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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. --- 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	Case No. 23-40523 WJL Chapter 11 Adv. Pro. 24-04053 WJL **OMNIBUS RESPONSE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO (I) DEBTOR'S MOTION TO DISMISS ADVERSARY COMPLAINT FOR DECLARATORY RELIEF AND (II) MOTION OF THE ROMAN CATHOLIC WELFARE CORPORATION OF OAKLAND, THE ROMAN CATHOLIC CEMETERIES OF THE DIOCESE OF OAKLAND AND ADVENTUS TO DISMISS COMPLAINT** Judge: Hon. William J. Lafferty

CEMETERIES OF THE DIOCESE OF OAKLAND, Defendants.	Date: March 4, 2025 Time: 10:30 a.m. (Pacific Time) Place: United States Bankruptcy Court Courtroom 220 1300 Clay Street Oakland, California 94612

TABLE OF CONTENTS

PAGES

PRELIMINARY STATEMENT 1

BACKGROUND 2

LEGAL STANDARD 6

ARGUMENT 8

I. The Complaint Sets Forth an Independent Legal Theory and Alleges Sufficient Facts in Support of the Committee's Request for Declaratory Relief that the Debtor Owns All Legal/Equitable Interests in the Property. 8

A. The Complaint Sets Forth a Cognizable Legal Theory in Support of the Requested Declaratory Relief 8

B. The Complaint Alleges Sufficient Facts to Support a Plausible Claim for the Requested Declaratory Relief. 10

1. The Bishop Exercises Extensive Control Over the Defendants and All Assets Within His Domain, Including the Property Purportedly Owned by the Non-Debtor Affiliated Entities. 12

2. The Non-Debtor Affiliated Entities' Organizational Structure and Shared Administrative Functions Establish An Entangled Corporate Enterprise Under the Debtor's Complete Control. 13

3. The Sheer Overlap in Common Directors and Officers Evidences a Singular Corporate Enterprise. 14

4. The Deliberate "Division" of Title Between the Property Held by the Defendants Is a Mere Façade Given the Relationship Between Them. 14

5. The Debtor Has Professed Its Extensive Control Over the Property Held By the Non-Debtor Affiliated Entities to the Public. 15

6. The Debtor Mandates the Investment and Use of the Non-Debtor Affiliated Entities' Funds As It Sees Fit, [redacted]. 15

II. The Complaint Sets Forth a Cognizable Legal Theory and Alleges Sufficient Facts in Support of Substantive Consolidation. 16

Case: 24-04053 Doc# 19 Filed: 02/19/25 Entered: 02/19/25 17:58:30 Page 3 of 31

A. The *Archdiocese of St. Paul & Minneapolis* Decision is Both Non-Binding and Factually Distinguishable. 16

B. The Complaint Alleges Sufficient Facts to Support a Plausible Claim for Substantive Consolidation. 18

1. The Committee Has Sufficiently Pled Entanglement Between the Defendants. 19

2. The Committee Has Sufficiently Pled Creditor Reliance. 20

3. The Committee Has Sufficiently Pled that Substantively Consolidating the Defendants Would Benefit Creditors and Not Materially Prejudice the Defendants. 23

Case: 24-04053 Doc# 19 Filed: 02/19/25 Entered: 02/19/25 17:58:30 Page 4 of 31

TABLE OF AUTHORITIES

Page(s)

CASES

In re Archdiocese of Milwaukee,
483 B.R. 693 (Bankr. E.D. Wis. 2012) 19

In re Archdiocese of St. Paul & Minneapolis,
888 F.3d 944 (8th Cir. 2018) 16, 17

Ariz. Students' Ass'n v. Ariz. Bd. of Regents,
824 F.3d 858 (9th Cir. 2016) 7

Ashcroft v. Iqbal,
556 U.S. 662 (2009) 6

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007) 6, 7

In re Bonham,
229 F.3d 750 (9th Cir. 2000) ..... passim

Butler v. Candlewood Rd. Partners, LLC (In re Raymond),
529 B.R. 455 (Bankr. D. Mass. 2015) 10

Butner v. United States,
440 U.S. 48 (1979) 10

Cal. Crane Sch., Inc. v. Google LLC,
722 F. Supp. 3d 1026 (N.D. Cal. 2024) 7

Matter of Castleman,
75 F.4th 1052 (9th Cir. 2023), *cert. denied sub nom. Castleman v. Burman*,
144 S. Ct. 813 (2024) 10

In re Cogliano,
355 B.R. 792 (B.A.P. 9th Cir. 2006) 8, 10

In re Concepts Am., Inc.,
No. 14-B-34232, 2018 WL 2085615 (Bankr. N.D. Ill. May 3, 2018) 17

In re DeFlora Lake Dev. Assocs., Inc.,
571 B.R. 587 (Bankr. S.D.N.Y. 2017) 8

In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litig.,
28 F.4th 42 (9th Cir. 2022) 7

Facebook, Inc. v. OnlineNIC Inc.,
No. 19-cv-07071-SI, 2023 WL 9019050 (N.D. Cal. Nov. 15, 2023) 11

In re Gilead Scis. Secs. Litig.,
536 F.3d 1049 (9th Cir. 2008) 7

Hawkins v. Kroger Co.,
906 F.3d 763 (9th Cir. 2018) 7

Hennessey's Tavern, Inc. v. Am. Air Filter Co.,
204 Cal. App. 3d 1351 (Ct. App. 1988) 11

Jackson v. Carey,
353 F.3d 750 (9th Cir. 2003) 7, 9

In re Jackson,
548 B.R. 353 (Bankr. N.D. Ga. 2016), *aff'd in part, appeal dismissed in part*,
724 F. App'x 905 (11th Cir. 2018) 9

Luxury Jewels, LLC v. Akers (In re Aroonsakool),
No. SC-13-1206, 2014 WL 1273696 (9th Cir. B.A.P. Mar. 28, 2014) 18, 20

Mou v. SSC San Jose Operating Co. LP,
415 F. Supp. 3d 918 (N.D. Cal. 2019) 11

In re NM Holdings Co., LLC,
407 B.R. 232 (Bankr. E.D. Mich. 2009) 17, 18

Palmas Assocs. v. Las Palmas Ctr. Assocs.,
235 Cal. App. 3d 1220 (1991) 11

Pattern Design LLC v. We Are Sechey Inc.,
No. 24-CV-02604-CRB, 2024 WL 4369668 (N.D. Cal. Oct. 1, 2024) 11

