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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

**NOTICE OF HEARING ON
DEMURRERS;**

**DEMURRERS OF INDIVIDUAL
DEFENDANTS ALAN SCOTT,
KATHRYN SCOTT, JEREMY RIDDLE,
KATIE RIDDLE, GREGORY
SCHERER, BANNING LEIBSCHER,
AND JULIAN ADAMS TO
PLAINTIFFS' COMPLAINT;**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Hon. Sheila Recio

[Filed with Request for Judicial Notice and
Declarations of Steven T. Graham, James
W. Renwick and Alan Scott]

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 **TO ALL PARTIES, THE COURT, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 2, 2023, at 9:30 a.m., or as soon thereafter as the
3 parties may be heard before the Honorable Sheila Recio in Department W08 of the above-entitled
4 court, located at 8141 13th Street, Westminster, California, there will be a hearing on the
5 demurrers of Defendants Alan Scott, Kathryn Scott, Jeremy Riddle, Katie Riddle, Gregory
6 Scherer, Banning Leibscher, and Julian Adams (collectively, the “Individual Defendants”) to the
7 Complaint filed in this action on or about November 10, 2022 by Plaintiffs Carol Wimber, Steve
8 Bray, Nancy Bray, Stephanie Ruppe, David Edmondson, Lance Pittluck, Don Salladin, Joe
9 Gillentine, James Gillentine (collectively, the “Plaintiffs”), and to each purported cause of action
10 alleged therein.

11 The Individual Defendants’ demurrers are and will be brought on the grounds that, with
12 respect to the Complaint as a whole and to each purported cause of action alleged therein, (a) the
13 Court lacks jurisdiction over the subject matter of Plaintiffs’ alleged claims, (b) the Plaintiffs, and
14 each of them, lack capacity and standing to bring the purported causes of action allegedly brought
15 on behalf of or for the benefit of the Nominal Defendant, (c) the allegations of the Complaint, and
16 each purported cause of action therein, fail to state a claim, and (d) the claims are barred by the
17 applicable statutes of limitations and laches.

18 The demurrers follow the Individual Defendants’ timely compliance with the meet-and-
19 confer requirements of California Code of Civil Procedure section 430.41. As discussed in the
20 accompanying Declaration of Steven T. Graham, Plaintiffs’ counsel and Defendants’ counsel
21 were unable to come to an agreement on the issues raised in this Demurrer. Code Civ. Proc.,
22 § 430.41(a)(3)(A).

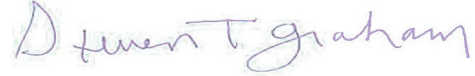
23 The demurrers are and will be brought pursuant to California Code of Civil Procedure
24 sections 430.10 and 430.30 and are and will be based on this Notice of Hearing, the attached
25 Demurrers and Memorandum of Points and Authorities, the concurrently-filed Declarations of
26 James W. Renwick and Alan Scott and Exhibits thereto, the concurrently-filed Request for
27 Judicial Notice, the concurrently-filed Demurrer of Nominal Defendant Dwelling Place Anaheim
28 f/k/a Vineyard Christian Fellowship of Anaheim (the “Church”) and all papers filed in support

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thereof, the other pleadings and papers on file in this action, and such other or further evidence and argument as may be permitted prior to the Court's ruling on the demurrers.

Dated: February 9, 2023

SNELL & WILMER L.L.P.



By: _____
Steven T. Graham
Howard M. Privette

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

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DEMURRERS

1
2 Defendants Alan Scott, Kathryn Scott, Jeremy Riddle, Katie Riddle, Gregory Scherer,
3 Banning Leibscher, and Julian Adams (collectively, the “Individual Defendants”), and each of
4 them, hereby demur to the Complaint filed in this action, and to each purported cause of action
5 alleged therein, as follows:

I.

Demurrer to First Cause of Action for Fraud

6
7
8 The Individual Defendants, and each of them, demur to the purported First Cause of
9 Action for Fraud alleged in the Complaint on each of the following grounds:

- 10 1. The court has no jurisdiction of the subject of the purported First Cause of
11 Action alleged in the Complaint (Cal. Code Civ. Proc. § 430.10(a));
- 12 2. The purported First Cause of Action fails because none of the persons who
13 filed the pleading has the legal capacity and/or standing to sue for or on
14 behalf of the Nominal Defendant Vineyard Christian Fellowship of
15 Anaheim, Inc., dba Dwelling Place Anaheim (the “Church”) (Cal. Code
16 Civ. Proc. § 430.10(b));
- 17 3. The purported First Cause of Action fails to state facts sufficient to state a
18 cause of action against the Individual Defendants, or any of them (Cal.
19 Code Civ. Proc. § 430.10(e));
- 20 4. The purported First Cause of Action is barred by the applicable 3-year
21 statute of limitations (Cal. Code Civ. Proc. § 338(d)), and/or the equitable
22 doctrine of laches.

II.

Demurrer to Second Cause of Action for Negligent Misrepresentation

23
24 The Individual Defendants, and each of them, demur to the purported Second Cause of
25 Action for Negligent Misrepresentation alleged in the Complaint on each of the following
26 grounds:
27
28

- 1 5. The court has no jurisdiction of the subject of the purported Second Cause
- 2 of Action alleged in the Complaint (Cal. Code Civ. Proc. § 430.10(a));
- 3 6. The purported Second Cause of Action fails because none of the persons
- 4 who filed the pleading has the legal capacity and/or standing to sue for or
- 5 on behalf of the Church (Cal. Code Civ. Proc. § 430.10(b));
- 6 7. The purported Second Cause of Action fails to state facts sufficient to state
- 7 a cause of action against the Individual Defendants, or any of them (Cal.
- 8 Code Civ. Proc. § 430.10(e)).
- 9 8. The purported Second Cause of Action is barred by the applicable 2- or 3-
- 10 year statute of limitation (Cal. Code Civ. Proc. § 338(d), 339(1)) and/or the
- 11 equitable doctrine of laches.

