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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:

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

Debtor.

Case No.:_____

Bankruptcy Case No.: 23-40523 WJL

THE ROMAN CATHOLIC BISHOP OF OAKLAND,

Plaintiffs,

vs.

PACIFIC INDEMNITY, a Delaware corporation; INSURANCE COMPANY OF AMERICA, a Delaware corporation; AETNA INSURANCE COMPANY, a Delaware corporation; TRAVELERS INSURANCE COMPANY, a Delaware corporation; CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO SYNDICATES 2623 (AFB) AND 623 (AFB), a foreign organization; INSURANCE COMPANY OF NORTH AMERICA, a Delaware corporation; ACE LIMITED, a foreign organization; UNITED STATES FIRE INSURANCE, a Delaware corporation; EMPLOYERS REINSURANCE, a Delaware

Adv. Proc. No.: 23-04028 WJL

Chapter 11

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, SUBSCRIBING SEVERALLY AND NOT JOINTLY TO SLIP NOS. CU 1001 AND K 66034 ISSUED TO THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, AND NOS. K 78138 AND CU 3061'S MOTION TO WITHDRAW THE REFERENCE

corporation; CNA INSURANCE 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.

MOTION TO WITHDRAW THE REFERENCE

Defendants Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland ("Underwriters"), by and through their undersigned attorneys, hereby move ("Motion") to withdraw the reference of this adversary proceeding ("Adversary Proceeding") to the United States District Court for the Northern District of California ("Court").

Underwriters timely request that the Court withdraw the reference of the Adversary Proceeding because the United States Bankruptcy Court for the Northern District of California ("Bankruptcy Court") cannot (i) adjudicate the private rights asserted in the "Claims" (as defined in the Motion);[1] (ii) enter a final order on the Claims, because the Claims are only within the Bankruptcy Court's non-core jurisdiction; or (iii) hold a jury trial on disputed factual issues, and no exception applies.

Title 28 ("Judicial Code") specifies that to grant the Motion, the Court must find that there is "cause".[2] In the Ninth Circuit, courts must weigh the "*Security Farms* factors" to determine whether a movant has shown cause to grant withdrawal of the reference.[3] Here, all of the *Security Farms* factors weigh in favor of granting the Motion.[4]

The Motion is also based on the Notice, Memorandum of Points and Authorities in support, the papers and pleadings on file in this case, and such other evidence that may be presented to the Court at the hearing, if any.

WHEREFORE, Underwriters respectfully request the Court enter an order withdrawing the reference and granting other such further relief as is just and proper.

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[1] *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50, 58 (1982) (plurality opinion).

[2] 28 U.S.C. § 157(d).

[3] *See Security Farms v. Int'l Bhd. of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999, 1008 (9th Cir. 1997) (citing *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2nd Cir. 1993)).

[4] *See* Memorandum of Points and Authorities filed concurrently herewith.

Dated: February 2, 2024

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In re:

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THE ROMAN CATHOLIC BISHOP OF OAKLAND,

Plaintiffs,

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PACIFIC INDEMNITY, a Delaware corporation; INSURANCE COMPANY OF AMERICA, a Delaware corporation; AETNA INSURANCE COMPANY, a Delaware corporation; TRAVELERS INSURANCE COMPANY, a Delaware corporation; CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO SYNDICATES 2623 (AFB) AND 623 (AFB), a foreign organization; INSURANCE COMPANY OF NORTH AMERICA, a Delaware corporation; ACE LIMITED, a foreign organization; UNITED STATES FIRE INSURANCE, a Delaware corporation;

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Chapter 11

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, SUBSCRIBING SEVERALLY AND NOT JOINTLY TO SLIP NOS. CU 1001 AND K 66034 ISSUED TO THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, AND NOS. K 78138 AND CU 3061'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO WITHDRAW THE REFERENCE

EMPLOYERS REINSURANCE, a Delaware corporation; CNA INSURANCE 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.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Roman Catholic Bishop of Oakland ("Plaintiff") seeks declaratory relief against numerous insurers, including Underwriters[1] (collectively, "Defendants"), for the insurers' alleged "failure to affirm coverage" for defense of Plaintiff's state court actions ("State Actions"). The underlying State Actions allege negligent supervision and negligent hiring of certain clerical and ministerial staff who purportedly perpetrated sexual abuse against certain claimants.

Underwriters timely request that the Court withdraw the reference of the Adversary Proceeding.

The reference must be withdrawn because the United States Bankruptcy Court for the Northern District of California ("Bankruptcy Court") cannot (i) adjudicate the private rights asserted in the "Claims" (as defined below);[2] (ii) enter a final order on the Claims, because the Claims are only within the Bankruptcy Court's non-core jurisdiction; or (iii) hold a jury trial on disputed factual issues, and no exception applies.

Title 28 ("Judicial Code") specifies that to grant the Motion, the Court must find that there is "cause".[3] "Cause" is not defined either in the Judicial Code or in Title 11 ("Bankruptcy Code").[4] In the Ninth Circuit, courts must weigh the "*Security Farms* factors" to determine whether a movant has shown cause to grant withdrawal of the reference.[5] Here, all of the *Security Farms* factors weigh in favor of granting the Motion.

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[1] *Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061.*

[2] *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50, 58 (1982) (plurality opinion).

[3] 28 U.S.C. § 157(d).

[4] *In re Richter*, 525 B.R. 735, 758 (Bankr. C.D. Cal. 2015) (citing *Christensen v. Tucson Estates, Inc. (In re Christensen)*, 912 F.2d 1162, 1166 (9th Cir. 1990)).

