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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 Defendant. )  
18 )  
19 )  
20 )  
21 )

Case No. SCV 20758  
**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANT’S MOTION TO  
TRANSFER AND CONSOLIDATE  
ACTIONS**  
**CCP §§ 1048(A), 403, 404.1;  
CRC 3.400(A)&(B), 3.500**  

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**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**  

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22 Defendant, PRESBYTERY OF SACRAMENTO, a California Nonprofit Religious  
23 Corporation, submits the following Memorandum of Points and Authorities in support of its  
24 Motion to Transfer and Consolidate Actions. Copies of both Complaints against defendant by  
25 FAIR OAKS PRESBYTERIAN CHURCH and FIRST PRESBYTERIAN CHURCH OF  
26 ROSEVILLE, CALIFORNIA have been attached respectively as Exhibits “A” and “B” along  
27 with the Declaration of ROBERT H. JOHNSON, an attorney for the defendant in the above  
28 entitled matter, filed concurrently herewith, for the Court’s convenience.

**I. INTRODUCTION**

Pursuant to Code of Civil Procedures (CCP) Section 403 and 1048(a), PRESBYTERY OF SACRAMENTO requests this court to grant this motion to transfer FAIR OAKS PRESBYTERIAN v. PRESBYTERY OF SACRAMENTO, currently pending in Sacramento County, to Placer County and to consolidate it with FIRST PRESBYTERIAN CHURCH OF ROSEVILLE v. PRESBYTERY OF SACRAMENTO, which is pending in Placer County. Defendant requests this court to grant its motion to transfer and consolidate as both actions not only involve the exact same legal issue, but also involve similar plaintiffs represented by the same attorney.

**II. STATEMENT OF FACTS**

Presbyterian Church (U.S.A.) (“PCUSA”) was formed in 1983, upon the reunion of the United Presbyterian Church in the United States (“UPCUSA”) and the Presbyterian Church in the United States (“PCUS”). The Presbyterian Church (U.S.A.) Constitution (“PCUSA Constitution”) (hereinafter “the Book of Order”), sets forth mandatory procedural and structural rules for church governance, and describes the doctrine, government and organization of all the governing bodies within PCUSA.<sup>1</sup>

According to the Book of Order, PCUSA is specifically organized as a four-tiered system of governing bodies, each with oversight jurisdiction over the subordinate body: the General Assembly, Synods, Presbyteries and the Sessions of each local church. Therefore, the General Assembly has jurisdiction and governance over the denomination, including all of the regional Synods in the U.S.A. Each Synod governs the Presbyteries within its region and similarly each Presbytery oversees and governs the Sessions for each individual local church within its assigned area.

According to the Book of Order, Defendant PRESBYTERY OF SACRAMENTO is governed by the Synod of the Pacific and governs the many Sessions located in its assigned area, which includes both Sacramento and Placer County. FAIR OAKS PRESBYTERIAN CHURCH

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<sup>1</sup>The PCUSA Constitution consists of two parts: Part I is the *Book of Confessions*, which covers church polity, and Part II is the *Book of Order*. (See BOO § G-1.0500)

1 (“FOPC”) and FIRST PRESBYTERIAN CHURCH OF ROSEVILLE, CALIFORNIA (“FPC”)  
2 are both local churches within the PCUSA and under the Book of Order, as local churches in  
3 both Sacramento and Placer County, they are governed by the Presbytery of Sacramento and are  
4 required to follow the Book of Order. FOPC was originally incorporated on or about August 12,  
5 1954, and FPC was originally incorporated on or about April 11, 1910.

