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

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Case No. 23-40523 WJL

Chapter 11

In re:

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

 Debtor.

**DECLARATION OF MICHAEL A.
 KAPLAN IN SUPPORT OF THE
 OFFICIAL COMMITTEE OF
 UNSECURED CREDITORS'
 OBJECTION TO WESTPORT
 INSURANCE CORPORATION'S
 MOTION FOR PROTECTIVE ORDER**

Judge: Hon. William J. Lafferty
 Date: April 26, 2024
 Time: 10:00 a.m. (Pacific Time)
 Place: United States Bankruptcy Court
 1300 Clay Street, Courtroom 220
 Oakland, CA 94612

1 I, Michael A. Kaplan, Esq., hereby declare as follows:

2 1. I am a partner of the law firm of Lowenstein Sandler LLP, counsel to the Official
3 Committee of Unsecured Creditors in connection with the above-referenced chapter 11 case.

4 2. I submit this Declaration in support of the *Official Committee of Unsecured*
5 *Creditors' Objection to Westport Insurance Corporation's Motion for Protective Order* filed
6 simultaneously herewith.

7 3. Attached as **Exhibit A** is a true and correct copy Westport's Log of Documents
8 Withheld from Production in Response to Committee Rule 2004 Subpoena.


9 4. Attached as **Exhibit B** is a true and correct copy of the letter dated March 28, 2024
10 from Michael A. Kaplan, Esq. to counsel for Westport Insurance Corporation.

11 5. Attached as **Exhibit C** is a true and correct copy of the letter dated April 9, 2024
12 from Todd C. Jacobs, Esq. to Michael A. Kaplan, Esq.

13 6. Attached as **Exhibit D** is a true and correct copy of the relevant pages of the
14 transcript of the hearing held on January 9, 2024 in the above-referenced chapter 11 case.

15 I certify under penalty of perjury that the foregoing information is true and correct to the
16 best of my knowledge, information and belief, and I understand that I am subject to punishment if
17 any of the foregoing statements made by me are willfully false. Executed this 11th day of April
18 2024, in Roseland, New Jersey.

19
20 Dated: April 11, 2024



Michael A. Kaplan, Esq.

Exhibit A

**Westport's Log of Documents Withheld from Production
In Response to Committee Rule 2004 Subpoena**

	A	B	C	D	E	F	G	H
	Begin Bates	End Bates	Date Sent	From	To	CC	Description	Basis for withhold
1								
2	West 000875	West 000875	27.03.2020	Chris Carpenter	Robin Craig	OP eClaims	Communication with Counsel	Attorney Client Communication
3	West 000923	West 000923	27.03.2020	Chris Carpenter	Robin Craig	OP eClaims	Communication with Counsel	Attorney Client Communication
4	West 001105	West 001105	06.11.1974				Reinsurance Information	Irrelevant; Proprietary
5	West 001128	West 001128	06.11.1974				Reinsurance Information	Irrelevant; Proprietary
6	West 001151	West 001151	06.11.1974				Reinsurance Information	Irrelevant; Proprietary
7	West 001344	West 001345	20.05.2020	Chris Carpenter	Mary McCoy	OP eClaims; Robin Craig	Communication regarding privileged information	Attorney Client Communication
8	West 001346	West 001346	20.05.2020	Chris Carpenter	Mary McCoy	OP eClaims; Robin Craig	Communication regarding privileged information	Attorney Client Communication
9	West 002015	West 002015	17.06.2020	Chris Carpenter	Robin Craig	OP eClaims	Communication with Counsel	Attorney Client Communication
10	West 002199	West 002199	18.06.2020	Chris Carpenter	Robin Craig	OP eClaims	Communication with Counsel	Attorney Client Communication
11	West 002566	West 002567	29.06.2020	Chris Carpenter	Robin Craig	OP eClaims	Communication with Counsel	Attorney Client Communication
12	West 002568	West 002569	29.06.2020	Robin Craig	Chris Carpenter	OP eClaims	Communication from Counsel	Attorney Client Communication

