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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 OF THE ROMAN CATHOLIC BISHOP OF OAKLAND, Plaintiff, v. THE ROMAN CATHOLIC BISHOP OF OAKLAND, ADVENTUS, THE	Adv. Pro.

ROMAN CATHOLIC WELFARE CORPORATION OF OAKLAND, AND THE ROMAN CATHOLIC CEMETERIES OF THE DIOCESE OF OAKLAND, Defendants.	)

ADVERSARY COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, the Official Committee of Unsecured Creditors (the "**Committee**") in the above captioned chapter 11 bankruptcy case (the "**Chapter 11 Case**") of the Roman Catholic Bishop of Oakland (the "**Debtor**"), files this adversary complaint (this "**Complaint**") against (i) the Debtor, (ii) Adventus, (iii) the Roman Catholic Welfare Corporation of Oakland ("**RCWC**") and (iv) the Roman Catholic Cemeteries of the Diocese of Oakland ("**RCC**" and together with Adventus and RCWC, the "**Non-Debtor Affiliated Entities**"), and hereby states and alleges as follows:[1]

PRELIMINARY STATEMENT[2]

1. The Committee files this Complaint to resolve a fundamental dispute between the Debtor and the Committee over the size of the Debtor's estate.

2. The Bishop, as the leader of the Diocese, exerts unmatched authority and control over all entities within his jurisdiction, including each of the Non-Debtor Affiliated Entities.

3. Indeed, the Bishop has publicly represented [redacted]

4. There is extensive evidence supporting the Bishop's concession, [redacted]

[1] The Debtor frequently uses the term "Diocese" to refer to the geographic area that it serves: Alameda and Contra Costa counties. When used in this sense, "Diocese" is not being used to refer to the Debtor as a corporation sole but rather to all of the Debtor's components, including its schools, cemeteries, and other affiliated entities, which it uses to fulfill its singular mission.

[2] Capitalized terms used but not defined in this Preliminary Statement have the meanings ascribed to them in this Complaint.

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5. In the face of this evidence, the Debtor has failed to concede that the assets of the Non-Debtor Affiliated Entities, including their cash, investments and real estate assets (collectively, the "**Property**"), belong to the Debtor's estate.

6. If the Property is declared property of the estate and/or is made part of the estate through substantive consolidation, the assets available to satisfy the claims of survivors of sexual abuse ("**Survivors**") will be materially and meaningfully increased.

7. As discussed below, the course of conduct among the Debtor and Non-Debtor Affiliated Entities—as well as the extensive control that the Bishop exerts over the Non-Debtor Affiliated Entities—demonstrate that the Non-Debtor Affiliated Entities are mere instrumentalities or conduits of the Debtor.

8. Without the Debtor, the Non-Debtor Affiliated Entities would be incapable of operating independently.

9. The Debtor and the Non-Debtor Affiliated Entities are served by a central staff, which oversees all of their administrative functions such as accounting, business development and strategic planning, human resources, information systems, property management services, and education services.

10. The Debtor and the Non-Debtor Affiliated Entities also conduct business from the same location and share directors and officers who are appointed by, and/or ultimately take orders from, the Bishop.

11. Moreover, any authority that the Non-Debtor Affiliated Entities appear to have over their operations and affairs is a mere artifice.

12. As leader of the Diocese, the Bishop exercises final decision-making authority on all material decisions within the Diocese, [redacted]

13. [redacted]

14. The Debtor readily brandished the Bishop's plenary power when doing so was financially beneficial. For example, [redacted]

15. But the Debtor now seeks to disavow the Bishop's power in the face of extensive liability for recurring sexual abuse perpetrated by its agents and affiliates, in an attempt to shield assets over which it has complete domination and control.

16. The Property either belongs to the Debtor and is property of its bankruptcy estate and subject to distribution to creditors under 11 U.S.C. § 541(a) and/or should be substantively consolidated with the Debtor's estate because of the Debtor's extensive entanglement with the Non-Debtor Affiliated Entities and the way the Debtor—as well as its agents and affiliates—hold themselves out to creditors and the public.

17. Accordingly, the Committee now seeks a declaration through this adversary proceeding (this "**Adversary Proceeding**") to that effect.

JURISDICTION AND VENUE

18. This Court has jurisdiction over the Adversary Proceeding under 28 U.S.C. §§ 157 and 1334(b), 11 U.S.C. § 105, and Federal Rules of Bankruptcy Procedure 7001 and 7013.

19. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409, as this Adversary Proceeding arises under and in connection with a case under chapter 11 of the United States Code (the "**Bankruptcy Code**") that is pending in this District.

20. This Adversary Proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

PARTIES

21. Plaintiff is the Committee of Unsecured Creditors in the Chapter 11 Case, appointed by the Office of the United States Trustee under 11 U.S.C. § 1102(a).

22. The Committee is a party in interest in the Chapter 11 Case under 11 U.S.C. § 1109(b).

23. The Committee is comprised of nine Survivors asserting claims against the Debtor based on sexual abuse perpetrated by persons or entities associated with or representing the Debtor or other Debtor-related institutions served by the Debtor.

24. Defendant, the Debtor in the Chapter 11 Case, is incorporated under California law as a "corporation sole," with its principal place of business located at 2121 Harrison Street, Suite 100, Oakland, California 94612.

25. The Debtor and the Non-Debtor Affiliated Entities are led and controlled by the bishop (the "**Bishop**"), which is currently the Most Reverend Michael C. Barber, SJ, who has served in that role since May 25, 2013.

26. Defendant Adventus is a California corporation used by the Diocese to hold title in limited real estate—specifically, single-family residences in Byron and Hayward and undeveloped land in Livermore.

27. Adventus's business and mailing address is 2121 Harrison Street, Suite 100 Oakland, California 94612.

28. Defendant RCWC is a nonprofit religious corporation that oversees 32 elementary schools and two high schools within the Diocese.

29. RCWC's business and mailing address is 2121 Harrison Street, Suite 100 Oakland, California 94612.

30. Defendant RCC (d/b/a Catholic Funeral and Cemetery Services) is a California corporation that operates and administers six diocesan cemeteries, five diocesan mortuaries, two mausoleums, and one crematory on land owned by the Debtor.

31. RCC's business and mailing address is 2121 Harrison Street, Suite 100, Oakland, California 94612.

FACTUAL ALLEGATIONS

A. The Entangled Diocesan Enterprise

32. The Debtor is incorporated under California law as a "corporation sole."

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33. All administrative functions of the Debtor and the Non-Debtor Affiliated Entities are centered in the Central Services Administration (also known as the Chancery), which oversees all accounting, business development and strategic planning, human resources, information systems, property management services, education services and overall operations within the Diocese.

34. The Bishop leads the Debtor, both spiritually and as the head of the Debtor corporation, under civil law.

35. The Bishop has the ability to exercise control over all assets—including the Property purportedly owned by the Non-Debtor Affiliated Entities—within his Diocese.

36. The Bishop exercises control over all assets—including the Property purportedly owned by the Non-Debtor Affiliated Entities—within his Diocese.

37. The Bishop also [redacted]

38. According to the Debtor, [redacted]

39. [redacted]

40. [redacted]

41. Additionally, [redacted]

42. The Bishop is similarly advised on all matters of Catholic education by the Diocesan School Board, a consultative board that is commissioned through the Superintendent of Schools.

43. The Non-Debtor Affiliated Entities' organizational documents all demonstrate the Debtor's extensive domination and control over their affairs and the Property.

44. According to Adventus' Bylaws, [redacted]

45. Additionally, Adventus' Articles of Incorporation provide that "[o]n the winding up and dissolution of [Adventus], after paying or adequately providing for the debts, obligations and liabilities of [Adventus], the remaining assets of [Adventus] shall be distributed to such organization or organizations organized and operated exclusively for charitable purposes as selected by the Board of Directors of [Adventus]."

46. According to RCWC's Amended Articles of Incorporation, "[t]he specific and primary purposes of [RCWC] shall be to conduct religious and educational activities of the Roman Catholic Church within the [Diocese] comprising the Counties of Alameda and Contra Costa in the State of California; to own, maintain and operate church-related facilities of the Roman Catholic Church within [the Diocese] including, without limitation, Roman Catholic parochial and high schools, Confraternity of Christian Doctrine Centers and other religious centers."

47. RCWC's Amended Articles of Incorporation also provide that "[o]n the liquidation, dissolution or abandonment of [RCWC], after paying or making provision for the payment of any debts and obligations of [RCWC], the then remaining assets of [RCWC] shall be distributed for such purposes to the [Debtor]."

48. According to RCWC's Bylaws, [redacted]

49. Similarly, RCC's Bylaws provide that [redacted]

50. The Debtor and each of the Non-Debtor Affiliated Entities share the same business and mailing address at 2121 Harrison Street, Suite 100 Oakland, California 94612.

