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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:

THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole,

Debtor.

Case No.: 23-40523 WJL

Hon. William J. Lafferty

Chapter 11

LONDON MARKET INSURERS' REPLY TO THE DEBTOR'S POST-TRIAL BRIEF IN SUPPORT OF CONFIRMATION OF CONFIRMATION OF DEBTOR'S MODIFIED FOURTH AMENDED PLAN OF REORGANIZATION

Certain Underwriters at Lloyd's, London and Certain London Market Companies ("London Market Insurers" or "LMI")[1] submit this Reply brief in support of LMI's post-trial confirmation brief[2] and in response to the Debtor's Post-Trial Brief in Support of Debtor's Fourth Amended Plan of Reorganization, filed at docket number 3418. In support thereof, LMI respectfully state as follows:

I. STATUS OF PROPOSED PLAN REVISIONS

On July 22, 2026, LMI, on behalf of LMI, Westport, Pacific, and Travelers, sent a red-lined draft of Plan revisions, which would make the Plan acceptable to those insurers. As of the date of filing of this Reply brief, LMI have not received a response from the Debtor. In the event the Debtor submits a revised Plan to the Court, LMI reserve all of their objections and rights with respect to such revised Plan.

II. JOINDER

To avoid duplication, LMI join in the arguments raised in the following briefs by the Objecting Insurers and Pacific Indemnity Company, Pacific Employers Insurance Company, Insurance Company of North America, and Westchester Fire Insurance Company ("Pacific Insurers") and incorporate those arguments as though fully set forth herein:

- Objecting Insurers' Post-Trial Reply Brief in Opposition to Confirmation of Debtor's Modified Fourth Amended Plan of Reorganization;

[1] LMI are Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 60034 issued to the Roman Catholic Bishop of San Francisco, and Nos. K 78318 and CU 3061 issued to the Roman Catholic Bishop of Oakland; Catalina Worthing Insurance Ltd f/k/a HFPI (as Part VII transferee of Excess Insurance Co. Ltd.); the Ocean Marine Insurance Company Limited (as Part VII transferee of the World Auxiliary Insurance Corporation Limited); River Thames Insurance Company Limited; Dominion Insurance Company Limited; Companhia de Seguros Fidelidade-Mundial f/k/a Fidelidade Insurance Company of Lisbon; and R&Q Gamma Company Limited (as Part VII transferee of Anglo French Ltd.).

[2] Capitalized terms not defined herein shall have the meanings ascribed to them in the London Market Insurers' Post-Trial Confirmation Brief filed at docket number 3414.

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- Pacific Insurers' Reply to the Debtor's Post-Hearing Brief in Support of Confirmation of the Debtor's Modified Fourth Amended Plan of Reorganization[3]; and
- Pacific Insurers' Reply to the Debtor's Post-Hearing Brief Regarding Revisions to the Debtor's Proposed Confirmation Order

III. LEGAL ARGUMENT

A. The Bankruptcy Code Does Not Allow for Multiple Discharges

The Debtor mistakenly argues that Section 1141(d) authorizes it to craft multiple Abuse Claim discharges under the Deferred Discharge Provision. Section 1141(d) states that confirmation of a plan will result in a discharge "except as provided in the plan or the order confirming the plan." While Section 1141(d) may arguably grant a debtor a *limited* degree of flexibility as to the timing of a discharge, it does not grant a carte blanche right to stagger multiple discharges to tip the scales in future litigation.[4]

The Debtor's interpretation of Section 1141(d) is inconsistent with the Bankruptcy Code. "In ascertaining the intent of Congress, we must 'interpret language in one section of a statute consistently with language of other sections and with the purposes of the entire statute considered as a whole.'"[5] Moreover, a statute should not be interpreted to render a provision superfluous.[6] The Bankruptcy Code repeatedly references a single discharge: Section 524 references "*a* discharge"[7] ten times and Section 1141 mentions "*a* discharge" six times.[8] The Debtor does not point to any express language in the Bankruptcy Code authorizing multiple discharges because there are none. The Debtor's

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[3] LMI do not join in Pacific's argument that "The Debtor offers no authority for enjoining claims between non-debtors."

[4] As LMI argue in their Post-Trial Confirmation Brief at 11-13, the Deferred Discharge Provision is intended to create a *Hand* claim against Non-Settling Insurers that cannot exist as a matter of law.

[5] *Am. Tunaboat Ass'n v. Brown*, 67 F.3d 1404, 1408 (9th Cir. 1995).

[6] *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

[7] 11 U.S.C. § 524 (emphasis added).

[8] 11 U.S.C. § 1141 (emphasis added).

interpretation also does not comport with Section 524(e). Section 524(e) provides that a debtor may agree to reaffirm a debt if the agreement is made and bankruptcy court approved before "*the* discharge".[9] Reading Section 1141(d) to allow multiple discharges renders Section 524(e) superfluous; if a debtor wished to reaffirm a debt, it would be unclear which discharge the debtor would need to seek approval before. Moreover, interpreting Section 1141(d) to authorize different discharges is inconsistent with the Bankruptcy Code's repeated references to a single discharge. In sum, Section 1141(d) does not allow for multiple discharges and accordingly, the Deferred Discharge Provision is improper.