[5] *See Security Farms v. Int'l Bhd. of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999, 1008 (9th Cir. 1997) (citing *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2nd Cir. 1993)); *see also Vacation Vill., Inc. v. Clark County*, 497 F.3d 902, 914 (9th Cir. 2007); *In re Tamalpais Bancorp*, 451 B.R. 6, 10 (N.D. Cal. 2011) (traditional contract dispute was non-core, making withdraw of the reference appropriate); *Envisage Dev. Partners, LLC v. Patch of Land Lending, LLC*, 2017 WL

- First, the Claims arise under state law and only exist within the Bankruptcy Court's non-core jurisdiction.
- Second, the Claims are legal claims.
- Third, because the Claims only exist within the Bankruptcy Court's non-core jurisdiction, which does not permit the Bankruptcy Court to issue final orders on the Claims, withdrawing the reference conserves judicial resources by not requiring repeated, duplicative adjudication of the Claims in different forums.
- Fourth, federal law affords Underwriters the right to a jury trial on all disputed factual issues, which cannot occur in the Bankruptcy Court without Underwriters' consent. Underwriters have demanded a jury trial on all issues so triable, and do not and will not consent to a jury trial in the Bankruptcy Court.
- Fifth, forum shopping is not at issue, because Underwriters filed this Motion early in this case. Withdrawal to this Court, now, which must ultimately decide the Claims, mitigates against any finding of forum shopping.
- Sixth, withdrawal of the reference, at this time, conserves all of the parties' resources by avoiding the relitigation of insurance coverage issues in different courts, which would require the parties to draft and file briefs in two courts. It also conserves the Court's resources by avoiding duplicative proceedings.
- Seventh, the uniformity of the bankruptcy administration is not affected, because the Claims arise under state law.

Hence, two District Courts in the Southern District of New York, when presented with similar motions by insurers in the *Diocese of Rockville Centre* bankruptcy case, granted such motions and immediately withdrew the reference.[6]

4551575, at *4 (N.D. Cal. Oct. 11, 2017); *In re ComUnity Lending, Inc.,* 2008 WL 11410087, at *2 (N.D. Cal. June 5, 2008).

[6] *See Roman Catholic Diocese of Rockville Ctr. v. Arrowood Indem. Co.*, 2021 WL 1978560 (S.D.N.Y. May 17, 2021) (granting a motion to withdraw a non-core insurance coverage dispute and stating that when a bankruptcy court must submit proposed findings of fact and conclusions of law, it is "inefficient to allow the proceedings to go forward, knowing that they will have to be substantially repeated") (citation omitted); *Roman Catholic Diocese of Rockville Ctr. v. Certain Underwriters at Lloyds, London et al.*, No. 21-00071, Doc. No. 50 (S.D.N.Y. Sept. 3, 2021) (granting

Therefore, there is cause to withdraw the reference, at this time, hence Underwriters respectfully request that the Court grant the Motion.

II. FACTUAL BACKGROUND

In the London insurance market, Underwriters chose to subscribe, severally and not for the other, as their interests may appear, certain insurance policies presented to them by the Plaintiff's insurance agent or broker. Underwriters allegedly subscribed certain insurance policies (a) on which the Roman Catholic Archbishop of San Francisco is a Named Assured and certain Diocese-related entities were also Assureds, that were effective for periods from March 12, 1962, to October 25, 1963, and (b) on which the Roman Catholic Bishop of Oakland is a Named Assured and certain Diocese-related entities were also Assureds, that were effective for periods from October 25, 1963, to October 25, 1966, (collectively, "Underwriters' Policies").

On May 8, 2023, Plaintiff filed a voluntary chapter 11 petition for relief under Title 11 of the Bankruptcy Code, in the Bankruptcy Court.[7]

On June 22, 2023, Plaintiff initiated the Adversary Proceeding against the "Defendants".[8] On June 26, 2023, Plaintiff amended the Complaint ("First Amended Complaint" or "FAC").[9] On June 30, 2023, the Official Committee of Unsecured Creditors ("Committee") filed a motion to intervene ("Motion to Intervene") in the Adversary Proceeding.[10] On August 1, 2023, Underwriters objected to the Motion to Intervene and expressly preserved their "right to move to withdraw the reference."[11] At oral ruling, on August 22, 2023, the Bankruptcy Court granted the Motion to Intervene, and

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the same to London Market Insurers because the alleged claims were non-core, based on contracts entered decades before bankruptcy, and London Market Insurers demanded a jury trial).

[7] *In re the Roman Catholic Bishop of Oakland*, No. 23-40523, Doc. No. 1 (filed May 8, 2023).

[8] The "Defendants" are Pacific Indemnity, Insurance Company of America, Aetna Insurance Company, Travelers Insurance Company, Underwriters, Insurance Company of America, Ace Limited, United States Fire Insurance, Employers Resinurance, CNA Insurance Company, Pacific Employers Insurance Company, Westchester Fire Insurance Company, and the California Insurance Guarantee Association. Adv. No. 1 ("Complaint").

[9] Adv. No. 2 ("FAC").

[10] Adv. No. 15.

