



Connie Taylor, Clerk of Superior Court  
 Cobb County, Georgia

IN THE SUPERIOR COURT OF COBB COUNTY  
 STATE OF GEORGIA

CARROLLTON FIRST UNITED )  
 METHODIST CHURCH, INC., et. al., )

Plaintiffs, )

v. )

THE TRUSTEES OF THE NORTH )  
 GEORGIA CONFERENCE OF THE )  
 UNITED METHODIST CHURCH, INC., )  
 THE NORTH GEORGIA CONFERENCE )  
 OF THE UNITED METHODIST CHURCH, )  
 INC., SUE HAUPERT-JOHNSON and )  
 ROBIN DEASE, individually and in their )  
 capacity as Bishop of the United Methodist )  
 Church and BETH SANDERS, DOUGLAS )  
 GILREATH, SUSAN G. LANDRY, GREG )  
 PORTERFIELD, MICHAEL MCQUEEN, )  
 BYRON THOMAS, JESSICA TERRELL, )  
 and RODRIGO CRUZ, individually and in )  
 their capacity as District Superintendents of )  
 the North Georgia Annual Conference of the )  
 United Methodist Church, )

Defendants. )

**CIVIL ACTION FILE NO:**

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**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR EMERGENCY HEARING**  
**OR IN THE ALTERNATIVE EXPEDITED HEARING**  
**FOR RESTRAINING ORDER**

COMES NOW Plaintiffs in the above styled civil action, and submit this Brief in  
 Support of their Motion for Emergency Hearing or in the Alternative Expedited Hearing  
 for Restraining Order and show the Court as follows:

## STATEMENT OF THE CASE

Plaintiffs incorporate herein all factual and legal allegations made in their Verified Complaint as if restated verbatim herein. Plaintiffs reserve the right to specifically reference the same upon the hearing of this motion. For purposes of brevity, Plaintiffs shall only state essential facts herein as necessary for the Court ruling on this motion.

### The UMC Book of Discipline: The Connectional Contract

The UMC Book of Discipline (hereinafter the “BOD”) is the constitution and governing document of the UMC. The UMC is a connectional denomination, and the BOD is the connectional covenant to which all persons or entities within the UMC agree to be bound. All UMC subdivisions, clergy, agents, lay members, and local churches covenant to abide by the will of the body as determined at General Conference. Specifically, Defendants are subject to the terms of this connectional covenant. The BOD, therefore, constitutes the terms of the shared contract entered into by all individuals and entities associated with the UMC.

General Conference is the only body within the UMC with the authority to pass legislation binding the entire UMC. No other body within the UMC, other than the General Conference, has law-making authority, and no entity, body, or person other than the General Conference can either amend the BOD or negate any portion of the BOD. This exclusive authority has been repeatedly affirmed by the UMC Judicial Council and is not a matter in dispute.

For example, see Judicial Council Decision 886 held as follows:

“The Discipline is the law of the Church which regulates every phase of the life and work of the Church. As such, annual conferences may not legally negate, ignore, or violate provisions of the Discipline with which they disagree, even when the disagreements are based on conscientious objections to those provisions.”

The BOD and Disaffiliation: ¶2553

The UMC General Conference met by special session in 2019 and enacted ¶2553 of the BOD, creating a process for local churches to disaffiliate from the UMC. See Exhibit A to Plaintiffs’ Complaint.

Thus, under the UMC’s internal church rules, “Property can be released from the trust [or] transferred free of the trust” “to the extent authority is given by the [Book of] Discipline.” As to the property of local churches that have elected to disaffiliate pursuant to the 2019 enactment of ¶2553, the Book of Discipline provides that:

A disaffiliating local church **shall have the right to retain its real and personal, tangible and intangible property**. All transfers of property shall be made prior to disaffiliation. All costs for transfer of title or other legal work shall be borne by the disaffiliating local church. Id. (¶2553 4.c) (emphasis added).

¶2553 sets out a specific procedure and a set of neutral rules, not based on any religious questions or requiring the interpretation of any religious doctrines, whereby a local church may disaffiliate from the UMC and retain its property free of any claim of trust in favor of the UMC.

¶2553 sets out certain financial commitments from a local church in order to disaffiliate, as set forth in ¶2553.4(b) (apportionments) & ¶2553.4(d) (pension liabilities).

