**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**

**THE DIOCESAN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF PLAINTIFFS' FIRST AMENDED COMPLAINT**

DATED: February 11, 2022

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

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# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

## CASES

**STATUTES**



**RULES**



**OTHER AUTHORITIES**

Defendants Roman Catholic Bishop of Providence, a corporation sole ("RCB"), Diocesan Administration Corporation, and Diocesan Service Corporation (collectively "the Diocesan Defendants") submit this Motion for Summary Judgment on Count IV of the First Amended Complaint ("FAC"). They do so pursuant to Fed. R. Civ. P. 56(a) and the Stipulation (ECF # 170) and Text Order approving the Stipulation entered on the docket on October 29, 2019, as well as the Court's Text Order on December 10, 2021. The Diocesan Defendants also file herewith their Rule 56 Statement of Undisputed Material Facts ("Rule 56 Statement").

This motion requests the same relief on the same grounds, records, and legal authority as Plaintiffs presented to this Court in their Motion for Summary Judgment filed on December 17, 2019 (ECF # 173).[1]

## INTRODUCTION

This case involves the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), which is a defined benefit pension plan. Under federal law, such a plan must comply with the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") unless it meets one of the specific exemptions in the statute. The only potential exemption possible in this case is the so-called church plan exemption. At issue here is when the Plan ceased to be a "church plan" exempt from ERISA.

As discussed below, qualification for the church plan exemption depends upon satisfaction of several elements. Plaintiffs have previously asserted that there is no genuine dispute as to the plan's ***noncompliance*** with one of those elements (the "principal purpose organization" element). By filing this Motion and the accompanying Statement of Undisputed Facts, the Diocesan

[1] Where arguments, factual averments, characterizations, and records within Plaintiffs' motion for summary judgment were irrelevant or not essential to the relief requested, the Diocesan Defendants have not included them here. For example, the arguments, factual averments and records that appeared in Plaintiffs' motion in support of their standing to bring this lawsuit do not appear in this motion.

Defendants adopt that position. As there is no disputed issue of fact—and because the law surrounding the requirement of a principal purpose organization was settled in 2017 in pertinent part by the U.S. Supreme Court in Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (2017)—the Court should enter summary judgment and declare as a matter of law that the principal purpose organization element was not satisfied and that the Plan was not exempt from ERISA as of April 29, 2013 at the latest, as Plaintiffs previously argued.

Prior to 1995, the hospital workers participated in a pension plan that also included diocesan employees.[2] In 1995, the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") was established as a stand-alone plan covering the hospital workers.[3] Initially, the Plan was administered by a "principal purpose" organization, which was "controlled by or associated with" a church such that it met the definition of "church plan" added to ERISA in 1980 for retirement plans established and maintained by organizations that were associated with a church but were not themselves a church.[4]

As a result of a series of transactions beginning in 2009, the employer of the hospital workers and the administrator of the Plan changed.[5] As demonstrated below, prior to the June 20, 2014 transaction (the "2014 Asset Sale") with the Prospect Entities to acquire most of the assets of St. Joseph Health Services of Rhode Island ("SJHSRI"), the Plan was no longer being administered by a "principal purpose" organization, as that term has been defined in Stapleton, and therefore no longer met that requirement for the "church plan" exemption.[6] As a result, the Plan became subject to ERISA, like all other private sector defined benefit plans that do not meet

[2] Rule 56 Statement ¶ 1, Ex. 1 (Diocesan Plan effective July 1, 1965).
[3] Rule 56 Statement ¶ 2, Ex. 2.
[4] Rule 56 Statement ¶¶ 6-7.
[5] Rule 56 Statement ¶¶ 8-13, 19-30.
[6] Rule 56 Statement ¶¶ 23-30.

any of the specific exemptions from ERISA regulation.

## THE DECLARATORY RELIEF SOUGHT

Count IV states as follows:

> Plaintiffs demand a declaratory judgment declaring that the Plan is not a Church Plan within the meaning of 29 U.S.C. § 1002(33), and is thus subject to the provisions of Title I and Title IV of ERISA.

First Amended Complaint ("FAC") (ECF # 60) at 144. The Stipulation (approved by Text Order) states as follows:

> At any time between thirty (30) and sixty (60) days after the Court's approval of this stipulation, the Receiver may file a motion for summary judgment concerning when, if at any time, the Plan ceased to be a church plan exempt from ERISA.