[11] Adv. No. 44.

recognized Underwriters' preservation of their right to file the Motion.[12]

On August 31, 2023, Underwriters filed a jury demand on all issues so triable.[13] On the same date, Defendants, including Underwriters, filed a motion to dismiss the FAC ("Motion to Dismiss").[14] On November 8, 2023, the Court granted the Motion to Dismiss with leave to amend the first and second causes of action.[15] On December 18, 2023, Plaintiff filed a Second Amended Complaint ("SAC") naming all Defendants, except Underwriters.[16] On January 9, 2024, at a Chapter 11 Status Conference, Plaintiff informed the Court that it had made a clerical error in omitting Underwriters from the SAC and would file a third amended complaint.[17]

On January 12, 2024, Plaintiff filed the Third Amended Complaint ("TAC"), which is now the operative Complaint.[18] The first cause of action in the TAC seeks a declaration that certain Defendants, including Underwriters, must provide coverage to Plaintiff for its defense of the State Actions under certain insurance policies, including the Underwriters' Policies ("First Claim").[19] The second cause of action alleges breach of contract for Defendants' failure to provide coverage, resulting in damages ("Second Claim" and together with the First Claim, "Claims").[20]

---

[12] Adv. No. 64 at 27:9-15 (stating "The oppositions filed by the insurance companies indicated that they were of course reserving their rights to move to withdraw the reference as to some or all of the matters set forth in the [Adversary Proceeding] and if not to do that now, perhaps do that at some future date. As I indicated, I am eminently respectful of all of those reservations and all potential arguments that will be made if and when we get responses here and go forward.")

[13] Adv. No. 71.

[14] Adv. No. 69.

[15] Adv. No. 147.

[16] Adv. No. 161.

[17] Dkt. No. 766.

[18] Adv. No. 163.

[19] *Id.*, ¶¶ 33-46.

[20] *Id.*, ¶¶ 47-55. The third cause of action for breach of statutory duty is only alleged against the California Insurance Guarantee Association. *Id.*, ¶ ¶ 56-62.

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On January 26, 2024, Underwriters, including some Defendants, filed a motion to dismiss the TAC.[21]

III. ARGUMENT

A. The Motion Is Timely Filed

"The Judicial Code provides no bright line rule regarding time for filing a motion to withdraw a reference."[22] It "is timely if it was made as promptly as possible in light of the developments in the bankruptcy proceeding."[23] "[C]ourts have judged the timeliness of such motions by looking at when the movant first became aware of the facts or circumstances making withdrawal possible under § 157(d)."[24]

Further, a motion to withdraw is timely if filed at the "first reasonable opportunity."[25] A determination of whether a party has invoked 28 U.S.C. § 157(d) "as promptly as possible" or "at the first reasonable opportunity" must be made upon the particular facts of each case.[26] Even much later filings can be reasonable, especially when no prejudice to other parties will occur.[27]

Underwriters are moving to withdraw the reference after moving to dismiss the TAC. On the

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[21] Adv. No. 69.

[22] *Transcon. Refrigerated Lines, Inc. v. New Prime, Inc.*, 2013 WL 5937963, *3 (M.D. Pa. Nov. 5, 2013).

[23] *Security Farms*, 124 F.3d at 1007 n. 3.

[24] *In re Allegheny Health Education and Research Foundation*, 2006 WL 3843572, *2 (W.D. Pa. Dec. 19, 2006) (citing *In re Mahlmann*, 149 B.R. 866, 869 (N.D. Ill. 1993)).

[25] *Stratton v. Vita Bella Grp. Homes, Inc.*, 2007 WL 1531860, at *2 (E.D. Cal. May 25, 2007); *see also Security Farms*, 124 F.3d at 1007, n.3.

[26] *Id.* (holding that a motion to withdraw, which was filed seven weeks after the trustee provided notice of grounds for withdrawal, to be timely) (citing *In re Chateaugay Corp.*, 104 B.R. 622, 623-24 (S.D.N.Y. 1989)).

[27] *See, e.g., Burger King Corp. v. B-K of Kansas, Inc.*, 64 B.R. 728, 730-31 (D. Kan. 1986) (although parties seeking withdrawal based upon federal law implicated by their own counterclaims waited for ten months after the counterclaims were filed before filing motion to withdraw, the motion was nonetheless timely where there was no prejudice to other party); *Interconnect Telephone Services, Inc. v. Farren*, 59 B.R. 397, 402 (S.D.N.Y. 1986) (in the absence of prejudice, defendants' motion to withdraw the reference was timely filed despite occurring more than one year after the complaint and after defendants already pursued an unsuccessful motion to dismiss).

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same day, certain Defendants[28] moved to withdraw the reference, including several Defendants who filed an Answer to the Adversary Proceeding[29] because it was their first reasonable opportunity to do so. While Underwriters understand that if the Bankruptcy Court grants the motion to dismiss the TAC, there will be no reference to withdraw, Underwriters nevertheless move to withdraw the reference early and concurrently with other certain Defendants requesting the same relief.

Further, as this case is in its infancy, there is no factual expertise of the Bankruptcy Court, and no factual deference afforded because no fact-finding has occurred. Hence, the Motion is timely and there is no prejudice to Plaintiff.

B. The Bankruptcy Court Cannot Adjudicate Private Rights

The Bankruptcy Court cannot adjudicate the Claims, because the Claims are matters of private right, and bankruptcy courts do not have the constitutional authority to adjudicate such matters.

Article III constitutes "an inseparable element of the constitutional system of checks and balances" that must "be jealously guarded."[30] It "serves both to protect 'the role of the independent judiciary within the constitutional scheme of tripartite government' and to safeguard litigants' 'right to have claims decided before judges who are free from potential domination by other branches of government.'"[31] "In sum, our Constitution unambiguously enunciates a fundamental principle—that the 'judicial Power of the United States' must be reposed in an independent Judiciary."[32]

State-created private right disputes, such as the Claims, lie at the center of Article III

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[28] Pacific Indemnity, Insurance Company of America, Pacific Employers Insurance Company, Westchester Fire Insurance Company, Westport Insurance Corporation, Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company, United States Fire Insurance, and California Insurance Guarantee Association.

