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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

Chapter 11

DEBTOR'S REPLY TO OBJECTION AND RESERVATION OF RIGHTS OF THE UNITED STATES TRUSTEE TO APPROVAL OF (I) DEBTOR'S DISCLOSURE STATEMENT AND (II) MOTION TO APPROVE SOLICITATION, NOTICE, AND BALLOTING PROCEDURES

Judge: Hon. William J. Lafferty

Date: December 18, 2024
Time: 10:30 a.m.
Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

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The Roman Catholic Bishop of Oakland, a California corporation sole and the debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case"), hereby files its reply (this "Reply") to *Objection and Reservation of Rights of The United States Trustee to Approval of (I) Debtor's Disclosure Statement and (II) Motion to Approve Solicitation, Notice, and Balloting Procedures* (the "Objection") [Docket No. 1513], filed by the United States Trustee (the "UST").[1] This Reply is filed in support of the Debtor's *Disclosure Statement for Debtor's Plan of Reorganization* dated November 8, 2024 [Docket No. 1445] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the "Disclosure Statement"), and *Debtor's Motion for Order (I) Approving Disclosure Statement; and (II) Establishing Procedures for Plan Solicitation, Notice, and Balloting* [Docket No. 1453] (the "Motion").[2]

I.
INTRODUCTION

Confirmation issues should be reserved for the confirmation hearing and not addressed at the disclosure statement stage unless a proposed plan is so fatally flawed that confirmation would be impossible. The UST raises multiple objections based on the terms of the Plan itself. Those are confirmation issues and not disclosure statement issues, and none of them rise to the "patently unconfirmable" standard for denial of disclosure statement approval based on flaws in the Plan. As to the actual disclosure issues raised in the Objection regarding Church assets and the Survivors' Trust, the Disclosure Statement provides adequate information. The UST's objection should therefore be overruled.

The bulk of the UST Objection is devoted to the issue of what constitutes consent for third-party releases following the Supreme Court's decision in *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071 (2024). The UST argues the opt-out structure for the Third-Party Release in the Plan is non-consensual and therefore violates *Purdue*. As an issue of unsettled law regarding the terms of the Plan, this is not a

[1] The Debtor is concurrently filing a separate reply to the *The Official Committee of Unsecured Creditors' Objection to the Debtor's Disclosure Statement* [Docket No. 1518] filed by the Official Committee of Unsecured Creditors (the "Committee").

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan, Disclosure Statement and Motion.

proper basis for objecting to the Disclosure Statement and should be resolved at confirmation. The UST's interpretation is also inconsistent with the substantial majority of post-*Purdue* cases. Multiple bankruptcy courts have held post-*Purdue* that under appropriate circumstances consent to third party releases can be based on failure to affirmatively opt out of the releases. This is the appropriate result here, where (1) fully 99% of Abuse Claimants are represented by counsel, virtually eliminating any concern regarding inadvertent failure to opt out, and (2) substantial financial consideration is being provided by the released parties in consideration for the release. For these reasons, to the extent the Court is inclined to resolve the Third-Party Release issue at the disclosure statement stage, it should overrule the UST's Objection.

II.

THE RELEASE PROVISIONS IN THE PLAN ARE CONSENSUAL

A. The Supreme Court Expressly Did Not Prohibit Opt-Out Third Party Releases in the *Purdue Pharma* Decision

As the UST acknowledges, the Supreme Court in *Purdue* stated its holding does not "call into question *consensual* third-party releases offered in connection with a bankruptcy reorganization plan [ ]." *Purdue*, 144 S. Ct. at 2087 (emphasis in original). Equally important, however, is the immediately following statement of "*[n]or do we have occasion today to express a view on what qualifies as a consensual release* or pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor." *Id.* at 2088 (emphasis added). The Supreme Court could have held that opt-out plans are non-consensual, but deliberately chose not to. *Id. Purdue* therefore cannot be read, by its on terms, to limit the ability of lower courts to approve opt-out releases, or to change pre-existing law on what constitutes a consensual release. *See id.* The UST's suggestion that *Purdue* effectively overrules prior decisions approving consensual opt-out third-party releases is wrong.

