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ELECTRONICALLY FILED
Superior Court of California,
County of Orange
09/08/2015 at 04:38:00 PM
Clerk of the Superior Court
By Maria Gina Barr, Deputy Clerk

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA,
10 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11
12 SAVE ST. JAMES THE GREAT, a California)
nonprofit public benefit corporation (formerly)
13 an unincorporated association),)

14 Plaintiff)

15 vs.)

16 THE BISHOP OF THE PROTESTANT)
EPISCOPAL CHURCH IN THE DIOCESE)
17 OF LOS ANGELES, a corporation sole,)
LEGACY PARTNERS RESIDENTIAL, INC.,)
18 a corporation, and DOES 1-20,)

19 Defendants.)

Case No.: 30-2015-00794789-CU-OR-CJC
VERIFIED FIRST AMENDED
COMPLAINT FOR (1) DECLARATORY
RELIEF, (2) SPECIFIC ENFORCEMENT
OF DEED RESTRICTION, AND
(3) INJUNCTIVE RELIEF

ASSIGNED FOR ALL PURPOSES TO
Hon. David T. McEachen
Department C21

Complaint Filed: June 24, 2015
Trial Date: None

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21 Plaintiff SAVE ST. JAMES THE GREAT, a California nonprofit public benefit
22 corporation (“Plaintiff”), brings this action to stop the sale and destruction of the church building in
23 which many of its members worship, a sale which would violate specific language in the deed
24 granting the property solely for church purposes, after 70 years of continuous use, and to restore
25 the rights of Plaintiff’s members, who have been locked out of their church by the Defendant
26 Bishop following the filing of this Action.
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Plaintiff alleges as follows:

1. Plaintiff is a California nonprofit public benefit corporation, which represents (1) congregants of the St. James the Great Episcopal Church (the “Church”) located at 3209 Via Lido, in Newport Beach, California (the “Property”), (2) residents of Lido Isle and environs, living near the Church, (3) two individuals who are the principals of tenants of the Property which were summarily removed from the Property contrary to their leases and California law, (4) relatives of former congregants whose remains are interred at the Property and who are currently being denied access to the Property to visit the deceased and (5) community members, including the leader of Brownie Troop 3094, who used the Property for charitable activities and have now been prevented from doing so. These and other members of Plaintiff have suffered harm as the direct result of the Bishop’s actions and have standing to bring this Action.

2. Plaintiff is informed and believes and on that basis alleges that at all times herein mentioned defendant the Bishop of the Protestant Episcopal Church in the Diocese of Los Angeles (“Bishop”) is a corporation sole incorporated in California, which currently holds title to the Property. The Right Reverend J. Jon Bruno, the current Episcopal Bishop of the Diocese of Los Angeles (“Bruno”), is currently the sole director of the Bishop.

3. Plaintiff is informed and believes and on that basis alleges that at all relevant times herein mentioned defendant Legacy Partners Residential, Inc. (“Legacy”) is a corporation doing business in California as a residential property developer, and is currently in escrow to purchase the Property, in order to demolish the Church and develop townhouses on the Property.

4. The true names and capacities of DOES 1 through 20, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff at this time, who therefore sues said defendants by such fictitious names, and when the true names and capacities of such defendants are ascertained, Plaintiff will ask leave of Court to amend this Complaint to insert the same. DOES 1-20, Bishop and Legacy are collectively referred to as “Defendants”.

5. Dating back to approximately 1929, the Griffith Company, a corporation (the

1 “Griffith Company”), owned a large portion of Lido Isle, and built the original streets, curbs,
2 gutters, the bridge to Balboa Peninsula and other improvements. Members of the Griffith family
3 (“Griffith Family”), which then operated the Griffith Company, maintained homes on Lido Isle.
4 On or about July 10, 1945, the Griffith Company, through its president Stephen M. Griffith,
5 granted the Property to Bishop via a deed conveyancing four parcels of land: Lots 1197, 1198,
6 1199 and 1200 of Tract No. 907, as further described therein (the “Deed”). The Deed was recorded
7 on September 29, 1945, in Book 1359, Page 177 of the official records of Orange County.

