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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK,[1]	:	Case No. 20-12345 (MG)
Debtor.	:	

DEBTOR'S OBJECTION TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITOR'S MOTION FOR RELIEF FROM CONFIDENTIALITY AGREEMENT

[1] The last four digits of the Debtor's federal tax identification number are 7437, and its mailing address is P.O. Box 9023, Rockville Centre, New York 11571-9023.

The Roman Catholic Diocese of Rockville Centre, New York (the "Debtor" or "Diocese"), respectfully files this objection to the motion (Doc. No. 2769, the "Motion") by the Official Committee of Unsecured Creditors (the "Committee") for relief, pursuant to 11 U.S.C. § 105(a), from the *Confidentiality Agreement and Protective Order Between the Debtor and Official Committee of Unsecured Creditors* (Doc. No. 320, the "Confidentiality Agreement").

INTRODUCTION

1. Early in this case, the Committee made informal document requests to the Debtor, including for the Debtor's personnel files for individuals accused of committing sexual abuse or facilitating alleged abuse. As the Committee's written request made clear—in a part that the Committee strategically omitted from its motion—the Committee asked for documents included in "confidential" and "strictly confidential" personnel files maintained by the Debtor. The Debtor agreed to produce these requested personnel files to the Committee, without insisting on any formal discovery mechanisms. The Diocese's only condition was that the parties enter into a Confidentiality Agreement to protect against the public disclosure of these highly sensitive, internal personnel records.

2. The parties accordingly entered into a Confidentiality Agreement, and Judge Chapman so ordered it on January 20, 2021. By the terms of this Protective Order, the Committee agreed that these internal personnel records requested by the Committee—the "CVA Claim Documents"—would be treated as "Confidential Information" if so designated by the Debtor. *See* Confidentiality Agreement ¶ 8(a) ("For purposes of this Agreement, 'Confidential Information' includes (i) all CVA Claim Documents explicitly designated and marked by the Diocese as 'Confidential Information' …."). That designation means that any recipient of the Debtor's confidential personnel files may not publicly disclose them and may use them only in

connection with this bankruptcy case or a related adversary proceeding. *See id.* ¶ 10.

3. In reliance on this Confidentiality Agreement, the Debtor has produced to the Committee approximately 950,000 pages of its internal personnel records. *See* Declaration of Eric P. Stephens ("Stephens Decl."), ¶ 4. That production was completed in May 2022, more than 18 months ago. *See* Stephens Decl. ¶ 8. The parties also engaged in Court-ordered mediation over a two-year period from October 2021 until October 18, 2023, when the co-mediators considered the mediation concluded for purposes of the Court's *Order Appointing Mediator*. *See* Doc. No. 2589 ¶ 2. In connection with that mediation, and to facilitate it, the Debtor removed redactions from CVA Claim Documents it previously produced and produced additional CVA Claim Documents for the first time, without redactions for sensitive personal information. *See* Stephens Decl. ¶ 16. At no point, in the more than two and half years during which the parties have been exchanging information and mediating on the basis of these personnel records, did the Committee ever challenge the confidential nature of a CVA Claim Document. *See id.* at ¶ 6.

4. After the Committee had obtained the Debtor's personnel files, however, the Committee withdrew its consent to the continuation of a consensual stay of certain CVA lawsuits involving parties related to the Debtor. *See* Doc. No. 166 in Adv. No. 20-01226. And now, more than a year and a half after the Debtor completed its production of the confidential CVA Claim Documents, the Committee is asserting for the first time that the entirety of the Debtor's 950,000 page production of its highly sensitive, internal personnel files should *not* be treated as "Confidential Information." The Committee's attempt to pull the rug out from under the Debtor by refusing to hold up its end of the bargain now that it has the CVA Claim Documents in hand smacks of gamesmanship and completely undermines the incentives that confidentiality and

mediation orders are intended to foster.

