEFENDANTS ROMAN CATHOLIC BISHOP OF PROVIDENCE,
A CORPORATION SOLE, DIOCESAN ADMINISTRATION CORPORATION
AND DIOCESAN SERVICE CORPORATION'S ANSWERS TO
PLAINTIFFS' FIRST SET OF INTERROGATORIES
IN CONNECTION WITH THE PRINCIPAL PURPOSE ORGANIZATION ISSUE**

Defendants Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation and Diocesan Service Corporation (collectively, "Diocesan Defendants") respond to Plaintiffs' First Set of Interrogatories as follows:

PRELIMINARY STATEMENT

1. As pointed out by the Diocesan Defendants in one of their first filings in this action, ECF No. 54, the Complaint fails to plead facts that establish any role of any of the named Diocesan Defendants as regards either St. Joseph Health Services of Rhode Island, Inc. ("SJHSRI") or the SJHSRI Retirement Plan (the "Plan"). Further, both SJHSRI and the Plan are separate legal entities with separate legal existences, responsibilities, governance, finances, etc. The named Diocesan Defendants are also each separate legal entities, which

the Complaint, and these Interrogatories, ignore. These Diocesan Defendants had little or nothing to do with the Plan. Responses to these Interrogatories will reflect that reality.

2. The Diocesan Defendants' objections and responses to these Interrogatories are based on information now known. The Diocesan Defendants have not completed their investigation, and discovery in this case is ongoing. The Diocesan Defendants therefore reserve their right to amend, modify, and/or supplement the objections or responses herein.

3. In responding to these Interrogatories, the Diocesan Defendants do not waive their evidentiary objections or their right to challenge the relevancy, materiality, admissibility, or use of any of the Diocesan Defendants' responses herein. Furthermore, in responding to these Interrogatories, the Diocesan Defendants do not adopt any definition or characterization of any term used by Plaintiffs in these interrogatories.

INTERROGATORY NO. 1:

For each of the calendar years 2008 – 2017, identify each and every organization that you contend maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i).

OBJECTION TO INTERROGATORY NO. 1:

The Diocesan Defendants object because the interrogatory seeks legal conclusions, particularly because the legal conclusions sought are unsettled and confusing and the subject of contradictory decisions by various courts. The Diocesan Defendants further object to this interrogatory on the ground that it prematurely seeks responses to contention discovery that the Diocesan Defendants should not be required to respond to until discovery is substantially complete and the Diocesan Defendants have had an opportunity to adequately review that discovery, including the almost 1,000,000 pages of documents recently produced in this case.

See, e.g., Capacchione v. Charlotte-Mecklenburg Schs., 182 F.R.D. 486, 489 (W.D.N.C. 1998) (holding that responses to contention interrogatories are most appropriate “after a substantial amount of discovery has been conducted — typically, at the end of the discovery period”). The Diocesan Defendants further object to this interrogatory on the ground that some or all of the information sought by this interrogatory is in the possession, custody or control of third parties. Some of the information, to the extent it exists in documentary form, was produced in the approximately 1,000,000 pages of documents recently exchanged by the parties.

ANSWER TO INTERROGATORY NO. 1:

Subject to the above objections, the Diocesan Defendants state that they have not formed any contention at this point in the proceedings as to any organization that maintained the Plan or had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i) for the years referenced in this interrogatory. In this early stage of discovery, the Diocesan Defendants understand that Article 18.1 of the 1999 Plan, ECF No. 174-9, provides that “the general administration of the Plan shall be placed in a Retirement Board consisting of the Most Reverend Bishop of the Diocese of Providence and (a) at least three members of the Board of Trustees, and (b) up to six others (who may or may not be members of the Board of Trustees) each of whom is appointed from time to time by the Most Reverend Bishop of the Diocese of Providence to serve at the pleasure of the Bishop.” Additionally, Section 8.1 in both the 2011 Plan Document, ECF No. 174-10, and 2016 Plan Document, ECF No. 174-3, states that the “Employer” shall be the Administrator of the Plan and allows the SJHSRI Board of Directors/Trustees to designate a person or committee of persons to be the administrator and fiduciary.

Finally, ECF No. 174-22, presented for execution to Bishop Thomas Tobin, the Bishop of the Diocese of Providence, states that the Board of Trustees of St. Joseph's Health Services of Rhode Island is the Retirement Board with respect to the Plan and further that the SJHSRI Board has appointed the Finance Committee of CharterCARE Health Partners to act on its behalf with respect to the administrative matters related to the Plan. The Diocesan Defendants are not members of that committee and have not completed their review of the voluminous, recently-produced records or other ongoing discovery that might shed light on which entities played a role in maintaining the Plan or had as a principal purpose the administration and/or funding of the Plan.

INTERROGATORY NO. 2:

Set forth all facts upon which you rely for your answer to Interrogatory No. 1, specifically identifying the facts upon which you rely for each part of your answer.

OBJECTION TO INTERROGATORY NO. 2:

See Objection to Interrogatory No. 1.

ANSWER TO INTERROGATORY NO. 2:

See Answer to Interrogatory No. 1.

INTERROGATORY NO. 3:

Identify all documents upon which you rely for your answer to Interrogatory No.

1.

OBJECTION TO INTERROGATORY NO. 3:

See Objection to Interrogatory No. 1.

ANSWER TO INTERROGATORY NO. 3:

See Answer to Interrogatory No. 1.

INTERROGATORY NO. 4:

For each organization you identified in response to Interrogatory No. 1, set forth all facts on which you rely for your contention that the organization was controlled by or associated with a church or a convention or association of churches, within the meaning of 29 U.S.C. § 1002(33)(C)(i).

OBJECTION TO INTERROGATORY NO. 4:

See Objection to Interrogatory No. 1. The Diocesan Defendants also object to this interrogatory as beyond the scope of initial discovery set forth in the Stipulation and Schedule for Limited Discovery and Briefing Schedule, entered as an order of the Court on January 13, 2020. That stipulation limited initial discovery to resolving issues raised in Plaintiffs' Motion for Summary Judgment, ECF No. 173. In turn, Plaintiffs' Motion for Summary Judgment expressly eschews any attempt to determine whether SJHSRI or any principal purpose entity is associated with a church. *Id.* at 22-26. Plaintiffs expressly and purposefully focused their arguments on the second prong of the tests set forth in their brief, which they characterize as the requirement that "SJHSRI's retirement plan be maintained by an organization whose principal purpose was administering or funding the Plan for SJHSRI's employees." *Id.* at 24.

ANSWER TO INTERROGATORY NO. 4:

Subject to, and without waiving that objection, the Diocesan Defendants have set forth in their Motion to Dismiss Plaintiffs' First Amended Complaint, ECF No. 67, specific facts pled in the Plaintiffs' own Amended Complaint, or referenced in documents attached to or mentioned in that complaint, to require dismissal of any and all claims respecting any alleged lack of connection between the Church and SJHSRI as required under applicable law.

INTERROGATORY NO. 5:

Identify all documents upon which you rely for your answer to Interrogatory No.

4.

OBJECTION TO INTERROGATORY NO. 5:

See Objection to Interrogatory No. 4.

