

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In re:

THE ROMAN CATHOLIC BISHOP OF
OAKLAND, a California corporation sole,

Debtor.

Case No. 23-40523 WJL

Chapter 11

**THIRD DECLARATION OF DOUGLAS
P. WILSON IN SUPPORT OF
APPLICATION FOR ENTRY OF AN
ORDER AUTHORIZING RETENTION
OF DOUGLAS WILSON COMPANIES
AS REAL ESTATE CONSULTANT TO
THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

I, Douglas P. Wilson, declare as follows:

1. I submit this declaration (the "Declaration") in response to the Court's request for clarification with respect to the *Second Amended Application for Entry of an Order Authorizing Retention of Douglas Wilson Companies as Real Estate Consultant for the Official Committee of Unsecured Creditors* [Docket No. 1293] (the "Application")¹ and certain terms of the Consulting Agreement, attached as Exhibit C to the Application, as set forth on the record at the hearing held on August 21, 2024 (the "Hearing"). A revised proposed order authorizing the retention of DWC consistent with the Application and this Declaration is attached hereto as Exhibit A.

2. The Consulting Agreement provides that DWC may engage certain independent third-party consultants to assist with the Project (as defined in the Consulting Agreement). At the Hearing, the Court sought clarification as to whether such independent third-party consultants would be entitled to the same indemnification to which DWC is entitled under section 5.1 of the Consulting Agreement. Section 5.1 of the Consulting Agreement excludes from the definition DWC Parties (those who are entitled to indemnification under the Consulting Agreement) "any independent third-party consultants, or their representatives or employees, engaged to assist with the Project." Accordingly, any such "independent third-party consultants, or their representatives or employees, engaged to assist with the Project" are not entitled to indemnification under the

¹ All capitalized terms used but otherwise not defined in this Declaration shall have the meanings ascribed to them in the Application.



1 Consulting Agreement. Section 5.1 likewise provides that, DWC shall have no liability related to
2 the services provided by any independent third-party consultants.

3 3. The Court also sought clarification of section 5.2 of the Consulting Agreement,
4 which provides for: (a) DWC's indemnification of the Client for any Claims that "arise in
5 connection with the Project" and are "caused solely by the grossly negligent or wrongful and
6 intentional acts or omissions of the DWC Parties;" and (b) Liquidated Damages in the event the
7 Client holds a Claim against DWC that (i) arises out of DWC's "gross negligence or wrongful and
8 intentional acts or omissions," and (ii) is sustained by a court of competent jurisdiction.

9 a. The Court sought clarification as to whether the Liquidated Damages amount of
10 \$130,000 would be increased in the event DWC provides, and is paid for, additional
11 services in accordance with section 3.5 of the Consulting Agreement.
12 Notwithstanding anything indicating otherwise in the Consulting Agreement, if
13 DWC provides additional services in accordance with section 3.5 of the Consulting
14 Agreement, the amount of Liquidated Damages in the Consulting Agreement shall
15 be increased to include any amounts paid to DWC in connection with such
16 additional services.

17 b. The Court sought clarification as to whether, in the event the Court decides to deny
18 fees requested by DWC for any reason, DWC could still be liable for the Liquidated
19 Damages. It is the intent of the parties to the Consulting Agreement to provide that
20 any damages due from DWC will be capped at the amount of fees paid to DWC
21 under the Consulting Agreement. In the event that the Court denies compensation
22 requested by DWC, or if DWC is paid less than the full amount awarded by the
23 Court, the Liquidated Damages shall be limited to amounts actually paid to DWC.

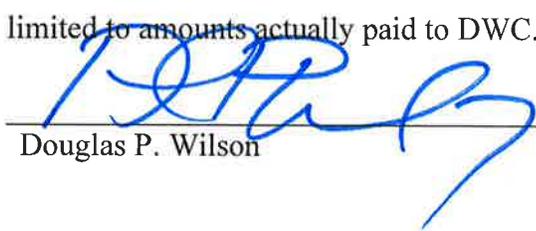
24
25 
26 Douglas P. Wilson
27
28

Exhibit A

Proposed Order

1 **LOWENSTEIN SANDLER LLP**

2 JEFFREY D. PROL (*pro hac vice*)

3 jprol@lowenstein.com

4 BRENT WEISENBERG (*pro hac vice*)

5 bweisenberg@lowenstein.com

6 One Lowenstein Drive

7 Roseland, New Jersey 07068

8 Telephone: (973) 597-2500

9 Facsimile: (973) 597-2400

10 **KELLER BENVENUTTI KIM LLP**

11 TOBIAS S. KELLER (Cal. Bar No. 151445)

12 tkeller@kblkllp.com

13 JANE KIM (Cal. Bar No. 298192)

14 jkim@kblkllp.com

15 GABRIELLE L. ALBERT (Cal. Bar No. 190895)

16 galbert@kblkllp.com

17 425 Market Street, 26th Floor

18 San Francisco, California 94105

19 Telephone: (415) 496-6723

20 Facsimile: (650) 636-9251

21 *Counsel for the Official Committee of Unsecured
22 Creditors*

23
24 **UNITED STATES BANKRUPTCY COURT
25 NORTHERN DISTRICT OF CALIFORNIA
26 OAKLAND DIVISION**

27 Case No. 23-40523 WJL

28 Chapter 11

In re:

THE ROMAN CATHOLIC BISHOP OF
OAKLAND, a California corporation sole,

Debtor.

