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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:

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

Debtor.

Case No. 23-40523-WJL

Chapter 11

PACIFIC INSURERS' OPPOSITION TO MOTION TO ENLARGE THE CLAIMS BAR DATE TO ACCEPT A LATE FILED PROOF OF CLAIM

Date: April 30, 2025
Time: 10:30 AM
Location: 1300 Clay Street, Ctrm. 220
Oakland, CA 94612
Judge: Hon. William J. Lafferty

Pacific Indemnity Company, Pacific Employers Insurance Company, Insurance Company of North America, and Westchester Fire Insurance Company (collectively, "Pacific Insurers"), by and through their undersigned counsel, respectfully file this opposition to the *Motion to Enlarge the Claims Bar Date to Accept a Late Filed Proof of Claim* ("Motion" or "Mot.") [Dkt. No. 1865] submitted by The Zalkin Law Firm, P.C. ("Zalkin") on behalf of Movant-Claimant John JB Doe ("Movant"). In support of this opposition, Pacific Insurers respectfully state as follows:

I. INTRODUCTION

Zalkin has represented Movant since December 2022 and knew about the September 2023 deadline for filing proofs of claim well in advance. But, rather than timely file Movant's proof of claim, Zalkin came to this Court in April 2025—nearly ***19 months*** after the Bar Date—and asked the Court to excuse the law firm's "pure unintentional oversight" and allow a late filing. Mot. at 7. The Court should reject Zalkin's request. Zalkin "bears the burden of presenting facts demonstrating" that its failure to timely file was the result of "excusable neglect." *In re Pac. Gas & Elec. Co.*, 311 B.R. 84, 89 (N.D. Cal. 2004); Fed. R. Bankr. P. 9006(b)(1). Zalkin has failed to meet its burden.

First, Zalkin has not offered a permissible reason for the late filing. It points to an internal docketing error and a high workload, but bankruptcy courts routinely decline to permit late filings on those grounds. *See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 392, 398 (1993) ("[W]e give little weight to the fact that counsel was experiencing upheaval in his law practice at the time of the bar date."); *Iopa v. Saltchuk-Young Bros., Ltd.*, 916 F.3d 1298, 1301-02 (9th Cir. 2019) (noting that excusable neglect is limited to matters that "were beyond the control of counsel" and rejecting issues with case management); *see also In re Boggs*, 246 B.R. 265, 268 (B.A.P. 6th Cir. 2000).

Second, permitting the 19-month-late filing would disrupt the case and prejudice the Debtor. This case is potentially mere months away from resolution. The Court has approved the Debtor's disclosure statement, the Debtor has begun soliciting votes for its Chapter 11 plan, claimants have until May 30 to vote on the plan, the case is proceeding under an expedited pre-

trial discovery and briefing schedule, and the confirmation trial will start on August 25. Given the highly advanced stage of this proceeding, allowing a late proof-of-claim filing now risks undermining the administration of the case.

Finally, Zalkin's unexplained delay in seeking relief after discovering its "oversight" in mid-February does not support a finding that it acted in good faith. Mot. at 7. Because Zalkin has failed to meet its burden to show excusable neglect for its nearly 19-month delay, the Court should deny the Motion.

II. STATEMENT OF FACTS

On July 25, 2023, the Court entered its *Order Establishing Deadlines for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof*, which set a deadline of September 11, 2023 for filing proofs of claim against the Debtor (the "Bar Date") [Dkt. No. 293, ¶ 2]. Zalkin "indisputably" knew about the "existence" and "significance of the Bar Date in this proceeding." Mot. at 11. Indeed, Zalkin has been actively involved in this case since well before the Bar Date. Zalkin "represents several sexual abuse claimants involved in this bankruptcy, including a member of the Survivors Committee," has "participated vigorously" in the case, and has engaged with the "mediation proceedings." Declaration of Devin M. Storey ("Storey Decl.") at 2, 5 [Dkt. No. 1865-1]. Despite being "fully aware of the Diocese of Oakland bankruptcy," Storey Decl. at 5, Zalkin failed to file Movant's proof of claim by the Bar Date.

