

**LOWENSTEIN SANDLER LLP**

JEFFREY D. PROL (Admitted Pro Hac Vice)

[jprol@lowenstein.com](mailto:jprol@lowenstein.com)

MICHAEL A. KAPLAN (Admitted Pro Hac Vice)

[mkaplan@lowenstein.com](mailto:mkaplan@lowenstein.com)

BRENT WEISENBERG (Admitted Pro Hac Vice)

[bweisenberg@lowenstein.com](mailto:bweisenberg@lowenstein.com)

One Lowenstein Drive

Roseland, New Jersey 07068

Telephone: (973) 597-2500

Facsimile: (973) 597-2400

**KELLER BENVENUTTI KIM LLP**

TOBIAS S. KELLER (Cal. Bar No. 151445)

[tkeller@kbkllp.com](mailto:tkeller@kbkllp.com)

JANE KIM (Cal. Bar No. 298192)

[jkim@kbkllp.com](mailto:jkim@kbkllp.com)

GABRIELLE L. ALBERT (Cal. Bar No. 190895)

[galbert@kbkllp.com](mailto:galbert@kbkllp.com)

425 Market Street, 26th Floor

San Francisco, California 94105

Telephone: (415) 496-6723

Facsimile: (650) 636-9251

*Counsel for the Official Committee of Unsecured  
Creditors***UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

Case No. 23-40523 WJL

*In re:*

Chapter 11

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

Debtor.

**OBJECTION OF THE OFFICIAL  
COMMITTEE OF UNSECURED  
CREDITORS TO THE JOINT MOTION  
FILED BY THE DEBTOR AND 85  
CLERGY EMPLOYEES OF THE  
DEBTOR TO QUASH AND MOTION  
FOR PROTECTION AGAINST  
SUBPOENAS**

Judge: Hon. William J. Lafferty



1 The Official Committee of Unsecured Creditors (the “Committee”) of the Roman  
2 Catholic Bishop of Oakland (the “Debtor”) files this objection (this “Objection”) to the *Joint*  
3 *Motion Filed by the Debtor and 85 Clergy Employees of the Debtor to Quash and Motion for*  
4 *Protection Against Official Committee of Unsecured Creditors’ Subpoenas Served on the*  
5 *Debtor’s Clergy Employees* (“Motion”) [Dkt. 1924]. In support of this Objection, the Committee  
6 states:

7 **PRELIMINARY STATEMENT<sup>1</sup>**

8 In order to determine whether the Plan complies with 11 U.S.C. § 1129(b)(1)—in  
9 particular that Survivors, who the Debtor seeks to cram the Plan down on, are being treated fairly  
10 and equitably—the Committee is entitled to take discovery and present evidence on what assets  
11 it believes are available to pay Survivors’ claims. Two of the areas where the Committee and  
12 Debtor disagree are (i) whether the funds the Debtor claims are restricted assets are in fact  
13 restricted under California law, and (ii) whether certain real estate, which by the Debtor’s own  
14 admission is not necessary to the Debtor’s go-forward mission, could be maximized to satisfy  
15 Survivor claims.

16 Most, if not all, of the purportedly restricted assets were received by or through one of  
17 the Churches, and therefore the Churches have relevant documents and information on the  
18 validity of those restrictions. In addition, the Churches were likely involved in and/or were  
19 advised about the Bishop’s Mission Alignment Process, a process which would consolidate  
20 certain Churches and was poised to generate operational efficiencies for the Debtor and much  
21 needed cash to pay Survivors. While the Churches likely maintain crucial information relevant  
22 to these disagreements, the issue, of course, is that the Churches are not separate legal entities  
23 that could be subpoenaed.

24 As such, to get the relevant information held at the Church level, the Committee  
25 subpoenaed individual Pastors. The Debtor claims it has legal control over the Churches’  
26 documents and that the documents sought are within the scope of the requests that the Committee

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27 <sup>1</sup> Capitalized terms that are not defined in this Preliminary Statement shall have the meanings  
28 ascribed to them below.

1 made to the Debtor. If that is the case, then the Debtor should search for and produce the  
2 documents it has. Indeed, the Committee is not concerned with where the information comes  
3 from, but instead that all relevant documents and information is produced. Failing a search of  
4 the documents maintained at the Churches (which the Debtor will likely claim is burdensome),  
5 the Pastors cannot simply decline to provide documents that they maintain at the individual  
6 Churches that are responsive to the Committee's discovery requests. The Committee has no  
7 interest in (nor time for) duplicate productions. A reasonable search should be conducted by the  
8 Pastors and responsive discovery produced.

