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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 SECOND AMENDED DISCLOSURE STATEMENT** Judge: Hon. William J. Lafferty Date: March 3, 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 Second Amended Disclosure Statement* (the "Objection") [Docket No. 1773],[1] filed by the Official Committee of Unsecured Creditors (the "Committee"). This Reply is filed in support of the Debtor's *Second Amended Disclosure Statement for Debtor's Amended Plan of Reorganization* dated February 19, 2025 [Docket No. 1763] (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

A. The Disclosure Statement Process to Date

On November 8, 2024, the Debtor filed *Debtor's Plan of Reorganization* [Docket No. 1444] (the "Original Plan") and accompanying *Disclosure Statement for the Debtor's Plan of Reorganization* [Docket No. 1445] (the "Original Disclosure Statement"). Shortly thereafter on November 13, 2024, the Debtor filed its *Motion for Order (I) Approving Disclosure Statement; and (II) Establishing Procedures for Plan Solicitation, Notice, and Balloting* [Docket No. 1453] (the "Approval Motion"). Following initial feedback from the Court and other parties and a hearing conducted on December 18, 2024, the Debtor filed its Amended Plan [Docket No. 1594] and Amended Disclosure Statement [Docket No. 1595] in support of same on January 3, 2025. Additional hearings on the Approval Motion and the Amended Disclosure Statement followed on January 16, 21, and 30, 2025.

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[1] The Objection was initially filed at Docket No. 1772 but contained, in an unredacted form, information that was provided to the Committee pursuant to a protective order. The Committee refiled a redacted Objection at 1773.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Disclosure Statement and Motion, and the *Debtor's Second Amended Plan of Reorganization* dated February 18, 2025 [Docket No. 1757] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the "Plan").

Following the January 30 hearing, the Court, at the Debtor's request, set a further hearing for March 3, and directed the Debtor to file a further amended Plan and Disclosure Statement not later than February 18. The Debtor complied, filing its Plan and the Disclosure Statement in support thereof that day. [Docket Nos. 1757, 1763.]

Under 11 U.S.C. § 1125(b), a disclosure statement is satisfactory if it provides adequate information for creditors and interest holders affected by a proposed plan to make an informed decision regarding whether to accept or reject the plan. *See, e.g.*, *In re Cal. Fidelity, Inc.*, 198 B.R. 567, 571 (B.A.P. 9th Cir. 1996) ("At a minimum, § 1125(b) seeks to guarantee that a creditor receives adequate information about the plan before the creditor is asked for a vote."). The Disclosure Statement reflects the Debtor's ongoing, good faith attempts to resolve concerns raised by the Committee and the Court while satisfying the section 1125(b) standard. The Disclosure Statement contains prominent, significant insertions:

- Providing background disclosure regarding the "why" of the Debtor's proposed Plan, including specific contributions from the Debtor (e.g. different real estate holdings to be liquidated or put up as collateral for its exit facility) and other entities to support a finding that the Plan is fair and equitable, Disclosure Statement at 2, Art. I(A)(ii);
- Explicitly referencing and then describing, in detail, the unresolved legal issues with respect to the fate of extracontractual claims against the Insurers following the Insurance Assignment, which such language is set forth in more detail below, *id*. at Art. I(A)(iii), XVIII(A);
- Outlining the mechanics of the Plan, including Immediate Payments, the Initial Determination and Claims Scoring process, the impact on distributions of a Trust Claimant's election to pursue the Distribution Option or the Litigation Option; *id*. at Art. (I)(C)(i)-(iii).

These insertions are in addition to multiple technical or clarifying changes to the Plan and Disclosure Statement too numerous to list here.

True to its word, the Debtor also provided a significantly revised Liquidation Analysis, filed at Docket No. 1771, that includes a "Supplemental Liquidation Analysis" addressing a hypothetical liquidation of all of the Debtor's real property.[3] Taken together these additions, supplementations, clarifications, and amplifications more than meet the standard of "adequate information" under § 1125(b).

[3] The Debtor reserves the right to argue that this is not the appropriate analysis.

The Disclosure Statement should be approved to allow actual creditors—rather than just the Committee—to evaluate the Plan.

