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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, vs. THE ROMAN CATHOLIC BISHOP OF OAKLAND, THE OAKLAND PAROCHIAL FUND, INC., AND JOHN DOE CHURCHES 1-82 Defendants.	Adv. Pro. No. 24-04051 WJL **REPLY MEMORANDUM IN SUPPORT OF THE OAKLAND PAROCHIAL FUND, INC.'S MOTION TO DISMISS** Date: March 4, 2025 Time: 10:30 a.m. Judge: Hon. William J. Lafferty, III Place: United States Bankruptcy Court Courtroom 220 1300 Clay Street Oakland, CA 94612

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TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF THE ROMAN CATHOLIC BISHOP OF OAKLAND:

PLEASE TAKE NOTICE that the Oakland Parochial Fund, Inc. ("OPF"), defendant in the above-captioned adversary proceeding, hereby submits this *Reply Memorandum in Support of the Oakland Parochial Fund, Inc. Motion to Dismiss* (the "Reply") in opposition to the *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* (the "Response") [Docket No. 16] and in further support of *the Motion of the Oakland Parochial Fund, Inc. to Dismiss* (the "Motion") [Docket No. 6], pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Rules"), as incorporated by Rule 7012 of the Federal Rules of Bankruptcy Procedure, to dismiss the *Adversary Complaint for Declaratory Relief* (the "Complaint") filed against OPF by the Official Committee of Unsecured Creditors of the Roman Catholic Bishop of Oakland (the "Committee"), on the grounds that the Complaint fails to state a claim upon which relief may be granted.

Dated: February 26, 2025

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By: */s/ Rebecca J. Winthrop*
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

PRELIMINARY STATEMENT[1]

Nonprofit non-debtor organizations, like OPF, may not be forced into bankruptcy against their will through substantive consolidation. To allow the Committee to do so, would elevate a bankruptcy court's equitable powers over the Bankruptcy Code's express prohibition on involuntary bankruptcy cases against nonprofits. On this basis, the Court should dismiss the Committee's claim for substantive consolidation against OPF (Count 6) as a matter of law. Rather than directly confront this reasoning, the Committee pivots to a purported "alter ego" exception – not mentioned once in the Complaint but repeated throughout the Response – to substantive consolidation in a last ditch effort to save its claim. But the alter ego doctrine too is an equitable remedy that may not be invoked to override the explicit mandates of the Bankruptcy Code.

Even if an alter ego "exception" could apply, it fails here for several reasons. First, an alter ego relationship exists only when the dominated entity effectively has no will or existence of its own except as a tool for the controlling entity. Every facet of the dominated entity's business from its day-to-day operations to its policies must be dictated by the controlling entity. The handful of alleged connections between the Debtor and OPF – the presence of a few shared officers, a common business and mailing address, a shared religious mission, approval required for major non-ordinary course corporate decisions, and the presence of inter-company transfers and contracts – fall short of the criteria necessary to make this showing. Second, some wrong or abuse arising from OPF's corporate separateness must be alleged, not merely the Committee's inability to reach assets that could be available to satisfy creditor claims. Though the Committee highlights alleged fraudulent transfers by the Debtor (a claims the Committee lacks standing to pursue), the Complaint does not sufficiently allege a fraud or injustice to creditors caused by OPF through its own bad acts that justify disregarding its corporate form.

Furthermore, the Committee does not rebut OPF's arguments that it has failed to adequately

[1] Capitalized terms used but not defined herein shall have the meanings ascribed in the Complaint or Motion, as applicable.

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plead a claim for declaratory relief against OPF (Count 5), *i.e.* that $8.3 million in proceeds from the Debtor's Term Loan Agreement with OPF are property of the Debtor's bankruptcy estate. Instead, the Committee requests leave to amend to replead this claim against the Debtor. Therefore, this claim too should be dismissed.

II.

