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HEARING TIME: 10:00 A.M.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	: :
THE CHRISTIAN BROTHERS' INSTITUTE, <i>et al.</i>	: Case No.: 11-22820 (RDD)
	: :
Debtors.	: (Jointly Administered)
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**DEBTORS' MOTION FOR AN ORDER ESTABLISHING
DEADLINES FOR FILING PROOFS OF CLAIM AND APPROVING
FORM AND MANNER OF NOTICE THEREOF**

The Christian Brothers' Institute ("CBI") and The Christian Brothers of Ireland, Inc. ("CBOI"), debtors and debtors-in-possession (collectively, the "Debtors"), hereby move this Court (the "Motion") for entry of an order pursuant to 11 U.S.C. § 501 and Rules 2002(a) and 3001 - 3005 of the Federal Rules of Bankruptcy Procedure, and Amended General Order M-386 (M-350), dated November 24, 2009 (the "Amended General Order"): (i) fixing the time within which proofs of claim against the Debtors' estates are to be filed by entities with general unsecured claims (the "General Bar Date"), sexual abuse claims (the "Sexual Abuse Bar Date"), holders of claims resulting from the Debtors' rejection of executory contracts or unexpired leases (the "Rejection Bar Date"), and creditors who may wish to file amended proofs of claim necessitated by the Debtors amending their Schedules of Assets and Liabilities and/or Statement

of Financial Affairs (the "Amended Schedules Bar Date"), and together with the General Bar Date, the Sexual Abuse Bar Date, and the Rejection Bar Date, each a "Bar Date" and collectively, the "Bar Dates"; (ii) approving the proposed Proof of Claim Forms (defined below); (iii) approving procedures for maintaining the confidentiality of proofs of claim filed by victims of sexual abuse (each a "Sexual Abuse Victim" and collectively, the "Sexual Abuse Victims"; (iv) approving the form and manner of the proposed notices of the Bar Dates as providing fair, reasonable and adequate notice of the Bar Dates; and (v) granting related relief. In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION

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

2. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 502 and 503 and Rules 2002 and 3003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

3. On April 28, 2011 (the "Petition Date"), the Debtors each commenced their respective Chapter 11 case by filing a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate as debtors-in-possession. No trustee has been appointed.

4. The Debtors' cases were consolidated for administrative purposes only, by order dated May 2, 2011. Thereafter, by order dated May 18, 2011, the Debtors were authorized

to retain Tarter Krinsky & Drogin LLP as bankruptcy counsel.

5. On May 11, 2011, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee"). The Committee retained Pachulski Stang Ziehl & Jones LLP as its counsel which was approved by an order of this Court dated July 14, 2011.

6. CBI is a domestic not-for-profit 501(c)(3) corporation organized under § 102(a)(5) of the New York Not-for-Profit Corporation Law. CBI was formed in 1906 pursuant to Section 57 of the then existing New York Membership Law. The Not-for-Profit Corporation Law replaced the Membership Law effective September 1, 1970. According to its governance documents, the purpose for which CBI was, and continues to be, formed was to establish, conduct and support Catholic elementary and secondary schools principally throughout New York State. As a not-for-profit corporation, the assets, and/or income are not distributable to, and do not inure to, the benefit of its directors or officers. CBI depends upon grants and donations to fund a portion of its operating expenses.

7. CBOI is a domestic not-for-profit 501(c)(3) corporation organized under the Not-for-Profit Corporation Law of the State of Illinois. According to its governance documents, the purpose for which CBOI was, and continues to be, formed was to establish, conduct and support Catholic elementary and secondary schools principally throughout the State of Illinois, as well as other spiritual and temporal affairs of the former Brother Rice Province of the Congregation of Christian Brothers. As a not-for-profit corporation, the assets, and/or income are not distributable to, and do not inure to the benefit of its members, or officers. CBOI depends upon grants and donations to fund a portion of its operating expenses.

8. The cause for the filing of these cases has been extensively detailed in the affidavit pursuant to Local Bankruptcy Rule 1007-2 filed with the original petitions, and is referred

to as if fully set forth herein. In short, the Debtors' Chapter 11 cases were filed in an effort to resolve in one forum, litigation and claims asserted by sexual abuse plaintiffs against the Debtors.

9. As in most Chapter 11 cases, the establishment of a last date to file claims is critical so that the Debtors will be able to know with greater certainty the amount and nature of the claims asserted by creditors. Here, the vast majority of the claims are in the nature of sexual abuse claims. Determining who is a known creditor and entitled to actual notice, and who is an unknown creditor entitled to publication notice is important in these cases. Understanding the importance of making extensive efforts to notify potential sexual abuse claimants of the need to file a proof of claim, the Debtors, after consultation with the Committee and the U.S. Trustee, filed two separate applications to retain Omni Management Group to aid the Debtors in connection with their noticing and administrative responsibilities under 28 U.S.C. § 156(c) and 11 U.S.C. § 327(a). Those applications were approved by orders dated September 2, 2011 (Docket Nos. 86 & 87).