¶2553 expires and member churches may no longer avail themselves of that disaffiliation process if it is not completed by December 31, 2023. Specifically, ¶2553 overtly states that upon its expiration, its provisions “shall not be used after that date.” The United Methodist Church website specifically states that when General Conference 2024 meets ¶2553 will not exist and therefore, it is not possible to “extend” a provision that does not exist. Further, there is no legislation presently before the General Conference to create a new or similar ¶2553. In this regard see,

[https://www.umc.org/en/content/ask-the-umc-is-the-umc-really-part-9?utm\\_source=communication%20essentials&utm\\_medium=email&utm\\_campaign=umcom&utm\\_content=disaffiliation03/01/2023&mkt\\_tok=MDc4LUpYUS02NDMAAAGKPVHRcYsExtLKfvPu-aV70xtuMkdMjtajuritM0VWKyTJvPex0oN54pgzcluoDEeA7HeOySJZUvJg2rvEfV3rYbJLLAO6l23tbjqbjCy5wfT](https://www.umc.org/en/content/ask-the-umc-is-the-umc-really-part-9?utm_source=communication%20essentials&utm_medium=email&utm_campaign=umcom&utm_content=disaffiliation03/01/2023&mkt_tok=MDc4LUpYUS02NDMAAAGKPVHRcYsExtLKfvPu-aV70xtuMkdMjtajuritM0VWKyTJvPex0oN54pgzcluoDEeA7HeOySJZUvJg2rvEfV3rYbJLLAO6l23tbjqbjCy5wfT)

The UMC Judicial Council has affirmed the constitutionality of ¶2553 and affirmed it as a viable process for UMC local churches to leave the denomination. See JCD #1385 and JCD #1401.

#### The ¶2553 Disaffiliation Process

The process commences with a local church, acting through its governing body, requesting the district superintendent to call a church conference of the membership of the local church for the purpose of voting on whether the local church wishes to disaffiliate from the UMC. This church conference is presided over by the district superintendent or an elder designated by the district superintendent.

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With respect to this local church conference, ¶2553 states it “**shall be conducted** in accordance with ¶248” of the BOD and “**shall be held** within one hundred twenty (120) days after the district superintendent calls for the church conference” (emphasis added).

¶248 makes it clear that there are two ways in which a church conference can be called by the district superintendent. One is at his/her own discretion. The other is when he/she is requested to do so by the pastor, the church governing body, or 10 percent of the professing membership of the local church. In the latter cases, the district superintendent’s duty is purely ministerial and is not subject to his/her discretion.

Therefore, under ¶248, if a local church has requested a church conference, the district superintendent has no discretion to refuse to call one. See Exhibit C to Plaintiffs’ Complaint.

At the local church conference called by the district superintendent, a vote is to be taken as to whether the local church wishes to disaffiliate from the UMC. If two-thirds of the members of the local church present and voting at the duly called church conference vote in favor of disaffiliation, then the conference trustees are directed to negotiate a disaffiliation agreement with the local church trustees and that agreement shall be presented to the annual conference for simple majority vote ratification by the annual conference members during a regular or specially called session of the annual conference.

Under ¶2553, the bishops of the UMC, such as Defendants Hauptert-Johnson and Dease, have *no role at all* in the process of disaffiliation. Under ¶2553, district superintendents have the limited and ministerial role of calling a local church conference to consider disaffiliation, when a local church council has requested one, and of presiding over the local church conference or

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designating another presiding officer. Under ¶2553, the board of trustees of an annual conference also has a limited role in the disaffiliation process. The role of a conference board of trustees under ¶2553 is to enter into a “binding Disaffiliation Agreement,” which is to contain standard terms specified in ¶2553 (all of which are financial or other non-religious matters), to which a conference board of trustees may add “additional standard terms that are not inconsistent” with the standard terms specified in ¶2553.

No provision of ¶2553 gives the Defendant Trustees the authority to “pause,” stop, or delay the disaffiliation process once that process has been announced and implemented. No provision of ¶2553 gives the Defendant Conference the authority to “pause,” stop, or delay the disaffiliation process once that process has been announced and implemented. No provision of ¶2553 gives Defendant Hauptert-Johnson or Defendant Dease the authority to “pause,” stop, or delay the disaffiliation process once that process has been announced and implemented. No provision of ¶2553 gives Defendants Sanders, Gilreath, Landry, Porterfield, McQueen, Thomas, Terrell, or Cruz the authority to “pause,” stop, or delay the disaffiliation process once that process has been requested by a local church pursuant to ¶2553.

#### Disaffiliation in North Georgia

At the 2021 North Georgia Annual Conference session, Defendant Conference by and through the Defendant Trustees announced it had created a process for local churches to utilize ¶2553. Defendant Trustees approved a formal ¶2553 Disaffiliation Agreement and announced that the provisions of the agreement would not be negotiated, in other words the agreement was final and official. That form agreement does not add to the conditions outlined in ¶2553 that a local

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church must meet to disaffiliate (*e.g.*, there is no requirement in the Disaffiliation Agreement that a local church be in “good standing” in order to avail itself of ¶2553). (See Defendant Trustees’ Report dated 4/19/21, attached as Exhibit D to Plaintiffs’ Complaint).

