CAUSE NO. 141-237105-09

THE EPISCOPAL CHURCH, THE RT. REV. C. WALLIS OHL, ROBERT HICKS FLOYD MCKNEELY, SHANNON SHIPP, DAVID SKELTON, and WHIT SMITH

Plaintiffs

VS.

FRANKLIN SALAZAR, JO ANN PATTON, WALTER VIRDEN, III, ROD BARBER, CHAD BATES, THE RT. REV. JACK LEO IKER, JUDY MAYO, JULIA SMEAD, THE REV. CHRISTOPHER CANTRELL, THE REV. TIMOTHY PERKINS, and THE REV. RYAN REED

Defendants/Counter-Defendants

THE ANGLICAN PROVINCE OF THE SOUTHERN CONE'S "DIOCESE OF FORT WORTH"

Defendant/Third-Party Plaintiff/Counter-Defendant

THE ANGLICAN PROVINCE OF THE SOUTHERN CONE'S "CORPORATION OF THE EPISCOPAL DIOCESE OF FORT WORTH"

Intervenor/Third-Party Plaintiff/ Defendant/Counter-Defendant

ST. ANTHONY OF PADUA CHURCH (Alvarado), ST. ALBAN'S CHURCH (Arlington), ST. MARK'S CHURCH (Arlington), CHURCH OF ST. PETER and ST. PAUL (Arlington), CHURCH OF ST. PHILIP THE APOSTLE (Arlington), ST. VINCENT'S CATHEDRAL (Bedford), ST. PATRICK'S CHURCH (Bowie), ST. ANDREW'S CHURCH (Breckenridge), GOOD SHEPHERD CHURCH (Brownwood), ST. JOHN'S CHURCH (Brownwood), CHURCH OF ST. JOHN THE DIVINE (Burkburnett), HOLY COMFORTER CHURCH (Cleburne), ST. MATTHEW'S CHURCH (Comanche), TRINITY CHURCH (Dublin), HOLY TRINITY CHURCH (Eastland), CHRIST THE KING CHURCH (Fort Worth), HOLY APOSTLES CHURCH (Fort Worth), IGLESIA SAN JUAN APOSTOL (Fort Worth),

IN THE DISTRICT COURT OF

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TARRANT COUNTY
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THOMAS A. WILDER
DISTRICT CLERK

TARRANT COUNTY, TEXAS

141ST DISTRICT COURT

IGLESIA SAN MIGUEL (Fort Worth), ST. ANDREW'S CHURCH (Fort Worth), ST. ANNE'S CHURCH (Fort Worth), CHURCH OF ST. BARNABAS THE APOSTLE (Fort Worth), ST. JOHN'S CHURCH (Fort Worth), ST. MICHAEL'S CHURCH (Richland Hills), CHURCH OF ST. SIMON OF CYRENE (Fort Worth), ST. TIMOTHY'S CHURCH (Fort Worth), ST. PAUL'S CHURCH (Gainesville), GOOD SHEPHERD CHURCH (Granbury), CHURCH OF THE HOLY SPIRIT (Graham), ST. ANDREW'S CHURCH (Grand Prairie), ST. JOSEPH'S CHURCH (Grand Prairie), ST. LAURENCE'S CHURCH (Southlake), ST. MARY'S CHURCH (Hamilton),TRINITY CHURCH (Henrietta), ST. MARY'S CHURCH (Hillsboro), ST. ALBAN'S CHURCH (Hubbard), ST. STEPHEN'S CHURCH (Hurst), CHURCH OF ST. THOMAS THE APOSTLE (Jacksboro), CHURCH OF OUR LADY OF THE LAKE (Laguna Park), ST. GREGORY'S CHURCH) (Mansfield), ST. LUKE'S CHURCH (Mineral Wells), CHURCH OF ST. PETER BY THE LAKE (Graford), ALL SAINT'S CHURCH (Weatherford), ALL SAINT'S CHURCH (Wichita Falls), CHURCH OF THE GOOD SHEPHERD (Wichita Falls), CHURCH OF ST. FRANCIS OF ASSISI (Willow Park), and CHURCH OF THE ASCENSION & ST. MARK (Bridgeport)

Intervenors/Third-Party Plaintiffs/
Defendants/Counter-Defendants

VS.

MARGARET MIEULI, ANNE T. BASS, WALT CABE, THE REV. CHRISTOPHER JAMBOR, THE REV. FREDERICK BARBER, THE REV. DAVID MADISON, ROBERT M. BASS, CHERIE SHIPP, DR. TRACE WORRELL, THE REV. JAMES HAZEL, THE REV. JOHN STANLEY, THE RT. REV. EDWIN F. GULICK, JR. and KATHLEEN WELLS,

