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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

Chapter 11

**DEBTOR'S PARTIAL OBJECTION TO THE DECLARATION OF KATHERYN R. MCNALLY IN SUPPORT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO CONFIRMATION**

Judge: Hon. William J. Lafferty

Date: June 15, 2026
Time: 9:00 a.m.
Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

The Roman Catholic Bishop of Oakland, a California corporation sole, and the debtor and debtor in possession (the "Debtor" or "RCBO") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case" or the "Bankruptcy Case"), hereby files this partial objection (the "Objection") to the *Declaration of Katheryn R. McNally in Support of the Official Committee of Unsecured Creditors' Objection to Confirmation of the Debtor's Modified Fourth Amended Plan of Reorganization* [Docket No. 3098] (the "McNally Declaration"), filed on behalf of the Official Committee of Unsecured Creditors (the "Committee"). In support of this Objection, the Debtor respectfully states as follows:

## I. PRELIMINARY STATEMENT

Certain portions of the McNally Declaration contain previously undisclosed opinions. This is an impermissible attempt to supplement Ms. McNally's expert report and testimony after the close of expert discovery, after completion of her deposition, and after the Debtor incurred the timer and expense of moving to prohibit her testimony [*see* Dkt. No. 3064].

The McNally Declaration introduces at least **five** brand new opinions or analytical frameworks the Committee never disclosed in Ms. McNally's Expert Report: (1) that asset insufficiency does not reduce claim value; (2) that the source of funds used to satisfy claims does not affect liability; (3) that insurance availability does not impact claim value; (4) comparative judgments about RCBO claims relative to other diocesan bankruptcies; and (5) a discussion of "potentially comparable settlements involving institutional defendants in California and other jurisdictions" introducing a new "2.2 to 2.7 times" multiplier in support of her theories about the impact of statutes of limitation."

Ms. McNally testified at her deposition that her Expert Report had not been supplemented and did not require supplementation. The Debtor had no opportunity to depose Ms. McNally on these new opinions, procure a rebuttal report from its own expert, or conduct a further *Daubert* challenge. The prejudice to the Debtor is manifest. The Court should exclude the undisclosed opinions in the McNally Declaration.

Additionally, at least two statements in the McNally Declaration are without proper foundation and constitute improper speculation designed to bolster Ms. McNally's testimony. *First*, the statement that "Based on my experience and review of the underlying settlement documentation, it is likely that certain claims resolved prior to the revival window in the First Legislation may have been subject to statute of limitations defenses" is without any foundation in the McNally Declaration or her underlying expert report. (*See* McNally Declaration at 7:2-4). Ms. McNally is not an attorney, and even if she was, there is no way to know based on settlement agreements which defenses may or may not have been raised or discussed. She certainly does not cite to any specific document(s) or statements to support this assertion. *Second*, the reference to "RCBO's concern over increased exposure to punitive damages as a result of the Second Legislation" is similarly without foundation, as Ms. McNally could not possibly know whether RCBO was "concerned" about punitive damages or not.

## II. JURISDICTION AND VENUE

This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

## III. BACKGROUND

On May 8, 2026, the Committee provided the Expert Report of McNally in connection with the Plan. On the same date, the Debtor provided the expert report of Dr. Denise Martin of NERA Consulting. Ms. McNally and Dr. Martin opined on similar overarching issues with different methodologies and assignments. On May 21, 2026, Dr. Martin issued a rebuttal report to Ms. McNally Report, but Ms. McNally did not issue a rebuttal report of her own. Dr. Martin's rebuttal report (and ultimate testimony) demonstrate that Ms. McNally's tort-based methodology produces results dramatically inconsistent with actual bankruptcy outcomes. On May 26, 2026, the Debtor deposed Ms. McNally in connection with her expert report.

A comparison of the McNally Declaration to her previously disclosed Expert Report reveals that the McNally Declaration improperly introduces the following new opinions, arguments, and characterizations that were not disclosed in the Expert Report and should therefore be excluded or disregarded:

- **Asset Insufficiency Does Not Reduce Claim Value.** The McNally Declaration opines that an argument that RCBO lacks sufficient assets to satisfy claims "does not reduce the underlying value" of the claims. (McNally Declaration at ¶ 13).This is a new legal-economic conclusion not found anywhere in the Expert Report. It is prejudicial because Ms. McNally testified she had no opinion on what would be relevant to the Court or to a factfinder and was not offering an opinion on reasonable payment to survivors in an insolvency situation. (McNally Dep. Tr. 178:1-13).
- **Source of Funds Does Not Affect Liability.** The McNally Declaration opines that "the source of funds historically used to satisfy claims does not affect the size of the liabilities. (McNally Declaration at ¶ 15). This is a brand new opinion, first disclosed in the McNally Declaration. At her deposition, Ms. McNally testified she was not offering opinions about "who pays" and had no opinion on how her number was being used by the Committee or its counsel. (McNally Dep. Tr. 116:23-117:7 ["Don't you think it's relevant to the court that in prior settlements that you looked at, the debtor only paid 45 percent of those claims?" "I don't have an opinion on what would be relevant to the court. I, again, I'm offering opinions on the face value of the claim, not to who pays."]).
- **Insurance Availability Does Not Impact Claim Value.** The McNally Declaration opines that "the availability of insurance assets to compensate survivors of secual abuse (or to repay the insured for settlement payments it makes) does not impact the value of the underlying claim." (McNally Declaration at ¶ 16). This opinion does not appear in the

Expert Report. Ms. McNally testified that, although she understood there was insurance in the case, she had not developed any insurance opinions as part of the report. (McNally Dep. Tr. 111: 6-16).