10. The Debtors have made substantial progress with the Committee with respect to the terms of a proposed bar date order, a specialized sexual abuse proof of claim form, and notice of the sexual abuse bar date, which the Debtors and the Committee believe will afford Sexual Abuse Victims with reasonable notice and a sufficient period of time to file proofs of claim. The primary unresolved issue between the Debtors and the Committee is the extent of the effort the Debtors are required to undertake to notify potential Sexual Abuse Victims and determining who is a known creditor entitled to actual notice or an unknown creditor entitled to publication notice. Both the Debtors and the Committee do not believe it is necessary to send notice to every alumni at every institution where the Debtors' Brothers taught or performed ministry in the last 50 years – that could equate to noticing over 1,000,000 people at a substantial cost. On the other hand, the Debtors believe that to the extent a known abuser taught or

performed ministry at a particular institution, sending notice to alumni who attended the institution during the years in which the known abuser was located at the institution is reasonable. The Debtors are seeking some guidance from this Court as to defining the universe of known creditors.

11. The Debtors and the Committee are presently discussing the issues regarding the need for a future claims representative.

12. As set forth above, the Debtors' Chapter 11 cases are somewhat unique in that the Debtors, over a period of many decades, either operated or were significantly involved in teaching and ministry with numerous schools, orphanages, and other institutions across the United States and Canada; many of which have been closed for a number of years. Noticing and advertising the bar date will be a significant undertaking in these Chapter 11 cases. This is complicated by the fact that the Debtors do not have access to alumni directories for the vast majority of the institutions, as most of the schools have been separately incorporated for years and operate independently from the Debtors. Other than claims asserted by individuals who had commenced litigation or asserted a claim against the Debtors prior to the Petition Date, the Debtors have no other means to determine who should receive actual notice of the Sexual Abuse Bar Date. In an effort to obtain alumni directories, the Debtors sent requests to the presidents of various institutions requesting such directories.¹ Due to a variety of factors, obtaining alumni directories may be difficult, costly and time consuming. The Debtors, however, understand their obligation to provide notice to known creditors or creditors who can be ascertained with reasonable diligence. Absent obtaining alumni directories, the Debtors may be unable to provide

¹ Since few institutions responded to the Debtors' voluntary request for alumni directories, the Debtors submitted a 2004 motion seeking authority to issue subpoenas to various institutions compelling the production of alumni directories. This Court recently entered a 2004 order granting the relief requested.

actual notice to every potential alumnus of institutions where credibly accused abusers were located. Until the bar date has expired and the claims have been asserted and analyzed, neither the Debtors nor the Committee will be able to determine the aggregate number of the claims or the amount that may be necessary to fund a plan of reorganization in these cases.

RELIEF REQUESTED

13. In order for the Debtors to fully administer their estates, to solicit acceptances or rejections in connection with a Chapter 11 plan(s), and to make distributions thereunder, the Debtors must obtain complete and accurate information regarding the nature, validity, and amount of all claims² that will be asserted in these cases. Consequently, the Debtors respectfully request that, pursuant to Bankruptcy Rule 3003(c)(3), the Court: (i) establish the Bar Dates and related claims procedures proposed herein; (ii) approve the proposed Proof of Claim Forms (defined below); (iii) approve proposed procedures allowing Sexual Abuse Victims to file confidential proofs of claims; (iv) approve the form and manner of the proposed notices of the Bar Dates; and (v) grant related relief.

I. THE BAR DATES

A. The General Bar Date

14. Bankruptcy Rule 3003(c)(3) provides that the Court shall fix a time within which proofs of claim must be filed. The Debtors request that the Court fix **March 2, 2012**, as the General Bar Date.

15. The General Bar Date shall be the date by which all entities³ including governmental units,⁴ holding pre-petition claims, including pre-petition claims but excluding

² The term "claim," as used herein, has the meaning given to it in § 101(5) of the Bankruptcy Code.

³ As used herein, the term "entity" has the meaning given to it in § 101(15) of the Bankruptcy Code.

⁴ As used herein, the term "governmental unit" has the meaning given to it in § 101(27) of the Bankruptcy Code.

Sexual Abuse Claims (as hereinafter defined) (each a "General Claim," and collectively, the "General Claims"), must file proofs of claim.

16. The Debtors and the Committee contemplate that claims may be filed on account of assault and battery that do not constitute sexual abuse. The Debtors and Committee expect that such claims would be governed by the General Bar Date and not the Sexual Abuse Bar Date.

B. The Sexual Abuse Bar Date

17. Due to the unique nature of the experiences and damages suffered by sexually abused individuals, the Debtors believe that a separate bar date should be fixed for Sexual Abuse Victims. The Debtors request that the Court fix **June 15, 2012** as the Sexual Abuse Bar Date. The Sexual Abuse Bar Date would be the date by which all claims of sexual abuse must be filed (each a "Sexual Abuse Claim" and collectively, the "Sexual Abuse Claims"). This bar date affects all Sexual Abuse Victims whether or not they filed and had pending as of the Petition Date, a lawsuit against the Debtors. All Sexual Abuse Victims must submit a Sexual Abuse Proof of Claim Form (as hereinafter defined) prior to the Sexual Abuse Bar Date.