III.

Demurrer to Third Cause of Action for Breach of Fiduciary Duty

12 The Individual Defendants, and each of them, demur to the purported Third Cause of
13 Action for Breach of Fiduciary Duty alleged in the Complaint on each of the following grounds:

- 14 9. The court has no jurisdiction of the subject of the purported Third Cause of
- 15 Action alleged in the Complaint (Cal. Code Civ. Proc. § 430.10(a));
- 16 10. The purported Third Cause of Action fails because none of the persons
- 17 who filed the pleading has the legal capacity and/or standing to sue for or
- 18 on behalf of the Church (Cal. Code Civ. Proc. § 430.10(b));
- 19 11. The purported Third Cause of Action fails to state facts sufficient to state a
- 20 cause of action against the Individual Defendants, or any of them (Cal. Code
- 21 Civ. Proc. § 430.10(e));
- 22 12. The purported Third Cause of Action is barred by the equitable doctrine of
- 23 laches.

IV.

Demurrer to Fourth Cause of Action for Declaratory Relief

24 The Individual Defendants, and each of them, demur to the purported Fourth Cause of

1 Action for Declaratory Relief alleged in the Complaint on each of the following grounds:

- 2 13. The court has no jurisdiction of the subject of the purported Fourth Cause
3 of Action alleged in the Complaint (Cal. Code Civ. Proc. § 430.10(a));
- 4 14. The purported Fourth Cause of Action fails because none of the persons
5 who filed the pleading has the legal capacity and/or standing to sue (Cal.
6 Code Civ. Proc. § 430.10(b));
- 7 15. The purported Fourth Cause of Action fails to state facts sufficient to state a
8 cause of action against the Individual Defendants, or any of them (Cal. Code
9 Civ. Proc. § 430.10(e))
- 10 16. The purported Fourth Cause of Action is barred by the equitable doctrine of
11 laches.

12 **V.**

13 **Demurrer to Fifth Cause of Action for Permanent Injunction**

14 The Individual Defendants, and each of them, demur to the purported Fifth Cause of
15 Action for Permanent Injunction alleged in the Complaint on each of the following grounds:

- 16 17. The court has no jurisdiction of the subject of the purported Fifth Cause of
17 Action alleged in the Complaint (Cal. Code Civ. Proc. § 430.10(a));
- 18 18. The purported Fifth Cause of Action fails because none of the persons who
19 filed the pleading has the legal capacity and/or standing to sue (Cal. Code
20 Civ. Proc. § 430.10(b));
- 21 19. The purported Fifth Cause of Action fails to state facts sufficient to state a
22 cause of action against the Individual Defendants, or any of them (Cal. Code
23 Civ. Proc. § 430.10(e))
- 24 20. The purported Fifth Cause of Action is barred by the equitable doctrine of laches.

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Dated: February 9, 2023

Respectfully submitted,

SNELL & WILMER L.L.P.



By: _____

Steven T. Graham
Howard M. Privette

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

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 As set forth in the Demurrer filed this same date by the Nominal Defendant, Dwelling
4 Place Anaheim (the “Church”),¹ the present dispute is purely ecclesiastical in nature.
5 Consequently, this Court does not have subject matter jurisdiction over Plaintiffs’ claims.
6 Similarly, as explained in the Church’s Demurrer, Plaintiffs lack standing to bring any derivative
7 claims on behalf of the Church. Defendants Alan Scott, Kathryn Scott, Jeremy Riddle, Katie
8 Riddle, Gregory Scherer, Banning Leibscher, and Julian Adams (altogether, the “Individual
9 Defendants”) bring their present demurrers based on those same grounds; however, rather than
10 repeat verbatim the arguments that are made in the Church’s Demurrer, the Individual Defendants
11 refer the Court to the Church’s Memorandum of Points and Authorities filed in support of its
12 Demurrer and ask that the Court consider those arguments as incorporated herein by reference.

13 Beyond those threshold issues of jurisdiction and standing, each of Plaintiffs’ five causes
14 of action also fail as a matter of law for additional reasons as set forth herein. The First Cause of
15 Action for purported promissory fraud cannot stand because the alleged “promises” are too vague
16 and indefinite to support a claim, the allegations of falsity and scienter are nonsensical and rely on
17 cherry-picked snippets of language that ignore what the speaker, Alan Scott, actually said, there
18 could be no justifiable reliance in such circumstances, there are no cognizable damages and, in
19 any event, the claim is barred by the statute of limitations and laches. The Second Cause of
20 Action for negligent misrepresentation fails for the same reasons, and because there is no such
21 thing as a negligent false promise. The Third Cause of Action for breach of fiduciary duty is
22 without merit because there are no facts alleged to show that the Board Defendants had a duty
23 with regard to ecclesiastic matters, and the actions taken show the utmost good faith in what they
24 believed to be the best interests of the Church and its congregation. Plaintiffs lack standing to
25 seek the relief sought by the Fourth and Fifth Causes of Action (declaratory relief and a
26 permanent injunction) and such relief is beyond the authority of the Court and without merit.

27 _____
28 ¹ Until January 2023, the Church’s formal corporate name was Vineyard Christian Fellowship of
Anaheim.