In re Prototype Eng'g & Mfg., Inc.,
628 B.R. 132 (Bankr. C.D. Cal. 2020) 19

Ranza v. Nike, Inc.,
793 F.3d 1059 (9th Cir. 2015) 11

Roman Cath. Archbishop v. Superior Ct.,
15 Cal. App. 3d 405 (Ct. App. 1971) 11

In re SK Foods, LP,
499 B.R. 809 (Bankr. E.D. Cal. 2013) 18, 19

Stokes v. Duncan (In re Stokes),
No. MT-13-1097, 2013 WL 5313412 (B.A.P. 9th Cir. Sept. 23, 2013) 8, 9

Case: 24-04053 Doc# 19 Filed: 02/19/25 Entered: 02/19/25 17:58:30 Page 6 of 31

In re Trujillo,
626 B.R. 59, 73 (Bankr. S.D. Fla. 2019) 8, 10

Union Sav. Bank v. Augie/Restivo Baking Co. Ltd. (In re Augie/Restivo Baking Co.),
860 F.2d 515, 518 (2d Cir. 1988) 18, 19

In re United Stairs Corp.,
176 B.R. 359 (Bankr. D.N.J. 1995) 17

Walsh v. Kindred Healthcare,
798 F. Supp. 2d 1073 (N.D. Cal. 2011) 11

STATUTES

11 U.S.C. § 541(a)(1) 10

28 U.S.C. § 2201(a) 8

RULES

Fed. R. Bankr. P. 7001 ..... 8, 10, 12

Fed. R. Bankr. P. 7008 6

Fed. R. Bankr. P. 7012 ..... 1, 7

Fed. R. Civ. P. 8 6

Fed. R. Civ. P. 12(b)(6) 1, 7

Case: 24-04053 Doc# 19 Filed: 02/19/25 Entered: 02/19/25 17:58:30 Page 7 of 31

Plaintiff, the Official Committee of Unsecured Creditors (the "**Committee**") in the above captioned chapter 11 bankruptcy case (the "**Chapter 11 Case**") of the Roman Catholic Bishop of Oakland (the "**Debtor**"), files this omnibus response (this "**Response**") in opposition to: (i) the *Debtor's Motion to Dismiss Adversary Complaint for Declaratory Relief* [Docket No. 14] (the "**Debtor's Motion**") and (ii) the *Motion of the Roman Catholic Welfare Corporation of Oakland, the Roman Catholic Cemeteries of the Diocese of Oakland and Adventus to Dismiss Complaint* [Docket No. 9] (the "**Non-Debtor Affiliated Entities' Motion**," and, together with the Debtor's Motion, the "**Motions to Dismiss**"). As explained below, the Court should deny the Motions to Dismiss this adversary proceeding (the "**Adversary Proceeding**") under Rule 12(b)(6) of the Federal Rules of Civil Procedure (the "**Federal Rules**"), incorporated into this Adversary Proceeding through Rule 7012 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

This Response is in further support of the Committee's complaint [Docket No. 1] (the "**Complaint**") filed in this Adversary Proceeding. In support of this Response, the Committee incorporates by reference herein its Memorandum of Law in Support, set forth below.[1]

PRELIMINARY STATEMENT

Following a months-long investigation—having reviewed thousands of pages of documents and conducted extensive legal research—the Committee concluded that the Debtor has been, and is, shielding assets from its creditors by holding assets in affiliated entities. The assets that the Debtor reports as its own pale in comparison to the hundreds of millions of dollars of assets held, but not owned, by Adventus, the Roman Catholic Welfare Corporation of Oakland ("**RCWC**") and the Roman Catholic Cemeteries of the Diocese of Oakland ("**RCC**," and collectively with Adventus and RCWC, the "**Non-Debtor Affiliated Entities**," and together with the Debtor, the "**Defendants**").

While the Non-Debtor Affiliated Entities are each separately incorporated under California law, the Non-Debtor Affiliated Entities and the Debtor have not, and do not, respect

[1] All capitalized terms used, but not defined herein, have the meanings ascribed to them in the Complaint.

corporate formalities. Rather, the Debtor, through the Bishop, exercises close to complete dominion and control over the Non-Debtor Affiliated Entities and their assets. Whether through the Bishop's power to [redacted] or the Bishop's control over the Non-Debtor Affiliated Entities' investments and financial transactions, the Diocesan enterprise is controlled by the Bishop, irrespective of the civil law form that the Non-Debtor Affiliated Entities take.[2]

Through the Complaint, the Committee seeks to ensure that survivors of sexual abuse ("**Survivors**") are treated fairly. While two distinct causes of action are pled—a declaratory judgement action under section 541 of the Bankruptcy Code and substantive consolidation—sustaining either one will prevent the Debtor from shielding its assets from Survivors by simply holding such assets in interrelated entities.

At this early stage, the Committee need not prove any facts. Rather, the Complaint simply needs to, and does, contain sufficient facts giving rise to claims for relief that are both facially plausible and legally cognizable. Despite the Defendants' premature attempts to probe the veracity of the Committee's allegations, when the facts presented are accepted as true and all inferences drawn in the Committee's favor, the Motions to Dismiss must be denied.

BACKGROUND

In 1962, the Debtor was formed when the Roman Catholic Archbishop of San Francisco and the Roman Catholic Welfare Corporation of San Francisco transferred all of their real property and personal property in Contra Costa and Alameda Counties to the Debtor and RCWC through three omnibus deeds (the "**Omnibus Deeds**"). (Compl. ¶ 58.) Because the Debtor is a "corporation sole" and the Non-Debtor Affiliated Entities are separately incorporated, the Defendants contend that the Debtor and each of the Non-Debtor Affiliated

[2] It is undisputed that the Bishop is vested with complete authority and control over the Debtor. While the Bishop is neither an officer nor director of the Non-Debtor Affiliated Entities, as set forth below, he controls them because [redacted] (Appendix A to the Series 2007 Bond Offering Memorandum ("**Appendix A**") [redacted]

Entities are merely affiliates of one another. But the facts alleged in the Complaint demonstrate a long-standing course of conduct between the Defendants in which corporate formalities were, and continue to be, ignored. Indeed, the Bishop has informed the Debtor's creditors that the Non-Debtor Affiliated Entities [redacted][3]

That enterprise, often referred to as the "Diocese," works to achieve a singular objective: to carry out the religious mission of the Catholic Church. [redacted]

The Non-Debtor Affiliated Entities' Motion chides the Committee for inaccurately using the phrase "Diocese," which they argue is a "geographic unit" and the "Debtor," which is the corporation sole. (Non-Debtor Affiliated Entities' Mot. at 4 n.2, 17). Yet both the Debtor and the Non-Debtor Affiliated Entities consistently used the phrase "Diocese" as including the collective corporations, divisions and operations of a singular unit. [redacted] The Debtor's website is also replete with references to the Diocese operating as an enterprise through its purported affiliates.