51. The Debtor and the Non-Debtor Affiliated Entities also share or shared at least four common officers and directors.[3]

52. Paul Bongiovanni served as CFO and agent for service of process of the Debtor in 2017; President and CEO of Adventus from 2019–2021; CFO of Adventus in 2019; agent for service of process for Adventus in 2019 and 2021; CFO, Secretary, and agent for service of process for RCWC from 2020–2022; CFO of RCC in 2019 and from 2023–2024; and Secretary of RCC from 2023–2024.

53. Michael Canizzaro served as Attorney-in-Fact for the Debtor in 2007; Vice President of Adventus in 2007; Secretary and Assistant Treasurer of RCWC in 2007; and Secretary and Treasurer of RCC in 2007.

54. John S. Cummins served as Bishop of the Debtor from 1977–2003; President and CEO, CFO, Secretary, and agent for service of process for the Debtor from 1999–2002; Director of RCWC in 1962; and President of RCWC in 1979.

55. Floyd L. Begin served as Bishop of the Debtor from 1962–1977; Director of RCWC in 1962; and President and CEO of RCWC in 1967.

B. <u>The Non-Debtor Affiliated Entities' Lack of Independent Control</u>

56. The Debtor and RCWC hold (or held) legal title to much of the Property.

[3] The dates listed in ¶¶ 52-55 are not comprehensive. They reflect a partial timeline based on the documents produced by the Diocese and publicly available information.

57. The Debtor directs that [redacted]

58. In 1962, the Roman Catholic Archbishop of San Francisco and the Roman Catholic Welfare Corporation of San Francisco transferred all of their real property and personal property in Contra Costa and Alameda Counties to the Debtor and RCWC through three omnibus deeds.

59. The conveyance was prompted by Pope John XXII's establishment of the Debtor from the eastern part of the Archdiocese of San Francisco in January 1962.

60. This deliberate division of assets between the Debtor and RCWC demonstrates a coordinated effort to ensure that the Debtor and RCWC entities act as a single enterprise.

61. The conveyance was not a mere transactional decision by the Pope, but a strategic allocation of resources that reflects the interdependence and unified control between the Debtor and RCWC.

62. The Debtor was granted ownership of all then-existing parcels of real property in Alameda and Contra Costa Counties that contained only churches, which included parcels of real property containing cemeteries.

63. RCWC was granted ownership of all then-existing parcels of real property that contained only schools and all then-existing parcels of real property that contained both schools and churches.

64. In addition, RCWC was assigned ownership of all tangible personal property (*e.g.*, alters, pews, tabernacles, and the Eucharist) within Alameda and Contra Costa Counties.

65. This asset structure illustrates how the Debtor and RCWC have functioned as a single entity since their inception over 60 years ago.

66. As of 2007, the Debtor [redacted]

[redacted]

67. As of 2007, [redacted]

68. Additionally, the Debtor has professed its control over the Property to the public, holding the Non-Debtor Affiliated Entities out as one and the same with the Debtor.

69. For example, in securing financing from creditors to build the Cathedral of Christ the Light (the "**Cathedral Complex**") in 2007, the Debtor represented that [redacted]

70. The Diocese also represented that [redacted]

71. The Debtor's website provides a single online source that contains Non-Debtor Affiliated Entity-related resources reflecting those entities as component parts of the Diocesan enterprise.

72. For instance, the "Diocese" tab of the Debtor's website includes a "Diocesan Directory" with a link providing access to (i) a RCC/Catholic Funeral and Cemetery Services webpage that includes information on services, locations, mission programs, key contacts, and FAQs; and (ii) information on diocesan schools, including a "school finder" with locations of all Diocesan schools, in addition to a direct link to the "Catholic Schools Diocese of Oakland."

C. The Series 2007 Bond Offering

73. In 2007, the Debtor and the Non-Debtor Affiliated Entities authorized a bond issuance (the "**Series 2007 Bonds**") with Deutsche Bank serving as bond trustee.

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74. The transaction (the "**Series 2007 Bond Offering**") was in response to [redacted]

75. As part of the Series 2007 Bond Offering, the Debtor and the Non-Debtor Affiliated Entities [redacted] formed a "Bond Obligated Group" (the "**Bond Obligated Group**").