Third-Party Defendants and Counterclaimants

THE EPISCOPAL CHURCH,

Third-Party Defendant

SECOND AMENDED ANSWER AND COUNTERCLAIMS TO SOUTHERN CONE DIOCESE'S THIRD-PARTY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now come the Rt. Rev. Edwin F. Gulick, Jr., Margaret Mieuli, Walt Cabe, Anne T. Bass, the Rev. J. Frederick Barber, the Rev. Christopher Jambor, the Rev. David Madison, and Kathleen Wells, Third-Party Defendants in the above entitled and numbered cause and—subject to and also without waiving any Motion to Strike Southern Cone Diocese's Third-Party Petition, and without waiving the right to assert lack of authority under Texas Rule of Civil Procedure 12—file this Second Amended Answer and Counterclaims to the Third-Party Petition of the Defendant/Third-Party Plaintiff that has appeared as "The Episcopal Diocese of Fort Worth" and that has also been referred to as the purported Anglican Province of the Southern Cone's "Diocese of Fort Worth" (the "Southern Cone Diocese") and would respectfully show the Court as follows:

1. This dispute revolves around the effect of the withdrawal by some of the individual former leaders of the Episcopal Diocese of Fort Worth and some of the individual former leaders of its parishes and missions from The Episcopal Church (the "Church"). Bishop Iker and other such leaders maintain that, after having withdrawn from the Church and pledged their allegiance to a different denomination, they nevertheless are entitled to continue to hold the leadership positions of the Diocese and, thus, use and possess Diocesan and Diocesan Corporation assets, in contravention of the rights of the remaining Episcopalians in the Diocese. Texas law, however, provides that when two factions of a local unit of a hierarchical church are in dispute over control of the local unit, the faction that is loyal to the hierarchical church—even if it is a minority—is the faction entitled to that control. The Episcopal Church is such a hierarchical church, and the Diocese of Fort Worth is one of its subordinate units. Thus, when

Bishop Iker and the other leaders withdrew from the Church and affiliated with another denomination, they relinquished all authority and capacity to hold leadership positions in the Church, including in the Diocese, its Diocesan Corporation, its Endowment Fund, and its parishes and missions. This is also consistent with Bishop Iker's sworn testimony and position in other litigation before November 2008 when he left The Episcopal Church. Since the withdrawal of Bishop Iker and other leaders from the Church, the remaining Episcopalians in the Diocese have properly filled those vacancies, and it is those Episcopalians who have the right, under Texas law and the rules of the Church, to control the Diocese and its assets as well as the parishes and missions and their assets. This is the case whether the Anglican Province of the Southern Cone's "Diocese of Fort Worth", the Anglican Province of the Southern Cone's "Corporation of the Episcopal Diocese of Fort Worth", and/or the Intervening Congregations are viewed as factions or as new entities.

I. SECOND AMENDED ANSWER

2. Subject to and without waiving the right to assert lack of authority under Texas Rule of Civil Procedure 12, Third-Party Defendants file this Second Amended Answer to the Plea in Intervention of the Third-Party Plaintiff the Southern Cone Diocese.

A. GENERAL DENIAL

3. Third-Party Defendants deny each and every, all and singular, the allegations of the Third-Party Petition and demand strict proof thereof.

B. VERIFIED DENIALS

4. The Southern Cone Diocese is not entitled to recover in the capacity in which it sues because it is either an entity of unknown form which has no relation to the Protestant Episcopal Church in the United States of America ("the Church") or the Episcopal Diocese of Fort Worth ("the Diocese") or a faction not recognized by the Church and because the only

legitimate association by this name is the Diocese, a subordinate unit of the Church under the authority of Provisional Bishop Rt. Rev. C. Wallis Ohl.

5. There is a defect in the parties because Defendant/Third-Party Plaintiff the Southern Cone Diocese is misidentified as "The Episcopal Diocese of Fort Worth" in its Third-Party Petition. The only legitimate association by this name is the Diocese, a subordinate unit of the Church under the authority of Provisional Bishop Rt. Rev. C. Wallis Ohl.

6. Third-Party Defendants the Rt. Rev. Edwin F. Gulick, Jr., Margaret Mieuli, Walt Cabe, Anne T. Bass, J. Frederick Barber, Christopher Jambor, David Madison, and Kathleen Wells are not liable to be sued in their individual capacities, pursuant to § 84.004 of the Texas Civil Practices and Remedies Code, because their alleged actions, if any, were undertaken in the course and scope of their duties or functions as volunteers of a charitable organization, the Episcopal Diocese of Fort Worth, and solely on behalf of the same charitable organization.

7. Third-Party Defendant the Rt. Rev. Edwin F. Gulick, Jr. is not liable to be sued in his individual capacity because his alleged actions, if any, were undertaken solely in his former capacity as Provisional Bishop of the Episcopal Diocese of Fort Worth and solely on behalf of the Diocese, and he does not claim to be the current Bishop of the Diocese as alleged in section 1 of the Third-Party Petition and throughout the same. Although Bishop Gulick held the office of Provisional Bishop of the Diocese from February 2009 until November 2009, he no longer holds this position. As a result, Defendant/Third-Party Plaintiff's claims for declaratory and injunctive relief against Bishop Gulick are moot.

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

C. ADDITIONAL DEFENSES

9. Third-Party Defendants the Rt. Rev. Edwin F. Gulick, Jr., Margaret Mieuli, Walt Cabe, Anne T. Bass, J. Frederick Barber, Christopher Jambor, David Madison, and Kathleen Wells are immune from any civil liability, pursuant to § 84.004 of the Texas Civil Practices and Remedies Code, because their alleged actions, if any, were undertaken in the course and scope of their duties or functions as volunteers of a charitable organization, the Episcopal Diocese of Fort Worth, and solely on behalf of the same charitable organization.

