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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 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO THE DEBTOR'S AMENDED DISCLOSURE STATEMENT

Judge: Hon. William J. Lafferty

Date: January 16, 2025
Time: 1:30 p.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 *The Official Committee of Unsecured Creditors' Objection to the Debtor's Amended Disclosure Statement* (the "Objection") [Docket No. 1624], filed by the Official Committee of Unsecured Creditors (the "Committee"). This Reply is filed in support of the Debtor's *Amended Disclosure Statement for Debtor's Amended Plan of Reorganization* dated January 3, 2025 [Docket No. 1595] (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").[1]

I. INTRODUCTION

The Debtor's Disclosure Statement should be approved and sent to creditors for their individual consideration. Simply put, the Debtor satisfies the standard for approval of its Disclosure Statement and the Committee's objections – most of which are the same objections the Committee previously argued before this Court – should now be overruled. The Debtor has made good on its commitment to amend the Disclosure Statement to address and resolve the objections stated by the United States Trustee and the Committee and the concerns expressed by the Court at the December 18 hearing.

Much has been said over the past two months in Court filings and argument about the Committee's opposition to the Debtor's proposed Plan, its "alternative vision for case resolution", the motions and adversary proceedings filed by the Committee, and the Debtor's request for a global mediation. Much will continue to be said about such things. But none of this changes the standard for approval of a disclosure statement pursuant to 11 U.S.C. § 1125(a)(1). The Debtor's Disclosure Statement includes adequate information which would enable an individual creditor to make an informed judgment about the Amended Plan and it should therefore be approved by this Court.

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Disclosure Statement and Motion, and the *Debtor's Amended Plan of Reorganization* dated January 3, 2025 [Docket No. 1594] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the "Amended Plan")

II. THE COMMITTEE FAILED TO PROVIDE AN APPENDIX SETTING FORTH ITS POSITION

By the end of the December 18 Disclosure Statement Hearing, two things were crystal clear and confirmed on the record:

1. The Committee wanted to include an appendix to the Disclosure Statement in the Debtor's solicitation package setting forth the Committee's position on the Plan and certain of the Debtor's contentions in the Disclosure Statement (the "Committee Appendix").
2. The Committee was given until January 10, 2025, to file its proposed Committee Appendix, and the Debtor would have a chance to respond to it.

The Committee itself created this expectation. In its objection to the Original Disclosure Statement, the Committee requested the right to include a Committee Appendix in the solicitation package. [Docket No. 1518 at 25.] The Committee then agreed on the record at the December 18 hearing it would file the Committee Appendix along with its objection to the amended Disclosure Statement no later than January 10, with the Debtor's response to the Committee Appendix being due January 14. [Docket No. 1624-1, Transcript of Proceedings dated December 18, 2024 (the "Hrg. Tr.") at 160:7-25.] The Court ordered as much as reflected in the Court's docket entry on December 19. [12/19/24, 1:39 p.m. (PST) Docket Entry ("Committee's objection and the appendix are due by 1/10/2025. Debtor's response due by noon on 1/14/2025" (emphasis added)).] Consistent with all of this, the Committee's counsel, in a call with the Debtor's counsel on December 20, confirmed the Committee would submit the Committee Appendix with its objection to the Amended Disclosure Statement. The Debtor even inserted references to the hypothetical Committee Appendix in the Disclosure Statement, anticipating the Committee Appendix would be filed on January 10, and reflected that it would ultimately be attached as Exhibit G to the Disclosure Statement. [*See*, *e.g.*, Disclosure Statement at Art. II.D.; 2, n. 4; 4, n. 6 and 7; 5, n. 7; 32, n. 9].

Regrettably, despite asking for and receiving permission to file the Committee Appendix, and despite this Court's docket entry confirming this, the Committee did not file (and still has not filed) the Committee Appendix. Instead, the Committee reargues what was rejected at the December 18 hearing,

now demanding "the Committee's position [on the Amended Plan] should be included in the text of the Amended Disclosure Statement in certain places, including in the Executive Summary where the Debtor uses graphs which the Committee believes are highly misleading." [Objection at 26 (Section VII).] In other words, it wants to interlineate its objections and contrary viewpoints into the Disclosure Statement itself. The Court expressly rejected this proposal in favor of the Committee Appendix option. [*See* 12/18/24 Hrg. Tr. at 116:4-117:4.] The Committee gives no justification for reopening this issue, or for failing to file the Committee Appendix it asked for and was ordered to submit.

Whatever the impetus for its about face, the Committee's actions prejudice the Debtor. The Debtor has made plain the urgency of moving this case toward resolution, whether that resolution is a confirmed plan or otherwise. Because the Committee failed to file the Committee Appendix, it is impossible for the Debtor – let alone for the Court – to assess or resolve any disputed portion of whatever writing the Committee seeks at a later date to include in the solicitation package. So, rather than abide by the schedule agreed to by the parties and set by this Court at the December 18 hearing, inevitably the Committee will seek to force delay by asking ask for more time to submit its Committee Appendix, after the Court again rejects its interlineation demand. This, if permitted, will require more time for the Debtor to respond and the Court to consider and adjudicate any disputes.

