

**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

**DIOCESAN DEFENDANTS' RESPONSE IN LIMITED
OPPOSITION TO FINAL SETTLEMENT APPROVAL**

Pursuant to the Court's March 26, 2021 order, ECF No. 209, Roman Catholic Bishop of Providence, a corporation sole, Diocesan Administration Corporation, and Diocesan Service Corporation (collectively "the Diocesan Defendants") incorporate their prior limited objection to Plaintiff's Motion for Preliminary Settlement Approval, ECF No. 208, and further state:

1. The Diocesan Defendants have consistently contended that R.I. Gen. Laws § 23-17.14-35 (the "Settlement Statute") is not only preempted by ERISA, but also unconstitutional under the United States and Rhode Island Constitutions. *See, e.g.*, Diocesan Defs.' Resp. in Opp'n to the J. Mot. for Settlement Class Certification, Appointment of Class Counsel & Prelim. Settlement Approval & Mot. for Award of Att'ys' Fees, ECF No. 73, at 4-13.

2. In its March 26, 2021 order, the Court preserved the Diocesan Defendants' rights as follows: "Plaintiffs' Motion is granted without prejudice to the right of the Non-Settling Defendants to argue later in this litigation or in a future proceeding that R.I. Gen. Laws § 23-17.14-35 is preempted and/or unconstitutional." ECF No. 209, ¶ 22.

3. Accordingly, to the extent that the Court is inclined to approve the proposed settlement and include a good-faith finding as a part of that ruling, the Diocesan Defendants respectfully request that the Court take the same approach and preserve the Diocesan Defendants' right to subsequently contend that the Settlement Statute is preempted by ERISA and/or unconstitutional in any resulting order.¹

Respectfully Submitted,

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

By Their Attorneys,

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¹ Such a step would preserve the Diocesan Defendants' rights in a manner consistent with the Court's prior approvals of settlements in this case. *See Del Sesto v. Prospect Chartercare, LLC*, 18-cv-328 WES, 2019 WL 5067200, at *6 (D.R.I. Oct. 9, 2019) ("Similarly, the Court need not determine the potential preemption or constitutionality of the Settlement Statute.... The Court's approval of this settlement shall be without prejudice to the Non-Settling Defendants' right to assert these arguments later in this litigation or in future proceedings." (underlining in original)); *see also Del Sesto v. Prospect Chartercare, LLC*, 18-cv-328 WES, 2019 WL 4758161, at *4 (D.R.I. Sept. 30, 2019) (providing similarly).

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 2021, the foregoing document has been filed electronically through the Rhode Island ECF system, is available for viewing and downloading, and will be sent electronically to the counsel who are registered participants identified on the Notice of Electronic Filing.

/s/ Howard Merten

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