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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 **THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' STATEMENT IN SUPPORT OF THE DEBTOR'S MOTION TO DISMISS CHAPTER 11 CASE PURSUANT TO 11 U.S.C. § 1112(b)** Judge: Hon. William J. Lafferty

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The Official Committee of Unsecured Creditors (the "**Committee**") of The Roman Catholic Bishop of Oakland (the "**Debtor**" or the "**Diocese**") files this statement in support of the *Debtor's Motion to Dismiss Chapter 11 Case Pursuant to 11 U.S.C. § 1112(b)* [Dkt. No. 2293] (the "**Motion**"). For the reasons below, the Committee supports the relief requested in the Motion *provided* that dismissal of this chapter 11 case is *with prejudice* such that the Debtor may not re-file for bankruptcy protection.

I.

INTRODUCTION

The Debtor has recently taken great liberties with the mediation privilege, incessantly arguing to this Court that the Committee refuses to negotiate. In turn, according to the Debtor, it has no choice but to seek dismissal of this chapter 11 case. The Committee has shown restraint in responding, choosing to keep negotiations within mediation. But the Debtor continues to paint the Committee as the antagonist, necessitating a reply. While the Debtor would have this Court believe the Committee was, and is not, interested in settlement, the Debtor fails to inform the Court that the Committee requested, several times, and as early as February 2025, that the financial advisors for the Debtor and the Committee meet to attempt to reconcile the parties' vastly different views on the Debtor's ability to fund a distribution to Survivors.[1] Time and again, the Debtor rebuffed the Committee's overtures. The Committee's professionals also engaged in several calls with Debtor's counsel—urging earnest settlement discussions resume before the voting deadline on the Debtor's Plan of Reorganization (as amended, the "**Plan**")—anticipating that after survivors of sexual abuse ("**Survivors**") voted down the Plan, case resolution would become more challenging. Time and again, the Debtor rebuffed the Committee's overtures. Thus, the notion that the Committee has remained stagnant in this case—comfortable to "just say no"—is a fallacy and a transparent attempt to criticize the Committee as the heel.

[1] *See, e.g.,* April 18, 2025 letter, attached to Exhibit A the declaration of Brent Weisenberg filed contemporaneously (the "**Weisenberg Dec.**") ("In lieu of proceeding down the current path, we urge you to reconsider our request to have our financial advisors meet so that we can better understand where our differences may be. Lowenstein understands why your client is hesitant to authorize this meeting. But we firmly believe that the meeting will help cure misunderstandings and more acutely clarify where our disputes lie so that we can try to solve for them.")

On or about August 25, 2025, under the guise of a settlement proposal, the Debtor made a $165 million "take it or leave it" offer to the Committee. *See* Exhibit A to *Declaration of Matthew D. Lee in Support of Debtor's Motion to Dismiss Chapter 11 Case Pursuant to 11 U.S.C. §1112(b)*, Dkt. No. 2294. In the Motion, the Debtor applauds its offer and expresses consternation as to why the Committee would not immediately accept what the Debtor has unilaterally concluded is fair and equitable. Putting aside that the settlement offer is paltry in comparison to the hundreds of millions of dollars in assets the Debtor seeks to retain, left unsaid are three important facts. ***First***, the $165 million offer was provided to the Committee through a letter that, while sent under the guise of a settlement proposal, appears designed to polarize the parties' positions. The notion that laying blame at the feet of Survivors is a productive way to resolve the parties' differences flies in the face of common sense. Indeed, the alleged settlement letter, and the Debtor's recent public accusations of the Committee's bad faith, only deepened the divide between the parties. ***Second***, the Debtor's offer is predicated on a wholly unacceptable insurance assignment which, if agreed on, would allow the Debtor's insurance carriers (the "**Insurers**") to skirt millions of dollars of contractual liability. ***Third***, the Debtor's offer does not include its agreement to the terms of certain Child Protection Protocols proposed by the Committee. Absent material and meaningful changes to the way the Diocese protects its children, the Committee will not support any settlement.

On September 8, 2025, the Committee presented a counter-offer to the Debtor and the Insurers through the court appointed mediators. The Committee's counter-offer has spurred some discussions between the Committee and Insurers with the assistance of mediator Tim Gallagher. But despite the urgency expressed by the Debtor and both direct communications between counsel to the Debtor and the Committee and the efforts of mediator Judge Sontchi, the Debtor has not engaged in any substantive discussions regarding the Committee's counter-offer nor has it made another offer to date.

II.

PRELIMINARY STATEMENT

Reluctantly, the Committee has come to the same conclusion as the Debtor: there is little prospect for a global resolution of this case between and among the Debtor, the Committee and

the Insurers within the time frame mandated by the Debtor. Where the Committee parts ways with the Debtor is the basis for its conclusion. Contrary to the Debtor's revisionist history, the Committee alone does not shoulder the blame for the parties' inability to reach consensus. As the Committee has brought to the Court's attention several times recently, the Committee predicted the Debtor's drive to a dead-end if it chose to pursue confirmation of its Plan without the Committee's support.[2] But the Debtor ignored the Committee's advice, filing and prosecuting a Plan which was facially unconfirmable. Even after 99% of Survivors rejected the Plan [Dkt. No. 2040], the Debtor remained hell-bent on dictating what "fair and equitable" means in the context of this case.

The Debtor is the architect of its own downfall. It should not now be heard to complain of its predicament. But complain it does. Because the Debtor's Motion is filled with a self-serving and inaccurate recitation of the facts and procedural history of this case, the Committee is compelled to set the record straight and below establishes why the Debtor's conduct throughout this case warrants any dismissal be "with prejudice."[3]

There is ample cause to conclude that the Debtor's actions in this case require that any order dismissing this case be "with prejudice." For example:

(i) The Debtor remained steadfast in its effort to cramdown the Plan on Survivors in the face of insurmountable legal and factual challenges to its Plan.

