

THE EPISCOPAL CHURCH, et al.	)	IN THE DISTRICT COURT OF
	)	
VS.	)	TARRANT COUNTY, TEXAS
	)	
FRANKLIN SALAZAR, et al. <sup>1</sup>	)	141 <sup>ST</sup> DISTRICT COURT

**FIFTH AMENDED ANSWER AND COUNTERCLAIMS TO SOUTHERN CONE CONGREGATIONS' FIRST AMENDED ORIGINAL PLEA IN INTERVENTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Third-Party Defendants and Counterclaimants Margaret Miele, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, the Rev. David Madison, the Rt. Rev. Edwin F. Gulick, Jr., Robert M. Bass, the Rev. James Hazel, Cherie Shipp, the Rev. John Stanley, Dr. Trace Worrell, and Kathleen Wells (collectively, "Third-Party Defendants" and/or "Counterclaimants") and—subject to and without waiving any motion to strike Southern Cone Congregations' First Amended Original Plea in Intervention, Motion to Sever and Abate Southern Cone Congregations' First Amended Original Plea in Intervention, and any motion to show authority under Texas Rule of Civil Procedure 12 as well as their right to amend and counterclaim—file their Fifth Amended Answer and Counterclaims to the First Amended Original Plea in Intervention filed by the purported ST. ANTHONY OF PADUA CHURCH (Alvarado), ST. ALBAN'S CHURCH (Arlington), ST. MARK'S CHURCH (Arlington), CHURCH OF ST. PETER AND ST. PAUL (Arlington), CHURCH OF ST. PHILIP THE APOSTLE (Arlington), ST. VINCENT'S CATHEDRAL (Bedford), ST. PATRICK'S CHURCH (Bowie), ST. ANDREW'S CHURCH (Breckenridge), GOOD SHEPHERD CHURCH (Brownwood), ST. JOHN'S CHURCH (Brownwood), CHURCH OF ST. JOHN THE DIVINE (Burkburnett), HOLY COMFORTER CHURCH (Cleburne), ST. MATTHEW'S

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 141<sup>ST</sup> DISTRICT COURT  
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<sup>1</sup> The style is being shortened at the request of the Clerk's office. It does not imply that any parties are omitted or dropped from the case.

CHURCH (Comanche), TRINITY CHURCH (Dublin), HOLY TRINITY CHURCH (Eastland), CHRIST THE KING CHURCH (Fort Worth), HOLY APOSTLES CHURCH (Fort Worth), IGLESIA SAN JUAN APOSTOL (Fort Worth), IGLESIA SAN MIGUEL (Fort Worth), ST. ANDREW'S CHURCH (Fort Worth), ST. ANNE'S CHURCH (Fort Worth), CHURCH OF ST. BARNABAS THE APOSTLE (Fort Worth), ST. JOHN'S CHURCH (Fort Worth), ST. MICHAEL'S CHURCH (Richland Hills), CHURCH OF ST. SIMON OF CYRENE (Fort Worth), ST. TIMOTHY'S CHURCH (Fort Worth), ST. PAUL'S CHURCH (Gainesville), GOOD SHEPHERD CHURCH (Granbury), CHURCH OF THE HOLY SPIRIT (Graham), ST. ANDREW'S CHURCH (Grand Prairie), ST. JOSEPH'S CHURCH (Grand Prairie), ST. LAURENCE'S CHURCH (Southlake), ST. MARY'S CHURCH (Hamilton), TRINITY CHURCH (Henrietta), ST. MARY'S CHURCH (Hillsboro), ST. ALBAN'S CHURCH (Hubbard), ST. STEPHEN'S CHURCH (Hurst), CHURCH OF ST. THOMAS THE APOSTLE (Jacksboro), CHURCH OF OUR LADY OF THE LAKE (Laguna Park), ST. GREGORY'S CHURCH (Mansfield), ST. LUKE'S CHURCH (Mineral Wells), CHURCH OF ST. PETER BY THE LAKE (Graford), ALL SAINT'S CHURCH (Weatherford), ALL SAINT'S CHURCH (Wichita Falls), CHURCH OF THE GOOD SHEPHERD (Wichita Falls), CHURCH OF ST. FRANCIS OF ASSISI (Willow Park), and CHURCH OF THE ASCENSION & ST. MARK (Bridgeport), (collectively, the "Southern Cone Congregations") and would respectfully show the Court the following:

1. This dispute revolves around the effect of the withdrawal by some of the individual former leaders of the Episcopal Diocese of Fort Worth and some of the individual former leaders of its parishes and missions from The Episcopal Church (the "Church"). Bishop Iker and other such former leaders maintain that, after having withdrawn from the Church and

pledged their allegiance to a different denomination, they nevertheless are entitled to continue to hold the leadership positions of the Diocese and, thus, use and possess Diocesan and Diocesan Corporation assets, in contravention of the rights of the remaining Episcopalians in the Diocese. Texas law, however, provides that when two factions of a local unit of a hierarchical church are in dispute over control of the local unit, the faction that is loyal to and recognized by the hierarchical church—even if it is a minority—is the faction entitled to that control. The Episcopal Church is such a hierarchical church, and the Diocese of Fort Worth is one of its subordinate units. Thus, when Bishop Iker and the other leaders withdrew from the Church and affiliated with another denomination, they relinquished all authority and capacity to hold leadership positions in the Church, including in the Diocese, its Diocesan Corporation, its Endowment Fund, and its parishes and missions. This is also consistent with Bishop Iker’s sworn testimony and position in other litigation before November 2008 when he left The Episcopal Church. Since the withdrawal of Bishop Iker and other leaders from the Church, the remaining Episcopalians in the Diocese have properly filled those vacancies, and it is those Episcopalians who have the right, under this Court’s rulings, Texas law, and the rules of the Church, to control the Diocese and its assets as well as the parishes and missions and their assets. This is the case whether the Anglican Province of the Southern Cone’s “Diocese of Fort Worth”, the Anglican Province of the Southern Cone’s “Corporation of the Episcopal Diocese of Fort Worth”, and/or the Southern Cone Congregations are viewed as factions, as new entities, or as the historic entities controlled by those who have no right of control under the law.

**I. FIFTH AMENDED ANSWER TO FIRST AMENDED ORIGINAL PLEA IN INTERVENTION**

2. Subject to and without waiving any Motion to Strike the First Amended Original Plea in Intervention filed by the Southern Cone Congregations and also without waiving the right

to assert lack of authority under Texas Rule of Civil Procedure 12, Third-Party Defendants file this Fifth Amended Answer to the First Amended Original Plea in Intervention of the Southern Cone Congregations.

**A. General Denial**

3. Third-Party Defendants deny each and every, all and singular, the allegations of the Southern Cone Congregations' First Amended Original Plea in Intervention and demand strict proof thereof.

**B. Verified Denials**

4. Third-Party Defendants the Rt. Rev. Edwin F. Gulick, Jr., Anne T. Bass, Margaret Mieuli, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, the Rev. David Madison, Robert M. Bass, the Rev. James Hazel, Cherie Shipp, the Rev. John Stanley, Dr. Trace Worrell and Kathleen Wells are not liable to be sued in their individual capacities, pursuant to § 84.004 of the Texas Civil Practice and Remedies Code, because their alleged actions, if any, were undertaken in the course and scope of their duties or functions as volunteers of a charitable organization, the Corporation of the Episcopal Diocese of Fort Worth ("the Corporation") and/or the Episcopal Diocese of Fort Worth ("the Diocese"), and solely on behalf of the same charitable organization.

5. Additionally, Third-Party Defendant the Rt. Rev. Edwin F. Gulick, Jr. is not liable to be sued in the capacity in which he has been sued because, although Bishop Gulick held the offices of Provisional Bishop of the Diocese and Chairman of the Board of Trustees of the Corporation of the Episcopal Diocese of Fort Worth from February 2009 until November 2009, he no longer holds these positions. As a result, the Southern Cone Congregations' claims against Bishop Gulick are moot.

6. Additionally, Third-Party Defendant Kathleen Wells is immune from civil liability because her alleged actions, if any, were undertaken in the course and scope of her duties or functions as an attorney.

7. To the extent that the Southern Cone Congregations claim to be the same congregations as the congregations that remain part of the Episcopal Diocese of Fort Worth that was formed in 1982, the Southern Cone Congregations lack capacity to sue because they are either entities of unknown form which have no relation to the Church or the Diocese or factions not recognized by the Church.

8. To the extent that the Southern Cone Congregations claim to be the same congregations as the congregations that remain part of the Episcopal Diocese of Fort Worth that was formed in 1982, the Southern Cone Congregations are not entitled to recover in the capacity in which they have sued because they are either entities of unknown form which have no relation to the Church or the Diocese or factions not recognized by the Church.

9. To the extent that the Southern Cone Congregations claim to be the same congregations as the congregations that remain part of the Episcopal Diocese of Fort Worth that was formed in 1982, there is a defect in the parties because the Southern Cone Congregations are misnamed or misidentified. The Southern Cone Congregations are either entities of unknown form which have no relation to the Church or the Diocese or factions not recognized by the Church.

**C. Additional Defenses**

10. Third-Party Defendants the Rt. Rev. Edwin F. Gulick, Jr., Anne T. Bass, Margaret Mieuli, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, the Rev. David Madison, Robert M. Bass, the Rev. James Hazel, Cherie Shipp, the Rev. John Stanley, Dr. Trace Worrell and Kathleen Wells are immune from any civil liability, pursuant to § 84.004 of the

Texas Civil Practice and Remedies Code, because their alleged actions, if any, were undertaken in the course and scope of their duties or functions as volunteers of a charitable organization, the Corporation of the Episcopal Diocese of Fort Worth and/or the Episcopal Diocese of Fort Worth, and solely on behalf of the same charitable organization.