5. This is yet another meritless, extreme motion by the Committee that should be denied. Not only does the Confidentiality Agreement expressly provide that the CVA Claim Documents produced in response to the Committee's request for personnel records are "Confidential Information," but there is a substantial body of case law in this District and elsewhere—completely ignored by the Committee in its motion—reflecting that "courts have generally characterized personnel files as confidential and found it appropriate to enter protective orders governing their use in litigation because of the inherent potential for harm or embarrassment if the information they contain is revealed." *Duling v. Gristede's Operating Corp.*, 266 F.R.D. 66, 72-73 (S.D.N.Y. 2010) (Pitman, M.J.). Courts routinely and repeatedly protect against public disclosure of an institution's internal personnel records, especially in this context when the documents are merely provided in discovery and not filed with the court.

6. The Court's analysis should properly stop there: these sensitive, internal personnel files are maintained in confidence by the Debtor (*see* Declaration of Sister Maryanne Fitzgerald ¶¶ 3-6) and should be protected against the sort of large-scale public disclosure that the Committee seems to have in mind. The Committee, however, offers two other rationales for why it wants these documents to be subject to public disclosure: it wants to allow claimants to use them in state court litigation and it wants claimants to be able to review the "universe" of CVA Claim Documents in connection with the plan process. As a threshold matter, the Committee does not even try to comply with the rigorous standard in the Second Circuit for modifying the terms of Protective Order to allow for this disclosure that is *not* permitted by the Protective Order to which the Committee itself agreed. *See Martindell v. Int'l Tel. & Tel. Corp*., 594 F.2d 291, 296 (2d Cir. 1979) (requiring a plaintiff seeking to modify a protective order to

show "improvidence in the grant of a Rule 26(c) protective order or some extraordinary circumstance or compelling need."); *see also S.E.C. v. TheStreet.com*, 273 F.3d 222, 229 (2d Cir. 2001) ("It is, moreover, presumptively unfair for courts to modify protective orders which assure confidentiality and upon which the parties have reasonably relied.").

7. In any event, both of these asserted rationales are contradicted by the record. The Regional Child Victims Act Part for the Ninth and Tenth Judicial Districts (i.e., Justice Steinman) has recently entered an Order that imposes an orderly process for plaintiffs in unstayed state court actions to obtain discovery from the Diocese in connection with those actions and addresses the confidentiality of these records that the Diocese will produce. *See* Stephens Decl. Ex. D. That production will be complete by January 19, 2024, only three days after the hearing on this motion. There is no basis for the Committee's assertion that, in effect, this state court process should be overridden by de-designating *en masse* the Diocese's confidential personnel records in this federal bankruptcy case.

8. Next, the Committee asserts that claimants "can only make a meaningful decision about how to proceed at this stage of the Bankruptcy Case if they are able to see the universe of CVA Claim[] Documents." Motion ¶ 31. There is no explanation from the Committee as to why every claimant would need to see the entire "universe" of CVA Claim Documents, including hundreds of thousands of pages of internal documents that do not relate to their individual claims. The Committee also does not inform the Court that, under the Protective Order, more than 60% of the individuals with extant claims in this case—a list that includes approximately 415 claimants—are permitted to access the CVA Claim Documents that relate to their case if they execute an undertaking in accordance with the Protective Order and send it to the Debtor and the Committee. *See* Confidentiality Agreement, Exhibit B. But no one has delivered such

an undertaking to the Debtor. *See* Stephens Decl. ¶ 9.