This Court should not countenance the Committee ignoring the Court's scheduling order nor the delay which the Committee seeks to force. The Court should either hold that the Committee has waived its right to submit a Committee Appendix at all, or it should hold that the solicitation package can be sent to creditors without a Committee Appendix if the Court has not approved a Committee Appendix by January 31, 2025.

III. THE DISCLOSURE STATEMENT PROVIDES ADEQUATE INFORMATION AS REQUIRED BY 11 U.S.C. § 1125.

A. Legal Standard

11 U.S.C. § 1125(a)(1) defines "adequate information" for purposes of a disclosure statement. It generally states that adequate information is such that would enable one to make an informed judgment about the plan. Section 1125(a)(1) expressly limits what must be included: "adequate information need

not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." Ultimately, it is up to the Court's discretion to evaluate the disclosures made and determine whether they are adequate. The Debtor's Disclosure Statement meets the standard required by § 1125 and this Court should therefore overrule the Committee's Objection.

B. The Disclosure Statement Clearly Describes the Litigation Option

The Committee attacks the Litigation Option on several fronts, describing its mechanics as "broken," [Objection at 9], "confusing," [*id*. at 16], and/or in violation of applicable law [*Id*. at 6]. Regarding the final salvo, as outlined in more detail below, this is a confirmation objection on which the Court will receive appropriate briefing from the parties. Generally, it appears the disconnect between the Debtors' insurers (including potential Non-Settling Insurers, as defined in the Plan) and the Committee concerns the effect of the Debtor's *discharge*—not the terms of the Amended Plan—on potential bad faith claims against the Insurers and whether the Debtor may assign those claims to the Survivors' Trust through the Plan. The Debtor's position on this issue is clear: the Survivors' Trust is receiving the "Assigned Insurance Interests," which means "all rights, claims, interests, benefits, responsibilities, and obligations of the Debtor in the Non-Settling Insurer Policies." [Plan § 1.12; Disclosure Statement at VII(E)(6).] These Assigned Insurance Interests, along with the Litigation Option that springs therefrom, are a focal point of the Amended Plan, which is predicated on allowing the Debtors' creditors, primarily Abuse Claimants, to make their own decisions about their preferred outcomes and distributions.

The work that went into the Insurance Assignment and Litigation Option has not gone unnoticed. At the hearing conducted on December 18, 2024, the Court noted the following:

> I have to say, it's not as if any part of the disclosure statement was tossed off lightly. But the provisions about the litigation option and about the continuing rights of the nonsettling insurers, I thought without indicating approval or not, because that's not important right now, they were very, very, very clearly thought through with enormous detail.

Hrg. Tr. at 20:3-9. The Debtor has continued that level of effort, arriving now at a place where the Disclosure Statement should be approved over any objection on these issues.

First, the mechanics that the Committee attacks as "broken" are anything but. The Committee complains the Litigation Option limits Trust Claimants pursuing it to the total value of any judgments received. This is, again, a confirmation objection. The Disclosure Statement describes all aspects of the Litigation Option clearly and succinctly. But the Plan term itself is also only fair. Holders of Trust Claims who select the Distribution Option will do so because it entitles them to more expeditious distributions from the Survivors' Trust. These distributions are only possible if appropriate *pro rata* reserves are established for Litigation Claimants pending the outcome of their cases. Allowing Litigation Claimants to recover *more* than the value of their judgments (which are to be paid primarily from insurance coverage, if any, and *then* are limited to the Reserved Amount) would mean prohibiting interim distributions to Distribution Claimants until all Abuse Claim Litigation has been completed. The Survivors' Trust cannot distribute more money than it has. On the other hand, if a Litigation Claimant receives a judgment below the Final Determination (resulting from scoring by the Abuse Claims Reviewer or the Neutral hearing their appeal), then the outcome they sought – a liquidated claim and a determination of insurance coverage – has been achieved, and *other* Distribution Claimants should be entitled to the excess amount. This, too, is only fair, and the Disclosure Statement describes it clearly and succinctly.

Second, the Committee argues that the Disclosure Statement is unclear as to whether Litigation Claimants can receive distributions from the Survivors' Trust. This is also incorrect. The Disclosure Statement states in plain language the relationship between the Reserved Amount and the Judgment Amount. The Reserved Amount is designed to guarantee a distribution from the Survivors' Trust to the Litigation Claimant *unless* the Judgment Amount is less (as described above) by reserving said amount for such claimant pending the outcome of their case. If available coverage from a Non-Settling Insurer does not pay the Judgment Amount in full, then the Litigation Claimant receives a payment from the Survivors' Trust, up to the Reserved Amount, provided that Litigation Claimant will not receive more than the total amount of his or her judgment from all sources. [*See* Disclosure Statement at I(C)(3) (page 9); VII(G)(5) (pages 55-56)]. Likewise, if the Judgment Amount is greater than the Reserved Amount, and insurance does not cover all or some of it, the Litigation Claimant receives up to the Reserved Amount. [*Id.*]

