

NORTH CAROLINA  
NEW HANOVER COUNTY

GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CVS 2156

FIFTH AVENUE UNITED  
METHODIST CHURCH OF  
WILMINGTON,

Plaintiff,

v.

THE NORTH CAROLINA  
CONFERENCE, SOUTHEAST  
JURISDICTION, OF THE UNITED  
METHODIST CHURCH, INC., *et al.*,

Defendants.

**DEFENDANTS’  
MEMORANDUM IN SUPPORT  
OF MOTION TO DISMISS AND  
OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION**

**INTRODUCTION**

Plaintiff’s complaint asks the Court to do something it cannot: resolve a dispute arising from, rooted in, and governed by religious doctrine.

Rather than concealing the nature of this dispute, Plaintiff embraces it. The essence of Plaintiff’s complaint is a request for this Court to second-guess the discretionary decision made by the North Carolina Conference under UMC doctrine that Plaintiff, a local United Methodist Church that was declining in membership despite being situated in a growing neighborhood that had also refused opportunities to work collaboratively with the North Carolina Conference on mission opportunities, no longer served the religious and theological purpose for which it was organized in accordance. Throughout its complaint, Plaintiff alleges that Defendants failed to act in “good faith” in the performance of their obligations under *The Book of Discipline of*

*The United Methodist Church* and asks the Court to declare provisions—fundamental to Methodist polity since its founding—of *The Book of Discipline* invalid and void based on “public policy.”

The First Amendment bars the very inquiry Plaintiff asks the Court to undertake. Because each of Plaintiff’s claims “requires the [C]ourt to interpret or weigh church doctrine,” the Court lacks subject matter jurisdiction over this action. *Nation Ford Baptist Church, Inc. v. Davis*, 382 N.C. 115, 123, 876 S.E.2d 742, 751 (2022). *See infra* pp. 11–24.

What is more, even assuming the complaint presents any claim that may be resolved solely by application of neutral principles of law—it does not—those neutral principles of law make clear that Plaintiff has failed to state any claim for which relief may be granted. *See infra* pp. 25–30.

Plaintiff’s complaint should be dismissed and its request for injunctive relief should be denied.

## FACTUAL BACKGROUND<sup>1</sup>

### *Background and Structure of the UMC*

The United Methodist Church (“UMC”) is a global Christian denomination that traces its origins to the Methodist movement founded in England by John Wesley and Charles Wesley in the 1700s. Affidavit of Reverend Dr. Connie Mitchell Shelton (“Shelton Aff.”) ¶ 6.

The UMC is both hierarchical and connectional. Shelton Aff. ¶¶ 6–13, 25–28.

It is hierarchical in the sense that governance of the denomination is established through levels of ascending control and authority. *Id.* at ¶¶ 6–13. The denomination is led by its General Conference, whose delegates are elected worldwide by members of Annual Conferences. The General Conference establishes official policies and determines the theological doctrines of the entire denomination. As part of its leadership role over the worldwide UMC, the General Conferences publishes *The Book of Discipline of The United Methodist Church*. Shelton Aff. ¶¶ 7–8. *The Book of Discipline* serves as the governing document for the UMC, its Conferences, and its individual churches. Shelton Aff. ¶¶ 8–9.

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<sup>1</sup> The factual background outlined here is taken from the allegations of the complaint and from the affidavits of Bishop Connie Mitchel Shelton, District Superintendent Tara Lain, and David G. Martin, which may be appropriately considered in connection with the motion to dismiss under Rule 12(b)(1) and Defendants’ opposition to Fifth Avenue UMC’s request for a preliminary injunction. *See Marlow v. TCS Designs, Inc.*, 887 S.E.2d 448, 452–53 (N.C. Ct. App. 2023) (explaining that, in the evaluation of a Rule 12(b)(1) motion, the Court may consider affidavits and evidentiary materials). As noted below, Defendants’ motion to dismiss pursuant to Rule 12(b)(6) relies only those facts alleged in the complaint itself.

The “connectional” aspect of the UMC stems from Methodism’s founding and intertwines each of the various bodies of the UMC in their theology, mission, doctrines, property, appointment and itinerancy of clergy, and worship. Shelton Aff. ¶ 26.

Although the UMC itself was founded in 1968, its structure and the role—and notably, key provision—of *The Book of Discipline* are nothing so new.

The UMC was born out of a series of divisions and mergers from the original Methodist Episcopal Church, which was established in 1784. Shelton Aff. ¶ 14. Following a dispute over slavery, in 1844, annual conferences from the slaveholding states, including North Carolina, separated from the Methodist Episcopal Church and formed the Methodist Episcopal Church, South. Shelton Aff. ¶ 16. In 1939, the Methodist Episcopal Church and the Methodist Episcopal Church, South reunited and joined with The Methodist Protestant Church to form The Methodist Church. *Id.* Finally, in 1968, The Methodist Church merged with the Evangelical United Brethren to form the UMC. *Id.*

At each step in this long and rich history, the UMC and its predecessors have been governed by *The Book of Discipline*. Shelton Aff. ¶¶ 15, 24.

### ***The Book of Discipline***

*The Book of Discipline* addresses not only the theological grounding of the UMC, but also practical concerns, including the organization and structure of the various bodies within the denomination and the ownership and stewardship of property in furtherance of the UMC’s mission.

The method of ownership and stewardship of property used by the UMC and its predecessors has been a fundamental tenet of Methodism since its founding, and in fact predates *The Book of Discipline* itself. Shelton Aff. ¶ 23. In short, property owned anywhere in the world by the UMC, its conferences, agencies, institutions or local churches is held in trust “for the benefit of the entire denomination.” See Shelton Aff. Ex. C ¶ 2501.

This requirement is known as the “trust clause.” The trust clause has been included in every iteration of *The Book of Discipline* adopted by every predecessor denomination of the UMC since 1784. Shelton Aff. ¶ 24, Exs. D, E, F, G, H. Although *The Book of Discipline* requires that the language of the trust clause be recited in deeds and other conveyances, given the importance of the trust clause to UMC polity, *The Book of Discipline* makes clear that:

the absence of the trust clause in any deed or conveyance shall in no way exclude a local church or church agency, or the board of trustees of either, from or relieve it of its connectional responsibilities to The United Methodist Church. Nor shall it absolve a local church or church agency or the board of trustees of either, of its responsibility to hold all of its property in trust for The United Methodist Church.

Shelton Aff. ¶ 21, Ex. C ¶ 2503.6. In the absence of a trust clause contained in a deed or conveyance, *The Book of Discipline* provides that the intent of the local church to be bound by the trust clause can be shown by any or all of the following:

- a) the conveyance of the property to a local church or church agency (or the board of trustees of either) of The United Methodist Church or any predecessor to The United Methodist Church;
- b) the use of the name, customs, and polity of The United Methodist Church or any predecessor to The United Methodist Church in such a way as to be thus known to the community as a part of such denomination; or

- c) the acceptance of the pastorate of ordained ministers appointed by a bishop or employed by the superintendent of the district or annual conference of The United Methodist Church or any predecessor to The United Methodist Church.

Shelton Aff. Ex. C ¶ 2503.6(a)–(c).

The trust clause extends to “all real and personal, tangible and intangible property held at” a local church or institution. Shelton Aff. Ex. C ¶ 2501.1. It is also irrevocable. *Id.*, Ex. C ¶ 2501.2.

*The Book of Discipline* outlines circumstances when the title to property held in trust for the denomination will vest in the trustees of the annual conference, including upon the closure of the local church. *See* Shelton Aff. Ex. C ¶ 2549. In such a case, title to the property of the local church vests in the board of trustees of the annual conference. *Id.*<sup>2</sup>

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<sup>2</sup> *The Book of Discipline* provides a path for officials of the annual conference to take immediate possession of the property of a local church where “exigent circumstances exist that require immediate protection of the local church’s property, for the benefit of the denomination.” *See* Shelton Aff. Ex. C ¶ 2549.3(b). The declaration of exigent circumstances is temporary. Upon the declaration of exigent circumstances, the annual conference is immediately vested with title to local church property, but the ultimate decision as to the closure of a local church is only made at the next annual conference and does not depend upon a finding of exigent circumstances. *See id.* Here, as alleged in the complaint, Paragraph 2549.3(b) was invoked upon a finding of exigent circumstances. Prior to the filing of the complaint, however, the annual conference voted to approve the closure of Fifth Avenue UMC. Shelton Aff. ¶¶ 43–44. As a result, to the extent Plaintiff challenges or asks the Court to ignore the exigent circumstances determination, that request is moot as the operative decision to close Fifth Avenue UMC was made by the annual conference on June 16, 2023. *Id.*

### *Fifth Avenue UMC*

Plaintiff Fifth Avenue United Methodist Church (“Fifth Avenue UMC” or “the Church”) was established in 1847 as a church of the Methodist Episcopal Church, South. Compl. ¶ 23; Shelton Aff. ¶ 17.

In the same year, Fifth Avenue UMC began acquiring the property on which its church was constructed. Specifically, in 1847, Miles Costin conveyed part of Lot 4, Block 104—the same lot on which the principal church building still sits—in the City of Wilmington to the “Trustees of the Methodist Episcopal Church South.” Affidavit of David G. Martin (“Martin Aff.”) ¶¶ 8–9, Ex. B-1. That conveyance included the then-required trust clause under *The Book of Discipline* then in effect. *Id.*

Over the next approximately one hundred fifty years, Fifth Avenue UMC’s real property holdings increased, with several of the deeds to Fifth Avenue including the then-applicable trust clause. *See* Martin Aff. ¶¶ 10–17.

As its campus grew, so too did Fifth Avenue UMC’s connection to the UMC and its predecessor denominations. The Church has accepted pastoral appointments from the North Carolina Conference and its predecessors since its founding in 1847. Affidavit of District Superintendent Tara Lain (“Lain Aff.”) ¶ 10. Its Articles of Incorporation recite that the purposes of its formation are “set forth in *The Book of Discipline*,” and explain that “[t]he business of [Fifth Avenue UMC] *shall be conducted in conformity with [The Book of] Discipline* of the United Methodist

Church. . .” Shelton Aff. ¶ 30, Ex. I (emphasis added).<sup>3</sup> Consistent with its Articles, which were filed in 2006, Fifth Avenue UMC made use of the United Methodist Hymnal, held itself out as a United Methodist Church—or its predecessor denominations—paid many of its annual apportionments, and submitted reports required of all local churches within the denomination. Lain Aff. ¶ 10.

Fifth Avenue UMC also complied with the very trust clause it now seeks to avoid. As recently as June of 2022, Fifth Avenue followed the procedures outlined in *The Book of Discipline* to convey property subject to the trust clause. See Martin Aff. ¶ 18, Exs. J, K; Lain Aff. ¶ 15.

Unfortunately, Fifth Avenue UMC’s rich history as a local church within the UMC waned. As downtown Wilmington grew, Fifth Avenue UMC’s membership, attendance, and participation in key ministries declined. Lain Aff. ¶ 18. Despite many efforts to course-correct, Fifth Avenue UMC’s activity and participation as a local church fell below the minimum standards outlined in *The Book of Discipline*. Lain Aff. ¶¶ 20–25. As a result, and as allowed by *The Book of Discipline*, the North Carolina Conference and its officials, “in their sole discretion, [determined] that exigent circumstances exist[ed] that require[d] immediate protection of [Fifth Avenue UMC’s] property, for the benefit of the denomination.” *Id.* at ¶¶ 26–30 (quoting *The Book of Discipline*, ¶ 2549.3(b) Shelton Aff. Ex. C).

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<sup>3</sup> Fifth Avenue UMC’s Articles of Incorporation also specifically provide that, upon dissolution, “**the title to all of its property, both real and personal shall be vested and be the property of the North Carolina Annual Conference of The United Methodist Church, pursuant to the said *Discipline*.**” Shelton Aff. Ex. I, Article XII.B. (emphasis added).