ARGUMENT

A. The Committee's Alter Ego Theory of Liability Does not Save its Claim for Substantive Consolidation and Must be Dismissed (Count 6)

1. Substantive Consolidation of the Debtor with OPF is Foreclosed by the Bankruptcy Code and Supreme Court Precedent.

The Committee does not seriously challenge *St. Paul*'s central holding that based on the Supreme Court's decision in *Law v. Siegel*, bankruptcy courts lack the equitable authority under section 105(a) of the Bankruptcy Code to order substantive consolidation of a debtor with nonprofit non-debtors against their will because that would violate section 303(a)'s prohibition on involuntary bankruptcies against nonprofits. *See Official Comm. of Unsecured Creditors v. Archdiocese of St. Paul & Minneapolis* (*In re Archdiocese of St. Paul & Minneapolis*), 888 F.3d 944, 947–48 (8th Cir. 2018). Instead, the Committee argues that nonprofit non-debtor entities like OPF may nevertheless be subject to substantive consolidation so long as they qualify as alter egos of the Debtor. *See* Response at 11 (citing *St. Paul*, 888 F.3d at 953).

This argument overlooks that *St. Paul* did not decide that an "alter ego" exception applies to override the Bankruptcy Code's express prohibition on forcing nonprofit non-debtors into bankruptcy. *St. Paul*, 888 F.3d at 953 ("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."). Regardless, it is unclear how a finding of alter ego could result in the transformation of the nature or the character of a nonprofit organization to a commercial enterprise no longer protected from involuntary bankruptcy. *See, e.g., In re MAEDC Mesa Ridge, LLC*, 334 B.R. 197, 201-202 (Bankr. N.D. Tex. 2005) ("A non-profit charitable organization that participates in commercial activity is not considered a 'moneyed,

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business, or commercial corporation' within the meaning of § 303(a), simply by participation in such activity, but must be evaluated based upon the nature and character of its organization and the activity in which it actually engages."). Absent allegations that OPF is a disguised for–profit enterprise not entitled to the protections of section 303(a), the Eighth Circuit's reasoning in *St. Paul* should apply with equal force to bar the application of the equitable remedy of alter ego[2] from circumventing the Bankruptcy Code's express prohibition on involuntary bankruptcies.

Furthermore, Ninth Circuit courts apply the traditional alter ego factors to determine whether debtors and non-debtors may be substantively consolidated. *See* Response at pp. 12-13 (citing *In re SK Foods, LP*, 499 B.R. 809, 833 (Bankr. E.D. Cal. 2013) ("*Bonham* concluded that the presence of traditional "alter ego" factors formed a basis to find that the affairs of the debtor are so entangled such that consolidation will benefit all creditors"); *see also In re Aroonsakool*, 2014 WL 1273696, at *7 (B.A.P. 9th Cir. Mar. 28, 2014) ("Alter ego doctrine and substantive consolidation overlap when the second factor under *Bonham* is at issue"). In other words, Ninth Circuit courts already consider whether an alter ego relationship exists when deciding whether a debtor's financial affairs are hopelessly entangled with the target of substantive consolidation. Thus, any "alter ego" exception for substantive consolidation of nonprofit non-debtors would be redundant and does not apply here.

2. The Committee has Insufficiently Pleaded the Two Elements of an Alter Ego Theory of Liability Under the Heightened Pleading Standard of Rule 9(b).

Rule 9(b) of the Federal Rules of Civil Procedure requires plaintiffs to plead allegations of fraud or mistake with particularity, meaning a plaintiff must identify the "who, what, when, where and how of the misconduct charged." *Cafasso, ex rel. United States v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (quoting *Ebeid ex rel. United States v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010)). A claim "grounded in fraud" and averments of fraud must be plead with particularity, even if fraud is not a required element of that claim. *Vess v. Ciba-Geigy Corp. USA*,

[2] *See, e.g., Rodriguez v. Old West Exp., Inc.*, 711 F. Supp. 3d 1182, 1190 (E.D. Cal. 2024) ("The alter ego doctrine is an equitable remedy whereby a court may disregard the formal separateness of a corporate entity when doing so prevents fraud or injustice.") (citing California law).

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317 F.3d 1097, 1103–1104 (9th Cir. 2003) (applying Rule 9(b) to claims based on violations of California law even though fraud was not an element of the statutes on which the plaintiff relied).