**[PROPOSED] ORDER AUTHORIZING
RETENTION OF DOUGLAS WILSON
COMPANIES AS REAL ESTATE
CONSULTANT TO THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS**

29 Upon consideration of the *Second Amended Application for Entry of an Order Authorizing*
30 *Retention of Douglas Wilson Companies as Real Estate Consultant to the Official Committee of*
31 *Unsecured Creditors* (the “**Application**”)¹ through which the Official Committee of Unsecured
32 Creditors (the “**Committee**”) of the Roman Catholic Bishop of Oakland (the “**Debtor**”) seeks

33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

¹ Capitalized terms used but not defined herein have the meanings ascribed to them in the Application.

1 entry of an order, pursuant to sections 328(a) and 1103(a) of title 11 of the United States Code (the
2 **“Bankruptcy Code”**) and Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure,
3 authorizing the Committee to retain and employ Douglas Wilson Companies (**“DWC”**) as a real
4 estate consultant to the Committee; and this Court having reviewed the Application and the related
5 declarations of Douglas Wilson, including the *Third Declaration of Douglas P. Wilson in Support*
6 *of the Application for Entry of an Order Authorizing Retention of Douglas Wilson Companies as*
7 *Real Estate Consultant for the Official Committee of Unsecured Creditors* (the **“Wilson**
8 **Declarations”**); and the Court having jurisdiction pursuant to sections 157(a) and (b) and 1334(b)
9 of the Bankruptcy Code to consider the Application and the relief requested therein; and venue
10 being proper in this Court pursuant to sections 1408 and 1409 of title 28 of the United States Code;
11 and the Court being satisfied that notice of the Application and the opportunity for a hearing on
12 the Application was appropriate under the particular circumstances and no further or other notice
13 need be given; and the Court being satisfied, based on the representations made in the Application
14 and the Wilson Declarations, that DWC does not represent or hold any interest adverse to the
15 Debtor or its estate as to the matters upon which DWC have been and are to be employed, and that
16 DWC is a “disinterested person[s]” as such term is defined in section 101(14) of the Bankruptcy
17 Code; and that while employed by the Committee, DWC will not represent any other person or
18 entity having an adverse interest in connection with the Chapter 11 Case; and this Court having
19 determined that the legal and factual bases set forth in the Application and the Wilson Declarations
20 establish just cause for the relief granted herein; and after due deliberation and sufficient cause
21 appearing therefor,

22 **IT IS HEREBY ORDERED THAT:**

- 23 1. The Application is **GRANTED**.
- 24 2. The terms of the Consulting Agreement are approved in all respects, as modified
25 by this Order, and subject to further amendments, as applicable.
- 26 3. DWC is hereby appointed as real estate consultant to the Committee effective as of
27 August 5, 2024 pursuant to the Consulting Agreement, and its compensation is to be fixed and
28 paid as set forth in the Application and the Consulting Agreement.

1 4. Payment of all fees are subject to the approval of the Court and DWC shall submit
2 all fee applications in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy
3 Procedure, Local Rules, and the Interim Compensation Order. For all services provided by DWC
4 on a flat advisory fee basis, DWC shall be subject solely to the standard of review provided for in
5 section 328(a) of the Bankruptcy Code.

6 5. DWC may engage certain independent third-party consultants (“**Consultants**”) to
7 assist with the Project. The Debtor shall pay DWC Thirty Thousand Dollars (\$30,000) for the
8 estimated fees required to be paid to such consultants in the manner set forth below (the
9 “**Consultant Fee Reserve Amount**”). DWC shall (i) to the extent that it uses the services of
10 Consultants in this case, pass through the costs of Consultants to the Debtor at the same rate that
11 DWC pays the Consultants; (ii) seek reimbursement for actual costs only; and (iii) ensure that the
12 Consultants are subject to the same conflict checks and compensation procedures as required for
13 DWC. In connection therewith, DWC shall prepare, and the Committee shall file with the
14 Bankruptcy Court, any such disclosures as required by Bankruptcy Rule 2014. If, at the conclusion
15 of the Term or the termination of the Consulting Agreement, the Consultant Fee Reserve Amount
16 has not been exhausted, the balance of such Consultant Fee Reserve Amount shall be repaid to the
17 Debtor. If the fees to be paid to Consultants exceed the Consultant Fee Reserve Amount, DWC
18 will shall invoice the Committee monthly for reimbursement of any such costs and each such
19 invoice shall be paid upon approval of the Bankruptcy Court or as otherwise permitted by the
20 *Order Authorizing Procedures for Interim Compensation and Reimbursement of Expenses of*
21 *Professionals; provided, however,* that DWC may not incur any expenses arising out of its
22 engagement of Consultants in excess of the Consultant Fee Reserve Amount without the prior
23 written approval of the Committee.