B. An "Overwhelming Majority" of Bankruptcy Courts Following *Purdue* Have Approved Opt-Out Releases

Not only did *Purdue* expressly not bar opt-out releases, but as one bankruptcy court noted in a recent decision, "an overwhelming majority of cases" have found that at a minimum voting in favor of a plan and not affirmatively opting out of a third-party release can be deemed consent to the release. *See In*

re Lavie Care Centers, LLC, 2024 WL 4988600, at *11 (Bankr. N.D. Ga. Dec. 5, 2024). There is strong consensus among post-*Purdue* decisions that return of a ballot in any form, without opting out, constitutes consent to third-party releases. *Id.*, at *14-15; *In re Smallhold, Inc.,* 2024 WL 4296938 at *14-15 (Bankr. D. Del. 2024); *In re Robertshaw U.S. Holding Corp.*, 662 B.R. 300, 322 (Bankr. S.D. Tex. 2024); cf. *In re Tonawanda Coke Corp.*, 662 B.R. 220, 223 (Bankr. W.D.N.Y. 2024) (cited by the UST for the contrary position); *In re Chassix Holdings, Inc.,* 533 B.R. 64, 79 (Bankr. S.D.N.Y. 2015) (same, pre-*Purdue*). The Trustee appears to have cited the only post-*Purdue* case that came out the other way. Even in *Smallhold*, Judge Goldblatt found any creditor taking the affirmative action of returning a ballot, but failing to also opting out, can be deemed to have consented to the plan's third-party releases. *In re Smallhold,* 2024 WL 4296938 at *14-15.

C. Third-Party Party Release Properly Extends to Non-Responding Creditors

This "overwhelming majority" of bankruptcy courts has nevertheless recognized that "the hardest question is what to do with creditors that take no action." *See In re Lavie Care Centers*, 2024 WL 4988600, at *12. The UST relies principally on *Smallhold* in arguing third-party releases cannot extend to non-responding creditors. *See* Objection, p. 15-17. The post-*Purdue* decisions reaching the opposite conclusion are more persuasive than *Smallhold* under the circumstances of this case. *See In re Robertshaw US Holding Corp.*, 662 B.R. 300 (Bankr. S.D. Tex. 2024); *In re Lavie Care Centers*, 2024 WL 4988600; *In re Roman Cath. Diocese of Syracuse*, 2024 Bankr. LEXIS 2807 (Bankr. N.D.N.Y. Nov. 14, 2024).

***Diocese of Syracuse*.** After the Debtor filed the Motion, the Bankruptcy Court for the Northern District of New York issued the first post-*Purdue* decision on third-party releases in a Catholic diocese case. It approved opt-out third party releases, including as to non-responding creditors. *In re Roman Cath. Diocese of Syracuse*, 2024 Bankr. LEXIS 2807. While the court in the *Diocese of Syracuse* case based its decision in part on the notion of the Committee acting in a *de facto* class representative capacity, it also found the opt-out model appropriate based on the fact that nearly all abuse claimants were represented by counsel, and the substantial consideration paid by the released parties for the third-party releases. *Id.* at *13-14. These same factors support the Third-Party Release here.

***Robertshaw*.** In the *Robertshaw* case, the Bankruptcy Court for the Southern District of Texas rejected the UST's argument that consensual third-party releases must be opt-in rather than opt-out. *See In re Robertshaw*, 662 B.R. at 322. As here, creditors in the *Robertshaw* case had the opportunity to opt out at the time they completed and returned their ballots, and the debtor gave each creditor express notice of the consequences of not opting out. *See id.* The Court first affirmed that the *Purdue* decision cannot be read beyond its express limitations, and therefore does not modify existing case law on what constitutes a consensual release. *Id.* As the court observed, the Fifth Circuit already prohibited nonconsensual third-party releases (*See In re Pac. Lumber Co.*, 584 F.3d 229, 251 (5th Cir. 2009)), and it was long-settled law in that circuit that creditors not opting out could appropriately be deemed to consent to the third-party releases for. *Id.* (noting that "[h]undreds of chapter 11 cases have been confirmed in this District with consensual third-party releases with an opt-out."); *Cole v. Nabors Corp. Servs., Inc. (In re CJ Holding Co.)*, 597 B.R. 597, 608–09 (S.D. Tex. 2019). Therefore, because "the third-party release language is specific enough to put releasing parties on notice of the types of claims released," the bankruptcy court overruled the UST's objection raised on the same grounds as its objection here, and confirmed the plan with opt-out third party releases. *In re Robertshaw*, 662 B.R. at 324. In reaching its decision, the Robertshaw court properly rejected the UST's attempt to use *Purdue* to narrow the range of what can be considered consensual third-party releases, relying in part on the Supreme Court's clear statement that its decision should not be read to do exactly that. *Id.* at 322 (citing *Purdue*, 144 S. Ct. at 2087–88).