**Westport's Log of Documents Withheld from Production
In Response to Committee Rule 2004 Subpoena**

	A	B	C	D	E	F	G	H
13	West 002570	West 002570	30.07.2020	Chris Carpenter	OP eClaims		Communication regarding privileged information	Attorney Client Communication
14	West 002571	West 002572	31.05.2020	Craig & Winkelman			Attorney Invoices	Attorney Client Communication; Attorney Work Product
15	West 002573	West 002573	30.07.2020	Chris Carpenter	OP eClaims		Communication regarding privileged information	Attorney Client Communication
16	West 002574	West 002576	31.05.2020	Craig & Winkelman			Attorney Invoices	Attorney Client Communication; Attorney Work Product
17	West 002577	West 002578	31.05.2020	Craig & Winkelman	Chris Carpenter		Attorney Invoices	Attorney Client Communication; Attorney Work Product
18	West 002579	West 002580	31.07.2020	Pam Sitton	Chris Carpenter; APHD OPS		Email string regarding expense reserve information	Proprietary; irrelevant
19	West 002581	West 002582	31.07.2020	Pam Sitton	Chris Carpenter; APHD OPS		Email string regarding expense reserve information	Proprietary; irrelevant
20	West 002583	West 002584	06.08.2020	Pam Sitton	Chris Carpenter; APHD OPS		Email string regarding reserve information	Proprietary
21	West 002585	West 002586	06.08.2020	Pam Sitton	Chris Carpenter; APHD OPS		Email string regarding reserve information	Proprietary

**Westport's Log of Documents Withheld from Production
In Response to Committee Rule 2004 Subpoena**

	A	B	C	D	E	F	G	H
22	West 003297	West 003297	01.09.12020	Angela Ofner	OP eClaims	Chris Carpenter; Robin Craig	Email from Craig & Winkelman regarding privileged information	Attorney Client communication
23	West 003298	West 003299	30.06.2020	Craig & Winkelman			Attorney Invoices	Attorney Client Communication; Attorney Work Product
24	West 003300	West 003300	1.09.2020	Angela Ofner	OP eClaims	Chris Carpenter; Robin Craig	Email from Craig & Winkelman regarding privileged information	Attorney Client communication
25	West 003301	West 003302	30.06.2020	Craig & Winkelman			Attorney Invoices	Attorney Client Communication; Attorney Work Product
26	West 003303	West 003304	30.06.2020	Craig & Winkelman			Attorney Invoices	Attorney Client Communication; Attorney Work Product
27	West 003305	West 003305	01.09.2020	Chris Carpenter	OP eClaims		Email forwarding Attorney client communication	Attorney Client Communication; Attorney Work Product
28	West 003306	West 3308	01.09.2020	Angela Ofner	OP eClaims	Chris Carpenter; Robin Craig	Email from Craig & Winkelman regarding privileged information	Attorney Client Communication; Attorney Work Product

**Westport's Log of Documents Withheld from Production
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	A	B	C	D	E	F	G	H
29	West 003309	West 003309	01.09.2020	Chris Carpenter	OP eClaims		Email forwarding Attorney client communication	Attorney Client Communication; Attorney Work Product
30	West 003310	West 003311	01.09.2020	Angela Ofner	OP eClaims	Chris Carpenter; Robin Craig	Email regarding attorney invoices and attaching same	Attorney Client Communication; Attorney Work Product
31	West 003312	West 003313	30.06.2020	Craig & Winkelman			Attorney Invoices	Attorney Client Communication; Attorney Work Product
32	West 003314	West 003317	12.10.2020	Angela Ofner	OP eClaims	Chris Carpenter; Robin Craig	Email from Craig & Winkelman regarding privileged information	Attorney Client Communication; Attorney Work Product
33	West 003318	West 003321	12.10.2020	Angela Ofner	OP eClaims	Chris Carpenter; Robin Craig	Email from Craig & Winkelman regarding privileged information	Attorney Client Communication; Attorney Work Product
34	West 003322	West 003324	31.08.2020	Craig & Winkelman			Attorney Invoices	Attorney Client Communication; Attorney Work Product
35	West 003325	West 003327	17.02.2020	Angela Ofner	OP eClaims	Chris Carpenter; Robin Craig	Email from Craig & Winkelman regarding privileged information	Attorney Client Communication; Attorney Work Product

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	A	B	C	D	E	F	G	H
36	West 003328	West 003330	17.02.2020	Angela Ofner	OP eClaims	Chris Carpenter; Robin Craig	Email from Craig & Winkelman regarding privileged information	Attorney Client Communication; Attorney Work Product
37	West 003331	West 003332	31.12.2020	Craig & Winkelman			Attorney Invoices	Attorney Client Communication; Attorney Work Product
38	West 003333	West 003335	11.10.2022	Chris Carpenter	OP eClaims		Email regarding attorney invoices and attaching same	Attorney Client Communication; Attorney Work Product
39	West 003336	West 003338	11.10.2022	Chris Carpenter	OP eClaims		Email regarding attorney invoices and attaching same	Attorney Client Communication; Attorney Work Product
40	West 003339	West 003340	31.08.2022	Craig & Winkelman	OP eClaims		Attorney Invoices	Attorney Client Communication; Attorney Work Product
41	West 003341	West 003348	24.12.2022	Chris Carpenter	OP eClaims		Email forwarding Attorney client communication	Attorney Client Communication; Attorney Work Product
42	West 003349	West 003355	23.12.2022	Chris Carpenter	OP eClaims		Email forwarding Attorney client communication	Attorney Client Communication; Attorney Work Product