18. The Debtors and the Committee contemplate that claims may be filed on account of assault and battery that is not or does not constitute sexual abuse. The Debtors and Committee expect that such claims would be governed by the General Bar Date and not the Sexual Abuse Bar Date and that such claims would utilize the General Proof of Claim Form (as defined below). For purposes of determining which claim form should be utilized, a claim for sexual abuse is defined as any and all acts or omissions that the Debtors may be legally responsible for that in any way arise out of, are based upon, or involve sexual conduct or misconduct, sexual abuse or molestation, lascivious behavior, pedophilia, ephebophilia, or sexually related psychological or emotional harm or contacts or interactions of a sexual nature

between a child and an adult. A child may be sexually abused whether or not this activity involves explicit force, whether or not this activity involves genital or other physical contact and whether or not there is physical, psychological or emotional harm to the child.

C. The Rejection Bar Date

19. It is possible that certain entities may assert claims in connection with the Debtors' rejection of executory contracts and/or unexpired leases pursuant to §365 of the Bankruptcy Code (each a "Rejection Damages Claim"). The Debtors propose that any person or entity that asserts a Rejection Damages Claim must file a proof of claim on or before the later of: (i) the General Bar Date; or (ii) the date fixed in the order providing for the rejection of such lease or executory contract.

D. Amended Schedules Bar Date

20. The Debtors may, during the course of these cases, amend their Schedules of Assets and Liabilities and/or Statements of Financial Affairs (collectively, the "Schedules") so as to add an entity not currently listed therein or to alter the amount, priority, classification, or other status of a listed claim. The holders of claims affected by the Debtors' amendments (the "Amended Schedules Claims") may be entitled to file amended or original proofs of claim to take into account the amendment(s) to the Schedules.

21. The Debtors, therefore, ask that the Court establish the following as the deadline for filing Amended Schedules Claims: the later of (a) the General Bar Date; or (b) thirty (30) days after the holder of a claim is served with notice that the Debtors amended their Schedules to identify, reduce, delete, or change the amount, priority, classification, or other status of such a claim.

II. WHO MUST FILE PROOFS OF CLAIM

22. The proposed order approving this Motion (the "Bar Date Order"),

provides that, except as set forth in paragraph 22 below, all persons and entities holding pre-petition claims, including, without limitation, the following entities, must file the proofs of claim on or before the applicable Bar Date:

- (a) Any person or entity whose pre-petition claim against the Debtors is not listed in the Debtors' Schedules or whose pre-petition claim is listed in the Schedules but is listed as disputed, contingent or unliquidated and that desires to participate in these cases or share in any distribution in these cases;
- (b) Any person or entity that believes that its pre-petition claim is improperly classified in the Schedules or is listed in an incorrect amount and that desires to have its claim allowed in a classification or amount other than that identified in the Schedules; and
- (c) Any Sexual Abuse Victim who believes that he or she has a claim against the Debtors, including but not limited to, Sexual Abuse Victims who have previously filed lawsuits against the Debtors, and Sexual Abuse Victims who have never filed a lawsuit, entered into a settlement or reported their abuse.

23. Pursuant to the proposed Bar Date Order, the following persons or entities are **not** required to file a proof of claim on or before the applicable Bar Date:

- (a) Any person or entity that has already properly filed a proof of claim against the Debtors with the Clerk of the Court for the United States Bankruptcy Court for the Southern District of New York (the "Court"), or with the Debtors' proposed Claims Agent – Omni Management Group ("Omni" or the "Claims Agent") – Sexual Abuse Victims that previously filed with the Court a proof of claim must utilize the Sexual Abuse Proof of Claim Form and must refile the claim if that form was not used;
- (b) Any person or entity: (a) whose claim is listed in the Schedules or any amendments thereto; and (b) whose claim is not described therein as "disputed," "contingent," or "unliquidated;" and (c) who does not dispute the amount or classification of its claim as set forth in the Schedules;
- (c) Any person or entity that asserts an administrative expense claim against the Debtors pursuant to § 503(b) and § 507(a)(2) of the Bankruptcy Code;
- (d) Any person or entity whose claim against the Debtors has been

allowed by an order of the Court entered on or before the applicable Bar Date; and

- (e) Any person or entity whose claim has been paid in full. For the avoidance of doubt, this does not include Sexual Abuse Victims who were paid pursuant to settlement agreements but believe they have additional claims against the Debtors beyond what was agreed to in the settlement.

