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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 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 ROMAN CATHOLIC WELFARE CORPORATION OF OAKLAND, AND THE ROMAN CATHOLIC CEMETERIES OF THE DIOCESE OF OAKLAND, Defendants.	Adv. Pro. No. 24-04053 **DEBTOR'S MOTION TO DISMISS ADVERSARY COMPLAINT FOR DECLARATORY RELIEF** Judge: Hon. William J. Lafferty Date: March 5, 2025 Time: 10:30 a.m. Place: United States Bankruptcy Court 1300 Clay Street Courtroom 220 Oakland, CA 94612

The Roman Catholic Bishop of Oakland, a California corporation and the debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case"), hereby files this motion to dismiss (the "Motion") the *Adversary Complaint for Declaratory Relief* [Docket No. 1] (the "Complaint") filed in the above captioned adversary proceeding (the "Adversary Complaint") under Federal Rule of Civil Procedure 12(b)(6), incorporated as Bankruptcy Rule 7012. In support of this Motion, the Debtor incorporates by reference herein its Memorandum of Law in Support, set forth below.

WHEREFORE, the Debtor respectfully requests the Court dismiss the Complaint against the Debtor, with prejudice, and grant such other and further relief as this Court finds just and proper.

DATED: January 24, 2025

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In re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole, Debtor.	Case No. 23-40523 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 ROMAN CATHOLIC WELFARE CORPORATION OF OAKLAND, AND THE ROMAN CATHOLIC CEMETERIES OF THE DIOCESE OF OAKLAND, Defendants.	Adv. Pro. No. 24-04053 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEBTOR'S MOTION TO DISMISS ADVERSARY COMPLAINT FOR DECLARATORY RELIEF** Judge: Hon. William J. Lafferty Date: March 5, 2025 Time: 10:30 a.m. Place: United States Bankruptcy Court 1300 Clay Street Courtroom 220 Oakland, CA 94612

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The Roman Catholic Bishop of Oakland, a California corporation and the debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case"), hereby files this memorandum in support of its motion to dismiss (the "Motion") 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," together with Adventus, RCWC, are the "Non-Debtor Catholic Entities") in the *Adversary Complaint for Declaratory Relief* [Docket No. 1] (the "Complaint") filed in the above captioned adversary proceeding by the Official Committee of Unsecured Creditors (the "Committee").

I.

PRELIMINARY STATEMENT

This Court should dismiss the Complaint because the Committee cannot, under any legal theory, substantively consolidate the Non-Debtor Catholic Entities with the Debtor. In Count 2, the Debtor seeks to substantively consolidate the Non-Debtor Catholic Entities into the Debtor's estate through the "front door" of actually alleging substantive consolidation. Count 2 should be dismissed for two reasons.

First, this Court does not have the authority to substantively consolidate a non-debtor, non-profit religious corporation with the Debtor under § 105 of the Bankruptcy Code. Section 303(a) of the Bankruptcy Code expressly prohibits the commencement of an involuntary bankruptcy case against a non-profit corporation. Under *Law v. Siegel*, 571 U.S. 415, 421 (2014), and the Eighth Circuit's decision in *In re Archdiocese of St. Paul & Minneapolis*, 888 F.3d 944 (8th Cir. 2018), the Committee cannot rely on substantive consolidation under § 105 to circumvent the prohibition against forcing non-profits such as the Non-Debtor Catholic Entities into bankruptcy under § 303(a).

Second, even if this Court had the authority to substantively consolidate the Non-Debtor Catholic Entities with the Debtor (which is does not), Count 2 should still be dismissed because the Committee has failed to allege sufficient facts to state a claim for substantive consolidation. The Committee's purported basis for substantive consolidation consists of (a) allegations that the Debtor purportedly exercised some control over the Non-Debtor Catholic Entities, and (b) unsupported conclusions that the Debtor and the Non-Debtor Catholic Entities are too entangled. These allegations are plainly insufficient to state a

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cognizable claim for substantive consolidation under well-established case law. This Court therefore should dismiss Count 2 on this alternative basis as well.

Count 1 seeks a declaratory judgment that the property of the Non-Debtor Catholic Entities is property of the Debtor's estate under § 541 of the Bankruptcy Code. Count 1 is nothing more than a "back door" attempt to substantive consolidate the Non-Debtor Catholic Entities with the Debtor by alleging, without any support whatsoever, that the Debtor "owns" the property of these separate and distinct entities. As discussed above, substantive consolidation of the Non-Debtor Catholic Entities with the Debtor is expressly prohibited under § 303(a) of the Bankruptcy Code. Moreover, the Committee cites zero facts supporting the theory that the Debtor somehow "owns" the property of the Non-Debtor Catholic Entities. Accordingly, this Court should also dismiss Count 1 with prejudice.

II.

RELEVANT BACKGROUND AND SUMMARY OF ALLEGED FACTS

A. General Background and Structure of the Debtor and the Diocese of Oakland

On May 8, 2023 (the "Petition Date"), the Debtor caused its attorneys to file a voluntary petition for bankruptcy relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its ministries and manage its properties as a debtor in possession under §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee has been appointed in this Chapter 11 Case.

