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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

OPPOSITION TO DEBTOR'S SECOND MOTION IN LIMINE TO EXCLUDE ARGUMENT AND EVIDENCE THAT A VOTE AGAINST THE DEBTOR PLAN REPRESENTS INFORMED CONSENT THAT DISMISSAL IS IN THE BEST INTEREST OF CREDITORS

Judge: Hon. William J. Lafferty
Date: June 12, 2026
Time: 9:00 a.m. (PT)
Place: United States Bankruptcy Court
1300 Clay Street, Courtroom 220
Oakland, CA 94612

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The Official Committee of Unsecured Creditors (the "**Committee**") of the Roman Catholic Bishop of Oakland (the "**Debtor**") respectfully files this brief in opposition (the "**Opposition**") to the *Debtor's Second Motion in Limine to Exclude Argument and Evidence That a Vote Against the Debtor Plan Represents Informed Consent That Dismissal is in the Best Interest of Creditors* [Dkt. No. 3071] (the "**Motion**"), submitted in connection with the anticipated hearing (the "**Confirmation Hearing**") on confirmation of the *Debtor's Modified Fourth Amended Plan of Reorganization Dated March 27, 2026* [Dkt. No. 2758] (the "**Plan**") in this chapter 11 bankruptcy case (this "**Chapter 11 Case**"). In support of this Opposition, the Committee states:

PRELIMINARY STATEMENT[1]

At the Confirmation Hearing, this Court will be asked to decide if the Debtor has carried its burden under Section 1129 of the Bankruptcy Code. Knowing that it is unable to carry that burden, the Debtor seeks to change the standard under which its Plan is to be judged by comparing the Plan to dismissal. Whether the Plan is "better" than dismissal is entirely beside the point. The issue will be whether the Debtor can prove to this Court that it satisfies each and every requirement of the Bankruptcy Code. Despite devoting pages of filings, i.e., its operative Disclosure Statement [Dkt. No. 2902], its Memorandum of Law in Support of Confirmation [Dkt. No. 3100], to discussing the perils of dismissal, the Debtor now seeks to exclude the very evidence that guts its arguments. If the Debtor is going to argue, mistakenly, that this Court should consider whether the Plan is better than dismissal, then it is highly relevant if Survivors were made aware of what would happen if the Plan was not approved but nevertheless rejected the Plan. The Motion is thus a transparent attempt to exclude evidence that directly undermines the Debtor's misguided arguments. It has no basis in law or fact and should be denied in its entirety.

The Debtor told Survivors that this case has exactly two outcomes: confirmation of the

[1] Capitalized terms that are not defined in this Preliminary Statement shall have the meanings ascribed to them herein or in the Plan.

Plan or dismissal. It told this Court repeatedly that re-solicitation would be useless because Class 4 would reject the Plan. It structured its entire confirmation strategy around cramdown. Having drafted that binary framework and declined to test it, the Debtor now asks this Court to exclude the natural inference that flows from the Survivors' exercise of their choice within it. The Court should decline to do so. To be clear, the Confirmation Hearing is not about the forthcoming dismissal motion—it is focused solely on the Debtor's attempt to cram its Plan down on the Survivors it neglected to protect as children, and whose voices it continues to ignore.

The Motion fails for at least four independent reasons. First, the Debtor's premise is legally baseless—the Bankruptcy Code imposes no "informed consent" requirement on creditors' votes. Second, the Debtor was not precluded from discovery; it had the opportunity to question a representative of the Committee on all authorized inquiry and squandered it on irrelevant tangents. Third, both parties have told Survivors that confirmation and dismissal are the only two outcomes, and explained, in detail, the attendant risks of dismissal. Fourth, the Debtor's repeated insistence that re-solicitation would be futile precludes it from challenging the evidentiary significance of the very vote it built its cramdown case around.

At bottom, this Motion is an attempt to preclude the Committee from rebutting a foundational (albeit misguided) argument the Debtor makes in support of its Plan: that it is better than dismissal (in the Debtor's eyes). If the Debtor pursues this subjective argument, the Committee must be permitted to introduce evidence of the fact that Survivors' overwhelming vote against the Plan—despite extensive information provided to them on the risks of the alternative, dismissal—establishes that they disagree with the Debtor's assessment. For all of these reasons, as set forth more fully below, the Motion should thus be denied.