8 6. The Deed contains *both* a restriction on the use of the Property *and* the right of
9 reverter. Specifically, the Deed provides that “[t]he property conveyed shall be used for church
10 purposes exclusively and no building other than a church and appurtenances may be erected, placed
11 or maintained thereon. The foregoing restriction shall be binding [upon] the grantee, his successors
12 and assigns. Upon the breach of the foregoing condition, the title to said property hereby conveyed
13 and to the whole thereof shall become at once divested from the grantee herein, his successors or
14 assigns, and shall revert and revest in the grantor, its successors or assigns.”

15 7. The location of the Property is very prominent and highly significant to the
16 Newport Beach community. It is located at the entrance to Lido Isle in close proximity to the old
17 Newport Beach City Hall property that Griffith also donated, and is clearly visible from the bridge
18 built by the Griffith Company connecting Lido Isle and Balboa Peninsula. The Church, which was
19 rebuilt in 2000, has been located on this site for almost 70 years.

20 8. Stephen M. Griffith, a member of the Griffith Family and the President of the
21 Griffith Company who signed the Deed on its behalf, and his wife, Della Brown Griffith, had a
22 home on Lido Isle. Della Brown Griffith worshipped regularly at the Church Property donated by
23 the family company. Plaintiff is informed and believes and on that basis alleges that, in her later
24 years, while driving to and from Lido Isle, Della Brown Griffith would tell family members how
25 proud she was of the Griffith Family's role in donating and building “their church,” St. James.

26 9. Beginning in or about 1982, Plaintiff is informed and believes and on that basis
27 alleges a representative of the Church (more specifically, of the owner, the Rector, Wardens and
28 Vestrymen of St. James Episcopal Church in Newport Beach) approached the Griffith Company,

1 and advised that the Church required flexibility to put a deed of trust on the property to build a new
2 Church building on the Property, and/or to purchase at a nearby location and build a new Church
3 on that site (on which the same restrictions would apply). The Griffith Company resisted, citing its
4 (and the Griffith Family's) intent that it remain a church in perpetuity. Ultimately, the Griffith
5 Company agreed to execute a partial quitclaim, in reliance on the assurances of the Church
6 representative. Plaintiff is informed and believes and on that basis alleges that at no time did the
7 parties discuss terminating Church use of the Property, except in the context of rebuilding the
8 Church at another location nearby.

9 10. The Griffith Company executed a partial quitclaim with respect to Lots 1197, 1198
10 and 1200 of Tract No. 907 (but not Lot 1199), on or about January 10, 1984, and it was recorded in
11 the official records of Orange County on January 18, 1984, as instrument no. 84-024171 (the
12 "Quitclaim"). The Quitclaim provides that the Griffith Company "specifically releases the Reverter
13 interest reserved in" the Deed, but does not reference the Deed restriction (nor does it reference Lot
14 1199).

15 11. The Quitclaim was made to the "Rector, Wardens and Vestrymen of St. James
16 Episcopal Church in Newport Beach, a corporation," which Plaintiff is informed and believes and
17 on that basis alleges was deeded the Property by the Bishop in or about May 1950. Plaintiff is
18 informed and believes and on that basis alleges that the Property was quitclaimed in or about April
19 2014 to "The Protestant Episcopal Church in the Diocese of Los Angeles" (an entity separate and
20 distinct from Bishop), which in turn quitclaimed it a month later to the Bishop.

21 12. Plaintiff is informed and believes and on that basis alleges that in or about May
22 1995, Bishop or its predecessor in interest caused to be recorded a "lot line adjustment" (recorded
23 in the official records of Orange County as document no. 95-0201207) that purports to merge all of
24 the Property's four lots (plus two additional lots) into a single parcel for Subdivision Map Act
25 purposes.

26 13. The Church Property was one of those properties embroiled in the dispute known as
27 the "Episcopal Church Cases," between approximately 2004 and 2013. The dispute as to the
28 Church Property ended with the Orange County Superior Court order dated May 1, 2013, granting

1 summary adjudication in the Episcopal Church Cases, Case No. JCCP 4392, Judge K. Dunning
2 presiding. Among other things, the Court held that both the real and personal property are held “in
3 trust for this Church and the diocese thereof” and that the trust, once created, cannot be amended or
4 dissolved except by the General Convention of the Episcopal Church.

