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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

***CORRECTED* REPLY IN SUPPORT OF DEBTOR'S MOTION FOR ENTRY OF AN ORDER AUTHORIZING (A) THE RELEASE OF THE DEBTOR'S INTERESTS IN CATHOLIC CHURCH SUPPORT SERVICES, INC. PURUSANT TO 11 U.S.C. §§ 105 AND 363, AND (B) APPROVING PLEDGE AGREEMENTS**

Judge: Hon. William J. Lafferty

Date: September 9, 2025
Time: 10:00 a.m.
Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

The Roman Catholic Bishop of Oakland, a California corporation sole and the debtor and debtor in possession (the "Debtor" or "RCBO") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case" or the "Bankruptcy Case"), hereby files this reply in support of its *Debtor's Motion for Entry of an Order Authorizing (A) the Release of the Debtor's Interests in Catholic Church Support Services, Inc. Pursuant to 11 U.S.C. §§ 105 and 363, and (B) Approving Pledge Agreements* [Docket No. 2237] (the "Motion"),[1] and in response to *The Official Committee of Unsecured Creditors' Preliminary Objection to the Debtor's Motion for Entry of an Order Authorizing (A) the Release of the Debtor's Interests in Catholic Church Support Services, Inc. Pursuant to 11 U.S.C. §§ 105 and 363, and (B) Approving Pledge Agreements* [Docket No. 2276] (the "Objection") filed by the Official Committee of Unsecured Creditors (the "Committee"). The Debtor concurrently filed a Supplemental Declaration of Attila Bardos (the "Bardos Suppl. Decl.").[2]

I. INTRODUCTION

For months, the Debtor has made it no secret it is running out of cash. Most recently the Debtor was forced to seek an adjournment of its plan confirmation hearing as a direct result of the exponentially increasing costs of the Committee's litigation in response to the Debtor's proposed plan. As set forth in its motion to adjourn, the Debtor had already burned through the majority of the priest long-term care and supplemental retirement plan funds that it had frozen and set aside for its initial funding of the survivors' trust contemplated by the plan. The Debtor asserted, and the Court accepted, it needed to quickly monetize assets to generate cash to pay administrative fees for the rest of the case.

The Motion seeks approval of the Debtor's divestment of its board position in CCSS in exchange for $8.75 million in pledges over five years from CCSS and RCC that would not otherwise have come into the estate, $3.95 million of which will be paid immediately upon approval of the Motion. This is the Debtor's first and best opportunity to monetize its assets, and it monetizes an asset – the CCSS board position – that has no value at all. There is no question the Debtor desperately needs this funding.

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[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

[2] While the Debtor recognizes that declarations on reply are generally not permitted, the Bardos Suppl. Decl. is necessitated to correct the record regarding inaccurate characterizations of evidence the Committee submits, including email correspondence from Mr. Bardos.

As a condition of the Pledge Agreements, the Debtor agrees to an amendment of the CCSS Bylaws eliminating (1) the Debtor's rights to appoint or approve appointment of Directors, and (2) various oversight or consent rights the Debtor has under the Bylaws. None of the rights the Debtor is relinquishing involve a right to distributions or to direct CCSS to make donations. While CCSS, a non-profit that has an obligation to put its profits to charitable use, has historically donating annually to the Debtor, usually in the amount of 50% of its net profits, it has no obligation to do so, and the Debtor cannot direct CCSS to do so. Further, nothing in the Motion (or anywhere else) suggests CCSS will stop donating to the Debtor, to the extent it has available net profits after the Pledge obligations have been fulfilled.

The Committee's objection to this lifeline can mean one or two things. Either the Committee is objecting to put more pressure on the Debtor, and/or it fundamentally misunderstands the relief the Debtor seeks. The Committee's Objection falsely characterizes the CCSS divestment as the sale of an asset, and on that basis the Committee argues that (1) such a sale is not legal under California law, and (2) that approval should be denied because the sale is not market tested. Nothing about this transaction is a sale. The ability under the CCSS bylaws to appoint or approve directors and to approve certain other actions is not an asset that could possibly be sold.

The Committee also asserts, with no evidence whatsoever, the Debtor controls CCSS to such an extent that it can simply use CCSS as a piggy bank. Nothing in the record supports this wild accusation. The financial consultant reports and emails the Committee points to simply do not say what the Committee claims. The actual rights of the Debtor with respect to CCSS are defined by its Bylaws, which neither require CCSS to give funds to the Debtor on command or provide the Debtor any right to CCSS's assets.

