FOLEY & LARDNER LLP
Thomas F. Carlucci (CA Bar No. 135767)
Tel: (415) 984-9824; tcarlucci@foley.com
Shane J. Moses (CA Bar No. 250533)
Tel: (415) 438-6404; smoses@foley.com
Emil P. Khatchatourian (CA Bar No. 265290)
Tel: (312) 832-5156; ekhatchatourian@foley.com
Ann Marie Uetz (admitted *pro hac vice*)
Tel: (313) 234-7114; auetz@foley.com
Matthew D. Lee (admitted *pro hac vice*)
Tel: (608) 258-4203; mdlee@foley.com
Geoffrey S. Goodman (admitted *pro hac vice*)
Tel: (312) 832-4515; ggoodman@foley.com
Mark C. Moore (admitted *pro hac vice*)
Tel: (214) 999-4150; mmoore@foley.com
555 California Street, Suite 1700
San Francisco, CA 94104-1520

Counsel for the Debtor
and Debtor in Possession

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, THE OAKLAND PAROCHIAL FUND, INC., AND JOHN DOE CHURCHES 1-82, Defendants.	Adv. Pro. No. 24-04051 **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 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, including its churches, with prejudice, and grant such other and further relief as this Court finds just and proper.

DATED: January 24, 2025

FOLEY & LARDNER LLP
Thomas F. Carlucci
Shane J. Moses
Emil P. Khatchatourian
Ann Marie Uetz
Matthew D. Lee
Geoffrey S. Goodman
Mark C. Moore

/s/ Shane J. Moses
Shane J. Moses

Counsel for the Debtor
and Debtor in Possession

FOLEY & LARDNER LLP
Thomas F. Carlucci (CA Bar No. 135767)
Tel: (415) 984-9824; tcarlucci@foley.com
Shane J. Moses (CA Bar No. 250533)
Tel: (415) 438-6404; smoses@foley.com
Emil P. Khatchatourian (CA Bar No. 265290)
Tel: (312) 832-5156; ekhatchatourian@foley.com
Ann Marie Uetz (admitted *pro hac vice*)
Tel: (313) 234-7114; auetz@foley.com
Matthew D. Lee (admitted *pro hac vice*)
Tel: (608) 258-4203; mdlee@foley.com
Geoffrey S. Goodman (admitted *pro hac vice*)
Tel: (312) 832-4515; ggoodman@foley.com
Mark C. Moore (admitted *pro hac vice*)
Tel: (214) 999-4150; mmoore@foley.com
555 California Street, Suite 1700
San Francisco, CA 94104-1520

Counsel for the Debtor
and Debtor in Possession

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, THE OAKLAND PAROCHIAL FUND, INC., AND JOHN DOE CHURCHES 1-82, Defendants.	Adv. Pro. No. 24-04051 **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

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT 1

II. BACKGROUND 2

A. General Background and Structure of the Debtor and the Diocese of Oakland 2

B. The Funds Held By The Debtor For The Benefit of The Churches And RCWC 4

C. The Adversary Proceeding 7

III. LEGAL STANDARD 7

IV. ARGUMENT 8

A. Count 1 Should Be Dismissed Because There Is No Actual Controversy 8

B. Counts 2, 3, And 4 Should Be Dismissed With Prejudice As They Either Fail To State An Actual Controversy Or There Insufficient Facts To State A Claim 9

1. All Claims Related to the Church Real Property Are Moot And Fail To State An Actual Controversy 10

2. All Claims Related To The Unrestricted Church Funds Are Moot And Fail To State An Actual Controversy 10

3. The Restricted Church Funds Are Held in Trust And Are Not Property Of The Estate 11

C. Count 5 Fails To State A Claim And Should Be Dismissed With Prejudice 12

D. Count 6 Fails To State A Claim And Should Be Dismissed With Prejudice 13

1. The Committee Cannot Use Section 105 Of The Bankruptcy Code To Involuntarily Force OPF Into Chapter 11 Under The Guise Of Substantive Consolidation 13

2. In The Alternative, The Complaint Fails To Allege Sufficient Facts To State A Claim for Substantive Consolidation 16

V. CONCLUSION 19

TABLE OF AUTHORITIES

Page(s)

Cases

In re Ame Zion Western Episcopal Dist.,
629 B.R. 69 (Bankr. E.D. Cal. 2021) 8

In re Archdiocese of St. Paul & Minneapolis,
553 B.R. 693 (Bankr. D. Minn. 2016) 14, 15, 18

In re Archdiocese of St. Paul & Minneapolis,
888 F.3d 944 (8th Cir. 2018) 2, 15, 16

