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**UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF CALIFORNIA**
**OAKLAND DIVISION**

| | |
|---|---|
| In re:<br><br>THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole,<br><br>Debtor. | Case No. 23-40523 WJL<br><br>Chapter 11 |
| THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF THE ROMAN CATHOLIC BISHOP OF OAKLAND,<br><br>Plaintiff,<br><br>v.<br><br>THE ROMAN CATHOLIC BISHOP OF OAKLAND, ADVENTUS, THE ROMAN CATHOLIC WELFARE CORPORATION OF OAKLAND, AND THE ROMAN CATHOLIC CEMETERIES OF THE DIOCESE OF OAKLAND,<br><br>Defendants. | Adv. Pro. No. 24-04053<br><br>**REPLY IN SUPPORT OF DEBTOR'S MOTION TO DISMISS ADVERSARY COMPLAINT FOR DECLARATORY RELIEF**<br><br>Judge: Hon. William J. Lafferty<br><br>Date: March 4, 2025<br>Time: 10:30 a.m.<br>Place: United States Bankruptcy Court<br>1300 Clay Street<br>Courtroom 220<br>Oakland, CA 94612 |

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The Roman Catholic Bishop of Oakland, a California corporation sole and the debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case"), hereby files this reply in support of its *Debtor's Motion to Dismiss Adversary Complaint for Declaratory Relief* [Docket No. 14] (the "Motion to Dismiss"), and in response to the *Omnibus Response of the Official Committee of Unsured 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* [Docket No. 19] (the "Response").[1]

## I.

## INTRODUCTION

Apparently aware that its claims have no legal basis, the Committee's Response acknowledges that its Complaint relies entirely on the Non-Debtor Catholic Entities being alleged alter egos of the Debtor under California law. The Committee, however, did not even attempt to plead alter ego in the Complaint, and the Complaint falls woefully short of alleging sufficient facts to plead an alter ego claim under California law.

As set forth in the Motion to Dismiss, Count 1 of the Complaint, seeking a declaratory judgment that the assets of the Non-Debtor Catholic Entities are property of the estate, fails because the Committee does not state a cognizable legal theory to support its claim. The Committee cannot state a claim for declaratory relief under section 541 of the Bankruptcy Code without any legal basis for asserting that the Non-Debtor Catholic Entities' assets belong to the debtor. The Committee utterly fails to provide any cognizable basis for alleging that the Debtor somehow "owns" the assets of the Non-Debtor Catholic Entities. This deficiency is fatal to Count 1.

In an effort to cure this defective pleading, the Committee attempts to argue that the Non-Debtor Catholic Entities are somehow alter egos of the Debtor. This post-hoc explanation fails because (1) the Committee does not even address one of the two essential elements necessary to plead alter ego: that recognition of the corporate form would result in fraud or injustice, and (2) the factors the Committee cites

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion to Dismiss.

in support of the second alter ego factor of "unity of interest and ownership" have all been found by California courts to be insufficient to establish alter ego. Indeed, the Committee's arguments primarily boil down to asserting that the Debtor allegedly "controls" the Non-Debtor Catholic Entities. While this allegation is not accurate, multiple courts have squarely rejected corporate control as a basis for alleging alter ego. This Court should dismiss Count 1 with prejudice.

Count 2 of the Complaint fails because section 303 of the Bankruptcy Code prohibits an involuntary bankruptcy case against a non-profit religious corporation such as the Non-Debtor Catholic Entities. As discussed in the Motion to Dismiss, the Eighth Circuit dismissed substantive consolidation claims against non-debtors brought by a creditors' committee in virtually identical circumstances in *In re Archdiocese of St. Paul & Minneapolis*, 888 F.3d 944 (8th Cir. 2018).

The Committee attempts to sidestep the ruling in *Archdiocese of St. Paul & Minneapolis* by arguing that alter ego is an "exception" to the rule prohibiting substantive consolidation of non-debtor, non-profit corporations This argument fails for two reasons. ***First***, under *Law v. Siegel*, 571 U.S. 415, 421 (2014), a Bankruptcy Court's equitable powers under section 105 cannot contravene specific sections of the Bankruptcy Code. Alter ego, even if properly plead, cannot be a basis for elevating section 105 over the express prohibition against non-profit involuntary cases under section 303.

