

**LAW & MOTION CALENDAR
TENTATIVE RULINGS**

September 8, 2023

**9:00 a.m.
10:30 a.m.
1:30 p.m.**

CX-104

JUDGE WILLIAM D. CLASTER

Department CX104 Phone Number: (657) 622-5304

The Court will hear oral argument on all matters at the time noticed for the hearing. If you would prefer to submit the matter on your papers without oral argument, please advise the clerk by calling (657) 622-5304. The Court will not entertain a request for continuance nor filing of further documents once the ruling has been posted.

APPEARANCES: Appearances, whether remote or in person, must be in compliance with new Code of Civil Procedure §367.75, California Rules of Court, Rule 3.672, and Superior Court of California, County of Orange, Appearance Procedure and Information, Civil Unlimited and Complex, located at https://www.occourts.org/media-relations/covid/Civil_Unlimited_and_Complex_Appearance_Procedure_and_Information.pdf.

COURT REPORTERS: Official court reporters (i.e. court reporters employed by the Court) are **NOT** provided for any matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- [Civil Court Reporter Pooling](#); and
- For additional information, please see the court's website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.
- [Civil Limited, Unlimited and Complex \(Updated June 11, 2020\)](#)

#	CASE NAME	MATTER
9:00 a.m.		
1	JCCP 5176 Watermark Services IV, LLC Wave and Hour Cases	Plaintiffs Daniel Carrillo-Salazar and Evanina's Motion for Final Approval of Class Action Settlement ROA 101 Plaintiffs' motion for final approval of class action settlement is CONTINUED to October 27, 2023 at 9:00 a.m. in Department CX101 for the parties to address the following issue. Any supplemental briefing shall be filed on or before October 17, 2023. The settlement agreement provides that "Class Counsel," as defined, will be paid up to \$800,000 in attorneys' fees. Class counsel are defined as Jackson Law, APC, Aegis Law Firm, PC, and United Employees Law Group. In the

		<p>Court's order of January 13, 2023, it directed counsel to provide billing records at final approval to support the fee request. The Jackson and Aegis firms filed declarations attaching billing records. The UELG firm has not filed such a declaration. If UELG is to share in the fee award, it must provide the requested billing records.</p>
2	<p>19-01092692</p> <p>Rodriguez vs. Dynamic Auto Images, Inc.</p>	<ol style="list-style-type: none"> 1. Defendant Tiffany Miller's Attorney, Adam L. Kidd's, Notice of Motion and Motion to Be Relieved as Counsel ROA 735 2. Defendant Tiffany Miller's Attorney, JL Sean Slattery's, Notice of Motion and Motion to Be Relieved as Counsel ROA 710 3. Defendant Tiffany Miller's Attorney, David P. Hall's, Notice of Motion and Motion to Be Relieved as Counsel ROA 745 4. Defendant Corey Miller's Attorney, Adam L. Kidd's, Notice of Motion and Motion to Be Relieved as Counsel ROA 705 <p>Continued to 11/03/2023 at 9:00 a.m. in Department CX101.</p>
3	<p>21-01222080</p> <p>Global Relocations, Inc. vs. TDF Financial Services, Inc.</p>	<ol style="list-style-type: none"> 1. Defendant James Carlson's Notice of Demurrer and Demurrer to First Amended Complaint ROA 92 <p>2. Status Conference</p>
4	<p>20-01176672</p> <p>Rodriguez vs. Dynamic Auto Images, Inc.</p>	<ol style="list-style-type: none"> 1. Defendant Eileen Miller's Attorney, Adam L. Kidd's, Notice of Motion and Motion to Be Relieved as Counsel ROA 168 2. Defendant Eileen Miller's Attorney, JL Sean Slattery's, Notice of Motion and Motion to Be Relieved as Counsel ROA 163 3. Defendant Eileen Miller's Attorney, David P Hall's, Notice of Motion and Motion to Be Relieved as Counsel ROA 158 4. Defendant Thomas Miller's Attorney, Adam L, Kidd's, Notice of Motion and Motion to Be Relieved as Counsel ROA 153 5. Defendant Thomas Miller's Attorney, JL Sean Slattery's, Notice of Motion and Motion to Be Relieved as Counsel ROA 133 6. Defendant Thomas Miller's Attorney, David P Hall's Notice of Motion and Motion to Be Relieved as Counsel ROA 148
5	<p>21-01232738</p> <p>Azadian vs. Reed</p>	<p>Defendant City of Newport Beach's Notice of Demurrer and Demurrer to Second Amended Complaint ROA 224</p> <p>The City of Newport Beach's demurrer to the sixth cause of action in Ghassem Azadian's Second Amended Complaint (2AC) is SUSTAINED WITHOUT LEAVE TO AMEND.</p>