Ashcroft v. Iqbal,
556 U.S. 662 (2009) 7, 12

In re Augie/Restivo Baking Co., Ltd.,
860 F.2d 515 (2d Cir. 1988) 16

Begier v. I.R.S.,
496 U.S. 53 (1990) 11

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007) 7, 8

In re Bonham,
229 F.3d 750 (9th Cir. 2000) 13, 14, 16, 17

Butner v. U.S.,
440 U.S. 48 (1979) 11

Center for Biological Diversity v. Lohn,
511 F.3d 960 (9th Cir. 2007) 8, 10

Cervantes v. Countrywide Home Loans, Inc.,
656 F.3d 1034 (9th Cir. 2011) 8

City of Palm Springs v. Living Desert Rsrv.,
70 Cal. App. 4th 613 (Cal. Ct. App. 1999) 12

Danning v. Bozek (In re Bullion Rsrv. of N. Am.),
836 F.2d 1214 (9th Cir. 1988) 11

Flint v. Dennison,
488 F.3d 816 (9th Cir. 2007) 8

In re Grace Christian Ministries, Inc.,
287 B.R. 352 (Bankr. W.D. Pa. 2002) 14, 15

Insurance Co. v. Simon (In re Foam Sys. Co.),
92 B.R. 406 (B.A.P. 9th Cir. 1988) 11

Johnson v. Riverside Healthcare Sys., LP,
534 F.3d 1116 (9th Cir. 2008) 8

Law v. Siegel,
571 U.S. 415 (2014) 2, 14, 15, 16

L.B. Rsch. & Educ. Found. v. UCLA Found.,
130 Cal. App. 4th 171 (Cal. Ct. App. 2005) 12

In re Maedc Mesa Ridge, LLC,
334 B.R. 197 (Bankr. N.D. Tex. 2005) 15

In re Malden Brook Farms, LLC,
475 B.R. 299 (Bankr. D. Mass. 2012) 15

McHenry v. Renne,
84 F.3d 1172 (9th Cir. 1996) 13

Meruelo Maddux Props. Inc. v. Bank of Am., N.A. (In re Meruelo Maddux Props., Inc.),
667 F.3d 1072 (9th Cir. 2012) 17

In re Moeller,
466 B.R. 525 (Bankr. S.D. Cal. 2012) 11

Norwest Bank Worthington v. Ahlers,
485 U.S. 197 (1988) 14

Official Committee of Unsecured Creditors of Verestar, Inc. v. American Tower Corp. (In re Verestar, Inc.),
343 B.R. 444 18

In re Pearlman,
462 B.R. 849 (Bankr. M.D. Fla. 2012) 14

San Diego County Credit Union v. Citizens Equity First Credit Union,
65 F.4th 1012 (9th Cir. 2023) 8, 10

Sharp v. Salyer (In re SK Foods, LP),
499 B.R. 809 (Bankr. E.D. Cal. 2013) 17

Simantob v. Lahijani (In re Lahijani),
2005 WL 4658490 (Bankr. C.D. Cal. Oct. 3, 2005) 17

In re Skybridge Spectrum Foundation,
2021 WL 2326595 (Bankr. D.D.C. June 3, 2021) 14

Spradlin v. Beads & Steeds Inns, LLC (In re Howland),
518 B.R. 408 (Bankr. E.D. Ky. 2014) 14

Staton v. Bank of Am. (BAC) Home Loans Servicing LP,
671 F. App'x 459 (9th Cir. 2016) 8

In re United Kitchen Assocs., Inc.,
33 B.R. 214 (Bankr. W.D. La. 1983) 14

United States v. Ritchie,
342 F.3d 903 (9th Cir. 2003) 8

Yehud-Monosson USA, Inc. v. Fokkena (In re Yehud-Monosson USA, Inc.),
458 B.R. 750 (BAP 8th Cir. 2011) 15

Statutes

Cal. Corp. Code § 9230(d) (1978) 12

11 U.S.C. § 105 ..... 2, 13, 14

11 U.S.C. § 105(a) 14, 15, 16

11 U.S.C. § 303(a) 2, 14, 15, 16, 18

11 U.S.C. § 541 ..... 7, 9, 11, 12

11 U.S.C. § 541(a) 5

11 U.S.C. §§ 1107(a) and 1108 3

Rules

Fed. R. Bankr. P. 1012 7

Fed. R. Civ. P. 8 12

Fed. R. Civ. P. 8(a)(2) 7

Fed. R. Civ. P. 12(b)(6) 7, 8

Other Authorities

13 Witkin, Summary of California Law, Trusts § 1 (10th ed. 2005) 11

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) The Oakland Parochial Fund, Inc. ("OPF"), and (iii) the John Doe Churches 1-82 (as referred to in the Complaint) in the *Adversary Complaint for Declaratory Relief* [Docket No. 1] (the "Complaint" or "Compl.") filed in the above captioned adversary proceeding by the Official Committee of Unsecured Creditors (the "Committee").

I.

