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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, THE OAKLAND PAROCHIAL FUND, INC., AND JOHN DOE CHURCHES 1-82, Defendants.	Case No. 23-40523 WJL Chapter 11 Adv. Pro. 24-04051 **OMNIBUS RESPONSE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO (I) DEBTOR'S MOTION TO DISMISS ADVERSARY COMPLAINT FOR DECLARATORY RELIEF, AND (II) THE OAKLAND PAROCHIAL FUND, INC.'S MOTION TO DISMISS** Judge: Hon. William J. Lafferty Date: March 4, 2025 Time: 10:30 a.m. (Pacific Time) Place: United States Bankruptcy Court Courtroom 220 1300 Clay Street Oakland, California 94612

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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. 11] (the "**Debtor's Motion**") and (ii) *The Oakland Parochial Fund, Inc.'s Motion to Dismiss* [Docket No. 9] (the "**OPF Motion**" and together with the Debtor's Motion, the "**Motions to Dismiss**") filed in the above-captioned 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

The arguments asserted in the Motions to Dismiss by the Debtor and the Oakland Parochial Fund, Inc. (the "**OPF**," and along with the Debtor, the "**Defendants**") fail for two central reasons, both of which stem from the Defendants' mischaracterization of the standard of review on a motion to dismiss and a misreading of the well-pled facts in the Complaint.

First, because justiciable controversies *do* exist with respect to Counts 1 through 4, such counts are not "moot," and require this Court to adjudicate the dispute remaining between the Committee and the Debtor. The Debtor's assertion that certain facts have been "acknowledged" is inadequate when there is no explicit admission of such facts on the record. To the contrary, in order to fully understand the interrelatedness between the Debtor, the Churches, and their alleged real and personal property, the Debtor must admit, without reservations or qualifications—or this Court to affirmatively determine—that (i) the Churches

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

are unincorporated divisions of the Debtor; (ii) the Debtor owns all legal and equitable interests in the Property; (iii) no valid trust exists with respect to the Property; and/or (iv) the Churches and the Debtor must be substantively consolidated. The Debtor's argument that all of these issues are moot is belied by the fact that the Debtor continually seeks to distinguish between the Debtor and the Churches. To fully and finally resolve this issue, the Committee filed the Complaint and is entitled to the certainty that sustaining its causes of action would provide.

Second, accepting the facts alleged in the Complaint as true and drawing all inferences in the Committee's favor—as this Court must on a motion to dismiss—the Committee sufficiently states a claim for substantive consolidation of the Debtor and OPF. Therefore, despite the Defendants' attempt to discredit the Complaint's allegations as "conclusory," this Court must first evaluate the plausibility of the claims, which have been pled in sufficient detail to survive the Motions to Dismiss.

The Defendants seek to forestall the Committee's request for equitable relief by arguing that an Eighth Circuit decision bars substantive consolidation of non-profit corporations as a matter of law. But the Defendants misconstrue the decision, which does not bind this Court in any event. The decision holds that section 303(a) of the Bankruptcy Code prohibits the use of substantive consolidation of ***truly independent*** non-profit, non-debtor entities, and explicitly makes no determination of whether entities that are, for example, alter egos under state law, can be consolidated. Thus, if, as alleged here, the entities are alter egos of one another, the Eighth Circuit's decision would not prohibit substantive consolidation. There is no Ninth Circuit decision holding otherwise.

ARGUMENT

I. The Complaint Sets Forth Sufficient Facts to Plead a Plausible Claim Upon Which Relief Can Be Granted.

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

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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)).[2]

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).

The Defendants mischaracterize the Committee's factual allegations as legal conclusions, asserting that, despite the Committee's ***nearly eleven pages of factual allegations***, the Complaint contains legal conclusions and unwarranted deductions of fact. (*See* Debtor's Mot. at 18; OPF Mot. at 6–7.) But not only does the Complaint plead facts sufficient to state each of the six counts contained therein, it *far exceeds* that pleading standard, which the Ninth Circuit has made clear is a very low bar:

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[2] 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.").

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

II. Counts 1 Through 4 Should Not Be Dismissed Because Justiciable Controversies Exist and the Complaint Pleads Sufficient Facts to State a Claim With Respect to Such Counts.