Lavie Care Centers. The most detailed and carefully reasoned opinion on third-party releases post-*Purdue* is Judge Baisier's decision in *In re Lavie Care Centers*, 2024 WL 4988600. At confirmation, *Lavie Care Centers* addressed a plan with opt-out third-party releases applicable both to creditors who returned ballots and those who did not.[3] *Id.* at *1. The UST objected on almost identical grounds to those raised here, arguing based on general contract law and the Restatement of Contracts, and relying heavily on the *Smallhold* decision, that only opt-in third party releases can be consensual. *Id.* at *8-9.

[3] The plan in *Lavie Care Centers* did not give creditors voting in favor the option to opt out, which the Plan here does. *See id.* at *6.

After summarizing relevant case law, the bankruptcy court acknowledged "there is a case to support every view." *Lavie Care Centers*, 2024 WL 4988600, at *12. Although it recognized there is scant federal law period supporting the inclusion of non-debtor releases in a plan, the court ultimately found that "[t]he best this Court can do on that score" was section 105 and 1123(b)(6) of the Bankruptcy Code. *Id.* *13. Under those provisions, approval turns on whether the release is "appropriate" or "necessary and appropriate" (depending on which section is referenced). *Id.* The court found the UST's state contract law concept "no better" because "the basis for the enforcement of consensual releases has not . . . been described anywhere as a 'contract' for them, or an 'agreement' to them." *Id.* at 14. Returning to the starting point, the court determined:

> … [E]vidence of consent, rather than whether the release is a "necessary or appropriate" plan provisions or constitutes a "contract", appears to be the touchstone for determining whether a creditor can be bound to a release. Or maybe said differently, finding consent is what is necessary to make the Release either a binding contract or "necessary or appropriate" as to an individual creditor in the bankruptcy plan context.

Id.

Going through each category of creditors, the *Lavie Care Centers* court first easily reached the conclusion "supported by many cases" that creditors voting for the Plan consented to the third-party release. *In re Lavie Care Centers*, 2024 WL 4988600, at *14. Next, as to creditors voting to reject the plan, the court reasoned "if you send in the ballot, having filled out your name and the amount of your claim, having signed it, and indicating you reject the Plan, but you do not check the conspicuous opt out box on the ballot, you have communicated consent to give the Release if the Plan is confirmed." *Id.* Finally, addressing the "hardest" question of creditors who took no action in response to the solicitation package, the Court ruled that they could properly be deemed to consent as long as they received notice. *Id.* at 15. This was based on general agreement "with the courts that say that, **service by mail being the rule in bankruptcy, creditors are obligated to pay attention to, and read, their mail, and that failure to do so has consequences**." *Id.* Thus:

> … [I]f a creditor gets materials in a bankruptcy case, and the materials say if you do not take an action, you will be bound by the consensual release, you must do something. You cannot simply ignore it. If you do, you may be "deemed" to consent to the release. Or you may have waived those rights.

Or you may be estopped from enforcing them.

Id.

The Court should reject the UST's objection here for the same reason it was rejected in *Lavie Care Centers*. The idea that creditors can be deemed to consent on the basis of notice is reinforced here, where 99% of Abuse Claimants are represented by legal counsel and the relevant notices will therefore be directed to their counsel.[4]

D. The Cases to the Contrary Relied on by the UST are Not Persuasive

In addition to being in a clear minority, neither of the decisions relied on by the UST that reject out-opts entirely are directly applicable. *See In re Tonawanda Coke Corp.*, 662 B.R. at 223; *In re Chassix Holdings,* 533 B.R. at 79. The bankruptcy court in *In re Tonawanda Coke* relied heavily on specifics of New York law. *In re Tonawanda Coke*, 662 B.R. at 222-223. Further, the court relied on the fact that no consideration was being given for the third-party release, in contrast to the Debtor's Plan, where RCWC is contributing in excess of $14 million for a release. *See id.* The Court's decision to limit opt-out in the *Chassix Holdings* case was not categorical, but rather was specific to the circumstances where a high degree of creditor inattentiveness could be expected. *See In re Chassix Holdings, Inc.*, 533 B.R. 64, 80 (Bankr. S.D.N.Y. 2015). Further, even this case undermines the UST's categorical position, in that as to creditors who voted for the Plan it supports deeming their vote in favor to be consent to the third-party releases. *Id.* ("case law in this District and elsewhere supports the conclusion that the creditors' vote for the Plan constitutes a consent to the releases.").

The *Smallhold* decision is the primary bankruptcy decision relied on by the UST. That case, however, actually supports an opt-out release as to all applicable category of creditors except those who do not respond. *In re Smallhold*, 2024 WL 4296938, *14-15.[5] The flaw of *Smallhold* is that, in scaling back pre-*Purdue* law on opt-out releases, it ignores the *Purdue* Court's caution that its decision did not

[4] As of October 11, 2024, there were 422 total filed Abuse Claims, of which 386 are timely, nonduplicate claims. See Disclosure Statement, p. 40. Of the 422 total claims, only four were filed by pro se individuals (of which one was not timely), and the other 418 were filed by counsel.

