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June 24, 2011

By Hand-Delivery

Ms. Stephanie Selsor, Chief Clerk
141st District Court
200 East Weatherford Street – 3rd Floor
Fort Worth, TX 76196

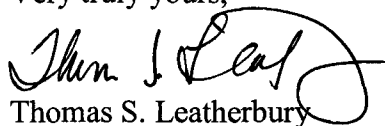
Re: *The Episcopal Diocese of Fort Worth, et al. v. Franklin Salazar, et al.*;
Cause No. 141-252083-11; In the 141st District Court of Tarrant County, Texas

Dear Ms. Selsor:

I have enclosed for filing an original and two (2) copies of Local Episcopal Parties' Motion to Tender Orders. Please file and return a file-marked copy to my courier.

Thank you for your assistance.

Very truly yours,



Thomas S. Leatherbury

1111 7726
Enclosures
US 942784v1

cc: J. Shelby Sharpe, Esq. (w/encl.) (via FedEx & e-mail pdf)
R. David Weaver, Esq. (w/encl.) (via FedEx & e-mail pdf)
Scott A. Brister, Esq. (w/encl.) (via FedEx & e-mail pdf)
Kendall M. Gray, Esq. (w/encl.) (via FedEx & e-mail pdf)
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Jonathan D.F. Nelson, Esq. (w/encl.) (via e-mail pdf)

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

MOTION TO TENDER ORDERS

TO THE HONORABLE COURT:

The Court invited the parties to negotiate a solution to the supersedeas issue. To date, the parties are still discussing the possibility of an agreement. In case these attempts are unsuccessful, Plaintiffs, the Local Episcopal Parties, submit the following two orders for the Court’s consideration before any supersedeas ruling:

1. **A revised supersedeas order.** During negotiations, it became clear that post-judgment injunctions would need additional specificity to ensure that no more property is transferred, encumbered, or dissipated. A new proposed Order is attached as Exhibit A.

2. **A proposed order on affidavits.** At the May 19th hearing, the Court orally overruled Plaintiffs’ objections to affidavit evidence. A proposed written Order is attached as Exhibit B.

A FAIR SOLUTION

Plaintiffs request a supersedeas bond of at least \$950,000 plus meaningful post-judgment injunctions. This is below the amount required by statute. It is less than 1% of the property value at stake. It is a fraction of the San Angelo cash deposit, the *lesser* of the two other Texas bonds in nearly identical cases.¹ It is the bottom number in the range shown by Plaintiffs in their Response. It is well below what Defendants could post based on their massive size and revenue

¹ Extrapolated from the \$35,000 cash deposit in a single-parish case to the forty-seven parishes and missions in this case (without taking into account the additional diocesan property at stake here).

history (\$10.5 million per year) as shown in the evidentiary record and undisputed by any evidence from Defendants.²

Defendants have proposed a bond of \$0. Defendants' position has no basis in law. Their "evidence" on substantial economic harm is argument of counsel and a conclusory affidavit from an interested congregant and employee – who admitted in deposition to using an incorrect definition, failing to consider the relevant factors, and swearing to a statement drafted by counsel for which she lacked sufficient knowledge. Defendants did not contact a single surety, bank, parent organization, or past financier about a bond. They do not come close to the evidence rejected in other Texas supersedeas cases. They did not provide any evidence for 61 of 62 Defendants, despite the fact that each judgment debtor must supersede the judgment.

Every Texas court to consider an ex-Episcopal breakaway faction case has set a substantial supersedeas bond or cash deposit and imposed additional protective covenants. Defendants' position is unreasonable and unsupported.

CONCLUSION AND PRAYER

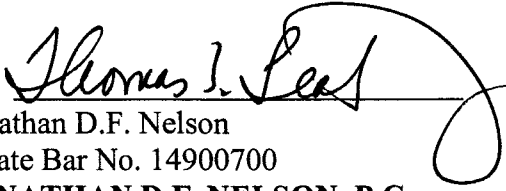
If the parties jointly inform the Court that they cannot reach agreement on the supersedeas issue, this Court should set a real bond and impose real post-judgment injunctions. And if Defendants do not post that bond, they are free to appeal while the property returns to its rightful owners, as recognized by nearly every court in the nation to consider the issue.

