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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)
Debtor.	:	
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**AFFIDAVIT OF KEVIN GRIFFITH IN SUPPORT OF  
CONFIRMATION OF THE FIRST AMENDED JOINT PLAN OF  
REORGANIZATION DATED DECEMBER 6, 2013**

STATE OF NEW YORK     )  
  ss:  
COUNTY OF NEW YORK    )

Kevin Griffith, being duly sworn, deposes and says:

1. I am the vice president of The Christian Brothers' Institute and The Christian Brothers of Ireland, Inc. (collectively, the "Debtors").
2. I submit this affidavit in support of confirmation of the first amended joint plan of reorganization, dated December 6, 2013 (ECF Doc. No. 620)(the "Plan").<sup>1</sup>
3. I am familiar with the Plan, the first amended disclosure statement, dated December 6, 2013 (ECF Doc. No. 621) (the "Disclosure Statement"), and all documents related thereto. I have actively participated in the development of the Plan and was personally involved in extensive plan mediation sessions with the Committee supervised by the Honorable Elizabeth S. Stong, United States

<sup>1</sup> All capitalized terms used in this affidavit that are not specifically defined herein shall have the meanings ascribed to such terms in the Plan.

Bankruptcy Judge for the Eastern District of New York, who acted as a plan mediator.

4. This affidavit presents certain facts relevant to the requirements for confirmation of the Plan pursuant to Section 1129 of the Bankruptcy Code. If I were called upon to testify, I would testify as to the facts set forth in this affidavit.

### **THE PLAN**

5. The primary purpose of the Plan is to establish a fair and equitable method for the resolution and payment of sexual abuse claims asserted against the Debtors, Settling Insurers, and Participating Parties, and to provide and to afford the Debtors a discharge consistent with Section 1141 of the Bankruptcy Code so that the Debtors will be able to continue their mission providing high quality, affordable education consistent with the tenets of the Catholic Church and to provide other related ministry work. The Plan provides for a global resolution of these issues and provides for the fair and equitable treatment of other classes of claims.

6. The Plan is the result of a collaborative effort between the Debtors, the Committee, Settling Insurers, and Participating Parties. The Debtors, the Committee, and Providence Washington Insurance Company (“PW”), the primary Settling Insurer were involved in numerous mediation sessions and settlement discussions over a period of several months under the supervision of the Honorable Elizabeth S. Stong. These negotiations involved both in person meetings and telephone conferences with at least six in person meetings at the Bankruptcy Court in Brooklyn.

7. The Plan mediation involved numerous complex and thorny issues, including without limitation the following issues: (i) the estimated value of the sexual abuse claims which involved numerous issues including statutes of limitation of several states and how to arrive at a fair value for numerous Canadian abuse claims in light of the fact that many Canadian abuse survivors received compensation from the winding down proceedings in Canada of the Canadian counterpart of the Debtors; (ii) insurance coverage issues; (iii) availability of the estates’ funds to contribute to a sexual abuse trust under any plan of reorganization; (iv) treatment of retirement claims asserted by the

Debtors' brothers; and (v) means by which the Plan would not impact the rights of abuse survivors to pursue claims against joint tortfeasors and the like.

8. After extensive negotiations and meetings the Debtors, the Committee, and PW were able to agree to the terms of a consensual plan of reorganization which ultimately resulted in the Plan which is the subject of a confirmation hearing scheduled for January 9, 2014. The Plan provides the means for settling and paying all claims asserted against the Debtors. Among other things, the Plan provides for the creation of a trust for the exclusive benefit of Abuse Claimants. The Plan provides the Debtors with a discharge. The Plan provides a mechanism for third-parties, such as joint tortfeasors and insurance companies, to participate and obtain the benefit of certain injunctions and releases.

**THE PLAN SATISFIES SECTION 1129 OF THE BANKRUPTCY CODE**

9. All facts set forth in this affidavit are based on my personal knowledge and my understanding of the requirements of chapter 11 of the Bankruptcy Code as they relate to confirmation of a plan of reorganization as has been explained to me in my numerous discussions with the professionals I have interacted with during these chapter 11 proceedings and my participation in all major aspects of these chapter 11 cases. Based thereon, I believe the Plan complies with applicable provisions of Section 1129 of the Bankruptcy Code.

