

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Kim vs. Kwon

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

CASE NUMBER:
30-2019-01076323-CU-NP-CJC

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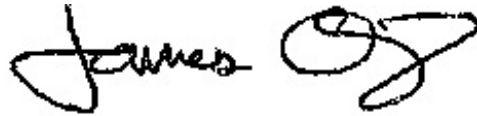
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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

AUG 14 2019

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

JIN HONG KIM, an individual; YON
SUNG KOO, an individual; and SOO
EAON SHIN, an individual,
Plaintiffs,

v.

DAVID KWON aka NAM HYUK KWON,
an individual; BOKSUP LEE, an
individual; HARRIS KWON aka HYUK
JUNG KWON, an individual; ERIC
SONGHO LEE, an individual; ILKWON
LEE, an individual; YOUNG JO SHIN,
an individual; Does 1-50, inclusive,
Defendants.

Case No. 30-2019-01076323
STATEMENT OF DECISION RE: CORPORATIONS
CODE § 9418 HEARING

Hon. MARTHA K. GOODING
Dept. C32

This action arises out of a highly contentious dispute over who controls – or has the right to control – the Irvine Baptist Church (the “Church”), a California religious nonprofit corporation. Plaintiffs Jin Hong Kim (“Kim”), Yon Sung Koo (“Koo”), and Soo Eeon Shin (“Shin”) (collectively, “Plaintiffs”) brought this action seeking, in part, a determination by the Court, pursuant to Corporations Code Section 9418, whether each of the three Plaintiffs is a validly elected

1 or appointed director of the Church. Defendants are David Kwon (aka Nam Hyuk Kwon), Boksup
2 Lee, Harris Kwon (aka Hyuk Jung Kwon), Eric Songho Lee, Ilkwon Lee and Young Jo Shin (collectively,
3 "Defendants"). Plaintiffs allege that each of the six Defendants purports to be a member of the
4 Church's Board of Directors and, in the case of David Kwon, purports to be the Chairman of the
5 Board of Directors.

6 In response to Plaintiffs' ex parte application for an order setting a prompt hearing date for
7 this Section 9418 hearing, the Court set an evidentiary hearing to commence on July 23, 2019.
8 Defendants did not object to the setting of an evidentiary hearing to permit the Court to make a
9 Section 9418 determination. All parties agreed that the Church, as a California religious nonprofit
10 corporation, is subject to Section 9418 and that the hearing should be expeditiously scheduled.

11 Section 9418 of the Corporations Code – which is part of the portion of the Corporations
12 Code that governs religious nonprofit corporations – provides as follows:¹

13 Upon the filing of an action therefor by any director or member, or by any person who had
14 the right to vote in the election at issue after such director, member, or person has
15 exhausted any remedies provided in the articles or bylaws, the superior court of the proper
16 county shall determine the validity of any election or appointment of any director of any
17 corporation.

18 Plaintiffs' counsel suggested that the Section 9418 hearing should determine the validity of
19 the appointment of not only the Church's directors, but also its officers. The Court disagreed. By its
20 terms, Section 9418 authorizes the Court only to "determine the validity of any election or
21 appointment of any *director* of any corporation." Corp. Code §9418(a) (emphasis added). This is
22 underscored by Section 9418(c), which provides that "[t]he court, consistent with the provisions of
23 this part and in conformity with the articles and bylaws to the extent feasible, may determine the
24 person entitled to the *office of director* or may order a new election to be held or appointment to
25 be made" *Id.* §9418(c)(emphasis added). Accordingly, the Court limited the scope of the
26 Section 9418 hearing to whether the three Plaintiffs, each of whom claims to be a duly elected or
27 appointed Director of the Church, were validly elected or appointed to the Church's Board of
28 Directors.

¹ All further statutory citations are to the Corporations Code, unless otherwise indicated.

1 Before setting forth the Court's finding and conclusions, it is useful to summarize the parties'
2 primary contentions.

3 PLAINTIFFS' CONTENTIONS

4 Plaintiffs contend Kim, Koo, and Shin are validly elected or appointed members of the Board
5 of Directors of the Church for the following reasons:

6 As to Plaintiff Kim: Plaintiffs contend Kim was at the relevant time periods – and still is – the
7 Church's Head of Deacons and a member of the Ordained Deacons Committee. When the Ordained
8 Deacons Committee demoted Pastor David Kwon from Senior Associate Pastor to Associate Pastor
9 effective February 17, 2019, Kim contends he became ex officio Chairman of the Church's Board of
10 Directors because (1) upon David Kwon's demotion, the Church still had no Senior Pastor and it no
11 longer had a Senior Associate Pastor; and (2) Kim therefore became ex officio Chairman of the
12 Board of Directors under the Church's Constitution by virtue of his position as Head of Deacons.²
13 Kim contends he was never validly removed as a deacon, he remains Head of Deacons, and he
14 therefore remains the duly selected ex officio Chairman of the Board of Directors.

15 As to Plaintiff Koo: Plaintiffs contend Koo became Secretary of the Church on January 1,
16 2019 when he was duly appointed to that position by the Ordained Deacons Committee. Koo
17 contends he remains in that position as he has never validly been removed as Secretary or from his
18 position as a deacon, and as Secretary he is a member of the Board.

19 As to Plaintiff Shin: Plaintiffs contend Shin became Finance Ministry Team Leader when he
20 was appointed to that position by the Ordained Deacons Committee. Shin contends he remains in
21 that position as he has never validly been removed as Finance Ministry Team Leader or from his
22 position as a deacon, and as Finance Ministry Team Leader he is a member of the Board.

