

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

<p>In re:</p> <p>ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, a New Mexico corporation sole,</p> <p style="text-align: center;">Debtor.</p>	<p>Chapter 11</p> <p>Case No. 13-13676-t11</p> <p>Jointly Administered with: Case No. 13-13677-t11</p>
<p>Jointly Administered with:</p> <p>BISHOP OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF GALLUP, an Arizona corporation sole.</p> <p>This pleading applies to:</p> <p><input checked="" type="checkbox"/> All Debtors. <input type="checkbox"/> Specified Debtor.</p>	
<p>Roman Catholic Church of the Diocese of Gallup, Debtor(s).</p> <p>John M.H. Doe, Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Roman Catholic Church of the Diocese of Gallup, et al.,</p> <p>Defendant(s).</p>	<p>Case No.: 13-13676-t11 Adversary No.: 14-01033-t</p> <p>Date: November 10, 2015 Time: 9:00 a.m. Place: Hearing Room 13102 U.S. Bankruptcy Court Dennis Chavez Federal Building 500 Gold Avenue, S.W., 13th Floor Albuquerque, NM 97102</p>
<p>Roman Catholic Church of the Diocese of Gallup, Debtor(s).</p> <p>Alfred A. Moya, Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Roman Catholic Church of the Diocese of Gallup, et al.,</p> <p>Defendant(s).</p>	<p>Case No.: 13-13676-t11 Adversary No.: 14-01034-t</p> <p>Date: November 10, 2015 Time: 9:00 a.m. Place: Hearing Room 13102 U.S. Bankruptcy Court Dennis Chavez Federal Building 500 Gold Avenue, S.W., 13th Floor Albuquerque, NM 97102</p>

**DECLARATION OF ROBERT E. PASTOR IN SUPPORT OF PLAINTIFFS’
MOTIONS TO REMAND ACTIONS TO STATE COURT**

I, Robert E. Pastor, hereby declare:

1. I am counsel of record for the plaintiffs in *Moya v. The Roman Catholic Church of the Diocese of Gallup, et al.*, Case no. CV2010-00713, Superior Court of the State of Arizona (Coconino County) and *John M.H. Doe v. The Roman Catholic Church of the Diocese of Gallup, et al.*, Case no. CV2013-00361), Superior Court of the State of Arizona (Coconino County) (the “State Court Actions”). In addition to these plaintiffs, I represent 18 survivors of clergy sexual abuse who filed proofs of claim in the above-captioned chapter 11 cases.

2. I am a partner at the law firm of Montoya, Jimenez & Pastor, P.A. We focus our practice representing individuals and families who have been injured by the intentional and negligent acts of others. I earned a Bachelor of Arts degree in Psychology from Boston College in May 1997. I earned my Juris Doctor degree from Arizona State University in May 2002, I was admitted to the State Bar of Arizona in October 2002. I served as a Deputy Maricopa County Attorney from November 2002 through September 2005. Some of the criminal cases I prosecuted included multi-defendant drug sales, car-theft rings, kidnapping, stabbings, and armed robberies. I eventually moved into a specialized crime unit where I prosecuted child abuse crimes. In September 2005, I joined a plaintiffs personal injury law firm. I became a shareholder partner in that firm. During my career, I represented individuals in lawsuits involving medical negligence, crashworthiness, tire tread-belt separation, motor vehicle collisions, sexual abuse, insurance coverage and insurance bad faith cases. In the area of sexual abuse, I have prosecuted civil claims against a variety of entities who have a duty to protect others from sexual abuse or who could have prevented the sexual abuse from occurring. Those

entities include, but are not limited to, the Roman Catholic Church of the Diocese of Phoenix, The Roman Catholic Church of the Diocese of Tucson, Child Protective Services, group homes, youth-sports organizations, homeowners, private schools, public schools, after-school-care programs, law enforcement, summer youth camps, and county probation departments.

Throughout my career, I have focused my practice on litigation and trial practice. In my career, I have tried more than 40 jury trials to verdict.

3. I submit this declaration in support of the *Motion of Alfred Moya to Remand Action to State Court* and the *Motion of John M.H. Doe to Remand Action to State Court* (the “Remand Motions”). I have personal knowledge of the facts set forth herein and can competently testify thereto.