[5] The issue of non-voting classes that is the primary focus of *Smallhold* is not applicable here, because non-voting classes are not releasing parties under the Plan.

modify existing case law on consensual third-party releases. The direct result of applying the reasoning of *Smallhold* would be abrogation of the basis for confirmation of hundreds of opt-out plans in jurisdictions that already barred non-consensual third-party releases. *See In re Robertshaw*, 662 B.R. at 322 (recognizing that "hundreds" of plans had been confirmed in the Fifth Circuit based on opt-out third-party releases). Indeed, in abrogating his own prior ruling finding an opt-out to be consensual, Judge Goldblatt ignored the Supreme Court's guidance that its decision in *Purdue* should not have this effect.

In addition, as noted in the motion, opt-out third-party releases as to non-responsive claims have been approved over the UST's objection in at least three subsequent cases in the District of Delaware following Judge Goldblatt's decision in *Smallhold*. *See* Motion, p. 24, ln. 1-20; *In re FTX Trading Ltd.,* No. 22-11068, confirmation order [Dkt. 26404] at p. 21 (Bankr. D. Del., Oct. 8, 2024) (confirmation order approving opt-out releases by creditors who received a solicitation package and did not vote or affirmatively opt out); *In re Wheel Pros, LLC,* No. 24-11939, confirmation order [Dkt. 255] (Bankr. D. Del., Oct. 15, 2024) (same); *In re: Fisker Inc. et al.,* No. 1:24-bk-11390, confirmation order [Dkt. 722], at p. 16-17 (Bankr. D. Del., Oct. 16, 2024) (same). The decision by multiple bankruptcy judges in the same district not to follow *Smallhold* as to opt-out releases for non-responsive creditors undoubtedly weakens its persuasive weight in that context.

E. <u>The State Law "Acceptance by Silence" Argument Relied on by the UST is a Straw Man and Inapplicable</u>

The UST's attack on the Third-Party Release as "acceptance by silence" is the very definition of a straw man. The Debtor never argues its opt-out Plan releases should be approved on contract principles, and would not for the reasons stated in *Lavie Care Centers*. The UST's position assumes a third-party release is only justifiable under state law contract principles of offer and acceptance, the Restatement of Contracts, and Ninth Circuit cases on arbitration clauses in adhesion contracts. *See Norcia v. Samsung Telecomms. Am., LLC,* 845 F.3d 1279, 1284 (9th Cir. 2017); *Reichert v. Rapid Invs., Inc.,* 56 F.4th 1220, 1227 (9th Cir. 2022). This law is simply not applicable to the Third-Party Release, where consent amounts to at most a waiver of rights on the part of creditors after notice and opportunity to opt out, not an affirmative contractual obligation.

As the court in *Lavie Care Centers* noted in rejecting the UST's objection there, "[n]o explanation is provided about why "acceptance" is required, rather than consent…." *In re Lavie Care Centers*, 2024 WL 4988600, at *8. Indeed, there is a "substantial bankruptcy case law that finds that notice and an opportunity to opt out is adequate in a bankruptcy case to constitute consent." *In re Lavie Care Centers*, 2024 WL 4988600, at *8 (noting that the UST attempts to sweep this aside, relying almost entirely on *Smallhold*, and rejecting this attempt).

F. <u>The Circumstances of this Case Support Approval of the Opt-Out Model of Releases</u>

The Third-Party Release in the Plan is narrowly tailored to release only Contributing Non-Debtor Catholic Entities. *See* Plan, § 1.1.92. Further, the release of RCWC is based on a cash contribution of up to $14.25 million by RCWC, based on the number of releases actually received. *See* Disclosure Statement, p. 10, Plan § 13.9. The Third-Party Release is provided only by Holders of Abuse Claims in Class 4, or of Unknown Abuse Claims in Class 5, both of which are voting classes, eliminating any concerns regarding deemed-to-accept or deemed-to-reject classes granting a release. *See* Plan § 13.9. Substantially all affected creditors are represented by counsel, or in the case of Class 5, the Unknown Abuse Claims Representative, virtually eliminating any rational concern of the Third-Party Release being a trap for the unwary. For all of these reasons, under the circumstances of this case, the Third-Party Release should be approved under sections 105 and 1123 of the Bankruptcy Code.