While the Bishop is neither a director nor an officer of the Non-Debtor Affiliated Entities, the Debtor represented to prospective bondholders that the Bishop, [redacted]

[3] The statements, admissions, and representations by the Debtor set forth in Appendix A, which is quoted numerous times throughout the Complaint, alone prove that the Committee sufficiently pled facts to support its causes of action.

[redacted]

Although the Bishop is neither a director nor an officer in the Non-Debtor Affiliated Entities, [redacted]

The structure and composition of the Non-Debtor Affiliated Entities' board emphasizes the Bishop's extensive domination and control over the Non-Debtor Affiliated Entities. RCWC's Bylaws provide that [redacted] Similarly, Adventus' Bylaws specify that [redacted] There are also at least four common directors and officers that the

Defendants share, each of whom hold key positions within their organizational structure. (Compl. ¶¶ 51–55.) Because of this overlap, along with the Bishop's unbridled power over them and the sheer number of transactions consummated among the Defendants, the ability of these board members to comply with their duty of loyalty is, at best, questionable.

Without the Debtor, the Non-Debtor Affiliated Entities are incapable of operating independently. (Compl. ¶ 8.) For example, the Complaint alleges, and the Defendants have represented, that their core administrative functions are centered in the Central Services Administration (also known as the "Chancery"), which oversees the Defendants' accounting, business development and strategic planning, human resources, information systems, property management services, education services and operations. (Compl. ¶ 33; [redacted])

The deliberate division of property among the Defendants is further evidence of their dependent relationship. The Debtor holds title to all parcels of real property within the Diocese that contain only churches (including parcels of real property containing cemeteries). (Compl. ¶ 62.) RCWC controls all parcels of real property that contain only schools and those that contain both schools and churches. (*Id.* ¶ 63.) Yet RCWC was also assigned ownership of ***all*** tangible personal property within the churches, including alters, pews, tabernacles, and the Holy Eucharist. (*Id.* ¶ 64.) If the Debtor did not functionally own the personal property that was assigned to RCWC, it could not carry out its religious mission.

The Debtor, through the Bishop, also mandates the investment and use of the Non-Debtor Affiliated Entities' funds. For example, the Deposit and Loan Fund (the "**DLF**") is an internal savings and loan program owned and operated by the Debtor which requires the Non-Debtor Affiliated Entities (among others) to deposit their excess funds with the DLF for the benefit of the churches, schools, and cemeteries within the Diocese. (*Id.* ¶ 89.) [redacted]

While the Debtor and the Non-Debtor Affiliated Entities now seek to disavow their singular nature, the Bishop has been more than willing to assert his authority over the Non-

Case: 24-04053 Doc# 19 Filed: 02/19/25 Entered: 02/19/25 17:58:30 Page 12 of 31

Debtor Affiliated Entities and their assets when doing so was financially beneficial. (*Id.* ¶ 68.) For example, in 2007, the Debtor needed financing to finish constructing a cathedral [redacted] (*Id.* ¶ 74.) The Complaint cites to numerous representations that the Debtor made about the Bishop's plenary power in connection with the Series 2007 Bond Offering—perhaps most importantly that [redacted]

The Debtor made similar representations in connection with the 2017 PNC Credit and Security Agreement, wherein it represented that it could pay debt service on the PNC Bank Debt because the Bishop could control the Non-Debtor Affiliated Entities by, among other things, "***using, controlling, and disposing of the assets*** of those public juridic persons subject to his governance" and taxing Catholic entities within the Diocese, including the Non-Debtor Affiliated Entities (Compl. ¶ 100; PNC Credit and Security Agreement § 6.15 (emphasis added).) The Debtor also used Diocesan-wide fundraising campaigns (known as the "Bishop's Appeal") to solicit money from the public for the benefit of the Non-Debtor Affiliated Entities, the proceeds of which were partially used to pay off their debt under the Series 2007 Bonds. (Compl. ¶¶ 93–95; [redacted])

LEGAL STANDARD

The Federal Rules require a complaint to contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); Fed. R. Bankr. P. 7008 ("Fed. R. Civ. P. 8 applies in an adversary proceeding."). This means that a motion to dismiss a complaint cannot be granted unless the complaint fails to allege sufficient facts that, ***when accepted as true and read with all reasonable inferences drawn in the plaintiff's favor,*** state a claim for relief that is ***facially plausible***. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted

as true, to 'state a claim to relief that is plausible on its face.'" (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007))). The Court "must 'accept the complaint's well-pleaded factual allegations as true and construe all inferences in the plaintiff's favor for the purposes of evaluating a motion to dismiss under [Federal Rule] 12(b)(6)." *Hawkins v. Kroger Co.*, 906 F.3d 763, 767 n.2 (9th Cir. 2018) (quoting *Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 864 (9th Cir. 2016)) (citing Fed. R. Civ. P. 12(b)(6)).[4]

Accordingly, in order to survive a challenge under Federal Rule 12(b)(6), a complaint "does not need detailed factual allegations." *Twombly*, 550 U.S. at 555 (internal citations omitted). Evaluating plausibility "does not impose a probability requirement at the pleading stage," but simply calls for factual allegations that are sufficient to raise a reasonable expectation that discovery will reveal evidence of the claim. *Id.* at 556. The issue, then, is "not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Jackson v. Carey*, 353 F.3d 750, 755 (9th Cir. 2003) (internal marks and citations omitted).

