

Church, the Associated Diocese and Bishops vonRosenberg and Adams seek to file a proposed pleading that asks this Court to order the disassociated diocese and its constituent entities and parishes, led by Bishop Lawrence: to stop using various “Episcopal”-based marks, indicia, and property to confuse the public; and to be removed and replaced as trustees of diocesan and parish property that is held in trust for the Church and the Associated Diocese, in accordance with the recent decision of the South Carolina Supreme Court.

Notwithstanding their common interests with the Church, the Associated Diocese and Bishops vonRosenberg and Adams have certain distinct and particular interests they seek to protect in this action, as follows:

- (1) The Associated Diocese is the beneficiary of a trust that holds title to the diocesan property. The trustee of that trust is The Trustees of The Protestant Episcopal Church in the Diocese of South Carolina. That trust is governed by the 1880 and 1902 Acts of the General Assembly of South Carolina, “for the purpose of receiving and holding” diocesan property for the Associated Diocese, in accord with the recent decision of the South Carolina Supreme Court.
- (2) The Associated Diocese is a beneficiary, together with the Church, of 28 trusts holding parish property under the Dennis Canon, in accord with the recent decision of the South Carolina Supreme Court. The trustees of those trusts are the respective 28 parish corporations, whose directors and trust managers are the members of the respective vestries.
- (3) The Associated Diocese is an authorized user and licensee of the Church’s federal trademark registrations.

(4) The Associated Diocese is the owner of certain South Carolina trademarks and state registrations, namely:

- a. “The Protestant Episcopal Church in the Diocese of South Carolina”;
- b. “The Diocese of South Carolina”;
- c. “The Episcopal Diocese of South Carolina”; and
- d. The following seal:



(5) The Associated Diocese is the owner of unregistered common law trademark rights in the mark “The Episcopal Church in South Carolina.”

(6) Bishop vonRosenberg and Bishop Adams have these same or similar interests by virtue of their former and current offices in the Church and the Associated Diocese.

Based upon these distinct and particular interests, the Associated Diocese and Bishops vonRosenberg and Adams have standing to make trademark and false advertising claims against all of the defendants, including those defendants to be joined, including the following parties:

- (1) Bishop Lawrence;

- (2) John Does 1-10, who are individuals who are consciously engaged in false advertising and trademark infringement together with Bishop Lawrence, but whose identity and numbers are presently unknown;
- (3) The Protestant Episcopal Church in the Diocese of South Carolina (the “Lawrence Diocese”);
- (4) The Trustees of The Protestant Episcopal Church in the Diocese of South Carolina (the “Trustees Corporation”); and
- (5) All of the disassociated parish corporations (the “Lawrence Parishes”).¹

¹ All Saints Protestant Episcopal Church, Inc.; Christ St. Paul’s Episcopal Church; Church of The Cross, Inc. and Church of the Cross Declaration of Trust; Church of The Holy Comforter; Church of the Redeemer; Holy Trinity Episcopal Church; Saint Luke’s Church, Hilton Head; St. Bartholomew’s Episcopal Church; St. David’s Church; St. James’ Church, James Island, S.C.; St. Paul’s Episcopal Church of Bennettsville, Inc.; The Church of St. Luke and St. Paul, Radcliffeboro; The Church of Our Saviour of the Diocese of South Carolina; The Church of the Epiphany (Episcopal); The Church of the Good Shepherd, Charleston, SC; The Church of The Holy Cross; The Church of The Resurrection, Surfside; The Protestant Episcopal Church of The Parish of Saint Philip, in Charleston, in the State of South Carolina; The Protestant Episcopal Church, The Parish of Saint Michael, in Charleston, in the State of South Carolina and St. Michael’s Church Declaration of Trust; The Vestry and Church Wardens of St. Jude’s Church of Walterboro; The Vestry and Church Wardens of The Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens of The Parish of St. Matthew; The Vestry and Wardens of St. Paul’s Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church Wardens of the Episcopal Church of The Parish of Christ Church; Vestry and Church Wardens of The Episcopal Church of the Parish of St. John’s, Charleston County; Christ the King, Waccamaw; St. Matthews Church; St. Andrews Church-Mt. Pleasant Land Trust; St. John’s Episcopal Church of Florence, S.C.; St. Matthias Episcopal Church, Inc.; St. Paul’s Episcopal Church of Conway; The Vestry and Church Wardens of The Episcopal Church of The Parish of Prince George Winyah; The Vestries and Churchwardens of The Parish of St. Andrews; Holy Apostles, Barnwell; St. James Anglican, Blackville; Berkeley County Strawberry Chapel; St. Alban’s Chapel, The Citadel; St. Andrew’s Mission; St. John’s Episcopal, Charleston; St. Barnabas, Dillon; Christ Church, Florence; St. James, Goose Creek; Holy Trinity, Grahamville; Ascension, Hagood; Church of the Advent, Marion; The Well by the Sea, Myrtle Beach; Church of the Resurrection, Myrtle Beach; Grace Parish, North Myrtle Beach; St. Paul’s, Orangeburg; St. Timothy’s, Cane Bay; Atonement, Walterboro.