9 The Court should deny the Motion and order that the documents requested in the  
10 Subpoenas be produced.

### 11 **RELEVANT BACKGROUND**

12 The churches (the "Churches") within the geographic region of the Debtor (the "Diocese"  
13 or "Diocese of Oakland") are not separately incorporated and do not hold property independently  
14 from the Debtor. [Dkt. No. 1831 at 32.] Therefore, unless subject to a valid restriction, any  
15 property previously designated as property of the Churches or property being held for the benefit  
16 of Churches, is property of the Debtor's estate. [*Id.*] The Debtor alleges that "many" of its assets  
17 (the "Allegedly Restricted Assets") cannot be used "to pay operational expenses, or to pay its  
18 creditors" because the assets are held in a charitable trust. [*Id.* at 14.] As donations typically  
19 come in through the Churches [*see id.* at 33], information regarding whether and to what extent  
20 certain assets are restricted is likely held at the Church level. This information is necessary to  
21 determine whether the Allegedly Restricted Assets are available to pay Survivor claims.

22 Additionally, the Diocese commenced a "Mission Alignment Process" before it initiated  
23 this bankruptcy proceeding (the "Chapter 11 Case") through which it planned to consolidate  
24 parishes to reduce operational costs and sell real estate to raise funds to compensate survivors of  
25 sexual abuse asserting claims against the Debtor arising out of sexual abuse perpetrated by  
26 persons or entities associated with or representing the Debtor (the "Survivors"). [*Id.* at 34–35.]  
27 However, the Mission Alignment Process was never completed [*id.* at 35], and the Debtor's  
28 *Third Amended Plan of Reorganization* (the "Plan") [Dkt. No. 1830] does not provide for

1 implementing it. As a result, the Debtor has failed to maximize the value of the estate for its  
2 creditors, including the Survivors. As the Mission Alignment Process planned to close certain  
3 Churches, there are likely documents and communications about it at the Church level. Because  
4 the Churches are not separate legal entities, the Committee had to serve the pastors (“Pastors”)  
5 of each of the Churches within the Diocese in their individual capacity.

6 The Debtor has consulted with the Pastors throughout this Chapter 11 Case. For example,  
7 the fee statements filed by Debtor’s counsel reference a number of meetings with one of the  
8 Pastors, Father Lawrence D’Anjou of St. Bonaventure Catholic Community,<sup>2</sup> regarding issues  
9 such as “chapter 11 strategy,” “chapter 11 planning,” “options for funding plan settlement,” and  
10 “Canon Law considerations surrounding asset sales and plan funding.” [Dkt. No. 466 at 56,  
11 133–34, 320.]

12 Additionally, Dr. Matthew Kemner, who was retained by the Debtor as an ordinary  
13 course professional to “serve as an advisor and counselor on a number of legal issues affecting  
14 the operations of RCBO” [Dkt. No. 707 at 1], has similarly consulted with the Pastors. His  
15 invoices show that he has discussed a number of issues relating to the Chapter 11 Case with  
16 Father D’Anjou and other Pastors, including the “character of certain assets” and “real property  
17 ownership issues”—both of which are directly relevant to the assets available to fund the  
18 Survivors’ Trust (as defined in the Plan). *See* Weisenberg Decl., Ex. A at 3.<sup>3</sup> Dr. Kemner’s  
19 invoices also show that he has conducted an analysis of other abuse litigations and corresponded  
20 with Father D’Anjou about that analysis. *See id.*, Ex. C at 1–3. A list of the relevant entries  
21 from Dr. Kemner’s invoices is below:

- 22 • January 21, 2025: “Prepare for and cover meeting with Fr Lawrence regarding  
23 marshalling of assets for possible sale and related matters.” *Id.*, Ex. A at 2.

24  
25 <sup>2</sup> Some of the entries mistakenly reference him as “Fr. Lawrence.” However, based on time  
26 entries from other timekeepers referring to the same meetings, these references appear to mean  
Father D’Anjou.

27 <sup>3</sup> Citations to the “Weisenberg Decl.” herein refer to the *Declaration of Brent Weisenberg, Esq.*  
28 *in Support of Objection of the Official Committee of Unsecured Creditors to the Joint Motion*  
*Filed by the Debtor and 85 Clergy Employees of the Debtor to Quash and Motion for*  
*Protection Against Subpoenas* filed simultaneously herewith.