B. <u>The Committee's Attempts to Block Solicitation</u>

The Committee objected to approval of both the Original Disclosure Statement and the Amended Disclosure Statement on various bases, arguing that Survivors (and other creditors) should not even get the chance to express their opinion by voting. At the same time, the Committee requested that, should the Court ultimately approve the Disclosure Statement, the confirmation hearing in this case be delayed significantly to allow certain alternatives that the Committee prefers to proceed. Despite having each of its motions seeking to implement its "alternative vision" denied to date, the Committee still objects to the Disclosure Statement – in many cases not even acknowledging the ways in which that document and the Plan specifically addresses their past objections – and continues to oppose sending the Second Amended Plan out for vote.

The Committee continues to argue *confirmation* objections at the *disclosure statement* stage, clothing the parts of the Plan it does not like in the veneer of patent unconfirmability. This time, the Committee focuses on three main arguments:

1. That the "Insurance Assignment violates state law;"
2. That the "Plan's claims allowance mechanism violates applicable law and is otherwise inherently flawed;" and,
3. That the "Plan is not proposed in good faith because it attempts to manufacture impaired consenting classes" through treatment of Unknown Abuse Claims and OPF.

[Objection at 1]. The Committee also raises (or re-raises) additional arguments against approval of the Disclosure Statement as written, including, but not limited to, requesting even more information about the risks associated with the Livermore property; a continued request to interlineate the Committee's position in the text of the Disclosure Statement; and at least six months for discovery and pre-trial preparation prior to (what the Committee assumes will be) a contested confirmation hearing. Each of these objections should be overruled (in some cases, again) such that the Disclosure Statement is approved for solicitation to individual creditors. The Court has heard enough argument from counsel about how claimants *might* vote and what claimants *might* think. The time has come for claimants to speak for themselves.

II. THE DISCLOSURE STATEMENT SHOULD BE APPROVED.

A. Risks, if Any, Associated with the Insurance Assignment Are Adequately Disclosed.

In a single-sentence argument pointing only to previous briefing on the issue, the Committee again argues that the Plan is patently unconfirmable because the Insurance Assignment violates applicable law. This is not only incorrect but also misses the point. The ultimate question—as framed by the Court itself—is not whether the Plan should be confirmed. It is whether the Disclosure Statement should be approved.

On January 29, 2025, the Court issued its *Memorandum Concerning Certain Issues Raised During January 21, 2025 Hearing on Approval of the Disclosure Statement* [Docket No. 1673], the conclusion of which invited argument "whether (1) in light of the uncertainties inherent in the current structure of the Plan and the resulting disagreement concerning the effect of confirmation, it would ever be appropriate to have creditors vote on such a Plan, and (2) what language might appropriately apprise creditors of the risks that confirmation of the Plan may eliminate valuable rights under applicable non-bankruptcy law." [*Id*. at 6]. On February 7, 2025, the Committee filed its *Brief in Response* [Docket No. 1705] to the Court's memorandum. Recognizing the Court had already concluded the Insurance Assignment did not run afoul of the prohibition against non-consensual third-party releases, the Committee "respectfully disagree[d] with the Court," re-urged its arguments on that point, and, among other things, argued for a delayed discharge and against approval of any disclosure statement soliciting a plan of reorganization containing something akin to the Insurance Assignment on the basis that the risks of such a plan—regardless the Committee's actual legal position on the underlying issues—cannot possibly be adequately described.

In its *Brief in Opposition* [Docket No. 1745] responding to the Committee's filing, dated February 14, 2025, the Debtor highlighted: 1) changes in the forthcoming Plan (filed on February 18, 2025) to defray any risks regarding so-called *Hand* claims for bad faith failure to pay a judgment, *id*. at 2-3, and 2) the fact that no California court has yet said which side of the issue on whether bad faith failure to settle claims survive the bankruptcy discharge, is right. [*Id*. at 3-7]. Thus, as the Court itself noted, this is not just a question without an answer. It is a question incapable of being answered in this forum or anytime soon. This cannot be the basis for denying solicitation of the Disclosure Statement or, as a result thereof, confirmation of the underlying Plan. The ultimate issue is, of course, whether language could be inserted in the Disclosure Statement to properly apprise creditors of the risks associated with the Insurance Assignment's effect on extracontractual claims against the Insurers.

As stated in the Debtor's Brief in Opposition, the answer to that question is a resounding "yes." In the Disclosure Statement, the Debtor addressed this issue in two different places. First, the Debtor included a specific reference to and direction to read, later language in the Executive Summary, at the very beginning of the Disclosure Statement:

> As set forth in detail below, there are significant unresolved legal issues with respect to the Insurance Assignment. The Debtor strongly encourages all Holders of Abuse Claims to refer to the Risk Factors section below, specifically Article XVIII(A), regarding the relative positions of the parties.