**Westport's Log of Documents Withheld from Production
In Response to Committee Rule 2004 Subpoena**

	A	B	C	D	E	F	G	H
43	West 003356	West 003357	30.11.2022	Craig & Winkelman			Attorney Invoices	Attorney Client Communication; Attorney Work Product
44	West 003357	West 003361	09.12.2022	SINNOTT, PUEBLA, CAMPAGNE & CURET			Attorney Invoices	Attorney Client Communication; Attorney Work Product
45	West 003362	West 003368	17.01.2023	Chris Carpenter	OP eClaims		Email forwarding Attorney client communication	Attorney Client Communication; Attorney Work Product
46	West 003369	West 003375	17.01.2023	Chris Carpenter	OP eClaims		Email forwarding Attorney client communication	Attorney Client Communication; Attorney Work Product
47	West 003376	West 003377	30.11.2022	Craig & Winkelman			Attorney Invoices	Attorney Client Communication; Attorney Work Product
48	West 003378	West 003381	09.12.2022	SINNOTT, PUEBLA, CAMPAGNE & CURET			Attorney Invoices	Attorney Client Communication; Attorney Work Product
49	West 003382	West 003383	30.11.2022	Craig & Winkelman			Attorney Invoices	Attorney Client Communication; Attorney Work Product

**Westport's Log of Documents Withheld from Production
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	A	B	C	D	E	F	G	H
50	West 003384	West 003387	31.01.2023	Chris Carpenter	OP eClaims		Email forwarding Attorney client communication	Attorney Client Communication; Attorney Work Product
51	West 003388	West 003389	31.12.2022	Craig & Winkelman			Attorney Invoices	Attorney Client Communication; Attorney Work Product
52	WEST 003391	WEST 003391	Various				System note regarding Expense Reserve Information	Proprietary; irrelevant
53	WEST 003393	WEST 003393	N/A				System note regarding Expense Reserve Information	Proprietary; irrelevant
54	WEST 003395	WEST 003395	Various				System note regarding Expense and/or Claim Reserve Information	Proprietary
55	WEST 003397	WEST 003397	N/A				System note regarding Expense and/or Claim Reserve Information	Proprietary
56	WEST 003399	WEST 003399	Various				System note regarding Expense and/or Claim Reserve Information	Proprietary
57	WEST 003403	WEST 003403	Various				System note regarding Expense Reserve Information	Proprietary; irrelevant

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	A	B	C	D	E	F	G	H
58	WEST 003411	WEST 003411	Various				System note regarding Expense Reserve Information	Proprietary; irrelevant
59	WEST 003413	WEST 003413	N/A				System note regarding Expense Reserve Information	Proprietary; irrelevant
60	WEST 003415	WEST 003415	N/A				System note regarding Expense Reserve Information	Proprietary; irrelevant
61	WEST 003417	WEST 003417	N/A				System note regarding Expense Reserve Information	Proprietary; irrelevant
62	WEST 003419	WEST 003419	Various				System note regarding Expense Reserve Information	Proprietary; irrelevant
63	WEST 003423	WEST 003423	Various				System note regarding Expense Reserve Information	Proprietary; irrelevant
64	WEST 003425	WEST 003425	N/A				System note regarding Expense Reserve Information	Proprietary; irrelevant
65	WEST 003431	WEST 003431	Various				System note regarding Expense Reserve Information	Proprietary; irrelevant
66	WEST 003433	WEST 003433	N/A				System note regarding Expense Reserve Information	Proprietary; irrelevant
67	WEST 003435	WEST 003435	Various				System note regarding Expense Reserve Information	Proprietary; irrelevant

**Westport's Log of Documents Withheld from Production
In Response to Committee Rule 2004 Subpoena**

	A	B	C	D	E	F	G	H
68	WEST 003437	WEST 003437	N/A				System note regarding Expense Reserve Information	Proprietary; irrelevant
69	WEST 003471	WEST 003471	Various				System note regarding Expense Reserve Information	Proprietary; irrelevant
70	WEST 003473	WEST 003473	N/A				System note regarding Expense Reserve Information	Proprietary; irrelevant
71	WEST 003475	WEST 003475	Various				System note regarding Expense Reserve Information	Proprietary; irrelevant
72	WEST 003477	WEST 003477	N/A				System note regarding Expense Reserve Information	Proprietary; irrelevant
73	West 003485	West 003485	Various				System note regarding Expense Reserve Information	Proprietary; irrelevant
74	WEST 003488	WEST 003488	Various				System note regarding Expense and/or Claim Reserve Information	Proprietary
75	WEST 003490	WEST 003490	22.01.2024	Ken Battis			Internal claim note regarding Expense and/or Claim Reserve Information	Attorney Client Communication; Attorney Work Product; Proprietary