6 In *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, (“*Jones*”), a 1979 case involving a church  
7 within PCUS, the United States Supreme Court ruled that trust interests in local church property  
8 are enforceable in civil courts. The *Jones* court invited denominations such as PCUS, which  
9 contended that local churches held their property in trust for the national denomination, to  
10 expressly state so in their governing documents. In response to *Jones*, in 1981, both UPCUSA  
11 and PCUS adopted and enacted a “Trust Clause” in their respective constitutions. In 1983, when  
12 PCUS and UPCUSA formed PCUSA, the “Trust Clause” was enacted in the PCUSA  
13 Constitution, specifically the Book of Order, which expressly states:

14 All property held by or for a particular church. . . , whether legal title is  
15 lodged in a corporation, a trustee or trustees, or an unincorporated  
16 association, and whether the property is used in programs of a particular  
17 church or of a more inclusive governing body or retained for the production  
18 of income, ***is held in trust nevertheless for the use and benefit of the  
Presbyterian Church*** (U.S.A). (See Exhibit “A”: FOPC’s Complaint  
19 against PRESBYTERY OF SACRAMENTO, ¶12; See Exhibit “B”: FPC’s  
20 Complaint against PRESBYTERY OF SACRAMENTO, ¶12; emphasis  
21 added)

22 During both occasions in 1981 and 1983, when the “Trust Clause” was enacted in the  
23 national denominations’ Book of Order, both plaintiff churches, FOPC and FPC, neither  
24 objected, nor did they exercise the option to leave. Rather, both churches remained within the  
25 PCUSA and have conducted themselves according to the Book of Order until 2006.

26 According to each of their complaints, in 2006, both FOPC and FPC, on their own  
27 accord, attempted to negate the “Trust Clause” by revising both of their Articles of Incorporation  
28 and Bylaws revoking any and all trust interest in their respective property belonging to PCUSA.  
(See Exhibit “A”: FOPC’s Complaint against PRESBYTERY OF SACRAMENTO, ¶¶ 9 and 10;  
See Exhibit “B”: FPC’s Complaint against PRESBYTERY OF SACRAMENTO, ¶¶ 9 and 10 ).

1 On February 27, 2007, during each of their respective regularly scheduled corporate  
2 meetings, both FOPC and FPC unanimously passed a corporate resolution expressly revoking  
3 any and all trust interest in their respective properties based upon the language found in the  
4 PCUSA Constitution. (See Exhibit “A”: FOPC’s Complaint against PRESBYTERY OF  
5 SACRAMENTO, ¶14; See Exhibit “B”: FPC’s Complaint against PRESBYTERY OF  
6 SACRAMENTO, ¶14). On March 19, 2007, FOPC and FPC individually filed a complaint in  
7 their respective counties, Sacramento and Placer, against the Presbytery of Sacramento as the  
8 local administrative unit of PCUSA for the exact same three causes of action: (1) Declaratory  
9 Relief; (2) Quiet Title; and (3) Injunctive Relief. (See both Exhibits “A” and “B”)

### 10 III. STANDARD OF REVIEW

11 CCP Section 403 provides that a

12 A judge may, on motion, transfer an action or actions from another  
13 court to that judge's court for coordination with an action involving  
14 a common question of fact or law within the meaning of Section  
15 404. The motion shall be supported by a declaration stating facts  
16 showing that the actions meet the standards specified in Section  
17 404.1, are not complex as defined by the Judicial Council and that  
18 the moving party has made a good faith effort to obtain agreement  
19 to the transfer from all parties to each action . . . . The court to  
20 which a case is transferred *may order the cases consolidated* for  
21 trial pursuant to Section 1048 without any further motion or  
22 hearing.

23 California Code of Civil Procedure (CCP) section 1048(a) states that “[w]hen actions  
24 involving a common question of law or fact are pending before the court, it may order a joint  
25 hearing or trial of any or all the matters in issue in the actions; it may order all the actions  
26 consolidated and it may make such orders concerning proceedings therein as may tend to avoid  
27 unnecessary costs or delay.”

