

The Honorable Theresa Doyle
Motion for Summary Judgment
Hearing: Friday, March 17, 2017 @ 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

THE PRESBYTERY OF SEATTLE, a
Washington nonprofit corporation; and
THE FIRST PRESBYTERIAN CHURCH
OF SEATTLE, a Washington nonprofit
corporation,

Plaintiffs,

v.

JEFF SCHULZ and ELLEN SCHULZ, as
individuals and as the marital community
comprised thereof,

Defendants.

No. 16-2-03515-9 SEA
No. 16-2-23026-1 SEA
Consolidated

PLAINTIFFS' AMENDED MOTION
FOR SUMMARY JUDGMENT IN
PRESBYTERY II

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiffs Presbytery of Seattle (“Seattle Presbytery”) and First Presbyterian Church of Seattle (“First Presbyterian”) seek summary judgment on their sole claim for declaratory relief as well as dismissal of defendants’ counterclaims. Plaintiffs request a declaration that First Presbyterian has no obligation to pay former co-pastors Jeff and Ellen Schulz under their purported severance agreements (the “Severance Agreements”). Those agreements were signed on November 10, 2015, in connection with efforts by the

1 Schulzes and their allies on the former governing body of First Presbyterian to cause First
2 Presbyterian to secede from the Presbyterian Church (U.S.A.) (the “Church”).

3 The Severance Agreements are unenforceable for four reasons, any one of which is
4 sufficient to justify relief and none of which is subject to factual dispute.

5 First, the Severance Agreements were not properly adopted. They purported to
6 alter the terms of call for Jeff and Ellen Schulz, but they were not approved by either First
7 Presbyterian’s congregation or Seattle Presbytery. Under Church doctrine, a change in the
8 terms of call for a pastor is invalid without both approvals.

9 Second, the Severance Agreements provide that Jeff and Ellen Schulz may
10 terminate their pastoral relationships at any time without creating liability. Under Church
11 doctrine, the Schulzes terminated their pastoral relationships when they renounced the
12 jurisdiction of the Church in December 2015.

13 Third, the Severance Agreements require the Schulzes to serve First Presbyterian
14 “in good faith and in good standing.” As a matter of Church doctrine, the Schulzes ceased
15 to be pastors in good standing when they renounced the jurisdiction of the Church.

16 Fourth, the Severance Agreements authorize termination for “good cause.” Seattle
17 Presbytery’s Administrative Commission for First Presbyterian Church of Seattle (the
18 “Administrative Commission”) examined the behavior of the Schulzes under Church law
19 and concluded that good cause existed to terminate their pastoral relationships even if
20 those relationships could be said to have survived their renunciation of jurisdiction.

21 The Administrative Commission assessed each of these issues under the Church
22 Constitution--specifically its *Book of Order*--as well as authorities that construe relevant
23 provisions in the *Book of Order*. Based upon these authorities, the Administrative
24 Commission determined that First Presbyterian has no obligations under the Severance
25 Agreements. A civil court must defer to the Administrative Commission’s judgment.

1 In *Presbytery of Seattle v. Rohrbaugh*, 79 Wn.2d 367, 373, 485 P.2d 615 (1971),
2 *cert. denied*, 405 U.S. 996 (1972), the Washington Supreme Court held:

3 [W]here a right of property in an action before a civil court depends upon
4 a question of doctrine, ecclesiastical law, rule or custom, or church
5 government, and the question has been decided by the highest tribunal
6 within the organization to which it has been carried, the civil court will
7 accept that decision as conclusive.

8 This principle applies to claims involving personal property no less than to disputes over
9 real property. It requires entry of summary judgment in plaintiffs’ favor.

10 Even if this Court were inclined to examine “good cause” without the deference
11 to ecclesiastical judgments that the First Amendment and Washington law both demand,
12 the Court would have to conclude that the Administrative Commission was correct in
13 concluding that the Schulzes had harmed the reputation of First Presbyterian and engaged
14 in misconduct warranting termination. For this reason as well, summary judgment is
15 warranted granting declaratory relief and dismissing defendants’ counterclaims for
16 breach of contract and violation of Washington wage law.

17 **II. STATEMENT OF UNDISPUTED FACTS**

18 **A. Presbyterian polity, Seattle Presbytery, and First Presbyterian**

19 The Church is a hierarchical religious denomination governed by “councils”
20 which, in ascending order, are the session (pastors and elders of the local congregation),
21 the presbytery (composed of all pastors and at least one elder from each of the
22 congregations within a district), the synod (composed of representative pastors and elders
23 from the presbyteries within a geographical region), and the general assembly (composed
24 of delegations of pastors and elders from the presbyteries). Declaration of Scott Lumsden
25 in Support of Plaintiffs’ Amended Motion for Summary Judgment in *Presbytery II*
 (“Lumsden Decl.”), ¶ 7; *see* Declaration of Robert B. Mitchell in Support of Plaintiffs’

1 Amended Motion for Summary Judgment in *Presbytery II* (“Mitchell Decl.”), Ex. B ¶ 2
2 (so finding). The Church and all councils within the Church are governed by the Church
3 Constitution, which consists of the *Book of Confessions (Part I)* and the *Book of Order*
4 (*Part II*). The *Book of Order* provides the ecclesiastical law of the Church. Lumsden
5 Decl. ¶ 4.

6 Seattle Presbytery is the presbytery with jurisdiction over First Presbyterian. *Id.* ¶
7 8. Seattle Presbytery’s responsibilities include providing oversight for pastors (also
8 known as teaching elders) within its jurisdiction. *Id.* ¶ 18.

