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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.	Chapter 11 Case No. 23-40523 WJL HON. WILLIAM J. LAFFERTY Adv No. 23-04028 WJL
THE ROMAN CATHOLIC BISHOP OF OAKLAND, Plaintiff, vs. PACIFIC INDEMNITY, a Delaware corporation; TRAVELERS CASUALTY & SURETY COMPANY F/K/A AETNA	**WESTPORT INSURANCE CORPORATION ANSWER TO THIRD AMENDED COMPLAINT FOR BREACH OF CONTRACT, DECLARATORY JUDGMENT RELIEF AND BREACH OF STATUTORY DUTY; AFFIRMATIVE DEFENSES; DEMAND FOR JURY TRIAL**

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CASUALTY & SURETY COMPANY, a Connecticut corporation; INSURANCE COMPANY OF NORTH AMERICA, Delaware corporation; UNITED STATES FIRE INSURANCE, a Delaware corporation; WESTPORT INSURANCE CORPORATION, a Delaware corporation; CONTINENTAL CASUALTY COMPANY, a Delaware corporation; PACIFIC EMPLOYERS INSURANCE, a Delaware corporation; WESTCHESTER FIRE INSURANCE COMPANY, a Pennsylvania corporation; and the CALIFORNIA INSURANCE GUARANTEE ASSOCIATION, a state entity,

Defendants.

Defendant Westport Insurance Corporation ("WESTPORT"), formerly known as Employers Reinsurance Corporation ("ERC"), hereby responds to the Third Amended Complaint of The Roman Catholic Bishop of Oakland and alleges affirmative and other defenses as follows:

JURISDICTION AND VENUE

1. WESTPORT admits the United States District Court for the Northern District of California presently has jurisdiction over this matter.
2. WESTPORT denies that this action is a "core proceeding" and further states that pursuant to 28 U.S.C. § 157(c)(2), it does not consent to the entry of final orders or judgments by the bankruptcy judge in this case.
3. WESTPORT admits that because the United States District Court for the Northern District of California presently has jurisdiction over this matter venue in that Court is proper pursuant to sections 1408 and 1409 of Title 28
4. WESTPORT does not consent to the entry of a final order or judgment by this Court in connection with this adversary proceeding and denies the allegations in this paragraph.

NATURE OF THE ACTION

5. WESTPORT states that paragraph 5 of the Third Amended Complaint asserts legal

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conclusions to which no response is required. To the extent a response is required, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, and on that basis, denies.

THE PARTIES

6. WESTPORT admits that Plaintiff THE ROMAN CATHOLIC BISHOP OF OAKLAND ("RCBO") is a California corporation sole with its principal place of business in Oakland, California.

7. To the extent that the allegations in paragraph 7 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 7 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

8. To the extent that the allegations in paragraph 8 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 8 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

9. To the extent that the allegations in paragraph 9 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 9 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

10. To the extent that the allegations in paragraph 10 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 10 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

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11. To the extent that the allegations in paragraph 11 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 11 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

12. To the extent that the allegations in paragraph 12 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 12 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

13. WESTPORT denies that it is a Delaware corporation and states that it was incorporated in Missouri. It admits that it has conducted business in this district. WESTPORT denies that it issued a written policy of excess insurance to RCBO under Policy No. U10255 for the period October 26, 1971 to October 26, 1974, but states that evidence of a policy, Policy No. U10255 for the period October 26, 1971 to October 26, 1974 was issued to RCBO by ERC. WESTPORT further states that effective January 1, 2008, WESTPORT Insurance Corporation merged with and into ERC and then changed its name to WESTPORT Insurance Corporation. To the extent that Plaintiff RCBO alleges that WESTPORT "is responsive" to certain claims, WESTPORT objects that the term is vague and ambiguous and on that basis lacks knowledge or information sufficient to form a belief as to the truth of that allegation and on that basis denies. With respect to the final allegation in this paragraph, that WESTPORT has "either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as described in Exhibit A," WESTPORT denies and further states that as an excess insurer, it has no coverage obligation unless and until the applicable underlying insurance is exhausted. To date, there has been no indication and no notice that the limits underlying the ERC policies have been exhausted in accordance with the terms of those policies and therefore WESTPORT has no coverage obligations.