III. PROPOSED PROOF OF CLAIM FORMS

24. General Proof of Claim Form. With respect to pre-petition creditors that are not Sexual Abuse Victims – *i.e.*, holders of General Claims, Rejection Damages Claims, or Amended Schedules Claim (collectively, the “General Creditor Claims”) – the Debtors seek approval of the proof of claim form attached hereto as **Exhibit “A”** (the “General Creditor Proof of Claim Form”), which substantially follows the Official Form 10.⁵

25. The proposed Bar Date Order provides that each General Creditor Proof of Claim Form filed must: (a) be written in English; (b) be denominated in lawful currency of the United States as of the Petition Date; and (c) have attached copies of any writings upon which the claim is based in accordance with Bankruptcy Rules 3001(c) and 3001(d), including for secured claims, evidence that the security interest has been perfected;⁶ and (d) be originally executed and mailed or delivered to Omni Management Group at the following address: Christian Brothers Institute, c/o Omni Management Group, LLC, 16161 Ventura Boulevard, Suite C, Encino, California 91436. The proposed Bar Date Order further provides that proofs of claim must be mailed or delivered by messenger or overnight courier; proofs of claim sent by

⁵ The proposed General Creditor Proof of Claim Form deviates slightly from the Official Form 10 in that it includes a notation indicating that it should not be utilized in connection with the assertion of claims of Sexual Abuse Victims against the Debtors’ estates.

⁶ Bankruptcy Rule 3001(c) requires as follows: “When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.” Bankruptcy Rule 3001(d) requires that “[i]f a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.”

facsimile, telecopy, or e-mail will not be accepted.

26. Sexual Abuse Proof of Claim Form. The Debtors submit that under the circumstances of these cases and the unique aspects of a sexual abuse claim, that a modified proof of claim form similar to those utilized by diocesan and religious order debtors should be employed. Accordingly, the Debtors, after consultation with the Committee, prepared a confidential proof of claim form to be submitted by a Sexual Abuse Victim in connection with their claims (the "Sexual Abuse Proof of Claim Form," and together with the General Creditor Proof of Claim Form, the "Proof of Claim Forms"). A copy of the proposed Sexual Abuse Proof of Claim Form is attached hereto as Exhibit "B."⁷ The information requested in the Sexual Abuse Proof of Claim Form is designed to, and will assist the Debtors and parties in interest in evaluating and liquidating the Sexual Abuse Claims.

27. Due to the nature of the information that is requested in the Sexual Abuse Proof of Claim Form, the Debtors seek approval through this Motion of the following confidentiality protocol (the "Confidentiality Protocol"):

- (a) Sexual Abuse Victims are directed not to file a Sexual Abuse Proof of Claim Form with the Court. Instead, the original and two (2) copies of each Sexual Abuse Proof of Claim Form must be mailed or delivered to Omni at the following address: Christian Brothers Institute, c/o Omni Management Group, LLC, 16161 Ventura Boulevard, Suite C, PMB608, Encino, California 91436.
- (b) Sexual Abuse Proof of Claim Forms submitted by Sexual Abuse Victims will not be available to the general public unless a Sexual Abuse Victim affirmatively indicates his or her desire that the proof of claim be made public in Part 1 of the Sexual Abuse Proof of Claim Form. The Confidentiality Protocol is for the benefit of the Sexual Abuse Victims. Accordingly, Sexual Abuse Victims may elect to make any of the information contained in an Sexual Abuse Proof of Claim Form public, even if they elected to file the Proof of Claim confidentially.

⁷ Sexual abuse proofs of claim will be deemed filed in both of the administratively consolidated Chapter 11 cases.

- (c) Sexual Abuse Proof of Claim Forms submitted by a Sexual Abuse Victim shall be held and treated as confidential by the Debtors and Debtors' counsel and upon request to the parties listed below (the "Permitted Parties"), subject to each Permitted Party executing and returning to Debtors' counsel a confidentiality agreement (the "Confidentiality Agreement"), and to such other persons as the Court determines, provided, however, that all parties with access to the Sexual Abuse Proof of Claim Forms shall agree to keep the information provided in a Sexual Abuse Proof of Claim Form confidential (unless the Sexual Abuse Victim elects otherwise in Part 1 of the Sexual Abuse Proof of Claim Form).⁸
- (d) The Permitted Parties include:
- (i) Counsel for the Official Committee of Unsecured Creditors;
 - (ii) Insurance companies that provided insurance that may cover the claims described in the Sexual Abuse Proof of Claim Forms;
 - (iii) Any future claims representative;
 - (iv) Any special arbitrator/claims reviewer appointed to review and resolve the claims of Sexual Abuse Victims;
 - (v) Any trustee appointed to administer payments to Sexual Abuse Victims;
 - (vi) Authorized representatives of a department of corrections if the Sexual Abuse Victim is incarcerated but only to the extent disclosure is authorized under applicable non-bankruptcy law;
 - (vii) Members of the Committee and their personal counsel (after the Sexual Abuse Proof of Claim Form has been redacted to remove the Sexual Abuse Victim's name, address and any other information identified in Part 2(A) of the Sexual Abuse Proof of Claim Form and the signature block); and

⁸ Access to the Sexual Abuse Proof of Claim Forms extends only to the natural person who executes the Confidentiality Agreement. A separate Confidentiality Agreement must be signed by each natural person who seeks access to the records on behalf of a Permitted Party. The United States Trustee's Office shall have full access without being required to execute a Confidentiality Agreement.

