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OPINION, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (JANUARY 2, 2026)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30466

IN THE MATTER OF THE ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS,

Debtor,

RICHARD C. TRAHANT,

Appellant,

v.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS; ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS; APOSTOLATES; ABUSE CLAIMANTS,

Appellees.

IN THE MATTER OF THE ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS,

Debtor,

RICHARD C. TRAHANT,

Appellant,

v.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS; ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS; APOSTOLATES,

Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC Nos. 2:22-CV-1740, 2:22-CV-4101

Before: RICHMAN, OLDHAM, and RAMIREZ,
Circuit Judges.

PRISCILLA RICHMAN, Circuit Judge:* [1]

This case arises out of the ongoing bankruptcy proceeding involving the Roman Catholic Church of the Archdiocese of New Orleans. Richard Trahant received confidential information regarding sexual abuse allegations against a New Orleans priest while serving as state court counsel for several alleged victims of sexual abuse who were also members of the Official Committee of Unsecured Creditors. Despite a protective order prohibiting the disclosure of confidential information revealed during discovery, Trahant

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* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

[1] Andrew Oldham, Circuit Judge, concurring in the judgment only.

contacted the principal of a local high school to confirm that the priest remained the high school's chaplain. Trahant then sent an email to a journalist listing the priest's name in the subject line, identifying where the priest was employed, and advising the journalist to "[k]eep this guy on your radar." The bankruptcy court held Trahant in contempt for violating the protective order and sanctioned him for his conduct. The district court affirmed.

Trahant now appeals the bankruptcy court's finding of contempt and imposition of sanctions on various grounds. Because we conclude that the bankruptcy court afforded Trahant due process, had jurisdiction, and did not abuse its discretion, we affirm the district court's judgment.

I

A

The Roman Catholic Church of the Archdiocese of New Orleans (Archdiocese) initiated Chapter 11 bankruptcy in response to numerous lawsuits brought against it alleging sexual abuse by priests and laypersons employed or supervised by the Archdiocese. The United States Trustee (Trustee) appointed the Official Committee of Unsecured Creditors (Committee) to represent the interests of the numerous abuse claimants involved in the case. At the time of the events underlying this appeal, the Committee was comprised of six members who each held unsecured tort claims for alleged sexual abuse. Those six members retained counsel to advise them on their individual claims against the Archdiocese and to assist them in fulfilling their duties as Committee members. Richard

Trahant served as counsel or co-counsel in state court for four alleged victims of sexual abuse, who were also members of the Committee.

Due to the sensitive nature of the abuse claims, the bankruptcy court entered a protective order governing the use and disclosure of discovery materials. The court amended its protective order several times to accommodate the needs of the parties. At all times, the protective order permitted the Archdiocese to designate any discovery material as "CONFIDENTIAL" when the material contained non-public information.

The protective order further stipulated that the Committee could use such confidential material "solely in connection with Committee's obligations under the Bankruptcy Code, for purposes of the Chapter 11 Case." It also stipulated that the Committee could not use the confidential material "for any other purpose, including without limitation any business, competitive, governmental, commercial, administrative, publicity, press release, marketing, or research purpose or function, or in any other legal case, lawsuit, proceeding, investigation, or otherwise except as expressly provided herein, or as ordered by the Court." The protective order prohibited disclosure "[e]xcept with the prior written consent of the person asserting [confidentiality], or in accordance with a prior order of the Court."

The Archdiocese produced to the Committee certain material marked "CONFIDENTIAL." This material included documents related to the Archdiocese's internal investigation of decades-old abuse allegations against a specific priest. The priest was not included in the Archdiocese's previously pub-

lished "Credibly Accused List" and was not named in a proof of claim filed in the bankruptcy case. According to the Archdiocese, the allegations against the priest were "totally confidential."

As state court counsel for several Committee members, Trahant had access to this confidential material. After learning about the sexual abuse allegations from the disclosed documents, Trahant became concerned that the priest remained a threat to underage high school students in the New Orleans area. He contacted his cousin, the principal of a local high school, to determine whether the priest was still employed as the high school's chaplain. The following exchange occurred over text message:

> Trahant: Is [priest] still the chaplain at [high school]?
>
> Principal: Yes
>
> Trahant: You and I need to get together soon.
>
> Principal: Sh*t
>
> Trahant: Indeed.
>
> Principal: You beat me to the text. That's an ominous question coming from you.

The next day, Trahant sent an email to a journalist listing the priest's name in the subject line, identifying where the priest was employed, and advising the journalist to "[k]eep this guy on your radar."

Shortly thereafter, Trahant attended a Committee meeting and requested that the high school be notified of the allegations. The Committee contacted the Archdiocese to ensure the priest was "suspended or removed" from the high school. It was then that the

parties learned that the priest was on extended medical leave and not currently in contact with minors at the school. However, the parties also learned that an unidentified person had already contacted high school officials about the allegations. The Archdiocese therefore notified the Committee that this unidentified person had leaked confidential information to officials at the high school. Less than three weeks later, the journalist whom Trahant had contacted published an article naming the priest and disclosing non-public details about the sexual abuse allegations.

B

The Archdiocese responded to these events by filing a sealed motion to compel the Committee to investigate the source of the leak and by asking the bankruptcy court to conduct an evidentiary hearing to consider imposing sanctions. The Archdiocese alleged the Committee allowed confidential material to be disclosed to administrators at the high school and the media in violation of the protective order. The bankruptcy court responded to these allegations by permitting the Archdiocese and the Committee to conduct informal discovery to uncover the source of the leak.

After nearly three months of investigating the breach, the Committee and the Archdiocese received discovery responses from the high school revealing that Trahant had contacted the high school principal multiple times. According to the responses, Trahant sent a text message to the principal inquiring about the status of the priest and had a phone call with the principal discussing the matter a few days later. In light of these revelations, the Committee filed a written declaration by Trahant. There, Trahant admit-

ted that he had contacted the principal but did not disclose that he had communications with the journalist. In an effort to determine the full extent of the breach of confidentiality, the bankruptcy court instructed the Trustee to conduct an independent investigation into the wrongful disclosure of the protected material.

Nearly six months after the initial leak, the Trustee filed its report under seal. The Trustee attached seventy-eight sworn declarations, eighteen transcripts of sworn examinations, and numerous documents, including telephone and text message logs. The Trustee also attached Trahant's deposition wherein he admitted that he had texted the high school principal after receiving confidential information from the discovery materials. In the deposition, Trahant also admitted to contacting the journalist via email. He testified that he knew the reporter would infer from the email that the priest was accused of sexual abuse; he further averred that he intended for the reporter to write about the alleged misconduct.

After reviewing the Trustee's report, the bankruptcy court issued an Order on June 7, 2022 directing the Trustee to relieve Trahant's clients from the Committee. The bankruptcy court concluded: "(i) Trahant had read and was bound by the Protective Order; (ii) knew that he was bound by the Protective Order; and (iii) beginning on December 31, 2021, provided on multiple occasions confidential information he received to a third party and the media in direct violation of this Court's Protective Order." The bankruptcy court, recognizing that it could not interfere with the attorney-client relationship, imputed Trahant's conduct to his clients. The bankruptcy court presumed that further

disclosure of confidential information to Trahant's clients could result in additional unauthorized disclosures to third parties. The Order further stated: "The Court will issue a separate Order To Show Cause to determine appropriate sanctions for Trahant's disclosure of confidential information in violation of this Court's Protective Order." Three days later, Trahant filed a notice of appeal regarding the June 7, 2022 Order, which the Archdiocese moved to dismiss.

Notwithstanding Trahant's appeal, the bankruptcy court later entered an order instructing Trahant to show cause for why he should not be sanctioned for violating the protective order. In doing so, the bankruptcy court granted Trahant access to the Trustee's report, ordered the Archdiocese and the Committee to file invoices identifying professional time spent investigating the protective order violation, and directed Trahant to appear at a show-cause hearing. Trahant immediately filed an emergency motion to stay the show-cause hearing with the district court. The district court denied the motion, concluding that "any action taken against Mr. Trahant at the hearing will leave him with a clear legal remedy: an appeal."

At the show-cause hearing, Trahant's testimony confirmed the relevant facts. He admitted that he learned about the sexual abuse allegations from the confidential discovery materials and knew that he was bound by the protective order. He admitted that he contacted the high school principal and the journalist without permission from the Archdiocese or the Court. Finally, he admitted that he knew both individuals would associate the priest with sexual abuse allegations due to his communications. Additionally, he also stated:

"[D]id I plant a seed? Absolutely. Absolutely. Your Honor is a hundred percent right. Yeah, I planted that seed."

The day after the show-cause hearing, the district court denied the Archdiocese's motion to dismiss Trahant's original appeal. The district court reasoned that the "dismissal [was] unwarranted" because the June 7, 2022 Order "appear[ed] to satisfy the finality and contempt elements required for this appeal to proceed forward." Nevertheless, on October 11, 2022, the bankruptcy court entered an order imposing sanctions against Trahant pursuant to Federal Rule of Civil Procedure 37(b)(2) and 11 U.S.C. § 105(a) for his knowing and willful breach of the protective order. The bankruptcy court acknowledged that it had "made a finding of contempt" against Trahant in the June 7, 2022 Order, and explained that the evidence presented at the show-cause hearing "reconfirmed" its initial finding. The court also noted that "[Trahant's] subsequent evasion and failure to provide information timely to counsel for the Committee and the [Archdiocese] regarding his own conduct constitute[d] bad-faith actions which caused the [Archdiocese], the Committee, and the [Trustee] to divert and expend resources unnecessarily to uncover information that Trahant had all along." The bankruptcy court therefore imposed a $400,000 sanction against Trahant in the October 11, 2022 Order to compensate the parties for the expenses incurred in investigating the breach of the protective order. This sanction accounted for approximately 53% of the $760,884 in attorney's fees and expenses that the Archdiocese and the Committee incurred in investigating and dealing with the breach of the protective order.

Trahant appealed the October 11, 2022 Order, and the district court consolidated the case with Trahant's original appeal from the June 7, 2022 Order. The district court later affirmed the bankruptcy court's finding of contempt and imposition of sanctions. Trahant timely appealed to our court.

II

In considering bankruptcy appeals, our court sits as a court of second review, "applying the same standards of review to the bankruptcy court's findings of fact and conclusions of law as applied by the district court."[2] We review contempt findings, as well as the imposition of sanctions, for abuse of discretion.[3] A bankruptcy court abuses its discretion when "its ruling is based on an erroneous []view of the law or on a clearly erroneous assessment of the evidence."[4] When, as here, "the district court has affirmed the bankruptcy court's factual findings, we will only reverse if left with a firm conviction that error has been committed."[5] We review findings of fact for clear error and questions of law de novo.[6]

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[2] *In re Lopez*, 897 F.3d 663, 668 (5th Cir. 2018) (internal quotation marks omitted) (quoting *In re Heritage Consol., L.L.C.*, 765 F.3d 507, 510 (5th Cir. 2014)).

[3] *In re Bradley*, 588 F.3d 254, 261 (5th Cir. 2009); *see also Waste Mgmt. of Wash., Inc. v. Kattler*, 776 F.3d 336, 339 (5th Cir. 2015).

[4] *In re Yorkshire, LLC*, 540 F.3d 328, 331 (5th Cir. 2008) (quoting *Chaves v. M/V Medina Star*, 47 F.3d 153, 156 (5th Cir. 1995)).

[5] *In re Bradley*, 588 F.3d at 261 (quoting *In re Terrebonne Fuel & Lube, Inc.*, 108 F.3d 609, 613 (5th Cir. 1997)).

[6] *Id.*

Trahant asserts that the bankruptcy court erred in three ways. First, he argues the bankruptcy court's June 7, 2022 Order violated his right to procedural due process by holding him in contempt and imposing sanctions without notice or the opportunity to be heard. Second, he contends that the bankruptcy court lacked jurisdiction to find him in contempt and impose the $400,000 sanction in the October 11, 2022 Order because an earlier appeal divested the bankruptcy court of jurisdiction over the matter. Third, Trahant argues that the bankruptcy court abused its discretion by finding him in contempt and sanctioning him for his conduct. We address Trahant's arguments in this order.

A

"Whether an alleged contemnor was afforded due process is a question of law we review de novo."[7] The procedural due process guaranteed by the Constitution "requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses. . . ."[8] The Supreme Court has made clear that "[d]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances."[9] "[D]ue process is flexible and

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[7] *Kattler*, 776 F.3d at 339.

[8] *In re Oliver*, 333 U.S. 257, 275 (1948).

[9] *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (internal quotation marks omitted) (alteration in original) (quoting *Cafeteria & Rest. Workers Union v. McElroy*, 367 U.S. 886, 895 (1961)).

calls for such procedural protections as the particular situation demands."[10] With this in mind, the starting point for analyzing Trahant's due process claim is a correct understanding of the process the bankruptcy court used when investigating the violation of the protective order and holding Trahant in contempt.

The crux of Trahant's due process argument is that the bankruptcy court entered the June 7, 2022 Order before providing him notice or the opportunity to be heard. According to Trahant, the June 7, 2022 Order constituted a final contempt order because the bankruptcy court found that he violated the protective order and punished him by imposing non-monetary sanctions. Trahant contends that he was entitled to the full panoply of procedural safeguards prior to the issuance of the June 7, 2022 Order because the bankruptcy court exposed him to "public embarrassment and ridicule" and removed his clients from the Committee.

Trahant's argument fails to appreciate the limited scope of the June 7, 2022 Order. Although the bankruptcy court made a preliminary finding that Trahant violated the protective order, it did not sanction Trahant for his conduct at that time. Instead, the court took limited actions that were necessary to protect the integrity of the bankruptcy process. In the words of the bankruptcy court, it removed Trahant's clients from the Committee "to prevent an abuse of process and to ensure adequate representation of [sexual abuse victims]." The bankruptcy court recognized that it could not interfere with the attorney-client relationship,

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[10] *Id.* (alteration in original) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

and, therefore, the court imputed Trahant's conduct to his clients. The bankruptcy court rightfully presumed that further disclosure of confidential information to Trahant's clients could result in further unauthorized disclosures to third parties. Because of the sensitive nature of the abuse claims in the discovery materials, we agree with the district court that the bankruptcy court's actions served as "a prudential prophylactic step, not [as] a sanction on Trahant."

To the extent Trahant now contends that the bankruptcy court's actions in the June 7, 2022 Order constituted a form of non-monetary sanctions, we disagree. As a previous panel of this court recently held, Trahant's clients did not have a legally protected interest in remaining on the Committee.[11] That is because "no creditor has a 'right' to serve or continue serving on a Creditors Committee."[12] Moreover, the substantive rights of Trahant's clients as creditors in the bankruptcy case were not impaired by their removal from the Committee.[13] Trahant therefore cannot claim that the removal of his clients was a non-monetary sanction imposed by the bankruptcy court for his personal conduct.

We also cannot accept Trahant's argument that the June 7, 2022 Order constituted a non-monetary sanction due to his perceived reputational harms. The bankruptcy court's actions in the June 7, 2022 Order were designed to protect the integrity of the

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[11] *In re Roman Cath. Church of Archdiocese of New Orleans*, 101 F.4th 400, 408 (5th Cir. 2024).

[12] *Id.*

[13] *Id.* at 409-10.

bankruptcy process and ensure that highly sensitive information pertaining to alleged sexual abuse remained confidential. In addition, the bankruptcy court did not consider its decision regarding Trahant's conduct to be final. Rather, the court explained that "serious questions remain regarding the extent of the information that was provided to third parties and the media by Trahant." The bankruptcy court fully contemplated a later assessment of Trahant's liability, after he received adequate notice and an opportunity to rebut the charges against him at a show-cause hearing. To this point, the bankruptcy court stated in the June 7, 2022 Order that it would issue a separate show-cause order to determine the appropriate sanctions for the alleged conduct.

This case is readily distinguishable from other due process cases in which our court has held that the alleged contemnor's rights were violated.[14] In *Waste Management of Washington, Inc. v. Kattler*,[15] the attorney who was held in contempt argued that he was not afforded due process because he did not receive adequate notice.[16] The motion to show cause listed the attorney's client, not the attorney, "as the sole potential contemnor whose liability was to be addressed at the hearing."[17] We therefore vacated the

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[14] *See Waste Mgmt. of Wash., Inc. v. Kattler*, 776 F.3d 336, 339-41 (5th Cir. 2015); *CEATS, Inc. v. TicketNetwork, Inc.*, 71 F.4th 314, 323-24 (5th Cir. 2023).

[15] 776 F.3d 336 (5th Cir. 2015).

[16] *Id.* at 339.

[17] *Id.*

contempt order, holding that the notice was insufficient.[18]

The attorney in *Waste Management* challenged a *final* contempt order—he raised his due process claim only *after* the contempt proceeding was completed.[19] By contrast, Trahant's due process claim pertains to a proceeding that was still ongoing. The June 7, 2022 Order stated that the bankruptcy court would issue a separate show-cause order, which provided Trahant adequate notice and the opportunity to rebut the allegations. These procedural safeguards satisfy what due process demands before a court enters a final contempt order.[20] Accordingly, we hold that the bankruptcy court did not violate Trahant's right to procedural due process by issuing the June 7, 2022 Order and removing Trahant's clients from the Committee.

B

Trahant next maintains that the bankruptcy court was without jurisdiction to issue the October 11, 2022 Order because an earlier appeal divested that court of jurisdiction over the matter. At issue is the jurisdictional significance of Trahant's immediate appeal to the district court of the June 7, 2022 Order.

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[18] *Id.* at 340-41.

[19] *See id.* at 339 (stating that the district court found the attorney and client in contempt after the show-cause hearing).

[20] *See, e.g.*, *id.* at 339-40 ("In general, due process requires 'that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses.'" (quoting *In re Oliver*, 333 U.S. 257, 275 (1948))).

Trahant contends that the pending appeal divested the bankruptcy court of jurisdiction.

Whether a bankruptcy court possesses subject matter jurisdiction is a question of law we review de novo.[21] It is axiomatic that "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."[22] "This rule applies with equal force to bankruptcy cases."[23] When a final judgment is appealed from the bankruptcy court, the district court assumes jurisdiction over the matter.[24] Nevertheless, "this rule presupposes that there is a final judgment from which to appeal."[25] Under 28 U.S.C. § 158(a)(3), in the absence of a final judgment, a party cannot appeal an interlocutory order from the bankruptcy court unless the district court grants leave to take an interlocutory appeal.[26]

Our court has explained that "[i]t is well-settled that a civil contempt order is not 'final' for purposes of appeal unless two actions occur: (1) a finding of contempt is issued, and (2) an appropriate sanction is

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[21] *In re OCA, Inc.*, 551 F.3d 359, 366 (5th Cir. 2008).

[22] *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982).

[23] *In re Transtexas Gas Corp.*, 303 F.3d 571, 579 (5th Cir. 2002).

[24] *See id.* (explaining that the notice of appeal from a final order of the bankruptcy court divested the bankruptcy court of jurisdiction over the case and placed jurisdiction in the district court, acting as the appellate court).

[25] *In re U.S. Abatement Corp.*, 39 F.3d 563, 568 (5th Cir. 1994).

[26] 28 U.S.C. § 158(a).

imposed."[27] We have also stated that a contempt order is not "final" when the bankruptcy court "clearly contemplates an assessment of damages in the future."[28] Simply put, finality requires a bankruptcy court to complete its contempt proceeding.

As explained in the preceding section, we disagree with Trahant's characterization of the June 7, 2022 Order as a final contempt order. Following the issuance of that Order, the bankruptcy court stated on multiple occasions that sanctions had not been imposed. For instance, during a hearing one month later, the bankruptcy court stated:

> [T]he Court's order of June 7, 2022 is not a final order because no assessment of sanctions has occurred. In fact, the order specifically states that the Court will issue a separate order to show cause to determine appropriate sanction for Trahant's disclosure of confidential information in violation of this Court's protective order.

Likewise, at the show-cause hearing, the bankruptcy court observed: "Of course, no sanctions have been awarded yet." This underscores that the June 7, 2022 Order was a non-final, interlocutory order.

Nevertheless, this interlocutory order was still subject to review if the district court granted Trahant leave to appeal under 28 U.S.C. § 158(a)(3) and Federal Rule of Bankruptcy Procedure 8004(d). Trahant contends that he requested the district court grant

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[27] *In re U.S. Abatement Corp.*, 39 F.3d at 567.

[28] *Id.*

leave to appeal the June 7, 2022 Order in accordance with Rule 8004(d). He asserts that the district court "expressly allowed the appeal" to move forward by denying the Archdiocese's motion to dismiss for lack of subject matter jurisdiction on August 23, 2022. We disagree.

Under Rule 8004(d), "[i]f an appellant timely files a notice of appeal . . . but does not include a motion for leave, the district court . . . may order the appellant to file a motion for leave, or treat the notice of appeal as a motion for leave and either grant or deny it."[29] Our court has explained that Rule 8004(d) "contemplates some exercise of discretion by the district court—it must 'either grant or deny' leave to appeal."[30] Here, the district court never expressly granted leave to appeal. Instead, the district court incorrectly concluded that the June 7, 2022 Order "appear[ed] to satisfy the finality and contempt elements required for this appeal to proceed forward." This is insufficient. Our caselaw firmly establishes that a district court cannot impliedly grant leave to appeal by merely ruling on an appeal before it from the bankruptcy court.[31]

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[29] Fed. R. Bankr. P. 8004(d) (2024) (amended in 2024 with stylistic changes).

[30] *In re Delta Produce, L.P.*, 845 F.3d 609, 618 (5th Cir. 2016) (quoting FED. R. BANKR. P. 8004(d) (2024)).

[31] *See id.* ("In allowing a district court to treat a notice of appeal as a request for leave to appeal, Rule 8004(d) still contemplates some exercise of discretion by the district court—it must 'either grant or deny' leave to appeal." (quoting Fed. R. Bankr. P. 8004(d) (2024))).

Our unpublished decision in *In re Holloway*[32] elucidates this point. There, the issue was whether a bankruptcy court order that had denied the enforcement of a settlement agreement was appealable to the district court.[33] The district court treated the order as a final appealable order, but on appeal, we held that the order was interlocutory.[34] We concluded that the district court lacked subject matter jurisdiction over the appeal because the district court had not granted leave to allow an appeal of the interlocutory order.[35] We noted that "[n]othing in the record indicate[d]" that the district court chose to treat the notice of appeal as a motion for leave.[36] In other words, even though the district court considered the order to be final and appealable, it could not "impliedly grant" leave to appeal.[37]

Trahant attempts to distinguish *In re Holloway* by noting that he "expressly requested" leave to appeal in his opposition to the motion to dismiss. However, Trahant misses two critical points. First, like the appellant in *In re Holloway*, Trahant failed to file a motion for leave to appeal. Second, as in *In re Holloway*, "[n]othing in the record indicates"[38] that

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[32] 370 F. App'x 490 (5th Cir. 2010) (unpublished).

[33] *Id.* at 491.

[34] *Id.* at 492.

[35] *Id.* at 493.

[36] *Id.*

[37] *Id.* at 492-93.

[38] *Id.* at 493.

the district court chose to treat the notice of appeal as a motion for leave. Accordingly, we conclude that the district court did not grant leave to appeal the June 7, 2022 Order and that Trahant's notice of appeal regarding the June 7, 2022 Order was "premature and of no effect."[39] The bankruptcy court retained subject matter jurisdiction to issue the October 11, 2022 Order.

C

Trahant's final argument is that the bankruptcy court abused its discretion by finding him in contempt and imposing a $400,000 sanction in the October 11, 2022 Order. Trahant asserts that (1) he did not violate the protective order, (2) the October 11, 2022 Order was not supported by competent evidence, and (3) the sanctions are disproportionate to the alleged conduct.

1

Trahant contends that he did not violate the protective order because the only confidential information he communicated to third parties was the priest's name and the fact that the priest was the chaplain at the high school. He maintains that "as a matter of law and public policy, the mere name of a priest who served for many years as a chaplain at a high school either is public, non-protected information or should be declassified under the Protective Order." This argument is unavailing.

First, the bankruptcy court's finding that Trahant disseminated protected information was fully supported by the record. Trahant admitted that he sent text messages to his cousin containing the priest's name

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[39] *In re U.S. Abatement Corp.*, 39 F.3d 563, 568 (5th Cir. 1994).

and asking if the priest was still employed at the high school. Trahant also averred that, when sending those messages, he knew his cousin would understand the priest had been accused of sexual abuse. Trahant confirmed that he intended to "plant a seed" because "[he] didn't want that guy back on [the high school] campus." Moreover, Trahant admitted that he contacted the journalist with the intention that the journalist would investigate and report on the alleged misconduct. In doing so, Trahant communicated confidential information "contained in, or derived from" the protected materials in direct violation of the protective order.

Second, even if the priest's name and association with the high school were public information, the fact that the priest was associated with allegations of sexual abuse was undoubtedly confidential. The priest's name was not included on the "Credibly Accused List" that was originally published by the Archdiocese to the general public in 2018. Nor were the allegations against the priest identified in a proof of claim filed in the bankruptcy case. As noted by the Archdiocese, the allegations against the priest were "totally confidential." For these reasons, the bankruptcy court correctly concluded that "[n]o dispute exists that the information that reached the media was information that could not have come from any other source but the [Archdiocese's] production of discovery in this case."

Lastly, Trahant's contention that the priest's name should be "declassified" now does not excuse his failure to seek declassification before revealing the confidential information. Even if there were an over-classification issue in this bankruptcy proceeding, the protective order provided a detailed process for

challenging confidentiality designations. Paragraph 6 provided that a party could "move the court for an order stating that the information designated as [confidential] is not confidential information within the meaning of this Protective Order and is not entitled to the protections of this Protective Order." This provision is unambiguous; it did not empower Trahant to disclose confidential information before the confidential designation had been lifted. To this point, protective orders serve as narrow exceptions to the general rule of disclosure.[40] They allow parties to keep specific categories of documents confidential by agreement. Here, the protective order governed not only what materials were protected, but also the method of contesting a confidentiality designation. By failing to follow these terms, Trahant violated the protective order.

2

Trahant next contends that the October 11, 2022 Order is not supported by competent evidence. He maintains that the evidence considered by the bankruptcy court, including the attorney fee statements, the Trustee's report, and Trahant's deposition,

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[40] *See Le v. Exeter Fin. Corp.*, 990 F.3d 410, 416-19 (5th Cir. 2021) ("[T]he working presumption is that judicial records should not be sealed."); *see also Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34 (1984) ("[A] protective order prevents a party from disseminating *only* that information obtained through use of the discovery process. Thus, [a litigant] may disseminate the identical information covered by the protective order as long as the information is gained through means independent of the court's processes." (emphasis added)).

was not properly offered by the parties. In the words of the district court, this argument "blinks reality."

The bankruptcy court stated—on multiple occasions—that it was adopting the factual findings of the Trustee's report and considering the fees and costs the parties incurred due to Trahant's conduct. Trahant's attorney specifically acknowledged that the bankruptcy court had "adopted the findings of the report" and challenged the report as inadmissible hearsay during the show-cause hearing. Likewise, Trahant was fully aware that the parties were submitting invoices to the court so that the court could determine the appropriate sanction. But Trahant did not object to the bankruptcy court's consideration of the invoices.

Unlike the cases invoked by Trahant, wherein disputed documents were not presented to the court or considered by the court,[41] the evidence at issue here was filed in the record and considered by the bankruptcy court in issuing its October 11, 2022 Order. The record included an extensive exchange between the bankruptcy court and Trahant during the show-cause hearing as well as Trahant's own deposition. It also included the Trustee's report and the attorney fee statements, which the bankruptcy court specifically ordered the parties to prepare for its consideration in the contempt proceeding. Trahant was

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[41] *See Callejo v. Bancomer, S.A.*, 764 F.2d 1101, 1119 n.25 (5th Cir. 1985) (refusing to consider on appeal letters that were not presented to the district court); *United States v. Dwoskin*, 644 F.2d 418, 421 (5th Cir. 1981) ("[T]he record is clear that this check was not admitted into evidence because it could not be identified. . . . We can not consider 'evidence' which is not in the record.").

provided multiple opportunities to confront this evidence and rebut any findings made by the bankruptcy court by offering his own evidence into the record. We therefore cannot accept Trahant's contention that the October 11, 2022 Order was not supported by competent evidence.

3

Notwithstanding the fact that the record fully supported the bankruptcy court's finding that Trahant violated the protective order, Trahant maintains that he "acted in the utmost good faith at all times" and that the sanctions are "disproportionate" to the alleged conduct. To support this argument, Trahant points to his "legal, moral, and ethical obligation . . . to keep [the priest] away from children." He also points to his belief that the $400,000 sanction is "not causally related to any actual damage or prejudice to any party." These arguments are without merit.

Although the bankruptcy court issued its October 11, 2022 Order pursuant to both Federal Rule of Civil Procedure 37(b)(2) and 11 U.S.C. § 105(a), we consider its reliance on Rule 37(b)(2) to be sufficient. Under Rule 37(b)(2), a bankruptcy court may impose sanctions for the failure to obey discovery orders, including protective orders.[42]

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[42] *See* Fed. R. Bankr. P. 7037 (2024) (amended in 2024 with stylistic changes) (incorporating Rule 37 of the Federal Rules of Civil Procedure into the bankruptcy Rules); *see also Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 488-90 (5th Cir. 2012) (applying Rule 37(b)(2) to a violation of a protective order).

We have repeatedly emphasized that courts "ha[ve] broad discretion under Rule 37(b) to fashion remedies suited to the misconduct."[43] Authorized sanctions under Rule 37(b)(2) include imposing reasonable expenses, such as attorney's fees resulting from the failure to obey a discovery order.[44] While more onerous sanctions, such as striking pleadings or dismissing a case, require a finding of willfulness or bad faith, lesser sanctions do not.[45] Sanctions are proper when clear and convincing evidence indicates "(1) that a court order was *in effect*, and (2) that the order required certain conduct by the respondent, and (3) that the respondent failed to comply with the court's order."[46] As previously explained, the evidence in the record established that Trahant violated the protective order, meaning the bankruptcy court did not abuse its discretion in imposing sanctions.

Trahant nevertheless contends that the $400,000 sanction is disproportionate because "the only allegedly contemptuous conduct that [he] engaged in was to communicate [the priest's] name and the fact that [the priest] was the chaplain at [the high school]." Trahant further asserts that the costs incurred by the Archdiocese and the Committee were "self-imposed and

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[43] *Smith & Fuller, P.A.*, 685 F.3d at 488 (quoting *Pressey v. Patterson*, 898 F.2d 1018, 1021 (5th Cir. 1990)).

[44] *Id.* at 488, 490.

[45] *Id.* at 488.

[46] *In re Bradley*, 588 F.3d 254, 264 (5th Cir. 2009) (quoting *Fed. Deposit Ins. Corp. v. LeGrand*, 43 F.3d 163, 170 (5th Cir. 1995)); *see also Waste Mgmt. of Wash., Inc. v. Kattler*, 776 F.3d 336, 341 (5th Cir. 2015) ("To hold a party in civil contempt, the court must find such a violation by clear and convincing evidence.").

mitigable" because he "made every effort to discuss what he knew but was repeatedly rebuffed." We disagree.

For months, Trahant avoided accountability by not admitting to the violation. As early as February 9, 2022, Trahant was aware that his communications with the high school principal and the journalist may have constituted a violation of the protective order. He specifically contacted the bankruptcy court via email to request permission to attend a status conference on the matter that was to be held on February 11, 2022. However, rather than disclosing his own conduct, the email stated that an investigation should be pursued against the Archdiocese. Similarly, on March 17, 2022, Trahant attended a public hearing regarding the matter. Instead of disclosing his conduct, Trahant remained silent while the attorneys argued over the investigation.

It was not until April 12, 2022, that Trahant finally admitted that he had contacted the high school principal. But even this admission came only after the high school revealed in a response to interrogatories filed eight days before that Trahant was the source of the confidential information. Moreover, Trahant's admission did not mention his disclosure of confidential information to the journalist. The bankruptcy court, therefore, reasonably concluded that Trahant's failure to come forward "created waste, disrupted the progress in this case, and delayed resolution of this particular matter for months." The bankruptcy court also reasonably concluded that a sanction reflecting the costs incurred by the Archdiocese and the Committee in investigating the leak was appropriate.

Trahant's reliance on *Topalian v. Ehrman*[47] is not to the contrary. There, we held that a court's reasoning for imposing sanctions must reflect the following four factors:

> (1) What conduct is being punished or is sought to be deterred by the sanction? . . . (2) What expenses or costs were caused by the violation of the rule? . . . (3) Were the costs or expenses "reasonable," as opposed to self-imposed, mitigatable, or the result of delay in seeking court intervention? . . . (4) Was the sanction the least severe sanction adequate to achieve the purpose of the rule under which it was imposed?[48]

Although the bankruptcy court did not explicitly reference these factors, the court addressed these concerns in the October 11, 2022 Order. The bankruptcy court provided a detailed summary of the expenses incurred by the parties, described why these expenses were incurred, and explained the conduct the court sought to deter by imposing the sanctions. The bankruptcy court also explained that, under the circumstances, the sanction award was narrowly tailored to the wrong. Despite finding the billing entries to be justified, the bankruptcy court reduced the total amount of the fees incurred by approximately 50% to arrive at the $400,000 sanction imposed. In light of this reduction and the fees incurred due to Trahant's misconduct, we hold that the bankruptcy court did not abuse its discretion.

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[47] 3 F.3d 931 (5th Cir. 1993).

[48] *Id.* at 936-37 (emphasis omitted).