Here, Plaintiffs request that the Court (1) sign the proposed Order reflecting the Court's overruling of Plaintiffs' objections to affidavit evidence³ and (2) consider for signature, if the parties cannot reach agreement, the proposed supersedeas Order.

² All statements are based on the supersedeas record, including Plaintiffs' Response to Defendants' Motion to Set Supersedeas and the 5/19/11 hearing transcript and exhibits, all of which are incorporated as if fully set forth herein.

³ Plaintiffs make this request solely to complete the record, without agreeing to the substance of the ruling and without waiving any of their objections to the affidavits.

Respectfully submitted,

By: 
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Attorneys for Plaintiffs the Local Episcopal Parties

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion to Tender Orders has been sent this 24th day of June, 2011, by Federal Express and email pdf, to:

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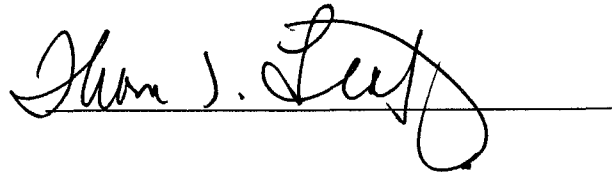
A handwritten signature in cursive script, appearing to read "John J. Lee", is written over a horizontal line.

EXHIBIT A

affidavit from Defendants' congregant and employee,⁴ who, upon deposition, admitted to (i) using an invalid definition of substantial economic harm⁵ and (ii) not considering the relevant factors under the case law⁶ in reaching her conclusions.

3. Plaintiffs have requested a bond of at least \$950,000 plus post-judgment injunctions.⁷ Defendants received roughly \$10,500,000 in new annual revenue at the congregational level alone in 2009.⁸ William Shamburger, an accountant with 39 years experience including 35 years with non-profit and church finances, in consultation with bankers with church finance experience and a surety, testified that Defendants could secure a letter of credit based on their size and annual revenue to support a supersedeas bond in excess of \$5 million.⁹ Defendants did not present any contrary expert evidence.¹⁰
4. Because (1) Texas Rule of Appellate Procedure 24.2(a)(2) requires that the "amount of security **must be at least**"¹¹ the value of the personal property interest on the date the court rendered judgment and the fair market rental value or revenue of the real property; (2) Defendants bear the burden to prove any reduction for substantial economic harm with competent evidence;¹² and (3) Plaintiffs have requested a bond below the amount required by statute and below

⁴ See, e.g., *id.* at 30:21-31:18.

⁵ See, e.g., *id.* at 132:23-133:2.

⁶ See, e.g., *id.* at 67:4-16; 74:5-12; 111:23-112:5; 124:16-23; 128:17-129:2; 129:11-16; 131:11-22; 132:11-18; 168:3-12; 170:1-5; *cf. Ramco Oil & Gas, Ltd.*, 171 S.W.3d at 917; *LMC Complete Automotive, Inc. v. Burke*, 229 S.W.3d 469, 487 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).

⁷ See Motion to Tender Orders, filed June 24, 2011.

⁸ See, e.g., May 19, 2011 Hearing Transcript Ex. 1 (Parrott Dep.) at 127:22-24 and Tab L .

⁹ See, e.g., May 19, 2011 Hearing Transcript beginning at 42.

¹⁰ See, e.g., n. 6 *supra*.

¹¹ Emphasis added.

¹² *Ramco Oil & Gas, Ltd.*, 171 S.W.3d at 917; *LMC Complete Automotive, Inc.*, 229 S.W.3d at 487.

the amount attainable by Defendants without causing any substantial economic harm, and taking into account all pertinent findings and the applicable law, Defendants should be ordered to post a supersedeas bond or to make a cash deposit of \$_____.

5. During this litigation, Defendants have transferred funds out of state in order to try to avoid this Court's jurisdiction,¹³ have dissipated over \$500,000 in property made the subject of this lawsuit,¹⁴ have signed oil and gas leases covering some of this property,¹⁵ have incurred new debts, including one to Jude Funding, Inc.,¹⁶ that purport to be secured by some of the Subject Property,¹⁷ and have represented to the Court through counsel that they are "all judgment proof."¹⁸ Based on the applicable law, including Texas Rule of Appellate Procedure 24.1(e) and 24.2(d), the Court finds that additional protection or security in the form of post-judgment injunctions against all of the Defendants is necessary and appropriate.