- (viii) Such other persons as the Court determines should have the information in order to evaluate Sexual Abuse Claims.

28. The proposed Bar Date Order provides that each Sexual Abuse Proof of Claim Form filed must: (i) be written in English; (ii) be denominated in lawful currency of the United States as of the Petition Date; (iii) be originally executed and sent to Omni at the following address: Christian Brothers Institute, c/o Omni Management Group, LLC, 16161 Ventura Boulevard, Suite C, Encino, California 91436 on or before the Sexual Abuse Bar Date. The proposed Bar Date Order further provides that proofs of claim must be mailed or delivered by messenger or overnight courier; proofs of claim sent by facsimile, telecopy, or e-mail will not be accepted.

29. The Debtors request that they need not provide further notices to any holder of a claim, whether a General Creditor Claim, Sexual Abuse Claim, Rejection Damages Claim, or Amended Schedules Claim, that is not subject to one of the exceptions enumerated above who fails to timely file a proof of claim in the appropriate form.

IV. NOTICE PROCEDURES

30. As part of the Debtors' goal to obtain a fresh start, the Debtors need to ensure that the reorganized organization will be free from the threat of additional claims being brought after their emergence from Chapter 11. In order to obtain this discharge, and in order to provide any person who believes he or she has a Sexual Abuse Claim the opportunity to appear and be heard, the Debtors propose to implement the noticing protocol set forth below.

A. Notice of the General and Rejection Damages Bar Dates

31. At least sixty (60) days prior to the General Bar Date, the Debtors shall serve by United States mail, first-class postage prepaid: (i) notice of the General Bar Date and the Rejection Damages Bar Date, substantially in the form attached hereto as **Exhibit "C"** and

incorporated herein by reference (the "General Creditor Bar Date Notice"); and (ii) a General Creditor Proof of Claim Form (together with the General Creditor Bar Date Notice, the "General Creditor Bar Date Notice Package"), upon: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to the Official Committee of Unsecured Creditors; (c) all entities who have filed a notice of appearance in the Debtors' cases; (d) all entities listed in the Debtors' Schedules; (e) all parties to executory contracts and unexpired leases of the Debtors; (f) all entities that have previously filed proofs of claim in the Debtors' cases; (g) any other entities or their counsel, including governmental units, known to the Debtors as entities who may have claims against the estates; and (h) such additional persons and entities as deemed appropriate by the Debtors.

32. The General Creditor Bar Dates give potential claimants a significantly greater notice period than required by Bankruptcy Rules 2002(a)(7).⁹

B. Notice of the Sexual Abuse Bar Date

33. The unique experience of a Sexual Abuse Victim warrants a special form of notice and a special notice program for the Sexual Abuse Bar Date. Through the means set forth below, the Debtors propose to make the following available to the public: (i) a notice of the Sexual Abuse Bar Date substantially in the form attached hereto as **Exhibit "D"** and incorporated herein by reference (the "Sexual Abuse Bar Date Notice," and together with the General Creditor Bar Date Notice, each a "Bar Date Notice" and collectively, the "Bar Date Notices"); (ii) a Sexual Abuse Proof of Claim Form; (iii) a list of Brothers affiliated with the Debtors; and (iv) the Bar Date Order (together with the Sexual Abuse Bar Date Notice and the

⁹ Bankruptcy Rule 2002(a)(7) states that "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of ... the time fixed for filing proofs of claim pursuant to [Bankruptcy] Rule 3003(c)"

Sexual Abuse Proof of Claim Form, the "Sexual Abuse Bar Date Notice Package," and together with the General Creditor Bar Date Notice Package, the "Bar Date Packages").

34. The Debtors shall provide notice of the Sexual Abuse Bar Date by serving the Sexual Abuse Bar Date Notice Package at least one hundred fifty (150) days prior to the Sexual Abuse Bar Date on known Sexual Abuse Victims who:

- (a) Filed, or threatened to file, lawsuits against the Debtors that allege they were abused;
- (b) contacted the Debtors to report that they were victims of abuse, whether or not that individual's claim was considered to be substantiated and whether or not the report was written or verbal;
- (c) entered into a settlement agreement with the Debtors stemming from allegations of abuse; and
- (d) received payment from the Debtors as a result of an allegation of abuse.

35. Within the same time frame, to the extent the Debtors are able to obtain alumni directories, the Debtors will also serve the Sexual Abuse Bar Date Notice and the Sexual Abuse Proof of Claim Form on all known alumni of schools or other institutions in which the Debtors are aware that known abusers taught or performed ministry at the addresses set forth in the alumni directories.