Additionally, the Associated Diocese, as a beneficiary, has standing to make supplemental state trust law claims against the following parties, as trustees:

- (1) The Trustee Corporation; and
- (2) The 28 parishes that are serving as trustees of the Dennis Canon trusts (the “28 Trustee Parishes”).²

These claims are pled in detail in the proposed pleading attached hereto as Exhibit A.

PROCEDURAL HISTORY

This case was commenced in 2013. The initial plaintiff was Bishop vonRosenberg and the initial defendants were Bishop Lawrence and John Does 1-10.

For the next four years, between 2013 and 2017, the case was effectively stayed, while this Court abstained from exercising jurisdiction in favor of a related state court case: *Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church*, 412 S.C. 211, 806 S.E.2d 82 (2017). The related state court case includes parties that have either already intervened as plaintiffs, currently seek to intervene as plaintiffs, or should be joined as

² All Saints Protestant Episcopal Church, Inc.; Christ St. Paul’s Episcopal Church; Church of The Cross, Inc. and Church of the Cross Declaration of Trust; Church of The Holy Comforter; Church of the Redeemer; Holy Trinity Episcopal Church; Saint Luke’s Church, Hilton Head; St. Bartholomew’s Episcopal Church; St. David’s Church; St. James’ Church, James Island, S.C.; St. Paul’s Episcopal Church of Bennettsville, Inc.; The Church of St. Luke and St. Paul, Radcliffeboro; The Church of Our Saviour of the Diocese of South Carolina; The Church of the Epiphany (Episcopal); The Church of the Good Shepherd, Charleston, SC; The Church of The Holy Cross; The Church of The Resurrection, Surfside; The Protestant Episcopal Church of The Parish of Saint Philip, in Charleston, in the State of South Carolina; The Protestant Episcopal Church, The Parish of Saint Michael, in Charleston, in the State of South Carolina and St. Michael’s Church Declaration of Trust; The Vestry and Church Wardens of St. Jude’s Church of Walterboro; The Vestry and Church Wardens of The Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens of The Parish of St. Matthew; The Vestry and Wardens of St. Paul’s Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church Wardens of the Episcopal Church of The Parish of Christ Church; Vestry and Church Wardens of The Episcopal Church of the Parish of St. John’s, Charleston County.

defendants to this case, including the Church, the Associated Diocese, the Lawrence Diocese, the Trustees Corporation, and the Lawrence Parishes.

This Court's abstention rulings led to two appeals to the Fourth Circuit Court of Appeals, which ultimately issued an order in February of 2017, concluding that this Court should not have abstained from exercising jurisdiction and instructing this Court to proceed with the case.

Following the mandate from the Fourth Circuit Court of Appeals, this case was reopened in March of 2017. Subsequently, some discovery was undertaken, Bishop Adams was added as a plaintiff as the successor to Bishop vonRosenberg, and the Church intervened as an additional plaintiff.

In October of 2017, the case was again stayed by consent of the parties while they participated in Court-ordered mediation. The mediation, by agreement, was expanded to include the parties and claims in the related state court case.