4. The Bishop of Gallup assigned Clement Hageman (“Hageman”) to Our Lady of Guadalupe Church & Parish in Holbrook, Arizona, where he sexually abused Alfred Moya. On August 12, 2010, Mr. Moya sued the Diocese, Our Lady of Guadalupe Parish and Hageman’s estate in the Superior Court in the State of Arizona (Coconino County) (Case No. CV2010-00713).¹ All of the abuse perpetrated by Hageman took place in Arizona, and all of Mr. Moya’s causes of action arise under Arizona statutory and common law. After extensive pre-trial proceedings before the state court, the *Moya* case was set for trial in February 2014. Prior to the Debtor’s bankruptcy filing, the trial court ruled on dispositive motions and heard ten discovery motions, which either requested an order compelling the Debtor to turn over evidence or requested an order denying the Debtor’s request for a protective order. In one discovery fight, the state court found that Mr. Moya had established a prima facie case for imposing punitive damages, stating, “The court concludes that the Plaintiff has met his burden of presenting clear

¹ A true and correct copy of the Plaintiff’s First Amended Complaint is attached as Tab 2 to the Debtor’s *Notice of Filing Superior Court Pleadings Pursuant to Fed. R. Bankr. P. 9027(e)(2)* [Docket No. 9].

and convincing evidence that a reasonable jury could find that the Defendant possessed an evil mind when they breached their duty to plaintiff.” See *Moya v. Gallup*, Under Advisement Ruling (Feb. 2, 2012).² After months of motion practice, the state court trial judge appointed a special Discovery Master to resolve discovery disputes. The Discovery Master issued numerous ruling compelling the Debtor to produce evidence, including the files of other priests who sexually abused children. The Discovery Master also ruled that delaying important depositions would prejudice the plaintiff. The orders of the trial court and Discovery Master gave way to the discovery of thirty-one (31) priests and lay personnel accused of sexual abuse in the Diocese and the production of information regarding the Diocese’s assets. The history of clergy sexual abuse and clergy sexual misconduct in the Diocese of Gallup spans more than seven decades. Except for a few items of outstanding discovery, the *Moya* case is ready for trial.³

5. The Diocese assigned Raul Sanchez (“Sanchez”) to Madre de Dios Church in Winslow, Arizona, where he sexually abused John M.H. Doe. Sanchez is a former Chancellor of the Diocese and is a fugitive in Mexico. On May 30, 2013, Mr. Doe sued the Diocese and Sanchez in the Superior Court in the State of Arizona (Coconino County) (Case No. CV2013-00361).⁴ All of the abuse perpetrated by Sanchez took place in Arizona, and all of Mr. Doe’s causes of action (sexual assault/sex abuse/molestation, breach of fiduciary duty, intentional infliction of emotional distress, intentional/negligent misrepresentation, negligent

² A true and correct copy of the Order is attached to the *Committee of Unsecured Creditors’ Memorandum of Points and Authorities In Support of Plaintiffs’ Motions to Remand Actions to State Court* (the “Committee Memorandum”).

³ The remaining discovery is: (1) the Debtor’s independent medical exam of Mr. Moya (which had been scheduled prior to the bankruptcy), (2) Mr. Moya’s deposition of the examining physician and (3) the Debtor’s deposition of Mr. Moya’s expert psychologist. Mr. Moya’s outstanding discovery request regarding the Debtor’s financial condition, related to a claim for punitive damages, may be moot in light of the subordination of punitive damage claims for “best interest test” purposes.

⁴ A true and correct copy of the Complaint is attached as Tab 2 to the Debtor’s *Notice of Filing Superior Court Pleadings Pursuant to Fed. R. Bankr. P. 9027(e)(2)* [Docket No. 5].

supervision/retention, child abuse and assault & battery) arise under Arizona statutory and common law.

6. The Diocese admits that both Hageman and Sanchez are credibly accused abusers.

7. Upon information and belief the Diocese of Gallup has employed a small army of lawyers and spent millions of dollars defending clergy sexual abuse cases. Bishop Wall and his lawyers have used every tactic imaginable to defeat, humiliate, shame, and hammer down victims including terminating psychological counseling services, threatening to out victims, obstructing discovery regarding pedophile priests and Debtor's concealment of clergy sexual abuse all in an attempt prevent the facts of clergy sexual abuse from seeing the light of day.