C. Publication Notices

36. In consultation with the Committee, the Debtors determined, pursuant to Bankruptcy Rule 2002(I), that it would be in the best interest of their estates to give notice by publication of the Sexual Abuse Bar Date so that unknown Sexual Abuse Victims to whom no other notice was sent by the Debtors will be notified of the Sexual Abuse Bar Date and the requirement to file a proof of claim on account of such sexual abuse. Accordingly, the Debtors propose to provide notice of the Sexual Abuse Bar Date by causing a copy of the notice attached

hereto as **Exhibit "E"** (the "Publication Notice") to be published as follows in national publications as well as community/local publications for areas in proximity of the schools or institutions where the Debtors' Brothers have taught, performed ministry, or were otherwise affiliated with.¹⁰

- (i) Publication twice (in English) in each of the following publications; the first publication to occur within two weeks of the service of the Sexual Abuse Bar Date Notice Package and the second publication to occur forty-five (45) days prior to the expiration of the Sexual Abuse Bar Date:¹¹

National Publications

New York Times – Nat'l Ed.
USA Today – Nat'l Ed.

Local U.S. Publications

Albany Times Union
Arizona Republic
Asbury Park Press
Bergen Record
Bonita Daily News
Boston Globe
Californian
Chandler Times
Chicago Sun-Times
Contra Costa Times
Hudson Valley Times
Kent Reporter
Los Angeles Times
Madison County Journal
Miami Herald
Montebello Comet
Mountain Eagle
Naples Record
New York Times – NY Metro Ed
Newark Star Ledger

¹⁰ The Publication Notice and Sexual Abuse Bar Date Notice list The Congregation of Christian Brothers; North American Province of the Congregation of Christian Brothers; Edmund Rice Christian Brothers North American Province; Eastern Province of the Congregation of Christian Brothers; Western Province of the Congregation of Christian Brothers; and The Christian Brothers of Ireland in Canada. Those entities are not debtors in these cases and are listed for name recognition purposes only.

¹¹ The Debtors reserve the right to modify the publication list.

Oakland Press
Ocala Star Banner
Poughkeepsie Journal
Rochester Democrat & Chronicle
San Antonio Express News
Sebree Banner
Star Advertiser
Tampa Tribune
The Bugle
The Herald-News
The Jena Times
The Montana Standard
The Post and Courier
Times Picayune
Vallejo Times Herald
Warwick Beacon

Canadian Publications

Advertiser
Burnaby / New Westminster NewsLeader
Chronicle
Journal de Montreal
Journal de Quebec
Kamloops This Week
St. John's Telegram
The Charter
The Citizen
The Compass
The Daily News
The National Post
The Western Star
Times Colonist
Toronto Star
Vancouver Province
Welland Tribune

37. In addition, the Debtors may, after consultation with the Committee and input from this Court, publish notice of the Sexual Abuse Bar Date through 24/7 RealMedia,

Inc., which will provide an opportunity for notice of the Sexual Abuse Bar Date to appear on numerous web properties; as well as on major websites such as CNN and Yahoo.¹²

38. The website notices will contain a link which will take viewers to a copy of the Sexual Abuse Bar Date Notice.

39. In addition, the Debtors intend to provide further notice of the Sexual Abuse Bar Date by taking the following measures:

- (i) Upon entry of this Order, the Debtors will post component parts of the Sexual Abuse Bar Date Notice Package on the following website:

www.omnimgt.com/sblite/TheChristianBrothers

- (ii) The Debtors and the Committee will maintain a toll free number which may be used by Sexual Abuse Victims to ask questions or obtain copies of the Sexual Abuse Bar Date Notice Package or parts thereof;
- (iii) Within one (1) week of the service of the Sexual Abuse Bar Date Notice Package, the Debtors will mail a copy of the Sexual Abuse Bar Date Notice to the following: (i) the attorney general for each state where a School is located; (ii) the district attorney for each county where a School is located; (iii) the public health agency for each locality where a School is located; (iv) a substance abuse agency in each locality where a School is located; (v) the police department for each locality where a School is located; and (vi) the hospital for each locality where a School is located – and request that each party post such Notice until the expiration of the Sexual Abuse Bar Date;

40. Each request described above shall be on the Debtors' stationery, personally signed by a Christian Brother who is an officer of the Debtors. The Debtors shall confer with the Committee regarding the format. The request shall include a statement at the bottom for the recipient to indicate whether it will comply with the request and the request shall

¹² 24/7 Real Media, Inc. is a national online network which was recently utilized in In re Jackson Hewitt Tax Service, Inc., Case No. 11-11587(MFW) to provide notice to potential creditors asserting violation of consumer protection related laws against Jackson Hewitt.

include a stamped self-addressed return envelope. The Debtors' will report on compliance to the Committee.

41. In the Debtors' judgment, the publication protocol described above (the "Publication Protocol") is likely to reach the widest possible audience of creditors who may not otherwise have notice of the Debtors' cases.