PRELIMINARY STATEMENT

This Court should dismiss all counts of the Complaint because it fails as a matter of law. Counts 1-4 puzzlingly seek relief against the Debtor's parish churches (the "Churches"), which are part of the Debtor. Count 1 seeks a declaratory judgment that the "Churches are unincorporated divisions of a corporation and are merely parts of the Diocese." This Count is moot and does not state an actual controversy because the Debtor has repeatedly acknowledged that the Churches are not separately incorporated legal entities under California law. Similarly, Count 4 of the Complaint—which seeks substantive consolidation of the Churches with the Debtor—should be dismissed because there are no separate legal entities to consolidate. The Churches are already part of the Debtor's estate.

In Counts 2 and 3, the Committee seeks to bring the real and personal property of the Churches into the Debtor's estate through declaratory judgment actions. This Court should dismiss these Counts as well. Because the Debtor already acknowledges that all Church property except for Restricted Church Funds (as defined below) is property of the estate, there is no actual controversy between the parties, and the Counts are moot.

Moreover, the Committee does not state a claim under Count 3 with respect to Restricted Church Funds. The Restricted Church Funds are donations by parishioners to the Churches for a specific religious purpose. The Committee does not make any allegation to the contrary in the Complaint. As a result, under California law, these funds are held in trust and are not property of the estate. To the extent that the

Committee seeks to allege that Restricted Church Funds should be deemed to be property of the estate, the Complaint falls far short of alleging a cognizable claim for that relief.

In Count 5, the Committee seeks a declaratory judgment that $8.3 million allegedly transferred by the Debtor into a restricted bank account is property of the estate. But Count 5 is alleged only against OPF, yet fails to allege that those funds were transferred to OPF. As to $6 million of these funds, the Debtor set such funds aside for purposes of paying employee health benefits, workers' compensation obligations and insurance. There is no dispute that the $6 million was property of the estate and, therefore, no justiciable controversy exists between the parties.

In Count 6, the Debtor seeks to substantively consolidate OPF, a non-debtor, non-profit entity, into the Debtor's estate. Count 6 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 (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 a non-profit such as OPF into bankruptcy under § 303(a).

Second, even if this Court has the authority to substantively consolidate OPF with the Debtor (which it does not), Count 6 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 OPF, and (b) unsupported conclusions that the Debtor and OPF are too entangled. These allegations are plainly insufficient to state a cognizable claim for substantive consolidation. This Court therefore should dismiss Count 6 as well.

II.

BACKGROUND

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 Petition 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 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. 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.

To carry out its Catholic mission, the Debtor works closely with its parish Churches. None of the Churches within the diocese are separately incorporated entities under California law. Under Canon Law and the internal organizing principles of the Catholic Church, each of the parish Churches is a separate juridic person, entrusted to the care of its priest, and under the governance of but recognized as separate from the Debtor. Consistent with Canon Law, to the extent that the Bishop holds goods belonging to a parish—such as real and personal property—he does so in trust for the benefit of the applicable Church. *See, e.g.*, Compl. ¶¶ 17, 37, 38, 42. However, because the Churches are not separately incorporated legal entities, as a matter of California law they are not separate from the Debtor, and they do not own or hold a legal or equitable interest in property separate from the Debtor.[2] As discussed below, this fact, which has previously been acknowledged to the Committee, moots a significant portion of the Complaint.

---

[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. Case Docket No. 19] (the "First Day Declaration"), which is incorporated herein by reference.

[2] This fact does not mean that all such Church property is available for liquidation.

The Debtor also has relationships with certain other distinct entities that are separately incorporated under California law and which are not debtors in this Chapter 11 Case (each such incorporated entity a "Non-Debtor Catholic Entity," and collectively, the "Non-Debtor Catholic Entities"). Each of the Non-Debtor Catholic Entities is described in the First Day Declaration. The Debtor provides certain administrative services (centralized human resources, accounting, and financial management) and programmatic support services to certain Non-Debtor Catholic Entities in support of their religious, educational and charitable missions. However, each Non-Debtor Catholic Entity is a separate and distinct legal entity that operates independently from each other (and the Debtor) and accounts for its operations separately.

Among the Non-Debtor Catholic Entities is RCWC, a California nonprofit religious corporation that oversees 32 elementary and two high schools (collectively, the "Schools") within the geographical limits of the diocese. Each School collects revenues, pays expenses, and conducts other operation and financial matters of the school. The Schools are operated and managed by RCWC, and RCWC owns substantially all property of the Schools. RCWC is a separate legal entity, incorporated under California law as a non-profit religious corporation, has its own board and officers, and while it may share a similar Catholic faith, it operates separately from the Debtor. RCWC is not a debtor in this Chapter 11 Case and its assets are not property of the Debtor's estate.