5 14. The new Saint James the Great Episcopal Church was dedicated by Bishop Jon
6 Bruno himself on October 6, 2013, and under the leadership of the Church Vicar, Rev. Cindy
7 Voorhees, the Church matured from a loosely affiliated group of people with almost no church
8 assets (no computers, sound system, administrative employees, sexton, altar guild, ushers, greeters,
9 readers or funds) to a financially secure, extremely cohesive congregation of over 150 families.

10 15. Plaintiff is informed and believes and on that basis alleges that in or about April
11 2015, Bishop and Legacy entered into a purported agreement pursuant to which Bishop would
12 putatively sell the Property and the parking lot across the street (currently servicing the Church) to
13 Legacy for approximately \$15,000,000.00. Plaintiff is informed and believes and on that basis
14 alleges that the close of escrow on the sale was originally set for June 26, 2015.

15 16. On May 17, 2015, Bishop Jon Bruno appeared at St. James the Great and abruptly
16 announced to the St. James the Great congregation that its last service in the Church would be held
17 on June 28, 2015, as Legacy was requiring the Property to be vacated, thus ending a 70 years of
18 worship on the site.

19 17. Plaintiff is informed and believes and on that basis alleges that on or about June 10,
20 2015, Legacy discovered the defect in the title to the Property and halted its due diligence efforts
21 indefinitely and advised the Bishop that it would not proceed with its diligence or the purchase
22 transaction until the title defect was removed – a fact that Plaintiff was not aware of when this Action
23 was originally filed.

24 18. Legacy representatives publicly announced on or about June 15, 2015, that if it
25 acquires the Property it intends to cause a mixed-use residential development to be built on the
26 Property (necessary eliminating Church use of the Property). Legacy representatives have also
27 been present at not less than two community meeting discussing such plans and the plans are
28 publicly available for review. Plaintiff’s representative has reviewed Legacy’s plans on file with

1 the City of Newport Beach and they reveal a mixed-use residential development to be constructed
2 both on the Property and on the Church’s parking lot.

3 19. Plaintiff is informed and believes and on that basis alleges that Griffith has affirmed
4 to the Bishop on several occasions that it wishes the Property to continue to be used for Church
5 purposes, consistent with the express wishes of the Griffith Family as set forth in the Deed, including
6 in a formal letter dated June 10, 2015. Plaintiff (together with individual Church congregants and the
7 Church Vicar) also contacted the Bishop, opposing the sale of the Church and the termination of
8 Church uses of the Property. Plaintiff is informed and believes and on that basis alleges that the
9 Bishop has ignored or rejected all such pleas. (Indeed, Bishop filed a complaint against the Griffith
10 Company on June 26, 2015 (deemed a related case), accusing the Griffith Company of interfering
11 with the sale to Legacy.)

12 20. In a letter dated June 17, 2015, from the Bishop to the Church “Transition and
13 Evaluation Team” (and thereafter delivered to congregants, including members of Plaintiff), the
14 Bishop admits the direct effect of the sale, stating: “As you know the buyers of the property are
15 developers and they have told us they have no interest in leasing or renting the existing property to
16 churches or other organizations . . .”

17 21. Plaintiff was formed following the failure of such pleas, first as an unincorporated
18 association and then (effective as of June 18, 2015) as a California nonprofit public benefit
19 corporation, to express the united voice of Church congregants, the intended beneficiaries of the
20 Deed restriction, and numerous others, in opposition to the sale of the Property and the termination
21 of Church uses at the Property in violation of the Deed.

22 22. Plaintiff is informed and believes and on that basis alleges that on or about the
23 morning of June 29, 2015, the Bishop sent his chief financial officer, Ted Forbath, and Clare
24 Zabala-Banguo, another ranking official, to the Property, and arranged for a locksmith to change
25 the locks at the Property. Upon accomplishing this, the Bishop’s staff ordered all Church
26 employees from the Property (including the grounds). The same day, the Bishop also purported to
27 “accept” the resignation of the Vicar, Rev. Cindy Voorhees, notwithstanding that no such
28 resignation was offered, as she informed the Bishop in writing twice on that same day. The lock-

1 out was performed without any prior notice and even though the Bishop knew there was no longer
2 any fixed closing date for the sale because Legacy had suspended its diligence pending resolution
3 of the title issue and the Bishop had brought an action against the Griffith Company claiming a
4 continuing cloud on title to the Property. Thus, there was no imminent need to lock out the Church
5 members, raising the very real question as to whether the action was done in retribution for
6 Plaintiff filing this Action and speaking out against the Bishop.