Although the alter ego doctrine "does not depend on the presence of actual fraud, it is designed to prevent what would be fraud or injustice, if accomplished." *Assoc. Vendors, Inc. v. Oakland Meat Co.*, 210 Cal. App. 2d 825, 838 (Cal. Ct. App. 1962). Accordingly, courts in the Ninth Circuit apply Rule 9(b)'s heighted pleading requirements to allegations of an alter ego relationship. *See, e.g.*, *Hood v. Handi-Foil Corp.*, 2024 WL 4008711, at *3–4 (N.D. Cal. Aug. 29, 2024) (dismissing claims for failing to satisfy Rule 9(b) due to the lack of specific factual averments in support of the plaintiff's alter ego theory); *Sandoval v. Ali,* 34 F. Supp. 3d 1031, 1040 (N.D. Cal. 2014) (imposing a heightened pleading standard, stating that "a plaintiff must allege specifically both of the elements of alter ego liability, as well as facts supporting each" (quoting *Neilson v. Union Bank of California*, N.A., 290 F. Supp. 2d 1101, 1116 (C.D. Cal. 2003)); *Walsh v. Kindred Healthcare*, 798 F. Supp. 2d 1073, 1082 (N.D. Cal. 2011) (setting out the Rule 9(b) standard and then concluding that plaintiffs failed to allege specific facts sufficient to invoke the alter ego doctrine). Moreover, there is a "strong presumption" against disregarding corporate separateness based on the alter ego doctrine. *Srinvasan v. Kenna*, 2019 WL 1118123, at *2 (N.D. Cal. Mar. 11, 2019). Indeed, alter ego is an "extreme remedy" that should only be applied in "exceptional circumstances." *Calvert v. Huckins*, 875 F. Supp. 674, 678 (E.D. Cal. 1995).

To invoke the alter ego doctrine under California law, a plaintiff must allege (1) there is such a unity of interest and ownership between two entities that their separate identities do not in reality exist, and (2) failure to disregard their separate identities would result in fraud or injustice. *Walsh*, 798 F. Supp. 2d at 1082 (citing *Wady v. Provident Life and Accident Ins. Co. of America*, 216 F. Supp. 2d 1060, 1066 (C.D. Cal. 2002) and *Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523, 538 (Cal. Ct. App. 2000)).[3] The concept of "alter ego" liability is not mentioned once in the Complaint, and in any event, neither element of that theory is sufficiently pleaded.

[3] In California, courts apply common principles to determine alter ego liability regardless of whether the plaintiff seeks to impose liability on a shareholder, a parent company, or companies forming a single enterprise. *See Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.*, 217 Cal. App. 4th 1096, 1107-1108 (Cal. Ct. App. 2013); *Las Palmas Assocs. v. Las Palmas Ctr. Assocs.*, 235 Cal. App.3d 1220, 1249-50 (Cal. Ct. App. 1991).

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a. No Unity of Interest and Ownership Between the Debtor and OPF.

To satisfy the first element, courts typically require the plaintiff to show "such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own and is but a business conduit for its principal." *Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.*, 217 Cal. App. 4th 1096, 1107–1108 (Cal. Ct. App. 2013). When a corporation "dictates every facet" of another corporation's business "from broad policy decisions to routine matters of day-to-day operations" the unity of interest prong is satisfied. *See Gerritsen v. Warner Bros. Entm't*, 116 F. Supp. 3d 1104, 1138, 1142 (C.D. Cal. 2015). However, "merely directing macro decisions is insufficient." *Sun Grp. U.S.A. Harmony City, Inc. v. CRRC Corp. Ltd.*, 2024 WL 219331, at *12 (N.D. Cal. May 14, 2024). There must be much "more than that amount of control of one corporation over another which mere common ownership and directorship would indicate." *Rollins Burdick Hunter of So. Cal. v. Alexander & Alexander Servs.*, 206 Cal. App. 3d 1, 9 (Cal. Ct. App. 1988).

Factors suggesting a unity of interest include "the commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, and use of one as a mere shell or conduit for the affairs of the other." *Roman Catholic Archbishop v. Superior Court*, 15 Cal. App. 3d 405, 411 (Cal. Ct. App. 1971). Other factors include "inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers." *Sonora Diamond Corp.*, 83 Cal. App. 4th at 539.

