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*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 THIRD MOTION FOR ORDER  
EXTENDING EXCLUSIVE PERIODS FOR  
THE DEBTOR TO FILE AND SOLICIT  
ACCEPTANCE OF A CHAPTER 11 PLAN**

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 second motion (the “Motion”) for entry of an order  
4 further extending the exclusive periods under §§ 1121(b) and (c)(3) of the Bankruptcy Code by four  
5 months to allow the Debtor until September 6, 2024 (the “Exclusive Filing Period”), to file a chapter 11  
6 plan, and until November 5, 2024, to solicit acceptances of its plan (the “Exclusive Solicitation Period,”  
7 and together with the Exclusive Filing Period, the “Exclusivity Periods”).

8 This Motion is based on the Memorandum of Points and Authorities set forth herein, the notice of  
9 hearing on the Motion, the *Declaration of Paul Bongiovanni in Support of Debtor’s Third Motion for*  
10 *Order Extending Exclusive Periods For The Debtor To File and Solicit Acceptance of a Chapter 11 Plan*  
11 (the “Bongiovanni Declaration”) filed concurrently herewith and incorporated herein by reference, and  
12 upon such oral and documentary evidence as may be presented at the hearing on the Motion.

13 The Debtor’s proposed form of order is attached hereto as **Exhibit A** (the “Proposed Order”).

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THIRD MOTION TO EXTEND EXCLUSIVITY

## Table of Contents

I. INTRODUCTION .....	1
II. JURISDICTION .....	2
III. BACKGROUND FACTS .....	2
A. GENERAL BACKGROUND .....	2
B. THE DEBTOR'S POST-PETITION ACTIVITIES AND CASE PROGRESS .....	3
C. THE BAR DATE AND CLAIMS .....	5
D. PROGRESS IN THE INSURANCE ADVERSARY PROCEEDINGS .....	6
E. PRODUCTION OF DOCUMENTS TO THE COMMITTEE AND INSURERS .....	7
F. MEDIATION WITH THE COMMITTEE AND INSURERS .....	8
IV. RELIEF REQUESTED .....	10
V. BASIS FOR RELIEF .....	10
A. 11 U.S.C. § 1121(D) PERMITS THIS COURT TO EXTEND THE DEBTOR'S EXCLUSIVITY PERIOD .....	10
B. THE REQUESTED RELIEF FALLS WITHIN THE STATUTORY TIME LIMITS .....	11
C. GOOD CAUSE EXISTS TO EXTEND THE DEBTOR'S EXCLUSIVITY PERIOD .....	12
1. Size and Complexity of the Case .....	12
2. Amount of Time Elapsed in the Case .....	14
3. Existence of Good Faith Progress .....	14
4. The Debtor is Paying its Post-Petition Bills as They Become Due .....	14
5. The Debtor Has Reasonable Prospects of Filing a Viable Plan .....	15
6. The Necessity of Sufficient Time for the Debtor to Negotiate a Plan .....	15
7. The Debtor Has Made Progress in Negotiations with its Creditors .....	16
8. The Debtor is Not Seeking an Extension in Order To Pressure Creditors .....	17
9. Unresolved Contingencies .....	17
D. THE REQUESTED EXTENSION WILL FACILITATE MOVING THE CASE FORWARD .....	17
VI. RESERVATION OF RIGHTS .....	18
VII. NOTICE .....	19
VIII. CONCLUSION .....	19

## Table of Authorities

Page(s)

### Cases

<i>Gaines v. Perkins (In re Perkins)</i> , 71 B.R. 294 (W.D. Tenn. 1987).....	11, 12
<i>In re Adelphia Commc'ns Corp.</i> , 352 B.R. 578 (Bankr. S.D.N.Y. 2006).....	11
<i>In re Borders Grp., Inc.</i> , 460 B.R. 818 .....	11
<i>In re Catholic Bishop of N. Alaska</i> , No. F08-00110-DMD, 2009 WL 8412171 (Bankr. D. Alaska Sept. 11, 2009).....	11
<i>In re Dow Corning Corp.</i> , 208 B.R. 661 (Bankr. E.D. Mich. 1997) .....	11, 16, 17
<i>In re Express One Int'l, Inc.</i> , 194 B.R. 98 (Bankr. E.D. Tex. 1996) .....	11, 15
<i>In re Henry Mayo Newhall Mem'l Hosp.</i> , 282 B.R. 444 (B.A.P. 9th Cir. 2002).....	10, 11, 12, 17
<i>In re Homestead Partners, Ltd.</i> , 197 B.R. 706 (Bankr. N.D. Ga., 1996) .....	18
<i>In re Lionel Corp.</i> , 722 F.2d 1063 (2d Cir. 1983).....	18
<i>In re New Meatco Provisions, LLC</i> , No. 2:13-BK-22155-PC, 2014 WL 917335 (Bankr. C.D. Cal. Mar. 10, 2014).....	11
<i>In re Public Service Co. of New Hampshire</i> , 88 B.R. 521 (Bankr. D.N.H. 1988) .....	11
<i>In re Texaco Inc.</i> , 76 B.R. 322 (Bankr. S.D.N.Y. 1987).....	12
<i>In re United Press Int'l.</i> , 60 B.R. 265 (Bankr. D.D.C. 1986) .....	12

### Statutes

11 U.S.C. § 1121 .....	passim
11 U.S.C. § 365 .....	18
11 U.S.C. §§ 1107(a) and 1108 .....	2
28 U.S.C. § 157(b) .....	2
28 U.S.C. § 1930(a)(6) .....	5
28 U.S.C. §§ 1408 and 1409 .....	2
28 U.S.C. §§ 157 and 1334 .....	2
42 U.S.C. §§ 2000bb-2000bb-4 .....	18
Cal. Corp. Code §§ 10000-10015 .....	18

### Other Authorities

H.R. Rep. No. 95-595 .....	10
S. Rep. No. 95-989 .....	10

I.

INTRODUCTION

The Debtor requests a third extension of the time in which it has the exclusive right to file and solicit notes on a Chapter 11 plan. The Debtor has made significant progress during the first 11 months of this Chapter 11 Case. Since the Court approved the Debtor's most recent request for an extension of exclusivity, the Debtor has continued to provide extensive documentation and information to the Official Committee of Unsecured Creditors (the "Committee"); continued to review filed claims; continued to aggressively pursue recovery on its insurance assets through two adversary proceedings; obtained approval of a mediation process and appointment of mediators for mediation with both the Committee and certain of its historical insurance carriers (the "Insurers"); and participated in multiple days of mediation with the Committee.