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[2] *See, e.g.*, December 18, 2024 Hr'g Tr. at 26-29 [Dkt. No. 1568], attached to the Weisenberg Dec. as Exhibit B ("MR. WEISENBERG: 'But we would submit that it's a better path forward than if we stay on this course and in three, four, or five months from now, you find the plan is not confirmable for any number of reasons, what have we achieved? We haven't figured out what are assets to the estate. We haven't figured out the valuation of claims. And so we're starting from scratch."); *see also* January 8, 2025 Hr'g Tr. at 27;7–11 [Dkt. No. 1630], attached to the Weisenberg Dec. as Exhibit C ("MR. WEISENBERG: "-- we believe that there is a better way to go about resolving the parties' issues. One of them is through the lift stay motion, right? And that, we hope, will bridge the huge chasm between the various values that parties attribute to survivor claims.'").

[3] In Section III.D. of the Debtor's Motion, the Debtor castigates the Committee for seeking to enforce Survivors' rights and not merely capitulating to the Debtor's demands. It then frames the Committee's efforts as wasteful because, according to the Debtor, the Committee was overly litigious and lost most of its litigation maneuvers. *See* Motion, 7;15–16. But, as explained below, litigation proved useful in moving this case ahead. Thus, the Debtor's constant refrain that the genesis of mounting fees arises out of the Committee's actions rings hollow.

(ii) The Debtor scheduled an allowed $35 million general unsecured claim for the Oakland Parochial Fund, Inc. ("**OPF**") arising out of an alleged loan transaction and classified OPF as a voting class under its Plan. Only after the Committee filed two objections to the OPF claim did the Debtor concede that OPF did not make a loan to the Debtor.

(iii) The Debtor—asserting that hundreds of millions of dollars of its real estate portfolio is not part of its bankruptcy estate and beyond the reach of its creditors—insists that it is entitled to a discharge without putting all of its assets on the table. But, as set forth below, there is abundant authority establishing that property of religious institutions, even if used for core religious purposes, is subject to attachment by judgment creditors without regard to its religious character.

(iv) The Debtor insists that the fairness of its distribution to Survivors is measured by comparing it to distributions made in other religious nonprofit bankruptcy cases. Blackletter law establishes otherwise.

(v) The Debtor misleadingly asserted that the real property it sought to assign the Survivors' Trust under the Plan, the Livermore property, was worth between $43 million and $81 million (or more). *See Debtor's Second Amended Disclosure Statement for Debtor's Second Amended Plan of Reorganization*, Dkt. No. 1763, 1;15–18. Even the Debtor conceded that its valuation depended on the property, now zoned for agricultural use, being entitled for the construction of single-family homes, a process which is highly uncertain and for which the Debtor failed to provide the Committee with meaningful information. *See id.* at 2;13–18.

(vi) In or about the time that the Debtor withdrew the assignment of the Livermore property from the Plan, the Committee learned through press coverage that in December 2024, the Debtor, through its affiliate Adventus, applied to rezone the Livermore property from agricultural to residential use and to allow for construction of up to 500 homes, and that the Livermore City Council had voted to authorize negotiations with Adventus to allow for medium density residential development of the Livermore property.[4] Information of this kind would have been vital in helping Survivors understand the Livermore property's value.

[4] *See* Diocese scraps school plan in Livermore, for up to 500 homes, The Real Deal

(vii) As alleged in the Committee's "Restricted Assets" complaint (Adv. Pro. No. 24-04051 WJL), the Debtor does not include $38 million in cash and investments among assets that could be used to either pay Survivors directly or to satisfy future expenses—thereby freeing up unrestricted cash to pay Survivors—claiming that the funds are "restricted" assets. The Debtor has thus far failed to produce evidence supporting the restricted nature of nearly all of those assets.

(viii) The Debtor repeatedly failed to comply with Plan discovery deadlines and certain of its Rule 30(b)(6) witnesses were inadequately prepared to testify about the issues identified by the Committee.

This Court previously stated that if the Debtor was unable to confirm a Plan, the likely result would be dismissal of the case.[5] The Debtor has squandered its opportunity: it has failed to obtain Committee support of a Plan due to its failure to put anywhere near all of its assets on the table, failed to garner support from Survivors for confirmation of the Plan that it proposed over the Committee's objection and failed in its efforts to cramdown its Plan over Survivors' overwhelming rejection of the Plan. The Debtor's decision to pursue cramdown rather than negotiation has led to almost a year of delay in resolving and paying Survivor claims and has unnecessarily multiplied administrative expenses. Dismissal of the case at this juncture is the right result so that Survivors' claims may be liquidated and paid through state law processes.

Dismissal of this case will permit approximately 375 Survivor lawsuits pending against the Debtor to proceed in State Court. The Debtor will ultimately face numerous trials and most likely, multi-million-dollar adverse judgements. When that inevitably occurs, the Debtor should not be

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https://therealdeal.com/sanfrancisco/2025/02/27/diocese-scraps-school-plan-in-livermore-for-up-to-500-homes/) (last visited September 18, 2025).