During the most recent stay of this case, while the parties for both cases were participating in the mediation, the related state court case was finally decided by the South Carolina Supreme Court, when, on November 17, 2017, a petition for a rehearing of the August 2, 2017 decision was denied and the remitter was issued.³ The South Carolina Supreme Court's order holds, *inter alia*, that "title is in the trustee corporation for the benefit of the associated diocese"; and that "the twenty-eight church organizations which acceded to the Dennis Canon" –

³ Subsequently, most (but not all) of the plaintiffs from the state case initiated a statutory proceeding in Dorchester County for relief under the Betterment Act for the monetary value of improvements (*i.e.*, buildings) on the land at issue. That statutory proceeding was initiated by the filing of a new complaint and is not a continuation or appeal of the state case (it is also frivolous and wrongfully filed by trustees against their own beneficiaries). The complaint itself requests a stay of the betterment action while some of the state court plaintiffs petition for a writ of certiorari from the United States Supreme Court in the original state court case. The filing of that petition did not stay the decision of the South Carolina Supreme Court. The defendants, the Church and the Associated Diocese, have filed a motion to dismiss the betterment proceeding.

a rule set out in the Church's governing documents – hold their property in “trust in favor of the national church.” *Protestant Episcopal Church in the Diocese of South Carolina*, 421 S.C. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting). The South Carolina Supreme Court left the “ultimate resolution of the parties’ conflicting [trademark] claims to the pending federal case.” *Id.* On February 9, 2018, most of the state court plaintiffs (the Lawrence Diocese, the Trustees Corporation, and 28 of the Lawrence Parishes) filed a petition for writ of certiorari to the United States Supreme Court, which is currently pending. The filing of the petition did not stay the decision of the South Carolina Supreme Court. Notably, the petition did not raise and therefore did not preserve any issue regarding the diocesan property.

On February 14, 2018, after the parties participated in several months of mediation without resolving any issues, the Court lifted the most recent stay and reopened the case. The Court also issued a new scheduling order, providing that motions to amend pleadings should be filed by March 15, 2018.

On February 20, 2018, Bishop Lawrence moved to dismiss one of Bishop vonRosenberg and Adams’ two Lanham Act claims, specifically their claim for trademark infringement under 15 U.S.C. 1125(a)(1), arguing that they lack standing to bring such a claim. That motion is currently pending and a response thereto will be filed by Bishops vonRosenberg and Adams in due course. If, *arguendo*, Bishops vonRosenberg and Adams lack standing to assert a Lanham Act trademark infringement claim in their capacities as the former and current Bishop of the Associated Diocese, the Associated Diocese should certainly be allowed to intervene to assert such a claim for itself. In other words, Bishop Lawrence’s criticism of Bishop vonRosenberg and Adams’ complaint only lends further support to the goal of the instant motions, namely, to

ensure that all of the appropriate and necessary parties and claims are before the Court, so this dispute can be fully resolved.

On March 1, 2018, the Associated Diocese and Bishops vonRosenberg and Adams timely filed their respective motions to intervene, to join parties and claims, and to amend their complaint.

ARGUMENT

The instant motions are made under the authority of several different rules of civil procedure, namely Rules 15, 18, 19, 20, and 24, FRCP.

1. Motion to Intervene: Rule 24

Rule 24, FRCP, applies to the Associated Diocese's motion to intervene.

This Court recently set forth and applied the legal standard for intervention of right, pursuant to Rule 24, FRCP, in its order granting the Church's motion to intervene. Order dated August 23, 2017 ("Thus, to intervene as of right, a movant must show: (1) timely application; (2) an interest in the subject matter of the underlying action; (3) that a denial of the motion for leave to intervene would impair or impede the movant's ability to protect its interest; and (4) that the movant's interest is not adequately represented by the existing parties to the litigation.") (*citing Houston Gen. Ins. Co. v. Moore*, 193 F.3d 838, 839 (4th Cir. 1999)).

The Court's analysis and decision should be the same for the Associated Diocese as it was for the Church.

First, the Associated Diocese's motion is timely. This case is still in its early stages. Discovery is not yet complete. In the midst of discovery, the case was stayed, while the parties, *including the Associated Diocese*, participated in mediation. During the stay, the South Carolina Supreme Court left "the ultimate resolution of the parties' conflicting [trademark] claims to the

pending federal case.” *Protestant Episcopal Church in the Diocese of South Carolina*, 421 S.C. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting). Reacting to that decision and Bishop Lawrence’s continuing activities in spite of that decision, the Associated Diocese filed the instant motion promptly after the stay was lifted.

Second, the Associated Diocese has an interest in the litigation. It owns the state trademarks and registrations and it is an authorized user and licensee of the Church’s federal trademark registrations. It is a beneficiary, together with the Church, of the 28 trusts holding parish property. It is the sole beneficiary of the trust that holds title to the diocesan property. It is being harmed and it has standing to bring trademark and false advertising claims against Bishop Lawrence and the parties to be joined, as well as supplemental state trust law claims against the parties serving as trustees.