- **Comparisons to Other Diocesan Bankruptcies.** The McNally Declaration offers new opinions that comparisons to other diocesan bankruptcies are "fact-specific" and that claims against RCBO may be "more valuable" than claims in other diocesan bankruptcies because of "the legal environment, the nature of allegations, and the absence of statute of limitations defenses." (McNally Declaration at ¶ 17). These comparative judgments are not in the Expert Report, and Ms. McNally testified that she had not presented any analysis on other bankruptcy cases for purposes of this report or this case, and had not conducted a bankruptcy-outcome statute-of-limitations analysis for purposes of this report. (McNally Dep. Tr. 158:10-18).
- **Discount Characterization.** The McNally Declaration recharacterizes the 2.2x–2.7x multiplier for claims within the limitations period as representing a "55%–63% discount," a framing found nowhere in the Expert Report. She states "[a] comparison of potentially comparable settlements involving institutional defendants in California and other jurisdictions indicates that claims within the statute of limitations settle, on average, for 2.2 to 2.7 times more than the claims falling outside the statute of limitations—representing an estimated discount of 55% to 63%, on average, for litigation risk associated with statute of limitations claim defenses." (McNally Declaration at ¶ 19).

## IV. LEGAL STANDARD

Federal Rule of Civil Procedure 26(a)(2)(B), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7026, requires that expert disclosures contain "a complete statement of all opinions the witness will express and the basis and reasons for them." Fed. R. Civ. P.

26(a)(2)(B)(i). The purpose of this requirement is to provide the opposing party with adequate notice of the expert's opinions and an opportunity to prepare for cross-examination and, if necessary, to retain a rebuttal expert.

Federal Rule of Civil Procedure 37(c)(1) provides that "[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). Exclusion is the presumptive sanction for failure to comply with expert disclosure requirements. *See Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001) (Rule 37(c)(1) is a "self-executing, automatic sanction designed to provide a strong inducement for disclosure.").

The burden is on the party facing exclusion to demonstrate that the failure to disclose was substantially justified or harmless. *Id.* In determining whether exclusion is warranted, courts consider: (1) the prejudice or surprise to the party against whom the evidence is offered; (2) the ability of that party to cure the prejudice; (3) the likelihood of disruption of trial; and (4) the bad faith or willfulness involved in not timely disclosing the evidence. *Lanard Toys Ltd. v. Novelty, Inc.*, 375 Fed. Appx. 705, 713 (9th Cir. 2010).

## V. RESPONSE

### A. The New Opinions Violate Expert Disclosure Requirements

As set forth above, Rule 26(a)(2)(B) requires a complete statement of all expert opinions, and Rule 37(c)(1) mandates exclusion of undisclosed opinions unless the failure was substantially justified or harmless. Here, the McNally Declaration introduces at least five discrete new opinions or analytical frameworks that were not contained in the Expert Report: (1) that asset insufficiency does not reduce claim value; (2) that the source of funds does not affect liability; (3) that insurance availability does not impact claim value; (4) comparative judgments about RCBO claims relative to other diocesan

bankruptcies; and (5) a discussion of "potentially comparable settlements involving institutional defendants in California and other jurisdictions" introducing a new "2.2 to 2.7 times" multiplier in support of her theories about the impact of statutes of limitation." After Ms. McNally testified that her Expert Report was the last report she had written in this case, had not been amended or supplemented, and did not need amendment or supplementation, the Debtor filed a *Daubert* motion seeking to exclude Ms. McNally's testimony. With the benefit of the Debtor's *Daubert* motion, the Committee then filed the McNally Declaration introducing these new opinions. These are not mere clarifications or summaries of previously disclosed opinions. They represent new substantive positions and opinions that were required to be disclosed under Rule 26(a)(2)(B). The Committee bears the burden of demonstrating that its failure to disclose was substantially justified or harmless. *See Yeti by Molly*, 259 F.3d at 1106. It cannot meet that burden here.

**B. The Debtor Has Been Prejudiced**

The Debtor has been materially prejudiced by the Committee's submission of new expert opinions in a declaration filed after completion of Ms. McNally's deposition and just ten days before the first day of the confirmation trial. The Debtor does not have a meaningful opportunity to:

- Re-depose Ms. McNally on these new or expanded opinions;
- Procure a further rebuttal report from its own expert to respond to the new analytical frameworks; or
- Brief the legal implications of the newly asserted positions.

During the deposition, she testified that the Expert Report was the last report she had written in this case, that it had not been amended or supplemented, that she did not believe it needed amendment or supplementation, and that she had not prepared a rebuttal report. (McNally Dep. Tr. 11:15-17). The McNally Declaration therefore deprived the Debtor of the opportunity to examine her on the newly

expanded opinions at the deposition. The prejudice to the Debtor is manifest and cannot be cured without disrupting the trial schedule.

### C. The New Opinions Are Inadmissible Under Fed. R. Evid. 702

To the extent the McNally Declaration's new opinions are offered as expert testimony, they must also satisfy the requirements of Federal Rule of Evidence 702. The trial court serves as a "gatekeeper" to ensure that expert testimony is both relevant and reliable. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993). Under Rule 702, opinion testimony is admissible only if it is based on sufficient facts or data, is the product of reliable principles and methods, and the expert has reliably applied those principles and methods to the facts of the case. Fed. R. Evid. 702. The Debtor has had no opportunity to conduct a *Daubert* challenge or to examine the reliability and methodology of the new opinions, including the newly asserted irrelevance of insolvency risk, the new funding and insurance opinions, and the new comparative-value judgments regarding other diocesan bankruptcies. The Court should exercise its gatekeeping function to exclude these untested and unreliable opinions.

## VI. CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court exclude the undisclosed opinions in the McNally Declaration and grant such other relief as the Court deems just and proper.

DATED: June 11, 2026

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