7 23. In changing the locks and removing Plaintiff's members and others from the
8 Property, the Bishop forcibly detained rightful possessors of the Property. In particular, Ounie
9 Phakousonh, a member of Plaintiff and the sole owner of The School of Devs, a California
10 corporation ("Phakousonh"), entered into a written lease with the Bishop in or about October 2014.
11 Pursuant to the lease, Phakousonh provided computer coding classes for members of the
12 congregation and the community at large, both children and adults. Phakousonh was locked out of
13 the Property on or about June 29, 2015, and was not able to recover personal property remaining
14 on the Property until on or about July 2, 2015. Due to the Bishop's forcible eviction of
15 Phakousonh, without following legal process, Phaskousonh suffered and continues to suffer
16 financial and other damages.

17 24. In addition, Patrick DiGiacomo, a member of the Plaintiff, is the fifty percent
18 owner of PT Catering, a catering company which signed a month-to-month lease with the Bishop
19 in or about November 2013. DiGiacomo used the Church kitchen not only for his catering
20 business, but also to cook the Sunday morning meals for the congregation, to cook social suppers
21 for the congregation, to hold cooking classes for congregants, and to teach autistic children (in free
22 lessons) how to cook. Although the lease was month-to-month, DiGiacomo expected that it would
23 last for years, based on his close relationship with the Vicar and the congregation, of which he was
24 and is an integral member. The Bishop's June 29th lock-out of the congregation from the Property
25 has not only deprived DiGiacomo of the use of the kitchen for his catering business; it has deprived
26 DiGiacomo and the whole congregation of the religious, educational and social uses to which they
27 were putting the kitchen and parish hall.

28 25. Another member of Plaintiff, Susan Egan Hartmann, is the Troop leader of Brownie

1 Troop 3094, which held its meetings at the Property from the fall of 2014 until the lock-out. In or
2 about April 2015, Troop 3094 completed a major service project, building an herb garden in the
3 Church's courtyard, with the Troop's own funds (raised from cookie sales) to provide herbs for
4 DiGiacomo to use in feeding both the people of the congregation and the homeless of Orange
5 County. The June 2015 lock-out denied Hartmann and Troop 3094 access to, and the use and
6 enjoyment of, the herb garden.

7 26. Patricia Norman, another member of Plaintiff, entrusted the ashes of her mother
8 with the Church in or about January 2013, interring them at the rose garden on the Property. Since
9 the Bishop caused the locks to be changed and all entrance barred to the Property on or about June
10 29, 2015, Norman has been unable to visit her mother's remains on the Property.

11 27. On Sunday July 5, 2015, and on every Sunday since then, the St. James the Great
12 congregation has held its Sunday morning worship services in a small park across the street from
13 the Property. This is more than simply an inconvenience for the congregation. The worshippers
14 have no pews in which to sit, they bring folding chairs; they have no fixed sound system, they have
15 to bring and assemble a temporary one which is sometimes hard to hear; they have no aisle, they
16 have to walk to receive communion over the uneven grass, a hazard to the aged and infirm. Several
17 congregants have fallen on the uneven lawn and one congregant has been injured by an SUV driver
18 who didn't see him crossing the street.

19 28. Many of Plaintiff's members live so close to the Church that they can walk to
20 Sunday services. If the Property is sold, and if these people are forced to attend another Episcopal
21 church, they will be required to drive to church services.

22 29. Many of Plaintiff's members, including Arthur Jeppe, its President, and his wife,
23 live on Lido Isle and worship at the Church. At present, they have a short drive, less than a mile, to
24 attend church services. If the Property is sold, in order to attend services at a similar Episcopal
25 church, they would be forced to drive an extra five and a half miles to St. Michael & All Angels in
26 Corona del Mar.