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14. To the extent that the allegations in paragraph 14 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 14 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

15. To the extent that the allegations in paragraph 15 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 15 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

16. To the extent that the allegations in paragraph 16 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 16 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

17. This paragraph is merely a characterization of the "Excess Defendants" and requires no response, but to the extent a response is required, the allegations are denied.

18. WESTPORT denies that it is a Delaware corporation and states that it was incorporated in Missouri. It admits that it has conducted business in this district. WESTPORT denies that it issued a written umbrella policy of insurance to RCBO under Policy No. PLE20430 for the period October 16, 1974 to October 16, 1977, but states that evidence of a policy, Policy No PLE20430 originally for the period October 16, 1974 to October 16, 1977, was issued to RCBO by ERC. The evidence further establishes that that policy was cancelled effective October 26, 1975. To the extent that Plaintiff RCBO alleges that WESTPORT "is responsive" to certain claims, WESTPORT objects to the term as vague and ambiguous and on that basis states that it lacks knowledge or information sufficient to form a belief as to the truth of that allegation and on that basis denies. With respect to the final allegation in this paragraph, that WESTPORT has "either failed to respond to the tenders, issued

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reservation of rights letters or explicitly denied coverage as described in Exhibit A," WESTPORT denies and further states that as an excess insurer, it has no coverage obligation unless and until the applicable underlying insurance is exhausted. To date, there has been no indication and no notice that the limits underlying the ERC policies have been exhausted in accordance with the terms of those policies and therefore WESTPORT has no coverage obligations. Moreover, to the extent that the claims identified in paragraph 18 first arose after October 26, 1975, no coverage would be afforded under this ERC excess policy because it was cancelled effective as of that date.

19. To the extent that the allegations in paragraph 19 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 19 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

20. To the extent that the allegations in paragraph 20 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 20 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

21. To the extent that the allegations in paragraph 21 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 21 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

22. This paragraph is merely a characterization of the "Umbrella Defendants" and requires no response, but to the extent a response is required, the allegations are denied.

NATURE OF THE ACTION AND RELIEF SOUGHT

23. Admit.

24. Admit.

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25. WESTPORT admits that Plaintiff RCBO has been sued in numerous civil actions seeking recovery for alleged negligent supervision and hiring of certain clerical and ministerial personnel over a period of decades. WESTPORT further avers that these claims arose out of the sexual misconduct by Diocesan personnel. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 25 and on that basis, denies.

26. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 and on that basis, denies.

27. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 and on that basis, denies.

28. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 and on that basis, denies.

29. To the extent that the allegations in paragraph 29 of Plaintiff's Third Amended Complaint are directed to other defendants, they require no answer. To the extent that the allegations in paragraph 29 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

30. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 as they pertain to the "Excess Defendants" and on that basis, denies. With respect to WESTPORT, it admits it has received tenders of Suit made on behalf of RCBO, under Policy No. U10255, but specifically denies that it has improperly denied or failed to confirm coverage (including, without limitation, failure to provide both defense and/or indemnity) for the Suits as reflected in Exhibit A – including failure to recognize the exhaustion of underlying insurance through payment, liquidation or other means thereby requiring the excess insurance to drop down and provide defense and indemnity to RCBO for the Suits. WESTPORT further states, that as an excess insurer, it has no coverage obligation to respond to the underlying complaints or Suits unless and until the applicable underlying insurance is exhausted. To date, there has been no

