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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole, Debtor.	Case No. 23-40523 WJL Chapter 11
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF THE ROMAN CATHOLIC BISHOP OF OAKLAND, Plaintiff, v. THE ROMAN CATHOLIC BISHOP OF OAKLAND, THE OAKLAND PAROCHIAL FUND, INC., AND JOHN DOE CHURCHES 1-82, Defendants.	Adv. Pro. No. 24-04051 **REPLY IN SUPPORT OF DEBTOR'S MOTION TO DISMISS ADVERSARY COMPLAINT FOR DECLARATORY RELIEF** Judge: Hon. William J. Lafferty Date: March 4, 2025 Time: 10:30 a.m. Place: United States Bankruptcy Court 1300 Clay Street Courtroom 220 Oakland, CA 94612

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The Roman Catholic Bishop of Oakland, a California corporation 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. 11] (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) The Oakland Parochial Fund, Inc.'s Motion to Dismiss* [Docket No. 16] (the "Response").[1]

I.
INTRODUCTION

This adversary proceeding is nothing more than a waste of the Debtor's limited resources and the time and attention of all of the parties. It seeks relief that is entirely moot, to the point that if the Committee obtained a judgment granting all the relief it seeks, that result would make no difference for creditors.

Counts 1 through 4 of the Complaint all seek, in one form or another, a determination that property of the Churches is property of the estate. The Debtor has clearly and repeatedly stated on the record that this is the case. There is no ambiguity: the Disclosure Statement clearly states that, "as a matter of California law [the Churches] are not separate from the Debtor, ***and they do not own or hold a legal or equitable interest in property separate from the Debtor***." Nevertheless, the Committee still insists on wasteful litigation. Because there is no actual case or controversy with respect to Counts 1 through 4, this Court should dismiss those Counts with prejudice.

Additionally, the Committee has acknowledged that Count 5 was not properly pled. There is therefore no dispute that Count 5 should be dismissed.

Count 6 seeks substantive consolidation of OPF with the Debtor's estate. This Count fails because section 303 of the Bankruptcy Code prohibits an involuntary bankruptcy case against a non-profit religious corporation such as OPF. The Committee attempts to sidestep this principle 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.

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

Alter ego 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 by the Eighth Circuit in *In re Archdiocese of St. Paul & Minneapolis*, 888 F.3d 944 (8th Cir. 2018), the Committee has plainly failed to plead an alter ego claim in the Complaint.

Further, as a practical matter, Count 6 seeks relief that would, even if successful, accomplish nothing for creditors. Substantive consolidation would not change the character of funds on deposit with OPF one iota. Unrestricted Church Funds held by OPF are already property of the estate (although most of these funds have been expended on administration of this Chapter 11 Case – a reality the Committee conveniently ignores). Substantive consolidation would do nothing to bring Restricted Church Funds currently on deposit with OPF into the estate, because they would remain subject to donor restriction and therefore held in trust under California law. Finally, School Funds held by OPF are held in trust for RCWC and would remain property of RCWC even if OPF were substantively consolidated.

This Court therefore should also dismiss Count 6 with prejudice.

II.

ARGUMENT

A. There Is No Justiciable Case Or Controversy Regarding The Churches Alleged In Counts 1 Through 4

The Committee appears determined to litigate for the sake of litigation. It has already obtained the result it seeks through Counts 1-4. Regardless of the Committee's determination to press on with litigation, these Counts must be dismissed, because there is no remaining case or controversy.

1. The Committee Still Has Not Identified An Actual Controversy Regarding Property Of The Estate In Count 1 Or Count 2

The Debtor has conceded on countless occasions that, under California law, the Churches are not separately incorporated legal entities, and all real property and personal property of the Churches (except for the Restricted Church Funds) are thus property of the estate under § 541(a).