**Westport's Log of Documents Withheld from Production
In Response to Committee Rule 2004 Subpoena**

	A	B	C	D	E	F	G	H
76	WEST 003491	WEST 003491	24.10.2023	Brigid Quadrino			Internal claim note regarding Expense and/or Claim Reserve Information	Attorney Client Communication; Attorney Work Product; Proprietary
77	WEST 003492	WEST 003492	19.10.2023	Ken Battis			Internal claim note regarding Expense and/or Claim Reserve Information; Notes regarding attorney client communications	Attorney Client Communication; Attorney Work Product; Proprietary
78	WEST 003493	WEST 003493	19.10.2023	Ken Battis			Internal claim file note regarding Expense and/or Claim Reserve Information	Attorney Client Communication; Attorney Work Product; Proprietary
79	WEST 003494	WEST 003494	11.10.2023	Ken Battis			Internal claim file note regarding Expense and/or Claim Reserve Information	Attorney Client Communication; Attorney Work Product; Proprietary
80	WEST 003495	WEST 003495	11.07.23	Ken Battis			Notes regarding attorney client communications	Attorney Client Communication; Attorney Work Product
81	WEST 003496	WEST 003496	14.12.2022	Chris Carpenter			Notes regarding attorney client communications	Attorney Client Communication; Attorney Work Product

**Westport's Log of Documents Withheld from Production
In Response to Committee Rule 2004 Subpoena**

	A	B	C	D	E	F	G	H
82	WEST 003497	WEST 003497	22.11.2021	Brigid Quadrino			Internal claim file note regarding Expense and/or Claim Reserve Information	Attorney Client Communication; Attorney Work Product; Proprietary
83	WEST 003498	WEST 003498	17.11.2021	Chris Carpenter			Internal claim file note regarding Expense and/or Claim Reserve Information	Attorney Client Communication; Attorney Work Product; Proprietary
84	WEST 003499	WEST 003499	23.06.2021	Chris Carpenter			Notes regarding attorney client communications	Attorney Client Communication; Attorney Work Product
85	West 003500	West 003500	29.04.2021	Marty Rosemann			Internal claim file note regarding Expense and/or Claim Reserve Information	Attorney Client Communication; Attorney Work Product; Proprietary
86	West 003501	West 003501	27.04.2021	Chris Carpenter			Internal claim file note regarding Expense and/or Claim Reserve Information	Attorney Client Communication; Attorney Work Product; Proprietary
87	West 003502	West 003502	23.04.2021	Chris Carpenter			Internal claim file note regarding Expense and/or Claim Reserve Information	Attorney Client Communication; Attorney Work Product; Proprietary

**Westport's Log of Documents Withheld from Production
In Response to Committee Rule 2004 Subpoena**

	A	B	C	D	E	F	G	H
88	West 003503	West 003503	23.03.2021	Chris Carpenter			Internal claim file note regarding Expense and/or Claim Reserve Information	Attorney Client Communication; Attorney Work Product; Proprietary
89	West 003504	West 003504	17.02.2021	Chris Carpenter			Internal claim note regarding attorney client communications	Attorney Client Communication; Attorney Work Product
90	West 003505	West 003505	11.01.2021	Chris Carpenter			Internal claim note regarding attorney client communications	Attorney Client Communication; Attorney Work Product
91	West 003506	West 003506	14.12.2020	Chris Carpenter			Internal claim note regarding attorney client communications	Attorney Client Communications
92	West 003507	West 003507	01.09.2020	Chris Carpenter			Internal claim note regarding attorney client communications	Attorney Client Communications
93	West 003508	West 003508	21.08.2020	Marty Rosemann			Internal claim file note regarding Expense and/or Claim Reserve Information	Attorney Client Communication; Attorney Work Product; Proprietary
94	West 003509	West 003509	05.08.2020	Marty Rosemann			Internal claim file note regarding Expense and/or Claim Reserve Information	Attorney Client Communication; Attorney Work Product; Proprietary