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indication and no notice that the limits underlying the ERC policies have been exhausted in accordance with the terms of those policies and therefore WESTPORT has no coverage obligations. WESTPORT further denies that RCBO is entitled to payment of defense and/or indemnity amounts from WESTPORT on the grounds that RCBO timely tendered the Suits to WESTPORT and has met all the conditions of the respective policies of insurance. WESTPORT denies that some or all of the Suits seek recovery for claims of "bodily injury" as that term is defined in the ERC excess policy and therefore denies that some or all of the claims come within the coverage grant of the ERC policy. WESTPORT denies that some or all of the claims made in the Suits are not excluded by the ERC policy. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 30 and on that basis, denies

31. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31 as they pertain to the "Umbrella Defendants" and on that basis, denies. With respect to WESTPORT, it admits it has received tenders of Suit made on behalf of RCBO, under Policy No. PLE20430 but specifically denies that it has improperly denied or failed to confirm coverage (including, without limitation, failure to provide both defense and/or indemnity) for the Suits as reflected in Exhibit A – including failure to recognize the exhaustion of underlying insurance through payment, liquidation or other means thereby requiring the excess insurance to drop down and provide defense and indemnity to RCBO for the Suits. WESTPORT further states, that as an excess insurer, it has no coverage obligation to respond to the underlying complaints or Suits unless and until the applicable underlying insurance is exhausted. To date, there has been no indication and no notice that the limits underlying the ERC policies have been exhausted in accordance with the terms of those policies and therefore WESTPORT has no coverage obligations. Moreover, to the extent that the claims identified in Exhibit A with respect to Policy No. PLE20430 first arose after October 26, 1975, no coverage would be afforded under this ERC policy because it was cancelled effective as of that date. WESTPORT further denies that RCBO is entitled to payment of defense and/or indemnity amounts from

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WESTPORT on the grounds that RCBO timely tendered the Suits to WESTPORT and has met all the conditions of the respective policies of insurance. WESTPORT denies that some or all of the Suits seek recovery for claims of "bodily injury" as that term is defined in the ERC policy and therefore denies that some or all of the claims come within the coverage grant of the ERC policy. WESTPORT denies that some or all of the claims made in the Suits are not excluded by the ERC policy. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 31 and on that basis, denies.

32. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 as they pertain to the "conduct" of the "Primary Defendants" or the "Excess Defendants" or the "Umbrella Defendants" and on that basis, denies. With respect to WESTPORT, it denies each and every allegation in paragraph 32 and further states, that as an excess insurer, it has no coverage obligation unless and until the applicable underlying insurance is exhausted. To date, there has been no indication and no notice that the limits underlying the ERC policies have been exhausted in accordance with the terms of those policies and therefore WESTPORT has no coverage obligations.

FIRST CAUSE OF ACTION
(Declaratory Relief Against All Defendants)

33. WESTPORT repeats its response to each and every allegation contained in paragraphs 1 through 32 of the Third Amended Complaint as if fully set forth herein.

34. This paragraph presents legal conclusions to which no response is required and requires no response, but to the extent a response is required, the allegations are denied.

35. Deny.

36. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 as they pertain to "each of the Defendants" and on that basis, denies. With respect to WESTPORT, it denies.

37. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 as they pertain to "each of the Defendants" and on that

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basis, denies. With respect to WESTPORT, it denies.

38. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 as they pertain to "each of the Defendants" and on that basis, denies. With respect to WESTPORT, it denies.

39. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 as they pertain to RCBO's "performance under the Defendants respective insurance policies" and on that basis, denies. With respect to WESTPORT, it denies and further states that as an excess insurer, it has no coverage obligation unless and until the applicable underlying insurance is exhausted. To date, there has been no indication and no notice that the limits underlying the ERC policies have been exhausted in accordance with the terms of those policies and therefore WESTPORT has no coverage obligations.

40. To the extent that the allegations in paragraph 40 of Plaintiff's Third Amended Complaint are directed to the "Primary Defendants" and/or CIGA, they require no answer. To the extent that the allegations in paragraph 40 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

41. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 as they pertain to all of the "Excess Defendants" and on that basis, denies. With respect to WESTPORT, it denies each and every allegation and further states that as an excess insurer, it has no coverage obligation unless and until the applicable underlying insurance is exhausted. To date, there has been no indication and no notice that the limits underlying the ERC policies have been exhausted in accordance with the terms of those policies and therefore WESTPORT has no coverage obligations.

42. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 as they pertain to all of the "Umbrella Defendants" and on that basis, denies. With respect to WESTPORT, it denies each and every allegation and further states that as an excess insurer, it has no coverage obligation unless and until the

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applicable underlying insurance is exhausted. To date, there has been no indication and no notice that the limits underlying the ERC policies have been exhausted in accordance with the terms of those policies and therefore WESTPORT has no coverage obligations. Moreover, to the extent that the claims identified in Exhibit A for Policy No. PLE20430 first arose after October 26, 1975, no coverage would be afforded under this ERC policy because it was cancelled effective as of that date.

43. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 as they pertain to each of the Defendants and/or CIGA and on that basis, denies. With respect to WESTPORT, it denies each and every allegation.

44. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44 and on that basis, denies.

45. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 as they pertain to each of the Defendants and/or CIGA and on that basis, denies. With respect to WESTPORT, it denies each and every allegation.

46. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46 as they pertain to all of the Defendants including CIGA, the Excess Defendants and the Umbrella Defendants and on that basis denies. With respect to Westport, it denies each and every allegation in paragraph 46 and further states that as an excess insurer, it has no coverage obligation unless and until the applicable underlying insurance is exhausted. To date, there has been no indication and no notice to it that the limits underlying the ERC policies have been exhausted in accordance with the terms of those policies and therefore WESTPORT has no coverage obligations. Moreover, to the extent that the claims identified in Exhibit A for Policy No. PLE20430 first arose after October 26, 1975, no coverage would be afforded under this ERC excess policy because it was cancelled effective as of that date.

SECOND CAUSE OF ACTION
(Breach of Contract Against All Defendants Except for CIGA)

47. WESTPORT repeats its response to each and every allegation contained in paragraphs 1

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through 46 of the Third Amended Complaint as if fully set forth herein.

48. This paragraph presents legal conclusions to which no response is required and requires no response, but to the extent a response is required, the allegations are denied.

49. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49 as they pertain to the "respective Defendants' policies" and on that basis, denies. With respect to WESTPORT, it admits that the ERC excess policies are valid and enforceable contracts but deny the rest of the allegation and further state that that as an excess insurer, WESTPORT has no coverage obligation unless and until the applicable underlying insurance is exhausted. To date, there has been no indication and no notice to it that the limits underlying the ERC policies have been exhausted in accordance with the terms of those policies and therefore WESTPORT has no coverage obligations.

50. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48 as they pertain to the "respective Defendants'" and on that basis, denies. With respect to WESTPORT, it denies.

51. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51 as they pertain to the "Defendants' failure'" and on that basis, denies. With respect to WESTPORT, it denies and further states that as an excess insurer, WESTPORT has no coverage obligation unless and until the applicable underlying insurance is exhausted. To date, there has been no indication and no notice to it that the limits underlying the ERC excess policies have been exhausted in accordance with the terms of those policies and therefore WESTPORT has no coverage obligations.

52. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 as they pertain to "RCBO's" performance "under the Defendants' respective insurance policies" and on that basis, denies. With respect to WESTPORT, it denies.

53. WESTPORT denies that it has breached the ERC excess policies. With respect to the remaining allegations in paragraph 53, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

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54. WESTPORT denies that it has breached the ERC excess policies. With respect to the remaining allegations in paragraph 54, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

55. WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55 and on that basis, denies.

THIRD CAUSE OF ACTION
(Breach of Statutory Duty Against CIGA)

56. WESTPORT repeats its response to each and every allegation contained in paragraphs 1 through 55 of the Third Amended Complaint as if fully set forth herein.

