

FOLEY & LARDNER LLP

Jeffrey R. Blease (CA Bar. No. 134933)
 Tel: (617) 226-3155; jblease@foley.com
 Thomas F. Carlucci (CA Bar No. 135767)
 Tel: (415) 984-9824; tcarlucchi@foley.com
 Shane J. Moses (CA Bar No. 250533)
 Tel: (415) 438-6404; smoses@foley.com
 Emil P. Khatchatourian (CA Bar No. 265290)
 Tel: (312) 832-5156; ekhatchatourian@foley.com
 Ann Marie Uetz (admitted *pro hac vice*)
 Tel: (313) 234-7114; auetz@foley.com
 Matthew D. Lee (admitted *pro hac vice*)
 Tel: (608) 258-4203; mdlee@foley.com
 555 California Street, Suite 1700
 San Francisco, CA 94104-1520

*Counsel for the Debtor
 and Debtor in Possession*

**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

**DEBTOR'S MOTION FOR A
 SUPPLEMENTAL ORDER INCREASING
 THE MONTHLY CAPS AUTHORIZED
 UNDER THE COURT'S PREVIOUS
 ORDER (I) AUTHORIZING THE
 RETENTION AND PAYMENT, EFFECTIVE
 AS OF THE PETITION DATE, OF
 PROFESSIONALS UTILIZED BY THE
 DEBTOR IN THE ORDINARY COURSE OF
 BUSINESS AND (II) GRANTING RELATED
 RELIEF**

Judge: Hon. William J. Lafferty

Date: April 26, 2024

Time: 10:00 a.m.

Place: United States Bankruptcy Court
 1300 Clay Street
 Courtroom 220
 Oakland, CA 94612

1 The Roman Catholic Bishop of Oakland, a California corporation sole, and the debtor and debtor
2 in possession (the “Debtor” or “RCBO”) in the above-captioned chapter 11 bankruptcy case (the “Chapter
3 11 Case” or the “Bankruptcy Case”), hereby files this motion (the “Motion”), pursuant to sections 105(a),
4 327, 328 and 330 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2014 of the Federal
5 Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(a) of *Bankruptcy Local Rules*
6 *for the Northern District of California* (the “Local Rules”), for the entry of a supplemental order to
7 increase the monthly caps on compensation of ordinary course professionals retained pursuant to this
8 Court’s *Order (I) Authorizing the Retention and Payment, Effective as of the Petition Date, of*
9 *Professionals Utilized by The Debtor in the Ordinary Course of Business and (II) Granting Related Relief*
10 [Docket No. 263] (the “OCP Order”).

11 The Debtor’s proposed form of order granting the relief requested herein is attached as
12 **Exhibit A** (the “Proposed Order”).

13 14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I.**

16 **INTRODUCTION**

17 Through the OCP Order, the Court authorized the Debtor to retain and compensate certain
18 Ordinary Course Professionals¹, subject to the requirements in the order. These included a monthly cap of
19 \$40,000 (calculated on a three-month rolling average) on the compensation which could be paid to each
20 Ordinary Course Professional and a total cap of \$100,000 per month (calculated on a three-month rolling
21 average) across all Ordinary Course Professionals. The OCP Order authorized the Debtor to seek relief in
22 this Court if it needed to increase these caps. OCP Order, ¶3(a).

23 To date, the Debtor has remained within the caps, but certain changes in the Debtor’s operations
24 and in the trajectory of the Chapter 11 Case necessitate an increase in the caps. The Debtor is requesting
25 an increase in the per-professional cap to \$75,000 per month (calculated on a three-month rolling average),
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27 ¹ Capitalized terms not defined herein are defined in the OCP Order.

1 and the total cap to \$200,000 per month (calculated on a three-month rolling average), in order to account
2 for these changes.

3 4 **JURISDICTION AND VENUE**

5 This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is
6 a core proceeding pursuant to 28 U.S.C. § 157(b), the *Order Referring Bankruptcy Cases and Proceedings*
7 *to Bankruptcy Judges*, General Order No. 24 (N.D. Cal.), and Rule 5011-1(a) of the Local Rules. Venue
8 for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

9 **II.**

10 **BACKGROUND**

11 **A. General Background**

12 On May 8, 2023 (the “Petition Date”), the Debtor caused its attorneys to file a voluntary petition
13 for chapter 11 bankruptcy relief under the Bankruptcy Code, initiating this Chapter 11 Case. The Debtor
14 continues to operate its ministry and manage its properties as a debtor in possession under sections 1107(a)
15 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case.
16 The Office of the United States Trustee for the Northern District of California appointed the Official
17 Committee of Unsecured Creditors on May 23, 2023 [Dkt. No. 58].

18 The Debtor is a corporation sole organized under the laws of the State of California. The Debtor
19 conducts its civil affairs under the laws of the State of California and the United States of America and in
20 accordance with the Code of Canon Law, the ecclesiastical law of the Roman Catholic Church.