The Debtor is a corporation sole organized under the laws of the State of California. Both before and after the filing date, the Debtor observed all requirements for its separate existence under appliable law. The Debtor conducts its civil affairs under the laws of the State of California and the United States of America and in accordance with the Code of Canon Law ("Canon Law"), the ecclesiastical law of the Roman Catholic Church (the "Catholic Church").[1]

The Debtor estimates that it serves nearly 550,000 resident Catholics within the diocese of Oakland and assists approximately 260,000 people annually through its ministry and charitable services. The

[1] Additional information regarding the Debtor, its mission, ministries, and operations, and the events and circumstances preceding the Petition Date, is set forth in the *Declaration of Charles Moore, Managing Director of Alvarez & Marsal North America, LLC, Proposed Restructuring Advisor to the Roman Catholic Bishop of Oakland, in Support of Chapter 11 Petition and First Day Pleadings* [Bankr. Docket No. 19] (the "First Day Declaration"), which is incorporated herein by reference.

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diocese of Oakland (the "Diocese") is home to 82 local parish Churches and missions and is home to 159 diocesan priests, 160 religious priests, 35 extern priests and 118 permanent deacons. The Debtor has been under the leadership of the incumbent bishop, Most Reverend Michael C. Barber, SJ (the "Bishop"), since his appointment on May 25, 2013. Compl. ¶¶ 25, 34.

The Bishop has certain leadership roles in connection with certain Non-Debtor Catholic Entities within the Diocese, although they are separately incorporated under California law and are not debtors in the Chapter 11 Case, including Adventus, RCWC, and RCC. *See, e.g., id.* ¶¶ 2, 35-36. The Non-Debtor Catholic Entities are separately incorporated California nonprofit religious corporations that are within the Diocese and are *affiliates* of the Debtor. *See, e.g., id.* ¶¶ 71-72 (alleging that the Debtor's website reflects that RCC and RCWC are components of the Diocese); ¶ 69 (alleging, inaccurately, that the Debtor represented to its creditors that the Non-Debtor Catholic Entities are components of the Debtor). Notably, although this is omitted from the Complaint, each Non-Debtor Catholic Entities has its own board of directors and management. *See* First Day Declaration, at p. 10-14; Docket No. 10, Exs. 2 (the "RCWC Bylaws"), 4 (the "RCC Bylaws"), and 6 (the "Adventus Bylaws").

Adventus is a California nonprofit corporation that holds title in certain real estate, including single-family residences in Byron and Hayward and undeveloped land in Livermore (the "Livermore Property"). Compl. ¶ 26. Adventus' Articles of Incorporation state that it is a nonprofit public benefit corporation "organized under the Nonprofit Public Benefit Corporation law for charitable purposes." Docket No. 10, Ex. 5 (the "Adventus AOI"). Moreover, its Bylaws provide that the corporate purpose of Adventus is "charitable." *See* Adventus Bylaws. At all relevant times, Adventus has always maintained a separate bank account. First Day Decl. ¶ 67.

RCC is California a nonprofit religious corporation that operates and administers six diocesan cemeteries, five diocesan mortuaries, two mausoleums and one crematory. Compl. ¶ 30. RCC's Articles of Incorporation state that the corporation "is a religious corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation law for charitable purposes." Docket No. 10, Ex. 3 (the "RCC AOI"). Moreover, its Bylaws provide that purpose is "charitable" and that RCC shall provide, among other things, the burial of the faithful of the Roman Catholic Church and maintain lands and improvements for burial. *See* RCC Bylaws.

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RCC owns no real property and all real property necessary to carry out its activities (burial, entombment, and related services) are leased from the Debtor pursuant to ground leases or other appropriate lease forms. First Day Decl. ¶ 45. Funds from every interment are set aside for a permanent maintenance fund to be held, invested, and used to provide perpetual care. *Id.* ¶ 46. RCC has at all times segregated its funds from those of the Debtor and has at all times maintained separate accounts. *Id.* RCC holds and invests such segregated funds, and also bears the related obligation to provide perpetual care for the deceased. *Id.* RCC has its own board and audited financial statements. *Id.*

RCWC is a California nonprofit religious corporation that oversees 32 elementary and two high schools (collectively, the "Schools") within the geographical limits of the diocese. *See, e.g.*, Compl. ¶ 28; Docket No. 10, Ex. 1 (the "RCWC AOI"). RCWC's Amended and Restated Articles of Incorporation provide that "[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." Compl. ¶ 46; RCWC AOI.

The Schools are operated and managed by RCWC, and RCWC owns substantially all property of the Schools. Bankr. Docket No. 1590 ¶ 6. Each School collects revenues, pays expenses, and conducts other operation and financial matters of the school. First Day Decl. ¶ 41. RCWC has its own board and has at all times maintained its own, separate bank accounts and had its own financial statements; it also relies on The Oakland Parochial Fund, Inc. ("OPF") to manage certain of its investments. *Id.* ¶ 42.