10. Defendant/Third-Party Plaintiff the Southern Cone Diocese is estopped from complaining that the Third-Party Defendants failed to comply with their own canons regarding calling the Special Convention for February 2, 2009, or election of a provisional bishop because it was the acts of the leaders of the Defendant/Third-Party Plaintiff the Southern Cone Diocese, including but not limited to the Rt. Rev. Jack Leo Iker and the former members of the Standing Committee, who left The Episcopal Church, leaving vacancies in the offices of bishop and Standing Committee.

11. Defendant/Third-Party Plaintiff the Southern Cone Diocese is judicially estopped and/or quasi-estopped from taking positions that are contrary to the admissions in prior litigation of its purported leaders, including Bishop Jack Leo Iker, Canon Charles Hough III, Assisting Bishop William C. Wantland, and former Assistant to the Bishop Billie Boyd, that The Episcopal Church is a hierarchical church in which dioceses are subordinate to the General Convention; that church officials who leave The Episcopal Church are no longer qualified to hold church offices and have no authority over Church property; that parish property is impressed with an express trust in favor of the Diocese; that the Dennis Canon applies to the Church property in the Diocese; that the unqualified accession to the Constitution and canons of the Church is binding on congregations of the Diocese; that Episcopal bishops must adhere to the Church Constitution

and canons or be subject to discipline; and that individuals who leave The Episcopal Church are no longer qualified to serve in church offices or use or possess church property. In addition, these statements are judicial admissions by Defendant/Third-Party Plaintiff's purported leaders that conclusively prove, as a matter of law, that Defendant/Third-Party Plaintiff has no authority over or right to use or possess property of the Church, the Diocese, the Diocesan Corporation, the Endowment Fund, or any parishes, missions, or congregations of the Diocese.

12. Defendant/Third-Party Plaintiff Southern Cone Diocese lacks standing to pursue its claims.

13. Defendant/Third-Party Plaintiff Southern Cone Diocese has unclean hands.

II. COUNTERCLAIMS

14. Subject to and also without waiving any Motion to Strike Southern Cone Diocese's Third-Party Petition, and without waiving the right to assert lack of authority under Texas Rule of Civil Procedure 12, Third-Party Defendants and Counterclaimants file these Counterclaims against Defendants and Counter-Defendants, including all of the named individuals and, to the extent necessary, the Southern Cone Corporation and the Southern Cone Diocese.

15. Defendants and Counter-Defendants have already appeared in this suit except as noted below. Those who have not appeared were named as Defendants/Counter-Defendants in Plaintiffs' Second Amended Original Petition and Third-Party Defendants' Counterclaim.

A. DISCOVERY CONTROL PLAN

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

B. PARTIES

17. Third-Party Defendants and Counterclaimants Margaret Mieuli, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison are lay members or clergy of the Church in the Diocese and appear individually and in their capacity as the members of the Standing Committee of the Diocese, an elected body that shares authority with the bishop of the Diocese with respect to certain property and other matters, collectively as the Standing Committee of the Diocese, and, to the extent necessary, on behalf of the Diocese. These parties are Third-Party Defendants and Counterclaimants with respect to the third-party petition brought by the Anglican Province of the Southern Cone's "Diocese of Fort Worth" and Counterclaimants against other opposing parties. Third-Party Defendant and Counterclaimant Anne T. Bass also appears in her capacity as a Trustee of the Fund for the Endowment of the Episcopate (The "Endowment Fund").

18. Third-Party Defendant and Counterclaimant the Rt. Rev. Edwin F. Gulick, Jr. appears individually and in his capacity as former Provisional Bishop. Bishop Gulick held the office of Provisional Bishop of the Episcopal Diocese of Fort Worth from February 2009 until November 2009 and no longer holds this position.

19. Third-Party Defendant and Counterclaimant Kathleen Wells is a lay member of the Church in the Diocese and appears individually and in her capacity as Chancellor of the Diocese. To the extent each of the Third-Party Defendants and Counterclaimants named in Paragraphs 17, 18, and 19 should be Plaintiffs against any other party in this lawsuit, and/or to any extent necessary and proper, Third-Party Defendants and Counterclaimants should be treated as Plaintiffs as well.

20. Third-Party Defendants and Counterclaimants are informed and believe that Defendants and Counter-Defendants Judy Mayo, Franklin Salazar, Julia Smead, the Rev.

Christopher Cantrell, the Rev. Timothy Perkins, and the Rev. Ryan Reed are former members of the Church and are wrongfully holding themselves out as being members of the Standing Committee of the Diocese. Counterclaimants assert claims against these Defendants and Counter-Defendants, respectively, in their individual capacities and in their purported official capacities as members of the Standing Committee of the Diocese. Opposing counsel has accepted service for Defendants/Counter-Defendants Cantrell, Perkins, Reed, and Mayo. Plaintiffs are informed and believe that Defendant/Counter-Defendant Smead may be served at her residence or other place of employment in Tarrant County as follows:

Julia Smead
3527 Spring Valley Dr.
Bedford, TX 76021-2225

21. Third-Party Defendants and Counterclaimants are informed and believe that Defendants and Counter-Defendants Franklin Salazar, Jo Ann Patton, Walter Virden, III, Rod Barber, and Chad Bates are former members of the Church and are wrongfully holding themselves out as Trustees of the Diocesan Corporation and as Trustees of the Endowment Fund, and that they reside in Tarrant County. Counterclaimants assert claims against these Defendants and Counter-Defendants, respectively, in their individual capacities and in their purported official capacities as Trustees of the Diocesan Corporation and as Trustees of the Endowment Fund.