The Debtor was clear in its *Objection and Reservation of Rights to the Official Committee of Unsecured Creditors' Motion for Standing to Prosecute Claims of the Debtor's Estate* [Bankr. Docket No. 1586] (the "Standing Objection"), where it stated:

> "None of the Churches within the diocese are separately incorporated entities under California law. . . . However, because the Churches are not separately incorporated legal entities, as a matter of California law they are not separate from the Debtor, and they do not own or hold a legal or equitable interest in property separate from the Debtor. . . . Because the Churches are not separate legal entities, the Unrestricted Church Funds are legally property of the estate pursuant to § 541(a) of the Bankruptcy Code."

Id. at pp. 9-12. These statements were also made in *Paul Bongiovanni's Declaration in Support of the Standing Objection* [Bankr. Docket No. 1590]:

> "It is my understanding none of the Churches within the diocese are separately incorporated entities under California law." ¶ 4.
>
> "The Debtor therefore separately accounted for all Church Funds, and treated them accordingly, although as a matter of civil law I understand the Churches are not separate from the Debtor." ¶ 12.

Counsel for the Debtor then made the same representations to the Court at the hearing on January 16, 2025:

> Mr. Goodman: The first claim is that the real property held by churches should be considered -- they should avoid any trust interest, and that should be considered property of the estate. As we said in our brief, as we said I think in the disclosure statement, we said otherwise. The debtor concedes that issue.

Tr. of Jan. 16, 2025 Hr'g at 29:12-16. The Debtor has repeatedly represented that Unrestricted Church Funds are available to be distributed to creditors. This is reflected in every iteration of the Disclosure Statement. *See, e.g.,* Disclosure Statement [Bankr. Docket No. 1445]; Amended Disclosure Statement [Bankr. Docket No. 1595]; Second Amended Disclosure Statement [Bankr. Docket No. 1763]; Revised Liquidation Analysis [Bankr. Docket No. 1771]; *see also* C. Moore Declaration ISO of Debtor's Objection [Bankr. Docket No. 1587], ¶ 6 ("As such, following the transfer of the Unrestricted Church Funds to OPF, those funds still remain available to be distributed to the creditors. Indeed, the Disclosure Statement includes the Unrestricted Church Funds as available for creditors as part of the liquidation analysis.").

The Committee makes much of an argument regarding California law on unincorporated associations and the distinction between unincorporated associations and divisions. *See* Response, pp. 5-6. The Committee tries to justify its effort to generate a dispute by arguing that the distinction between unincorporated associations and divisions is important because it goes to whether the Churches can own property separately from the Debtor. *See* Response, p.6. In different circumstances, this might make sense, but here it ignores the fact that the Debtor has repeatedly and unambiguously stated that the Churches do not legally own property separately from the Debtor, as set forth above. The Debtor's Disclosure Statement expressly states that: "as a matter of California law [the Churches] are not separate from the Debtor, ***and they do not own or hold a legal or equitable interest in property separate from the Debtor***." *See* Amended Disclosure Statement for Amended Plan of Reorganization [Bankr. Docket No. 1595] ("Disclosure Statement"), p.32 (emphasis added).[2] To state that the Debtor is "asserting that the Churches can somehow own a beneficial interest in property separate from the Debtor" (Response, p. 8), when the Debtor has made the foregoing statement ***repeatedly***, is disingenuous. There is therefore no justiciable controversy. *See, e.g., Center for Biological Diversity v. Lohn*, 511 F.3d 960, 964 (9th Cir. 2007) (finding that because no live controversy remains between the parties, the declaratory relief was also moot).

This Court should dismiss Counts 1 and 2, with prejudice.

2. The Committee Still Has Not Identified An Actual Controversy As To Count 3 Regarding Property Held in Trust

Moreover, because the Debtor has admitted that the Churches are not separately incorporated and their property is property of the estate (with the limited exception of Restricted Church Funds), the Debtor has acknowledged that there is no trust with respect to such property. *See* Mot. at pp. 16-18; *see also Debtor's Statement in Response to the Objection of the Official Committee of Unsecured Creditors to the Claim Scheduled by the Debtor for the Oakland Parochial Fund* [Bankr. Docket No. 1661], at pp. 4-5 ("Such restricted funds are then held in trust for that purpose as a matter of California law. These Restricted

[2] This statement is also in the Debtor's Second Amended Disclosure Statement [Docket No. 1763], but references the prior Amended Disclosure Statement because it was filed well before the Response.