- 1 • January 22, 2025: “Telephone conferences with various priests and leadership on status  
2 of bankruptcy and tasks to do.” *Id.*
- 3 • January 27, 2025: “[W]ork on inquiries from parishes regarding character of certain  
4 assets, and follow up with phone calls and research re same.” *Id.*, Ex. A at 3.
- 5 • January 28, 2025: “[T]elephone conference with parishes addressing real property  
6 ownership issues.” *Id.*
- 7 • January 29, 2025: “Prepare for meetings with pastor and lay parish leaders re possible  
8 upcoming burden sharing.” *Id.*
- 9 • February 5, 2025: “Prepare for meetings at parish level with leadership.” *Id.*, Ex. B at 1.
- 10 • February 6, 2025: “Final preparations for and cover meeting with priests regarding  
11 update on bankruptcy developments.” *Id.*
- 12 • March 1, 2025: “Analyze developments in distinct but related abuse litigation per  
13 instruction of D’Anjou.” *Id.*, Ex. C at 1.
- 14 • March 16, 2025: “[P]repare correspondence to Fr D’Anjou regarding other abuse  
15 litigation with relevance to ours, after research re same per leadership request.” *Id.*, Ex.  
16 C at 2.
- 17 • March 30, 2025: “Receive and follow up on research request from Fr D’Anjou and  
18 prepare correspondence to same.” *Id.*, Ex. C at 3.

19 To date, the Debtor has not produced any of the communications or the documents that relate to  
20 these discussions between Dr. Kemner and the Pastors.

21 The Committee served subpoenas (“Subpoenas”) on the Pastors on April 11, 2025.

## 22 ARGUMENT

### 23 **I. The Documents Sought Are Necessary for Plan Confirmation.**

24 The scope of discovery is broad, and whether the documents are produced by the Pastors  
25 themselves or by the Debtor, the documents sought are relevant to Plan confirmation and must  
26 be produced. Federal Rule of Civil Procedure (“Rule”) 26(b)(1) provides that “[p]arties may  
27 obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or  
28 defense and proportional to the needs of the case.” “The relevance standard” of Rule 26 “is

1 commonly recognized as one that is necessarily broad in scope in order ‘to encompass any matter  
2 that bears on, or that reasonably could lead to other matter that could bear on, any issue that is  
3 or may be in the case.’” *Doherty v. Comenity Cap. Bank & Comenity Bank*, No. 16CV1321-H-  
4 BGS, 2017 WL 1885677, at \*2 (S.D. Cal. May 9, 2017) (quoting *Oppenheimer Fund, Inc. v.*  
5 *Sanders*, 437 U.S. 340, 351 (1978)). The same broad scope of discovery under Rule 26 that  
6 applies to document requests to parties under Rule 34 also applies to documents sought through  
7 a subpoena under Rule 45. *Gonzales v. Google, Inc.*, 234 F.R.D. 674, 679 (N.D. Cal. 2006). And  
8 Federal Rule of Bankruptcy Procedure (“Bankruptcy Rule”) 9014 makes Rules 26(b)(1) and 34  
9 applicable to contested matters (such as the contested plan here), and Bankruptcy Rule 9016  
10 provides that Rule 45 applies in bankruptcy cases.

11 In connection with plan confirmation, a bankruptcy court in this circuit has noted that  
12 “the federal rules are to be broadly construed with a bias in favor of wide-open discovery.” *In*  
13 *re Claar Cellars LLC*, 623 B.R. 578, 608 (Bankr. E.D. Wash. 2021) (quotation omitted).  
14 Discovery is the plan opponent’s opportunity to “cast doubt on the viability of the acceptance of  
15 the plan.” *See In re Michelson*, 141 B.R. 715, 719 (Bankr. E.D. Cal. 1992). For a committee of  
16 creditors motivated to discover available assets, this opportunity includes casting doubt on the  
17 debtor’s claims that it lacks sufficient assets to pay its creditors. *Cf. In re Anderson*, 349 B.R.  
18 448, 465 (E.D. Va. 2006) (concluding that committee “fulfill[ed] its primary responsibility to  
19 represent the interests of its members” by participating in discovery and claim objection  
20 proceeding “focused on the [debtor’s] allegedly fraudulent scheme to defraud all the  
21 Committee’s members”).