B. The Property Of The Debtor And Each Non-Debtor Catholic Entity

The Complaint is largely premised on false allegations that the property and assets and affairs of each Non-Debtor Catholic Entity are so entangled with that of the Debtor that they cannot be separated. The Committee attempts to support these allegations based on the purported "control" exerted by the Bishop, through the Debtor, over the Non-Debtor Catholic Entities (which the Debtor disputes).

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A majority of the real property owned by Catholic entities within the Diocese is owned either by the Debtor or RCWC.[2] In 1962, in connection with the formation of the Diocese of Oakland by the Roman Catholic Church, the Roman Catholic Archbishop of San Francisco and the Roman Catholic Welfare Corporation of San Francisco allegedly transferred their real and personal property in Contra Costa and Alameda Counties to the Debtor and RCWC through three (3) omnibus deeds. Compl. ¶ 58. The real property was divided between the Debtor and RCWC: (i) the Debtor was given ownership of parcels of real property "that contained only churches, which included parcels of real property containing cemeteries," (*see, e.g., id.* ¶¶ 60, 62, 66) and (ii) RCWC was given all ownership of parcels of real property that contained Schools, some of which included Churches.[3] *See, e.g., id.* ¶¶ 60, 63, 66, 67.

The Debtor therefore is the legal owner of all Church real property with Alameda and Contra Costa Counties and RCWC is the legal owner of all School real property. *See, e.g., id.* ¶¶ 66-67; Bankr. Docket No. 1590 ¶ 6. RCC owns no real property. First Day Decl. ¶ 45. All cemeteries, mausoleums, and any other real property necessary to carry out its activities (burial, entombment, and related services) are leased from the Debtor pursuant to ground leases or other appropriate lease forms. *See, e.g., id.* ¶ 45; Compl. ¶¶ 30, 62 (alleging that the Debtor owned parcels of real property that contained cemeteries).

The cash and investments (the "Funds") of the Non-Debtor Catholic Entities are all held separately from the Debtor's cash and investments. The Committee alleges that prior to the transfers to OPF, Funds of the Non-Debtor Catholic Entities were all commingled in the Debtor's Deposit and Loan Fund ("DLF") program. *See, e.g.,* Compl. ¶¶ 89-92. But this is incorrect. From the outset of the case, the Debtor has maintained that Adventus and RCC have always segregated their funds from the Debtor (and each other) and maintained separate bank accounts. First Day Decl. ¶¶ 46, 67. Moreover, the Funds of RCWC held in the DLF program were scrupulously accounted for and held in trust for the benefit of RCWC by the Debtor in various accounts. Bankr. Docket No. 1590 ¶¶ 15-18.

[2] As noted above, Adventus hold title in certain limited real estate, including single-family residences in Byron and Hayward and some undeveloped land in Livermore, and Furrer Properties, Inc., holds title to certain real properties. Compl. ¶ 26; First Day Decl. ¶¶ 65, 67.

[3] RCWC was also allegedly given ownership of the tangible personal property (*e.g.,* alters, pews, tabernacles, and Eucharist) within Alameda and Contra Costa Counties. Compl. ¶ 64.

C. The Series 2007 Bond Offering

The remaining allegations of the Complaint focus on the purported single identity of the Debtor and Non-Debtor Catholic Entities. *See, e.g.*, Compl. ¶¶ 121-122. Again, the crux of these allegations center around the Bishop's purported ability to control the Debtor and the Non-Debtor Catholic Entities, particularly when it came to obtaining financing for the Diocese. *See, e.g., id.* ¶¶ 70, 73-88, 93-95, 122.

For instance, in 2007, the Debtor and the Non-Debtor Catholic Entities sought and obtained a bond (the "Series 2007 Bond"), with Deutsche Bank as the bond trustee, to build the Cathedral of Christ the Light and related complex including mausoleum, rectory, and offices (the "Cathedral Complex"). *See, e.g., id.* ¶¶ 69, 73. As part of the Series 2007 Bond transaction, the Debtor and the Non-Debtor Catholic Entities formed a "Bond Obligated Group." *Id.* ¶ 75. According to the Series 2007 Bond Offering Memorandum, dated November 13, 2007 (the "Offering Memorandum"), the Debtor and each of the Non-Debtor Catholic Entities were allegedly chosen as the obligors of the Series 2007 Bond "because of their strength of their combined credit profile." *Id.* ¶ 78. Each of the Non-Debtor Catholic Entities provided a joint and several guaranty of the Debtor's obligations under the Master Indenture Agreement. *Id.* ¶ 76.

Moreover, the Committee alleges, without support, that the Debtor represented to Deutsche Bank that the "wealth and financial wherewithal to pay the bond debt" included both its assets as well the assets of the Non-Debtor Catholic Entities. *Id.* ¶ 82. The Debtor also allegedly represented to Deutsche Bank that it had the authority to enter into the transaction on behalf of the other Non-Debtor Catholic Entities. *Id.* ¶ 83. But no such support for that allegation exists.

