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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole, Debtor.	Case No. 23-40523 WJL Chapter 11 **THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO THE DEBTOR'S DISCLOSURE STATEMENT** Judge: Hon. William J. Lafferty Date: December 18, 2024 Time: 10:30 a.m. (Pacific Time) Place: United States Bankruptcy Court 1300 Clay Street, Courtroom 220 Oakland, CA 94612

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

The Official Committee of Unsecured Creditors (the "**Committee**") of The Roman Catholic Bishop of Oakland (the "**Debtor**" or the "**Diocese**") files this objection (this "**Objection**") to the adequacy of the proposed Disclosure Statement (Dkt. No. 1445) (the "**Disclosure Statement**") describing *The Debtor's Plan of Reorganization* (Dkt. No. 1444) (the "**Plan**").[1] In support of this Objection, the Committee states:

I.

PRELIMINARY STATEMENT

When a proposed plan so clearly violates section 1129 of the Bankruptcy Code such that it cannot be confirmed, courts will address confirmation issues at a disclosure statement hearing. That should be the case here. The Committee opposes the Plan and will recommend that Abuse Claimants vote to reject the Plan. If past is prologue, Abuse Claimants will follow in tow and thus, it is a virtual certainty that they will overwhelmingly reject the Plan.[2] The Debtor will therefore need to cramdown the Plan on Abuse Claimants, requiring (i) that an impaired class of claims votes for the Plan, (ii) a showing that Abuse Claimants are being treated fairly and equitably and that the Plan was proposed in good faith, and (iii) that Abuse Claimants will receive more than if the Debtor were hypothetically liquidated under chapter 7 of the Bankruptcy Code. The Debtor will not be able to establish any of the foregoing.[3]

Through this Objection, the Committee establishes that the Plan is patently unconfirmable because of the Debtor's facial violation of the fair and equitable test. The Bishop fails to acknowledge that hundreds of millions of dollars of real estate and hundreds of millions of dollars

[1] Capitalized terms not defined below have the meaning ascribed to them in the Plan.

[2] The Disclosure Statement mistakenly states that state court counsel to Committee members represent approximately 45% of Abuse Claimants. *See* Disclosure Statement, at 6, Dkt. No. 1445.

[3] Abuse claimants in *In re The Archdiocese of Saint Paul and Minneapolis* and *In re The Roman Catholic Diocese of Rockville Centre*, the only two Diocese bankruptcy cases where votes on a plan of reorganization were solicited without committee support, voted by an overwhelming majority to reject those plans. In *In re The Archdiocese of Saint Paul and Minneapolis,* more than 93% of abuse claimants rejected the Archdiocese's plan. *See* Report of Ballot Tabulation, No. 15-30125 (Bankr. D. Minn. Sept. 21, 2018), Dkt. No. 1041. In *In re The Roman Catholic Diocese of Rockville Centre*, about 86% of abuse claimants rejected the Diocese's plan. *See* Decl. of Stephanie Kjontvedt of Epiq Corporate Restructuring, LLC Regarding the Solicitation and Tabulation of Ballots Cast on Fourth Modified First Amended Chapter 11 Plan, No. 20-12345-mg (Bankr. S.D.N.Y. Apr. 17, 2024), Dkt. No. 3057.

of cash and cash equivalents are either property of the bankruptcy estate or can be recovered for the estate under the Bankruptcy Code's avoidance powers.

Failing to heed the prescient words of then U.S. Bankruptcy Judge Louis DeCarl Adler in the San Diego diocese bankruptcy case, the Bishop filed this Chapter 11 Case in a transparent attempt to limit the Debtor's liability for survivors' pain and suffering that the Diocese negligently failed to stop. In other words, this case was filed to radically reduce the amount of damages that Abuse Claimants would otherwise be able to recover in state court. Judge Adler correctly recognized that "***Chapter 11 is not supposed to be a vehicle or a method to hammer down the claims of the abused***. It is a method of dealing with those claims fairly while preserving the core business, if you will, of the chapter 11 debtor." Mot. to Dismiss Hr'g Tr. at 76:9-13, *In re The Roman Cath. Bishop of San Diego*, No. 07-00939-LA11 (Bankr. S.D. Cal. Nov. 5, 2007), Dkt. No. 1368 (emphasis added). Judge Adler also stated:

> I decided this morning to reacquaint myself with the exact definition of "disingenuous." According to *Merriam Webster's* it means lacking in candor, also giving a false impression of simple frankness, calculating. From what I understand of the Diocese's finances . . . I think the term "disingenuous" as applied to the Diocese description of assets available to fund this settlement is completely accurate. There is, in my view, ample other property available for liquidation to fund the settlement without threatening the mission of the church. It is simply a question of how the Diocese sets its priorities.
>
> I say this because this case has ramifications beyond San Diego. There may be other diocese in this country which may be considering Chapter 11 as an easy vehicle to deal with the claims of abuse victims. I think that would be a mistake now or in the future. ***The church needs to look within itself. It needs to ask itself whether its core mission to educate children, to tend to the spiritual needs of its community, and to bring some healing to those abuse victims requires it to retain nonessential assets such as parking lots, apartment buildings, houses bequeathed to it, parish churches no longer viable, vacant land***. . . . Before a diocese -- any diocese -- resorts to a Chapter 11 filing, it should be making a good faith honest effort to assess whether that is necessary.

Id. at 75:4–76:8 (emphasis added). The Debtor clearly did not head Judge Adler's advice.

The Debtor's Plan contains other features which independently render it unconfirmable as a matter of law. The Plan:

(i) does not have one impaired class to accept the Plan to avail the Debtor of the cramdown provisions under section 1129(b)(2) of the Bankruptcy Code;

(ii) seeks to bind the holders of Unknown Abuse Claims, some of whom will not be known until well after the Effective Date, to the release, exculpation, and injunction provisions without making adequate provision for those claimants to be represented in Plan negotiations and the confirmation process;

(iii) facially fails the hypothetical liquidation test required for cramdown under section 1129(b)(2)(B) of the Bankruptcy Code because the Debtor, admittedly, does not include a substantial portion of its multi-million dollar real estate portfolio in its analysis;

(iv) improperly provides for non-consensual third-party releases and exculpation which grants broad immunity to a plethora of entities and individuals not entitled to protection;

(v) violates the absolute priority rule; and

(vi) is proposed in bad faith.

It follows that solicitation of the Debtor's Plan should be foreclosed to avoid burdening the Debtor, its estate and creditors with the expense of solicitation, discovery and a confirmation trial over a Plan that cannot be confirmed.

If this Court is inclined to review the adequacy of the Disclosure Statement, it is replete with omissions, misstatements and confusing language, all of which is explained below but highlighted here. For example, the Disclosure Statement:

(i) fails to provide an easily understandable summary for Abuse Claimants to know the amount of their distribution, when they will receive it, and what contingencies exist that may prevent or delay distributions;

(ii) does not accurately present the outcome of a hypothetical liquidation of the Debtor's assets and what Abuse Claimants would receive in a liquidation, ignoring (a) hundreds of millions of dollars of Diocese real estate assets, (b) hundreds of millions of dollars of assets that could be recovered from affiliated entities, and (c) potential recoveries from The Roman Catholic Welfare Fund ("**RCWC**"), which is a co-defendant in about 70 state court actions pending against the Debtor;

(iii) is both confusing and internally inconsistent in its explanation of the differing treatment provided to Trust Claimants choosing the Distribution Option and Litigation Option and their rights to receive and retain insurance proceeds paid by a Non-Settling Insurer;

(iv) provides no analysis or reasonable basis for determining whether the amount being set aside for Unknown Abuse Claims is fair and equitable;

(v) provides no information on the Diocese's settlement and release of a $40 million claim against its affiliate, The Catholic Cathedral Corporation of the East Bay (the "**Cathedral Corporation**");