42. Additionally, the Bar Date Notices and/or the Publication Notice will: (i) set forth the respective Bar Dates; (ii) advise creditors under what circumstances they must file a proof of claim in respect of a pre-petition claim (which include Sexual Abuse Claim); (iii) alert creditors to the consequences of failing to timely file a proof of claim, as set forth in Bankruptcy Rule 3003(c)(2) or an order of this Court, as applicable; (iv) set forth the address to which proofs of claim must be sent for filing; and (v) notify creditors that: (a) proofs of claim must be filed with original signatures; and (b) facsimile or e-mail filings of proofs of claim are not acceptable and are not valid for any purpose. The Debtors submit that the Publication Protocol is appropriate, and that the Bar Date Notices and Publication Notice will provide creditors with sufficient information to file properly prepared and executed proofs of claim in a timely manner, while simultaneously protecting the confidentiality of Sexual Abuse Victims.

BASES FOR RELIEF REQUESTED

43. Bankruptcy Rule 3003(c)(3) provides that the Court shall fix the time within which proofs of claim must be filed in a Chapter 11 case pursuant to § 501 of the Bankruptcy Code. See Fed. R. Bankr. P. 3003(c)(3). Under Bankruptcy Rule 3003(c)(1), a "governmental unit" has up to 180 days after the Petition Date to timely file a proof of claim. Bankruptcy Rule 3003(c)(2) further provides that any creditor who asserts a claim against the debtor that arose prior to the petition date, and whose claim is not scheduled in the debtor's schedules of assets and liabilities or whose claim is listed on such schedules as disputed,

contingent, or unliquidated, must file a proof of claim, failing which such creditor shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution. See id. at 3003(c)(2).

44. The Debtors submit that the proposed Bar Dates will provide potential claimants with an adequate amount of time after the mailing of the Bar Date Packages and publication of the Publication Notice within which to review the Schedules, compare the information contained therein and, if necessary, prepare and file proofs of claim. This includes governmental units that will receive more than the 180 days after the Petition Date required by Bankruptcy Rule 3002(c)(1) to file a proof of claim.

45. The establishment of the proposed Bar Dates is essential for these cases to progress. The Debtors cannot effectively negotiate and prepare a plan of reorganization until the universe of Sexual Abuse Claims asserted against the Debtors are known with greater certainty.

46. In addition, the Debtors submit that the special proposed Sexual Abuse Proof of Claim Form is appropriate under the circumstances of these cases. It is well established that the Court has the authority to authorize the modification of Official Bankruptcy Form B10. See In re A.H. Robins Co., 862 F.2d 1092 (4th Cir. 1988); In re Eagle-Picher Indus., Inc., 158 B.R. 713, 716 (Bankr. S.D. Ohio 1993). While Bankruptcy Rule 3001(a) provides that “[a] proof of claim shall conform substantially to the appropriate Official Form,” Bankruptcy Rule 9009 authorizes appropriate and necessary alterations to the Official Forms:

the Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may issue additional forms under the Code. The forms shall be construed to be consistent with these rules and the Code.

Fed. R. Bankr. P. 9009 (emphasis supplied); see also In re I.G. Servs., Ltd., 244 B.R. 377, 384 (Bankr. W.D. Tex. 2000) (citing In re A.H. Robins Co., 862 F.2d 1092) (noting that proof of claim forms that deviate from the Official Proof of Claim Form 10 may be used when special circumstances exist). Further, in A.H. Robins, the court recognized that substantial alteration to Official Proof of Claim Form 10 may be necessary when dealing with tort claims. See In re A.H. Robins Co., 862 F.2d at 1092.

47. Similar forms have been approved in cases similar to these involving the assertion of claims arising out of sexual abuse. See, e.g., In re Catholic Diocese of Wilmington, Inc., Case No. 09-13560 (Bankr. D. Del. Feb. 1, 2010); In re Roman Catholic Church of The Diocese of Tucson, Case No. 04-04721 (Bankr. D. Ariz. Nov. 5, 2004); In re Catholic Bishop of Northern Alaska, Case No. 08-00110 (Bankr D. Ala. May 30, 2008); In re Diocese of Davenport, Case No. 06-02229 (Bankr. S.D. Iowa Mar. 16, 2007); In re the Roman Catholic Bishop of San Diego, Case No. 07-00939 (Bankr. S.D. Cal. Aug. 20, 2007).

48. The Debtors respectfully request that the use of the Sexual Abuse Proof of Claim Form is necessary and appropriate in these cases. The form requires information necessary to allow the Debtors to evaluate the claims of Sexual Abuse Victims.

49. The Debtors submit the Confidentiality Protocol is both necessary and appropriate under the circumstances of these cases. The Debtors are sensitive to the issues that may arise for a Sexual Abuse Victim asserting a claim against the Debtors' estates. Through the Confidentiality Protocol and the Sexual Abuse Proof of Claim Form, the Debtors are attempting to obtain the information that they need in order to evaluate the Sexual Abuse Victims' claims, while at the same time providing a form that will not discourage Sexual Abuse Victims from coming forward and asserting their claims.