1 **II. LEGAL ARGUMENT**

2 **A. Standards on Demurrer**

3 A demurrer challenges defects that appear on the face of the Complaint and from matters
4 that are judicially noticeable under Evidence Code sections 451 or 452. *Blank v. Kirwan* (1985)
5 39 Cal.3d 311, 318; Cal. Code Civ. Proc. § 430.30(a). A demurrer tests the sufficiency of the
6 complaint; to be sufficient, a complaint “must contain a statement of facts which, without the aid
7 of other conjectured facts not stated, shows a complete cause of action.” *Hawkins v. Oakland*
8 *Title Ins. & Guar. Co.* (1958) 165 Cal. App. 2d 116, 122. Contentions, deductions, or conclusions
9 of law do not suffice. *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713. Moreover, simply
10 pleading conclusions of law does not fulfill the ultimate facts requirement. *Perkins v. Super. Ct.*
11 (1981) 117 Cal. App. 3d 1, 6. Thus, the Court should sustain a demurrer where, as here, the
12 allegations fail to state a cause of action or disclose a defense or bar to recovery. Without
13 admitting the truth of the matters alleged in the Complaint, the Individual Defendants base this
14 demurrer on the allegations of the Complaint and those matters which the Court must or may
15 judicially notice, including the matters identified in the accompanying RJN.²

16 **B. The Court Does Not Have Subject Matter Jurisdiction Over This Purely**
17 **Ecclesiastical Dispute.**

18 “Ecclesiastical decisions are not reviewable by the secular courts.” *Maxwell v. Brougher*
19 (1950) 99 Cal. App. 2d 824, 826; *see also Vukovich v. Radulovich* (1991) 235 Cal. App. 3d 281,
20 292-94 (court lacks subject matter jurisdiction over ecclesiastical issues and disputes).
21 “Significantly, such ecclesiastical matters include not only issues of religious doctrine per se, but
22 also issues of membership, clergy credentials and discipline, and church polity and
23 administration.” *Concord Christian Center v. Open Bible Standard Churches* (2005) 132 Cal.
24 App. 4th 1396, 1411. This rule is compelled by the First Amendment of the United States
25 Constitution which, by virtue of the Fourteenth Amendment, precludes this Court from interfering
26 in any way with ecclesiastical questions and disputes. *New v. Kroeger* (2008) 167 Cal. App. 4th

27 _____
28 ² Because the procedural setting of a demurrer requires the Court to accept allegations as true, the
Individual Defendants and Dwelling Place will be posting for the public a Frequently asked Questions
memo to address the incorrect and misleading allegations.

1 800, 815.³ As the United States Supreme Court explained in the seminal case of *Kedroff v. St.*
2 *Nicholas Cathedral of Russian Orthodox Church in North America* (1952) 344 U.S. 94, 119, this
3 means that a court may not “displace[] one church administrator with another” and cannot “pass[]
4 control of matters strictly ecclesiastical from one church authority to another” because
5 “intrud[ing] for the benefit of one segment of a church the power of the state into the forbidden
6 area of religious freedom [is] contrary to the principles of the First Amendment.” Yet that is
7 precisely what Plaintiffs seek to have the Court do in this case. As explained in more detail in the
8 memorandum of points and authorities filed by the Church in support of its demurrer to the
9 Complaint, the Individual Defendants’ demurrers should be sustained for this reason alone.⁴

10 **C. Plaintiffs Lack Standing to Bring Derivative Claims On Behalf of the Church.**

11 The Complaint purports to assert derivative claims on behalf of the Church against the
12 Scotts for fraud and negligent misrepresentation based on statements allegedly made when
13 interviewing for the Senior Pastor position in 2018 (First and Second Causes of Action) and
14 against all the Individual Defendants for breach of fiduciary duty in causing or allowing the
15 Church to disassociate from the Vineyard churches in 2022 (Third Cause of Action). As set forth
16 in more detail in the memorandum of points and authorities filed by the Church in support of its
17 demurrer to the Complaint, none of those claims fall within the carefully delineated scope of the
18 Corporations Code provisions that might allow for a derivative action and, even if they did, the
19 demurrers to these causes of action must be sustained because Plaintiffs are not “members” of the
20 Church who could bring such claims on its behalf. *See* Corp. Code §§ 5036, 5056, 5710, 9141(a),
21 9142(a), 9143(a), 9243(c), & 9245(b).

22
23 ³ The free expression of religion guaranteed by the First Amendment of the United States
24 Constitution is also protected by Article I, Section 4 of the California Constitution.

25 ⁴ Starting at paragraph 30 and continuing, the Complaint admits to the ecclesiastical process of
26 forming a search committee even before meeting Alan Scott, and then conducting due diligence in
27 evaluating each candidate’s spiritual and ecclesiastical qualifications to assume the Senior Pastor
28 position. This process included prayerful consideration, search committee deliberation and Board of
Director prayer and consideration. All of this led to the soulful determination that Alan Scott’s
decades of biblical training, pastoral leadership and personal qualities were the ones the Lord led them
to recognize. From the hiring in early 2018 to February 2022, all Plaintiffs generally supported the
spiritual direction of the church – until the name change and disassociation in February 2022.

1 **D. The Complaint Does Not State A Claim For Fraud.**

2 Plaintiffs’ First Cause of Action purports to state a claim for fraud against the Scotts,
3 alleging that when Alan interviewed for the Church’s Senior Pastor position, “the Scott
4 Defendants explicitly promised to the Search Committee and the Board that they were committed
5 to Vineyard USA and the Vineyard Movement,” as reflected in Alan’s “promise that he was
6 ‘Vineyard through and through’” when “questioned about how another church’s theology
7 influenced him.” (Compl., ¶ 92-95.) Plaintiffs also complain that the Scotts “failed to disclose to
8 the Search Committee and the Board that they were truly dissatisfied with the Vineyard
9 Movement and the Vineyard USA.” (*Id.*, ¶ 98.) According to the Complaint, based on the
10 interviews of the Scotts, the search committee concluded that “leaving the Vineyard was never
11 even a question.” (*Id.*, ¶ 95.) These allegations cannot support a claim of fraud.

