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*Counsel for the Official Committee of Unsecured
Creditors***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

**APPLICATION FOR ORDER
AUTHORIZING THE RETENTION OF
JONATHAN C. LIPSON AS
CONSULTANT AND EXPERT
WITNESS**

Lowenstein Sandler LLP (“**Applicant**”), counsel to the Official Committee of Unsecured Creditors (the “**Committee**”) of the Roman Catholic Bishop of Oakland (the “**Debtor**”), files this application (this “**Application**”) for entry of an order, under sections 327, 330 and 1103 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the retention of Jonathan C. Lipson (“**Professor Lipson**”) as a consultant and expert witness on the intersection between bankruptcy

1 law and religious freedom, *nunc pro tunc* to May 1, 2025, and approval of his Engagement Letter,
2 attached as **Exhibit B**.

3 In support of this Application, and incorporated herein by reference for all purposes,
4 Applicant submits the Declaration of Jonathan C. Lipson (the “**Lipson Declaration**”). A proposed
5 form of order granting the relief requested herein is annexed hereto as **Exhibit A**. In further
6 support of this Application, Applicant states as follows:

7 **I.**

8 **JURISDICTION**

9 The Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and
10 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and venue is proper in this district
11 pursuant to 28 U.S.C. §§ 1408 and 1409.

12 **II.**

13 **BACKGROUND**

14 On May 8, 2023 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under
15 chapter 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 case (the
16 “**Chapter 11 Case**”).

17 On May 23, 2023, the Office of the United States Trustee appointed the Committee.

18 On April 3, 2025, the Debtor filed its *Third Amended Disclosure Statement for Debtor’s*
19 *Third Amended Plan of Reorganization* [Dkt. No. 1874] (the “**Disclosure Statement**”) describing
20 *The Debtor’s Third Amended Plan of Reorganization* [Dkt. No. 1830] (the “**Plan**”).

21 On April 4, 2025, the Court entered an order approving the adequacy of the Disclosure
22 Statement [Dkt. No. 1877].

23 On April 15, 2025, the Court entered the *Order Setting Certain Dates and Deadlines in*
24 *Connection with Confirmation of the Debtor’s Plan of Reorganization* [Dkt. No. 1893],
25 establishing a schedule relating to expert discovery in advance of Plan confirmation.

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III.

RELIEF REQUESTED

By this Application, Applicant seeks entry of an order authorizing the retention of Professor Lipson as a consultant and expert witness to provide the following services, effective as of May 1, 2025 (the “**Services**”):

- (i) Providing rebuttal expert witness services in response to any arguments asserted by the Debtor that a religious non-profit debtor may be exempted from the application of certain Bankruptcy Code provisions;
- (ii) Review and evaluate any relevant reports prepared by or on behalf of the Debtor, its professionals or any other entities;
- (iii) Prepare and draft rebuttal expert reports and/or affidavits/declarations concerning the issues for which Professor Lipson is being engaged;
- (iv) Prepare for and provide both deposition and court testimony regarding the issues for which Professor Lipson is being engaged and in response to any relevant arguments advanced by the Debtor;
- (v) Assist the Committee in drafting pleadings concerning the issues for which Professor Lipson is being engaged; and
- (vi) Any other services that the Applicant deems necessary related to the application of certain Bankruptcy Code provisions and religious freedom.

IV.

BASIS FOR RELIEF REQUESTED

Professor Lipson’s unique expertise in the converging subjects of the Bankruptcy Code and the law of religious liberty are required given the esoteric nature of the issues which may arise out of the Debtor’s argument that certain provisions of the Bankruptcy Code do not apply to it because it is a religious institution. *See Third Amended Disclosure Statement for Debtor’s Third Amended Plan of Reorganization*, Art. II.D. [Dkt. No. 1874]. And, if the Debtor elects to retain an expert to support its argument, the Committee needs to have a rebuttal witness ready and immediately able to analyze any expert report and rebut it.

More specifically, the Committee needs Professor Lipson’s expertise because in the context of Section 1129(a)(7)’s “best interests” of creditors test, the Debtor argues that it may

1 choose which assets are to be valued in a hypothetical liquidation because certain assets are
2 otherwise protected under the First Amendment, notwithstanding the fact that the test to be
3 employed is hypothetical and that there is a compelling governmental interest in the application of
4 this portion of the Bankruptcy Code that is narrowly tailored to achieving that interest. Professor
5 Lipson is the author of an article on this very subject. *See* Jonathan C. Lipson, *When Churches*
6 *Fail: The Diocesan Debtor Dilemmas*, 79 S. CAL. L. REV. 363 (2006).

