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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

DEBTOR'S RESPONSE TO 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

Date: October 29, 2025
Time: 1:30 p.m.
Place: United States Bankruptcy Court
1300 Clay Street, Courtroom 220
Oakland, CA 94612

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The Roman Catholic Bishop of Oakland, a California corporation sole and the debtor and debtor in possession (the "Debtor" or "RCBO") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case"), hereby files its response (this "Response") to *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)* [Docket No. 2329] (the "Objection"), filed by the Official Committee of Unsecured Creditors (the "Committee") in response to the *Debtor's Motion to Dismiss Chapter 11 Case Pursuant to 11 U.S.C. §1112(b)* [Docket No. 2293] (the "Motion").[1] The Objection filed by the Committee is the only objection to the Motion, and is limited to seeking a finding of bad faith by the Debtor and a dismissal with prejudice barring future bankruptcy filings or discharge. Nothing in the circumstances of this Chapter 11 Case warrant the almost unheard-of remedy of a dismissal with prejudice in a Chapter 11 case, based on the record of which this Court is well aware and for the reasons set forth in this Response.

In support of this Response, the Debtor submits the concurrently filed declarations of Attila Bardos (the "Bardos Decl.") and Matthew D. Lee (the "Lee Decl."), and incorporates the previously filed: 1) *Declaration of Matthew D. Lee in Support of Debtor's Motion to Dismiss Chapter 11 Case Pursuant to 11 U.S.C. §1112(b)* [Docket No. 2294] and 2) *Debtor's Motion to Continue Confirmation Hearing and to Reset Confirmation Schedule* [Docket No. 2147], and respectfully represents as follows:

I.
INTRODUCTION

The Debtor seeks dismissal of its Chapter 11 Case because after nearly 30 months in Chapter 11, the Debtor believes there is no reasonably likelihood of a consensual settlement with the Committee. This belief, coupled with ongoing significant financial losses caused by extreme and untenable professional fees which cannot be further sustained, present valid grounds for the case to be dismissed without prejudice.

After the Motion was filed, the Debtor, the Committee and the Insurers participated in a two-day (October 7-8) in-person mediation with all three Mediators at the office of Tim Gallagher. At the

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the *Debtor's Third Amended Plan of Reorganization* (the "Third Amended Plan") [Docket No. 1830], filed on March 17, 2025, as applicable.

conclusion of the mediation, the Mediators collectively issued to all parties a Mediators' Proposal for settlement of the monetary issues in the Chapter 11 Case. As of this filing, the Mediators have extended the deadline for each party to either accept or reject the Mediators' Proposal. If the parties do not accept the Mediators' Proposal, then the Debtor will proceed with the hearing on the Motion and seek dismissal of the Chapter 11 Case without prejudice. This will mean the Debtor has determined, in its reasonable business judgment, the appropriate outcome of this Chapter 11 Case is dismissal, which would allow it to preserve what remains of its unrestricted resources for state court litigation and to pay what any resulting judgments against the Debtor to the extent it has unrestricted assets to do so. Through its Objection, the Committee *supports* dismissal. The Committee now alleges, for the first time in a formal written submission in this Chapter 11 Case, the Debtor acted in bad faith throughout the case and thus advocates that dismissal be accompanied by a permanent bar on any future Chapter 11 filings by the Debtor. This should be swiftly rejected by this Court.

The Committee's request for a dismissal with prejudice is more than extraordinary. It requires the Court – and frankly, the Committee – to ignore everything the Debtor has done to conduct itself as a debtor-in-possession during this Chapter 11 Case. The facts alleged by the Committee in support of a bad faith finding by this Court do not allege a *true* bad faith filing that might warrant a dismissal with prejudice, and indeed do not remotely support any finding of bad faith. Instead, the Committee alleges the Debtor filed this case because the Debtor wanted to use the chapter 11 reorganization process to limit the amount it must pay its creditors. Of course, that is the reason **all** debtors file bankruptcy, and is not indicative of bad faith.

Moreover, if the Court finds the Committee's arguments regarding bad faith familiar, it is because similar arguments were previously addressed and argued during multiple hearings in which the Debtor sought approval of what ultimately became the Debtor's *Third Amended Disclosure Statement* [Docket No. 1874]. The Committee eventually abandoned these bad faith arguments when the Committee acceded to the approval of same, which the Court granted on April 4, 2025. [Docket No. 1877]. The Committee's Objection—and the entire bad-faith argument underlying it—should be seen for what it is: the Committee's final scorched-earth litigation tactic and last hope to gain even more recovery from the

Debtor. It will not work. The Mediators' Proposal represents the last and final chance for a consensual resolution of this Chapter 11 Case, should the parties accept the terms presented by the Mediators.