Following the declaration of exigent circumstances, again as provided in *The Book of Discipline*, a motion to formally close Fifth Avenue UMC was made at the Annual Conference Session on June 16, 2023. Lain Aff. ¶ 31. The Annual Conference Session voted by a majority of the assembled clergy and lay delegates to formally close the Church. Lain Aff. ¶ 32.

### ***Disaffiliation***

Plaintiff's complaint spills significant ink over the issue of disaffiliation. Although, as discussed below, Fifth Avenue UMC's efforts to disaffiliate in no way limit its obligations or the Conference's authority under *The Book of Discipline*, some background on that process is helpful.

Disaffiliation describes the process by which a local church may separate from the UMC. This process is governed by *The Book of Discipline*. Generally speaking, the circumstances under which a local church may disaffiliate from the denomination are extremely limited. A local church may never do so without the consent of the annual conference. Shelton Aff. ¶ 50, Ex. C ¶ 2529.1(b)(3), Ex. M (Judicial Council Ruling 1379).

Throughout the 2000s and 2010s, though, theological and doctrinal debates took place over the status of gay, lesbian, transsexual, bisexual, and queer persons within the UMC. Specifically, disagreements persisted as to the performance of same-sex weddings and ordination of LGBTQ clergy. Shelton Aff. ¶ 48. Ultimately, in 2019, the General Conference of the UMC enacted Paragraph 2553 of *The Book of Discipline*. Paragraph 2553 allows local churches a limited right to disaffiliate “for

reasons of conscience regarding a change in the requirements and provisions of *The Book of Discipline* related to the practice of homosexuality or the ordination or marriage of self-avowed practicing homosexuals as resolved and adopted by the 2019 General Conference, or the actions or inactions of its annual conference related to these issues which follow.” Shelton Aff. ¶ 49.

Although Paragraph 2553 provided a new justification for disaffiliation, it did not create an absolute right to disaffiliate. Disaffiliation under Paragraph 2553 still requires consent of the annual conference. Shelton Aff. ¶ 50. Furthermore, until disaffiliation is complete, a local church remains—in all respects—a local church subject to *The Book of Discipline*. Shelton Aff. ¶ 51.

\* \* \*

On June 27, 2023—more than three months after the declaration of exigent circumstances and eleven days after the final vote to close the Church—Fifth Avenue UMC filed this action. Fifth Avenue generally alleges that its “right” to disaffiliate was interfered with by the decision to close the Church. Fifth Avenue also seeks to avoid the application—mandatory under *The Book of Discipline*—of the trust clause.

As discussed below, Plaintiff’s complaint should be dismissed.

### **GOVERNING STANDARDS**

The threshold issue in this case is whether, under the First Amendment’s doctrine of ecclesiastical entanglement, this Court is precluded from exercising subject matter jurisdiction over Plaintiff’s complaint challenging the authority of the Defendant Conference to supervise a local church within its boundaries. *See Nation*

*Ford Baptist Church*, 382 N.C. at 121, 876 S.E.2d at 750. In considering Defendant’s motion to dismiss under Rule 12(b)(1), the Court is free to consider affidavits and matters beyond the pleadings. *Tubiolo v. Abundant Life Church, Inc.*, 167 N.C. App. 324, 327, 605 S.E.2d 161, 163 (2004).

This motion also presents an alternative Rule 12(b)(6) issue: whether, applying neutral principles of law, the complaint states any claim for which relief may be granted. Dismissal under Rule 12(b)(6) is warranted when the complaint reveals that the law does not support the claim. *Oates v. JAG, Inc.*, 314 N.C. 276, 278, 333 S.E.2d 222, 224 (1985). In deciding the motion, the Court disregards any legal conclusions in the complaint that are contrary to law. *See McCrann v. Pinehurst, LLC*, 225 N.C. App. 368, 377, 737 S.E.2d 771, 777 (2013). In addition, the Court does not “accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Good Hope Hosp., Inc. v. N.C. Dep’t of Health & Human Servs.*, 174 N.C. App. 266, 274, 620 S.E.2d 873, 880 (2005).

## **ARGUMENT**

### **I. The First Amendment Prohibits the Exercise of Jurisdiction Over this Lawsuit.**

#### **A. Civil Courts Are Not the Forum to Resolve Disputes over Religious Doctrines or Spiritual Practices.**

Few rules are as well-settled as the principle that civil courts must avoid exercising jurisdiction over purely ecclesiastical disputes. With its rooting in the First Amendment to the United States Constitution, federal and North Carolina courts have regularly and reliably applied the ecclesiastical abstention doctrine to

defer matters of religion to the religious bodies themselves. As our Supreme Court has explained, “[t]he constitutional prohibition against court entanglement in ecclesiastical matters is necessary to protect First Amendment rights identified by the ‘Establishment Clause’ and the ‘Free Exercise Clause.’” *Nation Ford Baptist Church*, 382 N.C. at 116–17, 876 S.E.2d at 747 (quoting *Harris v. Matthews*, 361 N.C. 265, 270, 643 S.E.2d 566, 569 (2007)).<sup>4</sup>

When a civil action arises out of a religious dispute, the First Amendment’s impermissible entanglement doctrine bars judicial involvement “[w]hen the resolution of a dispute requires the interpretation of religious doctrines or spiritual practices.” *Nation Ford Baptist Church*, 382 N.C. at 116, 876 S.E.2d at 747. *See also Jones v. Wolf*, 443 U.S. 595, 602 (1979) (“[T]he First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice”). The First Amendment does not allow Courts to “interpret or weigh church doctrine.” *Smith*, 128 N.C. App. at 494, 495 S.E.2d at 398. Courts are also prohibited from deciding disputes involving religious organizations when those organizations “would be deprived of interpreting and determining their own laws and doctrine.” *Id.* at 494, 495 S.E.2d at 397 (citing *Watson v. Jones*, 80 U.S. (1 Wall.) 679 (1871)).

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<sup>4</sup> The Free Exercise clause is violated when a court interferes in a religious dispute and thereby chills the free exercise of religion. A court risks “establishing” a religion in violation of the Establishment Clause concern when it enters “into a religious controversy and [places] the enforcement power of the state behind a particular religious faction.” *Tubiolo*, 167 N.C. App. at 327–28, 605 S.E.2d at 163–64 (citation omitted).

Applying this rule, North Carolina courts have concluded that claims that require a determination of whether religious officials acted “in good faith and in the best interests of the Church,” or similarly question the “justification” of action taken under religious doctrine or polity, cannot be resolved by civil courts. *Nation Ford Baptist Church*, 382 N.C. at 125, 876 S.E.2d at 752 (citing *Harris*, 361 N.C. at 273, 643 S.E.2d at 571).

If, however, “a claim can be resolved solely by applying neutral principles of law, there is no impermissible entanglement.” *Nation Ford Baptist Church*, 382 N.C. at 123, 876 S.E.2d at 751. Courts in limited situations have, for example, concluded that certain property, contract, tort, or employment disputes could be resolved by application of “neutral principles of law,” and did not present impermissible ecclesiastical entanglement. *See, e.g., Smith*, 128 N.C. App. at 495, 495 S.E.2d at 398 (concluding the First Amendment does not bar negligent hiring claim that church knew or should have known that a pastor had a history of sexual misconduct). But if a complaint requires a court to analyze and apply religious canons, bylaws, deeds, or other governing documents that “incorporate[ ] religious concepts in the provisions relating to the ownership of property . . . [.] the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.” *Jones*, 443 U.S. at 604 (citing *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 709 (1976)).

In determining whether the Court has jurisdiction over a particular claim, the ultimate question is “whether resolution of the legal claim requires the court to

interpret or weigh church doctrine.” *Smith*, 128 N.C. App. at 494, 495 S.E.2d at 398. Critically, “impermissible entanglement may arise either when a court resolves an underlying legal claim or when it issues a form of relief.” *Nation Ford Baptist Church*, 115 N.C. at 123, 876 S.E.2d at 751. “A court must carefully distinguish between claims that will necessarily require it to become entangled in spiritual matters and those that can potentially be resolved purely on civil grounds.” *Id.* at 128, 876 S.E.2d at 754.

**B. Plaintiff cannot avoid the ecclesiastical nature of this action.**

A review of Plaintiff’s complaint reveals that, despite its somewhat careful pleading, this action presents only an intradenominational dispute over doctrine and theology that cannot be resolved by “neutral principles of law.”

Each of Plaintiff’s claims arises from the same set of fundamental facts. Plaintiff alleges the North Carolina Conference violated Plaintiff’s rights when it issued the Resolution for Closure and took possession of the property of Fifth Avenue UMC even though Plaintiff had requested a church conference to disaffiliate. Plaintiff claims that the decision to close the Church deprived Plaintiff of a contractual right to disaffiliate (Count I), broke a promise to allow the Church to disaffiliate (Count II), allowed the Conference to close and take possession of property in which it did not have a valid trust interest (Counts III and VI), was made in reliance upon allegedly “fraudulent” grounds for closure (Count IV), breached a relationship of trust and confidence between the Conference and the Church (Count V), and relied upon trust language from the *Book of Discipline* that Plaintiff did not

“intend” to accept and which therefore should be judicially modified or terminated (Count VI).

The decision to close the Church is not subject to review in a secular civil court, however, because it was based entirely on core United Methodist doctrine and theology and conducted in accordance with applicable church law. Paragraph 2549.3(b) of *The Book of Discipline* allows a United Methodist conference with supervisory authority over a local church to close the church and take ownership of its property for the benefit of the denomination upon finding that the church “no longer serves the purpose for which it was organized or incorporated.” Shelton Aff. Ex. C ¶ 2549.3(b). Local churches, of course, are organized and incorporated for a spiritual and theological purpose. They serve as the “the most significant arenas through which disciple-making occurs” in a denomination whose mission is “to make disciples of Jesus Christ for the transformation of the world.” Shelton Aff. Ex. C ¶ 120.

As explained in the Resolution, the Conference leaders entrusted by *The Book of Discipline* with the “sole discretion” to make exigent closure decisions determined that the Church was no longer serving its denominational purpose due to its declining membership and missional activity, the membership’s failure to collaborate in important UMC ministries, and the Conference’s pressing need to use the Church property to minister to those in need and provide a welcoming space for new United Methodist faith communities in the community where the Church is located. Lain Aff. ¶¶ 20–35, Ex. D. When making this decision, Conference officials were required

by *The Book of Discipline* to evaluate whether the Church was meeting the minimum religious and theological expectations for a UMC church. Lain Aff. ¶¶ 20, 28. Those expectations include the requirement that the church “minister to persons in the community where the church is located,” “carry forward the work that Christ has committed to his church,” and satisfy a “witness responsibility for its members and the surrounding area and a missional outreach responsibility to the local and global community.” Shelton Aff. ¶ 33, Ex. C ¶¶ 202–04.

Because there are no “neutral principles” through which this Court can evaluate whether Conference officials properly applied these spiritual and theological imperatives, Plaintiff’s claims violate the First Amendment and must be dismissed. *Nation Ford Baptist Church*, 382 N.C. at 117, 876 S.E.2d at 747. *See also Tubiolo*, 167 N.C. App. at 327–28, 605 S.E.2d at 163–64 (explaining that ecclesiastical matters not subject to court review include “doctrine, creed, or form of worship of the church,” “the adoption and enforcement within a religious association of needful laws and regulations for the government of membership,” and “the power of excluding from such associations those deemed unworthy of membership by the legally constituted authorities of the church”) (citation omitted).

