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6 Attorneys for Nominal Defendant
7 Dwelling Place Anaheim, f/k/a Vineyard
Christian Fellowship of Anaheim (erroneously named
8 as Vineyard Christian Fellowship of Anaheim, Inc.
d/b/a Dwelling Place Anaheim)

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ORANGE

12 CAROL WIMBER, STEVE BRAY, NANCY
13 BRAY, STEPHANIE RUPPE, DAVID
EDMONDSON, LANCE PITTLUCK, DON
14 SALLADIN, JOE GILLENLINE, JAMES
GILLENLINE, each individually and
15 derivatively on behalf of VINEYARD
CHRISTIAN FELLOWSHIP OF ANAHEIM,
16 INC., dba DWELLING PLACE ANAHEIM, a
California Nonprofit Religious corporation,

17 Plaintiffs,

18 v.

19 ALAN SCOTT, an individual, KATHRYN
SCOTT, an individual, JEREMY RIDDLE, an
20 individual, KATIE RIDDLE, an individual,
GREGORY SCHERER, an individual,
21 BANNING LEIBSCHER, an individual,
JULIAN ADAMS, an individual, and DOES 1-
22 50, inclusive,

23 Defendants.

24 DWELLING PLACE ANAHEIM d/b/a
VINEYARD CHRISTIAN FELLOWSHIP OF
25 ANAHEIM, a California Nonprofit Religious
corporation,

26 Nominal Defendant.

Case No. 30-2022-01291272-CU-FR-WJC

**DECLARATION OF JOHN C. PEIFFER
II IN SUPPORT OF NOMINAL
DEFENDANT'S DEMURRER TO
PLAINTIFFS' COMPLAINT;
EXHIBIT A**

Hon. Sheila Recio

Date: June 2, 2023
Time: 9:30 a.m.
Dept. W08
Reservation ID: 73949067

Action Filed: November 10, 2022
Trial Date: No Date Set

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I, John C. Peiffer II, declare as follows:

1. I am an attorney and member in good standing of the State Bar of California. I am a partner with the law firm of Brown & Streza, LLP, counsel of record in this action for the Nominal Defendant, Dwelling Place Anaheim, formerly known as and sued in this action as Vineyard Christian Fellowship of Anaheim. I make this declaration pursuant to Code of Civil Procedure section 430.41(a)(3) in support of the Nominal Defendant's Demurrer to Plaintiffs' Complaint. Except as otherwise noted, I state the following of my own knowledge and, if called as a witness, could and would testify completely thereto.

2. On February 4, 2023, pursuant to Code of Civil Procedure section 430.41, I sent a letter to Nathan R. Klein of the law firm of Tyler & Bursch, LLP, counsel for the Plaintiffs in this action, informing him of the Nominal Defendant's intent to demur to the Complaint in this action, discussing in detail the grounds and authority for such demurrers. A true and correct copy of my letter is attached hereto as **Exhibit A**.

3. On February 7, 2023, along with counsel from the Snell & Wilmer law firm representing the Individual Defendants in this action, I participated in a Zoom conference with Mr. Klein to further meet and confer regarding the Nominal Defendant's intent to demur to the Complaint. Mr. Klein indicated that he did not agree with the positions set forth in my "meet and confer" letter and that his clients did not intend to seek to withdraw or amend any of their claims or pleadings in light of the planned demurrers. Thus, the parties were unable to reach an agreement resolving the objections raised in the accompanying demurrers.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 9, 2023, at Napa, California.



John C. Peiffer II

Exhibit A

February 4, 2023

VIA EMAIL & U.S. MAIL

Robert H. Tyler
Nathan R. Klein
TYLER & BURSCH, LLP
25026 Las Brisas Road
Murrieta, CA 92562

RE: *Wimber, et al. v. Scott, et al.*, Case No. 30-2022-01291272-CU-FR-CJC

Dear Counsel:

We represent the nominal Defendant Dwelling Place Anaheim, a California nonprofit religious corporation, formerly known as Vineyard Christian Fellowship of Anaheim (the “**Church**”). We are writing pursuant to California Code of Civil Procedure § 430.41 to meet and confer ahead of filing a demurrer to your Complaint in the above-titled action.