9. In addition, state court counsel recommended to their clients that this bankruptcy case be dismissed, without reviewing with their clients any of the CVA Claim Documents or suggesting that the clients should undertake that review themselves. *See* Declaration of Todd R. Geremia ("Geremia Decl."), Exs. 5-8. At the hearing in July 2023 on the Committee's motion to dismiss this case, the Committee presented testimony from several claimants' counsel concerning their dismissal recommendations to their clients. *See* Declaration of Jason P. Amala [Doc. No. 2233]; Declaration of Patrick Stoneking [Doc. No. 2235]; *see also* 7/11/2023 Hearing Transcript (containing testimony from Mr. Andrew Silvershein of Herman Law and Mr. Linc Leder of Slater Slater Schulman LLP). All of the hundreds of clients represented by the counsel who so testified could have had access to the CVA Claim Documents that relate to their individual cases if they had executed an undertaking and delivered it to the Debtor. *See* Confidentiality Agreement, Ex. B. But, in connection with counsel's written dismissal recommendations, counsel did not discuss documents from the Debtor's personnel files or write to their clients that they should review documents from the Debtor's personnel files that relate to their claims. *See* Geremia Decl. Exs. 5-8; *see also* Doc. Nos. 2233, 2235.

10. The record thus belies the Committee's assertion that it should be deemed "necessary" to blow up the Debtor's confidentiality designations for its internal personnel records in order to allow for claimants to review the "universe" of this nearly one-million-page production of documents. Under the Protective Order, hundreds of claimants have the ability to access the personnel files that relate to their case, provided that they agree to maintain these files in confidence, and not one has invoked the procedure to do so. In any event, the Committee has not even tried to make the heightened showing required by the Second Circuit to modify a

protective order to allow for such a wholly unprecedented, and frankly unlawful, approach here.

ARGUMENT

A. The Committee Has Agreed That The CVA Claim Documents Are Confidential

11. The Committee's motion overlooks that the Confidentiality Agreement at issue here expressly defines the CVA Claim Documents as "Confidential Information." Paragraph 8 sets forth the *parties' agreement* that, "[f]or purposes of this Agreement," the "Definition of 'Confidential Information'" "includes (i) all CVA Claim Documents explicitly designated and marked by the Diocese as 'Confidential Information.'" The reason for this, as the Committee notes in the background section of this motion, is that the parties acknowledged that the documents the Committee requested—and that the Debtor provided in reliance on and pursuant to the parties' Confidentiality Agreement—are confidential personnel records maintained by the Diocese. Indeed, while the Committee partially quotes the requests at issue (Motion ¶ 14), it curiously leaves out from its quotation that the records requested and produced include those in "confidential" and "strictly confidential" files maintained by the Diocese in accordance with Roman Catholic Church doctrine:

> Document Requests
>
> Documents that would otherwise be produced to plaintiffs in the underlying CVA Actions, including, but not limited to, relevant and non-privileged (subject to provision of a privilege log) personnel and assignment history records, and correspondence, letters, emails, reports, complaints, disciplinary records, and laicization documents, concerning allegations of abuse, for each individual accused of committing sexual abuse or facilitating the sexual abuse of any plaintiff in the underlying CVA Actions (each a "Subject Individual"); ***and all confidential documents, including the strictly confidential documents, maintained by the Bishop*** pursuant to *Crimen Sollicitationis* (Crime of Solicitation) (1962) (Instruction of the Supreme Sacred Congregation of the Holy Office) concerning a Subject Individual.

See Doc. No. 52 Schedule 4, Adv. Pro. No. 20-01266, *Stipulation & Order Pursuant to 11 U.S.C. § 105(a) Staying the Prosecution of Certain Lawsuits* (emphasis added); *see also* Motion

¶ 14 (acknowledging that the CVA Claim Documents include the documents listed in this above-quoted request). And, as the Committee well knows, all of the information listed in these requests by the Committee—and not only that maintained in accordance with Canon Law procedures—is maintained by the Diocese in confidential personnel files that have *not* been publicly disclosed and are *not* publicly accessible. *See* Declaration of Sister Maryanne Fitzgerald ¶¶ 3-6.