ECF # 170, § 3(f).[7] Plaintiffs filed such Motion for Summary Judgment on December 17, 2019 (ECF # 173). Despite filing that motion, signing the Stipulation (ECF # 170) setting forth a schedule for resolving if and when the Plan ceased to be a church plan, and conducting discovery in connection with that motion, Plaintiffs sought leave to withdraw the motion, which the Court granted by text order, dated December 10, 2021. In that same order, the Court permitted the Diocesan Defendants to file the instant motion seeking the same relief that Plaintiffs had sought.

## IMPLICATIONS OF THE RELIEF SOUGHT

Plaintiffs have repeatedly argued that the Diocesan Defendants must explain the implications of the relief requested before the Court may act on the Diocesan Defendants' motion. The Diocesan Defendants maintain that this is not necessary, as the implications of granting their motion are patently obvious and were expressly identified last year.[8] They also note that their

[7] The Text Order states that, "in accordance with the schedule set forth by the parties, Plaintiffs' Motion for Summary Judgment as to Count IV shall be filed no earlier than November 29, 2019, and no later than December 29, 2019."

[8] Diocesan Defs.' Mem. Regarding Pls.' Pending Mot. for Summ. J., ECF No. 222, at 6-7.

Renewed Motion to Dismiss the First Amended Complaint (filed contemporaneously herewith) offers independent grounds to dispose of this case in its entirety without resolving Count IV. For that reason, the Court may wish to proceed with the motion to dismiss first. Nonetheless, if the Court prefers to proceed with the motion for summary judgment first, the Diocesan Defendants outline the major implications of awarding the requested relief to head-off any argument that the Court should deny the motion for the specious reason that such implications are unstated.

Following a determination that the Plan was subject to ERISA no later than April 29, 2013, the Court will be able to assess whether any (or all) of Plaintiffs' state law claims are preempted by ERISA to the extent they are premised on events on or after that date. Plaintiffs recognized the possibility that their state law claims might be preempted at the outset of this case. They pled: "Plaintiffs assert other state law claims that may be pre-empted if the Court determines that the Plan was covered by ERISA at the times those claims arose." FAC ¶ 32.

On top of potential preemption, the Court would also be able to determine whether ERISA precludes Plaintiffs' claims for money damages against the Diocesan Defendants arising from facts on or after April 29, 2013. Much, if not all, of the alleged conspiracy occurred after that date, especially as it concerns the purported role of the Diocesan Defendants (i.e., approving the asset sale and writing to the Vatican in August/September 2013, *id.* ¶¶ 141-79, writing to the Health Services Council in February 2014, *id.* ¶¶ 320-22, and agreeing that SJHSRI could appear in the 2015-2017 editions of the Official Catholic Directory, *id.* ¶¶ 183-203). To the extent ERISA controls during this period, it may preclude the relief Plaintiffs seek.

Further, by granting the motion, the Plan would have been subject to ERISA for more than five years, meaning: (A) Plaintiffs' ability to claim that Plan Participants' benefits are fully guaranteed by the Pension Benefit Guaranty Corporation ("PBGC") would be strengthened (and

perhaps resolved) and (B) the Court could take-up the Supreme Court's invitation in Thole v. U.S. Bank N.A., 140 S. Ct. 1615, 1622 n.2 (2020), to assess whether the near certain involvement of the PBGC deprives Plaintiffs of standing to bring this lawsuit.

Throughout this case, Plaintiffs have consistently tried to deflect arguments about the impact of PBGC coverage by painting such contentions as self-serving efforts by the defendants to avoid liability. The Diocesan Defendants raise the argument however not simply for whatever effect PBGC coverage may (or may not) have on their ability to defend Plaintiffs' claims, but because it would also be a positive development independent of the outcome of this lawsuit. Collateral source or not, effect on standing or not, it would be a good thing for the Plan to have full PBGC coverage sooner than later, insulated from the risks of the market and the possibility that Plaintiffs might recover nothing further in this case. Do Plaintiffs dispute that? The Diocesan Defendants are by no means suggesting that PBGC coverage would be guaranteed following the entry of the requested declaration, but they are thoroughly perplexed by Plaintiffs' position. Why do they shun a potential avenue to strengthen their hand with the PBGC and obtain greater security for the Plan?

Put more pointedly, the Court should grant this motion for the very reason courts and parties favor such resolution, generally. Resolving legal issues focuses the parties on remaining areas of dispute, simplifies the case, and advances settlement and resolution. No one disputes the appropriateness of the legal ruling sought here.