For the reasons articulated in attorney Steven Graham’s meet and confer letter dated February 3, 2023 (a copy of which is enclosed for your convenience), we do not believe your clients have standing to bring a derivative action on behalf of the Church. We refer you to Mr. Graham’s letter which articulates the specific problems presented by your clients’ attempt to raise derivative claims on behalf of the Church. Similarly, regarding your claims against the Church (*i.e.*, the Third through Fifth Causes of Action), our demurrer will raise arguments similar to those articulated in Mr. Graham’s letter.

Beyond the issues addressed in Mr. Graham’s letter, however, our demurrer also will challenge the Complaint—as a whole—on the basis of the Church Autonomy Doctrine developed under the First Amendment to the United States Constitution. Simply put, this ecclesiastical dispute is non-justiciable because it is beyond the jurisdiction and competence of the civil courts.

The Church Autonomy Doctrine is a longstanding limitation on the state’s power to regulate church affairs. Though it originally developed through state and federal Circuit court decisions, in recent decades the United States Supreme Court’s case law has articulated how the First Amendment’s religion clauses provide crucial protection for church autonomy by limiting civil courts’ involvement in ecclesiastical matters.

As the Supreme Court explained, the First Amendment’s religion clauses protect religious institutions’ autonomy and their right “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru* (2020) 140 S. Ct. 2049, 2055 (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.* (1952) 344

U.S. 94, 116). Although religious institutions do not enjoy general immunity from secular laws, most importantly for this dispute, the First Amendment's religion clauses protect churches' "autonomy with respect to internal management decisions that are essential to the institution's central mission." *Our Lady of Guadalupe*, 140 S. Ct. at 2060.

Applying Church Autonomy Doctrine principles, the Supreme Court has deferred to church authority in legal disputes involving matters as diverse as real property (*Watson v. Jones* (1871) 80 U.S. 679; *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church* (1969) 393 U.S. 440, 449–50); bequests in wills (*Gonzalez v. Roman Catholic Archbishop of Manila* (1929) 280 U.S. 1, 16); compliance with internal procedures (*Serbian Eastern Orthodox Diocese for U.S.A. & Canada v. Milivojevich* (1976) 426 U.S. 696, 721); and, among other issues, employment decisions involving ministers (*Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC* (2012) 565 U.S. 171, 188–89, *accord. Our Lady of Guadalupe*, 140 S. Ct. 2049).

Importantly, the Supreme Court has invalidated state court actions that relied upon state laws to determine matters of church governance and control. In *Kedroff*, for example, the Supreme Court invalidated the New York Court of Appeals' application of a state statute that attempted to transfer control over Russian Orthodox churches. 344 U.S. at 110. In reversing the New York high court's opinion, the Supreme Court explained that "[b]y fiat [the state law] displaces one church administrator with another. It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment." *Id.* at 119.

Similarly, the court has explained that the United States Constitution restrains civil courts from weighing in on disputes over whether churches adhered to their internal governance procedures. In *Milivojevich*, for example, the Supreme Court reversed the Illinois state courts' involvement in an intra-church dispute because the "case essentially involve[d] not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals." 426 U.S. at 709. The Court further explained that "[e]ven when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs." For that reason, "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." *Id.* quoting *Hull Church*, 393 U.S. at 449.

As indicated in Mr. Graham's letter, California State Courts have similarly recognized that the First Amendment's Church Autonomy Doctrine principles impose limits on civil courts. *See, e.g., Metropolitan Philip v. Steiger* (2000) 82 Cal.App.4th 923 (explaining that the trial court substituting its judgment for that of church authorities in a dispute over church identity and property would violate the First Amendment).

The First Amendment's Church Autonomy Doctrine principles apply here. It makes no difference that you have styled your lawsuit as a fraud action. At bottom, your complaint challenges the internal management decisions of the Church's Senior Pastor and Board

of Directors, specifically their prayerful decision to end the Church's affiliation with Vineyard USA and the so-called "Vineyard Movement."

The disputed events and decisions leading to the Church's disassociation from Vineyard USA goes directly to the heart of the Church's central mission—how best to pursue the Church's religious purposes and objectives, as articulated in the Church's articles of incorporation and bylaws since its founding. Your clients' claims represent a fundamental challenge to the ecclesiastical decisions of the Church's proper spiritual leadership and legal authority. Further, your requests for injunctive relief displacing the Church's leadership make the real nature of this dispute clear. Because of the First Amendment's Church Autonomy Doctrine principles implicated, this matter is improper for resolution in the civil courts. Our forthcoming demurrer will articulate more thoroughly these principles and those referenced above.