Not only does the Complaint plead facts sufficient to state each of the counts contained therein, it *far exceeds* that pleading standard, which the Ninth Circuit has made clear is a very low bar:

> But so long as the plaintiff alleges facts to support a theory that is not facially implausible, the court's skepticism is best reserved for later stages of the proceedings when the plaintiff's case can be rejected on evidentiary grounds.

In re Gilead Scis. Secs. Litig., 536 F.3d 1049, 1057 (9th Cir. 2008).

The Defendants' arguments fall flat at the motion to dismiss phase, where the Committee has provided more than sufficient factual detail to "nudge their claims across the line from conceivable to plausible." *Cal. Crane Sch., Inc. v. Google LLC*, 722 F. Supp. 3d 1026, 1038 (N.D. Cal. 2024) (quoting *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litig.*, 28 F.4th 42, 47 (9th Cir. 2022)). While discovery on these

[4] Federal Rule 12(b)(6) is incorporated into this adversary proceeding by Bankruptcy Rule 7012(b). *See* Fed. R. Bankr. P. 7012(b) ("R. Civ. P. 12(b)–(i) applies in an adversary proceeding.").

issues may provide additional supporting facts, nothing more is required from the Committee at this phase in the proceedings.

ARGUMENT

I. The Complaint Sets Forth an Independent Legal Theory and Alleges Sufficient Facts in Support of the Committee's Request for Declaratory Relief that the Debtor Owns All Legal/Equitable Interests in the Property.

A. The Complaint Sets Forth a Cognizable Legal Theory in Support of the Requested Declaratory Relief.

Bankruptcy Rule 7001 sets forth eight categories of relief that may be sought in an adversary proceeding. Among these are (i) "a proceeding to determine the validity, priority, or extent of a lien or other interest in property and (ii) "a proceeding to obtain a declaratory judgment related to" the enumerated categories.[5] Fed. R. Bankr. P. 7001(2), (9); *see also In re Cogliano*, 355 B.R. 792, 806 (B.A.P. 9th Cir. 2006) ("When the question of whether property is part of the estate is in controversy, Rule 7001(2) requires an adversary proceeding, absent waiver or harmless error.").

Courts recognize that a determination of property of the estate under section 541 of the Bankruptcy Code "is a separate cause of action" which may be pled in an adversary proceeding, and is "within the exclusive province of the Bankruptcy Court." *In re DeFlora Lake Dev. Assocs., Inc.*, 571 B.R. 587, 598–99 (Bankr. S.D.N.Y. 2017) (denying motion to dismiss adversary proceeding brought by debtor seeking, *inter alia*, a determination that certain escrow funds were property of the estate); *see also In re Trujillo*, 626 B.R. 59, 73 (Bankr. S.D. Fla. 2019) (noting that bankruptcy courts commonly rely on section 541 and the Declaratory Judgment Act to issue declaratory judgements in adversary proceedings to resolve disputed ownership interests).

The Non-Debtor Affiliated Entities' Motion relies heavily on selective (and misleading) quotes from an unpublished opinion, *Stokes v. Duncan (In re Stokes)*, a case that

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[5] Section 2201 of Title 28 of the United States Code (the "**Declaratory Judgement Act**") also authorizes bankruptcy courts to enter declaratory judgements. *See* 28 U.S.C. § 2201(a) ("In a case of actual controversy within its jurisdiction, . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration.").

is easily distinguishable from this case in any event. *See* No. MT-13-1097, 2013 WL 5313412 (B.A.P. 9th Cir. Sept. 23, 2013). *First*, under the particular facts of *Stokes*, whether the disputed assets were property of the debtor's estate "was a secondary (and perfunctory) issue in contrast to the actual and substantive issue" of whether the court had subject matter jurisdiction over the matter. *Id.* at *6. Here, the Defendants do not dispute that this Court has jurisdiction over this matter. *Second*, the *Stokes* court emphasized that "[t]he outcome of the Declaratory Relief Action could not impact the bankruptcy estate, could not impact creditor recoveries, and could not impact or involve the Trustee." *Id.* at *8. By contrast, a successful outcome in this Adversary Proceeding will directly impact the Debtor's estate and therefore will *per se* affect creditor recoveries. If this Court finds that the Property purportedly held by the Non-Debtor Affiliated Entities is property of the Debtor's estate, hundreds of millions of dollars in assets, including cash, investments, and real estate, will be made available to satisfy creditors' claims.

The other cases that the Non-Debtor Affiliated Entities rely on in their Motion to Dismiss are not binding on this Court and are distinguishable. For example, *In re Jackson* involved a cause of action for declaratory relief that was not ripe because the plaintiffs failed to name the chapter 7 trustee—the only party holding an interest in the disputed property upon commencement of the bankruptcy case—as a defendant in the adversary proceeding. *See In re Jackson*, 548 B.R. 353, 379 (Bankr. N.D. Ga. 2016), *aff'd in part, appeal dismissed in part*, 724 F. App'x 905 (11th Cir. 2018) ("The Court cannot make a determination that any property is not property of the estate under § 541(d) in a proceeding *in which the real party in interest, the Trustee as the representative of the estate, is not a party*.") (emphasis added). As a result, and because the issue was not yet ripe, under the specific facts of *Jackson*, section 541 did not "create a cause of action to determine what is and is not estate property." *Id.* Here, however, the Committee properly named the Debtor as a defendant in the Adversary Proceeding—making this issue ripe for consideration by this Court.

In *In re Raymond*, the court held that the trustee lacked standing to assert claims for declaratory judgement that certain trust assets were property of the Debtor's estate. *Butler v.*

Candlewood Rd. Partners, LLC (In re Raymond), 529 B.R. 455, 478, 484 (Bankr. D. Mass. 2015) ("The Debtor does not have a legal or equitable claim to the assets of the [trust]—he has a personal property interest as the beneficiary of the [trust]."). Here, there is no such impediment that inhibits this Court from issuing a declaratory judgement because there is no question that the Debtor would have legal and/or equitable title to the disputed assets as of the Petition Date if they are declared property of the estate.

