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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

**THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS' LIMITED
OBJECTION TO NOTICE OF
SUPPLEMENTAL RETENTION OF
ORDINARY COURSE PROFESSIONAL
CU ADVISORY CORPORATION**

Judge: Hon. William J. Lafferty

[No Hearing Requested]

[Re: Dkt. No. 2220]

1 The Official Committee of Unsecured Creditors (the “**Committee**”) of The Roman
2 Catholic Bishop of Oakland (the “**Debtor**” or the “**Diocese**”) files this limited objection (this
3 “**Objection**”) to the *Notice of Supplemental Retention of Ordinary Course Professional CU*
4 *Advisory Corporation Pursuant to Order (I) Authorizing the Retention and Payment, Effective as*
5 *of the Petition Date, of Professionals Utilized By the Debtor in the Ordinary Course of Business;*
6 *and (II) Granting Related Relief* [Dkt. No. 2220] (the “**Notice**”). Through the Notice, the Debtor
7 seeks to retain CU Advisory Corporation (“**CU**”) as an “ordinary course professional” (an
8 “**OCP**”). In support of this Objection, the Committee states:

9 I.

10 **PRELIMINARY STATEMENT**

11 The Committee does not oppose the Debtor’s retention of CU under section 327(a) of the
12 Bankruptcy Code. But the Committee *does* oppose the Debtor’s request to retain CU as an OCP.
13 In the OCP Motion (defined below), the Debtor describes OCPs as:

- 14 (i) a professional that is “essential to the Debtor’s ability to maintain its operations and
15 continue its mission.” OCP Motion at 2:21-22.
- 16 (ii) “professionals who are retained by the Debtor in the ordinary course of business to
17 provide services that are not central to administration of the Chapter 11 Case.” *Id.*
18 at 2:16-17;
- 19 (iii) “professionals retained in the ordinary course of the Debtor’s operations (each, an
20 “Ordinary Course Professional” and, collectively, the “Ordinary Course
21 Professionals”) to assist the Debtor in carrying out its duties and responsibilities.”
22 *Id.* at 3:26-4:1.

23 The Debtor seeks to retain CU to provide real estate advisory, consulting, and brokerage
24 services; services which do not fall within the ordinary course of business of a nonprofit religious
25 entity. CU’s provision of services “to evaluate the highest and best use of saleable and developable
26 land and properties to the Debtor” is not critical to the Debtor’s religious mission.¹ Rather, CU is
27 being retained to, among other things, (i) provide its professional opinion on the current and
28 potential value of the Debtor’s real property and (ii) propose disposition strategies.² CU’s services
will thus be central to the administration of the Debtor’s chapter 11 case, not separate from it.

28 ¹ Notice, Ex. 1 at 1:16-19.

² Notice, Ex. 1 at 1:23-25.

1 In addition, because the Debtor’s proposed retention of CU is outside the Debtor’s ordinary
2 course of business, the Debtor cannot alternatively retain CU under section 363(c) of the
3 Bankruptcy Code.

4 II.

5 BACKGROUND

6 Earlier in this case, this Court entered the *Order Authorizing Procedures for Interim*
7 *Compensation and Reimbursement of Expenses of Professionals* [Dkt. No. 170] (the “Interim
8 Compensation Order”).

9 Subsequently, the Debtor filed the *Debtor’s Motion for an Order (I) Authorizing the*
10 *Retention and Payment, Effective as of the Petition Date, of Professionals Utilized by the Debtor*
11 *in the Ordinary Course of Business and (II) Granting Related Relief* [Dkt. No. 178] (the “OCP
12 Motion”), through which it sought this Court’s authority to retain “Ordinary Course
13 Professionals,” who were “not involved in the administration of the Chapter 11 Case and [whose]
14 work does not relate directly to the Debtor’s reorganization.” *Id.* at 7:7-8. The Debtor added that
15 “the Ordinary Course Professionals provide services in connection with the Debtor’s ongoing
16 operations in a similar manner as would be required for the Debtor outside of the chapter 11 context
17 (and in a similar manner as many of the Ordinary Course Professionals provided services to the
18 Debtor prior to the Petition Date).” OCP Motion, 7:8-11. The Debtor proposed that filing a
19 retention notice was sufficient to employ OCPs, as requiring compliance with section 327 of the
20 Bankruptcy Code would impose “unnecessary administrative burden and cost” and risked
21 interference with the Debtor’s continued operations. *Id.* at 2:24 and 7:1-5.