27 30. Many of Plaintiff's members, are residents of Newport Beach but not members of
28 the St. James the Great congregation. Many such residents are highly troubled by Legacy's plans

1 to destroy the existing church buildings and replace the Church with dense residential
2 development. These residents are extremely concerned and anticipate additional traffic, difficult
3 parking, loss of the community resources of the church buildings and grounds, and a significant
4 transformation of the character of the neighborhood in which many of them have lived for many
5 years. Members of the Newport Beach City Council have also expressed, at a public City Council
6 meeting, concerns that the proposed Legacy development is inconsistent with the 2006 Newport
7 Beach General Plan.

8 31. The Church has been operating in accordance with the Deed restriction for seventy
9 (70) years. The benefits of the Deed were accepted by the Bishop and the Property has continued
10 to benefit the Bishop and the congregants for seventy years. Plaintiff is informed and believes and
11 on that basis alleges that the consideration the Griffith Company received in exchange for the Deed
12 to this highly valuable property was the recited \$10 consideration, plus the assurance that the
13 Property would be used perpetually for Church purposes – as it has been for seventy years, and that
14 such assurance was a fundamental part of the consideration received by the Griffith Company,
15 without which it would not have executed the Deed.

16 **FIRST CAUSE OF ACTION**

17 **(Declaratory Relief)**

18 32. Plaintiff realleges and incorporates herein by reference the allegations contained in
19 paragraphs 1 through 31 of this Complaint.

20 33. As hereinabove alleged, Plaintiff is a California nonprofit public benefit
21 corporation, representing (and having as its members) Church congregants, as the intended
22 beneficiaries of the Deed restriction, in opposition to the sale of the Property and the termination of
23 Church uses at the Property in violation of the Deed. Among other things, the Property is held in
24 trust by the Bishop for the benefit of Church congregants, and that trust would be violated by the
25 sale of the Property for development purposes. As such, Plaintiff has an enforceable equitable
26 interest in enforcing the Deed restriction against the Property.

27 34. As hereinabove alleged, Plaintiff, through its members, Phakousonh and
28 DiGiacomo, also has contractual and property interests in the Property, giving it statutory standing

1 to enforce the Deed restriction against the Property under the Corporations Code.

2 35. As hereinabove alleged, Plaintiff, through its members, including without
3 limitation, Norman, also has enforceable equitable interests in enforcing the Deed restriction
4 against the Property, because she has been wrongfully denied the right to visit her mother's ashes
5 on the Property, and has suffered damages thereby.

6 36. As hereinabove alleged, Plaintiff, through its members, including without
7 limitation, Hartmann, also has enforceable equitable interests in enforcing the Deed restriction
8 against the Property, because she and her Troop have been wrongfully denied the use and
9 enjoyment of the Property, and have suffered damages thereby.

10 37. An actual controversy has arisen and now exists between Plaintiff and Defendants
11 concerning their respective rights and obligations in that Plaintiff contends, as hereinabove alleged,
12 that the sale of the Property to Legacy is in violation of the Deed, because there is a valid
13 restriction covering the Property requiring it to be "used for church purposes exclusively" and
14 specifying that "no building other than a church and appurtenances may be erected, placed or
15 maintained thereon." Plaintiff is informed and believes and on that basis alleges that Defendants
16 contend that the Deed restriction is not valid and binding as against all or any portion of the
17 Property, and does not prohibit the sale of the Property for development purposes.

18 **SECOND CAUSE OF ACTION**

19 (Specific Enforcement of Deed Restriction)

20 38. Plaintiff realleges and incorporates herein by reference the allegations contained in
21 paragraphs 1 through 31 of this Complaint.

22 39. As hereinabove alleged, Plaintiff is a nonprofit public benefit corporation made up
23 of Church congregants, the intended beneficiaries of the Deed restriction, and many others, all
24 opposing the sale of the Property and the termination of Church uses at the Property in violation of
25 the Deed. As such, Plaintiff has a cognizable equitable interest in enforcing the Deed restriction
26 against the Property.

27 40. As hereinabove alleged, Plaintiff, through its members, including without
28 limitation, Phaskousonh and DiGiacomo, also has contractual and property interests in the

1 Property, giving it statutory standing to enforce the Deed restriction against the Property.

2 41. As hereinabove alleged, Plaintiff, through Norman (and possibly other members),
3 also has enforceable equitable interests in enforcing the Deed restriction against the Property,
4 because she has been wrongfully denied the right to visit her mother’s ashes on the Property, and
5 has suffered damages thereby.