***Second***, even if alter ego is an "exception" to the rule articulated in *Archdiocese of St. Paul & Minneapolis* the Committee has plainly failed to plead an alter ego claim in the Complaint. This Court therefore should dismiss Count 2 with prejudice.

The Committee's failure to adequately plead either cause of action should be taken in the context of this Chapter 11 Case. The Chapter 11 Case has been pending for nearly two years, and the Debtor has provided the Committee with many thousands of documents in response to the Committee's extensive requests for information. The Committee argues that the Debtor is trying to prevent it from conducting discovery on its allegations, but the reality is that there is almost nothing it could seek in discovery that has not already been provided. Despite access to all of these documents, the Committee has utterly failed to state a cognizable claim for relief.

## II.

## ARGUMENT

### A. Count 1 Must Be Dismissed Because The Committee Cannot State A Cognizable Claim For Declaratory Relief

#### 1. Section 541 Of The Bankruptcy Code And Bankruptcy Rule 7001 Provide No Basis For The Committee's Requested Relief

Count 1 seeks a declaration that assets indisputably owned by the Non-Debtor Catholic Entities are property of the Debtor's estate. In its Response, the Committee first argues that Count 1 is supported by section 541 of the Bankruptcy Code and Bankruptcy Rule 7001. This argument wholly misses the point, and provides no basis for the relief sought by the Committee.

The Committee points to the language of Rule 7001(2), which provides that adversary proceedings include "a proceeding to determine the validity, priority, or extent of a lien or other interest in property….," and Rule 7001(9), which includes a declaratory judgment action "relating to any of the foregoing." Fed. R. Bankr. P. 7001(2), (9). To be sure, a cause of action for determination of property of the estate can be stated under section 541 where there is a dispute as to ***ownership of specific property***, such as the ownership of disputed escrow funds. *See In re DeFlora Lake Dev. Assocs, Inc.*, 571 B.R. 587, 598-99 (Bankr. S.D.N.Y. 2017). The fundamental flaw in the Committee's argument is that it has not, and cannot, plead any cognizable basis that the estate holds any interest in the property of the Non-Debtor Catholic Entities.

Indeed, the Complaint does not seek resolution of a dispute as to the ownership of any property. Rather, it seeks a determination that property undisputedly owned by the Non-Debtor Catholic Entities is nonetheless somehow property of the estate. To obtain the relief it seeks, the Committee would have to first articulate a legal theory under California law for why the assets of the Non-Debtor Catholic Entities are in fact owned by the Debtor, which it did not, and cannot, do. *See Butner v. U.S.*, 440 U.S. 48, 55 (1979) ("Property interests are created and defined by state law.").

In the Complaint, the Committee relies almost entirely on assertions that the Non-Debtor Catholic Entities are allegedly controlled by the Debtor. Beyond the factual inaccuracy of these assertions, they are insufficient to state a cognizable claim under section 541. The Committee has not articulated any legal

theory or cited any case supporting its apparent position that the mere exercise of control over a corporation gives rise to an equitable or legal interest in its property.

**2. The Committee Cannot Rely On An "Alter Ego" Claim To Save Count 1**

Apparently recognizing that merely alleging that the Debtor "controls" the Non-Debtor Catholic Entities is not a legal basis for relief on its declaratory judgment claim, the Committee now seeks to repackage Count 1 as being based on "alter ego" under California law. This attempt to retroactively shoehorn a legal theory into Count 1 fails because the Committee did not and cannot plead alter ego under California law.

**a. Pleading An Alter Ego Claim Sets A High Bar That The Committee Cannot Satisfy**

Alter ego, or piercing the corporate form, "is recognized as an extreme remedy." *Calvert v. Huckins*, 875 F. Supp. 674, 678 (E.D. Cal. 1995). Therefore "[c]ourts will pierce the corporate veil only in exceptional circumstances." *Id.* (internal quotations omitted). In order to plead alter ego, plaintiffs must overcome "a general presumption in favor of respecting the corporate entity." *Id.* In other words, alter ego requires overcoming the ordinary legal fact that "a corporation is regarded as a legal entity, separate and distinct from its stockholders, officers and directors, with separate and distinct liabilities and obligations. *Sonora Diamond Corp. v. Superior Ct.*, 83 Cal. App. 4th 523, 538 (Cal. Ct. App. 2000).