[5] *See, e.g.*, December 18, 2024 Hr'g Tr. at 114;3–11 [Dkt. No. 1568], attached to the Weisenberg Dec. as Exhibit B (In the context of recommending language to be included in the Disclosure Statement, the Court stated: "And having articulated that, I think the debtor should say something along the lines of there is a material risk that if the Court does not agree with the debtor about this limitation and the debtor is not able otherwise to make assets available and satisfy what the debtor -- what the committee will say is the hard-and-fast liquidation analysis. We may not be able to confirm a plan in this case. Period. End of story. The case may have to be dismissed. I think it's just about that stark.")

permitted to refile and again invoke the automatic stay, further suppressing and delaying Survivor recoveries.

The Debtor's conduct here—demonstrating that it views bankruptcy as a tool to "game the system," not as a forum for good faith reorganization—establishes that there is "cause" to dismiss this case with prejudice. The Debtor's constant refrain of having filed this case to make an equitable distribution to Survivors lacks credibility when considering how far this Debtor has gone to impose draconian reductions on Survivors' claims while preserving hundreds of millions of dollars of assets. To that end, the Debtor has repeatedly argued that it is, in essence, judgment proof because certain self-selected assets are unavailable to pay Survivors. Nonsense. As shown below, when the Church is a debtor, it is like any other nonprofit debtor—it is liable for its debts, and if necessary, its property may be sold to satisfy those debts, whether inside or outside the bankruptcy process.

The Debtor had and continues to have the opportunity to settle with Survivors here and now. But if it elects to go back to State Court, it should be bound by that decision, and should not be permitted to come back to the Bankruptcy Court for a do-over. The Bankruptcy Code is designed to provide honest but unfortunate debtors a fresh start, and to ensure an equitable, efficient process for resolving creditor claims. It is not intended to be a tool for debtors to manipulate the timing and forum of claim resolution to their own advantage, especially at the expense of vulnerable creditors.

III.

ARGUMENT

Section 1112(b) of the Bankruptcy Code requires that a chapter 11 case be dismissed or converted to chapter 7 upon demonstrating "cause," which includes a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). Such cause exists here. After nearly two and a half years in chapter 11, the Diocese has no likelihood of rehabilitation. It cannot confirm the Plan it proposed and has stated that it will not pursue a Plan absent a global settlement. But the case is in gridlock with no

indication a consensual confirmable plan can be readily achieved. Meanwhile, the Debtor asserts that its estate is incurring substantial and continuing losses. *See* Motion, V.I.[6]

If this case is dismissed, cause is established herein to dismiss the Diocese's chapter 11 case with prejudice. Cause for dismissal with prejudice includes a bad faith filing and/or conduct that otherwise frustrates the objectives of the Bankruptcy Code, including misrepresentations in filed schedules and the filing of a plan of reorganization that fails to offer creditors what they are entitled to. *See, e.g.*, *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1225 (9th Cir. 1999) (affirming dismissal with prejudice where, among other things, plan offered insufficient value to Debtor's largest unsecured creditor and filed schedules contained omissions and misstatements); *see also Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915–23 (9th Cir. B.A.P. 2011) (bad faith is "cause" for dismissal and court has discretion to select remedy, including dismissal with prejudice). The Debtor's actions throughout this case establish an alarming pattern of bad faith. Taken together, the Debtor's actions demonstrate its transparent attempt to limit liability for Survivors' pain and suffering which the Diocese negligently failed to stop. Moreover, the Debtor's misrepresentation in its filed schedules regarding the OPF claim and the Debtor's pursuit of a patently unconfirmable Plan establish that this case has been prosecuted in bad faith for the purpose of suppressing the value of, and limiting the Debtor's liability for, Survivor claims. Accordingly, this bankruptcy case should be dismissed with prejudice.

A. Section 349(a) of the Bankruptcy Code Authorizes Dismissal with Prejudice Where a Debtor's Conduct Demonstrates Bad Faith and Other Improper Conduct

Section 1112(b), like similar Bankruptcy Code sections governing dismissals of chapter 7, 12 and/or chapter 13 cases, permits dismissal of chapter 11 bankruptcy cases "for cause." Once the Court determines that cause for dismissal of a bankruptcy case—whether a chapter 7, 11, 12 or 13 case—has been established, the court must decide "what form of dismissal should apply," including whether to impose a refiling bar under § 349(a). *Leavitt*, 171 F.3d at 1223–24; *Franco v. U.S. Tr. (In re Franco)*, No. CC-15-1281-KiTal, 2016 WL 3227154, at *5–6 (9th Cir. BAP June

[6] For purposes of the Motion only, the Committee will not contest the Debtor's allegations in support of its financial health. The Committee reserves its rights to do so in any other context.

2, 2016) (affirming dismissal with prejudice and entering one-year bar on refiling); *Johnson v. Vetter (In re Johnson)*, No. EC-13-1094-JuTaku, 2014 WL 2808977, at *7 (9th Cir. BAP June 6, 2014) (two-year refiling bar affirmed); *In re Neher*, No. 18-23887-B-13, DC No. JRD-1, 2018 WL 4945683, at *3–4 (Bankr. E.D. Cal. Oct. 10, 2018) (one-year bar).