B. The Funds Held By The Debtor For The Benefit of The Churches And RCWC

Before April 2023, the Debtor managed certain deposits and investments on behalf of itself as well as for participating Churches and RCWC, through two programs: (1) The Deposit and Loan Fund program (the "DLF"), which held cash, investments, and loans (the "Funds") to participating Churches and Schools, and (2) the Investment/Endowment Pool (the "Endowment Pool" and collectively with the DLF, the "Diocesan Investment Management Services") in which Churches and the Schools could separately invest Funds with long-term investment horizons in marketable securities. *See, e.g.*, Compl. ¶¶ 28 & 79.

With respect to Funds held for the benefit of RCWC (the "School Funds"), the Debtor has consistently maintained that those Funds are held in trust for the benefit of RCWC and the various Schools, and the Committee does not allege otherwise in the Complaint. As to the Funds held by the Debtor on behalf of the Churches (the "Church Funds"), Canon Law requires the Debtor to hold that cash specifically

for the benefit of the Churches. *See, e.g.*, Compl. ¶ 37 (citing the Disclosure Statement, Art. IV.C). The Debtor therefore separately accounted for all Church Funds, and treated them accordingly, although as a matter of civil law the Churches are not separate from the Debtor. *See, e.g.*, Compl. ¶¶ 37-39. A portion of the Church Funds are donor-restricted funds because they are Funds donated to a Church for a specific purpose as set forth by the donor (the "Restricted Church Funds"). When donors make donations to a Church or to the Debtor, they may direct their donations be devoted to a particular charitable purpose. Such restricted funds are then held in trust for that purpose as a matter of California law and are, therefore, not property of the Debtor's estate in bankruptcy. These Restricted Church Funds are distinct from unrestricted Church Funds, which can be used for any purpose of the Catholic Church (the "Unrestricted Church Funds") and therefore are not held in trust. *See, e.g.*, Compl. ¶¶ 39-41. Because the Churches are not separate legal entities, the Unrestricted Church Funds are legally property of the estate pursuant to § 541(a) of the Bankruptcy Code.

In April 2023, the Debtor transitioned the Diocesan Investment Management Services to The Oakland Parochial Fund, Inc. ("OPF"), which is a separate California nonprofit religious corporation organized for the purpose of supporting the missions of the diocese. *See, e.g., id.* ¶ 46; Docket No. 7, Ex. 1 (Articles of Organization of OPF). OPF provides the same managerial and administrative functions that the Debtor previously performed for the Churches and RCWC through the Diocesan Investment Management Services.[3] *See, e.g.*, Compl. ¶¶ 55, 60, 63-65, 68-69, 75. And the Debtor continues to support these functions through a management agreement with OPF, whereby the Debtor provides the personnel and services necessary to OPF's function. *See, e.g., id.* ¶¶ 56, 68-69, 72.

The Debtor vehemently disagrees with the Committee's baseless aspersions as to the motive and intent behind this transition. The Committee wrongly believes that because the transition to OPF occurred shortly before the Petition Date, the Debtor's intent was to shield assets from its creditors. *See, e.g., id.* ¶¶ 133, 135. This is simply not correct, and there are no facts to support that baseless claim. The Debtor

[3] For instance, if an RCWC School or a Church needs to access their Funds, they make the withdrawal request to OPF. Functionally, OPF acts as a deposit and investment manager for the Churches and RCWC. Bankr. Docket No. 1590, ¶ 26. The Funds deposited with OPF and the investments it manages are held by OPF for the benefit of the depositing Churches and RCWC Schools. *Id.*

has repeatedly stated on the record that any assets that were property of the Debtor before the transition remain property of the Debtor as deposited with OPF, and therefore property of the estate, now. *See* Bankr. Docket Nos. 1586 at p. 9 & 1590 at ¶ 4; Oral Argument at 22:50-23:27, Bankr. Docket No. 1647 (Hr'g on Jan. 16, 2025). The Debtor has not, does not, and will not claim that the character of any asset transferred into OPF has changed by virtue of that transfer—neither to be shielded from creditors, nor to be more available to creditors.

In furtherance of the transition from the Diocesan Investment Management Services to OPF, on April 1, 2023, the Debtor transferred to OPF approximately $100,973,312 belonging to the Churches and RCWC, consisting of investment Funds in the DLF program and Endowment Pool, as well as receivables for loans made from the DLF to individual Churches. Compl. ¶¶ 80, 83.

On May 5, 2023, the Debtor transferred an additional $5,002,915 held in the Deposit Account to OPF. *Id.* ¶¶ 82-83. The Funds transferred to OPF totaled to approximately $106 million, which included approximately $92 million in cash and investments and approximately $14 million in loan receivables from Churches and Schools. *Id.* ¶ 83.

Moreover, and although not specified in the Complaint, the break down between Church Funds and School Funds transferred to OPF is as followed: (i) approximately $74,978,240 were Church Funds, of which approximately $25,820,630 were Restricted Church Funds and $49,158,609.80 were Unrestricted Church Funds; and (ii) approximately $30,997,988 were School Funds. Bankr. Docket No. 1590, ¶ 22.