Defendant Hauptert-Johnson, presiding over the 2021 North Georgia Annual Conference session specifically found and ruled that theology was not implicated by the principles of ¶2553. The Judicial Council of the UMC upheld Defendant Hauptert-Johnson’s finding on procedural grounds. UMC Judicial Council Decision No. 1422, February 9, 2022, a copy of which is attached as Exhibit E to Plaintiff’s Complaint.

Acting in reliance upon the above, local churches (including Plaintiffs) engaged in a process of discernment within their local churches to determine whether to disaffiliate. This process was unique for each church, but typically included the following actions: vote of the administrative council (or governing board) to enter into the discernment process; formation of a factfinding/discernment team to research the issues involved; reporting of findings of the factfinding/discernment team to the administrative council (or governing board); planning and scheduling of town hall meetings with advance notice to the district superintendent and the church membership; preparation for and conducting of town hall meetings; attending town hall meetings conducted by the conference representative, bishop, or district superintendent in the local church at the request of the conference representative, bishop, or district superintendent; formal or informal polling of church membership; maintaining records of information provided to the congregation regarding disaffiliation; vote of the administrative council (or governing board) to request the district superintendent call a church conference for the purpose of conducting a disaffiliation vote; and

submission of letter to district superintendent requesting the church disaffiliation vote.

During the 2022 Annual Conference session disaffiliation agreements of seventy (70) churches in North Georgia were ratified and these churches disaffiliated from the UMC pursuant to this process and executed the form ¶2553 Disaffiliation Agreement referenced above.

Plaintiffs continued operating in good faith and in reliance upon the promises made by Defendants that the process announced in the summer of 2021 would continue to be followed for any church desiring to disaffiliate until December 31, 2023.

Plaintiffs continued to pay apportionments to Defendant Conference and engage in other ministry actions supporting the UMC in reliance upon said promises. Plaintiffs remained in the UMC and continued to pay their tithes and offerings in reliance upon promises made by Defendants that the process announced in the summer of 2021 would continue to be followed for any church desiring to disaffiliate until December 31, 2023.

Defendants' Bad Conduct and *Ultra Vires* Scheme to "Run Out the Clock"  
on the Right of Local Churches to Disaffiliate under ¶2553

Defendants, acting wrongfully, in bad faith, and *ultra vires* beyond the limits on their powers, have conspired to deprive Plaintiffs of their valuable property rights created by ¶2553; to wit, the right to vote on withdrawal from the UMC with their property intact.

Defendants have conspired to "run out the clock" on Plaintiffs' ability to utilize ¶2553 by a combination of *ultra vires* actions, fraudulent misrepresentations, and promises which they have failed to keep, so that, unless this Court intervenes, Plaintiffs cannot and indeed will not be allowed to fulfill the legislated requirements of ¶2553 in time to meet the sunset date of 12/31/23.



Subsequent to the 2021 Annual Conference, Defendants other than Defendant Dease (who at that time was not yet within the North Georgia Conference) continually assured local churches that there was no hurry to request disaffiliation and encouraged local churches, including Plaintiffs, to engage in a period of “discernment.” Said statements were made verbally during public meetings and also in writing. See Exhibit F to Plaintiffs’ Complaint as representative sample of such writing.

Despite the above assurances, Defendants have engaged in a pattern of behavior intending to and having the effect of preventing Plaintiffs from using ¶2553 as follows:

a) First, Defendants Trustees and Conference delayed from 2019 to 2021 to implement a process for ¶2553 in North Georgia.

b) Then after setting a specific process and allowing seventy (70) churches to follow that process to disaffiliation in June of 2022, the second delay was announced stating that no disaffiliation requests would be accepted from June 2022 until January 2023 and no church votes would be allowed to occur until March and April of 2023; thus a 9-month delay in the process. No reason was given for this delay. See Exhibit F to Plaintiffs’ Complaint.

c) And then on December 28, 2022, came the announcement of the third delay; this time a total cessation of the process until after General Conference 2024, an additional delay of 16 months and complete elimination of the General Conference legislation. Defendants made no advance effort to address the pretextual reasons given for the “pause,” just immediate accusation, trial and sentencing of all churches without due process and contrary to the Book of Discipline. See Exhibit G to Plaintiffs’ Complaint

The latest delay on December 28, 2022, was announced by all Defendants (other than Defendant Dease) as a joint announcement. Said announcement was an *ultra vires* action. None of Defendants have the authority to institute this “pause” which has the practical effect of eliminating the availability of the ¶2553 process for all North Georgia churches.

Plaintiffs cannot without discovery herein know when Defendants began their plan and conspiracy to deprive Plaintiffs of their General Conference legislated ¶2553 right or exactly when each Defendant joined the conspiracy, but the words and actions of Defendants show that the plan began after it became clear that hundreds of churches intended to disaffiliate.