The benefit to the estate of receiving nearly $4 million now, nearly $6 million within the next year, and nearly $9 million over the next five years, is readily apparent. The cost to the Debtor and the Estate is non-existent. The Court should overrule the Committee's Objection and grant the Motion.

II. THE COMMITTEE MISUNDERSTANDS THE TRANSACTION

A. <u>The Benefit to the Estate is Clear</u>

The transaction is straightforward. The Bylaws of CCSS provide certain very specific delineated oversight rights to the Debtor, which are as described in the Bardos Declaration, *See* Bardos Decl., ¶ 12,

and further delineated in the Bylaws themselves. *See* Decl. of B. Weisenberg ISO Opposition ("Weisenberg Decl."), Ex. A. CCSS requested the Debtor to consent to amendment of the CCSS Bylaws to remove the oversight rights, so that it can better market its services nationally – the Committee challenges the evidentiary basis for this motive, but why CCSS thinks this is necessary is irrelevant in light of the posture of the case, the obvious benefit to the estate, and the deference to the Debtor's business judgment. In exchange for the Debtor's consent, both CCSS and RCC have provided the Pledge Agreements, by which they collectively agree to donate $8.75 million to the Debtor, with $3.2 million from CCSS and $750,000 from RCC funded immediately, and additional funding of $1.2 million from CCSS and $750,000 from RCC a year later. *See* Bardos Decl., Exs. A, B.[3]

The cash the Debtor will receive through the Pledge does not require giving up any right or ability to receive money through any other means. Again, the Committee at best misunderstands the facts. The transaction is not a sale. The Debtor does not hold any equity interest in CCSS that is capable of sale. As a practical matter, the Debtor's oversight rights under the Bylaws are not membership rights capable of sale, and if they were such a sale would not be permitted by law (as the Committee itself points out). The characterization as a sale is simply incorrect.

The Pledges are being received in exchange for the Debtor's consent to elimination of its oversight rights in the CCSS Bylaws. They are not in exchange for a right to receive donations, and they do not eliminate the possibility of future donations from CCSS to the Debtor. Indeed, nothing in the Pledges, the revised Bylaws, or anything else before the Court suggests that the Debtor cannot continue to receive donations from CCSS to the extent CCSS's operations generate a sufficient profit. Indeed, the separation of CCSS from RCBO's direct oversight is specifically for the purpose of facilitating growth, in light of concerns from other business partners that CCSS is too tied to the Diocese of Oakland. *See* Bardos Suppl. Decl. ¶ 4.

Likewise, nothing in the Pledges, the Motion, or anywhere else suggests CCSS will stop donating to the Debtor absent this transaction. The Objection states that "the Debtor does not adequately explain

[3] The Committee attacks the Bardos declaration as hearsay. It is not. Mr. Bardos testifies that he has personal knowledge except as otherwise set forth. Bardos Decl., ¶ 2. Further, Mr. Bardos is a board member of CCSS, and therefore has direct knowledge of the actions of the CCSS board, and of its business operations

why CCSS would cease making donations to the Debtor absent this transaction." Objection, p. 9:26-27.[4] True, the Debtor does not explain that, because the Debtor does not believe that to be the case. Absent this transaction, it is likely CCSS would continue to donate a portion of its annual net profit to the Debtor. There is, however, no guarantee of this or of what the amount would be, and the ability of CCSS to generate income to fund donations would be constrained by its ties to the Diocese of Oakland. Under the Pledges, however, the Debtor will receive certainty, and substantially more money in the near term than it could otherwise expect.[5]

The Committee's Objection completely overlooks the $3.75 million being pledged by RCC. RCC has no history or practice of donations to RCBO. It operates in tandem with CCSS, however, and is making its pledge in consideration for the Debtor's agreement to amend the Bylaws. No discovery into RCC's motivations for giving the Debtor this money is necessary. RCC wants CCSS to be able to operate independently of the Debtor, and is obviously willing to donate money to facilitate this.

It is hard to imagine a more proper exercise of the Debtor's business judgment. When evaluating the decision of a debtor-in-possession, the court should "presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarawal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (collecting cases). Courts have applied the business judgment rule to approve debtors' decisions in numerous aspects of bankruptcy cases. *See, e.g,, In re Player's Poker Club*, 636 BR 811, 817–18 (C.D. Cal. 2022) (applying the business judgment rule in approving a debtor's decision to reject an executory contract); *Agarawal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (applying the business judgment rule in approving a debtor's decision to reject an executory contract); Order Authorizing the Sale of Debtors' Assets to Purchaser Free and Clear of Liens, Claims, Interests, and other Interests, *In re*

[4] All references to the Objection are to the numbered pages reflected in the unredacted version filed under seal.

