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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 **THE OAKLAND PAROCHIAL FUND, INC.'S MOTION TO DISMISS** Date: June 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. (the "OPF" or the "Non-Debtor Defendant"), defendant in the above-captioned adversary proceeding, hereby moves this Court (the "Motion"), pursuant to Rules 12(b)(1) and 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 *First Amended Adversary Complaint for Declaratory Relief* (the "Complaint") filed against the Non-Debtor Defendant by the Official Committee of Unsecured Creditors of the Roman Catholic Bishop of Oakland (the "Committee"), on the grounds that the Complaint fails to allege a justiciable case or controversy against the Non-Debtor Defendant and, alternatively, fails to state a claim upon which relief may be granted.

The Motion is based on the attached *Memorandum of Points and Authorities* and the *Notice of Hearing on the Motion of the Oakland Parochial Fund, Inc. to Dismiss Complaint*, both of which are filed concurrently herewith, the records and files in this bankruptcy case, this adversary proceeding and all related proceedings, and such other and further matters as this Court may consider at or before any hearing on this Motion.

Dated: May 23, 2025

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

PRELIMINARY STATEMENT

The Committee seeks a declaration that unspecified assets purportedly belonging to the Debtor and held in unidentified accounts at over a dozen financial institutions, including OPF, are available to pay the Debtor's creditors. The lack of a justiciable controversy between the Committee and OPF forecloses declaratory relief and warrants dismissal of all counts against OPF under Rule 12(b)(1). Even assuming an actual controversy between the Committee and OPF exists, the Committee has failed to plead facts (i) identifying the so-called Shielded Assets or (ii) plausibly alleging that the assets include commingled funds held at OPF.

For these reasons, and those more fully discussed below, the Committee's claims against OPF must be dismissed.

II.

FACTUAL BACKGROUND[1]

OPF is a California nonprofit religious corporation formed in 2014 "with the primary purpose of supporting the missions and purposes of the Roman Catholic Diocese of Oakland (the "Diocese"). (Compl. ¶¶ 15) (Dkt. 36). OPF, along with over a dozen other financial institutions, manages accounts holding assets that purportedly belong to the Debtor. (*Id.* ¶ 30). The assets managed by OPF include assets that the Debtor contends are held in a charitable trust and so cannot be used to pay the Debtor's operational expenses or creditors (the "Shielded Assets"). (*Id.* ¶¶ 24, 30). The Complaint does not specify the amount of Debtor funds held at OPF (as opposed to at other financial institutions) or the portion of Debtor funds held at OPF that are Shielded Assets. The Shielded Assets allegedly total $38 million. (*Id.* ¶ 28). According to the Committee, the Shielded Assets managed by OPF "commingled" unrestricted assets and assets subject to different restrictions (*Id.* ¶ 29).

The Shielded Assets include assets donated or gifted to the Debtor by individual donors (the

[1] Unless stated otherwise, the summary below is based on the non-conclusory factual allegations in the Committee's First Amended Adversary Complaint (Dkt. 36), which OPF has assumed to be true solely for the purpose of the Motion.

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"Individual Donor Assets"). (*Id.* ¶ 31). Allegedly, "documentation relating to certain of the Individual Donor Assets permitted the Debtor and/or the Bishop to use the funds in its/his discretion or otherwise did not specify any restriction for the donation." (*Id.* ¶ 32).

The Shielded Assets also include funds raised by "Debtor, Churches, and third parties" "from parishioners and others associated with the Debtor and/or its affiliates" (the "Campaign Assets"). (*Id.* ¶ 32). The Campaign Assets were donated to the Debtor as a result of solicitations (the "Solicitation Materials") by the Debtor and the Churches. (*Id.* ¶ 34). The only solicitation identified by the Complaint is the Bishop's annual appeal (the "Bishop's Appeal"). (*Id.* ¶ 35). Debtor previously referred to funds collected by the Bishop's Appeal in an appendix accompanying a bond offering of the Debtor from 2008. (*Id.* ¶ 36). The appendix states that "[t]he Bishop's Appeal is an annual direct appeal by the Bishop to every Catholic household in the Diocese to provide funding for the agencies of the Diocese. All of these funds are unrestricted and available to pay the budgeted expenses of the Diocese as well as any amounts payable on debt of the Diocese, including the Bonds." (*Id.*).