RELEVANT BACKGROUND

The Debtor filed its Chapter 11 petition on May 8, 2023. [Dkt. No. 1.] On March 29, 2026, the Debtor filed the operative Plan and its *Disclosure Statement in Support of Debtor's Modified Fourth Amended Plan of Reorganization* [Dkt. No. 2759]. On May 1, 2026, the Debtor filed a revised *First Amended Disclosure Statement in Support of Debtor's Modified Fourth*

Amended Plan of Reorganization [Dkt. No. 2902] (the "**Disclosure Statement**"). The Disclosure Statement explicitly declares: "This bankruptcy case has two possible outcomes: (i) **confirmation of the Debtor Plan** . . . or (ii) **dismissal of the bankruptcy case**, in which case no trust will be established and over 330 Abuse Claimants will return to the state court system to wait their turn for a jury trial." (Disclosure Statement at 4.) The Disclosure Statement further states that "[i]f the Debtor Plan is not confirmed, the Debtor has previously stated that it will seek entry of an order dismissing the Chapter 11 Case as of that date." (*Id.* at 33.) The Debtor also acknowledges that no other party intends to seek confirmation of an alternative plan of reorganization, and that "no other plan of reorganization will be confirmed in this bankruptcy case." (*Id.*)

The Debtor's decision to proceed via cramdown was deliberate. It contemplated that Class 4 would reject the Plan and sought to avoid re-solicitation entirely. In a February 16, 2026, Status Conference Statement, the Debtor represented that "the Debtor believes the creditor votes will not change in any material way from the voting results last year." (Dkt. No. 2644 at 4.) In its March 9, 2026, Status Conference Statement, the Debtor went further: "There is no need for a full new disclosure statement and resolicitation of the Fourth Amended Plan, because resolicitation would serve no purpose. Although the treatment of Survivors under the Fourth Amended Plan is materially *better* than under the Third Amended Plan, the Debtor is willing to accept the likely outcome of the Class 4 vote is the same so long as the Committee recommends voting against the Plan." (Dkt. No. 2707 at 5.) And in the Disclosure Statement itself, the Debtor "assumes that Class 4 would vote against the Debtor Plan in a similar manner, requiring that the Debtor proceed with confirmation of the Debtor Plan via cramdown." (Disclosure Statement at 35.)

The Debtor was not alone in presenting this binary framework. The Committee likewise communicated to Survivors that dismissal is the alternative outcome. (*See, e.g.*, Dkt. No. 2906-6 (the "**Committee Solicitation Letter**".) In a letter to Survivors, the Committee stated that it "will be filing a motion to dismiss this Chapter 11 Case so that Survivors can pursue their

lawsuits in state court," that "[i]t is possible that the Bankruptcy Court will dismiss this Bankruptcy Case if it does not approve the Diocese Plan," and that "rejection of the Diocese Plan and dismissal of this Chapter 11 Case to allow Survivors to pursue their lawsuits in state court is a far more fair and equitable method to resolve Abuse Claims than what is proposed in the Diocese Plan." (Committee Solicitation Letter at 3, 6.) Through the Committee Solicitation Letter, the Committee informed Survivors of the risks of dismissal, warning Survivors, among other things, that: state court litigation can be slow and lengthy, there is no guarantee that a Survivor will prevail on their state law claim, that the Debtor believes it may have insufficient assets to satisfy all Abuse Claims, that the Debtor believes that those "in the front of the line" may receive payment at the expense of those at the "back of the line" and that the Debtor may file for bankruptcy again. Against this backstop, Survivors had the opportunity to accept or reject the Plan, being fully informed that if the Plan was not approved, dismissal was the likely alternative.