The relief that the Committee seeks falls squarely within the text of Bankruptcy Rule 7001: "a proceeding to obtain a declaratory judgment related to" the "validity, priority, or extent of a lien *or other interest in property*." Fed. R. Bankr. P. 7001(2), (9) (emphasis added). By its Complaint, the Committee asks this Court to issue a declaratory judgement (Fed. R. Bankr. P. 7001(9)) as to whether—and the extent to which—the Debtor holds legal and/or equitable title to the Property (Fed. R. Bankr. P. 7001(2)). Accordingly, the argument that the declaratory relief sought in the Adversary Proceeding lacks a cognizable legal theory falls short.

B. The Complaint Alleges Sufficient Facts to Support a Plausible Claim for the Requested Declaratory Relief.

Section 541 of the Bankruptcy Code broadly defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1); *Matter of Castleman*, 75 F.4th 1052, 1056 (9th Cir. 2023), *cert. denied sub nom. Castleman v. Burman*, 144 S. Ct. 813 (2024). "A debtor's legal and equitable interests on the petition date are determined according to state law." *In re Cogliano*, 355 B.R. at 801; *Butner v. United States*, 440 U.S. 48, 55 (1979). Yet, "[t]he determination of what constitutes property of the estate is a question of federal law." *In re Trujillo*, 626 B.R. at 73. If a debtor holds an equitable interest in property, the estate acquires the equitable interest in the property. *See* 5 Collier on Bankruptcy ¶ 541.03 (16th 2024).

Under California law, equitable interests are a recognized form of property ownership. As the Debtor acknowledges, in some cases a corporation's separate legal form may be disregarded in the name of equity. *Mou v. SSC San Jose Operating Co. LP*, 415 F. Supp. 3d

918, 929–30 (N.D. Cal. 2019) ("[a] corporate identity may be disregarded . . . where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation."). Although "alter ego" cannot be pled as an independent cause of action under California law, the doctrine may be asserted as a theory of liability underlying a separate cause of action (i.e., it is "procedural" in nature). *Pattern Design LLC v. We Are Sechey Inc.*, No. 24-CV-02604-CRB, 2024 WL 4369668, at *2 (N.D. Cal. Oct. 1, 2024); *see also Hennessey's Tavern, Inc. v. Am. Air Filter Co.*, 204 Cal. App. 3d 1351, 1359 (Ct. App. 1988).

There are two general requirements to invoke the alter ego doctrine: (1) "that there is such a unity of interest and ownership that the separate personalities of the two corporations no longer exist;" and (2) "that if the acts are treated as those of only one of the corporations, an inequitable result will follow." *Mou*, 415 F. Supp. 3d at 930 (quoting *Walsh v. Kindred Healthcare*, 798 F. Supp. 2d 1073, 1082 (N.D. Cal. 2011)). Among the factors to be considered when considering these requirements are (i) commingling of funds and other assets of the entities; (ii) one entity holding out to that it is liable for the debts of the others; (iii) identical equitable ownership in the entities; (iv) using the same offices and shared employees and (v) the use of one entity as a "mere shell or conduit" of the others. *Roman Cath. Archbishop v. Superior Ct.*, 15 Cal. App. 3d 405, 411 (Ct. App. 1971).

The Ninth Circuit explains that the unity of interest and ownership prong of the alter ego test requires "a showing that the parent controls the subsidiary[6] to such a degree as to render the latter the mere instrumentality of the former." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015) (internal citation and marks omitted). This test "envisions pervasive control over the subsidiary, such as when a parent corporation dictates every facet of the subsidiary business—from broad policy decisions to routine matters of day-to-day operation." *Id.* (internal citation and quotation marks omitted).

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[6] California recognizes alter egos in both the parent-subsidiary context and the "single-enterprise" context. *See Palmas Assocs. v. Las Palmas Center Assocs.*, 235 Cal. App. 3d 1220, 1249 (1991) ("[U]nder the single-enterprise rule, liability can be found between sister companies."); *Facebook, Inc. v. OnlineNIC Inc.*, No. 19-cv-07071-SI, 2023 WL 9019050 (N.D. Cal. Nov. 15, 2023) (finding alter ego liability among sister entities under a single-enterprise theory).

Case: 24-04053 Doc# 19 Filed: 02/19/25 Entered: 02/19/25 17:58:30 Page 18 of 31

The Committee seeks declaratory relief under section 541 of the Bankruptcy Code and Bankruptcy Rule 7001 that the Property purportedly held by the Non-Debtor Affiliated Entities is property of the estate. (Compl. ¶¶ 112–116.) While the Debtor argues that Count One is "nothing more than a 'back door' attempt to substantive[ly] consolidate" the Non-Debtor Affiliated Entities with the Debtor (Debtor's Mot. at 2), substantive consolidation is an entirely distinct cause of action which allows the bankruptcy court to disregard the corporate form of separate legal entities. In doing so, the court treats them as if they were merged into a single surviving entity such that creditors' claims against the separate entities are transferred into claims against the consolidated surviving entity. *See In re Bonham*, 229 F.3d 750, 764 (9th Cir. 2000). The declaratory relief in Count One does not ask this Court to merge the estates of the Debtor and the Non-Debtor Affiliated Entities, but to find that the ***property*** purportedly held by the Non-Debtor Affiliated Entities in reality belongs to the Debtor as of the Petition Date.

Accepting the facts alleged in the Complaint as true, the Committee sufficiently pled that the Debtor exerts significant dominance and control over the property held by the Non-Debtor Affiliated Entities such that it holds both legal and equitable interests in such property. The Complaint contains a multitude of allegations showing that the Debtor and the Non-Debtor Affiliated Entities are mere components that work together to fulfill the singular mission of the Catholic Church. Over the course of their 60-year history, the Debtor and the Non-Debtor Affiliated Entities—at the direction of the Bishop—have developed a dependent relationship that is far from arms' length.

1. The Bishop Exercises Extensive Control Over the Defendants and All Assets Within His Domain, Including the Property Purportedly Owned by the Non-Debtor Affiliated Entities.

Until now, the Bishop has been more than willing to assert his plenary authority over the Non-Debtor Affiliated Entities, including in connection with the Series 2007 Bond Offering—the proceeds of which were used, in part, for the benefit of the Non-Debtor Affiliated Entities (*e.g.*, by funding massive capital improvements projects, expanding the scope of RCC's operations, and providing loans to schools under the purview of RCWC).

