

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In re:)
Multi-Circuit Episcopal Church) **Civil Case Numbers:**
Litigation) CL 2007-248724,
) CL 2007-1625,
) CL 2007-1235,
) CL 2007-1236,
) CL 2007-1238,
) CL 2007-5250,
) CL 2007-5364,
) CL 2007-5683,
) CL 2007-5682,
) CL 2007-5684, and
) CL 2007-5902,

**CANA CONGREGATIONS' MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR LEAVE TO AMEND**

COME NOW Truro Church, The Falls Church, Church of the Apostles, Church of the Epiphany, St. Margaret's Church, St. Paul's Church, St. Stephen's Church, Church of the Word, and various Trustees (the "CANA Congregations"),¹ and submit this Memorandum in Support of Their Motion for Leave to Amend their Answer and Counterclaims, and state as follows:

I. BACKGROUND

The CANA Congregations are now seeking leave to amend their Answer and Counterclaims to clarify certain defenses, refine the Counterclaims, and specify ad damnum clauses in the Counterclaims. Copies of the proposed Amended Answer and Grounds of Defense and Counterclaim for The Falls Church to The Episcopal Church ("TEC") and The Protestant Episcopal Church in the Diocese of Virginia ("Diocese") are attached as Exhibits 1 and 2 respectively. Should leave be granted the other CANA Congregations would file substantively identical amended pleadings albeit with lower ad damnum clauses.

¹ Church of Our Savior at Oatlands does not join in this brief.

The proposed Amended Answer and Grounds of Defense and Counterclaim does not seek to introduce any new theories of recovery on the CANA Congregations' counterclaims. Moreover, the amendment of the Answer for the most part merely clarifies existing legal and equitable defenses relating to the existence and enforceability of the purported interests asserted by TEC and the Diocese in the CANA Congregations' real and personal property. While the amendment adds certain affirmative defenses, such as invoking the Contracts Clause of U.S. and Virginia Constitutions, those defenses arise from facts which were previously addressed in discovery and the initial trials.

The added ad damnum clause simply places a monetary figure on the amounts claimed under the already existing theories of recovery. Most importantly, the proposed Amended Answer and Grounds of Defense and Counterclaim does not seek to undo issues already litigated and decided in this matter. Put simply, the issues raised in the proposed Amended Answer and Grounds of Defense and Counterclaim only deal with prospective issues to be litigated.

There is no conceivable prejudice to TEC or the Diocese. As of the date of this filing the parties are still 109 days from the trial set to begin on April 25, 2011 and well within the date to complete any additional discovery that could be conceivably related to the proposed Amended Answer and Grounds of Defense and Counterclaim to be filed by each CANA Congregation.

II. ARGUMENT

A. Leave to Amend is Liberally Granted in Virginia and Failure to Grant Leave upon a Showing of Good Cause is an Abuse of Discretion

It is well settled in Virginia jurisprudence that leave to amend is liberally granted. VA. S. CT. R. 1:8 (2011) ("Leave to amend shall be liberally granted in furtherance of the ends of justice."). Whether or not to grant leave is within the sound discretion of the trial court, and while "amendments are not a matter of right, a trial court's decision refusing leave to amend

after a showing of good cause is an abuse of discretion in ordinary circumstances.” Costanzo v. Costanzo, 2009 WL 230159 *2 (Va. App. 2009) (citing Ford Motor Co. v. Benitez, 273 Va. 242, 252, 639 S.E.2d 203, 208 (2007)).

B. Good Cause Exists and Therefore the CANA Congregations Should be Granted Leave to Amend Their Counterclaims

When faced with the issue of granting leave to amend the Virginia Supreme Court has used a three part test to determine the existence of good cause for the amendment sought. That test includes: (1) whether or not leave has been sought previously; (2) the timing of the request; and (3) whether or not the amendment sought would cause prejudice to the opposing party. See Ogunde v. Prison Health Services, Inc., 274 Va. 55, 67 (2007) (finding that the trial court abused its discretion in failing to allow amendment when no previous amendment was sought, request was timely, and no prejudice would have resulted from amendment); Costanzo, 2009 WL 230159 at *2 (citing three part test in Ogunde and finding that the trial court erred in refusing to grant leave to amend answer); see also Peterson v. Castano, 260 Va. 299, 303 (2000) (“the circuit court abused its discretion by denying the plaintiff’s [] request to amend his motions for judgment to increase each ad damnum clause because there was no evidence that the defendants would have suffered any prejudice, and the amendment would have been in furtherance of the ends of justice”).

In the case at bar, leave to amend has not been previously sought, the request is timely,² and the proposed amendments to the Counterclaims would not result in any prejudice to TEC or

² These consolidated cases were remanded on October 14, 2010. Thereafter the parties convened to address preliminary issues and ultimately a trial date was set on December 17, 2010. This Motion is now brought less than one month after the trial date was selected, prior to the close of discovery, and more than three and a half months prior to the selected trial date. See Ogunde, 274 Va. at 67 (finding that amendment “following the relevant rulings of the trial court and the conclusion of discovery” timely).

the Diocese. Furthermore, the amendments sought in this case are necessary to further the ends of justice.

III. CONCLUSION

As defined by the Virginia Supreme Court in Ogunde, good cause exists for the amendments sought by the CANA Congregations, and accordingly leave should be granted as refusal to do so would be an abuse of discretion.


WHEREFORE, for the forgoing reasons, and those in addition which may be urged upon a hearing of this matter, the CANA Congregations, by counsel, respectfully request that this Court enter an Order

- (a) granting them leave to amend their Answers and Grounds of Defense and Counterclaims consistent with the proposed Amended Answer and Ground of Defense and Counterclaims tendered by The Falls Church;
- (b) require TEC and the Diocese to file responsive pleadings to the Amended Counterclaims within 21 days of the Order entered as a result of this Motion; and
- (c) for such additional relief as this Court may deem just and proper under the circumstances.

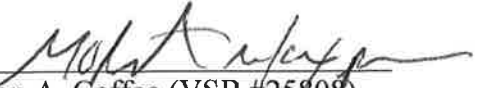
Dated: January 7, 2011

Respectfully submitted,


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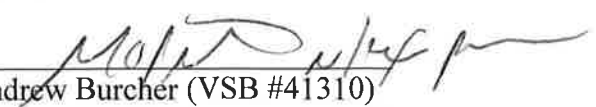
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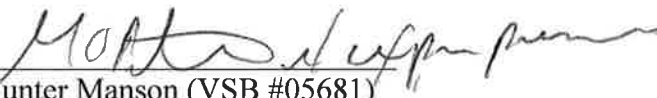
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 2011 a copy of the foregoing CANA Congregations' Memorandum in Support of Motion for Leave to Amend, was sent by electronic mail and first-class mail, postage prepaid, to:

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**THE CHURCH AT THE FALLS – THE FALLS CHURCH’S
AMENDED ANSWER, GROUNDS OF DEFENSE AND COUNTERCLAIM TO THE
COMPLAINT FILED BY THE PROTESTANT EPISCOPAL CHURCH**

COMES NOW the Defendant The Church at the Falls – The Falls Church (“The Falls Church”) and files this Amended Answer, Grounds of Defense and Counterclaim to the Complaint filed by The Protestant Episcopal Church (“TEC”) and states as follows:

I. ANSWER

The Falls Church responds to the numbered paragraphs of the Complaint and states that unless expressly admitted, each and every allegation contained in the Complaint is denied.