In addition, it appears neither Azadian nor Gregory and Carolyn Reed complied with Judge Lee's order of May 5, 2023 directing them to separately file in this Court the Reeds' cross-complaint and Azadian's answer thereto, both of which were previously filed in federal court. (See ROA 260, at p. 3, ¶ 6.) The Reeds are ordered to file their cross-complaint, and Azadian is ordered to file his answer thereto, by September 15, 2023.

I. Background

Azadian owns a property on Kings Road in the City. His property is traversed by a sewer easement held by the City. The lateral sewer line in the easement is roughly 70 years old, and Azadian alleges it is corroded and in need of substantial repair. The lateral line drains several properties along Kings Road before tying into the sewer main under the street.

The Reeds own one of the properties drained by the lateral. In 2019 and 2020, they demolished their existing home and built a much larger structure on the property. The new house is still connected to the lateral, even though it had much higher sewer usage than originally planned (with a total of 9 bathrooms, as opposed to the 6.5 it had when the Reeds purchased it, or the 2 bathrooms it first had when built). Azadian alleges the increased sewer usage has repeatedly caused backups in the lateral, which is now not only old and corroded, but operating far over its intended capacity.

Azadian filed suit against the Reeds, their contractors, and the City. As relevant here, Azadian seeks a writ of mandate compelling the City to order the Reeds to disconnect from the old lateral line and instead tie directly to the sewer main under Kings Road.

The City demurred to the writ of mandate claim in Azadian's FAC. Judge Lee overruled the demurrer insofar as it was based on Azadian's failure to exhaust administrative remedies, but he sustained the demurrer with leave to amend insofar as Azadian failed to allege "any clear and present duty on the part of [the City], or any beneficial right in [Azadian] to the performance of that duty, which relates in any way to the decision to allow the Reed Project to attach to the sewer line easement." (ROA 142, at p. 6.)

Azadian then filed the operative 2AC, and the City has once again demurred

to the writ of mandate claim.

II. Discussion

The sixth cause of action in the 2AC does not specify what type of mandamus Azadian seeks. However, at paragraph 16, he cites CCP § 1085 as a basis for the Court's jurisdiction. The Court therefore concludes Azadian seeks traditional mandamus.

Traditional mandamus "is available where the petitioner has no plain, speedy and adequate alternative remedy; the respondent has a clear, present and usually ministerial duty to perform; and the petitioner has a clear, present and beneficial right to performance." (*Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 752.)

"Generally, Code of Civil Procedure section 1085 may be employed only to compel the performance of a duty which is purely ministerial in character." (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501.) "A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists. Discretion, on the other hand, is the power conferred on public functionaries to act officially according to the dictates of their own judgment." (*Id.*, at pp. 501-502.) "[T]he writ will not lie to control discretion conferred upon a public officer or agency." (*Shamsian v. Department of Conservation* (2006) 136 Cal.App.4th 621, 640.)

The sole source of a legal duty cited in the 2AC is Article XI, section 7 of the California Constitution. It provides, in its entirety: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." That is, this provision vests the police power in local governments. It imposes no duties at all, let alone ministerial ones. To the contrary, it states that local governments "may make and enforce" ordinances and regulations to protect public health and safety. It cannot serve as a basis for traditional mandamus.

In opposition, Azadian argues the 2AC more than sufficiently pleads the existence of a duty to ensure sewage is properly disposed of, and the City's failure to fulfill that duty. Azadian is correct that cities have a non-delegable duty to ensure that all sewage in their boundaries is safely disposed of

without harming third parties. (See *People v. City of Los Angeles* (1948) 83 Cal.App.2d 627, 643.) But nothing in the authorities Azadian cites limits a city's discretion in how that duty will be fulfilled. Because the City has discretion in determining how to fulfill this duty, traditional mandamus is not available to compel performance.