**C. Plaintiff’s Claims of a “Right to Disaffiliate” Must be Dismissed.**

Perhaps realizing the First Amendment bars its challenge to the Conference’s decision to close the Church, Plaintiff claims it merely wants the Court to use “neutral principles” to enforce the Church’s “right to disaffiliate” under Paragraph 2553 of *The Book of Discipline*. According to Plaintiff, once the Church initiated a request for



disaffiliation, the Conference was stripped of authority to supervise the Church and was only allowed to play a ministerial role in carrying out the disaffiliation process. Compl. ¶¶ 50–59. Despite its claims, however, the questions raised by Plaintiff’s reliance on Paragraph 2553 are far from “neutral.”

Contrary to Plaintiff’s assertion, a local church that has requested a vote on disaffiliation remains subject to the full supervisory authority of the Conference until the date a particular church completes the disaffiliation process and thus is no longer a United Methodist Church. *The Book of Discipline’s* provision on disaffiliation makes clear that until disaffiliation is finally approved and completed, a local church is not relieved or released from any obligations under the *Discipline*, including the obligation to hold its property in trust for the benefit of the entire denomination and the obligation to comply with the minimum standards for a local church set forth in Paragraphs 201–204. Shelton Aff. ¶¶ 19, 33, Ex. C ¶ 2553.h. This is also clear from *The Book of Discipline’s* provision for exigent church closures. Paragraph 2549.3(b) states without qualification that Conference officials have the “sole discretion” to declare exigent circumstances and make a preliminary decision to close a church “**[a]t any time between sessions of annual conference.**” Shelton Aff. Ex. C ¶ 2549.3(b) (emphasis added). The exigent circumstances resolution in this case was made on March 24, between the June 2022 and June 2023 sessions of the annual conference. Shelton Aff. ¶¶ 38, 43.

Moreover, *The Book of Discipline* makes clear that a local church does not have an unqualified “right to disaffiliate.” Rather, the *Discipline* provides that a local

church “cannot sever its connectional relationship to The United Methodist Church **without the consent of the annual conference.**” Shelton Aff. ¶¶ 19, 50, Ex. C ¶ 2529.1(b)(3) (emphasis added). The Judicial Council, which is the court of highest jurisdiction within the United Methodist Church, has ruled that a local church cannot disaffiliate pursuant to Paragraph 2553 unless the disaffiliation is “ratified by a simple majority of the members of the annual conference present and voting.” Shelton Aff. ¶ 50, Ex. M. In this case, by contrast, the majority of the members of the annual conference voted to close the Church. Shelton Aff. ¶ 44.

The nature of Plaintiff’s claims makes it even more clear that this lawsuit is barred by the First Amendment. For instance, Plaintiff alleges the decision to close the Church rather than allow it to disaffiliate was made in bad faith, Compl. ¶ 107, and the reasons given for the closure were “mere pretext.” Compl. ¶ 130. These are the very types of claims that were recently barred by the North Carolina Supreme Court. *See Nation Ford Baptist Church*, 382 N.C. at 125, 876 S.E.2d at 752 (concluding that examinations of “good faith” or justifications are improper under ecclesiastical abstention doctrine).

Finally, Plaintiff’s claim that it has a right to disaffiliate runs afoul of the requirement from *Jones v. Wolf* that the North Carolina Conference, as Plaintiff’s parent body in the hierarchical structure of the UMC, be afforded deference in its interpretation and application of religious doctrine. *Jones*, 443 U.S. 595, 604. A delegate to the June 2023 annual session of the Conference recently submitted a request through denominational channels for Bishop Shelton to issue a ruling of law

addressing the claim that initiation of a disaffiliation process prevents Conference leaders from closing a church for exigent circumstances. Shelton Aff. ¶ 45. The Bishop issued a Ruling of Law that the existence of exigent circumstances allows conference leaders to take preliminary action to close a church pursuant to Paragraph 2549.3(b) of *The Book of Discipline* regardless of what other circumstances or options (such as a request for disaffiliation) a local church is addressing. Shelton Aff. Ex. L. The Bishop's ruling will be reviewed by the Judicial Council, the highest adjudicative body in the UMC. Accepting jurisdiction of Plaintiff's lawsuit in the face of this pending ecclesiastical proceeding would violate the First Amendment by interfering with the internal appeals process through which the denomination is interpreting its own rules on this ecclesiastical issue. *See Serbian E. Orthodox Diocese*, 426 U.S. at 724–25 (“In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them”).

**D. Plaintiff's Claims That it is Not Bound by the Trust Clause Must be Dismissed.**

As set forth above, the primary narrative supporting Plaintiff's breach of contract, promissory estoppel, fraud, and constructive fraud claims is that Defendants' decision to close the Church rather than allow Plaintiff to disaffiliate violated Paragraph 2553 of *The Book of Discipline*. These claims all logically require

Plaintiff to acknowledge that Plaintiff is a local UMC church whose property is subject to rules set forth in *The Book of Discipline*. See Compl. ¶¶ 35–43.

Despite this admission, Plaintiff tries to have it both ways by claiming in its third, sixth, and seventh claims for relief (declaratory judgment, quiet title, and judicial modification of trust) that it is not bound by the provisions of *The Book of Discipline* that make clear that Plaintiff held its church property in trust for the benefit of the denomination. Plaintiff's attempt to disavow the trust clause while relying on other provisions from the *Discipline* must be rejected because it is wholly unsupported by the undisputed facts, well-settled law, and *The Book of Discipline*, and because these claims improperly ask the Court to interpret, weigh and even rewrite fundamental church doctrine in violation of the First Amendment.

North Carolina courts have consistently held that “the parent body of a connectional church has the right to control the property of local affiliated churches, and, as a corollary, this right will be enforced in civil courts.” *Daniel v. Wray*, 158 N.C. App. 161, 168, 580 S.E.2d 711, 717 (2003). Plaintiff admits in its complaint that the UMC is a connectional denomination and Plaintiff is a local church within the denomination. Compl. ¶¶ 35–43. As such, Plaintiff is bound by the United Methodist trust clause, which provides that “[a]ll properties of United Methodist local churches and other United Methodist agencies and institutions are held, *in trust*, for the benefit of the entire denomination, and ownership and usage of church property is subject to [*The Book of*] *Discipline*.” Shelton Aff. Ex. C ¶ 2501.1. (emphasis in

original). Moreover, “[t]he trust is and always has been irrevocable, except as provided in the *Discipline*.” Shelton Aff. Ex. C. ¶ 2501.2.

The trust clause has been included in every edition of *The Book of Discipline* and its predecessors since the original founding of the Methodist Church in America in 1784. Shelton Aff. ¶¶ 15, 24. Local church property is held in trust for a compelling theological reason: to ensure that local churches remain accountable and connected to the denomination. Through this accountability mechanism, the conferences that supervise and support local churches can ensure that churches are served by pastors who follow sound UMC doctrine and they reliably follow the mission of the UMC to “make disciples of Jesus Christ for the transformation of the world.” Shelton Aff. ¶¶ 25–28.

Plaintiff’s claim that it can avoid the trust clause because it did not subjectively intend to have its property under the supervisory control of the Conference cannot be squared with the many ways through which Plaintiff demonstrated its full connection with the UMC and intent to be bound by **all** provisions of *The Book of Discipline* for over 175 years. These actions include:

- Plaintiff’s admission that it is a local church bound by *the Discipline* (Compl. ¶¶ 35–43);
- Plaintiff’s adoption of Articles of Incorporation which provided that the church’s activities “shall be in accordance with the Doctrines, Laws, Usages, *Discipline*, and Ministerial appointments of The United Methodist Church” and that the church’s “property, both real or personal, shall be subject to the

*Discipline, Laws, Usages, and Ministerial appointments of the United Methodist Church*” (Shelton Aff. ¶ 30 and Ex. I);

- Plaintiff’s acceptance of pastors from the UMC and the UMC’s predecessors for 175 years, its payment of annual apportionments, its submittance of reports required by the Conference, and its acceptance of loans and grants from the Conference (Lain Aff. ¶¶ 9–14); and
- Plaintiff’s history of holding itself out as a United Methodist Church and use of the United Methodist Hymnal to organize its services (Lain Aff. ¶ 10).

Any claim that Plaintiff did not intend to accept the authority of the *Discipline* with respect to property matters is belied by the fact that Plaintiff willingly submitted to that authority just a year ago when it followed the procedure prescribed by Paragraph 2541 of *The Book of Discipline* to sell a portion of the Church’s property to an adjacent landowner. Lain Aff. ¶ 15, Ex. B. District Superintendent Tara Lain presided over the church conference approving the sale and signed off on the deed. *Id.* In light of these undisputed facts demonstrating Plaintiff’s full connection with the United Methodist Church, this case falls squarely within the well-settled rule that when a local church in a hierarchical denomination takes part in the denomination’s activities and complies with its rules for decades, the church is bound by the denomination’s trust clause and cannot separate from the denomination and take control of the church property in a manner contrary to the denomination’s rules. *Daniel*, 158 N.C. App. at 168, 580 S.E.2d at 717.

Plaintiff's specific arguments regarding the trust clause further demonstrate that the First Amendment does not allow this case to proceed. For instance, Plaintiff's declaratory judgment and quiet title claims allege that the trust has been "terminated because the purpose of the trust has become unlawful, contrary to public policy, or impossible to achieve." Complaint ¶¶ 128, 157. Given that the trust clause serves the theological purpose of ensuring that local churches serve the doctrine and mission of the UMC, any effort to declare this fundamental tenet of Methodist theology unlawful or contrary to public policy would violate the First Amendment by requiring the Court to delve into the justifications for church doctrine and resolve them in a way that compromises the UMC's ability to self-govern. *Nation Ford Baptist Church*, 382 N.C. at 123, 876 S.E.2d at 751 (impermissible entanglement doctrine precludes judicial involvement in controversies over religious doctrines or creeds).

Plaintiff's claim for judicial modification of the trust (Count VI) would require the Court to go even further. Beyond asking the Court to interpret or weigh church doctrine, Plaintiff invites the Court to rewrite one of the fundamental theological provisions of United Methodism that has been part of the *Discipline* since 1784. It should go without saying that any revision of the trust clause must be considered and enacted by the General Conference of the United Methodist Church rather than the Superior Court for New Hanover County.

Plaintiff's effort to avoid, terminate or modify the trust clause mirrors claims in a similar lawsuit brought by a group of local United Methodist churches in the

Western North Carolina Conference of the UMC. The group—represented by the same counsel as Fifth Avenue here—filed a lawsuit in Iredell County claiming they should not have to comply with the requirements of Paragraph 2553 of *The Book of Discipline* to disaffiliate because they were not bound by the trust clause. By order dated March 22, 2023, Presiding Superior Court Judge Richard L. Doughton ruled that the quiet title, declaratory judgment and judicial modification of trust claims in that lawsuit should be dismissed for lack of subject matter jurisdiction on the primary grounds that those claims “are barred by the First Amendment to the United States Constitution and Article 1, Section 13 of the North Carolina Constitution.” *Mount Carmel United Methodist Church v. W. N.C. Conf. of the United Methodist Church*, No. 22-CVS-2775 (Iredell Cnty. Super. Ct., filed Mar. 22, 2023) (copies of the Verified Complaint and the Order Granting Motions to Dismiss are attached as Exhibits A and B hereto). The same claims—many of which are reproduced nearly verbatim in Fifth Avenue UMC’s complaint—should be dismissed here for the same reason.

Because each claim in Plaintiff’s Complaint asks this Court to take sides in an intradenominational dispute over church doctrine in violation of the First Amendment and settled North Carolina and federal law, this case must be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) of the North Carolina Rules of Civil Procedure.