#### The 23 Million Dollar Misappropriation and Conversion

Since the formation of the UMC in 1968, the North Georgia Annual Conference had been a plan sponsor of a pension benefit for retired clergy. This plan was ultimately administered by a third-party provider, Wespath. Years ago in 1982, it became apparent the pension plan was underfunded to sustain future projected payments to clergy approaching retirement.

Defendant Conference (acting through its agents) properly implemented a plan to fund the shortfall by way of invoicing local churches monthly. Local churches were invoiced above and beyond their normal apportionment requirements for the purpose of paying the cost of the pension plan benefits and fully funding any underfunding the plan benefits. These local church monthly invoiced payments were used to fully fund pension benefits and fund a special purpose reserve fund by the Conference.

Part of a local church’s ¶2553 financial requirement is to pay that church’s share of the Conference future unfunded pension liability as calculated quarterly by Wespath. After passage of

¶2553 the Conference began notifying each local church of its share of the future unfunded pension liability on a quarterly basis.

In mid-2021 an agent of Defendant Conference known as the Conference Board of Pension and Health Benefits (hereinafter CBPHB), reviewed the special reserve fund, which based on then existing market conditions had amassed a surplus of approximately twenty-three million dollars (\$23,000,000.00).

In October 2021, acting on this information Defendant Conference, through its agents, CBPHB and others, deposited the approximate \$23 million dollars with Wespath and designated it for the sole purpose of paying any future unfunded pension liability.

Upon depositing said funds with Wespath, the Conference began posting a credit against the local church ¶2553 future unfunded pension liability for the local church's proportionate share of the designated deposit. This significantly reduced the local church ¶2553 unfunded future pension liability net guy out amount. This calculation was fully disclosed on the local church portal of the conference web site as a decrease in the local church unfunded pension liability for purposes of the ¶2553 payment.

During the 2022 Annual Conference session this depositing of funds with Wespath and corresponding ¶2553 payment reduction to local churches was reported and included in the official record. See Exhibits H and I attached to Plaintiffs' Complaint.

The first seventy (70) churches which disaffiliated in North Georgia at the 2022 Annual Conference session received the benefit of this credit. By way of example, see Exhibit J attached to Plaintiffs' Complaint.

After the Annual Conference session, in October of 2022, the CBPHB announced it had re-evaluated allowing a credit to the local church ¶2553 pension buy out amount for the local church share of the designated deposit with Wespath. The CBPHB announced this credit would no longer be allowed. This resulted in the local church ¶2553 future pension buyout amount increasing significantly at that time. The money in question (originally approximately \$23 million dollars) remains on deposit with Wespath dedicated to future unfunded pension benefit liability and the Conference continues to benefit from the deposit of those funds.

Plaintiffs made payments to the Conference which created said funds deposited with Wespath. Disallowing Plaintiffs the credit results in each Plaintiff paying their proportionate share of the future liability twice, once when initially paying their share of the reserve fund and again when making the disaffiliation payment.

Disallowing Plaintiffs the credit after allowing the first seventy (70) churches to have the credit creates an unjust disparity of treatment between two sets of churches going through the same process set by the Conference. Further, because the Conference collected the funds at issue from local churches, including Plaintiffs, for the specific purpose of satisfying unfunded pension liabilities, the Conference's denial of a credit for the payment and its refusal or failure to return the funds to the contributing churches results in a conversion of the local church's pension liability payment.

This scheme unjustly enriches the Conference and deprives the Plaintiffs of equal treatment with earlier disaffiliating churches. The only rationale for disallowing this credit is the desire of the Conference to stuff its coffers with funds from departing churches. This is particularly egregious

considering the Conference had net unrestricted assets in excess of \$90 million dollars (\$90,000,000.00) at December 31, 2021 according to the Conference Committee and Administration report to the 2022 Annual Conference session. See Exhibit K attached to Plaintiffs' Complaint (page 124 of the 2022 Conference Journal). This scheme constitutes a wrongful misappropriation of funds and constitutes the tort of conversion of Plaintiffs' property rights to the Conference's own use.

### **ARGUMENT AND CITATION OF AUTHORITY**

#### **Nature of the Action- No Ecclesiastical Question.**

This action presents issues which are within the competence and jurisdiction of this Court, which can and should be resolved under neutral principles of law applicable to any property dispute, without the need to decide any religious questions and without intruding into legitimate ecclesiastical autonomy. This property dispute can and must be resolved in accordance with the procedure employed by the Georgia Supreme Court in the cases of Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc., 290 Ga. 272 (2011), and Rector v. Bishop of the Episcopal Diocese of Georgia, Inc., 290 Ga. 95 (2011). The above cases hold that Georgia courts will consider charters, constitutions, and other governing texts of religious organizations under neutral principals of law in resolving property disputes. Defendants cannot be heard to contest this point as Defendants have availed themselves of the same principles recently in a substantially similar context in this very court, that being the case of The Trustees of The North Georgia Conference of the United Methodist Church, Inc. v. Mt. Bethel United Methodist Church, Inc. d/b/a Mt. Bethel United Methodist Church, Superior Court of Cobb County, CAFN 21-1-06801-28.