The parties have been engaged in and complied with pretrial procedures since April 6, 2026, as set forth in the *Confirmation Scheduling Order* [Dkt. No. 2790]. On May 21, 2026, the Court heard arguments on the parties' joint letter regarding an outstanding discovery dispute. (*See Declaration of Michael A. Kaplan in Supp. of the Committee's Opposition to the Debtor's Second Motion in Limine to Exclude Argument and Evidence That a Vote Against the Debtor Plan Represented Informed Consent That Dismissal is in the Best Interest of Creditors* ("**Kaplan Decl**."), Ex. 1 (May 21, 2026, Transcript of Proceedings ("**05/21 Hr'g Tr.**")).) The Debtor sought broad discovery through deposition into the Committee's internal deliberations, including what individual Committee members and constituents were told about the consequences of dismissal. (*See generally* Dkt. No. 2982; *see also* 05/21 Hr'g Tr.) The Court allowed only limited continued inquiry of Mr. Matthew Babcock as the Committee's Rule 30(b)(6) designee: whether a committee meeting was held and vote conducted, when the meeting occurred, whether the recommendation to dismiss the case was presented to the Committee members, whether Mr. Babcock was aware of the meeting, and the factual and legal bases for statements regarding

dismissal. (*See* 05/21 Hr'g Tr. at 17:9–13, 20:23–21:25, 36:15–23.) The Court declined to permit further inquiry.

Mr. Babcock was deposed as the Committee's Rule 30(b)(6) corporate representative on April 30, 2026, and again on June 3, 2026. During the April 30 deposition, Mr. Babcock clearly articulated the Committee's reasons for objecting to the Plan: (1) the Debtor's contribution is not enough, especially in light of the $16 million Woodall jury verdict; (2) RCBO, RCWC, RCC, and Adventus have refused to offer a sufficient contribution; (3) the insurers refuse or are reluctant to contribute a meaningful amount for the benefit of Survivors; and (4) the Plan's child protection provisions do not go far enough. (Kaplan Decl., Ex. 2 ("**04/30 Babcock Dep. Tr.**") at 162:16–163:16.)

On the subject of dismissal specifically, Mr. Babcock testified that the Committee views dismissal "as the opportunity for individual survivors to pursue their claims and increase the assets that would be available through RCBO and help to assist in the insurance process." (04/30 Babcock Dep. Tr. at 199:20–24.) He explained that if the case is dismissed, "individual claimants would be able to pursue their claim in the state court. The RCBO has a different responsibility and role. The entirety of its assets are exposed. And they have a different role in the insurance proceeding." (*Id.* at 114:5–10.)

Rather than pressing on this substance, Debtor's counsel squandered substantial deposition time on irrelevant tangents across both sessions. The following examples are illustrative, not exhaustive:

- At the April 30 deposition, Debtor's counsel questioned Mr. Babcock about Fourth Circuit case law on insurer defenses, (*see id.* at 104:5–109:7), pressed him on whether he or the Committee were "expert[s] on the First Amendment" or "the Religious Freedom Restoration Act," (*see id.* at 114:11–19),[2] and posed

[2] Despite being informed on April 30 that Mr. Babcock is not an expert in First Amendment jurisprudence, Debtor's counsel on June 3 again questioned Mr. Babcock about the First Amendment and the Religious Freedom Restoration Act. (*See* Kaplan Decl., Ex. 3 ("**06/03 Babcock Dep. Tr.**") at 99:13–101:7.)

hypothetical math exercises, asking him to calculate how many years it would take to try 375 cases at various rates and how long "on average" an appeal takes in the Sixth District, (*see id.* at 79:14–83:3).

- At the June 3 session, Debtor's counsel questioned Mr. Babcock about a 51-year-old North Carolina Court of Appeals decision the witness did not know of and which facts and holdings he could not identify. (06/03 Babcock Dep. Tr. at 100:2–102:16.)
- Debtor's counsel also devoted time across both deposition sessions to the insurers' posture toward the Plan—a subject about which Mr. Babcock repeatedly testified he lacked knowledge. (*See* 04/30 Babcock Dep. Tr. at 207:13–208:17.) At the June 3 session, Debtor's counsel pressed Mr. Babcock on whether the Debtor "control[led] the insurers," whether the insurers "oppose both the diocese plan and the committee plan," and whether the Debtor "would prefer if [the insurers] did not object to the plan." (*See* 06/03 Babcock Dep. Tr. at 73:8–75:13.) Counsel further asked whether the Committee had identified specific dollar amounts particular insurers "should have come forward with" to pay survivors, (*see id.* at 40:11–24), and then asked Mr. Babcock to identify what each of five individual insurers—Westport, CNA, CIGA, LMI, and American Home Insurance—had offered; predictably, he answered "I don't recall" to each. (*See id.* at 41:21–42:10.)
- Debtor's counsel spent considerable time asking Mr. Babcock—a certified public accountant, who was appearing solely as the Committee's corporate designee—to define the word "parish," to distinguish a parish from a church, and to explain whether "a building . . . that has an altar and the various attributes of a church building" could be described as something other than "the word 'church.'" (04/30 Babcock Dep. Tr. at 41:22–44:21). The witness patiently explained that "a parish is a nonincorporated entity within the diocese" and that parishes may have "more