## **II. Under “neutral principles,” the complaint fails to state a claim for relief.**

Even if the Plaintiff’s Complaint was not subject to dismissal for lack of jurisdiction under Rule 12(b)(1), each of the claims set forth in the Complaint is



defective and must be dismissed pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

**A. Plaintiff's claims for breach of contract, constructive fraud, and to quiet title fail under the plain language of *The Book of Discipline*.**

**1. Plaintiff pleaded facts which necessarily defeat its contract claim.**

Plaintiff's first claim alleges that Defendants violated *The Book of Discipline*, which Plaintiff alleges is a contract between it and Defendants, "by preventing Plaintiff from having a Church Conference vote on disaffiliation after the vote had been requested." Compl. ¶ 107. Even assuming the *Discipline* merely constitutes a "contract" whose terms can be interpreted solely based on "neutral principles of law,"<sup>5</sup> this claim fails.

The opportunity to disaffiliate for matters of conscience involving the role of LGBTQ members of the UMC is outlined in Paragraph 2553 of *The Book of Discipline*. Paragraph 2553 does not, however, limit, modify, or eliminate a local church's obligations under *The Book of Discipline* or the conference's role in supervising the church until such time as disaffiliation is effective. *See* Shelton Aff., Ex. C, ¶ 2553. As Paragraph 2553 makes clear, only upon completion of the disaffiliation process, including the satisfaction of outstanding liabilities and claims, is the disaffiliated

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<sup>5</sup> Plaintiff's allegation that Defendants violated their "duty of good faith" clearly seeks a judicial determination as to the justification of Defendants in connection with the decision to close Fifth Avenue UMC. The First Amendment bars this inquiry. *See Nation Ford Baptist Church*, 382 N.C. at 125, 876 S.E.2d at 752 (concluding the court could not answer the question of whether church officials acted "in good faith and in the best interests of the [c]hurch").

church “release[d from] any claims that [the annual conference] may have under ¶ 2501 [the trust clause].” Shelton Aff. Ex. C ¶ 2553(h).

Here, Plaintiff’s complaint clearly alleges that it had not completed the disaffiliation process prior to the closure of the Church. See Compl. ¶ 92. Thus, Plaintiff was, at all relevant times, subject to the provisions of *The Book of Discipline* setting minimum standards for local churches as well as the provisions of the trust clause. These provisions allowed Defendants to determine, in their discretion and based on the best interests of the denomination, that Fifth Avenue UMC should be closed. The closure of the local church terminated the church’s right to proceed with disaffiliation, or any other rights the local church had—including property rights—under *The Book of Discipline*. Accordingly, Plaintiff’s claim for breach of contract, which assumes the ability to disaffiliate somehow survives closure, is defeated by the plain language of *The Book of Discipline* and should be dismissed. See *Oberlin Capital, L.P. v. Slavin*, 147 N.C. App. 52, 61, 554 S.E.2d 840, 847 (2001) (explaining dismissal was proper where language of the contract necessarily defeats elements of claim).

**2. The economic loss doctrine bars Plaintiff’s constructive fraud claim.**

In its fifth claim, Plaintiff alleges Defendants took advantage of the relationship between Plaintiff and Defendants to the detriment of Plaintiff. More specifically, Plaintiff alleges that Defendants abused this relationship of trust as it relates to the decision to close Fifth Avenue UMC and take possession of its former property under the trust clause.

Plaintiff alleges that this relationship is contractual. *See* Compl. ¶ 105. Accepting that position for purposes of this motion, *The Book of Discipline* outlines a local church’s relationship with the annual conference and denomination, addresses the parties’ respective rights and obligations generally, and governs the use and ownership of property used by the local church. *See generally* Shelton Aff. Ex. C. To the extent Plaintiff has suffered injury arising out of this contractual relationship, including its property rights thereunder, its remedy, if any, is in contract, not tort. *Perry v. Frigi-Temp Frigeration*, No. 20 CVS 916, 2020 WL 5292044, \*6–8, 2020 NCBC 62, ¶¶ 34–39 (N.C. Super. Ct. Sept. 3, 2020) (dismissing claim for constructive fraud under economic loss doctrine where subject matter of constructive fraud claim was subject of parties’ contractual relationship). The economic loss doctrine bars Plaintiff’s constructive fraud claim.

### **3. Plaintiff is not entitled to an order quieting title.**

Plaintiff’s third and sixth claims each seek a declaration that Plaintiff is entitled to “quiet, exclusive, uninterrupted, and peaceful possession of its property,” *see* Compl. ¶ 128, and an order clearing the “cloud” that is the trust clause. Compl. ¶ 158. These claims fail for three reasons.

First, to the extent these claims are premised on the allegation that the trust clause should be modified or terminated, these claims fail for the reasons discussed in Section I.C. above. Simply put, there are no “neutral principles” that allow modification or termination of the trust clause.

Second, to the extent that these claims are based on the allegation that all but one deed to Fifth Avenue UMC's former property contained trust clause language, that allegation is neither correct nor material. *See* Compl. ¶ 157(d). As the deeds themselves make clear,<sup>6</sup> from the founding of Fifth Avenue, its property was conveyed with express reference to the then-applicable trust clause. *See* Martin Aff. Exs. B, B-1.

Regardless, *The Book of Discipline* makes clear that the absence of trust language in individual deeds does not “absolve a local church . . . [of] the responsibility to hold all of its property in trust for The United Methodist Church.” Shelton Aff. Ex. C ¶ 2503.6. *The Book of Discipline* specifically provides that consent to the trust clause will be found through any of the actions outlined above. *See supra* p. 5. Here, the complaint and the records before the Court at this stage make clear that Fifth Avenue UMC has agreed to the obligation to hold its property in trust under two independent bases.

First, the deeds themselves reveal that Paragraph 2503.6(a) is satisfied. Each of the deeds to the individual parcels acquired by Fifth Avenue convey property to either the trustees of Fifth Avenue UMC or its predecessors. *See* Martin Aff. Exs. B, B-1, C, D, E, F, G, H, I. Under *The Book of Discipline*, this alone is sufficient to find Fifth Avenue's consent to the trust clause. *See* Shelton Aff. Ex. C ¶ 2503.6.

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<sup>6</sup> Here, again, Plaintiff's complaint relies on the chain of title—all public records—and its claims are premised on the deeds to the property. The Court can, therefore, consider these deeds at the Rule 12(b)(6) stage. *See Oberlin Capital*, 147 N.C. App. at 60, 554 S.E.2d at 847. The operative deeds are attached as Exhibits to the Affidavit of David G. Martin.

Second, Plaintiff's complaint also makes clear that Fifth Avenue has used "the name, customs, and polity of The United Methodist Church . . . in such a way as to be thus known to the community as a part of such denomination." Shelton Aff. Ex. C ¶ 2503.6(b). In addition to bringing this action as "Fifth Avenue *United Methodist Church*," Plaintiff expressly alleges as much. See Compl. p. 1, ¶¶ 36, 105.

Because Plaintiff has, by deed or actions, assented to the trust clause, it is enforceable as a matter of law. See *Daniel*, 158 N.C. App. at 170–71, 580 S.E.2d at 718 (enforcing denominational trust where assent to canon imposing trust was demonstrated by past conduct).

Plaintiff's claims to quiet title should be dismissed.

#### **4. Plaintiff's remaining claims must be dismissed.**

Plaintiff's remaining claims must also be dismissed under other "neutral principles of law."

First, Plaintiff's claim for "Promissory Estoppel" must be dismissed because promissory estoppel is not a recognized cause of action under North Carolina law. See *Home Elec. Co. of Lenoir, Inc. v. Hall & Underdown Heating & Air Conditioning Co.*, 86 N.C. App. 540, 543, 358 S.E.2d 539, 541 (1987), *aff'd per curiam*, 322 N.C. 107, 366 S.E.2d 441 (1988).

Second, Plaintiff's claim for fraud must be dismissed because it does not comply with the heightened pleading standard in Rule 9(b). Plaintiff alleges no actual fraudulent misrepresentation, let alone the time, place, content, or identity of the

person making such a representation. *Harrold v. Dowd*, 149 N.C. App. 777, 782–83, 561 S.E.2d 914, 918–19 (2002).

Finally, Plaintiff’s second cause of action includes a claim for “collusion.” To the extent Plaintiff intended to assert a claim for civil conspiracy, such a claim would necessarily involve an examination of the purpose and justification of Defendants’ decision to close Fifth Avenue UMC. *See State ex rel. Cooper v. Ridgeway Brands Mfg., LLC*, 362 N.C. 431, 444, 666 S.E.2d 107, 115 (2008) (explaining that a civil conspiracy requires “*a wrongful act*” resulting in harm to another) (emphasis added).<sup>7</sup> This, the Court cannot do. *See Nation Ford Baptist Church.*, 382 N.C. at 125, 876 S.E.2d at 752.

**III. In sum, even assuming that only “neutral principles of law” can be applied to Plaintiff’s complaint, Plaintiff’s claims should be dismissed under Rule 12(b)(6).**

**1. Plaintiff’s request for mandatory injunctive relief should be denied.**

Finally, Plaintiff’s complaint also requests that the Court enter a preliminary injunction requiring that Defendants “call a church conference,” preside over the

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<sup>7</sup> Civil conspiracy is also a dependent claim. Where the underlying claims for relief warrant dismissal, so too does civil conspiracy. *BDM Investments v. Lenhil, Inc.*, 264 N.C. App. 282, 300, 826 S.E.2d 746, 762 (2019).

conference, and refrain from taking certain action related to Plaintiff's efforts to disaffiliate from the UMC.<sup>8</sup>

The purpose of preliminary injunctive relief is, of course, to preserve the status quo while the underlying claims are resolved. *See SED Holding, LLC v. 3 Star Props., LLC*, 246 N.C. App. 632, 639, 784 S.E.2d 627, 632 (2016). Plaintiff's request does not seek to preserve the status quo as it exists today. Nor does it ask the Court to preserve the status quo as it existed when Plaintiff initiated this action. Instead, Plaintiff unabashedly asks the Court to rewind the clock to March of 2023 to preserve *that* "status quo." Compl. ¶ 181(a). Plaintiff's request, of course, is not one to preserve the status quo but instead a request that the Court enter mandatory injunctive relief requiring certain acts be taken.

"Mandatory injunctions are disfavored as an interlocutory remedy," and are generally improper because "it would determine by an interlocutory order the ultimate relief sought in the action." *Roberts v. Madison Cnty. Realtors Ass'n, Inc.*, 344 N.C. 394, 400, 474 S.E.2d 783, 787–88 (1996) (cleaned up). Only where a party demonstrates "serious irreparable injury to the petitioner if the injunction is not granted, no substantial injury to the respondent if the injunction is granted, and

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<sup>8</sup> Curiously, Plaintiffs request that "Defendants" be enjoined from interfering or discouraging Plaintiff's disaffiliation application or its church conference and vote. Compl. Prayer ¶ 3(c). This, of course, violates the rights and, indeed, obligations of Defendants under *The Book of Discipline* to participate in that process, which further demonstrates the impermissible ecclesiastical entanglement presented in this action. *See Nation Ford Baptist Church*, 382 N.C. at 123, 876 S.E.2d at 751 (recognizing that "impermissible entanglement may arise either when a court resolves an underlying legal claim or when it issues a form of relief").

predictably good chances of success on the final decree by the petitioner[,] a mandatory interlocutory injunction could properly be issued.” *Id.*

There can be no clearer example of a mandatory injunction that would “determine by an interlocutory order the ultimate relief sought in the action” than this. *Id.* Plaintiff’s broad request specifically asks the Court to—before the pleadings have closed—allow Plaintiff to disaffiliate from the UMC and, notwithstanding the closure of the Church and the application of the trust clause, sever the Conference’s interest in Fifth Avenue UMC’s former property. This is improper.

For the reasons discussed above, Plaintiff has not demonstrated any likelihood of success on the merits, much less the “predictably good chances” required to obtain mandatory injunctive relief. *Id.* See *supra* pp. 11–30.