Although the Debtor asserts that Counts 1 through 4 should be dismissed for lack of actual controversies and/or for failure to state a claim because "the Debtor has already acknowledged that property of the Churches (other than Restricted Church Funds) is property of the estate," (Debtor's Mot. at 9) and "there are no separate legal entities to consolidate" (*Id.* at 1), the Debtor fails to appreciate that the specific wording of the declaratory relief sought by the Committee has meaning, and the Debtor's statements fall short of resolving the controversies. The Debtor has ***not*** made the necessary admission to render Counts 1 through 4 moot, and justiciable controversies remain to be determined by the Court.[3] In fact, as this Court has previewed, the determination of these issues likely requires a more in-depth analysis than that afforded to a simple 12(b)(6) motion:

[3] To date, the Debtor has refused to stipulate that (i) the Churches are unincorporated divisions of the Debtor; (ii) the Debtor owns all legal and equitable interests in the Property, and that, accordingly; (iii) no valid trust exists with respect to the Property. If the Debtor were willing to stipulate to these facts, there would be no need for the Committee to litigate the Adversary Proceeding as to these Counts.

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> I'm not so sure I would accept [the Debtor's statements] at face value enough to be certain that I would grant a 12(b)(6) motion . . . [a]nd I think similarly with respect to restricted funds . . . [this] is something that would probably take a little bit more legal sleuthing and fact examining than a 12(b)(6) motion would be likely to involve . . . [b]ut in the hypothetical world of what I would look at a 12(b)(6) motion, I don't necessarily feel at the moment that it is so certain . . . that I would find this claim isn't colorable.

(Tr. of Jan. 21, 2025 Hr'g at 14:21–15:13.)

Because the Committee has pled sufficient facts to allow for additional "legal sleuthing and fact examination," the Debtor's Motion to dismiss these counts must be denied.

A. Count 1 is Not Moot Because the Debtor Has Not Admitted that the Churches are Unincorporated Divisions.

An acknowledgment that the Churches are "not separately incorporated, legal entities under California law" (Debtor's Mot. at 8) does not render Count 1 as moot. California law recognizes that an unincorporated entity can be either an "unincorporated association" or an "unincorporated division." These terms cannot be used interchangeably, so the Debtor's statement is not tantamount to an admission that the Churches are unincorporated divisions of a corporation and merely parts of the Debtor.

The difference between an "unincorporated association" and an "unincorporated division"—both of which are "not separately incorporated, legal entities under California law"—is significant. An "unincorporated association" is akin to a partnership. *See S. Cal. Darts Ass'n v. Zaffina*, 762 F.3d 921, 927 (9th Cir. 2014) (citing Fed. R. Civ. P. 17(b)(3)(A)'s reference to a "partnership or other unincorporated association"); *see also* Cal. Corp. Code § 18035(a) (defining an "unincorporated association" as "an unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not"). California law recognizes that, like a partnership, unincorporated associations may be treated as independent entities, including by being beneficiaries of a trust. *Hebbard v. Colgrove*, 28 Cal. App. 3d 1017, 1022–26 (Cal. Ct. App. 1972).

In contrast, an unincorporated division is an entity that has not satisfied the corporate formalities required to be treated as an independent legal entity. *See Marquez v. U.S. Bank, N.A.*, No. LA-CV-15-06658-JAK (Ex), 2016 WL 2885857, at *4 (C.D. Cal. May 16, 2016) ("An unincorporated division of a corporation is not an independent entity."). In other words, "unincorporated divisions of [corporations] are simply that—parts of them." *Rockymore v. Eurofins Donor & Prod. Testing, Inc.*, No. 3:22-CV-00176-WHO, 2022 WL 2704122, at *3 (N.D. Cal. July 11, 2022). This distinction has been recognized in various cases involving Catholic corporations sole. *See, e.g.*, *F.E.L. Publ'ns, Ltd. v. Cath. Bishop*, 754 F.2d 216, 221 (7th Cir. 1985) ("[T]he parishes within the Archdiocese are not legal entities separate and independent from the Catholic Bishop, but are subsumed under the Catholic Bishop."); *Akoury v. Roman Cath. Archbishop*, No. 043803B, 2004 WL 2341333, at *2 (Mass. Super. Sept. 14, 2004) ("Saint Albert the Great's Church and Parish (including its real estate and its [personal property]) is an unincorporated subdivision of the Archdiocese of Boston.").