The Debtor has made progress toward a Chapter 11 plan. In December, the Debtor and Committee filed a joint motion seeking approval of a mediation process and appointment of mediators. On January 22, 2024, the Court entered an order granting the joint motion and appointing mediators both to mediated terms of a plan between the Debtor and Committee and to mediate coverage and other issues between the Debtor and the Insurers. After separate meetings between the mediators and each of the Debtor and Committee, the first joint mediation sessions with the Debtor and Committee were held on March 18 and 19, 2024. Further mediation sessions between the Debtor and Committee are scheduled for April, May, and June, 2024. The Debtor has also met independently with the insurance mediators appointed by the Court and anticipates that joint mediation sessions with the Insurers will be scheduled soon.

The Debtor needs additional time to evaluate how a plan can best be structured, to continue its analysis of claims following the claims bar date, and to continue mediation with the Committee and the Insurers as described above. To the extent consensual resolutions cannot be reached, the Debtor also needs additional time to prosecute and liquidate its claims against the Insurers in the two adversary proceedings filed in this Chapter 11 Case and recently withdrawn to District Court, which the Debtor believes will materially increase the assets available to satisfy claims. It remains the Debtor's objective to reach a resolution, through mediation, which will result in a consensual plan of reorganization to be proposed by the Debtor being confirmed by this Court, without competing plans on file. The Bankruptcy

THIRD MOTION TO EXTEND EXCLUSIVITY

Code contemplates the Debtor should have the opportunity to take these actions and mediate terms of a plan free of the distractions of competing plans. At this stage of the case and under the circumstances presented here, the Debtor's request for a third extension of the exclusivity deadline should be granted.

The Debtor therefore seeks a further extension of the Exclusivity Periods provided in § 1121. For the reasons set forth below, ample cause exists for these extensions.

## II.

### JURISDICTION

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

The legal basis for the relief requested herein is section 1121 of the Bankruptcy Code.

## III.

### BACKGROUND FACTS

#### A. General Background

On May 8, 2023 (the "Petition Date"), the Debtor filed a voluntary petition for chapter 11 bankruptcy relief under the Bankruptcy Code. The Debtor continues to operate its ministry and manage its properties as a debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case.

On May 23, 2023, the Office of the United States Trustee for Region 17 (the "U.S. Trustee") appointed the Committee.

The Debtor is a corporation sole organized under the laws of the State of California. The Debtor conducts its civil affairs under the laws of the State of California and the United States of America and in accordance with the Code of Canon Law, the ecclesiastical law of the Roman Catholic Church. Additional information regarding the Debtor, its mission, ministries, and operations, and the events and circumstances preceding the Petition Date, is set forth in the *Declaration of Charles Moore, Managing Director of Alvarez & Marsal North America, LLC, Proposed Restructuring Advisor to the Roman Catholic Bishop*

THIRD MOTION TO EXTEND EXCLUSIVITY

1 of Oakland, in Support of Chapter 11 Petition and First Day Pleadings [Docket No. 19], which is  
2 incorporated herein by reference.

3 **B. The Debtor's Post-Petition Activities and Case Progress**

4 During the initial months of this Chapter 11 Case, the Debtor focused on a smooth transition into  
5 Chapter 11 and obtaining essential first day and other relief. On the Petition Date, the Debtor filed first  
6 day motions seeking essential relief with respect to, among other things, employment of the Debtor's  
7 claims and noticing agent [Docket No. 5], noticing and confidentiality issues [Docket No. 6], assistance  
8 programs for abuse survivors [Docket No. 8], employee compensation and benefit programs [Docket  
9 No. 13], adequate assurance for the Debtor's utility providers [Docket No. 14], the Debtor's insurance  
10 program [Docket No. 15], and the Debtor's cash management system [Docket No. 16] (collectively, the  
11 "First Day Motions"). The Debtor worked constructively with the U.S. Trustee, and, after its appointment,  
12 the Committee to resolve disputes and issues regarding the First Day Motions. As a result of these efforts,  
13 the Debtor was able to obtain consensual final orders on all but one of the First Day Motions, and  
14 substantially narrow the issues prior to obtaining a Court ruling on the one First Day Motion not  
15 consensually resolved.

16 The Debtor timely filed its Schedules of Assets and Liabilities (as amended, the "Schedules") and  
17 Statement of Financial Affairs on May 22, 2023 [Docket No. 82]. Many estates of the size and complexity  
18 of the Debtor's estate require additional time to file the schedules and statements, but the Debtor was able  
19 to complete its schedules and statements within 14 days of the Petition Date. The Debtor also filed  
20 Amended Schedules on June 8, 2023 [Docket No. 137], and further Amended Schedules on June 21, 2023  
21 [Docket No. 169].

22 In addition to the foregoing, during the first ten months of this Chapter 11 Case the Debtor has,  
23 among other things:

- 24 • Established a constructive relationship with the U.S. Trustee and the Committee, allowing  
25 the consensual resolution of numerous matters, including First Day Motions.
- 26 • Sought and obtained approval for employment of the Debtor's retention of Foley & Lardner  
27 LLP as Debtor's counsel, Kurtzman Carson Consultants, LLC as claims and noticing agent,  
28 and Alvarez & Marsal North America, LLC as the Debtor's financial advisor. In addition,  
the Debtor filed a motion for approval of interim compensation procedures, which was  
approved by the Court on June 23, 2023.

