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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF PLACER**
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12 FIRST PRESBYTERIAN CHURCH OF)
ROSEVILLE, CALIFORNIA, a California)
13 Nonprofit Religious Corporation)
14 Plaintiff)
15 v.)
16 PRESBYTERY OF SACRAMENTO, a)
California Nonprofit Religious Corporation,)
17 and DOES 1 through 20, inclusive,)
18 Defendants.)
19)
20)
21)
22)

Case No. SCV 20758
DECLARATION OF ROBERT H. JOHNSON IN SUPPORT OF DEFENDANT'S MOTION TO TRANSFER AND CONSOLIDATE ACTIONS

Hearing Date: November 13, 2007
Time: 8:30a.m.
Location: Dept. 7
Judge: Hon. Margaret Wells
Date of Filing Action: March 19, 2007
Trial Date: March 3, 2008

22 **I, ROBERT H. JOHNSON, declare:**

23 1. I am an attorney duly licensed to practice law in all the Courts in the State of California
24 and New York. I am admitted to practice before the U.S. Supreme Court, the U.S. Courts of
25 Appeals for the Ninth and Second Circuits, and the U.S. District Courts for the Eastern and
26 Northern Districts of California and the Southern and Eastern Districts of New York. I am a
27 shareholder in the law firm of Johnson Schachter & Lewis, A Professional Law Corporation,
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1 attorneys of record for defendant in both FIRST PRESBYTERIAN CHURCH OF ROSEVILLE,
2 CALIFORNIA, a California Nonprofit Religious Corporation, v. PRESBYTERY OF
3 SACRAMENTO, a California Nonprofit Religious Corporation, Case No. SCV 20758, pending
4 in the California Superior Court of Placer, and FAIR OAKS PRESBYTERIAN CHURCH, a
5 California Nonprofit Religious Corporation, v. PRESBYTERY OF SACRAMENTO, a
6 California Nonprofit Religious Corporation, Case No. 07AS01238, pending in the California
7 Superior Court of Sacramento. I am also an ordained elder in the Presbyterian Church (U.S.A.).
8 I make this declaration based on my own personal knowledge and if called as a witness I could,
9 and would, testify competently thereto.

10 2. The Presbyterian Church (U.S.A.) Constitution (“PCUSA Constitution”) (hereinafter “the
11 Book of Order”) governs all bodies within PCUSA and sets forth mandatory procedural and
12 structural rules for church governance, which describes the doctrine, government and
13 organization of all the governing bodies within PCUSA.

14 3. According to the Book of Order, PCUSA is specifically organized as a four-tiered system
15 of governing bodies, each with oversight jurisdiction over the subordinate body: the General
16 Assembly, the Synod, the Presbytery and the Session of each local church.

17 4. Defendant PRESBYTERY OF SACRAMENTO is governed by the Synod of the Pacific,
18 and governs over forty Sessions of local churches located in and around the Sacramento area,
19 which includes both Sacramento and Placer County.

20 5. Plaintiffs, FAIR OAKS PRESBYTERIAN CHURCH (“FOPC”) and FIRST
21 PRESBYTERIAN CHURCH OF ROSEVILLE, CALIFORNIA (“FPC”) are both local churches
22 located in both Sacramento and Placer County.

23 6. Under the Book of Order, FOPC and FPC are governed by the Presbytery of Sacramento
24 and required to follow the PCUSA Constitution, which includes the Book of Order.

25 7. The PCUSA Constitution, specifically the Book of Order, contains an express “Trust
26 Clause” which states:

27 All property held by or for a particular church . . . , whether legal title is
28 lodged in a corporation, a trustee or trustees, or an unincorporated

1 association, and whether the property is used in programs of a particular
2 church or of a more inclusive governing body or retained for the production
3 of income, *is held in trust nevertheless for the use and benefit of the
Presbyterian Church* (U.S.A.). (Emphasis added)

4 8. According to both of the complaints filed against Presbytery of Sacramento by FOPC and
5 FPC, I am informed of and believe the following:

6 A. In 2006, both FOPC and FPC, on their own accord, attempted to negate the “Trust
7 Clause” by revising both of their Articles of Incorporation and Bylaws revoking
8 any and all trust interest in their respective property belonging to PCUSA.

9 B. On February 27, 2007, during each of their respective regularly scheduled
10 corporate meetings, both FOPC and FPC unanimously passed a corporate
11 resolution expressly revoking any and all trust interest in their respective
12 properties based upon the language found in the PCUSA Constitution.

13 C. On March 19, 2007, FOPC and FPC individually filed a complaint in their
14 respective counties, Sacramento and Placer, against the Presbytery of Sacramento,
15 as the local administrative unit of PCUSA for the same three causes of action: (1)
16 Declaratory Relief; (2) Quiet Title; and (3) Injunctive Relief.

17 9. Defendant, PRESBYTERY OF SACRAMENTO, seeks to transfer to this Court the
18 action pending in Sacramento County, FAIR OAKS PRESBYTERIAN v. PRESBYTERY OF
19 SACRAMENTO ; Case No. 07AS01238, as it alleges essentially the same claims against the
20 defendant in this action.

21 10. On August 15, 2007 and September 22, 2007, I spoke to David Tyra, opposing counsel
22 for the plaintiffs in both FAIR OAKS PRESBYTERIAN v. PRESBYTERY OF
23 SACRAMENTO and FIRST PRESBYTERIAN CHURCH OF ROSEVILLE, CALIFORNIA v.
24 PRESBYTERY OF SACRAMENTO, about consolidating the two cases. He indicated that his
25 clients, both plaintiff churches, were opposed to consolidating the two cases.