Any concern that an opt-out release might be a trap for the unwary is entirely inapplicable here, because substantially every Abuse Claimant is represented by counsel. Because the filing window of AB 218 closed pre-petition, practically speaking an Abuse Claimant can only have a claim if they filed a complaint in Superior Court before the window closed. As a result, the Abuse Claimants were and are represented by counsel and are highly likely to both know about this Chapter 11 Case and have been advised during the course of it. While the Holders of Unknown Abuse Claims are a limited exception to the foregoing, they will be represented by a professional representative approved by the Court. In fact, **out of 422 Abuse Claims filed, only three timely proofs of claim were not filed by counsel. This amounts to more than 99% of Abuse Claimants being represented by counsel**. This is drastically different from a typical large Chapter 11, or even a mass-tort case like *Purdue* itself, where there could be

substantial risk of creditors failing to make a decision on the releases simply through inattention.[6] Consequently, if an Abuse Claimant does not opt-out, their decision cannot reasonably considered be the result of simple inadvertence. *See In re Mallinckrodt*, 639 B.R. 837, 879 (Bankr. D. Del. 2022) (the "very active" nature of the creditor body was a factor in approving opt-out releases). As the Diocese of Syracuse court put it, "With 94% of the survivors represented by sophisticated counsel, concerns that the legalese of an opt-out ballot may confuse a claimant who inadvertently agrees to the releases are minimized." *In re Roman Cath. Diocese of Syracuse*, 2024 Bankr. LEXIS 2807 at *13.

While the UST presses this objection, the Committee did not object to the opt-out structure, even while objecting to numerous other provisions of the Plan and Disclosure Statement. This fact in itself should alleviate any concern that the opt-out release treats the Abuse Claimants in an unfair or inappropriate manner. *See In re Robertshaw*, 662 B.R. at 324 (noting non-opposition of the Committee to the opt-out release structure as a basis to overrule the UST's objection).

G. The Court Does Not Need to Resolve the Third-Party Release Issue to Approve the Disclosure Statement

Applicability of the Third-Party Release is a legal issue that can be resolved in connection with confirmation of the Plan. Put another way, the Third-Party Release does not render the Plan "patently unconfirmable," and therefore the UST's objection is not a basis to deny approval of the disclosure statement. *See In re Beyond.com Corp.*, 289 B.R. 138, 140 (Bank. N.D. Cal. 2003) (declining to approve disclosure statement where plan was fundamentally inconsistent with the bankruptcy code).

Courts throughout the country have recognized that unless the disclosure statement "describes a plan of reorganization which is so fatally flawed that confirmation is ***impossible***" (*i.e.,* the plan is patently unconfirmable), the court should approve a disclosure statement that otherwise adequately describes the chapter 11 plan at issue. *In re Cardinal Congregate I,* 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990) (emphasis added); *see also In re Unichem Corp.,* 72 B.R. 95, 98 (Bankr. N.D. Ill.), *aff'd*, 80 B.R. 448

[6] The UST further objects to the Opt-Out Release Form being a separate form, rather than part of the ballot. Given the representation of Abuse Claimants by counsel, and the fact that the Class 4 and 5 Ballots clearly refer to the Opt-Out Release Form, the Debtor respectfully submits that this is not a material concern. Nevertheless, if the Court determines that it is appropriate, the release election can be included in the applicable ballots.

(N.D. Ill. 1987) (courts should disapprove the adequacy of a disclosure statement on confirmability grounds "where it is ***readily apparent*** that the plan accompanying the disclosure statement could ***never*** legally be confirmed" (emphasis added)). "Ordinarily, confirmation issues are reserved for the confirmation hearing, and not addressed at the disclosure statement stage." *In re Larsen,* No. 09–02630, 2011 WL 1671538, at *2 n. 7 (Bankr. D. Id. May 3, 2011). "A plan is patently unconfirmable where (1) confirmation 'defects [cannot] be overcome by creditor voting results' and (2) those defects 'concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing.'" *In re American Capital Equipment, LLC*, 688 F.3d 145, 154-155 (3d Cir. 2012) (citing *In re Monroe Well Serv., Inc.*, 80 B.R. 324, 333 (Bankr. E.D. Pa. 1987)). For denial of disclosure statement approval because the plan it describes is patently unconfirmable, it must be "obvious" that the plan cannot be confirmed even if the creditors vote for it. *Id*. at 154.

The UST's objections to the Plan's opt-out releases do not rise to this level. While the Debtor believes the structure of the Third-Party Release should be approved as proposed, if the Court ultimately comes to a different conclusion, the issue can be cured by modification of the Third-Party Release terms of the Plan. Only a change to a completely opt-in release structure would require substantive revisions to the solicitation materials, and as discussed above, the UST's position that this is the only method for consensual third-party releases has been rejected by an "overwhelming majority" of bankruptcy courts addressing the issue. *See In re Lavie Care Centers*, 2024 WL 4988600, at *12.