- Filed a motion to authorize retention of ordinary course professionals, which was granted by an order entered on July 20, 2023.
- Timely filed all Monthly Operating Reports, pursuant to the Court's *Order (1) Pursuant to L.B.R. 2015-2(e) Extending Time to File Monthly Operating Reports, and (2) Modifying Order for Payment of State and Federal Taxes* [Docket No. 165].
- Provided extensive reporting to the US Trustee in advance of the Initial Debtor Interview, in response to the US Trustee's *Chapter 11 Initial Reporting Requirements and Document Requests*, and attended the Initial Debtor Interview, which was conducted and concluded on June 9, 2023. The Debtor also provided additional information requested by the US Trustee following the Initial Debtor Interview. The Debtor believes it has responded to all information requests from the U.S. Trustee.
- Attended the Section 341 Meeting of Creditors, which was held and concluded on June 21, 2023. Bishop Michael Barber, Paul Bongiovanni (the Debtor's CFO), and Charles Moore of Alvarez & Marsal North America, LLC (the Debtor's restructuring advisor) testified at the Meeting.
- Filed a motion for rejection of an executory contract, to reduce administrative costs.
- Filed a motion for approval of a new insurance premium finance agreement, in connection with the renewal of the Debtor's package of insurance policies as part of its comprehensive insurance program. This motion was approved by the Court at a hearing on July 12, 2023.
- Filed two adversary complaints seeking declaratory and breach of contract relief regarding insurance coverage for abuse claims, titled *Roman Catholic Bishop of Oakland v. Pacific Indemnity, et. al.*, Adversary Proceeding No. 23-04028 (the "Insurance Adversary Proceeding"), and *Roman Catholic Bishop of Oakland v. American Home Assurance Co. et al.*, Adversary Proceeding No. 23-04037 (the "Additional Insurance Adversary Proceeding"). These adversary proceedings (collectively, the "Insurance Adversary Proceedings") seek to liquidate the Debtor's claims against numerous of its historical insurance carriers. The Debtor substantively defeated multiple motions to dismiss filed by the Insurers, and has briefed a further round of oppositions to motions to dismiss, which are now pending before the District Court following withdrawal of the reference.
- Following extensive discussions with the Committee, secured approval of a motion to set September 11, 2023, as the bar date and to approve claims procedures and proof of claim forms [Docket No. 181] (the "Bar Date Motion"). The Court entered the *Order Establishing Deadlines for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof*, approving the Bar Date Motion, on July 25, 2023 [Docket No. 293] (the "Bar Date Order").
- Negotiated and reached agreement with the Committee on the terms of a confidentiality agreement and protective order filed with the Court on July 21, 2023, and addressed numerous additional issues raised by the Insurers, leading to a modified confidentiality and protective order approved by the Court on January 30, 2024 (the "Confidentiality and Protective Order"), governing the Debtor providing the Committee and Insurers with confidential documents and information requested in this Chapter 11 Case.
- Produced thousands of documents to the Committee and to the Insurers, as discussed further below.
- Obtained multiple extensions of the statutory deadlines for assumption and rejection of non-residential real property leases, and for removal of state court actions to the bankruptcy

THIRD MOTION TO EXTEND EXCLUSIVITY



1 court, to allow the Debtor to analyze these issues in connection with its overall approach  
2 to the case. In particular, the Debtor most recently obtained a further extension of time,  
3 through October 1, 2024, the Debtor's time to assume or reject its lease agreement with  
Catholic Cathedral Corporation of the East Bay for use of the Oakland Cathedral and the  
RCBO chancery offices.

- 4 • Following the general claims bar date of September 11, 2023, pursuant to the Bar Date  
5 Order, begun the review and analysis of proofs of claim.
- 6 • After extensive negotiations with the Committee, filed a joint motion seeking approval for  
7 mediation and appointment of mediators, ultimately leading to entry, on January 22, 2024,  
8 of an order approving mediation and appointing mediators both between the Debtor and  
9 the Committee regarding formulation of a consensual plan, and between the Debtor and its  
Insurers regarding the issues raised in the Insurance Adversary Proceedings.
- 10 • Participated in multiple days of mediation with the Committee, and initiated the process of  
mediation with the Insurers, both as described in more detail below.
- 11 • Timely paid all amounts owed to the U.S. Trustee under 28 U.S.C. § 1930(a)(6).

12 After the initial period of the case and resolution of the First Day Motions, the Debtor's efforts  
13 focused on the bar date and claims process, litigating the Insurance Adversary Proceedings, and  
14 simultaneously engaging in discussions, and now mediation, with the Committee and Insurers toward a  
15 negotiated resolution of issues in the case and a consensual plan. Each of these areas is discussed in more  
detail below.

16 **C. The Bar Date and Claims**

17 The Court entered the Bar Date Order on July 25, 2023, establishing September 11, 2023, as the  
18 bar date for non-governmental claims (the "Bar Date"). The Debtor timely completed all initial notice  
19 and service requirements under the Bar Date Order, as set forth in (1) the *Certificate of Service* filed on  
20 August 4, 2023 [Docket No. 333], by Kurtzman Carson Consultants LLC ("KCC"), the claims and  
21 noticing agent for the Debtor, and (2) the *Certificate of Counsel Regarding Compliance With Certain*  
22 *Provisions of the Bar Date Order* filed by the Debtor on the same date [Docket No. 334].

23 Following the Bar Date, the Debtor and its professionals began the process of analyzing the filed  
24 claims, with the assistance of KCC and its other professionals. Approximately 556 proofs of claim were  
25 submitted, including a small number filed directly with the Court rather than submitted to KCC. Of these,  
26 418 allege claims related to sexual abuse. The Debtor has identified a small number of duplicate claims,  
27 and based on the Debtor's initial review, it appears there are approximately 386 non-duplicate sexual  
28 abuse claims. There are a very small number of non-abuse tort claims, and the remainder of the filed

claims are primarily commercial vendor claims. Based on the Debtor and KCC's initial review, approximately 353 (or approximately 85%) of the sexual abuse claims included some form of the optional supplement along with the Form 410 official proof of claim form.<sup>1</sup> Because the vast majority of claims are unliquidated personal injury claims based on allegations of sexual abuse, in contrast to the commercial claims predominating typical Chapter 11 cases, there cannot be a meaningful statement of the monetary value of the claims at this stage of the case. As restructuring advisor to the Debtor, A&M has engaged in a valuation analysis of the claims for purposes of mediation with the Committee.

**D. Progress in the Insurance Adversary Proceedings**

The insurance policies providing coverage for sexual abuse claims, maintained by the Debtor over a period of several decades, are an essential asset of the estate. This coverage will be a critical part of any plan of reorganization. On June 22, 2023, the Debtor filed the Insurance Adversary Proceeding complaint for declaratory relief and breach of contract, seeking to liquidate the Debtor's claims against numerous of its Insurers. [AP 23-04028, Docket No. 2]. On August 30, 2023, the Debtor filed the Additional Insurance Adversary Proceeding, seeking declaratory relief and alleging breach of contract against two additional Insurers. [AP 23-04037, Docket No. 1].<sup>2</sup> Any proceeds the Debtor wins in a judgment in the Insurance Adversary Proceedings, or obtains through a negotiated resolution, will infuse the estate with unrestricted cash assets, which can be used to, among other things, contribute to unsecured creditor recoveries.