11. Third-Party Defendants the Rt. Rev. Edwin F. Gulick, Jr., James Hazel, Cherie Shipp, John Stanley, Trace Worrell, Margaret Mieuli, Walt Cabe, Anne T. Bass, Robert M. Bass, J. Frederick Barber, Christopher Jambor, David Madison, and Kathleen Wells are immune from any civil liability, pursuant to §§ 22.221 and 22.222 of the Texas Business Organizations Code.

12. The Southern Cone Congregations are judicially estopped and/or quasi-estopped from taking positions that are contrary to the admissions in prior litigation of their purported leaders, including Bishop Jack Leo Iker, Canon Charles Hough III, Assisting Bishop William C. Wantland, and former Assistant to the Bishop Billie Boyd, that The Episcopal Church is a hierarchical church in which dioceses are subordinate to the General Convention; that church officials who leave The Episcopal Church are no longer qualified to hold church offices and have no authority over Church property; that parish property is impressed with an express trust in favor of the Diocese; that the Dennis Canon applies to the Church property in the Diocese; that the unqualified accession to the Constitution and canons of the Church is binding on congregations of the Diocese; that Episcopal bishops must adhere to the Church Constitution and canons or be subject to discipline; and that individuals who leave The Episcopal Church are no longer qualified to serve in church offices or use or possess church property. In addition, these statements are judicial admissions by the Southern Cone Congregations' purported leaders that conclusively prove, as a matter of law, that the Southern Cone Congregations have no authority

over or right to use or possess property of the Church, the Diocese, the Diocesan Corporation, the Endowment Fund, or any parishes, missions, or congregations of the Diocese.

13. The Southern Cone Congregations lack standing to pursue their claims.

14. The Southern Cone Congregations have unclean hands.

## **II. COUNTERCLAIMS AGAINST SOUTHERN CONE CONGREGATIONS**

15. Subject to and without waiving the right to assert any motion to strike and lack of authority under Texas Rule of Civil Procedure 12, Third-Party Defendants and Counterclaimants assert the following counterclaims against Intervenors/Third-Party-Plaintiffs/Defendants/Counter-Defendants the Southern Cone Congregations, as defined below.

The Southern Cone Congregations have already appeared in this suit.

### **A. DISCOVERY CONTROL PLAN**

16. Discovery in this matter is requested to be conducted under Level 3 pursuant to Texas Rule of Civil Procedure 190.4.

### **B. PARTIES**

17. Third-Party Defendants and Counterclaimants Robert M. Bass, Cherie Shipp, Dr. Trace Worrell, the Rev. James Hazel, and the Rev. John Stanley are or were lay members or clergy of the Church in the Diocese and appear individually and in their official capacity as the Trustees of the Corporation of The Episcopal Diocese of Fort Worth (“Diocesan Corporation” or “Corporation”), a Texas non-profit corporation with its principal office in Fort Worth, Texas, formed pursuant to the Constitution and canons of the Diocese to hold and manage the property of the Diocese subject to the Constitutions and canons of the Church and the Diocese, collectively as the Board of Trustees of the Diocesan Corporation, and, to the extent necessary and possible, on behalf of the Diocesan Corporation. Third-Party Defendant and

Counterclaimant the Rev. James Hazel also appears in his capacity as a Trustee of the Fund for the Endowment of the Episcopate (The “Endowment Fund”).

18. Third-Party Defendants and Counterclaimants Margaret Mieuli, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison are lay members or clergy of the Church in the Diocese and appear individually and in their capacity as the members of the Standing Committee of the Diocese, an elected body that shares authority with the bishop of the Diocese with respect to certain property and other matters, collectively as the Standing Committee of the Diocese, and, to the extent necessary and possible, on behalf of the Diocese. Third-Party Defendant and Counterclaimant Anne T. Bass also appears in her capacity as a Trustee of the Fund for the Endowment of the Episcopate (The “Endowment Fund”).

19. Third-Party Defendant and Counterclaimant Kathleen Wells is a lay member of the Church in the Diocese and appears individually and in her capacity as Chancellor of the Diocese.

20. Third-Party Defendant and Counterclaimant the Rt. Rev. Edwin F. Gulick, Jr. appears individually and in his capacity as former Provisional Bishop. Bishop Gulick held the offices of Provisional Bishop of the Diocese—a non-profit unincorporated association with its principal office in Fort Worth, Texas and a subordinate unit of the Church comprised of the Church’s worshipping congregations located in all or part of 24 Texas counties, including Tarrant County— and Chair of the Board of Trustees of the Diocesan Corporation from February 2009 until November 2009, and no longer holds these positions.

21. Counterclaimants are informed and believe that the party that has attempted to intervene as “The Corporation of the Episcopal Diocese of Fort Worth”—but that has no



affiliation with The Episcopal Church—is purportedly led by former members and clergy of the Church and the Diocese who now purport to be affiliated with the Anglican Province of the Southern Cone and is either a faction within the Diocesan Corporation, not recognized by the Church, that is wrongfully claiming control of the Diocesan Corporation or an entity of unknown form that is not the historic and continuing Diocesan Corporation (hereinafter the “Southern Cone Corporation”). Under this Court’s prior rulings, the purported leaders of the Southern Cone Corporation wrongfully hold themselves out to be the leaders of “The Corporation of The Episcopal Diocese of Fort Worth” and are wrongfully doing business as the Diocesan Corporation. Third-Party Defendants and Counterclaimants do not, by any means, concede that these purported leaders have the capacity to appear or cause this party, entity, or faction to appear as the “Corporation of the Episcopal Diocese of Fort Worth.” The Southern Cone Corporation does not have legal capacity to sue as such, is not entitled to recover in the capacity in which it has sued, and lacks standing to pursue its claims. The only legitimate and recognized corporation by this name is governed by trustees the Rt. Rev. C. Wallis Ohl, Robert M. Bass, Cherie Shipp, Dr. Trace Worrell, the Rev. James Hazel, and the Rev. John Stanley and is a Texas non-profit corporation with its principal office in Fort Worth, Texas, formed in 1983 pursuant to the Constitution and canons of the Diocese to hold and manage the property of the Diocese subject to the Constitutions and canons of the Church and the Diocese.

22. Counterclaimants are informed and believe that the party defendant that has appeared as “The Episcopal Diocese of Fort Worth”—but which has no affiliation with The Episcopal Church—is purportedly led by former members and clergy of the Church and the Diocese who now purport to be affiliated with the Anglican Province of the Southern Cone and is either a faction within the Diocese, not recognized by the Church, that is wrongfully claiming

control of the Diocese or an entity of unknown form that is not the historic and continuing Diocese (hereinafter the “Southern Cone Diocese”). Under this Court’s prior rulings, the purported leaders of the Southern Cone Diocese wrongfully hold themselves out to be the leaders of the historical Episcopal Diocese of Fort Worth and are wrongfully doing business as the Diocese. Third-Party Defendants and Counterclaimants do not, by any means, concede that these purported leaders have the capacity to appear or cause this party, entity, or faction to appear as the “Episcopal Diocese of Fort Worth.” The Southern Cone Diocese does not have legal capacity to sue as such, is not entitled to recover in the capacity in which it has sued, and lacks standing to pursue its claims. The only legitimate and recognized entity by this name is led by the Rt. Rev. C. Wallis Ohl.

23. Counterclaimants are informed and believe that Intervenor and Counter-Defendants the purported ST. ANTHONY OF PADUA CHURCH (Alvarado), ST. ALBAN’S CHURCH (Arlington), ST. MARK’S CHURCH (Arlington), CHURCH OF ST. PETER AND ST. PAUL (Arlington), CHURCH OF ST. PHILIP THE APOSTLE (Arlington), ST. VINCENT’S CATHEDRAL (Bedford), ST. PATRICK’S CHURCH (Bowie), ST. ANDREW’S CHURCH (Breckenridge), GOOD SHEPHERD CHURCH (Brownwood), ST. JOHN’S CHURCH (Brownwood), CHURCH OF ST. JOHN THE DIVINE (Burkburnett), HOLY COMFORTER CHURCH (Cleburne), ST. MATTHEW’S CHURCH (Comanche), TRINITY CHURCH (Dublin), HOLY TRINITY CHURCH (Eastland), CHRIST THE KING CHURCH (Fort Worth), HOLY APOSTLES CHURCH (Fort Worth), IGLESIA SAN JUAN APOSTOL (Fort Worth), IGLESIA SAN MIGUEL (Fort Worth), ST. ANDREW’S CHURCH (Fort Worth), ST. ANNE’S CHURCH (Fort Worth), CHURCH OF ST. BARNABAS THE APOSTLE (Fort Worth), ST. JOHN’S CHURCH (Fort Worth), ST. MICHAEL’S CHURCH (Richland Hills),