(Compl. ¶ 86.) The Complaint cites to numerous representations that the Debtor made about the Bishop's plenary power—perhaps most importantly that:

[redacted]

(*Id.* ¶ 70; [redacted]).[7]

2. The Non-Debtor Affiliated Entities' Organizational Structure and Shared Administrative Functions Establish An Entangled Corporate Enterprise Under the Debtor's Complete Control.

It is undisputed that (i) [redacted] (Non-Debtor Affiliated Entities' Mot. at 3 (emphasis added)); and (ii) [redacted] (Non-Debtor Affiliated Entities' Mot. at 4–5.) The Non-Debtor Affiliated Entities argue that the Bishop's control is illusory because management of their entities may be delegated. (*See, e.g., id.* at 3–4.) But just because the boards have ***authority*** to delegate responsibility over critical decisions, does not necessarily mean that they do so. Moreover, whether they do so is an issue of fact which may not be introduced by the Non-Debtor Affiliated Entities at this stage. Rather, the Court must reasonably infer that the Debtor,

[7] The Non-Debtor Affiliated Entities' argument that the Committee misunderstands the meaning of the term "juridic persons," as it is used in Appendix A and in the 2017 Credit and Security Agreement underlying the PNC Bank Debt, ignores the procedural posture of this case. (Non-Debtor Affiliated Entities' Mot. at 18). At this stage, the Court must accept as true the Committee's allegation that "juridic person" includes the Non-Debtor Affiliated Entities as true.

Case: 24-04053 Doc# 19 Filed: 02/19/25 Entered: 02/19/25 17:58:30 Page 20 of 31

through the Bishop, controls the Non-Debtor Affiliated Entities based on the facts alleged in the Complaint which it must accept as true. (*See, e.g.*, Compl. ¶ 33; [redacted])

3. The Sheer Overlap in Common Directors and Officers Evidences a Singular Corporate Enterprise.

Thus far, the Committee has been able to identify ***at least*** four common directors and officers shared by the Debtor and the Non-Debtor Affiliated Entities. (Compl. ¶¶ 51–55.) Indeed, in connection with the Series 2007 Bond Offering, the Debtor represented that [redacted] (Compl. ¶ 83.)

The countless transactions among the Defendants and the mandated cash management and investment protocols imposed on the Non-Debtor Affiliated Entities, would place directors of affiliated commercial corporations in grave jeopardy of breaching their duty of loyalty by placing them on both sides of these transactions or requiring them to comply with mandated maintenance and use of assets. But here, where the Non-Debtor Affiliated Entities are mere instrumentalities of the Debtor, and the entities are separate in form but not substance, the Defendants do not consider their duties as conflicting.

4. The Deliberate "Division" of Title Between the Property Held by the Defendants Is a Mere Façade Given the Relationship Between Them.

The Omnibus Deeds "divided" title to the assets of the Roman Catholic Archbishop of San Francisco and the Roman Catholic Welfare Corporation of San Francisco between the Debtor and RCWC. (Compl. ¶ 58.) The Debtor received legal title to virtually all of church real property and RCWC received title to the personal property within those churches. (Compl. ¶¶ 62–64.) Yet if the Debtor did not effectively control the personal property that was assigned to RCWC, it would be unable to fulfill its religious mission. A church is—in effect—a structure with no religious significance without the contents that transform it into a place of worship, such as alters, pews, tabernacles, and the Holy Eucharist. It therefore follows that the Debtor and RCWC could not exist separately. The same principal applies to RCC. While

RCC operates cemeteries, it does so using land owned by the Debtor. Thus, these parties must work in concert, in perpetuity, to ensure that Catholic funerals function properly and the cemetery maintained.

5. The Debtor Has Professed Its Extensive Control Over the Property Held By the Non-Debtor Affiliated Entities to the Public.

The Complaint contains specific examples of the Debtor acknowledging its unity of interest with the Non-Debtor Affiliated Entities to the public. For example, the Debtor maintains a website that provides the public with a single online source containing Non-Debtor Affiliated Entity-related resources reflecting those entities as component parts of the Diocesan enterprise. The "Diocese" tab of the Debtor's website includes a "Diocesan Directory" with a link providing access to the RCC/Catholic Funeral and Cemetery Services webpage that includes information on services, locations, mission programs, key contacts, and FAQs, and information on diocesan schools, including a "school finder" with locations of all Diocesan schools, in addition to a direct link to the "Catholic Schools Diocese of Oakland." (Compl. ¶¶ 71–72.)

Furthermore, the Debtor has used public, Diocesan-wide fundraising campaigns to address financial needs of the Non-Debtor Affiliated Entities, using a portion of the proceeds received from benefactors to pay debt service on the Series 2007 Bonds. (Compl. ¶ 93.) The money raised through this campaign, known as the "Bishop's Appeal," could be used to provide unrestricted funds to pay the budgeted expenses of the Debtor, [redacted] (*Id.* ¶ 95, [redacted])

6. The Debtor Mandates the Investment and Use of the Non-Debtor Affiliated Entities' Funds As It Sees Fit, [redacted]

The Complaint is replete with specific allegations relating to the Debtor's domination and control over the Non-Debtor Affiliated Entities' finances. As set forth in Appendix A, at the time of the Series 2007 Bond Offering, [redacted] The Debtor prematurely argues it has always

Case: 24-04053 Doc# 19 Filed: 02/19/25 Entered: 02/19/25 17:58:30 Page 22 of 31

segregated its funds from those of RCC and Adventus, and that 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" (Debtor's Mot. at 5). The Debtor will have an opportunity to dispute the facts alleged in the Complaint. But, for now, the facts must be accepted as set forth in the Complaint.

In any event, the evidence uncovered in the Committee's investigation thus far—which forms the basis for the Complaint—undercuts the Debtor's argument. For example, [redacted] Given the Debtor's broad discretion over the use of funds in the DLF, the Committee should be afforded the opportunity to open the Debtor's books and records to determine whether there is a clear demarcation between the financials of the Defendants in the DLF and elsewhere.

Because the facts alleged in the Complaint, when accepted as true, and the reasonably inferences drawn therefrom sufficiently plead a claim for declaratory relief with respect to the Non-Debtor Affiliated Entities' alleged property, the Motions to Dismiss Count One of the Complaint must be denied.

II. The Complaint Sets Forth a Cognizable Legal Theory and Alleges Sufficient Facts in Support of Substantive Consolidation.