8. On February 6, 2014, the Debtor removed the State Court Actions from Arizona state court to the United States Bankruptcy Court for the District of Arizona. It removed the *Moya* case by filing a *Notice of Removal Pursuant to 28 U.S.C. § 1452 and Federal Rule of Bankruptcy Procedure 9027* (AZ Adversary No. 2:14-ap-00109-EPB).⁵ The *Moya* adversary proceeding was transferred to the United States Bankruptcy Court for the District of New Mexico on March 25, 2014 (NM Adversary No. 14-01034-t), and on August 9, 2014, Mr. Moya timely filed a proof of claim.⁶ The Debtor removed the *Doe* case by filing a *Notice of Removal Pursuant to 28 U.S.C. § 1452 and Federal Rule of Bankruptcy Procedure 9027* (AZ Adversary No. 2:14-ap-00119-EPB).⁷ The *Doe* adversary proceeding was transferred to the United States Bankruptcy Court for the District of New Mexico on March 25, 2014 (NM Adversary No. 14-01033-t), and on August 8, 2014, Mr. Doe timely filed a proof of claim.⁸

⁵ A true and correct copy of the Notice of Removal is attached to the Committee Memorandum

⁶ Movant asks the Court to take judicial notice of his proof of claim, which was filed under seal in the main bankruptcy case.

⁷ A true and correct copy of the Notice of Removal is attached to the Committee Memorandum.

⁸ Movant asks the Court to take judicial notice of his proof of claim, which was filed under seal in the main bankruptcy case.

9. On June 6, 2014, this Court approved the *Stipulated Order Regarding Abeyance of Adversary Proceeding and Reservation of Rights* (the “Stipulation”) under which the Debtor and each plaintiff in the removed lawsuits (including Mr. Moya and Mr. Doe) agreed, “The Adversary Proceeding shall be held in abeyance, and any and all deadlines shall be stayed.” *See* Stipulation, ¶ 1, at 2.⁹ Each Stipulation further provides, “To the extent that either Plaintiff or Defendant wishes to reinitiate this Adversary Proceeding, such party may file a Motion with the Court notifying the Court and the parties that it no longer wants this Adversary Proceeding held in abeyance, and asking the Court to reinitiate the Adversary Proceeding.” *Id.* ¶ 2, at 3.

10. In connection with the Stipulations, Movants did not consent to the removal of the State Court Actions or waive their rights to seek remand. They merely consented to hold the adversary proceedings in abeyance.

11. On April 27, 2015, the Court ordered the major parties-in-interest in the chapter 11 case to begin mediation. I attended some of the Court-ordered mediation on behalf of my clients, three of whom are members of the Official Committee of Unsecured Creditors (the “Committee”). The Debtor, the Committee, The Catholic Mutual Relief Society of America and The Catholic Relief Insurance Company of America (“Catholic Mutual”), the New Mexico Guaranty Fund (“NMGF”), St. Bonaventure Indian School and Mission, representatives of certain parishes, the Province of St. John the Baptist of the Order of Friars Minor (the “Franciscans”) participated. Prior to the mediation, I worked closely with the Committee to value the filed proofs of claims of represented and *pro se* survivors. To insure the Debtor, its insurance carriers and the Franciscans had the information needed to evaluate the claims, I and the other state court counsel representing survivors made ourselves and our clients available for

⁹ True and correct copies of the Stipulations with Mr. Moya and Mr. Doe are attached to the Committee Memorandum.

questioning before mediation. Catholic Mutual, NMGF and the Franciscans either deposed or had the opportunity to depose, survivors before the mediation. I am informed and believe that Catholic Mutual completed interviews and depositions of all of the survivors with claims within its policy periods and the Franciscans deposed at least the two survivors whose claims are covered by insurance. I am informed and believe that the Debtor provided documents regarding abuse claims to Catholic Mutual and NMGF.

12. The parties failed to reach a mediated settlement of the chapter 11 case, I believe, because the Debtor and its insurance carriers, despite sworn depositions of individual survivors of clergy sex abuse conducted no fair, independent claims evaluation. Given the failure of mediation and the need to resolve the sex abuse claims to facilitate a resolution of these chapter 11 cases, Mr. Moya and Mr. Doe determined that the State Court Actions should go forward. Mr. Moya and Mr. Doe notified the Court of their desire to do so by filing their *Motions for Relief from Stay* (the “Stay Motions”) on July 8, 2015.

13. When they filed their *Stay Motions*, neither Mr. Moya, nor Mr. Doe, nor I recalled that the Debtor had removed the State Court Actions to the bankruptcy court.

14. On October 9, 2015, Mr. Moya and Mr. Doe each filed a *Motion to Remand Action to State Court* (the “Remand Motions”), pursuant to which they seek to have their cases remanded to state court where they will go forward should the Court grant the *Stay Motions*.

15. Mr. Doe and Mr. Moya agree that they will file a motion to consolidate pre-trial proceedings if this Court makes it a condition to granting the *Stay Motions* or the *Remand Motions*.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of October 2015.

/s/ Robert E. Pastor
Robert E. Pastor