

1 ROBERT H. JOHNSON (SBN 048067)
TZE MING U (SBN 249311)
2 JOHNSON SCHACHTER & LEWIS
A Professional Law Corporation
3 California Plaza
2180 Harvard Street, Suite 560
4 Sacramento, CA 95815
Telephone: (916) 921-5800
5 Facsimile: (916) 921-0247
6 Attorneys for Defendant PRESBYTERY OF SACRAMENTO

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF PLACER**

11 FIRST PRESBYTERIAN CHURCH OF)
12 ROSEVILLE, CALIFORNIA, a California)
Nonprofit Religious Corporation)
13 Plaintiff)
14 v.)
15 PRESBYTERY OF SACRAMENTO, a)
16 California Nonprofit Religious Corporation)
17 Defendant.)

Case No. SCV 20758

**NOTICE OF MOTION AND
MOTION TO TRANSFER AND
CONSOLIDATE ACTIONS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION; AND SUPPORTING
DECLARATION OF ROBERT
JOHNSON**

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

22 **TO EACH PARTY AND TO THE COUNSEL OF RECORD FOR EACH PARTY:**
23 **YOU ARE HEREBY NOTIFIED THAT** on November 13, 2007, at 8:30 a.m., in Department
24 Seven of this Court located at 11546 B Avenue, Auburn, CA. 95603, in Case No. SCV 20758,
25 Defendant PRESBYTERY OF SACRAMENTO will move the court for an order to transfer the
26 following Sacramento County Court case to this court:

27 FAIR OAKS PRESBYTERIAN, a California Nonprofit Religious Corporation, v.
28 PRESBYTERY OF SACRAMENTO, a California Nonprofit Religious Corporation;
Case No. 07AS01238, filed on March 19, 2007, pending in the Sacramento County
Superior Court, in which the following parties have appeared:

1 *Plaintiffs*, FAIR OAKS PRESBYTERIAN, *counsel of record*, KRONIK, MOSKOVITZ,
2 TIEDEMANN & GIRARD (David Tyra);
3 *Defendants*, PRESBYTERY OF SACRAMENTO, *counsel of record*, JOHNSON,
4 SCHACHTER & LEWIS, A Professional Law Corporation (Robert H. Johnson)

5 Concurrently, Defendant PRESBYTERY OF SACRAMENTO will also move the court
6 for an order to have that action consolidated with one that is already pending before this court:

7 FIRST PRESBYTERIAN CHURCH OF ROSEVILLE, CALIFORNIA, a California
8 Nonprofit Religious Corporation v. PRESBYTERY OF SACRAMENTO, a California
9 Nonprofit Religious Corporation; Case No. SCV 20758, filed on March 19, 2007, trial set
10 for March 3, 2008, pending in the Placer County Superior Court, in which the
11 following parties have appeared:

12 *Plaintiffs*, FIRST PRESBYTERIAN CHURCH OF ROSEVILLE, CALIFORNIA,
13 *counsel of record*, KRONIK, MOSKOVITZ, TIEDEMANN & GIRARD (David Tyra);
14 *Defendants*, PRESBYTERY OF SACRAMENTO; *counsel of record*, JOHNSON,
15 SCHACHTER & LEWIS, A Professional Law Corporation (Robert H. Johnson)

16 Consolidation is requested *for all purposes*.

17 This motion is made on the ground that the issues of fact and law relating to the church
18 property dispute in both cases, specifically the legal issue of whether a trust interest in local
19 church property for the use and benefit of the larger general church is enforceable, are common
20 to both actions and consolidation of these actions is appropriate, applying the standards set forth
21 in the Code of Civil Procedure Section 404.1. This motion is further made on the ground that
22 substantially the same issues are presented in both actions, some of the same witnesses will be
23 required to testify in both actions and on the further ground that large expenditures of time and
24 money will be saved in the preparation for and the conduct of the trial thereof by consolidating
25 the two actions. A single trial of all issues will avoid unnecessary costs and delays and will
26 serve the interests of economy and convenience.

27 All parties are further notified that:

28 Pursuant to Local Rule (20.3.3) on the afternoon of the court day before each
regularly scheduled law and motion calendar, the court will cause to be recorded
a tentative ruling on each matter on the next day's calendar. The tentative
rulings will be available after 12:00 noon by telephoning a voice-mail message at
(530) 886-6673. The tentative ruling shall become the final ruling of the court
unless a party advises all other parties and the court of a request for oral argument.
Such request shall be made by calling (530) 889-6529 and leaving a recorded
message with the court no later than 4:00 p.m. on the court day preceding the
hearing.

1 Consolidating the two actions in Placer County will not in any way prejudice either one
2 of the plaintiff churches, as the Placer County trial date will be preserved. FIRST
3 PRESBYTERIAN CHURCH will still have its case heard on March 3, 2008, and FAIR OAKS
4 PRESBYTERIAN will have the opportunity to have its case adjudicated earlier. Moreover,
5 consolidating the two actions will serve the convenience of both plaintiff churches, especially as
6 both are being represented by the same attorney, center around the same issue and will be heard
7 and adjudicated at the same time. On a practical level, consolidation will serve the economic
8 interests of all parties on both sides and their respective counsels.

9 In addition to serving the convenience and economic interests of all parties involved,
10 while not prejudicing either one of the plaintiff churches, consolidating the two cases will also
11 serve in the best interests of efficiently utilizing already limited judicial resources. While it is
12 clear that the Sacramento Superior Court will benefit from consolidating the two actions in
13 Placer County, the Placer Superior Court will not be unduly burdened, as a very small
14 percentage of time and judicial resources will be required for evidentiary disputes, due to the fact
15 that the central issue in both cases is a legal one: whether an express trust interest in local
16 church property for the use and benefit of the larger general church that has been enacted in the
17 Presbyterian Church (U.S.A.) Constitution is enforceable.

18 Consolidating the two actions will be based upon the provisions of Code of Civil
19 Procedures Sections 403 and 1048(a), California Rules of Court, 3.500, this notice, the attached
20 points and authorities and declaration of ROBERT H. JOHNSON, the files and records in this
21 action, and any further evidence and argument that the Court may receive at or before the
22 hearing.

23 Date: October 18, 2007

JOHNSON SCHACHTER & LEWIS
A Professional Law Corporation

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25
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27 _____
ROBERT JOHNSON
TZE MING U
Attorneys for Defendants PRESBYTERY
28 OF SACRAMENTO

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 _____, 2007, I served the following: **NOTICE OF MOTION AND 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.
- 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 _____, 2007, at Sacramento, California.