The distinction bears meaningful implications for the Debtor's creditor constituencies, including the survivors whose interests the Committee represents: if the Churches are deemed unincorporated divisions of the Debtor rather than unincorporated associations, then the Churches are legally incapable of owning any assets separate from the Debtor. This would mean that, without reservation or condition, all Church Property is property of the Debtor's estate, and therefore available to increase the recovery for creditors, and must be included in the Debtor's Schedules and liquidation analysis with respect to the Debtor's plan of reorganization (the "**Plan**").

Unfortunately, despite the Committee's good faith efforts to resolve Count 1 and render it moot, the Debtor has refused to stipulate that the Churches are unincorporated divisions of the Debtor that are not capable of owning the Property. That fact alone demonstrates that Count 1 sufficiently pleads a justiciable controversy and is not moot.

Accordingly, as there remains an actual controversy over whether the Churches are "unincorporated divisions," and as the Defendants have not sought Count 1's dismissal on any other grounds, the Debtor's request must be denied.

B. Count 2 is Supported by Sufficient Factual Allegations to Support a Claim for Relief and a Controversy Exists Because the Debtor Disputes that it Owns all Legal and Equitable Interests in the Property.

Count 2 of the Complaint seeks a declaratory judgment determining that the Debtor owns all legal *and* equitable interests in the Property pursuant to section 541 of the Bankruptcy Code. The Debtor's statements regarding this Count are nuanced in such a way as to render the purported concessions meaningless. Indeed, although the Debtor asserts that "[the Churches] do not own or hold legal or equitable title interest in real property separate from the Debtor," its Schedules and SOFAs indicate otherwise. For example, as set forth in support of Count 2 of the Complaint:

- "In the SOFA, the [Debtor] lists 203 parcels of real property—the Real Property— ***purportedly held by the Debtor in trust for the benefit of the Churches***, which the [Debtor] contends has a tax assessed value in excess of $225 million. The [Debtor] also lists 279 bank and investment accounts containing cash and investments—the Personal Property—***purportedly held by the Debtor in trust for the benefit of the Churches***, which the [Debtor] contends has a value in excess of $49.6 million." (*See* Compl. ¶¶ 42–43 (emphasis added).)

- "The [Debtor] included none of the Property in the Schedules as property of the Debtor's estate." (*See id.* ¶ 45.)

- "[T]he Disclosure Statement provides that, 'to the extent that the Bishop holds goods belonging to a parish—including, for example, real and personal property—he does so in trust for the benefit of the applicable Church.'" (*See id.* ¶ 37 (quoting *Disclosure Statement for Debtor's Plan of Reorganization*, Bankr. Docket No. 1445 (the "**Disclosure Statement**") Art. IV.C).)

Accepting these facts as true, and because unincorporated divisions lack the legal capacity to be beneficiaries of a trust, the Property should be declared property of the Debtor's estate. *See, e.g.*, *In re Roman Cath. Archbishop of Portland in Oregon*, 335 B.R. 868, 879, 889 (Bankr. D. Or. 2005) (declaring that the debtor holds both legal and equitable title to

property of parishes because, as unincorporated divisions, "***the parishes are not separate civil entities that can hold title to property or hold beneficial interests in their own right***") (emphasis added).

Here, the Complaint alleges (i) the Churches are unincorporated divisions of the Debtor with no separate civil law existence from the Debtor (meaning the *equitable* interests are in the Debtor); (ii) the Debtor exerts significant dominance and control over the Property (further meaning the *equitable* interests are in the Debtor); and (iii) title in the Property is in the name of the Debtor (meaning the *legal* interests are in the Debtor); *but* (iv) the Debtor expressly asserts in its Disclosure Statement, SOFA, and Schedules that such property is held in trust for the benefit of the Churches, thereby creating a justiciable controversy as to whether the equitable interests are in the Debtor.

Speaking out of both sides of its mouth, the Debtor claims that it has admitted that the Churches are not separate legal entities, while simultaneously asserting that the Churches can somehow own a beneficial interest in property separate from the Debtor. Again, if the Debtor were to stipulate that the Churches do not, and cannot, own property, this count would not need to be litigated. In lieu of such admission, however, a justiciable controversy remains for determination by this Court.

C. Count 3 Must Not be Dismissed as the Committee Has Sufficiently Pled that No Valid Trust Agreement Exists with Respect to the Property and a Constructive Trust Cannot Exist Between a Debtor and its Unincorporated Divisions.