Importantly, the Funds at OPF are held in the same manner that they were held by the Debtor through the Diocesan Investment Management Services. That is, the $30.9 million of School Funds (which are not at issue here) at OPF are held in trust for the benefit of RCWC and the Schools; the $25.8 million of Restricted Church Funds are held at OPF in trust for a specific charitable purpose; and the $49 million of Unrestricted Church Funds at OPF is considered property of the estate under Civil law. Based on facts alleged in the Complaint, it appears the Committee is only after the Unrestricted Church Funds. *See, e.g.*, Compl. ¶ 43 (alleging that the Debtor asserts $49.6 million of Church Funds is held in trust).

Additionally, on April 28, 2023, OPF loaned $35 million to the Debtor to fund this Chapter 11 Case (the "OPF Loan"), (*id.* ¶¶ 85-86), including to pay the professional fees of the Debtor and the

Committee. The Debtor then allegedly transferred approximately $8.3 million of the OPF Loan from an unrestricted bank account to a restricted bank account. *Id.* ¶ 87.

C. The Adversary Proceeding

On November 20, 2024, the Committee filed the instant Complaint, containing various counts against OPF and the Churches. The Committee seeks a determination that (1) the Churches are unincorporated divisions of the "Diocese" [4]; (2) that all property of the Churches is property of the estate under § 541 of the Bankruptcy Code; (3) that no valid "trust" exists with respect to the Church property; (4) the Churches and the Debtor should be substantively consolidated; (5) the $8.3 million of the OPF Loan is property of the estate under § 541 of the Bankruptcy Code; and (6) OPF, a non-debtor, should be substantively consolidated with the Debtor. *See generally*, Counts 1-6.

For the reasons set forth below, the Complaint should be dismissed with prejudice, as all counts are either moot or 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

[4] The Committee refers to the "Diocese" and the "Debtor" interchangeably. This is confusing and misleading. The Debtor is the Roman Catholic Bishop of Oakland, a corporation sole. The Diocese of Oakland is not a corporation or any form of legal entity. It is a geographical area that is served by the Debtor, but also by other Non-Debtor Catholic Entities that are legally and practically distinct from the Debtor.

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 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, and "thus may assume its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).").

IV.

ARGUMENT

A. Count 1 Should Be Dismissed Because There Is No Actual Controversy

In Count 1, the Committee seeks a declaratory judgment that the "Churches are unincorporated divisions of a corporation and are merely parts of the Diocese." Compl. ¶¶ 96-101. This Count is moot and does not state an actual controversy because the Debtor has acknowledged that the Churches are not separately incorporated, legal entities under California law.[5] *See, e.g., Staton v. Bank of Am. (BAC) Home Loans Servicing LP*, 671 F. App'x 459 (9th Cir. 2016) ("If a claim 'has lost its character as a present, live controversy,' it is moot." (quoting *Flint v. Dennison*, 488 F.3d 816, 823 (9th Cir. 2007)); *San Diego County Credit Union v. Citizens Equity First Credit Union*, 65 F.4th 1012,1022-23 (9th Cir. 2023) (noting that a declaratory judgment may be granted only when there is an actual case or controversy); *Center for*

[5] As discussed below, this does not mean that *all* Church property is property of the estate or available for liquidation. The Debtor further reserves all of rights to argue that the Debtor cannot be forced to liquidate Church real property including, without limitation, under chapter 7 of the Bankruptcy Code. But that point has no bearing on Count 1, which is plainly moot.

Biological Diversity v. Lohn, 511 F.3d 960, 964 (9th Cir. 2007) (finding that because no live controversy remains between the parties, the declaratory relief was also moot). As such, there is not a justiciable controversy, and Count 1 must be dismissed as moot.

B. Counts 2, 3, And 4 Should Be Dismissed With Prejudice As They Either Fail To State An Actual Controversy Or There Insufficient Facts To State A Claim

In Counts 2, 3, and 4, the Committee essentially seeks to bring the Real Property and Funds of the Churches into the Debtor's bankruptcy estate. In particular, Count 2 requests entry of a declaratory judgment that all Property of the Churches is property of the estate under § 541 of the Bankruptcy Code. *See, e.g.*, Compl. ¶¶ 102-108. To the extent the Property is held in trust, Count 3 seeks a declaratory judgment that no such valid trust exists. *See, e.g., id.* ¶¶ 109-116. Furthermore, to the extent that the Court determines that the Churches are incorporated entities, capable of owning property, Count 4 seeks to substantively consolidate the Churches with the Debtor. *See, e.g., id.* ¶¶ 117-123. For the reasons set forth below, these claims must be dismissed. These Counts all fail to state a claim for the same reason: the Debtor has already acknowledged that property of the Churches (other than Restricted Church Funds) is property of the estate.[6]