Third, the Committee asserts that various provisions concerning "allowance" of Trust Claims are contradictory and/or confusing. If that is true, it can be fixed. The Debtor's intent is clear with respect to Abuse Claims, no matter which of the three available options an Abuse Claimant chooses with respect to their claim. First, regarding Abuse Claims that elect the Immediate Payment Option, the Disclosure Statement is explicit that such claims are not "scored or reviewed in any way." [Disclosure Statement at I(B) (page 6)]. The Survivors' Trust Agreement elaborates: "Abuse Claims of Claimants that elect the Immediate Payment will not be scored by the Abuse Claims Reviewer or be subject to Claim objections." [*See* Exhibit F, Docket No. 1595-6, at Art. 5.1 (page 17 of 43)]. This is the reason that the definition of "Trust Claims" in the Amended Plan excepts the claims of claimants that elect to receive an Immediate Payment. Second, regarding Distribution Claimants, their Trust Claim is allowed in the amount of the Final Determination (plus additional *pro rata* distributions) pursuant to the Survivors' Trust Documents. Finally, regarding Litigation Claimants, their Trust Claim is allowed in the amount of the lesser of the Reserved Amount (which arises from the Final Determination) or the Judgment Amount as it relates to the Survivors' Trust. If, at any point, a Litigation Claimant becomes a Distribution Claimant by virtue of a post-Effective Date insurance settlement, allowance of their Trust Claim occurs similarly.[2]

To the extent any amendments or revisions need to be made to the Amended Plan or Disclosure Statement to address these issues, the Debtor will make them. It is not the Debtor's intent, through the Amended Plan or otherwise, to give parties (including Non-Settling Insurers) multiple bites at the apple with respect to claim objections or to circumvent the Litigation Option entirely by allowing *other* parties with no stake in that litigation to weigh in. At the same time, Non-Settling Insurers deserve and must have the right to *contest* claims against them through the Litigation Option, regardless whether that contest is styled as a claim objection.

[2] Section 6.5 of the Trust Distribution Plan provides that if the Survivors' Trustee settles with an Insurer, any Litigation Claimant asserting coverage under that Insurers' policy "shall be deemed to have rescinded their election of the Litigation Option in favor of the Distribution Option and the Survivors' Trustee shall be deemed to have consented to such rescission." [Disclosure Statement, Ex. F, p. 42.]

C. The Disclosure Statement And Liquidation Analysis Provides Adequate Information On The Debtor's Plan Contributions And The Rationale Behind Its Liquidation Analysis.

At the December 18 hearing, the Court asked the Debtor to amend its original disclosure statement to further develop the "why" of its financial contribution and its exclusion of certain real estate assets from its Liquidation Analysis. The Debtor complied. [*See* Disclosure Statement at Art. I.A.ii., Art. I.B, Art. II.D.] By any objective measure, these additions are detailed and plainly worded. To the extent the Court would like further information on this subject, the Debtor repeats what it has disclosed to the Court and has explained numerous times to the Committee.

First, the $63 million Initial Debtor Contribution (to be paid to the Survivors' Trust on the Effective Date) reflects the maximum amount cash the Debtor can contribute on the Effective Date. It will receive a loan of $55 million from RCC on the Effective Date. This was the largest exit facility RCC was willing to offer the Debtor, and RCC was the only viable, realistic exit financing party available to the Debtor. $53 million of the RCC loan will be transferred to the Survivors' Trust on the Effective Date. The balance will be used to fund the Reorganized Debtor's operations. The remaining $10 million of the Initial Debtor Contribution will be paid from cash reserves long set aside to pay creditors.

Second, the Debtor's contributions of $10 million in each of the four years following the Effective Date reflects the reality of the Debtor's financial position. As the Disclosure Statement states, the Debtor will need to sell real estate to simultaneously fund the post-Effective Date contributions to the Survivors' Trust and its approximately $80 million in ongoing debt service payments to RCC on the Debtor's pre-petition and exit facilities. Selling real estate, especially real estate with churches located on it, does not happen overnight. Each property will be subject to its own unique conditions of sale such as re-zoning, lot line adjustments, permits for improvements, and other issues requiring municipal or other governmental approval. The Debtor has exhaustively reviewed its real estate assets and has sought valuations on many of them. The Plan reflects the Debtor's business judgment for what real estate sales it can reasonably accomplish within the first four years after the Plan becomes effective. The specifics of the Debtor's strategy to meet its post-Effective Date obligations will be presented at the confirmation

hearing to support the Debtor's position that the Plan is feasible under 11 U.S.C. § 1129(a)(11). The Committee cites no authority suggesting that this must be done now, at the Disclosure Statement stage.

If ordered by the Court, the Debtor will supplement the Disclosure Statement with this or any other information the Court directs. The Debtor stands on its earlier briefing in support of its Liquidation Analysis. [Docket No. 1541 at 13-15; *see also* Section IV.A, *infra*.]

D. RCBO's Disclosure Statement Otherwise Provides the Required Adequate Information Concerning the Debtor's Plan

For ease of reference, set forth in **Appendix A** and incorporated into this Reply is a chart which sets forth each of the Committee's additional objections to the adequacy of information in the Disclosure Statement, and the Debtor's reply to each. While the Committee has abandoned many of the issues previously raised in the context of the Original Disclosure Statement,, some of these objections are similar. Generally speaking, the Disclosure Statement contains adequate information to allow the Debtor's creditors to cast an informed vote regarding their acceptance or rejection of the Amended Plan.

IV. MANY OF THE COMMITTEE'S OBJECTIONS SHOULD BE OVERRULED BECAUSE THEY ARE PLAN OBJECTIONS AND NOT OBJECTIONS COMPELLING DISAPPROVAL OF THE DEBTOR'S DISCLOSURE STATEMENT.