23 DEFENDANTS' CONTENTIONS

24 Defendants contend David Kwon's employment status at the Church was not validly altered
25 by the Ordained Deacons Committee. More specifically, Defendants contend David Kwan was not
26 validly demoted from Senior Associate Pastor to Associate Pastor and he was not thereafter validly

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28 ² The Church Constitution, admitted into evidence as Exhibit ("Exh.") 101, is cited throughout by Chapter ("Ch.") and Article ("Art.").

1 terminated from his position as Associate Pastor. Accordingly, Defendants contend (1) David Kwon
2 remains Senior Associate Pastor and ex officio Chairman of the Church's Board of Directors; and (2)
3 Plaintiff Kim therefore could not and did not succeed to the Chairman position as Head of Deacons.
4 In any event, Defendants also contend Kim was validly terminated as a deacon by the Officers
5 Committee and the General Assembly, he is no longer Head of Deacons, and he therefore could not
6 be ex officio Chairman of the Board of Directors.

7 As to Koo and Shin, Defendants do not dispute they were the Church's validly-selected
8 Secretary and Finance Ministry Team Leader, respectively, as of February 2019. Defendants
9 contend, however, that the Officers Committee voted to terminate Koo and Shin as deacons on
10 March 17, 2019, and their terminations became final when they were ratified by the General
11 Assembly on March 31, 2019. Defendants further contend that, once stripped of their deacon
12 positions, Koo and Shin were no longer eligible to be Secretary and Finance Ministry Team Leader,
13 and they therefore cannot be Board members by virtue of holding those positions.

14 THE EVIDENTIARY HEARING

15 At the outset of the hearing, the parties stipulated that each side would be limited to four
16 hours of testimony. The Court accepted the parties' stipulation and ordered the hearing to proceed
17 on that basis. The parties also stipulated to admissibility for all purposes of Exhibits 101-115 and
18 Exhibits 1-40 *except* Exhibits 3, 6, 7, 24, 31, 32, and 33.³ They also stipulated to a witness exclusion
19 order and to the removal of Exhibit 2A and the renumbering of Exhibit 2B as Exhibit 2.

20 In addition, the parties advised the Court they disagreed on the proper translation of Article
21 3, Chapter 8 of the Church Constitution (Exh.101) and that, to resolve the dispute, they jointly
22 retained a properly-certified translator, Soomi Ko ("Ko"), who would not only provide
23 Korean/English interpreter services for witness testimony at the hearing, but also provide the Court
24 a translation of that Article. The parties agreed Ko's translation of the disputed provision would be
25 binding on them and the Court. Exhibit 101 contains handwritten interlineations reflecting Ko's
26 corrected translation of Article 3. See Exh. 101 at 8.

27
28 ³ The parties stipulated at closing argument there is in fact no Exhibit 106.

1 The evidentiary hearing took place on July 23 and 24, 2019, and at the conclusion of the
2 hearing, both parties rested. Closing arguments were held on July 31, 2019, and all post-trial
3 briefing was submitted to the Court by August 1, 2019.

4 The parties requested a Statement of Decision and agreed upon the following procedure:
5 The Court will issue a Proposed Statement of Decision and serve it on the parties; the parties will
6 have seven (7) calendar days from service to file and serve written objections to it; and, after
7 considering the objections, the Court will issue its Final Statement of Decision.⁴

8 The Court issued its Proposed Statement of Decision on August 6, 2019. Thereafter,
9 Plaintiffs filed their Request for Corrections of the Proposed Statement of Decision, and Defendants
10 filed detailed Objections to the Proposed Statement of Decision. The Court has carefully considered
11 both documents.

12 In making the factual findings set forth herein, the Court has carefully considered all the
13 testimony and exhibits admitted at trial, as well as the parties' arguments in closing, in their post-
14 trial briefs, and in their objections/requested "corrections" to the PSOD. The Court's findings and
15 conclusions necessarily reflect its evaluation and determination of the credibility of each of the
16 witnesses who testified. See Evid. Code § 780; CACI 5003. A trier of fact "properly may reject part
17 of the testimony of a witness, though not directly contradicted, and combine the accepted portions
18 with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of
19 truth out of selected available material." *Nevarov v. Caldwell* (1958) 161 Cal.App.2d 762, 777
(citations omitted). The Court has done so here.

20 Based on the credible evidence presented at the evidentiary hearing and reasonable
21 inferences the Court has drawn from it, the Court makes the following findings and conclusions.
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25 ⁴ Defendants later suggested they should have more time than the agreed-upon seven days, because they did not
26 actually receive the Court's PSOD until August 10, several days after it was served. The Court properly served the PSOD
27 on Defendants by mail on August 7, 2019 to the address for Defendants' counsel that was contained in the Court's
28 records. Mail service was the only manner in which the Court served Defendants at that time, as their counsel had not
provided an email address for service of papers in this action. In any event, Defendants were able to file a very detailed
set of objections on August 13, 2019, one day before the expiration of the seven-day period.

FINDINGS AND CONCLUSIONS

1 The Church is affiliated with the United States Southern Baptist Church. Its governing
2 document is the Constitution of Irvine Baptist Church (the "Constitution"). The parties do not
3 dispute that the current and operative Constitution was ratified in August 2017 by the Church's
4 General Assembly and became effective September 1, 2017. See Exh. 101. Thus, the parties agree
5 this action is governed by the 2017 Constitution, and the Court so finds.

6 The Constitution provides generally that "[a]dministrative authority lies with the General
7 Assembly, and duties required to carry out an effective administration of the church may be
8 performed by the officers or a representative assigned by the church." *Id.* Ch. 5 at 5. It further
9 provides that "[t]he church will follow The Broadman Church Manual and Robert's Rules of Order
10 unless there is special rule." *Id.*

11 The questions posed by the Section 9418 hearing require the Court to interpret and apply
12 the terms of the Constitution.