7 *Nunc pro tunc* retention is appropriate here because this Application was filed shortly after
8 Professor Lipson was selected to serve as Applicant's consultant and expert witness, and Applicant
9 required provision of the Services from Professor Lipson immediately upon such selection.

10 **A. Qualifications**

11 After careful and diligent inquiry into Professor Lipson's qualifications and connections,
12 Professor Lipson was selected to provide consulting and rebuttal expert witness services relating
13 to the intersection of bankruptcy law and religious freedom, subject to the approval of this Court.
14 Professor Lipson is uniquely qualified for this role through his ability and extensive professional
15 experience.

16 Professor Lipson holds the Harold E. Kohn Chair and is a Professor of Law at Temple
17 University Beasley School of Law. He teaches (or has taught) Contracts, Bankruptcy,
18 Corporations, Commercial Law, Lawyering for Entrepreneurship, International Business
19 Transactions, and a variety of other business law courses. His research focuses on corporate
20 governance, restructuring, and contracting practices. A significant focus for Professor Lipson is
21 the nexus between bankruptcy and religious liberty, such as his seminar "Debt and Democracy" (a
22 study on bankruptcy and constitutional law), and his articles *When Churches Fail: The Diocesan*
23 *Debtor Dilemmas*, 79 S. CAL. L. REV. 363 (2006) (cited in *Blaudziunas v. Egan*, 74 A.D.3d 697
24 (2010)), *First Principles and Fair Consideration: The Developing Clash Between the First*
25 *Amendment and the Constructive Fraudulent Conveyance Laws*, 52 UNIV. MIAMI L. REV. 247
26 (1997), and *Religious Organizations Filing for Bankruptcy*, 13 AM. BANKR. INST. L. REV. 25
27 (2005) (invited panel remarks). In fact, he has been published and cited in several articles featuring
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1 diocesan bankruptcies throughout the country (for example: *Complex issues will accompany*
2 *settlement* (San Diego Diocese bankruptcy), San Diego Union-Tribune, Feb. 28, 2007; National
3 Public Radio, Chuck Quirnbach, *Bankrupt Diocese Tries to Protect Assets*, Feb. 16, 2012
4 available at [http://www.npr.org/2012/02/16/146995458/bankrupt-wis-church-tries-to-limit-abuse-](http://www.npr.org/2012/02/16/146995458/bankrupt-wis-church-tries-to-limit-abuse-claims)
5 [claims](http://www.npr.org/2012/02/16/146995458/bankrupt-wis-church-tries-to-limit-abuse-claims)). He has also been published in many of the nation's top law reviews and his work is
6 frequently cited, including by the United States Supreme Court and U.S. Courts of Appeals, as
7 well as leading business courts such as the Delaware Supreme Court, the Delaware Chancery Court
8 and the Bankruptcy Court for the Southern District of New York.

9 Prior to teaching, Professor Lipson practiced as a lawyer. From 1995-1999, he practiced
10 corporate and commercial law in Boston, with the firm Hill & Barlow. From 1992 to 1995, he
11 practiced bankruptcy and commercial law in the New York office of Kirkland & Ellis. From 1990-
12 1992, he practiced with Milbank, Tweed, Hadley & McCloy. While in practice, he was involved
13 in several large and complex chapter 11 cases, including those of *Healthco*, *Thinking Machines*
14 *Corporation*, and *CIS Corporation*.