To plead a cognizable claim for alter ego under California law, "a plaintiff must make out a prima facie case (1) that there is such unity of interest and ownership that the separate personalities [of the two entities] no longer exist and (2) that failure to disregard [their separate identities] would result in fraud or injustice." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015) (internal quotations omitted), citing *Doe v. Unocal*, 248 F.3d 915, 922 (9th Cir. 2001), abrogated on other grounds by *Williams v. Yamaha Motor Co.*, 851 F.3d 1015 (9th Cir. 2017); *Antoine v. BAE Sys., Inc.*, 2018 WL 11471623, at *11 (N.D. Cal. July 30, 2018); *Sonora Diamond Corp.*, 83 Cal. App. 4th at 538 (applying the same test). As set forth below, the Committee's allegations fall far short of satisfying this high bar.

**b. The Committee Did Not Even Attempt To Plead Alter Ego In Count 1**

Relying on an alter ego theory to save Count 1 fails for many reasons, not least of which is that the Committee's Complaint does not even attempt to plead alter ego. Count 1, as pled, merely alleges (incorrectly) that the Debtor exercises control over property of the Non-Debtor Catholic Entities, and that as a result the Debtor "holds both the legal and equitable interests in the property." Complaint, ¶¶ 113-116. In light of the Motion to Dismiss, which demonstrated that the Committee's "property of the estate" theory had no basis under state law, the Committee attempts to argue that Count 1 is based on alter ego. *See* Response, pp. 10-12.

Courts in the Ninth Circuit are split on whether the heightened pleading standard of Fed. R. Civ. P. 9(b) applies to pleading alter ego liability. *See Wimbledon Fund, SPC v. Graybox, LLC*, 2016 WL 7444709 (C.D. Cal. 2016) (discussing split and collecting cases). As to the fraud element of the alter ego test, however, "a majority of courts in this Circuit have found that plaintiffs must satisfy Rule 9(b)'s particularity standard." *Id.* Regardless, "[c]onclusory allegations of alter ego status are insufficient." *Walsh v. Kindred Healthcare*, 798 F. Supp. 2d 1073, 1082 (N.D. Cal. 2011). Thus, in order to plead a claim based on alter ego, "a plaintiff must allege specifically both of the elements of alter ego liability, as well as facts supporting each." *Sandoval v. Ali*, 34 F. Supp. 3d 1031, 1040 (N.D. Cal. 2014); *Neilson v. Union Bank of Cal., N.A.*, 290 F.Supp.2d 1101, 1116 (C.D. Cal.2003).

Under either Rule 9(b) or Rule 8, the Complaint failed to plead facts sufficient to state a claim based on alter ego liability. Eleventh hour allegations of alter ego in a response brief will not save a Complaint that fails to allege the basic elements of alter ego. *See e.g, Sandoval*, 34 F. Supp. 3d at 1040.

**(i) The Committee Does Not Even Argue That It Has Satisfied The "Fraud Or Injustice" Prong Of The Alter Ego Test**

The Committee's alter ego argument fails because the Committee has not pled (and does not even argue), "one of the two essential elements of the alter ego doctrine": that misconduct would be perpetrated or injustice would flow from recognition of the separate corporate form of the Debtor and Non-Debtor Catholic Entities. *Sonora Diamond Corp.*, 83 Cal. App. 4th at 538 (rejecting alter ego based on a failure of this prong of the test); *see also Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015) (stating the

two prongs required for alter ego). Failure to plead specific facts supporting this prong is fatal to a complaint based on alter ego. *See Mou v. SSC San Jose Operating Co. LP*, 415 F. Supp. 3d 918, 931 (N.D. Cal. 2019) (dismissing alter ego claims based on a failure to allege facts supporting the fraud or injustice prong).

While the Committee makes various allegations regarding purported control of the Non-Debtor Catholic Entities by the Debtor, the Complaint does not plead how any of the Non-Debtor Catholic Entities is a "sham corporate entity formed for the purpose of committing fraud or other misdeeds." *See Sonora Diamond Corp.*, 83 Cal. App. 4th at 538.[2] Underscoring the degree to which the Committee fails to plead this prong of the test, the Committee does not even attempt to argue that it has satisfied this "essential element," instead simply ignoring the requirement altogether and focusing exclusively on the unity of interest prong. *See* Response, pp. 10-16.