13 The General Assembly

14 The Church's governance structure has several layers. First and foremost is the General
15 Assembly, which is the "final legislative body of the church." Exh. 101, Ch. 7 at 7. All certified
16 Church members at least 18 years of age are members of the General Assembly. *Id.* Testimony
17 given at the hearing shows that, as of the key time frame of this dispute, February/March 2019,
18 there were approximately 300 certified members of the Church.⁵ The Senior Pastor is the ex officio
19 Chairman of the General Assembly, and the Senior Associate Pastor or the Head of Deacons takes
20 his place in the absence of the Chairman, "in that order." *Id.* Ch. 7, Art. 2 at 7.

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24 ⁵ In response to the Court's Proposed Statement of Decision, Plaintiffs filed a request for "corrections" to the PSOD, in
25 which they asked the Court to find that there were, in fact, 497 certified members of the Church as of March 26, 2019.
26 In support of this request, Plaintiffs point to Exhibit 26, which the parties stipulated to admit into evidence for purposes
27 of the Section 9418 hearing. However, there was no testimony presented at the hearing about Exhibit 26, including
28 what the document is, who prepared it, when it was prepared, how and why it was prepared, and whether it is an
accurate list of certified members. Without such testimony, the Court has no basis on which to conclude that Exhibit 26
accurately reflects the number of certified members as of the relevant time period here. The only testimony provided
at the hearing – and it was not disputed – is that there were approximately 300 certified members of the Church.

1 The Chairman must call a regular General Assembly meeting at least twice annually and
2 announce it in the church bulletin 2 weeks before the meeting. Exh. 101, Ch. 7, Art. 3 at 7.⁶ “An
3 extraordinary General Assembly meeting may be requested by the Senior Pastor or the Officers’
4 Committee and held upon special occasion with an announcement in the weekly bulletin 2 weeks
5 before the meeting.” *Id.*

6 The duties of the General Assembly include deliberating on and ratifying the budget and
7 settlement of accounts; ratifying any matters related to the ordination of deacons, senior
8 deaconesses, and pastors; ratifying the hiring and pardoning of a senior pastor, as well as the
9 renewal of his term; ratifying any matters related to purchasing and selling of church properties,
10 and ratifying any amendments to the church Constitution. Exh. 101, Ch. 7, Art. 4 at 7.

11 The Officers Committee

12 The next layer of governance is the Officers Committee. Its membership consists of the
13 Senior Pastor, Senior Associate Pastor, Administrative Pastor, serving ordained deacons, full-time
14 ordained deacons under 70 years of age, serving deaconesses, and head of the ministry team. Exh.
15 101, Ch. 8, Art. 1(a) at 8. As with the General Assembly, the Senior Pastor is the ex officio Chairman
16 of the Officers Committee, and the Senior Associate Pastor or the Head of Deacons takes his place in
17 the absence of the chairman, “in that order.” *Id.* Ch. 8, Art. 2 at 8.

18 Meetings of the Officers Committee must be called by the Chairman once every quarter and
19 announced in the church bulletin one week before the meeting. “A special officers committee
20 meeting may be called when necessary regarding important matters with a request from the Senior
21 Pastor, the Ordained Deacons Committee or the [sic] over 2/3 of the Officers Committee and it shall
22 be announced in the church weekly bulletin 1 week before the meeting.” Exh. 101, Ch. 8, Art. 3
23 at 8.

24 The duties of the Officers Committee include, among other things, “deliberat[ing] and
25 approv[ing] resolutions by the Ordained Deacons’ Committee”; passing resolutions related to
26 amending the Constitution, the budget and settlement of accounts, the purchase and sale of assets,

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28 ⁶ The church bulletin is an information pamphlet or flyer distributed at Sunday services to all attendees.

1 the hiring and pardoning of a senior pastor, as well as renewal of his term “before submitting the
2 above resolutions to the General Assembly.” Exh. 101, Ch. 8, Art. 4 at 8. The Officers Committee is
3 also empowered to “[d]iscuss and make decisions regarding any important matters of the church
4 and decide on matters prescribed by the Constitution.” *Id.*

5 The Ordained Deacons Committee

6 The next layer of governance is the Ordained Deacons Committee. Its members consist of
7 the Senior Pastor and a non-specified number of serving ordained deacons; the Constitution
8 provides a formula for determining the number of serving ordained deacons, which depends upon
9 the number of certified members in the Church. Exh. 101, Ch. 9, Art. 1 at 9. As of February 1, 2019,
10 there were 3 ordained deacons serving on the Ordained Deacons Committee; the parties do not
11 dispute that this number was correct, and the Court therefore finds it was.

12 The Senior Pastor is the ex officio Chairman of the Ordained Deacons Committee, and the
13 Senior Associate Pastor or the Head of Deacons takes his place in the absence of the Chairman, “in
14 that order.” Exh. 101, Ch. 9, Art. 2 at 9. The Chairman must call an Ordained Deacons Committee
15 meeting once a month, and either the Chairman or the Head of Deacons may call a meeting as
16 needed. The Constitution does not require advance written notice of meetings of the Ordained
17 Deacons Committee.

18 The duties of the Ordained Deacons Committee include, among other things, reviewing and
19 deciding upon matters delegated by the General Assembly and the Officers Committee; undertaking
20 the duties of the Personnel Committee and the Disciplinary Committee; and reviewing and
21 discussing matters related to other church operations and submitting them to the Officers
22 Committee. Exh. 101, Ch. 9, Art. 4 at 9.

