LOWENSTEIN SANDLER LLP
JEFFREY D. PROL (*pro hac vice*)
jprol@lowenstein.com
BRENT WEISENBERG (*pro hac vice*)
bweisenberg@lowenstein.com
One Lowenstein Drive
Roseland, New Jersey 07068
Telephone: (973) 597-2500
Facsimile: (973) 597-2400

KELLER BENVENUTTI KIM LLP
TOBIAS S. KELLER (Cal. Bar No. 151445)
tkeller@kbkllp.com
JANE KIM (Cal. Bar No. 298192)
jkim@kbkllp.com
GABRIELLE L. ALBERT (Cal. Bar No. 190895)
galbert@kbkllp.com
425 Market Street, 26th Floor
San Francisco, California 94105
Telephone: (415) 496-6723
Facsimile: (650) 636-9251

Counsel to the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole, Debtor. --- THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF THE ROMAN CATHOLIC BISHOP OF OAKLAND, Plaintiff, v. THE ROMAN CATHOLIC BISHOP OF OAKLAND and THE OAKLAND PAROCHIAL FUND, INC., Defendants.	Case No. 23-40523 WJL Chapter 11 Adv. Pro. 24-04051 WJL **OMNIBUS RESPONSE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO (I) DEBTOR'S MOTION TO DISMISS FIRST AMENDED ADVERSARY COMPLAINT FOR DECLARATORY RELIEF AND (II) THE OAKLAND PAROCHIAL FUND'S MOTION TO DISMISS** Judge: Hon. William J. Lafferty Date: June 4, 2025 Time: 2:00 p.m. (Pacific Time) Place: United States Bankruptcy Court Courtroom 220 1300 Clay Street

Case: 24-04051 Doc# 48 Filed: 05/28/25 Entered: 05/28/ 23405232505290000000000003

The Committee files this omnibus response (this "**Response**") in opposition to: (i) the *Debtor's Motion to Dismiss First Amended Adversary Complaint for Declaratory Relief* [Dkt. No. 44] (the "**Debtor's Motion**"), and (ii) *The Oakland Parochial Fund, Inc.'s Motion to Dismiss* [Dkt. No. 40] (the "**OPF Motion**," and, together with the Debtor's Motion, the "**Motions to Dismiss**"). For the reasons set forth below, the Court should deny the Motions to Dismiss.[1]

PRELIMINARY STATEMENT

In another effort to delay the Court from determining whether the Debtor is inappropriately shielding funds that should be made available to pay creditors, the Debtor's Motion advocates for the Donors, its *own parishioners*, to be sued and even offers to assist the Committee in suing them. However, the Donors are not actually necessary parties to the Adversary Proceeding because they claim no interest in the subject assets, there is no claimed interest to be impeded upon, and even if an interest was claimed by *any* of the individuals, the Debtor has not even pled, let alone proven, that the Donors' ability to protect their interests are at risk, that there is any risk (let alone a substantial risk) for inconsistent results, nor that joinder is feasible. The Debtor's argument to the contrary should be rejected.

For its part, OPF seeks to dismiss the Amended Complaint by asking the Court to create a new, heightened pleading standard for the Committee, while simultaneously ignoring the Federal Rules of Civil Procedure (the "**Federal Rules**") by attempting to contest facts at the motion to dismiss stage. Though procedurally misguided, the OPF Motion highlights an argument the Committee has been making all along—that the Debtor, who claims to have produced every piece of evidence it has to support its claim that its assets are appropriately restricted, cannot show that the Shielded Assets were properly identified, accounted for, and traced. In other words, the Committee's allegations are based on its review of the documents produced thus far, and OPF's assertions that those documents are insufficient only demonstrate that (i) further discovery on the matter is needed or (ii) sufficient documents to determine a restriction on assets do not exist (in which case the assets must be deemed unrestricted). As such, the OPF Motion should be denied.

[1] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Amended Complaint or Motions to Dismiss, as applicable.