9 First Presbyterian is an historic church in downtown Seattle. *Id.* ¶ 8. The Restated
10 Articles of Incorporation for First Presbyterian, filed in 1985, provide that the “objects and
11 purposes” of First Presbyterian are “to promote the worship of Almighty God and the
12 belief in the extension of the Christian Religion, under the Form of Government and
13 discipline of ‘The Presbyterian Church (U.S.A.).’” Declaration of William A. Longbrake
14 in Support of Plaintiffs’ Amended Motion for Summary Judgment (“Longbrake Decl.”),
15 Ex. A.

16 **B. The schism at First Presbyterian and the Severance Agreements**

17 In October 2015 the then-leaders of First Presbyterian (including co-pastors Jeff
18 and Ellen Schulz) took a series of steps in an effort to secede from the Church. Mitchell
19 Decl., Ex. B ¶ 9; Declaration of Shelley M. Dahl in Support of Plaintiffs’ Amended
20 Motion for Summary Judgment (“Dahl Decl.”), Ex. A at 1-2. The First Presbyterian
21 session informed Seattle Presbytery that on October 27, 2015, it had “voted to reestablish
22 the [First Presbyterian] Board as a body separate from the session” and that the First
23 Presbyterian “Board” was not subject to the authority of Seattle Presbytery or the Church
24 Constitution. Dahl Decl., Ex. A at 2.

1 The First Presbyterian session then distributed notices of meetings to vote to
2 “disaffiliate” from the Church and to amend First Presbyterian’s restated articles of
3 incorporation, removing any reference to the Church or its form of government.
4 Longbrake Decl., Exs. B-C. Seattle Presbytery advised First Presbyterian that these
5 actions violated the Church Constitution. Dahl Decl., Ex. A at 2. First Presbyterian’s
6 session nevertheless proceeded to hold the vote. *Id.* On November 15, 2015, a majority
7 of the congregation voted to ratify the October bylaw amendments, to amend the articles
8 of incorporation to remove references to the Church, and to “disaffiliate” from the Church.
9 *Id.*

10 Also on October 27, 2015, First Presbyterian’s session (purporting to act as a
11 separate “Board of Trustees”) resolved to enter into the Severance Agreements with Jeff
12 and Ellen Schulz. *See* Dahl Decl., Ex. B, attachment. The Severance Agreements were
13 intended to “encourage and induce the [First Presbyterian] pastors to remain as Co-Pastors
14 of [First Presbyterian] . . . including in the event of any conflict between [First
15 Presbyterian], its Session, and its Congregation, on the one hand, and [the Church] or any
16 Presbytery, Synod, Administrative Commission, or affiliate . . . on the other hand . . .” *Id.*
17 The then-President of First Presbyterian, Kathryn Ostrom, and each of Jeff and Ellen
18 Schulz signed substantially identical copies of the Severance Agreements on November
19 10, 2015. *Id.*

20 The Severance Agreements provide for Jeff and Ellen Schulz to receive two years’
21 severance pay if the First Presbyterian session terminates their pastoral relationships when
22 it “is acting under the control of PCUSA.” *Id.* ¶ 2. The Severance Agreements define
23 “PCUSA” to include Seattle Presbytery. *See id.*, second recital. Seattle Presbytery
24 learned of the existence of the Severance Agreements in the summer of 2016; it never
25 approved them. Lumsden Decl. ¶ 11. And the Severance Agreements were neither

1 disclosed to nor approved by the First Presbyterian congregation. Longbrake Decl. ¶¶ 6-7
2 & Exs. B-C; Lumsden Decl. ¶ 12.

3 **C. The Schulzes’ renunciation of the Church’s jurisdiction**

4 In December 2015, Jeff and Ellen Schulz wrote to the Stated Clerk of Seattle
5 Presbytery that they “renounce[d] jurisdiction of the Presbyterian Church (U.S.A.), per G-
6 2.0509 and G-2.0407 of the Book of Order.” Lumsden Decl., Ex. A. Nevertheless, until
7 the end of July 2016, the Schulzes continued to occupy the premises of First Presbyterian
8 and minister to the group that had voted to leave the Church. Lumsden Decl. ¶ 25;
9 Mitchell Decl. ¶ 6.

10 **D. The *Presbytery I* litigation and the Administrative Commission’s work with
11 First Presbyterian**

12 Seattle Presbytery formed the Administrative Commission to investigate
13 “allegations, admissions, and events [which] suggest that the session [of First
14 Presbyterian] is affected with disorder and call into question its ability and willingness to
15 exercise its authority and manage wisely its affairs.” Dahl Decl., Ex. A at i. After
16 conducting a thorough investigation in which it received information from 50 individuals,
17 the Administrative Commission on February 16, 2016, issued a report (the “First Report”).
18 *See id.*

19 The First Report concluded that First Presbyterian’s leadership had failed to follow
20 the Church Constitution and its own procedures; had failed to be truthful and forthcoming
21 with its congregation, ministry partners, and Seattle Presbytery; and had failed to wisely
22 manage the affairs of First Presbyterian. *Id.* at i. The Administrative Commission noted
23 that it had received credible reports that the Schulzes “were paid amounts not authorized
24 by the congregation” and that “in late 2013 the [Schulzes] took some of their
25 compensation in cash in order to make a better case for financial aid for a college-aged

1 child.” Dahl Decl., Ex. A ¶ 15; Lumsden Decl. ¶ 26.¹ Following release of the First
2 Report, the Administrative Commission “assumed original jurisdiction with the full power
3 of the session of [First Presbyterian] under G-3.0303e” of the Church Constitution,
4 meaning that the Administrative Commission would “perform the duties of the session.”
5 *Id.* at 14 ¶ 1. The Administrative Commission appointed the Rev. Dr. Heidi Husted
6 Armstrong as First Presbyterian’s temporary pastor. *Id.* at 15 ¶ 5.