More than conclusory allegations are required, or a complaint will be dismissed. *See Mou*, 415 F. Supp. 3d at 931; *Sandoval*, 34 F. Supp. 3d at 1040 (alter ego not properly plead where complaint lacked facts regarding fraud or inequitable request of recognizing corporate form). General allegations that defendants operated as a single business for the purpose of evading liability and hiding money were "too vague and conclusory to support a plausible inference that there has been an abuse of corporate privileges." *See Mou*, 415 F. Supp. 3d at 931. Likewise, "California courts have rejected … the view that the potential difficulty a plaintiff faces collecting a judgment is an inequitable result that warrants application of the alter ego doctrine." *Sandoval*, 34 F. Supp. 3d at 1040, citing *Neilson*, 290 F.Supp.2d at 1117 (internal quotations omitted).

The Complaint therefore must be dismissed. *See Meadows v. Emett & Chandler*, 99 Cal. App. 2d 496, 499 (Cal. Ct. App. 1950) ("The rule is firmly settled that no reliance can be had on [alter ego] theory in the absence of pleading that recognition of the corporate entity would sanction a fraud or promote injustice."). In other words, the allegation of alter ego "is insufficient to justify the court in disregarding

[2] The Committee could not reasonably suggest that the Non-Debtor Catholic Entities were formed for the purpose of defrauding Survivors, given the long history of their current structure. As to RCWC in particular, the Complaint alleges that it was formed in 1962.

the corporate entity in the absence of allegations of facts from which it appears that justice cannot otherwise be accomplished." *Id.* at 498-99.

**(ii) The Committee Fails To Satisfy The "Unity Of Interest And Ownership" Prong Of The Alter Ego Test**

The Committee also fails to plead facts in its Complaint alleging "that there is such unity of interest and ownership that the separate personalities [of the two entities] no longer exist." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073. In making its argument, the Committee points to the factors for consideration articulated in *Roman Cath. Archbishop v. Superior Ct. See* Response, p. 11. These include: (i) commingling of funds and other assets of the two entities, (ii) the holding out by one entity that it is liable for the debts of the other, (iii) identical equitable ownership in the two entities, (iv) use of the same offices and employees, and (v) use of one as a mere shell or conduit for the affairs of the other. *See Roman Cath. Archbishop v. Superior Ct.*, 15 Cal. App. 3d at 411. Ultimately, as the Committee acknowledges, no one factor controls and taken together, they must amount to "a showing that the parent controls the subsidiary to such a degree as to render the latter the mere instrumentality of the former." *Ranza*, 793 F.3d at 1073; *Motul S.A. v. USA Wholesale Lubricant, Inc.*, 901, 686 F.Supp.3d 900, 911 (N.D. Cal. 2023).

The Committee cites six factors that it alleges support a claim based on alter ego. *See* Response, pp. 11-16. In reality, as set forth below, it is clear that even if all of the Committee's unsupported allegations are taken as true, none of these six factors are sufficient to plead an alter ego theory.

***First***, the mere exercise of control by a parent over a subsidiary is insufficient to support a claim based on alter ego. The Committee argues that the Debtor generally exercises control over the Non-Debtor Catholic Entities. *See* Response, pp. 12-13. This allegation is insufficient. As the Ninth Circuit has stated, "a plaintiff does not meet the unity of interest and ownership prong when the evidence shows only an active parent corporation involved directly in decision-making about its subsidiaries' holdings." *Ranza*, 793 F.3d at 1073, citing *Unocal*, 248 F.3d at 928.[3] This was true even where a plaintiff showed evidence of the parent company's: "(1) involvement in its subsidiaries' acquisitions, divestments and capital

[3] *Unocal* was abrogated on other grounds related to jurisdiction over foreign corporations. *See Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1021 (9th Cir. 2017). It remains good law as to alter ego. *See e.g.*, *Antoine*, 2018 WL 11471623, at *11 (citing *Unocal*).

expenditures; (2) formulation of general business policies and strategies applicable to its subsidiaries, including specialization in particular areas of commerce; (3) provision of loans and other types of financing to subsidiaries; [and] (4) maintenance of overlapping directors and officers with its subsidiaries." *Unocal*, 248 F.3d at 928; *see also Katzir's Floor & Home Design, Inc. v. MMLS.com,* 394 F.3d 1143, 1149 (9th Cir. 2004) (''[The] mere fact of sole ownership and control does not eviscerate the separate corporate identity that is the foundation of corporate law'').