Dismissal with prejudice is not supported by the facts of this Chapter 11 Case nor the law. The Debtor has no intention to file chapter 11 again, but the Committee cannot articulate a single reason it should be forever barred from doing so. The Committee's allegations of bad faith are unwarranted. For nearly thirty months, as even the Committee has previously acknowledged, the Debtor has been absolutely forthcoming and transparent to this Court and to the Committee including in discovery. The Debtor has made repeated and diligent efforts to achieve a global resolution, ensuring that all creditors receive equitable treatment. The Debtor engaged in more than a dozen mediation sessions—including additional sessions on October 7-8, 2025, *after* the filing of the Motion to Dismiss—over a period of approximately 20 months. As the Court is aware, the Debtor put an offer on the table that would have provided for: 1) a complete assignment of its insurance interests and rights to the Survivor's Trust, 2) a guaranteed contribution by the Debtor of approximately $122 million and by RCWC of an additional $43 million (for a combined total of $165 million, or approximately $463,768 per Class 4 survivor assuming 345 survivors receive distributions) *before* accounting for any recovery from the Debtor's insurers, and, critically, 3) what the Debtor believes are among the most comprehensive and far-reaching child-protection protocols in the country, derived from hundreds of hours of work and significant negotiation with the Committee.

That these efforts were not enough for a Committee seemingly incapable of saying "yes"—and still standing on repeated demands for more money, more closed churches, and a weakened Debtor less capable of fulfilling its sacred duty—does not evidence of bad faith on the part of the Debtor. Rather, it demonstrates a consensual outcome with this Committee is impossible in this Chapter 11 Case, no matter what the Debtor proposed, no matter how deeply it cut, and no matter how transparent it was in discovery or mediation. Rather than approve a consensual outcome which would pay to all survivor creditors in this Chapter 11 Case an average survivor recovery of $463,768 from the Debtor and RCWC alone, which substantially exceeds all average diocesan-only recovery amounts in diocesan bankruptcies in which it least 200 non-duplicative abuse claims were filed and in which a consensual plan was confirmed on or

after January 1, 2015, this Committee of nine survivors has instead chosen to favor the few who may be able get to state court judgments more quickly than others, over the whole.

Should the Debtor proceed with the hearing on this Motion October 29th, the Debtor will stand before this Court having exhausted every effort of which it can conceive to persuade the Committee to a global settlement and will thus seek dismissal of this Chapter 11 Case without prejudice.

II.

ARGUMENT

A. Dismissal of this Bankruptcy Case is Appropriate and Necessary.[2]

The Debtor can no longer afford the administrative expense associated with pursuing confirmation of the Plan through a contested plan confirmation process. Even if the Debtor could afford this cost, it does not believe it should continue to do so when there is no likely prospect for a global, consensual resolution.

Pursuant to 11 U.S.C. §1112(b)(4)(A), cause exists for this Court to dismiss this bankruptcy proceeding. The Debtor experienced a continuing loss over the past two-plus years. (*See* Bardos Decl., ¶ 3.) It has paid nearly $41 million[3] to the retained professionals in this case, 43% of which went to Committee professionals. (*See id.*) These costs will only increase if the Debtor remains in bankruptcy. With no end in sight and insufficient funds to pursue a non-consensual plan, the Debtor can no longer bear the burden of these costs. (*See id.*) The Debtor's unrestricted cash is currently $8.4 million. (*See id.*) The balance of estimated accrued and unpaid professional fees as of September 30, 2025, is approximately $7.7 million, leaving a net available cash balance of approximately $700,000. (*See id.*) The Debtor's current unrestricted cash includes both the one-time payment of $3.2 million from Catholic Church Support Services, Inc. pursuant to the pledge agreement approved by the Court's September 18, 2025, order [Docket No. 2323] (the "CCSS Order"),[4] and the draw-down of $2.5 million in remaining funds

[2] All the arguments made in the Motion are incorporated herein.
[3] This amount is through September 2025.
[4] An additional $750,000 initial pledge amount from RCC pursuant to the CCSS Order has not yet been received by RCBO. These funds do not materially increase available cash in light of the need to pay post-September professional fees and other operating expenses.

from the LTC and SERP (priest retirement) funds leaving only $500,000 in LTC funds against ongoing long term care expenses. (*See id.*)

Also, in this case, it does not appear the Debtor will be able to consensually resolve the significant case issues regarding payment of claims to creditors, namely the survivors of sexual abuse. The Committee has not made and clearly does not intend to make a reasonable settlement demand. In fact, the most recent correspondence from the Committee dated September 8, 2025—the first written settlement demand from the Committee in nearly a year—was virtually the same as the Committee's prior demands. The Committee's latest demand ignored what actually happened in the Chapter 11 Case over that same period of time, including multiple negative rulings against the Committee's attempts to "augment" the Debtor's chapter 11 estate with the assets of RCC, RCWC, Adventus, and other entities. The Committee continues to act as though the Debtor prevailing on those efforts has no impact on the Committee's settlement position.

The Debtor filed bankruptcy hoping to resolve survivor claims through a fair and equitable claims process, not a race to the courthouse. It proposed the closure of twelve of its churches and the sale of all its vacant real estate to make that happen. It was prepared to pay $160 million[5] to the 345 non-duplicative, non-time-barred abuse claimants **plus** the value of its historical insurance policies. The Committee's responses are well-documented. The Debtor is out of money, out of ideas, and out of hope for a consensual resolution in this case.

Rather than require the Debtor to continue in bankruptcy, this Court should dismiss the case and return the parties to their respective pre-petition positions. While this outcome is far from preferred and is indeed the last thing the Debtor wanted when it filed its bankruptcy petition, it is nonetheless necessary at this point. The Debtor's financial resources are finite and diminishing. It must devote its assets to protecting itself in the state-court litigation to come.