Defendants previously recognized the legal rights afforded seventy (70) other congregations in North Georgia to disaffiliate from the UMC under the same process sought by Plaintiffs less than one year ago. In doing so, Defendants established a course of dealing and course of conduct under the rights afforded congregations pursuant to ¶2553 of the United Methodist Church Book of Discipline.

#### Interlocutory Restraining Order.

O.C.G.A. § 9-11-65 provides the Court may issue an order restraining certain acts, said order to be binding upon the parties to the action, their officers, agents, servants, employees, and attorneys and upon those persons in active concert or participation or who receives notice of the order by personal service or otherwise. Moreover, a party who asserts a claim for equitable relief may at any time, by proper pleading and proof, also apply for and obtain any of the extraordinary remedies available from the court in its exercise of equitable powers. O.C.G.A. § 23-3-3. Furthermore, the Court can, in equity, issue an interlocutory injunction that requires a party to take affirmative steps to prevent the moving party from suffering irreparable injury. See Davis v. VCP S., LLC, 297 Ga. 616, 623 (2015) (affirming contempt order sanctioning party for violating “interlocutory injunction requiring [defendant] to take affirmative action[.]”). Ultimately, the granting of injunctions rests with the sound discretion of the court. Johnson v. Durrence, 136 Ga. App. 439 (1975).

#### Preserve or Restore the Status Quo.

“The purpose for granting interlocutory injunctions is to preserve the status quo, as well as balance the conveniences of the parties, pending a final adjudication of the case.” Grossi Consulting,

LLC v. Sterling Currency Group, LLC, 290 Ga. 386, 388, (2012). Courts have additionally spoken of injunctions functioning to **restore** the status quo. See Bishop v Patton, 288 Ga. 600, 604 (2011). The party seeking an interlocutory injunction need only present evidence that the status quo was endangered and in need of preservation, and a trial court does not abuse its discretion if it grants the injunction with such a showing. Green v. Waddleton, 288 Ga. App. 369 (2007). **The status quo to be preserved by an interlocutory injunction “is not the situation of contested rights, but the last, peaceable, noncontested status of the parties...”** Inkaholiks Luxury Tattoos Georgia LLC v. Parton, 324 Ga. App. 769, 774 (2013).

In the case at bar, the uncontroverted evidence is that the last peaceable, noncontested status of the parties was at the Annual Conference 2022 session where seventy (70) churches disaffiliated following the procedure set forth by the Defendants in accordance with ¶2553 and before the “pause” at issue was announced. The Court should enter an order returning the parties to their respective positions prior to the “pause.”

#### Standard for Granting a Restraining Order.

The Court must consider the following factors: (1) whether there exists a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) whether the threatened injury to the moving party outweighs the threat of harm that the injunction may do to the party being enjoined; (3) whether there is a substantial likelihood that the moving party will prevail on the merits at trial; and (4) whether granting the interlocutory injunction will not disserve the public interest. Veterans Parkway Developers, LLC. v. RMW Development Fund II, LLC., 300

GA. 99 (2016).

I. Whether there exists a substantial threat that the Plaintiffs will suffer irreparable injury if the injunction is not granted.

Should the Court not intervene, Plaintiffs will suffer irreparable harm. The ultra vires “pause” as presently announced will not terminate until after May of 2024. Plaintiffs’ right to disaffiliate pursuant ¶2553 expires on December 31, 2023. Therefore, Defendants have taken wrongful action in fact prohibiting Plaintiffs from exercising a valuable property right. Once this right is gone, there will be no similar right to replace it. This fact is admitted by the UMC on its website.

Moreover, ¶2553 requires an annual conference ratification vote of the disaffiliation agreements. The annual conference meets once per year, this year being set June 1-3, 2023. Without the Court requiring additional sessions of annual conference, the Defendants could simply drag out this litigation until beyond Annual Conference 2023 and beyond the end of this calendar year and prohibit Plaintiffs from exercising the right to disaffiliate.

The financial terms of ¶2553 are highly beneficial to Plaintiffs and put them in the position to obtain a release from the UMC trust clause for a relatively small payment of money. This fact may be the single largest motivating factor guiding Defendants’ bad conduct. Once ¶2553 expires the only remaining option for churches to leave the denomination involves closing a church and attempting to negotiate a buy-back from the conference at market value. Such a huge increase in the financial payment is unjust and beyond the reasonable ability of churches to perform. Therefore, denying an injunction will perpetuate the significant financial harm to each church desiring to



disaffiliate under the provisions of ¶2553.