Meanwhile, this case, which began in May 2023, has progressed significantly and may be mere months away from completion. The Debtor filed its original Chapter 11 plan and disclosure statement on November 8, 2024 and subsequently filed the Third Amended Plan of Reorganization on March 17, 2025 and the final version of the Third Amended Disclosure Statement on April 3, 2025 [Dkt. Nos. 1444, 1445, 1830, 1874]. On April 4, the Court approved the Third Amended Disclosure Statement and the solicitation procedures for the Third Amended Plan [Dkt. No. 1877]. The Debtor is now soliciting votes for its Chapter 11 plan, and claimants have until May 30 to vote on the plan [Dkt. No. 1877]. The confirmation process is moving

forward under an expedited pre-trial discovery and briefing schedule, with the confirmation trial set for August 25 [Dkt. Nos. 1877, 1893].

Just before the confirmation proceedings got underway, Zalkin asked this Court to enlarge the Bar Date to allow Movant to file a late proof of claim [Dkt. No. 1865]. Movant asserts claims against the Debtor, the Franciscan Friars of California, Inc., and the Golden Gate Area Council of the Boy Scouts. Storey Decl. at 2. Zalkin asserts that its failure to timely file Movant's claim was a "pure oversight" by "Local Counsel and its support staff" resulting from a "failure of our systems to track [Movant's] case." Mot. at 8-9; Storey Decl. at 5; *see also* Mot. at 11 ("Local Counsel incorrectly classified the claim as an internal matter[.]"). Zalkin also states that it was handling "a significant press of business at the end of 2022" in filing sexual-abuse claims before the reviver window closed. Storey Decl. at 3. But Zalkin claims this fact is part of "an explanation, not an excuse," for the error. Storey Decl. at 3.

Zalkin discovered its oversight only in "mid-February of 2025," when Movant "asked for a status update." Storey Decl. at 5; Mot. at 8. Zalkin asserts that this Motion was "a priority since that time, subject only to hearings that had already been set and could not be moved." Storey Decl. at 5; *see also* Mot. at 8 ("This motion has followed as quickly as time and other deadlines permitted."). But Zalkin did not actually file the Motion until April 1, 2025, a month and a half after realizing it had not timely filed Movant's claim [Dkt. No. 1865].

III. ARGUMENT

A bankruptcy court may, "for cause shown," allow a claimant to file a proof of claim after the Bar Date if the failure to timely file "was the result of excusable neglect." Fed. R. Bankr. P. 9006(b)(1). The claimant "bears the burden of presenting facts demonstrating excusable neglect." *Pac. Gas & Elec*, 311 B.R. at 89; *see also In re Edwards Theatres Cir. Inc.*, 70 F. App'x 950, 951 (9th Cir. 2003). Courts consider the four *Pioneer* factors to determine whether there is excusable neglect, which are "[1] the danger of prejudice to the debtor, [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith." *Pioneer*, 507 U.S. at 395; *Iopa*, 916 F.3d at 1301. Zalkin's failure

to file the proof of claim by the Bar Date does not satisfy the *Pioneer* factors and therefore was not the result of excusable neglect warranting a late filing.

1. Zalkin's Reason for the Delay Weighs Against the Motion

Misclassifying Movant's case is not a reason to excuse the significant delay in submitting the proof of claim or seeking relief from this Court. "[T]he authorities construing *Pioneer* weigh the reasons for the delay factor most heavily." *Pac. Gas & Elec.*, 311 B.R. at 91. When determining if the stated reasons for delay are adequate, courts consider whether the reasons "were beyond the control of counsel." *Iopa*, 916 F.3d at 1301-02; *Pioneer*, 507 U.S. at 395. Attorney inadvertence or clerical issues are not adequate reasons to permit late filings. *See id.* at 392 ("[I]nadvertence . . . do[es] not usually constitute 'excusable' neglect."); *Boggs*, 246 B.R. at 268 ("'Clerical or office problems' are simply not a sufficient excuse for failing to file a notice of appeal within the ten day period."). Nor do challenges managing a law practice justify a late filing. *Pioneer*, 507 U.S. at 398 ("[W]e give little weight to the fact that counsel was experiencing upheaval in his law practice at the time of the bar date."); *Iopa*, 916 F.3d at 1302 (rejecting the rationale that the lawyer had "several challenges in managing his caseload, particularly following the departure of the associate who managed this case").