[5] The Committee also overstates the amount the Debtor can expect to receive. In asserting that the Debtor has received $8 million from CCSS in the past 4.5 years, and drawing an average from that, the Committee ignores that a one-time donation of $3.8 million was made in 2022 to facilitate the ability of the Debtor to refinance its debt to PNC through financing from RCC.

Beverly Community Hospital Ass'n, No. 2:23-bk-12359-SK (Bank. C.D. Cal. Aug. 2023) (applying business judgment rule in granting debtor's motion for an order approving sale of debtor's assets). The high costs of litigation driven by the Committee have drained RCBO's cash far beyond what it projected. As a result, the Debtor urgently needs an immediate cash infusion. This transaction with CMS will bring in $3.95 million almost immediately, which the Debtor can use to pay accrued administrative expenses. Further, the $8.75 million from the Pledge Agreements will give the Debtor guaranteed funds that it can use to fund a plan if a settlement with the Committee can be reached. The benefit to the Debtor, its estate, its creditors, and the professionals, including the Committee professionals, is clear.

The Committee goes to some length to argue that the business judgment test is not applicable, and that a higher standard for an insider transaction should be applied. As a matter of law, this is wrong. As the Committee acknowledges, CCSS does not meet the statutory definition of an "insider" under the Bankruptcy Code. *See* Objection, p. 8:13-14; 11 U.S.C. § 101(31). The Committee has, however, set forth no basis for CCSS to be treated as a non-statutory insider under the Ninth Circuit Standard. *See In re Village at Lakeridge, LLC*, 814 F.3d 993, 1001 (9th Cir. 2016) (setting forth the two-factor test for a non-statutory insider). There is no evidence that the transaction was negotiated at less than arm's length,[6] and the closeness of the relationship is not equivalent to the enumerated classifications under §101(31). Beyond that, every case the Committee cites applies to sales of assets, where there is a risk of insiders manipulating the sale to themselves for a lower price.[7] For this concept to be applicable, CCSS would have to be controlling the Debtor, which even the Committee does not suggest is the case. The Committee's statement that the Debtor's incentive was that "the less marketing, and the lower the price, the better" is completely nonsensical. *See* Objection, p. 9:17. First, the Committee is well aware that there is no asset here that is capable of being marketed. Second, the Debtor's incentive to receive as much as

[6] The bald statement that "the Bishop sits on both sides of the transaction" is contradicted by the facts, and specifically by the fiduciary duty of CCSS's board members.

[7] For example, the Committee cites I*n re Summit Global Logistics Inc.*, 2008 Bankr. LEXIS 896 (Bankr. D. N.J. March 26, 2008), for the proposition that: "The Debtors bear the burden of proving that they have satisfied the requirements of Section 363(f), the good faith finding under Section 363(m), and the heightened scrutiny required by non-bankruptcy law for insider transactions." The Debtor is not seeking a sale free and clear pursuant to Section 363(f) because there is no sale. The Debtor is also not requesting a good faith finding under Section 363(m), because there is no sale.

possible is obvious given its cash position. Third, the Committee cannot explain why the Debtor would be getting nearly $9 million in Pledges if its incentive was somehow bizarrely to receive as little as possible. The Committee cannot articulate any reason why the Debtor would not want as much money from Pledges as CCSS and RCC are willing to provide, because there is none.

More to the point, however, regardless of whether higher scrutiny is applied, this Court should grant the Motion, because it is in the best interests of the Debtor, its creditors, and the estate.

B. The Committee's Legal Arguments are Inapplicable

1. Corporations Code Section 9320 is Not Applicable

The Committee argues the legality of the Pledges pursuant to California Corporations Code section 9320 ("Section 9230") is a "gating issue." *See* Objection, p. 6-7. This gate is easily traversed, because Section 9230 is not applicable. Section 9320 governs a transfer for value of a membership interest in a nonprofit religious corporation, or of rights related to such a membership interest. Cal. Corp. Code. § 9320. Again, RCBO has no membership interest in CCSS, and this is not sale or other transfer of an interest for value to some other party.

The Committee ignores the controlling provisions of the California Corporations Code. Regarding membership in a nonprofit religious corporation:[8] "A corporation … may provide in its articles or bylaws that it shall have no members." Cal. Corp. Code § 9310(a). The Bylaws state CCSS has no members. This is governing regarding whether the Debtor is a "member" – it is not. Further, even if RCBO were a member, "[a] member may resign from membership at any time" and "[a] membership may be terminated as provided in the articles or bylaws of the corporation." Cal. Corp. Code § 9340(a), (d). The Bylaws can be amended with the consent of the Debtor. *See* Weisenberg Decl., Ex. A.