A. The *Archdiocese of St. Paul & Minneapolis* Decision is Both Non-Binding and Factually Distinguishable.

The Committee makes extensive allegations in the Complaint that the Defendants operate as a singular enterprise, controlled by the Bishop. To prevent the Committee from even being permitted to conduct further discovery into this issue, the Defendants urge this Court to adopt the holding made by the Eighth Circuit in *In re Archdiocese of St. Paul & Minneapolis*. *See* 888 F.3d 944 (8th Cir. 2018). The Defendants misconstrue this decision, which has no precedential value in this Adversary Proceeding, as creating a *per se* prohibition against substantively consolidating a non-profit non-debtor with a debtor under section 303(a)

of the Bankruptcy Code. The court in *St. Paul*, however, explicitly declined to rule on the circumstances present here—whether a non-debtor non-profit entity that is an alter ego of a debtor could be substantively consolidated—and the Defendants have not pointed to any case (precedential or otherwise) that makes that determination.

The Defendants omit crucial language of the decision that made clear that the court's ruling was limited to "truly independent nonprofit entities," and ***not*** applicable to alter egos of a debtor. *See id.* at 953. The Eighth Circuit stated in no uncertain terms: "We leave for another day the issue of whether a non-profit non-debtor that is the alter ego, under state law, of the debtor, or has been formed as part of a fraudulent scheme, such as a Ponzi scheme, can be consolidated." *Id.*; *see also In re Concepts Am., Inc.*, No. 14-B-34232, 2018 WL 2085615, at *6 n.8 (Bankr. N.D. Ill. May 3, 2018) (noting that the Eighth Circuit's decision in *St. Paul* was limited to non-debtor non-profits that are not alter egos under state law). Unlike in this Adversary Proceeding, the committee in *St. Paul* "ha[d] not argued an alter ego theory." 888 F.3d at 953. Still, the Eighth Circuit went out of its way to ensure that its decision could not be used as the Debtor and OPF seek to now use it—to improperly and incorrectly assert that the substantive consolidation of an alter ego is like an involuntary bankruptcy filing of an independent entity.

Although section 303(a) of the Bankruptcy Code prohibits the involuntary bankruptcy of "a corporation that is not a moneyed, business, or commercial corporation," 11 U.S.C. § 303(a), the substantive consolidation of a debtor's alter ego—which is not a truly independent entity—simply consolidates assets and liabilities of a debtor's alter ego as part of that debtor's voluntary bankruptcy proceeding. As such, the non-profit status of the targeted entities here does not impose any barrier to substantively consolidating non-debtor entities under circumstances where, as here, the non-debtor entities are merely alter egos of a *voluntary* debtor. *See In re United Stairs Corp.*, 176 B.R. 359, 371 (Bankr. D.N.J. 1995) (non-debtor alter egos are not entitled to the procedural safeguards of section 303 of the Bankruptcy Code); *see also In re NM Holdings Co., LLC*, 407 B.R. 232, 280 (Bankr. E.D. Mich. 2009) (substantive

consolidation is "a different remedy with a different purpose" than section 303 and the doctrine of substantive consolidation has "its own protections for the non-debtor").

As detailed below, the Committee has sufficiently pled that the Non-Debtor Affiliated Entities are alter egos of the Debtor, and thus are not truly independent non-profit entities that would be entitled to the protections of section 303(a) of the Bankruptcy Code.

B. The Complaint Alleges Sufficient Facts to Support a Plausible Claim for Substantive Consolidation.

The Ninth Circuit has expressly affirmed courts' authority to grant a motion to substantively consolidate non-debtors. *See In re Bonham*, 229 F. 3d at 750. To sustain a claim for substantive consolidation, a movant must satisfy ***either*** prong of the disjunctive *Bonham* test: (i) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors (known as the "entanglement test"); ***or*** (ii) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit (known as the "creditor expectations test"). *Id.* at 766; *see also Union Sav. Bank v. Augie/Restivo Baking Co. Ltd. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515, 518 (2d Cir. 1988); *In re SK Foods, LP*, 499 B.R. 809, 833 (Bankr. E.D. Cal. 2013).

Under the entanglement test, courts typically analyze whether the movant has demonstrated either an operational or financial entanglement of business affairs. This determination is a heavily fact intensive. Traditional indicators of entanglement include, but are not limited to instances in which (i) there is a "unity of interest and common ownership between the debtor and the target entities;" (ii) the target entities are "but instrumentalities of the bankrupt with no separate existence;" and (iii) "there was commingling of assets and no clear demarcation between the affairs of the debtor and the target entities such that adhering to the separate corporate entities theory would result in an injustice to the bankrupt's creditors." *Luxury Jewels, LLC v. Akers (In re Aroonsakool)*, No. SC-13-1206, 2014 WL 1273696, at *7 (9th Cir. B.A.P Mar. 28, 2014) (internal citations omitted).

Under the creditor expectations test, substantive consolidation is appropriate if creditors did not rely on the separate identity between a debtor and its affiliates in extending

credit. *In re Bonham*, 229 F.3d at 766. If the movant "establishes a close interrelationship between debtors and the non-debtor entities," there is a presumption that creditors did not rely on their separate credit and the burden of proof then shifts to the parties opposing substantive consolidation to show otherwise. *In re Archdiocese of Milwaukee*, 483 B.R. 693, 700 (Bankr. E.D. Wis. 2012) (citing *In re Bonham*, 229 F.3d at 767); *see also In re SK Foods*, 499 B.R. at 834 ("where close interrelationships are established between the debtor and target entities, it will be presumed that the target's creditors did not rely on the separate credit of the targets, and a court is justified in ordering substantive consolidation in the absence of proof to the contrary by the parties opposing that relief.").

Regardless of whether the entanglement test or creditor expectations test is satisfied, substantive consolidation must also inure to the benefit of all creditors, and such benefit must outweigh any harm to the entity being consolidated. *See In re Bonham*, 229 F.3d at 767. As the Ninth Circuit has held, the "sole aim [is] fairness to all creditors." *Id.* at 767 n.12 (internal citations omitted). Therefore, courts must consider "whether substantial consolidation 'will yield an equitable treatment of creditors without any undue prejudice to any particular group." *See In re Augie/Restivo*, 860 F.2d at 518 (citation omitted). "Substantive consolidation . . . leav[es] no party unjustly enriched and no creditors looking to an impoverished asset pool for payment." *In re Prototype Eng'g & Mfg., Inc.*, 628 B.R. 132, 147 (Bankr. C.D. Cal. 2020) (internal citations omitted).