B. <u>The Debtor Fails Its Burden of Proof as to the Deferred Discharge Provision</u>

As plan proponent, the Debtor bears the burden of proving that the Plan complies with the Bankruptcy Code.[10] Section 1123(a) lists provisions that are required in the Plan, while Section 1123(b) lists provisions that are not required, but are permissible.[11] The Debtor cannot and does not argue that Section 1123(a) requires the Deferred Discharge Provision. Further, the Debtor cannot and does not argue that the Deferred Discharge is a permissible under Section 1123(b). Indeed, the Debtor seemingly concedes that Section 1123(b)(1)-(5) does not allow for the Deferred Discharge Provision, noting in its brief that it may later argue that Section 1123(b)(6) authorizes the Deferred Discharge Provision.[12] The Debtor is incorrect about Section 1123(b)(6). Section 1123(b)(6) does not authorize the Deferred Discharge Provision.

In *Harrington v. Purdue Pharma*, the Supreme Court ruled that Section 1123(b)(6)'s catchall provision must be interpreted in relation to Section 1123(b)(1)-(5).[13] Because Section 1123(b)(1)-(5)

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[9] 11 U.SC. § 524(a) (emphasis added).

[10] *In re Kemp*, 134 B.R. 413, 414 (Bankr. E.D. Cal. 1991).

[11] 11 U.S.C. § 1123(a) ("Notwithstanding any otherwise applicable nonbankruptcy law, a plan *shall*…") (emphasis added); 11 U.S.C. § 1123(b) ("Subject to subsection (a) of this section, a pay *may*…") (emphasis added).

[12] Debtors Post-Trial Brief in Support of Confirmation of Confirmation of Debtor's Modified Fourth Amended Plan of Reorganization, Dkt No. 3418 at 77:8-10.

[13] *Harrington v. Purdue Pharma*, 603 U.S. 204, 218-19. (2024)

allows provisions governing a debtor's rights and responsibilities with its creditors, Section 1123(b)(6) must be interpreted in this context.[14] Thus, Section 1123(b)(6) only allows for provisions relating to a debtor's rights and responsibilities with creditors that do not violate the Bankruptcy Code. The Deferred Discharge Provision governs releases for the Debtor's benefit and thus, bears no relation to a debtor's responsibilities to its creditors. Just as the Supreme Court ruled that Section 1123(b)(6) cannot be expanded to allow for nonconsensual third party releases, Section 1123(b)(6) cannot be similarly stretched to authorize the Deferred Discharge Provision.

C. <u>The Debtor's Reliance On Other Cases Is Unavailing</u>

The Debtor's reliance on the Madison Square Boys & Girls Club, Inc. ("Madison Square"), Diocese of Rochester, and Diocese of Buffalo bankruptcy cases is unavailing.[15] As noted earlier, LMI join in Objecting Insurers' arguments, which note that the Madison Square plan is distinguishable because no insurers objected to the discharge provision.

The Diocese of Rochester bankruptcy plan is distinguishable. In this case, the insurers settled with the debtor, and the bankruptcy court approved the applicable settlement agreements before the bankruptcy court confirmed the debtor's plan.[16] In those settlement agreements, the insurers purchased the debtor's policies, as well as any alleged extra-contractual (*i.e.* bad faith) claims. Hence, any deferred discharge was not at issue in the Diocese of Rochester bankruptcy case.

Lastly, the Diocese of Buffalo case is irrelevant. The Debtor cites to a plan filed at docket number 4221, arguing that this plan includes similar language to the Deferred Discharge Provision here.[17] *However, the Debtor cites a prior version of the plan that the Diocese of Buffalo has abandoned*. The current plan in the Diocese of Buffalo case is at docket number 4901. That plan does not include *any* language deferring a discharge. It instead defines the "Abuse Claim Discharge Date"

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[14] *Id*.

[15] *See* Debtor's Post Trial Brief in Support of Confirmation of Debtor's Modified Fourth Amended Plan of Reorganization, Dkt No. 3418 at 76:20-28 to 77:6-7.

[16] *See Diocese of Rochester*, Case No. 2-19-20905-PRW, Dkt Nos. 3264, 3265, 3266, 3266, and 3378.

[17] *See* Debtor's Post Trial Brief in Support of Confirmation of Debtor's Modified Fourth Amended Plan of Reorganization, Dkt No. 3418 at 77:6-7.

to mean "the Effective Date, the date on which the Diocese Discharge and Additional Debtors Discharge occurs."[18] Hence, there is no similar language in the current version of the Diocese of Buffalo, N.Y. plan.

In sum, the Debtor's reliance on these three cases is misplaced.

IV. CONCLUSION

For the foregoing reasons, LMI respectfully request that the Court deny confirmation of the Debtor's Modified Fourth Amended Plan unless and until the Plan is modified to address the legal defects and ambiguities identified in LMI's Objections and their Post-Trial Brief.

Dated: August 19, 2026

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[18] *See Diocese of Buffalo, N.Y.*, Case No. 1-20-10322-CLB, Dkt No. 490, § 1.1.4.