1. The Falls Church admits the allegation in the first sentence and denies the allegation in the second sentence of ¶ 1 of the Complaint.

2. The Falls Church admits that The Falls Church, Truro Church, Church of Our Savior at Oatlands, Church of the Apostles, Church of the Epiphany, St. Margaret’s Church, Christ the Redeemer Church, St. Stephen’s Church and St. Paul’s Church incorporated as non-



stock religious corporations between February 2006 and January 2007 as permitted by Virginia law and that Church of the Word and Potomac Falls Church are unincorporated associations. The Falls Church further admits that TEC claims an interest in their properties, but denies that TEC has any right to such properties and further denies the remaining allegations in ¶ 2 of the Complaint.

3. The Falls Church admits the allegations in ¶ 3 of the Complaint.

4. The Falls Church admits the allegations in ¶ 4 of the Complaint.

5. The Falls Church admits the allegations in ¶ 5 of the Complaint.

6. The Falls Church admits the allegations in ¶ 6 of the Complaint.

7. The Falls Church admits the allegations in ¶ 7 of the Complaint.

8. Paragraph 8 of the Complaint contains a legal conclusion to which no response is necessary.

9. The Falls Church admits that the Rt. Rev. Martyn Minns served as the rector of Truro Church, that the former individual defendants identified in ¶ 9 of the Complaint served on the Vestry of Truro Church, and that the Vestry of Truro Church has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of Truro Church. The Falls Church denies the remaining allegations in ¶ 9 of the Complaint.

10. The Falls Church admits that Rev. David R. Harper served as the rector of Church of the Apostles, that the former individual defendants identified in ¶ 10 of the Complaint served on the Vestry of Church of the Apostles, and that the Vestry of Church of the Apostles has at all times pertinent to this action exercised, and continues to exercise control over the real and

personal property of Church of the Apostles. The Falls Church denies the remaining allegations in ¶ 10 of the Complaint.

11. The Falls Church admits that the Rev. Robin Rauh served as the rector of Church of the Epiphany, that the former individual defendants identified in ¶ 11 of the Complaint served on the Vestry of Church of the Epiphany, and that the Vestry of Church of the Epiphany has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of Church of the Epiphany. The Falls Church denies the remaining allegations in ¶ 11 of the Complaint.

12. The Falls Church admits that the Rev. Mark Sholander has served as the Rector of Christ the Redeemer Church, a Virginia non-stock corporation, since January 2007, that the former individual defendants identified in ¶ 12 of the Complaint served on the Vestry of Christ the Redeemer Church, and that the Vestry of Christ the Redeemer Church has at all times pertinent to this action exercised, and continues to exercise, control over all property of Christ the Redeemer Church. The Falls Church denies the remaining allegations in ¶ 12 of the Complaint.

13. The Falls Church admits that the Rev. Dr. John W. Yates II served as the rector of The Falls Church, that the former individual defendants identified in ¶ 13 of the Complaint served on the Vestry of The Falls Church, and that the Vestry of The Falls Church has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of The Falls Church. The Falls Church denies the remaining allegations in ¶ 13 of the Complaint.

14. The Falls Church admits that the Rev. Neal Brown served as the rector of St. Margaret's Church, that the former individual defendants identified in ¶ 14 of the Complaint

served on the Vestry of St. Margaret's Church, and that the Vestry of St. Margaret's Church has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of St. Margaret's Church. The Falls Church denies the remaining allegations in ¶ 14 of the Complaint.

15. The Falls Church admits that the Rev. David N. Jones served as the rector of St. Paul's Church, that the former individual defendants identified in ¶ 15 of the Complaint served on the Vestry of St. Paul's Church, and that the Vestry of St. Paul's Church has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of St. Paul's Church. The Falls Church denies the remaining allegations in ¶ 15 of the Complaint.

16. The Falls Church admits that Rev. Robin T. Adams served as the rector of Church of the Word, that the former individual defendants identified in ¶ 16 of the Complaint served on the Vestry of Church of the Word, and that the Vestry of Church of the Word has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of Church of the Word. The Falls Church denies the remaining allegations in ¶ 16 of the Complaint.

17. The Falls Church admits that since 1977, the Rev. Elijah Brockenbrough White, III has served as the rector of the Church of Our Savior at Oatlands, that Daniel L. Bell, II, and other former individual defendants not identified in ¶ 17 of TEC's Complaint are members of the Vestry of the Church of Our Savior at Oatlands, and that the Vestry of the Church of Our Savior at Oatlands has at all times pertinent to this action exercised, and continues to exercise, control

over the real and personal property of Church of Our Savior at Oatlands, on behalf of said Congregation. The Falls Church denies the remaining allegations in ¶ 17 of the Complaint.

18. The Falls Church admits that the Rev. Jack Grubbs served as the Vicar of Potomac Falls Church, and that the leadership of Potomac Falls Church, under the authority of the Vestry of The Falls Church, have at all times pertinent to this action exercised, and continue to exercise, control over all property of Potomac Falls Church. The Falls Church denies the remaining allegations in ¶ 18 of the Complaint.

19. The Falls Church admits that the Rev. Jeffrey O. Cerar served as the rector of St. Stephen's Church, that the former individual defendants identified in ¶ 19 of the Complaint served on the Vestry of St. Stephen's Church, and that the Vestry of St. Stephen's Church has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of St. Stephen's Church. The Falls Church denies the remaining allegations in ¶ 19 of the Complaint.

20. The Falls Church admits the Trustees of Truro Church hold title to real property for the benefit of Truro Church and further admits that the deeds produced pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

21. The Falls Church admits the Trustees of Church of the Apostles hold title to real property for the benefit of Church pf the Apostles and further admits that the deeds produced pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

22. The Falls Church admits the Trustees of Church of the Epiphany hold title to real property for the benefit of Church the Epiphany and further admits that the deeds produced

pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

23. The Falls Church admits the Trustees of The Falls Church hold title to real property for the benefit of The Falls Church and further admits that the deeds produced pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

24. The Falls Church admits the Trustees of St. Margaret's Church hold title to real property for the benefit of St. Margaret's Church and further admits that the deeds produced pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

25. The Falls Church admits the Trustees of St. Paul's Church hold title to real property for the benefit of St. Paul's Church and further admits that the deeds produced pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

26. The Falls Church admits that the individual defendants, not originally identified by the Plaintiff in paragraph 17 of the Complaint, are the current Trustees of certain real property of the Church of Our Savior at Oatlands, these Trustees having been appointed by Court Order to hold title to that real property on behalf of the Church of Our Savior at Oatlands, consistent with the original 1875 deed of conveyance for that property which granted it to the use and benefit of said local Congregation. All other allegations of said paragraph 26 are denied.