The defendant Insurers filed multiple different initial responses to the Insurance Adversary Proceeding complaint, to wit: two motion to dismiss, a motion to dismiss and/or for more definite statement, and an answer. The Debtor timely responded to the three motions, which were heard on October 18, 2023, and November 8, 2023. As reflected in the Court's oral rulings delivered on November 8, 2023, and November 14, 2023, the Court granted the motions to dismiss but with leave to amend, directing the Debtor to file an amended complaint addressing the issues identified in the Court's ruling no later than December 18, 2023.

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<sup>1</sup> As described in more detail in the Bar Date Motion and Bar Date Order, the optional supplement allowed sexual abuse claimants to provide additional detail regarding their claims, to assist the Debtor and Committee in reviewing and evaluating the proofs of claim.

<sup>2</sup> One of these Insurers has since been dismissed without prejudice.

1 On December 18, 2023, the Debtor filed its second amended complaint in the Insurance Adversary  
2 Proceeding [AP Docket No. 161]. On January 12, 2024, the Debtor filed its third amended complaint in  
3 the Insurance Adversary Proceeding [AP Docket No. 163].

4 Although the third amended complaint fully addressed the issues identified by the Court in its  
5 ruling on the prior motions to dismiss, several of the Insurers continued to delay progress by filing further  
6 motions to dismiss. In response to the third amended complaint, the defendant Insurers variously filed  
7 two motions to dismiss [AP Docket Nos. 173, 175], a motion to dismiss and/or for more definite statement  
8 [AP Docket No. 171], and two answers [AP Docket Nos. 164, 165]. The briefing on these motions is  
9 complete.

10 The defendant Insurers also filed motions to withdraw the reference as to the Insurance Adversary  
11 Proceeding, on February 2 and February 6, 2024 [AP Docket Nos. 188, 190]. In order to avoid  
12 unnecessary delay, the Debtor filed statements of non-opposition, and on March 18, 2024, the District  
13 Court ordered withdrawal of the reference as to the Insurance Adversary Proceeding.<sup>3</sup>

14 While the Debtor is working diligently to move forward with Insurance Adversary Proceedings,  
15 the Insurers' multiple rounds of motions to dismiss, coupled with the motions to withdraw the reference,  
16 have created substantial delay in the adjudication of the Debtor's coverage claims. Nevertheless, the  
17 Debtor is optimistic that the District Court will act swiftly on the motions and set a discovery schedule  
18 following the initial case management conference in the District Court, which is set for April 18, 2024.

19 **E. Production of Documents to the Committee and Insurers**

20 The Debtor and the Committee have continued to engage constructively with each other regarding  
21 the exchange of information and production of documents. Counsel for the Debtor, the Debtor's financial  
22 consultant A&M, counsel for the Committee, and the Committee's financial consultant BRG, have  
23 continued discussion in connection with document production by the Debtor in response to the extensive  
24 information requests made by the Committee in conducting its due diligence. Pursuant to the stipulated  
25 protective order entered by this Court and executed between the Committee and the Debtor [Docket Nos.  
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27 <sup>3</sup> The remaining defendant Insurer in the Additional Insurance Adversary Proceeding also moved for  
28 withdrawal of the reference on March 21, 2024, however the District Court has not yet acted on this  
motion.

288 and 331], and the subsequent confidentiality and protective order also governing production of documents to the Insurers [Docket No. 832], the Debtor has produced thousands of documents to the Committee. Based on the mutual cooperation between the Debtor and Committee, on September 5, 2023, the Committee withdrew its previously filed motion for a 2004 order seeking discovery from the Debtor. The Committee and has subsequently made multiple statements to the Court acknowledging the Debtors' cooperation in sharing information and documents.

Counsel for the Debtor has participated in meetings with counsel for the Insurers, as well as special insurance counsel for the Committee, also for the purpose of moving the Chapter 11 case forward in a constructive direction with regard to insurance coverage for sexual abuse claims.

As the Court is aware, the meet and confer efforts of the parties led to the resolution of most of the issues raised in the Rule 2004 motion filed by certain of the Insurers, leaving only limited issues which have since been decided by the Court. *See Order Granting Moving Insurers' Ex Parte Motion for Entry of an Order Under Federal Rule of Bankruptcy Procedure 2004* (the "Order Granting Ex Parte Motion") [Docket No. 511]. While the Debtor has long been prepared to produce documents to the Insurers, its ability to do so has been delayed by the need to first obtain entry of the Confidentiality and Protective Order governing productions of documents between the Debtor and Insurers, and subsequently, for the various Insurer parties to execute the required acknowledgement and agreement to be bound pursuant to the Confidentiality and Protective Order.

The Debtor has now produced to every Insurer that signed the required confidentiality provisions all documents related to abuse claims that were previously produced to the Committee. Likewise, the Debtor has provided the proofs of claim to every Insurer that has complied with the relevant confidentiality provisions of the Bar Date Order. Production of the proofs of claim was made possible by resolution of the Committee's motion for a protective order regarding sharing of proof of claim information, which the Court granted by order entered on March 19, 2024.

**F. Mediation with the Committee and Insurers**

The Debtor's objective in this Chapter 11 Case is to achieve confirmation of a plan of reorganization that will (a) ensure a fair and equitable outcome for survivors of sexual abuse, and (b) allow the Debtor to stabilize its finances, continue its mission to serve the needs of the faithful within the Diocese

1 of Oakland, and continue to provide services to underserved people and groups in the East Bay. As set  
2 forth herein, it has made substantial progress in setting the necessary groundwork for achieving all of these  
3 goals through mediation of a consensual plan.

4 On December 19, 2023, the Debtor and the Official Committee of Unsecured Creditors (the  
5 “Committee”) jointly filed the *Joint Motion for Entry of an Order Referring Parties to Mediation,*  
6 *Appointing Mediators and Granting Related Relief* [Docket No. 705] (the “Mediation Motion”). On  
7 January 22, 2024, the Court entered an order referring the parties to mediation, appointing the mediators  
8 agreed by the parties, and identifying the matters for mediation, both as between the Debtor and the  
9 Committee, and between the Debtor and its Insurers [Docket No. 810] (the “Mediation Order”). The  
10 matters for mediation and the specifics of the mediation process are more fully set forth in the Mediation  
11 Order.

12 The Committee and the Debtor each met individually with mediators Judge Sontchi and Jeff  
13 Krivis, exchanged initial proposals, and participated in the first round of joint mediation on March 18 and  
14 19, 2024. While the Debtor is committed to the mediation process and is optimistic that it will ultimately  
15 lead to a consensual plan of reorganization between the Debtor and Committee, there are many complex  
16 and difficult issues to work through, and mediation will take multiple months. Further joint mediation  
17 sessions with the Committee are scheduled for April, May, and June, 2024.