ANSWER TO INTERROGATORY NO. 5:

See Answer to Interrogatory No. 4. See also Diocesan Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint, ECF No. 67, and related exhibits.

INTERROGATORY NO. 6:

For each organization you identified in response to Interrogatory No. 1, state the full name of each and every person who was a member, director, officer, or other individual with management or voting authority with respect to the organization, and state each such person's role(s) with respect to the organization and dates upon which such role(s) commenced and ended.

OBJECTION TO INTERROGATORY NO. 6:

See Objection to Interrogatory No. 1. Objecting further, the Diocesan Defendants state that this interrogatory is overly broad, unduly burdensome, and seeks delineation by the Diocesan Defendants of information found in the records of third parties that Plaintiffs already have. Moreover, discovery is ongoing, and none of the Diocesan Defendants have yet to form a contention concerning the subject of Interrogatory No. 1. In any event, the records of the entities referenced in the response to Interrogatory No. 1, the SJHSRI Retirement Board, the SJHSRI Board of Trustees, and the CharterCARE Health Partners Finance Committee were never kept or maintained by the Diocesan Defendants, but rather by third parties who have provided records to

Plaintiffs previously and to the Diocesan Defendants more recently in this action. The information called for in this interrogatory, to the extent that information is available, would be found in the records of third parties, which Plaintiffs have possessed for a considerably longer period of time than the Diocesan Defendants, for example, in the minutes, to the extent they were kept, of the SJHSRI Board, the SJHSRI Retirement Board, and/or the Finance and Investment Committees of CharterCare Health Partners. As such, even if the Court were to ignore the fact that Plaintiffs had these records for over one year, the Diocesan Defendants and Plaintiffs are in the same position to identify the information requested in Interrogatory No. 6.

ANSWER TO INTERROGATORY NO. 6:

See Answer to Interrogatory No. 1. Answering further, the Diocesan Defendants refer Plaintiffs to the documents that Plaintiffs collected over the course of the investigation that preceded this lawsuit for the answer to this Interrogatory.

INTERROGATORY NO. 7:

For each organization you identified in response to Interrogatory No. 1 that was a board or committee, state the date of each meeting of the organization during the calendar years 2008 – 2017 and state whether agendas, notes, or minutes of or for each such meeting exist.

OBJECTION TO INTERROGATORY NO. 7:

See Objection to Interrogatory Nos. 1 and 6.

ANSWER TO INTERROGATORY NO. 7:

See Answer to Interrogatory Nos. 1 and 6.

INTERROGATORY NO. 8:

Identify all documents upon which you rely for your answer to Interrogatory No. 7, including but not limited to all agendas, notes, or minutes of or for each such meeting.

OBJECTION TO INTERROGATORY NO. 8:

See Objection to Interrogatory Nos. 1 and 6.

ANSWER TO INTERROGATORY NO. 8:

See Answer to Interrogatory Nos. 1 and 6.

INTERROGATORY NO. 9:

For each organization you identified in response to Interrogatory No. 1, state all of the organization's purposes or functions that were not the maintenance or funding of the Plan.

OBJECTION TO INTERROGATORY NO. 9:

See Objection to Interrogatory Nos. 1 and 6.

ANSWER TO INTERROGATORY NO. 9:

See Answer to Interrogatory Nos. 1 and 6.

INTERROGATORY NO. 10:

Identify all documents upon which you rely for your answer to Interrogatory No. 9.

OBJECTION TO INTERROGATORY NO. 10:

See Objection to Interrogatory Nos. 1 and 6.

ANSWER TO INTERROGATORY NO. 10:

See Answer to Interrogatory Nos. 1 and 6.

INTERROGATORY NO. 11:

State the full name, residential address (if applicable), business address, employer, title, and capacity of the person executing the responses to these interrogatories.

ANSWER TO INTERROGATORY NO. 11:

The Most Reverend Thomas J. Tobin, Bishop of Providence, One Cathedral Square, Providence, RI 02903 executed the responses to these interrogatories in the following capacities:

1. For Roman Catholic Bishop of Providence, a corporation sole, as the current Bishop of Providence;
2. For the Diocesan Administration Corporation, as President; and
3. For the Diocesan Service Corporation, as President.

INTERROGATORY NO. 12:

Identify each and every person who was consulted, conferred, interviewed, or who otherwise provided information in connection with the preparation of the responses to these interrogatories, including the full name, residential and business addresses, telephone numbers, e-mail addresses, and job title for each identified person, and the substance of the information you know or believe that each such person has.

ANSWER TO INTERROGATORY NO. 12:

The attorneys for the Diocesan Defendants assisted in responding to these interrogatories.

As to Objections,

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

By Their Attorneys,

PARTRIDGE SNOW & HAHN ^{LLP}



Howard Merten (#3171)
Eugene G. Bernardo (#6006)
Paul M. Kessimian (#7127)
Christopher M. Wildenhain (#8619)
40 Westminster Street, Suite 1100
Providence, RI 02903
(401) 861-8200
(401) 861-8210 FAX
hmerten@psh.com
ebercardo@psh.com
pkessimian@psh.com
cwildenhain@psh.com

DATED: February 12, 2020

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of February, 2020, a copy of the foregoing document was sent via email and prepaid first class mail to Counsel of Record for Plaintiffs and the Remaining Defendants.



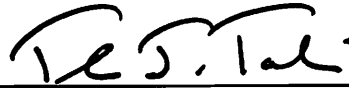
Howard Merten (#3171)

ROMAN CATHOLIC BISHOP OF PROVIDENCE,

A CORPORATION SOLE

VERIFICATION

I, Most Reverend Thomas J. Tobin, declare under the penalties of perjury that I have read the foregoing Answers to Plaintiffs' 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 answers to the Interrogatories are correct, according to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'T. J. Tobin', is written above a horizontal line.

Most Reverend Thomas J. Tobin, D.D.
Bishop of Providence

Executed this this 11th day of February, 2020.

DIOCESAN ADMINISTRATION CORPORATION

VERIFICATION

I, Most Reverend Thomas J. Tobin, declare under the penalties of perjury that I have read the foregoing Answers to Plaintiffs' 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 answers to the Interrogatories are correct, according to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'T. J. Tobin', written over a horizontal line.

Most Reverend Thomas J. Tobin, D.D.
President

Executed this this 11th day of February, 2020.

DIOCESAN SERVICE CORPORATION

VERIFICATION

I, Most Reverend Thomas J. Tobin, declare under the penalties of perjury that I have read the foregoing Answers to Plaintiffs' 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 answers to the Interrogatories are correct, according to the best of my knowledge.



Most Reverend Thomas J. Tobin, D.D.
President

Executed this this 11th day of February, 2020.