¹³ See, e.g., May 19, 2011 Hearing Transcript Ex. 1 (Parrott Dep.) at 93:18-22.

¹⁴ See, e.g., *id.* at 63:12-64:4 and 84:13-16.

¹⁵ See, e.g., *id.* at 160:11-18; 161:1-13; 162:9-13; 235:18-21; 236:20-23; and 237:1-7.

¹⁶ See, e.g., Defendants' Motion to Set Supersedeas at \$0 Ex. A (Parrott Aff.) at 2.

¹⁷ Throughout this Order, "Subject Property" is defined as the property listed at Schedule A to Plaintiffs' Supplemental Motion for Partial Summary Judgment filed with this Court on March 31, 2011 in Cause No. 141-237105-09 (excepting the "Church of the Holy Cross" property, which on information and belief was sold), of which the Court takes judicial notice and incorporates herein, as well as all real and personal property, including funds, cash, securities, depository and investment accounts, other bank accounts, assets held by trusts or foundations, and records, that were held as of November 15, 2008 by or for the Episcopal Diocese of Fort Worth, the Corporation of the Episcopal Diocese of Fort Worth, the Fund for the Endowment of the Episcopate of the Episcopal Diocese of Fort Worth, any of the congregations, parishes, or missions of the Episcopal Diocese of Fort Worth, or any other constituent entity of the Episcopal Diocese of Fort Worth, as well as any real and personal property obtained with, by, through, or as a result of Subject Property, such as interest on, income from, royalties from, or assets purchased with Subject Property, and including any Subject Property transferred to new accounts or new banks, commingled with other assets, or otherwise transferred or recharacterized.

¹⁸ February 8, 2011 Hearing Transcript at 13 (MR. BRISTER: "[I]f we lose, we are wasting time because our clients are all judgment proof. So [Plaintiffs] can get a million dollars [in damages], and who are they going to collect that from.").

6. Defendants' Director of Business and Finance testified that the litigation expenses and fees of this case are not part of Defendants' normal course of business.¹⁹ In 2009, 2010, and 2011, Defendants paid \$1,139,268.59 of their \$1,348,207.06 in legal expenses, or 85%, through external funds²⁰ that "are not assets of the Diocese or Diocesan Corporation."²¹ Defendants presented no evidence that this historic trend over the entirety of this dispute will change. Defendants' Director of Business and Finance testified that Defendants define their ordinary course of business as "ordinary operating costs ... as defined by our budget."²² For each budget since this dispute began (2009, 2010, and 2011), Defendants excluded litigation costs of this case, including attorneys' fees, from their budget, designating no diocesan assets to this litigation.²³ Defendants also distinguished litigation costs in this case from their normal course of business in multiple representations to the Court.²⁴ Accordingly, based on the uncontested evidence including Defendants' own definition, "normal course of business" is defined in this Order as "annual expenditures not more than 5% over the amounts, respectively, and in the categories, respectively, reflected in the budgets initially adopted for 2011 by the Defendants, respectively, which budgets shall be tendered by Defendants to Plaintiffs subject to this Order and are incorporated

¹⁹ See, e.g., May 19, 2011 Hearing Transcript Ex. 1 (Parrott Dep.) at 148:14-22; 150:3-5; and 171:21-172:23.

¹⁹ Defendants' Motion to Set Supersedeas Ex. B (Second Parrott Aff.) at 2 and Motion at p. 2.

²⁰ See, e.g., May 19, 2011 Hearing Transcript Ex. 1 (Parrott Dep. Tab B) at SC3866; 3980; 3985; 3991; 3995; see also Parrott Dep. at 171:21-172:23.

²¹ See, e.g., Defendants' Motion to Set Supersedeas at \$0 Ex. B (Second Parrott Aff.) at 2; see also Motion at p. 2.