The Series 2007 Bond transaction raised approximately $114.7 million, of which more than half were allegedly used to pay down obligations to Bank of America. *Id.* ¶ 85. The remaining funds were allegedly used to (i) complete the construction of the Cathedral Complex; (ii) expand RCC; (iii) provide loans to parishes and schools from the DLF program; (iv) fund other Diocesan operations; and (v) fund the costs of legal settlements. *Id.* ¶ 86.

Additionally, in 2017, the Debtor, the Non-Debtor Catholic Entities, and PNC entered into that certain Credit and Security Agreement, dated February 2017 (the "2017 Credit Agreement"), under which PNC issued $70 million to the Debtor to allegedly fund the redemption of the outstanding Series 2007

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Bonds. *See, e.g. id.* ¶¶ 97-100. The Debtor and Non-Debtor Catholic Entities allegedly served as guarantors under the 2017 Credit Agreement.[4] *See, e.g., id.* ¶ 98.

D. The Adversary Proceeding

On December 11, 2024, the Committee filed the instant Complaint, containing two Counts that focus on consolidating the Non-Debtor Catholic Entities into the Debtor's bankruptcy estate. Specifically, the Committee seeks a determination that (1) the Non-Debtor Catholic Entities should be substantively consolidated with the Debtor under § 105 of the Bankruptcy Code (Count 2); and (2) the property owned by the Non-Debtor Catholic Entities is somehow property of the estate under § 541 of the Bankruptcy Code (Count 1).

For the reasons set forth below, the Complaint should be dismissed with prejudice, as all Counts fail to state a claim upon which relief can be granted.

III.

LEGAL STANDARD

Under Fed. R. Civ. P. 12(b)(6), incorporated by Fed. R. Bankr. P. 1012, a complaint must be dismissed if it "fail(s) to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The complaint must offer more than "naked assertions devoid of further factual enhancement." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To survive a motion to dismiss, the complaint must contain sufficient facts that "state a claim to relief that is plausible on its face." *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Under this plausibility requirement, the complaint's allegations must be "enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 548. The plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (internal citation omitted). The basis for dismissal may be either "a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008). "A complaint that alleges only 'labels and conclusions' or a 'formulaic

[4] This allegation would mean that the Debtor guaranteed its own obligation, which it did not. *See, e.g.*, Compl. ¶ 75 (defining the "Bond Obligated Group" to include the Debtor and Non-Debtor Catholic Entities).

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recitation of the elements of the cause of action' will not survive dismissal. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (quoting *Twombly*, 550 U.S. at 555). Moreover, a complaint should be dismissed with prejudice when an amendment to the complaint would be futile. *Id.*

In ruling on a motion to dismiss, the court may also consider materials outside of the complaint, such as (1) documents attached to the complaint as exhibits, (2) documents incorporated by reference in the complaint, and (3) matters properly subject to judicial notice. *In re Ame Zion Western Episcopal Dist.*, 629 B.R. 69, 77 (Bankr. E.D. Cal. 2021); *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (noting that the court may consider a document offered by the defendant and treat such document as part of the complaint to the extent the document is relied on by the Plaintiff, and "thus may assume its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).").

IV.

ARGUMENT

A. Count 2 Fails To State A Claim And Should Be Dismissed With Prejudice

Count 2 seeks to substantively consolidate the Non-Debtor Catholic Entities with the Debtor *nunc pro tunc* to the Petition Date. *See, e.g.*, Compl. ¶¶ 117-26. Count 2 should be dismissed because (i) the Court does not have the authority to substantively consolidate a non-debtor, nonprofit corporation with the Debtor under § 105 of the Bankruptcy Code; and (ii) even if the Court had that authority, the Committee has failed to plead sufficient facts to support a claim for substantive consolidation.

1. The Committee Cannot Use Section 105 Of The Bankruptcy Code To Involuntarily Force The Non-Debtor Catholic Entities Into Chapter 11 Under The Guise Of Substantive Consolidation

The Committee cannot use § 105 of the Bankruptcy Code to involuntarily force the Non-Debtor Catholic Entities into chapter 11 under the guise of substantive consolidation. "[T]he power of substantive consolidation derives from the bankruptcy court's general equity powers as expressed in § 105 of the Bankruptcy Code." *In re Bonham*, 229 F.3d 750, 764 (9th Cir. 2000). However, as the Supreme Court has made clear, in exercising its equitable power under § 105, a bankruptcy court may not contravene specific sections of the Bankruptcy Code. *Law v. Siegel*, 571 U.S. 415, 421 (2014). Indeed, "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Id.* (quoting *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988)).

Although some courts are split as to whether § 105(a) may be used to substantively consolidate a debtor with a non-debtor entity, the Ninth Circuit has permitted substantive consolidation of non-debtor entities under certain circumstances. *In re Bonham*, 229 F.3d at 764; *but see Spradlin v. Beads & Steeds Inns, LLC (In re Howland)*, 518 B.R. 408, 414 (Bankr. E.D. Ky. 2014) (disallowing substantive consolidation of non-debtor entities because it circumvents provisions of the Bankruptcy Code dealing with involuntary bankruptcy cases); *In re Pearlman*, 462 B.R. 849, 854-55 (Bankr. M.D. Fla. 2012) (declining to substantive consolidate non-debtor entities). While § 105(a) gives this Court the authority to substantive consolidate non-debtor entities under *Bonham* in appropriate cases, it lacks the authority in this specific instance because doing so directly contradicts the express mandates of § 303(a) of the Bankruptcy Code. *See Siegel*, 571 U.S. at 421 ("It is hornbook law that § 105(a) 'does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.'") (quoting Collier on Bankr. ¶ 105.01[2] (16th ed. 2013)).