than one location," but Debtor's counsel persisted in pressing semantic distinctions between "a church," "a building," "a rectory," and "a school." (*Id.*)

ARGUMENT

The Motion should be denied in its entirety for four independent reasons. ***First***, the Bankruptcy Code does not require creditors to demonstrate that their votes reflect "informed consent" (and even if it did, the Court approved all the relevant materials Survivors received relating to confirmation of the Plan and the only alternative, dismissal). ***Second***, the Debtor was not precluded from discovery; it received responses to every inquiry this Court authorized, voluntarily relinquished the rest, and squandered what precious time it had on irrelevant questioning. ***Third***, both parties told Survivors that this case has exactly two outcomes, i.e., confirmation or dismissal, thereby presenting the inference the Debtor seeks to exclude as an unavoidable product of the Debtor's own framing. ***Fourth***, having repeatedly insisted that re-solicitation would be futile because the rejection vote was a foregone conclusion, the Debtor cannot now sterilize the significance of the very choice it predicted, accepted, and built its ill-fated cramdown strategy around.

I. The Motion Misapprehends the Relevant Legal Framework.

The Motion rests on the implicit premise that the Committee must demonstrate that each creditor's vote constitutes "informed consent" that dismissal is in that creditor's best interest. That premise is legally baseless.

No provision of the Bankruptcy Code requires proof from creditors that a stated alternative to confirmation is preferable to any given party. The Debtor is the only party with a burden at the Confirmation Hearing—and the "informed consent" of creditors is not part of it.

Even on its own terms, the Debtor's premise fails. The Disclosure Statement approval process and all related solicitation materials were approved by this Court following a lengthy, thorough process designed to give all voting creditors the information necessary to make an informed decision. (*See generally* Dkt. No. 2910 (the "**Solicitation Order**").) The Solicitation Order sets forth the specific requirements for Class 4 votes, including that "[c]onsistent with the

form of Class 4 Ballot, the E-Balloting Portal will include a requirement for any person submitting a Ballot on behalf of a Class 4 claimant (that is not the claimant him or herself) to certify: 1) that he or she has consulted the claimant on whose behalf the Ballot is being submitted, and 2) that under applicable law, he or she has authority to submit such Ballot on behalf of such Claimant regarding the decisions reflected therein." (Solicitation Order ¶ 25.) Those are the requirements. There are no others. The Debtor cites no authority—in the Solicitation Order, the Bankruptcy Code, or elsewhere—for the proposition that something more was needed to ensure "informed consent."

This Court has already said as much. At the May 21, 2026 discovery hearing, the Court rejected the Debtor's "informed consent" theory in terms that leave little room for doubt. The Court observed that "even if it is irrational, it's for irrational actors to make that decision." (05/21 Hr'g Tr. at 38:14–25.) The Court explained that the decision to reject a plan and pursue dismissal "is not subject to the same level of inquiry" as plan confirmation, because "[t]hese are not commercial creditors. These are individuals who suffered something horrific. They had every hope and expectation of someday going before a jury. Bankruptcy is largely going to eliminate that. And their choice necessarily is, at some point, do I want to participate in this process or not. And if the answer is I don't, and they can make a motion to dismiss the case and convince me that's the better outcome for creditors, they can do that." (*Id.* at 20:13–18, 35:10–19.) The Motion is a thinly veiled attempt to relitigate—through evidentiary exclusion—a question this Court already resolved.