For the reasons set forth herein and in the Motion, cause exists to dismiss this case pursuant to 11 U.S.C. §1112(b), and granting the relief requested is necessary, prudent, and in the best interests of the Debtor, its estate, and creditors.

[5] This reflects the total contrition of $165 million less the $5 million set-aside for unknown abuse claims.

B. The Debtor Has Acted in Good Faith and Dismissal Should be Without Prejudice.

Section 349(a) grants the bankruptcy court authority to dismiss a case without or with prejudice. Dismissal with prejudice including a bar to subsequent discharge under section 349(a) "is a severe and drastic sanction that is limited to extreme situations." *McCarthy v. Martin (In re Martin)*, No. WW-15-1377-JuTaKu, 2016 Bankr. LEXIS 4238, at *29 (B.A.P. 9th Cir. Dec. 6, 2016); *see also Hall v. Vance*, 887 F.2d 1041, 1045 (10th Cir. 1989) ("Dismissal with prejudice is a severe sanction to which the courts should resort only infrequently.").

A bar to refiling or to discharge in a subsequent case is virtually unheard of in a Chapter 11 case. All the cases the Committee cited where the court imposed a permanent bar on a debtor refiling bankruptcy are either *chapter 13 or chapter 7* cases, not chapter 11 cases. *See In re Leavitt*, 171 F.3d at 1220 ("Appellant debtor's Chapter 13 petition was dismissed with prejudice by the Bankruptcy Court based on its findings that plaintiff's concealment of assets and inflation of expenses amounted to bad faith."); *In re Johnson*, No. ADV 12-1150, 2014 WL 2808977 (B.A.P. 9th Cir. June 6, 2014) (chapter 7); *In re Neher*, No. 18-23887-B-13, 2018 WL 4945683 (Bankr. E.D. Cal. Oct. 10, 2018) (chapter 13). The Committee fails to cite a chapter 11 case that was dismissed with a permanent bar. Indeed, the Debtor could not find one.

Nor has the Committee stated a basis for a bad faith finding. Courts applying bad faith tests generally consider a variety of non-exclusive factors, including:

> (1) the debtor's history of filings and dismissals; (2) whether a debtor misrepresented facts in their petition, unfairly manipulated the Bankruptcy Code, or otherwise filed the petition in an inequitable manner; (3) whether the debtor is actually in need of bankruptcy protection; (4) whether the debtor intended to invoke the automatic stay for improper purposes, such as for the sole objective of defeating state court litigation; and (5) whether egregious behavior is present.

In re Mitchell, 357 B.R. 142, 154 (Bankr. C.D. Cal. 2006) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999)). Simply stated, "[a] bankruptcy case is filed in bad faith if it was brought for 'tactical reasons unrelated to reorganization.'" *In re Van Damme*, No. 25-10329-gs, 2025 Bankr. LEXIS 660, at *18-19 (Bankr. D. Nev. Mar. 13, 2025).

None of the *Leavitt* factors summarized in the *In re Mitchell* decision are present here. As set forth below, every factual circumstance the Committee raises fails to support any finding that the Debtor acted in bad faith either in filing this Chapter 11 Case or at any point during the Chapter 11 Case.

i. *Oakland Parochial Fund Claim*

The Original Plan [Docket No. 1444] and subsequent amendments included treatment of the scheduled claim of the OPF, in the amount of $35,000,000.00, as Class 8. Pursuant to the *Stipulation Regarding Withdrawal of Claim of Oakland Parochial Fund, Inc.* [Docket No. 1784] between the Debtor and OPF, and the order thereon [Docket No. 1796], OPF withdrew the OPF Claim in its entirety. The Plan therefore no longer includes Class 8 or any other provision for distribution to OPF on account of the OPF Claim. Plan, § 1.1.4.

The Debtor did not misrepresent the OPF Claim in its filing of the Schedules. (Bardos Decl., ¶ 4.) Instead, after attempting to reach a compromise with the Committee and in the belief that this could facilitate a comprehensive resolution, the Debtor and the OPF agreed to withdraw that claim to take the issue off the table. (*See id.*) While it is true that subsequent amended versions of the Plan contemplated potential repayments by the Debtor to OPF of the amount the Debtor believes it owes, such payments would not impact required contributions to the Survivor's Trust in any way. (*See Third Amended Disclosure Statement*, [Docket No. 1874], at 27). The Debtor has always been clear that any repayments to OPF would be independent and not at the expense of its civil law obligations. (*See id.*, ("Nothing in the Plan, however, prohibits the Debtor from making payments to OPF after the Effective Date of the Plan in order to satisfy its obligations under Canon Law, provided any such payments do not otherwise violate the terms of the Plan or applicable civil law." (*emphasis added*)).[6]

Throughout this process, the Debtor acted in good faith, demonstrating its commitment to resolving matters amicably. Agreeing with OPF to pull OPF's claim to satisfy the Committee produced an amicable resolution – indeed, the very resolution the Committee wanted. To conclude the Debtor giving the Committee exactly what it wanted somehow illustrates bad faith by the Debtor is nonsensical.