15 Professor Lipson has also served as an expert in several complex corporate reorganizations,
16 including, but not limited to: *In re Enron Corp.* (Bankr. S.D.N.Y) consulting expert to Official
17 Committee of Unsecured Creditors on matters of transaction characterization and legal opinions
18 (2005- 2007), which was resolved by settlement including \$30 million estate recovery; *In re Dexter*
19 *Distributing* (Bankr. D. Ariz.), consulting expert to debtor-in-possession on claims of breach of
20 fiduciary duty by corporate directors; *U.S. Bank National Association v. GreenPoint Mortgage*
21 *Funding, Inc.* (N.Y. Sup. Ct., pending), consulting and potentially testifying expert on certain
22 definitions in asset securitization transactions; *Banco Santander v. Stradley Ronon, LLP*, (Pa. Ct.
23 Cm. Pl.), expert retained in legal malpractice case involving secured transaction under UCC
24 Article 9, which was resolved in favor of client at summary judgment; *National Credit Union*
25 *Administration Board v. Credit Suisse Securities (USA) LLC, et al.* (S.D.N.Y.); *National Credit*
26 *Union Administration Board v. UBS Securities, LLC* (S.D.N.Y.), submitted expert report and
27 testified at deposition in coordinated actions brought by the NCUA in the Southern District of New

1 York, the Central District of California and the District of Kansas. Currently, Professor Lipson
2 provides expert services on behalf of the U.S. Trustee in the *Professional Fee Matters Concerning*
3 *the Jackson Walker Law Firm* (Bankr. S.D. Tex).

4 Given his breadth of experience, Professor Lipson is well qualified to provide the Services
5 outlined herein.

6 **B. Compensation and Fee Applications**

7 Subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local
8 Bankruptcy Rules, the *United States Bankruptcy Court Northern District of California Guidelines*
9 *for Compensation and Expense Reimbursement of Professionals and Trustees effective February*
10 *19, 2014* (the “**Local Guidelines**”), and the Guidelines for Reviewing Applications for
11 Compensation and Reimbursement of Expenses (the “**Appendix A Guidelines**”) issued by the
12 Office of the United States Trustee, Professor Lipson will charge for his professional services on
13 an hourly basis in accordance with the ordinary and customary hourly rates in effect at the time
14 the services are rendered. Professor Lipson’s hourly rate is \$1,400.¹ His typical billing rate charged
15 in both bankruptcy and non-bankruptcy matters, to both debtor and non-debtor clients, is \$1,900
16 per hour. Professor Lipson’s reduced hourly rate for this Chapter 11 Case is comparable to those
17 charged by professionals of similar experience for engagements of scope and complexity similar
18 to this Chapter 11 Case. Professor Lipson will also seek reimbursement of actual and necessary
19 out-of-pocket expenses incurred in connection with the Services and as provided for in his
20 engagement letter (the “**Engagement Letter**”). A copy of the Engagement Letter is attached
21 hereto as **Exhibit B**.

22 Professor Lipson will maintain contemporaneous time records in six-minute intervals and
23 apply to this Court for payment of compensation and reimbursement of expenses in relation to his
24 provision of the Services. Such records will be maintained in accordance with applicable
25 provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the Local

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27 ¹ Professor Lipson’s standard hourly rate is \$1,900 per hour. At the Committee’s request,
28 he has agreed to charge the estate \$1,400 per hour.

1 Guidelines, the Appendix A Guidelines, and any additional procedures that may be established by
2 the Court in this Chapter 11 Case. Professor Lipson may apply to the Court to authorize a monthly
3 allowance that will permit provisional monthly payment of up to 80% of his fees and 100% of his
4 expenses under the *Order Authorizing Procedures for Interim Compensation and Reimbursement*
5 *of Expenses of Professionals* [Dkt. No. 170]. Professor Lipson understands that interim and final
6 fee awards are subject to approval by this Court.

7 Professor Lipson will charge for all services provided and for other charges and
8 disbursements incurred in rendering the Services. These customary items include, among other
9 things, travel and lodging expenses, business meals, costs of reproduction, research,
10 communications, legal counsel costs, applicable sales or excise taxes and other direct expenses.
11 Internal costs or overhead costs and document production services (including regular secretarial
12 and word processing time) will not be charged for separately. Professor Lipson has acknowledged
13 that Applicant, the Committee, its constituents, its advisors or professionals shall not be liable for
14 the fees, expenses or other amounts payable to Professor Lipson.

15 **V.**

16 **DISINTERESTEDNESS**

17 To the best of Applicant's knowledge and except to the extent disclosed in the Professor
18 Lipson Declaration, Professor Lipson (a) is a "disinterested" person within the meaning of section
19 101(14) of the Bankruptcy Code, and (b) does not hold or represent an interest adverse to the
20 Debtor, or other parties in interest in the Chapter 11 Case. Professor Lipson will conduct an
21 ongoing review of his files to ensure that no disqualifying circumstances arise. If any new relevant
22 facts or relationships are discovered, Professor Lipson will supplement his disclosure to the Court.