At bottom, the burden at the Confirmation Hearing is entirely on the Debtor. It must demonstrate that each element of 11 U.S.C. § 1129 is satisfied. Whether dismissal is in the best interest of creditors is not an element of that burden, and the Debtor cannot manufacture one by repackaging it as an evidentiary motion. If and when the Plan fails to achieve confirmation, the Committee will address its burden on any motion to dismiss at the appropriate time and in accordance with the requirements applicable to such relief. Until then, the Debtor may not shift its confirmation burden to the Committee by demanding proof of the rationality of its

constituents' votes.

II. The Debtor Was Not Precluded from Discovery.

The Debtor's contention that it was barred from obtaining discovery is at best incorrect and at worst misleading. The Debtor received the discovery this Court authorized and voluntarily agreed to the limitations that now bind it.

As to the scope of permitted discovery, the record is clear. At the May 21 hearing, the Court permitted the Debtor to inquire of Mr. Babcock as to (in addition to the topics that were already covered at Mr. Babcock's initial deposition): (i) whether there was a committee meeting and vote; (ii) when the meeting occurred; (iii) whether the recommendation to dismiss the case was presented to the Committee members; (iv) whether Mr. Babcock was aware of the meeting; and (v) the factual and legal basis for the Committee's statements regarding dismissal. (05/21 Hr'g Tr. at 17:9–13, 20:23–21:25, 36:15–23.) The Debtor received all of this discovery through Mr. Babcock's depositions, wherein Mr. Babcock answered each category of permitted inquiry fully. On process, Mr. Babcock testified that the Committee met with its professionals and advisers, discussed and deliberated, and that their decision was reflected in the publicly filed Notice of Withdrawal. (*See* 04/30 Babcock Dep. Tr. at 21:23–22:3, 75:7–12, 76:4–8.) He confirmed that the Committee convened "within the last week or so" before the withdrawal, that Committee counsel organized the meeting, and that Mr. Woodall, as chairman, participated along with other committee members and professionals. (*Id.* at 137:24–138:1, 141:1–2, 144:22–24.) On substance, Mr. Babcock also spoke at length about the factual and legal bases for the Committee's positions regarding dismissal. (*See, e.g.*, *id.* at 114:5–10, 162:16–167:11, 176:17–23.) The Debtor was not denied discovery. It received every answer that this Court's discovery ruling entitled it to.

What the Debtor actually squandered was its ***opportunity***. Rather than asking Mr. Babcock about the substance of the Committee's position—which he was plainly prepared to explain—Debtor's counsel spent substantial deposition time on irrelevant tangents. As set forth above, Mr. Babcock clearly articulated the Committee's four reasons for opposing the Plan and

its basis for favoring dismissal. (04/30 Babcock Dep. Tr. at 162:16–163:16, 199:20–24, 114:5–10.) Debtor's counsel, by contrast, chose to spend time asking Mr. Babcock about, among other things, Fourth Circuit and North Carolina state court case law the witness had neither cited nor heard of, whether his expertise was in First Amendment jurisprudence, and hypothetical math exercises and how long "on average" an appeal takes. (*See, e.g.*, *id.* at 104:5–109:7, 114:11–19, 79:14–83:3; 06/03 Babcock Dep. Tr. at 100:2–102:16.) Having chosen this strategy, the Debtor cannot now seek to exclude at trial the evidence it failed to seek in discovery.

Debtor's counsel also devoted much time to questioning Mr. Babcock about the insurers' posture toward the Plan—a matter entirely outside the Committee's control and irrelevant to the Debtor's confirmation burden. Counsel asked Mr. Babcock whether the Debtor "control[led] the insurers" and whether it "would prefer if [the insurers] did not object to the plan"—questions that are so far afield from anything having to do with the Debtor's confirmation burden. (*See* 06/03 Babcock Dep. Tr. at 73:8–75:13.) Rather than probe the Committee's stated rationale for favoring dismissal, counsel marched through five individual insurers one by one asking what each had offered. (*See id.* at 41:21–42:10.)