Though no one factor governs, the Ninth Circuit has held that "ownership" of "at least a portion of a corporation" is "a pre-requisite to alter ego liability, and not a mere factor or guideline." *SEC v. Hickey*, 322 F.3d 1123, 1128–29 (9th Cir. 2003) (internal quotations omitted) (citing to California law, the Ninth Circuit rejected the plaintiff's argument that an alter ego relationship between the defendant and corporation could be shown even though the defendant did not own any portion of it); *MH Pillars Ltd. v. Realini,* 2017 WL 916414, at *12-13 (N.D. Cal. Mar. 8, 2017) (rejecting enterprise theory of alter ego liability on a motion to dismiss based on, among other

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things, the plaintiff's failure to plead ownership among the alleged corporate alter egos); *Xyience Bev. Co. LLC v. Statewide Bev. Co. Inc.*, 2015 WL 13333486, at *7 (C.D. Cal. Sept. 24, 2015) (holding that failure to plead an ownership interest between the alleged corporate alter egos meant that the plaintiff's theory of alter ego liability "fails at the first step").

The Committee's allegations of the affiliations between the Debtor and OPF fall woefully short of the specific conduct necessary to satisfy the unity of interest element of alter ego.

First, the Committee does not allege an ownership interest by the Debtor in OPF, or vice versa. This alone is fatal to the Committee's alter ego theory. *See Hickey*, 322 F.3d at 1128–29.

Second, the Committee does not allege that the Debtor involved itself in OPF's day-to-day decision-making or internal affairs, let alone that the Debtor directed every facet of OPF's business. Rather, according to the Complaint, OPF was established for the purpose of supporting the religious mission of the Diocese (Compl. ¶¶ 13, 46 OPF AOI § II. B.). All of OPF's corporate property was irrevocably dedicated to the religious mission and purposes, beliefs and teachings of the Roman Catholic Church within the Diocese, not to the Debtor. (OPF AOI § II. B.).[4] Though OPF's formational documents direct that OPF was to be "operated, supervised or controlled" by the Debtor subject to OPF's right to exercise "all the rights conferred by the Nonprofit Corporation Law of the State of California upon religious nonprofit corporations" and any other lawful activities "reasonably necessary to fulfill" its stated religious purposes (Compl. ¶ 46; OPF AOI § II. B.), the Complaint does not identify specific instances when the Debtor exercised such control over OPF. In addition, while OPF's corporate affairs are managed by a board of directors, any borrowing for capital needs, non-ordinary course transactions, and changes to OPF's governing articles of

[4] The Committee insists that the Court must accept as true that the Debtor and Diocese are one and the same, notwithstanding the distinction drawn between the two in the documents on which the Committee relies. *Compare* Response at p. 15, n.7 *with* Motion at pp. 1, 2 (referring to distinction between the two and language confirming the distinction in OPF's articles of incorporation). But this Court need not accept as true allegations that are contradicted by the documents incorporated by reference in the Complaint, or draw inferences unsupported by the text of those documents. *See* Motion at p. 10 (citing *Daniels-Hall v. Nat'l Educ. Ass'n,* 629 F.3d 992, 1005-06 (9th Cir. 2010) (dismissing ERISA claim based in part on documents incorporated by reference that contradicted allegations in the complaint); *see also Kelly v. Elec. Arts, Inc.*, 2015 WL 1967233, at *8 (N.D. Cal. Apr. 30, 2015) ("the inference that defendants used the term [de-risk] to promise the elimination of technological risks is contradicted by the documents which plaintiffs incorporate into their complaint by reference and is therefore entitled to no presumption of truth."). The Committee offers no rebuttal to OPF's argument that its Articles of Incorporation are incorporated by reference in the Complaint.

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incorporation or bylaws are effective only upon the Debtor's written consent. (Compl. ¶ 52; OPF AOI § V.A.). OPF and the Debtor are also parties to various agreements, [redacted] the Term Loan Agreement, by which OPF loaned the Debtor $35 million. (*Id*. ¶¶ 56, 63-67, 68, 72, 85).