[29] Adv. Nos. 164, 165.

[30] *Northern Pipeline,* 458 U.S. at 58. Article III of the United States Constitution provides: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office." U.S. Const. Art. III, § 1.

[31] *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 848 (1986) (citations omitted).

[32] *Northern Pipeline*, 458 U.S. at 60.

adjudication and "may not be removed from the jurisdiction of Article III courts".[33] Contract disputes, such as insurance coverage cases, are private right disputes.[34]

By contrast, a non-Article III tribunal, such as the Bankruptcy Court, may resolve a right closely integrated into a public regulatory scheme.[35] The filing of a bankruptcy case itself, in contrast to the Claims, is this type of public right. "[T]he restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages[.]"[36] "[T]here is no doubt that the bankruptcy judges … are not Art. III judges."[37] They lack the constitutional authority to adjudicate state law claims. *Stern v. Marshall*, 564 U.S. 462, 469 (2011). "Under *Stern*, Article III … determines the bankruptcy court's adjudicative authority. Thus, a district court . . . must first determine whether or not the bankruptcy court has constitutional authority to enter final judgment on the claim . . . . To the extent the core/non-core distinction held a privileged position among the *Orion* factors before *Stern*, this is no longer the case."[38] The core/non-core distinction thus no longer holds a "privileged position" because there are some core matters over which the Bankruptcy Court *does not* have final adjudicative authority.[39]

Consistent with this principle, there are three instances when a bankruptcy court may adjudicate a claim finally: (1) if the claim involves a public right; (2) if the process of adjudicating

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[33] *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 32 (2014).

[34] *Northern Pipeline*, 458 U.S. at 71; *see In re SRC Holding Corp.,* 545 F.3d 661, 666 (8th Cir. 2008).

[35] *Thomas v. Union Carbide Agr. Prod. Co.*, 473 U.S. 568, 594 (1985).

[36] *Northern Pipeline*, 458 U.S. at 71.

[37] *Id.* at 61.

[38] *In re Lyondell Chem. Co.*, 467 B.R. 712, 719 (S.D.N.Y. 2012); *see also Security Investor Protection Corp. v. Bernard L. Madoff Inv. Security LLC*, 486 B.R. 579, 582 n.1 (S.D.N.Y. Feb. 6, 2013) (quoting *Dynegy Danskammer, L.L.C. v. Peabody Coaltrade Int'l Ltd.*, 905 F. Supp. 2d 526 (S.D.N.Y. 2012)).

[39] *See, e.g., Stern*, 564 U.S. at 484; *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 56 (1989).

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the creditor's proof of claim would necessarily resolve a counterclaim; or (3) if the parties consent to final adjudication by the Bankruptcy Court.[40] Here, none of the three instances applies.

First, the Claims do not implicate public rights.[41] If a right "neither belongs to nor exists against the Federal Government, then it must be adjudicated by an Article III court."[42] The Claims raise state law insurance coverage issues of contractual breach and interpretation, which are matters of private right.[43] The Bankruptcy Court may not adjudicate such matters.

Second, Underwriters are not creditors of Plaintiff. Underwriters have not filed a proof of claim. Hence, there is no counterclaim for the Bankruptcy Court to resolve.

Third, Underwriters do not consent to adjudication of the Claims by the Bankruptcy Court. Absent knowing and voluntary consent by the parties, an Article III Court must decide the Claims.[44]

Hence, the Bankruptcy Court cannot adjudicate the Claims.

C. <u>There Is Cause to Withdraw the Reference</u>

1. Security Farms Factor (1)—The Claims Are Within the Bankruptcy Court's Non-Core Jurisdiction

The Claims raise only non-core issues.

Two statutes are relevant to this analysis. Section 1334 of the Judicial Code confers "jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11,"[45] on district courts. Section 157 of the Judicial Code allows district courts to refer such proceedings to a bankruptcy court.[46]

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[40] *Stern,* 564 U.S. at 478-82, 488-99; *accord, Lyondell*, 467 B.R. at 720 (applying these three considerations in deciding motion to withdraw bankruptcy reference).

[41] *See, e.g., Stern,* 564 U.S. at 484; *Beacon Theatres v. Westover*, 359 U.S. 500, 506 (1959).

[42] *Stanbrough v. Valle (In re Valle)*, 469 B.R. 35, 40 (Bankr. D. Idaho 2012).

[43] *Northern Pipeline*, 458 U.S. at 71.

[44] *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1939 (2015).

[45] *Battle Ground Plaza, LLC v. Ray (In re Ray)*, 624 F.3d 1124, 1130 (9th Cir. 2010) (citing 28 U.S.C. § 1334(b)).

[46] *Id.*

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"[C]haracterization of the claims as core or non-core [under 28 U.S.C. § 157(b)] is useful before considering the [other *Security Farms*] factors."[47] The provisions of 28 U.S.C. § 157(b)(2) must be read narrowly so as to avoid "constitutional problems arising from having Article I judges issue final orders in cases requiring an Article III judge, without a party's consent."[48] "[T]he collateral consequences of state law actions do not necessarily make those actions core."[49]

a. The Claims Are Not Within the Bankruptcy Court's Core Jurisdiction

Section 157 of the Judicial Code determines the nature of the jurisdiction that a bankruptcy court has over a matter.