23 The Head of Deacons

24 The Head of Deacons is appointed by the Senior Pastor from among the serving ordained
25 deacons. Exh. 101, Ch. 9, Art. 6 at 10. As of February 1, 2019, Plaintiff Kim was the properly selected
26 and serving Head of Deacons, having been appointed to a second, one-year term beginning January
27 1, 2019.
28

1 The Board of Directors

2 The Board of Directors of the Church consists of only three members: the Senior Pastor, the
3 Secretary, and the Finance Ministry Team Leader. Exh. 101, Ch. 11, Art. 1 at 11. The Senior Pastor is
4 the ex-officio Chairman of the Board of Directors, and the Senior Associate Pastor or the Head of
5 Deacons takes his place in the absence of the Chairman, "in that order." *Id.* Art. 2 at 11. Thus,
6 when the Church has no Senior Pastor and no Senior Associate Pastor, the Head of Deacons
7 becomes a member of the Board and serves as its Chairman.

8 The Secretary and Finance Ministry Team Leader

9 The positions of Secretary and Finance Ministry Team Leader are addressed in Chapter 14 of
10 the Constitution. Article 1 (titled "Secretary") provides that the "Secretary for the Officers
11 Committee shall be elected by the officers and shall also be the Secretary for the General
12 Assembly." Exh. 101, Ch. 14, Art. 1 at 14. The Secretary must be selected from among the serving
13 ordained deacons. *Id.*

14 Article 2 (titled "Finance") provides that the Finance Team Leader "must be one of the
15 serving ordained deacons appointed by the Ordained Deacons Committee." Exh. 101, Ch. 14, Art. 2
16 at 15. The titles "Finance Team Leader" and "Financial Ministry Team Leader" are used
17 interchangeably to describe the same position.

18 * * * * *

19 The first question to be decided is whether Plaintiff Jin Hong Kim is the validly-selected
20 Chairman of the Board of Directors by virtue of his position as Head of Deacons, in the absence of
21 both a Senior Pastor and a Senior Associate Pastor.

22 This, in turn, requires the Court to determine whether (1) David Kwon's employment status
23 was validly changed by the Ordained Deacons Committee from Senior Associate Pastor to Associate
24 Pastor (thus leaving a vacancy in both the positions of Senior Pastor and Senior Associate Pastor,
25 which meant the Head of Deacons became Chairman of the Board); (2) whether Kim thereafter was
26 validly removed from his position as a deacon (and Head of Deacons) by the Officers Committee and
27 General Assembly; and (3) whether Rev. Chung Jik Park ("Rev. Park") was hired as a Senior Associate
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1 Pastor in the wake of David Kwon's termination to fulfill the role of Senior Pastor and therefore is a
2 Board member, rather than Kim.

3 Did the Ordained Deacons Committee have authority under the Constitution to change
4 David Kwon's employment status from Senior Associate Pastor to Associate Pastor (and then to
5 terminate his employment) without such action being ratified by the Officers Committee and/or the
6 General Assembly?

7 The Court concludes it did.

8 At the time the Church's then-Senior Pastor, Kyung Ho Park (who is not related to Rev.
9 Chung Jik Park), retired in 2018, David Kwon was a Senior Associate Pastor. Although there had
10 been at least one previous Senior Associate Pastor, David Kwon was at that time (and, until his
11 position was changed to Associate Pastor, he remained) the only Senior Associate Church's Pastor.⁷
12 However, David Kwon was never hired as the Senior Pastor of the Church. Instead, he simply was
13 asked to (and did) perform the duties of the Senior Pastor while that office was vacant. Throughout
14 the time he performed the duties of the Senior Pastor on a temporary, interim basis, David Kwon
15 remained a Senior Associate Pastor.

16 The evidence is clear David Kwon was never hired as the Senior Pastor of the Church. The
17 process for hiring the Senior Pastor, as set forth in the Constitution, requires multiple steps. Once a
18 vacancy in the position (or a resignation of the Senior Pastor) has been confirmed, the Officers
19 Committee must form a Hiring Committee of 5-7 members. Exh. 101, Ch. 13, Art. 3 at 12. The Hiring
20 Committee then nominates a candidate for the Senior Pastor position. *Id.* That nomination then
21 must be ratified in a two-step process: first, the Officers Committee must ratify the Hiring
22

23 ⁷ The parties do not dispute that David Kwon was properly promoted from an Associate Pastor to Senior Associate
24 Pastor in October 2017 by a vote of the Ordained Deacons Committee, and that this was properly done under the
25 current Constitution (which became effective September 1, 2017) without the need to have that vote ratified by either
26 the Officers Committee or the General Assembly. (Indeed, David Kwon acknowledged that his promotion to Senior
27 Associate Pastor did not require ratification by the Officers Committee or General Assembly.) Thus, Defendants'
28 argument for purposes of this proceeding that the Constitution requires "all actions" of the Ordained Deacons
Committee to be ratified by the Officers Committee is at least inconsistent both with the terms of the Constitution and
with past practice, if not disingenuous. If the Court were to accept Defendants' argument, that would lead to the
conclusion that David Kwon never became Senior Associate Pastor and was never more than an Associate Pastor – a
result Defendants decidedly do not seek.

1 Committee's nomination by at least a ¾ majority; then, at least ¾ of the General Assembly must
2 approve the selection. *Id.*

3 *None of these steps was ever taken with respect to David Kwon.* When Senior Pastor Kyung
4 Ho Park retired, David Kwon was simply asked to perform the duties of the Senior Pastor on an
5 interim basis until a new Senior Pastor could be hired. This is authorized by the Constitution, which
6 provides that a Senior Associate Pastor may perform the duties of the Senior Pastor in his absence.
7 See Exh. 101, Ch. 13, Art. 3, Sec. 2 at 12. Thus, when David Kwon was asked to perform those
8 duties, he remained only a Senior Associate Pastor.