76. Each of the Non-Debtor Affiliated Entities was [redacted]

77. [redacted]

78. According to Appendix A of that certain Series 2007 Bond Offering Memorandum dated November 13, 2007 (the "**Series 2007 Bond Offering Memorandum**"), [redacted]

79. The Debtor made a series of representations to creditors in Appendix A to the Series 2007 Bond Offering Memorandum, including, but not limited to, the following:

a. [redacted]

b. [redacted]

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[redacted]

c. [redacted]

[redacted]

d. [redacted]

[redacted]

e. [redacted]

[redacted]

f. [redacted]

[redacted]

g. [redacted]

[redacted]

h. [redacted]

[redacted]

i. [redacted]

[redacted]

j. [redacted]

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[redacted]

80. These representations all demonstrate statements made to creditors regarding the Debtor's, through the Bishop's, extensive control over the Bond Obligated Group and the Property.

81. The Series 2007 Bond Offering Memorandum was distributed to potential investors as part of the Debtor's solicitation of the public debt market in connection with the Series 2007 Bonds.

82. In negotiating the terms of the Series 2007 Bond Offering, the Debtor represented to Deutsche Bank that [redacted]

83. The Debtor also represented to Deutsche Banke that [redacted]

84. In connection with the Series 2007 Bond Offering, the Debtor noted that [redacted]

D. <u>Use of Proceeds from the Series 2007 Bonds</u>

85. Through the Series 2007 Bond Offering, the Debtor raised approximately $114.7 million, [redacted].

86. [redacted] which the Bishop used to (i) complete construction of the Cathedral Complex; (ii) expand RCC; (iii) provide loans to parishes and schools from the Bishop's Deposit and Loan Fund (as defined below); (v) fund the Diocese's

operations, including capital projects; and (vi) fund the "costs of legal settlements," which the Committee believes were payments to be made to Survivors.

87. [redacted]

88. [redacted]

[redacted]

E. The Deposit and Loan Fund

89. The Deposit and Loan Fund ("**DLF**") is an internal savings and loan program owned and operated by the Debtor which requires the Non-Debtor Affiliated Entities (among others) to deposit their excess funds with the DLF for the benefit of the churches, schools, and cemeteries within the Diocese.

90. [redacted]

91. According to the Debtor, [redacted]

92. [redacted]

F. Diocesan-Wide Fundraising Campaign

93. In or around 2015, the Bishop—with the help of the Diocesan Development Office—launched a Diocesan-wide fundraising campaign to address significant financial needs, including a $30 million debt restructure related to the Series 2007 Bonds.

94. The campaign aimed to raise $65 million to support various Diocesan initiatives, including $3 million for the "Bishop's Appeal."

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95. The $3 million raised through the campaign provided unrestricted funds to pay the budgeted expenses of the Debtor, as well as [redacted][4]

G. Contemplated Real Property Sale

96. The Committee is informed and believes that [redacted]

H. 2017 PNC Credit and Security Agreement

97. All members of the Bond Obligated Group entered into that certain Credit and Security Agreement with PNC (f/k/a Compass Bank), as lender, dated as of February 1, 2017 (the "**2017 Credit and Security Agreement**"), under which the Debtor borrowed $70 million for funding the redemption of the outstanding Series 2007 Bonds (the "**PNC Bank Debt**").

98. All members of the Bond Obligated Group served as guarantors under the 2017 Credit and Security Agreement.

99. The 2017 Credit and Security Agreement sets forth that the loans issued thereunder are to benefit each member of the Bond Obligated Group.

100. The 2017 Credit and Security Agreement also contains a "Covenant to Obtain Assets," which allows the Debtor to take certain actions to avoid or cure an event of default caused by the Bond Obligated Group's inability to make timely payments (in addition to other means of raising income that may be legally available), including: (i) using, controlling, and disposing of the assets of those public juridic persons subject to his governance; (ii) increasing the customary rate of the cathedraticum on all or substantially all of the public juridic persons subject to his governance; (iii) imposing an extraordinary and moderate exaction upon other

[4] In the Debtor's recently filed Disclosure Statement, the Debtor now asserts that the funds in the Bishop's Appeal are restricted funds.

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physical and juridic persons; (iv) increasing prescribed fees and suggested free-will offerings; and (v) instituting a diocesan-wide extraordinary appeal.

I. The RCC Loans

101. [redacted]

102. [redacted] (the "**2022 RCC Loan**"), [redacted]

103. [redacted]

104. As of July 2024, the outstanding balance on the 2022 RCC Loan totaled $25.9 million.

J. Significant Litigation Against the Debtor

105. On October 13, 2019, Governor Gavin Newsom signed into law California Assembly Bill No. 218 ("**AB 218**"), which revived the statute of limitations for individuals to file civil lawsuits for childhood sexual abuse.