"[A] core proceeding is one that 'invokes a substantive right provided by title 11 or . . . a proceeding that, by its nature, could arise only in the context of a bankruptcy case.'"[50] "A matter 'arises under' the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code."[51] A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code."[52]

The Claims are not core: (i) they arise under state law, outside of bankruptcy law; and (ii) they

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[47] *Hawaiian Airlines, Inc. v. Mesa Air Group, Inc*., 355 B.R. 214, 223 (D. Haw. 2006).

[48] *Dunmore v. United States*, 358 F.3d 1107, 1115 (9th Cir. 2004); *see also In re Castlerock Properties*, 781 F.2d 159, 162 (9th Cir. 1986) ("[A] court should avoid characterizing a proceeding as 'core' if to do so would raise constitutional problems."); *Union Carbide*, 473 U.S. at 584 ("Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law...") (characterizing the holding of *Northern Pipeline*, 458 U.S. 50 (1982)).

[49] *Drennen v. Certain Underwriters at Lloyd's of London (In re Residential Capital, LLC)*, 2015 WL 9302834, *4 (S.D.N.Y. Dec. 21, 2015) (citing *Orion*, 4 F.3d at 1101).

[50] *Id.* at 1131 (citing *Gruntz v. County of L.A. (In re Gruntz*), 202 F.3d 1074, 1081 (9th Cir. 2000)).

[51] *Id.* at 1131; *Harris v. Wittman (In re Harris)*, 590 F.3d 730, 737 (9th Cir. 2009).

[52] *Id.* at 1131 (citing *In re Marshall*, 600 F.3d 1037, 1054 (9th Cir. 2010)).

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are not administrative matters unique to bankruptcy cases.

b. *Security Farms* Factor (1)—The Claims Are Within the Bankruptcy Court's Non-Core Jurisdiction

Claims that arise under state law are within a bankruptcy court's non-core jurisdiction.

A bankruptcy court has "non-core" or "related-to" jurisdiction over matters related-to cases under Title 11. 28 U.S.C. § 157(b)(1). This jurisdiction includes any proceeding satisfying both of the following elements: "the outcome of the proceeding could conceivably … alter the debtor's rights, liabilities, options, or freedom of action . . . ***and*** … impacts upon the handling and administration of the … estate".[53] "Actions that do not depend on bankruptcy laws for their existence and that could proceed in another court are considered 'non-core'"[54] so long as both elements are satisfied.[55] Thus, while a claim for breach of contract against a trustee arising from a post-petition contract is a core proceeding because a claim against a trustee could only exist in a bankruptcy case, a claim arising from a pre-petition or post-petition contract against a debtor is a non-core proceeding.[56]

Insurance coverage claims arise under state law.[57] Here, the Claims only seek a determination of Plaintiff's and Underwriters' state law rights and obligations under the Underwriters' Policies, requiring an interpretation of pre-petition contracts. While the Claims are not within the Bankruptcy Court's core jurisdiction, they are within its related-to, non-core jurisdiction.

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[53] *Fietz v. Great W. Savings (In re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988).

[54] *Security Farms*, 124 F.3d at 1008 (citing *Castlerock*, 781 F.2d at 162).

[55] Actions that are not core, and also do not satisfy both elements are wholly outside of the Bankruptcy Court's jurisdiction.

[56] *Compare Harris*, 590 F.3d at 740 with *Ray*, 624 F.3d at 1131-33.

[57] *See, e.g., In re Lehman Bros. Holdings Inc.*, 502 B.R. 376, 382-383 (Bankr. S.D.N.Y. 2013) (holding that a breach of contract claim arising under New York law was considered a non-core matter); *Castlerock,* 781 F.2d at 162 ("State law contract claims that arguably fall within these catch-all provisions [*i.e.*, 28 U.S.C. § 157(A) and (O)] have been held to be 'noncore' 'related proceedings' under § 157(c)."") (citation omitted)); *Longview Power, LLC v. First Am. Title Ins. Co. (In re Longview Power, LLC)*, 515 B.R. 107, 115 (Bankr. D. Del. 2014) (concluding coverage dispute was non-core, stating "[t]he bottom line is that the coverage dispute implicates state law rights and defenses."); *Ashland Inc. v. G-I Holdings Inc. (In re G-I Holdings, Inc.)*, 564 B.R. 217, 251 (Bankr. D.N.J. 2016); *see also In re John A. Rocco Co.*, 2015 WL 1727474, at *8 (Bankr. D.N.J. April 13, 2015) ("The question of coverage under the policies is entirely one of state law, and whatever rights the Debtor may have to coverage under the policies arose independent of and antecedent to the bankruptcy.").

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Thus, the first *Security Farm* factor weighs in favor of granting the Motion.

2. *Security Farms* Factor (2)—The Claims Are Legal Claims

There are two Claims. Each is a legal claim.

The first Claim is a request for declaratory relief. A request for declaratory relief "may be legal or equitable depending on the 'basic nature of the underlying issues.'"[58] An action for declaratory relief seeking a ruling as to the parties' respective rights under a contract is inherently legal.[59] This includes claims seeking a declaration as to insurance coverage under an insurance policy.[60] Hence, the first Claim is a legal claim.

The second Claim for breach of contract, is inherently a legal claim.[61]

Thus, the second *Security Farms* factor weighs in favor of granting the Motion.

3. *Security Farms* Factor (3)—Federal Law Affords Underwriters Jury Trial Rights

Because the Claims are legal claims, Underwriters have the right to have a jury as the finder of fact.