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 (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)); *In re Larsen,* No. 09–02630, 2011 WL 1671538, at *2 n. 7 (Bankr. D. Id. May 3, 2011) ("Ordinarily, confirmation issues are reserved for the confirmation hearing, and not addressed at the disclosure statement stage."); *In re Southern Montana Elec. Generation and Transmission Cooperative, Inc.*, 2013 WL 5488723 (Bankr. D. Mont. Oct. 1, 2013) ("The Court agrees

that the road to confirmation in this case is not nicely paved, and the Trustee has significant hurdles to overcome, but as stated earlier, that does not warrant disapproval of a Disclosure Statement that otherwise satisfies the requirements of 11 U.S.C. § 1125.").

The Committee's Objection, like its objection to the original Disclosure Statement, is largely based on its allegation that the Plan is patently unconfirmable. "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)). This means for a motion to approve a disclosure statement to be denied on the grounds 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. As before, the Committee does not raise any section 1129 objections to the Amended Plan that rise to this level.

A. <u>Whether The Plan Satisfies The Best Interest Of Creditors Test Is A Confirmation Issue And Not A Condition To Approval Of The Disclosure Statement.</u>

The Committee cannot prevail at this stage – the Disclosure Statement stage – on its argument that the Plan is "patently unconfirmable" because it does not satisfy the best interest of creditors test of 11 U.S.C. § 1129(a)(7)(A)(ii). That is because it is entirely possible that the Plan will, at confirmation, satisfy 11 U.S.C. § 1129(a)(7)(A)(i), in which case the Court need not even examine section 1129(a)(7)(A)(ii).

A plan proponent can satisfy section 1129(a)(7) in one of two ways. First, each creditor in an impaired class can vote to accept the plan. 11 U.S.C. § 1129(a)(7)(A)(i). Second, each creditor in an impaired class "will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount" the creditor would receive if the debtor were liquidated in a chapter 7 case. 11 U.S.C. § 1129(a)(7)(A)(ii). A plan proponent need not satisfy both of these standards. They are an either-or proposition.

The Plan creates five unimpaired classes. These are: (i) Class 3, general unsecured creditors, (ii) Class 4, Holders of Abuse Claims, (iii) Class 5, Holders of Unknown Abuse Claims, (iv) Class 6, Non-

Abuse Litigation Claims, and (v) Class 8, the OPF Claim. If every member of an impaired class votes for the Plan, then the Plan will satisfy section 1129(a)(7)(A)(i), and the Court need not even consider the best interest of creditors test. The Committee swears up and down that this is impossible, that it will not happen. But there is no way to know that right now, before the Plan has even been sent out for a vote. The Debtor is entitled to try, and to do so knowing that if it cannot satisfy section 1129(a)(7)(A)(i), it must satisfy section 1129(a)(7)(A)(ii) if its Plan is to be confirmed. Whether the Debtor can satisfy section 1129(a)(7)(A)(ii) is a confirmation question. The Court can assess the Debtor's liquidation analysis at that time, and can take up the various legal arguments for which assets should or should not be included in that analysis.

As the Court requested, the Debtor added discussions to its Disclosure Statement of the reasons it cannot be compelled to sell real estate on which it operates the Churches [*See* Disclosure Statement Art. I.A.ii, Art. II.D.] In brief, the Ninth Circuit has held that assets of the Debtor's estate that cannot be legally made available for distribution to creditors should not be included in a hypothetical liquidation under section 1129(a)(7) of the Bankruptcy Code. *Security Farms v. Gen. Teamsters, Warehouseman and Helpers Union, Local 890 (In re Gen. Teamsters, Warehouseman and Helpers Union, Local 890)*, 265 F.3d 865, 877 (9th Cir. 2001). Further, the U.S. Supreme Court has held that, in the context of the ministerial exception to federal employment discrimination laws, the First Amendment Religion Clauses prohibit "government interference with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 565 U.S. 171, 188-190 (2012). The decision to operate a church on a piece of real estate is inherently an ecclesiastical decision which affects the faith and mission of the Catholic Church, no less so than who to ordain as a priest or under what conditions to administer the Sacraments. Under the Free Exercise Clause and Establishment Clause, such decisions cannot be forced by government edict or court order, nor can they be delegated to a chapter 7 trustee. The Religious Freedom Restoration Act (RFRA) may offer additional protection. In *In re Roman Cath. Archbishop of Portland in Oregon*, in the context of a section 544(a)(3) claim seeking to avoid all donor and parishioner restrictions on the sale of churches and Catholic school buildings, the bankruptcy court held, "if application of the statute leaves the parishioners and school

children with no place to worship and study, because no facilities are available, and if they establish that worship and study are central to religious doctrine, the burden (on the free exercise of the Catholic faith) could be substantial" in violation of RFRA. 335 B.R. 842, 864 (Bankr. D. Or. 2005) (denying tort committee's summary judgment motion).