12. The Confidentiality Agreement sets forth specific bases on which the confidentiality designation of a CVA Claim Document might be challenged, such as that one of the documents "was generally available to the public after its receipt from the Diocese" or "was obtained by a Recipient from a third party under no obligation to maintain its confidentiality." *See* Confidentiality Agreement ¶ 8(b). But the Committee has not identified a *single document* in the personnel files produced by the Diocese that should be considered non-confidential on this basis. *See* Stephens Decl. ¶ 9. Nor is the Diocese aware of a single document in the CVA Claim Documents that would be subject to de-designation on this basis. *See id.*

13. The confidentiality of internal personnel files maintained by an institution, such as these records produced to the Committee, is firmly established and routinely protected in federal court. Judge Pitman treated the issue at length in *Duling v. Gristede's Operating Corp.*, 266 F.R.D. 66 (S.D.N.Y. 2010). The plaintiffs there objected to a protective order that afforded confidential treatment to the defendant's personnel files and, similar to what the Committee argues here, asserted that the defendant should have to provide "specific examples of harm" that would result from disclosure of information in the personnel files. *Id.*at 73. The court rejected the plaintiffs' position, noting that "courts have generally characterized personnel files as confidential and found it appropriate to enter protective orders governing their use in litigation

because of the inherent potential for harm or embarrassment if the information they contain is revealed." *Id.* At 72-73. As the first such example, Judge Pitman quoted at length from a district court decision addressing the same issue, which stated in pertinent part: "'The court generally regards personnel files of employees to be confidential by their nature. … They commonly contain confidential material. Justice requires protection against wide dissemination of such confidential, personal information.'" *Duling*, 266 F.R.D. at 73 (quoting *Dahdal v. Thorn Americas, Inc.*, No. Civ. A. 97-2119-GTV, 1997 WL 599614, at *1 (D. Kan. Sept. 15, 1997)). Judge Pitman then proceeded to cite a long string of cases, set out in the accompanying footnote here for the Court's convenience,[2] in support of his holding in *Duling* that "the harm that would result from the disclosure of the undisputedly personal information contained in the personnel files establishes a 'particular need for protection.'" *Id.* at 73 (quoting standard cited by Committee in support of its motion from *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986), and quoting *Dahdal*, 1997 WL 599614, at *1, for the proposition that "disclosing personnel records 'would result in a clearly defined, serious, and unnecessary injury to the

[2] *See Donald v. Rast,* 927 F.2d 379, 381 (8th Cir.1991) (recognizing "the confidential nature of the information contained in a police officer's personnel file"); *Williams v. Art Inst. of Atlanta,* No. 1:06–CV–0285–CC/AJB, 2006 WL 3694649 at *16 (N.D. Ga. Sept. 1, 2006) (finding good cause to enter a protective order preventing disclosure of personnel records to third parties because "employee ... personnel information [is] private information that should not be widely disseminated"); *Mitchell v. Metro. Life Ins. Co., Inc.,* 03 Civ. 10294(WHP), 2004 WL 2439704 at *2 (S.D.N.Y. Nov. 2, 2004) (Pauley, D.J.) (entering a protective order to maintain confidentiality of defendants' personnel files pertaining to non-party employees because the files "contain[ed] sensitive data entitled to protection, such as social security numbers, disciplinary records and information relating to personal circumstances (e.g., disability and martial status)"); *Williams v. Bd. of County Comm'rs of Unified Gov't of Wyandotte County/Kansas City, KS,* No. CIV. A. 98–2485–JTM, 2000 WL 133433 at *1 (D. Kan. Jan. 21, 2000) ("recogniz[ing] that personnel files and records ... are confidential in nature and that, in most circumstances, they should be protected from wide dissemination"); *Gillard v. Boulder Valley Sch. Dist. Re.–2,* 196 F.R.D. 382, 385 (D. Colo.2000) (personnel records are "normally ... entitled to some degree of confidentiality"); *Ladson v. Ulltra East Parking Corp.,* 164 F.R.D. 376, 377 n.2 (S.D.N.Y.1996) (Kaplan, D.J.) (noting that "[l]egitimate privacy concerns exist with regard to personnel files" and that they are appropriately addressed through a protective order); *Frank v. Capital Cities Commc'ns, Inc.,* 80 Civ. 2188(CSH), 1987 WL 19021 at *3–*4 (S.D.N.Y. Oct. 16, 1987) (Haight, D.J.) (granting protective order limiting plaintiffs' access to personnel records of defendants' employees because "[d]efendants clearly have a strong and legitimate interest in maintaining strict control over access to this information").

privacy of the employee who is not a party to the lawsuit'").