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[58] *Mile High Indus. v. Cohen*, 222 F.3d 845, 856 (10th Cir. 2000) (quoting *Fischer Imaging Corp. v. GE*, 187 F.3d 1165, 1168 (10th Cir. 1999)).

[59] *Beacon Theatres v. Westover*, 79 S.Ct. 948, 953 (1959).

[60] *AstenJohnson, Inc. v. Columbia Cas. Co.*, 562 F.3d 213, 226 (3d Cir. 2009)); *see also Fischer Imaging*, 187 F.3d at 1171 (finding, in a declaratory judgment action based on an insurance policy, in which the plaintiff had not yet suffered injury, "absent declaratory judgment procedures," the plaintiff's claim would have "come to the court" in a suit on the contract); *Am. Safety Equip. Corp. v. J.P. Maguire & Co*., 391 F.2d 821, 824 (2d Cir. 1968) (same); *see also Tennessee Elec. Power Co.* v. *TVA*, 306 U. S. 118, 137-138 (1939) (identifying a right arising out of a contract as a legal right); *Rockville Ctr.*, 2021 WL 1978560; *Rockville Ctr.*, No. 21-00071, Doc. No. 50; *Archdiocese of Milwaukee et al. v. Stonewall Insurance Company et al.*, No. 13-00060, Doc. No. 9 (Feb. 22, 2013); *Simler v. Conner*, 372 U.S. 221, 223 (1963).

[61] *Beacon Theatres*, 79 S.Ct. 948, 953 (1959).

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"[T]he right to a jury trial in the federal courts is to be determined as a matter of federal law…."[62] This is true even when a claim arises under state law,[63] and "even when a state statute or state constitution would preclude a jury trial in state court."[64]

Federal law preserves the right to a jury trial in a declaratory relief action.[65] Similarly, federal law entitles litigants to a jury trial on all legal claims with disputed facts.[66] The Supreme Court has "consistently interpreted the phrase 'Suits at common law' to refer to 'suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered.'"[67] Thus, the Seventh Amendment guarantees the absolute right to a jury trial on legal claims wherever asserted, including in bankruptcy court.[68]

While courts interpret contracts as a matter of law, the question of contractual breach, and any contract interpretation that depends upon the credibility of extrinsic evidence, is a matter for the jury.[69] However, the Bankruptcy Court cannot conduct a jury trial without consent. 28 U.S.C. § 157(e).[70]

The Claims are contractual disputes. Underwriters demanded a jury trial on all matters so

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[62] *Simler*, 372 U.S. at 222 (*per curiam*).

[63] *GTFM, LLC v. TKN Sales, Inc.*, 257 F.3d 235, 240 (2d Cir. 2001).

[64] *Gipson v. KAS Snacktime Co.*, 83 F.3d 225, 230 (8th Cir. 1996) (citations omitted).

[65] *Beacon*, 359 U.S. at 508.

[66] U.S. Const. Amend. VII (stating, "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved….").

[67] *Granfinanciera v. Nordberg*, 492 U.S. 33, 41 (1989) (citing *Parsons* v. *Bedford*, 3 Pet. 433, 447 (1830)) (original emphasis).

[68] *Id.* at 55; *see also Midway Venture, LLC v. Gladstone (In re Pacers, Inc.)*, 2012 U.S. Dist. 2012 WL 947956, at *4 (S.D. Cal. Mar. 20, 2012) ("Moreover, even where the 'resolution of a party's legal claims aris[e] from a bankruptcy proceeding,' but will have only 'a negligible impact on the claims-allowance process, the right to a jury trial is preserved.'") (quoting *In re Crown Vantage, Inc.*, 2002 WL 32872440, at *3 (N.D. Cal. Dec. 16, 2002)).

[69] *Welles v. Turner Entm't Co.*, 503 F.3d 728, 737 (9th Cir. 2007).

[70] *See also Orion*, 4 F.3d at 1101; *In re Cinematronics, Inc.*, 916 F.2d 1444, 1451 (9th Cir. 1990).

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triable.[71] Given that the Claims raise the issue of breach and/or whether extrinsic evidence is relevant, factual determinations are necessary to the result. Thus, federal law and procedure afford Underwriters a jury trial on the Claims, which must be conducted by the Court, not the Bankruptcy Court.

Therefore, the third *Security Farms* factor weighs in favor of granting the Motion.

4. *Security Farms* Factor (4)—Judicial Economy Favors Immediate Withdrawal of the Reference

The efficient use of judicial resources favors withdrawal of the reference of the Claims now.

When a district court must enter a final judgment on claims subject to a motion to withdraw the reference, judicial economy favors immediate withdrawal.[72] Withdrawal prevents the duplication of the use of judicial resources. "This extra layer of review can be avoided if the matter is withdrawn to the district court."[73]

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[71] *See* Adv. No. 84.

[72] *In re Sullivan Int'l Grp., Inc.*, 2019 WL 5648671, at *4 (S.D. Cal. Oct. 31, 2019) (observing in an insurance coverage matter that "the efficient use of judicial resources favors the withdrawal of the reference"); *Dynegy*, 905 F. Supp. 2d at 533 (stating "district courts should consider the most efficient use of judicial resources…. because if a district court must review recommendations *de novo*, 'it would be inefficient to allow the [] proceedings to go forward, knowing that they will have to be substantially repeated'") (citation omitted); *see also, e.g., Vacation Vill., Inc. v. Clark County*, 497 F.3d 902, 914 (9th Cir. 2007) (Final judgment afforded the efficient use of "judicial resources and minimized further delay and costs"); *see also In re Addison*, 240 B.R. 47, 50 (C.D. Cal. 1999) ("[I]f withdrawal is denied, this Court may be forced to revisit this very motion in the form of the findings of fact and conclusions of law of the bankruptcy judge. Therefore, the interest of judicial economy dictates that this Court should exercise permissive withdrawal and adjudicate this matter now, rather than awaiting the determination of the bankruptcy court.")