* * *

For the foregoing reasons, we AFFIRM the district court's judgment affirming the bankruptcy court's finding of contempt and imposition of sanctions.

JUDGMENT, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (JANUARY 2, 2026)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30466

IN THE MATTER OF THE ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS,

Debtor,

RICHARD C. TRAHANT,

Appellant,

v.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS; ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS; APOSTOLATES; ABUSE CLAIMANTS,

Appellees.

IN THE MATTER OF THE ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS,

Debtor,

RICHARD C. TRAHANT,

Appellant,

v.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS; ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS; APOSTOLATES,

Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC Nos. 2:22-CV-1740, 2:22-CV-4101

Before: RICHMAN, OLDHAM, and RAMIREZ,
Circuit Judges.[1]

JUDGMENT

This cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that Appellant pay to Appellees the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a

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[1] Andrew Oldham, Circuit Judge, concurring in the judgment only.

timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. *See* Fed. R. App. P. 41(b). The court may shorten or extend the time by order. *See* 5th Cir. R. 41 I.O.P.

ORDER, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (AUGUST 16, 2023)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30466

IN THE MATTER OF THE
ROMAN CATHOLIC CHURCH OF THE
ARCHDIOCESE OF NEW ORLEANS,

Debtor,

RICHARD C. TRAHANT,

Appellant,

v.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS; ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS; APOSTOLATES; HANCOCK WHITNEY BANK; ABUSE CLAIMANTS,

Appellees.

IN THE MATTER OF THE
ROMAN CATHOLIC CHURCH OF THE
ARCHDIOCESE OF NEW ORLEANS,

Debtor,

RICHARD C. TRAHANT,

Appellant,

v.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS; ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS; APOSTOLATES,

Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC Nos. 2:22-CV-1740, 2:22-CV-4101

Before: Don R. WILLETT, U.S. Circuit Judge.

ORDER

IT IS ORDERED that Appellant's opposed motion to unseal the sealed portions of the record on appeal is DENIED.

IT IS FURTHER ORDERED that Appellant's alternative motion to view and obtain sealed documents is GRANTED.

IT IS FURTHER ORDERED that Appellant's opposed motion to establish the evidentiary record on appeal is DENIED.

/s/ Don R. Willett
U.S. Circuit Judge

OPINION, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA (JUNE 21, 2023)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS

CIVIL ACTION No. 22-1740 c/w 22-4101

SECTION M (2)

Before: Barry W. ASHE, U.S. District Judge.

OPINION

Before the Court is the motion of appellant Richard C. Trahant for rehearing of the March 27, 2023 opinion and corresponding judgments entered on March 28 and April 11, 2023.[1] Appellee the Roman Catholic Church of the Archdiocese of New Orleans (the "Archdiocese") responds in opposition.[2] Also before the Court is Trahant's motion to vacate the

[1] R. Docs. 90; 91 (citing the March 27, 2023 opinion, R. Doc. 88, and the corresponding judgments, R. Doc. 89 in this action and R. Doc. 5 in Civil Action No. 22-4101). Trahant filed his motion in each of these consolidated appeals. Because the motions are nearly identical, the Court will cite only to R. Doc. 90 in this opinion.

[2] R. Doc. 95.

March 27, 2023 opinion and the corresponding judgments.[3] The Archdiocese responds in opposition,[4] and Trahant replies in further support of his motion.[5] Although both the motions for rehearing and the motion to vacate are DENIED for the reasons set out herein, the undersigned withdraws the court's March 27, 2023 opinion in this matter and substitutes the following, which addresses the issues raised in the appeal as well as those raised by Trahant's motions for rehearing and his motion to vacate.[6]

* * * *

OPINION ON TRAHANT'S APPEALS

These consolidated appeals arise out of two orders issued by the bankruptcy court on June 7, 2022, and October 11, 2022,[7] the first enforcing the court's pro-

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[3] R. Doc. 102.

[4] R. Doc. 103.

[5] R. Doc. 106.

[6] This Court sits as an appellate court-essentially a court of first review-concerning the orders of the bankruptcy court in this matter. When acting as the court of first review as to matters on appeal from a district court, the Fifth Circuit sometimes withdraws a prior opinion, and substitutes another, in response to a petition for rehearing so that it may clarify factual or legal points misapprehended by the petitioner, even though rehearing is ultimately denied. *See, e.g., Crawford v. Cain,* 68 F.4th 273, 279 (5th Cir. 2023); *Craig v. Martin,* 49 F.4th 404 (5th Cir. 2022); *MTGLQ Investors, L.P. v. Walden,* 2021 WL 4888870 (5th Cir. Oct. 19, 2021); *Eldridge v. Stephens,* 608 F. App'x 289 (5th Cir. 2015). This Court, as the court of first review in this bankruptcy matter, does likewise.

[7] Civil Action No. 22-1740 (Trahant's appeal from the bankruptcy court's June 7, 2022 order) was consolidated with Civil Action

tective order upon finding that appellant Richard C. Trahant had violated it, and the second imposing sanctions on Trahant upon finding him in contempt of court for disclosing confidential information to third parties. For the reasons below, the bankruptcy court's orders are AFFIRMED.

I. Background

The underlying Chapter 11 bankruptcy was initiated on May 1, 2020, by the debtor-appellee, the Archdiocese, largely in response to numerous lawsuits brought against it in state court alleging sexual abuse by priests or lay persons employed or supervised by the Archdiocese and complicity of the Archdiocese in that abuse.[8] These are devastatingly serious allegations that should be resolved at the soonest for scores of reasons, including justice and healing for all involved, especially the victims, but also for the larger community and all affected by the titanic breach of trust at the heart of the allegations. Achieving this end is the professed goal of all the stakeholders in the bankruptcy, including the bankruptcy court, the claimants who are sexual abuse victims, other creditors, and the debtor itself. And yet, ancillary matters-like the events necessarily addressed by the bankruptcy court in the orders at issue here-have unfortunately sidetracked the

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No. 22-4101 (Trahant's appeal from the bankruptcy court's October 11, 2022 order) because both orders deal with Trahant's violation of the bankruptcy court's protective order. R. Doc. 76. Unless otherwise indicated, all record document citations are found in Civil Action No. 22-1740.

[8] No. 22-4101, R. Doc. 1-2 at 5. After filing for bankruptcy relief, the Archdiocese removed the state-court cases to this federal court, and those cases are stayed pursuant to 11 U.S.C. § 362(a). No. 22-4101, R. Doc. 1-2 at 5.

bankruptcy case from this principal goal. Thus, while the issues at hand are serious, involving as they do Trahant's admitted breach of the protective order governing the Archdiocese's bankruptcy case, they are secondary to the main matters of the case. It is high time that these ancillary matters are resolved, so that the stakeholders can get on with confecting and confirming a plan of reorganization that encompasses a program to deal with the sexual abuse claims and the other essential questions posed by the bankruptcy.

Now, as to the orders on appeal-in which the bankruptcy court was forced to confront the protective order violation-the resolution of the issues they raise becomes clear once the chronology of events and the bankruptcy court's stepped approach to sorting them out are plainly understood. In short, this appeal deals with the bankruptcy court's deliberate handling of a known violation of the protective order it put in place to protect the confidentiality of information that sexual abuse victims themselves sought to keep private. Once the disclosure and suspected violation came to light, the bankruptcy court presided over a first phase involving an investigation of the violation and enforcement of the protective order. This phase culminated in the June 7, 2022 order finding that a violation had indeed occurred and implementing practical steps to prevent any additional unauthorized disclosure of protected information, any additional violation of the protective order, and any additional abuse of the bankruptcy or judicial process. And once the violation was established and the protective order vouchsafed, the bankruptcy court presided over a second phase involving a contempt proceeding against Trahant, which culminated in the October 11, 2022

order imposing sanctions against him. So understood, all of Trahant's objections to the way in which he was treated come to naught.

Let's begin then with the timeline of events. The Archdiocese filed for bankruptcy on May 1, 2020. On May 20, 2020, within three weeks of the initiation of the bankruptcy, the United States Trustee (the "Trustee") appointed the Official Committee of Unsecured Creditors (the "Committee") and, thereafter, reconstituted it twice-first on June 10, 2020, then again on October 8, 2020.[9] At the time of the events underlying the appeal, the Committee was comprised of six of the more than 450 abuse claimants.[10] The Committee, as a single unit and with the bankruptcy court's approval, is represented by the law firms of Locke Lord LLP and Pachulski Stang Ziehl & Jones LLP.[11] However, individual members of the Committee retained their respective state-court counsel to advise them on their individual claims against the Archdiocese and its bankruptcy estate and to assist them in fulfilling their duties as Committee members.[12] Until

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[9] No. 22-4101, R. Docs. 2-1 at 40; 2-2 at 1-2. For a more complete explanation of the Committee's role in a bankruptcy proceeding and a narrative of the facts, *see* No. 22-4101, R. Doc. 1-2 at 1-22.

[10] *Id.* at 6. Although not strictly relevant to the present appeal, the Court notes that, on March 5, 2021, the Trustee, pursuant to an order of the bankruptcy court, appointed a separate official committee comprised of unsecured *commercial* creditors. *Id.*

[11] *Id.*

[12] *Id.*

June 7, 2022, Trahant served as counsel or co-counsel to four of the individual members of the Committee.[13]

On August 3, 2020, the bankruptcy court adopted the protective order negotiated by the Archdiocese and the Committee to govern the use and disclosure of "Protected Material" produced in discovery.[14] The protective order, which has been amended as needed,[15] remains in place.[16] "Protected Material" is defined by the protective order as discovery (whether documents or information) designated by the producing party as "CONFIDENTIAL" or "CONFIDENTIAL — ATTORNEYS EYES ONLY."[17] The producing party may designate a document as "CONFIDENTIAL" when it contains "Confidential Information," meaning "any non-public information provided by a [p]arty wherein such information is not public or available to the general public."[18] "The [p]arty requesting the material shall be responsible for safeguarding all produced materials and information designated as 'CONFIDENTIAL' in accordance with the provisions of this

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[13] *Id. See also* R. Doc. 1-4 at 3; No. 22-4101, R. Doc. 2-2 at 1-2.

[14] No. 22-4101, R. Doc. 1-2 at 7. The original protective order is found at R. Doc. 33-2 at 23-43, and No. 22-4101, R. Doc. 2-1 at 48-68.

[15] The protective order was amended and supplemented in January, May, and October 2021 to meet certain case needs as they arose. R. Doc. 33-2 at 51-71, 110-14, and 127-31.

[16] No. 22-4101, R. Doc. 1-2 at 7.

[17] R. Doc. 33-2 at 25.

[18] *Id.* at 26.

Protective Order."[19] Paragraph 7 of the protective order limits the disclosure or dissemination of any discovery material marked "CONFIDENTIAL" to purposes related to the bankruptcy proceeding and, even then, only to certain persons or entities, including the Trustee, the Archdiocese as debtor (its officers, employees, and agents), the Committee (its members and their attorneys), and other creditors and bankruptcy-case constituents, after they sign a confidentiality statement.[20] In particular, under the protective order, the Committee may use such material:

> *solely* in connection with [the] Committee's obligations under the Bankruptcy Code, for purposes of the Chapter 11 Case, and/or for purposes of any judicial proceedings relating thereto (including informal discovery and any contested matters and adversary proceedings commenced in connection with the Chapter 11 Case), *and not for any other purpose,* including without limitation any business, competitive, governmental, commercial, administrative, *publicity, press release,* marketing, or research purpose or function, or in any other legal case, lawsuit, proceeding, investigation, or otherwise *except as expressly provided herein, or as ordered by the Court[.]*[21]

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[19] *Id.*

[20] *Id.* at 30-32.

[21] *Id.* at 30 (emphasis added). These uses constitute the "Authorized Uses" under the protective order. *Id.* at 30-31.

Paragraph 9 of the protective order also delimits the prohibited uses of Protected Material:

> Any Protected Material, and all information derived from Protected Material (including, but not limited to, all testimony, deposition, or otherwise, that refers, reflects or otherwise discusses any information designated "CONFIDENTIAL" or "CONFIDENTIAL — ATTORNEYS' EYES ONLY" under this Protective Order), shall not be used, directly or indirectly, by any person for any business, commercial or competitive purposes, or for any purpose whatsoever other than for Authorized Uses.[22]

Importantly, paragraph 6 outlines the procedure for challenging the "CONFIDENTIAL" designation of any materials produced in discovery and having the designation removed, if warranted.[23] In all other circumstances, paragraph 10 of the protective order makes it clear that any disclosure of Protected Material beyond the methods set out in the order is strictly prohibited, reciting:

> Except with the prior written consent of the person asserting "CONFIDENTIAL" or "CONFIDENTIAL — ATTORNEYS' EYES ONLY" treatment, or in accordance with a prior order of the Court after notice, any Protected Material, and *any information contained in, or derived from Protected Material* (including, but not limited to, all deposition, examination

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[22] *Id.* at 35.

[23] *Id.* at 27-30.

> or hearing testimony that refers, reflects, or otherwise discusses any information designated "CONFIDENTIAL" or "CONFIDENTIAL — ATTORNEYS' EYES ONLY") may not be disclosed other than in accordance with this Protective Order.[24]

Trahant, as an attorney representing some of the individual Committee members, read, signed, and was bound by the protective order.[25]

In **December 2021**, the Archdiocese produced certain "CONFIDENTIAL" materials to the Committee in response to discovery requests in the bankruptcy proceeding.[26] The materials included documents related to proceedings held before the Archdiocese's Internal Review Board, which investigates allegations of sexual abuse made against clergy.[27] Specifically, certain of the documents contained the board's evaluation of decades-old abuse allegations by an accuser (who had kept her name and experience out of the public eye) against a specific priest (who had not been included on the Archdiocese's "Credibly Accused List" or named in a proof of claim filed in the bankruptcy case).[28]

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[24] *Id.* at 36 (emphasis added).

[25] *Id.* at 23.

[26] No. 22-4101, R. Doc. 2-3 at 51.

[27] *Id.*

[28] No. 22-4101, R. Doc. 1-2 at 13. In November 2018, the Archdiocese published the "Credibly Accused List," which names clergy who have been removed from the ministry due to allegations of sexually abusing a minor. *Id.*

On **December 31, 2021**, Trahant (whose law practice overwhelmingly consists of litigating clergy sexual abuse cases) texted his cousin, the principal of the high school where the priest worked, mentioning the priest's name and knowing that his cousin, who was aware of the nature of his law practice, would infer from Trahant's action that the priest had been accused of sexual abuse.[29] Trahant admitted that he did this to ensure that the priest would not be allowed to return to work at the high school.[30] The text was quickly followed by conversations between Trahant and his cousin, beginning on January 4, 2022, and continuing, along with additional texts, into the first part of January 2022.[31] At some point in these communications, Trahant disclosed to his cousin the nature of the allegations against the priest which he had learned through his receipt of the confidential documents produced by the Archdiocese.[32]

On **January 1, 2022**, Trahant sent an email to a journalist listing the priest's name in the subject line, identifying in the body of the email where the priest was employed, and advising the journalist to "keep him on your radar."[33] Trahant admitted that he knew that the journalist, who investigated and reported on clergy abuse allegations, would then pursue every lead concerning allegations of sexual abuse involving

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[29] *Id.* at 14.

[30] *Id.* at 14-15.

[31] No. 22-4101, R. Doc. 2-11 at 332.

[32] No. 22-4101, R. Doc. 1-2 at 15.

[33] *Id.*

that priest. Trahant also admitted that his purpose in contacting the journalist was to get an article published disclosing the priest's conduct.[34]

On **January 4, 2022**, during a phone conference, counsel for the Committee informed the Archdiocese's counsel about its concerns that a priest against whom sexual abuse claims had been made was currently serving as chaplain at a local high school.[35] The Archdiocese's counsel contacted its client and learned that the priest was on extended medical leave and consequently had no contact with minors at the school.[36] Counsel also learned, however, that prior to January 4, an unidentified person had also contacted the high school with detailed information about the priest, as officials from the high school had already called the Archdiocese about the issue.[37]

On **January 18, 2022**, the journalist who Trahant had previously emailed published an article in an online newspaper naming the priest, disclosing details about the sexual abuse allegations against him, and disclosing information about the Archdiocese's Internal Review Board's investigation and disposition of the claims — none of which had been public before then.[38]

On **January 20, 2022**, the Archdiocese filed a sealed motion asserting violations of the bankruptcy

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[34] *Id.*

[35] No. 22-4101, R. Docs. 1-2 at 9-10; 2-3 at 51.

[36] No. 22-4101, R. Docs. 1-2 at 10; 2-3 at 52.

[37] No. 22-4101, R. Docs. 1-2 at 10; 2-3 at 52-53.

[38] No. 22-4101, R. Docs. 1-2 at 4; 2-3 at 55.

court's protective order, specifically alleging that the Committee had allowed Protected Material, produced by the Archdiocese pursuant to the confidentiality protections of the order, to be disclosed to administrators at a local high school and to a local journalist leading to its publication.[39] The motion sought to compel the Committee to investigate the source of the breach and asked the bankruptcy court to conduct an evidentiary hearing to consider imposing sanctions for the violation of the protective order.[40]

On **January 27, 2022**, the bankruptcy court held an initial status conference with counsel for the Committee and the Archdiocese to discuss the motion to compel.[41] The Trustee and individual counsel for one of the Committee members were also in attendance.[42] At the request of counsel for the Committee and Archdiocese, the bankruptcy court allowed them to conduct informal discovery concerning the matters raised in the motion and held three additional status conferences between February 11 and April 14, 2022, to receive progress updates.[43] The objective of the discovery was to uncover the source of the leak of the confidential information.[44]

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[39] No. 22-4101, R. Docs. 1-2 at 9; 2-3 at 46-58.

[40] *Id.*

[41] No. 22-4101, R. Doc. 1-2 at 10.

[42] *Id.*

[43] *Id.*

[44] Trahant makes much of his efforts to participate in these status conferences, obliquely blaming the restrictions on his participation for his failure to come clean that he was the source

At the **February 11 and March 11, 2022** status conferences, counsel for the Committee reported that interviews of its attorneys and firm support staff, the Committee members, and the Committee members' individual counsel (who included Trahant) did not uncover any evidence that a Committee member or representative had breached the protective order.[45] This means that, as of these dates, Trahant had not even told counsel for the Committee about his role in making the disclosures in question.

On **April 4, 2022**, as a part of the investigation instigated by the motion to compel, the Committee and the Archdiocese received discovery responses from the high school revealing that Trahant had contacted the principal of the high school multiple times beginning on December 31, 2021, regarding certain Protected Material.[46]

On **April 13, 2022**, counsel for the Committee filed under seal various written declarations, including one by Trahant in which he admitted that on December 31, 2021, he first contacted his cousin, the principal of the high school, regarding Protected Material he received in his role as counsel for a Committee mem-

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of the disclosures to the principal and the journalist. The bankruptcy court was correct to discount this self-serving deflection, however, as Trahant was free to tell the court of his role without having more extensive participation in the status conferences — hardly the only vehicle available to Trahant for communicating to the court.

[45] *Id.* at 10-11.

[46] *Id.* at 11.

ber.[47] In the declaration, Trahant asserted that he believed that protecting minors was a legitimate compelling reason for the disclosure.[48] Despite having disclosed the priest's name to the high school principal and the journalist, clear violations of the protective order, Trahant also swore in his declaration that he "did not provide any 'confidential' documents to or discuss the contents of any 'confidential' documents with" any officials at the high school and "did not disclose or disseminate any documents marked in any way confidential, the contents of documents, or any other information produced by the [Archdiocese] to" the journalist or anyone else affiliated with the newspaper.[49]

At the **April 14, 2022** status conference, the parties discussed with the bankruptcy court the discovery responses from the high school revealing that Trahant had contacted the principal of the high school by text message on December 31 2021, and by telephone on January 4, 2022, inquiring about the priest at issue and discussing the allegations against him.[50] In light of these troubling discoveries, which were at odds with the reports made at the earlier status conferences, the bankruptcy court agreed to the parties' request that the Trustee be appointed to conduct an independent investigation.[51]

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[47] No. 22-4101, R. Docs. 1-2 at 11; 2-11 at 330-33.

[48] No. 22-4101, R. Docs. 1-2 at 11; 2-11 at 331.

[49] No. 22-4101, R. Docs. 1-2 at 11; 2-11 at 332-33.

[50] No. 22-4101, R. Doc. 2-11 at 254-57.

[51] No. 22-4101, R. Doc. 1-2 at 12. *See* 2 COLLIER ON bankruptcy ¶ 307.02, at 307-3 (Richard Levin & Henry J. Sommer eds., 16th ed.) ("The United States trustee is often the only party

On **April 25, 2022**, the bankruptcy court issued an order instructing the Trustee to investigate the allegations of wrongful dissemination of Protected Material.[52] The bankruptcy court "was concerned not only with enforcing its own [o]rders, but with the timing of such breach and the negative impact that violation would have on the functioning of the Committee, the rights of parties in interest in the bankruptcy process, and the ability of the parties in th[e bankruptcy] case to proceed in good faith in the upcoming mediation of claims asserted against the estate."[53] The bankruptcy court directed the Trustee to submit its findings on or before June 3, 2022, stating: "Upon reviewing the United States Trustee's Statement of Position, the Court will schedule a further hearing to determine what action, if any, should be taken."[54]

On **June 3, 2022**, the Trustee filed its statement of position under seal, attaching 78 sworn declarations, 18 transcripts of sworn examinations provided under Rule 2004 of the Federal Rules of Bankruptcy Procedure, one transcript and one summary of two unsworn telephone interviews, and numerous documents produced to the Trustee in discovery, including telephone and text message logs, e-discovery transaction reports, and emails, letters, and text messages

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likely to pursue matters that go to the integrity or efficiency of the bankruptcy system but do not involve a recovery for the party bringing the matter.").

[52] R. Doc. 33-2 at 344-46; No. 22-4101, R. Doc. 1-2 at 12.

[53] No. 22-4101, R. Doc. 1-2 at 12.

[54] R. Doc. 33-2 at 345; No. 22-4101, R. Doc. 1-2 at 12.

(collectively, the "Trustee's Report").[55] Trahant's Rule 2004 deposition was among these supporting documents, and his deposition testimony revealed additional protective order violations.[56] In his deposition, Trahant testified that his law practice consists largely of litigating clergy sexual abuse claims.[57] He admitted that, as counsel for four of the Committee members, he read, and was bound by, the protective order and all of its amendments.[58] Trahant stated that he first learned of the abuse allegations against the priest at issue on December 30 or 31, 2021, through his receipt of the discovery produced by the Archdiocese.[59] Trahant recognized the priest's name and conducted an internet search to find his current residence and workplace.[60] When the Trustee confronted Trahant with his sworn declaration and the December 31, 2021 text messages, Trahant admitted that he contacted his cousin, the high school principal, to inquire about the priest by name, knowing that his cousin would immediately infer that the priest had been accused of sexual abuse.[61] Trahant stated that

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[55] No. 22-4101, R. Doc. 1-2 at 12-13. While the Trustee's Report was sealed, all parties bound by the protective order, including Trahant, were afforded the opportunity to review the full report and its attachments. *Id.* at 13.

[56] No. 22-4101, R. Doc. 2-11 at 334-99.

[57] No. 22-4101, R. Doc. 1-2 at 14.

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] No. 22-4101, R. Docs. 1-2 at 14; 2-11 at 343-44 (testifying that the principal "immediately knew — simply based on my ques-

his purpose was to ensure that the priest would not return to work at the high school.[62] Trahant also admitted to further text and telephone communications with his cousin through January 4, 2022, during which he revealed the nature of the allegations against the priest, which he had only learned from the Protected Material produced in discovery.[63] In the deposition, the Trustee also confronted Trahant with his January 1, 2022 email to the journalist — the one with the subject line containing only the name of the priest, while the body of the email read: "Keep this guy on your radar. He is currently the chaplain at [the high school]."[64] Trahant admitted that he knew the reporter would infer from the email that the priest had been accused of sexual abuse and then would write about it.[65] Trahant was adamant in his deposition that he did not believe his actions violated the protective order, but he also testified contradictorily that he felt restricted by its provisions.[66] He admitted, however, that he did not move for relief from the protective order to report what he claims were potential crimes, nor did he use the protective order's mech-

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tion, he knew what the inference was").

[62] No. 22-4101, R. Docs. 1-2 at 14-15; 2-11 at 344-45.

[63] No. 22-4101, R. Docs. 1-2 at 15; 2-11 at 351-53.

[64] No. 22-4101, R. Docs. 1-2 at 15; 2-11 at 345.

[65] *Id.* (testifying that he knew the reporter had "been deeply involved in reporting on the clergy abuse crisis" and sent the email for the purpose of "alerting him, without telling him anything, clearly, keep this guy on your radar. This is where he is.").

[66] No. 22-4101, R. Docs. 1-2 at 15-16; 2-11 at 397-98.

anism for challenging the Archdiocese's "confidential" designation of the documents it produced.[67]

On **June 7, 2022**, after reviewing the Trustee's Report, the bankruptcy court issued an order (the "June 7, 2022 Order" on appeal in Civil Action No. 22-1740), finding that Trahant's own testimony, as well as certain documents attached to the Trustee's Report, confirmed that he knowingly and willfully violated the protective order: "(i) Trahant had read and was bound by the Protective Order; (ii) knew that he was bound by the Protective Order; and (iii) beginning on December 31, 2021, provided on multiple occasions confidential information he received to a third party [his cousin, the principal] and the media in direct violation of the Court's Protective Order."[68] The bankruptcy court noted that "[n]o dispute exists that the information that reached the media was information that could not have come from any other source but the [Archdiocese]'s production of discovery in this case."[69] The bankruptcy court, expressly acknowledging its "duty to protect the integrity of the bankruptcy process and enforce its own Orders," found that "Trahant's willful breach of [the] Protective Order clearly disqualifies him from further receiving

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[67] No. 22-4101, R. Docs. 1-2 at 16; 2-11 at 398.

[68] R. Doc. 1-2 at 3.

[69] *Id.* at 3-4 (noting also that the Trustee acknowledged in the report that "serious questions remain regarding *the extent of the information* [meaning the details of the allegations against the priest, but not his name] that was provided to third parties and the media by Trahant and whether documents or sensitive information contained therein was also provided to the media by someone else") (emphasis added).

Protected Material in this case and participating in any confidential Committee proceedings, including meetings, deliberations, and mediation."[70] This determination, however, presented a dilemma to the bankruptcy court: how could it permit the four Committee members who were Trahant's clients to keep him as their counsel (which the court recognized they had every right to do) and yet continue to participate in the Committee's work, which necessarily involved protecting the confidentiality of the sensitive information and documents they were called upon to receive and review? Recognizing that it could not interfere in the attorney-client relationship (meaning that the court had to assume, given "the dynamics present on the Committee," that the confidential information the Committee members received would be communicated to Trahant, who had already demonstrated a willingness to disclose such information despite the protective order), the bankruptcy court was "forced" to resolve the dilemma by imputing Trahant's "willful breach and disregard of [the] Protective Order" to his clients — that is to say, presuming that disclosure of confidential information to them, and consequently Trahant, could result in further unauthorized disclosures to third parties — and finding cause to order the Trustee to remove them from the Committee "to prevent an abuse of process and to ensure adequate representation of creditors."[71] The bankruptcy court explained that it was compelled to "act [in this way] to protect against disruption of the bankruptcy process, to guard the rights of all parties in interest, and, most

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[70] *Id.* at 4.

[71] *Id.* at 4-5.

immediately in light of the current posture of the case, to preserve the trust in the confidentiality of mediation."[72] The bankruptcy court concluded the June 7, 2022 Order by stating that it "will issue a separate Order To Show Cause to determine appropriate sanctions for Trahant's disclosure of confidential information in violation of [the] Protective Order."[73]

On **June 10, 2022,** Trahant filed a notice of appeal regarding the bankruptcy court's June 7, 2022 Order without seeking leave of the bankruptcy court to appeal that order.[74] The appeal was allotted to Judge Greg Guidry.

On **June 13, 2022**, the bankruptcy court issued the promised order to show cause — that is, the order to set a contempt hearing as signaled in both its April 25, 2022 order and its June 7, 2022 Order. Given its earlier finding that Trahant knowingly and willfully violated the protective order, the bankruptcy court ordered him to appear before the court on July 25, 2022, to show cause "why he should not be sanctioned for his willful violation of [the] Protective Order."[75] The bankruptcy court rested its authority to convene this contempt proceeding on 11 U.S.C. § 105(a). The court further ordered the Trustee to provide the Trustee's Report (along with all its exhibits) to Trahant and any counsel he might retain for purposes of preparing for the contempt proceeding; it ordered

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[72] *Id.* at 4. A mediation was scheduled to begin the next day.

[73] *Id.* at 5.

[74] R. Doc. 1.

[75] R. Doc. 33-2 at 1-2.

counsel for the Archdiocese and the Committee to file on or before July 1, 2022, invoices "identifying attorney and paralegal time spent on services related to" the investigation instigated by the motion to compel; and it ordered Trahant to file a written response on or before July 18, 2022, for the court's "consideration regarding imposition[] of sanctions against him."[76]

On **August 8, 2022**, Trahant filed objections to the show-cause order and to the imposition of "additional" sanctions, arguing that the June 7, 2022 Order (even though the objections were ostensibly directed at the show-cause order) was improper because he had not been provided with adequate due process before he was found in contempt.[77] Trahant's objections thus failed to apprehend the limited nature of the June 7, 2022 Order, which did not include any finding of contempt or impose sanctions.

On **August 22, 2022**, the bankruptcy court held the show-cause/contempt hearing after it had been continued from the original July 25, 2022 date due to counsel's scheduling conflict.[78] During the hearing, Trahant was represented by counsel, allowed to present evidence and argument, and offered his own testimony under oath.[79] Trahant testified at the hearing that he obtained confidential information regarding the priest solely from the Protected Material he received as counsel for the individual Committee

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[76] *Id.* at 2.

[77] No. 22-4101, R. Doc. 2-11 at 27-36.

[78] No. 22-4101, R. Docs. 1-2 at 18; 2-11 at 81-141.

[79] *Id.*

members.[80] He also testified that he knew he was bound by the protective order.[81] Trahant admitted that he sent text messages to his cousin containing the priest's name and asking if he was still employed at the high school, knowing that his cousin would understand from his messages that the priest had been accused of sexual abuse.[82] Further, he admitted that he gave the priest's name to the journalist.[83] Trahant testified that he did not agree with the Archdiocese's confidential designation of the information concerning the priest, and that he did not think he violated the protective order because he did not give physical or electronic documents to his cousin or the journalist.[84] When asked by the bankruptcy court why he did not tell counsel for the Committee that he communicated confidential information to his cousin and the reporter, his answers were equivocal and inconsistent, and they did not comport with the record, the timeline of events,

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[80] No. 22-4101, R. Docs. 1-2 at 20.

[81] *Id.*

[82] *Id.* at 20-21 (quoting Trahant's testimony: "And did I plant a seed? Absolutely. Absolutely. Your Honor is a hundred percent right. Yeah, I planted a seed. Why did I plant the seed as it related to [my cousin]? Because it was simple. I communicate with [my cousin] fairly frequently and I didn't want that guy back on campus.").

[83] *Id.* at 21 (quoting Trahant's testimony: "That was, that was the seed I planted with [the high school]. The seed I planted with [the reporter]. . . . But yes, I planted a seed. . . . Because I think this, I think this stuff needs to be exposed.").

[84] *Id.* at 20-21.

or the actions taken by the Committee's counsel in investigating the breach.[85]

On **October 11, 2022**, the bankruptcy court issued its memorandum opinion and order (the "October 11, 2022 Order" on appeal in Civil Action No. 22-4101) imposing sanctions on Trahant pursuant to Rule 37(b)(2) of the Federal Rules of Civil Procedure and 11 U.S.C. § 105(a) for his knowing and willful breach of the protective order.[86] The bankruptcy court held that the Trustee's Report, which included Trahant's emails and text messages as well as the deposition testimony he provided to the Trustee, along with his sworn testimony at the show-cause/contempt hearing, provided clear-and-convincing evidence that Trahant was bound by the protective order and violated it for his own purposes.[87] Further, the court found that Trahant's actions were wasteful, disrupted the progress of the bankruptcy case, and delayed resolution of the disclosure issue.[88] The bankruptcy court emphasized that Trahant, as a seasoned attorney and officer of the court, has a responsibility to obey court orders, "even

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[85] *Id.* at 22 ("The Court heard equivocation, deflection, and inconsistency in Trahant's answers.").

[86] *Id.* at 1-30.

[87] *Id.* at 22-26 ("Trahant's testimony and the record in this case presents clear and convincing evidence that, even though a Protective Order was in place governing the confidential information produced by the [Archdiocese] and Trahant was bound by the Protective Order, he nevertheless took confidential information he received through his affiliation with the Committee and used it for his own purposes — not one for which it was intended or protected.").

[88] *Id.* at 26-27.

those he may disagree with and those that become inconvenient to him," which was heightened by the position of trust he held as counsel to Committee members who were, in turn, entrusted with the duty to hold sensitive and non-public information in confidence.[89] With these findings, the bankruptcy court imposed sanctions against Trahant pursuant to Rule 37 and § 105 "not only to serve as a deterrent for any attorney or law firm who might be tempted to violate the Court's discovery orders [including, particularly, its protective order], but also to preserve the integrity of the bankruptcy process and protect it from abuse."[90] The Archdiocese and the Committee submitted evidence consisting of invoices totaling $760,884.73 for the attorneys' fees and costs they incurred in investigating and dealing with the breach of the protective order, but the bankruptcy court imposed only $400,000 (or 53% of this amount) as sanctions against Trahant.[91] Notably, Trahant did not challenge the reasonableness of the fees and costs reflected in the invoices.[92]

On **October 21, 2022**, Trahant filed a notice of appeal regarding the bankruptcy court's October 11, 2022 Order.[93]

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[89] *Id.* at 27.