9 Accordingly, the relevant portions of the Church Constitution regarding the personnel
10 actions taken against David Kwon by the Ordained Deacons Committee are the provisions governing
11 an Associate Pastor, which are found at Chapter 13, Article 3. See Exh. 101 at 13-14.

12 Compared to the hiring of a Senior Pastor, the procedure to hire an Associate Pastor is quite
13 streamlined. To hire an Associate Pastor, the Senior Pastor makes a hiring recommendation, and
14 "the decision to hire is decided upon review of the Ordained Deacons' Committee." Exh. 101, Ch.
15 13, Art. 3, Sec. 3 at 14. The Constitution does not require that the hiring of an Associate Pastor be
16 ratified by any individual, committee, or other church body, including either the Officers Committee
17 or the General Assembly.

18 The procedure to dismiss an Associate Pastor is similarly attenuated. The Constitution
19 provides that where grounds for dismissal exist, the dismissal "shall be decided upon review by the
20 Ordained Deacons Committee." Exh. 101, Ch. 13, Art. 3, Sec. 5(3) at 14.⁸ Again, the Constitution
21 does not require ratification by any individual, committee or other church body, including either the
22 Officers Committee or the General Assembly. As is clear from the provisions for hiring and
23 dismissing the Senior Pastor, where the Church's Constitution intended to require ratification for a
24 hiring/dismissal decision, it did so explicitly. There is no such provision that applies to the dismissal
25 of an Associate Pastor (whether a Senior Associate Pastor or what the parties refer to as a "general"

26 ⁸ Article 5, Sections 1 and 2 have no bearing here, as they set forth the procedures to follow when an Associate Pastor
27 "wishes to resign" or is "urged to resign." Neither of those things happened here. Pastor David Kwon was involuntarily
28 terminated.

1 Associate Pastor), which is the position David Kwon held when the Ordained Deacons Committee
2 voted to demote him and then voted to terminate him.⁹

3 David Kwon's employment status was changed from Senior Associate Pastor to Associate
4 Pastor by vote of the Ordained Deacons Committee on February 17, 2019. David Kwon received
5 notice of and was present at that meeting. Indeed, he called the meeting. In effect, David Kwon
6 was dismissed from his position as Senior Associate Pastor and reinstated as a "regular" Associate
7 Pastor.

8 The same Committee then voted to dismiss him (i.e., terminate his employment at the
9 Church) on March 15, 2019. There is no credible evidence the March 15 meeting was not validly
10 called or convened. Kwon was not present at that meeting because, as a result of his new
11 employment status as Associate Pastor, he was no longer a member of the Ordained Deacons
12 Committee. Kwon was notified of his termination by letter dated March 15, 2019. The letter was
13 signed by Ordained Deacons Kim, Koo and Shin, and by "Acting Senior Pastor Rev. Chung Jik Park."
14 Exh. 104. The letter notified David Kwon that his termination from the Church's employ was
15 effective that same day, March 15, 2019. *Id.*

16 Defendants do not contend the Ordained Deacons Committee did not act with the requisite
17 quorum or have enough votes to demote or terminate David Kwon. Nor could such a contention
18 succeed. Under the Constitution, the Ordained Deacons Committee consists of the Senior Pastor (or
19 his replacement, as prescribed in the Constitution) plus three Serving Ordained Deacons. Thus, by
20 themselves, the three deacons that served as members of the Ordained Deacons Committee
21 constituted $\frac{3}{4}$ of the membership of the Committee.

22 The Constitution requires a quorum of $\frac{2}{3}$ of the Ordained Deacons Committee's members
23 to open a meeting; decisions by the Committee require a vote of $\frac{2}{3}$ of the membership, and
24 "matters regarding appointing positions" require "at least $\frac{3}{4}$ of the votes in favor." Exh. 101, Ch. 9,
25 Art. 5.

26
27 ⁹ The power of the Ordained Deacons Committee to hire and fire an Associate Pastor logically includes the authority to
28 demote a Senior Associate Pastor to Associate Pastor.

1 All three of the serving ordained deacons that were on the Ordained Deacons Committee –
2 Kim, Koo and Shin – attended the February 17 and March 15 meetings at which David Kwon was
3 demoted and terminated, respectively. All three voted in favor of both of those actions. Thus,
4 there was a sufficient quorum at both meetings where the employment decisions were taken
5 against David Kwon, and the decisions regarding David Kwon were properly passed by the votes of
6 at least $\frac{3}{4}$ of the Ordained Deacons Committee members.

7 In sum, the Court finds and concludes that the Ordained Deacons Committee had the
8 authority to demote David Kwon from Senior Associate Pastor to Associate Pastor (and, later, to
9 terminate him as Associate Pastor), and that it properly took those actions. Accordingly, effective
10 March 15, 2019, David Kwon ceased to be a Church employee of any kind and ceased to have any
11 right or authority to act for or on behalf of the Church or any of its committees, bodies, or other
12 entities.