[6] In the prior versions of the Plan that provided for treatment of the OPF claim, the Plan provided for deferral of up to 10 years to begin payments, and up to 30 years to complete payments, ensuring repayment to OPF would not be at the expense of other creditors. [*See Disclosure Statement*, Docket No. 1445], at 37].

ii. *Payments to Survivors*

The Debtor proposed a plan that would pay per survivor on average an amount which substantially exceeds all average recovery amounts in similar diocesan bankruptcies. *See* Motion, p. 2-4. On August 25, 2025, the Debtor delivered to the Committee its proposal for final resolution of this Chapter 11 Case, increasing the amount the Debtor will pay and communicating an increase in the offer from schools, in the total amount of $165 million, together with a commitment it would adopt enhanced child protection protocols for which the Committee advocated more than one year ago. (Bardos Decl., ¶ 6.) The Debtor's proposal is not merely fair and equitable. It would allow an average per-survivor recovery of $463,768 from the Debtor and RCWC alone. (*See id.*) This substantially exceeds all average diocesan-only recovery amounts in diocesan bankruptcies in which at least 200 non-duplicative abuse claims were filed and in which a consensual plan was confirmed on or after January 1, 2015. Moreover, this amount does not even include the significant value survivors electing the Litigation Option stand to receive from the Debtor's Insurers.

Even after filing the Plan, the Debtor continued to raise the settlement offer. The current settlement of $165 million is an increase of $22 million over the proposal in the Third Amended Plan. The Debtor has stretched the limits of its unrestricted assets to their absolute maximum. (Bardos Decl., ¶ 7.)

The Committee states "[t]his case was filed to radically reduce the amount of damages that Survivors would otherwise be able to recover in state court." (Objection, p. 12.) Setting aside the fundamental reality of insolvency—the inability to pay all debts in full—when coupled with a primary purpose of the bankruptcy process—to allow for equitable distributions to all creditors—the premise of the Committee's Objection falls flat. From the outset, the Debtor has maintained its intention to utilize this Chapter 11 Case to benefit *all* creditors, not just those that can win the race to the courthouse and place themselves first in line after enduring protracted litigation in state court.

iii. *Churches*

At no point during this Chapter 11 Case has the Debtor suggested the Churches are outside the estate. The declaration of Charles Moore filed on the Petition Date states, "[n]one of the [Churches] within the diocese are separately incorporated entities under California law," and "[t]o the extent that the Bishop

holds goods belonging to a parish—including, for example, real and personal property—he does so in trust for the benefit of the applicable Church." (Moore Declaration [Docket No. 19], ¶ 19). The original Disclosure Statement, filed approximately eighteen (18) months later, includes the same language. [*See* Docket No. 1445 at 18]. Subsequent amended versions of the Disclosure Statement, including the Third Amended Disclosure Statement [Docket No. 1874] clarified that "[b]ecause the Churches are not separately incorporated legal entities, as a matter of California law they are not separate from the Debtor, and they do not own or hold a legal or equitable interest in property separate from the Debtor." *See* Art. III.E. Similar language exists in Article IV.C of all subsequent versions of the Disclosure Statement, as well.[7] The Disclosure Statement has also been revised, consistent with the Plan, to clarify that because Churches are not separately incorporated, they are included in the releases and permanent injunction in the Plan in favor of the Debtor, and not receiving any separate release from the Debtor.

iv. *The Plan*

It is unfounded for the Committee to suggest that the Debtor acted inappropriately by filing the Plan. The Debtor was obligated to do so within its exclusivity period or open itself up to competing plans. This course of action was not only necessary but also affirmed by the Court, which explicitly recognized the Debtor's requirement to submit a plan. In light of these circumstances, the Debtor's decision to file the Plan was reasonable. The assertion that it should not have filed the Plan disregards the procedural realities and overlooks the Court's alignment with the Debtor's actions.

Also, the Committee contends the Debtor's efforts to implement a cramdown of the Plan on the creditors proves the Debtor's bad faith. This is absurd. Pursuing plan confirmation over the objection of its unsecured creditors committee is within the legal rights of every debtor. *See Zachary v. California Bank & Tr.*, 811 F.3d 1191, 1194 (9th Cir. 2016). Nothing in the Bankruptcy Code places special conditions for plan confirmation on Catholic dioceses.

[7] This language was added to the *Amended Disclosure Statement* filed on or about January 3, 2025 at Docket No. 1595, as reflected in the redline comparison attached to Docket No. 1596 as Exhibit B.

v. *Liquidation Analysis*

The Committee spends more than two pages excoriating the Liquidation Analysis, re-raising arguments the parties thoroughly addressed during the Disclosure Statement stage. With the Court having already approved the Disclosure Statement, there is little reason to revisit these points. Nonetheless, the Debtor will once again summarize why its original Liquidation Analysis is appropriate.

The original Liquidation Analysis compared recoveries under the Plan to possible recoveries by creditors under a hypothetical liquidation. It is predicated on the well-founded premise that a "hypothetical liquidation" must be a possible liquidation. Under Ninth Circuit law, assets of the Debtor's estate that cannot be legally made available for distribution to creditors should not be included in a hypothetical liquidation under section 1129(a)(7)(A)(ii) of the Bankruptcy Code. *See Security Farms v. Gen. Teamsters, Warehouseman and Helpers Union, Local 890 (In re Gen. Teamsters, Warehouseman and Helpers Union, Local 890)*, 265 F.3d 865, 877 (9th Cir. 2001). This means a liquidation analysis ought not include assets which cannot be used to pay creditors because including such assets distorts the outcome and creates confusion.