Likewise, control over another entity's budget, including approval authority for large purchases, has been found to be insufficient to establish alter ego. *Ranza*, 793 F.3d at 1074. The "mere instrumentality" requirement of alter ego means that a plaintiff must show not just oversight and control of general policies, but that the parent controls "how the company will be operated on a day-to-day basis." *Calvert*, 875 F. Supp. at 679, quoting *Seltzer Sister Bottling Co. Inc. v. Source Perrier, S.A.*, 1991 WL 279273 (N.D.Cal.1991); *Unocal*, 248 F.3d at 927 (alter ego requires exercise of day-to-day control). The Committee has not pled ***any*** facts from which it can be plausibly inferred that the Debtor exercises day-to-day control over the operations of the Non-Debtor Catholic Entities.

***Second***, the right of RCBO to appoint board members is insufficient to plead a claim based on alter ego. The Committee argues that its claims are supported by the fact that the Debtor has the right to appoint some or all board members of the Non-Debtor Catholic Entities. *See* Response, p. 13-14. This is contrary to Ninth Circuit law. The Ninth Circuit has specifically found that alter ego was ***not*** demonstrated where a parent "placed several of its directors on the subsidiary's board." *Unocal*, 248 F.3d at 927, citing *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir.1980). Indeed, evidence "that the parent company owned 100 percent of the subsidiary's stock, it shared office space and policy manuals with the subsidiary, they had some common personnel, and they had consolidated financial statements" fell "woefully short of the showing on which alter ego normally rests." *Tomaselli v. Transamerica Ins. Co.*, 25 Cal. App. 4th 1269, 1285 (1994).

It is hard to imagine how the ability to appoint board members could be sufficient to establish alter ego liability when 100% shareholder control is not sufficient to establish such liability. This underscores the Committee's overreach. If the ability to control board seats was sufficient to support alter ego liability,

then every corporate parent would be the alter ego of its subsidiaries, upending the fundamental underpinnings of corporate law. *See Meadows*, 99 Cal. App. 2d at 499 ("Mere ownership of all the stock and control and management of a corporation by one or two individuals is not of itself sufficient to cause the courts to disregard the corporate entity.")

***Third***, overlapping board members is insufficient to support a claim based on alter ego. *See* Response, p. 14. In rejecting alter ego claims, the Eastern District of California noted that as to assertions of overlapping officers and directors, "[c]ourts have repeatedly held that such factors do not justify piercing the corporate veil." *Calvert v. Huckins*, 875 F. Supp. 674, 678 (E.D. Cal. 1995). Thus, the plaintiffs must show that the parent does "more than exercise the broad oversight typically indicated by common ownership and common directorship." *Id.* Indeed, as the Ninth Circuit bluntly stated: "Total ownership and shared management personnel are alone insufficient to establish the requisite level of control." *Ranza*, 793 F.3d at 1073. Where courts have articulated unity of officers and directors as a factor supporting alter ego, it has been based on "*identical* directors and officers." *See Troyk v. Farmers Grp., Inc.*, 171 Cal. App. 4th 1305, 1342 (2009). While the Committee has alleged some overlap of directors between the Debtor and Non-Debtor Catholic Entities, it certainly has not (and could not) allege identical boards and officers.[4]

***Fourth***, allegations that the Debtor and Non-Debtor Catholic Entities purportedly work in concert is insufficient to support a claim based on alter ego. *See* Response, pp. 14-15. This argument collapses under the barest scrutiny, because like many of the Committee's arguments, it proves too much. If corporate-family affiliations were sufficient to support an alter ego claim, every group of affiliated companies would be deemed alter egos of each other. Not surprisingly, the Ninth Circuit has rejected this theory of alter ago liability. *See, e.g.*, *Ranza*, 793 F.3d at 1074 (holding that the interrelation between Nike, as parent, and a wholly owned subsidiary that existed for the purpose of selling Nike-branded products in Europe, was insufficient to support alter ego claims).