22. Defendant and Counter-Defendant the Rt. Rev. Jack Leo Iker was formerly an ordained member of the clergy of the Church and formerly Bishop of the Diocese. Counterclaimants are informed and believe that Defendant and Counter-Defendant wrongfully holds himself out as the Bishop of the Diocese and as a Trustee and Chair of the Diocesan Corporation. Counterclaimants assert claims against Defendant and Counter-Defendant Bishop

Iker in his individual capacity and in his purported official capacity as bishop of the Diocese and Chairman of the Board of the Diocesan Corporation.

23. Counterclaimants are informed and believe that the party that has attempted to intervene as "The Corporation of the Episcopal Diocese of Fort Worth"—but that has no affiliation with The Episcopal Church—is either a faction not recognized by the Church or an entity of unknown form that is purportedly led by former members and clergy of the Church and the Diocese and whose leaders purport to be affiliated with the Anglican Province of the Southern Cone (hereinafter the "Southern Cone Corporation"). These purported leaders wrongfully hold themselves out to be the leaders of "The Corporation of The Episcopal Diocese of Fort Worth" and are wrongfully doing business as the Diocesan Corporation. Third-Party Defendants and Counterclaimants do not, by any means, concede that these purported leaders have the capacity to appear or cause this party, entity, or faction to appear as the "Corporation of the Episcopal Diocese of Fort Worth." The only legitimate and recognized corporation by this name is governed by trustees the Rt. Rev. C. Wallis Ohl, Robert M. Bass, Cherie Shipp, Dr. Trace Worrell, the Rev. James Hazel, and the Rev. John Stanley, a Texas non-profit corporation with its principal office in Fort Worth, Texas, formed in 1983 pursuant to the Constitution and canons of the Diocese to hold and manage the property of the Diocese subject to the Constitutions and canons of the Church and the Diocese.

24. Counterclaimants are informed and believe that the party defendant that has appeared as "The Episcopal Diocese of Fort Worth" – but which has no affiliation with The Episcopal Church – is either a faction not recognized by the Church or an entity of unknown form that is purportedly led by former members and clergy of the Church and the Diocese and whose leaders purport to be affiliated with the Anglican Province of the Southern Cone

(hereinafter the "Southern Cone Diocese"). The purported leaders wrongfully hold themselves out to be the leaders of the historical Episcopal Diocese of Fort Worth and are wrongfully doing business as the Diocese. Third-Party Defendants and Counterclaimants do not, by any means, concede that these purported leaders have the capacity to appear or cause this party, entity, or faction to appear as the "Episcopal Diocese of Fort Worth." The only legitimate and recognized entity by this name is led by the Rt. Rev. C. Wallis Ohl.

C. JURISDICTION AND VENUE

25. This Court has jurisdiction over this matter, because it involves real property located in part in Tarrant County, Texas, and the matter in controversy is within the jurisdictional limits of this Court. Venue is appropriate because one or more of the Defendants and Counter-Defendants resides in Tarrant County, Texas.

D. BACKGROUND

Structure and Governance of The Episcopal Church

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

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

congregations belong to, are subordinate to, and are under the jurisdiction of the Church and the individual dioceses in which the congregations are located.

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

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

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

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

32. The next level of the Church's organization and governance is the diocese. A diocese may be formed only by action of the General Convention, and only with an unqualified

accession to the Church's Constitution and canons. Each diocese exercises jurisdiction over the parishes and other congregations within its geographical area. The governing body of each diocese, generally called its "Convention," is a legislative body comprised of clergy of the diocese and laity elected by their congregations. Each diocesan Convention adopts and from time to time amends its own diocesan Constitution and canons that supplement and may not conflict with the Church's Constitution or canons.

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

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

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

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

37. Canon I.17(8) of the Church, "Fiduciary Responsibility," applies to all officers at each level of the Church's governance and provides that "[a]ny person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of [the] Church and of the Diocese in which the office is being exercised."

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

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

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

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

Dioceses of The Episcopal Church

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

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

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

b. require dioceses and parishes to adopt prescribed business methods, including submission of annual reports to the Church's Executive Council, annual audits by certified public accountants, and adequate insurance of all buildings and their contents;

c. set forth requirements and conditions for the formation and operation of parishes and other worshipping congregations under the oversight of the dioceses;

d. provide requirements for the care, control, use, and disposition of church property; and

e. provide rules under which dioceses may select, train, ordain, deploy, and supervise the clergy of parishes and other worshipping congregations.