Third, the Associated Diocese’s interests would be impaired. An adverse decision could impair its aforementioned trademark interests and its interests as a beneficiary.

Fourth, the Associated Diocese is not adequately represented. Bishops vonRosenberg and Adams have represented some of the Associated Diocese’s interests in this action already, but only by virtue of their offices, and only as to trademark and false advertising claims, and not as to any trust law claims. Their presence, therefore, is no reason to deny the Associated Diocese’s intervention. Nor is the presence of the Church. Notwithstanding its common interests with the Church, the Associated Diocese has several distinct and particular interests, as detailed above.

Accordingly, the four elements for intervention as of right are satisfied and the Associated Diocese’s motion to intervene should be granted.

This Court did not consider permissive intervention with respect to the Church's motion to intervene because it granted intervention of right. Likewise, this Court need not consider permissive intervention as to the Associated Diocese's motion because it should grant intervention of right. This Court could, however, grant the Associated Diocese's motion under the lower threshold for permissive intervention. "Permissive Intervention,' . . . allows the court, in its discretion, to permit anyone to intervene upon timely motion who 'has a claim or defense that shares with the main action a common question of law or fact.' Fed. R. Civ. P. 24(b)(1)(B). In exercising discretion under Rule 24(b), 'the court shall consider whether the intervention will unduly delay or prejudice the application of the rights of the original parties.' Fed. R. Civ. P. 24(b)(3)." Order dated August 23, 2017. The Associated Diocese's claims clearly involve common questions of law and fact. As explained herein, its motion is timely and made without undue delay, and Bishop Lawrence will not be prejudiced.

2. Motion to Amend: Rule 15

Rule 15, FRCP, applies to Bishops vonRosenberg and Adams' motion to amend their complaint.

Rule 15, FRCP, requires that courts "freely give leave" to a request to amend a pleading "when justice so requires." Rule 15(a)(2), FRCP. The Fourth Circuit "ha[s] interpreted Rule 15(a) to provide that 'leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile.'" *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006) (following citation omitted).

The proposed pleading attached hereto as Exhibit A does not prejudice Bishop Lawrence. Bishop vonRosenberg's and Adams' claims against him remain essentially the same. The

primary purpose of the amendment is to include the claims of the Associated Diocese as an intervening plaintiff, as well as claims against the parties to be joined. Such an amendment is not proposed in bad faith and is not futile. As set forth above, the Associated Diocese's intervention is warranted. As set forth below, the joinder of parties and claims is likewise warranted.

3. Motion to Join Parties: Rules 19 and 20

Rules 19 and 20, FRCP, apply to Bishops vonRosenberg and Adams' and the Associated Diocese's respective motions to join parties.

Rule 19, FRCP, provides that a person or entity "must be joined as a party if ... in that person's absence, the court cannot accord complete relief among existing parties." The Fourth Circuit has held that a party is "necessary" to a dispute under this rule and must be joined to it if the core of the dispute cannot be "fully resolve[d]" without him or her. *Home Buyers Warranty Corp. v. Hanna*, 750 F.3d 427, 435 (4th Cir. 2014) (deeming it "crucial" that builder be joined to homeowner's dispute with issuer of home warranty because otherwise homeowner could not receive "full recovery on the defects in her house").

Bishops vonRosenberg and Adams and the Associated Diocese cannot receive "complete relief" on their trademark and false advertising claims without the inclusion of the entities that currently pledge their loyalty to and are acting in concert with and under the direction and control of Bishop Lawrence, namely the Lawrence Diocese, the Trustees Corporation, and the Lawrence Parishes. As set forth in the proposed pleading attached hereto as Exhibit A, those parties are taking the same or similar actions to those taken by Bishop Lawrence and John Does 1-10 that confuse the public. Any remedy to stop the confusion they are creating will be sorely incomplete if those parties are not added, as they otherwise will not be bound by this Court's

resolution of the case therefore free to continue their confusing activities. *See, e.g., Monaco v. South Carolina Workers' Compensation Commission*, 2008 WL 163059 (D.S.C. 2008) (Governor was “necessary party” and therefore joined in the action because “[e]ven if this Court enjoined the Commission from enforcing the current executive orders, without adding the Governor as a party, the Governor is free to issue a subsequent executive order”).

Even if joinder of parties were not required under Rule 19, FRCP, it is both permitted and highly desirable under the circumstances here.