We are, of course, willing to talk through these issues with you. Please do not hesitate to call if you would like to discuss them.

Very truly yours,



John C. Peiffer II

Enclosure (as stated)

Cc: Casey S. Hale
Paul D. Schmitt
Steven T. Graham
Howard M. Privette

Snell & Wilmer

600 ANTON BLVD, SUITE 1400
COSTA MESA, CA 92626-7689
714.427.7000 P
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Steven T. Graham
(714) 427-7002
sgraham@swlaw.com

February 3, 2023

EMAIL & FIRST CLASS MAIL

Robert H. Tyler, Esq.
Nathan R. Klein, Esq.
Tyler & Bursch, LLP
25026 Las Brisas Road
Murrieta, California 92562

Re: *Wimber, et al. v. Scott, et al.*,
Case No. 30-2022-01291272-CU-FR-CJC (Orange County Superior Court)

Dear Counsel:

As you know, this firm represents Alan Scott, Kathryn Scott, Jeremy Riddle, Katie Riddle, Gregory Scherer, Banning Leibscher, and Julian Adams (the “Individual Defendants”) in relation to the above-referenced action (the “Action”). Pursuant to California Code of Civil Procedure section 430.41, we are writing to “meet and confer” with respect to our clients’ intention to file a demurrer to the Complaint in the Action. The demurrer will be directed to the Complaint as a whole and to each of the five purported causes of action alleged therein. We briefly summarize grounds for the demurrer below.

Lack of Subject Matter Jurisdiction

As a threshold matter, the Court lacks jurisdiction over the subject matter of the claims alleged in the Complaint. The Complaint seeks to have a secular civil court nullify the purely ecclesiastical decision of Dwelling Place Anaheim (the “Church”) to disassociate from a group of churches that identify as “Vineyard” churches. The Complaint seeks such relief by various means, but every purported cause of action would by necessity require the Court to evaluate and decide issues related to Alan and Kathryn Scott’s personal religious beliefs and teachings and/or the doctrinal and pastoral direction of the Church. Such ecclesiastical matters “are not reviewable by the secular courts.” *Maxwell v. Brougher* (1950) 99 Cal. App. 2d 824, 826. The Complaint, and each purported cause of action alleged therein, must be dismissed on this ground alone. In addition, each cause of action is subject to dismissal on any of a number of alternate grounds.

Robert H. Tyler, Esq.
Nathan R. Klein, Esq.
February 3, 2023
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First Cause of Action.

(a) The purported claim of fraud in relation to alleged misstatements by Alan and Kathryn Scott (the “Scotts”) prior to being hired to serve as Senior Pastors of the Church does not fall within any of the narrowly circumscribed matters for which a representative action is permitted on behalf of a Nonprofit Religious Corporation under the California Corporations Code. *See* Cal. Corp. Code §§ 9141(a)(2), 9142(a)(1), 9143(a), 9243(c), & 9245(b)(1).

(b) The Plaintiffs do not have standing to bring a representative action on behalf of the Church insofar as they are not “members” of the Church within the meaning of Corporations Code sections 5056 and 9332(a) and are not otherwise permitted to bring a representative action under the Church’s Articles of Incorporation and Bylaws. *See* Cal. Corp. Code §§ 9141(a)(2), 9142(a)(1), 9143(a), 9243(c), & 9245(b)(1).

(c) The Plaintiffs do not have standing to bring a representative action on behalf of the Church insofar as they do not satisfy the prerequisites of a representative action set forth in Corporations Code section 5710(b) and/or other rules of like kind. *See* Cal. Corp. Code § 5710(b).

(d) The Plaintiffs do not have standing to bring a representative action on behalf of the Church insofar as, to the extent that they claim to have satisfied Corporations Code section 5710(b)(2), they fail to allege particular facts sufficient for the Court to disregard any decision by the Church’s board of directors not to take action sought by Plaintiffs. *See Bezirdjian v. O’Reilly* (2010) 183 Cal. App. 4th 316, 322-23; *Findley v. Garrett* (1952) 109 Cal. App. 2d 166, 174-79.