Section 349(a) of the Bankruptcy Code establishes dismissal is without prejudice "unless the court, for cause, orders otherwise." 11 U.S.C. § 349(a). Courts in the Ninth Circuit have repeatedly recognized the bankruptcy court's discretion to dismiss bankruptcy cases with prejudice and impose refiling bars when cause is shown. *See Leavitt*, 171 F.3d at 1223–24 ("bad faith" justifies dismissal with prejudice; such dismissal "bars further bankruptcy proceedings" and may include broader relief); *Franco*, 2016 WL 3227154, at *5–6 (affirming dismissal with prejudice and one-year refiling bar); *Johnson*, 2014 WL 2808977, at *7 (two-year bar affirmed); *Landis v. Ortega (In re Ortega)*, Nos. 11-14240-B-13, 11-01119-B, UST-1, 2011 WL 10723285, at *6 (Bankr. E.D. Cal. Aug. 18, 2011) ("Bad faith is cause for dismissal with prejudice under section 349(a).").[7]

The *Leavitt* decision guides courts in the Ninth Circuit as to whether dismissal with prejudice is warranted, and courts evaluate requests for dismissal with prejudice applying the "totality of circumstances," determined "through a four-consideration matrix" set forth in *Leavitt*:

> (i) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner;
>
> (ii) the debtor's history of filings and dismissals;
>
> (iii) whether the debtor only intended to defeat state court litigation; and
>
> (iv) whether egregious [bad faith] behavior is present.[8]

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[7] Courts outside the Ninth Circuit have similarly imposed refiling bars based on bad faith case conduct, including permanent bars. *See, e.g., In re JER/Jameson Mezz Borrower II, LLC*, 461 B.R. 293, 304 (Bankr. D. Del. 2011) (chapter 11 case dismissed with prejudice for bad faith); *In re Anvil Holdings L.P.*, 595 B.R. 622, 626–28 (Bankr. W.D.N.Y. 2019) (bar due to egregious misrepresentations); *In re Hall*, 304 F.3d 743, 747–48 (7th Cir. 2002) (affirming permanent bar for bad faith and abuse of process).

[8] Although *Leavitt* involved the evaluation of dismissal with prejudice standards in a chapter 13 case, the Ninth Circuit B.A.P. has explained that the same standards for finding of bad faith in the context of chapter 13 bankruptcies should apply in evaluating dismissal with prejudice under other chapters of the Bankruptcy Code. *See, e.g.*, *Franco*, 2016 WL 3227154, at *6; *In re Duran*, 630 B.R. 797, 810 (9th Cir. B.A.P. 2021) ("we perceive no principled reason why the *Leavitt*

See Duran, 630 B.R. at 810 (quoting *Leavitt*, 171 F.3d at 1224); *see also In re Ramsell*, No. 3:23-BK-08763-DPC, 2024 WL 3949835, at *7 (B.A.P. 9th Cir. Aug. 27, 2024) (quoting *Leavitt*, 171 F.3d at 1224).

The "bankruptcy court is not required to find that each [*Leavitt*] factor is satisfied or even to weigh each factor equally." *Khan v. Barton (In re Khan)*, 523 B.R. 175, 185 (9th Cir. B.A.P. 2014); *Duran*, 630 B.R. at 810 ("these four considerations are not essential elements and need not be computed with arithmetic precision"); *Ramsell*, 2024 WL 3949835, at *8 ("Given that the bankruptcy court made findings regarding three of the four *Leavitt* factors, which findings were not clear error, the bankruptcy court did not abuse its discretion in dismissing Debtor's case for bad faith."). Rather, "[t]he *Leavitt* factors are simply tools that the bankruptcy court employs in considering the totality of the circumstances." *Ramsell*, 2024 WL 3949835, at *7 (quoting *Khan*, 523 B.R. at 185); *see also Duran,* 630 B.R. at 810 ("Consideration of the totality of the circumstances means that these four considerations . . . need not be computed with arithmetic precision. For instance, a bankruptcy could be found to have been filed in § 349(a) 'bad faith' even though the debtor had [filed] no prior bankruptcy case.").

Additional characteristics of a "bad-faith [bankruptcy] case include … filing on the eve of … some other litigation event in another court … a plan that proposes little payment to creditors, a plan that has no hope of confirmation and general lying, cheating or stealing by the debtor." *Ramsell*, 2024 WL 3949835, at *7 (citing *Ellsworth*, 455 B.R. at 918 n.11) (internal citation omitted)).

Given a bankruptcy court's clear discretion in tailoring the appropriate remedy where bad faith cause for dismissal is established, courts have affirmed dismissals under § 349(a) that have included a permanent bar on refiling, a time-limited refiling bar, and/or dismissal "with prejudice" to the discharge of existing debts in any later case. *Leavitt*, 171 F.3d at 1223–24; *Franco*, 2016 WL 3227154, at *5–6 (affirming dismissal with prejudice and entering one-year bar on refiling); *Johnson*, 2014 WL 2808977, at *7 (two-year refiling bar affirmed); *Neher*, 2018 WL 4945683, at *3–4 (one-year bar). Indeed, the ABI Commission has recognized that "it has become somewhat

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analysis of § 349(a) "cause" should not apply equally to ***all*** case dismissals . . .") (citation omitted).

common for courts to enter orders of dismissal 'with prejudice,' prohibiting the filing of a new bankruptcy case for longer than the 180-day period" specified in section 109(g) of the Bankruptcy Code. *Final Report of ABI Commission on Consumer Bankruptcy*, Am. Bankr. Inst., at pg. 68 (2019).

The Debtor's misrepresentations and bad faith conduct[9] in this case satisfy the *Leavitt* "totality of circumstances" factors and warrant dismissal with prejudice for the reasons below.

B. *Leavitt* "Totality of Circumstances" Factors 1, 3 and 4 Weigh in Favor of Dismissal

The Debtor's actions in this case establish that *Leavitt* factors 1, 3 and 4 are met. Accordingly, dismissal with prejudice is warranted.

(i) The Debtor Misrepresents Facts in its Schedules

On June 21, 2023, the Debtor filed its Schedules [Dkt. No. 161], which, among other things, list on Schedule E/F the OPF claim as a nonpriority general unsecured claim. The basis of the OPF claim is listed in the Schedules as "Term Loan Agreement – Amended," and the OPF claim was not marked as contingent, unliquidated, or disputed.