**Westport's Log of Documents Withheld from Production
In Response to Committee Rule 2004 Subpoena**

	A	B	C	D	E	F	G	H
95	West 003510	West 003510	05.08.2020	Chris Carpenter			Internal claim file note regarding Expense and/or Claim Reserve Information; Notes regarding attorney client communications	Attorney Client Communication; Attorney Work Product; Proprietary
96	West 003511	West 003511	30.07.2020	Chris Carpenter			Internal claim note regarding attorney client communications	Attorney Client Communication
97	West 003512	West 003512	18.06.2020	Chris Carpenter			Internal claim note regarding attorney client communications	Attorney Client Communication
98	West 003513	West 003514	10.06.2020	Chris Carpenter			Internal claim note regarding attorney client communications	Attorney Client Communication; Attorney Work Product
99	West 003528	West 003528	N/A	N/A			System note regarding Expense Reserve Information	Irrelevant; proprietary
100	West 003530	West 003530	19.10.2023	Ken Battis			Internal claim note regarding Expense Reserve Information	Irrelevant; proprietary
101	West 003533	West 003533	06.11.1974	N/A			Reinsurance information	Irrelevant; proprietary
102	West 003557	West 003557	06.11.1974	N/A			Reinsurance information	Irrelevant; proprietary

Exhibit B

March 28, 2024

VIA EMAIL AND FEDEX

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Re: *In re The Roman Catholic Bishop of Oakland*, Case No. 23-40523 (WJL)

Dear Counsel:

As you know, this firm represents the Official Committee of Unsecured Creditors (the “Committee”) of the Roman Catholic Bishop of Oakland (the “Debtor”) in the above-referenced Chapter 11 case (the “Chapter 11 Case”).

We write to raise certain objections in response to Westport Insurance Corporation’s (“Westport”) March 22, 2024 privilege log (“Privilege Log”), which Westport conveniently served two days after the Committee filed its *Motion to Enforce the Rule 2004 Order and Compel Compliance with Subpoenas*, (Dkt. No. 996). This Privilege Log, however, is deficient for several reasons.

First, the privilege log fails to comply with Federal Rule of Civil Procedure 26. Rule 26(b)(5)(A) provides:

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (i) expressly make the claim; and
- (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

Here, Westport's vague descriptions do not enable the Committee to assess the claim of privilege in violation of Rule 26's requirements. A proper privilege description will "establish that the documents in question relay legal advice from attorneys or discuss employees' intent to seek legal advice." See *Scalia v. Int'l Longshore and Warehouse Union*, 336 F.R.D. 603, 619 (N.D. Cal. 2020). However, "[a] vague declaration that states only that the document 'reflects' an attorney's advice is insufficient to demonstrate that the document should be found privileged." *Hynix Semiconductor Inc. v. Rambus Inc.*, 2008 WL 350641, at *3 (N.D. Cal. Feb. 2, 2008). The following privilege descriptions are insufficient to demonstrate that these documents are appropriately withheld and therefore violate Rule 26(b)(5)(A)'s requirements:

- Communication with Counsel;
- Communication regarding privileged information;
- Email from Craig & Winkelman regarding privileged information;
- Email forwarding Attorney client communication;
- Email regarding attorney invoices and attaching same;
- Internal claim note regarding Expense and/or Claim Reserve Information;
- Internal claim note regarding Expense and/or Claim Reserve Information; Notes regarding attorney client communications;
- Internal claim file note regarding Expense and/or Claim Reserve Information;
- Notes regarding attorney client communications;
- Internal claim note regarding attorney client communications; and
- Internal claim file note regarding Expense and/or Claim Reserve Information; Notes regarding attorney client communications.

The Committee demands that Westport revise each of these privilege log descriptions—in accordance with its obligations under Rule 26(b)(5)(A)—so that the Committee can determine whether the documents contain privileged communications or work product.

Second, Westport's assertions of privilege over "propriety" information are wholly improper. Westport therefore must produce all documents it withheld on the basis of being "proprietary." This includes all documents with the following privilege descriptions: (a) reinsurance information; (b) expense reserve information and notes regarding same; and (c) claim reserve information and notes regarding same.

As Westport is aware, on January 30, 2024, the Court signed a confidentiality and protective order ("Protective Order") governing the "production, review, disclosure and handling of any Disclosure or Discovery Material . . . by any person or entity in connection with the above-

captioned Chapter 11 case.” (Dkt. No. 832.) The Protective Order explicitly anticipates that the discovery in this case will involve the production of confidential and proprietary information. (*See id.* ¶ 1.) Under the Protective Order, Westport may designate documents as “Confidential” if it believes in good faith that the document contains proprietary information. (*Id.* ¶ 5.1.) The Protective Order also prohibits “[m]ass, indiscriminate, or routinized designations,” and subjects the designating party to sanctions for unjustified or improper designations. (*Id.* ¶ 5.3.)