27. The Falls Church admits the Trustees of St. Stephen's Church hold-title to real property for the benefit of St. Stephen's Church and further admits that the deeds produced

pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

28. The Falls Church denies that TEC is an autonomous hierarchical religious denomination and admits that TEC has some hierarchical attributes. The Falls Church further admits that TEC purports to have a loose three-tiered form of "government" as reflected in its Constitution and Canons, but denies that such is binding on The Falls Church or the members of The Falls Church.

29. The Falls Church admits that TEC purports to be governed in part by a bicameral legislative body called its "General Convention" and that the Presiding Bishop is elected by the General Convention, and has the responsibilities as provided by the TEC Constitution and Canons, but denies that the General Convention is the highest level of TEC governance.

30. The Falls Church lacks sufficient information to admit that TEC is currently affiliated with 111 incorporated or unincorporated dioceses located in the United States and other countries. Upon information and belief, a number of the dioceses have disaffiliated from and/or are not in full communion with TEC. The Falls Church admits that each diocese purports to have a governing body which, among other things, operates under the authority, and carries out the mission, of the broader Anglican Communion. The Falls Church further admits that many TEC dioceses are governed by purportedly representative legislatures that in turn elect the ecclesiastical authority, which typically includes the diocesan and other bishops, and a committee of clergy and laity that acts as a council of advice to the diocesan bishop.

31. The Falls Church does not have sufficient information to admit or deny how many congregations or parishes continue to be affiliated with TEC, but upon information and belief, believes that congregations and Dioceses continue to sever, or plan to sever, ties with TEC,

providing further evidence of the significance of the division in TEC. The Falls Church is without sufficient information and belief to admit or deny the remaining allegations in paragraph 31, which are accordingly, for the moment, denied.

32. The Falls Church denies that TEC is an autonomous hierarchical religious denomination and admits that TEC has some hierarchical attributes and that TEC allows a representative participation as alleged in ¶ 32 of the Complaint.

33. The Falls Church admits that under the 2006 version of the sections cited, there are spot references to division of an existing diocese, but no specific enabling of authority or establishment of procedure for any authorization of a division by TEC's General Convention. The Falls Church denies the presence or absence of such an action by TEC (or the Diocese) has any bearing on the determination of whether a "division" has occurred under Virginia Code § 57-9, and denies such an action has any relevance as to whether The Falls Church has the right to sever its ties with TEC and the Diocese. The Falls Church admits The Protestant Episcopal Church in the Diocese of Virginia ("Diocese") was previously divided, but lacks sufficient information to admit or deny that it was done pursuant to the authorization of the General Convention.

34. The Falls Church denies the allegations set forth in paragraph 34, which upon the 2006 version of sections cited, relate to "missionary dioceses" and not "dioceses" as alleged.

35. The Falls Church denies the allegations contained in ¶ 35 of the Complaint. As evidenced by the CANA Congregations' petitions pursuant to Virginia Code § 57-9, TEC's and the Diocese's actions have caused a division within the Diocese, the national Episcopal Church, and the Anglican Communion.

36. The Falls Church admits that TEC is a constituent member of the Anglican Communion and, as such, is subject to the doctrinal authority of the Anglican Communion; that the Anglican Communion at one time consisted of 38 provinces which trace their roots to the Church of England; and that TEC at one time was in broken or impaired communion with no fewer than 25 of the then 38 provinces of the Anglican Communion due to the division caused in the Anglican Communion, by TEC and the Diocese.

37. The Falls Church admits that it joined the Convocation of Anglicans in North America and that CANA is in communion with the Anglican Communion through the Church of Nigeria. The Falls Church further admits that by withdrawing from TEC and joining CANA, it has restored itself to full communion with all other provinces of the Anglican Communion.

38. The Falls Church admits that a number of churches and clergy in Virginia that were formerly affiliated with the Diocese and with TEC voted to recognize the division in the Anglican Communion, in TEC, and in the Diocese, to disaffiliate from TEC and the Diocese, and to affiliate with the Church of Uganda, which is a member of the Anglican Communion.

39. The Falls Church admits that in the past there have been theological differences among the members of the Anglican Communion but deny that they were of the same intensity as the present differences and or that constituent members of the Anglican Communion are independent.

40. The Falls Church admits that TEC's General Convention and the Diocese have, from time to time, purported to adopt and amend Constitutions and Canons, but states further that not all of such actions have been taken with the regularity and in compliance with the rules and procedures governing such actions, nor with applicable state laws, and some are invalid. The

Falls Church is without knowledge or information sufficient to form a belief with respect to other dioceses, and therefore denies the allegations set forth in this paragraph as to those dioceses. The Falls Church denies that it is bound by the Constitution and Canons of either TEC or the Diocese.

41. The Falls Church admits that TEC and the Diocese's canons purport to govern both temporal and spiritual matters and contain a number of provisions that specifically relate to the use and control of parish property, but denies that any canons relating to parish property create any legally enforceable property, trust or contract rights in any property of The Falls Church on the part of TEC or the Diocese.

42. The Falls Church does not have sufficient information to admit or deny the allegation with respect to former Diocesan Canons 1.7 and 1.10, adopted in 1793, as TEC has not attached the Canons to its Complaint, but notes that these Canons were revoked in the early 1800s. Moreover, the excerpted portions of the former Canons only purported, prior to their revocation, to control property actually owned by TEC and as such have no application to The Falls Church's property.

43. The Falls Church does not have sufficient information to admit or deny the allegation with respect to Canon 11.6 of TEC Canons, but denies that any canons relating to parish property create any legally enforceable property, trust or contract rights in any property of The Falls Church on the part of TEC or the Diocese. The Falls Church further notes that the excerpted portion of the Canon, if accurate, only purports to secure consecrated property, which even assuming *arguendo* said Canon were enforceable, would only apply to a portion of the properties owned by The Falls Church. The Falls Church also notes that TEC admitted officially,

continuously and repeatedly that its property canons are merely aspirational, as state law controls ownership and control of the property of individual congregations.

44. The Falls Church does not have sufficient information to admit or deny the allegation with respect to Canon 1.7.3, as TEC has not attached the Canon to its Complaint, but denies that any canons relating to parish property create any legally enforceable property, trust or contract rights in any property of The Falls Church on the part of TEC or the Diocese. The Falls Church further notes that TEC admitted officially, continuously and repeatedly that its property canons are merely aspirational, as state law controls ownership and control of the property of individual congregations. The Falls Church also notes that the Canon quoted in this paragraph does not seek to bar The Falls Church from conclusively deciding the title to its property or to exercise its independent right to withdraw from TEC and the Diocese.

45. The Falls Church admits that Diocesan Canons 15.1 and 15.2 state what they purport to state, but denies that any canons relating to parish property create any legally enforceable property, trust or contract rights in any property of The Falls Church on the part of TEC or the Diocese. The Falls Church further notes that TEC admitted officially, continuously and repeatedly that its property canons are merely aspirational, as state law controls ownership and control of the property of individual congregations. The Falls Church denies that the Canons quoted in this paragraph control or have any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, establish any property interest in The Falls Church' property, or restrict or limit in any way the exercise of its independent right to withdraw from TEC and the Diocese.

46. The Falls Church admits that TEC Canon II1.9(5)(a)(1-2) states what it purports to state and relates only to the sacerdotal functions of a rector, but denies that it controls or has any

effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9 or that it established any property interest in The Falls Church's property, or that it is enforceable in the civil action.

