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8 Proposed Attorneys for The Roman Catholic Bishop of
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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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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
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20 Proposed Attorneys for
21 The Roman Catholic Bishop of Stockton
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