None of the cases the Committee attached as Exhibit C to its Objection stands for a contrary proposition. Those cases examined whether the debtor could or did satisfy the best interest of creditors' test, without examining whether in doing so the debtor was obligated to perform a liquidation analysis that included selling all of its church buildings. *Portland* strongly suggests the answer is no, or at least could be no, because of the potential impact of selling all the Debtor's real estate on the ability to carry out the Catholic faith. *Portland* also supports the Debtor's position that this issue must be reserved for confirmation, at which time the parties can present evidence for or against the Debtor's position.

The Committee's attempt to distinguish *Security Farms* ignores that precedent's core holding on section 1129(a)(7): if a debtor cannot be forced to sell an asset, or if an asset cannot be sold, in a chapter 7 liquidation, then it cannot be considered for purposes of the best interest of creditors test. *Security Farms*, 265 F.3d at 877. "Hypothetical" does not mean "regardless of what the law says." Any asset the Debtor cannot as a matter of law be forced to sell is appropriately excluded from its liquidation analysis and from the Court's evaluation of the best interest of creditors test.

B. The Insurance Assignment Does Not Violate the Bankruptcy Code

The Committee argues at length that the Disclosure Statement should not be approved because the Amended Plan contains unlawful provisions, based entirely on the terms of the Insurance Assignment. [*See* Objection, p. 6-9.] This argument fails both because it is not properly stated as an objection to the Disclosure Statement, and because it is wrong on the merits.

The Committee has entirely failed to articulate how any provision of the Insurance Assignment renders the Amended Plan patently unconfirmable, or in any way is inconsistent with the Bankruptcy Code or applicable law. The Committee's arguments focus on extra-contractual exposure for Non-Settling insurers, and in particular the Committee's position that bad-faith remedies in excess of the amount of any

Abuse Claim judgment are eliminated by the Plan. Even if this were true, the Committee has failed to articulate how this results in violation of applicable law.

1. The Insurance Assignment Does Not Include a Third-Party Release in Violation of the Purdue Pharma Rule

The Committee's one attempt to identify how the Insurance Assignment is inconsistent with the Bankruptcy Code is based on *Harrington v. Purdue Pharma L.P.,* 144 S. Ct. 2071 (2024),, and specifically that "the Amended Plan grants Non-Settling Insurers a non-consensual third-party release for any direct claims Abuse Claimants may hold against the insurers for an unreasonable, bad faith refusal to pay a judgment." [*See* Objection, p. 6-7.] This objection fails as a matter of law for two reasons.

First, under no circumstances can any part of the Insurance Assignment be characterized as a release of non-debtor claims. It is beyond dispute that insurance coverage rights under the applicable policies belong to the Debtor, as would any related bad faith claims. Thus, even if the Plan did release bad-faith claims (which it does not), any such release would be a release of claims of the Debtor, which are expressly permitted by the Bankruptcy Code. *See* 11 U.S.C. 1123(b)(3). The fact certain of the *Debtor's* rights are assigned to the Abuse Claimants by the Plan does not create a third-party release, and could not even if the Plan did provide any release.

Second, the Plan does not contain a release of bad faith claims at all. Notably, no bad faith claims against the Insurers currently exist. The Debtor has not pled any claim based on insurer bad faith in the Insurance Coverage Litigation. At most, the Committee is therefore talking about the mere possibility that such claims might exist in the future. Even so, the Amended Plan contains no release of any such hypothetical claims. The Committee's reliance on Section 5.14 of the Amended Plan is misplaced; the language pointed to by the Committee (*see* Objection, pp. 6,7) merely provides that an Abuse Claimant may not recover from the Survivors' Trust and any Non-Settling Insurer collectively more than the amount of any judgment obtained. [*See* Amended Plan, section 5.14.] This language is intended to bar double recovery, not as some kind of release of extra-contractual remedies, if any might exist. [*Id.*] Specifically, it does not purport to bar a Claimant from seeking to include such remedies in any judgment they obtain, or to amend their judgment to add such remedies, in the unlikely event they are found to be available. [*Id.*]

The Committee also points to the argument made by certain Insurers that the Debtor's discharge inherently eliminates any further bad-faith claim. [*See* Objection, p. 7-8.] To the extent the Insurers are correct, the eliminate of a right by operation of law is not a release. Further, this illustrates the absurdity of the Committee's arguments – it cannot be the case that the Debtor receiving a discharge inherently renders any plan containing an assignment of insurers rights unconfirmable, but that is exactly the logical conclusion of the Committee's argument.

2. The Plan is Not "Patently Unconfirmable" Because the Committee Disagrees With Some Provisions of the Insurance Assignment

As set forth above, the argument that the Insurance Assignment contains a release of third-party claims is utterly without merit. Despite its attempts to characterize its objection as being based on some violation of applicable law, the Committee's objection to the Insurance Assignment otherwise boils down to disagreeing with the terms of the Debtor's resolution with the Non-Settling Insurers. In particular, the Committee believes the Amended Plan negatively affects the ability of Abuse Claimants to assert bad faith claims against insurers, and the Committee thinks the Insurance Assignment should be structured differently to better preserve any such claims. [*See* Objection, p. 8.] The fact that the Committee is unhappy with the resolution the Debtor was able to reach after months of hard-fought litigation and extensive negotiation is not a valid disclosure statement objection.