47. The Falls Church admits that TEC Canons I.7.(4) and I.7(5) state what they purport to state, but denies that they were properly passed or that they control or have any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, that they established any property interest in The Falls Church's property, or that they are enforceable in this civil action.

48. The Falls Church admits that Diocesan Canon 15.1 states what it purports to state, but denies that it controls or has any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, that it established any property interest in The Falls Church's property, or that it is enforceable in this civil action.

49. The Falls Church denies the allegations contained in ¶ 49 of the Complaint.

50. The Falls Church admits that Diocesan Canon 15.3 states what it purports to state, but denies that it controls or has any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, that it established any property interest in The Falls Church's property, or that it is enforceable in this civil action.

51. The Falls Church admits that TEC Canon 1.13.2(a) states what it purports to state, but deny that it controls or has any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, that it established any property interest in The Falls Church's properties, or that is enforceable in this civil action.

52. The Falls Church admits that Diocesan Canon 10 states what it purports to state, but denies that it controls or has any effect on the petition The Falls Church filed pursuant to

Virginia Code § 57-9, that it established any property interest in The Falls Church's property, or that it is enforceable in this civil action.

53. The Falls Church admits the preamble to the Diocesan Constitution and Article XVII state what they purport to state, but denies the remaining allegations contained in ¶ 53 of the Complaint.

54. The Falls Church admits that TEC Canon 1.17(8) states what it purports to state, but denies that it controls or has any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, that it established any property interest in The Falls Church's property, or that it is enforceable in this civil action.

55. The Falls Church admits that Diocesan Canon 11.8 states what it purports to state, but denies that it controls or has any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, that it established any property interest in The Falls Church's property, or that it is enforceable in this civil action.

56. The Falls Church admits that Diocesan Canon 11.11 states what it purports to state, but denies that it controls or has any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, that it established any property interest in The Falls Church's property, or that it is enforceable in this civil action.

57. The Falls Church denies the allegations contained in this paragraph.

58. The Falls Church denies the allegations contained in this paragraph.

59. The Falls Church admits that Diocesan Canon 10.6 states what it purports to state, but denies that it controls or has any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, that it established any property interest in The Falls Church's property, or that it is enforceable in this civil action.

60. The Falls Church admits that Diocesan Canon 9.3 states what it purports to state, but denies that it controls or has any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, that it established any property interest in The Falls Church's property, or that it is enforceable in this civil action.

61. The Falls Church denies the allegations contained in this paragraph.

62. The Falls Church admits that an overwhelming majority of each of its congregations voted to withdraw from TEC and the Diocese and to affiliate with CANA and that it did so in reliance on the Protocol adopted by the Special Committee appointed by Diocese Bishop Peter James Lee. The Falls Church further admits that the congregation of defendant Christ the Redeemer Church, which has never been affiliated with TEC or the Diocese, also unanimously voted to affiliate with CANA.

63. The Falls Church admits the allegations contained in this paragraph and further specifically incorporates by reference the petition it filed pursuant to Virginia Code § 57-9 as further response to the Complaint.

64. The Falls Church denies that the Diocese, the Standing Committee of the Diocese, or the Diocesan Bishop took any action with regard to the Rev. Mark Sholander or any other clergy of defendant Christ the Redeemer Church. The Falls Church admits the other allegations in this paragraph, but avers that the Diocese lacked ecclesiastical jurisdiction over The Falls Church and its clergy, and breached the Protocol by taking the actions alleged in this paragraph, and further denies that such actions have any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, restrict or limit in any way the exercise of the independent

right of The Falls Church to withdraw from TEC and the Diocese, or are otherwise enforceable in this civil action.

65. Without attachment to the Complaint of the resolutions referenced, The Falls Church can neither admit nor deny the precise content of what action by resolution the Executive Committee of the Diocese purported to take on January 18, 2007. The Falls Church does state that all of the properties of The Falls Church have continued in religious use and have not been “abandoned,” that the Diocese lacked ecclesiastical jurisdiction over The Falls Church and its clergy to pass any such “resolutions,” and that the Diocese breached the Diocese’s own Protocol for Departure by taking the actions alleged in this paragraph. The Falls Church further denies that the Executive Committee’s actions have any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, restrict or limit in any way the exercise of the independent right of The Falls Church to withdraw from TEC and the Diocese, or are otherwise enforceable in this civil action.

66. The Falls Church does not have sufficient information to admit or deny the allegations in this case, but if called upon to answer would deny the same.

67. The Falls Church admits that it owns, possesses and controls all of its real and personal property and is using said property for the benefit of its congregation, but denies the remaining allegations in this paragraph.

68. The Falls Church denies the allegations in this paragraph.

69. The Falls Church denies the allegations as phrased, and avers that it has a vested and exclusive ownership interest in The Falls Church’s property.

70. The Falls Church admits that TEC has asserted an interest in The Falls Church’s property, but denies that TEC has any such property interest.

71. The Falls Church denies the allegations contained in this paragraph.

WHEREFORE, the defendant The Falls Church, by counsel, respectfully requests that this Honorable Court enter judgment in its favor on the Complaint, award it costs in defending the Complaint, and grant such additional relief as the case may require and the Court deems just.

II. GROUNDS OF DEFENSE

The Falls Church, and for its Grounds of Defense, states as follows:

1. This court lacks subject matter jurisdiction over the claims and actions asserted by TEC.
2. The claims and actions asserted by TEC do not constitute a justiciable controversy.
3. TEC's claims and actions are barred by equitable estoppel and/or estoppel en pais.
4. TEC's claims and actions are barred by waiver and/or estoppel, and unjust enrichment.
5. TEC's claim and actions are barred by unclean hands.
6. TEC's claims and actions are barred by laches.
7. TEC's claims and actions are barred by unconscionability.
8. TEC's requested relief, to the extent based upon an asserted contractual right, constitutes an unenforceable penalty clause in violation of Virginia public policy.
9. TEC's claims and actions are barred because of TEC's prior breach of the contract it alleges gives rise to its purported interest in the property of The Falls Church.
10. TEC's claims and actions are barred because there exists a lack of mutuality of obligation between TEC and The Falls Church in the contract TEC alleges gives rise to its

purported interest in the property of The Falls Church.

11. TEC's claims and actions are barred because the contract TEC alleges gives rise to its purported interest in the property of The Falls Church may not be enforced in part or severed and to the extent that any provision of the alleged contract is unenforceable by this court, all provisions are unenforceable.

12. TEC's claims and actions are barred because The Falls Church reasonably relied to its detriment upon representations, promises, and actions of TEC and/or its employees, agents and representatives.

13. TEC has failed to state a sufficient claim upon which any of the relief it requests can be afforded to it.

14. TEC has failed to allege the "ministry and mission" to which TEC requests the Court order the subject real property be applied.

15. TEC has failed to state a legal basis, in contract, trust or other law upon which the Court can properly award to TEC an Order requiring The Falls Church's property only be used "in accordance with the Constitutions and canons of the Episcopal Church and the Diocese." Likewise, TEC has alleged no basis sufficient in law for the award of an injunction as a further form of the same prayer.