21 Additional information regarding the Debtor, its mission, ministries, and operations, and the events
22 and circumstances preceding the Petition Date, is set forth in the *Declaration of Charles Moore, Managing*
23 *Director of Alvarez & Marsal North America, LLC, Proposed Restructuring Advisor to the Roman*
24 *Catholic Bishop of Oakland, in Support of Chapter 11 Petition and First Day Pleadings* [Dkt. No. 19]
25 (the “First Day Declaration”), which is incorporated herein by reference.

1 **B. Proposed Increases in Monthly Compensation Caps for Ordinary Course**
2 **Professionals**

3 The Debtor is seeking to increase the monthly compensation cap per professional from \$40,000
4 per month to \$75,000 per month (calculated on a three-month rolling average). It is also seeking to increase
5 the total monthly cap across all Ordinary Course Professionals from \$100,000 per month to \$200,000 per
6 month (calculated on a three-month rolling average). The changes in the Debtor's operations and in the
7 needs of the Chapter 11 Case necessitating these increases are as follows.

8 First, the Debtor's long-time Chief Financial Officer, Paul Bongiovanni, retired as of April 1, 2024.
9 Mr. Bongiovanni has been instrumental in this Chapter 11 Case. He has overseen all aspects of the matter,
10 in particular with respect to discovery and monthly operating reports, as well as the Debtor's day-to-day
11 financial operations. In order to ensure continuity of the management of the Chapter 11 Case, the Debtor
12 retained Dr. Matthew Kemner, an experienced former attorney, to oversee the legal aspects of the case.
13 *See Notice of Supplemental Retention of Ordinary Course Professional Dr. Matthew J. Kemner Pursuant*
14 *to Order (I) Authorizing the Retention and Payment, Effective as of the Petition Date, of Professionals*
15 *Utilized by The Debtor in the Ordinary Course of Business and (II) Granting Related Relief* [Docket No.
16 707]. As Mr. Bongiovanni transitions out of the Debtor's employment, the Debtor's need for Dr. Kemner's
17 services will increase, which will require an increase in the cap. The Debtor expects that Dr. Kemner will
18 perform approximately 58 hours of work for the Debtor per month on a rolling three-month average,
19 whereas he has been performing between 40-50 hours of work per month. The Debtor is also considering
20 seeking to retain Mr. Bongiovanni as an Ordinary Course Professional on a limited basis to provide
21 consulting services to the Debtor based on his long experience and knowledge of the Debtor's operations.
22 The Debtor will file a Notice of Supplemental Retention pursuant to the OCP Order in the event that it
23 retains Mr. Bongiovanni.

24 Second, the Debtor is working to reduce its spending on administrative expenses, including the
25 expenses of its retained professionals. The Debtor has replaced some of the services currently provided
26 by its financial advisor, Alvarez and Marsal North America, LLC ("A&M") with its already-retained
27 Ordinary Course Professionals Veracruz Advisory, LLC ("Veracruz"). The Debtor anticipates that
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Veracruz will undertake the following additional duties: (a) preparation of the Debtor's monthly operating reports; (b) preparation of cash forecasts; (c) analysis of specific assets of the Debtor; and (d) interacting with the Committee's professionals with respect to document productions and other information requests. The Debtor and Veracruz have agreed to increase the current monthly \$35,000 payment to \$70,000 in order to account for these additional duties, which will require an increase in the caps for Ordinary Course Professionals. However, the cost-savings from shifting this work to Veracruz will result in a net benefit to the estate.

Third, and finally, the Debtor's focus in the case has shifted to mediation and to achieving resolution of the outstanding issues with the Committee and insurers. The Debtor anticipates this will result in the proposal of a consensual plan of reorganization. To accomplish this, the Debtor requires the retention of certain additional Ordinary Course Professionals, including an Insurance Archaeologist to assist in ongoing Adversary Proceedings, and an additional Canon Law expert who may be required to provide information to the Debtor as it evaluates any potential plan of reorganization. These additional retentions also will require an increase in the monthly caps. The Debtor will file Notice of Supplemental Retentions pursuant to the OCP Order for these professionals as well.

III.

RELIEF REQUESTED

Pursuant to sections 105(a), 327, 328 and 330 of the Bankruptcy Code, and Bankruptcy Rule 2014, the Debtor hereby seeks entry of an order, substantially in the form of the Proposed Order submitted herewith, authorizing it to increase the monthly compensation caps for its Ordinary Course Professionals to a per-professional cap of \$75,000 per month (calculated on a three-month rolling average), and the monthly cap to \$200,000 per month (calculated on a three-month rolling average). The Debtor also requests authorization to seek further increases in the monthly caps if needed.

IV.

BASIS FOR RELIEF

The Debtor has been in bankruptcy for approximately 11 months and has made significant progress. It is working toward a final resolution and plan of reorganization, and its needs have shifted.

MOTION TO INCREASE MONTHLY CAPS FOR ORDINARY COURSE PROFESSIONALS

1 Therefore, the Debtor needs to retain and compensate Ordinary Course Professionals. The fee increases
2 sought herein will allow it to better address this new phase of the case and the change in circumstances
3 brought about by Mr. Bongiovanni's retirement. In addition, the Debtor believes it can reduce its overall
4 administrative costs by using Ordinary Course Professionals to take on new tasks (but not core
5 restructuring tasks) while reducing the amount of fees incurred by A&M on a month-to-month basis. The
6 increased Ordinary Course Professional Fee caps will benefit the estate and the Debtor's creditors by
7 allowing the Debtor to work toward the ultimate resolution of the case and reduce its overall professional
8 fees.