Section 303(a) expressly prohibits the commencement of an involuntary bankruptcy case against a "corporation that is not a moneyed, business, or commercial corporation." 11 U.S.C. § 303(a). Although the Bankruptcy Code does not define a "corporation that is not moneyed, business, or commercial," many courts have interpreted this to mean "non-profit" or "not-for-profit" corporations. *See, e.g., In re Archdiocese of St. Paul & Minneapolis*, 553 B.R. 693, 700-01 (Bankr. D. Minn. 2016), *aff'd*, 562 B.R. 755 (D. Minn. 2016), *aff'd*, 888 F.3d 944 (8th Cir. 2018); *In re Skybridge Spectrum Found.*, 2021 WL 2326595, at *11 (Bankr. D.D.C. June 3, 2021) (noting that § 303(a) allows only for corporations organized for profit and finding that the proposed debtor was a non-profit entity that was ineligible to be an involuntary debtor); *In re Grace Christian Ministries, Inc.*, 287 B.R. 352, 355 (Bankr. W.D. Pa. 2002) ("A corporation . . . may not be an involuntary chapter 7 or 11 debtor if it is a not-for-profit corporation."); *In re United Kitchen Assocs., Inc.*, 33 B.R. 214, 216 (Bankr. W.D. La. 1983) ("[E]leemosynary institutions . . . are, thus exempt from involuntary bankruptcy."). The legislative history also confirms this, explaining that "[e]leemosynary institutions, such as churches, schools, and charitable organizations, and foundations, likewise are exempt from involuntary bankruptcy." S. Rep. No. 95–989, at 32 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5818.

To determine whether a corporation is a "moneyed, business, or commercial corporation," courts consider "the classification of the corporation by the state; the powers conferred upon it; and the character and extent of its activities." *Yehud-Monosson USA, Inc. v. Fokkena (In re Yehud-Monosson USA, Inc.)*, 458 B.R. 750, 755 (BAP 8th Cir. 2011); *In re Malden Brook Farms, LLC*, 475 B.R. 299, 303 (Bankr. D. Mass. 2012); *In re Maedc Mesa Ridge, LLC*, 334 B.R. 197, 200 (Bankr. N.D. Tex. 2005); *Grace Christian Ministries, Inc.*, 287 B.R. at 355-56.

The Non-Debtor Catholic Entities are clearly within the definition of "not moneyed, business, or commercial corporation" that are excluded by § 303(a). The Articles of Incorporation of each Non-Debtor Entity confirms that they are non-profit religious California corporations and were organized to carry out religious and/or education activities.[5] *See* Adventus AOI & Bylaws (stating the purpose is charitable and organized exclusively for charitable purposes); RCC AOI & Bylaws (same); RCWC AOI (stating the purpose is to conduct religious and educational activities of the diocese and organized and operated exclusively for religious and educational purposes). As such, the Non-Debtor Catholic Entities are not eligible for involuntary bankruptcy under § 303(a).

Substantive consolidation of a non-debtor entity is the functional equivalent of an involuntary bankruptcy. Because the Non-Debtor Catholic Entities cannot be forced into an involuntary bankruptcy under the plain language of § 303(a), *Law v. Siegel* makes clear that this Court does not have the statutory authority to accomplish the same result through the "back door" of substantively consolidating the Non-Debtor Catholic Entities with the Debtor under § 105(a).

Indeed, under nearly identical circumstances, the Eighth Circuit in *In re Archdiocese of Saint Paul & Minneapolis* recently upheld this principle. There, like here, the creditors' committee sought to rely on § 105(a) of the Bankruptcy Code to substantively consolidate the debtor with over 200 Catholic, non-debtor, non-profit entities, including, among others, parishes in the diocese, consolidated schools, Catholic cemeteries, and other Catholic financial institutions (collectively, the "Target Entities"). *Archdiocese of Saint Paul & Minneapolis*, 888 F.3d 944, 948 (8th Cir. 2018). The bankruptcy court denied the committee's motion for substantive consolidation and the district court affirmed. *Id.*

[5] The Committee also concedes that RCWC is a "nonprofit religious corporation." Compl. ¶ 28.

On further appeal, relying on the principles from *Law v. Siegel*, the Eighth Circuit affirmed the lower courts' conclusions that permitting substantive consolidation of the Target Entities, over their objection, would effectively force non-profit entities into bankruptcy involuntarily and in direct conflict with § 303(a). *Id.* at 952-54. In other words, the bankruptcy court did not have the legal authority to substantively consolidate the debtor and the Target Entities "because to do so would override an explicit statutory protection in the Bankruptcy Code." *Id.* at 953 ("Section 303(a) prevents the use of § 105(a) to force truly independent non-profit entities into involuntary bankruptcy.").