50. Additionally, in order to satisfy the requirements of due process, notice of

the Bar Dates must be reasonably calculated to apprise interested persons of the deadlines. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Whether notice is reasonable or adequate depends on whether a creditor is known or unknown to the debtor. See Grant v. U.S. Home Corp. (In re U.S.H. Corp of NY), 223 B.R. 654, 658 (Bankr. S.D.N.Y. 1998); see also Chemetron Corp. v. Jones, 72 F.3d 341, 346 (3d Cir. 1995). “Known” creditors must receive actual, mail notice of bankruptcy proceedings. See id. at 345. By contrast, notice by media publication is sufficient to satisfy the requirements of due process for “unknown” creditors. See id. at 346-47.

51. A “known” creditor is one whose identity is either known or “reasonably ascertainable by the debtor.” Id. at 346 (citing Tulsa Professional Collection Serv., Inc. v. Pope, 485 U.S. 478 (1988)). In identifying “known” creditors, due process requires debtors to perform reasonable diligence of their books and records – but it does not require that debtors engage in “impracticable and extended searches.” Mullane, 339 U.S. at 317; see also In re Thomson McKinnon Securities Inc., 130 B.R. 717, 720 (Bankr. S.D.N.Y. 1991) (noting that the debtor is not required to search out each conceivable or possible creditor); Chemetron Corp., 72 F.3d at 346.

52. By contrast, the Supreme Court has held that an “unknown” creditor is one whose “interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to the knowledge” of the debtor. Mullane, 339 U.S. at 317. Moreover, in bankruptcy cases, when determining whether a creditor is “known” or “unknown,” the appropriate form of notice, and how much to spend on notice, courts must balance the interests of the debtor’s existing and potential creditors as well as other parties in interest. See Vancouver Women’s Health Collective Soc. v. A.H. Robins Co., Inc., 820 F.2d 1359, 1364 (4th Cir. 1987); see also Fogel v. Zell, 221 F.3d 955, 963 (7th Cir. 2000); In re GAC

Corp., 681 F.2d 1295, 1300 (11th Cir. 1982); In re Circuit City Stores, Inc., 439 B.R. 652, 660 (Bankr. E.D. Va. 2010) (“[t]he totality of the circumstances in each case must be analyzed to determine whether a particular creditor is known or unknown”).

53. The Debtors submit that any potential Sexual Abuse Victims, other than those articulated in subsections (a) through (e) of this paragraph are “unknown” as articulated in Mullane and that accordingly, publication notice as described above is sufficient to put any such claimants on notice of the Debtors’ Sexual Abuse Bar Date:

- (a) Filed, or threatened to file, lawsuits against the Debtors that allege they were abused;
- (b) contacted the Debtors to report that they were victims of abuse, whether or not that individual’s claim was considered to be substantiated and whether or not the report was written or verbal;
- (c) entered into a settlement agreement with the Debtors stemming from allegations of abuse; and
- (d) received payment from the Debtors as a result of an allegation of abuse.
- (e) attended schools and/or institutions where known abusers taught or performed ministry to the extent the Debtors can obtain addresses for such individuals.

54. The Debtors submit that the Bar Date Notices and Publication Notice in the forms and manners as proposed by the Debtors herein, are fair and reasonable and will provide good, sufficient, and due notice to all creditors, including creditors with foreign addresses, of their rights and obligations in connection with claims they may assert against the Debtors’ estates in these cases. See In re Thomson McKinnon Securities Inc., 130 B.R. 717, 720 (Bankr. S.D.N.Y. 1991) (noting that (i) “[i]f the debtor knows, or should know, of its potential liability to a specific creditor, that creditor is a known creditor entitled to actual notice” and (ii) the debtor is not required to search out each conceivable or possible creditor);

55. Accordingly, the Debtors respectfully submit that the relief requested herein is warranted and in the best interest of the Debtors, their creditors, and their estates.

RESERVATION OF RIGHTS

56. The Debtors reserve their right to object to any claim or proof of claim on any grounds, including, but not limited to, the passing of the applicable statutes of limitations. The Debtors reserve their right to dispute, or to assert offsets or defenses to, any claim reflected on the Schedules, or any amendments thereto, as to amount, liability, classification, or otherwise, and to subsequently designate any claim as disputed, contingent, unliquidated or undetermined.

NOTICE

57. Notice of this Motion will be given to: (a) the U.S. Trustee; (b) counsel to the Committee; (c) all parties who filed requests for notice in these cases pursuant to Bankruptcy Rule 2002; and (d) all insurance companies that may provide coverage for claims described herein. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

58. No previous request for the relief sought herein has been made to this or any other Court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit "F:"** (i) authorizing the Debtors to fix the Bar Dates; (ii) approving the proposed Proof of Claim Forms; (iii) approving the form and manner of notice of the Bar Date Notice Packages, pursuant to Bankruptcy Rule 2002(a)(7); (iv) approving the form and manner of publication of the Publication Notice pursuant to Bankruptcy Rule 2002(1); and (v) granting such other and further relief as the Court may deem proper.

Dated: New York, New York
November 29, 2011

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