Meanwhile, this case cries out for simplification and clarity. Plaintiffs' FAC covers 163 pages, 558 paragraphs and 23 counts (12 counts specific to the Diocesan Defendants). The Diocesan Defendants' Motion to Dismiss argues that despite its length, Plaintiffs' complaint is nothing more than a barrage of legal and factual conclusions and naked surmise about all three

Diocesan Defendants (without distinction). It argues that none of the Plaintiffs' claims survive legal scrutiny against these remaining defendants because they lack factual substance and flout the requirements of Rule 8 and 9. It further seeks resolution based upon a myriad of other fatal legal deficiencies.

Plaintiffs want no such clarification. They reversed field and withdrew a fully briefed and legally correct motion for summary judgment. They ask the Court ***not*** to determine if ERISA applies—even after they have declared in signed pleadings that it does apply and even though their FAC alleges that "…the determination of whether and when the Plan ceased to qualify as a Church Plan is essential to determining the rights of the parties herein." FAC ¶ 66.

Plaintiffs do not want this Court to pare down their claims and never have.[9] Plaintiffs are playing a shell game and want to preserve the confusion wrought by their deluge of shells. Deciding this motion removes one obvious shell from the game and opens the way to removing several more through preemption and the other means for narrowing the issues described above. The Court should resolve this undisputed legal issue.

## FACTS CONCERNING CHURCH PLAN STATUS

### A. Key Dates

The key dates and events for purposes of this motion for summary judgment are:

- July 1, 2011, the effective date of the amended and restated Plan that eliminated the retirement board and vested the administration of the Plan in SJHSRI itself; and
- April 29, 2013, when Bishop Thomas J. Tobin, the Bishop of the Diocese of Providence, signed a resolution (a) ratifying the Plan which had been amended and made effective July 1, 2011 and (b) declaring that the Board of Trustees of SJHSRI shall be the retirement board, and

[9] At a hearing on defendants' initial motions to dismiss the FAC on September 10, 2019—over two years ago—the Court asked Plaintiffs "wouldn't it make sense to get a decision on" if/when the Plan became covered by ERISA? Plaintiffs demurred and proposed that the Court decide nothing, not Count IV, not the motions to dismiss. Tr. of Sept. 10, 2019 Hr'g on Mot. to Dismiss, ECF No. 222-1, *id.* 61:8-9 ("[M]y suggestion to your Honor is that your Honor not even decide the motions to dismiss"); *see id.* 70:11–73:11 (further resisting the Court's efforts to simplify the case and ready matters for decision).

further declaring that the Board of Trustees of SJHSRI had appointed the Finance Committee of CCCB to act on its behalf with respect to administrative matters relating to the Plan.

**B. Facts**

During the period from 1965 through June 30, 1995, the employees of SJHSRI participated in a defined-benefit retirement plan known as the Diocese of Providence Retirement Plan (the "Diocesan Plan").[10] Effective July 1, 1995, SJHSRI established the Plan.[11] The Plan by its own terms claimed to be a church plan purportedly exempt from the requirements of ERISA.[12]

During the period from its inception effective July 1, 1995 until the restatement of the Plan effective July 1, 2011, the Plan documents designated a retirement board to administer the Plan (the retirement board during this period being herein referred to as the "Initial SJHSRI Plan Retirement Board").[13] Pursuant to the terms of those Plan documents, the Initial SJHSRI Plan Retirement Board consisted of "the Most Reverend Bishop of the Diocese of Providence," at least three members of SJHSRI's Board of Trustees, and up to six others (who may or may not have been members of SJHSRI's Board of Trustees), all appointed by "the Most Reverend Bishop of the Diocese of Providence" to serve at the pleasure of "the said Bishop."[14]

Beginning in 2008, executives of Defendants SJHSRI and Roger Williams Hospital ("RWH") conducted negotiations to effectuate a reorganization of those companies under the control of a common parent entity, which came to be known as Defendant CharterCARE Community Board ("CCCB").[15] One issue of concern was whether the Plan would remain a church plan after the reorganization.[16] To address that concern, SJHSRI secured a formal legal

[10] Rule 56 Statement ¶ 1, Ex. 1 (Diocesan Plan effective July 1, 1965).
[11] Rule 56 Statement ¶ 2.
[12] Rule 56 Statement ¶ 5; Ex 2 at 1; Ex. 3 at 1; Ex. 4 at 1; Ex. 5 at 1.
[13] Rule 56 Statement ¶ 6; Ex. 2 at 31; Ex. 3 at 30.
[14] Rule 56 Statement ¶ 7; Ex. 2 at 31; Ex. 3 at 30.
[15] Rule 56 Statement ¶ 8; Ex. 6. Prior to June 20, 2014, Defendant CCCB was named ChartereCARE Health Partners ("CCHP"). Rule 56 Statement ¶ 39, Ex. 21.
[16] Rule 56 Statement ¶¶ 8-18.