Furthermore, the injury to Defendants—and to the UMC as a whole—will be significant if the injunction is granted. Plaintiff’s action seeks to expand the ability of a local church to disaffiliate beyond what is allowed by *The Book of Discipline*. See *supra* pp. 16–19. Allowing a closed church to disaffiliate *after* closure undermines the hierarchical nature of the denomination. While it sounds so, this is far from hyperbolic. If local churches like Plaintiff can disregard their minimum standards under *The Book of Discipline* and apply to a civil court after the closure process has been completed to escape the consequences of not meeting those standards, there is no reason for compliance in the first instance. Yet this is exactly the tack Plaintiff has attempted to take. Not only does the First Amendment prohibit embracing this



approach on the merits, but the injury that will be caused to Defendants also prohibits embracing it at the injunctive relief stage.

Finally, Plaintiff will suffer no injury if injunctive relief is denied. Rather than acting with diligence to seek judicial protection of its alleged “right to disaffiliate” before the permanent closure of the Church,<sup>9</sup> Plaintiff waited until that decision was made by the Annual Conference three months after the exigent circumstances determination. Critically, though, the decision at the Annual Conference was a deliberative one. Speakers for and against that motion were heard, and the Annual Conference rendered its decision. *See* Shelton Aff. ¶¶ 43–45. As discussed above, that final decision—the substance of which Plaintiff does not and could not challenge here—severs any “right to disaffiliate.” *See supra* pp. 16–19, 25–26. In other words, at the time Plaintiff requested injunctive relief, it had no right which could be preserved. Therefore, denial of that injunctive relief will cause Plaintiff no legal injury.

Plaintiff’s request for injunctive relief should be denied.

\* \* \*

Ultimately, Plaintiff’s complaint fails to present any justiciable issue. As discussed above, each claim rests on questions the Court cannot answer, and each request for relief asks for things the Court cannot give. Because no “neutral

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<sup>9</sup> Of course, as discussed above, at no time would judicial involvement in this ecclesiastical dispute actually have been proper, nor is there any unconditional “right to disaffiliate.” Purely for the sake of argument, though, Plaintiff’s dilatory approach to enforcing such a “right”—if it existed—has been the sole cause of any injury.

principles of law” can resolve this intradenominational dispute, the complaint should be dismissed.

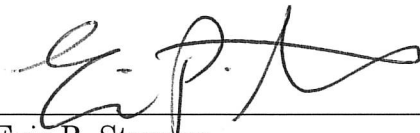
**CONCLUSION**

For these reasons, Defendants respectfully request the Court deny Plaintiff’s request for a preliminary injunction and dismiss Plaintiff’s complaint.

Respectfully submitted the 5th day of September, 2023.

**POYNER SPRUILL LLP**

By:



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*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b)(1)(a), I hereby certify that I have this day served a copy of the foregoing document by e-mail to the following:

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This the 5th day of September, 2023.

  
Eric P. Stevens

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

IREDELL COUNTY

2022 NOV 10 A 10:43 22-CVS-2775

MOUNT CARMEL UNITED  
METHODIST CHURCH; BETHEL  
UNITED METHODIST CHURCH OF  
NEW LONDON; BETHESDA BY  
UNITED METHODIST CHURCH;  
CHESTNUT GROVE UNITED  
METHODIST CHURCH; CONCORD  
UNITED METHODIST CHURCH IN  
CATAWBA; GOOD SHEPHERD  
CHARLOTTE UNITED METHODIST  
CHURCH; LIBERTY & ROCKWELL  
UNITED METHODIST CHURCH;  
MINNEAPOLIS UNITED  
METHODIST CHURCH;  
MOUNTAIN VIEW UNITED  
METHODIST CHURCH; NEW HOPE  
UNITED METHODIST CHURCH;  
PALESTINE UNITED METHODIST  
CHURCH; PISGAH UNITED  
METHODIST CHURCH; ROCKWELL  
UNITED METHODIST CHURCH;  
WEDDINGTON UNITED  
METHODIST CHURCH; WESLEY  
CHAPEL UNITED METHODIST  
CHURCH; CROSSROADS UNITED  
METHODIST CHURCH; WEST  
BEND UNITED METHODIST  
CHURCH; BOILING SPRINGS  
UNITED METHODIST CHURCH;  
VANDERBURG UNITED  
METHODIST CHURCH; GRAY'S  
CHAPEL UNITED METHODIST  
CHURCH; CENTRAL UNITED  
METHODIST CHURCH; MILL  
GROVE UNITED METHODIST  
CHURCH; PROVIDENCE UNITED  
METHODIST CHURCH;  
MITCHELL'S GROVE UNITED  
METHODIST CHURCH; MT.  
MITCHELL UNITED METHODIST  
CHURCH; GOLD HILL UNITED  
METHODIST CHURCH; KISTLER'S  
CHAPEL UNITED METHODIST  
CHURCH; FAIRFIELD UNITED  
METHODIST CHURCH; CHRIST  
UNITED METHODIST CHURCH;  
LEBANON UNITED METHODIST  
CHURCH; SHADY GROVE UNITED  
METHODIST CHURCH; ARNEYS

IREDELL CO., C.S.C.

W

VERIFIED COMPLAINT  
(JURY TRIAL DEMANDED)



FAIRVIEW UNITED METHODIST CHURCH; LIBERTY UNITED METHODIST CHURCH; EBENEZER UNITED METHODIST CHURCH - MOUNT ULLA; DELTA UNITED METHODIST CHURCH; ST. ANDREWS UNITED METHODIST CHURCH; GROOMETOWN UNITED METHODIST CHURCH; VICKREY UNITED METHODIST CHURCH; BETHESDA UNITED METHODIST CHURCH; and CENTRAL FALLS UNITED METHODIST CHURCH; individually and derivatively on behalf of WESTERN NORTH CAROLINA CONFERENCE OF THE UNITED METHODIST CHURCH,

Plaintiffs,

v.

THE WESTERN NORTH CAROLINA CONFERENCE OF THE UNITED METHODIST CHURCH;

Defendant and  
Nominal  
Defendant

and

THE BOARD OF TRUSTEES OF THE WESTERN NORTH CAROLINA CONFERENCE OF THE UNITED METHODIST CHURCH, and  
KENNETH CARTER, in his capacity as Bishop of the Western North Carolina Conference of the United Methodist Church,

Defendants.

Plaintiffs, each church entity set forth in the caption above ("Plaintiff Churches") submit this Verified Complaint, and allege and state as follows.

## NATURE OF THE ACTION

1. Plaintiff Churches wish to disaffiliate from the United Methodist Church (“UMC”) to pursue their deeply held religious beliefs. Defendants want to force Plaintiff Churches to stay affiliated with the UMC, and violate those beliefs, by holding their church buildings and property hostage. Defendants claim Plaintiff Churches’ property is encumbered by an irrevocable trust for the benefit of the UMC and the only way for Plaintiff Churches to disaffiliate without surrendering the buildings and property that are central to their congregations is by the permission of the UMC and payment of a financial ransom.

2. This position is inconsistent with the decades-long pattern and practice of the UMC to allow local churches to disaffiliate and retain their church property without paying a ransom. What is more, it reflects a substantial material change in circumstances that was not anticipated by either Plaintiff Churches or Defendants at the time Plaintiff Churches affiliated with the UMC. Continued enforcement of the alleged trust as a mechanism to penalize Plaintiff Churches for disaffiliating is unlawful and contrary to the intent of the parties and to North Carolina public policy protecting North Carolinians’ freedom of religion.

3. Plaintiff Churches bring this action to (1) seek relief from the uncertainty, insecurity, and controversy arising from Defendants’ refusal to allow them to disaffiliate from the UMC and retain their property, (2) reform or terminate the trust to conform to their original intent, and (3) most importantly, protect their freedom to worship as they see fit. Indeed, like all North Carolinians, the thousands

of members of Plaintiff Churches “have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.” N.C. Const. art. I, § 13.

#### **PARTIES, JURISDICTION AND VENUE**

4. Plaintiff Mount Carmel United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 4265 Ebert Road, Winston-Salem, North Carolina.

5. Plaintiff Bethel United Methodist Church of New London is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 41864 Gurley Road, New London, North Carolina.

6. Plaintiff Chestnut Grove United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 1024 Volunteer Road, King, North Carolina.

7. Plaintiff Concord United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 7618 Monbo Road, Catawba, North Carolina.

8. Plaintiff Good Shepherd Charlotte United Methodist Church, is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 13110 Moss Road, Charlotte, North Carolina.

9. Plaintiff Minneapolis United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 2719 US Hwy 19-E Newland, NC 28657.

10. Plaintiff Mountain View United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 438 Mountain View Road, Statesville, North Carolina.

11. Plaintiff New Hope United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 4251 Chesnee Road, Rutherfordton, North Carolina.

12. Plaintiff Palestine United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 36414 Palestine Road, Albemarle, North Carolina.

13. Plaintiff Pisgah United Methodist Church is located at, conducts operations, and has its principal or registered office at 488 Hill Farm Road, Hiddenite, North Carolina.

14. Plaintiff Rockwell United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 430 East Main Street, Rockwell, North Carolina.

15. Plaintiff Weddington United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 413901 Providence, Weddington, North Carolina.



16. Plaintiff Wesley Chapel United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 172 Old Wesley Road, Hamptonville, North Carolina.

17. Plaintiff Crossroads United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 220 George W Liles Pkwy NW, Concord, North Carolina.

18. Plaintiff West Bend United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at PO Box 1845, Asheboro, North Carolina.

19. Plaintiff Boiling Springs United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at PO Box 774, Boiling Springs, North Carolina.

20. Plaintiff Vanderburg United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 1809 Charlotte Hwy, Mooresville, North Carolina 28115.

21. Plaintiff Gray's Chapel United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 5056 NC Highway 22 North, Franklinville, North Carolina.

22. Plaintiff Central United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 300 South Main Street, Asheboro, North Carolina.

23. Plaintiff Mill Grove United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 13639 U.S. Hwy 601, Midland, North Carolina 28107.

24. Plaintiff Providence United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at PO Box 756, Marion, North Carolina

25. Plaintiff Mitchell's Grove United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 3511 E. MLK Jr. Drive, High Point, North Carolina.

26. Plaintiff Mt. Mitchell United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 6001 Old Salisbury-Concord Rd., Kannapolis, North Carolina.

27. Plaintiff Gold Hill United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 720 St. Stephens Church Rd., Gold Hill, North Carolina.

28. Plaintiff Kistler's Chapel United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 3060 Poors Ford Road, Rutherfordton, North Carolina.

29. Plaintiff Fairfield United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 1505 NC Highway 62 West, High Point, North Carolina.

30. Plaintiff Christ United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 2416 Zion Church Rd., Hickory, North Carolina.

31. Plaintiff Lebanon United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 2330 Big Level Rd, Mill Spring, North Carolina.

32. Plaintiff Shady Grove United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 167 Shady Grove Church Road, Winston-Salem, North Carolina.

33. Plaintiff Arneys Fairview United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at P.O. Box 1024, Morganton, North Carolina.

34. Plaintiff Liberty United Methodist Church is located, conducts operations, and has its principal or registered office at 3940 Liberty Road, Gold Hill, North Carolina.

35. Plaintiff Ebenezer United Methodist Church - Mount Ulla is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 8425 NC 801, Mt. Ulla, North Carolina.

36. Plaintiff Delta United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 5984 Hwy 704, Sandy Ridge, North Carolina.

37. Plaintiff St. Andrews United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 405 Edney Ridge Road, Greensboro, North Carolina.

38. Plaintiff Groometown United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 405 Edney Ridge Road, Greensboro, North Carolina.

39. Plaintiff Vickrey United Methodist Church is a North Carolina non-profit corporation located, conducting operations, and with its principal or registered office at 5348 Vickrey Chapel Road, Greensboro, North Carolina.