CHURCH OF ST. SIMON OF CYRENE (Fort Worth), ST. TIMOTHY'S CHURCH (Fort Worth), ST. PAUL'S CHURCH (Gainesville), GOOD SHEPHERD CHURCH (Granbury), CHURCH OF THE HOLY SPIRIT (Graham), ST. ANDREW'S CHURCH (Grand Prairie), ST. JOSEPH'S CHURCH (Grand Prairie), ST. LAURENCE'S CHURCH (Southlake), ST. MARY'S CHURCH (Hamilton), TRINITY CHURCH (Henrietta), ST. MARY'S CHURCH (Hillsboro), ST. ALBAN'S CHURCH (Hubbard), ST. STEPHEN'S CHURCH (Hurst), CHURCH OF ST. THOMAS THE APOSTLE (Jacksboro), CHURCH OF OUR LADY OF THE LAKE (Laguna Park), ST. GREGORY'S CHURCH (Mansfield), ST. LUKE'S CHURCH (Mineral Wells), CHURCH OF ST. PETER BY THE LAKE (Graford), ALL SAINT'S CHURCH (Weatherford), ALL SAINT'S CHURCH (Wichita Falls), CHURCH OF THE GOOD SHEPHERD (Wichita Falls), CHURCH OF ST. FRANCIS OF ASSISI (Willow Park), and CHURCH OF THE ASCENSION & ST. MARK (Bridgeport), as well as Defendant the purported Southern Cone Diocese's All Saints' Episcopal Church (Fort Worth) ("Southern Cone All Saints"), (hereinafter, collectively, the "Southern Cone Congregations," also referred to in other pleadings as the "Intervening Congregations," represented of record by R. David Weaver, or as "Defendant Congregations")—which have no affiliation with The Episcopal Church—are not the historic, continuing congregations of the Diocese, but are either factions within those congregations, parishes, or missions, not recognized by the Church or the Diocese, or entities of unknown form purportedly led by former members and clergy of the Church and the Diocese who purport to follow Bishop Iker and be affiliated with the Anglican Province of the Southern Cone and the Southern Cone Diocese. These purported leaders of these factions or entities wrongfully hold themselves out as being the leaders of those congregations or parishes or missions of the Diocese and are wrongfully doing business in the name of and as congregations or parishes or missions of

the Church and the Diocese. The Southern Cone Congregations do not have legal capacity to sue as such, are not entitled to recover in the capacity in which they have sued, and lack standing to pursue their claims.

**C. JURISDICTION AND VENUE**

24. This Court has jurisdiction over this matter, because it involves real property located in part in Tarrant County, Texas, and the matter in controversy is within the jurisdictional limits of this Court. Venue is appropriate because one or more of the defendants resides in Tarrant County, Texas. Intervenor/Third-Party Plaintiffs/Counter-Defendants the Southern Cone Congregations have already appeared in this suit.

**D. BACKGROUND**

Structure and Governance of The Episcopal Church

25. The Episcopal Church is a hierarchical religious denomination whose governing documents are its Constitution, bylaws called “canons,” and its Book of Common Prayer (“Prayer Book”). These documents were initially adopted in 1789. The provisions of these documents, as they are amended over time by the Church’s governing body, are binding on every subordinate unit and member of the Church. The Church is comprised of 111 geographically-defined, subordinate entities known as “dioceses” and more than 7,600 worshipping congregations, usually “parishes” or “missions,” in the United States and other countries.

26. The Church has a three-tiered, representative form of governance that is prescribed by its Constitution and canons, under which dioceses belong to, are subordinate to, and are under the jurisdiction of the international body, and under which local worshipping congregations belong to, are subordinate to, and are under the jurisdiction of the Church and the individual dioceses in which the congregations are located.

27. At the international level, the Church is governed by a legislative body called its “General Convention,” which establishes the general policies, rules, and programs of the Church. The General Convention is comprised of a House of Bishops, consisting of most of the Church’s active and resigned bishops, and a House of Deputies, consisting of lay and clergy representatives elected by each of the Church’s dioceses. The General Convention has adopted and from time to time amends the Church’s Constitution, canons, and Prayer Book.

28. The “Presiding Bishop” is the “Chief Pastor and Primate” of the Church. The Presiding Bishop is elected by the General Convention and is charged with responsibility for leadership in initiating, developing, and implementing policy and strategy in the Church and speaking for the Church as to the policies, strategies, and programs authorized by the General Convention.

29. The Church has an Executive Council comprised of elected bishops, priests, and lay persons who, under the leadership of the Presiding Bishop, have oversight over the fiscal and programmatic affairs of the Church between meetings of the General Convention.

30. The Church is a member of the Anglican Communion, a worldwide fellowship of 38 autonomous regional churches generally known as “Provinces.” The historic tradition of the Anglican Communion is that each Province forms its own constituent units and exercises jurisdiction within its own geographic territory, and not within the geographic territory of any other Province.

31. The next level of the Church’s organization and governance is the diocese. A diocese may be formed only by action of the General Convention, and only with an unqualified accession to the Church’s Constitution and canons. Each diocese exercises jurisdiction over the parishes and other congregations within its geographical area. The governing body of each

diocese, generally called its “Convention,” is a legislative body comprised of clergy of the diocese and laity elected by their congregations. Each diocesan Convention adopts and from time to time amends its own diocesan Constitution and canons that supplement and may not conflict with the Church’s Constitution or canons.

32. Each diocese is under the authority of a bishop elected by the diocesan Convention and “ordained” and installed with the consent of the leadership of a majority of the other dioceses. The Bishop is in charge of both temporal and spiritual affairs within that diocese. The Bishop is advised by and as to certain matters, including those relating to property, and shares authority with a “Standing Committee” of clergy and lay persons elected by the diocesan Convention.

33. At the third level of governance, the Church’s more than 7,600 parishes and other worshipping congregations are located in and are under the temporal and spiritual authority of the Church and the diocese thereof in which they are located.

34. Each Episcopal parish has an ordained Episcopal priest as its “rector,” who has charge of the spiritual and certain temporal affairs of the parish. The rector is elected by the parish’s governing body, called a “vestry,” which is comprised of the rector and lay persons elected by the parish.

35. The Church’s hierarchical structure provides for representative participation in each level of governance. Parishes and other congregations send representatives to the diocesan Convention, and dioceses send bishops, other clergy, and lay representatives to the Church’s General Convention.

36. Canon I.17(8) of the Church, “Fiduciary Responsibility,” applies to all officers at each level of the Church’s governance and provides that “[a]ny person accepting any office in

this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of [the] Church and of the Diocese in which the office is being exercised.”

37. Article VIII of the Church’s Constitution and the Ordination services of its Prayer Book require all clergy of the Church, as a condition of ordination, to subscribe to the following written declaration:

“I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.”

This oath is generally referred to as the “Declaration of Conformity.”

38. Under the Church’s Constitution, canons, and polity, no diocese or parish may unilaterally divide or separate or otherwise disaffiliate from the Church.

#### Dioceses of The Episcopal Church

39. The Church’s Constitution and canons prescribe the methods by which a new diocese of the Church may be formed. Since its founding, the Church has required that a diocese of the Church be formed only with the consent of the General Convention and only if the new diocese accedes to the legislative authority of the General Convention as expressed in the Church’s Constitution, canons, or both.

40. Once formed, a diocese becomes a subordinate unit of the Church, bound by the provisions of the Church’s Constitution, canons, and Prayer Book, which govern both temporal and spiritual matters. The Constitution and canons, as well as in some instances the Prayer Book:

- a. govern the ordination, installation, spiritual and temporal duties, discipline, and retirement of bishops;

- b. require dioceses and parishes to adopt prescribed business methods, including submission of annual reports to the Church's Executive Council, annual audits by certified public accountants, and adequate insurance of all buildings and their contents;
- c. set forth requirements and conditions for the formation and operation of parishes and other worshipping congregations under the oversight of the dioceses;
- d. provide requirements for the care, control, use, and disposition of church property; and
- e. provide rules under which dioceses may select, train, ordain, deploy, and supervise the clergy of parishes and other worshipping congregations.

41. The Church's canons permit and set forth the process by which a "Missionary Diocese" of the Church, with the consent of the General Convention, may leave the jurisdiction of the Church and join another Province of the Anglican Communion. A "Missionary Diocese" is a defined geographic area outside of any of the Church's established dioceses that is entrusted to the pastoral care of a bishop elected by the Church's House of Bishops under Article VI of the Church's Constitution.

42. The Diocese of Fort Worth was not and is not a Missionary Diocese. The Constitution and canons of the Church do not provide for or permit the release, withdrawal, or transfer of any diocese that is not a Missionary Diocese.

43. Since the Church was founded in 1789, the Church's policy and practice has always required that parish property be held and used for the mission of the Church and its dioceses and not diverted to other purposes. More recently, Canon I.7.4 was adopted by General



Convention in 1979 before the formation of the Diocese of Fort Worth effective 1983. Canon I.7.4 (“the Dennis Canon”) provides as follows:

Sec.4. All **real and personal property** held by or for the benefit of any Parish, Mission, or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons. (Emphasis added.)

44. The Diocese of Fort Worth made an unqualified accession to this and other Constitutional and canonical provisions of the Episcopal Church as a condition of its formation effective 1983, with consent of the General Convention in 1982, from the Diocese of Dallas. The Dennis Canon recognizes the long-standing trust interest of The Episcopal Church and its dioceses, in parish and mission property in each diocese, respectively, including but not limited to the trust interest of the Church and its Episcopal Diocese of Fort Worth in the interest of each of its congregations, including but not limited to the property currently claimed and in the possession of the Southern Cone Congregations. The subsequent purported amendment to Diocesan Canon 18 to attempt to disclaim any interest of the Church or the Diocese in the real property of the congregations was *ultra vires* and void because, among other reasons, it is inconsistent with the express and implied trust provisions of the Dennis Canon and common law.

#### Ordination and Discipline of Bishops by The Episcopal Church

45. Article VIII of the Church’s Constitution and the Ordination services of the Prayer Book provide that an individual may not be ordained as a deacon, priest, or bishop unless he or she subscribes to the Declaration of Conformity described in Paragraph 37 above. The Ordination Service for a bishop in the Prayer Book also requires that an individual being ordained as a bishop of the Church promise to “guard the faith, unity, and discipline of the Church” and to “share with [his or her] fellow bishops in the government of the whole Church.”

46. Article II.2 of the Church's Constitution provides that a bishop may be ordained and take office in a diocese only after obtaining the consent of the leadership of a majority of the other dioceses of the Church.