Conceding the weakness of the 2AC (which was drafted by prior counsel), Azadian requests leave to amend. He identifies several legal enactments he contends create a duty that would give rise to mandamus relief. The Court disagrees on all counts.

First, he cites Newport Beach Administrative Code §§ 15.02.010 and 15.08.010, which adopt the California Building Code and the Uniform Plumbing Code as the City's own. He contends the City has violated the California Building Code and the Uniform Plumbing Code, and that under *Lippman v. City of Oakland* (2017) 19 Cal.App.5th 750, mandamus lies to enforce the California Building Code and the Uniform Plumbing Code.

Sections 15.02.010 and 15.08.010 simply adopt the California Building Code and Uniform Plumbing Code. As the City points out, it is essentially required to do so by state law. (See Health & Saf. Code § 17958 [requiring local governments to adopt standards equivalent to those adopted under the California Building Code and Health & Saf. Code § 17922, or else those standards will be imposed by operation of law]; *id.*, § 17922 [adopting the Uniform Plumbing Code].) Nothing in those sections of the Administrative Code does anything other than adopt the California Building Code and the Uniform Plumbing Code. By their terms, they impose no duties of any kind.

Presumably, Azadian means the City has violated the California Building Code and the Uniform Plumbing Code, and that under *Lippman*, mandamus lies to remedy those violations. In *Lippman*, the plaintiff identified a conflict between the California Building Code (which required cities to provide multi-member boards to hear building appeals) and the Oakland Municipal Code (which provided for building appeals before a single hearing examiner). After a single hearing examiner denied the plaintiff's appeal, the Court of Appeal issued a writ of mandate requiring Oakland to follow the California Building Code and hear the appeal with a multi-member board. Plaintiff identifies no such conflict here. He does not even identify which provision of the California Building Code or the Uniform Plumbing Code he believes the City violated, nor does he discuss whether that provision imposes a ministerial duty or a discretionary duty.

Second, Azadian identifies several provisions of the City's Municipal Code

		<p>providing for appeals of zoning and building decisions, and he says the City failed to afford him the required appeal. This argument falls apart upon comparison with the procedural history of this case. The City previously demurred to the mandamus claim on the grounds that Azadian failed to exhaust his administrative remedies by appealing the City's grant of permission to the Reeds to use the lateral. Judge Lee overruled this ground for demurrer, accepting Azadian's argument that the City never identified a specific appealable decision in the first place. (ROA 142, at pp. 2-3.) Having successfully argued an appeal was unnecessary or impossible, Azadian cannot now argue the City's failure to afford him an appeal gives rise to a mandamus claim. In any event, the City's failure to afford Azadian an appeal would, at most, give the Court grounds to order the City to permit Azadian's administrative appeal. It would not give the Court grounds to order the relief Azadian seeks: compelling the City to require the Reeds to tie their sewer system to the main instead of the lateral.</p> <p>Finally, Azadian contends that under Newport Beach Municipal Code § 14.24.020, the Reeds' renovation project required the City to inspect the lateral to ensure it complied with current standards, and no inspection was ever done. As the City points out in reply, assuming this section of the Municipal Code creates a ministerial duty, it is at most the duty to conduct an inspection (and perhaps to ensure necessary work is done to bring the lateral up to code). As with the failure to afford Azadian an appeal, the City's alleged failure to conduct an inspection is not grounds to order the City to require the Reeds to reroute their sewer system.</p> <p>The City's demurrer is sustained. While Azadian argues leave to amend would be proper, none of the provisions of the City's Administrative Code or Municipal Code cited in his opposition supports the relief sought. Unless Azadian at the hearing of this motion can point to a viable basis to support his writ claim, the Court will find any further amendment futile and leave to amend will be denied.</p>
6	23-01316089 Calderon vs. Abbie, Inc.	Plaintiff Melody Calderon's Unopposed Verified Application of Melissa Hague for Pro Hac Vice Admission ROA 108 The unopposed application of Melissa Hague for pro hac vice admission is GRANTED. The application complies with the requirements of CRC 9.40.
10:00 a.m.		
7	22-01291272 Wimber vs. Scott	1. Nominal Defendant Dwelling Place Anaheim, FKA Vineyard Christian Fellowship of Anaheim to Plaintiffs Demurrer to Complaint ROA 52 2. Defendants Alan Scott, Kathryn Scott, Jeremy Riddle, Katie Riddle, Gregory Scherer, Banning Leibscher, and Julian Adams'