opinion from John H. Reid, III, of (then) Edwards Angell Palmer & Dodge LLP dated November 12, 2008 ("Attorney Reid's Opinion"), concerning whether SJHSRI's participation with RWH in a new health care system would "allow SJHSRI to preserve the status of the Plan as a non-electing church plan . . . ."[17]

Attorney Reid's Opinion stated:

> Section 414(e)(3)(A) of the [Internal Revenue] Code [26 U.S.C. § 414(e)(3)(A)] and ERISA Section 3(33)(C)(i) [29 U.S.C. § 1002(33)(C)(i)] includes in the definition of church plan a plan maintained by an organization, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church, if such organization is controlled by or associated with a church.[18]

Attorney Reid's Opinion noted that the Plan was "administered by a Retirement Board appointed by the Bishop."[19] It also noted:

> The Retirement Board is an organization controlled by a church by virtue of the fact that its members include the Bishop and at least nine other members appointed by the Bishop to serve at his pleasure. **The Retirement Board has no other function than the administration of the Plan**.[20]
>
> [Emphasis added]

Attorney Reid opined that, among the requirements necessary "[i]n order to maintain the status of the Plan as a church plan in accordance with the Code, ERISA and the interpretations of the IRS and DOL", was that "**the Retirement Board must continue to be appointed by the Bishop or by another representative of the Roman Catholic Church and must continue to**

[17] Rule 56 Statement ¶ 14, Ex. 8.
[18] Rule 56 Statement ¶ 15, Ex. 8. The opinion went on to point out that the statutory phrase "employees of a church" is defined by Section 414(e)(3)(B)(ii) of the Internal Revenue Code to include "an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under Section 501 and which is controlled by or associated with a church or a convention or association of churches." Rule 56 Statement ¶ 16, Ex. 8.
[19] Rule 56 Statement ¶ 17, Ex. 8. The opinion used "the Bishop" to refer to "the Catholic Bishop of Rhode Island." Rule 56 Statement ¶ 17, Ex. 8 at 2.
[20] Rule 56 Statement ¶ 17, Ex. 8.

**administer the Plan**." (emphasis added).[21]

In 2009, SJHSRI, RWH, and RCB entered into a Health System Affiliation and Development Agreement regarding the reorganization of SJHSRI and RWH (and its affiliates) under the umbrella of CCCB.[22] The reorganization reduced the power and control of the Most Reverend Bishop of the Diocese of Providence over SJHSRI. In connection with the 2010 reorganization, the membership of SJHSRI was divided between a Class A member and a Class B member, with Defendant CCCB being the Class A member, and RCB being the Class B member.[23] The Bylaws of SJHSRI were amended to reflect this structure, with each member class having different voting rights.[24] In general, Defendant CCCB as the Class A Member was given the power to appoint the majority of the Board of Trustees, and control over all major (non-religious) decisions, and the consent of RCB as Class B Member was required for religious matters, including any matters affecting SJHSRI's compliance with Catholic ethical directives.[25]

As noted, the Plan was amended and restated effective July 1, 2011 (the "2011 Plan").[26] The 2011 Plan did not provide for a retirement board, or a retirement board controlled by the Most Reverend Bishop of the Diocese of Providence or RCB.[27] The 2011 Plan did grant to "the Most Reverend Bishop of Providence" the right to determine where any remaining balance in Plan assets would be directed after all Plan liabilities were satisfied in the event SJHSRI had ceased to exist.[28] Otherwise, the Plan granted no other authority to "the Most Reverend Bishop of Providence" or RCB.[29]

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[21] Rule 56 Statement ¶ 18, Ex. 8.
[22] Rule 56 Statement ¶ 19, Ex. 9.
[23] Rule 56 Statement ¶ 20, Ex. 10.
[24] Rule 56 Statement ¶ 20.
[25] Rule 56 Statement ¶ 21.
[26] Rule 56 Statement ¶ 22, Ex. 4.
[27] Rule 56 Statement ¶ 23, Ex. 4.
[28] Rule 56 Statement ¶ 23, Ex. 4 at 55-56.
[29] Rule 56 Statement ¶ 23, Ex. 4.

