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7 Proposed Attorneys for The Roman Catholic Bishop of  
8 Stockton

9 UNITED STATES BANKRUPTCY COURT  
10 EASTERN DISTRICT OF CALIFORNIA  
11 SACRAMENTO DIVISION

12 In re:  
13 THE ROMAN CATHOLIC  
14 BISHOP OF STOCKTON, a  
California corporation sole,  
15 Debtor-In-Possession.

CASE NO. 14-20371-C-11

DCN: FWP-5

Date: February 26, 2014  
Time: 10:00 a.m.  
Courtroom: 35  
501 I Street, 6th Floor  
Sacramento, CA

18 **MOTION FOR AUTHORITY TO EMPLOY HEENAN**  
19 **COMMUNICATIONS AS PUBLIC RELATIONS CONSULTANT**

20 The Roman Catholic Bishop of Stockton, a California corporation sole, the Debtor and  
21 Debtor in Possession herein (the “Debtor” or the “RCB”), hereby requests authority to employ  
22 Heenan Communications as its public relations consultant, and in support of this Motion,  
23 respectfully represents the following:

24 **JURISDICTION AND VENUE**

25 1. This Court has jurisdiction over this case and this matter pursuant to 28 U.S.C. §§  
26 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(A). Venue  
27 is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

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1           6.       The Debtor recognizes and has accepted the responsibility to share information  
2                 with the faithful and the communities it serves throughout the bankruptcy process. It further  
3                 recognizes that satisfying this responsibility is likely to require assistance and expertise from a  
4                 consultant experienced in external and internal communications. Given the unique and sensitive  
5                 nature of this matter, the Debtor has requested the services of Heenan Communications as its  
6                 public relations consultant. Heenan Communications has substantial knowledge and experience  
7                 that will enable them to perform services of special benefit to the Debtor and its estate in a cost  
8                 effective manner and ensure transparency of the process to the Catholic parishes and communities  
9                 the Debtor serves.

10           7.       Heenan Communications has agreed to provide advice, counsel and support related  
11                 to the Debtor's internal and external communications.

#### 12                                 **DISINTERESTEDNESS**

13           8.       Except as set forth in the verified statement of Michael Heenan filed herewith,  
14                 pursuant to Rule 2014, and to the best of Mr. Heenan's knowledge, information and belief,  
15                 Heenan Communications (i) does not have any disqualifying connections with the Debtor, its  
16                 creditors, or with any parties in interest, or with their attorneys and accountants, or with the office  
17                 of the United States Trustee, or with any person employed in the office of the United States  
18                 Trustee which would preclude employment, and (ii) does not now hold or represent any interest  
19                 materially adverse to the interests of the estate or of any class of creditors or equity security  
20                 holders.

#### 21                                 **COMPENSATION**

22           9.       Heenan Communications has agreed to undertake this matter for a lower than  
23                 customary monthly fee of \$5,000 plus reimbursement of related and reasonably incurred  
24                 expenses, subject to prior approval by the Debtor. The monthly fee is roughly half of the normal  
25                 fee Heenan Communications charges in the ordinary course of its business. The Debtor has  
26                 agreed to maintain a retainer in the amount of \$10,000 against which Heenan Communications  
27                 will draw its monthly fee to be replenished in the ordinary course of business.

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## LEGAL ANALYSIS

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2           10.     The primary basis for this motion is section 328(a). However, in the alternative,  
3 the Debtor relies on section 363(b). Section 363 of the Bankruptcy Code provides, in relevant  
4 part, that a debtor in possession “after notice and hearing, may use, sell or lease, other than in the  
5 ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Under applicable case  
6 law in this and other circuits, courts will approve a debtor’s proposed use of its assets under  
7 section 363(b) if it represents a sound business purpose on the part of the debtor. *See, e.g., In re*  
8 *240 North Brand Partners, Ltd.*, 200 B.R. 653, 659 (9th Cir. BAP 1996) (“[D]ebtors who wish to  
9 utilize § 363(b) to dispose of property of the estate must demonstrate that such disposition has a  
10 valid business justification.”); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr.  
11 D. Del. 1999) (“In evaluating whether a sound business purpose justifies the use, sale or lease of  
12 property under Section 363(b), courts consider a variety of factors, which essentially represent a  
13 business judgment test.”); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (courts defer to a  
14 trustee’s judgment concerning use of property under § 363(b) when there is a legitimate business  
15 justification); *In re Delaware & Hudson R.R. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (courts  
16 have applied the “sound business purpose” test to evaluate motions brought pursuant to section  
17 363(b)). Under the business judgment rule, a court will not interfere with the judgment of a board  
18 of directors unless there is a showing of “gross and palpable overreaching.” *In re Marvel Entm’t*  
19 *Group, Inc.*, 273 B.R. 58, 78 (Bankr. D. Del. 2002) (“under the business judgment rule, a board’s  
20 ‘decisions will not be disturbed if they can be attributed to any rational purpose’ and a court ‘will  
21 not substitute its own notions of what is or is not sound business judgment’”) (citing *Sinclair Oil*  
22 *Corp. v. Levien*, 280 A.2d 717, 719-20 (Del. 1971)). In the alternative, the Debtor requests  
23 employment under section 328 of the Bankruptcy Code.

24           11.     The Debtor submits that the employment of Heenan Communications is a sound  
25 exercise of its business judgment and satisfies section 363 of the Bankruptcy Code as the services  
26 of Heenan Communications are necessary and essential to the Debtor’s reorganization efforts and  
27 overall administration of this bankruptcy case. In addition to the specific knowledge they have  
28 acquired about the Debtor’s business, Mr. Heenan and the additional personnel to be assigned to

1 this engagement have extensive experience providing management services to distressed  
2 companies.

3 **CONCLUSION**

4 12. The Debtor believes it is essential that Heenan Communications be employed to  
5 provide the services described above and that Heenan Communications be permitted to bill and  
6 be paid as described herein.

7 WHEREFORE, based upon the foregoing, the Debtor requests that the Court enter an  
8 order authorizing:

9 1. The employment of Heenan Communications, LLC under sections 328(a), or in  
10 the alternative, sections 105(a) and 363 of the Bankruptcy Code, as its public relations consultant  
11 on the terms and conditions set forth above;

12 2. The employment to be effective as of January 15, 2014, and

13 3. For such other and further relief as the Court may deem proper in the  
14 circumstances.

15 Dated: January 23, 2014

16 FELDERSTEIN FITZGERALD  
17 WILLOUGHBY & PASCUZZI LLP

18 By: /s/ Paul J. Pascuzzi  
19 PAUL J. PASCUZZI  
20 Proposed Attorneys for  
21 The Roman Catholic Bishop of Stockton  
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