13 Defendants suggested at the hearing the Court should find the Officers Committee did not
14 have good or sufficient reasons to terminate David Kwon because (in Defendants' view) David Kwon
15 could only be terminated if he failed to properly perform his ministerial duties, and the evidence is
16 insufficient to show he was not properly performing his ministerial duties. See Exh. 101, Ch. 13, Art.
17 3 ("If any grounds for disqualification are discovered regarding the performance of [as Associate
18 Pastor's] ministerial duties" the matter shall be decided "upon review by the Ordained Deacons
19 Committee.") Such a determination would be beyond this Court's purview. It would be improper
20 for this Court to even attempt to determine whether David Kwon was a good and effective pastor,
21 properly carrying out his ministerial duties for this congregation in accordance with Church policy or
22 religious doctrine. See *Singh v. Singh* (2004) 114 Cal.App.4th 1264.¹⁰

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26 ¹⁰ There was considerable testimony at the hearing about the contents of an April 15, 2019 Statement of Information
27 that was filed with the Secretary of State in the midst of the dispute that culminated in this lawsuit. The document was
28 filed by one or more of the members of the warring factions, in an apparent effort to bolster their claim to control the
Church. The Court finds the document to be irrelevant and unhelpful, and the information contained in it unreliable and
not credible. It has no bearing on the question before the Court: who are the valid, properly selected members of the
Board of Directors of the Church.

1 The Court further finds and concludes that as of March 15, because there was no Senior
2 Pastor and no Senior Associate Pastor, Kim as the Head of Deacons became Chair of the Church's
3 Board of Directors.

4 Rev. Park's appointment as interim pastor does not change the Court's conclusion. Rev. Park
5 was not hired as a Senior Associate Pastor to perform the duties of a Senior Pastor. He was simply
6 brought in as an interim pastor when the Church, wracked by turmoil, found itself without either a
7 Senior Pastor or a Senior Associate Pastor to conduct services and otherwise minister to the
8 congregation.

9 The Constitution provides that "any matters not governed by this Constitution" shall be dealt
10 with based on "tradition, past practices and common sense." Exh. 101, Ch. 19 at 19. On at least
11 one other occasion in the past, the Ordained Deacons Committee of the Church made the decision
12 to bring back an Emeritus Pastor to act as interim pastor when there was conflict or dissension
13 regarding a Senior Pastor. Thus, the Church's own tradition or past practice further supports the
14 authority of the Ordained Deacons Committee to ask the Church's Emeritus Pastor, Rev. Park, on an
15 interim basis, to fulfill the functions of a Senior Pastor until a new Senior Pastor and new Senior
16 Associate Pastor could be hired. Furthermore, if nothing else, common sense tells us that when the
17 Church is without a pastor – because the Senior Pastor has retired and the next in line, the Senior
18 Associate Pastor, is also gone – the Church's governing body empowered to act as the Personnel
19 Committee has authority to bring in someone to serve as interim pastor until the vacancies can be
20 filled.

21 The next question is whether the Officers Committee and General Assembly validly voted to
22 rescind David Kwon's termination and validly voted to terminate Kim, Koo and/or Shin as deacons.

23 The Court concludes they did not. Although such votes purportedly were taken, they were
24 not taken in conformity with the Church's Constitution.

25 The Church's Constitution prescribes specific procedures that must be followed for the
26 calling and conduct of meetings of the Officers Committee and the General Assembly.

27 Special Meetings of the Officers Committee: Chapter 8 of the Constitution, governing the
28 Officers Committee, provides "[a] special meeting may be called when necessary regarding
important matters with a request from the Senior Pastor, the Ordained Deacons' Committee or the

1 [sic] over 2/3 of the Officers' Committee and it shall be announced in the church weekly bulletin 1
2 week before the meeting." Exh. 101, Ch. 8, Art. 3 at 8. As of March 2019, there were 56 members
3 of the Officers Committee.¹¹

4 Special Meetings of the General Assembly: Chapter 7 of the Constitution, governing the
5 General Assembly, provides that "[a]n extraordinary General Assembly meeting may be requested
6 by the Senior Pastor or the Officers' Committee and held upon special occasion with an
7 announcement in the weekly bulletin 2 weeks before the meeting." Exh. 101, Ch. 8, Art. 3 at 8. The
8 Church had approximately 300 certified members at the time of these events, and a quorum
9 therefore consisted of only 50 certified members. *Id.* Ch. 7 at 7. Most decisions by the General
10 Assembly only require more than 50% of the votes cast on an issue, but for matters "related to
11 amendments to the Constitution as well as the appointment of a senior pastor, serving ordained
12 deacons and serving deacons" the approval of more than ¾ of the attending members is required.
13 *Id.*, Ch. 7, Art. 5 at 7.

14 These procedures were not followed.

15 When David Kwon learned of his termination on March 15, he immediately called a meeting
16 (or, more accurately, *purported* to call a meeting) of the Officers Committee for March 17, 2019. He
17 did this by sending a KaKao Talk text message to members of the Officers Committee on March 15
18 advising them of a meeting to be held on March 17.¹² He followed that with an email at nearly
19 10:00 p.m. on the night of March 16, 2019 to 58 individuals notifying them of the March 17 meeting
20 he purported to call under his claimed authority as Chairman of the Officers Committee. *See* Exh.

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23 ¹¹ David Kwon testified several times that the number of members on the Officers Committee when he purported to
24 send notice of a special meeting was 56. Under questioning by his counsel, he later changed that testimony to state
25 there were only 55 members because one of the Officers Committee members had told him she would be moving to
26 another church. The Court finds Kwon's original testimony of 56 members to be credible, and finds that Kwon's effort to
27 revise the number downward (evidently, to avoid a quorum problem) was *not* credible. Moreover, resignation of an
28 Officers Committee member requires written resignation. *See* Exh. 101, Ch. 8 Art. 1. There is no evidence of any
written resignation. There is only David Kwon's uncorroborated testimony that this member told him she would be
leaving the Church. The Court finds this not credible.

¹² KaKao Talk is a popular text messaging application used within the Korean community.

1 105. The email was not sent to four of the Officers Committee members, although those four
2 members did receive the KaKao Talk text message.