EXHIBIT B

**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' SUPPLEMENTAL RESPONSES TO PLAINTIFFS'
FIRST SET OF INTERROGATORIES CONCERNING THE PRINCIPAL PURPOSE
ORGANIZATION ISSUE AND PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Defendants Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation and Diocesan Service Corporation (collectively, the "Diocesan Defendants") provide these supplemental responses to Plaintiffs' First Set of Interrogatories in connection with the Principal Purpose Organization Issue and Plaintiffs' Motion for Summary Judgment:

PRELIMINARY STATEMENT

1. As pointed out by the Diocesan Defendants in one of their first filings in this action, ECF No. 54, the Complaint fails to plead facts that establish any role of any of the named Diocesan Defendants as regards either St. Joseph Health Services of Rhode Island, Inc. ("SJHSRI") or the SJHSRI Retirement Plan (the "Plan"). Further, both SJHSRI and the Plan are separate legal entities with separate legal existences, responsibilities, governance, finances, etc. The named Diocesan Defendants are also each separate legal entities, which

the Complaint, and these Interrogatories, ignore. These Diocesan Defendants had little or nothing to do with the Plan. Responses to these Interrogatories will reflect that reality.

2. The Diocesan Defendants' objections and responses to these Interrogatories are based on information now known. The Diocesan Defendants have not completed their investigation, and discovery in this case is ongoing. The Diocesan Defendants therefore reserve their right to amend, modify, and/or supplement the objections or responses herein.

3. In responding to these Interrogatories, the Diocesan Defendants do not waive their evidentiary objections or their right to challenge the relevancy, materiality, admissibility, or use of any of the Diocesan Defendants' responses herein. Furthermore, in responding to these Interrogatories, the Diocesan Defendants do not adopt any definition or characterization of any term used by Plaintiffs in these interrogatories.

INTERROGATORY NO. 1:

For each of the calendar years 2008 – 2017, identify each and every organization that you contend maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i).

OBJECTION TO INTERROGATORY NO. 1:

The Diocesan Defendants object because the interrogatory seeks legal conclusions, particularly because the legal conclusions sought are unsettled and confusing and the subject of contradictory decisions by various courts. The Diocesan Defendants further object to this interrogatory on the ground that it prematurely seeks responses to contention discovery that the Diocesan Defendants should not be required to respond to until discovery is substantially complete and the Diocesan Defendants have had an opportunity to adequately review that discovery, including the almost 1,000,000 pages of documents recently produced in this case.

See, e.g., Capacchione v. Charlotte-Mecklenburg Schs., 182 F.R.D. 486, 489 (W.D.N.C. 1998) (holding that responses to contention interrogatories are most appropriate “after a substantial amount of discovery has been conducted — typically, at the end of the discovery period”). The Diocesan Defendants further object to this interrogatory on the ground that some or all of the information sought by this interrogatory is in the possession, custody or control of third parties. Some of the information, to the extent it exists in documentary form, was produced in the approximately 1,000,000 pages of documents recently exchanged by the parties.

SUPPLEMENTAL OBJECTION TO INTERROGATORY NO. 1:

In addition to the objections above, the Diocesan Defendants further state that, in the event they form a contention as to whether any organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), within the referenced timeframe, they will timely supplement their answer to this Interrogatory.

ANSWER TO INTERROGATORY NO. 1:

Subject to the above objections, the Diocesan Defendants state that they have not formed any contention at this point in the proceedings as to any organization that maintained the Plan or had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i) for the years referenced in this interrogatory. In this early stage of discovery, the Diocesan Defendants understand that Article 18.1 of the 1999 Plan, ECF No. 174-9, provides that “the general administration of the Plan shall be placed in a Retirement Board consisting of the Most Reverend Bishop of the Diocese of Providence and (a) at least three members of the Board of Trustees, and (b) up to six others (who may or may not be members of the Board of Trustees) each of whom is appointed from time to time by the Most

Reverend Bishop of the Diocese of Providence to serve at the pleasure of the Bishop.”

Additionally, Section 8.1 in both the 2011 Plan Document, ECF No. 174-10, and 2016 Plan Document, ECF No. 174-3, states that the “Employer” shall be the Administrator of the Plan and allows the SJHSRI Board of Directors/Trustees to designate a person or committee of persons to be the administrator and fiduciary.

Finally, ECF No. 174-22, presented for execution to Bishop Thomas Tobin, the Bishop of the Diocese of Providence, states that the Board of Trustees of St. Joseph’s Health Services of Rhode Island is the Retirement Board with respect to the Plan and further that the SJHSRI Board has appointed the Finance Committee of CharterCARE Health Partners to act on its behalf with respect to the administrative matters related to the Plan. The Diocesan Defendants are not members of that committee and have not completed their review of the voluminous, recently-produced records or other ongoing discovery that might shed light on which entities played a role in maintaining the Plan or had as a principal purpose the administration and/or funding of the Plan.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 1:

Based on their review of the documents produced by various parties and non-parties, the Diocesan Defendants supplement their response to Interrogatory No. 1 as follows:

2008-2010: The St. Joseph Health Services of Rhode Island Retirement Board (the “SJHSRI Retirement Board”).

2011-2017: The Diocesan Defendants have no contention as to whether an organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), during this timeframe.

INTERROGATORY NO. 2:

Set forth all facts upon which you rely for your answer to Interrogatory No. 1, specifically identifying the facts upon which you rely for each part of your answer.

OBJECTION TO INTERROGATORY NO. 2:

See Objection to Interrogatory No. 1.

AMENDED OBJECTION TO INTERROGATORY NO. 2:

The Diocesan Defendants object to this interrogatory on the ground that it prematurely seeks responses to contention discovery that the Diocesan Defendants should not be required to respond to until discovery is substantially complete and the Diocesan Defendants have had an opportunity to adequately review that discovery, including the almost 1,000,000 pages of documents recently produced in this case. *See, e.g., Capacchione v. Charlotte-Mecklenburg Schs.*, 182 F.R.D. 486, 489 (W.D.N.C. 1998) (holding that responses to contention interrogatories are most appropriate “after a substantial amount of discovery has been conducted — typically, at the end of the discovery period”). The Diocesan Defendants further object to this interrogatory on the ground that some or all of the information sought by this interrogatory is in the possession, custody or control of third parties. Some of the information, to the extent it exists in documentary form, was produced in the approximately 1,000,000 pages of documents recently exchanged by the parties.

The Diocesan Defendants further state that, in the event they form a contention as to whether any organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), within the referenced timeframe, they will timely supplement their answer to this Interrogatory.

ANSWER TO INTERROGATORY NO. 2:

See Answer to Interrogatory No. 1.

AMENDED ANSWER TO INTERROGATORY NO. 2:

Subject to, and without waiving their objections, the Diocesan Defendants respond that the facts referenced in the answer to Interrogatory No. 1 are as follows: In this early stage of discovery, the Diocesan Defendants understand that Article 18.1 of the 1999 Plan, ECF No. 174-9, provides that “the general administration of the Plan shall be placed in a Retirement Board consisting of the Most Reverend Bishop of the Diocese of Providence and (a) at least three members of the Board of Trustees, and (b) up to six others (who may or may not be members of the Board of Trustees) each of whom is appointed from time to time by the Most Reverend Bishop of the Diocese of Providence to serve at the pleasure of the Bishop.” Additionally, Section 8.1 in both the 2011 Plan Document, ECF No. 174-10, and 2016 Plan Document, ECF No. 174-3, states that the “Employer” shall be the Administrator of the Plan and allows the SJHSRI Board of Directors/Trustees to designate a person or committee of persons to be the administrator and fiduciary.