Consistent with the foregoing, bankruptcy courts have recognized that it is appropriate to defer determination of third-party release issues to the confirmation hearing (or after). *See In re Lavie Care Centers*, 2024 WL 4988600, at *1 (third-party releases addressed at confirmation hearing); *In re Robertshaw US Holding Corp.*, 662 B.R. at 304 (same); *In re Smallhold, Inc.*, 2024 WL 4296938, at *6 (plan previously confirmed, with release issue preserved for later decision).

H. It is Not Premature to Permit an Unknown Abuse Claims Representative to Act on Behalf of Unknown Abuse Claimants

The UST's objection related to the Unknown Abuse Claims Representative's ability to act for the Unknown Abuse Claimants should be overruled. The Plan provisions on providing for the Unknown

Abuse Claims Representative are in no way premature. The Debtor has filed a motion seeking appointment of the Unknown Abuse Claims Representative [Docket No. 1503], and that motion is set for hearing concurrently with the Disclosure Statement.

III.

THE UST'S OBJECTION BASED ON QUARTERLY FEES SHOULD BE OVERRULED

A. The UST's Objection is Not an Appropriate Objection to Approval of the Debtor's Disclosure Statement

The UST's objection regarding the Plan provisions for payment of quarterly fees is not properly made as an objection to the Disclosure Statement. While it is correct that a disclosure statement should not be approved if the plan it describes is "patently unconfirmable," this should not be used as an excuse to turn minor technical objections to confirmation into Disclosure Statement objections, for all the reasons set forth in Section II.G., above. *See In re Larsen*, 2011 WL 1671538, at *2 n. 7 (confirmation issues should be reserved for the confirmation hearing).

B. The Plan Fully Complies With the Requirement for Payment of Quarterly Fees

In addition to being premature, the UST's objection regarding quarterly fees is wrong. The terms of the Plan comply with the requirement for payment of quarterly fees to the UST pursuant to 28 U.S.C. § 1930(a)(6). In the Ninth Circuit, courts have held that "all post-confirmation payments made by reorganized debtors, as well as all payments from the bankruptcy estate, constitute 'disbursements' for the purposes of § 1930(a)(6)." *In re Cent. Copters*, 226 B.R. 447, 449 (Bankr. D. Mont. 1998). Payments by the Survivors' Trust to its beneficiaries are neither "payments from the bankruptcy estate" nor "payments made by the reorganized debtors." *See id.* Nor are they payments on the Debtor's behalf. *See, e.g., In re Genesis Health Ventures, Inc.*, 402 F.3d 416, 421 (3d Cir. 2005) (holding that indirect payments of a debtor's expenses are subject to quarterly fees); *In re Buffets, LLC*, 979 F.3d 366, 373-74 (5th Cir. 2020) (disbursements include payments on behalf of the debtor).

The Bankruptcy Court for the Eastern District of California, reviewing cases on whether payments by third parties fall under 28 U.S.C. § 1930(a)(6), found, "the common thread that appears to bind many of those decisions together is the fact that the debtor had some interest in, or control over, the money

disbursed." *In re Hale*, 436 B.R. 125, 130 (Bankr. E.D. Cal. 2010); *accord In re Charter Behav. Health Sys., LLC*, 292 B.R. 36, 45, 47 (Bankr. D. Del. 2003). Following *Hale*, the Bankruptcy Court for the District of Delaware found disbursements from a creditors' trust were not subject to quarterly fees. *See In re Paragon Offshore, PLC*, 629 B.R. 227 (Bankr. D. Del. 2021). The court in *Paragon* noted that "[b]y distributing the corpus of the Litigation Trust Pro Rata to the beneficiaries of the Litigation Trust, the Trust is not paying expenses on behalf of any Debtors." *Id.* at 231 (internal quotations omitted). Instead, "all 'disbursements related to any of the Debtors' obligations to the Trust beneficiaries … occurred at the Effective Date" when the trust assets were transferred from the debtors to the trust. *Id.*