[90] *Id.*

[91] *Id.* at 27-29.

[92] *Id.* at 28

[93] No. 22-4101, R. Doc. 1.

On **February 10, 2023**, Trahant's appeals of the bankruptcy court's June 7, 2022 Order and October 11, 2022 Order were consolidated as related cases.[94]

On **March 27, 2023**, after full briefing by the parties (which is reviewed below), Judge Guidry issued an opinion affirming both orders of the bankruptcy court.[95] Because that opinion is now withdrawn, this Court does not rely upon it in any way.[96]

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[94] No. 22-4101, R. Doc. 4. From this date on, the events in this chronology bear less upon Trahant's appeals of the bankruptcy court's orders than they do upon his motions for rehearing and motion to vacate.

[95] R. Doc. 88.

[96] Nevertheless, for historical purposes and ease of reference, the Court recounts here the reasoning of Judge Guidry's opinion. Judge Guidry held that Trahant was afforded due process with respect to the June 7, 2022 Order because he was aware that he was a target of the Trustee's investigation and was represented by counsel when giving his deposition. *Id.* at 9-11. Further, Judge Guidry held that the June 7, 2022 Order did not impose sanctions on Trahant, but rather only prohibited him from participating in the bankruptcy proceeding in order to protect the integrity of the bankruptcy process as the bankruptcy court was empowered to do under § 105(a). *Id.* at 11. In addition, Judge Guidry held that the bankruptcy court gave Trahant additional opportunities to be heard at the show-cause hearing, curing any due process violation that may have related to the June *7,* 2022 Order. *Id.* at 11-12. With respect to the October 11, 2022 Order, Judge Guidry held that the bankruptcy court did not abuse its discretion in imposing sanctions against Trahant under Rule 37 and § 105(a) because it correctly found, based on the clear-and-convincing evidence in the record, that Trahant knowingly and willfully violated the protective order. *Id.* at 12-14. Finally, Judge Guidry found that the amount of attorney's fees the bankruptcy court imposed on Trahant as sanctions ($400,000) was reasonable and justified, especially considering that Trahant never contested the invoices presented and the bankruptcy court reduced the amount

On **March 28 and April 11, 2023**, Judge Guidry entered judgments in the consolidated cases affirming the bankruptcy court's orders in accordance with his March 27, 2023 opinion.[97]

On **April 10 and 11, 2023**, Trahant filed the instant motions for rehearing.[98]

On **April 13, 2023**, Judge Guidry held a telephone status conference in which he noted that, while no motion to recuse had been filed, "it ha[d] been brought to [his] attention that past charitable donations to New Orleans Catholic Charities and the Catholic Community Foundation as well as [his] time as a board member for the New Orleans Catholic Charities approximately from 2000 to 2008 could possibly be a reason for [him] to consider recusing [him]self in this case." Judge Guidry then observed that, "in light of this, [he] ha[d] requested guidance from the committee on codes of judicial conduct and . . . should receive a response from the committee within a week or two. The committee's response . . . will guide [his] decision concerning whether to recuse . . . or not."[99]

On **April 20, 2023**, Judge Guidry held another status conference in which he advised the parties that he had received the requested guidance from the Committee on Codes of Conduct concerning the recusal issue that had been raised. Judge Guidry read the committee's summary from its formal advisory opinion:

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claimed by more than 50%. *Id.* at 14-15.

[97] R. Doc. 89; No. 22-4101, R. Doc. 5.

[98] R. Docs. 90; 91.

[99] R. Docs. 94; 97 at 4.

The committee sees multiple factors that weigh against the need for recusal under Canon 2 or the general impartiality rule of Canon 3C(1). First, none of the charities to which you contributed some of your wind-down campaign funds has been or is an actual party in any proceeding before you. Moreover, even though your contributions to charities affiliated with Catholic interests were generous and substantial, they amounted to less than 25 percent of the campaign funds you had to donate.

Second, your leadership as a board member of one of the charities ended 15 years ago, which is a significant span of time, and over a decade before the Archdiocese filed its Chapter 11. Third, you have already entered several decisions and those decisions do not uniformly favor any interested party, which is a concrete indication of impartiality. Finally, simply participating as a faithful participant in the life of your parish and the Archdiocese of which it is a part cannot amount to a reasonable basis for questioning impartiality in litigation involving the church without effectively forcing judges to choose between their faith and their adjudicative duties.

Based on the facts, the committee does not see in your case anything that would require a direct or explicit basis for disqualification under Canon 3C(1)(a) through (e). Recusal based on a risk of an appearance of impropriety under Canon 2 or a reasonable

> basis for questioning impartiality under Canon 3C(1) is inherently fact specific and often a very personal decision for the judge involved. With that said, the committee does not believe a reasonable person fully informed of all relevant considerations would have a basis to question your impartiality or to suggest a risk of an appearance of impropriety necessitating recusal in your case.[100]

Judge Guidry advised the parties that, "[b]ased upon [the committee's] advice and based upon my certainty that I can be fair and impartial, I have decided not to recuse myself."[101]

On **April 21, 2023**, the Associated Press published an article suggesting that Judge Guidry could not be impartial in the appeals arising from the Archdiocese's bankruptcy case because of his prior donations to, and service on the board of, Catholic charitable organizations.[102]

On **April 28, 2023**, Judge Guidry entered an order of recusal, which reads:

> I do not believe disqualification pursuant to 28 U.S.C. § 455 is mandated, and no party has filed a motion to disqualify me pursuant to 28 U.S.C. § 144;[103] however, balancing my

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[100] R. Docs. 96; 98 at 4-6.

[101] R. Doc. 98 at 5-6.

[102] R. Doc. 102-2 at 13-16.

[103] Section 144 provides that a district judge must recuse when a party to a proceeding "makes and files a timely and sufficient

> duty to decide the case with my duty to consider self-recusal if appropriate, I have decided to recuse myself from this matter in order to avoid any possible appearance of personal bias or prejudice.[104]

This order is the full extent of the information available to this Court concerning the grounds for recusal.

On **May 1, 2023**, after two more district court judges recused themselves from this matter, it was reallotted to this Court.[105]

Thereafter, on **May 8, 2023**, Trahant filed the instant motion to vacate Judge Guidry's March 27, 2023 opinion and the corresponding judgments entered on March 28 and April 11, 2023.[106]

II. Law & Analysis

In disposing of the appeals and motions that have been brought, this Court is mindful of two essential points. First, it is imperative to bring final resolution to the matter concerning the unauthorized disclosure of protected confidential information so that the bankruptcy court and the stakeholders in this bankruptcy case, including most vitally the sexual abuse claimants, can get back to the main business of confecting a plan of reorganization to address their respective interests. Second, it is just as important

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affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party." 28 U.S.C. § 144.

[104] R. Doc. 99.

[105] R. Docs. 100; 101.

[106] R. Doc. 102.

that this Court do so in a way that upholds the sanctity of the judicial process in general, and court orders in particular, so that the participants in the bankruptcy process and the public it serves are ensured of integrity in the administration of justice. After all, courts are duty-bound to enforce their own orders and to prevent abuses of the judicial process.

A. The Appeals

1. The Parties' Contentions on Appeal

In his appellant brief, Trahant argues that the bankruptcy court's June 7, 2022 Order contravened his right to procedural due process by holding him in contempt and sanctioning him without notice and an opportunity to be heard.[107] He also argues that the bankruptcy court lacked jurisdiction to issue the October 11, 2022 Order because his appeal of the June 7, 2022 Order divested that court of jurisdiction to further consider imposing sanctions for his violation of the protective order.[108] Moreover, according to Trahant, the August 22, 2022 show-cause hearing was "fraught with errors" principally because the bankruptcy court did not rightly appreciate that his testimony was the only competent evidence presented.[109] Finally, Trahant argues that the $400,000 sanction is excessive, amounting to the imposition of criminal contempt, be-

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[107] R. Doc. 79 at 32-39.

[108] *Id.* at 39-41.

[109] *Id.* at 41-52.

cause there was no evidence that he violated the protective order willfully or in bad faith.[110]

The Archdiocese, in its appellee brief, argues that the bankruptcy court's June 7, 2022 Order was not final and appealable, nor did it deprive Trahant of due process, as it did not impose sanctions on him.[111] Alternatively, the Archdiocese argues that Trahant was not deprived of due process because he knew he was the target of the Trustee's investigation prior to the issuance of the June 7, 2022 Order.[112] Further, the Archdiocese argues that the clear-and-convincing evidence presented at the show-cause/contempt hearing, including the Trustee's Report and Trahant's own testimony, proved that Trahant knowingly and willfully violated a protective order by which he was bound.[113] Finally, the Archdiocese argues that the $400,000 sanction that the bankruptcy court imposed on Trahant was reasonable considering the delay, disruption, and waste caused by Trahant's actions.[114]

In his reply brief, Trahant points to what he perceives to be misrepresentations in the Archdiocese's appellee brief and argues that the bankruptcy court's sealed status conferences in February, March, and

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[110] *Id.* at 52-59.

[111] R. Doc. 82 at 31-34.

[112] *Id.* at 34-36.

[113] *Id.* at 36-42.

[114] *Id.* at 42-49.

April 2022 tainted the Trustee's investigation as to deny him due process.[115]

2. Analysis

The Court has jurisdiction over these consolidated appeals under 28 U.S.C. § 158(a)(1) because, collectively, the appeals arise from a final order (the October 11, 2022 Order) of contempt imposing sanctions against Trahant.[116] When reviewing the findings of a bankruptcy court, a district court acts in its appellate capacity and applies the same standard of review as does a court of appeals when reviewing a district court's action. *In re Glenn,* 900 F.3d 187, 189 (5th Cir. 2018); *In re Perry,* 345 F.3d 303, 308 (5th Cir. 2003). A district court reviews findings of contempt and imposition of sanctions for abuse of discretion. *Waste Mgmt. of Wash., Inc. v. Kattler,* 776 F.3d 336, 339 (5th Cir. 2015); *Goldin v. Bartholow,* 166 F.3d 710, 722 (5th Cir. 1999). A court abuses its discretion when it

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[115] R. Doc. 83-1 at 5-35. Trahant complains in his reply brief, as elsewhere, that the bankruptcy court over-sealed documents in the record and he urges this Court to unseal them. The bankruptcy court unsealed some parts of the record and allowed Trahant access to certain other parts of the sealed record. Because Trahant was permitted access to the essential documents in conjunction with the show-cause/contempt proceeding, he was able to participate fully in that proceeding and in these appeals. The duty to comply with the Fifth Circuit's guidance for sealing is that of the court ordering the seal. Accordingly, this Court will leave the question whether to unseal other parts of the record to the bankruptcy court in the first instance.

[116] Although the Archdiocese originally objected to this Court's jurisdiction over Trahant's appeal of the bankruptcy court's June 7, 2022 Order, it concedes that the objections were remedied when the Court consolidated these appeals. *See* R. Doc. 82 at 3.

"(1) relies on clearly erroneous factual findings; (2) relies on erroneous conclusions of law; or (3) misapplies the law to the facts.'" *June Med. Servs., L.L.C. v Phillips,* 22 F.4th 512, 519 (5th Cir. 2022) (quoting *Bradley ex rel. AJW v. Ackal,* 954 F.3d 216, 224 (5th Cir. 2020)). The lower court's findings of fact are reviewed for clear error and conclusions of law are reviewed *de novo. Am. Airlines, Inc. v. Allied Pilots Ass 'n,* 228 F.3d 574, 578 (5th Cir. 2000). "Whether an alleged contemnor was afforded due process is a question of law . . . review[ed] de novo." *Waste Mgmt.,* 776 F.3d at 339.

a. An overview of the bankruptcy court's stepped response to the violation

A correct disposition of the appeals of the bankruptcy court's orders follows from a correct understanding of the process the bankruptcy court pursued in issuing the orders. This process consisted of what were two phases — essentially two separate proceedings — instituted to address issues arising out of the unauthorized disclosure of confidential information which was suspected to be a violation of the court's protective order.

The first phase or proceeding was initiated in response to the January 18, 2022 publication of the protected information and the ensuing motion to compel. That proceeding involved an investigation into the suspected violation and the bankruptcy court's enforcement of its protective order through the issuance of the June 7, 2022 Order. Based on the investigation and the evidence it generated, the bankruptcy court applied a lesser evidentiary standard

(likely, a preponderance standard) to make findings that a violation had indeed occurred and the court acted to enforce its protective order and prevent further abuse of the judicial process (namely, any additional unauthorized disclosure of confidential information) by removing Trahant from any role in the Committee's receipt and handling of confidential information and documents. This could only be accomplished by having the individual Committee members who were Trahant's clients removed from the Committee since the bankruptcy court could not (and would not) interfere with their choice of Trahant as their attorney. At bottom, then, the first phase was limited to an investigation into the suspected protective order violation and the court's enforcement of its order.[117]

The second phase was the contempt proceeding initiated by the bankruptcy court's June 13, 2022 show-cause order. That order advised Trahant of the accusation against him and that sanctions were being considered, and it set a hearing at which Trahant would be allowed to present evidence to disprove the accusation and the reasonableness of any sanctions, which would be considered under an evidentiary standard of clear and convincing. Based on the evidence

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[117] This was undoubtedly how the bankruptcy court viewed its own approach in these proceedings — that is, as a stepped process — as reflected in the court's statement at the beginning of the show-cause/contempt hearing: "[W]e're here today on an order to show cause. The Court issued it after . . . I had read the independent report of the United States Trustee. I made some decisions, issued a couple of orders, and then issued this order to show cause. Of course, *no sanctions have been awarded yet."* No. 22-4101, R. Doc. 2-11 at 88-89 (emphasis added).

presented to the bankruptcy court in submissions before the hearing and in testimony at the hearing, the court issued its October 11, 2022 Order, confirming under the more rigorous clear-and-convincing standard that Trahant had violated the protective order by disclosing Protected Material to his cousin and the journalist and finding that Trahant had acted in contempt of court in doing so. Consequently, the court also examined, again under the clear-and-convincing evidentiary standard, the evidence concerning the quantum of the fees and costs to be imposed as sanctions. In this light, as is proper for a contempt matter, this second proceeding was the only phase involving the imposition of sanctions.

With this overview in mind, the Court now examines the issues on appeal.

b. Due process and the bankruptcy court's June 7, 2022 Order

Trahant argues that he was deprived of due process because the bankruptcy court's June 7, 2022 Order imposed sanctions on him without notice and an opportunity to be heard.[118] However, Trahant's argument mischaracterizes the intent and effect of that order, which did not impose any sanction on him. The timeline of events outlined above demonstrates that the bankruptcy court employed a stepped process in addressing Trahant's violation of the protective order. First, the bankruptcy court ordered the Trustee to undertake an independent investigation and issue

[118] R. Doc. 79 at 32-39.

a report.[119] The Trustee's Report states that Trahant admitted to disseminating to third parties information that he learned through his receipt of Protected Material as counsel to individual Committee members.[120] Upon reviewing the Trustee's Report and the appended exhibits, the bankruptcy court correctly determined, for purposes of enforcing its protective order, that Trahant had knowingly and willfully violated it and effectively admitted to doing so.[121] Recognizing that it had a duty to protect the integrity of the bankruptcy process and to enforce its own orders, the bankruptcy court employed § 105(a) of the Bankruptcy Code to fashion an appropriate remedy.

Section 105(a) empowers a bankruptcy court *sua sponte* to take any action or make "any determinations necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a).[122] That is exactly what occurred. The bankruptcy court found that Trahant's blatant breach of the protective order disqualified him from further receiving Protected Material.[123]

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[119] R. Doc. 1-2 at 2.

[120] *Id.* at 3.

[121] *Id.*

[122] Although the June 7, 2022 Order also references 11 U.S.C. § 1102(a)(4), *see* R. Doc. 1-2 at 5, that statute was not applicable because it authorizes the bankruptcy court to remove claimants from the committee at the request of a party, which neither occurred — nor was required to occur — in connection with the issuance of this order that was crafted to enforce the court's earlier protective order.

[123] *Id.* at 4.

Trahant's demonstrated inclination to disclose Protected Material also rendered imprudent his clients' continued service on the Committee since the bankruptcy court was appropriately unwilling to meddle with the free flow of attorney-client communications.[124] Thus, the bankruptcy court found it necessary to remove Trahant's clients from the Committee so as to end Trahant's access to Protected Material.[125] This remedy was a prudential prophylactic step, not a sanction on Trahant.[126] Trahant was not held in contempt, nor was he fined in the June 7, 2022 Order. Neither were his clients. They had no protected right to serve on the Committee and their claims in the Archdiocese's bankruptcy proceeding were not compromised by their removal from the Committee.[127]

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[124] *Id.*

[125] *Id.* at 4-5.

[126] Hence, this Court disagrees with Judge Guidry's observation in denying the Archdiocese's motion to dismiss the appeal of the June 7, 2022 Order that the order and Trahant's removal "appear to satisfy the finality and contempt elements required for this appeal to proceed forward." R. Doc. 32 at 2-3. The history of the case in the bankruptcy court clearly indicates that the June 7, 2022 Order was just an interlocutory order designed to enforce an earlier court order (the protective order) and preserve the integrity of the bankruptcy proceeding while the court, in the separate show-cause/contempt proceeding, afforded Trahant due process in connection with the ultimate imposition of sanctions.

[127] The Court recognizes that Trahant's clients invested years of service on the Committee. It is unfortunate that their attorney's actions have deprived them of the ability to continue to serve. But, without interfering with the attorney-client relationship, it seems that the bankruptcy court had no choice but to remove them to preserve the integrity of the confidential communications necessary to the Committee's work. Paramount in the

Thus, the bankruptcy court used § 105(a) to fashion a remedy that it deemed necessary and appropriate to implement its rules and prevent an additional abuse of process while preserving the attorney-client relationship.

The bankruptcy court further clarified that the June 7, 2022 Order was not a sanction by stating that it would "issue a separate Order To Show Cause to determine appropriate sanctions for Trahant's disclosure of confidential information in violation of [the] Protective Order."[128] Thus, the later (June 13, 2022) order set a hearing date for Trahant to show cause why he should not be held in contempt and sanctioned pursuant to § 105(a) for his knowing and willful violation of the protective order.[129] The term "contempt," which had not appeared in the June 7, 2022 Order, is employed for the first time in the June 13 show-cause order. That order also granted Trahant access to the Trustee's Report, acknowledged that he had a right to counsel at the show-cause/contempt hearing, and afforded him the opportunity to file a written response to address whether sanctions should be imposed against him.[130]

"The fundamental requisite of due process of law is the opportunity to be heard." *Mullane v. Cent. Hanover Bank & Tr. Co.,* 339 U.S. 306, 314 (1950).

Court's consideration of this consequence, though, is that the actual claims of the former Committee members are unaffected by the action and left intact.

[128] R. Doc. 1-2 at 5.

[129] R. Doc. 33-2 at 1-2.

[130] *Id.* at 3.

Where an alleged contemnor is provided notice and the opportunity to be heard before he is sanctioned, there has been no denial of due process. *See In re Terrebonne Fuel & Lube, Inc.,* 108 F.3d 609, 613-14 (5th Cir. 1997) (citing *Int'l Union, United Mine Workers of Am. v. Bagwell,* 512 U.S. 821, 827 (1994)). The June 13, 2022 show-cause order certainly constitutes notice to Trahant of the contempt proceeding, and he had the opportunity to be heard at the August 22, 2022 show-cause/contempt hearing.[131] Trahant was represented by counsel and testified at the hearing.[132] It was only after Trahant had been heard that the bankruptcy judge imposed sanctions on him pursuant to § 105(a) and Rule 37(b)(2). Thus, there was no due process violation in connection with the sanctions.

Now, looking at the June 7, 2022 Order for what it was — namely, an enforcement of the bankruptcy court's protective order — Trahant received all the process he was due in connection with that order as well. A thorough review of the record reveals that Trahant was aware of the protective order and his obligations to abide by it before the document production in December 2021. Trahant was also aware that an apparent information leak had occurred in early January 2022. Indeed, as counsel for several of the Committee members, Trahant provided a sworn declaration stating that he did not breach the protective order even though he simultaneously admitted to providing the priest's name to the high school principal. These inconsistent statements within his declaration show that Trahant knew he could be the "target" of the

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[131] No. 22-4101, R. Doc. 1-2 at 18.

[132] *Id.* at 18-22.

investigation into the leak and reflected a concerted effort on his part to defend his actions and explain why he believed they were permissible. The investigation that followed, evolving into that of the Trustee, included written discovery to Trahant and the taking of his deposition. During his deposition, Trahant was represented by counsel, who specifically observed that Trahant was "clearly being looked at as a potential person who violated the Court's protective order."[133] This Court finds that Trahant, an experienced attorney, was provided adequate notice and an opportunity to be heard concerning the matters addressed by the June 7, 2022 Order — being the bankruptcy court's determinations, for purposes of enforcing its protective order, of whether a violation occurred, who committed it, and how to remedy it going forward so as to prevent additional abuse of the bankruptcy and judicial process and protect its integrity.

The bankruptcy court determined, for good reason, that Trahant was at least one source of the leak and issued its June 7, 2022 Order finding that he had knowingly and willfully violated the protective order. And while at this point Trahant had arguably enjoyed more than enough due process for the bankruptcy court to impose sanctions, it did not impose sanctions but, instead, issued the show-cause order to afford him specific notice of the contempt hearing and an opportunity to be heard. In issuing the June 7, 2022 Order, the bankruptcy court took appropriate steps to "enforce . . . court orders or rules [and] prevent an abuse of process" pursuant to its authority under

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[133] No. 22-4101, R. Doc. 2-11 at 372 (Trahant deposition taken on May 18,2022).

§ 105(a). The need for the bankruptcy court to enforce its protective order by removing Trahant from his role with the Committee was warranted by the circumstances. As well-said by the bankruptcy court, the action was necessary "to protect the integrity of the bankruptcy process, to guard the rights of all parties in interest, and to preserve the trust in the confidentiality of mediation (which was due to begin on June 8, 2022)."[134] The bankruptcy court, therefore, did not abuse its discretion, or deny due process to Trahant, in acting pursuant to § 105(a).[135]

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[134] No. 22-4101, R. Doc. 2-11 at 416.

[135] While Trahant does not similarly charge that the October 11, 2022 Order was entered without due process (other than to say that "the invalidity of the June 7, 2022 Order . . . is fatal to the October 11, 2022 Order," R. Doc. 79 at 41), the record reflects that the bankruptcy court afforded due process in regard to the later order as well. Following the issuance of the June 7, 2022 Order, the bankruptcy court issued a show-cause order, which provided Trahant with additional notice and the opportunity to be heard before sanctions were levied against him. The bankruptcy court ordered that Trahant be provided with the Trustee's Report and the attached materials so he could prepare for the show-cause/contempt hearing. Trahant filed written objections to the impending proceeding into the record. When the show-cause/contempt hearing was held on August 22, 2022, Trahant was represented by counsel and offered additional objections to the proceeding and the June 7, 2022 Order. Trahant also provided sworn testimony and engaged in a thorough discourse with the bankruptcy court about the evidence against him. Trahant did not controvert the Trustee's findings in any meaningful way. Rather, Trahant's testimony confirmed the findings of the Trustee's investigation and he again admitted to disclosing the identity of the priest to the high school principal and the journalist. Trahant further acknowledged that the priest's identity and details of the sexual abuse allegations against him were not in the public domain at the time he disseminated the

c. The bankruptcy court's jurisdiction to enter the October 11, 2022 Order

Next, Trahant argues that his appeal of the June 7, 2022 Order divested the bankruptcy court of jurisdiction to re-adjudicate or otherwise address the issue of contempt and the imposition of sanctions against him.[136] Consequently, in Trahant's view, the bankruptcy court had no jurisdiction to issue the show-cause order, hold the show-cause/contempt hearing, or enter the October 11, 2022 Order imposing sanctions against him. Trahant's argument assumes that the June 7, 2022 Order was final and appealable. It was not.

While it is generally true that a timely-filed notice of appeal will divest a court of jurisdiction over the judgment that is the subject of the appeal, "this rule presupposes that there is a final judgment from which to appeal." *In re U.S. Abatement Corp.,* 39 F.3d 563, 568 (5th Cir. 1994). "[T]he Bankruptcy Code requires finality for appeals from bankruptcy court decisions to the district court, unless the district court grants leave to pursue an interlocutory appeal." *Id.* at 566. "[A] civil contempt order is not 'final' for purposes

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information. No. 22-4101, R. Doc. 2-11 at 116. After the August 22, 2022 hearing, he was afforded more than one month's time to submit briefing on any issue, including the invoices filed by the Archdiocese and the Committee, before the October 11, 2022 Order was entered. In sum, as with the June 7, 2022 Order, this Court finds without hesitation that Trahant was not deprived of due process in connection with the proceedings concerning the October 11, 2022 Order but was, in fact, provided with many opportunities to be heard before a finding of contempt was made and sanctions imposed against him.

[136] R. Doc. 79 at 39-41.

of appeal unless two actions occur: (1) a finding of contempt is issued, and (2) an appropriate sanction is imposed." *Id.* at 567. As explained above, this Court has determined that the way the events concerning the breach of the protective order unfolded demonstrates that the June 7, 2022 Order was confined to enforcement of the protective order and did not involve any element of a contempt ruling or an imposition of sanctions. The June 7, 2022 Order does not even mention the term "contempt," and it plainly states that sanctions would be addressed at a later date, in connection with a show-cause/contempt hearing. Hence, the June 7, 2022 Order was not a final and appealable order, *id.* at 566-67, but instead was merely a non-final, unappealable, interlocutory order.[137] Trahant did not seek leave to appeal that interlocutory order. Accordingly, Trahant's notice of appeal regarding the June 7, 2022 Order was

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[137] *See supra* note 126. This Court, in connection with its independent consideration of the matters on appeal, the motions for rehearing, and the motion to vacate, can and must also reexamine the basis of its own appellate jurisdiction. This includes a reexamination of Judge Guidry's August 23, 2022 order (R. Doc. 32) denying the Archdiocese's motion to dismiss the then-separate appeal of the June 7, 2022 Order. For the reasons discussed above, the Court holds that the August 23, 2022 order incorrectly determined that the June 7, 2022 Order appeared "to satisfy the finality and contempt elements required for this [separate] appeal to proceed forward." *Id.* at 3. With the issuance of the October 11, 2022 Order, which did find contempt and impose sanctions, the related issues addressed in the June 7, 2022 Order could be addressed in an appeal of the final and appealable October 11, 2022 Order, along with the contempt and sanctions determinations made in that later order. This conclusion is confirmed by the Court's previous consolidation of the appeals from these two orders.

premature and of no effect, meaning that the bankruptcy court retained jurisdiction to consider, and ultimately impose, sanctions. *Id.* at 568.[138]

d. The bankruptcy court's October 11, 2022 Order

Trahant argues that the October 11, 2022 Order is not supported by competent evidence because no party offered evidence of his bad faith or willfulness at the show-cause hearing; in fact, says Trahant, no party offered any evidence at all other than his own testimony in which he denied knowingly or willfully violating the protective order.[139] Trahant also argues that the imposition of $400,000 in attorney's fees and costs as sanctions is excessive as neither the Archdiocese nor the Committee suffered any harm by his disclosures of confidential information.[140] These arguments are without merit.

Section 105(a) of the Bankruptcy Code gives a bankruptcy court the power to take any action or make any "determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a). This

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[138] *See Dayton Indep. Sch. Dist. v. U.S. Mineral Prods. Co.,* 906 F.2d 1059, 1062-64 (5th Cir. 1990) (holding that "the district court loses jurisdiction over all matters which *are validly* on appeal") (emphasis added); *Barnes v. BP Expl. & Prod. Inc.,* 2022 WL 3924317, at *1 n.1 (E.D. La. Aug. 30, 2022) ("The district court retains jurisdiction, however, when the notice of appeal relates to an order that is not immediately appealable.") (citing *Griggs v. Provident Consumer Disc. Co.,* 459 U.S. 56, 58 (1982)).

[139] R. Doc. 79 at 41-52.

[140] *Id.* at 52-59.

power includes the prerogative to issue civil contempt orders. *In re Terrebonne Fuel & Lube, Inc.,* 108 F.3d at 613. Bankruptcy courts, "'to achieve the orderly and expeditious disposition of their dockets,'" also have the inherent power to impose sanctions against attorneys whose conduct involved bad faith or a willful abuse of process. *In re Carroll,* 850 F.3d 811, 815 (5th Cir. 2017) (quoting *Scaife v. Associated Air Ctr. Inc.,* 100 F.3d 406, 411 (5th Cir. 1996)); *In re Cleveland Imaging & Surgical Hosp., L.L.C.,* 26 F.4th 285, 292 (5th Cir. 2022). In addition, Rule 37(b)(2) allows courts to impose sanctions for the failure to obey discovery orders, including protective orders. *Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.,* 685 F.3d 486, 488-90 (5th Cir. 2012). Authorized sanctions under Rule 37(b)(2) include imposing reasonable expenses, including attorney's fees, caused by the failure to obey a discovery order, and these "Messer sanctions do not require a finding of willfulness." *Id.* at 488; *see also* Fed. R. Civ. P. 37(b)(2)(C). Sanctions are proper under Rule 37(b)(2) "where clear and convincing evidence indicates '(1) that a court order was in effect, (2) that the order required certain conduct by the respondent, and (3) that the respondent failed to comply with the court order.'" *Shaw v. Coix Health LLC,* 2021 WL 5140615, at *3 (E.D. La. Nov. 4, 2021) (quoting *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.,* 283 F.3d 282, 291 (5th Cir. 2002)).

Here, a thorough review of the record reveals that the bankruptcy court's findings of fact as to Trahant's knowing and willful violation of the protective order were correct and should not be disturbed. Trahant's suggestion that the only evidence before the bankruptcy court at the August 22, 2022 show-

cause/contempt hearing was the sworn testimony he provided blinks reality. Going into the hearing, the bankruptcy court made it clear that the record already encompassed the Trustee's Report and its attachments (which included, for example, Trahant's prior deposition testimony and his critical emails and text messages, among a vast array of other evidence).[141] Also, going into the hearing, the bankruptcy court ordered and received the submissions of the Committee and the Archdiocese regarding the fees and costs they had incurred in conjunction with the investigation of the unauthorized disclosure of confidential information.[142] This was the substantial body of evidence Trahant was given the opportunity at the August 22, 2022 hearing to confront. He could do so by presenting his own testimony (as he did), the testimony of others (which he did not), or other documentary evidence (which he also did not). The record also includes the extensive exchange between the bankruptcy court and Trahant at the hearing, wherein the latter was afforded the opportunity to respond to the bankruptcy court's questions about his conduct and to explain it, if he could. And explain it he did, stating that he wanted to "plant a seed" via his disclosure to the principal because he "didn't want that guy [the priest] back on campus" and via his disclosure to the

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[141] That Trahant was fully aware that the Trustee's Report (including its attachments) was part of the evidentiary record is made plain by his objection to such evidence at the show-cause/contempt hearing and the bankruptcy court's overruling the objection. No. 22-4101, R. Doc. 2-11 at 101-03.

[142] Trahant never objected to the bankruptcy court's consideration of this evidence.

journalist because "this stuff needs to be exposed."[143] Hardly the stuff of remorse. Trahant's testimony at the August 22, 2022 hearing confirmed his awareness of the protective order, the materials it was intended to protect, and that he was bound by it. His testimony also confirmed that he was aware of the procedure provided in the protective order for challenging a "CONFIDENTIAL" designation of any document produced in discovery, but that he failed to use it. Thus, Trahant made the unilateral and knowing choice to subvert this procedure (to which he had agreed) and disclose the Protected Material to third parties. The bankruptcy court correctly rejected Trahant's argument that he believed he was not violating the protective order as not credible, especially since he alternately contends that there was no violation because he did not hand over any of the confidential documents, that there was no violation because he disagreed with the "CONFIDENTIAL" designation (but did not bother to challenge it), and that there was no violation because the information needed to be made public through his planting seeds.

The bankruptcy court's finding of contempt in the October 11, 2022 Order — bottomed on the uncontroverted finding that Trahant willfully and knowingly violated the protective order, amounting to bad faith on his part — was thus easily supported by the ample clear-and-convincing evidence in the bankruptcy court's record.[144] To be sure, in light of Trahant's own deposition and hearing testimony, his emails, and his text messages, the evidence is really

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[143] *Id.* at 120.

[144] No. 22-4101, R. Doc. 1-2 at 22-26.

uncontested that he violated the protective order because he thinks the priest's name should not have been protected. In short, Trahant took it upon himself to decide what rules should or should not be obeyed and what information should or should not be protected without first availing himself of the protective order's mechanism for contesting the confidential designation. In doing so, Trahant blatantly violated a court order making sanctions appropriate, whether under § 105(a) or Rule 37(b)(2)(C).