Based on the binding principles from *Law v. Siegel* and the Court's analysis in *Saint Paul & Minneapolis*, the Committee cannot use § 105(a) to circumvent the prohibition against an involuntary bankruptcy against non-profit entities such as the Non-Debtor Catholic Entities. This Court therefore should dismiss Count 2 with prejudice.

2. In The Alternative, The Complaint Fails to Allege Sufficient Facts To State A Claim for Substantive Consolidation

Because the Court does not have the authority to substantively consolidate non-profit corporations, Count 2 fails as a matter of law. Nonetheless, assuming, *arguendo*, that the Court had the authority to substantively consolidate the Non-Debtor Catholic Entities with the Debtor (which is does not), Count 2 must nevertheless be dismissed because the Committee has failed to allege sufficient facts to state a claim for substantive consolidation.

Substantive consolidation is an equitable remedy that combines the assets and liabilities of separate and distinct, but related, legal entities into a single pool and treats them as though they belong to a single entity. *In re Bonham*, 229 F.3d 750, 764 (9th Cir. 2000). Substantive consolidation "enabl[es] a bankruptcy court to disregard separate corporate entities, to pierce their corporate veils in the usual metaphor, in order to reach assets for the satisfaction of debts of a related corporation." *Id.* The Ninth Circuit in *In re Bonham* adopted the two-factor test to determine whether substantive consolidation is appropriate: (1) whether creditors dealt with the subject entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors. *Id.* at 766 (adopting the Second Circuit's test in *In re Augie/Restivo Baking Co., Ltd.* 860 F.2d 515 (2d Cir. 1988)). Neither factor is present here.

At bottom, the Committee believes that substantive consolidation is warranted because the Bishop, through the Debtor, allegedly exercises control over the Non-Debtor Catholic Entities and their property. *See, e.g.*, Compl. ¶¶ 118-120. In support of the first factor, the Committee asserts that the Debtor and the Non-Debtor Catholic Entities functioned as a single unit that creditors did not rely on their separate identity in extending credit. *Id.* ¶ 121. But aside from this bald assertion that creditors treated them as one, the Complaint utterly fails to include allegations of creditor confusion or that from a creditor's perspective they believed the Debtor and Non-Debtor Catholic Entities were one and the same.

Whether a creditor treats the entities as the same is viewed from the creditors' perspective. *See, e.g., In re Republic Airways Holding Inc.*, 565 B.R. 710, 717 (Bankr. S.D.N.Y. 2017) ("The inquiry is whether *creditors* treated the debtors as a single entity, not whether the managers of the debtors themselves, or consumers viewed the [debtors] as one enterprise."). To that end, the Complaint must allege facts that support a reasonable inference that the creditors perceived the debtor and non-debtor entities as one unit in extending credit. *Compare Official Committee of Unsecured Creditors of Verestar, Inc. v. American Tower Corp. (In re Verestar, Inc.)*, 343 B.R. 444, 463 (Bankr. S.D.N.Y. 2006) (finding that the complaint failed to allege that creditors saw the debtor and other entity as one because the there were no specific allegations of creditor confusion or that the debtor's creditors extended credit based on the target entity's financials); *with In re The Lodge at Big Sky, LLC*, 454 B.R. 138, 141-43 (Bankr. D. Mont. 2011) (finding that creditors treated the entities as one and substantive consolidation was appropriate because evidence demonstrated that vendors were sending invoices to the debtor even though operations were taken over by the target entity). Nothing of the sort is alleged here.

There are no facts alleged that show any creditor believed that the Debtor and the Non-Debtor Catholic Entities were the same unit. Instead, the Committee alleges that in obtaining the 2007 Series Bond, the Debtor made certain representations to Deutsche Bank and other "creditors" regarding the assets of the Debtor and each Non-Debtor Catholic Entity (who also served as guarantors). *See, e.g.*, Compl. ¶¶ 79, 82-83 (alleging that the Debtor represented to Deutsche Bank that it had the financial wherewithal to pay the bond debt with its immediate assets but also with assets of the Non-Debtor Catholic Entities and had the authority to enter into the bond offering on behalf of each Non-Debtor Catholic Entity). These types of representations appear to be standard representations that a borrower and guarantor would make

in obtaining a loan. Further, the fact that Deutsche Bank required the Non-Debtor Catholic Entities to guarantee the Bond obligations and that the Offering Memorandum made specific representations about the availability of their assets to satisfy the debt only demonstrates that Deutsche Bank fully understood that they were separate entities. Put another way, had Deutsche Bank believed those different entities were all part of the same borrower, it would have had no need or desire for guarantees or the Debtor's debt from any of them.