57. This paragraph presents legal conclusions to which no response is required and requires no response, but to the extent a response is required, the allegations are denied,

58. To the extent that the allegations in paragraph 58 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 58 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

59. To the extent that the allegations in paragraph 59 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 59 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

60. To the extent that the allegations in paragraph 60 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 60 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

61. To the extent that the allegations in paragraph 61 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations

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in paragraph 61 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

62. To the extent that the allegations in paragraph 62 of Plaintiff's Third Amended Complaint are directed to another defendant, they require no answer. To the extent that the allegations in paragraph 62 of Plaintiff's Third Amended Complaint require an answer, WESTPORT lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on that basis, denies.

PRAYER FOR RELIEF

a. Paragraph a of the prayer for relief asserts legal conclusions to which no response is required. To the extent a response is required, WESTPORT denies the allegations of paragraph a of the prayer for relief.

b. Paragraph b of the prayer for relief asserts legal conclusions to which no response is required. To the extent a response is required, WESTPORT denies the allegations of paragraph b of the prayer for relief.

c. Paragraph c of the prayer for relief asserts legal conclusions to which no response is required. To the extent a response is required, WESTPORT denies the allegations of paragraph c of the prayer for relief.

d. Paragraph d of the prayer for relief asserts legal conclusions to which no response is required. To the extent a response is required, WESTPORT denies the allegations of paragraph d of the prayer for relief.

e. Paragraph e of the prayer for relief asserts legal conclusions to which no response is required. To the extent a response is required, WESTPORT denies the allegations of paragraph e of the prayer for relief.

f. Paragraph f of the prayer for relief asserts legal conclusions to which no response is required. To the extent a response is required, WESTPORT denies the allegations of paragraph f of the prayer for relief.

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AFFIRMATIVE DEFENSES

FURTHER ANSWERING the RCBO's claims in its Third Amended Complaint, without prejudicing and/or compromising any of its previous answers and/or responses to the RCBO's prior complaints and/or claims and without waiving any additional or further defenses, WESTPORT further replies that the RCBO cannot recover, in whole or in part, for claims alleged in its Third Amended Complaint against WESTPORT, or that the RCBO cannot prove the existence, limits, policy numbers or material terms of some or all the alleged excess ERC insurance contracts upon which its action against WESTPORT is premised, or that the RCBO will be unable to carry its burden of proof or that its suit is otherwise barred, by the provisions contained in any alleged ERC excess contracts, by law, by equity or under public policy, as follows:

FIRST DEFENSE

The Third Amended Complaint fails to state a claim upon which relief can be granted against WESTPORT.

SECOND DEFENSE

The at-issue ERC policies are excess policies with no coverage obligation unless and until the applicable underlying insurance is exhausted. As the RCBO has provided no notice or evidence that the limits underlying the ERC excess policies have been exhausted in accordance with the terms of those policies, WESTPORT has no coverage obligation under the ERC excess policies.

THIRD DEFENSE

One or more or all of the claims referenced in Exhibit A of Plaintiff's Third Amended Complaint do not fall within the policy period, limits, and scope of insurance afforded under the ERC excess policies and/or the policy(ies) to which the ERC excess policies may follow form, in whole or in part.

FOURTH DEFENSE

Plaintiff RCBO has not established that all applicable limits of all applicable underlying policies of insurance have, in fact, been exhausted in accordance with the ERC excess policies'

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terms.

FIFTH DEFENSE

Policy exclusions within the ERC excess policies or the policies to which the ERC excess policies may follow form limit or preclude coverage for one or more or all of the claims referenced in Plaintiff's Third Amended Complaint against WESTPORT, in whole or in part.

SIXTH DEFENSE

To the extent that the Plaintiff RCBO has not complied with its duties under the ERC excess policies, including but not limited to "notice" and "cooperation" obligations, any such failure limits or precludes coverage for the claims at issue, in whole or in part.

SEVENTH DEFENSE

To the extent that the Plaintiff RCBO has not complied with any policy conditions under the ERC excess policies, any such failure to comply limits or precludes coverage for the claims at issue, in whole or in part.