[73] *Envisage Dev. Partners, LLC v. Patch of Land Lending, LLC*, 2017 WL 4551575, *4 (N.D. Cal. Oct. 11, 2017) (stating "the issue of rights and liabilities under the loan agreement is conceptually distinct from the issue of how [plaintiff's] liabilities should be discharged in bankruptcy. … Accordingly, judicial efficiency would be best served by withdrawing the reference"); *see also Security Farms,* 124 F.3d at 1008 (finding that efficiency was enhanced by withdrawal where non-core issues predominate the claim); *Gens v. Colonial Sav., F.A.*, 2012 WL 993713, at *3 (N.D. Cal. Mar. 23, 2012) ("In sum, because plaintiff's claims are non-core proceedings that must ultimately be resolved by this court, the court finds it appropriate to withdraw the reference now."); *In re Parlor Bellevue LLC*, 2019 WL 1403264, at *2 (W.D. Wash. Mar. 28, 2019) ("Where non-core issues predominate, withdrawal may promote efficiency because a single proceeding in the district court could avoid unnecessary costs implicated by the district court's *de novo* review of non-core bankruptcy determinations."); *In re Cachet Financial Servs.,* 2023 WL 4752048 at *4 (judicial efficiency is served by withdrawing the reference in insurance coverage action that does not involve any core claims).

In a similar suit by a diocese facing abuse-related claims in the Southern District of New York, the district court concluded judicial efficiency required withdraw of the reference of a non-core insurance coverage dispute *immediately*.[74] The district court determined that it would be inefficient to have the bankruptcy court handle pre-trial matters where, as here, the bankruptcy court was not yet intimately familiar with the insurance coverage dispute, and where the claims "arise under contract law, not bankruptcy law," as contract issues were "the bread and butter of district courts[.]"[75] Further, it found that the district court overseeing ***all related pre-trial matters***, would promote judicial economy and expediency.[76]

Underwriters have a jury trial right in this case. "Due to the fact that a District Court Judge must eventually preside over the jury trial in this matter, it would constitute a tremendous waste of judicial resources to permit the bankruptcy judge to continue to maintain jurisdiction over the [claims in this Adversary Proceeding]".[77] Further, both Claims arise under state law, not the Bankruptcy Code, and neither involves bankruptcy issues. There is no doubt that this Court must issue final rulings on the Claims.[78] This Court should also control discovery and motions of dispositive issues to avoid inefficient and costly administration of this case.[79]

Thus, the fourth *Security Farms* factor weighs in favor of immediate withdrawal of the reference.

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[74] *Rockville Ctr.*, 2021 WL 1978560, at *8-11.

[75] *Id.*, at *22.

[76] *Id.*

[77] *Gumport v. Growth Fin. Corp. (In re Transcon Lines)*, 121 Bankr. 837, 838 (C.D. Cal. 1990); *see also Official Comm. of Asbestos Claimants v. G-I Holdings, Inc. (In re G-I Holdings, Inc.)*, 295 B.R. 211, 217 (D.N.J. 2003) (quoting *In re General Teamsters, Warehousemen and Helpers Union Local 890*, 124 F.3d 999, 1008 (9th Cir. 1997)).

[78] *See* Motion, *supra*, III(B) and III(C)(1)(a-b).

[79] *In re Cachet Fin. Servs.*, 652 B.R. 341, 350 (C.D. Cal. 2023) ("However, where, as here, non-core claims completely overwhelm claims that can be finally adjudicated in Bankruptcy Court, the matter is more likely to eventually come before this Court and efficiency is best served by having the matter heard in the correct forum *at the earliest possible opportunity.*") (original emphasis).

5. *Security Farms* Factor (5)—Withdrawal of the Reference Does Not Constitute Forum Shopping

Forum shopping exists where parties "exert inordinate effort for the purpose of seeking not merely a fair trial but a forum they consider more receptive to their cause, and [it] requires courts to squander public resources in adjudicating the propriety of manipulative efforts to gain access to the forum considered most hospitable to the litigants' interests."[80] Accordingly, a motion to withdraw the reference that follows an adverse decision may constitute forum shopping. Rather than causing the Courts in the Northern District of California to squander resources, Underwriters seek a more efficient resolution of the Adversary Proceeding. Further, as mentioned above, the Motion is timely, reducing the likelihood of forum shopping.[81]

The Motion does not promote forum shopping because the Bankruptcy Court cannot enter final judgment on the Claims. [82] Indeed, because each Claim is outside the Bankruptcy Court's core jurisdiction, ***proceeding in the Court will reduce forum shopping***.[83] It is in the best interest of all parties for the adjudication of the Claims to be done by a court "that is well-practiced in evaluating common law and statutory causes of action arising under non-bankruptcy law."[84] There have been

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[80] *Cummings v. U.S.*, 648 F.2d 289, 290 (5th Cir. 1981).

[81] *See Burdette v. Emerald Partners LLC*, 2015 WL 4394859, *3 (W.D. Wash. July 16, 2015).