***Fifth***, maintaining a website reflecting resources of affiliated entities or joint fundraising is insufficient to support a claim based on alter ego. *See* Response, p. 15. The Committee provides no

[4] As a corporation sole, RCBO does not have a board, whereas the Non-Debtor Catholic Entities do.

explanation or attempt to cite any legal authority for how these could support alter ego claims. If "shared office space and policy manuals … some common personnel, and … consolidated financial statements" are "woefully short" of the alter ego standard, then a common website and shared fundraising are that much further removed. *See Tomaselli*, 25 Cal. App. 4th at 1285 (1994). Courts have expressly rejected allegations of "shared headquarters, facilities, finances, website, email address, phone number, employees and customers" as sufficient to plead alter ego without more specificity. *See Motul*, 686 F.Supp.3d at 911 (quoting *Payoda, Inc. v. Photon Infotech, Inc.*, 2015 WL 4593911, at *2 (internal quotations omitted)).

***Sixth***, maintaining the DLF is insufficient to support a claim based on alter ego. *See* Response, pp. 15-16. Loans from a parent to its subsidiaries do not support establish an alter ego relationship where they are properly documented and corporate formalities observed. *Unocal*, 248 F.3d at 928. The Committee does not allege any failure to maintain corporate formalities or properly account for deposits and loans. Despite the Committee suggestion to the contrary, a failure to property account cannot be inferred from the mere existence of the DLF.[5]

Fundamentally, cases in California and the Ninth Circuit uniformly hold that extensive "macromanagement" and interconnectedness between corporate entities is insufficient to support alter ego claims where the entities observed separate corporate formalities. *See, e.g., Ranza*, 793 F.3d at 1075. Nothing in the complaint alleges any failure to observe corporate formalities by the Debtor or the Non-Debtor Catholic Entities.

Further, the Committee's discussion of the six factors it argues support a finding of alter ego are entirely devoid of any legal authority. *See* Response, pp. 12-16. As demonstrated above, each of the Committee's six factors is inadequate to allege alter ego under applicable California and Ninth Circuit law. *See Sandoval*, 34 F. Supp. 3d at 1040 (a plaintiff must plead facts sufficient to support each of the essential elements of alter ego).

[5] The Committee presumably asks the Court to draw this inference, because it knows that it cannot in good faith allege a failure to property account or observe corporate formalities, since the extensive discovery it has received amply demonstrates thorough accounting for the assets of all funds deposited in the DLF.

### 3. The Committee's Alter Ego Allegations Are Contrary To California Law

The Committee has failed to cite any authority for applying alter ego to affiliated non-profit entities. Alter ego is applied to hold "the equitable ownership of a corporation liable for the actions of the corporation." *Sonora Diamond Corp.*, 83 Cal. App. 4th at 538. Where the test is met (which it is not here, as demonstrated above), a court may "ignore the corporate entity and deem the corporation's acts to be those of the persons or organizations actually controlling the corporation." *Id.*

It is undisputed that the Non-Debtor Catholic Entities are non-profit corporations organized under the laws of California. As such, they are by definition not subsidiaries of the Debtor, because they do not have equity. The Committee simply ignores this foundational issue.

Further, to the extent the Committee seeks to get around this defect in its Complaint by arguing that the Non-Debtor Catholic Entities are functionally subsidiaries because they are controlled by the Debtor, application of alter ego to hold the Non-Debtor Catholic Entities liable for the debts of the Debtor would be contrary to California law. *See, e.g., He Nam You v. Japan,* 150 F.Supp. 3d 1140, 1149 (N.D. Cal. 2015) ("Outside reverse piercing occurs when a plaintiff that is not a shareholder (an outsider) seeks to reach the assets of a subsidiary based on a parent's liability (the reverse of traditional veil piercing, which seeks to reach the assets of a parent for the liability of its subsidiary)."). It is black-letter law that California does not recognize or allow "reverse veil-piercing," where a plaintiff seeks to hold a subsidiary liable for the debts of its parent. *See, e.g., id.* at 1149-50 (applying California law and rejecting the use of outside reverse veil piercing as a basis for liability); *Postal Instant Press, Inc. v. Kaswa Corp.,* 162 Cal. App. 4th 1510, 1519-24 (Cal. Ct. App. 2008) (rejecting reverse veil piercing and holding that a third-party may not pierce the corporate veil to reach corporate assets to satisfy a shareholder's personal liability).

