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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SACRAMENTO**

12 FAIR OAKS PRESBYTERIAN CHURCH, a )  
13 California Nonprofit Religious Corporation )  
14 Plaintiff )  
15 v. )  
16 PRESBYTERY OF SACRAMENTO, a )  
17 California Nonprofit Religious Corporation, )  
18 and DOES 1 through 20, inclusive, )  
19 Defendants. )  
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Case No. 07AS01238

**DEFENDANT PRESBYTERY OF  
SACRAMENTO'S ANSWER TO FAIR  
OAKS PRESBYTERIAN CHURCH'S  
COMPLAINT**

Defendant PRESBYTERY OF SACRAMENTO answers Plaintiff FAIR OAKS  
PRESBYTERIAN CHURCH's Verified Complaint as follows:

**I. GENERAL ALLEGATIONS**

**A. The Parties**

1. Defendant admits the allegations contained in paragraph 1.
2. Defendant admits that it is a nonprofit religious corporation organized under the laws of California, with its principal place of business in the County of Sacramento. Defendant denies that the role of the Presbytery is simply that of "a local administrative unit of the Presbyterian

1 Church (USA)". Defendant admits that the Presbyterian Church (USA)(hereinafter, PCUSA)  
2 was formed as a result of reunion between the Presbyterian Church in the U.S. (PCUS),and the  
3 United Presbyterian Church in the U.S.A. (UPCUSA)in 1983 and on that basis, admits that  
4 PCUSA was formed in1983. Defendants also admits that PCUSA currently has approximately  
5 11,000 churches throughout the United States, including the County of Sacramento.

6 3. No response is required because the allegations contained in paragraph 3 do not  
7 constitute factual allegations capable of admission or denial.

8 4. Defendant denies the allegations contained in paragraph 4 to the extent they constitute  
9 factual allegations capable of admission or denial.

10 **B. Jurisdiction and Venue.**

11 5. Based solely on its present information and belief, Defendant admits that the real  
12 property which is the subject of the complaint is generally known as 11417 Fair Oaks Blvd., but  
13 is without knowledge or information sufficient to form a belief as to the accuracy of the metes  
14 and bounds described in said paragraph and accordingly denies each and every remaining  
15 allegation in said paragraph.

16 6. Based solely on its present information and belief, Defendant admits the Plaintiff took  
17 title to those parcels mentioned in the first sentence of paragraph 6; however, Defendant alleges  
18 that any such title was, at all times relevant hereto, and is subject to a property trust clause in  
19 favor of the denomination(s) of which Plaintiff was/is a congregation, most recently the  
20 Presbyterian Church (U.S.A.) (PCUSA). Defendant denies the remaining allegations found in  
21 paragraph 6.

22 7. Based solely on its present information and belief, Defendant admits the allegations  
23 contained in paragraph 7 solely insofar as they pertain strictly to the language contained within  
24 the four corners of the deeds themselves. However, a trust in favor of PCUSA is imposed by  
25 operation of law, and therefore, to the extent that the allegations in this paragraph are intended to  
26 diminish, limit, negate or deny that trust, Defendant denies the allegations found in paragraph 7.

27 8. Defendant denies the allegations contained in paragraph 8.  
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1 **C. Relevant Provisions From Plaintiff's Governing Documents.**

2 9. Based solely on its present information and belief, Defendant admits the allegations  
3 in paragraph 9 that Plaintiff was originally incorporated on or about August 12, 1954, and that at  
4 a meeting in October 2006, some members of the congregation attempted to pass amendments to  
5 the Plaintiff's bylaws which, to the extent they purport to diminish, limit, negate or deny the trust  
6 referred to above are null and void. Accordingly the remaining allegations in paragraph 9 are  
7 denied.

8 10. Based solely on its present information and belief, Defendant admits the allegations  
9 in paragraph 10 which imply that some members of the congregation attempted to pass similar  
10 null and void provisions of Plaintiff's bylaws, but deny the remaining allegations in said  
11 paragraph.

12 **D. Present Dispute Between the Parties**

13 11. Defendant admits that the constitution of the PCUSA consists of the *Book of*  
14 *Confessions* and *Book of Order*. Defendant denies the remainder of the allegations in paragraph  
15 11 to the extent that Plaintiff incorrectly contends that the *Book of Confessions* contains  
16 statements of church governance (polity).

17 12. Defendant admits the allegations contained in paragraph 12.

18 13. Defendant denies the allegations contained in paragraph 13.