This type of activity is insufficient to show an alter ego relationship between the Debtor and OPF. *See, e.g., Doe v. Unocal Corp.*, 248 F.3d 915, 927 (9th Cir. 2001) ("[a] parent corporation may be directly involved in financing and macro-management of its subsidiaries . . . without exposing itself to a charge that each subsidiary is merely its alter ego"); *Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (finding no alter ego liability where parent company's approval required for leases, major capital expenditures, and the sale of subsidiary assets); *Sun Grp. U.S.A. Harmony City, Inc.*, 2024 WL 2193311, at *13 (holding guaranty by the parent company of its subsidiary's loans and other obligations, providing funding for the subsidiary, filing consolidated annual reports referring to the subsidiary's assets and its own, and directing major macro decisions for the subsidiary did not show alter ego); *Joiner v. Ryder Sys.*, 966 F. Supp. 1478, 1485 (C.D. Ill. 1996) (finding no alter ego liability where parent approved subsidiaries' acquisitions and capital budget); *Sonora Diamond Corp.*, 83 Cal. App. 4th at 546-47 (holding parent company's involvement in financing of its subsidiaries' mining operation, guaranty of key financial obligations, and ongoing financial support insufficient to show alter ego). Moreover, California law authorizes OPF to restrict its decision making for major decisions in favor of third parties, such as to the Debtor, for non-ordinary course transactions, borrowing money, or changing its organizational documents. *See* Motion at p. 13 (citing Cal. Corp. Code §§ 9132, 9240).

Third, the presence of some shared officers (¶¶ 19, 21), though no directors, does not support alter ego liability. Courts have routinely found these types of allegations insufficient to establish an alter ego relationship. *See, e.g., Unocal Corp.*, 248 F.3d at 927-28 (no alter ego relationship found where parent company guaranteed loans for its subsidiary, reviewed and approved major decisions, placed several of its directors on the subsidiary's board, and was closely

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involved in its pricing decisions); *Conde v. Sensa*, 2016 WL 6082309, at *3 (S.D. Cal. Oct. 17, 2016) (allegations of control based on shared directors "falls well short of establishing the required extraordinary unity of interest and ownership" between the defendants and the corporation); *Gerritsen*, 116 F. Supp. 3d at 1138-1139 (overlap between directors or executive leadership was not "suggestive of a unity of interest and ownership" but rather "a normal attribute of ownership that officers and directors of the parent serve as officers and directors of the subsidiary.").

Fourth, the Committee's alter ego allegations are remarkably similar to those found lacking in *St. Paul*. There, the unsecured creditors' committee alleged that the archbishop had plenary power over the diocese, placed directors on the nonprofit non-debtors' boards of directors, had the authority to appoint and remove directors, reviewed and approved various financial and property–related requests by parishes for major decisions like mergers and closures, and other projects above a certain dollar threshold, managed a loan and insurance fund for the benefit of diocesan entities and parishes, shared office space and staff with various non-debtor entities, and played a role in the employment process for parish schools. *See* 888 F.3d at 948-950, 953. Though the Eighth Circuit acknowledged that the committee did not specifically argue for alter ego, the court nevertheless determined that the committee's allegations of financial and other entanglements sounding in alter ego were too sparse to survive dismissal under *Iqbal*/*Twombly*. *Id*. at 953-54. So too here.

b. Fraud or injustice has not been sufficiently alleged.

To satisfy the second alter ego element, the plaintiff must show the corporate form was misused "to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose." *Sonora Diamond Corp.*, 83 Cal. App. 4th at 538. "[B]ad faith conduct on the part of the defendants" must be shown. *See Smith v. Simmons*, 638 F. Supp. 2d 1180, 1192 (E.D. Cal. 2009) (rejecting alter ego for failure to show bad faith or any fraudulent conduct in the defendant's dealings with the plaintiff); *see also Matyas v. Summerkids, Inc.*, 2022 WL 17887608, at *13 (C.D. Cal. May 16, 2022) (granting defendant's motion to dismiss claim predicated on alter ego liability because the plaintiff failed to allege some involvement by the defendant in his co-defendants' bad faith conduct).