12 The elements of fraud are (1) misrepresentation, (2) knowledge of falsity, (3) intent to
13 induce reliance on the misrepresentation, (4) justifiable reliance on the misrepresentation, and (5)
14 resulting damages. *Cansino v. Bank of America* (2014) 224 Cal. App. 4th 1462, 1469.
15 “[A]llegations of fraud involve a serious attack on character, and fairness to the defendant
16 demands that he should receive the fullest possible details of the charge.” *Committee on*
17 *Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216. Thus, fraud must
18 be specifically pleaded, meaning that “[e]very element of the cause of action for fraud must be
19 alleged in the proper manner (*i.e.*, factually and specifically), and the policy of liberal
20 construction of the pleadings will not ordinarily be invoked to sustain a pleading defective in any
21 material respect.” *Id.* Among other things, this requirement is meant to allow the Court to “weed
22 out nonmeritorious actions on the basis of the pleadings.” *Id.* at 216-17. This is such an action.

23 **1. Plaintiffs Do Not Plead Actionable Misstatements**

24 As a threshold matter, Plaintiffs must identify each alleged misstatement and provide facts
25 showing “how, when, where, to whom, and by what means the representations were tendered.”
26 *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645. Here, Plaintiffs do not attribute to Kathryn
27 Scott any specific statement that they contend was false or misleading. Her demurrer to the First
28 Cause of Action should be sustained on that basis alone.

1 With respect to Alan Scott, the only affirmative statements they attribute to him – that he
2 is “Vineyard through-and-through” (Compl., ¶¶ 92-93) and that “out of honor to John and the
3 Wimber family, I would never take this house out of the Vineyard Movement” (*id.*, ¶ 94) – are
4 too vague and indefinite to be actionable. “To be enforceable, a promise must be definite enough
5 that a court can determine the scope of the duty and the limits of performance must be sufficiently
6 defined.” *Ladas v. California State Auto. Assn* (1993) 19 Cal. App. 4th 761, 770. People do not
7 speak in capitalized, defined terms like “Vineyard Movement.” And even if Alan used those exact
8 words, as defined in the Complaint, “Vineyard Movement” refers to a “spiritual awakening,” the
9 use of “modern worship music,” and “congregational participation” – **not** a never-ending
10 devotion to a particular church, denomination, or organization. (*See* Compl., ¶ 24 (defining
11 “Vineyard Movement”).) Those words, then, describe devotion to the spiritual heritage described
12 by John Wimber. They say nothing about the future affiliation of the Church with other churches,
13 or what name the Church might use. Nowhere is it even alleged that Alan affirmatively promised
14 to never change the name of the Church or disassociate from Vineyard USA. Would there be any
15 bounds on such a promise? What would they be? To the extent that Plaintiffs try to read an
16 unqualified promise into the words they ascribe to Alan, they demonstrate why those words are
17 too vague and indefinite to support a claim of fraud and would require the Court to assess every
18 alleged statement only by improperly stepping into ecclesiastical matters involving the meanings
19 of “Vineyard Movement,” “Vineyard through and through,” “Spiritual awakening,” “modern
20 worship music,” and “congregational participation” in all these spiritual endeavors.

21 **2. Plaintiffs Do Not Plead Falsity or Intent to Defraud**

22 The allegations of the Complaint do not support a conclusion that any promise ascribed to
23 Alan was false when made, or that Alan intended to defraud the Church by making it. It is firmly
24 established that “something more than nonperformance is required to prove the defendant’s intent
25 not to perform his promise.” *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 30. Here, given the
26 indefinite nature of the alleged “promises” Plaintiffs ascribe to Alan, there is not even anything
27 that could be deemed a “failure to perform” such “promises.” In particular, there is no allegation
28 the Church has abandoned the spiritual heritage of John Wimber or the “distinctives” that

1 Plaintiffs ascribe to the Vineyard Movement.

2 Plaintiffs try to juxtapose statements that Alan allegedly made to the Church’s Search
3 Committee about being “Vineyard through-and-through” with statements the Scotts allegedly
4 made earlier in 2017 to Mike and Liz Safford and to Phil Strout in which they described their
5 “dissatisfaction” with the Vineyard Movement. (*See* Compl., ¶¶ 83-86.) Once again, such
6 allegations are too vague to support a claim of fraud. Moreover, they make no sense.

7 For example, at the time these statements were allegedly made, Mike Safford was the
8 Church’s Senior Associate Pastor. (Compl., ¶ 83.) As alleged in the Complaint, “[m]any thought
9 Mike Safford would be the next in line to assume the role as Senior Pastor.” (*Id.*) So why would
10 the Scotts have multiple conversations with Alan’s presumptively main rival for the position of
11 Senior Pastor in which they expressed “dissatisfaction” with the Vineyard Movement? If there
12 was an intent to mislead the Church into giving the Senior Pastor position to Alan, why tell the
13 “truth” to the person holding the #2 position in the Church?

14 The lack of merit in these allegations becomes even more clear in relation to Alan’s
15 communication with Phil Strout, who was “Vineyard USA’s then existing National Director.”
16 (Compl., ¶ 86.) The Complaint takes a snippet from an email that Alan sent to Strout and
17 completely mischaracterizes it by arguing that it “express[es] his dissatisfaction with the
18 Vineyard Movement and Vineyard USA.” (*Id.*) Once again, if the Scotts’ plan was to defraud the
19 Church by falsely portraying themselves as “Vineyard through-and-through,” why undermine that
20 position in writing with the National Director of Vineyard USA? In fact, the rest of the email,
21 which the Court may properly consider on demurrer (*see* accompanying RJN), expresses
22 something completely different from what is portrayed in the Complaint. What the email actually
23 said (with the misleading excerpt from the Complaint in italics) was:

24 Yet, the more we have thought about it, the more aware we have
25 become that while we love the Vineyard, and can easily trace God's
26 hand on it in the US, the fractured nature of the movement in OC
27 makes it difficult to attend church locally without causing undue
28 upset to someone we love. *As I mentioned when we were together,*
we love each of the leaders, we just wished they loved each other
well.