²² See, e.g., May 19, 2011 Hearing Transcript Ex. 1 (Parrott Dep.) at 171:21-172:23.

²³ See, e.g., *id.* at 148:14-22, 150:3-5, and 171:21-172:23; *id.* at Tab B (SC3903-3919).

²⁴ See, e.g., Defendants' Motion to Set Supersedeas at \$0 at 3 ("To date, Defendants have paid litigation costs mostly from extraordinary gifts and contributions"); at 5 (discussing "current operating expenses, much less the extraordinary expenses of this litigation and appeal"); 1-2 ("no expenditures have been made by Defendants other than in the ordinary course of business and in defense of this lawsuit").

herein by reference,”²⁵ provided that Defendants may come before the Court to seek modification of this definition upon a showing that increased expenditures are reasonably necessary under Texas Rule of Appellate Procedure 24.3(a)(2) or 24.2(d). Based on these findings and the supersedeas record, including Defendants’ definition, testimony, representations, and financial documents, the Court finds that the litigation costs and expenses of this dispute, including attorney’s fees, are not within Defendants’ normal course of business.

7. During Defendants’ normal course of business over the past 3 years since this dispute began, Defendants have represented to the Court that the Subject Property bank accounts have gone up, not down.²⁶ The Court accordingly finds that maintaining the Subject Accounts above November 15, 2008 balances is consistent with Defendants’ normal course of business.
8. Defendants have testified that in the normal course of business, current operations are traditionally funded primarily through new revenue, which is roughly equivalent to expenses.²⁷ The Court accordingly finds that funding operations primarily through current revenue and not through dissipation of previously-held assets (here, Subject Property) is Defendants’ normal course of business.

²⁵ Defendant Diocese’s 2011 budget is in the record at May 19, 2011 Hearing Transcript Ex. 1 (Parrott Dep.) at Tab B (SC3916-3919);

²⁶ *See, e.g.*, March 31, 2011 Hearing Transcript at 30 (MR. SHARPE: “And, by the way, the accounts that [Plaintiffs are] talking about, they’ve got a bigger value today than they did at the time of separation. They haven’t gone down, they’ve gone up.”); *id.* at 8 (MR. BRISTER: “We’ve given them the bank statements of what’s there and what was there in November ‘08, so they know all that. And they can see that we haven’t done that for two and a half years, almost three years now.”).

²⁷ *See, e.g.*, May 19, 2011 Hearing Transcript Ex. 1 (Parrott Dep.) at 54:6-55:15 and at Tab B (SC3903-3919); Defendants’ Motion to Set Supersedeas at \$0 Ex. B (Second Parrott Aff.) at 1.

IT IS THEREFORE ORDERED that, on or before _____, 2011, Defendants²⁸ shall post a supersedeas bond or make a cash deposit in the amount of \$_____.

IT IS FURTHER ORDERED that, during the appeal in this case or until further order of the Court, while Defendants are in possession of Subject Property, all Defendants:

- a. **SHALL NOT** use, transfer, dissipate, encumber, convey, destroy, conceal, or dispose of any Subject Property other than in the normal course of business and in accordance with the terms of this Order;
- b. **SHALL** keep Subject Property fully insured and maintain in force and good standing property and casualty insurance at least at the coverage levels effective in 2010, confirmed by quarterly report to Plaintiffs;
- c. **SHALL** notify the parties and, after hearing, obtain leave of Court or written agreement of the Local Episcopal Parties before using, transferring, dissipating, encumbering, or conveying any Subject Property for attorney's fees or other litigation expenses;
- d. **SHALL** keep Subject Property in good repair, normal wear and tear excepted, and keep current all indebtedness secured or allegedly secured by any Subject Property, confirmed by quarterly report to Plaintiffs;
- e. **SHALL** maintain their normal-course-of-business practice of funding expenses primarily through new revenue and receipts, and not through dissipation of Subject Property, subject to Defendants' right to seek modification of this provision from the Court under changed circumstances; Defendants shall not, directly or indirectly, favor