7 After the former church leaders (including Jeff and Ellen Schulz) refused to follow
8 the Administrative Commission’s instructions or recognize its authority, the plaintiffs in
9 *Presbytery of Seattle et al. v. Jeff and Ellen Schulz, et al.*, Case No. 16-2-03515-9 SEA
10 (“*Presbytery I*”) sued those former leaders seeking, inter alia, a declaratory judgment that
11 the members of the Administrative Commission were the proper leaders of First
12 Presbyterian.

13 This Court on May 27 granted plaintiffs’ motion for summary judgment and
14 entered a declaratory judgment that “[t]he current governing body of [First Presbyterian]
15 is the Administrative Commission for First Presbyterian Church of Seattle.” Mitchell
16 Decl., Ex. A at 6 ¶ 5. The Court denied defendants’ motion for a preliminary injunction,
17 entering 26 findings of fact. Mitchell Decl., Ex. B at 6-10. The Court concluded that
18 defendants had failed to show the existence of a clear legal or equitable right, a well-
19 grounded fear of immediate invasion of any right, or that the acts complained of would
20 result in actual and substantial injury. *Id.* at 11 ¶¶ 1-4.

21 After the Court entered its May 27 orders, the Washington Secretary of State
22 recognized the members of the Administrative Commission as the proper governing body
23 of First Presbyterian. Mitchell Decl., Ex. D. The Secretary of State also stamped as “null
24

25 ¹ These credible reports were later substantiated by forensic analysis and documentary
review. *See* part VI.A.4 *infra*.

1 and void” the amended Articles of Incorporation filed by the former leaders of First
2 Presbyterian. Mitchell Decl., Ex. C. The First Presbyterian property is now used to hold
3 church services for those who remain loyal to the Church, and the services are led by
4 Pastor Heidi Husted Armstrong. Lumsden Decl. ¶ 25.

5 **E. The Administrative Commission’s Second Report**

6 In the summer of 2016, after the Severance Agreements were produced in
7 discovery in *Presbytery I*, the Administrative Commission issued the First Supplemental
8 Report of the Administrative Commission for First Presbyterian Church of Seattle (the
9 “Second Report”). Dahl Decl. ¶ 6 & Ex. B. The Second Report concluded that, under the
10 Church Constitution, the Severance Agreements changed the terms of the call of First
11 Presbyterian’s pastors, a change that needed to be approved by both the congregation and
12 Seattle Presbytery to be effective. Neither approval was obtained. Dahl Decl., Ex. B ¶¶
13 4-9.

14 The Administrative Commission also concluded that Jeff and Ellen Schulz
15 terminated their pastoral relationships by renouncing the Church’s jurisdiction in
16 December 2015, months before the Administrative Commission assumed original
17 jurisdiction. *Id.* ¶¶ 11-13. The Administrative Commission determined further that Jeff
18 and Ellen Schulz failed to continue serving First Presbyterian in good faith and in good
19 standing. *Id.* ¶ 15. Finally, the Administrative Commission concluded that the former
20 First Presbyterian leaders had attempted to impose a “Good Cause” standard for
21 termination of the Schulzes’ ministry that was inconsistent with the Church Constitution,
22 but this standard was met in any event. *Id.* ¶¶ 16-17. The Administrative Commission
23 ordered Scott Lumsden, the person with authority over the financial affairs of First
24 Presbyterian, not to pay Jeff or Ellen Schulz anything under the Severance Agreements.
25 *Id.* at 3-4 ¶ 1.

1 After confirming that Jeff and Ellen Schulz intended to assert rights under the
2 Severance Agreements, *see* Mitchell Decl. ¶¶ 7-8, the plaintiffs commenced this action for
3 declaratory relief.

4 III. ISSUES PRESENTED

5 A. Whether First Presbyterian has no obligations under the Severance
6 Agreements entered into by Jeff and Ellen Schulz and the former leaders of First
7 Presbyterian where:

8 1. A higher council within the Church has determined that the Severance
9 Agreements are invalid because they changed the terms of the Schulzes' call but were not
10 approved by the First Presbyterian congregation or Seattle Presbytery;

11 2. A higher council within the Church has determined that the Schulzes'
12 renunciation of jurisdiction terminated their pastoral relationships with First Presbyterian;

13 3. A higher council within the Church has determined that the Schulzes were
14 not serving as pastors of First Presbyterian in good standing; and

15 4. A higher council within the Church has determined that good cause existed
16 to terminate any pastoral relationship that Jeff and Ellen Schulz might be said to still have
17 with First Presbyterian, and good cause undoubtedly existed.

18 B. Whether issue preclusion prevents the Schulzes from challenging
19 determinations regarding the structure of the Church and the effect of the Administrative
20 Commission's determination.

21 C. Whether the Schulzes' counterclaims for breach of contract and willful
22 withholding of wages fail because of the absence of an enforceable contract, and whether
23 the wage claim also fails because of a bona fide dispute as to First Presbyterian's
24 obligations.
25

1 **IV. EVIDENCE RELIED UPON**

2 Plaintiffs rely upon the declarations of Neil Beaton, Shelley M. Dahl, William A.
3 Longbrake, Scott Lumsden, and Robert B. Mitchell submitted with this amended motion,
4 as well as the pleadings and papers on file.

5 **V. LEGAL STANDARD**

6 A party seeking to obtain summary judgment may “move with or without
7 supporting affidavits for a summary judgment in the party’s favor” CR 56(a).
8 Summary judgment is required if there exists no genuine issue as to any material fact and
9 the moving party is entitled to judgment as a matter of law. CR 56(c). A fact is not
10 “material” unless it “is one upon which the outcome of the litigation depends in whole or
11 in part.” *Marshall v. Thurston County*, 165 Wn. App. 346, 350, 267 P.3d 491 (2011).
12 Because no issues of material fact are in dispute, and because plaintiffs are entitled to a
13 declaratory judgment and to dismissal of defendants’ counterclaims as a matter of law,
14 plaintiffs ask that the Court enter judgment in their favor. *See, e.g., State, Dep’t of*
15 *Ecology v. Wahkiakum County*, 184 Wn. App. 372, 376, 337 P.3d 364 (2014)
16 (determining constitutionality of statute, and determining that there were no disputed
17 facts).