Finally, ECF No. 174-22, presented for execution to Bishop Thomas Tobin, the Bishop of the Diocese of Providence, states that the Board of Trustees of St. Joseph’s Health Services of Rhode Island is the Retirement Board with respect to the Plan and further that the SJHSRI Board has appointed the Finance Committee of CharterCARE Health Partners to act on its behalf with respect to the administrative matters related to the Plan. The Diocesan Defendants are not members of that committee and have not completed their review of the voluminous, recently-produced records or other ongoing discovery that might shed light on

which entities played a role in maintaining the Plan or had as a principal purpose the administration and/or funding of the Plan.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 2:

Based on their review of the documents produced by various parties and non-parties, the Diocesan Defendants supplement their response to Interrogatory No. 2 as follows:

2008-2010: Article 18 of the 1999 Plan (ECF No. 174-9) placed the general administration of the Plan in the SJHSRI Retirement Board. Facts concerning the existence, functions, and activities of the SJHSRI Retirement Board during this time period can be found from review of the documents identified in this response and in the supplemental response to Interrogatory No. 3.

2011-2017: The Diocesan Defendants have no contention as to whether an organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), during this timeframe and have no further response to Interrogatory No. 2.

INTERROGATORY NO. 3:

Identify all documents upon which you rely for your answer to Interrogatory No. 1.

OBJECTION TO INTERROGATORY NO. 3:

See Objection to Interrogatory No. 1.

AMENDED OBJECTION TO INTERROGATORY NO. 3:

The Diocesan Defendants object to this interrogatory on the ground that it prematurely seeks responses to contention discovery that the Diocesan Defendants should not be required to respond to until discovery is substantially complete and the Diocesan Defendants

have had an opportunity to adequately review that discovery, including the almost 1,000,000 pages of documents recently produced in this case. *See, e.g., Capacchione v. Charlotte-Mecklenburg Schs.*, 182 F.R.D. 486, 489 (W.D.N.C. 1998) (holding that responses to contention interrogatories are most appropriate “after a substantial amount of discovery has been conducted — typically, at the end of the discovery period”). The Diocesan Defendants further object to this interrogatory on the ground that some or all of the information sought by this interrogatory is in the possession, custody or control of third parties. Some of the information, to the extent it exists in documentary form, was produced in the approximately 1,000,000 pages of documents recently exchanged by the parties.

The Diocesan Defendants further state that, in the event they form a contention as to whether any organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), within the referenced timeframe, they will timely supplement their answer to this Interrogatory.

ANSWER TO INTERROGATORY NO. 3:

See Answer to Interrogatory No. 1.

AMENDED ANSWER TO INTERROGATORY NO. 3:

Subject to, and without waiving their objections, the Diocesan Defendants state that the Answer to Interrogatory No. 1 refers to: ECF No. 174-9 (the 1999 Plan); ECF No. 174-10 (the 2011 Plan); ECF No. 174-3 (the 2016 Plan); and ECF No. 174-22 (the April 29, 2013 resolution signed by Bishop Tobin). All four of these documents are exhibits to Plaintiffs’ pending Motion for Summary Judgment.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 3:

Based on their review of the documents produced by various parties and non-parties, the Diocesan Defendants supplement their response to Interrogatory No. 3 as follows:

2008: The 1999 Plan (PCLLC 137588–PCLLC 137644) (also filed at ECF No. 174-9); SJHSRI-051682–SJHSRI-051724; APS0024515–APS0024516; 101169–101170 (Angell Production); SJHSRI-235259–SJHSRI-235266 (also filed at ECF No. 174-12); 100586–100589 (Angell Production) (also filed at ECF No. 174-13); PCLLC 087106; SJHSRI-171373.

2009: The 1999 Plan (PCLLC 137588–PCLLC 137588) (also filed at ECF No. 174-9); SJHSRI-051682–SJHSRI-051724; SJHSRI-275750; SJHSRI-073950–SJHSRI-073951; PCLLC 086759; SJHSRI-171374; SJHSRI-179169–SJHSRI-179233 (also filed at ECF No. 174-14); SJHSRI-171352–SJHSRI-171354; SJHSRI-275759–SJHSRI-275761; APS0197498–APS0197502; APS0197512–APS0197514; APS0197496–APS0197497; APS0197489; 100605–100606 (Angell Production); SJHSRI-216646–SJHSRI-216647; CCCB-020428; SJHSRI-087865.

2010: The 1999 Plan (PCLLC 137588–PCLCC 137644) (also filed at ECF No. 174-9); SJHSRI-051682–SJHSRI-051724; SJHSRI-086724–SJHSRI-086726; PCLLC 137680; SJHSRI-275773; SJHSRI-125889–SJHSRI-125891; CCCB-013539; PCLLC 137550; SJHSRI-197621–SJHSRI-197623.

2011-2017: The Diocesan Defendants have no contention as to whether an organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i) during this timeframe, and have no further response to Interrogatory No. 3.

INTERROGATORY NO. 4:

For each organization you identified in response to Interrogatory No. 1, set forth all facts on which you rely for your contention that the organization was controlled by or associated with a church or a convention or association of churches, within the meaning of 29 U.S.C. § 1002(33)(C)(i).

OBJECTION TO INTERROGATORY NO. 4:

See Objection to Interrogatory No. 1. The Diocesan Defendants also object to this interrogatory as beyond the scope of initial discovery set forth in the Stipulation and Schedule for Limited Discovery and Briefing Schedule, entered as an order of the Court on January 13, 2020. That stipulation limited initial discovery to resolving issues raised in Plaintiffs' Motion for Summary Judgment, ECF No. 173. In turn, Plaintiffs' Motion for Summary Judgment expressly eschews any attempt to determine whether SJHSRI or any principal purpose entity is associated with a church. *Id.* at 22-26. Plaintiffs expressly and purposefully focused their arguments on the second prong of the tests set forth in their brief, which they characterize as the requirement that "SJHSRI's retirement plan be maintained by an organization whose principal purpose was administering or funding the Plan for SJHSRI's employees." *Id.* at 24.

AMENDED OBJECTION TO INTERROGATORY NO. 4:

The Diocesan Defendants object because the interrogatory seeks legal conclusions, particularly because the legal conclusions sought are unsettled and confusing and the subject of contradictory decisions by various courts. The Diocesan Defendants further object to this interrogatory on the ground that it prematurely seeks responses to contention discovery that the Diocesan Defendants should not be required to respond to until discovery is substantially

complete and the Diocesan Defendants have had an opportunity to adequately review that discovery, including the almost 1,000,000 pages of documents recently produced in this case. *See, e.g., Capacchione v. Charlotte-Mecklenburg Schs.*, 182 F.R.D. 486, 489 (W.D.N.C. 1998) (holding that responses to contention interrogatories are most appropriate “after a substantial amount of discovery has been conducted — typically, at the end of the discovery period”). The Diocesan Defendants further object to this interrogatory on the ground that some or all of the information sought by this interrogatory is in the possession, custody or control of third parties. Some of the information, to the extent it exists in documentary form, was produced in the approximately 1,000,000 pages of documents recently exchanged by the parties.