It is improper for Westport to withhold documents on the basis of them being “proprietary.” If Westport has a good-faith belief that its “proprietary” documents contain confidential information, it can designate those documents in accordance with the Protective Order and any receiving party can object to those designations, as needed, under the Protective Order. Westport lacks the authority to pick and choose the documents it withholds absent a proper legal purpose.

Accordingly, the Committee demands that Westport produce the following withheld documents, to the extent the documents have no material properly protected by the attorney-client privilege or the attorney work-product privilege:

- | | | |
|------------------|---------------|---------------|
| • West 001105 | • West 003417 | • West 003492 |
| • West 001128 | • West 003419 | • West 003493 |
| • West 001151 | • West 003423 | • West 003494 |
| • West 002579–80 | • West 003425 | • West 003497 |
| • West 002581–82 | • West 003431 | • West 003498 |
| • West 002583–84 | • West 003433 | • West 003500 |
| • West 002585–86 | • West 003435 | • West 003501 |
| • West 003391 | • West 003437 | • West 003502 |
| • West 003393 | • West 003471 | • West 003503 |
| • West 003395 | • West 003473 | • West 003508 |
| • West 003397 | • West 003475 | • West 003509 |
| • West 003399 | • West 003477 | • West 003510 |
| • West 003403 | • West 003485 | • West 003528 |
| • West 003411 | • West 003488 | • West 003530 |
| • West 003413 | • West 003490 | • West 003533 |
| • West 003415 | • West 003491 | • West 003557 |

Finally, Westport must produce all attorney invoices withheld because its assertion of the attorney-client privilege and attorney work-product privilege over these documents is also improper. In the Ninth Circuit, “[n]ot all communications between attorney and client are privileged,” and its decisions recognize that “the identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege.” *Clarke v. Am. Com. Nat’l Bank*, 974 F.2d 127, 129 (9th Cir. 1992); *see also id.* at 130 (affirming district court order to disclose attorney billing statements because they “are not protected by the attorney-client privilege”).

In California, “courts have generally presumed that invoices for legal services are *not* categorically privileged.” *Los Angeles Cnty. Bd. of Supervisors v. Superior Ct.*, 2 Cal. 5th 282, 299 (2016). “Indeed, disclosure of billing invoices is the norm in the federal courts in California, where ‘[f]ee information is generally not privileged.’” *Id.* (quoting *Fed. Sav. and Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374 (9th Cir. 1990)); *see also Tornay v. United States*, 840 F.2d 1424, 1426 (9th Cir. 1988) (“Payment of fees is incidental to the attorney-client relationship, and does not usually involve disclosure of confidential communications arising from the professional relationship.”).

Westport’s designation of attorney invoices as privileged is therefore improper, and the Committee demands that Westport produce the following withheld documents:

- West 002571–72
- West 002574–76
- West 002577–78
- West 003298–99
- West 003301–02
- West 003303–04
- West 003310–11
- West 003312–13
- West 003322–24
- West 003331–32
- West 003333–35
- West 003336–38
- West 003339–40
- West 003356–57
- West 003357–61
- West 003376–77
- West 003378–81
- West 003382–83
- West 003388–89

The Committee looks forward to receiving a response to these objections by **Friday, April 5, 2024**. Upon receipt of a response, if any, the Committee will make itself available to meet and confer on any outstanding issues.

Very truly yours,



Michael A. Kaplan, Esq.

MAK:amk

cc: Jeffrey Prol, Esq.
Brent Weisenberg, Esq.
Colleen M. Restel, Esq.
Tim Burns, Esq.
Jesse Bair, Esq.
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Ann Marie Uetz, Esq.
Matthew D. Lee, Esq.

Exhibit C

April 9, 2024

Via Email

Michael A. Kaplan
Lowenstein Sandler
One Lowenstein Drive
Roseland, New Jersey 07068
mkaplan@lowenstein.com

RE: In re The Roman Catholic Bishop of Oakland, California, Case No. 23-40523

Michael:

We received your March 28, 2024 letter regarding Westport's log of redacted documents sent in response to the Committee's subpoena. As the Court made clear on several occasions, it granted the Committee's Rule 2004 application to facilitate an efficient and cost-effective resolution of the parties' issues through mediation, as opposed to the more expensive and time-consuming avenue of litigation. Yet, the Committee's approach to obtaining documents for purposes of mediation has thus far been beyond counterproductive. Indeed, even before the parties have had the opportunity to sit down for their first mediation session, the Committee has burned through substantial estate resources writing letters, making unreasonable demands, and briefing and re-briefing issues that are already teed up before the Court, could readily be addressed with the mediators, or both. The Committee is litigating for the sake of litigating, to the detriment of the estate and the survivors it represents.