23 **VI.**

24 **NOTICE**

25 Notice of this Application will be provided to (i) the Debtor; (ii) Debtor's counsel; (iii) the
26 Office of the United States Trustee Region 17; and (iv) all parties that have requested to receive
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1 notice under Bankruptcy Rule 2002. Given the nature of the requested relief, the Applicant
2 submits that no other or further notice is required.

3 **WHEREFORE**, Applicant submits that for the above reasons, the retention and
4 employment of Professor Lipson to provide the Services should be approved, and requests that the
5 Court enter an order authorizing the retention of Professor Lipson to provide the Services *nunc*
6 *pro tunc* to May 1, 2025, and granting such other and further relief as may be just and proper.

7 Dated: May 12, 2025

LOWENSTEIN SANDLER LLP
KELLER BENVENUTTI KIM LLP

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9 By: /s/ Jeffrey D. Prol
Jeffrey D. Prol
Brent Weisenberg

10
11 - and -

12 Tobias S. Keller
Gabrielle L. Albert

13 *Counsel for the Official Committee of*
14 *Unsecured Creditors*

EXHIBIT A

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*Counsel for the Official Committee of Unsecured
Creditors*

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

Case No. 23-40523 WJL

Chapter 11

In re:

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

Debtor.

**[PROPOSED] ORDER GRANTING
THE APPLICATION FOR THE
RETENTION OF JONATHAN C.
LIPSON AS CONSULTANT AND
EXPERT WITNESS**

Upon consideration of the *Application for Order Authorizing the Retention of Jonathan C. Lipson as Consultant and Expert Witness* (the “**Application**”), through which Lowenstein Sandler LLP (“**Applicant**”), counsel to the Official Committee of Unsecured Creditors (the “**Committee**”) of the Roman Catholic Bishop of Oakland (the “**Debtor**”), requests entry of an order, under sections 327, 330 and 1103 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing

1 and approving the retention and employment of Jonathan C. Lipson (“**Professor Lipson**”) to
2 provide the Services on behalf of the Committee; and upon the *Declaration of Jonathan C Lipson*
3 *in Support of the Application for Order Authorizing the Retention of Jonathan C. Lipson as*
4 *Consultant and Expert Witness*; and this Court having jurisdiction to consider the Application and
5 the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of
6 the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §
7 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the
8 Court being satisfied that Professor Lipson represents no interest adverse to the Debtor’s estate;
9 and it appearing that the Services to be provided by Professor Lipson are required; and the Court
10 having held a hearing on the Application; and after due deliberation thereon, and good and
11 sufficient cause appearing therefor:¹

12 **IT IS HEREBY ORDERED THAT:**

13 1. The Application is granted and the terms of Professor Lipson’s retention in the
14 Engagement Letter are approved.

15 2. All objections to the Application or the relief requested therein that have not been
16 withdrawn, waived or settled, and all reservations of rights included therein, are overruled.

17 3. Applicant is authorized to retain and employ Professor Lipson as a consultant and
18 expert witness to provide the Services as described in the Application, with such employment
19 effective as of May 1, 2025.

20 4. Notwithstanding anything to the contrary in this Order, or the Application, the
21 Court is not approving terms and conditions of Professor Lipson’s employment under Section
22 328(a) of the Bankruptcy Code.

23 5. Professor Lipson shall apply for compensation for professional services rendered
24 and reimbursement of expenses incurred beginning on May 1, 2025, in connection with the
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28 ¹ Capitalized terms not defined herein have the same meaning as ascribed to them in the
Application.

Chapter 11 Case as set forth in the Application and in compliance with the provisions of the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of this Court.

