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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' REPLY REGARDING DISMISSAL OF CHAPTER 11 CASE WITH PREJUDICE

Judge: Hon. William J. Lafferty

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

The Official Committee of Unsecured Creditors (the "**Committee**") of The Roman Catholic Bishop of Oakland (the "**Debtor**" or the "**Diocese**") files this reply to the Debtor's response [Dkt. No. 2413] (the "**Debtor's Response**") to the Committee's request that this Chapter 11 Case be dismissed *with prejudice* [Dkt. No. 2329] (the "**Committee's Statement**"). In support of this reply, the Committee states:

The record before this Court establishes that the Debtor did not file this Chapter 11 Case to restructure its operations. Despite constant pleas from the Committee to use chapter 11 for its intended purpose—to right size its operations to improve financial performance and maximize the value of its assets for the benefit of its bankruptcy estate and creditors—the Debtor has chosen not to do so. Rather, the Debtor's singular focus has been on halting state court litigation and imposing unsupportable and improper reductions on Survivors' recoveries. The Ninth Circuit B.A.P. recently noted that this form of gamesmanship is indicative of bad faith. *See In re Silver*, No. 2:21-BK-16492-ER, 2022 WL 17848965, at *4–5 (B.A.P. 9th Cir. Dec. 19, 2022), *aff'd*, No. 23-60004, 2024 WL 838698 (9th Cir. Feb. 28, 2024) ("Filing a bankruptcy case to defeat or delay state court litigation, even if that is not the only purpose for the filing, constitutes bad faith", and where a debtor's actions as part of the bankruptcy process are not being done to "effectuate a reorganization but solely as a litigation tactic, *i.e.*, to gain a more convenient forum", such actions constitute bad faith under *Leavitt* sufficient to warrant dismissal of a chapter 11 case) (internal quotations omitted)). Such conduct, in turn, merits a bankruptcy case being dismissed with prejudice. *In re Barrett*, Case No. BAP SC-25-1025-BFL, 2025 WL 1783558, at *4 (B.A.P. 9th Cir. June 27, 2025) (considering, in affirming bad faith dismissal with prejudice and two-year refiling bar, whether debtor intended bankruptcy case to defeat or delay state court litigation, "even if that is not the only purpose for the filing").

The Debtor's focus on tamping down Survivor recoveries through this case has two primary components. ***First***, the Debtor has refused to value Survivors' claims under state law as mandated by the Bankruptcy Code. The Debtor argues that Survivors' claim values are irrelevant; according to the Debtor, what is germane is how the proposed distribution to Survivors in this case compares with other Diocesan bankruptcy cases in other jurisdictions. The Committee has

repeatedly established, dating back to the early days of this case, that the Debtor's approach is wrong, unlawful and frankly, preposterous. *See, e.g., The Official Committee of Unsecured Creditors' Objection to the Debtor's Disclosure Statement* [Dkt. No 1518], p. 21-22 ("What a group of survivors received in another case is irrelevant to what is fair and equitable in this case. Taken to its extreme, the Debtor would have this Court believe that the reasonableness of creditors' recovery in the Sears bankruptcy should be based on the recovery creditors received in Lord & Taylor's chapter 11 case.").

Second, ignoring the Supreme Court's summary of what is required of a debtor to obtain a discharge, the Debtor has repeatedly refused to place all of its assets on the table. *See Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 209 (2024) (to receive a discharge, a debtor must proceed "with honesty and place virtually all its assets on the table for its creditors."). Instead, the Debtor has steadfastly hid behind an improper interpretation of the protections of the First Amendment, arguing that religious freedom permits it to exclude the majority of its assets from the reach of its creditors. In turn, the Debtor asserts it may unilaterally choose which of its assets to put on the table. If the Debtor's argument were correct, no judgment creditor could execute a judgment against a religious nonprofit entity by attaching real property to satisfy its claim, making the Diocese all but judgment proof.[1] In turn, the Debtor argues that its liquidation analysis only need include the assets *it believes* are available to pay Survivors. If accepted, the Debtor's tortured interpretation of the Bankruptcy Code and the First Amendment would allow it to shield hundreds of millions of dollars in assets while paying Survivors a fraction of what they are owed.