Further, the Committee's reliance on the 2004 Series Bond documents, as well as the subsequent 2017 Credit Agreement, is misplaced, because those documents demonstrate the exact opposite of what the Committee suggests. Each of these sets of loan documents specifically required a guaranty by the Non-Debtor Catholic Entities that make up the "Bond Obligated Group," demonstrating the lender's recognition of the separate nature of these entities. If the lenders dealt with the Bond Obligated Group as a single economic unit, *see In re Bonham*, 229 F.3d at 766, they would not have required separate guarantees and separate financial disclosures. The Committee also misconstrues references to juridic persons subject to the Debtor's governance, i.e. the parish Churches, as applying to the Non-Debtor Catholic Entities. In reality, these lending agreements simply demonstrate that the first *Bonham* factor is not satisfied, because the lenders regarding the Debtor and the Non-Debtor Catholic Entities as affiliated, but separate, entities.

Next, in support of factor two—alleged entanglement of affairs—it is the Committee's position that as a result of the Debtor's purported control over the Non-Debtor Catholic Entities, their affairs are so substantially entangled that the no accurate identification or allocation of assets is possible in the absence of substantive consolidation. *See, e.g.*, Compl. ¶¶ 120, 123. Again, the Complaint plainly fails to sufficient allege facts that support this conclusion. This claim is illogical. The activities and affairs of each Non-Debtor Catholic Entity are separate and distinct. For instance, RCC provides burial services for the deceased while RCWC oversees the Schools within the diocese. These operations are separate and distinct from one another that there could not possibly be an argument for entanglement. Moreover, neither have the financing matters intertwined with the Debtor or another Non-Debtor Catholic Entity, and the Committee has failed to plead otherwise.

Consolidation under the entanglement factor is reserved for situations where the debtor and target entities ignore corporate formalities, commingle assets, and there is no clear demarcation of affairs between the entities that it is either impossible to untangle their affairs or the time and expense required to do so would be futile. *See, e.g., Bonham,* 229 F.3d at 767 (finding substantive consolidation appropriate where the debtor commingled her assets with non-debtor assets and there was no clear demarcation between the affairs of the debtor and non-debtor); *Meruelo Maddux Props. Inc. v. Bank of Am., N.A. (In re Meruelo Maddux Props., Inc.),* 667 F.3d 1072, 1075 n.1 (9th Cir. 2012) ("Appellate courts have ratified substantive consolidation orders when, for example, the debtors have abused corporate formalities, or creditors have treated the separate entities as a single unit and the business affairs of the consolidated entities were hopelessly entangled."); *Sharp v. Salyer (In re SK Foods, LP),* 499 B.R. 809, 839-42 (Bankr. E.D. Cal. 2013) (finding substantial entanglement where the debtor and the target entities did not document any intercompany transactions, comingled assets, disregarded corporate formalities, and engaged in inequitable conduct by diverting assets of the debtor); *Simantob v. Lahijani (In re Lahijani),* 2005 WL 4658490, at *10 (Bankr. C.D. Cal. Oct. 3, 2005) (finding substantive consolidation of non-debtors appropriate where, among other things, the debtor commingled funds, disregarded corporate form, debtor served as the principal used the entity's assets for his personal benefit, and the financial affairs between the entities were so entangled there was no ability to trace funds).

Simply alleging that the Debtor purportedly exercised some control over the Non-Debtor Catholic Entities (which the Debtor disputes) does not, without more, support substantive consolidation. Indeed, in rejecting almost identical allegations, the bankruptcy in *Archdiocese of St. Paul & Minneapolis* concluded the same and observed the following:

> Even if the committee had alleged facts identifying each non-debtor, the motion fails to show how the interrelationship requires consolidation. There is no doubt that the Catholic Church is hierarchical in its organization and authoritarian in doctrinal matters. But those characteristics are insufficient for a court to ignore its corporate legal structure. The typical substantive consolidation is reserved for situations where the finances of two or more debtors are so confusingly intertwined that it is impossible to separate them. Nothing of the sort is alleged here. . . . For example, the committee contends that the Archbishop and Vicar General have certain managerial functions and oversight over the non-debtors. Even if the Archbishop exercises control over the targeted Catholic entities and properties, such exercises of authority, alone, fail to constitute an abuse of

> the corporate form as such acts are duly contemplated under Minnesota law governing religious corporations and organizations. The ex officio roles of the Archbishop and the Vicar General (mandated, by the way, by Minnesota corporation law) do not mean that the finances of the targeted entities are inextricably intertwined with those of the debtor.

553 B.R. 693, 703 (Bankr. D. Minn. 2016), *aff'd*, 562 B.R. 755 (D. Minn. 2016), *aff'd*, 888 F.3d 944, 953 (8th Cir. 2018) (concluding that the facts as alleged in the complaint could not overcome the "express prohibition of § 303(a) against an involuntary bankruptcy of non-debtor non-profits."). Similarly, in *In re Verstar Inc.*, the only thing alleged by the committee in support of substantive consolidation was that the non-debtor entity used its control over the debtor's finances to sweep the debtor's cash into a common account. 343 B.R. at 463. There, the bankruptcy court denied substantive consolidation because such allegations "may give rise to liability, but there [was] no allegation that it [was] impossible to sort out the intercompany transfers or that the companies' respective rights to the cash cannot be traced." *Id.* The same is true here. As the Committee acknowledges, the Debtor and all Non-Debtor Catholic Entities publish annual audited financials, which on its face undercuts the suggestion that their financial affairs are too entangled to separate.