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

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

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

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

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

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

Ordination and Discipline of Bishops by The Episcopal Church

46. Article VIII of the Church's Constitution and the Ordination services of the Prayer Book provide that an individual may not be ordained deacon, priest, or bishop unless he or she subscribes to the Declaration of Conformity described in Paragraph 38 above. The Ordination Service for a bishop in the Prayer Book also requires that an individual being ordained as a bishop of the Church promise to "guard the faith, unity, and discipline of the Church" and to "share with [his or her] fellow bishops in the government of the whole Church."

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

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

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

History of the Episcopal Diocese of Fort Worth

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

62. Prior to his ordination as deacon, priest, and bishop of the Church, Defendant and Counter-Defendant Bishop Iker signed the Declaration of Conformity described in Paragraph 38 above, as required by the Church's Constitution and Prayer Book, was ordained Bishop Coadjutor of the Diocese in 1993 with the consents of the leadership of a majority of the other dioceses of the Church, and became Bishop of the Diocese in 1994, all pursuant to the constitutional, canonical, and liturgical requirements of the Church.

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

faithfully execute their offices in accordance with the Constitutions and canons of the Church and the Diocese; and the clergy, including the Diocesan Bishop, have been bound to obey the Constitution and canons of the Church by the Declaration of Conformity, as described in Paragraph 38 above, that each signed prior to and as a condition of ordination.

64. In 1994, the clergy and most of the vestry members of a local congregation (Church of the Holy Apostles in Fort Worth) left The Episcopal Church for another church but claimed the right to continue to use the real and personal property of the parish. The Diocesan Corporation, under Bishop Iker, sued and recovered the property for the remaining loyal Episcopalians in the congregation, calling the departing group the "Schismatic and Purported Church of the Holy Apostles." In that case Bishop Iker and his associates confirmed under oath that "[t]he Church in this Diocese accedes to the Constitution and Canons of The Episcopal Church, and recognizes the authority of the General Convention of said Church. Therefore, each Parish within The Episcopal Diocese of Fort Worth has acknowledged that they are governed by and recognize the authority of the General Convention and the Constitution and Canons of The Episcopal Church in the United States in America"; that under both diocesan and national canons, real and personal property for the use and benefit of congregation in the Diocese is "impressed with an express trust in favor of the diocese, for the use of an Episcopal congregation" under the Dennis Canon (now Church Canon I.7.4); and that former clergy and vestry members who abandon communion with The Episcopal Church for another church "are not Episcopalians and they do not represent an Episcopal congregation," having formed a "new creation, having no relation to [Holy Apostles] and no right to its property." *See* Affidavits of Jack Leo Iker (November 3, 1993), The Rev. Canon Charles Hough III (February 4, 1994), The Rev. Canon Billie R. Boyd (February 11, 1994), and The Rt. Rev. William Wantland, (July 29,

1994); *Corporation of the Episcopal Diocese of Fort Worth* v. *McCauley, et al.,* No. 153-144833-92 (153rd Dist. Ct., Tarrant County, Texas) (emphasis added). These statements constitute judicial admissions. The Defendants are also judicially estopped and/or quasi-estopped from asserting contrary positions now.

The Current Dispute

65. On or about September 5, 2006, in anticipation of the current dispute, and again on April 21, 2009, after leaving the Church and their offices, the Defendants and Counter-Defendants identified in Paragraphs 21 and 22 above, purporting to act as Trustees of the Diocesan Corporation, caused to be filed with the Secretary of State "Amended and Restated Articles of Incorporation of [the] Corporation of the Episcopal Diocese of Fort Worth" and a "Certificate of Correction." The "Amended and Restated Articles" and Certificate purported to:

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

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

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

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

66. The actions described in Paragraph 65 above violated these Defendants' and Counter-Defendants' constitutional and canonical obligations described in Paragraphs 37, 38, and 63 above; conflict with the Church's requirements and authority regarding the recognition of a Diocesan Bishop; they were ultra vires and void and therefore could not and did not affect the status of the Diocesan Corporation as an instrument of the Diocese subject to the Constitutions and canons of the Church and the Diocese, the legal and canonical obligations of these Trustees to the Diocese and the Church, or the status of and restrictions on the use and control of the property acquired by the Diocesan Corporation as an instrument of the Diocese.

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

68. The actions described in Paragraphs 65 and 67 above violated the respective constitutional and canonical obligations and prior commitments of the Diocese and of the members of Convention, were invalid, and did not affect the status or continuing existence of the Church's Diocese of Fort Worth.

69. On December 5, 2008, following a public statement by Defendant and Counter-Defendant Bishop Iker on November 24, 2008, that he no longer had any connection with the Church, the Presiding Bishop of the Church declared that Defendant and Counter-Defendant Bishop Iker had voluntarily renounced his ordained ministry in the Church and that he was "therefore, removed from the Ordained Ministry of [the] Church and released from the

obligations of Ministerial offices" in the Church. Defendant Bishop Iker thereby ceased to be a bishop of the Church or the Diocese.