3 This did not comply with the Church Constitution. The March 17 purported special meeting
4 of the Officers Committee was not validly called or convened.

5 First, at the time David Kwon purported to call a March 17 special meeting of the Officers
6 Committee, he was no longer employed as a pastor at the Church, much less as the Senior Pastor or
7 a Senior Associate Pastor. He was no longer ex officio Chairman of the Officers Committee, and he
8 had no authority to call a special meeting of the Officers Committee.¹³

9 Second, the Church Constitution requires notice of a special meeting of the Officers
10 Committee to be given at least one week in advance of the meeting and provides that such notice
11 "shall be announced in the church weekly bulletin 1 week before the meeting." Exh. 101, Ch. 8, Art.
12 3. The clear import of this provision is to ensure that one-week notice of a special committee
13 meeting is given to all members of the Church – not just to the Officers Committee members – and
14 to require such notice to be given in the church bulletin.

15 The notices David Kwon purported to give on March 15 and 16 did not comply with any of
16 the notice requirements. The email/text notices to the members of the Officers Committee were
17 given only on March 15 and 16 – far less than the one week notice required by the Constitution –
18 and they were not notices provided via the Church bulletin. Moreover, the only purported notice
19 given to the Church members of the March 17 special Officers Committee meeting was in a flyer
20 handed out with the Church bulletin at the Sunday services on March 17, literally only a few hours
21 before the purported Officers Committee meeting was convened that very afternoon – again, far
22 less than the one week notice required by the Constitution.

23 In short, neither the members of the Officers Committee nor the members of the Church
24 received proper notice, either in the manner or at the time mandated by the Constitution.

25 Defendants sought to avoid this glaring notice problem by arguing that the March 17
26 meeting of the Officers Committee at which David Kwon purportedly was reinstated and Kim, Koo,

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28 ¹³ Notably, David Kwon acknowledged in testimony at the hearing that he was not the Senior Associate Pastor for the
approximately one month between February 17 and March 31.

1 and Shin purportedly were terminated as deacons was not a “new” or “special” meeting of the
2 Committee, but was really just a “continuation” of a meeting of the Officers Committee that had
3 started on February 24. From this, Defendants argue that no notice at all was required for Kwon’s
4 hastily-called March 17 Officers Committee meeting. The Court finds this testimony not credible
5 and the argument not persuasive.

6 The Court finds that the March 17 meeting was not a “continuation” or “adjournment” of an
7 earlier February 24 Officers Committee meeting. It was a new, special meeting that required
8 compliance with the notice provisions of the Church’s Constitution.¹⁴

9 Even if the notice requirements of the Constitution could be avoided by simply declaring a
10 validly-called special Officers Committee meeting “continued” or “adjourned” to a later date, that is
11 not what happened here.¹⁵ There was no validly noticed and convened February 24 meeting of the
12 Officers Committee that could have been “continued.”

13 The gathering that occurred on February 24 was an informal mediation session that had
14 been put together by Rev. Park, who at that time was acting as a mediator to resolve the disputes
15 between the warring factions of the Church.¹⁶ It was *not* a properly-noticed Officers Committee

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17 ¹⁴ In any event, even a “continuation” of a prior meeting still would have to meet the quorum requirements, which the
18 March 17 meeting did not. *See below.*

19 ¹⁵ Roberts Rules of Order (“RROR”) prescribes the procedure for adjourning a meeting – i.e., continuing a meeting to a
20 later date. *See* Exh. 5 at KIM 0132-33. RROR provides: “An *adjourned meeting* is a meeting in continuation of the
21 session of the immediately preceding regular or special meeting. The name *adjourned meeting* means that the meeting
22 is scheduled for a particular time (and place, if it is not otherwise established) by the assembly’s ‘adjourning to’ or
23 ‘adjourning until’ that time and place. If a regular meeting or a special meeting is unable to complete its work, an
24 adjourned meeting can be scheduled for later the same day or some other convenient time before the next regular
25 meeting, by the adoption (as applicable) of a main or a privileged motion to fix the time to which to adjourn, or a main
26 motion to adjourn until the specified time.” *Id.* (emphasis original). In other words, even if the February 24 meeting
27 had been a validly-called regular or special meeting of the Officers Committee – and it clearly was not – for it to have
28 been properly “adjourned” to March 17, 2019, a motion would have to have been made *at the February 24 meeting* to
adjourn the meeting to March 17, 2019. No such motion was made, much less adopted.

¹⁶ Testimony was given that, at the February 24 informal mediation session scheduled by Rev. Park, the Officers
Committee members present agreed to retroactively “deem” the gathering an “official” meeting of the Officers
Committee even though the notice provisions for such a meeting had not been followed. Even if the Court were to
accept this testimony as true, there is no authority for members of the Officers Committee to gather without proper
notice and then retroactively confer “official Officers Committee meeting” status on their gathering simply by calling it
such. The February 24 meeting was not a validly noticed or convened meeting of the Officers Committee and it
therefore was not – and could not have been – validly adjourned to March 17, 2019.

1 meeting. There is no credible evidence the February 24 meeting was an Officers Committee
2 meeting that had been properly called and convened in compliance with the requirements of the
3 Church Constitution. There is also no evidence it was properly (or even actually) adjourned to on
4 February 24 to March 17.