24 6. The Debtor shall pay DWC (i) \$95,000 (representing 50% of the DWC
25 Compensation and entire amount of the Consultant Fee Reserve Amount) within 5 days of entry
26 of this Order, (ii) \$32,500 (representing 25% of the DWC Compensation) within 5 days of the
27 Committee providing notice to the Debtor that it has received a 60-day Project status report by
28

1 DWC, and (iii) \$32,500 (representing the final 25% of the DWC Compensation) within 5 days of
2 the Committee providing notice to the Debtor that it has received the final Project report by DWC.

3 7. If requested by the Committee and agreed to by DWC, in its sole and absolute
4 discretion, DWC is authorized to provide Litigation Support Services (as defined in the
5 Application). Litigation Support Services shall be billed at the schedule of hourly rates for 2024
6 shown on Exhibit B attached to the Application. DWC may modify its hourly rates on ten days
7 written notice to the Committee, the Debtor and the U.S. Trustee. DWC shall bill its time in 6-
8 minute increments and invoices for DWC's hourly fees shall provide a description of the services
9 rendered by each professional as well as the time expended in providing each service (rounded in
10 increments to the nearest tenth of an hour.

11 8. Notwithstanding anything herein to the contrary, the U.S. Trustee retains all rights
12 to respond or object to DWC's interim and final applications for compensation and reimbursement
13 of out-of-pocket expenses on any grounds, including the reasonableness standard under section
14 330 of the Bankruptcy Code, and the Court retains jurisdiction to consider the U.S. Trustee's
15 response or objection to DWC's interim and final fee pursuant to section 330 of the Bankruptcy
16 Code.

17 9. Notwithstanding anything to the contrary in the Consulting Agreement, the Court
18 shall have exclusive jurisdiction over DWC's engagement during pendency of the Chapter 11
19 Case. Any binding or mandatory arbitration provisions, or provisions mandating the payment of
20 attorney's fees for enforcement and/or interpretation of the Consulting Agreement, shall not apply
21 during the Chapter 11 Case.

22 10. The Debtor shall indemnify DWC under the terms of the Consulting Agreement.
23 Consultants are not entitled to indemnification under the Consulting Agreement, and DWC shall
24 have no liability related to the services provided by any Consultants.

25 11. All requests by DWC for the payment of an indemnity claim as set forth in the
26 Consulting Agreement shall be made by means of an application to the Court and shall be subject
27 to review by the Court to ensure that payment of such indemnity conforms to the terms of the
28 Consulting Agreement, and is reasonable under the circumstances of the litigation or settlement in

1 respect of which indemnity is sought, *provided however*, that in no event shall DWC be
2 indemnified in the case of its own bad faith, self-dealing, breach of fiduciary duty, gross
3 negligence, or willful misconduct.

4 12. The Liquidated Damages provision in the Consulting Agreement shall be limited
5 to amounts actually paid to DWC under the Consulting Agreement, including amounts paid to
6 DWC for additional services to the Client in accordance with section 3.5 of the Consulting
7 Agreement.

8 13. Within five days of the Committee receiving (i) the draft report DWC is obligated
9 to provide the Committee within 60 days of the Effective Date and (ii) the final report DWC is
10 obligated to provide the Committee within 90 days of the Effective Date, the Committee shall
11 provide counsel to the Debtor with a copy of each report pursuant to the *Order Referring Parties*
12 *to Mediation, Appointing Mediators, and Granting Related Relief* with all protections provided to
13 documents exchanged in mediation.

14 14. All parties reserve their right to support or oppose the relevancy of DWC's
15 conclusions.

16 15. The Committee reserves the right to seek to retain such other consultants, advisors,
17 professionals and experts that it deems necessary to fulfil its fiduciary duties and the Debtor
18 reserves its rights to oppose such retentions.

19 16. If the Debtor elects to retain a real estate consultant, advisor, professional or expert,
20 the Committee may not oppose the retention on the grounds that such retention is unnecessary;
21 *provided, however*, the Committee reserves all other objections it may have to such retention. By
22 way of example, and not limitation, the Committee may oppose the Debtor's proposed retention
23 based on conflicts or unreasonableness of compensation.

24 17. This Court shall retain jurisdiction to hear and determine all matters arising from
25 or related to the implementation of this Order.

26 18. This Order shall be immediately effective and affordable upon its entry.

27 **END OF ORDER**
28

COURT SERVICE LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

All ECF Parties