19 14. Based solely on its present information and belief, Defendant admits that a resolution  
20 was reportedly passed in February purporting to revoke the trust imposed on the property which  
21 is the subject of this litigation. Defendant denies that (a) Plaintiff or any of its members had  
22 authority under California law or the PCUSA Constitution to adopt such a resolution, (b) that  
23 this was the legal effect of the document referred to, or (c) that those who voted on said  
24 document had the authority to adopt it, and further denies the remaining allegations contained in  
25 paragraph 14.

26 15. Defendant denies the allegations contained in paragraph 15. It is expressly denied  
27 that this Defendant has taken any unprecedented or improper actions against Plaintiff or  
28

1 threatened to confiscate the property of local churches such as Plaintiff. At the present time the  
2 case or controversy which Plaintiff attempts to create by the false allegations of this paragraph is  
3 not ripe, and may never become ripe.

4 16. Defendant denies the allegations contained in paragraph 16. As appears from the  
5 face of the documents, they are privileged by the attorney client privilege and were not authored  
6 by an officer, employee or member of this Presbytery. Therefor, the allegation of their contents  
7 is an improper attempt to impute intent to this Defendant from the implied receipt of a document.  
8 The pleading of their contents suggests, however, that Plaintiff has failed to join necessary  
9 parties to this action.

10 17. Defendant denies the allegations contained in paragraph 17. The Advisory Opinion  
11 alleged therein is akin to an Attorney General's opinion. It's very title indicates it is Advisory.  
12 Only the Permanent Judicial Commissions of the Synod and General Assembly are empowered  
13 to rule on contested issues regarding the Book of Order when, as here, there is a dispute between  
14 a presbytery and a church. As was noted in the Answer to Paragraph 16, the pleading of the  
15 contents of that Advisory Opinion suggests that Plaintiff has failed to join necessary parties to  
16 this action.

17 18. Defendant denies the allegations contained in paragraph 18.

## 19 **II. FIRST CAUSE OF ACTION**

### 20 **Declaratory Relief**

21 19. Defendant incorporates by reference as though fully set forth herein, its answer to  
22 each and every preceding paragraph in this Complaint.

23 20. Insofar as the allegations in paragraph 20 constitute contentions of law, no response  
24 is required. Defendant alleges further that even if an actual controversy exists, it is not justiciable  
25 for Constitutional reasons and/or the Court should abstain from deciding same pending  
26 exhaustion of the PCUSA's internal judicial process.



**IV. THIRD CAUSE OF ACTION**

**Injunctive Relief**

28. Defendant incorporates by reference as though fully set forth herein, its answer to each and every preceding paragraph in this Complaint.

29. Defendant denies the allegations contained in paragraph 29.

30. Defendant denies the allegations contained in paragraph 30.

31. Defendant denies the allegations contained in paragraph 31 to the extent they imply any harm attributable to this Defendant. Furthermore, since neither the Synod nor the General Assembly have sought to or have threatened to disrupt Plaintiff's customary and normal operations, those allegations of this paragraph are denied.

32. Defendant denies the allegations contained in paragraph 32.

**AFFIRMATIVE DEFENSES**

1. AS AND FOR A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering Defendant alleges that the complaint and each cause of action therein fails to state facts sufficient to constitute a cause of action against this answering Defendant.

2. AS AND FOR A FURTHER, SEPARATE AND DISTINCT, AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering Defendant alleges that the Plaintiff had failed to join all necessary parties to this action.

3. AS AND FOR A FURTHER, SEPARATE AND DISTINCT, AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering Defendant alleges that at all times relevant hereto, Plaintiff consented, either expressly or impliedly, to any such acts or conduct as may be shown on the part of this answering Defendant.

4. AS AND FOR A FURTHER, SEPARATE AND DISTINCT, AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN that , this complaint and every cause of action therein is premature and not yet ripe for judicial determination.

1           5.       AS AND FOR A FURTHER, SEPARATE AND DISTINCT AFFIRMATIVE  
2 DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering Defendant alleges that  
3 Plaintiff's complaint, and/or each cause of action therein, is barred because Plaintiff has failed to  
4 exhaust the internal ecclesiastical remedies available to it prior to bringing this action, including,  
5 but not limited to, established procedures for those congregations seeking to leave the PCUSA and  
6 appeals to the Permanent Judicial Commissions of the Synod and General Assembly of any actions  
7 taken subsequently hereto with respect to Plaintiff with which Plaintiff may disagree.

8           6.       AS AND FOR A FURTHER, SEPARATE AND DISTINCT, AFFIRMATIVE  
9 DEFENSE TO THE COMPLAINT ON FILE HEREIN , this answering defendant alleges that  
10 Plaintiff's complaint, and each and every cause of action therein consists of ecclesiastical  
11 controversy. Accordingly, there exists no justiciable controversy properly brought before this Court  
12 and this Court is therefore barred from hearing this case by the First Amendment to the United States  
13 Constitution and Article One, Section Four of the California Constitution.