18 The Debtor is also making progress toward mediation with the Insurers. The Debtor’s counsel has  
19 met independently with mediators Judge Newsome and Tim Gallagher to prepare for the mediation related  
20 to the Insurance Adversary Proceeding and anticipates that initial joint mediation sessions with the  
21 Insurers will be held soon.

22 The mediation process between the Debtor and Committee, and between the Debtor and the  
23 Insurers, is a critical step toward the Debtor’s goal of reaching a consensual plan of reorganization. It is  
24 crucial that the Debtor be given time to engage in this process, which is still in early stages, in the coming  
25 months without the interference and distraction of competing plans.

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IV.

RELIEF REQUESTED

By this Motion, the Debtor requests this Court enter an order, substantially in the form of the Proposed Order attached hereto as Exhibit A, to extend the exclusivity periods under section 1121(b) and (c)(3) of the Bankruptcy Code for four months, extending the Exclusive Filing Period under 1121(b) to and including Friday, September 6, 2024, and extending the Exclusive Solicitation Period under section 1121(c)(2) to and including Tuesday, November 5, 2024.

V.

BASIS FOR RELIEF

**A. 11 U.S.C. § 1121(d) Permits This Court to Extend the Debtor's Exclusivity Period**

To facilitate effective reorganization in chapter 11 cases, the Bankruptcy Code grants a debtor-in-possession the initial exclusive right to file a plan and allows the Court to extend that exclusive right for cause. 11 U.S.C. § 1121. The debtor has the exclusive right to file a plan until 120 days after the date of the petition. 11 U.S.C. § 1121(b), (c)(2). If the debtor files a plan within the 120-day period, the debtor's right to exclusivity continues to 180 days after the petition, to allow the debtor time to seek acceptance and confirmation of its proposed plan. 11 U.S.C. § 1121(c)(3).

These 120-day and 180-day exclusive periods to file and to seek acceptance of a plan may be extended on the request of any party in interest. 11 U.S.C. § 1121(d). The operative portion of section 1121(d) reads: “. . . on request of a party in interest made within the respective periods specified . . . and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.” 11 U.S.C. § 1121(d). The Court has discretion to extend the time in which the Debtor has the exclusive right to file and to seek acceptance of a plan. *See In re Henry Mayo Newhall Mem'l Hosp.*, 282 B.R. 444, 452 (B.A.P. 9th Cir. 2002).

Although section 1121 provides the exclusivity period may be extended “for cause,” the Bankruptcy Code does not define “cause” or provide any specific standard. The legislative history of section 1121(d), however, reflects a Congressional intent to allow a debtor to remain in control of the bankruptcy process, while recognizing the legitimate interest of creditors in the debtor's case. *See* H.R. Rep. No. 95-595, 406 (1977); S. Rep. No. 95-989, 118 (1978). Courts have further interpreted the “cause”

THIRD MOTION TO EXTEND EXCLUSIVITY

standard of section 1121(d) as a broad standard that allows the Court “maximum flexibility to suit various types of reorganization proceedings.” *In re Public Service Co. of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988); *see Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 297 (W.D. Tenn. 1987) (“[t]he hallmark of [§ 1121(d)] is flexibility”); *In re Borders Grp., Inc.*, 460 B.R. 818, 821–22 (Bankr. S.D.N.Y. 2011) (“The determination of cause under section 1121(d) is a fact-specific inquiry and the court has broad discretion in extending or terminating exclusivity.”).

In exercising its broad discretion, the bankruptcy court may consider a variety of factors to assess the totality of circumstances in each case. *See In re Henry Mayo Newhall*, 282 B.R. at 452; *In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997); *In re Express One Int’l, Inc.*, 194 B.R. 98 (Bankr. E.D. Tex. 1996). The factors which can be considered in evaluating whether to extend the exclusivity period include: (1) the size and complexity of the case; (2) the amount of time elapsed in the case; (3) the existence of good faith progress; (4) whether the debtor is paying its bills as they become due; (5) whether the debtor has demonstrated reasonable prospects of filing a viable plan; (6) the necessity of sufficient time for the debtor to negotiate a plan; (7) whether the debtor has made progress in negotiation with its creditors; (8) whether the debtor is seeking an extension in order to pressure creditors to submit to the debtor’s reorganization demands; and (9) whether an unresolved contingency exists. *In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); *see also In re Express One*, 194 B.R. at 100; *In re New Meatco Provisions, LLC*, No. 2:13-BK-22155-PC, 2014 WL 917335, at \*3 (Bankr. C.D. Cal. Mar. 10, 2014); *In re Catholic Bishop of N. Alaska*, No. F08-00110-DMD, 2009 WL 8412171, at \*1 (Bankr. D. Alaska Sept. 11, 2009); *In re Adelphia Commc’ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006) (noting the nine factors listed above are “objective factors which courts historically have considered in making determinations of this character”). The Ninth Circuit Bankruptcy Appellate Panel has held the one “transcendent” consideration is whether an extension of the exclusivity period will facilitate moving the case toward a fair and equitable resolution. *In re Henry Mayo Newhall*, 282 B.R. at 444, 453.

**B. The Requested Relief Falls Within the Statutory Time Limits**

The Debtor filed its petition on May 8, 2023. The Debtor’s original Exclusive Filing Period ended on September 5, 2023, and its original Exclusive Solicitation Period ended on November 4, 2023.

THIRD MOTION TO EXTEND EXCLUSIVITY



Pursuant to the Court's most recent order extending the Exclusive Periods, entered on December 18, 2023 [Docket No. 702], the Debtor's Exclusivity Filing Period currently runs through May 6, 2024, and its Exclusivity Solicitation Period currently runs through July 5, 2024.

The Bankruptcy Code limits extensions of the exclusivity period to 18 months from the petition date for the Exclusive Filing Period, and 20 months for the Exclusive Solicitation Period. *See* 11 U.S.C. § 1121(d)(2). These outside dates are therefore November 8, 2024, for the Exclusive Filing Period, and January 8, 2025, for the Exclusive Solicitation Period. The extensions sought herein are approximately two months short of these limits. The Debtor reserves its right to seek a further extension.