(vi) seeks to lure Abuse Claimants into accepting the Plan based on charts purportedly analyzing the compensation that survivors received in other diocesan bankruptcy cases. But the Disclosure Statement is misleading, at best, and deceptive, at worst, because the Debtor's charts (a) select certain favorable precedents and omit unfavorable precedents, and (b) fail to disclose critical information necessary for any meaningful comparison; and

(vii) misleadingly asserts that the real property that the Debtor seeks to assign the Survivors' Trust, the Livermore Property, is worth between $43 million and $81 million (or more). The Debtor's valuation is neither supported by analysis nor evidence. Even the Debtor concedes that its valuation depends on the property being rezoned and obtaining entitlements for residential development, and that neither is guaranteed. *See* Disclosure Statement, at 74, Dkt. No. 1445. Ironically, in the Disclosure Statement, the Debtor states that its real estate is difficult to value because any sale would necessitate a zoning change for the subject property. *See* Disclosure Statement, Liquidation Analysis, Ex. B, at 7, ¶ F, Dkt. No. 1445-2. In addition, the Debtor's valuation of the Livermore Property fails to consider that it will likely take years and significant expense to obtain the necessary approvals to maximize the value of the Livermore Property, which timeframe would see survivors pass-away. Thus, almost half of Abuse Claimants' projected recovery may be gravel and rock.

For all these reasons, the Court should deny approval of the Disclosure Statement.

II.

THE DISCLOSURE STATEMENT CANNOT BE APPROVED BECAUSE THE PLAN CANNOT BE CONFIRMED

While the Bankruptcy Code requires that a disclosure statement contain "adequate information," approval of a disclosure statement describing a plan that cannot be confirmed must be denied, regardless of the extent of disclosure it contains. *See, e.g.*, *In re Beyond.com Corp.*, 289 B.R. 138, 140 (Bankr. N.D. Cal. 2003) (citations omitted) ("Because the underlying plan is patently unconfirmable, the disclosure statement may not be approved."). This rule emanates out of common sense: courts will not permit a bankruptcy estate to incur the costs of soliciting votes for a plan that even if unanimously accepted by creditors could never be confirmed. *See, e.g.*, *In re Main Street AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999) (citations omitted).

To preserve estate assets and precious time, this Court should deny approval of the Disclosure Statement because the Plan it describes does not meet the requirements of section 1129 of the Bankruptcy Code. Specifically, since it will be rejected by Class 4 (Abuse Claims), thus failing to satisfy section 1129(a)(8), the Plan can be confirmed only if it meets all the other provisions of 1129(a) and the cramdown requirements of 1129(b). It fails on both accounts.

A. **<u>The Plan Cannot Satisfy Section 1129(a)(1) of the Bankruptcy Code.</u>**

To be confirmable, a plan must comply with the Bankruptcy Code. 11 U.S.C. § 1129(a)(1). The Debtor's Plan fails to do so for several reasons.

(i) <u>The Plan Unlawfully Releases Non-Debtor Third Parties.</u>

The Plan's definition of "Released Parties" is so broad that it provides for the non-consensual release of countless individuals and entities, none of whom are debtors, including the Debtor's:[4]

> current and former directors, managers, officers, employees, equity holders (regardless of whether such interests are held directly or indirectly), interest holders, predecessors, successors, and assigns, subsidiaries, affiliates, managed accounts or funds, and each of their respective current and former equity holders, officers, directors, managers, principals, shareholders, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

Debtor's Plan of Reorganization, at 13, Dkt. No. 1444. On its face, "Released Parties" includes the following non-debtors, all of whom are described as affiliates in the Decl. of Charles Moore, Managing Director of Alvarez & Marsal North America, LLC, Proposed Restructuring Advisor to The Roman Catholic Bishop of Oakland, in Support of Chapter 11 Pet. and First Day Pleadings, Section II ("Affiliated Non-Debtor Catholic Entities"), at 10-15, Dkt. No. 19: (a) The Roman Catholic Welfare Corporation of Oakland; (b) Lumen Christi Academies; (c) The Roman Catholic Cemeteries of the Diocese of Oakland; (d) The Oakland Parochial Fund, Inc.; (e) The Catholic Cathedral Corporation of the East Bay; (f) Christ the Light Cathedral Corporation; (g) The Oakland Society for the Propagation of the Faith; (h) Catholic Charities of the Diocese of Oakland, Inc., dba Catholic Charities of the East Bay; (i) Catholic Church Support Services; (j) Furrer Properties Inc.; (k) Adventus; (l) Catholic Foundation for the Diocese of Oakland; and (m) each of their

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[4] Even before the *Purdue* decision (*Harrington v. Purdue Pharma L.P.*, 603 U.S. ___ (2024)), the Ninth Circuit did not permit non-consensual third-party releases. *See, e.g., Resorts Int'l, Inc. v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394, 1401 (9th Cir. 1995) ("This court has repeatedly held, without exception, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors."); *New Falls Corp. v. Tullo*, 2009 Ariz. App. Unpub. LEXIS 452, at *18 (Ariz. Ct. App. Apr. 28, 2009) ("Despite a split of authority between federal courts on this issue, the Ninth Circuit has consistently held that bankruptcy courts have no authority to discharge the liabilities of non-debtors, including guarantors.").

officers, directors, managers, principals, members, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

Under the plain meaning of the undefined term "predecessors" used in the definition of "Released Parties," non-consensual third-party releases would be granted to, among others, the Archdiocese of San Francisco, from which the Debtor was formed. *See Predecessor*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/predecessor (last visited Dec. 4, 2024) (defining "predecessor" as "one that precedes"). Under the plain meaning of the undefined term "affiliate" used in the definition of "Released Parties," third-parties could be granting non-consensual releases to every diocese across the country and even the Holy See, all of which are "closely associated" with the Debtor.[5] *See Affiliated*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/affiliated (last visited Dec. 4, 2024) (defining "affiliated" as "closely associated with another typically in a dependent or subordinate position"). At minimum, each proposed released entity must be specifically identified and must provide financial information sufficient to help determine the adequacy of consideration it is paying in exchange for the third-party release.[6]

The Plan's release provision also improperly provides that the Churches are receiving releases. If the Churches are unincorporated divisions—as the Committee contends—and thus a part of the Debtor, they are not separate legal entities and do not require separate releases. Alternatively, if the Churches are unincorporated associations, and thus, separate legal entities from the Debtor, as the Debtor appears to contend, the Churches may not receive non-consensual third-party releases.

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[5] While the Plan provides for an opt-out mechanism so that a creditor may exclude itself from the Third-Party Release, it appears that option is only available as to claims against Contributing Non-Debtor Catholic Entities.

[6] The financial information should include, but not be limited to, all assets, including cash and investments and real property holdings, deposit and loan fund obligations, total liabilities, total revenue, total operating expenses, net operating surplus / (deficit), and change in net assets. This information should be provided for at least a five-year period of time. For all real property holdings, the information should include, but not be limited to, the current use of the property and a designation of whether or not the property is considered to be central to the mission of the Diocese and/ or the entity seeking a release.

(ii) The Plan Is Poised to Unlawfully Bind Holders of Unknown Abuse Claims.