The Diocesan Defendants also object to this interrogatory as beyond the scope of initial discovery set forth in the Stipulation and Schedule for Limited Discovery and Briefing Schedule, entered as an order of the Court on January 13, 2020. That stipulation limited initial discovery to resolving issues raised in Plaintiffs’ Motion for Summary Judgment, ECF No. 173. In turn, Plaintiffs’ Motion for Summary Judgment expressly eschews any attempt to determine whether SJHSRI or any principal purpose entity is associated with a church. *Id.* at 22-26. Plaintiffs expressly and purposefully focused their arguments on the second prong of the tests set forth in their brief, which they characterize as the requirement that “SJHSRI’s retirement plan be maintained by an organization whose principal purpose was administering or funding the Plan for SJHSRI’s employees.” *Id.* at 24.

The Diocesan Defendants further state that, in the event they form a contention as to whether any organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), within the referenced timeframe, they will timely supplement their answer to this Interrogatory.

ANSWER TO INTERROGATORY NO. 4:

Subject to, and without waiving that objection, the Diocesan Defendants have set forth in their Motion to Dismiss Plaintiffs' First Amended Complaint, ECF No. 67, specific facts pled in the Plaintiffs' own Amended Complaint, or referenced in documents attached to or mentioned in that complaint, to require dismissal of any and all claims respecting any alleged lack of connection between the Church and SJHSRI as required under applicable law.

AMENDED ANSWER TO INTERROGATORY NO. 4:

Subject to, and without waiving their objections, the Diocesan Defendants respond as follows: The Diocesan Defendants did not identify in response to Interrogatory No. 1 any organization that they contend maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(c)(i). Responding further, the Diocesan Defendants have set forth in their brief in support of their Motion to Dismiss Plaintiffs' First Amended Complaint, ECF No. 67-1, at pages 41-47, 51, specific facts pled in the Plaintiffs' own Amended Complaint, or referenced in documents attached to or mentioned in that complaint, to require dismissal of any and all claims respecting any alleged lack of connection between the Church and SJHSRI as required under applicable law.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 4:

Based on their review of the documents produced by various parties and non-parties, the Diocesan Defendants supplement their response to Interrogatory No. 4 as follows:

2008-2010: Article 18 of the 1999 Plan provides:

The general administration of the Plan shall be placed in a Retirement Board consisting of the Most Reverend Bishop of the Diocese of Providence and (a) at least three members of the Board of Trustees, and (b) up to six others (who may or may not be members of the Board of Trustees) each of whom is appointed from

time to time by the Most Reverend Bishop of the Diocese of Providence to serve at the pleasure of the said Bishop.

Article 18 of the 1999 Plan also states: “The Retirement Board will have full discretionary power to administer the Plan in all of its details subject to the satisfaction of the Most Reverend Bishop of the Diocese of Providence.”

2011-2017: The Diocesan Defendants have no contention as to whether an organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i) during this timeframe, and have no further response to Interrogatory No. 4.

INTERROGATORY NO. 5:

Identify all documents upon which you rely for your answer to Interrogatory No. 4.

OBJECTION TO INTERROGATORY NO. 5:

See Objection to Interrogatory No. 4.

AMENDED OBJECTION TO INTERROGATORY NO. 5:

The Diocesan Defendants object to this interrogatory on the ground that it prematurely seeks responses to contention discovery that the Diocesan Defendants should not be required to respond to until discovery is substantially complete and the Diocesan Defendants have had an opportunity to adequately review that discovery, including the almost 1,000,000 pages of documents recently produced in this case. *See, e.g., Capacchione v. Charlotte-Mecklenburg Schs.*, 182 F.R.D. 486, 489 (W.D.N.C. 1998) (holding that responses to contention interrogatories are most appropriate “after a substantial amount of discovery has been conducted — typically, at the end of the discovery period”). The Diocesan Defendants further object to this interrogatory on the ground that some or all of the information sought by this interrogatory is in

the possession, custody or control of third parties. Some of the information, to the extent it exists in documentary form, was produced in the approximately 1,000,000 pages of documents recently exchanged by the parties.

The Diocesan Defendants also object to this interrogatory as beyond the scope of initial discovery set forth in the Stipulation and Schedule for Limited Discovery and Briefing Schedule, entered as an order of the Court on January 13, 2020. That stipulation limited initial discovery to resolving issues raised in Plaintiffs' Motion for Summary Judgment, ECF No. 173. In turn, Plaintiffs' Motion for Summary Judgment expressly eschews any attempt to determine whether SJHSRI or any principal purpose entity is associated with a church. *Id.* at 22-26. Plaintiffs expressly and purposefully focused their arguments on the second prong of the tests set forth in their brief, which they characterize as the requirement that "SJHSRI's retirement plan be maintained by an organization whose principal purpose was administering or funding the Plan for SJHSRI's employees." *Id.* at 24.

The Diocesan Defendants further state that, in the event they form a contention as to whether any organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), within the referenced timeframe, they will timely supplement their answer to this Interrogatory.

ANSWER TO INTERROGATORY NO. 5:

See Answer to Interrogatory No. 4. See also Diocesan Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint, ECF No. 67, and related exhibits.

AMENDED ANSWER TO INTERROGATORY NO. 5:

Subject to and without waiving their objections, the Diocesan Defendants respond as follows: The Answer to Interrogatory No. 4 references the Diocesan Defendants' brief in

support of their Motion to Dismiss Plaintiffs' First Amended Complaint, ECF No. 67-1, and ECF No. 67-20 (Exhibit 19) and ECF No. 67-21 (Exhibit 20) to the motion.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 5:

Based on their review of the documents produced by various parties and non-parties, the Diocesan Defendants supplement their response to Interrogatory No. 5 as follows:

2008-2010: The 1999 Plan (PCLLC 137588–PCLLC 137644) (also filed at ECF No. 174-9).

2011-2017: The Diocesan Defendants have no contention as to whether an organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), during this timeframe and have no further response to Interrogatory No. 5.

INTERROGATORY NO. 6:

For each organization you identified in response to Interrogatory No. 1, state the full name of each and every person who was a member, director, officer, or other individual with management or voting authority with respect to the organization, and state each such person's role(s) with respect to the organization and dates upon which such role(s) commenced and ended.

OBJECTION TO INTERROGATORY NO. 6:

See Objection to Interrogatory No. 1. Objecting further, the Diocesan Defendants state that this interrogatory is overly broad, unduly burdensome, and seeks delineation by the Diocesan Defendants of information found in the records of third parties that Plaintiffs already have. Moreover, discovery is ongoing, and none of the Diocesan Defendants have yet to form a contention concerning the subject of Interrogatory No. 1. In any event, the records of the entities

referenced in the response to Interrogatory No. 1, the SJHSRI Retirement Board, the SJHSRI Board of Trustees, and the CharterCARE Health Partners Finance Committee were never kept or maintained by the Diocesan Defendants, but rather by third parties who have provided records to Plaintiffs previously and to the Diocesan Defendants more recently in this action. The information called for in this interrogatory, to the extent that information is available, would be found in the records of third parties, which Plaintiffs have possessed for a considerably longer period of time than the Diocesan Defendants, for example, in the minutes, to the extent they were kept, of the SJHSRI Board, the SJHSRI Retirement Board, and/or the Finance and Investment Committees of CharterCare Health Partners. As such, even if the Court were to ignore the fact that Plaintiffs had these records for over one year, the Diocesan Defendants and Plaintiffs are in the same position to identify the information requested in Interrogatory No. 6.