Instead, the 2011 Plan provided that "[t]he Employer [SJHSRI] shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Directors[30] [sic], shall designate a person or committee of persons to be the Administrator and named fiduciary."[31] Records of SJHSRI obtained in discovery reveal that SJHSRI, despite representations to the contrary, did not designate an Administrator or named fiduciary (which would have been necessary for SJHSRI to have a "principal purpose organization," as subsequently defined in Stapleton).[32] Thus, SJHSRI remained the Administrator and named fiduciary of the Plan until October 20, 2017, when the Board of Trustees of SJHSRI irrevocably designated Plaintiff Receiver as administrator of the Plan pursuant to the terms of the 2016 Plan.[33]

The 2011 Plan also stated:

> The administration of the Plan, as provided herein, including the determination of the payment of benefits to Participants and their Beneficiaries, shall be the responsibility of the Administrator. The Administrator shall conduct its business and may hold meetings, as determined by it, from time to time. The Administrator shall have the right to construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any distributions under the Plan to the fullest extent provided by law and in its sole discretion; and interpretations or decisions made by the Administrator will be conclusive and binding on all persons having an interest in the Plan. In the event more than one party shall act as Administrator, all actions shall be made by majority decisions. In the administration of the Plan, the Administrator may (1) employ agents to carry out nonfiduciary responsibilities (other than Trustee responsibilities), (2) consult with counsel who may be counsel to the Employer, and (3) provide for the allocation of fiduciary responsibilities (other than Trustee responsibilities) among its members. Actions dealing with fiduciary responsibilities shall be taken in writing and the performance of agents, counsel and fiduciaries to whom fiduciary responsibilities have been delegated shall be reviewed periodically.[34]

[30] As noted previously, SJHSRI was actually governed by a Board of Trustees, not a Board of Directors.
[31] Rule 56 Statement ¶ 27, Ex. 4 at 38.
[32] Rule 56 Statement ¶ 30.
[33] Rule 56 Statement ¶ 30, Ex. 11.
[34] Rule 56 Statement ¶ 29, Ex. 4 at 38.

The Plan was again amended and restated January 30, 2017, effective July 1, 2016 (the "2016 Plan").[35] The 2016 Plan also provided that "[t]he Employer shall be the Plan Administrator, hereinafter called the Administrator, and named fiduciary of the Plan, unless the Employer, by action of its Board of Trustees, shall designate a person or committee of persons to be the Administrator and named fiduciary."[36]

In other words, the provisions of the 2011 Plan and the 2016 Plan are identical with respect to the fact that the organization that administered the Plan was SJHSRI.

Between 2008 and the filing of this lawsuit, only two payments were made to the Plan.[37] First, SJHSRI paid $1,500,000 in September 2008.[38] Second, $14 million was transferred to the Plan by an escrow agent (First American Title Insurance Company) on behalf of the transacting parties on June 20, 2014 in connection with the 2014 Asset Sale.[39] The escrow agent received those funds by wire transfer from Prospect Medical Holdings, Inc. ("Prospect Medical").[40]

On April 29, 2013, "Bishop Thomas J. Tobin, the Bishop of The Diocese of Providence," signed a resolution ("the April 29th Resolution") which stated as follows:

> RESOLVED: That the adoption of the amendment and restatement of the Plan, effective as of July 1, 2011, a copy of which is attached, as adopted by the Board of Trustees of St. Joseph Health Services of Rhode Island on July 21, 2011, be ratified and confirmed.[41]

The April 29th Resolution also stated as follows:

> RESOLVED: That the Board of Trustees of St. Joseph Health Services of Rhode Island is the Retirement Board with respect to the

[35] Rule 56 Statement ¶ 3, Ex. 5.
[36] Rule 56 Statement ¶ 28, Ex. 5 at 41.
[37] Rule 56 Statement ¶ 31.
[38] Rule 56 Statement ¶ 32, Ex. 13.
[39] Rule 56 Statement ¶ 33, Exs. 14 & 15.
[40] Rule 56 Statement ¶ 33, Exs. 16 & 17.
[41] Rule 56 Statement ¶¶ 34-35, Ex. 18.

Plan and acts on behalf of St. Joseph Health Services of Rhode Island as the Plan Administrator of the Plan.

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

RESOLVED: That the Board of Trustees of St. Joseph Health Services of Rhode Island has appointed the Finance Committee of CharterCARE Health Partners[42] to act on its behalf with respect to administrative matters relating to the Plan.