16. TEC's claims and actions are barred because TEC has breached the implied duty of reasonableness in the implied contract TEC alleges gives rise to its purported interest in the property of The Falls Church.

17. TEC's claim for transfer by Order of the subject property from the use of the local Congregations to the use of a national religious organization with which The Falls Church is no longer in theological communion, is barred by the rights of The Falls Church and its members to

worship freely and not be forced to support a particular religious entity, under the provisions of the First Amendment of the United States Constitution, and the Virginia Bill of Rights guaranteeing to its citizens the free exercise and non- establishment of religion (Virginia Constitution, Article I, Section 16 and 17).

18. To the extent TEC presents a claim for specific performance, and without conceding that TEC has properly pled such a claim, The Falls Church states that such relief would constitute a hardship or inequity out of proportion to the relief requested.

19. TEC's claims and action are barred by the Contracts Clause of the United States Constitution.

20. TEC's claims and actions are barred by the Contracts Clause of the Virginia Constitution.

21. TEC's claims and actions are barred by the due process rights, requirements and guarantees of both the United States Constitution and the Virginia Constitution.

22. TEC's claims and actions are barred by the equal protection rights, requirements and guarantees of both the United States Constitution and the Virginia Constitution.

23. The Falls Church intends to rely upon any further defense learned during the course of discovery or the trial of this matter.

III. COUNTERCLAIM FOR DECLARATORY RELIEF AND UNJUST ENRICHMENT / QUANTUM MERUIT, AND CONSTRUCTIVE TRUST

The Falls Church, and for its Counterclaim for Declaratory Relief and Unjust Enrichment / Quantum Meruit, and Constructive Trust states as follows:

1. The Falls Church was formerly affiliated with TEC and the Diocese.

2. The Falls Church owns real property which is held for its congregation's benefit through trustees.

3. The Falls Church owns personal property which is likewise held for its congregation's benefit through trustees.

4. The deeds to the real property are titled and held for the sole benefit of The Falls Church and its congregation.

5. The Falls Church's real property was either purchased with funds at the congregational level, and not from TEC or the Diocese, or was donated to The Falls Church for the benefit of its congregation and not from or for the benefit of either TEC or the Diocese. Some of the property predated the existence of either TEC or the Diocese.

6. Upon information and belief, the intent of each of the grantors of the deeds for The Falls Church was to benefit its congregation and not for the benefit of TEC or the Diocese.

7. Likewise, personal property owned by The Falls Church was either purchased or acquired with the individual congregation's own funds or donated for the benefit of The Falls Church and its congregation with the intent of benefiting the individual congregation and not TEC or the Diocese.

8. At all times relevant to this counterclaim, including but not limited to prior to any disassociation with TEC and the Diocese, The Falls Church has been a generally self-contained and autonomous congregation which was responsible for its own source of funding.

9. Unlike a true hierarchical church, TEC and the Diocese did not receive any mandatory funding from The Falls Church. For instance, the Diocese relies upon voluntary contributions from individual congregations and has no means of enforcing donations. Nor is title held in any denominational or diocesan officer.

10. At the same time that TEC and the Diocese have, and had, no means of compelling funding from affiliated congregations, TEC and the Diocese do not, and have not, provided any direct financial support for The Falls Church's properties.

11. In each instance, the membership of The Falls Church has provided the vast majority of funding or gifting for The Falls Church in terms of acquisition of real and personal property, maintenance of such property, and any improvements to real property. Such funding or gifting by the membership was with the donative intent of benefiting The Falls Church and its congregation and not TEC and the Diocese.

12. At all times relevant to this counterclaim and irrespective of any interest that this court may find TEC or the Diocese to have in the property of The Falls Church, The Falls Church has an equal or superior ownership interest in its property that can not be extinguished under the law of the Commonwealth of Virginia or in equity.

13. At all times relevant to this counterclaim, including but not limited to prior to any disassociation with TEC and the Diocese, The Falls Church owned its real and personal property in accordance with the laws of the Commonwealth of Virginia to the exclusion of TEC and the Diocese.

14. At all times relevant to this counterclaim, The Falls Church acted reasonably, in good faith, to its detriment and in reliance upon the Protocol for Departing Congregations ("Protocol") developed in coordination and cooperation with the Diocese and TEC.

15. At all times relevant to this counterclaim, The Falls Church complied with its understanding of the Protocol and with the requests made of The Falls Church by the Diocese and TEC pursuant to the Protocol.

16. Despite or because of The Falls Church's adherence to the Protocol, the Diocese and TEC unilaterally and without reasonable or just cause abandoned the Protocol to The Falls Church's detriment and harm.

17. TEC is requesting (without support in either law or fact) that this court order the real and personal property of the Falls Church (which The Falls Church has at all times owned in accordance with the laws of the Commonwealth of Virginia) be relinquished to the control of the Diocesan Bishop.

COUNT I
(DECLARATORY JUDGMENT)

18. The allegations of paragraphs 1-17 of this Counterclaim are incorporated herein by reference.

19. TEC has stated in its Complaint an adverse interest in the real and personal properties of The Falls Church. To the extent that purported interest is subject to the jurisdiction of this court and is justiciable, there is a justiciable controversy between the parties.

20. The Falls Church is by title, possession and control and all other legal indications the true and lawful owner of its properties, and TEC has no cognizable legal claim upon the same. Accordingly, those properties should properly be declared in the sole and exclusive ownership of The Falls Church, free and clear of any claim of right or interest by TEC.

COUNT II
(UNJUST ENRICHMENT / QUANTUM MERUIT)

21. The allegations of paragraphs 1-20 of this Counterclaim are incorporated herein by reference.

22. If the Court were to determine that TEC has rights, superior or otherwise, to The Falls Church's real and personal property then TEC would be unjustly enriched at the expense of

The Falls Church and its congregation and TEC would receive a benefit that The Falls Church and the members of its congregation and its donors never intended to confer.

23. If the Court were to determine that TEC has rights, superior or otherwise, to The Falls Church's real and personal property then TEC must be held to have entered into an implied contract as between it and The Falls Church for the acquisition of, maintenance of, repair to and improvements to The Falls Church's property.

24. The Falls Church is entitled to recover from TEC the full value of the amount by which TEC has been unjustly enriched or to the amount of the value of the services and property The Falls Church has acquired and maintained, as quantum meruit, whichever is greater.

COUNT III
(CONSTRUCTIVE TRUST)

25. The allegations of paragraphs 1-24 of the Counterclaim are incorporated herein by reference.

26. If this Court were to determine that TEC has rights, superior or otherwise to The Falls Church's real and personal property, then TEC would be unjustly and unfairly enriched at the expense of The Falls Church and its congregation and TEC would receive a benefit that The Falls Church and its members never intended to confer.

27. The Falls Church would therefore be entitled to have a constructive trust of The Falls Church's real and personal property impressed upon TEC in favor of The Falls Church.