In addition to focusing on the operations of the Baltimore Archdiocese, a wholly unrelated entity, (*see id.* at 128:15–130:13), counsel spent considerable time asking a certified public accountant to define the word "parish" and to explain whether a building with "an altar and the various attributes of a church building" could be called something other than a church, (*see* 04/30 Babcock Dep. Tr. at 41:22–44:21.) This is not the conduct of a party that lacked discovery—it is the conduct of a party that had nothing productive to ask. These extended lines of questioning have no bearing on any element of § 1129 and consumed time the Debtor now claims it lacked.

The Debtor's separate complaint that it could not depose Mr. Woodall and Ms. O'Lague is equally unavailing. The Court expressly stated it did not "see the utility in having those individual witnesses as representatives of the committee . . . testify" and that, "for the same

reasons I'm limiting Babcock, I would limit the individuals." (05/21 Hr'g Tr. at 36:24–37:5.) Debtor's counsel ***agreed*** it would not pursue the motion to compel those depositions, so long as the Committee would not call them at the Confirmation Hearing. (*Id.* at 37:8–11.) Committee counsel agreed to that condition. (*Id.* at 37:14–16.) That bargain was knowing and voluntary. The Debtor cannot now claim it was "precluded" from discovery it affirmatively relinquished.

Finally, the Debtor's sword-and-shield argument concerning privilege is misplaced.[3] The Committee asserted privilege over the substance of its internal deliberations—what individual members discussed, how they arrived at their decision, and the legal advice they received from counsel. (*See, e.g.*, Dkt. No. 2982 at 9–11.) The Court agreed and ruled that an inquiry beyond whether there was a meeting, a vote, and summaries of the Committee's concluded factual and legal position would be both privileged and irrelevant. (05/21 Hr'g Tr. at 20:23–21:6, 35:24–36:6.) Critically, the Committee is not now seeking to introduce at the Confirmation Hearing the very information it asserted privilege over, i.e., the content of Committee discussions, the legal advice provided by counsel, or what individual members said to one another. Rather, any inference of informed consent arises not from privileged material but from the Debtor's own conduct: the Debtor told Survivors in its Court-approved Disclosure Statement that this case has exactly two outcomes—confirmation or dismissal—and that a vote against the Plan "moves the case closer to a dismissal." (Disclosure Statement at 4:18–5:19.)

[3] The Debtor cites *Harewood v. Alexander*, No. 16-21874, 2017 WL 11926501 (S.D. Fla. Feb. 16, 2017), and *General Atomic Co. v. Exxon Nuclear Co.*, 90 F.R.D. 290 (S.D. Cal. 1981), but neither case supports exclusion here. In *Harewood*, the court denied a motion to compel disclosure of psychotherapy records, holding that the sword-and-shield doctrine applies only where a party affirmatively relies on privileged communications to prove its claims, *e.g.*, by calling the therapist as a witness, and then attempts to shield the underlying records from discovery. *See* 2017 WL 11926501, at *3–5. The court found no waiver because the plaintiff did not intend to introduce the privileged material at trial. *Id.* at *3–5, 7. The same is true here. The Committee has not introduced and does not intend to introduce any privileged deliberation material at the Confirmation Hearing. *General Atomic* is even further afield. There, the court imposed discovery sanctions under Rule 37(b) because a party deliberately housed documents in a foreign country to obstruct discovery, destroyed evidence, and then attempted to profit from that concealment at trial. 90 F.R.D. at 297–308. The Committee has done nothing remotely comparable to require this Court to determine the appropriateness of sanctions. The Debtor's apparent attempt to equate the Committee's lawful assertion of privilege—which the Court sustained—with willful obstruction of discovery mischaracterizes both the cited authorities and the record.

The suggestion that Survivors understood what they were voting for is not derived from anything the Committee shielded. It is instead derived, if at all, from the Debtor's own framing of the choice, the Court-approved solicitation process, and the publicly cast vote itself. No privilege was ever asserted over any of that.

Furthermore, the internal workings of a nine-member committee meeting are entirely irrelevant to how more than 300 individual Survivors—none of whom were in that meeting—chose to cast their votes based on the publicly available solicitation materials that this Court approved. Each Survivor voted based on, among other things, the Debtor's Disclosure Statement and other Court-approved materials in the solicitation package and not solely based on what transpired in a private committee session. At bottom, the sword-and-shield doctrine bars a party from deploying the same information it refused to disclose; it does not bar an opposing party from drawing logical inferences from the moving party's own public statements and Court-sanctioned processes. The Debtor's discovery arguments are meritless.

