2	DECONCINI MCDONALD YETWIN & LACY, P.C. 2525 EAST BROADWAY BLVD., SUITE 200 TUCSON, AZ 85716-5300 (520) 322-5000							
3								
4	Gary F. Urman (AZ # 11748) Attorneys for Defendant/Counterclaimant							
5	U.S. DISTRICT COURT							
6	DISTRICT OF ARIZONA							
7 8	DANIEL ZIMMERMAN, an unmarried man, and UNIVERSAL LIFE	NO. CV07-0209-TUC-DCB						
9	CHÚRCH/ULC MONASTERY, INC., an Arizona not-for-profit charitable corporation,							
10	Plaintiff,	ANSWER AND COUNTERCLAIM						
11	VS.							
12	GEORGE FREEMAN, an unmarried							
13	man, and DOES I-X,							
14	Defendant.							
15	GEORGE FREEMAN, an unmarried							
16	man,							
17	Counterclaimant,							
18								
19	VS.							
20	DANIEL ZIMMERMAN, an unmarried							
21	man,							
22	Counterdefendant							
23								
24								
25								
26								
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Defendant George Freeman, by and through his counsel undersigned, for his Answer and Counterclaim, admits, denies and affirmatively alleges as follows:

## **ANSWER**

- In response to Paragraph 1 of the Complaint, Defendant admits that Mr. 1. Zimmerman is an ordained minister of the Universal Life Church and a resident of the State of Arizona. While Defendant admits that Plaintiff suffers from one or more physical and Defendant is without information to form a belief whether Mr. mental disabilities. Zimmerman is a permanently disabled man, and therefore denies the allegation.
  - Defendant admits Paragraph 2 of the Complaint. 2
- In response to Paragraph 3, Defendant admits that he is an unmarried man, 3. that he is a resident of the State of Washington, and that he was a friend of Plaintiff. Defendant denies the remaining allegations set out I Paragraph 3 of the Complaint.
- Defendant is without information sufficient to form a belief as to the truth of 4 the allegations set out in Paragraph 4 of the Complaint, and therefore denies same.
  - Defendant denies the allegations set out in Paragraph 5 of the Complaint. 5.
  - Defendant admits the allegations set out in Paragraph 6 of the Complaint. 6.
- Defendant admits the allegations set out in Paragraph 7, except that ULC was 7. run by Mr. Zimmerman, among others, as an officer and board member. At all times, Mr. Zimmerman was subject to removal, if appropriate.
- In response to Paragraph 8 of the Complaint, Defendant admits that he was 8. and is an officer and director of ULC. Defendant denies all allegations set out in Paragraph 8 that are inconsistent with the foregoing.
- Defendant denies the allegations set out in Paragraphs 9, 10, 11, 12, 13, 14, 15 9. and 16 of the Complaint.

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- 10. In response to Paragraph 17 of the Complaint, Defendant realleges Paragraphs 1 though 9 herein.
- Defendant denies the allegations set out in Paragraphs 18, 19, 20 and 21 of the Complaint.
- 12. In response to Paragraph 22 of the Complaint, Defendant realleges Paragraphs 1 though 11 herein.
- 13. Defendant is without information sufficient to form a belief as to the truth of the allegations set out in Paragraph 23 of the Complaint, and therefore denies same.
- 14. Defendant denies the allegations set out in Paragraphs 24, 25 and 26 of the Complaint.
- 15. In response to Paragraph 27 of the Complaint, Defendant realleges Paragraphs 1 through 14 herein.
- 16. Defendant admits the allegations set out in Paragraphs 28, 29 and 30 of the Complaint.
- 17. Defendant denies the allegations set out in Paragraph 31 of the Complaint. While Defendant admits the action arises out of contract, Defendant affirmatively alleges that he is entitled to an award of his attorney's fees incurred herein.
- 18. In response to Paragraph 32 of the Complaint, Defendant realleges Paragraphs 1 through 17 herein.
- Defendant denies the allegations set out in Paragraphs 33, 34, 35 and 36 of the Complaint. Defendant affirmatively alleges that federal postal statutes do not contain a private right of action.
- 20. In response to Paragraph 37 of the Complaint, Defendant realleges Paragraphs 1 through 19 herein.