AMENDED OBJECTION TO INTERROGATORY NO. 6:

The Diocesan Defendants object to this Interrogatory on the ground that it prematurely seeks responses to contention discovery that the Diocesan Defendants should not be required to respond to until discovery is substantially complete and the Diocesan Defendants have had an opportunity to adequately review that discovery, including the almost 1,000,000 pages of documents recently produced in this case. *See, e.g., Capacchione v. Charlotte-Mecklenburg Schs.*, 182 F.R.D. 486, 489 (W.D.N.C. 1998) (holding that responses to contention interrogatories are most appropriate “after a substantial amount of discovery has been conducted — typically, at the end of the discovery period”).

Objecting further, the Diocesan Defendants state that this Interrogatory is overly broad, unduly burdensome, and seeks delineation by the Diocesan Defendants of information found in the records of third parties that Plaintiffs already have. Moreover, discovery is ongoing,

and none of the Diocesan Defendants have yet to form a contention concerning the subject of Interrogatory No. 1. In any event, the records of the entities referenced in the response to Interrogatory No. 1, the SJHSRI Retirement Board, the SJHSRI Board of Trustees, and the CharterCARE Health Partners Finance Committee were never kept or maintained by the Diocesan Defendants, but rather by third parties who have provided records to Plaintiffs previously and to the Diocesan Defendants more recently in this action. The information called for in this Interrogatory, to the extent that information exists, would be found in the records of third parties. For example, the minutes, to the extent they were kept, of the SJHSRI Board of Trustees, the SJHSRI Retirement Board, and/or the Finance and Investment Committees of CharterCare Health Partners. Further, Plaintiffs have possessed these records for a considerably longer period of time than the Diocesan Defendants and are in the same position to identify the information requested in Interrogatory No. 6, particularly as it concerns organizations referenced in Plaintiffs' Motion for Summary Judgment.

The Diocesan Defendants further state that, in the event they form a contention as to whether any organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), within the referenced timeframe, they will timely supplement their answer to this Interrogatory.

ANSWER TO INTERROGATORY NO. 6:

See Answer to Interrogatory No. 1. Answering further, the Diocesan Defendants refer Plaintiffs to the documents that Plaintiffs collected over the course of the investigation that preceded this lawsuit for the answer to this Interrogatory.

AMENDED ANSWER TO INTERROGATORY NO. 6:

Subject to and without waiving their amended objection, the Diocesan Defendants did not identify any organization they contend maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(c)(i).

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 6:

Based on their review of the documents produced by various parties and non-parties, the Diocesan Defendants supplement their response to Interrogatory No. 6 as follows:

2008: The Most Reverend Thomas J. Tobin, D.D. (ex officio); Reverend Monsignor Paul D. Theroux, J.C.L.; Joseph R. DiStefano, Esq.; Daniel J. Ryan, CPA; Kevin P. Stiles; Kathleen A. Kenny, CPA; John M. Fogarty

2009: The Most Reverend Thomas J. Tobin, D.D. (ex officio); Reverend Monsignor Paul D. Theroux, J.C.L.; Joseph R. DiStefano, Esq.; Daniel J. Ryan, CPA; Kevin P. Stiles; John M. Fogarty; Kathleen A. Kenny, CPA; Darleen Souza.

2010: The Most Reverend Thomas J. Tobin, D.D. (ex officio); Reverend Monsignor Paul D. Theroux, J.C.L.; Joseph R. DiStefano, Esq.; Daniel J. Ryan, CPA; Kevin P. Stiles; John M. Fogarty; Christopher Ferraro; Darleen Souza.

With respect to the dates the persons listed above began or ceased their role with the SJHSRI Retirement Board and what those roles were, the Diocesan Defendants refer Plaintiffs to the documents that Plaintiffs collected over the course of the investigation that preceded this lawsuit.

2011-2017: The Diocesan Defendants have no contention as to whether an organization maintained the Plan and had as its principal purpose or function the administration

or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), during this timeframe and have no further response to Interrogatory No. 6.

INTERROGATORY NO. 7:

For each organization you identified in response to Interrogatory No. 1 that was a board or committee, state the date of each meeting of the organization during the calendar years 2008 – 2017 and state whether agendas, notes, or minutes of or for each such meeting exist.

OBJECTION TO INTERROGATORY NO. 7:

See Objection to Interrogatory Nos. 1 and 6.

AMENDED OBJECTION TO INTERROGATORY NO. 7:

The Diocesan Defendants object to this Interrogatory on the ground that it prematurely seeks responses to contention discovery that the Diocesan Defendants should not be required to respond to until discovery is substantially complete and the Diocesan Defendants have had an opportunity to adequately review that discovery, including the almost 1,000,000 pages of documents recently produced in this case. *See, e.g., Capacchione v. Charlotte-Mecklenburg Schs.*, 182 F.R.D. 486, 489 (W.D.N.C. 1998) (holding that responses to contention interrogatories are most appropriate “after a substantial amount of discovery has been conducted — typically, at the end of the discovery period”).

Objecting further, the Diocesan Defendants state that this Interrogatory is overly broad, unduly burdensome, and seeks delineation by the Diocesan Defendants of information found in the records of third parties that Plaintiffs already have. Moreover, discovery is ongoing, and none of the Diocesan Defendants have yet to form a contention concerning the subject of Interrogatory No. 1. In any event, the records of the entities referenced in the response to Interrogatory No. 1, the SJHSRI Retirement Board, the SJHSRI Board of Trustees, and the

CharterCARE Health Partners Finance Committee were never kept or maintained by the Diocesan Defendants, but rather by third parties who have provided records to Plaintiffs previously and to the Diocesan Defendants more recently in this action. The information called for in this Interrogatory, to the extent that information exists, would be found in the records of third parties. For example, the minutes, to the extent they were kept, of the SJHSRI Board of Trustees, the SJHSRI Retirement Board, and/or the Finance and Investment Committees of CharterCare Health Partners. Further, Plaintiffs have possessed these records for a considerably longer period of time than the Diocesan Defendants and are in the same position to identify the information requested in Interrogatory No. 7, particularly as it concerns organizations referenced in Plaintiffs' Motion for Summary Judgment.

The Diocesan Defendants further state that, in the event they form a contention as to whether any organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), within the referenced timeframe, they will timely supplement their answer to this Interrogatory.

ANSWER TO INTERROGATORY NO. 7:

See Answer to Interrogatory Nos. 1 and 6.

AMENDED ANSWER TO INTERROGATORY NO. 7:

Subject to and without waiving their amended objection, the Diocesan Defendants did not identify any organization they contend maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(c)(i).