The Complaint further alleges that "[t]here is no express commitment to hold" the Shielded Assets "in trust in the Debtor's governing instruments, or in any resolution of [its] board of directors." (*Id.* ¶¶ 84, 85).

Against this backdrop, the Committee has filed the Complaint, which seeks a declaration on five counts:[2]

- The Campaign Assets are not held in charitable trust under California Business and Professions Code Section 17510, *et seq.* (Count I);
- The Individual Donor Assets are not held in charitable trust under California Business and Professions Code Section 17510, *et seq.* (Count II);
- The Shielded Assets are not held in trust under California Corporations Code Section 9142(c) (Count III);

[2] *See* Compl., at 15.

- The Shielded Assets are commingled and not properly accounted for or identified (Count IV); and
- The Shield Assets are not restricted, are not held in trust, and can be used to pay creditors of the Debtor (Count V).

III.

LEGAL STANDARD

A. Rule 12(b)(1)

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) raises a challenge to the Court's subject matter jurisdiction. *See* FED. R. CIV. P. 12(b)(1). "Article III . . . gives the federal courts jurisdiction over only cases and controversies." *Public Lands for the People, Inc. v. United States Dep't of Agric.*, 697 F.3d 1192, 1195 (9th Cir. 2012) (internal quotation marks and citation omitted). "The 'actual controversy' requirement of the [Declaratory Judgment] Act is the same as the 'case or controversy' requirement of Article III of the United States Constitution." *Societe de Conditionnement en Aluminun v. Hunter Eng'g Co.*, 655 F.2d 938, 942 (9th Cir. 1981). The plaintiff bears the burden of proving that the court has subject matter jurisdiction. *See Kekkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). A Rule 12(b)(1) "jurisdictional attack may be facial or factual." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack is based on the challenger's assertion that allegations in the complaint are "insufficient on their face to invoke federal jurisdiction." *Lewter v. United States*, 2012 WL 13034849, at *6 (S.D. Cal. Aug. 10, 2012) (citing *Meyer*, 373 F.3d at 1039). When evaluating a facial challenge to subject matter jurisdiction, the court accepts the plaintiff's factual allegations as true and analyzes subject matter jurisdiction without resorting to extrinsic evidence. *Id.*; *Dreier v. U.S.*, 106 F.3d 844, 847 (9th Cir. 1996) (citation omitted).

B. Rule 12(b)(6)

Rule 12(b)(6) authorizes the Court to dismiss a complaint for failure to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). Dismissal under Rule 12(b)(6) is appropriate if "the complaint lacks a cognizable legal theory" or "sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive

a Rule 12(b)(6) motion, a complaint must plead factual allegations sufficient to state a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations omitted); *accord Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id*. When deciding whether a claim is plausible, courts must generally accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the plaintiff. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). But courts need not accept as true "a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678. Nor must courts "accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Sec. Litig*., 536 F.3d 1049, 1055 (9th Cir. 2008) (quoting *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)). When deciding a Rule 12(b)(6) motion, a court may generally consider only the factual allegations contained within the four corners of the complaint, exhibits attached to the complaint, and matters subject to judicial notice. *Swartz v. KPMG LLP,* 476 F.3d 756, 763 (9th Cir. 2007) (per curiam).

IV.

ARGUMENT

The Court should dismiss all counts asserted against OPF in the Complaint. The lack of an actual controversy between the Committee and OPF, including the lack of a substantive claim by the Committee under Bankruptcy Code Section 541, requires dismissal of Counts I through V. Additionally, the Committee has failed to plead facts identifying the so-called Shielded Assets or plausibly alleging that they include commingled funds held by OPF. Counts I through V should be dismissed on this basis, as well.