As to your most recent correspondence regarding Westport's log, the Committee fails to identify how any particular entry on the log deprives the Committee of the ability to assess Westport's basis for redacting documents including based on privilege. In doing so, the Committee ignores applicable law and the purpose of such logs. For example, the party asserting the privilege need only make "a *prima facie* showing that the privilege protects the information the party intends to withhold." *In re Grand Jury Investigation*, 974 F.2d 1068, 1071 (9th Cir. 1992). To this end, the Ninth Circuit has stressed that the sufficiency of a claim of privilege should be assessed "in the context of a holistic reasonableness analysis ... to forestall needless waste of time and resources, as well as tactical manipulation of the rules and the discovery process." *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Ct. for Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005). Courts and parties must avoid "a mechanistic determination of whether the information is provided in a particular format." *Id.*

In compliance with these principles, Westport provided the Committee with a log that included, where applicable, each document's date of transmission, creator, sender, recipients, subject matter, and specific privilege claimed. This alone satisfies Westport's obligations. *See Club Level, Inc. v. City of Wenatchee*, 618 F. App'x 316, 319 (9th Cir. 2015) (where privilege log "disclosed the nature of the correspondence, the date of sending, the sender and recipient(s), and

a brief statement describing the subject of the content,” the “district court reasonably determined that the Log complied with the requirements of Federal Rule of Civil Procedure 26(b)(5)”); *In re 3dfx Interactive, Inc.*, 347 B.R. 394, 403 (Bankr. N.D. Cal. 2006) (“For each document, Nvidia’s privilege log contains the author, date of preparation, recipients, description, and the specific privilege claimed. This is sufficient[.]”).

But, here, the Committee has more than just a log – it also has the declaration of Westport’s Ken Battis, filed on March 18, 2024, in support of Westport’s Motion for Protective Order. *See* Dkt. No. 979. Mr. Battis’ declaration provides additional explanation for Westport’s assertion of privilege over the reserve-related documents which comprise nearly half of the entries on Westport’s log. *See In re Grand Jury Investigation*, 974 F.2d at 1071 (sustaining privilege claims because producing party was provided with “a privilege log and affidavits” regarding the claims of privilege); *Friends of Hope Valley v. Frederick Co.*, 268 F.R.D. 643, 651 (E.D. Cal. 2010) (holding that “declarations explaining the privileged nature of the communications” are relevant to a requesting party’s assessment of the privilege claim); *Scalia v. Int’l Longshore & Warehouse Union*, 336 F.R.D. 603, 613 (N.D. Cal. 2020) (“Although a [privilege log] description like ‘Report of Investigation’ is not specific on its own, Pifer’s declaration details the ROI process as well as how the ROI was developed in this case”). Given the additional information provided by Mr. Battis’ declaration, is it really the Committee’s position that it does not know the basis for Westport’s claim of privilege over reserve information?

The Committee also has the documents themselves. Every document listed on Westport’s log was provided to the Committee with redactions, and many of these documents provide the Committee with additional context and information it can use to assess Westport’s privilege claims. *See Mayorga v. Ronaldo*, No. 22-16009, 2023 WL 8047781, at *2 (9th Cir. Nov. 21, 2023) (refusing to compel documents, even where producing party “fail[ed] to provide a privilege log” because, “significantly, [the requesting party] actually possessed the documents [and] was therefore well-equipped to ‘assess the claim’ of privilege even without a privilege log.”).

The Committee therefore has more information than it needs or is entitled to in order to determine whether it will accept or challenge Westport’s privilege claims. Nevertheless, as a good faith gesture, Westport is preparing and will soon provide the Committee with a legend which states the employer and role for each individual appearing on Westport’s log. If, after receiving the legend, you have genuine questions about specific log entries, please let us know and we will endeavor to provide additional context, within reason.

Westport remains willing to meet and confer about this and any other discovery issue, but we hope the Committee will instead choose to focus on the task Judge Lafferty has assigned the parties – good faith participation in the mediation.