Church Funds are distinct from unrestricted Church Funds, which can be used for any purpose of the Catholic Church . . . and therefore, not held in trust."); *A. Bardos Declaration In Support of the Debtor's Statement in Response to the Objection of the Official Committee of Unsecured Creditors to the Claim Scheduled by the Debtor for the Oakland Parochial Fund* [Bankr. Docket No. 1662], ¶ 8 (same).

The Committee's argument that the Debtor "continues to state, through its Disclosure Statement and other pleadings, that property is being held in trust for the Churches" is highly misleading. *See* Response, p.9. As the Debtor has clearly stated from the beginning of the case through its Disclosure Statement, the Debtor is organized according to, and its internal operations are governed by, Canon law, under which the Churches are separate juridic persons and the Bishop holds assets for the benefit of the Churches. As a matter of California law, however, for all purposes relevant to the rights of creditors and the question of property of the estate, the Debtor has been clear that the Churches "do not own or hold a legal or equitable interest in property separate from the Debtor." *See* Disclosure Statement, p.32. To the extent the Committee relies on the Debtor's Schedules and SOFA, any case or controversy that could have been asserted based on those filings has since been rendered moot by the Debtor's numerous subsequent statements, which render any such dispute moot. *See, e.g., Staton v. Bank of Am. (BAC) Home Loans Servicing LP,* 671 F. App'x 459 (9th Cir. 2016) ("If a claim 'has lost its character as a present, live controversy,' it is moot." (quoting *Flint v. Dennison*, 488 F.3d 816, 823 (9th Cir. 2007)). This Court therefore should dismiss Count 3 with prejudice.

3. The Committee Still Has Not Identified An Actual Controversy As To Substantive Consolidation In Count 4

Substantive consolidation of the Churches, as requested in Count 4, is moot for the same reasons. Because the Debtor admits that the Churches are not separate from the Debtor, and do not own property separately from the Debtor, there is no actual controversy regarding substantive consolidation. But the Committee is desperate to continue its litigation and refuses to accept that the Debtor has already conceded everything it seeks in Count 4.[3]

[3] The Committee tries to create a case or controversy based on vague references to the Debtor creating limitations or exceptions regarding the Churches not separately owning property. This seems to be based on the Debtor's reservation as to Restricted Church Funds. These are donations by parishioners to the Churches for a specific religious purpose. The Debtor has been

This Court therefore should dismiss Count 4 with prejudice.

4. The Debtor Has Offered to Stipulate the Churches Are Not Legally Separate

The Committee attempts to justify ignoring the Debtor's numerous statements that the Churches are not legally separate, and do not own property separately from the Debtor, by arguing that the Debtor "has refused" to stipulate to these facts. *See* Response, p. 4, n.3. This statement is simply incorrect, as counsel for the Debtor has stated on the record:

> [The Committee] talk about a stipulation. [The Committee] threw in a lot of other things in that stipulation we wouldn't -- if the stipulation says, is the church real property [sic] of the estate, [the Debtor] would sign that today. [The Debtor] actually told them that. But it's got a number of other things [the Debtor] wouldn't agree to, so we couldn't. That's the only reason the stipulation isn't here. We'd be estopped otherwise.

Tr. of Jan. 16, 2025 Hr'g at 29:17-23. Moreover, since that hearing, the Debtor has provided the Committee with a proposed stipulation to resolve these claims. A copy of that stipulation is attached hereto as **Exhibit A**.[4] However, to date, the Committee has refused to accept this version of the stipulation and instead continues to pursue litigation.

B. The Committee Acknowledges That Count 5 Is Not Properly Pled

In a footnote, the Committee acknowledges that Count 5 was not properly pled. *See* Response, p.10, fn.4. Count 5 therefore should be dismissed.