The Debtor argued then, and argues now, that houses of worship like the Churches should not be considered part of the liquidation analysis because they cannot be liquidated in a forced sale. The decision on whether to operate a church at a particular location, or the decision whether to sell real estate on which a church sits, is inherently an ecclesiastical decision which affects the faith and mission of the Catholic Church. *See Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 565 U.S. 171, 188-190) (in the context of the ministerial exception to federal employment discrimination laws, First Amendment Religion Clauses prohibit "government interference with an internal church decision that affects the faith and mission of the church itself"). Under the Free Exercise Clause and Establishment Clause of the First Amendment to the U.S. Constitution, these decisions are reserved for the Bishop alone and the Court may not interfere with or dictate those decisions. California law also can be read to support this result. *See*, *e.g.*, *People ex. rel. Deukmejian v. Worldwide Church of God*, 127 Cal. App. 3d 547, 551 (1918) ("How the State, acting through the Attorney General or the courts, can control church property and the receipt and expenditure of church funds without necessarily becoming involved in the

ecclesiastical functions of the church is difficult to conceive.") In truth, neither party can cite controlling authority directing its preferred outcome on this issue. It is an issue of first impression. That the Committee disagreed with the Debtor and took an opposing view is not an indicium of bad faith by either party.

This is ultimately a moot point. The Liquidation Analysis attached as Exhibit B to the Disclosure Statement includes a "Supplemental Liquidation Analysis" premised on the liquidation of all real estate titled in the name of the Debtor, **including all of its Churches**. This was done at the specific suggestion of the Court. (Transcript of January 21, 2025, hearing, at 21: "I think we need [a liquidation analysis] that, at least hypothetically, encompasses everything that might in some world be liquidated"). The Court then approved the Disclosure Statement. Had confirmation of the Third Amended Plan gone forward in August 2025, the Debtor would have used the Supplemental Liquidation Analysis to demonstrate the Third Amended Plan satisfied the requisite standard under section 1129(a)(7).

vi. Discovery

In the nearly two and a half years since the Petition Date, the Committee has requested, and the Debtor has diligently produced, tens of thousands of documents. (*See* Lee Decl. ¶ 4.) In total, the Committee has issued nearly 1,000 formal and informal discovery requests. (*See id.*) At no time prior to submission of the original Plan in November 2024 did the Committee raise *any* concerns to the Court about the Debtor's fulsomeness or transparency. In fact, the Committee praised the Debtor's cooperation with the Committee's diligence requests on the record on multiple occasions. Following approval of the Disclosure Statement and commencement of formal discovery, the Debtor timely produced written responses to all the Committee's requests and began a rolling document production. Multiple meet-and-confer calls were held to address issues and questions from the Committee, just like any other case with voluminous discovery. (*See id.*) The Debtor is unaware of a single informal or formal request to which it did not respond completely and honestly. (*See id.*) Presumably, if anything the Debtor allegedly did or failed to do in discovery prejudiced the Committee, the Committee would have moved to compel whatever it viewed as deficient. It never did.

Throughout this process, the Debtor and its team have committed significant effort to review and produce thousands of documents. (*See* Lee Decl. ¶ __.) This cost the Debtor millions of dollars. (Bardos

Decl., ¶ 8) The Debtor will place its dedication to transparency and adherence to discovery requirements on par with anyone. The Committee's after-the-fact criticisms are belied by its own statements throughout the case and the millions of dollars in fees the Committee's own professionals accumulated thinking up discovery requests.

vii. *Livermore Property*

Finally, the Committee repeats its charge that the Debtor misled the Committee about the value of the Livermore Property and hid the Debtor's efforts to increase the property's value by changing the zoning from agricultural to residential. Nothing could be further from the truth.

The Livermore Property, owned by Adventus, consists of approximately 122.5 acres of vacant land with no on-site improvements. (Bardos Decl., ¶ 9) It is currently zoned for agricultural use. (*See id.*) The Debtor stated in the original Disclosure Statement it believes the Livermore Property is worth between $43 million and up to approximately $81 million or more if it is entitled for residential development, such that the sale of the Livermore Property by the Survivors' Trustee could have increased the Survivors' Trust Assets by that amount (and perhaps more). The Debtor and Adventus have spent considerable time working with the City of Livermore to permit the Livermore Property to be developed for residential use. (*See id.*) This work is ongoing. (*See id.*)

Adventus formally requested the redesignation of the Livermore Property from agricultural use to residential use in December 2023, proposing the property be re-zoned to residential and housing development be authorized. (Bardos Decl., ¶ 10.) On or about February 24, 2025, the Livermore City Council unanimously approved a request by the city's planning staff to negotiate a housing development agreement in relation to the Livermore Property. (*See id.*) That process alone took over one year. The Debtor hopes Adventus' negotiations with the City will lead to a re-zoning of at least some of the Livermore Property to allow residential use, and the Debtor and Adventus will continue working to re-entitle the Livermore Property after until a final determination is made. (*See id.*) But before that can happen, assuming a development agreement with the City is ultimately approved, Adventus still must: (1) initiate development of a Neighborhood Plan which requires outreach to the neighborhood; (2) seek city approval of the Neighborhood Plan; and (3) submit applications for a Tentative Tract Map and Site Plan