47. Article II.6 of the Church's Constitution and Church Canon III.12(8) provide that a bishop may not resign his or her office and remain a bishop in good standing in the Church without the consent of a majority of the House of Bishops.

48. Church Canons IV.1 and IV.9 provide that grounds for the discipline, including the involuntary removal or "deposition," of a bishop include a violation of the Constitutions or canons of the Church or of the diocese in which he or she is resident, violations of the vows required of a bishop by the Church at ordination, and "abandonment of the Communion" of the Church.

#### History of the Episcopal Diocese of Fort Worth

49. Since the mid-19th Century, long before the Diocese was formed, its geographic territory was part of other missionary districts or dioceses of the Church, including most recently the Episcopal Diocese of Dallas. In 1982, the Diocese of Dallas sought the division of its own territory into two dioceses. In 1982, Article V.1 of the Church's Constitution provided that a "new Diocese may be formed, with the consent of the General Convention and under such conditions as the General Convention shall prescribe by General Canon or canons" and when the Convention is satisfied that the new diocese "has acceded to the Constitution and canons of [the] Church." Effective January 1, 1983, Article V provided, as it does today, that "[a]fter consent of the General Convention, the Constitution of the New Diocese" must "include[] an unqualified accession to the Constitution and canons of [the] Church."

50. At its September 1982 meeting, the Church's General Convention approved the division of the Diocese of Dallas into two dioceses, with all or part of 24 counties in Texas,

including Tarrant County, to become the “Western Diocese,” conditioned upon receipt of assurances “that all of the appropriate and pertinent provisions of the Constitution and canons of the General Convention ... have been fully complied with...” The name ultimately selected for the “Western Diocese” was the “Episcopal Diocese of Fort Worth.”

51. In November 1982, the Bishop of the Diocese of Dallas called a “Primary Convention” to permit the new Episcopal Diocese of Fort Worth to organize. At that meeting, the Convention unanimously adopted a resolution stating that the “Diocese of Fort Worth ..., pursuant to approval of the 67th General Convention of the Episcopal Church, does hereby subscribe to and accedes to the Constitution and Canons of the Episcopal Church.” The Convention at that meeting adopted its first diocesan Constitution and canons, to be effective on January 1, 1983. To comply with Article V.1 of the Church’s Constitution and with the General Convention’s September 1982 action conditionally approving formation of the new diocese, Article I of the new diocesan Constitution, “Authority of the General Convention,” provided:

“The Church in this Diocese accedes to the Constitution and Canons of the Episcopal Church in the United States of America, and recognizes the authority of the General Convention of said Church.”

52. Article 18 of the first Diocesan Constitution provided that canons “may be adopted, altered, amended, or repealed” only if they were “not inconsistent with [the diocesan] Constitution, or the Constitution and Canons of the General Convention.”

53. Canon 22 of the new Diocese provided that every new parish shall “promise to abide by and conform to the Constitution and Canons of the General Convention and of the Diocese of Fort Worth.”

54. At its formation, the Diocese received from the Diocese of Dallas 30 parishes and 24 missions, along with all of their associated real and personal property; an apportioned share of

numerous funds, including an endowment fund, and accounts of the Diocese of Dallas; and the right to the joint use of other real property, assets, and programs of the Diocese of Dallas. The Diocese of Dallas pledged to support the new Diocese with additional funds in the amount of \$100,000 from the Diocese of Dallas' own operating funds.

55. Article 13 of the Diocese's first Constitution (now Article 14) provided that title to all real estate acquired "for the use of the Church in this Diocese, including the real property of all parishes and missions as well as Diocesan Institutions, shall be held subject to control of the Church in the Episcopal Diocese of Fort Worth acting by and through [the Diocesan Corporation]." The Diocesan Corporation was also to hold title to "[a]ll other property belonging to the Diocese, as such," including trust and endowment accounts.

56. Diocesan Canon 11 (now Canon 17) provided that the Diocesan Corporation would be governed by a "Board of Trustees" of five elected members, all lay members or clergy of the Church in the Diocese, and the Bishop as Chair.

57. In February 1983, the Bishop and two lay members in good standing of the Diocese formed the Corporation in accordance with the foregoing constitutional and canonical requirements. On August 22, 1984, a District Court of Dallas County, Texas, issued a declaratory judgment approving the transfer of substantial assets of the Episcopal Diocese of Dallas to the Diocesan Corporation. The court noted that "Plaintiff, The Episcopal Diocese of Fort Worth ... is a duly constituted religious organization, organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America," and that "Plaintiff, Corporation of the Episcopal Diocese of Fort Worth ... is a Texas non-profit corporation, duly organized under the Constitution and Canons of the Episcopal Diocese of Fort Worth."

58. The Diocesan Corporation holds title to substantial real and personal property of the Diocese acquired pursuant to the judgment described in Paragraph 57 and subsequently, including but not limited to numerous parcels of real property, and, on information and belief, the Endowment Fund, the E.D. Farmer Fund, the Anne S. and John S. Brown Trust, the Betty Ann Montgomery Farley Fund, the Reverend Efrain Huerta Fund benefiting Hispanic Ministries, the Memorial Scholarship Fund out of Common Trust (Growth Fund and Income Fund), St. Paul's Memorial Fund, the E.D. Farmer Foundation, and the Revolving Fund.

59. Pursuant to Article 15 of the original Constitution of the Diocese (now Article 16), the Endowment Fund was created to be governed by a board of at least five lay and clergy trustees to assist in the compensation of the Episcopate of the Diocese.

60. Throughout its history and at least until the present dispute arose, the Diocese has consistently participated in the life of the Church as a subordinate unit and has generally complied with the requirements imposed on it by the Church's Constitution, canons, and Prayer Book.

a. The Diocese has consistently sent representatives to meetings of the Church's General Convention;

b. The Diocese and the clergy of the Diocese, including Defendant Bishop Iker, have participated in and accepted the valuable benefits of the Church Pension Fund, reserved solely for clergy and institutions of the Church, as required by the Church's canons;

c. All Bishops of the Diocese have been elected and ordained as bishops pursuant to the requirements of the Church's Constitution, canons, and Prayer Book;

d. The clergy of the Diocese have been ordained or received, and parish rectors and other ordained clergy have been elected and installed, pursuant to the requirements of the Church's Constitution, canons, and Prayer Book;

e. The Diocese has adopted and implemented business methods prescribed by the Church's canons, submitted annual reports to the Church's Executive Council, conducted audits, and maintained adequate insurance of buildings and their contents, in compliance with the Church's requirements;

f. The Diocese has overseen the formation and operation of parishes and other worshipping congregations of the Diocese according to the Church's requirements; and

g. The Diocese has provided for the care, control, use, and disposition of property according to the Church's requirements.

61. Prior to his ordination as deacon, priest, and bishop of the Church, Defendant Bishop Iker signed the Declaration of Conformity described in Paragraph 37 above, as required by the Church's Constitution and Prayer Book, was ordained Bishop Coadjutor of the Diocese in 1993 with the consents of the leadership of a majority of the other dioceses of the Church, and became Bishop of the Diocese in 1994, all pursuant to the constitutional, canonical, and liturgical requirements of the Church.

62. At all relevant times, the Diocesan Bishop, the members of the Standing Committee, the members of the Executive Council, the deputies to the Diocesan Convention, and the Trustees of the Diocesan Corporation and of the Endowment Fund have all been required by the Constitution and/or canons of the Church and/or the Diocese to be lay members or clergy of the Church in the Diocese; the foregoing persons have been bound by Church Canon I.17(8) to

faithfully execute their offices in accordance with the Constitutions and canons of the Church and the Diocese; and the clergy, including the Diocesan Bishop, have been bound to obey the Constitution and canons of the Church by the Declaration of Conformity, as described in Paragraph 37 above, that each signed prior to and as a condition of ordination.

63. In 1994, the clergy and most of the vestry members of a local parish (Church of the Holy Apostles in Fort Worth) left The Episcopal Church for another church but claimed the right to continue to use the real and personal property of the parish. The Diocesan Corporation, under Bishop Iker, sued and recovered the property for the remaining loyal Episcopalians in the parish, calling the departing group the “Schismatic and Purported Church of the Holy Apostles.” In that case Bishop Iker and his associates confirmed under oath that “[t]he Church in this Diocese accedes to the Constitution and Canons of The Episcopal Church, and recognizes the authority of the General Convention of said Church. Therefore, each Parish within The Episcopal Diocese of Fort Worth has acknowledged that they are governed by and recognize the authority of the General Convention and the Constitution and Canons of The Episcopal Church in the United States in America”; that under both diocesan and national canons, real and personal property for the use and benefit of congregations in the Diocese is “impressed with an express trust in favor of the diocese, for the use of an Episcopal congregation” under the Dennis Canon (now Church Canon I.7.4); and that former clergy and vestry members who abandon communion with The Episcopal Church for another church “are not Episcopalians and they do not represent an Episcopal congregation,” having formed a “new creation, having no relation to [Holy Apostles] and no right to its property.” These statements constitute judicial admissions. The Southern Cone Congregations are also judicially estopped and/or quasi-estopped from asserting contrary positions now.