The cases cited by the UST in support of its argument to the contrary are unconvincing. First, they all address liquidating plans, where a liquidating trust is the successor the debtor. *See In re Atna Res. Inc.*, 576 B.R. 214, 216 (Bankr. D. Colo. 2017) ("all assets and claims of the Debtors were transferred to the Trust, the Debtors were deemed liquidated"); *In re CSC Indus., Inc.*, 226 B.R. 402, 406 (Bankr. N.D. Ohio 1998) ("the Liquidation Trust has stepped into the shoes of Debtors as successor in interest"); *In re Hudson Oil Co., Inc.*, 200 B.R. 52, 53 (Bankr. D. Kan. 1996), rev'd, 210 B.R. 380 (D. Kan. 1997), (the "trust is a liquidating and disbursing agent for the debtors, and would have to pay the fees if they apply to the debtors").[7] This type of case, where the plan creates a "pour over" trust into which all assets of the debtor are transferred, is clearly distinguishable from cases like this one and *Paragon*, where certain assets are transferred to a trust for the benefit of certain claimants. *See In re Health Diagnostic Lab'y, Inc.*, 2023 WL 105586, at *4 (Bankr. E.D. Va. Jan. 4, 2023) (distinguishing *Paragon* in a liquidating trust cases). Second, the cases cited by the UST all address the question of whether the liquidating trust in each case is liable for any fees payable, not the basis for calculation of fees. *See id.*

Whether payments from the Survivors' Trust are "disbursements" for purposes of § 1930(a)(6) depends on whether the Reorganized Debtor would have control over, or an interest in, the money disbursed from the Survivors' Trust. *See In re Hale*, 436 B.R. 125. Once assets are transferred to the trust, the Reorganized Debtor no longer has any interest in, or control over, the funds in the Survivors'

[7] The UST cites to *In re Hudson Oil Co.*, Inc., 210 B.R. 380, 383-384 (Bankr. D. Kan. 1997). However this decision on appeal merely states that the bankruptcy court's ruling on this issue was not properly appealed. *Id.*

Trust. As the *Paragon* court found, this means they are not subject to quarterly fees. *See In re Paragon Offshore*, 629 B.R. at 231. Instead, fees under § 1930(a)(6) are properly assessed, as the Plan provides, on the Debtor's transfer to the Survivors' Trust. *Id.*[8]

The UST does not appear to contest the provision of the Plan that contributions from non-Debtor entities to the Survivors' Trust "shall not be considered distributions by or on behalf of the Debtor or Reorganized Debtor for purposes of calculating U.S. Trustee Fees." *See* Plan, §12.8.4; see Objection, ¶¶ 55-60. To the extent that she does, however, this exclusion is appropriate, because any such payments are not on behalf of the Debtor, but rather are in exchange for the releases provided under the Plan.[9]

IV.

THE DISCLOSURE STATEMENT PROVIDES ADEQUATE INFORMATION

A. The Disclosure Statement Provides Adequate Information on the Basis for Discharge of Claims Against Churches

The UST is correct that the Plan contemplates that the Churches will benefit from the discharge of claims against the Debtor under section 1141 of the Bankruptcy Code. *See* Objection, p. 23, ln. 15-p. 24, ln. 2; Plan, § 13.3. The Disclosure Statement, consistent with the Debtor's First Day Declaration and all subsequent filings, describes that for purposes of Canon law and internal organization, the Churches are understood to be and treated as separate juridic persons. *See* Disclosure Statement, p. 25, 27. For purposes of applicable civil law, however, the Churches do not hold property separately from the Debtor, and do not have a legal existence separate from the Debtor. *See* Disclosure Statement, p. 27 ("None of the parish churches (the 'Churches') within the diocese are separately incorporated entities under California law.").

Because the Churches are not legally separate from the Debtor and are therefore part of the Debtor, they are entitled to the benefit of the discharge under section 1141(d) of the Bankruptcy Code, and the

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[8] The UST acknowledges that it should not be allowed to "double-count" by assessing fees both on disbursements from the Debtor to the Survivors' Trust and then again on disbursements from the Survivors' Trust, but confusing also argues that the Plan should "require both the Debtor and the Survivors' Trust" to pay quarterly fees. *See* Objection, ¶59-60.

[9] For clarity, contributions made to the Survivors' Trust from funds obtained through the Exit Financing provided by RCC are contributions by the Debtor, and the Debtor does not dispute that they are subject to fees under §1930(a)(6).

property of the Churches is subject to section 1141(c), which provides that "after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors." 11 U.S.C. § 1141(c), (d).

The UST's assumption that "[i]t does not appear that the Plan provides for the contribution of Church property to the Survivors' Trust" is simply incorrect. *See* Objection, p. 23, ln. 20-21. As described in the Disclosure Statement, the Debtor is contributing $103 million to the Survivors' trust through the four-year anniversary of the Plan's effective date. *See* Disclosure Statement, p. 10-11. The Disclosure Statement describes the funding of this $103 million as follows: "The Debtor Cash Contribution to the Survivors' Trust will be facilitated in part by a $55 million loan from the RCC. The remaining Debtor Cash Contribution will come from unrestricted cash including unrestricted cash raised from the sale of real estate owned by the Debtor." *Id.* at 11. This includes cash raised from the sale of real estate titled in the name of the Debtor and held for the benefit of the Churches including vacant and other Church property.