10. I believe the Plan complies with Section 1129(a) of the Bankruptcy Code based upon the following:

(a) Section V of the Plan sets forth the classification of claims. Since the Debtors are not-for-profit entities, there are no interests to classify. I am advised that such classification complies with Section 1122(a) of the Bankruptcy Code. Class 1 consists of Other Priority Claims. I am unaware of any claims in this class. Class 2 consists of the holders of secured claims. I am aware of at least one claim in Class 2 which is a holder of a mortgage on certain real property located in Rochester, New York

owned by one of the Debtors. Class 3 consists of general unsecured convenience claims. These are claims of five hundred dollars per claim or less. Class 4 consists of sexual abuse claims. Based upon the claims filed with the claims agent, there are approximately four hundred and thirty-six (436) filed Class 4 claims. Class 5 consists of fraud claims. These are claims related to sexual abuse claims who have asserted they were fraudulently induced into settling their sexual abuse litigations based upon incomplete information. I understand there are five such Class 5 claims. Class 6 consists of physical abuse claims. These are claims asserting physical abuse such as excessive corporal punishment as opposed to sexual abuse. I understand there are approximately six such claims. Class 7 consists of maintenance claims. These are claims asserted by brothers of the North American Province of the Edmund Rice Christian Brothers for support and the like during the later years of their lives. Class 8 consists of general unsecured claims. These claims are ordinary trade claims and/or claims made by certain entities which made unsecured loans to the Debtors prior to the chapter 11 filings. Class 9 consists of penalty claims. These are claims such as punitive damage claims and the like related to sexual abuse claims. Class 10 consists of abuse related contingent/contribution/reimbursement claims. These are claims asserted by joint tortfeasors and the like. Based upon my review of the claims and my discussions with the Debtors' professional advisors, the claims in each class designated by the Plan are substantially similar to one another and are properly classified under the Plan. In addition, with respect to each class of claims, the Plan provides the same treatment for each claim in their respective class.

(b) Section V of the Plan designates classes of claims other than the claims of the type described in Sections 507(a)(2), 507(a)(3) and 507(a)(8) of the Bankruptcy Code.

(c) Section VI of the Plan identifies each class of claims that are not impaired

under the Plan and specifies the treatment thereof.

(d) Section VII of the Plan sets forth the treatment of impaired claims.

(e) Sections IX, X and XII provide adequate means for implementation of the Plan. The Plan will be implemented by the execution and delivery of various documents and agreements, including the establishment and funding of the trust for resolution and payment of Class 4, 5, and 6 claims, funding and payment of all claims other than Class 4, 5, and 6 claims in accordance with the treatment of those claims as provided under the Plan, a procedure for objections to claims, the sale of certain real estate, and an assignment of available insurance coverage provided by Non-Settling Insurers to the Trust.

(f) Section 1123(a)(6) of the Bankruptcy Code is inapplicable. Section 1123(a)(8) of the Bankruptcy Code is also inapplicable as the Debtors are not individuals.

(g) I believe the Debtors and the Committee have complied with Section 1125 of the Bankruptcy Code as the Disclosure Statement contains adequate information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the Debtors and the condition of the Debtors' books and records to enable a hypothetical creditor typical of holders of claims to make an informed judgment about the Plan.

**COMPLIANCE WITH BANKRUPTCY CODE SECTION 1129(a)(2)-(a)(10)**

11. Based upon my understanding of the Bankruptcy Code requirements I believe the Debtors have complied with the applicable provisions of the Bankruptcy Code, including Sections 1125 and 1126 of the Bankruptcy Code regarding disclosure and plan solicitation. Further, the Debtors timely filed with the Bankruptcy Court their schedules of assets and liabilities in compliance with the official forms and made amendments as necessary. The Debtors filed all monthly operating reports required on the forms promulgated by the United States Trustee. Based upon the affidavits

of service on file I believe that Omni Management Group has provided timely notice of the Disclosure Statement, the Plan, and notice of the confirmation hearing to all known creditors and all other parties and interest to whom notice was required to have been provided.

12. I believe the Plan complies with Section 1129(a)(3) of the Bankruptcy Code. The Plan is a result of extensive arm's-length negotiations between the Debtors, the Committee, and PW. The Plan is a culmination of those negotiations and contains substantial input from each group. The Plan has been proposed jointly by the Debtors and the Committee. Accordingly, the Plan achieves the goal of a consensual reorganization and affords the Debtors a discharge which is one of the primary goals of a successful chapter 11 case.

13. I believe the Plan complies with Section 1129(a)(4) of the Bankruptcy Code. All payments made or to be made by or on behalf of the Debtors for the estate professionals retained in these chapter 11 cases have been or are subject to approval of this Court.

14. I believe the Plan complies with Section 1129(a)(5) of the Bankruptcy Code. Section XII of the Disclosure Statement discloses that the Reorganized Debtors' shall continue to be managed by their current Board of Trustees which consists of (i) Brother Hugh O'Neill; (ii) Brother Kevin Griffith; (iii) Brother Barry Lynch; (iv) Brother Daniel Casey; (v) Brother Mark Anthony Murphy; and (vi) Brother Raymond Vercruysse. I believe the continuation of these individuals as the Reorganized Debtors' management is in the best interest of creditors. Additionally, I understand the Trustee of the Trust is experienced in distributing monies to sexual abuse survivors and has done so in other religious order/diocesan bankruptcy cases.