EIGHTH DEFENSE

The RCBO or any proponent of coverage must establish the existence, limits, policy number and material terms of any alleged excess ERC insurance contract in order to seek recovery from WESTPORT thereunder and to date, has not done so.

NINTH DEFENSE

The claims asserted in the Third Amended Complaint are barred to the extent that they fail to satisfy the applicable statutes of limitation and/or repose.

TENTH DEFENSE

If the RCBO establishes that ERC entered into the alleged ERC excess insurance contracts and that they provided excess liability coverage, any such coverage would extend only to an occurrence, as defined thereunder. No obligation of WESTPORT, if any, can be established in the absence of such an occurrence.

ELEVENTH DEFENSE

If the RCBO establishes that ERC entered into the alleged excess insurance contracts and that they provided excess liability coverage, any such contract would bar coverage for intentional,

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expected, or non-fortuitous “bodily injury" or "property damage." The Third Amended Complaint is barred to the extent it seeks coverage for or is based on intentional, expected, or non-fortuitous “bodily injury" or "property damage."

TWELFTH DEFENSE

If the RCBO establishes that ERC entered into the alleged excess insurance contracts and that they provided excess liability coverage, any such coverage would extend only to such bodily injury, loss or damage, as those terms may be used in any insurance policy proven by the RCBO. The Third Amended Complaint is barred to the extent that it seeks coverage for or is based on, losses or monies paid that do not constitute bodily injury, loss or damage within the meaning of any alleged ERC excess insurance contracts or any polic(ies) to which they follow form.

THIRTEENTH DEFENSE

If the RCBO establishes that ERC entered into the alleged excess insurance contracts and that they provided excess liability coverage, any such coverage would be barred, under the excess insurance contracts and public policy, to the extent the alleged losses of the RCBO arose out of intentional or willful conduct.

FOURTEENTH DEFENSE

If the RCBO establishes that ERC entered into the alleged excess insurance contracts and that they provided excess liability coverage, any such coverage would be conditioned on any insured providing WESTPORT with timely and proper notice of the claims or of any bodily injury, or of the alleged occurrences that form the basis for those claims, or of any other developments likely to affect WESTPORT's excess liability. The RCBO’s failure to do so constitutes a breach of any alleged contract and has prejudiced WESTPORT and precludes coverage.

FIFTEENTH DEFENSE

If the RCBO can establish all material terms of the ERC excess policies, and if the RCBO can prove that its request for payment is covered under the ERC excess policies, the RCBO’s request for payment is barred in whole or in part by the doctrines of waiver, laches, estoppel, and/or unclean hands.

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SIXTEENTH DEFENSE

WESTPORT has reserved all its rights, and waived none, under any applicable doctrine of law, equity or contract.

SEVENTEENTH DEFENSE

To the extent the alleged losses of the RCBO arose, in whole or in part, out of the sexual abuse of minors, the claims are barred, in whole or in part by law, statute and/or public policy.

EIGHTEENTH DEFENSE

The Underlying Claims are based on statutory laws that unconstitutionally impair the obligations of contracts.

NINETEENTH DEFENSE

The claims asserted in the Third Amended Complaint are barred to the extent that the alleged losses of the RCBO are limited or precluded due to prior impairment or exhaustion of limits of the ERC policies.

TWENTIETH DEFENSE

The claims asserted in the Third Amended Complaint are barred by the doctrine of accord and satisfaction to the extent of prior settlements, releases or other agreements between WESTPORT and the RCBO.

TWENTY-FIRST DEFENSE

To the extent the alleged losses of the RCBO are limited or precluded due to prior impairment or exhaustion of limits, settlements, releases or other agreements between WESTPORT and the RCBO, any further claim for damages is barred by the doctrines of release and accord and satisfaction.