Finally, Trahant argues that the $400,000 sanction is too high. This Court disagrees and finds that the sanctions imposed by the bankruptcy court are reasonable, fully supported by the record, and justified under the circumstances. Trahant was aware that the bankruptcy court had ordered the Archdiocese and the Committee to file their respective investigation-related invoices, and he had an opportunity to examine them ahead of the August 22, 2022 show-cause/contempt hearing. Yet, he did not object to or contest the fee invoices before the bankruptcy court. Thus, this Court finds no error in the bankruptcy court's determination, upon conducting its own independent lodestar review of the invoices, that the amount was reasonable given the waste and delay caused by Trahant's failure to own up to his actions sooner. Indeed, although the bills presented to the bankruptcy court totaled $760,884.73, that court imposed a sanction of less than half this amount.[145] The bankruptcy court

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[145] *Id.* at 29. This Court concludes that the bankruptcy court's decision to cut the total amount in half was reasonable since the Trustee had not been able to determine who had disclosed to the journalist the details of the sexual abuse allegations which found their way into his published article. Instead, the Trustee was

went to great lengths to emphasize that the sanctions were intended "not only to serve as a deterrent for any attorney or law firm who might be tempted to violate the Court's discovery orders, but also to preserve the integrity of the bankruptcy process and to protect it from abuse."[146] Accordingly, the Court finds no merit in Trahant's contention that the sanctions were punitive and thus criminal in nature. The bankruptcy court did not abuse its discretion in imposing sanctions against Trahant.

III. Conclusion Concerning the Appeal

Rules are not made to be broken, as was blatantly done in this case. Instead, they were made in this case, with the agreement of all stakeholders, to protect sensitive information about sexual abuse allegations that victims had chosen not to make public for reasons of their own, which included, no doubt, protecting their privacy. As the record and undisputed facts establish, Trahant, an experienced attorney, knew he was bound by the protective order and made the deliberate choice to violate it and, in doing so, failed to honor the privacy choices of certain sexual abuse victims he did not know but whose interests he professes to zealously advocate. This Court cannot condone an officer of the court's deliberate decision to violate a court order, no matter how noble his motivation, so it has no reservation in upholding the bankruptcy court's finding that Trahant's conduct was

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only able to determine that Trahant's violations involved his disclosure of the priest's name to the principal and, separately, to the journalist.

[146] *Id.* at 27.

contemptuous, wasteful, and warranted the imposition of sanctions.

AFFIRMED.

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OPINION ON TRAHANT'S MOTIONS FOR REHEARING AND MOTON TO VACATE

I. Trahant's Motions for Rehearing

A. Pending Motions

On April 10 and 11, 2023, Trahant filed his two motions for rehearing, one in each of the consolidated appeals, arguing that Judge Guidry's opinion overlooked or misapprehended material matters of law and fact.[147] First, Trahant argues that, regardless of whether he was aware that he might be the subject of a future contempt hearing, he was deprived of due process because he did not have notice and an opportunity to be heard before the bankruptcy court entered the June 7, 2022 Order.[148] Next, Trahant argues that his appeal of the June 7, 2022 Order, coupled with Judge Guidry's denial of the Archdiocese's motion to dismiss that appeal, divested the bankruptcy court of jurisdiction to further consider the imposition of sanctions against him and ultimately issue the October 11, 2022 Order.[149] Trahant also argues that neither the June 7, 2022 Order, nor the October 11, 2022 Order, is supported by competent evidence be-

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[147] R. Docs. 90; 91.

[148] R. Doc. 90 at 9-12.

[149] *Id.* at 12-15.

cause the priest's name is public, non-protected information or should be "declassified," he can still contest the "confidential" designation pursuant to the protective order, and the imposition of $400,000 in attorney's fees is excessive as neither the Archdiocese nor the Committee suffered any harm by the disclosures.[150]

In opposition, the Archdiocese argues that Trahant's motions for rehearing rehash old arguments, failing to demonstrate any mistake of fact or law.[151] The Archdiocese argues that Trahant was afforded due process prior to the bankruptcy court's issuance of the June 7, 2022 Order because he knew he could be the subject of contempt and was represented by counsel when he was deposed by the Trustee.[152] Next, the Archdiocese argues that the bankruptcy court retained jurisdiction to issue the October 11, 2022 Order because the June 7, 2022 Order was a non-appealable interlocutory order.[153] The Archdiocese further argues that the orders were supported by competent evidence contained in the Trustee's Report and Trahant's testimony at the show-cause/contempt hearing, which confirmed that Trahant violated the protective order.[154] Finally, the Archdiocese argues that the sanctions imposed were reasonable considering that Trahant willfully breached the protective order

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[150] *Id.* at 15-21.

[151] R. Doc. 95.

[152] *Id.* at 5-6.

[153] *Id.* at 6-7.

[154] *Id.* at 7-11.

and the bankruptcy court reduced the fees claimed by more than 50%.[155]

B. Legal Standard for Rehearing

Rule 8022 of the Federal Rules of Bankruptcy Procedure governs motions for rehearing of bankruptcy appeals in district courts. Such a motion "must be filed within 14 days after the entry of judgment on appeal" and "must state with particularity each point of law or fact that the movant believes the district court . . . has overlooked or misapprehended and must argue in support of the motion." Fed. R. Bankr. P. 8022(a)(1)-(2). A Rule 8022 motion for rehearing "may be granted to correct a 'mistaken use of facts or law' in the prior decision." *In re Mar. Commc'ns/Land Mobile L.L.C.,* 745 F. App'x 561, 562 (5th Cir. 2018) (quoting *In re Coleman,* 2015 WL 7101129, at *1 (E.D. La. Nov. 13, 2015) ("The Court is of the opinion that the standard is simply whether the Court would have reached a different result had it been aware of its mistaken use of facts or law.")).

C. Analysis

Trahant's motions for rehearing were timely filed within 14 days of the Court's March 27, 2023 opinion. Because the motions and oppositions largely reiterate the arguments raised in the parties' briefs on appeal, and because, following reallotment of the appeals to this section of court, this Court has withdrawn the March 27, 2023 opinion, thereby allowing it to consider independently the arguments made in the briefs on appeal as well as the arguments urged in the

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[155] *Id.* at 11-12.

motions for rehearing, the Court need not repeat its analysis of these arguments in disposing of the motions for rehearing. Instead, it suffices to say that Trahant's position on rehearing has been taken into account and sufficiently addressed in the foregoing opinion on the appeals from the June 7, 2022 and October 11, 2022 Orders. The bankruptcy court did not deprive Trahant of due process in issuing either of its orders, it had jurisdiction to enter the October 11, 2022 Order, and that order was fully supported by the evidence and the law. This Court pauses only to expressly reject Trahant's disingenuous argument that he did not violate the protective order because the priest's name is public, non-protected information or should be "declassified."[156] Trahant only learned of the sexual abuse allegations against the priest through the Archdiocese's production of documents designated as confidential pursuant to the protective order. Trahant's disclosures of the name to the principal and journalist were not made in a vacuum but under circumstances he understood perfectly well would signal ("plant a seed") that the priest was connected in some unspecified way with the sexual abuse claims Trahant was famously pursuing. This connection was not public. Trahant's argument that the name should be "declassified" falls flat given his failure to trigger the protective order's mechanism for challenging a confidential designation and thereby seek "declassification." Trahant points to another provision of the protective order providing that a failure to challenge a designation initially does not waive the right to later challenge it. While true, the provision cannot be read to greenlight violations of the protective order

[156] R. Doc. 91-1 at 16-18.

(through the disclosure of Protected Material) that are subsequently sought to be excused by means of a designation challenge. Trahant's reading of the provision thus places the proverbial cart before the horse.

Accordingly, the motions for rehearing are DENIED.

II. Trahant's Motion to Vacate

A. Pending Motion

Trahant argues that this Court should vacate Judge Guidry's March 27, 2023 opinion and the corresponding judgments pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure because they were entered by a judge subject to recusal under 28 U.S.C. § 455.[157] Trahant insists that the failure to do so will produce injustice to the parties because the bankruptcy court's June 7, 2022 and October 11, 2022 Orders "are invalid, unsupported by competent evidence, and clearly erroneous, yet they were affirmed in an Opinion and Judgments entered by a judge subject to recusal."[158] Trahant also argues that the failure to vacate the opinion and judgments will produce injustice in other cases because there is a risk that the bankruptcy court's two orders "will substantially erode due process protections in other contempt proceedings, and will substantially expand the jurisdiction of bankruptcy courts over aspects of cases involved in other appeals of bankruptcy cases to district courts."[159] Finally, Trahant argues that failure to vacate the opinion and judgments will undermine

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[157] R. Doc. 102-1 at 8-13.

[158] *Id.* at 11.

[159] *Id.*

the public's confidence in the judicial process considering that "[t]he extensive national and international media coverage of the so-called 'donations scandal' exposes the extent to which the public might reasonably question Judge Guidry's impartiality."[160] According to Trahant, "[t]o deny relief in these circumstances would convey a message to the public that Mr. Trahant and the nearly 500 sexual abuse survivors with claims against the Archdiocese in the pending bankruptcy proceeding are unable to find a fair forum in federal court."[161]

In opposition, the Archdiocese first argues that the motion to vacate is an untimely motion for rehearing (filed long after the 14-day period for such motions), so it should not be considered.[162] On the merits of the motion, the Archdiocese argues that vacatur is not warranted because, "even if Judge Guidry were required to recuse himself before affirming the Bankruptcy Court's orders, his failure to do so [poses no risk of injustice to Trahant and] constitutes harmless error" because Trahant "may appeal to the Fifth Circuit, which will review the bankruptcy court's orders without giving any deference to Judge Guidry's ruling."[163] Moreover, says the Archdiocese, vacatur "would work substantial injustice to [it] and other parties in interest and undermine the public's confidence in the judicial process by needlessly delaying resolution of these [a]ppeals and diverting additional

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[160] *Id.* at 12.

[161] *Id.*

[162] R. Doc. 103 at 2, 7-8.

[163] *Id.* at 2-3, 9-12.

attention and resources from the reorganization process."[164]

In reply, Trahant again reviews the three factors governing whether recusal warrants vacatur, urging that each favors vacating Judge Guidry's opinion and judgments.[165]

B. Legal Standard for Vacating an Order and Judgment for Failure to Recuse[166]

Section 455(a) provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Similarly, § 455(b)(1) provides that a judge shall disqualify himself "[w]here he has a personal bias or prejudice concerning a party." *Id. §* 455(b)(1). The Fifth Circuit has explained that "[t]hese provisions afford separate, though overlapping, grounds for recusal. Subsection (b)(1) pertains to specific instances of conflicts of interest, while subsection (a) deals with the appearance of partiality generally." *Andrade v. Chojnacki,* 338 F.3d 448, 454 (5th Cir. 2003). "Further, whenever a judge's partiality might reasonably be questioned, recusal is required under § 455(a), irrespective whether the circumstance is covered by § 455(b)." *Id.* (citing *Liljeberg v. Health Servs.*

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164 *Id.* at 3, 12-14.

165 R. Doc. 106 at 3-7.

166 The Court pretermits consideration of the Archdiocese's argument concerning the timeliness of the motion to vacate because, even considering the Rule 60(b) motion on the merits, it is denied for the reasons reviewed below.

Acquisition Corp., 486 U.S. 847, 860 n.8 (1988)). To evaluate a claim under § 455(a), courts "must consider whether a reasonable and objective person, knowing all of the facts, would harbor doubts concerning the judge's impartiality," and "recusal may be required even though the judge is not actually partial." *Patterson v. Mobil Oil Corp.,* 335 F.3d 476, 484 (5th Cir. 2003) (quotations and emphasis omitted).

Although § 455 does not, on its own, authorize relief when a judge should have recused himself, Rule 60(b)(6) of the Federal Rules of Civil Procedure provides a remedy. *See Liljeberg,* 486 U.S. at 863; *Patterson,* 335 F.3d at 485-86. Rule 60(b)(6) "grants federal courts broad authority to relieve a party from a final judgment 'upon such terms as are just,' provided that the motion is made within a reasonable time and is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)." *Liljeberg,* 486 U.S. at 863 (quoting Fed. R. Civ. P. 60(b)(6)). The rule enables courts, in "extraordinary circumstances," "to vacate judgments whenever such action is appropriate to accomplish justice." *Id.* at 864 (quotations omitted). The Supreme Court has explained that Rule 60(b)(6) relief is "neither categorically available nor categorically unavailable for all § 455(a) violations." *Id.* Instead, in determining whether a judgment should be vacated for violation of § 455(a), courts must consider (1) "the risk of injustice to the parties in the particular case"; (2) "the risk that the denial of relief will produce injustice in other cases"; and (3) "the risk of undermining the public's confidence in the judicial process." *Id.* In the Fifth Circuit, "the 'harmless error' rule has long been applied in this context."[167]

[167] In another proceeding emanating from the Archdiocese's

Patterson, 335 F.3d at 485; *see also Labranche v. Dep't of Def,* 720 F. App'x 182, 185 (5th Cir. 2018) (applying harmless error rule as a component of the *Liljeberg* analysis).

C. Analysis

Because Judge Guidry did recuse himself, the appeals were reallotted to this section of court. And, as reflected above, this Court conducted an independent analysis of the issues raised on appeal, withdrew the March 27, 2023 opinion of Judge Guidry, and issues its own opinion addressing the appellate issues anew. Given these circumstances, it is probably unnecessary to address the substance of Trahant's motion to vacate because the opinion now underlying the judgments on appeal has been rendered by a judge not subject to recusal under § 455.

Nevertheless, in an abundance of caution, this Court will conduct the *Liljeberg* and *Patterson* analysis. Because Judge Guidry did recuse himself, this Court

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bankruptcy case, it has been urged that the harmless error analysis is only to be performed by the Fifth Circuit, not this district court. However, a close reading of *Liljeberg* and *Patterson* indicates that the analysis is to be performed by the court handling the questions whether a judge should have recused and whether any failure to do so earlier requires that a judgment be vacated. *See, e.g., Roberts v. Wal-Mart La., L.L.C.,* 54 F.4th 852, 854 (5th Cir. 2022) (noting that a district judge "ably and succinctly applied the *Liljeberg* factors" to the questions about the recusal of another district judge once the case was reallotted to him). This Court is the court first called upon to answer these questions in this instance (in part, because it is acting as an appellate court in this instance), so it may conduct the harmless error analysis that accompanies a complete examination of these questions.

will assume he should have, notwithstanding the opinion of the Committee on Codes of Conduct that recusal was not required. So, the question is whether his failure to recuse earlier was harmless error considering: (1) the risk of injustice to the parties in this case; (2) the risk that the denial of relief will produce injustice in other cases; and (3) the risk of undermining the public's confidence in the judicial process. The Court finds that, on balance, Judge Guidry's failure to recuse earlier was harmless error.

First, declining to vacate Judge Guidry's opinion and judgments presents no risk of injustice to the parties in this case. As explained above, this Court conducted an independent analysis of the issues on appeal and, like Judge Guidry, affirms the bankruptcy court's June 7, 2022 and October 11, 2022 Orders. Although this Court employs slightly different reasoning, the result is the same — namely, affirmance of the bankruptcy court's orders. In addition, the Fifth Circuit will also perform a fair and impartial review of the bankruptcy court's orders. That court has repeatedly found no risk of injustice to the parties when the trial court's ruling is subject to *de novo* review — as is true here for both the bankruptcy court's and district court's rulings. *Roberts,* 54 F.4th at 854 (holding there was no risk of injustice to the parties in part because the party seeking vacatur "would have received a fair, impartial *de novo* review"); *Patterson,* 335 F.3d at 485 ("Because we review a summary judgment ruling *de novo,* using the same standards as the district court, the parties are guaranteed a fair, impartial review of the merits of the ruling."). The Fifth Circuit "review[s] the decision of a district court, sitting in its appellate capacity, by applying the

same standards of review to the bankruptcy court's finding of fact and conclusions of law as applied by the district court." *In re ASARCO, L.L.C.,* 650 F.3d 593, 600 (5th Cir. 2011). As such, the Fifth Circuit will review the bankruptcy court's June 7, 2022 and October 11, 2022 Orders under the same standards of review applied by Judge Guidry originally, and now by this Court, so Trahant is guaranteed yet another fair and impartial review of these rulings.

Second, there is no risk that the denial of vacatur will produce injustice in other cases. As explained above, the bankruptcy court provided Trahant with due process at each stage of these proceedings, appropriately exercised its jurisdiction to address the October 11, 2022 Order, and did not, at any point, act beyond the authority granted to it by § 105(a) and Rule 37(b)(2). Also, Judge Guidry has recused himself in all proceedings arising out of the Archdiocese's bankruptcy case, and this Court, when called upon, will conduct an independent review of the issues addressed in his prior orders, so there is no risk of inconsistent rulings or injustice in these other proceedings. Moreover, if Trahant seeks review from the Fifth Circuit, there will be a second fair and impartial review by that court of the bankruptcy court's orders in these other proceedings as well. Further, the fact-intensive nature of the rulings in these proceedings "suggests that this denial [of vacatur] is unlikely to produce injustice in other cases." *Roberts,* 54 F.4th at 854.

Finally, failure to vacate Judge Guidry's judgments — the relief sought by Trahant — will not undermine the public's confidence in the judicial process because this Court has weighed all the arguments made on

appeal and reevaluated Judge Guidry's decision in connection with its own consideration of the appeals and the motions for rehearing. Further, Judge Guidry was advised by the Committee on Codes of Conduct that recusal was unnecessary and only recused to avoid an appearance of partiality after the media reported his donations to Catholic charitable organizations that are not parties to the bankruptcy case or any of its proceedings. In the wake of his recusal and reallotment of the bankruptcy appeals to this section of court, this Court's independent consideration of the appellate issues and issuance of a substituted opinion affirming the bankruptcy court's orders, there is no reason to vacate the judgments entered by Judge Guidry, and the public's confidence in the judicial process should be heightened by the similarity in outcome, placing the integrity of Judge Guidry's judgments in the appeals beyond question. *See Roberts,* 54 F.4th at 854 ("[T]he public's faith in the judicial system may be more undermined by vacating a straightforwardly correct decision. . . . "); *Patterson,* 335 F.3d at 486 (cautioning that "the public may be more inclined to lose faith in the system if this court were to mindlessly vacate [the recused judge's] rulings"); *In re Continental Airlines Corp.,* 901 F.2d 1259, 1263 (5th Cir. 1990) ("[I]f we reverse and vacate a decision that we have already determined to be proper, the public will lose faith in our system of justice because the case will be overturned without regard to the merits of the . . . claims [at issue].") As the Fifth Circuit concluded in *Roberts,* "[t]hat the case was reopened and reviewed by both an independent district judge and a panel of this court will likewise reassure the public that the federal judicial system takes its recusal obligations seriously." 54 F.4th at 854.

In sum, Judge Guidry's failure to recuse earlier was harmless error and this Court will not vacate his prior judgments (although it has withdrawn his prior opinion and substituted this one for it). Finally, this Court emphasizes that denying relief to Trahant on his motion to vacate does not convey a message to the sexual abuse survivors involved in the Archdiocese's bankruptcy case that they cannot find a fair forum in federal court. This appeal has nothing to do with the merits of their claims but deals instead with an attorney's failure to obey a court order and the court's obligation to protect the judicial process from such abuse. It is the Court's hope that the stakeholders in the bankruptcy case can put these ancillary matters to rest, so they can get on with the primary goal of confecting and confirming a plan of reorganization for the debtor that will provide meaningful relief for sexual abuse claimants within the bankruptcy process.

IV. Conclusion Concerning the Pending Motions

Accordingly, for the foregoing reasons,

IT IS ORDERED that Trahant's motion to vacate (R. Doc. 102) is DENIED.

IT IS FURTHER ORDERED that Trahant's motions for rehearing (R. Docs. 90; 91) are DENIED.

New Orleans, Louisiana, this 21st day of June, 2023.

/s/ Barry W. Ashe
U.S. District Judge

OPINION, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA (MARCH 27, 2023)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS

CIVIL ACTION No. 22-1740 c/w 22-4101

(Bankruptcy No. 20-10846)

SECTION T (2)

Before: Greg GERARD GUIDRY, U.S. District Judge.

OPINION

These consolidated appeals arise out of two Orders, issued by the Bankruptcy Court on June 7, 2022, and October 11, 2022,[1] finding that Appellant, Richard C. Trahant ("Trahant"), violated the court's Protective Order and imposing sanctions against him for disclosing confidential information to third parties. For the

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[1] *See* R1 Doc. 1-2 (No. 22-1740) & R2 Doc. 1-2 (No. 22-4101). The Court consolidated these appeals on February 10, 2023, for all purposes. R. Doc. 76 (22-1740). The use herein of "R1 Doc.__" refers to record documents found in Case Number 22-1740 and "R2 Doc.__" refers to record documents found in Case Number 22-4101.

reasons below, the Bankruptcy Court's Orders are AFFIRMED.[2]

BACKGROUND

The underlying Chapter 11 Bankruptcy Proceeding was initiated on May 1, 2020, by Appellee, the Roman Catholic Church of the Archdiocese of New Orleans (the "Archdiocese").[3] Thereafter, the Office of the United States Trustee ("UST") appointed the Official Committee of Unsecured Creditors (the "Committee") on May 20, 2020.[4] Among those appointed to the Committee, and appearing in the Bankruptcy Proceeding as creditors, were four individuals who filed lawsuits in state court asserting sexual abuse claims against clergy of the Archdiocese.[5] Trahant is counsel of record for each of these four Committee Members in their respective state court actions.[6]

On August 3, 2020, the Bankruptcy Court entered a Protective Order governing the use and disclosure of "Protected Material" produced in discovery.[7] "Pro-

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[2] Having examined the briefs and the record, the Court finds that oral argument is unnecessary pursuant to Federal Rule of bankruptcy Procedure 8019(b)(3).

[3] R2 Doc. 2-11, p. 404.

[4] R2 Doc. 2-1, p. 40.

[5] R2 Doc. 2-2, pp. 1-2.

[6] R1 Doc. 1-4, p. 3; R2 Doc. 2-2, pp. 1-2.

[7] R1 Doc. 33-2, pp. 23-43. The Protective Order was subsequently amended and supplemented on January 25, 2021, May 24, 2021, and October 18, 2021, to meet the needs of the case as it progressed. *See* R1 Doc. 33-2, pp. 51-71, pp. 110-114, pp. 127-131.

tected Material" is defined by the Protective Order as any document produced in discovery that has been designated as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS EYES ONLY" by the producing party.[8] The producing party may designate a document as "CONFIDENTIAL" when it contains "Confidential Information," meaning "any non-public information provided by a Party wherein such information is not public or available to the general public."[9] Further, the requesting party "shall be responsible for safeguarding all produced materials and information designated as 'CONFIDENTIAL' in accordance with the provisions of th[e] Protective Order."[10] Paragraph 7 of the Protective Order limits the disclosure or dissemination of any "CONFIDENTIAL" materials to purposes related directly to the Bankruptcy Proceeding and expressly prohibits their use "for any other purpose, including without limitation any business, competitive, governmental, commercial, administrative, publicity, press release, marketing, or research purpose or function, or in any other legal case, lawsuit, proceeding, investigation, or otherwise except as expressly provided herein, or as ordered by the Court."[11] Paragraph 9 of the Protective Order defines the prohibited uses of Protected Materials:

> Any Protected Material, and all information derived from Protected Material (including, but not limited to, all testimony, deposition,

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[8] R2 Doc. 2-2, p. 10.

[9] R2 Doc. 2-2, p. 11, ¶ 4.

[10] R2 Doc. 2-2, p. 11, ¶ 4.

[11] R Doc. 2-2, pp.15-16, ¶ 7.

> or otherwise, that refers, reflects or otherwise discusses any information designated "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" under this Protective Order), shall not be used, directly or indirectly, by any person for any business, commercial or competitive purposes, or for any purpose whatsoever other than for Authorized Uses.[12]

Importantly, Paragraph 6 of the Protective Order outlines the procedure for challenging the "CONFIDENTIAL" designation of any materials produced in discovery and having the designation removed, if warranted.[13] To that end, Paragraph 10 emphasizes that any disclosure of Protected Material beyond the methods set forth in the Protective Order is strictly prohibited.[14]

On December 3, 2021, the Archdiocese produced certain "CONFIDENTIAL" materials to the Committee in response to discovery requests in the Bankruptcy Proceeding.[15] The materials contained documents related to proceedings held before the Archdiocese's Internal Review Board ("IRB"), which investigates allegations of sexual abuse made against clergy.[16] On January 4, 2022, during a phone conference, Committee Counsel informed Counsel for the Archdiocese about its concerns that a priest identified

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[12] R2 Doc. 2-2, p. 20, ¶ 9.

[13] R2 Doc. 2-2, pp. 12-15, ¶ 6.

[14] R2 Doc. 2-2, p. 21, ¶ 10.

[15] R2 Doc. 2-3, p. 51, ¶ 13.

[16] R2 Doc. 2-3, p. 51, ¶ 13.

in the recently-produced IRB records was currently serving as the chaplain at a local high school and could be a danger to students.[17] The Committee requested that the priest be immediately removed from his position at the school.[18] In turn, Counsel for the Archdiocese contacted its client and learned that the priest had been placed on medical leave and was no longer working at the high school.[19] Counsel for the Archdiocese also learned that an unidentified third party had recently contacted the high school to make it aware of the priest in question, thus indicating that a breach of the Protective Order had apparently occurred.[20]

Thereafter, an article appeared on NOLA.com providing details about the priest in relation to the allegations contained in the IRB documents.[21]

On January 20, 2022, the Archdiocese filed a *Motion for Entry of an Order: (A) Compelling the Tort Committee and/or its Counsel to Answer Identified Questions, and (B) Setting an Evidentiary Hearing on Sanction for Violation of Protective Order* (the "Motion to Compel") on January 20, 2022.[22] The Bankruptcy Court held sealed status conferences with counsel for the Archdiocese and the Committee on January 27,

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[17] R2 Doc. 2-3, p. 51, ¶ 14.

[18] R2 Doc. 2-3, pp. 51-52, ¶¶ 14-15.

[19] R2 Doc. 2-3, p. 52, ¶ 16.

[20] R2 Doc. 2-3, pp. 52-53, ¶ 19.

[21] R2 Doc. 2-11, p. 403.

[22] R2 Doc. 2-3, pp. 46-58.

2022, February 11, 2022, March 11, 2022, and April 14, 2022, to determine the best course of action for identifying the source of the apparent information leak.[23] During the February 11, 2022 status conference, it was decided that joint discovery would be issued to the high school seeking the identity of the individual who had contacted them.[24]

Discovery responses from the high school were received and discussed with the Bankruptcy Court at the April 14, 2022 status conference.[25] The responses revealed that on December 31, 2021, by text message, and on January 4, 2022, by telephone, Trahant contacted the principal of the high school inquiring about the priest at issue and discussed the allegations against him.[26]

The day before that status conference, on April 13, 2022, the Committee filed written declarations under seal, including a declaration by Trahant dated April 12, 2022, to show, ostensibly, that no individual associated with the Committee had any knowledge of, or role in, the leak.[27] In his Declaration, Trahant states that he submitted the Declaration in connection with the Archdiocese's Motion to Compel and acknowledges that he received and reviewed "most, if not all" of the documents produced by the Archdiocese in the

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[23] *See* R2 Doc. 2-4, p. 4; R2 Doc. 2-11, pp. 168-220, pp. 221-53, and pp. 254-329, respectively.

[24] R2 Doc. 2-11, p. 220.

[25] R2 Doc. 2-11, p. 254.

[26] R2 Doc. 2-11, pp. 256-57.

[27] R2 Doc. 2-6, pp. 142-44; R2 Doc. 2-11, pp. 330-33.

Bankruptcy Proceeding.[28] Trahant's Declaration further states that he "first became aware of the credible finding of the sexual abuse of a minor by [the priest] on or about December 31, 2022" and that he "took it upon [him]self to contact [the high school principal] for what I believed (and still believe) to be a legitimate compelling reason – to protect minors. I wanted to make sure that a priest who admitted to sexually abusing a minor was no longer permitted to be on a high school campus."[29] Trahant admits that his first contact with the high school principal occurred on December 31, 2021, via text message and was followed by conversations beginning on January 4, 2022, with more conversations and text messages thereafter.[30] Despite disclosing the priest's name to the high school principal, a clear violation of the Protective Order, Trahant's Declaration purports to defend his actions by declaring that he:

- did not provide any "confidential" documents to or discuss the contents of any "confidential" documents with [the high school principal];[31]
- did not disclose or disseminate any documents or reveal the contents of any documents to anyone associated with [the high school] regarding [the priest] at any time from December 31, 2021, to the date of this Decla-

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[28] R2 Doc. 2-11, pp. 330-31, ¶¶ 2-4.

[29] R2 Doc. 2-11, p. 331, ¶ 7.

[30] R2 Doc. 2-11, p. 332, ¶¶ 9-10.

[31] R2 Doc. 2-11, p. 332, ¶ 10.

ration, nor did I ask or cause any other person to do so;[32]

- did not disclose or disseminate any documents marked in any way confidential, the contents of documents, or any other information produced by the Debtor to [the reporter] or anyone associated with the Advocate, the Times-Picayune, NOLA.com;[33] and
- never provided, disclosed, or disseminated any sealed or confidential documents produced by the Debtor or any information included in those documents to any person other than members of the Committee, their counsel, or the Committee's bankruptcy professionals.[34]

In light of these troubling discoveries, on April 25, 2022, the Bankruptcy Court ordered the UST to investigate the breach and to prepare and submit a report of its findings by June 3, 2022.[35] The UST filed its Report (the "UST Report") under seal with the Bankruptcy Court on June 3, 2022.[36] The UST Report was accompanied by 78 sworn declarations, 18 transcripts of sworn examinations provided under Rule 2004 of the Federal Rules of Bankruptcy Procedure, one transcript and one summary of two unsworn telephonic interviews, and documents produced to the

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[32] R2 Doc. 2-11, p. 332, ¶ 11.

[33] R2 Doc. 2-11, p. 333, ¶ 15.

[34] R2 Doc. 2-11, p. 333, ¶ 16.

[35] R2 Doc. 2-7, pp. 22-24.

[36] R1 Doc. 33-2 p. 543 (SEALED); R2 Doc. 2-11, p. 411.

UST pursuant to Rule 2004, including telephone logs, text messages, e-mails, and letters.[37] Trahant's Rule 2004 deposition was among these supporting documents and his testimony, unsurprisingly, revealed additional Protective Order violations.[38]

Trahant was confronted with his Sworn Declaration and the text messages he exchanged with the high school principal during the deposition. Trahant testified that he contacted the principal, who is also his cousin, on December 31, 2021, and inquired about the priest by name.[39] Trahant added that the principal, "immediately knew – simply based on my question, he knew what the inference was."[40] The deposition testimony further confirmed Trahant disclosed the nature of the allegations against the priest in subsequent communications with the principal.[41] Trahant was also questioned about an email that he sent to a local reporter on January 1, 2022.[42] The subject line of the email contained only the name of the priest.[43] The body of the message read: "Keep this guy on your radar. He is currently the chaplain at [the high school].[44] Trahant testified that he knew the

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[37] R2 Doc. 2-11, pp. 411-12.

[38] R2 Doc. 2-11, pp. 334-99.

[39] R2 Doc. 2-11, pp. 333-44 (Depo. pp. 36-39).

[40] R2 Doc. 2-11, pp. 344 (Depo. p. 39).

[41] R2 Doc. 2-11, pp. 351-53 (Depo. pp. 66-76).

[42] R2 Doc. 2-11, pp. 345 (Depo. p. 42).

[43] R2 Doc. 2-11, p. 345 (Depo. p. 42).

[44] R2 Doc. 2-11, p. 345 (Depo. pp. 42-43).

reporter had "been deeply involved in reporting on the clergy abuse crisis" and sent the email for the purpose of "alerting him, without telling him anything, clearly, keep this guy on your radar. This is where he is."[45]

After reviewing the UST Report and accompanying evidence, the Bankruptcy Court issued an Order on June 7, 2022 (the "June 7, 2022 Order"), finding that Trahant had knowingly and willfully violated the Protective Order.[46] The Bankruptcy Court precluded Trahant from further participating in the Bankruptcy Proceeding as personal counsel to Committee members and, as a result, removed his individual clients from serving on the Committee.[47] The June 7, 2022 Order indicated that a separate Order to Show cause would be issued "to determine appropriate sanctions for Trahant's disclosure of confidential information in violation of this Court's Protective Order."[48] Trahant appealed the June 7, 2022 Order to this Court on June 10, 2022.[49]

On June 13, 2022, the Bankruptcy Court issued an Order to Show Cause setting a hearing for Trahant to explain why he should not be sanctioned for violating the Protective Order.[50] The Show Cause Order also required the UST to provide the UST Report and

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[45] R2 Doc. 2-11, p. 345 (Depo. P.43).

[46] R1 Doc. 1-4.

[47] R1 Doc. 1-4.

[48] R1 Doc. 1-4, p. 5.

[49] R1 Doc. 33-2, pp. 569-71.

[50] R1 Doc. 33-2, pp. 586-88.

all of its exhibits to Trahant and his counsel in preparation for the hearing.[51] The Show Cause Order further instructed counsel for the Archdiocese and the Committee to compile invoices "identifying attorney and paralegal time spent on services related to" the Motion to Compel.[52] Trahant filed "Objections to Order to Show Cause and to Imposition of Additional Sanctions" on August 8, 2022.[53] In his objections Trahant argued that the June 7, 2022 Order was improper because he had not been provided with adequate due process before he was found in contempt.[54]

The Show Cause Hearing was held by the Bankruptcy Court on August 22, 2022.[55] During the proceeding, Trahant was represented by counsel, allowed to present argument, evidence, and offered his own testimony under oath.[56] During the hearing, he once again confirmed his contemptuous conduct, but still asserted that he had not violated the Protective Order. At the conclusion of the Show Cause Hearing, the

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[51] R1 Doc. 33-2, p. 588.

[52] R1 Doc. 33-2, p. 588. The invoices were filed with the bankruptcy Court from June 23, 2022, to September 14, 2022. *See* R2 Doc. 2-11, p. 417.