Rule 20(a)(2), FRCP, provides that “[p]ersons ... may be joined in one action as defendants if: (A) any right to relief is asserted against them ... with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.”

As for (A), the proposed pleading against the parties to be joined largely relies on the very same transactions and occurrences as the existing pleading. In fact, most of the supporting allegations are unaltered. The proposed pleading simply connects those supporting allegations to the Lawrence Diocese, the Trustees Corporation, and the Lawrence Parishes and explains how they have participated and acted in concert with Bishop Lawrence to perpetuate public confusion in violation of the Lanham Act. *See, e.g., Triangle Software, LLC v. Garmin International, Inc.*, 2011 WL 10618731 *1 (E.D.Va. 2011) (in patent infringement action, where there was a “business relationship” between the existing defendant and the entities the plaintiff proposed to add as defendants, and where the defendant allegedly “induced” those entities to infringe the plaintiff’s patent, the plaintiff’s claims against the new entities “[arose] out of the same transaction or occurrence” as the existing claims); *Saval v. BL Ltd.*, 710 F.2d 1027, 1031 (4th

Cir. 1983) (internal citations omitted) (“[a]bsolute identity of all events is unnecessary” to satisfy the “same transaction or occurrence” standard) (internal citation omitted).

As for (B), where infringement of the same trademarks is at issue, common questions of law and fact are found to exist. *See Golden Scorpio Corp. v. Steel Horse Bar & Grill*, 596 F.Supp.2d 1282, 1284 (D.Ariz. 2009) (“there are common questions of law and fact because all defendants are alleged to have infringed the same trademarks.”). Here, Bishops vonRosenberg and Adams and the Associated Diocese seek to join these new defendants to protect the same trademarks and prevent the same sort of false advertising that they seek to address in the existing suit.

Equally important, the policy goals of the rule would be advanced by allowing joinder. The Fourth Circuit has said that Rule 20 “should be construed in light of its purpose, which is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits.” *Saval v. BL Ltd.*, 710 F.2d 1027, 1031 (4th Cir. 1983) (internal citations omitted). According to the U.S. Supreme Court, “the impulse is toward the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966). Here, where the parties and proposed additional parties have labored in this and related litigation for nearly five years, the parties’ need for closure and the equally important need to conserve judicial resources both weigh heavily in favor of allowing joinder of all proposed parties in this action.

4. Motion to Join Claims: Rule 18

Rule 18, FRCP, applies to Bishops vonRosenberg and Adams’ and the Associated Diocese’s respective motions to add claims.

Rule 18(a), FRCP, provides that “[a] party asserting a claim ... may join, as independent or alternative claims, as many claims as it has against an opposing party.” Under this rule, a party generally “should be permitted to join all claims against an opponent as a matter of right,” 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1582 (2010), however, federal courts may entertain such claims only if they independently satisfy jurisdiction requirements. *E.g.*, *King Fisher Mar. Serv. V. 21st Phoenix Corp.*, 893 F.2d 1155, 1158 n.2 (10th Cir. 1990).

28 U.S.C § 1367 governs the supplemental jurisdiction of federal courts. Subsection (a) of Section 1367 provides that, except when certain exceptions apply (none of which apply here), “in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article II of the United States Constitution.” 28 U.S.C. § 1367(a). The Fourth Circuit has held that Section 1367 codifies the standard set out by the U.S. Supreme Court in *United Mine Workers of America v. Gibbs*, 86 S.Ct. 1130 (1966). *See Brzonkala v. Va. Polytechnic Inst. & State Univ.*, 169 F.3d 820, 842 (4th Cir. 1999). The *Gibbs* Court held that federal courts have supplemental jurisdiction over state law claims where “[t]he state and federal claims ... derive from a common nucleus of operative fact.” *Gibbs*, 86 S.Ct. at 1138. “In practice, § 1367(a) requires only that the jurisdiction-invoking claim and the supplemental claim have some loose factual connection.” 13D Charles Alan Wright, Arthur R. Miller, Edward H. Cooper & Richard D. Freer, *Federal Practice and Procedure* § 3567.1 (2008).

Bishops vonRosenberg and Adams’ and the Associated Diocese’s additional claims for trademark infringement under state law are essentially the same as their trademark infringement

claims under the federal Lanham Act. They clearly derive from a common nucleus of operative fact.