There is nothing in the Corporations Code prohibiting either amendment of the Bylaws to terminate RCBO's oversight rights or execution of the Pledge Agreements conditioned on such termination. The Committee is grasping at straws in its inexplicable determination to prevent the Debtor from receiving funds under the Pledge Agreements.

[8] Corporations Code section 5056 is part of the generally applicable sections that govern all non-profits, including those under Part 4 (nonprofit religious corporations), unless "provisions or the context otherwise requires." Cal. Corp. Code §§ 5002(a). Sections 9310 and 9340 are specifically applicable to nonprofit religious corporations.

2. *The Committee's Market Test Arguments are Nonsensical*

The Committee also argues that the Pledge Agreements cannot be approved because "without a market test to evaluate the fairness of the proposed consideration, it is impossible to determine whether the amounts being paid to the Debtor are reasonable." Objection, p. 7:16-18. This argument again is based on a misunderstanding of the transaction, because it treats CCSS as if it were a for-profit entity and the agreement between the Debtor and CCSS as if it were a transfer of an equity interest that the Debtor could simply sell to the highest bidder. This is not a sale, and the Debtor's rights under the bylaws are self-evidently not an asset of the estate that could be sold. The relevant question therefore is not whether some other party might pay more (since that is not possible), but rather whether the transaction presented is in the best interests of the Debtor and its creditors. It undoubtedly is.

III. RCBO DOES NOT CONTROL CCSS

A. The CCSS Bylaws Govern Corporate Management and Decision-Making

The Objection is based in large part on a familiar fiction. The Committee paints a picture of CCSS as an entity entirely controlled by the Debtor, from which the Debtor can demand unlimited cash at will. *See* Objection, p. 1:16-24, 4:3-5:17. Among other things, the Objection suggests that the Debtor has "complete dominion and control over CCSS," and that "if the Bishop requires a contribution from CCSS to help fund this case … [h]e merely can exercise that control to cause CCSS to pay the Debtor just as he has done in the past." Objection, p. 1:26, 2:6-8. This caricature is not consistent with reality and not supported by the evidence.

CCSS is a separate nonprofit religious corporation organized under the laws of the State of California and pursuant to section 501(c)(3) of the Internal Revenue Code. *See* Weisenberg Decl., Ex. B (the "Articles of Incorporation"). As the Committee correctly states, "[g]overnance rights are defined by an organization's bylaws and articles of incorporation, and are tied to its charitable mission and legal framework." Opposition, p. 2:14-15. Pursuant to the Bylaws and California corporation law, all corporate powers and management of CCSS are exercised by or under the direction of **its** Board of Directors. *See* Weisenberg Decl., Ex. A. The rights of the Debtor relative to CCSS are controlled entirely by the Bylaws. Nothing in the Bylaws gives the Debtor authority to direct CCSS's use of available cash.

The Committee conflates the authority to appoint board members or approve their appointment with direct control. The CCSS Board of Directors is has seven members, only two of whom are part of the Debtor's leadership.[9] Bardos Suppl. Decl., ¶ 5. A majority of the CCSS board has no role with the Debtor. *Id.* The Committee fails to explain how, exactly, the Bishop or the Debtor would simply "cause CCSS to pay the Debtor." As members of the Board of CCSS, the members have a fiduciary duty to CCSS to act independently in its best interest and consistent with its nonprofit religious mission. The suggestion that they would simply ignore these duties to take whatever action might be directed by the Debtor is both wrong and insulting.

Historically, the Board of CCSS has a standard practice of donating fifty percent (50%) of the net profits of CCSS to the Debtor on an annual basis. This is a decision made by the Board of CCSS. Neither the Bishop nor the Debtor has ever directed CCSS to make any donation to the Debtor or otherwise. *See* Bardos Suppl. Decl., ¶ 6.