Since that isn't the story at the moment, it's not an environment
where we would want to plant our lives or raise our girls. And so

1 *after 29 years of connection with the tribe, we have arrived at the*
2 *painful conclusion that we won't be part of a local vineyard church*
3 *in the next part of our journey.*

4 It goes without saying, that we will continue to champion the
5 movement, and will always be grateful for the way it reflects and
6 demonstrates the kingdom. A further sadness for us, is that we
7 won't get the chance to work alongside you. Nonetheless, just as
8 God has led you to pray for us, so now it is our turn to pray for you.
9 We will be praying for wisdom, courage and kindness for you
10 personally and that God continues to release the US Vineyard and
11 the Vineyard globally into its unique and beautiful destiny.

12 (*Compare* Compl., ¶ 86 with RJN, Ex. 7 (emphasis added)). How does telling Strout that “we
13 love the Vineyard” and “we will continue to champion the movement” reflect on the alleged
14 falsity of anything the Scotts said during the interview process? All that the email expresses is a
15 truthful statement about “the fractured nature of the movement **in OC**” which led the Scott family
16 to not be part of a “local Vineyard church.” Quite simply, there were no false promises.⁵

17 3. **Plaintiffs Do Not Plead Justifiable Reliance**

18 At the time Alan Scott was selected to serve as Senior Pastor, the only reference to
19 “Vineyard” in the Church’s Articles and Bylaws was in the name of the Church. (*See* RJN, Exs. 3
20 & 5.) There was and is no reference to the “Vineyard Movement” or to “Vineyard USA.” There is
21 no reference to an affiliation with any other church or denomination. There is no reference to any
22 Church authority above the Senior Pastor and Board of Directors other than God. (*Id.*, p. 6.)

23 The Bylaws expressly grant the Senior Pastor the authority to make ecclesiastical
24 decisions on behalf of the Church. (RJN, Ex. 5, p. 22.) Plaintiffs allege that there was
25 consideration given to changing the Bylaws *after* Alan Scott was selected to serve as Senior
26 Pastor in an effort “to balance the authority between the senior pastor and the board of directors.”
27 (*See* Compl., ¶ 50.) But the only change they made to the Bylaws was to adjust the threshold
28 amount for which board approval would be required for any single expenditure incurred in

29 ⁵ Moreover, with respect to any purported “individual” claims brought by the Plaintiffs on their own
30 behalf, there is no allegation that the Scotts intended to induce reliance by the Plaintiffs for the
31 purpose of having them continue tithing. (*See* Compl., ¶ 131.) The sole allegation is that the
32 representations were made “to the Search Committee and the Anaheim Vineyard Board with the
33 intent to induce the Search Committee and the Anaheim Vineyard Board to act in reliance on these
34 representations” in selecting Alan Scott to be the Church’s Senior Pastor. (*Id.*, ¶ 129.)

1 conducting the Church’s business. (*See* RJN, Ex. 6.) There was nothing changed or added to limit
2 the Senior Pastor’s ecclesiastical authority. (*See id.*) Plaintiffs cannot be heard to rely on
3 amorphous alleged “promises” to restrict Alan’s ecclesiastical authority and discretion when the
4 then directors (including three of the present Plaintiffs) failed to enshrine any such restriction in
5 the Church’s governing documents when they had the opportunity to do so. (*See* Compl., ¶ 51.)

6 With respect to any individual claims, each Plaintiff must have actually heard the alleged
7 misrepresentations and justifiably and detrimentally relied upon them. “Actual reliance occurs
8 when the defendant’s misrepresentation is an immediate cause of the plaintiff’s conduct, altering
9 his legal relations, and when, absent such representation, the plaintiff would not, in all reasonable
10 probability, have entered into the transaction.” *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal. App.
11 4th 513, 519. To plead reliance, Plaintiffs must allege actions, as distinguished from unspoken
12 and unrecorded thoughts and decisions, indicating actual reliance on the misrepresentations. *See*
13 *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 184. There are no such allegations here.

14 **4. Plaintiffs Do Not Plead A Cognizable Injury**

15 In the Complaint, Plaintiffs attempt to allege harm both to the Church and to each of them
16 individually. For example, they allege that the Church “has been damaged by virtue of paying
17 salary and providing other employment related benefits for 4+ years to the Scott Defendants,” and
18 the Plaintiffs were damaged personally because they “continued tithing after the Scott Defendants
19 were hired.” (Compl., ¶¶ 100, 106.) However, the prayer for relief in the Complaint does not seek
20 monetary damages based on either theory. (*See id.*, pp. 32-33.)

21 There is no allegation that the Scotts did not do the work for which they were hired by the
22 Church, so there is no basis for a claim that the Church was damaged by paying them for their
23 four plus years of service. And to the extent that Plaintiffs seek to take back the amount of their
24 tithing, those tithes were made to the Church, not to the Scotts. In any event, contributions, like
25 tithes, made for the general support of the activities of a nonprofit religious corporation like the
26 Church may not be clawed back based on dissatisfaction with the ecclesiastical direction of the
27 church. (*See* Corp. Code § 9143 (allowing for recovery of a contribution only in circumstances
28 where the contribution was made for “a specific purpose other than the general support of the

1 corporation's activities and has been used in a manner contrary to [that] specific purpose").
2 Plaintiffs thus fail to plead legally cognizable damages, a necessary element of their claim.

3 **E. The Complaint Does Not State a Claim for Negligent Misrepresentation.**

4 Implicitly acknowledging the weakness of their fraud claim, Plaintiff's Second Cause of
5 Action purports to state an alternate claim against the Scotts for negligent misrepresentation,
6 based on the same allegations made in support of the First Cause of Action.