6 42. As hereinabove alleged, Plaintiff, through its members, including without
7 limitation, Hartmann, also has enforceable equitable interests in enforcing the Deed restriction
8 against the Property, because she and her Troop have been wrongfully denied the use and
9 enjoyment of the herb garden located on the Property, and have suffered damages thereby.

10 43. As hereinabove alleged, the Church has been operating in accordance with the
11 Deed restriction for seventy (70) years, notwithstanding the intervention of the Quitclaim. There
12 can be no question that the Deed is clear, just, reasonable and specifically enforceable. The benefits
13 of the Deed were accepted by the Bishop and the Property has continued to benefit the Bishop and
14 the congregants for seventy years. Plaintiff is informed and believes and on that basis alleges that
15 the consideration Griffith received in exchange for the Deed was the recited \$10 consideration,
16 plus the assurance that the Property would be used perpetually for Church purposes – as it has been
17 for seventy years, and that such assurance was a fundamental part of the consideration received by
18 Griffith, without which it would not have executed the Deed.

19 44. Plaintiff is informed and believes and on that basis alleges that the congregants it
20 represents were intended beneficiaries of the Deed. Plaintiff further alleges that the Bishop holds
21 the Property in trust for the benefit of the congregants, including those who are members of
22 Plaintiff. While the Deed was made to the Bishop, the Deed restriction is designed to prevent the
23 very action the Bishop is attempting to carry out – the sale and conversion of the Property to non-
24 Church purposes. The beneficiary of the provision is thus obviously not the Bishop, who would
25 prefer it not be enforced, but the congregants who are directly benefitted by its enforcement.
26 Similarly, the trust is also for the benefit of the congregants and may not be violated by using or
27 transferring the Property other than for Church purposes.

28 45. In a letter dated June 17, 2015, from the Bishop to the Church “Transition and

1 Evaluation Team” (and thereafter delivered to other congregants, including members of Plaintiff),
2 the Bishop admits the direct effect of the sale, stating: “As you know the buyers of the property are
3 developers and they have told us they have no interest in leasing or renting the existing property to
4 churches or other organizations You asked if you could be in contact with the buyer of the
5 property. They have informed my office that is not something they wish to do as they have an
6 exclusive contractual relationship with The Bishop as Corporation Sole.”

7 46. Given the totality of the circumstances as hereinabove alleged, including Legacy’s
8 publicly announced intention to demolish the Church to build townhomes, and the ordered eviction
9 of the congregants immediately following the sale, Bishop’s sale of the Property is a clear breach
10 of the Deed restriction and of the trust in which it holds the Property.

11 47. As hereinabove alleged, Plaintiff and its members have suffered and will continue
12 to suffer great and irreparable injuries in that their use of the Property for Church purposes has
13 been terminated and all fixtures and personal property will be (or already have been) removed from
14 Church premises (including the Church organ, pews, and stained glass windows). The parishioners
15 cannot continue to congregate outside of the Property forever. Unless Church use is allowed to
16 resume, membership will be dispersed and lose the community that they have gained by being a
17 part of the congregation. Some congregants will even have their loved ones’ remains disturbed and
18 moved from what was to be their final resting place. There is simply no way that these losses can
19 be adequately compensated.

20 **THIRD CAUSE OF ACTION**

21 (Injunctive Relief)

22 48. Plaintiff realleges and incorporates herein by reference the allegations contained in
23 paragraphs 1 through 31 of this Complaint.

24 49. As hereinabove alleged, Plaintiff is a nonprofit public benefit corporation made up
25 of Church congregants (among many others), as the intended beneficiaries of the Deed restriction,
26 in opposition to the sale of the Property and the termination of Church uses at the Property in
27 violation of the Deed and of the trust in which the Bishop holds the Property. As such, Plaintiff has
28 an enforceable equitable interest in enforcing the Deed restriction against the Property.

1 50. As hereinabove alleged, Plaintiff, through its members, including without
2 limitation, Phaskousonh and DiGiacomo, also has contractual and property interests in the
3 Property, giving it statutory standing to enforce the Deed restriction against the Property.