9 **V.**

10 **RESERVATION OF RIGHTS**

11 Nothing contained in this Motion is intended to be or shall be construed as (i) an admission as to
12 the validity of any claim against the Debtor, (ii) a promise to pay any claim, (iii) a waiver of the Debtor's
13 or any appropriate party in interest's rights to dispute any claim, (iv) an implication or admission that any
14 particular professional is an Ordinary Course Professional, or (v) an approval or assumption of any
15 agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if the
16 Court grants the relief sought in this Motion, any payment made pursuant to the Court's order is not
17 intended to be, and should not be construed as, an admission to the validity of any claim or a waiver of
18 the Debtor's rights to dispute such claim subsequently.

19 **VI.**

20 **NOTICE**

21 Notice of this Motion will be provided to the parties listed on the Core Service List, pursuant to
22 the *Second Interim Order Approving Debtor's Motion for an Order Authorizing and Approving Special*
23 *Noticing and Confidentiality Procedures* [Dkt. No. 71]. The Debtor submits that in light of the nature of
24 the relief requested, no further notice is required.

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28 MOTION TO INCREASE MONTHLY CAPS FOR ORDINARY COURSE PROFESSIONALS

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VII.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Order and grant such other and further relief as may be appropriate.

DATED: April 5, 2024

FOLEY & LARDNER LLP

Jeffrey R. Blease
Thomas F. Carlucci
Shane J. Moses
Emil P. Khatchatourian
Ann Marie Uetz
Matthew D. Lee

/s/ Shane J. Moses

SHANE J. MOSES

*Counsel for the Debtor
and Debtor in Possession*

EXHIBIT A

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Jeffrey R. Blease (CA Bar. No. 134933)
Tel: (617) 226-3155; jblease@foley.com
Thomas F. Carlucci (CA Bar No. 135767)
Tel: (415) 984-9824; tcarlucchi@foley.com
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Tel: (415) 438-6404; smoses@foley.com
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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

**[PROPOSED] SUPPLEMENTAL ORDER
INCREASING THE MONTHLY CAPS
AUTHORIZED UNDER THE COURT'S
PRIOR ORDER (I) AUTHORIZING THE
RETENTION AND PAYMENT, EFFECTIVE
AS OF THE PETITION DATE, OF
PROFESSIONALS UTILIZED BY THE
DEBTOR IN THE ORDINARY COURSE OF
BUSINESS AND (II) GRANTING RELATED
RELIEF**

Judge: Hon. William J. Lafferty

Date: April 26, 2024

Time: 10:00 a.m.

Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

1 This Court has considered the *Debtor's Motion for a Supplemental Order Increasing the Monthly*
2 *Caps Authorized Under the Court's Previous Order (I) Authorizing the Retention and Payment, Effective*
3 *as of the Petition Date, of Professionals Utilized by the Debtor in the Ordinary Course of Business and*
4 *(II) Granting Related Relief* (the "Motion"),¹ the First Day Declaration, and the statements of counsel and
5 the evidence adduced with respect to the Motion at a hearing before this Court, if any (the "Hearing").
6 This Court has found (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
7 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409 and (iii) notice of the
8 Motion and the Hearing was sufficient under the circumstances. After due deliberation, the Court having
9 determined that the relief requested in the Motion is in the best interests of the Debtor, its estate and its
10 creditors, and good and sufficient cause having been shown;

11 **IT IS HEREBY ORDERED THAT:**

- 12 1. The Motion is GRANTED as set forth herein.
- 13 2. The limit on monthly compensation permitted to be paid to each individual Ordinary
14 Course Professional is increased to \$75,000 per month (calculated on a three-month rolling average).
- 15 3. The limit on total monthly compensation permitted to be paid across all Ordinary Course
16 Professionals is increased to \$200,000 per month (calculated on a three-month rolling average).
- 17 4. The Debtor is permitted to seek further authorization from this Court to increase the
18 monthly caps in the future if warranted.
- 19 5. Neither Entry of this Order nor entry of the OCP Order affects the Debtor's right to dispute
20 any invoice submitted by an Ordinary Course Professional.
- 21 6. Other than the changes in monthly compensation limits approved herein, the OCP Order
22 [Docket No. 263] otherwise remains in full force and effect.
- 23 7. The Debtor is hereby authorized to take such actions and to execute such documents as
24 may be necessary to implement the relief granted by this Order.

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28 ¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 8. This Court shall retain jurisdiction to hear and determine all matters arising from or related
2 to the interpretation, implementation and/or enforcement of this Order.

3 **END OF ORDER**
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SUPPLEMENTAL ORDER AUTHORIZING INCREASING MONTHLY CAPS

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COURT SERVICE LIST

All ECF Recipients.

SUPPLEMENTAL ORDER AUTHORIZING INCREASING MONTHLY CAPS

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