The Complaint provides sufficient factual allegations to support a plausible claim that no valid trust exists with respect to the Property. Under California law, a trust can be created by a written instrument, or if no written instrument exists, a court can impose a "resulting trust . . . to enforce the intention of the parties." *In re Marriage of Ruelas*, 154 Cal. App. 4th 339, 342 (Cal. Ct. App. 2007).

As alleged in the Complaint, no written instrument exists: "[u]pon information and belief, the Property titled in the [Debtor's] name is not subject to a written trust agreement."

(*See* Compl. ¶ 39.) Furthermore, the Complaint provides that no resulting trust has been created: "[u]pon information and belief, the [Debtor] and the Churches never intended to establish trusts for the Property." (*See id.* ¶ 40.) Even if a resulting trust existed (which it does not), such trust would be held in favor of the Debtor rather than the Churches. "Under California law a resulting trust is implied by operation of law whenever a party pays the purchase price for a parcel of land and places the title to that land in the name of another [and] ***[t]he trust is presumed to result in favor of the person who paid the purchase price***." *In re Torrez*, 63 B.R. 751, 754 (B.A.P. 9th Cir. 1986), *aff'd*, 827 F.2d 1299 (9th Cir. 1987) (emphasis added). Finally, and as set forth above, an unincorporated division cannot be a beneficiary of a trust. *See In re Archbishop of Agana*, No. AP 19-00001, 2022 WL 3093715, at *5 (D. Guam Mar. 17, 2022).

The Committee has pled sufficient facts to state a claim in Count 3 and, as discussed above, an actual controversy exists as to whether a valid trust exists with respect to the Property because the Debtor continues to state, through its Disclosure Statement and other pleadings, that property is being held in trust for the Churches. Accordingly, the Debtor's Motion seeking to dismiss Count 3 of the Complaint should be denied.

D. Count 4 is Not Moot Because the Debtor Has Not Admitted that the Churches' Alleged Assets are Property of the Estate.

The Debtor's Motion states that Count 4, seeking substantive consolidation of the Debtor and Churches, is moot because "there are no separate legal entities to consolidate." (*See* Debtor's Mot. at 10.) Although the Debtor now admits that "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," the Debtor's Motion is replete with exceptions and limitations that render the Committee unable to determine exactly which assets are part of the estate. (Debtor's Mot. at 9.) For example, the Debtor caveats, "th[e] fact [that the Churches do not own or hold a legal or equitable interest in property separate from the Debtor] does not mean that all such Church

property is available for liquidation." (Debtor's Mot. at 3 n.2; *see also id.* at 8 n.5 ("[T]his does not mean that *all* Church property is property of the estate or available for liquidation.").) Accordingly, as an actual controversy still exists, the Committee requires resolution as to Count 4 of the Complaint. If it is determined that the Property is not property of the estate, the Complaint sufficiently demonstrates that substantive consolidation of the Churches with the Debtor is warranted, and therefore the Debtor's Motion should be denied.

III. The Committee Has Sufficiently Pled Substantive Consolidation Under Counts 4 and 6 of the Complaint.[4]

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.

[4] As to Count 5, at the time of filing the Complaint, the Committee could not ascertain whether the funds at issue were transferred from OPF to the Debtor and then to the Restricted Account, or from OPF directly to the Restricted Account. If the Debtor is conceding that the Debtor, not OPF, transferred funds received from OPF (which the Debtor elsewhere admits came from Unrestricted Church Funds) to a restricted account, the Committee requests permission to amend Count 5 to be pled against the Debtor, rather than against OPF. In addition, discovery would be required (at the appropriate time) to support the Debtor's allegation that the purportedly restricted assets are indeed restricted. At this stage, the factual allegations, which must be accepted as true with all reasonable inferences drawn in the Committee's favor, speak for themselves as to the unrestricted nature of the assets.

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 akin to 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 OPF and the Churches 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 Sufficiently Pleads Facts for Substantive Consolidation.

The Committee has sufficiently stated a claim for substantive consolidation by pleading that (i) both OPF and the Churches[5] have satisfied the Entanglement Test (as defined below) and (ii) that the benefits of substantive consolidation outweigh any potential harm to the Defendants. *In re Bonham*, 229 F.3d 750, 766–67 (9th Cir. 2000) (citing *In re Augie/Restivo Baking Co.*, 860 F.2d 515, 518 (2d Cir. 1988)).