Demurrer to Complaint ROA 56

3. Case Management Conference

The demurrers of (1) Nominal Defendant Vineyard Christian Fellowship of Anaheim, Inc. dba Dwelling Place Anaheim (the “Church”) and (2) Individual Defendants Alan Scott, Kathryn Scott, Jeremy Riddle, Katie Riddle, Gregory Scherer, Banning Leibscher, and Julian Adams are SUSTAINED WITH LEAVE TO AMEND. Any amended pleading must be filed by September 21, 2023.

Defendants’ requests for judicial notice are DENIED on the ground that the material at issue is immaterial to the Court’s ruling on these demurrers.

I. Factual Background

The complaint is lengthy and detailed. The Court summarizes pertinent allegations below.

A. The Church and the Vineyard Movement

The Vineyard Movement emerged in the late 1970s. By 1982, there were about seven Vineyard churches in a loose association, including the Church. John Wimber, founding pastor of the Church (which was co-founded by plaintiff Carol Wimber), was quickly recognized as the leader of the Vineyard Movement. Under his leadership and his successors’ leadership, the Vineyard Movement has grown to include over 2,400 churches worldwide. The Church was recognized as the flagship of the Vineyard Movement.

John Wimber passed away in 1997. He was succeeded as senior pastor of the Church by Lance Pittluck, a plaintiff here. Pittluck resigned in 2017, and a search for a new senior pastor began. The Church formed a search committee consisting of five board members, five staff members, and two lay members of the Church. From December 2017 to January 2018, they investigated numerous potential candidates and ended up interviewing a select few.

B. The Scotts and Their Disillusionment with the Vineyard

Movement

The Scotts were previously the co-pastors of Causeway Coast Vineyard in Northern Ireland. They resigned in March 2017. Kathryn Scott obtained a visa from the United States in April 2017. Based on the visa, the Scotts moved to Orange County with the intent to further Kathryn Scott's music career.

During previous visits to Southern California, the Scotts became friendly with Mike and Liz Safford. Mike Safford was the senior associate pastor of the Church serving under Pittluck. Many assumed Mike Safford would become senior pastor when Pittluck retired. But in early 2017, Safford asked Alan Scott if he would consider becoming senior pastor of the Church upon Pittluck's retirement. Scott refused, stating that after his resignation from Causeway Coast Vineyard, he had no intent to continue affiliating with the Vineyard Movement due to his dissatisfaction with the organization. However, in a conversation in April 2017, Alan Scott asked Mike Safford about the Church's assets, and he learned the Church owned \$55 million in real property and had \$19 million in the bank. (At the time Scott became senior pastor, this was reduced to \$7 million because various Church debts had been paid off.)

In May 2017, Alan Scott emailed Phil Strout, then the National Director of Vineyard USA, to discuss his decision to disaffiliate from the Vineyard Movement upon his resignation from Causeway Coast Vineyard. He wrote that the Vineyard Movement wasn't "an environment where we would want to plant our lives or raise our girls," and that he and Kathryn had "arrived at the painful conclusion that we won't be part of a local [V]ineyard church in the next part of our journey."

In an August 2017 conversation, Alan Scott again told Mike Safford he had no desire to be senior pastor of the Church. However, he also discouraged Mike Safford from applying for the position, saying Safford was not qualified for it. He instead encouraged Safford to stay on as an associate pastor.

C. The Scotts' Recruitment Process

Despite his prior statements to Safford, Alan Scott applied to be senior pastor of the Church when Pittluck retired. When the search committee considered his application, neither the search committee nor the Church board knew of his disillusionment with the Vineyard Movement, his personal

decision to disaffiliate from the Vineyard Movement, his email to Phil Strout, or his discussions with Safford. Neither Strout nor Safford informed the board or search committee of Scott's statements, and neither of them participated in the recruitment process.