[53] R2 Doc. 2-11, pp. 27-36.

[54] R2 Doc. 2-11, pp. 27-36.

[55] R2 Doc. 2-11 pp. 81-141.

[56] R2 Doc. 2-11 pp. 81-141.

Bankruptcy Court took the matter under advisement.[57]

On October 11, 2022, the Bankruptcy Court issued a Memorandum Opinion and Order (the October 11, 2022 Order) imposing sanctions against Trahant in the amount of $400,000 for his Protective Order violations.[58] Trahant appealed the October 11, 2022 Order to this Court on October 21, 2022.[59]

On February 10, 2023, this Court consolidated the appeals on the grounds that they involve identical parties and intertwined factual and legal issues.[60] The issues raised by Trahant in these consolidated appeals fall under two inquiries: (1) whether Trahant was deprived of adequate procedural due process; and (2) whether the sanctions levied against Trahant were warranted and just.

LAW AND ANALYSIS

The Court has jurisdiction over these consolidated appeals under 28 U.S.C. § 158(a)(1) because, collectively, the appeals arise from a final order of contempt and imposing sanctions against Trahant.[61]

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[57] R2 Doc. 2-11 p. 140.

[58] R2 Doc. 2-11, pp. 400-429. The bankruptcy Court reached the $400,000 amount by reducing the $760,884.73 in total fees incurred by counsel for the Archdiocese and Committee by approximately 50%.

[59] R2 Doc. 2-11, pp. 430-32.

[60] R. Doc. 76 (22-1740).

[61] Although the Archdiocese originally objected to this Court's jurisdiction over Trahant's appeal of the bankruptcy Court's

When reviewing the findings of a bankruptcy court, the district courts act in their appellate capacity and apply the same standard of review as that of the court of appeals when reviewing a district court's action.[62] A district court reviews findings of contempt and imposition of sanctions for abuse of discretion.[63] A court abuses its discretion when it "(1) relies on clearly erroneous factual findings; (2) relies on erroneous conclusions of law; or (3) misapplies the law to the facts."[64] The lower court's findings of fact are reviewed for clear error and conclusions of law are reviewed *de novo*.[65] "Whether an alleged contemnor was afforded due process is a question of law . . . review[ed] *de novo*."[66]

Trahant Was Provided Ample Due Process

Trahant contends the June 7, 2022 Order violated his due process rights because he was not provided with notice and the opportunity to be heard before he

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June 7, 2022 Order, it concedes the objections were remedied when the Court consolidated these appeals. *See* R. Doc. 82, p. 3 (22-1740).

[62] *In re Perry*, 345 F.3d 303, 308 (5th Cir. 2003); *Matter of Glenn*, 900 F.3d 187, 189 (5th Cir. 2018).

[63] *Waste Mgmt. of Wash., Inc. v. Kattler*, 776 F.3d 336, 339 (5th Cir. 2015); *Goldin v. Bartholomew*, 166 F.3d 710, 722 (5th Cir. 1999).

[64] *June Med. Servs., LLC v. Phillips*, 22 F.4th 512, 519 (5th Cir. 2022) (quoting *Bradley on Behalf of AJW v. Ackal*, 954 F.3d 216, 224 (5th Cir. 2020)).

[65] *Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 578 (5th Cir. 2000).

[66] *Waste Mgmt.,* 776 F.3d at 339.

was found in contempt and precluded from participating in the Bankruptcy Proceeding. "The fundamental requisite of due process of law is the opportunity to be heard."[67] Where an alleged contemnor is provided notice and the opportunity to be heard before he is sanctioned, there has been no denial of due process.[68]

Despite taking issue with the June 7, 2022 Order, Trahant acknowledges the Bankruptcy Court was empowered to act *sua sponte* pursuant to 11 U.S.C. § 105(a) to take any action or make "any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."[69] Trahant continues that, regardless of the authority conveyed by § 105(a), the Bankruptcy Court did not have the ability to "punish a person for contempt or impose sanctions without reasonable notice and opportunity for hearing under Fed. R. Bankr. P. 9014(a), notice and a hearing under 11 U.S.C. § 1004(a)(4), or due process of law under the Fifth Amendment to the U.S. Constitution."[70] While the Court agrees with Trahant's recitation of the law on this point, it cannot agree that Trahant was subject to punishment for contempt or assessed with sanctions without notice or the opportunity to defend himself.

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[67] *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

[68] *See In the Matter of Terrebonne Fuel and Lube, Inc.*, 108 F.3d 609, 613-14 (5th Cir. 1997) (citing *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994)).

[69] R. Doc. 79, p. 33 (22-1740).

[70] R. Doc. 79, p. 33 (22-1740)

A thorough review of the record reveals Trahant was aware of the Protective Order and his obligations to abide by it before the document production in December 2021. Trahant was also aware that an apparent information leak had occurred in early January 2022. Indeed, as counsel for several Committee Members, Trahant provided a sworn declaration stating he did not breach of the Protective Order even though he simultaneously admitted to providing the priest's name to the high school principal. These inconsistent statements within his Declaration represent Trahant's understanding that he could be the "target" of the investigation and a concerted effort to defend his actions and explain why he believed they were permissible. Thereafter, the UST thoroughly (internal quotes omitted). investigated the breach, which included written discovery to Trahant and the taking of his deposition. During his deposition Trahant was represented by counsel, who specifically observed that Trahant was "clearly being looked at as a potential person who violated the Court's protective order."[71] The Court finds Trahant's contention that he, an experienced attorney, was not provided sufficient notice or the opportunity to be heard before the June 7, 2022 Order to be disingenuous at best.

The Bankruptcy Court determined, for good reason, that Trahant was at least one source of the leak and issued its June 7, 2022 Order finding him in contempt. At this point, Trahant had enjoyed more than enough due process for the Bankruptcy Court to impose sanctions, but it did not. Instead, Trahant would later be given additional opportunities to be

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[71] R2 Doc. 2-11, p. 372 (Depo. p. 152).

heard and the Bankruptcy Court merely precluded Trahant from further participating in the Bankruptcy Proceeding. The Bankruptcy Court took appropriate steps to "enforce . . . court orders or rules . . . [and] prevent an abuse of process" as it was empowered to do under 11 U.S.C. § 105(a). The Court finds that the need for the Bankruptcy Court at that time to take immediate action and remove Trahant was warranted by the circumstances. As stated by the Bankruptcy Court, the action was necessary "to protect the integrity of the bankruptcy process, to guard the rights of all parties in interest, and to preserve the trust in the confidentiality of mediation (which was due to begin on June 8, 2022)."[72] The Bankruptcy Court, therefore, did not abuse its discretion in acting pursuant to 11 U.S.C. § 105(a).

Even if a plausible argument could be made that the June 7, 2022 Order infringed upon Trahant's due process rights, which the Court finds is assuredly not the case, any conceivable procedural infirmities were cured by the subsequent chain of events. Following the issuance of the June 7, 2022 Order, the Bankruptcy Court issued a Show Cause Order, which provided Trahant with additional notice and the opportunity to be heard before sanctions were levied against him. The Bankruptcy Court ordered that Trahant be provided with the UST's Report and the attached materials so that he could prepare for the Show Cause Hearing. Trahant filed written objections to the impending proceeding into the record. When the Show Cause Hearing was held on August 22, 2022, Trahant was represented by counsel and offered additional objections to

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[72] R2 Doc. 2-11, p. 416.

the proceeding and the June 7, 2022 Order. Trahant also provided sworn testimony and engaged in thorough discourse with the Bankruptcy Court about the evidence against him. Trahant did not controvert the UST's findings in any meaningful way. Rather, Trahant's testimony confirmed the findings of the UST's investigation and he again admitted to disclosing the identity of the priest to the high school's principal and the reporter. Trahant further acknowledged that the priest's identity and details of the allegations against him were not in the public domain at the time he disseminated the information.[73] After the August 22, 2022 Hearing, he was afforded more than one month's time to submit briefing on any issue, including the invoices filed by the Committee and Archdiocese, before the October 11, 2022 Order was entered. In sum, the Court finds without hesitation that Trahant was not deprived of any due process rights in the proceedings below and, in fact, was provided with many opportunities to be heard before a finding of contempt and the imposition of sanctions.

The Bankruptcy Court Did Not Abuse Its Discretion By Imposing Sanctions Against Trahant

Trahant's assertion that the Bankruptcy Court lacked jurisdiction to render the October 11, 2022 Order is misplaced. Although this Court allowed Trahant's appeal of the June 7, 2022 Order to remain pending, the August 22, 2022 Hearing and the Bankruptcy Court's October 11, 2022 Order did not alter the status of the issues already on appeal.[74]

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[73] R2 Doc. 2-11, p. 116:5-25.

[74] *See Dayton Independent School District v. U.S. Mineral*

Rather, the October 11, 2022 Order brought finality to the issues now properly before the Court. The Bankruptcy Court did not err in continuing on with Trahant's contempt proceeding after the June 7, 2022 Order was appealed.

Trahant next argues the Bankruptcy Court abused its discretion by imposing sanctions against him because there was no evidence of bad faith or willfulness in his conduct. This is incorrect.

Section 105(a) of the Bankruptcy Code gives a bankruptcy court the power to, *sua sponte*, take any action or make any "determination necessary or appropriate to enforce of implement court orders or rules, or to prevent an abuse of process."[75] Included in those powers is the prerogative to issue civil contempt orders.[76] Bankruptcy courts also have inherent powers to impose sanctions where bad faith or willful abuse of process has occurred to ensure the orderly and expeditious disposition of their dockets.[77] Federal

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Products Co., 906 F.2d 1059 (5th Cir. 1990) ("When one aspect of a case is before the appellate court on interlocutory review, the district court is divested of jurisdiction over that aspect of the case. A district court does not have the power to 'alter the status of the case as it rests before the Court of Appeals'." (quoting *Coastal Corp. v. Texas Eastern Corp.,* 869 F.2d 817, 820–21 (5th Cir. 1989)).

[75] 11 U.S.C. § 105(a).

[76] *In the Matter of Terrebonne Fuel and Lube, Inc.*, 108 F.3d 609, 613 (5th Cir. 1997).

[77] *In re Carroll*, 850 F.3d 811, 815 (5th Cir. 2017) (citing *Scaife v. Associated Air Ctr. Inc.*, 100 F.3d 406, 411 (5th Cir. 1996)); *In re Cleveland Imaging & Surgical Hosp., L.L.C.*, 26 F.4th 285, 292 (5th Cir. 2022).

Rule of Civil Procedure 37(b) further endorses the imposition of sanctions, including attorneys' fees, for protective order violations.[78]

Here, a thorough review of the record reveals that the Bankruptcy Court's findings of fact as to Trahant's knowing and willful actions were correct and should not be disturbed. Trahant's testimony at the August 22, 2022 Hearing confirmed his awareness of the Protective Order and the materials it was intended to protect. He knew the appropriate process as provided in the Protective Order for challenging the "CONFIDENTIAL" designation of any document and failed to observe it. Trahant, thus, knowingly subverted that process and disseminated "Protected Materials" to third parties. Trahant's contention that he firmly believed he was not violating the Protective Order is not convincing because it is directly at odds with his sworn testimony. Indeed, Trahant testified that he disagreed with the "CONFIDENTIAL" designation of the materials at issue and contacted the high school principal and the reporter with the intent of "planting a seed" about the priest.[79] A review of Trahant's text messages with the high school principal undeniably shows that Trahant knowingly and intentionally disclosed confidential information to him.[80] The uncontroverted facts provide more than a sufficient basis to conclude Trahant willfully and knowingly

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[78] *Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.2d 486, 488 (5th Cir. 2012).

[79] R2 Doc. 2-11, pp. 119-124.

[80] R1 Doc. 37-4 (SEALED).

violated the Protective Order constituting bad faith on his part.

The $400,000 in sanctions imposed by the Bankruptcy Court are reasonable and justified under the circumstances. The Bankruptcy Court ordered the Archdiocese and the Committee to file their respective investigation-related fee invoices. There is no indication in the record that Trahant ever objected to any of the invoices filed. In any event, the Bankruptcy Court independently reviewed the invoices for reasonableness using the well-accepted "lodestar analysis," and considered the complexities of the litigation, the number of attorneys involved, and prevailing rates. The Bankruptcy Court was satisfied that the fees incurred were reasonable.[81] Despite finding the billing entries to be justified, and although not required to do so, the Bankruptcy Court reduced the total amount of the sanctions by approximately 50% to arrive at the $400,000 sanction imposed.[82] The Bankruptcy Court went to great lengths to emphasize that the sanctions were intended "to serve as a deterrent for any attorney or law firm who might be tempted to violate the Court's discovery orders, but also to preserve the integrity of the bankruptcy process and protect it from

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[81] R2 Doc. 2-11, pp. 426-27. "Once a court orders that a party must pay reasonable fees and expenses as a sanction, the lodestar analysis is then used to determine the proper amount of fees 'by multiplying the reasonable number of hours expended in defending the suit by the reasonable hourly rates for the participating lawyers.'" *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL NO. 2179, 2021 WL 4192060, at *2 (E.D. La. Sept. 15, 2021) (quoting *Skidmore Energy v. KPMG*, 455 F.3d 564, 568 (5th Cir. 2006)).

[82] R2 Doc. 2-11, pp. 427-28.

abuse."[83] Accordingly, the Court finds no merit in Trahant's contention that the sanctions were punitive in any manner. Trahant's position that the sanctions against him rise to the level of criminal in nature are, therefore, meritless. The Bankruptcy Court did not abuse its discretion when imposing sanctions against Trahant.

CONCLUSION

The record and undisputed facts demonstrate that Trahant, an experienced attorney, knew he was bound by the Protective Order and deliberately chose to violate it. What is worse, Trahant continues to suggest that he did not violate the Protective Order and that his disregard for its protocols was justified. The Court finds Trahant's position to be inexplicable, especially considering he is an officer of the Court. This Court has no reservations in finding that Trahant's conduct was contemptuous, wasteful, and warranted the imposition of sanctions. Trahant has been afforded the opportunity to be heard and has presented no evidence to support a contrary conclusion.

AFFIRMED.

New Orleans, Louisiana this 27th day of March 2023.

/s/ Greg Gerard Guidry
U.S. District Judge

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[83] R2 Doc. 2-11, p. 426.

ORDER, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA (APRIL 28, 2023)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS

CIVIL ACTION No. 22-1740 c/w 22-4101

(Bankruptcy No. 20-10846)

SECTION T (2)

Reallotted to Sect. B

Before: Greg GERARD GUIDRY, U.S. District Judge.

ORDER

I do not believe disqualification pursuant to 28 U.S.C. § 455 is mandated, and no party has filed a motion to disqualify me pursuant to 28 U.S.C. § 144; however, balancing my duty to decide the case with my duty to consider self-recusal if appropriate, I have decided to recuse myself from this matter in order to avoid any possible appearance of personal bias or prejudice.

New Orleans, Louisiana this 28th day of April, 2023.

/s/ Greg Gerard Guidry
U.S. District Judge

Reallotted to Sect. B
April 28, 2023

MEMORANDUM OPINION AND ORDER, U.S. BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF LOUISIANA (OCTOBER 11, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH
FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.

Case No. 20-10846

CHAPTER 11

COMPLEX CASE

SECTION A

Before: Meredith S. GRABILL, U.S. Bankruptcy Judge.

MEMORANDUM OPINION AND ORDER

When Congress adopted the Bankruptcy Reform Act of 1978 and ushered in the current Bankruptcy Code, it intended official committees to play a leading role—not some bit or walk-on part—in corporate reorganizations. The Bankruptcy Act of 1898, the Code's immediate predecessor, and the Act's amendments had been drafted under the assumption that all creditors—especially those in corporate reorganizations (which officially appeared on the bankruptcy scene in 1933)—would voluntarily supervise the collection and liquid-

ation of the estate, as the estate itself served as a trust for their benefit. *See* H.R. REP. NO. 95-595, at 91 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6053; Vincent L. Leibell, Jr., *The Chandler Act—Its Effect Upon the Law of Bankruptcy*, 9 FORDHAM L. REV. 380, 392–395 (1940) [hereinafter Leibell, Jr., *Chandler Act*]. But after 80 years of bankruptcy administration under the Act, "[t]he notion of creditor control, while still theoretically sound, ha[d] failed in practical terms." H.R. REP. NO. 95-595, at 92. Understandably, "[c]reditors [took] little interest in pursuing a bankrupt debtor [as] [t]hey [were] unwilling to throw good money after bad." *Id.* That was apparently true whether a trustee had been installed to coordinate with creditors to formulate a plan of reorganization as required in a Chapter X case under the Act or when a creditors' committee had been elected to supervise the debtor-in-possession in forming its own plan in Chapter XI under the Act. *See* H.R. REP. NO. 95-595, at 92–93; *see also* Leibell, Jr., *Chandler Act*, at 395. It appeared that meaningful participation in cases on the creditors' side came only from attorneys who were getting paid for their participation as creditors' proxies. *See* H.R. REP. NO. 95-595, at 92–93 ("In practice, creditor control has become attorney control, and the bankruptcy system operates more for the benefit of attorneys than for the benefit of creditors. The practices that have grown out of this shift of control often work to the detriment of both debtors and creditor. They benefit only those administering bankruptcy cases.").

Congress's new 1978 Bankruptcy Code contained several innovations designed to modernize the system, and, more importantly, to make the system fairer for everyone involved. The role of creditors' committees

was refocused and expanded. No longer would a committee passively supervise a trustee or debtor-in-possession, but the committees would "primarily be negotiating bodies for the classes of creditors that they represent." H.R. REP. No. 95-595, at 104. For the first time, a case could have multiple committees if faced with a diverse creditor body requiring representation. *See id.* Membership in committees would be chosen and appointed from the holders of the largest claims of a represented class, a move that was believed to be "more likely to assist in successful reorganization than proxy election, by attorneys, of a committee that may not truly represent the interests of its constituents." *Id.*

Congress wanted robust creditor participation in the corporate restructuring process to achieve fairer and better outcomes for debtors and creditors alike. Broadly speaking,

> [t]he creditors' committee is not merely a conduit through whom the debtor speaks to and negotiates with creditors generally. On the contrary, it is purposely intended to represent the necessarily different interests and concerns of the creditors it represents. It must necessarily be adversarial in a sense, though its relations with the debtor may be supportive and friendly. There is simply no other entity established by the Code to guard those interests. The committee as the sum of its members is not intended to be merely an arbiter but a partisan which will aid, assist, and monitor the debtor pursuant to its own self-interest.

In re Refco Inc., 336 B.R. 187, 195 (Bankr. S.D.N.Y. 2006) (quoting *In re Daig Corp.*, 17 B.R. 41, 43 (Bankr. D. Minn. 1981)). Outside of the various individual rights that all creditors enjoy under the Bankruptcy Code, Congress empowered committees particularly, as the primary negotiating bodies for a chapter 11 plan, to "appear and be heard on any issue" in a case, *see* 11 U.S.C. § 1109(b), and to "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan," *see* 11 U.S.C. § 1103(c)(2). Indeed, contained in § 1103(c) "is a wide and important array of authority indicating the intent to create a significant and central role for committees in carrying out a reorganization." *Johns-Manville Sales Corp. v. Doan (In re Johns-Manville Corp.)*, 26 B.R. 919, 925 (Bankr. S.D.N.Y. 1983).

With those powers, however, also comes the fiduciary duty that an official committee owes to its constituency of unsecured creditors and, at times, to the debtor's estate. *See In re Refco Inc.*, 336 B.R. at 195 (citations omitted). In exercising its powers and fulfilling its duties as the primary negotiating body for a plan of reorganization, a committee and its members and their agents should and will receive sensitive or proprietary information from the debtor or other parties, often in the context of settlement discussions. *See id.* at 196. Thus, "[i]t has frequently been held that committee members' fiduciary duties of loyalty and care to the unsecured creditor body require such information to be held in confidence." *Id.* (citing cases). Moreover, "[m]aintaining the parties' reasonable expectations

of confidentiality . . . is often critical to a committee's performance of its oversight and negotiation functions." *Id*. at 197.

In short, even in the face of evolving commercial financing trends that lean toward the creation of more secured debt, a functioning and focused unsecured creditors' committee remains key to the integrity and success of the bankruptcy process itself. Unsecured creditors' committees and their professionals and agents play as large a part in the success or failure of any restructuring case as that of debtors and secured creditors. But the bankruptcy process as it was intended to function under the Bankruptcy Code quickly falls apart when courts cannot depend on the integrity, ethics, and honesty of litigants and professionals who have accepted roles of great responsibility and trust.

On January 20, 2022, counsel for The Roman Catholic Church for the Archdiocese of New Orleans (the "Archdiocese" or, post-petition, the "Debtor") notified the Court through a motion that someone had contacted officials at a local high school in December 2021 or early January 2022 and wrongfully disclosed confidential information in violation of the Protective Order in place governing discovery in this case. The Debtor averred that the disclosed information could only have come from discovery produced in early December 2021 by the Debtor to the Official Committee of Unsecured Creditors (the "Committee"). [ECF Doc. 1256]. The Debtor's motion further reported that the same confidential information, that is, the identity of a priest, details of sexual abuse allegations made against that priest and the individual who alleged the abuse, and the resolution of the subsequent Archdiocesan

investigation—none of which had ever been publicly disclosed—was then published in a local online newspaper article. *See id.* As discussed in detail below, after the parties attempted to investigate the matter themselves with limited results, they asked the Court to allow the Office of the United States Trustee ("UST") to perform an independent investigation into the alleged breach of the Protective Order. The UST's investigation revealed that at least one source of the leak of the foregoing confidential information was Richard Trahant, an attorney representing an individual member of the Committee.

Now before the Court is the *Order To Show Cause* issued to attorney Richard Trahant by this Court on June 13, 2022, [ECF Doc. 1589], and *Richard C. Trahant's Objections to Order To Show Cause and to Imposition of Additional Sanctions*, [ECF Doc. 1704]. The Court held an evidentiary hearing under seal on August 22, 2022, pursuant to the *Order To Show Cause*. After receiving sworn testimony from Trahant and listening to arguments of counsel, the Court took the matter under submission, [ECF Doc. 1749], and now makes the following findings of fact and conclusions of law.[1]

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[1] These findings of fact and conclusions of law constitute the Court's findings of fact and conclusions of law pursuant to Federal Rule of bankruptcy Procedure 7052 and 9014. To the extent that any of the following findings of fact are determined to be conclusions of law, they are adopted and shall be construed and deemed conclusions of law. To the extent any of the following conclusions of law are determined to be findings of fact, they are adopted and shall be construed and deemed as findings of fact.

RELEVANT BACKGROUND

A. The Debtor's Bankruptcy Case Filing and Constitution of Official Committees

On May 1, 2020, the Archdiocese filed a petition for bankruptcy relief under chapter 11 of the Bankruptcy Code. [ECF Doc. 1]. The Court designated the Archdiocese's case as a "complex" case under the Court's *Procedures for Complex Chapter 11 Cases*, as the Debtor represented that it held total debt of more than $10 million, more than fifty parties-in-interest existed, and the case was expected to attract significant media attention. [ECF Docs. 2 & 18]. Indeed, leading up to the filing of its case, the Archdiocese had been defending against at least 34 pending lawsuits filed in Louisiana state court between 2018 and 2020 by individuals alleging claims of sexual abuse by priests or lay persons employed or supervised by the Archdiocese and complicity of the Archdiocese in that abuse (the "Abuse Cases"). Upon filing for bankruptcy relief, the Debtor removed each of those lawsuits to the United States District Court for the Eastern District of Louisiana and, at this time, all of the lawsuits remain stayed pursuant to 11 U.S.C. § 362(a).

A few of the plaintiffs in the Abuse Cases mobilized quickly and participated through their state court counsel and newly retained bankruptcy counsel in the Debtor's first-day hearings on May 4 and 5, 2020. [ECF Docs. 107 & 108]. Trahant was among the state court counsel who participated in the first-day hearings on behalf of those plaintiffs, having represented several plaintiffs in the Abuse Cases. [ECF MTR 43 & ECF Docs. 37, 65 & 1333]. The plaintiffs' participation resulted in heavily negotiated first-day Orders, including those regarding payment of prepetition wages and

benefits, use of cash collateral, and the requirement to file under seal certain portions of the Debtor's schedules and statement of financial affairs to the extent those documents contained confidential identifying information of abuse claimants. [ECF Docs. 100, 173 & 177].

The UST constituted the Committee on May 20, 2020, [ECF Doc. 94], and reconstituted it on June 10, 2020, [ECF Doc. 151], and again on October 8, 2020, [ECF Doc. 478]. At its inception, the Committee was comprised of abuse claimants and bondholders; since October 8, 2020, the Committee has been comprised entirely of abuse claimants, six total. After the Committee's constitution, the Court approved the Committee's retention of the law firms of Locke Lord LLP and Pachulski Stang Ziehl & Jones LLP as counsel for the Committee. [ECF Docs. 256 & 257]. Individual members of the Committee retained their state court counsel to advise them regarding their individual claims against the estate and to assist them in fulfilling their duties as members of the Committee, [ECF Docs. 151 & 478]. Until June 7, 2022, Trahant served as counsel to certain individual Committee members. [ECF Docs. 151 & 478].

Pursuant to this Court's *Order Directing United States Trustee To Appoint Additional Committee of Commercial Unsecured Creditors* and the accompanying memorandum and opinion, [ECF Docs. 745 & 746], on March 5, 2021, the UST constituted an additional official committee comprised of unsecured commercial creditors (the "Commercial Committee"), [ECF Doc. 772]. On May 20, 2021, the Court approved the Commercial Committee's retention of Stewart Robbins Brown & Altazan, LLC as counsel. [ECF Doc. 874].

B. The Court's Protective Order Governing Discovery

On July 24, 2020, the Debtor moved the Court for entry of a protective order pursuant to Federal Rule of Civil Procedure 26(c)[2] to govern discovery in this case in order "to protect the disclosure of certain confidential documents and other confidential information that will be produced in discovery . . . including, but not limited to, (1) confidential financial information and (2) sensitive and confidential information regarding sexual abuse claims." [ECF Doc. 280]. At the hearing on the motion, the Court resolved remaining objections lodged by the Committee, and on August 3, 2020, issued an Order accepting the form of Protective Order negotiated by the Debtor and the Committee. [ECF Doc. 305]. The Protective Order has been amended on occasion to adjust for the changing contours and needs of the case including, as examples, the addition of the Commercial Committee and to allow certain parties (such as abuse claimants who do not serve on the Committee and their individual counsel, as well as the Debtor's insurers and reinsurers) to have access to certain confidential information so that they may participate in the mediation of abuse claims. [ECF Docs. 729 (amending and superseding 305), 885 & 1120]; *see also* [ECF Doc. 1095].

Under the Protective Order, "Protected Material" is discovery produced and designated by the producing party as "CONFIDENTIAL" OR "CONFIDENTIAL—ATTORNEYS' EYES ONLY." [ECF Doc. 729, at 3]. Paragraph 7 of the Protective Order sets forth use and

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[2] Rule 26 is made applicable to this proceeding by Federal Rules of bankruptcy Procedure 7026 and 9014.

disclosure limits for material designated as "CONFIDENTIAL." [ECF Doc. 729, ¶ 7]. Any discovery material designated or marked "CONFIDENTIAL" may be disclosed by a recipient only to certain persons: (i) the Debtor, including its officers, employees, and agents; (ii) the Committee, including its members and their attorneys; (iii) other creditors and case constituents, after they have signed a Confidentiality Statement; and (iv) the UST. *See id.*[3] Protected Material may only be used only for "Authorized Uses," which, in the case of the Committee, is

> solely in connection with Committee's obligations under the Bankruptcy Code, for purposes of the Chapter 11 Case, and/or for purposes of any judicial proceedings relating thereto (including informal discovery and any contested matters and adversary proceedings commenced in connection with the Chapter 11 Case); and not for any other purpose, including, without limitation, any business, competitive, governmental, commercial, administrative, publicity, press release, marketing, or research purpose or function, or in any other legal case, lawsuit, proceeding, investigation, or otherwise except as expressly provided herein, or as ordered by the Court.

See id. Paragraph 9 of the Protective Order conversely identifies prohibited uses for Protected Material obtained through discovery in this case:

> Any Protected Material, and all information

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[3] Paragraph 8 of the Protective Order has similar restrictions on the disclosure of discovery material marked "CONFIDENTIAL—ATTORNEYS' EYES ONLY." [ECF Doc. 729, ¶ 8].

> derived from Protected Material (including, but not limited to, all testimony, deposition, or otherwise, that refers, reflets or otherwise discusses any information designated "CONFIDENTIAL" or "CONFIDENTIAL—ATTORNEYS' EYES ONLY" under this Protective Order), shall not be used, directly or indirectly, by any person for any business, commercial or competitive purposes, or for any purpose whatsoever other than for Authorized Uses.

[ECF Doc. 729, ¶ 9]. Indeed, the Protective Order completely restricts disclosure of Protected Material outside of the methods prescribed in the Protective Order:

> Except with the prior written consent of the person asserting "CONFIDENTIAL" OR "CONFIDENTIAL—ATTORNEYS' EYES ONLY" treatment, or in accordance with a prior order of the Court after notice, <u>any Protected Material, and any information contained in, or derived from Protected Material</u> (including, but not limited to, all deposition, examination or hearing testimony that refers, reflects, or otherwise discusses any information designated "CONFIDENTIAL" or "CONFIDENTIAL—ATTORNEYS' EYES ONLY") <u>may not be disclosed other than in accordance with this Protective Order</u>.

[ECF Doc. 729, ¶ 10 (emphasis added)].

The Protective Order also sets forth the protocol for challenging designations of "CONFIDENTIAL" OR "CONFIDENTIAL—ATTORNEYS' EYES ONLY." [ECF Doc. 729, ¶ 6].

FINDINGS OF FACT

A. Events Leading to the UST's Independent Investigation of the Breach of the Court's Protective Order

On January 20, 2022, the Debtor filed a motion under seal asserting that violations of the Court's Protective Order had occurred. The Debtor's motion alleged that the Committee allowed Protected Material produced by the Debtor to the Committee to be disclosed to administrators at a local high school as well as to a local reporter, resulting in the publication of Protected Material in the media a few weeks later. [ECF Doc. 1256]. The Protected Material disclosed and published in a local online newspaper article included the identity of a priest and the high school at which he was currently employed, details of sexual abuse allegations made against that priest and the individual who alleged the abuse, and the resolution of the subsequent Archdiocesan investigation. *See id*. The motion sought to compel the Committee to investigate the source of the breach within its ranks and asked this Court for an evidentiary hearing to consider imposition of sanctions for the breach of the Protective Order ("Motion To Compel"). *See id*.[4]

Specifically, the Debtor alleged that, on January 4, 2022, based on documents received by the Committee through discovery in this case in December 2021, Committee counsel contacted the Debtor's counsel and

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[4] The Motion To Compel has been unsealed pursuant to this Court's Order of October 11, 2022, [ECF Doc. 1843]; however, the Court has redacted the motion to shield confidential information guarded by this Court's Protective Order and pursuant to 11 U.S.C. §§ 107(b)(2) and 107(c).

informed them of the Committee's concerns that a priest against whom sexual abuse claims had been alleged in the past was currently serving as a chaplain at a local high school, albeit one not operated by the Debtor. [ECF Doc. 1256]. In response to the Committee's demand for action, Debtor's counsel immediately contacted their client and learned that the priest in question was currently out of work on extended medical leave and thus had no contact with minors. *See id.*[5] But Debtor's counsel also learned then that someone had contacted the high school prior to January 4 with detailed information about the priest, as officials from the high school had already called the Debtor about the issue. *See id.*

The Court held an initial status conference with counsel for the Committee and the Debtor on January 27, 2022, to discuss the Debtor's Motion To Compel; also in attendance at that status conference was counsel for the UST and individual counsel for one member of the Committee. [ECF Doc. 1257]. Counsel for the Debtor and the Committee conveyed to the Court their desire to engage in informal discovery regarding the breach. The Court allowed the parties to move forward with consensual, informal discovery, and held three status conferences with the parties between February 11 and April 14, 2022, to receive updates on their progress. [ECF Docs. 1290, 1295,

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[5] The Debtor and the Committee jointly provided to administrators at the high school documents concerning the past sexual abuse allegations against the priest to the high school once those administrators executed the Protective Order. [ECF Doc. 1843, Ex. B (Hr'g Tr. 6:15–7:3 (March 11, 2022))]. The priest resigned from employment at the high school in mid-January. [ECF Doc. 1843, Ex. E].

1296, 1308, 1414].[6] Counsel for the Committee reported in those status conferences that they had investigated possible sources of the breach of the Protective Order; after interviewing attorneys and support staff in their firms, Committee members, and those members' individual counsel, Committee counsel assured the Court and the Debtor that they had uncovered no evidence that revealed that the breach of the Protective Order originated from the Committee's side. *See* Hr'g Tr. 6:22–7:8 (Feb. 11, 2022), [ECF Doc. 1843, Ex. A]; Hr'g Tr. 16:20–20:1 (March 11, 2022), [ECF Doc. 1843, Ex. B].