Nothing alleged in the Complaint supports the notion that the assets and affairs of the Non-Debtor Catholic Entities would be impossible to "untangle" from the Debtor. Rather the opposite conclusion can be reached. The Committee alleges that the Debtor holds legal title over the Church real property; RCWC holds title to the School property; and Adventus holds title to single-family residences in Byron and Hayward and undeveloped land in Livermore. *See, e.g.*, Compl. ¶¶ 26, 58, 60, 62, 63, 66. Moreover, as to the alleged "commingled" Funds in the DLF program, none of the alleged facts show "untangling is either impossible or so costly as to consume the assets." *In re Augie/Restivo Baking Co., Ltd.*, 860 F.2d 515, 519 (2d Cir. 1988) (noting that consolidation under the entanglement factor should not be "Pavlovian;" rather, "commingling, therefore, can justify substantive consolidation only where the time and expense necessary even to attempt to unscramble them is so substantial as to threaten the realization of any net assets for all the creditors, or where no accurate identification and allocation of assets is possible." (cleaned up)).[6] This is also misleading, because, as the Committee is well aware, RCWC is the

[6] In fact, for further details of how to "untangle" (to extent they are tangled) the Funds that were held through the DLF program, the Debtor directs the Committee to the declaration of Paul Bongiovanni [Bankr. Docket No. 1590]

only Non-Debtor Catholic Entity that even had some of its own funds on deposit in the DLF as of the Petition Date.

As such, Count 2 fails to state a claim upon which relief can be granted and should be dismissed with prejudice.

B. Count 1 Fails To State A Claim And Should Be Dismissed With Prejudice

Count 1 seeks a declaratory judgment that the Property of the Non-Debtor Catholic Entities is property of the Debtor's estate under § 541 of the Bankruptcy Code. According to the Committee, the Debtor's alleged control over the property of the Non-Debtor Catholic Entities demonstrates that the Debtor holds both legal and equitable interests in the property. Compl. ¶¶ 113-14. This claim is fatally flawed in at least two respects.

First, Count 1 is nothing more than a "back door" attempt to substantive consolidate the Non-Debtor Catholic Entities with the Debtor by alleging, without any basis whatsoever, that the Debtor somehow "owns" the property of the Non-Debtor Catholic Entities. As discussed above, under *Law v. Siegel* and *Saint Paul & Minneapolis*, this Court simply cannot force the Non-Debtor Catholic Entities into bankruptcy by allowing the Committee to grab all of their property. *See also Avery v. Leya Techs., LLC (In re Prototype Eng'g & Mfg., Inc.)*, 628 B.R. 132, 146 (Bankr. C.D. Cal. 2020) (noting that "*Bonham* supports the proposition that upon issuance of a substantive consolidation order, the property of a consolidated non-debtor because property of the estate under 11 U.S.C. § 541."). Thus, for the same reasons noted above, Count 1 should be dismissed with prejudice.

Second, the Complaint fails to allege any basis that the Debtor actually holds legal title to the property of the Non-Debtor Catholic Entities. Indeed, the Complaint recognizes that the Debtor does not own title to such property. *See, e.g.*, Compl. ¶ 26 (alleging Adventus holds title to limited real estate); ¶¶ 58-67 (alleging that RCWC had legal title to School real property).

A bankruptcy estate's interest in property is defined by state law. *Butner v. U.S.*, 440 U.S. 48, 55 (1979) ("Property interests are created and defined by state law."). In California, corporations are regarded as a legal entity that is separate and distinct from its shareholders, officers and directors, and other

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filed in support of the *Debtor's Objection to the Official Committee of Unsecured Creditors' Motion for Standing to Prosecute Claims of the Debtor's Estate* [Bankr. Docket No. 1586].

affiliated entities; only in certain circumstances may that corporate identity be disregarded under the extraordinary remedy of alter ego. *See, e.g., Mou v. SSC San Jose Operating Co. LP*, 415 F. Supp. 3d 918, 929-31 (N.D. Cal. 2019) (noting that courts may disregard a corporate identity by piercing the corporate veil or under the doctrine of alter ego).

As noted above, none of those circumstances are alleged here, nor could the Committee make such an allegation in good faith.[7] The Non-Debtor Catholic Entities are separate and distinct entities that have their own assets and liabilities. The Committee's request for a declaration that would pilfer the assets of the Non-Debtor Catholic Entities under the mantle of § 541 of the Bankruptcy Code is, at best, utterly baseless. This Court should dismiss Count 1 of the Complaint with prejudice.

V.

CONCLUSION

For the reasons set forth above, the Debtor respectfully requests that the Court grant the Motion, dismiss all Counts of the Complaint with prejudice, and grant other relief that the Court deems just and proper.

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[7] Moreover, the Debtor has repeatedly maintained that any funds held at OPF for the benefit of RCWC are held in trust. *See Debtor's Objection to the Official Committee of Unsecured Creditors' Motion for Standing to Prosecute Claims of the Debtor's Estate* [Bankr. Docket No. 1586] and the declaration in support by Paul Bongiovanni [Bankr. Docket No. 1590].