22 On July 20, 2023, the Court approved the OCP Motion under the *Order (I) Authorizing the*
23 *Retention and Payment, Effect as of the Petition Date, of Professionals Utilized by the Debtor in*
24 *the Ordinary Course of Business and (II) Granting Related Relief* [Dkt. No. 263] (the “OCP
25 Order”). Under the OCP Order, the Court authorized the Debtor to retain OCPs without requiring
26 the Debtor to file employment applications under section 327 of the Bankruptcy Code. The OCP
27 Order further authorizes the Debtor to pay each OCP up to \$40,000.00 per month, without
28 requiring the OCP to file a fee application unless its services exceed \$40,000.00 in a single month.

1 See OCP Order at 3:23-28 to 4:1-3. The OCP Order authorizes the Debtor to retain additional
2 OCPs by filing a notice of the proposed retention with parties having 14 days to object. *Id.* at 4:5-
3 9. If a party objects, the parties have 10 days to resolve their dispute. If the dispute is not resolved,
4 then the matter is scheduled to be heard by the Court. *Id.*

5 On August 12, 2025, the Debtor filed the Notice seeking to retain CU as an OCP. The
6 Retention Questionnaire attached to the Notice states that CU will provide services to the Debtor
7 relating to “asset management support, owner’s representative services, portfolio analysis,
8 brokerage services, disposition strategies, and valuations, in order to evaluate the highest and best
9 use of saleable and developable land and properties.” Notice, Ex. 2 at 1:23-25.

10 III.

11 **CU IS A PROFESSIONAL PERSON UNDER SECTION 327 OF THE BANKRUPTCY** 12 **CODE AND THE SCOPE OF ITS RETENTION FAR** 13 **EXCEEDS THE DEFINITION OF AN OCP UNDER THE OCP ORDER**

14 A. **CU Must be Employed Under Section 327 of the Bankruptcy Code**

15 Section 327(a) of the Bankruptcy Code permits a debtor to employ “one or more attorneys,
16 accountants, *appraisers*, auctioneers, or other professional persons, that do not hold or represent
17 an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee
18 in carrying out the trustee’s duties under this title.” 11 U.S.C. § 327(a) (emphasis added). While
19 the term “appraiser” is not defined by the Bankruptcy Code, the plain meaning of the term
20 “appraiser”—“a valuation of property by the estimate of an authorized person”—establishes that
21 section 327(a) is precisely the statute under which CU must be retained.³ The Debtor proposes to
22 retain CU to provide “valuations” in order to evaluate the highest and best use of saleable and
23 developable land and properties to the Debtor. Notice, Ex.1 at 1:18-19. Thus, by, among other
24 things, valuing the Debtor’s property, CU is acting as an appraiser, which is a professional person
25 under section 327(a) of the Bankruptcy Code.

26 Even if this Court concluded CU was not an appraiser, CU is a “professional person” that
27 must be employed under section 327 of the Bankruptcy Code. While there is no set definition of

28 ³ MERRIAMWEBSTER.COM, <https://www.merriam-webster.com/dictionary/predecessor> (last visited Feb.
24, 2025).

1 what constitutes a “professional person,” courts recognize that “a ‘professional person’ is one who
2 takes a central role in the administration of the bankruptcy estate and in the bankruptcy
3 proceedings. Individuals or entities that perform mechanical, nondiscretionary tasks are not
4 ‘professional persons’ within the meaning of 327.” *In re East Coast Foods, Inc.*, 2019 WL
5 6893015, at *6 (C.D. Cal. Dec. 8, 2019). When determining whether a professional is a
6 “professional person” for purposes of section 327, courts consider several factors, including but
7 not limited to:

- 8 (1) whether the entity or individual controls, manages, administers,
9 invests, purchases, or sells assets that are significant to the debtor’s
reorganization;
- 10 (2) whether the entity or individual is involved in negotiating the terms
11 of a plan of reorganization;
- 12 (3) whether the entity or individual is directly related to the type of work
13 carried out by the debtor or to the routine maintenance of the
debtor’s business operations;
- 14 (4) whether the entity or individual is given discretion or autonomy to
15 exercise professional judgment in some part of the administration of
the debtor’s estate;
- 16 (5) the extent of the entity’s or individual’s involvement in the
administration of the debtor’s estate; and
- 17 (6) whether the entity’s or individual’s services involve some degree of
18 special knowledge or skill, such that the employee can be considered
a ‘professional’ within the ordinary meaning.

19 *In re California Indep. Petroleum Assoc.*, 2022 WL 162439, at *6 (E.D. Cal. Jan. 18, 2022). If an
20 entity is not a “professional person,” the Debtor may be able to retain them under section 363(c).
21 *Id.* at *8.