(e) The allegations of the Complaint do not plead the elements of fraud with specificity, including falsity of any statements, materiality, justifiable reliance, scienter/intent to defraud, and damages, either on behalf of the Church or on behalf of themselves as individuals. *See Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645; *Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216-217. Furthermore, to the extent that Plaintiffs purport to bring claims related to their past tithing, tithes were not paid to the Individual Defendants and therefore no claim could be brought against them to recover any such amounts. Nor could tithes be recovered from the Church. *See* Cal. Corp. Code § 9143.

(f) The claim is barred by the applicable 3-year statute of limitations. Cal. Civ. Proc. Code § 338(d).

Second Cause of Action.

(a) The purported claim of negligent misrepresentation in relation to alleged misstatements by the Scotts prior to being hired to serve as Senior Pastors of the Church does not fall within any of the narrowly circumscribed matters for which a representative action is permitted on behalf of

Robert H. Tyler, Esq.
Nathan R. Klein, Esq.
February 3, 2023
Page 3

a Nonprofit Religious Corporation under the California Corporations Code. *See* Cal. Corp. Code §§ 9141(a)(2), 9142(a)(1), 9143(a), 9243(c), & 9245(b)(1).

(b) The Plaintiffs do not have standing to bring a representative action on behalf of the Church insofar as they are not “members” of the Church within the meaning of Corporations Code sections 5056 and 9332(a) and are not otherwise permitted to bring a representative action under the Church’s Articles of Incorporation and Bylaws. *See* Cal. Corp. Code §§ 9141(a)(2), 9142(a)(1), 9143(a), 9243(c), & 9245(b)(1).

(c) The Plaintiffs do not have standing to bring a representative action on behalf of the Church insofar as they do not satisfy the prerequisites of a representative action set forth in Corporations Code section 5710(b) and/or other rules of like kind. *See* Cal. Corp. Code § 5710(b).

(d) The Plaintiffs do not have standing to bring a representative action on behalf of the Church insofar as, to the extent that they claim to have satisfied Corporations Code section 5710(b)(2), they fail to allege particular facts sufficient for the Court to disregard any decision by the Church’s board of directors not to take action sought by Plaintiffs. *See Bezirdjian v. O’Reilly* (2010) 183 Cal. App. 4th 316, 322-23; *Findley v. Garrett* (1952) 109 Cal. App. 2d 166, 174-79.

(e) The allegations of the Complaint do not plead the elements of negligent misrepresentation with particularity, either on behalf of the Church or on behalf of themselves as individuals. *See Majd v. Bank of Am., N.A.* (2015) 243 Cal.App. 4th 1293, 1307, *as modified* (Jan. 14, 2016); *Charnay v. Cobert* (2006) 145 Cal. App. 4th 179, 185 n.14. For example, any alleged promise about what the Scotts might or might not do in the future cannot support a cause of action for negligent misrepresentation. *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal. App. 4th 153, 158 & 159.

(d) The claim is barred by the applicable 2-year or 3-year statute of limitations. Cal. Civ. Proc. Code §§ 338(d), 339(1).

Third Cause of Action.

(a) The purported claim of breach of fiduciary duty in relation to the disassociation of the Church from the Vineyard churches does not fall within any of the narrowly circumscribed matters for which a representative action is permitted on behalf of a Nonprofit Religious Corporation under the California Corporations Code. *See* Cal. Corp. Code §§ 9141(a)(2), 9142(a)(1), 9143(a), 9243(c), & 9245(b)(1).

(b) The Plaintiffs do not have standing to bring a representative action on behalf of the Church insofar as they are not “members” of the Church within the meaning of Corporations Code sections 5056 and 9332(a) and are not otherwise permitted to bring a representative action under

Robert H. Tyler, Esq.
Nathan R. Klein, Esq.
February 3, 2023
Page 4

the Church's Articles of Incorporation and Bylaws. *See* Cal. Corp. Code §§ 9141(a)(2), 9142(a)(1), 9143(a), 9243(c), & 9245(b)(1).

(c) The Plaintiffs do not have standing to bring a representative action on behalf of the Church insofar as they do not satisfy the prerequisites of a representative action set forth in Corporations Code section 5710(b) and/or other rules of like kind. *See* Cal. Corp. Code § 5710(b).