Finally, the delay caused by the “pause” has caused churches to lose membership as some congregants have grown weary of Defendants’ broken promises and perceive there will be no exit. The loss of membership has caused a corresponding reduction in giving to local churches. This in turn has limited Plaintiffs’ ability to engage in the mission and ministry of their congregations as they would have otherwise been able. Further delay will only worsen these dynamics.

None of the above harm can be reversed once suffered. The uncontroverted evidence shows Plaintiffs will suffer irreparable harm.

II. Whether the threatened injury to the Plaintiffs outweighs the threat of harm that the injunction may do to the Defendants.

The injury to Plaintiffs strongly outweighs any potential harm to Defendants by the granting of an injunction. The Court must note the injunctive relief sought is largely to require that Defendants abide by a contract to which they are already bound and follow a process they themselves created. How does this state of events harm the Defendants?

How Defendants could suffer any harm from the granting of an injunction must be shown by Defendants. The only harm identified by Defendants is an alleged damage to their reputation due to “misinformation” allegedly stated against them by some unnamed actors. Plaintiffs vehemently deny any of them have engaged in any such conduct and demand Defendants provide strict proof of same in the event Defendants contend otherwise. Plaintiffs show the Court that any such “misinformation” is only a sincere and deep disagreement between the parties as to how each

perceive facts and how each has chosen to live out their respective faiths. Unfortunately, Defendants label observable and documentable facts contrary to their worldview as “misinformation.”

The actual damages to Plaintiffs enumerated above far outweighs any damage Defendants can claim they will suffer by living up to their contractual obligations.

III. Whether there is a substantial likelihood that Plaintiffs will prevail on the merits at trial.

The Plaintiffs have a substantial likelihood of prevailing on the merits of the case at trial regarding the legal causes of action relied upon in this motion for the granting of a restraining order.

A. Breach of Contract and Specific Performance.

This is a clear case of breach of contract. The UMC Book of Discipline is the constitution and governing document of the UMC. All UMC sub-divisions, clergy, agents, lay members, and local churches covenant to abide by the will of the body as determined at General Conference. Specifically, Defendants are subject to the terms of this connectional covenant. The BOD, therefore, constitutes the terms of the shared contract entered into by all individuals and entities associated with the UMC. **Defendants cannot argue to the contrary as they filed suit last year in this very court relying on the same connectional contract (Book of Discipline) in seeking control of property from Plaintiffs’ sister church, Mt. Bethel United Methodist Church.**

No other body within the UMC, other than the General Conference, has law-making authority, and no entity, body, or person other than the General Conference can either amend the BOD or negate any portion of the BOD. This exclusive authority has been repeatedly affirmed by

the UMC Judicial Council and is not a matter in dispute.

For example, see Judicial Council Decision 886 held as follows:

“The Discipline is the law of the Church which regulates every phase of the life and work of the Church. As such, annual conferences may not legally negate, ignore, or violate provisions of the Discipline with which they disagree, even when the disagreements are based on conscientious objections to those provisions.”

The UMC General Conference met by special session in 2019 and enacted ¶2553 of the BOD, creating a process for local churches to disaffiliate from the UMC. ¶2553 sets out a specific procedure and a set of neutral rules, not based on any religious questions or requiring the interpretation of any religious doctrines, whereby a local church may disaffiliate from the UMC and retain its property free of any claim of trust in favor of the UMC. ¶2553 sets out certain financial commitments from a local church in order to disaffiliate, as set forth in ¶2553.4(b) (apportionments) & ¶2553.4(d) (pension liabilities).

In furtherance of this legislation, Defendant Trustees announced it had created a process for local Georgia churches to utilize ¶2553. Defendant Trustees approved a formal ¶2553 Disaffiliation Agreement setting forth the financial obligations and announced that the provisions of the agreement would not be negotiated, in other words the agreement was final and official.

In fact, seventy (70) local churches disaffiliated from the UMC pursuant to this specific process in June of 2022. Defendants promised this process would continue. Plaintiffs relied upon the process created and fulfilled all obligations toward that end.

Contrary to the terms of the contract, Defendants unilaterally announced on December 28, 2022 they would no longer honor the connectional contract. Specifically, defendants suspended the ¶2553 process entirely without any due process or ability of any local church to protest same. Plaintiffs submit there could not be a clearer case for breach of contract than the facts above. These facts are not in dispute and are easily documented by Defendants official records and statements. Plaintiffs can hardly think of a clearer case for breach of contract than the facts of the case at bar.

The facts of the case at bar unquestionably prove the existence of a contract with all essential elements. See O.C.G.A § 13-1-1; 13-3-1. The uncontroverted facts recited above prove that Defendants have breached this contract by virtue of this ultra vires “pause.” Plaintiffs shall prevail at trial in proving breach of contract.