4 51. As hereinabove alleged, Plaintiff, through its members, including without
5 limitation, Norman, also has enforceable equitable interests in enforcing the Deed restriction
6 against the Property, because she has been wrongfully denied the right to visit her mother's ashes
7 on the Property, and has suffered damages thereby.

8 52. As hereinabove alleged, Plaintiff, through its members, including without
9 limitation, Hartmann, also has enforceable equitable interests in enforcing the Deed restriction
10 against the Property, because she and her Troop have been wrongfully denied the use and
11 enjoyment of Property, and have suffered damages thereby.

12 53. Unless the sale of the Property to Legacy is enjoined by this Court, Plaintiff and its
13 members will suffer great and irreparable injuries in that their use of the Property for Church
14 purposes will be permanently terminated and all personal property removed from Church premises.
15 These include, among other things, the Church organ, pews, and stained glass windows. Personal
16 property held in trust on the Property also includes approximately twelve cremated human remains
17 that were intended to remain on the Property as their final resting place.

18 54. As hereinabove alleged, once the sale closes, the Church is permanently closed and
19 emptied of all personal property and members of the congregation dispersed to other churches, it
20 will be impractical if not impossible to restore the members of the Plaintiff to their rightful home in
21 the Church. Accordingly, there is no adequate remedy at law available to Plaintiff for the injuries
22 which are threatened unless this Court intervenes as requested.

23 55. As an independent ground for an injunction to halt the sale, Plaintiff alleges that the
24 Bishop has no authority to enter into or consummate the sale, as determined by this Court only two
25 years ago in the Episcopal Church Cases. Specifically, as hereinabove alleged, in an order dated
26 May 1, 2013 granting summary adjudication in the Episcopal Church Cases, Case No. JCCP 4392,
27 Judge K. Dunning presiding, the Court held that both the real and personal property are held "in
28 trust for this Church and the diocese thereof" and that the trust, once created, may not be amended

1 or dissolved except by the General Convention of the Episcopal Church. Plaintiff is informed and
2 believes and on that basis alleges that the Bishop has not obtained the consent of the General
3 Convention of the Episcopal Church to remove the Property from the trust. As a result, and given
4 the irreparable injury the sale will cause Plaintiff, the sale must be enjoined until and unless such
5 consent is obtained.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff requests the Court to enter a judgment against all Defendants and
8 each of them, in favor of Plaintiff, as follows:

- 9 1. A declaration that (a) the sale of the Property to Legacy is in violation of the Deed,
10 (b) the Deed requires that the Property be used for church purposes exclusively,
11 (c) no building other than a church and appurtenances may be erected, placed or
12 maintained thereon, (d) the Plaintiff, on behalf of its members, is an intended
13 beneficiary of the Deed restriction, and of the trust in which the Bishop holds the
14 Property, entitled to enforce the Deed restriction.
- 15 2. Specific performance of the Deed restriction, requiring the Bishop to allow
16 Plaintiff's members immediate and uninterrupted access to the church and
17 thereafter to continue to use, operate and maintain the Property for church purposes.
- 18 3. An order requiring Defendants to show cause, if any they have, why they should
19 not be enjoined as set forth herein, during the pendency of this action;
- 20 4. A temporary restraining order, preliminary injunction and a permanent injunction,
21 all enjoining Defendants and each of them and their agents, servants and employees
22 and all persons acting under, in concert with or for them from (a) taking any action
23 to further the transfer of the Property by or from its current owner, (b) changing the
24 use of the Property from use as the St. James the Great Episcopal Church or
25 prohibiting such use, or (c) taking any other action in violation of the Deed
26 restriction or in violation of the trust in which the Property is held;
- 27 5. Attorneys' fees and costs as provided for by law;

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6. Costs of suit; and

7. Any other and further relief the Court deems proper.

Dated: September 8, 2015

CROUDACE & DIETRICH LLP

By: /s/ Mark A. Nitikman
Mark A. Nitikman
Attorneys for Plaintiff Save St. James the Great

LATHAM AND WATKINS LLP

By: /s/ John T. Ryan
John T. Ryan
Colleen C. Smith
Attorneys for Plaintiff Save St. James the Great

1 **PROOF OF SERVICE**

2 I am employed in the County of San Diego, State of California. I am over the age
3 of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 12670
4 High Bluff Drive, San Diego, CA 92130.