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- 21. In response to Paragraphs 38 and 39, Defendant admits that both he and Plaintiff owe a fiduciary duty to the corporation. Defendant denies the remaining allegations set out in Paragraphs 38 and 39 of the Complaint.
- 22. Defendant denies the allegations set out in Paragraphs 40 and 41 of the Complaint.
- 23. In response to Paragraph 42 of the Complaint, Defendant realleges Paragraphs 1 through 22 herein.
- 24. Defendant denies the allegations set out in Paragraphs 43, 44, 45, 46 and 47 of the Complaint.
- 25. In response to Paragraph 48 of the Complaint, Defendant realleges Paragraphs 1 through 24 herein.
- 26. Defendant denies the allegations set out in Paragraphs 49, 50, 51 and 52 of the Complaint.
- 27. In response to Paragraph 53 of the Complaint, Defendant realleges Paragraphs 1 through 26 herein.
- Defendant denies the allegations set out in Paragraphs 54, 55 and 56 of the Complaint
- 29. In response to Paragraph 57 of the Complaint, Defendant realleges Paragraphs1 through 28 herein.
  - 30. Defendant admits the allegations set out in Paragraph 58 of the Complaint.
- 31. Defendant denies the allegations set out in Paragraphs 59, 60, 61, 62, 63 and 64 of the Complaint.
- 32. In response to Paragraph 65 of the Complaint, Defendant realleges Paragraphs 1 through 31 herein.

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- Defendant denies the allegations set out in Paragraphs 66, 67 and 68 of the 33. Complaint.
- In response to Paragraph 69 of the Complaint, Defendant realleges Paragraphs 34. 1 through 33 herein.
- Defendant denies the allegations set out in Paragraphs 70, 71, 72, 73 and 74 35. of the Complaint.
- In response to Paragraph 75 of the Complaint, Defendant realleges Paragraphs 36. 1 through 35 herein.
- Defendant denies the allegations set out in Paragraphs 76, 77, 78, 79, 80 and 37. 81 of the Complaint.
- Defendant denies all allegations set out in the Complaint that are not 38.. specifically admitted herein.
- Defendant alleges, as and for affirmative defenses, waiver, estoppel, 39. incapacity, illegality and failure to state a claim for which relief may be granted.
- Defendant affirmatively alleges that Plaintiff Zimmerman lacks the standing 40. or authority to bring claims on behalf of the Corporation.
  - Defendant is entitled to an award of his attorney's fees incurred herein. 41.

WHEREFORE, Defendant respectfully requests that Plaintiff take nothing by his Complaint and that Plaintiff's Complaint be dismissed, and that Defendant be awarded his costs and attorney's fees incurred herein.

## COUNTERCLAIM

Defendant/Counterclaimant George Freeman, for his Counterclaim against Plaintiff/Counterdefendant Daniel Zimmerman alleges as follows:

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- Prior to August 4, 2006, Plaintiff Daniel Zimmerman ("Zimmerman") served 1 as the President and as a member of the Board of Directors of Universal Life Church/ULC Monastery, Inc., an Arizona corporation (the "Corporation").
- As of August 4, 2006, the other directors of the Corporation were George 2. Freeman, Daniel Chapin and Jeffrey Vogt.
- On August 4, 2006, by action of the Board of Directors of the Corporation, 3. Zimmerman was removed as an officer and director of the Corporation. The action was taken for the following reasons:
- instability. increasing mental A. Zimmerman demonstrated an Zimmerman's instability resulted in frequent outbursts directed at staff and constituents involving threats and profanity, usually without any provocation or apparent reason. In one incident, Zimmerman was cited by Tucson Police after he threatened to blow up Park Place Mall. Zimmerman's erratic and unstable behavior has tarnished the Corporation and its mission, and has resulted in a significant loss of revenues.
- Zimmerman has concealed his personal financial activities involving B. funds and assets of the Corporation and has refused to produce records of the Corporation that were requested by other officers and directors.
- Zimmerman has made personal use of corporate funds and corporate C. property and has refused to account for such use. Zimmerman maintains the attitude that corporate funds are interchangeable with his own funds, that corporate funds may be used by him as he pleases, for any personal purpose, and that he has no duty to account to the Corporation for his personal use of corporate funds.
- In a fit of erratic behavior, Zimmerman disabled the ULC website, the D. chief source of income for the Corporation, indicating that he did not want to spend his (the Corporation's) savings to support the site.