The Committee initially filed an objection to the $35 million claim asserted by OPF based, in part, on OPF having been the transferee of a transfer avoidable under the Bankruptcy Code [Dkt. No. 1524] (the "**First OPF Claim Objection**"). The Committee understood there to be a transfer based, in part, on the Debtor having disclosed in its Schedules that it transferred about $106 million to OPF just before this bankruptcy. OPF then purportedly loaned the Debtor $35 million under an April 28, 2023 Term Loan Agreement. Under the Debtor's Plan, the Debtor classified the OPF claim as a general unsecured claim and proposed to pay it in full. Presumably, the Debtor had budgeted to pay the OPF claim, meaning more than $35 million that could be paid to Survivors would be paid to OPF.

In responding to the Committee's arguments, the Debtor later conceded, in numerous pleadings, that no transfer was made. For example, on January 24, 2025, the Debtor and OPF each

[9] Applicable law makes clear that a finding of bad faith does not require malice or fraudulent intent by the debtor. *See Leavitt,* 171 F.3d at 1225; *Duran*, 630 B.R. at 810.

moved to dismiss an adversary proceeding commenced by the Committee challenging the $106 million transfer. In the *Debtor's Motion to Dismiss Adversary Complaint for Declaratory Relief*, Adv. Pro. No. 24-04051, [Dkt. No. 11] (the "**Motion to Dismiss**"), the Debtor stated that:

- The Churches "are part of the Debtor" and that "all Church property except for Restricted Church Funds . . . is property of the estate." Motion to Dismiss at 1;
- "[A]ny assets that were property of the Debtor before the transition [of funds to OPF] remain property of the Debtor as deposited with OPF, and therefore property of the estate, now." *Id.* at 6; and
- "The Debtor has not, does not, and will not claim that the character of any asset transferred into OPF has changed by virtue of that transfer . . . ." *Id.*

The Debtor thus conceded that there was no transfer of OPF owned funds to the Debtor and, in turn, no loan. Even more damning is the declaration of Mr. Attila Bardos, the chief financial officer of the Debtor and an *ex-officio* director on OPF's Board of Directors, wherein he declared *under penalty of perjury* that ownership of the $106 million transferred from the Debtor to OPF did not constitute a change in ownership. Mr. Bardos stated: "[redacted]."[10] Because the Debtor concedes any alleged Church assets are estate property, Mr. Bardos admitted that the Debtor's funds merely made a roundtrip: from the Debtor to OPF and then back to the Debtor. Thus, the transfers of property of the estate from OPF to the Debtor could not form the basis of a valid claim against the estate. Only after the Committee filed a second objection to the OPF claim [Dkt. No. 1766] did OPF withdraw its claim through a stipulation with the Debtor. *See* Dkt. Nos. 1784 and 1796.

Not content with the result required by civil law, the Debtor did not concede that OPF would not and could not be repaid. Rather, the Debtor's *Third Amended Disclosure Statement for Debtor's Third Amended Plan of Reorganization* [Dkt. No. 1831] provides that, notwithstanding the Debtor's discharge and the Plan's confirmation injunction (§ 13.4), the Debtor may repay the OPF loan to satisfy its obligations under Canon Law, provided any such payments do not otherwise

[10] *Declaration of Attila Bardos in Support of The Oakland Parochial Fund, Inc.'s Response in Opposition to Objection of the Official Committee of Unsecured Creditors to the Claim Scheduled by the Debtor for The Oakland Parochial Fund*, Dkt. No. 1664, 7:11–13.

violate the terms of the Plan or applicable civil law. Because Survivors are not being paid in full, as the Debtor concedes, any amounts paid to OPF would diminish the distribution to Survivors.

(ii) The Debtor Filed For Bankruptcy Protection to Impose Draconian Reductions on the Amounts Survivors Would Be Awarded in California State Court

Courts hold that a debtor's proposal to pay "little" to creditors is a characteristic of bad faith. *See, e.g., Ramsell,* 2024 WL 3949835, at *7 (citing *Ellsworth*, 455 B.R. at 918 n.11 (internal citation omitted)). This case was filed to radically reduce the amount of damages that Survivors would otherwise be able to recover in state court. But as U.S. Bankruptcy Judge Louis DeCarl Adler in the San Diego diocese bankruptcy case correctly recognized: "Chapter 11 is not supposed to be a vehicle or a method to hammer down the claims of the abused. It is a method of dealing with those claims fairly while preserving the core business, if you will, of the chapter 11 debtor." Mot. to Dismiss Hr'g Tr. at 76:9-13, *In re The Roman Cath. Bishop of San Diego*, No. 07-00939-LA11 (Bankr. S.D. Cal. Nov. 5, 2007), Dkt. No. 1368.

Judge Adler also stated:

> I decided this morning to reacquaint myself with the exact definition of "disingenuous." According to Merriam Webster's it means lacking in candor, also giving a false appearance of simple frankness, calculating. From what I understand of the Diocese's finances . . . I think the term "disingenuous" as applied to the Diocese description of assets available to fund this settlement is completely accurate. There is, in my view, ample other property available for liquidation to fund the settlement without threatening the mission of the church. It is simply a question of how the Diocese sets its priorities.
>
> I say this because this case has ramifications beyond San Diego. There may be other diocese in this country which may be considering Chapter 11 as an easy vehicle to deal with the claims of abuse victims. I think that would be a mistake now or in the future. ***The church needs to look within itself. It needs to ask itself whether its core mission to educate children, to tend to the spiritual needs of its community, and to bring some healing to those abuse victims requires it to retain nonessential assets such as parking lots, apartment buildings, houses bequeathed to it, parish churches no longer viable, vacant land***. . . . Before a diocese -- any diocese -- resorts to a Chapter 11 filing, it should be making a good faith honest effort to assess whether that is necessary.