RESOLVED: That the Plan is intended to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code") as a non-electing church plan within the meaning of Section 414(e) of the Code and Section 3(33) of the Employee Retirement Income Security Act of 1974, as amended.[43]

The records of SJHSRI obtained in discovery do not reflect that, at any time on or after April 29, 2013, SJHSRI's Board of Trustees actually held separate meetings as a "retirement board," devoted any specific part of their regular meetings to their function as a "retirement board," or proceeded by an agenda specific to their function as a "retirement board."[44] Instead, records show that SJHSRI's Board of Trustees considered and decided matters concerning the Plan as part of the Board of Trustees' regular meetings and pursuant to the agenda of the meetings of the Board of Trustees; nor did the board keep separate minutes concerning its actions as a putative "retirement board."[45] For example, at a meeting of SJHSRI's Board of Trustees on March

[42] Subsequently renamed (and herein referred to as) CharterCARE Community Board (or "CCCB"). See Rule 56 Statement ¶ 39.
[43] Rule 56 Statement ¶ 36, Ex. 18. Plaintiffs argued in their motion for summary judgment that the April 29th Resolution was not necessary to render the 2011 Plan effective and, therefore, ERISA may have governed earlier than April 29, 2013. ECF No. 173 at 26. As Plaintiffs also recognized however, whether that was the case or not was not material and did not need to be resolved in ruling on their motion, given that they only sought a declaration that ERISA attached no later than April 29, 2013. *Id.* Because the Diocesan Defendants seek the same relief, the same is true here.
[44] Rule 56 Statement ¶ 37.
[45] Rule 56 Statement ¶37.

14, 2014 the Board considered and addressed a broad range of corporate issues both relevant and irrelevant to the Plan, and the Board officially voted to approve a series of resolutions concerning the Plan.[46]

Records of CCCB obtained in discovery reveal that the CCCB Finance Committee was a sub-committee of CCCB's Board of Trustees, responsible for managing or advising CCCB's Board of Trustees concerning financial matters for CCCB.[47] The financial matters that the CCCB Finance Committee advised CCCB's Board of Trustees included financial management of the operations of both Fatima Hospital and Roger Williams Hospital.[48]

## ARGUMENT

### I. Summary Judgment Standard

A party is entitled to summary judgment if "the record, construed in the light most flattering to the nonmovant, 'presents no genuine issue as to any material fact and reflects the movant's entitlement to judgment as a matter of law.'" Lawless v. Steward Health Care Sys., LLC, 894 F.3d 9, 20-21 (1st Cir. 2018) (quoting McKenney v. Mangino, 873 F.3d 75, 80 (1st Cir. 2017)). "For this purpose, an issue is 'genuine' if it 'may reasonably be resolved in favor of either party.'" Vineberg v. Bissonnette, 548 F.3d 50, 56 (1st Cir. 2008) (quoting Garside v. Osco Drug, Inc., 895 F.2d 46, 48 (1st Cir. 1990)). "A fact is 'material' only if it 'possesses the capacity to sway the outcome of the litigation under the applicable law.'" Vineberg, 548 F.3d at 56 (quoting Cadle Co. v. Hayes, 116 F.3d 957, 960 (1st Cir. 1997)).

[46] Rule 56 Statement ¶ 37, Ex. 19.
[47] Rule 56 Statement ¶ 38, Ex. 20.
[48] Rule 56 Statement ¶ 38, Ex. 20.

## II. The Plan was not maintained by a principal-purpose organization and, therefore, the Plan was fully subject to ERISA by April 29, 2013 at the very latest

### A. The Principal Purpose Requirement

In 2017, the U.S. Supreme Court clarified the concept of a "principal purpose organization" and the extent to which it was a requirement for a non-church organization (like a hospital) to have a church plan. Before that time, some courts, including district courts in the First Circuit, had construed ERISA to permit such entities to administer church plans without a principal purpose organization.[49] See Torres v. Bella Vista Hosp., Inc., CIVIL 06-2158 (JAG), 2009 WL 10717769, at *4-5 (D.P.R. Apr. 13, 2009), adopting recommendation, 639 F. Supp. 2d 188, 193 (D.P.R. 2009); Catholic Charities of Me., Inc. v. City of Portland, 304 F. Supp. 2d 77, 84-86 & n.4 (D. Me. 2004); see also Overall v. Ascension, 23 F. Supp. 3d 816, 827 (E.D. Mich. 2014) (addressing a plan maintained by a principal purpose organization, but acknowledging: "Several courts have agreed that plans sponsored by non-church organizations, such as hospitals, can qualify for the 'church plan' exemption but have followed a simpler rule. Specifically, courts require only that the non-profit organization sponsoring the plan be controlled by or associated with a church"). In the wake of Stapleton, such construction was no longer tenable.

As the Supreme Court explained: "The statutory definition of 'church plan' came in two distinct phases." Advocate Health Care Network v. Stapleton, 137 S. Ct. at 1656.