At bottom, the Amended Complaint, when considered in light of the actual pleading standard—wherein the Committee's well-pled allegations must be accepted as true and all reasonable inferences drawn in the Committee's favor—sufficiently states justiciable controversies against the Debtor and OPF regarding the purportedly restricted assets. The Motions to Dismiss should be denied and a scheduling order should be entered to ensure this Adversary Proceeding is adjudicated at the same time as the Plan.

ARGUMENT

Through the Motions to Dismiss, the Defendants seek dismissal of the Amended Complaint on separate (conflicting) grounds—none of which require dismissal of the Amended Complaint. Importantly, the Debtor does not take the position that the Amended Complaint does not set forth a basis for relief, but only that its individual parishioners should defend the litigation alongside it. (*See* Debtor Mot. at 4–7) (seeking dismissal under Federal Rule 12(b)(7)). OPF on the other hand takes a contrary position, which highlights the Debtor's own inability to establish restriction over the use of its assets (*see* OPF Mot. at 6–7) (seeking dismissal under Federal Rule 12(b)(1)), and attempts to liken itself to a bank which need not be sued for this Court to grant relief against the Debtor (*see* OPF Mot. at 5) (seeking dismissal under Federal Rule 12(b)(6)).

The Federal Rules require a complaint to contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); Fed. R. Bankr. P. 7008 ("Fed. R. Civ. P. 8 applies in an adversary proceeding."). When considering a motion to dismiss under either Federal Rule 12(b)(1), (b)(6) or (b)(7), a court must accept as true the allegations in plaintiff's complaint and draw all reasonable inferences in the plaintiff's favor. *See Lewter v. United States*, Nos. 10-CV-2390 W (WVG), 10-CV-848 W (WVG), 2012 WL 13034849, at *6 (S.D. Cal. Aug. 10, 2012) (setting forth the standard for Federal Rule 12(b)(1)); *Bd. of Trs. as Trs. of Operating Eng'rs. Loc. 501 Sec. Fund v. Cnty. of Orange*, No. 819CV02117JLSADS, 2020 WL 4355502, at *1–2 (C.D. Cal. Apr. 6, 2020) (setting forth the standard for Federal Rule 12(b)(7)); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (A motion to dismiss a complaint pursuant to Federal Rule 12(b)(6) cannot be granted unless the complaint

fails to "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'") (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When considered under the correct standard of review, the Motions to Dismiss must be denied.

A. The Individual Parishioners Are Not Necessary Parties to the Adversary Proceeding.

To succeed on a Federal Rule 12(b)(7) motion to dismiss, the movant bears the burden to show that the purported necessary parties are, among other things, "required" parties under Federal Rule 19(a). *See Bd. of Trs.*, No. 2020 WL 4355502, at *4 (denying a Federal Rule 12(b)(7) motion to dismiss because the movant "has not met its burden of showing that the [nonparty] is a required party under Rule 19(a)"). If the movant is able to demonstrate that a nonparty is a required party, the movant must then show that joinder is feasible, and further, if not feasible, that the action should be dismissed. *Id.* at *2. Ultimately, the "party moving to dismiss for failure to join a party under [Federal] Rule 19 bears the burden of demonstrating that dismissal or joinder is appropriate." *Id.* (citing *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990)).

A nonparty is a "Required Party" under Federal Rule 19(a)(1) if: (A) the court "cannot accord complete relief" among the existing parties absent the nonparty, or (B) the nonparty "claims an interest relating to the subject of the action *and* is so situated that disposing of the action in the person's absence may" (i) "as a practical matter impair or impede the person's ability to protect the interest"; or (ii) "leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent, obligations because of the interest." Fed. R. Civ. P. 19(a)(1) (emphasis added).

As a preliminary matter, the Debtor's Motion should be denied because the Debtor has presented no evidence showing that the Donors "claim[] an interest" in the subject of this Adversary Proceeding as it is required to do under Federal Rule 19(a)(1)(B) (the only section the Debtor relies on). *See Blumberg v. Gates*, 204 F.R.D. 453, 455 (C.D. Cal. 2001) (reviewing that the plain text of Federal Rule 19 requires that the absent party "claim[] an interest in the

subject of the action") (quoting Fed. R. Civ. P. 19).