14           7.       AS AND FOR A FURTHER, SEPARATE AND DISTINCT AFFIRMATIVE  
15 DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering Defendant alleges that  
16 Plaintiff's complaint, and each and every cause of action therein, is barred by the doctrines of laches  
17 and unclean hands.

18           8.       AS AND FOR A FURTHER, SEPARATE AND DISTINCT AFFIRMATIVE  
19 DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering Defendant alleges that any  
20 and all acts alleged in Plaintiff's complaint, has been ratified by the conduct of Plaintiff.

21           9.       AS AND FOR A FURTHER, SEPARATE AND DISTINCT, AFFIRMATIVE  
22 DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering Defendant alleges that they  
23 are entitled to recover reasonable expenses, including attorney's fees, from the Plaintiff in that  
24 Plaintiff's complaint on file herein is frivolous and was brought and maintained in bad faith and  
25 without reasonable cause, and is totally and completely without merit and was brought for the sole  
26 purpose of harassing this Defendant. [Code of Civil Procedure Sections 128.7 and 1038.]  
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1           10. AS AND FOR A FURTHER, SEPARATE AND DISTINCT AFFIRMATIVE  
2 DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering Defendant alleges that, at  
3 all times, it acted in good faith.

4           11. AS AND FOR A FURTHER, SEPARATE AND DISTINCT AFFIRMATIVE  
5 DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering Defendant alleges that  
6 because the complaint is couched in conclusory terms, this answering Defendant cannot fully  
7 anticipate all affirmative defenses that may be applicable to the within action. Accordingly, the right  
8 to assert additional affirmative defenses, if any and to the extent that such affirmative defenses are  
9 applicable, is hereby reserved.

10           WHEREFORE, this answering Defendant prays that Plaintiff take nothing by reason of his  
11 complaint; that this answering Defendant be awarded costs of suit incurred herein; and for such other  
12 and further relief as this Court may deem just and proper.

15 Date: April 19, 2007

JOHNSON SCHACHTER & LEWIS  
A Professional Law Corporation

18 \_\_\_\_\_  
19 ROBERT H. JOHNSON  
LEHOA NGUYEN, Attorneys for  
20 Defendant, PRESBYTERY OF SACRAMENTO

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**VERIFICATION**

I, Rev. Jeff Chapman,, declare:

I am the Chair of the Presbytery Council for the Presbytery of Sacramento, Defendant in the within-entitled action.

I have read the foregoing DEFENDANT PRESBYTERY OF SACRAMENTO’S ANSWER TO FAIR OAKS PRESBYTERIAN CHURCH’s COMPLAINT, and know the contents thereof.

I am informed and believe and thereon allege that the matters stated therein are true and correct.

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

Executed this 19th day of April, 2007 at \_\_\_\_\_, California.

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Rev. Jeff Chapman, Chair of the Presbytery  
Council, Presbytery of Sacramento

**PROOF OF SERVICE**

**CASE NAME:** Fair Oaks Presbyterian Church v. Presbytery of Sacramento  
**CASE NO.:** Case No. 07AS01238

I am employed in the County of Sacramento. I am over the age of eighteen years and not a party to the within above-entitled action. My business address is 2180 Harvard Street, Suite 560, Sacramento, CA 95815.

I am familiar with this office's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a United States mailbox after the close of each day's business.

On the date below, I served the following: **DEFENDANT PRESBYTERY OF SACRAMENTO'S ANSWER TO FAIR OAKS PRESBYTERIAN CHURCH'S COMPLAINT**

- United States Mail - on all parties in said action by placing a true copy of the above-described document(s) enclosed in a sealed envelope in the designated area for outgoing mail addressed as set forth below.
- By FACSIMILE (telecopier) - by personally sending to the addressee's facsimile number a true copy of the above-described document(s).
- Federal Express - on all parties in said action by placing a true copy of the above-described document(s) in an authorized area for pick-up by an authorized express service courier the same day it is collected and processed in the ordinary course of business as set forth below.
- Personal Service - By personally delivering or causing to be delivered a true copy of the above-described document to the person(s) and at the address(es) set forth as shown below.

David W. Tyra  
Kronick, Moskovitz, Tiedemann & Girard  
A Professional Corporation  
400 Capitol Mall, 27<sup>th</sup> Floor  
Sacramento, CA 95814

FEDERAL: I declare that I am employed in the office of a member of the bar of this Court at whose direction service was made.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 19, 2007, at Sacramento, California.

\_\_\_\_\_  
Cheneen Hubert