### The Current Dispute

64. On or about September 5, 2006, in anticipation of the current dispute, and again on April 21, 2009, after leaving the Church and their offices, the Defendants and Counter-Defendants Bishop Iker, Franklin Salazar, Jo Ann Patton, Walter Virden, III, Rod Barber, and Chad Bates, purporting to act as Trustees of the Diocesan Corporation, caused to be filed with the Secretary of State “Amended and Restated Articles of Incorporation of [the] Corporation of the Episcopal Diocese of Fort Worth” and a “Certificate of Correction.” The “Amended and Restated Articles” and Certificate purported to:

a. delete provisions of the 1983 Articles describing the property held by the Diocesan Corporation as property “acquired for the use of the Episcopal Diocese of Fort Worth”;

b. delete provisions of the 1983 Articles stating that the aforesaid property “shall be administered in accordance with the Constitution and Canons of the Episcopal Diocese of Fort Worth”;

c. insert provisions purporting to give the Trustees of the Diocesan Corporation the “sole authority to determine the identity and authority of the Bishop [of the Episcopal Diocese of Fort Worth]” and, in the event of a vacancy in the office of Diocesan Bishop, “appoint ... a Chairman of the Board” for the Diocesan Corporation; and

d. provide for election of Trustees by the Board itself, instead of by the Annual Diocesan Convention as required by Diocesan Canon 17.3.

65. The actions described in Paragraph 64 violated these defendants’ constitutional and canonical obligations described in Paragraphs 36, 37, and 62 above; conflict with the Church’s requirements and authority regarding the recognition of a Diocesan Bishop; were ultra



vires and void and therefore could not and did not affect the status of the Diocesan Corporation as an instrument of the Diocese subject to the Constitutions and canons of the Church and the Diocese, the legal and canonical obligations of these Trustees to the Diocese and the Church, or the status of and restrictions on the use and control of the property acquired by the Diocesan Corporation as an instrument of the Diocese.

66. At the November 2008 meeting of the Convention of the Diocese, with the support and leadership of Defendant Bishop Iker, a majority of delegates present voted for various resolutions that purported to amend the Diocese's Constitution and canons to remove references to the Church and to permit the Diocese to affiliate with the Anglican Province of the Southern Cone, a denomination located in South America.

67. The actions described in Paragraphs 64 and 66 above violated the respective constitutional and canonical obligations and prior commitments of the Diocese and of the members of Convention, were invalid, and did not affect the status or continuing existence of the Church's Diocese of Fort Worth.

68. On December 5, 2008, following a public statement by Defendant Bishop Iker on November 24, 2008, that he no longer had any connection with the Church, the Presiding Bishop of the Church declared that Defendant Bishop Iker had voluntarily renounced his ordained ministry in the Church and that he was "therefore, removed from the Ordained Ministry of [the] Church and released from the obligations of Ministerial offices" in the Church. Defendant Bishop Iker thereby ceased to be a bishop of the Church or the Diocese.

69. Those individuals comprising the former leadership of the Diocese, including each of the individual defendants who now claim leadership roles and who supported the purported withdrawal of the Diocese from the Church and the purported affiliation of the

Diocese with a different denomination, by those acts left the Church, violated their obligations under the Church's Declaration of Conformity and/or Church Canon I.17(8), and ceased to be eligible to hold any office in the Church, the Diocese, or any of the Church's or the Diocese's other subordinate units, including but not limited to the Standing Committee, the Diocesan Corporation and the Endowment Fund; and their offices became vacant. On December 15, 2008, the Presiding Bishop informed the former members of the Diocesan Standing Committee that in these circumstances she could no longer recognize them as members of the Standing Committee in carrying out her canonical duties with respect to a diocese that no longer had a bishop.

70. Similarly, beginning on or about November 15, 2008, certain members of the clergy and lay officials, including vestry members, of certain parishes and/or missions of the Diocese, including those now claiming to be the Southern Cone Congregations, also supported the purported withdrawal of the Diocese from the Church and the purported affiliation of the Diocese with a different denomination. By those acts, those individuals left the Church, violated their obligations under the Church's Declaration of Conformity and/or Church Canon I.17(8), and ceased to be eligible to hold any office in the Church, the Diocese, or any of the Church's or the Diocese's other subordinate units, including but not limited to the offices of rector, priest in charge, vicar, deacon, or other clergy, and vestry members, treasurers, chancellors, and other officials of congregations of the Diocese, and their offices became vacant. The Southern Cone Congregations, respectively, judicially admit in their plea in intervention that "The Intervening Congregations are currently . . . under the episcopal oversight of the Rt. Rev. Jack Leo Iker, a defendant in this cause"—and not Bishop Ohl, who is recognized by The Episcopal Church to be the Bishop of its historical Episcopal Diocese of Fort Worth. As such, each of the Southern

Cone Congregations and its leaders claims not to be “part of, and subject to [The Episcopal Church] and its Constitution and canons.” *See* Plea in Intervention, p. 4, paragraph II.

71. The Diocese held a special meeting of its Convention on February 7, 2009. At that meeting, a Provisional Bishop of the Diocese, the Rt. Rev. Edwin F. Gulick, Jr., was elected pursuant to Church Canon III.13; other vacant offices in the Diocese, including the Standing Committee, the Executive Council, Chancellor, and the Trustees of the Diocesan Corporation and the Endowment Fund, were filled; resolutions declaring certain diocesan offices vacant and declaring the constitutional and canonical amendments described in Paragraph 66 as well as the purported amendments of the Articles of Incorporation of the Diocesan Corporation as described in Paragraph 64 to be void and of no effect were passed; and the Diocese’s clergy and lay Deputies to the Church’s 2009 meeting of the General Convention were elected.

72. On November 13–14, 2009, the Diocese held the 27th Annual meeting of its Convention, at which Plaintiff Bishop Ohl was elected the Diocese’s second Provisional Bishop and the Convention ratified the numerous resolutions and other actions taken by the special meeting of the Convention in February 2009 as described in Paragraph 71 above and the Convention changed to mission status certain parishes, including those historical Episcopal parishes and/or missions whose property is being used by the Southern Cone Congregations. As a result of the changes to mission status at the Convention, the congregations of the continuing Diocese still include 55 congregations, including 17 active parishes, many worshipping in temporary space because Southern Cone groups still occupy their property, and 38 missions, some of whom are worshipping in their own space, some in temporary space, and some still in the process of reorganization under Bishop Ohl.

73. As shown in the Plea in Intervention of the putative Southern Cone Congregations, those putative intervenors still occupy and use the real and personal property, records, funds and other property of these continuing Episcopal parishes and missions of the Diocese and continue to use their names, property, and programs for the use of a church other than The Episcopal Church, to the exclusion of the continuing Episcopal congregations for the continued ministry of The Episcopal Church.

74. The Southern Cone Congregations, respectively, have judicially admitted that they are “under the episcopal oversight of the Rt. Rev. Jack Leo Iker, a defendant in this cause.” See Plea in Intervention, paragraph II. They claim not to be “a part of, and subject to, [The Episcopal Church] and its Constitution and Canons” as required under the Dennis Canon in order for a congregation to maintain control of property held by it or for its benefit. Thus even if any of the continuing congregations ceased to exist (which the Third-Party Defendants/Counterclaimants do not allege), then under the Dennis Canon and Diocesan Canon 18 any real and personal property held for the use and benefit of that congregation would revert to the Corporation and the Diocese recognized by the Church for the use of the mission of the Church. Thus, under no scenario can a congregation purport to leave The Episcopal Church and its Diocese and still occupy and use—for another church—the real and personal property it had held in trust for the mission of the Episcopal Church.

75. The canons (now Canon 21) of the Episcopal Diocese of Fort Worth have provided since its primary convention in 1982 that the Bishop of the Diocese has direct authority over missions of the Diocese as ministries of the Bishop *ex officio*. The affairs of a mission are conducted by the Bishop or his or her representatives, i.e., the vicar and the Bishop's Committee, both of which serve at his or her pleasure.

76. The Church recognizes the Diocese as the continuing Episcopal Diocese of Fort Worth under the leadership of Plaintiffs and Counterclaimants. The Church and the Diocese recognize the bishops described in Paragraphs 71 and 72 above as the bishops with Episcopal oversight of the Diocese, the persons elected to the Standing Committee described in Paragraphs 71 and 72 above as the Standing Committee of the Diocese, the persons described in Paragraphs 71 and 72 above as the Trustees of the Diocesan Corporation and the Trustees of the Endowment Fund, and the persons described in Paragraph 71 above as the elected Deputies of the Diocese to the Church's General Convention.

77. On July 6, 2009, pursuant to the Constitution and canons of the Church and the Diocese, Bishop Gulick, then bishop of the Diocese, inhibited some members of the clergy, canonically resident in the Diocese, who had abandoned communion of the Church by following Bishop Iker from The Episcopal Church, its Diocese and its congregations on or about November 15, 2008, as described above. On February 15, 2010, again pursuant to the Constitution and canons of the Church and the Diocese, Bishop Ohl, as bishop of the Diocese, deposed some 57 members of the clergy canonically resident in the Diocese, from the ordained ministry. Many of these deposed clergy hold themselves out to be clergy functioning in the Southern Cone Congregations.

78. Although the Defendants and Counter-Defendants and leaders of the Southern Cone Congregations have left the Church and the Diocese for a different denomination, they continue to use the names, seals, and other symbols of the Diocese and the Diocesan Corporation and many of the parishes and/or missions of the Diocese, and hold the entities or factions affiliated with that denomination out as the continuing Episcopal Diocese of Fort Worth and many of the parishes and missions of the Diocese. The Defendants and Counter-Defendants and

leaders of the Southern Cone Congregations are asserting exclusive use and possession of substantially all of the real and personal property, including other funds, of the Diocesan Corporation, the Endowment Fund, the Diocese, and its congregations, parishes, missions, and other Institutions.