B. <u>The Disclosure Statement Provides Adequate Information Regarding the Survivors' Trust</u>

Like many of the UST's objections, her argument that the disclosure statement is inadequate because it does not include the Survivors' Trust agreement, or identify the Survivors' Trustee, is a confirmation objection. The statutory authority relied on by the UST is Section 1129(a)(5)(A)(1) of the Bankruptcy Code, which governs what must be in the Plan, not the disclosure statement.

It is exceedingly common for specific trust-related terms to be disclosed in trust distribution procedures and trust agreements filed after the disclosure statement has been approved, ahead of the voting deadline. *See, e.g., In re Yarway Corp.*, Case No. 13-11025 (BLS) (Bankr. D. Del. March 18, 2015) [Docket No. 827-1] (personal injury trust distribution procedures filed after disclosure statement was approved); *In re Specialty Prods. Holding Corp.*, Case No. 10-11780 (PJW) (Bankr. D. Del. Oct. 23, 2014) [Docket No. 5117-3] (personal injury trust distribution procedures filed after the hearing to seek approval of the disclosure statement); *In re TK Holdings Inc.*, Case No. 17-11375 (BLS) (Bankr. D. Del.

Jan. 23, 2018) [Docket No. 1789-14] (same); *In re United Gilsonite Labs*, Case No. 5:11-bk-02032 (RNO) (Bankr. M.D. Penn. Nov. 14, 2014) [Docket No. 2098-6] (same).

While the Survivors' Trust Documents have not been filed, the Disclosure Statement provides extensive detail regarding the applicable terms of the Survivors' Trust that are more than sufficient to allow an Abuse Claimant to make an informed decision about the Plan. *See* Disclosure Statement, Article VII, pp. 40-47.

C. The Disclosure Statement Provides Adequate Information Regarding the Identity of Release Recipients

The UST overstates the sweep of the release language. *See* Objection, p. 25, ln. 3-18. The releases only extend to the Debtor, the Churches, and the Contributing Non-Debtor Catholic Entities. *See* Plan, § 1.1.92. None of these three is remotely confusing or unclear. The release then simply provides language of a type found in nearly every release, including certain related parties to ensure that releases are effective as to the principal releasees, and cannot be circumvented. *Id.* In arguing that the identity of the releasees is unclear, the UST ignores the limiting language providing that the release "expressly excludes (i) any Person accused of committing a physical act of Abuse upon a Holder of an Abuse Claim or their predecessor(s)-in-interest, and (ii) any Non-Debtor Catholic Entity that is not a Contributing Non-Debtor Catholic Entity." *See* Plan, § 1.1.92. This avoids any concern that non-contributing Non-Debtor Catholic Entities could be swept in without clear disclosure. As to the inclusion of "current and former directors, managers, officers, employees," etc., for the principal releasees, it would be absurd to argue that adequate disclosure requires that each released individual be specifically name. If the scope of the release must be narrowed to avoid a result that is broader than the Code allows or that the Debtor intends, the Debtor will amend the release accordingly.

D. The Disclosure Statement Does Not Need to Address Post-Confirmation Reporting Requirements

The UST objects to the Disclosure Statement on the ground that the Plan and Disclosure Statement do not address the filing of post-confirmation reporting requirements. This is not a proper objection to the Disclosure Statement, because setting forth the requirement to file quarterly reports could not possibly

be material to a creditors' ability to "make an informed judgement about the plan." *See* 11 U.S.C. §1125(a)(1); *In re Diversified Invs. Fund XVII*, 91 B.R. 559, 561 (Bankr. C.D. Cal. 1988) ("The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan.").

Further, while the requirement to file quarterly reports post-confirmation is not disputed, nothing in in those authorities requires the Plan or the Disclosure Statement to include provisions addressing that statutory requirement. Nevertheless, in order to resolve any potential Plan objection on the same grounds, the Debtor will amend the Plan to expressly require the filing of quarterly post-confirmation reports in compliance with the applicable statutory authority.

V.

CONCLUSION

For the reasons set forth above, the Debtor respectfully requests that the Court (1) overrule the US Trustee's Objection, and (2) enter an order, substantially in the form attached as Exhibit 1 to the Motion, approving the Debtor's Disclosure Statement and proposed Solicitation Procedures.

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