14. Many other courts have similarly held that personnel files are appropriately protected as confidential material in accordance with a protective order.[3] That is especially so in this context. The Committee is not by this motion challenging the accessibility of a single document that has been filed with the Court, where there are separate considerations governing a public right of access. Indeed, unlike even the cases cited above, the Committee is not seeking to allow for access to documents that have been provided as part of *formal* discovery procedures in this bankruptcy case. As the Confidentiality Agreement acknowledges, the Debtor produced the CVA Claim Documents to the Committee "without the need for formal discovery proceedings" but only "provided that the information and documents are subject to the protections afforded by the terms of this Agreement." *See* Doc. No. 320, Recitals. The Committee does not cite a single case, nor is the Debtor aware of one, where a court stripped the confidentiality designations from all personnel files that have been produced to another party informally—and not filed with the court—where the party receiving the documents expressly agreed in a court-ordered stipulation that these very documents should be regarded as "Confidential Information."

15. While the Committee's motion entirely ignores the substantial body of case law affording confidential treatment to personnel files provided in discovery, the decisions cited by the Committee are all remarkable for how inapposite they are to the issue here. Two of the

[3] *See, e.g.*, *Garnett-Bishop v. N.Y. Community Bancorp*, No. CV 12-2285, 2013 WL 101590, at *2 (E.D.N.Y. Jan. 8, 2013) (granting defendant's motion for a protective order to allow for confidential treatment of personnel records and quoting *Duling*, 206 F.R.D. at 71-72, for the proposition that "'courts have generally characterized personnel files as confidential and found it appropriate to enter protective orders governing their use in litigation'"); *Flaherty v. Seroussi*, 209 F.R.D. 300, 304 (N.D.N.Y. 2002) (granting defendant's motion for a protective order to provide for the confidentiality of records concerning a defendant's "individual employees," including those "relating to allegations and investigations"); *Rosenblit v. City of Philadelphia*, No. 20-3121, 2021 WL 288887, at *6 (E.D. Penn. Jan.. 28, 2021) ("Courts in this District have consistently recognized the confidential nature of personnel files.") (citing cases).

principal cases cited by the Committee addressed whether documents met a definition of "trade secrets" as set forth in the confidentiality agreement and in federal law. *See In re Parmalat Secs. Litig.*, 258 F.R.D. 236 (S.D.N.Y. 2009); *U2 Home Ent't, Inc. v. Kylin TV, Inc.*, No. 06-CV-2770, 2008 WL 1771913 (S.D.N.Y. Apr. 15, 2008). The lead plaintiffs in *Parmalat* also challenged the confidentiality designation of documents that were *filed with the court* on motions for summary judgment. That is a materially different context than the Committee's motion here, because as the court in *Parmalat* discussed there is a presumption of public access to "judicial documents" that are filed with the court at trial or in connection with substantive motion practice. *See In re Parmalat Secs. Litig.*, 258 F.R.D. at 243. By contrast, there is no right of public access to documents that are provided to a party through discovery, much less through the type of informal discovery provided by the Debtor here. Moreover, unlike the Committee here, the lead plaintiffs in *Parmalat* narrowed their request so that they were not challenging the designation of *all* the approximately 1,800 documents at issue; they instead made document-by-document challenges to the confidentiality designations for only roughly 200 documents filed with the court. *See id.* at 241.

