

RCO



6429465

1 Elizabeth Stone (Bar No. 239285)
2 GOODWIN PROCTER LLP
3 Three Embarcadero Center, 24th Floor
San Francisco, CA 94111
4 Tel: 415-733-6000
Fax: 415-677-9041

5 Sherri C. Strand (*Pro Hac Vice*)
6 Timothy F. Noelker (*Pro Hac Vice*)
7 Rebecca A. Pinto (*Pro Hac Vice*)
8 THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, MO 63108
Tel: 314-552-6000
Fax: 314-552-7000

9 Attorneys for Plaintiffs

FILED
ALAMEDA COUNTY

APR 01 2008

CLERK OF THE SUPERIOR COURT
By R.C. Hughes Deputy

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ALAMEDA**
12 **NORTHERN DIVISION**

Goodwin Procter LLP
Three Embarcadero Center, 24th Floor
San Francisco, California 94111

13 RON LEE, NAOMI GATZKE, JOSEPH
14 THOMPSON, JR., MIRIAM THOMPSON,
15 OUR REDEEMER LUTHERAN CHURCH, a
not-for profit religious corporation, and THE
16 CALIFORNIA-NEVADA-HAWAII
DISTRICT
17 OF THE LUTHERAN CHURCH-MISSOURI
SYNOD, a not-for profit religious corporation

18 Plaintiffs,

19 v.

20 SHARON BOWLES, MARY-ANN HILL,
21 PORTIA RIDGEWAY, and CELIA MOYER,

22 Defendants.

Case No. RG 07363452

Judge: Hon. Steven A. Brick
Courtroom No. 17

**PLAINTIFF RON LEE'S ANSWER TO
DEFENDANTS' CROSS COMPLAINT**

Filing Date: December 28, 2007
Trial Date: none set

1 Plaintiff and Cross-Defendant Ron Lee ("Mr. Lee"), by and through his counsel of record,
2 answers the Cross-Complaint filed on February 28, 2008, by Defendants and Cross-Plaintiffs Sharon
3 Bowles, Mary-Ann Hill, Portia Ridgeway, and Celia Moyer (the "Cross-Complaint"), as follows:

4 **GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure § 431.30, Mr. Lee denies generally each and
6 every allegation in the Cross-Complaint, and the alleged causes of action and counts contained
7 therein, denying specifically that Defendants and Cross-Plaintiffs have been damaged in the sums
8 prayed for, or in any other sum or amount whatsoever, or at all by reason of the matters alleged in
9 the Cross-Complaint.

10 **AFFIRMATIVE DEFENSES**

11 Each affirmative defense set forth below applies to each count and cause of action set forth in
12 the Cross-Complaint unless otherwise specified, and are alleged on information and belief based on
13 Mr. Lee's best understanding of the Cross-Complaint and the information available at the present
14 time.

15 **FIRST AFFIRMATIVE DEFENSE**

16 (Failure to State a Claim)

17 The Cross-Complaint fails to state a claim upon which relief may be granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 (Lack of Standing and/or Lack of Capacity)

20 Defendants are not authorized and/or lack standing or capacity to sue on behalf of either
21 themselves or Our Redeemer Lutheran Church because Defendants have expressly severed their
22 relationship with The Lutheran Church-Missouri Synod, thereby rendering themselves ineligible to
23 hold membership in, or any leadership positions within, Our Redeemer Lutheran Church. In
24 addition, Defendants were never properly installed or elected as officers of Our Redeemer Lutheran
25 Church ("Our Redeemer"), and the pertinent elections at which Defendants were supposedly elected
26 to officer positions were not properly noticed or conducted in accordance with Our Redeemer's
27 Constitution, Bylaws, and other governing documents.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD AFFIRMATIVE DEFENSE

(Estoppel, Waiver, and/or Laches)

The Defendants are estopped, and/or barred by the doctrines of waiver or laches from bringing suit against Mr. Lee seeking an audit or otherwise based on his alleged fiscal mismanagement of Our Redeemer, because, among other reasons: Defendants failed to promptly conduct a proper audit upon Mr. Lee's resignation years ago as church treasurer, despite Mr. Lee's lack of objection to such an audit and despite the Congregation's approval of such audit and reliance upon Defendants' stated intention to conduct same; Defendants wrongfully assumed control of Our Redeemer, converted its books and records, and themselves misused and/or diverted Our Redeemer's funds for improper purposes, rendering it difficult or impossible to ascertain whether Our Redeemer's damages, if any, were caused during Mr. Lee's tenure as treasurer; and Defendants wrongfully and/or inexcusably delayed in asserting their purported rights, resulting in prejudice to Mr. Lee, in that records have been destroyed or lost, and knowledgeable witnesses have died or relocated, and/or forgotten relevant facts.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Defendants are barred by the doctrine of unclean hands from bringing suit against Mr. Lee based upon alleged expenditures of Our Redeemer's funds, in that they themselves engineered, approved, or directed the improper expenditure of Our Redeemer's funds for improper purposes— including, but not limited to, the payment of a salary to an improperly-retained Episcopalian priest to conduct worship services at Our Redeemer. Defendants breached their *de facto* trust duties to Our Redeemer in that their actions were prohibited by Our Redeemer's governing documents.

FIFTH AFFIRMATIVE DEFENSE

(Consent)

Defendants expressly or impliedly consented to several of the actions of which they now complain, including but not limited to Mr. Lee's service in the posts of both treasurer and president of Our Redeemer, and Mr. Lee's fiscal management of Our Redeemer.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Defendants' claims are barred in whole or in part by the statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

(Uncertainty)

Defendants' claims are vague, uncertain, and unintelligible in that, among other things, they wholly fail to identify, specify, or describe the alleged act(s) of fiscal mismanagement of which they accuse Mr. Lee.

EIGHTH AFFIRMATIVE DEFENSE

(Contribution, Indemnity)

Assuming Our Redeemer experienced any financial injury or loss under Mr. Lee's leadership – which Mr. Lee specifically denies – those injuries were directly and proximately caused and contributed to in whole or in part by actions of some or all of the defendants, or by persons not parties to this case over whom Mr. Lee has no direction, control or authority. Therefore, any recovery against Mr. Lee (which Mr. Lee denies would be appropriate) should be reduced or apportioned by common law and statute.

NINTH AFFIRMATIVE DEFENSE

(Statutory Immunity)

Mr. Lee is immune from claims for monetary damages under the Volunteer Protection Act of 1997, 42 U.S.C. § 14503(a), and Cal. Corp. Code §§ 5047.5, 5239.