A. The Committee's Declaratory Judgment Action Against OPF is Non-Justiciable (All Counts)

The Committee's complaint for declaratory relief against OPF is non-justiciable under federal law. "The 'actual controversy' requirement of the [Declaratory Judgment] Act is the same as the 'case or controversy' requirement of Article III of the United States Constitution." *Societe*

de Conditionnement en Aluminun, 655 F.2d at 942. Therefore, courts faced with applications for declaratory relief "must first inquire whether there is an actual case or controversy within its jurisdiction." *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 669 (9th Cir. 2005). To determine whether a declaratory judgment action presents a justiciable case or controversy, courts consider "whether the facts alleged, under all the circumstances, show that there is a substantial controversy, *between parties having adverse legal interests*, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Shell Gulf of Mexico Inc. v. Ctr. for Biological Diversity, Inc.*, 771 F.3d 632, 637 (9th Cir. 2014) (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273, 61 S.Ct. 510, 85 L.Ed. 826 (1941)) (emphasis added). Here, the Complaint does not plead a justiciable claim against OPF for two reasons: (1) the Committee and OPF do not have adverse legal interests and (2) federal bankruptcy law confers on the Committee no substantive right of action against OPF.

As to the first reason, there are no adverse legal interests between the Committee and OPF because there is no allegation either that OPF can, or intends to, exercise control over the Shielded Assets to the Committee's detriment. The Complaint seeks a judicial declaration regarding the status of assets that the Debtor contends it holds in charitable trust. (Compl. ¶ 24). The Complaint alleges that at least some of the Shielded Assets are held in accounts with OPF, a nonprofit religious corporation that is separate from the Debtor. (*Id.* ¶ 30). The Complaint does not allege that OPF is the equitable owner of any Shielded Assets or that OPF may independently dispose of the Shielded Assets that it purportedly holds. Just as the Committee would have no declaratory claims against the separately incorporated banking institutions (*e.g.*, Wells Fargo) and investment firms (*e.g.*, Edward Jones) alleged to hold the Debtor's assets (*Id.*), so too is there no claim against OPF, which similarly holds assets on behalf of the Debtor without any equitable ownership interest.

Indeed, the Committee's dispute regarding the nature of the Shielded Assets hinges on allegations regarding the *Debtor's* purported treatment of those assets. [redacted] But for purposes of a declaratory relief action, "A's injuring B does not create a case or controversy between B and C." *Weaver's Cove Energy, LLC v. R.I. Dep't of Envt'l. Mgmt.*, 524

F.3d 1330, 1332 (D.C. Cir. 2008). Further, while OPF may disagree with the Committee's characterization of the Shielded Assets under California law, "differing views of the law are not enough to satisfy Article III." *First Fin. Sec., Inc. v. Jones*, No. 17-CV-00773, 2017 WL 5751354, at *9 (N.D. Cal. Nov. 28, 2017). Because OPF lacks any adverse legal interest vis-a-vis the Committee concerning the Shielded Assets, there is no actual controversy between the Committee and OPF on which the Court could enter declaratory relief. *See Bornhauser v. Jacksonville Post Closing*, CV 15-9994-JFW, 2016 WL 7444965, at *6 (C.D. Cal. Mar. 17, 2016) (where plaintiff-borrower sought declaratory relief concerning her rights in real property, plaintiff did not "establish[] the existence of a justiciable controversy between herself and [defendant]" that did not service the mortgage); *In re Old Carco LLC*, 530 B.R. 614, 619–620 (Bankr. S.D.N.Y. 2015) ("[Supplier] FTE has not met its burden of proving the existence of an actual controversy between it and [debtor] Old Chrysler or the Liquidation Trust regarding their respective rights under the Supplier Agreement. Old Chrysler has gone out of business, and the remaining property in its estate vested in the Liquidation Trust under the Plan. Hence, Old Chrysler has no further rights against FTE, and whatever it had now belongs to the Liquidation Trust.").

As to the second reason for the absence of a justiciable claim, the Committee's lack of any substantive claim against OPF under federal bankruptcy law is fatal to its Complaint for declaratory relief because "the Declaratory Judgment Act only creates new remedies, and therefore, the adverse legal interests required by Article III must be created by the authority governing the asserted controversy between the parties." *Shell Gulf of Mexico Inc.*, 771 F.3d at 636; *Collin Cty., Tex. v. Homeowners Ass'n for Values Essential to Neighborhoods, (HAVEN)*, 915 F.2d 167, 171 (5th Cir. 1990) ("A party's legal interest must relate to an actual 'claim arising under federal law that another asserts against him[.]'" (internal citations omitted)). The Complaint's Count V is styled as an action under Bankruptcy Code Section 541,[3] which does not create a right to relief. *Stokes v. Duncan (In re Stokes)*, 2013 WL 5313412, at *6 (B.A.P. 9th Cir. Sept. 23, 2013) (vacating and remanding