18 **VI. ARGUMENT AND AUTHORITY**

19 **A. The Schulzes cannot enforce the Severance Agreements against First**
20 **Presbyterian.**

21 The U.S. Supreme Court has held that “where resolution of . . . disputes cannot be
22 made without extensive inquiry by civil courts into religious law and polity, the First and
23 Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the
24 highest ecclesiastical tribunal within a church of hierarchical polity” *Serbian E.*
25 *Orthodox Diocese for U.S.A. & Canada v. Milivojevich*, 426 U.S. 696, 709, 96 S. Ct.

1 2372, 49 L. Ed. 2d 151 (1976). Instead, the civil court “must accept such decisions as
2 binding on them, in their application to the religious issues of doctrine or polity before
3 them.” *Id.* In *Rohrbaugh*, the Washington Supreme Court applied the same principle to a
4 property dispute between Seattle Presbytery and the Laurelhurst United Presbyterian
5 Church, holding that a civil court must defer to the resolution of a question of doctrine,
6 ecclesiastical law, or church government by the highest tribunal within the church that has
7 addressed that question. 79 Wn.2d 367, 373, 485 P.2d 615 (1971); *see also Elvig v.*
8 *Ackles*, 123 Wn. App. 491, 497, 98 P.3d 524 (2004) (court may adjudicate associate
9 minister’s claim against church only if “an ecclesiastical tribunal of a hierarchically-
10 structured church has not already resolved the matter”).

11 Seattle Presbytery is indisputably a higher council within the Church, superior to
12 the session of First Presbyterian. Mitchell Decl., Exs. A-B; Lumsden Decl. ¶¶ 7-8.² In
13 exercising its right of review over the session and the pastors of First Presbyterian, the
14 Administrative Commission has made numerous determinations, grounded in Church
15 doctrine and the Church Constitution, regarding the Severance Agreements. The
16 Severance Agreements cannot be enforced against First Presbyterian unless this Court
17 impermissibly substitutes its own judgment for that of the Administrative Commission.

18 ***First***, the Severance Agreements were not validly entered into between the
19 Schulzes and First Presbyterian. As the Administrative Commission determined, the
20 Severance Agreements changed the terms of the Schulzes’ pastoral call but were not
21 presented to or approved by either Seattle Presbytery or the congregation of First
22 Presbyterian. Under the Church Constitution, the Severance Agreements are invalid.

23
24
25 ² The hierarchical nature of the Church is not subject to reasonable dispute. Defendants
are also precluded from contesting that issue under *Presbytery I*. *See* Part VI.B *infra*.

1 *Second*, the Severance Agreements do not apply because the Schulzes voluntarily
2 terminated their pastoral relationships when they renounced the Church’s jurisdiction.
3 The Schulzes are not, therefore, the pastors of First Presbyterian, and they ceased to be the
4 pastors in 2015 by their own volition rather than by action of First Presbyterian’s session
5 while under the control of the Administrative Commission.

6 *Third*, conditions to enforcing the Severance Agreements have not been met by the
7 Schulzes. The Severance Agreements require the Schulzes to continue as pastors of First
8 Presbyterian “in good standing.” As a matter of Church doctrine, the Schulzes were not
9 pastors of First Presbyterian in good standing after December 16, 2015.

10 *Fourth*, the “good cause” standard that permitted First Presbyterian to terminate
11 the Schulzes without liability under the Severance Agreements has been satisfied. The
12 Administrative Commission, in its First Report, found that the Schulzes violated the
13 Church Constitution and engaged in serious misconduct while serving as pastors of First
14 Presbyterian. This conclusion is reinforced by the Administrative Commission’s Second
15 Report. To entertain the Schulzes’ argument that there is *not* good cause to terminate any
16 pastorate they claim to hold would impermissibly entangle the Court in religious matters.
17 The Court must instead defer to the Administrative Commission’s determinations. Even
18 without such deference, the Administrative Commission (acting as the session of First
19 Presbyterian) was entitled to terminate the Schulzes for good cause because of their
20 manipulation of the church’s books and records and their violations of law.

21 **1. The Severance Agreements cannot be enforced against First**
22 **Presbyterian because they were not approved by the congregation**
23 **and Seattle Presbytery.**

24 The Church Constitution requires the approval of both the congregation and the
25 presbytery before any changes to the financial terms of the pastoral relationship (“the
terms of call”) can be made. Lumsden Decl. ¶¶ 15-18 & Exs. B-D; Dahl Decl., Ex. B ¶¶

1 4-5. Under Church law, as the Administrative Commission found, a severance agreement
2 is a change in the terms of call of a pastoral relationship. *See* Dahl Decl., Ex. B ¶¶ 4-7;
3 *see also* Lumsden Decl., Exs. B & C (Remedial Cases of General Assembly Permanent
4 Judicial Council holding that proposed agreements contemplating continuation of salary
5 after dissolution of pastoral relationship constitute a change in the terms of call).

6 The Severance Agreements were never presented to the First Presbyterian
7 congregation or Seattle Presbytery for their approval. Longbrake Decl., Exs. A-B;
8 Lumsden Decl. ¶ 11. For this reason, the Administrative Commission determined, they
9 cannot be enforced against First Presbyterian. Dahl Decl., Ex. B ¶ 9.³ This determination
10 was indisputably based upon Church law, namely the *Book of Order* and authorities from
11 the Church's highest judicial council specifically addressing whether severance
12 agreements affect the terms of a pastor's call and whether they must be approved by the
13 congregation and the presbytery. Dahl Decl., Ex. B ¶¶ 4, 7; Lumsden Decl., Exs. B-C; *cf.*
14 *Williams v. Wilson*, 563 S.E.2d 320, 324 (S.C. 2002) (dismissal of pastor by "trustees" of
15 congregational church was a nullity, because governing documents gave power to dismiss
16 pastor to congregation).