The reason-for-delay factor weighs decisively against the Motion. The delay in filing the proof of claim was entirely within Zalkin's control. Zalkin has been actively involved in this case and "indisputably" knew about the "existence" and "significance of the Bar Date in this proceeding," so it was fully capable of timely filing Movant's claim. Mot. at 11; *see* Storey Decl. at 2, 5. Zalkin does not argue otherwise.

Rather, Zalkin tries to offer a patently inadequate rationale of "counsel error" and "support staff" error. Mot. at 9. As part of its "explanation," Zalkin states it was handling "a significant press of business at the end of 2022" in filing sexual-abuse claims before the reviver window closed. Storey Decl. at 3. But courts have squarely rejected these rationales as a basis for finding excusable neglect. The Supreme Court "g[a]ve little weight to the fact that counsel was experiencing upheaval in his law practice at the time of the bar date," even though the disruption prevented counsel from accessing the claimant's case file until after the bar date.

Pioneer, 507 U.S. at 384, 398. Zalkin's rationale has even less weight here, where Zalkin points to no "upheaval" in its work, let alone any disruption that prevented it from obtaining Movant's case file before the Bar Date. The Ninth Circuit has expressly rejected the rationale that "challenges in managing" an attorney's caseload justify a late filing, even when the challenges are exacerbated "following the departure of the associate who managed" the case. *Iopa*, 916 F.3d at 1301-02. The Ninth Circuit's analysis applies even more forcefully here, where Zalkin does not claim there were attorney or staff departures that impacted the firm's work. And to the extent Zalkin tries to place blame on "support staff," Mot. at 9, the case law is clear that "'[c]lerical or office problems' are simply not a sufficient excuse for failing to file" a proof of claim by the Bar Date, *Boggs*, 246 B.R. at 268.

Moreover, Zalkin provides no compelling reason for the delay in seeking relief from the Court. Zalkin discovered its oversight in "mid-February of 2025." Storey Decl. at 5. But Zalkin does not explain why it filed the motion on April 1, 2025, one-and-a-half months later. It states that the Motion was "a priority since" mid-February and "followed as quickly as time and other deadlines permitted." Storey Decl. at 5; Mot. at 8. But Zalkin does not spell out why those unidentified "other deadlines" necessitated more than a month-long delay in filing the Motion. Mot. at 8. Zalkin vaguely points to "hearings that had already been set and could not be moved," but again does not explain why those hearings resulted in an April 1 filing. Storey Decl. at 5. Zalkin's failure to provide an adequate reason for the delay in filing the Motion after noticing its error is a further reason to deny the Motion.

Zalkin invokes *Pincay v. Andrews* as "an example of a case that has slipped through the cracks in a busy law office." Mot. at 13. But the court there held that counsel's notice of appeal was timely because, despite a calendaring mistake, counsel filed the notice *within a thirty-day grace period for doing so*. 389 F.3d 853, 855 (9th Cir. 2004). This analysis is irrelevant because no such grace period exists here. Even setting aside *Pincay*'s grace period, the *Pincay* delay was only thirty days, whereas here the delay was nearly 19 months. And although the Ninth Circuit in *Pincay* affirmed the district court's ruling, it stressed that "[h]ad the district court declined to permit the filing of the notice, we would be hard pressed to find any rationale

requiring us to reverse." *Id.* at 859. At most, *Pincay* stands for the proposition that "the decision whether to grant or deny an extension of time to file a notice of appeal should be entrusted to the discretion of the district court." *Id.* Here, the Court is deciding the Motion in the first instance, and the reason-for-delay *Pioneer* factor firmly supports denial.