[3] Although Count IV does not expressly invoke Section 541, the Committee also requests a judicial determination that the Shielded Assets "are available to pay creditors of the Debtor." (*Id.* ¶ 104). In effect, Count IV also bases its right to relief on Section 541.

bankruptcy court's denial of motion to dismiss a claim for declaratory relief under section 541 of the Bankruptcy Code on the ground that it lacked jurisdiction over the property at issue); *see also In re Jackson*, 548 B.R. 353, 380 (Bankr. N.D. Ga. 2016) (rejecting the plaintiff's stand-alone claim for a determination that debtor and the estate lacked an interest in property subject to a constructive trust, reasoning that "[s]ection 541 defines property but it does not create a cause of action to determine what is and what is not estate property"); *see also Butler v. Candlewood Rd. Partners, LLC (In re Raymond)*, 529 B.R. 455, 470 (Bankr. D. Mass. 2015) ("section 541 of the Bankruptcy Code implicates trustees' duties under 11 U.S.C. § 704(a) to collect and reduce to money property of the estate, but it does not provide, in and of itself, a substantive claim for relief, absent invocation of the trustee's so-called 'strong arm' powers under 11 U.S.C. §§ 544-551 or 11 U.S.C. § 542.").

Because the Committee's Counts I through V do not allege a justiciable controversy against OPF, the Court should dismiss them under Rule 12(b)(1).

B. The Committee Fails to Adequately Plead Factual Allegations Sufficient to State a Claim for Declaratory Relief under Counts I through V

Impairing all of its counts, the Complaint fails to put OPF on notice as to which assets the Complaint contends are property of the Debtor's estate. Additionally, the Complaint does not plausibly allege a lack of restriction concerning the Campaign Assets (Count I) or the Individual Donor Assets (Count II). Likewise, the Committee's razor-thin factual allegations do not support a plausible inference that funds of the Debtor held by OPF were commingled, as offered in Count IV. For these reasons, Counts I through V must be dismissed under Rule 12(b)(6).

1. *The Complaint Does Not Adequately Identify the Shielded Assets or the Categories of Donations Comprising Them (Counts I, II, and III)*

Counts I, II, and III seek a declaration that the Campaign Assets (Count I), the Individual Donor Assets (Count II), and the so-called Shielded Assets (Count III) are not held in charitable trust. (Compl. ¶¶ 65, 80, 94). Property held in trust by a debtor for another is not property of the bankruptcy estate. *In re Cutter*, 398 B.R. 6, 19 (9th Cir. B.A.P. 2008). Federal bankruptcy law determines what property is included in the estate. *In re Raymond Renaissance Theater, LLC*, 583 B.R. 735, 744 (Bankr. C.D. Cal. 2018). The Committee's conclusory allegations do not give rise to

a plausible inference that the funds purportedly held in accounts with OPF are property of the Debtor's estate. *See In re Caremerica, Inc.*, 409 B.R. 737, 751 (Bankr. E.D. N.C. 2009) (Chapter 7 trustee failed to plausibly allege that purported preferential transfers involved *property of the debtor*).

In *Caremerica*, the court determined that an adversary complaint containing substantially more detail than the Complaint here did not plausibly allege that purported preferential transfers involved "an interest of the debtor in property." *In re Caremerica*, 409 B.R. at 750 (citing 11 U.S.C. § 547(b)). The trustee's amended complaint in *Caremerica* alleged that the debtors used an account of third party "PPS/BER" as a conduit to transfer funds to the defendants. *In re Caremerica*, 409 B.R. at 750. In support, the complaint attached bank statements showing fund transfers from the PPS/BER bank accounts, as well as a table identifying the dates and amounts of transfers allegedly received by each defendant. *Id.* The trustee alleged that the debtors made "certain transfers to such defendant in at least the amount listed beside such defendant's name[,]" set forth in the trustee's table. The court determined that the complaint's allegations were conclusory, since they did not rebut "the alternative and reasonable possibility that the funds flowing through BER . . . originated from sources other than the debtors." *Id.* at 751; *see also In re Silver Star of Nevada, Inc.*, No. 23-10315-SAH, Adv. No. 25-01005-SAH, 2025 WL 898334, at *4 (W.D. Okla. Mar. 24, 2025) (slip copy) (dismissing Chapter 11 trustee's adversary complaint for declaratory relief under Section 541 because, despite including information showing transfers from the Debtor to third parties, "the Complaint in no form or fashion identifie[d] the actual property" comprising the purported estate assets).