Importantly, counsel for the Committee never disputed the allegation that a breach of the Protective Order had occurred. As a result of its internal investigation into the source of that breach, on or about April 4, 2022, the Committee and the Debtor received discovery responses from the local high school revealing, among other things, that Trahant had contacted the principal of the high school multiple times beginning on December 31, 2021 regarding Protected Material. About a week later, on April 13, 2022, counsel for the Committee filed under seal declarations of "certain Committee members, their state court counsel, and Committee bankruptcy counsel." [ECF Doc. 1438]. That set of declarations included the *Declaration of Richard C. Trahant* dated April 12, 2022 (the "Decla-

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[6] Those *in camera* status conferences were transcribed and initially maintained under seal. At this time, the Court has unsealed the transcripts, but provides redacted copies to shield confidential information guarded by this Court's Protective Order and pursuant to 11 U.S.C. §§ 107(b)(2) and 107(c). [ECF Doc. 1843].

ration")[7] in which Trahant declared that he served as counsel to four individual Committee members and that on December 31, 2021, he first contacted his cousin who serves as the principal at the local high school regarding Protected Material that he received in his role as counsel for a Committee member "for what [he] believed (and still believe[s]) to be a legitimate compelling reason – to protect minors." [ECF Doc. 1843, Ex. D, ¶¶ 1–9]. Trahant also declared that he "did not provide any 'confidential' documents to or discuss the contents of any 'confidential' documents with" any officials at the local high school and "did not disclose or disseminate any documents marked in any way confidential, the contents of documents, or any other information produced by the Debtor to" the reporter or anyone else affiliated with area newspapers. [ECF Doc. 1843, Ex. D, ¶¶ 10–11 & 15].

At the April 14, 2022 status conference on the Motion To Compel, the parties requested that the UST be appointed to perform an independent investigation. [ECF Doc. 1843, Ex. C]. The Court agreed. As it stated in its April 25, 2022 Order instructing the UST to investigate the allegations of wrongful dissemination of Protected Material, the Court was concerned not only with enforcing its own Orders, but with the timing of such breach and the negative impact that violation would have on the functioning of the Committee, the rights of parties in interest in the bankruptcy process, and the ability of the parties in

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[7] The Court has unsealed the Declaration per its Order of October 11, 2022, and attached the Declaration as Exhibit D to that Order, redacted to shield confidential information guarded by this Court's Protective Order and pursuant to 11 U.S.C. §§ 107(b)(2) and 107(c). [ECF Doc. 1843].

this case to proceed in good faith in the upcoming mediation of claims asserted against the estate. [ECF Doc. 1468]. The Court instructed the UST to submit its findings on or before June 3, 2022, and enabled that expedited expectation by shortening the timelines for responding to discovery propounded by the UST. *See id*. The Court's Order instructed all parties in interest to preserve relevant hard-copy documents and electronically stored information in their custody and control, observing that counsel for the Committee and the Debtor had agreed on behalf of their clients and constituents to cooperate with the UST in its investigation. *See id*.

The Court stated in its Order that, upon reviewing the results of the UST's investigation into the breach of the Protective Order, it would determine the need for further action. *See id*. With that, the Debtor withdrew its Motion To Compel. [ECF Doc. 1473].

B. The Results of the UST's Independent Investigation and the Court's Response

On June 3, 2022, the UST filed under seal its statement of position regarding the allegations made by the Debtor of violations of the Protective Order (the "UST Report"). [ECF Doc. 1572]. Counsel for the UST conducted its investigation efficiently and thoroughly, attaching to the report 78 sworn declarations; 18 transcripts of sworn examinations provided under Rule 2004 of the Federal Rules of Bankruptcy Procedure; one transcript and one summary of two unsworn telephonic interviews; and numerous documents produced in discovery, including telephone and text-message logs, e-discovery transactions reports, and e-mail and

letter correspondence.[8] All parties who are bound by the Court's Protective Order, including Trahant, have had the opportunity to review the full UST Report and attachments. [ECF Doc. 1669, 1671 & 1752].

According to the Debtor's website, in November 2018, "to foster the healing of victims, in a spirit of transparency, and in the pursuit of justice," the Archbishop made the decision to publish the names of those "Archdiocesan clergy (priests and deacons) who had been removed from ministry for an allegation of sexual abuse of a minor." Archdiocese of New Orleans, Pastoral Letter, Clergy Report Regarding Abuse (Nov. 2, 2018), https://nolacatholic.org/2018-report-on-clergy-abuse. That list has been referred to by the parties in this case as the "Credibly Accused List." According to the deposition transcript of Debtor's counsel attached to the UST Report, in the course of producing documents to the Committee pursuant to Bankruptcy Rule 2004, the Debtor had prioritized the production of documents related to sexual abuse claims alleged against priests listed on the Credibly Accused List or named in a proof of claim filed in this case. [ECF Doc. 1572 (Wegmann Dep. 29:5–34:20 (May 23, 2022)) (under seal)]. Internal documents evaluating abuse allegations specifically against the priest whose name was

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[8] The UST Report is voluminous and replete with Protected Material subject to this Court's Protective Order; any attempt at redaction would render the document useless to the reader. *See, e.g.*, Hr'g Tr. 12:8–13:9 (July 22, 2022) [ECF Doc. 1671]. Therefore, the Court is unable to unseal the UST Report and its attachments at this time. But the Court has unsealed and redacted Trahant's deposition transcript, which was attached to the UST Report and is discussed at length in this opinion. [ECF Doc. 1843, Ex. E].

disclosed in violation of the Protective Order here were first produced to the Committee by the Debtor in December 2021. [ECF Doc. 1572 (Wegmann Dep. 29:5–34:20)]. Prior to that disclosure, no information regarding that priest had been produced by the Debtor, as the priest is not named in a proof of claim filed in this case and has never been listed on the Credibly Accused List. *See id.*

During its investigation, counsel for the UST also deposed Trahant pursuant to Bankruptcy Rule 2004. The transcript of that sworn deposition as well as the exhibits used in the deposition were attached to the UST Report. In his deposition, Trahant disclosed that he, with two other attorneys, represented four of the then-current Committee members as plaintiffs in their prepetition Abuse Cases against the Archdiocese and continued to represent them as they fulfilled their duties on the Committee; he further disclosed that his law practice overwhelmingly consists of litigating clergy sexual abuse cases. [ECF Doc. 1843, Ex. E (Trahant Dep. 15:1–16:12 (May 18, 2022))]. Trahant also admitted that he had read the Court's Protective Order and all amendments thereto and was bound by the Protective Order, although he stated he disagreed with many of the "confidential" designations of documents produced by the Debtor. [ECF Doc. 1843, Ex. E (Trahant Dep. 16:13–17:16)].

Trahant stated that he first learned of abuse allegations against the priest at issue here on or about December 30 or 31, 2021, through his receipt of discovery produced by the Debtor. [ECF Doc. 1843, Ex. E (Trahant Dep. 26:4–32:12)]. Trahant reported that he recognized the name of that priest and conducted an Internet search to find out where the priest currently

resided or worked. [ECF Doc. 1843, Ex. E (Trahant Dep. 32:13–:23)]. When the UST presented Trahant with his April 12, 2022 Declaration, as well as text messages dated December 31, 2021, that he had provided to the UST through discovery, Trahant admitted that he contacted his cousin who serves as the principal of the area high school where the priest was employed at that time. [ECF Doc. 1843, Ex. E (Trahant Dep. 34:15–40:18; Exs. 4 & 5)]. Trahant stated that he mentioned the priest by name in the text message and, because his cousin knew the nature of his law practice, Trahant knew that his cousin would infer that an alleged sexual abuse history would be associated with that priest. [ECF Doc. 1843, Ex. E (Trahant Dep. 37:14–40:18; Ex. 5)]. Indeed, Trahant stated that his purpose in contacting his cousin was to ensure that the priest would not be allowed to return to work at the high school. [ECF Doc. 1843, Ex. E (Trahant Dep. 37:14–41:6)]. Trahant engaged in further text messages and telephone calls with his cousin on December 31, 2021, and January 3–4, 2022, in which he disclosed the nature of allegations against the priest that he learned through his receipt of confidential documents produced by the Debtor. [ECF Doc. 1843, Ex. E (Trahant Dep. 59:1–61:10, 66:25–76:8; Exs. 5 & 13)].

The UST also presented Trahant with an e-mail that he had produced to the UST; on January 1, 2021, Trahant sent that e-mail to a reporter with whom he had a professional relationship, and listed the name of the priest in the subject line. [ECF Doc. 1843, Ex. E (Trahant Dep. 42:4–44:21; Ex. 6)]. Trahant told the reporter in the e-mail where the priest was currently employed and to "keep him on your radar"; he further

testified that he sent the e-mail knowing that the reporter consistently investigated and reported on clergy abuse allegations and would relentlessly pursue any allegations of sexual abuse against the priest. [ECF Doc. 1843, Ex. E (Trahant Dep. 42:4–43:16)]. Indeed, as explained by Trahant:

> UST: This first email to [the reporter] from January 1st when you sent this email, was your intent to have [the reporter] publish an article that would disclose [the priest's] conduct?
>
> TRAHANT: Yes, but not only [the priest's] conduct.
>
> UST: Who else's conduct?
>
> TRAHANT: The archdiocese, for putting him there to begin with. . . . We've done this . . . meaning [the reporter], other reporters—enough to know that—just like [my cousin] did, when I bring up a name, they have a pretty good idea where it's going.

[ECF Doc. 1843, Ex. E (Trahant Dep. 85:14–86:2)].

Trahant was adamant throughout his deposition that he believed that his actions did not constitute violations of the Protective Order; rather, he viewed the allegations of a Protective Order violation to be "contrived" by the Debtor as retribution for "su[ing] them into bankruptcy." [ECF Doc. 1843, Ex. E (Trahant Dep. 250:22–251:16)]. Trahant conveyed that he felt restricted by the Protective Order, but at the same time, he conceded that he had never moved the Court for relief from the Protective Order to report potential crimes and never exercised the protocol available in the Protective Order to challenge the Debtor's "confi-

dential" designations of documents. [ECF Doc. 1843, Ex. E (Trahant Dep. 253L12–254:8)].

Based on the Court's review of the UST's factual findings from its investigation and all of the attachments to the UST Report, the Court issued an Order on June 7, 2022, finding:

> The sworn testimony of attorney Richard Trahant accompanying the UST Report supports the UST's statement that Trahant serves as co-counsel with attorneys John Denenea and Soren Gisleson to represent the personal interests of four individual members of the Committee; prepetition, the three attorneys pursued those members' claims against the Archdiocese in state court. Trahant's testimony confirmed that he, Denenea, and Gisleson practice law as a group, even though they each may be sole proprietors or partners in different law firms.
>
> Trahant's testimony, as well as documents attached to the UST Report, also confirm the UST's finding that Trahant received confidential information produced by the Debtor in the course of discovery in this case. Finally, Trahant's testimony and certain documents support the UST's findings that (i) Trahant had read and was bound by the Protective Order; (ii) knew that he was bound by the Protective Order; and (iii) beginning on December 31, 2021, provided on multiple occasions confidential information he received to a third party and the media in direct violation of this Court's Protective Order. The Court finds, based on its review of Trahant's

> testimony, that his disclosures and violation of the Protective Order were knowing and willful.

[ECF Doc. 1574, at 2]. The Court continued:

> No dispute exists that the information that reached the media was information that could not have come from any other source but the Debtor's production of discovery in this case. Although the Court commends the UST's diligence and expeditiousness in investigating the disclosure of highly confidential information in violation of the Protective Order, as the UST Report acknowledges, serious questions remain regarding the extent of the information that was provided to third parties and the media by Trahant and whether documents or sensitive information contained therein was also provided to the media by someone else. The fact that no one may even be able to uncover the extent of the breach, however, does not affect this Court's duty to protect the integrity of the bankruptcy process and enforce its own Orders.

[ECF Doc. 1574, at 3–4]. For the reasons stated in the Court's Order of June 7, 2022, to protect the integrity of the bankruptcy process, to guard the rights of all parties in interest, and to preserve the trust in the confidentiality of mediation (which was due to begin on June 8, 2022), the Court disqualified Trahant from receiving further Protected Material in this case. [ECF Doc. 1574, at 4– 5]. Pursuant to 11 U.S.C. §§ 105(a) and 1102(a)(4), the Court further instructed the UST to relieve the four members represented by

Trahant and his practice group from the Committee to prevent further abuse of process and to ensure adequate representation of creditors. [ECF Doc. 1574, at 5].[9]

The Court concluded its Order of June 7, 2022, by instructing that it would issue a separate *Order To Show Cause* to determine appropriate sanctions for Trahant's disclosure of confidential information in contempt of the Court's Protective Order. [ECF Doc. 1574, at 5]. On June 13, 2022, the Court issued the *Order To Show Cause* to Trahant to appear and explain to the Court why he should not be sanctioned for his willful violation of this Court's Protective Order. [ECF Doc. 1589]. The Court also instructed counsel for the Debtor and the Committee to compile and submit invoices identifying professional time spent on services related to the Debtor's Motion To Compel. *See id*. The following table summarizes those invoices and amounts charged to the estate:

[9] On June 7, 2022, the UST issued a *Notice of Appointment of Reconstituted Official Committee of Unsecured Creditors*, identifying the names of the two remaining members of the Committee and their individual counsel. [ECF Doc. 1575]. On June 21, 2022, the UST filed another *Notice of Appointment of Reconstituted Official Committee of Unsecured Creditors*, identifying the names of three new members of the Committee and their individual counsel. [ECF Doc. 1618].

Jones Walker LLP (Debtor's Counsel)

$ 261,294.35[10]

$ 95,124.40[15]

$ 356,418.75

Donlin, Recano & Company, Inc.
(Debtor's Noticing Agent)

$ 33,160.55[11]

$ 4,393.79[16]

$ 37,554.34

Locke Lord LLP (Committee Counsel)

$ 268,168.64[12]

$ 9,112.50[17]

$ 277,281.14

Pachulski Stang Ziehl & Jones LLP

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[10] Fees and expenses incurred between January 1, 2022, and June 30, 2022. [ECF Doc. 1698, Exs. A & B (filed August 1, 2022)].

[15] Fees and expenses incurred during the month of July 2022. [ECF Doc. 1785, Exs. A & B (filed September 14, 2022)].

[11] Fees and expenses incurred between January 1, 2022, and June 30, 2022. [ECF Doc. 1698, Exs. C & D (filed August 1, 2022)].

[16] Fees and expenses incurred during the month of July 2022. [ECF Doc. 1785, Exs. C & D (filed September 14, 2022)]

[12] Fees and expenses incurred between January 1, 2022, and June 30, 2022. [ECF Docs. 1696 (filed August 1, 2022) & 1724 (filed August 16, 2022)].

[17] Fees and expenses incurred during the month of July 2022. [ECF Doc. 1786 (filed September 14, 2022)].

(Committee Counsel)	
	$ 57,001.00[13]
	$ 19,120.00[18]
	$ 8,400.00[19]
	$ 1,960.00[20]
	$ 86,481.00
Berkeley Research Group, LLC (Committee Financial Advisor)	
	$ 3,149.50[14]
	$ 3,149.50
TOTAL	**$ 760,884.73**

Although the show-cause hearing was initially set for July 25, 2022, the Court continued the hearing to accommodate Trahant's counsel's scheduling con-

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[13] Fees and expenses incurred between January 1, 2022, and May 31, 2022. [ECF Doc. 1627 (filed June 23, 2022)].

[18] Fees and expenses incurred between May 1, 2022, and June 30, 2022. [ECF Doc. 1699 (filed August 2, 2022)].

[19] Fees and expenses incurred between April 1, 2022, and June 30, 2022. [ECF Doc. 1723 (filed August 15, 2022)]. Because the time periods in ECF Docs. 1627, 1699, and 1723 overlap, the Court reviewed all invoices to ensure that no duplicate time entries were listed.

[20] Fees and expenses incurred in the month of July 2022. [ECF Doc. 1781 (filed September 14, 2022)].

[14] Fees and expenses incurred between April 2022 and June 2022. [ECF Doc. 1714 (filed August 11, 2022)].

flicts; thus, the show-cause hearing occurred on August 22, 2022. [ECF Doc. 1644 (denying Trahant's motion for stay of hearing to consider sanctions pending appeal)].[21]

C. The Show-Cause Hearing

At the show-cause hearing,[22] the Court heard arguments from Trahant's counsel as to why his client should not be sanctioned for violating the Protective Order. Counsel asserted, among other things, that no clear and convincing evidence of a Protective

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[21] Citing *United States Abatement Corp. v. Mobil Exploration & Producing U.S. Inc. (In re United States Abatement Corp.)*, 39 F.3d 563 (5th Cir. 1994), this Court denied Trahant's motion for a stay pending appeal as premature; the Court found its Order of June 7, 2022, to be an interlocutory order because, although it made a finding of contempt, no sanctions had been imposed. *See* Hr'g Tr. 10:16–14:3, 15:17– 18:14 (July 1, 2022) [ECF Doc. 1642]. Alternatively, the Court denied Trahant's motion because he made no attempt to show that any of the four factors exist that would justify a stay pending appeal of a final order under Federal Rule of bankruptcy Procedure 8007. *See* Hr'g Tr. 18:14–20:7 (July 1, 2022) [ECF Doc. 1642]. The District Court likewise denied Trahant's motion to stay the show-cause hearing, finding that Trahant had not made the requisite showing of likelihood of success on the merits or irreparable harm to justify a stay of the show-cause hearing pending appeal. *See In re Roman Catholic Church of the Archdiocese of New Orleans*, No. 22-1740 (E.D. La. Aug. 9, 2022) [ECF Doc. 31].

[22] The Court held the show-cause hearing under seal, as the arguments and evidence presented at the hearing would necessarily discuss and pertain to Protected Material governed by the Court's Protective Order. The Court has now unsealed that transcript pursuant to its Order of October 11, 2022, [ECF Doc. 1843]; however, the Court has redacted the transcript to shield confidential information guarded by this Court's Protective Order and pursuant to 11 U.S.C. §§ 107(b)(2) and 107(c).

Order violation exists in the UST Report. Counsel further argued that the UST Report is hearsay, "lacks trustworthiness," and should not be relied upon by the Court in making findings because the UST "is an interested party in these whole proceedings." Hr'g Tr. 18:14–23:1 (Aug. 22, 2022), [ECF Doc. 1752].[23]

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[23] The Court overrules counsel's objection to the UST Report as hearsay. Federal Rule of Evidence 803 allows "[a] record or statement of a public office" to be excluded by the rule against hearsay if

> (A) it sets out:
>
> > (i) the office's activities;
> >
> > (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or
> >
> > (iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
>
> (B) the opponent does not show that the source of information or other circumstance indicate a lack of trustworthiness.

Fed. R. Evid. 803(8). "This rule is premised on the assumption that a public official will perform his duty properly and the unlikelihood that he will remember details independently of the record." *Boyd v. Toyobo Am., Inc. (In re Second Chance Body Armor, Inc.)*, 421 B.R. 823, 830 (Bankr. W.D. Mich. 2010) (internal quotations and citations omitted). "*Admissibility in the first instance is assumed* because of the reliability of the public agencies usually conducting the investigation, and their lack of any motive for conducting the studies other than to inform the public fairly and adequately." *Id.* (internal quotations and citations omitted).

The Court observes that the UST is part of the federal executive branch and acted within its authority. The UST is "a national program with broad administrative, regulatory, and litigation/enforcement authorities whose mission is to promote the

And, assuming *arguendo* that Trahant violated the Protective Order, counsel opined that the harm resulting from that violation was negligible. *See* Hr'g Tr. 25:4–26:11.

Trahant himself offered sworn testimony at the show-cause hearing. That testimony revealed that Trahant obtained confidential information regarding the priest at issue here solely from discovery he received through his affiliation with the Committee. *See* Hr'g Tr. 34:4–34:15, 40:3–41:21. Trahant knew that he was bound by the Protective Order issued by this Court, but he did not agree with the Debtor's designation of the information concerning the priest as "confidential" and believes that the Debtor "over-stamp[s]" the vast majority of the documents it produces as "confidential." *See* Hr'g Tr. 32:15–21, 39:1–40:2, 41:25–42:11. Trahant was also aware of the provisions

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integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the public." Dep't of Justice, U.S. Trustee Program, https://www.justice.gov/ust (last visited October 5, 2022). The UST is routinely called upon to investigate allegations of bankruptcy fraud and other matters affecting the integrity of the bankruptcy system. The UST Report also contains factual findings as required by Rule 803(8)(A)(iii).

Because the Court finds that the threshold requirements of Rule 803(8)(A)(iii) are met, the UST Report is presumed admissible unless Trahant affirmatively demonstrates that the UST Report is not trustworthy. *See Lightsway Litig. Servs., LLC v. Wimar Tahoe Corp. f/k/a Tropicana Casinos & Resorts, Inc. (In re Tropicana Entm't, LLC)*, 613 B.R. 587, 593–94 (Bankr. D. Del. 2020); *In re Second Chance Body Armor, Inc.*, 421 B.R. at 832. Trahant presented no evidence at the show-cause hearing to demonstrate the UST Report was biased or prejudiced against him. Thus, the Court concludes that Trahant did not carry his burden to show that the UST Report is untrustworthy pursuant to Rule 803(8)(B).

in the Protective Order that would have given him the opportunity to challenge the Debtor's "confidential" designations of information, but chose not to follow that procedure. *See* Hr'g Tr. 40:3–5. Trahant admitted that he sent text messages to his cousin containing the priest's name and asking if the priest were still employed by the high school where his cousin served as principal, understanding that his cousin would immediately know that the priest had been accused of sexual abuse, given that Trahant has litigated sexual abuse claims against the Archdiocese for years. *See* Hr'g Tr. 31:17–32:6. Although Trahant voiced his belief that he did not violate the Protective Order because he gave no physical or electronic documents to his cousin or a reporter, *see* Hr'g Tr. 32:5–14, he conceded that, in divulging the name of the priest and alleged abuse allegations against him to his cousin and a reporter, he planted the seeds of information that he knew would accomplish his own goal:

> COURT: . . . In your deposition and in the text messages and all of the exhibits that I reviewed . . . it came through that you didn't take physical documents and hand them over, but I would invite you to consider the fact that you took [the priest's] name and the information that you had about him—and you said you were very concerned. You had a good reason. You were concerned with protecting children at that high school—but I would invite you to consider that you took the confidential information and . . . planted the seed that then [officials at the high school], once they had the seed planted, came back at Archbishop Aymond and others from the

> Archdiocese and [asked questions] about [the priest]. Once you planted the seed with [the reporter], he's a reporter and he's going to go do what reporters do.
>
> . . . .
>
> TRAHANT: And did I plant a seed? Absolutely. Absolutely. Your Honor is a hundred percent right. Yeah, I planted that seed. Why did I plant the seed as it related to [my cousin]? Because it was simple. I communicate with [my cousin] fairly frequently and I didn't want that guy back on campus.
>
> . . . .
>
> TRAHANT: That was, that was the seed I planted with [the high school]. The seed I planted with [the reporter] . . .
>
> > But yes, I planted a seed . . .
> >
> > Because I think this, I think this stuff needs to be exposed.

Hr'g Tr. 36:20–38:24.

The Court asked Trahant why—if he did not believe he had violated the Court's Protective Order or if he believed he had good cause that justified his violation of the Protective Order—why he declined to tell counsel for the Committee that he had communicated confidential information with his cousin and with a reporter. The Court heard equivocation, deflection, and inconsistency in Trahant's answers. *See* Hr'g Tr. 31:10–16, 34:16–36:3. Further, his answers do not comport with the record and the timeline of events in

this case or the actions taken by Committee counsel in investigating the breach.

The Court also heard statements from counsel for the Debtor regarding the harm that has been caused by the breach of the Protective Order and wrongful disclosure of confidential information, including the hurt and trauma revisited upon the survivor of the priest's alleged abuse, the harm to the level of trust among parties with already-strained relations as they entered the mediation process, and the financial harm to the estate for professional fees incurred needlessly due to Trahant's delay in admitting his communications with his cousin and the reporter. *See* Hr'g Tr. 47:10–54:13. The Debtor requested that the Court impose sanctions against Trahant in the form of attorneys' fees and costs for willful violation of the Protective Order and the harm that his actions caused. *See id.*

CONCLUSIONS OF LAW

"At the outset, the Court notes that it has broad discretion to preserve the integrity and purpose of its own orders." *Skyport Global Commc'ns, Inc. v. Intelsat Corp. (In re Skyport Global Commc'ns, Inc.)*, 408 B.R. 687, 694 (Bankr. S.D. Tex. 2009) (citing *Barrett v. Atl. Richfield Co.*, 95 F.3d 375, 380 (5th Cir. 1996)).

A. Rule 37(b)(2) Permits Sanctions for Violations of the Protective Order.

Federal Rule of Civil Procedure 37(b)[24] "empowers the courts to impose sanctions for failures to obey discovery orders" and the Fifth Circuit has held that

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[24] Rule 37 is made applicable to this proceeding by Federal Rules of bankruptcy Procedure 7026 and 9014.

violations of protective orders are sanctionable within the scope of Rule 37(b)(2)(A). *Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 488–90 (5th Cir. 2012).[25] In addition to the broad range of sanctions listed in Rule 37(b)(2)(A), including contempt, Rule 37(b)(2) "authorize[s] the court to impose a concurrent sanction of reasonable expenses, including attorney's fees, caused by the failure to obey a discovery order." *Id.* at 488 (citation omitted); *see also* FED. R. CIV. P. 37(b)(2)(C). Although this Court "has broad discretion under Rule 37(b) to fashion remedies suited to the misconduct," usually a "finding of bad faith or willful misconduct [is required] to support the severest remedies under Rule 37(b)—striking pleadings or dismissal of a case." *Id.* (quoting *Pressey v. Patterson*, 898 F. 2d 1018, 1021 (5th Cir. 1990)).[26] But

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[25] The Court's Protective Order, like the one examined in *Cooper Tire & Rubber Co.*, (a) governs confidential material produced or disclosed in response to formal or informal discovery conducted in the case; (b) allows parties to designate material as "confidential"; (c) addresses inadvertent production of confidential material; (d) includes procedures for objections to designation of material produced as "confidential"; and (e) includes provisions regulating the storage, return, or destruction of confidential material. *See* 685 F.3d at 489–90. Thus, the Court's Protective Order was entered "to provide or permit discovery" of documents within the meaning of Rule 37(b).

[26] "Noncompliance with discovery orders is considered willful when the 'court's orders have been clear, when the party has understood them, and when the party's noncompliance is not due to factors beyond the party's control. . . . '" *In re Express Grain Terminals, LLC*, No. 21-11832, 2022 WL 1136313, at *4 (Bankr. N.D. Miss. Apr. 15, 2022) (quoting *Ali v. Dainese USA, Inc.*, 577 F. Supp. 3d 205, 221 (S.D.N.Y. 2021)).

"[l]esser sanctions," such as imposition of attorneys' fees, "do not require a finding of willfulness." *Id*.

"Rule 37 sanctions must be applied diligently both to penalize those whose conduct may be deemed to warrant such a sanction, [and] to deter those who might be tempted to such conduct in the absence of such a deterrent." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 763–64 (1980); *see also Cooper Tire & Rubber Co.*, 685 F.3d at 490; *Adolph Coors Co. v. Movement Against Racism & the Klan*, 777 F.2d 1538, 1542 (11th Cir. 1985). "Sanctions are proper where clear and convincing evidence indicates '(1) that a court order was in effect, (2) that the order required certain conduct by the respondent, and (3) that the respondent failed to comply with the court order.'" *Shaw v. Ciox Health LLC*, No. 19-14778, 2021 WL 5140615, at *3 (E.D. La. Nov. 4, 2021) (quoting *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 291 (5th Cir. 2002)).

B. The Court May Also Impose Sanctions Pursuant to 11 U.S.C. § 105(a) and Its Inherent Authority.

In addition to the authority granted by Rule 37 to impose sanctions for violation of the Court's Protective Order, "it is firmly established that 'the power to punish for contempt is inherent in all courts.'" *In re Skyport Global Commc'ns, Inc.*, 408 B.R. at 695 (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (citation omitted)). Indeed, "[f]ederal courts have inherent powers which include the authority to sanction a party or attorney when necessary to achieve the orderly and expeditious disposition of their dockets." *Carroll v. Abide (In re Carroll)*, 850 F.3d 811, 815 (5th Cir. 2017) (citations omitted); *see also In re Spectee Grp., Inc.*, 185 B.R. 146, 155 (Bankr. S.D.N.Y. 1995)

("A Court has inherent authority to supervise and control its own proceedings, and to require the payment of the other party's attorney's fees by one who has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" (quoting *Oliveri v. Thompson*, 803 F.2d 1265, 1272 (2d Cir. 1986))).

> This power reaches both conduct before the court and that beyond the court's confines, for "[t]he underlying concern that gave rise to the contempt power was not . . . merely the disruption of court proceedings. Rather, it was disobedience to the orders of the Judiciary, regardless of whether such disobedience interfered with the conduct of trial."

Chambers, 501 U.S. at 44 (quoting *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 798 (1987)).

Specifically, the Court has the power to assess attorneys' fees against both attorneys and litigants who engage in abusive litigation practices or in bad-faith conduct. *See Chambers*, 501 U.S. at 45–46; *Roadway Express, Inc.*, 447 U.S. at 765. A party "shows bad faith by delaying or disrupting the litigation or by hampering enforcement of a court order." *Hutto v. Finney*, 437 U.S. 678, 689 n.14 (1978). "The 'less severe sanction' of an assessment of attorney's fees is undoubtedly within a court's inherent power." *Chambers*, 501 U.S. at 45 (citing *Roadway Express, Inc.*, 447 U.S. at 765). "Where the Court concludes 'that the very temple of justice has been defiled . . . [or when a party] shows bad faith by delaying or disrupting the litigation or by hampering enforcement of a court order,' then the Court may invoke its inherent powers." *In re Skyport Global Commc'ns, Inc.*, 408 B.R. at 696

(quoting *Chambers*, 501 U.S. at 46). Although the Court's inherent powers are typically exercised when conduct is not subject to discipline under statutes or rules, "neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the [r]ules." *Chambers*, 501 U.S. at 50.

This Court also has a statutory grant of authority under § 105(a) of the Bankruptcy Code "to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). In addition to granting broad power to implement provisions of the Bankruptcy Code, § 105(a) "has been interpreted as supporting the inherent authority of the bankruptcy courts to impose civil sanctions for abuses of the bankruptcy process." *In re Carroll*, 850 F.3d at 816 (quoting *Walton v. LaBarge, Jr. (In re Clark)*, 223 F.3 859, 864 (8th Cir. 2000); *Friendly Fin. Discount Corp. v. Tucker (In re Tucker)*, No. 99-31069, 2000 WL 992448, at *3 (5th Cir. June 28, 2000)); *see also In re Tabor*, 583 B.R. 155, 177 (Bankr. N.D. Ill. 2018) (citing *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 1997)).

"The Fifth Circuit has held that the imposition of sanctions using § 105 as well as the inherent power of the Court must be accompanied by a specific finding of bad faith." *In re Bradley*, 495 B.R. 747, 793 (Bankr. S.D. Tex. 2013) (collecting cases); *see also In re Skyport Global Commc'ns, Inc.*, 408 B.R. at 695 (quoting *Chambers*, 501 U.S. at 45); *Goldin v. Bartholow*, 166 F. 3d 710, 722 (5th Cir. 1999).

C. Trahant's Disobedience of the Court's Protective Order and His Subsequent Choice To Obscure His Actions Justifies a Finding of Bad Faith and Warrants Sanctions.

The Court based its finding that Trahant violated the Protective Order primarily upon the factual findings contained in the UST Report—and in no small part upon Trahant's own sworn statements and the e-mails and text messages that he himself produced to the UST. The evidence presented at the show-cause hearing reconfirmed that finding. Trahant's testimony and the record in this case presents clear and convincing evidence that, even though a Protective Order was in place governing the confidential information produced by the Debtor and Trahant was bound by that Protective Order, he nevertheless took confidential information he received through his affiliation with the Committee and used it for his own purposes—not one for which it was intended or protected.

But Trahant's testimony at the show-cause hearing and the record in this case further reveal that his actions created waste, disrupted the progress in this case, and delayed resolution of this particular matter for months. Trahant not only disobeyed this Court's Protective Order, but his subsequent evasion and failure to provide information timely to counsel for the Committee and the Debtor regarding his own conduct constitute bad-faith actions which caused the Debtor, the Committee, and the UST to divert and expend resources unnecessarily to uncover information that Trahant had all along.

Trahant maintains his belief that he has complied with the terms of the Protective Order because he did not turn over any physical or electronic documents to

his cousin or the reporter, but the Court finds those statements to be disingenuous and difficult to accept considering the clear language of the Protective Order that prohibits disclosure of "any Protected Material, and any information contained in, or derived from Protected Material . . . other than in accordance with this Protective Order." [ECF Doc. 729, ¶ 10 (emphasis added)]. The Protective Order further describes specifically the purposes for which information governed by the Protective Order may be used. [ECF Doc. 729, ¶ 10]. Trahant is a seasoned attorney and an officer of the Court who has a responsibility to uphold and follow Court Orders—even those he may disagree with and those that become inconvenient to him. Further, through his legal representation of a member of the Committee—the primary negotiating body for a plan of reorganization in this case—Trahant was able to receive confidential information; thus, he and his client-members of the Committee and other Committee professionals owe fiduciary duties to that Committee's constituency that require such information to be held in confidence. Thus, pursuant to Rule 37, its inherent authority, and § 105 of the Bankruptcy Code, the Court imposes sanctions in the form of attorneys' fees and expenses against Trahant not only to serve as a deterrent for any attorney or law firm who might be tempted to violate the Court's discovery orders, but also to preserve the integrity of the bankruptcy process and protect it from abuse.