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

71. Similarly, on or about November 15, 2008 certain members of the clergy and lay officials, including vestry members, of certain parishes and/or missions of the Diocese, including those now claiming to be the Intervening Congregations, also supported the purported withdrawal of the Diocese from the Church and the purported affiliation of the Diocese with a different denomination. By those acts, those individuals left the Church, violated their obligations under the Church's Declaration of Conformity and/or Church Canon I.17(8), and ceased to be eligible to hold any office in the Church, the Diocese, or any of the Church's or the Diocese's other subordinate units, including but not limited to the offices of rector, priest in charge, vicar, deacon, or other clergy, and vestry members, treasurers, chancellors, and other

officials of congregations of the Diocese, and their offices became vacant. The Intervening Congregations, respectively, judicially admit in their plea in intervention that "The Intervening Congregations are currently . . . under the episcopal oversight of the Rt. Rev. Jack Leo Iker, a defendant in this cause"—and not Bishop Ohl, who is recognized by The Episcopal Church to be the Bishop of its historical Episcopal Diocese of Fort Worth. As such, each of the Intervening Congergations and its leaders claims not to be "part of, and subject to [The Episcopal Church] and its Constitution and canons." *See* Plea in Intervention, p. 4, paragraph II.

72. The Diocese held a special meeting of its Convention on February 7, 2009. At that meeting, a Provisional Bishop of the Diocese was elected pursuant to Church Canon III.13; other vacant offices in the Diocese, including the Standing Committee, the Executive Council, and the Trustees of the Diocesan Corporation and the Endowment Fund, were filled; resolutions declaring certain diocesan offices vacant and declaring the constitutional and canonical amendments described in Paragraph 67 as well as the purported amendments of the Articles of Incorporation of the Diocese Corporation as described in Paragraph 65 above to be void and of no effect were passed; and the Diocese's clergy and lay Deputies to the Church's 2009 meeting of the General Convention were elected.

73. On November 13–14, 2009, the Diocese held the 27th Annual meeting of its Convention, at which Plaintiff Bishop Ohl was elected the Diocese's second Provisional Bishop and the Convention ratified the numerous resolutions and other actions taken by the special meeting of the Convention in February 2009 as described in Paragraph 72 above and the Convention changed the status of certain parishes to missions, including those historical Episcopal parishes and/or missions whose property is being used by the Intervening Congregations. As a result of the changes to mission status at the Convention, the congregations

of the continuing Diocese still include 55 congregations, including 17 active parishes, many worshipping in temporary space because Southern Cone groups still occupy their property, and 38 missions, some of whom are worshipping in their own space, some in temporary space, and some still in the process of reorganization under Bishop Ohl.

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

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

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

77. The Church recognizes the Diocese as the continuing Episcopal Diocese of Fort Worth under the leadership of Counterclaimants. The Church and the Diocese recognize the bishops described in Paragraphs 72 and 73 above as the bishops with Episcopal oversight of the Diocese, the persons elected to the Standing Committee described in Paragraphs 72 and 73 above as the Standing Committee of the Diocese, the persons described in Paragraphs 72 and 73 above as the Trustees of the Diocesan Corporation and the Trustees of the Endowment Fund, and the persons described in Paragraph 72 above as the elected Deputies of the Diocese to the Church's General Convention.

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

79. Although the Defendants and Counter-Defendants have left the Church and the Diocese for a different denomination, Defendants and Counter-Defendants continue to use the names, seal, and other symbols of the Diocese and the Diocesan Corporation and many of the parishes and/or missions of the Diocese, and hold the entities or factions affiliated with that denomination out as the continuing Episcopal Diocese of Fort Worth and many of the parishes and missions of the Diocese. The Defendants and Counter-Defendants are asserting exclusive use and possession of substantially all of the real and personal property, including other funds, of the Diocesan Corporation, the Endowment Fund, the Diocese, and its congregations, parishes, missions, and other Institutions.

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

E. FIRST CAUSE OF ACTION (Declaratory and Injunctive Relief and Accounting)

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

82. Counterclaimants Margaret Mieuli, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, the Rev. David Madison, the Rt. Rev. Edwin F. Gulick, Jr., and Kathleen Wells, individually and in their other stated capacities, assert this claim against all of the individual Defendants/Counter-Defendants and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation.

83. Counterclaimants take the position that the actions described in Paragraphs 65, 67, and 79 above are contrary to the Constitutions and canons of the Church and the Diocese and to the Prayer Book of the Church and are otherwise contrary to law and without any effect; that all property held by or for the Diocese is held and may only be used for the mission and benefit

of the Church and its subordinate Diocese, subject to the Constitutions and canons of the Church and the Diocese; that the Diocese and its parishes and missions remain a subordinate part of the Church for all purposes; that well-established Texas law recognizes that a constituent part of a hierarchical church is represented by those individuals who remain part of and loyal to the hierarchical church; and that the individual Plaintiffs and the Third-Party Defendants and Counterclaimants and the persons leading the parishes and missions of the Diocese, as recognized by the Church, are the proper authorities entitled to the use, possession, and control of the real and personal property of the Diocese and its parishes and missions.

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

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

86. As a result of the Defendants' and Counter-Defendants' continued use and possession of the property of the Diocese for purposes other than the mission of the Church and the Diocese, in derogation of the Constitutions and canons of the Church and the Diocese, and in disregard of the rights of the Church and the Diocese, Counterclaimants have suffered and will

continue to suffer irreparable injury. Injunctive relief is necessary and proper to enforce the parties' rights and duties with respect to the issues described above.