Design Review before it can begin to develop the site. (*See id.*) There is no certainty in how this will play out, and the Committee itself has on numerous occasions made clear that it wants to bear none of the risk of the inherent uncertainty in the ongoing efforts to liquidate some or all of this asset. (*See id.*)

The Debtor's public filings alone dispel the Committee's claim that it had no idea about the Debtor's efforts to re-zone and develop the Livermore Property until after the failed mediation of February 24 and 25. Attached as **Exhibit A** is a list of just some of the Debtor's public statements on the Livermore Property entitlement process, the uncertain result of that process, and the potential increase in the value of that property should it be re-zoned from agricultural to residential. Exhibit A sets out these public statements in three categories: statements before the February 24-25 mediation, statements after the mediation, and statements in Court.

The Debtor's non-public disclosures regarding the Livermore Property began long before it filed the Disclosure Statement, however. The Debtor produced the December 2023 re-zoning application to the Committee in **early 2024** along with several other documents concerning its rezoning efforts. (*See* Lee Decl. ¶ 7.) The Debtor produced additional documents concerning the present and potential future values of the Livermore Property through one of the mediators, Hon. Christopher Sontchi (retired), on **April 12, 2024**. (See id., at ¶ 8.) On June 27, 2024, the Debtor granted the Committee's professionals direct access via a Teams meeting to the Debtor's former CFO, Paul Bongiovanni, so he could update the Committee on the re-entitlement process on the Livermore Property and so its professionals could ask questions about it. (See id., at ¶ 9.) This was one of multiple meetings regarding the Livermore property the Debtor agreed to between its leadership and the Committee's professionals. (*See id.*) There are several examples of work product created in 2024 by the Committee's professionals, BRG and Douglas Wilson Companies, in which they acknowledge the information the Debtor supplied to the Committee about the Livermore Property. The documents were created in mediation, so the Debtor does not disclose their contents here. It will instead trust the Committee's professionals to either correct the record or withdraw its arguments about the Livermore Property.

The Committee's position on the Livermore Property has been all over the map. The Committee's proposed letter to its constituents stated "the Committee values the Livermore property between $10 to

$15 million." [Docket No. 1773-2, at 6], and in its initial Disclosure Statement objection asserted "almost half of Abuse Claimants' projected recovery may be gravel and rock." [Docket No. 1518, at 9.] Based on the Committee's position, the Debtor substituted nearly dollar-for-dollar value based on what the Committee said the Livermore Property was worth (approximately $12 million). (Bardos Decl., ¶ 11.) That the Committee then protested this substitution demonstrates only that the Committee itself always knew that the Debtor's *higher* value was accurate, and the Committee wanted to capture that value without giving the Debtor credit for it. This only became clearer in discovery, where the Committee produced correspondence between its professionals and other individuals noting the high potential value of the Livermore Property.

Finally, the rezoning of the property is a matter of public record, readily accessible and transparent to anyone interested, including the Committee. Given the availability of this information, it is unreasonable for the Committee to assert that they were deprived of crucial knowledge or that such information was withheld. (*See* Objection, at 4.) If they were somehow unaware of the progress of the rezoning efforts with respect to the Livermore Property, it was because they chose to be.

III.

CONCLUSION

WHEREFORE, the Debtor requests the Court enter an order overruling the Committee's Objection in its entirety and dismissing this bankruptcy proceeding without prejudice.

DATED: October 20, 2025

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EXHIBIT A

Debtor's References to Livermore Property Entitlement Process in Public Filings and Court Hearings

Record References Before February 24-25

Document	Docket No.	Date	Quote
Disclosure Statement	1445	November 8, 2024	[pg. 2] "The Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single family homes. The Debtor has engaged with City of Livermore officials and staff regarding the entitlement process for many years." [pg. 74] "As stated previously, the Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single family homes. The Debtor is optimistic that not only will the City approve a change to residential use, but that the property will realize the value the Debtor has placed on it. There is no guarantee either will happen."
Debtor's Reply to the Official Committee of Unsecured Creditors' Objection to the Debtor's Disclosure Statement	1541	December 16, 2024	[Appx. A, #9] "This objection is a restatement of the objection to the valuation of the Livermore Property. As the Committee is aware, the Livermore Property may be worth substantially more than what the Debtor projected as the low and high-end recoveries in the Disclosure Statement." "With the understanding that any value of the Livermore Property is speculative pending rezoning and development of that property (as described in Article I(A) on page 2), at any confirmation hearing, the Debtor will be prepared to present evidence in further of the Plan regarding such value."
Amended Disclosure Statement for Amended Plan	1595	January 3, 2025	[p. 2] "The Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single-family homes. The Debtor has engaged with City of Livermore officials and staff regarding the entitlement process for many years." [p. 3] "The Livermore Property, which the Plan proposes to transfer to the Survivors' Trust on the Effective Date, hands over to the Survivors' Trust for