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clear that, as set forth in the Motion to Dismiss, property that is donated subject to donor restrictions is held in trust pursuant to California law. *See L.B. Rsch. & Educ. Found. v. UCLA Found*., 130 Cal. App. 4th 171, 177 (Cal. Ct. App. 2005). This is not property of the state, as a matter of black letter law. *See, e.g., Begier v. I.R.S.,* 496 U.S. 53, 59 (1990) (finding that because the debtor did not hold an equitable interest in property, he held that property in trust for another, and so that interest was not "property of the estate"). Whether these Restricted Church Funds are held by a Church or by the Debtor, they are not property of the estate, and the Complaint does not seek a determination to the contrary. The Complaint therefore does not state a cause of action based on the Restricted Church Funds.

[4] As Debtor has communicated to Committee counsel, its willingness to execute the stipulation is of course conditioned on the Committee's agreement to dismiss this adversary proceeding.

C. Count 6 Must Be Dismissed Because The Committee Still Cannot State A 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 OPF 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 OPF. 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 argues that this decision "has no precedential value in this Adversary Proceeding." *Id.* at p.16. 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 a separate, non-debtor non-profit entity 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

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. This attempt to retroactively shoehorn a legal theory into Count 6 fails because the Committee did not and cannot plead alter ego under California law.

a. Alter Ego Does Not Change The Prohibition On Consolidation of Non-Profit Entities

The Committee's attempts to sidestep the reasoning in *Archdiocese of St. Paul & Minneapolis* by once again alleging that it has plead alter ego, based on the Eighth Circuit's reservation on that issue. 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. Notably, 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 6. 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.[5]

b. The Committee Did Not Even Attempt To Plead Alter Ego In Count 6

Relying on an alter ego theory to save Count 6 fails for many reasons, not least of which is that the Committee's Complaint does not even attempt to plead alter ego. Count 6, as pled, merely alleges (incorrectly) that the affairs of the Debtor and OPF are entangled by virtue of the Debtor's purported control over OPF, and that as a result OPF should be consolidated with the Debtor. Complaint, ¶¶ 131-136. In other words, it seeks to plead substantive consolidation, not alter the elements of alter ego. In

[5] 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).

light of the Motion to Dismiss, which demonstrated that substantive consolidation is not available against non-profit entities, the Committee attempts to argue that Count 6 is based on alter ego. *See* Response, pp. 12-14.

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. v. Superior Ct.*, 83 Cal. App. 4th 523, 538 (Cal. Ct. App. 2000) (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 OPF by the Debtor, the Complaint does not plead how OPF 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. 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 on a cursory argument regarding the unity of interest prong. *See* Response, pp. 13-16.

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 pled 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. Count 6 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 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 showing "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 *Zoran Corp. v. Chen*, 185 Cal. App. 4th 799, 811-12 (Cal. Ct. App. 2010).[6] *See* Response, p.14. These include: "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

[6] It is unclear why the Committee relies on a different set of factors here than it does in its response to the motions to dismiss its complaint against RCWC, RCC, and Adventus, where it instead relies on *Roman Cath. Archbishop v. Superior Ct.*, 15 Cal. App. 3d 405, 411 (Cal. Ct. App. 1971).

ownership, management and financial interest, or concealment of personal business activities.'" Response, p. 14, quoting *Zoran*, 185 Cal. App. 4th 7 at 811-12.[7] 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.*, 686 F.Supp.3d 900, 911 (N.D. Cal. 2023).

The Committee argues that it has demonstrated a unity of interest and ownership based on pleading the Debtor's "considerable control" over OPF's finances, governance, and corporate property, and that OPF "essentially serves as a conduit for the Debtor." This is, as one court described much more extensive allegations, "woefully short of the showing on which alter ego normally rests." *Tomaselli v. Transamerica Ins. Co.*, 25 Cal. App. 4th 1269, 1285 (1994).

First, as to control, the Committee only cites allegations that (1) certain actions by OPF's board are only effective upon written consent of the Debtor, and (2) there is an overlap of the board of OPF and the management of the Debtor. *See* Response, pp.15-16. The Committee also argues that the Debtor generally exercises control over OPF. This is dramatically short of the showing necessary for alter ego; mere exercise of control by a parent over a subsidiary is insufficient to support a claim based on alter ego.[8]

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 Doe. v. Unocal, 248 F.3d 915, 928 (9th Cir. 2001).[9] This was true even where a plaintiff showed evidence of the parent company's: "(1) involvement in its subsidiaries' acquisitions, divestments and capital 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*

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[7] *Zoran* in fact lists many more factors, which the Committee omits without explaining why it chose to cherry pick the ones it did.