[82] *See In re Bill Johnson's Rests., Inc*., 2017 WL 25288, *4 (D. Ariz. 2016) (no forum shopping when a right to a jury trial exists); *Flemmer v. Newell (In re Vill. Concepts, Inc.)*, 2014 WL 1266205, *3 (E.D. Cal. Mar. 23, 2014) (no forum shopping when only the district court has a right to enter a final order); *Brown Publ. Co. Liquidating Trust v. Brown*, 2017 WL 455418, *5 (E.D.N.Y. Feb. 1, 2017) ("Because the Bankruptcy Court cannot enter final judgment on the fraudulent conveyance claims, withdrawal does not promote forum shopping."); *In re The VWE Grp., Inc.*, 359 B.R. 441, 451 (S.D.N.Y. 2007) ("[W]ithdrawing the reference will not result in forum-shopping because, due to [the] defendants' demand for a jury trial on this non-core claim, the parties have no choice but to try the case in this court."); *Kirschenbaum v. Fed. Ins. Co. (In re Ems Fin. Servs., LLC)*, 491 B.R. 196, 206 (E.D.N.Y. 2013) ("[T]here is no evidence [of] forum shopping. Quite the contrary: . . . given that the claims at issue are all non-core, this case involves a non-core proceeding that could have and probably should have been brought in a district court originally.").

[83] *Pelullo v. National Union Fire Ins. Co. (In re Pelullo)*, 1997 WL 535166 (E.D. Pa. 1997) (citations omitted).

[84] *See Kohn v. Haymount Ltd. P'ship (In re Int'l Benefits Group, Inc.)*, 2006 WL 2417297, *4 (D.N.J. Aug. 21, 2006).

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no adverse decisions against Underwriters and by seeking withdrawal of the reference, Underwriters are seeking only to adjudicate the Claims in a forum that can hold a jury trial and issue a final order.

Hence, the fifth *Security Farms* factor favors granting the Motion.

6. *Security Farms* Factor (6)—Withdrawal of the Reference Preserves the Parties' Resources

Granting the Motion economizes resources of the estate and non-debtors.[85] Where, as here, "non-core issues predominate (*i.e.*, claims the bankruptcy court cannot finally determine), withdrawal may promote efficiency because a single proceeding in the district court could avoid unnecessary costs implicated by the district court's de novo review of non-core bankruptcy determinations".[86]

Withdrawal will prevent delay and added costs to the parties by eliminating the duplicative litigation in this Court if the Court were to deny the Motion,

Hence, the sixth *Security Farms* factor weighs in favor of granting the Motion.

7. *Security Farms* Factor (7)—Withdrawal Does Not Affect the Uniformity of Bankruptcy Administration

Withdrawal to this Court cannot affect the uniformity of bankruptcy administration "because there are no core claims" in the TAC.[87]

The Claims arise under state law, and do not concern substantive bankruptcy law, hence keeping the Claims in the Bankruptcy Court affords no benefit to the uniformity of bankruptcy administration.[88]

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[85] *Everett v. Art Brand Studios*, LLC, 556 B.R. 437, 445 (N.D. Cal. 2016) ("In this case, 'withdrawal will prevent delay and added costs to the parties by placing the non-core claims in this Court, which can render final judgment.'") (citation omitted); *see also Baxter*, 579 B.R. at 714 ("[U]nnecessary costs could be avoided by a single proceeding in the district court.") (citation omitted).

[86] *In re Hoku Corp.*, 2015 WL 7295445, at *2 (D. Idaho Nov. 18, 2015); *Facebook, Inc. v. Vachani*, 577 B.R. 838, 846-47 (N.D. Cal. 2017); *Everett*, 556 B.R. at 444 ("If the claims sought to be withdrawn are non-core and the Bankruptcy Court cannot enter final judgment, then efficiency generally favors withdrawing the reference.").

[87] *Harris*, 2017 WL 2972079, *2; *see also Flemmer*, 2014 WL 1266205, *3 (same).

[88] *See, e.g.*, *Dynegy,* 905 F. Supp. 2d at 533 ("Courts routinely have found no benefit [to uniformity of bankruptcy administration] where claims are based on state law."); *Hamilton v. Willms*, No. 02-6583, Doc. No. 892 at 2 (E.D. Cal. Apr. 5, 2016) ("The … claims in this case are based in California state law and are completely independent of bankruptcy law; they are non-core."); *Residential Funding Co., LLC v. UBS Real Estate Secs., Inc*., 2015 WL 1062264, *5 (S.D.N.Y. Mar. 6, 2015)

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Therefore, the seventh *Security Farms* factor weighs in favor of withdrawing the reference.

IV. CONCLUSION

WHEREFORE, because the Motion is timely, the Bankruptcy Court cannot finally determine the Claims, and each of the *Security Farms* factors favors granting the Motion, Underwriters respectfully request that the Court grant the Motion and withdraw the reference of this Adversary Proceeding.

Dated: February 2, 2024

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Attorneys for Defendants, *Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of*

(stating that "the contract claims are based in New York state law and do not concern substantive bankruptcy law… weigh[ing] in favor of withdrawing the reference."); *Dev. Specialists, Inc. v. Akin Gump Strauss Hauer & Feld LLP*, 462 B.R. 457, 473 (S.D.N.Y. 2011) ("Their resolution will at most have the effect of augmenting the bankruptcy estate; it will have no impact that would require uniform, coordinated adjudication before the Bankruptcy Court."); *M Fabrikant & Sons, Inc. v. Long's Jewelers Ltd.*, 2008 WL 2596322, *4 (S.D.N.Y. June 26, 2008) ("Withdrawing the reference would not hamper uniform administration of the bankruptcy code because this case is a 'non-core' proceeding.").

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San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland

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