Having failed to bludgeon Survivors into submission and belatedly conceding that it cannot confirm its Plan over Survivors' objection, the Debtor now seeks to dismiss this Chapter 11 Case. The Committee supports the Debtor's request because the Debtor has refused to concede that the Bankruptcy Code does not allow it to unilaterally determine what is fair and equitable. But if this

[1] The Debtor's arguments are plainly wrong because extensive caselaw establishes that the First Amendment does not shield nonprofit religious entities' property from attachment to satisfy the claims of creditors. *See, e.g., 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.").

Court dismisses the Chapter 11 Case, the Debtor should be barred from re-filing. Allowing otherwise is tantamount to permitting the Debtor to play jurisdictional ping-pong, where the Debtor may yet again attempt to avoid or delay adverse rulings in the state courts by re-filing for bankruptcy protection. Such blatant gamesmanship is nothing less than forum-shopping, itself a badge of bad faith, and should not be countenanced by this Court.

Allowing the Debtor the ability to come back to this Court after choosing to dismiss this Chapter 11 Case is precisely the type of forum-shopping that courts have found justifies dismissing a bankruptcy case with prejudice and/or a bar to refiling. *See, e.g.*, *In re Eubanks*, No. CV 25-01665-EG, 2025 WL 2694467, at *10 (Bankr. D.S.C. Aug. 28, 2025) (granting debtor's voluntary motion to dismiss but imposing a two-year refiling ban for cause to ensure no further prejudice to creditors seeking to exercise their state law rights); *In re Anvil Holdings L.P.*, 595 B.R. 622, 629 (Bankr. W.D.N.Y. 2019) (dismissal of Chapter 11 case with a 240-day bar to re-filing Chapter 11 where debtor's real goal was to frustrate ability of creditors to enforce their rights).

In an effort to avoid being deprived of its ability to continue forum-shopping, the Debtor argues that dismissal of a chapter 11 case with prejudice is unheard of. According to the Debtor, it could not locate any case where a chapter 11 case was dismissed with a permanent bar to refiling. The Committee had greater success in its research. The Committee found several cases *granting and/or affirming chapter 11 dismissals with prejudice, including with a permanent filing bar*. *See, e.g.*, *In re Class A Props. Five, LLC*, 600 B.R. 27, 29, 32-34 (Bankr. N.D. Ill. 2019) (finding that dismissal order with prejudice in prior chapter 11 case barred current chapter 11 filing, explaining that "finding of bad faith is sufficient cause to justify a dismissal that impairs future filings under section 349" and that the Court intended to protect the creditor from the Debtor seeking to effectively "enjoin [the creditor] from exercising its state-law rights" by filing another bankruptcy petition); *In re Bridge To Life, Inc.*, No. 05-19154 (JF), 2006 WL 1329778, at *6 (E.D.N.Y. May 16, 2006) (explaining, in affirming decision dismissing second chapter 11 bankruptcy after first chapter 11 case was dismissed with prejudice, that "[a]n interdiction against refiling [of chapter 11 by non-profit debtor] was considered necessary and appropriate … because the First Chapter 11 Case was commenced not to reorganize, restructure or rehabilitate, but to impermissibly use

Chapter 11 as a weapon in a two-party dispute" and "[debtor] Bridge [To Life, Inc.] might again resort to improper use of Chapter 11" and "Bridge has no legally cognizable need for Chapter 11. Bridge has the ability to pay the amount of the [judgment] and the wage claims of the … employees from its equity in the Fresh Meadows Property … [and] any disputes related to these claims … can and should be resolved in the state courts") (citing *In re The Bridge to Life, Inc.*, 330 B.R. 351, 354 (Bankr. E.D.N.Y. 2005)).