2. The Prejudicial Impact and Long Delay Weigh Against the Motion

Allowing this long-delayed proof-of-claim filing would prejudice the Debtor and the case by disrupting the expedited confirmation process that is well underway. Courts deny late proofs of claim that would interfere with negotiating or confirming a reorganization plan. *In re Enron Corp.* disallowed a late proof of claim that was "submitted long after the negotiations required to develop" the final reorganization plan "had begun" because the "belated introduction of" the claim could "have a disruptive effect." 419 F.3d 115, 129 (2d Cir. 2005). *In re iE, Inc.*, a case cited by Zalkin, refused to permit a late claim because it would improperly delay confirmation, even though the claim was filed two weeks before the debtor filed the first amended plan and disclosure statement. 2020 WL 3547928, at *7 (B.A.P. 9th Cir. June 22, 2020); *see* Mot. at 13.

These rulings underscore the prejudicial impact on the Debtor and this case of granting the Motion, as this proceeding is at a far more advanced stage. Unlike *Enron* and *iE*, which disallowed late claims submitted before Chapter 11 plans were even filed, the Debtor has had a Chapter 11 plan on file since November 2024 [Dkt. No. 1444]. Moreover, the Court has already approved the disclosure statement for the Debtor's Third Amended Plan [Dkt. No. 1877]. Solicitation is well underway, with the voting period closing on May 30 [Dkt. No. 1877]. The confirmation process is proceeding under an expedited discovery and pre-trial briefing schedule, and the confirmation trial will start on August 25 [Dkt. Nos. 1877, 1893]. Given the late stage of this case, allowing Movant to file his claim now, more than 19 months after the Bar Date and just four months before the confirmation hearing, risks upending the administration of the case.

Zalkin implicitly concedes this point. It repeatedly claims there is no prejudice because there is "no approved disclosure statement" or "solicited plan." Mot. at 9; *see also* Mot. at 11,

14. Now that this case has an approved disclosure statement and a plan for which the Debtor is soliciting votes, granting the Motion would, by Zalkin's own logic, be highly prejudicial.

Permitting the late filing would further prejudice the Debtor and the case by opening the floodgates to other late claims, which would grind the bankruptcy proceeding to a halt. Courts find prejudice from "possibly opening the floodgates to many similar claims." *In re Keene Corp.*, 188 B.R. 903, 913 (Bankr. S.D.N.Y. 1995); *see In re Am. Classic Voyages Co.*, 405 F.3d 127, 133-34 (3d Cir. 2005) (similar); *Enron*, 419 F.3d at 132 (discussing precedent disallowing a proof of claim filed three-and-a-half months late because "there was a risk of 'similarly-situated potential claimants' filing a 'deluge of motions seeking similar relief'") (internal citation omitted). Zalkin offers no reason to permit the late claim that would not equally apply to untold numbers of late claims. Allowing the late claim would thus eliminate the purpose of the Bar Date and undermine the administration of this case.

Zalkin's substantial delay in both filing the claim and requesting a remedy also weigh against granting the Motion. Courts deny late filings where there was a significant delay either in making the filing or in asking the court to allow the late filing. *iE* determined that a six-month filing delay was "not insignificant." 2020 WL 3547928, at *7 (internal quotations omitted). *In re KMart Corp.* affirmed an order disallowing a proof of claim that was filed only one day after the bar date because "eighty-one days lapsed between the Original Bar Date and [the claimant's] filing of her 9006(b) motion." 381 F.3d 709, 714, 717 (7th Cir. 2004). *Iopa* rejected an untimely filing where there was a one-month delay in seeking judicial relief. 916 F.3d at 1301.

Here, both the delay in filing *and* the delay in requesting a remedy are significant. 19 months have passed since the Bar Date. And Zalkin did not file this Motion until one-and-a-half months after realizing it had failed to timely file the claim. Considering the disruptive impact these substantial delays would have on a bankruptcy proceeding with a confirmed disclosure statement, a plan for which the Debtor is actively soliciting votes, and an impending confirmation trial, the length-of-delay *Pioneer* factor weighs "strongly" against a finding of excusable neglect. *Iopa*, 916 F.3d at 1301.