87. The exact nature and extent of the Diocesan accounts, including endowed funds, income, and disbursements, are unknown to Counterclaimants and cannot be determined without an accounting of the transactions and transfers of Diocesan property and an investigation of all financial accounts and funds in the name of or for the benefit of the Diocese, which accounts and funds have been used and depleted by the Defendants and Counter-Defendants from and after August 15, 2006.

F. SECOND CAUSE OF ACTION (Conversion)

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

89. Counterclaimants Margaret Mieuli, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison, individually and in their other stated capacities, assert this claim against all of the individual Defendants/Counter-Defendants and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation.

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

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

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

G. THIRD CAUSE OF ACTION (Texas Business & Commerce Code § 16.29)

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

94. Counterclaimants Margaret Mieuli, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison, individually and in their other stated capacities, assert this claim against all of the individual Defendants/Counter-Defendants and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation.

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

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

H. FOURTH CAUSE OF ACTION (Breach of Fiduciary Duty)

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

98. Counterclaimants Margaret Mieuli, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison, individually and in their other stated capacities, assert this claim against all of the individual Defendants/Counter-

Defendants and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation.

99. Defendants and Counter-Defendants owe fiduciary duties to the Diocese and Church. Defendants' and Counter-Defendants' actions, including violating their constitutional and canonical obligations to the Diocese and Church, purporting to affiliate with an unrelated entity while taking Diocesan and Church property, and misappropriating funds and the trade name and distinctive shield of the Diocese, constitute breaches of fiduciary duty. Defendants and Counter-Defendants benefited from these acts. Plaintiffs and Counterclaimants have been injured by these acts and seek equitable and legal relief. To the extent the Southern Cone Corporation or the Southern Cone Diocese or the Intervening Congregations aided and abetted, knowingly participated in, or received the benefits of these breaches of fiduciary duty, Plaintiffs and Counterclaimants also seek this relief from these Southern Cone entities or factions as well.

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

I. FIFTH CAUSE OF ACTION (Action to Quiet Title)

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

102. Counterclaimants Margaret Mieuli, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison, individually and in their other stated capacities, assert this claim against all of the individual Defendants/Counter-Defendants and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation.

103. Counterclaimants have an interest in their property, substantially all of which is being improperly held by Defendants and Counter-Defendants; title to this property is affected by a claim by the Defendants and Counter-Defendants, and that claim is *ultra vires*, void, invalid, and unenforceable.

J. SIXTH CAUSE OF ACTION (Trespass to Try Title)

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

105. Counterclaimants Margaret Mieuli, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison, individually and in their other stated capacities, assert this claim against all of the individual Defendants/Counter-Defendants and—to the extent necessary—against the Southern Cone Diocese and the Southern Cone Corporation.

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

K. RELIEF REQUESTED

107. Counterclaimants respectfully request that this Court issue the following against Defendants and Counter-Defendants, including all of the named individuals, the Southern Cone Corporation, and the Southern Cone Diocese:

a. A declaration that the Diocese is the continuing Episcopal Diocese of Fort Worth that has been a constituent entity of the Church since its formation effective January 1, 1983 and continuing to the present day;

b. A declaration that there is only one Episcopal Diocese of Fort Worth, there is only one Bishop of the Episcopal Diocese of Fort Worth, there is only one Standing Committee of the Episcopal Diocese of Fort Worth, there is only one Corporation of the Episcopal Diocese of Fort Worth, and there is only one Fund for the Endowment of the Episcopate of the Episcopal Diocese of Fort Worth;

c. A declaration that the Plaintiffs and the Third-Party Defendants and Counterclaimants and their duly elected successors are the proper authorities of the Diocese, the bishops, the Standing Committee, the Diocesan Corporation, and the Endowment Fund, respectively, and are entitled to the use and control of the real, personal, and intellectual property of the Diocese and its parishes and missions, including the property held by the Diocesan Corporation and the Endowment Fund, and that Defendants and Counter-Defendants and their successors do not hold those offices and are not entitled to the use or control of said property;

d. A declaration that the bishop selected at the Special Convention in February 2009 and his successors were and are the Bishop of the Diocese, and that Bishop Iker does not hold that office;

e. A declaration that the bishop selected at the Annual Convention of November 13-14, 2009, and his successors, and the members of the Standing Committee of the Diocese and the Trustees of the Diocesan Corporation and the Endowment Fund, respectively, selected at or immediately after the meeting of the Special Convention of

February 7, 2009 and the Annual Convention of November 13-14, 2009, and their successors comprise the Bishop, Standing Committee of the Diocese and are the Trustees of the Diocesan Corporation and Endowment Fund, respectively, and that the Defendants and Counter-Defendants and their successors do not hold any of those offices;

f. A declaration that Kathleen Wells acted in accordance with her position and within her authority as Diocesan Chancellor;

g. A declaration that the Plaintiffs, along with Third-Party Defendants and Counterclaimants, and their successors are entitled to the exclusive use of the name, seal, and other intellectual property of the Diocese and its parishes and missions and/or the Diocesan Corporation and/or the Endowment Fund, including the name of the Diocesan Corporation, and that Defendants and Counter-Defendants and their successors may not use said name, seal, and other intellectual property;

h. A declaration that all property held by or for the Diocese and its parishes and missions and/or the Diocesan Corporation and/or the Endowment Fund is held for and may be used only for the mission of the Church and the Diocese, subject to the Constitutions and canons of the Church and the Diocese;

i. A declaration that the September 5, 2006 and April 21, 2009 attempted changes to the articles and bylaws of the Diocesan Corporation were *ultra vires*, unauthorized, void, and without effect;