**C. Good Cause Exists to Extend the Debtor's Exclusivity Period**

An evaluation of the factors identified above demonstrates cause for a third extension of the Exclusivity Periods. In *Henry Mayo Newhall*, exclusivity was extended in a situation involving "(1) a first extension; (2) in a complicated case; (3) that had not been pending for a long time, relative to its size and complexity; (4) in which the debtor did not appear to be proceeding in bad faith; (5) had improved operating revenues so that it was paying current expenses; (6) had shown a reasonable prospect for filing a viable plan; (7) was making satisfactory progress negotiating with key creditors; (8) did not appear to be seeking an extension of exclusivity to pressure creditors; and (9) was not depriving the Committee of material or relevant information." *In re Henry Mayo Newhall*, 282 B.R. at 452, 453 (holding the Bankruptcy Court was correct in finding cause to extend exclusivity). While this motion requests a third extension, there is likewise cause here.

**I. Size and Complexity of the Case**

It is well-established that the size and complexity of a debtor's case alone may constitute cause to extend the Exclusivity Periods. Courts have recognized "[t]he large size of a debtor and the consequent difficulty in formulating a plan . . . for a huge debtor with a complex financial structure are important factors which generally constitute cause for extending the exclusivity periods." *In re Texaco Inc.*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987). Of course, a colossal bankruptcy estate is not a prerequisite to justify an extension of the exclusivity period based on size and complexity. *See In re United Press Int'l.*, 60 B.R. 265, 270 (Bankr. D.D.C. 1986) (granting an extension of the exclusivity period for a \$40 million company); *Gaines v. Perkins (In re Perkins)*, 71 B.R. 294, 296 (W.D. Tenn. 1987) (finding a case was



1 sufficiently large to justify an extension where there were approximately 100 creditors holding 225 claims  
2 against the estate).

3         The size and complexity of this case continues to support an extension of exclusivity. The Debtor's  
4 Schedules list more than 570 creditors. Approximately 560 proofs of claim were filed, including 386 non-  
5 duplicate claims asserting the Debtor is liable for damages relating to childhood sexual abuse. Many of  
6 those claims are asserted to be of six-figure or seven-figure amounts, and many are listed as having an  
7 unknown amount. The claims related to childhood sexual abuse present unique complexities of  
8 confidentiality, valuation, procedure, and appropriate and equitable treatment of claims. Extension of the  
9 Exclusivity Periods will allow additional time for the Debtor to continue to evaluate and value those claims  
10 with the assistance of Foley and A&M, negotiate protocols and values with the Commission in mediation  
11 and craft a plan for satisfying all valid claims.

12         Adding to the complexity of this Chapter 11 Case is the Insurance Adversary Proceedings. The  
13 Debtor expects the Insurance Adversary Proceedings to result in significant assets becoming available to  
14 fund the estate and satisfy creditor claims. The Insurance Adversary Proceedings involve issues of  
15 insurance coverage that the Debtor and its attorneys have studied for years. The Court has already  
16 addressed several of these issues in ruling on the first round of motions to dismiss. As set forth above, the  
17 Debtor has filed a third amended complaint, and the Insurers have filed further motions to dismiss that are  
18 now pending before the District Court following withdrawal of the reference. An initial case management  
19 conference has been set by the District Court for April 18, 2024, only two and a half weeks before the  
20 current expiration of exclusivity. As of this filing, the District Court has not entered a pre-trial scheduling  
21 order. The timing for the resolution of the Insurance Adversary Proceedings is therefore unknown.

22         The Debtor has also held initial meetings with the insurance mediators, Judge Newsome and Mr.  
23 Gallagher, and anticipates that initial joint mediation sessions will be scheduled soon. An extension of  
24 the Exclusivity Periods is necessary to allow coverage issues to be litigated or resolved through mediation  
25 without the added pressure of needing to file a chapter 11 plan.

26         Furthermore, the nature of the Debtor, as distinct from a corporate chapter 11 debtor, contributes  
27 to the complexity of the case and resultant need for additional time to propose a plan. As described in  
28 detail in the First Day Declaration, the Debtor provides central services to the Churches serving the 82

THIRD MOTION TO EXTEND EXCLUSIVITY

1 churches within the Diocese of Oakland, and also to the Non-Debtor Catholic Entities (as defined in the  
2 First Day Declaration). The Debtor must adhere to Canon Law in addition to its civil law obligations, a  
3 consideration secular, corporate debtors do not have. Finally, the Debtor's mission is unique in its focus:  
4 celebration of the sacraments, provision of pastoral services, performance of works of mercy, and outreach  
5 to and support of the faithful and the poor within the Diocese of Oakland. These ministries are the  
6 Debtor's foundation. The Debtor requires additional time to evaluate the impact of potential plan options  
7 on these elements of its mission.

8                   2.     Amount of Time Elapsed in the Case

9             On the hearing date for this Motion, less than one year will have elapsed since the Petition Date.  
10            This is the Debtor's third request for an extension of exclusivity, following two prior four-month  
11            extensions. The requested relief would extend the Exclusivity Periods to September 6, 2024, and  
12            November 5, 2024, approximately 16 and 18 months, respectively, after the Petition Date. This extension  
13            is approximately two months less than the outside limit on exclusivity provided by the Bankruptcy Code.  
14            See 11 U.S.C. § 1121(d)(2)(B) (18-month and 20-month maximums). In light of the size and complexity  
15            of this Chapter 11 Case, and the significant ongoing progress toward a consensual plan including the  
16            relatively recent start of mediation with the Committee, this extension of the Exclusivity Periods is  
17            appropriate.

18                   3.     Existence of Good Faith Progress

19            The substantial steps the Debtor has taken to date to move this Chapter 11 Case forward are  
20            summarized in sections III.B – III.F, above. The Debtor's demonstrable good faith progress toward a  
21            confirmable plan supports an extension of the Exclusivity Periods.

22                   4.     The Debtor is Paying its Post-Petition Bills as They Become Due

23            Since the Petition Date, the Debtor has paid its employees, vendors, utilities providers, the U.S.  
24            Trustee, and other post-petition expenses in the ordinary course of business or as otherwise provided by  
25            Court order. The Debtor has paid the administrative expenses for professional fees in the Chapter 11 Case  
26            pursuant to the interim compensation procedures order, and the orders approving the first and second  
27            rounds of interim fee applications. The Debtor has sufficient financial resources to continue to pay its  
28            bills as they come due and will continue to do so. This factor is satisfied.