The Committee cites no legal theory other than alter ego to support a claim that property of the Non-Debtor Catholic Entities is property of the estate under section 541. Because the Complaint does not allege facts supporting an alter ego claim, Count 1 of the Complaint must be dismissed.

### B. Count II Fails Because The Committee Still Cannot State A Cognizable Basis For Substantive Consolidation

#### 1. Substantive Consolidation is Not Available Against Non-Profit Entities

As set forth in the Motion to Dismiss, the Committee cannot use section 105 of the Bankruptcy Code to involuntarily force the Non-Debtor Catholic Entities into bankruptcy under the guise of substantive consolidation. Section 303 of the Bankruptcy Code prohibits an involuntary bankruptcy case against a non-profit religious corporation such as the Non-Debtor Catholic Entities. The Eighth Circuit considered, and rejected, substantive consolidation claims against non-debtors in virtually identical circumstances in *In re Archdiocese of St. Paul & Minneapolis*, 888 F.3d 944 (8th Cir. 2018).

The Committee asks this Court to simply disregard *Archdiocese of St. Paul & Minneapolis*, without any basis for this Court doing so. *See* Response, pp. 16-18. Among other things, the Committee merely argues that this decision "has no precedential value in this Adversary Proceeding." *Id.* at p.16. This is a remarkable assertion. Certainly, this Court is not bound by the decisions of the Eighth Circuit, but as the sole Circuit-level decision directly on point, it is highly persuasive. The Committee also fails to grapple with the underlying reasoning of *Archdiocese of St. Paul & Minneapolis*, which is based on the "hornbook law that § 105(a) 'does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.'" *Law v. Siegel*, 571 U.S. 415, 421 (2014). Because the sole statutory authority for substantive consolidation is section 105 of the Bankruptcy Code, *see In re Bonham*, 229 F.3d 750, 764 (9th Cir. 2000), the Court cannot apply it to consolidate separate, non-debtor non-profit entities in contravention of the express limitations of section 303. *Archdiocese of St. Paul & Minneapolis*, 888 F.3d at 953.

#### 2. The Committee Cannot Save Its Substantive Consolidation Claim By Repackaging It As An Alter Ego Claim

The Committee's only other attempt to sidestep the reasoning in *Archdiocese of St. Paul & Minneapolis* is to once again allege that it has stated a claim for alter ego in Count 2. The Court in *Archdiocese of St. Paul & Minneapolis* stated that "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." 888 F.3d at 953. The Eighth Circuit did not rule that alter ego is an exception – it merely reserved the question entirely. *Id.*

The Committee's alter ego argument does not save Count 2 for two reasons. ***First***, including alter ego allegations in a substantive consolidation claim under section 105 does not change the express prohibition – articulated by the Supreme Court in *Law v. Siegel* – that the Bankruptcy Court's equitable powers under section 105 cannot contravene specific sections of the Bankruptcy Code. 571 U.S. at 421. The Committee therefore cannot use section 105 – including any allegations of alter ego – to obtain substantive consolidation in derogation of section 303. Instead, it would have to plead a separate alter ego claim that does not invoke substantive consolidation, which it has not done.[6]

***Second***, even if alter ego is an "exception" to the rule articulated in *Archdiocese of St. Paul & Minneapolis* (and it is not), any such exception is inapplicable here. As noted above, the Committee has plainly failed to plead an alter ego claim in the Complaint. The Committee's inability to adequately plead alter ego requires dismissal of the Complaint in its entirety.

### 3. The Complaint Fails To Allege Sufficient Facts To Support A Claim For Substantive Consolidation

While the reasoning in *Archdiocese of St. Paul & Minneapolis* alone is fatal to Count 2, this Court should also dismiss Count 2 because the Committee failed to plead a basis for substantive consolidation under Ninth Circuit law. This requires satisfying either the single economic unit factor or the entanglement factor under the Ninth Circuit's two-factor test. *Bonham*, 229 F.3d at 766. As set forth in detail in the Motion to Dismiss, the Complaint fails to allege sufficient facts to plead a cause of action under either