It is thus clear that section 349(a) of the Bankruptcy Code applies equally to dismissals under chapter 11 of the Bankruptcy Code.[2] While many of the Ninth Circuit cases evaluating the *Leavitt* 349(a) factors to be considered on a request for dismissal with prejudice are in the context of chapter 13 case dismissals, the Third Circuit has noted that although "*In re Leavitt* addressed a good faith determination regarding a Chapter 13 bankruptcy petition, *there is no significant distinction between Chapter 11 and Chapter 13* [in connection with the review of a decision on a motion to dismiss a Chapter 11 case for cause]." *In re SGL Carbon Corp.*, 200 F. 3d 154, 159 n.7 (3d Cir. 1999) (citing *In re Leavitt*, 171 F.3d 1219 (9th Cir. 1999)) (emphasis added)). The Court's conclusion is consistent with cases in the Ninth Circuit, holding that the same "totality of the circumstances" standard for finding bad faith under *Leavitt* in chapter 13 dismissals applies in evaluating dismissal with prejudice under other chapters of the Bankruptcy Code. *See*, *e.g.*, *Franco v. U.S. Tr. (In re Franco)*, 2016 WL 3227154, at *5.

Moreover, the fact that most cases addressing dismissal with prejudice arise in the chapter 13 context is no surprise: chapter 13 provides for dismissal of right by the debtor (*see* 11 U.S.C. § 1307(b)), whereas a debtor in Chapter 11 only has an absolute right to convert the case to Chapter

[2] *See* 11 U.S.C. § 349(a), 103(a); *see also, e.g.*, *Franco v. U.S. Tr. (In re Franco)*, No. CC-15-1281-KiTal, 2016 WL 3227154, at *5 (9th Cir. B.A.P. June 2, 2016) (explaining that while *Leavitt*'s factors for determining bad faith justifying dismissal with prejudice were set out in a Chapter 13 case, there is no reason why such standards should not apply to dismissal with prejudice in Chapter 7 cases).

7, not dismissal.[3] Accordingly, it is entirely appropriate for the Court to apply the *Leavitt* factors and evaluate the totality of the circumstances, as stated in the Committee's Statement.[4]

The vast majority of the Debtor's Response is filled with fallacies, revisionist history and untoward attacks on Survivors. Rather than respond point by point, the Committee will limit itself to the following:

- The Committee does not dispute, as the Debtor argues (Debtor's Response, at p. 2), that bankrupt debtors often desire "to use the chapter 11 reorganization process to limit the amount it must pay its creditors." Creditor impairment is entirely appropriate where the amount being offered to creditors is more than they would receive in a Chapter 7 liquidation and/or where the impaired creditors consent to a lesser distribution. In contrast, this Debtor has unilaterally sought to determine which assets it would use to pay Survivors, which is unlawful on its face.[5]

- In an effort to justify its argument that it need not satisfy section 1129(a)(7)(a)(ii)'s hypothetical liquidation test, the Debtor continues to rely on *Sec. Farms v. Gen. Teamsters, Warehouseman and Helpers Union, Local 890 (In re Gen. Teamsters, Warehouseman and Helpers Union, Local 890)*, 265 F.3d 869, 877 (9th Cir. 2001). There, the Ninth Circuit held that the National Labor Relations Act's specific prohibitions on the transfer of a union's collective bargaining rights and future collection of dues meant that those bargaining rights and dues collections "could not be liquidated to pay off creditors" and thus the value of such assets would

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[3] *See, e.g., Jacobson Dev. Grp., LLC v. Off. of U.S. Tr.*, Case No. 22-CV-604 (JMA), 2023 WL 2403617, at *3 (E.D.N.Y. Mar. 8, 2023) ("It is well-settled that, unlike debtors who seek dismissal of their Chapter 12 or 13 bankruptcy cases[,] pursuant to 11 U.S.C. § 1112(b), "a Chapter 11 debtor does not enjoy an absolute right to a dismissal of its bankruptcy.") (citing *In re Kingsbrook Dev. Corp.*, 261 B.R. 378, 379 (Bankr. W.D.N.Y. 2001).