[Disclosure Statement at 5, Art. 1(A)(iii)]. Later, in a section entitled "Risks Associated with the Insurance Assignment," the Debtor set forth the relative position of the parties—the Insurers, the Committee, and itself:

> The Insurance Assignment effected by the Plan provides Trust Claimants who choose the Litigation Option (defined above as "Litigation Claimants") with the opportunity to liquidate their claims against the Debtor (as a nominal party) by way of a judgment in the tort system and then seek to recover the amount of their judgment under any applicable insurance policies of the Debtor. The ability of Litigation Claimants to monetize their judgment through recovery from Non-Settling Insurers on account of the Assigned Insurance Interests is a fundamental aspect of the Plan that the Debtor believes has tremendous value for such Claimants in the form of contractual rights (i.e., the potential insurance coverage for the judgement under the insurance policies) and potential extracontractual rights (i.e., through a potential future cause of action for bad faith against the Non Settling Insurers). At present, the Debtor believes that it holds no existing bad faith cause of action against any of its Insurers. Therefore, no such cause of action (as opposed to insurance rights) can or will be assigned under the Plan. However, the Debtor believes the intent of the Plan is to assign all of Debtor's rights under its insurance – including any potential future bad faith claims.
>
> The Committee contends that Litigation Claimants may, nevertheless, be able to assert potential direct bad faith claims against any of Debtor's insurers should an insurer fail in good faith to pay a covered judgment, after the Effective Date based upon the decision in *Hand v. Farmers Ins. Exchange*, 23 Cal. App.4th 1847 (1994) ("*Hand*"). Section 5.14 of the Plan reserves the rights of Litigation Claimants to try to assert such bad faith claims directly based upon potential future actions by the Insurers after the Effective Date based upon the *Hand* decision.
>
> The Insurers contest whether any bad faith claims could be successfully asserted by Litigation Claimants, whether directly or through assignment from the Debtor. The Insurers assert, *inter alia*, that the Debtor will not be negatively affected by any post Effective Date future Insurer actions and therefore will not have a bad faith cause of action

> against the Insurers capable of assignment post Effective date. The Insurers further contest whether Hand is a correct statement of California law such that Litigation Claimants could have a direct bad faith cause of action against any Insurers. They also assert that supposed future bad faith claims based on things that have not yet happened are entirely speculative. If the Insurers' contentions in this regard are upheld by a court in future litigation, Litigation Claimants that obtain a covered judgment against the Debtor in name only would be able to recover money from the Non-Settling Insurers under any applicable insurance policy up to the limits of those policies, but would not be able to recover any extracontractual damages (i.e. damages in addition to the insurance coverage provided under the insurance policies) based on any future acts or omissions by the Non-Settling Insurers.
>
> The Committee believes the Insurers' position is not an accurate statement of the law, and certain post-confirmation conduct by Insurers that allegedly violate obligations to act in good faith would survive confirmation of the Plan, such as the obligation to pay a covered judgment, and that an Insurer's violation of that obligation could give rise to a direct bad faith cause of action on the part of Litigation Claimants. The Debtor believes this is an open question of law, with strong arguments on both sides of the issue, and does not predict here how a California court would ultimately rule.
>
> The Debtor notes that the insurance coverage rights assigned to the Litigation Claimants under the Plan have significant value standing alone even if the Insurers are correct regarding either the *Hand* decision, specifically, or bad faith claims, generally, (*i.e.*, such that there is no bad faith recovery).
>
> In any event, as recognized by the Court in its *Memorandum Concerning Certain Issues Raised During January 21, 2025 Hearing on Approval of Disclosure Statement* [Dkt. No. 1673], the outcome of the dispute related to potential, future bad faith claims is not merely uncertain, it is unlikely to be determinable at confirmation, and likely cannot be determined until such time (if ever) that an Insurer is alleged to have acted in bad faith, which may occur, if at all, years after the occurrence of the Effective Date in this case.

[Disclosure Statement at 86-87, Art. XVIII(A)]. This language is clear, explicit, and complete as to the positions of the parties and provides more than adequate information to apprise claimants of the supposed risks.