15. I do not believe Section 1129(a)(6) is implicated as the Debtors are not subject to any rate regulation and is not changing any rates that require approval of a governmental agency.

16. Based upon my understanding of the requirements of Section 1129(a)(7) of the Bankruptcy Code. I believe the Plan satisfies such requirements. I understand in order to satisfy Section 1129(a)(7) each holder of a claim in an impaired class must either (a) vote to accept the Plan,

or (b) receive no less than such holder would receive in a chapter 7 liquidation. As set forth in the Disclosure Statement, the Section 1129(a)(7) analysis must be considered in light of the fact that the Court cannot convert these cases to chapter 7 liquidations over the Debtors' objection. However, the Debtors and the Committee believe that in a hypothetical chapter 7 liquidation there is a risk that the Class 7 Maintenance Claims could be allowed and would be entitled to share with other unsecured creditors. Based upon actuarial tables, these claims could exceed a hundred million dollars. Under the Plan these claims are being assumed by Community Support Corporation in exchange for obtaining the benefits of a Participating Party under the Plan. The Plan incorporates a mechanism (an allocation protocol) to distribute monies to sexual abuse survivors which was negotiated by counsel representing in excess of seventy five percent (75%) of abuse claimants. It is unlikely that a chapter 7 trustee would be able to implement such allocation plan absent a confirmed chapter 11 plan. Additionally, Settling Insurers would not likely contribute funds to the Trust absent the issuance of various injunctions which I understand would not be available in a Chapter 7 case. Finally, absent the settlement with PW which is a key element of the Plan substantially less monies would be available to Class 4 claimants and each claimant would be required to pursue whatever insurance might be available. Such litigation over the extent of the Debtors' assets that might be available to pay claims and the extent of insurance coverage, would likely be prolonged, subject to appeals, costly, and have an uncertain outcome. As such I believe the Plan results in significantly more going to creditors than would be available if the Debtors' assets were liquidated under chapter 7 of the Bankruptcy Code.

17. Section 1129(a)(8) of the Bankruptcy Code arguably has not been satisfied as Class 9 and 10 are deemed to reject the Plan as they are receiving no distribution under the Plan.

18. Section 1129(a)(9) of the Bankruptcy Code has been satisfied. I am unaware of any priority claims or tax claims. As to holders of administrative claims, those claims will be paid in the ordinary course of business, or with respect to professional fees, in full as awarded by this court

promptly after the fees are awarded unless otherwise agreed between the Reorganized Debtors and the professional. I believe we have the resources available to satisfy all outstanding fees.

19. As set forth in the certification of ballots at least one class of impaired claims has accepted the Plan. Class 4 overwhelmingly accepted the Plan. In addition, Class 8 accepted the Plan. As such, Section 1129(a)(10) of the Bankruptcy Code has been satisfied.

### **FEASIBILITY**

20. I believe the Plan is feasible and not likely to be followed by liquidation or the need for further reorganization. In determining feasibility, I have looked at the Debtors ability to meet its financial obligation required by the Plan. The Plan requires the Reorganized Debtors to pay \$13.442 million to the Trust. From the proceeds of various assets sales approved by this Court, the Debtors' bankruptcy counsel is holding in a segregated account at Citibank \$14,160,154.63. The Plan also requires PW to pay \$3.2 million to the Trust. This Court has already approved the settlement between the Debtors and PW and I have been advised that PW has the funds available to contribute to the Trust. The Plan also provides for the sale of certain real property owned by the Debtors, and the net proceeds of such sales contributed to the Trust. The Debtors intend to cooperate in all respects with the Committee in connection with such sales.

21. I also believe that based upon the Reorganized Debtors' streamlined operations and the implementation of centralized funding, the Reorganized Debtors will have the financial ability to meet their ongoing ordinary operating expenses such as support of the Brothers. Because Reorganized Debtors will no longer incur the significant litigation expenses relating to defending sexual abuse litigation, the Debtors will likely have more funds available to continue the pursuit of their core mission.

22. The Debtors have paid all statutory fees due to the United States Trustee. To the extent any fees are unpaid they will be paid on the Effective Date or earlier. Pursuant to the Plan, the



Reorganized Debtors will pay all fees due to the United States Trustee until entry of a final decree.

23. I am unaware of any retiree benefits which the Debtors are required to pay. However, I note that Community Support Corporation has agreed under the Plan to be responsible for the financial support of all Brothers to the extent the Reorganized Debtors lack the necessary funds.