Even if each individual Donor claimed a legally protectable interest (which they have not), the Debtor has not even attempted to prove that the absence of individual parishioners will impede any parishioner's ability to protect its unidentified interest or create a substantial risk of inconsistent obligations. In fact, the Debtor has presented no evidence at all and relies merely on conclusory and hypothetical statements to support its position. *See Xpress Diesel & Auto LLC v. Sorget*, No. 2:24-CV-00798-JAD-EJY, 2024 WL 4119272, at *2–3 (D. Nev. Sept. 6, 2024) (noting that an "[a]nalysis under Rule 19(a) is practical and fact specific" and that "merely having a personal stake in the outcome of a case is not enough") (internal marks and citation omitted).

Further, while the Debtor offers to assist the Committee in suing the Debtor's parishioners, the Debtor ignores the fact that (i) many Donors are deceased (as donations were made through wills), and (ii) that the Debtor has to date not been able to provide the Committee with the name and contact information for each Donor that contributed to the Debtor's allegedly restricted assets.

Because the Debtor has not met its burden to show that the Donors are required parties under Federal Rule 19(a), or that dismissal of the Amended Complaint is required by Federal Rule 12(b)(7), the Debtor's Motion should be denied.

B. OPF Ignores the Applicable Standard of Review by Attempting to Counter the Committee's Well-Pled Factual Allegations.

To survive a challenge under Federal Rule 12(b)(6), a complaint "does not need detailed factual allegations." *Twombly*, 550 U.S. at 555. Evaluating plausibility "does not impose a probability requirement at the pleading stage," but simply calls for factual allegations that are sufficient to raise a "reasonable expectation that discovery will reveal evidence" of the claim. *Id.* at 556. The issue, then, is "not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Jackson v. Carey*, 353 F.3d 750, 755 (9th Cir. 2003) (internal citation omitted). Further, to satisfy Federal Rule 8, "[s]pecific facts

are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Twombly*, 550 U.S. at 555).

Here, not only does the Amended Complaint plead facts sufficient to state each of the counts contained therein (and give OPF more than sufficient notice of the claims against it and grounds for those claims), but it also far exceeds that pleading standard, which the Ninth Circuit made clear is a very low bar:

> But so long as the plaintiff alleges facts to support a theory that is not facially implausible, the court's skepticism is best reserved for later stages of the proceedings when the plaintiff's case can be rejected on evidentiary grounds.

In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1057 (9th Cir. 2008).

OPF's arguments[2] fall flat because the Committee provided more than sufficient factual detail to "nudge their claims across the line from conceivable to plausible." *Cal. Crane Sch., Inc. v. Google LLC*, 722 F. Supp. 3d 1026, 1038 (N.D. Cal. 2024) (quoting *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litig.*, 28 F.4th 42, 47 (9th Cir. 2022)). The Committee identified, to the best of its ability, based on the information it has received to date *from the Debtor*, the assets the Debtor has alleged are subject to restriction and the locations the Debtor has indicated where the restricted assets are held.[3] Further information is not required to put OPF on notice of the claims against it.

Further, the allegations set forth in the Amended Complaint are not "legal conclusions"—they far exceed "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Iqbal*, 556 U.S. at 678. OPF confuses the relief requested with the factual allegations. (*See* OPF Mot. at 7) (arguing that, because the Committee seeks a legal

---

[2] Notably, the Debtor does not contest that the factual allegations in the Amended Complaint are sufficient to state a claim under Federal Rule 12(b)(6).