The Debtor has already clearly described the distinction between the Churches' separate status under Canon Law and their status under applicable civil law as follows:

> None of the Churches within the diocese are separately incorporated entities under California law. Under Canon Law and the internal organizing principles of the Catholic Church, each of the parish Churches is a separate juridic person, entrusted to the care of its priest, and under the governance of but recognized as separate from the Debtor. Consistent with Canon Law, to the extent that the Bishop holds goods belonging to a parish—such as real and personal property—he does so in trust for the benefit of the applicable Church. However, ***because the Churches are not separately incorporated legal entities, as a matter of California law they are not separate from the Debtor, and they do not own or hold a legal or equitable interest in property separate from the Debtor***.

[6] To be clear, (1) this does not mean such property is subject to liquidation or available to pay creditors, for example to the extent it is essential to the Debtor's religious mission, and (2) restricted property, including Restricted Church Funds, is not property of the estate under California law and Bankruptcy Code—a premise that the Committee does not challenge.

Debtor's Objection and Reservation of Rights to the Official Committee of Unsecured Creditors' Motion For Standing to Prosecute Claims of the Debtor's Estate, Bankr. Docket No. 1586, p. 9:10-18 (emphasis added). The Complaint therefore does not state a claim in any of the counts related to Church Property, because there is no justiciable controversy. *See, e.g., San Diego County Credit Union*, 65 F.4th at 1022-23; *Lohn*, 511 F.3d at 964.

1. All Claims Related to the Church Real Property Are Moot And Fail To State An Actual Controversy

As noted above, because the Debtor has already acknowledged that the Churches are not separately incorporated entities, as a matter of California law they are not separate from the Debtor, and they do not own or hold legal or equitable title interest in real property separate from the Debtor.

For that reason, any attempt to bring the real property held by the Churches into the bankruptcy estate under the theory of substantive consolidation and/or declaratory relief in Counts 2, 3, and 4 are moot and should be dismissed. As to Counts 2 and 3 seeking declaratory relief, the requirement for an actual controversy is not satisfied. *See, e.g., San Diego County Credit Union*, 65 F.4th at 1022-23; *Lohn*, 511 F.3d at 964. As to Count 4 seeking substantive consolidation, the claim fails because there are no separate legal entities to consolidate.

2. All Claims Related To The Unrestricted Church Funds Are Moot And Fail To State An Actual Controversy

All claims purporting to bring the Unrestricted Church Funds into the bankruptcy estate are also moot because those funds have been and remain available to creditors to this day. Under Canon law, the Debtor held the Unrestricted Church Funds in in the DLF and Endowment Pool for the benefit of the Churches. And OPF continues to hold those funds for the benefit of the Churches. However, under Civil law, the Unrestricted Church Funds are property of the estate. The Debtor has repeatedly acknowledged this on the record, including in its objection to the Committee's standing motion as cited above. Indeed, as evidenced in the Liquidation Analysis attached as Exhibit B to the *Amended Disclosure Statement for Debtor's Amended Plan of Reorganization* [Bankr. Docket No. 1595], the Debtor agrees that Unrestricted

Church Funds (whether held at OPF or in individual Church bank accounts) are property of the estate and are available to satisfy the claims the creditors (if not already spent by debtor in the Chapter 11 Case).

Accordingly, there is no justiciable controversy as to whether the Unrestricted Church Funds are property of the Debtor's estate, and thus, Counts 2, 3, and 4 should be dismissed.

3. The Restricted Church Funds Are Held in Trust And Are Not Property Of The Estate

Under California law, the Restricted Church Funds are held in trust under California law pursuant to the applicable donor restrictions and are therefore not property of the estate. The Complaint does not appear to challenge this basic legal conclusion—to the extent it seeks a determination that Church Property is not held in trust, it only describes the concept of Property held by the Debtor "in trust for the benefit of the Churches." Compl. ¶ 105.

It is black letter law that property held in trust by the debtor is not property of the estate under § 541 of the Bankruptcy Code. *See, e.g., Begier v. I.R.S.*, 496 U.S. 53, 59 (1990) (finding that because the debtor did not hold an equitable interest in property, he held that property in trust for another, and so that interest was not "property of the estate"); *Insurance Co. v. Simon (In re Foam Sys. Co.)*, 92 B.R. 406, 408–09 (B.A.P. 9th Cir. 1988). Rather, "[p]roperty held in trust by a bankruptcy debtor belongs to the beneficiary of the trust." *Danning v. Bozek (In re Bullion Rsrv. of N. Am.)*, 836 F.2d 1214, 1217 (9th Cir. 1988).