22 Based on these factors, there can be no doubt that CU is a “professional” under section 327
23 of the Bankruptcy Code. CU is being retained based on its “special knowledge or skill” to provide
24 specialized services pertaining directly to the administration of the Debtor’s bankruptcy estate:
25 assisting the Debtor in selling real property, the proceeds of which will be used to pay the
26 administrative expenses in this case. *See* July 16, 2025 Hr’g Tr. at 15;21-24 [Dkt. No. 2158] (“So
27 in light of all this, Your Honor, the debtor must seek additional time, if it seeks to confirm its plan,
28 so it can sell real estate to pay admin expenses and get its plan confirmed.”). CU’s real estate

1 advisory, consulting, and brokerage services cut to the very heart of whether the Debtor can fund
2 this case, at least according to the Debtor.

3 As of the date of this Objection, the Debtor insists it will prosecute its Plan of
4 Reorganization in early January 2026. If that is the case, CU's services will undoubtedly be used
5 in connection with Plan confirmation, further establishing its central role in the administration of
6 the Chapter 11 Case.

7 Therefore, the Debtor's request to retain CU relates directly to the Debtor's reorganization,
8 which is contrary to the very purpose of the Debtor's OCP Motion. *See* OCP Motion at 7:7-15.
9 Accordingly, CU is a professional that must be retained under section 327 of the Bankruptcy Code.

10 **B. The Debtor Cannot Retain CU as an OCP Under Section 363 of the**
11 **Bankruptcy Code**

12 Alternatively, the Debtor's proposed retention of CU cannot be approved as an ordinary
13 course transaction under section 363 of the Bankruptcy Code. Section 363(c) of the Bankruptcy
14 Code permits the Debtor to "enter into transactions . . . in the ordinary course of business, without
15 notice or a hearing." 11 U.S.C. § 363(c). In the Ninth Circuit, there are two tests to determine
16 whether a transaction is within the ordinary course of business under section 363(c), both of which
17 must be satisfied: the vertical dimension test and the horizontal dimension test. *Aalfs v. Wirum*
18 (*In re Straightline Inv., Inc.*), 525 F.3d 870, 879 (9th Cir. 2008).

19 Applying the vertical dimension test, a court "views the disputed transaction 'from the
20 vantage point of a hypothetical creditor and inquires whether the transaction subjects a creditor to
21 economic risks of a nature different from those he accepted when he decided to extend credit.'" *In re Straightline Inv., Inc.*, 525 F.3d at 879 citing *Burlington N. R.R. Co. v. Dant & Russell, Inc.*
22 (*In re Dant & Russell, Inc.*), 853 F.2d 700, 705 (9th Cir. 1988). Consideration of retention under
23 the vertical dimension test necessitates "an examination of the pre-petition relationship between
24 the debtor and his creditors to determine whether the transaction in question was ordinary in the
25 context of that relationship." *In re Straightline Inv., Inc.*, 525 F.3d at 880.

26 With respect to the horizontal dimension test, "the question is 'whether the postpetition
27 transaction is of a type that other similar businesses would engage in as ordinary business.'" *Id.* at
28

1 880-881 citing *In re Dant & Russell, Inc.*, 853 F.2d at 704. To that end, the court must find that
2 “neither the debtor nor the creditor [did] anything abnormal to gain an advantage over other
3 creditors...” *In re Straightline Inv., Inc.*, 525 F.3d at 881.

4 The Debtor’s proposed retention of CU fails both tests and thus cannot be considered an
5 ordinary course transaction. This retention (or transaction) is not ordinary within the context of
6 the prepetition relationship between the Debtor and its creditors, nor is it a transaction other
7 churches would engage in as ordinary course business. The Debtor is a religious institution
8 responsible for the spiritual leadership of its parishioners. Real estate consulting, brokerage, and
9 advisory services relating to the sale of real property is *not* critical to the Debtor’s faith-based
10 mission, and other religious organizations seldom need to retain real estate valuation experts to
11 carry out their duties to their communities. Accordingly, because the Debtor’s proposed retention
12 of CU fails both the vertical and horizontal tests, the Debtor cannot retain CU under section 363
13 of the Bankruptcy Code.

14 **WHEREFORE**, for these reasons, the Committee asks this Court (i) to deny the Debtor’s
15 request to retain CU as an OCP, (ii) to require the Debtor to file a retention application to retain
16 CU under section 327 of the Bankruptcy Code, (iii) to require CU to comply with the Interim
17 Compensation Order and (iv) for such other and further relief as is just.

18 Dated: August 19, 2025

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