Sincerely,

Parker, Hudson, Rainer & Dobbs LLP



Todd C. Jacobs

TCJ:ss

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Exhibit D

1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 -oOo-

4 In Re:) Case No. 4:23-Bk-40523
5 THE ROMAN CATHOLIC BISHOP OF) Chapter 11
6 OAKLAND)
7 Debtor.) Tuesday, January 9, 2024
8) 9:00 AM
9)

10 CLAIMS MOTION TO ALLOW FILING
11 OF LATE PROOFS OF CLAIM
12 F.R.B.P. 9006(B)(1). FILED
13 BY WBS CLAIMANTS (DOC. 607)

14 JOINT MOTION FOR ENTRY OF
15 ORDER REFERRING PARTIES TO
16 MEDIATION, APPOINTING
17 MEDIATORS, AND GRANTING
18 RELATED RELIEF, FILED BY
19 DEBTOR THE ROMAN CATHOLIC
20 BISHOP OF OAKLAND (DOC. 705)

21 STATUS CONFERENCE

22 TRANSCRIPT OF PROCEEDINGS
23 BEFORE THE HONORABLE WILLIAM J. LAFFERTY
24 UNITED STATES BANKRUPTCY JUDGE

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3 Matt Weiss
4 Westport Insurance
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16

17 Court Recorder: DA'WANA CHAMBERS
18 United States Bankruptcy Court
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20 Oakland, CA 94612

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24 Proceedings recorded by electronic sound recording;
25 transcript provided by transcription service.

1 THE COURT: All right. Very good. Okay. Well, I'll
2 reserve 9:30 for you, okay, next Wednesday.

3 MR. WEISENBERG: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MR. WEISENBERG: And if it's okay with you, if the
6 parties are able to agree, then we'll submit something to the
7 Court indicating as such, and if not, we'll --

8 THE COURT: Yeah. I mean, I had no other independent
9 problems with the order.

10 MR. WEISENBERG: Okay.

11 THE COURT: Okay.

12 MR. WEISENBERG: Thank you, Your Honor.

13 THE COURT: So that's fine. Okay.

14 All right. Does that resolve that as far as we go?

15 MS. UETZ: Yeah. Just for clarity, I'll circulate a
16 proposed order --

17 THE COURT: Okay.

18 MS. UETZ: -- with that one change tomorrow.

19 THE COURT: Okay. The other call's at 1:30? Okay.

20 Okay. I wanted to talk a little bit about where we
21 were with respect to the order after a very lengthy hearing
22 with respect to some of the discovery matters on the insurance
23 side. I think there have been -- there's been an exchange of
24 orders, and there have been some declarations and other
25 pleadings filed. I want to give you just a couple of

1 observations about that.

2 In my view, I mean, if someone wants to bring a
3 companion motion to veil on my motion, I guess they can,
4 although I'll have a comment about that too. What we largely
5 resolved in connection with the earlier hearings, in which I
6 granted some requests, denied others, and this went as well to
7 some of the what we can call the internal documents from the
8 insurance companies, I don't think I was asked to resolve and I
9 don't think I did resolve what was attorney-client privilege.
10 That is a sometimes-moving target.

11 I'll make the observation that I tend to -- I take
12 that relatively seriously, both because if it is waived or
13 breached, it's a big deal, but also because I think there can
14 sometimes be efforts to cloak something in attorney-client
15 privilege that arguably is not necessary to that relationship
16 or is overstated or is not something on which legal advice is
17 truly sought. I mean, I've never had anybody CC their lawyer
18 with their grocery list and later claim it's attorney-client
19 privilege, but someday I will. So I'm not resolving that, but
20 I'm suggesting I take a fairly rigorous view of that question.
21 Okay.

22 Work product, again, work product to me is something
23 that is produced in connection with litigation. So again, I
24 don't think I resolved it, but I would suggest that my view of
25 that is rigorously questioning. Okay.

1 With respect to relevance, I think we did resolve
2 that. And I think that the long discussion we had, I found
3 very helpful. And if anybody wants to either appeal my order
4 or argue that it should be deemed a final order, you can do
5 that. But in my view, we thoroughly exhausted the relevance
6 arguments. So for better or for worse, that's my sense of
7 that. Okay.

8 Mr. Plevin, you want to say something?

9 MR. PLEVIN: Briefly, Your Honor. So I did not join
10 the LMI motion. My client did not. So I'm not going to speak
11 about that.

12 THE COURT: Yeah, we're going to -- we're going to
13 come to that in a second --

14 MR. PLEVIN: Right.

15 THE COURT: -- and I think I'm needing some
16 clarification on that myself. All right. Go ahead.

17 MR. PLEVIN: So the dispute that was laid out in the
18 two certifications and the declaration was really, it really
19 comes down to one paragraph and one issue.

20 THE COURT: Yep.

21 MR. PLEVIN: And that is that when we -- there were
22 some open issues about definitions and phrasing of some of the
23 requests, and we had a meet-and-confer. There were a lot of
24 people on it. There were some respects in which we expressed
25 some concerns about a definition or something, and the