For purposes of determining the existence of a trust, state law applies in bankruptcy cases. *Butner v. U.S.*, 440 U.S. 48, 55 (1979) ("Property interests are created and defined by state law."). Under California law, trusts are classified as either: "express trusts, where the actual intent of the settlor is expressed" or "implied trusts, where the intention is not expressed." *In re Moeller*, 466 B.R. 525, 535 (Bankr. S.D. Cal. 2012) (citing 13 Witkin, Summary of California Law, Trusts § 1 (10th ed. 2005)). Moreover, where, as here, donations are reserved for a specific charitable or religious purpose, a charitable trust is formed.

To create a charitable trust, there must be a proper manifestation by the settlor of an intention to create a trust, a trust res, and a charitable purpose, promoting the welfare of mankind or the public at large, of a community, or of some other class of persons which is indefinite as to numbers and individual

identities. *L.B. Rsch. & Educ. Found. v. UCLA Found.*, 130 Cal. App. 4th 171, 177 (Cal. Ct. App. 2005); *City of Palm Springs v. Living Desert Rsrv.*, 70 Cal. App. 4th 613, 621 (Cal. Ct. App. 1999). "Property given 'upon condition' that it be applied to certain charitable purposes is especially likely to be construed as having been given in a charitable trust." *L.B. Rsch. & Educ. Found.*, 130 Cal. App. 4th at 178; *see also City of Palm Springs*, 70 Cal. App. 4th at 622 (noting that courts favor construction of a gift as a trust over a condition gift). Moreover, the California Corporations Code, concerning restricted gifts made to nonprofit religious corporations, authorizes the California Attorney General to enforce restrictions on use of donated property so long as the property is received subject to "a representation that it would be used for a specific charitable purpose other than general support of the corporation's activities." Cal. Corp. Code § 9230(d) (1978).

Here, the Restricted Church Funds are donations by parishioners to the Churches for a specific religious purpose. The Committee does not dispute this fact, nor does it raise it in the Complaint. As a result, these funds are held in trust under California law and are not property of the estate.[7] Whether these Restricted Church Funds are held by a Church or by the Debtor, they are not property of the estate, and the Complaint does not seek a determination to the contrary. At most, the Complaint contains only "naked assertions devoid of further factual enhancement" on the issue of why any Restricted Church Funds should be deemed to be property of the estate.[8] *See Iqbal*, 556 U.S. at 678. The Committee therefore has fallen far short of stating a cognizable claim for that relief.

Accordingly, Counts 2, 3, and 4 of the Complaint should be dismissed.

C. Count 5 Fails To State A Claim And Should Be Dismissed With Prejudice

In Count 5, the Committee seeks a declaratory judgment that the $8.3 million in Term Loan Proceeds allegedly transferred by the Debtor into a restricted bank account is property of the estate under § 541 of the Bankruptcy Code. *See, e.g.*, Compl. ¶¶ 124-129. Count 5 is improperly plead, and fails to support a plausible claim for relief. To comply with Federal Rule of Civil Procedure 8 (made applicable

[7] The Committee also fails to specify how much of the Church Funds is restricted and unrestricted. The Committee also fails to provide any legal basis for making the Restricted Church Funds property of the estate.

[8] In other words, if the Complaint were to seek a determination under § 541 regarding donor-restricted funds, the allegations in the current Complaint would fall woefully short of satisfying the *Iqbal* and *Twombly* standard.

by Bankruptcy Rule 7008), a complaint should clearly and fully set forth "who is being sued, for what relief, and on what theory, with enough detail to guide discovery." *McHenry v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1996).

Count 5 is only alleged against OPF—not the Debtor—yet the Complaint fails to state that the $8.3 million "Term Loan Proceeds" were transferred to, or are currently held at, OPF. The Committee fails to identify the beneficiary of restricted account and where it is account is located. Further, the Committee identifies an alleged transfer from more than eighteen months ago, rather than identify funds as to which there is a current dispute.[9] This deficiency alone warrants dismissal of Count 5.[10]

D. Count 6 Fails To State A Claim And Should Be Dismissed With Prejudice

Count 6 seeks to substantively consolidate OPF with the Debtor *nunc pro tunc* to the Petition Date. Compl. ¶¶ 130-136. Count 6 should be dismissed because (i) the Court does not have the authority to substantively consolidate a non-debtor, nonprofit religious 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 OPF Into Chapter 11 Under The Guise Of Substantive Consolidation

The Committee cannot use § 105 of the Bankruptcy Code to involuntarily force OPF 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

[9] This is a material issue, because the bulk of the funds identified by the Committee were spent for the insurance expenses for which they were allocated, and therefore are no longer available. This is information that is readily available to the Committee through the Debtor's monthly operating reports and supplemental reporting and disclosures.