> From the beginning, ERISA provided that "[t]he term 'church plan' means a plan established and maintained ... for its employees ... by a church or by a convention or association of churches." [29 U.S.C.] § 1002(33)(A). Then, in 1980, Congress amended the statute to expand that definition by deeming additional plans to fall within it. The amendment specified that for purposes of the church-plan definition, an "employee of a church" would include an employee of a church-affiliated organization (like the hospitals here). [29 U.S.C.] § 1002(33)(C)(ii)(II). And it added the provision whose effect is at issue in these cases:

[49] The U.S. Court of Appeals for the First Circuit has yet to construe the church plan exemption. Nor has a court in this district.

> "A plan established and maintained for its employees ... by a church or by a convention or association of churches includes a plan maintained by an organization ... the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches." [29 U.S.C.] § 1002(33)(C)(i).
>
> That is a mouthful, for lawyers and non-lawyers alike; to digest it more easily, note that everything after the word "organization" in the third line is just a (long-winded) description of a particular kind of church-associated entity—which this opinion will call a "principal-purpose organization." The main job of such an entity, as the statute explains, is to fund or manage a benefit plan for the employees of churches or (per the 1980 amendment's other part) of church affiliates.

Advocate Health Care Network v. Stapleton, 137 S. Ct. at 1656-57 (ellipses in the original).

"As *Advocate* makes clear, two types of organization qualify for the church-plan exemption: churches and so-called principal-purpose organizations." Medina v. Catholic Health Initiatives, 877 F.3d 1213, 1221 (10th Cir. 2017) (referring to Advocate Health Care Network v. Stapleton, supra). As quoted above, a principal purpose organization is an organization "the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches." 29 U.S.C. § 1002(33)(C)(i).

It is undisputed that SJHSRI was the Plan sponsor since 1995 and is not and never was a church. Accordingly, following Stapleton, for the Plan to qualify as a church plan since 1995, it needed to be funded or managed by a principal purpose organization. See Smith v. OSF HealthCare Sys., 933 F.3d 859, 863 (7th Cir. 2019) ("The language in § 1002(33)(A) and (C)(i) thus makes the church plan exemption available to pension plans and other employee benefit plans

established by church-associated entities, such as church-associated hospitals, where the plans are maintained by principal-purpose organizations.").

In 2017, the Tenth Circuit held that whether the principal purpose organization requirement is satisfied depends upon compliance with *all* parts of a three-part test:

> The statute imposes a three-step inquiry for entities seeking to use the church-plan exemption for plans maintained by principal-purpose organizations:
>
> 1. Is the entity a tax-exempt nonprofit organization associated with a church?
>
> 2. If so, is the entity's retirement plan maintained by a principal-purpose organization? That is, is the plan maintained by an organization whose principal purpose is administering or funding a retirement plan for entity employees?
>
> 3. If so, is that principal-purpose organization itself associated with a church?
>
> **Under this framework, to qualify for the church-plan exemption, CHI [the plan sponsor] must receive an affirmative answer to all three inquiries**.

Medina v. Catholic Health Initiatives, supra, 877 F.3d at 1222 (emphasis added). See also Boden v. St. Elizabeth Med. Ctr., Inc., 404 F. Supp. 3d 1076, 1082 (E.D. Ky. 2019), in which the court stated:

> This principal-purpose organization statutory language has been distilled into a three-part test, which other courts have used to determine whether a plan maintained by a principal-purpose organization falls within the church-plan exemption:
>
> 1. Is the entity a tax-exempt nonprofit organization associated with a church?
>
> 2. If so, is the entity's retirement plan maintained by a principal-purpose organization? That is, is the plan maintained by an organization whose principal purpose is administering or funding a retirement plan for entity employees?

3. If so, is that principal-purpose organization itself associated with a church?

A plan that satisfies **each prong** falls within the church-plan exemption. Boden, 404 F. Supp. 3d at 1082 (emphasis supplied) (citing Medina v. Catholic Health Initiatives, supra)). See also Cappello v. Franciscan All., Inc., No. 3:16-CV-290 RLM-MGG, 2019 WL 1382909, at *3 (N.D. Ind. Mar. 27, 2019) ("An organization can qualify for the exemption, if: (1) it is a 'tax-exempt nonprofit organization associated with a church'; (2) its retirement plan is 'maintained by an organization ... the principal purpose or function of which is the administration or funding of [the retirement] plan' for the benefit of its employees; **and** (3) the principal purpose organization is also controlled by or associated with a church.") (quoting 29 U.S.C. § 1002(33)) (emphasis supplied).