26 11. Both complaints allege the same three causes of action: Quiet Title, Declaratory Relief,
27 and Injunctive Relief. In essence, these two cases share the same questions of law.

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1 12. The specific standards set forth in Code of Civil Procedure Section 404 for consolidation
2 are met by the following :

- 3 A. Both plaintiffs are represented by the same attorney who filed both complaints
4 against the defendant on the same day in two different courts.
- 5 B. Both of these actions center around the same legal issue regarding whether an
6 express trust interest contained in a constitution, such as the PCUSA Constitution,
7 is enforceable.
- 8 C. Both complaints allege the exact same three causes of action: (1) Declaratory
9 Relief; (2) Quiet Title; and (3) Injunctive Relief.
- 10 D. Consolidation of both cases will enhance trial court efficiency, prevent
11 unnecessary duplication of evidence and procedures, and most importantly avoid
12 the risk of inconsistent judgments, which would reduce the costs and delays
13 resulting from multiple trials, and conserve judicial resources. (*See Todd-*
14 *Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.4th 976, 978-979, 56
15 CR2d 16-18).
- 16 E. In order to prevent inconsistent rulings from two different courts, it would be
17 most appropriate that the fault finding process be conducted by one judge.
18 Furthermore, this would clearly serve in the best interests of efficiently utilizing
19 already limited judicial resources.
- 20 F. Consolidating both actions will not unduly complicate the trial of this action,
21 because the common issue of whether the Trust Clause in the PCUSA
22 Constitution is enforceable, will predominate and any separate issues that may
23 arise, if at all, will be limited to the nature and extent of each plaintiff's injuries.
- 24 G. The trial date set in Placer County for March 3, 2008, will be preserved, and as a
25 trial date has not been set for the case pending in Sacramento County,
26 consolidation will not by any means delay the trial of either one of these cases.
27 Rather, consolidating both cases would allow the case pending in Sacramento
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- 1 County to be heard earlier, which would alleviate the Sacramento Superior Court
2 of the burden from hearing it at a later time.
- 3 H. Consolidating these two cases together would further judicial efficiency and
4 economy, and also further efficiency, economy and convenience of all parties,
5 witnesses and counsel.
- 6 13. Neither case is complex, as defined by California Rule of Court, Rule 3.400, and have not
7 been designated as complex by any court.
- 8 A. The dispute in both actions involves very few, if any, disputable facts and is
9 primarily a legal issue.
- 10 B. Both actions focus primarily on one legal issue: whether an express trust interest
11 contained in PCUSA's Constitution is enforceable.
- 12 C. Numerous pretrial motions will not be required, nor will a large number of witnesses
13 or a substantial amount of documentary evidence be needed.
- 14 D. The number of witnesses will be minimal.
- 15 E. The amount of documentary evidence will be quite small, if not just a handful of
16 documents, which will include, but will not be limited to, the PCUSA Constitution
17 and each plaintiff church's property deeds, articles of incorporation and bylaws.
- 18 F. The total number of parties involved in both actions is only three.
- 19 G. Plaintiffs in both actions are represented by the same attorney.
- 20 H. Substantial postjudgment supervision by the court will not be necessary.
- 21 14. Significant common questions of law and fact predominate in all of these actions. All of
22 the actions involve the core issue of whether the "Trust Clause" contained in the PCUSA
23 Constitution, which states that all church property is held in trust for the use and benefit of PCUSA,
24 is enforceable.
- 25 15. The convenience of the parties, witnesses and counsel will be served by the consolidation.
26 The parties will avoid duplicative discovery demands and responses, the witnesses will not be
27 subjected to multiple depositions.
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1 16. Judicial facilities and resources will be more efficiently utilized if the cases are consolidated
2 because there will be a single judge in a single courtroom hearing pretrial motions and a single trial
3 which will avoid duplication of judicial and staff time in both Placer and Sacramento counties.

4 17. Consolidation of the actions will encourage settlement because litigants will not be inclined
5 to settle their cases if common issues are being litigated in other courts in front of different judges
6 with the possibility of different outcomes.

7 18. Both of the actions are in the early stages of litigation, and, to the best of my knowledge the
8 bulk of discovery on the common issues has not yet commenced.

9 19. I have notified opposing counsel, who is the same person in both cases, of his obligation to
10 disclose to the court any information he has concerning any other motions requesting transfer of any
11 case that would be affected by the granting of this motion. I am aware of no such matters. (*See*
12 Exhibit "C" setting forth notification.)

13 I declare under penalty of perjury, under the laws of the State of California, that the
14 foregoing is true and correct, except as to those portions stated to be true under information and
15 belief, and as to those portions I believe them to be correct. Executed in Sacramento, California,
16 this 18th day of October, 2007.

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18 _____
19 ROBERT H. JOHNSON
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PROOF OF SERVICE

CASE NAME: FIRST PRESBYTERIAN CHURCH OF ROSEVILLE, CALIFORNIA
v. PRESBYTERY OF SACRAMENTO
CASE NO.: SCV 20758

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, October 18, 2007, I served the following: **DECLARATION OF ROBERT H. JOHNSON IN SUPPORT OF DEFENDANT'S MOTION TO TRANSFER AND CONSOLIDATE ACTIONS**

— 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.

X 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 Tyra
Kronik, Moskovitz, Tiedemann & Girard
A Professional Corporation
400 Capital Mall, 27th Floor
Sacramento, California 95814
Telephone: (916) 321-4500
Fax: (916) 321-4555

— 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, October 18, 2007, at Sacramento, California.