5 On September 8, 2015, I served the following document described as:

6 **VERIFIED FIRST AMENDED COMPLAINT FOR (1) DECLARATORY RELIEF, (2)
7 SPECIFIC ENFORCEMENT OF DEED RESTRICTION, AND (3) INJUNCTIVE
8 RELIEF**

9 by serving a true copy of the above-described document in the following manner:

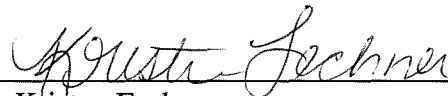
10 **BY OVERNIGHT MAIL**

11 I am familiar with the office practice of Latham & Watkins LLP for collecting and processing
12 documents for overnight mail delivery by Federal Express Mail or other express service carrier.
13 Under that practice, documents are deposited with the Latham & Watkins LLP personnel
14 responsible for depositing documents in a post office, mailbox, subpost office, substation, mail
15 chute, or other like facility regularly maintained for receipt of overnight mail by Federal Express
16 Mail or other express service carrier; such documents are delivered for overnight mail delivery
17 by Federal Express Mail or other express service carrier on that same day in the ordinary course
18 of business, with delivery fees thereon fully prepaid and/or provided for. I deposited in Latham
19 & Watkins LLP' interoffice mail a sealed envelope or package containing the above-described
20 document and addressed as set forth below in accordance with the office practice of Latham &
21 Watkins LLP for collecting and processing documents for overnight mail delivery by Federal
22 Express Mail or other express service carrier:

23 K. Erik "Rick" Friess, Esq.
24 Allen Matkins Leck Gamble Mallory & Natsis
25 LLP
26 1900 Main Street, 5th Floor
27 Irvine, CA 92614-7321
28 Phone: (949) 553-1313
Fax: (949) 553-8354

I declare that I am employed in the office of a member of the Bar of California, or
permitted to practice before, this Court at whose direction the service was made and declare
under penalty of perjury under the laws of the State of California that the foregoing is true and
correct.

Executed on **September 8, 2015**, at San Diego, California.


Kristen Fechner

VERIFICATION (C.C.P. 446 AND 2015.5)

STATE OF CALIFORNIA, COUNTY OF ORANGE

VERIFIED FIRST AMENDED COMPLAINT FOR (1) DECLARATORY RELIEF, (2) SPECIFIC ENFORCEMENT OF DEED RESTRICTION, AND (3) INJUNCTIVE RELIEF

I have read the foregoing and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am an officer a partner of

SAVE ST. JAMES THE GREAT, a California nonprofit public benefit corporation

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on (date) September 7, 2015, at Newport Beach, California.

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

Arthur Jeppe

Type or Print Name

Signature

PROOF OF SERVICE CCP 1013a(3) Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of California. I am over the age of 18 and not a party to the within action; my business address is

On (date) , **I served the foregoing document described as on in this action

- by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list;
by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

*I deposited such envelope in the mail at California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on (date) , at California.

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

Type or Print Name

Signature

*(BY MAIL, SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX OR BAG)
**FOR PERSONAL SERVICE, SIGNATURE MUST BE THAT OF MESSENGER)

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3 of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 12670
4 High Bluff Drive, San Diego, CA 92130.

5 On September 8, 2015, I served the following document described as:

6 **VERIFICATION RE VERIFIED FIRST AMENDED COMPLAINT FOR (1)
7 DECLARATORY RELIEF, (2) SPECIFIC ENFORCEMENT OF DEED RESTRICTION,
8 AND (3) INJUNCTIVE RELIEF**

9 by serving a true copy of the above-described document in the following manner:

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28 Phone: (949) 553-1313
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29 I declare that I am employed in the office of a member of the Bar of California, or
30 permitted to practice before, this Court at whose direction the service was made and declare
31 under penalty of perjury under the laws of the State of California that the foregoing is true and
32 correct.

33 Executed on **September 8, 2015**, at San Diego, California.

34 
35 _____
36 Kristen Fechner