The Committee's scattershot objections to other specific provisions of the Insurance Assignment likewise fail because they are by no means appropriate as disclosure statement objections. More specifically (each romanette below corresponds to the same romanette in the Objection):

i. Individual Right to Seek Coverage: The Plan provides each Abuse Claimant the right to independently decide whether to elect the Litigation Option and seek coverage. This is inherently inconsistent with a continuing collective coverage action being pursued at the same time. To the extent there are common issues, nothing prevents doctrines of preclusion from applying. Further, the Committee has not articulated how this issue could render the Amended Plan patently unconfirmable

ii. *Cumis* Counsel: Appointment of independent counsel under Cal. Civil Code § 2860 and *San Diego Navy Fed. Credit Union v. Cumis Ins. Soc'y, Inc.,* 162 Cal. App. 3d 358, 375, 208 Cal. Rptr. 494, 506 (Ct. App. 1984), is inapplicable because Reorganized Debtor will no longer have any financial responsibility for paying claims. Further, the Committee has not articulated how this issue could render the

Amended Plan patently unconfirmable.

iii. Jurisdiction for Coverage Disputes: Abuse Claimants electing the Litigation Option should be able to seek a coverage determination from a court of competent jurisdiction that adjudicates the underlying claim. To the extent the language of section 8.3.10 is inconsistent with this principle, the Debtor will amend it accordingly. The Committee has not, however, articulated how this issue could render the Amended Plan patently unconfirmable.

iv. Affected Insurer Consent to Settlement: The provision the Committee objects to simply provides that the Debtor and/or Survivors' Trust cannot settle an Abuse Claim without the consent of the *affected* Insurer. This is appropriate, since while the Survivors' Trust might be the nominal defendant under the Channeling Injunction, the affected Insurer has the only financial exposure. Further, the Committee has not articulated how this issue could render the Amended Plan patently unconfirmable.

C. The Plan Otherwise Complies With the Bankruptcy Code

The Committee's argument that the Amended Plan is "replete with broken mechanics" based on four items, each of which would at most require a minor tweak to the Plan even if the Committee were correct, is illustrative of the overblown rhetoric that pervades the Committee's objection. [*See* Objection, pp. 9-10.] It is also yet another example of the Committee's desperate attempt to turn relatively minor objections at confirmation into disclosure statement objections.

First, the Committee's argument that the definition of Allowed and mechanics of the Litigation Option could prevent an Abuse Claimant from being a beneficiary of the Survivors' Trust is addressed in section III.B., above.

Second and third, the fact that the Plan does not cut off the right of parties other than the Survivors' Trustee to objection to claims is transparently not a basis to object to the Disclosure Statement, and does not merit further discussion at this point. The Debtor is certainly willing to confer with the Committee regarding these issues prior to the Confirmation hearing.

Fourth, section 5.4 cannot reasonably be read as disallowing all Unknown Abuse Claims, given the extensive provisions for treatment of Unknown Abuse Claims asserted within four years provided in the Plan and Trust Documents. Again, to the extent some clarification is helpful, the Debtor is willing to confer with the Committee on this issue prior to the Confirmation hearing.

V. THE CONFIRMATION HEARING SHOULD BE SET IN EARLY MAY

The Debtor acknowledges the Committee's right to seek discovery in connection with confirmation of the Amended Plan, although the Debtor believes that all parties would be better served by a focus on resolution through renewed mediation. A confirmation hearing in early May should provide more than sufficient time for any discovery the Committee requires. The Committee's position regarding the need for further discovery should be tempered by the fact that the Debtor has already turned over literally thousands of documents in response to hundreds of requests for documents by the Committee.[3]

VI. CONCLUSION

For the reasons set forth above and based on the information submitted to the Court in connection with the hearing(s) on the matter, the Debtor respectfully requests the Court (1) overrule the Committee's Objection, and (2) enter the Debtor's Proposed Order approving the Debtor's Disclosure Statement and proposed Solicitation Procedures.

DATED: January 14, 2024

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[3] It should be noted that on at least one issue identified by the Committee, valuation of the Livermore Property, the Committee has already obtained a valuation pursuant to the *Order Authorizing Retention of Douglas Wilson Companies as Real Estate Consultant to the Official Committee of Unsecured Creditors* [Docket No. 1332].

APPENDIX A

	Committee's § 1125 Objections to Amended Disclosure Statement and Debtor's Reply to Each			
	Committee's Objection	**Citation to Committee Objection (Article of Committee's Objection)**	**Debtor's Reply**	**Citation to Disclosure Statement (Article and Page)[1]**
1.	No "Easy-To-Understand" Summary	V(i)	The first nine+ pages of the Amended Disclosure Statement contain the Executive Summary setting forth, in succinct and clear terms, including straightforward bullet pointed lists and graphics: • Which assets will be contributed by which parties; • The sources of such assets, as well as potential values to the extent knowable at this time; • How such contributions compare to similar diocesan and religious order cases/Plans; • The mechanics of the Amended Plan, including the Initial Distribution, the Distribution Option, and the Litigation Option; • A graphic reflecting the decision tree for Abuse Claimants with respect to the Amended Plan; • A description of the scoring process for Abuse Claims, including how an individual score relates to potential distributions; • Additional explanatory information regarding the process for making distributions from the Survivors' Trust; and, • The Debtor's Non-Monetary Commitment to Healing and Reconciliation. The Executive Summary was amplified in the Amended Disclosure Statement to provide, in particular, additional easy-to-understand diagrams and descriptions regarding the impact of the choices available to Abuse Claimants under the Amended Plan. The Committee's objection should be overruled on this basis.	I(A)-(D) (pages 1-10).