[10] As to $6 million of the so-called "Term Loan Proceeds," it is worth noting that the Debtor set aside these funds for purposes of paying employee health benefits, workers' compensation obligations and insurance. While the Debtor earmarked the funds for certain expenses, there is no dispute that the $6 million was property of the estate. As such, there is no justiciable controversy as to whether this $6 million was property of the Debtor's estate. The Debtor's disclosures to the Committee fully informed the Committee of the allocation and purpose of the funds in these insurance accounts.

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 Foundation*, 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. 355-56.

OPF is unquestionably a non-profit religious corporation. The Committee does not dispute this fact. Indeed, the Complaint alleges "OPF is a separately incorporated California nonprofit religious corporation[.]" *See, e.g.*, Compl. ¶ 46; OPF AOI ("This corporation is a religious corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Religious Corporation Law of California primarily for religious purposes."). As such, OPF is not eligible for involuntary bankruptcy under § 303(a).

Substantive consolidation of a non-debtor entity is the functional equivalent of an involuntary bankruptcy. Because OPF 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 OPF 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.*

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 a non-profit entity such as OPF. This Court should dismiss Count 6 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 6 fails as a matter of law. Nonetheless, assuming, *arguendo*, that the Court had the authority to substantively consolidate OPF (which is does not), Count 6 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. *Bonham*, 229 F.3d at 764. 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 *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 *In re Augie/Restivo Baking Co., Ltd.* 860 F.2d 515 (2d Cir. 1988)).

The Committee's argument for substantive consolidation centers around the alleged "entanglement of affairs" of OPF and the Debtor.[11] *See, e.g.*, Compl. ¶¶ 131-134. In particular, the Committee contends

[11] It does not appear that the Committee is relying on factor one—the single economic unit—for substantive consolidation. Regardless, the Complaint is devoid of any alleged facts showing that creditors treated the Debtor

that substantive consolidation is warranted because the Debtor, through the Bishop, allegedly exercises such a high degree of control over OPF that OPF is so entangled with the affairs of the Debtor that consolidation will benefit all creditors. *Id.* ¶ 131. But this is not the standard for substantive consolidation.

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 comingled funds, disregarded corporate form, debtor served as the principal used the entity's assets for his personal benefit, and the entanglement of financial affairs between the entities were so entangled there was no ability to trace funds).

None of the "facts" alleged in the Complaint, even if true (which the Debtor disputes), demonstrate that it is impossible to unscramble the Debtor's affairs with OPF, nor are there allegations that show the entanglement of assets is so substantial that the accurate identification of assets is not possible. Rather, the "facts" alleged reflect the opposite. Indeed, disentangling the assets and affairs of the Debtor and OPF can be easily accomplished, and in fact, the Committee has done so.[12] *See, e.g.*, Compl. ¶¶ 79-84 (alleging

---

and OPF as a single economic unit.

[12] Moreover, the uncontroverted facts of the Chapter 11 Case show the opposite. *See* declaration of Paul Bongiovanni [Bankr. Docket No. 1590] filed in support of the *Debtor's Objection to the Official Committee of*

when the three transfers to OPF occurred and the exact amounts of those transfers). Over 18 months into this Chapter 11 Case, the Committee cannot rest on conclusory, unsupported allegations of "entanglement"—without any facts behind the allegations—to state a substantive consolidation claim. The Committee also fails to allege any facts that the Debtor and OPF ignored corporate formalities.

Simply alleging the Debtor purportedly exercised some control over OPF (which the Debtor disputes) does not, without more, support substantive consolidation. *See, e.g., Official Committee of Unsecured Creditors of Verestar, Inc. v. American Tower Corp. (In re Verestar, Inc.)*, 343 B.R. 444, 463 (finding that the allegations that the non-debtor entity used its control over the debtor's finances to sweet cash from the debtor's account may give rise to liability but it did not support substantive consolidation because assets of each entity could clearly be traced); *In re Archdiocese of St. Paul & Minneapolis*, 553 B.R. 693, 702 (Bankr. D. Minn. 2016) (determining that the allegations demonstrated that the Catholic Church has control certain non-debtor Catholic entities, and without any allegations showing that the entities finances were so inextricably intertwined, the committee failed to a claim of substantive consolidation), *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.").

As such, Count 6 fails to state a claim upon which relief can be granted and should be dismissed with prejudice.

///

//

Unsecured Creditors' Motion for Standing to Prosecute Claims of the Debtor's Estate [Bankr. Docket No. 1586].

V.

CONCLUSION

For the reasons set forth above, the Debtor respectfully requests that the Court grant the Motion, dismiss the Complaint against the Debtor, including its churches, with prejudice, and grant other relief that the Court deems just and proper.

DATED: January 24, 2025

FOLEY & LARDNER LLP
Thomas F. Carlucci
Shane J. Moses
Emil P. Khatchatourian
Ann Marie Uetz
Matthew D. Lee
Geoffrey S. Goodman
Mark C. Moore

/s/ Shane J. Moses
Shane J. Moses

Counsel for the Debtor
and Debtor in Possession