6. Professor Lipson shall provide reasonable notice to the Debtor and the U.S. Trustee of any increase of Professor Lipson's hourly rates as set forth in the Application.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

8. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

****END OF ORDER****

EXHIBIT B



Brent Weisenberg
Partner

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May 12, 2025

VIA EMAIL

Jonathan C. Lipson
Harold E. Kohn Chair in Law; Professor of Law
Temple University—Beasley School of Law
1719 North Broad Street
Philadelphia, Pennsylvania 19122
jlipson@temple.edu

Re: *In re The Roman Catholic Bishop of Oakland*, Case No. 23-40523

Dear Professor Lipson,

This letter confirms your agreement to act as an expert witness on behalf of Lowenstein Sandler LLP (“Lowenstein”), counsel to the Official Committee of Unsecured Creditors (the “Committee”) appointed in the Chapter 11 bankruptcy case of the Roman Catholic Bishop of Oakland (the “Debtor”) pending before the United States Bankruptcy Court for the Northern District of California, Oakland Division (the “Court”).

Lowenstein is retaining you, on behalf of the Committee, to provide consulting and expert testimony services (the “Services”) of a character and quality which would be necessarily adjunct to our services as lawyers. The Services include:

- Provide rebuttal expert witness services in response to any arguments asserted by the Debtor that a religious non-profit debtor may be exempted from the application of certain Bankruptcy Code provisions;
- Review and evaluate any relevant reports prepared by or on behalf of the Debtor, its professionals or any other entities;
- Prepare and draft rebuttal expert reports and/or affidavits/declarations concerning the issues for which you are being engaged;
- Prepare for and provide both deposition and court testimony regarding the issues for which you are being engaged and in response to any relevant arguments advanced by the Debtor;
- Assist the Committee in drafting pleadings concerning the issues for which you are being engaged; and

- Any other services that the Applicant deems necessary related to the application of certain Bankruptcy Code provisions and the law of religious liberty.

In connection with this engagement, all communications between you, personnel under your supervision, and Lowenstein, as well as communications between you (and such other persons) and any attorney, expert, agent or employee acting on behalf of the Committee or us, shall be regarded as confidential and made solely for the purpose of assisting counsel in giving legal advice to the Committee. You will not disclose to anyone, without our written or oral permission, the nature or content of any oral or written communications, or any information gained from the inspection of any records or documents submitted to you, including information obtained from corporate records or documents; and you will not permit inspection of any papers or documents without our permission in advance.

All working papers, records or other documents, regardless of their nature and the source from which they emanate, shall be held by you solely for our convenience and subject to our qualified right to instruct you with respect to possession and control. Working papers prepared by you, or under your direction, belong to Lowenstein on behalf of the Committee. You will immediately return all documents, records, and working papers to us at our request.

As part of the agreement to provide your services in this matter, you will immediately notify Lowenstein of the happening of any one of the following events: (a) the disclosure or surrender of any documents, records or information covered by this agreement, in a manner not expressly authorized by us; (b) a request by anyone to examine, inspect or copy such documents or records covered by this agreement; or (c) any attempt to serve, or the actual service of any court order, subpoena, or summons upon you which requires the production of any such documents or records.

Subject to the terms set forth herein, it is agreed that for your provision of the Services, you will be compensated at a rate of \$1,400.00 per hour and you will be reimbursed, for your out-of-pocket disbursements for expenses incurred in connection with such services. These customary disbursements include, among other things, travel and lodging expenses, business meals, costs of reproduction, research, communications, legal counsel costs, applicable sales or excise taxes and other direct expenses. Internal costs or overhead costs and document production services (including regular secretarial and word processing time) will not be charged for separately.

It is understood and agreed that although Lowenstein is retaining your services, payment of your fees will not be the responsibility of Lowenstein, the Committee, its advisors and professionals. Rather, the Debtor shall be solely responsible for the payment of your fees.

To ensure such payment, you agree to maintain contemporaneous time records in six-minute intervals and apply to this the Court for payment of compensation and reimbursement of expenses in relation to his provision of the expert witness services. Such records will be maintained in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the Local Guidelines, the Appendix A Guidelines, and any additional procedures that may be established by the Court in this Chapter 11 Case. You may then apply to the Court to authorize a monthly allowance that will permit provisional monthly payment

May 12, 2025

of up to 80% of his fees and 100% of his expenses under the *Order Authorizing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Dkt. No. 170]. It is understood that interim and final fee awards are subject to approval by the Court.


If the foregoing terms of this engagement are acceptable, please sign a copy below, and return it to me.

Very truly yours,

/s/ Brent Weisenberg

AGREED AND ACCEPTED:

By: _____


Jonathan C. Lipson

Dated: _____


5.12.25