WHEREFORE, The Falls Church prays that this Honorable Court enter judgment in its favor and:

1. Declare that the real and personal property owned by The Falls Church is, and

should be vested exclusively in The Falls Church, further ordering that all right title and interest in the properties of The Falls Church be transferred to The Falls Church by the Trustees of The Falls Church; or

2. In the alternative, and only if the Court finds that TEC has a proprietary interest in the real and personal property of The Falls Church, declare that such interest is no greater than the interest of The Falls Church and enter judgment in the amount that TEC has been unjustly enriched or to which The Falls Church is entitled as quantum meruit, which is \$20,000,000 (twenty million dollars), one-half of the costs of acquisition of, maintenance of, repairs to, improvements to, accrual of and fair market value of the real and personal property owned by The Falls Church; or

3. In the alternative, and only if the Court finds that TEC has a superior right to The Falls Church's real and personal property, that the Court enter judgment in the amount that TEC has been unjustly enriched or to which The Falls Church is entitled as quantum meruit, which is \$40,000,000 (forty million dollars), the costs of acquisition of, maintenance of, repairs to, improvements to, accrual of and fair market value of the real and personal property owned by The Falls Church; or

4. In the alternative, and only if the Court finds that TEC has a superior right to The Falls Church's real and personal property, that the Court impose a constructive trust over The Falls Church's real and personal property for the benefit of The Falls Church; and

5. For such additional relief as this Court deems just and necessary.

Dated: January ____, 2011

Respectfully submitted,

WINSTON & STRAWN

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, 2011 a copy of the foregoing Defendant The Church at the Falls – The Falls Church Amended Answer, Grounds of Defense and Counterclaim to the Complaint Filed By The Episcopal Church was sent by electronic mail and first-class mail, postage prepaid, to:

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With a copy by electronic mail and hand-
delivery to:

Caitlin Fields, Esquire
Law Clerk to the Honorable Randy I. Bellows
Circuit Court for Fairfax County
4110 Chain Bridge Road
Fifth Floor Judges' Chambers
Fairfax, VA 22030

Paul N. Farquharson

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In re:)
Multi-Circuit Episcopal Church) **Civil Case Numbers:**
Litigation) CL 2007-248724,
) CL 2007-1625,
) CL 2007-1235,
) CL 2007-1236,
) CL 2007-1238,
) CL 2007-5250,
) CL 2007-5364,
) CL 2007-5683,
) CL 2007-5682,
) CL 2007-5684, and
) CL 2007-5902,

**THE CHURCH AT THE FALLS – THE FALLS CHURCH’S
AMENDED ANSWER, GROUNDS OF DEFENSE AND COUNTERCLAIM TO THE
COMPLAINT FILED BY THE PROTESTANT EPISCOPAL CHURCH IN THE
DIOCESE OF VIRGINIA**

COMES NOW the Defendant The Church at the Falls – The Falls Church (“The Falls Church”) and files this Amended Answer, Grounds of Defense and Counterclaim to the Complaint filed by The Protestant Episcopal Church in the Diocese of Virginia (“Diocese”) and states as follows:

I. ANSWER

The Falls Church responds to the numbered paragraphs of the Complaint and states that unless expressly admitted, each and every allegation contained in the Complaint is denied.

1. The Falls Church admits that the Diocese is a religious body or association in Virginia and is not incorporated. The Falls Church admits the allegations in the second sentence of ¶1 of the Complaint.



2. In response to ¶2 of the Complaint, The Falls Church admits that it is a parish (a local church) and that, since July 6 2006, it has been a non-stock corporation doing business under the laws of Virginia. The Falls Church further admits that its congregation determined to sever ties with The Episcopal Church (“TEC”) and the Diocese and to retain ownership, possession and control of the parish’s property.

3. The Falls Church admits that the Rev. John Yates served and serves as Rector of The Falls Church. The Falls Church admits the general allegations regarding the duties of a rector in TEC.

4. The Falls Church admits that the individuals named in ¶4 of the Complaint serve or in the past served as members of the Vestry of The Falls Church, but states that the defined “Vestry defendants” are no longer parties to this action.

5. The Falls Church admits that the Related Trustees hold title to property for the benefit of The Falls Church.

6. The Falls Church admits that TEC purports to be a hierarchical or super-congregational religious denomination, but denies that TEC has all of the attributes of a true hierarchical religious denomination or is a true hierarchical religious denomination. The Falls Church further admits that TEC has two other tiers of governance.

7. The Falls Church lacks sufficient information to admit that TEC is currently composed of 111 incorporated or unincorporated dioceses located in the United States and other countries. Upon information and belief, a number of the dioceses have disaffiliated from and/or are not in communion with TEC. The Falls Church admits that each diocese has a governing body which, among other things, carries out the mission of the broader Anglican Communion.

The Falls Church further admits the “general” nature of the structure of each diocese as alleged in ¶ 7 of the Complaint.

8. The Falls Church does not have sufficient information to admit or deny how many congregations or parishes continue to be affiliated with TEC, but upon information and belief, believes that congregations and parishes continue to sever ties with TEC in the division of TEC. The Falls Church admits the general allegations as to how the congregations or parishes are organized and structured.

9. The Falls Church admits the general allegations as to parishes electing representatives to the Annual Convention or Council of the diocese in which they are, or were, situated, and that each diocese sends representatives to General Convention of TEC as alleged.

10. The Falls Church admits that TEC’s General Convention has adopted, and from time to time has amended, its Constitution and Canons, but denies that such Constitution or Canons are binding upon The Falls Church. The Falls Church further admits the general allegations related to dioceses adopting, and from time to time amending, Constitutions and Canons, but denies that the Diocese’ Constitutions and Canons are binding upon The Falls Church.

11. The Falls Church denies the allegations in ¶ 11 of the Complaint.

12. The Falls Church denies the allegations in ¶ 12 of the Complaint.

13. The Falls Church denies the allegations in ¶ 13 of the Complaint.

14. The Falls Church admits that TEC Canon III.9(5) states what it purports to state, but denies that it controls, has any effect on, or establishes a legally enforceable interest in The Falls Church’s property. The Falls Church denies any allegation that TEC or The Diocese has

any legal or equitable interest in The Falls Church's property.

15. The Falls Church does not have sufficient information to admit or deny what the "[a]pplicable Canons" of TEC or the Diocese purport to say as the Diocese has not identified which Canons they refer to in this paragraph of the Complaint. The Falls Church nonetheless denies that any Canon of either TEC or the Diocese controls, has any effect on, or establishes a legally enforceable interest in The Falls Church's property. The Falls Church denies any allegation that TEC or The Diocese has any legal or equitable interest in The Falls Church's property.

16. The Falls Church does not have sufficient information to admit or deny the allegation with respect to Canon II.6.2 of the TEC, but notes that the excerpted portion, if accurate, of the Canon, only purports to secure consecrated property, which if enforceable, would only apply to a portion of the properties owned by The Falls Church. The Falls Church does not have sufficient information to admit or deny the allegation with respect to Canon I.7(3) of the TEC. The Falls Church denies that either Canon establishes a legally enforceable interest in The Falls Church's property. Further, The Falls Church avers that, as TEC representatives also recognized, the canons were merely aspirational, as state law controls the ownership and control of the property of individual congregations. The Falls Church denies any allegation that TEC or The Diocese has any legal or equitable interest in The Falls Church's property.