Unknown Abuse Claimants, some of whom may not be known until after the Effective Date, are bound to the release, exculpation and injunctions provisions of the Plan without making adequate provision for future claimants' interests to be represented in this Chapter 11 Case. On December 9, 2024, the Debtor moved for the appointment of an Unknown Abuse Claims Representative, rendering the appointment all but futile because the Unknown Abuse Claims Representative will not be afforded adequate opportunity to evaluate the scope of the Debtor's estate, the expected number and value of unknown claims and negotiate the treatment thereof under the Plan before the proposed Voting Deadline of February 25, 2025. In the *Camden Diocese* case, the Unknown Abuse Claims Representative, the Honorable Michael R. Hogan (Ret.), the proposed Unknown Abuse Claims Representative here, filed his "Report and Recommendations" ***4 months and 28 days*** after the effective date of his retention. *See* Order Granting Application To Employ Judge Michael R. Hogan As Unknown Claims Representative, *In re The Diocese of Camden*, No. 20-21257-JNP (Bankr. D.N.J. Feb. 28, 2022), Dkt. No. 1237 and Unknown Claims Representative's Report and Recommendations, *In re The Diocese of Camden*, No. 20-21257-JNP (Bankr. D.N.J. July 26, 2022), Dkt. No. 2083.[7] Here, if Judge Hogan was retained on December 18, 2024, the Debtor would have Judge Hogan retain professionals, complete his diligence, negotiate the treatment of Unknown Abuse Claimants, and cast his ballot in ***70 days***.

(iii) The Plan Improperly Exculpates Non-Debtor Parties.

The Plan may not be confirmed given the definition of "Exculpated Parties." Courts have found that the limited grant of immunity to certain entities and individuals for actions within the scope of their duties to a bankruptcy estate does not extend to parties that are not fiduciaries of the

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[7] In other cases where Judge Hogan was appointed as the unknown claims representative, it took him ***between 126 to 858 days to issue his report*** (measured from the effective date of his retention). *See, e.g.*, *In re Roman Cath. Church of the Diocese of Gallup*, No. 13-13676-t11 (Bankr. D.N.M. Feb. 12, 2016 and June 17, 2016), Dkt. Nos. 526, 581 (126 days); *In re Roman Cath. Church of the Archdiocese of Santa Fe*, No. 18-13027-t11 (Bankr. D.N.M. June 13, 2022 and Dec. 26, 2022) Dkt. Nos. 996, 1206 (196 days); *In re Roman Cath. Bishop of Helena*, No. 14-60074-TLM (Bankr. D. Mont. Apr. 9, 2014 and Jan. 12, 2015), Dkt. Nos. 186, 408 (278 days); *In re Roman Cath. Diocese of Harrisburg*, No. 1:20-bk-00599-HWV (Bankr. M.D. Pa. Nov. 16, 2021 and Jan. 25, 2023), Dkt. Nos. 744, 1500 (435 days); *In re The Norwich Roman Cath. Diocesan Corp.*, No. 21-20687 (Bankr. D. Conn. Aug. 4, 2022 and Mar. 6, 2024) Dkt. Nos. 753, 1712 (580 days); *In re The Archdiocese of Saint Paul and Minneapolis*, No. 15-30125 (Bankr. D. Minn. Feb. 14, 2017 and Sept. 21, 2018) Dkt. Nos. 969, 1271 (584 days); *In re Archbishop of Agaña*, No. 19-00010 (Bankr. D. Guam Mar. 3, 2020 and July 9, 2022) Dkt. Nos. 355, 894 (858 days).

estate. *See, e.g.*, *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1081-82 (9th Cir. 2020) (holding that exculpation clauses must be limited to parties participating in the bankruptcy proceeding and plan approval process). But the Plan's definition of "Exculpated Parties" includes: (a) The College of Consultors of the Diocese of Oakland and each of its members; (b) The Diocese of Oakland Finance Council and each of its members; (c) The Presbyteral Council of the Diocese of Oakland and each of its members; and (d) for each of the foregoing, their respective officers, directors, agents, employees, equity holders, attorneys, financial advisors, accountants and representatives. Debtor's Plan of Reorganization, at 8, Dkt. No. 1444. The Debtor has not established, and cannot establish, that all of these entities are fiduciaries to the Debtor's estate. Accordingly, the exculpation provision may not be approved and the Plan cannot be confirmed. *See, e.g.*, Order Denying Approval of the Disclosure Statement in Support of Fourth Amended Joint Chapter 11 Plan of Reorganization for the Roman Catholic Diocese of Syracuse Dated Sept. 13, 2024, at 12, *In re The Roman Cath. Diocese of Syracuse*, No. 20-30663 (Bankr. N.D.N.Y. Nov. 14, 2024), Dkt. No. 2308 (holding that the "Exculpation and Release Provisions" were too broad, could not extend to "related persons of the Persons and Entities" and that the exculpation provision should be limited to estate fiduciaries and their professionals, the Committee and its members, the mediators, and Debtor's officers and directors who participated in the Chapter 11 process from the Petition Date to the Effective Date).

B. <u>The Plan Cannot Satisfy Section 1129(a)(3) of the Bankruptcy Code.</u>

The Plan was not proposed in good faith. It therefore does not comply with section 1129(a)(3) of the Bankruptcy Code. Evidence of the Debtor's bad faith includes:

(i) The Debtor's transfer of about $106 million to the Oakland Parochial Fund (the "**<u>OPF</u>**") just 30 or so days before the Petition Date. The OPF, which had laid dormant for over a decade, was used by the Diocese to shield its enterprise's assets, all the while keeping the assets under the control of the Bishop given the commonality of officers of the Debtor and OPF and the power granted to the Diocese in OPF's incorporation documents. *See* OPF Articles of Incorporation, at 1 (The OPF "is formed, and shall be operated, supervised or controlled by The Roman Catholic Bishop of Oakland, a California corporation sole ('RCBO')….") attached as

Exhibit A to the Declaration of Brent Weisenberg in support of this Motion (the "**Weisenberg Dec.**"). The Committee has filed an adversary complaint to recover this transfer.

(ii) The Diocese has not pursued collection of a $40 million loan it made to the Cathedral Corporation in or about 2009 that the Cathedral Corporation has yet to repay. Rather, under the Plan, the Diocese will deem its claim satisfied by taking ownership of the Cathedral and the land on which it sits without providing any valuation of those assets. While section 1123(b)(3) of the Bankruptcy Code provides that a plan may provide for the settlement or adjustment of any claim belonging to the debtor or the estate, the Bankruptcy Court is to approve such settlements under the Bankruptcy Rule 9019 standard. *See, e.g.*, *In re PG&E Co.*, 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004) (holding, with respect to settlements in a debtor's plan of reorganization, "the standards under Rule 9019 will be applied."). In fact, heightened scrutiny is warranted "when an insider benefits from a compromise or release that a debtor in possession proposes on behalf of its bankruptcy estate." *In re Astria Health*, 623 B.R. 793, 801 n.24 (Bankr. E.D. Wash. 2021) (citing *In re Drexel Burnham Lambert Grp.*, 134 B.R. 493, 498 (Bankr. S.D.N.Y. 1991)) ("We subjected the agreement to closer scrutiny because it was negotiated with an insider, and hold that closer scrutiny of insider agreements should be added to the cook book list of factors that Courts use to determine whether a settlement is fair and reasonable."). The Disclosure Statement contains no discussion regarding whether this settlement passes muster under Bankruptcy Rule 9019.

(iii) The Debtor has transferred over $4.5 million during the Chapter 11 Case to Cathedral Corp. to, among other things, fund its operations.[8]

(iv) The Diocese commenced a "Mission Alignment Process" before the Chapter 11 Case through which it was to close certain Churches to reduce operational costs and monetize its real estate for the benefit of survivors. In explaining the "Mission Alignment Process" to parishioners Bishop Barber stated: "[redacted]

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[8] The Committee was informed by the Debtor that certain of these payments were made under a "Facilities Use Agreement" under which the Debtor paid rent to Cathedral Corp. But the Debtor has not produced that agreement to the Committee and even if such agreement exists, there has been no explanation as to why the Debtor paid over $4.5 million to Cathedral Corp. when it owes the Debtor in excess of $40 million.