### 28 IV. ARGUMENT

According to CCP Section 403, to transfer an action pending in one court to be  
consolidated with another action in another court, one must demonstrate that: (1) the actions  
sought to be consolidated are not “complex” as defined by the Judicial Counsel; and (2) meets  
the specified standards found in CCP § 404.1, especially that both actions involve a “common  
question of fact or law.”

1 **A. NEITHER OF THE ACTIONS ARE COMPLEX**

2 A “complex case” is an action that requires:

3 Exceptional judicial management to avoid placing unnecessary  
4 burdens on the court of the litigant and to expedite the case, keep  
5 costs reasonable, and promote effective judicial decision making by  
6 the court, the parties and counsel. (*See* CRC 3.400(a); *First State*  
*Ins.Co. v. Sup.Ct. (Jalisco Corp., Inc.)*, 79 Cal. App.4th 324 at 332;  
94 Cal. Rptr.2d 104 at 109).

7 The several factors a court examines when determining whether an action is “complex”  
8 include (*see* CRC 3.400(b).):

- 9 (1) Numerous pretrial motions raising difficult or novel legal issues that will be  
10 time-consuming to resolve;
- 11 (2) Management of a large number of witnesses or a substantial amount of  
12 documentary evidence;
- 13 (3) Management of a large number of separately represented parties;
- 14 (4) Coordination with related actions pending in one or more courts;
- 15 (5) Substantial postjudgment judicial supervision.

16 Consideration of these factors leads to a conclusion that both lawsuits are by no means  
17 complex. Complex litigation is typically mass tort litigation with dozens or hundreds of  
18 plaintiffs with separate claims. A clear example of a case that is really meant to be a “complex”  
19 case is *McGhan Medical Corp. v. Superior Court* (1992) 11 Cal.App.4th 804. *McGhan* involved  
20 300 cases filed in approximately 20 counties. Other reported cases determined to be “complex”  
21 under CCP §404 were similar. *Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, similarly  
22 involved an alleged toxic tort with dozens of plaintiffs. *Volkswagon of America v. Superior*  
23 *Court*, (2001) 94 Cal.App.4<sup>th</sup> 695, concerned tort claims regarding asbestos exposure to  
24 numerous plaintiffs and asserted against numerous defendants. At the time of the order being  
25 reviewed, the litigation in question already had been proceeding for eleven years.

26  
27 By contrast, these two actions presently involve only two plaintiffs, and only one  
28 defendant. Even allowing for the possibility that a couple more parties might be added, a case

1 where the litigants can be counted on the fingers of one hand hardly compares to the types of  
2 cases which are found to be complex under CCP §404 and CRC 3.400.

3 The dispute in both actions involves very few, if any, disputable facts and is primarily a  
4 legal issue. Both cases center around one legal issue: whether an express trust interest contained  
5 in a constitution, such as the “Trust Clause” enacted in the PCUSA Constitution, is enforceable.  
6 In resolving this issue, numerous pretrial motions will not be required, nor will a large number of  
7 witnesses or a substantial amount of documentary evidence be needed.

8 In truth, the number of witnesses will be minimal and the universe of documentary  
9 evidence will be quite small, which will include, but will not be limited to, the PCUSA  
10 Constitution and each plaintiff church’s property deeds, articles of incorporation and bylaws.  
11 That said, many of those witnesses and documents will be common to both actions. Once again,  
12 complex litigation typically involves dozens or hundreds of plaintiffs with separate claims. The  
13 total number of parties involved in both actions here is only three, and plaintiffs in both actions  
14 are represented by the same attorney, which hardly makes this case complex. Finally, substantial  
15 postjudgment supervision by the court will not be necessary. Based upon the criteria above, this  
16 case does not qualify as a “complex” case.