7 The elements of negligent misrepresentation are (1) the defendant made a false
8 representation as to a past or existing material fact; (2) the defendant made the representation
9 without reasonable ground for believing it to be true; (3) in making the representation, the
10 defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation;
11 and (5) the plaintiff suffered resulting damages. *Majd v. Bank of Am., N.A.* (2015) 243 Cal. App.
12 4th 1293, 1307, *as modified* (Jan. 14, 2016) (citing *West v. JPMorgan Chase Bank, N.A.* (2013)
13 214 Cal. App. 4th 780, 792). In short, the elements of negligent misrepresentation are the same as
14 for intentional fraud except for the requirement of scienter; in a claim for negligent
15 misrepresentation, the plaintiff need not allege the defendant made an intentionally false
16 statement, but simply one as to which he or she lacked any reasonable ground for believing the
17 statement to be true. *Charnay v. Cobert* (2006) 145 Cal. App. 4th 179, 184. Like fraud, negligent
18 misrepresentation must be alleged with particularity. *Id.* at 185 n.14.

19 For the reasons explained above with respect to the fraud claim, Plaintiffs' allegations
20 cannot support the elements required for a claim of negligent misrepresentation. Indeed, the lack
21 of a scienter requirement makes the negligent misrepresentation even less viable in this case. As
22 discussed above, the essence of Plaintiffs' claim is that Alan Scott supposedly promised not to do
23 something in the future. Such a promise can be false only if "the promisor did not intend to
24 perform at the time he or she made the promise, and it was intended to deceive or induce the
25 promisee to do or not do a particular thing." *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2
26 Cal. App. 4th 153, 159. The specific intent requirement "precludes pleading a false promise claim
27 as a negligent misrepresentation." *Id.* In short, there is no such thing as a negligent false promise.
28

1 **F. The Complaint Does Not State a Claim for Breach of Fiduciary Duty**

2 Plaintiff’s Third Cause of Action purports to state claims against all the Individual
3 Defendants for breach of fiduciary duties in their roles as directors of the Church.

4 As a threshold matter, the Complaint alleges that the decision to have the Church
5 disassociate from the Vineyard churches was made solely by Alan Scott. The Complaint
6 affirmatively alleges that “[t]here was no prior disclosure to, consultation with, or participation in
7 said decision of the Anaheim Vineyard Board of Directors.”⁶ (Compl., ¶ 54.) Even if it were true,
8 it would be perfectly consistent with the Church’s Bylaws, which expressly provide that “[a]ll
9 ecclesiastical matters relating to the Church . . . shall be the ultimate responsibility of the Senior
10 Pastor,” and “shall not be subject to the collective decision of the Board of Directors.” (RJN, Ex.
11 5, pp. 20 & 22.) Plaintiffs, however, allege that they are “informed and believe that the current
12 Anaheim Vineyard Board of Directors ratified the decision of Defendant Alan Scott.” (Compl., ¶
13 54.) Because the decision to disassociate from the Vineyard churches was not within the authority
14 of the Board, however, the members of the Board could not have breached any fiduciary duty
15 with respect to an ecclesiastical decision over which they have no authority as expressly stated in
16 the Bylaws. For that reason alone, the demurrers of all the Individual Defendants other than Alan
17 Scott should be sustained.

18 In any event, whether the decision was made by Alan Scott alone, or with the approval of
19 the entire Board, the standards applicable to members of the board of directors of a nonprofit
20 religious corporation like the Church are to act “in good faith, in a manner such director believes
21 to be in the best interests of the corporation and with such care, including reasonable inquiry, as is
22 appropriate under the circumstances.” Corp. Code § 9241(a). In performing these duties, the
23 director “may consider what the director believes to be: (1) The religious purposes of the
24 corporation; and (2) Applicable religious tenets, canons, laws, policies, and authority.” Corp.
25 Code § 9240(c). Directors are entitled to a presumption that they act in good faith and in the
26 honest belief their actions are taken in the best interests of the corporation. *See Katz v. Chevron*

27 _____
28 ⁶ This is a completely incorrect statement and will be addressed in the Frequently asked Questions, but again must be taken as true for this demurrer.

1 Corp. (1994) 22 Cal. App. 4th 1352, 1366. This presumption is “premised on the notion that
2 those to whom the management of the corporation has been entrusted, and not the courts, are best
3 able to judge whether a particular act or transaction is one which is helpful to the conduct of
4 corporate affairs or expedient for the attainment of corporate purposes.” *Will v. Engebretson &*
5 *Co.* (1989) 213 Cal. App. 3d 1033, 1040 (quotations and citations omitted). Here, there are no
6 facts alleged that would support a conclusion that the decision to disassociate from the Vineyard
7 churches was anything other than a good faith decision that such action was in the best interests
8 of the Church and its congregation. Just because these Plaintiffs may not agree with that decision,
9 and feel disrespected by a name change, does not state a claim for breach of fiduciary duty.

10 **G. Plaintiffs Are Not Entitled to Declaratory Relief**

11 The Fourth Cause of Action purports to seek two forms of declaratory relief against the
12 Individual Defendants. First, Plaintiffs claim they “are entitled to immediate access to the
13 documents and information requested on or about April 12, 2022,” *i.e.*, the documents identified
14 in the Complaint at paragraphs 64-77. (Compl., ¶ 154.) They also claim they are “entitled to have
15 the board reconstituted to its makeup immediately prior to when the Scott Defendants were
16 offered their positions so that the reconstituted board can return the corporation to the status quo
17 that existed immediately prior to the hiring of the Scott Defendants.” (*Id.*) Plaintiffs are not
18 entitled to either form of relief both as a matter of law and as a matter of common sense
19 protection of the Church.