106. The passage of AB 218 allowed certain survivors to bring what had once been time-barred claims against individuals and entities for such claims through and including December 31, 2022.

107. As of May 4, 2023, the Debtor estimated that there were about 332 separate, active lawsuits or mediation demands pending against the Debtor filed by Survivors alleging sexual abuse by clergy or others associated with the Debtor.

K. The Chapter 11 Case

108. On May 8, 2023 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

109. The Debtor's commencement of the Chapter 11 Case created a bankruptcy estate under section 541(a) of the Bankruptcy Code.

110. On November 8, 2024, the Debtor filed the *Debtor's Plan of Reorganization* [Dkt. No. 1444] (the "**Plan**"). The Committee does not support the Plan, because, among other things, the Debtor does not include the Property as part of its bankruptcy estate.

111. The Plan provides that Survivors' claims—which are classified in Class 4 ("Abuse Claims") and Class 5 ("Unknown Abuse Claims")—are impaired under the Plan.

CAUSES OF ACTION

COUNT ONE

(Declaratory Relief: The Debtor Owns All Legal and Equitable Interests in the Property Pursuant to 11 U.S.C. § 541)
(Against the Debtor and the Non-Debtor Affiliated Entities)

112. The Committee repeats and realleges each of the allegations set forth above and below as if fully set forth herein.

113. The significant dominance and control that the Debtor exerts over the Property demonstrate that the Debtor holds both the legal and equitable interests in the Property, and that it is property of the Debtor's estate.

114. The Debtor's own statements to the public—professing the extent of control and dominance it has over the Non-Debtor Affiliated Entities confirms as much.

115. An actual, justiciable controversy exists as to whether the Debtor owns all legal and equitable interests in the Property.

116. The Committee is entitled to a determination that the Debtor owns all legal and equitable interests in the Property, and that the Property is property of the Debtor's estate under section 541 of the Bankruptcy Code.

COUNT TWO

(Substantive Consolidation of the Debtor and the Non-Debtor Affiliated Entities)
(Against the Debtor and the Non-Debtor Affiliated Entities)

117. The Committee repeats and realleges each of the allegations set forth above and below as if fully set forth herein.

118. The Non-Debtor Affiliated Entities are managed by the Debtor and are under the Debtor's complete control.

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119. All final decisions and authority are vested in the Debtor and the Debtor may use, control, and dispose of the Non-Debtor Affiliated Entities' assets.

120. Through the Bishop and with the assistance of other high-level management personnel of the Debtor—some of whom are or were also officers of one or more of the Non-Debtor Affiliated Entities—the Debtor exercises a high degree of domination and control over the Non-Debtor Affiliated Entities such that their affairs are so entangled with those of the Debtor and substantive consolidation will benefit all creditors.

121. Creditors also dealt with the Debtor and the Non-Debtor Affiliated Entities as a single economic unit and did not rely on their separate identity in extending credit.

122. For example, as set forth above, in securing financing to build the Cathedral Complex in 2007, the Debtor represented that [redacted]

123. The time and expense necessary to attempt to unscramble the entanglement of the Debtor's affairs with those of the Non-Debtor Affiliated Entities is so substantial that no accurate identification and allocation of assets is possible in the absence of substantive consolidation.

124. Because the Debtor is attempting to use the Chapter 11 case to obtain a litigation advantage over the Survivors by placing the Property beyond their reach but still within the Debtor's reach and control, the benefits of substantive consolidation outweigh the harm (if any) that it would cause.

125. Substantive consolidation is necessary to ensure fairness to all creditors.

126. Accordingly, the Non-Debtor Affiliated Entities and the Debtor should be substantively consolidated.

PRAYER FOR RELIEF

WHEREFORE, the Committee seeks judgment as follows:

a. A determination that the Debtor owns all legal and equitable interests in the

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Property and that the Property constitutes property of the Debtor's estate under 11 U.S.C. § 541(a); and

b. A determination that the Non-Debtor Affiliated Entities should be substantively consolidated with the Debtor, *nunc pro tunc*, effective as of the Petition Date; and

c. Any other relief that the Court deems just and proper.

[*Remainder of page intentionally left blank*]

Dated: December 11, 2024

KELLER BENVENUTTI KIM LLP
LOWENSTEIN SANDLER LLP

By: */s/ Gabrielle L. Albert*
Tobias S. Keller
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