40. Plaintiff Central Falls United Methodist Church located at 1436 Pennsylvania Avenue, Asheboro, NC.

41. Plaintiff Bethesda United Methodist Church located in 2922 Bethesda Road, Lexington, NC.

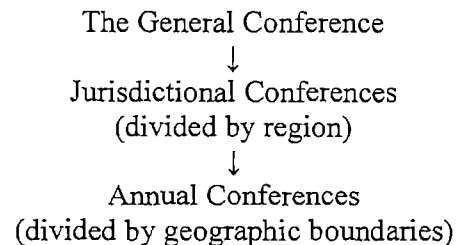
42. Plaintiffs collectively, are referred to herein as "Plaintiff Churches."

43. The United Methodist Church ("The UMC") is an unincorporated, worldwide, evangelical church denomination, founded in 1968.

44. The UMC is unincorporated and incapable of holding property.

45. The UMC does not own any of Plaintiff Churches' property.

46. The UMC is generally organized as follows:



↓  
Local Churches

47. Plaintiff Churches are local churches affiliated with the UMC through their annual conference, Defendant Western North Carolina Conference of the United Methodist Church.

48. The Plaintiff Churches have been paying annual apportionments to Defendants for decades, which total in the millions of dollars for each plaintiff church.

49. Defendant, the Western North Carolina Conference of the United Methodist Church (the "Conference"), is a non-incorporated, non-profit association located at 13924 Professional Center Drive, Suite 200, Huntersville, NC 28078.

50. Defendant Board of Trustees of the Western North Carolina Conference of the United Methodist Church ("Board") has the authority to settle litigation and convey, buy, sell, and release property and assets on behalf of the Conference.

51. Defendant Board owes the Conference a statutorily imposed fiduciary duty.

52. Defendant Kenneth Carter, in his official capacity as Bishop of the Western North Carolina Conference of the United Methodist Church, presides over Conference Defendant and has a place of business at 13924 Professional Center Drive, Suite 200, Huntersville, NC 28078.

53. All Plaintiff Churches are properly and legally constituted and in existence and have authority and capacity to sue and be sued.

54. All conditions precedent to bringing this suit, if any, have been satisfied or otherwise occurred.

55. This matter is a property dispute between Plaintiff Churches, the UMC, and Defendants.

56. This Court has personal jurisdiction over the Defendants pursuant to, *inter alia*, N.C. Gen. Stat. § 1-75.4(1), because they are residents of the State of North Carolina and organized under the laws of North Carolina.

57. Venue is proper in this Court pursuant to N.C. Gen. Stat. § 1-76 *et seq.* because part of the subject trust property is in Iredell County and Plaintiff Churches Mountain View United Methodist Church and Vanderburg United Methodist Church are residents of said County.

58. The trusts which allegedly encumber the real property of Mountain View United Methodist Church and Vanderburg United Methodist Church are administered in Iredell County.

### FACTS

59. Plaintiff Churches are 38 local churches spread throughout Western North Carolina. Combined, their congregations include more than 10,000 North Carolinians of faith.

60. Plaintiff Churches owned their church buildings, centers, and land long before affiliating with the UMC at the time of its formation in 1968. Some have owned their church buildings since before the Civil War.

61. Plaintiff Churches have maintained their buildings, centers and land during the entirety of time that they have been in existence, and without any assistance from the UMC.

62. The UMC has not purchased or exercised any obligation of ownership, financial or otherwise, over any of Plaintiff Churches' real or personal property.

63. Plaintiff Churches' ownership of their property was independent of their affiliation with the UMC and Defendants.

64. Plaintiff Churches want to amicably disaffiliate from the UMC and Defendants to pursue their deeply held religious beliefs. The UMC and Defendants have recently adopted doctrines, usages, customs and practices radically and fundamentally opposed to the long-held characteristic doctrines, usages, customs and practices of the UMC and Plaintiff Churches. Simply put, Plaintiff Churches feel compelled by their faith to worship elsewhere.

65. As described below, Plaintiff Churches have demanded the relief sought herein from Defendants. Defendants have refused that relief and further demands would be futile.

66. In August 2022, Plaintiff Churches submitted written requests to Bishop Kenneth Carter of the Western North Carolina Conference of the United Methodist Church to disaffiliate from the UMC, with their church buildings and property.

67. The UMC purports to govern itself pursuant to a document titled the Book of Discipline of The United Methodist Church (2016) (the "Discipline").

68. The UMC and Defendants have historically acknowledged multiple pathways under the Discipline for local churches in this situation to disaffiliate without paying a financial ransom for their church property.

69. In their requests, Plaintiff Churches invoked one such pathway - Paragraph 2548.2 of the Book of Discipline. That paragraph provides, in pertinent part, as follows:

With the consent of the presiding bishop and of a majority of the district superintendents and of the district board of church location and building and at the request... of a meeting of the membership of the local church, ... the annual conference may instruct and direct the board of trustees of a local church to deed church property to... another evangelical denomination under a[]... comity agreement, provided that such agreement shall have been committed to writing and signed and approved by the duly qualified and authorized representatives of both parties concerned.

70. Paragraph 2549 is an example of another pathway local churches have used to disaffiliate. It provides that if the local church is no longer “maintained by its membership as a place of divine worship of The United Methodist Church,” the church may be closed according to a “(4) a plan of transfer of the membership of the local church.” This plan has included the setup of a new corporate entity and all properties transferred to this new entity.

71. Paragraphs 2548.2, 2549, and others have been used for decades as pathways for local churches to disaffiliate from the UMC, while retaining their church buildings and property. The repeated use of these paragraphs for that purpose is a custom, pattern, and practice of the UMC and Defendants.

72. Defendants refused Plaintiff Churches’ requests to disaffiliate.



73. In an August 17, 2022 denial letter, Defendants argued that, at the time Plaintiff Churches affiliated with the UMC, they placed their church property in trust for the benefit of the UMC denomination. Defendants further argued that local churches have no right to disaffiliate and cannot leave the UMC to pursue their religious beliefs without permission of the UMC and Defendants and without a release from the denominational trust.

74. Defendants also argued that Paragraph 2548.2 was not a pathway for Plaintiff Churches to disaffiliate. Yet, they acknowledged that the Judicial Council of the United Methodist Church had been petitioned to clarify alleged ambiguity around whether paragraph 2548.2 remained a pathway to disaffiliate and was in the process of deliberating on that exact question. Defendants also conceded that it was possible that the Judicial Council would ultimately hold that “Paragraph 2548.2 may be used as a method of disaffiliation.”

75. On August 23, 2022, after Plaintiff Churches had submitted their requests for disaffiliation, Conference Defendants wrote to Plaintiff Churches and informed them that the Judicial Council had issued a declaratory ruling clarifying that “the use of paragraph 2548.2 as a disaffiliation pathway has been definitively closed.”

76. Defendants contend that all of the disaffiliation pathways previously available to local churches are now closed and that only one remains available to Plaintiff Churches, paragraph 2553, and only until December 2023. After December

2023, Defendants contend, Plaintiff Churches will be barred from disaffiliating, despite the fact that they no longer share the UMC's religious beliefs.

77. Paragraph 2553 did not exist when Plaintiff Churches affiliated with the UMC. In response to a "deep conflict within The United Methodist Church" regarding issues of "conscience," the UMC amended the Discipline in 2019 to add paragraph 2553.

78. Disaffiliation under paragraph 2553 will require Plaintiff Churches to fulfill burdensome and previously non-existent "financial obligations" and other requirements if they want to disaffiliate without surrendering their property.

79. These "financial obligations" are excessive, punitive, and unappealable. They are also completely unnecessary.

80. First, Plaintiff Churches have been paying annual apportionments to the Conference Defendant for decades, totaling in the millions of dollars.

81. Second, Defendants sell closed or abandoned churches in coordination with the Duke Endowment Grant for the Church Legacy Initiative with monies that are made available to the Conference for discretionary use.

82. Third, Defendants have discretionary funds that are available for use by the Conference and could be used to fund a portion if not all of the unfunded pension liability that the Defendants claim to exist.

83. Fourth, the "unfunded pension obligations" which Defendants cite as a basis for the financial requirements does not exist as described by the Defendants. Wespath Benefits and Investments, a general agency of the UMC and operator of its

pension funds, has more than \$29 Billion in assets, an amount more than sufficient to cover pension liabilities for current enrollees for decades to come.

84. To the extent that Defendants are facing an unfunded liability in their conference pension fund, despite the aforementioned substantial assets, the liability is the result of Defendants' grossly negligent financial mismanagement.

85. Upon information and belief, Defendants are inflicting these financial obligations on Plaintiff Churches not because there is a financial need or a legitimate contractual basis, but instead to (1) penalize Plaintiff Churches for disaffiliating, (2) restrict Plaintiff Churches' freedom of religion, and (3) to the extent there are unfunded liabilities in the conference pension fund, compensate for Defendants' grossly negligent mismanagement of that fund.

86. The use of the alleged denominational trust to force unnecessary financial obligations on Plaintiff Churches serves no valid purpose, is unlawful, and is against North Carolina public policy. It infringes on Plaintiff Churches' fundamental rights to property and freedom of religion.

87. What is more, Defendants incorrectly claim that Plaintiff Churches have no recourse in the courts of this State because they claim all of their actions are ecclesiastical in nature and thus unreviewable by any North Carolina court.

88. In sum, according to Defendants:

- a. Plaintiff Churches are trustees, holding their church buildings, land and personal property in an irrevocable trust for the benefit of the UMC and Conference Defendants;

- b. The UMC recently closed one of the pathways that had previously been used by local churches to disaffiliate from the UMC without paying “financial obligations”;
- c. The newly-enacted paragraph 2553 is the only remaining pathway for Plaintiff Churches to disaffiliate;
- d. As a result, Plaintiff Churches can only disaffiliate from the UMC if they either (1) abandon their personal property, church buildings, and land, or (2) obtain the permission of Defendants and pay substantial financial obligations;
- e. If Plaintiff Churches do not elect one of these choices by December 2023, they will lose all ability to disaffiliate and retain their church buildings and personal property; and
- f. Plaintiff Churches have no recourse in the courts of this State.

89. This cannot be.

90. Regardless of how any particular provision of the Discipline is interpreted, Defendants’ conduct confirms that there has been a substantial change - or attempted change - in how much freedom local churches maintain to disaffiliate, the disaffiliation procedure, and in their relationship with Defendants and the UMC denomination more broadly.

91. At the time Plaintiff Churches affiliated with the UMC and continuing throughout their affiliation, they never intended to permanently subjugate their freedom of religion to the approval of the UMC and Defendants. Nor did Plaintiff

Churches intend for their church property to remain encumbered by an irrevocable trust even after their disaffiliation for religious reasons, unless they paid a substantial ransom.

92. Plaintiff Churches, who are settlors of the alleged denominational trust, intended to affiliate with the UMC and to use their property in accordance with their affiliation so long as the affiliation was consistent with their deeply held religious beliefs. It was their intent and understanding that the terms of any trust created by the Discipline allowed them to disaffiliate and retain their property in the event that the UMC adopted doctrines, usages, customs and practices radically and fundamentally opposed to those in existence at the time Plaintiff Churches affiliated with the UMC. To the extent any term of the Discipline limits such disaffiliation, that term was affected by a mistake of fact or law.

93. Plaintiff Churches also intended that they would be the trustee of any trust in which they placed their church property and as such would be able to exercise all authority and powers vested in trustees under North Carolina law. To the extent any term of the Discipline allegedly empowers the UMC or Defendants to interfere in the exercise of those powers, that term was affected by a mistake of fact or law and is unlawful.

**FIRST CLAIM FOR RELIEF**  
**(Plaintiff Vanderburg United Methodist Church v. All Defendants)**  
**Quiet Title**

94. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

95. Vanderburg United Methodist Church was organized in 1871 and received its real property from the Vanderburg family.

96. Vanderburg United Methodist Church held title to its real property, including the property located at 1809 Charlotte Hwy, Mooresville, North Carolina, 28115 prior to the formation of the UMC.