20 **1. Plaintiffs Are Not Entitled to Inspect the Church’s Corporate Records**

21 Prior to filing the Complaint, Plaintiffs allege that they made a long list of “corporate
22 record demands” on the Church, complaining that Defendants “produced none of the documents
23 and information requested.” (Compl., ¶¶ 64-77.) However, Plaintiffs do not and cannot show that
24 they have entitlement to inspect *any* of the Church’s corporate records, let alone documents
25 encompassed by the incredibly invasive and overreaching “demands” made in this case. Not only
26 do they ask for all the Church’s corporate minutes (going back to 2012), financial statements, and
27 operating budgets, they ask for things like the “immigration files for Alan Scott and Kathryn
28 Scott” and “employment files for Alan Scott, Kathryn Scott, Jeremy Riddle and Katie Riddle,”

1 among many other categories of materials. (*See id.*) They have no right to these materials.

2 The Corporations Code establishes strict limits on who may seek to inspect the records of
3 nonprofit religious corporations like the Church, and on the scope of materials subject to
4 inspection. For example, “[e]xcept as otherwise provided in the articles or bylaws, a member may
5 inspect and copy the record of all the members’ names, addresses, and voting rights . . . for a
6 purpose reasonably related to the member’s interest as a member.” Corp. Code § 9511. Similarly,
7 “[e]xcept as otherwise provided in the articles or bylaws, the accounting books and records and
8 minutes of proceedings of the members and the board and committees of the board shall be open
9 to inspection” by “any member . . . for a purpose reasonably related to the member’s interest as a
10 member.” Corp. Code § 9512. Finally, the corporation’s “articles and bylaws as amended to date .
11 . . shall be open to inspection by the members.” Corp. Code § 9160.

12 As explained in the Church’s demurrer, none of the Plaintiffs in this case is a “member” of
13 the Church for the purposes of the Corporations Code. To underscore the point, the Church’s
14 Bylaws further specify that “[o]nly the voting members will have access to the membership rolls
15 and corporate records.” (RJN, Ex. 5, p. 4.) Under the Church’s Bylaws, the only documents that
16 non-voting members have a right to inspect are the Articles of Incorporation and Bylaws. (*See id.*,
17 p. 19.) Yet those are not among the materials “demanded” by the Plaintiffs in this case. Under the
18 circumstances, then, the Plaintiffs are not entitled to any of the relief they seek in the Complaint
19 with respect to their “Corporate Record Demands.”

20 **2. Plaintiffs Are Not Entitled to Replace the Church’s Board of Directors**

21 Even more overreaching is the Complaint’s request that the Court replace the Church’s
22 existing board of directors with the slate of directors that held office in January 2018. As noted
23 above, there is no viable claim of wrongdoing against any of the Board members. Thus, to the
24 extent that Plaintiffs base their request on such claims, the request for declaratory relief must fail
25 as well. *See Faunce v. Cate* (2013) 222 Cal. App. 4th 166, 173 (“injunctive and declaratory relief
26 are equitable remedies, not causes of action” so a demurrer is properly sustained as to such claims
27 where they are premised upon nonviable causes of action).

28 Perhaps more fundamentally, the relief sought is not in the nature of a declaration of

1 rights. Rather, as reflected in the Complaint’s Fifth Cause of Action, what Plaintiffs appear to be
2 seeking is an affirmative injunction expelling the current Board members from office and
3 replacing them with a different set of individuals. As explained below, there is nothing in the law
4 that gives the Court the authority to grant such relief, and there is nothing in the law that would
5 give Plaintiffs the right to ask for it. As a result, the demurrers should be sustained on this point.

6 **H. Plaintiffs Cannot Obtain a Permanent Injunction.**

7 The Fifth Cause of Action purports to seek the remedy of a permanent injunction against
8 the Individual Defendants, asking the Court to “restrain and enjoin” the Scott Defendants from
9 “changing the purpose” of the Church (Compl., ¶ 158) and then “restrain and enjoin” the
10 Church’s existing Board and order that the “board that hired the Scott Defendants [*i.e.*, the board
11 of directors as it existed in January 2018] . . . be reconstituted to govern the assets and operations
12 of the corporation” so that “the reconstituted board can return the corporation to the status quo
13 that existed immediately prior to the hiring of the Scott Defendants.” (*Id.*, ¶¶ 154, 159.)⁷

14 Even setting aside the Constitutional principles that prevent the Court from interfering in
15 purely ecclesiastical issues like “changing the purpose” of the Church and picking which leaders
16 are entitled to decide what that purpose should be, as a pure matter of corporate governance
17 Plaintiffs have no right to seek to remove or replace the Board and the Court has no authority to
18 grant such relief. Under the Corporations Code, the articles and bylaws of a nonprofit religious
19 corporation like the Church shall govern “the tenure, election, selection, designation, removal and
20 resignation of directors.” Corp. Code § 9220(a). Here, the Church’s Bylaws set forth how
21 directors are to be appointed and how they may be removed. (RJN, Ex. 5, pp. 8-9 & 11.) Any
22 change must be accomplished by those means, not by the intercession of a secular court.

23 Beyond the Bylaws, under Corporations Code section 9223, a director may be removed by
24 court order only for “fraudulent acts.” Corp. Code § 9223(a). Here, there is no allegation of
25

26 ⁷ As explained in some detail in the Frequently asked Questions memo, it makes no sense to remove
27 the existing Board and the Scotts who have, over their four plus years of leadership, erased a prior
28 \$600,000/year budget deficit and facilitated the Lord’s substantial increase in person attendance and
online participation through Covid. The reinstatement of the “Old Board” from four years ago – after
limited participation, if any, in the Church’s affairs would be an act of ecclesiastical foolishness.