Here, the Complaint includes far less detail regarding the purported estate property than the complaints in *CareMerica* or *In re Silver Star* and thus does not give OPF fair notice of *which, if any, assets held by OPF are in dispute.* The Complaint describes "approximately $38 million" in Shielded Assets that "[u]pon information and belief, . . . were commingled both with restricted assets and with assets subject to different alleged restrictions." (Compl. ¶¶ 28, 29). The Complaint alleges that Shielded Assets, in aggregate, "are held in accounts at OPF" and a dozen other financial institutions but does not identify: (i) the accounts or the amounts they hold; (ii) when any funds

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were deposited into those accounts; (iii) the source of the deposits; or (iv) whether the deposits were made by the Debtor, a Debtor affiliate, or a member church. (*Id.* ¶ 30). Additionally, while the Committee alleges that the Shielded Assets include Individual Donor Assets and Campaign Assets (*Id.* ¶¶ 31, 33), the Committee does not specify when either category of donations was collected, or by which constituent entity or affiliate of the Debtor. Nor does the Committee plead that either category of donations was actually deposited with, or transferred to, OPF, when, in what amounts, or into which accounts. Accordingly, the Complaint does not (a) adequately allege that any assets held by OPF are in fact "Shielded Assets," as defined by the Committee, or, alternatively, (b) identify *which* assets held by OPF constitute Shielded Assets.

The Complaint's Count II, concerning the characterization of Campaign Assets, hinges almost entirely on an excerpt regarding the Bishop's Appeal from an appendix accompanying the Debtor's 2008 bond offering. The excerpt characterizes the Bishop's Appeal as "an annual direct appeal by the Bishop to every Catholic household in the Diocese to provide funding for the agencies of the Diocese" and states that "[a]ll of these funds are unrestricted and available to pay the budgeted expenses of the Diocese as well as any amounts payable on debt of the Diocese, including the Bonds." (*Id.* ¶ 36). The bond appendix was issued *15 years before* the Debtor entered bankruptcy. The Committee cannot premise its application for declaratory relief on a single statement—made over a dozen years prior to the petition date—characterizing a subset of the donations, without offering any factual support as to how the purported donations were used by the Debtor in the intervening decade and a half. *Nayab v. Capital One Bank (USA), N.A.*, 942 F.3d 480, 495 (9th Cir. 2019) ("The plausibility standard . . . asks for more than a sheer possibility that a defendant has acted unlawfully."). Moreover, the Committee does not identify what percentage of the "approximately $38 million" in Shielded Assets are comprised of donations through the Bishop's Appeal, which accounts these donations are held in, when they were purportedly deposited with OPF, and whether funds presumably deposited over a decade ago even remain in an OPF account today.

2. The Complaint Does Not Plead a Plausible Commingling Theory (Count IV)

In Count IV, the Committee seeks a declaration that the Shielded Assets are "commingled"

and "therefore are not subject to a valid restriction and are available to pay creditors of the Debtor." (Compl. ¶ 104). The Committee's allegations of commingling are either completely conclusory or so remote as to be irrelevant.[4]

For instance, the Committee generally alleges that, "[u]pon information and belief," "the use of the Shielded Assets is not properly accounted for" (*id.* ¶ 99), and "the Shielded Assets have not been identified in actual segregated bank and/or investment accounts or, in the alternative, have not been traced using an acceptable methodology if commingled (*id.*¶ 100). The Committee also speculates about the unrestricted nature of the Individual Donor Assets, without any factual support. *Id.* ¶ 32 ("*[T]he documentation relating to certain of the Individual Donor Assets* permitted the Debtor and/or the Bishop to use the funds in its/his discretion or otherwise did not specify any restriction for the donation." (emphasis added)). The Complaint's allegations regarding the Campaign Assets are equally vague and unsupported. *Id.* ¶¶ 38–39 (alleging that "[c]ertain of the Solicitation Materials" or "documents regarding the use of funds received on account of the Solicitation Materials" "included provisions that the Debtor and/or the Bishop can use the Campaign Assets at their discretion" (*id.* ¶ 38) or "provided that the funds raised were to be used to service or pay down outstanding debts of certain Churches" (*id.* ¶ 39)); *see also In re Stillwater Asset Backed Offshore Fund Ltd.*, 559 B.R. 563, 588–89 (S.D.N.Y. Sept. 2, 2016) (in adversary proceeding alleging debtor's liability under alter ego theory, allegations that multiple fund entities "commingled their assets and products, offspring, and rents" were found conclusory, where plaintiff did not allege, *inter alia*, what the allegedly commingled cash flows or assets were, their amounts, the manner in which they were commingled, and the accounts that were affected).