TWENTY-SECOND DEFENSE

If the RCBO establishes that ERC entered into the alleged excess insurance contracts and that they provided excess liability coverage, any such coverage would be subject to any applicable deductibles, retentions, occurrence, aggregate limits, retrospective premiums, and limits of liability contained in those excess policies.

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TWENTY-THIRD DEFENSE

To the extent that the RCBO has failed to mitigate, minimize, or avoid any damage, any liability of the RCBO for such damage is not covered nor does it give rise to any contribution or other equitable or legal obligations on the part of WESTPORT.

TWENTY-FOURTH DEFENSE

If the RCBO establishes that ERC entered into the alleged excess insurance contracts and that they provided excess liability coverage, any such coverage would be reduced or excluded to the extent that the RCBO, or any subsidiary of the RCBO, has other insurance applicable to the loss in question.

TWENTY-FIFTH DEFENSE

If the RCBO establishes that ERC entered into the alleged excess insurance contracts and that they provided excess liability coverage, any such coverage would be conditioned on the insured's taking all appropriate steps to avoid and/or mitigate any injury or damage. The RCBO's claims are barred, in whole or in part, to the extent that the RCBO failed to take all reasonable steps to prevent injury or damage arising out of the same or similar conditions.

TWENTY-SIXTH DEFENSE

Insurance provides coverage only for matters that are contingent, unknown or fortuitous. To the extent that the losses alleged in the Underlying Claims were not contingent, unknown and fortuitous, there is no coverage under the ERC policies.

TWENTY-SEVENTH DEFENSE

If the RCBO establishes that ERC entered into the alleged excess insurance contracts and that they provide excess liability coverage, any such coverage would extend only to liabilities arising out of certain acts or omissions of the named insured or of an insured as defined in the alleged insurance contracts. To the extent that the Third Amended Complaint seeks reimbursement, contribution, or indemnification for, or is based on, losses attributable to individuals or organizations that would not qualify as named insureds or insureds under the terms of the alleged ERC excess insurance contracts, those claims are barred.

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TWENTY-EIGHTH DEFENSE

If the RCBO seeks a declaration of WESTPORT'S excess coverage obligations with regard to the Underlying Claims against the RCBO such coverage is barred, in whole or in part, by the terms, exclusions, conditions, limitations, and other provisions contained in or incorporated by reference in the ERC excess insurance policies that the RCBO alleges WESTPORT, as successor to ERC, issued to it.

TWENTY-NINTH DEFENSE

If the RCBO establishes that ERC entered into the alleged excess insurance contracts and that they provided excess liability coverage, any such coverage would be barred to the extent that any insured voluntarily incurred obligations or made certain payments (and/or permitted certain payments to be made) without the prior consent of WESTPORT.

THIRTIETH DEFENSE

If the RCBO establishes that ERC entered into the alleged excess insurance contracts and that they provided excess liability coverage, any such coverage would be subject to WESTPORT's right to have any loss equitably apportioned among all primary, excess and umbrella insurers and their policies which also afford coverage for the loss, including any self-insurance or self-insured retention of any insureds.

BANKRUPTCY COURT RULE 7012(b)

WESTPORT avers that the instant proceeding is non-core and does not consent to the entry of final orders or judgment by the bankruptcy judge.

WHEREFORE, WESTPORT respectfully prays for judgment in its favor and that Plaintiff RCBO take nothing, for costs of suit, for any fees recoverable by law, and for such other and further relief as the Court may deem just and proper.

RESERVATION OF RIGHTS

WESTPORT reserves all of its rights and defenses under the ERC excess policies and applicable law, and WESTPORT fully reserves its right to supplement its affirmative defenses.

PRAYER FOR RELIEF

WHEREFORE, WESTPORT prays for relief as follows:

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1. For a judgment dismissing the RCBO Third Amended Complaint with prejudice.

2. For such other further relief that the Court determines is fair, just, and equitable.

DEMAND FOR JURY TRIAL

Subject to and without waiving any of its defenses, WESTPORT hereby demands a jury trial.

DATED: January 26, 2024

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