III. Both Parties Establish the Binary Choice, Making the Inference of Informed Consent Unavoidable.

The Court should not exclude arguments or evidence suggesting an inference between the Survivors' vote and the Survivors' informed consent regarding dismissal because both parties told Survivors in Court-approved solicitation materials that this case has exactly two possible outcomes: confirmation or dismissal. (*See* Disclosure Statement at 4 (declaring that "[t]his bankruptcy case has two possible outcomes: (i) **confirmation of the Debtor Plan** . . . or (ii) **dismissal of the bankruptcy case**, in which case no trust will be established and over 330 Abuse Claimants will return to the state court system to wait their turn for a jury trial."); *see also generally* Dkt. No. 2906-6.) Accordingly, when (and if) Survivors vote against the Plan, they do so with full knowledge—provided by the Debtor itself—that the consequence of rejection is dismissal. A vote against the Plan is, by the Debtor's own framing, a vote for the only other outcome the Debtor has identified. The Committee Solicitation Letter lays bare the risks the

Debtor conjures up when discussing dismissal. And if Survivors vote against the Plan, they will have done so only after being fully informed of those risks. The Committee cannot be deprived of introducing this fact to rebut the Debtor's arguments that it believes the Plan is better than dismissal. That conclusion is the Debtor's subjective view. Evidence that Survivors voted against the Plan knowing the risks of dismissal would necessarily rebut the argument about which is better, as clearly the Survivor vote alone would undercut the Debtor's flawed argument. In the context that both parties created, the Survivors' vote is not merely a negative expression; it is an affirmative expression of preference for the alternative both parties identified: dismissal.

The Debtor cannot have it both ways. It cannot tell Survivors that "[a] vote against the Debtor Plan, or no vote at all, moves the case closer to a dismissal in which the only certainty is that most Survivors will receive nothing," (Disclosure Statement at 5), and then seek to exclude evidence that Survivors understood this and voted accordingly. The Debtor drafted the binary framework. It must live with the inference that flows from Survivors' exercise of their authority within that framework.

IV. The Debtor's Repeated Insistence on Foregoing Re-Solicitation Estops it from Challenging the Evidentiary Weight of the Vote.

The Motion is fatally undermined by its own prior conduct regarding solicitation of the very vote whose significance it now seeks to exclude. The Debtor did not want this vote. It said so repeatedly, in writing and orally, to this Court.

On February 16, 2026, the Debtor told the Court that "the Debtor believes the creditor votes will not change in any material way from the voting results last year." (Dkt. No. 2644 at 4:5.) Three weeks later, it went further: "There is no need for a full new disclosure statement and resolicitation of the Fourth Amended Plan, because resolicitation would serve no purpose." (Dkt. No. 2707 at 5.) And in its Disclosure Statement, the Debtor "assumes that Class 4 would vote against the Debtor Plan in a similar manner, requiring that the Debtor proceed with

confirmation of the Debtor Plan via cramdown." (Disclosure Statement at 35.) This Court similarly recognized the Debtor's expectation of rejection. (*See* 05/21 Hr'g Tr. at 9:20–23 ("[T]he debtor was willing to forego solicitation and assume that the vote would be negative, as it was the last time we went through this exercise.").)

The logical absurdity of the Debtor's position cannot be overstated. The Debtor told Survivors that a vote against the Plan "moves the case closer to a dismissal." (Disclosure Statement at 5.) It told this Court that re-solicitation would "serve no purpose" because the result was preordained. (Dkt. No. 2707 at 5.) And it structured its entire confirmation case around cramdown of a rejecting class. Now, having predicted and accepted a vote from Class 4, the Debtor asks this Court to exclude the natural inference from Survivors exercising the very choice the Debtor told them they had. Basic principles of estoppel—and fundamental fairness—preclude this gamesmanship.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court deny the Motion in its entirety and grant such other relief as is just and proper.

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Dated: June 9, 2026

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