(d) The Plaintiffs do not have standing to bring a representative action on behalf of the Church insofar as, to the extent that they claim to have satisfied Corporations Code section 5710(b)(2), they fail to allege particular facts sufficient for the Court to disregard any decision by the Church's board of directors not to take action sought by Plaintiffs. *See Bezirdjian v. O'Reilly* (2010) 183 Cal. App. 4th 316, 322-23; *Findley v. Garrett* (1952) 109 Cal. App. 2d 166, 174-79.

(e) The allegations of the Complaint do not plead the elements of breach of fiduciary duty, either on behalf of the Church or on behalf of themselves as individuals. *See generally* Cal. Corp. Code §§ 9240-9247.

Fourth Cause of Action.

(a) The Fourth Cause of Action appears to be brought as a direct action by the Plaintiffs against the Individual Defendants. To the extent that it also purports to be brought as a derivative action on behalf of the Church, it is subject to each of the standing arguments set forth above.

(b) In any event, Plaintiffs have cannot bring a direct claim and there can be no justiciable controversy between Plaintiffs and the Individual Defendants insofar as Plaintiffs have no right under Corporations Code sections 9511 and 9512, or under the Church's bylaws, to inspect the records described in the Complaint and Plaintiffs have no standing under Corporations Code sections 9220-9223 to seek to remove the Church's board of directors. Nor do Plaintiffs plead facts that would be sufficient to justify any such relief. *See generally* Cal. Corp. Code §§ 9240-9247.

Fifth Cause of Action.

(a) The Fifth Cause of Action appears to be brought as a direct action by the Plaintiffs against the Individual Defendants. To the extent that it also purports to be brought as a derivative action on behalf of the Church, it is subject to each of the standing arguments set forth above.

(b) In any event, Plaintiffs cannot bring a direct claim insofar as Plaintiffs have no standing under Corporations Code section 9141(a)(1) to seek to enjoin any activity of the Church or its officers and directors and no standing under Corporations Code sections 9220-9223 to seek to remove the Church's board of directors. Nor do Plaintiffs plead facts that would be sufficient to justify any such relief. *See generally* Cal. Corp. Code §§ 9240-9247.

Snell & Wilmer

Robert H. Tyler, Esq.
Nathan R. Klein, Esq.
February 3, 2023
Page 5

We are available to discuss these matters live with you by telephone. Please let us know if you would like to do so and what time(s) you might be available.

Very truly yours,

Snell & Wilmer

A handwritten signature in blue ink that reads "Steven T. Graham". The signature is written in a cursive style.

Steven T. Graham

cc: John C. Peiffer, Esq.
Howard M. Privette, Esq.

4888-9966-1134.2

3 **PROOF OF SERVICE**

4 I am employed in the County of Orange, State of California. I am over the age
5 of 18 and not a party to the within action; my business address is 600 Anton Boulevard,
6 Suite 1400, Costa Mesa, California 92626.

7 On February 9, 2023, I served, in the manner indicated below, the foregoing
8 document described as **Declaration of John C. Peiffer II in Support of Nominal**
9 **Defendant's Demurrer to Plaintiffs' Complaint; Exhibit A** on the interested parties
10 in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa
11 Mesa, addressed as follows:

12 See attached Service List.

- 13 BY REGULAR MAIL: I caused such envelopes to be deposited in the United
14 States mail at Costa Mesa, California, with postage thereon fully prepaid. I am
15 readily familiar with the firm's practice of collection and processing
16 correspondence for mailing. It is deposited with the United States Postal Service
17 on that same day and that practice was followed in the ordinary course of
18 business for the service herein attested to. (C.C.P. § 1013(a)).
- 19 BY ELECTRONIC MAIL/E-SERVICE: My office caused such document(s) to
20 be delivered electronically to the following email addresses,
21 nklein@tylerbursch.com; msarmiento@tylerbursch.com;
22 spadilla@tylerbursch.com; sgraham@swlaw.com; hprivette@swlaw.com
- 23 BY OVERNIGHT DELIVERY: I caused such envelope to be delivered by air
24 courier, with next day service, to the offices of the addressee(s). (C.C.P. §
25 1013(c)(d)).
- 26 BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to
27 the offices of the addressees. (C.C.P. § 1011(a)(b)).

28 I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

Executed on February 9, 2023, at Costa Mesa, California.



Diane Williams

1 ***Carol Wimber, et al. v. Alan Scott, et al.***
2 ***Orange County Superior Court, Case No. 30-2022-01291272-CU-FR-WJC***

3 **Service List**

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