22 It is likely that the Debtor will seek to “cram down” the Plan on Survivors without their  
23 support—something that has never been done before in a diocesan bankruptcy case. In order to  
24 cram down the Plan, the Debtor must prove that the Plan is “fair and equitable” with respect to  
25 the Survivors. 11 U.S.C. § 1129(b)(1). The Debtors concede that Survivors will not be paid in  
26 full under the Plan; in fact, the \$143.5 million (subject to reduction if the Survivors do not  
27 provide releases to the Roman Catholic Welfare Corporation of Oakland (“RCWC”)) proposed  
28 to fund the Survivors’ Trust over the course of several years pales in comparison to the value of

1 the Survivors' claims. To support its position that this is not fair and equitable as required by  
2 the Bankruptcy Code, the Committee is entitled to discovery regarding the Debtor's assets and  
3 to what extent those assets are available to pay the claims of Survivors, including assets that are  
4 purportedly held for the benefit of the Churches or that are allegedly restricted.

5 The Subpoenas only contain ten requests, each of which seeks documents relevant to the  
6 Committee's objection that the Plan does not allocate sufficient assets to the Survivors' Trust to  
7 fund payments to Survivors, while the Debtor will maintain significant assets and real estate—  
8 including real estate that is not necessary to its go-forward mission or was otherwise previously  
9 proposed to be sold.

10 For example, Request Nos. 1–3 each seek relevant communications between the Pastor,  
11 the College of Consultors of the Diocese of Oakland and each of its members (the "College of  
12 Consultors"), the Diocese of Oakland Finance Council and each of its members (the "Finance  
13 Council"), and The Most Reverend Michael C. Barber, SJ (the "Bishop") and/or the Debtor  
14 relating to the Abuse Claims (as defined in the Plan) or the Chapter 11 Case. These are the key  
15 decision-makers in this case, and any communications each Pastor may have had with the  
16 decision-makers on these topics are relevant to the Debtor's evaluation of the Abuse Claims and  
17 the assets available to pay those claims.

18 Request No. 4 seeks documents relating to the Allegedly Restricted Assets, and Request  
19 No. 5 seeks communications between the Pastor, the Bishop, the Debtor, and any Church donor  
20 relating to donations to support the Church. Any documents and communications relating to the  
21 Allegedly Restricted Assets and donations to the Church are relevant to the Debtor's evaluation  
22 of available assets and assertion that such assets are not available to pay creditors under the Plan.  
23 As noted above, the Debtor's legal advisor, Dr. Kemner discussed these issues with the Pastors,  
24 including phone calls with the parishes regarding "character of certain assets" amidst other  
25 entries regarding this Chapter 11 Case. *See, e.g.,* Weisenberg Decl., Ex. A at 3. Dr. Kemner's  
26 time entries demonstrate the Pastors were aware of and involved in issues regarding Allegedly  
27 Restricted Assets, and they should be required to produce any additional documents and  
28 communications that exist.



1 Request Nos. 6 and 7 seek relevant communications and documents between the Pastor,  
2 the Bishop, the Debtor, and VeraCruz Advisory, LLC (“VeraCruz”) relating to the Mission  
3 Alignment Process, and Request No. 8 seeks documents relating to loans and loan requests made  
4 by the Pastor on behalf of the Church to the Bishop, Debtor, Non-Debtor Catholic Entities, or  
5 third parties, all of which are relevant to the Debtor’s available assets. Dr. Kemner similarly  
6 discussed issues regarding “marshalling of assets for possible sale and related matters,” “real  
7 property ownership issues” with the Pastors, *id.* at 2–3, showing the Pastors’ involvement in  
8 these issues.

9 Request No. 9 seeks documents relating to the Pastor’s analyses of the Abuse Claims,  
10 and Request No. 10 seeks communications between the Pastor and the Bishop or the Debtor  
11 relating to the Chapter 11 Case, including communications relating to the Plan and the *Debtor’s*  
12 *Third Amended Disclosure Statement for Debtor’s Third Amended Plan of Reorganization* (the  
13 “Disclosure Statement”) [Dkt. No. 1831]. Such analyses by the Pastors and communications  
14 with key decision-makers are relevant to the Debtor’s evaluation of the Abuse Claims and  
15 drafting and negotiation of the Plan.