[redacted]" Tr. of Bishop Michael C. Barber Presentation ("RCBO-CC-0009268_0001"), at 1, ¶ 01:47, attached to the Weisenberg Dec. as Exhibit B. In a May 8, 2023 letter to parishioners and friends of the Diocese, Bishop Barber stressed the need to "re-align our resources to meet the needs of our diocese, while addressing claims coming through the bankruptcy process." Letter from Bishop Michael C. Barber (May 8, 2023), attached to the Weisenberg Dec. as Exhibit C. Bishop Barber added that it was essential that the Debtor focus on "our mission to serve people, not on maintenance of structures which no longer serve our mission." *Id.* The Diocese has since walked back its plan and neither the Plan nor the Disclosure Statement discuss the closure of any Parishes or Churches or committing any real estate, other than the Livermore Property, to fund distributions to survivors or the operational efficiencies which could be achieved by doing so.

(v) The Debtor's failure to include hundreds of millions of dollars of real estate as property of its estate. The Debtor contends that it owns certain improved real property in trust for the Churches. But the Churches are not separately incorporated under California law and have no civil legal existence of their own. Indeed, before the Petition Date, the Debtor induced Abuse Claimants to dismiss their state court complaints against Church defendants by entering into several stipulations acknowledging and agreeing that the defendant Church was "not a separate corporation or civil legal entity of any kind and The Roman Catholic Bishop of Oakland, a corporation sole, holds title to its assets under civil law." *See* Exhibit D attached to the Weisenberg Dec.

Moreover, the Debtor ignores the Bishop's wide-ranging power to control the operations and purse strings of Diocese affiliates. [redacted]" App'x A to Series 2007 Bond Offering Memorandum dated Nov. 13, 2007, at A-16, attached as Exhibit E to the Weisenberg Dec.[9] Meaning, the Bishop was quick to represent his control over non-Debtor affiliates and their assets when he wanted money. But now that he is being asked to pay money, he disavows his power and asserts that every non-Debtor is separate and distinct. In that same vein, in soliciting purchasers of Diocese bonds, [redacted]" App'x A to Series 2007 Bond Offering Memorandum dated Nov. 13, 2007, at A-15. In the Disclosure Statement, the Bishop now recants his previous statement, asserting that all funds raised through the Bishop's Ministries Appeal ("**BMA**") are "restricted to fund the particular ministries and programs that the BMA was designed to support and facilitate …" Disclosure Statement, at 19, Dkt. No. 1445.[10]

(vi) Finally, the Debtor seeks to assign its rights under its insurance policies to the Survivors' Trust under provisions that expand the state-law rights of Non-Settling Insurers while substantially prejudicing the state-law insurance rights of Abuse Claimants. The Debtor did not invite the Committee to participate in several stealth mediation sessions with the Non-Settling Insurers. And now that the Committee has seen the proposed "agreement" reached between the Debtor and the Non-Settling Insurers, it opposes its terms. In addition to containing numerous provisions at odds with Abuse Claimants' prepetition rights, the terms of the Plan would inhibit Abuse Claimants' ability to reach a fair resolution with Non-Settling Insurers without years of litigation. As but one example, the insurance assignment language risks depriving Abuse Claimants of the ability to hold the Non-Settling Insurers liable for bad faith failure to promptly

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[9] While the Committee does not concede that canon law has relevance when determining whether purported affiliates of the Debtor are in fact separate corporations under civil law, [redacted]. *See* Order Granting Mot. in Limine, at 3, *Off. Comm. of Unsecured Creditors v. Archbishop of Agaña (In re Archbishop of Agaña)*, Ch. 11 Case No. 19-00010, Adv. No. AP 19-00001 (D. Guam Feb. 8, 2022), Dkt. No. 213 ("[T]he court finds that the Archdiocese's internal religious structure is irrelevant to the determination of whether a resulting trust exists under civil law. [And], to consider the non-secular interpretation of canon law would result in a religious entanglement that the First Amendment forbids.") (footnote omitted) (citing *Jones v. Wolf*, 99 S. Ct. 3020, 3025 (1979)).

[10] Upon information and belief, in or about 2022, the Diocese renamed "The Bishop's Appeal." It is now called "The Bishop's Ministries Appeal."

and fairly settle Abuse Claimants' claims against the Debtor, a key feature of California law meant to deter wrongful insurer conduct.

The Plan also fails to comply with applicable law. Accordingly, it does not comply with section 1129(a)(3) of the Bankruptcy Code. Under Section 9.3 of the Plan, the Debtor Cash Contribution and any Non-Debtor Catholic Entity Contribution are being made to satisfy any liability the Debtor and any Contributing Non-Debtor Catholic Entities may have for uninsured claims and uninsured exposure (such as self-insured retentions). Under Section 8.7 of the Plan, an Abuse Claimant holding a judgment against a Non-Settling Insurer will have his or her distribution offset by the amount of the distribution received under the Plan. But the Non-Settling Insurers have no contractual or state law right to an offset for such amounts because they are explicitly being made for any uninsured portion of the judgment, whether that be a self-insured retention, a payment above a Non-Settling Insurers' policy limits or otherwise. Nonetheless, the Non-Settling Insurers would enjoy the benefit of an offset that they are not entitled to. In doing so, the Plan makes the Non-Settling Insurers—rather than Abuse Claimants—a beneficiary of the Debtor's contribution to the Survivors' Trust.

C. <u>The Plan Cannot Satisfy Section 1129(a)(7) of the Bankruptcy Code.</u>

The Debtor asserts that it is not obligated to satisfy section 1129(a)(7)(a)(ii)'s hypothetical liquidation test because (i) its bankruptcy case cannot involuntarily be converted to a chapter 7 liquidation, and (ii) it cannot be forced to sell its real estate. This argument has been routinely rejected in other non-profit bankruptcy cases. The *In re Boy Scouts of America* court specifically rejected the Debtor's argument that the hypothetical test does not apply because a non-profit cannot be liquidated, holding that section 1129(a)(7) applies to non-profits because "there is nothing illogical about requiring a nonprofit to show that it can meet this requirement in order to obtain the benefits of a confirmed plan." *In re Boy Scouts of Am.*, 642 B.R. 504, 661 (Bankr. D. Del. 2022), *aff'd*, 650 B.R. 87 (D. Del. 2023). Historically in Catholic diocese bankruptcy cases, courts list section 1129(a)(7) as among the required factors to confirm a chapter 11 plan of reorganization under section 1129(a) notwithstanding the church's status as a non-profit.[11]

The Debtor will be unable to satisfy the hypothetical liquidation test required for cramdown of the Plan under section 1129(a)(7)(a)(ii) of the Bankruptcy Code. ***The Debtor concedes it has not complied with the test*** by stating that it only includes "proceeds from certain vacant land and the properties serving as collateral for the secured RCC loan" in its liquidation analysis. Disclosure Statement, Ex. B, at 7, ¶ F, Dkt. No. 1445-2. According to the Debtor, it need not include substantially all of its improved real estate—which represents the vast majority of the Debtor's wealth—in its liquidation analysis "[b]ecause the Debtors (sic) cannot have their chapter 11 cases (sic) converted into chapter 7 cases involuntarily, the Debtors (sic) also cannot be forced to close and sell Churches." *Id.*[12] As a result, the Debtor is excluding somewhere between $400 million and $700 million of real property assets from its liquidation analysis.