THIRD MOTION TO EXTEND EXCLUSIVITY

1                   5.       *The Debtor Has Reasonable Prospects of Filing a Viable Plan*

2           The Debtor continues to have the means and ability to propose a viable plan. The Debtor is  
3 committed to proposing a plan that is both fair and equitable to survivors of sexual abuse and allows the  
4 Debtor to continue its mission. The Debtor has retained the necessary skilled professionals and has  
5 actively engaged with the Committee. The Debtor's assets, set forth in its Schedules, support the ability  
6 of the Debtor to propose a plan that meets these objectives. Further, the Debtor filed the Insurance  
7 Adversary Proceedings to obtain the benefit of the substantial insurance coverage it purchased over many  
8 decades, which is an important asset to further the Debtor's goals of compensating abuse survivors through  
9 a plan. While the Debtor is aggressively litigating the Insurance Adversary Proceedings, now in District  
10 Court, and has initiated the mediation process, it will take time to either negotiate an acceptable resolution  
11 or to litigate the Insurance Adversary Proceedings to judgment.

12           It remains too early to identify the terms of a plan, which are the subject of ongoing mediation  
13 with the Committee. Nevertheless, there is no reason to doubt a confirmable plan can be filed. The  
14 ongoing mediation only supports the likelihood of filing a viable plan. This factor supports extension of  
15 the Exclusivity Periods. *See In re Express One*, 194 B.R. at 100 (the issue for this factor is whether there  
16 is reasonable prospect of filing viable plan).

17                   6.       *The Necessity of Sufficient Time for the Debtor to Negotiate a Plan*

18           The Debtor requires additional time to evaluate options and negotiate a plan through the mediation  
19 process. As set forth above, the first joint mediation session between the Debtor and Committee occurred  
20 in mid-March, and further mediation sessions are scheduled in April, May, and June, after the current  
21 Exclusive Filing Period is set to expire. Given the complexity and difficulty of the issues to be addressed  
22 in mediation, the Debtor needs the additional time requested herein to engage in the ongoing mediation  
23 with the Committee without the specter of competing plans.

24           Additionally, the Insurance Adversary Proceedings are important potential sources for creditor  
25 recoveries, but remain in their pleading stages despite the Debtor's diligent efforts to press forward. While  
26 the Insurance Adversary Proceedings will inevitably move forward, the District Court has not yet ruled  
27 on the pending motions to dismiss the third amended complaint. An initial case management conference  
28 is also set for April 18, only two and half weeks before expiration of the current Exclusive Filing Period.

THIRD MOTION TO EXTEND EXCLUSIVITY

1 Extending the Exclusivity Periods will allow that litigation to extend past the pleading stage and move  
2 closer to its ultimate conclusion before a plan must be filed. A settlement or a judgment in the Insurance  
3 Adversary Proceedings will greatly assist the Debtor in determining what assets it will have to fund a  
4 chapter 11 plan.

5 The Debtor is actively pursuing both the litigation and mediation with the Committee and Insurers.  
6 However, it is not realistic to expect either a settlement or judgment to occur during the current Exclusive  
7 Filing Period. The Debtor needs and should receive additional time to negotiate with the Committee and  
8 other parties regarding formulation of a plan.

9 7. The Debtor Has Made Progress in Negotiations with its Creditors

10 Since the Committee was appointed and retained counsel, the Debtor and its advisors have been  
11 in regular contact with Committee counsel on all material matters. Significantly, the Debtor and the  
12 Committee negotiated an agreement on the issues presented in the Bar Date Motion and jointly supported  
13 the entry of the order approving that motion and the establishment of the Bar Date. This allowed for a  
14 Bar Date of approximately four months after the Petition Date, which materially advanced the progress of  
15 this Chapter 11 Case.

16 The Debtor's and Committee's respective professionals have also been working collaboratively  
17 on discovery matters. In connection with entry of the Stipulated Protective Order, the Debtor has produced  
18 thousands of documents to the Committee. As a direct result of the level of cooperation provided by the  
19 Debtor, the Committee withdrew its Rule 2004 motion for examination of the Debtor, and has repeatedly  
20 recognized and landed the cooperation it has received from the Debtor.

21 The Debtor and Committee also agreed on the selection of two mediators to jointly mediate matters  
22 between the Debtor and the Committee as they work toward a consensual plan of reorganization, and as  
23 described above are actively engaging in that mediation process.

24 Although the Debtor and Committee do not and will not agree on everything, the Debtor has made  
25 extensive progress in negotiations with the Committee to resolve numerous issues. This supports an  
26 extension of the Debtor's exclusivity. *See In re Dow Corning Corp.*, 208 B.R. at 665 (active involvement  
27 in negotiation supports extending exclusivity).  
28

1 It is important to note that the Insurers are not creditors of the Debtor. Notwithstanding this fact,  
2 it is anticipated that the Debtor and the Insurers will soon begin mediation of the coverage issues raised  
3 in the Insurance Adversary Proceeding.

4 8. The Debtor is Not Seeking an Extension to Pressure Creditors

5 At this stage in the case, there cannot be any reasonable contention the Debtor's request for an  
6 extension is for the purpose of pressuring creditors. There have been no major disputes with creditors in  
7 the Chapter 11 Case, and the Debtor has cooperated with the Committee on numerous issues throughout  
8 the case to date. Further, the Debtor is actively participating in mediation with the Committee. The Debtor  
9 is not abusing the exclusivity period and should be permitted to maintain exclusivity as contemplated by  
10 the Bankruptcy Code.

11 9. Unresolved Contingencies

12 Generally speaking, the types of unresolved contingencies in question are external to a bankruptcy  
13 case. *See In re Dow Corning Corp.*, 208 B.R. at 666. Here, the Debtor's key assets essential to a plan  
14 include is its portfolio of insurance policies from which it will pursue coverage to help compensate abuse  
15 survivors. The Debtor has maintained insurance coverage through a series of primary, excess, and  
16 umbrella insurers from the early 1960s through the present and has worked to identify and preserve  
17 insurance policies in effect when clergy sexual abuse allegedly occurred. To address coverage issues  
18 regarding abuse claims, the Debtor filed the Insurance Adversary Proceedings. Resolution of the issues  
19 raised in the Insurance Adversary Proceedings is a significant contingency affecting proposal of a plan.  
20 The Debtor is diligently pursuing resolution of the Insurance Adversary Proceedings through a dual-track  
21 approach of both litigation and mediation, although litigation has been substantially delayed by the  
22 insurers' serial filings of motions to dismiss. This factor also supports the extension of exclusivity.