[8] OPF is of course not a subsidiary of the Debtor. The same reasoning would, however, clearly apply.

[9] *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 v. BAE Sys., Inc.*, 2018 WL 11471623, at *11 (N.D. Cal. July 30, 2018) (citing *Unocal*).

& 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'').

Control over another entity's budget, including approval authority for large purchases, has also 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 v. Huckins*, 875 F. Supp. 674, 679 (E.D. Cal. 1995) (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 OPF.

The Ninth Circuit has also 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…." *Tomaselli*, 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. 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's management and OPF, it certainly has not (and could not) allege identical boards and officers. [10]

Second, the Committee's allegations that OPF acts to further the mission of the Debtor (and other Non-Debtor Catholic Entities) is also insufficient to support a claim based on alter ego. *See* Response, p. 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).

Third, the OPF loan does not support a claim based on alter ego. *See* Response, p. 16. Loans from a parent to its subsidiaries (much less loans from alleged affiliates) 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 through OPF. Despite the Committee's suggestion to the contrary, a failure to property account cannot be inferred from the mere existence of the OPF or the DLF.[11]

3. The Complaint Fails To Allege Sufficient Facts To Support A Claim For Substantive Consolidation Separate From Its Alter Ego Arguments

While the reasoning in *Archdiocese of St. Paul & Minneapolis* and the failure to plead alter ego are fatal to Count 6, this Court should also dismiss Count 6 because the Committee failed to plead a basis for substantive consolidation under Ninth Circuit law. This requires satisfying either the creditor expectations 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 factor. *See* Motion to Dismiss, pp. 11-16. Nothing in the

[10] As a corporation sole, RCBO does not have a board, whereas OPF does.

[11] 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 and managed by OPF.

Committee's Response meaningfully refutes the arguments in the Motion to Dismiss. Indeed, the Committee's Response does not distinguish its arguments for substantive consolidate from its arguments for alter ego, and therefore Count 6 must be dismissed because the Committee fails to successfully plead alter ego, as set forth above.

As to the entanglement factor, the Committee merely regurgitates the argument that the Debtor's purported control over OPF 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.

The OPF loan and claim do not establish entanglement. There is inescapable irony in the Committee's argument that clearly documented and accounted transactions amount to confusion or entanglement. The Committee has raised an objection to the OPF claim and can prosecute that objection. Its claim objection does not establish a basis for consolidation.

Likewise, the Response fails to overcome the defects in the creditor-reliance factor as 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) (no specific allegations of creditor confusion or that the debtor's creditors extended credit based on the target entity's financials). The Committee argues that *Verestar* supports its case because the Court there found that the plaintiff had pled facts supporting alter ego. In doing so, the Committee ignores the relevant point, the plaintiff had failed to satisfy the creditor reliance prong because the complaint lacked specific allegation of creditor confusion

or extension of credit based on the target entity's financial; allegations that are also lacking here. *See In re Verestar*, 343 B.R. at 463.

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 harm" and "[s]ubstantive consolidation is necessary to ensure fairness to all creditors." Complaint, ¶¶ 124-25.

The Committee argues that substantive consolidation would "increase the estate by over one hundred million dollars." *See* Response, p.19. As the Committee should be well aware, this is simply false. As a matter of law, there cannot be any benefit to creditors from consolidation, because the Debtor has acknowledged that assets held by OPF for the Churches are property of the estate to exactly the same extent as they would be if held by the Debtor directly. Or, to put it another way, Church cash and investments held by OPF are property of the estate unless they are donor restricted funds held in trust under California law.[12] Likewise, School funds held by OPF are held in trust for RCWC, and would not become property of the estate as a result of substantive consolidation.