The Debtor's transparent effort to reduce the distribution Abuse Claimants would receive under a hypothetical chapter 7 filing is also evidenced by the Debtor's tamping down or disregarding the value of other assets available to satisfy Abuse Claims while artificially increasing expenses to be incurred in a chapter 7, including:

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[11] *See, e.g.*, *In re Diocese of Camden*, 653 B.R. 309, 341 (Bankr. D.N.J. 2023) (despite the debtor arguing that section 1129(a)(7) does not apply to non-profits, "the Court disagrees" and required the diocese debtor to satisfy the Liquidation Analysis requirements); Order Confirming Debtor's First Amended Plan of Reorganization Dated Nov. 3, 2022, at 9, *In re Roman Cath. Church of the Archdiocese of Santa Fe*, No. 18-13027-t11 (Bankr. D.N.M. 2022), Dkt. No. 1214 (order confirming chapter 11 plan finding the debtor satisfied section 1129(a)(7) Liquidation Analysis, despite acknowledging that section 1112(c) "protects charitable institutions by precluding conversion of a chapter 11 case to chapter 7."); *In re Roman Cath. Archbishop of Portland*, 339 B.R. 215, 227 (Bankr. D. Or. 2006) ("[I]n order to meet the best interests test for confirmation set out in § 1129(a)(7), the plan must provide that an impaired class receive at least as much as the class would receive in a chapter 7 liquidation.").

[12] The Committee anticipates that the Debtor will assert some form of First Amendment right or rely on canon law to justify its refusal to include hundreds of millions of dollars of assets in its liquidation analysis. Both arguments will fail. *First*, section 1129(a)(7) of the Bankruptcy Code is a ***hypothetical*** test designed to ensure non-consenting creditors receive at least as much as they would if the debtor was liquidated. The test is a hypothetical measuring device, it does not rest upon whether the Debtor's assets could legally be involuntarily liquidated under chapter 7. *Second*, canon law has no relevance when deciding issues under civil law. *See, e.g.*, *Tort Claimants Comm. v. Roman Cath. Archbishop of Portland (In re Roman Cath. Archbishop of Portland)*, 335 B.R. 842, 857-58 (Bankr. D. Or. 2005) (Bankruptcy court determined that it did not need to consider canon law in the context of resolving a property dispute as a religious organization's internal law is not relevant to the dispute unless neutral principles of civil law make it so. "In other words, although a corporation sole is authorized by state law to organize its affairs pursuant to canon law, it is the corporation's organization and structure as implemented under civil law that governs the corporation's relationship with the secular world.").

(i) The liquidation analysis ascribes no value to the Debtor's ownership interest in a telecommunications network—which produces \$2 to \$3 million a year in cash flow. *See* Disclosure Statement, Ex. C "Projected Cash Flows," at 7, Dkt. No. 1445-3.

(ii) The liquidation analysis fails to recognize that under a hypothetical liquidation, Abuse Claimants would retain their claims against RCWC and RCWC's insurers.

(iii) The Debtor asserts that litigation costs in the tens of millions of dollars would be incurred liquidating Abuse Claims in a chapter 7 case. But it is not clear why a chapter 7 trustee could not create a trust much like the Survivors' Trust and adopt similar procedures for distributions from that trust. By doing so, there would be no increased cost to the estate if the claims were liquidated and paid in a chapter 7.

D. <u>The Plan Cannot Satisfy Section 1129(a)(10) of the Bankruptcy Code.</u>

Before the Plan can be crammed down on Abuse Claimants, the Debtor will need to secure the vote of one impaired accepting class, but that class does not exist. All of the classes of claims listed as "impaired" under the Plan, other than the Abuse Claimants' Class, are either "unimpaired" or not entitled to vote.

(i) <u>Class 3 (General Unsecured Claims) are being paid in full.</u>

While the Debtor asserts that Class 3 (General Unsecured Claims) is impaired, the Disclosure Statement states, "[t]he Plan further provides that the Holders of Allowed . . . ***General Unsecured Claims will be paid in full*** as set forth herein . . . ." Disclosure Statement, at 8, Dkt. No. 1445 (emphasis added). The Plan provides:

> [E]ach such Holder [of an Allowed General Unsecured Claim] shall receive payment in Cash from . . . the Reorganized Debtor in an amount equal to such Allowed General Unsecured Claim, payable no later than the later of (a) the date that is one year after the Effective Date, (b) the date that is twenty-one (21) days after the date when such General Unsecured Claim becomes an Allowed General Unsecured Claim, or (c) the date on which the Holder of such General Unsecured Claim and the Reorganized Debtor shall otherwise agree in writing.

Debtor's Plan of Reorganization, at 22, Dkt. No. 1444.

Even if this Class is impaired, there is no evidence of the number and value of Claims in this Class, and the Debtor has failed to establish that it is unable to pay these Claims in full without impairing them.

(ii) The Debtor's Attempt to Classify Unknown Abuse Claims in a Separate Class Is an Improper Attempt to Gerrymander the Classification of Claims.

The Plan's concept of appointing an Unknown Abuse Claimants Representative to represent the interests of Unknown Abuse Claimants is patterned after the appointment of a future claimants representative to represent the interests of demand holders in an asbestos-related bankruptcy under section 524(g)(4)(B)(i) of the Bankruptcy Code.[13] Section 524(g)(4)(B)(i) requires the appointment of "a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands . . . " but it does not grant the legal representative the right to vote on a plan. The fact that Congress chose to use the word "demand" instead of "claim" in section 524(g) has led some to conclude that holders of demands may not be classified under a plan of reorganization. *See, e.g.*, NAT'L BANKR. REV. COMM'N, BANKRUPTCY: THE NEXT TWENTY YEARS 339–41 (1997), https://govinfo.library.unt.edu/nbrc/reportcont.html, Chapter 2 ("Treatment of Mass Future Claims in Bankruptcy"). While consensual diocesan plans have classified unknown holders of demands, they often do so by placing them in the same class as known claimants.[14] The Debtor's decision to classify Unknown Abuse Claims in a separate Class, and permit the Unknown Abuse Claimants Representative to cast a ballot on behalf of that Class, would empower an individual to determine whether the Debtor can obtain the vote of an impaired

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[13] Holders of "demands" in an asbestos related bankruptcy are individuals that have been exposed to asbestos but have not manifested evidence of asbestos related disease prior to the claims bar date. They are also colloquially referred to as "future claimants."

[14] *See, e.g.*, **(i)** Second Amended Joint Plan of Reorganization Proposed by the Debtor and Official Committee of Unsecured Creditors, *In re Diocese of Davenport*, No. 06-02229-lmj11 (Bankr. S.D. Iowa Apr. 3, 2008), Dkt. No. 262, at 22 ("For purposes of accepting or rejecting the plan," Unknown Tort Claims class combined with the abuse Tort Claims class and "treated as a single class."); **(ii)** Debtor's and the Official Committee of Unsecured Creditors' Third Amended and Restated Joint Plan of Reorganization for the Catholic Bishop of Northern Alaska, *In re Cath. Bishop of Northern Alaska*, No. 08-00110 (Bankr. D. Alaska Dec. 17, 2009), Dkt. No. 602-1, at 42 (Class 10 impaired voting class of creditors included tort claims and future tort claims); **(iii)** First Amended Disclosure Statement for Debtor's Second Amended Plan of Reorganization Jointly Proposed by Executive Committee of the Association of Parishes, Debtor, Future Claims Representative and Tort Claimants' Committee, *In re The Cath. Bishop of Spokane*, No. 04-08822-FPC11 (Bankr. E.D. Wash. Mar. 7, 2007), Dkt. No. 1773-3, at 33 (current and future claimants treated as one voting class for purposes of accepting or rejecting the debtor's plan) and **(iv)** Third Amended and Restated Disclosure Statement Regarding Plan of Reorganization Dated May 25, 2005, *In re The Roman Cath. Church of the Diocese of Tucson*, No. 4:04-bk-04721-BMW (Bankr. D. Ariz. May 26, 2005), Dkt. No. 401, at 16 (same).

While unknown holders of demands have been separately classified in other diocesan bankruptcy cases, doing so was in the context of a consensual plan of reorganization.

accepting class. Under basic principles of fairness and equity, no single individual should have this power.