17 The Administrative Commission's determinations are entitled to conclusive
18 deference, as they involve determinations of ecclesiastical rules and church government
19 (namely, the entities within the Church that must approve any severance agreement).
20 *Serbian E. Orthodox Diocese*, 426 U.S. at 709; *Rohrbaugh*, 79 Wn.2d at 373. The same
21 was true of the Administrative Commission's determination regarding church leadership
22 in *Presbytery I*. *See* Mitchell Decl., Ex. A ¶¶ 1-2. To determine that the Severance

23 ³ Whether Ms. Ostrom individually and on her own behalf entered into and is bound by
24 the Severance Agreements is not an issue presented here. By contrast, both Ms. Ostrom's
25 authority to bind First Presbyterian and the question of whether she exercised authority in
conformity with Church law are ecclesiastical matters as to which the Administrative
Commission's determinations are conclusive.

1 Agreements are valid, the Court would have to second-guess the Administrative
2 Commission's determination in the Second Report that the Severance Agreements are
3 invalid as an ecclesiastical matter. The First Amendment prohibits such a holding, and
4 summary judgment should be granted. *See Gates v. Seattle Archdiocese*, 103 Wn. App.
5 160, 166-68, 10 P.3d 435 (2000) (court could not entertain breach of contract claim by
6 pastoral assistant against church, as interpreting contract would involve ecclesiastical
7 matters); *see also Anderson v. Enterprise Lodge No. 2*, 80 Wn. App. 41, 47, 906 P.2d 962
8 (1995) (reversible error for trial court to allow jury to decide meaning of organization's
9 rules where organization's interpretation is reasonable).

10 **2. As a matter of Church law, the Schulzes terminated their**
11 **pastorates with First Presbyterian, and the Severance Agreements**
12 **therefore do not apply.**

13 Just as the Church Constitution establishes the steps required to enter into a valid
14 severance agreement, it also addresses how a pastoral relationship is terminated. Under
15 the Church Constitution, as affirmed by the Administrative Commission, "[r]enunciation
16 of jurisdiction shall remove [a] teaching elder from membership and ordered ministry, and
17 shall terminate the exercise of that ministry." Lumsden Decl. ¶ 20 (quoting *Book of*
18 *Order*, G-2.0509). Church law holds that "[i]f a pastor of a particular church renounces
19 the jurisdiction of the [C]hurch . . . , the pastoral relationship is thereby dissolved, and the
20 pulpit is vacant." Dahl Decl., Ex. B ¶ 13; Lumsden Decl., Ex. E.

21 Jeff and Ellen Schulz renounced the jurisdiction of the Church in December 2015.
22 Lumsden Decl., Ex. A. The Severance Agreements provide that the Schulzes are entitled
23 to compensation "if, *and only if*, the pastoral relationship and terms of call between Pastor
24 Schulz and [First Presbyterian] are terminated and/or dissolved by [the Church acting
25 through the Session]" Dahl Decl., Ex. B, attachment ¶ 2 (emphasis in the original).

The Administrative Commission concluded that, given the Schulzes' voluntary

1 renunciation of jurisdiction, “[t]he Session did not terminate or dissolve the Schulzes’
2 pastoral relationship; rather, the Schulzes terminated or dissolved their pastoral
3 relationship by their renunciation of jurisdiction.”⁴ Dahl Decl., Ex. B ¶ 14.

4 Jeff and Ellen Schulz may claim to have never resigned employment at First
5 Presbyterian, but that is a hollow argument. They indisputably withdrew from the
6 Church, and that step terminated their pastorates with First Presbyterian as a matter of
7 Church law. The Administrative Commission’s interpretation of Church law on this
8 subject is entitled to full deference. *See, e.g., Pearson v. Church of God*, 478 S.E.2d 849,
9 853-54 (S.C. 1996) (holding that court could not resolve pastor’s claim that his ministry
10 had not been terminated, which was a condition for pension payments to apply, because “a
11 court must accept the doctrinal and administrative determinations of the highest
12 ecclesiastical body of the Church”).

13 The Administrative Commission has determined that the Schulzes terminated their
14 pastoral relationships with First Presbyterian by their own actions in renouncing the
15 jurisdiction of the Church. Dahl Decl., Ex. B ¶¶ 12-14. No court can second-guess such
16 an ecclesiastical determination about a pastor’s relationship with his or her congregation
17 without becoming entangled in ecclesiastical matters. This Court must, instead, give
18 effect to the Administrative Commission’s determination that the Schulzes terminated
19 their pastorates in December 2015.

20 **3. The Schulzes did not continue to serve “in good faith and good**
21 **standing” as required by the Severance Agreements.**

22 For similar reasons, the Severance Agreements cannot be given effect against First
23 Presbyterian because they require that the Schulzes continue to serve as pastors “in good

24 ⁴ The Schulzes are now leading a group of people who have left the Church. They
25 certainly may do so, but any pastoral relationship they have is with that group and not
with First Presbyterian or Seattle Presbytery.

1 faith and good standing.” Dahl Decl., Ex. B, attachment ¶ 2. As determined by the
2 Administrative Commission, the Schulzes ceased to serve “in good faith and good
3 standing” by no later than the date they renounced the jurisdiction of the Church, and that
4 date was December 16, 2015. Dahl Decl., Ex. B ¶ 15. As a result, the conditions required
5 for any severance obligation of First Presbyterian have not been met: the Schulzes are not
6 serving as pastors of First Presbyterian in good faith and in good standing, as determined
7 under Church law.