[1] Unless otherwise noted, references are to the *Amended Disclosure Statement for the Debtor's Amended Plan of Reorganization* [Docket No. 1595].

	Committee's § 1125 Objections to Amended Disclosure Statement and Debtor's Reply to Each			
2.	Released Parties Still Too Broad	V(ii)	The Amended Plan addresses the Committee's prior concern regarding Released Parties, clarifying that: > The Plan does not purport or attempt to release or grant permanent injunctions to any other diocese, archdiocese, or religious organization that is not a Contributing Non-Debtor Catholic Entity. Presently, RCWC and Adventus are the only Contributing Non-Debtor Catholic Entities under the Plan." Also, the Amended Disclosure Statement clearly states that: "The Plan also expressly excludes from the release the perpetrators of abuse identified in Abuse Claims." Finally, the Amended Disclosure Statement explains that: > Because the Churches are not separately incorporated legal entities, as a matter of California law they are not separate from the Debtor, and they do not own or hold a legal or equitable interest in property separate from the Debtor. Thus, the Churches are included in the releases and permanent injunction in favor of the Debtor. The Committee's objection should be overruled on this basis.	III(F) (page 19). III(E) (page 18).
3.	Risks with Livermore Property Valuation	V(iii)	The Amended Disclosure Statement clearly and succinctly describes potential risks associated with the expressed value of the Livermore Property. In particular: > The Livermore Property is worth between $43 million and up to approximately $81 million or more if it is entitled for residential development, such that the sale of the Livermore Property by the Survivors' Trustee could contribute such amount following its sale to the Survivors' Trust Assets. > … > The Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single-family homes. The Debtor	I(A)(i) (page 2).

	Committee's § 1125 Objections to Amended Disclosure Statement and Debtor's Reply to Each			
			has engaged with City of Livermore officials and staff regarding the entitlement process for many years. Additionally, the Executive Summary includes a chart giving zero value to the Livermore Property as a baseline for comparison. Finally, the Risk Factors section of the Amended Disclosure Statement also explains the risk associated with entitlement of the Livermore Property: As stated previously, the Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single-family homes. The Debtor is optimistic that not only will the City approve a change to residential use, but that the property will realize the value the Debtor has placed on it. There is no guarantee either will happen. The Committee's objection should be overruled on this basis. As set forth in the briefing in response to the Committee's original Disclosure Statement Objection, the Debtor is not required to provide appraisals of assets in its Disclosure Statement.	I(B)(page 4). XVIII(D) (page 85).
4.	Omitted Claims Valuation Method	V(iv)	As set forth in the briefing in response to the Committee's original Disclosure Statement Objection, the Amended Disclosure Statement does not attempt to provide a valuation of Abuse Claims asserted against the Debtor and is not required to do so. Rather, the Liquidation Analysis (Exhibit B) sets forth in detail the Debtor's analysis of a hypothetical liquidation of its assets in chapter 7. In response to prior comments from the Committee and instructions from the Court, the Debtor also included discussion of the Liquidation Analysis methodology in the Amended Disclosure Statement itself. Additionally, the Amended Disclosure Statement also contains additional information concerning the representative cases chosen for the analyses in the Executive Summary. The Committee's objection should be overruled on this basis.	n/a II(D) (page 16). I(B) (pages 5 and 6).

	Committee's § 1125 Objections to Amended Disclosure Statement and Debtor's Reply to Each			
5.	"Misleading" Recovery Estimates	V(v)	The Amended Disclosure Statement and Liquidation Analysis are consistent on the number of projected claims receiving distributions for purposes of calculation and presentation: 345. This number is derived from the Debtor's thorough review of the Abuse Claims as described in Article V(H)(2) (page 37). The demonstrative example of the interaction between claims-scoring and distributions assumes 250 claims, but that is not misleading. The Committee's objection should be overruled on this basis. This objection is merely another attempt by the Committee to have its position inserted directly into the text of the Debtor's Disclosure Statement. To the extent the Committee raises a separate objection in the context of the Initial Determination by cherry-picking incomplete statements, the entire context of the Amended Disclosure Statement is important in that it references exactly the same factors noted by the Committee: > The Initial Determination will include a projected total recovery for the Trust Claimant based on the anticipated Survivors' Trust Assets available for distribution. ***Actual distributions may change based on, among other things, the value of the Livermore Property when sold and recoveries for Litigation Claimants from Non-Settling Insurers that free up additional funds for Distribution Claimants***. (emphasis added). This objection should be overruled, as well.	*Compare* I(B) (page 4 and 5), II(D) (page 16), V(H)(2) (page 37), and Liquidation Analysis at B(2)(i) (page 3) (all describing 345 Abuse Claims) with I(C)(2) and VII(G)(2) (using 250). I(C)(ii).