Even if Unknown Abuse Claimants may be separately classified, the Debtor filed a motion to retain the Unknown Abuse Claimants Representative on December 9, 2024. As explained above, even if the Unknown Abuse Claimants Representative is retained as of December 18, 2024, the amount of time he will be afforded to determine whether Unknown Abuse Claimants are being treated fairly and equitably is grossly insufficient. The Plan is thus poised to violate the due process rights of unknown and unknowable Abuse Claimants who will manifest injury after the Claims Bar Date—classified in Class 5 of the Plan—by seeking to bind them to the Plan without providing the Unknown Claims Representative adequate opportunity to perform diligence with respect to the Debtor's assets and the number and value of potential Unknown Abuse Claims, or to negotiate the Plan's treatment of Unknown Abuse Claims.

(iii) The Diocese Fails to Establish the Existence of Voting Creditors in Class 6 (Non-Abuse Litigation Claims).

The Diocese classifies Non-Abuse Litigation Claims in a separate Class and proposes to create the Non-Abuse Litigation Reserve to fund distributions to Holders of Allowed Non-Abuse Litigation Claims. But the Debtor does not disclose whether there are any claimants in this Class, the estimated value of their claims, and the amount to be funded into the Non-Abuse Litigation Reserve, making it impossible to know whether there are any creditors in this Class, the value of their claims, or whether claims in this Class are actually impaired.

(iv) The Class 8 (OPF Claim) May Not Serve as the Debtor's Impaired Class.

OPF's vote cannot count when determining whether the Debtor has obtained the consent of one impaired accepting Class of creditors so that it can avail itself of the Bankruptcy Code's cramdown provisions for two reasons. *See* 11 U.S.C. § 1129(a)(10). *First*, contemporaneous with the filing of this Objection, the Committee is filing an objection to OPF's claim (the "**OPF Claim Objection**").[15] *Second*, the OPF is both a statutory and non-statutory insider as explained in the

[15] The OPF Claim Objection is included herein by reference as if it were fully set forth herein.

OPF Claim Objection and section 1129(a)(10) of the Bankruptcy Code provides that insider votes are disregarded for purposes of determining whether an impaired class has accepted the plan.

E. The Plan Cannot Satisfy Section 1129(b)(2)(B) of the Bankruptcy Code.

Even if the Debtor's Plan met all the requirements of section 1129(a), except (a)(8), the Debtor would still not be able to cramdown the Plan on Abuse Claimants because the Plan fails to satisfy section 1129(b)(2)(B) of the Bankruptcy Code, specifically the absolute priority rule. It would be inequitable and contrary to the absolute priority rule to allow the Debtor to impair Abuse Claims by unilaterally deciding how much to pay its victims while reaping the benefits of reorganization, freeing itself of liability, and retaining hundreds of millions of assets for its post-bankruptcy life. The Debtor cannot retain or receive anything from the reorganization until all creditors are paid in full. *See* 11 U.S.C. §§ 507, 726 (unsecured creditors are third in line to receive a distribution from the estate and the debtor is sixth in line).

III.

THE DISCLOSURE STATEMENT CONTAINS INADEQUATE INFORMATION TO ENABLE ABUSE CLAIMANTS TO CAST INFORMED VOTES

Even if the Debtor manages to remedy the Plan deficiencies described above, additional information on Abuse Claimants' treatment must still be provided before the requirements of section 1125 of the Bankruptcy Code are satisfied.

A. The Disclosure Statement Should Include an Easy-To-Digest Summary of What Rights Abuse Claimants Possesses Under the Plan and What They Can Expect in Terms of Recovery and Distribution

Two bankruptcy courts recently denied approval of a diocesan disclosure statement because each lacked an easy-to-digest summary of the projected distribution to, and rights of, survivors. In the *Rockville Centre* bankruptcy case, the Honorable Martin Glenn held:

> As a guiding principle, the Disclosure Statement should provide in easy-to-digest terms what rights an Abuse Claimant possesses under the Plan as well as what an Abuse Claimant can expect in terms of recovery and distribution. The Court believes that such information would allow Abuse Claimants to make an informed assessment how they may fare if they pursued their claims outside of the bankruptcy system and, therefore, whether they would vote in favor of or against the Plan.

Order Regarding the Second Modified Disclosure Statement for First Amended Plan of Reorganization Proposed by the Roman Catholic Diocese of Rockville Centre, at 3, *In re The Roman Cath. Diocese of Rockville Centre*, No. 20-12345-mg (Bankr. S.D.N.Y. Jan. 18, 2024), Dkt. No. 2828; *see also* Order Denying Approval of the Disclosure Statement in Support of Fourth Amended Joint Chapter 11 Plan of Reorganization for the Roman Catholic Diocese of Syracuse Dated Sept. 13, 2024, at 12, *In re The Roman Catholic Diocese of Syracuse*, No. 20-30663-5-wak (Bankr. N.D.N.Y. Nov. 14, 2024), Dkt. No. 2308 (in denying approval of debtor's disclosure statement, court quoted Judge Glenn to set forth its concerns with complexity of information provided). Judge Glenn further held that "Abuse Claimants should be not expected to navigate multiple documents and cobble together bits and pieces of information in an effort to ascertain what rights they may or may not possess." *Id.* at 4–5.

The Disclosure Statement is long and convoluted. It fails to provide a concise statement of the treatment of Abuse Claims and contains confusing information that is irrelevant to an Abuse Claimant's decision to accept or reject the Plan. *See, e.g.*, Debtor's Plan of Reorganization, at 22, Dkt. No. 1444. The Debtor should create a short, "plain English" explanation of the Plan, located near the beginning of the Disclosure Statement to provide Abuse Claimants the information necessary to help them determine whether to vote for or against the Plan. Included should be a simple explanation of the effect of an Abuse Claimant choosing the Distribution or Litigation Option and a summary of the relevant portions of the Survivors' Trust Documents so that Abuse Claimants are not forced to review multiple documents to figure out how their Claims will be treated.

B. <u>The Disclosure Statement Omits Significant Information.</u>

(i) <u>Omitted Claims Valuation Method</u>: The Disclosure Statement fails to explain how the Diocese calculated the total value of Abuse Claims at $98 million and thus, Abuse Claimants have no way to understand whether the amount being paid to the Survivors' Trust is fair and equitable. The valuation is especially suspect given that the average payment this Diocese made to survivors to settle claims asserted during a prior opening of the statute of limitations in the early 2000s was $1.1 million per claim (and $1.7 million after adjusting for inflation). Even if only 345

Abuse Claims were allowed (the number is closer to 375), the Debtor's liability, calculated using the inflation adjusted values that it paid in the early 2000's, would be $586.5 million.[16]

(ii) Omitted Survivors' Trust Documents: The Disclosure Statement refers, many times, to the treatment afforded Abuse Claimants or the powers the Survivors' Trustee holds as being set forth in the Survivors' Trust Documents. But the Survivors' Trust Documents were not filed with the Disclosure Statement and may not be filed until shortly before the Voting Deadline. The Survivors' Trust Documents must be promptly filed and later served with the Solicitation Package so that Abuse Claimants will have adequate opportunity to review them prior to voting. These deficiencies are fatal; until remedied, the Disclosure Statement cannot be approved. *See, e.g., In re Ferretti*, 128 B.R. 16, 19 (Bankr. D. N.H. 1991) (noting a disclosure statement must be succinct and clear).[17]

(iii) Omitted Information re: Analysis of Adversary Proceedings: The Disclosure Statement fails to describe contested matters and adversary proceedings pending before this Court and the potential impact of this Court's adjudication of those matters. Creditors must be informed that the size of the Debtor's estate will meaningfully increase if the Committee prevails in those actions. The Disclosure Statement must also discuss the November 19, 2024 motion the Debtor filed in the District Court requesting that the District Court Insurance Case be stayed pending a decision on confirmation of the Plan and its impact on Abuse Claimants' ability to recover against the Non-Settling Insurers. RCBO's Mot. to Hold Cases in Abeyance, *Roman Cath. Bishop of Oakland v. Pac. Indem.*, No. 3:24-cv-00709-JSC (N.D. Cal. Nov. 19, 2024), Dkt. No. 146.