8 The need for deference to the Church’s interpretation of its own law is particularly
9 acute when determining whether a pastor is in good standing. To pass upon this issue
10 would require the Court to intervene and determine the necessary qualifications for
11 leadership within the Church, which is a fundamentally ecclesiastical matter. *See Elvig*,
12 123 Wn. App. at 496 (noting that “civil courts may not adjudicate matters involving a
13 church’s selection of its spiritual leaders”); *Erdman v. Chapel Hill Presbyterian Church*,
14 175 Wn.2d 659, 668, 286 P.3d 357 (2012) (quoting *Gonzalez v. Roman Catholic*
15 *Archbishop of Manila*, 280 U.S. 1, 16, 50 S. Ct. 5, 74 L. Ed. 131 (1929) (“[I]t is the
16 function of the church authorities to determine what the essential qualifications of a
17 chaplain are and whether the candidate possesses them.”)). The Court must defer to the
18 Administrative Commission’s resolution of this issue and grant summary judgment to
19 plaintiffs.

20 **4. Not only are the severance agreements invalid and, because of the**
21 **Schulzes’ renunciation of jurisdiction, inapplicable; in addition,**
22 **First Presbyterian had good cause to terminate their employment.**

23 The Severance Agreements are invalid and inapplicable. Additionally, First
24 Presbyterian had good cause to terminate the Schulzes.

25 As a threshold matter, the *Book of Order* does not require good cause to terminate
a relationship with a pastor. Dahl Decl., Ex. B ¶ 16 (citing *Book of Order* G-2.0504). The

1 Administrative Commission determined that a purported good-cause standard “does not
2 and cannot replace the requirements placed upon teaching elders by the *Book of Order*.”
3 *Id.* Among the requirements of teaching elders set forth in the *Book of Order* is the
4 requirement of service to the Church, the same Church whose jurisdiction Jeff and Ellen
5 Schulz renounced in December 2015. *See* Lumsden Decl. ¶ 23. The former elders of
6 First Presbyterian were not entitled to replace the standards in the *Book of Order* with
7 their own limited notion of “good cause.” Dahl Decl., Ex. B ¶ 16.

8 But in any event, the Administrative Commission has determined that the good-
9 cause standard was satisfied here. As the Second Report says, the Administrative
10 Commission’s First Report “described conduct manifesting ‘dishonesty . . . or intentional
11 and knowing misrepresentation by Pastor Schulz,’ as well as ‘[m]isconduct in the
12 performance of Pastor Schulz’s duties and responsibilities,’” citing to the language of the
13 Severance Agreements. Dahl Decl., Ex. B ¶ 17. In the First Report, the Administrative
14 Commission noted several violations of these standards of conduct. Dahl Decl., Ex. A ¶¶
15 10-16, 19, 21. For instance, the Schulzes attempted to conceal their plans to leave the
16 Church by intimidating church elders and swearing them to secrecy. *Id.* Jeff Schulz also
17 lied about the hiring of a lawyer to help misappropriate Church property. *Id.* ¶ 19.

18 The Court must defer to the Administrative Commission’s determination that the
19 Schulzes’ dishonesty and misconduct met the good-cause test for termination. Courts are
20 forbidden from inquiring into whether standards were met in terminating a ministerial
21 arrangement, because to do so would entangle the court in ecclesiastical matters. *See*,
22 *e.g.*, *DeBruin v. St. Patrick Congregation*, 816 N.W.2d 878, 888-89 (Wis. 2012) (plurality
23 op.) (court could not determine whether minister was terminated with “good and sufficient
24 cause” in a manner permissible under the First Amendment; majority of court held that
25 complaint for breach of contract failed to state a claim for which relief could be granted);

1 *Friedlander v. Port Jewish Ctr.*, 347 F. App'x 654, 654 (2d Cir. 2009) (rabbi's suit
2 against temple for breach of contract could not proceed under First Amendment because it
3 would have required determination of whether rabbi conducted "gross misconduct or
4 willful neglect of duty"); *Woodward v. St. John Vianney Theological Seminary*, 2012 WL
5 7746927 (Colo. Dist. Ct. Sept. 13, 2012) ("[A]ny determination that SJV terminated Dr.
6 Woodward for 'just cause' or in want of 'just cause' would require this Court to decide
7 whether SJV's decision to fire Dr. Woodward was either right or wrong. This is clearly
8 prohibited by the First Amendment."); *Gates*, 103 Wn. App. at 168 (court could not
9 permissibly interpret job description, which required liturgical assistant to provide for
10 "spiritual needs" of the parish, without "an evaluation of religious scripture, doctrine, and
11 principles").

12 Here, a court cannot determine whether the good-cause standard has been met
13 without interpreting Church doctrine. For example, the Court cannot determine whether
14 the Schulzes engaged in "misconduct in the performance of [their] duties and
15 responsibilities," which includes their treatment of church members and violations of
16 Church law, without declaring what "duties" and "responsibilities" the Schulzes owed as
17 pastors. See Dahl Decl., Ex. B, attachment at ¶ 4(e). Nor can the Court determine
18 whether the Schulzes engaged in moral turpitude which would harm First Presbyterian's
19 "reputation or community standing" without delving into religious concerns regarding the
20 proper conduct of a Presbyterian pastor. Because this inquiry into Church doctrine is
21 forbidden by the First Amendment, the Court must defer to the Administrative
22 Commission's determination that the good-cause standard was met. See, e.g., *El Farra v.*
23 *Sayyed*, 226 S.W.3d 792, 796-97 (Ark. 2006) (claim for breach of contract was not
24 cognizable because it required inquiry into whether religious body terminated minister "on
25 valid grounds according to Islamic Jurisdiction (Shair'a)").