16 Within the Motion, the Debtor is not consistent on whether documents are held at the  
17 Church level or whether all documents are considered to be in the Debtor’s possession, custody,  
18 and control. The Debtor argues in some places that the Pastors “do not have a legal right of  
19 possession, custody, or control over their employer’s documents,” and that the “subpoenas on  
20 their face seek information belonging to the Churches and thus belonging to the Debtor” but  
21 argues in others that it will need to “[c]oordinat[e] responses from each of the Debtor’s priests  
22 across 85 discrete organizations.” [Motion at 2, 9, 12.] The Debtor cannot have it both ways.  
23 Either the Churches’ documents are in the Debtor’s legal possession, or the Churches’ documents  
24 belong to the Churches—but either way, the documents must be searched and produced.

25 **II. The Subpoenas Are Not Burdensome and Seek Documents that the Debtor Must**  
26 **Produce Anyway.**

27 The Debtor and the Pastors cannot get out of their discovery obligations simply by  
28 making a bare claim of burden. A party is “required to reasonably and diligently search for and



1 produce responsive documents in her possession, custody, or control” and has “an affirmative  
2 duty to seek responsive documents reasonably available to her from her agents, or others subject  
3 to her control.” *Milke v. City of Phoenix*, 497 F. Supp. 3d 442, 465 (D. Ariz. 2020) (cleaned up),  
4 *aff’d*, No. 20-17210, 2022 WL 259937 (9th Cir. Jan. 27, 2022). Each Subpoena contains only  
5 ten document requests and does not seek an inordinate number of documents.

6 Further, the Pastors/Debtor have not yet conducted the searches, so the actual burden is  
7 hypothetical and uncertain—the Debtor has not provided any information on how many  
8 documents would need to be reviewed in response to the Subpoenas or how long such review  
9 would take. “As a threshold matter, . . . an objecting party must specifically establish the nature  
10 of any alleged burden, usually by affidavit or other reliable evidence.” *Thomas v. Cate*, 715 F.  
11 Supp. 2d 1012, 1032 (E.D. Cal. 2010). The objecting party “must provide sufficient detail  
12 regarding the time, money and procedures required to produce the requested documents,” *Shaw*  
13 *v. Experian Info. Sols., Inc.*, 306 F.R.D. 293, 301 (S.D. Cal. 2015) (quotation omitted), including  
14 “how voluminous [the objecting party] expects the responsive discovery would be, how  
15 logistically difficult it would be for the [objecting party] to comply to the subpoena, and whether  
16 compliance would impose large costs on the [the objecting party],” *Mi Familia Vota v. Hobbs*,  
17 343 F.R.D. 71, 98 (D. Ariz. 2022).

18 Even if the Pastors/Debtor made such a showing, “[t]he fact that production of documents  
19 will be time consuming and expensive is not ordinarily a sufficient reason to refuse to produce  
20 material if the requested material is relevant and necessary to the discovery of admissible  
21 evidence,” as here. *Shaw*, 306 F.R.D. at 301.

22 The fact that the documents are stored across 85 different Churches within the Diocese  
23 is irrelevant. For example, in *Thomas v. Cate*, the responding party objected to an interrogatory  
24 on the grounds that it would be “extremely burdensome and onerous” because it required the  
25 party “to conduct research and investigation on behalf of” the moving party. 715 F. Supp. 2d at  
26 1031. However, the court found insufficient to establish an undue burden the fact that it would  
27 take “approximately one-hundred and eleven hours to conduct the data review necessary to  
28 respond” to the interrogatory by running a list of relevant data within the responding party’s

1 control and manually checking information in the list. *Id.* at 1033. The court reasoned that “[t]he  
2 fact that a responding party maintains records in different locations, utilizes a filing system that  
3 does not directly correspond to the subjects set forth in [an] interrogatory, or that responsive  
4 documents might be voluminous does not suffice to sustain a claim of undue burden.” *Id.*  
5 (quotation omitted). Here too, the fact that documents are stored at the individual Churches does  
6 not make responding to the Subpoena requests unduly burdensome where the documents sought  
7 relate directly to the main issues in the case.