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			the benefit of Class 4 Claims what is likely the most valuable single real estate asset available to the Debtor (through its affiliate, Adventus, which will approve the transfer if the Plan is confirmed). The Debtor has spent considerable time working with the City of Livermore to permit the Livermore Property to be developed for residential use. This work is ongoing. If the Debtor (or the Survivors' Trust) succeeds, the sale of the Livermore Property will dramatically increase the amount available to pay Abuse Claims." [p. 85] "As stated previously, the Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single-family homes. The Debtor is optimistic that not only will the City approve a change to residential use, but that the property will realize the value the Debtor has placed on it. There is no guarantee either will happen."
Debtor's Reply to the Official Committee of Unsecured Creditors' Objection to the Debtor's Amended Disclosure Statement	1629	January 14, 2025	[Appendix A, #3] "The Amended Disclosure Statement clearly and succinctly describes potential risks associated with the expressed value of the Livermore Property. In particular: The Livermore Property is worth between $43 million and up to approximately $81 million or more if it is entitled for residential development, such that the sale of the Livermore Property by the Survivors' Trustee could contribute such amount following its sale to the Survivors' Trust Assets." … "The Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single-family homes. The Debtor has engaged with City of Livermore officials and staff regarding the entitlement process for many years. Additionally, the Executive Summary includes a chart giving zero value to the Livermore Property as a baseline for comparison." "Finally, the Risk Factors section of the Amended Disclosure Statement also explains the risk associated with entitlement of the Livermore Property:

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			As stated previously, the Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single-family homes. The Debtor is optimistic that not only will the City approve a change to residential use, but that the property will realize the value the Debtor has placed on it. There is no guarantee either will happen."
Second Amended Disclosure Statement	1763	February 19, 2025	[p.2] "The Debtor believes the Livermore Property is worth between $43 million and up to approximately $81 million or more if it is entitled for residential development, such that the sale of the Livermore Property by the Survivors' Trustee could contribute such amount following its sale to the Survivors' Trust Assets.[4] Adventus holds title to the Livermore Property. The Livermore Property is located at 3658 Las Colinas Road, Livermore, CA. The Livermore Property consists of approximately 122.5 acres of vacant land with no on-site improvements. It is currently zoned for agricultural use. The Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single-family homes. The Debtor has engaged with City of Livermore officials and staff regarding the entitlement process for many years but cannot guarantee that such entitlement efforts will ultimately be successful. If the Livermore Property is ultimately not entitled for the construction of single-family homes, then total possible creditor recoveries under the Plan may be materially less than projected." *"Footnote 4: As discussed in the Committee Letter attached hereto as Exhibit G, the Committee contests this valuation*." [p. 4] "The Livermore Property to be contributed by the Debtor to the Survivors' Trust on the Effective Date hands over to the Survivors' Trust what the Debtor believes is the most valuable single real estate asset available to the Debtor (through its affiliate, Adventus, which will approve the transfer if the Plan is confirmed). The Debtor has spent considerable time working with the City of Livermore to permit the Livermore Property to be developed for

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			residential use. This work is ongoing. If the Debtor (or the Survivors' Trust) succeeds, the sale of the Livermore Property will dramatically increase the amount available to pay Abuse Claims. If the Livermore Property is ultimately not entitled for the construction of single-family homes, then total possible creditor recoveries under the Plan may be materially less than projected." [p. 89] "As stated previously, the Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single-family homes. The Debtor is optimistic that not only will the City approve a change to residential use, but that the property will realize the value the Debtor has placed on it. There is no guarantee either will happen."

Record References After February 24-25

Document	Docket No.	Date	Quote
Debtor's Reply to the Official Committee of Unsecured Creditors' Objection to the Debtor's Second Amended Disclosure Statement	1781	February 26, 2025	[p. 7] "The Debtor added language to the Disclosure Statement (such language being in blue below) at Art. I(A)(i) (pages 1 and 2) and I(A)(ii) (page 5), regarding the risks associated with the stated valuation of the Livermore Property if it was *not* re-entitled for the construction of single-family homes: The Survivors' Trust will be funded with (a) $103 million in cash contributed by the Debtor, (b) a contribution of real estate which the Debtor believes is worth between approximately $43 million and $81 million (or more) if it is entitled for residential development…" "The Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single-family homes. The Debtor has engaged with City of Livermore officials and staff regarding the entitlement process for many years. but cannot guarantee that such entitlement efforts will ultimately be successful. If the Livermore

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			Property is ultimately not entitled for the construction of single-family homes, then total possible creditor recoveries under the Plan may be materially less than projected." "The Risk Factors section of the Disclosure Statement also explains the risk associated with entitlement of the Livermore Property at Art. XVIII(E) (page 89), and this language remains unchanged: As stated previously, the Debtor's estimated valuation of the Livermore Property assumes the property is entitled for the construction of single-family homes. The Debtor is optimistic that not only will the City approve a change to residential use, but that the property will realize the value the Debtor has placed on it. There is no guarantee either will happen. Now, the Committee pivots to a different argument—that additional disclosure about the status of the "Debtor's discussions with the City" is necessary. [Objection at 9]. That this argument was not previously made in any filing and was not raised in any meet-and-confer discussions with the Debtor underscores its illegitimacy. The Committee seeks delay, not additional information." "The Disclosure Statement clearly and succinctly describes the risks associated with the Livermore Property and the re-entitlement process. Additional description of that process is unnecessary. The Committee's Objection should be overruled on this basis." *Red text shows the highlighted text in the original document*
Third Amended Disclosure Statement	1831	March 17, 2025	[p. 4] "Previous versions of the Plan required the Debtor to transfer title of certain real property owned by Adventus to the Survivors' Trust. The real property is located at 3658 Las Colinas Road, Livermore, California (the "Livermore Property"). Adventus would have approved the transfer of the Livermore Property to the Debtor