24. Section 1129(a)(14) of the Bankruptcy Code does not apply to the Debtors as the Debtors do not have any obligations to pay domestic support obligations.

25. Section 1129(a)(15) of the Bankruptcy Code does not apply as the Debtors are not individuals.

26. I believe Section 1129(a)(16) of the Bankruptcy Code is satisfied as any transfers of the Debtors' property under the Plan (such as the sale of certain real estate) shall be in accordance with any non-bankruptcy law applicable to the Debtors as New York and Illinois not-for-profit corporations.

**THE INJUNCTIVE RELIEF AFFORDED TO SETTLING INSURERS AND  
PARTICIPATING PARTIES UNDER THE PLAN ARE WARRANTED  
AND NECESSARY AS CRITICAL COMPONENTS OF THE PLAN**

27. Section XV of the Plan provides for certain permanent injunctive relief preventing Abuse Claimants from pursuing virtually any actions to seek recovery on account of abuse promulgated by the Debtors or individuals for whom the Debtors may be responsible against Participating Parties and Settling Insurers. In essence, any such claims are channeled to the Trust. I have been advised that bankruptcy courts have approved similar types of injunctive relief in connection with mass tort bankruptcies and other Catholic diocese and religious order cases. I have been advised that Section 524(g) of the Bankruptcy Code provides express authority for such relief in asbestos cases. Although, the Debtors' cases are not asbestos cases, the rationale is similar and has been adopted by other bankruptcy courts in church-related bankruptcy cases. I have been advised that the Settling Insurers would not contribute the monies necessary to fund the Trust absent the

ability to obtain such injunctive relief. I also understand Community Support Corporation would not agree to assume the obligation to support the Debtors' elderly brothers in their retirement without the injunctive relief granted to a Participating Party under the Plan. Similarly, the Edmund Rice Christian Brothers North American Province of the Congregation of Christian Brothers and its predecessors, including the North American Province, the former Eastern American Province, the former Western American Province, and the former Canadian Province of the Congregation of Christian Brothers, an ecclesiastical entity and juridic person under Canon Law, a Participating Party under the Plan would not have permitted the Debtors to fund the Trust absent the ability to obtain permanent injunctive relief provided under the Plan.

28. I have been advised that in the Second Circuit, a bankruptcy court has the ability in "unusual circumstances" to permanently enjoin a claim held by a non-debtor third party against another non-debtor third party. I have been further advised that a third party action that will directly and adversely impact the reorganization is more likely to constitute the "unusual circumstances" required to obtain such injunctive relief. Here, without the protection afforded by the Plan to Settling Insurers and Participating Parties, the settlement embodied in the Plan, which was a result of extensive negotiation could not be achieved. I also note that the ballots sent to all creditors specifically included the language granting the permanent injunctive relief to Settling Insurers and Participating Parties. I have been advised a vote in favor of the Plan with such third party releases can constitute consent to the third-party injunctive relief.

**THE PLAN SATISFIES SECTION 1129(b) OF THE BANKRUPTCY CODE**

29. I have been advised based upon my understanding of bankruptcy law that the court, if necessary, can confirm the Plan under Section 1129(b) of the Bankruptcy Code. I do not believe that the Plan unfairly discriminates between any creditors. There is clearly a rational basis to treat sexual abuse claims differently than ordinary general unsecured claims or contingent

reimbursement claims, which are statutorily disallowed under the Bankruptcy Code. In compliance with the non-monetary commitments set forth in the Plan, I recently met with several abuse survivors and I can understand the profound affect the abuse had on their lives. The entire premise of the Debtors' chapter 11 filings was to resolve the numerous sexual abuse claims in a meaningful way in light of the Debtors' limited resources and enable the Debtors to continue their mission without the continued strain both economically and emotionally of dealing with sexual abuse litigation.

30. I have also been advised that the fair and equitable requirement with respect to a class of unsecured claims which has rejected the Plan or deemed to reject the Plan implicates what is often referred to as the "absolute priority" rule, which requires that each holder of a claim in a rejecting class receive or retain property equal to the value of the claim or that holders junior to such claims will not receive or retain any property under the Plan. I have been advised that the "absolute priority" rule does not apply in these cases because there are no persons or entities having ownership or profit interest in the Debtors. The Debtors are New York and Illinois not-for-profit corporations without shareholders. The Debtors' trustees have no ownership interest in the Debtors.

**WHEREFORE**, it is respectfully requested that this court confirm the Plan and grant such other and further relief as the court deems just and proper.

/s/ Kevin Griffith  
Kevin Griffith

Sworn to before me this  
2nd day of January, 2014

/s/ Anthony D. Dougherty  
Notary Public

Notary Public, State of New York  
No. 02DO4985701  
Qualified in New York County  
Commission Expires 8/26/2017