1 Both the hierarchical deference doctrine from *Rohrbaugh* and the ecclesiastical
2 abstention doctrine from *Gates* compel summary judgment to plaintiffs on the “good
3 cause” question. But because the Schulzes may argue that the Severance Agreements
4 should be evaluated under so-called “neutral principles,” plaintiffs will also address why
5 their argument fails on summary judgment even under such a legal test.

6 Paragraph 4 of the Severance Agreements defines “Good Cause” for termination in
7 seven disjunctive provisions. Under subparagraph (d), good cause is “[a]ny conduct
8 involving moral turpitude by Pastor Schulz that causes harm to either her [his] or [First
9 Presbyterian’s] reputation or community standing, or any arrest or violation of law other
10 than for minor traffic infractions.” Under subparagraph (e), good cause is “[m]isconduct
11 in the performance of Pastor Schulz’s duties and responsibilities or conduct that would be
12 likely to cause financial or reputational detriment to Pastor Schulz or [First Presbyterian].”
13 Both of these tests are satisfied under any analysis.

14 First, the Schulzes violated subparagraph (d) by committing “a violation of law . . .
15 .” As revealed by the books and records of First Presbyterian, and as confirmed by the
16 expert reports and declaration of Neil Beaton, the Schulzes artificially reduced their
17 income in 2013 by accepting payments under the table and purporting to “realize” this
18 income in a subsequent (and more favorable) tax year. *See* Declaration of Neil Beaton in
19 Support of Plaintiffs’ Amended Motion for Summary Judgment (“Beaton Decl.”), ¶¶ 5-9.
20 The Schulzes were paid salary in December 2013, but they accepted payment “under the
21 table” and outside of payroll. *Id.* ¶ 5. The Schulzes purported to defer this income, but it
22 is a violation of the Internal Revenue Code for individuals to receive income in one year
23 but then report it in a later year. *Id.* ¶ 7. Ellen Schulz confirmed her awareness that the
24 Schulzes had avoided taxes in 2013 by writing, in 2016, to request that her 2013 income
25 be included on her 2016 W-2. Lumsden Decl., Ex. G. Both this statement and their 2013

1 tax return confirm that the Schulzes did not report all the income that they received in
2 2013.

3 The Schulzes violated not only the Internal Revenue Code but also laws governing
4 false statements in connection with obtaining federal financial aid. David Martin wrote
5 that the Schulzes received a cost-of-living adjustment bonus in mid-2013 and that this
6 disbursement “sharply reduc[ed] the potential financial aid available from Princeton
7 University for their eldest son.” Lumsden Decl. ¶ 27 & Ex. F. This gave rise to the
8 under-the-table payments and the idea to impermissibly “defer” income in order to
9 increase the amount of financial aid available to the Schulzes, which Mr. Martin candidly
10 put in writing. *See id.* at Ex. F. The Schulzes lowered their purported tax liability both
11 for IRS reporting purposes and for the purpose of submitting a false Free Application for
12 Federal Student Aid (“FAFSA”) application. *See* 18 U.S.C. § 1001 (prohibiting false
13 statement in connection with federal government program); 20 U.S.C. § 1097 (prohibiting
14 obtaining by fraud or false statements funds provided under financial aid statutes).
15 Because the Schulzes committed violations of the law other than minor traffic infractions,
16 First Presbyterian had good cause to terminate their pastorates.

17 Second, the Schulzes violated subparagraph (e) by engaging in “[m]isconduct in
18 the performance of Pastor Schulz’s duties and responsibilities or conduct that would be
19 likely to cause financial or reputational detriment to Pastor Schulz or [First Presbyterian].”
20 Receiving under-the-table payments to conceal income from the books and records of a
21 church, from taxing authorities, or both is serious misconduct for a Presbyterian pastor.
22 Lumsden Decl. ¶ 29. The arrangement that the Schulzes made with Mr. Martin, a former
23 ruling elder of First Presbyterian, to impermissibly defer reporting (but not receipt) of
24 income undermines confidence in the honesty and judgment of the church’s leadership.
25 *Id.* The arrangement also calls into question the integrity of the church’s financial

1 recordkeeping, and such integrity is critical to the reputation and financial health of a
2 church. *Id.* The Schulzes’ actions were likely to cause, and did cause, reputational harm
3 to both First Presbyterian and the Schulzes. *Id.* ¶ 30. Thus, First Presbyterian had good
4 cause to terminate the Schulzes’ employment.

5 The Schulzes cannot show that the Severance Agreements entitle them to ongoing
6 salary, whether the decision of the Administrative Commission is afforded deference or
7 not. The Court should enter summary judgment on plaintiffs’ claims and enter a
8 declaratory judgment confirming that First Presbyterian has no obligation to the Schulzes.

9 **B. Issue preclusion prevents the Schulzes from re-litigating many issues**
10 **in this case.**

11 Summary judgment is appropriate because the material facts are not in dispute and
12 governing law requires the Court to defer to the Administrative Commission’s
13 determinations. That many of the same issues raised in this case were previously litigated
14 in *Presbytery I* makes summary judgment even more appropriate. To the extent that the
15 Schulzes wish to dispute certain issues—such as whether Seattle Presbytery or its
16 Administrative Commission is a higher council within a hierarchical church—issue
17 preclusion forecloses them from doing so.

18 In Washington, issue preclusion applies when:

19 (1) the previously-decided issue is identical with the one presented in the
20 action in question; (2) there was a final judgment on the merits; (3) the
21 party against whom collateral estoppel is asserted was a party to, or in
22 privity with a party to, the prior adjudication; and (4) application of the
doctrine does not work an injustice on the party against whom the doctrine
will be applied.

23 *Cunningham v. State*, 61 Wn. App. 562, 566, 811 P.2d 225 (1991). For purposes of issue
24 preclusion, a “final judgment” includes “any prior adjudication of an issue in another
25 action that is determined to be sufficiently firm to be accorded conclusive effect.”