97. Vanderburg United Methodist Church acquired and maintained its property, to include paying for all repairs, without any assistance from Defendants or UMC.

98. Defendants claim that language from paragraphs 2501 and 2502 of the Book of Discipline of the United Methodist Church (2016) as amended in 2019 (“Book of Discipline”) creates an irrevocable trust for the benefit of the UMC.

99. Paragraph 2501 of the Discipline provides, in pertinent part, as follows:

1. All properties of United Methodist local churches and other United Methodist agencies and institutions are held, in trust, for the benefit of the entire denomination, and ownership and usage of church property is subject to the Discipline.

\* \* \*

The United Methodist Church is organized as a connectional structure, and titles to all real and personal, tangible and intangible property held... by a local church or charge, or by an agency or institution of the Church, shall be held in trust for The United Methodist Church and subject to the provisions of its Discipline.

\* \* \*

100. Paragraph 2502 of the Discipline sets forth the following trust language to be incorporated into the deeds to real property owned by the local churches.

In trust, that said premises shall be used, kept, and maintained as a place of divine worship of the United Methodist ministry and members of The United Methodist Church; subject to the Discipline, usage, and ministerial appointments of said Church as from time to time authorized and declared by the General Conference and by the annual conference within whose bounds the said premises are situated.

(Italics in original.)

101. Defendants assert that this alleged denominational trust grants them control over Plaintiff Churches' real property and that, absent Defendants' approval, such control will continue even after Plaintiff Churches' disaffiliation. This creates a cloud on the title to Plaintiff Churches' real and personal property, including the real property of Vanderburg United Methodist Church.

102. This cloud on Vanderburg United Methodist Church's real property is invalid because, as set forth above,

- a. any denominational trust has been terminated because the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve; and
- b. Defendants' use of the denomination trust to penalize Vanderburg United Methodist Church and impede their disaffiliation is

inconsistent with Vanderburg United Methodist Churches' intent at the time it affiliated with the UMC and allegedly placed its real property in trust;

- c. the terms of the denominational trust are ambiguous and were affected by a mistake of fact or law; and
- d. there is no trust language contained in the deed to the Vanderburg United Methodist Church's real property, including that located at 1809 Charlotte Hwy, Mooresville, North Carolina.

103. As a result of the invalid cloud created by the trust on the Vanderburg United Methodist Church's real property, Vanderburg United Methodist Church is entitled to have title to that real property quieted in its name.

**SECOND CLAIM FOR RELIEF**  
**(All Plaintiffs v. All Defendants)**  
**Declaratory Judgment**

104. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

105. An actual dispute exists between Plaintiff Churches and Defendants with respect to Plaintiff Churches' authority to own, use, or otherwise convey property deeded, titled, or otherwise owned by Plaintiff Churches.

106. Plaintiff Churches wish to have all uncertainty and insecurity as to the legal and equitable ownership of their church property removed by way of judicial declaration, for which there is a bona fide, actual, present, practical need.



107. Defendants claim that language from paragraphs 2501 and 2502 of the Book of Discipline creates an irrevocable trust for the benefit of the UMC.

108. Plaintiff Churches are the settlors as to their respective church property.

109. Plaintiff Churches are also the trustees of the trust allegedly created by the Discipline.

110. The language of Paragraph 2502 is inconsistent with the language in Paragraph 2501 in that it does not expressly provide that the trust is irrevocable.

111. In combination with recent material changes to the disaffiliation process, Defendants are using the trust for the purposes of, among other things, blocking Plaintiff Churches from disaffiliating with the UMC, penalizing them for their deeply held religious beliefs, and raising funds to compensate for their gross mismanagement of Defendants' pension fund.

112. These purposes were not contemplated by Plaintiff Churches at the time they affiliated with the UMC and are contrary to their intent when any trust was formed. Moreover, the purposes of the alleged trust have become unlawful, contrary to public policy, and impossible to achieve.

113. Accordingly, absent the Court's intervention in this ongoing, active controversy, Plaintiff Churches will be prevented from disaffiliating from the UMC and will have their property held hostage. The Court's intervention is necessary to enable the free exercise of Plaintiff Churches' constitutional religious and property rights.

114. Accordingly, Plaintiff Churches are entitled to a declaratory judgment from the Court declaring:

- a. that the trust has terminated because the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve;
- b. that, to the extent the trust has not terminated, it is revocable; and
- c. that Plaintiff Churches are entitled to the quiet, exclusive, uninterrupted, and peaceful possession of their respective properties (real and personal) without any interference from Defendants.

**THIRD CLAIM FOR RELIEF**  
**(All Plaintiffs v. All Defendants)**  
**Judicial Modification of Trust**

115. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

116. Plaintiff Churches are the settlors as to their respective church property.

117. Plaintiff Churches are also the trustees of the trust allegedly created by the Discipline.

118. Under Section 36C-4-410 a trust terminates when the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

119. Section 36C-4-412 of the North Carolina General Statutes empowers this court to modify or terminate a trust when, because of circumstances not anticipated by the settlor, modification or termination will further purpose of the trust.

120. Section 36C-4-415 of the North Carolina General Statutes empower this Court to modify or terminate a trust to conform to the settlors intention when a term of the trust was ambiguous and was affected by a mistake of fact or law, whether in expression or in inducement.

121. At the time Plaintiff Churches affiliated with the UMC, it was not their intent that they would be unable to disaffiliate, and retain their church buildings and property, without paying a large sum of money. It was their intent that there would remain a pathway to disaffiliate to pursue their deeply held religious beliefs without having to either abandon their long-held church property or pay a large fine.

122. In that regard, Paragraph 2548.2 is a material provision of the Discipline that Plaintiff Churches relied upon when agreeing to hold their own property in trust for The UMC.

123. The current circumstances were not, and could not have been, anticipated by Plaintiff Churches when they put their property in trust for what was supposed to be the benefit of a church denomination that shared their beliefs.

124. As a result, the current situation is unconscionable and inequitable, and Plaintiff Churches wish to have their respective trusts terminated, or alternatively, to have themselves clearly established as the trustee of each respective trust with all power to revoke the trust and/or dispose of the property as North Carolina law allows.

**FOURTH CLAIM FOR RELIEF**

**Constructive Fraud**

**(All Plaintiffs, individually and on behalf of the Conference v. Defendants Board and Bishop Carter)**

125. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

126. Plaintiff Churches paid the Conference millions of dollars in apportionments and also entrusted it with the use of their real and personal property, including real property that, in some cases, had been in their congregations for generations. Plaintiff Churches have also devoted decades of ministerial services in support of the Conference and UMC.

127. The Board has the authority to manage convey, buy, sell, and release property and assets on behalf of the Conference.

128. Bishop Carter, is the Resident Bishop and Principal presiding over the Conference.

129. The Board and Bishop Carter were in a position of power, authority, and influence over Plaintiff Churches and the Conference.

130. Plaintiff Churches placed special trust and confidence in Defendant Board and Bishop Carter to manage these resources, and the Conference in general, for the best interest of Plaintiff Churches and the Conference, and in accordance with the long-held characteristic doctrines, usages, customs and practices of the UMC.

131. Defendant Board and Bishop Carter owed Plaintiff Churches and the Conference a duty to act in good faith and with due regard to their interests, and a

duty to disclose all material facts related to the management of the Conference and its resources.

132. Thus, Defendant Board and Bishop Carter owed a fiduciary duty to the Conference and Plaintiff Churches.

133. Defendant Board, in particular, owes the Conference a statutorily imposed fiduciary duty and is accountable to the Conference and Plaintiff Churches for the use and management of the Conference and its property.

134. The Board and Bishop Carter used their position as a fiduciary to the detriment of Plaintiff Churches and the Conference and to their own benefit, financial and otherwise.

135. Defendants leveraged their alleged control over the denominational trust, and Plaintiff Churches' property, to penalize Plaintiff Churches for their religious beliefs, impede their disaffiliation, and extract a ransom from Plaintiff Churches to unjustly enrich themselves.

136. Defendants have also withheld from Plaintiff Churches material facts related to the use and purpose of the discretionary funds controlled by the Defendants including the management of the conference pension funds.

137. The Board and Bishop Carter have also made false statements to Plaintiff Churches, including that the conference pension funds have unfunded liabilities, in order to increase the ransom and enrich themselves.

138. In the alternative, to the extent the conference pension fund actually has unfunded liabilities, said liabilities are the result of gross mismanagement, and

upon information and belief, Defendants concealed from Plaintiff Churches material facts about that mismanagement.

139. The Board's and Bishop Carter's actions were in bad faith and constituted willful and wanton misconduct.

140. The Board and Bishop Carter have benefited from these abuses because they enabled Board and Bishop Carter to conceal their gross mismanagement of the Conference and thereby preserve their positions of power.

**FIFTH CLAIM FOR RELIEF**

**Breach of Fiduciary Duty**

**(All Plaintiffs, individually and on behalf of the Conference v. Defendants  
Board Defendant and Bishop Carter)**

141. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

142. Plaintiff Churches paid the Conference millions of dollars in apportionments and also entrusted it with the use of their real and personal property, including real property that, in some cases, had been in their congregations for generations. Plaintiff Churches have also devoted decades of ministerial services in support of the Conference and UMC.

143. The Board Defendant has the authority to manage, convey, buy, sell, and release property and assets on behalf of the Conference.

144. Bishop Carter, is the Resident Bishop and Principal presiding over the Annual Conference.

145. The Board and Bishop Carter were in a position of power, authority, and influence over Plaintiff Churches and the Conference.

146. Plaintiff Churches and the Conference placed special trust and confidence in Defendant Board and Bishop Carter to manage these resources, and the Conference in general, for the best interest of Plaintiff Churches and the Conference, and in accordance with the long-held characteristic doctrines, usages, customs and practices of the UMC.

147. Defendant Board and Bishop Carter owed Plaintiff Churches and the Conference a duty to act in good faith and with due regard to their interests, and a duty to disclose all material facts related to the management of the Conference and its resources.

148. Thus, Defendant Board and Bishop Carter owed a fiduciary duty to the Conference and Plaintiff Churches.

149. Defendant Board, in particular, owes the Conference a statutorily imposed fiduciary duty and is accountable to the Conference and Plaintiff Churches for the use and management of the Conference and its property.

150. The Board and Bishop Carter used their position as a fiduciary to the detriment of Plaintiff Churches and the Conference and to their own benefit, financial and otherwise.

151. Defendants leveraged their alleged control over the denominational trust, and Plaintiff Churches' property, to penalize Plaintiff Churches for their religious beliefs, impede their disaffiliation, and extract a ransom from Plaintiff Churches to unjustly enrich themselves.

152. Defendants have also withheld from Plaintiff Churches material facts related to the use and purpose of the discretionary funds available to the Defendants and the management of the conference pension funds.

153. The Board and Bishop Carter have also made false statements to Plaintiff Churches, including that the conference pension funds have unfunded liabilities, in order to increase the ransom and enrich themselves.

154. In the alternative, to the extent the conference pension fund actually has unfunded liabilities, said liabilities are the result of gross mismanagement, and upon information and belief, Defendants concealed from Plaintiff Churches material facts about that mismanagement.

155. The Board's and Bishop Carter's actions were in bad faith and constituted willful and wanton misconduct.

**SIXTH CLAIM FOR RELIEF**  
**Quantum Meruit**  
**(All Plaintiffs v. All Defendants)**

156. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

157. Plaintiff Churches have spent decades performing ministerial services for Defendants and UMC. Plaintiff Churches have also used their real and personal property in service of Defendants and the UMC and paid Defendants and the UMC millions of dollars in apportionments.

158. Defendants and UMC voluntarily accepted these services and their benefits.

159. Plaintiff Churches did not render these services gratuitously.



160. Defendants will be unjustly enriched in the amount of the value of Plaintiff Churches' property if they are allowed to retain Plaintiff Churches' real and personal property after Plaintiff Churches' disaffiliation.