Id. at 75:4–76:8 (emphasis added). The Debtor did not heed Judge Adler's advice

The Supreme Court recently commented that "[a] debtor can win a discharge of its debts if it proceeds with honesty and places virtually all its assets on the table for its creditors." *See Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 209 (2024). Yet, as set forth below, the Debtor seeks to pay Survivors pennies on the dollar while retaining hundreds of millions of dollars in assets. The Debtor's manipulative gamesmanship during this case should not be countenanced by allowing it to re-file bankruptcy if its present gambit to take its chances in state court do not pan out in its favor. Indeed, as set forth above, the Bankruptcy Code and case law recognize that serial filings, especially where the debtor's intent is to gain a tactical advantage or to frustrate creditor rights, constitute "bad faith" and "abuse of process." Courts routinely deny such attempts to re-file, particularly where the debtor has failed to negotiate in good faith or where dismissal is sought to avoid obligations to creditors.

(iii) There is Extensive Evidence Establishing the Debtor's Bad Faith Behavior

The Debtor Belatedly Concedes its Churches are Part of its Bankruptcy Estate. In April 2024, the Committee asked the Debtor to stipulate that its Churches did not own property separate and apart from the Debtor and that OPF did not hold title to the assets transferred to it by the Debtor. But the Debtor refused to do so, despite multiple requests. Given the Debtor's refusals, the Committee had no choice but to commence a declaratory judgment action to determine, among other things, the Churches' rights, if any, to own property and OPF's status as an independent entity (Adv. Pro. No. 24-04053 WJL) (the "**Church/ OPF Complaint**"). While the Debtor characterizes the dismissal of the Church/ OPF Complaint, *without prejudice*, as a "win" for the Debtor, that conclusion ignores the fact that the Debtor later conceded that all Church property, except for restricted Church funds, is property of the estate and OPF conceded that it owns no assets. Establishing these facts was one of the very purposes for the Committee filing and prosecuting the Church/ OPF Complaint.[11]

[11] In *The Roman Catholic Archbishop of San Francisco* bankruptcy case, the debtor has refused to concede that its parishes' assets are estate property, necessitating an adversary proceeding which has been pending since May 2025. *See* In re The Roman Catholic Archbishop of San Francisco, Adversary Case No. 25-03021.

While the Committee's motion for standing to assert certain claims against the Debtor and OPF was denied *without prejudice*, the Motion neglects to recognize that the claims the Committee was seeking to assert were merely complementary and alternative theories for relief to those set forth in the Church/ OPF Complaint. Given that the Committee extracted many of the concessions it had set out for by filing that complaint, the relief sought in the standing motion was moot.[12]

The Debtor Prosecutes a Facially Unlawful Plan. The Debtor chose to file its Plan in November 2024 without the Committee's support. *See* Dkt. No. 1444. In objecting to the adequacy of the accompanying Disclosure Statement, the Committee argued that the Plan was patently unconfirmable. *See* Dkt. No. 1518. The Committee then presciently argued: "[S]olicitation of the Debtor's Plan should be foreclosed to avoid burdening the Debtor, its estate and creditors with the expense of solicitation, discovery and a confirmation trial over a Plan that cannot be confirmed." *Id.* 3;11–13. But the Debtor ignored the Committee's pleas, choosing instead to try to achieve what has never occurred to date: cramming down a plan of reorganization over Survivors' objection in a non-profit religious bankruptcy case.[13]

The Committee's objections to the iterations of the Disclosure Statement set forth the numerous legal and factual issues with the Plan, any one of which demonstrates the Plan could not be confirmed [*see* Dkt. Nos. 1518, 1624, 1773, 1846]. The most glaring: the Debtor's insistence that it need not satisfy section 1129(a)(7)(a)(ii)'s hypothetical liquidation test because (i) its bankruptcy case cannot involuntarily be converted to a chapter 7 liquidation, and (ii) it cannot be forced to sell its real estate. This argument has been routinely rejected in other non-profit

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[12] Despite this concession, in an effort to secure the acceptance of an impaired accepting class of creditors, the Debtor counted votes cast by Parish Churches in Class 3 (General Unsecured Claims) on the Plan.

[13] Abuse claimants in *In re The Archdiocese of Saint Paul* and Minneapolis and *In re The Roman Catholic Diocese of Rockville Centre*, the only two Diocese bankruptcy cases where votes on a plan of reorganization were solicited without committee support, voted by an overwhelming majority to reject those plans. In *In re The Archdiocese of Saint Paul and Minneapolis*, more than 93% of abuse claimants rejected the Archdiocese's plan. *See Report of Ballot Tabulation*, No. 15-30125 (Bankr. D. Minn. May 11, 2017), Dkt. No. 1041. In *In re The Roman Catholic Diocese of Rockville Centre*, about 86% of abuse claimants rejected the Diocese's plan. *See Decl. of Stephanie Kjontvedt of Epiq Corporate Restructuring, LLC Regarding the Solicitation and Tabulation of Ballots Cast on Fourth Modified First Amended Chapter 11 Plan*, No. 20-12345-mg (Bankr. S.D.N.Y. Apr. 17, 2024), Dkt. No. 3057.

bankruptcy cases. *See, e.g., In re Boy Scouts of Am.*, 642 B.R. 504, 661 (Bankr. D. Del. 2022), *aff'd*, 650 B.R. 87 (D. Del. 2023).