In the Ninth Circuit, a non-debtor may be substantively consolidated with a debtor if the plaintiff satisfies the two-part *Bonham* test. *Id.* First, the movant must establish either that (i) creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit or (ii) the affairs of the debtor are so entangled that consolidation will benefit all creditors (the "**Entanglement Test**"). *See id.* Second, the benefits of substantive consolidation must outweigh the harm to the entity being consolidated. *See id.* at 767.

The Entanglement Test is satisfied when the targeted entity's affairs are "excessively entangled with the [debtor's] affairs to the extent that consolidation will benefit all creditors." *Id.* at 766. This requirement is met by a finding that the entity is an alter ego of the Debtor. *In re Lahijani*, No. SV 02-01797 GM, 2005 WL 4658490, at *10 (Bankr. C.D. Cal. Oct. 3, 2005) (the "[e]xtraordinary circumstances required for substantive consolidation are present where the debtor and non-debtor entities are alter egos of each other, and where the debtor uses corporate assets as if they were his own."); *see also In re SK Foods, LP*, 499 B.R. 809, 833 (Bankr. E.D. Cal. 2013) ("[T]he presence of traditional 'alter ego' factors form[] a basis to find

[5] Assuming, *arguendo*, that the Court does not find the Churches to be unincorporated divisions of the Debtor.

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that the affairs of the debtor are so entangled that [substantive] consolidation will benefit all creditors.") (internal citation omitted).

Under California law, an alter ego is "an entity lacking economic substance, essentially acting as the other self of an individual or entity." *In re Brugnara Props. VI*, 606 B.R. 371, 376 (Bankr. N.D. Cal. 2019) (applying California law) (internal citation omitted). And "[i]n bankruptcy, an alter ego is a nominal third party that has no substantive existence separate from the debtor, and property purportedly held by that third party is, therefore, the debtor's own property." *In re Singh*, No. 6:14-BK-19919-SC, 2019 WL 1231146, at *6 (B.A.P. 9th Cir. Mar. 14, 2019) (citations omitted) (applying California law). In brief, "affiliates are alter egos when the entity is merely an instrumentality, agency, conduit or adjunct of another." *In re SK Foods, LP*, 499 B.R. at 842 (citing *McLoughlin v. L. Bloom Sons Co., Inc.*, 206 Cal. App. 2d 848, 851–52 (Cal. Dist. Ct. App. 1962)).

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 v. SSC San Jose Operating Co. LP*, 415 F. Supp. 3d 918, 930 (N.D. Cal. 2019) (quoting *Walsh v. Kindred Healthcare*, 798 F. Supp. 2d 1073, 1082 (N.D. Cal. 2011)).

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

[6] California recognizes alter egos in both the parent-subsidiary context, and the "single-enterprise" context. *See Palmas Assocs. v. Las Palmas Ctr. Assocs.*, 235 Cal. App. 3d 1220, 1249 (Cal. Ct. App. 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, at *13 (N.D. Cal. Nov. 15, 2023) (finding alter ego liability among sister entities under a single-enterprise theory).

subsidiary business—from broad policy decisions to routine matters of day-to-day operation." *Id.* (internal citation and marks omitted). Courts consider numerous factors when determining whether the requisite "unity of interest and ownership" is established, though "no one characteristic governs." *In re Singh*, 2019 WL 1231146, at *6 (quoting *Toho-Towa Co. v. Morgan Creek Prods., Inc.*, 217 Cal. App. 4th 1096, 1109 (Cal. Ct. App. 2013)). Among the factors to be considered are: the use of a purported alter ego as "a mere shell, instrumentality or conduit"; "identification of the directors and officers of the two entities in the responsible supervision and management"; "the disregard of legal formalities and the failure to maintain arm's length relationships among related entities"; and "the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities." *Zoran Corp. v. Chen*, 185 Cal. App. 4th 799, 811–12 (Cal. Ct. App. 2010) (internal citations omitted). California courts have emphasized that "[n]o single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine." *Id.* at 812.

The Debtor's and OPF's claim that the Committee has not pled sufficient entanglement to satisfy the *Bonham* test is undermined by the case law it cites. For example, although the Bankruptcy Court for the Southern District of New York declined to substantively consolidate the debtor and its subsidiary in the bankruptcy case of *Verestar, Inc.* (where the debtor controlled the subsidiary's core corporate functions and business, exerted dominion of the subsidiary's cash and bank accounts, and operated the subsidiary as a "mere façade"), the *Verestar* court *did* find that the committee had pled allegations with sufficient specificity to pursue its alter ego claim. 343 B.R. 444, 463, 465 (Bankr. S.D.N.Y. 2006). Here, in the Ninth Circuit, as explained below, a finding of alter ego satisfies the Entanglement Test, so the similar facts in *Verestar* only advance the Committee's argument for substantive consolidation.