The Complaint's sparse and conclusory allegations contrast starkly with pleadings that survived Rule 12 motions in analogous cases. For example, in *In re Ameripay*, which concerned the bankruptcy of a payroll and tax services company, the chapter 7 trustee sought to avoid the debtor's pre-petition payments to creditors and taxing authorities, alleging that the payments were made from an account containing commingled funds. *See, e.g.*, *In re Ameripay, LLC*, No. 09–

[4] As discussed above in Section IV(A)(1), the Complaint's defects in attempting to identify the Shielded Assets impair Count IV, as well.

27794, Adv. No. 11-2014, 2012 WL 246397, at *5 (D. N.J. Jan. 25, 2012). The court held that the trustee adequately pleaded "the commingling of the [movant-customer's] funds with funds of the [d]ebtor" and its other customers. *Id.* There, the trustee's complaint alleged that the debtor had no contractual obligation to segregate customer funds. *Id.* at *2. The complaint also identified: the allegedly commingled bank accounts (by account number) that received customer deposits; specific fund transfers (i) from the debtors' operating accounts into the commingled account and (ii) from the commingled account to creditors; the intervals at which funds were deposited into and withdrawn from the commingled accounts; and the recipients of funds from the commingled accounts. *Id.* at *3. *See also In re Wiley*, 2010 WL 5185448, at *4–5 (D. N.M. Oct. 14, 2010) (holding that trustee plausibly alleged commingled-funds theory with respect to funds held by debtor's trust, where trustee specified expenditures of trust funds for personal use and for the benefit of his family members).

3. The Committee Fails to State a Claim against OPF that the Shielded Assets are Property of the Debtor's Bankruptcy Estate under Section 541 (Count V)

The Complaint's pleading deficiencies likewise doom its application for declaratory relief in Count V. In Count V, the Committee seeks a declaration "that the Shielded Assets are not restricted, are not held in trust, and can be used to pay creditors of the Debtor." (Compl. at 15). As with Counts I through IV, the Committee's bare-bones allegations do not identify the "Shielded Assets" purportedly held at OPF or the amounts that comprise the Shielded Assets. *See, e.g., McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996) (To comply with Rule 8, a complaint should clearly and fully set forth "who is being sued, for what relief, and on what theory, with enough detail to guide discovery"); *In re Silver Star of Nevada, Inc.*, 2025 WL 898334, at *4 ("If Trustee wants a declaration the Property Assets are, in fact, property of the Silver Star bankruptcy estate, at a minimum, the Complaint should identify what comprises the Property Assets as currently known."). Nor does the Committee state any plausible basis that the assets, even if identified, are unrestricted and available to pay creditors. In particular, the Committee vaguely alleges that the Individual Donor Assets were donated without restrictions on their use (*Id.* ¶ 32), that the materials used by the Debtor to solicit donations of Campaign Assets permitted the assets' unrestricted use

(*Id.* ¶¶ 38, 39), and that no governing instrument, bylaw, or resolution of the Debtor impressed a trust on the Shielded Assets (*Id.* ¶¶ 84, 85). These conclusory allegations fall far short of the meeting the standard required to survive a Rule 12 motion to dismiss.

V.

CONCLUSION

For the foregoing reasons, OPF respectfully requests its Motion to dismiss the Complaint for lack of subject matter jurisdiction under Rule 12(b)(1) or, alternatively, for failure to state a claim for relief under Rule 12(b)(6) be granted with respect to Counts I through V asserted in the Complaint.

Dated: May 23, 2025

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