16. The Committee also invokes *Pearlstein v. Blackberry, Ltd.*, 332 F.R.D. 117 (S.D.N.Y. 2019). That case, too, addressed whether the documents at issue met a specific clause in the Protective Order's definition of "Confidential Material," which allowed a producing party to designate information as confidential that was not generally publicly available and was not, *inter alia*, "current commercially sensitive information." *See* Geremia Decl. Ex. 2 ¶ 5. The defendant in that case *did not object* to the motion to de-designate the documents at issue, and as the court pointed out, the information at issue did not meet the operative clause of the definition from the Protective Order because it "involve[d] events that are six years in the past and involve

a line of business in which BlackBerry no longer participates." *Id.* at 122.

17. Finally, the Protective Order at issue in *Schiller v. City of New York*, Nos. 04 Civ. 7922, 04 Civ. 7921, 2007 WL 136149 (S.D.N.Y. Jan. 19, 2007), allowed producing parties to designate as "Confidential" any information "that they deem confidential," and there was *no definition* in the Protective Order as to what should be regarded as confidential information. *See* Geremia Decl. Ex. 3 ¶ 5. The court pointed this out in its opinion, stating that, as in *Fournier v. McCann Erickson*, 242 F. Supp. 2d 318 (S.D.N.Y. 2006), the Protective Order "'allowed for unilateral designation of [a document] as protected material, and it did not list specific documents, or delineate the kinds of documents, contemplated for protection.'" *Schiller*, 2007 WL 136149, at *5 (quoting *Fournier*, 242 F. Supp. 2d at 341). Unlike the Committee here, the plaintiffs also provided the City a list of the specific documents that, the plaintiffs asserted, were improperly designated as confidential. And the City's grounds for seeking to uphold the "confidentiality" of the documents at issue were centered on assertions of *privilege*, "most notably the law enforcement privilege and the deliberative process privilege." *Id.* The court ruled on those issues by rejecting the asserted privileges as a matter of law and holding that, in any event, they had been waived as to all material that the City had already disclosed to plaintiffs.

18. None of these cases address the issue presented here: whether there is any ground for stripping the confidentiality designation from *all* CVA Claim Documents that the Committee has agreed—and the Court has so ordered—are to be afforded confidential treatment in the context of informal discovery in this bankruptcy case. Unlike in the cases cited by the Committee, the CVA Claim Documents meet a specific definition of "Confidential Information" in the Protective Order. The Committee acknowledges also in this motion that the CVA Claim

Documents that it requested and that the Diocese produced are *personnel records*. *See* Motion ¶ 14. And, as shown above, it is well-established that it is entirely proper for a court to protect the confidentiality of an institution's internal personnel records. There is, in short, no basis for the Committee's motion to de-designate *en masse* nearly one million pages of the Diocese's internal, non-public personnel files, including records that concern sensitive information relating to accusations of sexual abuse.

B. The Committee's Other Bases For This Motion Are Not Grounds For Stripping the CVA Claim Documents of Their Confidentiality Designation

19. The Committee also invokes two other rationales in support of this motion, neither of which is a ground for stripping the confidentiality designations from the CVA Claim Documents.

20. As an initial matter, the Committee does not seek, or present any basis for seeking, to modify the Protective Order to which it stipulated in this case. There is an onerous standard that applies to any such request, which requires the party seeking that relief to show "improvidence in the grant of [the] order or some extraordinary circumstance or need," where the parties have reasonably relied on the protective order. *See Martindell v. Int'l Tel. & Tel. Corp.*, 594 F.2d 291, 296 (2d Cir. 1979). The Committee has neither attempted to make this showing, nor has it even invoked this standard. That failing alone disposes of the Committee's other putative rationales for de-designating the CVA Claim Documents.

21. Both of the Committee's alternative rationales also do not hold up to scrutiny. The Committee asserts that the CVA Claim Documents should be made available to plaintiffs in their state court actions that are no longer subject to the stay to which the Committee consented at the outset of this bankruptcy case (the "Unstayed State Court Actions"). *See* Motion ¶ 32. The Confidentiality Agreement provides that "[n]o Confidential Information may be used by any

Recipient for any purpose other than with respect to the Case or any adversary proceeding related to the Case." Confidentiality Agreement ¶ 10. The Committee's proposed order on this motion quotes this language from the Confidentiality Agreement, but the Committee does not make any request or present any basis for *modifying* this express provision to which it agreed.