[3] OPF's assertion that the Committee "speculates" when alleging facts based upon "information and belief" (*see* OPF Mot. at 10) is unavailing. The Federal Rule 8 pleading standard is satisfied by "[f]actual allegations made on information and belief." *In re Case*, 636 B.R. 852, 859 (Bankr. S.D. Fla. 2022).

finding from the Court that the Individual Donor Assets, Shielded Assets, and Campaign Assets are not held in trust, that the Committee is making "conclusory allegations").

The factual allegations in the Amended Complaint are based on (i) documents and information provided by the Debtor, which it has repeatedly asserted contain *all* of the evidence available to meet its burden of proof, and (ii) statements made by the Debtor and OPF in this Adversary Proceeding and the Chapter 11 Case. Because it is ultimately the Debtor's burden to prove the assets are restricted and have been held and accounted for in a manner that maintains any restriction, OPF's position therefore highlights the Debtor's inability to meet its burden. *See In re Wendt*, 320 B.R. 904, 909 (Bankr. D. Minn. 2005) ("As the proponent of an exclusion of assets from the estate, the Debtor had the initial burden of production of evidence to meet the elements of § 541(c)(2).").

Because the Committee has pled facts sufficient to state a claim, the OPF Motion should be denied.

C. The Amended Complaint Is Justiciable Against OPF.

A declaratory judgment action presents a justiciable case or controversy sufficient to defeat a Federal Rule 12(b)(1) motion when the alleged facts show that the parties have adverse legal interests, "of sufficient immediacy and reality to warrant the issuance of a declaratory judgement." *Shell Gulf of Mexico Inc. v. Ctr. for Biological Diversity, Inc.*, 771 F.3d 632, 635 (9th Cir. 2014) (citation omitted). Like motions to dismiss pursuant to Federal Rule 12(b)(6) and (b)(7), facial attacks under Federal Rule 12(b)(1) assume the truth of the plaintiff's allegations. *Lewter*, 2012 WL 13034849 at *7 (citing *Broudy v. United States*, 661 F.2d 125, 126 n.1 (9th Cir. 1981)).

In a last-ditch effort to thwart the Adversary Proceeding, OPF attempts to analogize itself to a neutral banking institution, contending that it has no adverse legal interest from the Committee because "there is no allegation either that OPF can, or intends to, exercise control over the Shielded Assets to the Committee's detriment." (OPF Mot. at 5). Not so. The Amended Complaint states, for example, that the Shielded Assets held at OPF were previously deemed unrestricted when held by the Debtor but have been deemed restricted only while in OPF's possession (Am. Compl. ¶ 97).

Drawing all reasonable inferences in the Committee's favor—as the Court must at this stage—the Amended Complaint demonstrates OPF's control over the Debtor's assets. *See Lewter*, 2012 WL 13034849, at *6.

Moreover, unlike a neutral banking institution, OPF previously alleged ownership and control over assets it held, and it was not until the Committee objected to that premise, that the Debtor and OPF finally conceded [*see* Bankr. Dkt. Nos. 1784, 1796] that those assets were not OPF's property. OPF has maintained an inconsistent position as to its role within the Debtor's enterprise throughout this Chapter 11 Case. OPF's relationship to the Debtor, and past conduct regarding its efforts to assert control and ownership over property of the Debtor's estate, makes clear that OPF cannot genuinely assert its relationship with the Debtor is akin to the Debtor's relationship with unaffiliated banking institutions.

OPF's attempts to contest factual allegations are inappropriate at the motion to dismiss stage. For that reason, OPF's argument that it is akin to a banking institution with no adverse legal interest to the Committee falls flat, and the OPF Motion should be denied.

WHEREFORE, the Committee requests that the Court deny the Motions to Dismiss in their entirety and grant any other relief that is just and proper.

Dated: May 28, 2025

KELLER BENVENUTTI KIM LLP
LOWENSTEIN SANDLER LLP

By: */s/ Gabrielle L. Albert*
Tobias S. Keller
Jane Kim
Gabrielle L. Albert

- and -

Jeffrey D. Prol
Michael A. Kaplan
Brent Weisenberg
Colleen M. Restel

Counsel for the Official Committee of Unsecured Creditors