[6] It is questionable whether the Committee could ever state an alter ego claim, as the Ninth Circuit has held that such claims are direct claims of individual creditors. *See, e.g., Int'l Petroleum Prods. & Additives Co., Inc. v. Black Gold S.A.R.L.,* 115 F.4th 1202, 1215-16 (9th Cir. 2024) (finding that general alter ego claims do not exist under California law and, therefore, such claim belongs individual creditor); *accord Ahcom, Ltd. v. Smeding*, 623 F.3d 1248, 1252 (9th Cir. 2010). Moreover, at a minimum, the Committee would have needed to seek derivative standing to do so. *See, e.g., In re Diocese of Camden, New Jersey,* 2022 WL 884242 (Bankr. D.N.J. Mar. 24, 2022) (denying the committee's request for derivative standing to pursue alter ego and fraudulent transfer claims, among others because it failed to satisfy the derivative standing standard); *In re Archdiocese of Milwaukee,* 483 B.R. 693, 699 (Bankr. E.D. Wis. 2012) (finding that the committee failed to statute a colorable claim for the alter ego doctrine that would survive a motion to dismiss); *In re RS Air, LLC*, 2022 WL 1284012, at *2 (9th Cir. BAP Apr. 26, 2022) (noting that the creditors sought derivative standing to pursue alter ego claims against the debtor's principal and his trust).

factor. *See* Motion to Dismiss, pp. 11-16. Nothing in the Committee's Response meaningfully refutes the arguments in the Motion to Dismiss.

As to the entanglement factor, the Committee merely regurgitates the argument that the Debtor's purported control over the Non-Debtor Catholic Entities means they are sufficiently entangled to serve as a basis for substantive consolidation. *See* Response, pp. 19-20. This argument entirely misses the point. Consolidation under the entanglement factor is reserved for situations where the debtor and target entities ignore corporate formalities, commingle assets, and there is no clear demarcation of affairs between the entities that it is either impossible to untangle their affairs or the time and expense required to do so would be futile. *See, e.g., Bonham*, 229 F.3d at 767 (finding substantive consolidation appropriate where the debtor commingled her assets with non-debtor assets and there was no clear demarcation between the affairs of the debtor and non-debtor). The Committee alleged no such entanglement, and alleged no facts from which such an entanglement could plausibly be inferred.

Likewise, the Response fails to overcome the defects in the creditor-reliance factor discussed in the Motion to Dismiss. *See* Response, pp. 20-23. This factor requires that the Complaint allege facts that support a reasonable inference that the creditors perceived the debtor and non-debtor entities as one unit in extending credit. *See Official Committee of Unsecured Creditors of Verestar, Inc. v. American Tower Corp. (In re Verestar, Inc.)*, 343 B.R. 444, 463 (Bankr. S.D.N.Y. 2006) (finding that the complaint failed to allege that creditors saw the debtor and other entity as one because the there were no specific allegations of creditor confusion or that the debtor's creditors extended credit based on the target entity's financials). The Committee continues to reply entirely on representations made in connection with the Series 2007 Bond Offering and the 2017 PNC loan. In doing so, the Committee fails to address the reality that (1) these representations are typical of those that a borrower and guarantors would make in obtaining financing, and (2) the requirement for separate guarantees demonstrates that the lenders understood the entities to be separate and distinct.

Finally, as the Committee acknowledges, *Bonham* also requires that substantive consolidation inure to the benefit of all creditors. *See Bonham*, 229 F.3d at 767. The Committee does not, however, meaningfully argue, much less plead, that this is the case. The Complaint merely states in completely

conclusory fashion that "the benefits of substantive consolidation outweigh the hard" and "[s]ubstantive consolidation is necessary to ensure fairness to all creditors." Complaint, ¶¶ 124-25. Beyond its failure to specifically address how substantive consolidation would benefit creditors of the Debtor, the Committee fails to even address how substantive consolidation would affect, much less benefit, creditors of the Non-Debtor Entities. *See In re Mihranian*, 937 F.3d 1214, 1216 (9th Cir. 2019) (requiring notice to creditors of the purposed consolidated non-debtor entities).

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

## III.

## CONCLUSION

For the reasons set forth above and in its Motion to Dismiss, the Debtor submits that the Court should overrule the Committee's Opposition and dismiss the Complaint and this Adversary Proceeding, with prejudice.

Dated: February 26, 2025

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