As foreshadowed in its *Brief in Opposition* [Docket No. 1745] to the Committee's brief on the Insurance Assignment, the Debtor has amended sections 5.14 and 8.7 of the Plan to defray possibility that the Plan could be argued to preclude claims against Insurers for bad faith failure to pay a judgment. Specifically, Section 5.14 was revised as shown below (additions in blue, removals in ~~red~~):

> ***5.14. Additional Terms Regarding Class 4 and Class 5 Claims.*** Except as otherwise provided herein, terms for resolution of and distribution in connection with Abuse Claims in Class 4 or Class 5 shall be as provided in the Survivors' Trust Documents. For the avoidance of doubt, (i) any such Holder of an Abuse Claim shall not recover in the aggregate from the Survivors' Trust and any Non-Settling Insurer an amount greater than the amount of the judgment issued by the applicable court of competent jurisdiction ~~in connection with~~on the underlying Abuse Claim~~.~~, (ii) any such Holder of an Abuse Claim is not barred by this Section 5.14 from seeking

> extracontractual damages under the holding of *Hand v. Farmers Ins. Exchange*, 23 Cal. App.4th 1847 (1994) ("*Hand*"), and (iii) all defenses and the rights of any Non-Settling Insurer to oppose any such claim by a Holder of an Abuse Claim under *Hand* are fully preserved, including that *Hand* is not a correct statement of applicable law and that it would not apply to any such asserted claim.

[Docket No. 1764], Ex. A (Redline of Second Amended Plan), p.31-32. Likewise, section 8.7 was revised to incorporate these terms. Any objection that the Plan be its terms precludes extracontractual damages otherwise available under the *Hand* decision is therefore moot.

B. The Disclosure Statement Otherwise Provides Adequate Information.

While the Committee abandoned many of the issues previously raised in the context of the Original and Amended Disclosure Statements, some of the issues raised in the Objection are similar. All should be overruled.

1. The Livermore Property:

The Debtor added language to the Disclosure Statement (such language being in blue below) at Art. I(A)(i) (pages 1 and 2) and I(A)(ii) (page 5), regarding the risks associated with the stated valuation of the Livermore Property if it was *not* re-entitled for the construction of single-family homes:

> The Survivors' Trust will be funded with (a) $103 million in cash contributed by the Debtor, (b) a contribution of real estate which the Debtor believes is worth between approximately $43 million and $81 million (or more) if it is entitled for residential development…
>
> The Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single-family homes. The Debtor has engaged with City of Livermore officials and staff regarding the entitlement process for many years. but cannot guarantee that such entitlement efforts will ultimately be successful. If the Livermore Property is ultimately not entitled for the construction of single-family homes, then total possible creditor recoveries under the Plan may be materially less than projected.

The Risk Factors section of the Disclosure Statement also explains the risk associated with entitlement of the Livermore Property at Art. XVIII(E) (page 89), and this language remains unchanged:

> 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.

Now, the Committee pivots to a different argument—that additional disclosure about the status of the "Debtor's discussions with the City" is necessary. [Objection at 9]. That this argument was not previously made in any filing and was not raised in any meet-and-confer discussions with the Debtor underscores its illegitimacy. The Committee seeks delay, not additional information.

The Disclosure Statement clearly and succinctly describes the risks associated with the Livermore Property and the re-entitlement process. Additional description of that process is unnecessary. The Committee's Objection should be overruled on this basis.

2. *The Debtor's Alternative Liquidation Analysis*

As described above, the Debtor filed a significantly revised Liquidation Analysis that includes a "Supplemental Liquidation Analysis" as requested by the Court. [*See* Docket No. 1771-1]. The Liquidation Analysis, which is approximately 14 pages long, speaks for itself as to the methodology and assumptions utilized.

The Committee's Objection argues, without support, that the "Debtor must explain each analysis and how and why they differ." [Objection at 9]. The Liquidation Analysis itself does this, primarily in the detail regarding "Property, Plant & Equipment." The Committee's Objection should be overruled on this basis.

3. *The Mission Alignment Process*

Previously, the Committee raised the Debtor's prepetition Mission Alignment Process in the context of § 1129(a)(3) as an attack against the Debtor's good faith in proposing the Plan. Here, the Objection pivots again, raising new inadequate disclosure arguments for the first time:

> Thus, the Debtor has not committed to sell any Church property, when before the bankruptcy, it was contemplating selling 30 or so properties. Creditors should be informed why the Debtor has chosen not to implement the Mission Alignment Process as previously contemplated and whether the Debtor plans to implement it over the next five to ten years.