17. The Falls Church does not have sufficient information to admit or deny what the "[a]pplicable Canons" of TEC or the Diocese purport to say as the Diocese has not identified which Canons they refer to in this paragraph of the Complaint. The Falls Church nonetheless denies that any Canon of either TEC or the Diocese controls, has any effect on, or establishes a

legally enforceable interest in The Falls Church's property. Moreover, to the extent that such Canons purport to establish an interest in The Falls Church's property, The Falls Church avers that, as TEC representatives also recognized, the canons were merely aspirational, as state law controls the ownership and control of the property of individual congregations. The Falls Church denies any allegation that TEC or The Diocese has any legal or equitable interest in The Falls Church's property.

18. The Falls Church does not have sufficient information to admit or deny what Constitution and Canons of TEC or the Diocese purport to say as the Diocese has not identified specifically what portion of the Constitutions or Canons it refers to in this paragraph of the Complaint. The Falls Church nonetheless denies that it may not disaffiliate from TEC or the Diocese or that any portion of the Constitution or Canons of TEC or the Diocese has any effect on, or establishes a legally enforceable interest in The Falls Church's property. Moreover, to the extent that such Canons purport to establish an interest in The Falls Church's property, The Falls Church avers that, as TEC representatives also recognized, the canons were merely aspirational, as state law controls the ownership and control of the property of individual congregations. The Falls Church denies any allegation that TEC or The Diocese have any legal or equitable interest in The Falls Church's property.

19. The Falls Church admits that the Canons of the Diocese purport to require each member of a parish's vestry to state an oath, but denies that such oath has any effect on the petition The Falls Church filed pursuant to Virginia Code § 57-9, or on The Falls Church's right to ownership, possession and use of the property at issue.

20. The Falls Church admits that the Canons of TEC purport to require certain

persons accepting an office in TEC to perform their duties as stated, but denies that such oath has any effect on the The Falls Church's right to ownership, possession, control or use of the property at issue.

21. The Falls Church admits that TEC is member of the Anglican Communion and that the Anglican Communion consists of 38 provinces which trace their roots to the Church of England.

22. The Falls Church admits that an overwhelming majority of its congregation voted to sever ties with TEC and the Diocese and voted to retain the ownership, possession and control of The Falls Church's property, and that in doing so, they adhered to and relied upon the Protocols adopted by the Special Committee appointed by Diocese Bishop Peter James Lee.

23. The Falls Church denies the allegations contained in ¶ 23 of the Complaint.

24. The Falls Church denies the allegations contained in ¶ 24 of the Complaint.

25. The Falls Church admits that judicial approval of its petition pursuant to Virginia Code § 57-9 would conclusively vest title to real and personal property in The Falls Church free from any competing claims by TEC or the Diocese.

26. The Falls Church does not have sufficient information to admit or deny the allegations contained in this paragraph, but if called upon to answer would aver that the actions taken by the Standing Committee of the Diocese are without effect.

27. The Falls Church does not have sufficient information to admit or deny the allegations contained in this paragraph, but if called upon to answer would aver that the action taken by Bishop Lee is without effect.

28. The Falls Church does not have sufficient information to admit or deny the

allegations contained in this paragraph, but if called upon to answer would aver that the action taken by the Executive Board of the Diocese is without effect.

29. The Falls Church denies the allegations contained in ¶ 29 of the Complaint.

30. The Falls Church denies the allegations contained in ¶ 30 of the Complaint.

31. The Falls Church denies the allegations contained in ¶ 31 of the Complaint and that TEC or the Diocese are entitled to the relief requested.

WHEREFORE, The Falls Church, by counsel, respectfully request that this Honorable Court enter judgment in its favor on the Complaint, award its costs in defending the Complaint, and grant such additional relief as the case may require and the Court deems just.

II. GROUNDS OF DEFENSE

The Falls Church, and for its Grounds of Defense, states as follows:

1. This court lacks subject matter jurisdiction over the claims and actions asserted by the Diocese.
2. The claims and actions asserted by the Diocese do not constitute a justiciable controversy.
3. The Diocese's claims and actions are barred by equitable estoppel and/or estoppel en pais.
4. The Diocese's claims and actions are barred by waiver and/or estoppel, and unjust enrichment.
5. The Diocese's claim and actions are barred by unclean hands.
6. The Diocese's claims and actions are barred by laches.
7. The Diocese's claims and actions are barred by unconscionability.

8. The Diocese's requested relief, to the extent based upon an asserted contractual right, constitutes an unenforceable penalty clause in violation of Virginia public policy.

9. The Diocese's claims and actions are barred because of the Diocese's prior breach of the contract it alleges gives rise to its purported interest in the property of The Falls Church.

10. The Diocese's claims and actions are barred because there exists a lack of mutuality of obligation between the Diocese and The Falls Church in the contract the Diocese alleges gives rise to its purported interest in the property of The Falls Church.

11. The Diocese's claims and actions are barred because the contract the Diocese alleges gives rise to its purported interest in the property of The Falls Church may not be enforced in part or severed and to the extent that any provision of the alleged contract is unenforceable by this court, all provisions are unenforceable.

12. The Diocese's claims and actions are barred because The Falls Church reasonably relied to its detriment upon representations, promises, and actions of the Diocese and/or its employees, agents and representatives.

13. The Diocese has failed to state a sufficient claim upon which any of the relief it requests can be afforded to it.

14. The Diocese has failed to allege the "ministry and mission" to which the Diocese requests the Court Order the subject real property be applied.

15. The Diocese has failed to state a legal basis, in contract, trust or other law upon which the Court can properly award to the Diocese an Order requiring The Falls Church's property only be used "in accordance with the Constitutions and canons of TEC and the Diocese". Likewise, the Diocese has alleged no basis sufficient in law for the award of an

injunction as a further form of the same prayer.

16. The Diocese's claims and actions are barred because the Diocese has breached the implied duty of reasonableness in the implied contract the Diocese alleges gives rise to its purported interest in the property of The Falls Church.

17. The Diocese's claim for transfer by Order of the subject property from the use of The Falls Church to the use of a national religious organization with which The Falls Church is no longer in theological communion, is barred by the rights of The Falls Church and its members to worship freely and not be forced to support a particular religious entity, under the provisions of the First Amendment of the United States Constitution, and the Virginia Bill of Rights guaranteeing to its citizens the free exercise and non-establishment of religion (Virginia Constitution, Article I, Section 16 and 17).

18. To the extent the Diocese presents a claim for specific performance, and without conceding that the Diocese has properly pled such a claim, The Falls Church states that such relief would constitute a hardship or inequity out of proportion to the relief requested.

19. The Diocese's claims and action are barred by the Contracts Clause of the United States Constitution.

20. The Diocese's claims and actions are barred by the Contracts Clause of the Virginia Constitution.

21. The Diocese's claims and actions are barred by the due process rights, requirements and guarantees of both the United States Constitution and the Virginia Constitution.

22. The Diocese's claims and actions are barred by the equal protection rights,

requirements and guarantees of both the United States Constitution and the Virginia Constitution.

23. The Falls Church intends to rely upon any further defense learned during the course of discovery or the trial of this matter.