79. For example, regarding intervenor “St. Andrew’s Church (Fort Worth),” its purported rector is deposed from the ministry of The Episcopal Church, and its lay vestry members are not communicants in good standing of The Episcopal Church or otherwise eligible to hold any offices in the Church. Even so, intervenor “St. Andrew’s Church” claims the right to use and possess the substantial property of “St. Andrew’s Episcopal Church” of Fort Worth, a congregation founded by the Church in 1875. Those former Episcopalians continue to occupy and possess for their own use and benefit St. Andrew’s real property located in downtown Fort Worth and the funds, records, name and other property of St. Andrew’s. Those former Episcopalians usurp the authority of the loyal Episcopalians who have been forced to worship as St. Andrew’s Episcopal Church in temporary worship space under the authority of Bishop Ohl. Those former Episcopalians even claim that their church, and not the Episcopal congregation, is the beneficiary of the Charitable Remainder Unitrust established in 2002 by Episcopalian Cynthia Brants, now deceased, in honor of her family members who were long-time members of St. Andrew’s Episcopal Church.

80. A number of the leaders of the Diocese and their attorneys have demanded that Defendants and Counter-Defendants and leaders of the Southern Cone Congregations cease use and possession of and return the foregoing property, but the demand has been refused.

**E. FIRST COUNTERCLAIM (Declaratory and Injunctive Relief and Accounting)**

81. Counterclaimants incorporate by reference the allegations of Paragraphs 17–80.

82. Counterclaimants Robert M. Bass, Cherie Shipp, Dr. Trace Worrell, the Rev. James Hazel, the Rev. John Stanley, Anne T. Bass, Margaret Mieuli, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, the Rev. David Madison, and Kathleen Wells (to the extent her authority as Diocesan Chancellor has been challenged), individually and in their other stated capacities, assert this claim against the Southern Cone Congregations and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation. Counterclaimant Edwin J. Gulick, Jr., individually and in his other stated capacity, asserts this claim against the Southern Cone Congregations and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation for any and all actions taken in connection with his selection as and during his tenure as provisional bishop.

83. Counterclaimants take the position that the actions described in Paragraphs 64, 66, and 78 above are contrary to the Constitutions and canons of the Church and the Diocese and to the Prayer Book of the Church and are otherwise contrary to law and without any effect; that all property held by or for the Diocese is held and may only be used for the mission and benefit of the Church, its subordinate Diocese, and parishes and/or missions of the Diocese, subject to the Constitutions and canons of the Church and the Diocese; that the Diocese and its parishes and/or missions remain subordinate parts of the Church for all purposes; that well-established Texas law recognizes that a constituent part of a hierarchical church is represented by those individuals who remain part of and loyal to and recognized by the hierarchical church; and that the individual Plaintiffs and the Third-Party Defendants and Counterclaimants and the persons leading the parishes and missions of the Diocese, as recognized by the Church, are the proper authorities entitled to the use, possession, and control of the real and personal property of the Diocese and its parishes and/or missions.

84. Counterclaimants are informed and believe that Defendants and Counter-Defendants and leaders of the Southern Cone Congregations take the position that they have the right to govern the Diocese, the Diocesan Corporation, the Endowment Fund, and the parishes and missions of the Diocese; that they and other former members of the Church have withdrawn the Diocese and most of its parishes and missions from the Church to join a different denomination; that they are entitled to the use and possession of the real and personal property of the Diocesan Corporation, the Diocese, and its parishes and missions; and that their actions are not in conflict with the Constitutions and canons of the Church or the Diocese or Texas law.

85. An actual controversy exists, therefore, between the parties regarding the legal issues identified in Paragraphs 83 and 84 above. A declaratory judgment is therefore necessary and proper to determine the parties' rights and duties with respect to those issues.

86. Defendants' and Counter-Defendants' continue to use and possess the personal property, the intellectual property, and the real property held by the Diocesan Corporation for the benefit of the Diocese and its parishes and missions for purposes other than the mission of the Church and the Diocese, in derogation of the Constitutions and canons of the Church and the Diocese, and in disregard of the rights of the Church and the Diocese. Among other things, since November 15, 2008, Defendants and Counter-Defendants have entered into transactions with third parties purporting to convey, lease, and/or encumber the real property held by the Diocesan Corporation. Except for a handful of parishes, the continuing Episcopal congregations have been excluded from worshipping in their own churches and forced to worship in inferior temporary locations and have been deprived of the use and benefit of the personal property within their churches. Counterclaimants also have been deprived of the personal property held by the Diocese or the Diocesan Corporation that is necessary for conducting the affairs of the Diocese.



Defendants and Counter-Defendants and the Southern Cone Congregations and their leaders also continue to hold themselves out as the leaders of the Diocese, the Diocesan Corporation, and the parishes and missions of the Diocese and hold the entities or factions affiliated with the Anglican Province of the Southern Cone out as the continuing Diocese and many of the parishes and missions of the Diocese. This includes the Defendants' and Counter-Defendants' and the Southern Cone Congregations' unauthorized use of the name and seal of the Diocese and the names and/or seals of many of the parishes and missions of the Diocese. As a result of this conduct, Counterclaimants have suffered and will continue to suffer irreparable injury, and Counterclaimants have no adequate remedy at law for these injuries. Injunctive relief is necessary and proper to require Defendants and the Southern Cone Congregations to surrender possession of the property, to prevent them from further encumbering, using, and/or disposing of the real and personal property at issue, to prevent them from spending money in accounts belonging to the Plaintiffs and Counterclaimants, to prevent them from holding themselves out as the Diocese (including but not limited to by using the trade names "The Episcopal Diocese of Fort Worth" and "The Corporation of the Episcopal Diocese of Fort Worth" and the distinctive shield of the Diocese), the Diocesan Corporation, or the parishes and missions of the Diocese, or leaders thereof, and to enforce the parties' other rights and duties with respect to the issues described above.

87. The exact nature and extent of the Diocesan and parish and mission accounts, including endowed funds, income, and disbursements, and other contractual and other interests are unknown to Counterclaimants and cannot be determined without an accounting of the transactions and transfers of Diocesan property and an investigation of all financial accounts and funds in the name of or for the benefit of the Diocese and its congregations, which accounts and

funds have been used and depleted by the Defendants and Counter-Defendants and leaders of the Southern Cone Congregations.

**F. SECOND COUNTERCLAIM (Conversion)**

88. Counterclaimants incorporate by reference the allegations of Paragraphs 17–87.

89. Counterclaimants Robert M. Bass, Cherie Shipp, Dr. Trace Worrell, the Rev. James Hazel, the Rev. John Stanley, Anne T. Bass, Margaret Mieuli, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison, individually and in their other stated capacities, assert this claim against the Southern Cone Congregations and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation.

90. The Diocese and its parishes and missions own or have the duty to administer valuable personal property, sacramental and liturgical instruments and materials, bank and brokerage accounts, monies, valuable chattels, personnel records, financial records, real property records and deeds, and historical records of the Diocese and its parishes and missions, some of which is titled in the name of the Diocesan Corporation or Endowment Fund.

91. Defendants and Counter-Defendants, including the Southern Cone Congregations, and their leaders have converted the foregoing property of the Diocese by wrongfully claiming it, wrongfully using and possessing it, wrongfully transferring it or using it in the name of non-Episcopal Church entities, and wrongfully applying it for their own uses and purposes.

92. A number of Plaintiffs and Counterclaimants have demanded that Defendants and Counter-Defendants, including the Southern Cone Congregations, cease possession and use of and return the foregoing property, but the demand has been refused.

**G. THIRD COUNTERCLAIM (Texas Business & Commerce Code § 16.29)**

93. Counterclaimants incorporate by reference the allegations of Paragraphs 17–92.

94. Counterclaimants Robert M. Bass, Cherie Shipp, Dr. Trace Worrell, the Rev. James Hazel, the Rev. John Stanley, Anne T. Bass, Margaret Mieuli, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison, individually and in their other stated capacities, assert this claim against the Southern Cone Congregations and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation.

95. The trade names “Episcopal Diocese of Fort Worth” and “The Corporation of the Episcopal Diocese of Fort Worth” and the distinctive shield of the Diocese have been in continuous use by the Diocese and the Diocesan Corporation since 1983 to carry out the mission of the Church in the Diocese, and are valid trade names and marks under the common law.

96. Defendants and Counter-Defendants, including the Southern Cone Congregations, are using the foregoing trade names and marks in connection with an entity or entities or faction or factions unrelated to Plaintiffs and Third-Party Defendants and Counterclaimants and without their permission, and in a manner likely to dilute the distinctive quality of the foregoing trade names and marks.

#### **H. FOURTH COUNTERCLAIM (Breach of Fiduciary Duty)**

97. Counterclaimants incorporate by reference the allegations of Paragraphs 17–96.

98. Counterclaimants Robert M. Bass, Cherie Shipp, Dr. Trace Worrell, the Rev. James Hazel, the Rev. John Stanley, Anne T. Bass, Margaret Mieuli, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison, individually and in their other stated capacities, assert this claim against the Southern Cone Congregations and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation.

99. Defendants and Counter-Defendants owe fiduciary duties to the Diocese and Church. Their actions—including violating their constitutional and canonical obligations to the Diocese and Church; purporting to affiliate with an unrelated entity while taking Diocesan,

Church, and parish or mission property; misappropriating funds and the trade name and distinctive shield of the Diocese; and conveying, leasing, and/or encumbering property held by the Diocesan Corporation without any authority—constitute breaches of fiduciary duty. Defendants and Counter-Defendants, including the Southern Cone Congregations, benefited from these acts. Plaintiffs and Counterclaimants have been injured by these acts and seek equitable and legal relief. To the extent the Southern Cone Congregations aided and abetted, knowingly participated in, or received the benefits of these breaches of fiduciary duty, Counterclaimants also seek this relief from the Southern Cone Congregations.