Having shown a breach of contract exists, Plaintiffs further show they are entitled to specific performance of that contract. O.C.G.A § 23-2-130 states “specific performance of a contract, if within the power of the party, will be decreed, generally, whenever the damages recoverable at law would not be an adequate compensation for nonperformance.” See Bagwell v. Trammell, 297 Ga. 873 (2015). Monetary damages are not an adequate legal remedy, as would preclude specific performance of a contract, where the contract sought to be enforced involved the sale of unique real property. Hampton Island, LLC. v. HAOP, LLC., 306 Ga. App. 542 (2010).

In the case at bar, it is well within the power of Defendants to perform the contract at issue. They have simply chosen not to do so out of their own self-interest. Plaintiffs show they are highly likely to prevail at trial on their breach of contract and specific performance counts.

## B. Promissory Estoppel

“A promise which the promissor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.” O.C.G.A § 13-3-44(a). See also, Insilco Corp. v. First Nat. Bank of Dalton, 248 Ga. 322 (1981).

A claim of promissory estoppel consists of four elements: (1) a promise, (2) which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person, and (3) which does induce such action or forbearance, (4) is binding if injustice can be avoided only by enforcement of the promise. Houston v. Houston, 267 Ga. App. 450 (2004) and Everts v. Century Supply Corp., 264 Ga. App. 218 (2003).

The uncontroverted facts recited above prove every element of promissory estoppel. In the event the Court for any reason determines a contract does not exist between these parties, Plaintiffs would then assert the alternative theory of promissory estoppel and would prevail on that issue.

## C. Unjust Enrichment and Conversion

“The concept of unjust enrichment in law is premised upon the principle that a party cannot induce, accept, or encourage another to furnish or render something of value to such party and avoid payment for the value received; otherwise, the party has been unjustly enriched at the expense of

another and, in fairness and good conscience, must reimburse the other to the extent of the value conferred.” Reidling v. Holcomb, 225 Ga. App. 229, 232 (1997).

Defendants used the provisions of the BOD, the UMC connectional contract, to require that churches contribute funds specifically for the purpose of paying down a jointly shared future pension liability. The Defendant Conference (acting through its agents) properly implemented a plan to fund a perceived pension funding shortfall by way of invoicing local churches monthly. Local churches were invoiced above and beyond their normal apportionment requirements for the purpose of paying the cost of the pension plan benefits and fully funding any underfunding the plan benefits.

These local church monthly invoiced payments were used to fully fund pension benefits and fund a **special purpose reserve fund** by the Conference. In mid-2021 an agent of Defendant Conference known as the Conference Board of Pension and Health Benefits (hereinafter CBPHB), reviewed the special reserve fund, which based on then existing market conditions **had amassed a surplus of approximately twenty-three million dollars (\$23,000,000.00)**.

In October 2021, acting on this information Defendant Conference, through its agents, CBPHB and others, deposited the approximate \$23 million dollars with Wespath and designated it for the sole purpose of paying any future unfunded pension liability.

Upon depositing said funds with Wespath, the Conference began posting a credit against the local church ¶2553 future unfunded pension liability for the local church’s proportionate share of the designated deposit. This significantly reduced the local church ¶2553 unfunded future pension liability net guy out amount. This calculation was fully disclosed on the local church portal

of the conference web site as a decrease in the local church unfunded pension liability for purposes of the ¶2553 payment.

During the 2022 Annual Conference session this depositing of funds with Wespath and corresponding ¶2553 payment reduction to local churches was reported and included in the official record. See Exhibits H and I to Plaintiffs' Complaint.

The first seventy (70) churches which disaffiliated in North Georgia at the 2022 Annual Conference session received the benefit of this credit. By way of example, see Exhibit J to Plaintiffs' Complaint.

Subsequently, the CBPHB announced it had re-evaluated allowing a credit to the local church ¶2553 pension buy out amount for the local church share of the designated deposit with Wespath. The CBPHB announced this credit would no longer be allowed. This resulted in the local church ¶2553 future pension buyout amount increasing significantly at that time. The money in question (originally approximately \$23 million dollars) remains on deposit with Wespath dedicated to future unfunded pension benefit liability and the Defendants continue to benefit from the deposit of those funds.

Plaintiffs made payments to the Conference which created said funds deposited with Wespath. Disallowing Plaintiffs the credit results in each Plaintiff paying their proportionate share of the future liability twice, once when initially paying their share to create the reserve fund and again when making the disaffiliation payment under ¶2553.

Disallowing Plaintiffs the credit after allowing the first seventy (70) churches to have the credit creates an unjust disparity of treatment between two sets of churches going through the same

process set by the Conference. Further, because the Conference collected the funds at issue from local churches, including Plaintiffs, for the specific purpose of satisfying unfunded pension liabilities, the Conference's denial of a credit for the payment and its refusal or failure to return the funds to the contributing churches results in a conversion of the local church's pension liability payment.