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 7:

The Diocesan Defendants supplement their response to Interrogatory No. 7 as follows:

2008-2010: Based on the Diocesan Defendants' review of the documents produced by various parties and non-parties, the SJHSRI Retirement Board met on May 14, 2009, July 16, 2009, August 7, 2009 and January 27, 2010. With respect to the meeting on August 7, 2009, the Diocesan Defendants have identified minutes, which are referenced in their supplemental response to Interrogatory No. 8. The Diocesan Defendants have yet to identify minutes, agendas, or notes specific to the other meetings, but have located other documents related to these meetings and identify them in their supplemental response to Interrogatory No. 8.

2011-2017: The Diocesan Defendants have no contention as to whether an organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), during this timeframe and have no further response to Interrogatory No. 7.

INTERROGATORY NO. 8:

Identify all documents upon which you rely for your answer to Interrogatory No. 7, including but not limited to all agendas, notes, or minutes of or for each such meeting.

OBJECTION TO INTERROGATORY NO. 8:

See Objection to Interrogatory Nos. 1 and 6.

AMENDED OBJECTION TO INTERROGATORY NO. 8:

The Diocesan Defendants object to this Interrogatory on the ground that it prematurely seeks responses to contention discovery that the Diocesan Defendants should not be required to respond to until discovery is substantially complete and the Diocesan Defendants

have had an opportunity to adequately review that discovery, including the almost 1,000,000 pages of documents recently produced in this case. *See, e.g., Capacchione v. Charlotte-Mecklenburg Schs.*, 182 F.R.D. 486, 489 (W.D.N.C. 1998) (holding that responses to contention interrogatories are most appropriate “after a substantial amount of discovery has been conducted — typically, at the end of the discovery period”).

Objecting further, the Diocesan Defendants state that this Interrogatory is overly broad, unduly burdensome, and seeks delineation by the Diocesan Defendants of information found in the records of third parties that Plaintiffs already have. Moreover, discovery is ongoing, and none of the Diocesan Defendants have yet to form a contention concerning the subject of Interrogatory No. 1 (upon which Interrogatory No. 7 relies). In any event, the records of the entities referenced in the response to Interrogatory No. 1, the SJHSRI Retirement Board, the SJHSRI Board of Trustees, and the CharterCARE Health Partners Finance Committee were never kept or maintained by the Diocesan Defendants, but rather by third parties who have provided records to Plaintiffs previously and to the Diocesan Defendants more recently in this action. The information called for in this Interrogatory, to the extent that information exists, would be found in the records of third parties. For example, the minutes, to the extent they were kept, of the SJHSRI Board of Trustees, the SJHSRI Retirement Board, and/or the Finance and Investment Committees of CharterCare Health Partners. Further, Plaintiffs have possessed these records for a considerably longer period of time than the Diocesan Defendants and are in the same position to identify the information requested in Interrogatory No. 8, particularly as it concerns organizations referenced in Plaintiffs’ Motion for Summary Judgment.

The Diocesan Defendants further state that, in the event they form a contention as to whether any organization maintained the Plan and had as its principal purpose or function the

administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), within the referenced timeframe, they will timely supplement their answer to this Interrogatory.

ANSWER TO INTERROGATORY NO. 8:

See Answer to Interrogatory Nos. 1 and 6.

AMENDED ANSWER TO INTERROGATORY NO. 8:

Subject to and without waiving their amended objection, the Diocesan Defendants did not identify any organization they contend maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(c)(i).

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 8:

The Diocesan Defendants supplement their response to Interrogatory No. 8 as follows:

2008-2010: Based on the Diocesan Defendants' review of the documents produced by various parties and non-parties, the SJHSRI Retirement Board met on May 14, 2009, July 16, 2009, August 7, 2009, and January 27, 2010. The Diocesan Defendants have located the following documents concerning these meetings or their subject matter:

May 14, 2009: APS0197512–APS0197514; APS0197489; APS0197498–APS0197502; SJHSRI-171352–SJHSRI-171354.

July 16, 2009: SJHSRI-216646–SJHSRI-216647; 100605–100606 (Angell Production).

August 7, 2009: SJHSRI-216610–SJHSRI-216613; SJHSRI-216555–SJHSRI-216559; SJHSRI-216608–SJHSRI-216609.

January 27, 2010: SJHSRI-086724–SJHSRI-086726; CCCB-013539; PCLLC
137550.

2011-2017: The Diocesan Defendants have no contention as to whether an organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i) during this timeframe, and have no further response to Interrogatory No. 8.

INTERROGATORY NO. 9:

For each organization you identified in response to Interrogatory No. 1, state all of the organization’s purposes or functions that were not the maintenance or funding of the Plan.

OBJECTION TO INTERROGATORY NO. 9:

See Objection to Interrogatory Nos. 1 and 6.

AMENDED OBJECTION TO INTERROGATORY NO. 9:

The Diocesan Defendants object to this Interrogatory on the ground that it prematurely seeks responses to contention discovery that the Diocesan Defendants should not be required to respond to until discovery is substantially complete and the Diocesan Defendants have had an opportunity to adequately review that discovery, including the almost 1,000,000 pages of documents recently produced in this case. *See, e.g., Capacchione v. Charlotte-Mecklenburg Schs.*, 182 F.R.D. 486, 489 (W.D.N.C. 1998) (holding that responses to contention interrogatories are most appropriate “after a substantial amount of discovery has been conducted — typically, at the end of the discovery period”).

Objecting further, the Diocesan Defendants state that this Interrogatory is overly broad, unduly burdensome, and seeks delineation by the Diocesan Defendants of information found in the records of third parties that Plaintiffs already have. Moreover, discovery is ongoing,

and none of the Diocesan Defendants have yet to form a contention concerning the subject of Interrogatory No. 1. In any event, the records of the entities referenced in the response to Interrogatory No. 1, the SJHSRI Retirement Board, the SJHSRI Board of Trustees, and the CharterCARE Health Partners Finance Committee were never kept or maintained by the Diocesan Defendants, but rather by third parties who have provided records to Plaintiffs previously and to the Diocesan Defendants more recently in this action. The information called for in this Interrogatory, to the extent that information exists, would be found in the records of third parties. For example, the minutes, to the extent they were kept, of the SJHSRI Board of Trustees, the SJHSRI Retirement Board, and/or the Finance and Investment Committees of CharterCare Health Partners. Further, Plaintiffs have possessed these records for a considerably longer period of time than the Diocesan Defendants and are in the same position to identify the information requested in Interrogatory No. 9, particularly as it concerns organizations referenced in Plaintiffs' Motion for Summary Judgment.

The Diocesan Defendants further state that, in the event they form a contention as to whether any organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), within the referenced timeframe, they will timely supplement their answer to this Interrogatory.

ANSWER TO INTERROGATORY NO. 9:

See Answer to Interrogatory Nos. 1 and 6.

AMENDED ANSWER TO INTERROGATORY NO. 9:

Subject to and without waiving their amended objection, the Diocesan Defendants did not identify any organization they contend maintained the Plan and had as its principal

purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(c)(i).