**SEVENTH CLAIM FOR RELIEF**  
**Unjust Enrichment**  
**(All Plaintiffs v. All Defendants)**

161. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

162. Plaintiff Churches have also used their real and personal property in service of Defendants and the UMC and paid Defendants and the UMC millions of dollars in apportionments.

163. If Plaintiff Churches are found to have conveyed their church buildings and other property to Defendants, then Plaintiff Churches have conferred benefit upon Defendants in the form of Plaintiff Churches' respective church buildings and property.

164. Plaintiff Churches did not confer these benefits gratuitously.

165. Plaintiff Churches did not confer these benefits officiously.

166. Defendants and UMC consciously and voluntarily accepted these benefits.

167. Defendants will be unjustly enriched in the measurable amount of the value of Plaintiff Churches' property if they are allowed to retain Plaintiff Churches' real and personal property after Plaintiff Churches' disaffiliation.

WHEREFORE, Plaintiff Churches pray the Court enter judgment against

Defendants and grant the following relief:

1. Declare that:
  - a. any trust encumbering Plaintiff Churches' property for the benefit of UMC is terminated;
  - b. that, to the extent the trust has not terminated, it is revocable; and
  - c. that Plaintiff Churches are entitled to the quiet, exclusive, uninterrupted, and peaceful possession of their respective properties (real and personal) without any interference from Defendants.
2. To the extent the trust is not terminated, issue an order modifying any trust encumbering Plaintiff Churches' property for the benefit of UMC to clarify that the trust is revocable and that Plaintiff Churches can exercise authority as Trustees free from any interference by Defendants or the UMC;
3. An award of pre-judgment and post-judgment interest as permitted by law;
4. An award of attorneys' fees and costs as permitted by law; and
5. Such other and further relief as is just and proper.

**JURY TRIAL DEMAND**

Plaintiff Churches demand a trial by jury for all issues so triable.

Respectfully submitted, this the 9th day of November 2022.

**K&L GATES LLP**

By:



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*Attorneys for Plaintiff Churches*

STATE OF NORTH CAROLINA  
CUMBERLAND COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22-CVS-\_\_\_\_\_

MOUNT CARMEL UNITED  
METHODIST, *et al.* CHURCH

Plaintiffs,

v.

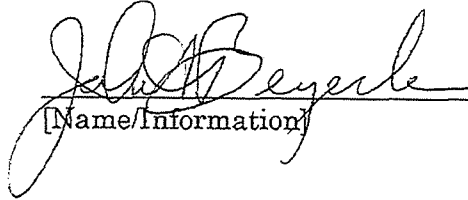
THE WESTERN NORTH  
CAROLINA CONFERENCE OF  
THE UNITED METHODIST  
CHURCH,

Defendants,

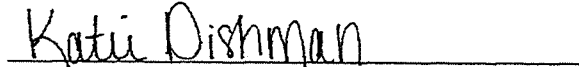
**VERIFICATION**

The undersigned, being first duly sworn, deposes and says, on behalf of Plaintiff, Vanderburg United Methodist Church, that he has read the foregoing, and to the best of his personal knowledge, the matters and statements contained therein are true, except as to those matters or statements made upon information and belief, and as to those he believes them to be true.

This 9 day of Nov, 2022.

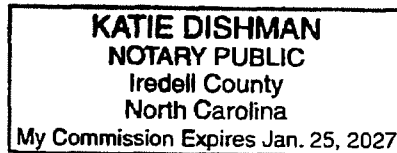
  
[Name/Information]

Sworn to and subscribed before me  
this 9 day of NOV, 2022

  
\_\_\_\_\_  
Notary Public (Official Signature)

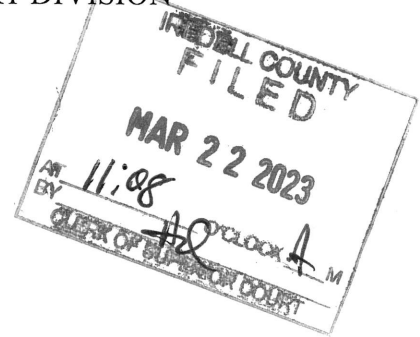
My Commission expires: Jan. 25, 2027

[Official Notary Seal]



STATE OF NORTH CAROLINA  
IREDELL COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22-CVS-2775



MOUNT CARMEL UNITED  
METHODIST CHURCH; BETHEL  
UNITED METHODIST CHURCH OF  
NEW LONDON; BETHESDA UNITED  
METHODIST CHURCH; CHESTNUT  
GROVE UNITED METHODIST  
CHURCH; CONCORD UNITED  
METHODIST CHURCH IN CATAWBA;  
GOOD SHEPHERD CHARLOTTE  
UNITED METHODIST CHURCH;  
LIBERTY & ROCKWELL UNITED  
METHODIST CHURCH; MINNEAPOLIS  
UNITED METHODIST CHURCH;  
MOUNTAIN VIEW UNITED  
METHODIST CHURCH; NEW HOPE  
UNITED METHODIST CHURCH;  
PALESTINE UNITED METHODIST  
CHURCH; PISGAH UNITED  
METHODIST CHURCH; ROCKWELL  
UNITED METHODIST CHURCH;  
WEDDINGTON UNITED METHODIST  
CHURCH; WESLEY CHAPEL UNITED  
METHODIST CHURCH; CROSSROADS  
UNITED METHODIST CHURCH; WEST  
BEND UNITED METHODIST CHURCH;  
BOILING SPRINGS UNITED  
METHODIST CHURCH; VANDERBURG  
UNITED METHODIST CHURCH;  
GRAY'S CHAPEL UNITED METHODIST  
CHURCH; CENTRAL UNITED  
METHODIST CHURCH; MILL GROVE  
UNITED METHODIST CHURCH;  
MITCHELL'S GROVE UNITED  
METHODIST CHURCH; MT. MITCHELL  
UNITED METHODIST CHURCH; GOLD  
HILL UNITED METHODIST CHURCH;  
KISTLER'S CHAPEL UNITED  
METHODIST CHURCH; FAIRFIELD  
UNITED METHODIST CHURCH;  
LEBANON UNITED METHODIST  
CHURCH; SHADY GROVE UNITED

**ORDER GRANTING MOTIONS TO  
DISMISS UNDER RULE 12 AND  
MOTION TO DISMISS FOR IMPROPER  
VENUE**



METHODIST CHURCH; ARNEYS FAIRVIEW UNITED METHODIST CHURCH; LIBERTY UNITED METHODIST CHURCH; EBENEZER UNITED METHODIST CHURCH - MOUNT ULLA; DELTA UNITED METHODIST CHURCH; ST. ANDREWS UNITED METHODIST CHURCH; GROOMETOWN UNITED METHODIST CHURCH; VICKREY UNITED METHODIST CHURCH; BETHESDA UNITED METHODIST CHURCH; and CENTRAL FALLS UNITED METHODIST CHURCH; individually and derivatively on behalf of WESTERN NORTH CAROLINA CONFERENCE OF THE UNITED METHODIST CHURCH,

Plaintiffs,

v.

THE WESTERN NORTH CAROLINA CONFERENCE OF THE UNITED METHODIST CHURCH;

Defendant and Nominal Defendant

and

THE BOARD OF TRUSTEES OF THE WESTERN NORTH CAROLINA CONFERENCE OF THE UNITED METHODIST CHURCH, and KENNETH CARTER, in his capacity as Bishop of the Western North Carolina Conference of the United Methodist Church,

Defendants.

**THIS MATTER**, came before the undersigned at the March 20, 2023 session of

Superior Court of Iredell County upon the Motion of the Defendants, the Western North Carolina Conference of the United Methodist Church, The Board of Trustees of the Western North Carolina Conference of the United Methodist Church, and Kenneth Carter, in his capacity as Bishop of the Western North Carolina Conference of the United Methodist Church (collectively, the “Defendants”) to dismiss the Complaint pursuant to Rule 12 and to Dismiss or Transfer this case for improper venue. Having reviewed: (1) the Verified Complaint filed by the Plaintiffs; (2) with regard to the Motion to Dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, only, but not with regard to the motion to dismiss for failure to state a claim under Rule 12(b)(6) or the motion to dismiss or transfer for improper venue, the Affidavits of Bishop Kenneth H. Carter, Jr., Rev. Amy L. Coles, and Rev. Dr. R. Mark King, with exhibits, which Defendants submitted in support of their motion on Rule 12(b)(1) grounds; (3) and, the arguments of counsel as set forth in the Motion filed by the Defendants, the Memoranda of Law submitted by the Plaintiffs and Defendants, and the arguments of counsel at the hearing – the Court finds that the Defendants’ motions should be **GRANTED**, in part without prejudice and in part with prejudice as set forth below.

The First Claim for relief should be dismissed because the court lacks subject matter jurisdiction because the claims asserted are barred by the First Amendment to the United States Constitution and Article 1, Section 13 of the North Carolina Constitution and, in the alternative, fails to state a claim for which relief could be granted because it fails to allege a prima facie case for quiet title, and should therefore be, **DISMISSED WITHOUT PREJUDICE**.

The Second and Third Claims for relief should be dismissed because the court lacks subject matter jurisdiction because the claims asserted are barred by the First Amendment to the United States Constitution and Article 1, Section 13 of the North Carolina Constitution and, in

the alternative, the claims which the Plaintiffs are asserting affect an interest in real property and venue is not proper in Iredell County pursuant to N.C. Gen. Stat. §1-76, and those claims should therefore be, **DISMISSED WITHOUT PREJUDICE**.

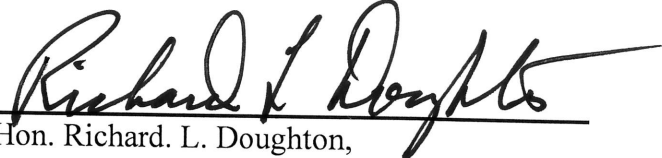
The Fourth, Fifth, Sixth, and Seventh claims for relief in the Plaintiffs Complaint fail to state a claim for which relief could be granted, and the Plaintiffs lack standing to bring those claims, and those claims should, therefore, should be **DISMISSED WITH PREJUDICE**.

**IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED**, that the Defendants Motion to Dismiss under Rule 12 and Motion to Dismiss for improper venue is hereby **GRANTED**, with Prejudice as to the Fourth, Fifth, Sixth, and Seventh Claims for relief and without prejudice as to the First, Second, and Third Claims for relief, and any remaining claims or allegations in the Complaint.

Pursuant to Rule 54(b) of the North Carolina Rules of Civil Procedure, and this Court having determined that there is no just reason for delay, this Order shall be deemed to be, and the same hereby is, a FINAL JUDGMENT, as to all claims hereby dismissed.

This 22<sup>nd</sup> day of March, 2023.

**IT IS SO ORDERED**

  
Hon. Richard. L. Doughton,  
Superior Court Judge Presiding

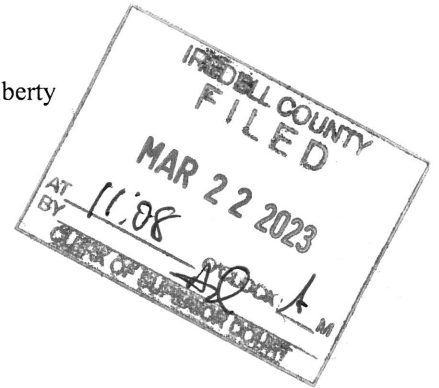


**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of **MOTIONS TO DISMISS AND MOTION TO DISMISS OR TRANSFER** has been served on all parties to this action by hand delivery in open court and by email pursuant to stipulation under Rule 5(b)(1)(A) to the following attorneys of record:

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Dated: March 22<sup>nd</sup>, 2023

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