[Objection at 10]. As an initial matter, the Committee's statement is plainly wrong. In describing the "why" of the Debtor's Plan, the Disclosure Statement contains the following description of real estate to be liquidated "to support the funding of the Plan:"

- The Reorganized Debtor will either utilize as collateral for the loan RCC will make to the Debtor in support of the Plan or liquidate all ***eleven vacant real estate parcels titled in the name of the Debtor*** which are not part of a larger parcel containing a Church or ministry-related building.
- The Reorganized Debtor will ***either utilize as collateral for the loan RCC will make to the Debtor in support of the Plan or liquidate vacant portions of***

seventeen real estate parcels titled in the name of the Debtor which the Debtor has determined may be liquidated while allowing the Debtor to continue its mission, even though they are each part of a larger parcel which includes a Church or ministry-related building which is currently operating.

- The Reorganized Debtor will either utilize as collateral for the loan RCC will make [] to the Debtor in support of the Plan or liquidate the Debtor-owned portions of ***twelve real property locations on which Churches currently operate either as primary or secondary locations***.
- The Reorganized Debtor will liquidate seven residential homes and Adventus will liquidate one residential home and contribute the proceeds to the Reorganized Debtor, all of which are currently used in connection with the Debtor's ministry.
- Furrer Properties, Inc. will liquidate the three parcels of property on which Cooper's Mortuary operates and which includes a four-unit apartment building (three total parcels of real estate) and contribute the proceeds to the Reorganized Debtor.
- If necessary to use as a source of collateral for the RCC loan, RCBO will utilize other real estate currently being used in support of the Debtor's ministry.

[Disclosure Statement at 4 (emphasis added)]. Thus, the Debtor has clearly articulated its intent to monetize *all* existing vacant real estate titled in its name, twelve parcels on which Churches currently operate, and significant additional property. The Committee's focus on closing additional Churches belies its intent to usurp the Debtor's judgment on that sacred process and is not an issue of disclosure.

Furthermore, the Committee cites no authority suggesting a proposed plan of reorganization can be found to be not proposed in good faith under section 1129(a)(3) on the basis that a statement the Debtor made pre-petition is allegedly different from the proposed plan. Nor could any such authority conceivably exist. Section 1129(a)(3) "directs courts to look only to the <u>proposal</u> of the plan, not the <u>terms</u> of the plan" in determining whether the plan was proposed in good faith. *Garvin v. Cook Investments NW, SPNWY, LLC*, 922 F.3d 1031, 1034-1035 (9th Cir. 2019) (emphasis added). Again, the Committee has acknowledged on the record before this Court the good faith of all parties who participated in more than eight months of mediation in this case, which mediation resumed this week at the initiative of the Debtor. The Committee <u>still</u> offers no explanation for how the Plan is not proposed in good faith or was proposed in a manner forbidden by law.

4. <u>Committee Interlineation</u>

The Objection repeats the request—raised first at the December 18 hearing and not the Committee's written objection to the Original Disclosure Statement—to interlineate its position at various points in the Disclosure Statement. Those points are included in the blue-lined Disclosure Statement attached as Exhibit C to the Objection. This is despite the prior agreement from the Debtor that: 1) the Committee could draft and attach a letter, to be transmitted with the Disclosure Statement upon solicitation, 2) the Debtor would cite and hyperlink to that letter where necessary in the Disclosure Statement, and 3) the Court's prior instructions and/or rulings on this exact issue. [*See* 12/18/24 Hrg. Tr. at 116:4-117:4; 1/21/25 Hrg. Tr. at 28:2-30:7]. This request should be overruled again, as the mere length of the *Debtor's* Disclosure Statement does not justify the Committee's attempted rewrite of a document in which it does not join.

What's more, the nature and placement of the Committee's edits is wholly inappropriate. The Committee is seeking to usurp the Debtor's disclosure statement forcing the Debtor to include the Committee's criticism of the Plan in the Debtor's document. Among other things, the Committee proposes inclusion of a statement in all caps at the ***top*** of the Executive Summary, not just referencing the Committee Letter, but also reciting the Committee's encouragement to vote to reject the Plan. This is a transparent effort to discourage creditors from reading the Executive Summary at all. It is more than sufficient that the Debtor has agreed to include the Committee's letter,[4] and even include hyperlinks to the Committee's position on specific issues.

For these reasons, the Disclosure Statement contains adequate information to allow the Debtor's creditors to cast an informed vote regarding their acceptance or rejection of the Plan and should be approved. The Committee's Objection should be overruled in its entirety.