100. To the extent that the Southern Cone Congregations and their purported leaders had or owed fiduciary duties and/or aided and abetted or knowingly participated in the breaches of fiduciary duties of the other Defendants and Counter-Defendants, Counterclaimants seek the same relief against the Southern Cone Congregations.

**I. FIFTH COUNTERCLAIM (Action to Quiet Title)**

101. Counterclaimants incorporate by reference the allegations of Paragraphs 17–100.

102. Counterclaimants Robert M. Bass, Cherie Shipp, Dr. Trace Worrell, the Rev. James Hazel, the Rev. John Stanley, Anne T. Bass, Margaret Mieuli, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison, individually and in their other stated capacities, assert this claim against the Southern Cone Congregations and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation.

103. Counterclaimants have an interest in the disputed property, including but not limited to the property listed on Schedule A to Local Episcopal Plaintiffs' Seventh Amended Petition ("Schedule A"), substantially all of which is being improperly held by Defendants and Counter-Defendants, including the Southern Cone Congregations; title to this property is affected

by a claim by the Defendants and Counter-Defendants, including the Southern Cone Congregations, and that claim is *ultra vires*, void, invalid, and unenforceable.

**J. SIXTH COUNTERCLAIM (Trespass to Try Title)**

104. Counterclaimants incorporate by reference the allegations of Paragraphs 17–103.

105. Counterclaimants Robert M. Bass, Cherie Shipp, Dr. Trace Worrell, the Rev. James Hazel, the Rev. John Stanley, Anne T. Bass, Margaret Mieuli, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison, individually and in their other stated capacities, assert this claim against the Southern Cone Congregations (except Southern Cone All Saints) and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation.

106. Counterclaimants seek to recover by proof of title the real property described in Schedule A. This property is unlawfully possessed by Defendants and Counter-Defendants, including the Southern Cone Congregations. Counterclaimants have a regular chain of conveyances from the sovereignty of the soil; a superior title out of a common source; and/or title by prior possession that has not been abandoned. Counterclaimants were in possession of this property prior to Defendants' and Counter-Defendants' improper and unlawful actions, and Counterclaimants are entitled to possession. Defendants and Counter-Defendants, including the Southern Cone Congregations and their purported leaders, unlawfully entered upon and dispossessed Counterclaimants of such premises in or after November 2008 and withhold from Counterclaimants the possession thereof.

107. Defendants' and Counter-Defendants' wrongful possession of the property has deprived Counterclaimants of rents and profits to which Counterclaimants are legally entitled.

## RELIEF REQUESTED

108. Counterclaimants respectfully request that this Court issue the following as to the Southern Cone Congregations:

a. A declaration that, to the extent that any declaration issued by this Court in this case involves an ecclesiastical determination, **the Court defers to and applies the ecclesiastical determination of The Episcopal Church as conclusive and binding for civil law purposes as a matter of law**; alternatively, to the extent that any declaration issued by this Court in this case does not involve an ecclesiastical determination, the Court makes that declaration as a matter of law;

b. A declaration that there is only one Episcopal Diocese of Fort Worth (the “Diocese”), which is the continuing Episcopal Diocese of Fort Worth that has been a constituent entity of the Church since its formation effective January 1, 1983 and continuing to the present day; there is only one Bishop of the Episcopal Diocese of Fort Worth (the “Bishop”); there is only one Standing Committee of the Episcopal Diocese of Fort Worth (the “Standing Committee”); there is only one Corporation of the Episcopal Diocese of Fort Worth (the “Diocesan Corporation”); there is only one Fund for the Endowment of the Episcopate of the Episcopal Diocese of Fort Worth (the “Endowment Fund”); and there is only one of each of the parishes and missions constituting congregations of the Episcopal Diocese of Fort Worth (see Schedule B to Local Episcopal Plaintiffs’ Seventh Amended Petition (“Schedule B”));

c. A declaration that the Plaintiffs and Third-Party Defendants and their duly elected or appointed successors, as recognized by The Episcopal Church, are the proper authorities of the Diocese, the bishops, the members of the Standing Committee, and the

Trustees of the Diocesan Corporation and the Endowment Fund, respectively, and are entitled to the use and control of the Episcopal Property,<sup>2</sup> and that Defendants and their successors do not hold those offices and are not entitled to the use or control of said property; Defendant Diocese, to any extent that it is a separate and existing entity, is not the continuing Episcopal Diocese of Fort Worth;

d. A declaration that, as the proper authorities of the Diocese, the bishops, the members of the Standing Committee, and the Trustees of the Diocesan Corporation and the Endowment Fund, respectively, the Plaintiffs and Third-Party Defendants and their duly elected or appointed successors, as recognized by The Episcopal Church, are authorized to update the signature cards on any accounts held by the Diocese, the Diocesan Corporation, or the Endowment Fund and to file proper articles of incorporation and by-laws and any other necessary filings with the Texas Secretary of State;

e. A declaration that each of the parishes and missions listed in Schedule B is represented by those of its members who have remained a part of The Episcopal Church, under the leadership of those recognized as such by the Church and the Diocese;

f. A declaration that the leaders of the parishes and missions listed in Schedule B and the Bishop of the Diocese, his or her designees, and the members of the

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<sup>2</sup> “Episcopal Property” is defined as (1) the real and personal property listed in Schedule A, and (2) any and all real or personal property, of any character or kind, type or description, including all bank accounts and financial assets, that were held by or for the benefit of the Diocese, the Diocesan Corporation, the Fund for the Endowment of the Episcopate, any of the parishes or missions of the Diocese (see Schedule B), or any other constituent entity of the Diocese, as of November 15, 2008, as well as any property acquired using, or as a result of, other Episcopal Property in any way, including but not limited to income generated by selling, investing, or encumbering with debt, leases, or liens any Episcopal Property, and property purchased with Episcopal Property or with funds derived from Episcopal Property. Episcopal Property also includes any and all property that originated as Episcopal Property, including any and all Episcopal Property that Defendants have re-characterized, transferred to different accounts, placed under different names, transferred to new entities, or commingled with other property. Relief granted by this Court in this case applies to all Episcopal Property.

Bishop's committees and vicars of the missions listed in Schedule B and their duly elected or appointed successors, as recognized by The Episcopal Church, are the rightful leaders of those parishes and missions, as recognized by The Episcopal Church, and are entitled to the use and control of the Episcopal Property held by or for the parishes and missions listed in Schedule B, and that the Defendant Congregations using the names of the parishes and missions listed in Schedule B and the leaders of those Defendant Congregations and all others acting in concert with Defendants are not entitled to the use or control of said property;

g. A declaration that Bishop Gulick, the bishop selected at the Special Convention in February 2009, and his successors, including Bishop Ohl, as recognized by The Episcopal Church, were and are the Bishop(s) of the Diocese after February 7, 2009, and that Bishop Iker does not hold that office and has not held that office since November 15, 2008;

h. A declaration that Bishop Ohl, the bishop selected at the Annual Convention of November 13-14, 2009, and his successors, and the members of the Standing Committee of the Diocese and the Trustees of the Diocesan Corporation and the Endowment Fund, respectively, selected at or immediately after the meeting of the Special Convention of February 7, 2009 and the Annual Convention of November 13-14, 2009, respectively, and their successors, as recognized by The Episcopal Church, comprise the Bishop and members of the Standing Committee of the Diocese and are the Trustees of the Diocesan Corporation and Endowment Fund, respectively, and that the Defendants and their successors do not hold and have not, since November 15, 2008, held any of those offices;



i. A declaration that Kathleen Wells has, since February 7, 2009, held the office of Chancellor for the Episcopal Diocese of Fort Worth, that she has acted at all times in accordance with her position and within her authority as Diocesan Chancellor, and that, since February 7, 2009, she has been authorized to represent the Diocese, the Standing Committee, the Diocesan Corporation, and the Endowment Fund as their legal counsel;

j. A declaration that Jonathan D.F. Nelson is, and has been since before suit was filed in this case, authorized to represent the Diocese, the Standing Committee, the Diocesan Corporation, and the Endowment Fund as their legal counsel;

k. A declaration that, as the Court has determined on the merits in the course of litigation, in deference to the ecclesiastical determinations of The Episcopal Church and applying those ecclesiastical determinations as conclusive and binding for civil law purposes, Plaintiffs and Third-Party Defendants and their duly elected or appointed successors, as recognized by The Episcopal Church, are the proper authorities of the Diocese, the Diocesan Corporation, the Endowment Fund, and the Diocese's other constituent entities; they, and not Defendants, can authorize counsel to represent the Diocese, the Diocesan Corporation, the Endowment Fund, and other Diocesan constituent entities and to prosecute or defend claims in this matter on their behalf and in the name of those entities; that the claims that have been prosecuted by the Plaintiffs are also claims properly brought in the name of the Diocese, the Diocesan Corporation, the Endowment Fund, and the Diocese's other constituent entities; that these claims should properly be replead as such; and that the Modified Order Granting Rule 12 Motion, dated July 8,

2010, is no longer in effect now that the Court has reached the merits of the identity issue;

l. A declaration that the Defendant Corporation, the Defendant Diocese, and the Defendant Congregations do not have legal capacity to sue as the parties as which they have purported to appear (the Diocesan Corporation, the Diocese, and the historical parishes and missions of the Diocese, respectively), are not entitled to recover in the capacity in which they have sued, and/or lack standing to pursue their claims;

m. A declaration that all Episcopal Property is held in trust for and may be used only for the mission of the Church and the Diocese, subject to the Constitutions and canons of the Church and the Diocese;

n. A declaration that Defendants have no rights to or authority over any Episcopal Property, and that Defendants have no right or authority to possess, divert, encumber, alienate, transfer, or use any such property;

o. A declaration that the Plaintiffs, along with Third-Party Defendants and Counterclaimants, and their duly elected or appointed successors and the parishes and missions listed in Schedule B, as recognized by The Episcopal Church, are entitled to the exclusive use of the name, seal, and other intellectual property of the Diocese and its parishes and missions and/or the Diocesan Corporation and/or the Endowment Fund and/or any other constituent entities of the Diocese, including the name of the Diocesan Corporation, and that Defendants and their successors may not use said names, seal, and other intellectual property;

p. A declaration that the August 15, 2006 (filed September 5, 2006) and April 21, 2009 attempted changes by the Defendants to the articles and bylaws of the