17 **B. SPECIFIED STANDARDS FOR CONSOLIDATION ARE MET**

18 According to CCP §404.1, transferring and consolidating two,  
19 civil actions sharing a common question of fact or law is  
20 appropriate if one judge hearing all of the actions for all purposes .  
21 . . will promote the ends of justice taking into account whether the  
22 *common question of fact or law is predominating and significant to*  
23 *the litigation*; the convenience of parties, witnesses, and counsel;  
24 the relative development of the actions and the work product of  
25 counsel; the efficient utilization of judicial facilities and  
26 manpower; the calendar of the courts; *the disadvantages of*  
27 *duplicative and inconsistent rulings, orders, or judgments*; and, the  
28 likelihood of settlement of the actions without further litigation  
should [transfer and consolidation] be denied. <sup>2</sup> (*Emphasis added*)

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<sup>2</sup>The term “transfer and consolidation” is being used in place of “coordination” to prevent confusion. Although a motion to “transfer and consolidate” actions and a motion for “coordination” are different, they both share the same set of criteria, found in CCP 404.1, that a moving party must meet in order to bring two cases from different courts together to be heard at the same time in the same court.

1 It would be most appropriate for one judge to hear both actions against PRESBYTERY  
2 OF SACRAMENTO, coordinate the witnesses, provide one set of consistent instructions to the  
3 jury, and resolve all, if any, evidentiary and postjudgment issues. As stated above, both plaintiff  
4 churches, FAIR OAKS PRESBYTERIAN and FIRST PRESBYTERIAN OF ROSEVILLE, are  
5 represented by the same attorney who filed both complaints against the defendant on the same  
6 day, March 19, 2007, in two different courts. Both of these actions center around the same legal  
7 issue and both complaints allege the exact same three causes of action: (1) Declaratory Relief;  
8 (2) Quiet Title; and (3) Injunctive Relief.<sup>3</sup>

9 Consolidation of both cases will enhance trial court efficiency, prevent unnecessary  
10 duplication of evidence and procedures, and most importantly avoid the risk of inconsistent  
11 judgments, which would reduce the costs and delays resulting from multiple trials, and conserve  
12 judicial resources. (*See Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.4th 976,  
13 978-979, 56 CR2d 16-18). In order to prevent inconsistent rulings from two different courts, it  
14 would be most appropriate that the fault finding process be conducted by one jury. Furthermore,  
15 this would clearly serve in the best interests of efficiently utilizing already limited judicial  
16 resources.

17 Consolidating both actions will not unduly complicate the trial of this action, because the  
18 common issue of whether the “Trust Clause” in the PCUSA Constitution is enforceable will  
19 predominate, and any separate issues that may arise, if at all, will be limited to the nature and  
20 extent of each plaintiff's injuries.

21 The trial date set in Placer County for March 3, 2008, will be preserved, and as a trial  
22 date has not been set for the FAIR OAKS case pending in Sacramento County, consolidation  
23 will not by any means delay the trial of either one of these cases. Rather, consolidating both  
24

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25 <sup>3</sup>When FOPC and FPC both separately filed their complaints on March 19, 2007, both plaintiff churches  
26 claimed that they merely wanted to assuage the alleged fears of donors who allegedly had grown reluctant to make  
27 monetary donations due to the “fear” that the property both plaintiff churches occupy and use ultimately belong to  
28 the national PCUSA denomination. However, with the recent vote to leave PCUSA by a majority of the members  
voting at both FOPC and FPC on October 14, 2007, it is now undisputed that both churches wish to leave the  
national PCUSA denomination and take the property they occupy with them despite what the “Trust Clause” in the  
PCUSA Constitution expressly states.

1 cases would allow the case pending in Sacramento County to be heard earlier, which would  
2 alleviate the Sacramento Superior Court of the burden from hearing it at a later time.  
3 Consolidating these two cases together would further judicial efficiency and economy, and also  
4 further efficiency, economy and convenience of all parties, witnesses and counsel.

5 **IV. CONCLUSION.**

6 Based on the foregoing, PRESBYTERY OF SACRAMENTO respectfully requests that  
7 this court grant this Motion to Transfer and Consolidate.

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9 Date: October 18, 2007

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