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[16] To expedite a consensual resolution of this case, the Committee recently filed the Lift Stay Motion through which it seeks a modification of the automatic stay so that six Abuse Claimants' lawsuits against the Diocese may continue. In the context of approval of the Disclosure Statement and confirmation of the Plan, liquidating claims as contemplated by the Bankruptcy Code, using state law, serves a vital (and gating) function: it will allow survivors to determine the approximate percentage return they will receive under the Plan. Indeed, the Disclosure Statement does not—and cannot—provide adequate information until this occurs.

[17] There is no exemption from the requirement of adequate disclosure for creditors who intend to object to a plan. To the contrary, adequate disclosure is required even if all parties are subject to cram down, because "[t]he opportunity for parties in interest to appear and effectively express a dissenting voice would be drastically diminished" otherwise. *In re Jeppson*, 66 B.R. 269, 297 (Bankr. D. Utah 1986).

(iv) Omitted Information re: Unknown Abuse Claims: The Disclosure Statement provides no analysis or reasonable basis for determining the amount to be set aside for Unknown Abuse Claims. There is neither a projection of the number of Unknown Abuse Claims which may be filed nor any valuation of those claims, making it impossible for the Unknown Abuse Claims Representative to make an educated decision on whether the proposed $5 million Unknown Abuse Claims Reserve is fair and equitable.

(v) Omitted Information re: Asset Valuation

The Disclosure Statement provides that each Holder of an Abuse Claim shall receive their allocable share of the Survivors' Trust Assets. But the Disclosure Statement fails to provide an adequate valuation of the Livermore Property or ascribe any value to the Insurance Assignment, both of which are asserted to be substantial components of the Survivors' Trust Assets. The Debtor must provide a detailed, and credible, valuation of those assets so that Abuse Claimants can determine the value of the assets to be placed into the Survivors' Trust.

(vi) Omitted Information re: Number and Claim Valuation

The Disclosure Statement fails to provide the approximate number of Claims in each Class and the estimated value of Claims in each Class. Without such information, it is impossible for a Class to determine whether the treatment it is being afforded under the Plan is fair and equitable. *See, e.g.*, *In re Arnold*, 471 B.R. 578, 585-86 (Bankr. C.D. Cal. 2012) (holding that debtor's disclosure statement failed to provide adequate disclosures because it "does not contain adequate information with respect to the total amount owed to General Unsecured Creditors.").

C. The Disclosure Statement Is Misleading.

(i) Fairness of Distribution to Abuse Claimants: The Debtor seeks to justify the fairness of its distribution to Abuse Claimants by comparing its proposed payment to other Catholic diocese bankruptcy case distributions. That is a specious comparison. The Debtor's charts (i) include certain precedents that support the Debtor's purported valuation and omit other precedents that do not support the Debtor's view, and (ii) fail to disclose critical information necessary for any meaningful comparison, such as the applicable law and statute of limitations governing claims in the bankruptcy case, the debtor's assets, the availability of insurance, the severity of the claims being settled and the average amount paid to survivors in or about 2002, when the statute of limitations was previously opened. What a group of survivors received in another case is irrelevant to what is fair and equitable in this case. Taken to its extreme, the Debtor would have this Court believe that the reasonableness of creditors' recovery in the Sears bankruptcy should be based on the recovery creditors received in Lord & Taylor's chapter 11 case.

Determining whether the proposed distribution to Abuse Claimants is fair and equitable depends on, among other things, the amount of assets in the debtor's estate. Comparing this Chapter 11 Case to a select few Diocese bankruptcy cases scattered around the country does not consider the value of the Debtor's assets, specifically its extensive real estate holdings in one of the most expensive real estate markets in the country, or the value of Abuse Claims in California. Recently, in *In re The Roman Catholic Diocese of Rockville Centre*, Judge Glenn took issue with similar charts proposed to be used in the debtor's disclosure statement, finding them "misleading." Hr'g Tr. of Feb. 8, 2024 Status Conference Re: Hybrid Disclosure Statement, at 86:11-13, *In re The Roman Cath. Diocese of Rockville Centre*, No. 20-12345-mg (Bankr. S.D.N.Y. Feb. 21, 2024), Dkt. No. 2938. The transcript is attached as Exhibit F to the Weisenberg Dec. Judge Glenn ultimately directed that the charts must not be used lest "there's going to be a more fulsome, irrelevant comparison to judgments elsewhere." *Id.* at 87:19-21.

Even if this Court found some value in the comparisons, the Debtor should at least be required to include bankruptcy cases that the Debtor chose not to include in its charts, including the other two California Diocese bankruptcy cases in which plans have been confirmed: (i) *In re The Roman Catholic Bishop of San Diego*, during which the diocese reached a settlement with survivors to pay $198 million to 144 survivors, equaling $1.375 million per claimant, or $2,055,366 on an inflation-adjusted basis and (ii) *In re The Roman Catholic Bishop of Stockton,* during which the diocese reached a settlement with survivors to pay $13.795 million to 27 survivors, equaling an average of $510,926 per claimant, or $661,015 per claimant on an inflation-adjusted basis. The Debtor also fails to mention in its Disclosure Statement the per survivor recovery in the recently announced Los Angeles Archdiocese out-of-court settlement wherein survivors are projected to receive on average $650,000 each. The fairness of the payment to Abuse

Claimants must be determined based on the unique facts of *this* case, not those chosen by the Debtor to drive down survivors' recoveries.

(ii) Value of Survivors' Trust

The Debtor represents in the Disclosure Statement that the Survivors' Trust will be funded with $198.25 million or so. But $81 million of that amount is predicated on the successful rezoning, development and sale of the Livermore Property. If the Survivors' Trust fails to rezone the Livermore Property or obtain entitlements for construction of residential housing, average Survivor recoveries could be reduced to as low as $234,782 (assuming a reduction of funding of $81 million and 345 claims). In addition, the Debtor's estimates fail to consider the costs associated with obtaining necessary approvals and delays to be incurred while the approval process is pursued.

(iii) Comparison to Chapter 7

As shown above, the Liquidation Analysis (Disclosure Statement, Ex. B, Dkt. No. 1445-2) does not fairly present the outcome of a liquidation of the Debtor's assets and what Abuse Claimants would receive in a liquidation.

(iv) Greater Administrative Expenses: The Debtor argues that confirmation of the Plan provides the most favorable outcome for Creditors because the Plan "has the support of, among other entities, the Contributing Non-Debtor Catholic Entities" and the negotiation and drafting required for an alternative plan "would likely add substantially greater administrative expenses." Disclosure Statement, at 68, ¶ A, Dkt. No. 1445. Those statements are not supported by evidence. The mere fact that non-Debtor affiliates that are completely controlled by the Debtor support the Plan and that there may be additional negotiations with those entities over the terms of an alternative Plan does not make the Plan more favorable than other alternatives.

(v) Child Protection Protocols: The Disclosure Statement misleadingly implies that the Plan provides provisions designed to foster the protection of children from Sexual Abuse. *See id.* at 15, ¶ K. Yet Section 12.2 of the Plan refers the reader to Article IV.G. of the Disclosure Statement, which summarizes what the Debtor has done in the past to protect children. *See* Debtor's Plan of Reorganization, at 61, ¶ 12.2, Dkt. No. 1444; Disclosure Statement, at 24, ¶ G, Dkt. No. 1445. In other words, the Debtor's assertion in the Disclosure Statement that it "will do everything in its power to prevent such abuse," rings hollow. *See* Disclosure Statement, at 6, ¶ D, Dkt. No. 1445. The Debtor somehow has concluded that its lackluster policies and protocols—which have failed to adequately protect children—are enough.