1 Restatement (Second) of Judgments § 13; *see also Cunningham*, 61 Wn. App. at 564-70
2 (applying issue preclusion based on a partial summary judgment from a previous case that
3 settled prior to any final judgment).

4 All elements of issue preclusion are present here. Several of the issues that this
5 case raises are identical to those decided in *Presbytery I*. Among other things, *Presbytery*
6 *I* determined that (1) the Church is a hierarchical church in which the determinations of
7 Seattle Presbytery, through its Administrative Commission, are conclusive and binding on
8 the session, trustees, and congregation of First Presbyterian; (2) the findings and rulings of
9 the Administrative Commission in its First Report are conclusive and binding in all
10 determinations of church policy and governance related to First Presbyterian; and (3) the
11 Administrative Commission assumed original jurisdiction of First Presbyterian on
12 February 16, 2016, and it continues to govern First Presbyterian. *See Mitchell Decl.*, Ex.
13 A ¶¶ 1, 2, 5. In this case, plaintiffs ask for deference to the determinations of the
14 Administrative Commission and a holding that they are binding. Plaintiffs' motion is also
15 founded on their right, confirmed in *Presbytery I*, to govern First Presbyterian. The
16 Schulzes cannot re-litigate any of these issues here.

17 The other factors required for issue preclusion to apply are also present. First, as
18 in *Cunningham*, the court issued a judgment on the merits that, although not final, is
19 "sufficiently firm to be accorded conclusive effect." 61 Wn. App. at 564. The Court's
20 summary judgment in *Presbytery I* was decided after substantial briefing and a full
21 hearing. The Court also denied a later motion to reconsider its orders after requesting
22 supplemental briefing. Case No. 16-2-03515-9 SEA, Dkts. No. 105, 126. Second, the
23 Schulzes were defendants in *Presbytery I*, and they had full opportunity to litigate the
24 issues. Third, no injustice will be worked by acknowledging this Court's prior judgment
25 and avoiding re-litigation of issues that have already been decided.

1 Not only did the Schulzes vigorously defend their actions and dispute the
2 plaintiffs' claims; in addition, the Court ruled only after reviewing extensive briefs and
3 giving the parties' arguments full consideration. The Court should not be required to re-
4 examine the determinations of Church governance that it already made in *Presbytery I*.

5 **C. Because the Schulzes are not owed any wages, summary judgment**
6 **should be entered dismissing their counterclaims.**

7 The Schulzes have counterclaimed for breach of contract and violation of
8 Washington wage law, RCW 49.52.050. For the reasons set forth above, the Severance
9 Agreements are invalid, inapplicable, and unenforceable. Because First Presbyterian has
10 no obligation to pay the Schulzes, there can be no breach of contract claim. Moreover,
11 because the existence of a valid obligation to pay wages is necessary to sustain a claim
12 under RCW 49.52.050, the Schulzes have no viable claim for violation of Washington
13 wage law. *See Chelan Cty. Deputy Sheriff's Ass'n v. Chelan Cty.*, 109 Wn.2d 282, 300,
14 745 P.2d 1 (1987) (wages must be "due under a statute, ordinance, or contract"); *Stevenson*
15 *v. United Subcontractors, Inc.*, 365 F. App'x 752, 753 (9th Cir. 2009) (holding that
16 because no employment contract was breached, plaintiff's claim for willful withholding of
17 wages under RCW 49.52 failed).

18 In addition to failing for lack of an enforceable agreement, the Schulzes' wage
19 claim fails because First Presbyterian's obligation to pay them was (at best for the
20 Schulzes) "fairly debatable." *See Wash. State Nurses Ass'n v. Sacred Heart Med. Ctr.*,
21 175 Wn.2d 822, 834-36, 287 P.3d 516 (2012) (holding that although hospital had failed to
22 comply with minimum wage laws, claim under RCW 49.52 failed because conflict was
23 "fairly debatable dispute" over wages owed). Whether there is a bona fide dispute over
24 the obligation to pay may be summarily adjudicated. *See id.* at 834; *Snoqualmie Police*
25 *Ass'n v. City of Snoqualmie*, 165 Wn. App. 895, 908, 273 P.3d 983 (2012) (noting that

1 RCW 49.52 claim is not cognizable when there exists “a bona fide dispute as to the
2 obligation of payment . . . [,]” and concluding as a matter of law that obligation that had
3 not been adjudicated was subject of bona fide dispute over obligation of payment).

4 The Schulzes’ severance claim is well outside the purpose of RCW 49.52, which
5 exists to provide harsh remedies “to prevent abuses by employers” in an inherently uneven
6 setting. *See Ellerman v. Centerpoint Prepress, Inc.*, 143 Wn.2d 514, 519, 22 P.3d 795
7 (2001). That is far from the case here: the Schulzes entered into agreements that violated
8 Church law with the goal of later forcing First Presbyterian to pay them for ministering to
9 a group that had left the Church. The Schulzes’ wage claim, like their breach of contract
10 claim, should be dismissed on summary judgment.

11 **VII. CONCLUSION**

12 Summary judgment is appropriate both with respect to plaintiffs’ claim for
13 declaratory relief and defendants’ counterclaims. There is no genuine issue of material
14 fact bearing on the Administrative Commission’s determination that the Severance
15 Agreements are invalid, inapplicable, and unenforceable. There is also no genuine issue
16 of material fact relating to the actions of the Schulzes that violated the law, bringing both
17 them and First Presbyterian into disrepute. The Court should enter a declaratory judgment
18 confirming that the Severance Agreements do not bind First Presbyterian, and it should
19 enter a judgment dismissing the Schulzes’ counterclaims.

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DATED this 30th day of January 2017.

I certify that the foregoing memorandum contains 7,185 words, in compliance with the Local Civil Rules.

Respectfully submitted,

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