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Missing from the Complaint are allegations of bad faith by OPF or that an inequitable result would occur if the Court declines to impose alter ego liability on OPF. Instead, the Committee accuses the Debtor, not OPF, of inequitable conduct by directing alleged fraudulent transfers, though it also acknowledges that the Debtor has strenuously objected to the Committee's position. (Compl. ¶¶ 79–84). Similarly, the Committee characterizes OPF's $35 million loan to the Debtor as a "Sham Term Loan Agreement" without providing any factual support why the loan was fraudulent. (*Id*. ¶¶ 85-87). In addition, the Committee alleges that the Debtor's unidentified property has been placed beyond the reach of Survivors and should be made available to increase the assets available to satisfy their claims. (Compl. ¶¶ 4, 135). But these are not specific bad acts by OPF that justify disregarding its corporate form. *See Reynolds v. Binance Holdings, Ltd.*, 481 F. Supp. 3d 997, 1008–09 (N.D. Cal. 2020) (holding that the plaintiff's alter ego liability theory must fail because he failed to allege any specific bad faith conduct by the defendants that would make it equitable for them to hide behind the corporate form); *Walsh v. Kindred Healthcare*, 798 F. Supp. 2d at 1083 (holding that plaintiffs' failure to allege specific facts of an abuse of the corporate form as to certain healthcare facility defendants meant that the fraud or injustice element of alter ego had not been sufficiently alleged). Moreover, the mere inability to reach assets that might be available to satisfy creditor claims does not qualify as a wrong or abuse arising from OPF's corporate separateness. *See Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th at 539 ("The alter ego doctrine does not guard every unsatisfied creditor of a corporation but instead affords protection where some conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate form. Difficulty in enforcing a judgment or collecting a debt does not satisfy this standard.").

The failure to plead this crucial element of the alter ego doctrine requires dismissal. *See, e.g., Apple Inc. v. Allan & Assocs. Ltd.,* 445 F. Supp. 3d 42, 55–56 (N.D. Cal. 2020) (generalized allegations of an injustice that would result if one of the alleged alter egos was allowed to hide behind the corporate form were insufficient to satisfy the second element of the alter ego doctrine for the other two defendants); *Mou v. SSC San Jose Operating Co. LP*, 415 F. Supp. 3d 918, 931 (N.D. Cal. 2019) (allegations that the defendants operated as a single business for the purpose of

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"lining their pockets with money" and "evading liability" and "hiding money" were too vague and conclusory to support a plausible inference they abused the corporate privilege sufficient to show an inequitable result).

3. The Complaint Fails to Address the Harm to OPF that Would be Caused by Substantive Consolidation.

The Complaint lacks allegations of why the harm posed to OPF by substantive consolidation would not be outweighed by the benefit to all creditors. As the bankruptcy court in *St. Paul* aptly recognized, "[s]ubstantive consolidation does not reasonably result in the same benefit for all creditors." *In re Archdiocese of St. Paul & Minneapolis*, 553 B.R. 693, 704 (Bankr. D. Minn. 2016). In fact, "[c]reditors of the non-debtors who have no sexual abuse claims asserted against them would not benefit from substantive consolidation as much as the creditors of non-debtors who do have clergy sexual abuse claims asserted against them because those creditors do not face similar risks of litigation. Substantive consolidation could dilute the recovery of creditors of non-debtors who do not have clergy sexual abuse claims asserted against them." *Id*. This too supports dismissal of the Committee's substantive consolidation claim here.

B. The Committee's Claim for a Declaratory Judgment Against OPF that Proceeds of the Term Loan Agreement are Property of the Debtor's Bankruptcy Estate Should Be Dismissed (Count Five)

The Committee fails to address its failure to adequately plead a claim for declaratory relief *against OPF* that $8.3 million in proceeds from the Debtor's Term Loan Agreement with OPF are property of the Debtor's bankruptcy estate. Instead, in a footnote, the Committee "requests permission to amend Count 5 to be pled against the Debtor, rather than OPF." Response at p. 10, n.4. For these reasons and those set forth in the Motion, OPF submits that Count 5 must be dismissed. *See* Motion at pp. 15–17 (seeking dismissal of Count 5 on the grounds that the Committee (i) fails to identify OPF's interest in the loan proceeds or the accounts where those proceeds were allegedly transferred in violation of Rule 8, (ii) its declaratory relief claim is duplicative of the Committee's substantive consolidation claim that should be dismissed, (iii) effectively asserts a claim for the avoidance of a fraudulent transfer though it lacks standing to

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bring that claim, and (iv) does not state a cognizable claim for relief).

III.

CONCLUSION

For the foregoing reasons, OPF respectfully requests its Motion to dismiss the Complaint for failure to state a claim for relief under Rule 12(b)(6) be granted with respect to the Fifth and Sixth Counts asserted in the Complaint.

Dated: February 26, 2025

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