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6 Attorneys for Individual Defendants
Alan Scott, Kathryn Scott, Jeremy Riddle, Katie
7 Riddle, Gregory Scherer, Banning Leibscher, and
Julian Adams
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ORANGE

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

16 Plaintiffs,

17 v.

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

22 Defendants.

23 VINEYARD CHRISTIAN FELLOWSHIP OF
ANAHEIM, INC., dba DWELLING PLACE
24 ANAHEIM, a California Nonprofit Religious
corporation,
25 Nominal Defendant.

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

**DECLARATION OF STEVEN T.
GRAHAM IN SUPPORT OF
INDIVIDUAL DEFENDANTS'
DEMURRERS TO PLAINTIFFS'
COMPLAINT; EXHIBIT A**

Hon. Sheila Recio

Date: June 2, 2023
Time: 9:30 a.m.
Dept. W08
Reservation ID: 73949066

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

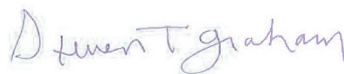
1 I, Steven T. Graham, declare as follows:

2 1. I am an attorney and member in good standing of the State Bar of California. I am
3 a partner with the law firm of Snell & Wilmer L.L.P., counsel of record in this action for the
4 Individual Defendants Alan Scott, Kathryn Scott, Jeremy Riddle, Katie Riddle, Gregory Scherer,
5 Banning Leibscher, and Julian Adams (“Individual Defendants”). I make this declaration pursuant
6 to Code of Civil Procedure section 430.41(a)(3) in support of the Individual Defendants’
7 Demurrers to Plaintiffs’ Complaint. Except as otherwise noted, I state the following of my own
8 knowledge and, if called as a witness, could and would testify completely thereto.

9 2. On February 3, 2023, pursuant to Code of Civil Procedure section 430.41, I sent a
10 letter to Nathan R. Klein of the law firm of Tyler & Bursch, LLP, counsel for the Plaintiffs in this
11 action, informing him of the Individual Defendants’ intent to demur to the Complaint in this
12 action, discussing in detail the grounds and authority for such demurrers. A true and correct copy
13 of my letter is attached hereto as **Exhibit A**.

14 3. On February 7, 2023, along with my partner Howard Privette and counsel from
15 the Brown & Streza law firm representing the Nominal Defendant in this action, I participated in
16 a Zoom conference with Mr. Klein to further meet and confer regarding the Individual
17 Defendants’ and Nominal Defendant’s intent to demur to the Complaint. Mr. Klein indicated that
18 he did not agree with the positions set forth by the Individual Defendants and by the Nominal
19 Defendant in their “meet and confer” letters and that his clients did not intend to seek to withdraw
20 or amend any of their claims or pleadings in light of the planned demurrers. Thus, the parties
21 were unable to reach an agreement resolving the objections raised in the accompanying
22 demurrers.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct. Executed this 9th day of February, 2023, at Costa Mesa, California.

25 

26 _____
27 Steven T. Graham
28

Exhibit A

Snell & Wilmer

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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.

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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

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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.
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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.

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Nathan R. Klein, Esq.
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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



Steven T. Graham

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

4888-9966-1134.2

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

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,
Suite 1400, Costa Mesa, California 92626.


6 On February 9, 2023, I served, in the manner indicated below, the foregoing
7 document described as **DECLARATION OF STEVEN T. GRAHAM IN SUPPORT**
8 **OF INDIVIDUAL DEFENDANTS' DEMURRERS TO PLAINTIFFS'**
9 **COMPLAINT; EXHIBIT A** on the interested parties in this action by placing true
copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

10 See attached Service List.

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

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

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

27 
28 Diane Williams

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

Service List

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