22. The Regional Child Victims Act Part for the Ninth and Tenth Judicial Districts (i.e., Justice Steinman) has also recently entered an Order that imposes an orderly process for plaintiffs in the Unstayed State Court Actions to obtain discovery from the Diocese in the Unstayed State Court Actions. *See* Stephens Decl. ¶¶ 12-14 & Ex. D. This Order provides for the Diocese to produce to each plaintiff in an Unstayed State Court Action the entire personnel file for the accused abuser in each case. *See* Stephens Decl. ¶¶ 12-14. This production is to be made by January 19, 2024, only three days after the hearing on this motion by the Committee. *See id.* Justice Steinman also entered a Protective Order that, like many protective orders, allows for the Diocese to designate as "Confidential Material" records that reveal confidential, sensitive, or private information about individuals or entities; provides for specific protections to be afforded to such designated documents; and also provides for a procedure to raise and resolve any disputes about confidentiality designations. *See* Stephens Decl. Ex. D.

23. There is, accordingly, a procedure put in place by the CVA-R Part to allow for discovery of the Diocese's personnel records and address the confidentiality of these records that the Diocese will produce as part of that court-ordered discovery. There is no basis for the Committee's assertion that, in effect, this state court process should be overridden by de-designating *en masse* the Diocese's confidential personnel records in this federal bankruptcy case. The CVA-R Part will determine what discovery plaintiffs are entitled to in the Unstayed State Court Actions and has already decided what confidentiality protection is appropriate to

afford to the Diocese's documents in connection with that discovery. Indeed, when the Debtor's counsel informed this Court at the December 19, 2023 hearing that there is a process in place for the Diocese to produce abuser-specific files in each unstayed case pending before Justice Steinman, the Court responded, "I would be much happier if he decides it than I." 12/19/23 Tr. at 82:18-19; *see also id*. at 82:12 ("I'll be very happy if he decides it."). Soon thereafter, on January 5, 2024, Justice Steinman *did* decide the issue and entered an order to govern non-party discovery that is being provided by the Diocese on an expedited basis in all of the Unstayed State Court Actions. It is not at all appropriate to modify the Protective Order in this bankruptcy case in order to facilitate this same pre-trial discovery that is being administered by the CVA-R Part, especially when the parties in this bankruptcy case were well aware of the pendency of state court actions when they entered into the Protective Order in this case.

24. The Committee also asserts that claimants should be permitted to access the confidential CVA Claim Documents in connection with the Debtor's proposed plan of reorganization. *See* Motion ¶ 31. The Committee does not inform the Court, however, that the Confidentiality Agreement *already provides* for a procedure for any claimant who is represented by counsel who also represent a member of the Committee to have access to the CVA Claim Documents related to their particular claim. Any such claimant can become an "Additional Recipient" who is permitted to access Confidential Information produced by the Debtor after he or she executes the undertaking attached as Exhibit B to the Confidentiality Agreement and a copy of that executed undertaking is provided to counsel for the Debtor and the Committee. *See* Confidentiality Agreement ¶ 6.

25. The Committee asserts that claimants "can only make a meaningful decision about how to proceed at this stage of the Bankruptcy Case if they are able to see the universe of

CVA Claims Documents." Motion ¶ 31. The Committee makes no attempt to explain why every claimant in this case would have any legitimate need to review the "universe of CVA Claim[] Documents," which would include for virtually every claimant more than 900,000 pages of documents that *do not relate to his or her claim*. Nor does the Committee offer any explanation for why the confidentiality protection should be stripped from *all* of the CVA Claim Documents—thus allowing for any claimant or claimant's counsel to publicly disseminate all of the Diocese's internal personnel files—in order to allow for each claimant to review personnel files that relate to his claim. There is not even remotely a "fit" here between what the Committee says claimants need and what the Committee is proposing.