The search committee, however, was acutely concerned with both the importance of the Church's place in the Vineyard Movement and the Church remaining part of the Vineyard Movement. It therefore questioned candidates on their commitment to the Vineyard Movement. During the Scotts' interview with the committee, Alan Scott stated he was "Vineyard through and through." This phrase has specific meaning in the Vineyard Movement, symbolizing commitment to the Vineyard Movement to the exclusion of other Christian movements. The Scotts were aware of this specific meaning. Alan Scott also told the committee, "Due to the historical nature of this church and out of honor to John and the Wimber family, I would never take this house out of the Vineyard Movement." When asked if the Scotts would ever desire to lead the Church toward another Christian movement, Alan Scott replied that John Wimber was like a spiritual father to him and Kathryn Scott.

Joe Gillentine, a Plaintiff here and co-chair of the search committee, was convinced based on these responses that there was no question the Scotts would keep the Church part of the Vineyard Movement. If there had ever been any question on that point, the search committee never would have recommended them, and the board never would have hired them.

After Alan Scott was offered the position, he and Kathryn visited the Saffords' home. They told the Saffords they would "never take Vineyard Anaheim out of the Vineyard Movement," would "mak[e] sure this church remained a Vineyard church," and would "leave the church to the Vineyard [Movement] and go start their own new church" if they had disagreements with the Vineyard Movement.

D. Subsequent Developments

From 2019 to 2021, Alan Scott methodically reconstituted the Church's board of directors so that it consisted only of members loyal to him. On February 25, 2022, Alan Scott publicly announced the Church was leaving the Vineyard Movement to found a new Christian movement. This decision was not discussed with parishioners, Plaintiffs, the Church's current board members, or the Vineyard Movement proper. However, Plaintiffs allege the

current board has since ratified this decision.

Based on the foregoing, Plaintiffs filed suit, alleging as follows:

- The Scotts' true goal, from the time Mike Safford first told Alan Scott about the Church's finances, has been to gain control of the Church's roughly \$62 million in assets.
- The Scotts never had any intent of keeping the Church part of the Vineyard Movement. Rather, they intended to use their leadership positions to wrest control of the Church's assets. Their statements during the recruitment process were knowingly false when made.
- The current board of directors has breached its fiduciary duties by ratifying the Church's disaffiliation, because allowing the Church to cease being a Vineyard church contradicts the entire purpose for which it was formed. Furthermore, the current board has breached its fiduciary duties to steward the Church's finances by permitting disaffiliation, which has resulted in a significant drop in attendance and concurrent loss of tithes.
- Plaintiffs and others have financially supported the Church under false pretenses, and were blindsided by the decision to leave the Vineyard Movement.

II. Discussion

Defendants argue in their demurrers that Plaintiffs' claims are barred by the First Amendment. As pled, the Court agrees.

"The First Amendment provides that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.' Among other things, the Religion Clauses protect the right of churches and other religious institutions to decide matters 'of faith and doctrine' without government intrusion. [Citation.] State interference in that sphere would obviously violate the free exercise of religion, and any attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion. The First Amendment outlaws such intrusion. [¶] The independence of religious institutions in matters of 'faith and doctrine' is closely linked to independence in what we have termed 'matters of church government.' [Citation.] This does not mean that religious institutions enjoy a general immunity from secular laws, but it does protect their autonomy with respect to internal management decisions that are essential to the institution's

central mission. And a component of this autonomy is the selection of the individuals who play certain key roles.” (*Our Lady of Guadalupe School v. Morrissey-Berru* (2020) 140 S.Ct. 2049, 2060.)

Put another way, “[t]he First Amendment protects the right of religious institutions ‘to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.’” (*Id.*, at p. 2055 [quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America* (1952) 344 U.S. 94, 116].)