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 9:

Based on their review of the documents produced by various parties and non-parties, the Diocesan Defendants supplement their response to Interrogatory No. 9 as follows:

2008-July 15, 2009: None.

July 16, 2009-August 7, 2009: With the exception of a delegation from SJHSRI of responsibility related to the adoption of a restatement of the St. Joseph Health Services of Rhode Island 403(b) Savings Plan, none.

August 8, 2009-2010: None.

2011-2017: The Diocesan Defendants have no contention as to whether an organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), during this timeframe and have no further response to Interrogatory No. 9.

INTERROGATORY NO. 10:

Identify all documents upon which you rely for your answer to Interrogatory No. 9.

OBJECTION TO INTERROGATORY NO. 10:

See Objection to Interrogatory Nos. 1 and 6.

AMENDED OBJECTION TO INTERROGATORY NO. 10:

The Diocesan Defendants object to this Interrogatory on the ground that it prematurely seeks responses to contention discovery that the Diocesan Defendants should not be required to respond to until discovery is substantially complete and the Diocesan Defendants

have had an opportunity to adequately review that discovery, including the almost 1,000,000 pages of documents recently produced in this case. *See, e.g., Capacchione v. Charlotte-Mecklenburg Schs.*, 182 F.R.D. 486, 489 (W.D.N.C. 1998) (holding that responses to contention interrogatories are most appropriate “after a substantial amount of discovery has been conducted — typically, at the end of the discovery period”).

Objecting further, the Diocesan Defendants state that this Interrogatory is overly broad, unduly burdensome, and seeks delineation by the Diocesan Defendants of information found in the records of third parties that Plaintiffs already have. Moreover, discovery is ongoing, and none of the Diocesan Defendants have yet to form a contention concerning the subject of Interrogatory No. 1 (upon which Interrogatory No. 9 relies). In any event, the records of the entities referenced in the response to Interrogatory No. 1, the SJHSRI Retirement Board, the SJHSRI Board of Trustees, and the CharterCARE Health Partners Finance Committee were never kept or maintained by the Diocesan Defendants, but rather by third parties who have provided records to Plaintiffs previously and to the Diocesan Defendants more recently in this action. The information called for in this Interrogatory, to the extent that information exists, would be found in the records of third parties. For example, the minutes, to the extent they were kept, of the SJHSRI Board of Trustees, the SJHSRI Retirement Board, and/or the Finance and Investment Committees of CharterCare Health Partners. Further, Plaintiffs have possessed these records for a considerably longer period of time than the Diocesan Defendants and are in the same position to identify the information requested in Interrogatory No. 10, particularly as it concerns organizations referenced in Plaintiffs’ Motion for Summary Judgment.

The Diocesan Defendants further state that, in the event they form a contention as to whether any organization maintained the Plan and had as its principal purpose or function the

administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), within the referenced timeframe, they will timely supplement their answer to this Interrogatory.

ANSWER TO INTERROGATORY NO. 10:

See Answer to Interrogatory Nos. 1 and 6.

AMENDED ANSWER TO INTERROGATORY NO. 10:

Subject to and without waiving their amended objection, the Diocesan Defendants did not identify any organization they contend maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(c)(i).

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 10:

Based on their review of the documents produced by various parties and non-parties, the Diocesan Defendants supplement their response to Interrogatory No. 10 as follows:

2008-July 15, 2009: None.

July 16, 2009-August 7, 2009: CCCB-020428; SJHSRI-216610–SJHSRI-216613; SJHSRI-216555–SJHSRI-216559; SJHSRI-216608–SJHSRI-216609.

August 8, 2009-2010: None

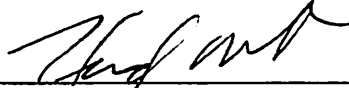
2011-2017: The Diocesan Defendants have no contention as to whether an organization maintained the Plan and had as its principal purpose or function the administration or funding of the Plan, within the meaning of 29 U.S.C. § 1002(33)(C)(i), during this timeframe and have no further response to Interrogatory No. 10.

As to Objections,

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

By Their Attorneys,

PARTRIDGE SNOW & HAHN LLP

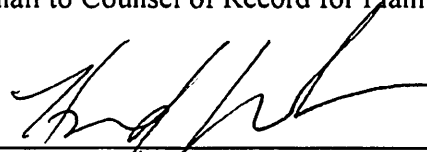


Howard Merten (#3171)
Eugene G. Bernardo (#6006)
Paul M. Kessimian (#7127)
Christopher M. Wildenhain (#8619)
40 Westminster Street, Suite 1100
Providence, RI 02903
(401) 861-8200
(401) 861-8210 FAX
hmerten@psh.com
eberardo@psh.com
pkessimian@psh.com
cwildenhain@psh.com

DATED: June 26, 2020

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of June, 2020, a copy of the foregoing document was sent via email and prepaid first class mail to Counsel of Record for Plaintiffs and the Remaining Defendants.



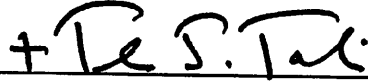
Howard Merten

ROMAN CATHOLIC BISHOP OF PROVIDENCE,

A CORPORATION SOLE

VERIFICATION

I, The Most Reverend Thomas J. Tobin, declare under the penalties of perjury that I have read the foregoing Supplemental Responses to Plaintiffs' First Set of Interrogatories in connection with the Principal Purpose Organization Issue and Plaintiffs' Motion for Summary Judgment, and based upon matters within my personal knowledge and on information that has been assembled and provided to me, the foregoing supplemental responses to the Interrogatories are correct, according to the best of my knowledge.

A handwritten signature in black ink, appearing to read "T. J. Tobin", written over a horizontal line.


Most Reverend Thomas J. Tobin, D.D.
Bishop of Providence

Executed this this 7th day of July, 2020.

DIOCESAN ADMINISTRATION CORPORATION

VERIFICATION

I, The Most Reverend Thomas J. Tobin, declare under the penalties of perjury that I have read the foregoing Supplemental Responses to Plaintiffs' First Set of Interrogatories in connection with the Principal Purpose Organization Issue and Plaintiffs' Motion for Summary Judgment, and based upon matters within my personal knowledge and on information that has been assembled and provided to me, the foregoing supplemental responses to the Interrogatories are correct, according to the best of my knowledge.

A handwritten signature in black ink, appearing to read "T. J. Tobin", written over a horizontal line.

Most Reverend Thomas J. Tobin, D.D.
President

Executed this this 7th day of July, 2020.

DIOCESAN SERVICE CORPORATION

VERIFICATION

I, The Most Reverend Thomas J. Tobin, declare under the penalties of perjury that I have read the foregoing Supplemental Responses to Plaintiffs' First Set of Interrogatories in connection with the Principal Purpose Organization Issue and Plaintiffs' Motion for Summary Judgment, and based upon matters within my personal knowledge and on information that has been assembled and provided to me, the foregoing supplemental responses to the Interrogatories are correct, according to the best of my knowledge.



Most Reverend Thomas J. Tobin, D.D.
President

Executed this this 7th day of July, 2020.