1. The Committee Has Pled Sufficient Facts to Demonstrate a Unity of Interest and Ownership Between OPF and the Debtor.

The Complaint demonstrates more than a sufficient degree of entanglement to find substantive consolidation appropriate under Ninth Circuit case law. The Committee has pled, among other things, that (i) the Debtor[7] exerts considerable control over OPF, including its finances, governance, and corporate property and (ii) OPF essentially serves as a conduit for the Debtor to simultaneously provide financing to the Debtor and thwart creditors' access to funds that are rightfully property of the estate. Specifically, the Complaint provides that:

- OPF "was established in 2014 with the primary purpose of supporting the missions and purposes of the Diocese, to be 'operated, supervised or controlled by The Roman Catholic Bishop of Oakland.'" (*See* Compl. ¶ 46.)
- "Before April 1, 2023, within roughly one month of the commencement of the Debtor's Chapter 11 Case, OPF held no cash or investments and conducted no business of any kind." (*See id.* ¶ 47.)
- "Upon information and belief, the OPF only has two officers: Father Lawrence D'Anjou and Paul A. Bongiovanni. Father Lawrence D'Anjou is the Chief Executive Officer and President of OPF and the Vicar General of the Debtor." (*See id.* ¶¶ 48–49.)
- The OPF Charter provides that "all corporate property is irrevocably dedicated to support the religious mission and purposes, and teachings, beliefs and activities, of the [Debtor] . . . and is formed, and shall be operated, supervised or controlled by the [Debtor]." (*See id.* ¶ 51.)
- Certain actions by the OPF Board are effective only upon written consent of the Debtor:

  (i) any borrowing for capital or similar needs;

[7] The OPF Motion asserts that the Committee "repeatedly conflates" the Debtor and the Diocese. (OPF Mot. at 1.) Any conflation emanates from the Debtor's own documents, its website and its organizational structure. Nevertheless, the term "Diocese" is clearly defined in the Complaint to mean the Debtor, and all references to the "Diocese's control" are interchangeable with the "Debtor's control." To avoid confusion, this Response uses the term the "Debtor" instead of the "Diocese" when quoting allegations set forth in the Complaint.

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(ii) entering into any transaction outside the ordinary course of the affairs of the corporation; or

(iii) any amendment, restatement, repeal or adoption of the Articles of Incorporation or Bylaws of the corporation. (*See id.* ¶ 52.)

Since its incorporation in 2014, OPF has never had any employees, and relies on the Debtor for finance and accounting services. (*See id.* ¶ 55–56.) With those facts taken as true, and with all reasonable inferences drawn in the Committee's favor, and along with additional facts alleged in the Complaint, the Committee demonstrated that OPF cannot exist independent of the Debtor and is an alter ego of the Debtor.

Despite the fact that throughout this case, (i) the Debtor has referred to a $35 million loan from OPF to the Debtor which forms the basis of OPF's alleged claim against the Debtor's estate, and (ii) under the Debtor's Plan, it seeks to pay that claim in full, the Debtor's Motion now emphasizes that the Debtor's funds that were transferred to OPF and then "loaned" back to the Debtor remain, and have always been, property of the Debtor's estate. (*See* Debtor's Mot. at 5–6 ("The Debtor 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. . . . 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.").) Tellingly, the Debtor does not address the inherent contradiction that an entity cannot loan money to *itself*, let alone list that transfer as a claim on its schedules. The fact that *even the Debtor* is confused (at best) about the separation of the entities and ownership of assets between them underscores the entanglement between the Debtor and OPF.[8]

[8] The Debtor has created a great deal of confusion over the $35 million loan purportedly made by OPF to the Debtor. Under the proposed Plan, the Debtor proposes to repay OPF for that loan. But now the Debtor states that the loan was funded with its own funds. The Committee will object to the claim scheduled for OPF and its treatment under the Plan. Given the game of whack-a-mole the Debtor has forced the Committee to play, the Committee is compelled to allege alternative theories of relief until this issue is fully and finally decided.

2. The Committee Pled Sufficient Facts to Demonstrate a Unity of Interest and Ownership Between the Churches and the Debtor.