Particularly relevant here is *Maxwell v. Brougher* (1950) 99 Cal.App.2d 824. In *Maxwell*, the pastor of a church was alleged to have engaged in conduct that, if true, would have been grounds to remove him as pastor. The pastor refused to answer the charges, so the plaintiff brought them to the church board with the request that they be brought to the congregation. In violation of church bylaws and custom, the pastor and the board refused to disclose the charges to the congregation. Instead, they called a meeting for a “confidence vote” in the pastor and issued a statement that rumors about the pastor were untrue. A majority of parishioners voted to have a hearing on the rumors and receive evidence, but the board members presiding over the meeting declared the confidence vote won and the rumors quashed. The plaintiff filed suit, seeking a do-over of the meeting in accordance with church bylaws.

The Court of Appeal held secular courts could not interfere in the dispute. “Where the subject matter of a dispute is purely ecclesiastical in its character, a matter which concerns church discipline or the conformity of its members to the standard of morals required of them, the decision of the church tribunal will not be interfered with by the secular courts either by reviewing their acts or by directing them to proceed in a certain manner or, in fact, to proceed at all. If the civil courts undertook so to do they would deprive such bodies of their right of construing their own church laws including doctrinal theology and the uses and customs of every religious denomination.” (*Id.*, at p. 826.) “The rule adopted by the Supreme Court of this state is that the decrees of an ecclesiastical body are binding not only upon the church as such body but are binding and conclusive upon the civil courts whenever pertinent and material to pending litigation.” (*Ibid.*) “From the foregoing it is manifest that the civil courts will not interfere with the decision of the congregation insofar as the charges against the pastor of the church or any other theological or disciplinary matter is concerned.” (*Id.*, at p. 827.)

The gravamen of Plaintiffs’ claims is that the Scotts lied during the pastoral

recruitment process, including lying about one of the search committee's most important concerns--the Church's future affiliation with the Vineyard Movement. Like the pastor in *Maxwell*, if this is true, it may well provide grounds for the Scotts to be dismissed. Yet when Plaintiffs presented these concerns to the board of directors, the board allegedly "failed to act in a manner that satisfies Plaintiffs' concerns." (Compl. ¶ 63.) Like the plaintiff in *Maxwell*, Plaintiffs argue the body responsible for hiring or firing the pastor didn't proceed how they wanted, and like the plaintiff in *Maxwell*, they have filed suit to have a do-over (in Plaintiffs' case, with a wholly reconstituted board). Secular courts cannot be involved in this dispute.

While Plaintiffs do not address *Maxwell* in their briefing, they make several counterarguments. First, they contend this isn't a theological dispute at all since the Court need not decide what the Scotts actually believe about the Vineyard Movement and its teachings. Rather, the Court need only decide whether the Scotts were lying about their intention to keep the Church in the Vineyard Movement. But *Maxwell* teaches that a court "will not interfere with the decision" of the responsible body (there, the full congregation) "insofar as . . . any . . . theological or disciplinary matter is concerned." Even if the Scotts lied, the board has chosen not to discipline them, and the Court cannot second-guess that decision. Plaintiffs also allege the board has ratified the Scotts' decision to disaffiliate the Church from the Vineyard Movement. The decision to remain in the Vineyard Movement or not is ultimately a theological one the Court cannot question. If the board approves of that decision, why does it matter if the Scotts were not forthright in the interviewing process?

Plaintiffs' solution appears to be that the Court should unseat the current board and reconstitute the board as it was in January 2018, before the Scotts were hired, so the reconstituted board may decide how to proceed. Setting aside the questions of whether a secular court may become so directly involved in Church governance, there appears to be no factual basis for this relief. True, Plaintiffs allege Alan Scott remade the board to include only people who would agree with him. (Compl. ¶ 51-52.) But Plaintiffs never allege the old board members were illegally removed, or that new potential board members dissatisfied with the Scotts were threatened or coerced not to apply for a position, etc. As pled, the board simply appears to have turned over organically.

Second, Plaintiffs point to several cases holding a church can be held liable for fraud. These cases are inapposite or non-binding. For example, *Molko v. Holy Spirit Association* (1988) 46 Cal.3d 1092 involved former members of the Unification Church who sued the church, alleging they had been recruited through deception and eventually brainwashed to become cult members. Their fraud claim was based on recruiters' repeated denial that

they were affiliated with the Unification Church. Without those denials, the plaintiffs alleged, they would not have gone along with the recruitment process.