B. <u>The Committee's Evidence Does Not Even Suggest Control By RCBO</u>

None of the Committee's purported evidence shows any control of CCSS by the Debtor. The Committee primarily points to various pre-petition presentations by Vera Cruz Advisory, the Debtor's financial consultant. *See* Objection, pp. 4-5. First, the Committee points to an August 18, 2016, presentation to the College of Consultors, which provided an update on a working group formed for purposes of coordination between entities within the Diocese including the Debtor, RCC, RCWC, and Adventus. *See* Objection, p. 4, fn. 2; Weisenberg Decl., Ex. C. The organizational chart for the working group identifies the Bishop as "Decision Maker." *Id.* The Committee's suggestion that this means he supplants the CCSS Board as the corporate decision maker for CCSS is utterly misleading, the most sinister possible interpretation of the cited language. Likewise, the suggestions from Vera Cruz in presentations identified by the Committee that an increase in contributions from CCSS might be part of the solution to the Debtor's cash flow needs is not evidence of the Debtor's authority to command that

[9] These two are Attila Bardos, the Debtor's CFO, and Father Lawrence D'Anjou, the Debtor's Vicar General. One additional member, John Tarman, sits on the Finance Council of the Diocese of Oakland.

change. *See* Objection, pp. 4-5, and fn. 2, 6-9; *See* Weisenberg Decl., Exs. C, E, F, G.[10] Of course, it bears noting Vera Cruz is a financial advisor for the Debtor, and whatever statements it might have made have no bearing on the Bylaws or the actual governance of CCSS.

In discussing the various Vera Cruz presentations, the misleading nature of the Committee's argument, and its desperation to find factual support where there is none, is laid bare by the bullet pointed quote at the top of page 5 of the Objection. This purports to quote the "[t]he Debtor's own documents" as stating that "the Debtor has the power to increase contributions from Cemeteries/CMS." *See* Objection, p. 5:1-2. **This statement is nowhere found in any of the documents cited.** *See* Weisenberg Decl., Exs. C, E, F, G. The Committee made it up out of thin air.

Nothing in the July and August 2025 emails between various employees and officers of the Debtor and of CCSS *(see* Objection, p. 4:7-13; Weisenberg Decl., Ex. D) indicates the Debtor has the power to compel a donation from CCSS, and the characterization of them as doing so is extremely misleading. *See* Bardos Suppl. Decl, ¶ 7. These emails reflect the decision of the Board of CCSS to donate 50% of net income to RCBO, and the accounting for the reconciliation of that amount. *Id.* In particular, the August 1, 2025, email from Mr. Bardos to Robert Seelig states as follows: "It looks like your RSM auditors have reconciled the remaining donation balance with Ron and John at $286,080.67. If you are good to go with this, we would very much welcome the donation when you get a chance. We are indeed cash flow challenged!" Weisenberg Decl., Ex. D. Again, the actual language "if you are good with this" eviscerates the Committee's suggestion that this was a direction by Mr. Bardos. *See id.* Indeed, this email reflects a reconciliation by the CCSS auditors of the donation amount that the CCSS Board had already decided to donate to the Debtor, consistent with past practice. Bardos Suppl. Decl, ¶ 7. The request CCSS fund the pre-determined donation amount soon in light of cash flow issues was not a direction regarding either the timing or amount. [11] *Id.*

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[10] Notably, the September 16, 2021, presentation identified by the Committee states that "CMS contribution is *expected* to increase this year, but long-term to be similar to the previous projection." Weisenberg Decl., Ex. G, at p. 4. This directly contradicts the notion that these presentations indicate that the Debtor can control CCSS donations.

[11] There is an irony in the fact that the primary cause of these cash flow issues was the professional fees driven primarily by the Committee.

Reference to statements in the 2007 Bond appendix are no more persuasive. *See* Weisenberg Decl., Ex. H. In the context of the document, the reference to "juridic persons" clearly refers to Churches. Beyond this, (1) this is just a rehash of the same unpersuasive argument the Committee used to try to establish that the Debtor controls RCC and RCWC, and (2) actual authority to control CCSS is determined by the Bylaws, not a 2007 document created before CCSS was even formed.

C. The Committee is Just Rehashing Old Arguments

At its core, the argument the Committee makes is the same one it has made over and over, without support, and ultimately without success: that all the Catholic entities in the Diocese of Oakland are just puppets controlled by the Debtor, used to "shield assets" as part of one big indistinguishable enterprise. In particular, the arguments in the Objection are the same arguments the Committee made seeking substantive consolidation of OPF, RCC, RCWC, and Adventus into the Debtor's estate. Even though it lost there, it rehashes the same points here, based on the same facts. The objection is nothing more than the Committee's continued refusal to accept that this issue was resolved conclusive against it, and possibly a fishing expedition for a second bite at the apple.

IV. CONCLUSION

For all the reasons set forth in the Motion, supporting declarations, and this reply, the relief sought in the Motion is in the best interests of the Debtor and its Creditors. The Debtor therefore requests the Court overrule the Objection, grant the Motion, enter the Proposed Order.

DATED: September 8, 2025

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