	Committee's § 1125 Objections to Amended Disclosure Statement and Debtor's Reply to Each			
6.	Omitted Information re: Unknown Abuse Claim	V(vi)	Like the Original Disclosure Statement, the Amended Disclosure Statement outlines the creation of the $5,000,000 Unknown Abuse Claims Reserve funded by a portion of the Survivors' Trust Assets. The Debtor is necessarily unaware of the magnitude of Unknown Abuse Claims at this time. The amount reserved for Unknown Abuse Claims in this Plan is greater than the most recent confirmed or proposed plans in diocesan bankruptcy cases containing such provisions:[2] • *Camden*, confirmed 3/15/2024: $1,250,000;[3] and, • *Syracuse*, revised 11/27/2024: $3,000,000.[4] The Committee's objection should be overruled on this basis.	VII(F) (page 52).
7.	Omitted Information re: Non-Abuse Claims	V(vii)	The Amended Disclosure Statement and Liquidation Analysis provide clear and succinct information regarding Non-Abuse Litigation Claims, which are classified in Class 6 under the Amended Plan, and the creation of the Non-Abuse Claims Litigation Reserve. The Committee's objection should be overruled on this basis.	X(G) (page 65).
8.	Omitted Information re: Non-Committee Avoidance Actions	V(viii)	The Debtor is unaware of any Avoidance Actions outside of those alleged by the Committee as described in Article V(K) entitled "The Committee's Alternate Vision of Case Resolution." The Debtor does not anticipate pursuing any such actions. The Committee's objection should be overruled on this basis.	V(K) (page 40).

[2] The *Modified Chapter 11 Plan of Reorganization Proposed by the Roman Catholic Diocese of Rockville Centre, New York and Additional Debtors*, confirmed on December 4, 2024, does not contain an unknown abuse claims reserve. *See* Docket No. 3447 in Case No. 20-12345-MG.

[3] *See* Docket No. 3659 in Case No. 20-21257-JNP in the Bankruptcy Court for the District of New Jersey at section 2.2.124.

[4] *See* Docket No. 2337 in Case No. 20-30663-WAK in the Bankruptcy Court for the Northern District of New York at section 1.1.194.

	Committee's § 1125 Objections to Amended Disclosure Statement and Debtor's Reply to Each			
9.	"Miscellaneous Issues"	V(x)	• The Debtor agrees the inclusion of "or" instead of "and" in connection with the proposed opt-out provision is a scrivener's error. • The Initial Debtor Contribution will consist of $53 million in Cash received from the Exit Facility and $10 million in non-restricted Cash held by the Debtor. The $63 million number on page 51 is a typographical error. • The Amended Disclosure Statement is consistent that the Survivors' Trustee shall make the Final Distribution following monetization of all Survivors' Trust Assets and resolution of all Trust Claims. Article VII(G)(4)(d) contemplates the outcome where funds are not claimed after the Final Distribution. • The Amended Disclosure Statement is consistent that the Insurance Coverage Litigation need not continue given the existence of the individualized Litigation Option. To the extent clarification in the Amended Plan regarding use of funds to pursue settlements with Non-Settling Insurers is necessary, the Debtor will so clarify. • The Survivors' Trust Documents, specifically the Survivors' Trust Distribution Plan, contains significant discussion of the Neutral Review Process in Section 3.4 of that document, including that: The Neutral Determination shall use the same Criteria and Evaluation Factors set forth in Section 4.1 with respect to the Abuse Claims Reviewer and score the Trust Claim accordingly	III(G) (page 19). VII(E)(1) (pages 50-51). VII(G)(4)(d) (page 54). n/a (Objection cites to Amended Plan). Exhibit F(1) (page 33 of 43, Docket No. 1595-6).

	Committee's § 1125 Objections to Amended Disclosure Statement and Debtor's Reply to Each			
10.	Liquidation Analysis / CTN	VI (page 21)	The Committee asserts that the Liquidation Analysis fails to disclose assets held by a third party, CTN, or a revenue stream from grants to the Debtor. This assertion: 1) was not discussed at the prior hearing or included in the Committee's previous objections, 2) does not provide any justification for the request about a non-debtor's assets and 3) ignores descriptions in the Disclosure Statement, Liquidation Analysis, and Financial Projections regarding the grants received from CTN. The Financial Projections, in particular: CTN receives royalty payments from leases of spectrum to third-party telecommunications providers. These funds are used to operate CTN with a portion historically granted to the Debtor. It is expected that these grants will continue and remain at the $2.1 million level in 2025 and 2026 with a 3% growth rate thereafter. Further, regarding footnote K of the Liquidation Analysis specifically, the Debtor disclosures that it has the right to appoint directors of CTN – this is the extent of the Debtor's "interest" in CTN, and is appropriately valued with a liquidation value of $0. As the Committee is aware, the Debtor does not hold any ownership interest in CTN, nor any legal right to continued grants from CTN.	IV(D) (page 23); Exhibit B at 8, 11; Exhibit C at 3,
11.	Non-Debtor Financial Information	VI (page 21)	Similarly, the Committee requests a litany of information regarding non-Debtor affiliates (defined as Contributing Non-Debtor Catholic Entities in the Plan) for the past five years. This, too, is a new issue that was not raised at the prior hearing or in any prior briefing. There is no justification for this request, which is vastly overbroad and includes " the current use of any real property and a designation of whether or not the property is considered central to the mission of the Diocese and / or the entity seeking a release." The Committee provides no explanation for why this information is necessary nor why it did not raise it previously.	n/a