None of Zalkin's cases changes this analysis. *In re Roman Catholic Diocese of Syracuse, New York* allowed a four-month-late proof of claim only because, unlike here, no Chapter 11 plan or disclosure statement had been proposed. 638 B.R. 33, 39-40 (Bankr. N.D.N.Y. 2022). *In re Any Mountain, Inc.* allowed a late filing under circumstances that do not apply here: the debtor had made the "first mistake" by failing to schedule the late claimant as a creditor. 2007 WL 622198, at *1 (Bankr. N.D. Cal. Feb. 23, 2007). *In re Hawaiian Airlines, Inc.* found only "nominal" prejudice from allowing an opening brief filed a mere two weeks late. 2011 WL 1483923, at *5 (D. Haw. Apr. 18, 2011). But here, allowing a 19-month-late claim just months before the confirmation trial would cause far more than "nominal" prejudice, as it would risk upending the entire case. *In re Broadmoor Country Club & Apt.* is a 30-year-old Missouri federal-court decision allowing a proof of claim filed only eight days late, and Zalkin does not explain why *Broadmoor* justifies a delay *seventy-one* times longer. 158 B.R. 146, 149 (Bankr. W.D. Mo. 1993). Finally, *In re JSJF Corp.* found the lower court *correctly refused* to allow untimely claims because the movant had not presented evidence of excusable neglect. 344 B.R. 94, 104 (B.A.P. 9th Cir. 2006). *JSJF* thus weighs *against* granting the Motion. Because Zalkin has "failed to explain how the prejudice [and length-of-delay] factor[s] favor[] a finding of excusable neglect," *In re Nations First Cap., LLC*, 851 F. App'x 32, 34 (9th Cir. 2021), this Court should follow *JSJF* and deny the Motion.

3. The Motion Does Not Show Zalkin Acted in Good Faith

The Motion does not show Zalkin acted in good faith because Zalkin did not seek to resolve the late-filing issue immediately. Good faith requires seeking judicial relief as soon as a party discovers a deadline has passed. *See In re Casey*, 198 B.R. 918, 925 (Bankr. S.D. Cal. 1996) (finding that movants did not show good faith where they "did not bring a motion to enlarge" the 120-day period to serve complaints "for almost 60 days" after discovering the period had run, and emphasizing that the "motion should have been brought immediately"). Here, Zalkin submitted the Motion more than a month after it realized Movant's claim had not been timely filed. Given this long delay in seeking judicial relief, Zalkin cannot show it acted in

good faith. And even if "counsel acted in good faith, that factor does not require a finding of excusable neglect when weighed against the other three factors." *Iopa*, 916 F.3d at 1302.

Zalkin beseeches the Court not to hold Zalkin's error against Movant. *See* Mot. at 11 ("The Movant himself is not the source for the delay and should not be punished[.]"). But the Supreme Court has made clear that "clients must be held accountable for the acts and omissions of their attorneys," including attorneys' failure to timely file proofs of claim. *Pioneer*, 507 U.S. at 396-97.[1] That principle requires denying the Motion.

V. CONCLUSION

For these reasons, Pacific Insurers respectfully request that the Court deny the Motion.

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[1] Zalkin cites a Ninth Circuit case that interprets *Pioneer* as going "so far as to hold that it was an abuse of discretion *not* to find excusable neglect where a versed bankruptcy practitioner missed the bankruptcy court's notice and failed to file a timely proof of claim." Mot. at 13 (quoting *In re Zilog, Inc.*, 450 F.3d 996, 1006 (9th Cir. 2006)). But *Pioneer* actually stated that "were there any evidence of prejudice to petitioner or to judicial administration in this case, or any indication at all of bad faith, we could not say that the Bankruptcy Court abused its discretion in declining to find the neglect to be excusable." 570 U.S. at 398. As this opposition details, there is ample evidence of prejudice and lack of good faith, which requires denying the Motion under *Pioneer*.

Dated: April 23, 2025

By: */s/ Alexandra J. Wolter*

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