ERISA does not define the statutory term "maintained", but the courts have construed it as simply meaning that the principal-purpose organization cares for the plan for purposes of operational productivity. See Medina v. Catholic Health Initiatives, supra, 877 F.3d at 1226 (10th Cir. 2017) ("In our view, then, when ERISA says that a church plan includes a plan "maintained" by a principal-purpose organization, 29 U.S.C. § 1002(33)(C), it simply means the principal-purpose organization, as *Black's* says, 'cares for the plan for purposes of operational productivity.'") (citing Black's Law Dictionary 1039 (9th ed. 2009)); Boden v. St. Elizabeth Med. Ctr., Inc., supra, 404 F. Supp. 3d at 1087 ("[A]n organization said to 'maintain' a plan must merely 'care[ ] for the plan for the purposes of operational productivity.'") (citing Medina and Black's Law Dictionary). For purposes of this motion, however, the precise meaning of the statutory term "maintained" is irrelevant. Rather, the focus here is on whether the entity maintaining the Plan had that as its main job.

**B. At least since April 29, 2013, the Plan has not been funded, administered, maintained, or managed by an organization whose principal purpose was to maintain the Plan**

The second prong[50] of the principal purpose test requires that SJHSRI's retirement plan be maintained by an organization whose principal purpose was administering or funding the Plan for SJHSRI's employees. See Medina v. Catholic Health Initiatives, supra, 877 F.3d at 1222; Boden v. St. Elizabeth Medical Center, Inc., supra, 404 F. Supp. 3d at 1082; Cappello v. Franciscan Alliance, Inc., supra, 2019 WL 1382909, at *3. Thus, for the Plan to qualify as a church plan, it must have been maintained by an entity whose "main job" was to fund or manage the Plan. Advocate Health Care Network v. Stapleton, supra, 137 S. Ct. at 1657 ("The main job of such an entity, as the statute explains, is to fund or manage a benefit plan…").

Based upon the record in this case, including documents maintained by SJHSRI and CCCB, it cannot be disputed that since April 29, 2013 at the latest, the Plan was maintained by either SJHSRI itself, SJHSRI's Board of Trustees, or the Finance Committee of CCCB's Board of Trustees. It is also indisputable that neither SJHSRI itself, nor SJHSRI's Board of Trustees, nor the Finance Committee of CCCB's Board of Trustees, was maintaining the Plan since April 29, 2013 as its "main job." Clearly, maintaining the Plan was not the "main job" of SJHSRI itself, which was operating hospital facilities. Similarly, maintaining the Plan was not the "main job" of SJHSRI's Board of Trustees, which was overseeing the operation of those hospital facilities. It is also clear that maintaining the Plan was not the "main job" of CCCB's Finance Committee, which was overseeing the financial operations of CCCB and its subsidiaries (RWH and SJHSRI).

As noted, between 2008 and the filing of this lawsuit, only two payments were made to the Plan: SJHSRI paid $1,500,000 in September 2008 and SJHSRI (or, arguably, the Prospect

[50] The law is clear that each prong or step of the three-part test must be satisfied. The failure to satisfy the second prong is indisputable.

Defendants indirectly) paid $14,000,000 in June 2014.[51] SJHSRI's "principal purpose" was never funding the Plan. Prospect Medical certainly was not devoted principally to funding the Plan at any time. Thus, neither of these payments came from an entity whose "main job" was funding the Plan.

Thus, the Plan failed the second prong of the three-step test for exempt church plan status.

Accordingly, this Court should enter summary judgment declaring that as of April 29, 2013 at the very latest, the Plan was not "maintained by an organization … the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits" as required by I.R.C. § 414(e) (26 U.S.C. § 414(e)) and ERISA § 3(33)(C)(i) (29 U.S.C. § 1002(33)(C)(i)).

Accordingly, for the very reasons stated by Plaintiffs in their earlier Motion for Summary Judgment and on the record presented to the Court, first by Plaintiffs and now by the Diocesan Defendants, the Court should enter summary judgment declaring that as of April 29, 2013 at the latest, the Plan did not qualify as a non-electing church plan and therefore was covered by ERISA.

## CONCLUSION

This motion for summary judgment on Count IV of the First Amended Complaint should be granted, and the Court should enter 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.

## LOCAL RULE 7(c) STATEMENT

Pursuant to Local Rule 7(c), the Diocesan Defendants respectfully request oral argument on their Motion for Summary Judgment and estimate that thirty (30) minutes will be needed.

[51] Rule 56 Statement ¶¶ 32-33.

Respectfully Submitted,

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

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of February, 2022, the foregoing document has been filed electronically through the Rhode Island ECF system, is available for viewing and downloading, and will be sent electronically to the counsel who are registered participants identified on the Notice of Electronic Filing.

/s/ Howard Merten

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