²⁸ Throughout this Order, "Defendants" includes all parties defined as Defendants in Defendants' December 23, 2010 Motion for Partial Summary Judgment (see page titled "Parties") including all Defendant Congregations, as well as the Defendant appearing as All Saints' Episcopal Church (Fort Worth) or All Saints' Church (or any other permutation) and any other party in this case affiliated with Defendant Iker and/or the Southern Cone.

using Subject Property over new revenue in departure from their normal course of business, such as by encouraging other Defendants or contributors to reduce or redirect contributions;

- f. **SHALL** maintain the balances of all bank accounts of any character or kind that are Subject Property, including depository and investment accounts, at or above the account balances of November 15, 2008 plus any post-11/15/2008 interest, income, or increased market value attributable to those pre-11/15/2008 funds. If for any reason Defendants desire to withdraw funds from said accounts so that an account will fall below those levels, Defendants must first notify the parties and after a hearing demonstrating why such withdrawals are necessary in the normal course of business, obtain leave of Court or written agreement of the Local Episcopal Parties to make such withdrawals;
- g. **SHALL** provide to Plaintiffs true and complete copies of documents sufficient to demonstrate Defendants' compliance with this Order; to wit, within 10 days of the date of this Order, Defendants shall provide to Plaintiffs true and complete copies of the budgets initially adopted by all Defendants, respectively, for 2011, and, for the duration of this Order, Defendants shall provide to Plaintiffs within 10 days of receipt true and complete copies of all monthly bank statements for all Subject Property accounts, and all audits, financial statements, and financial reports prepared by or for Defendant Diocese's Finance Committee and Executive Committee, Defendant Corporation's Trustees, Defendants' Board of Directors of Camp Crucis, and the vestries, finance committees, investment committees, and bishops' committees of the individual congregations, respectively; Defendants shall also provide copies to

Plaintiffs of any such statements provided to any potential lender or other third party, within 10 days of providing those statements, as well as any other documentation necessary to confirm compliance with this Order;

- h. **SHALL** notify the parties and after hearing obtain leave of Court or written agreement of the Local Episcopal Parties before increasing the balance of indebtedness on the \$3.5 million line of credit from Jude Funding, Inc. or on any other debt allegedly secured by Subject Property, and further provided that this provision does not constitute an admission by Plaintiffs that any purported lien on Subject Property is valid, nor do Plaintiffs waive any rights regarding same including pending claims to declare such transactions void;
- i. **SHALL** jointly with Plaintiffs instruct all trustees of trusts, foundations, and other entities that are holding Subject Property not to make further distributions without prior consent of both Plaintiffs and Defendants or by leave of Court; and
- j. **SHALL** notify the Court and Plaintiffs immediately of any significant change in Defendants' circumstances.

Defendants may come before the Court to seek modification of any term of this Order upon a showing that such modification is reasonably necessary under Texas Rule of Appellate Procedure 24, including under 24.2(d). Any party may come before the Court to seek modification of the Order pursuant to Rule 24, including 24.3(a)(2).

IT IS SO ORDERED.

Signed this ____ day of June, 2011.

JUDGE PRESIDING

EXHIBIT B

CAUSE NO. 141-252083-11

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

**ORDER ON THE LOCAL EPISCOPAL PARTIES’
OBJECTIONS TO USE OF AFFIDAVITS**

Came on for consideration the Episcopal Parties’ oral objections to the use of affidavits in connection with post-judgment and supersedeas bond proceedings, the Episcopal Parties’ objections to Affidavit of Charles A. Hough, III (filed on January 31, 2011), the Episcopal Parties’ objections to the two affidavits of Jane Parrott contained in the Episcopal Parties’ Motion to Strike Affidavits of Jane Parrott (filed on May 16, 2011), and the Episcopal Parties’ oral objections to the Third Affidavit of Jane Parrott at the May 19, 2011 hearing. The Court has reviewed the affidavits filed in support of Defendants’ Motion to Set Supersedeas Bond, the arguments of counsel, and the applicable law.

It is therefore ORDERED that the objections listed above are **overruled** and that the affidavits of Charles A. Hough, III, Jane R. Parrott, and Sue Turnage **will be** considered as evidence in the post-judgment and supersedeas bond proceedings.

IT IS SO ORDERED.

Signed this ____ day of June, 2011.

JUDGE PRESIDING