"Once a court orders that a party must pay reasonable fees and expenses as a sanction, the lodestar analysis is then used to determine the proper amount of fees 'by multiplying the reasonable number of hours expended in defending the suit by the reasonable

hourly rates for the participating lawyers.'" *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL NO. 2179, 2021 WL 4192060, at *2 (E.D. La. Sept. 15, 2021) (quoting *Skidmore Energy v. KPMG*, 455 F.3d 564, 568 (5th Cir. 2006)). "In determining the fee award, the court should exclude all time that is excessive, duplicative, or inadequately documented." *Id.* (citing *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993)). "In doing so, it is of importance for the court to keep in mind that '[t]he essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection.'" *Id.* (quoting *Fox v. Vice*, 563 U.S. 826, 838 (2011)). "So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time." *Id.* (quoting *Fox*, 563 U.S. at 838). That goal of "rough justice" is significant when combined with the purpose of Rule 37 sanctions, which, as stated above, is deterrence—not full repayment. *See id.* "Specifically, the court may reduce an award 'by a percentage to substitute for the exercise of proper billing judgment.'" *Id.* (quoting *Gilmore v. Audubon Nature Inst., Inc.*, 353 F. Supp. 3d 499, 508 (E.D. La. 2018)). Courts in this district have repeatedly reduced fee awards by 50% in this context. *See id.* (collecting cases).

At no time has Trahant objected to the reasonableness of the fee statements submitted by the professionals of the Debtor and the Committee pursuant to the *Order To Show Cause*, [ECF Doc. 1589]. The Court has nevertheless independently reviewed the fee statements submitted by those professionals. Considering the complexities of this matter, including the seriousness of the breach of the Protective Order,

as well as the number of attorneys and law firms involved, and the prevailing rates in the home markets of those law firms, the Court is satisfied that the amounts incurred by those firms in dealing with this matter are reasonable. The Court further observes that, pursuant to § 330(a)(1) of the Bankruptcy Code, the estate pays all allowed fees and expenses for professionals of the Debtor as well as the Committee.

Based on the circumstances of this matter, the Court finds that an award of a percentage of the fees and costs incurred will serve the desired purpose of deterring Trahant and others from engaging in similar misconduct. Therefore, the Court imposes sanctions in the amount of $400,000.00, which is approximately 53% of $760,884.73, the total amount of attorneys' fees and costs that were incurred by professionals of the Debtor and the Committee in responding to the Motion To Compel and investigating the breach of the Protective Order.[27]

Accordingly,

IT IS ORDERED that monetary sanctions are assessed against Richard C. Trahant in the amount of $400,000.00 and shall be payable to the Debtor within thirty days of this Order by mailing via commercial courier or hand-delivering certified funds to the Debtor's

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[27] The Court notes that the figure of $760,884.73 does not reflect the time and resources spent by the UST in completing its very thorough and comprehensive investigation into the breach of the Court's Protective Order. The Court and the parties owe their gratitude for the diligence and steadfastness of the UST as it continues to fulfill its mission to serve as an independent watchdog over cases filed in this district and to protect the bankruptcy process for the benefit of all parties in interest.

bankruptcy counsel, Jones Walker LLP, 201 St. Charles Avenue, Ste. 4900, New Orleans, Louisiana 70170.

IT IS FURTHER ORDERED that the Court will hold a hearing on Monday, November 21, at 4:00 p.m. at the United States Bankruptcy Court, 500 Poydras Street, Courtroom B-709, New Orleans, Louisiana 70130 to assess compliance with this Order and, in the event of noncompliance, to assess whether additional action should be taken by the Court to ensure compliance with this Order. Parties are to review this Court's General Order 2021-2, as amended, for information on conduct of hearings, which allow in-person participation in court proceedings as well as telephonic participation (Dial-In: 504.517.1385; Conf. Code 129611).

IT IS FURTHER ORDERED that the Debtor is instructed to serve this Memorandum Opinion and Order via first-class U.S. Mail on all parties not receiving electronic notice via this Court's CM/ECF system and on Richard Trahant at the address listed below within three days pursuant to the Federal Rules of Bankruptcy Procedure, this Court's Complex Case Procedures, and any Orders limiting notice and file a certificate of service to that effect.

Richard C. Trahant
Attorney at Law
2908 Hessmer Avenue
Metairie, Louisiana 70002

New Orleans, Louisiana, this 11th day of October, 2022.

/s/ Meredith S. Grabill
U.S. Bankruptcy Judge

ORDER TO SHOW CAUSE, U.S. BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF LOUISIANA (JUNE 13, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH
FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.

Case No. 20-10846

CHAPTER 11

COMPLEX CASE

Before: Meredith S. GRABILL, U.S. Bankruptcy Judge.

ORDER TO SHOW CAUSE

On June 7, 2022, this Court issued an Order, which in pertinent part, adopted the findings of the independent investigation of the Office of the United States Trustee (the "Trustee Report"), [ECF Doc. 1574],[1] that (i) attorney Richard Trahant received confidential information in connection with his repre-

[1] The UST Report is currently filed under seal and remains under seal pursuant to 11 U.S.C. § 107(b)(2), "to protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title."

sentation of individual members of the Official Committee of Unsecured Creditors (the "Committee") that was produced by the Debtor in the course of discovery in this case; (ii) Trahant had read and was bound by the Protective Order issued by this Court to guard against the unauthorized disclosure of highly confidential and sensitive information during the course of discovery in this case; (iii) Trahant knew that he was bound by the Protective Order; and (iv) beginning on December 31, 2021, Trahant provided on multiple occasions confidential information he received to a third party and the media in direct violation of this Court's Protective Order. The Court also found, based on its review of documents appended to the Trustee Report, including Trahant's own sworn testimony, that his disclosures and violation of the Protective Order was knowing and willful.

The Court's June 7, 2022 Order stated that the Court would issue a separate Order To Show Cause to determine appropriate sanctions for Trahant's disclosure of confidential information in violation of this Court's Protective Order. This Court holds both "inherent contempt authority and equitable authority under § 105 [of the Bankruptcy Code]." *In re Cano*, 410 B.R. 506, 538 (Bankr. S.D. Tex. 2009). "Federal courts have inherent powers which include the authority to sanction a party or attorney when necessary to achieve the orderly and expeditious disposition of their dockets." *Carroll v. Abide (In re Carroll)*, 850 F.3d 811, 815 (5th Cir. 2017) (citations omitted); *see also In re Spectee Grp., Inc.*, 185 B.R. 146, 155 (Bankr. S.D.N.Y. 1995) ("A Court has inherent authority to supervise and control its own proceedings, and to require the payment of the other party's attorney's fees

by one who has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" (quoting *Oliveri v. Thompson*, 803 F.2d 1265, 1272 (2d Cir. 1986))).

This Court also has a statutory grant of authority under § 105(a) of the Bankruptcy Code "to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). In addition to granting broad power to implement provisions of the Bankruptcy Code, § 105(a) "has been interpreted as supporting the inherent authority of the bankruptcy courts to impose civil sanctions for abuses of the bankruptcy process." *In re Carroll*, 850 F.3d at 816 (quoting *Walton v. LaBarge, Jr. (In re Clark)*, 223 F.3 859, 864 (8th Cir. 2000); *Friendly Fin. Discount Corp. v. Tucker (In re Tucker)*, No. 99-31069, 2000 WL 992448, at *3 (5th Cir. June 28, 2000)); *see also In re Tabor*, 583 B.R. 155, 177 (Bankr. N.D. Ill. 2018) (citing *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 1997)).

Thus,

IT IS ORDERED that Richard Trahant shall APPEAR on Monday, July 25, 2022, at 10:00 a.m. AND SHOW CAUSE before this Court as to why he should not be sanctioned for his willful violation of this Court's Protective Order;

IT IS FURTHER ORDERED that the United States Trustee shall provide the Trustee Report and all exhibits appended to the report to Mr. Trahant and any counsel he may retain to represent him in this matter; PROVIDED THAT Trahant's counsel reviews, signs, and agrees to be bound by the Protective Order in this case and submits an executed Protective Order to the United States Trustee and counsel for the Debtor

and the Committee. Mr. Trahant and counsel are reminded that the UST Report is currently filed under seal pursuant to 11 U.S.C. § 107(b)(2) and is considered to be highly confidential Protected Material and subject to the Protective Order.

IT IS FURTHER ORDERED that counsel for the Debtor and the Committee are instructed to compile invoices identifying attorney and paralegal time spent on services related to the *Debtor's Motion for Entry of an Order: (A) Compelling the Tort Committee and/or Its Counsel to Answer Identified Questions, and (B) Setting an Evidentiary Hearing on Sanctions for Violation of Protective Order,* [ECF Doc. 1256]. Those invoices are to be redacted for privilege and filed into the docket in this case, with unredacted copies delivered by hand to the Court, on or before Friday, July 1, 2022.

IT IS FURTHER ORDERED that Mr. Trahant shall file a written response for this Court's consideration regarding impositions of sanctions against him on or before Monday, July 18, 2022.

New Orleans, Louisiana, this 13th day of June, 2022.

/s/ Meredith S. Grabill
U.S. Bankruptcy Judge

ORDER, U.S. BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF LOUISIANA (JUNE 7, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.

Case No. 20-10846

CHAPTER 11

COMPLEX CASE

Before: Meredith S. GRABILL, U.S. Bankruptcy Judge.

ORDER

The Roman Catholic Church of the Archdiocese of New Orleans (the "Debtor" or, prepetition, the "Archdiocese") filed for bankruptcy protection under chapter 11 of the Bankruptcy Code on May 1, 2020. On May 20, 2020, the Office of the United States Trustee ("UST") constituted the Official Committee of Unsecured Creditors (the "Committee"). [ECF Doc. 94]. The Committee is currently comprised of six holders of unsecured tort claims: James Adams, Patricia Moody, George Coulon, Theodore Jackson, Jackie Berthelot, and Eric Johnson. [ECF Doc. 478].

On August 3, 2020, this Court granted the motion for a protective order filed by the Debtor and entered a Protective Order to protect highly confidential and sensitive information from disclosure during the course of discovery. [ECF Doc. 305]. The Court amended its Protective Order several times to accommodate the needs of the parties. [ECF Docs. 729, 885 & 1120]. Paragraphs 7 and 8 of the Protective Order set forth use and disclosure limits for material designated as "Confidential" and "Confidential—Attorneys' Eyes Only." [ECF Doc. 729]. Although the Protective Order authorizes the use of confidential material for the Debtor to fulfill its fiduciary duties in its chapter 11 case and the Committee to fulfill its own responsibilities under the Bankruptcy Code, other uses are prohibited. *See id.* ¶ 7. Those prohibited uses include "without limitation any business, governmental, competitive, commercial, administrative, publicity, press release, marketing or research purpose or function or in any other legal case, lawsuit, proceeding, investigation or otherwise except as expressly provided herein or as ordered by the Court. . . . " *Id.* Paragraph 9 of the Protective Order defines "Protected Material" as "Discovery Material designated by a Producing Party as 'CONFIDENTIAL' or 'CONFIDENTIAL—ATTORNEYS' EYES ONLY' under this Protective Order." *Id.* ¶ 9. That paragraph further provides that any Protected Material "shall not be used, directly or indirectly, by any person for any business, commercial or competitive purposes, or for any purpose whatsoever other than for Authorized Uses." *See id.*

On January 20, 2022, the Debtor, with leave of Court, filed under seal *Debtor's Motion for Entry of an Order: (A) Compelling the Tort Committee and/or Its*

Counsel to Answer Identified Questions, and (B) Setting an Evidentiary Hearing on Sanctions for Violation of Protective Order. [ECF Doc. 1256]. On April 25, 2022, after allowing time for the Debtor and the Committee at their request to engage in limited discovery, this Court issued an Order instructing the UST to conduct an independent investigation into credible allegations regarding the intentional dissemination of highly confidential and sensitive information in violation of this Court's Protective Order by an individual or individuals associated with the Committee. [ECF Doc. 1468]. As described in the April 25, 2022 Order, the Court was—and remains—very concerned about a willful breach of the Protective Order, as well as the timing of the breach and its negative impact on the functioning of the Committee, the rights of parties in interest in the bankruptcy process, and the ability of the parties to proceed in good-faith mediation of abuse claims asserted against the estate.

The UST submitted its thorough report to the Court under seal as instructed on June 3, 2022 (the "UST Report"). [ECF Doc. 1572]. The UST Report remains under seal at this time. The Court has reviewed the UST Report and the attachments thereto, which include 78 sworn declarations; 18 transcripts of sworn examinations provided under Rule 2004 of the Federal Rules of Bankruptcy Procedure; one transcript and one summary of two unsworn telephonic interviews; and numerous documents produced to the UST pursuant to Rule 2004, including relevant telephone and text message logs, electronic transaction reports, and e-mail and letter correspondence.

The sworn testimony of attorney Richard Trahant accompanying the UST Report supports the UST's statement that Trahant serves as co-counsel with attorneys John Denenea and Soren Gisleson to represent the personal interests of four individual members of the Committee; prepetition, the three attorneys pursued those members' claims against the Archdiocese in state court. Trahant's testimony confirmed that he, Denenea, and Gisleson practice law as a group, even though they each may be sole proprietors or partners in different law firms.

Trahant's testimony, as well as documents attached to the UST Report, also confirm the UST's finding that Trahant received confidential information produced by the Debtor in the course of discovery in this case. Finally, Trahant's testimony and certain documents support the UST's findings that (i) Trahant had read and was bound by the Protective Order; (ii) knew that he was bound by the Protective Order; and (iii) beginning on December 31, 2021, provided on multiple occasions confidential information he received to a third party and the media in direct violation of this Court's Protective Order. The Court finds, based on its review of Trahant's testimony, that his disclosures and violation of the Protective Order was knowing and willful.

No dispute exists that the information that reached the media was information that could not have come from any other source but the Debtor's production of discovery in this case. Although the Court commends the UST's diligence and expeditiousness in investigating the disclosure of highly confidential information in violation of the Protective Order, as the UST Report acknowledges, serious questions remain regarding

the extent of the information that was provided to third parties and the media by Trahant and whether documents or sensitive information contained therein was also provided to the media by someone else. The fact that no one may ever be able to uncover the extent of the breach, however, does not affect this Court's duty to protect the integrity of the bankruptcy process and enforce its own Orders.

Trahant's willful breach of this Court's Protective Order clearly disqualifies him from further receiving Protected Material in this case and participating in any confidential Committee proceedings, including meetings, deliberations, and mediation. To be sure, Trahant has never served as a member of the Committee; yet, as personal counsel to individual Committee members, Trahant and his team of co-counsel received confidential information from the Debtor. The Court acknowledges that individual Committee members may retain the attorney of their choosing to represent their personal interests in this chapter 11 case and have chosen Trahant and his group. This Court certainly has no intention of invading the attorney-client privilege to modulate the communications between those Committee members and their attorneys; indeed, any attempt to regulate or stop the flow of information or candor that must exist between a client and her attorney is not only a futile endeavor, but would offend a fundamental facet of effective legal representation. Thus, an impasse has been reached.

This Court must nevertheless act to protect against disruption of the bankruptcy process, to guard the rights of all parties in interest, and, most immediately in light of the current posture of this case, to preserve the trust in the confidentiality of mediation.

Given Trahant's willful breach and disregard of this Court's Protective Order and the dynamics present on the Committee, the Court is forced to impute Trahant's actions to those of his clients on the Committee and finds cause for their removal from the Committee. Therefore,

IT IS ORDERED that, pursuant to § 105(a),[1] and § 1102(a)(4), to prevent an abuse of process and to ensure adequate representation of creditors, the United States Trustee will immediately relieve the following members of the Committee from service on the Committee: James Adams, Theodore Jackson, Jackie Berthelot, and Eric Johnson.

IT IS FURTHER ORDERED that, to the extent that the United States Trustee in her discretion finds it necessary, she is free to add members to the Committee, provided that none of the conflicts identified herein exist for new Committee members; otherwise, the Committee may continue to function with its two remaining members.

IT IS FURTHER ORDERED that counsel for the Debtor serve this Order via first-class U.S. Mail on

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[1] That section of the Bankruptcy Code provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

those parties in interest who will not receive service via this Court's CM/ECF system and file a certificate of service within three days.

The Court will issue a separate Order To Show Cause to determine appropriate sanctions for Trahant's disclosure of confidential information in violation of this Court's Protective Order.

New Orleans, Louisiana, this 7th day of June, 2022.

/s/ Meredith S. Grabill
U.S. Bankruptcy Judge

ORDER, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA (AUGUST 23, 2022)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS

Civil Action No. 22-1740

SECTION T

Before: Greg GERARD GUIDRY, U.S. District Judge.

ORDER

Before the Court is the Debtor's *Motion to Dismiss*.[1] Two months ago, the United States Bankruptcy Court for the Eastern District of Louisiana issued an order in *In re Archdiocese*, Case No. 20-10846, removing four people from the Official Committee of Unsecured Creditors (the "Committee") and dismissing their lawyer, Richard Trahant.[2] After an investigation by the United States Trustee, the Bankruptcy Court determined that Mr. Trahant, in violation of a court order, disseminated confidential information to a third-

[1] R. Doc. 26.

[2] R. Doc. 1-1 at 1.

party.[3] Concerned about further leaks, the Bankruptcy Court ordered the removal of Mr. Trahant and his clients, the four committee members, pursuant to 11 U.S.C. § 105(a).[4] Additionally, the Bankruptcy Court instituted sanctions proceedings against Mr. Trahant.

In the present motion, the Debtor maintains this Court lacks jurisdiction over Mr. Trahant's case.[5] Specifically, the Debtor contends that, because the Bankruptcy Court's Order was an "interlocutory order," this Court lacks a "final" order to review.[6] Additionally, the Debtor argues Mr. Trahant cannot sufficiently identify any "exceptional circumstances" that would warrant an interlocutory appeal.[7] Richard Trahant filed a response.[8] First, Mr. Trahant contends the Bankruptcy Court's Order is "final for purposes of appeal."[9] Mr. Trahant maintains that, because his removal constituted a sanction and stemmed from a "contempt order," it may be appealed as a final order.[10]

To resolve this motion, it must be determined whether this Court has jurisdiction over Mr. Trahant's claim. Generally, a district court may only "hear appeals

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[3] *Id.* at 2.

[4] *Id.* at 4-5.

[5] R. Doc. 26-1 at 6-8.

[6] *Id.* at 7-8.

[7] *Id.* at 11-13.

[8] R. Doc. 30.

[9] *Id.* at 6.

[10] *Id.* at 7.

from final [orders]" or seek an interlocutory appeal.[11] It is "well-settled" that a contempt order may constitute a final order for purposes of an appeal if "a finding of contempt is issued" and "an appropriate sanction is imposed."[12] As for standing, the general appellate standard in bankruptcy is the "narrow" and exacting "person aggrieved" test.[13] However, bankruptcy sanctions are governed by traditional Article III considerations.[14]

Here, after reviewing the filings and the applicable law, the Court finds dismissal unwarranted. Although Mr. Trahant's grievances stem from an ongoing bankruptcy proceeding, this Court is presented with a question of sanctions. At this time, per the 12(b)(1) standard, the Bankruptcy Court's Order and Mr. Trahant's removal appear to satisfy the finality and contempt elements required for this appeal to proceed forward.[15] Accordingly, the motion is DENIED.

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[11] 28 U.S.C. § 158.

[12] *Matter of U.S. Abatement Corp.*, 39 F.3d 563, 567 (5th Cir. 1994).

[13] *Matter of Technicool Sys., Inc.*, 896 F.3d 382, 385 (5th Cir. 2018); *Southern Pacific Transp. Co. v. Voluntary Purchasing Groups, Inc.*, 227 B.R. 788, 790–91 (E.D. Tex. 1998) (citing *Rohm & Hass Texas, Inc. v. Ortiz Bros. Insulation, Inc.*, 32 F.3d 205, 210 n. 18 (5th Cir. 1994)).

[14] *See In re Cleveland*, 26 F. 4th 285, 295 (5th Cir. 2022) (applying the injury-in-fact requirements to a sanctions order).

[15] Federal Rule of Civil Procedure 12(b)(1) is the initial vehicle for parties to raise a "lack of subject-matter jurisdiction" defense. "The standard of review applicable to . . . Rule 12(b)(1) is similar to that applicable to motions to dismiss under Rule 12(b)(6)," but the court may review a broader range of materials in considering

CONCLUSION

For the foregoing reasons, the *Motion to Dismiss* is DENIED.

New Orleans, Louisiana this 23rd day of August, 2022.

/s/ Greg Gerard Guidry
U.S. District Judge

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subject-matter jurisdiction. *Thomas v. City of New Orleans*, 883 F. Supp. 2d 669, 676 (E.D. La. Aug. 2, 2012) (citing *Williams v. Wynne*, 533 F.3d 360, 364–65 n. 2 (5th Cir. 2008). "Courts may dismiss for lack of subject matter jurisdiction on any one of three different bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Clark v. Tarrant Cty., Texas*, 798 F.2d 736, 741 (5th Cir. 1986).

ORDER, U.S. BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF LOUISIANA (APRIL 25, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH
FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.

Case No. 20-10846

CHAPTER 11

SECTION A

Before: Meredith S. GRABILL, U.S. Bankruptcy Judge.

ORDER

On August 3, 2020, this Court entered a Protective Order to protect sensitive and confidential information exchanged among the parties in this case, and has amended that Order periodically to adjust to the needs of the case. [ECF Docs. 305, 729, 885 & 1120]. At this time, signatories bound by the Protective Order include: (i) The Roman Catholic Church for the Archdiocese of New Orleans (the "Debtor"), its counsel, other professionals, and insurers; (ii) individual members of Official Committee of Unsecured Creditors (the "Committee"), the Committee's counsel and other professionals, and individual members' counsel; (iii) the

Official Committee of Unsecured Commercial Creditors and its counsel; and (iv) any other persons or entities who have signed and agreed to be bound by the Protective Order.

On January 20, 2022, the Debtor, with leave of Court, filed under seal *Debtor's Motion for Entry of an Order: (A) Compelling the Tort Committee and/or Its Counsel To Answer Identified Questions, and (B) Setting an Evidentiary Hearing on Sanction for Violation of Protective Order* (the "Motion"). [ECF Doc. 1256]. Through the Motion, the Debtor alleged that a serious breach of the Protective Order has occurred and that sensitive and highly confidential information governed by the Protective Order has been disclosed by an individual or individuals associated with the Committee to third parties and the media in violation of the protective order. To date, counsel for the Committee and the Debtor have cooperated and conducted joint discovery in an effort to determine whether a breach of the Protective Order occurred, to what extent any breach occurred, and the circumstances and details regarding any such breach.

At this time, based upon discovery responses obtained thus far by counsel for the Committee and the Debtor and presented to the Court, the Court has determined that an independent investigation by the Office of the United States Trustee is warranted. The Court has studied the discovery responses and is very concerned about the possibility of intentional dissemination of highly confidential information in violation of this Court's Protective Order, as well as the timing of any such breach, and the negative impact it has on the functioning of the Committee, the rights of parties in interest in the bankruptcy process, and the ability

of the parties in this case to proceed in good-faith mediation of claims asserted against the estate. Accordingly,

IT IS ORDERED that:

1. The United States Trustee is directed to file under seal and hand-deliver to the Court a Statement of Position on or before Friday, June 3, 2022 as to the allegations made by the Debtor in the Motion regarding the dissemination of highly confidential information governed by the Protective Order in this case made between December 2021 and January 2022 to third parties and the media. Upon reviewing the United States Trustee's Statement of Position, the Court will schedule a further hearing to determine what action, if any, should be taken.

2. Counsel for the Committee and the Debtor have agreed on behalf of their clients to cooperate with the Office of the United States Trustee's investigation and to provide all information in their possession concerning these matters to the United States Trustee. Should the United States Trustee seek discovery under Rules 2004, 7033, 7034, or 7036 of the Federal Rules of Bankruptcy Procedure, the time for responding to interrogatories, requests for document production, and requests for admission is reduced to fourteen days after service of the request.

3. Effective immediately, the following individuals and parties in interest are instructed to take affirmative steps to preserve both paper

documents and electronically stored information in their custody and control and relevant to the Motion and the United States Trustee's investigation: (i) the Debtor, including all employees, directors, officers, and bankruptcy and non-bankruptcy professionals; and (ii) the Committee, including its individual members, individual members' personal attorneys and those attorneys' law firm members/shareholders/ employees, and Committee professionals and all members/ shareholders/employees of Committee professionals' firms.

4. The Debtor shall serve this Order on the required parties who will not receive a copy through the ECF system pursuant to the FRBP and the LBRs and file a certificate of service to that effect within three (3) days.

New Orleans, Louisiana, April 25, 2022.

/s/ Meredith S. Grabill
U.S. Bankruptcy Judge

ORDER, U.S. BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF LOUISIANA (APRIL 7, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH
FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.[1]

Case No. 20-10846

CHAPTER 11

SECTION A

Before: Meredith S. GRABILL, U.S. Bankruptcy Judge.

ORDER CONTINUING HEARING ON DEBTOR'S SEALED MOTION TO COMPEL

The Court held an *in camera* status conference on the *Debtor's Motion for Entry of an Order. (A) Compelling the Tort Committee and/or Its Counsel To Answer Identified Questions, and (B) Setting an Evidentiary Hearing on Sanctions for Violation of Protection Order* (the "Motion To Compel"), [ECF Doc. 1256], filed under seal by The Roman Catholic

[1] The last four digits of the Debtor's federal tax identification number are 8966. The Debtor's principal place of business is located at 7887 Walmsley Ave., New Orleans, LA 70125.

Church of the Archdiocese of New Orleans (the "Debtor"), on March 11, 2022, at 10:00 a.m. Per agreement of the parties,

IT IS ORDERED that the *in camera* status conference on the Debtor Motion To Compel is CONTINUED to Thursday, April 14 at 9:30 a.m. in chambers located at 500 Poydras Street, Ste. B-741B, New Orleans, Louisiana. No personal electronic devices are permitted in chambers. Counsel for the parties will attend. The parties include the Debtor, represented by the law firm of Jones Walker, and the Official Committee of Unsecured Tort Creditors, represented by the law firms of Locke Lord and Pachulski Stang. Counsel for the United States Trustee will also attend.

IT IS FURTHER ORDERED that counsel for the Debtor arrange and bear the cost for a transcriptionist to transcribe the *in camera* status conference. Counsel for the Debtor must provide the Court with the name and e-mail address by e-mailing Jennifer_Nunnery@laeb.uscourts.gov by Wednesday, April 13, 2022, at Noon.

IT IS FURTHER ORDERED that the transcript of the status conference will remain sealed for ninety days, at which time the Court will consider whether to maintain that transcript under seal based on the arguments of the parties.

IT IS FURTHER ORDERED that Debtor's counsel shall serve this Order on the required parties who will not receive a copy through the ECF system pursuant to the FRBP and the LBRs and file a certificate of service to that effect within three (3) days.

New Orleans, Louisiana, April 7, 2022.

/s/ Meredith S. Grabill
U.S. Bankruptcy Judge

ORDER, U.S. BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF LOUISIANA (FEBRUARY 14, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH
FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.[1]

Case No. 20-10846

CHAPTER 11

SECTION A

Before: Meredith S. GRABILL, U.S. Bankruptcy Judge.

ORDER CONTINUING HEARING ON DEBTOR'S SEALED MOTION TO COMPEL

The Court held an *in camera* status conference on the *Debtor's Motion for Entry of an Order. (A) Compelling the Tort Committee and/or Its Counsel To Answer Identified Questions, and (B) Setting an Evidentiary Hearing on Sanctions for Violation of Protection Order* (the "Motion To Compel"), [ECF Doc. 1256], filed under seal by The Roman Catholic

[1] The last four digits of the Debtor's federal tax identification number are 8966. The Debtor's principal place of business is located at 7887 Walmsley Ave., New Orleans, LA 70125.

Church of the Archdiocese of New Orleans (the "Debtor"), on February 11, 2022, at 10:00 a.m. Per agreement of the parties,

IT IS ORDERED that the *in camera* status conference on the Debtor Motion To Compel is CONTINUED to Friday, March 14 at 9:30 a.m. in chambers located at 500 Poydras Street, Ste. B-741B, New Orleans, Louisiana. No personal electronic devices are permitted in chambers. Counsel for the parties will attend. The parties include the Debtor, represented by the law firm of Jones Walker, and the Official Committee of Unsecured Tort Creditors, represented by the law firms of Locke Lord and Pachulski Stang. Counsel for the United States Trustee will also attend.

IT IS FURTHER ORDERED that counsel for the Debtor arrange and bear the cost for a transcriptionist to transcribe the *in camera* status conference. Counsel for the Debtor must provide the Court with the name and e-mail address by e-mailing_Jennifer_Nunnery@laeb.uscourts.gov by Thursday, March 10, 2022, at Noon.

IT IS FURTHER ORDERED that the transcript of the status conference will remain sealed for ninety days, at which time the Court will consider whether to maintain that transcript under seal based on the arguments of the parties.

IT IS FURTHER ORDERED that Debtor's counsel shall serve this Order on the required parties who will not receive a copy through the ECF system pursuant to the FRBP and the LBRs and file a certificate of service to that effect within three (3) days.

New Orleans, Louisiana, February 14, 2022.

/s/ Meredith S. Grabill
U.S. Bankruptcy Judge

ORDER, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA (FEBRUARY 10, 2023)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH
OF THE ARCHDIOCESE OF NEW ORLEANS

Civil Action No. 22-1740

(Bankruptcy No. 20-10846)

SECTION T (2)

Before: Greg GERARD GUIDRY, U.S. District Judge.

ORDER

Before the Court are a *Motion to Supplement the Appellate Record*[1] and *Motion to Strike Appellee's Brief and Appendix.*[2] During the pendency of those motions, Appellant filed a subsequent appeal with this Court, namely *In re Archdiocese,* No. 22-cv-04101. That subsequent appeal involves identical parties and intertwined fundamental factual and legal issues. Appellant's designations and statement of issues in this matter are either explicitly addressed, or incorporated into, the issues in the subsequent

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[1] R. Doc. 60.

[2] R. Doc. 63.

appeal. Moreover, both appeals involve orders by the same judge in the same matter.

Federal Rule of Civil Procedure 42(a) allows the court to consolidate multiple cases that "involve a common question of law or fact." Federal Rule of Bankruptcy Procedure 8003(b)(2) provides that "[w]hen parties have separately filed timely notices of appeal, the district court or BAP may join or consolidate the appeals."[3] Consolidation of bankruptcy appeals is appropriate where the "relevant orders being appealed from concern the same facts, involve the same or similar parties, and were issued by the same judge."[4] The decision as to whether to consolidate multiple bankruptcy appeals lies within the discretion of the

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[3] Fed. R. Bankr. P. 8003(b)(2); *See In re Monge,* 700 F.App'x 354, 355 5th Cir. 2017) (per curiam).

[4] *Buczek v. Keybank N.A.*, No. 20-1046, 2022 WL 3648567, at *1 n.1 (W.D.N.Y. Aug. 24, 2022) (citing *U.S. Bank Nat'l Ass'n v. Windstream Holdings, Inc.,* No. 20-4276, 2020 WL 4481933 at *2 (S.D.N.Y. Aug. 3, 2020)).

Court.[5] The Court may order such consolidation *sua sponte*.[6]

For the above reasons, the Court in its discretion will order these matters be consolidated. This consolidation renders the issues in the pending motions moot. Accordingly,

IT IS ORDERED that this matter is consolidated with *In re Archdiocese,* No. 22-cv-4101;

IT IS FURTHER ORDERED that the *Motion to Supplement the Appellate Record* and *Motion to Strike Appellee's Brief and Appendix* are DENIED AS MOOT.

The parties are to submit single operative briefs addressing all issues in the consolidated appeals as follows: Appellant's original brief shall be filed no later than February 20, 2023; Appellee's original brief is due no later than March 2, 2023; and, if necessary,

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[5] *In re Monge*, 700 F. App'x 354, 355 (5th Cir. 2017) (per curiam) ("The district court exercised its discretion under Federal Rule of Bankruptcy Procedure 8003(b)(2) to consolidate the two lawsuits . . . . "); *See also* 10 Collier on Bankruptcy ¶ 8003.09 (16th ed. 2022) (citing *Weaver v. University of Cincinnati*, 970 F.2d 1523, 1528-29 (6th Cir. 1992)). ("The appellate tribunal has discretion to consolidate appeals if it deems it appropriate if it concludes that consolidation will serve the interests of justice. In most cases, the goal of fostering judicial economy is served by placing all related issues before the court at one time."); *In re Cannonsburg Env't Assocs., Ltd.*, 72 F.3d 1260, 1269 (6th Cir. 1996) ("[T]he district court did not abuse its discretion by consolidating the two appeals.").

[6] *See* 10 Collier on Bankruptcy ¶ 8003.09 (16th ed. 2022) ("Appeals may be consolidated by order of the district court or bankruptcy appellate panel on its own motion or on the motion of a party.").

Appellant's reply brief is due no later than March 6, 2023.

New Orleans, Louisiana this 10th day of February 2023.

/s/ Greg Gerard Guidry
U.S. District Judge

ORDER, U.S. BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF LOUISIANA (FEBRUARY 9, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH
FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.[1]

Case No. 20-10846

CHAPTER 11

SECTION "A"

Before: Meredith S. GRABILL, U.S. Bankruptcy Judge.