5 Third, the Officers Committee had 56 members at the time David Kwon was demoted and
6 then terminated and at the time of the purported March 17, 2019 special meeting of the Officers
7 Committee. The purported special meeting was attended by 28 members. A quorum, consisting of
8 a majority of the committee members, was required to open a meeting. Half of a 56-member
9 committee would be 28 members. But a *majority* means more than half, and a majority of the 56-
10 member committee is 29 members. Only 27 members attended. (David Kwon was no longer a
11 member or ex officio Chairman of the Officers Committee, and he therefore did not count as a 28th
12 member in attendance.) With only 27 members present, there was no quorum to transact business.
13 And without a quorum, there could be no valid meeting and no business validly transacted.

14 In sum, for each of these independent reasons, the Court concludes the actions taken at the
15 March 17 purported Officers Committee meeting were not valid, including both the purported vote
16 to "reinstate" David Kwon and the purported vote to dismiss Kim, Koo, and Shin as deacons.

17 Likewise, the purported special meeting of the General Assembly, called for and purportedly
18 convened on March 31, 2019 to "ratify" the votes taken at the purported March 17 Officers
19 Committee meeting, was not in conformance with the Church's Constitution.

20 Under the Church Constitution, a special meeting of the General Assembly could take place
21 only when requested by either the Senior Pastor or the Officers Committee. Exh. 101, Ch. 7, Art. 3.
22 This was not done here with respect to the March 31 purported General Assembly meeting. The
23 Officers Committee did not request such a meeting. Nor did the Church's Senior Pastor (since there
24 was none at the time) or even the interim pastor, Rev. Park. Nor did a Senior Associate Pastor or
25 the Head of Deacons, who are authorized by the Constitution to act (in that order) in the place of a
26 Senior Pastor during his absence, call the meeting.

27 The March 31 meeting was called on March 17 by David Kwon, who by that time had been
28 terminated from any and all positions at the Church. At the time he purported to call the March 31
General Assembly meeting, David Kwon was not employed by the Church in *any* capacity, let alone

1 as Senior Pastor or Senior Associate Pastor. In other words, after learning of his termination, David
2 Kwon refused to accept the decision of the Ordained Deacons Committee and continued to act as if
3 he were still the Senior Associate Pastor and were still entitled to call meetings of the Church's
4 committees or bodies, all in violation of the Church's Constitution. He had no authority to do this.¹⁷

5 Moreover, although the purported meeting of the General Assembly on March 31, 2019 was
6 attended by more than 200 people, there is no credible evidence they were all certified members of
7 the Church, as was necessary for them to validly cast a vote. Thus, there is no evidence the votes by
8 those in attendance to rescind David Kwon's termination as Associate Pastor and terminate Kim,
9 Koo, and Shin as deacons were validly cast by certified members qualified to vote.

10 Finally, Defendants made a half-hearted argument that Kim is disqualified from being a
11 member of the Church's Board of Directors because he is not really a member of the Church. The
12 Court rejects this argument. The evidence presented to support it is unreliable and not credible.¹⁸
13 Kim is a member of the Church and is eligible to serve as Head of Deacons, a position to which he
14 was duly appointed.

15 In sum, the Court finds and concludes that neither Kim, Koo, nor Shin was validly removed or
16 dismissed as deacons. They remain in their positions of Head of Deacons, Secretary, and Financial
17 Ministry Team Leader, respectively. Because there is no Senior Pastor or Senior Associate Pastor,
18 Kim remains a Board member by virtue of his position as Head of Deacons. Koo and Shin remain
19 Board members by virtue of their positions as Secretary and Finance Ministry Team Leader,
20 respectively. The Court also finds David Kwon was not reinstated as Associate Pastor or Senior

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22 ¹⁷ The evidence showed that after his employment with the Church was terminated, David Kwon (1) continued to act as
23 if he were still a Senior Associate Pastor, (2) erroneously was still listed in the Church bulletin under that title, and (3)
24 was not immediately removed as a signatory on the Church bank account(s). None of this has any bearing on David
25 Kwon's *actual* status. David Kwon's refusal to acknowledge his termination and his insistence on continuing to act as if
he remained in his former role does not mean he was not validly terminated. Neither do errors in the Church bulletin.
Neither does the fact that he was not immediately removed from the Bank documents.

26 ¹⁸ Dong Il (aka "Greg") Shin testified he does not think Kim is really a member of the Church because, at one point during
27 all the dissension, Kim suggested to him that he would be willing to leave the Church if that would bring an end to the
28 litigation and strife. Even if Kim made such a statement, it is a far cry from a resignation by Kim from the Church or a
relinquishment of his membership. There is absolutely no factual basis for Greg Shin's "opinion" that Kim is not a
member of the Church.

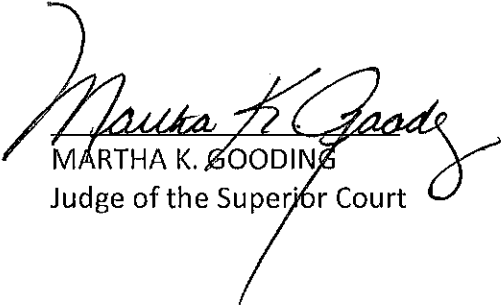
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Associate Pastor. His termination by the Ordained Deacons Committee was validly voted upon and became effective March 15, 2019.

CONCLUSION

The Court concludes the Church's Board of Directors consists of three individuals, and Plaintiffs Jin Hong Kim, Yon Sung Koo and Soo Eeon Shin are the three validly-selected and serving members of the Church's Board of Directors. The Court further concludes that none of the Defendants – including David Kwon (aka Nam Hyuk Kwon), Boksup Lee, Harris Kwon (aka Hyuk Jung Kwon), Eric Songho Lee, Ilkwon Lee, and Young Jo Shin – is a duly or validly elected or appointed member of the Church's Board of Directors, and they have no authority to act as such.

Dated: 8/14/2019


MARTHA K. GOODING
Judge of the Superior Court