The Complaint alleges facts that, when taken as true and with all reasonable inferences drawn in the Committee's favor, demonstrate the Debtor's "pervasive control" over the Churches as part of the Debtor's enterprise. Indeed, the degree of entanglement is so pronounced that the Debtor has essentially stated (albeit with caveats) that the Churches, under California law, are not separate from the Debtor. (*See* Debtor's Mot. at 3.)[9]

For example, the Debtor acts as one body before the federal government and recognizes that the Churches (and Schools) fall under its umbrella, with all financial activity of the Churches restricted by the Debtor. (*See* Compl. ¶ 26.) Further no Church may enter into a contract without the approval of the Debtor. (*See id.* ¶ 27.)

The Debtor has also represented to third parties that the Churches are merely part of the Debtor. (*See id.* ¶ 30.) [redacted] In this vein, before the Chapter 11 Case began, the Debtor entered into several stipulations with survivors under which the defendant Church was dismissed from the case because the Debtor conceded that the dismissed Church "is not a separate corporation or civil legal entity of any kind, and The Roman Catholic Bishop of Oakland, a corporation sole, holds title to its assets under civil law." (*See id.* ¶¶ 32–33.)

The Complaint alleges that "[t]he [Debtor] has complete control of and domination over the Parishes, the Churches, and the Property (as defined herein), as evidenced by the fact that the Debtor:

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[9] If this Court does not determine all assets purportedly belonging to or held for the benefit of the Churches are property of the Debtor's estate as set forth in Counts 1 through 3 of the Complaint, substantive consolidation of the Debtor and the Churches is necessary and appropriate as the facts alleged in the Complaint demonstrate that the Debtor and the Churches are so entangled that they are one in the same.



(*See id.* ¶ 34.)

Based on the above and the additional factual allegations set forth in the Complaint, the Committee has pled facts sufficient to show that the Churches are alter egos of the Debtor and substantive consolidation is appropriate, and therefore the Motions to Dismiss must be denied. Further, the second element of the alter ego test—that failure to treat the entities as alter egos would result in an inequitable result—is also satisfied as to the Churches and OPF, as set forth below in Part III.C of this Response.

C. The Balance of Benefits and Harm Weigh in Favor of Substantive Consolidation.

The Complaint sufficiently alleges that substantive consolidation will inure to the benefit of all creditors, and that such benefit will outweigh any harm to the entity being consolidated, as required under the *Bonham* test. *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 substantive consolidation "will yield an equitable treatment of creditors without any undue prejudice to any particular group." *In re Food Fair, Inc.*, 10 B.R. 123, 127 (Bankr. S.D.N.Y. 1981). In short, substantive consolidation ensures that "no party [is] unjustly enriched and no creditors look[] to an

impoverished asset pool for payment." *In re Parkway Calabasas Ltd.*, 89 B.R. 832, 839 (Bankr. C.D. Cal. 1988).

Here, where the facts establish that the Debtor is repurposing OPF as a vessel to shift funds outside the Debtor's estate (and beyond the reach of the survivors and other creditor constituencies),[10] and where the Debtor is seeking to avoid treatment of the Churches as property of the Debtor's estate, allowing substantive consolidation is in the best interest of all creditors. *See In re Bonham*, 229 F.3d at 768 (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) considerably improve the potential recoveries for all creditors, including survivor claimants, increasing the Debtor's estate by over one hundred million dollars; (ii) eliminate the $35 million OPF Claim, as well as obviate the time and expense necessary to litigate the Committee's forthcoming objection to the OPF Claim; (iii) streamline a potentially contested confirmation process; and (iv) pose no material harm to OPF.

Thus, for the reasons described, maintaining any purported separation between OPF and the Debtor, as well as among the Churches and the Debtor, would result in fraud or injustice to the Debtors' creditor constituencies. *In re Singh*, 2019 WL 1231146, at *6. Substantive consolidation is thus appropriate and the Court should deny the Defendants' Motions to dismiss Counts 4 and 6, as applicable.

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[10] The Debtor denies 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." (Debtor's Mot. at 6). Yet the Debtor lists such loan as a claim on its schedules and under its Plan of Reorganization, proposes to repay OPF $35 million. Those funds could otherwise be used to pay survivors. Again, until the Debtor's words and actions match, the Committee is compelled to pursue alternative legal theories to prevent property of the estate from being siphoned off to related entities.

WHEREFORE, the Committee respectfully 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, 2025

KELLER BENVENUTTI KIM LLP
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