This scheme unjustly enriches the Defendants and deprives the Plaintiffs of equal treatment with earlier disaffiliating churches. The only rationale for disallowing this credit is the desire of the Conference to stuff its coffers with funds from departing churches. This is particularly egregious considering the Conference had net unrestricted assets in excess of \$90 million dollars (\$90,000,000.00) as of December 31, 2021 according to the Conference Committee and Administration report to the 2022 Annual Conference session (page 124 of the 2022 Conference Journal). This scheme unjustly enriches Defendants in allowing them to retain the benefit of payments they did not make. Moreover, Defendant Conference overtly stated the giving of this credit initially to all churches was reasonable and fair. See partial transcript, Exhibit I to Plaintiffs' Complaint. Defendants cannot now be heard to contend otherwise.

"Conversion consists of an unauthorized assumption and exercise of the right of ownership over personal property belonging to another, in hostility to his rights; an act of dominion over the personal property of another inconsistent with his rights; or an unauthorized appropriation. . . . Any distinct act of dominion wrongfully asserted over another's property in denial of his right, or inconsistent with it, is a conversion." Decatur Auto Ctr., Inc. v. Wachovia Bank, N.A., 276 Ga. 817, 819 (2003).



Plaintiffs show that should the Conference disallow the credit to Plaintiffs relating to the pension reserve deposited with Wespath addressed hereinabove, the same would result in a misappropriation and conversion of funds as specified hereinabove.

Therefore, Plaintiffs have shown the likelihood of success on both the unjust enrichment and conversion counts of their Verified Complaint.

#### D. Breach of Fiduciary Duty

Plaintiffs are member-churches of the North Georgia Conference, of which the Defendants are officers, directors and/or agents. As such, Georgia law and the Book of Discipline, as the charter of The United Methodist Church, impose fiduciary duties upon the Defendants toward Plaintiffs. See O.C.G.A. § 23-2-58.

By virtue of the Trustees' positions as directors of the North Georgia Conference, and the Bishop and District Superintendent's positions as officers of the North Georgia Conference, Defendants owed a fiduciary duty not to act to the exclusion of, or detriment to Plaintiffs, or to deprive the local churches of the rights conferred upon member churches via the BOD.

Particular to this litigation, Defendants owe a fiduciary duty to Plaintiffs to allow them the opportunity to use ¶2553 of the BOD first to ascertain the wishes of its membership as to disaffiliation and subsequently to comply with all other requirements of ¶2553 before December 31, 2023.

*Ultra vires* acts that are outside the scope of the powers, jurisdiction, or authority of a person, office, or entity, such as an act by a corporation beyond the powers conferred in its corporate charter,

or an act by an agent beyond the scope of the agency, are either void or voidable and subject to direct claim for breach of fiduciary duty by members to whom a fiduciary duty is owed.

Defendants have breached their fiduciary duty to Plaintiffs as alleged above, and particularly in the *ultra vires* act of instituting the present “pause.” Plaintiffs are entitled to injunctive relief as a result.

IV. Whether granting the interlocutory injunction will disserve the public interest.

An interlocutory injunction that maintains the status quo by allowing Plaintiffs to take necessary steps to move forward with the disaffiliation process during the pendency of this litigation **affirmatively serves the public interest.** One reason is that knowing the outcome of such a vote will lend greater certainty to each Plaintiff and each community served by each church. This certainty inures to the benefit of the church members individually and also each Plaintiff’s ongoing ministries, locally and worldwide. See *Alera Healthcare, Inc. v. Anabaptist Healthshare*, 355 Ga. App. 381, 392 (2020) (affirming interlocutory injunction where “the trial court found that an interlocutory injunction is in the members' interest, and thus the public interest.”).

It is contrary to public policy to take private property without due process. See, e.g., *Unified Gov't v. Stiles Apartments, Inc.*, 290 Ga. 740, 742 (2012) (“[D]epriving a private entity of its property without the due process of law can rarely, if ever, be in the public interest.”). The Plaintiffs have a property right, specifically the right to vote for disaffiliation provided by ¶2553 that will be involuntarily forfeited, indeed taken by the Defendants, with the passage of time if an interlocutory injunction is not entered.

For the above and foregoing reasons, Plaintiffs respectfully submit an injunction must be granted.

Respectfully submitted, this 30th day of March 2023.

/s/ Daniel L. Parr, Sr.  
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*\*Pro Hac Vice Motion*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the opposing parties in the foregoing matter with a copy of the foregoing with the summons and process as provided by law.

This 30<sup>th</sup> day of March 2023.

/s/ Daniel L. Parr, Sr.

**Daniel L. Parr, Sr.**

*Attorney for Plaintiffs*

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