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

k. A declaration that the Defendants' actions since November 15, 2008 purportedly in the name of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or other Diocesan institutions were and are unauthorized, void, and without effect.

l. An injunction requiring Defendants and Counter-Defendants to vacate and surrender possession of the real property of the Diocese and its parishes and missions and/or the Diocesan Corporation and/or the Endowment Fund, including but not limited to property located at 2900 Alemeda Street, Fort Worth, Tarrant County, Texas, and at Camp Crucis in Hood County, Texas, and to relinquish to Third-Party Defendants and Counterclaimants, along with Plaintiffs, the possession of all real, personal, and intellectual property, including funds and records, of the Diocese and its parishes and missions, the Diocesan Corporation, and the Endowment Fund;

m. An injunction prohibiting Defendants and Counter-Defendants and their successors from holding themselves out as officers and other leaders of the Diocese or its parishes and missions and/or the Diocesan Corporation and/or the Endowment Fund, or using the name, seal, symbols, and other trademarks and intellectual property of the Diocese, its parishes and missions, the Diocesan Corporation, and the Endowment Fund;

n. An order requiring Defendants and Counter-Defendants to provide an accounting of all real and personal property used or possessed by Defendants or Counter-Defendants in the name of or purportedly on behalf of the Diocese, the Diocesan Corporation, the Endowment Fund, or any parish, mission, or congregation of the Diocese on and after August 15, 2006 to the present day;

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

p. A judgment awarding title and possession of the property prayed for, as well as rents and profits;

q. Declaratory judgment invalidating Defendants' and Counter-Defendants' claim to property and quieting title of property in the Corporation of the Episcopal Diocese of Fort Worth as controlled by Plaintiffs, along with Third-Party Defendants and Counterclaimants;

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

s. Other and further relief to which the Counterclaimants may be entitled.

III. PRAYER

WHEREFORE, Third-Party Defendants and Counterclaimants respectfully request that any Defendant or Counter-Defendant who has not appeared in this action be cited to appear and answer herein and pray that upon final hearing Defendant/Third-Party Plaintiff/Counter-Defendant the Southern Cone Diocese take nothing by its Third-Party claims; that the Court enter the Declarations specified and the Orders requested herein; that Third-Party Defendants and Counterclaimants have judgment against Defendants and Counter-Defendants as prayed for above, including against all of the named individuals, the Southern Cone Corporation, and the Southern Cone Diocese; and for any and all other relief to which these Third-Party Defendants and Counterclaimants may show themselves to be justly entitled.

Respectfully submitted,

By: Jon Nelson w/permission

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Second Amended Answer and Counterclaims to Southern Cone Diocese's Third-Party Petition has been sent this 18th day of October, 2010, by hand-delivery or Federal Express to:

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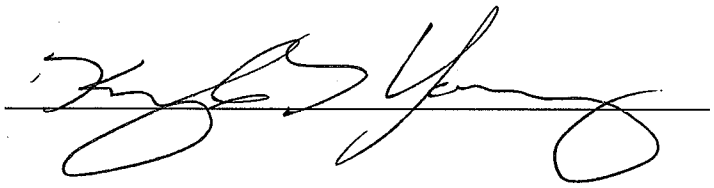

VERIFICATION

On this day, KATHLEEN WELLS personally appeared before me, the undersigned Notary Public, and after being duly sworn stated under oath that she is the Chancellor of the Episcopal Diocese of Fort Worth; that the only legitimate association bearing the name "Episcopal Diocese of Fort Worth" is the association that is a subordinate unit of the Protestant Episcopal Church in the United States of America; that she is counsel of record for all Plaintiffs except the Episcopal Church and for all Third-Party Defendants; that the only legitimate association bearing the name "Corporation of the Episcopal Diocese of Fort Worth" is the corporation of which the Rt. Rev. C. Wallis Ohl is Chairman of the Board of Trustees, a Texas non-profit corporation with its principal office in Fort Worth, Texas, formed pursuant to the Constitution and canons of the Episcopal Diocese of Fort Worth to hold and manage the property of the Diocese subject to the Constitutions and canons of the Protestant Episcopal Church in the United States of America and the Diocese; that the Rt. Rev. Edwin F. Gulick, Jr., was the Provisional Bishop for the Episcopal Diocese of Fort Worth from February 2009 until November 2009 and does not now hold that position; and that the facts in Paragraphs 4 through 8 of the Second Amended Answer and Counterclaims to the Southern Cone Diocese's Third-Party Petition are within her personal knowledge and are correct.

Kathleen Wells

SUBSCRIBED AND SWORN TO BEFORE ME this 24th day of September, 2010.

REBECCA D. MEEK
MY COMMISSION EXPIRES
January 24, 2014

Notary Public, State of Texas