26. The record in this case also belies the Committee's assertion. Approximately 64% of the remaining claimants in this case—about 415 claimants—may become recipients of Confidential Information that "relate[s] directly to his or her claim" in the bankruptcy case by executing the undertaking attached to the Confidentiality Agreement. *See* Confidentiality Agreement ¶ 6 & Ex. B. The Debtor has not received a *single executed undertaking* from an Additional Recipient, however, notwithstanding that the Debtor first filed its amended plan of reorganization on November 27, 2023, nearly two months before the hearing on this motion. *See* Stephens Decl. ¶ 9.

27. This is also not the first time that claimants have been confronted with deciding whether to elect to prosecute their claims in state court or pursue an aggregate resolution in bankruptcy court. As the Committee notes in its motion, it moved to dismiss this bankruptcy case on March 27, 2023, and asserted in connection with that motion that claimants would be better off prosecuting their claims in state court than attempting to achieve a resolution in this bankruptcy case—in accordance with plans proposed at that time by both the Committee and the

Debtor. *See Reply in Support of the Motion of the Official Committee of Unsecured Creditors to Dismiss the Chapter 11 Case* (Doc. No. 2230), ¶ 4. Not a single non-Committee member sought access to the CVA Claim Documents that relate to his case in connection with that motion to dismiss, by executing and sending to the Debtor the requisite undertaking to become an "Additional Recipient."

28. The Court will also recall that the Committee supported its motion to dismiss with a presentation about how many claimants purportedly favored dismissing this bankruptcy case. The Court ordered counsel for the claimants who would testify in support of this presentation to disclose the communications with their clients reflecting any recommendation whether to support dismissal of this bankruptcy case in favor of litigating their claims in state court. Every counsel who so testified also had access to the Debtor's Confidential Information, by either their representation of a Committee member or by being a Mediation Party. That means that, under the Confidentiality Agreement, every one of their clients could also have been an "Additional Recipient" and could have reviewed the Debtor's Confidential Information related to his claim. The Committee made its motion to dismiss on March 27, 2023, and the hearing on that motion was on July 10-11, 2023. But, in connection with recommending to their clients not to support the Debtor's then-proposed plan and to support dismissal of this bankruptcy case, not a single claimant's counsel who testified at the hearing reviewed with their clients the merits of their individual claims or the Debtor's personnel files—which counsel had access to and all of their clients could have had access to as well—that related to any of those individual claims. *See* Geremia Decl. Exs. 5-8.

29. Accordingly, not only does the Committee fail to set forth any basis for modifying the Protective Order to allow for the "universe" of CVA Claim Documents to be accessed by

every claimant in this case—and also dissemination by any claimant or claimant's counsel to the media and the public at large—but the record in this case belies the Committee's assertion that claimants "can only make a meaningful decision about how to proceed at this stage of the Bankruptcy Case if they are able to see the universe of CVA Claim[] Documents." Motion ¶ 31. Not a single claimant has sought access to the Debtor's Confidential Information as an "Additional Recipient," notwithstanding that the Debtor's production of CVA Claim Documents has been complete for more than a year and half, since May 31, 2022, and notwithstanding that the Committee's motion to dismiss nearly a year ago put into stark relief whether a claimant should prosecute his state court action or pursue a resolution of his claim as part of a plan of reorganization in this bankruptcy case.

30. This motion to de-designate the CVA Claim Documents is not, in any event, a proper mechanism to seek what would be extreme relief from the Protective Order in order to allow for full-blown public access to all of the Debtor's confidential CVA Claim Documents. Nor has the Committee made the rigorous showing that is required by the Second Circuit to modify the Protective Order to allow for such extraordinary relief.

CONCLUSION

The Debtor therefore respectfully requests that the Court deny the Committee's motion.

Dated: January 9, 2024
New York, New York

Respectfully submitted,

/s/ Todd R. Geremia

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