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 OPF. *See In re Mihranian*, 937 F.3d 1214, 1216 (9th Cir. 2019) (requiring notice to creditors of the purposed consolidated non-debtor entities).

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

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[12] The restricted nature of funds is not addressed by the Complaint. With the limited exception of Count 5, the Committee has not challenged the restricted status of funds and would have to do so on a specific basis as to particular funds.

III.

CONCLUSION

For the reasons set forth above, 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

FOLEY & LARDNER LLP

/s/ Shane J. Moses
Shane J. Moses

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EXHIBIT A

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole, Debtor.	Case No. 23-40523 WJL Chapter 11 **STIPULATION BY AND BETWEEN THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THE DEBTOR REGARDING CERTAIN PROPERTY OF THE ESTATE**

This stipulation (this "**Stipulation**") is entered into by and between the debtor and debtor-in-possession, The Roman Catholic Bishop of Oakland (the "**Debtor**"), and the Official Committee of Unsecured Creditors (the "**Committee**," and together with the Debtor, the "**Parties**"). The Parties hereby agree to be bound by the terms set forth herein.

A. On May 8, 2023, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**").

B. On June 8, 2023, the Debtor filed its amended *Statement of Financial Affairs* [Dkt. 103] (the "**SOFA**").

C. In response to Part 11, Question 21: Property held for another of the SOFA, the Debtor filed *Exhibit #1 – Real property held in trust by the Debtor for the benefit of the applicable*

Church or Non-Debtor Catholic Entity [Dkt. 103 at 94–99] (the "**Real Property Exhibit**"), which listed 203 real properties purportedly held by the Debtor in trust for the benefit of the parish churches affiliated with the Debtor identified on **Exhibit A** to this Stipulation (collectively, the "**Churches**").

D. On June 8, 2023, the Debtor filed its amended *Schedule A/B: Assets – Real and Personal Property* [Dkt. 102] (the "**Schedules**"). The Schedules did not list any of the real property listed in the Real Property Exhibit.

E. The Committee has asserted, among other things, that the real property set forth in the Real Property Exhibit is property of the Debtor's estate.

F. The Debtor submits that the Schedules and Real Property Exhibit are complete and accurate, but has nevertheless agreed to this Stipulation as set forth herein.

ACCORDINGLY, THE PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:

1. Because the Churches are not separately incorporated legal entities, as a matter of California law they are not legally separate entities from the Debtor.

2. All real property assets listed on the Real Property Exhibit as being held for the benefit of the Churches are assets of the Debtor and all such property is property of the Debtor's estate under section 541 of the Bankruptcy Code, subject to the Debtor's reservations of rights herein.

3. The Debtor agrees that unrestricted cash held by the Churches, or held by a third party for the benefit of one or more Churches, is property of the Debtor's estate under section 541 of the Bankruptcy Code. Nothing herein shall constitute a stipulation or agreement that any cash held in trust by or for the benefit of Churches including, without limitation, as a restricted donation, is property of the Debtor's estate. The parties reserve all rights to argue that any particular Church cash is or is not restricted or held in trust under applicable law.

4. The Debtor agrees to amend its Schedules within 45 days to include all of the real property listed in the Real Property Exhibit.

5. The Parties reserve all rights with respect to the foregoing in connection with the confirmation of a plan of reorganization, including without limitation whether (a) any real property assets listed on the Real Property Exhibit must be included in a liquidation analysis for purposes of 11 U.S.C. § 1129(a)(7)(A)(ii), and (b) any Church cash the Debtor alleges is restricted may be used to satisfy claims against the Debtor.

6. As to real property, this Stipulation addresses only the real property listed on the Real Property Exhibit, and is not intended to address the ownership of any other property, including but not limited to, the ownership of, or restrictions imposed (if any) on personal property, except as expressly set forth in paragraph 3, above. The omission of any real property from the Real Property Exhibit does not reflect an admission that such property is or is not property of the Debtor's estate. The Parties reserve all rights with respect to real property not listed on the Real Property Exhibit, and any personal property.

ACCEPTED AND AGREED TO:

Dated: February ___, 2025

[insert signature blocks]

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