III. THE COMMITTEE'S CONFIRMATION OBJECTIONS SHOULD BE OVERRULED.

As the Debtor has repeatedly noted, 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,

[4] Subject to resolution of the Debtor's objections to the letter, which will be forthcoming. Although the Committee certainly has the right to state its position in its letter, it should not be permitted to make factual assertions that are plainly inaccurate.

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.").

Like its objections to the Original Disclosure Statement and the Amended Disclosure Statement, the Committee's Objection is premised on the assertion 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 approval of 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 Second Amended Plan that rise to this level.

A. <u>The Committee's Attack on the Plan's Allowance Procedures is a Confirmation Issue and Wrong.</u>

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. The Committee's desperation to find any argument to delay approval of the Disclosure Statement is made plain in its arguments that its quibbles with the claims allowance rise to the level of violating applicable law, to say nothing of patent unconfirmability. To the extent there is any meritorious objection, it is clearly a confirmation objection that need not be addressed, much less resolved, at this stage.

Further, the argument that the process violates applicable law is just wrong. Allowing parties-in-interest to object to claims clearly does not violate any law, nor does the practical effect of a potential limited delay in initial distributions. The Committee's argument is based solely on principles of standing, but it is not clear how these principles lead to a violation of law. The terms of the Plan regarding objection do not cut off the right of parties to object, but they also do not create standing for any party that otherwise lacks standing.

This objection does not merit further discussion at this point. The Debtor's Disclosure Statement meets the standard required by § 1125 and this Court should therefore overrule the Committee's Objection.

B. <u>The Committee's New Good-Faith Challenge is a Confirmation Issue and Also Wrong.</u>

A chapter 11 plan must be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Ninth Circuit recently held § 1129(a)(3) "directs courts to look only to the <u>proposal</u> of the plan, not the <u>terms</u> of the plan" in determining whether the plan was proposed in good faith. *Garvin v. Cook Investments NW, SPNWY, LLC*, 922 F.3d 1031, 1034-1035 (9th Cir. 2019) (emphasis added).

The Committee argues that the plan is proposed in bad faith and violates section 1129(a)(3) because the Plan classification and treatment of the Class 8 Claim (the OPF Claim), and the classification of the Class 5 Claims (Unknown Abuse Claims). The Committee offers neither explanation nor authority to support its inflammatory suggestion that the Debtor is acting in bad faith. Because these objections are to the terms of the plan, they are plainly not proper objections under section 1129(a)(3). *See Garvin*, 922 F.3d at 1034-1035.

Further, these objections to classification and treatment are plaining not properly raised as disclosure statement objections. There is an appropriate procedure for raising the Committee's objections, but a disclosure statement objection is not it. The Committee has already filed multiple objections to the OPF Claim, which are currently set for hearing on March 26. If the Committee succeeds in obtaining disallowance of the OPF claim, then Class 8 will be a nullity. If it does not, then inclusion of Class 8 in the Plan is proper. Likewise, the Committee can certainly make its arguments regarding the Class 5 Claims in connection with Plan confirmation.

The Committee has acknowledged on the record before this Court the good faith of all parties who participated in more than eight months of mediation which preceded the filing of the Plan. The Committee offers no explanation for how the Plan is supposedly not proposed in good faith or was done in a manner forbidden by law. Nor could it.

As such the Debtor's Disclosure Statement meets the standard required by § 1125 and this Court should therefore overrule the Committee's Objection.

C. <u>The Insurance Assignment Does Not Violate Applicable Law</u>

To the extent necessary in the context of an objection to confirmation, the Debtor reiterates the Insurance Assignment does not violate applicable law. The Debtor incorporates the legal argument set forth in its *Brief in Response* [Docket No. 1705] on this issue, as if fully set forth herein.

IV. THE CONFIRMATION HEARING SHOULD BE SET IN MAY

The Debtor acknowledges the Committee's right to seek discovery in connection with confirmation of the Plan. However, the Committee's proposal for a six-month discovery and pre-trial process does not take into account the economic realities of this bankruptcy and is designed only to cause delay. A confirmation hearing in May (or, at the latest, June) provides more than sufficient time for any discovery the Committee requires. Also, as noted previously, 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.[5]

V. CONCLUSION

For the reasons set forth above and based on the information submitted to the Court in connection with the hearings on this matter, the Debtor respectfully requests the Court (1) overrule the Committee's

[5] Additionally, on at least one issue identified by the Committee where discovery *might* be necessary, 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].

Objection, and (2) enter the Debtor's Proposed Order approving the Debtor's Disclosure Statement and proposed Solicitation Procedures.

DATED: February 26, 2024

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