The facts set forth in the Complaint, which must be accepted as true, demonstrate a sufficient level of entanglement and creditor reliance to warrant substantive consolidation under either prong of the Ninth Circuit's *Bonham* test.

1. The Committee Has Sufficiently Pled Entanglement Between the Defendants.

The facts alleged in the Complaint—together with the reasonable inferences derived therefrom—establish plausible theories of entanglement to sustain a claim for substantive consolidation. As explained above, the Committee has set forth specific factual allegations that demonstrate both a "unity of interest and common ownership" between the Debtor and the

Non-Debtor Affiliated Entities and that the Non-Debtor Affiliated Entities are "but instrumentalities of the bankrupt with no separate existence." *In re Aroonsakool*, 2014 WL 1273696, at *7. These allegations include that:

(i) The Bishop exercises extensive control over the Defendants and all assets within his domain, including the property that is purportedly owned by the Non-Debtor Affiliated Entities (Compl. ¶¶ 34–42, 73–84);

(ii) The Non-Debtor Affiliated Entities' organizational documents and shared administrative functions establish an entangled corporate enterprise under the Debtor's complete control (*Id.* ¶¶ 33, 43–49);

(iii) The Defendants have shared at least several directors and officers with potentially conflicting duties of loyalty (*Id.* ¶¶ 51–55);

(iv) The deliberate "division" of title between the property held by the Defendants is a mere façade given the integral relationship between them (*Id.* ¶¶ 56–67);

(v) The Debtor has professed its extensive control over the property held by the Non-Debtor Affiliated Entities to the public (*Id.* ¶¶ 68–72, 93–95); and

(vi) The Debtor mandates the investment and use of the Non-Debtor Affiliated Entities' funds as it sees fit, [redacted]

(*Id.* ¶¶ 89–92).

Underscoring the entangled Diocesan corporate structure, Appendix A [redacted]

2. The Committee Has Sufficiently Pled Creditor Reliance.

Given the close interrelationship between the Debtor and the Non-Debtor Affiliated Entities described above, the Committee is entitled to a presumption that creditors did not rely

Case: 24-04053 Doc# 19 Filed: 02/19/25 Entered: 02/19/25 17:58:30 Page 27 of 31

on their separate credit. *See In re Bonham*, 229 F.3d at 767. Despite the Debtor's assertion that "there are no facts alleged that show any creditor believed that the Debtor and the Non-Debtor [Affiliated] Entities were the same," the Committee has set forth specific allegations that the Defendants held themselves out to creditors as one and the same. Most significantly, the Debtor represented to prospective bondholders that [redacted]

These [redacted] are apparent throughout the Series 2007 Bond Offering Memorandum and the 2017 PNC Credit and Security Agreement. (Compl. ¶¶ 73–88, 97–100.) Appendix A,[8] which accompanied the Series 2007 Bond Offering documents and is referenced extensively in the Complaint, is replete with assurances that [redacted] These representations include the following:

[redacted]

[redacted]

[redacted]

[8] The cover page of Appendix A states that [redacted]

[redacted]

In negotiating the terms of the Series 2007 Bond Offering, the Debtor represented to Deutsche Bank that [redacted] (Compl. ¶ 82.) The Debtor dismisses this sweeping assertion of authority as a "standard representation" that a borrower and guarantor would make to obtain a loan from a potential lender, yet fails to, and is not even entitled to at this stage, provide any evidence to this extent. (Debtor's Mot. at 12.) At a minimum, the Committee is entitled to discovery into discussions about these representations.

The Debtor made similar representations to creditors in connection with the 2017 PNC Credit and Security Agreement, under which the Debtor borrowed $70 million from PNC (f/k/a Compass Bank) to fund the redemption of the outstanding Series 2007 Bonds. (Compl. ¶ 97.) Specifically, the Debtor represented that it could take certain actions to avoid or cure an event of default caused by its inability to make timely payments, including: (i) ***using, controlling, and disposing of the assets*** of those public juridic persons subject to his governance; (ii) ***increasing the customary rate of the cathedraticum*** on all or substantially all of the public juridic persons subject to his governance; (iii) ***imposing an extraordinary and moderate exaction*** upon other physical and juridic persons; (iv) increasing prescribed fees and suggested

free-will offerings; and (v) instituting a diocesan-wide extraordinary appeal. (Compl. ¶ 100; 2017 PNC Credit and Security Agreement § 6.15 (emphasis added).)

While the Debtor argues that the fact that Deutsche Bank and PNC treated the Non-Debtor Affiliated Entities as independent entities is evidence of their independence, that argument is easily debunked. Any commercial lender would recognize the fact that entities which are separately incorporated should be treated as such by default. Neither Deutsche Bank nor PNC needed to weigh into whether the entities were in fact separate because they guaranteed the debt.

3. The Committee Has Sufficiently Pled that Substantively Consolidating the Defendants Would Benefit Creditors and Not Materially Prejudice the Defendants.

In further satisfaction of the *Bonham* test, the Complaint establishes that allowing substantive consolidation is in the best interest of all creditors. *See In re Bonham*, 229 F.3d at 767 (substantive consolidation is warranted when "[it] will allow a truly equitable distribution of assets by treating the corporate shells as a single economic unit."). Substantive consolidation would (i) substantially increase the assets available to pay Survivors; (ii) streamline a potentially contested confirmation process and minimize related fees and expenses; and (iii) pose no material harm to the Non-Debtor Affiliated Entities, which already operate as one and the same with the Debtor. (Compl. ¶¶ 117–126.)

Because the facts alleged in the Complaint, when accepted as true, and the reasonable inferences drawn therefrom sufficiently plead a claim for substantive consolidation of the Defendants, the Motions to Dismiss Count Two of the Complaint must be denied.

WHEREFORE, the Committee requests that the Court deny the Motions to Dismiss in their entirety and grant any other relief that is just and proper.

Dated: February 19, 2024

KELLER BENVENUTTI KIM LLP
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Case: 24-04053 Doc# 19 Filed: 02/19/25 Entered: 02/19/25 17:58:30 Page 31 of 31