Making matters worse, the Debtor conceded it did not comply with the test by stating that its liquidation analysis only includes "proceeds from certain vacant land and the properties serving as collateral for the secured RCC loan" in its liquidation analysis. Disclosure Statement, Ex. B, at 7, ¶ F, Dkt. No. 1445-2. According to the Debtor, it need not include substantially all of its improved real estate—which represents the vast majority of the Debtor's wealth—in its liquidation analysis "[b]ecause the Debtors (sic) cannot have their chapter 11 cases (sic) converted into chapter 7 cases involuntarily, the Debtors (sic) also cannot be forced to close and sell Churches." *Id.* If the hypothetical liquidation test were properly administered, the Plan would not satisfy the hypothetical liquidation test for any of three reasons.

First, in accordance with the civil law of California, judgments against religious institutions are treated no differently than those against nonprofit and for-profit entities, and real property may be attached to satisfy the claims of creditors. *See, e.g., Watson v. Jones*, 80 U.S. 679, 714 (1871) ("Religious organizations come before [the courts] in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints."); *see also Floyd S. Pike Elec. Contractor, Inc. v. Goodwill Missionary Baptist Church*, 214 S.E.2d 276, 278 (N.C. App. 1975) ("There being no provision in our Constitution exempting church property from execution, unless exempted by statute, said property is subject to sale under execution."); *Rector, Churchwardens and Vestrymen of Church of the Nativity v. Fleming*, 20 N.Y.S.2d 597, 599 (N.Y. Sup. Ct. 1940) ("That the real property of a religious corporation may be sold to satisfy a judgment against it has, apparently, never been questioned in this state and innumerable such sales have been made."), *aff'd*, 23 N.Y.S.2d 46 (N.Y. App. Div. 2d Dept. 1940), *aff'd sub nom. Rector, Churchwardens and Vestrymen of Church of Nativity v. Fleming*, 34 N.E.2d 485 (N.Y. 1941) (per curiam).

Second, the entirety of Debtor's real estate portfolio—without exception—is subject to the hypothetical liquidation test. The Debtor voluntarily sought the protection of Chapter 11 of the

Bankruptcy Code and hypothetically could seek relief under Chapter 7. Under the assumed (hypothetical) scenario of a conversion to Chapter 7 by Debtor, its properties would be subject to liquidation. This is precisely what is intended by section 1129(a)(7)—an analysis conducted under a *hypothetical* liquidation. 11 U.S.C. § 1129(a)(7).

Third, the First Amendment does not shield the Debtor's assets, including its real estate holdings, from consideration under the hypothetical liquidation test. The Debtor is bound by neutral laws of general applicability that govern all debtors in a bankruptcy proceeding. "[T]he right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" *See Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 879–81 (1990) (citation omitted). Ecclesiastical law is not superior to a congressional enactment in a constitutional system that dictates a separation between church and state.

Congress did not insert a special carveout in section 1129(a)(7) of the Bankruptcy Code solely for the benefit of properties of religious organizations to the exclusion of all other nonprofit entities. Yet the Debtor asked this Court to do what Congress has not done—to create a special carveout in the hypothetical liquidation test that would only exempt the properties of a Church for the purpose of determining the fairness of a plan of reorganization. Such an approach would violate not only the Bankruptcy Code but also the First Amendment. *See Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 532 (1993)*. It would subvert Congress's intent that the hypothetical liquidation analysis "[e]nsure that the dissenting members of an accepting class will receive at least what they would otherwise receive under the best interest of creditors test." 124 Cong. Rec. H32406 (daily ed. Sept. 28, 1978) (statement of Rep. Edwards).

In addition, the Debtor insists, in the face of black letter law to the contrary, that its Plan be found fair and equitable because the proposed distribution is measured by comparing it to distributions made to ***other*** survivors in ***other*** bankruptcy cases pending in ***other*** jurisdictions in cases with ***different*** governing law, ***different*** estate assets, ***different*** insurance programs and

different historical jury verdicts and settlements.[14] The Debtor also fails to factor into its analysis whether the statute of limitations was open in prior cases, which is a material factor in determining claim values.

After 99% of Survivors voted down the Plan, the Debtor asserted that it could nonetheless cramdown the Plan on Survivors because two impaired classes of creditors accepted the Plan. But the Committee was prepared to prove: (i) the Debtor manufactured an impaired accepting class of creditors—Class 3 (General Unsecured Creditors)—to avail itself of cramdown because the Debtor could pay Class 3 in full plus interest on the Effective Date of the Plan and (ii) in the accepting class of non-abuse tort claims, there was a single vote cast in favor of the Plan on behalf of a creditor holding a claim against the Roman Catholic Welfare Corporation, not the Debtor. *See Decl. of Andres A. Estrada with Respect to Solicitation and the Tabulation of Votes on the Debtor's Third Amended Plan of Reorganization*, Dkt. No. 2040.

Moreover, during discovery, the Committee learned that a number of Class 3 General Unsecured Creditors voting for the Plan were insiders. The Debtor was poised to count the votes of several priests and what appear to be school employees within the Diocese, several other Catholic entities within the Diocese operating under the Bishop's control and most shockingly, the Bishop's vote, arising out of a $300 unreimbursed expense. The Debtor was also going to count the claims asserted by Parish Churches, which have no separate legal existence from the Debtor and cannot hold claims or vote on the Plan. At the time the confirmation hearing was adjourned, the Committee was investigating this issue because the Debtor may not have secured the vote of Class 3 after eliminating insider and facially invalid claims.