III. COUNTERCLAIM FOR DECLARATORY RELIEF, UNJUST ENRICHMENT / QUANTUM MERUIT, AND CONSTRUCTIVE TRUST.

The Falls Church and for its Counterclaim for Declaratory Relief, Unjust Enrichment / Quantum Meruit, and Constructive Trust, states as follows:

1. The Falls Church was formerly affiliated with TEC and the Diocese.
2. The Falls Church owns real property which is held for its congregation's benefit through trustees.
3. The Falls Church owns personal property which is likewise held for its congregation's benefit through trustees.
4. The deeds to the real property are titled and held for the sole benefit of The Falls Church and its congregation.
5. The Falls Church's real property was either purchased with funds at the congregational level, and not from TEC or the Diocese, or was donated to The Falls Church for the benefit of its congregation and not from or for the benefit of either TEC or the Diocese. Some of the property predated the existence of either TEC or the Diocese.
6. Upon information and belief, the intent of each of the grantors of the deeds for The Falls Church was to benefit its congregation and not for the benefit of TEC or the Diocese.
7. Likewise, personal property owned by The Falls Church was either purchased or

acquired with the individual congregation's own funds or donated for the benefit of The Falls Church and its congregation with the intent of benefiting the individual congregation and not TEC or the Diocese.

8. At all times relevant to this counterclaim, including but not limited to prior to any disassociation with TEC and the Diocese, The Falls Church has been a generally self-contained and autonomous congregation which was responsible for its own source of funding.

9. Unlike a true hierarchical church, TEC and the Diocese did not receive any mandatory funding from The Falls Church. For instance, the Diocese relies upon voluntary contributions from individual congregations and has no means of enforcing donations. Nor is title held in any denominational or diocesan officer.

10. At the same time that TEC and the Diocese have, and had, no means of compelling funding from affiliated congregations, TEC and the Diocese do not, and have not, provided any direct financial support for The Falls Church's properties.

11. In each instance, the membership of The Falls Church has provided the vast majority of funding or gifting for The Falls Church in terms of acquisition of real and personal property, maintenance of such property, and any improvements to real property. Such funding or gifting by the membership was with the donative intent of benefiting The Falls Church and its congregation and not TEC and the Diocese.

12. At all times relevant to this counterclaim and irrespective of any interest that this court may find the Diocese to have in the property of The Falls Church, The Falls Church has an equal or superior ownership interest in its property that can not be extinguished under the law of the Commonwealth of Virginia or in equity.

13. At all times relevant to this counterclaim, including but not limited to prior to any disassociation with TEC and the Diocese, The Falls Church owned its real and personal property in accordance with the laws of the Commonwealth of Virginia to the exclusion of TEC and the Diocese.

14. At all times relevant to this counterclaim, The Falls Church acted reasonably, in good faith, to its detriment and in reliance upon the Protocol for Departing Congregations (“Protocol”) developed in coordination and cooperation with the Diocese and TEC.

15. At all times relevant to this counterclaim, The Falls Church complied with its understanding of the Protocol and with the requests made of The Falls Church by the Diocese and TEC pursuant to the Protocol.

16. Despite or because of The Falls Church’s adherence to the Protocol, the Diocese and TEC unilaterally and without reasonable or just cause abandoned the Protocol to The Falls Church’s detriment and harm.

17. The Diocese is requesting (without support in either law or fact) that this court order legal title to the property at all times owned in accordance with the laws of the Commonwealth of Virginia by The Falls Church be taken from The Falls Church and be conveyed and transferred to the Bishop of the Diocese.

COUNT I
(DECLARATORY JUDGMENT)

18. The allegations of paragraphs 1-17 of this Counterclaim are incorporated herein by reference.

19. The Diocese has stated in its Complaint an adverse interest in the real and personal properties of The Falls Church. To the extent that purported interest is subject to the

jurisdiction of this court and is justiciable, there is a justiciable controversy between the parties.

20. The Falls Church is by title, possession and control and all other legal indications the true and lawful owner of its properties, and the Diocese has no cognizable legal claim upon the same. Accordingly, those properties should properly be declared in the sole and exclusive ownership of The Falls Church, free and clear of any claim of right or interest by the Diocese.

COUNT II
(UNJUST ENRICHMENT / QUANTUM MERUIT)

21. The allegations of paragraphs 1-20 of this Counterclaim are incorporated herein by reference.

22. If the Court were to determine that the Diocese has rights, superior or otherwise, to The Falls Church's real and personal property then the Diocese would be unjustly enriched at the expense of The Falls Church and its congregation and the Diocese would receive a benefit that The Falls Church and the members of its congregation and its donors never intended to confer.

23. If the Court were to determine that the Diocese has rights, superior or otherwise, to The Falls Church's real and personal property then the Diocese must be held to have entered into an implied contract as between it and The Falls Church for the acquisition of, maintenance of, repair to and improvements to The Falls Church's property.

24. The Falls Church is entitled to recover from the Diocese the full value of the amount by which the Diocese has been unjustly enriched or to the amount of the value of the services and property The Falls Church has acquired and maintained, as quantum meruit, whichever is greater.

COUNT III
(CONSTRUCTIVE TRUST)

25. The allegations of paragraphs 1-24 of the Counterclaim are incorporated herein by reference.

26. If this Court were to determine that the Diocese has rights, superior or otherwise to The Falls Church's real and personal property, then the Diocese would be unjustly and unfairly enriched at the expense of The Falls Church and its congregation and the Diocese would receive a benefit that The Falls Church and its members never intended to confer.

27. The Falls Church would therefore be entitled to have a constructive trust of The Falls Church's real and personal property impressed upon the Diocese in favor of The Falls Church.

WHEREFORE, The Falls Church prays that this Honorable Court enter judgment in its favor and:

1. Declare that the real and personal property owned by The Falls Church is, and should be vested exclusively in The Falls Church, further ordering that all right title and interest in the properties of The Falls Church be transferred to The Falls Church by the Trustees of The Falls Church; or

2. In the alternative, and only if the Court finds that the Diocese has a proprietary interest in the real and personal property of The Falls Church, declare that such interest is no greater than the interest of The Falls Church and enter judgment in the amount that the Diocese has been unjustly enriched or to which The Falls Church is entitled as quantum meruit, which is \$20,000,000 (twenty million dollars), one-half of the costs of acquisition of, maintenance of, repairs to, improvements to, accrual of and fair market value of the real and personal property

owned by The Falls Church; or

3. In the alternative, and only if the Court finds that the Diocese has a superior right to The Falls Church's real and personal property, that the Court enter judgment in the amount that the Diocese has been unjustly enriched or to which The Falls Church is entitled as quantum meruit, which is \$40,000,000 (forty million dollars), the costs of acquisition of, maintenance of, repairs to, improvements to, accrual of and fair market value of the real and personal property owned by The Falls Church; or

4. In the alternative, and only if the Court finds that the Diocese has a superior right to The Falls Church's real and personal property, that the Court impose a constructive trust over The Falls Church's real and personal property for the benefit of The Falls Church; and

5. For such additional relief as this Court deems just and necessary.

Dated: January ____, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, 2011 a copy of the foregoing Defendant The Church at the Falls – The Falls Church Amended Answer, Grounds of

Defense and Counterclaim to the Complaint filed by the Protestant Episcopal Church in the

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