8 Relying on similar reasoning, the court in *Pham v. Wal-Mart Stores, Inc.*, rejected the  
9 responding party’s argument that it would be unduly burdensome to produce documents, from a  
10 five-year period, relating to incidents at the responding party’s stores nationwide. *See* No. 2:11-  
11 CV-01148-KJD-GWF, 2011 WL 5508832, at \*1, 3–5 (D. Nev. Nov. 9, 2011). The responding  
12 party’s assertions that it would be required to ship files from locations nationwide to counsel and  
13 that counsel would be required to review each file—review which may have taken over fifty-six  
14 hours—were insufficient. *See id.* at \*2, 4–5. The court found it “unreasonable that a national  
15 retailer . . . would not have adequate procedures in place to ensure that injury claims . . . are  
16 reported and maintained in a centralized manner” and explained that objecting parties “are not  
17 excused from producing relevant information in their possession, custody and control because  
18 of unreasonable deficiencies in their record keeping system.” *Id.* at \*5. Here, the Debtor claims  
19 the relevant documents are in its possession, custody, and control. Responding to the Subpoena  
20 requests cannot be too burdensome for both the individual Pastors *and* the Debtor—either the  
21 Pastors or the Debtor needs to search for and produce the documents requested. The lack of  
22 centralization of the documents does not provide an excuse to simply not engage in discovery.

23 The cases cited by the Debtor regarding burden are inapposite. For example, the  
24 discovery requests in *Xcentric Ventures, L.L.C. v. Borodkin* were of a very different nature than  
25 the requests here. There, the requesting party sought all non-privileged documents that a non-  
26 party had in her possession relating to the requesting party, its manager, its website, and a blog  
27 post about its website. 934 F. Supp. 2d 1125, 1144 (D. Ariz. 2013). The court concluded that  
28 only a subset of the requested information was “reasonably calculated to lead to admissible

1 evidence” relating to the only remaining claim in the case: that a separate action brought by  
2 another party against the requesting party was a malicious prosecution. *Id.* The court also  
3 quashed a request seeking communications with 19 people, 3 of whom indisputably had no  
4 involvement in the action at issue and 4 of whom would have their communications covered by  
5 the attorney work-product doctrine. *Id.* at 1144–45. By contrast, here, the Pastors possess  
6 information on the Debtor’s assets, and the Debtor has not asserted that the documents requested  
7 of the Pastors are covered by any privilege.

8 Similarly, unlike the *pro se* inmate in *Canell v. Department of Corrections* who  
9 “repeatedly issued discovery requests for the same information before the answers to the prior  
10 requested discovery were due,” No. CV-09-3054-RHW, 2010 WL 174314, at \*1 (E.D. Wash.  
11 Jan. 15, 2010), the Committee has issued one set of discovery requests on the deadline for doing  
12 so and has conferred with the Debtor in good faith to work towards resolving any disputes. The  
13 court in *Canell* also noted the inadequacies with the plaintiff’s motion, which did not comply  
14 with the Rules. *Id.* Accordingly, the court concluded that the plaintiff had “abused the discovery  
15 process as evidenced by the quantity and nature of the discovery requests.” *Id.* But the requests  
16 here are far from the discourteous and unprofessional requests and motion in that case.

17 Further, as the Debtor concedes, the requested documents should all be produced  
18 anyway, regardless of whether the Debtor or the Pastors produce them. The Committee is not  
19 concerned with who makes the production, rather it is concerned with ensuring that all relevant  
20 sources of documents are searched, whether that is hard copy documents at a Church location, a  
21 Pastor’s emails, or a Church’s electronically stored documents. As the Debtor already  
22 acknowledges in its Motion, its obligation to collect “all responsive information within its  
23 possession, custody, or control” “extends to gathering responsive information from its  
24 employees, including the Clergy Employees.” [Motion at 2.] If that is true, then the Debtor  
25 should already be searching for documents across the 85 Churches, and the Subpoenas constitute  
26 no additional burden because the documents are already being collected and reviewed.

27 Finally, if despite this representation, the Debtor and Pastors continue to assert that  
28 producing documents held by the Churches is too burdensome for the Debtor, the Committee is

1 amenable to conducting the review itself, if the Debtor and Pastors make the documents available  
2 to the Committee for inspection under Rules 34 and 45. This would alleviate any concerns  
3 regarding burden.

4 **CONCLUSION**

5 **WHEREAS**, for all these reasons, the Committee requests that the Court enter an order  
6 denying the Motion and granting such other and further relief as the Court deems just and proper.

7 Dated: May 9, 2025

**LOWENSTEIN SANDLER LLP**  
**KELLER BENVENUTTI KIM LLP**

8 By: /s/ Gabrielle L. Albert  
9 Jeffrey D. Prol  
10 Michael A. Kaplan  
11 Brent Weisenberg  
12 Colleen M. Restel

– and –

13 Tobias S. Keller  
14 Jane Kim  
15 Gabrielle L. Albert

*Counsel for the Official Committee of  
Unsecured Creditors*