The Associated Diocese's additional claims against the Trustee Corporation and the 28 Trustee Parishes have much more than a "loose factual connection" to the Associated Diocese's Lanham Act claims and can easily be said to derive from a "common nucleus of operative fact" as them. Indeed, some of the facts supporting the Associated Diocese's Lanham Act claims are identical to those supporting its removal-of-trustee request – specifically, the repeated use, for another denomination, of the diocesan and parish buildings held in trust for the Church and the Associated Diocese. That repeated use both causes confusion in violation of the Church's rights under the Lanham Act and violates fiduciary duties owed to the Church and the Associated Diocese by the Trustee Corporation and the 28 Parish Trustees.

The Fourth Circuit has "articulated at least nine factors that generally are relevant to the 'likelihood of confusion' inquiry" that is the heart of a trademark infringement claim. *Rosetta Stone, Ltd. v. Google, Inc.*, 676 F.3d 144, 153 (4th Cir. 2012). One of those factors is "the similarity of the facilities used by the markholders." *Id.* (internal quotations and citations omitted). Courts routinely hold that when a particular building has historically been associated with a specific entity, its mere occupancy later by a competitor can be relevant to the analysis of a Lanham Act claim between the parties. Thus, when the competitor later occupies the same building and fails to adequately distinguish itself from the prior occupant, that action weighs in favor of finding a Lanham Act violation. *See, e.g., Putt-Putt, LLC v. 416 Constant Friendship, LLC*, 936 F.Supp.2d 648, 658 (D.Md. 2013) ("Defendant 416 CF's use of the same building that once housed a former authorized Putt-Putt franchise" weighed in favor of finding a Lanham Act violation); *Blue Mako Incorp. v. Minidis*, 2008 WL 11334205 *9 (C.D.Cal. 2008) (giving similar

weight to the fact that “[e]ach Hot Rocks restaurant was located in the same building ... as the Red Brick restaurant it replaced”); *IHOP Corp. v. Langley*, 2008 WL 1859340 *1 (E.D.N.C. 2008) (giving similar weight to fact that “Defendant’s restaurant” operated in “the building once occupied by an IHOP restaurant”). In the light of these precedents, the Trustee Corporation’s and 28 Trustee Parishes’ repeated use of buildings that are historically recognized as “Episcopal Diocese” and “Episcopal Church” buildings, even while they are worshipping in affiliation with another denomination and have disavowed the Church and the Associated Diocese, is one factor that supports a finding that they have violated the Lanham Act.

That same use of the buildings by the Trustee Corporation and the 28 Trustee Parishes also violates their fiduciary obligations to the Associated Diocese. The Supreme Court of South Carolina concluded that “title is in the trustee corporation for the benefit of the associated diocese”; and that “the twenty-eight church organizations which acceded to the Dennis Canon” – a rule set out in the Church’s governing documents – hold their property in “trust in favor of the national church.” *Protestant Episcopal Church in the Diocese of South Carolina*, 421 S.C. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting). Use by the Trustee Corporation and the 28 Trustee Parishes of the property they hold in trust for the Associated Diocese – including the historic buildings traditionally identified as the “Episcopal Diocese” and “Episcopal Churches” – to carry out their operations in affiliation with another denomination clearly violates their fiduciary duties to the Church and the Associated Diocese.

For these reasons, the Associated Diocese’s Lanham Act claims against the Trustee Corporation and the 28 Trustee Parishes and its claims for removal of trustees under S.C. Code

§ 62-7-706 derive from a common nucleus of operative fact, and this Court has jurisdiction over the state law claims.⁴

WHEREFORE, the Court should grant the Associated Diocese's and Bishop vonRosenberg and Adams' respective motions to intervene, to join parties and claims, and to amend their complaint, and grant them leave to file the proposed pleading attached hereto as Exhibit A.

(Signature page to follow)

⁴ The "probate exception" to federal court jurisdiction has no application to the present case. "[T]he probate exception is limited to two categories of cases: (1) those that require the court to probate or annul a will or to administer a decedent's estate, and (2) those that require the court to dispose of property in the custody of a state probate court." *Lee Graham Shopping Center, LLC v. Estate of Kirsch*, 777 F3d 678, 689-81 (4th Cir. 2015); *see also Wellin v. Wellin*, No. 2-14-cv-4067-DCN, 2015 WL 628071, at *4 (D.S.C. Feb. 12, 2015) (same) (citing *Marshall v. Marshall*, 547 U.S. 293, 311-12 (2006)). Neither category of circumstances exists here.

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Respectfully submitted,

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