(vi) Ownership of Cathedral: The Disclosure Statement is misleading about who ultimately owns the Cathedral Center. It states that the "[Cathedral Corporation] holds legal title to the land and improvements constituting the Cathedral Center" and will continue to own, operate, and maintain it after the Effective Date of the Plan. But in the next paragraph the Debtor explains a proposed settlement under which it would take ownership of the land and improvements constituting the Cathedral Center. *See id.* at 22, ¶ 5.

(vii) "Initial Determination": The Disclosure Statement explains that each Holder of a Trust Claim will receive a notice containing the Initial Determination, including a projected recovery based on the anticipated assets of the Survivors' Trust at the time of the Initial Determination. *See id.* at 45, ¶ 3. But given that the monetization of the Livermore Property and the Assigned Insurance Assets are unpredictable, and undoubtedly will take years, it is unclear how an educated determination of the projected recovery can be made.

D. The Disclosure Statement Is Confusing or Contradictory.

(i) The Cap Imposed by the Final Determination: The Disclosure Statement's explanation of the differing treatment provided to Trust Claimants choosing the Distribution Option and Litigation Option is both confusing and inconsistent. Article I, Section C of the Disclosure Statement, entitled "Plan Mechanics," describes the differing treatment for Trust Claimants that choose the Distribution Option and those that choose the Litigation Option. The Disclosure Statement provides that, regardless of which option is chosen, a Trust Claimant's Abuse Claim is capped by the Final Determination, which is a valuation of the Abuse Claim by a neutral arbiter. *Id.* at 5. Not only is there no discussion of how the "neutral" will be selected, but there is also no discussion of how the Final Determination's allocation of points can be compared to a monetary recovery awarded to an Abuse Claimant. Further complicating the matter is that the

Livermore Property will take years to monetize, making it impossible to know the equivalency between points awarded to Abuse Claimants and a judgment awarded to that claimant.

(ii) The Impact of Obtaining a Judgment: The Disclosure Statement provides that if a Holder of a Trust Claim obtains a judgment against a Non-Settling Insurer, the Holder will have no further claims against the Survivors' Trust. *See id.* at 46, ¶ d. But the Disclosure Statement also provides that following final resolution of each Abuse Claim Litigation, the Survivors' Trustee will make an initial distribution to each Trust Claimant who selected the Litigation Option. *See id.* ¶ e. Thus, it is unclear whether a Trust Claimant who selected the Litigation Option is entitled to receive any distribution from the Survivors' Trust.

Compounding the confusion is Article VII.C.7., which provides that the Survivors' Trustee may settle with the Non-Settling Insurers on some or all of the Abuse Claims. *See id.* at 41, ¶ 7. But there is no mention on how a settlement would impact an Abuse Claimant who selected the Litigation Option or how those settlement proceeds would be distributed.

(iii) Disposition of Survivors' Trust Assets: Article VII.H. of the Disclosure Statement provides that any remaining Assets in the Survivors' Trust shall be transferred to the Reorganized Debtor. *See id.* at 46, ¶ H. But Article I.C. of the Disclosure Statement states that the Survivors' Trustee will make his Final Distribution "which shall be comprised of *all* Trust Claimants' pro-rata shares of all remaining Survivors' Trust Assets, including reserves." *Id.* at 6.

(iv) Who Will Prosecute Claims Against Non-Settling Insurers After Confirmation?: The Disclosure Statement is also confusing and/or internally inconsistent as to who will prosecute the insurance claims against Non-Settling Insurers after confirmation: individual Abuse Claimants or the Survivors' Trust. Article IX.A of the Disclosure Statement provides that "any effort to collect from Abuse Insurance Policies issued by the Non-Settling Insurers to satisfy an Abuse Claim after Confirmation of the Plan shall be sought ***individually by the applicable Holder of an Abuse Claim*** after such Holder's Claim has been liquidated as provided herein." (emphasis added). By contrast, Article XIII.L.d. of the Disclosure Statement appears to contemplate the Survivors' Trust bringing suit against Non-Settling Insurers: "This [No Duplicative Recovery] provision does not prohibit the Survivors' Trust from pursuing recovery from Non-Settling Insurers for coverage of an Abuse Claim for which the Holder of such Abuse Claim has received a recovery from the Survivors' Trust."

(v) Miscellaneous Confusion: The Disclosure Statement mentions a "Liquidating Trust" which appears to be a scrivener's error as no such entity is mentioned elsewhere in the Plan. *See id.* at 33. Finally, Article I.C. of the Disclosure Statement provides if a litigation yields a judgment covered by insurance, the amount will be paid by the Survivors' Trust but Article VII.F.3.d. of the Disclosure Statement provides that a Non-Settling Insurer or other third party liable to such Claim Holder will pay the judgment directly to such Holder. *See id.* at 5, 46.

E. The Solicitation Procedures Are Unworkable.

If this Court approves the Disclosure Statement, the Debtor's proposed Plan confirmation schedule does not provide for adequate time for the parties to prepare for a contested confirmation hearing. The Committee submits that any schedule this Court ultimately approves for confirmation must account for sufficient time for:

(i) allowing the State Court Actions (as defined in the Lift Stay Motion) to proceed to allow the parties accurate data points from which to calculate the Debtor's aggregate liability, or, in the alternative, allow the Committee to conduct fact and expert discovery on the Debtor's Abuse Claims' valuation;

(ii) allowing the Committee's adversary proceedings to continue and conclude so that the Plan accurately sets forth the assets of the Debtor's estate;

(iii) the Debtor and all Contributing Non-Debtor Catholic Entities to produce documents and witnesses which fully disclose their financial position and relationships;

(iv) the Debtor to produce documents establishing the validity of any assets it claims are restricted; and

(v) the Committee and other parties in interest to conduct discovery relating to the Plan.

F. The Committee Should Be Authorized to Send a Letter to Abuse Claimants in the Solicitation Package.

If this Court approves the adequacy of the Disclosure Statement, the Committee requests that the Court (a) allow the Committee to prepare a letter advising Abuse Claimants that the Committee opposes confirmation of the Plan and recommending Abuse Claimants vote to reject the Plan, and (b) direct the Debtor to include the Committee's letter with the Disclosure

Statement, before the ballots in a different (yet legible) color paper so the letter is conspicuous and not relegated to the last document in the Debtor's package. Consistent with the decision in *Jacobson v. AEG Cap. Corp.*, the Committee submits that it is appropriate to include the letter as part of the Debtor's solicitation package. 50 F.3d 1493, 1500 (9th Cir. 1995) ("Interested parties, i.e. creditors and shareholders . . . acting in good faith, can circulate opposition to the debtor's plan."); *In re Pierce*, 237 B.R. 748, 758 (Bankr. E.D. Cal. 1999) (holding that a creditors' committee may "advise the general unsecured creditors of their views on any plan of reorganization.").

IV.

RESERVATION OF RIGHTS

If any objection, in whole or in part, contained in this Objection is considered an objection to confirmation of the Plan rather than, or besides, an objection to the adequacy of the Disclosure Statement, the Committee reserves its right to assert such objection, as well as any other objections, to confirmation of the Plan. The Committee also reserves the right to raise further and other objections to the Disclosure Statement before or at the hearing on it.

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WHEREFORE, the Committee requests that this Court deny approval of the Disclosure Statement and grant the Committee such further and other relief as this Court deems just and proper.

Dated: December 11, 2024

LOWENSTEIN SANDLER LLP
KELLER BENVENUTTI KIM LLP
BURNS BAIR LLP

By: *<u>/s/ Gabrielle L. Albert</u>*
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