ORDER

Before the Court is the *Debtor's Motion for Entry of an Order: (A) Compelling the Tort Committee and/or Its Counsel To Answer Identified Questions, and (B) Setting an Evidentiary Hearing on Sanctions for Violation of Protective Order* (the "Motion To Compel"), [ECF Doc. 1256], filed under seal by The Roman Catholic Church of the Archdiocese of New Orleans (the "Debtor"). The Parties to the Motion To Compel

[1] The last four digits of the Debtor's federal tax identification number are 8966. The Debtor's principal place of business is located at 7887 Walmsley Ave., New Orleans, LA 70125.

are the Debtor, represented by the law firm of Jones Walker, and the Official Committee of Unsecured Creditors ("UCC"), represented by the law firms of Locke Lord and Pachulski Stang. The Motion To Compel alleges that the UCC has violated this Court's Protective Order governing discovery in this case.

Pursuant to the Stipulated Order submitted by the Parties, [ECF Docs. 1294 & 1295], and this Court's Order of February 4, 2022, [ECF Doc. 1290],

IT IS ORDERED that only counsel for the Parties and the United States Trustee may attend the in-person, *in camera* status conference scheduled on Friday, February 11, 2022, at 10:00 a.m. in chambers located at 500 Poydras Street, Ste. B-741B, New Orleans, Louisiana, to provide the Court with an update on the discovery process related to resolution of the Motion To Compel. No personal electronic devices are permitted in chambers.

IT IS FURTHER ORDERED that counsel for the Debtor arrange and bear the cost for a transcriptionist to transcribe the in *camera* status conference. Counsel for the Debtor must provide the Court with the name and e-mail address by e-mailing Orders_Clerk@laeb.uscourts.gov by Thursday, February 10, 2022, at 4:00 p.m.

IT IS FURTHER ORDERED that the transcript of the status conference will remain sealed for ninety days, at which time the Court will consider whether to maintain that transcript under seal based on the arguments of the parties.

IT IS FURTHER ORDERED that the Debtor shall serve this Order on the required parties who will not receive notice through the ECF system pursuant

to the FRBP and the LBRs and file a certificate of service to that effect within three (3) days.

New Orleans, Louisiana, this 9th day of February, 2022.

/s/ Meredith S. Grabill
U.S. Bankruptcy Judge

ORDER, U.S. BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF LOUISIANA (FEBRUARY 4, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH
FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.[1]

Case No. 20-10846

CHAPTER 11

SECTION A

Before: Meredith S. GRABILL, U.S. Bankruptcy Judge.

ORDER CONTINUING HEARING ON DEBTOR'S SEALED MOTION TO COMPEL

The Court held an in camera status conference on the Debtor's motion to compel under seal (the "Debtor Motion To Compel"), [ECF Doc. 1256], on January 27, 2022, at 2:30 p.m. Per agreement of the parties,

IT IS ORDERED that the in camera status conference on the Debtor Motion To Compel is CON-

[1] The last four digits of the Debtor's federal tax identification number are 8966. The Debtor's principal place of business is located at 7887 Walmsley Ave., New Orleans, LA 70125.

TINUED to Friday, February 11, at 10:00 a.m. Representatives from the Debtor, the Official Committee of Unsecured Tort Creditors, and the United States Trustee are invited to attend in-person.

IT IS FURTHER ORDERED that Debtor's counsel shall immediately serve this Order on the required parties who will not receive a copy through the ECF system pursuant to the FRBP and the LBRs and file a certificate of service to that effect.

New Orleans, Louisiana, February 4, 2022.

/s/ Meredith S. Grabill
U.S. Bankruptcy Judge

ORDER, U.S. BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF LOUISIANA (JANUARY 20, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH
FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.[1]

Case No. 20-10846

CHAPTER 11

SECTION A

Before: Meredith S. GRABILL, U.S. Bankruptcy Judge.

ORDER CONTINUING HEARING ON UCC MOTION TO COMPEL SCHEDULED ON JANUARY 20, 2022 AND SETTING STATUS CONFERENCE ON DEBTOR'S SEALED MOTION TO COMPEL

Before the Court is the Ex Parte *Consent Motion for Continuance of Status Conference Scheduled on January 20, 2022* (the "Motion To Continue"), [ECF Doc. 1251], relating to the *Official Committee of*

[1] The last four digits of the Debtor's federal tax identification number are 8966. The Debtor's principal place of business is located at 7887 Walmsley Ave., New Orleans, LA 70125.

Unsecured Creditors' Motion To Compel Debtor's (1) Production of Documents, and (2) Privilege Log, to the Extent Necessary, Related to Rule 2004 Order (the "UCC Motion To Compel"), [ECF Doc. 804], and responses filed thereto. The hearing on the UCC Motion To Compel is currently scheduled for Thursday, January 20, at 1:30 p.m. Upon review of the Motion To Continue,

IT IS ORDERED that the Motion To Continue is GRANTED.

IT IS FURTHER ORDERED that a hearing will occur before the undersigned on Thursday, January 27, at 2:30 p.m. at 500 Poydras Street, Courtroom B-709, New Orleans, Louisiana, to consider the UCC Motion To Compel and the related responses. All parties and counsel are instructed to review the General Orders issued by this Court and by the United States District Court for the Eastern District of Louisiana for instructions on conduct of hearings, as well as the admittance to the federal building located at 500 Poydras Street, New Orleans, Louisiana. Those Orders are available at https://www.laeb.uscourts.gov/.

* * *

Additionally, on January 19, 2022, the Court issued an *Order Granting Motion To File Under Seal Motion To Compel,* [ECF Doc. 1255]. The Debtor filed a motion to compel under seal on January 20, 2022 (the "Debtor Motion To Compel"). [ECF Doc. 1256].

IT IS FURTHER ORDERED that, upon conclusion of the hearing on the UCC Motion To Compel, the Court will hold an *in camera* status conference to discuss the nature of the Debtor Motion To Compel.

IT IS FURTHER ORDERED that Debtor's counsel shall immediately serve this Order on the required parties who will not receive a copy through the ECF system pursuant to the FRBP and the LBRs and file a certificate of service to that effect.

New Orleans, Louisiana, January 20, 2022.

/s/ Meredith S. Grabill
U.S. Bankruptcy Judge

ORDER DENYING PETITION FOR REHEARING EN BANC, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (FEBRUARY 9, 2026)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30466

IN THE MATTER OF THE ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS,

Debtor,

RICHARD C. TRAHANT,

Appellant,

v.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS; ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS; APOSTOLATES; ABUSE CLAIMANTS,

Appellees.

IN THE MATTER OF THE ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS,

Debtor,

RICHARD C. TRAHANT,

Appellant,

v.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS; ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS; APOSTOLATES,

Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC Nos. 2:22-CV-1740, 2:22-CV-4101

Before: RICHMAN, OLDHAM, and RAMIREZ,
Circuit Judges.*

ON PETITION FOR REHEARING EN BANC

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5th Cir. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P.40 and 5th Cir. R.40), the petition for rehearing en banc is DENIED.

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* Judges Don R. Willett and Dana M. Douglas did not participate in the consideration of the rehearing en banc.

DEBTOR'S MOTION FOR ENTRY OF AN ORDER (PUBLIC VERSION) (JANUARY 20, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.[1]

Case No. 20-10846

CHAPTER 11

SECTION A

DEBTOR'S MOTION FOR ENTRY OF AN ORDER: (A) COMPELLING THE TORT COMMITTEE AND/OR ITS COUNSEL TO ANSWER IDENTIFIED QUESTIONS, AND (B) SETTING AN EVIDENTIARY HEARING ON SANCTIONS FOR VIOLATION OF PROTECTIVE ORDER

[1] The last four digits of the Debtor's federal tax identification number are 8966. The Debtor's principal place of business is located at 7887 Walmsley Ave., New Orleans, LA 70125.

Respectfully submitted,

/s/ Mark A. Mintz

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Attorneys for the Roman Catholic Church of the Archdiocese of New Orleans

Dated: January 20, 2022

EMAIL FROM SOREN GISLESON,
(PUBLIC VERSION)
(FEBRUARY 9, 2022)

From: Soren Gisleson
Sent: Wednesday, February 9, 2022 11:17 AM

To: Elizabeth_DeLeon@laeb.uscourts.gov;
Christopher_Lamb@laeb.uscourts.gov

Cc: Mintz, Mark <mmintz@joneswalker.com>; 'Wegmann, Dirk' <dwegmann@joneswalker.com>; Vance, Patrick <pvance@joneswalker.com>; 'Jim Stang' <jstang@pszjlaw.com>; Andrew Caine <acaine@pszjlaw.com>; Kuebel, Rick <rkuebel@lockelord.com>; Knapp, Bradley C. <bknapp@lockelord.corn>; Richard Trahant <trahant@trahantlawoffice.com>; Johnny Denenea <jdenenea@gmail.com>; 'Brittany Wolf <bwolf@gainsben.com>; Amanda.B.George@usdoj.gov

Subject: In re Archdiocese of New Orleans Bankruptcy, No. 20-10846, Friday February 11, 2022 status conference

Dear Judge Grabill's Chambers,

Please allow this email to serve as notice that Rick Trahant and myself will be attending the sealed in camera status conference this Friday at 10:00am in our own capacities as persons who appear to be the subject, at least in part, of the Debtor's sealed motion. (There was some uncertainty on our part whether we could participate in the last one.) We respectfully request that a court reporter be present at the status conference. We understand that any transcript would remain under seal until a court orders otherwise.

To the extent we are allowed to contribute to any agenda, we would like to discuss the following issues: (1) the Debtor providing a list of all persons (a) who had access to the Fr. ------ documents, (b) who received a communication with the Fr. ------- documents, (c) who communicated with any Brother Martin representative or proxy about Fr. ------, and (d) who sent the Fr. ------ documents to any Brother Martin representative or proxy; (2) discovery of the Debtor of all issues related to the Fr. ------ documents; (3) third party discovery of Brother Martin, its representatives, and proxies of all issues related to Fr. ------- and (4) creating a mutually agreeable protocol for referring evidence of criminal conduct to the appropriate authorities, whether it be local, state, and/or federal.

We have attempted on multiple occasions to conduct a meet and confer with the Debtor's counsel. They have refused and instead suggested that we attend Friday's status conference and raise the issues with the Court.

Please let us know if you have any questions, comments, or concerns.

Sincerely,

Soren Gisleson

Soren E. Gisleson, Esq.
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COMMITTEE MEMBERS OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THEIR STATE COURT COUNSEL'S MOTION TO PARTICIPATE IN DISCOVERY (PUBLIC VERSION) (FEBRUARY 22, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH
FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.

Case No. 20-10846

CHAPTER 11

SECTION "A"

COMMITTEE MEMBERS OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THEIR STATE COURT COUNSEL'S MOTION TO PARTICIPATE IN DISCOVERY

Respectfully submitted,

/s/ Brittany R. Wolf.-Freedman

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DECLARATION OF RICHARD C. TRAHANT
(PUBLIC VERSION)
(APRIL 12, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH
FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.[1]

Case No. 20-10846

SECTION "A"

CHAPTER 11

DECLARATION OF RICHARD C. TRAHANT

Pursuant to 28 U.S.C. § 1746, I, Richard C. Trahant, hereby submit this declaration (this "Declaration") under penalty of perjury:

1. I am counsel to four members of the Official Committee of Unsecured Creditors (the "Committee") in the above-captioned bankruptcy case (the "Case").

2. I submit this declaration in connection with the Debtor's *Motion for Entry of an Order: (A) Compelling the Tort Committee and / or its Counsel to*

[1] The last four digits of the Debtor's federal tax identification number are 8966. The Debtor's principal place of business is located at 7887 Walmsley Ave., New Orleans, LA 70125.

Answer Identified Questions, and (B) Setting an Evidentiary Hearing on Sanctions for Violation of the Protective Order (the "Sealed Motion") (Doc. No. 1246).

3. The Committee has requested documents necessary to the performance of its duties under Bankruptcy Code section 1103, and the Debtor has responded to those requests partially, including by the production of certain documents. As a role of the Committee, I have access to the documents and information produced by the Debtor pursuant to the protective orders entered in this Case. The Committee's co-counsel, Pachulski Stang Ziehl & Jones LLP, uploads the Debtor's document productions into a document database called Everlaw, to which I am entitled to access (other than for documents that have been produced with bankruptcy counsel only restrictions). I have accessed documents produced by the Debtor by logging into the Everlaw database.

4. As permitted by the confidentiality orders in the Case, some documents produced by the Debtor have been shared by email among the Committee members, their counsel, and the Committee's bankruptcy professionals. I have read most, if not all these documents.

5. During a Committee meeting on January 3, 2022, I made the Committee members and Committee Counsel, as well as "State Court Counsel" generally aware of the contents of certain documents produced by the Archdiocese in December 2021 related to ---------- including documents Bates labeled as ANO (20-10846)_00149323 — 00149325. I had reviewed the documents discussed in the Committee meeting prior to the meeting.

6. I also became aware of discussions and correspondence between the Committee's bankruptcy counsel and Debtor's counsel regarding ------ and ------ beginning on January 4. 2022.

7. I had first become aware of the credible finding of the sexual abuse of a minor by ------ on or about December 31, 2022. I took it upon myself to contact my cousin and the ---------- for what I believed (and still believe) to be a legitimate compelling reason-to protect minors. I wanted to make sure that a priest who admitted to sexually abusing a minor was no longer permitted to be on a high school campus.

8. After reviewing the documents available at the time, I realized that Archbishop Aymond failed to remove --------- from ministry in 2011 after Aymond received an allegation of sexual abuse against a minor by --------- that was deemed credible by the Archdiocese Review Board ("ARB"). Archbishop Gregory Aymond ignored the ARB finding, placing ---------- anyway, and intentionally failed to inform the ---------- administration about the credible finding of sexual abuse.

9. I originally contacted ------ on December 31, 2021, via text message, asking him if ------- was still the Chaplain at ------- to which he responded in the affirmative via text message. I was told by ---------- via text that ------ was to be on campus to do a "school wide liturgy" at the end of January of 2022.

10. My first conversation with ---- regarding ----- was on January 4, 2022. 1 did not tell ---- that ----- victim was in high school because I did not know this on January 4, 2022. 1 had a few conversations with ---- after January 4. 2022, traded some texts with him,

and I ultimately learned that the details of ----- sexual abuse of a minor were in fact provided to various individuals affiliated with ------ by ------ and Archbishop Gregory Aymond over the course of several conversations. I did not provide any "confidential" documents to or discuss the contents of any "confidential" documents with -------

11. I did not disclose or disseminate any documents or reveal the contents of any documents to anyone associated with ----- regarding ----- at any time from December 31, 2021, to the date of this Declaration, nor did I ask or cause any other person to do so.

12. I am aware that, in agreement with the Debtor and with ----- on behalf of -------, on January 13, 2022, the Committee, through Locke Lord LLP, provided ----- with documents related to ------- which were Bates labeled ANO (20-10846)_00149323 — 00149325 and ANO (20-10846)_00149356 — 00149368. I did not provide any documents, including from this Case, to ----- or anyone else associated with ------

13. Prior to being prohibited from reviewing newly produced documents by this Court, I read and annotated ----- file, which is comprised of nearly 800 pages. As of the signing of this Declaration, I do not believe the totality of ---- file has been shared with ----- I have not provided or discussed these documents with ----- or anyone from -----.

14. I became aware of the -------- article by ----- entitled ----------.

15. I did not disclose or disseminate any documents marked in any way confidential, the contents of documents, or any other information produced by the

Debtor to ----- anyone associated with the Advocate, the Times-Picayune, NOLA.com.

16. I have never provided, disclosed, or disseminated any sealed or confidential documents produced by the Debtor or any information included in those documents to any person other than members of the Committee, their counsel, or the Committee's bankruptcy professionals.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on . . . at New Orleans, Louisiana.

By: /s/ Richard C. Trahant
[NAME]
Richard C. Trahant

Dated: April 12, 2022

NOTICE OF WITHDRAWAL OF DEBTOR'S MOTION FOR ENTRY OF AN ORDER (APRIL 26, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.[1]

Case No. 20-10846

SECTION "A"

CHAPTER 11

NOTICE OF WITHDRAWAL OF DEBTOR'S MOTION FOR ENTRY OF AN ORDER: (A) COMPELLING THE TORT COMMITTEE AND/OR ITS COUNSEL TO ANSWER IDENTIFIED QUESTIONS, AND (B) SETTING AN EVIDENTIARY HEARING ON SANCTIONS FOR VIOLATION OF PROTECTIVE ORDER

PLEASE TAKE NOTICE that The Roman Catholic Church of the Archdiocese of New Orleans, the above-captioned debtor and debtor-in-possession (the "Debtor" or "Archdiocese"), hereby withdraws the

[1] The last four digits of the Debtor's federal tax identification number are 8966. The Debtor's principal place of business is located at 7887 Walmsley Ave., New Orleans, LA 70125.

Debtor's Motion for Entry of an Order: (A) Compelling the Tort Committee and/or Its Counsel To Answer Identified Questions, and (B) Setting an Evidentiary Hearing on Sanctions for Violation of Protective Order [ECF No. 1256], which was filed under seal on January 20, 2022.

[Signature Page Follows]

Respectfully submitted,

/s/ Mark A. Mintz

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Attorneys for the Roman Catholic Church of the Archdiocese of New Orleans

Dated: April 26, 2022

ACTING UNITED STATES TRUSTEE'S STATEMENT OF POSITION CONCERNING VIOLATIONS OF THE PROTECTIVE ORDER, (PUBLIC VERSION) (JUNE 3, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.[1]

Case No. 20-10846

CHAPTER 11

ACTING UNITED STATES TRUSTEE'S STATEMENT OF POSITION CONCERNING VIOLATIONS OF THE PROTECTIVE ORDER

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[1] The last four digits of the Debtor's federal tax identification number are 8966. The Debtor's principal place of business is located at 7887 Walmsley Ave., New Orleans, LA 70125.

Respectfully submitted,

DAVID W. ASBACH
Acting United States Trustee, Region 5

by: /s/ Amanda Burnette George
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Dated: June 3, 2022

NOTICE OF APPOINTMENT OF RECONSTITUTED OFFICIAL COMMITTEE OF UNSECURED CREDITORS (JUNE 7, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.

Case No. 20-10846

SECTION "A"

CHAPTER 11

NOTICE OF APPOINTMENT OF RECONSTITUTED OFFICIAL COMMITTEE OF UNSECURED CREDITORS

NOW INTO COURT comes David W. Asbach, Acting United States Trustee for Region 5, by and through the undersigned attorney, and pursuant to the Court's Order entered on June 7, 2022 at Doc. No. 1574, hereby gives notice that the following creditors of the Roman Catholic Church of the Archdiocese of New Orleans are among those holding unsecured claims and are willing to be appointed and serve as a committee of unsecured creditors (the "Official Com-

mittee of Unsecured Creditors") with the powers enumerated in 11 U.S.C. § 1103:

1. Patricia Moody

C/O Brittany R. Wolf-Freedman
Gainsburgh, Benjamin, David, Meunier & Warshauer, LLC
2800 Energy Centre
1100 Poydras Street
New Orleans, LA 70163
Phone: 504-522-2304
Fax: 504-528-9973
bwolf@gainsben.com

2. George Coulon

C/O Damon J. Baldone, Esq.
Damon J. Baldone & Associates
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by: /s/Amanda Burnette George
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Dated: June 7, 2022

RICHARD C. TRAHANT'S OBJECTIONS TO ORDER TO SHOW CAUSE AND TO IMPOSITIONS OF ADDITIONAL SANCTIONS (AUGUST 8, 2022)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: ROMAN CATHOLIC CHURCH
FOR THE ARCHDIOCESE OF NEW ORLEANS,

Debtor.

Case No. 20-10846

SECTION "A"

CHAPTER 11

RICHARD C. TRAHANT'S OBJECTIONS TO ORDER TO SHOW CAUSE AND TO IMPOSITIONS OF ADDITIONAL SANCTIONS

NOW INTO COURT, through undersigned counsel, comes Richard C. Trahant, who respectfully objects to the "Order to Show Cause" dated June 13, 2022 (Bankr. Doc. 1589) ordering him to appear and show cause "as to why he should not be sanctioned for his willful violation of this Court's Protective Order," and to any imposition of additional sanctions against him pursuant to it, on the grounds that it, like the "Order" dated June 7, 2022 (Bankr. Doc. 1574) holding him in contempt for alleged violations of the Protective

Order, deprives him of the right to due process of law in violation of the Fifth Amendment to the U.S. Constitution by subjecting him to sanctions for alleged conduct that was adjudged to be contempt in the June 7, 2022 Order without notice, without a hearing, without an opportunity to present a defense, and based on a sealed record and secret factual and legal bases.

PROCEDURAL BACKGROUND

1. Mr. Trahant is co-counsel of record for sexual abuse claimants James Adams, Theodore Jackson, Jackie Berthelot, and Eric Johnson (the "Abuse Claimants") against the debtor in bankruptcy, The Roman Catholic Church of the Archdiocese of New Orleans (the "Debtor"), in this Chapter 11 bankruptcy proceeding (the "Bankruptcy Proceeding") (Bankr. Docs. 1, 37). In the Bankruptcy Proceeding, the U.S. Trustee appointed the Abuse Claimants to the Official Committee of Unsecured Creditors (the "Committee") "pursuant to 11 U.S.C. § 1102(a)(1) . . . with the powers enumerated in 11 U.S.C. § 1103," on May 20, 2020 (Bankr. Docs. 94-95, 151).

2. On June 7, 2022, the Bankruptcy Court, acting *sua sponte,* issued an "Order" (Bankr. Doc. 1574) finding that Mr. Trahant allegedly "provided on multiple occasions confidential information he received to a third party and the media in direct violation of this Court's Protective Order," and that the alleged breach "disqualifies him from further receiving Protected Material in this case and participating in any confidential Committee proceedings, including meetings, deliberations, and mediation" (Bankr. Doc. 1574 pp. 3-4). The Bankruptcy Court further found that "the Court is forced to impute Trahant's actions to those of

his clients on the Committee . . . ," and ordered the U.S. Trustee to "immediately relieve [the Abuse Claimants] from service on the Committee . . . " (Bankr. Doc. 1574 pp. 4-5). "The Court will issue a separate Order To Show Cause," the Court announced, "to determine appropriate sanctions for Trahant's disclosure of confidential information in violation of this Court's Protective Order" (Bankr. Doc. 1574p. 5). The Bankruptcy Court cited 11 U.S.C. §§ 105(a) and 1102(a)(4) as authority for the Order.

3. In the June 7, 2022 Order, the Bankruptcy Court identified and relied upon a Trustee Report and accompanying documents created as part of an investigation ordered by the Bankruptcy Court (Bankr. Docs. 1468, 1572 (SEALED), 1574 pp. 2-3). However, the U.S. Trustee filed the Trustee Report and attachments under seal without service on Mr. Trahant, his co-counsel, or their clients the Abuse Claimants, and as the Bankruptcy Court observed in the Order, "The UST Report remains under seal at this time" (Bankr. Docs 1572 (SEALED), 1574 p. 2). As a result, neither Mr. Trahant, his co-counsel, the Abuse Claimants, nor the public had access to the factual or legal bases of the Bankruptcy Court's Order holding Mr. Trahant in contempt, disqualifying him from participating in proceedings of the Committee, imputing his alleged conduct to the Abuse Claimants, and ordering the U.S. Trustee to remove the Abuse Claimants from the Committee (Bankr. Docs. 1572 (SEALED), 1574 p. 2).

4. Prior to the issuance of the Bankruptcy Court's June 7, 2022 Order, Mr. Trahant received no notice of any alleged charge against him; no notice of any scheduled public trial or hearing on any alleged charge against him; no opportunity to prepare a

defense against any alleged charge against him; no opportunity to testify, call other witnesses to testify, or submit documentary evidence in opposition to any alleged charge against him; and no opportunity to confront or examine any witness, or review any document, that the Bankruptcy Court relied on to hold him in contempt, disqualify him from participation in Committee proceedings, impute his alleged conduct to the Abuse Claimants, and order the U.S. Trustee to remove the Abuse Claimants from the Committee (Bankr. Docs. 1-1574). Although the Order mentions the "Debtor's Motion for Entry of an Order: (A) Compelling the Tort Committee and/or Its Counsel to Answer Identified Questions, and (B) Setting an Evidentiary Hearing on Sanctions for Violation of Protective Order" filed by the Debtor under seal on January 20, 2022 and provided to Mr. Trahant around that time, Mr. Trahant was not named in the motion, and the Debtor withdrew the motion on April 26, 2022 (Bankr. Docs. 1256, 1473, 1574 p. 2).

5. On June 10, 2022, the Abuse Claimants and Mr. Trahant filed notices of appeals from the June 7, 2022 Order to the District Court, which docketed the appeals as Case Nos. 22-1738 and 22-1740, respectively, on June 13, 2022 (Bankr. Docs. 1580, 1582). Despite the pending appeals, the Bankruptcy Court issued the "Order to Show Cause" dated June 13, 2022 ordering Mr. Trahant to appear and show cause "why he should not be sanctioned" for his alleged violation of the Protective Order as declared in the June 7, 2022 Order (Bankr. Doc. 1589 p. 2).

GROUNDS OF OBJECTIONS

6. Rule 9020 of the Federal Rules of Bankruptcy Procedure provides that "Rule 9014 governs a motion for an order of contempt made by the United States trustee or a party in interest." Fed. R. Bankr. P. 9020. Rule 9014 provides in pertinent part that "relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). But Rules 9014 and 9020 do not apply to the June 7, 2022 Order or Order to Show Cause because neither the U.S. Trustee nor any party in interest made a motion for an order of contempt or sanctions against Mr. Trahant (Bankr. Docs. 1574, 1589). Instead, the Bankruptcy Court acted *sua sponte* pursuant to 11 U.S.C. § 105(a), which provides in pertinent part: "No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." But although § 105(a) authorizes the Bankruptcy Court to act *sua sponte* in certain circumstances, it does not authorize the Bankruptcy Court to punish a person for contempt or impose sanctions without due process of law in violation of the Fifth Amendment to the U.S. Constitution.

7. The Fifth Amendment provides in pertinent part: "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . . " U.S. Const. Amend. V. *See also U.S.* Const. Amend. XIV ("nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ").

"In general, due process requires 'that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses.'" *Waste Management of Wash., Inc. v. Kattler,* 776 F.3d 336, 339-40 (5th Cir. 2015) (citation omitted). "Adequate notice typically takes the form of a show-cause order and a notice of hearing identifying each litigant who might be held in contempt." *Id.* at 340 (footnote omitted). Absent adequate notice or any of the other requirements of due process, a "contempt finding cannot stand. . . ." *Id.*

8. In this case, Mr. Trahant was not afforded any of the requirements of due process before being held in contempt in the June 7, 2022 Order (Bankr. Docs. 1-1574). He was not served with a show-cause order, notice of hearing, or other form of notice identifying him as a person who might be held in contempt at any time (Bankr. Docs. 1-1574). The "Motion for Entry of an Order . . . Setting an Evidentiary Hearing on Sanctions for Violation of Protective Order" that the Debtor filed under seal on January 20, 2022 does not identify Mr. Trahant as an alleged contemnor, and was withdrawn on April 26, 2022 before any ruling on it (Bankr. Docs. 1256, 1473). The Bankruptcy Court's Order dated April 25, 2022 ordering the U.S. Trustee to investigate alleged Protective Order violations did not identify Mr. Trahant as a target of the investigation (Bankr. Doc. 1468). Mr. Trahant had no opportunity to review the sealed Trustee Report or its apparently voluminous sealed attachments that the Bankruptcy

Court inventoried in the June 7, 2022 Order (Bankr. Docs. 1572 (SEALED), 1574 pp. 2-3).

9. Mr. Trahant thus received no notice of any alleged charge against him; no notice of any public trial or hearing on any alleged charge against him; no opportunity to prepare a defense against any alleged charge against him; no opportunity to testify, call other witnesses to testify, or submit documentary evidence in opposition to any alleged charge against him; and no opportunity to confront or examine any witness, or review any document, that the Bankruptcy Court relied on to hold him in contempt, prior to entry of the June 7, 2022 Order (Bankr. Docs. 1-1574). In these circumstances, the June 7, 2022 Order deprived Mr. Trahant of the right to due process of law, and it "cannot stand." *Id. See also, e.g., Chambers v. NASCO, Inc.,* 501 U.S. 32, 50, 111 S.Ct. 2123, 2136, 115 L.Ed.2d 27 (1991) ("A court must, of course, exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees") (citation omitted); *Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 569-70, 92 S.Ct. 2701, 2705, 33 L.Ed.2d 548 (1972) ("The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property," including liberty interests in "a person's good name, reputation, honor, or integrity . . . "); *Wisconsin v. Constantineau,* 400 U.S. 433, 437, 91 S.Ct. 507, 510, 27 L.Ed.2d 515 (1971) ("Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential"); *Levine v. United States,* 362

U.S. 610, 616, 80 S.Ct. 1038, 1042-43, 4 L.Ed.2d 989 (1960) ("But while the right to a 'public trial' is explicitly guaranteed by the Sixth Amendment only for 'criminal prosecutions,' that provision is a reflection of the notion, deeply rooted in the common law, that 'justice must satisfy the appearance of justice.' Accordingly, due process demands appropriate regard for the requirements of a public proceeding in cases of criminal contempt, as it does for all adjudications through the exercise of the judicial power, barring narrowly limited categories of exceptions") (citations omitted); *In re Oliver,* 333 U.S. 257, 276, 68 S.Ct. 499, 509, 92 L.Ed. 682 (1948) ("The facts shown by this record put this case outside the narrow category of cases that can be punished as contempt without notice, hearing and counsel"); *Cooke v. United States,* 267 U.S. 517, 45 S.Ct. 390, 69 L.Ed. 767 (1925) ("Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. We think this includes the assistance of counsel, if requested, and the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed") (citations omitted); *Deutsch v. Annis Enter.,* 882 F.3d 169, 175 (5th Cir. 2018) ("The requirements of due process balance the competing concerns of necessity and potential arbitrariness by allowing a relatively unencumbered contempt power when its exercise is most essential, and requiring progressively greater procedural protections when other considerations come into play") (internal quotes and citation omitted); *Goldin v. Bartholow,* 166 F.3d 710, 722 (5th Cir. 1999)

(finding *sua sponte* imposition of sanctions required district court "to afford Goldin notice describing the offending conduct and allow him an opportunity to show cause why sanctions should not be imposed"); *Dailey v. Vought Aircraft Co.,* 141 F.3d 224, 229 (5th Cir. 1998) (reversing and vacating attorney disbarment because the district court failed to provide adequate notice and opportunity to be heard); *Scaife v. Associated Air Center Inc.,* 100 F.3d 406, 412 (5th Cir. 1996) (reversing and vacating attorney reprimand sanction because it was overbroad and excessive in relation to the alleged conduct); *United States v. Brown,* 72 F.3d 25, 29 (5th Cir. 1995) (reversing and dismissing attorney suspension sanction because disciplinary rule must be strictly construed resolving ambiguities in favor of the person charged); *Elliott v. Tilton,* 64 F.3d 213, 217 (5th Cir. 1995) (reversing and remanding attorney sanction because the district court failed to make a finding of bad faith); *Chaves v. M/V Medina Star,* 47 F.3d 153, 156 (5th Cir. 1995) (reversing attorney sanction because the magistrate judge failed to exercise the mandated restraint before assessing sanctions under the inherent power of the court); *Resolution Trust Corp. v. Bright,* 6 F.3d 336, 340-41 (5th Cir. 1993) (reversing attorney disbarment because the record did not support the district court's bad faith finding); *In re Medrano,* 956 F.2d 101, 103-05 (5th Cir. 1992) (reversing attorney disbarment because the district court applied the preponderance of the evidence rather than clear and convincing evidence standard); *Cunningham v. Ayers,* 921 F.2d 585, 586 (5th Cir. 1991) (reversing bankruptcy court's decision to suspend attorney from practice because "a reasonable person would have a reasonable basis for questioning [the judge's] impartiality in the contempt

proceeding"); *In re Thalheim,* 853 F.2d 383, 388 (5th Cir. 1988) (reversing attorney suspension because the district court violated due process by failing to follow its own requirements concerning proper disciplinary proceedings); *L. Sols. Chicago LLC v. United States Tr.,* 592 B.R. 624, 632 (W.D. La. 2018), *aff'd sub nom. Matter of Bankr.,* 770 F. App'x 168 (5th Cir. 2019) ("To the extent UpRight was subject to discipline, it was entitled to due process"); *In re Correra,* 589 B.R. 76, 125-26 (Bankr. N.D. Tex. 2018) ("A court must exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees") (footnotes omitted); *In re Alvarado,* 2003 WL 22097092, p. 6 (W.D. Tex. 2003) (finding "the Bankruptcy Judge's order did not satisfy the standards of due process. Appellant was not provided notice of the possibility of sanctions and given an opportunity to present evidence or arguments against their imposition").

10. The sole alleged grounds for impositions of additional sanctions against Mr. Trahant pursuant to the Order to Show Cause are those set forth in the June 7, 2022 Order holding him in contempt without due process of law (Bankr. Docs. 1574, 1589). Like the June 7, 2022 Order, the Order to Show Cause deprives Mr. Trahant of the right to due process of law by subjecting him to sanctions for alleged conduct that was adjudged to be contempt in the June 7, 2022 Order without notice, without a hearing, without an opportunity to present a defense, and based on a sealed record and secret factual and legal bases (Banks. Docs. 1574, 1589). The denial of procedural due process that fatally infects the June 7, 2022 Order thus fatally

infects the Order to Show Cause, and any imposition of additional sanctions will further deprive Mr. Trahant of protected property and liberty interests without due process of law in violation of the Fifth Amendment (Bankr. Docs. 1574, 1589).

CONCLUSION

For these reasons, Mr. Trahant respectfully objects to the Order to Show Cause and to any imposition of additional sanctions against him pursuant to it.

RESPECTFULLY SUBMITTED,

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