The Debtor Repeatedly Obstructs Plan Discovery. Throughout Plan discovery, the Debtor blew through document production deadlines and in other instances, failed to adequately prepare

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[14] Under applicable non-bankruptcy law, jury verdicts and individual case settlements are the proper mechanism to liquidate the value of Survivors' claims. Congress has expressly preserved claimants' jury-trial rights for personal-injury claims such as the sexual abuse actions in this case. *See* 28 U.S.C. § 157(b). Payment of claims against a bankrupt debtor may be limited by the debtor's resources, but the allowed amount of such claims is not. *See* 11 U.S.C. § 502(b)(1) (claims are allowed "except to the extent . . . unenforceable . . . under . . . applicable law"); *see also Butner v. U.S.*, 440 U.S. 48, 55 (1979) ("Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.").

certain Rule 30(b)(6) witnesses to testify about the issues identified by the Committee. For example:

- Document productions were due May 23, 2025. But the Debtor did not complete its productions that day. Counsel to the Committee received approximately 5,800 documents on May 23rd; approximately 2,800 VeraCruz documents on May 24th; and a large production of approximately 25,000 documents from the Debtor on May 29th (after some depositions had already taken place), and approximately 9,800 documents from the Debtor on June 1st.
- Dan Flanagan, a Rule 30(b)(6) designee, was not adequately prepared for two of the topics he was designated to testify about at his deposition. As a result, the Debtor had to designate another witness, Attila Bardos, to testify on those topics the following week.
- Depositions uncovered relevant documents that were not produced to the Committee for which it had to make supplemental requests.
- The Committee provided a (categorical) privilege log with its document production on May 23rd, the due date for document productions. The Committee followed up with the Debor multiple times about its privilege log, which the Debtor finally produced on June 23rd.

The Court Lifts the Automatic Stay. While the Committee's first motion to lift the automatic stay was denied, the Court granted the Committee's request that it hold that the automatic stay did not extend to non-debtors. *See* Dkt. No. 1721. The Court later granted the Committee's renewed motion for stay relief. *See* Dkt. No. 2168. Tellingly, the Debtor here stands alone among dioceses in Northern California in failing to recognize the efficacy of stay relief in forcing both Survivors and insurers to reassess settlement posture as cases move forward to trial in state court.

As noted above, courts in and out of the Ninth Circuit impose refiling bars where debtors misuse the bankruptcy process, pursue clearly unconfirmable plans, or otherwise act inequitably. *See, e.g., Leavitt*, 171 F.3d at 1223–24 (permanent dismissal with prejudice); *Duran*, 630 B.R. at 814; *Franco*, 2016 WL 3227154, at *5–6 (one-year bar); *Johnson*, 2014 WL 2808977, at *7 (two-year bar); *Neher*, 2018 WL 4945683, at *3–4 (one-year bar). Here, the Debtor pressed a plan that was facially unconfirmable, lacked support from the largest unsecured class, failed to

maximize the value of its estate for creditors, failed to maximize recoveries, and made a meaningful misrepresentation in the Schedules—conduct which evidences the Debtor's bad-faith in prosecuting this case.

Given the Debtor's bad faith and the prejudice to the largest creditor body, Survivors, the Court should dismiss the case with prejudice under § 349(a) and impose a permanent bar on any chapter 11 filing by the Debtor (or any successor or affiliate).

C. Dismissal of this Case Must Be With Prejudice to Prevent Manifest Injustice to Survivors

Because the Debtor's conduct throughout this case has reeked of manipulation, gamesmanship and an overall lack of good faith, the Court should exercise its discretion under § 349(a) to dismiss this case with prejudice and impose a permanent refiling bar to protect Survivors and the integrity of the bankruptcy process.

The Debtor invoked the protections of Chapter 11 to stay litigation and to attempt to resolve its liability for sexual abuse in a single forum at a single time while insisting it is entitled to a "bankruptcy discount. For over two years, Survivors have been forced to participate in a bankruptcy process that has consumed tens of millions of dollars in professional fees, delayed their day in court and imposed significant emotional and financial burdens. The Debtor has repeatedly represented that it sought a global, fair and equitable resolution for Survivors, only to now seek dismissal when it perceives the process is no longer to its advantage. The Court should make clear that if the Diocese chooses to dismiss its bankruptcy case, it should not be permitted to re-file. Permitting the Diocese to voluntarily dismiss its case, only to re-file at a later date, would:

(i) ***Enable Strategic Forum-shopping.*** The Diocese could use the threat of re-filing to pressure Survivors into accepting unfavorable settlements, knowing that it can always return to bankruptcy if negotiations outside of bankruptcy do not go its way.

(ii) ***Delay and Exhaust Creditors.*** Survivors have already endured years of litigation, mediation, and negotiation, incurring significant emotional and financial costs. Allowing the Diocese to re-file if it is not satisfied with results in the state court would force Survivors to restart the process, further delaying justice and compensation.

(iii) ***Undermine Finality and Judicial Economy.*** The Court and parties have invested substantial resources in the current case. Allowing serial filings wastes judicial resources and undermines the integrity of the bankruptcy process.

To permit the Debtor to refile would be blatantly unfair, a misuse of the bankruptcy system, and would inflict further harm on Survivors.[15]

WHEREFORE, the Committee requests (i) that entry of any order approving the Motion be *with prejudice* and (ii) any other relief that the Court may deem just and appropriate.

Dated: September 19, 2025

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-and-

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[15] If the Court contemplates allowing for any future bankruptcy filing after a period of time, the Court should at minimum require prior leave upon a detailed evidentiary showing of *bona fide*, material change in circumstances justifying re-filing. *See*, *e.g., Ellsworth*, 455 B.R. at 922 (court has broad discretion to condition relief).