Diocesan Corporation were ultra vires, unauthorized, void, and without effect, as recognized by The Episcopal Church;

q. A declaration that the Defendants' actions seeking to withdraw the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, its parishes or missions, or other Diocesan institutions or any property of any character or kind from The Episcopal Church were and are unauthorized, void, and without effect, as recognized by The Episcopal Church;

r. A declaration that the Defendants' actions seeking to withdraw the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, its parishes or missions, or other Diocesan institutions or any property of any character or kind from The Episcopal Church were and are unauthorized, void, and without effect, as recognized by The Episcopal Church;

s. A declaration that the Defendants' actions since November 15, 2008 purportedly in the name of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, the parishes and missions of the Diocese, or any other constituent entities of the Diocese were and are unauthorized, void, and without effect, as recognized by The Episcopal Church;

t. In addition to applying to the Individual Defendants, the declarations made and issued in subparagraphs a-s above apply to any extent necessary against the Episcopal Diocese of Fort Worth under the leadership of the Individual Defendants and against the Corporation of the Episcopal Diocese of Fort Worth under the leadership of the Individual Defendants;

u. All declarations herein apply not only to Defendants but to their individual agents and successors;

v. An injunction requiring Defendants, their officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with them to vacate and surrender possession of all Episcopal Property, to surrender control of the Diocesan Corporation to the Local Episcopal Parties, and to relinquish to Plaintiffs and Third-Party Defendants and to the authorized leaders of the parishes and missions listed in Schedule B, as recognized by The Episcopal Church, the possession of all Episcopal Property, and to execute any necessary documents to accomplish the surrender of such control and such property;

w. An injunction prohibiting Defendants, their successors and assigns, and any person acting in concert with them from destroying, disposing of, altering, or concealing any records of the Diocese, the Diocesan Corporation, the Endowment Fund, any parish or mission of the Diocese, or any other constituent entities of the Diocese;

x. An injunction prohibiting Defendants, their officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with them from granting, conveying, selling, alienating, leasing, encumbering, disposing of, destroying, damaging, using, removing, hiding, obscuring, diverting, shifting to new accounts, commingling with other property, in any way transferring, or claiming the right to control any Episcopal Property;

y. An injunction prohibiting Defendants, their officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with them from using or depleting any of the following: (1) money that was held as of November

14, 2008 in any bank account, investment account, endowment account, or other account by or on behalf of the Diocese, the Diocesan Corporation, the Endowment Fund, any parish or mission of the Diocese, or any other Diocesan entity or entities; (2) any interest or other income from Episcopal Property; or (3) the proceeds from the sale, lease, or encumbrance of any Episcopal Property;

z. An injunction prohibiting Defendants, their officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with them from holding themselves out as officers or other leaders of the Diocese, its parishes and missions, the Diocesan Corporation, the Endowment Fund, and/or any other constituent entities of the Diocese, or using the name, seal, symbols, and other trademarks and intellectual property of the Diocese, its parishes and missions, the Diocesan Corporation, the Endowment Fund, and/or any other constituent entities of the Diocese;

aa. An injunction prohibiting Defendants, their successors and assigns, and any person acting in concert with them from holding themselves out as the Diocese, the Diocesan Corporation, the Endowment Fund, any of the Episcopal parishes or missions, or any other constituent entity of the Diocese;

bb. An order requiring Defendants to provide an accounting of all real and personal property used or possessed by Defendants in the name of or purportedly on behalf of the Diocese, the Diocesan Corporation, the Endowment Fund, the Episcopal Missions, or any parish, mission, or congregation of the Diocese on and after August 15, 2006 until the day they surrender possession of the property, including a full accounting of any encumbrances, indebtedness, transfers, sales, exchanges, shifting to new accounts, disbursements, dissipations, or commingling of such property with other property;

cc. A judgment against the Defendants awarding all damages to which Plaintiffs are entitled, with prejudgment and post-judgment interest as allowed by law;

dd. A judgment awarding title to the Corporation of the Episcopal Diocese of Fort Worth and possession to the proper officials of the Diocese or its parishes or missions, respectively, of the real property described in Schedule A and any other real property held by or for the Diocese, the Diocesan Corporation, the Endowment Fund, or any parish or mission of the Diocese, as well as rents and profits;

ee. Declaratory judgment invalidating Defendants' claims to the real property described in Schedule A and any other real property held by or for the Diocese, the Diocesan Corporation, the Endowment Fund, or any parish or mission of the Diocese and quieting title to such property in the Corporation of the Episcopal Diocese of Fort Worth as governed by Plaintiffs, along with Third-Party Defendants;

ff. A judgment awarding the Plaintiffs their reasonable and necessary attorney's fees, costs and expenses;

gg. Other and further relief to which the Plaintiffs may be entitled.

## **VI. PRAYER**

WHEREFORE, premises considered, Counterclaimants pray that upon final hearing the Southern Cone Congregations take nothing by their First Amended Original Plea in Intervention; that the Court enter the Declarations specified above; that the Court enter the orders requested above; that Counterclaimants have judgment against the Southern Cone Congregations as prayed for above; and that the Court grant Counterclaimants any and all other relief to which they may show themselves to be justly entitled.

Respectfully submitted,

By: *Tom Leatherbury* *of perm*

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**Attorneys for Third-Party Defendants and  
Counterclaimants**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Fifth Amended Answer and Counterclaims to Southern Cone Congregations' First Amended Original Plea in Intervention has been sent this 1<sup>st</sup> day of March, 2011, by Federal Express or hand delivery, to:

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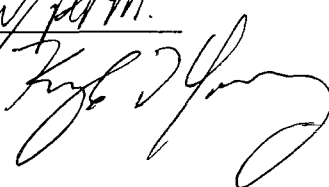
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Tom Leatherbury w/perm.  




**VERIFICATION**

THE STATE OF TEXAS   \*\*  
  \*\*  
COUNTY OF TARRANT   \*\*

On this day, KATHLEEN WELLS personally appeared before me, the undersigned Notary Public, and after being duly sworn stated under oath the following:

1. My name is Kathleen Wells. I am over the age of 18 years, am competent to make this affidavit, and have personal knowledge of the facts stated herein.


2. Since February 7, 2009, I have served as Chancellor of the Episcopal Diocese of Fort Worth. Since before February 7, 2009, and at all times relevant to this dispute, I have been a member of Trinity Episcopal Church in Fort Worth, and I served as a delegate from that parish to the Diocesan Convention in 2007, 2008, and 2009. I was also a deputy from the Episcopal Diocese of Fort Worth to the 2009 General Convention, and I was elected in November 2010 as a deputy to the 2012 General Convention. I was appointed by the President of the House of Deputies to the Church’s Standing Commission on Constitution and Canons, where I have served since 2009. As an active member of my parish before February 7, 2009, and additionally through my position as Chancellor since February 7, 2009, I have personal knowledge of the conduct of the defendants named above and the injury caused by their conduct to the plaintiffs named above.

3. I have read the Fifth Amended Answer and Counterclaims to Southern Cone Congregations’ First Amended Original Plea in Intervention, as set forth above, and every statement of fact contained in paragraphs 73, 78, and 86 therein is within my personal knowledge and is true and correct.

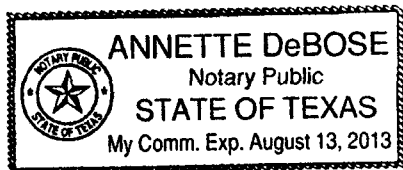
4. I am counsel of record for all Plaintiffs except the Episcopal Church and for all Third-Party Defendants. The only legitimate association bearing the name "Episcopal Diocese of Fort Worth" is the association that is a subordinate unit of the Protestant Episcopal Church in the United States of America. The only legitimate corporation bearing the name "Corporation of the Episcopal Diocese of Fort Worth" is the corporation of which the Rt. Rev. C. Wallis Ohl is Chairman of the Board of Trustees, a Texas non-profit corporation with its principal office in Fort Worth, Texas, formed pursuant to the Constitution and canons of the Episcopal Diocese of Fort Worth to hold and manage the property of the Diocese subject to the Constitutions and canons of the Protestant Episcopal Church in the United States of America and the Diocese.

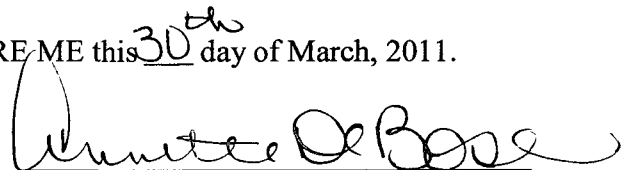
5. The Rt. Rev. Edwin F. Gulick, Jr., was the Provisional Bishop for the Episcopal Diocese of Fort Worth from February 2009 until November 2009 and does not now hold that position.

6. The facts in Paragraphs 4 through 9 of the Fifth Amended Answer and Counterclaims to Southern Cone Congregations' First Amended Original Plea in Intervention are within my personal knowledge and are correct.

  
Kathleen Wells

SUBSCRIBED AND SWORN TO BEFORE ME this 30<sup>th</sup> day of March, 2011.



  
Notary Public, State of Texas