[4] While some Ninth Circuit B.A.P. cases deem dismissal with prejudice a "drastic remedy," the facts needing to be established to justify a dismissal with prejudice remain constant: a determination of "bad faith" itself is "cause" for dismissal with prejudice under § 349(a), and a determination of bad faith involves the application of the four factors set out in *Leavitt*. *See Franco v. U.S. Tr. (In re Franco)*, No. CC-15-1281-KiTal, 2016 WL 3227154, at *5 (9th Cir. BAP June 2, 2016). *Leavitt* Factors 1 and 3 do not require egregiousness, and while egregious conduct may support a total refiling bar upon dismissal, bad-faith conduct may support other lesser refiling bars.

[5] *Cf. In re Catholic Bishop of Spokane*, 329 B.R. 304, 324 n.5 (Bankr. E.D. Wash. 2005) ("The [Bankruptcy] Code is an integrated statutory scheme. Bankruptcy debtors who voluntarily choose to participate in that statutory scheme, even those of a religious nature, should not be able to "pick and choose" among Code sections. Dismissal would alleviate any undue burden suffered by the debtor in the application of any particular Code section.")

not be available in a hypothetical chapter 7 liquidation. *Id.* Unlike *Security Farms*, here there is no statutory or constitutional prohibition that protects the assets of the Debtor, including its real estate holdings, from the reach of a judgment creditor. *See* supra, fn. 1. Accordingly, a hypothetical chapter 7 trustee would exercise its obligation to liquidate all assets—including all real property owned by the Debtor.

- The Debtor misinterprets the Committee's agreement to withdraw its opposition to the *Third Amended Disclosure Statement For Debtor's Third Amended Plan of Reorganization*, dated March 17, 2025 [Dkt. No. 1831] (the "**Third Amended Disclosure Statement**") as an abandonment of the Committee's bad faith objections to the Debtor's Third Amended Plan. *See* Debtor's Response, at p.2. While the Court approved the Third Amended Disclosure Statement, it did so with the Committee's rights fully reserved *vis a vis* confirmation as evidenced by the Committee Letter [Dkt. No. 1872-8] which makes clear that the Committee believes that the Debtor's bad faith is evidenced by, among other things, its "grossly undervaluing" and "unlawfully shielding assets" from Survivors.

- The fact that the Debtor dislikes what Survivors deem fair and equitable treatment of their claims does not make this the Committee that just "can't say yes." Indeed, this Committee remains willing to negotiate in good faith, as it always has, and is prepared to say "yes" to a settlement that treats Survivors fairly and equitably.[6] If the Debtor is prepared to make such an offer, it should do so here and now; not shop for a friendly venue where it can continue to frustrate Survivors' ability to receive some modicum of justice in an effort to pressure them into accepting an unfavorable settlement. Thus, the Debtor should be barred from abandoning its efforts to settle, drive Survivors back into state court and then re-file for Chapter 11 as soon as Survivors obtain state court judgments.

- Curiously, the Debtor never addresses that it, in fact, scheduled the $35 million OPF claim as undisputed when the facts have since established there was no underlying loan. The

[6] Indeed, the Committee provided the Mediators with another settlement proposal on Friday, October 24, 2025. The settlement proposal was rejected out of hand by the Debtor on October 26, 2025.

Debtor's blatant filing of inaccurate schedules is itself grounds for prohibiting the Debtor from re-filing for bankruptcy protection.

- The Debtor's assertion that its "dedication to transparency and adherence to discovery requirements" is on par with anyone is belied by the facts in the Committee's Statement, where the Committee establishes that throughout Plan discovery, the Debtor blew through document production deadlines and in other instances, failed to adequately prepare certain Rule 30(b)(6) witnesses to testify about the issues identified by the Committee. *See* Committee's Statement, p. 17-18.