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			upon confirmation of the Plan, and the Debtor would have in turn transferred the Livermore Property to the Survivors' Trust on the Effective Date. The Livermore Property consists of approximately 122.5 acres of vacant land with no on-site improvements. It is currently zoned for agricultural use. The Debtor believes the Livermore Property is worth between $43 million and up to approximately $81 million or more if it is entitled for residential development, such that the sale of the Livermore Property by the Survivors' Trustee could have increased the Survivors' Trust Assets by that amount (and perhaps more). [3]" "The Debtor has spent considerable time working with the City of Livermore to permit the Livermore Property to be developed for residential use. This work is ongoing. On or about February 23, 2025, the Livermore City Council unanimously approved a request by the city's planning staff to negotiate a housing development agreement in relation to the Livermore Property. The Debtor hopes that these negotiations will lead to a re-zoning of the Livermore Property to allow residential use. The Committee, however, informed the Debtor and the Bankruptcy Court that it opposed the transfer of the Livermore Property to the Survivors' Trust, claiming the property was of uncertain value and objecting to the Survivors' Trust having to complete the re-entitlement process in order to increase the property's value. The Debtor removed the Livermore Property from the list of Survivors' Trust Assets. The Debtor will continue working to re-entitle the Livermore Property after the Effective Date. The Debtor is considering whether the Livermore Property could be used as collateral for the RCC loan, provided that Adventus would be willing to use the property for that purpose."

Document	Docket No.	Date	Quote
			"Footnote 3: As discussed in the Committee Letter attached hereto as Exhibit G, the Committee contests this valuation."
	1851	March 28, 2025	[pp. 8-9] "The Committee next argues the Plan reduces the amount paid to Survivors due to the exclusion of the Livermore Property assignment. While the Committee does not actually argue that this is a basis to deny approval of the Disclosure Statement, it requires a response." "In making this argument, the Committee reverses the positions it has consistently taken for the past four months—that the Debtor overvalues the Livermore Property, that any value that might result from rezoning the Livermore Property is tenuous at best, and that contributing the Livermore Property to the Survivors' Trust would shift the risks to the Survivors' Trust. Most recently, the Committee also stated in its proposed Committee Letter that "the Committee values the Livermore property between $10 to $15 million." [Docket No. 1773 at 24]. And it was specifically because of the Committee's positions and statement of value that the Third Amended Plan proposed a solution: remove the Livermore Property from the Survivors' Trust Assets but increase the cash contribution from the Debtor by $12 million." "Having obtained exactly what it asked for—its asserted value for the Livermore Property in cash—the Committee still objects. Its new argument is that based on the *Debtor's* valuation of the Livermore Property, the Debtor decreased the amount being contributed to the Survivor's Trust. The Committee cannot have it both ways. Having objected over and over to the Debtor's valuation of the Livermore Property as being too high and inherently speculative and having expressly stated that it values the Livermore Property at $10 - $15 million, the Committee cannot in good faith now rely on the Debtor's valuations to manufacture a Disclosure Statement objection. [5]"

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			"Footnote 5: The Committee also slings mud at the Debtor over the pace of progress of rezoning the Livermore Property. The Debtor has been transparent that rezoning is necessary to maximize the value of the Livermore Property, and that it is actively pursuing rezoning." *To wit, in the latest iteration of the Disclosure Statement, the Debtor stated the following:* *'On or about February 24, 2025, the Livermore City Council unanimously approved a request by the city's planning staff to negotiate a housing development agreement in relation to the Livermore Property. The Debtor hopes that these negotiations will lead to a re-zoning of the Livermore Property to allow residential use. [Disclosure Statement at 4].'"* *"It is difficult to imagine how re-zoning could occur if it was not requested."*

In-Court Statements

Hearing Description	Date of Hearing	Location	Quote
Continued Hearing on Disclosure Statement	January 16, 2025	p. 111, lines 15-25; 112, lines 1-19	MR. MOORE: The committee brought up the Livermore property, probably because I brought it up, about how -- and I think this is emblematic. This is why I'm going to raise it. One of the things that we did was try to identify additional risks because that's one thing that the Court pointed out to us last time. THE COURT: Yeah. MR. MOORE: And the Livermore property was one of the instances where we did that, where we talked about how in section 1(a)(1), page 2, the Livermore property is worth between forty-three million and up to approximately eighty-one million if it is entitled for residential development, the debtor's estimated value of the Livermore property assumes the

Hearing Description	Date of Hearing	Location	Quote
			property is entitled for the construction of single-family homes. And then in our risk factors, section looks like 18(d) on page 85, we state: "As stated previously, the debtor's estimated valuation of the Livermore property assumes the property is entitled for the construction of single-family homes. The debtor is optimistic that not only will the city approve a change to residential use, but that the property will realize the value the debtor has placed on it. There is no guarantee either will happen." So we have attempted to be very thoughtful to say this is a fundamental premise of what the plan is and what we are trying to contribute to you, but we may be wrong. And I think that was consistent with the Court's instructions coming out of the last hearing.