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	E.	In	a	similar	fit	of	erratic	behavior,	Zimmerman	discharged	the
Corporation	ı's acco	unta	mts	s withou	t ar	rang	ging for	replaceme	ents, thereby	endangering	the
financial sta	ability o	f the	e C	orporatio	n.						
									-		

- F. On more than one occasion, Zimmerman has made inappropriate comments of a sexual nature to Corporation employees, vendors and constituents. Zimmerman demanded that another officer install cameras on the desktops of the young male workers so that he could "watch them."
- G. Zimmerman has jeopardized the legal well being of the Corporation with his behavior and erratic decision making.
- H. Zimmerman, in incorporation papers and annual reports filed with the Arizona Corporation Commission, falsely and fraudulently concealed felony convictions that he was required to disclose pursuant to Arizona law. In so doing, Zimmerman jeopardized the Corporation's legal standing as an Arizona nonprofit corporation.
- I. Zimmerman further endangers the legal status of the Corporation by disregarding local, state and federal laws affecting the Corporation. When questioned about the tax consequences of a particular decision, Zimmerman responded that his treatise, the "Book of Covenants," constitutes a "back door" which allows him to interpret laws and regulations as he sees fit.
- 4. Following the removal of Zimmerman from the Board of Directors, and as an officer of the Corporation, Defendant/Counterclaimant George Freeman was elected president of the Corporation by the remaining directors.

# **COUNT ONE** (Declaratory Judgment)

5. Freeman realleges Paragraphs 1 through 4 herein.

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- A controversy exists between the parties that is appropriate for judicial 6. adjudication under Arizona's Declaratory Judgment Act.
- Freeman is entitled to a judicial adjudication that Zimmerman has been 7. lawfully removed as an officer and director of the Corporation and that Zimmerman has no authority to manage the affairs of the Corporation or to transact business in its name.
  - Freeman is entitled to an award of his attorney's fees incurred herein. 8.

# COUNT TWO (Judicial Removal of Director)

- Freeman realleges Paragraphs 1 through 8 herein. 9.
- Pursuant to A.R.S. § 10-3810, a director of a corporation may be judicially 10 removed if he has engaged in fraudulent conduct or intentional criminal conduct with respect to the Corporation, and if removal is in the best interests of the Corporation.
- Zimmerman has engaged in fraudulent conduct and/or criminal conduct with 11. respect to the Corporation by misappropriating corporate funds and by concealing information concerning his personal use and theft of corporate funds.
- Zimmerman, by his own allegations in his Complaint, is a "vulnerable adult" 12. due to physical and mental impairment, and is unable to take care of himself or the affairs of the Corporation.
  - Removal of Zimmerman is in the best interests of the Corporation. 13.
- Freeman is a director of the Corporation holding at least twenty-five percent 14 (25%) of the voting power within the Corporation, and is authorized to bring this action.

1	15.	If the Court finds that Zimmerman was not lawfully removed as a director and							
2	officer of the	ficer of the Corporation on August 4, 2006, Freeman, on behalf of the Corporation, is							
3	entitled to an order directing the Zimmerman be removed pursuant to A.R.S. § 10-3810.								
5	16.	Freeman is entitled to an award of his attorney's fees incurred herein.							
6	WHE	REFORE, Freeman requests that the Court enter judgment as follows:							
7	1.	For a judicial declaration that Zimmerman has been lawfully removed as an							
8	officer and o	lirector of the Corporation, and that Zimmerman has no power or authority to							
9	transact busi	ansact business on behalf of the Corporation;							
10	2.	In the alternative, for an order that Zimmerman be removed as a director							
11	pursuant to A	A.R.S. § 10-3810;							
12	3.	For Freeman's costs and attorney's fees incurred herein; and							
13 14	4.	For such other and further relief as the Court deems just and proper.							
15		ED this 28 day of August, 2007.							
16	DAT	DECONCINI McDonald Yetwin & Lacy, P.C.							
17									
18		By: /s/ gurman/11748  Gary F. Urman							
19		2525 E. Broadway Blvd., Suite 200 Tucson, AZ 85716-5300 Attorneys for Defendant/Counterclaimant							
20	* Avonage	Attorneys for Defendant Counterclamant							
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Document 14

# DECONCINI MCDONALD YETWIN & LACY, P.C. 2525 East Broadway Blvd., Suite 200 Tucson, AZ 85716-5300

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# CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

> James P. Armstrong The Armstrong Law Firm 4600 E. Shea Blvd. Phoenix, Arizona 85028

> > /s/kphillips

Zimmerman v. Freeman

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