1 “fraudulent acts” on the part of any of the Board defendants, and as set forth above, there is not a
2 Constitutionally reviewable or legally viable claim against the Scotts. Moreover, none of the
3 Plaintiffs have standing to bring such an action in the first place. An action for such an order
4 under Corporations Code section 9223 may only be brought by the Attorney General, a director,
5 or twice the number of “members” authorized under Corporations Code section 5036. *See id.*⁸
6 The “authorized number of members” means “5 percent of the voting power” where “the total
7 number of votes entitled to be cast for a director is” less than 1000, and where, as here, “twice the
8 authorized number” is required, “that means two times the number calculated according to [the
9 5% rule].” *See Corp. Code § 5036.* Here, as explained in detail in the Church’s Demurrer and as
10 discussed above, “members” in this context means “voting members” so that the “number of
11 members” who are Plaintiffs in this case is zero. Plaintiffs simply have no standing and no factual
12 or legal basis for the relief they seek.

13 **I. Plaintiffs’ Claims Are Barred By the Applicable Statutes of Limitations and**
14 **The Equitable Doctrine of Laches.**

15 According to the Complaint, Alan Scott applied for the position of Senior Pastor in late
16 2017 and was chosen for the position in January 2018. (*See Compl.*, ¶¶ 38, 50; *see also id.*, ¶ 81
17 (investigation and interviews of Senior Pastor candidates occurred “from approximately mid-
18 December 2017 to mid-January 2018”).) Thus, any claim of fraud based on statements made
19 during that process is barred by the applicable 3-year statute of limitations. *See Civ. Proc. Code*
20 *§ 338(d).* Similarly, any claim of negligent misrepresentation is barred by the applicable 2-year
21 statute of limitations. *See Civ. Proc. Code § 339(1).*

22 To the extent that Plaintiffs argue that the truth of these matters was not and could not
23 have been discovered until the Church announced its disassociation from the Vineyard churches
24 in 2022 (*see Compl.*, ¶ 96), they fail to account for their own allegations about early 2017
25 conversations that the Scotts supposedly had with Mike Safford and his wife (*Compl.*, ¶¶ 34-35,
26 84-85.). The Complaint uses those allegations to support the contention that the Scotts “had no

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28 ⁸ If such an action is brought by a party other than the Attorney General, notice must be served on the
Attorney General, who has the right to intervene. *Corp. Code § 9223(b).* There was no effort to do so
in this case.

1 intent to continue affiliating with Vineyard USA and the Vineyard Movement” at the time Alan
2 interviewed for the Senior Pastor position. (*Id.*) However, the Complaint acknowledges that Mike
3 Safford was the Senior Associate Pastor of the Church at the time Alan Scott was selected to
4 serve as Senior Pastor. (*Id.*, ¶ 33.) Thus, his knowledge must be imputed to the Church. *See* Civ.
5 Code § 2332; *see also Baxter v. State Teachers’ Retirement System* (2017) 18 Cal. App. 5th 340,
6 367 (“Included among the types of information that may be imputed from agent to principal are
7 facts used to determine the date of accrual of a statute of limitations.”) Under the circumstances,
8 the First and Second Causes of Action ostensibly brought on behalf of the Church for alleged
9 fraud and negligent misrepresentation are barred by the respective statutes of limitations.

10 Moreover, equity will not allow a party to sleep on his rights to the prejudice of another.
11 As noted above, Plaintiffs seek equitable forms of relief in this case; moreover, a derivative action
12 is inherently equitable in nature. *See Brusso v. Running Springs Country Club, Inc.* (1991) 228
13 Cal. App. 3d 92, 104 (a derivative suit “is an action in equity”). Plaintiffs’ claims are therefore
14 subject to equitable defenses like laches. *See Rosenfeld v. Zimmer* (1953) 116 Cal. App. 2d 719,
15 722-23 (applying doctrine of unclean hands in derivative action). Here, for more than four years
16 after Alan Scott became the Church’s Senior Pastor, as he led the renewal and growth of the
17 congregation and plugged the Church’s leaking financial situation, no one questioned his spiritual
18 direction or the work of the Board. It would benefit no one, and prejudice all, to reinstate the “Old
19 Board” from four years ago because of unhappiness over the Church’s recent name change.

20 **III. CONCLUSION**

21 The individual Defendants recognize the sentiments of all Plaintiffs who feel a deep
22 loyalty and respect for John Wimber and The Vineyard Movement but seeking Court intervention
23 to change an ecclesiastical direction is not the proper course legally or biblically.⁹

24 For the foregoing reasons, and for the reasons set forth in support of the Church’s
25 concurrently-filed Demurrer to the Complaint, the Individual Defendants each respectfully
26 request that the Court sustain their demurrers to Plaintiffs’ Complaint.

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⁹ *See* Matthew 18:15 and 1 Cor. 6.

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Dated: February 9, 2023

SNELL & WILMER L.L.P.



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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

PROOF OF SERVICE

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


On February 9, 2023, I served, in the manner indicated below, the foregoing document described as **NOTICE OF HEARING ON DEMURRERS; DEMURRERS OF INDIVIDUAL DEFENDANTS ALAN SCOTT, KATHRYN SCOTT, JEREMY RIDDLE, KATIE RIDDLE, GREGORY SCHERER, BANNING LEIBSCHER, AND JULIAN ADAMS TO PLAINTIFFS' COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

See attached Service List.

- BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing 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)).
- BY ELECTRONIC MAIL/E-SERVICE: My office caused such document(s) to be delivered electronically to the following email addresses, nklein@tylerbursch.com; msarmiento@tylerbursch.com; spadilla@tylerbursch.com; John.Peiffer@brownandstreza.com; Paul.Schmitt@brownandstreza.com, Christia.Zeiter@brownandstreza.com
- BY OVERNIGHT DELIVERY: I caused such envelope to be delivered by air courier, with next day service, to the offices of the addressee(s). (C.C.P. § 1013(c)(d)).
- BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to the offices of the addressees. (C.C.P. § 1011(a)(b)).

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

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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

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