The California Supreme Court allowed the claims to go forward. “The challenge here, as we have stated, is not to the Church’s teachings or to the validity of a religious conversion. The challenge is to the Church’s practice of misrepresenting or concealing its identity in order to bring unsuspecting outsiders into its highly structured environment. That practice is not itself *belief*—it is *conduct* ‘subject to regulation for the protection of society.’” (*Id.*, at p. 1117 [emphasis original].)

Here, unlike in *Molko*, Plaintiffs challenge the Scotts’ sincerity of their professed belief in the Vineyard Movement. In *Molko*, everyone agreed the recruiters were sincere adherents of the Unification Church faith, and everyone agreed they falsely denied their membership because of the teachings of their faith. But Plaintiffs contend the Scotts were lying when they said they were “Vineyard through and through” and intended to keep the Church part of the Vineyard Movement. The statements at issue are allegedly false because the Scotts were not sincere adherents to Vineyard theology.

Plaintiffs also cite *Barr v. United Methodist Church* (1979) 90 Cal.App.3d 259 for the following proposition: “Nevertheless, nothing either our State or Federal Supreme Court has said has even remotely implied that ‘under the cloak of religion, persons may, with impunity, commit frauds upon the public.’” (*Id.*, at p. 275.) Plaintiffs ignore the factual setting of *Barr*. There, the plaintiffs claimed to have been defrauded by a secular retirement home corporation, and they argued that by contract, the United Methodist Church had agreed to be financially responsible for the retirement home corporation’s wrongdoing. As the Court of Appeal put it, “A religious organization should not be relieved of its lawful obligations arising out of secular activities because the satisfaction of those obligations may, in some tangential fashion, discourage religious activities.” (*Id.*, at p. 275.) The alleged fraud here, on the other hand, goes to the Scotts’ personal religious beliefs and to the Church’s affiliation with the Vineyard Movement, an inherently religious question.

Plaintiffs next cite *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America* (1952) 344 U.S. 94 for the proposition that “Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference.” (*Id.*, at p.

		<p>116 [emphasis original to Plaintiffs’ brief].) Plaintiffs omit a footnote after the word “proven.” Footnote 23 of the opinion blockquotes <i>Gonzalez v. Roman Catholic Archbishop of Manila</i> (1929) 280 U.S. 1, which held that in the absence of fraud, collusion, or arbitrariness, an ecclesiastical body’s decision on ecclesiastical matters is binding on secular courts. (<i>Id.</i>, at p. 16.) Subsequent to <i>Kedroff</i>, the Supreme Court explained, “the suggested ‘fraud, collusion, or arbitrariness’ exception” in <i>Gonzalez</i> “was dictum only” and had never been “given concrete content . . . or applied” by the Supreme Court. (<i>Serbian Eastern Orthodox Diocese for U.S. of America and Canada v. Milivojevich</i> (1976) 426 U.S. 696, 712.) This purported “exception” exists only as dictum and has never been applied by the United States Supreme Court.</p> <p>Plaintiffs doubtless have sincerely held complaints about how events unfolded at the Church. If everything alleged in their complaint is true, the Court understands why they would be upset. But as another of the Church’s cases explains: “[S]ecular courts will not attempt to right wrongs related to the hiring, firing, discipline or administration of clergy. Implicit in this statement of the rule is the acknowledgement that such wrongs may exist, that they may be severe, and that the administration of the church itself may be inadequate to provide a remedy. The preservation of the free exercise of religion is deemed so important a principle as to overshadow the inequities which may result from its liberal application.” (<i>Higgins v. Maher</i> (1989) 210 Cal.App.3d 1168, 1175.)</p> <p>Accordingly, the demurrers are sustained. Because this is Plaintiffs’ first attempt to state a cause of action, they are granted leave to amend.</p>
1:30 p.m.		
8	19-01103825 Prime Healthcare vs. Orange County Health Authority	<p>Defendant CalOptima Health’s Motion for Summary Adjudication [Time Barred Exhibit C Claims]</p> <p>Status Conference</p> <p>The motion for summary adjudication is off calendar per moving party.</p>