23 **D. The Requested Extension Will Facilitate Moving the Case Forward**

24 These factors relate to the "transcendent consideration" of whether extending exclusivity will  
25 facilitate moving the case forward toward a fair and equitable resolution. *See In re Henry Mayo*, 282 B.R.  
26 at 453. Here, there is no question that extending the Exclusivity Periods will do that. The Debtor has set  
27 the groundwork for proposing a plan of reorganization. It is in mediation with the Committee regarding  
28 the terms of a plan and will soon enter mediation with its insurers regarding resolution of coverage

1 disputes. The relief requested will allow the Debtor reasonable time to further evaluate the filed claims,  
2 continue to provide information to the Committee, prosecute the Insurance Adversary Proceedings, and  
3 negotiate with the Committee regarding the terms of a plan, all while remaining protected from the  
4 pressure of a plan-filing deadline or the risk of interference of competing plans, as contemplated by the  
5 Bankruptcy Code. *See In re Homestead Partners, Ltd.*, 197 B.R. 706, 719 (Bankr. N.D. Ga., 1996) (“[t]he  
6 debtor’s exclusive opportunity at plan formulation is a key element in the delicate balance struck by  
7 Congress to encourage the consensual development of reorganization plans.”).

8 While the Debtor could simply formulate and present a plan on its own, it is highly preferable to  
9 first seek consensus with other parties. This requires additional time for negotiation, and in particular for  
10 the pending mediations with the Committee and Insurers to play out, before filing a plan. The Debtor  
11 does not believe it is productive or appropriate for other parties to file competing plans before it has had  
12 a reasonable opportunity to develop and propose its own plan, hopefully through a consensual, mediated  
13 process.

14 There is every reason to believe extending the Exclusivity Periods to allow for negotiation and  
15 mediation among the major parties will move the case toward a positive conclusion in which the Debtor  
16 can reorganize and provide meaningful relief to its creditors. The requested extension of exclusivity is  
17 therefore consistent with the purpose of section 1121. *See In re Lionel Corp.*, 722 F.2d at 1071;  
18 *Homestead Partners, Ltd.*, 197 B.R. at 719.

## 19 VI.

### 20 RESERVATION OF RIGHTS

21 Nothing contained in this Motion is intended to be or shall be construed as (i) an admission as to  
22 the validity of any claim against the Debtor, (ii) a waiver of the Debtor’s or any appropriate party in  
23 interest’s rights to dispute any claim, or (iii) an approval or assumption of any agreement, contract,  
24 program, policy, or lease under section 365 of the Bankruptcy Code.

25 Nothing contained in this Motion is intended to be or shall be construed as a waiver of any of the  
26 Debtor’s rights under any applicable law, including, without limitation, the Code of Canon law, the First  
27 Amendment of the United States Constitution, the Constitution of the State of California, California  
28 Corporations Code §§ 10000-10015, the Religious Freedom Restoration Act of 1993 (42 U.S.C. §§

THIRD MOTION TO EXTEND EXCLUSIVITY

2000bb-2000bb-4), the church autonomy doctrine, charitable trust law, California trust law, and the Debtor's rights under any insurance policies and to proceeds thereof, and to object to disclosure of information and contend certain assets discussed in this Motion are not property of the estate.

#### VII.

#### NOTICE

Notice of this Motion is being provided to the Core Service List pursuant to the Court's *Final Order Authorizing and Approving Special Noticing and Confidentiality Procedures* [Docket No. 292] (the "Noticing Order"). Pursuant to the Noticing Order, no further notice is required.

#### VIII.

#### CONCLUSION

WHEREFORE, the Debtor requests the Court enter an order, substantially in the form of the Proposed Order, extending the Exclusivity Periods and granting related relief.

DATED: April 5, 2024

#### FOLEY & LARDNER LLP

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Shane J. Moses  
Emil P. Khatchatourian  
Ann Marie Uetz  
Matthew D. Lee

/s/ Shane J. Moses

Shane J. Moses

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# EXHIBIT A



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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

In re:

THE ROMAN CATHOLIC BISHOP OF  
OAKLAND, a California corporation sole,  
  
Debtor.

Case No. 23-40523 WJL

Chapter 11

**[PROPOSED] THIRD ORDER EXTENDING  
EXCLUSIVE PERIODS FOR THE DEBTOR  
TO FILE AND SOLICIT ACCEPTANCE OF  
A CHAPTER 11 PLAN**

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

Upon the *Debtor's Third Motion for Order Extending Exclusive Periods For The Debtor To File and Solicit Acceptance of a Chapter 11 Plan*, dated April 5, 2024 (the "Motion"),<sup>1</sup> filed by the Roman Catholic Bishop of Oakland, a California corporation sole, and the debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case"), for entry of an

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

1 order pursuant to section 1121(d) of the Bankruptcy Code extending the exclusive periods during which  
2 only the Debtor may file and solicit acceptance of a chapter 11 plan as provided in sections 1121(b) and  
3 (c)(3) of the Bankruptcy Code; the Court having reviewed and considered the Motion, the Bongiovanni  
4 Declaration in support thereof, and all other filings in support of the Motion; the Court finding it has  
5 jurisdiction over this matter, venue in this Court is proper, and notice of the Motion was reasonable and  
6 is sufficient under the circumstances; and the Court finding the relief requested in the Motion is in the best  
7 interests of the Debtor, its creditors, and other parties in interest; and after due deliberation and good cause  
8 appearing therefor,

9 **IT IS HEREBY ORDERED:**

10 1. The Motion is granted as set forth herein.

11 2. Pursuant to 11 U.S.C. § 1121(d), the Exclusive Filing Period during which the Debtor has  
12 the exclusive right to file a chapter 11 plan, as provided in 11 U.S.C. § 1121(b) and (c)(2), is hereby  
13 extended to September 6, 2024.

14 3. Pursuant to 11 U.S.C. § 1121(d), the Exclusive Solicitation Period during which the Debtor  
15 has the exclusive right to solicit acceptance of a chapter 11 plan, as provided in 11 U.S.C. § 1121(c)(3),  
16 is hereby extended to November 5, 2024.

17 4. This order is without prejudice to any further requests for extension of the Debtor's  
18 Exclusive Periods.

19 5. This Court shall retain jurisdiction with respect to all matters arising from or related to the  
20 implementation of or interpretation of this Order.

21 \*\*\* END OF ORDER \*\*\*

**COURT SERVICE LIST**

All ECF Recipients.

THIRD ORDER EXTENDING EXCLUSIVITY