- The Debtor mischaracterizes the Committee's arguments related to the Livermore Property in a transparent effort to accuse the Committee of being untruthful with the Court. The Debtor begins by asserting: "Finally, the Committee repeats its charge that the Debtor misled ***the Committee*** about the value of the Livermore Property …" Debtor's Response, p. 12;6–7 (emphasis added). That was not, and is not, the Committee's argument. The Committee's argument does not rely on the extent of ***its*** knowledge about the Livermore Property. Rather, the Committee's argument turns on the breadth and scope of information provided by the Debtor ***to Survivors*** in its Disclosure Statement.

In the Committee's Statement, the Committee notes that between the filing of the *Second Amended Disclosure Statement For Debtor's Second Amended Plan of Reorganization*, dated February 19, 2025 [Dkt. No. 1763] (the "**Second Amended Disclosure Statement**") and the Third Amended Disclosure Statement, filed March 17, 2025, the Debtor withdrew the Livermore Property from the Plan's definition of "Survivors' Trust Assets," meaning the Debtor, through Adventus, would no longer be assigning the Livermore Property to the Survivors' Trust. The Committee goes on to note that "[i]n or about the time that the Debtor withdrew the assignment of the Livermore Property from the Plan," an article was published in the Real Deal (on February 27, 2025) reporting that (i) the Livermore "City Council voted Monday to authorize negotiating the [development] agreement to allow for medium density residential development", and (ii) Adventus had "applied to rezone the land to residential, allowing for up to 500 homes" in December 2024. *See Diocese scraps school plan in Livermore, for up to 500 homes*, The Real Deal, *available at*

https://therealdeal.com/san-francisco/2025/02/27/diocese-scraps-school-plan-in-livermore-for-up-to-500-homes/) (last visited October 26, 2025).

The Second Amended Disclosure Statement, dated just eight days before the article was published, made no mention of the impending City Council vote, the status of negotiations with the Livermore City Council, or that in December 2024, Adventus apparently applied to rezone the Livermore Property to residential, allowing for up to 500 homes. Rather, the Second Amended Disclosure Statement merely disclosed that "[t]he 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." Second Amended Disclosure Statement, p. 2:16-18. The Committee opposed the adequacy of the Second Amended Disclosure Statement as related to the Livermore Property on the basis that "Abuse Claimants should be informed about the Debtor's discussions with the City: where are they in the application/ permitting process; what have they discussed; has the City given feedback; has the City indicated when it might decide the issue; has the City asked for more information or studies to be performed?" *The Official Committee of Unsecured Creditors' Objection to the Debtor's Second Amended Disclosure Statement* [Dkt. No. 1773], 8:28, 9:1–5.

In the Debtor's February 26, 2025 response to the Committee's objection (filed just one day before The Real Deal news article was published), the Debtor refused to provide this information. *See Debtor's Reply to the Official Committee of Unsecured Creditors' Objection to the Debtor's Second Amended Disclosure Statement* [Dkt. No. 1781], p. 7:26–27; 8:1–2 ("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.").[7]

[7] On March 18, 2025, after the Livermore Property was removed from the Plan's definition of "Survivors' Trust Assets," the Debtor revealed that "[o]n 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." *Supplement to Debtor's Motion for Order (I) Approving Disclosure Statement; and (I) Establishing Procedures for Plan Solicitation, Notice, and Balloting* [Dkt. No. 1835], p. 3;4–6.

The status of negotiations between Adventus and the Livermore City Council, the fact that an application was filed in December 2024 to rezone the Livermore Property and that negotiations were taking place, as opposed to mere "engagement" between the parties, is information which informs the valuation of the Livermore Property and should have been detailed to adequately inform Survivors of the proposed Plan and its consideration to Survivors.[8]

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

Dated: October 27, 2025

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By: */s/ Gabrielle L. Albert*
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-and-

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[8] To avoid further confusion and debate on this issue, the Committee will not rely on this argument in support of its request for dismissal with prejudice.